

General Allegation

128th Session (19 to 28 September 2022)

Sudan

The Working Group received information concerning alleged violations and obstacles encountered in the implementation of the Declaration on the Protection of All Persons from Enforced Disappearance (hereafter, ‘the Declaration’) in Sudan.

1. According to information received, the Government of Sudan has engaged in the practice of enforced disappearance for decades. Under the regime of the former President Omar al-Bashir, enforced disappearances were employed by security and intelligence agencies to silence human rights defenders, opposition leaders, students, academics, and journalists, within and outside the country. It is reported that, in October 2018, a Sudanese national was arrested abroad and forcibly returned to Sudan with the cooperation of a foreign Government. Upon arrival, the Government of Sudan initially refused to disclose his whereabouts to relatives. The person was eventually released by the Sudanese Transitional Military Council on 15 April 2019.
2. The National Intelligence and Security Service (hereafter, ‘NISS’) was reported to have committed enforced disappearance lasting from weeks to several months during which victims were arbitrarily detained, tortured and later freed.
3. According to the information received, the practice of enforced disappearance in Sudan reached a critical point in December 2018, following the nationwide pro-democracy protests, which called for the removal of former President Omar al-Bashir and the installation of a new democratically elected Government. The sources have reported that, throughout the protests, which lasted for months, NISS, alongside other security forces, attacked multiple protest sites, killing, injuring and forcibly disappearing hundreds of protestors. According to the sources, it is in this context that, on 3 June 2019, security forces launched violent attacks against peaceful protestors in what has become known as “Khartoum massacre” leading to the killing of at least 36 up to 127 people and the injuring of over 700 people. During and subsequent to the Khartoum massacre, widespread human rights violations were allegedly committed against protestors, including extrajudicial killings, cruel and inhuman treatment, torture, excessive use of force, sexual and gender-based violence and enforced disappearances. While the exact number of disappeared persons is yet to be confirmed, it is reported that at least 100 people were forcibly disappeared during this period, of which 40 were later found dead. It is further reported that hundreds of protestors were detained on 3 June 2019, many of which were released in the subsequent months, while others are yet to be accounted for.
4. It is further reported that the National Investigation Committee established in September 2019 to investigate on the Khartoum massacre has not yielded results, for several reasons, including failure to undertake thorough investigations and lack of independence of its members. According to the sources, while the Committee initially

undertook some investigative steps, including the questioning of over 3,000 people; it did not make public the results of its investigations, neither it took steps to hold accountable those responsible for the gross human rights violations concerned. According to the sources, while the Committee has referred to the existence of mass graves in West Omdurman, no steps were taken to exhume or preserve the graves. It is further reported that, on 7 March 2022, security forces raided the main office of the Committee, forcing its members to halt their activities. Concerns have been expressed as to the tampering of documents collected by the Committee.

5. According to the sources, the military coup of 25 October 2021 has further worsened the human rights situation in Sudan. Following the coup, the military issued the Emergency Order No. 3, implementing a state of emergency and empowering the Sudanese security forces and military to arrest, detain and punish those considered in violation of such order. As a result, hundreds of people were reportedly arbitrarily detained, subjected to ill-treatment, held in *incommunicado* detention, forcibly disappeared and killed.
6. It is further reported that the Sudanese authorities have not cooperated with international investigations teams, such as the Argentine Forensic Anthropology Team which, during a visit to the country in July 2021, was prevented from accessing the morgue by the Public Prosecutor.
7. According to the sources, the Sudanese legislation has historically provided for broad immunities for members of the Sudanese armed forces, police and the General Intelligence Service (hereafter, 'GIS', formerly NISS). The immunity from prosecution for acts committed in the line of duty is provided for police officers under Article 45(1) of the Police Act 2008 and for the military under Article 42(2) of the Armed Forces Act 2007. Immunities can be waived upon request from the Public Prosecutor and conditioned to the approval of the higher-ranking officials. It is reported that the Public Prosecution's requests for waiver of immunities of security and regular forces have been systematically ignored.
8. It is further reported that Sudanese domestic law does not explicitly criminalize enforced disappearances as autonomous offences.
9. To substantiate their claims, sources have referred to several cases of persons allegedly forcibly disappeared, whose fate and whereabouts remain unknown to date. The sources have further highlighted the prevailing climate of impunity in Sudan, whereby the authorities have failed to search for the disappeared persons or to hold accountable the perpetrators, despite the repeated demands by the families.

The Working Group would like to bring to the attention of the Sudanese authorities the following provisions of the Declaration, which are directly related to the present allegation:

Article 2

1. *No State shall practice, permit or tolerate enforced disappearances.*

2. States shall act at the national and regional levels and in cooperation with the United Nations to contribute by all means to the prevention and eradication of enforced disappearance.

Article 3

Each State shall take effective legislative, administrative, judicial or other measures to prevent and terminate acts of enforced disappearance in any territory under its jurisdiction.

Article 4

1. All acts of enforced disappearance shall be offences under criminal law punishable by appropriate penalties which shall take into account their extreme seriousness.

2. Mitigating circumstances may be established in national legislation for persons who, having participated in enforced disappearances, are instrumental in bringing the victims forward alive or in providing voluntarily information which would contribute to clarifying cases of enforced disappearance.

Article 7

No circumstances whatsoever, whether a threat of war, a state of war, internal political instability or any other public emergency, may be invoked to justify enforced disappearances.

Article 9

1. The right to a prompt and effective judicial remedy as a means of determining the whereabouts or state of health of persons deprived of their liberty and/or identifying the authority ordering or carrying out the deprivation of liberty is required to prevent enforced disappearances under all circumstances, including those referred to in article 7 above.

