

**Deep and harmful:
Addressing the root causes of human rights violations and impunity in
Sudan and the need for transformative justice**

I. Introduction

SOAS Centre for Human Rights Law, ACCESS, and REDRESS submit this report to the Independent International Fact-Finding Mission for the Sudan ('**Sudan FFM**'). The report addresses four interrelated points contained in the Call for Submissions and resolution A/HRC/RES/54/2 (2023) which sets out the mandate for the Sudan FFM,¹ namely:

Call for Submissions:

- recommendations on measures of prevention, protection, and reparation. These could include amongst others, policy and normative measures, accountability measures with a view to avoiding and ending impunity for any individual involved in ordering, facilitating, or perpetrating crimes under international law, as well as reparations measures for victims and survivors and their families; and
- recommendations on measures to be taken by third States, multilateral institutions, companies, and the private sector to increase human rights protections and the promotion of equality, truth, justice and reparations.

Sudan FFM mandate:

- to investigate and establish the facts, circumstances and root causes of all alleged human rights violations and abuses and violations of international humanitarian law; and
- to make recommendations, in particular on accountability measures, with a view to ending impunity and addressing its root causes, and ensuring accountability, including, as appropriate, individual criminal responsibility, and access to justice for victims.

This report was prepared on the basis of the authors' and organisations' long-standing expertise and their experience of working on Sudan. The methodology includes desk research into open-source academic, NGO, media and social media resources, up until 27 June 2024. On 7 June 2024, REDRESS convened a hybrid roundtable of Sudanese legal experts and practitioners to gather oral input on the main findings and recommendations. This input is not directly referenced in the report but triggered further research and reflection that served to refine the report.

The report builds on over two decades of engagement, including law reform advocacy and litigation, particularly in cases of torture before the African Commission on Human and Peoples' Rights, as well as research on justice for serious human rights violations in Sudan.² It

¹ UN Human Rights Council, [Responding to the human rights and humanitarian crisis caused by the ongoing armed conflict in the Sudan](#), A/HRC/RES/54/2 (2023)

² See REDRESS publications from 2003 to date (available [here](#)), including REDRESS and SOAS Centre for Human Rights Law, [Ruining a Country, Devastating Its People: Accountability for serious](#)

identifies the root causes of human rights violations and impunity in Sudan, which it understands as the social relations and structures in a wide sense.³ They encompass political, legal, social, economic, and cultural factors that have engendered violence and a lack of accountability therefor.

Doing so is a complex undertaking, given the multiplicity of explanatory factors, and the timeframe, with many of Sudan's current challenges having their origins in colonial relations.⁴ The causes contributing to the ongoing armed conflict can primarily be tracked back to more recent developments, beginning with the military coup in June 1989. This coup brought the regime of the then President Omar al-Bashir to power for almost 30 years – a period characterised by a combination of multiple armed conflicts and serious human rights violations⁵ as well as an autocratic Islamist regime. Notable peace agreements in the North-South, East, Blue Nile, South Kordofan and Darfur conflicts during this period did not stem but rather fuelled the prevailing logic of recourse to violence as the principal means of doing politics,⁶ whereby violations have been met with near total impunity. Following al-Bashir's ouster, the transitional period beginning in July 2019 intensified existing fault lines. The December 2018 revolution and planned transition to a democratic, civilian rule challenged the hegemonic position and interests of a series of actors in Sudan and the region. The revolution brought with it new civic movements, youth groups and political dynamics whose popularity was seen as a real threat by traditional forces and external actors. These forces reacted to this challenge with customary violence and ultimately turned on each other.

II. Situating human rights violations and impunity in their wider context

Sudan has a well-documented history of serious violations of international human rights law and international humanitarian law, including extrajudicial killings, torture, arbitrary detentions, and enforced disappearances, particularly since 1989, as well as several structural

[*violations of international human rights and humanitarian law in Sudan since 15 April 2023*](#)

(September 2023); Lutz Oette (ed), *Criminal Law Reform and Transitional Justice: Human Rights Perspectives for Sudan* (Ashgate 2011); Lutz Oette and Mohamed Abdelsalam Babiker (eds), *Constitution-making and human rights in the Sudans* (Routledge 2019).

³ Eric T. Hoddy and Paul Greedy, '[From agency to root causes: addressing structural barriers to transformative justice in transitional and post-conflict settings](#)' (2000) 15 *Contemporary Social Science* 561.

⁴ See African Union ('AU'), [Report of the African Union High-Level Panel on Darfur](#), PSC/AHC/2(CCVII) (2009), particularly para 49; further Lutz Oette, "Power, conflict and human rights in Sudan" in Oette and Babiker, *supra* note 2, at 15, 19-21.

⁵ Human Rights Watch/Africa, [Behind the Red Line: Political Repression in Sudan](#) (1996); Amin M. Medani, *Crimes against International Humanitarian Law in Sudan: 1989-2000* (Dar El Mostaqbal El Arabi, 2001); UN, [Report of the International Commission of Inquiry on Darfur to the United Nations Secretary-General](#) (2005); see additionally reports by the UN Human Rights Council special procedure mandate holders on Sudan, the reports by the UN Secretary-General on Darfur, the [reports of the Panel of Experts on Sudan](#), the concluding observations of the UN human rights treaty bodies on Sudan, the jurisprudence of the African Commission on Human and Peoples' Rights on cases against Sudan, and the reports by NGOs, such as the [African Centre for Peace and Justice Studies](#), Strategic Initiative in the Horn of Africa ([SIHA Network](#)), and [REDRESS](#) on human rights violations in Sudan.

⁶ Sharath Srinivasan, *When Peace Kills Politics: International Intervention and Unending Wars in the Sudans* (Hurst 2021).

and systemic human rights concerns.⁷ Such violations in Sudan are manifestations of what has become an embedded ‘culture’ of direct violence and structural violence.⁸ Such forms of violence have been characteristic of political developments in Sudan since 1989, with brief interludes following the signing of the 2005 Comprehensive Peace Agreement, and during the period from April 2019 (with the notable exception of the June 2019 massacre) until the military coup in October 2021. The violations committed in Sudan since October 2021 have common features, including their chief protagonists and perpetrators, and follow a similar logic to the use of violence witnessed from 1989 to 2019. Violations have been intertwined with impunity, producing vicious circles of recourse to violence and repression as a mode of doing politics.⁹ Such impunity denotes “the impossibility, de jure or de facto, of bringing the perpetrators of violations to account – whether in criminal, civil, administrative or disciplinary proceedings – since they are not subject to any inquiry that might lead to their being accused, arrested, tried and, if found guilty, sentenced to appropriate penalties, and to making reparations to their victims.”¹⁰ It “arises from a failure by States to meet their [multiple] obligations”, which derive from international human rights law and other sources, particularly international humanitarian law.¹¹ In the transitional period (July 2019 to, effectively, October 2021), military, security and other violent actors associated with the al-Bashir regime opposed holding perpetrators accountable and addressing past atrocities, including the commission of international crimes. Justice institutions and law reform processes adopted by the transitional government also largely failed to address the many obstacles and challenges of confronting the legacies of al-Bashir’s al-Ingaz regime.

Sudan has a history of military coups since its independence in 1956 which ended brief periods of democratic rule, beginning in 1958, and subsequently in 1969, 1989, and 2021.¹² Military coups also aborted processes of constitution-making for the last seventy years as the Sudanese

⁷ See *supra* note 4, 5, and UN Human Rights Committee (HRCt), [Concluding observations on the fifth periodic report of the Sudan](#), UN Doc CCPR/C/SDN/CO/5 (19 November 2018).

⁸ On direct violence, see Oette, *supra* note 4, at 30-32. The notion of structural violence refers to violence of injustice and inequity – “embedded in ubiquitous social structures [and] normalized by stable institutions and regular experience”. These structures, that is, social relations and arrangements in the widest possible sense, are considered violent because they marginalise people, sustain inequalities, frustrate people’s capabilities, and result in myriad forms of harm and suffering. Barbara Rylko-Bauer and Paul Farmer, “Structural violence, poverty, and social suffering” in David Brady and Linda M. Burton (eds), *The Oxford Handbook of The Social Science of Poverty* (Oxford University Press 2016) at 47.

⁹ See HRCt, *supra* note 7, stating: “The Committee is concerned that, not only has the State failed to hold to account perpetrators under national law, but it has also refused to cooperate with the International Criminal Court, which has issued arrest warrants against Sudanese nationals and officials on charges of genocide, crimes against humanity and war crimes (arts. 2 and 6-7).”

¹⁰ Diane Orentlicher, [Report of the independent expert to update the Set of principles to combat impunity](#), Addendum: Updated Set of principles for the protection and promotion of human rights through action to combat impunity’ UN Doc E/CN.4/2005/102/Add.1 (8 February 2005) at 6.

¹¹ *Ibid.*, 7.

¹² See W.J. Berridge, *Civil Uprisings in Modern Sudan: The ‘Khartoum Springs’ of 1964 and 1985* (Bloomsbury 2015); Willow Berridge et al. (eds), *Sudan’s Unfinished Democracy: The Promise and Betrayal of a People’s Revolution* (Hurst 2022).

people have not been able to adopt a permanent constitution.¹³ The military coup in 1989 was the most consequential for current developments. Its architects enshrined their rule through a combination of a coercive Islamist ideology and a violent security apparatus and proxy forces,¹⁴ while implementing legislative and institutional changes to enshrine impunity for violations.¹⁵ The coup and its aftermath as well as consequent developments were characterised by:

- permanent and de facto emergency rule;¹⁶
- legislative and constitutional changes that enhanced the repressive powers of the State while providing immunity for the police, army, and security forces;¹⁷
- institutional changes, particularly the dismissal of independent judges and prosecutors and others as well as changes in legal education which resulted in a weakened judiciary lacking independence, and the formation of a powerful security apparatus having powers of arrests and detention for prolonged periods. The security forces both received State funding and became economic actors in non-transparent (if not illicit) activities, which enhanced their powers and reach. These forces were not operating under any civilian or parliamentary oversight;
- the pursuit of a political, religiously cloaked ideology of Islamism, which resulted in discriminatory treatment (particularly of women and ethnic and religious minorities)¹⁸ and other violations (including resort to corporal punishments), and fuelled ideologically motivated warfare in the Nuba Mountains, Blue Nile, the South, and in Darfur, as well as tensions in other parts of the country;
- centralisation of power and denial of the right to self-determination and protection of minority rights;
- recourse to allied armed former rebel groups (e.g., the Justice and Equality Movement ('JEM') and Sudan Liberation Movement/Army (SLM/A)) as well as paramilitary forces such as the *Janjaweed* in Darfur to fight proxy wars (subsequently formalised under al-Bashir as the Rapid Support Forces ('RSF')), including the mobilisation of

¹³ See Mohammed Abdelsalam Babiker and Atta H. el-Battahani, *Reflections on Sudan's Constitutional Trajectory, 1953–2023: 70 Years Lacking Legitimacy, Democratic Governance and Ownership*, International Institute for Democracy and Electoral Assistance (IDEA) (11 August 2023).

