



Fragmentation of justice: Capital punishment in Sudan during armed conflict

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Introduction

Capital punishment has been a persistent feature of Sudan's legal system.¹ It is classified as a retentionist country, retaining the death penalty in law and actively carrying out executions. Long before the outbreak of the current armed conflict between the Sudanese Armed Forces (SAF) and the paramilitary Rapid Support Forces (RSF), which exploded into full-scale hostilities on 15 April 2023,² Sudan retained one of the broadest legislative frameworks permitting the death penalty in the region. Domestic legislation authorises capital punishment for a wide range of offences, including crimes against the State and national security, while successive governments have consistently resisted international efforts calling for a moratorium or abolition.

Previous human rights documentation repeatedly raised concerns regarding the broad application of capital punishment, the scope of offences punishable by death and the extent to which criminal proceedings complied with international fair trial standards. Although these concerns were significant, they historically developed within a justice system that, despite its structural shortcomings, continued to operate through nationally recognised judicial institutions. The outbreak of armed conflict fundamentally altered that landscape.³

Drawing upon recent judicial developments, publicly available court decisions, and reports by human rights organisations and United Nations mechanisms, this paper examines how conflict has altered the administration of criminal justice and significantly heightened the risk of the arbitrary

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deprivation of life. It concludes that safeguarding the right to life requires immediate international attention to judicial safeguards, independent review of capital cases, and long-term reforms aimed at restricting and ultimately abolishing the death penalty in Sudan.

1. The changing landscape of capital punishment

The fragmented conflict landscape

As the civil war continues, Sudan's administrative and legal framework has fractured into distinct spheres of governance. The broad outlines of this conflict feature a bitter territorial contest where the SAF maintains control over much of the east and north, while the RSF exercises effective control over vast swathes of Darfur and Kordofan.⁴ This violent division of territory has directly shattered the judiciary; while formal courts continue to function under emergency protocols in SAF-controlled areas, other regions have witnessed the total collapse of formal judicial institutions or their active replacement by ad hoc, military-led administrative bodies.⁵ Concurrently, security-related prosecutions have expanded considerably, particularly in territories retaken by the SAF, where allegations of collaboration with opposing forces have triggered a wave of capital trials.

One of the most striking developments has been the substantial increase in the number of death sentences imposed during the conflict. Information published through judicial decisions and publicly available court summaries indicates that at least 88 individuals—and likely considerably more—were sentenced to death during the first half of 2025 alone, predominantly under provisions relating to offenses against the State, including Articles 50 and 51 of the Criminal Act 1991.⁶ As additional judicial

decisions continue to filter out from various states across Sudan, the actual number is projected to be significantly higher than publicly documented.⁷

Central legal questions

The accelerating use of capital punishment during armed conflict raises questions extending far beyond numerical trends. The principal inquiry is whether an irreversible punishment can lawfully and legitimately be imposed within a justice system operating under conditions of armed conflict and collapse of infrastructure, severely weakened institutional independence, emergency security measures, military overreach, and competing, parallel systems of legal authority.

This concern is particularly acute given persistent reports that many prosecutions have involved allegations of collaboration with opposing forces, often within proceedings characterised by limited judicial oversight, restrictions on access to legal representation, reliance on security-led investigations and the application of broadly defined offences against the State. In capital cases, where the consequence of judicial error cannot be undone, compliance with international fair trial guarantees becomes not merely desirable but legally indispensable.

Furthermore, a second, less-examined development has emerged. Alongside the continued operation of courts in SAF-controlled territories, new justice structures have begun to appear in areas under the control of the RSF.⁸ These parallel institutions, together with the recent re-establishment of Sudan's Constitutional Court by the de facto state authorities in SAF-aligned areas, signal a broader transformation of the country's legal landscape. It is crucial to clarify that the re-established Constitutional Court functions strictly within the remnants of the formal state apparatus

rather than as an SAF initiative.⁹ Rather than confronting a single justice system under strain, Sudan increasingly faces multiple and competing systems of criminal justice operating under different political and military authorities.

