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Mandates of the Special Rapporteur in the field of cultural rights; the Special Rapporteur on extrajudicial, summary or arbitrary executions; the Independent Expert on the situation of human rights in the Sudan; the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment; the Special Rapporteur on violence against women, its causes and consequences; and the Working Group on the issue of discrimination against women in law and in practice

REFERENCE:
UA SDN 3/2018

14 May 2018

Excellency,

We have the honour to address you in our capacity as Special Rapporteur in the field of cultural rights; Special Rapporteur on extrajudicial, summary or arbitrary executions; Independent Expert on the situation of human rights in the Sudan; Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment; Special Rapporteur on violence against women, its causes and consequences; and Working Group on the issue of discrimination against women in law and in practice, pursuant to Human Rights Council resolutions 37/12, 35/15, 36/26, 34/19, 32/19 and 32/4.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning the sentancing to death of Ms. [redacted] for killing the man she was forced to marry, who had raped her and was about to rape her again.

According to the information received:

In 2014, Ms. [redacted] who was 16 years old at the time, was forced by her family into signing a contract of marriage against her will. Inter-family arrangements set the marriage for the year in which Ms. [redacted] would turn 17. Ms. [redacted] rejected the arrangement, as she wished to further pursue her education. Ms. [redacted] fled to live with another family member in another city in order to avoid a forced marriage and potential "honour" based violence for rejecting the marriage contract. Three years later, in April 2017, Ms. [redacted] was told by her father that the marriage had been cancelled, indicating that it would be safe for her to return home. Upon her return, Ms. [redacted] learnt that the marriage had not been cancelled and she would be forced into marriage.

On 27 April 2017 the forced marriage was completed with a wedding ceremony. In the days following the ceremony, Ms. [redacted] was taken on a so-called

"honeymoon" in a rented apartment in the Omdurman neighborhood of Al Muhandiseen in order to consummate the forced marriage.

Ms. [redacted] refused to consummate the marriage for four days. On the fifth day, on 2 May 2017, the man to whom she had been married called two of his brothers and his nephew to the apartment. The three men held Ms. [redacted] down while the man to whom Ms. [redacted] was forcibly married raped her. Following this, the male relatives remained in the apartment overnight. On 3 May 2017, the same man attempted to rape her again. Ms. [redacted] threatened she would kill him if he tried to rape her again. The man then brought a knife from the kitchen and told her he would kill her if she refused. He then assaulted her and there was a struggle. He overpowered her and was on top of her when she managed to pick up the knife and stab him. She stabbed him twice after which he stumbled to the ground. He died from his wounds.

Following the death of the man, Ms. [redacted] reported the incident to her family, however, fearing retribution, her father disowned Ms. [redacted] in front of their community and took her to the police, declaring his daughter was a "shame for the family". Ms. [redacted] confessed to the killing at the police station, but the officer in charge of the logs did not note that she was raped because the perpetrator was her husband.

Ms. [redacted] was arrested and transferred to the Omdurman prison for women (دار التائبات).

On 29 April 2018, Ms. [redacted] was found guilty of pre-meditated murder by the Central Criminal Court of Omdurman. Reportedly a medical examiner was not consulted to conduct the examinations necessary to show if there were signs of physical abuse. Ms. [redacted] also did not have legal representation until the second hearing. Additionally, a psychiatrist, who offered expert testimony during the trial, concluded after evaluating Ms. [redacted] that she suffered from psychological trauma and needed care.

Under Article 130 of the Sudanese Criminal Code, a person guilty of murder is either executed (Qasas) or has to pay a fine (Deeya). The trial was held on 10 May 2018 and the family of the man requested Qasas. Reportedly, the judge asked the deceased husband's family to forgive her, but they rejected the suggestion and maintained the request for Qasas and the judge confirmed their decision. The defense has 15 days to make an appeal.

While we do not wish to prejudge the accuracy of the information received, very grave concern is expressed that Ms. [redacted] was sentenced to death on 10 May 2018, following judicial proceedings that do not appear to have fulfilled

the most stringent guarantees of fair trial and due process, in particular as Ms. [redacted] early and forced marriage, rape, threat to her life and other forms of gender-based violence against her were not used as evidence to examine the case and she did not have access to legal representation until the second hearing.

In view of the irreversibility of the punishment of the death penalty, we call upon your Excellency's Government to **immediately halt any steps being taken toward the execution of Ms.** [redacted] which, on the basis of the information made available to us would violate international human rights law and standards, and thus constitute an arbitrary execution. We further urge your Excellency's Government to ensure that the death sentence against the aforementioned individual is annulled and that she is re-tried in full compliance with international human rights law.

In this context, we refer your Excellency's Government to the right of every individual to life and security and not to be arbitrarily deprived of his/her life, as set forth in article 6(1) of the International Covenant on Civil and Political Rights (ICCPR), ratified by Sudan on 18 march 1986, and 4 of the African Charter on Human and Peoples Rights, ratified by Sudan in 1986. 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.

