



LEGAL AND INSTITUTIONAL REFORMS IN SUDAN

Policy Briefing

MARCH 2021

Front cover photo credit: David Rose/Panos Pictures. Youth with signs demanding democratic civilian rule as the continuing citizen protest or 'sit in', as it is now known, moved into its fourth week since the fall of President Omar al-Bashir.

SUMMARY

1. After the ouster of then-president Omar al-Bashir from office in early 2019, a new transitional government was formed in Sudan. Comprised of military and civilian representatives, the government committed to much-needed human rights reforms and accountability efforts. Human rights violations in Sudan, including torture, enforced disappearances, and widespread discrimination against women and minorities, have long been the result of both deficient legal protections and uneven enforcement. A historic lack of trust in Sudan's judicial system, extending to both the judiciary and General Prosecution, has further facilitated a lack of accountability for rights violations.
2. The transitional government is not the first to attempt legislative reform efforts in Sudan. But [prior efforts](#), such as the 2005 Comprehensive Peace Agreement and the Interim National Constitution, did not translate into adequate legislative and institutional human rights protections. The current transitional government has made a promising series of amendments in November 2019 and July 2020, which addressed key issues in Sudan, including female genital mutilation, cooperation with the International Criminal Court, and torture. While these reforms were widely welcomed outside of Sudan as a sign of the government's commitment to addressing legislative shortcomings as part of Sudan's political transition, more is needed. In line with the continued demands of the protestors who called for al-Bashir's removal from office, and the promises made in the 2019 Constitutional Charter, the Sudanese transitional government has the task of establishing a number of commissions charged with reforming different aspects of Sudan's law. These commissions have yet to materialise, and major legislative reforms are yet to occur.
3. As [announced](#) on 23 February 2021, the approval of the ratification of the 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) is an important marker for legal and institutional reforms in Sudan. Sudan's transitional government should be congratulated for making this significant commitment. The finalised ratification of these treaties, including the submission of an instrument of ratification to the UN Secretary-General in New York, will be a major step for Sudan, and will provide the launching pad for incorporating critical international human rights obligations into Sudan's domestic law. Similarly, the ratification of the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) would help guide the transitional government in its efforts to push forward real reforms enhancing women's rights in Sudan.
4. With or without the ratification of these treaties, the transitional government should begin addressing immediate—and achievable—reforms. These include the review of security and judicial sector policies and practices, the criminalisation of torture and enforced disappearances in Sudan's criminal code in conformity with UNCAT, and human rights training for government actors in key sectors, among others. These steps should be taken in collaboration with the whole spectrum of stakeholders including civil society, victims, communities, and marginalised groups in Sudan. Groups that have been heavily affected by human rights violations in Sudan, particularly women, should be included in every stage of a legal and institutional reform, ensuring legitimacy and representativeness for these changes.
5. This reform process, to be truly effective, should not be undertaken in a piecemeal fashion. Sudan's transitional government, and its international and domestic

supporters, should take care to ensure that this process is undertaken methodologically, with the consultations discussed above, and with an understanding that a constellation of factors have enabled the persistence of human rights abuses in Sudan throughout the decades. An integrated reform process deserving of its name will have to develop and unfold in close coordination with the establishment of peace and democracy, the constitution-making process, the rebuilding of public institutions, and economic reforms.

RECOMMENDATIONS

6. **To Sudan's transitional government:**
 - a) Ratify without reservations the key human rights treaties to which Sudan is not yet a party, including UNCAT, ICPPED, and CEDAW, and deposit instruments of ratification with the UN Secretary-General in New York. Where relevant, ratify any additional protocols, including the Optional Protocol to the Convention against Torture (OPCAT).
 - b) Begin without delay a mapping exercise to identify the key legal, administrative, and institutional changes necessary for the effective implementation of Sudan's international human rights obligations, including by seeking the advice of experts and human rights organisations where needed.
 - c) Guarantee the consultation and participation of all relevant stakeholders—including victims, women, youth, communities and civil society from all parts of Sudan—in the development and implementation of any treaty ratification and reform processes.
 - d) Begin a process of legal reform to strengthen human rights protections, focusing on the comprehensive criminalization of torture and enforced disappearances, removal of immunities for security forces and other personnel, and clarification of arrest and detention authorities.
 - e) Provide training to security, police and judicial sector actors on relevant human rights standards and their implementation in the Sudanese context.
7. **To the international community of States, international organisations, donors and international civil society:**
 - a) Coordinate through multilateral venues and within existing civil society working groups to support various aspects of the reform process and its priorities, with attention to technical capacity building, mobilising the Sudanese public around needed reforms, and to ensuring an increased knowledge among the Sudanese public of key human rights protections,
 - b) Encourage the finalised ratification without reservation of key human rights treaties, including UNCAT, ICPPED and CEDAW, as well as the ratification of the OPCAT, and provide technical assistance when needed to facilitate the process of implementation.
 - c) Focus on supporting the Sudanese government in taking concrete practical steps to eradicate enabling factors for torture, enforced disappearances and other human rights abuses, including reviewing and revising internal policies for the security forces, detention policies, and judiciary.
 - d) Provide targeted funding and technical assistance to the Government of Sudan in support of initiatives focused on achieving key human rights benchmarks, including critical legislative reforms such as the criminalisation of torture and the lifting of immunities for perpetrators of human rights abuses within the security sector.
 - e) Amplify the voices of Sudanese people and civil society organisations in seeking a legislative and institutional reform process which is cognisant of their rights, and reflective of and responsive to their demands, through advocacy, capacity building, financial support to local organisations and renewed engagement.

