

**Legal  
Analysis**

March 2022

# “Taken from Khartoum’s Streets”

Arbitrary arrests, incommunicado  
detentions, and enforced disappearances  
under Sudan’s emergency laws

REDRESS, PLACE, Darfur Bar Association, and the  
Emergency Lawyers’ Group



**REDRESS**  
Ending torture, seeking justice for survivors



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# Summary

Since the 25 October 2021 coup in Sudan, members of the armed forces, police, General Intelligence Service (GIS), and other security forces have carried out scores of arrests of protestors, journalists, civilian political leaders, and other human rights defenders. Relying on an overbroad emergency order—Emergency Order No 3—issued under an unlawful state of emergency, which permits the arrest of any person who “participates in a crime related to [the state of emergency],” Sudan’s security forces and military continue to use detention to punish opponents of the coup and to deter others from further activism.

The following briefing, which was jointly prepared by REDRESS, the People’s Legal Aid Centre (PLACE), the Emergency Lawyers’ Group, and the Darfur Bar Association, outlines patterns of arbitrary arrests and detentions under the state of emergency and Emergency Order No 3. Arrests can be broadly categorised as (1) occurring before, during, or just after protests or (2) targeted arrests conducted from individuals’ places of residence, work, or from other known gathering places. In detention, including during transport to prisons and police stations, security and intelligence forces—particularly members of the GIS—routinely beat, kick and subject detainees to other forms of ill-treatment, some of which may rise to the level of torture. Many of the detentions described in this briefing are arbitrary, and some may be considered enforced disappearances.

To prevent these abuses, the ongoing state of emergency should be lifted immediately, and Sudan’s military authorities should issue guidance to all security and military forces specifying the repeal of Emergency Order No 3/2021 (EO No 3) and all related immunities.

The authorities should immediately cease the arbitrary arrest and detention of protestors, including minors, human rights defenders, journalists, and political leaders. Comprehensive steps should be taken to end torture and ill-treatment in custody, as well as incommunicado detention. All those arrested should be promptly brought before a judge and released if not charged with a recognisable offence.

The Sudanese military authorities should urgently institute reforms to meet its obligations under the international human rights treaties that it has ratified, including the International Covenant on Civil and Political Rights (ICCPR), UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (UNCAT), and International Convention for the Protection of All Persons from Enforced Disappearance (ICCPED), which protect various rights and freedoms—including the freedom of expression, opinion, association, and peaceful assembly.

Many detainees were released on the same day as the UN independent expert’s visit to Sudan, indicating that international pressure can meaningfully impact the human rights situation in Sudan. Accordingly, Sudan’s international partners, as well as multilateral organisations such as the United Nations and African Union, should consistently and publicly condemn abuses by Sudanese forces. They should also request visits to conduct spot inspections of places of detention operated by the police, GIS, Rapid Support Forces, and armed forces.

# Recommendations

## To Sudan's military authorities:

- Lift the nationwide state of emergency, which was declared in violation of Sudanese domestic law and international law;
- Repeal any emergency orders issued under the state of emergency, including Emergency Order No 3, concerning the arrest and detention powers of all security and intelligence forces under the state of emergency;
- Refrain from the arrest and detention of people for the exercise of fundamental freedoms and rights, including the right to peaceful protest;
- Cease requiring detainees, as a condition of release, to commit to not exercise their right to engage in peaceful protest or other forms of political opposition;
- Ensure that all detainees are kept in official places of detention, that all arrests are properly registered and that fair trial rights are ensured;
- Cooperate with UN special procedures mandate-holders, including the UN independent expert on the human rights situation in the Sudan and the UN working groups on arbitrary detention, enforced disappearance, and UN special rapporteur on torture among others;
- In an impartial and timely manner, investigate all torture allegations against any security and law enforcement officials regardless of rank and whether the victim or family has formally filed a complaint with the Public Prosecution;
- Order prosecutors at all levels to regularly conduct unannounced inspections of known and suspected detention sites and to investigate all allegations of torture and ill-treatment;
- Allow visits as requested by the relevant UN special procedures mandate-holders and other human rights mechanisms from the UN and African Union;
- Order the publishing of data on the number of investigations opened, and cases of torture, ill-treatment and other abuses by security forces referred for prosecutions, as well as the result of such investigations.

### **To the United States, European Union, and other States:**

- Call for the lifting of the nationwide state of emergency and public repeal of any associated emergency orders, including Emergency Order No 3, concerning the arrest and detention powers of all security and intelligence forces under the state of emergency;
- Impose targeted sanctions on those most responsible for ongoing human rights violations in Sudan under the available human rights sanctions regimes;
- Issue additional public statements expressing concern about the systematic use of arbitrary arrests and detentions and ill-treatment of those in police, intelligence, or military custody;
- Focus engagements with Sudanese security and military leaders on ending arbitrary arrests, torture and other forms of ill-treatment, and enforced disappearance, and on ensuring accountability for these and other serious violations.

