

Mandates of 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 rights to freedom of peaceful assembly and of association; the Special Rapporteur on the situation of human rights defenders; the Independent Expert on the situation of human rights in the Sudan; and the Special Rapporteur on violence against women, its causes and consequences

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SDN 6/2016:

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Excellency,

We have the honour to address you in our capacity as 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 rights to freedom of peaceful assembly and of association; Special Rapporteur on the situation of human rights defenders; Independent Expert on the situation of human rights in the Sudan; and the Special Rapporteur on violence against women, its causes and consequences, pursuant to Human Rights Council resolutions 26/12, 25/2, 24/5, 25/18 30/22 and 32/19.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning the **imposition of the death penalty upon six members, including two women, of the Khartoum Centre for Training and Human Development (TRACKS), a civil society organization, allegedly in connection with their legitimate exercise of the rights to freedom of expression and association.** The six members are the following: Mr. **Khalafalla Mukhtar**, Ms. **Arwa Elrabie**, Mr. **Midhat Hamadan**, Mr. **Alhassan Kheiri**, Mr. **Mustafa Adam**, and Ms. **Raye Imany Leyla**.

TRACKS for Training and Human Development is a Khartoum-based organization that provides training on a range of themes, including IT, capacity-building and human rights training for the private sector and national civil society organizations. It is registered with the National Training Bureau, a division of the Sudanese Ministry of Labour.

TRACKS and its members have been subject of previous communications sent by the Special Procedures on two different occasions, on 27 April 2015 (SDN 2/2015) and on 5 April 2016 (SDN 2/2016). TRACKS' members have reportedly been constantly targeted by agents from the National Intelligence and Security Service (NISS) over the past two years. Their offices have been raided twice, their documents and equipment, as well as their passports, were confiscated by NISS agents. In addition, they have allegedly

been summoned and detained several times at the NISS office where they have been questioned about the organization's activities, including its relationship with the Al-Khatim Adlan Centre for Enlightenment and Human Development, an organization that was forcibly shut down by the Government in 2012. The concerned human rights defenders were allegedly tortured (see SDN 2/2015 and SDN 2/2016). We regret that, to date, no answer has been received from the Government regarding these two communications. Moreover, the Independent Expert on the situation of human rights in the Sudan, who visited the country in April 2016, expressed concern about this case to the relevant Sudanese authorities. He emphasized the important role played by human rights defenders in the country, and stressed the need for the Government of the Sudan to allow them to carry out their activities in an open, safe and secure environment.

According to the new information received:

On 22 May 2016. **Mr. Khalafalla Mukhtar**, Director of TRACKs, **Ms. Arwa Elrabie**, **Mr. Midhat Hamadan**, and **Mr. Alhassan Kheiri**, TRACKs' employees, **Mr. Mustafa Adam**, and **Ms. Raye Imany Leyla**, affiliated to the organization, were allegedly arrested by the NISS. They were reportedly taken to the State Security Prosecution Office in Khartoum where they have been detained for 86 days without charge. There is growing concern about the pervasive actions of the NISS and their impact on the exercise of human rights in the country.

The concerned individuals allegedly suffered from ill-treatment while in detention: cells were about 4 square meters, without ventilation and had to be shared with 26 other detainees. On 14 August 2016, due to the stifling environment and his heart condition, Mr. Khalaf-Allah Al-Afif Mukhtar, reportedly fainted.

On 14 August, all of the individuals, including the two women, were reportedly charged by the Prosecution Office under the 1991 Sudan's Penal code, namely its articles 21 (joint acts in execution of criminal conspiracy), article 50 (undermining the constitutional system), 51 (waging war against the state), 53 (espionage against the country), and 65 (criminal and terrorist organizations). These charges, if confirmed, lead to the application of the death penalty. Mr. Mustafa Adam and Mr. Midhat Afifaddin have additionally been charged under Article 14 of the Information Crimes Law.

On 15 August 2016, three of TRACKs staff members, Mr. Khalafalla Mukhtar, Mr. Mustafa Adam and Mr. Midhat Hamdan, were transferred to the Al Hudan prison, in Omdurman. Since 16 August 2016, they have been denied family visits. Ms. Arwa Elrabie, Ms. Raye Imany Leyla, and Mr. Alhassan Kheiri, were reportedly released on bail.

A preliminary hearing was scheduled on 24 August 2016 and was allegedly adjourned to 28 August, while Mr . Khalafalla Mukhtar, Mr. Mustafa Adam and Mr. Midhat Hamadan remain in detention.

Serious concern is expressed that charges carrying the sentence of the death penalty have been imposed against the six above-mentioned individuals, four men and two women, in a process that may have failed to uphold the most stringent fair trial and due process guarantees, amounting to a possible violation of the right to life. We express further concern at the application of espionage and terrorism provisions, carrying the death penalty, to criminalize freedom of expression and to target human rights organizations. We reiterate our concerns at the growing harassment and sentencing brought against activists and human rights defenders, including women human rights defenders for exercising their legitimate rights to freedom of expression and freedom of association in Sudan.

