



ماعت للسلام والتنمية وحقوق الإنسان
Maat For Peace, Development, and Human Rights

Transitional Justice Approach to Achieving Political Stability in Sudan



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Introduction

The events of the Sudanese environment intersect not only with the contents and processes of transitional justice, but also the requirements of justice, peace and development, and human rights obligations, being an inevitable result of Sudan's changes and transformations at the political, economic, social and security levels. Starting from its independence in 1956, passing through its revolutionary uprisings in December 2018, and concluding with the bloody clashes between the State's military components represented by the Sudanese army, on the one hand, and the Rapid Support Forces (RSF), on the other, on April 15, 2023.

Based on the importance of strengthening political stability, and as a result the establishment of basic human rights rules, and believing in the role of transitional justice in laying the foundations for stability in all its forms and manifestations, Maat for Peace, Development and Human Rights issues a new study entitled “**Transitional Justice: An Approach to Political Stability in Sudan**”, through which Maat seeks to develop a conceptual root for “Transitional Justice” and analytical monitoring of the facts and epics of Sudanese transitional justice, monitoring the mechanisms for achieving it and drawing a map of civil society's interventions.

It is noteworthy that this study is issued by Maat in conjunction with the activities of the **75th session of the African Commission on Human and Peoples' Rights**, as Maat observed during its participation in the session a clear interest from the African mechanism in the escalating Sudanese crisis, through holding side events and special sessions on ways to achieve political stability in Sudan.

First: Concept of Transitional Justice

The terminology of transitional justice is promoted and researched by societies that are trying to rebuild themselves and move on from a violent history replete with human rights violations, especially after the end of World War II and the Cold War; as it revolved around the idea of criminalization, international trials, truth and compensation commissions, and its definitions varied.

For the United Nations, Transitional Justice comprises “the full range of processes and mechanisms associated with a society's attempt to come to terms with a legacy of large-scale past violations and abuses to ensure accountability, serve justice, and achieve reconciliation.” Legal and academic circles defined Transitional Justice as “the process of responding to violations in a systematic or expanded manner in the scope of human rights with the aim of verifying recognition of the suffering of victims of violations that occurred against them and also enhancing the possibility of achieving reconciliation, peace and democracy.” Moreover, it was defined as “the set of judicial and non-judicial measures

that have been implemented by various states in order to address the legacy of gross human rights violations. These measures include prosecutions, truth commissions, reparations programs and various forms of institutional reform.”¹

In light of the above, **it is clear that transitional justice is a process of adapting the application of justice** in a way that suits societies that are undergoing democratic transitions following a period of expansion and spread of human rights violations whether the aforementioned transitions took place in the long term or suddenly. These processes may include both judicial and non-judicial mechanisms, including truth-seeking, prosecution initiatives, reparations, and various measures to prevent the recurrence of new violations, including constitutional, legal and institutional reform, the strengthening of civil society, memorialization efforts, cultural initiatives, the preservation of archives, the reform of history education, recognition of victims’ rights, encourages civil trust, and strengthens the rule of law and democracy.²

Second: Forms of Transitional Justice in Sudan

Transitional justice appeared in its new Sudanese edition with the uprisings of the Sudanese revolution in December 2018, under the slogans “Justice, Freedom, Peace.” The problems of its application ranged from the transition from a dictatorial government to a democratic one, the peaceful settlement of the eastern Sudanese issue, the implementation of the final agreement between the military and civil parties, peace, security and military reform, and the review and dismantling of the government of June 30, 1989, “the rule of President Omar al-Bashir.” Its first edition took shape with the formation of the former Attorney General, “Maulana Taj Al-Sir Ali Alhiber”, several investigative committees, the approval of the Anti-Corruption Committee Law, the dismantling of the government of June 30, 1989, the formation of the Transitional Justice Commission, the reform of the Human Rights and Justice Commission, and the creation of a law on the principle of transitional justice.³ **In the midst of this, the contents and features of transitional justice in Sudanese contexts can be monitored and analyzed as follows:**

