



Submission to the Universal Periodic Review of Sudan

Human Rights Watch

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Introduction

1. This submission comes as Sudan is two years into a democratic transition. Nationwide protests that started December 2018 led to the ousting of Sudan's president Omar al-Bashir, after 29 years of authoritarian rule. Military and civilian leaders signed a power-sharing deal in August 2019 forming a transitional government.
2. For 30 years, Sudanese experienced ruthless dictatorship under al-Bashir's rule. The former regime deployed its security forces to oppress activists and opponents, departed from any commitment to uphold international human rights norms, and had their forces committing well-documented atrocities in conflict areas in Darfur, Blue Nile and Southern Kordofan.
3. Authorities have embarked on reforms but have yet to provide justice and accountability for past crimes.¹ Former president al-Bashir and other leaders from his government remain in detention in Khartoum since April 2019.
4. While Sudan's leaders repeatedly committed to cooperating with the International Criminal Court (ICC), to date they have refused to surrender three remaining suspects in their custody to the Hague or initiated proceedings against them domestically on the same crimes which the ICC arrest warrants cover.
5. The government has not formed 11 out of 12 key transitional commissions envisioned under the transitional constitutional charter such as the ones on human rights and transitional justice. A transitional legislative council is also yet to be formed.

Arbitrary Detention and Torture

6. During its 2016 review, Sudan accepted recommendations to ratify the Convention against Torture (CAT), and to conduct domestic legal reforms to prohibit torture and arbitrary detention.²
7. Nonetheless, security officials continued to detain opposition members, journalists, and labor leaders, often for long periods without charge or access to lawyers. In 2017, following the "civil disobedience" campaign to protest economic austerity measures in November and December 2016, security agents detained dozens of opposition members.³
8. During a wave of protests in January and February 2019, security agents detained hundreds of rights activists, protesters and opposition party members and held dozens for weeks without charge. Detainees were subjected to torture and ill-treatment. A Darfuri student leader was detained for five months in solitary confinement, repeatedly beaten, subjected to electric shocks, threatened with death and rape, and held in harsh conditions.⁴

¹ <https://www.hrw.org/news/2020/02/20/sudan-progress-rights-justice-key-transition>

² See 138.7, 138.9, 138.10. All paragraph cites are to United Nations General Assembly, Human Rights Council, Report of the Working Group on the Universal Periodic Review: Sudan, A/HRC/33/18 (July 2016). Recommendations accepted by Sudan can be found here: https://www.upr-info.org/sites/default/files/document/sudan/session_25_-_may_2016/recommendations_and_pledges_sudan_2016.pdf.

³ HRW WR Chapter 2018: <https://www.hrw.org/world-report/2018/country-chapters/sudan>

⁴ <https://www.hrw.org/world-report/2019/country-chapters/sudan>

9. In July 2019, Sudan renamed the National Intelligence and Security Service (NISS), which was responsible of abuses against protesters, activists and others, to General Intelligence Service (GIS).⁵ Positively, it amended the 2010 National Security Act, recommendation it had rejected during the previous UPR, and removed NISS's powers of arrest and detention.⁶ In February 2021, Sudan announced it passed laws on ratification of the CAT and the International Convention for the Protection of All Persons from Enforced Disappearance.⁷

10. Human Rights Watch has not documented any cases of arbitrary detention or torture by the GIS since their mandate changed, but found that the Rapid Support Forces (RSF)— designated as an armed force under the transitional constitutional charter—have unlawfully detained dozens of civilians in Khartoum since 2020.

11. Throughout 2020, Rapid Support Forces (RSF) reportedly detained several members of the Mahamid Arab tribe due to their links to Musa Hilal,⁸ the former pro-government militia leader who is subject to UN sanctions for his role in Darfur atrocities.⁹

12. On December 21, 2020, authorities said that 45-year-old Baha al-Din Nouri died while in the RSF custody in Khartoum. An investigation is ongoing in his case and involved RSF elements were handed over to the Attorney-General. The RSF do not have legal authority to detain civilians or carry out law enforcement functions, thus making detentions of civilians unlawful.

