

# REDRESS

Ending torture, seeking justice for survivors



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## **Submission to the Human Rights Council's Universal Periodic Review Working Group regarding the Review of the Republic of Sudan**

**24 March 2021**

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### **INFORMATION ABOUT THE ORGANISATIONS MAKING THIS SUBMISSION**

**REDRESS** is an international human rights NGO based in the United Kingdom and The Netherlands with a mandate to assist torture survivors to seek justice and other forms of reparation, hold accountable the governments and individuals who perpetrate torture, and develop the means of ensuring compliance with international standards and securing remedies for victims. REDRESS represents Sudanese clients at the African Commission on Human and Peoples' Rights in relation to claims arising from torture and has worked in Sudan for over two decades on various issues related to torture, enforced disappearances, and other human rights violations.

**The People's Legal Aid Centre (PLACE)** is a Sudanese organisation of lawyers and paralegals, established in 1999, that provides legal aid services to victims of human rights violations in Sudan, including legal information, advice, assistance and representation. PLACE provides advanced specialised training to young lawyers on human rights law, and advocates for the repealing and replacing of national laws and procedures that are in violation of international law, and for the urgent ratification of international human rights conventions and treaties.

**Submission to the Human Rights Council's  
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**EXECUTIVE SUMMARY**

1. The Redress Trust (REDRESS) and the People's Legal Aid Centre (PLACE) make this submission as part of the Universal Period Review (UPR) of Sudan. This submission is based on REDRESS and PLACE's work on torture and international crimes in Sudan, including representing and assisting individual survivors of torture and other international crimes in proceedings before national, regional and international bodies, and advocating for legislative and institutional reforms.<sup>1</sup> This submission is not a complete review of past recommendations made, nor is it a comprehensive review of Sudan's human rights record.
2. Since its last UPR in 2016, Sudan has undergone significant political change, including the removal of former president Omar al-Bashir in April 2019, and the creation of a transitional government in the autumn of 2019. The new transitional government has taken several important steps with respect to human rights and accountability efforts, including through a raft of legislative reforms enacted on 13 July 2020 that criminalized female genital mutilation, banned the use of torture and forced confessions, and repealed provisions aimed at preventing cooperation with the International Criminal Court (ICC).<sup>2</sup> Other reforms in November 2019 abolished the Public Order Laws used to prosecute women for a variety of offences, including their dress or conduct.<sup>3</sup>
3. Sudan's transitional government should also be congratulated for signing a memorandum of cooperation with the ICC in February 2021 (in relation to the ICC's ongoing investigation of Ali Kushayb)<sup>4</sup> and for committing to the ratification of the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (UNCAT) and the International Convention for the Protection of All Persons from Enforced Disappearance (ICPPED).<sup>5</sup>
4. However, beyond these notable achievements, major legislative reforms are yet to occur, and the transitional bodies charged with undertaking these reforms per the Constitutional Charter have not been fully established or operationalised. Accordingly, this submission focuses on the additional reforms to Sudan's legal and institutional framework that are necessary to ensure the effective prohibition of torture or other cruel, inhuman or degrading treatment or punishment. It also focuses on the urgent need to address obstacles to accountability for the gross human rights violations that occurred under former president Omar al-Bashir. This submission makes a number of recommendations in the areas of concern listed.

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<sup>1</sup> See <https://redress.org/our-work/international-accountability/>.

<sup>2</sup> See REDRESS, "Further Historic Changes Made to Sudanese Laws," (16 July 2020), available at: <https://redress.org/news/further-historic-changes-made-to-sudanese-laws/>.

<sup>3</sup> See e.g., BBC News, "Sudan crisis: Women praise end of strict public order law," (29 November 2019), available at: <https://www.bbc.co.uk/news/world-africa-50596805>.

<sup>4</sup> Radio Dabanga, "Sudan signs MoU with ICC on Ali Kushayb trial," (16 February 2021), available at: <https://www.dabangasudan.org/en/all-news/article/sudan-signs-mou-with-icc-on-kushayb-trial>.

<sup>5</sup> See REDRESS, "Sudanese Government Approves Ratification of Key Treaties on Torture and Enforced Disappearances," (23 February 2021), available at: <https://redress.org/news/sudanese-government-approves-ratification-of-key-treaties-on-torture-and-enforced-disappearances/>.