### **To the United Nations and African Union:**

- Call for the lifting of the nationwide state of emergency and public repeal of any associated emergency orders, including Emergency Order No 3, concerning the arrest and detention powers of all security and intelligence forces under the state of emergency;
- Monitor the impact of Emergency Order No 3 on the exercise of human rights and fundamental freedoms in Sudan, and respond to breaches through the relevant human rights mandates, including by making inquiries and providing technical assistance as needed.

# Background

On 25 October 2021, after overseeing the arrest of the then-prime minister and several other prominent civilian members of Sudan’s transitional government, Abdel Fattah al-Burhan—Sudan’s top general—declared a nationwide state of emergency. Almost immediately after, al-Burhan issued an unknown number of decrees to implement the state of emergency, including Emergency Order No 3, which expands the legal authorities of Sudan’s “regular forces,” rolling back one of the only security sector-related reforms made under the pre-coup transitional government.

Issued on 24 December 2022 and signed by al-Burhan personally, EO No 3 cites several legal authorities: Constitutional Decree No. 38 (2019) – the decree enacting into law the Constitutional Document – and Constitutional Decree Nos. 19 and 20 (2021); Sudan’s 1997 Emergency and Protection of Public Safety Act (available here in [English](#) and [Arabic](#)); and Article 18/1 of the 2019 regulation “governing the work of the Sovereign Council.” Only some of these authorities have been made public. In fact, former high-level employees within Sudan’s Ministry of Justice have told REDRESS that only a handful of constitutional decrees were promulgated under the pre-coup government and speculated that the 2021 decrees cited in EO No 3 do not exist; their absence in the [Official Gazette](#) means, at least formally, that they do not carry the force of law. It is nonetheless worth outlining the existing normative framework for any state of emergency in Sudan before diving into the particulars of EO No 3.

The total number of individuals arrested and detained under emergency authorities across Sudan is unknown. In early March 2022, the Joint Human Rights Office in Khartoum reported that more than 1,000 people were arrested between 25 October 2021 and 3 March 2022, including nearly 150 children.<sup>1</sup> However, the real figures are likely higher, because varying periods of detention, an absence of centralized recordkeeping (in addition to the widespread practice of state denial of detentions), and a fear of reprisals frustrate efforts to arrive at a complete picture of the problem. At the time of writing, arrests and detentions are ongoing.

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1 OHCHR, “Oral update on the situation of human rights in the Sudan: 49<sup>th</sup> Session of the Human Rights Council, Statement by United Nations High Commissioner for Human Rights, Michelle Bachelet,” 7 March 2022, available at: <https://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=28215&LangID=E>.

# States of emergency under international law

A declaration of emergency permits governments to impose restrictions on certain rights, including freedom of movement, expression, and association. However, as the UN Human Rights Committee has outlined in its [General Comment No. 29](#), governments can derogate from its human rights obligations “only to the extent strictly required by the exigencies of the situation,” and governments must ensure that any measures taken under a state of emergency are strictly proportional to the aim pursued. Under international law, including the International Covenant on Civil and Political Rights (ICCPR)—to which Sudan is a party—any emergency powers must not be applied in a discriminatory manner. Certain rights, including the right to life, the right to be free from torture or cruel, inhuman, or degrading punishment, and a right to a fair trial cannot be suspended even under a state of emergency, whatever the circumstances.

The measures implemented under Sudan’s state of emergency laws cannot be considered either proportional or narrowly tailored to the “exigencies of the situation” as required by international law, either historically (under former president al-Bashir) or presently, as will be discussed in greater detail below. In addition to the ever-present risk of torture and ill-treatment of those detained—violations of non-derogable rights, as indicated above—sweeping arrests, crackdowns on humanitarian organisations and journalists, and emergency trials undermine human rights and are not necessary or legitimate. Arrest or detention as punishment for the legitimate exercise of fundamental human freedoms, including freedom of expression and opinion, freedom of peaceful assembly, and freedom of association, is arbitrary.

# Sudan's legal framework for emergencies

## 2019 CONSTITUTIONAL DOCUMENT

Under both international<sup>2</sup> and Sudanese law, a state of emergency can be imposed only after certain procedures are followed. The 2019 Constitutional Document, as enacted into law by Constitutional Decree No. 38 (cited in EO No. 3) provides that the “Sovereign Council may, pursuant to a request from the Cabinet, declare a state of emergency” (Art. 40.1); any such declaration of a state of emergency “shall be presented to the Transitional Legislative Council within 15 days from the date of its issuance” (Art. 40.2). The Constitutional Document is clear on another point: “the declaration of a state of emergency is extinguished if the Legislative Council does not ratify it, and all the measures taken thereunder are extinguished, without retroactive force” (Art. 40.4).

