

**Mandates of the Working Group on Arbitrary Detention; the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; 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 violence against women, its causes and consequences; and the Working Group on the issue of discrimination against women in law and in practice**

REFERENCE:  
AL SDN 4/2018

14 September 2018

Excellency,

We have the honour to address you in our capacities as Working Group on Arbitrary Detention; Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; 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 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 33/30, 34/18, 32/32, 34/5, 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 criminal proceedings against **Ms. Wini Omer**.

According to the information received:

Ms. Omer is a human rights defender and a long-time advocate for the repeal of Sudan's morality laws, which criminalise, inter alia, "indecent dress" and which disproportionately affects women. Since September 2016, she has been involved in advocating for civic education and for issues such as women's rights, secularism, and democratic reform.

At about 4.30pm on 10 December 2017, Ms. Omer was waiting at a bus stop in Khartoum when a prosecutor stopped his car and began shouting at Ms. Omer about her "unacceptable" clothing. He detained her using his own car, and threatened and verbally assaulted her while driving her to the closest police station.

The police station was not equipped to handle public order offences, but Ms. Omer was detained there for an hour and her phone was searched. While being detained, she was again verbally assaulted. She was then transferred to another police station.

Upon arrival at another police station, Ms. Omer's phone and laptop were searched again. After spending five hours in a cell, she was charged with "indecent dressing" under article 152 of the Sudanese Criminal Act, which carries a punishment of up to 40 lashes, a fine or both. Ms. Omer was released at 11.45pm and informed that her trial would be held at 8am the following morning at the Public Order Court.

Following three court hearings, the charges against Ms. Omer were dropped on account of a lack of incriminating evidence. The judge suggested that she may have been targeted by the prosecutor.

On the evening of 20 February 2018, Ms. Omer was arrested by Public Order Police in Khartoum's Al Zohour district by nine plainclothes policemen who had entered the apartment (where she was visiting three friends) via the windows. One of the men approached Ms. Omer and said: "Wini, we've been looking for you - it's a small world. This way you will never write or speak about the Public Order Police ever again". Ms. Omer was not informed of the reason for her arrest at the time.

Her laptop and phone were confiscated. The apartment was extensively searched and ransacked. Ms. Omer told police that she had not been drinking or consuming drugs, but police insisted that the bottles of Pepsi that had been found in the rubbish bins had contained alcohol. The bottles were subsequently taken into evidence.

Ms. Omer was taken to the Public Order Police Headquarters in Khartoum's Al Mugran district. At 6am on 21 February, an investigation was opened into Ms. Omer for drug consumption under article 20 of the 1994 drug law, punishable by up to 5 years in prison; for drinking alcohol under article 78 of the 1991 Criminal Act, punishable by up to forty lashes; for practicing prostitution under article 154 of the 1991 Criminal Act, punishable by up to 100 lashes or imprisonment up to 3 years; and for running a brothel under article 155 of the 1991 Criminal Act, punishable by up to 100 lashes or imprisonment up to five years.

On the morning of 21 February, Public Order Police informed Ms. Omer's defence team that she was being taken to court, but initially refused to specify the location. The defence team were subsequently given one hour to assemble at the court. Ms. Omer was taken to Imtedad Court in the district of Al-Sahafa, but no court hearing took place. Ms. Omer was taken back to the police station.

Ms. Omer was informed that her case file had been transferred to the General Attorney's office for further investigation. Defence lawyers considered this practice a procedural irregularity, and concerns were allegedly raised about the General Attorney's office having tampered with case evidence. When lawyers arrived at the General Attorney's office, they were informed that the file was

incomplete and had been returned to the police station in Al-Mugran for additional information.

On the afternoon of 22 February, the National Intelligence and Security Services arrived at the Public Order Police station to interrogate Ms. Omer regarding her human rights activities. Ms. Omer was also taken for drug and alcohol testing and the prosecutor reportedly suggested that a virginity test be carried out.