13. On June 29, 2020, the former military governor of West Darfur ordered the imprisonment of 72 men and boys for six months under the emergency law, which allows authorities to detain people without judicial oversight. They were among a group of 122 arrested by the RSF in the preceding weeks during counter migration operations in Darfur.¹⁰

14. *Sudan should:*

- Take measures, including instructing the police, armed forces, security personnel to end all mistreatment of detainees, making clear that there is never a justifiable reason for mistreatment.
- Ratify the Optional Protocol to the Convention against Torture, which allows independent, international experts to conduct regular visits to places of detention.
- Release all individuals arbitrarily detained by military forces including those detained by the Rapid Support Forces.

⁵ <https://allafrica.com/stories/201907300341.html>

⁶ <https://www.hrw.org/news/2020/07/16/sudans-law-reforms-positive-first-step>

⁷ <https://www.voanews.com/africa/sudan-ratifies-un-conventions-against-torture-and-enforced-disappearances>

⁸ Darfur 24, New arrests amongst members of Mahamid clan in West Darfur, March 24, 2020

<https://www.darfur24.com/en/2020/03/24/new-arrests-amongst-members-of-mahamid-clan-in-west-darfur/>

⁹ France 24, Sudan forces arrest top Darfur militia chief: state media, November 27, 2017:

<https://www.france24.com/en/20171127-sudan-forces-arrest-top-darfur-militia-chief-state-media>

¹⁰ African Center for Justice and Peace Studies, West Darfur: Arbitrary arrests and incommunicado detention of 72 people on allegations of human smuggling and illegal immigration, July 29, 2020, <https://www.acjps.org/west-darfur-arbitrary-arrests-and-incommunicado-detention-of-72-people-on-allegations-of-human-smuggling-and-illegal-immigration/>

- Expediate formation of national human rights commission as envisioned under the transitional constitutional charter with a mandate to request unfettered access to detention sites.

Freedom of Expression and Assembly

15. Although Sudan accepted recommendations on taking adequate measures to “safeguard freedom of expression and assembly,”¹¹ it did not take any steps towards that goal.

16. Between October and June 2017, printed editions of different newspapers were confiscated by government security agents without them stating specific reasons.¹²

17. Restrictions on assembly and expression increased as protests began from late 2018 and resulted in the ousting of al-Bashir in April 2019. In the first week of January 2019 alone, security officials seized print runs of eight newspapers because they had covered the anti-austerity protests.¹³

18. In Khartoum, on June 30, 2020, the one-year anniversary of a major protest following al-Bashir’s ouster, police responded with violence, killing one protester and injuring several others.¹⁴

19. Crackdown against protesters also took place out of Khartoum. In North Darfur, armed militia attacked a sit-in in Fata Borno, a displaced persons camp near Kutum, in North Darfur, on July 13, 2020, killing at least nine.¹⁵ On October 15, 2020, security forces, including the RSF, killed at least eight and injuring others in the eastern state of Kassala.¹⁶

20. Further restrictions were introduced via legal reforms In July 2020, as the transitional government amended the 2007 Cybercrimes Act, increasing penalties for multiple offenses such as publication of “indecent materials.”¹⁷ On July 18, the Sudanese army appointed a special commissioner to bring lawsuits against individuals who “insult” the military online, both inside and outside the country.¹⁸

21. There have also been due process concerns around the work of the *Empowerment Elimination, Anti-Corruption, and Funds Recovery Committee*, a body that was formed in November 2019 to tackle corruption and repossess stolen assets and properties by the former ruling party, as well as its potential politicization.¹⁹ On January 7, 2020, the committee suspended *Al-ray al-am* and *al-Sudani* newspapers and two private TV channels for alleged financial links to al-Bashir’s regime²⁰ with concerns raised on lack of due process and judicial oversight on those steps.²¹

¹¹ See 138.99.