2. Sudan's legal framework and the escalation of death sentences during armed conflict

Sudan's legal framework on capital punishment

The death penalty has remained a central feature of Sudan's criminal justice system from the colonial period through successive constitutional and political transitions.¹⁰ The Constitutional Charter for the Transitional Period of 2019 recognises the inherent right to life while simultaneously preserving the State's authority to impose capital punishment. Article 44 guarantees the right to life, whereas Article 54 permits the death penalty as *qisas* (retribution), *hudud* (fixed Islamic penalties) or for crimes of "extreme gravity" in accordance with the law. However, neither the Constitutional Charter nor domestic legislation clearly defines what constitutes "crimes of extreme gravity", leaving wide discretion to the courts.¹¹

Sudan has consistently opposed international initiatives promoting a global moratorium on executions and has not ratified the Second Optional Protocol to the ICCPR, which aims at the abolition of the death penalty. During successive Universal Periodic Review (UPR) cycles before the UN Human Rights Council, Sudan declined recommendations calling for a moratorium, maintaining that the regulation of capital punishment falls strictly within its domestic legal sovereignty.¹² However, international law dictates that the existence of capital punishment under domestic legislation does not diminish the obligation to ensure that every

capital prosecution complies with the highest standards of due process under Articles 6 and 14 of the ICCPR.¹³

The impact of armed conflict on criminal justice

The outbreak of armed conflict fundamentally shattered the institutional framework of Sudan's judiciary. The conflict has damaged courtrooms, displaced judicial personnel, disrupted legal representation networks and pulverised oversight mechanisms across significant parts of the country.¹⁴

International investigations have documented widespread violations of international human rights law and international humanitarian law committed by all parties to the conflict, including arbitrary detention, torture, enforced disappearance and unlawful killings. These systemic abuses inevitably bleed into the administration of criminal justice, particularly where investigations and prosecutions arise directly from conflict-related allegations. Capital punishment presents the highest possible consequence of criminal proceedings; international law requires that judicial safeguards become stronger, not weaker, during periods of instability.¹⁵

The escalation of death sentences

Judicial decisions publicly released by the Office of the Public Prosecutor indicate that courts across several states have increasingly imposed capital punishment in cases involving alleged collaboration with the RSF or offences characterised as threatening national security.¹⁶ A notable characteristic of these prosecutions has been the extensive reliance on Article 50 (Undermining the Constitutional Order) and Article 51 (Waging War Against the State) of the Criminal Act 1991.

While these provisions have long existed, their application has expanded drastically to penalise daily survival. Civilians living under de facto RSF or militia control frequently find themselves in circumstances where they have absolutely no choice but to interact with whichever force exercises effective physical authority over their neighbourhoods. To secure basic nutrition, access functioning hospitals, pass checkpoints for safety, or protect their homes from looting, ordinary civilians must engage with local de facto actors. Treating these compulsory survival strategies as criminal "collaboration" or treason punishable by death represents a severe perversion of justice.¹⁷

Consequently, allegations of collaboration require meticulous judicial scrutiny. Under international human rights standards, criminal responsibility must be based upon individual criminal conduct supported by reliable evidence rather than assumptions arising from residence, ethnicity, occupation, family relationships or survival under occupation.¹⁸ Furthermore, distinct geographical and ethnic patterns have emerged. Publicly available judgments indicate that many prosecutions involve civilians accused of supporting opposing forces rather than actual combatants, and defendants originating from historically marginalised or conflict-affected regions, including Darfur and Kordofan, appear disproportionately represented in these security-related capital trials.¹⁹

Security-linked prosecutions and fair trial concerns

In capital cases, procedural guarantees are essential protections against irreversible violations of the right to life. Reports from defence lawyers, human rights organisations and legal observers highlight several alarming aspects of recent proceedings.

Arrests are routinely conducted by security bodies entirely outside ordinary judicial procedures, and defendants face severely limited or non-existent access to lawyers during critical investigative and interrogation stages.²⁰ Furthermore, trials are frequently fast-tracked before special or military-related courts rather than independent civilian judiciaries; severe restrictions are placed on the ability of defendants to challenge state evidence or present exculpatory witnesses; and courts continue to rely heavily on confessions or information obtained during incommunicado detention, where the risk of torture is extremely high.²¹

