

Mandates of the Special Rapporteur on the right to education; 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 minority issues; the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance; and the Independent Expert on the situation of human rights in the Sudan

REFERENCE:
AL SDN 5/2017

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Excellency,

We have the honour to address you in our capacities as Special Rapporteur on the right to education; 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 minority issues; Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance; and Independent Expert on the situation of human rights in the Sudan, pursuant to Human Rights Council resolutions 26/17, 32/32, 34/5, 34/6, 34/35, 27/29.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning alleged acts of racial discrimination and continuous harassment and violence targeting Darfuri students, including Darfuri students that are also human rights defenders. We would like to remind you that these last years, the situation of students, including Darfuri students, has been object of two previous communications sent by the special procedures mandate holders in 2015¹ and 2016.² While acknowledging the reply received to the 2015 communication, we regret that no reply to the 2016 communication was received and the concerns raised in the 2015 communication regarding the situation of Darfuri students remain valid.

According to the information received:

Between 9 and 11 May 2017, hundreds of students, including Darfuri students, from the University of Bakhtalruda, located in the city of Ed Dueim, White Nile State, organized a sit-in and peaceful protests against the Student Union election conducted in the university. The protesters called for fair and free elections as well as the representation of students of all ethnicities in the Student Union. Another key demand from Darfuri students during the protests was to ensure the continuous implementation of the fee waiver, adopted through Presidential Decree 2006 – based on the 2006 Darfur Peace Agreement (DPA) – and which provided for the exemption of the payment of school fees for all students from Darfur. Furthermore, according to the information received, in December 2015, it was already expressed that the academic year 2016-2017 would be the last year during which the fee waiver would be applied.

¹ SDN 7/2015, sent on 28 December 2015.

² SDN 5/2016, sent on 13 May 2016.

On 10 May 2017, classes were suspended and the university was partially closed. Due to the security situation, students were forced to leave their dorms during the university's closure. However, as many Darfuri students did not have the financial means to travel back to Darfur during the suspension of the classes, they remained in the dorms. As a result, many Darfuri students who tried to remain in their dorms were forced out by police officers and agents from the National Intelligence and Security Services (NISS).

On 11 May 2017, during the peaceful protests, the campus was raided by police officers and security agents from the NISS. During the raid, several students were injured, there were two police officers casualties and about 70 students were arrested, of which at least 45 were Darfuri. Nine Darfuri students reportedly remain in detention for allegedly killing the two police officers.

On 23 May 2017, 14 Darfuri students were suspended by the University administration without being given an opportunity to challenge this decision. Subsequent to their suspension, other students requested meetings with the administration in order to demand the readmission of the expelled students and the release of the nine arrested students. Following these requests for meetings, which were refused by the administration, Darfuri students have reportedly been facing increased racial targeting and student leaders from Darfur were followed and threatened by security agents from the NISS. It was also reported that the university administration made false accusations against some Darfuri students, accusing them of being violent members of armed groups. It was also reported that Darfuri students were targeted and attacked by students affiliated to the ruling party due to their ethnicity.

On 18 July 2017, at around 9.00 AM, approximately 1,200 students of Darfuri origin, including 60 female students and students that are also human rights defenders, decided to abandon their studies and to leave the city. They announced their intention to do so to the administration of the University of Bakhtalruda. The students demanded peacefully that the University administration end its conduct of instigating racial discrimination and harassment against Darfuri students in the city of Ed Dueim. They again demanded the release of the nine students arrested and the reintegration of the 14 suspended students.

When the students arrived at the bus station of Ed Dueim, police officers and NISS agents surrounded the station. It was reported that the buses drivers were ordered by NISS and police officers not to take the students anywhere. As a result, the students left the Ed Dueim city by foot and walked between 8-10 kilometers along the interstate highway. They arrived at approximately 8.00 PM at the gate of Jabal Awlyaa, the southern border of Khartoum State but, were denied entry into Khartoum State by the authorities. The students then returned inside the White Nile State borders and remained near the Sofi village, (also named Alsheikh Alyagoot), where they spent the night outside, without any food or water supplies.

On 19 July, at around 12.00 AM, some people collected food and supplies for the students, but the police and agents from the NISS did not allow the food to reach them, until later that night, and only after long negotiations. During the same night, the students were surrounded by about 10 security cars and 12 police vehicles, as well as special police forces and with machine guns at the top of five of the vehicles. Some of the students were able to sleep in schools of the village, and approximately 60 female students were hosted in villagers' houses. However, the remaining students were forced to sleep outside and were surrounded by the police officers and security agents.

