



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

Maat for Peace' submission to the Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence on “Roles & Responsibilities of Non-State Actors in Transitional Justice Processes”

Case study: Sudan

❖ Preamble:

The concept of transitional justice is recently adopted in international law. It constitutes a systematic and institutional response to widespread and systematic violations of human rights. Transitional justice seeks to recognize the rights of victims, the possibilities of peacebuilding and the consolidation of democracy in societies that have suffered or are suffering from bloody conflicts and historical grievances that led to these conflicts. Remedies can be provided through several mechanisms that seek to establish accountability, reconciliation, and reparation for the victims. With this understanding, transitional justice is not considered a type of justice known through the implementation of the law in an organized manner, but rather a type of justice that is established according to the specificity of cultural, social, economic, and political societies. Transitional justice also refers to a renewed commitment to make ordinary citizens secure in their own countries, safe from the abuses of their authorities, and under effective protection from any violations by others. Transitional justice is rooted in accountability and reparation for victims and recognizes their dignity as citizens and as human beings.

Out of its belief in the importance of the thematic reports that the Special Rapporteur focuses on, **Maat for Peace, Development and Human Rights** is interested in contributing to this report to clarify the role of non-state actors in Sudan in achieving transitional justice and addressing the challenges they faced.



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❖ The legal framework for transitional justice:

Transitional justice can be defined as the set of judicial and non-judicial measures implemented by different countries in order to address the legacies of massive human rights violations. These measures include prosecutions, truth commissions, reparations programs, and various forms of institutional reform. Hence, transitional justice focuses on recognizing the dignity of individuals, redressing, and recognizing the violations to prevent their recurrence. It also aims to create accountable institutions, restore confidence in those institutions, and make access to justice possible for the most vulnerable groups in society. Besides, it aims at ensuring that women and marginalized groups play an active role in the pursuit of a just society, respect for the rule of law, facilitating peace processes, promoting a durable solution to conflicts, establishing a basis for addressing the underlying causes of conflict and marginalization, and advance the cause of reconciliation.¹ **Hence, it can be said that transitional justice includes:-**

Legal aspect that involves fair trials for everyone involved in committing human rights violations and embezzlement of public money or whoever was found guilty of any crime. The trials shall be public and transparent, and they shall meet all the necessary conditions as stipulated in international treaties. The purpose of these trials is to do justice to the oppressed, restore rights to their people, and confirm the rule of law.²

Social aspect represented in the application of the so-called positive discrimination. It is intended to bridge the gap that occurred as a result of the policies of the previous regime, for example, in employment, and in work contracts, priority is given to societies affected by injustice. In Sudan, this is known as marginalization, as there are certain areas whose residents feel excluded by the state and no longer part of it. In addition to marginalization in government jobs, dark-skinned Africans feel that they are deprived even of appearing on state television as broadcasters or presenters. Therefore, positive discrimination addresses this problem through the

¹ ما هي العدالة الانتقالية، المركز الدولي للعدالة الانتقالية، الرابط، <https://www.ictj.org/ar/about/transitional-justice>

² أهمية العدالة الانتقالية في الحالة السودانية.. نماذج افريقية، الجزيرة نت، 1 مايو 2019، الرابط، <https://bit.ly/3GpNtPl>




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application of a population policy that requires all groups representing the different segments of society to be shown³.

Financial or material aspect: it means to compensate the victims financially so that they can engage in life normally. There are villages in Darfur that were completely wiped out, many of them died, and the rest lead miserable lives in camps for displaced people on the outskirts of the cities. The situation in Southern Kordofan (Nuba Mountains) was not any better, as government Antonov planes were bombing safe villages, driving people out of homes and forcing them to live in caves in the mountains. This is in addition to hundreds of educated Nuba children who were taken from their homes by the security authorities, and nothing was heard of them, and some of them were found dead.⁴

Hence, transitional justice works to address the effects of gross human rights violations and other forms of misuse of power in a comprehensive manner that includes criminal justice, damage reform, social and economic justice, documenting and revealing those violations and abuses, holding those responsible to account, and purging state institutions of civilians and military personnel who were involved in committing those violations and just retribution for the victims, redress, rehabilitation, and reintegration into society⁵.

