

To: United Nations: **Working Group on Arbitrary Detention; Special Rapporteur on extrajudicial, summary or arbitrary executions, Ms Agnes Callamard; Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Mr David Kaye; Special Rapporteur on the rights to freedom of peaceful assembly and of association, Mr Maina Kiai; Special Rapporteur on the situation of human rights defenders, Mr Michel Forst; and the Independent Expert on the human rights situation in Sudan, Mr Aristide Nononsi,**

12 December 2016

Re: Open Letter concerning the six months detention of and spurious criminal proceedings against staff members and affiliates of the Centre for Training and Human Development (TRACKs) in Sudan

Dear Sir/Madame,

We, the undersigned African and international non-governmental organizations, are writing to bring to your attention in your capacities as Special Procedure mandate holders worrying developments concerning the detention and trial of ten human rights defenders in Sudan. We urge you to call on the Government of Sudan to immediately and unconditionally drop all charges against ten staff members and affiliates of the Centre for Training and Human Development (TRACKs), an organization which provides training on a range of issues from IT to human rights, in two overlapping cases that include crimes against the state. Crimes against the state charges carry the death penalty.

We also call on you to urge the Government of Sudan to release TRACKs Director Khalafalla al Afif Mukhtar, trainer Midhat Afif al-Deen Hamdan, and the director of another organization, Alzarqaa Organisation for Rural Development, Mustafa Adam, who have been arbitrarily detained for over six months, as well as guarantee the right to a fair trial in conformity with international and regional human rights standards.

Our organizations believe that the charges against TRACKs staff and affiliates are spurious and based solely on the peaceful exercise of their work in favour of human rights, democratic principles, and peace and security in Sudan. We believe that authorities are acting in violation of Sudan's 2005 Interim National Constitution, the African Charter on Human and Peoples' Rights (African Charter), and the International Covenant on Civil and Political Rights (ICCPR) to which Sudan is a state party. We consider the continued detention of Khalafalla al Afif Mukhtar, Midhat Afif al-Deen Hamdan, and Mustafa Adam to be arbitrary. The Prosecution has failed to provide written confirmation of the names of the accused or charges brought against them or evidence for the legal basis of the charges, undermining the ability of the accused to prepare a defense. Proceedings have been repeatedly adjourned, prolonging the detention of the three men. Much of the evidence presented has been related solely to TRACKs staff members and affiliates' human rights work. The evidence presented is unconvincing as to how the human rights work of TRACKs staff and affiliates constitute crimes against the state. A number of civil society activists and journalists have been obstructed from attending the trial by court police and subjected to harassment and intimidation, including having their photos taken during court sessions.

Following the raid on TRACKs in February 2016 and the interrogation and detention of ten individuals, an urgent appeal by Mr Kaye, Mr Kiai, Mr Forst, Mr Nononsi, and Mr. Juan E. Mendez was transmitted to the Government of Sudan without any response. Additionally, a communication sent by the UN Human Rights Council Working Group on Arbitrary Detention on 17 June 2016 was received but without response. The Working Group adopted its subsequent Opinion 34/2016 during the seventy-sixth session from 22 – 26 August 2016, concerning Adil Bakheit, Al Shazali Ibrahim El Shiekh, Alhassan Kheiri, Arwa Elrabie, Imany Leyla Raye, Khalafalla Alafif Mukhtar, Khuzaini Elhadi Rajab, Midhat Afifi Hamdan, Mustafa Adam, and Nudaina Kamal. All of this group, except for Al Shazali Ibrahim El Sheikh and Khuzaini Elhadi Rajab, who were released without charge on 5 and 6 June 2016, are currently facing criminal charges. To date, our organizations are unaware of any official response by the Government of Sudan to Opinion 34/2016.

In light of the gravity and urgency of the situation, we respectfully request you to urgently take appropriate action to address the human rights violations including by:

1. Publicly calling on the Government of Sudan to immediately and unconditionally release the ten TRACKS staff and affiliates and drop all charges against them;
2. Publicly calling on the government to release Mr Mukhtar, Mr. Hamdan and Mr Adam pending trial and to guarantee them the right to an impartial, independent, and competent tribunal as well as their other fair trial rights at all times;
3. Publicly declaring that the detentions constitute a violation of the right to freedom of expression, as protected by Article 9 of the African Charter, Article 19 of the ICCPR and Article 19 of the Universal Declaration of Human Rights, and the protection enjoyed by detainees as set out in the UN Declaration on Human Rights Defenders; and

We wish to thank the Honourable Commissioners in advance of your responsiveness and attention in addressing the continued detention of the three men and ongoing trial proceedings by transmitting communications to the Government of Sudan. Please do not hesitate to contact us if you have any questions or if we can provide you with any additional information you may need.