BACKGROUND



Photo credit: David Rose/Panos Pictures. Protestors waving national flags in the city centre as continuing citizen protests entered their fourth week after the fall of President Omar al-Bashir.

8. Former Sudanese president Omar al-Bashir's tenure in office was characterised by decades of gross human rights violations, including torture, extra-judicial killings and enforced disappearances. Legislative and institutional failings, such as Sudan's [inadequate and discriminatory criminal code](#), immunities for members of the security services, and obstacles to victims' access to justice, permitted such violations to occur. A lack of accountability for violations emboldened those responsible to commit international crimes with impunity.
9. In April 2019, the toppling of the 30-year regime under al-Bashir ushered in an unprecedented opportunity for democracy and peace in Sudan, as a new transitional government committed to both human rights reforms and accountability efforts. A raft of [legislative reforms](#) were enacted on 13 July 2020, including amendments that criminalised female genital mutilation, banned the use of torture and forced confessions, and repealed provisions aimed at preventing cooperation with the International Criminal Court. These reforms have been widely welcomed as a sign of the government's commitment to addressing legislative shortcomings as part of Sudan's political transition.
10. Nonetheless, it has equally been recognised that further reforms are needed to achieve the goals of the August 2019 constitutional declaration and the demands of the protestors who called for al-Bashir's removal from office. In line with the ambitious commitments made in the Constitutional Charter ([Arabic](#), [English](#)), the Sudanese transitional government reportedly plans to establish a number of commissions charged with reforming different aspects of Sudan's law. However, these commissions, including designated commissions on human rights, transitional justice, and judicial reform—as well as the Transitional Legislative Council, one of the representative bodies provided

for in the Juba Peace Agreement—have yet to be fully established. Major legislative reforms are yet to occur, beyond the [repeal of the Public Order Law](#) in late 2019 and the promulgation of the July 2020 amendments (mentioned above), both of which addressed some key issues but were not comprehensive.

11. Frustrated with the slow pace of change in Sudan, [protestors](#) have taken to the streets with renewed energy since late 2020, and into the early months of 2021. The transitional government must strike a delicate balance between addressing Sudan’s economic challenges while making progress on its reform agenda. The following sections of this policy briefing lay out possible first steps and immediate priorities for the transitional government.