❖ **The role of non-state actors in achieving transitional justice in Sudan:**

On August 31, 2020, four rebel movements signed a peace agreement with the Sudanese government in Juba, mediated by the Government of South Sudan. The transitional government, which has been in power in Sudan for more than a year, has made negotiations with the rebels a top priority, in order to reach peace in the areas that have been caught in a vicious circle of conflict for several years since the rule of former President Omar al-Bashir, which lasted for three decades before being overthrown in April 2019 after popular protests that continued for months. The four movements are combined under the alliance of the Sudanese Revolutionary Front, which emerged in 2011. The Sudanese government is fighting in seven of the country's 18

³ السودان وطريق شائك لتحقيق العدالة الانتقالية، موقع عاين، 9 سبتمبر 2020، الرابط، <https://3ayin.com/justice-2/>

⁴ أهمية العدالة الانتقالية في الحالة السودانية.. نماذج افريقية، الجزيرة نت، 1 مايو 2019، الرابط، <https://bit.ly/3GpNtPI>

⁵ الهادي نقداً لله، مدى نجاح تطبيق الية العدالة الانتقالية في السودان، موقع راديو دبنقا، 1 يوليو 2020، الرابط، <https://bit.ly/3qkMYRf>




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states, the five states of Darfur, the states of South Kordofan, and the Blue Nile. These four movements are the Sudan Liberation Movement, the Justice and Equality Movement, the Transitional Revolutionary Council, and the Sudan People's Liberation Movement.⁶

However, it can be said that the failure of some armed groups and parties to join this agreement led to a number of violations. For example, in protest of their marginalization in the peace agreement, the Beja tribe in East Sudan in October 2020 closed the southern port in Port Sudan, on which the country relies on covering about 70 percent of the daily needs, and closed the pipeline importing petroleum products linking the main port of Port Sudan and other cities of Sudan, which exacerbated the fuel crisis.⁷

Also, the security situation in parts of Darfur remains precarious in light of the escalation of sectarian violence, human rights violations and widespread displacement. Sectarian clashes in El Geneina located West Darfur in January 2021, resulted in the deaths of 250 persons and the displacement of more than 100,000 others, according to estimates by the United Nations High Commissioner for Human Rights. In early April 2021, violent clashes occurred again in El Geneina, leading to the death of more than 80 persons. According to the Office for the Coordination of Humanitarian Affairs, nearly 40,000 persons have been displaced as a result.⁸

❖ Challenges of applying transitional justice in Sudan:

Achieving transitional justice in Sudan is accompanied by a number of challenges that impede access to government bodies capable of achieving justice through an independent judicial system and other law enforcement mechanisms. The transition that Sudan is going through requires achieving justice that recognizes the crimes committed against the victims of wars and the grievances inflicted upon them.⁹

⁶ من هم المتمرّدون الذين سيوقعون اتفاق سلام مع الحكومة، موقع DW عربي، 30 أغسطس 2020، الرابط، <https://bit.ly/33xrBmN>

⁷ هايدي الشافعي، السودان وتحديات أدت إلى تفاقم الأزمة، المرصد المصري، 25 أكتوبر 2021، الرابط، <https://marsad.ecss.com.eg/63904/>

⁸ . حمدي عبد الرحمن، التحديات الأربعة: ما الذي يعوق اتفاق جوبا للسلام في السودان، مركز المستقبل للابحاث والدراسات المتقدمة، 3 يونيو 2021، الرابط،

<https://bit.ly/3GrwKes>

⁹ السودان وطريق شانك لتحقيق العدالة الانتقالية، موقع عاين، 9 سبتمبر 2020، الرابط، <https://3ayin.com/justice-2/>



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However, the implementation of transitional justice mechanisms in Sudan collides with many obstacles that limit the effectiveness of this mechanism and that may lead to its failure in the end. Attempts of impunity come at the forefront of these obstacles in terms of importance. Considering that the current transitional period is based on negotiation and bargaining between the political forces that accomplished the revolution and between the armed forces and other forces that sided with the revolution, this may be a reason to abort the adoption of transitional justice mechanisms as a result of those bargains and the lack of clarity in the relationship between the Transitional Justice Commission, the army and the security and civil institutions that were involved in committing human rights violations during Al-Bashir's rule. The armed and security forces may reject the mandate of the commission over the actions of its employees and members who were involved in committing those crimes as a form of immunity for them.¹⁰

The lack of impartiality and competence of the judiciary and the lack of expertise and competencies in fact-finding committees that the executive authority may form from unqualified persons or who were involved in violations in the past is considered a major obstacle to the application of transitional justice mechanisms. A form of blackmail and intimidation may be practiced on those committees by political parties or security or military agencies to pressure them and influence their decisions. The evidence for that is the delay in the trial of Al-Bashir.

One of the most important obstacles is the lack of the necessary material resources, as achieving transitional justice requires material and human resources, as it deals with violations, serious crimes, and problems inherited from the past. Judicial procedures, trials, granting compensation, reforming institutions, and the nature of the work of truth commissions require huge financial resources¹¹.

