

SUDAN ALERT

Promoting civic space in Sudan:
priorities for the European Union



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About PAX

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Executive Summary

Sudanese civil society activists describe shrinking civic space in Sudan. Almost all Sudanese organisations working on human rights have been shut down, forced to flee and establish themselves outside of the country or have stopped working in conflict zones, while the government set up its own organisations to compete for these organisations' funding.¹ Non-governmental organisations (NGOs) in Sudan are required to register with governmental bodies including the Humanitarian Aid Commission (HAC), the Ministry of Culture and the National Council of training. This has intensified government scrutiny of civil society organisations (CSOs)² and regularly leads to restrictions to or bans on the work of NGOs and their personnel.³ Opposition figures and human rights activists are jailed, while the government responds with violence to demonstrations.⁴ The situation in Darfur remains an 'information black hole.'⁵ Amnesty International alleges the government of Sudan (GoS) used chemical weapons in Darfur as recently as September 2016.⁶ These allegations are all strenuously denied by the GoS.

1 After the media, Sudan's intelligence body clamps down on civic space from 'News.' Available at <http://www.civicus.org/index.php/media-resources/news/873-after-the-media-sudan-s-intelligence-body-clamps-down-on-civic-space>

2 Civic Freedom Monitor: Sudan from 'The International Center for Not-for-Profit Law', available at <http://www.icnl.org/research/monitor/sudan.html>

3 Sudan Report 2016 from Freedom House available at <https://freedomhouse.org/report/freedom-world/2016/sudan>

4 'Broad support for civil strike in Sudan, US warns of violence' Dabanga 18 December 2016. Available at <https://www.dabangasudan.org/en/all-news/article/broad-support-for-civil-strike-in-sudan-us-warns-for-violence>

5 Former EU Special Representative for Sudan and South Sudan Dame Rosalind Marsden, 'Sudan interview: Khalid Al Mubarak and Rosalind Marsden' Channel 4 News, 6 April 2017. Available at <https://www.channel4.com/news/sudan-interview-khalid-al-mubarak-and-rosalind-marsden>

6 'Sudan: Credible evidence of the use of chemical weapons to kill and maim hundreds of civilians including children in Darfur revealed' Amnesty International 29 September 2016. Available at <https://www.amnesty.org/en/latest/news/2016/09/sudan-credible-evidence-chemical-weapons-darfur-revealed/>

The European political discourse on Sudan, however, is of rehabilitation, bringing Sudan in from the cold after a period of isolation in the hope that the GoS may help stem migration to the EU in the short term. This rehabilitation is tinged with regret over particular incidents or the cases of individual human rights defenders, and the outstanding warrants from the International Criminal Court (ICC) for senior government officials, including the president, on charges of genocide, war crimes and crimes against humanity. For the European Union (EU) and its member states, all other policy concerns are subordinated to a migration agenda that prioritises engaging with governments and security services in the region to stem migration flows to Europe. The European External Action Service (EEAS) and European Commission (EC) seem willing to tie support for the GoS ambitions in relation to easing US sanctions and debt relief to progress in stemming migration to Europe, but not to the Treaty commitments to ‘the universality and indivisibility of human rights and fundamental freedoms’ in EU external action.⁷ Member states such as the UK, Germany and Italy also pursue bilateral relations marked by commercial interests and cooperation on security and intelligence.

In January 2017, the US provisionally lifted trade and economic sanctions against Sudan, to be reviewed in July 2017. This six-month period is an opportunity for leverage over the GoS, yet there is no evidence that EU officials are requiring anything more than participation in dialogue and progress on individual human rights cases. As important as these individual cases are, they are products of an environment in which rights and freedoms are systemically repressed. EU and member state officials describe seeing a surprisingly high number of women in parliament or ministries during a recent visit to Khartoum. This is not evidence of improved participation of Sudanese women in public and social life more generally. Some officials are sceptical of reports by respected human rights organisations and defenders, saying they require more evidence, while they do not seek similar evidence of concrete improvement in the human rights situation in Sudan as a whole, let alone in Darfur and the Two Areas. There is simply no credible evidence that the human rights situation – as a whole – is not deteriorating, or that civic space is not shrinking. Freeing certain individuals or appointing women to government positions do not necessarily amount to greater freedoms and certainly do not result in the legislative reform necessary to safeguard those freedoms. Yet for some officials, it seems the burden of proof lies with civil society organisations to prove the situation has deteriorated, rather than with the GoS to demonstrate that it meets its obligations to protect the rights and freedoms of the people coming under its jurisdiction. These EU and member state officials appear to require a far higher standard of evidence from those challenging the dominant discourse of rehabilitating the regime than from the regime itself.

Isolating the regime has not necessarily improved the lives of Sudanese people. Yet engaging with and rehabilitating the regime without the proof that the GoS takes responsibility to protect the rights and freedoms of all people in Sudan sends a clear message to abusive members of the regime and security services, to civil society, journalists and opposition activists that the EU and its member states can be held to ransom so long as regimes promise to reduce the number of migrants arriving in the EU.

The EU and its member states have considerable funds available from the European Development Fund (EDF) and the EC budget for supporting projects in Sudan. Development cooperation is channeled through the EU Emergency Trust Fund for Africa (EUTF) and includes a Special Measure for Sudan. Funding under the EUTF has been committed so quickly it draws

⁷ Treaty on European Union (2012) Article 21

into question how much local engagement there can have been in needs identification or project design, or ownership by local people and civil society. Oversight of the EUTF is opaque, even for member state officials who sit on the committee, making scrutiny of project selection and disbursement of public money extremely difficult. Combined with the significant concerns raised by civil society of the effect of migration programming on human rights and conflict dynamics in Sudan, this means that independent evaluation of the effects of EUTF programming on men and women in Sudan is pressing.

Some officials cite the engagement of CSOs in service delivery as a sign of positive progress however, funding CSOs to deliver services reduces the independence of those CSOs and their ability to determine their own political agenda. That is not to suggest CSOs cannot be involved in service delivery, but that when CSOs are mainly involved in service delivery, this is usually a sign of shrinking civic space. The restrictions placed on CSOs through the HAC, the Ministry of Culture and other government bodies also mean that EU officials must take care to consult independent, not government-backed CSOs.

The temporary lifting of US sanctions will be reviewed in July, and debt relief may come up for consideration in the coming years. The EU and its member states must use these opportunities to reiterate their commitment to the rights and freedoms listed in the Treaty and demand concrete, verifiable progress from the GoS on guaranteeing these basic freedoms and human rights as a pre-condition for supporting lifting sanctions or relieving debt.

Recommendations

1. The European Commission, EEAS, and representatives of the member states should **publicly commit to defending basic rights and freedoms – civic space – in all their dealing with the government of Sudan**, particularly in light of the review of lifting US sanctions and future considerations of debt relief. This includes:

A. Requiring the GoS to publish independently **verifiable evidence** that

- i. the human rights situation in Sudan, including in Darfur and the Two Areas, is improving; and that
- ii. the process has begun to bring about the necessary legislative reforms to protect the freedoms of speech, association and assembly, including lifting the provisions used to target and silence women activists.

B. Securing the release of civil society and opposition activists, bearing in mind that progress on individual cases does not necessarily reflect an improvement in the systematic repression of human rights and fundamental freedoms that make up civic space.

C. Conditioning any moves by the EU and its member states to support permanently lifting US sanctions or consider debt relief for Sudan on independently verifiable evidence that the human rights situation is improving and is set to improve through the implementation of key legislation, bearing in mind the need for specific measures to protect women activists.

D. Ensuring the appropriate **monitoring mechanisms are in place.**

- i.** The EC should clarify the mandate of EC Special Envoy for the Promotion of Freedom of Religion or Belief outside the European Union, underlining that religious freedom is placed in a broader context of human rights and fundamental freedoms for all, including women and marginalized groups.
- ii.** The EEAS should build on the visit of the Special Envoy for the Promotion of Freedom of Religion or Belief to Sudan with a visit by EU Special Representative for Human Rights, Stavros Lambrinidis, to engage in conversations with the Sudan authorities on shrinking space and underscore that the EU Treaty commits the EU to promote the human rights of all people.
- iii.** The EU should work with the United States to ensure that the mandate of the UN independent expert on the situation of human rights in the Sudan is renewed through the UN Human Rights Council, and that the relevant resolution is returned to its previous strength.

E. Guaranteeing funding through the EUTF for promoting human rights and fundamental freedoms and supporting independent civil society organisations, and ensuring that these concerns are mainstreamed across all EUTF-funded programmes in Sudan.

F. The EU Delegation in Khartoum **should engage with independent CSOs** both in and outside Sudan, and seek advice from reputable independent CSOs and experienced INGOs to help ensure that consultations are not infiltrated or dominated by government-backed groups.