2. In such proceedings, competent national authorities shall have access to all places where persons deprived of their liberty are being held and to each part of those places, as well as to any place in which there are grounds to believe that such persons may be found.

3. Any other competent authority entitled under the law of the State or by any international legal instrument to which the State is a party may also have access to such places.

Article 10

1. Any person deprived of liberty shall be held in an officially recognized place of detention and, in conformity with national law, be brought before a judicial authority promptly after detention.

2. Accurate information on the detention of such persons and their place or places of detention, including transfers, shall be made promptly available to their family members, their counsel or to any other persons having a legitimate interest in the information unless a wish to the contrary has been manifested by the persons concerned.

3. An official up-to-date register of all persons deprived of their liberty shall be maintained in every place of detention. Additionally, each State shall take steps to maintain similar centralized registers. The information contained in these registers shall be made available to the persons mentioned in the preceding paragraph, to any judicial or other competent and

independent national authority and to any other competent authority entitled under the law of the State concerned or any international legal instrument to which a State concerned is a party, seeking to trace the whereabouts of a detained person.

Article 13

- 1. Each State shall ensure that any person having knowledge or a legitimate interest who alleges that a person has been subjected to enforced disappearance has the right to complain to a competent and independent State authority and to have that complaint promptly, thoroughly and impartially investigated by that authority. Whenever there are reasonable grounds to believe that an enforced disappearance has been committed, the State shall promptly refer the matter to that authority for such an investigation, even if there has been no formal complaint. No measure shall be taken to curtail or impede the investigation.*
- 2. Each State shall ensure that the competent authority shall have the necessary powers and resources to conduct the investigation effectively, including powers to compel attendance of witnesses and production of relevant documents and to make immediate on-site visits.*
- 3. Steps shall be taken to ensure that all involved in the investigation, including the complainant, counsel, witnesses and those conducting the investigation, are protected against ill-treatment, intimidation or reprisal.*
- 4. The findings of such an investigation shall be made available upon request to all persons concerned, unless doing so would jeopardize an ongoing criminal investigation.*
- 5. Steps shall be taken to ensure that any ill-treatment, intimidation or reprisal or any other form of interference on the occasion of the lodging of a complaint or during the investigation procedure is appropriately punished.*
- 6. An investigation, in accordance with the procedures described above, should be able to be conducted for as long as the fate of the victim of enforced disappearance remains unclarified*

Article 18

- 1. Persons who have or are alleged to have committed offences referred to in article 4, paragraph 1, above, shall not benefit from any special amnesty law or similar measures that might have the effect of exempting them from any criminal proceedings or sanction.*
- 2. In the exercise of the right of pardon, the extreme seriousness of acts of enforced disappearance shall be taken into account.*

The Working Group would be grateful for the cooperation and observations of Sudanese authorities on the following questions:

1. Please provide any additional information and/or any comment you may have on the above-mentioned allegations.
2. Please inform on any steps taken to investigate the allegations of arrests, arbitrary detention, cruel and inhuman treatment, torture, excessive use of force, sexual and gender-based violence, enforced disappearance, including *incommunicado* detention.

3. Please provide details on the steps taken to prevent forcible return from abroad and subsequent enforced disappearances of Sudanese nationals.
4. Please provide information on the measures taken to ensure that the mechanisms established to deal with the Khartoum massacre, including the National Investigation Committee, are able to carry out prompt, thorough, independent and impartial investigations and to prevent the tampering of the documents collected by the Committee in the context of its investigations. Please provide information on the measures taken to ensure that the results carried out by the Committee are made public.
5. Please provide information on the measures taken to exhume, respect, identify and return to the families the mortal remains found in burial sites, including but not limited to mass graves located in West Omdurman. What are the measures adopted to secure the burial sites and prevent any form of manipulation and spoliation.
6. Please provide information on measures taken by the Sudanese authorities, including the military leadership, to carry out an immediate, impartial and transparent investigation, in accordance with applicable international standards, and about its outcomes, including the identification of perpetrators of the gross human rights violations at stake. In addition, please indicate if any judicial or other inquiry has been undertaken in relation to the above-mentioned allegations. Have any penal, disciplinary or administrative sanctions been imposed on the alleged perpetrators?
7. Please provide information on the current status of the Emergency Order No. 3 and the measures taken to ensure that the implementation of such order complies with international human rights standards, namely, the right not to be subject to enforced disappearances in all circumstances, including the state of emergency.
8. How do you ensure that those who are alleged to have committed an enforced disappearance are suspended from any official duties during the investigations and prosecutions? Please provide information on the measures taken to ensure that persons who have or are alleged to have committed enforced disappearance do not benefit from immunity or any other measures that might have the effect of exempting them from any criminal proceedings or sanction.
9. Please provide information on the measures taken to ensure the right to a prompt and effective judicial remedy as a means of determining the whereabouts of persons deprived of their liberty.
10. How do the Sudanese authorities ensure the right of victims and their relatives to an effective remedy, which should at minimum guarantee cessation of violations, restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition?

11. Please provide information on the criminal legal framework dealing with allegations of enforced disappearance and clarify whether the latter is codified as a separate criminal offence under the domestic legislation.
12. Please provide information on the steps undertaken to recognise the competence of the Committee on Enforced Disappearances to receive and examine individual and inter-state communications pursuant to Arts. 31 and 32 of the International Convention on the Protection of All Persons from Enforced Disappearance.

The Working Group requests the Sudanese authorities to provide a response to the above questions within 60 days.