



PEACE NEGOTIATIONS  
POST-CONFLICT CONSTITUTIONS  
WAR CRIMES PROSECUTION

# **THE RELATIONSHIP BETWEEN THE SOVEREIGN AUTHORITY AND SUDAN'S MILITARY COMMAND**

**Legal Memorandum**

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# **The Relationship Between the Sovereign Authority and Sudan's Military Command**

## **Statement of Purpose**

This memorandum addresses security-related reforms concerning civilian oversight of Sudan's military, and in particular examines the relationship between a sovereign authority and Sudan's military command.

## **Introduction**

The documents relevant to Sudan's political transition process prior to the conflict that began in April 2023 include the Constitutional Charter for the Transitional Period of 2019 (2019 Constitutional Declaration), the 2020 Juba Agreement for Peace in Sudan (2020 Juba Peace Agreement), the Transitional Draft Constitution of 2022 prepared by the Sudanese Bar Association (2022 Draft Constitution), and the Political Framework Agreement signed on December 5, 2022 (the Framework Agreement) (collectively, the 2019-22 Key Documents). In addition, a draft of a final political agreement for Sudan was released on March 27, 2023 (the 2023 Draft Political Agreement).

When peace negotiations to end the current war occur, there is a significant likelihood that the security sector (SSR) arrangements in new draft documents for negotiations will differ in important ways from those found in the 2019-22 Key Documents and the 2023 Draft Political Agreement. However, in formulating their new positions on SSR, it may be very useful for the negotiating parties to refer back to these 2019-22 Key Documents and the 2023 Draft Political Agreement, to re-acquaint themselves with those documents' provisions relating to SSR and the relationship between a sovereign authority and Sudan's military command.

Each of these documents contemplates a "sovereign" authority of some form that has authority over the military in a Head of State capacity. As currently drafted, however, the 2019-22 Key Documents and the 2023 Draft Political Agreement do not define clearly the scope of the sovereign authority and the relationship between the sovereign authority and the Sudanese military leadership. This memorandum analyzes potential options to bridge the gap, or clarify the relationship between (i) the sovereign authority and (ii) the commander-in-chief of the military, or the Sudanese military more generally, as well as to enhance the overall civilian oversight of the military.

This memorandum is in three parts. The first part examines the 2019-22 Key Documents and the terms of the 2023 Draft Political Agreement as they concern the relationship between the sovereign authority and the Sudanese military. The second part provides options to clarify this relationship in any future documents, or amended versions of the existing documents agreed by Sudanese stakeholders on a Sudanese transition. The final part provides some broader options for enhancing overall civilian oversight of the military in Sudan.

Unless otherwise specified, this memorandum refers to the Sudanese “military” to capture all facets of the armed forces affiliated with the Sudanese government, including principally the Sudanese Armed Forces and the Rapid Support Forces.

## **The Sovereign Authority as Set Out in the 2019-22 Key Documents and 2023 Draft Political Agreement**

Each of the 2019-22 Key Documents and the 2023 Draft Political Agreement contemplates a sovereign authority that will act as the head of state.<sup>1</sup> This role includes ultimate authority over Sudan’s military. However, the documents are not consistent regarding key aspects of the sovereign authority’s composition, appointment, and powers, as well as its relationship to the Sudanese military leadership. This section provides a non-exhaustive summary of some of these features.

### *Sovereignty Council or Single Head of State*

The 2019-22 Key Documents provide for a “sovereignty council” or a “sovereign level” composed of several members, at least some of whom would be civilians. The 2019 Constitutional Declaration is the most prescriptive of the 2019-22 Key Documents on this issue, and provides for a Sovereignty Council composed of eleven members, six of whom would be civilians.<sup>2</sup> The 2022 Draft Constitution similarly envisages a sovereignty council consisting of an unspecified

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<sup>1</sup> The 2020 Juba Peace Agreement includes provision regarding the transitional Sovereignty Council provided for in the 2019 Constitutional Declaration (i.e., the already-established Sovereignty Council). Among other matters, it provides that “parties of the peace process signatory to this agreement shall be represented on the current transitional Sovereignty Council by three (3) members.” 2020 JUBA PEACE AGREEMENT, tit. 1, sec. 4 (2020). The 2020 Juba Peace Agreement, however, provides little further specific language regarding the nature and scope of the Sovereignty Council or its role in connection with military oversight. This memorandum is, therefore, principally focused on the other 2019-22 Key Documents and the 2023 Draft Political Agreement.

<sup>2</sup> SUDAN CONST., art. 11(2) (2019). The 2019 Constitutional Declaration does, however, also provide that, during the first 21 months of the transitional period, the Sovereignty Council would be chaired by someone selected by the military members. SUDAN CONST., art. 11(3) (2019).

number of only civilian members—thus proposing the removal of the military’s involvement in the sovereignty council.<sup>3</sup> The Framework Agreement refers only to a “limited civilian sovereign level,” but in this respect also appears to suggest that the sovereign level would be limited purely to civilian participation.<sup>4</sup>

In contrast to the 2019-22 Key Documents that envisage a multi-member sovereignty council, the 2023 Draft Political Agreement contemplates a single sovereign or individual “Head of State”—though it also refers to a “Transitional Sovereignty Council,” suggesting that this issue had not yet been resolved.<sup>5</sup> Notably, the 2023 Draft Political Agreement does not specify whether the “Head of State” is required to be a civilian.

