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SOAS
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SERIOUS HUMAN RIGHTS VIOLATIONS PERPETRATED IN THE CONTEXT OF MASS CIVILIAN DETENTION IN SUDAN

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DEFINITIONS

ACJPS	African Centre for Justice and Peace Studies
AComHPR	African Commission on Human and Peoples' Rights
AP II	Additional Protocol II of 1977 to the Geneva Conventions of 1949
CA 1991	Criminal Act 1991
CAT	Committee Against Torture
CIDTP	Cruel, inhuman or degrading treatment or punishment
CRP	Central Reserve Police
CRSV	Conflict-related sexual violence
DNHR	Darfur Network for Human Rights
Elements of Crimes	Elements of Crimes of the ICC Statute
EO No. 3	Emergency Order No. 3/2021
FFM Submission	Written submission made to the Sudan FFM by REDRESS, ACCESS, DNHR, and the SOAS Centre for Human Rights Law in July 2024, detailing the practice of arbitrary arrest, arbitrary detention, and torture and CIDTP perpetrated against civilians by the RSF, the SAF, and their respective affiliates
GIS	General Intelligence Service
GIS Amendment	General Intelligence Service Law (Amendment) 2024
Hemedti	General Mohamed Hamdan Dagalo (leader of the Rapid Support Forces)
HRC	Human Rights Council
HRCt	Human Rights Committee
IACtHR	Inter-American Court of Human Rights
ICC	International Criminal Court
ICC Statute	Rome Statute of the International Criminal Court
ICL	International criminal law
ICPPED	International Convention for the Protection of All Persons from Enforced Disappearance
IHL	International humanitarian law
IHRL	International human rights law
NIAC	Non-international armed conflict

<u>NISS</u>	National Intelligence and Security Service (now the GIS)
<u>OCHA</u>	UN Office for the Coordination of Humanitarian Affairs
<u>OHCHR</u>	Office of the UN High Commissioner for Human Rights
<u>OTP</u>	Office of the Prosecutor of the International Criminal Court
<u>Robben Island Guidelines</u>	Guidelines and Measures for the Prohibition and Prevention of Torture, Cruel, Inhuman or Degrading Treatment or Punishment in Africa
<u>RSF</u>	Rapid Support Forces
<u>SAF</u>	Sudanese Armed Forces
<u>SAF MI</u>	Military Intelligence branch of the SAF
<u>SPLM-N al-Hilu</u>	Faction of the Sudan People's Liberation Movement-North led by Abdelaziz al-Hilu
<u>Sudan FFM</u>	Independent International Fact-Finding Mission for the Sudan
<u>UN</u>	United Nations
<u>UNCAT</u>	UN Convention Against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment
<u>U.S.</u>	United States

A. SUMMARY

On 15 April 2023, an armed conflict erupted in Sudan between the Sudanese Armed Forces and the Rapid Support Forces. The conflict, which remains ongoing at the time of writing and shows no signs of abating, has caused unprecedented devastation. However, rather than mitigating the magnitude of civilian harm caused by their fighting and the related mass displacement, humanitarian crisis, and imminent catastrophic famine, the warring parties have each exploited the ongoing state of conflict to target civilians.

This report is an abridged version of a submission made to the Independent International Fact-Finding Mission for the Sudan in July 2024 and addresses one of the most prominent features of the targeting: namely the ongoing arbitrary arrest, arbitrary detention, and torture and cruel, inhuman or degrading treatment or punishment by both sides of thousands of individuals, many of whom are civilians as part of a shadow war against civil society, human rights defenders, activists, and marginalised communities.

A clear overarching pattern has developed since the earliest stages of the conflict. Arrests are usually conducted ostensibly based on an individual's perceived connection with the "other side", i.e., that they are an intelligence agent, informant, supporter, or sympathiser of the Rapid Support Forces, the Sudanese Armed Forces, or another armed group. These claims, which are often spurious, feed a polarising narrative espoused by the warring parties that is used to justify further targeting of civilians based on, amongst other things, race, ethnicity and ethnic profiling, tribal affiliation, activism, neutrality, profession, and other attributes.

In practically all cases identified by the report authors, persons detained by the Rapid Support Forces are held in inadequate (and often inhumane) conditions that are contrary to international standards. Civilians are frequently held *incommunicado*, without any means to contact family members or their lawyers, and often lack access to adequate nutrition, vital medicines, or personal hygiene facilities. The same also appears to be true of detention centres run by the Sudanese Armed Forces. At least some of these cases may amount to enforced disappearance.

There is strong evidence that detained civilians are frequently subjected to ill-treatment rising to the level of torture, especially those in the custody of the Rapid Support Forces or the General Intelligence Service (which is closely affiliated with the Sudanese Armed Forces). Perpetrators commonly employ various techniques that may amount to torture or ill-treatment, including the regular use of both physical and psychological violence against civilians. Civilians are at particularly high risk of torture and ill-treatment during their initial arrest and interrogation, which may take place over the course of a number of hours. Acts of torture are seemingly conducted for the purposes of obtaining information (including 'confessions' of alignment with the 'other side') as well as to intimidate, degrade, and humiliate them. In numerous cases, there is also a discriminatory purpose to their torture.

In detention centres operated by the Rapid Support Forces particularly, combatants have been implicated in various cases of conflict-related sexual violence including rape and gang rape, as well as numerous incidents of ransom which may amount to hostage-taking. According to various reports, there is also evidence that the Rapid Support Forces has organised itself around a possible enslavement structure that it has embedded into its military operations – evidenced by, amongst other things, numerous instances of sexual slavery and forced labour perpetrated by the Rapid Support Forces against civilian detainees.

As explained throughout the course of this report, there is clear evidence of patterns of arbitrary arrest, arbitrary detention, ill-treatment (some of which amounts to torture), and death in custody, which all indicate the existence of separate widespread and systematic practices, if not deliberate policies, adopted by the Rapid Support Forces and the Sudanese Armed Forces, respectively, that may amount to international crimes including torture, war crimes, and crimes against humanity.

The present factual situation (particularly the profound impact of the atrocities on State institutions including the police, public prosecution, and judiciary) and Sudan's national laws and related infrastructure pose serious hurdles to any meaningful prosecution of perpetrators even if there was a political commitment to accountability for international crimes. Meanwhile, there remains a clear role for international actors to play in supporting Sudan's journey to accountability. The International Criminal Court has jurisdiction over crimes listed in the Rome Statute of the International Criminal Court committed in the "situation in Darfur since 1 July 2002" and has launched a new investigation into alleged international crimes committed in Darfur since 15 April 2023. However, in any event, the International Criminal Court has neither the jurisdiction nor the resources to investigate *all* violations since the start of the conflict, and to ensure that *all* perpetrators are held accountable. In this respect, the decision of the Human Rights Council to establish the Independent International Fact-Finding Mission for the Sudan is a welcome step towards a more comprehensive accountability strategy.

Going forward, there is an overwhelming need for a holistic, transformative approach to Sudan's future based on civilian rule, participatory approaches to developing justice and accountability mechanisms (including in relation to detention violations), and comprehensive legal and institutional reforms designed with a view to ending impunity and addressing its root causes. Once a transitional government is established, that government should prioritise consultations with trusted civilian and political forces keen to promote genuine transitional justice models, objectives and processes, including survivor communities and grassroots organisations, with a view to developing the required approach collaboratively.

B. RECOMMENDATIONS

To the parties to the armed conflict:

- Cease all armed hostilities without delay, including the ongoing sieges by the Rapid Support Forces in North Darfur, Blue Nile, and White Nile States, and atrocities in other parts of Darfur, Khartoum, Gezira, Sennar, and the Kordofan States.
- Comply with international humanitarian law and international human rights law obligations, including:
 - i) ensuring that all detained individuals are treated humanely, including civilians and persons *hors de combat*;
 - ii) releasing any civilians arbitrarily detained (including those detained in unofficial temporary detention sites such as occupied homes, offices, and other civilian premises);
 - iii) protecting civilians from targeted attacks; and
 - iv) ensuring that humanitarian aid can be delivered promptly and safely to all areas.
- Enable independent monitors to inspect detention centres or facilities (both official and secret) at the earliest possible opportunity, including allowing any official visits requested by the Independent International Fact-Finding Mission for the Sudan, International Committee of the Red Cross, relevant United Nations Special Procedures mandate-holders, and other human rights mechanisms from the United Nations and African Union.
- Ensure that all civilian detainees are held in official places of detention, that all arrests are conducted in accordance with international humanitarian law and international human rights laws standards and are properly registered, and that fair trial rights and guarantees are ensured. Unsanctioned and secret detention centres should be immediately closed and detained or interned persons either released or transferred to official sites in accordance with applicable law.
- Publicly commit to the protection of human rights, and to supporting processes that ensure all perpetrators are held accountable and brought to justice (including commanders under the principle of command responsibility).

To the Sudanese de facto authorities:

- All civilians arrested should be promptly brought before a judge and released if not charged with a recognisable offence in accordance with international law standards. In areas where local courts are non-functional due to the conflict, alternative arrangements should be made to ensure adequate judicial review and oversight, including using courts, judges, and prosecutors located in other states as appropriate.
- Prepare, publish, and update records of all civilians in detention. Promptly notify the families of those detained about their loved ones' whereabouts and health conditions. Detained individuals should also be afforded the right to be represented by their nominated lawyer.

- Direct the Attorney General, Public Prosecutor and the Ministry of Justice to publish data on the number of investigations opened, and cases of torture, ill-treatment and other detention abuses by military, security, and intelligence forces and other affiliated armed groups referred for prosecutions, as well as the result of such investigations.

To a forthcoming civilian government in Sudan:

- Develop and implement a robust, independent, and accessible transitional justice model and related mechanisms to address accountability and redress for victims. This must develop in close coordination with and be prominently enshrined in any peace, democracy, and constitution-making processes.
- Recognise that comprehensive legal and institutional reforms must be enacted and implemented as a pre-condition to be able to:
 - i) properly investigate violations and hold perpetrators accountable;
 - ii) develop specific mechanisms to provide truth, justice, and reparation to victims (e.g., special criminal courts);
 - iii) dismantle the structures that enable and incentivise the commission of human rights violations; and
 - iv) take the necessary measures to ensure and safeguard the transition to a State committed to the rule of law, constitutionalism, and human rights protection.
- Any such models, reforms, and mechanisms must be:
 - i) developed following participatory approaches capturing the widest possible number of persons, experiences, and perspectives during any consultative process. These approaches should be led by trusted civilian and political forces keen to promote genuine transitional justice objectives and processes; and
 - ii) implemented as part of a holistic, transformative approach designed to address the root causes of impunity in Sudan. For instance, accountability mechanisms and processes should be informed by Sudan's obligations under international human rights and humanitarian law (e.g., repealing immunity provisions at the earliest opportunity).

To mediating organisations and States:

- Ensure that any political negotiations are transparent and genuinely participatory, inclusive, and owned by the Sudanese people. Consider as a confidence-building measure requiring the warring parties to release civilians who have been arbitrarily detained, facilitated by a suitable independent third party (e.g., the International Committee of the Red Cross).
- Make a clear commitment that, once a peace agreement is reached, a political process will be launched to establish a civilian government and that the military will not play any continued role in any democratic transition in Sudan. All negotiations should be conducted on this basis.
- Ensure that any peace agreement reached is in accordance with international humanitarian law, international human rights law, and international criminal law standards on accountability. Mediators should refuse to endorse any peace agreement that provides for amnesties for crimes against humanity, war crimes, genocide,

torture, enforced disappearance, conflict-related sexual violence, or gross violations of international human rights law or international humanitarian law and other grave breaches of the Geneva Conventions of 1949.

To the International Criminal Court:

- Investigate all credible allegations of international crimes committed within its jurisdiction in Sudan – both international crimes committed in a detention context as well as other violations committed in connection with the armed conflict – and ensure that those most responsible are held accountable, that victims are provided with reparation, and that victims and their families are properly protected.
- In the course of investigating individual instances of civilian detention and related violations, consider also any emerging patterns of violations common across such cases, including for the purposes of assessing whether the threshold for crimes against humanity has been met in the case of the Rapid Support Forces, the Sudanese Armed Forces, or both.
- In the course of ongoing investigations, take proper account of the significant continuity of and nexus between international crimes committed in Darfur and the rest of the country, including in terms of their geographic and temporal scope and how this relates to the jurisdiction of the court. In this respect, any investigation and prosecution strategy that has been adopted should address the fact that the warring parties' respective chains of command, logistical military support, and control of military operations emanate considerably from outside Darfur (particularly Khartoum and, in the case of the Sudanese Armed Forces, also Port Sudan).

To the members of the Human Rights Council:

- Extend the mandate of the Independent International Fact-Finding Mission for the Sudan for a minimum period of one year to allow it to pursue its work of investigating and establishing the facts (including identification of perpetrators), circumstances and root causes of all alleged human rights violations and abuses and violations of international humanitarian law, and related crimes in the context of the ongoing armed conflict – including violations committed in the context of mass civilian detention.
- Take steps to properly equip the Independent International Fact-Finding Mission for the Sudan to conduct its work effectively, including paying their contributions to the United Nations in full and on time to resolve the liquidity crisis. The Independent International Fact-Finding Mission for the Sudan should be provided sufficient resourcing to ensure it can hire and retain staff, and that its staff can meet with survivors, witnesses, and experts in-person as required.
- Continue to assess the situation in Sudan, including the patterns of targeted arrest and detention of civilians described throughout this report. Issue further extensions of the Independent International Fact-Finding Mission for the Sudan's mandate as appropriate to enable it to produce a comprehensive body of report(s) addressing violations and abuses committed in the context of the ongoing armed conflict and thereafter issue final recommendations informed by such findings.
- Ensure that the findings and reports of the Independent International Fact-Finding Mission for the Sudan can be utilised to inform the ongoing work of complementary bodies and processes, including the International

Criminal Court, the Panel of Experts on the Sudan, States (particularly that may be willing to exercise universal jurisdiction or make targeted sanctions designations), mediation and peace processes, and the forthcoming civilian government (particularly in relation to any transitional justice processes).

To the UN Special Procedures mandate-holders and other human rights mechanisms from the UN and African Union:¹

- Investigate all credible reports of arbitrary arrests, detentions (including *incommunicado* detention), torture and ill-treatment (including conflict-related sexual violence), and enforced disappearance in Sudan. As appropriate, facilitate urgent appeals and actions on individual cases and liaise with the de facto authorities (and the Rapid Support Forces in areas under its control) on appropriate measures to protect civilians in detention or otherwise under threat.

To sanctions authorities:

- Apply targeted sanctions against those individuals and entities most responsible for ongoing arbitrary arrest, detention, torture, enforced disappearance, death in custody, and other related violations, all of which fall within the scope of the available human rights sanctions regimes.
- Measure and monitor the effectiveness of sanctions designations to date. Evaluate and adapt the underlying sanctions strategy as required in response to key findings. For instance, based on developments to date, sanctions authorities should take a more network-based approach to entity sanctions and address sanctions-evasion networks, multilateralise sanctions where possible, and target (further) senior leaders in the Rapid Support Forces, the Sudanese Armed Forces, and their respective associates, each implicated in detention abuses and other serious human rights violations.
- Funds for interim relief and reparation should be made available through recovering looted property and illicit gains made and by freezing, confiscating, and repurposing assets of sanctioned individuals in a human rights-compliant procedure. States should also enforce sanctions in a consistent and proactive manner, which would enable them to repurpose the fines from sanctions breaches to provide reparation to victims.
- Take the necessary steps to minimise the inadvertent impact of targeted sanctions designations on individuals not implicated in violations, including advising financial institutions – for instance, in the form of published guidance – to ensure that any restrictions placed on transactions with a Sudan nexus are necessary to comply with sanctions rules or at least are proportionate to the specific objectives sought by the underlying sanctions regime(s).

1 The patterns of violations addressed in this report raise various thematic issues and therefore engage the mandates of various human rights mechanisms, including the Special Rapporteurs on: (i) torture and other cruel, inhuman or degrading treatment or punishment; (ii) the situation of human rights defenders; (iii) extrajudicial, summary or arbitrary executions; and (iv) violence against women and girls, Working Groups on: (i) Arbitrary Detention; and (ii) Enforced or Involuntary Disappearances, the African Commission on Human and Peoples' Rights (including the Committee for the Prevention of Torture in Africa), the Independent Expert on the situation of human rights in the Sudan, and the UN Secretary-General's Personal Envoy for Sudan. The situation in Sudan more generally also engages considerably with the mandates of other Special Rapporteurs, including those on: (i) the rights to health and education; (ii) the rights of migrants; and (iii) trafficking in persons.

To national war crimes units:

- Monitor the movements of suspected perpetrators of serious human rights violations and international crimes and prepare to arrest and prosecute any such perpetrators that enter their territory or jurisdiction under the principle of universal jurisdiction.
- Proactively open structural investigations and establish joint investigative teams to collect evidence in relation to the crimes committed during the current armed conflict. If not done already, States should also ratify, and take the necessary steps to implement, the 2023 Ljubljana – The Hague Convention on International Cooperation in the Investigation and Prosecution of the Crime of Genocide, Crimes Against Humanity, War Crimes and other International Crimes.
- Investigations should address both direct perpetrators of international crimes as well as those engaging in conduct ancillary to such crimes – for instance, inciting, assisting, aiding or abetting the commission of international crimes – especially individuals based in, or with a nexus to, the territory of the relevant war crimes unit (including those seeking asylum).