We also refer to the United Nations Safeguards Protecting the Rights of those facing the Death Penalty in particular Safeguard 4 and 5. Only full respect for stringent due process guarantees distinguishes capital punishment from arbitrary execution.

We would further highlight that the Special Rapporteur on extrajudicial, summary or arbitrary executions has argued that "**the imposition of the death penalty against clear evidence of self-defense constitutes an arbitrary killing**. This is particularly important for women charged with murder of their intimate partners, or others, when defending themselves" (A/HRC/35/23 paragraph 44). "Arbitrariness may also be inferred from laws and practices, which violate the principle of non-discrimination" (A/HRC/35/23 paragraph 6), as was made clear by the African Commission on Human and Peoples Rights in paragraph 12 of its general comment No. 3 on the right to life. Here, such arbitrariness is inferred from the failure of the police to note the rape and of the court's apparent failure to take into account the forced nature of the marriage.

In this context, we would also 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). The African Commission on Human and People's Rights also stated in its general comment No. 3 that

“international law requires those States that have not yet abolished the death penalty to take steps towards its abolition in order to secure the rights to life and to dignity, in addition to other rights such as the right to be free from torture and cruel, inhuman or degrading treatment.” In its Resolution No. 136 (2008), the African Commission further called on African States to observe a moratorium on death penalty.

We call on your Excellency’s Government to take all necessary measures to take fully into account Ms. [redacted] claim of self-defense against attempted rape by the individual she had been forced to marry and her right to be free from any gender-based violence, discrimination and abuse. In relation to gender-based violence, we would like to bring to Your Excellency’s attention Article 1 of the United Nations Declaration on the Elimination of Violence against Women which defines "violence against women".

In the light of article 149 of the Sudanese Criminal Code which defines the offence of rape as the situation whereby “whoever makes sexual contact by way of penetrating a sexual organ or any object or part of the body into the victim’s vagina or anus by way of using force, intimidation, or coercion by fear of the use of violence, detention, psychological persecution, temptation, or abuse of power against the person or another person, or when the crime is committed against a person incapable of expressing consent because of natural causes or luring-related or related to age”, we draw your Government’s attention to article 4 (c) and article 4 (d) of the United Nations Declaration on the Elimination of Violence against Women, which note the responsibility of states to exercise due diligence to prevent, investigate and, in accordance with national legislation, punish acts of violence against women, whether those acts are perpetrated by the State or by private persons. To this end, States should develop penal, civil, labour and administrative sanctions in domestic legislation to punish and redress the wrongs caused to women who are subjected to violence.

With regard to the discriminatory practice of early and forced marriage, the Working Group on discrimination against women in law and in practice recommended States to eliminate in law and in practice all forms of marriage that restrict and/or deny women and girls’ rights, well-being and dignity, including early and/or forced marriage. International human rights law guarantees gender equality in the family, including when marriage is entered into, during marriage and at its dissolution, as set out in article 16 of the Universal Declaration of Human Rights and article 23 of the International Covenant on Civil and Political Rights (A/HRC/29/40). In this context, we would also like to refer you to the concluding observations of the Committee on the Rights of the Child CRC/C/SDN/CO/3-4 (2010), which expressed concern at the prevalence of the early and forced marriage of girls in Sudan and recommended the State to pass legislation at the federal level to expressly prohibit female genital mutilation and early marriage and ensure that such legislation is enforced in practice.

Finally, we would like to take this opportunity to encourage your Government to ratify the Convention on the Elimination of All Forms of Discrimination against Women.

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 the details about the judicial proceedings against Ms. [redacted] and the legal basis and evidence used in court to sentence her to death. Please also provide details about Ms. [redacted] access to legal assistance the grounds for condemning her for pre-meditated murder in an apparent case of self-defense.

3. Please provide any information on measures that can and will be taken to ensure that Ms. [redacted] judicial process duly complies with existing international standards including in relation to self-defense.

4. Please provide information on the victim's access to remedy for the forced marriage and rape she was subjected to and information on any measures taken to ensure the physical and psychological integrity of Ms. [redacted] during her imprisonment.

5. Please provide information about the measures envisaged to ensure the respect of Sudan's international human rights obligations, including in relation to Presidential pardon.

6. Please provide information on the measures envisaged to prohibit early and forced marriage in compliance with international norms and standards and the measures envisaged or undertaken to protect women and girls against early and forced marriage and to challenge and discourage the social norms and practices in this regard.

7. Please provide information on the measures envisaged or undertaken to train law enforcement officers on responding to allegations of rape and sexual assault, including within marriage.

8. Please provide information on the measures envisaged to ensure that Sudanese legislation, in particular Article 130 of the Criminal Code, is in compliance with international human rights law.

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.

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.

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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