



## Q&A: WHY SHOULD THE MANDATE OF THE FACT-FINDING MISSION (FFM) FOR SUDAN BE EXTENDED AT HRC57?

27 August 2024

Nearly 80 Sudanese, African, and international NGOs have [called](#) for the extension of the mandate of the Independent International Fact-Finding Mission (FFM) for Sudan, which the UN Human Rights Council established at its 54<sup>th</sup> regular session (through [resolution 54/2](#)), in October 2023.

This Question and Answer document seeks to address key questions that may arise as States

consider their position ahead of the Council's 57<sup>th</sup> session ([HRC57](#), 9 September-11 October 2024), during which the FFM will present a written report. The signatory organisations urge States to support a resolution that extends the FFM's mandate for at least one year.

### 1. WHAT IS THE SITUATION IN SUDAN?

Almost a year and a half after the start of the conflict, on 15 April 2023, **violations of international humanitarian law and human rights violations and abuses** continue to be committed by all parties to the conflict in Sudan. Some of these abuses constitute war crimes and [crimes against humanity](#).

[According](#) to the FFM, the conflict is characterised by its urban and widespread nature, “with civilians placed at the centre of extreme violence.” **Blatant disregard for international human rights and humanitarian norms** by both the Sudanese Armed Forces (SAF) and the Rapid Support Forces (RSF) and allies has led to both targeted and indiscriminate attacks, including airstrikes, on civilians and on hospitals and schools. Medical personnel, humanitarian workers, teachers, lawyers, journalists and human rights defenders have been targeted.

Warring parties have carried out looting, arbitrary detention, torture, enforced disappearances, and rape, gang-rape and other forms of [sexual violence](#), including [sexual slavery](#), as a tool of war to “subjugate, terrorise, break and punish

women and girls, and as a means of punishing specific communities.” In Darfur and elsewhere, the RSF and affiliated militias have [burned](#) houses and villages and committed atrocities against Massalit and other non-Arab communities. Human Rights Watch and other organisations have concluded that the **targeted atrocities** against the Massalit people and other non-Arab communities with the apparent objective of at least having them permanently leave the region constitutes [ethnic cleansing](#). The UN Under-Secretary-General and Special Adviser to the Secretary-General on the Prevention of Genocide [warned](#) that the “the situation today bears all the marks of risk of genocide, with strong allegations that this crime has already been committed.”

The conflict, which is fuelled by a constant flow of [arms](#), has resulted in a **grave humanitarian crisis**. Sudan is facing the [world's largest](#) internal displacement crisis, with over ten million people forcibly displaced from their homes, including more than two million who have fled to neighbouring countries.

## 2. HOW DOES THE GRAVITY OF THE SITUATION IN SUDAN CURRENTLY COMPARE TO THE SITUATION WHEN THE FFM WAS ESTABLISHED BY THE HRC?

In the time since the FFM was first authorised, in October 2023, **the human rights situation in Sudan has further deteriorated**. The geographic scope of the conflict, and accompanying violations of international humanitarian law, expanded from Darfur, Khartoum and Omdurman to include Gezira, Sennar, and White Nile. Now, more than 10 million people have been forced to flee their homes, more than in any other

country currently. At least 25 million people are facing crisis levels of hunger and five million are facing starvation. The warring parties have blocked the delivery of aid and prevented unfettered humanitarian access to the millions of civilians in need. According to [UN experts](#), “both the SAF and the RSF are using food as a weapon and starving civilians.”

## 3. WHY IS THE FFM AN ESSENTIAL PART OF THE INTERNATIONAL RESPONSE TO THE CRISIS?

- [A broad investigative and accountability mandate](#)

The FFM plays a crucial role to **support fact-finding, accountability, and truth and justice for the victims**. Its [mandate](#) includes investigating and establishing the facts, circumstances and root causes of all violations and abuses in Sudan; collecting, consolidating and analysing evidence; recording and preserving information; documenting and verifying relevant information and evidence; and identifying, where possible, those individuals and entities responsible with a view to ensuring that they are held accountable. The FFM's mandate also includes making recommendations, in particular on accountability measures, with a view to ending impunity and addressing its root causes. It is mandated to report to the UN Human Rights Council and General Assembly, and to cooperate and share best practice with other international, regional and domestic accountability initiatives.