2. Improving the performance of EUTF

The lack of transparency and oversight of EUTF is a cause for concern, particularly as large-scale projects have been funded quickly, suggesting that human rights considerations and local ownership may have been bypassed.

A. The EC should commission without delay **independent evaluations** of the projects funded under EUTF, paying specific attention to the extent to which they have affected, positively or negatively, the freedoms and human rights of the Sudanese people, particularly the most marginalized, and gender equality. The evaluations should also consider the sustainability of the intervention, including extent to which member state development agencies and consultancy companies have benefitted in comparison with the degree of local ownership, including through meaningful consultation with local civil society, and sustainable capacity building of the projects.

B. The European Court of Auditors should **conduct a full investigation** into whether or not funds from the EDF and/or EC budget have benefitted directly or indirectly abusive elements, formal and informal, within the Sudanese security system.

3. Strengthening provisions for civic space in EU external action

A. The **EUGS Implementation Plans and Communication on Resilience** should address explicitly the challenge of **protecting and promoting civic space, human rights and fundamental freedoms** in countries for which stemming migration is the EU priority.

B. In the discussions on the future of relations between the EU and the African, Caribbean and Pacific (ACP) states after the Cotonou Agreement expires, the **democracy and human rights provisions** within the agreement demanded by African and European civil society, **must not be watered down.** ♦

The changing context: civic space in Sudan

'Civic space' is understood to mean the combination of the freedoms to associate, of assembly and of expression⁸ as a prerequisite for Sudanese civil society to organize and to push for the changes that they see as necessary for reform and ultimately peace in Sudan. Given that many Sudanese and Sudanese civil society organisations (CSOs) that are not affiliated to the ruling elite have little access to funding, defence of these freedoms must also include the possibility of financial support, including from international actors and particularly, for this report, the European Union (EU). International actors like the EU may also provide some limited civic space by enabling CSOs to communicate indirectly with the authorities. CSOs should also be able to communicate directly with international actors and influence their policies towards Sudan.

Sudanese civil society played an important role in the negotiations for the post-colonial future of Sudan in the 1940s. After independence, civil society organisations worked for a range of civil, political, cultural, economic and social rights across the country. When President Al-Bashir came to power after the coup in 1989, he declared a State of Emergency that banned a large range of CSOs, political parties, labour unions and media outlets. A Human Rights Defender (HRD) interviewed for CIVICUS stated that by 2012 almost all the organisations working on human rights had been shut down, forced to flee and establish themselves outside of the country or had stopped working in conflict zones, while the government set up its own organisations to compete for these organisations' funding.⁹ Student demonstrators and journalists were met with

⁸ Definition from <https://monitor.civicus.org/whatiscivicspace/>

⁹ After the media, Sudan's intelligence body clamps down on civic space from 'News.' Available at <http://www.civicus.org/index.php/media-resources/news/873-after-the-media-sudan-s-intelligence-body-clamps-down-on-civic-space>

police violence when demanding political change and economic improvement in June 2012.¹⁰ From 2013, pressure on CSOs intensified especially after the clear growing popular discontent that showed itself during the September 2013 public protests. The government scrutinizes non-governmental organisations through government bodies such as the HAC, the Ministry of Culture and the National Council for training,¹¹ and which regularly restricts or bans the work of NGOs and their personnel.¹² Since 2016 and most recently in December 2016, opposition figures and human rights activists have been jailed, while the government responded to demonstrations with violence.¹³

The government is involved in ongoing conflicts in Darfur, Blue Nile and South Kordofan. President Al-Bashir and senior politicians Abdel Raheem Muhammad Hussein and Ahmad Harun, the Governors of Khartoum state and North Kordofan state, respectively, and a fourth man have been indicted by the International Criminal Court (ICC).¹⁴ The elections held in 2015 were not free or fair; civil society was excluded from the process and government and security forces routinely harass political opponents, particularly but not exclusively in the electoral period. Power and resources are concentrated in the hands of the governing elite in Khartoum, and Sudan is considered highly corrupt. In 2016, a freedom of information law was passed, but it is not enforced. Although the press is recognized as free in the Constitution, it is heavily controlled by the government, which also reportedly restricts internet access to reduce protest. There is little academic freedom, and private communication is monitored. Christian churches – particularly African churches – are demolished by national and state authorities, and are forbidden to rebuild.

Freedom of assembly and of association are provided for by the interim constitution and by law, yet 185 demonstrators, including children, were shot dead during demonstrations in 2013, and nearly 60 people were detained preemptively on the anniversary of the demonstrations. Although some women participate in public life, they face extensive discrimination in economic, political and personal spheres. Sudan is ranked 165th on the Human Development Index with a gender inequality index of 0.575 and a gender development index of 0.839 in 2016.¹⁵ Police use criminal code provisions prohibiting 'indecent and immoral acts' to prevent women from wearing clothes that they disapprove of, for example,¹⁶ thus limiting their participation in social and public life.

This paper focuses on what the EU and its member states can do through their engagements in Sudan outside the sphere of humanitarian assistance to protect or help expand civic space, particularly through supporting the basic freedoms and human rights of Sudanese men and women engaged in civil society. ♦

10 Bashir Regime Faces Growing Resistance as Protests Endure for Over a Week, blog 25 June 2012 available at <http://www.enoughproject.org/blogs/bashir-regime-faces-growing-resistance-protests-endure-over-week>

11 Civic Freedom Monitor: Sudan from 'The International Center for Not-for-Profit Law', available at <http://www.icnl.org/research/monitor/sudan.html>

12 Sudan Report 2016 from Freedom House available at <https://freedomhouse.org/report/freedom-world/2016/sudan>

13 'Broad support for civil strike in Sudan, US warns of violence' Dabanga 18 December 2016. Available at <https://www.dabangasudan.org/en/all-news/article/broad-support-for-civil-strike-in-sudan-us-warns-for-violence>

14 A fourth indictee, Ali Kushayb, is also still at large. https://www.icc-cpi.int/en_menus/icc/situations%20and%20cases/situations/situation%20icc%200205/Pages/situation%20icc-0205.aspx

15 United Nations Development Programme Human Development Reports 2016: Sudan Available at <http://hdr.undp.org/en/countries/profiles/SDN>

16 Sudan Report 2016 Freedom House. Available at <https://freedomhouse.org/report/freedom-world/2016/sudan>

EU political context

EU relations with Sudan were addressed in the earlier Sudan Alert and are only briefly summarized here.¹⁷ Before the so called EU refugee and migration crisis, it was difficult to detect 'an EU' approach to Sudan as member states were divided on whether and how to engage. They also had significant bilateral relations, which were often at odds with those of other member states. Sudan's strategic importance to the EU and its member states heightened as member state politicians wanted to reduce, and be seen to reduce quickly the number of refugees and migrants into their national constituencies. Fear of domestic criticism for not trying to reduce migration by engaging with a repressive regime outweighed the earlier risk of criticism for engaging with such a regime.

This is made explicit in a leaked restricted EC-EEAS non-paper, which noted that 'The EU should carefully consider the high reputational risk associated with its engagement with Sudan if exclusively focused on migration.' The non-papers recommendations refer to the limited civic space directly, again in relation to risk to the EU's reputation:

'The EU should carefully consider its reputational risks in its engagement with Sudan (ICC indictees in the country, ongoing violent conflicts, lack of political space and widespread human rights violations, US sanctions due to Sudan's status as a "state sponsor of terrorism").'

In addition to the funding being made available, the non-paper considers "Further positive incentives (such as discussions on ease of US economic sanctions, debt relief, effective cooperation on

17 The EU's Policy Options for Sudan PAX 2016. Available at www.paxforpeace.nl/media/files/pax-report-eu-sudan.pdf

counter-terrorism), could be provided to promote effective cooperation on return and readmission and fight against smuggling".¹⁸ The EC and EEAS are willing to apply conditionality to migration, but not to the Treaty commitments to protect human rights and fundamental freedoms, even after acknowledging the 'lack of political space and widespread human rights violations' in Sudan.

