

Mandates of the Working Group on Arbitrary Detention; the Working Group on Enforced or Involuntary Disappearances; 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

REFERENCE:
UA SDN 2/2018

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Excellency,

We have the honour to address you in our capacity as Working Group on Arbitrary Detention; Working Group on Enforced or Involuntary Disappearances; 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, 36/6, 34/5, 34/19 and 36/26.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning the alleged disappearance of Mr. Yousif El Koda, Mr. Amjed El Tayeb, Mr. Omer Ushari Ahmed Mahmoud and Mr. Abdul Latif Abdul Latif Ali, after taking part in a demonstration on 16 January 2018 in Khartoum. Even if some of them had contacts with their relatives, their current place of detention is unknown.

On 13 February 2018, a United Nations Special Procedures communication (SDN 1/2018) was sent to your Excellency's Government concerning the 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 to 31 January 2018. Thus far, no response has been received from the Government. The present letter is based on further information concerning these events.

According to the information received:

On 16 January 2018, a joint demonstration against the rising prices of basic commodities and austerity measures was held in the vicinity of the Presidential Palace in Khartoum. The demonstration was called by the Sudanese Communist Party and benefited from the support of the National Umma Party (NUP), Baath and the Sudanese Conference. Mr. Yousif El Koda (يوسف الكودة), Mr. Amjed El Tayeb (امجد الطيب), Mr. Omer Ushari Ahmed Mahmoud (عمر عشاري أحمد محمود) and Mr. Abdul Latif Abdul Latif Ali (عبد اللطيف عبد اللطيف علي) took part in it.

During the demonstration, Mr. El Koda, Mr. Mahmoud and Mr. Abdul Latif Ali were arrested by members of the National Intelligence and Security Service (NISS) in plainclothes, in the vicinity of the presidential palace. The arrests were witnessed by other demonstrators. On 18 January 2018, as part of the crackdown on demonstrators, Mr. El Tayeb was arrested by members of the NISS, also in plainclothes, near his house in Khartoum 2. During and after the demonstration, the NISS arrested hundreds of participants and activists, as well as journalists and opposition figures. Although many of them have now been released, Mr. El Koda, Mr. Mahmoud, Mr. El Tayeb and Mr. Abdul Latif Ali remain under arrest.

Mr. Amjed El Tayeb

Mr. El Tayeb was arrested under the provisions of the 2010 National Security Act, which allows the NISS to hold persons for up to four and a half months without judicial review.

On 25 January 2018, persons associated with Mr. El Tayeb challenged the legality of his detention before the Constitutional Court invoking the arbitrary nature of his deprivation of liberty. To date, their demand has not been processed by the Court.

On 1 February 2018, Mr. El Tayeb was seen at Khartoum's central prison where he had been transferred to meet with persons associated with him and who had requested to visit him. However, he was not able to inform them about his place of detention as he had been blindfolded during the transfer. A week after the visit, persons associated with him, were informed that he might be at the NISS' headquarters in Khartoum.

At the beginning of March 2018, a person associated with Mr. El Tayeb was able to visit him and reported that he might be currently detained in a detention facility run by the NISS known as the "Refrigerator", where prisoners are subjected to constant blasts of cold air and to 24-hour lighting. This prison is located in the Khartoum Bahri district (Khartoum North), near a bus station called "Mawgif Shandi".

Mr. Omer Ushari Ahmed Mahmoud

On 2 February 2018, Mr. Mahmoud was seen at Kober prison by persons associated with him, where he had been transferred to meet them. Mr. Mahmoud was not able to inform them about his place of detention as he had been blindfolded during the transfer. After this visit, persons associated with Mr. Mahmoud submitted two requests for visit to the NISS, respectively on 15 and 25 February 2018. Both were rejected. A second visit took place on 4

March 2018. However the permission was granted as a personal favor and there was no formal acknowledgment of Mr. Mahmoud's detention.

Persons associated with Mr. Mahmoud challenged the legality of his detention before the Constitutional Court, invoking the arbitrary nature of his deprivation of liberty. The suit is still pending before the Court. Up to date, they have not been provided with any formal information on his fate and whereabouts. Mr. Mahmoud has not been presented before a judicial authority, and has yet to meet with a lawyer.

Mr. Yousif El Koda

The authorities detaining Mr. El Koda refuse to acknowledge his detention and there is no information about his current place of detention.

In February 2013, Mr. El Koda was arrested upon his return from Kampala (Uganda) where he had attended a meeting with the Sudanese opposition. He has been detained incommunicado for 48 days. Fearing further persecution, in March 2013, he fled to Switzerland, where he obtained political asylum. In 2016, Mr. El Koda returned to Sudan to participate in the national dialogue process initiated by the Government.

It is further alleged that, on 20 February 2018, the head of the NISS, Major-General, Salah Abdullah, declared in the *Al Intibah* newspaper that the liberation of the prisoners arrested in relation to the demonstration of 16 January 2018 is conditional upon a "change of attitude" on the part of opposition parties. The victims' families describe such statement as a form of political blackmail by the Sudanese authorities.

