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1.3. Rule of law and administration of justice

☐ (a) Rule of Law

For background information about the rule of law see section 1.1.3 (f) of the EUAA Sudan report – Country Focus (April 2024).

In October, the UN FFM for the Sudan expressed serious concerns over the collapse of the rule of law in the country, including the destruction of legal infrastructure, the disruption of police, prosecution and judiciary functions as well as the targeting of lawyers.65 By November 2024, UN Special Rapporteurs, members of the Special Procedures of the Human Rights Council, urged both warring parties to restore law and order.66

Following the outbreak of the conflict, authorities imposed or extended a state of emergency across several states, including Khartoum and regions of Darfur, effectively granting security forces expanded powers and immunity for actions performed while on duty.67 For additional information on the proclaimed state of emergency and security forces see 1.2 State structure and governance and 1.3 Policing the rule of law and the new state of emergency.

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The latest USDOS report noted that the law permitted arrests without warrants, allowing magistrates to extend detention without charges for up to two weeks and up to six months for formal charges, despite legal requirements to inform individuals upon arrest. Bail was available for most offences, except for those accused of crimes

punishable by death or life imprisonment. Suspects in common criminal cases were reportedly compelled into confessing under duress, subjected to physical abuse and police intimidation of family members. While legal assistance was available by law and could be requested through the legal aid department at the Ministry of Justice or the Sudanese Bar Association, the government often failed to provide support and legal aid organisations and lawyers partially filled the gap. Detainees arrested for protesting against the military takeover were routinely denied family contact and legal representation.69

Despite the efforts made by the government to bring the national legislation in line with the Convention against Torture (UNCAT), Sudan's legal system continued to lack the necessary monitoring mechanisms and legal access to justice for victims of human rights violations.70 Sudanese domestic law did not explicitly criminalise enforced disappearances as offences.71

According to Freedom House, despite the guarantees of equal treatment in the interim constitution and legal reforms introduced in 2020, women remained disadvantaged in many areas of the law. Perpetrators of widespread crimes against women, including during armed conflicts, have generally enjoyed impunity, and women were denied equal rights to property and inheritance under both laws and customary practices.72

☐ (b) Legal system

Sudan has a mixed legal system of Islamic law and English common law,74 with Sharia introduced in 1983 and officially adopted under President Al-Bashir in 1989.75 While Sharia law is not explicitly listed as part of Sudan's sources of law in the Transitional Constitutional Charter (TCC), many Sudanese laws incorporate elements of Sharia. Furthermore, in matters that are not governed by any legislative text, the courts apply the Sharia..76

The Miscellaneous Act of 2020, amending the Criminal Act of 1991, defines an adult as anyone over the age of 18, but criminal responsibility may be imposed on any child who has attained puberty, with care and reform measures allowed to be imposed on

any child over the age of 12.77 With 2020 Criminal Law amendments, women were no longer in need of a permit from male family members to travel with their children and female genital mutilation (FGM) was banned. Lashing and public flogging were ended and the consumption of alcohol by non-Muslims permitted.78, 78 For more information on FGM see section 2.6(e) Female genital mutilation (FGM).

The 2020 amendment to the Cyber Crime Law of 2018 increased penalties for a range of cyber offences, including spreading false news to damage the reputation of the state.79

The maximum penalty for torture is three months' imprisonment.80 Amendments to the legal framework, such as the 2009 amendment to the Criminal Procedure Act and the 2022 amendment to the Armed Forces Act of 2007, addressed the prosecution for crimes against humanity, genocide and war crimes, including offences against protected persons and prisoners of war, attacks on civilians, and displacement of the population.

However, significant gaps remain, such as the lack of provisions for holding commanders and superiors accountable and restrictions on the investigation and prosecution to direct perpetrators.81

Additionally, laws such as Article 3, restrict criminal proceedings against Sudanese nationals accused of international humanitarian law violations, including core international crimes, to domestic institutions. Furthermore, they prohibit any assistance or support to the extradition of any Sudanese national for prosecution abroad.82

Sudanese law criminalises same-sex relationships and permits forced marriages.83 For more information on same-sex relationship see section 2.8 LGBTIQ persons. The UN FFM for the Sudan has also shared concerns over the legal procedures required to prove rape, in particular the mandatory use of a medical report form which has become unavailable in many health facilities or police stations.84 For more information on sexual violence and conflict-related sexual violence see section 2.6(b) Sexual violence and conflict-related sexual violence.