¹⁴ Alex de Waal and A.H. Abdel Salam, "Islamism, State Power and Jihad in Sudan" in Alex de Waal (ed), *Islamism and its Enemies in the Horn of Africa* (Hurst 2004) 70.

¹⁵ Amin M. Medani, "A Legacy of Institutionalized Repression: Criminal Law and Justice in Sudan" in Oette, *supra* note 2, at 67.

¹⁶ See, e.g., post-October 2021 coup, REDRESS, [Taken from Khartoum's Streets](#) (March 2022).

¹⁷ See, e.g., REDRESS and SOAS Centre for Human Rights Law, [Domestic Accountability Efforts in Sudan](#) (May 2021); More recently, see Sudan Tribune, [Sudan strengthens intelligence service powers](#) (10 May 2024) (on the Sudanese de facto authorities reinstating broad immunities for the General Intelligence Service (formerly, the National Intelligence and Security Services), thereby reversing reforms made to the [National Security Act 2010](#) during the transitional period).

¹⁸ See, e.g., SIHA Network and REDRESS, [Criminalisation of Women in Sudan: A Need for Fundamental Reform](#) (November 2017).

fighters along tribal and ethnic lines.¹⁹ These actors had an ambivalent, transactional relationship with the State, which allowed them to have free rein and act with impunity as the price for their loyalty. The current dynamics of the war testify to this reality as now former rebel groups are fighting with the Sudanese Armed Forces (‘SAF’) against the RSF;²⁰ and

- oppression of political opposition, civil society, and youth groups, both in Khartoum and across the country.²¹

The manifold violations committed in the period from 1989 to 2019 were motivated and characterised by a mixture of the violent imposition of social and cultural standards based on the al-Bashir regime’s interpretation of Islamic law, economic exploitation and profit-making (including corruption), the maintenance of political control, as well as gendered, racial and class hegemony. The transitional period that commenced in 2019 resulted in some initial changes to reverse these features.²² Amongst other things, Sudan: (i) ratified the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and the International Convention for the Protection of All Persons from Enforced Disappearance; and (ii) undertook several key legal reforms, including prohibiting torture of those accused of a crime (and increasing penalties for public officials involved in carrying out torture), repealing discriminatory Public Order Laws, abolishing the crime of apostasy, criminalising female genital mutilation, and removing requirements for women to seek permission from a male relative to travel with children. The transitional government was, however, unable to succeed in bringing about more far-reaching or structural changes. This was due to the slow pace of bringing about changes, with Covid-19 a contributing factor, and, most importantly,²³ the continued influence of military actors, and, ultimately, the October 2021 coup d’etat.

¹⁹ See Enough Project, [Janjaweed Reincarnate: Sudan’s New Army of War Criminals](#) (June 2014). The formalisation and growth of the RSF from the *Janjaweed* are also emblematic of the proliferation of military and security actors in Sudan, fuelled in part by attempts by al-Bashir to “coup-proof his regime through fragmentation of the internal-security apparatus—a strategy that entails using different security organs as counterweights to one another, giving them overlapping responsibilities, and reducing their lines of communication and coordination. The goal is to make it more difficult for any one branch of the security apparatus to organize a coup”. Mai Hassan and Ahmed Kodouda, [Sudan’s Uprising: The Fall of a Dictator](#) (October 2019).

²⁰ See, e.g., [SPLM-N Agar](#), [the JEM faction led by Gibril Ibrahim](#), and [SLM-Minni Minnawi](#). Other armed groups have expressed their support for the SAF, including [the Sudanese Alliance](#), parts of the [GSLF](#), and forces led by [Musa Hilal](#).

²¹ See Oette, *supra* note 4, for an overview and [multiple REDRESS reports on Sudan published from 2003 until to date](#).

²² See, e.g., REDRESS and SOAS Centre for Human Rights Law, [Legal and Institutional Reforms in Sudan](#) (March 2021).

²³ See Mohamed Abdelsalam Babiker, “COVID-19 and Sudan: The Impact on Economic and Social Rights in the Context of a Fragile Democratic Transition and Suspended Constitutionalism” (2021) 65 *Journal of African Law Supplement S2: COVID-19 and the Law in Africa*, 311.

Accountability – that is having or being willing to account for one’s action to another person or entity – is based on equality before the law.²⁴ Its absence in Sudan, in contrast, denotes a system of domination. This domination is rooted in structural factors and defined by ethnic, religious-ideological, gendered, class and geographical axes. It is based on, and manifests itself in political, economic, social and cultural capital and influence. Such domination is not static but has been constructed and continuously enforced through violence, or the threat thereof. It has resulted in extreme privileges and power asymmetries that are seldom mediated through political, judicial or other institutional processes. Consequently, the high price of this hegemony, including the lack of prospect for peaceful political change and a successful life project for multiple groups in society, has engendered both armed rebellions and peaceful protests. Armed rebellions have resulted in a modification of power asymmetries (e.g., power-sharing) but not in any changes to the logic of exercising power, by force if necessary. Impunity is against this background rooted in, and based on the lack of political, judicial, or other processes that sufficiently counteract violent domination and power structures.

III. Root causes of human rights violations and impunity in Sudan

1. Legal and institutional framework

Sudan lacks a stable constitutional framework. Its first constitution was largely based on the Self-Government Statute of 1953, which, as a colonial legacy, endorsed the Westminster model. Subsequent constitutions were short-lived, including the ‘permanent’ constitution of 1973, leading to what has been described as Sudan being “in search of constitution and constitutionalism”.²⁵ This lack of a durable constitutional framework mirrors Sudan’s political instability, including a lack of participatory constitution-making. Recent constitutions, such as the 2005 Interim National Constitution, and to a large extent the 2019 Constitutional Declaration, are noteworthy for being both political pacts (to end an armed conflict as part of the Comprehensive Peace Agreement and to structure the transitional period respectively) and documents designed for interim or transitional periods.²⁶ Both of them have failed to engender constitutionalism in the absence of concomitant political, legal, and institutional changes. The Interim National Constitution was meant to bring about democratic transformation. However, amongst other factors, the absence of an effective Constitutional Court resulted in a weak legal culture of addressing critical political questions, scrutinising legislation, and protecting fundamental rights.²⁷ The 2019 Constitutional Declaration,²⁸ moreover, lacked detail of key measures to be taken during a very complicated transition, such as on: ‘transitional justice’, the

²⁴ See for this and wider notions of accountability, UN Special Rapporteur on Torture, [Report on accountability for torture and other cruel, inhuman or degrading treatment or punishment](#), UN Doc A/76/168 (16 July 2021).

²⁵ Ali Suleiman Fadlalla and Mohamed Abdelsalam Babiker, “In search of constitution and constitutionalism in Sudan: The quest for legitimacy and the protection of rights” in Oette and Babiker, *supra* note 2, at 41.

²⁶ See *ibid.*, 55-58, on the Interim National Constitution and the Comprehensive Peace Agreement “as flawed models of constitution-making”.

²⁷ REDRESS, CLRS, and Sudanese Human Rights Monitor, [Arrested Development: Sudan’s Constitutional Court, Access to Justice and the Effective Protection of Human Rights](#) (August 2012).

²⁸ See for the text of the declaration in [Arabic](#) (original) and [English translation](#) (prepared by International IDEA).

setting up of independent commissions, the legislative assembly, security sector reform, a unified army and dismantling of paramilitary forces (i.e., rebel armed groups, the RSF), and the establishment of the Constitutional Court in addition to fundamental reform of the justice sector including the judiciary and independence of the prosecution authorities.

Sudan's formal legal system was largely inherited from colonial times. It eroded in the late 1970s and 1980s under Jaafar Nimeri's regime (1969-1985) which was struggling to hold onto power.²⁹ The adoption of the so-called 1983 September laws which introduced Shari'a corporal criminal punishments, set an important, lasting precedent for how to instrumentalise supposedly religiously legitimated law for repressive (and overtly political) ends.³⁰ The subsequent period from 1989 to 2019 was characterised by the development of ideologically motivated and politically opportune legislation that strengthened the repressive power of the State while weakening legal and institutional protections. The key planks of repressive legislation consisted of criminal law (Shari'a, 'offences against the State', 'rioting', press freedoms as a means of justifying censorship and harassment), national security laws, the Anti-Terrorism Act,³¹ and emergency laws.³² The national security and emergency laws in particular vested the security forces and authorities with broad powers of arrest, detention, search and confiscation while enjoying immunity from prosecution.³³ This combination resulted in an extremely powerful, unaccountable security apparatus responsible for a series of human rights violations, including the torture of political opponents.³⁴ The criminal legislation used against political opponents, including civil society actors, was supplemented by legislation that sought to curtail the exercise of rights, such as the Sudanese Voluntary and Humanitarian Work Act 2006, the Press and Publications Act 2009 and the Trade Union Act 2010.³⁵ In the absence of political freedoms and a functioning democratic system protected by the judiciary, this setup engendered increasing opposition, both of armed rebel actors and peaceful political and social movements.

The system during the al-Bashir period also aimed at the transformation of society to impose an Islamist order. This order gave priority to a Saudi-influenced conception of Islam, which called for jihad against non-believers and a gendered hierarchy within society.³⁶ The former manifested itself in wars conducted in South Sudan, the Nuba Mountains, Blue Nile, and Darfur. The latter was enforced by means of gender-discriminatory legislation and public order

²⁹ Mark Fathi Massoud, *Law's Fragile State: Colonial, Authoritarian and Humanitarian Legacies in Sudan* (Cambridge University Press 2013).

³⁰ Abdelsalam Hassan Abdelsalam and Amin M. Medani, "Criminal Law Reform and Human Rights in African and Muslim Countries with Particular Reference to Sudan" in Oette, *supra* note 2, at 33, 46-49.

³¹ Available in Arabic [here](#).

³² Medani, *supra* note 15.

³³ *Ibid.*, see also REDRESS and KCHRED, [Reforming the National Security Services: Mandate, powers and accountability](#) (January 2009). See also HRCt, *supra* note 7, at para. 10.

³⁴ *Ibid.*; Amnesty International, [Agents of Fear: The National Security Service in Sudan](#) (April 2010); Amnesty International, [Sudan: "They descended on us like rain": Justice for victims of protest crackdown in Sudan](#) (10 March 2020).

³⁵ Front Line Defenders, [UPR Submission – Sudan](#) (21 September 2015).

³⁶ A. H. Abdel Salam and Alex De Waal, "On the Failure and Persistence of Jihad" in de Waal, *supra* note 14, at 21.

acts that opened the door to arbitrary moral policing and routine floggings.³⁷ In daily life, coercive social control therefore complemented the authoritarian, violent suppression of political opposition.