Between 20 and 23 February on-duty prosecutors repeatedly refused to sign the bail order. Ms. Omer continued to be detained in a crowded and poorly ventilated cell until the evening of 24 February 2018, when she was released on bail.

Between March and July 2018, the guarantor of Ms. Omer's bail was threatened with jail by the authorities. Therefore, in early July, Ms. Omer went to the prosecutor to change the guarantor of her bail. The prosecutor refused to carry out the procedure at that point, and detained Ms. Omer for one night. Since Ms. Omer had still not been officially charged, while in jail she demanded that charges be brought before her or that the investigation be dropped.

On the evening of 11 July 2018, the prosecution informed Ms. Omer and her defence team that the first court session would be held the following day but refused to give details about the time, place, or details of the accusations.

On the morning of 12 July 2018, Ms. Omer and her defence team were informed of the location and went to Al Shargi Court for her hearing. All the judges refused to open the case and recommended that the file be transferred to another court.

A hearing was then scheduled for 15 July 2018, but the judge postponed the hearing until Tuesday 24 July, as the prosecution was not in attendance.

On 24 July, the investigator informed Ms. Omer that she faced eight additional accusations. Although she was not given details of all eight, she was informed that they include "spying on the state" and "undermining the constitutional order". She believes that the documents outlining human rights violations in Sudan, which the authorities could have found on her laptop, might have formed the basis for these accusations.

According to article 50 and 53 of the 1991 Criminal Act, "espionage against the country" and "undermining the constitutional system" are punishable by death, life imprisonment or imprisonment for a lesser term, as well as the forfeiture of all of one's property.

The next hearing was then scheduled for 6 August, but at the hearing the judge refused to continue the case and recommended that it be transferred to another court and assigned a new judge. The reason for this was attributed to a comment Ms. Omer had made on social media, expressing frustration at the extended

periods between court hearings. On 7 August, a new judge took over the case, and is continuing the investigation.

Ms. Omer's next court hearing had been scheduled for 4 September, but the prosecutor and witnesses failed to appear in the courtroom so the judge postponed the session until the 16 September 2018.

Ms Omer remains under a travel ban and her laptop, along with other electronics, are still confiscated.

While we do not wish to prejudge the accuracy of these allegations, we express serious concern at the treatment and judicial harassment of Ms. Omer, which appears to be directly related to the exercise of her right to freedom of expression through her peaceful advocacy and legitimate attempts to document and expose human rights violations in Sudan.

We express concern at the apparent targeting and harassment of Ms. Omer by law enforcement and the judiciary, which appears to be a consequence of her work in defense of human rights. We are also gravely concerned at the fact that she appears to have been targeted and assaulted by a prosecutor, and to have been falsely accused of dressing indecently, an offence that directly relates to Ms. Omer's women's rights work. We express grave concern at the alleged accusations Ms. Omer is facing, and are particularly alarmed at the suggestion that at least two accusations carry death sentences. Furthermore, we express concern that several of the accusations against Ms. Omer, and the potential punishment they may result in, are unlawful under international human rights law, as they interfere with her physical integrity and her right to privacy and freedom from gender-based discrimination. Our concern extends to her treatment while in detention; in terms of her prolonged detention in a crowded cell, the seizure of her personal items, and the suggestion that a virginity test would be carried out on her, since such tests constitute inhuman treatment and gender-based discrimination. We are also concerned at the judicial proceedings against her, which appear to be falling short of international standards for due process. In particular, that after six court dates being set, only one hearing has so far taken place, and that judges appear to be repeatedly either postponing, refusing to open, or transferring Ms. Omer's case.