A number of legislative changes have been made since the beginning of the war, including the dissolution of the RSF by constitutional decree,85 and the classification of the organisation as a terrorist organisation.86

(c) The judicial system

The 2019 Constitutional Declaration established three judicial bodies: the Supreme Judicial Court, the Judicial Authority and the Constitutional Court. However, as of October 2022, only the Supreme Court of the Judicial Authority had been established. The Constitutional Court, with jurisdiction over the protection of rights and freedoms and the adjudication of constitutional disputes, remained unformed[87] after its dissolution in 2017.[88] The Sudanese Civil Procedure Act, adopted in 1983 and amended several times, stipulated five different types of courts: the National Supreme Court, the National Court of Appeal, the General Civil Court, the Magistrate's Court and the city and country courts.[89] Additionally, military courts can be convened for prosecuting military personnel for violation of military laws.[90]

Despite its institutional independence, the judiciary is largely controlled by the executive.[91] Lawyers were detained and threatened by both SAF and the RSF. They faced significant obstacles in exercising their functions due to harassment, surveillance, and potential arrest for allegedly supporting the RSF while providing legal defence to civilians in complex criminal cases related to human rights violations and war crimes under investigation by the authorities.[92]

According to the October 2024 UN FFM for the Sudan, the RSF attempted to establish a justice system and field courts in areas under its control, but these institutions have been infrequently used. Additionally, the report indicated the establishment of martial courts as well as an investigative body to investigate reported mass killings committed in Ardamata.[93]

The ongoing conflict has significantly affected the judicial infrastructure. Reports indicated systematic attacks on institutional buildings, including the headquarters and offices of the Attorney General in Khartoum State and courts by the RSF.[94] Attacks particularly affected Khartoum and the Darfur states. Burning of official records, in particular judicial records and land registries, were reported in El Geneina, Nyala and Zalingei. The lack of any digital back-up of court records posed a challenge. The Public Prosecution had made efforts to retrieve data from conflict-affected areas.[95]

☐ (d) Prosecution

The latest UN universal periodic review noted that the 2019 Constitutional Document introduced a legislative reform programme including the separation of Public Prosecutor from the executive branch.[96] In 2023, by Presidential Decree, the Sudanese authorities established a National Committee of Investigation on human rights violations, war crimes, and violations by the RSF. The committee, formed by GIS and military intelligence representatives, police and the ministries of Justice and Foreign Affairs, was mandated to collect evidence and list all violations committed by the RSF since the beginning of the conflict.[97] As of September 2024, 18 741 cases had been registered.[98]

Victims of rape and sexual violence face obstacles in reporting crimes due to fears of stigma and prosecution for adultery. Moreover, the laws lack effective provisions for prosecuting sexual and gender-based violence.[99] Human rights organisations cited substantial barriers to reporting gender-based violence, including police reluctance to investigate.[100] Testimonies collected by the UN FFM for the Sudan, including from survivors of rape and other forms of sexual violence, revealed a lack of trust in the ability and willingness of the domestic system to deliver justice.[101] Authorities have often failed to investigate torture allegations or provided effective remedies and reparations to victims.[102]

In response to allegations of repeated widespread sexual violence, the RSF announced that it was taking action to prevent and address violations of human rights. However, the RSF's announcements about accountability measures were not backed up by evidence. UN sources and events in El Fasher pointed to repeated RSF violations and abuses. Further, no information was shared with the ICC substantiating the RSF's claim of initiating investigations of abuses;[103] its internal mechanisms, specifically the RSF Committee for Addressing Violations and field courts, are not active in enforcing accountability.[104]