On 19 July, negotiations commenced between the Director of the White Nile Security Major, a representative of the Governor of the White Nile State and the university administration, on the one hand, and the students represented by lawyers from the Darfur Bar Association on the other. During the day, security forces harassed the students and ordered them to go back to Ed Dueim, to which they refused. Security forces then threatened to break up the gathering by force. Food brought to the students by a group of people was confiscated by the police and the NISS and many students also slept outside that night. It was reported that four political leaders from the Sudanese Congress Party, who tried to visit the student protesters, were arrested by the security agents and that two of them were released the next day.

On 20 July 2017, while negotiations were taking place, a member of the Darfur Bar Association was arrested and released an hour later. It was reported that the NISS agents went closer to the village this day and that members of the Sudanese Civil Society Initiative, including human rights defenders, were arrested by security agents and were released five hours later. The students were prevented from receiving the food brought by villagers and NISS officers went closer to the village that day.

On 21 July, officers from the NISS prevented the villagers from bringing food to the students and ordered the Sheik of the village to stop providing them food and water. At approximately 10.00 AM, after the failure of three rounds of negotiations, security agents allowed four students, accompanied by security agents, to enter Khartoum, to bring buses to take the students back to Darfur. In the afternoon, the students travelled back to Darfur, accompanied by 12 security agents, police officers and traffic police cars. Around 9.00-10.00 PM, the buses were ordered to stop in Abu Hebeira, an area next to Ed Dueim, because the Governor of the White Nile State wanted to address the students. The latter arrived accompanied by the Dean of the University of Bakhtalruda. No agreement was reached so the students spent the night outside on the side of the highway in Abu Hebeira.

On 22 July, another negotiation started, but no solution was found at the end of the day. In addition to that, the students did not have access to sufficient food or water and were not allowed to leave the area, as they were still surrounded by security

officers and police agents. The students spent their second night on the side of the highway in Abu Hebeira.

On 23 July 2017, at about 1.00 PM, the buses resumed their travel to Darfur, escorted by security agents and police officers. A group of people were waiting for the students with food and water, but five of them were reportedly arrested and released 5-6 hours later. The food was confiscated.

On 24 July, at 10.00 AM, the students arrived to Al-Fashir. Agents from the NISS were surrounding the bus station, and prevented them from meeting with people waiting for them. Four Darfuri students, including a female student, from the Al-Fashir University who were trying to meet those arriving, were arrested by NISS agents.

It was reported that following these events, some Darfuri students from the University remain in hiding, as they fear being arrested.

We are deeply concerned at the allegations of restrictions to freedom of movement and access to basic services, such as food and water, against Darfuri students, and human rights defenders. Serious concern is also expressed at the racial discrimination experienced by Darfuri students at several levels of the society, including within the university, by police officers and security agents. We are further concerned by the continuing acts of harassment and violence targeting Darfuri students because of their ethnicity, as well as the failure by the authorities to prevent and address these repeated incidents and hold perpetrators accountable. Concerns are also expressed as these incidents seem to illustrate a worrying pattern of racism, racial discrimination and xenophobia against the Darfuri people. We similarly express our concerns at the multiple arrests of Darfuri students during the protests, which if verified, violate the rights to freedom of expression and peaceful assembly.

We also express concern about the announcement that the academic year 2016-2017 would be the last year during which the fee waiver would be applied. Its suspension would prevent Darfuri students, already affected by the conflict, from accessing high education in equal conditions with the rest of the Sudanese population. Despite Article 44 (1) of the Sudanese Constitution, which grants the right to education “without discrimination as to religion, race, ethnicity, gender or disability” and the Presidential Decree adopted in 2006, we are concerned that Darfuri students face disproportionate obstacles in accessing education, often as a result of the non-payment of tuition fees, which can then lead to Universities suspending them from studying, banning them from sitting for exams or denying them their certificates after graduation.

In connection with the above alleged facts and concerns, please refer to the **Annex on Reference to international human rights law** attached to this letter which cites international human rights instruments and standards relevant to these allegations.

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 comment(s) you may have on the above-mentioned allegations.
2. Please provide the details, and where available the results, of any investigation carried out in relation to the allegations mentioned above. If no inquiries have taken place, or if they have been inconclusive, please explain why.
3. What measures have been taken to ensure the enjoyment of all human rights by the population from Darfur, on an equal basis with the rest of the population?
4. What measures have been taken to guarantee access to education for Darfuri students in the Sudan, without discrimination on any basis and address the educational needs of all vulnerable children and adolescents, in particular those from conflict-affected areas?
5. What measures, including legislation, policies and action plans, have been adopted to combat racism, racial discrimination, xenophobia and related intolerance at all levels of the society?
6. Please explain what actions have been taken, including the adoption of curricula and trainings delivered at all the levels of education, to promote the values of equality and non-discrimination?
7. Please provide information on the compliance with international and regional instruments in guaranteeing the right of freedom of movement, to freedom of expression and peaceful assembly.
8. Please explain what measures have been taken to ensure that peaceful protestors and human rights defenders in the Sudan can carry out their peaceful and legitimate activities and express and protest freely without fear of being stigmatized, harassed, and/or arrested.