News from Khartoum in early April 2023 suggested that the parties engaged in Sudan’s ongoing political process reached agreement to establish a “collegial head of state” that would have likely involved “the formation of a Sovereignty Council consisting of seven to nine members, including the leaders of the armed movements.”<sup>6</sup> This reporting suggests that the Sovereignty Council would have included members of the “armed movements”, referring to parties to the Juba Peace Agreement whose civilian nature may be in doubt once they are integrated into the Sudanese Armed Forces in accordance with the 2020 Juba Peace Agreement.

### *Role of the Sovereign Authority*

Both the 2019 Constitutional Declaration and the 2022 Draft Constitution provide that the “Sovereignty Council is the head of state, the symbol of its sovereignty and unity, and the Supreme Commander of the Armed Forces.”<sup>7</sup> The 2023 Draft Political Agreement similarly provides that the Head of State “is the

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<sup>3</sup> SUDAN TRANSITIONAL CONST., art. 44(2) (2022) (draft).

<sup>4</sup> Framework Agreement, p. 4 (Dec. 5, 2022).

<sup>5</sup> 2023 Draft Political Agreement, chapter 3 (Mar. 27, 2023). In the 2023 Draft Political Agreement the terms “Head of State” and “Transitional Sovereignty Council” are often used interchangeably, though in one instance it appears to be suggested that the Head of State is “member of the Transitional Sovereignty Council.” Draft Political Agreement, chapter 3, Vacancy of the Post of Head of State / Member of the Transitional Sovereignty Council (Mar. 27, 2023).

<sup>6</sup> Sudan Tribune, *Sudanese Parties Opt for Collegiate Transitional Presidency*, Apr. 5, 2023, available at <https://sudantribune.com/article272584/>; see also Sudan Tribune, *Signing of Sudan’s Political Agreement Postponed Again Due to Military Differences* (Apr. 5, 2023) (noting that “[t]he civilian-military committee agreed to form an eight-member Sovereign Council”), available at <https://sudantribune.com/article272609/>.

<sup>7</sup> SUDAN CONST., art. 11(1) (2019) (also expressly specifying that the Sovereignty Council is the “Supreme Commander” of the Rapid Support Forces, and other Uniformed forces); SUDAN TRANSITIONAL CONST., art. 44(1) (2022) (draft). The phrase “Supreme Commander” is not defined within either agreement.

symbol of the state’s sovereignty and unity, and he is the supreme commander of the regular forces.”<sup>8</sup>

The Framework Agreement, however, describes a “limited civilian sovereign” with only “honorary tasks.”<sup>9</sup> Specifically, it provides that “the revolution forces signatories to the Political Declaration shall via consultation, choose a limited civilian sovereign level, with *honorary* tasks, to *represent* the head of state, a symbol of sovereignty and the High Commander of the Regular Bodies.”<sup>10</sup> This language suggests a less involved role for the sovereign level than is envisaged in the constitutional documents discussed above. On the other hand, elsewhere the Framework Agreement provides that the “Head of State shall be the Commander-in-Chief of the Armed Forces” and the “high Commander of the Rapid Support Forces,” which could be read as suggestive of a more substantive role for the sovereign level with respect to military oversight, if the Head of State is to be understood as synonymous with the sovereign level.<sup>11</sup>

Of the 2019-22 Key Documents, only the 2019 Constitutional Declaration sets out a clear process for the appointment of the members of the Sovereignty Council.<sup>12</sup> Each of the 2019 Constitutional Declaration, the 2022 Draft Constitution, and the 2023 Draft Political Agreement does, however, provide a

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<sup>8</sup> Draft Political Agreement, chapter 3 (Mar. 27, 2023). “Regular forces” is not defined within the 2023 Draft Political Agreement. In addition, it is worth noting that the informal translation of the 2023 Draft Political Agreement currently refers to the “Head of State” as “[h]e.” This may be a product of the informal nature of translation, but it is a contrast to the description of the prime minister elsewhere in the 2023 Draft Political Agreement. Draft Political Agreement, chapter 4, Transitional Council of Ministers, Composition of the Transitional Council of Ministers (Mar. 27, 2023) (“The Council of Ministers shall consist of a female or male prime minister...”). The “[c]onditions” for the Head of State similarly assume that individual will be male, but do not expressly specify this is a requirement. Draft Political Agreement, chapter 3 (Mar. 27, 2023). If it is the intention that an individual will hold the position of Head of State, it would be helpful to clarify whether or not that individual is required to be male and this language may be updated to reflect that individuals of any gender may hold this position.

