

A CRITICAL ANALYSIS OF SOME OF THE COMPLEXITIES OF IMPLEMENTING  
TRANSITIONAL JUSTICE IN SUDAN AFTER THE GENOCIDE IN DARFUR

LLM Mini-Thesis

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## ABBREVIATIONS

(SLM)	Sudan Liberation Movement
(SPLM/N)	Sudan People's Liberation Movement/North
(SPLM/A)	Sudan liberation Movement Army
(JME)	Justice and Equality Movement
(UNOCHA)	United Nations Office for the Coordination of Humanitarian Affairs
(UNAMID)	United Nations and the African Union Hybrid Operation in Darfur
(RSF)	Rapid Support Forces
(ICTR)	International Criminal Tribunal for Rwanda
(ICC)	International Criminal Court
(UNSG)	United Nations Secretary-General
(UNSC)	United Nations Security Council
(TRC)	South African Truth and Reconciliation Commission
(ICTJ)	International Centre for Transitional Justice
(TPM)	Tripartite Mechanism
(UNITAMS)	United Nations Integrated Transition Assistance Mission in Sudan
(AU)	African Union
(IGAD)	Intergovernmental Authority on Development
(NCP)	National Congress Party
(FFC)	Forces of Freedom and Change
(NUP)	National Umma Party
(SPA)	Sudanese Professionals Association

(ERC) Empowerment Removal Committee

(IDPs) Internally displaced peoples




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## DECLARATION

I, Hajer Musa Abdalsslam, declare that 'A CRITICAL ANALYSIS OF SOME OF THE COMPLEXITIES OF IMPLEMENTING TRANSITIONAL JUSTICE IN SUDAN: AFTER THE GENOCIDE IN DARFUR' is my original work, and no part of it has been published anywhere else in any institution or University in the past.

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Student

Signed..........Date.....20/02/2023.....

Supervisor

Signed..........Date...24 February 2023.....



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## **DEDICATION:**

I dedicate this Mini-Thesis to my mother MarEEm Adam Musa, And My Father Musa Abdalsoul Abdalsllam and to my elder Sister Safa Musa and Her husband Abdulaziz Mukhtar may Allah Bless you all.



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## ABSTRACT

*In recent decades, the lives of millions of civilians have been devastated in the Darfur region in western Sudan, by the attacks of the militia Janjaweed, with the support of the government army under the supervision of senior officials, including former President Omar al-Bashir. As a result, the Sudan Liberation Movement Army (SPLM/A) and Justice and Equality Movement (JEM) were founded in 2003 to fight the government of Sudan and its militia to stop attacks on civilians and restore political stability to the Republic of Sudan. The conflict caused massive human rights violations classified as crimes against humanity in forms of murder, mass rape, mass displacement of civilians and burning etc. After Sudan's great revolution led to a regime change in 2019, transitional justice in the Darfur region continues to face huge challenges. In 2019 some of the perpetrators and major participants in genocide, war crimes and crimes against humanity in Darfur became senior army commanders and are now leaders in the Sovereign Council of the transitional government. The current transitional government signed a peace agreement with the armed fighting movements as one of the revolution's goals towards a successful transitional period to establish Sudan as a new democratic state. Nevertheless, the transitional authorities are stuck between the presence of spoilers in the form of significant figures in the army, the failure to disarm militias that continue to cause human rights violations, and the numerous conflicts in the Darfur region. This contradiction negatively affects the transitional justice process and makes it difficult for the transitional government in Darfur to grant victims the right to compensation and reparation. This study aims to critically analyse the complexities of the transitional justice process in Sudan in order to allow the authorities to achieve the goals of a democratic state. Data will be collected through desktop research. The following questions will be addressed: How does the existence of spoilers in the transitional government and ongoing general instability impact the transitional justice approach politically and socially in the Darfur region? What are the challenges for the transitional authorities to implement a transitional justice process amid general instability? And what approach might the military power consider to convey a transitional justice mechanism to achieve a more reasonable political and social future for the victimized people? A qualitative research method will be utilized to address the questions. Finally, findings, critical analysis and recommendations will be presented in this study.*

**KEYWORDS:** Transitional justice, reparation and compensation, Darfur, crimes against humanity, genocide, international criminal justice, human rights, peace agreement.

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# CHAPTER 1

## 1.1. INTRODUCTION

Transitional justice has been deemed as a temporary program set and it represents a primary aim in any state to transition from armed conflict or a duration of violence to stability.<sup>1</sup> Sudan is presently going through transitional justice, and the Darfur region, which has suffered from decades-long war that has led to the annihilation of some ethnicities, and demographic change is not an exception but takes a high priority, and therefore some transitional justice procedure has already been implemented. Although the transitional justice process is a temporary program, it has established mechanisms to address major problems that would otherwise remain unaddressed, such as economic reparation for victims, alleviation of the suffering of the displaced and the expulsion of new settlers brought in by previous government. It is necessary to address the factors that contribute to the complicated of transitional justice in Darfur, whether they are political instability, economic, social, cultural or corrupt, at the beginning of the program. Implementing transitional justice mechanisms such as accountability, reparations, and reconciliation may be possible by ensuring political stability. Admittedly, transitional justice may lean toward political expediency. However, with the insistence of Sudanese Resistance Committees and compression from the international community, transitional justice will address a heritage of gross human rights violations in Darfur.<sup>2</sup>

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<sup>1</sup> Balda S & Magrerll L 'Reparation and the Darfur peace process: ensuring victims' rights' *International Centre for Transitional Justice* (2007) 7.

<sup>2</sup> Balda S & Magrerll L 'Reparation and the Darfur peace process: ensuring victims' rights' *International Centre for Transitional Justice* (2007) 7.

## 1.2. BACKGROUND



Figure 1: Geographic of Sudan

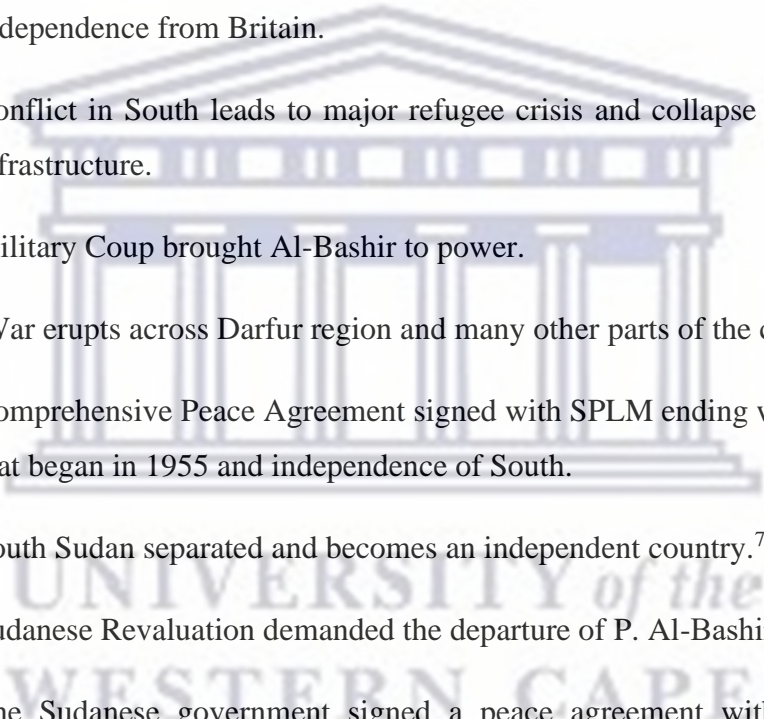
The Republic of Sudan is located in eastern North Africa, bordered by Egypt to the north, Libya to the northwest, Chad to the west, Central African Republic to the southwest, South Sudan to the south, and Ethiopia to the southeast. The country witnessed the most prolonged conflicts, human rights violations, and marginalization, which ended with the Comprehensive Peace Agreement signed in Kenya on the 9th of January, 2005.<sup>3</sup> The Comprehensive Peace Agreement represents a final effort to find an inclusive and permanent solution to the conflict that has divided North and South Sudan. Sudan is recognized as North Sudan after the separation of South Sudan in 2011.<sup>4</sup> Sudan was formerly the largest country in Africa and is now the 3ed biggest republic in Africa after Democratic Republic of the Congo and Algeria. Khartoum is the capital of Sudan, and it is located at the meeting spot of the White Nile and the Blue Nile, to form together the Nile River. Ethnic groups consist of 97 percent of indigenous

<sup>3</sup> Balda S & Magrerll L 'Reparation and the Darfur peace process: ensuring victims' rights' International Centre for Transitional Justice (2007) 6.

