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INTELLIGENCE SECTOR REFORM IN SUDAN

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Executive Summary

This memorandum reviews governance and reform of Sudan's intelligence sector both under former President Omar al-Bashir and the proposals made during Sudan's peace and political processes from 2019 to 2023. This memorandum also discusses intelligence sector reform best practices and analyzes Sudan-specific options for such reforms.

Under President Al-Bashir, the National Intelligence and Security Service (NISS) was essentially subject to the direct supervision by the head of state, had absolute powers to protect against internal and external threats, and included an armed operations unit, which in part led to its reputation as an abusive secret police organization. Following the removal of President Al-Bashir from power, and consistent with the original civilian movements that led to the removal of President Al-Bashir, key documents from Sudan's 2020-2023 political processes proposed reforms to Sudan's intelligence sector reflecting a desire to limit the authority of the General Intelligence Service (GIS) to only the gathering, analyzing, and sharing of information with no arrest or detention capabilities.

Although the documents propose a move towards a civilian-led intelligence sector focused solely on the collection, analysis, and proper sharing of information, they lack specificity on other areas of intelligence sector reform.

This memorandum analyzes options for intelligence sector reform in Sudan in line with best practices. The options include: (1) ensuring separation among domestic and foreign intelligence responsibilities; (2) distinguishing between the personnel and responsibility of the civilian intelligence sector, the military establishment, and law enforcement; (3) implementing laws to guarantee the intelligence sector is apolitical; (4) establishing a framework for effective oversight of the intelligence sector; and (5) developing specific requirements for intelligence staffing, functions, and information dissemination.

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REFORM OF THE INTELLIGENCE SECTOR IN SUDAN

Statement of Purpose

This memorandum reviews governance and reform of Sudan's intelligence sector both under former President Omar al-Bashir and the proposals made during Sudan's peace and political processes from 2019 to 2023. This memorandum also discusses intelligence sector reform best practices and analyzes Sudan-specific options for such reforms.

Introduction

This memorandum will start by analyzing the intelligence sector under former President Omar al-Bashir and the National Intelligence and Security Service Act of 2010 (NISS Act) and the reform proposed in the Constitutional Charter for the Transitional Period of 2019 (2019 Interim Constitution), the October 3, 2020 Juba Agreement for Peace in Sudan (Juba Peace Agreement), the Transitional Draft Constitution of 2022 prepared by the Sudanese Bar Association (2022 Draft Transitional Constitution), the Political Framework Agreement signed on December 5, 2022 (2022 Framework Agreement), and the 2023 Draft Political Agreement.

This memorandum will then discuss international best practices for intelligence sector reforms and analyze Sudan-specific options for such reform. This memorandum will also consider how the ongoing conflict between the Sudanese Armed Forces (SAF) and the Rapid Support Forces (RSF) has influenced intelligence sector reform priorities.

To guide the effective reform of Sudan's intelligence sector, several main issues merit attention and priority, including (1) separation of foreign and domestic intelligence services; (2) distinction among the roles of the military, law enforcement, and intelligence sector; (3) legal framework outlining the role of the intelligence sector and cycle of information; (4) proper oversight and accountability mechanisms; and (5) developmental milestones.

Background of Sudan's Intelligence Sector

Intelligence Sector During the Al-Bashir Presidency

Under the leadership of former President Al-Bashir, the NISS Act gave the NISS broad powers, including arrest, detention, summoning, search, and surveillance, in addition to police powers and any lawful powers necessary for the execution of the provisions of the NISS Act.¹ The NISS was under the general supervision of the head of state and under the direct responsibility of the Director-General of the NISS.² The NISS also had authority over both internal and external dangers and risks that may threaten the democratic system of Sudan, or its social, economic, or environmental safety.³ During the Al-Bashir presidency, the NISS had absolute powers and also gained a negative reputation among the public for acting as plain-clothes secret police and committing indiscriminate killing, torture, and cruel, inhumane, or degrading treatment against civilians demonstrating against the Al-Bashir regime.⁴

After the ousting of the Al-Bashir regime in April 2019, the NISS was renamed as the General Intelligence Service (GIS). In the years since, there have been five legal frameworks and proposals that primarily guide the structure and operations of the GIS and intelligence sector: (1) 2019 Constitutional Declaration; (2) 2020 Peace Agreement; (3) 2022 Draft Constitution; (4) 2022 Political Framework Agreement; and (5) 2023 Draft Political Agreement. This memorandum will refer to these as the key documents.

