

1.Introduction

- 1.1 The East and Horn of Africa Human Rights Defenders Project (DefendDefenders) is a regional non-governmental organisation (NGO) registered and based in Uganda. Established in 2005, DefendDefenders seeks to strengthen the work of human rights defenders (HRDs) throughout the East and Horn of Africa sub-region by reducing their vulnerability to the risk of persecution and by enhancing their capacity to effectively defend human rights. DefendDefenders focuses its work on 11 countries, including Sudan.
- 1.2 Established in 2009, African Centre for Justice and Peace Studies (ACJPS) is a non-profit, non-governmental organisation working to monitor and promote respect for human rights and legal reform in Sudan. ACJPS is dedicated to creating a Sudan committed to all human rights, the rule of law and peace, where rights and freedoms of individuals are honored.
- 1.3 In this submission, DefendDefenders and ACJPS examine a series of concerns relating to civic space in the Republic of Sudan since 2016. We specifically assess concerns relating to Sudan's respect for the rights to freedom of opinion and expression, association, and peaceful assembly. We evaluate the government's efforts in implementing the recommendations that were accepted during its second Universal Periodic Review (UPR), in 2016.
- 1.4 Since Sudan's last UPR cycle, President Omar al Bashir was overthrown following a nationwide protest that started in December 2018. On 11 April 2019, al Bashir was ousted in a military coup.ⁱ On 5 July 2019, the military and the opposition agreed on a power sharing deal consisting of civilian and military leaders.ⁱⁱ On 17 August 2019, a Constitutional Declaration was signed.ⁱⁱⁱ Subsequently, on 21 August 2019, the Transitional Military Council (TMC) transferred power to a newly-formed Sovereign Council, as per the July deal, and in September, to a civilian-led Transitional Government headed by a Prime Minister^{iv}, leading to a complex institutional arrangement with two bodies composing the executive branch, which has civilian and military components.
- 1.5 During its second UPR review, Sudan accepted 204 recommendations and noted 99.^v 13 of those recommendations explicitly pertain to civic space. The transitional government has taken positive steps by amending several laws intended to improve the human rights situation and open civic space in the country. It announced a "full cooperation" policy towards the United Nations, which includes cooperation with the Human Rights Council and its mechanisms, as well as ratification of the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW). The Government committed to reviewing legislation to bring it fully in line with international human rights standards and the Constitutional Document.^{vi} Additionally, the government approved the ratification of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT) and the Convention for the Protection of All Persons from Enforced Disappearance (CPPED)^{vii}.
- 1.6 We welcome the transitional government's efforts to initiate prosecutions, including that of former President Omar Al-Bashir for economic crimes. Authorities informed the media they were in constant contact with International Criminal Court (ICC),^{viii} following the historic visit of ICC Prosecutor Fatou Bensouda to Khartoum, in October 2020. In addition, Sudan signed a memorandum of cooperation with the ICC^{ix}. We call on the Sudanese authorities to pursue cooperation with the ICC, by transferring all indicted persons to The Hague.
- 1.7 We commend the government's efforts to protect and improve women's and girls' rights by repealing the Public Order law 1994, the imposition of a ban on female genital mutilation (FGM),

and the fact that women no longer need permission from a male relative to travel with their children. Legal reform, including criminal justice reform, is underway.^x

1.8 While recent changes were made to the definition of rape in Sudan’s criminal law, the law remains ambiguous. Women reporting sexual offences remain at risk of prosecution for adultery.^{xi} Women continue to be targeted based on such laws.

1.9 While the transitional government has taken progressive steps towards promoting and protecting human rights, we remain concerned by continued restrictions on the rights to freedoms of opinion and expression, association, and peaceful assembly. HRDs including journalists, and political activists regularly face harassment, intimidation, threats, and violence.

1.10 On 3 June 2019, during the uprising, and following the demise of President Al Bashir, Sudan security agents violently dispersed a peaceful sit-in by beating, firing live ammunition at, and injuring, protestors. Women protestors were subjected to sexual assault and rape, including gang-rape, and medical personnel were attacked. Reports suggest security forces, including the Rapid Support Forces (RSF), killed approximately 120 people, injured more than 900, and raped at least 64 women.^{xii} The victims are still waiting for justice. We urge the new authorities to do their utmost to ensure accountability for the violations and abuses committed under the former regime, both in Khartoum, including on 3 June 2019, and in other parts of the country, including conflict and former conflict areas of Darfur, Blue Nile, The Eastern Region, and South Kordofan, over the last three decades. Criminal accountability should be sought at the command responsibility level within the Sudanese government, military, and security forces, including the former National Intelligence Security Services (NISS), now General Intelligence Service, GIS) and the RSF, which are responsible for grave violations.

1.11 Sudan is currently rated as “repressed” by the CIVICUS Monitor.^{xiii} However, Sudan was previously classified as “closed.” This marks relative progress, which is a result of political and legislative changes.