The FFM is presently **the only international mechanism with the mandate, expertise and experience to independently investigate and report on violations** committed in the entire terri-

tory of Sudan since 15 April 2023, including their root causes. The International Criminal Court (ICC) has an ongoing investigation in Darfur, which includes crimes since April 2023, but it does not have jurisdiction outside of the region. In August 2024, the African Commission on Human and Peoples' Rights (ACHPR) adopted a resolution establishing a Joint Fact-Finding Mission (with the African Union (AU) Peace and Security Council). The Mission had not been operationalised at the time of writing, and it is not clear whether – and to what extent – it will have capacity to preserve the evidence collected (see section 5 below).

The FFM's collection and preservation of evidence functions, as well as its ability to identify those responsible, mean that it remains uniquely placed to establish the facts and advance accountability. It is complementary to regional efforts, including the recent ACHPR initiative, and it can work together with the ICC's investigations.

- [How can the FFM make a difference?](#)

**Impunity is at the heart of the current crisis** and of cycles of violence in Sudan. It is a key factor and a driver of violations. Although the ICC issued arrest warrants addressing crimes committed in Darfur as far back as 2003, only one case has been brought to trial so far. The failure to act on ICC arrest warrants and other steps to hold accountable those responsible for similar atrocities in the past, including 20 years ago in [Darfur](#), has encouraged parties to the current conflict to believe that perpetrating crimes ag-

ainst civilians is acceptable and would go unpunished. The current crisis shows that the absence of accountability for atrocities committed against civilians increases the risk of recurrence and undermines prospects for sustainable security and respect for human rights.

As impunity is a key driver of cycles of violence in Sudan, facilitating accountability is a *sine qua non* to fight and deter violations. In this regard, the work of the FFM also has a **preventive element** insofar as it preserves the prospects for

those who commit violations and abuses to be held to account.

The FFM's work to **collect and preserve evidence** minimises risks that such evidence will get lost due to a lack of investigations or intentional destruction, which would undermine prospects that victims and survivors can obtain justice in the future before national or international courts.

Alongside the ICC, the FFM is the only international mechanism that prioritises accountability, making a unique contribution to global efforts to address and find a long-term solution to the crisis. The FFM's work could also contribute to the exercise of universal jurisdiction before national courts.

#### 4. CAN THE FFM BE EFFECTIVE WITHOUT THE COOPERATION OF THE SUDANESE AUTHORITIES?

**Yes.** Over time, independent mechanisms established by international and regional human rights bodies have devised **methodologies, tools, and methods of work** to document, investigate and establish the facts, circumstances and root causes of violations, collect and preserve evidence, and identify perpetrators even without access to the territory of the country concerned. For instance, they have: (i) gathered first-hand information from victims, survivors, witnesses, and other key sources such as civil society actors, journalists, medical personnel, and UN agencies; (ii) conducted interviews with refugees and asylum-seekers in neighbouring countries; (iii) reviewed official documents and data; (iv) conducted remote monitoring; (v) analysed the legal and policy framework, as well as practices and patterns of violations; (vi) used open-source investigations; and (vii) used forensic analysis.

In recent years, commissions of inquiry and other independent mechanisms established by

the Human Rights Council have been able to produce detailed reports highlighting human rights violations and crimes under international law in, among others, Burundi, Myanmar, North Korea, Syria, and Yemen, and to attribute responsibility to perpetrators.

The Sudanese authorities' refusal to cooperate with the FFM and to grant it access **will not prevent the members and secretariat of the FFM from carrying out their work.**

This being said, Sudan's Council Membership comes with obligations, including to "uphold the highest standards in the promotion and protection of human rights" and to "fully cooperate" with the Council and its mechanisms. Non-cooperation should not be rewarded or accepted. Pressure for access, cooperation, and implementation of the FFM's recommendations should continue.

#### 5. WHAT OTHER MECHANISMS EXIST, AND WHY AREN'T THESE ENOUGH TO ADDRESS THE CRISIS?

- Existing UN and regional bodies and mechanisms

The various regional and international initiatives to address the crisis in Sudan and alleviate the suffering of the Sudanese people are important and complementary. Several UN and regional bodies and mechanisms have been involved, each with different mandates and responsibilities [*list not exhaustive*]:

- The **OHCHR country office** in Sudan (currently operating from Nairobi) has a broad [mandate](#) that includes monitoring, technical assistance and capacity-building. Its operations are based on an Agreement signed in 2019 between the UN High Commissioner for Human Rights and Sudan's Tran-

sitional Government. It does not, however, conduct investigations with a view to supporting current or future accountability processes.