The EU's response to migration has changed not only the content of its foreign policy, but the institutions that shape it. EU migration policy is largely driven by the European Commission's Directorate for Migration and Home Affairs (DG HOME) and member state ministries of the interior, rather than the member states ministries of foreign affairs and for development cooperation, the European External Action Service (EEAS) or the Commission's Directorate-General for International Cooperation and Development (DG DEVCO), which are only marginally involved. EU-Sudan relations are also influenced by the conflict in South Sudan, state failure and the rise of ISIS and other extremist groups across the region, in which the Government of Sudan (GoS) is active.¹⁹

Beyond the priority of stemming migration to the EU, member states have difficulty prioritizing other Sudan-related issues, including its internal conflicts, let alone coming to a common position on which issues to tackle and how. The earlier Sudan Alert highlighted how pressing human rights and conflict prevention needs were being subordinated to an overwhelming desire from European states to reduce migration flows to the EU and that the tactics used, particularly in strengthening Sudan border management services risked increasing migration flows and exacerbating conflict. The concerns and recommendations raised in that earlier Sudan Alert remain valid at the time of writing this report.²⁰

A common mantra is that the donor community, the EU and its member states in particular, has little leverage in Sudan and 'it is essential to be aware of the limitations of aid in Sudan.'²¹ This point of view is challenged by some of the people interviewed for this report who clearly stated that the international community, including the EU have an opportunity at present to influence the actions of the Sudanese government. The EU may well have greater leverage now than it has had in previous years because the GoS is working hard to normalise relations with the US and Europe firstly to permanently lift the US sanctions lifted temporarily in January 2017 and to bereviewed in July 2017, and secondly as a first but important step towards debt relief. The EU

18 'Leaked: "non – papers" on migration, mobility and readmission with Ethiopia, Somalia and Sudan' 30 March 2016, Statewatch Available at <http://statewatch.org/news/2016/mar/eu-readmission-docs.html> Accessed 4 April 2017; Council of the European Union Joint Commission-EEAS non-paper on enhancing cooperation on migration, mobility and readmission with Sudan 7203/16 Brussels, 17 March 2016. Available at <http://statewatch.org/news/2016/mar/eu-comeeas-readmission-sudan-7203-16.pdf> Accessed 12 May 2017.

19 'Leaked: "non – papers" on migration, mobility and readmission with Ethiopia, Somalia and Sudan' 30 March 2016, Statewatch Available at <http://statewatch.org/news/2016/mar/eu-readmission-docs.html> Accessed 4 April 2017; Council of the European Union Joint Commission-EEAS non-paper on enhancing cooperation on migration, mobility and readmission with Sudan 7203/16 Brussels, 17 March 2016. Available at <http://statewatch.org/news/2016/mar/eu-comeeas-readmission-sudan-7203-16.pdf> Accessed 12 May 2017.

20 See, for example: Suliman Baldo April 2017 Border Control from Hell: how the EU's migration partnership legitimizes Sudan's 'militia state' Enough project. Available at <http://www.enoughproject.org/reports/border-control-hell-how-eus-migration-partnership-legitimizes-sudans-militia-state> ; Vivek Shah, April 2017 EU funds may worsen fate of refugees EU Observer. Available at <https://euobserver.com/migration/137489>.

21 Short Term Strategy 2016/17 for the implementation of a special support measure in favour of the people of the Republic of Sudan to be financed from the reserve of the European Development Fund' undated Europa website Available at https://ec.europa.eu/europeaid/sites/devco/files/ad-decision1-sudan-support-measure-2016_en.pdf Accessed 4 April 2017, p. 7

has leverage – but is choosing to use that leverage on migration related issues and choosing not to prioritise requiring the GoS to demonstrate verifiable and sustainable improvements in meeting its obligations to protect the rights and freedoms of the people coming under its jurisdiction.

This Sudan Alert examines EU policies, and those of member states active in Sudan, to identify opportunities for the EU and its member states to use its increased engagement to increase its leverage on the government of Sudan related to the issue of civic space – which, as we have seen, is very limited. ♦

Civic space in EU policies towards Sudan: overview

The Treaty on European Union states unambiguously that EU external action shall be guided by respect for 'democracy, the rule of law, the universality and indivisibility of human rights and fundamental freedoms, respect for human dignity, the principles of equality and solidarity'.²² So although the Treaty does not refer to 'civic space', it commits the EU to promoting the key components of the concept.

EU Human rights guidelines

The EU has numerous global instruments and policies to back up these Treaty commitments. One instrument is the EU human rights guidelines, although these are not legally binding. For the purposes of this report, the guidelines on Human rights defenders (HRD) (2008), on violence against women and girls and combatting all forms of discrimination against them (2008), to promote and protect the enjoyment of all Human Rights by Lesbian, Gay, Bisexual, Transgender and Intersex (LGBTI) Persons (2013) and on Freedom of Expression Online and Offline (2014) are probably the most directly relevant to shrinking civic space in Sudan. The guidelines on International Humanitarian Law (IHL) also remain relevant in the case of Sudan, of course, and not limited to commenting on President Al-Bashir's travel to States Parties of the ICC.

The guidelines on HRD encourage representatives of the EU and its member states to develop local strategies to implement the guidelines, paying particular attention to women human rights defenders, to organise annual meetings between HRD and diplomats to discuss the human rights situation, and

²² Treaty on European Union (2012) Article 21

to raise the situation of HRD with governments during political dialogues.²³ The guidelines also state that EU representatives are to promote gender equality in society more broadly, given that obstacles to exercising their socio-economic and political rights increase women's exposure to violence, and that women activists may be particularly targeted for violence, including sexual violence.²⁴ LGBTI individuals or organisations are often specifically targeted for violence or police harassment, frequently with the express intention to prevent their freedom of expression and assembly.

These guidelines underline the principle that human rights must be universal and enjoyed by all people equally, and that the EU should take steps to ensure that those rights are protected worldwide. In 2014, the EU also published guidelines that address directly the question of civic space, the EU Human Rights Guidelines on Freedom of Expression Online and Offline, in which

*'the EU reaffirms its determination to promote, in its external human rights policy, the freedoms of opinion and expression as rights to be exercised by everyone everywhere, based on the principles of equality, non-discrimination and universality. Through its external policy instruments, the EU intends to help address and prevent violations of these rights in a timely, consistent and coherent manner.'*²⁵

Note that the guidelines refer to the EU's external human rights policy, rather than its external action, which suggests that external human rights policy is somehow separate from, or perhaps subordinate to, external action.

The priority areas for action include:

- ◆ Combatting violence, harassment and intimidation of individuals, including journalists other media actors, because of their exercise of the right to freedom of expression online and offline, and combating impunity for such crimes;
- ◆ Promoting laws and practices that protect freedom of opinion and expression;
- ◆ Promoting media freedom and pluralism and fostering an understanding among public authorities of the dangers of unwarranted interference with impartial/critical reporting; and
- ◆ Promoting and respecting human rights in cyberspace and other information and communication technologies.

The EU is to make use of political dialogues and high-level visits; monitoring, assessing and reporting on freedom of expression; public statements and demarches; and all appropriate EU external financial instruments to further these objectives.²⁶

23 Council of the EU Ensuring protection – European Union Guidelines on Human Rights Defenders (2008) available at https://eeas.europa.eu/sites/eeas/files/16332-re02_08_en.pdf Accessed 4 April 2017.

24 Council of the EU EU guidelines on violence against women and girls and combating all forms of discrimination against them (2008) Available at https://eeas.europa.eu/sites/eeas/files/16173_08_en.pdf Accessed 4 April 2017.

25 Council of the EU EU Human Rights Guidelines on Freedom of Expression Online and Offline Available at <https://eeas.europa.eu/sites/eeas/files/142549.pdf> Accessed 4 April 2017

26 Rights Guidelines on Freedom of Expression, *ibid.*

Civic space in EU external action – the EU Global Strategy

The European Union Global Strategy (EUGS) commits the EU to ‘speak out against the shrinking space for civil society including through violations of the freedoms of speech and association’, as part of its approach to promote societal resilience. The EUGS defines state resilience as ‘the ability of states and societies to reform, thus withstanding and recovering from internal and external crises’ based on democracy, trust in institutions and sustainable development. The EU will promote human rights through dialogue and support, including in the most difficult cases²⁷ and through long term commitment to civil society.

The EU has not yet defined ‘resilience’ in either conceptual or operational terms, although the EEAS, DGs NEAR, DEVCO and for European Civil Protection and Humanitarian Aid Operations (ECHO) have launched a consultative process to formulate a coherent policy framework on resilience across the EU’s external action. A new Communication on Resilience is expected in mid 2017. There is a risk that this merely ‘reframes’ existing external action, but it also provides an opportunity to develop context-specific pathways out of situations of fragility and crisis²⁸ - as in the case of Sudan. The extent to which the necessary components of conflict- and gender-sensitivity, and protection of fundamental freedoms including of speech, association and assembly are central to the concept and to the EU’s intended actions remains to be seen.