Particular concern surrounds the role of joint security structures, often termed "security cells," involving personnel from various intelligence and military bodies.²² These cells drive the detention, interrogation and information gathering for individuals later prosecuted before the courts, operating without effective judicial oversight. Furthermore, the legal defence ecosystem itself is under attack; in one reported case, a lawyer attempting to provide legal representation to defendants facing capital charges was himself sentenced to death.²³

Gender and capital punishment

Interviews conducted by justice actors with women previously detained in Sudan have highlighted cases where women faced serious criminal charges related to allegations of providing logistical assistance or support to parties to the conflict.²⁴ These cases require urgent attention because conflict environments often blur the lines between ordinary civilian activities—such as providing humanitarian assistance, cooking or medical aid—and active combat support.²⁵ International law firmly dictates that mere association with a person

or group cannot justify an irreversible punishment.²⁶

Beyond security-related prosecutions, the impact of Sudan's wartime judicial breakdown extends deep into ordinary criminal law. In February 2026, human rights organisations documented two cases in which Sudanese women were sentenced to death by stoning for adultery under Article 146 of the 1991 Criminal Act. These cases are particularly significant: they demonstrate that the conflict has not displaced pre-existing patterns of gender-based criminalisation, but has instead allowed discriminatory legal frameworks to persist with reduced accountability. Stoning—an exceptionally cruel and irreversible punishment—disproportionately targets women under morality-based offences. The application of Article 146 during an active armed conflict highlights that wartime legal fragmentation does not just create new conflict-related abuses; it preserves and deepens structural gender inequalities, leaving women without access to effective legal defence or protection against the most severe forms of state punishment.²⁷

3. Institutional fragmentation and parallel systems

Parallel justice structures and the fragmentation of legal authority

The fragmentation of Sudan's territorial control has catalysed the emergence of parallel justice structures operated by competing authorities. In areas under the control of the RSF, new ad hoc justice-related bodies have emerged, responsible for appointing judges, prosecutors and administrative legal officials outside the formal state system. Legal scholars and bodies like the UN Independent International Fact-Finding Mission for

the Sudan have raised serious concerns regarding these parallel setups.²⁸

The creation of justice institutions by armed actors exercising de facto control introduces severe hazards, including a complete lack of an established constitutional legal basis, a high risk of courts being weaponised for political vengeance or collective punishment, the absence of transparent appointment procedures or accountability for judicial corruption, and the potential expansion of capital punishment into unmonitored territories without any mechanisms for formal appeal.²⁹

Selective justice and equality before the law

The application of the death penalty during this armed conflict exposes a stark crisis of selective justice. While ordinary civilians accused of peripheral logistical support face swift capital prosecution, senior military figures and powerful armed actors responsible for documented, widespread atrocities have historically benefited from political arrangements, institutional immunity or strategic pardons.³⁰ The principle of equality before the law requires that accountability processes apply universally. The credibility of any future transitional justice process in Sudan hinges on ending this asymmetric enforcement.

International human rights implications

The current domestic landscape places Sudan in direct violation of its international commitments. Article 6 of the ICCPR mandates that in states which have not abolished the death penalty, a sentence of death may be imposed only for the "most serious crimes" and only pursuant to a final judgment rendered by a competent, independent and impartial court. When a state executes an individual following a trial that fundamentally lacks fair trial guarantees—such as access to counsel,

freedom from coerced confessions and independent judicial review—the execution does not constitute a lawful penal sanction. It constitutes an arbitrary deprivation of life, a severe violation of international human rights law.

Conclusion

The escalation of death sentences in Sudan during the ongoing armed conflict represents a profound challenge to the global protection of human rights and the rule of law. The current crisis is not simply a question of the statutory existence of the death penalty in Sudanese law; it is a question of whether an irreversible punishment can ever be applied fairly within a justice system shattered by civil war, institutional collapse and competing centres of military authority.

The experience of Sudan powerfully demonstrates why international law moves resolutely toward restricting and ultimately abolishing capital punishment. In environments marked by institutional fragmentation and armed conflict, the probability of irreversible judicial error and political weaponisation becomes exceptionally high. Restoring respect for the right to life and fair trial guarantees must remain central to any viable path toward peace, accountability and constitutional reform in Sudan.