Under a plain reading of these constitutional provisions, al-Burhan's declaration of a state of emergency is not valid. Having taken steps to arrest most of its members before declaring a state of emergency, it is clear that al-Burhan did not declare a state of emergency pursuant to a request from the Cabinet; moreover, the Transitional Legislative Council was never established under the pre-coup transitional government (preserving most final legislative decision-making power for the military-led Sovereign Council).

## 1997 EMERGENCY AND PROTECTION OF PUBLIC SAFETY ACT

Though Sudan's state of emergency was not declared in accordance with established constitutional provisions, the Sovereign Council under al-Burhan's leadership has nonetheless issued several emergency orders, including EO No 3. In addition to a citation to the Constitutional Document, EO No. 3 also takes as its basis two additional, unknown constitutional decrees (Nos. 19 and 20, 2021) and the 1997 Emergency and Protection of Public Safety Act. The latter permits the “president of the Republic” to impose a state of emergency in several situations, including foreign invasion or blockade, in the case of an “immediate or gross danger that threatens national unity, safety of the country or any part of it,” where there is a crisis that “threatens the country's economy” or “prevailing crime, insurgency or riot,” and in any “other situation which the president view[s] as a direct threat to Sudan, any part of it, public safety, or community life.”

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2 Under international law, States must follow several specific requirements when derogating from their human rights obligations, including by publicly proclaiming a state of emergency and notifying the UN Secretary General of their intention to derogate from certain human rights obligations. States must again notify the UN Secretary General when the derogation period ends or if the state of emergency period is extended. States must ensure that derogation measures are necessary and proportional, and that derogation measures are consistent with the State's other obligations under international law, including international humanitarian law. Measures implemented under a state of emergency cannot be applied in a discriminatory manner, and States must uphold non-derogable rights. See UN Human Rights Committee, General Comment No. 29, States of Emergency (Article 4), UN Doc. CCPR/C/21/Rev.1/Add.11 (31 August 2001).

The Emergency and Protection of Public Safety Act also requires the consent of a secondary body, the Parliament, to any declaration of emergency. Article 5(2) states that the “declaration of emergency shall be presented to the council, in accordance with provisions of the constitution, to decide whatever [it] deems fit.” Passed in 1997 under former president Omar al-Bashir, the “council” referred to in the Act does not exist, though presumably the Transitional Legislative Council, if created, would have filled this role.

Under the terms of Emergency and Protection of Public Safety Act and the 1998 Emergency and Public Safety Bylaw, security forces can raid premises without warrants, seize property and impose surveillance over any buildings, arrest persons suspected of participating in crimes related to the declared state of emergency, and ban or restrict the movement of persons and their activities. As REDRESS and Sudanese partners have [previously noted](#), read together the 1997 Act and 1998 bylaw permit preventive arrest and detention on the basis of vague grounds, including the belief of the authorities that the person in question has acted—or may act—in a way that “affects public security or public safety.” Additionally, the 1998 bylaw provides neither time limits for this type of detention nor judicial oversight—in effect, authorising prolonged, if not indefinite, detention in violation of international law.

Over the course of al-Bashir’s several decades in office, states of emergency were declared to deploy masses of troops to quell protests and uprisings, and to ban organisations without explanation; in one final instance, just two months before his ouster from office in April 2019, al-Bashir declared a [one-year state of emergency](#) accompanied by five emergency decrees, all of which were aimed at preventing protests, labour strikes, and other political gatherings or demonstrations.

## EMERGENCY ORDER NO. 3

To some extent, given the broad powers afforded to Sudan’s military and security services under the Emergency and Protection of Public Safety Act, EO No 3 does not materially change much. In relevant part, Emergency Order No 3 (available in full [here](#)) authorises Sudanese Armed Forces (SAF), Rapid Support Forces (RSF), police, and GIS personnel to (a) arrest “persons who participated in a crime related to emergency...”; (b) enter or search any premises or persons; (c); (d) seize any goods, objects or other items; and (e) prohibit the movement of persons or their activity in any area. The Emergency Order also provides that these forces may exercise “any other powers that the Transitional Sovereign Council deems necessary.”

The Order also prohibits the initiation of any legal measures against members of the regular forces for any activities undertaken in the course of their official duties unless such immunities are waived by the head of the Sovereign Council or his designated representative.

These powers are largely consistent with those set out in the Emergency Act and other existing Sudanese laws; as REDRESS has repeatedly highlighted, Sudan’s armed forces and police operate under highly permissive laws and [enjoy broad immunities](#) from prosecution.

However, in one critical respect EO No 3 is highly consequential: in defining Sudan’s “regular forces” to include the General Intelligence Service, the order has reversed major reforms made to Sudan’s notorious National Intelligence and Security Service, which was renamed the General Intelligence Service in the Constitutional Document 2019 and limited to “gathering and analysing information and providing it to the competent bodies.” Subsequent amendments to the National Security Act in July 2020 abolished the immunities enjoyed by GIS agents and formally stripped GIS of its arrest, detention, and seizure authorities, in line with the Constitutional Document and some reforms made in July 2019.

