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# Sudan: Present Situation; Challenges and Prospects

by Habiba Abubaker; Naiade El-Khoury; Rüdiger  
Wolfrum

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Max Planck Foundation for International Peace and the Rule of Law  
Bergheimer Strasse 139 – 151 · 69115 Heidelberg · Germany  
Phone: (+49) 6221 91404 - 0 · Fax: (+49) 6221 91404 - 44  
[www.mpfpr.de](http://www.mpfpr.de)

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I. Introduction

In April 2019 the former government under President Omar Al-Bashir, the head of the National Congress Party, was toppled in an act of revolution by the Sudanese civil society. The Interim Constitution of 2005 has been subsequently abolished and replaced by a Constitutional Charter. The country faces significant challenges. This contribution will deal briefly with the factual situation, which was leading to the revolution and then will turn to some of the challenges/endeavours of the now ruling Interim Government of Sudan, before moving to what might be expected from the United Nations, the African Union and States from all regions of the world.

II. Brief Background to the Sudanese Revolution of 2019 – The coup that ended a 30-year coup

1. Facts

In December 2018, the Sudanese revolution had started its first steps towards dismantling the regime of the National Congress Party (NCP), headed by Omar Al-Bahir who ruled Sudan for a period of 30 years after he had, in a revolutionary coup, ousted the democratically established regime under Sadig Al-Mahdi, the head of the Umma Party. In this 30-year period, the Sudan has undergone significant transitions. One of the major facts thereof was the secession of its southern provinces, which since 2011 constitute the Republic of South Sudan. This secession resulted in the loss of most of the oil resources, before that the backbone of the Sudanese economy. The decreasing economic situation, particularly the increase of the price of bread, the loss of perspectives and the general dissatisfaction of the people of the Sudan with the policy of the regime under Omar Al-Bashir were the causes for the peaceful demonstrations, which lasted for approximately 12 months. It is exceptional that the demonstrations remained peaceful in spite of the long period of time and in spite of the overwhelming participation. This reflected the political responsibility of the protesters. However, this also demonstrated that the protests were not only driven by economic and social considerations, but also by a fundamental objection to the regime represented by Omar Al-Bashir. The Forces for Freedom and Change (FFC), with millions of civilians as their backbone, was the main coalition behind the protests and the revolution. The FFC consisted of various unions of political parties, professional societies as well as civil society representatives. The demonstrations were carried by the younger generation which saw no future for it in the then existing regime.

On 11 April 2019, the Sudanese military, led by the Transitional Military Council (TMC), toppled the regime, imprisoning Omar Al-Bashir and announcing a change of government led by the military until an arrangement was reached. This started a negotiation process between the FFC, who demanded a fully civilian government, and the TMC, who demanded the

military be involved in governance. Tension and conflict resulted in the termination of the negotiation process. In aims of mediating, the African Union and the Ethiopian government, led by Prime Minister Abiy Ahmed, intervened and paved the way for further negotiations between the conflicting parties. As a result, on 17 August 2019, the TMC and the FFC signed the Constitutional Charter for the Transitional Period (2019).

## 2. The Constitutional Charter for the Transitional Period (2019)

Signed as a joint agreement, the Constitutional Charter for the Transitional Period (2019) acts as the Sudanese constitution. It establishes a transitional period of three years plus three months, while dividing the powers between the TMC and the FFC. This Constitutional Charter was negotiated and drafted with the participation of the forces having carried the revolution. The drafting process was undertaken under the general leadership and guidance of the Ethiopian Prime Minister Abiy Ahmed, aided by two mediators, Mohamed El Hacem Lebatt from Mauritania, and Mahmoud Drir from Ethiopia, as special representatives of the African Union. No further outside influence was accepted. The Constitutional Charter establishes the organizational structure (the power sharing) for the transitional period. It consists of a Sovereignty Council, the head of state, composed of eleven members, five of which represent the TMC, the other five represent the FFC, while the eleventh member is mutually chosen by the TMC and the FFC. The government is constituted by the Executive Council: it comprises a Prime Minister and a cabinet of ministers under the command of the Prime Minister. In the composition of the cabinet care was taken to have all regions of the Sudan represented; the ministers are considered technical experts. The Legislature, still to be established, will be composed of 300 members; 67% of which will represent the FFC, whilst the remainder will be composed of forces not party to the FFC. The heads of the Judiciary have already been appointed and installed.