To prevent systemic, irreversible violations of international law, the following urgent measures must be adopted by Sudanese authorities and all entities exercising de facto territorial control:

- *Immediate execution moratorium and independent case review:*

Establish an immediate moratorium on all executions. At present, due to the severe disruption of communications and institutional monitoring caused by the war, comprehensive data regarding the exact number of judicial or quasi-judicial executions being actively carried out remains heavily restricted. However, given the breakdown of formal confirmation channels and the high risk of summary executions by warring factions, a sweeping moratorium is vital. Authorities must implement an independent judicial review of all capital sentences passed since April 2023, ensuring particular scrutiny over cases involving Articles 50 and 51 of the Criminal Act 1991.

- *Restore absolute fair trial protections:*

Guarantee unconditional access to legal counsel from the moment of arrest. Strip "security cells" and intelligence agencies of investigative and prosecutorial powers in capital cases, and prohibit the admission of any evidence or confessions obtained without a lawyer present.

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References

- ¹ Amnesty International, 'Sudan: Death Penalty / Unfair Trial' (30 April 2003) <<https://www.amnesty.org/en/documents/afr54/029/2003/en/>> accessed 22 July 2026.
- ² See UN update on the establishment of the Independent International Fact-Finding Mission for Sudan to investigate violations committed in the context of the conflict: United Nations Human Rights Council, 'Situation of Human Rights in the Sudan' UN Doc A/HRC/54/L.16 (11 October 2023) <<https://www.ungeneva.org/en/news-media/meeting-summary/2023/10/afternoon-human-rights-council-adopts-16-texts-establishes-fact>> accessed 22 July 2026.
- ³ African Centre for Justice and Peace Studies (ACJPS), *The Wide Application of the Death Penalty in Sudan* (August 2016) <<https://web.acjps.org/the-wide-application-of-the-death-penalty-in-sudan/>> accessed 22 July 2026.
- ⁴ Rosemary DiCarlo, 'Security Council Briefing on Sudan' (United Nations Department of Political and Peacebuilding Affairs, 26 June 2026) <<https://dppa.un.org/en/news/dicarlo-warns-of-narrowing-window-to-avert-wider-escalation-in-sudan>> accessed 22 July 2026; Security Council Report, 'Sudan: June 2026 Monthly Forecast' (1 June 2026) <<https://www.securitycouncilreport.org/monthly-forecast/2026-06/sudan-39.php>> accessed 22 July 2026.
- ⁵ United Nations Human Rights Council, 'Report of the Independent International Fact-Finding Mission for the Sudan' (20 January 2025) UN Doc A/HRC/58/29, paras 82–85.
- ⁶ UN Human Rights Office of the High Commissioner (OHCHR), 'Human Rights Situation in the Sudan: 1 January to 30 June 2025' (19 September 2025) <<https://www.ohchr.org/sites/default/files/documents/countries/sudan/ohchr-report-human-rights-situation-in-sudan-1-january-30-juin-2025.pdf>> accessed 22 July 2026.
- ⁷ OHCHR documented at least 108 death sentences issued between January and late June 2025, predominantly in cases involving alleged collaboration with the RSF and frequently relying on Articles 50 and 51 of the 1991 Criminal Act.
- ⁸ United Nations Human Rights Council, 'Findings of the Investigations Conducted by the Independent International Fact-Finding Mission for the Sudan' (23 October 2024) UN Doc A/HRC/57/CRP.6, para 328.
- ⁹ Sudan Tribune, 'Sudan Judicial Body Moves to Reinstate Top Court' (31 July 2025) <<https://sudantribune.com/article/303456>> accessed 22 July 2026.
- ¹⁰ Second Optional Protocol to the International Covenant on Civil and Political Rights, Aiming at the Abolition of the Death Penalty (adopted 15 December 1989, entered into force 11 July 1991) 1642 UNTS 414 ('Second Optional Protocol').
- ¹¹ Constitution of the Republic of the Sudan 2019, art 54 (restriction on the death penalty).
