

To Permanent Representatives of Member and Observer States of the United Nations Human Rights Council,
Geneva, Switzerland

2 September 2019

Sudan: Ensuring a credible response by the UN Human Rights Council at its 42nd session.

Excellencies,

Ahead of the 42nd regular session of the UN Human Rights Council (“HRC” or “the Council”), we, the undersigned civil society organisations, urge you to ensure the Council takes action to address serious human rights violations and abuses that have been and continue to be committed in Sudan, and to support systemic reforms in the country. As detailed below, the Council should formulate a holistic response to the situation in the country, including by ensuring an investigation of violations committed since December 2018, renewing the mandate of the Independent Expert on Sudan, and strengthening monitoring and reporting by the Office of the High Commissioner for Human Rights (OHCHR).

On 17 August, the Forces for Freedom and Change (FFC), opposition umbrella groups, as well as the Transitional Military Council (TMC), which took power upon the ouster of former president Omar al-Bashir, signed an agreement on transitional governance arrangements for the next three years, followed by elections. However, the human rights situation in Sudan continues to be of grave concern, including with violence against protesters and ongoing lack of accountability for violations and abuses since December, and poses major risks to long-term stability in the country, as well as in the East African, Horn of Africa and Middle East regions.¹

Yet, since peaceful protests calling for civilian rule started, in December 2018, the Council has missed several opportunities to contribute to the formulation of a meaningful international response to the Sudanese crisis. It remained silent ahead of its 40th session (February-March 2019); after the 3 June 2019 massacre; and during its 41st session (June-July 2019), failing to convene a special session, or an urgent debate, or even to adopt a resolution on the country’s extraordinary human rights situation.

Silence is no longer an option. The transitional agreement is no guarantee of improved respect for human rights. As the UN’s top human rights body, the Council should fulfill its responsibilities towards the Sudanese people and contribute to ensuring that human rights compliance and systemic reforms are central parts of a sustainable political solution to the crisis and that peaceful transitional arrangements are respected, in line with its mandate to promote and protect human rights.

As the Council’s 42nd session approaches, Member and Observer States should actively work towards the adoption of a resolution using the range of tools available to address Sudan’s short-, mid-, and long-term human rights challenges. The Council should act in accordance with its mandate to address human rights violations, and be guided by the overarching need to protect the rights and freedoms of the Sudanese people.

Major human rights developments in Sudan since December 2018 are detailed in the annex to this letter.

With the above considerations and the human rights situation in Sudan in mind, at its 42nd session, the Council should:

- (1) Establish an independent investigation, in the form of a fact-finding mission or similar, into all human rights violations and abuses, including sexual and gender-based violence, committed in the context of peaceful protests since December 2018.**

The investigation should:

¹ See annex.

- Be independent, impartial, transparent, thorough, and effective. It should address patterns of violations and the chain of command of all relevant State organs; examine the role of all such organs, including the Transitional Military Council (TMC), Rapid Support Forces (RSF), National Intelligence and Security Service (NISS), and associated elements; and seek to identify those most responsible for the violations, irrespective of their rank or social standing;
- Rely on a standard of proof that enables the identification of individual perpetrators and future criminal prosecutions, and recommend ways of holding perpetrators accountable;
- Address the gaps in the national investigation² by covering all violations and abuses committed in relation to peaceful protests since December 2018, including after the 3 June 2019 massacre;
- Address patterns of violations, including the legal, institutional, and policy framework that enable violations associated with State responses to peaceful protests and citizens' exercise of their human rights and fundamental freedoms; and
- Cover violations and abuses committed in Khartoum and the rest of the country, including conflict areas of Darfur, South Kordofan, and Blue Nile.

The Council should request the investigative mechanism to share its report and recommendations with the African Union (AU), the Intergovernmental Authority on Development (IGAD), and all relevant organs of the UN.