Observers will note that, despite these reforms to the GIS, intelligence agents had continued to play a role in arrests under the pre-coup transitional government, and that no more than a handful of prosecutions of either GIS or other security personnel had progressed to the trial phase. However, the scope and scale of abuses committed since the coup, and particularly since January 2022, after the promulgation of EO No. 3, demonstrate the significance of the reinstatement of GIS’s Bashir-era authorities.

# Campaign of arrests since January 2022

Since the restoration of GIS's full powers of search and arrest at the end of December 2021, the pace of arrests has demonstrably increased. Arrests can be broadly categorised as one of two types: (1) individuals arbitrarily arrested during or just after protests; and (2) individuals targeted under emergency laws, arrested from their homes or known gathering places, and held in Khartoum-area prisons such as Soba Prison and Omdurman Women's Prison. In both categories, GIS personnel play a primary role in conducting arrests, overseeing detentions, and opening cases against individuals.

## ARRESTS DURING OR AFTER PROTESTS

Arrests conducted during or shortly after protests follow a similar pattern. In most of the cases REDRESS, PLACE, and the Emergency Lawyers Group have handled, unidentified forces in Toyota boxcars (pickup trucks)—typically used by the GIS—initially arrest and detain protestors before handing them off to the Prison Police or regular police, who eventually move them into the regular criminal justice system to face complaints opened by the GIS.

Police, GIS, and other forces such as the Central Reserve Police (CRP) or RSF are, in theory, identifiable by their distinct uniforms. For example, CRP forces typically wear light brown camouflage uniforms with a bird insignia, while GIS personnel are identifiable by their beige, red, and brown camouflage uniforms. In practice, identifying specific forces with certainty can be challenging, because the use of uniforms is inconsistent, with various paramilitary and auxiliary forces adopting the uniforms of other forces. GIS personnel in particular are also often in plainclothes, making their identification difficult.

Many of those arrested after protests report being pursued by security forces or being arrested after getting caught in the security perimeters established by joint forces around known protests. In some instances, individuals have been arrested from bridges, main roads, and public transport stops by security forces.

Many individuals are subjected to beatings or other forms of ill-treatment while in transit to a detention centre. For example, a 16-year-old boy was arrested on 24 February 2022 during a protest in Khartoum. He said to REDRESS:

*I was with 7 or 8 other friends at the protest, and we were surrounded by security forces coming at us from different directions. Some of us were able to get away but I was arrested at around 3 or 3:30 pm. When I was arrested, I was the only one, but [the security forces] attacked other protestors in other areas and arrested two more kids. I'm 16 and I was the oldest.*

*In the boxcar, I suffered from all kinds of beatings [that] you can imagine, [including] flogging, beating by sticks with nails, kicking with military boots, and an [officer] jumped on my entire body with both legs. I was hit in the eye with a fist [wearing] a large ring, and my forehead and eyes were hit with the butt of the gun. When we got to the police station after 3 or 4 hours, we were completely naked. They tore off our clothes with knives.*

*At the police station, after completing the basic investigations (asking for our names, where we live, how old we are) we were taken to cells. The adults were held in one and children in another. I was held for maybe 5 or 7 hours before my parents were able to take me out.*

Most of those arrested in relation to protests and eventually transported to police stations are charged under the Criminal Code 1991 with public nuisance, breach of public safety, or offences related to “public tranquility,” including rioting; to a lesser extent, protestors have also been charged with offences such as possession or use of drugs or indecent dress.<sup>3</sup> In a few cases, protestors have been charged with more serious crimes, such as criminal damage or “causing wounds,” the penalty for which can be determined by *qisas* (retribution) in certain situations<sup>4</sup> or with heavy fines.

In the majority of cases, minors who are arrested after protests have not been charged with crimes. Instead, an adult family member is summoned to the applicable police station and required to sign a “personal pledge” guaranteeing their supervision of the minor and forbidding the minor to participate in further protests.

The period of detention in these cases varies widely, from several hours to several days, though some individuals have been detained for several weeks following protests. In some cases, as above, the transfer to a police station for charging under criminal laws occurs within several hours of arrest; in other cases, individuals are detained for much longer in Khartoum-area prisons, presumably under the authority of EO No 3, before being transferred to a police station. Some detainees are also understood to be held in the Khartoum and Khartoum North premises of the Police Criminal Investigations directorate, a group that has been described by some lawyers as “outperforming” the GIS in subjecting defendants to torture to extract evidence or confessions.

