

Mandates of the Special Rapporteur on the situation of human rights defenders; 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 the human rights of internally displaced persons; and the Working Group on discrimination against women and girls

REFERENCE:
AL SDN 4/2021

4 May 2021

Excellency,

We have the honour to address you in our capacities as Special Rapporteur on the situation of human rights defenders; 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 the human rights of internally displaced persons; and Working Group on discrimination against women and girls, pursuant to Human Rights Council resolutions 43/16, 44/5, 43/4, 41/15 and 41/6.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning the **killing of human rights defender Faisal Yousef Mohamed and the sentencing of woman human rights defender Waad Bahjat**.

Mr. **Faisal Yousef Mohamed** was a human rights defender and legal trainee from West Darfur. He was a member of both the Hay El Ameerya Resistance Committee, which organizes peaceful demonstrations to promote civil and economic rights in Sudan, and the El Geneina Paralegal Network, which works to improve access to legal assistance for internally displaced persons living in camps in West Darfur.

Ms. **Waad Bahjat** is a woman human rights defender, as well as an engineer and a blogger, who focuses her writings on women's rights in Sudan. She is a member of the Umdba Resistance Committee, which peacefully mobilizes for the promotion of civil and economic rights in Sudan, and against public corruption in the country.

Concerns relating to the events, which took place on 16 and 17 January 2021 at the Krinding camp for internally displaced persons in West Darfur, were previously communicated to your Excellency's Government on 28 January 2021 (UA SDN 2/2021). At the time of finalizing of this communication, a response to these concerns has not been received.

According to the information received:

Concerning Faisal Yousef Mohamed

On 16 January 2021, armed men belonging to Arab communities attacked the Krinding camp for internally displaced persons in West Darfur, targeting people mostly from the Masalit ethnic group. In subsequent clashes between the communities, a reported 163 people were killed and 217 injured, with an estimated 50,000 persons displaced from the camp to nearby areas in a situation of dire humanitarian need. Some of these events were witnessed by

Mr. Mohamed, who was working with internally displaced persons at the Krinding camp at the time.

On 17 January 2021, at approximately 10 pm, members of an armed group involved in the violence at the Krinding camp entered Mr. Mohamed's home in El Geneina, West Darfur, where they killed him and two of his family members, while making death threats against other relatives of the human rights defender who were present. As of the finalizing of this communication, an investigation into the killing of the human rights defender and his family members had reportedly not been carried out.

Concerning Waad Bahjat

On 9 November 2020, Ms. Bahjat was arrested at a petrol station in the Al-Amarat neighbourhood of Khartoum by a member of the Sudanese police. The arrest was carried out in the presence of an officer of the Sudanese Armed Forces. At the moment of her arrest, the woman human rights defender was broadcasting a live video on social media in which she alleged that women at the station were being discriminated against by members of the Sudanese police and armed forces. She was subsequently brought to Al-Imtedad Police Station, where her mobile phone was confiscated and she was interrogated and subjected to threats and ill-treatment, including physical abuse leading to injuries to her shoulder.

Ms. Bahjat was released on bail the following day after having had access to her lawyer. She was charged with publishing false news, public nuisance, insulting a public servant exercising judicial proceedings and with defamation, under articles 66, 77, 116 and 159 of the Sudanese Criminal Act, 1991.

On 3 December 2020, the first hearing in Ms. Bahjat's case was held at the Criminal Court in Khartoum, where charges and witnesses accounts were presented against her by the Public Prosecutor. A second hearing in her case took place on 10 January 2021, with the Criminal Court dismissing the charges of defamation, insulting a public servant exercising judicial proceedings, and publishing false news, while maintaining the charge of public nuisance and admitting a further charge of using criminal force, under article 143 of the Sudanese Criminal Act.

On 31 March 2021, after at least one postponement in her case, the Criminal Court convicted Ms. Bahjat and sentenced her to six months imprisonment (suspended) and a fine of 10,000 Sudanese pounds (approx. 22 EUR) on the charges of use of criminal force and public nuisance. Following the sentence, she was temporarily held in the police station attached to the court, before being released on the same date after having paid the ordered fine. The women human rights defender plans to appeal to the decision of the court.

Without wishing to prejudge the accuracy of the information received, we express our grave concern at the killing of Mr. Mohamed and his family members, which we fear may have been in retaliation for his work to protect and promote the fulfilment of the rights of internally displaced persons in West Darfur. Our concern is heightened by the allegation that there has yet to be an investigation into the killing of the human rights defender and his family members, which, if confirmed, would

indicate a strong risk of his killing resting in impunity, further compounding concerns previously communicated to your Excellency's Government relating to accountability and access to justice in the context of intercommunal violence in Darfur (see UA SDN 2/2021).