(2) Renew and strengthen the mandate of the independent expert (IE) and ensure robust monitoring and public reporting mandate for the OHCHR throughout 2020 and beyond by:

- Renew and strengthen the mandate of the Independent Expert until a fully mandated OHCHR country office is declared operational by the OHCHR and the government of the Sudan;
- Continue to extend technical assistance and capacity-building to Sudan, including in the form of training on human rights compliance for security and law enforcement bodies and technical advice on bringing legislation, policies, and practices in line with international standards and Sudan's obligations, including by amending or repealing laws and regulations and reforming State organs;
- As technical cooperation relies on, and goes hand in hand with, a thorough and ongoing assessment of the human rights situation, issues, and challenges, the Council needs to ensure that the OHCHR enjoys a robust monitoring and reporting capacity. Such reporting should include recommendations for systemic (including legislative, institutional, and policy) reforms needed to improve Sudan's human rights situation and to bring about transformational change for the benefit of the Sudanese people, including women and girls, marginalised and at-risk groups;
- Ensure public discussion of the human rights situation in Sudan and systemic reforms needed to improve it through an Enhanced Interactive Dialogues once a year, bringing together the Independent Expert, the High Commissioner for Human Rights, the Government of Sudan, relevant UN actors, and civil society representatives, in addition to the regular Interactive Dialogues at the Council's September sessions;
- The Council should further make clear that UN and independent actors must have access to all places and persons of interest throughout the country, including the conflict areas of Darfur, South Kordofan and Blue Nile and that the Sudanese Government has an obligation to create and maintain a safe and enabling environment in which civil society, human rights defenders, the media and other independent actors can operate free from hindrance, insecurity, and reprisals.

The Council should encourage, as a matter of urgency, the signing of a Memorandum of Understanding (MoU) between the Government of Sudan and OHCHR, regarding the opening and operationalization of a fully mandated OHCHR country office to monitor the full range of human rights including the domestic investigation into abuses against protesters on June 3, as envisioned in the constitutional charter.

Yet again, we urge you to take immediate and long-overdue action to ensure the Council provides a credible response to the human rights situation in Sudan, and stand ready to provide your Delegation with any further information.

With assurances of our highest consideration,

² See annex.

1. **African Centre for Justice and Peace Studies (ACJPS)**
2. **Amnesty International**
3. **Cairo Institute for Human Rights Studies (CIHRS)**
4. **CSW**
5. **DefendDefenders (the East and Horn of Africa Human Rights Defenders Project)**
6. **Global Centre for the Responsibility to Protect (GCR2P)**
7. **Human Rights Watch**
8. **International Federation for Human Rights (FIDH)**
9. **International Service for Human Rights (ISHR)**
10. **MagkaSama Project**
11. **MENA Rights Group**
12. **Physicians for Human Rights**
13. **REDRESS**
14. **Strategic Initiative for women in the Horn of Africa (SIHA Network)**
15. **Sudanese Human Rights Initiative (SHRI)**
16. **Sudanese Human Rights Monitor**

Annex: Human rights developments in Sudan since December 2018

In December 2018, a threefold increase in the price of bread triggered peaceful mass protests against economic hardship, inequality and poverty, which quickly expanded to include grievances over lack of good governance, authoritarian rule, and human rights violations in Sudan. Tens of thousands of Sudanese started peacefully protesting on a daily basis, organised sit-ins, most notably in the capital Khartoum, and demanded long-term political change. The protests came to be referred to as the “Sudanese Uprising” or “Sudanese Revolution.”

The authorities responded by using excessive and lethal force, indiscriminately firing live ammunition and tear gas into crowds of peaceful protesters, killing dozens of civilians. In a joint letter published in January 2019, non-governmental organisations (NGOs) and human rights defenders (HRDs) called on the Council to dispatch a fact-finding mission to Sudan. The signatories wrote: “These attacks are not taking place in a vacuum: they follow decades of violations committed during systematic and widespread attacks on civilians – amounting to crimes against humanity – both in the context of popular protest and multiple conflicts waged against populations in Sudan’s designated peripheries.”³ At its 40th regular session, however, the Council remained silent on the situation.

On 5 March 2019, the African Commission on Human and Peoples’ Rights (ACHPR) adopted a resolution on the human rights situation in Sudan. The resolution expressed concern over “the use of excessive and disproportionate force to disperse protests, resulting in the deaths and injuries of several protesters,” alarm over “reports that security forces fired live ammunition and tear gas into hospital premises, where protesters were taking shelter,” and concern over “allegations relating to the arbitrary arrest, detention, torture and ill-treatment of persons suspected of participating in or supporting the protests.” The ACHPR made a series of recommendations to the Government and called on it to authorise the Commission to undertake a fact-finding mission to the country.⁴

In the night of 10-11 April 2019, the protest movement and power shifts within the political, military and security apparatus led to the ouster of President Omar al-Bashir, who had ruled Sudan for almost 30 years and is wanted by the International Criminal Court (ICC) on several counts of crimes against humanity, war crimes, and genocide for crimes committed in Darfur.⁵ The military installed a Transitional Military Council (TMC) and peaceful protests continued. Protesters and their representatives, including the Sudanese Professionals’ Association (SPA) and other civilian and professional associations, demanded a quick transition to civilian rule through a civilian-led transition process.

