

**Draft Transitional Justice Commission Bill 2020**

Pursuant to the provisions of the constitutional document for the transitional period for the year 2019, the Sovereign Council and the Ministers have jointly issued, and the Sovereign Council signed the following law:

**Chapter One**

**Introductory Provisions**

**The Name of the Law and its Entry into Force**

1. This law is called “The Transitional Justice Commission Law of 2020,” and it shall be enforced from the date of its signature.

**Explanations**

2. In this law, unless the context requires another meaning:

“General Secretariat”	means the General Secretariat of the Commission established under the provisions of Article 13,
“Violation”	means any violation that constitutes a gross or systematic violation of international human rights law, including economic and social rights, or a serious violation of international humanitarian law practiced by organs of the State or by groups or individuals who acted in their name or under their protection or with their knowledge even if they do not have the capacity or authority to do so, and includes every gross and systematic attack on human rights committed by organised groups,
“Reparations”	means material and moral compensation, rehabilitation and apology to the victims, and their rehabilitation and reintegration,
“Chair of the Commission”	means the head of the Transitional Justice Commission referred to in Article 4(1)
“Victims”	means persons who have suffered harm, whether individuals or groups, including physical or mental harm, psychological suffering, economic loss, or a major denial of the enjoyment of their basic rights, through an act or abstention that constitutes a gross violation of human rights or international humanitarian law. Family members who have been affected through kinship to a

“Transitional justice”	victim and every person who suffered harm during their intervention to help the victim or prevent the violation is also considered a victim, refers to an integrated set of mechanisms and methods adopted to understand and address the past of human rights violations by uncovering the truth, holding accountable those responsible, redressing victims’ harm and providing reparations to them in a way that achieves reconciliation, preserves and documents collective memory, and establishes guarantees of non-repetition violations, and the transition from a state of tyranny to a democratic system that contributes to the consolidation of the rule of law and the promotion of human rights,
“Uncover the truth”	means the process of identifying all violations, and their causes, circumstances, sources, circumstances surrounding them and their consequences, by adopting a number of methods, procedures and research,
“Accountability and accounting”	refers to the set of mechanisms and initiatives that prevent impunity or responsibility,
“Reconciliation”	means all measures and actions that would improve the social fabric, strengthen civic peace and national unity, and restore citizens’ confidence in state institutions and in each other as citizens and as rights-holders. It does not mean in any way impunity and failure to hold accountable those responsible for violations,
“The Commission”	means the Transitional Justice Commission established under the provisions of Article 3(1)

## **Chapter Two**

### **The Commission**

#### **The Establishment, Headquarters and Responsibilities of the Commission**

3. (1) An independent commission shall be established, to be called the “Transitional Justice Commission.” It shall have a legal personality and a public seal, and it has the right to litigate in its name.
- (2) The headquarters of the Commission shall be in the national capital, and it may establish branches in any of the states or regions in Sudan.

(3) The Commission shall be responsible for performing its duties before the Council of Ministers without prejudice to its independence.

**Composition and Terms of the Commission**

4. (1) The Commission is formed by a decision of the Council of Ministers, upon the recommendation of the Minister of Justice, from a Chair and ten members, of whom at least four are women, and three representatives of civil society organisations.

(2) The term of membership of the Chairperson and members of the Commission shall be three years, renewable again.

**Conditions for Appointing the Chairperson and Members of the Commission**

5. It is required that the chairperson and members of the Commission be experienced and competent, and represent a wide spectrum of the components of society, and that they should be dedicated to working for the commission and without prejudice to the general nature of the foregoing. The chairperson and members of the Commission must meet the following conditions:

(a) To be:

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| (First)  | Sudanese nationality  |
| (Second) | Full legal capacity   |
| (Third)  | Have a university degree in law, political science, or any other related disciplines            |
| (Fourth) | Of impartiality, integrity, competence, and professional independence                           |
| (Fifth)  | In a healthy condition suitable for carrying out the tasks assigned [to him/her] under this law |