2019 Interim Constitution and Partial Reform of the NISS Act

The Constitutional Charter for the Transitional Period of 2019 (2019 Interim Constitution) provides that the GIS be “a uniformed agency [...] limited to gathering and analyzing information and providing it to the competent bodies.”⁵ The 2019 Interim Constitution also subjects the GIS “to the sovereign and executive authorities in accordance with the law.”⁶ Additionally, Articles 25 and 50 of the NISS Act were replaced by the Miscellaneous Provisions Act (2020), which sought to restrict the broad powers of the GIS.⁷ The 2019 Interim Constitution, however, still permitted the military to retain control over the GIS.⁸

¹NISS Act 2010 art. 25 and 50(1)(d) (2010).

²NISS Act 2010 art. 3 (2010).

³NISS Act 2010 art. 4 (2010).

⁴Ammar ME Ibrahim, *Security Sector Reform in Sudan: Challenges and Entry Points for Civil Society* at 12, SAFEWORLD (Nov. 2022).

⁵SUDAN CONST. art. 37 (2019).

⁶SUDAN CONST. art. 37 (2019).

⁷Ministry of Justice, *The Official Gazette*, Issue 1904 at 13–14 (2020), available at,

<https://redress.org/wp-content/uploads/2020/07/2-Sudan-Amendments-July-2020-English-REDRESS-translation.pdf>

⁸Brooke Davies, *Sudan’s 2019 Constitutional Declaration: It’s Impact on the Transition* at 27, INT’L INST. FOR DEMOCRACY & ELECTORAL ASSISTANCE (2022), available at,

<https://www.idea.int/sites/default/files/publications/sudans-2019-constitutional-declaration-its-impact-on-the-transition-en.pdf>.

2020 Juba Peace Agreement

On October 3, 2020, Sudan's new transitional government and representatives from several armed groups signed the Juba Agreement for Peace in Sudan (Juba Peace Agreement). This Agreement amended the 2019 Interim Constitution and requires that certain provisions be included in the eventual permanent constitution.⁹ Under the Juba Peace Agreement, there are three different articles regarding the GIS. The Juba Peace Agreement provides that the GIS shall be a “national [...] body whose members may not have any political affiliation [...] to a certain party, group, faction, region or area.”¹⁰ The Juba Peace Agreement also provides an extensive list of powers the GIS can exercise.¹¹ Notably, the Juba Peace Agreement indicates that the GIS is responsible for both domestic and foreign intelligence services.¹²

Some of the articles of the Juba Peace Agreement, however, differ in their wording, which could lead to diverging interpretations. For instance, some articles suggest that the competencies of the GIS include: (a) “[m]aintaining Sudan’s national security, to protect its constitution and its social fabric, and the security of its citizens from any danger in cooperation with other security forces;” (b) “collecting, analysing and assessing information that is related to Sudan’s security, and making recommendations on the necessary measures that should be taken;” and (c) “carrying out any necessary investigations.”¹³

2022 Draft Transitional Constitution

Under the auspices of the Sudanese Bar Association, civilians prepared a Draft Transitional Constitution in September 2022. This document was recognized as the likely foundation for a new constitutional framework. The 2022 Draft Constitution makes clear that a General Intelligence Agency (GIA) shall be under the authority of the Prime Minister and that the Prime Minister shall appoint the Director General and deputies of the GIA.¹⁴ Under the 2022 Draft Constitution, the transitional government shall take the necessary measures and make

⁹Zaid Al-Ali, *The Juba Agreement for Peace in Sudan: Summary and Analysis* at 5, INT’L INST. FOR DEMOCRACY & ELECTORAL ASSISTANCE (2021), available at, <https://www.idea.int/sites/default/files/publications/the-juba-agreement-for-peace-in-sudan-en.pdf>.