On 14 May 2019, in another resolution on Sudan, the ACHPR reaffirmed its statements and recommendations as well as the State’s obligations pursuant to the African Charter on Human and Peoples’ Rights. It called on Sudan’s transitional authorities to “protect the right of citizens to participate freely in the government of their country through freely chosen representatives,” “respect and uphold the fundamental human rights and freedoms of citizens, particularly the right to assembly, freedom from torture and ill-treatment, liberty and security, as well as due process of law, during and after the transition to a Civilian-led Transitional Authority,” “refrain from the use of excessive force against protesters [...],” “conduct prompt, impartial and independent investigations into the alleged human rights violations and hold perpetrators, including state security agents accountable,” and “ensure that victims of the violations and their families obtain full and adequate redress.”⁶ The standoff between peaceful protesters and the State’s military and

³ DefendDefenders *et al.*, “Joint Letter from Nongovernmental Groups: Human Rights Council Should Create Independent Fact-Finding Group for Sudan,” 31 January 2019, <https://www.defenddefenders.org/statement/joint-letter-from-nongovernmental-groups-human-rights-council-should-create-independent-fact-finding-group-for-sudan/> (accessed on 6 August 2019).

⁴ African Commission on Human and Peoples’ Rights, “413 Resolution on the Human Rights Situation in the Republic of The Sudan – ACHPR/Res. 413 (EXT.OS/ XXV),” 5 March 2019, <https://www.achpr.org/sessions/resolutions?id=431> (accessed on 6 August 2019).

⁵ International Criminal Court, “Al Bashir Case: The Prosecutor v. Omar Hassan Ahmad Al Bashir,” as of 6 August 2019, ICC-02/05-01/09 <https://www.icc-cpi.int/darfur/albashir> (accessed on 6 August 2019).

⁶ African Commission on Human and Peoples’ Rights, “421 Resolution on the Human Rights Situation in the Republic of The Sudan – ACHPR / Res. 421 (LXIV) 2019, 14 May 2019, <https://www.achpr.org/sessions/resolutions?id=445> (accessed on 6 August 2019).

security apparatus continued.

On 3 June 2019, Rapid Support Forces (RSF) – or “Janjaweed,” a paramilitary force under the authority of General Mohamed Hamdan Dagalo, known as “Hemedti,” who also serves as deputy head of the TMC, attacked peaceful demonstrators at a sit-in in Khartoum. More than one hundred civilians have been reported killed, and hundreds more injured. Protesters were also beaten and arbitrarily detained, subjected to rape, including gang rape, and other forms of intimidation and humiliation.

The attacks occurred in the very early morning, with soldiers opening fire on protesters then chasing them into buildings. Forces attacked or prevented care at at least three hospitals with reports of doctors being assaulted.⁷ Attacking forces burned down the sit-in tents and looted goods. Reports also indicate that RSF carried out similar attacks on peaceful protesters in Darfur and other parts of the country.

The crimes and human rights violations committed during the crackdown on June 3 shocked the capital, and recall violations committed by government forces and the RSF in other parts of the country over the last decades, including in conflict areas of Blue Nile, South Kordofan, and Darfur.⁸

After the attack, talks between the TMC and FFC, facilitated by H.E. Dr. Abiy Ahmed, Ethiopia’s Prime Minister (as the Chairperson of IGAD), faltered. On 6 June 2019, the AU suspended with immediate effect the participation of Sudan in all AU activities until the effective establishment of a civilian-led Transitional Authority.