## INTERNATIONAL OBLIGATIONS

5. Sudan's transitional government has stated that it plans to ratify the international human rights treaties to which Sudan is not yet a party.<sup>6</sup> These include UNCAT, ICPPED, the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), and the Convention on the Protection of the Rights of Migrant Workers and Members of their Families. Sudan is also not a party to the Rome Statute.
6. In February 2021, Sudan's Sovereign Council and Council of Ministers approved the ratification of UNCAT and ICPPED in a joint meeting.<sup>7</sup> At the time of writing, the transitional government had not submitted the required instruments of ratification. It therefore remains unclear whether the government intends to ratify any reservations to these treaties, or whether Sudan will accept the jurisdiction of any individual complaint mechanisms or the Optional Protocol to UNCAT (OPCAT).
7. Access to individual complaints procedures provides an important avenue for victims and means of supervision, which enable states to address any shortcomings that become apparent. For example, the OPCAT and UNCAT's individual communications procedure under Article 22 are designed to assist States in fulfilling their obligations under the Convention against Torture. Similarly, under Article 31 of ICPPED, the Committee on Enforced Disappearances may receive and consider individual communications.
8. Sudan has previously accepted the recommendation to ratify CEDAW. Reports in March 2021 indicated that Sudan's Council of Ministers had approved its ratification, but any ratification of the treaty is subject to joint approval by the Sovereign Council and Council of Ministers.<sup>8</sup>
9. Finally, considering the well-documented commission of serious international crimes in Sudan during the al-Bashir regime, and ongoing violations, ratification of the Rome Statute would be a key measure in preventing the repetition of such crimes in the future and ensuring accountability where necessary.

### Recommendations:

- Expedite steps to ratify without reservations the key human rights treaties to which Sudan is not yet a party, including UNCAT, ICPPED, CEDAW, and the Convention on the Protection of the Rights of Migrant Workers and Members of Their Families, and the Rome Statute, and deposit instruments of ratification with the relevant depository.
- Ratify any additional protocols, including the Optional Protocol to the Convention against Torture (OPCAT) and the First Optional Protocol to the International Covenant on Civil and Political Rights (ICCPR), and opt-in to the individual communications procedures under UNCAT, ICPPED and other treaties where relevant.

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<sup>6</sup> Sudan has previously supported this recommendation, in the May 2016 UPR cycle. See Report of the Working Group on the Universal Periodic Review, Sudan, UNHRC Doc A/HRC/33/8 (11 July 2016), including at paras. 138.1 (Philippines), 138.2 (Ghana), 138.3 (Pakistan), 138.4 (Zimbabwe), 138.5 (Namibia), 138.6 (Brazil), 138.7 (Italy) (Honduras) (Guatemala) (Viet Nam) (Uruguay) (Congo) (France) (Slovakia) (Czech Republic) (Georgia); (Lebanon) (Togo) (South Africa) (Sierra Leone) (Denmark) (Poland) (El Salvador), 138.8 (Ghana), 138.9 (Burkina Faso), and 138.10 (Indonesia).

<sup>7</sup> See, for e.g., REDRESS, "Sudanese Government Approves Ratification of Key Treaties on Torture and Enforced Disappearances," (23 February 2021), available at: <https://redress.org/news/sudanese-government-approves-ratification-of-key-treaties-on-torture-and-enforced-disappearances/>.

<sup>8</sup> See, for e.g., Madania News, "The Council of Ministers Authorises the Signing of the CEDAW Agreement," (8 March 2021), available at: <https://www.madanianews.com/?p=4730>.