(b) Not be

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|----------|---|
| (First)  | Previously convicted of an offense involving a breach of honor or trust |
| (Second) | Removed from any public office due to a breach of honor and trust       |
| (Third)  | Have responsibility in a political party or armed struggle movement     |

- (Fourth) Hold a representative office or executive responsibility in the federal government or the states in the period between June 30, 1989 and April 11, 2019
- (Fifth) Assume national, state, or local party responsibility at home or abroad in the dissolved National Congress Party
- (Sixth) A judge that has participated in trials of a political nature or state security courts

**Cases of Vacancy in the Position and How to Fill Them**

6. (1) The office of the Chairperson and members of the Commission shall fall vacant in any of the following cases:
- (a) The absence of any of the conditions of appointment stipulated in Article 5,
  - (b) Evidence of a health condition that impedes his ability to carry out his duties, whether physical or mental,
  - (c) Resignation,
  - (d) Evidence of a conviction by a final judgment in an offence related to honour or trust,
  - (e) Breach of any of the obligations or duties mentioned in Article 12(2),
  - (f) Proof of repeated absence, in accordance with the regulations,
  - (g) Death

(2) In the event that the position is vacant for any of the reasons in accordance with the provisions of Clause (1), a position shall be filled by the same method and conditions of appointment.

**The Oath**

7. (1) Before assuming their office, the Chairperson and members of the Commission shall swear the following oath before the Prime Minister:

"I swear by Allah, to perform my duty as a member with impartiality, dedication, sincerity, impartiality, honesty and honor, without discrimination on any basis without fear or favoritism, and to preserve professional secrecy and respect the dignity of the victims and the goals for which the commission was established, and as I say a martyr."

(2) It is permissible to take the same oath stipulated in Clause (1) by adherents of other beliefs by swearing in their sacrament.

**The Allocations and Privileges of the Chairperson and Members of the Commission**

8. The Council of Ministers determines the allocations and privileges of the Chairperson and members of the Commission.

**Commission Objectives**

9. The Commission aims to achieve:
  - (a) A transitional justice law that aims to understand and address past human rights violations committed against the Sudanese people since June 30, 1989,
  - (b) The conceptual framework for transitional justice as well as the appropriate mechanisms and measures to uncover the truth of the violations, hold accountable those responsible, redress the victims' harm and rehabilitate them in a way that achieves national reconciliation, preserves and documents the collective memory, and establishes guarantees of non-repetition of violations and the transition to a democratic system,
  - (c) Supervising the transitional justice process at the national level to ensure its unity and non-fragmentation by working to reconcile the various transitional justice initiatives and mechanisms, including the judicial, non-judicial and related independent commissions

**The Mandate and Powers of the Commission**

10. The Commission will carry out its duties with complete impartiality, efficiency and independence, and strives to achieve its objectives in accordance with the provisions of Article 9. Without prejudice to the general nature of the above, it shall have the following powers and authorities:
  - (a) Conducting a preliminary survey of human rights violations in Sudan, identifying the stakeholders, and drawing a preliminary objective and geographic map in order to prepare a comprehensive national strategy for transitional justice,

- (b) Organize broad, in-depth, comprehensive and non-exclusive national consultations in the various regions of Sudan, especially with those affected by human rights violations, and the primary stakeholders, including victims and their families, families of martyrs, and marginalized groups of women and youth, persons with disabilities, displaced persons and refugees, to contribute to developing a comprehensive transitional justice strategy that reflects the needs of the aspirations of the Sudanese people, is consistent with the outcomes of the ongoing peace negotiations and is in line with international human rights standards,
- (c) Preparing a national conference for transitional justice to agree on a comprehensive strategy for transitional justice in Sudan, and work to ensure that this conference enjoys wide participation from the main stakeholders, including victims and their families, families of martyrs, various political and societal forces, civil society organizations, women, youth and people with disabilities, displaced people, refugees, experts, academics and others,
- (d) Drafting a transitional justice law in accordance with the provisions of Article 16 in light of the outcomes of the National Conference for Transitional Justice, within a maximum deadline of three months from the date of the end of the conference's work before submitting it to the competent authorities for approval,
- (e) Supervising the establishment of transitional justice agencies such as truth commissions, mechanisms of accountability, accountability, reparation, and institutional reform, and following up on their work in consultation with the relevant judicial and executive bodies and civil society,
- (f) Work to address any discrepancies in the formulation and implementation of policies between the various transitional justice initiatives and mechanisms, including independent commissions, judicial and non-judicial committees and mechanisms, and work to ensure the integration, coherence and proportionality of these mechanisms and initiatives in a unified national approach,
- (g) Addressing public opinion independently, directly or through the available media, to introduce the components and objectives of transitional justice and the work of the Commission and explain the steps that it has taken or will take.
- (h) Requiring all governmental and non-governmental agencies to provide any information related to the issue of transitional justice, and compelling those bodies to provide the Commission with that information.