<sup>9</sup> Framework Agreement, p. 4 (Dec. 5, 2022).

<sup>10</sup> Framework Agreement, p. 4 (Dec. 5, 2022) (emphasis added). “Regular bodies” is defined as including the Armed Forces, the Rapid Support Forces, the Police and the General Intelligence Service. Framework Agreement, p. 5 (Dec. 5, 2022).

<sup>11</sup> Framework Agreement, pp. 5, 7 (Dec. 5, 2022).

<sup>12</sup> See SUDAN CONST., art. 11(2) (2019) (“The Sovereignty Council consists of 11 members, of whom five are civilians selected by the Forces of Freedom and Change, and five are selected by the Transitional Military Council. The eleventh member is a civilian, selected through agreement between the Transitional Military Council and the Forces of Freedom and Change.”)

process for the replacement of members of the sovereignty council where a seat becomes vacant.<sup>13</sup>

### *Relationship Between the Sovereign Authority and the Military Leadership*

Each of the 2019-22 Key Documents and the 2023 Draft Political Agreement subordinates the Sudanese military to a sovereign authority of some form. The 2019 Constitutional Declaration provides that the “Armed Forces and Rapid Support Forces . . . are subordinated to the General Commander of the Armed Forces and subject to the sovereign authority.”<sup>14</sup> Both the 2022 Draft Constitution and the 2023 Draft Political Agreement also include a variation of the following language: “The armed forces adopt a military doctrine that adheres to the constitutional system and the law, and recognizes the democratic civil system as the basis for governance, and the head of state is the supreme commander of the armed forces.”<sup>15</sup>

What this subordination means in practice, however, is unclear. Though certain of the 2019-22 Key Documents, as well as the 2023 Draft Political Agreement, expressly enumerate the powers and competencies of the sovereign authority, these powers are relatively limited with respect to issues relevant to the military and its leadership. For instance, under the 2019 Constitutional Declaration, the Sovereignty Council has the power to “[d]eclare war based on a recommendation from the Security and Defense Council” and the power to “[d]eclare a state of emergency at the request of the Cabinet.”<sup>16</sup> The competencies of the sovereign authority are similar in the 2022 Draft Constitution and the 2023

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<sup>13</sup> See SUDAN CONST., art. 14(2) (2019) (“In the event a seat on the Sovereignty Council becomes vacant, the Transitional Legislative Council shall nominate a replacement member if the member whose seat was vacated is a civilian, and the General Commander of the Armed Forces shall nominate the replacement if the member is military, and the Sovereignty Council shall confirm the appointment.”); SUDAN TRANSITIONAL CONST., art. 47(2) (2022) (draft) (“In the event a seat on the Sovereignty Council becomes vacant, the parties signatory to the political declaration shall appoint the replacement within no more than two months as of the vacancy of the seat, and the Council shall adopt him/her.”); see also Draft Political Agreement, chapter 3 (2023) (“In the event that the position of the Head of State becomes vacant, the Transitional Sovereign Council, the party that initially selected the member shall choose a replacement member within a period not exceeding 60 days of the position becoming vacant.”)

<sup>14</sup> SUDAN CONST., art. 35(1) (2019). As drafted, this language suggests that the Sovereignty Council and the General Commander were intended to remain separate entities, but that the Armed Forces and Rapid Support Forces are “subject to the sovereign authority.”

<sup>15</sup> Draft Political Agreement, chapter 4, Fourth: Regulatory Mechanisms, The Armed Forces (March 27, 2023); see also SUDAN TRANSITIONAL CONST., art. 69(2) (2022) (draft) (“The Armed Forces adopt a military doctrine that abides by the constitutional order and the law, acknowledge the democratic civil system as a basis for governance and it shall be subordinate to the Commander-in-Chief of the Armed Forces.”)

<sup>16</sup> SUDAN CONST., art. 12(1)(j) and 12(1)(k) (2019).

Draft Political Agreement.<sup>17</sup> But the 2023 Draft Political Agreement additionally provides that the Head of State has power to appoint the “Commander-in-Chief of the Armed Forces after his nomination by the Armed Forces and appoint the Rapid Support Commander after recommended by Rapid Support.”<sup>18</sup>

The sovereign authority, as envisaged within the documents, therefore has a limited standalone role in broader oversight of the military. And, though the 2019-22 Key Documents and the 2023 Draft Political Agreement do appear to envisage subordination of the military—and, in particular, the military command—to the sovereign authority, there remains a lack of clarity as to how this would function in practice.

### **Enhancing or Clarifying the Sovereign Authority’s Role and Its Relationship to the Sudanese Military**

The 2019-22 Key Documents and the 2023 Draft Political Agreement broadly reflect a commitment to civilian oversight of the military in Sudan.<sup>19</sup> As the Head of State and ultimate commander of the military, the installation of a civilian-led sovereign authority may help provide a strong foundation for the development of such civilian oversight. As of early April 2023 prior to the breakout of war, developments on the ground in Sudan were moving quickly and the proposed approach to a sovereign authority appeared to be shifting from a single Head of State back towards a multi-member sovereignty council.