We would appreciate receiving a response within 60 days. Your Excellency's Government's response will be made available in a report to be presented to the Human Rights Council for its consideration.

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(s) responsible for the alleged violations.

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

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Annex

Reference to international human rights law

In connection with above alleged facts and concerns, we would like bring to the attention of your Excellency's Government Article 7 of the Universal Declaration of Human Rights (UDHR) that states that "All are equal before the law and are entitled without any discrimination to equal protection of the law. All are entitled to equal protection against any discrimination in violation of this Declaration and against any incitement to such discrimination".

We would like to stress the obligations under the International Convention on the Elimination of All Forms of Racial Discrimination (CERD), acceded to by the Sudan on 21 March 1977, in particular 1, 2, 4, 5, 6 and 7 that address applicable States' obligations.

With regards to the discriminatory practice against Darfuri people, we recall article 1 which defines the term "racial discrimination" and in particular article 1.4 that establishes the need for special measures taken "for securing the adequate advancement of certain racial or ethnic groups or individuals requiring such protection [...] in order to ensure such groups or individuals equal enjoyment or exercise of human rights and fundamental freedoms". Article 2, paragraph 1 (a), (b) and (c) to ensure that all public authorities and public institutions act in conformity with the obligation of not act or practice racial discrimination against persons, as well as on the effective State review an elimination of policies and legislations which create or perpetuate racial discrimination, on the non-sponsoring, defence, or support to racial discrimination by any persons or organizations. Article 2, paragraph 2 states that "State parties shall [...] take, in the social, economic, cultural and other fields, special and concrete measures to ensure the adequate development and protection of certain racial groups or individuals belonging to them". Article 4 outlines criminalizing the dissemination of ideas based on racial superiority and prohibiting public authorities from promoting racial discrimination. Article 5 enumerates States' obligations to protect persons' rights to security, protection against bodily harm, and protection of a number of civil rights including the right to freedom of movement within the border of the State, the right of peaceful assembly and association, as well as the right to education. Article 6 describes how States will assure every person within its jurisdiction effective protection against racial discrimination and access to remedies. Article 7 refers to the adoption by States of "immediate and effective measures, particularly in the field of teaching, education, culture and information, with a view to combating prejudices which lead to racial discrimination".

In addition, we consider appropriate to refer to the General recommendation No. 29 of the Committee on the Elimination of Racial Discrimination, which recommends that States, as appropriate for their particular circumstances, adopt specific measures, including the adoption of "special measures in favour of descent-based groups and communities in order to ensure their enjoyment of human rights and fundamental freedoms, in particular concerning access to [...] education" and to "combat discrimination by public or private bodies and any harassment of students who are members of descent-based communities".

The Committee for the Elimination of Racial Discrimination in its General Recommendation No. 13 on the training of law enforcement officials in the protection of human rights reminded the provisions of article 2 of the Convention, which oblige the States to guarantee that public authorities and institutions refrain from engaging in any practice of racial discrimination and guarantee the rights listed in article 5 of the Convention, without distinction as to race, colour or national or ethnic origin. The Committee also stated that these obligations apply to national law enforcement officials that have to be properly informed about the obligations of their State under the Convention and the Code of Conduct for Law Enforcement Officials (1979).

The Committee reiterated its positions in its General Recommendation No. 31 on the prevention of racial discrimination in the administration and functioning of the criminal justice system. The Committee recommended preventing questioning, arrests and searches which are based solely on the physical appearance of a person or any profiling that exposes him/her to greater suspicion.

Furthermore, we wish to call to the attention of your Excellency's Government to the international standards of protection of minorities, in particular the United Nations Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities of 1992 on the rights to persons belonging to national or ethnic, religious and linguistic minorities and in particular its article 1.1 which stipulates that "States shall protect the existence and the national or ethnic, cultural, religious and linguistic identity of minorities within their respective territories and shall encourage conditions for the promotion of that identity. We would like to also refer to article 4.1 which establishes that: "States shall take measures where required to ensure that persons belonging to minorities may exercise fully and effectively all their human rights and fundamental freedoms without any discrimination and in full equality before the law."