¹² <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G17/225/56/PDF/G1722556.pdf?OpenElement> para.32

¹³ <https://www.hrw.org/world-report/2019/country-chapters/sudan>

¹⁴ <https://www.middleeasteye.net/news/protests-sudan-correct-revolution-path-hamdok>

¹⁵ <https://unamid.unmissions.org/unamid-deeply-concerned-about-violent-incidents-kutum-town-and-fata-borno-idps-camp-north-darfur>

¹⁶ <https://www.hrw.org/news/2020/12/21/sudan-security-forces-kill-protesters-eastern-sudan>

¹⁷ <https://www.hrw.org/news/2020/07/24/sudans-army-threatens-activists-journalists-lawsuits>

¹⁸ <https://www.hrw.org/news/2020/07/24/sudans-army-threatens-activists-journalists-lawsuits>

¹⁹ Report of the Independent Expert on the situation of human rights in the Sudan (A/HRC/45/53), July 30, 2020, para.52

²⁰ <https://cpj.org/2020/01/sudan-suspends-four-news-outlets-links-bashir/>

²¹ Middle East Eye, Cries of censorship in Sudan as media outlets linked to old regime closed, January 20, 2020, <https://www.middleeasteye.net/news/fears-over-freedom-speech-sudan-following-closure-several-media-outlets>

22. *Sudan should:*

- End unnecessary or excessive force against peaceful protesters; instruct security forces to follow the UN *basic principles on use of force and firearms by law enforcement officials*, in all operations policing public protests or gatherings; hold abusive security forces to account.
- Issue public and clear instructions to military forces not to engage in any law enforcement operations including crowd control.
- Expediate investigation into all events of violence against peaceful protests including ones on June 3, 2019 dispersal of the sit-in and violent crackdown against protesters in September 2013.
- Revise 2007 Cybercrimes Act by removing vague grounds of criminalization such as “spreads of false news” and publication of “indecent materials.”

Accountability

23. Sudan previously accepted a few recommendations that corresponded to the promotion of accountability.²²

24. No meaningful attempt to provide accountability has taken place under the former regime. The new transitional authorities pledged to address past crimes and formed multiple investigation committees but so far there have no trials of serious past crimes.

25. An independent committee formed by the prime minister in 2019 to investigate the violent dispersal of protests in Khartoum on June 3, in which more than 120 were killed,²³ has not released its findings. Victims’ families and activists have strongly criticized its slow pace as well as its lack of witness protection and sexual and gender-based violence expertise.²⁴

26. The transitional government signaled its readiness to cooperate with the ICC in February 2020, which officials reaffirmed throughout the year. The government and the ICC engaged in several discussions since then, in particular on cooperation with Ali Kushayb case who surrendered himself to the court on June 9, 2020, and the ICC prosecutor made her first visit to Sudan in October 2020.²⁵ Both parties signed a Memorandum of Understanding related to cooperation on the Kushayb case in February 2021.²⁶

27. However, Sudan still did not explicitly agree to surrender the three suspects to The Hague in their custody, and it appears the authorities may be continuing to deliberate on the extent to which Sudan will cooperate with the court.²⁷ There have not to our knowledge been any domestic proceedings against the suspects up to date on the same crimes addressed in the ICC’s warrants for the suspects.

28. *Sudan should:*

²² See 140.31, 140.48.

