

Mandates of the Special Rapporteur on the situation of human rights defenders; the Working Group on Arbitrary Detention; the Special Rapporteur on extrajudicial, summary or arbitrary executions; the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; the Special Rapporteur on violence against women, its causes and consequences 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 capacities as Special Rapporteur on the situation of human rights defenders; Working Group on Arbitrary Detention; Special Rapporteur on extrajudicial, summary or arbitrary executions; Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; Special Rapporteur on violence against women, its causes and consequences and Independent Expert on the situation of human rights in the Sudan, pursuant to Human Rights Council resolutions 34/5, 33/30, 35/15, 34/18, 32/19 and 36/26.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning alleged excessive use of force by security forces leading to arrests, deaths and injuries, including of human rights defenders, during a number of demonstrations that took place in different cities of Sudan from 6 January to 31 January 2018.

According to the information received:

From 6 to 31 January 2018, several demonstrations took place across Sudan, mainly in the cities of Al-Damazin, Nyala, El- Genina, Omdurman, Port Sudan and Sennar, in protest for the announcement of Sudan's 2018 budget and the elimination of subsidies and other measures resulting in the excessive increase of the price of basic commodities and the tripling of the US dollar exchange rate.

In this regard, various sources refer to an excessive and disproportionate use of force by the Sudanese security forces in order to disperse peaceful demonstrations, notably the intentional use of lethal force, the use of live ammunition and tear gas and a high number of arbitrary arrests. Some of concerns related to these events are addressed herewith.

On 6 January 2018, a high school student was killed and six others were wounded during a protest in El-Genina.

Since 6 January 2018, it is estimated that the National Intelligence and Security Service (NISS) and the Sudanese police have arrested at least 200 people throughout the country. It has been reported that the majority of arrests took place

on 16 and 17 January during demonstrations called by political opposition parties supporting the mobilizations.

As a result, dozens of prominent political activists and opposition party members, human rights defenders and journalists have reportedly been arrested by the National Intelligence and Security Services (NISS) at their homes or offices, and allegedly held incommunicado or taken to undisclosed locations.

It is our understanding that the right to freedom of expression and association, as set out in the ICCPR to which the Sudan is a state part, is provided for in the Bill of Rights of the Interim National Constitution of the Sudan (Article 39). Moreover, international standards require authorities to bring charges promptly after any arrest. However, Sudan's National Security Act provides NISS with broad powers of search, seizure, arrest, and prolonged detention of up to four and a half months without any judicial review. We call on the Sudanese authorities to ensure that any detention by security services is properly recorded and that anyone detained has all due process protections, including access to counsel and medical care as well as visits by family members.

Furthermore, it is reported that four members of a non-governmental organization working on women's rights have been summoned for interrogation every day since 11 January 2018 after a protest in Omdurman.

It is also alleged that authorities have significantly increased restrictions on freedom of expression. On 7 January, NISS officers reportedly issued directives to the press not to cover demonstrations. As a consequence, the NISS has allegedly banned the distribution of several newspapers in different cities and a considerable number of journalists and correspondents have been arrested by authorities while covering the demonstrations around the country.

It is reported that, while some journalists have been released, others are still being held without charges and their whereabouts remain unknown to their families. Similarly, there are credible reports that a prominent human rights activist and journalist has been subject to ill-treatment amounting to torture during his arrest.

Grave concern is expressed at the situation of detained minors, women, political activists, and human rights defenders arbitrarily arrested in connection to the recent demonstrations, under procedures which seemingly fail to meet the standards of due process mandates by national and international law. Furthermore, serious concern is expressed at the threat posed to the physical and psychological integrity of all individuals held in custody since the start of the demonstrations, often lacking access to legal assistance and medical care, held without charges or judicial review, and/or kept incommunicado.

We similarly wish to express grave concern with regard to the allegations of excessive use of force by the Sudanese security forces in the management of demonstrations, which has allegedly led to deaths and injuries, as well as the *de facto* censorship placed on

the press to report on this issue. We are of the view that these acts, if confirmed, severely curtail the public debate on governmental policies and matters of public interest, in hindrance of civil rights and democracy in Sudan.

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 therefore be grateful for your observations on the following matters:

1. Please provide any additional information and any comments you may have on the above-mentioned allegations.
2. Please provide information on the orders, regulations and operational procedures for law enforcement agents concerning the use of force and how they are compatible with international standards including on the use of force and firearms.
3. Please provide the details, and when available the results, of any investigation, medical and judicial, or other inquiries carried out in relation to the death and injury of protesters in the context of the above-mentioned allegations. If no inquiries have taken place, or if they have been inconclusive, please explain why.
4. Please indicate the legal basis of the arrest and detention of individuals that participated in demonstrations, and how such measures are compatible with international human rights norms and standards as mentioned below.
5. Please provide information on the whereabouts of the detained individuals, particularly prominent political activists, opposition party members and journalists and clarify whether their families have been informed of their places of detention, including transfers.
5. Please indicate whether detainees have been given access to their lawyers and families and whether they have been provided with medical treatment.
6. Please indicate the rules concerning custody, including custody time limits, and how such measures are compatible with international human rights norms and standards as mentioned below.
7. Please indicate the legal basis for the use of media and newspaper censorship, and how such measures comply with international human rights norms and standards as mentioned below.

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 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.

We intend to publicly express our concerns in the near future as, in our view, the information upon which the press release will be based is sufficiently reliable to indicate a matter warranting immediate attention. We also believe that the wider public should be alerted to the potential implications of the above-mentioned allegations. The press release will indicate that we have been in contact with your Excellency's Government's to clarify the issue/s in question.

