



TRANSITIONAL JUSTICE PROCESSES IN SUDAN

Policy Briefing

August 2020

Front cover photo credit: Petterik Wiggers/Panos Pictures. A group of female protestors break their Ramadan fast during a mass sit-in outside the Ministry of Defence. Although mass protests saw the fall of President Omar al-Bashir, the military have retained control of government and in response the protests have continued with activists demanding democracy and civilian rule

SUMMARY

1. Approaching justice for past violations as an integral element of Sudan's transition is a necessary but complex task. The breadth and depth of violations, regional variation, multiple conflicts, ongoing suffering and historical experiences demand a considered, layered and integrated transitional justice process which can account for these factors and finally achieve the aims of freedom, peace and justice. This will only be attained if, at every stage, this is a process made by the people of Sudan for the people of Sudan.
2. Consultation and participation cannot be empty promises. Engaging with and centring the whole spectrum of civil society, stakeholders, victims, communities, groups and voices – both marginalised and mainstream – must be the cornerstone of transitional justice in Sudan. Women and youth in particular are a driving force of the revolution and must not be prevented from continuing to steer its direction. So long as marginalised groups are excluded from decision-making – whether by institutional, cultural or practical barriers – any transitional justice process will not be representative or legitimate. Any consultation and participation process must consider the well-being and dignity of the victims.
3. In launching this process, and in line with their commitment in the Constitutional Charter, the transitional government must not view transitional justice as a 'tick-box' exercise. Despite the timetable pressure of the transitional period, it is critical that the rights of victims are fully upheld, and proper time and consideration is given to the adoption or creation of any law, strategy or institution concerning transitional justice. This will enable crucial consultation and participation to take place. Fortunately, the decision-makers' tool kit is not empty. Sudan has numerous recent experiences with peace and transitional justice. Important lessons can be learnt, and previous pitfalls avoided. International and regional comparative approaches – such as from Columbia, Morocco, Tunisia and South Africa – may also be instructive.
4. Transitional justice cannot be considered or implemented in isolation. It is a transformative process which must happen alongside other momentous changes ongoing in Sudan. An integrated transitional justice process deserving of its name will have to develop and unfold in close coordination with the establishment of peace and democracy, the constitution-making process, the rebuilding of public institutions, regional development and bolstering of legal protection and the rule of law.
5. The pending Transitional Justice Commission Bill has become an important focal point for transitional justice in Sudan and contains several promising features. However, the plan to adopt it without prior consultation and participation, and to leave the modalities of consultation and participation to the Transitional Justice Commission envisaged under the Bill seriously risks jeopardising the overall approach to, and success of, transitional justice processes in Sudan. The institutional design of such processes is itself prone to pre-determine certain outcomes, and may, even if inadvertently, result in a narrowing of consultation and participation. It will give the new Commission considerable powers, which have not been subject to prior scrutiny and input by those whose rights will be affected by its work. The approach taken therefore risks undermining confidence in, and the legitimacy of, the process before it has even commenced.

RECOMMENDATIONS

6. To the Transitional Government of Sudan:
 - a) To pause immediately all ongoing efforts towards transitional justice, particularly the Transitional Justice Commission Bill, until a thorough and comprehensive process of consultation and participation has happened.
 - b) To guarantee the consultation and participation of all relevant stakeholders – including victims, women, youth, communities and civil society from all parts of Sudan – in the development and implementation of any transitional justice process.
 - c) To ensure that consultation and participation is practical and effective, and accounts for the rights of, and diverse situations, vulnerabilities and barriers faced by different individuals. In particular, practices and institutional structures which facilitate and promote the participation of women and victims of sexual violence (both men and women) must be adopted.
 - d) To reflect on and draw from past experiences of peace and transitional justice in Sudan and other countries, including good practices and prior failings, to realise a transitional justice process which is capable of, and effective in addressing the root causes of conflict, structural discrimination and systemic abuse.
 - e) To meaningfully realise the right of all victims to reparation, and to ensure that victims' expectations and needs are heard and acted upon.
 - f) To translate the energy and aspirations of the Sudanese people into a genuine political will and commitment to a transitional justice process which is transformative, transparent and seeks accountability at the highest levels.
7. To the international community of states, international organisations, donors and international civil society:
 - a) To support an integrated, rights-based process of transitional justice which includes, rather than side-lines, transitional justice in ongoing efforts towards economic recovery and the building of democratic institutions.
 - b) To make funding and support contingent on concrete action towards making the transitional justice process driven by consultation and participation.
 - c) To continue to critically monitor the scope of, and insist on inclusivity and representation in, the peace and transitional justice processes and not to be complicit in any attempt to use these mechanisms as tools of division or re-establishment of old power structures.
 - d) To bolster the voices of Sudanese people in seeking a transitional justice process which is cognisant of their rights, and reflective of and responsive to their demands, through advocacy, capacity building, financial support and renewed engagement.

