



Addressing Legal Challenges in Combating Enforced Disappearance in Sudan: Pathways to Comprehensive Human Rights Reform.

Definition of Enforced Disappearance: Enforced disappearance refers to the arrest, detention, kidnapping, or any other form of deprivation of liberty carried out by state agents or individuals or groups acting with the authorization, support, or endorsement of the state. This practice is typically followed by a refusal to acknowledge the deprivation of liberty or a concealment of the fate and whereabouts of the disappeared person, thereby denying them legal protection (Article 2 and the preamble of the International Convention for the Protection of All Persons from Enforced Disappearance).

In Sudan, enforced disappearance remains a grave violation of human rights and is frequently employed as a tool for political repression and conflict. The ongoing war between the Sudan Armed Forces (SAF) and the Rapid Support Forces (RSF) has led to an increase in such incidents.

This paper addresses the challenge of confronting enforced disappearance within the framework of Sudanese laws and legal institutions. It examines Sudan's legal structures in relation to human rights, assesses the effectiveness of existing legal measures, and explores the roles of both domestic and international legal mechanisms in combating this violation. Additionally, the paper highlights the obstacles to eliminating enforced disappearance and suggests potential paths for reform.

Introduction

Enforced disappearance occurs when individuals are abducted or detained by the state or its agents, followed by a refusal to acknowledge their fate or whereabouts. This practice leaves families in a perpetual state of uncertainty and constitutes a severe violation of various human rights, including the right to liberty, freedom from torture and exploitation, and the right to a fair trial all of which can ultimately lead to loss of life.

Sudan, with its history of political instability, internal conflict, and authoritarian rule, has experienced several cases of enforced disappearance, particularly during periods of civil unrest, government suppression of opposition, and following the violent dispersal of the General Command sit-in on June 3, 2019. This issue has persisted, especially after the October 25, 2021, coup against the civilian transitional government and the subsequent peaceful demonstrations demanding civilian rule. Following the outbreak of war on April 15, 2023, between SAF and RSF, reports from national organizations and international bodies have documented a rise in violations, including kidnapping, detention, and disappearance of individuals. Families have often been left uninformed about the circumstances of their loved ones' arrests, current whereabouts, or fates. None of the disappeared have been able to contact their families, lawyers, or representatives, and no party has claimed responsibility for their arrests.

Legal Framework in Sudan

1. **Constitutional Provisions:** The Interim National Constitution of 2005, adopted following the Comprehensive Peace Agreement, establishes a comprehensive framework for the protection of fundamental rights and freedoms. Article 27 (3) states that legislation will regulate these rights and freedoms without weakening them. Article 29 guarantees the right to personal freedom and security, while Article 33 prohibits torture and cruel, inhumane, or degrading treatment or punishment. The 2019 Constitutional Document further strengthens these rights. Article 46 (1) affirms the rights to personal freedom, security, and respect for human dignity. Article 51 prohibits torture and inhumane treatment or punishment, and Article 52 addresses the principle of a fair trial.
2. **Sudanese Criminal Law:** Article 186 of the Criminal Law addresses crimes against humanity and specifies that any individual who unlawfully imprisons others or severely restricts their physical freedom will be punished for violating fundamental principles of international humanitarian law. This article criminalizes actions related to enforced disappearance. However, while Sudanese law seeks to align with international law by incorporating crimes against humanity, it does not recognize criminal liability based on command responsibility or the accountability of higher officials. Recognizing such responsibilities is crucial for ensuring accountability for grave violations.

Despite the existence of Articles 161(1) and 162 of the Criminal Code, which address the luring of an insane person and the crimes of kidnapping and unlawful detention, respectively, the Criminal Code still lacks a specific definition or criminalization of enforced disappearance as an independent crime. Other legal provisions, including Articles 77, 81, and 83 of the 1991 Criminal Procedure Code, criminalize secret detention and offer some level of protection for detainees. However, the absence of an explicit reference to enforced disappearance complicates efforts to address its unique nature.

While the law provides some protections against enforced disappearance, these guarantees are frequently violated. Many individuals continue to be victims of enforced disappearance in various forms. This situation is exacerbated by a prevailing policy of impunity, as national laws grant procedural and substantive immunities to regular forces personnel. For instance, Article

45(1) of the Police Law, 2008, extends immunity from prosecution to police officers committing criminal offenses while on duty; individuals cannot be fully investigated or prosecuted unless their commanding officer relinquishes this immunity. Similarly, Article 34 of the Armed Forces Act of 2007 offers immunity for soldiers and officers acting in good faith during their duties, while Article 42(2) prohibits the investigation or prosecution of military judiciary officers without the Army Commander's approval.

These immunities undermine the right to an effective remedy, preventing victims of enforced disappearance and other human rights violations from accessing justice or seeking compensation and reparations. This remains true despite the legal reforms initiated by the transitional government after Al-Bashir's rule in 2019, which included amendments to the National Security Law that repealed Article 52—previously granting broad immunities to security service members. However, following the military coup on October 25, 2021, Emergency Order No. (3) and subsequent emergency orders granted extensive powers to security, police, and army personnel, enabling them to arrest individuals for a range of violations, including unlawful detention, enforced disappearance, torture, and other forms of ill-treatment, in clear violation of human rights obligations under international treaties ratified by Sudan.

Legal Regional and International Obligations

- Sudan has ratified several key international treaties, including the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, and the Convention on the Rights of the Child. Additionally, it has recently ratified the International Convention for the Protection of All Persons from Enforced Disappearance and the Convention against Torture. These treaties collectively prohibit torture, arbitrary arrest, and detention, and they establish essential rights such as the right to life, the right to a fair trial, and the right to legal recognition. However, significant loopholes and gaps remain in the implementation of these obligations.
- Regionally, Sudan is a party to the African Charter on Human and Peoples' Rights but has not met its obligations under this framework. Although the Banjul Convention does not explicitly address enforced disappearance, it includes several relevant articles aimed at its prevention. Furthermore, the African Commission on Human and Peoples' Rights has adopted various soft law instruments, such as the Robben Island Guiding Principles and the Luanda Guidelines, to assist states in developing measures to prevent and address violations related to enforced disappearance.

Enforced disappearance in Sudan remains a profound violation of human rights, often used as a tool for political repression amidst ongoing conflict. Despite Sudan's ratification of key international treaties and its recent legal reforms, significant gaps persist within national legislation, allowing impunity to flourish and depriving victims of justice and redress. This document has highlighted the inadequacies in Sudanese laws, particularly the absence of a specific legal definition of enforced disappearance, the lack of judicial independence, and the broad immunities granted to security and military personnel.

To effectively combat enforced disappearance, Sudan must prioritize comprehensive legal reforms that align with its international obligations and address systemic issues that obstruct accountability. Strengthening judicial independence, establishing preventive mechanisms, and ensuring adequate support for victims and their families are essential steps in this direction. Additionally, robust cooperation with international and regional bodies can provide the expertise and support needed to uphold human rights standards within Sudan.

The fight against enforced disappearance in Sudan requires sustained commitment from both national and international actors to promote justice, transparency, and human dignity. Only through a unified approach can Sudan hope to address this grave issue and work towards a legal and social framework that safeguards human rights for all.

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