## TORTURE PREVENTION

### *Prohibition and definition of torture*

10. Sudan has addressed some legislative shortcomings regarding torture and other forms of ill-treatment.<sup>9</sup> In particular, Article 4(b) of the Criminal Procedure Act 1991 was amended in 2020 to explicitly prohibit the torture of an “accused person.”<sup>10</sup> Article 115(2) of the Criminal Act 1991 was also amended to recognise that torture can be inflicted both physically and psychologically, and the penalty for torture has been increased from three months to three years.<sup>11</sup>
11. Both amendments are positive steps towards establishing a clear prohibition on the use of torture in Sudan. However, the amendment to Article 115(2) is limited in application to torture perpetrated in order to obtain or prevent the provision of information in legal proceedings. This definition of torture is considerably narrower than the internationally recognised definition of torture.<sup>12</sup> Further, an increased penalty of three years does not adequately reflect the gravity of torture as a crime, though three years is an improvement from three months. Article 4(b) is of broader application, but is only drafted as a “principle to be regarded” in the application of the Criminal Procedure Act, and not as a point of substantive law. While, according to Article 3, the Act applies to all criminal actions, inquiry, arrest, trial and sanctions, the prohibition lacks a definition of torture or an appropriate penalty.
12. Separately, Sudanese authorities continue to apply criminal law provisions that prescribe Shari’a punishments such as amputation, cross-amputation, and floggings, despite amendments in 2020 that removed flogging as a criminal sanction for many criminal offences. These punishments violate international prohibitions on cruel, inhuman or degrading treatment, and are disproportionately applied to women and girls, who are more often charged with violations of public morality rules; despite the abolishment of the public order laws regime, the Criminal Act 1991 retains discriminatory provisions.<sup>13</sup>
13. Sudan also continues to apply the death penalty for some crimes, including to crimes which are not considered “the most serious.” Recent, important changes to the Criminal Act 1991 repealed the death penalty for the crimes of apostasy and consensual same-sex relations, but capital punishment may still be imposed for a variety of other crimes, such as crimes against the state.<sup>14</sup> The implementation of the death penalty could contravene the absolute prohibition of torture and cruel, inhuman and degrading treatment and breach Article 6 of the ICCPR, particularly as imposed for crimes not considered of extreme gravity.<sup>15</sup>

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<sup>9</sup> Sudan has previously supported these recommendations in the May 2016 review. See Report of the Working Group on the Universal Periodic Review, Sudan, UNHRC Doc A/HRC/33/8 (11 July 2016), including at paras. 138.74 (Timor-Leste), 138.75 (Maldives).

<sup>10</sup> See REDRESS, “Further Historic Changes Made to Sudanese Laws,” (16 July 2020), available at: <https://redress.org/news/further-historic-changes-made-to-sudanese-laws/>.

<sup>11</sup> *Ibid.*

<sup>12</sup> Article 1, UN Convention against Torture and Other Cruel, Inhuman or (Degrading Treatment (UNCAT).

<sup>13</sup> See, for e.g., Strategic Initiative for Women in the Horn of Africa (SIHA), “Gender Briefing: Sudan,” (10 March 2020), available at: [https://issuu.com/halayassin/docs/sudan\\_gender\\_briefing](https://issuu.com/halayassin/docs/sudan_gender_briefing).

<sup>14</sup> See, for e.g., REDRESS, “Law Reform Moves Sudan Closer Towards Full Protection for Human Rights of Women and Minorities,” (14 July 2020), available at: <https://redress.org/news/law-reform-moves-sudan-closer-towards-full-protection-for-human-rights-of-woman-and-minorities/>.

<sup>15</sup> See, for e.g., HRC General Comment No. 36, Article 6 (Right to Life), CCPR/C/GC/36 (2018); see also HRC Communication No. 588.1994, *Errol Johnson v. Jamaica* (1996), para. 8.2.

#### 14. Recommendations:

- a) Amend the Criminal Act 1991 to include a crime of torture, defined in conformity with internationally recognised definitions, such as Article 1 of the UNCAT.
- b) Amend the Criminal Procedure Act 1991, Evidence Act 1994, and other relevant legislation to include an absolute prohibition on using evidence obtained as a result of torture or other ill-treatment.
- c) Take urgent and concrete measures to abolish laws that allow corporal punishment, including amputations, cross-amputations, and whippings, and any other forms of punishment that are in breach of articles 7 and 10 of the ICCPR.
- d) Abolish the death penalty for all crimes.