CURRENT OUTLOOK: NECESSARY NEXT STEPS

International human rights treaty ratification

12. Enacting comprehensive reforms is an integral component of Sudan's political transition, and making progress on such reforms has formed an important part of demands in ongoing protests. The ratification (and implementation) of key international treaties would provide a useful structure and foundation for the transitional government's efforts in this respect. Equally, treaty ratification and implementation processes would provide an important starting point for advocacy around norm-setting and internalisation within Sudan's legislative framework and practices, as well as to provide individuals and organisations with additional avenues for engagement with a view to securing compliance and oversight.
13. As [announced by the Minister of Justice](#), the transitional government plans to ratify the international human rights treaties to which Sudan is not yet a party. These include UNCAT, ICPED, CEDAW, and the Convention on the Protection of the Rights of Migrant Workers and Members of their Families, as well as the Rome Statute.
14. In a [historic development](#), in February 2021 the Council of Ministers and Sovereign Council announced in a joint meeting the approval of ratification of two key international conventions: UNCAT and ICPED. Sudan's transitional government should be congratulated for taking this important step towards enhancing human rights protections. The transitional government must now deposit instruments of ratification to the UN Office of Legal Affairs in New York. It is not clear whether the government intends to enter any reservations—or whether Sudan will accept any individual complaints mechanisms (as well as OPCAT, which provides for the establishment of a national preventive system assisted, and monitored, by the UN Subcommittee on the Prevention of Torture).
15. Sudan's transitional government is also reportedly considering ratifying CEDAW. While it is understood that CEDAW has, at the time of writing, not been approved for ratification by the Council of Ministers—an important preliminary procedural step—activists in Sudan continue to strongly call for its consideration along with UNCAT and ICPED.
16. Ratifying these treaties sends a powerful message that Sudan is committed to breaking with the al-Bashir regime's legacy of human rights violations, and to meeting its commitments under the Constitutional Document and Juba Peace Agreement. In addition, ratification and implementation of these treaties would lead to greater international support for the needed domestic reforms, and provides an important opportunity for increased consultations with Sudanese stakeholders.

Recommendation: *Ratify without reservations key human rights treaties, including UNCAT, ICPED and CEDAW, and promptly submit the necessary instruments of ratification. Where relevant, ratify any additional protocols, including the OPCAT.*

Comprehensive domestic reforms and consultations

17. The ratification of any human rights treaties, including UNCAT and ICPED, is an important first step in a longer process of implementation to ensure compliance with treaty obligations. The Constitutional Charter provides that all international treaty obligations are to be incorporated in Sudanese law. But this process is not automatic—

a number of reforms are required to bring Sudanese law into conformity, and to ensure that these reforms are reflected in practice as well as on paper.

18. Before the enactment of any specific reforms, the Sudanese transitional government should undertake a comprehensive mapping exercise to identify the legal, administrative or institutional changes necessary for the effective implementation of its international human rights obligations.¹ Sudan's transitional government should begin such a mapping exercise now, regardless of the status of UNCAT, ICPPED or other treaty ratification—in part because these treaties largely reflect customary international law norms which should in any case be reflected in Sudanese law and practice.
19. The new [Human Rights Commission](#)—whose planned formation was announced in mid-January 2021 by Prime Minister Hamdok, and will be under the leadership of the Minister of Justice—may be well-placed to undertake this mapping. The Legal Reform and Judicial Reform Commissions, once fully established and operative, should also participate in this effort. Close coordination and cooperation between these mechanisms will be essential. The entities responsible for undertaking this effort would benefit from reviewing the [foundational work](#) done by experts and human rights organisations on legislative and institutional reforms in Sudan.
20. Among the elements to analyse in this mapping exercise are key constitutive governing documents, such as Sudan's Constitutional Charter and the Juba Peace Agreement, and existing legislation governing criminal and judicial proceedings—such as the Criminal Act 1991, the Criminal Procedure Act 1991, and the Evidence Act 1994. It is equally important to evaluate the regulations, policies and practices of the Sudanese security forces, the police, the prison authorities, the judiciary and General Prosecution, and any other bodies involved in law enforcement, arrest or detentions, as the following section of this policy briefing will examine in greater detail.

Recommendation: *Begin without delay a mapping exercise to identify the key legal, administrative, and institutional changes necessary for effective implementation of Sudan's international human rights obligations, including by consulting the work on relevant reforms by experts and human rights organisations.*

21. Thus far, reform efforts undertaken by the civilian component of Sudan's transitional government have been criticised by some for lacking adequate community participation. Activists report having been largely left out of internal government discussions. Similarly, there have been only limited opportunities for public debate about ongoing reform processes, despite public appetite for reforms and the human rights discourse more generally. As demonstrated by ongoing mass protests, public perception of the government's approach negatively impacts the reform process—and, more broadly, threatens the success of the transitional period.
22. Sudan's transitional government would benefit from reversing this trend through increased coordination with key stakeholders. Any governmental efforts to identify existing legislative or institutional gaps must also be conducted in tandem with the civil society organisations and individuals who played a critical role in driving Sudan's revolutionary processes. This should include victims of human rights violations, their

¹ The Association for the Prevention of Torture (APT) and Convention against Torture Initiative (CTI) have developed an Anti-Torture Legislative Guide that may be helpful in undertaking any such legislative review exercise (available in [English](#) and [Arabic](#)).

families and their communities. Given the historic pattern of rights violations in Sudan, particular attention should be paid to the inclusion of women, youth and those with heightened vulnerabilities, such as survivors of sexual and gender-based violence and internally displaced persons. Academics, lawyers, and other subject matter experts inside and outside Sudan can play a critical role in providing technical assistance where needed.