A. Constitutional Document

The Constitutional document signed by the Sudanese civil and military actors on August 17, 2019 constituted a basic constitutional and legal reference for the first transitional justice; **where its provisions** approved a formula for sharing the temporary power by forming the Sovereign Council with military and civilian membership, forming a

¹ OXFORD ACADEMY, transitional justice, November 2022, <https://academic.oup.com/ijtj>

² UNHR, OHCHR: Transitional justice and human rights, Access date may 2023, <https://bit.ly/41RoUou>

³ UNITAMS, UNITED NATIONS INTEGRATED TRANSITION ASSISTANCE MISSION IN SUDAN, access date 17 May 19, 2023, <https://bit.ly/42RAPE9>

transitional civilian government for a period of 39 months, and addressing the issue of peace with the armed movements within 6 months of its signing.

B. Juba Peace Agreement

Since its signing in October 2020, the Peace Agreement between the transitional government and the Revolutionary Front organizations, consisting of 14 armed movements, has attempted to re-establish and strengthen transitional justice within another 39 months; it included 8 protocols related to the Darfur region, and one for the Blue Nile and South Kordofan regions, as well as protocols for eastern, central and northern Sudan, and approved the involvement of peace parties from the armed opposition at all levels of the transitional authority, and the integration of the forces of the movements into the Sudanese army, according to the security arrangements protocol, in addition to compensating war victims and resettling displaced persons and refugees.

C. Framework Agreement

The Sudanese Framework Agreement, signed on December 5, 2022 by the military and civilian components under the auspices of Britain, the United States, the UAE and Saudi Arabia, and with the support of the United Nations, the IGAD and the African Union, represented a new roadmap for transitional justice and an attempt to absorb its previous stumbling blocks; where the final agreement included five main axes: transitional justice, security and military reform, reviewing and evaluating the peace agreement, dismantling the Brotherhood organization and the path of eastern Sudan, and approved the formation of a caretaker government until elections are held after 24 months, and decided to hand over the transitional authority to a civilian authority without military participation, and the integration of the Rapid Support Forces and the armed movements forces into the army within a security and military reform plan that leads to a single professional and national army.

Third: Problems of Applying Sudanese Transitional Justice and its Indicators

Those who follow the history of Sudan will notice the extent to which transitional justice is far from Sudanese contexts. Where **the first attempts to achieve transitional justice faltered** as a result of security complexities, imbalances of national integration, and unconstitutional political changes such as the coup of General “Ibrahim Abboud” in 1958, the coup of officers led by Jaafar an-Nimeiry in 1969, the general civil disobedience uprisings in 1985, and the coup in 1989 led by “Omar Hassan al-Bashir” with the support of the Islamic currents,⁴ and the secession of southern Sudan from its north in 2011, and the second attempts faltered due to political divisions, conflictual interactions, and

⁴ Al Jazeera, Sudan, from the fall of the regime to the fall of the state, April 23, 2023, <https://bit.ly/3Wk8GTG>

military clashes between the Sudanese actors from the Sudanese army and the Rapid Support Forces after the popular revolution uprisings in December 2018 against Al Bashir government.

In the context of the second attempt, the provisions of the constitutional document quickly faltered as a result of the political dissonance and lack of trust between the military council and the forces of freedom and change, the complexities of negotiation with the armed movements, and the pitfalls of completing the institutional structures: legislative and transitional, which were completely assassinated by the exceptional decisions of "Abdel Fattah al-Burhan" in October 25, 2021, which dissolved the government of "Abdalla Hamdok", imposed a state of emergency in the country, and froze the work of the Committee for Removal of Empowerment of the Rescue System.