²³ <https://www.hrw.org/report/2019/11/18/they-were-shouting-kill-them/sudans-violent-crackdown-protesters-khartoum>

²⁴ <https://www.hrw.org/news/2020/02/20/sudan-progress-rights-justice-key-transition>

²⁵ <https://www.hrw.org/news/2020/06/09/icc-sudanese-fugitive-custody>

²⁶ <https://www.dabangasudan.org/en/all-news/article/sudan-signs-mou-with-icc-on-kushayb-trial>

²⁷ <https://www.aljazeera.com/news/2020/10/20/icc-prosecutor-talks-on-al-bashir-case-in-historic-sudan-visit>

- Ratify the Rome Statute and implement the statute in national legislation, including by incorporating provisions to cooperate promptly and fully with the International Criminal Court and definitions of genocide, crimes against humanity and war crimes into domestic law.
- Cooperate with the ICC in its Darfur investigation in accordance with UN Security Council Resolution 1593, including in the surrender of ICC suspects.
- Criminally investigate with a view to prosecution before domestic courts in accordance with international law, including standards of fair trial, serious international crimes committed in relation to the conflicts in Southern Kordofan, Blue Nile, and Darfur, and attacks on protesters.

Armed Conflict and Intercommunal Violence in Darfur

29. The peace deal in August 2020 put an end to military confrontation between several rebel groups and government forces. Other holdout groups continued to commit to ceasefire with the government but both parties exchanged blames on breaches to the ceasefire in mid-2020.²⁸

30. Before the adoption of the peace deal, civilians including those living in displaced persons camp continued to be targeted by government forces and allied militia. In May and June 2017, the RSF attacked villages in North and Central Darfur, forcing tens of thousands to flee.²⁹ Between February and April 2018, UNAMID said that over a half of reported incidents involving 120 victims, were “reportedly perpetrated by government security forces and auxiliary groups, including RSF and the Border Guards.”³⁰

31. During 2017 and 2018, intercommunal violence often exacerbated by government forces continued. In October 2017, West Darfur, subclans of the Rizeigat clashed with the Zaghawa in West Darfur, over the ownership of camels, which resulted in the deaths of 16 Zaghawa and 11 Rizeigat.³¹ Between August and September 2018, incidents were reported to UNAMID of farmers assaulted by armed nomads supported by elements of the RSF in Jebel Merra area.³²

32. Between 29 and 31 December 2019, a group of Rizeigat herdsman raided Krinding internal displaced persons camp, reportedly aided by the RSF, leaving around 60 killed and at least 48,000 displaced.³³

33. Multiple protests and sit-ins took place in West, North, and Central Darfur between June and August 2020 voicing their demands for basic service, security, and accountability. Some of the protests were attacked by armed militias for example in Fata Borno, North Darfur which left nine displaced

²⁸ <https://www.aa.com.tr/en/africa/sudan-rebels-accuse-each-other-of-violating-ceasefire/1862897#:~:text=The%20SLM%20DAW%20is%20the,unilateral%20ceasefire%20since%20Bashir's%20ouster.>

²⁹ <https://www.hrw.org/world-report/2018/country-chapters/sudan>

³⁰ Report of the Secretary-General on the African Union United Nations Hybrid Operation in Darfur, S/2018/389, April 25, 2018, para.9, <https://undocs.org/S/2018/389>

³¹ Para.9 <https://unamid.unmissions.org/sites/default/files/n1745340.pdf>

³² https://unamid.unmissions.org/sites/default/files/unamid_sg_report_11_june-8_october_2018.pdf para.7

³³ <https://www.fidh.org/en/region/Africa/sudan/west-darfur-investigation-into-krinding-camp-massacre-is-urgently>

persons dead.³⁴

34. Armed militiamen also attacked the town of Misteri, West Darfur in July 2020, leaving around 60 killed, 88 injured, and over 10,000 displaced.³⁵

35. The transitional government continued to press for the termination of the mandate of the UNAMID. The UNSC unanimously agreed to doing so³⁶ despite reported uptick in intercommunal violence³⁷ and protests of IDPs in Darfur against the decision.³⁸ The UN replaced the peacekeepers with a nationwide political mission that has no mandate to provide physical protection of civilians.³⁹

36. Just days after the official termination of UNAMID, armed ethnic Arab militia attacked ethnic Massalit residents of al-Genaina city including Kirinding camp in January 2021. The attack left 150 killed and the UN reported that the fighting displaced 50,000 people.⁴⁰