We would like to inform your Excellency's Government that after having transmitted an allegation letter to the Government, the Working Group on Arbitrary Detention may transmit the case through its regular procedure in order to render an opinion on whether the deprivation of liberty was arbitrary or not. Such letters in no way prejudice any opinion the Working Group may render. The Government is required to respond separately to the allegation letter and the regular procedure.

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

Michel Forst
Special Rapporteur on the situation of human rights defenders

Elina Steinerte
Vice-Chair of the Working Group on Arbitrary Detention

Agnes Callamard
Special Rapporteur on extrajudicial, summary or arbitrary executions

David Kaye
Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression

Dubravka Šimonovic
Special Rapporteur on violence against women, its causes and consequences

Aristide Nononsi
Independent Expert on the situation of human rights in the Sudan

Annex

Reference to international human rights law

While we do not wish to prejudge the accuracy of these allegations, we wish to draw the attention of your Excellency's Government on the principles set forth in the Universal Declaration of Human Rights and International Covenant on Civil and Political Rights (ICCPR), to which Sudan acceded to on 18 March 1986. Articles 3 and 6 (1) of these instruments respectively guarantee the right of every individual to life and security and provide that these rights shall be protected by law and that no one shall be arbitrarily deprived of his life. In General Comment No. 31, the Human Rights Committee has observed that there is a positive obligation on States Parties to ensure protection of Covenant rights of individuals against violations by its own security forces. Permitting or failing to take appropriate measures or to exercise due diligence to prevent, punish, investigate and bring perpetrators to justice could give rise to a breach of the Covenant (CCPR/C/21/Rev.1/Add.13).

Under international law any loss of life that results from the excessive use of force without strict compliance with the principles of necessity and proportionality is an arbitrary deprivation of life and therefore illegal. We would like to remind your Excellency's Government of the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials (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). In particular, principle 9 provides that intentional lethal use of firearms may only be made when strictly unavoidable in order to protect life and principle 12 which provides that "everyone is allowed to participate in lawful and peaceful assemblies, in accordance with the principles embodied in the UDHR and the ICCPR, Governments and law enforcement agencies and officials shall recognize that force and firearms may be used only in accordance with principles 13 and 14." These provisions restrict the use of firearms to situations of violent assemblies and provide that force and firearms may only be used as a last resort when unavoidable and require exercising the utmost restraint.

Without expressing at this stage an opinion on whether the detention of the above mentioned persons is arbitrary or not, we would like to appeal to your Excellency's Government to take all necessary measures to guarantee their right not to 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 UDHR and articles 9 and 14 of the ICCPR.

In relation to the allegations according to which the demonstrators have been held incommunicado and some of them have been transferred to unknown places, we would like to bring to the attention of your Excellency's Government the United Nations Declaration on the Protection of All Persons from Enforced Disappearance with sets out necessary protection by the State, and in particular: article 10 (right to access of competent national authorities to all places of detention; to be held in an officially recognized place of detention, in conformity with national law and to be brought before a

judicial authority promptly after detention; to accurate information on the detention of persons and their place of detention being made available to their family, counsel or other persons with a legitimate interest).

Furthermore, we would like to refer your Excellency's Government to article 19 of the ICCPR, which provides that "[e]veryone 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."

Similarly, we would like to refer to article 21 of the ICCPR, which provides that "[t]he right of peaceful assembly shall be recognized. No restrictions may be placed on the exercise of this right other than those imposed in conformity with the law and which are necessary in a democratic society in the interests of national security or public safety, public order (*ordre public*), the protection of public health or morals or the protection of the rights and freedoms of others. Similarly, we would like to refer to article 22 of the ICCPR which states that "[e]veryone shall have the right to freedom of association with others..."

Furthermore, we would like to bring to the attention of your Excellency's Government the following provisions of 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".

- Article 5 point a) which 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 points b) and c) which provide that everyone has the right, individually and in association with others as provided for in human rights and other applicable international instruments, freely to 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, both in law and in practice, of all human rights and fundamental freedoms and, through these and other appropriate means, to draw public attention to those matters.

- 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.

In relation to restrictions to the work of civic organisations, we would like to stress that the Special Rapporteur on the rights to freedom of peaceful assembly and of association clarified that “The right to freedom of association applies for the entire life of the association. The suspension and the involuntarily dissolution of an association are the severest types of restrictions on freedom of association. As a result, it should only be possible when there is a clear and imminent danger resulting in a flagrant violation of national law, in compliance with international human rights law. It should be strictly proportional to the legitimate aim pursued and used only when softer measures would be insufficient” (A/HRC/20/27, para. 75).

We would also like to refer to Human Rights Council resolution 24/5, and in particular operative paragraph 2 that “reminds States of their obligation to respect and fully protect the rights of all individuals to assemble peacefully and associate freely, online as well as offline, including in the context of elections, and 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.”

Concerning the allegations that a prominent woman human rights defender has been subject to ill treatment during her arrest, reference is made to the visit report of the Special Rapporteur on violence against women, its causes and consequences on her mission to the Sudan, in which the Special Rapporteur expressed concerns that “Despite the existence of article 51 of the National Security Law (2010), during interrogation women are allegedly intimidated and suffer torture and other cruel inhuman or degrading treatment or punishment, including being raped in some instances. The Special Rapporteur is concerned about the occurrence of such acts and the targeting of female human rights defenders generally, and in particular women belonging to ethnic and/or religious minority groups. Furthermore, women are allegedly threatened upon their release, and warned about reporting the violations or seeking medical care. Allegations were also received about the blacklisting of human rights defenders after incarceration,

and the restrictions placed on them, including the denial of the possibility of leaving the country.” (A/HRC/32/42/Add.1, para. 32)