We also express serious concern as to the prosecution of Ms. Bahjat, which we fear to have been sought by the State in direct retaliation for the legitimate exercise of her right to freedom of expression as a woman human rights defender in relation to alleged acts of discrimination against women.

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 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 allegations.
2. Please provide information as to steps taken by your Excellency's Government to ensure a full and effective investigation into the killing of Mr. Mohamed and his family members, in compliance with its obligations under international human rights law, in particular article 6 of the International Covenant on Civil and Political Rights. Please also provide information as to the current status, or, where available, the results of any such investigation, along with any steps towards prosecution which may have resulted from it.
3. Please provide information as to the factual and legal grounds for the arrest and prosecution of Ms. Bahjat and explain how these actions have been consistent with articles 9 and 19 of the International Covenant on Civil and Political Rights.
4. Please provide information on steps taken by your Excellency's Government to ensure that human rights defenders, including women human rights defenders, in all parts of Sudan can carry out their work in a safe and enabling environment without fear of acts of intimidation or harassment of any sort, such as gender based discrimination, and to ensure that any attacks to which they are subjected are fully investigated. If no such measures have been put in place, please indicate a means by which we may engage with your Excellency's Government as to the development of such measures.

We would appreciate receiving a response within 60 days. Passed this delay, this communication and any response received from your Excellency's Government will be made public via the communications reporting [website](#). They will also subsequently be made available in the usual report to be presented to the Human Rights Council.

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.

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

Mary Lawlor
Special Rapporteur on the situation of human rights defenders

Morris Tidball-Binz
Special Rapporteur on extrajudicial, summary or arbitrary executions

Irene Khan
Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression

Cecilia Jimenez-Damary
Special Rapporteur on the human rights of internally displaced persons

Elizabeth Broderick
Chair-Rapporteur of the Working Group on discrimination against women and girls

Annex

Reference to international human rights law

In relation to the above-mentioned allegations, we would like to refer your Excellency's Government to articles 3, 6, 9 and 19 of the International Covenant on Civil and Political Rights (ICCPR), acceded to by Sudan on 18 March 1986, which prohibit discrimination in enjoyment of the rights referred to in the Covenant on the basis of gender, the right to life, the right to liberty and security of person, including freedom from arbitrary arrest and detention, and the right to freedom of opinion and expression.

In reference to the right to life as enshrined in article 6 of the Covenant, we would like to recall General Comment no. 36 of the Human Rights Committee, wherein the Committee underlined that the duty to protect the right to life requires State parties to take “special measures of protection towards persons in vulnerable situations whose lives have been placed at particular risk because of specific threats or pre-existing patterns of violence” and that such persons “include human rights defenders”.¹ The Committee also highlights that State parties to the Covenant have an obligation, “where they know or should have known of potentially unlawful deprivations of life, to investigate and, where appropriate, prosecute the perpetrators of such incidents.”² Such investigations must be independent, impartial, prompt, thorough, effective, credible and transparent. States are also under the obligation to prevent the occurrence of similar violations in the future.

We would further like to recall the recent report of the Special Rapporteur on the situation of human rights defenders, presented at the 46th session of the Human Rights Council in February 2021, on the killing of human rights defenders, and refer your Excellency's Government to the recommendations to States contained therein.

Article 19 of the ICCPR provides guarantees the right of all persons to freedom of expression, encompassing the freedom to seek, receive and information and ideas of all kinds. Any restrictions on freedom of expression must be strictly limited and meet the high threshold set out in article 19 (3) of the Covenant, following which any limitations must be determined by law and conform to the strict tests of necessity and proportionality. As underlined by the Human Rights Committee in its General Comment no. 34, attacks on persons because of the exercise of their freedom of expression, including in the form of arbitrary arrest, cannot under any circumstance be compatible with article 19.³ As highlighted by the Committee, persons engaged in gathering, analysing and reporting on human rights are frequently subjected to such acts of intimidation because of their activities.⁴

We would also like to refer 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 of the Declaration, which state that everyone has the right to promote and to strive for the protection and

¹Human Rights Committee, *General Comment No. 36*, CCPR/C/GC/36, para 23

²*Ibid.*, para 27

³Human Rights Committee, *General Comment No. 34*, CCPR/C/GC/34, para 23

⁴*Idid*

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. We would further wish to stress the following articles of the Declaration:

- article 9, paragraph 5, which holds that States shall conduct a prompt and impartial investigation or ensure that an inquiry takes place whenever there is reasonable ground to believe that a violation of human rights and fundamental freedoms has occurred in any territory under its jurisdiction; and

- article 12, paragraph 2, holding that States 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 their legitimate exercise of the rights referred to in the Declaration.