The Constitutional Charter is more than an organisational document, balancing the various political forces. It also establishes the course to be followed for drafting a permanent constitution for the Sudan and even defines certain fix points. The future permanent constitution will be drafted in a process, which is meant to follow a traditional blueprint, which guarantees parliamentary as well as participation of the civil society (establishment of a constitutional conference which shall be inclusive of all parties, including armed groups). At the end of the process, the new constitution will be put to a referendum. The future Sudan will be decentralised, and will abide by the principle of the rule of law, parliamentary control of the government and democratic elections. What is remarkable that the Constitutional Charter contains a bill of fundamental rights and freedoms, and declares that fundamental rights and freedoms contained in international human rights treaties ratified by the Sudan have constitutional rank. The latter has been taken over from the Interim Constitution of 2005, which the Constitutional Charter had abolished.

Concerning elections, it is planned that Sudan will have elections at the end of the transitional period of 39 months: therefore, elections are envisaged to take place in December 2022. One interesting factor in the 2019 Constitutional Charter is that it prohibits any member of the current transitional government

from running for elections in the term directly following the transitional period. This, perhaps, explains why the current government is almost entirely made up of technocrats, while the political parties have decided not to accept governmental responsibilities in the transitional period.

Yet, the anticipated constitution-making process has been delayed. The signing of peace agreements with armed movements (see on that below), which was made a precondition before the constitution-making process could be starting proved to be more demanding than originally anticipated. Additionally, certain internal reforms and the need to deal with the economic situation have also contributed to the delay.

### 3. The Post-Revolution Sudan - Future Constitutional Amendments, Plans for the Trial of former President Omar Al-Bashir, and Elections

As an element in its endeavours to prepare the Sudan for a rule of law-oriented parliamentary governing system, the Transitional Government has started to dismantle the regime that was established for 30 years. For example, the government established a committee having the function to identify the assets, including property as well as capital, of Omar Al-Bashir and to return them to the state. Furthermore, he has been charged with corruption and found guilty. Investigations on the major supporters of the former regime have been started and some of them already lost their position. With regards to the international arrest warrant against Omar Al-Bashir by the International Criminal Court (ICC), however, the Transitional Government has stated that it plans of submitting him to the ICC. The eventuality of the former President of being submitted to the ICC also lays on the current negotiations with the armed groups: some armed factions have put it as a rule that he be submitted, whilst others disagree and believe a special national court be set up for his trial.

On 9 June 2020, the ICC announced that Ali Muhammad Ali Abd-Al-Rahman ("Ali Kushayb"), commander of the Janjaweed militia, has voluntarily surrendered himself in the Central African Republic and is currently in ICC custody.<sup>1</sup> In 2007, an arrest warrant pursuant to the Rome Statute (2001), was issued for his arrest for war crimes and crimes against humanity.<sup>2</sup>

### 4. Peace Negotiations with the Armed Movements

In accordance with Chapter Fifteen of the Constitutional Charter, the Transitional Government had initiated peace talks with the armed movements in Juba in September 2019.<sup>3</sup> By the time the Prime Minister of Sudan addressed the UN Secretary General the peace talks had reached an impasse. Since December 2019, not only had the peace talks between the Delegation of the Sovereign Council and the Sudanese Revolutionary Front (SRF)<sup>4</sup> been extend

<sup>1</sup> <https://www.icc-cpi.int/Pages/item.aspx?name=PR1525>

<sup>2</sup> [https://www.icc-cpi.int/CourtRecords/CR2007\\_02908.PDF](https://www.icc-cpi.int/CourtRecords/CR2007_02908.PDF)