None of the individuals we spoke to were allowed access to a lawyer, and only some were permitted to contact their families. Some of these detentions may constitute enforced disappearances, in cases where individuals

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3 Article 152 of the Criminal Code 1991 (concerning “indecent and immoral acts”) was amended by the Miscellaneous Amendments Law of 2020, to read: “[a]nyone who commits an act of a sexual nature in a public place or issues signals with sexual meanings that cause harassment of the public’s feeling or public modesty, shall be punished with imprisonment for a period not exceeding six months, or with a fine or with both penalties.”

4 See Articles 138 – 141 of the Criminal Code 1991. For example, Article 139(1) provides that “[w]hoever commits the offence of causing intentional wounds, shall be punished, with retribution (*qisas*), where its conditions are satisfied, and where the conditions are not satisfied, or retribution (*qisas*) is remitted, he shall be punished, with imprisonment, for a term, not exceeding five years, or with fine, or with both, without prejudice to the right of *dia*.”

are held incommunicado in unknown detention centres.<sup>5</sup> Several factors, including the availability of personal guarantors for detainees, delays in the ratification of guarantees by the Public Prosecution (needed before an individual is released, pending appearance before a court), and length of investigations by the police, appear to determine the detention period.

The following testimonies, provided directly to and verified by REDRESS and PLACE, illustrate this pattern.

A protestor, a 24-year-old university student, was arrested during protests on 24 January 2022, but released without charge:

*I was participating in the procession in the vicinity of the Republican Palace. After leaving the protest, when I arrived at the Sudan University, a white boxcar came and chased us. A number of people appeared in civilian clothes. I was arrested and with me a group of other young men. I later learned that the [people who arrested us] belonged to the security apparatus [General Intelligence Service].*

*We were taken to the offices of the [GIS] in al-Amarat Area, Street 57, where we were photographed and inspected. We were also blindfolded. We were transferred to Soba Prison, south of Khartoum.*

*With me, there was a foreigner from Ethiopia and two children, ages 15 and 16. We were then transferred to the Khartoum North police station but were not investigated. There were about 30 detainees in the station. We were released at 1 am.*

A 23-year-old university student participated in a protest in Khartoum on 24 January 2022, and was subsequently detained for 28 days:

*Along with several companions, I withdrew from the demonstration at 3:30 pm, as police forces began heavily using tear gas and bullets. At around 4:30 pm, I was near al-Qurashi Park and al-Jawda Hospital in Khartoum when a white Toyota “boxcar” (pickup truck) drew near. Security forces arrested me [and my companions], blindfolded us, and beat us in the car for approximately two hours. Others were arrested from the streets and held in the same boxcar. We were all interrogated and searched [including personal property such as phones].*

*This initial investigation and search lasted for approximately three hours, and we were all photographed. We were then transferred to Soba Prison (south of Khartoum). Guards in the prison wore prison police uniforms. We were told by a prison police captain that “there is a party that brought you here and you are in trust until the party that arrested you orders your release.”*

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5 Enforced disappearances are defined by three cumulative elements: (1) the deprivation of liberty against the will of the person; (2) the involvement of government officials, either directly or by tolerance or acquiescence; and (3) the refusal to acknowledge the deprivation of liberty or concealment of the fate or whereabouts of the person. See International Convention for the Protection of All Persons from Enforced Disappearance (Article 2).

*I did not witness torture inside Soba Prison, and I was not tortured, but there were some detainees who showed signs of torture. I was held in a cell with 33 other detainees, and none of us were interrogated throughout our stay in prison.*

*On 15 February 2022 I decided to engage in a three-day hunger strike. On 21 February 2022 we [the protestor and several others detained on the same day] were transferred to the Khartoum North Police Department. A complaint was opened against me under Article 77 of the Criminal Code 1991 (“Public Disturbance”). The complainant in the case is the security agency [the General Intelligence Service].*

*I was released on 21 February 2022 after I spent 28 days in prison.*

Throughout this period, the university student was permitted only one phone call to a family member and was denied access to any legal representation.<sup>6</sup> This protestor was one of approximately 115 other detainees released on 21 February, coinciding with the visit of the UN independent expert on the human rights situation in the Sudan. The detainees held in Soba Prison and transferred to police custody on 21 February were all charged with criminal violations (public nuisance and/or disturbance) by the GIS and released on bail with personal guarantors.

## TARGETED ARRESTS UNDER EMERGENCY LAWS

A second group of individuals have been targeted for arrest under the emergency laws, arrested from their homes or known gathering places, and held in Khartoum-area prisons such as Soba Prison and Omdurman Women’s Prison. Some reports from Sudan have suggested that individuals are, as a matter of practice, being detained for a renewable 21-day period under EO No 3 (Art 4(a)). We have not been able to corroborate these reports, and EO No 3 does not provide for a specific period of detention.

In most cases, individuals arrested and detained in this category are not charged with any crime while in detention, though some have been charged upon their release with a variety of miscellaneous crimes. The majority of individuals arrested in this category are not interrogated during either their arrest or while detained.