Recommendation: *Guarantee the consultation and participation of all relevant stakeholders – including victims, women, youth, communities and civil society from all parts of Sudan – in the development and implementation of any treaty ratification and reform processes.*

ISSUE AREAS: PRIORITIES FOR REFORM AND ATTENTION



Photo credit: Petterik Wiggers/Panos Pictures. A group of female protestors break their Ramadan fast during a mass sit-in outside the Ministry of Defence.

Legislative changes

23. Domestic implementation of any human rights treaties, including UNCAT and ICPPED, will require taking action to enact critical legislative amendments. Though the below list is not comprehensive, among these essential reforms are the following:

a) **Complete criminalisation of torture and enforced disappearances:**

- i) Article 4 of the Convention against Torture requires that State Parties must criminalise torture in their domestic law. In addition, States have an obligation to promptly and effectively investigate acts of torture. [Reforms in 2020](#) were a significant first step towards bringing Sudan’s laws in line with these and other international human rights standards. Changes to provisions of the Criminal Procedure Act 1991 and the Criminal Act 1991, for example, recognised that torture can be both mental and physical, and prohibited the use of torture

conducted by a public official to obtain information in legal proceedings. However, further steps are necessary to ensure the outright criminalisation of acts of torture in Sudanese law, consistent with international standards. In particular, the changes to the Criminal Procedure and Criminal Acts made in 2020 are largely procedural, rather than substantive provisions of criminal law.

- ii) **Sudan should pass laws that prevent corporal punishment**, including amputations and flogging as forms of reprisal—a significant form of torture and/or ill-treatment. It is also essential to address the **key gaps in Sudan’s criminal procedure laws and prison laws which enable torture in detention**, and prevent the effective investigation or prosecution of acts of torture through inadequate pre-trial or post-trial protections.
- iii) In addition, Sudan should **abolish capital punishment for all crimes**. The implementation of the death penalty could contravene the absolute prohibition of torture and cruel, inhuman, and degrading treatment. Recent changes to the 1991 Criminal Law repealed the death penalty for the crimes of [apostasy](#) and [consensual same-sex relations](#), and for all crimes committed by minors, but capital punishment may still be imposed in Sudan for a variety of other crimes.

b) Lifting of immunities and amnesties for security forces and the police:

- i) Immunities effectively bar victims of torture and other human rights violations from claiming compensation and/or other forms of reparation. Members of the Sudanese Armed Forces (SAF), police, and the General Intelligence Service (GIS) are afforded broad immunities through the Armed Forces Act 2007, the Police Act 2008, and the [National Security Act 2010](#). The Miscellaneous Amendments Act 2020 made some changes to the National Security Act (NSA) 2010 by removing some immunities that GIS agents enjoy.
- ii) Still, immunity remains one of the biggest obstacles to justice in Sudan. In particular, the NSA, Armed Forces Act of 2007 and Police Act of 2008 all retain provisions granting individuals immunity from prosecution unless approval is granted by higher-level officials through internal processes. Consequently, though investigations into allegations of torture are carried out by the Attorney General, only the director of the GIS or the other security forces may authorise the lifting of immunity in response to a request from the Public Prosecution. In [recent cases](#), the security and regular forces have not responded to such requests by the Attorney General to waive immunities, making investigation and prosecution of any cases of torture, ill-treatment and other human rights violations functionally impossible. To address this obstacle to justice, **the authority to lift immunities should be removed from the security forces**. Sudan’s transitional government should instead implement a process for judicial authorisation and review of any decision on immunities—or remove immunities altogether. **The NSA, Armed Forces Act, Police Act, and laws governing the conduct of the RSF should also be amended accordingly.**
- iii) Attention should also be paid to the [amnesty](#) announced in November 2020, which 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 serious international crimes or grave human rights violations that fall within the mandate of the Special Criminal Court for Darfur; and (iii) face civil law or *qisas* punishments (for specific crimes under Shari’a law).