To all States and regional authorities:

- Urgently increase support, including funding and technical capacity building, to Sudanese civil society organisations, particularly those conducting documentation and monitoring work, providing humanitarian assistance, supporting survivors, and otherwise promoting the defence of human rights. On documentation of international crimes, (continue to) prioritise support with a view to ensuring Sudanese civil society organisations' activities are properly enhanced, coordinated and fit for their intended purpose (e.g., to maximise the likelihood that the evidence gathered will be admissible and optimised for use in future accountability proceedings).
- Cooperate with the International Criminal Court in the investigation and prosecution of those most responsible for international crimes in Sudan, including employing judicial cooperation tools to support the investigation and prosecution of international crimes and the provision of reparation for victims. For instance, where requested, States should identify, trace, freeze and seize the assets of accused persons including for the purpose of providing reparation to victims.
- Focus engagements with the warring parties on securing a comprehensive ceasefire, enabling the delivery of further humanitarian aid and interim relief for survivors, as well as preventing further violations of international humanitarian law and international human rights law obligations.
- Continue issuing public statements condemning possible international crimes being committed in the current armed conflict (including in the context of mass civilian detention) and urging all parties to comply with their international law obligations.

C. BACKGROUND



© Reuters/Mohamed Nureidin Abdallah.

People walk near damaged cars and buildings at the central market during clashes between the RSF and the army in Khartoum North, in April 2023.

On 15 April 2023, an armed conflict erupted in Sudan between its latest coup leaders – the Sudanese Armed Forces (**SAF**) led by General Abdel Fattah al-Burhan, and the paramilitary Rapid Support Forces (**RSF**) led by General Mohamed Hamdan Dagalo (**Hemedti**). The conflict, which remains ongoing at the time of writing and shows no signs of abating, has caused unprecedented devastation – particularly in Khartoum, Darfur, Kordofan, Gezira, and Sennar – though the whole country has been profoundly impacted.²

The cost of Sudan’s latest armed conflict has largely been borne by the people of Sudan. The SAF and the RSF have consistently throughout the conflict engaged in urban warfare while battling for control of strategic locations.³ This has drastically amplified the magnitude of civilian harm caused by the fighting. Even by conservative estimates, almost 19,000 people have been killed,⁴ mainly civilians, and more than 8 million people have been forcibly

2 See e.g., REDRESS and the SOAS Centre for Human Rights Law, “Ruining a Country, Devastating its People”, 11 September 2023 (available in English and Arabic); Final report of the Panel of Experts on the Sudan (S/2024/65), 15 January 2024.

3 REDRESS and the SOAS Centre for Human Rights Law (n 2), pp. 17-19.

4 For updated figures, see the latest Sudan Situation Reports by the [Armed Conflict Location and Event Data Project \(ACLED\)](#). Current official death counts are widely regarded as significant undercounts given the many challenges accurately recording deaths. E.g., the Panel of Experts (n 2) found that in El-Geneina (West Darfur) alone, between 10,000 and 15,000 people were killed. In testimony to the United States (**U.S.**) Senate Foreign Affairs Committee on 1 May 2024, the U.S. Special Envoy for Sudan noted that the official figure may be incorrect by a factor of 10 to 15, citing possible figures as high as 150,000 and that work is ongoing to determine a more accurate count.

displaced – now the largest displacement crisis in the world.⁵ Critical infrastructure has been badly damaged or destroyed, often deliberately by the warring parties.⁶ Meanwhile, the humanitarian crisis is worsening daily. Every second person requires humanitarian assistance.⁷ Communities, particularly those in parts of Darfur and Khartoum, are at imminent risk of catastrophic famine if not already in the midst of it.⁸

Rather than mitigating these issues, the warring parties – ultimately the lead architects of the crisis – have each exploited the ongoing state of conflict to target civilians for various purposes, including as a means of consolidating territory, strengthening their negotiating positions, crushing resistance, inflicting terror, and settling old scores. As REDRESS and the SOAS Centre for Human Rights Law concluded in our report, “Ruining a Country, Devastating its People”, there is a large body of credible and evolving evidence implicating the RSF and the SAF in the commission of serious human rights abuses and international crimes since 15 April 2023.⁹

One dominant pattern, and the subject of this report, is the ongoing arbitrary arrest, arbitrary detention, and torture and cruel, inhuman or degrading treatment or punishment (**‘CIDTP’**) by both sides of thousands of individuals, many of whom are civilians as part of a shadow war against civil society, human rights defenders, activists, and marginalised communities. There is clear evidence of patterns of arbitrary arrest, arbitrary detention, ill-treatment (some of which amounts to torture), and death in custody (including as a result of inhumane detention conditions and lack of access to adequate nutrition and vital medicines), which all indicate the existence of widespread and systematic practices, if not deliberate policies, adopted by the RSF and the SAF, respectively, that may amount to international crimes including torture, war crimes, and crimes against humanity.

This report is an abridged version of a submission made to the Independent International Fact-Finding Mission for the Sudan (**‘Sudan FFM’**) by REDRESS, ACCESS, the Darfur Network for Human Rights (**‘DNHR’**), and the SOAS Centre for Human Rights Law, detailing the ongoing practice of arbitrary arrest, arbitrary detention, and torture and CIDTP perpetrated against civilians by the RSF, the SAF, and their respective affiliates (the **‘FFM Submission’**). The FFM Submission is primarily based on information (including survivor and witness testimonies) gathered by DNHR and ACCESS in Sudan and neighbouring countries, including individual cases of arbitrary civilian detention and related violations, as well as the locations and conditions of detention centres and, where possible, the identities of those responsible. Sensitive information included in the FFM Submission has been redacted for the purposes of this report, noting that public disclosure of such information may jeopardise the safety of survivors, witnesses, and other stakeholders, especially those still based physically in Sudan.

While in the preparation of the FFM Submission the authors consulted a range of sources regarding alleged arbitrary arrest, arbitrary detention, and ill-treatment perpetrated across Sudan since 15 April 2023, the scope of the FFM Submission focuses primarily on, and is therefore limited by, the information gathered and verified by ACCESS and DNHR. This report is similarly limited. In particular:

5 For updated figures, see the latest Sudan Situation Reports by the United Nations (**‘UN’**) Office for the Coordination of Humanitarian Affairs (**‘OCHA’**); Mohamed El Tayeb, “The Largest Displacement Crisis in the World: The Deteriorating Humanitarian Situation in Sudan”, 12 June 2024.

6 See REDRESS and the SOAS Centre for Human Rights Law (n 2) and documentation prepared by, amongst others, the Sudan Conflict Observatory, Yale School of Public Health’s Humanitarian Research Lab, and Centre for Information Resilience.

7 Health Cluster, World Health Organisation, Sudan Conflict: Public Health Situation Analysis (PHSA), 3 April 2024.

8 For updates, see reports by the Famine Early Warning Systems Network (FEWS NET) and OCHA (n 5); World Food Programme, “Famine confirmed in Sudan’s North Darfur, confirming UN agencies worst fears”, 1 August 2024.

9 REDRESS and the SOAS Centre for Human Rights Law (n 2).

- a) ACCESS and DNHR primarily gathered survivor and witness accounts regarding the treatment of individuals believed to be civilians who had not participated directly or indirectly in hostilities. Therefore, this report addresses violations committed against individuals on the assumption that, for the purposes of any international humanitarian law ('IHL') and international criminal law ('ICL') analysis, they would be classified as civilians who had not directly participated in hostilities and would benefit from the legal protections associated with this status or classification at the time of the violation(s). See Section J (**Accountability and Legal Reform**) for analysis on the legal consequences of this assumption and the (increasing) practical challenges distinguishing combatants from the civilian population.
- b) ACCESS and DNHR primarily gathered information regarding violations in Khartoum, Gezira, and the Darfur States.¹⁰ While these are key locations where arbitrary arrests have been conducted since 15 April 2023, further fact-finding and analysis is required regarding the nature of such violations committed elsewhere in Sudan, including the identity of key perpetrators, location of detention sites, and key differences against the patterns described in this report.

The Sudan FFM has documented “widespread arrests and detention conducted by both SAF and RSF since mid-April 2023 in areas under their control”, with civilians “arrested mainly on suspicion of supporting the other side of the conflict”.¹¹ Since the authors submitted the FFM Submission, the Sudan FFM has found that:

“both RSF and SAF arbitrarily arrested and detained civilians, including children, in violation of fundamental guarantees under international humanitarian law and international human rights law. Individuals, including children, were not informed of the reasons for their arrest, or any charges brought against them, and often held in unofficial detention locations in inhumane conditions and without access to legal assistance or judicial oversight in violation of the ICCPR and CRC.”¹²

10 This was not a deliberate strategy but was instead influenced by various factors, including: (i) the locations of ACCESS’ and DNHR’ human rights monitors in Sudan and their (lack of) ability to travel to certain locations; (ii) patterns of internal and external displacement; and (iii) communications blackouts and civil society crackdowns within individual states that hindered both in-person and remote information gathering.

11 Sudan FFM, Report of the Independent International Fact-Finding Mission for the Sudan (A/HRC/57/23) (‘FFM Report’), 5 September 2024, para. 71.

12 Ibid, para. 74.

D. CIVILIAN DETENTION SINCE APRIL 2023



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Military, security, and intelligence actors in Sudan have long used targeted arrests of civilians to gain information, stifle dissent, punish and eliminate opponents, and inflict discriminatory violence.

A deliberate policy

Military, security, and intelligence actors in Sudan have long used targeted arrests of civilians to gain information, stifle dissent, punish and eliminate opponents, and inflict discriminatory violence.¹³ Once arrested, the lack of adequate legal and procedural safeguards to regulate the detention process and related use of unsanctioned detention centres and *incommunicado* detention places detained persons outside of the (already limited) protection of national law and facilitates the use of enforced disappearance as well as torture and ill-treatment including to extract forced ‘confessions’.

This practice was prominently employed under the al-Bashir regime which came to power by a military coup d’état in 1989¹⁴ and, following Bashir’s ouster in 2019 and the subsequent October 2021 military coup, resumed largely unchanged – with the RSF and SAF effectively inheriting the relevant detention centres, networks, personnel, and techniques.¹⁵ Having now turned on one another, there is compelling evidence that the RSF and

13 For recent analysis of this issue, see Edward Thomas, “The Labyrinth”, 22 April 2024 (Atar, English Issue 3).

14 See e.g., recent merits decisions by the African Commission on Human and Peoples’ Rights (‘ACoMHPR’) in the cases of Dr. Amin Mekki Medani and Mr. Farouq Abu Eissa, as well as S.I..

15 Thomas (n 13).

the SAF¹⁶ are engaged in separate (but operationally similar) systematic campaigns of targeted violence against the civilian population – involving unprecedented levels of arbitrary arrest, *incommunicado* detention, torture and ill-treatment, and extrajudicial killings of individuals, particularly on the basis of ethnicity and tribal affiliation as well as targeting civil society members, human rights defenders, activists, and other marginalised groups. Taken together, these patterns have all the appearances of deliberate policies developed by, or at least with the knowledge of, senior leaders or commanders within the warring parties.

Scale of arrests

The total number of civilians arbitrarily arrested and detained across Sudan since 15 April 2023 is unknown. Public reports in mid-2023 estimated that the RSF had detained at least 3,500 civilians in Khartoum alone¹⁷ and SAF MI had detained a further 1,500 people.¹⁸ These figures do not account for arrests made since August 2023, nor those arrested in other regions or by other actors.¹⁹ Considering the estimated detention numbers provided to ACCESS and DNHR in survivor testimonies as well as analysis of subsequent crackdowns launched by the warring parties since August 2023, the true figure across all states could be at least double.

The factual landscape is further complicated by the current security situation and partial collapse of Sudan's judicial system, including that:

- a) Some States have experienced a total absence of due process and official recordkeeping since the early stages of the conflict. Arrests are often conducted by the warring parties with limited or no regard for judicial processes, including refusal to provide reasons for the arrest and indefinite pre-charge and pre-trial detention. It is unclear whether custodial records are being prepared and properly updated by the relevant local authorities. In areas controlled by the RSF, there are either no functioning local authorities or the RSF has permitted the re-establishment of local authorities that overall appear to lack any substance, operational independence, or adequate resources.
- b) The RSF and the SAF often hold detained individuals *incommunicado* without allowing contact with family members or lawyers and while denying any involvement in the relevant arrest or knowledge of the detained individual's whereabouts.²⁰
- c) In the early stages of the conflict, armed clashes took place around various prisons, particularly in Khartoum State. Due to the then-escalating conflict (including damage to some detention buildings), thousands of previously detained individuals were released – either by the prison authorities or the RSF.²¹ Perpetrators have since made frequent use of ghost sites and improvised temporary detention centres, meaning it may

16 Understood broadly, including SAF Military Intelligence ('SAF MI'), the General Intelligence Service ('GIS'), Central Reserve Police ('CRP'), and allied Islamist militias (including the Popular Security Forces).

17 Reuters, "Sudan's paramilitary RSF detained 5,000, some tortured, human-rights groups say", 14 July 2023.

18 Sudan Tribune, "Detention and Espionage: Parallel wars wage on in Khartoum's Shadows", 12 August 2023. The Missing Initiative has documented at least 990 cases of missing persons since the start of the current conflict, including 95 women and at least 50 children. See the [Missing Initiative Facebook Group](#) for more information on specific cases.

19 While this report focuses primarily on arrests made by the most prevalent perpetrators, other armed groups are involved in the conflict and monitors note that they could also be involved in arrests. This includes factions of the Sudan People's Liberation Movement-North led by Malik Agar (SPLM-N Agar, aligned with the SAF); and Abdelaziz al-Hilu ('SPLM-N al-Hilu').

20 See Section J (Enforced Disappearance and Ransom) for consideration of this issue as possibly amounting to enforced disappearance.

21 See e.g., Report of the UN High Commissioner for Human Rights (A/HRC/55/29), 4 March 2024, para. 91; Dabanga, "Attacks on prisons in Sudanese capital free thousands of inmates", 25 April 2023; Dabanga, "Sudan: Prominent Islamist hardliners escape Kober Prison", 26 April 2023.

be unclear where a particular individual is being held.²² Even where the location is known, third parties (e.g., independent monitors) have been unable to access and inspect detention sites.

- d) It is often challenging to document particular incidents, especially when arrests are conducted covertly or as part of concurrent military operations. In addition, all human rights monitors consulted as part of this paper acknowledged ongoing communications constraints as a major issue currently affecting visibility of human rights violations in Sudan.²³
- e) Perpetrators have taken considerable steps to obstruct and deter reporting channels, including local monitoring networks. Human rights defenders have been specifically targeted by the RSF and the SAF – on account of both their historic work as well as ongoing reporting of crimes.²⁴ In RSF detention especially, survivors interviewed by ACCESS reported facing collective punishments in response to detention information being shared with news agencies and via social media.²⁵ In some instances, civilians released from detention have provided testimonies of their experiences and then, in response, been re-arrested and subjected to torture and ill-treatment.²⁶ These practices have a chilling effect, further hindering reporting.

22 See e.g., Mat Nashed, “‘They’re targeting us’: Sudan’s army cracks down on democracy activists”, 9 January 2024; Sudan Tribune (n 18).

23 On the communications issue, see e.g., Rawh Nasir, “‘We are on the edge’: Communication blackout thwarts mutual aid efforts in besieged Khartoum”, 4 March 2024; Philip Drost, “Internet in Sudan is ‘patchy at best.’ UNICEF says it could get much worse”, 17 May 2024.

24 See Section F (**Arrest Patterns**).

25 See Sections G (**Locations and Conditions of Detention**) and H (**Torture and Ill-treatment**).

26 According to testimonies gathered by ACCESS and DNHR.

E. ARREST PATTERNS



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Since 2023 arbitrary arrests of civilians have been reported across large parts of Sudan.

Key alleged perpetrators

Since 15 April 2023, arbitrary arrests and detention of civilians have been reported across large parts of Sudan, including Darfur, Khartoum, Kordofan and Nile States, Gezira, Sennar, Gedaref, Kassala, and Northern State, as well as eastern Sudan.²⁷ Arrests are conducted from a range of locations – particularly homes, residential streets, and military checkpoints. The main actors allegedly responsible for arrests are:²⁸

The SAF

SAF MI and the GIS – which allegedly conduct “preventative detentions” across states still under the control of the de facto authorities.²⁹ Arrests are conducted in a systematic manner, targeting individuals with particular profiles

27 See e.g., Report of the UN High Commissioner (n 21), para. 54; Human Rights Watch, “The Massalit Will Not Come Home”, 9 May 2024; Dabanga, “Khartoum ‘one big prison’, people ‘tortured to death’ by Sudan Military Intelligence”, 4 September 2023; Sudan Tribune (n 18); Mat Nashed, “‘They’re going to kill us’: Sudan’s army targets civilians on ethnic basis”, 16 January 2024; Centre for Information Resilience, “Wad Madani, El Gezira: Arrests, detention, and killings in Sudan’s second city”, 15-20 December 2023; Dabanga, “Detentions continue in Sudan’s White Nile state”, 13 June 2024; Sudan Tribune, “Sudanese military intelligence arrests journalist”, 14 May 2024; Dabanga, “National Umma Party condemns arbitrary arrests by Sudan Military Intelligence”, 12 June 2024; Oscar Rickett, “Sudan war intensifies as wave of arrests hits Gedarif”, 23 May 2024; Dabanga, “Military Intelligence continues to detain activists in Sudan”, 19 June 2023.