Sudan's legal system neither provides adequate protection against human rights violations nor mechanisms for accountability. Criminal laws are deficient as they fail to adequately criminalise violations such as torture, rape, arbitrary detention, or enforced disappearance.³⁸ Legislative reforms from 2007-2009, largely in response to the threat of prosecutions by the International Criminal Court ('ICC'), criminalised international crimes, namely genocide, crimes against humanity, and war crimes. However, the definitions of these crimes do not correspond to the ICC Rome Statute or the understanding of these crimes in customary international law.³⁹ Moreover, legislation provides for criminal and civil immunity for the police, army and security forces, which can only be lifted by a superior, to be followed, if immunity were exceptionally lifted, by a trial before specialised tribunals.⁴⁰ Sudanese lawyers have, appropriately, often used the terms immunity and impunity interchangeably. Impunity is not only built into the legal system, but has been a feature of peace agreements which were later incorporated into constitutional arrangements.⁴¹ None of the peace agreements provided for an effective criminal accountability mechanism or any transitional justice model,⁴² the absences of which can be viewed as intentional omissions by the negotiating parties to protect their mutual interests.

These legislative deficiencies combine with institutional shortcomings. Sudan's judiciary was significantly weakened by the mass dismissal of judges in the wake of the 1989 military coup, a lack of independent prosecutors, and the subsequent deterioration of legal education.⁴³ In practice, the judiciary, including the Constitutional Court, lacked independence and did not act as a protector of rights or counterweight to executive abuse of power. Consequently, and in combination with other factors, (potential) victims of violations lacked effective access to justice.⁴⁴ In addition, Sudan lacked an effective rule of law-compliant criminal justice system,

³⁷ Medani, *supra* note 15; HRCt, *supra* note 7, at para. 17.

³⁸ See Asma Abdel Halim, "Gendered Justice: Women and the Application of Penal Laws in the Sudan" in Oette, *supra* note 2, at 227; HRCt, *supra* note 7, at (n 7) paras 19, 33, and, for recent legislative changes, see REDRESS, [Sudan Legal Amendments: Explanatory Table](#) (July 2020). Sudanese law also fails to incorporate critical safeguards against torture and ill-treatment, e.g., Sudan [does not have an exclusionary rule](#) that prohibits the admission of statements extracted under torture, or other material derived from that torture, as evidence during legal proceedings.

³⁹ Mohamed Abdelsalam Babiker, "The Prosecution of International Crimes under Sudan's Criminal and Military Laws: Developments, Gaps and Limitations" in Oette, *supra* note 2, at 160.

⁴⁰ *Ibid.*, 174-78.; HRCt, *supra* note 7, at para. 37. See also *supra* note 17.

⁴¹ See, e.g., the absence of any reference to accountability in the Comprehensive Peace Agreement.

⁴² See on the accountability measures under the Doha Document for Peace in Darfur, UN, [Report of the United Nations High Commissioner for Human Rights on Impunity and Accountability in Darfur for 2014](#) (August 2015) paras 69-72.

⁴³ Massoud, *supra* note 28.

⁴⁴ HRCt, *supra* note 7, at para. 6. For instance, see: (i) inconsistencies between Sudanese law and judicial practice (e.g., [judges requiring a completed copy of Form 8](#) to commence criminal proceedings for all offences involving physical injury, despite [no such requirement under national law](#)); and (ii) lack of implementation of legal reforms by prosecutors and judges (e.g., survivors of

an independent national human rights institution, or other key bodies, such as a law reform commission.⁴⁵

When al-Bashir was ousted by the forces of the 2018 December revolution and a new transitional government formed in 2019, the latter therefore faced significant challenges to address a legacy of past violations and to undertake profound reforms of the legal and institutional framework. The 2019 Constitutional Declaration provided for an expansive list of duties to be performed by State agencies, with a particular focus on constitution-making, legislative and judicial reforms, combating discrimination, securing women's rights, rehabilitating victims of human rights violations, and a series of other measures, including establishing institutions such as independent Commissions.⁴⁶ Subsequently, the transitional government, particularly the Ministry of Justice, undertook some important reforms as described above (at section II).

Yet, what were arguably the most critical parts of addressing the legacy of violations faltered. A transitional justice bill, which was controversial on account of what was perceived as inadequate civil society participation, was delayed and consequently not implemented by the time of the October 2021 coup.⁴⁷ Institutionally, the constitutionally mandated Committee to Dismantle the June 30, 1989 Regime and Retrieve Public Funds commenced its work, but was itself effectively dismantled following the October 2021 coup.⁴⁸ The independent national commission of inquiry into the June 3 massacre was criticised for its delayed work by victims of the massacre and had not finished its work until the coup.⁴⁹ Among the most significant failings during the transitional period were the failures to establish a legislative body, the Constitutional Court, the High Judicial Council, and essential commissions for democratic transition (including the constitution-making commission and election commission). The limited progress made in effective security sector reforms and integration of armed groups and militias into a unified national army was regarded as one of the key causes leading to the outbreak of hostilities in April 2023. The primary reasons for these failings were the presence of the military and security forces, primarily the two parties to the current armed conflict, who had no interest whatsoever in seeing a fundamental change to the system which would, in turn,

sexual violence may, upon reporting the offence to the authorities, be charged with adultery (*zina*) and their report (including Form 8) used as evidence against them in subsequent criminal proceedings, despite [amendments](#) to the [Criminal Law Act 1991](#) in 2015 de-linking the offence of rape from that of *zina*).

⁴⁵ Ibid., para 8; Lutz Oette and Mohamed Abdelsalam Babiker, "[The Rule of Law and Human Rights in Sudan: challenges and prospects for reform](#)", in *Institutional Reforms Series (2)* (Sudan Democracy First Group, 2014); Mohamed Abdelsalam Babiker, "[Why Constitutional Bills of Rights fail to protect Civil and Political Rights in Sudan: Substantive Gaps, Conflicting Rights, and 'Arrested' Reception of International Human Rights Law](#)", in *Constitutional protection of Human Rights in Sudan: Challenges and Future Perspectives* (University of Khartoum, Sudanese Human Rights Monitor and REDRESS, 2014).

⁴⁶ Article 8 of the Constitutional Declaration of 2019.

⁴⁷ Babiker, *supra* note 44.

⁴⁸ Africa Intelligence, "[Khartoum tackles complex matter of dismantling Bashir-era Islamist networks](#)" (9 January 2023).

⁴⁹ Radio Dabanga, "[June 3 Massacre investigation committee forced to suspend its activities](#)" (20 May 2022).

put at risk their mode of doing politics and business (see below at sections III.2 and III.3). Furthermore, the weaknesses of the civilian component of the transitional government and the lack of a clear vision and robust agenda for the transition have all contributed to its failures.

Since the October 2021 coup, Sudan is *de facto* left with no constitution (the 2019 Constitutional Declaration has effectively become defunct), a legal and institutional system that is on multiple counts incompatible with international human rights standards and enshrines impunity, and the absence of much-needed bodies, measures, and reforms to address the legacy of human rights violations (including those predating the current armed conflict) and to prevent further violations, particularly security sector reforms. A presumed return to power of the Islamists, who are widely viewed as wielding significant influence on the SAF, risks replicating the system of pervasive human rights violations, recurring wars and violent discrimination that marked the al-Bashir years.

2. *Political structures and developments*

Sudan's history since independence has been characterised by authoritarian rule, often following military coups, interspersed with democratic interludes. Developments since the beginning of the 2018 revolution follow this pattern. The current armed conflict is a culmination of the absence of democratic processes and culture, which have since 1989, with increasing intensity, been replaced with the politics of violence by the State, its proxies, and rebel groups.⁵⁰ The resort to violence was part of the 1989 military coup and the cementing of power in its aftermath,⁵¹ ideologically motivated (or at least legitimated) wars in the South, the Nuba Mountains and Darfur, as well as South Kordofan and the Blue Nile in 2011, and the response to political challenges to the regime, whether armed or peaceful. Its driving force has been a combination of security to fend off challenges, self-enrichment, and patronage, which, institutionally, led to a State increasingly reliant on security and paramilitary forces that established their own spheres and networks of power.⁵² It also established a model that other armed actors sought to emulate. This was evident in proxy wars (e.g., the *Janjaweed* in Darfur)⁵³ and peace processes. The latter rewarded violent actors with a share of power and access to resources but ultimately fuelled, rather than stemmed, further violence in search for power.⁵⁴

Politics in Sudan have morphed into a securitised business model by (potentially) violent actors seeking to stay in power rather than the search for the best possible solutions for the majority of the population and the settlement of disputes. This has important implications. The primary focus, including budget spending, has been on the military and security, which, together with corruption, come at the expense of the realisation of collective rights and social, economic and cultural rights.⁵⁵ Politically, given the lack of democratic processes, the model has been

⁵⁰ Oette, *supra* note 4, at 30-32.

⁵¹ [Amnesty International and others v. Sudan](#), African Commission on Human and Peoples Rights Communication 48/90, 50/91, 52/91, 89/93 (1999).

⁵² Oette, *supra* note 4, at 27-30.

⁵³ See Alex de Waal, "[Counter-Insurgency on the Cheap](#)" (2004) 26 *London Review of Books*.

⁵⁴ Srinivasan, *supra* note 6.

⁵⁵ Committee on Economic, Social and Cultural Rights ('CESCR'), *Concluding observations on the second periodic report of the Sudan* UN Doc E/C.12.SDN/CO/2 (27 October 2015) paras 15-16.

characterised by political deal-making, limited interest in policy-making, the mobilisation of ethnic groups to achieve political ends, and the absence of transparency or accountability. It has also resulted in the exclusionary concentration of power in the hands of violent actors and concomitant marginalisation of others, effectively the vast majority of the population, particularly by means of a lack of participation and increasingly limited economic prospects.⁵⁶ This combination reinforced existing fault lines, fuelled further resistance, and increased emigration (both internally from the margins to the centre, i.e. Khartoum, and externally).

The increasing intertwining of militarisation and business interests has expanded the scope for violent actors, both in Sudan and abroad, such as RSF-affiliated young Sudanese men paid by regional powers to fight in Yemen.⁵⁷ Foreign States and institutions have played an important role in sustaining if not reinforcing this model. Several States, particularly neighbouring States, have both security and business interests in the current armed conflict and have reportedly supplied arms.⁵⁸ Beginning in 2014, the European Union and its member States engaged with Sudan in the so-called Khartoum Process, whose primary purpose was to control migration from the Horn of Africa. In so doing, it provided, at the least, additional political clout to the RSF which acted as border forces at the time.⁵⁹ This problematic willingness to treat violent, human rights-violating actors as reliable partners, even when they lacked any legitimacy whatsoever, including by the United Nations Integrated Transition Assistance Mission in Sudan (UNITAMS) and several States after the October 2021 coup, also largely appeared to underpin Western diplomacy until the outbreak of the current armed conflict on 15 April 2023.