- The High Commissioner's **Designated Expert** on human rights in the Sudan is [tasked](#), with the assistance of and in close cooperation with the OHCHR country office, with monitoring the situation in Sudan and engaging with all relevant parties on the developing situation of human rights since the military takeover of 25 October 2021. His work will conclude upon the restoration of Sudan's civilian-led Government. He

does not undertake investigations or collection and preservation of evidence.

- The UN Secretary-General's **Personal Envoy** for Sudan has focused on peace and security issues. He does not have a mandate to investigate violations or identify perpetrators, and at present his office does not include human rights, protection of civilians or conflict-related sexual violence expertise.
- The UN Security Council **Sudan Panel of Experts**, among other things, [assists](#) the Committee established pursuant to resolution 1591 (2005) in monitoring the implementation of the measures imposed by the Security Council and assesses progress towards reducing violations of the arms embargo and violations of international humanitarian law and violations and abuses of human rights. It does not have collection and preservation of evidence functions and does not prepare case files for prosecutions.
- The **AU High Level Panel on Sudan** works with all relevant Sudanese stakeholders to foster an all-inclusive dialogue aimed at bringing an end to the conflict and putting in place a process towards lasting peace in the country. It does not have a mandate to investigate violations or identify perpetrators.
- The **AU Peace and Security Council (PSC)** has adopted communiqués regarding the situation in Sudan, including [Communiqué 1218](#) of 21 June 2024. It focuses on peace and security, including protection of civilians. It has nonetheless supported investigations into violations including by the ACHPR. It has also mandated its Sub-Committee on Sanctions to lead on “identify [ing] all external actors supporting the warring factions militarily, financially and politically” and to “make proposals on how to contain each of them”.

#### ▪ The FFM’s distinctive focus on accountability

Investigative and other independent mechanisms are often established by decisions of UN or

- The **ACHPR** adopted resolution [Res.588 \(LXXIX\) 2024](#) in June 2024, in which it expressed “its willingness to join the efforts of the international community, and in particular those of the United Nations and its Human Rights Council” and envisaged “the dispatch of a fact-finding mission to the Republic of Sudan to investigate human rights violations and breaches of humanitarian law from April 15, 2023 to date.” On 2 August, it adopted resolution [Res.590 \(LXXX\) 2024](#), in which it decided to undertake a Joint Fact-Finding Mission with the AU PSC. Established for an initial period of three months, the Mission will operate in a hybrid format. It will conduct “an on-site investigation in a designated area of Sudan or neighboring States for [a] duration of two weeks, where possible.”<sup>1</sup> It will also work remotely for an additional two weeks. As a new mechanism, its capacity is yet untested, but the envisaged duration of the investigation potentially limits its depth and scope, and it is yet unclear whether – and to what extent – it will preserve the collected evidence to criminal courts’ standards.
- **Mediation efforts** aimed at a ceasefire and peace talks are ongoing. While the priority of political actors is an immediate ceasefire coupled with important endeavours to protect civilians and ensure unfettered humanitarian access, mediation, good offices, and similar initiatives have historically not had a focus on accountability, including holding those responsible for grave violations criminally accountable. Yet impunity is a key factor and driver of cycles of violence, and any long-term solution in Sudan must centre accountability for grave violations. The work of the FFM should therefore be seen not as separate from, but as complementary to, these efforts.

These do not preclude exploring regional and international **avenues for justice**, as well as the exercise of universal jurisdiction, wherever possible.

regional bodies to respond to crises or complex human rights situations. They play a crucial

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<sup>1</sup> ACHPR Resolution Res.590 (LXXX) 2024 adds: “Following the on-site investigation, the Mission will continue its work remotely for an additional two weeks. This arrangement will

occur within a three-month timeframe, which may be extended if necessary. At the end of each term, the Mission will issue a report on its activities.”

fact-finding role, publicly reporting on violations of international law by all parties. They document violations for evidentiary purposes, collect and preserve evidence, analyse the crimes documented, and, when possible, identify perpetrators and help advance accountability. They **conduct their work with a view to making the information collected usable in support of future accountability efforts** (including through domestic, regional and international processes or mechanisms), facilitating the preparation of case files for criminal proceedings in accordance with international standards and aiming for a standard of proof and evidentiary requirements (including regarding “linkage” evidence that connects specific crimes to perpetrators and the chain of custody for the evidence collected) as close as possible to those used by international judicial bodies. They can also play an important role towards transitional justice efforts that focus on truth-seeking and preserving a historical record.