37. *Sudan should:*

- Take concrete measures to improve government forces' compliance with international law, this would include establishing civilian oversight bodies.
- Immediately grant unfettered access to UNITAMS to monitor and report on human rights abuses in conflict areas.
- Issue clear, public orders to all government forces to stop attacks on civilians, and rein in militias.
- Embark on security sector reform in particular for security forces tasked to provide protection of civilians. This should include establishing clear vetting procedures to identify and remove individuals responsible for serious abuses during recruitment and integration of new forces.
- Bring an end to impunity and expediate accountability for crimes in conflict areas, particularly by implementing justice and accountability mechanisms provided under Juba Peace Agreement that include national special criminal court for Darfur, truth and reconciliation committee, and cooperation with International Criminal Court.

Women Rights/ Sexual Violence

38. Sudan has not ratified the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), even though it accepted recommendations to do so (138.2, 138.3).

³⁴ <https://unamid.unmissions.org/unamid-deeply-concerned-about-violent-incidents-kutum-town-and-fata-borno-idps-camp-north-darfur>

³⁵ <https://reliefweb.int/report/sudan/sudan-escalation-violence-darfur-flash-update-no-3>

³⁶ https://unamid.unmissions.org/sites/default/files/res_2559_2020_e.pdf

³⁷ <https://reports.unocha.org/en/country/sudan/card/1R5yoxqxpR/>

³⁸ <https://www.aljazeera.com/opinions/2020/12/24/darfuris-call-for-protection-in-vain>

³⁹ UNSC Resolution 2524 (2020), S/RES/2524 (2020), June 3, 2020, https://unitams.unmissions.org/sites/default/files/s_res_25242020_e.pdf

⁴⁰ <https://news.un.org/en/story/2021/01/1082352/> <https://www.hrw.org/news/2021/01/22/deadly-darfur-attack-just-days-after-last-peacekeepers-leave>

39. In February 2018, the United Nations expert on sexual violence in conflict noted following her visit to Sudan that there is a “deep-seated culture of denial around rape”.⁴¹ In the same year, the UN Independent Expert on Sudan also highlighted that Sudanese legal system continued to institutionalize gender inequality.⁴²

40. The 1991 Personal Status for Muslim Act formalizes the male guardianship system, which allows marriage of girls as young as 10 and gives veto power to male guardians on initiation or nullification of marriage contracts.

41. Despite 2015 amendments to the criminal code that clarified the definition of rape, judicial authorities do not recognize marital rape as a crime.⁴³ In May 2018, Noura Hussein, a 19-year-old woman who had been forced into marriage at 16, was sentenced to death for killing her husband when he tried to rape her. In June, a court commuted the sentence to five years in prison with a heavy fine.⁴⁴

42. Positively, Sudan introduced legal reforms including criminalization of female genital mutilation (FGM) and repealed restrictive public order laws.⁴⁵ However the 1991 Criminal Act still includes vaguely defined offenses of indecent acts and gross indecency.

43. Multiple sources including survivors, activists, and civil society organizations specialized in responding to sexual violence, said security forces committed sexual and gender-based violence against female and male protesters, including medical workers, during the violent dispersal of the sit-in in Khartoum on June 3, 2019.⁴⁶ The committee investigating the violence does not include any women nor include anyone with expertise to investigate Sexual and Gender Based Violence which has led to claims that it is inaccessible for victims.⁴⁷

44. *Sudan should:*

- Ensure provision of comprehensive and non-discriminatory health services to women and girls who have experienced sexual violence including victims and survivors from violence of June 3, 2019.
- Incorporate specialized expertise on Sexual and Gender Based violence in the scope of the investigation into June 3 violence.
- Abolish gender discrimination sanctioned by male guardianship provisions under 1991 Personal Status for Muslims Act, and align the law with principles of equality and non-discrimination under international law.
- Ratify the CEDAW.