<sup>3</sup> See the Juba Declaration for Pre-Negotiation Issues Date 9/11/2019. A wide participation of several armed movements was established in the Juba talks including: four Darfuri armed groups, the Alliance of Sudan Liberation Forces; the Blue Nile/South Kordofan rebel group; Sudan People's Liberation Movement-North al-Hilu faction; [Sudan Revolutionary Front](#) (SRF); the Sudanese Justice and Equality Movement led by Gabriel Ibrahim (Darfur region); the Sudan Liberation Army and Movement MINNI MINAUJ led by Khamis Abdullah Abkar, the Sudan Liberation Movement/ the Transitional Council El-Hadi Idris; the Sudan Liberation Movement - Unity Command led by Abdullah Yahya; the Liberation Forces, led by Taher Hajar (Darfur Region).

<sup>4</sup> The SRF allied in 2011 together a wide range of Sudanese armed rebel groups.

four times, but armed confrontation had erupted repeatedly.<sup>5</sup> The main challenges for disagreements among the different groups remain in the areas of security arrangements, organisational structure (power sharing) and wealth distribution. Given the tumult and the tensions in the negotiations, a grouping of the peace negotiations along five geographical regions seems to illustrate developments most clearly:

In the Darfur region, a political agreement between a delegation of the Sovereign Council and the SRF was signed on 21 October 2019. The agreement covers a renewed ceasefire, the provision of humanitarian aid by government agencies in conflict areas and the commitment of the parties to further negotiations.<sup>6</sup> A framework agreement was signed on 28 December, covering issues such as power and wealth sharing, transitional justice and the Darfur-Darfur dialogue. On 31 December, however, negotiations were suspended by the SRF in response to the deployment of the Rapid Support Forces to El Geneina.<sup>7</sup> At the end of April 2020, an agreement was reached between the Transitional Government and Darfur groups within the framework of the Sudanese Revolutionary Front (SRF), according to which 40 percent of the resources of the Western Sudan region are to be used for ten years for its development.<sup>8</sup> As far as the armed groups in Darfur are concerned, however, the parties have not yet reached an agreement on power sharing,<sup>9</sup> including the distribution of wealth and the amount of money that the government is to pay out annually in funds for the compensation of civilians affected by the war, in reconstruction programs and in development.<sup>10</sup>

Following recent developments, the Sudan Liberation Movement led by Minni Miinawi broke away from the SRF creating a major obstacle to the current peace negotiations in Darfur.<sup>11</sup>

The two-area region includes the mountains of South Kordofan/Nuba and the Blue Nile State. On October 18, a political agreement was signed by the Sudan People's Liberation Movement – North led by al-Hilu (SPLM-N (al-Hilu)) and representatives of the Sovereignty Council. Negotiations with the SPLM-N (al-Hilu) were successful on six points of the Framework Agreement. However, talks have been stalled over the SPLM-N (al-Hilu)'s demand for a secular state in South Kordofan/Nuba Mountains and Blue Nile State, and with regards to claims to self-determination.<sup>12</sup>

Representatives of the Sudan People's Liberation Movement – North under the leadership of Aqar (SPLM-N (Aqar)) and representatives of the Sovereignty Council signed an agreement, a "humanitarian protocol and a ceasefire" on 17 December. The agreement provides for a ceasefire monitoring group to assess

<sup>5</sup> <https://reliefweb.int/report/sudan/sudan-peace-talks-extended-sine-die>.

<sup>6</sup> <https://www.dabangasudan.org/en/all-news/article/srf-rebels-sudan-govt-sign-agreement-in-juba>.

<sup>7</sup> <https://www.garda.com/crisis24/news-alerts/300761/sudan-security-forces-deployed-to-west-darfur-state-december-30>.

<sup>8</sup> <https://sudantribune.com/spip.php?article69260>.

<sup>9</sup> Disagreements persist over the division of power at federal and regional level. Among other things, the armed groups are demanding four seats in the Sovereign Council, nine portfolios in the transitional government and around 140 seats in the transitional parliament, see <https://www.sudantribune.com/spip.php?article69492>.