28 Based on the FFM Submission and information and evidence gathered by the report authors (held on file).

29 See e.g., Dabanga, “Unlawful detentions and extrajudicial killings of activists continue in war-torn Sudan”, 12 May 2024.

that are seemingly identified in advance (see section on **Targeted groups**).³⁰ Earlier in the conflict, the SAF MI and GIS conducted arrests in waves, usually responding to major RSF attacks in other parts of the country or where such an attack was thought to be imminent.³¹ While arrests have continued consistently throughout the conflict, the link between RSF attacks and phases of arrest by the SAF generally appears less pronounced than it previously was.

SAF MI typically operates from buildings within or near SAF bases.³² SAF MI officers often wear civilian shirts on top of their uniform, obscuring their identity and rank.³³ Meanwhile, the GIS utilises both known and secret detention centres, some of which are based inside residential neighbourhoods.³⁴ Its members also often attempt to hide their identity, including using civilian clothes and masks/face coverings during arrests and interrogation.³⁵ Some victims report that civilians are more likely to be tortured and may face more severe harm in GIS custody than in SAF MI custody.³⁶

The SAF MI and GIS regularly coordinate on the classification and transfer of civilians between different detention centres, as well as on certain arrests.³⁷ The GIS also reportedly collaborates with Islamist-affiliated militia groups, including the Al-Baara ibn Malik Brigade.³⁸

There is generally less information on detention violations committed by the SAF than by the RSF. While this may be partially explained by reports that the SAF and MI have lower rates of civilian arrest and detention, there are also reports that survivors of violations perpetrated by the SAF and its affiliates are reluctant to file complaints due to lack of confidence in the justice system and fear of reprisals.³⁹ The SAF intelligence and detention apparatus is also more established than the RSF equivalent, potentially enabling more covert operations.

The RSF

RSF and allied militia, which conduct arrests that broadly fall into one of two categories:

- a) large-scale arrests of civilians with particular profiles (see in **Targeted groups**) typically conducted during or in the immediate aftermath of major RSF attacks. The coordination of these arrests and consistency of the pattern across various states (e.g., between West, South, and Central Darfur, Gezira, and parts of Khartoum) is indicative of a strategy developed by senior RSF officials and implemented with the oversight of local unit commanders;⁴⁰ and
- b) arrests conducted by RSF officers in the period following the capture of an area. These arrests are generally conducted by individual officers or groups of officers⁴¹ for various purposes, including looting and extortion, forced recruitment, inflicting discriminatory violence (e.g., ethnically targeted attacks and conflict-related sexual violence ('**CRSV**')), and terrorising communities to establish and maintain social control.⁴²

30 Ibid.

31 See e.g., Dabanga, "RSF attacks in Sudan's El Gezira cause mass exodus, hundreds of youths detained", 17 December 2023.

32 Based on the FFM Submission and information and evidence gathered by the report authors (held on file).

33 Ibid.

34 Ibid.

35 Ibid.

36 Ibid.

37 Ibid.

38 Ibid.

39 See e.g., Report of the UN High Commissioner (n 21), para. 95.

40 Based on the FFM Submission and information and evidence gathered by the report authors (held on file).

41 ACCESS and DNHR monitors have observed that, in contrast to SAF MI/GIS, there is no clear differentiation between RSF officials that do and do not have 'authority' to carry out arrests (e.g., limiting arrest 'powers' to discrete intelligence/security units). In practice, any officer or allied militia member may detain individuals on behalf of the RSF.

42 Based on the FFM Submission and information and evidence gathered by the report authors (held on file).

RSF officers often wear beige fatigue/camouflage uniforms during arrest operations; frequently associated with Toyota land cruisers with the RSF logo: a skull and two swords on it.⁴³ Civilians arrested by the RSF are regularly subjected to ill-treatment, some of which reaches the threshold of torture. Violence and ill-treatment often commence from the moment of the person's arrest.⁴⁴ See also Section G (**Torture and Ill-treatment**) on circumstances and conditions of detention amounting to torture and CIDTP.

on the significant risk of death in RSF detention, particularly due to lack of vital healthcare and medicine, lack of adequate nutrition, and overcrowding.

Targeted groups

While the modalities of arrest operations vary depending on the factual context, a clear overarching pattern has developed since the earliest stages of the conflict. Arrests are usually conducted ostensibly based on an individual's perceived connection with the "other side", i.e., that they are an intelligence agent, informant, supporter, collaborator, or sympathiser of the RSF or SAF respectively.⁴⁵ These claims, which are often spurious, feed a polarising narrative espoused by the warring parties that is used to justify further targeting of civilians based on, amongst other things:⁴⁶

- a) race, ethnicity or ethnic profiling, and tribal affiliation;
- b) activism, and neutrality; and
- c) profession and other attributes.

Race, ethnicity or ethnic profiling, and tribal affiliation

Sudan has a history of conflicts characterised by the establishment and maintenance of power and domination by certain groups, with ethnic discrimination being an important and recurring dimension.⁴⁷ The current armed conflict is no exception. Inequality and discrimination have formed both root causes of the conflict as well as key drivers and consequences of atrocities to date.⁴⁸

43 On uniforms and other identifiers, see Sudanese Archive, "[Tagging Guide – June 3 Security: A database documenting the role security forces played in injuring and killing civilian protesters in Khartoum on June 3, 2019](#)", June 2021.

44 Based on the FFM Submission and information and evidence gathered by the report authors (held on file).

45 The warring parties both employ specific language to justify their targeting of individuals that they claim are affiliated with the 'other side' (e.g., SAF references to "[sleeper cells](#)" / "[shadow of the Janjaweed](#)"; RSF references to "[remnants](#)" / "[keizan](#)" in connection with Islamists [widely viewed as wielding significant influence on the SAF](#)). The RSF also targets individuals based on their perceived affiliation with other armed groups fighting alongside the SAF, including the Justice and Equality Movement-Gibril Ibrahim, Sudan Liberation Movement-Minni Minnawi, and SPLM-N al-Hilu (see n 55 on SPLM-N al-Hilu).

46 This section classifies patterns of violations based on the key characteristics that may be used as a basis for targeting. Individual cases often involve intersectional discrimination (e.g., ethnicity/gender and class). Class is a deeply engrained aspect of Sudan's social dynamics, including in connection with human rights violations and exclusion. In the current conflict for instance, access to capital is a key factor that affects an individual's ability to negotiate with the warring parties and travel through checkpoints to access safer areas (likewise in the case of old age and disability).

47 See e.g., Equal Rights Trust and the Sudanese Organisation for Research and Development (SORD), "[In Search of Confluence: Addressing Discrimination and Inequality in Sudan](#)", October 2014, 2.2.

48 See e.g., SOAS Centre for Human Rights Law, ACCESS, and REDRESS, "['Deep and harmful': Addressing the root causes of human rights violations and impunity in Sudan](#)", 3 July 2024; Thomas (n 1313) ("The torture system has always been aimed at the poor – and it uses racism both for targeting and implementing torture.")

The SAF

There has been a pronounced racial and ethnic dimension to the SAF's targeting of individuals since 15 April 2023. The SAF has primarily targeted people identified as originating from Kordofan or Darfur, particularly those belonging to certain so-called 'Arab' tribes (e.g., the Rizeigat and Misseriya).⁴⁹ These individuals are arrested by the SAF, particularly in the aftermath of RSF attacks, ostensibly because the SAF suspects that they support (or are affiliated with) the RSF. This pattern is a product of the "politicisation of the central ideological values around ethno-religious identity" in Sudan,⁵⁰ fuelled also by the RSF's policy of ethnically based recruitment (primarily perceived as from Arab communities) and the 'ethnicisation' of the conflict.⁵¹

The SAF's operations have long been marked by discrimination, though the ongoing conflict has seemingly led to a significant expansion in the use of racial characteristics as a basis for its violence. In general, accusations of affiliation with the RSF are extremely challenging to rebut, both because there is often no real evidence to challenge per se but also as, owing to Sudan's pervasive militarisation, most civilians can be seen as connected in some way – however loosely – to the RSF and other armed groups, e.g., through tenuous association with a friend or relative. Owing to the breadth of ethnicity-based targeting by both sides (see the following section on the RSF), it is not uncommon for civilians to be arrested separately by both the SAF and the RSF on the basis that they support the "other side".

The RSF

Meanwhile, it is well documented that the RSF has targeted, in particular, so-called 'non-Arab' groups extensively, especially in the Darfur and Kordofan States.⁵² In Darfur, the RSF and allied militia launched large-scale ethnically targeted attacks against the Masalit and other groups that are increasingly viewed as amounting to crimes against humanity and genocide.⁵³ One feature of these attacks has been the targeted detention and ill-treatment of individuals from particular 'non-Arab' tribes, including the Masalit, Fur, Zaghawa, and Tunjur.⁵⁴ Perpetrators have mainly targeted prominent figures from these communities as well as those who have publicly denounced the RSF's actions. In South Kordofan, the RSF (and to an extent, the SAF) have primarily targeted the Nuba people, ostensibly for their affiliation with the SPLM-N al-Hilu.⁵⁵

49 See e.g., Report of the UN High Commissioner (n 21), para. 57 ("The Sudanese Armed Forces detained individuals perceived to be members or supporters of the Rapid Support Forces and supporters of the Political Framework Agreement, in some cases based on their ethnic origin or affiliation with Arab tribes of the Darfur region [...]"); African Centre for Justice and Peace Studies ('ACJPS'), "Sudan War: Arbitrary Arrest, Torture, and Ill-treatment Behind Closed Doors", 14 March 2024, pp. 7-9; Sudan Tribune, "Sudanese military accused of ethnically targeted detentions", 24 July 2024; ACJPS, Dabanga, "Ethnic detentions continue in Sudan, lawyers targeted by both warring parties", 6 July 2024; ACJPS, "Al-Jazeera State: 26 Men Arbitrarily Arrested And Allegedly Killed By The Military Intelligence Unit In Wad Madani", 11 January 2024; Mat Nashed (n 22), Note that the classifications of 'Arab' and 'non-Arab' reflect a simplified and imperfect framing of a complex set of social and anthropological developments (see e.g., Alex De Waal, "Who are the Darfurians? Arab and African Identities, Violence and External Engagement", 10 December 2004). The use of these labels in parts of this report is for clarity only (recognising their prominent use in public reports) and should not be treated as an endorsement of their appropriateness. The SAF is also increasingly targeting 'non-Arab' groups also (see e.g., DNHR, "Ethnically motivated extra-judicial executions in Sudan", 19 December 2023).

50 Equal Rights Trust and SORD (n 47).

51 Panel of Experts (n 2).

52 See e.g., Human Rights Watch (n 27); Mat Nashed (n 22); reports by Justice Africa Sudan. See also n 49 on issues with the classifications of 'Arab' and 'non-Arab'.

53 See e.g., the Raoul Wallenberg Centre for Human Rights, "Breaches of the Genocide Convention In Darfur, Sudan: An Independent Inquiry", 14 April 2024; Human Rights Watch (n 27).

54 Based on the FFM Submission and information and evidence gathered by the report authors (held on file).

55 See e.g., Operation Broken Silence, "Specter of ethnic killing looms in Sudan's Nuba Mountains", 22 February 2024; International Service for Human Rights, "Civil society demands immediate intervention and thorough investigation in South Kordofan, Sudan", 1 March 2024; Justice Africa Sudan, "RSF And Its Allied Tribal Militias Attacked Some Villages Around Al Dair Mountain", 23 April 2024. See also Justice Africa Sudan, "Human Rights Violations In North Kordofan", 5 October 2023 on violations committed by both sides in North Kordofan. The situation in the Kordofan States is evolving regularly. Currently, there is some degree of coordination between the SAF and the SPLM-N al-Hilu in response to the RSF siege though this partnership is fragile.

Activism and neutrality

Both sides

Concurrently, both sides (but especially the SAF) have launched coordinated campaigns targeting activist groups – particularly some sectors’ members of the resistance committees, emergency response rooms, and anti-war advocates.⁵⁶ These groups are in a particular position of vulnerability for several reasons:

- a) In many ways, this is a continuation of the warring parties’ attempts to dismantle the civilian apparatus that had been at the forefront of campaigning for and envisaging a new participatory, democratic order.⁵⁷ The resistance committees have become a key political and social force for change in Sudan, especially compared to the political parties. Their steadfast commitment to democracy, fight for justice and accountability, explicit rejection of the politics of violence, and calls to dismantle Sudan’s coup regime and wider kleptocratic system are a clear threat to the interests of the military and security sector at large, as well as influential Islamist actors.⁵⁸
- b) Targeted detention is one of several tools employed by the de facto authorities for the purpose of suppressing dissent/activism and goes hand in hand with other measures, such as state decrees issued following the start of the conflict purportedly dissolving local resistance and neighbourhood service committees.⁵⁹
- c) Both sides have found value in, and are adept at, politicising humanitarian access to bolster their respective leverage – and therefore both crush alternatives to preserve their domination.⁶⁰ The resistance committees and emergency response rooms have developed resilient mutual aid networks in the absence of a functioning State and widespread obstruction of humanitarian aid by both parties.⁶¹ Alongside providing a glimpse into an alternative Sudan where the political system actually serves the people, the mobilisation of grassroots groups and the Sudanese diaspora provides a (partial) alternative to reliance on external aid.
- d) Activists have largely resisted pressure to ‘align’ with either of the warring parties, standing firm in their messaging that both sides are responsible for the conflict and that there should be an immediate cessation of hostilities. The resistance committees are also one of the primary actors still documenting human rights violations in Sudan perpetrated by both sides. This collective stance is seen as a powerful threat to the war-

56 See e.g., Mat Nashed (n 22); Mat Nashed, “Are Sudan’s civil society activists being targeted by both warring sides?”, 1 April 2024; Dabanga, “Six activists detained in Sudan’s Sennar and El Gedaref in two weeks”, 22 April 2024; Dabanga, “Sudan Military Intelligence continues to detain critical voices”, 11 July 2023; Dabanga, “Seven women activists detained at Sudan ‘enforced disappearances’ vigil”, 31 August 2023; Dabanga, “Widespread condemnation as Sudan army detains Sufi sheikh”, 28 February 2024; Radio Tamazuj, “Khartoum: ‘Mass arrests’ by RSF raise concern”, 24 March 2024; Dabanga, “Sudanese authorities detain activists in El Gedaref”, 7 May 2024.

57 Prior to the armed conflict, the Central Committee of Sudanese Doctors reported that at least 125 people had been killed by Sudanese security forces since the October 2021 coup. See also REDRESS, “Taken from Khartoum’s Streets”, March 2022; REDRESS, “Your Life Isn’t Worth The Price of a Bullet”, June 2022; Situation of human rights in the Sudan, Report of the UN High Commissioner for Human Rights (A/HRC/50/22), 9 May 2022; Physicians for Human Rights, ““Chaos and Fire”: An Analysis of Sudan’s June 3, 2019 Khartoum Massacre”, 5 March 2020. Hu

58 Senior actors within the Islamist movement in Sudan were major political figures in, and key economic beneficiaries of, the Bashir coup regime. While Bashir was ousted following the revolution, the underlying kleptocratic system remained and Islamist actors largely retained their ill-gotten wealth and extensive networks. These individuals are widely perceived as retaining considerable political influence in Sudan (including over both the SAF and the RSF) and are accused of stoking the conflict to weaken both sides and facilitate their own return to power. References to ‘the Islamists’ in this report are references to this group of actors (see n 45, n 62).

59 See e.g., Dabanga, “Sudan River Nile gov bans FFC and resistance committees”, 9 January 2024 (as well as in Northern State).

60 See also REDRESS and the SOAS Centre for Human Rights Law (n 2), p. 23 for further context to control exerted over humanitarian aid, including via the Humanitarian Aid Commission (SAF) and Sudan Agency for Relief and Humanitarian Operations (RSF).

61 See e.g., Rawh Nasir, Tom Rhodes, and Philip Kleinfeld, “How mutual aid networks are powering Sudan’s humanitarian response”, 2 August 2023; Nils Carstensen and Lodia Sebit, “Mutual aid in Sudan: the future of aid?”, 11 October 2023; Fatima Qureshi, “The Crisis in Sudan and the Unseen Resilience of Mutual Aid”, 20 March 2024; Sudan Crisis Coordination Unit, “Sudan’s Emergency Response Rooms - June - November 2023”, 30 November 2023; Reuters, “UN rights chief: blocking aid to Sudan could be a war crime”, 1 March 2024.

ring parties and the Islamists by presenting an alternative narrative to those espoused by the SAF and RSF,⁶² hindering their ability to mobilise civilians as combatants against the ‘other side’ as well as illustrating to international actors the dangers of once again treating either side as a reliable partner or prioritising (negative and short-term) peace in Sudan over justice and transformative change.⁶³

Targeting resistance committee members

The case of Mohamed Adam (better known as Tupac) is a key emblematic case of the SAF-led authorities continuing to target grassroots activists.