¹⁰JUBA AGREEMENT FOR PEACE IN SUDAN, tit. 2, ch. 8, sec. 28.1, tit. 3, ch. 4, sec. 93.1 & tit. 7, sec. 26.1 (2020).

¹¹JUBA AGREEMENT FOR PEACE IN SUDAN, tit. 2, ch. 8, sec. 28.1, tit. 3, ch. 4, sec. 93.1 & tit. 7, sec. 26.1 (2020).

¹²JUBA AGREEMENT FOR PEACE IN SUDAN, tit. 2, ch. 8, sec. 28.7.6 and 28.7.7, tit. 3, ch. 4, sec. 94.8 and 94.9 & tit. 7, sec. 26.3.6 and 26.3.7 (2020).

¹³Zaid Al-Ali, *The Juba Agreement for Peace in Sudan: Summary and Analysis* at 42-43, INT’L INST. FOR DEMOCRACY & ELECTORAL ASSISTANCE (2021), available at, <https://www.idea.int/sites/default/files/publications/the-juba-agreement-for-peace-in-sudan-en.pdf>.

¹⁴TRANSITIONAL CONST. ch. 5, sec. 3, art 49 & ch. 9, sec. 3, art 71(3) (2022) (draft).

arrangements to reform and modernize the GIA to remove the consolidation of power therein, and base the powers of the GIA on the doctrine of protecting the security of Sudan and its citizens.¹⁵ Similar to the 2019 Interim Constitution, the 2022 Draft Constitution also limits the GIA to “gathering and analyzing information and submitting it to the competent authorities.”¹⁶

2022 Framework Agreement

On December 5, 2022, the Draft Political Framework Agreement (2022 Framework Agreement) was signed by Sudanese political parties and the military. The 2022 Framework Agreement is generally consistent with the 2019 Interim Constitution and the 2022 Draft Constitution in that it limits the authority of the GIS to intelligence gathering and analysis and prohibits arrest and detention practices.¹⁷ The Prime Minister is again given responsibility for appointing the Director General of the GIS, however, unlike the 2022 Draft Constitution, which expressly places the GIA “under the authority of the Prime Minister,” the 2022 Framework Agreement merely states that the GIS “shall report to the Prime Minister.”¹⁸ Furthermore, while the 2022 Framework Agreement explicitly states that the GIS is to be “a civilian regular national body,” it does not specifically prohibit political affiliation nor does it make a distinction between domestic and foreign intelligence capabilities.

2023 Draft Political Agreement

The 2023 Draft Political Agreement was produced at the end of March 2023 but was never signed in the run-up to the current conflict. The 2023 Draft Political Agreement is generally consistent with the 2022 Framework Agreement in that it limits the authority of the intelligence service to collecting, analyzing, and presenting information to competent authorities, and prohibits arrest and detention practices.¹⁹ The Prime Minister is again given responsibility for appointing the Director General of the GIS, but unlike any of the prior documents, provides that the Transitional Sovereignty Council must *approve* the appointment.²⁰ However, it appears that the Prime Minister alone has the authority to dismiss leaders of the intelligence services and oversee the GIS.²¹

¹⁵ TRANSITIONAL CONST. ch. 9, sec. 3, art 71(5) (2022) (draft).

¹⁶ TRANSITIONAL CONST. ch. 9, sec. 3, art 71(1) (2022) (draft).

¹⁷ POLITICAL FRAMEWORK AGREEMENT at 7 (Dec. 5, 2022).

¹⁸ POLITICAL FRAMEWORK AGREEMENT at 8 (Dec. 5, 2022).

¹⁹ POLITICAL AGREEMENT at 13-14 (2023) (draft).

²⁰ POLITICAL AGREEMENT at 7-8 (2023) (draft).

²¹ POLITICAL AGREEMENT at 14 (2023) (draft).