With this context, and based on review of the documents described above, below are some preliminary options for enhancing or clarifying the role of the sovereign authority as a means of civilian oversight of the military, as well as options for clarifying the relationship between the sovereign authority and the military. These options fall into two broad categories: options related to civilian involvement in the sovereign authority; and options concerning the powers of the sovereign authority and its relationship to the Sudanese military.

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<sup>17</sup> See SUDAN TRANSITIONAL CONST., art. 45 (2022) (draft); Draft Political Agreement, chapter 3, Terms of Reference of the Transitional Sovereignty Council / Head of State (March 27, 2023).

<sup>18</sup> Draft Political Agreement, chapter 3, Terms of Reference of the Transitional Sovereignty Council / Head of State (Mar. 27, 2023).

<sup>19</sup> See, e.g., Framework Agreement, p. 2 (Dec. 5, 2022) (listing as a “transition issue[] and task[]” “[s]ecurity and military reform that leads to one professional army that protects the borders of the homeland and democratic civilian rule, and keeps the army away from politics, and prohibits the armed forces from engaging in investment and commercial activities except for those related to military industrialization and military missions under the jurisdiction of the Ministry of Finance”).



## *The Composition of the Sovereign Authority and Civilian Involvement*

When thinking about options to enhance civilian oversight and control over the military, there are clear risks in consolidating too much power in one person. A multi-member sovereign authority, as opposed to a single Head of State, may help prevent such a consolidation of power. Regardless of whether the sovereign authority consists of one or multiple individuals, an express inclusion of a mechanism for censure or removal of a member of the sovereign authority or the Head of State within Sudan's interim constitution may also help guard against such a consolidation. The 2022 Draft Constitution does not contain such a mechanism.

Relatedly, consistent with the later 2019-22 Key Documents such as the 2022 Draft Constitution<sup>20</sup>, it may be beneficial for any future key transitional document or updated draft expressly specify that a sovereignty council, if contemplated, be made up of civilians only; failing which, that it is civilian-controlled. In a change from prior documents, the 2023 Draft Political Agreement does not specify whether the Head of State must be a civilian. Under the 2023 Draft Political Agreement, it appears that a member of the military could serve as the Head of State.

In addition, although the 2023 Draft Political Agreement suggests that the Head of State and the Commander-in-Chief of the military are separate positions, the current 2023 Draft Political Agreement does not expressly prohibit the same individual from serving as both the Head of State and the Commander-in-Chief of the military. This is inconsistent with a transition from military control to a civilian-led democratic government. Indeed, a typical feature of democratic civilian control of the armed forces includes institutional separation between the Head of State and the operational control of the armed forces, ideally “through layers of public sector management and administration, including federal security groups, ministries, departments and general staff and advisory groups.”<sup>21</sup>

Expressly requiring that members of the sovereignty council be civilians and expressly defining who constitutes a qualifying civilian may be important for such a transition. This may be even more important if Sudan ultimately opts for an individual Head of State. This could be done by specifying that a “civilian” is an individual who has not held military office for a given period of years. For

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<sup>20</sup> SUDAN TRANSITIONAL CONST., art. 44(2) (2022) (draft).

<sup>21</sup> Geneva Centre for Security Center Governance (DCAF), *The Armed Forces: Roles and Responsibilities in Good Security Sector Governance*, p. 6 (2015).

instance, in the United States, federal law prohibits holding office as the Secretary of Defense until seven to ten years after military service.<sup>22</sup>

A requirement for a *civilian* sovereign authority to take effect from the moment any agreement is concluded and the updated sovereign authority installed may also be important. This is in contrast to the 2019 Constitutional Declaration, which provided that the Sovereignty Council was to be chaired by someone selected by the military membership for the first 21 months of the transitional period, thus enabling General al-Burhan to serve as chair.<sup>23</sup> To the extent any future documents or amendments provide for a transitional sovereign authority, limiting membership of such transitional sovereign only to civilians would help cement civilian control over the military.

Future documents or amendments on a Sudanese transition may also benefit from the inclusion of a clear process for appointing members of the sovereignty council and the Head of State. For instance, the procedure for appointment could address matters including (i) the method of appointment (*e.g.*, general election, appointment by signatory parties, legislative appointment); (ii) the relevant time periods for effecting the selection process, and (iii) who are the individuals, groups, or authorities exercising the decision-making power to select the Head of State. Another procedural feature that may be considered (perhaps better suited to a long-term constitutional framework rather than a transitional government) is the imposition of a term length (*e.g.*, four or five years) and a limit (*e.g.*, two or three) on the number of terms for which an individual may hold the position of Head of State. Term limits can also be a strong check of authority, and in the long term, can help secure a lasting political transition.

Ideally, the sovereign authority will be chosen in democratic elections. This may not be feasible at a transitional stage. At a minimum, however, the document(s) defining the procedures could provide expressly for civilian involvement in the appointment process.<sup>24</sup>

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<sup>22</sup> See, *e.g.*, Armed Forces: Secretary of Defense, 10 U.S. Code § 113 (reflecting the conditions of service for the Secretary of Defense).