The violent mode of doing politics combined with an aggressive Islamist ideology, particularly during the early al-Bashir years, resulted in increased political repression and aggression against the whole population, including ethnic and religious minorities. The ideological component behind these attacks had limited visibility for some time in the 2010s but is now widely believed to be a driving force behind the SAF.⁶⁰ This element is one factor that explains a novel feature of the current armed conflict. It constitutes a case of in-fighting amongst violent actors within the ruling forces, with both main protagonists having followed the logic of violence in Sudan over the last three decades and been involved in serious human rights violations.⁶¹ Notably, the in-fighting is largely split along the long-standing centre-periphery divide, with the RSF simultaneously embodying the wider military and security apparatus and portraying themselves as representing marginalised rebels from the periphery (but having

⁵⁶ Ibid., paras 21-22 on regional disparities and extreme poverty.

⁵⁷ Reem Abbas, [Money is Power: Hemedti and the RSF's Paramilitary Industrial Complex in Sudan](#), The Tahrir Institute for Middle East Policy (26 July 2023).

⁵⁸ See UN, [Final report of the Panel of Experts on Sudan](#), UN Doc S/2024/65 (15 January 2024) para. 42, which described allegations that Chad and the United Arab Emirates provided military support to the RSF as being “credible”. The new United States (‘U.S.’) Special Envoy for Sudan also acknowledged the reports as “credible” in [testimony before the U.S. Senate Foreign Affairs Committee](#).

⁵⁹ Lutz Oette and Mohamed Abdelsalam Babiker, “Migration Control à la Khartoum: EU External Engagement and Human Rights Protection in the Horn of Africa” (2017) 36 *Refugee Survey Quarterly* 64.

⁶⁰ Khalid Abdelaziz, [Exclusive: Islamists wield hidden hand in Sudan conflict, military sources say](#), Reuters (28 June 2023)

⁶¹ REDRESS and SOAS Centre for Human Rights Law, *supra* note 2, at 10-12.

themselves targeted marginalised communities such as the Masalit, Fur, and Zaghawa in Darfur).⁶² This divide is even more marked by the involvement of the Islamists. As a political force, they represent a concentration of power and essentially abusive relationship with the regions, a feature that the RSF have emphasised in their statements and public relations.⁶³ These dynamics contribute to the ethnic dimension of the war, particularly ethnically targeted attacks.⁶⁴

The authoritarian and violent mode of doing politics has excluded large parts of the Sudanese population from decision-making in the absence of genuine democratic processes and free and fair elections. Civil society groups kept a level of opposition and scrutiny of violations throughout the al-Bashir era.⁶⁵ Several wider movements developed during this period, such as Girifna and No to Women Oppression, as well as a number of human rights organisations. These movements were pivotal to massive public protests in September 2013 that were violently suppressed by government forces.⁶⁶ They provided the nucleus for the outbreak of the 2018 revolution and the Forces for Freedom and Change. The revolution and subsequent protests, including the sit-in that resulted in the 3 June 2019 massacre and the anti-coup protests in response to which over a hundred peaceful protesters were killed, had a common denominator transcending any internal divisions: the establishment of civilian rule. The revolutionary slogan of peace, freedom, and justice expresses the principles of and hopes for a new, democratic order.⁶⁷ It also constitutes a conscious, explicit rejection of the politics of violence and its chief proponents. This was evident in the peaceful nature of protests and the political charters adopted and signed by numerous resistance committees in 2022.⁶⁸ The resistance committees have been at the forefront of campaigning for and envisioning a new participatory, democratic order for Sudan. They have also organised at the grassroots level, providing numerous services in the absence of a functioning State, such as waste disposal since

⁶² UN, [Statement by Ms. Alice Wairimu Nderitu, United Nations Special Adviser on the Prevention of Genocide, on the situation in El Fasher, Darfur](#) (5 June 2024).

⁶³ See, e.g., [Tweet from the RSF, 18 April 2023](#); [Tweet from the RSF, 4 May 2023](#); [Tweet from the RSF, 12 May 2023](#); [Tweet from the RSF, 22 May 2023](#); [Tweet from the RSF, 29 May 2023](#); [Tweet from the RSF, 1 June 2023](#); [Tweet from the RSF, 4 August 2023](#); [Tweet from the RSF, 7 October 2023](#); [Tweet from the RSF, 15 January 2024](#); [Tweet from the RSF, 20 February 2024](#); [Tweet from the RSF, 6 March 2024](#); [Tweet from the RSF, 22 March 2024](#); [Tweet from the RSF, 3 April 2024](#); [Tweet from the RSF, 4 April 2024](#); [Tweet from the RSF, 25 April 2024](#); [Tweet from the RSF, 8 May 2024](#). On the RSF's public relations strategy, see Mat Nashed, [The soft-power campaign of Sudan's RSF leader 'Hemedti'](#), Al Jazeera (20 April 2023); Africa Intelligence, [Hemedti's brothers wage his social media war](#) (21 April 2023); Vincent Duhem, [Sudan: Hemedti's multi-million dollar image make over](#), The Africa Report (25 April 2023); Mohamed Suliman, [Canada Must Take a Stand Against Lobbying Efforts for Sudan's RSF Militia](#), Jurist News (8 November 2023).

⁶⁴ See, e.g., UN, [Sudan: UN Committee urges end to ethnic violence and hate speech, calls for immediate ceasefire](#) (16 April 2024).

⁶⁵ See, e.g., Sudan Call, [A Political Declaration on the Establishment of a State of Citizenship and Democracy](#) (3 December 2014).

⁶⁶ UN, [Report of the Independent Expert on the situation of human rights in the Sudan](#), Mashood A. Baderin, UN Doc A/HRC/27/69 (4 September 2014) paras 32-41.

⁶⁷ Hadeel Osman, [Sudan: A New Generation Demands Freedom, Peace and Justice](#), TAP (21 December 2020).

⁶⁸ See, e.g., Muzan Alneel, [The Charters of Sudan's Political Landscape](#), The Tahrir Institute for Middle East Policy (26 April 2022)

the October 2021 coup, and medical aid and food kitchens since the outbreak of the current armed conflict.⁶⁹ The committees have therefore become a key political and social force for change, including when compared to political parties, several of which had become weakened if not compromised during the al-Bashir era.

While the resistance committees and other opposition forces operate nationwide, there is a degree of tension with armed opposition movements in the peripheries. These movements have mobilised to gain regional concessions, which were negotiated in the 2020 Juba Peace Agreement.⁷⁰ These developments point to three main ways of doing politics in Sudan, espoused by groups that are far from uniform if not opposed to each other: (i) the violent gaining or maintenance of power by military or security elites (the SAF, Islamists, the RSF); (ii) the violent gaining of concessions, including power-sharing, if not regional power (rebel movements); or (iii) peaceful, civilian rule (civil society, revolutionary forces, and political parties). The RSF are in a unique position. They both belong to the military and security elites, after their formal incorporation during the al-Bashir regime, and empowerment in the Transitional Sovereign Council ('TSC') and coup regime, which instituted their leader as Deputy-Head of the TSC and now the RSF constitutes a (rebel) movement that claims to represent (a certain constituency of) a marginalised region, namely Darfur.

3. *Economic and environmental factors*

“Sudan has strong natural capital, with huge natural resource endowments, including arable land, livestock, and minerals” according to the African Development Bank group.⁷¹ Yet, the latest UNDP Human Development Report categorises Sudan as a low development country ranking 170 out of 193 countries, a ranking that is bound to deteriorate as a result of the war.⁷² Sudan’s underdevelopment is structural. The centre-periphery divide, harking back to colonial

⁶⁹ Aida Abbashar, [Resistance Committees and Sudan’s Political Future](#), *PeaceRep* (5 July 2023); Rawh Nasir, Tom Rhodes, and Philip Kleinfeld, [How mutual aid networks are powering Sudan’s humanitarian response](#), *The New Humanitarian* (2 August 2023); Nils Carstensen and Lodia Sebit, [Mutual aid in Sudan: the future of aid?](#), *Humanitarian Practice Network* (11 October 2023); Sudan Crisis Coordination Unit, [Sudan’s Emergency Response Rooms – June – November 2023](#) (30 November 2023). On recent challenges to grassroots mutual aid networks, see Reuters, [Sudanese left in the dark by RSF-imposed telecoms blackout](#) (12 February 2024); Rawh Nasir, [We are on the edge’: Communication blackout thwarts mutual aid efforts in besieged Khartoum](#), *The New Humanitarian* (4 March 2024).

⁷⁰ Amar Jamal, [Key Actors in the Juba Peace Agreement: Roles, Impacts, and Lessons](#), *Rift Valley Institute and XCEPT* (2023). This method of doing politics has continued since the start of the current conflict. While most armed groups initially remained neutral (which could be perceived as hedging their bets while conflict dynamics developed), several key groups have since aligned with the SAF (*supra*, note 19) – in part as a means of securing/enhancing their future political prospects. See, e.g., Sudan Tribune, [New coalition in Sudan eyes political pact with military](#) (13 March 2024); Dabanga, [Sudan political blocs’ charter shapes post-war transition](#) (10 May 2024). The issue of neutrality has been divisive within armed groups, e.g., splintering the JEM (Sudan Tribune, [JEM prominent leaders defect after denouncing the Movement’s leader](#) (30 August 2023)), and the Gathering of the Sudan Liberation Forces (Darfur24, [Disagreements flare up as Sudan Liberation Forces dismisses its chairman](#) (12 May 2024)).

⁷¹ African Development Bank Group, *Sudan Economic Outlook* (2023).

⁷² UNDP, Human Development Report 2023/2024, [Breaking the gridlock: Reimagining cooperation in a polarized world](#) (13 March 2024).

times, has concentrated wealth and power in the capital.⁷³ The economy is geared towards the needs of the capital, including food production.⁷⁴ The main economic beneficiaries in the al-Bashir era were key figures in the Islamist movement, the security apparatus and business persons close to them who benefited from the oil boom, particularly until 2011, and neo-liberal measures.⁷⁵ The oil boom was followed by a gold boom which now makes up the majority of exports.⁷⁶ The ruling political elites and security figures primarily focused on resource extraction and corruption, amassing considerable wealth in what has been called ‘kleptocracy’.⁷⁷ This included, particularly on the part of actors such as the security services, running business operations that lacked transparency, and, especially in the case of the RSF, illicit operations such as gold mining.⁷⁸ This self-enrichment, which included the involvement of numerous external actors, has contrasted sharply with consistent underinvestment in infrastructure and crucial services. Government funds were opaque and taxation inadequate and unjustly enforced.⁷⁹ Available funds were largely spent on the security service, instead of the realisation of social, economic and cultural rights, particularly in the field of health and education, and the combating of poverty.⁸⁰ Considerable parts of the population, particularly but not solely internally displaced persons, have suffered from chronic food insecurity and reliance on external humanitarian aid during crises.⁸¹ This dire situation has been aggravated, and risks further aggravation, due to environmental degradation, including “deforestation, land degradation, loss of biodiversity and habitat, pollution of air, land, and water, conflicts over diminishing natural resources, food insecurity and poor waste and sanitation services in urban areas”.⁸² Such environmental degradation has been linked to fuelling conflicts in Sudan.⁸³ Large-scale development projects, such as dams and land grabbing, including selling out land to foreign buyers or private businesses affiliated with the Islamists, have also had adverse environmental impacts, besides resulting in forced displacement and impoverishment⁸⁴ and in

⁷³ Oette, *supra* note 4.