- (i) Access to documents related to state institutions and agencies related to transitional justice,
- (j) To seek assistance from experts, researchers, and national, regional and international organizations in matters related to transitional justice, and other reliable and relevant sources,
- (k) Developing transitional justice policy guidelines and allocating relevant capabilities,
- (l) Cooperating with the Office of the United Nations High Commissioner for Human Rights, United Nations agencies, and other relevant regional and international organizations to support the capacities of national entities to implement transitional justice requirements,
- (m) Coordination with the national commissions and other relevant bodies to ensure the consistency and integration of the requirements of transitional justice into a unified national approach,
- (n) Training the staff of the Commission and qualifying them to perform their duties,
- (o) Preparing and approving the annual draft budget of the Commission and submitting it to the Council of Ministers for approval,
- (p) Preparing the organizational and functional structure of the Commission and submitting it to the Cabinet for approval,
- (q) Submit periodic reports on its activities to the Council of Ministers,
- (r) Appointing the staff of the Commission in accordance with the Civil Service Law and other relevant laws,
- (s) Issue internal bylaws to organize its business and meetings.

**The Responsibilities and Authorities of the Commission Chairperson**

11. (1) The Chairperson of the Commission is the first person responsible for the Commission, and he supervises all the administrative and financial matters required to work in the Commission. Without prejudice to the generality of the foregoing, he shall have the following competencies and powers:

- (a) Chairing the Commission's meetings,
- (b) Representing the Commission before the relevant authorities,

- (c) Following up on the implementation of the work and decisions of the Commission,
- (d) Submit periodic reports to the Prime Minister on all related issues regarding the transitional justice process,
- (e) Any tasks and functions necessary to perform his duties.

(2) In his absence, the Chairperson of the Commission may assign a representative from among the members to carry out his responsibilities and authorities.

### **Commission Meetings**

12. The Commission shall meet according to the following procedures:

- (a) Upon an invitation from the Chairperson of the Commission at least once every month,
- (b) The Chairperson of the Commission may call the Commission to an emergency meeting at the request of one-third of the members,
- (c) The legal quorum for Commission meetings is completed with the presence of two-thirds of the members,
- (d) The Commission's decisions are taken by a simple majority of the votes of members present. The event of a tie, the Chairperson of the Commission shall have a deciding vote.

### **Chapter Three**

#### **General Secretariat**

#### **Formation of the General Secretariat**

13. (1) The Commission shall have a general secretariat consisting of the Secretary General and an appropriate number of employees who are appointed according to the functional structure of the Commission. The laws governing the Civil Service shall apply to them.

(2) The Secretary-General is appointed by a decision of the Council of Ministers upon the recommendation of the Chairperson of the Commission. The decision defines the terms of reference and powers of the Secretary-General.

(3) The conditions for appointing the Secretary General shall be the same as the conditions for appointing the Chairperson and members of the Commission contained in this law.



(4) The General Secretariat operates under the supervision of the Chairperson of the Commission, through specialized technical departments, in accordance with the organizational and functional structure of the Commission stipulated in this law.