- Section 2 assesses Sudan’s implementation of recommendations concerning freedom of opinion and expression.
- Section 3 assesses Sudan’s implementation of recommendations concerning freedom of assembly.
- Section 4 assesses Sudan’s implementation of recommendations concerning freedom of association.
- Section 5 contains recommendations to address ongoing restrictions on civic space.
- Section 6 contains an annex of implementation of 2nd cycle UPR recommendations related to civic space.

2. Freedom of opinion and expression

2.1 During its second UPR review, the government received 12 recommendations relating to freedom of opinion and expression. It accepted 11 and noted one. Sudan is credited for undertaking reforms since the previous UPR cycle aimed at improving freedom of opinion and

expression, including access to information. However, we are concerned that the practice lags behind the law. Additionally, the government has a responsibility to ensure that violations committed by the previous regime are addressed, perpetrators held to account, guarantees of non-repetition promoted and victims receive justice. There is limited effort to address violations and abuses committed under Bashir's administration.

- 2.2 The previous regime routinely restricted the right of freedom of opinion and expression. According to Amnesty International, in 2018, journalists were intimidated, harassed, questioned and arrested for doing their job.^{xiv} Independent newspaper Al Jazeera's prints were confiscated 13 times in 2018. NISS also confiscated ten newspaper prints on 27 different instances. Furthermore, Zine El Aben El-A'jab, a former editor of Al Mustagila newspaper, was charged with "dissemination of false information." On 29 October 2018 he was sentenced to one and a half months in prison or a fine of 5,000 Sudanese pounds.^{xv}
- 2.3 Journalists and activists were constantly arrested and intimidated. According to Reporters Without Borders, at least 79 journalists were arrested during the anti-government protests.^{xvi} The arrests appeared to be deliberate attempts at preventing journalists from performing their work.
- 2.4 During the protests, journalists and activists were particularly targeted. On 22 January 2019, NISS withdrew work permits from journalists reporting on the protests against former President Al Bashir. The authorities suspended the permits of correspondents of three newspapers due to their publication of information relating to the protests.^{xvii} Similarly, on 22 February 2019, Osman Mirghani, editor-in-chief of the independent Sudanese newspaper Al-Tayar, was arrested shortly after an interview which discussed the protests. Mirghani was held in an undisclosed location and had no access to his family before he was released.^{xviii}
- 2.5 Although the Constitutional Document adopted in August 2019 guarantees freedom of the press under Article 56 (3),^{xix} authorities have failed to fully respect freedom of opinion and expression. On 12 June 2020, the Sudanese Journalist Network (SJN) reported that the checkpoints intended to regulate COVID-19 were *de facto* restricting them from informing the public.^{xx} On 27 January 2021, SJN criticised the military restriction of journalists entering Darfur, under the pretext of a deteriorating security situation.^{xxi}
- 2.6 The Cybercrime Act 2018 has been used to harass, prosecute, and censor journalists and activists. According to a memo^{xxii} posted by the Ministry of Justice, Article 23 of the 2018 Cybercrimes Act, which criminalises the spread of false news, was amended, increasing the prison sentence from one year to four years.^{xxiii} On 18 July 2020, the army declared that it was ready to resort to legal action against individuals who "insult" them, including journalists and activists.^{xxiv}
- 2.7 Concerns have mounted over the potential of the amended cybercrime law to restrict the right to freedom of expression. On 11 February 2021, Orwa Alsadig, a Sudanese politician and political activist, was sued^{xxv} by the Sovereign Council for publishing lies, fake news, and insults after a speech he made was widely shared on social media.^{xxvi}
- 2.8 Despite Sudan supporting eight recommendations related to creating and maintaining an enabling environment for activists and journalists, the latter are still targeted and subjected to harassment and intimidation. On 23 June 2020, Mohamed El Amin Osheik was severely beaten by police officers for photographing cars queuing at a petrol station and reporting on fuel shortages in Sudan.^{xxvii}

2.9 Authorities continue to use the Sudanese Criminal Act (1991) to target HRDs and activists for criticising the government online. On 8 November 2020, Waad Bahjat, a woman HRD (WHRD), was charged with defamation, insult to a public servant exercising judicial proceeding (Article 116 of the Sudanese Criminal Act of 1991), publishing false news (Article 66), and public annoyance (Article 77). Bahjat was charged for posting a live video on Facebook recording an incident where several women were harassed by the Sudanese Armed Forces (SAF) and denied access to fuel at a petrol station.^{xxxviii} On 18 September 2020, Sudanese authorities raided a cultural center and arrested five artists for alleged “nuisance.”^{xxxix} The courts sentenced the artists to two months in prison and a fine of 5’000 Sudanese pounds.^{xxx} There were later released after the case was annulled by the Court of Appeal.^{xxxi}

3. Freedom of peaceful assembly

3.1 During Sudan’s second UPR, the government received five recommendations concerning the right to freedom of peaceful assembly. The government accepted four recommendations and noted one. Among others, the government committed to “end violent suppression of protestors, and arbitrary detention of political activists and journalists.” In practice, the government has failed to fully implement these recommendations.

