

Mandates of the Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence; the Special Rapporteur on extrajudicial, summary or arbitrary executions; the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health; the Independent Expert on the situation of human rights in the Sudan; and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment

REFERENCE:
AL SDN 3/2020

25 June 2020

Excellency,

We have the honour to address you in our capacities as Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence; Special Rapporteur on extrajudicial, summary or arbitrary executions; Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health; Independent Expert on the situation of human rights in the Sudan and Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment; pursuant to Human Rights Council resolutions 36/7, 35/15, 42/16, 39/22 and 34/19.

We would like to bring to the attention of your Excellency's Government information we have received concerning the request for release of the former president of Sudan, Omar Al-Bashir, due to a reported outbreak of COVID-19 in the facilities where he is currently detained.

According to the information received:

In 2009 and 2010, the International Criminal Court (ICC) issued two arrest warrants against then President of Sudan, Omar Al-Bashir, on charges of crimes against humanity, war crimes and genocide. He remained at large until April 2019, when he was ousted from Government.

In April 2019, warrants of arrests were issued against leaders of the former regime including Mr. Al-Bashir and two of his high-ranking assistants, who are part of the five Sudanese indicted by the ICC. 19 members of the former regime are reportedly charged with unjust enrichment and the use of public resources for private benefits, and for their role in the coup d'état of 1989. Some are also facing charges of murder and torture committed on several incidents against opponents.

On 13 May 2019, Sudanese prosecutors charged Mr. Al-Bashir with "inciting and participating" in the killing of protesters during the mass protests that led to his ousting. On a separate case, on 14 December 2019, Mr. Al-Bashir was convicted for corruption and illicit financial gains, and sentenced to two-year

imprisonment, which he is currently serving in Kober prison. Reportedly, he is also under investigation for his cooperation with terrorist entities.

In March 2020, the Government announced having reached agreement with Darfur armed groups to cooperate with the ICC regarding the five indicted Sudanese, and to establish a special criminal court for war crimes and crimes against humanity in Darfur.

On 29 April 2020, the legal representatives of Mr. Al-Bashir's and other former leaders sent a letter to the Attorney-General's Office requesting his release, on bail or house arrest, due to a reported COVID-19 outbreak in Kober prison.

On 27 May 2020, the Public Prosecutor of the Attorney-General's Office rejected their requests indicating that applicable laws preclude the release on bail of persons facing serious criminal charges, and that the claimants did not match the criteria for release in the context of COVID-19. He also issued a statement indicating that safety measures had been taken to guarantee the health and safety of detainees during the pandemic, including transferring of detainees to hospitals or into quarantine.

On 8 June, the Attorney General, following agreement with the Chief Justice, announced that the trial of former regime leaders will start soon, respecting safety guidelines for prevention of the spread of COVID19.

On 16 June, he informed that investigations were finalized and charges were made in relation to four cases, including the coup d'état of 1989 and unjust enrichment and corruption. Cases related to events in Darfur and the crackdown against protestors in 2013, 2016 and during the months of revolutions from December 2019 to April 2020 remain under investigation.

We express grave concern at the request for release submitted by former President of Sudan Omar Al Bashir's legal team, in response to a COVID-19 outbreak in Kober prison, without public health justifications. This could entail serious risks for the delivery of justice against persons charged in Sudan and indicted by the ICC for serious international crimes. In this regard, we welcome the decision of the Public Prosecutor of the Attorney-General's Office to reject those requests due to the seriousness of the crimes laid against them and their insufficient qualification for release in the context of the COVID-19 Pandemic. We concur that their continued detention is essential to ensure accountability for the grave crimes with which they are charged and to guarantee victim's access to justice and reparation, while ensuring the detainee's physical integrity. In this regard, we also welcome the statement released by the Public Prosecutor of the Attorney-General's Office concerning the measures adopted to ensure the health of detainees in Kober prison during the pandemic which, in turn rendered the request of former regime detainees further unwarranted.

We support this positioning by recalling that the adoption of measures that create, *de jure or de facto*, impunity for persons convicted of serious human rights violations, crimes against humanity, genocide or war crimes are prohibited under existing international law. At the same time, States have a general obligation to guarantee the enjoyment of the rights of all persons under their jurisdiction, including their prison populations: prison overcrowding is never acceptable and constitutes a violation of several international obligations, including the protection of the right to physical and mental integrity.

In the context of a pandemic such as COVID-19, where the risk of contagion endangers the health and life of the population, States have a greater duty to prevent violations of the rights of persons deprived of their liberty, avoiding overcrowding and ensuring hygiene and sanitation in prisons and other detention centers, as indicated by various United Nations Special Procedures and the United Nations High Commissioner for Human Rights.