Prior to the conflict, 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.⁶⁴

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).⁶⁵

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.⁶⁶

Following his release, Tupac recorded a video speaking of his willingness to turn himself in once it was safe to do so, and that he would demonstrate his innocence. In May 2023, he was arrested again by the CRP.⁶⁷ 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 to discuss how to aid internally displaced people.⁶⁸

He was subsequently released before, around 17 August 2023, he was arrested again by SAF Military Intelligence.⁶⁹ This arrest was reportedly tied to his ‘escape’ from al-Huda Prison. While in detention, Tupac displayed visible signs of torture.⁷⁰ He was released following the retraction of written evidence supposedly “implicating” him.

62 There is seemingly still a belief within both sides that they can still defeat the other, or at least strengthen their respective positions prior to committing to a cessation of hostilities. The resulting stalemate (and consequent continuation of conflict) is thought to be advantageous to the Islamists by weakening both sides and eventually enabling the Islamists to return to power (see e.g., n 45); Dabanga, “Widespread detentions in Sudan ‘attempt by remnants of Al Bashir regime to regain power’”, 31 December 2023; Dabanga, “Six Sudan activists released amidst continuing military detentions”, 5 January 2024).

63 See e.g., SOAS Centre for Human Rights Law and others (n 48). The de facto authorities are in the process of developing a “constitutional framework” which they claim will replace the (now effectively redundant) 2019 Constitutional Document. Senior SAF officials have already made several statements announcing their apparent intention to hold power via a “government of technocrats” until elections, and that they refuse to share power with actors that have aligned with the RSF. Based on their actions to date, it is likely that the SAF will claim that any neutral anti-war actors are ‘aligned with the RSF’ to force alignment with the SAF and exclude certain groups, e.g., the FFC-CC, from future political projects.

64 REDRESS, “Torture-tainted trials in Sudan”, September 2022.

65 Ibid.

66 See REDRESS and the SOAS Centre for Human Rights Law (n 2), p. 23.

67 Ibid.

68 Ibid.

69 Ibid.

70 Ibid.

On 8 April 2024, public reports emerged that the East Gedaref Criminal Court had convicted Tupac of waging war against the State under Art. 51(a) of the Criminal Act 1991 ('CA 1991') (a broad offence that includes 'abetting' or 'supporting' those who fight against the State; punishable by death, life imprisonment, or other custodial sentence).⁷¹ The reports suggest that Tupac was sentenced to life imprisonment, though REDRESS has been unable to verify the conviction or possible sentence. At the time of writing, REDRESS understands that the de facto authorities are applying significant pressure to locate and re-arrest Tupac.

Profession and other attributes

Both the SAF and the RSF have targeted civilians on the basis of their profession, particularly political actors,⁷² journalists,⁷³ doctors,⁷⁴ and lawyers and human rights defenders.⁷⁵

The SAF

There are two main patterns of arrests conducted by the SAF that target civilians on the basis of profession:

- a) systematic searches of individuals from certain professions or community roles (including those listed prior), leveraging existing SAF MI/GIS intelligence networks in states under its control.⁷⁶ The SAF subsequently arrests these individuals; and

arrests based on reactive intelligence, e.g., in response to public anti-war/human rights demonstrations or related social media activity.⁷⁷

71 Tweet from the Daily Sudan Post, 8 April 2024.

72 The RSF has primarily targeted political actors associated with the defunct National Congress Party/other Islamist actors (based on their close relationship with the SAF and what is seen as an Islamist plot to return to power) as well as prominent community leaders (usually in ethnically targeted violence or as part of establishing local administrations in areas under its control). See e.g., Abdelhameed Awad, "Sudan: RSF targets Islamists tied to former regime with wave of arrests in Khartoum", 20 May 2023; Zeinab Mohammed Salih, "Sudan paramilitary group boasts of detaining Islamists", 19 June 2023; Darfur 24, "RSF detain 7 community leaders in Darfur", 8 May 2024. The SAF has primarily targeted political actors associated with the Forces of Freedom and Change-Central Council (FFC-CC, now effectively operating as Taqaddum) based on their perceived affiliation with the RSF. See e.g., Dabanga, "Political activist tortured in Sudan military detention", 19 July 2023; Dabanga, "More than 20 detained by Sudanese Military Intelligence in communist party raid", 21 August 2023; Dabanga, "Death of Sudanese politician 'deliberately withheld by Military Intelligence'", 24 January 2024; Dabanga, "Sudan RSF detain a journalist and a politician in El Gezira", 26 January 2024; Radio Tamazuj, "SAF Military Intelligence arrests National Umma Party member in Sinnar State", 2 May 2024.

73 See e.g., Dabanga, "Sudanese journalists condemn attacks, 'anonymous lists'", 13 May 2023; Dabanga, "Violations against journalists in Sudan war", 6 June 2023; Dabanga, "Sudanese journalists condemn targeting of professionals and volunteers", 9 August 2023; Dabanga, "Arbitrary detentions continue in Sudan, intelligence condemns RSF forex speculators", 25 September 2023; Dabanga, "Sudan activists condemn RSF detention and 'enforced disappearance' of journalists", 23 November 2023; Dabanga, "Sudan activists denounce RSF's 'arbitrary detention' of El Midan editor-in-chief", 22 January 2024; Dabanga, "Sudanese Journalists Syndicate: 'Media targeted by both sides in Sudan war'", 5 May 2024.

74 See e.g., DHR, "RSF and allied militias in South Darfur Nyala have arrested more than 20 doctors from an Italian hospital", 26 October 2023; Zeinab Mohammed Salih, "Doctor who criticised army for diverting aid detained in Sudan", 31 May 2023.

75 See e.g., Dabanga, "DBA: 'Lawyers targeted, detained by both sides in Sudan conflict'", 6 August 2023; ACJPS, "Sudan: Seven Human Rights Defenders and Activists Arrested, Detained, and Allegedly Tortured by the SAF Military Intelligence Unit in the Blue Nile Region", 20 January 2024; ACJPS, "Sudan War: Arbitrary Arrest, Torture, and Ill-treatment Behind Closed Doors", 14 March 2024 (this report also provides helpful analysis on other patterns of arbitrary arrest, detention, torture and extrajudicial killings since 15 April 2023); ACJPS, "Sudan War: The Continued Targeting of Human Rights Defenders and Activists by Security Forces", 18 April 2024. Other targets beyond the scope of this paper include alleged combatants (see e.g., Sudan Tribune, "Sudanese police arrest RSF commander in Nile River State", 11 September 2023) and those working in key strategic locations (see e.g., Dabanga, "Oil worker 'tortured to death' by Sudanese military intelligence", 7 November 2023).

76 See e.g., REDRESS and the SOAS Centre for Human Rights Law (n 2), p. 23.

77 See e.g., Dabanga, "SPLM-N Agar and Sudan Blue Nile govt defend breaking up anti-war vigil and reject 'neutrality'", 5 September 2023.

Where the SAF identifies a civilian for arrest in this manner, they will typically accuse the individual of association with the RSF and often interrogate the individual, potentially for long periods of time. The SAF may also subject the individuals to ill-treatment, including severe beatings. Subsequent treatment of the individual by the SAF depends mainly on the SAF's classification of their threat level. Where the SAF perceives an individual as lower risk, they may release that individual and order that they leave the state, whereas higher-risk individuals are often transferred by the SAF to permanent detention centres where the SAF may detain them *incommunicado* for many weeks or months.

The RSF

The RSF's approach is similar to that of the SAF, though it deviates in several material ways. According to various ACCESS and DNHR testimonies, upon arriving in an area, the RSF gathers its intelligence in tranches – asking first about the homes of military and police officers, then merchants, and then politicians and other prominent civilians (e.g., journalists, doctors, and lawyers).⁷⁸ RSF officers and their affiliates then conduct systematic searches for these individuals. In contrast to what is known of the SAF, the RSF conducts its searches for numerous purposes including managing perceived 'opposition' and collecting information (as is the case for the SAF), but also to extort money and goods. Once it completes its searches, the RSF will then either:

- a) question individuals informally without conducting an arrest. Often, RSF officers will also seize their assets and/or order that they leave the state; or
- b) arrest the individual, after which it is likely that the RSF will force them to provide labour, hold them for ransom, and/or subject them to other torture and ill-treatment in crowded and otherwise appalling detention conditions.⁷⁹

Both sides

Both sides have targeted civilians on the basis of age and gender, particularly young men, who are perceived as being the most likely to participate in the conflict. Sudan Tribune sources suggest that the majority of civilians arrested fall within the age range of 17-30.⁸⁰ Both sides have also forcibly recruited children as combatants,⁸¹ placing them at heightened risk of targeting and detention by the other side. As previously described, young people are also targeted by both warring parties based on their political activism and community organising.

Relatedly, women and girls face heightened risks of CRSV and forced labour in detention sites operated by the RSF. See Section H (**CRSV and Gender-Based Violence**) for analysis on these issues, though it is widely understood that such cases are likely heavily underreported for various reasons.⁸² It is currently less clear to what extent this practice is prevalent in SAF detention centres (see the previous section on the SAF).

78 See also Sudan Tribune (n 18).

79 See Sections H (**Torture and Ill-treatment**), I (**CRSV and Gender-Based Violence**), and J (**Enforced Disappearance and Ransom**).

80 Sudan Tribune (n 18). This figure is consistent with trends identified from testimonies collected by ACCESS and DNHR, though both sides are known to have detained individuals across the age and gender spectrum.

81 See e.g., ACJPS, "Stolen Innocence: Children Forcefully Recruited Into Armed Conflict in Sudan", 11 January 2024; UN, "Sudan: UN expert warns of child recruitment by armed forces", 16 October 2023; International Committee of the Red Cross, "Chad/Sudan: ICRC facilitates release of 30 children previously detained in relation to conflict; ICRC president visits eastern Chad", 15 September 2023; The New Arab, "Are the RSF recruiting children to fight in Sudan's war?", 28 February 2024.

82 See e.g., REDRESS (n 2); REDRESS and Rights for Peace, "One Step Closer to Justice and Healing", 27 June 2024

F. LOCATIONS AND CONDITIONS OF DETENTION



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The inside of al-Huda prison in Omdurman.

Detention sites

The SAF

The SAF has primarily used its established network of detention centres – mainly prisons, military, security, and police buildings, and covert detention sites (some of which are located inside residential neighbourhoods).

The RSF

RSF detention centres broadly fall into two categories:⁸³

- a) Unofficial temporary detention centres generally located in residential neighbourhoods and buildings, basements of homes or schools, universities, seized police stations, and commercial factories and warehouses. Temporary sites are often strategically located in areas where RSF forces are based as well as on main street intersections. The RSF subjects detained civilians to initial round(s) of interrogation before then sorting and either releasing them (sometimes having looted the individual or held them to obtain ransom) or transferring them to permanent centres.⁸⁴

⁸³ For further information on RSF detention centres in Khartoum, see [Emergency Lawyers' report](#), 3 September 2023 (currently only available in Arabic).

⁸⁴ Based on the FFM Submission and information and evidence gathered by the report authors (held on file).

- b) Permanent detention centres (some official, some unofficial) – these are larger buildings, usually seized military and security headquarters, RSF bases and camps, as well as government buildings. Permanent centres are generally located further from residential neighbourhoods than temporary sites. The RSF transfers detained individuals to permanent sites and often holds them *incommunicado* in extremely poor (and often inhumane) conditions which may amount to torture, and routinely subjects them to organised interrogation and torture and ill-treatment.

Gezira detention centres

Following the RSF's capture of Gezira State in December 2023, RSF officers launched a campaign of targeted violence against its residents, including organised looting and pillage, sexual violence, extrajudicial killings, and arbitrary arrest and detentions.⁸⁵

ACCESS has collected testimonies of some civilians detained by the RSF in Gezira. In one instance, the RSF arrested three individuals and transferred them to a house that the RSF used as a residence for its forces as well as a temporary detention centre. The RSF interrogated the individuals for several hours before transferring them to a larger detention centre.

The survivor who was interviewed described their subsequent detention centre as being divided into different improvised detention cells. The cell that the RSF held the individuals in was described as dark, having only one door, and holding approximately 30 people, all of whom the survivor described as being in very poor states of health (which the survivor understood as being a consequence of torture and ill-treatment inflicted by RSF officers).

Having been transferred to the larger centre, the RSF would call on detained persons to meet with “the counsellor”, an individual wearing RSF uniform – believed to be a lawyer or equivalent according to the survivor's testimony. The counsellor would conduct an ‘investigation’ and decide whether to release the detained individual or transfer them to Soba Prison in Khartoum (this assessment was reportedly based on the individual's “importance” and perceived level of threat to the RSF).

Detention conditions

The SAF

This section focuses on conditions in RSF detention centres and is based on information and testimonies gathered by ACCESS and DNHR. Further testimony gathering and verification are required in respect of SAF detention centres, though reports (and the authors' consultations with experts) suggest that many of the issues noted below may also apply to the SAF. For instance, the recent report of the UN High Commissioner notes that:

“Most detention facilities, in particular those in unofficial places of detention, were described as overcrowded, with shortages of food and water and limited access to medical care. [...]

⁸⁵ See e.g., Sudan Tribune, “Sudanese lawyers release fresh report about atrocities in Al Jazirah State”, 17 March 2024; Anne Soy and Nata-sha Booty, “At least 150 villagers feared dead in Sudan massacre”, 6 June 2024.

Detention facilities operated by the Sudanese Armed Forces included the Wadi Sayidna Air Force base, where reportedly 92 detainees were held as at 13 August [2023], suffering shortages of food, water, medicines, sanitation and ventilation, according to persons held there.

In some cases, poor conditions and medical neglect reportedly led to the death of detainees. [...] a witness reported the death of 11 detainees at the Sudanese Armed Forces Armoured Corps detention facility between 9 May and 21 August. The witness attributed the deaths to lack of water and food.⁸⁶

The RSF

Despite some minor differences, in practically all cases identified by ACCESS and DNHR, persons detained by the RSF are held in inadequate (and often inhumane) conditions that are contrary to international standards.

Common issues include lack of access to clean water, adequate food portions, toilets, and light, as well as overcrowding, lack of ventilation, high humidity, and poor hygiene practices. These issues often exacerbate health conditions (both pre-existing and those resulting from torture and ill-treatment during their arrest and detention) and facilitate the spread of disease, particularly infections. Civilians detained by the RSF are also rarely provided access to healthcare or medication required for their serious health conditions such as cancer, kidney infections, blood diseases, and mental health conditions. In various cases documented by ACCESS and DNHR, witnesses have reported that this has resulted in the death of detained individuals, particularly when coupled with long periods of detention in harsh conditions, often including torture. In some cases, detention officers permit access to emergency medical interventions – though this is inconsistent and often administered by medical professionals who have also been detained. In one case reported to ACCESS, a detained individual with a significant health condition and without access to health care was transferred by the RSF to another RSF detention site instead of a hospital. In other cases, RSF officers have extorted family members of detained persons in order to allow them access to adequate food portions and vital medicines.

Food portions vary between detention centres but are often inadequate (usually a single portion of lentils and either rice or bread per day). Commonly, civilians released after long periods of detention show visible signs of malnutrition. Food is also withheld, both as a means of extracting information and as a collective punishment for ‘poor behaviour’.

Inadequate access to food

According to an eyewitness interviewed by ACCESS, individuals detained by the RSF in a detention centre in Khartoum were given two cups of lentils mixed with rice as their daily meal. One day, several individuals attempted to escape the prison but were unsuccessful. In response, RSF detention officers reduced the food supply by half for a period of approximately one month. At least seven individuals died during this period, which the eyewitness attributed to the reduction in food portions.

In another case documented by DNHR, a previously detained individual described that the RSF detained them and two other individuals in Darfur. The RSF subjected the individuals to regular beatings, deprived them of food, and gave them just half a litre of water daily to share between them. After three days, the

⁸⁶ Report of the UN High Commissioner (n 21), paras. 60-61. See also FFM Report, paras. 72-73.

RSF transferred the survivor who was interviewed to a hall with approximately two hundred other individuals. While water tap was available and the RSF provided individuals with “occasional rice”, the lack of adequate food portions coupled with overcrowding were said to have led to “constant deaths”.

Civilians are usually held by the RSF *incommunicado*, with detention officers not allowing them to appear before the competent judicial authorities to challenge the legality of their detention.⁸⁷ This is inconsistent with various international standards, including Art. 5 of the African Charter on Human and Peoples’ Rights. The AComHPR has previously found that *incommunicado* detention is inhuman treatment of both the detained individual and the family concerned and has emphasised that it is a gross human rights violation that can lead to other violations such as torture or ill-treatment,⁸⁸ and can in certain circumstances amount to enforced disappearance.⁸⁹

The circumstances and conditions of detention in RSF centres are often extremely damaging psychologically for detained civilians, including for those with pre-existing conditions. Individuals interviewed by ACCESS and DNHR described becoming accustomed to watching people die in detention, usually over the course of several weeks owing to the rampant spread of disease and otherwise unsafe conditions, as well as often recurring torture and ill-treatment. See also Section G (**Torture and Ill-treatment**) on circumstances and conditions of detention amounting to torture and CIDTP.