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. Accordingly, the **transitional government should clarify who, and which crimes, are covered by the amnesty.**

c) **Amending prison and detention laws to protect prisoners:**

- i) Sudan's Attorney General has in [recent months clarified](#) that only the police and Public Prosecution may arrest civilians or otherwise exercise arresting and detention authorities. Nonetheless, the RSF and SAF [continue to detain civilians](#) and, in some cases, are reported to have committed acts of torture against detainees. For example, in a high-profile incident in December 2020, a young activist was [tortured to death](#) in an RSF detention centre in Omdurman.
- ii) Currently, the Constitutional Document leaves the reform of these security institutions to the discretion of their leadership. However, the transitional government should take clear legislative action to prohibit the detention of civilians by any institution other than the police or Public Prosecution, **and should take urgent action to close all illegal detention centres operated by the RSF and other militias.** Sudan's government should also introduce essential protections against torture in detention centres, including the right to have access to a lawyer before any form of interrogation and legal limits on duration of detentions which are compatible with international human rights standards.

Recommendation: *Begin a process of legal reform, focusing on the comprehensive criminalization of torture and enforced disappearances, lifting of immunities for security forces and other personnel, and clarification of arrest and detention authorities.*

Institutional reform and capacity building in key sectors

24. 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.
25. It is important to recognise that a diverse set of actors are both historically and presently responsible for acts of torture and other human rights violations in Sudan. As discussed above, 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.
26. This will include **building the capacity of and training police, security forces and military, and prison officials on the relevant standards** for law enforcement and detention. The support of international actors and civil society organisations should be engaged to conduct comprehensive human rights training for the various bodies that comprise the security sector. Among other topics, training should be provided on (i) the

prohibition of torture and other human rights guarantees; (ii) standards for treatment of refugees, migrants, women and other marginalised groups, given their heightened vulnerability and historic patterns of violations in Sudan; (iii) the rights of detainees with regards to interrogations and criminal investigations; (iv) and the rights to association and expression, including on the use of force in dispersing protests and in other crowd control scenarios.

27. Training of the security forces should be accompanied by an overhaul of the relevant internal directives and bylaws for these organisations. Many of these documents are not available to the general public. A first step would be to **make the operating procedures for the security forces and police available for public scrutiny**. Reform of these policies where necessary is the second, critical step.
28. The transitional government and international donors should also focus on **judicial sector reform and training**, including training on international human rights standards. To this end, Sudan's government could consider developing a national training institute for its judges, prosecutors and lawyers. Among other topics, training should include information on witness protection (e.g., ensuring that witnesses aren't subject to reprisals), standards for the investigation and prosecution of international crimes, judicial independence, and issues related to gender- and victim-sensitivity and harm reduction.

Recommendation: *Provide training to security, police and judicial sector actors (including the army, RSF, and General Prosecution) on relevant human rights standards and their implementation in the Sudanese context.*

MOBILIZING THE PUBLIC



Photo credit: David Rose/Panos Pictures. Protestors held up signs during a nighttime vigil for victims of recent violence as the sit-in entered its fourth week since the fall of President Omar al-Bashir.

Public awareness programmes on human rights

29. The processes of law reform and public mobilisation are complementary. Just as it is crucial that the process of legislative and institutional reform is driven by—or at least responsive to—the needs of stakeholders, including victims of past human rights violations and their communities, it is important to ensure that the public is engaged with in respect of human rights, and the transitional government’s reform obligations. Civil society organisations can play an essential role in mobilising the public around galvanising issues such as the ratification of human rights treaties, and the criminalisation of torture and enforced disappearances.
30. As part of this effort, it is important that civil society organisations and activists can freely participate in the national political transition process without fear of reprisals. Accordingly, the transitional government should take steps to ensure respect for, and the protection of, the rights to freedom of assembly and association. Among other activities, this could include prohibiting the arbitrary detentions of human rights defenders and use of judicial proceedings to intimidate or harass such individuals, and strengthening the capacity of the planned National Human Rights Institute to support human rights activists.

Civil society mobilisation on a comprehensive reform agenda

31. Civil society organisations, through their close contacts with Sudanese communities, can also support the transitional government in setting out a strategy for a participatory reform process. This could include **coordinated action to encourage the transitional government to establish—and operationalise—the commissions promised under the Constitutional Document**. The bulk of the reforms envisioned under the Constitutional Document are to be undertaken by these commissions, yet they have not been formed. A clear process is needed for creating and staffing these commissions. Civil society and international organisations can contribute to this process by **supporting the government in drafting the necessary “generation of commission” acts required for the establishment of the remaining commissions**, and providing other technical assistance as needed. This can help generate momentum around a comprehensive reform process.

Recommendation: *Coordinate among civil society to reach a consensus around the reform process and its priorities. Develop a public awareness campaign to mobilize around needed reforms and increase knowledge of human rights guarantees.*

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