<sup>4</sup> Ottaway M & Hamzawy A 'The Comprehensive Peace Agreement' Carnegie Endowment for International Peace (2011)1.

Africans and 3 percent of Arab immigrants.<sup>5</sup> The population is estimated to be over 40 million people. The state is subject to Islamic law and is recognized as an Arab state. On the 1st of January 1956, Sudan gained its independence from the United Kingdom in the name of the Republic of Sudan. Since then Sudan has been led by 14 prime ministers and presidents, all 14 governments are from Northern Sudan region and there has never been a chance for majority indigenous African populations to lead the country.<sup>6</sup>

### 1.2.1. Historical Background and Timeline:



1956	Independence from Britain.
1983	Conflict in South leads to major refugee crisis and collapse of basic health infrastructure.
1989	Military Coup brought Al-Bashir to power.
2003	War erupts across Darfur region and many other parts of the country.
2005	Comprehensive Peace Agreement signed with SPLM ending war of succession that began in 1955 and independence of South.
2011	South Sudan separated and becomes an independent country. <sup>7</sup>
2019	Sudanese Revaluation demanded the departure of P. Al-Bashir's regime.
2020	The Sudanese government signed a peace agreement with several armed movement.

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<sup>5</sup> William W 'The Black Book history or Darfur's darkest chapter' SUDAN TRIBUNE (2004).

<sup>6</sup> Swchweitzer R, Melville F & Steel Z 'et al' 'Trauma, post-migration living difficulties, and social support as predictors of psychological adjustment in resettled Sudanese refugees' Australian & New Zealand Journal of Psychiatry (2006) 3 ANZP.

<sup>7</sup> 'Sudan Profile – Time line' BBC10 September 2019 available at: <https://www.bbc.com/news/world-africa-14095300>(accessed 11 January 2021).

## 1.2.2. The economic crisis in Sudan after the revolution

The Sudanese revolted on 19th December 2018 due to the bread and fuel crisis in the country, but the crisis worsened after the revolution and increased the prices of bread, gas, medicine and basic commodities. The price of the dollar on the parallel market reached more than 300 pounds, while its official price was 55 pounds. The Sudanese are facing a severe bread crisis that has made the transitional government face extremely complex situations. On 1<sup>st</sup> October 2020, the United Nations said that food cost in Sudan have tripled in a year, while the cost of health services has risen by 90%, painting a difficult image of the situation in Sudan.<sup>8</sup> The cost of importing flour, medicine and fuel is about one billion and two hundred dollars a month, which is a huge bill for a country afflicted by wars and international sanctions.<sup>9</sup> The leader of the Forces Freedom and Change, Nouredin Babiker, states in the "Al-Hurra" website that the causes of the economic decline in Sudan are due to the bad legacy that the government of the transitional period inherited from the previous regime<sup>10</sup>. Babiker explained that the causes of corruption are due to the absence of oversight, the existence of an incubating environment for corruption, the plunder of the country's wealth for the benefit of a specific group, an economy parallel to the military institution, and the absence of a national economic project, all of these factors were combined in the thirty years of Bashir's regime. He declared that the transitional government does not have a strong will to fight corruption and confront the military sector companies, which represent 80% of the country's companies.<sup>11</sup>

The people of Darfur rely on agriculture and huge livestock in their economy before the outbreak of war in 2003. The war has caused enormous economic and humanitarian damage. The war in Darfur has left more than 300,000 Darfurian civilians dead, 3 million displaced, nearly three thousand villages burned and millions of dollars lost in agricultural crops and livestock that have been stolen by the government and its militias.<sup>12</sup> According to the United Nations Office for the Coordination of Humanitarian Affairs (UNOCHA) and the World Bank's International Development Report 2011, those who live in a fragile state affected

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<sup>8</sup> (Hashem M 'The secret of the worsening economic crisis in Sudan after the revolution' AL-hurra07 October 2020 2.) الحر برنامج أكتوبر في أزمة الرغيف واشنطن\_ هاشم مصطفى

<sup>9</sup> Hashem M (2020) 3

<sup>10</sup> Hashem M (2020) 4

<sup>11</sup> Hashem M (2020) 5

<sup>12</sup> (Ali HT 'Justice for serious international crimes committed in Sudan' Al-JAZEERA 11 August 2011 )2. ٢٠١١ علي ١١ أغسطس حامدالتجاني للدراسات مركز الجزيرة

by armed conflict are more likely to suffer from poverty and not be able to access education or basic rights.<sup>13</sup>

### **1.2.3. Conflict and Crisis of Political, Social, Cultural, and Identity**

The central government of Sudan was established on the basis of ideological discrimination of Arabs against African Sudanese. Arabs are treated like the masters of the state, they deserve all rights, and they occupy leadership positions in the state as the right people to protect the state. In stark contrast, Africans are granted Sudanese subordinate status and are treated like slaves. This duality has a direct bearing on the wars in Darfur. All these factors have led to a large number of ethnic Africans embracing the Arab culture, and they have come to view their own cultures with disgust by rejecting their original identities.<sup>14</sup>

Political forces in Sudan have failed to build a perfect space for the different religious and ethnic groups in the country. Nevertheless, they have created a racial and discriminatory foundation that makes the civil violence in Sudan a conflict of identity based on the dynamics of racism and discrimination within the country's political, religious, cultural, and social institutions.<sup>15</sup>

## **1.3. PROBLEM STATEMENT**

The post-genocidal landscape in Sudan, particularly in the aftermath of the Darfur genocide, presents a multifaceted challenge in the effective implementation of transitional justice mechanisms. The complexities inherent in this context, stemming from historical, political, and socio-cultural factors, demand a comprehensive critical analysis

The implementation of transitional justice in Sudan is confronted by intricate challenges, including deeply ingrained historical grievances, political instability, and the existence of

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<sup>13</sup>Ali HT (2011) 3

<sup>14</sup>Baldo S & Magarrell L (2007)13.

<sup>15</sup>Yousif A & Rothbart D 'Ideology and cultural violence in Darfur' ACCORD 2016 3.

multiple armed groups. The complexities extend to issues of accountability, reconciliation, and the establishment of a fair and inclusive justice system. These challenges impede the smooth execution of transitional justice processes and hinder the nation's progression towards sustainable peace and stability.

Moreover, the diverse cultural and ethnic makeup of Sudan adds another layer of complexity, requiring nuanced approaches to address the unique needs and perspectives of different communities. The lack of a tailored approach to these complexities may perpetuate tensions and hinder the healing and rebuilding process post-genocide.

Sudan is currently going through a transitional phase, we may see that many countries in transition do not apply the necessary measures for transitional justice and depend on implementing a system of their own, directly or indirectly, as is the case in Sudan. In countries in transition we often find the citizens' desire for peace, justice, democracy and the rule of law after violent conflict as a joint feature of all countries.<sup>16</sup> Although Sudan is going through a two-year transitional period, the prosecution of criminals have not yet been completed, and the money that the former regime plundered has not been recovered. In addition, weapons have not been collected from the Janjaweed in Darfur, human rights violations continue, and no services have been provided to those living in internal displacement camps.<sup>17</sup>

Culturally, African culture is under threat through the Arab cultural conquest and the imposition of the Arabic language that is gradually dismantling African social and cultural cohesion in Sudan.<sup>18</sup> These cultural changes aim to redefine Sudan's identity, which has been the main cause of wars since independence in 1956.<sup>19</sup> After the last revolution in December 2019, it led to the figuration of a joint transitional government between military and civilian groups. An army-dominated transitional government signed a peace agreement with one of the armed movements the Sudan Revolutionary Front on 3<sup>rd</sup> of October 2020, in Juba, South Sudan.<sup>20</sup> However, the situation remains complicated after the signing of the Juba Peace Agreement, as the two main movements, namely, the Sudan Liberation Movement headed by

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<sup>16</sup> Lawyers: 'Government fails to collect weapons in Darfur' *DABANGA* 10 February 2021.