<sup>23</sup> See SUDAN CONST., art. 11(3) (2019).

<sup>24</sup> See, *e.g.*, SUDAN CONST., art. 11(2) (2019) (specifying expressly the appointment process for members of the Sovereignty Council). Alternatively, drafters may consider whether there is a role for the Transitional Legislative Council in the appointment process, given that this legislative authority is intended to be representative of the Sudanese people and is composed of the parties to the peace process (25%) and individuals nominated by the political, civil, and professional forces that signed the final political agreement and the resistance committees (75%). Draft Political Agreement, chapter 3, Formation of the Transitional Legislative Council (Mar. 27, 2023).

## *Powers of the Sovereign Authority and Its Relationship to Sudanese Military*

It will be more effective if the powers of the sovereign authority and the sovereign authority's relationship to the Sudanese military are clear and express. Documents or amendments setting out these powers and relationships may thus benefit from refining the scope of the sovereign authority's role as "Supreme Commander" (or equivalent) of the military. For example, to the extent the Sudanese military is not unified, it would be best for any document to expressly specify that the sovereign authority has ultimate authority over the Sudanese Armed Forces, and the Rapid Support Forces, as well as any other units or the military (this may include the police and the intelligence services).<sup>25</sup> In order to limit any uncertainty, language such as "regular forces" or "armed forces" may be expressly defined within the relevant document.

While many of the 2019-22 Key Documents specify that the military ultimately is subordinate to the sovereign authority, language describing the sovereign authority as "honorary" (as the Framework Agreement states) or that otherwise suggests the role is merely symbolic, add ambiguity.<sup>26</sup>

In addition, assuming the sovereign authority is part of a broader framework for democratic civilian oversight of the military, any future documents or amendments on a Sudanese transition would benefit from clarifications on the sovereign authority's role in such oversight. For instance, as described above, the 2023 Draft Political Agreement currently provides that the Head of State appoints the Commander-in-Chief of the Armed Forces after his nomination by the Armed Forces.<sup>27</sup> This provision suggests that the Head of State's role in this process is limited. While the language refers to the Head of State's power to "appoint[]" as distinct from "approving the appointment" of a given position—terminology which is used elsewhere in describing the powers of the Head of State—it is unclear what, if any, power the Head of State has to decline the appointment of the nominated Commander-in-Chief, for instance. Similarly, the 2023 Draft Political Agreement

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<sup>25</sup> Note, however, that a commitment to a single, unified professional Sudanese army is part of the ongoing political transition process. *See, e.g.*, Draft Political Agreement, Preamble ("We are committed to building a unified professional and national army in a simultaneous process of reform, integration, modernization and development, and that the army is not subject to partisanship, politicization and regionalism, and that it expresses the unity of the nation and achieves the slogan "One Army... One People" and supports the sustainability of democratic civil rule, and thus we establish a new relationship between civilians And the military.") (Mar. 27, 2023).

<sup>26</sup> Draft Political Agreement, chapter 3 ("He is the symbol of the state's sovereignty and unity, and he is the supreme commander of the regular forces.") (Mar. 27, 2023).

<sup>27</sup> Draft Political Agreement, chapter 3, Terms of Reference of the Transitional Sovereignty Council / Head of State (Mar. 27, 2023).

does not contemplate any involvement of the Head of State in the removal of the Commander-in-Chief.

To conclude, as will be discussed in greater detail below, developing a non-political and professional military requires the support of stable democratic civilian institutions that provide overall oversight of the military. For this reason, civilian oversight of the military cannot be limited to the sovereign authority—it is therefore encouraging that this is not currently envisaged by any of the 2019-22 Key Documents or the 2023 Draft Political Agreement. In this respect, the next section concerns recommendations that other elements of the Sudanese government be expressly empowered with adequate powers for military oversight, to help enable appropriate checks and balances and enhance broad-based buy-in for civilian leadership over the military.

### **Enhancing Overall Civilian Oversight of the Military**

The sovereign authority will be one of multiple civilian governance institutions in the Sudanese government. Empowering other parts of the civilian government to oversee the military will not only increase civilian oversight overall, but also will enable more political groups to participate in the oversight of the military, which in turn can help strengthen broad-based buy-in on the part of civil society in the political process and the civilian government. This section provides an overview of some key considerations in this respect, including options for enhancing the role of civilian oversight of the military in civilian government institutions other than the sovereign authority; facilitating this oversight role by other civilian government institutions; and ensuring a limited role for the military in other sectors of political and economic life in Sudan. These recommendations are intended as a starting point for further discussion and development on the subject of civilian oversight of the military.

#### *Broadening Civilian Oversight of Military Operations*

While the sovereign authority is intended to have ultimate authority over the Sudanese military, it is important that the broader civilian government play a significant role in military oversight. Expanding the authority of other civilian institutions helps ensure appropriate civilian oversight of the military and that such civilian oversight is shared among the different branches of the civilian government. This also can contribute to developing a professional and impartial military, rather than a military that is loyal to a particular party.