We would also wish to make reference to the Declaration on the Elimination of Violence against Women, proclaimed by General Assembly resolution 48/104 of 20 December 1993, which sets forth in article 1 that ‘violence against women’ means any act of gender-based violence that results in, or is likely to result in, physical, sexual or psychological harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or in private life. The Declaration recognizes as well in its article 6, the right of women to the equal enjoyment and protection of all human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field, including the right to be free from all forms of discrimination (article 6,e.)

We would furthermore like to refer to General Assembly resolution 68/181, adopted on 18 December 2013, on the protection of women human rights defenders. Specifically, we would like to refer to articles 7, 9 and 10, whereby States are called upon to, respectively, public acknowledged the important role played by women human rights defenders, take practical steps to prevent threats, harassment and violence against them and to combat impunity for such violations and abuses, and ensure that all legal provisions, administrative measures and policies affecting women human rights defenders are compatible with relevant provisions of international human rights law.

Furthermore, as stressed by the Working Group on discrimination against women and girls in one of its reports to the Human Rights Council (A/HRC/23/50), stigmatization, harassment and outright attacks are used to silence and discredit women who are outspoken as leaders, community workers, human rights defenders and politicians. Women defenders are often the target of gender-specific violence, such as verbal abuse based on their sex, sexual abuse or rape; they may experience intimidation, attacks, death threats and even murder. Violence against women defenders is sometimes condoned or perpetrated by State actors. The Working Group recommended to accelerate efforts to eliminate all forms of violence against women, including through a comprehensive legal framework to combat impunity, in order to fulfil women’s human rights and to improve the enabling conditions for women’s participation in political and public life.

In a joint declaration, the Working Group on discrimination against women and girls emphasised that women human rights defenders face unique challenges, driven by deep-rooted discrimination against women and stereotypes about their appropriate

role in society. Today's rising fundamentalisms of all kinds and political populism, as well as unchecked authoritarian rule and uncontrolled greed for profit-making further fuel discrimination against women, intensifying the obstacles facing women human rights defenders. In addition to the risks of threats, attacks and violence faced by all human rights defenders, women human rights defenders are exposed to specific risks, such as misogynist attacks, gender-based violence (including sexual violence), lack of protection and access to justice as well as lack of resources. Those working on rights contested by fundamentalist groups such as women's sexual and reproductive health and rights and those denouncing the actions of extractive industries and businesses are at heightened risk to attacks and violence⁵.

In its thematic report on Women deprived of liberty (A/HRC/41/33), the Working Group on Discrimination against women and girls has expressed that women who seek to participate in political, economic, social or cultural leadership in their communities or nations may be acting in defiance of stereotypes obliging women to stay quiet and invisible and defer to male governance. They may thus be stigmatized, or even criminalized or confined, to prevent them from speaking out or taking action (see A/73/301). For example, violence or confinement may be used to stifle and punish women politicians, or those who have an active voice in public, for transgressing traditional gender norms. Women human rights defenders, perceived as challenging traditional notions of family and gender roles in society, (A/HRC/40/60, para. 28), are increasingly at risk of facing criminalization and detention as a result of their legitimate public activism (see A/HRC/16/44 and Corr.1). In a number of States, women who work specifically to combat gender stereotypes and advance women's rights are most likely to be targets for criminal persecution and imprisonment. Certain laws, including "complicity" laws, and "public order" laws¹⁶ or even anti-terrorism laws, may be particularly instrumentalized to target women human rights defenders. In some countries, forms of public expression dominated by women, such as religious observances (for example, how they are dressed) related to "disfavoured" or minority faiths, are criminalized or are grounds for restricting access to essential services. The Working Group recommended States to support and protect women's engagement in public and political life including the work of women human rights defenders, and eliminate any laws or policy measures designed to criminalize the public roles of women.

Finally, we wish to remind your Excellency's Government of the provisions of the 1998 Guiding Principles on Internal Displacement, which reflect international human rights law and international humanitarian law. According to the Guiding Principles, all authorities shall respect and ensure respect for their obligations under international law, including human rights and humanitarian law, in all circumstances, so as to prevent and avoid conditions that might lead to displacement of persons (Principle 5), and every human being shall have the right to be protected against being arbitrarily displaced from his or her home (Principle 6). Authorities also have the obligation to protect internally displaced persons, in particular their right to life by protecting them against acts such as murder, summary or arbitrary executions and attacks against their camps and settlements (Principle 10).

⁵ (<https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=20938&LangID=E>)