<sup>17</sup> Lawyers: 'Government fails to collect weapons in Darfur' *DABANGA* 10 February 2021.

<sup>18</sup> Yousif A & Rothbart D (2016) 3.

<sup>19</sup> Yousif A & Rothbart D (2016) 4.

<sup>20</sup> Al-Ali Z & Mejri A & Aderson G 'et al' *'The Juba Agreement for Peace in Sudan-Summary and Analysis'* International Institute for Democracy and Electoral Assistance (2020) 2.



Abdel Wahid Nur(SLM/A) and the Sudan People's Liberation Movement / North (SPLM/A), led by Abdel Aziz Al-Hilu did not become part of the agreement. These two main movements demanded the split of religion from the state, the end of the Arab Islamic State and Arabization and the redefinition of the identity that was not covered by the terms of the peace agreement.<sup>21</sup>

The situation has become more complex in Darfur after the withdrawal of the United Nations and the African Union Hybrid Operation in Darfur (UNAMID) in line with the Juba Peace Agreement.<sup>22</sup> The end of UNAMID's mission began on 31 December, 2020, before the Sudanese government and peace partners began implementing the peace agreement in order to assume responsibility for providing security for the people in the region.<sup>23</sup> Arab militia forces were accused of recent widespread atrocities in the region.<sup>24</sup> This endangers innocent civilians, most of them women and children, and pays the price in a new wave of deadly violence by Arab militias. In general, all of these aforementioned matters add to the distrust and complexity of the political transition in Sudan, including peace processes, peace building, protection of civilians, and thus transitional justice. Therefore, this study's themes will focus on analysing the difficulties of implementing transitional justice in the presence of transitional government leaders who participated in the Human rights crimes committed in Darfur on the one hand. On the other hand, the study will also analyse the difficulties facing the implementation of transitional justice in the non-participation of some of the important armed struggle groups namely SPLM/A and SLM/A in the Juba peace agreement.

Failing to conduct a rigorous examination of the complexities involved in implementing transitional justice in Sudan poses significant risks. Without a thorough understanding of these challenges, there is a heightened likelihood of inadequacies in the design and execution of transitional justice mechanisms. This may result in ineffective processes that fail to address the root causes of the conflict, potentially exacerbating tensions and contributing to the recurrence of violence.

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<sup>21</sup> Al-Ali Z & Mejri A & Aderson G 'et al' (2020) 5.

<sup>22</sup> 'Sudan's New Transitional Government Presents Chance to Restore Long-Term Stability in Darfur, United Nations, African Union Officials Tell Security Council' *The United nations* 26 August 2019.

<sup>23</sup> 'Sudan's New Transitional Government Presents Chance to Restore Long-Term Stability in Darfur, United Nations, African Union Officials Tell Security Council' *The United nations* 26 August 2019.

<sup>24</sup> Eltahir N & Abdelaziz 'Darfur Displaced fearful as Peacekeepers hand over to Local forces' *The AEUTERS* 13 January 2021.

Furthermore, the absence of a critical analysis may lead to the imposition of generic transitional justice models that do not align with the specific dynamics of Sudan. This could undermine the legitimacy of the justice system and diminish the prospects for genuine reconciliation and social cohesion.

### **1.3.1. SIGNIFICANCE OF THE STUDY**

The militia “Janjaweed” has been committing genocide and crimes against humanity since 2003, in Darfur with the support of the Government of Sudan. They are not only crimes within the scope of the International Criminal Court, but also a war of identity and the social, economic and political war against the people of Darfur. The importance of this study lies in analysing the transformational vision of the transitional government and its capacity to achieve the goals of the transitional period. The study will analyse the difficulties facing civilians in Darfur, especially the displaced. The study will propose recommendations to assist the transitional authority in overcoming some of the challenges that it inherited from the former regime. The study will analyse the role of the Juba Peace Agreement in the success of the transitional period.

### **1.3.2. AIMS AND OBJECTIVES**

The objectives of the study are to:

- i. Analyse the non-prosecution of perpetrators and their participation in the transitional government, and its political, economic, cultural and social impact on Sudan, especially Darfur.
- ii. Investigate UNAMID's exit from Darfur before forming a joint force to protect unarmed citizens and its impact on the transitional justice process.
- iii. Examine the role of the Juba Peace Agreement in implementing the transitional justice process in Darfur.

### **1.3.3. RESEARCH QUESTIONS**

- (i) How does the lack of prosecution of perpetrators of international crimes and their participation in the transitional government affect political, economic, cultural and social instability in Sudan, especially Darfur?
- (ii) What would be the impact of UNAMID's exit on the implementation of the peace process and the transitional justice process?
- (iii) What measures can the transitional government take to achieve security, stability, and justice for the victims of human rights violations in Sudan, specifically in Darfur?



## 1.4. LITERATURE REVIEW

### 1.4.1. Geographical location of Darfur region

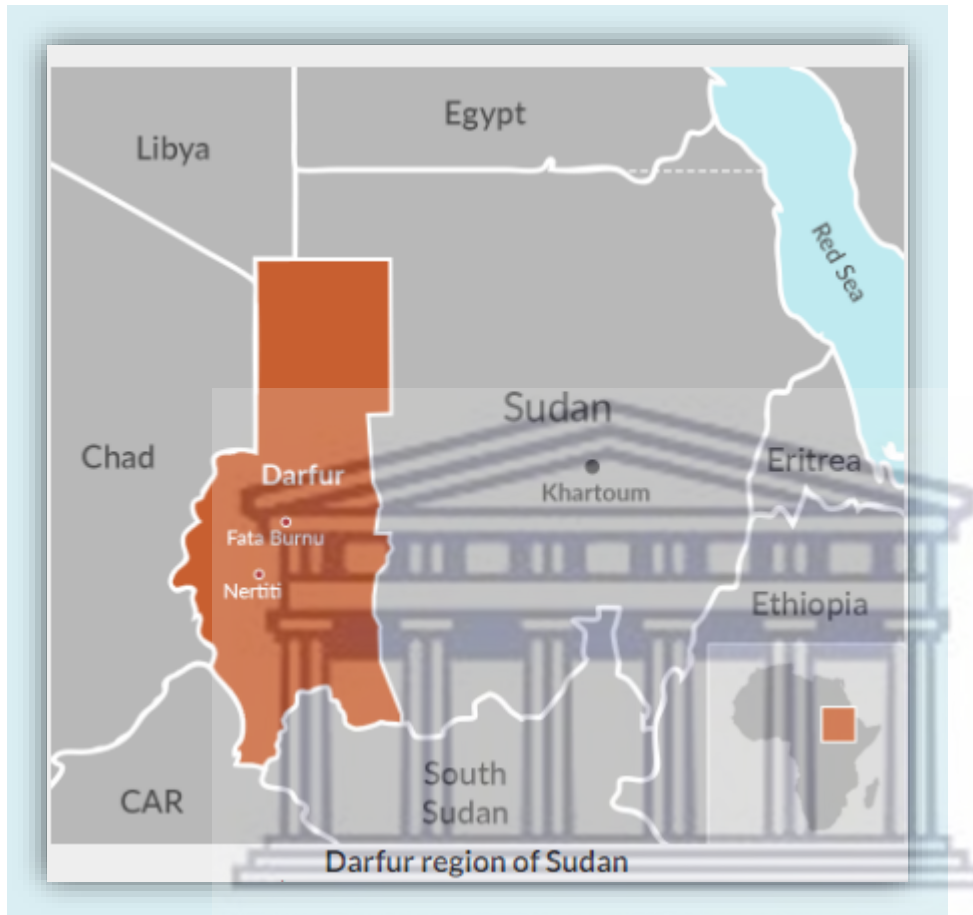


Figure 2: Darfur map

The Darfur region is located on the western part of Sudan, see Figure 2 above. The region shares border with Libya, the Republic of Chad, Central Africa and the State of South Sudan. From its northern side, the Sahara Desert serves as a barrier between Darfur and Libya and Chad.<sup>1</sup> The region is closely related to Chadian culture and communities. With a wide variety of cultures, the Darfur region consists of 5 provinces namely, North Darfur with its capital El Fashir, West Darfur with its capital "El Geneina, South Darfur and its capital is Nyala, the Central Darfur with its capital at Zalingei and the East Darfur with is capital at Al Daein. According to an Amnesty International 2004 report, there are around 30 indigenous ethnic African groups in Darfur region and most are the result of intermingling of Negro African groups. The rejection of indigenous African heritage to claim Arabic heritage imposed by the government and re-identification led to 60 years of war in Darfur. Established Sharia law set strict rules for non-Muslim Nations. According to Wallis, Political power has been

unsuccessful in constructing a comfortable description for the various ethnic and religious in Sudan.<sup>25</sup>