Juba Peace Agreement was also not welcomed by all political forces and actors, including the Sudan Liberation Movement led by Abdul Wahid Muhammad Nur in Darfur, and the People's Movement led by Abdel Aziz Al-Hilu. The framework agreement did not establish a practical settlement of the ongoing disputes over how to integrate armed elements into the regular army, where the framework agreement severely raised inter-disputes between the same military parties from the Sudanese army and the Rapid Support Forces, until ended in fighting and military collisions and clashes with the Rapid Support elements lining up near vital locations in the capital, Khartoum.

On April 15, 2022; Fighting broke out in Khartoum between the Sudanese Armed Forces and the paramilitary Rapid Support Forces. The fighting quickly spread to other parts of the country and reached West Darfur, South Darfur, North Darfur, South Kordofan, North Kordofan, Blue Nile, Kassala and the Red Sea.⁵

All Sudanese endeavors and aspirations regarding transitional justice has stopped, with Sudan becoming a war zone filled with bombs, planes and explosive weapons, marked with low security, humanitarian and human rights environment, filled with violations of killing, displacement, asylum, insecurity, sexual violence, gender-based violence, damage to vital infrastructure and increasing humanitarian needs, **which can be monitored in as follows:**⁶

Clashes spread between the conflicting Sudanese parties in more than 12 states out of 18 Sudanese states, killing at least 700 people and wounding more than 5,200 since the beginning of the fighting. Hence, the number of people in need of humanitarian assistance

⁵ RW, Sudan: Revised Humanitarian Response Plan 2023 (Revision issued on 17 May 2023), <https://bit.ly/41NfGte>

⁶ OCHA, SUDAN Situation Report Last updated: 17 May 2023 (Archive), <https://bit.ly/3Oq2lnX>

increased from 15.8 million, estimated in (November) 2022, to 24.7 million in (May) 2023, which represents an increase of 57%, and estimating the needs and humanitarian response to Sudan at more than \$3 billion as the conflict enters its second month.

In addition, an estimated 736,200 people have been **displaced** within Sudan, including 368,000 children. Approximately 68% of the IDP population is from Khartoum State, not to mention the presence of approximately 3.8 million IDPs in the past. An estimated 220,000 people **have fled** to neighboring countries - mainly to Egypt, South Sudan, Chad, Ethiopia and the Central African Republic, including an estimated 82,000 children.

More than 1.14 million **refugees** from South Sudan, Chad, Central African Republic, Ethiopia, Syrian Arab Republic, Eritrea and other nationalities are affected, and suffering nearly 3 **million children** under the age of five because of malnutrition, including more than 610,000 with severe acute malnutrition and the disruption of treatment programs for 50,000 children suffering from severe acute malnutrition, putting their lives at risk and the destruction of supplies needed to treat 14,500 children. Indeed, education has been affected with the continued closure of schools and educational institutions in the conflict-affected areas of Khartoum, Gezira, South Darfur, West Darfur and West Kordofan, with nearly 6.9 million children out of school before the conflict. The national immunization program has been disrupted amid an ongoing polio outbreak and many cold chain facilities have been looted, damaged or destroyed, including the loss of more than 600,000 vaccines intended for children.

The political crisis also affected severe **food insecurity** rates, bringing them to 19.1 million people in the next three to six months, especially in West Darfur, West Kordofan, Blue Nile, Red Sea and North Darfur.

Given the health infrastructure crisis, 61 percent of health facilities in Khartoum are closed and only 16 percent are operating as usual, leaving millions of people without access to health care. More than 25 attacks on health facilities have also been monitored, 61% of health facilities in Khartoum have been closed, stored blood and medicines have deteriorated due to power outages, and an estimated 219,000 pregnant women in Khartoum suffer from severe difficulties in obtaining basic prenatal care, or safe delivery services, or postpartum care.

Not to mention the increase in reported cases of sexual violence, especially among the displaced, who are on the move in search of shelter and safety. Services and supplies against gender-based violence have been severely affected, especially in the states of Khartoum, Blue Nile and Darfur states. As 76 organizations were providing services related to gender-based violence in Sudan before the conflict, 3.1 million women and girls

were monitored at risk of gender-based violence, including due to disruption of services as a result of the conflict.