Ongoing Conflict

In April 2023, power struggles within the military government, the Sudanese Armed Forces (SAF), and members of the paramilitary Rapid Support Forces (RSF), erupted into armed conflict. This came after weeks of increased tension over the proposed integration of the RSF into the military as part of the above key documents.²² As a result, intelligence sector reform under the key documents has been put on hold, and a new transitional justice framework will likely need to be implemented once the conflict has ceased. As of March 2024, the conflict is still ongoing.

This conflict has further highlighted the need for proper intelligence sector reform. In particular, it has been reported that former intelligence officials under the Al-Bashir regime, who had trained in the armed operations unit, have joined the ranks of the SAF and RSF.²³ Additionally, the conflict arose and has been sustained in part due to external actors seeking to influence Sudanese policy. For example, it has been reported that both groups have received funding and weaponry from other states, such as the United Arab Emirates and Saudi Arabia, and mercenaries from Russia's Wagner Group.²⁴

Intelligence sector reform can help to ensure that governmental entities or organizations that threaten Sudan are not receiving outside aid in an attempt to destabilize Sudan. Reform can also properly monitor the transition of individuals among intelligence agencies, the military establishment, and law enforcement groups, to maintain independence and distinct responsibilities among these sectors.

Best Practices for Intelligence Sector Governance & Reform

This memorandum identifies five issues that may help ensure that intelligence sector governance and reforms adhere to international best practices, including: (1) separation between foreign and domestic intelligence services and operations; (2) distinction among the roles of the military, intelligence sector, and law enforcement; (3) legal framework for the intelligence sector, and cycle and dissemination of information; (4) oversight and accountability; and (5) periodic milestones for developing and sustaining reformed intelligence sector.

²² *What is Happening in Sudan? A Simple Guide*, AL JAZEERA (Apr. 18, 2023), last updated May 3, 2023, What is happening in Sudan? A simple guide | News | Al Jazeera.

²³ Khalid Abdelaziz, *Islamists Wield Hidden Hand in Sudan Conflict, Military Sources Say*, REUTERS (June 28, 2023), <https://www.reuters.com/world/africa/islamists-wield-hidden-hand-sudan-conflict-military-sources-say-2023-06-28/>

²⁴ Hager Ali, *The Sudan Crisis: A Power Struggle By Design*, AL JAZEERA (May 18, 2023), <https://www.aljazeera.com/news/2023/5/18/the-sudan-crisis-a-power-struggle-by-design> Professor David L. Phillips, *Breaking the Impasse: Security Sector Reform in Sudan*, ROYAL UNITED SERVICES INSTITUTE (Apr. 24, 2023), <https://www.rusi.org/explore-our-research/publications/commentary/breaking-impasse-security-sector-reform-sudan>

Separation Between Foreign and Domestic Intelligence Services

First, the legal framework setting up the intelligence sector could establish two separate agencies. One agency would be responsible for domestic intelligence and the other responsible for foreign intelligence. While the Juba Peace Agreement seems to suggest the GIS could have authority over both domestic and foreign intelligence, best practice would be to separate domestic and foreign intelligence operations into distinct agencies to ensure that proper protections remain intact with regard to domestic activities (for example, constitutionally protected search requirements for operations carried out domestically).

Nonetheless, one of the key challenges facing African intelligence services is the need for more funding and resources, and Sudan may face challenges creating, staffing, and funding two separate agencies. An alternative option is to maintain a single intelligence agency but erect a theoretical wall separating domestic activities from foreign activities. Sudan can potentially also leverage the intra-continental intelligence services, such as the African Union's African Standby Force and Committee of Intelligence and Security Services of Africa to assist its understanding of best practices as it relates specifically to countries emerging from a post-conflict era, as will be the case in Sudan.

Still, there is a fine line between ensuring separation, while also permitting proper channels of communication to avoid a duplication of efforts and lack of coordination and cooperation between agencies. The legal framework creating and ensuring the smooth operation of the intelligence sector—discussed further below—could include details on under what circumstances, and in what instances, information can be shared between domestic and foreign operators.