While we do not wish to prejudge the accuracy of the information made available to us, the above alleged facts indicate a prima facie violation of the right of every individual of life and security and not to be arbitrarily deprived of his/her life, as set forth in article 6(1) of the the International Covenant on Civil and Political Rights (ICCPR), ratified by Sudan on 18 march 1986, and article 3 of the Universal Declaration of Human Rights (UDHR).

We would also like to bring to the attention of your Excellency's Government article 6(2) of the ICCPR, 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.

Article 14 of the ICCPR enshrines the right to a fair trial, including the right to access to a lawyer and other essential procedural guarantees. The imposition of a death sentence following a trial in which this provision has not been respected constitutes a violation of the right to life. Fair-trial safeguards also include the right to a fair and public hearing in the determination of any criminal charge, reflected in article 14(1) of the ICCPR. The public can be excluded from a hearing due to reasons of morals, public order, national security or in order to protect the private lives of the parties, but any judgement rendered in a criminal case must be made public, with the only exception of cases involving children, juveniles or matrimonial disputes, when the interest of the parties requires confidentiality.

Article 5 of the United Nations Safeguards Protecting the Rights of those facing the Death Penalty provides that capital punishment may only be carried out following a legal process which gives all possible safeguards to ensure a fair trial, including the right to adequate legal assistance at all stages of the proceedings. Only full respect for stringent

due process guarantees distinguishes capital punishment as possibly permitted under international law from arbitrary execution. 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.

In this context, we would 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). This evolving standard, along with the resulting illegality of the death penalty under such prohibition, is developing into a norm of customary law, if it has not already done so (para. 74). The Special Rapporteur on torture has called upon all States to reconsider whether the use of the death penalty per se respects the inherent dignity of the human person, causes severe mental and physical pain or suffering and constitutes a violation of the prohibition of torture and other cruel, inhuman or degrading treatment or punishment (para. 79). Retentionist States are called upon to end the practice of executions with little or no prior warning given to condemned prisoners and their families (para. 80 (c)).

We would also like to refer your Excellency's Government to articles 19 and 22 of the ICCPR, guaranteeing the rights to freedom of expression and to freedom of association. Paragraph 3 of article 19 sets out the requirement that any restrictions to the right to freedom of expression must be necessary, proportionate and prescribed by law. We would like to highlight that while national security is a legitimate objective under article 19(3), it is not enough to simply claim it as a justification to pursue illegitimate purposes such as silencing critical voices. The state has to demonstrate that it is necessary to do so to achieve a legitimate objective. We reiterate the statement by the Human Rights Committee in General Comment 34 that article 19(3) may never be invoked as a justification for the muzzling of any advocacy of human rights (CCPR/C/G/34).

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.

Finally, we would like to bring to your Excellency's attention article 4 (o & p) of the United Nations Declaration on the Elimination of Violence against Women which notes that States should recognize the important role of the women's movement and non-governmental organizations worldwide in raising awareness and alleviating the problem of violence against women, and should, moreover, facilitate and enhance the work of the women's movement and non-governmental organizations and cooperate with them at local, national and regional levels.

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 persons 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 details of the legal grounds for the arrest and the subsequent charges of espionage and terrorism. Please provide information about the legal basis keeping the above-named persons detained for 86 days without being charged. Please indicate how these measures are compatible with international human rights norms and standards governing freedom of association and freedom of opinion and expression.
3. Please provide details about the judicial proceedings against the above-named persons, and the legal basis and evidence in court to sentence them to death.
4. Please kindly indicate what measures have been taken to ensure that activists and human rights defenders, including women human rights defenders in Sudan are able to carry out their legitimate work in a safe and enabling environment without fear of threats or acts of intimidation, harassment or prosecution of any sort.

In view of the irreversibility of the punishment of the death penalty and of the allegations of unfair trial leading to the imposition of the death sentences mentioned above, **we urge your Excellency's Government as a matter of urgency to take all steps necessary to prevent the execution of Mr. Khalafalla Mukhtar, Ms. Arwa Elrabie, Mr. Midhat Hamadan, Mr. Alhassan Kheiri, Mr. Mustafa Adam and Ms. Raye Imany Leyla, which if carried out would be inconsistent with Sudan's obligations under international human rights law, and thus an arbitrary execution.** We further call upon your Excellency's Government to annul the death sentences against the aforementioned individuals and to ensure a fair retrial to all.

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.

Agnes Callamard
Special Rapporteur on extrajudicial, summary or arbitrary executions

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

Maina Kiai
Special Rapporteur on the rights to freedom of peaceful assembly and of association

Michel Forst
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