Sincerely,

Organisations

Act for Sudan

African Centre for Democracy and Human Rights Studies

African Centre for Justice and Peace Studies

Al Khatim Adlan Centre for Enlightenment and Human Development (KACE)

Amnesty International

Cairo Institute for Human Rights Studies

CIVICUS

Commonwealth Human Rights Initiative

Darfur Bar Association

Darfur Relief and Documentation Centre

DefendDefenders

ENOUGH Project

Face Past 4 Future

Human Rights Institute of South Africa

Human Rights Watch

FIDH, within the framework of the Observatory for the Protection of Human Rights Defenders

International Justice Project

International Refugee Rights Initiative

International Service for Human Rights

Investors against Genocide

MagkaSama Project

Massachusetts Coalition to Save Darfur

National Coalition of Human Rights Defenders - Uganda

National Human Rights Monitoring Organisation

Never Again Coalition

World Organisation Against Torture (OMCT), within the framework of the Observatory for the Protection of Human Rights Defenders

PAX

Réseau des Défenseurs des Droits Humains en Afrique Centrale (Central Africa Human Rights Defenders Network)

Réseau Ouest Africain des Défenseurs des Droits de l'Homme

Skills for Nuba Mountains

Stop Genocide Now

Sudan Consortium
Sudan Democracy First Group
Sudan Human Rights Monitor
Sudanese Rights Group (Huqooq)
SUDO UK
Sudan Unlimited
Waging Peace

Individuals

Elhag ali Warrag Sidahmed Warrag, editor in chief, Hurriyat newspaper
Mohaned Elnour, lawyer
Najlaa Ahmed, Human Rights Advocate.
Salih Amaar, Vice-Editor, *El-Taghyeer* newspaper
Shamsaddin Dawalbait, Democratic Thought Project

Background

There are currently two cases facing TRACKS staff and affiliates related to the raid on the organization in March 2015 and another following a second raid in February 2016.

Three weeks after the March 2015 raid, on 16 April 2015, human rights defender Adil Bakheit, a member of the Board of Trustees of the Khartoum-based human rights group, Sudanese Human Rights Monitor (SHRM), was detained and held in police custody for 17 days before his release on bail. Mr. Bakheit was charged with seven criminal offences. TRACKS Director Khalafalla Mukhtar was summoned on 21 May 2015, charged with the same offences, and released later the same day.

TRACKS was raided for a second time on 29 February 2016, just five days after it was announced that the NISS prosecution intended to drop the case brought against Adil Bakheit and Khalafalla Mukhtar. On this occasion, no formal charges were issued, but 10 members of TRACKS staff, volunteers and visitors present at the time of the raid were repeatedly summoned over a number of days.

The day prior to the scheduled court hearing on 21 May 2016, TRACKS staff and affiliates present at the TRACKS office during the second raid in February 2016 received telephone calls instructing them to report to the NISS office in the Amarat area of Khartoum immediately after the court session. Nine TRACKS staff members and affiliates reported to the NISS after the court session on 22 May 2016. TRACKS' accountant, Nudaina Kamal, who is currently on maternity leave, was released immediately but required to leave her car with the NISS as a guarantee for her release. The remaining eight were transferred to the Office of the Prosecutor for State Security the same day where they were detained without charge.

The men were detained in a 3m by 5m cell with twenty one other detainees at the NISS Prosecutor's office. Khalafalla A. Mukhtar (director of TRACKS) was in the same congested cell but due to failing health he was on 24 May 2016 transferred to a room which he shared with another detainee. The two women, TRACKS volunteer Imani-Leyla Raye and administration manager Arwa Ahmed Elrabie, were required to sit in the reception area in front of the cell.

On 22 May 2016, Sudan's National Intelligence and Security Service (NISS) reactivated an earlier criminal case, number 56/2015, brought against TRACKS director Khalafalla al Afif Mukhtar and Adil Bakheit, a well-known independent human rights trainer who had delivered trainings for TRACKS, following a raid on the organization in March 2015. The men were charged in April and May 2015 with seven offences including three under the category of crimes against the state that carry the death penalty. However, they heard nothing further about the case until they were summoned to court on 22 May and informed that two other members of TRACKS staff, administration manager Arwa Al-Rabie and accountant Nudaina Kamal, were also accused in the case.

Arwa Elrabie (staff) and Raye Imany Leyla (volunteer) were released on 30 May on bail of 5,000 Sudanese pounds (820 USD). Khuzaini Elhadi A. Rajab (staff), Shazali Ibrahim El-Shiekh (staff) and Alhassan Kheiri (staff) were released on bail on 7 June 2016. Khalafalla A. Mukhtar, Midhat A. Hamdan and Mustafa Adam (director, Al Zarfqa organisation) are still detained, but were moved to Al-Huda prison on 15 August 2016.

Case number 110/2016 was filed on 15 August against the eight TRACKS staff and affiliates: TRACKS director Khalafalla al Afif Mukhtar, trainer Midhat Afif al-Deen Hamdan and the director of Alzarqaa Organisation for Rural Development, Mustafa Adam, are detained at Al-Huda prison. Also accused in the case are two TRACKS trainers, Al-Hassan Kheiry and Abu Hureira Abdelrahman, TRACKS administration manager Arwa Ahmed Elrabie and volunteer Imany Leyla Raye, as well as Albaqir al Afif Mukhtar, the director of another organization, Al Khatim Adlan Centre for Enlightenment and Human Development (KACE), who is the brother of the Khalafalla al Afif Mukhtar. Abu Hureira and Albaqir al Afif Mukhtar were outside Sudan when the charges were issued. Currently standing trial are Khalafalla al Afif Mukhtar, Midhat Afif al-Deen Hamdan, Mustafa Adam, TRACKS trainer Al-Hassan Kheir and volunteer Imany Leyla Raye, a Cameroonian national.