### **1.4.2. Transitional justice in Sudan**

The perpetrators of the atrocities in Sudan's conflict are now the influential figures in the military who participate in the current transitional government in Sudan. For example, Abd Al-fatah Al-Burhan who is now chairman of the Sovereign Council was one of the military commanders who led the genocide operations against the Darfurian people, supervised the activities of the Janjaweed, and the arming of the Arab tribes in the area.<sup>26</sup> Mohamed Hamadan Dalgo, also known as Hemetti, is the head of the Rapid Support Forces (RSf), a modified version of the Janjaweed militias that have committed widespread atrocities in Darfur but is now the Vice Chair of the Sovereign Council.<sup>27</sup> This incoherence challenges the legitimacy and ability of the transitional government in the province to deliver victims with a right to reparation and compensation.<sup>28</sup>

### **1.4.3. The Concept and Theory of Transition Justice**

The idea of transitional justice constructed from the field of international law and human rights law and refers to the various methods that a state may adopt to remedy the crime committed during an armed conflict or authoritarian regime. The mechanisms of transitional justice can be judicial or non-judicial mechanism.<sup>29</sup> The mechanisms may include but are not finite to: a series of actions or processes that go through the stage of political development from human rights violations to civil peace. And victims have full-recognized rights such as requiring perpetrators to be accountable, pursue truth, and compensation for suffering and pain.<sup>30</sup>

As pointed out above, transitional justice is known as a collection of mechanisms, including both judicial and non-judicial bodies, established by the state to address past human rights abuses.<sup>31</sup> The International Centre for Transitional Justice also supports the earlier

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<sup>25</sup> William W (2004).

<sup>26</sup> Tubiana J 'The Man Who Terrorized Darfur Is Leading Sudan's Supposed Transition' The FP 14 May 2019.

<sup>27</sup> Tubiana J (2019).

<sup>28</sup> Lefkowitz L & Rone J 'Darfur in Flames: Atrocities in Western Sudan' *Human Rights Watch* (Vol. 16, No. 5 (A) (2004)7.

<sup>29</sup> Winter S 'Towards a unified theory of Transitional Justice' *International Journal of Transitional Justice* Vol. 7 (2013) 227.

<sup>30</sup> Winter S, (2013) 228.

<sup>31</sup> Winter S (2013) 229.

defined notions of transitional justice, which defines transitional justice is “a response to systematic or widespread violations of human rights. It seeks recognition for victims and promotion of possibilities for peace, reconciliation and democracy. Transitional justice is not a special form of justice but justice adapted to societies transforming themselves after a period of pervasive human rights abuse. In some cases, these transformations happen suddenly; in others, they may take place over many decades.”<sup>32</sup> Transitional justice mechanisms cover a series of these actions or policies, which may be shored by the political, economic, social and cultural transition to societal stability.<sup>33</sup> In the context of Sudan, the variety of transitional justice mechanisms should provide worthy devices for dealing with intricate post-conflict realities. Still, none of them should be seen as a panacea in every endeavor to bridge the space between previous violence and a hopeful future.<sup>34</sup>

#### **1.4.4. Compensation and Reparation Authority**

The concept of reparation or compensation is one of the fundamental mechanisms of transitional justice that aims to compensate the victims or their families who have been subjected to violations while also addressing the causes of the conflict.<sup>35</sup> Dealing with pecuniary reparation is not a simple mission. A 2015 report by the Intergovernmental Authority for Development emphasized that the Compensation and Reparation Commission is the most significant part of setting up transitional justice.<sup>36</sup> Since the objective of reparation is to mitigate the suffering of the victims, the compensation and reparation authority demands a multitude of financial resources. The problem is with the administration that determines who will be responsible for the bill. In most countries, procedures for transactions with monetary compensation are always challenged.<sup>37</sup> If compensation is to succeed and prevent dissatisfaction, it must be comprehensive in addressing economic disparity and inequality.<sup>38</sup>

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<sup>32</sup> ICTJ ‘What is Transitional Justice’ available at: <https://www.ictj.org/sites/default/files/ICTJ-Global-Transitional-Justice-2009> (accessed 7 August 2021).

<sup>33</sup> Stover E, Harvey M & Weinstein (eds) ‘Human Rights Law Review’ *Journal of International Law* (2005) 425.

<sup>34</sup> Stover E, Harvey M & Weinstein (2005)

<sup>35</sup> Domingo P ‘Dealing with legacies of violence: transitional justice and governance transitions’ available at: [www.odi.org.uk](http://www.odi.org.uk) (accessed 8 August 2021).

<sup>36</sup> Day A ‘The UN Security Council and Transitional Justice: South Sudan’ *United Nations University Centre for Policy Research* (2020)127.

<sup>37</sup> Galtung J ‘Cultural violence’ *Journal of peace research* (1990) 291.

<sup>38</sup> Galtung J ‘Cultural violence’ *Journal of peace research* (1990) 291.

Reparations and compensation should not be deemed the only significant mechanism of transition justice; other mechanisms, such as memorialisation, should also be considered and not be neglected. However, Sudan's case is extremely complex; consequently, the selection is very complex; reparations are considered here in the case of wider security sector amelioration.

#### **1.4.5. Peace agreement during the transitional Justice**

Fulfilling peace throughout the state is considered one of the most substantial goals of the revolution, and thus transitional justice. Therefore, any attempts to end the war, attain political stabilisation, and sustain development should be based on peace agreements. Majzub explains that transitional authorities need to treat the state's human rights abuses committed by the previous regime; however, they must address the reality that the key perpetrators still have significant power over the army and transitional power. In addition, exposure to human rights violations helps keep political perpetrators at bay, and gathering evidence to conduct criminal prosecutions is difficult, if not impossible.<sup>39</sup>

### **1.4. 1.5. OVERVIEW OF THE CHAPTERS**

**Chapter 1:** This chapter provides an overview of the research topic, a discussion of the research problem, and an outline of the study's importance and objectives.

**Chapter 2:** This chapter provides a discussion of the theoretical argument proposed in response to the research question. The appropriate hypotheses are derived from the literature review on the basis of the reviewed literature appropriate for this study.

**Chapter 3:** This chapter describes the research design and the methodology used for testing. Specifically, the chapter describes the research design, data collection procedures.

**Chapter 4:** This chapter provides a detailed presentation of the results of data analysis and findings.

**Chapter 5:** This chapter provides a conclusion and recommendations for future research.

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<sup>39</sup> Majzub D 'Peace or Justice-Amnesties and the International Criminal Court' *Melbourne Journal of International Law* (2002) 247.

## CHAPTER 2

# OVERVIEW OF TRANSITIONAL JUSTICE: PROCESSES AND ELEMENTS IN INTERNATIONAL AND CONTINENTAL LAW AND THE IMPLEMENTATION OF TRANSITIONAL JUSTICE THEORIES IN SUDAN'S CONTEXT

### 2.1. INTRODUCTION

Transitional justice is a set of processes that include several legal, cultural, or political mechanisms that seek to enhance any transitional justice process and change a dictatorial regime. These processes include trials, compensation, truth and reconciliation commissions, memorials, and amnesty. These mechanisms either contribute to the democratic transition or impede the democratization process. The success or failure of transitional justice is determined by the political will and instrument of each country.<sup>40</sup>

The United Nations Secretary General defined transitional justice as mechanisms, processes, and judicial and non-judicial tools, such as trials, compensation, truth and reconciliation commissions, shared memory, rehabilitation, and amnesty. In addition, the grave human rights and international humanitarian law violations resulting from a dictatorial regime or occupation and other violations require criminal and political measures to reform judicial institutions, the security sector, or military structures and establish a constitution that protects the country and citizens.<sup>41</sup> These mechanisms should build initiatives from civilians and military personnel during transitional justice and democratic transition processes. Provided that these initiatives lead to legal and institutional reforms, as well as the need for these initiatives to be compatible with international human rights standards to have an influential role in transitional justice and democratic transformation.<sup>42</sup>

This chapter aims to participate in planning and implementing efficient prosecution, truth-telling, and reparations strategies to help victims of human rights law and international humanitarian law violations in Darfur. And address all related offenses, including political ones

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<sup>40</sup> Simic O AN INTRODUCTION TO TRANSITIONAL JUSTICE 2 ed (2021)1.