Different Roles of the Military, Intelligence Sector, and Law Enforcement

Second, in order to ensure proper separation between the military, intelligence sector, and law enforcement operations, the legal framework governing the intelligence sector could build in certain requirements and clarifying definitions. These requirements could include explicitly outlining the intelligence sector's independence and appointment of a civilian head—subject to legislative approval—unconstrained by political party affiliation, whose term begins and ends between, and therefore does not align with, election cycles (for example, the Director of the United States Federal Bureau of Investigation is appointed for a single 10-year term by the president of the United States and confirmed by the Senate).

In particular, and especially in light of the ongoing conflict, Sudan could also consider implementing a system to assist with the integration of former military or intelligence officials into new roles as civilians within the post-conflict intelligence community. This can include a “cooling off” period before military members can join the intelligence sector, before intelligence officials can join the military or law enforcement, and processes to debrief and offboard ex-intelligence officials to civilian life. Nonetheless, it may be difficult to staff an intelligence agency post-conflict when those engaged in the conflict may be the only experienced professionals. An alternative option is to waive this requirement for a limited number of reliable officials, invest in significant training of staff, and take steps to dismantle former military structures and ensure separation and integration of opposing groups in a manner that prevents the formation of factions with competing loyalties. Proper vetting of intelligence sector leaders and staff, driven by transitional justice measures put in place in Sudan, will be important.

Furthermore, in defining the mission of the intelligence services and differentiating between intelligence and law enforcement operations, the legal framework could clearly distinguish key terms, including: (1) crime from national security matters; (2) freedom of speech from violent threats; (3) freedom of association from participation in terrorist groups; and (4) the right to gather and express political dissent from riots. While these distinctions are merely illustrative, these may be particularly important for Sudan, given the history of the intelligence sector being used by one political party against its opponents and to violently suppress civilian activism.

These distinctions are also important to guide the legal basis upon which the intelligence sector can monitor domestic communications and engage in domestic operations. Having proper legal definitions to guide permissible versus impermissible action can enable the judicial system to independently review certain actions undertaken by the intelligence sector.

Intelligence Cycle and Dissemination

Third, setting up a properly organized intelligence lifecycle and dissemination process is critical to ensure the intelligence agencies are not abused for political gain. This requires that intelligence is conveyed based on objective analysis and is disclosed in an unbiased manner to the appropriate people at the appropriate time. This, too, should be detailed in the legal framework governing the intelligence sector and include details on when, and to what extent, agencies or personnel may share information.

Oversight & Accountability

The fourth and arguably most important consideration is the establishment of effective oversight of the intelligence sector to ensure it is not abused for political gain and is loyal to the whole of the government of Sudan and not any one faction. This requires multiple, interlocking oversight methods operating at all levels of government and civil society.

In many states, the executive branch of government has the authority to appoint the director and deputies of intelligence sector agencies. It may be important, however, to give the legislature oversight of the appointment, *e.g.*, by requiring approval of the appointee before the appointee can succeed to the position. In addition to powers to appoint, powers to remove are similarly important. Sudan could consider, for example, prohibiting the Prime Minister from dismissing top intelligence officials unless for good cause shown, and establishing procedures through which the legislature can force removal of the Director of the GIS for clear violations of law.

The legislature will have an important role in creating the legal framework under which the GIS and any other intelligence sector agencies operate, and in establishing the guidelines under which the GIS is required to report on its operations and maintain accountable to the people of Sudan, for example, occasional public testimony by top officials and semi-regular classified briefings. The legislature could also create specific courts to oversee intelligence activities that are responsible for the review and grant of invasive domestic operations.

Additionally, independent executive branch oversight boards could be used to enact guidelines that set the direction of the intelligence sector operations in an unbiased and transparent manner. Other independent boards could also be used to set requirements for vetting potential intelligence agency officials, hiring guidelines, assignment of security clearances, periodic trainings, and operational reviews, and to oversee a process to ensure transitions of personnel between roles in the military, intelligence, or law enforcement sectors are done properly pursuant to any appropriate “cooling off” period.