87 Family visits may be permitted in rare exceptions.

88 AComHPR, Amnesty International, Comité Loosli Bachelard, Lawyers’ Committee for Human Rights, Association of Members of the Episcopal Conference of East Africa v. Sudan, Communication Nos. 48/90, 50/91, 89/93, para. 54; AComHPR, Liesbeth Zegveld and Mussie Ephrem v. Eritrea, Communication 250/02, para. 55; AComHPR, Article 19 v. Eritrea, Communication 275/2003, para. 102. See also AComHPR, “Guidelines and Measures for the Prohibition and Prevention of Torture, Cruel, Inhuman or Degrading Treatment or Punishment in Africa” (**‘Robben Island Guidelines’**), para. 20(a).

89 See also Art. 17(d), the International Convention for the Protection of all Persons from Enforced Disappearance (**‘ICPPED’**); Robben Island Guidelines, para. 24.

G. TORTURE AND ILL-TREATMENT



© Ashraf Shazly/AFP via Getty Images.

A family member of a dead protester pays tribute to killed anti-regime demonstrators as part of a sit-in in Khartoum on 3 January 2021.

Both sides

There is a heightened risk of abuse for those held in detention settings. Since 15 April 2023, there is strong prima facie evidence that detained civilians are frequently subjected to ill-treatment rising to the level of torture, especially in RSF and GIS custody.⁹⁰

Perpetrators commonly employ various techniques that may amount to torture or CIDTP, and that reflect a blend of established and emerging techniques, including:

- a) Use of physical violence to inflict physical harm, including beatings with whips, sticks, metal bars and the butts of guns, as well as electric shocks and extinguishing cigarettes on skin.⁹¹ Numerous previously detained individuals described having their hands and legs tied prior to being beaten.

⁹⁰ Based on the definition in Article 1 of the UN Convention Against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment ('**UNCAT**'), which Sudan ratified in August 2021, and which defines torture as: "any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity."; See also FFM Report, paras. 75-79; REDRESS and the SOAS Centre for Human Rights Law (n 2), p. 43-44.

⁹¹ On acts of physical violence before and during detention as torture, see influential jurisprudence in other contexts, e.g., the Inter-American Court of Human Rights ('**IACtHR**'), *Case of Mendoza Et Al. v. Argentina, Judgment of 14 May 2013*; the Committee Against Torture ('**CAT**'), *Ntikarahera v. Burundi (CAT/C/52/D/503/2012)*.

- b) Acts of psychological violence, including sleep deprivation (e.g., throwing water on individuals that have lost consciousness following prolonged torture and ill-treatment)⁹² as well as firing bullets near detainees' ears and legs (which may amount to mock executions),⁹³ forced labour (e.g., digging graves and burying those who died in detention),⁹⁴ and credible threats of violence (including rape and other sexual violence).⁹⁵

Civilians are at particularly high risk of torture and CIDTP during their initial arrest and interrogation, which may take place over the course of a number of hours. Acts of torture are seemingly conducted for the purposes of obtaining information (including 'confessions' of alignment with the 'other side') as well as to intimidate, degrade, and humiliate them. In numerous cases, there is also a discriminatory purpose to their torture – with both sides targeting civilians based on their ethnicity or tribal background (on which, see Section E (**Arrest Patterns**)).

The circumstances and conditions of detention may also amount to torture or CIDTP; particularly denial of food, water, and medical care,⁹⁶ *incommunicado* detention and solitary confinement,⁹⁷ unsafe detention conditions (e.g., high heat, humidity, overcrowding, lack of proper toilets, unmitigated spread of disease, etc.)⁹⁸ and regularly hearing and witnessing the torture and ill-treatment of others.

Torture and CIDTP in detention

Numerous individuals have died in detention as a result of torture, ill-treatment, and inadequate and inhumane detention conditions. Eyewitness accounts provided to ACCESS indicate that, between April and July 2023, at least 35 detained persons died in an RSF detention centre located in Khartoum.

Following numerous deaths and amidst deteriorating detention conditions, the centre was temporarily closed and detainees (most of whom were reportedly affiliated with the de facto authorities) were transferred to a prison in Khartoum. The detention centre was later reopened as a temporary sorting/identification site where individuals would be held for up to two weeks before either being released or transferred to a permanent centre.

Numerous casualties have been reported in other RSF-controlled detention centres in Khartoum. For instance, the case of Ja'far Adam Mohammed – who had a pre-existing mental health condition and, while in a state of psychosis, left his family's house without their knowledge and was then arrested by the RSF

92 See e.g., AComHPR, Monim Elgak, Osman Hummeida and Amir Suliman (represented by FIDH and OMCT) v. Sudan, Communication 379/09.

93 See e.g., AComHPR, Amnesty International and others (n 88).

94 UNCAT is of particular relevance in forced labour cases where the treatment was not inflicted by State officials, as States are deemed responsible for acts of torture where they fail to exercise due diligence to stop torture, sanction perpetrators, and provide remedies to victims for acts of torture perpetrated by non-State actors (on which, see REDRESS and the SOAS Centre for Human Rights Law (n 2) at p. 43-44).

95 See e.g., CAT, Gabdulkhakov v. Russian Federation (CAT/C/63/D/637/2014). Generally, see also the Office of the UN High Commissioner for Human Rights ('OHCHR'), "Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment" (the Istanbul Protocol), 2022.

96 See e.g., IACtHR, Case of González Medina and Family v. Dominican Republic, Judgment of 27 February 2012.

97 Solitary confinement may amount to torture, in particular where the right to benefit from prompt and independent medical and legal assistance is not respected, or if the solitary confinement is of an excessive duration or is accompanied by other harmful treatment. See e.g., Human Rights Committee ('HRCt'), Rawle Kennedy v. Trinidad and Tobago (CCPR/C/74/D/845/1998), 26 March 2002; CAT, Estela Deolinda Yrusta and Alejandra del Valle Yrusta v. Argentina (CAT/C/65/D/778/2016), 31 January 2019. Solitary confinement or *incommunicado* detention unaccompanied by other ill-treatment will be held to amount to CIDTP as opposed to torture (CAT, Hany Khater v. Morocco (CAT/C/68/D/782/2016), 26 December 2019).

98 In many cases, the only provision for toilets is a bucket, plastic bag, or similar alternative which is only emptied and replaced periodically.

and transferred to this detention centre.⁹⁹ RSF officers subjected him to severe beatings for hours without interruption, reportedly owing to Ja'far's behaviour (described as a state of "agitation" with "emotional outbursts"). Other detained individuals reported hearing Ja'far's screams but were unable to intervene. Ja'far was eventually brought back to the main detention hall covered in blood. He died within several hours. In general, eyewitness accounts provided to the report authors described horrific practices of torture and ill-treatment as well as deaths in custody directly ordered by RSF commanders who oversee the detention centre.

In another case documented by the report authors, a survivor of an RSF detention site described how two fellow detainees died after being beaten and tortured, and without receiving any medical care. Following their deaths, RSF detention officials burned the individuals' bodies inside the building and took the survivor to see it. One of the officers told the survivor that "it's your turn to burn like this next".

Finally, in one instance, SAF MI reportedly arrested 30 people in South Kordofan having accused the individuals of being associated with the SPLM-N al-Hilu.¹⁰⁰ According to Sudanese monitors who notified this case to the report authors, at least eight of those individuals were killed by the SAF MI in the detention centre, five of whom died as a result of injuries sustained as a result of torture. The whereabouts and status of the other 22 individuals are unknown.

See also Sections H (**CRSV and Gender-Based Violence**) and I (**Enforced Disappearance and Ransom**) as forms of torture.

99 Case notified to ACCESS and publicly reported by Sudan Tribune, "[Fatal torture of mental health patient unveiled amidst ongoing war in Sudan](#)", 25 July 2023.

100 Based on the FFM Submission and information and evidence gathered by the report authors (held on file). See also Dabanga, "[8 killed in South Kordofan Military Intelligence Detention](#)", 21 September 2023 (Arabic).

H. CRSV AND GENDER-BASED VIOLENCE



©Reuters/Zohra Bensemra.

A 24-year-old mother, who said she was raped by armed militiamen in West Darfur, sits outside a makeshift shelter in Chad in 2023.

The SAF

The following section on ‘The RSF’ describes how civilians in RSF detention have been subjected to rape and other forms of sexual violence. Civilians detained by the SAF are also, in principle, in positions of heightened vulnerability, though the prevalence of CRSV in SAF detention is in the process of being assessed and, at present, further information and evidence are required to make any informed findings.¹⁰¹ See later section on the existence and impact of substantial obstacles to ensuring a proper investigation.

The RSF

Organisations including ACCESS and DNHR have documented survivor and witness reports of rape, including gang rape, as well as other forms of sexual violence in RSF detention.¹⁰²

¹⁰¹ Sudanese human rights monitors consulted by REDRESS have identified possible cases of CRSV in SAF detention, though additional documentation and verification are required in these cases. On reports of sexual violence perpetrated by Human Rights Watch, “Khartoum is not Safe for Women! – Sexual Violence against Women and Girls in Sudan’s Capital”, 28 July 2024, p. 3 (“Fewer cases were attributed to SAF members. Services providers described particularly high levels of sexual violence in populated areas of Khartoum North and Omdurman, including by SAF after it regained control of parts of Omdurman in January 2024. Several service providers said that survivors and community members were scared to report incidents involving SAF forces, notably because they were concerned the SAF-aligned authorities would dismiss their claims.”) and FFM Report, para. 63.

¹⁰² See also Emergency Lawyers (n 83), partially summarised in English in Mohammed Amin, “Sudan: Torture and sexual assault taking place in illegal detention centres”, 8 September 2023.

CRSV reports are particularly prevalent in RSF detention sites in Darfur and Khartoum, especially temporary and improvised detention centres. Women and girls are in a particular position of vulnerability, though ACCESS and DNHR have also received reports of sexual violence being perpetrated by the RSF against men and boys, including forcing detained individuals to undress and subjecting them to threats of rape.¹⁰³

Gender is one of the key variables that determines RSF detention treatment and outcomes, particularly as it intersects with ethnicity. In contrast to the primary process described in this paper (arrest, interrogation, detention, and possible release), women and girls are sometimes seen as ‘vanishing’ after their initial arrest.¹⁰⁴ According to various reports, there is evidence that the RSF has organised itself around a possible enslavement structure that it has embedded into its military operations, particularly in parts of Darfur, Khartoum, Gezira and Kordofan.¹⁰⁵

Civilians, primarily women and girls, are targeted for arrest by the RSF based on their gender and ethnicity and then detained for purposes including forced labour and sexual slavery. In a joint letter, various UN Special Procedures expressed specific concern at reports of widespread violations by the RSF, including:

reports that women and girls have been subjected to enforced disappearance and acts tantamount thereto, forced to work, and sexually exploited. Reportedly, hundreds of women have been detained by the RSF, held in inhuman or degrading conditions, subjected to sexual assault, and are vulnerable to sexual slavery.”¹⁰⁶

OHCHR also noted receiving:

“reports that women and girls are being abducted and held in inhuman, degrading slave-like conditions in areas controlled by the [RSF] in Darfur, where they are allegedly forcibly married and held for ransom”, [with some sources reporting] “seeing women and girls in chains on pickup trucks and in cars”.¹⁰⁷

In the FFM Report, the Sudan FFM found that:

“Women and girls were also abducted by RSF for the purpose of sexual violence and/or sexual exploitation in Darfur and Greater Khartoum. Some victims were abducted and transported to remote locations where they were raped. Witnesses also described that women and girls were abducted on board of pickup vehicles and taken to unknown destinations. Some victims described that they were abducted and forcibly held and confined in a house or a room for a duration ranging from several days to several months, during which they were deprived of their liberty and subjected to repeated rape and/or sexual exploitation by different RSF members and threatened with violence or death in case they tried to leave or resist sexual violence.”

103 The DNHR has received reports of sexual violence also affecting teenage boys in detention centres. However, verifying these claims has been challenging for DNHR as survivors are hesitant to come forward due to the sensitive nature of the issue.

104 See e.g., SIHA Network, “Kidnapping and Slavery: The RSF is committing more dangerous rights violations in this malign war against civilians in Sudan”, 1 August 2023.

105 Ibid; See also SIHA Network, “Silent Weapons, Loudest Wounds: Addressing the Crisis of Sexual Violence in Sudan”, 25 October 2023; ACIPS, “Sexual Slavery in Khor Jahannam”, 13 January 2024; Sudan Tribune, “Kidnapping and sexual slavery of underage girls in Greater Khartoum”, 29 November 2023; Nima Elbagir, Barbara Arvanitidis, Alex Platt, Tamara Qiblawi and Pallabi Munsri, “‘They called me a slave’: Witness testimony exposes alleged RSF-led campaign to enslave men and women in Sudan”, 20 November 2023; Dabanga, “SIHA demands an end to RSF siege of Tuti Island in Sudan capital”, 3 May 2023; Katharine Houreld and Hafiz Haroun, “Sudanese militiamen carry out wave of abductions, seeking slaves and ransom”, 23 February 2024; Amnesty International, “Death Came to Our Home”, 3 August 2023, pp. 8 and 27-28; Africa Defense Forum, “RSF Accused of Rape in Conquered Territory”, 2 April 2024.

106 UN, “UN experts alarmed by reported widespread use of rape and sexual violence against women and girls by RSF in Sudan”, 17 August 2023. Subsequently, see also UN, “Sudan: UN experts appalled by use of sexual violence as a tool of war”, 30 November 2023.

107 UN, “Sudan: Alarming reports of women and girls abducted and forced to marry, held for ransom”, 3 November 2023.

It is often extremely difficult to trace the whereabouts and condition of women and girls arrested as part of this structure, especially where (as has been reported) the RSF transfers detained civilians from Khartoum and elsewhere to Darfur. It is only upon their release, if it happens, that survivors may be able to describe their treatment – enabling commonalities to be drawn between different cases as well as mappings of key perpetrators and detention sites.

Most cases reported to date fall broadly into two categories (though some cases may include aspects of both):

- a) The RSF detains civilians and commits acts of rape and sexual violence, often across multiple days or weeks. In many cases, the RSF detains civilians in residential homes that have been converted into temporary detention sites seemingly for this purpose – e.g., often only women and girls have been detained by the RSF at the house, all of whom the RSF repeatedly victimise including through gang rape and repeated incidents of rape, sometimes across the same day. Many of these cases have the hallmarks of rape and other forms of sexual violence and torture.¹⁰⁸
- b) The RSF detains civilians for the purpose of enslavement, including sexual slavery (as mentioned previously).¹⁰⁹ and extracting forced labour. These persons are detained in both temporary and permanent detention centres. Common acts of forced labour include receiving and treating RSF officers, cooking and preparing meals, and washing clothes. While in detention, they are also vulnerable to RSF behaviour intended to humiliate or degrade them (e.g., being ordered by the RSF to dance) as well as rape and sexual violence.¹¹⁰

Sexual slavery and forced labour

In one case documented by the report, seven RSF officers arrested a civilian woman from the Fur tribe while she was travelling back to Kalma camp in South Darfur. The RSF officers took her to a house in the Kuria area near the Turkish Hospital in Nyala. The house had multiple rooms and held other women who had also been detained by the RSF. Following her initial detention by the RSF, the survivor overheard RSF officers conversing, with one stating “[w]e have a new woman. It will be fun.” Over the next two days, five RSF officers took turns raping her.

In another testimony provided to the report authors, the RSF arrested another civilian woman Street in Khartoum and transferred her to a house. The RSF ordered her to receive injured RSF officers and cook and prepare meals under the supervision of a number of RSF members. When the survivor initially refused to do so, she faced death threats from the RSF. The RSF forced her to provide labour in this temporary detention centre for 65 days. She eventually managed to leave the site after RSF officers evacuated (in response to information that the site might be bombed by the SAF).

Women and girls are also in particular positions of vulnerability to gender-based violence perpetrated by the RSF in other contexts, including threats of sexual violence as a means of coercing family members to leave their homes (which are then occupied by the RSF) and forcibly recruiting family members. For instance, this practice has recently occurred in new areas controlled by the RSF in Gezira and Sennar States.

108 See e.g., Arts. 7(1)(f) and (g), 8(2)(c), and 8(2)(e)(vi) of the Rome Statute of the International Criminal Court (**‘ICC Statute’**); HRCt, *M.T. v. Uzbekistan* (CCPR/C/114/D/2234/2013), 21 October 2015.

109 See also Human Rights Watch (n 101), p. 39.

110 On these issues, see e.g., Arts. 7(1)(c) (crime against humanity of enslavement), 8(2)(c)(ii) (war crime of outrages upon personal dignity), and 8(2)(c)(iii) (war crime of taking hostages), ICC Statute.