#### *Lack of adequate safeguards against torture*

15. Sudan's legal system lacks adequate custodial protections or the necessary monitoring mechanisms to ensure the non-repetition of torture and other forms of ill-treatment. Individuals continue to be detained unlawfully in Sudan, and detainees are often denied basic procedural safeguards.
16. Under the Constitutional Charter 2019, the Rapid Support Forces (RSF) were designated a regular military force; accordingly, along with the Sudanese Armed Forces (SAF), the RSF is not authorised to detain civilians or conduct other law enforcement functions. Legislative amendments in 2020 also repealed Article 50 of the National Security Act 2010 (NSA), which provided the National Security and Intelligence Service (NISS), now the General Intelligence Service (GIS), with broad powers of arrest and detention. Sudan's Attorney General confirmed in January 2021 that only the police and Public Prosecution may arrest civilians or otherwise exercise arresting and detention authorities.<sup>16</sup> Nonetheless, the RSF, GIS, and SAF continue to arrest and detain civilians and, in some cases, are reported to have committed acts of torture.<sup>17</sup>
17. There are existing safeguards under the Criminal Procedure Act 1991, including the judicial review of detention, criminalisation of unlawful detention, rights to legal representation, the right to be informed of charges,<sup>18</sup> and other entitlements for detainees.<sup>19</sup> But these rights are often ignored. In practice, detainees in Sudan do not have an unequivocal right to communicate with legal counsel or family members, and do not have the right to appear before a judge to challenge the legality of detention, increasing individuals' vulnerability to incommunicado detention and torture.
18. It also remains a concern that civilians may be prosecuted by military authorities. July 2013 amendments to the Armed Forces Act 2007 subject civilians to the jurisdiction of military courts for a range of broadly defined offences, such as undermining the constitutional system,

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<sup>16</sup> See Sudan Public Prosecution, <https://www.facebook.com/111158367053054/posts/244491147053108/> (21 January 2021).

<sup>17</sup> See, for e.g., Human Rights Watch, "Sudan: Unlawful Detentions by Rapid Support Forces," (1 March 2021), available at: <https://www.hrw.org/news/2021/03/01/sudan-unlawful-detentions-rapid-support-forces>.

<sup>18</sup> Criminal Procedure Act 1991, Article 72.

<sup>19</sup> Criminal Procedure Act, Article 83.

leaking classified information, and publishing “false news.”<sup>20</sup> The use of military courts undermines fair trial guarantees, and can result in arbitrary detentions, torture, and other forms of ill-treatment.<sup>21</sup>

**19. Recommendations:**

- a) Take urgent steps to close all unlawful detention centres, including those operated by the Rapid Support Forces.
- b) Amend the Criminal Procedure Act 1991 and other relevant legislation to ensure adequate custodial safeguards, including: access to a lawyer of one’s choice from the beginning of criminal proceedings, the right to be brought before an independent judicial authority within 24 hours of arrest, the right to a medical examination of all detainees, and for a comprehensive record to be kept of all interrogations.
- c) Repeal amendments to the Sudan Armed Forces Act 2007 that allow the prosecution of civilians in military courts for broadly defined “crimes against the state.”
- d) Establish a fully independent oversight body or national preventive mechanism vested with sufficient resources and mandated to investigate allegations of torture and ill-treatment in line with best practices, including through regular visits to detention centres and public reporting on ongoing abuses.
- e) Grant the relevant international organisations, including the Office of the United Nations High Commissioner for Human Rights (OHCHR), access to detention centres.

**CRIMINAL ACCOUNTABILITY FOR SERIOUS VIOLATIONS**

*Immunities*

20. Under Sudanese law, police officers, security forces members and collaborators, and members of the armed forces are granted substantive and procedural immunity. These immunities are incompatible with the right to an effective remedy, because they effectively bar victims of torture and other human rights violations from accessing justice and claiming compensation and/or other forms of reparation.<sup>22</sup>
21. In July 2020, Sudan’s transitional government removed Article 52 of the NSA 2010, abolishing the immunities enjoyed by members of NISS.<sup>23</sup> However, members of the other forces are still afforded broad immunities. Article 34 of the Armed Forces Act 2007 provides immunity from criminal prosecution for soldiers and officers who conduct any act “in good faith” in the course of their duties.<sup>24</sup> Article 42(2) of the Armed Forces Act 2007 further prohibits the investigation or prosecution of any “officers of the Military Judicature” unless approved by the head of the

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<sup>20</sup> See, for e.g., REDRESS, “Sudan: Amendment of Armed Forces Act Runs Counter to International Standards and Risks Fostering Further Human Rights Violations,” (23 July 2013), available at: [http://www.pclrs.com/downloads/Submission-on-Amendment\\_Sudan-Armed-Forces-Act\\_23July2013.pdf](http://www.pclrs.com/downloads/Submission-on-Amendment_Sudan-Armed-Forces-Act_23July2013.pdf).