<sup>10</sup> Armed movements are demanding thirteen billion dollars to be paid over a period of ten years by the government, while the government is proposing five billion dollars over a period of ten years, see <https://www.sudantribune.com/spip.php?article69492>.

<sup>11</sup> The Group is demanding the release of the head of the Popular Front for Liberation and Justice Amin Daoud before signing the peace agreement, see <https://www.sudanakhbar.com/764108>.

<sup>12</sup> <https://reliefweb.int/report/sudan/splm-n-al-hilu-extends-unilateral-ceasefire-additional-three-months>.

humanitarian needs in the Two Areas.<sup>13</sup> On 24 January 2020 a framework agreement was signed. It grants legislative autonomy to South Kordofan and Blue Nile, proposes solutions for sharing land and other resources and aims to unite all militias and government soldiers in a single unified Sudanese military body.<sup>14</sup> The SPLM-N (Agar) confirmed its willingness to integrate into the Sudanese army, provided that the state is willing to form national institutions on the basis of citizenship and not on the basis of race or religion.<sup>15</sup>

With regard to the negotiations in Northern Sudan, a final agreement was reached on 26 January 2020 with the Kush movement and the Northern Entity (Revolutionary Front Alliance) covering issues such as studies for new dams, provisions on compensation for people displaced by existing dams, road construction and provisions on toxic waste disposal.<sup>16</sup>

The fourth region is Central Sudan. A final peace agreement between the Sovereignty Council and the SRF was concluded on 24 December 2019, covering issues such as development, the agricultural programme of El Gezira and El Managil, land rights and a fair and equitable distribution of wealth.<sup>17</sup>

In the Eastern Region of Sudan negotiations were suspended on 21 January 2020.

### III. Request for Assistance from the United Nations under Chapter VI UN Charter

In a letter,<sup>18</sup> dated 27 January 2020, addressed to the Secretary-General of the United Nations (UN), Mr. Antonia Guterres. The Sudanese Prime Minister stated “the transition in Sudan is unfolding amidst complex political, economic and security challenges [...] While the Sudanese parties including the Armed Groups – many who are integral part of the transition – continue to engage constructively in negotiations in juba, progress remains slow, and time is of essence.” In aims of acquiring international assistance, the Prime Minister requested the UN “to seek a Security Council mandate to establish as soon as possible a Chapter VI peace support operation in the form of a Special Political Mission (SPM) with a strong peacebuilding component.” Whilst the SPM shall adopt a nationwide inclusive approach, Sudan requested for, among other themes, an urgent need for mediation support to assist in the Juba peace negotiations; support in implementing the transitional constitution; humanitarian assistance and development initiatives; reintegration of internally displaced peoples (IDPs) and refugees; as well as, aid in the financial sector to support Sudan to overcome its dire economic crisis. All of these

<sup>13</sup> <https://www.dabangasudan.org/en/all-news/article/rebel-movement-denies-suspension-of-peace-negotiations>

<sup>14</sup> <https://www.reuters.com/article/us-sudan-politics/sudan-signs-initial-political-and-security-deal-with-rebel-group-idUSKBN1ZNI9F>. See also <https://www.dabangasudan.org/en/all-news/article/sudan-govt-rebels-sign-framework-agreement-in-juba>.

<sup>15</sup> <https://www.sudantribune.com/spip.php?article69243>.

<sup>16</sup> [http://www.xinhuanet.com/english/2020-01/27/c\\_138735747.htm](http://www.xinhuanet.com/english/2020-01/27/c_138735747.htm). See also

<https://web.archive.org/web/20191226114234/https://www.dabangasudan.org/en/all-news/article/juba-peace-talks-breakthrough-accord-on-central-sudan-track>.

<sup>17</sup> <https://english.alaraby.co.uk/english/news/2019/12/24/peace-talks-drift-as-sudan-strikes-deal-with-rebels>

<sup>18</sup> [https://www.securitycouncilreport.org/atf/cf/%7B65BFCF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/S\\_2020\\_77.pdf](https://www.securitycouncilreport.org/atf/cf/%7B65BFCF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/S_2020_77.pdf)

would fall under one UN leadership; as such, the SPM acts as an umbrella system for all UN presence within Sudan.