The 2023 Draft Political Agreement already includes strong language seeking to prevent the involvement of the military in politics and for use against the Sudanese people. It aims to enact security and military reform that leads to a unified army that “protects the borders of the homeland and democratic civil rules, distances the army from politics . . . and purifies the army from any partisan political presence.”<sup>28</sup> The 2023 Draft Political Agreement further provides that the Armed Forces “shall not be used against the Sudanese people, nor shall they interfere in political affairs.”<sup>29</sup>

Beyond this, security experts have observed that creating professional and impartial militaries in newly transitioned states requires a strong political apparatus, marked by the professional and ethical pursuit of public interests, to sustain those militaries.<sup>30</sup> In accordance with international best practices, this political apparatus typically is charged with issues such as defining a national security strategy and the role of the military in that strategy; creating legally defined missions and engagements for the military; and overseeing security policy and legislation as well as policy and defense budgets.<sup>31</sup>

The 2023 Draft Political Agreement reflects that a Security and Defense Council—headed by the prime minister and including civilian and non-civilian roles—will play a substantive role in overseeing military affairs.<sup>32</sup> This is consistent with international best practices discussed above that advise institutional separation between the Head of State and the operational head of the armed forces through layers of public sector management and administration, as well as a national security body with a coordination and advisory function.<sup>33</sup>

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<sup>28</sup> Draft Political Agreement, Second: Transition Issues and Tasks, para 1 (Mar. 27, 2023).

<sup>29</sup> Draft Political Agreement, chapter 4, Fourth: Regulatory Mechanisms, The Armed Forces, para. 4 (Mar. 27, 2023).

<sup>30</sup> Alice Hunt Friend, *Civilian Protection through Civilian Control: An Overlooked Piece of Security Sector Assistance in the Sahel*, CSIS, p. 4 (Dec. 2020).

<sup>31</sup> Geneva Centre for Security Center Governance (DCAF), *The Armed Forces: Roles and Responsibilities in Good Security Sector Governance*, p. 6 (2015).

<sup>32</sup> Draft Political Agreement, chapter 4 (March 27, 2023). The Security and Defense Council will include: (1) The Prime Minister; (2) The Commander-in-Chief of the Sudanese Armed Forces; (3) Commander of the Rapid Support Forces; (4) Minister of Defense; (5) Minister of Finance; (6) Minister of Interior; (7) Minister of Justice; (8) Minister of Foreign Affairs; (9) Federal Minister of Government; (10) Director General of General Intelligence; (11) Director General of Police; (12) Representatives of the signed armed struggle movements.

<sup>33</sup> See Geneva Centre for Security Center Governance (DCAF), *The Armed Forces: Roles and Responsibilities in Good Security Sector Governance*, p. 6 (2015).

The 2023 Draft Political Agreement lists the Security and Defense Council's responsibilities, including the preparation of a comprehensive national security strategy and ensuring coordination between state agencies on security issues; and recommending declarations of a state of emergency and declarations of war to the Council of Ministers.<sup>34</sup> The Security and Defense Council also is tasked with developing permanent plans to reform and develop defense and security institutions.<sup>35</sup> Under the 2023 Draft Political Agreement, the role of approving these plans for security and military reform belongs to the "transitional government," without further specification as to which part of the government.<sup>36</sup> To clarify the relationship between the transitional government and the Security and Defense Council, the final political agreement and transitional constitution could clarify the extent to which the transitional government relies on, or defers to, the recommendations of the Security and Defense Council. One option is to require consultation or impose a higher standard (for example, a supermajority vote requirement or legislative approval) for the transitional government to make plans that diverge from the recommendations of the Security and Defense Council. The Security and Defense Council may follow up on the implementation of these plans, aimed at establishing permanent, professional and independent defense and security institutions.<sup>37</sup> However, under the 2023 Draft Political Agreement, the implementation of these plans appears to fall within the purview of the armed forces themselves, without any express role for the Council of Ministers and the executive organs of the state such as monitoring or direction (apart from certain Ministers' roles as members the Security & Defense Council, which itself has the vague role of "following up" on implementation)."<sup>38</sup>

The 2019-22 Key Documents could further strengthen the civilian-led governance of the military by circumscribing the authority of the military in other

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<sup>34</sup> Draft Political Agreement, chapter 4 ("Preparing and developing a [ . . . ]comprehensive security strategy to protect the security of the Sudanese people;" "Recommending to the Council of Ministers to declare a state of emergency approved by the Council of Ministers in accordance with the provisions of the Constitution;" "Recommending to the Council of Ministers to declare war, which the Council of Ministers approves in accordance with the provisions of the Constitution;" "Developing permanent plans for the reform and development of defense and security institutions to support the will of the Sudanese people, and the objectives and provisions of the Constitution, by proposing policies that may be approved or approved by the competent authorities;" and "Ensuring the necessary coordination between the various state agencies with regard to [ . . . ] security issues.") (Mar. 27, 2023)

<sup>35</sup> Draft Political Agreement, chapter 4, Fourth: Regulatory Mechanisms, Security and Defense Council (Mar. 27, 2023).