☐ (e) Policing the rule of law and the new state of emergency

The 2019 Constitutional declaration stipulated that the police forces were national, uniformed law enforcement forces, and were competent to preserve the security and safety of society. They were subject to the policies and decisions of the executive authority by law [Article 35(1)].105 The Sudan Police Force was responsible for traditional police functions, such as fighting crimes and maintaining public safety, as well as for a wider set of functions including civil defence, customs, wildlife protection and civil registration.106 It fell under the direct command of the Minister of Interior107 and had a well-established structure and a clear chain of command led by the Police Director-General.108 In 2022, the Ministry of Interior established the Community Police, initiative that triggered a national debate for the similarities with the Public Order Police, a force repealed in 2019 and enforcing a strict moral code under al-Bashir era. 109

The Central Reserve Police (CRP), typically wearing light brown camouflage uniforms with a bird insignia,110 is a militarised police unit.111 As stated by a MEE analyst 'the Reserve Police is not at the front lines, but it supports the army and takes control of areas after the army clears them of RSF fighters.'112 The date of creation of this police unit is unknown, though some experts place it around 1970s.113 The current number of members is unknown, but estimates from 2017 reported 20 000 members in Darfur, 40 000 in Khartoum and 20 000 outside Khartoum. The unit has been involved in incidents related to violence against protesters after the 2021 coup and violation of human rights.114

After the beginning of the war, RSF forces assaulted and occupied police offices in Khartoum states. Buildings, devices and equipment were damaged, including the identification documents factory (passports).115

The April 2024 UNHCR protection brief on Sudan noted that 'the broader breakdown in law and order in conflict affected states and absence of law enforcement bodies, is leading to the inability to provide protection from armed groups and criminal activities'. 116 In its latest report, USDOS indicated that most IDP camps had no functioning police force.117 Moreover, in October 2024, the UN FFM for the Sudan voiced concerns regarding the collapse of the rule of law in the country, including the disruption of police functions.118

State security committees existed across the country before the conflict. They were chaired by governors and included senior military, intelligence, police and senior state officials, and coordinated and implemented key security policies at the state level.119

Constitutional Decree No. 6 of 2024, concerning the Security and Defence Council, set up security committees led by a High Technical Committee formed by various state agencies dealing with intelligence, police, defence, foreign affairs, justice and public prosecution. They were meant to maintain peace and security and carry out any task as ordered.120

According to the 2022 report of the Working Group on the Universal Periodic Review, Sudan acknowledged the lack of funding to train officials working in law enforcement agencies.121 The 2024 USDOS report indicated that government institutions and law enforcement were facing significant operational constraints due to the ongoing conflict, which has further reduced the already limited anti-trafficking efforts.122

The UN FFM has received information that, from 2023, the RSF has undertaken some attempts to create a rudimentary military police and justice system through an RSF Committee to Address Violations (sometimes also referred to as the Committee to Address Negative Phenomena) and an RSF field court. These institutions seem to have been rarely used in the field. Additionally, the RSF established its own intelligence service with centralised specialised units, a counterintelligence unit and a unit to monitor civilians and civil society.123

State of emergency

After the coup, al-Burhan declared a state of emergency by issuing a number of decrees, including Emergency Order No.3 that expanded the legal powers of regular forces and provided immunities for any activities undertaken during the course of their official duties.124 This mandate was reinforced in May 2024 when the authorities declared a state of emergency in Khartoum125 and in other states and regions - namely Darfur, Kordofan, Gezira, Gedaref, Sennar, Blue Nile, Northern and Eastern Sudan - allowing joint security forces, military intelligence and police to conduct law enforcement activities.126 For additional information see section 2.1 Perceived political opponents.

In the same period, the General Intelligence Service (GIS) Law (2024 Amendment) further reinstated legal powers to intelligence personnel, including interrogation, search, detention and asset seizure, while also granting them immunity from criminal or civil prosecution.127 Furthermore, the law authorised the GIS director to establish a special court for cases involving capital punishment.128 The GIS, created in 2019129, replaced the former National Intelligence and Security Service (NISS),130 an agency controlling the RSF in the past and responsible for human rights violations during al-Bashir time.131

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