No written documents are provided to family members by the prison administration, GIS, or the police in relation to any detainees arrested in this way under EO No. 3. The available arrest records indicate that detainees are arrested and handed over to prison administrators by GIS officers, and that the forms for renewal of detention are issued by the GIS.

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<sup>6</sup> Article 83 of the Criminal Procedure Act 1991 stipulates that an arrested person has the right to contact his/her lawyer. However, the National Security Act 2010, which governs GIS, contains no guarantees for immediate access to counsel; provisions which in theory set out the rights of those arrested, detained and in custody of the intelligence service were repealed in July 2020 reforms made by the transitional government, in accordance with the other legal reforms stripping the GIS of its powers of arrest and detention.

Detainees held in Khartoum-area prisons, particularly Soba Prison, are largely held in sections designated for GIS detainees. The GIS is understood to have issued an order preventing detainees from receiving visitors, including from lawyers or doctors. As a matter of practice, internal GIS directives and bylaws are not made public.

Several cases illustrate this pattern of detention.

Amiera Osman, a prominent women's rights activist and human rights defender, was arrested from her home on 22 January 2022 at around 11:30 pm, according to testimony from Amiera's family provided to REDRESS:

*A joint force of approximately 30 plainclothes and masked individuals, heavily armed with pistols, Kalashnikovs, batons, and sticks, entered Amiera's family home, saying they were "fighting drugs." Amiera, who suffers from partial paralysis, was not permitted to fully dress before her arrest; arresting forces said that they would carry Amiera out of her home wrapped in a sheet if necessary.*

*Amiera was taken to the Omdurman's Women's Prison, where she was denied the use of a bathroom and given a perforated bucket in her cell. Her requests for clothing were denied for at least 48 hours.*

*The morning after her arrest, Amiera's family filed a report with the Eastern Division Prosecution within Sudan's Public Prosecution. At the time, a report was opened under Sudan's criminal code, under articles pertaining to offences against personal liberty, invasion of privacy, and the use of criminal force. Amiera's family also sought to open a case with the police, who did not take any action until the family went to the headquarters of the GIS. The GIS informed the family that Amiera was not found with them.*

*After 15 days, Amiera was transferred from the Omdurman Women's Prison to the Khartoum North Police Station under heavy military escort. The prison's records officer informed Amiera that she was being accompanied to the police station by a GIS officer. At the police station, she was kept incommunicado, and was not charged with any crime. She was denied the right to a lawyer.*

*At the police station, Amiera was recognised by activists who contacted her family and friends. Upon arriving to post bail for Amiera, the family discovered that she was being charged with possession of live bullets. Amiera's case has not progressed further.*

The denial of Amiera's detention, and the repeated refusal to provide information on her whereabouts, renders her arbitrary detention an enforced disappearance. There is no minimum time limit for an enforced disappearance to qualify as such; the crime can result from the incommunicado detention of an individual, whatever the period of time, as long as the State refuses to acknowledge the whereabouts of the individual.<sup>7</sup>

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<sup>7</sup> See, for e.g., REDRESS, "Strategic Litigation of Enforced Disappearances in Africa," June 2021, available at: <https://redress.org/wp-content/uploads/2021/07/Practice-Note-5-Strategic-Litigation-of-Enforced-Disappearance-in-Africa.pdf>.

Amiera's case received significant attention from civil society organisations, including REDRESS, which filed an urgent appeal with the UN Special Rapporteur on Torture, UN Working Groups on Arbitrary Detention and Enforced Disappearance, and the UN Committee on Enforced Disappearance.<sup>8</sup> Amiera was released several days after inquiries by the UN.

A second woman, a known member of the Khartoum area resistance committees, was arrested from her place of work by GIS personnel in late January 2022 after stepping outside to meet a colleague, after receiving a phone call indicating her assistance was needed. A statement by her colleagues suggests that the call was from the GIS. Her family received information from informal sources that she was detained in Omdurman Women's Prison but received no official confirmation of her whereabouts. Like many others, she was released on 21 February, coinciding with the UN independent expert's visit to Sudan. No criminal complaint was opened against her, and she was not interrogated while detained.

A man, referred to here as A.H.A., was arrested from his car after being chased by armed members of the GIS and was taken directly to Soba Prison. During his transfer to the prison, he was informed that he was seen in his car between protest areas, indicating that he was distributing leaflets to protestors. A.H.A. was not permitted to meet with his family or lawyer and was released after two weeks without charge, after the UN independent expert's visit to Sudan.

Two brothers were arrested for a first time and violently beaten before being placed under guard in an Omdurman police station, after several other police stations refused to receive them. On the second day of their detention, the brothers were released by the police because there was no complainant in their case and no evidence related to their arrest. Subsequently, GIS personnel raided and searched the brothers' home, and re-arrested both before transporting them to Soba Prison. Neither was interrogated, and they were denied visits from family members and lawyers. Emergency lawyers submitted a memorandum to the Public Prosecution in their case but have not received further information. The brothers were released after the UN independent expert's visit to Sudan.