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. In connection with the above alleged facts and concerns, please refer to the **Reference to International Law Annex** 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/or any comment(s) you may have on the above-mentioned allegations.
2. Please provide detailed information on the treatment and detention of Ms. Omer, and the travel ban and accusations against her, which appear to contradict Sudan's international human rights obligations.
3. Please provide information about the evidence used to justify the accusations of "espionage against the country" and "undermining the constitutional system" as well as other offences that have been brought against Ms. Omer.
4. Kindly indicate what measures have been taken to ensure that Ms. Omer receives a fair and independent hearing in conformity to international law.
5. Please provide information about whether any investigation has been initiated into the allegations of targeting and assault against Ms. Omer by a public prosecutor. If no such investigation has taken place, please explain why.
6. Please indicate what measures have been taken to ensure that human rights defenders in Sudan are able to carry out their peaceful and legitimate work in a safe and enabling environment without fear of threats or acts of intimidation and harassment of any kind.
7. Please provide information on the measures envisaged to ensure that Sudanese legislation complies with international human rights law and in particular the repealing of art 152 of the Criminal Act and the abolition of the penalty of flogging, which violates the absolute prohibition of torture and other cruel and inhumane or degrading treatment or punishment.
8. Please indicate what measures have been taken to ensure that laws that criminalise behaviour undertaken mostly by women, such as prostitution or dressing "indecently", are not used in an arbitrary manner against women human rights defenders and are ultimately repealed.

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.

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.

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

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

Clement Nyaletsossi Voule  
Special Rapporteur on the rights to freedom of peaceful assembly and of association

Michel Forst  
Special Rapporteur on the situation of human rights defenders

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

Ivana Radačić  
Chair-Rapporteur of the Working Group on the issue of discrimination against women in  
law and in practice

## **Annex**

### **Reference to international human rights law**

In connection with above alleged facts and concerns, we would like to draw your attention to articles 7, 9, 12, 14, 17, 19, 21, 22 of the International Covenant on Civil and Political Rights (ICCPR), acceded to by Sudan on 18 March 1986, which states that no one shall be subjected to inhuman or degrading treatment; everyone has the right to liberty and security of person, no one shall be subject to arbitrary arrest or detention, and that anyone who is arrested shall be informed at the time of arrest of the reasons for their arrest and shall be promptly informed of any charges against them; everyone shall be free to leave any country, including his own; everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal without undue delay; no one shall be subjected to arbitrary interference with their privacy and everyone has the right to the protection of the law against such interference; everyone shall have the right to freedom of expression, including the freedom to seek, receive, and impart ideas regardless of frontiers, either orally, in writing or in print or through any other media of his choice; and that the right to peaceful assembly shall be recognized and everyone shall have the right to freedom of association with others.

In particular, we wish to bring your attention to article 6(2) of ICCIP, 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 in respect of intentional killing.

We would further like to refer your Excellency's Government 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. In particular, we would like to refer to articles 1 and 2, which states that everyone has the right, individually and in association with others to promote and to strive for the protection and realization of human rights and that the State has a prime responsibility and duty to protect, promote and implement all human rights. We would also like to draw attention to article 5, 6 and 12. Article 5 and 6 state that everyone has the right to meet or assemble peacefully and to know, seek, receive, and impart information about all human rights. While according to article 12, the state shall take all necessary measures to ensure the protection by the competent authorities of everyone, against any arbitrary action as a consequence of the legitimate exercise of their human rights.

We further refer your Excellency's Government to the principles enunciated by Human Rights Council resolution 24/5, and in particular operative paragraph 2, which reminds States of their obligation to respect and protect the right of all individuals, including human rights defenders, to associate freely, online as well as offline, seeking to promote these rights. States should take all necessary measures to ensure that any restrictions on the free exercise of the right to freedom of association are in accordance with their obligations under human rights law.

We would also like to refer to General Assembly Resolution 68/181, which urges States to acknowledge publicly the important and legitimate role of women's rights defenders in the promotion and protection of human rights, democracy, the rule of law and development as an essential component of ensuring their protection, including by publicly condemning discrimination against them.