- ¹² UN Human Rights Council, 'Report of the Working Group on the Universal Periodic Review: Sudan' (2022) UN Doc A/HRC/50/16 <<https://www.ohchr.org/en/hr-bodies/upr/sd-index>> accessed 22 July 2026.
- ¹³ International Covenant on Civil and Political Rights (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171 ('ICCPR') arts 6 and 14.
- ¹⁴ United Nations Development Programme (UNDP), *Rule of Law and Human Rights Annual Report 2023: Sudan* (2024) <<https://rolhr.undp.org/annualreport/2023/arab-states/sudan.html>> accessed 22 July 2026.
- ¹⁵ OHCHR, 'Human Rights Situation in the Sudan' (n 6).
- ¹⁶ Sudan News Agency (SUNA), 'Court issues death sentences and prison terms for individuals accused of collaborating with rebel militia' (2 July 2025) <<https://www.suna.sd/posts/mhkm-snar-tsdr-hkma-balaaadam-lmtaaon-maa-almlyshya-oakhr-balsgn>> accessed 22 July 2026.
- ¹⁷ Human Rights Watch, 'Sudan: Arbitrary detention by army, security forces' (7 April 2026) <<https://www.hrw.org/news/2026/04/07/sudan-arbitrary-detention-by-army-security-forces>> accessed 22 July 2026.
- ¹⁸ ICCPR (n 13) art 6; Human Rights Committee, 'General Comment No 36 on Article 6 of the International Covenant on Civil and Political Rights, on the Right to Life' (30 October 2018) UN Doc CCPR/C/GC/36, para 40.
- ¹⁹ European Union Agency for Asylum (EUAA), *COI Report – Sudan: Country Focus* (February 2025) <<https://www.euaa.europa.eu/publications/coi-report-sudan-country-focus-0>> accessed 26 August 2026.
- ²⁰ Sudan Tribune, 'Sudanese lawyers demand Release of miners held without charge for months' (3 October 2025) <<https://sudantribune.com/article/305629>> accessed 25 August 2026.
- ²¹ United Nations Human Rights Council, 'Report of the Independent International Fact-Finding Mission for the Sudan' (n 5) paras 91–94.
- ²² Al Jazeera, 'Sudan: Formation of a security cell in Khartoum' (3 May 2024) <<https://www.aljazeera.net/news/2024/5/3/السودان-تشكيل-خليفة-أمنية-بالخرطوم>> accessed 22 July 2026.
- ²³ UN Special Rapporteur on Human Rights Defenders, 'Sudan: Death sentence issued against HRD Abubakr Mansour Mohamed Hamza and arbitrary arrest of his defense counsel (Joint Communication)' (8 January 2026) <<https://srdefenders.org/sudan-death-sentence-issued-against-hrd-abubakr-mansour-mohamed-hamza-and-arbitrary-arrest-of-his-defense-counsel-joint-communication/>> accessed 22 July 2026; Human Rights Watch, 'Sudan: Arbitrary detention by army, security forces' (n 17).
- ²⁴ Strategic Initiative for Women in the Horn of Africa (SIHA Network), 'Press Statement: Grave concerns over women and children subjected to detention, enforced disappearance and abductions in Darfur' (10 June 2026) <<https://sihanet.org/press-statement-grave-concerns-over-women-and-children-subjected-to-detention-enforced-disappearance-and-abductions-in-darfur/>> accessed 26 August 2026.
- ²⁵ International Committee of the Red Cross, *Interpretive Guidance on the Notion of Direct Participation in Hostilities under International Humanitarian Law* (2009) <<https://www.icrc.org/en/publication/0990-interpretive-guidance-notion-direct-participation-hostilities-under-international>> accessed 22 July 2026.
- ²⁶ ICCPR, art 14(1) (guarantee of individual guilt and fair trial standards).

²⁷ African Centre for Justice and Peace Studies (ACJPS), 'Sudanese courts sentence two women to death by stoning for adultery despite international obligations' (13 February 2026) <<https://www.acjps.org/publications/sudanese-courts-sentence-two-women-to-death-by-stoning-for-adultery-despite-international-obligations>> accessed 26 August 2026.

²⁸ UN Human Rights Council (n 8), para 328.

²⁹ UN Human Rights Council (n 8), para 330.

³⁰ Committee for Justice, 'Sudan: Committee for Justice condemns death and prison sentences in cases related to alleged cooperation with RSF, calls for fair trial guarantees' (27 May 2026) <<https://www.cfjustice.org/sudan-committee-for-justice-condemns-death-and-prison-sentences-in-cases-related-to-alleged-cooperation-with-rsf-calls-for-fair-trial-guarantees/>> accessed 26 August 2026.