3.2 Article 58 (1) of the 2019 Constitutional Document guarantees the right to peaceful assembly, stating that “every individual has the right to free organisation with others.”^{xxxii} Despite this provision, enjoyment of the right to peaceful assembly remains limited. Sudanese authorities continue to arrest peaceful protestors and use excessive force to stop demonstrations. On 27 August 2020, protests broke out in eastern Sudan over the newly elected Governor. Reportedly, four protestors were killed and three were injured.^{xxxiii}

3.3 In 2016, the Sudanese government committed to “guaranteeing the right to freedom of peaceful assembly and association in line with the International Covenant on Civil and Political (ICCPR) and amend existing legislation that is in violation of it.” Excessive use of force in policing demonstrations raises issues under, among other provisions, Article 21 of the ICCPR. On 18 August 2020, protesters assembled to protest the lack of progress in the implementation of the power sharing agreement. Authorities fired tear gas at hundreds of protestors and arrested a dozen of them.^{xxxiv}

3.4 On 2 January 2019, during the uprising that led to the demise of the former regime, 40 protestors were killed, and dozens were injured due to the use of excessive and lethal force.^{xxxv} Justice remains elusive. Similarly, in May and June 2019, police and security forces used excessive and sometimes lethal force; they used tear gas, beat up protestors, and detained them to disband protests and sit-ins.^{xxxvi}

3.5 According to WHRD MENA, WHRDs were particularly targeted for their role during the protests.^{xxxvii} Women faced a specific set of challenges including threats of violence and sexual and gender-based violence (SGBV).^{xxxviii} Justice remains elusive for these violations, including the 3 June 2019 massacre in Khartoum, during which the RSF and other armed elements killed dozens of protestors and raped and gang-raped women. Despite the establishment of a national inquiry committee, perpetrators are yet to be indicted and held criminally responsible. This impunity fails to send the signal that these acts are unacceptable in the new Sudan; by failing to grant the victims and survivors justice and reparations, Sudanese authorities fail to promote justice, truth, and guarantees of non-recurrence.

- 3.6 Journalists, opposition members and supporters, and citizens who organised peaceful protests were often restricted and faced violence. On 6 January 2019, the crackdown on protests resulted in at least 816 people being arrested. Reports suggest journalists, opposition leaders, civil society organisation (CSO) representatives and members, and doctors were arbitrarily arrested and detained.^{xxxix}
- 3.7 Sudan's security forces used arbitrary arrests and detentions as intimidation tactics to prevent peaceful protests. The NISS targeted activists for participation in the protests.^{xl} Ten lawyers and HRDs were briefly detained for organising a peaceful protest. On 5 January 2019, HRD Salah Adam was arrested and detained.^{xli}
- 3.8 Civilians continue to face violence and threats when exercising their right to peacefully protest. On 13 July 2020, 12 protestors were killed and 14 were injured in Fata Borno, North Darfur. Armed militia members fired live ammunition at protestors demonstrating against insecurity, for the protection of crops, and for the dismissal of corrupt government officials.^{xlii}
- 3.9 The RSF continues to enjoy impunity for crimes committed in Khartoum on 3 June 2019 and in other regions. For instance, on 29 July 2019, the RSF fired live ammunition at 500 high school students demonstrating against the increased public transport costs. Five students were killed, including three minors.^{xliii}

4. Freedom of association

- 4.1 During Sudan's second UPR, the government received five recommendations on the right to freedom of association. It committed to four and noted one. It committed to "take adequate measures to effectively safeguard the freedoms of expression, association, and assembly". However, the government has failed to take adequate measures to fully implement recommendations.
- 4.2 Article 58(1) of the Constitutional Document stipulates: "Every individual has the right to free organisation with others, including the right to form political parties, associations, organizations, syndicates and professional unions, or to join the same in order to protect their interests."^{xliv} Article 22 of the ICCPR also protects the freedom of association. However, concerns raise over the government's onslaught on independent trade unions and their leaders. On 24 February 2021, the International Trade Union Confederation (ITUC) and ITUC-Africa addressed a letter to Prime Minister Abdulla Hamdok criticising the arbitrary arrests of trade unionists and the dissolution of trade unions.^{xlv}
- 4.3 The government has taken positive steps towards creating an enabling environment for CSOs. Recent amendments were made to the Voluntary and Humanitarian Works Act (2006). On 10 March, the Minister of Social Development, Ahmed Adam Bakhiet suspended a controversial set of regulations that set out to govern organizations registered under the Sudan Voluntary and Humanitarian Works Act (SVHWA) of 2006. The February regulations were approved by the previous minister Lena Al-Shiekh during her last days in office^{xlvi}. The suspended regulations maintained the criminalisation of any person or group of persons who exercised any voluntary work in the name of an organization without having been registered. They introduced a "right of the registrar to refuse a registration application as per Article 13 of the SVHWA^{xlvii}.
- 4.4 The previous government targeted CSOs by raiding organisations and arbitrarily arresting staff members. On 3 January 2019, the NISS raided the National Civic Forum and arrested three staff members.^{xlviii} The current authorities continue to use former regime laws, particularly the Sudan Voluntary and Humanitarian Works Act 2006, to restrict freedom of association. On 31