BACKGROUND



Photo credit: David Rose/Panos Pictures. Two women looked at a display of photographs of people killed during recent protests in Sudan after the fall of President Omar al-Bashir.

8. In April 2019, the toppling of the 30-year regime under former President Al-Bashir ushered in a new opportunity for democracy and peace in Sudan. The preceding period, and its immediate aftermath, were characterised by abuses, including torture, extra-judicial killing, rape, enforced disappearance and destruction of homes and villages. These crimes were committed both during recurring conflict (in Darfur, the south and east of Sudan) and as part of a general scheme of repression against the people of Sudan, orchestrated by the military and security sectors. Particular groups were often targeted, such as ethnic minorities, women, human rights defenders, students, political opponents and journalists. Alongside this, Sudan experienced the active destruction of its independent institutions, the corruption of its economy and growth of the deep state, the fuelling of inter-community and political divisions, and the entrenchment of impunity.
9. The revolutionary process which led to the ending of this regime capitalised on the energy and perseverance of civilian society, including young people and [women](#), who continue to seek a place at the table where choices about Sudan's future will be made. Others, including the internally displaced, refugees, victims of violence, their families and communities deserve a transitional justice process which is responsive to their demands and aims to repair the harm they have suffered.

Recommendation: *Guarantee the consultation and participation of all relevant stakeholders – including victims, women, youth, communities and civil society from all parts of Sudan – in the development and implementation of any transitional justice process.*

CONTEXTUAL FRAMEWORK

What is transitional justice?

10. In the absence of a universally accepted definition, transitional justice may be described as “a [system of decisions](#) taken by the community and the state in response to systematic wide-scale human rights violations with the aim of duly recognizing the violations victims have suffered and holding the perpetrators to account.” According to [ICTJ](#), “[t]ransitional justice is rooted in accountability and redress for victims.” ICTJ identifies three core aims of transitional justice: “the recognition of the dignity of individuals, the redress and acknowledgment of violations, and the aim to prevent them from happening again.”
11. As the mandate of the [AU High-Level Panel on Darfur](#) recognised, the three pillars of peace, reconciliation and justice require a balancing of accountability and combating impunity with reconciliation and healing, within the realisation of the goal of peace. All of this must occur within a unique situation of transition, fragility and reduced institutions; [careful and conscious](#) appreciation of context is required.

Past efforts

12. This is not the first time that Sudan has grappled with the concept and conduct of transitional justice. Both during the previous regime, and in transitions before it, changes in power and the cessation of conflict have resulted in initiatives that included efforts to address the violations of the past. Previous peace agreements, including the [Comprehensive Peace Agreement](#) (2005), the [Darfur Peace Agreement](#) (2006) and the [Doha Document for Peace in Darfur](#) (2011), have engaged with aspects of transitional justice, including accountability, compensation and reform. However, the continuation of conflict and abuse demonstrates the ultimate failure of these previous transitional justice efforts.
13. It is vital that lessons are learnt and acted upon from these past efforts, including the need for civil society input and involvement, [effective implementation strategies](#), galvanisation of political will and sufficient funding.

Recommendation: *Reflect on and draw from past experiences of peace and transitional justice in Sudan and other countries in the region, including good practices and prior failings, to realise a transitional justice process which is capable of, and effective in addressing the root causes of conflict, structural discrimination and systemic abuse.*

The current framework

14. Today, Sudan is in a strong starting position to devise and implement a successful transitional justice process. There are three key sources of obligations and inspiration which frame the beginning of this process.
15. First, the foundations of the transitional justice process are embedded in the Constitutional Charter agreed in August 2019 ([Arabic](#), [English](#)). Numerous provisions therein affirm the government’s commitment and obligation to pursue transitional

justice, including through accountability, removal of immunities, development of the human rights and justice system, and establishment of a Transitional Justice Commission.

16. Second, in pursuit of this aim, a Transitional Justice Bill has been drafted and remains under consideration. Aspects of this draft bill are highly promising. The bill recognises the right to reparation, rejects impunity, centres the need for accountability, and contains the beginning of plans to engage with and consult Sudanese civilians when preparing the transitional justice strategy. However, the bill needs clearer direction and definition, in particular on the meaning of 'victims', the role and remit of any bodies it creates (such as the Transitional Justice Commission and any fact-finding committees), and the process by which the right to reparation can be realised. Moreover, the Bill must not be adopted without a process of broad consultation and participation, to enable it to reflect and respond to the aspirations of the Sudanese people. Adopting the Bill without prior consultation and participation risks creating an institutional set up and procedures that are not (perceived to be) responsive to victims' rights and needs. In turn, such development risks undermining the faith in, and legitimacy of the transitional justice process pursuant to the Bill, which jeopardises its success from the very outset.
17. Finally, the (imminent) conclusion of peace agreements between the Government of Sudan, the Sudanese Revolutionary Front and other groups, will be a further mechanism for the implementation of transitional justice efforts, heeding the lessons of the shortcomings of previous peace processes and agreements in this regard.