<sup>36</sup> Draft Political Agreement, chapter 4, Fourth: Regulatory Mechanisms, The Armed Forces, para. 6(c) (Mar. 27, 2023).

<sup>37</sup> Draft Political Agreement, chapter 4, Fourth: Regulatory Mechanisms, Security and Defense Council (Mar. 27, 2023).

<sup>38</sup> Draft Political Agreement, Fourth: Regulatory Mechanisms, The Armed Forces, paras. 6(c) & 7 (Mar. 27, 2023).

respects. As discussed above, the 2023 Draft Political Agreement provides that the military shall not be used against the Sudanese people or involved in political affairs.<sup>39</sup> This could go further through statutory or constitutional rules establishing the conditions under which the military may act in a domestic context.<sup>40</sup> Methods of such control could include: (i) a statutory prohibition on domestic use of the military without legislative approval; (ii) the requirement that domestic military operations rely only on specially allocated funds approved by the legislature; and (iii) permanent restrictions on certain types of actions, such as forbidding the military to operate detention centers or rescind constitutionally protected rights outside the boundaries of the constitution as the 2019-22 Key Documents have started to contemplate.<sup>41</sup> The 2019-22 Key Documents and 2023 Draft Political Agreement could also further limit the ability of the Sovereign Authority to make structural changes during a state of emergency, to avoid the risk of repetition of the 2021 coup, the start of which involved, among other actions, an emergency declaration.<sup>42</sup> Current language requires that the Council of Ministers recommend a declaration of a state of emergency to the Sovereign Authority, but in the context of such a declaration does not prohibit the type of structural changes to the government made in 2021.<sup>43</sup>

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<sup>39</sup> Draft Political Agreement, Fourth: Regulatory Mechanisms, The Armed Forces, para. 4 (Mar. 27, 2023) (“The Armed Forces shall consist of the various components of the Sudanese people in a manner that takes into account their nationality, balance and representation without discrimination or exclusion, and shall be subject to the institutions of the Transitional Authority and shall not be used against the Sudanese people, nor shall they interfere in political affairs.”). As a different example, South Africa has taken another approach by restricting instead the role of the military—defining the mission of its military in such a way that involvement of the military in domestic politics would be illegal. REPUBLIC OF SOUTH AFRICA CONSTITUTION, Chapter 11, Section 199 (7) (1996) (“Neither the security services, nor any of their members, may, in the performance of their functions (a) prejudice a political party interest that is legitimate in terms of the Constitution; or (b) further, in a partisan manner, any interest of a political party.”).

<sup>40</sup> Geneva Centre for Security Center Governance (DCAF), *The Armed Forces: Roles and Responsibilities in Good Security Sector Governance*, p. 6 (2015); PILPG, *Post-Conflict Armed Forces Reform: Core Elements and Comparative State Practice*, p. (Mar. 2015) (discussing how Liberia requires the President, Ministry of Justice, and Ministry of Defense to allow domestic troop deployments); LIBERIA CONST., arts. 51, 54(e) (1986).

<sup>41</sup> Framework Agreement, p. 7 (Dec. 5, 2022) (forbidding the general intelligence services from maintaining detention facilities or detaining individuals); SUDAN TRANSITIONAL CONST., art. 74(7) (2022) (draft) (listing certain rights that the government cannot suspend even during a state of emergency).

<sup>42</sup> United States Department of State, *Sudan 2021 Human Rights Report*, COUNTRY REPORTS ON HUMAN RIGHTS PRACTICES FOR 2021, p. 1 (2021), available at [https://www.state.gov/wp-content/uploads/2022/03/313615\\_SUDAN-2021-HUMAN-RIGHTS-REPORT.pdf](https://www.state.gov/wp-content/uploads/2022/03/313615_SUDAN-2021-HUMAN-RIGHTS-REPORT.pdf).

<sup>43</sup> United States Department of State, *Sudan 2021 Human Rights Report*, COUNTRY REPORTS ON HUMAN RIGHTS PRACTICES FOR 2021, p. 1 (2021), available at [https://www.state.gov/wp-content/uploads/2022/03/313615\\_SUDAN-2021-HUMAN-RIGHTS-REPORT.pdf](https://www.state.gov/wp-content/uploads/2022/03/313615_SUDAN-2021-HUMAN-RIGHTS-REPORT.pdf).

A new civilian-led government can implement other policies to help ensure it exercises oversight of the military with broad-based civil support in addition to strong legislative authority. In South Africa for instance, the post-apartheid government ensured the involvement of civil society groups in military policy by including civil society groups in white paper drafting and in contributing to the Defense Secretariat, a civilian government organization that advises and sets policy programs for defense forces. Other initiatives could focus on transparency, such as opening legislative sessions to the public using television and internet to help civil society stay informed and participate in military oversight. In this regard, the 2023 Draft Political Agreement refers to public sessions of the Legislative Council being open to the public, but it could clarify further the requirements for particular sessions to be closed to the public, as well as the available methods of public access (e.g., TV or internet streaming).