In a second letter, dated 27 February 2020, the Sudanese Prime Minister reiterated the Sudanese proposal to the UN, while also explicitly mentioning the African Union, as the main regional organization in Africa, in its role in peacebuilding and promoting stability in Sudan. On the 3<sup>rd</sup> of June 2020, the United Nations' Security Council (UNSC) unanimously adopted Resolution 2524 (2020), establishing a United Nations Integrated Transition Assistance Mission in Sudan (UNITAMS) for a period of 12 months. This envisaged period may be extended but cannot exceed the term of the transitional period. According to Resolution 2524 (2020), UNITAMS will pursue the following four main objectives:

1. Assist the political transition, progress towards democratic governance, in the protection and promotion of human rights, and sustainable peace;
2. Support peace processes and implementation of future peace agreements;
3. Assist peacebuilding, civilian protection and rule of law, in particular in Darfur and the Two Areas; and
4. Support the mobilisation of economic and development assistance and coordination of humanitarian assistance.

The resolution positively refers to what has been achieved by the Government of Sudan, more than once underlines the primary responsibility of the Government of Sudan for the protection of the Sudanese people, emphasising, the protection of women, children and internally displaced persons – the wording resembles the one concerning the doctrine on the responsibility to protect. Most importantly, the resolution underlines the national ownership of the constitution making process.

Nevertheless, this engagement of the UN through UNITAMS is being discussed controversially in Sudan for three reasons. Some argue such an assistance is unnecessary considering the achievements of the Interim Government of Sudan, so far. Others argue that the mandate of UNITAMS would exceed the scope of Chapter VI of the UN Charter, and a third group believe that the move of the Sudanese Prime Minister meant surrendering Sudanese sovereignty to the international community.

This paper aims to discuss the measures requested by the Sudanese government through its letter to the UN Security Council from the point of view of Chapter VI UN Charter.

Chapter VI of the UN Charter, Article 33 to 38, concretise Article 2 (3) UN Charter, which obliges States to settle their disputes by peaceful means. What is particularly relevant in the context dealt with here is that Chapter VI UN Charter deals with the power of the Security Council to support parties in their endeavours. Although traditionally Chapter VI UN Charter is being seen from the point of view of dispute settlement, it also covers – as provided for in Articles 35 and 36 – situations. Such disputes or situations may be brought to



the attention of the Security Council through, amongst others, self-referral by the State in question, as is the case here.

S/RES 2524 does not indicate that it was adopted under Chapter VI; however, it is since long the practice of the Security Council not to identify the basis of its decisions except for Chapter VII decisions. For the latter – if they are meant to be binding – the traditional formula is ‘Acting under Chapter VII.’ While most referrals by UN Member States under Chapter VI request for the Security Council to discuss the dispute or issue in a mere meeting,<sup>19</sup> the Sudanese request is more comprehensive as it calls for a fully functioning mission that requires not only political support, but also financial and human resources. As a matter of consequence, Resolution 2524 is somewhat atypical.

Chapter VI does not indicate a particular mechanism to be adopted by the Security Council; it has in this respect some flexibility as long as the measures taken reflect the objective to be pursued by the Security Council as expressed in Article 24 of the Charter, namely that they foster the maintenance of international peace and security. In that respect, resolution S/RES 2524 breaks with the traditional view that Chapter VI is only to be applied if there is a dispute, whereas a tension within a State is not sufficient to trigger the applicability of Chapter VI. A broadened view of the applicability of Chapter VI UN Charter reflects the wider interpretation of Article 39 of the UN Charter. It is by now generally accepted and reflected in the practice of the Security Council that even purely State internal factors may endanger international peace and security. Finally, since the Transitional Government of the Sudan had asked for the assistance of the Security Council opponents to S/RES 2524 cannot invoke Article 2 (7) of the UN Charter claiming that the establishment of UNITAMS and its mandate are interfering into the internal affairs of the Sudan. Therefore, the criticism of the initiative of the Prime Minister and the criticism of the mandate of UNITAMS seems to be unconvincing. However, these objections signal to UNITAMS to cooperate closely with the government and to remain strictly within its mandate.