Where a survivor of sexual violence is subsequently released from detention and wishes to file a legal complaint, there are substantial obstacles to ensuring a proper investigation, posing a barrier to accessing certain healthcare (for both physical injuries and psychological support for post-traumatic stress disorder and other trauma),¹¹¹ pursuing justice and accountability, and receiving reparations and interim relief.¹¹²

Amongst other things, the conflict has had a debilitating impact on Sudan's legal apparatus, especially in Khartoum, Darfur, and Kordofan.¹¹³ Elsewhere, the relationship between the warring parties and the public prosecution/judiciary in areas under their control raises significant concerns (including the possibility of the warring parties applying pressure to influence decisions), if not precludes the possibility of prompt, effective, and independent legal proceedings. OHCHR has found that:

“[i]n the current circumstances, the domestic justice system does not have the means or capacity to conduct prompt, independent and credible investigations or to prosecute persons in a manner consistent with international human rights norms and standards. Challenges include the high number of allegations of violations and abuses, lack of protection for judicial actors, victims and witnesses and limitations in the legal framework and the capacity of the judicial system.”¹¹⁴

Even when it is theoretically viable to bring a legal claim, there are further obstacles to pursuing accountability against perpetrators within the RSF or the SAF. There has been longstanding impunity in Sudan for acts of CRSV perpetrated by Sudanese military, security, and intelligence forces¹¹⁵ that has been enshrined in Sudan's legal and institutional setup, including:

- a) broad immunities for perpetrators that are rarely waived and therefore effectively preclude prosecutions – see Section J (**Accountability and Legal Reform**);
- b) legal procedures that hinder proper documentation, deter survivors from filing legal claims, and may harm survivors who do so;¹¹⁶
- c) inconsistencies between legal rights and practice, e.g., that despite there being an exception to the criminalisation of abortion where pregnancies are a result of rape (provided that the procedure is completed within a 90-day window), authorities often require a completed copy of Form 8 and sometimes a successful prosecution for rape before the procedure can take place,¹¹⁷ and
- d) a lack of independent judiciary and prosecution attorneys.¹¹⁸

111 Any transitional justice process should address the long-standing legacy of trauma and psychological distress in Sudan resulting from the recurring cycles of armed conflict and serious human rights violations.

112 See e.g., Rights for Peace and others, “Sudan Study on the Status of and Opportunities for Reparations of Conflict-Related Sexual Violence”, August 2023; REDRESS and Rights for Peace (n 82); and REDRESS, Submission to the UN Special Rapporteur on Torture, “Reparations for Survivors of Conflict-Related Sexual Violence”, 26 April 2024.

113 See e.g., Report of the UN High Commissioner (n 21), para. 87.

114 Ibid, para. 93; Dabanga, “Rulings without lawyers: Sudan's legal professionals detained”, 5 June 2024. OHCHR noted in its report (para. 90) that judges in Kassala and Port Sudan are adjudicating cases related to crimes committed in Darfur and Khartoum. While there has been a move to broaden courts' jurisdiction to hear crimes committed in another State (see e.g., Sudan Tribune, “Public Prosecution Announces New Guidance on Rape and Sexual Violence Cases”, 20 March 2024), there has been no material updates on progress in sexual violence cases and, in any event, much wider legal and structural changes are required to begin to address the climate of impunity for perpetrators.

115 See e.g., Rights for Peace (n 112).

116 E.g., the use of Form 8 which authorities continue to treat as a practical require to filing a legal claim or accessing certain medical treatment (e.g., abortion). See REDRESS and Rights for Peace (n 82).

117 Any analysis of CRSV in Sudan should capture these and other reproductive rights violations.

118 See e.g., SOAS Centre for Human Rights and others (n 48); FFM Report, paras. 96-104.

I. ENFORCED DISAPPEARANCE AND RANSOM



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A Sudanese protestor stares at a recently painted mural during a protest outside the army complex in Khartoum in April 2019.

Enforced disappearance

Both sides

As set out in more detail in the FFM Submission, the RSF and the SAF have both been implicated in various instances of targeted arbitrary arrest and arbitrary detention of civilians. Commonly, the relevant parties detain civilians for considerable periods of time (sometimes indefinitely), particularly those identified as high risk or value. Some of these cases may amount to enforced disappearances under international human rights law ('IHL'),¹¹⁹ IHL,¹²⁰ and ICL.¹²¹

119 See definition in Art. 2, ICPPED; and REDRESS and the SOAS Centre for Human Rights Law (n 2) for a summary of the key requirements. Sudan ratified the ICPPED in August 2021 but has yet to implement the measures needed to prevent and protect against enforced disappearance. Enforced disappearance has been used in Sudan to suppress dissent at least since the Bashir regime (see e.g., ACJPS, "Baseline Study for Enforced Disappearance in Sudan", September 2020; REDRESS, "Taken From Khartoum's Streets" (n 57); ACJPS, "A Report on Enforced Disappearances: One Year Into Sudan War", 27 April 2024).

120 Rule 98 of the International Committee of the Red Cross' Customary International Humanitarian Law Database, acknowledging the prohibition of enforced disappearance as a norm of customary international law established by State practice and applicable in non-international armed conflicts such as the ongoing armed conflict in Sudan. See also Rules 123 (on the registration of persons deprived of their liberty), 105 (on respect for family life), and 117 (on the requirement to take all feasible measures to account for persons reported missing as a result of armed conflict and to provide their family members with information it has on their fate).

121 See Art. 7(1)(i), Elements of Crimes of the ICC Statute ('Elements of Crimes'). See also REDRESS and the SOAS Centre for Human Rights Law (n 2), pp. 32-33 on Sudan's relationship with the ICC Statute.

Enforced disappearance is a continuous violation, which means that it starts with the deprivation of liberty of the victim and continues until the victim's whereabouts are established. There is no time limit on how long enforced disappearance lasts; it can be hours, days, or decades.

Numerous cases considered in the FFM Submission involve the reported arbitrary arrest, *incommunicado* detention, or other form of arbitrary deprivation of liberty of the relevant individuals, often in undisclosed and unofficial detention centres. In many such cases, the warring parties have each been accused of refusing to acknowledge the deprivation of liberty or concealing the fate or whereabouts of the disappeared person, which places the person outside of the protection of the law. While these cases may therefore qualify as instances of enforced disappearance, the precise elements to prove (and therefore the decisive issues to consider when analysing the facts of individual cases) vary depending on the legal regime in question. In this respect, it should be noted that:

- a) Both the RSF and the SAF, as parties to the armed conflict, are bound by the prohibition against enforced disappearance under the minimum standards of IHL, including the Martens Clause, common Art. 3 of the Geneva Conventions (in particular, judicial guarantees for those in detention) and Additional Protocol II of 1977 to the Geneva Conventions of 1949 ('AP II'). There is strong prima facie evidence that both sides may have violated this prohibition.
- b) The relevant obligations under IHRL apply to the State and its agents, meaning that the IHRL analysis in an individual case may depend on the identities of the relevant perpetrators and their relationship with the State. The SAF MI and the GIS are long-recognised organs of the de facto authorities and would qualify as State actors. REDRESS and the SOAS Centre for Human Rights Law have previously concluded that, since the RSF has purported to be a State actor, in the absence of a legitimate government, and recognising its well-documented de facto control of parts of Sudan, the RSF could also be held responsible for perpetrating enforced disappearances as a State actor.¹²² In any event, the de facto authorities would be responsible for such cases under IHRL provided that it could be shown that the RSF or other perpetrator groups (as applicable) acted with the "authorisation, support or acquiescence of the State".
- c) For the purposes of ICL, the ICC Statute defines enforced disappearance of persons in a manner that is broadly similar to the ICPPED, with the added element that the arrest, detention or abduction is done with the intention of removing the individual from the protection of the law for a prolonged period of time.¹²³

Finally, across these legal regimes, it is required to demonstrate a refusal to acknowledge the deprivation of liberty or concealment of the fate or whereabouts of the disappeared person. This commonly appears to be the case in reported cases,¹²⁴ though the general absence of due process and recordkeeping could pose challenges when investigating specific cases (see Section D (**Civilian Detention Since April 2023**)).

122 REDRESS and the SOAS Centre for Human Rights Law (n 2) at p. 32. See also Amnesty International, "Death Came to Our Home' – War Crimes and Civilian Suffering in Sudan", 3 August 2023 on the Rapid Support Forces Act 2017 (which establishes the RSF as nationally-composed military forces reporting to the Head of State) and the RSF as a signatory to the Juba Peace Agreement. The same assessment would need to be conducted in the case of perpetrators from RSF-allied militias.

123 Art. 7(2)(i), ICC Statute.

124 E.g., denying such involvement or knowledge when approached by the victim's family members or burning the bodies of the deceased and burying them in unmarked graves. Relatedly, see Sudan Tribune, "RSF accused of running secret execution chambers in the Sudanese capital", 12 May 2024.

Ransom

The RSF¹²⁵

The RSF has been implicated in numerous incidents of arresting civilians and demanding payments, including from family members, as a condition for their release.¹²⁶ This practice, described below, is particularly prevalent in areas under RSF control in Darfur, Khartoum, Gezira, Sennar, and Kordofan. While detailed consideration of this issue is beyond the scope of this report, REDRESS and the SOAS Centre for Human Rights Law previously that these cases may amount to the war crime of hostage-taking.¹²⁷

Having been arrested by RSF officers, civilians may be falsely accused of committing crimes and ordered to pay a monetary sum in order to be released. Based on testimonies gathered by ACCESS and DNHR, the amount demanded can vary from around 250,000 Sudanese Pounds (approximately \$416 USD) to 10 million Sudanese Pounds (approximately \$16,640 USD), or more, depending on the detained person's financial situation and that of their family. Relatedly, the RSF has established field courts in e.g., Bahri (Khartoum North) and Darfur to impose fines on individuals.¹²⁸ There is no legal basis for the establishment of these courts, nor any known procedures governing their operation or opportunity to appeal.

In some cases, the RSF will seize the mobile phones of detained individuals and call family members in order to demand the ransom payment. They are informed that if the demanded amount is not paid, the detained person will be killed immediately. RSF officers often allow the individual to speak briefly on the phone with the family members to validate that they are in RSF custody.

Increasing ransom incidents in Darfur

DNHR has documented the increasing phenomenon of hostage-taking and ransom by RSF officers in Darfur.¹²⁹ In one case, a civilian from the Fur tribe was arrested by the RSF outside Kalma camp in South Darfur. He was accused of affiliation with the SAF and subjected to beatings across several periods, including an initial period of almost five hours.

While in detention, one RSF officer (exceptionally) informed a friend of the survivor that he was in detention. The friend subsequently notified the survivor's family, and his wife attempted to visit him in detention. While this was initially refused, an RSF officer hinted at the possibility of making a bribe payment to facilitate the survivor's release.

The next day, his wife provided a payment of 360,000 Sudanese Pounds (approximately \$614 USD) to the RSF commander responsible for the detention centre. The commander claimed that the amount was insufficient compared to the survivor's alleged 'crime' but that, considering the financial situation in Kalma camp, he would release the survivor on the condition that he does not return to Nyala (and warning that if

125 We have been notified of other cases where, reportedly, the SAF has held individuals for ransom. These have not been included in this report as additional review and verification is required.

126 See e.g., REDRESS (n 2), p. 39; Katharine Houreld and Hafiz Haroun (n 105); Al Taghyeer, "[Sudan's RSF abducts 15 women in Nuba Mountains, demands ransom](#)", 9 March 2024.

127 Ibid, Art. 8(2)(c)(iii), ICC Statute.

128 Sudan Tribune (n 18); information collected by DNHR.

129 See also Dabanga, "[Kidnapping and protection rackets rife in North Darfur](#)", 5 July 2023.

the survivor returned, this would confirm his affiliation with the SAF). The survivor was later released after spending fourteen days in detention.

DNHR testimonies confirm that this was not an isolated event and that communities, particularly those in Kalma camp, are anxious as they do not have the money to pay the ransoms and failure to do so could result in them losing their livelihoods or being killed.

J. ACCOUNTABILITY AND LEGAL REFORM



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Proceedings against Ali Kushayb, charged with 31 counts of war crimes and crimes against humanity, committed in Darfur, opened at the ICC on 5 April 2022.

Numerous international legal frameworks apply concurrently during the current armed conflict in Sudan, including IHRL, IHL, and ICL.¹³⁰

International human rights law

As identified throughout this report, there is strong evidence that numerous IHRL violations have been committed in the context of mass civilian detention and associated with deprivation of liberty, including arbitrary arrest, arbitrary detention, torture and CIDTP, extrajudicial executions, rape and sexual violence, and possible enforced disappearance. In the case of RSF detention sites, there is also evidence of sexual slavery and forced labour, as well as the denial of the right to food, health, and humanitarian assistance. The relevant obligations under IHRL bind Sudan as a State, in contrast to IHL (particularly common Art. 3 and AP II, which bind all parties to the armed conflict, including the SAF, the RSF, and their affiliated armed groups) in their capacity as parties to a non-international armed conflict ('NIAC') and ICL (which concerns individual and command criminal responsibility for international crimes). On this, see the following section for consideration of the classification of the SAF and

¹³⁰ See REDRESS and the SOAS Centre for Human Rights Law (n 2), pp. 29-33 on the operation of these legal frameworks in the context of the ongoing armed conflict.

the SAF as possible State actors, though in any event, the de facto authorities have a duty to respect and ensure respect for IHRL and have the responsibility under IHRL to prevent and investigate violations, hold perpetrators accountable, and provide reparation to victims.

International humanitarian law

The ongoing armed conflict in Sudan is a NIAC and therefore the parties to the conflict are governed by IHL, including applicable customary international law.¹³¹ Both the RSF and the SAF have committed numerous violations of IHL in the context of mass civilian detention, including as set out in this chapter.

As noted previously, this report addresses violations committed against individuals on the assumption that they would be classified as civilians who had not participated directly or indirectly in hostilities. While detailed consideration of this issue is beyond the scope of the report, it should be noted that:

- a) there is some debate as to the precise nature of the civilian/combatant distinction in NIACs;¹³²
- b) an individual's (lack of) direct participation in hostilities may affect their IHL protections during a NIAC¹³³ and whether certain violations committed against them can be classified as war crimes;¹³⁴ and
- c) in practice, it may sometimes be difficult to reliably apply the distinction between civilians and combatants given the situation in Sudan, particularly noting ongoing campaigns by both sides to recruit (sometimes forcibly) civilians as well as the increasing mobilisation of civilian actors to defend their communities against the RSF.

International criminal law

There is strong evidence that members of the warring parties have committed core international crimes in the context of mass civilian detention, including war crimes¹³⁵ and crimes against humanity.¹³⁶ This conclusion is significant for numerous reasons, including that:

- a) As noted below, the ICC has jurisdiction over ICC Statute crimes committed in the "situation in Darfur since 1 July 2002". Perpetrators of international crimes that appear in the ICC Statute may therefore be investigated, prosecuted, and held criminally responsible by the ICC for their role in the commission of such crimes (including top leaders and commanders of the SAF and the RSF);

131 REDRESS and the SOAS Centre for Human Rights Law (n 2), pp. 29-30.

132 Art. 13(3), AP II states that civilians lose their protection from lawful direct attack when they "take a direct part in hostilities", though AP II itself does not define civilians. Some have concluded that IHL in NIACs protects individuals based on their classification as civilians or combatants, whereas others consider that such protections apply according to their actual activities (i.e., (lack of) direct participation in hostilities).

133 Beyond lawful direct attack (where the civilian/combatant distinction is highly relevant), see Common Art. 3(1) and Arts. 4 and 5, AP II, which indicate that when an individual is detained during a NIAC, they may be entitled to the same level of protection under IHL, regardless of their status or involvement in hostilities (though this is disputed by some States).

134 E.g., the war crime of attacking civilians, though note that for many war crimes, it is sufficient to demonstrate that victims were civilians, medical personnel, or religious personnel taking no active part in the hostilities or were *hors de combat* (e.g., combatants that had been detained or otherwise incapacitated).

135 See also n 131 on the armed conflict in Sudan being a NIAC.

136 See also n 53 on the crime of genocide.

- b) These crimes are also subject to universal jurisdiction – which allows (if not obliges) States to assert or exercise jurisdiction over them and prosecute these offences before their ordinary domestic criminal courts. This is true even if the offence was committed outside of the State and neither the perpetrator nor the victims are nationals of the State;¹³⁷ and
- c) Sudan will ultimately need to devise and implement a genuine and effective transitional justice process that, amongst other things, responds to the challenge of holding to account those responsible for international crimes committed in Sudan.

War crimes

There is strong evidence that both the RSF and the SAF have committed war crimes in the context of mass civilian detention,¹³⁸ including making the civilian population the object of attack¹³⁹ and committing acts of violence to life and person, including torture¹⁴⁰ and murder.¹⁴¹ The RSF has also been implicated in conduct that may amount to war crimes of sexual violence (including rape and sexual slavery),¹⁴² taking hostages,¹⁴³ and the use of collective punishments.¹⁴⁴

Crimes against humanity

Taken as a totality and placed in the broader context of the conflict, the nature and patterns of the practices described in the report contribute to a body of evidence that is strongly indicative of crimes against humanity possibly committed by both the RSF and the SAF.