<sup>41</sup> United Nations Approach to Transitional Justice. Report of the SECRETARY-GENERAL. United Nations, 2010.

<sup>42</sup> United Nations Approach to Transitional Justice. Report of the SECRETARY-GENERAL. United Nations, 2010.



and social, cultural, civil, and economic rights. Also, it pursues to address the effects of the colonial background and extended history of marginalization. The Darfur conflicts have been ongoing since 2003, with countless killings, raped women, and about 2.5 million displaced people. Some fled to Chad, but the majority have resided in displacement camps in Darfur since 2003. However, the Violations continue against them by the Janjaweed militias and the Rapid Support militias.<sup>43</sup>

In international law, the state's responsibility is to ensure that all perpetrators of human rights violations are accountable. It is also the responsibility of civil society to pursue justice for the victims of conflict. International law also stipulates that accountability, compensation, reconciliation, the rule of law, and respect for human rights can only be applied if the state prevents impunity for perpetrators of international humanitarian law and international human rights law violations. Therefore, transitional justice in Sudan is necessary to convey a broader concept, the most important of which is the non-recurrence of violations.<sup>44</sup>

In this Chapter, we will briefly discuss transitional justice theories. As, Transitional justice has a lot of new developments in Sudan, and we have to cover those developments in the upcoming chapters. In the following Chapters, we will interrogate if transitional justice theories will ever work in Sudan's context because of the inclusion of the former regime's perpetrator participation in the transitional government. The transitional justice theories may have limited benefits in Sudan because of the weak political will, lack of participation of civil society, and missed of the justice system.<sup>45</sup>

## **2.2. MECHANISMS AND APPROACHES TO TRANSITIONAL JUSTICE**

Transitional Justice not only seeks to implement international standards and hold all those responsible for previous violations accountable, but it is a set of mechanisms and procedures (judicial and non-judicial) aimed at rebuilding the corrupted judicial structure to restore the rule of law.<sup>46</sup> The mechanisms that can address previous violations include (truth commissions

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<sup>43</sup> Balda S & Magrerll L '*Reparation and the Darfur peace process: ensuring victims' rights*' *International Centre for Transitional Justice* (2007) 7.

<sup>44</sup> Buckley S & Beck T & Braum C & Mieth F 'et al' *Transitional Justice Theories* (2014) ch 1.

<sup>45</sup> Imam Z '*Search for Transitional Justice in Darfur: The Role of the Traditional Mechanisms*' (published LLM thesis, University of Deusto, 2013) 27.

<sup>46</sup> Kasapas G '*AN INTRODUCTION TO THE CONCEPT OF TRANSITIONAL JUSTICE: WESTERN BALKANS AND EU CONDITIONALITY*' in *Hellenic Centre for European Studies* (2010)60.

- compensation - reform of institutions).<sup>47</sup> Transitional justice mechanisms also aim to implement justice for the victims and address the division of societies.<sup>48</sup> In addition, different cultures and different religious beliefs play a major role in determining the mechanisms of transitional justice that are best suited to be implemented with each method.<sup>49</sup> This chapter attempts to evaluate the different mechanisms of transitional justice (punitive - restorative - distributive) as a methods of national reconciliation in the context of post-conflict rehabilitation.<sup>50</sup>

### **2.3. RETRIBUTIVE JUSTICE AS A MECHANISM OF TRANSITIONAL JUSTICE**

“Retributive justice refers to the subjectively appropriate punishment of individuals or groups who have violated rules, laws, or norms and, thereby being viewed as having engaged in wrongful acts, offenses, or transgressions. The concept of punishment is broadly construed to encompass various adverse consequences, including costs, losses, or suffering—whether material or symbolic—imposed on an offender in reaction to their wrongdoing.<sup>51</sup> The trials play a crucial role in the pursuit of retributive justice. Retributive justice, fundamentally centered on imposing penalties for past transgressions against human rights and international humanitarian law, also serves the purpose of forestalling potential arbitrary actions by a newly established government. Moreover, within the scope of retributive justice, there is an overarching goal to institute reforms in the judicial system, viewing this as a pivotal process that contributes to the overall stability of the legal framework.<sup>52</sup> Some supporters of retributive justice consider that litigation is a necessary means for the administration of justice with five benefits as follows.<sup>53</sup>

- (i) Prosecuting criminals through legal means will be a deterrent against any reprisals;
- (ii) The trials prevent the issue of impunity and also serve as a shield for any future violations.

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<sup>47</sup> Simic O AN INTRODUCTION TO TRANSITIONAL JUSTICE 2 ed (2021)50.

<sup>48</sup> Simic O 2 ed (2021)44.

<sup>49</sup> Kasapas G (2008)59.

<sup>50</sup> Kasapas G (2008)59.

<sup>51</sup> Sabbagh C & Schmitt M ‘Handbook of social justice theory and research’ in wenzel M Retributive Justice 13 ed (2010)239.

<sup>52</sup> What is Transitional Justice? Available at: <https://www.ictj.org/about/transitional-justice> (accessed 5 August 2021).

<sup>53</sup> Kasapas G (2008)62.

(iii) The trials demonstrate to the victims the moral commitment and the seriousness of the new government towards holding the criminals accountable. Some scholars argue that without litigation, victims cannot forget past pain; not only prosecution, however, acknowledge victims' suffering as a serious step towards healing past trauma.

(iv) Retributive justice contributes to restoring relations between the parties as well as solving the problem of the disintegration of societies.

(v) Retributive justice should work in such a way that perpetrators who committed international crimes were not included in the new democratic government.

The imperative of holding perpetrators accountable for human rights violations is paramount within Sudan's Transitional Justice (TJ) framework, particularly concerning the region of Darfur. Nevertheless, we posit that the execution of retributive justice poses intricate challenges in the present Sudanese context, primarily attributable to the participation of former regime commanders in the transitional justice process. This involvement raises concerns about potential opportunities for impunity within the system. Hence, this will be discussed in greater detail in Chapter 3.....).

## **2.4. RESTORATIVE JUSTICE AS A MECHANISM OF TRANSITIONAL JUSTICE**

Restorative justice is a mechanism or approach to address human rights violations by balancing the requirements of victims, perpetrators, and society.<sup>54</sup> Overall, it is linked to a sense of security, stability, and living a good life.<sup>55</sup> Restorative justice is a non-judicial temporary commission that seeks to solve human rights violations committed during the era of conflict, which are often created by the international community and local government to seek truth as an initial step to reconciliation. This form of justice may require amnesty for the perpetrators of past crimes to gain access to the truth.<sup>56</sup>

The restorative justice characteristics are that it helps build and reinforce relations between victims, perpetrators, and society and cooperate to resolve disputes, know the causes

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<sup>54</sup> Dandurand Y Handbook on Restorative Justice Programmes (Published, University College of the Fraser Valley, 2006) 6.

<sup>55</sup> Payne B & Conay V 'A Framework for a Restorative Society? Restorative Justice in Northern Ireland' European Journal of Probation. Vol 3 (2011) 49.

<sup>56</sup> Kasapas G (2008)64.

of conflicts, and set controls for non-recurrence.<sup>57</sup> Here, truth commissions play an important role in rebuilding relations and community harmony.<sup>58</sup> Restorative justice has proven successful as a transitional justice mechanism in New Zealand, Scandinavia, and Australia.<sup>59</sup> Despite its characteristics, restorative justice has some weaknesses, namely:

(i) Restorative justice requires the disclosure of facts, which leads to reliving the trauma and pain of the victims.

(ii) The essence of restorative justice is amnesty for human rights abuses in the broadest sense, pardon vs truth. But can the victims forget all the abuses of the past?