We would like to remind the Durban Declaration and Programme of Action, in particular paras. 46 and 47 that urge States to guarantee within their jurisdiction a full and effective exercise of all human rights, an effective participation in the cultural, social, economic and political life, without discrimination by persons belonging to national, or ethnic, religious and linguistic minorities. Paragraphs 49 and 58 urge States to take appropriate measures to prevent racial discrimination against minorities in education, as well as to adopt and implement effective measures and policies encouraging the population and institutions to take a stand against racism, racial discrimination, xenophobia and related intolerance" and to adopt all necessary measures (constitutional, legislative and administrative) to foster equality among individuals who are victims of racism, racial discrimination, xenophobia and related intolerance. We would like to also highlight paragraph 71 which urges States "to design and fully implement effective policies and programmes to prevent, detect and ensure accountability for misconduct by policy officers and other law enforcement personnel which is motivated by racism, racial discrimination, xenophobia and related intolerance and to prosecute perpetrators of such misconduct". We wish to also stress paragraph 72 and 85 that urge States to design, implement and enforce effective measures to eliminate racial profiling and comprising the

practice of law enforcement officers relying, to any degree, on race, colour, descent or national or ethnic origin as the basis for subjecting persons to investigatory activities or for determining whether an individual is engaged in criminal activity and to undertake investigations to examine possible links between criminal prosecution, police violence and penal sanctions with racism, racial discrimination, xenophobia and related intolerance. Furthermore, paragraph 124 urges States to adopt appropriate measures to ensure that persons belonging to minorities have access to education without discrimination of any kind.

We would like to remind that the International Covenant on Civil and Political Rights, to which Sudan is a party since 18 March 1986, in its articles 12.1, 19 and 21, ensures the right to freedom of movement within the country, the right to freedom of expression and the right to peaceful assembly, respectively. Article 20.2 states that “Any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence shall be prohibited by law”. Article 21 ensures the rights to peaceful assembly and equality before the law and article 26 highlights the prohibition of discrimination and the guarantee to all persons of “equal and effective protection against discrimination on any ground, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status”.

We would like to also refer to the report of the Special Rapporteur on violence against women, its causes and consequences on her visit to the Sudan (A/HRC/32/42/Add.1) in which she mentioned that she received allegations about targeted harassment of women from minority ethnic groups, including Darfuri [...] women [and that] their humiliation is in particular linked to their perceived racial identity and questioning of their ‘Arab’ identity” (para. 33). She also referred to the information received in relation to the “increasing demands by [...] students for democratic reforms have resulted in violence and authoritarian action, including arrests and detention by security forces” (para. 86).

We wish to also refer to the report of the Independent Expert on the situation of human rights in the Sudan (A/HRC/33/65) in which he called your Excellency’s Government “to ensure that human rights defenders, journalists, members or the political opposition, students and other civil society actors are not intimidated, arrested and detained, ill-treated or tortured by State security agents as a result of their work, opinions or peaceful assembly” (para. 75).

In relation to education, article 26 of the Universal Declaration of Human Rights and article 17.1 of the African Charter on Human and Peoples’ Rights, ratified by your Government on 18 February 1986, establish the rights of everyone to the right of education.

We would like to further refer to article 13.1 of the International Covenant on Economic, Social and Cultural Rights, which recognizes the right of everyone to education and “that education shall enable all persons to participate effectively in a free

society, promote understanding, tolerance and friendship among all nations and all racial, ethnic or religious groups”. Article 13.2 (c) stresses that “higher education shall be made equally accessible to all, on the basis of capacity, by every appropriate means, and in particular by the progressive introduction of free education”.

The Committee on Economic, Social and Cultural Rights in its General Comment No. 13 on the right to education stressed that “higher education includes the elements of availability, accessibility, acceptability and adaptability, which are common to education in all its forms at all levels” (para. 17). In its General Comment No. 20, the Committee emphasizes that “in order to eliminate substantive discrimination, States parties may be, and in some cases are, under an obligation to adopt special measures to attenuate or suppress conditions that perpetuate discrimination. Such measures are legitimate to the extent that they represent reasonable, objective and proportional means to redress de facto discrimination and are discontinued when substantive equality has been sustainably achieved” (para. 9).

We wish to also remind Article 14 of the 2006 Darfur Peace Agreement which states that “affirmative action shall be taken to promote the educational interests of the disadvantaged Darfurians through among others [...] exemption from the payment of school fees for new students of Darfurian origin at all levels, for a period of five years” (para. 86 (b)).

Finally, reference should also be made 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, also known as the UN Declaration on Human Rights Defenders. Of particular relevance are articles 1 and 2 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, and that each State has a prime responsibility and duty to protect, promote and implement all human rights and fundamental freedoms. Article 5 (a), 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 (b) and c) provides that everyone has the right to freely 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 of these rights. article 12 (1) and (3), provides for the right to participate in peaceful activities against violations of human rights and fundamental freedoms, as well as for the right to be protected effectively under national law in reacting against, or opposing, through peaceful means, activities and acts that result in violations of human rights and fundamental freedoms.