Lastly, in order to ensure proper oversight, it is also important to consider an accountability mechanism for persons who feel that their rights have been violated. But citizens must first understand the laws in order to challenge any supposed violations of law. Thus, it is important that the legal framework governing the intelligence sector, activities, and governing processes and oversight is made public or can be subject to automatic declassification after a designated period of

time for certain classified materials and information. Sudan could also consider developing a statutory framework under which citizens can request and obtain access to government documents and communications, including as relates to the intelligence sector. International best practice recommends:

Any individual who believes that her or his rights have been infringed by an intelligence service is able to bring a complaint to a court or oversight institution, such as an ombudsman, human rights commissioner, or national human rights institution. Individuals affected by illegal actions of an intelligence service have recourse to an institution that can provide an effective remedy, including full reparation for the harm suffered. The institutions responsible...are independent of the intelligence services and the political executive...and have full and unhindered access to all relevant information, the necessary resources and expertise to conduct investigations, and the capacity to issue binding orders.²⁵

The judiciary could also play a role in hearing and making rulings on allegations of intelligence sector government overreach and allegations of violations of constitutionally protected rights and other human rights abuses.

Periodic Milestones

It is inherently difficult to predict the exact timeline for reforming a nation's intelligence sector, especially one that is embroiled in intra-state violence and whose intelligence agencies have a long-standing history of being abused to further political and non-democratic objectives. Notwithstanding these constraints, it is important to establish a general timeline to ensure the reform is actually carried out and done so effectively. As a general matter, intelligence sector reform occurs in three stages. First, in the short-term (for example, five to seven years), the intelligence agencies and operating laws could be established, and the process of creating a vetting process and staffing up organizations could begin. In the medium-term (for example, six to twelve years), the agencies could begin to build the competency of its professionals, organizational identity, and intelligence functions. And in the longer-term (for example, 25 years), the intelligence sector could be sufficiently organized and functional, so that any outside international support is no longer needed on an ongoing basis.

²⁵ UN General Assembly, *Special Rapporteur on the Promotion and Protection of Human Rights and Fundamental Freedoms while Countering Terrorism*, A/HRC/14/46, May 5, 2010, practice 9-10.

Conclusion

The intelligence sector had seen attempts at and proposals for reforms by transition-minded Sudanese civilians between the ouster of Al-Bashir and the April 2023 start of conflict. While always aspirational, those attempts exhibited a desire to shift the role of the GIS—previously viewed as an abusive secret police organization used as a weapon for political gain—to an independent sector that would support the intelligence needs of a civilian government and protect the rights of Sudanese citizens. Any developments after the present conflict could consider specific options for reform. Keeping in mind the above options, and with regard to Sudan in particular, the following options for intelligence sector reforms could be prioritized:

- (1) Create two agencies—one responsible for domestic intelligence and the other for foreign intelligence—and clearly define the responsibilities of each. But, if that is impossible, clearly distinguish and erect barriers between domestic and foreign operations to ensure separation of responsibilities and preserve the different operational standards that are applicable for domestic versus international operations.
- (2) Ensure an appropriate balance of authority and responsibility between the civilian intelligence sector and the military by establishing a civilian head of the GIS and designating a “cooling off” period—especially for the highest-ranking officials—before military members can transfer to the intelligence sector and vice versa. Proper vetting of intelligence sector leaders and staff, driven by transitional justice measures put in place in Sudan, will be important.
- (3) Draft a legal framework that establishes the role of the intelligence sector and the mechanisms through which it must operate, seeks to guarantee the intelligence sector has appropriate levels of independence, is apolitical, remains functionally different from the military and law enforcement, and clearly distinguishes between action that is legal and important for a functional democracy (for example, non-violent protests and political dissent) and illegal action of national security concern (for example, terrorism and imminent threats of violence). This clarification would enable an independent judiciary to effectively evaluate the legality of intelligence sector operations and ensure the rule of law is maintained.

- (4) Establish a framework for sufficient legislative, judicial, executive, and civilian oversight of the intelligence sector, and an accountability mechanism through which individuals can appeal if they believe their civil liberties may have been violated or infringed upon.

- (5) Develop key requirements of intelligence functions and information dissemination via objective staffing criteria, periodic disclosures of ongoing intelligence activities to appropriate stakeholders, and other safeguards, including via sufficient trainings and guardrails to avoid the formation of factions with divided loyalties.