Fourth: Mechanisms for Achieving Transitional Justice

Although efforts to achieve transitional justice in Sudan have stalled more than one round, and despite the challenges that currently impeding its path, there are still some mechanisms that states and governments follow towards transitional justice, which can be applied in the Sudanese case, and can be presented as follows:

A. Truth Commissions:

They are non-judicial bodies that conduct investigations into violations that occurred in the recent past, issue reports and recommend ways to address violations, promote reconciliation, compensate and commemorate victims, and make proposals to prevent the recurrence of violations in the future.

B. Criminal Justice Mechanism

The investigation and prosecution of international crimes—including genocide, crimes against humanity, and war crimes—is an essential component of transitional justice. This component has its origins in the two International Criminal Tribunals for the former Yugoslavia and for Rwanda. Investigating and prosecuting influential leaders (both political and military) would contribute to strengthening the rule of law and bridging the “impunity gap.”

C. Compensation and Reparation Mechanisms

Reparations aim to both acknowledge and address the causes and consequences of human rights violations and grievances, in countries emerging from dictatorship, armed conflict or political violence and in societies suffering from injustices based on ethnicity or the legacy of colonialism. All victims of human rights violations have the right to reparation, each victim has different needs, and the type of reparation required may differ according to the victim’s economic level, social gender, age, and social identity. The forms of compensation and reparations programs are compensation, restoration of civil and political rights, physical rehabilitation, granting the right to enter land, shelter, and provision of health care or education, revealing the truth about the violations, providing guarantees of non-recurrence, offering apologies, erecting memorials and commemorating the memory.⁷

⁷ ICTJ, JUSTICE TRUTH DIGNITY, Access date May 19, 2023 <https://www.ictj.org/ar/reparations>

D. Truth and Memorialization

Architectural monuments, museums, memorial activities, and educational initiatives are essential to form a public record and stand up to denial and repetition; after a devastating conflict or an oppressive government knowing the truth about the past is a step toward achieving justice. It is a recognized human right enjoyed by all victims of human rights violations and survivors alike. International law explicitly recognizes "the right to know the circumstances of the violations of the human rights of the victims and to know the identity of those responsible." Upholding this right is especially important, as repressive governments deliberately distort history and deny the perpetration of atrocities to justify themselves, fuel mistrust, and even incite violence. Therefore, the search for the truth contributes to establishing a historical record that prevents manipulation⁸.

E. Institutional reform

Addressing the legacy of gross human rights violations requires the adoption of a multifaceted strategy that includes interventions at the levels of institutions, law, civil society, the community, and the individual alike, a process whereby state institutions are reconsidered and restructured to respect human rights, preserve the rule of law and be subject to voter accountability. Reform efforts, which adopt a transitional justice approach, can achieve accountability and redress the damages resulting from the attacks; most importantly, they can eliminate the beliefs that allowed these violations to occur. Therefore, the recommendation to adopt this type of reform abounds; it is launched by frankness initiatives that reveal the institutional aspects of past mistakes.

F. Protection

Prevention is at the top of the priorities in the global policy plan for peace, development, and good governance. This plan recognizes the value of preventive transitional justice, which is not limited to helping societies avoid recurring gross violations of human rights, but also includes addressing the drivers that lead to violence and conflict, including exclusion, fragility, and inequality. Transitional justice has always included prevention in its first objectives⁹.

G. Youth Participation Mechanisms

The effective and informed involvement of young people in transitional justice processes improves their usefulness and utility as they are the main component responsible for consolidating the new political system, establishing democratic values, and sustaining peace, and one of the advocates for accountability and reform processes and breaking the

⁸ ICTJ, JUSTICE TRUTH DIGNITY, Access date May 19, 2023 <https://www.ictj.org/ar/reparations>

⁹ ICTJ, JUSTICE TRUTH DIGNITY, Access date May 19, 2023 <https://www.ictj.org/ar/reparations>

cycles of aggression and impunity handed down through generations. Children and youth are among the most vulnerable to the effects of conflict and gross human rights violations. The violations, targeting schools, forced conscription, sexual violence, displacement, and poor health care, have long-term effects that may undermine the future of young people.