⁷⁴ Edward Thomas, *Patterns of growth and inequality in Sudan, 1977-2017*, Working Paper, Institute for Middle East Studies and Islamic Studies, (Durham 2017).

⁷⁵ Ibid.; Siddig Umbadda, “Towards Institutional Reform and Economic Policies Supporting Stability (after Political Reconciliation)” *Institutional Reform Series Paper No 3* (Sudan Democracy First Group 2017); Suliman Baldo, *Khartoum’s Economic Achilles’ Heel: The Intersection of War, Profit, and Greed*, Enough Project (2016).

⁷⁶ Edward Thomas and Alex de Waal, “Hunger in Sudan’s Political Marketplace” *Occasional Paper 32* (World Peace Foundation, 2 April 2022).

⁷⁷ Alex de Waal, “[The Revolution No One Wanted](#)” (2023) 45 *London Review of Books*.

⁷⁸ Final report of the Panel of Experts, *supra* note 51; Suliman Baldo, [To End War in Sudan, Target the General’s War Chest](#), Just Security (2 May 2023).

⁷⁹ See additionally Matthew Benson, Muzan Alneel, and Raga Makawi, [The Everyday Politics of Sudan’s Tax System: Identifying Prospects for Reform](#) LSE Conflict and Civiness Research Group and Peace and Conflict Resolution Evidence Platform, (11 January 2023).

⁸⁰ CESCR, *supra* note 54.

⁸¹ Ibid., para 49. World Food Programme, [Emergency: Sudan](#) (no date).

⁸² UN Environment Programme, [State of the environment in Sudan](#) (no date).

⁸³ UN Environment Programme, [In Sudan, conflict and environmental decline go hand in hand](#) (4 November 2022).

⁸⁴ CESCR, *supra* note 54 at paras 11-12, 23-24.

some situations aiding and abetting the commission of war crimes by international companies in oil concession fields.⁸⁵

The lack of economic prospects, particularly for young people, has been amongst the key factors propelling emigration, rebellion and protests.⁸⁶ The economic development in the al-Bashir era had also resulted in growing challenges and inequality in Sudan since 2011, which fuelled resentment and opposition.⁸⁷ These components combined with political dynamics to constitute important factors in the 2018 revolution. The political transition threatened the economic interests of members of the former regime and the security sector. This explains why Islamist actors and security forces, in the face of discussions surrounding security sector reforms, have had a strong interest in thwarting, and reversing, measures that would undermine (further) their kleptocratic business model.

4. *Social structures and dynamics*

Sudan's social structures and dynamics are marked by multiple, frequently intersecting hegemonies that result in inequality and discrimination. While several of these structures are deep-rooted, the al-Bashir era witnessed the "politicisation of the central ideological values around ethno-religious identity".⁸⁸ The regime instrumentalised its Islamist ideology to create or deepen, both rhetorically and practically, differentiations based on the dichotomy of a superior and inferior status in society.⁸⁹ Race, gender and class have been important markers in this process. Racism against 'non-Arabs' and 'blacks' who are often referred to as 'slaves' can be tracked back to colonial times.⁹⁰ Its prevalence, and in-built dehumanisation, explain both exposure and resort to extremely brutal forms of violence. This was evident in the North-South civil war and wars in the Nuba Mountains, Darfur, Blue Nile, and South Kordofan.⁹¹ Racial discrimination has also been an integral feature of policing and law enforcement.⁹² Since the outbreak of the revolution, counter-attacks by violent actors, State fragility, and local dynamics have reportedly given rise to an increase in tensions accompanied by hate speech in

⁸⁵ See, e.g., Business & Human Rights Resource Centre, [Sweden: In historic indictment, public prosecutor charges Lundin Energy executives with complicity in Sudan war crimes](#) (11 November 2021); Lena Bjurström, [Oil and War Crimes in Sudan: Lundin Trial Opens in Sweden](#), JusticeInfo.Net (4 September 2023). See also PAX Unpaid Debt, [OMV AG executives accused of complicity in war crimes](#) (7 May 2024).

⁸⁶ Susanne Jaspars and Margie Buchanan-Smith, [Darfuri migration from Sudan to Europe: From displacement to despair](#), Humanitarian Policy Group and Research & Evidence Facility (August 2018).

⁸⁷ See, e.g., Ben Lowings, [Sudan: Economy and Military in the Fall of Bashir](#) Brussels International Centre Policy Brief (April 2019).

⁸⁸ Equal Rights Trust in partnership with Sudanese Organisation for Research and Development, [In Search of Confluence: Addressing Discrimination and Inequality in Sudan](#) (October 2014) VI.

⁸⁹ Oette, *supra* note 4, at 19-22.

⁹⁰ Amir Idris, *Sudan's Civil War: Slavery, Race, and Formational Identities* (Edwin Mellen Press 2001).

⁹¹ Oette, *supra* note 4, at 21.

⁹² Committee on the Elimination of Racial Discrimination ('CtERD'), [Concluding observations on the combined twelfth to sixteenth periodic reports of the Sudan](#), UN Doc CERD/C/SDN/CO/12-16 (12 June 2015) para. 13, with reference to excessive use of force during demonstrations and ill-treatment of human rights defenders.

various parts of Sudan, which reached unprecedented levels after the eruption of the war in April 2023.⁹³ This can be viewed as an indication that racism and hate speech are utilised to assert aggressive, ethnically-informed ideologies to gain or maintain local if not national power. There is a long history of resistance to racism in Sudan, including in John Garang's vision of a "New Sudan".⁹⁴ The revolutionary protest movement adopted the slogan "We are all Darfur" to express solidarity with marginalised groups who have been subjected to (primarily) State violence.⁹⁵ The rhetoric and fight by the RSF demonstrates, however, that experiences of racism and violence can be a contributing factor that results in extreme counterviolence and destruction, such as in Darfur, Khartoum, Gezira, Sinar, and the Kordofan States during the current armed conflict.⁹⁶

Gender is another major marker of discrimination. The al-Bashir regime legally institutionalised gender-based discrimination, particularly in personal laws and public order laws as a means of social control.⁹⁷ It also committed (or permitted) the commission of, large-scale gender-based violence against women, particularly in the context of armed conflicts, such as in Darfur, and in policing.⁹⁸ This pervasive discrimination led to numerous protests and movements, such as No to Women Oppression, which played a major role in generating momentum for and during the revolution.⁹⁹ The threat to gender-based hierarchies posed by the revolution, and the macho-militarist culture pervading the Sudanese security sector and groups such as the RSF, help to explain the backlash and continuous reports about what must be considered both widespread and systematic gender-based violations against women, including rape and sexual slavery as a tool of war.¹⁰⁰

⁹³ Rights for Peace, [Discrimination and Hate Speech Fuel Violence in Sudan](#) (March 2021).

⁹⁴ John Garang, *The Call for Democracy in Sudan* (Kegan Paul International 1992).

⁹⁵ Taariq Elmahadi, ["We Are All Darfur" in Khartoum: A Conversation on the Sudan Uprising with Sara Elhassan](#) (2020) 1 *National Review of Black Politics* 154.

⁹⁶ See, e.g., Human Rights Watch, [The Massalit Will Not Come Home](#), ACLED (9 May 2024), [Sudan: Escalating Conflict in Khartoum and Attacks on Civilians in al-Jazirah and South Kordofan](#) (15 March 2024); Mat Nashed, ["They're going to kill us": Sudan's army targets civilians on ethnic basis](#), Al Jazeera (16 January 2024). There are also reports that the RSF has organised itself around an enslavement structure that it has embedded into its military operations, particularly in parts of Darfur, Khartoum, and Gezira (see, e.g., reports by [the Office of the High Commissioner for Human Rights \('OHCHR'\)](#), [UN Special Procedures](#), [SIHA Network](#), and [African Centre for Justice and Peace Studies](#)).

⁹⁷ Ebtisam Sanhoury Elrayh, "Women's rights in Sudan: Constitutional recognition and lived experiences" in Oette and Babiker, *supra* note 2, at 160; Halim, *supra* note 37; SIHA Network and REDRESS, [Criminalisation of Women in Sudan: A Need for Fundamental Reform](#) (2017); HRCt, *supra* note 7, at paras 14, 17.

⁹⁸ *Ibid.*; see additionally [further reports by SIHA throughout this period](#).

⁹⁹ Sarah O. Nugdalla, "The Revolution Continues: Sudanese Women's Activism" in Awino Okech (ed), *Gender, Protests and Political Change in Africa* (Palgrave Macmillan 2020) 107.

¹⁰⁰ See [Sudan: Scourge of sexual violence amid ongoing conflict demands urgent response](#), Joint Statement by the Special Representative of the Secretary-General on Sexual Violence in Conflict, Pramila Patten, and Assistant Secretary-General for Humanitarian Affairs and Deputy Emergency Relief Coordinator, Joyce Msuya (25 April 2024). ; UN, [Sudan: UN experts appalled by use of sexual violence as a tool of war](#) (30 November 2023); REDRESS and SOAS Centre for Human Rights Law, *supra* note 2. (n 2)

Class is a factor that has received less attention in the analysis of Sudan's social dynamics but is deeply engrained, particularly when combined with ethnicity and gender. There have been long-standing critiques of exploitative labour conditions and the neglect of both rural workers and those living and working on the margins in cities such as Khartoum.¹⁰¹ This includes internally displaced persons who constitute an important stratum of society that frequently finds itself excluded from access to labour, health, and education services and networks on account of their status, and have repeatedly been the subject of human rights violations and exclusion.¹⁰²

The politics and social dynamics of hegemony have been increasingly challenged by its victims and civil society actors, including human rights defenders. These dynamics have created significant rifts in society, particularly along gendered and generational lines. The reasons for the October 2021 coup and subsequent violence are therefore not confined to political and economic power but also seek to maintain, or re-establish, social and cultural hegemony. As hegemonic actors lost most if any legitimacy they ever had, such hegemony can only be upheld through the use of constant repression and violence as it will engender continuous opposition. The violent oppression of protests (including the extrajudicial killings of hundred protestors in Khartoum) after the October 2021 coup and reports of arbitrary arrests, detention, torture and enforced disappearances of civil society activists, members of resistance committees, journalists, trade unionists, and lawyers during the current war, constitute a parallel, 'shadow', war, by military intelligence of both SAF and RSF commanders.¹⁰³ It demonstrates that the

¹⁰¹ Thomas and de Waal, *supra* note 75.