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8 REDRESS, "UN Experts Urged to Intervene on Behalf of Prominent Sudanese Activist Disappeared in Raid," 27 January 2022, available at: <https://redress.org/news/un-experts-urged-to-intervene-on-behalf-of-prominent-sudanese-activist-disappeared-in-raid/>.

# Legal standards

Even under the declared (unlawful) state of emergency in Sudan, the arrests and detentions described in this briefing are neither strictly proportionate to the aim pursued nor applied in a nondiscriminatory manner and are thus prohibited under international law. As indicated above, while the ICCPR allows for certain emergency measures in response to “significant threats to the life of the nation,” strict requirements must be met. Detentions without trial or charge based on a person’s suspected or future threat to public safety are arbitrary and permissible only on an exceptional basis, subject to procedural guarantees.<sup>9</sup> The arrests and detentions described above and currently occurring do not respect these conditions. That many individuals are eventually charged with a crime does not remedy the arbitrariness of their detention.

Further, Sudan has acceded to or ratified a range of international treaties which forbid many of the abuses outlined in this report, including the UNCAT, the ICCPR, and the ICCPED. Since the coup, Sudan’s military authorities have publicly affirmed that the binding nature of these treaties, including in a [televised statement](#) made by al-Burhan on 25 October 2021, in which he said that all treaties signed under the transitional government are still in force. Joining these treaties means Sudan has made a commitment to respect, protect, and fulfil rights such as the freedoms of expression and assembly and the right to be free from torture and arbitrary detention.

## ARBITRARY DETENTION

The ICCPR, which Sudan ratified in 1986, provides that “[e]veryone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law.”<sup>10</sup> The ICCPR further requires authorities to properly and promptly inform a detainee of the “nature and cause of the charge against him,” present him or her before a court that can judge the lawfulness of the detention “without

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9 The right to liberty of the person, which is provided for under Article 9 of the ICCPR, is not among the non-derogable rights listed in the ICCPR. However, detentions implemented under a state of emergency—sometimes referred to as administrative detentions—must still comply with the derogation criteria specified under Article 4 of the ICCPR (see footnote 2). Detentions conducted under a declared state of emergency cannot be indefinite, and international and regional human rights bodies have confirmed that the right to habeas corpus or the equivalent must, in practice, be considered non-derogable; anyone deprived of their liberty has the right to challenge the lawfulness of his or her detention, in order that a court may decide “without delay” whether he or she is being held lawfully. *See, for e.g.*, Report of the Working Group on Arbitrary Detention, UN Doc. E/CN. 4/2004/3 (15 December 2003), para. 60 (“in no event may an arrest based on emergency legislation last indefinitely”), and Inter-American Commission on Human Rights — Annual Report, 1976, OAS Doc. OEA/Ser.L/V/II.40, Doc. 5 corr. 1 of 7 June 1977, Section II, Part I (“the declaration of a state of emergency or a state of siege cannot serve as a pretext for the indefinite detention of individuals, without any charge whatever. It is obvious that when these security measures are extended beyond a reasonable time they become true and serious violations of the right to freedom”).

10 International Covenant on Civil and Political Rights, Article 9(1).

delay,” and compensate those unlawfully detained.<sup>11</sup>

The UN Human Rights Committee has in its General Comment No. 35 interpreted the requirement to bring any person arrested or detained on a criminal charge “promptly” and “without delay” before a judge as meaning within 48 hours, stating that “any delay longer than 48 hours must remain absolutely exceptional and be justified under the circumstances.”<sup>12</sup> The majority of detentions described in this briefing are not in line with this 48-hour limit; as noted above, Sudanese law does not provide time limits for detentions conducted under a state of emergency, or for judicial oversight.

The Working Group on Arbitrary Detention has further set out scenarios in which the deprivation of liberty can be considered arbitrary, including when “detention is used in response to the legitimate exercise of human rights, such as arresting peaceful protestors for the mere exercise of their rights to freedom of opinion and expression [or] freedom of assembly and freedom of association.”<sup>13</sup> Detentions are also arbitrary when an “individual has been deprived of liberty in absence of any legislative provision that would authorise such detention,” or where the national authorities have failed to invoke a legal basis for arrest.<sup>14</sup>

## ENFORCED DISAPPEARANCE

Enforced disappearances are defined under international law as “the arrest, detention or abduction of an individual by state authorities or their agents followed by a refusal to acknowledge the deprivation of liberty or by concealing the fate or whereabouts of the person, which places the person outside the protection of the law.”<sup>15</sup> Among the rights an enforced disappearance violates are the right to liberty and security of the person, the right to be free from torture and other ill-treatment, and the right to a prompt, fair, and public trial.