The EU Emergency Trust Fund for Africa (EUTF)

The EU has two sources of funding for Sudan – the European Development Fund (EDF), and its own budget (through DEVCO instruments). The European Development Fund (EDF) is the financing mechanism of the Cotonou Agreement (discussed below). The EDF is not part of the EU’s budget; it is governed by a separate international agreement ratified by all the EU member states, and it is intended for the ACP countries and Overseas Countries and Territories only. Each member state contributes a certain percentage negotiated with each new fund. The current fund, the 11th EDF, was established in 2013 for the period 2014-2020 with €30 506 million. The largest contributors are Germany (20.1%), France (17.8%) and the United Kingdom (14.7%), which between them cover more than half of the budget.²⁹

As the GoS refused to sign or ratify the Cotonou Agreement, the GoS is ineligible for EDF funding. However, EDF funds have been made available for projects in Sudan through the EU Emergency Trust Fund (EUTF) for Africa. Funds from the EU budget, notably through the Development Cooperation Instrument (DCI) have also been channeled through the EUTF. Projects are often co-financed by member states. The Better Migration Management project, for example, aims to improve migration management in the region. It is implemented by five member states (Germany, France, Italy, the Netherlands and the United Kingdom), the International Organization for Migration (IOM) and the United Nations, with GIZ as the lead

27 Shared Vision, Common Action: A stronger Europe. A Global Strategy for the European Union’s Foreign and Security Policy (hereafter: EUGS), June 2016, pp. 15-17

28 V. Hauck ‘Will the new Communication on resilience help to make EU external action more effective?’ 17 March 2017 ECPDM website Available at <http://ecdpm.org/talking-points/new-communication-resilience-eu/> Accessed 4 April 2017.

29 Internal Agreement 11th EDF Official Journal of the European Union L210/1 6 August 2013 Available at https://ec.europa.eu/europeaid/sites/devco/files/internal-agreement-11edf-2013-2020_en.pdf Accessed 4 April 2017.

agency. The project has €40 million from the EU and €6 million from the German Federal Ministry for Economic Cooperation and Development (BMZ).³⁰

Sudan can benefit from the following components of the EUTF:

- ◆ The Special Measure of €100 million, to support the needs of vulnerable people through expanded and better education and health services, and improved livelihoods in areas affected by conflict and hosting large numbers of refugees, IDPs and returnees;
- ◆ A €15 million Regional Development and Protection Programme (RDPP) to support refugees and host communities in Eastern Sudan and Khartoum;
- ◆ A €40 million regional project to improve the capacity of countries along the Eastern Migratory Route to better manage migration;
- ◆ A €10 million regional project focusing on opening new channels for legal migration and mobility;
- ◆ €8 million in response to the El Niño crisis.³¹

OPPORTUNITIES FOR SUPPORTING CIVIC SPACE THROUGH THE EUTF

The contextual analysis in the Short Term Strategy 2016/2017 for the Special Measure identifies the occurrence of inter-communal conflict and risk of radicalization among the criteria used to select geographical clusters for multi-sectoral resilience action.³² Fundamental freedoms are not included in the criteria, although social and political exclusion are identified as a motivating factor for EU aid in Sudan. The Short Term Strategy also notes the hostility of the government towards accountability measures undertaken by civil society, so the Strategy aims to 1) support civil society in public policy planning, particularly at the local level, 2) enhance the capacities of local government to dialogue with citizens, and 3) to promote peacebuilding. 'Support to basic freedoms, media, youth, women and human rights monitoring' is included under the first objective, but emphasis clearly lies elsewhere. Of the €100 million available under the Special Measure, €64 million has already been committed, mostly to 'traditional' development projects such as health, education, food security and livelihoods.

The RDPP includes measures to increase social cohesion. This does not include measures explicitly intended to protect or expand civic space,³³ although arguably safeguarding civic space contributes to social cohesion. There seems to be less opportunity to support civic space

30 'Better Migration Management' GIZ website Available at <https://www.giz.de/en/worldwide/40602.html>

31 EU Delegation to Sudan EU Cooperation with Sudan undated available at http://ec.europa.eu/europeaid/eu-bilateral-development-cooperation-sudan_en Accessed 5 April 2017.

32 'Short Term Strategy 2016/17 for the implementation of a special support measure in favour of the people of the Republic of Sudan to be financed from the reserve of the European Development Fund' undated Europa website Available at https://ec.europa.eu/europeaid/sites/devco/files/ad-decision1-sudan-support-measure-2016_en.pdf Accessed 4 April 2017, p.6.

33 Regional Development and Protection Programme in Sudan: Enhancing alternatives to first and secondary movement from Sudan DEVCO website Available at https://ec.europa.eu/europeaid/trust-fund-projects/regional-development-and-protection-programme-sudan-enhancing-alternatives-first_en Accessed 5 April 2017

through the other migration projects and the response to El Niño crisis.³⁴

CIVIL SOCIETY AND THE EUTF

The paper questions the capacities of civil society organisations financially, strategically and administratively.³⁵ Civil society organisations globally frequently observe how difficult it is for national or local CSOs to access EU funds, which often require administrative capacity beyond the possible, particularly in fragile contexts. The Fund is implemented through partnerships with civil society, international non-governmental organisations (NGOs), international organisations and donor agencies from member states.

Only a few large international NGOs (INGOs) have the absorption capacity to manage EUTF funds directly, and national (and smaller international) NGOs are generally subcontractors to INGOs, donor agencies and international organisations. Engaging NGOs as implementers of donor projects and as partners with local government in providing services is consistent with the context analysis the document provides. Yet this approach also carries a significant risk that should be made explicit: that service delivery roles for NGOs can overshadow and exclude other critical roles for civil society at local and national levels that contribute, broadly speaking, to government accountability and longer-term reform, for which civic space is a prerequisite. Interviews for this report suggest that in some cases, engaging civil society in, for example, service delivery is seen as evidence of a functioning civic space when the evidence from other parts of the world suggests that concentrating local and national civil society actors in service delivery roles may be both a symptom of shrinking civic space – and therefore a survival strategy for some CSOs - and an obstacle to civic space expansion in the future.

THE CHALLENGES OF TRANSPARENCY AND OVERSIGHT OF THE EUTF

The EUTF's governance structure is difficult to navigate even for institutional insiders, and particularly when it comes to oversight. As the funds are from the EDF – even if they are not being used for usual EDF objectives - member states usually influence their use. The case of the EUTF is unusual because large amounts of money were allocated for a new political priority (migration) very quickly. In many cases, it seems that the usual procedures determining development aid and foreign policy were not followed within member state governments. Instead of policies and programmes originating at the working level and passing through different committee stages before reaching the ministerial level, the EUTF and the EU's migration strategies were determined largely from the ministerial levels, and higher.

The Council Conclusions of June 2016 are seen as a crucial policy - stating that 'The High Representative, including in her role as Vice-President of the Commission, will lead the implementation of this new approach and ensure close and effective coordination between the EU institutions and services and the Member States' and that 'All relevant instruments and sources of funding should be mobilised in a coherent manner in support of the approach set out

34 Council of the EU Council conclusions on 'Taking action to better manage migratory flows' Justice and Home Affairs Council meeting Luxembourg, 10 October 2014 Available at http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/en/jha/145053.pdf Accessed 5 April 2017; DEVCO The EU Emergency Trust Fund for Africa – Horn of Africa Window Actions in support of tackling irregular migration and forced displacement in the Horn of Africa within the EU Emergency Trust Fund undated Available at https://ec.europa.eu/europeaid/sites/devco/files/eutf-hoa-migration-support-paper-dec-2016_en_0.pdf Accessed 5 April 2017.

35 *ibid.* p16

above'.³⁶ Within the EU architecture, this statement appears to carry significant weight, and has reportedly been interpreted to subordinate all external action priorities, including human rights and freedoms, to the migration agenda. The Commission, and to a lesser extent the EEAS, has therefore more authority within the EUTF than for usual EDF funds, and member states that wish to see certain aspects included or enhanced, including references to human rights and civic space find they have little influence. An exacerbating factor in this case is that the EUTF is spread over different functions in the permanent representations (Africa, development, migration) meaning that it is difficult for representations to have a clear overview. The absence of a Council Working Group on migration exacerbates this.

The speed at which the migration policies and programmes have been unfolded also acts against effective oversight. As soon as the EUTF was announced, several member states were able to present programmes for immediate funding through national development agencies and consultancy companies, whereas other member states adopt a longer-term process of developing projects through consultation with partners and for implementation by local partners. The selection process for projects involves treating around 50 applications in one day, every four months or so, with the result that there is not enough time for members of the selection process to receive substantiated answers to questions concerning the governance, human rights or gender components of projects. The challenges of transparency and oversight mean that it is difficult for member states or civil society organisations to influence the funding decisions – such as increasing the funds made available to support civic space – or to hold the EUTF accountable, monitoring, for example, the extent to which the EU's commitments to protecting human rights in all external action are being met.

