

Legislating in Sudan

The Transitional Period

In December 2018, Sudanese protesters [took to the streets](#) to demonstrate against a [cut to bread subsidies](#) in what ultimately became a nationwide, peaceful movement calling for the end of Omar al-Bashir's regime. In January 2019, civil society organizations led by the Sudanese Professionals Organization [signed](#) the Declaration of Freedom and Change, establishing the Forces for Freedom and Change coalition to represent the protest movement. Following months of demonstrations, the military [seized power](#) from al-Bashir on April 11, 2019. Protesters and organizers on the ground continued to call for civilian-led, democratic rule. On June 3, 2019, armed forces carried out a [massacre](#) of demonstrators, which [mobilized](#) protesters even further until the Transitional Military Council finally agreed to [share](#) power with the Forces for Freedom and Change on July 5, 2019.

In the weeks thereafter and following international mediation, the Transitional Military Council and Forces for Freedom and Change [negotiated](#) the [Draft Constitutional Charter of 2019](#) and [signed](#) the document on August 17, 2019. Soon after its formation, the civilian-military government entered into [peace talks](#) with several rebel factions. On October 3, 2020, the parties [signed](#) the [Juba Peace Agreement](#), which amended the Charter and incorporated rebel leaders into the transitional coalition. The Draft Constitutional Charter, as amended, serves as Sudan's interim constitution and roadmap for the country's transition.

Legislative Authority in the Hands of the Executive

Article 25(1) of the Draft Constitutional Charter [stipulates](#) that a Transitional Legislative Council is to serve as Sudan's legislature for the 39-month transitional period. Article 24(4) sets a ninety-day [deadline](#) for the formation of the Council. However, in October 2019, that deadline passed; and [following repeated delays](#), the Council still has not been created. As a result, the Sovereignty Council and Cabinet, which together serve as the current executive branch, also control Sudan's legislative authorities.

The Cabinet comprises up to 20 ministers and the prime minister. The 14-member Sovereignty Council is [composed of](#) five civilians from the Forces for Freedom and Change coalition, five military leaders from the Sudanese Armed Forces and Rapid Support Forces paramilitary, one member approved by both civilian and military authorities, and three rebel leaders [incorporated pursuant](#) to the [Juba Peace Agreement](#). The chair, General Abdel Fattah al-Burhan of the Sudanese Armed Forces, serves as the head of state. General Mohamed Hamdan Dagalo (known as Hemetti) serves as deputy chair and is a commander of the Rapid Support Forces paramilitary that has been [implicated](#) in war crimes in Darfur. Despite promises to select a second civilian deputy, one has not been announced.

In the [absence](#) of a legislative body—as is currently the case—the Sovereignty Council and Cabinet are to jointly [adopt](#) the Transitional Legislative Council's authorities, pursuant to Article 25(3) of the Draft Constitutional Charter. The process for drafting and approving laws is as follows: First, the ministry with jurisdiction over the relevant area of law [drafts](#) and sends it to the Ministry of Justice for revisions. The legislation is then referred to the Cabinet. The Cabinet then has sole [authority to introduce](#) draft laws for consideration before a [joint session](#) of the Cabinet and the Sovereignty Council. This joint session then [debates](#) the proposed legislation and enacts it with a vote by [consensus or, in the absence of consensus, a two-thirds supermajority](#) under Article 25(3) of the Draft Constitutional Charter. The process, in practice, has lacked transparency as debates are not publicly broadcasted and draft bills are rarely shared with the general public.

An Absence of Constitutional Review

The Draft Constitutional Charter establishes a Constitutional Court with judicial review authorities over laws and measures under Articles 21 and 31(1). However, like the Transitional Legislative Council, the Constitutional Court has yet to be [created](#), leaving Sudan without an independent judicial mechanism to review the constitutionality of legislative and executive measures.

In October 2019, the Sovereignty Council [appointed](#) Nemat Abdullah Khair as President of the Constitutional Court and Chief Justice of the Supreme Judicial Council after her nomination by the Forces for Freedom and Change, but in May 2021, the Sovereignty Council [removed](#) her. The Council has not appointed a replacement or justified her removal.

In theory, the Supreme Judicial Council [appoints](#) members of the Constitutional Court under Article 29 of the Draft Constitutional Convention, and the Sovereignty Council then confirms them under Article 12. However, the Supreme Judicial Council has also not been formed, and its formation [requires](#) confirmation by the Sovereignty Council under Article 12(1)(e).

The Significance

Designating separate and complementary authorities to the executive, judicial, and legislative branches contributes to a system of checks and balances. The separation of powers allows each branch of government to contribute to building a system of governance in an institutionalized and transparent process, preventing any branch from amassing excessive power and encouraging mutual accountability between governing bodies.

However, the failure of Sudanese authorities to create the necessary legislative and judicial bodies stipulated by the Draft Constitutional Charter has resulted in the concentration of legislative power in the hands of two executive bodies and in the absence of constitutional judicial review.

Executive control of legislative power should be temporary, limited in scope, and severely restricted, because the executive bodies are not necessarily trained in or equipped to draft the laws that could be foundational during a period of transition. The executive power also represents a different set of interests, both by design and in light of the significant military representation built into the Sovereignty Council. The current situation puts Sudan at risk of seeing laws passed that improperly concentrate control in the hands of the executive, that arbitrarily restrict citizen rights, and that fail to take the necessary steps toward progress in the transitional plan—be it the creation of necessary bodies or the eventual administration of elections.

Furthermore, there is no shortage of constitutional concerns in the transition process, during which a Constitutional Court is necessary to play a central review role. Prominent political figures have, for example, questioned the constitutionality of key government decisions, such as the Juba Peace Agreement's [constitutional amendments](#) and the [formation](#) of the [Council of Partners for the Transitional Period](#), an extra-constitutional executive body with [heavy military representation](#).

Looking ahead, it will be essential to monitor how the executive branch implements its legislative authorities and what steps it takes toward creating the bodies and mechanisms necessary to realize a transparent, accountable, and just system built on checks and balances. ■