H. Programs Supporting Sustainable Development

Sustainable Development Goals are devoid of reference to transitional justice, but they include many goals and objectives that transitional justice can contribute to achieving. The sixteenth goal of sustainable development includes strengthening the rule of law, improving access to justice, reducing violence, establishing inclusive institutions, and fighting corruption; The fifth goal focuses on promoting gender equality, and the tenth goal aims to reduce broader inequality¹⁰.

I. Peace and Stability Mechanisms

Peace processes and political negotiations to end violent conflict must always deal with past human rights violations; Peace processes raise fundamental questions about how the peace agreement addresses the legacy of gross and flagrant human rights violations committed during the conflict. Demands for justice included the most complex and controversial elements of peace negotiations. But addressing the abuses of the past, paying attention to the visions of the victims, and addressing their needs is essential to ensuring that peace processes and the agreements that emerge from them are given the necessary credibility and legitimacy. The frameworks established under the peace agreements would also determine the nature and extent of potential transitional justice measures for the coming years or decades.

Fifth: Maat's Vision to Achieve Transitional Justice in Sudan

The transformations of the Sudanese environment, its security and political complexities, and its democratic stumbling blocks necessitate the limitation of infighting, violent clashes, and the escalation of humanitarian needs, with increasing roles at all levels and necessitating the activation of its relief, charitable, developmental, constructive, educational, media, written, and participatory mechanisms as a factor in the stabilization and settlement of transitional justice, and in this regard.

A. Providing technical support

- Developing and drafting materials on the rule of law, including tools for prosecution initiatives, briefings to the Office of the United Nations High

¹⁰ ICTJ, JUSTICE TRUTH DIGNITY, Access date May 19, 2023 <https://www.ictj.org/ar/reparations>

Commissioner for Human Rights, and handbook-style guides on the complementarity principle.

Developing and making available policy tools, guidelines, strategic frameworks, and approaches to transitional justice to relevant stakeholders, including the United Nations.

- Providing support and advice on issues related to transitional justice, including to Resident Coordinator offices and United Nations country teams at the field level
- Designing and implementing comprehensive and context-specific transitional justice processes that focus on victims and address the causes, structural drivers, and enablers of human rights violations, and contributing to prevention, peacekeeping, development, and reconciliation.
- Providing expert assistance, analysis, and advice to both governments and actors or institutions working in the justice sector, on several issues, including amnesty laws, prosecution strategy, amendments to criminal procedure laws, and selection of judges and prosecutors, in addition to various forms of criminal liability.
- Providing training courses for judges and public prosecutors as they prepare to initiate criminal proceedings against former military and political leaders.

B. Support the negotiation process and the peaceful settlement

- Issuing urgent appeals to the conflicting Sudanese parties for an immediate cease-fire, respect for international humanitarian law and international human rights law, affirm commitment to the humanitarian truce and establish a model for transitional justice.
- Launching continuous calls to speed up reaching a comprehensive agreement to end this fighting without conditions and to stop air strikes inside cities and anti-aircraft fire.
- Launching the Sudanese National Dialogue Forums; African civil society can play mediation and facilitation roles, facilitate communication between the conflicting parties, and bring points of view closer to achieving national reconciliation, building political confidence, and making national and social peace initiatives a success.
- Activating Sudanese social peace mechanisms by engaging in resolving Sudanese social and tribal conflicts, especially in places such as Jebel Moon, El Fasher, Yassin, and Jebel Marra over access to land and water and mediating sustainable agreements on future access between hostile groups such as nomads and herders or between local administrations and displaced communities.