### *Facilitating Effective Oversight by Other Civilian Institutions*

As described above, empowering elements of the civilian government other than the sovereign authority can help ensure broad-based civilian oversight of the military that is shared among various civilian groups. Implementing such oversight responsibilities in practice, however, requires expanding access to military information to the various civilian government organs. Ministers with key oversight responsibilities, such as the ministers of finance, interior and defense, will need to be familiar with key facets of the military, while the legislature and Council of Ministers would need reliable information—about the structure, size, financing, and resource needs of the military, for example—to make funding and policy decisions.<sup>44</sup> This requires developing clear policies that govern access to military information, including exceptions for classified or top-classified missions, for which information access may be restricted to a small group of civilian individuals.

Capacity building in improving civilian oversight will be key. Civilians, as well as military personnel, who possess expertise in military procedure and organization are an important resource in overseeing military conduct. Civilian specialists, especially retired military personnel, can play key roles in legislative oversight work, military justice systems, and financial management of military

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<sup>44</sup> Geneva Centre for Security Center Governance (DCAF), *The Armed Forces: Roles and Responsibilities in Good Security Sector Governance*, p. 6 (2015).



resources, all of which are part of an effective system of democratic civilian control.<sup>45</sup>

### *Regulating Military Involvement In Other Sectors*

Beyond civilian oversight and related potential legal constraints on the conduct or authority of the military, the Sudanese government could also define or circumscribe the role of the military in non-military sectors, and in particular the economy.<sup>46</sup> The 2019-22 Key Documents and the 2023 Draft Political Agreement propose limiting military involvement in commercial activities to situations with a military purpose, and the 2023 Draft Political Agreement specifically declares that the military is prohibited from engaging in investment and commercial activities, except for those related to military manufacturing and military missions, in accordance with the policy set by the transitional government.<sup>47</sup> The 2023 Draft Political Agreement further specifies that enterprises owned by the military will be subject to the supervision and control of the Ministry of Finance.<sup>48</sup> The precise scope of military manufacturing and military missions could vary depending on the policy of the transitional government or the Ministry of Finance.<sup>49</sup> Ensuring that these definitions have as narrow a scope as possible – in the transitional constitution, final political agreement or other legal documents – will help ensure that the military’s role in the economy is limited moving forward.

The proposed limitations on the military’s role in commercial activity could go even further. For example, the final political agreement could require that only military manufacturing and military missions that are approved by the Council of Ministers or by the transitional legislative council on a regular basis (for example, every two years), shall be exempt from the prohibition on military involvement in commercial activities. Separately, it could require military involvement in commercial activities for military manufacturing or missions to be overseen by an

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<sup>45</sup> Geneva Centre for Security Center Governance (DCAF), *The Armed Forces: Roles and Responsibilities in Good Security Sector Governance*, p. 6 (2015).

<sup>46</sup> PILPG, *A Survey of Legislation Reforming the Military in Post-Conflict States*, p. 16 (Jan. 2015).

<sup>47</sup> The 2023 Draft Political Agreement also prohibits the General Intelligence Service from practicing commercial and investment activities except within the framework of performing its duties, and prohibits the Police forces from practicing any investment or commercial business. See Draft Political Agreement, General Intelligence Services para. 2 (Mar. 27, 2023).

<sup>48</sup> See Draft Political Agreement, Fourth: Regulatory Mechanisms, The Armed Forces, para. 4; see also same General Intelligence Services, para. 2 (Mar. 27, 2023).

<sup>49</sup> See also SUDAN TRANSITIONAL CONST., art. 69(7) (2022) (draft) (“The Armed Forces shall be banned from conducting economic and commercial activities, except those related to military industry and military tasks, in accordance with the policy set by the transitional government.”)

independent entity, under civilian leadership, that is responsible for state defense enterprises.<sup>50</sup>

## **Conclusion**

Establishing a stable and effective system of democratic civilian oversight and control over the military will be critical to a lasting and peaceful political transition in Sudan. This memorandum has focused on enhancing and clarifying the role of the civilian sovereign authority in particular, and on strengthening the role of other civilian government branches in oversight of the military. By negotiating more specific terminology in defining the roles of the sovereign authority relative to military command, expressly regulating the military's power in military and non-military spheres, and expanding oversight and control powers of other civilian government institutions, a new transitional government could prospectively address potential sources of political instability by improving and securing the overall democratic civilian oversight control over the military.

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<sup>50</sup> Geneva Centre for Security Center Governance (DCAF), *The Armed Forces: Roles and Responsibilities in Good Security Sector Governance*, p. 5 (2015) (noting the need for control over defense budgets and oversight of use of public resources, and in particular supervision and oversight that can prevent corruption in the defense sector).