Photo credit: David Rose/Panos Pictures. Protesters crowded a bridge in the centre of Khartoum, as the continuing citizen protests entered its fourth week since the fall of President Omar al-Bashir.

The process of transitional justice

18. It is crucial that the process of transitional justice – from the outset – is driven by consultation with the stakeholders, including victims, their families and communities. International bodies have recognised victims’ rights to effective remedies and the importance of victim-oriented reparation processes, and effective consultation and participation are increasingly considered integral to effective national transitional justice processes. Consultations must reach a representative group of Sudanese society, accounting for differences of region, gender, age and experience, and take care to accommodate those with particular vulnerabilities, such as survivors of sexual and gender-based violence. This consultative development process must be followed by a transitional justice policy which continues to allow for active participation. Facilitating and implementing the outcome of this consultation and participation is central to an effective and durable transitional justice process. Strong organisation, coordination and communication between different mechanisms is key.
19. Practically, the process of transitional justice requires careful consideration of the structure and sequence in which measures will take place. Decisions made on transitional justice are part of the broader matrix of the move towards peace and democracy. The interrelation between these transformative efforts requires that they take place in tandem; justice must be complementary, and not secondary, to peace and democratic transition.

Recommendation: *Ensure that consultation and participation is practical and effective, and accounts for the rights of, and diverse situations, vulnerabilities and barriers faced by different individuals. In particular, practices and institutional structures which facilitate and promote the participation of women and victims of sexual violence (both men and women) must be adopted.*

The components of transitional justice

20. Experience shows us that the components of transitional justice are many and varied. The options for accountability and the requirements of legal and institutional reform are not considered in this briefing note.
21. A central component of transitional justice is reparation. While there are many forms of [reparation](#), including restitution, compensation, rehabilitation, satisfaction, and guarantees of non-repetition, as well as individual and collective methods for distribution, the starting point must be that all victims have a right to reparation. The [challenges](#) are affording reparations in a manner which does not create an unjust hierarchy among victims, exclude groups or threaten economic stability, yet also succeeds to address the causes and consequences of violations and responds to changing needs and urgencies. A further challenge is to ensure that any reparation measures sufficiently recognise victims and their rights, instead of blurring reparation processes with development projects, or the provision of economic, social and cultural rights to which everyone is entitled.

Recommendation: *Meaningfully realise the right of all victims to reparation, and ensure that victims' expectations and needs are heard and acted upon.*

Other factors for consideration

22. In considering the process and components of transitional justice, four other factors are worth reflecting on:
 - a) **How can the scale and range of abuse be dealt with?** The scale of violations in Sudan is extensive. Victims' experiences cannot be homogenised but dealing with every violation requires time, resources and potential delays to reconciliation and healing. Additionally, different causes of conflict merit specific attention, to ensure the roots of injustice are addressed.
 - b) **What place is there for traditional methods of reconciliation?** [Traditional or local methods](#) of dispute resolution and reconciliation – such as *judiya* (traditional councils of mediation), the payment of *diya* (collective compensation), and local courts – are historically central to some Sudanese cultures. However, some consider that their [influence has waned](#), and others express concern about the degree to which they facilitate the participation of women and other marginalised groups, and uphold the right to reparation. These methods were also not developed for, nor are they considered suitable to, addressing serious human rights violations for which the state is responsible.
 - c) **How can lessons be learnt from other countries' experiences?** Aspects of transitional justice efforts from other countries, [including in Africa](#), may be [helpful comparators](#) for Sudan. Examples are plentiful, and may include the scale of evidence collection by the truth commission in [Tunisia](#), the damaging impact of delay and non-implementation in [Uganda](#), or the combination of truth and limited amnesty in [South Africa](#).
 - d) **To what extent does this process rely on funding and economic transparency?** Sudan's [current economic position](#) presents an obstacle to transitional justice if reparative measures and necessary reforms are stalled by resource constraints.

Significant international funding is needed, which will require greater economic transparency and accountability than practised under the previous regime.

23. In answering these questions and formulating a transitional justice strategy which is uniquely Sudanese, it is crucial that the voices of stakeholders from across Sudan are sought, listened to and acted upon.

Recommendation: *Translate the energy and aspirations of the Sudanese people into a genuine political will and commitment to a transitional justice process which is transformative, transparent and seeks accountability at the highest levels.*

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