(iii) At times, restorative justice is used as a mechanism for obstructing the transitional process because it provides opportunities to manipulate the transition by perpetrators.<sup>60</sup> Over the past two decades, restorative justice has become an integral portion of transitional justice, either as an alternative to criminal prosecution or a complement to retributive justice.<sup>61</sup>

In Sudan, retributive justice holds a central position, viewed as indispensable. Nevertheless, there is a recognition of the significance of restorative justice in broadening the scope of justice, facilitating civil involvement, and involving local administrations. In Sudanese context, restorative justice is identified as traditional or informal justice.<sup>62</sup> It will be discussed in greater detail in Chapter 3 ...).

## **2.5. DISTRIBUTIVE JUSTICE AS A MECHANISM OF TRANSITIONAL JUSTICE**

Distributive justice is justice in distributing wealth, benefits and reducing economic burdens on victims of human rights violations.<sup>63</sup> Distributive justice works to address the roots of a

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<sup>57</sup> Collins C Post-transitional justice (2010)13.

<sup>58</sup> Dandurand Y (2006)8.

<sup>59</sup> Payne B & Conay V (2011)50.

<sup>60</sup> Kasapas G (2008)65.

<sup>61</sup> Jakobsson E Transitional Justice – An Analysis of Restorative and Retributive Mechanisms in Sub-Saharan Africa (Bachelor Thesis in Peace and Development Studies, 2018) 2.

<sup>62</sup> Imam Z Search for Transitional Justice in Darfur: The Role of the Traditional Mechanisms (Published, University of Deusto,2012)8.

<sup>63</sup> Olsarelli S 'Introduction: Introduction: The Idea of Distributive Justice' The Oxford Handbook of Distributive Justice (2018) 2.

crisis or conflict so that the ruling authority has to compensate the victims of human rights abuses who were deprived of material and other non-material possessions.<sup>64</sup> The most prominent characteristics of distributive justice are:

(i) Land and wealth are the most common causes that lead to internal conflicts in many countries. Based on this, wealth distribution is a primary mechanism for achieving peace and stability in the country and an appropriate mechanism for solving economic problems and reducing poverty.<sup>65</sup>

(ii) Reparation is a fundamental mechanism of distributive justice. It includes a set of measures: (restoration of rights and reconstruction - participation of victims in the change process - advice provided by truth commissions - correction of past mistakes). Consequently, distributive justice is important to address the consequences of conflicts.<sup>66</sup>

Distributive justice's limitation lies in the potential imposition of an upper threshold on land reclamation for victims within the new system. In scenarios where victims vie for land, the governing authority of the emerging regime determines the compensatory limits applicable to individuals and groups. Noteworthy instances of these policies include their implementation in Romania in 1991 and Hungary in 1945.<sup>67</sup> In Colombia, the capture of land by armed forces led to the lack of a fair distribution of land and an internal conflict.<sup>68</sup> The activation of distributive justice is imperative in Sudan to effectively tackle land-related issues in Darfur. This involves providing compensation as a means to ensure peace stability and foster national reconciliation.<sup>69</sup> We will consider the recent coup d'état in Sudan on 25 October 2021. It will be discussed in greater detail in chapter 3.

## **2.6. TRANSITIONAL JUSTICE THEORIES**

Transitional justice theory help us to understand how conflicts and human rights abuses are transformed to build a stable state after mass atrocities.<sup>70</sup> Reichler argued that transitional justice requires methods, opinions, and experiences to create new avenues of thinking about

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<sup>64</sup> KasapasG (2008)66.

<sup>65</sup> Bergsmo M & Garavito C & Kalmanovitz P 'et al' Distributive Justice in Transitions (2010) 2.

<sup>66</sup> Jakobsson E (2018) 9.

<sup>67</sup> Baldo S & Magarrell L 'REPARATION AND THE DARFUR PEACE PROCESS: ENSURING VICTIMS' RIGHTS' (2007) ICTJ 8.

<sup>68</sup> Bergsmo M & Garavito C & Kalmanovitz P 'et al' Distributive Justice in Transitions (2010) 2 in Saffon M & Upimny R Distributive Justice and the Restitution of Dispossessed Land in Colombia 12 (2010) 379-420.

<sup>69</sup> Baldo S & Magarrell L (2007)7.

<sup>70</sup> Buckley S & Beck T & Braum C & Mieth F 'et al' 'Transitional Justice Theories' (2014) in Zistel S & Beck T & Braum C & Mieth F Transitional Justice Theories: An Introduction (2014) ch 1.

justice theory, peacebuilding practice, and the success of transitional justice.<sup>71</sup> Peacebuilding includes a wide range of measures and mechanisms related to human rights to limit the prevention of the recurrence and continuation of armed conflicts, as well as strengthening the foundations of sustainable peace and stability in the political, economic, and security aspects, building a democratic state, in addition to the rule of law.<sup>72</sup> It must also establish structures and sustainable links and legal justice to prevent impunity.<sup>73</sup>

Among the areas where genocide, war crimes and crimes against humanity occurred, for example, Rwanda 1994 and East Timor 2004, studies were conducted on the development of the theory of transitional justice, and the implementation of justice in each country differed significantly from the other.<sup>74</sup> After the human rights violations that took place in Rwanda in 1994, International Criminal Tribunal for Rwanda (ICTR) was instituted, which sought to achieve justice somewhat, as well as for change from the culture of impunity to prosecution, as well as to restore stability and build peace.<sup>75</sup> The argument was that holding criminals and major perpetrators accountable conveys a clear message that the rest of the criminals will be prosecuted in the future, especially as it will be a deterrent to committing any violations in the future. This remains main reason behind the violence in Rwanda is the lack of trials or the culture of impunity.<sup>76</sup>

## **2.7. TRANSITION INTERESTS THEORY**

The theory of transitional justice in terms of transition is intended to seek to move from injustice to democracy, from impunity and amnesia to prosecution, and the possibility of hope for change.<sup>77</sup> Some scholars argue that transitional justice in (the transitional interest) seeks to address the wounds of the past and helps in political reconstruction by inculcating political liberal values about economic development, building political and legal structures, and rebuilding confidence for the victims.<sup>78</sup> In addition, civil society has dramatically influenced transitional justice mechanisms, as it pushes the new government to address previous crimes,

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<sup>71</sup> Reichler L 'CHALLENGES OF PEACE RESEARCH' *International Journal of Peace Studies* 11 (2016) 6.

<sup>72</sup> Cheng-Hopkins UN Peacebuilding: An Orientation: Report of the Secretary-General on Peacebuilding in the Immediate Aftermath of Conflict of June 2009. United Nations, (2010)6.

<sup>73</sup> Zistel S & Beck T & Braun C & Mieth F (2014) ch 1.

<sup>74</sup> Zistel S & Beck T & Braun C & Mieth F (2014) ch 1

<sup>75</sup> Clark P THE GACACA COURTS, POST-GENOCIDE JUSTICE AND RECONCILIATION IN RWANDA (2010)36.

<sup>76</sup> Clark P (2010)35.

<sup>77</sup> Nesiah V 'Theories of Transitional Justice: Cashing in the Blue Chips in The Oxford Handbook of Theories of International Law' *International Law, Law and Society* (2016)8.

<sup>78</sup> Nesiah V (2016)9.

such as prosecuting criminals, truth commissions and compensation, and rejecting mechanisms that seek amnesty without achieving justice.<sup>79</sup> So, when we say transitional justice for (interest of transition), we find a shift from an authoritarian state to a thriving democracy. We see a tight relationship between the transitional Justice mechanisms and the strength of civil society. Therefore, the weaker the civil society, the weaker the democratic transition.<sup>80</sup> Non-governmental organizations, civil society, and local organizations also played an essential role in implementing transitional justice processes to address human rights abuses, for example, in East Timor, Ghana.<sup>81</sup>

The precarious political history of Sudan is perceived as a setting that fosters ongoing human rights violations without apprehension of legal consequences. Consequently, the transitional justice initiative in Sudan necessitates comprehensive collaboration among civil society, Sudanese judiciary, and international entities, including the International Criminal Court (ICC). This collective effort aims to attain criminal justice for human rights abuses and address legal gaps that contribute to a culture of impunity.<sup>82</sup>

## **2.8. JUSTICE INTERESTS THEORY**

The UN Secretary-General mentioned in a report on (the rule of law and transitional justice) Transitional justice is in the interest of justice when it emphasizes the prosecution of the individual, the search for truth, reparations, and the building of a state of institutions.<sup>83</sup> David also argued that transitional justice and truth commissions have goals linked to the interests of justice that include the truth they seek, a public podium for victims, accountability and penalisation of perpetrators, reparations for victims, institutional reform, reinforcing the rule of law, development, and reconciliation, and public forums around past abuses.<sup>84</sup> Greiff also argues that transitional justice aims to build trust, democracy, recognition, and reconciliation, open the door to negotiations, rewrite the constitution, prosecute abusers of power, and

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<sup>79</sup> Hoelscher M & Fioramonti L 'Civil Society, Conflict and Violence' in Tricia D & Leigh A & Andrew G An Exploratory Analysis of Civil Society and Transitional Justice 35 (2012)63.