Because it collects first-hand information on violations and testimonies from victims and sur-

vivors, their families, witnesses and others with direct knowledge of the situation in Sudan, such as refugees and human rights defenders, and because it relies on a multiplicity of sources, using methodologies in line with the practice of other investigative mechanisms, **the FFM for Sudan is uniquely placed to document not only specific instances of violations but also patterns of violations and responsibilities.** This includes identifying violations at the command responsibility level, establishing whether some types of violations have a widespread and/or systematic character, and showing how new violations are linked to previous cycles of violence and impunity.

Working with victims and survivors (recognising the harm they have suffered and their right to truth, justice and reparations), civil society, and networks, **the FFM is well placed to promote truth, justice, reparations, and guarantees of non-recurrence.** It also contributes to coherent global policy responses that integrate human rights issues into political, humanitarian, and other efforts.

## 6. COULD TECHNICAL ASSISTANCE FOR THE NATIONAL COMMISSION OF INVESTIGATION BE AN ALTERNATIVE TO THE WORK OF THE FFM?

**No.** The National Commission of Investigation is **not a credible alternative to the independent mandate of the FFM to document crimes by all parties to the conflict and to advance accountability for grave violations.** It does not have a mandate to establish the facts, including their root causes, of all violations and abuses in Sudan, to collect and preserve evidence, and to publicly report to the public, the UN, and the UN member states.

As indicated in the Sudanese authorities’ “Position Paper on the Oral Update Session by the Fact-Finding Mission on Sudan on 18 June 2024,” prepared ahead of the Council’s 56<sup>th</sup> session, the Sudanese authorities formed a National Commission of Investigation to “investigate the violations and abuses of the rebel [RSF] militia and other crimes,” with the Attorney-General as its Chair. This Commission was established by Presidential Decree No. 143 of 21 July 2023 and is entirely focused on violations by the RSF and its allies. It does not investigate violations committed by the SAF or other state entities or agents, and therefore does not act as an

independent check on executive power, especially when SAF itself is a party to the conflict.

In their Position Paper, the Sudanese authorities also claimed that “the principle of ‘complementarity’ should be applied so that the role of the Human Rights Council and its mechanisms is to complement, [foster] and build the capacity of the national mechanism under the provisions of [the Council’s agenda] Item 10.”

At the time of writing, the signatory organisations were **not aware of any public report** by the National Commission of Investigation, beyond the statement delivered by the Attorney-General at the interactive dialogue on Sudan that took place during the Human Rights Council’s 56<sup>th</sup> session, in June 2024. They were not aware, either, of any **victim or witness protection measures** taken by the National Commission, or of the existence of **specialised units or investigators** dealing with sexual violence or violations committed against refugees, women and children. These are clear differences with the FFM’s mandate as set out in Council resolution 54/2. The National Commission of Investi-

gation is conducting what are essentially SAF-led investigations into RSF abuses, lacking impartiality, independence, and credibility. It is not a structurally independent body with the mandate and means to be shielded from political interference. It does not address, either, deep-seated weaknesses in the judicial system, including interferences by the executive, inadequate victim and witness protection mechanisms,

systemic violations of fair trial and due process rights, and gender and ethnic biases. Nor does it address SAF abuses.

No amount of capacity-building would, for the above reasons, make the National Commission of Investigation a credible alternative to the impartial independent mandate of the FFM.

## 7. HOW HAS THE UN LIQUIDITY CRISIS IMPACTED THE WORK OF THE FFM?

As noted in the FFM’s first update to the Council, in June 2024, “[t]he liquidity crisis faced by the United Nations Secretariat and the hiring freeze [...] led to **several months of delay in establishing an effective Secretariat** for our work. [...] It is imperative to have adequate resources in order to effectively deliver on our important mandate.” When civil society released its [call](#) for the FFM’s extension, in May 2024 (seven months after the adoption of resolution 54/2), the FFM remained significantly under-staffed and was only expected to be reasonably functional (but still under-staffed) by the end of May 2024. It started its work, however, as outlined in its first update to the Council.

Nevertheless, for reasons that are beyond the FFM’s control (it has not been given the neces-

sary time and resources), the written report it will present at HRC57 will not be truly comprehensive. As the conflict and associated violations and abuses continue, **further investigations are needed**, including through field visits, to collect first-hand information and verify allegations of violations, some of which may amount to crimes under international law.

Furthermore, the Council should follow up on its resolutions S-32/1, 50/1, and S-36/1 by requesting **additional reporting by the High Commissioner**, with the assistance of his Designated Expert, beyond the Council’s 58<sup>th</sup> session (February-April 2025). Current reporting by the High Commissioner ends at the Council’s 58<sup>th</sup> session.

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