#### **Functions of the General Secretariat**

14. The General Secretariat is concerned with the executive and administrative work of the Commission. Without prejudice to the general nature of the foregoing, the General Secretariat shall have the following functions:

- (a) Following up on the implementation of the Commission's decisions and directives,
- (b) Implementing the directives and decisions issued by the Commission,
- (c) Preparing minutes of meetings and deliberations,
- (d) Carrying out the necessary executive and administrative work for all the specialized technical committees,
- (e) Preparing the annual budget and submitting it to the Commission for approval,
- (f) Proposing and implementing the organizational structure of the commission and the terms of service for Commission employees
- (g) Performing any other duties entrusted to it by the Commission or the Chairperson of the Commission

#### **Chapter Four**

#### **General Provisions**

#### **Draft Transitional Justice Law**

15. The Council of Ministers shall refer the transitional justice bill prepared by the Commission to the transitional legislative authority within fifteen days from the date of its receipt

#### **Contents of the Transitional Justice Law**

16. The transitional justice law should include:

- (a) The conceptual framework for transitional justice in accordance with the provisions of this law and the outcomes of the National Conference for Transitional Justice,

- (b) Mechanisms and initiatives for accountability and accountability for those responsible for violations,
- (c) Measures and means of redress and rehabilitation for victims,
- (d) Appropriate mechanisms and measures to uncover the truth regarding violations, including the right to know the truth as an inalienable right for all citizens without discrimination,
- (e) Legal and practical safeguards to ensure that violations do not recur, including institutional reform measures and examination of records,
- (f) Determining the appropriate and appropriate time frame for the implementation of the transitional justice program in a way that achieves national reconciliation and social peace and helps restore citizens' confidence in the state's institutions.

**Duties of the Chairperson and Members of the Commission  
And Staff and Their Immunities**

17. The Chairperson, members, and staff of the Commissions shall comply with the following:

- (a) The principles of impartiality, impartiality and independence.
- (b) The duty of confidentiality, and they are prohibited from disclosing or publishing the work of the Commission outside the reports and data that it publishes. This applies to all employees, and includes maintaining the confidentiality of all documents, data, testimonies, information or materials that came to [his/her] knowledge about matters related to the Commission.
- (c) The duty of confidentiality applies to the resigning member and to collaborators and to contractors with the Commission.
- (d) The Chairperson and members of the Commission must declare their properties and the property of their spouses and children to the competent authorities.
- (e) The Chairperson of the Commission, members and staff must avoid any conduct that might affect the Commission's reputation and status.

**Immunity of the Chairperson and Members of the Commission**

18. (1) It is not permissible to take any judicial procedures against the Chairperson of the Commission or any of its members for any act related to the performance of their duties entrusted to them under the provisions of this law.

(2) No criminal proceedings may be taken against the Chairperson of the Commission or any of its members for any act committed during the exercise of their duties, or in connection with it, except after the removal of immunity from [him/her] by a reasoned decision by two-thirds of the members of the Commission.

**Chapter Five**  
**Financial Provisions**  
**Financial Resources Commission**

19. The financial resources of the Commission consist of the following:

- (a) What the state allocates for it in terms of financial resources
- (b) Unconditional grants, gifts and donations approved by the Minister of Finance and Economic Planning
- (c) Any other financial resources with the approval of the Minister of Finance and Economic Planning

**The Commission's Budget**

20. The Commission shall have an independent budget prepared in accordance with sound accounting principles.

**Accounts and Audit**

21. (1) The Commission must maintain regular and correct accounts in accordance with sound accounting principles.

(2) The Commission shall deposit its funds in accounts with the Central Bank of Sudan or any other bank approved by the Ministry of Finance and Economic Planning.

(3) The Commission shall submit an annual statement of the final accounts to the competent authorities at the end of each fiscal year.

(4) The National Audit Office shall review the accounts of the Commission or any auditor approved by the Auditor General and under his supervision.

**The Authority to Issue Regulations**

22. The Commission may issue the regulations necessary to implement the provisions of this law.

I testify that the Sovereignty Council and the Council of Ministers approved the Transitional Justice Commission Law for the year 2020 at the session on () day ..... of the month ..... year 2020,

Lieutenant General:  
Abdel Fattah al-Burhan