<sup>21</sup> *Ibid.*

<sup>22</sup> In previous UPR cycles, REDRESS and other organisations have called for the removal of these provisions. See Summary prepared by the Office of the United Nations High Commissioner for Human Rights in accordance with paragraph 15 (c) of the annex to Human Rights Council resolution 5/1 and paragraph 5 of the annex to Council resolution 16/21, UNHRC Doc A/HRC/WG.6/25/SDN/3 (19 February 2016), para. 9.

<sup>23</sup> See REDRESS, “Further Historic Changes Made to Sudanese Laws,” (16 July 2020), available at: <https://redress.org/news/further-historic-changes-made-to-sudanese-laws/>.

<sup>24</sup> Armed Forces Act 2007, Article 34.

army.<sup>25</sup>

22. Similarly, Article 45(1) of the Police Act 2008 extends immunity from prosecution to police officers who commit criminal offences while performing their official duties.<sup>26</sup> In all cases, individuals can only be subjected to a full investigation or prosecution for criminal offences if the head of their respective forces lifts these immunities. In the transitional period, the security and regular forces have not responded to requests by the Public Prosecution to waive legal immunities, making investigation and prosecution of any cases of torture, ill-treatment and other human rights violations functionally impossible.<sup>27</sup>
23. The transitional Constitutional Charter 2019 also contains immunity provisions which stipulate that criminal proceedings may not be instituted against any member of the Sovereign Council, Council of Ministers, Transitional Legislative Council, or governors of Sudan's states without a waiver of immunity from the Legislative Council—or the Constitutional Court, in the absence of a Legislative Council.<sup>28</sup> At the time of writing, the Legislative Council and Constitutional Court have not been created. Procedurally, it is therefore not possible to waive the immunity of any members of the transitional government, including those implicated in serious crimes in Sudan.

#### 24. Recommendations:

- a) Repeal provisions providing immunity for any officials, including Articles 34 and 42(2) of the Armed Forces Act 2007 and Article 45(1) of the Police Act 2008, and the laws governing the conduct of the Rapid Support Forces.
- b) Amend Article 22 of the Constitutional Charter 2019 to exempt criminal proceedings against members of the transitional government regarding serious international crimes or human rights violations.
- c) Pending further reforms of immunity laws, instruct the respective forces not to grant any immunity in relation to alleged acts of torture or other ill-treatment, and make accused personnel subject to the jurisdiction of ordinary courts.

#### Amnesties

25. Attention should also be paid to the amnesty announced in November 2020 by the chair of the Sovereign Council, Lt. General al-Burhan.<sup>29</sup> The amnesty resolution appears to extend to all those who previously carried weapons or participated in military operations in Sudan. The resolution excludes from amnesty those who have been (i) indicted by the International Criminal Court; (ii) are accused of committing genocide, war crimes, or crimes against humanity, and/or grave human rights or humanitarian law violations that fall within the mandate of the Special Criminal Court for Darfur; and (iii) face civil law or *qisas* proceedings (for specific crimes under Shari'a law) that have not been resolved.

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<sup>25</sup> Armed Forces Act 2007, Article 42(2).

<sup>26</sup> Police Act 2008, Article 45.

<sup>27</sup> See, for e.g., Radio Dabanga, "Families of Sudan's December Revolution victims demand justice and protest immunity," (29 December 2020), available at: [dabangasudan.org/en/all-news/article/families-of-sudan-s-december-revolution-victims-demand-justice-and-protest-immunity](https://dabangasudan.org/en/all-news/article/families-of-sudan-s-december-revolution-victims-demand-justice-and-protest-immunity).

<sup>28</sup> Constitutional Charter 2019, Article 22.

<sup>29</sup> See REDRESS, "REDRESS Seeks Clarification on Sudan's 'General Amnesty' Resolution," (20 January 2021), available at: <https://redress.org/news/redress-seeks-clarification-on-sudans-general-amnesty-resolution/>.

26. Despite these exclusions, there are outstanding questions about the amnesty resolution's scope of application, and its compliance with international law. Blanket amnesties and amnesties applying to certain human rights violations are incompatible with international human rights law in that they impede the investigation and punishment of those responsible for gross human rights violations, in the same way that the immunities above affect victims' ability to access justice. The transitional government thus far has not provided clarification as to which crimes are covered by the amnesty, including when and where crimes must have been committed, and by whom.