THE UNKNOWNABLE IMPACT OF THE EUTF FUNDED PROJECTS

There are reportedly no plans at the moment to evaluate independently the impact of projects funded under the EUTF, including in relation to reduced numbers of migrants. There is, therefore, a danger that significant EU aid will neither affect the lives of the 'beneficiaries' in any significant manner, nor reduce migrant numbers while at the same time (at best) failing to improve an environment in which dissent is silenced. Besides the effects on the affected populations, the effects of the EUTF in Sudan could set a dangerous precedent for future development aid and foreign policy in and with Sudan and for other countries in the future, whose governments may be able to play the migration, or similar, card. Technical level visits by EC officials, while a normal part of programme management, are no substitute for independent evaluation.

THE FUTURE OF THE EUROPEAN DEVELOPMENT FUND

Sudan did not sign the Cotonou Agreement because signatories are encouraged to ratify and implement the Rome Statute of the International Criminal Court (ICC).³⁷ The Agreement is due for revision. The effects of Brexit on the revision process, and indeed on the whole system of agreements between the EU and ACP states, is as yet unknown but could be considerable. It seems that France and the EC are keen to maintain some form of status quo, although presumably with a smaller budget as the UK currently contributes around 15% of European

36 European Council European Council meeting (28 June 2016) – Conclusions EUCO 26/16 Available at <http://www.consilium.europa.eu/en/press/press-releases/2016/06/28-euco-conclusions/>

37 European Commission The Cotonou Agreement (2000, revised 2005, revised 2010), Article 7 available at http://www.europarl.europa.eu/intcoop/acp/03_01/pdf/mn3012634_en.pdf Accessed 4 April 2017

Development Fund (EDF), Cotonou's financing tool. Officials in the EU and member states are privately concerned that the UK may not honour its existing agreements to contribute to the 11th EDF, depending on how Brexit negotiations play out, even before entertaining the possibility that the UK might contribute to the EDF close to or after Brexit. Germany, the Netherlands and Central European countries are reportedly keener for reform and aligning the EDF more closely with the EU budget.

Key articles such as article 8 on political dialogue and article 96 on sanctions are likely to be discussed in depth. They currently provide both a format and (in principle) a means of holding governments and the EU to account for respecting human rights. With current concern with the ICC on the African continent, the ICC commitment could be dropped or sufficiently weakened for even the current regime in Sudan to sign whatever replaces the Cotonou Agreement. Although Cotonou is not the only structure for political dialogue between the EU and ACP countries, weakening its content on democracy and human rights to enable regimes such as the Sudanese to sign would surely represent a significant step backwards for EU and ACP governments and civil society actors, and bring to the fore concerns that development aid is intended to shore up agreements between regimes rather than improve the lives of people.

Other funding instruments

In addition to the EDF, the EU also has at its disposal instruments that depend on the EU budget and managed by the EC.

At the continental level, the EU's Pan-African programme is a key financial instrument for implementing the EU-Africa Strategy, and receives €845 million (2014-2020) from DEVCO's DCI. The programme is largely EU-AU, and for trans-regional, continental and global projects rather than focused on specific countries. The Roadmap identifies democracy, good governance and human rights as priority area 2 and both organisations commit to defending human rights and to holding regular consultations on civil, political, economic, social and cultural rights.³⁸ The Programme's Multiannual Indicative Programme 2014-2017 includes a component on CSOs contribution to Good Governance and Human Rights, with the specific objective of strengthening the role of CSOs in promoting Democracy, Good Governance and Human Rights in Africa, with actions mostly focused on the continental level. The component is to be implemented by the UN, member states and CSOs through direct management or grants.³⁹

The Development Cooperation Instrument (DCI) thematic programme on global challenges also funds projects in Sudan. This addresses climate change, environment, energy, human development, food security and migration, within the larger poverty reduction objective. The majority of EU cooperation, including the DCI, is funneled through the EUTF and a search of the EU project database did not yield any results for support to civil society in Sudan.⁴⁰

38 Fourth EU-Africa Summit 2-3 April 2014 Roadmap 2014-2017 Available at http://www.africa-eu-partnership.org/sites/default/files/documents/2014_04_01_4th_eu-africa_summit_roadmap_en.pdf Accessed 5 April 2017.

39 Pan-African Programme 2014-2020 Multiannual Indicative Programme 2014-2017 Available at http://ec.europa.eu/europeaid/sites/devco/files/mip-pan-african-programme-2014-2017_en.pdf Accessed 5 April 2017, p.16

40 Available via the website of the EU Delegation, at http://ec.europa.eu/europeaid/countries/sudan_en?qt-node_tabs_country_=1#qt-node_tabs_country_

However, the Delegation in Khartoum also directly manages the DCI programme on support to civil society and local authorities (DCI CSO-LA), the EIDHR and the Instrument contributing to Stability and Peace (IcSP). The Delegation currently manages a portfolio of projects totaling nearly €2 million through EIDHR, €7 million through DCI CSO-LA, and around €5.6 million through IcSP. The projects' titles suggest that the majority of these projects would contribute to expanding or protecting civic space in a variety of ways. EIDHR funded projects specifically support strengthening women's human rights, and the rights of disabled minorities and both EIDHR and CSO-LA support strengthening civil society organisations.⁴¹

Other tools

There is no formal structured political dialogue between the EU and Sudan as with other ACP countries, as Sudan is not signatory to the Cotonou Agreement, and the outstanding ICC warrant against President Al-Bashir means that EU officials cannot engage in non-essential contact with him. Nonetheless, the EU Delegation reportedly has intense engagements and ongoing dialogue with other parts of the administration, notably the ministry of foreign affairs, in which difficult issues, including human rights and the cases of individual HRDs are discussed. It monitors human rights violations, cases of breaches of freedom of the press and of expression and supports, financially, the work of civil society activists in international fora. It seems that the rest of the EU machinery considers the EU Delegation as the key player for supporting human rights.

COUNCIL WORKING PARTY ON AFRICA

The Council Working Party on Africa (COAFR) visited Sudan, South Sudan and Ethiopia in March 2017 as part of its annual trip to Africa. There was no particular motivation for COAFR to visit Sudan then: in previous years, COAFR visited Southern and Central Africa so by 2017, COAFR was expecting to visit the Horn of Africa. The group, which included representatives of 15 member states, spent about 2.5 days in Khartoum. The group had a long exchange with officials from different ministries and raised the question of human rights, including the cases of specific activists, such as Madawi Ibrahim.⁴² Women's rights and empowerment were also discussed, and the group met representatives of women's associations. Participants at the meeting were pleasantly surprised at the government's apparent openness to improving the participation of women in public and social life, and a National Action Plan (NAP) for UN Security Council Resolution (UNSCR) 1325 has been drafted.

SPECIAL ENVOY AND REPRESENTATIVES

Jan Figel, Special Envoy for the Promotion of Freedom of Religion or Belief outside the European Union visited Sudan in March 2017. This Special Envoy position, unlike the EU Special Representatives, is a Commission appointment. The mandate is not published online,⁴³

41 Funding information received by email from the EU Delegation in Khartoum.

42 Dr. Mudawi Ibrahim Adam is an internationally recognized human rights defender who was the winner of the inaugural 2005 Front Line Defenders Award for human rights defenders. He is the founder and Chairperson of the Sudan Social Development Organization (SUDO). He is a Professor of Engineering at the University of Khartoum. On 7 December 2016 Dr Mudawi Ibrahim Adam was arrested. For updates on his situation check: <https://www.frontlinedefenders.org/en/case/mudawi-ibrahim-adam-detained>.

43 He was reappointed in April 2017.

and it is something of an unknown quantity. There is no report of the Special Envoy's meeting publicly available, and his staff was not available for interview for this report. The EU delegation in Khartoum published a press release after his visit, stating that he had met government officials, political, religious and civil society representatives. He called for the release of two Christian pastors (colleagues of a Czech pastor who was previously released after significant diplomatic intervention) and visited the human rights activist Mudawi Ibrahim in jail.⁴⁴ In his public statement, Envoy Figel appears to place religious freedom in its broader human rights context. The approach is open to interpretation. On the one hand, freedom of religion may be an entry point for broader human rights discussions with the GoS, and Figel's public statement suggests that there was dialogue on the subject. On the other, a focus on freedom of religion, especially from an EU envoy, may appear to limit EU interests to protecting the rights of Christians, rather than the broader population of different faiths and of none and the universal exercise of rights – including by women and LGBTI people. To counter this perception, it would be important for the EU Special Representative (EUSR) for Human Rights, Stavros Lambrinidis, to make a follow-up visit. The EUSR for the Horn of Africa also covers Sudan in his mandate, but no information is available on his work in and on Sudan. It seems his work is mainly confined to discussing with other envoys, and that his focus lies elsewhere in the region.