C. Promoting Sudanese peace and security

- Launching programs and campaigns to combat violent and hateful speeches, division, and fighting between the conflicting Sudanese parties for security and the promotion of social peace
- Launching training and rehabilitation programs and plans to build the capacities of the political, media, and community elites on the skills, values, and knowledge of coexistence, tolerance, reconciliation, solidarity, and peace.
- Launching programs and campaigns to raise awareness in the local community of the rights of women, children, and people with special needs and to enhance the role of women and youth in shaping the future and the importance of political participation for all sectors.
- Launching educational and rehabilitation campaigns and programs concerned with first aid programs for the wounded and injured due to the clashes and violence spreading in the Sudanese territories, and ways of securing and protecting themselves and moving away from the clashes to a haven.
- Facilitating communication between the parties, creating multiple alternatives for political dialogue, facilitating participation in political negotiations, and mediating between negotiating parties.
- Launching reform and rehabilitation programs for Sudanese security institutions by supporting their knowledge of human rights, legal obligations, and their respect, and the importance of peace-building and its mechanisms, as well as providing a vision for reforming the police, judicial and government systems to support the rule of law and its implementation.

D. Activate civilians' protection:

The forms of protection are represented in contributing to the evacuation of civilians, supervising the conditions of prisoners and detainees, providing assistance, facilitating their exchange and return to their countries, searching for missing persons, and reuniting separated families through:

- Issuing statements of condemnation and ringing alarm bells regarding the deteriorating conditions in Sudan and its repercussions on humanitarian and relief needs, and urgent appeals to the international community to accelerate the humanitarian and relief response to the deteriorating humanitarian situation in Sudan by providing food and health needs and ensuring the arrival of essential medicines, blood bags, surgical supplies, and trauma care ready for delivery.

- Launching campaigns to donate medical supplies and support health facilities, hospitals, staff, medical consumables, supplies, and pharmaceuticals
- Demanding the provision of refugee camps in the states of Gedaref, Kassala, White Nile, Blue Nile, and the South and West Kordofan for services, including health and water, and ensuring the operation of humanitarian partners' programs for integrated health and nutrition.
- Issuing calls for facilitating the transportation movements of the displaced and refugees, addressing the challenges of lack of means of transportation, their high prices, and securing their movements.

E. Activating the humanitarian and relief response

- Providing technical support and cooperate with local organizations and networks to support people who face violations and all forms of systematic violence and provide psychological and social services.
- Urgent appeals to the international community for an urgent response to the arrivals of Sudanese refugees to neighboring countries.
- Strengthening means of support with development agencies in meeting humanitarian needs: food, health, and humanitarian needs, by highlighting and monitoring them and drawing requirements to respond to them.
- Providing technical support to Sudanese civil society organizations regarding the formulation of programs to assist victims of sexual violence and women in the face of armed conflict and combating children's recruitment, killing, and displacement violations.

F. Monitoring and documentation

- Monitoring and documenting violations of civil and political rights, economic, social, and cultural rights, and structural grievances, such as marginalization and inequality.
- Representation and advocacy in political debates by supporting or opposing initiatives or presenting their proposals.
- Documenting war crimes and crimes against humanity that continue to be committed. After that, work will be completed when societies conduct peace negotiations, then move to it and implement complex accountability mechanisms.
- Supporting victims' efforts to access and participate in a formal justice system while ensuring that defendants' rights to a fair due process are safeguarded.

- Engaging with the Human Rights Council and its special procedures and the United Nations Security Council on issues related to transitional justice and accountability

F. Activating compensation and reparation programs

- Holding conferences and discussions to consult, communicate and work with victims to make recommendations on how to design and deliver compensation programs
- Facilitating victims access to, informing and educating them about their rights and practices, providing spaces, creating campaigns and platforms for victims to talk about their suffering, needs, and rights, and for victims to speak directly about their experiences and interests.
- Carrying out reparative activities such as storytelling and the arts, memorial prayers, memorials, and body mapping to help victims recount psychological issues or sexual violence.