**27. Recommendations:**

- a) Amend or repeal any provisions of the amnesty resolution which provide impunity from prosecution to individuals who have committed serious international crimes, human rights violations, or international humanitarian law violations in Sudan, to ensure compliance with Sudan's international obligations.
- b) Conduct full, impartial, and independent investigations into all allegations of crimes under international law and, where sufficient admissible evidence exists, prosecute those responsible in fair trials.

*International Criminal Court*

28. Since opening its investigation in 2005, the International Criminal Court (ICC) has issued arrest warrants for five individuals in relation to the situation in Darfur, including former president al-Bashir, Ahmed Harun, Abdel Raheem Muhammed Hussein, Ali Muhammad Ali Abd-al-Rahman ("Ali Kushayb"), and Abdallah Banda Abakaer Nourain.

29. Sudan's transitional government took the important step of signing a memorandum of understanding (MOU) with the ICC in February 2021.<sup>30</sup> The MOU is case-specific, relating only to the ICC's investigation of crimes committed by Ali Kushayb, who is now in ICC custody after surrendering himself to authorities in the Central African Republic in June 2020.<sup>31</sup> The transitional government must ensure that the ICC investigative team, and any other civil society or international organisations participating in the case, have complete access to Darfur to conduct the necessary interviews. Equally, the government must ensure that no evidence is destroyed, and that witnesses or victims are not harmed or intimidated.

30. Three other individuals subject to ICC arrest warrants – al-Bashir, Ahmed Harun, and Abdel Raheem Mohammed Hussein—are currently in Sudan's custody. Sudan must cooperate with the ICC in these cases, including by executing all three arrest warrants and turning these individuals over to the ICC immediately. Because the Juba Peace Agreement has been incorporated into the Constitutional Charter, the transitional government's obligation to cooperate fully with the ICC is a constitutional requirement.

**31. Recommendations:**

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<sup>30</sup> See, for e.g., Radio Dabanga, "Sudan signs MoU with ICC on Ali Kushayb trial," (16 February 2021), available at: <https://www.dabangasudan.org/en/all-news/article/sudan-signs-mou-with-icc-on-kushayb-trial>.

<sup>31</sup> See, for e.g., ICC, "Statement of the Prosecutor of the International Criminal Court, Fatou Bensouda, following the surrender and transfer of alleged militia leader, Ali Muhammad Ali Abd-Al-Rahman, also known as Ali Kushayb, to the Court," (9 June 2020), available at: <https://www.icc-cpi.int/Pages/item.aspx?name=200609-otp-statement-ali-kushayb>.

- a) Fulfil obligations, pursuant to UN Security Council resolution 1593, to fully cooperate with the ICC, including surrendering to the Court those individuals subject to ICC arrest warrants, including al-Bashir and the other suspects in Sudanese custody.
- b) Ensure complete, unfettered access to Darfur and other areas of concern for ICC investigators.
- c) Ratify the Rome Statute of the International Criminal Court.

### *Domestic Investigations and Prosecutions*

32. In addition to any proceedings at the ICC, domestic investigations into, and prosecutions of, certain human rights abuses and other serious crimes are reportedly underway. These include several cases against security forces in relation to the killing of individuals at anti-regime protests in December 2018.<sup>32</sup> These cases are a positive development, but many other violations remain uninvestigated at the time of writing. Many of these violations are alleged to have taken place under the command of officials currently serving within the transitional government; efforts to instigate investigations into these events have been largely unsuccessful or have stalled for unclear reasons.
33. For example, the publication of a report commissioned by the transitional government on violations which occurred on 3 June 2019—when government security forces violently dispersed a sit-in protest, and committed widespread acts of torture, enforced disappearances, and sexual violence—has been repeatedly delayed.<sup>33</sup> A lack of transparency around this investigation, as well as around the work of the Missing Persons Investigative Committee, may violate Sudan’s international human rights obligations to conduct effective and independent investigations.
34. Any prosecutions for serious human rights violations are impeded by gaps in Sudan’s criminal and military laws regarding international crimes. In a series of amendments in 2009, Sudan incorporated the international crimes of genocide, crimes against humanity and war crimes into its domestic laws.<sup>34</sup> While these amendments were intended to show Sudan’s capacity to prosecute international crimes in Darfur, the definition of these crimes as codified in the Criminal Act is at variance with those recognised in international law.
35. Additionally, Sudanese law does not recognise criminal liability on the grounds of command or superior responsibility, both of which are well-established modes of liability in international criminal law that impose obligations on commanders and superiors to prevent crimes, and does not allow them to abdicate responsibility for serious crimes committed by subordinates.<sup>35</sup> This form of criminal responsibility can be important in ensuring accountability for the most serious international crimes.