In a letter to the HRC, a group of NGOs wrote: “These horrific acts clearly demonstrate [the TMC’s] lack of commitment to a peaceful transition to a civilian government and their determination to consolidate control by the harshest elements in the security services. It highlights the risk of further political polarization and of mass violent confrontation if urgent action is not taken in support of a peaceful transition to civilian rule.” The signatories urged the Council to convene a special session and to adopt a resolution requesting the UN High Commissioner to set up a fact-finding mission.⁹

In another letter addressed to the UN Security Council (UNSC), NGOs¹⁰ highlighted that the RSF, riot police, and national security officials that attacked the protest site “blocked the exit so that protesters could not easily leave and used live ammunition. Gunmen reportedly threw bodies into the Nile, weighing them down with bricks. According to the Central Committee of Doctors, 40 bodies were retrieved from the waters.¹¹ Attackers also reportedly raped protesters. At least three hospitals were attacked, with reports of doctors assaulted. Since then, targeted harassment of medical personnel has led to the closing of eight hospitals,

⁷ Physicians for Human Rights, “With Sudan Power-Sharing Plan, PHR Urges Renewed Focus on Accountability, Independent Investigation and Long-Term International Monitoring,” 5 July 2019, <https://phr.org/news/with-sudan-power-sharing-plan-phr-urges-renewed-focus-on-accountability-independent-investigation-and-long-term-international-monitoring/> (accessed on 2 August 2019).

⁸ HRW, ““Men With No Mercy” Rapid Support Forces Attacks against Civilians in Darfur, Sudan”, 9 September 2015, <https://www.hrw.org/report/2015/09/09/men-no-mercy/rapid-support-forces-attacks-against-civilians-darfur-sudan>.

⁹ Sudan Consortium *et al.*, “Killings of Peaceful Sudanese Democracy Protesters Demand Accountability,” 6 June 2019, <http://sudanconsortium.org/2019/06/06/killings-of-peaceful-sudanese-democracy-protesters-demand-accountability/> (accessed on 6 August 2019).

¹⁰ Act for Sudan, African Federation Association AFA WFM UGANDA, African Centre for Justice and Peace Studies (ACJPS), AlKhatim Adlan Centre for Enlightenment and Human Development (KACE), Atrocities Watch Africa, Cairo Institute for Human Rights Studies (CIHRS), CSW, Darfur Bar Association (DBA), DefendDefenders (the East and Horn of Africa Human Rights Defenders Project), Euro-African Forum on Rights and Development (EAFRD), Horn of Africa Civil Society Forum, Human Rights Watch, Human Rights Institute of South Africa (HURISA), International Federation for Human Rights (FIDH), International Refugee Rights Initiative, Investors Against GenocideJustice Centre for Advocacy and Legal Consultations, Kamma Organization for Development Initiatives (KODI), The MagkaSama Project, Massachusetts Coalition to Save Darfur, MENA Rights Group, Never Again Coalition, Nubsud Human Rights Monitors Organisation (NHRMO), Skills for Nuba Mountains, Stop Genocide Now, Sudan Consortium, Sudan Unlimited, Sudanese Rights Group, World Peace Foundation

¹¹ Central Committee of Sudan Doctors (CCSD), “June 5th, 2019”, 5 June 2019, <https://www.facebook.com/Sudandoctorscommittee/posts/central-committee-of-sudan-doctors-ccsdjune-5th-2019-urgentwe-sadly-report-that-/2339370886348814/> (accessed on 26 August 2019).

according to the Central Committee of Doctors.¹²

We note the call by a group of NGOs on the UNSC to support regional efforts by, among other things, condemning the violence, supporting the establishment of an independent investigation, demanding a rapid transfer of power to civilian authorities and a transition period led by civilian authorities, freezing plans to draw down the forces of the joint UN-AU Mission in Sudan (UNAMID), demanding the demobilisation of the RSF under international supervision, and expanding the imposition of targeted sanctions in Sudan, now only focused on Darfur, to individuals most responsible for violence against peaceful protesters and other peaceful opposition. Meanwhile, the RSF committed further human rights violations in Darfur. New satellite evidence and testimonies confirm that government forces, including the Rapid Support Forces and associated militias, have damaged or destroyed at least 45 villages in Jebel Marra between July 2018 and February 2019.¹³

However, ahead of, and at, its 41st session, the HRC failed to take any action on Sudan. It did not convene a special session or an urgent debate, and failed to adopt any resolution on the situation.