For the purposes of ICL, Art. 7 of the ICC Statute – which broadly reflects the key elements of definitions adopted in other international texts and customary international law – defines crimes against humanity as any of various prescribed acts when committed as part of a “widespread or systematic attack” directed against any civilian population, with knowledge of the attack, including, in the context of mass civilian detention and related violations:

- a) Murder (Art. 7(a));
- b) Enslavement (Art. 7(c));
- c) Imprisonment or other severe deprivation of physical liberty in violation of fundamental rules of international law (Art. 7(e));¹⁴⁵

137 See REDRESS and the SOAS Centre for Human Rights Law (n 2), p. 32 for further context.

138 War crimes in a NIAC being “serious violations” of Common Art. 3 to the Geneva Conventions of 1949 and other serious violations of the laws and customs of war within the established framework of international law (see REDRESS (n 2) at pp. 36-42 for more detailed analysis).

139 Rule 156 CIHL. See also Art. 2(e)(i) and (ii), ICC Statute.

140 See REDRESS and the SOAS Centre for Human Rights Law (n 2), pp. 37-38.

141 Ibid.

142 Ibid, p. 38.

143 Ibid, p. 39.

144 Art. 4(2)(b), AP II; Rule 103 CIHL.

145 See Art. 7(1)(e), Elements of Crimes, which sets out the elements of the crime against humanity of imprisonment or other severe deprivation of physical liberty.

- d) Torture (Art. 7(f));¹⁴⁶
- e) Rape, sexual slavery, and certain other forms of sexual violence (Art. 7(g));
- f) Enforced disappearance (Art. 7(i));¹⁴⁷ and
- g) Other inhumane acts of a similar character intentionally causing great suffering, or serious injury to body or to mental or physical health (Art. 7(k)).

Attack directed against a civilian population

The ICC Statute requires that, to qualify as a crime against humanity, such acts must be “directed against any civilian population”. The ICC’s jurisprudence also confirms that the concept of ‘civilian population’ is not “limited to populations defined by a common nationality, ethnicity, or other distinguishing features”¹⁴⁸ and may include, for instance, “a group defined by its (perceived) political affiliation”¹⁴⁹.

As explained in Section E (**Arrest Patterns**), both the SAF and RSF have frequently resorted to arbitrary arrest, *incommunicado* detention, and subsequent torture and CIDTP to target civilians based on various characteristics described in this report. (Common across these instances are patterns of organised punitive detention and ill-treatment targeting civilians to inflict terror and discriminatory violence, establish and consolidate control, and eliminate perceived threats. In the case of the RSF, this also includes rape and sexual violence (including sexual slavery) as well as forced labour and ransom. These patterns are consistent with, and form part of, attacks conducted separately by the RSF, the SAF, and their respective affiliates, each against ‘civilian populations’, namely their perceived opposition comprising cohorts of individuals in states under their control identified based on their race, ethnicity/ethnic profiling, and tribal affiliation, activism, political activity, profession/community role, and age and gender.

Widespread or systematic attack

It must also be shown that the relevant act(s) occurred or are occurring in the context of a “widespread or systematic attack” (emphasis added). An ‘attack’ for this purpose is a course of conduct involving violence against or mistreatment of a civilian population, which would appear to be satisfied in this case. An assessment of whether an attack is ‘widespread’ or ‘systematic’ should occur on a case-by-case basis, collectively considering both detention abuses and other violations committed against civilians.¹⁵⁰ For present purposes, the pattern of detention violations considered in this report is indicative of an attack that is widespread (see following section, which addresses both the existence of a State or organisational policy as well as indicators of the systematic nature of the practice).

146 In contrast to the definition of torture under IHRL (UNCAT), the ICC Statute does not require the involvement of a public official for conduct to constitute torture as a crime against humanity (Art. 1(1)(f), Elements of Crimes) or as a war crime (Art. 8(2)(c)(i), Elements of Crimes). Likewise, see Art. 8(1)(c)(i) for the same on the war crime of torture. See also REDRESS and the SOAS Centre for Human Rights Law (n 2), p. 43. As with UNCAT, the ICC Statute does not include as torture “pain or suffering arising from, inherent in or incidental to, lawful sanctions”, though the concept of ‘lawful sanctions’ does not include measures that, while sanctioned under national law, are clearly illegal under international law.

147 The ICC Statute definition of enforced disappearance varies from the definition in the ICPPED, including that the ICC Statute offence: (i) can be committed by a “political organisation” as well as the State (see REDRESS and the SOAS Centre for Human Rights Law (n 2), pp., 32 and 44 on classifications of the RSF including as possible State actors or a political organisation); and (ii) requires that the perpetrator intends to remove the individual from the protection of the law “for a prolonged period of time”.

148 ICC, *Prosecutor v. Bosco Ntaganda*, ICC-01/04-02/06, Judgment, 8 July 2019, para. 667; ICC, *Prosecutor v. Germain Katanga and Mathieu Ngudjolo Chui*, ICC-01/04-01/07, Decision on the Confirmation of Charges, 30 September 2008, para. 399.

149 ICC, *Prosecutor v. William Samoei Ruto*, Henry Kiprono Kosgey & Joshua Arap Sang, ICC-01/09-01/11, Decision on the Confirmation of Charges Pursuant to Art. 61(7)(a) and (b) of the ICC Statute, 23 January 2012, para. 164.

150 See also REDRESS and the SOAS Centre for Human Rights Law (n 2), pp. 45-47 on crimes against humanity generally.

The violations examined in this paper appear to form part of large-scale attacks launched by the RSF and the SAF respectively.¹⁵¹ While, given the circumstances, there is no official data on the exact number of those targeted to date, the consensus amongst survivor testimonies and OHCHR and civil society reports indicates that both sides have allegedly arbitrarily detained hundreds, if not thousands, of civilians across numerous states.¹⁵² Further evidence is required on this issue, particularly noting the ongoing challenges gathering information on detention centres operated by the SAF (see previous section on the SAF).

In the case of both the RSF and the SAF, the underlying violations have the hallmarks of organised violence sanctioned by senior leaders within the warring parties, particularly noting the recurring modalities of arrests, detention, and subsequent treatment, the organisations consistently implicated in this practice, the common profiles of individuals targeted, and the apparent purposes of detention and ill-treatment.

State or organisational policy

According to the ICC Statute, the attack must involve the multiple commission of prescribed acts (see previous section) against a civilian population “pursuant to or in furtherance of a State or organisational policy to commit such an attack.”¹⁵³ Such ‘policy’ requires that the State or organisation actively promote or encourage such an attack against a civilian population. In exceptional circumstances, this may be implemented by a deliberate failure to take action, which is consciously aimed at encouraging such an attack (though the existence of such a policy cannot be inferred solely from the absence of action).¹⁵⁴ The respective attacks by the RSF and the SAF against civilians (of which mass civilian detention and related violations since 15 April 2023 form a very significant part) have the appearances of separate, deliberate policies developed by, or at least with the knowledge of, senior leaders within the warring parties.¹⁵⁵ As the picture is still emerging as to the existence and contents of official documentation codifying such policies, this assessment is based on the modalities of arrest and detention (as described from Section E (**Arrest Patterns**) above) which are consistent with a recurrent pattern of attacks that were planned, directed, or organised, as well as the following indicators:

Both sides:

- a) Both sides, while now in opposition, are acting in furtherance of the same overarching policy of institutionalised violence in Sudan as a method of doing ‘politics’, particularly as a means of establishing, maintaining, and growing political power and wealth.¹⁵⁶ A central tenet of this strategy has been the enshrining of impunity for violations by, amongst other things, legislative and institutional changes that enhanced the security forces’ respective powers, provided broad sweeping immunities in respect of their actions, and weakened or dismantled mechanisms that would otherwise oversee and regulate their actions.¹⁵⁷ Both the SAF and RSF are primary architects, enforcers, and beneficiaries of this system; and the patterns of violations described in this paper reflect their continued belief in and reliance on it.

151 See e.g., n 17 and 18; Report of the UN High Commissioner (n 21), para. 54.

152 Ibid.

153 Art. 7(3), Elements of Crimes.

154 Ibid.

155 This element does not mean that a formal design or policy should be proven to exist. The ICC has previously found that “in the majority of situations amenable to the Court, some aspects of the policy pursued against a civilian population will only crystallize and develop as actions are set in train and undertaken by the perpetrators” (ICC, *Prosecutor v. Germain Katanga*, ICC-01/04-01/07, Judgment, 7 March 2014, para. 1108). The ICC has previously considered that in determining whether an attack was committed in furtherance of a State policy, an inference could be drawn from the following factors: “(i) that the attack was planned, directed, or organised; (ii) a recurrent pattern of violence; (iii) the use of public or private resources to further the policy; (iv) the involvement of the State or organisational forces in the commission of crimes; (v) statements, instructions or documentation attributable to the State or the organisation condoning or encouraging the commission of crimes; and/or (vi) an underlying motivation” (ICC, *Prosecutor v. Jean-Pierre Bemba Gombo*, ICC-01/05-01/08, Judgment, 21 March 2016, para. 160).

156 See e.g., SOAS Centre for Human Rights Law and others (n 48).

157 Ibid.

- b) Both sides have heavily leveraged Sudan’s established torture infrastructure, including detention sites, networks, personnel, and techniques inherited from the Bashir regime.¹⁵⁸ Many of the actors implicated in historic violations continue to play an active role in ongoing violations, either directly as officers of the SAF MI, GIS, and RSF or indirectly in the case of certain senior Islamists and other influential actors.¹⁵⁹
- c) Both sides have clear underlying motivations behind their targeting of specific profiles of civilians – on which, see following section on ‘The Knowledge Element.’

The SAF:

In various cases, survivors and witnesses identified their perpetrators as belonging to the SAF. The SAF has intimate ties to (and is synonymous with) the current de facto authorities. The SAF is Sudan’s army and has held power in some capacity for most of Sudan’s history post-independence. It coordinates heavily with State-sanctioned intelligence arms as well as the police. Its leader, al-Burhan, is the current de facto head of state. The bulk of Sudan’s public funds have largely been spent on the SAF and other elements of the military and security service.¹⁶⁰ It has long been validated, empowered, and shielded by the State, demonstrating the involvement of the State in the commission of the aforementioned crimes, which may therefore suggest that the attack was committed in furtherance of a state policy.

The RSF:

In this respect, it should be noted that the paramilitary RSF has also been funded and regularised by Sudan and was notionally incorporated into the SAF. Prior to the armed conflict, its leader, Hemedti, was al-Burhan’s deputy. The armed conflict has, however, significantly affected the relationship between the RSF and the State. For instance, in the absence of funding by the de facto authorities, the RSF has reportedly relied on extensive financial, military, and logistical support from other States, most prominently the United Arab Emirates.¹⁶¹

Knowledge element

The ICC Statute also requires the perpetrator knew (or should have known) that the conduct was part of or intended the conduct to be part of the attack.¹⁶² The knowledge element relates to the context of the act, i.e., “the perpetrator must have acted with knowledge of the broader context of the attack, with knowledge that his acts (or omissions) formed part of the widespread or systematic attack against the civilian population.”¹⁶³ The required knowledge can be inferred from circumstantial evidence, such as “the accused’s position in the military hierarchy; his assuming an important role in the broader criminal campaign; his presence at the scene of the crimes; his references to the superiority of his group over the enemy group; and the general historical and political environment in which the acts occurred”.¹⁶⁴

158 Ibid.

159 Ibid.

160 See e.g., Committee on Economic, Social and Cultural Rights, “Concluding observations on the second periodic report of the Sudan” (UN Doc E/C.12.SDN/CO/2), 27 October 2015, paras 15-16. The SAF also reportedly relies “in large part on wealthy individuals and businessmen aligned with it to finance its military capability.” (Panel of Experts (n 2), para. 115))

161 See e.g., the Panel of Experts (n 2), paras. 41-42; The New York Times, “Talking Peace in Sudan, the U.A.E. Secretly Fuels the Fight”, 29 September 2023.

162 Art. 7(1), Elements of Crimes.

163 International Criminal Tribunal for Rwanda, Prosecutor v. Augustin Ndindiliyimana et al. (Appeal), ICTR-00-56-A, Judgment, 11 February 2014, para. 260.

164 ICC, Prosecutor v. Germain Katanga and Mathieu Ngudjolo Chui, ICC-01/04-01/07, Decision on the Confirmation of Charges, 30 September 2008, para. 402; ICC, Prosecutor v. Bosco Ntaganda, ICC-01/04-02/06, Judgment, 8 July 2019, para. 1171; ICC, Prosecutor v. Dominic Ongwen, ICC-02/04-01/15, Judgment, 4 February 2021, para. 2805.

While detailed consideration of this requirement is beyond the scope of this report, the knowledge element for both sides may be inferred based on various factors. For instance, the same actors are routinely implicated in detention violations (particularly the RSF, SAF MI, and GIS), in many instances patterns of arrest and detention appear connected with the warring parties' wider military strategies and objectives, and both sides have failed to address alleged violations despite them being well documented and reported on by individuals, NGOs, the media, and UN bodies and mechanisms (including, in this latter case, direct communications with both parties).¹⁶⁵

In the present case, members at all hierarchical levels of the warring parties appear likely to have sufficient knowledge of their attacks against the civilian population (including the treatment of detained civilians deprived of their liberty) and are aware that their acts form part of such an attack. In particular, the present attacks should be situated in their respective context, forming part of longer-term attacks perpetrated by the same groups and victimising the same profiles of individuals, including that:

- a) The attacks by the RSF and allied Arab militia against non-Arab groups in Darfur are the latest phase of the conflict in Darfur and can be traced back at least as far as the Government of Sudan's counter-insurgency campaign implemented from 2003, a key element of which was its mobilisation and provision of support to the *Janjaweed* (now the RSF).¹⁶⁶ The SAF's failure to defend civilians from RSF attacks in West, South, Central, and East Darfur, and its own violence against individuals from Darfur tribes should similarly be situated against the responsibility of the SAF and National Intelligence and Security Service ('NISS') (now the GIS) for historic atrocities in Darfur, as well as the Khartoum authorities' longstanding political and economic marginalisation of Darfur and other peripheries.¹⁶⁷
- b) Likewise, the present attacks by the warring parties against e.g., the Nuba people,¹⁶⁸ activists/political opposition,¹⁶⁹ women/girls,¹⁷⁰ and journalists¹⁷¹ can only be understood by mapping them across historic violations that have been committed against these groups by many of the same actors, deploying much of the same rhetoric, using many of the same techniques, and for many of the same purposes.

Conclusion

As set out above, the practices of mass civilian detention and related abuses by the RSF and the SAF since 15 April 2023 each contribute to a body of evidence that is strongly indicative of crimes against humanity possibly committed by both sides. Further detailed analysis is required on this issue with a view to future accountability proceedings, including on the key differences between the attacks carried out by the RSF and the SAF and their legal significance (including as identified in this report) as well as further situating detention violations in the context of wider attacks launched by both sides against the civilian population.

165 See e.g., Panel of Experts (n 2); Report of the UN High Commissioner (n 21); and various statements by the ICC Prosecutor, UN officials, third States, and humanitarian organisations. With very few exceptions, both sides have refused to acknowledge their own role in serious violations since the start of the conflict and instead heavily emphasise the other side's culpability.

166 See e.g., Report of the International Commission of Inquiry on Darfur to the UN Secretary-General, 25 January 2005; ICC, Second Warrant of Arrest for Omar Hassan Ahmad Al Bashir, ICC-02/05-01/09-95, 12 July 2010.

167 Ibid.

168 For a high-level summary, see e.g., Cultural Survival, "Land Alienation and Genocide in the Nuba Mountains, Sudan", 26 March 2010; Operation Broken Silence, "Specter of ethnic killing looms in Sudan's Nuba Mountains", 22 February 2024.

169 See e.g., n 57.

170 See e.g., Rights for Peace (n 112).

171 See e.g., Reporters Without Borders, "Sudan".

Domestic accountability

There is strong evidence that members of both sides have committed core international crimes. While the international justice system has, under the principle of complementarity, traditionally recognised that States have primary responsibility for investigating and prosecuting international crimes that occur within their jurisdiction, and providing reparation to victims, the present factual situation and Sudan's judicial infrastructure and domestic laws pose serious hurdles to any meaningful prosecution of perpetrators even if there was a political commitment to accountability for international crimes.¹⁷²

The armed conflict in Sudan has continued unabated since 15 April 2023. It is therefore extremely challenging for the de facto authorities to properly investigate and prosecute all crimes committed in a detention context at least while the conflict is in its current form, noting the profound impact of the atrocities on State institutions including the police, public prosecution, and judiciary.