However, the legitimate and necessary measures to protect against COVID-19 and overcrowding must be compatible with international human rights standards and must not create impunity. Such standards prohibit the application of amnesties, pardons, exemptions from criminal liability, and benefits in the enforcement of sentences to those responsible for serious violations of human rights and grave breaches of international humanitarian law. These individuals usually enjoy conditions of detention - established for security reasons - that avoid mass contact (for example, through detention in special establishments and/or in individual or two or three person cells), which places them at an advantage in terms of safety and health compared to other persons deprived of their liberty. Measures of house arrest on health grounds for such persons may, as a matter of principle, only be granted in the event of terminal illness of imminent resolution.

As noted by the Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence in a related [press statement](#)¹, in the current health emergency brought about by COVID-19 pandemic, once general measures have been implemented to avoid overcrowding of the general prison population, if the problem of possible overcrowding of persons imprisoned for committing the aforementioned crimes persists, it is recommended: (a) To relocate such prisoners to another prison facility where they have safe and healthy detention conditions ; (b) If this is impossible, provide for temporary house arrest with appropriate controls: the person must return to prison once the emergency situation has passed, to serve the remainder of their prison term. In no case should the benefit of indefinite house arrest be granted to prisoners who have been convicted of the aforementioned crimes.

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.

¹ <https://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=25840&LangID=E>

As it is our responsibility, under the mandate provided to me by the Human Rights Council, to seek to clarify all cases brought to our attention, I 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 information.
2. Please provide any available information in relation to the status of Mr. Omar Al-Bashir and former regime detainees' request for release from prison. Please also provide information in relation to their health, the safety and sanitary conditions of the facilities in which they are currently detained, the number of persons with whom they share a cell, and whether there is risk of contagion in this sector.
3. Please indicate if Kober prison is or has been affected by a COVID-19 outbreak. Please indicate what measures have been adopted to protect the prison population, including in the area where former regime authorities are being held, against COVID-19.
4. Please indicate if the authorities are considering a possible transfer to a different prison if the sanitary conditions are not deemed sufficient to ensure the health and physical integrity of former regime leaders and other inmates.

This communication and any response received from your Excellency's Government will be made public via the communications reporting website within 60 days. They will also subsequently be made available in the usual report to be presented to the Human Rights Council.

While awaiting a reply, I urge that all necessary interim measures be taken to halt the alleged violations.

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

Fabian Salvioli

Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence

Agnes Callamard

Special Rapporteur on extrajudicial, summary or arbitrary executions

Dainius Puras

Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health

Aristide Nononsi

Independent Expert on the situation of human rights in the Sudan

Nils Melzer
Special Rapporteur on torture and other cruel, inhuman or degrading treatment or
punishment

Annex

Reference to international human rights law

In connection with above alleged facts and concerns, 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.

We would also like to refer to the obligation to investigate and punish human rights violations and to combat impunity for such crimes. In this regard, we would like to recall that, as established by the Human Rights Committee in its General Comment No. 31, States have an obligation to investigate and punish serious human rights violations, including enforced disappearances. Failure to investigate and prosecute such violations is in itself a breach of the norms of human rights treaties (paragraph 18). Impunity for such violations can be an important element contributing to the recurrence of violations.

We would also like to recall the updated Set of Principles for the Protection and Promotion of Human Rights through Action to Combat Impunity of February 2005, which states that impunity constitutes a violation of the obligations of States to investigate violations, to take appropriate measures with regard to perpetrators, especially in the field of justice, to ensure that persons suspected of criminal responsibility are prosecuted, tried and sentenced to appropriate penalties, to guarantee victims effective remedies and to make reparation for the harm suffered, to guarantee the inalienable right to know the truth and to take all necessary measures to prevent the recurrence of such violations (principle 1).

Furthermore, we wish to recall that international law imposes limits on the use of benefits such as amnesty, pardon and commutation of sentences in respect of crimes against humanity. The reduction of sentences based on common criminal law principles and procedural rules ignores the special gravity of crimes against humanity. The international community recognizes the need to restrict the use of certain rules of law, such as procedural benefits, in order to combat impunity and prevent these rules from becoming an obstacle to justice (E/CN.4/Sub.2/1997/20/Rev.1). The provision of such benefits could involve hidden forms of impunity that contravene international human rights obligations.

We would also like to emphasize that the updated Set of Principles reaffirms the obligation of States to take appropriate measures in respect of perpetrators of violations (principle 1) and sets out restrictions on leniency measures (principle 24). The Committee against Torture has also considered that the imposition of less severe penalties is incompatible with States' obligations. (CAT/C/34/D/212/2002 (2005), párr. 6.7)

Lastly, we emphasize that the early release of a person accused or convicted of crimes against humanity, on grounds contrary to international standards, is an affront to the victims, as it may expose them to violence, re-victimization and intimidation.