December 2020, Mustafa Adam, a Commissioner of the Humanitarian Aid Commission, released a statement announcing the cancellation of 45 registered organisations and seizure of their assets, citing their link to the former regime as a reason for closure.^{xlix} This raises substantive and due process issues.

4.5 Under the previous regime and during the protests, opposition parties were impacted by restrictions on freedom of association. A member of Sudanese Congress Party was arrested and detained for three months. On 11 January 2019, Amani Hasabo was arrested under the emergency laws.ⁱ On 29 June 2019, two members of the protest movement were arrested.ⁱⁱ On 2 July 2019, two opposition leaders were arrested, and the authorities allegedly also searched the houses of three other opposition leaders.ⁱⁱⁱ

5. Recommendations to the Government of Sudan

DefendDefenders and ACJPS welcomes the significant progress achieved since the last UPR review; we note, however, that this progress is a result of political changes in the country. The civilian-led Transitional Government has moved to reform legislation adversely impacting civic space and to guarantee a more enabling environment for HRDs and civil society actors in the country. We encourage the government to fully implement recommendations accepted in 2016 and to reconsider its position on recommendations noted by the previous regime.

Despite these positive developments, we remain concerned by failures to fully and meaningfully implement some of the recommendations accepted in 2016. We call on the government of Sudan to create and maintain, in law and in practice an enabling environment for civil society, in accordance with the rights enshrined in the Constitutional Document, laws and regulations, the ICCPR, the UN Declaration on Human Rights Defenders, and relevant Human Rights Council resolutions. Furthermore, we call on the government to expedite the formation of the Human Rights Commission and the Transitional Justice Commission according to the Constitutional Document.

We formulate the following specific recommendations:

5.1 Regarding freedom of opinion and expression

- Amend the Press and Publication Act (2009), Criminal Act (1991), and Cybercrimes Act (2018) to bring it in line with international standards on the right to freedom of opinion and expression;
- End to the practice of arbitrary arrests and detention of journalists, artists, activists and others for expressing their views;
- Ensure all media outlets work freely without fear of retribution for expressing their views; and;
- Investigate threats and attacks against journalists and human rights defenders and publicly condemn attacks and threats against them.

5.2 Regarding freedom of peaceful assembly

- Conclude investigations of the 3 June 2019 massacre; indict and prosecute perpetrators according to international human rights standards;
- Domesticate the UN Convention Against Torture and International Convention for the Protection of All Persons from Enforced Disappearance;
- Amend the National Security Act 2010 in line with the Sudan's Constitutional Document of 2019 and international standards on the use of force, including the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials;
- Repeal sections of the National Security Act 2010 that grant immunity to the police, the armed forces, and the Rapid Support Forces;
- Train security personnel on basic human rights principles and policing of crowds in accordance with international standards, including the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials; and;
- Unconditionally and immediately release all peaceful protestors arbitrarily detained and arrested.

5.3 Regarding freedom of association

- In line with Articles 57 and 58(2) of the Constitutional Document, allow the formation of political parties freely;
- End the unjustifiable raids and disruptions of civil society organisations;
- Laws and policies governing registration of organisations should be clear, non-discriminatory and nonburdensome, without discretionary components. A notification regime should be preferred to an authorisation regime. The laws should also recognise the existence of informal organisations; Oversight mechanisms and investigations should be independent and impartial and guided by due process in line with international standards.

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^{iv} Sudan 2019, Amnesty International, <https://www.amnesty.org/en/countries/africa/sudan/report-sudan/>, Accessed 13 March 2021.

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^{ix} “Sudan signs ICC cooperation agreement for Darfur trial”, Jurist- Legal news & commentary, 18 February 2021, <https://www.jurist.org/news/2021/02/sudan-signs-icc-cooperation-agreement-for-darfur-trial/#>, Accessed 24 March 2021.

^x DefendDefenders, 9 September 2020, <https://defenddefenders.org/wp-content/uploads/2020/09/HRC45-Civil-society-letter-regarding-SUDAN.pdf>, Accessed 18 March 2021.

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