#### IV. Outside influence on the Sudanese economy - potential assistance and challenges

On 18 May 2020 the US Supreme Court ruled that the Republic of the Sudan must pay punitive damages, alleging that Sudan had assisted al Qaeda in its attack 1998 outside the United States Embassies in Kenya and Tanzania. The suit was filed pursuant to the Antiterrorism and Effective Death Penalty Act of 1996, which codified an exception to foreign sovereign immunity under the Foreign Sovereign Immunities Act (“FSIA”) for state-sponsored terrorism at 28 U.S.C. §1605(a). The plaintiffs are awarded about \$10.2 billion in damages, including roughly \$4.3 billion in punitive damages. In 2017 the United States Court of Appeals for the District of Columbia Circuit [agreed](#) vacating the punitive awards. Yet, in its judgement the Supreme Court unanimously

<sup>19</sup>[https://www.un.org/securitycouncil/sites/www.un.org.securitycouncil/files/scpcrb.repertoire\\_part\\_vi.21st\\_supplement\\_2018\\_for\\_webposting.pdf#page=35](https://www.un.org/securitycouncil/sites/www.un.org.securitycouncil/files/scpcrb.repertoire_part_vi.21st_supplement_2018_for_webposting.pdf#page=35) at p.8.

reinstated punitive awards. It remanded holding that the Congress intended in its 2008 amendments that plaintiffs in a suit against a foreign state for personal injury or death caused by acts of terrorism under §1605A(c) may seek punitive damages for pre-enactment conduct.

In June 2020, a high-level donors' Conference was held in Berlin, Germany, to promote aid by the international community to the Sudanese transition and its economic reforms. A total of approximately €1.3 billion were raised; *inter alia*, the European Union contributed €312 million, Germany contributed €150 million, the United States announced a €318 million contribution, the United Arab Emirates committed to €268 million, the United Kingdom devoted to €166 million,<sup>20</sup> China offered bilateral and multilateral assistance, while Poland promised debt settlement.<sup>21</sup> It is not clear whether this aid would be directed only to the government, or also through other means of aid such as through capacity-building and Non-Governmental Organisations (NGOs). Another conference is envisaged to take place in early 2021.<sup>22</sup>

While all these contributions will help Sudan through its transition, specifically with the difficulties now faced due to COVID-19, it still falls short from the \$8 billion that Sudan needs for its crippling economy, as well as its inherited debt of \$60 billion.

More help, in particular, the assistance of the international financial institutions is needed. Their engagement requires first and foremost that Sudan is taken from the list of States supporting terrorism. An obstacle in this respect seem to be the claim against the Sudan as upheld by the Supreme Court decision mentioned above.

All international assistance faces at least two challenges. First, it is necessary that the funds received be used to alleviate the urgent needs of the Sudanese population but also provide for a sustainable economic and social development of the country as a whole. The final decision should be with the Sudanese government in this respect acting based on a well-designed enjoying widest possible public support in the country. This means the donations and resources should be free of conditions imposed by States or international organisations. Second, it will be particularly important that outside forces refrain from taking a direct influence on the substance of the permanent constitution still to be drafted also technical assistance or even mediation may be necessary.

<sup>20</sup> <https://www.dw.com/en/germany-pledges-150-million-in-aid-for-sudan/a-53940760>

<sup>21</sup> <https://www.bloomberg.com/news/articles/2020-06-25/sudan-gets-aid-from-west-smiles-from-arabs-at-donor-conference>

<sup>22</sup> <https://www.auswaertiges-amt.de/blob/2357946/8aedad7576e1c5483e11a7f3da403f45/200625-final-communique-data.pdf>. at p.3.