Up until 15 August, Khalafalla al Afif Mukhtar, Midhat Afif al-Deen Hamdan and Mustafa Adam had been detained by the NISS for 86 days without charge before being charged with various crimes against the state offences. Whilst held by the NISS from 22 May – 15 August 2016, the three men were detained in a cell that was overcrowded, with poor ventilation and restricted access to sanitation.

The defendants have been accused of being responsible for the International Criminal Court (ICC) indictment against President Omar al Bashir and the application of US sanctions against Sudan, despite both events taking place years before the establishment of TRACKS in 2013. It has also been alleged that TRACKS has been conducting work on behalf of and has a fiscal relationship with Al-Khatim Adlan Centre for Enlightenment & Human Development (KACE), a pro-democracy NGO that also works to promote multiculturalism in Sudan, which was closed by the Sudanese authorities in 2012. KACE is now registered in Uganda.

The defense lawyers have not been granted copies of the documents and digital material, presented by the Government, as evidence of crimes against the state in advance of the court hearings. This included evidence of human rights activities carried out by staff and affiliates of TRACKS, such as a list of names of monitors belonging to a “crisis network”, the transcript of a conversation in a Whatsapp group called “human rights defenders” concerning the current civil and political rights situation in the country, and a report concerning the alleged torture and extrajudicial killing of a human rights defender. Evidence presented to the court also included reports published by other organizations, such a 2015 report on trafficking by Human Rights Watch, and an award-winning documentary film, “Beats of the Antonov”, about the impact of war on the people of the Blue Nile and Nuba Mountains in Sudan, that were found on lap-tops seized during a raid on TRACKS in 2016. Prosecutors have alleged the film was produced by the rebel Justice and Equality Movement, an armed opposition group.

Contrary to the NISS’ claims that all evidence presented was seized during raids on TRACKS offices, a number of items presented as evidence to the court on 20 October were in fact confiscated during raids on the home of TRACKS director Khalafalla al Afif Mukhtar and the homes of three of his relatives on 11 June 2016.

Grant contracts between KACE and grant-making bodies, seized during a raid on the family home of KACE Director Dr. Al-Baqir al-Afif Mukhtar in Khartoum, have been presented to the court to support allegations that TRACKS is carrying out the work of KACE. However, no evidence showing a financial relationship between KACE and TRACKS has been presented.

Photographs obtained from personal social media accounts belonging to TRACKS staff members, showing friends and family not on trial, have also been presented to the court. There is no indication of why these photos were shown and how they relate to the criminal charges but it is believed by some activists to be an attempt to intimidate the individuals involved and, as some of the photographs show the

women without headscarves and in the company of men, to encourage the judges to view the defendants and their families as improper and immoral. The judge in the case thereafter ordered the prosecutor to only present relevant evidence.

On 13 October, a US diplomat was prevented by court police from attending a court session, and on 20 October, two journalists were prevented from attending a session. Journalist Ibrahim al-Safi was stopped at the entrance to the courthouse by court police, grabbed by the collar, and pulled into an office for questioning. Two plain-clothed NISS officers confiscated journalist Adil Color's press card and forced him to leave the court session. He was told to return after the court session for questioning, but did not do so due to fear of arrest. In addition, plain-clothed security officials, some armed, have also attended the sessions, sitting amongst activists.

The Sudanese authorities have impermissibly restricted the rights to freedom of expression, peaceful assembly and association, including by shutting down newspapers, using excessive force to break up protests, and placing restrictions on civil society organizations. The Confederation of Sudanese Civil Society Organisations reported that in the last quarter of 2015 three organizations faced undue restrictions in the renewal of their licences, one local organization was denied registration and another was forcibly closed without reasons being given. In March this year, the NISS stopped four civil society representatives from travelling to Switzerland for a high level meeting with diplomats in preparation for a UN-led human rights review of Sudan and confiscated their passports.

Human rights organizations have long called on Sudan to reform repressive laws, including the National Security Act of 2010 which vests the security agency with wide powers of arrest and detention for up to four and a half months without judicial review in addition to powers of search and seizure. Sudan also continues to use the death penalty, implemented by hanging, for a range of offences. These laws have been used to crack down on civil society and human rights defenders.

Contact

The African Center for Justice and Peace Studies (ACJPS): In Kampala, Mossaad Mohamed Ali (English, Arabic, Swedish): +256 779584542; or Emily Cody, (English): +256 788695068, info@acjps.org.

DefendDefenders: In Kampala, Clementine de Montjoye (English, French), +256 752183305, advocacy@defenddefenders.org