The discourse amongst EU policy makers and officials appears to be shifting across the board on Sudan, with an emphasis on improvements to women's participation in public life, for example, or the sporadic, rather than systematic nature of repressing basic freedoms. Some observe that young people growing up in Sudan today have not experienced civic space or dissent, and that they are also excluded from civic space by the older generations, although one could make the case that this should lead for greater support for CSO engagement in public life, and particularly the meaningful participation of young women. Others highlight entry points for dialogue with the GoS on specific subjects, such as the fate of individual HRDs or freedom of religion.

Bilateral Member State relations with Sudan

France, Germany, Italy, the Netherlands, Romania, Spain, Sweden and the United Kingdom are the member states with embassies in Khartoum. This is a good indicator of which member states have the most interest in Sudan, although the Romanian presence is reportedly more for historical reasons than current interest. Press releases also tend to refer to the EU and these states,⁴⁵ whereas usually the EU delegation or EEAS will speak for the EEAS.⁴⁶ This is unusual for EU statements on African states. At the EU policy level, the Visegrád group (Czech Republic, Hungary, Poland and Slovakia) have recently become more engaged with the Horn of Africa, although not Sudan specifically.

The UK, Germany, France and Italy have significant bilateral relations. Dutch relations have waned due to the ICC indictments. Sweden will adopt a new development strategy for Sudan,

44 EEAS 'European envoy on freedom of religion or belief: Sudanese partners open to dialogue on religious diversity' March, 2017. Available at https://eeas.europa.eu/headquarters/headquarters-homepage/24024/european-envoy-freedom-religion-or-belief-sudanese-partners-open-dialogue-religious-diversity_en

45 See for example, 'Joint Statement on Political Detentions and Newspapers' Censorship' 7 December 2016, EEAS website Available at https://eeas.europa.eu/headquarters/headquarters-homepage/16961/joint-statement-political-detentions-and-newspapers-censorship_en

46 By comparison, a brief survey of EU statements regarding DR Congo and South Sudan in 2016 shows that the EU spoke as EU, not EU and certain member states.

perhaps in late 2017. As is usual in EU foreign policy formulation, foreign policy priorities are driven by the national capitals and representatives in EU bodies, such as COAFR, are not necessarily aware of all bilateral engagements. They also cover the whole African continent. Different national ministries have different relations with third states, as is indicated below. While some of the relationships, particularly from ministries of foreign affairs and development cooperation tend to be relatively transparent and open to public scrutiny, others, particularly from ministries of defence and the interior may be less so. Most development cooperation policies and programmes run through national embassies, but embassies may not be aware of all bilateral relationships.

UNITED KINGDOM

Sudan is a UK human rights priority country, but the latest Department for International Development (DFID) strategy paper available online ended in 2014.⁴⁷ Ongoing DFID programmes address health, water and climate change. DFID also supports a local dialogue and partnership programme, helping people to collaborate on areas of concern (£12.2 million) and support to statisticians, including in civil society to provide evidence base to support policies that make economic growth more inclusive.⁴⁸

The UK has a 'strategic dialogue' initiated by the Director for Africa at the Foreign and Commonwealth Office (FCO) in 2016, which meets every six months. According to the FCO, the strategic dialogue focuses on UK-bilateral relations, the security situation in the region, from dealing with migration, to progress in ending Sudan's own internal conflicts and advancing economic growth and human rights.⁴⁹ At its most recent meeting, 'Both sides agreed to continue the regular dialogue on human rights between the two governments at all levels, including on the subject of trafficking in people.'⁵⁰ The UK also has a Special Representative to Sudan, who visited in 2016 to encourage inclusivity in the National Dialogue, amongst other issues.⁵¹ Officials from other EU member states suggest that the UK may be laying the groundwork for greater bilateral commercial ties with Sudan, particularly in light of Brexit. Trade certainly features on the FCO's Sudan blog, and a high-level UK trade delegation visited Sudan in early 2017 for bilateral talks,⁵² soon after the release of journalists Phil Cox and Daoud Hari. The journalists were arrested in December 2016 while investigating the claims of chemical weapons use in Darfur. They allege they were tortured by Sudanese security forces while in arbitrary detention, and bear eye-witness testimony to the detention of journalists and academics in Kober prison.⁵³

47 DFID Sudan Available at <https://www.gov.uk/government/world/organisations/dfid-sudan>

48 Development Tracker, Sudan Available at <https://devtracker.dfid.gov.uk/countries/SD/projects#page-1>

49 'UK-Strategic dialogue "It's good to talk"' blog by Chloe Hamborg 7 April 2016 Available at <https://blogs.fco.gov.uk/michaelaron/2016/04/07/uk-sudan-strategic-dialogue-its-good-to-talk/>

50 FCO 'UK-Sudan Strategic Dialogue Press Release' 19 April 2017 Available at <https://www.gov.uk/government/news/uk-sudan-strategic-dialogue>

51 'First visit by UK special representative to Sudan' blog 6 October 2016 Available at <https://blogs.fco.gov.uk/michaelaron/2016/10/06/first-visit-by-uk-special-representative-to-sudan/>

52 'Senior British delegation to arrive in Khartoum for bilateral talks' Sudan Tribune 27 March 2017. Available at <http://www.sudantribune.com/spip.php?article62020>

53 Phil Cox 'Kidnapped, tortured and thrown in jail: my 70 days in Sudan' Guardian 5 April 2017, Available at <https://www.theguardian.com/world/2017/apr/05/captured-in-darfur-south-sudan>

GERMANY

Germany also has significant bilateral relations with Sudan and, with Italy, was a key member state in pushing for greater engagement by the EU with the GoS. The German Federal Ministry for Economic Cooperation and Development (BMZ) finances projects on vocation education in East Sudan and reconstruction in Darfur, and the German Federal Foreign Office (AA) finances a multi-country programme on biosecurity, which includes Sudan. All of these are implemented by the German development agency, GiZ.⁵⁴ Germany also supports the “Sub-regional Small Arms Control Mechanism” process since its foundation in May 2012, predominantly through the Bonn International Center for Conversion (BICC), which currently deploys two international technical advisors to Sudan.⁵⁵ The German Parliamentary Committee on economic development visited Sudan in October 2016 to have ‘high-level discussions with Sudanese authorities on questions related to development and challenges emanating from migration’.⁵⁶

GiZ is also the lead implementer of the Better Migration Management project, funded by the EU Trust Fund and is being implemented in cooperation with and co-financing from five member states (Germany, France, Italy, the Netherlands and the United Kingdom) and with the International Organization for Migration and the United Nations. The project’s budget is €46 million (€40 million from the EU and €6 million from the BMZ).

The only German project that appears to address civic space directly is through the Friedrich Ebert Stiftung works on socioeconomic reform and the promotion of human rights, peace and democracy in Sudan.⁵⁷

FRANCE

France seems more cautious in engaging with the GoS than the UK, Germany or Italy. Unlike the UK and Germany, France only engages on the technical, not political levels. Its aid passes primarily through the EU and through UN agencies.⁵⁸ It does however support projects through the Fonds d’appui à la Société Civile du Sud (FASCS) to build the capacity of Sudanese CSOs and to support projects that further human and women’s rights.⁵⁹

ITALY

The Italian Directorate General for Development and Cooperation (DGDC) (part of the Ministry of Foreign Affairs and International Cooperation) carries out projects funded by the DGDC or the EUTF through a Local Technical Unit in Khartoum, supervised by the Italian embassy. Besides humanitarian aid, the LTU’s projects address health, education, rural development.

United States

The US is a key actor in Sudan, with significant leverage. In January 2017, the US provisionally lifted trade and economic sanctions against Sudan, in April, Sudan participated for

54 GiZ website Available at <https://www.giz.de/en/worldwide/24880.html>.

55 German Embassy Khartoum website Available at <http://m.khartoum.diplo.de/Vertretung/khartoum/en/Startseite.html>

56 German Embassy Khartoum website Available at <http://m.khartoum.diplo.de/Vertretung/khartoum/en/Startseite.html>

57 Friedrich Ebert Stiftung <http://www.fessudan.org/pages/english/fes-sudan/fields-of-activities.php>

58 French embassy Khartoum website Aide au développement Available at <https://sd.ambafrance.org/L-aide-au-developpement-de-la>

59 French embassy Khartoum website, Appui à la société civile et aide humanitaire Available at <https://sd.ambafrance.org/Le-soutien-aux-initiatives-et>

the first time in Africom, the US Africa Command, interpreted as ‘the first step to remove Sudan from the terror list.’⁶⁰ The director of the National Intelligence and Security Services has recently visited the headquarters of the Federal Bureau of Investigation (FBI) and the Central Intelligence Agency (CIA),⁶¹ suggesting that the benchmark of most interest to the US administration is that concerning intelligence cooperation on counter-terrorism – and indeed, the CIA’s biggest office in the region is reportedly in Khartoum.⁶² The US is also the penholder for resolutions on Sudan in the UN Human Rights Council, and the GoS has long resisted the appointment of the UN independent expert on the human rights situation in the Sudan. This mandate comes up for renewal in 2017, and extension of that mandate will be an important signal for the human rights community. However, the US, EU and other like-minded states will have to work to strengthen the mandating resolution, after the GoS succeeded in weakening it in 2016. The unknown quality of the Trump administration poses a challenge for EU and member state diplomats. Besides the indications that counter-terrorism cooperation will be high priority, the administration does not yet have a Special Envoy for Sudan or an Assistant Secretary for Africa in the State Department, so it is not clear what the overall message of the administration is. This confusion is compounded by concerns that the US will cut funding, both directly to projects in Sudan and to the UN bodies.