LGBT rights

⁴¹ <https://www.un.org/sexualviolenceinconflict/press-release/special-representative-of-the-secretary-general-on-sexual-violence-in-conflict-ms-pramila-patten-concludes-visit-to-sudan-and-calls-for-end-to-culture-of-denial-for-conflict-related-sexual-violence/>

⁴² <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G18/249/99/PDF/G1824999.pdf?OpenElement> para.37

⁴³ <https://www.hrw.org/world-report/2019/country-chapters/sudan>

⁴⁴ <https://www.hrw.org/news/2018/05/15/sudans-many-nouras>

⁴⁵ <https://www.hrw.org/news/2020/07/16/sudans-law-reforms-positive-first-step>

⁴⁶ <https://www.hrw.org/report/2019/11/18/they-were-shouting-kill-them/sudans-violent-crackdown-protesters-khartoum>

⁴⁷ <https://www.hrw.org/news/2020/06/02/sudan-justice-june-3-crackdown-delayed>

45. Sudan rejected recommendations from Chile concerning the elimination of discriminatory provisions affecting lesbian, gay, bisexual, and transgender (LGBT) people, although its inaction on these recommendations places it in violation of its international human rights obligations.⁴⁸

46. In July 2020, Sudan's Sovereign Council amended the 1991 Criminal Act, removing some crimes from the books, including flogging and the death penalty. Article 148, which criminalizes "sodomy," was amended to reflect these changes, but increased the minimum sentence for same-sex relations from 5 to 7 years imprisonment.⁴⁹

47. Previously, the death penalty was punishment for individuals accused of committing "homosexual sex" defined by the act of penetration, for the third time. For people found guilty of this offense for the first time, sentences were lashing 100 times or prison up to 5 years. For the second time, the sentence was both punishments combined.

48. *Sudan should:*

- Repeal article 148 of the Sudanese Criminal Act, which criminalizes "sodomy" defined by the act of penetration.
- Pass comprehensive anti-discrimination legislation that prohibits discrimination on the grounds of sexual orientation and gender identity and includes effective measures to identify and address such discrimination and gives victims of discrimination an effective remedy.

Disability Rights

49. People with intellectual and psychosocial disabilities (mental health conditions) in Sudan can be shackled—chained or locked in confined spaces—for weeks, months or even years.⁵⁰ This inhumane practice exists due to inadequate support and mental health services as well as widespread beliefs that stigmatize people with psychosocial disabilities⁵¹ and goes against the recommendations Sudan accepted related to the rights of persons with disabilities.⁵²

50. *Sudan should:*

- Ban shackling in law and in policy.
- Develop a time-bound plan to shift progressively to voluntary community-based mental health, support, and independent living services. Create and implement a de-institutionalization policy and a time-bound action plan for de-institutionalization, based on the values of equality, independence, and inclusion for persons with disabilities.

⁴⁸ For authoritative guidance on the protection afforded by international human rights law against discrimination based on sexual orientation and gender identity, see "Yogyakarta Principles on the Application of International Human Rights Law in relation to Sexual Orientation and Gender Identity" (2006), <http://yogyakartaprinciples.org/principles-en/>.

⁴⁹ <https://ilga.org/sudan-removes-death-penalty-same-sex-relations>

⁵⁰ Terhas Berhane-Rwakaara, "Understanding the 'Cure' to Mental Health in Africa," *500words Magazine*, November 19, 2018, <https://500wordsmag.com/social/understanding-the-cure-to-mental-health-in-africa/> (accessed Feb. 25, 2021). Human Rights Watch, *Living in Chains: Shackling of People with Psychosocial Disabilities Worldwide*, October 6, 2020, https://www.hrw.org/sites/default/files/media_2020/10/global_shackling1020_web_2.pdf, p. 3.

⁵¹ Human Rights Watch, *Living in Chains*, p. 3.

⁵² See 139.52, 138.124, 138.126.

- Comprehensively investigate state and private institutions in which people with mental health conditions live, with the goal of stopping chaining and ending other abuses.