Crimes and human rights violations by forces under the command of the TMC continued, and on 30 June 2019, as the Council's 41st session was ongoing, RSF forces attacked protesters in Omdurman, killing at least ten people.¹⁴ On 29 July 2019, security forces broke up a student protests in the city of El-Obeid, shooting dead at least six protesters, including three minors.¹⁵ Killings of civilians have also continued to be reported in other areas of the country.

On 5 July 2019, a power-sharing deal was agreed between the TMC and representatives of the civilian protest movement, the Forces for Freedom and Change (FFC). The deal envisioned a 39-month transition period led by a Sovereign Council (SC) with a rotating (TMC/FFC) presidency, followed by elections. The agreement also called for an investigation into the 3 June massacre and other instances of violence, as well as a (seemingly unrealistic) six-month time frame to try and reach a peace agreement with all armed rebel groups throughout the country, including Blue Nile, Darfur and South Kordofan.

On 4 August, the parties signed a constitutional charter that provides for transitional bodies, sets out mandated tasks and time periods. On 17 August, the parties signed the power-sharing agreement incorporating both the political and constitutional agreements. On 21 August, the new SC members, chaired by the army general and former TMC chair, Abdel Fattah Burhan, were sworn in along with the prime minister. A new cabinet was scheduled to be appointed on 1 September 2019, and a 300-member legislative council is to be appointed within 3 months.¹⁶

The agreement contains many ambitious goals for reforming institutions and protecting rights, but no benchmarks for progress.¹⁷ A critical gap in the agreement is the absence of any mechanism to ensure its implementation and consequences for breaching it. The agreement is also sorely lacking in broad accountability for human rights violations. The agreement calls for a new "independent national committee"

12 African Centre for Justice and Peace Studies *et al.*, "30 CSOs Appeal to UN Security Council for Urgent Intervention to Prevent further Bloodshed in Sudan," 11 June 2019, <https://www.acjps.org/30-csos-appeal-to-un-security-council-for-urgent-intervention-to-prevent-further-bloodshed-in-sudan/> (accessed on 6 August 2019).

13 Amnesty International, *Sudan: Fresh evidence of government-sponsored crimes in Darfur shows drawdown of peacekeepers premature and reckless*, 11 June 2019, <https://www.amnesty.org/en/latest/news/2019/06/sudan-fresh-evidence-of-government-sponsored-crimes-in-darfur-shows-drawdown-of-peacekeepers-premature-and-reckless/>

14 UN News, "Restrictions, unmet promises, unbridled violence in Sudan, a 'recipe for disaster', says Bachelet", 3 July 2019, <https://news.un.org/en/story/2019/07/1041802> (accessed on 26 August).

15 African Centre for Justice and Peace Studies, "North Kordofan: Urgent call to investigate the killing of six peaceful protesters including 3 minors in El Obeid," 2 August 2019, <https://www.acjps.org/north-kordofan-urgent-call-to-investigate-the-killing-of-six-peaceful-protesters-including-3-minors-in-el-obeid/> (accessed on 6 August 2019).

16 Reuters, "Sudan factions initial pact ushering in transitional government," 4 August 2019, <https://uk.reuters.com/article/uk-sudan-politics-idUKKCN1UU09P> (accessed on 6 August 2019).

17 Human Rights Watch news release, August 23, 2019, "Prioritize Justice, Accountability," <https://www.hrw.org/news/2019/08/23/sudan-prioritize-justice-accountability>

to investigate the 3 June 2019 massacre with possible African support¹⁸ – but it is unclear if and how those responsible (including commanders who are on the SC) will be held accountable, and if they will be investigations into crimes under international law and other serious human rights violations perpetrated outside of the 3 June event, including before December 2018.

Many questions therefore remain. They include, *inter alia*, the legal enforceability of the constitutional declaration and consequences for breaching it; details regarding the State's decentralisation; decision-making in the SC (and *de facto* veto powers by either of the parties as well as ways of overcoming these vetoes); the status of the RSF and their relationship to the Sudanese Armed Forces (SAF); details of the process of dismantling the means of control of the former regime; and how to establish and guarantee the maintenance of an independent judiciary.

¹⁸ See Radio Dabanga, "Sudan: Signing of Constitutional Declaration heralds start of comprehensive peace process," 5 August 2019, <https://www.dabangasudan.org/en/all-news/article/sudan-signing-of-constitutional-agreement-heralds-start-of-comprehensive-peace-process> (accessed on 6 August 2019).