<sup>80</sup> Hoelscher M & Fioramonti L 'Civil Society, Conflict and Violence' in Tricia D & Leigh A & Andrew G An Exploratory Analysis of Civil Society and Transitional Justice 35 (2012)64.

<sup>81</sup> Duthie R Building 'Trust and Capacity: Civil Society and Transitional Justice from a Development Perspective' International Journal of Transitional Justice (2009)11.

<sup>82</sup> The 'Policy Briefing on DOMESTIC ACCOUNTABILITY EFFORTS IN SUDAN' (2021) SOAS University of London.

<sup>83</sup> Greiff P A Normative Conception of Transitional Justice (2010)18.

<sup>84</sup> Robert I & Rotberg & Thompson D (eds) 'Truth v. Justice: The Moral Efficacy of Truth Commissions: South Africa and Beyond' in Crocker DA TRUTH COMMISSIONS, TRANSITIONAL JUSTICE, AND CIVIL SOCIETY (2000)3.

compensate for losses.<sup>85</sup>The interests of justice seek individual responsibility and combat the concept of collective guilt. Hence, the theory of the interest of justice is formulated on the prevailing idea of human rights related to political liberalism, totalitarianism, and globalism.<sup>86</sup>

Given the complex nature of transitional justice in Sudan, the Transitional Justice Commission calls for all mechanisms to remain open. Discussions regarding compensation, reparation, truth, and reconciliation are requested to be deferred for later consideration.<sup>87</sup>

However, when discussing legal proceedings, the focus shifts towards the restructuring of both security and judicial institutions. This restructuring aims to reinstate the state as one governed by the rule of law. When framing the issue within the context of comprehensive reform, certain deliberate impediments become apparent. Notably, the alleged perpetrators have not been handed over to the International Criminal Court (ICC), and the formation of the Legislative Council has not transpired. These obstacles suggest a lack of a well-defined and official vision by the transitional government.

The absence of a transparent model for addressing ICC prosecutions for crimes committed in Sudan over the past 30 years, despite well-documented evidence, prompts questions about the delay in filing charges. Instances such as the crimes against demonstrators at the military headquarters on June 3, 2019, and the killings of protesters in Khartoum in 2013 underscore the need for clarity on why charges have not been initiated thus far.

## 2.9. THEORIES OF CHANGE FOR TRANSITIONAL JUSTICE

The concept of change: an imposition or method based on processes, outcomes, and activities around crisis resolution and re-elaboration of mini-methods that pursue a long-term goal (and a desire to demonstrate that donor money provides change).<sup>88</sup>

Valters argues that organizations and donors of funds help address ongoing crises. The organizations mentioned the change in any society due to their projects and programs.<sup>89</sup>James

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<sup>85</sup> Creiff P (2010)18.

<sup>86</sup> Nesiah V (2016)7.

<sup>87</sup> (Abdulsalam M: 'Transitional justice is a top priority for achieving democratic transformation' DABANGA4 October 2019.)

محمد عبدالسلام "العدالة الانتقالية أولوية قصوى لتحقيق التحول الديمقراطي" 4 أكتوبر 2019

<sup>88</sup> Gready P & Robins S 'Transitional Justice and Theories of Change: Towards evaluation as understanding' International Journal of Transitional Justice (2020)283.

<sup>89</sup> Gready P & Robins S (2020)284.



defines the theory of change as “an ongoing process of reflection to explore change and how it happens – and what that means for the part we play in a particular setting, sector and/or group of people.”<sup>90</sup>

Fundamental to the development of the theory of change focuses on a good and strong public understanding of policy and social science approach and that the project or programs lead to end results. There are six theories of policy change:<sup>91</sup>

- (i) The "big leaps" or equilibrium theory can considerably change local institutions and politics.
- (ii) "Coalition theories" can change policies through systematic activity among individuals who hold the same beliefs.
- (iii) "Agenda Preparation" Change occurs through the political solution to the problem and the political environment around the issue.
- (iii) "Correspondence or possibility theory": A change occurs through the correspondence that is submitted so that the political opinions of individuals differ from one to another and their acceptability.
- (iv) "The theory of political power or political elites" Political Change occurs through influencing the creation of a decision and participation with authority in decision-making.
- (v) "The theory of working with society" Change occurs when work is done collectively and work is organized to solve crises.

In the current situation of Sudan, we note that the armed movements that signed the Juba Peace Agreement allied themselves with the Military Council, which resulted in the October coup of 2021. However, they had typical demands with the Declaration of Freedom and Change forces and other civilians.<sup>92</sup> It will be discussed in greater detail in chapter 4. To apply the theory of change, we find that there are some challenges facing the theory of change, which are:

First, the mechanisms for achieving change are not developed or effective for democracy, strengthening the rule of law, reconciliation, and building peace. This raises the question of whether transitional justice is effective in Sudan as a cause or result of democracy.<sup>93</sup>

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<sup>90</sup> Valters C 'The Theories of Change Time for a radical approach to learning in development' Overseas Development Institute (2015) 5.

<sup>91</sup> Jones H '*A guide to monitoring and evaluating policy influence*' overseas Development Institute UK, (2011)5.

<sup>92</sup> Crisis group African Briefing: 'The Rebels Come to Khartoum: How to Implement Sudan's New Peace Agreement' International Crisis Group (2022).

<sup>93</sup> Gready P & Robins S (2020)286.

Transitional justice requires change at the societal, individual, and national levels. Still, no method has been identified to link change between levels, and neither is it determined which is necessary for any specific mechanism. The transitional justice mechanisms (trials, truth commissions, and reparations at the local level cause significant differences and tensions between activists, legal entities, and institutions).<sup>94</sup> For example, in South Africa's TRC, there were interruptions between the Truth and Reconciliation Commission, local justice bodies, the masses, and political elites, as well as between reconciliation and human rights on the one hand, and in response to the public's desire for revenge on the other hand.<sup>95</sup> Greiff also argues that transitional justice aims to build trust, democracy, recognition, and reconciliation, open the door to negotiations, rewrite the constitution, prosecute abusers of power, and compensate for losses.<sup>96</sup>

Secondly, it revolves around the shortcomings in transitional justice mechanisms and the dispute over practical application between trial and investigation committees in investigations conducted to obtain evidence and witnesses and provide evidence.<sup>97</sup>

Cronin-Furman argues that the "archetype" as a mechanism for the theory of change assumes that the ICC did not punish other potential criminals for severe violations and that deterring criminals is less likely to be seen as a lack of transitional justice mechanisms.<sup>98</sup>

## **2.10. CRITICAL APPROACHES TO TRANSITIONAL JUSTICE**

We previously mentioned the advantages of transitional justice. It is strengthening theories of dual transitional justice that seek to build peace after mass atrocities and a means to strengthen democracy. This is what was mentioned in the social contract theories, other than critical theories that analyse contradictions, inequality, and political divisions.<sup>99</sup> I will discuss some critical theories of the transitional justice process as follows first: redefining justice primarily to determine "the interests of justice." Secondly: the cut-off of the idea of transition, how are the theories of "transitional interests" determined.<sup>100</sup>

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<sup>94</sup> Gready P & Robins S (2020)287.

<sup>95</sup> Richard A & Wilson 'The Politics of Truth and Reconciliation in South Africa: Legitimizing the Post-Apartheid State' in *Brahm E Reconciliation, Retribution and Revenge* (2001) 97.

<sup>96</sup> Creiff P (2010)18.

<sup>97</sup> Cronin-Furman K 'Managing Expectations: International Criminal Trials and the Prospects for Deterrence of Mass Atrocity' *International Journal of Transitional Justice* (7) (2013)436.