Paris Club

According to the International Monetary Fund (IMF), Sudan is a pre-decision point heavily indebted poor country (HIPC), which is eligible for debt relief under the HIPC Initiative, but has not met the necessary qualifications to join the scheme, not least normalizing relations with its creditors.⁶³ 75% of its debt is with bilateral creditors, with just under 50% of bilateral debt with Paris Club states (which includes 12 EU member states).⁶⁴ Its high levels of debt – 61% of GDP in 2015, according to the IMF⁶⁵ - means that it can only raise further debt from non-Paris Club states. In 2013, the Dutch government announced a €150 million provision in its 2014 budget for debt relief for Sudan, and the German government also expressed some willingness for debt relief. Both governments emphasized the importance of peace and security in Sudan, but relief has not been forthcoming. Most recently, France has reportedly agreed to support the government in its calls for the US sanctions on Sudan to be lifted.⁶⁶ Many EU member states, including those like Austria, which no longer maintain an embassy in the country, are creditors to Sudan, so debt relief might present an opportunity for increasing pressure for political reform. However, at the moment, EU member states seem to be more interested in using this leverage to stem migration. ♦

60 ‘Participation in AFRICOM meeting “step to remove Sudan from terror list”: spokesperson’ Sudan Tribune 17 April 2017. Available at <http://www.sudantribune.com/spip.php?article62215>

61 ‘NISS Chief Meets CIA and FBI Leaders’ Sudan Vision 28 April 2017 Available at <http://news.sudanvisiondaily.com/index.php/new-posts/local-news/6365-niss-chief-meets-cia-and-fbi-leaders>.

62 ‘CIA office in Khartoum is the largest one in the Middle East: official’ Sudan Tribune 1 February 2017 <http://www.sudantribune.com/spip.php?article61539>

63 International Development Association, International Monetary Fund Heavily Indebted Poor Countries (HIPC) Initiative and Multilateral Debt Relief Initiative (MDRI) - Statistical Update March 15, 2016 Available at <http://pubdocs.worldbank.org/en/12861460039083955/Statistical-Update-2015.pdf> Accessed 4 April 2017, p.3.

64 IMF Sudan: Staff Report for the 2016 Article IV Consultation—Debt Sustainability Analysis June 25, 2016 Available at <https://www.imf.org/external/pubs/ft/dsa/pdf/2016/dsacr16324.pdf> Accessed 4 April 2017.

65 IMF *ibid*.

66 ‘Sudan calls on France to support debt relief efforts’ Sudan Tribune March 22, 2105. Available at <http://www.sudantribune.com/spip.php?article54363>

The Risks of Normalizing relations with Sudan

The Sudanese government strenuously denies allegations of torture and arbitrary detention of journalists and academics⁶⁷ and other human rights violations. The GoS is not, of course, monolithic yet the power and reach of the intelligence and security services remain a serious concern. These are funded extravagantly through the national budget, while many Sudanese and migrants rely on international humanitarian assistance for survival and meeting their basic needs. The overweening power of the security services directly affects civic space. The security services control access - the situation in Darfur is an 'information black hole.'⁶⁸ There are serious allegations of abuse, including the use of chemical weapons in Darfur as recently as September 2016,⁶⁹ not to mention the outstanding ICC warrants.

The UK is apparently strengthening its bilateral relations with Khartoum. Italy and Germany also seem to push a similar line, and both have commercial interests in Sudan, and migration is a key domestic concern in both. The discourse is not so different among EU officials. EU and member state officials note that the GoS is willing to discuss even difficult issues, like human rights and basic freedoms, and demonstrate to visitors apparent progress on women's participation in public life. Officials are sceptical of reports by respected human rights

67 'Channel 4 News filmmakers reveal six week ordeal in Sudanese detention' Channel 4 News, 5 April 2017. Available at <https://www.channel4.com/news/sudan-kidnap-detention-abduction-darfur-philcox>

68 Former EU Special Representative for Sudan and South Sudan Dame Rosalind Marsden, 'Sudan interview: Khalid Al Mubarak and Rosalind Marsden' Channel 4 News, 6 April 2017. Available at <https://www.channel4.com/news/sudan-interview-khalid-al-mubarak-and-rosalind-marsden>

69 'Sudan: Credible evidence of the use of chemical weapons to kill and maim hundreds of civilians including children in Darfur revealed' Amnesty International 29 September 2016. Available at <https://www.amnesty.org/en/latest/news/2016/09/sudan-credible-evidence-chemical-weapons-darfur-revealed/>

organisations and defenders, saying they require more evidence yet they seek no similar evidence of concrete improvement in the human rights situation in Sudan as a whole, let alone in Darfur and the Two Areas. Madawi Ibrahim is still in jail despite numerous high-profile visits and calls for his release. There is simply no credible evidence that the human rights situation – as a whole – is improving, or that civic space is not shrinking.

Funding CSOs to deliver services reduces the independence of CSOs and their ability to determine their own political agenda. That is not to suggest CSOs cannot be involved in service delivery, but that when CSOs are mainly involved in service delivery, this is usually a sign of shrinking civic space. The restrictions placed on CSOs through the HAC and other government bodies also mean that EU and member state officials must take care to consult independent, not government-backed CSOs.

The six month period between the provisional lifting of US sanctions in January and the review of the same in July is frequently cited as an opportunity for leverage over the GoS, yet there is no evidence that EU counterparts are requiring anything more than participation in dialogue and progress on individual human rights cases. As important as these individual cases are, they are products of an environment in which rights and freedoms are systemically repressed. The presence of a certain number of women in parliament or ministries cannot be extrapolated to women of different socioeconomic, ethnic or religious groups. Freeing certain individuals or appointing women to government positions do not necessarily amount to greater freedoms and certainly do not result in the legislative reform necessary to safeguard those freedoms. Yet officials appear to require a far higher standard of evidence from those challenging the dominant discourse of rehabilitating the regime than from the regime itself. The EU and its member states have the opportunity to demand concrete, verifiable progress from the GoS on guaranteeing basic freedoms and human rights as the US sanctions are reviewed in July, and as the question of debt relief comes closer.

Isolating the regime has not necessarily improved the lives of Sudanese people. Yet engaging with and rehabilitating the regime without the proof that the GoS takes responsibility for its obligations to protect the rights and freedoms of all the people coming under its jurisdiction sends a clear message to abusive members of the regime and security services, to civil society, journalists and opposition activists that the EU and its member states can be held to ransom so long as regimes promise to reduce the number of migrants arriving in the EU.

The impact of the EU's migration programmes on the lives of real people cannot yet be known, and must be independently evaluated to establish whether the high-speed, high-priority, high-stakes gamble of its programming has indeed reduced the numbers of migrants over the medium- to longer-term and at what human cost. ♦

Recommendations

1. The European Commission, EEAS, and representatives of the member states should **publicly commit to defending basic rights and freedoms – civic space – in all their dealing with the government of Sudan**, particularly in light of the review of lifting US sanctions and future considerations of debt relief. This includes:

A. Requiring the GoS to publish independently **verifiable evidence** that

- i. the human rights situation in Sudan, including in Darfur and the Two Areas, is improving; and that
- ii. the process has begun to bring about the necessary legislative reforms to protect the freedoms of speech, association and assembly, including lifting the provisions used to target and silence women activists.

B. Securing the release of civil society and opposition activists, bearing in mind that progress on individual cases does not necessarily reflect an improvement in the systematic repression of human rights and fundamental freedoms that make up civic space.

C. Conditioning any moves by the EU and its member states to support permanently lifting US sanctions or consider debt relief for Sudan on independently verifiable evidence that the human rights situation is improving and is set to improve through the implementation of key legislation, bearing in mind the need for specific measures to protect women activists.