¹⁰² [Report of the Special Rapporteur on the human rights of internally displaced persons, Chaloka Beyani, Addendum: Mission to Sudan](#), UN Doc A/HRC/23/44/Add.2 (25 June 2013). See, on discrimination and marginalisation faced by foreign nationals, Munzoul A.M. Assal, "Citizenship, statelessness and human rights protection in Sudan's constitutions and post South Sudan secession challenges" in Oette and Babiker, *supra* note 2 at 118, 131-137.

¹⁰³ See, e.g., the case of Mohamed Adam (better known as 'Tupac'), a key emblematic case of the Sudanese de facto authorities continuing to target grassroots activists. On 15 January 2022, Tupac (then 17 years old) was arrested from a Khartoum-area hospital after sustaining injuries during a protest. Along with three other young men, [Tupac was charged with the killing of a police brigadier general during the same protest](#). He was held in incommunicado detention by security forces and subjected to torture and other forms of ill-treatment, including to extract his confession (no other credible evidence was presented substantiating the charges issued against him). Shortly after the outbreak of the current armed conflict, around 21 April 2023, [severe damage was inflicted on al-Huda Prison](#) in Omdurman. Most of those detained in al-Huda Prison were released by prison authorities, including [Tupac](#). Following his release, [Tupac recorded a video](#) speaking of his willingness to turn himself in to the authorities once it was safe to do so, and that he would demonstrate his innocence. In May 2023, he was [arrested again](#) by the [\(then recently deployed\)](#) Central Reserve Police. The legal basis for this arrest (if any) is unclear. At the time of this arrest, Tupac was convening a meeting with other grassroots actors discussing how to aid internally displaced people. He was [subsequently released](#) before, around 17 August 2023, he was [arrested again](#) by SAF Military Intelligence. This arrest was reportedly tied to his 'escape' from al-Huda Prison. While in detention, [Tupac displayed visible signs of torture](#), including being seen "shackled and bleeding". He was again released following the [retraction of written evidence](#) supposedly "implicating" Tupac. According to public reporting, on 8 April 2024, the [East Gedaref Criminal Court convicted Tupac](#) of waging war against the State under Article 51(a) of the [Criminal Act 1991](#) (a broad offence that includes 'abetting' or

violent actors who were in power during the al-Bashir regime, and post the 2018 revolution transition (and also after the coup) have resorted to the same pattern of systematic and widespread violations which in the context of the war may amount to both war crimes and crimes against humanity. It is reflective of the type of order they are likely to establish if they were to come to power following the war. It also indicates that one of the key agendas of the war, by both parties, is to abort the revolutionary slogans represented in the fight for justice and accountability which no doubt stands against the interests of both SAF and the RSF. Consequently, any negotiated peace settlement and political arrangements in Sudan following the war, including a transition towards civilian rule, must be cognisant of this reality.

5. *The role of regional and international actors*

Regional and international actors have played an ambivalent role in Sudan and have contributed to its instability and violent politics. Such actors have: (i) been complicit in violations by providing arms and actively supporting violent actors; (ii) pursued economic interests that have fuelled rights violations; (iii) adopted policies that were detrimental to human rights protection; (iv) adopted both passive and proactive positions in aborting Sudan's democratisation in response to the 2018 revolution; and (v) failed to engage in a way that advances peace and human rights protection.¹⁰⁴ Overall, there has been a marked lack of a sustained, concerted effort based on clear parameters and principled engagement, including with respect to accountability mechanisms.

Regional and international actors have engaged in the flawed peace process logic (see above at sections I and III.2), which helped in reinforcing the status and power of violent actors. The approach of focusing on 'men with guns' for the last thirty years, including in diplomacy during the transitional period, points to a wider failure to prioritise the rights, interests and needs of the Sudanese people and to pursue a transformative agenda towards civilian rule, democratic transformation, and rule of law institutions, particularly following the 2018 revolution. This liberal peace model has stalled (but not ended) cycles of violence, while also perpetuating and entrenching the powers of military actors and providing them with a new 'lease of political life' and international recognition and legitimacy.¹⁰⁵ It allowed them to become peace makers and implementers of flawed peace agreements often endorsed by regional and international actors such as the UN and AU.

The UN has played a prominent role in Sudan in the last two decades. Its ability and willingness to discharge the responsibility to protect has been limited, though.¹⁰⁶ For all its limitations, the ill-informed decision to terminate the mandate of the United Nations – African Union Mission in Darfur (UNAMID) in December 2020 at the request of the transitional government has left a significant protection vacuum on the ground that has been evident in the run-up to and during

'supporting' those who fight against the State; punishable by death, life imprisonment, or other custodial sentence). He has reportedly been sentenced to life imprisonment. The authors of this report have been unable to verify this reported conviction/sentencing.

¹⁰⁴ Final Panel of Experts Report, *supra* note 57; Oette, *supra* note 4, at 35-36.

¹⁰⁵ John Young, *The Fate of Sudan: The Origins and Consequences of a Flawed Peace Process* (Zed books 2012); Fadlalla and Babiker, *supra* note 24.

¹⁰⁶ See additionally David Lanz, *The Responsibility to Protect in Darfur From Forgotten Conflict to Global Cause and Back* (Routledge 2020).

the current armed conflict, with UNITAMS failing to prevent the deterioration of the situation before its mandate ended in December 2023.¹⁰⁷ Furthermore, UNAMID forces were withdrawn from Darfur and replaced by UNITAMS – an assistance mission lacking a robust mandate for the protection of civilians. Ironically, it is worth noting here that UNAMID forces were replaced by joined SAF-RSF forces for the protection of civilians; the same forces now responsible for the ongoing armed conflict and the documented commission of international crimes including war crimes, crimes against humanity, and genocide against the civilian populations supposed to be protected in Darfur.

UN and AU bodies have played an important role in documenting and monitoring human rights violations, in providing an analysis of the causes of violations, and in setting out accountability mechanisms, which have, however, largely been ineffective.¹⁰⁸ The UN International Commission of Inquiry on Darfur produced an important and influential report identifying responsibility for violations of international human rights and humanitarian law and international crimes in Darfur in 2005.¹⁰⁹ However, the subsequent UN Security Council referral of the Darfur situation to the prosecutor of the ICC through resolution 1593 (2005) was not followed up by either adequate support for the Court nor effective Security Council engagement. The UN country mandate special procedure of the Human Rights Council on Sudan has produced a valuable record of human rights concerns and priorities but has suffered from limited engagement on the part of Sudan and international action taken as well as follow-up by the UN Human Rights Council on numerous recommendations by various special rapporteurs and independent experts since 1993. Sudan had been under the UN special procedures system for almost three decades, however, with limited impact on the human rights situation. The establishment of the Sudan FFM is a critical step in responding to the current armed conflict with a view to effective documentation and investigation, and, eventually, accountability of the perpetrators of violations and transformative change in Sudan towards a State that is respectful of human rights. To achieve this goal, the Sudan FFM needs a conducive, supportive institutional environment, both in terms of the length of its mandate and adequate financing and personnel. In this respect, it is crucial that the UN Human Rights Council extends its mandate for at least one year to allow it to pursue and fulfil its complex mandate, recognising the profound impact of the UN's liquidity crisis on the Sudan FFM's staffing and operationalisation.¹¹⁰ It also requires the provision of additional support, including funding, for the Sudanese civil society organisations and victim groups with direct access to the country and established relationships of trust with victims (noting the risk of re-traumatisation and re-

¹⁰⁷ UN, [Security Council Terminates Mandate of UN Transition Mission in Sudan, Adopting Resolution 2715 \(2023\) in Vote of 14 in Favour to 1 Abstention](#) (1 December 2023). UNITAMS has [subsequently completed its withdrawal](#) from Sudan.

¹⁰⁸ The main focus of this section is on the role of the UN. The AU has played an important role on human rights protection in Sudan, particularly through the African Commission on Human and Peoples' Rights and specific interventions such as the AU High-Level Panel on Darfur (*supra* note 4) though the AUPD's recommendations were not implemented.

¹⁰⁹ Report of the International Commission of Inquiry on Darfur, *supra* note 5.

¹¹⁰ See, e.g., Human Rights Watch, [UN's Financial Troubles Jeopardize Critical Human Rights Work](#), (13 February 2024); Amnesty International, [Sudan: Give UN Fact-Finding Mission a Chance](#) (4 March 2024); REDRESS, [One Year On: Urgent Strategy Shift Required to Halt Atrocities in Sudan](#) (15 April 2024).

victimisation when a survivor is interviewed multiple times over, in addition to the risk of reprisals from both the SAF and RSF). The terminations of the mandates of fact-finding missions and commissions of inquiry on Libya, Yemen, and Ethiopia demonstrate the detrimental influence of certain actors and the perils of a short-termism approach to human rights protection.¹¹¹

The referral of the Darfur situation to the prosecutor of the ICC in 2005 raised considerable expectations amongst victims and civil society actors in Sudan that those bearing the greatest responsibility for international crimes in Darfur would be held accountable. Almost twenty years on, however, the Court has struggled on account of limitations of its mandate, the lack of UN Security Council support, obstruction by the Sudanese government and third States, as well as a series of institutional and political constraints and strategic choices made. There have also been many criticisms of the Court related to its seeming inability to collect and preserve evidence and access victims, its remoteness from those victims, and a lack of contextual understanding of the Darfur dynamics. As a result, many victims have lost confidence in the effectiveness of the court in redressing victims of violations. Also, the Darfur referral to the ICC was not seen as deterring further violations; rather, almost 20 years after the referral there was evidence of another genocide committed in Darfur¹¹² and this seemingly indicates the limited impact on the ground of ICC referral with regard to the Sudan and Darfur situation. The ICC nonetheless continues to provide an important international mechanism for accountability, at least with respect to international crimes committed in Darfur. This applies also, and particularly so, to international crimes committed in the current armed conflict, especially in respect to acts of genocide allegedly committed in West Darfur (particularly El-Geneina) and other war crimes or crimes against humanity committed in Darfur or having an intricate link to Darfur.¹¹³

Several attempts have been made to hold alleged perpetrators of violations to account through using universal jurisdiction.¹¹⁴ However, legal and institutional constraints, including evidentiary challenges, have undermined these initiatives given the lack of concerted and proactive efforts by States to hold Sudanese nationals accountable. Initiating structural investigations, as for example done by Germany in respect to international crimes committed in Syria, which are not dependent on the presence of the alleged perpetrators in a State's jurisdiction, offers a model of such a proactive effort.¹¹⁵

Targeted sanctions in response to alleged violations are an important diplomatic tool through which States can act against perpetrators, including by: (i) restricting their financing and

¹¹¹ See, e.g., OHCHR, '[UN Experts call for ongoing international scrutiny and support for victims in Ethiopia](#)' (26 October 2023).