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<sup>32</sup> Sudan Public Prosecution,

[https://www.facebook.com/permalink.php?story\\_fbid=254663909369165&id=111158367053054&notif\\_id=1612537999526939&notif\\_t=page\\_followed\\_contents\\_awareness&ref=notif](https://www.facebook.com/permalink.php?story_fbid=254663909369165&id=111158367053054&notif_id=1612537999526939&notif_t=page_followed_contents_awareness&ref=notif) (8 February 2021).

<sup>33</sup> See, for e.g., Middle East Eye, “Delays in Sudan’s massacre investigation prompt protests from victims’ families,” (27 May 2020), available at: <https://www.middleeasteye.net/news/sudan-investigation-lags-families-massacre-victims-ready-look-justice-elsewhere>.

<sup>34</sup> Sudan Criminal Act 1991, as amended in 2009.

<sup>35</sup> Armed Forces Act 1999, Article 22 (shielding superior army officers from criminal responsibility in Sudan’s civil courts for acts committed by subordinates); see also Armed Forces Act 1999, Article 39(7) (providing that members of the armed forces have no right to take legal proceedings “as a result of executing any lawful orders issued to them by those superiors during their service”).

### **36. Recommendations:**

- a) Uphold its obligations to carry out effective, independent investigations into past violations, including by publicly releasing any reports, investigative records or data from relevant committees (e.g., the Missing Persons Investigative Committee).
- b) Investigate all allegations of torture, ill-treatment or other human rights violations, and promptly take steps to appropriately discipline or prosecute any perpetrators, including those currently serving in government positions or within the government security forces.
- c) Take measures to ensure that victims of human rights abuses are guaranteed effective remedies, including restitution and compensation.
- d) Amend the Criminal Act 1991 and Armed Forces Act 2007 to ensure that the definitions of international crimes, particularly crimes against humanity and war crimes, are consistent with international law, and to add command/superior responsibility as a form of liability.

## **SECURITY AND JUDICIAL SECTOR REFORMS**

37. In addition to the above legislative reforms, Sudan's transitional government should also undertake a programme of institutional reforms. Such reforms, which would not necessarily be contingent on the formation of a fully operative Transitional Legislative Council, could occur in parallel to any legislative amendments.

38. A diverse set of actors are both historically and presently responsible for acts of torture and other human rights violations in Sudan. This includes the security forces and regular forces. However, Sudan's weak judicial sector also contributes to a climate of impunity, facilitating continued use of torture and the commission of other human rights violations. Eradicating these abuses therefore requires a comprehensive reform of Sudan's institutions, including through mainstreaming training for national actors in these key sectors.<sup>36</sup>

### **39. Recommendations:**

- a) Enact codes of conduct for the police, armed forces, GIS, and other security forces that prohibit torture and ill-treatment, the breach of which are subject to non-discretionary disciplinary sanctions.
- b) Require human rights training for all members of the police, armed forces, GIS, and prison officials, including on the relevant international standards for law enforcement and detention, including on gender-based violence in detention contexts.
- c) Publish the operating procedures for the security forces and police, making them available for public scrutiny.
- d) End unnecessary or excessive force against peaceful protestors, including by instructing security forces to follow the UN basic principles on use of force and firearms by law enforcement officials.
- e) Where security forces use unnecessary or excessive force, hold responsible parties to account, including through internal disciplinary procedures or prosecutions.

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<sup>36</sup> In line with recommendations supported by Sudan in the previous UPR cycle. See Report of the Working Group on the Universal Periodic Review, Sudan, UNHRC Doc A/HRC/33/8 (11 July 2016), including at para. 138.27 (Norway).

- f) Develop a national training institute for judges, prosecutors and lawyers, focusing on witness protection, standards for the investigation and prosecution of international crimes, judicial independence and impartiality, and issues related to gender- and victim-sensitivity and harm reduction.
- g) Uphold international and constitutional obligations with respect to freedoms of association and expression, including by ending undue restrictions on civil society organisations and enforcement of overbroad “cybercrime” and “offences against the state” laws.