D. Ensuring the appropriate **monitoring mechanisms are in place.**

- i. The EC should clarify the mandate of EC Special Envoy for the Promotion of Freedom of Religion or Belief outside the European Union, underlining that religious freedom is placed in a broader context of human rights and fundamental freedoms for all, including women and marginalized groups.
- ii. The EEAS should build on the visit of the Special Envoy for the Promotion of Freedom of Religion or Belief to Sudan with a visit by EU Special Representative for Human Rights, Stavros Lambrinidis, to engage in conversations with the Sudan authorities on shrinking space and underscore that the EU Treaty commits the EU to promote the human rights of all people.
- iii. The EU should work with the United States to ensure that the mandate of the UN independent expert on the situation of human rights in the Sudan is renewed through the UN Human Rights Council, and that the relevant resolution is returned to its previous strength.

E. Guaranteeing funding through the EUTF for promoting human rights and fundamental freedoms and supporting independent civil society organisations, and ensuring that these concerns are mainstreamed across all EUTF-funded programmes in Sudan.

F. The EU Delegation in Khartoum **should engage with independent CSOs both in and outside Sudan, and seek advice from reputable independent CSOs and experienced INGOs to help ensure that consultations are not infiltrated or dominated by government-backed groups.**

2. Improving the performance of EUTF

The lack of transparency and oversight of EUTF is a cause for concern, particularly as large-scale projects have been funded quickly, suggesting that human rights considerations and local ownership may have been bypassed.

A. The EC should commission without delay **independent evaluations** of the projects funded under EUTF, paying specific attention to the extent to which they have affected, positively or negatively, the freedoms and human rights of the Sudanese people, particularly the most marginalized, and gender equality. The evaluations should also consider the sustainability of the intervention, including extent to which member state development agencies and consultancy companies have benefitted in comparison with the degree of local ownership, including through meaningful consultation with local civil society, and sustainable capacity building of the projects.

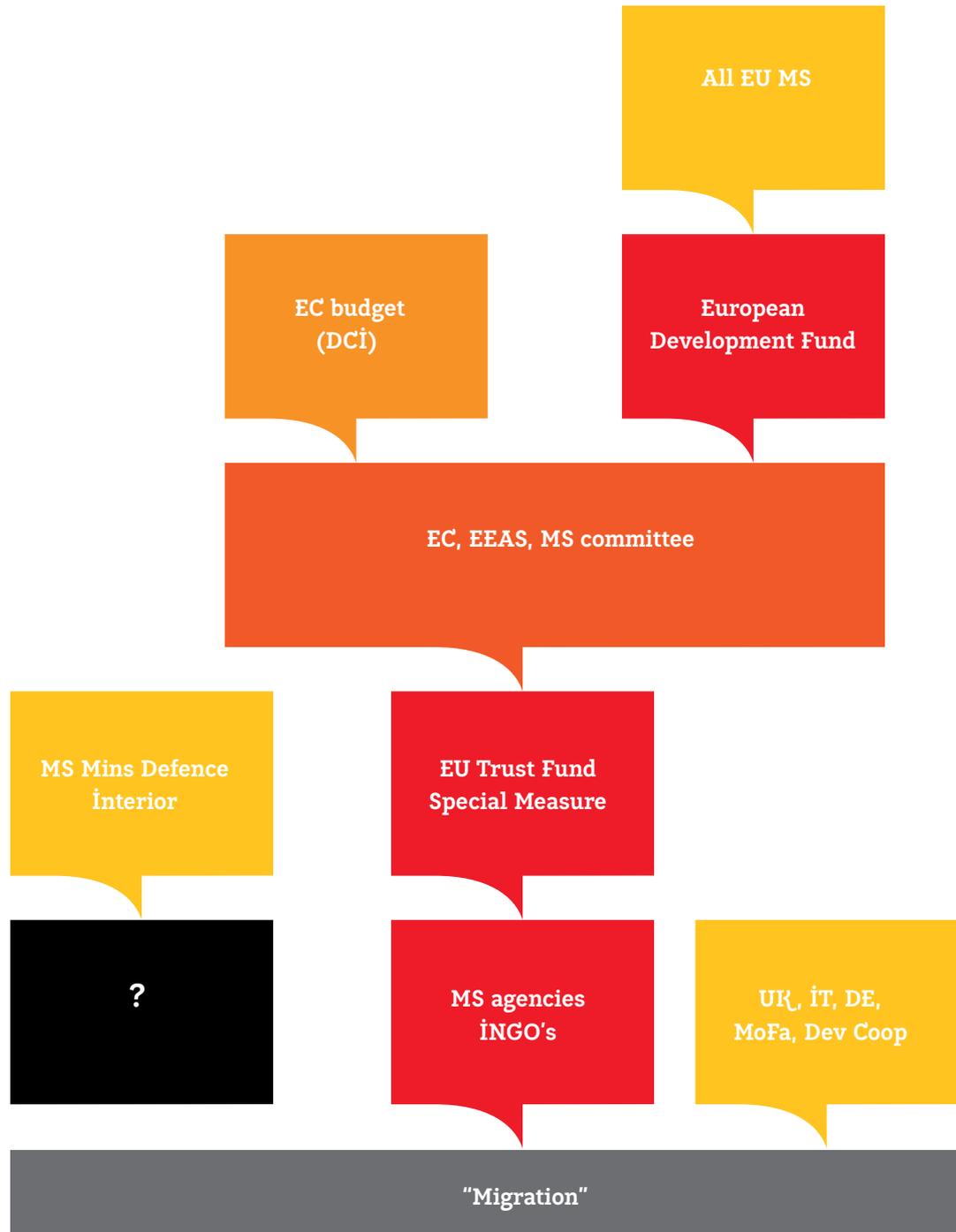
B. The European Court of Auditors should **conduct a full investigation** into whether or not funds from the EDF and/or EC budget have benefitted directly or indirectly abusive elements, formal and informal, within the Sudanese security system.

3. Strengthening provisions for civic space in EU external action

A. The **EUGS Implementation Plans and Communication on Resilience** should address explicitly the challenge of **protecting and promoting civic space, human rights and fundamental freedoms** in countries for which stemming migration is the EU priority.

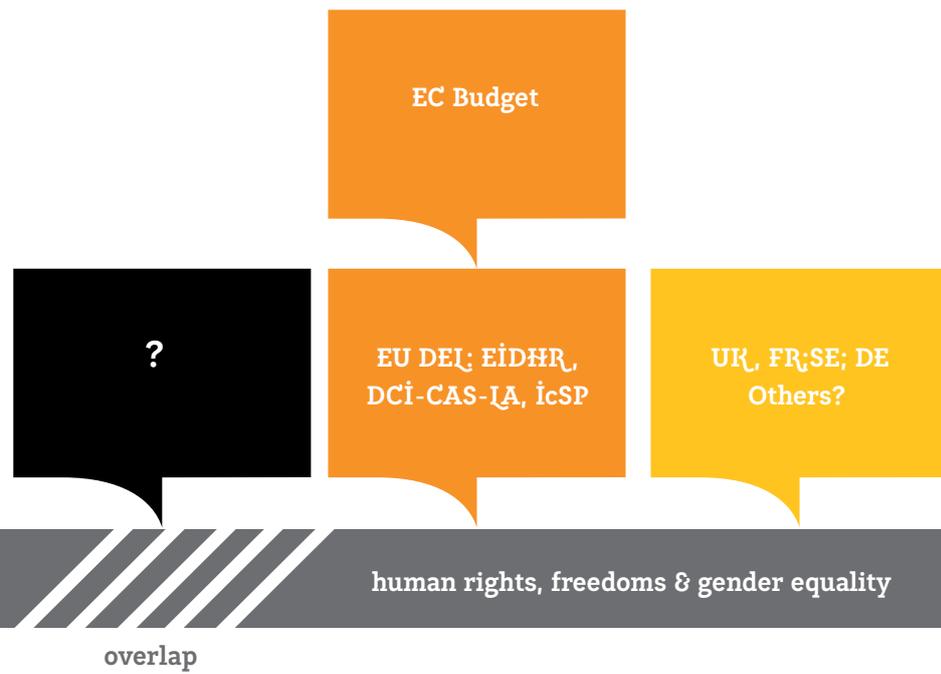
B. In the discussions on the future of relations between the EU and the African, Caribbean and Pacific (ACP) states after the Cotonou Agreement expires, the **democracy and human rights provisions** within the agreement demanded by African and European civil society, **must not be watered down.** ♦

Annex



Simplified chart of EU funding in Sudan

- Legend
- Policy objectives
 - EC budget
 - Non EC budget
 - Member States





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