One of the main challenges Sudan faces is paying the costs of implementing the peace agreement and achieving transitional justice (including compensation and reparations). The national economy is still suffering from structural distortions, and the economic crisis that Sudan has been suffering from for years, which was the main reason for the overthrow of Al-Bashir, has

¹⁰ الهادي نقداً لله، مدى نجاح تطبيق الية العدالة الانتقالية في السودان، موقع راديو دبنقا، 1 يوليو 2020، الرابط، <https://bit.ly/3qkMYRf>

¹¹ الهادي نقداً لله، مدى نجاح تطبيق الية العدالة الانتقالية في السودان، موقع راديو دبنقا، 1 يوليو 2020، الرابط، <https://bit.ly/3qkMYRf>




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exacerbated, as well as a severe food crisis amid a significant rise in prices, where it is expected that 9.8 million persons will suffer from acute food insecurity. Moreover, 13.4 million persons, or nearly a quarter of the population, need humanitarian assistance, including 2.5 million internally displaced persons. Many Sudanese also considered that reforms that included reducing subsidies and floating the Sudanese pound were too harsh, which led to a significant increase in the prices of gasoline and food commodities. It exacerbated the crisis, angered the Sudanese people against the transitional government, and pushed them to organize demonstrations more than once¹².

❖ Cases in which non-state actors have participated in demobilization and reintegration processes:

One of the most important transitional justice mechanisms is the establishment of programs related to how to disarm fighters, demobilize, and integrate some into different institutions, including those of the regular forces. The Juba Agreement for Peace in Sudan 2020 presents one of the most important forms in which issues related to transitional justice arrangements were addressed indirectly, especially those related to the integration of non-state armed groups and the armies of armed parties and how to reconcile their conditions in the peace phase.¹³

The Juba Agreement for Peace in Sudan confirmed that one of its priorities is to give transitional justice a top priority in an effort to meet the aspirations of the people and realize that stopping wars and conflicts is a priority, and reforming state agencies, including the military institution, is necessary to save transitional justice measures and security and integration arrangements whose implementation requires sustainable support from regional and international political partners. Article 29/1 of the agreement considers the armed forces to be the basic core of the merger operations, in addition to legal formations consisting of the armed forces, the Rapid Support Forces, the police forces, the General Intelligence Service, and the armed struggle

¹² هايدي الشافعي، السودان وتحديات أدت إلى تفاقم الأزمة، المرصد المصري، 25 أكتوبر 2021، الرابط، <https://marsad.ecss.com.eg/63904/>

¹³ الرابط، <https://sudaneseonline.com/cgi-bin/sdb/2bb.cgi?seq=print&board=510&msg=1623627214&rn=6> محمد النور كبر، العدالة الانتقالية في السودان: التحديات ومستقبل غامض، السودان أونلاين، 13 يونيو 2021، الرابط،



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movement forces to form a security force in Darfur to establish security, achieve security arrangements, and bridge the gap. Also, the security forces in Darfur and the Rapid Support Forces are subject to the Armed Forces Law of 2007, the 2013 amendment, in accordance with Article 29 of the agreement.¹⁴

However, this point represents the biggest challenge to achieving transitional justice in Sudan. It is known that the armed groups that signed the peace agreement in Sudan tend to inflate the number of their members and seek to recruit more individuals into their ranks, in order to achieve a number of goals represented in demanding a greater share of positions within the security services, as well as the greater the number of armed group fighters, the greater their monetary and material gains that they will obtain by participating in the demobilization and integration process. Recruitment is also a way for armed groups to ensure that they always have a buffer stock on hand if Sudan's peaceful transition collapses.¹⁵

❖ **Recommendations:**

Maat for Peace, Development and Human Rights confirms that transitional justice is a critical stage for building the future. It begins with the formation of committees of experts and the involvement of civil society organizations, especially since sustainable peace and stability will not be achieved without the application of justice and redressing the victims, which is a necessity for building a state of law on the foundations of civil and democratic pluralism. This is the only way to guarantee justice and equity for the victims because building sustainable peace requires a comprehensive and final liquidation of all the conflicts of the past. However, if the rights of victims of grave violations are ignored, this will lead to societal divisions, and the distrust of victims of these violations will increase in state institutions. Therefore, Maat recommends the following:

- Significant resources must be made available to address compensation, resettlement, demobilization and reintegration issues.

¹⁴ فائز بابكر كرار، العدالة الانتقالية والترتيبات الامنية، موقع الراكوبة، 11 يونيو 2021، الرابط، <https://bit.ly/3zQA2FC>

¹⁵ د. حمدي عبد الرحمن، التحديات الاربعة: ما الذي يعوق اتفاق جوبا للسلام في السودان، مركز المستقبل للابحاث والدراسات المتقدمة، 3 يونيو 2021،

الرابط، <https://bit.ly/3GrwKes>



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- The achievement of transitional justice in Sudan must be accompanied by serious and effective steps for institutional reform, whether in the political, security or economic fields.
- Working to activate laws and speed up justice procedures to prevent impunity.
- Attempting to reach effective steps in order to include all non-state actors with a real impact on the ground in peace processes in order to compensate and provide reparation for all victims to ensure tangible progress in transitional justice measures



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