Sudan ratified the ICPPED in August 2021 but has yet to implement the measures needed to prevent and protect against enforced disappearances, which were a primary tool used by the al-Bashir regime to suppress dissent.<sup>16</sup>

11 Detentions can be considered arbitrary when (a) the grounds for the arrest are illegal; (b) the person was not informed of the reasons for the arrest; (c) the procedural rights of the person were not respected; d) the person was not brought before a judge within a reasonable amount of time. See the International Covenant on Civil and Political Rights (Article 9). See also African Charter on Human and Peoples’ Rights (Article 6), stipulating that “[e]very individual shall have the right to liberty and the security of his person. No one may be deprived of his freedom except for reasons and conditions previously laid down by law. In particular, no one may be arbitrarily detained or arrested.”

12 See UN Human Rights Committee, General Comment No. 35, Article 9, Liberty and Security of Person, UN Doc. CCPR/C/GC/35 (16 December 2014), para. 33.

13 Working Group on Arbitrary Detention, “Revised Fact Sheet No. 26,” available at: <https://www.ohchr.org/sites/default/files/Documents/Issues/Detention/FactSheet26en.pdf> (noting that “deprivation of liberty is arbitrary if a case falls into one of the following five categories . . . category II: when the deprivation of liberty results from the exercise of the rights or freedoms guaranteed by articles 7, 13, 14, 18, 19, 20 and 21 of the Universal Declaration of Human Rights and, insofar as States parties are concerned, by articles 12, 18, 19, 21, 22, 25, 26 and 27 of the International Covenant on Civil and Political Rights.”)

14 *Ibid.* (Noting that “it is not sufficient that there is a national law authorising the arrest in question, the authorities must invoke that national law, usually through the notice of the reasons for arrest and charges, the presentation of a duly issued arrest warrant and the regular judicial review, to justify the particular instance of detention.”)

15 International Convention for the Protection of all Persons from Enforced Disappearance, Article 2.

16 See African Centre for Justice and Peace Studies, “Enforced Disappearance in Africa: Baseline Study for Sudan,” September 2020, available at: <https://www.acjps.org/baseline-study-for-enforced-disappearance-in-sudan-september-2020/>.

## TORTURE AND ILL-TREATMENT

International law bans torture, as well as cruel, inhuman, or degrading treatment at all times, including in declared states of emergency. The UNCAT, which Sudan ratified in August 2021, defines torture as:

*[A]ny act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity.*

UNCAT also forbids the use of evidence obtained by torture and requires states to ensure torture does not take place and prosecute alleged perpetrators of torture. To meet these requirements, states should have effective systems in place for addressing victims' complaints, and for prosecuting those who torture, those who order them to, and those in positions of authority who tolerate and fail to prevent or punish torture.

All victims of torture or other cruel, inhuman or degrading treatment or punishment are entitled to "adequate, effective and prompt reparation" which should be "proportional to the gravity of the violations and the harm suffered."<sup>17</sup> Full and effective reparation should include restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition, as appropriate in light of the individual circumstances of each case.<sup>18</sup>

Prior to the coup, Sudan's transitional government had taken some important steps towards bringing its domestic laws into compliance with the UNCAT, including by addressing some legislative shortcomings regarding torture. For example, the Criminal Procedure Act 1991 was amended to explicitly prohibit the torture of an "accused person," and the Criminal Code 1991 was amended to recognize that torture can be inflicted both physically and psychologically, with an increased penalty for torture (up to three years).

Even so, Sudan's legal system continued to lack adequate custodial protections or the necessary monitoring mechanisms to ensure the non-repetition of torture and other forms of ill-treatment, and the substantive and procedural immunities afforded to police officers, members of the armed forces, and others prevented victims from pursuing legal accountability.

Today, the broad immunities to the GIS and other security forces under EO No 3 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.

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17 United Nations General Assembly, "Basic Principles on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law," UN Doc. A/Res/60/147 (December 2005), available at: <https://undocs.org/en/A/RES/60/147>.

18 *Ibid.*

# Conclusion

Issued under an unlawful state of emergency, Emergency Order No 3/2021 contravenes Sudan's international human rights commitments and domestic legal obligations, and should be immediately repealed, in conjunction with the lifting of the declared state of emergency. The implementation of EO No. 3 has resulted in grave violations against protestors, activists, and civilian political leaders, with the objective of suppressing dissent across Sudan.

Sudanese military leaders should pledge to end arbitrary arrests, torture, and other forms of ill-treatment, and to establish credible mechanisms of oversight over its detention practices. Equally, Sudan's international partners and multilateral organisations, including the UN and African Union, should continue to issue calls for the lifting of the state of emergency and should make clear to Sudan's authorities that ongoing violations, including arbitrary arrests and detentions, will not be tolerated.

Front cover photo credit: A person wearing a Sudan's flag stand in front of a burning pile of tyres during a protest against prospect of military rule in Khartoum, Sudan October 21, 2021.  
REUTERS/Mohamed Nureldin Abdallah

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