Sudan's domestic law and institutions also continue to present major obstacles that must be overcome to successfully prosecute violations, including those committed in detention centres, before national courts, particularly with respect to domestic prosecution of international crimes (as being most relevant for present purposes). For instance:

- a) The CA 1991 (as amended in 2009) and the Armed Forces Act 2007 both fail to adequately criminalise torture in a manner consistent with Art. 1 of UNCAT and do not criminalise enforced disappearance as a stand-alone offence.¹⁷³
- b) The legal definitions of rape (including as a war crime and crime against humanity) are vague and fail to properly elaborate on the different forms of coercion/lack of consent as well as the acts of penetration which have been recognised in international jurisprudence. They also fail to reflect the diverse forms of sexual violence that may constitute an international crime. See previously on the obstacles to ensuring a proper investigation of, and pursuing accountability for, alleged rape and sexual violence.

The CA 1991 and the Armed Forces Act 2007 also fail to recognise command/superior responsibility as a distinct mode of criminal liability, despite the well-recognised obligation on commanders and superiors to prevent the commission of crimes by their subordinates.¹⁷⁴

Both sides, but particularly the SAF, have exploited other deficiencies in Sudanese law to further facilitate their commission of serious human rights abuses against civilians. Often, arrests are conducted without any stated

172 REDRESS and the SOAS Centre for Human Rights Law (n 2), p. 50.

173 On these and other issues, see REDRESS and the SOAS Centre for Human Rights Law (n 2), pp. 50-52; and for further detail, Mohamed Abdelsalam Babiker, "The Prosecution of International Crimes under Sudan's Criminal and Military Laws: Developments, Gaps and Limitations" in Lutz Oette (ed), *Criminal Law Reform and Transitional Justice: Human Rights Perspectives for Sudan* (Ashgate 2011), 161-181.

174 Ibid.

legal basis or leveraging the already highly permissive laws and emergency orders under which they operate.¹⁷⁵ Where a basis is given, the SAF is increasingly relying on exceptionally broad offences as a basis for arrests and subsequent criminal proceedings – primarily, CA 1991 Arts. 50 (undermining the constitutional system) and 51 (waging war against the State). In some cases, the authorities also rely on 186-188 (on encouraging or supporting the commission of crimes against humanity, genocide, and war crimes, respectively).¹⁷⁶ These offences, which are all potential capital offences, run contrary to recognised international standards, including failure to adequately set out the grounds for arrest and detention and failure to provide for procedural safeguards.¹⁷⁷

The de facto authorities have also taken recent steps to strengthen the repressive powers of the GIS, reversing crucial reforms made during the transition.¹⁷⁸ On 8 February 2024, the de facto Sovereign Council purportedly enacted the General Intelligence Service Law (Amendment) 2024 ('GIS Amendment'), which re-introduces broad powers of arrest and detention, equivalent to those of a police officer under the Police Forces Act 2008 and the CA 1991 (Arts. 25 and 50, GIS Amendment),¹⁷⁹ as well as sweeping immunities for GIS officers in respect of:

“Any act committed by any member of the [GIS] in good faith, during or because of the performance of his job duties, or the performance of any duty imposed on him, or as a result of any act issued by him under any authority authorized or granted to him under this law or any other effective law, regulation, or orders issued pursuant to any of them, provided that the act is within the limits of the actions and duties imposed on him according to the authority granted to him under this law, and that the act or omission was not done with bad intent or negligence, shall not be considered a crime.” (Art. 52(1), GIS Amendment)¹⁸⁰

The stated effect of this amendment is that no criminal or civil proceedings may be brought against a member of the GIS unless the GIS Director exercises their discretion and waives the member's immunity (Art. 52(3)) – which prior practice suggests is unlikely to happen except in very rare cases.¹⁸¹ There is also no provision or oversight governing the exercise of the GIS Director's discretion, except that they must waive immunity if it becomes clear that the subject of the proposed proceedings is “not related to official work”.

175 Although a nationwide state of emergency has not yet been declared, states of emergency purportedly declared or renewed in Blue Nile, East Darfur, Gezira, Gedaref, Kassala, Khartoum, Kordofan, Red Sea, River Nile, Sennar and West Darfur States remain in force (Report of the UN High Commissioner (n 21), p. 17). Various arrests have been made under the auspices of these State-wide states of emergency. However, the 2019 Constitutional Document requires that any such declaration “shall be presented to the Transitional Legislative Council within 15 days from the date of its issuance” (Art. 40.2) and that “the declaration of a state of emergency is extinguished if the Legislative Council does not ratify it, and all the measures taken thereunder are extinguished, without retroactive force” (Art. 40.4). Under a plain reading of these provisions, the above states of emergency may not be valid as the Transitional Legislative Council was never established under the pre-coup transitional government. In any event, see REDRESS and the SOAS Centre for Human Rights Law (n 2) on the conditions that must be strictly met to derogate from (derogable) obligations under Art. 4 of the International Covenant on Civil and Political Rights – and the related lack of evidence that the Sudanese authorities have purported to derogate from any such obligations.

176 See e.g., ACJPS, “Sudan: Anti-War Figures Including Former Prime Minister Hamdok Charged With Crimes That Carry The Death Penalty”, 9 April 2024.

177 See e.g., Dabanga, “Sudanese man and woman sentenced to death”, 4 June 2024.

178 Al-Burhan has issued an unknown number of decrees since the start of the armed conflict.

179 These powers were removed from the NISS under the Miscellaneous Amendments Law 2020 (REDRESS, “Further Historic Changes Made to Sudanese Laws”, 16 July 2020; see also the 2019 Constitutional Document, Art. 37), though its application to the GIS is unclear and in any event the GIS continued to play a role in the conduct of arrests. Sudan subsequently issued Emergency Order No. 3/2021 ('EO No. 3') reintroducing arrest and other powers for the GIS (and other military and security actors) in respect of persons who “participated in a crime related to emergency [...]”. EO No. 3 was issued under an unlawful state of emergency which was lifted in May 2022. However, EO No. 3 seemingly remained in force.

180 NISS/GIS immunities were previously removed under the Miscellaneous Amendments Law 2020 (ibid). However, in practice proceedings were only allowed to proceed in a handful of cases and GIS officers generally continued to benefit from de facto immunity from accountability for torture and other serious violations.

181 Even if immunity is waived, any subsequent legal proceedings related to “any act committed by him related to his official work shall be confidential unless the court decides otherwise.” (Art. 52(3), GIS Amendment)

It is quite clear that the GIS Amendment has not been validly enacted as law and lacks constitutional legitimacy after the October 2021 coup as a matter of domestic and international law.^{182 183} However, in any event, the GIS Amendment will be of considerable practical significance in the current circumstances by facilitating indefinite detentions and related torture and CIDTP, as well as further shielding GIS members from future prosecutions. More broadly, the move is emblematic of a regime that has contempt for agreed constitutional principles as well as established rules of IHRL and ICL. It is also a pertinent reminder of their established modes of governance and blatant disregard for principles of non-violence, the rule of law, constitutionalism, human rights protections, and civilian rule. Instead of taking steps to address the spiralling humanitarian crisis or accountability vacuum for perpetrators of human rights abuses in the armed conflict, the de facto authorities continue to prioritise implementing their own campaign of targeted violence against civilians and further entrenching immunities and impunity for their behaviour and that of their affiliates.¹⁸⁴

International accountability

There remains a clear role for international actors to play in supporting Sudan's journey to accountability.

The ICC has jurisdiction over crimes listed in the ICC Statute committed in the "situation in Darfur since 1 July 2002".¹⁸⁵ In July 2023, the Prosecutor announced that his office had launched a new investigation into alleged international crimes committed in Darfur since 15 April 2023.¹⁸⁶ In a subsequent briefing to the UN Security Council, the Prosecutor concluded that "there are grounds to believe" that the SAF, the RSF, and affiliated groups are committing ICC Statute crimes.¹⁸⁷ It is understood that the OTP is currently focusing closely on atrocities perpetrated by the RSF and allied militia in West Darfur, with increasing attention now also on the situation in Al-Fashir, North Darfur.¹⁸⁸

As described above, there is strong evidence that the warring parties have committed various ICC Statute crimes. The ICC has jurisdiction to investigate such crimes where they occur in Darfur or there is otherwise a strong nexus

182 According to the 2019 Constitutional Declaration, the Transitional Legislative Council (which was never established) is the authority responsible for enacting laws and legislation (Art. 25.1). Until the Transitional Legislative Council is formed, its powers are vested in the members of the Sovereign Council and the Cabinet, who exercise them in a joint meeting, and who take decisions by consensus or by a two-thirds majority of members (Art. 25.3). While the text of the GIS Amendment suggests that it was issued at a joint meeting of the Sovereign Council and Council of Ministers, al-Burhan previously purported to remove Hemedti, al-Hadi Idris, and Tahir Hajer from the Sovereign Council, as well as various ministers – and arguably did so in an unlawful and unconstitutional manner (see n 183). This may mean that the two-thirds majority was not technically met (e.g., factoring in the purported removals of Hemedti, Idris, and Hajer, the remaining five Sovereign Council members would at most comprise a 62.5% majority). In addition, there is currently no Prime Minister or cabinet to exercise executive powers – which are presently exercised solely by the de facto Sovereign Council.

183 See e.g., Reuters, "Sudan's Burhan sacks RSF head Hemedti as deputy of sovereign council", 19 May 2023; Sudan Tribune, "Sudan's Sovereign Council member removed from office", 3 November 2023; Sudan Tribune, "Al-Burhan removes another member from Sudan's Sovereign Council", 20 November 2023; Sudan Tribune, "Sudan's al-Burhan announces limited cabinet reshuffle", 1 November 2023; Sudan Tribune, "Burhan reshuffles Sudanese cabinet, dismissed several governors", 22 November 2023. See Arts. 11.2 and 14 of the 2019 Constitutional Document for the grounds on which a member of the Sovereign Council can be removed (these do not appear to have been met). Art. 18.1(d) does enable a member of the Cabinet to be removed following withdrawal of confidence by the Transitional Legislative Council with a two-thirds majority. As the Transitional Legislative Council was not established, this power is vested in the members of the Sovereign Council and the Cabinet (as above, Art. 25.3), raising the same issue of whether the two-thirds majority threshold can be met following the possibly unconstitutional removal of several Sovereign Council members and ministers.

184 This is also evident by contrasting the de facto authorities' approach to civilians with their approach to individuals indicted by the ICC (e.g., REDRESS and the SOAS Centre for Human Rights Law (n 2), pp. 54-55 on Ahmed Harun).

185 As Sudan is not a State Party to the ICC Statute, the ICC's jurisdiction in Sudan is principally derived from a referral by the UN Security Council on 31 March 2005, Resolution 1593 (2005) (and fundamentally derived UN Charter obligations).

186 Office of the Prosecutor of the ICC ('OTP'), *Thirty-Seventh Report of the Prosecutor of the International Criminal Court to the United Nations Security Council pursuant to Resolution 1593 (2005)*, 13 July 2023.

187 OTP, *Statement of ICC Prosecutor, Karim A. A. Khan KC, to the United Nations Security Council on the Situation in Darfur, pursuant to Resolution 1593 (2005)*, 30 January 2024.

188 Ibid; OTP Report (n 186); UN, "ICC Prosecutor appeals for evidence of Darfur atrocities", 11 June 2024.

to the situation in Darfur. While a full consideration of the ICC's jurisdiction in Sudan is beyond the scope of this report,¹⁸⁹ it should be noted that if a prosecutorial strategy addressing the current situation in Darfur is likely to be effective, it should take account of the significant continuity of and nexus between violations in Darfur and the rest of the country, particularly in Khartoum, Gezira, Kordofan, and Sennar.

In any event, the ICC has neither the jurisdiction nor the resources to investigate *all* violations since the start of the conflict, and to ensure that *all* perpetrators are held accountable. In this respect, the decision of the HRC to establish the Sudan FFM is a welcome step towards a more comprehensive accountability strategy and may also inform the ICC's ongoing investigations in Sudan. The Sudan FFM's mandate is closely tied to the issue of accountability, particularly investigating violations, documenting and gathering/analysing evidence of violations, and identifying those individuals and entities responsible with a view to ensuring that they are held accountable. With a view to maximising the impact of its work (particularly addressing the root causes of violations in Sudan) and complementing the work of the ICC, the Sudan FFM should consider the following:

- a) Adopting a holistic investigation strategy that is sufficiently wide to capture the full gamut of violations, including those that are not within the ICC's jurisdiction or the OTP's prosecutorial strategy. The Sudan FFM's investigations should address all categories of alleged human rights violations and abuses and violations of IHL, including violations in detention centres, and violations and abuses committed across all states – whether controlled by the de facto authorities or the RSF;
- b) Compiling and validating evidence with a view to the opening and developing of case files on individual perpetrators that meet the necessary evidence standards or thresholds under ICL, as well as relevant protocols adopted by investigative bodies of the HRC; especially in relation to individuals and entities expressly identified in the Sudan FFM's reports as being responsible for detention violations. While it is unclear exactly what additional accountability processes may be established in the future to address such violations, it is vital that steps are taken to proactively develop robust evidence packages while survivors and witnesses are still contactable, the circumstances still enable the gathering of admissible, reliable, and credible evidence, and before further evidence is lost;
- c) While a focus on individual perpetrators is crucial, the Sudan FFM should also be mindful of the wider importance and symbolism of its reports to survivors and their communities, including as a form of truth-telling. In this respect, particularly recognising that survivors are not a homogenous group, and their views can differ significantly, the Sudan FFM should adopt a participatory approach that fully involves survivors and their representatives in the design and implementation of the Sudan FFM's fact-finding and reporting processes;
- d) Continue to request information from the warring parties on detention violations as well as access to the country, including to inspect detention centres. The information set out in this report should be reviewed and, as appropriate, communicated to the warring parties in the form of oral and written reports and, if appropriate, bilateral correspondence;
- e) Analyse the information and documentation that it receives and can verify as a totality with a view to developing a detailed and up-to-date analysis of the warring parties' leadership structures, chains of command, decision mechanisms, and reporting lines, which may be used for the purposes of assessing whether (and if so which) core international crimes may have been committed as well as to support findings of individual criminal responsibility, including under the principles of command responsibility and universal jurisdiction; and

189 See REDRESS and the SOAS Centre for Human Rights Law (n 2), pp. 54-55.

- f) take the necessary steps to ensure that any information and documentation that it receives is properly preserved and can, as appropriate, be accessed and used for future justice, accountability, and reparation purposes, including national transitional justice processes in the event that the Sudan FFM's mandate is terminated.

States should also take proactive steps to promote accountability in Sudan, including that:

- a) National war crimes units in third States should (continue to) monitor the movements of suspected perpetrators of serious human rights and prosecute any such violations and international crimes and, under universal jurisdiction, prepare to arrest perpetrators that enter their territory. In this respect, States should proactively open (or continue their) structural investigations to collect evidence in relation to the crimes committed during the current armed conflict.
- b) States should impose targeted sanctions on all Sudanese leaders of both the SAF and the RSF responsible for serious human rights and IHL violations, as well as the companies and other affiliated entities who facilitate them.

Finally, there is an overwhelming need for a holistic, transformative approach to Sudan's future based on civilian rule, participatory approaches to developing justice and accountability mechanisms, and comprehensive legal and institutional reforms designed with a view to ending impunity and addressing its root causes. The Sudan FFM should consider issuing a recommendation in its written report that, once a transitional government is established, that government should prioritise consultations with trusted civilian and political forces keen to promote genuine and effective transitional justice models, objectives and processes, including survivor communities and grassroots organisations, with a view to developing the required approach collaboratively.

See our parallel joint submission to the Sudan FFM with the SOAS Centre for Human Rights Law and ACCESS dated 3 July 2024 which identifies the root causes of human rights violations and impunity in Sudan as well as a series of more detailed recommended principles to guide this process.¹⁹⁰

¹⁹⁰ SOAS Centre for Human Rights Law and others (n 48).

K. CONCLUSION

As this report and our more detailed FFM Submission demonstrate, the warring parties in Sudan are each engaged in the arbitrary arrest, arbitrary detention, and torture and cruel, inhuman or degrading treatment or punishment of hundreds, if not thousands, of individuals, many of whom are civilians as part of a shadow war against civil society, human rights defenders, activists, and marginalised communities. There is clear evidence of patterns of treatment that indicate the existence of a widespread and systematic practice, if not deliberate policy, that may amount to international crimes, including torture, war crimes, and crimes against humanity.

While the prospects of imminent accountability for these crimes may be bleak, immediate steps must be taken to ensure that perpetrators will eventually be brought to justice and survivors will receive reparation. The establishment of the Sudan FFM is a welcome step towards a more comprehensive accountability strategy, recognising also that it is uniquely well positioned to coordinate the receipt of, preserve, analyse, and action evidence of violations with a view to their use for future justice, accountability, and reparation purposes.

Beyond the violations themselves, the Sudan FFM must also take steps to highlight and address the root causes of cyclical armed conflict and related violations in Sudan, including the pervasive culture of impunity for violence perpetrated by Sudanese military, security, and intelligence forces, and the historic failure by various actors to dismantle the wider kleptocratic system (that incentivises the commission of human rights in the pursuit of power and wealth) or develop genuinely participatory, inclusive processes for peace-building, democratic transformation, and transitional justice that are owned by the Sudanese people in substance, not just in label.

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Security forces react to protesters demanding the restoration of civilian rule in 2022 with water cannons, gas bombs and stun grenades.

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