Mr. Abdul Latif Abdul Latif Ali

Following his arrest, Mr. Abdul Latif Ali was transferred to a NISS detention facility in Khartoum, where he was kept in a small cell (2x2m) with other 20 people for several days, sleeping on the floor with the light constantly on and air conditioning kept on extremely low temperatures. Due to these extreme living conditions, he suffered from pneumonia. He is also suffering from hypertension, and stomach and kidney's issues. He urgently needs special treatment, however, he was only allowed to receive some of his medications from his family.

On 7 February 2018, he was blindfolded and transferred from the secret detention place in which he is held to the Kober prison in order to see his family for the first time. During the first visit, Mr. Abdul Latif Ali looked weak and considerably thinner. He was kept in a small cell together with 28 other detainees.

More than one month after this first visit, the NISS accepted his family's request for a second visit, which took place on 19 March 2018. Since then, the family has not been able to contact him nor has it been provided with any information on his fate and whereabouts.

Both visits were very short, lasting only 15 minutes.

In January 2018, persons associated with Mr. Abdul Latif Ali challenged the legality of his detention before the Constitutional Court invoking the arbitrary nature of his deprivation of liberty. The suit is still pending before the court. They also submitted a complaint to the National Commission for Human Rights of Sudan in Khartoum.

Grave concern is expressed about the detention and current disappearance of Mr. Yousif El Koda, Mr. Amjed El Tayeb, Mr. Omer Ushari Ahmed Mahmoud and Mr. Abdul Latif Abdul Latif Ali. We are further concerned about their physical and mental integrity as they are allegedly being kept outside the purview of the law, and thereby at heightened risk of torture or other ill-treatment, or worse. These persons seem to have been arrested and are being detained in secret for what appears to be their legitimate political activities, in particular the peaceful exercise of their right to freedom of expression and assembly, while participating in peaceful protests. We stress our particular concerns at the broader effect of this form of criminalization of these rights, which has a detrimental effect on civil society as a whole, in particular on dissenting and critical voices.

While we do not wish to prejudge the accuracy of these allegations, we would like to draw the attention of your Excellency's Government to the relevant international norms and standards that are applicable to the issues brought forth by the situation described above.

The above alleged facts indicate a prima facie violation of the right of every individual of liberty and security and not to be arbitrarily deprived of his/her liberty, as set forth in article 9(1) of the International Covenant on Civil and Political Rights (ICCPR), ratified by Sudan on 18 March 1986. Articles 19, 21 and 22 of the ICCPR, guarantee the rights to freedom of expression, to freedom of peaceful assembly and to freedom of association. Any restriction to these rights must be prescribed by law and comply with the strict requirements of necessity and proportionality.

In relation to the allegations that the whereabouts of Mr. Yousif El Koda, Mr. Amjed El Tayeb, Mr. Omer Ushari Ahmed Mahmoud and Mr. Abdul Latif Abdul Latif Ali are currently unknown, we would like to draw your Excellency's Government attention to the United Nations Declaration on the Protection of All Persons from

Enforced Disappearance. In particular, we would like to recall the prohibition to practice, permit or tolerate enforced disappearance (article 2); that no circumstances whatsoever, whether a threat of war, a state of war, internal political instability or any other public emergency, may be invoked to justify enforced disappearances (article 7); the right 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 and the obligation to make available accurate information on the detention of persons and their place of detention to their family, counsel or other persons with a legitimate interest (article 10); and the obligation to maintain in every place of detention an official up-to-date register of detained persons (article 12). Also relevant for the reported cases, the Declaration establishes in its article 13 the right for any person with a legitimate interest to complain to a competent and independent State authority and to have that complaint promptly, thoroughly and impartially investigated by that authority, even if there has been no formal complaint.

We would like to express our grave concern regarding the alleged treatment of of Mr. Yousif El Koda, Mr. Amjed El Tayeb, Mr. Omer Ushari Ahmed Mahmoud and Mr. Abdul Latif Abdul Latif Ali that may result in serious violations of their human rights to security and integrity in contravention to the absolute and non-derogable prohibition of torture and other ill-treatment as codified in article 7 of the of the International Covenant on Civil and Political Rights (ICCPR), to which Sudan is a party since 18 March 1986.

Finally, 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 articles 1, 2, 5 and 6.

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 comment which you may have on the above mentioned allegations.
2. Please provide details of the factual and legal grounds for the arrest and the subsequent detention of the aforementioned individuals and how these

measures are compatible with international human rights norms and standards governing the rights not to be arbitrarily deprived of liberty, to freedom of expression, freedom of peaceful assembly and freedom of association.

3. Please provide detailed information concerning the whereabouts of Mr. Yousif El Koda, Mr. Amjed El Tayeb, Mr. Omer Ushari Ahmed Mahmoud and Mr. Abdul Latif Abdul Latif Ali.
4. Please provide detailed information, and where available, the results of any investigation, judicial or other inquiries carried out in relation to the above mentioned allegations. If no inquiries have taken place, or if they have been inconclusive, please explain why.

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.

We would like to inform your Excellency's Government that after having transmitted an urgent appeal 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 appeals in no way prejudice any opinion the Working Group may render. The Government is required to respond separately for the urgent appeal procedure and the regular procedure

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

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

Bernard Duhaime
Chair-Rapporteur of the Working Group on Enforced or Involuntary Disappearances

Michel Forst
Special Rapporteur on the situation of human rights defenders

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