¹¹² See, e.g., the Raoul Wallenberg Centre for Human Rights, '[Breaches of the Genocide Convention in Darfur, Sudan \(April 2023—April 2024\): An Independent Inquiry](#)' (14 April 2024).

¹¹³ REDRESS and SOAS Centre for Human Rights Law, *supra* note 2.

¹¹⁴ *Ibid.*

¹¹⁵ Beini Ye, '[How Germany is Leading the Way for Accountability for Crimes in Syria](#)', International Justice Monitor (19 April 2019). An effective structural investigation should not be a passive process but instead an active investigation led by the relevant national war crimes unit, including regular engagement and coordination with different units as well as with the ICC, Sudan FFM, civil society groups, and survivors (as applicable).

international travel avenues; (ii) providing immediate recognition of the abuses taking place and showing solidarity with victims; and (iii) signalling to perpetrators that these States do not condone their conduct. Both warring parties rely on complex international trade networks to finance their activities and, in recent years, have leveraged internationally brokered deals to preserve their political power. Accordingly, there is a strong case that, to promote behavioural change, States should impose targeted sanctions on all Sudanese military and security leaders responsible for serious human rights violations as well as their facilitators, going beyond those that have already been imposed by the US, UK and the European Union.¹¹⁶

IV. Recommendations

1. A holistic, transformative approach

Sudan's situation is complex, with multiple factors contributing to the prevalence of violence and insecurity, and the concomitant lack of human rights protection and accountability. The latter requires a combined political and legal solution. Peace, civilian rule, democracy, and thorough reforms of the legal and institutional system are preconditions and co-requisites for a comprehensive approach to justice and accountability in Sudan. Any measures taken to redress violations and hold perpetrators to account are closely linked to creating an order based on freedom, justice, peace, democracy, equality, non-discrimination, and non-violence.

Any forthcoming transition in Sudan must be based on civilian rule aimed at overcoming legacies of authoritarian, lopsided, and violent governance that have enshrined power asymmetries and human rights-violating modes of doing politics, including armed conflicts. This task includes, besides specific mechanisms designed to provide truth and justice to victims and to hold perpetrators accountable, constitutional, legislative and institutional reforms, particularly security sector reform, the dismantling of the shadow State and its economy to be replaced with a transparent economic system that prioritises development and social, economic and cultural rights using a rights-based approach, and a series of measures designed to address the multiple axes of inequality and economic and social marginalisation in Sudan.

Mechanisms to address justice and accountability for serious human rights violations in Sudan should against this background be designed in a participatory, victim-centred process, and include, besides criminal accountability for serious violations, reparation for victims as well as measures that dismantle the ideological, political, legal, economic and social structures and building blocks of a system that is based on violent, human rights violating domination.

2. Peace should not come at the expense of accountability and justice

The cessation of hostilities and an end to the armed conflict in Sudan is a precondition for ending ongoing, war-related violations, and for building a State committed to the rule of law, constitutionalism and human rights protection. The modalities of ending the armed conflict, such as peace agreements, will likely raise the question of amnesties or other assurances given

¹¹⁶ Caitlan Lloyd, [One Year On: Urgent Strategy Shift Required to Halt Atrocities in Sudan](#), REDRESS (15 April 2024).

to the parties as a prerequisite for their commitment to stop (or not resume) fighting.¹¹⁷ Agreements to end armed conflicts in Sudan have repeatedly prioritised (negative) peace over justice (criminal accountability). This practice runs counter to Sudan's obligations as a party to international human rights treaties, under which it has an obligation to investigate, prosecute and redress serious human rights violations.¹¹⁸ The negative peace model in Sudan has been confined to the temporary absence of violence. It has neither challenged the pervasive culture of resort to violence nor the recurring outbreak of fighting if not armed conflicts. Worse, it has, paradoxically, provided an incentive for actors to use violence with a view to gaining a share of wealth and power or other benefits as part of peace agreements which basically provide them with a new lease of life and legitimacy to continue in power and entrench the status quo. The pursuit of peace should therefore be based on a model of positive peace, which has been defined "as the attitudes, institutions and structures that create and sustain peaceful societies."¹¹⁹ Upholding the rule of law and a commitment to human rights are amongst the 'pillars' of positive peace.¹²⁰

It will therefore be critical, both as a matter of discharging Sudan's international human rights obligations and of establishing an environment conducive to lasting peace, to provide for appropriate accountability mechanisms. This includes the removal from office, by means of a human rights compliant lustration procedure, of any officials implicated in violations, and a similar vetting of persons in terms of their suitability for office, based on their past conduct.¹²¹ For the future of Sudan, this means that at a minimum high-ranking members of the SAF and RSF, any of their members responsible for violations, and the relevant institutions themselves should not be in a position to hold office or to participate in democratic processes. However, for these measures to be successful, civic forces must adopt a unified approach and have their own blueprint of justice in any forthcoming peace agreements. This entails changing historical templates in which justice and accountability have been relegated to a lower status in peace agendas to secure (apparently) fragile or negative peace.

3. Participatory approaches to developing justice and accountability mechanisms

Justice and accountability mechanisms are, ideally, provided for through a democratically legitimated legal framework and institutional system. In the absence thereof, or in parallel, participatory approaches to developing such mechanisms are crucial, particularly where there are large numbers of victims and persons affected. Such mechanisms serve a dual function of both providing justice and accountability and constituting a process that signals a commitment to the rule of law and human rights and solidarity with the victims of violations. In Sudan, the question of justice, or 'transitional justice', had already been under discussion in respect of violations predating the armed conflict, and has continued to be raised regarding violations

¹¹⁷ It is worth noting that drafts of the Framework Agreement signed in December 2022 included provisions on amnesty for commanders but not those who commit atrocities on the ground.

¹¹⁸ See, in particular, Human Rights Committee, [General Comment No. 31 \[80\] The Nature of the General Legal Obligation Imposed on States Parties to the Covenant](#), UN Doc CCPR/C/21/Rev.1/Add. 13 (26 May 2004) para. 18.

¹¹⁹ Vision of Humanity, [Positive Peace Report 2022: Analysing the factors that build, predict and sustain peace](#) (2022) p. 4.

¹²⁰ *Ibid.*, p. 9.

¹²¹ OHCHR, [Rule-of-Law Tools for Post-Conflict States - Vetting: an operational framework](#) (2006).

committed in the current conflict.¹²² It is therefore appropriate to commence participatory approaches already, to the extent that they are feasible. These approaches should be led by trusted civilian and political forces keen to promote genuine transitional justice objectives and processes, such as the resistance committees, and human rights organisations, with the involvement of political parties. This could and should be done by means of interviews, where appropriate, surveys, and wider consultations of persons affected by the conflict, particularly anyone alleging to be a victim of violations, and trusted intermediaries. Considering the large number of affected persons, including numerous Sudanese nationals outside the country, modes for participatory approaches should be tailored to the circumstances. They should ensure that the widest possible number of persons, experiences, and views, in terms of the breadth of violations and preferred justice models, are captured during any consultative processes. Should the end of the armed conflict be followed by a transitional period, there will be scope to develop an agreed-upon wider consultative model as part of a genuine political transition. It will be important to do so promptly and transparently, considering the failure to adopt in a timely fashion a participatory approach to transitional justice during the last transition (2019-2021). A model that is worthwhile considering in this regard is the community-wide consultations on justice carried out by the AU High-Level Panel on Justice in Darfur in 2009.¹²³

4. *Accountability measures with a view to ending impunity and addressing its root causes*

Accountability measures, both in terms of accounting and holding perpetrators responsible for serious violations and international crimes, include criminal law mechanisms and other processes, such as truth commissions. The mechanisms for and modalities of accountability measures in Sudan should be decided in a representative, participatory process, as set out above at section IV.3. Such processes must, however, be informed by Sudan's obligations under international human rights law and international humanitarian law, as well as in respect of the ICC. These obligations entail a duty to investigate, prosecute, and provide redress for violations of international human rights law and international humanitarian law,¹²⁴ and to cooperate with the ICC.¹²⁵ They also include a right to the truth, as recognised explicitly in article 24(2) of the International Convention for the Protection of all Persons from Enforced Disappearance to which Sudan is a party. Serious violations under these bodies of law must not be subject to amnesties or other measures that limit accountability.¹²⁶ These obligations are not confined to violations committed during the current armed conflict. They also apply to other previous serious violations committed since 1989 for which there has been, bar some exceptional cases, complete impunity to date.

Article 6 of the 2019 Constitutional Declaration provided that:

- (1) All people, bodies, and associations, whether official or unofficial, are subject to the rule of law.

¹²² Oette, *supra* note 4; REDRESS and SOAS Centre for Human Rights Law, *supra* note 2.

¹²³ AU High-Level Panel on Darfur, *supra* note 4.

¹²⁴ Human Rights Committee General Comment 31, *supra* note 7, at paras 15-18.

¹²⁵ ICC, *The Prosecutor v Ali Muhammad Ali Abd-Al-Rahman ('Ali Kushayb')*: Registry's Second Report on the current status of cooperation with the Republic of Sudan, ICC-02/05-01/20 (22 October 2021) paras 13-18.

¹²⁶ HRCt, *supra* note 117, para. 18.

- (2) The transitional authority is committed to upholding the rule of law and applying the principle of accountability and restitution of grievances and rights that have been denied.
- (3) Notwithstanding any text that is provided for in any law, war crimes, crimes against humanity, crimes of extra-judicial killing, violations of human rights and international humanitarian law, crimes of financial corruption, and all crimes that involve abuse of authority committed since 30 June 1989 shall not be extinguished by prescription.

If these principles were applied, accountability measures would apply equally to all persons, including both sides to the current armed conflict. They would not be confined to violations committed in the course of said conflict but also other violations. This includes particularly those committed since the beginning of the revolution in late 2018, considering that bodies had already been established pursuant to the 2019 Constitutional Declaration to investigate certain violations, such as those committed during the 3 June 2019 massacre.

Any accountability measures relating to the current armed conflict should, ideally, cover the full spectrum of alleged violations, for which the findings of the Sudan FFM could be used as a baseline, using international human rights, international humanitarian law, and international criminal law standards binding on Sudan. This includes violations such as indiscriminate killings, bombardment of civilians, extrajudicial killings, enforced disappearance, torture, arbitrary detention, various forms of sexual violence, looting, pillage, denial of humanitarian assistance as well as forced displacement, and, in the case of Darfur, genocide.¹²⁷ Criminal accountability mechanisms should apply pertinent international standards on victims' rights, the right to a fair trial, and punishments.¹²⁸

5. *Reparation*

Reparation measures for victims of violations should be victim-centred. This entails addressing immediate needs, comprising humanitarian assistance and interim measures of reparation, with a particular focus on the traumatic impact of violations and the specific challenges faced by certain victims, such as survivors of sexual violence. Reparation should be guided by the Basic Principles and Guidelines 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, which human rights bodies have used as a reference point to inform the obligations of States.¹²⁹ This entails providing effective access to justice for victims and adequate, effective and prompt reparation for the harm suffered.¹³⁰ Reparation measures (whether individual or communal) should seek to cover a broad spectrum of violations so as to achieve the objectives of equal justice, recognition of victims and their rights, and showing

¹²⁷ REDRESS and SOAS Centre for Human Rights Law, *supra* note 2.

¹²⁸ *Ibid.*

¹²⁹ *See, e.g.*, Committee against Torture (CtAT), [General comment No. 3 \(2012\): Implementation of article 14 by States parties](#), UN Doc CAT/C/CG/3 (13 December 2012) para 6. *See also* the Human Rights Implementation Centre, University of Bristol Law School, [Providing reparation for human rights cases: A practical guide for African States](#) (2021).

¹³⁰ [Basic Principles and Guidelines 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 GA Res 60/147 (15 December 2005), principle 11.

solidarity with them.¹³¹ The nature of violations during the armed conflict is such that special considerations, and, where appropriate, processes, should apply to reparation for victims of certain violations, particularly: extrajudicial killings and enforced disappearance, in terms of the right to truth; sexual violence and slavery-related crimes, particularly in terms of gender-sensitive procedures and rehabilitation; forcibly displaced persons, in terms of their right to return and other forms of reparation; and looting, in terms of restitution or compensation for property lost. As reparation is inherently linked to prevention, it should also address the root causes of violations and impunity, by adopting a model of transformative reparation.¹³²

Following the end of the armed conflict, the need to mobilise enormous amounts of national and international funds for reconstruction of the country will be paramount. This entails that there will likely be limited public funds for reparation, and a political reluctance to prioritise such reparation. Reparation should therefore be financed, as far as possible, by utilising funds belonging to the alleged perpetrators and pertinent institutions.¹³³ Such funding should be made available through recovering looted property/illicit gains made and States freezing, confiscating, and repurposing assets of sanctioned individuals in a human rights-compliant procedure.¹³⁴ States should enforce sanctions in a consistent and proactive manner, which would enable them to repurpose the fines from sanctions breaches to provide reparation to victims. They should engage directly with third States where assets could be located to support the confiscation/repurposing process and ensure greater consistency across jurisdictions. Third States, and/or foreign nationals, including companies, who are found to have been complicit in violations should be requested to provide appropriate levels of funding for the purpose of reparation.

6. *Legal and institutional reforms*

In line with article 8(5) of the 2019 Constitutional Declaration, which sets out to “(c)arry out legal reform, rebuild and develop the rights and justice system, and ensure the independence of the judiciary and the rule of law”, legislative and institutional reforms should be comprehensive. In addition to constitutional reforms, namely the adoption of a new constitution in a participatory, democratically legitimated process,¹³⁵ this task requires a comprehensive review of Sudan’s legal system and institutional set-up, particularly their compatibility with international standards binding on Sudan and Sudanese constitutional principles. Such review could be undertaken by a specifically tasked body, or bodies, and should include a consultative

¹³¹ See additionally, Pablo de Greiff, ‘Justice and Reparations’, in P. de Greiff (ed), *The Handbook of Reparations* (Oxford University Press, 2006) 451.

¹³² African Commission on Human and Peoples’ Rights, [*General Comment No. 4 on the African Charter on Human and Peoples’ Rights: The Right to Redress for Victims of Torture and Other Cruel, Inhuman or Degrading Punishment or Treatment \(Article 5\)*](#) (2017) para. 8: “Redress must occasion changes in social, economic and political structures and relationships in a manner that deals effectively with the factors which allow for torture and other ill-treatment.”

¹³³ [*Report of the Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence, Fabián Salvioli: Financing of reparation for victims of serious violations of human rights and humanitarian law*](#), UN Doc A/78/181 (14 July 2023).

¹³⁴ Some States (e.g., the UK) must first implement the necessary laws to [bridge the gap](#) between asset freezing and confiscation.

¹³⁵ See additionally contributions in Oette and Babiker, *supra* note 2.

process to identify how laws and institutions have impacted people in their daily lives. Priority areas include legislative changes to reform: discriminatory legislation, repressive criminal legislation, broad emergency and anti-terrorism legislation; and to address impunity, such as defining violations in accordance with international standards and removing immunity provisions. Institutionally, a comprehensive security sector reform, particularly a dismantling of the military intelligence and security apparatus and a reform of the police must be considered an absolute priority considering their role in serious human rights violations over the last four decades and in the lead-up to, and during the war. This should be complemented by reforms of the criminal justice and prison system, the establishment of an independent judiciary (including the timely establishment of a constitutional court) and prosecution attorneys, changes to legal education, and the setting up of an independent national human rights institution.

7. Political measures

Addressing the political causes of human rights violations and impunity, namely authoritarian, ideological and inegalitarian rule, is pivotal to establishing the rule of law and a society in which disputes can be settled peacefully. Civil society actors, particularly the resistance committees and youth organisations, have shown, in word and deed, what such an alternative Sudanese society could look like. Their role has been vital during the revolutionary period and the war itself, where civil society actors have themselves been targeted in an ongoing parallel war. The establishment of both civilian rule and a democratic process, including through a representative transitional government, a recognition of Sudan's diversity through appropriate federal and minority rights arrangements, the guaranteeing of political rights and the creation of civic space, free and fair elections, and a commitment to transparency and accountability, are critical components to address and reverse a culture of domination that has been sustained through violence and impunity.

8. Economic measures

8.1. Reforming the system

Sudan's economy already faced serious challenges at the time of the outbreak of the war, and now faces a major crisis of economic breakdown; destruction of livelihoods, properties, and infrastructure; and massive displacement. This development has resulted in impoverishment, food insecurity and starvation, and the need for large-scale humanitarian assistance. The economic reconstruction awaiting Sudan will therefore constitute a major challenge needing foreign debt relief and various support measures. The priorities of reforming Sudan's economic system, from a human rights perspective that seeks to address impunity, are to dismantle the kleptocratic system, including an end to land grabbing and rights-violating projects, such as various dam projects, as well as transparency and accountability mechanisms, particularly in respect of the collection and use of public funds, which should include recovered ill-gotten gain. The rebuilding of the economic system should be guided by the collective right to economic self-determination and development and the realisation of economic, social and cultural rights, especially the right to education, the right to health, the right to livelihoods, and the right to land. This includes specific consideration of how to reintegrate internally displaced persons, both those who face long-term and more recent displacement. A system of environmental protection, through constitutional, legislative, and institutional measures, is

critical in its own right, as well as for economic recovery and for the prevention of conflicts and rights violations that have been fuelled by competition over resources. Legislative, institutional, economic, and environmental reforms should be tailored to specific local and regional challenges that have given rise to tensions if not conflict, such as land ownership and cultivation rights in Darfur.

8.2. *Creating economic opportunities to stem the proliferation of men taking up arms and to create pathways for reintegration*

The lack of economic opportunities has been a key factor in the recruitment of young men as fighters, many of whom have, particularly but not solely members of the RSF, in turn resorted to looting, plunder, and theft as modes of remuneration in the absence of regular pay. Reversing this logic requires demobilisation, disarmament and reintegration ('DDR'), not least as a means to prevent further violations, which includes the provision of economic opportunities. Examples from other countries, such as Colombia, demonstrate the risks associated with a lack of doing so, namely a large-scale turn to violent, organised crime, which may in other contexts manifest itself as violent 'extremism'.¹³⁶ A sound business environment, equitable distribution of resources, high levels of human capital, and low levels of corruption are four of the eight pillars comprising positive peace.¹³⁷ Linking responses to the presence of a high number of brutalised fighters, many of whom are themselves implicated in human rights violations, including a combination of DDR with truth, justice, and reconciliation processes as appropriate, and macroeconomic approaches will therefore be a critical component in reducing the risk of future violations. These processes will have to be embedded in wider support measures for those who have lost or suffered damages to their properties, small businesses or livelihoods, not least with a view to preventing the outbreak of new tensions and conflicts where a divide between perceived 'winners' and 'losers' of post-war arrangements emerges.

9. *Addressing social hegemony and oppression*

Sudan's society has multiple fault lines along ethnic, gender, and class lines, combined with a generational divide evident in the revolution. The underlying inequality and discrimination cannot be addressed in isolation, as it forms part of legal, institutional, political, economic and environmental measures. As a matter of policy-making, addressing inequality and multiple forms of discrimination, including intersectional discrimination should be both a priority in, and yardstick of any inclusive peace processes, transition, and democratic processes and reforms thereafter.

10. *The responsibility of international actors to support human rights, justice and accountability*

The UN, AU, the League of Arab States, States, and other international actors should prioritise support for peaceful, democratic actors in Sudan, making it clear that peace and democratic transition must be built on civilian, democratic rule. In supporting human rights monitoring and justice and accountability measures during any peace processes and transitions,

¹³⁶ Hernando Calvo Ospina, "[Colombia's deadly export industry](#)" *Le Monde Diplomatique* (English edition, February 2024).

¹³⁷ Positive Peace Report, *supra* note 118, at 9-10.

international actors should in particular: (i) prioritise the needs, rights and views of victims of violations through assistance and participatory processes; (ii) recognise the important role of civil society and other democratically legitimated actors and protect and support them in the promotion of human rights and justice; (iii) help in enabling the ICC to discharge its mandate effectively; (iv) exercise universal jurisdiction, including by means of structural investigations, over persons suspected of having committed serious violations in Sudan; (v) cooperate with transitional and democratically legitimated actors in Sudan with a view to recovering ill-gotten gains, looted property, and other such assets, to be returned to their rightful owners or used for the reconstruction of the country and reparation measures; (vi) support the promotion of all human rights, including the right to equality; civil and political rights; economic, social and cultural rights; the right to development; and the right to peace, essential to establishing a peaceful order in Sudan; (vii) protect the rights of asylum seekers and refugees from Sudan, particularly by providing humanitarian assistance and access to key services, such as education, in neighbouring and other third countries, and by respecting the prohibition of refoulement; and (viii) provide logistical, financial and other assistance needed to achieve the objectives set out in the above list of recommendations.