<sup>98</sup> Cronin-Furman K (2013).

<sup>99</sup> Sharp D *What 'Would Satisfy Us? Taking Stock of Critical Approaches to Transitional'* *International Journal of Transitional Justice*, Oxford University Press (2019)572.

<sup>100</sup> Nesiiah V (2016)12.

### **2.10.1. Redefining justice primarily to determine the “interests of justice”**

Critical approaches that contradict the interest of justice and seek to redefine justice and develop theories to redefine it. Because challenges to transitional justice depend on the victim and the perpetrator.<sup>101</sup> Nesiah says transitional justice needs to be redefined. For example, transitional justice theories in South Africa distort the infrastructure of apartheid and that the political system repeats grievances anew.<sup>102</sup> Thus, the Truth and Reconciliation Commission focused on the policeman who killed and the guard who tortured him and ignored the guilt of whites who had interests from the racist regime, even if they did not participate in the killing and torture directly.<sup>103</sup> This theory has not received any beneficial interest, but it opens the door to thinking about the planned structure of human rights violations, which gives rise to new violence. Nesiah also argued in the final report of the Truth and Reconciliation Commission that the recommendation made that taxes be imposed on all whites to benefit from the apartheid system, and support abuses were not implemented.<sup>104</sup> Because paying taxes, recovering money, and then applying justice is impossible, the issue of apartheid has become an essential matter from which lessons are taken in the daily practices of implementing democracy and the rule of law<sup>105</sup>

Nesiah argues justice must be redefined. This can be suitable for Sudan case, for example, the case of the torture and killing of Professor Ahmed al-Khair and the rest of the detainees after their arrest in the 2018 demonstrations. The junior officers who carried out the orders were tried without the senior officers who issued the orders. We need to redefine justice to include all perpetrators.<sup>106</sup>

### **2.10.2. Critical approaches to transitional justice that seek to cut off the idea of transition:**

It is known that transitional justice in the "interest of transition" helps to move from war to peace, from dictatorship to democracy, and from chaos to stability. However, critical theories challenge the points linking the goals of the transition to democracy, peace, and social cohesion. For example, the Plaza Mothers in Argentina reject the Argentine transition from a

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<sup>101</sup> Nesiah V (2016)12

<sup>102</sup> Motlhoki S 'The effectiveness of the South African Truth and Reconciliation Commission in the context of the five pillars of transitional justice' (published, UNIVERSITY OF SOUTH AFRICA,2017)23.

<sup>103</sup> Nesiah V (2016)13.

<sup>104</sup> Nesiah V (2016)13.

<sup>105</sup> Nesiah V (2016)14.

<sup>106</sup> BBC 'Sudan sentences 29 to death for teacher's killing in custody' available at: <https://www.bbc.com/news/world-africa-50945224> (accessed 7 November 2021).

dictatorship to a democracy, arguing that persistent disappearances have led to distrust and questioning of the social contract and peace. These critical theories did not form any political impetus but impacted the concept of transitional justice.<sup>107</sup>

As for cutting off the idea of transition, we seek to take a lesson from Argentina that the continuation of cases of disappearance is not a justification for surrendering to dictatorial rule. We do not support the idea of cutting off the transitional process just because of the continuation of violations in Sudan. Instead, we seek to continue the transitional process to reach democracy because the recent coup in Sudan is severing the idea of transition and a license to resume violations.<sup>108</sup> we will discuss this in detail in chapter 4.

## **2.11. TRUTH COMMISSIONS CHALLENGES IN THE PROCESS OF TRANSITIONAL JUSTICE**

In recent years' truth commissions are exceedingly looked to be an essential instrument of the transitional justice process, whose target is to repair past wrongs, assure the dignity of victims, and supply justice in periods of transition after a fierce conflict or human rights abuses.<sup>109</sup> They are often offered as a path to administer the challenges that usually occur in transitional justice processes, including finding the equilibrium between the need to knowledge what placed in the past, moving forward, and hopefully greater recognition of the complexity of truth post-conflict.<sup>110</sup>

Despite the vibrant academic debate on truth commissions, it has been described by a relative shortage of theoretical frameworks. Rather, truth commissions practice in transitional justice is largely based on implicit assumptions rather than depending on experimental evidence.<sup>111</sup> Policy actors through the transitional justice process have overwhelmingly not sufficiently participated in a critical reflection of the truth commissions policy suggested, which has been robustly affected and confirmed by particular historical experiences, such as the Nuremberg and Tokyo trials after the Second World War, the tribunals for the former Yugoslavia and Rwanda, or the Truth and Reconciliation Commission (TRC) in South

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<sup>107</sup> Nesiah V (2016)14.

<sup>108</sup> DABANGA 'Darfur gunmen 'see coup as a license to resume attacks' The Dabanga 2 January 2020.

<sup>109</sup> Langer J 'Are Truth Commissions Just Hot-Air Balloons? A Reality Check on the Impact of Truth Commission Recommendations' on the Latin American Studies Association, Universidad del Rosario, (2017)180.

<sup>110</sup> Olsen T & Payne L & Reiter A & Brahm 'When truth commissions improve human rights' The International Journal of Transitional Justice. Vol (4) *University of Denver* (2010)460.

<sup>111</sup> Buckley-Zistel S & Beck T & Braum C & Mieth F (2014)1.

Africa.<sup>112</sup> Thus, the challenge is both to reveal what these underlying assumptions entail and how they influence or limit the practice of transitional justice. As a result, through the last decade, there has been a persistent discussion as to whether or not truth commissions in the transitional justice process actually work and what impact they have.<sup>113</sup>

For instance, the claim that in the Peruvian case confirmed stories became more enshrined and did not allow for a ‘grey zone’ between victims and perpetrators. In Sierra Leone, the Western-enjoined concepts clashed with domestic opinions on the significance of truth-telling and social healing rather than commemoration for recovery.<sup>114</sup>

While the supporters of truth commissions argue that prosecutions are pricier in comparison to truth commissions, this discussion is inadequate for promoting truth commissions. Instead, policymakers of transitional justice should consider that truth commissions often do not level to the anticipations of victims and civil society.<sup>115</sup> Additionally, shorter time frames and insufficient time for setting up the commission has been the biggest challenge in truth-telling, this is based on the augment of the international community and its consulters like the International Centre for Transitional Justice (ICTJ).<sup>116</sup> We will discuss the truth and reconciliation Commission in greater detail in Sudan's Context and see whether it works in Sudan's situation or what effect it will have, in Chapter 4.

## **2.12. IMPACTS OF TRANSITIONAL JUSTICE ON DEMOCRATIC INSTITUTION-BUILDING**

The effect of transitional justice depends on the way it is applied in countries. If justice is applied comprehensively, it will inevitably lead to the rule of law and democracy, but it will lead to a new dictatorial regime if it is poorly used.<sup>117</sup> Thus, the use of transitional justice mechanisms such as Trials, truth commissions, rehabilitation programs by the military and civilians in a comprehensive manner will lead to a democratic system. But, to the same extent, its misuse will turn the transitional period into a new authoritarian regime.<sup>118</sup> Barkan's

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<sup>112</sup> Buckley- Zistel S & Beck T & Braum C & Mieth F ‘et al’ ‘Transitional Justice Theories: An Introduction’ *Transitional Justice Theories* (2014)2.

<sup>113</sup> Buckley- Zistel S & Beck T & Braum C & Mieth F ‘et al’ *Transitional Justice Theories: An Introduction* *Transitional Justice Theories* (2014)2.

<sup>114</sup> Buckley- Zistel S & Beck T & Braum C & Mieth F ‘et al’ (2014)3.

<sup>115</sup> Langer J (2017)183.

<sup>116</sup> Olsen T & Payne L & Reiter A & Brahm (2010)462.

<sup>117</sup> Simic O 2ed (2021) ch1.

<sup>118</sup> Simic O 2ed (2021) ch1.

argument focuses on the necessity of telling the story of the past and participating in the delegitimization of the previous regime for the new government to triumph over historical injustice and agreement in moving forward, as well as without telling the story of the past, no trials no remembrance and no apology can happen.<sup>119</sup> Halev argues that if the situation continues without trials or a truth commission, and the issue of impunity persists, it will lead to new violence and a desire for revenge.<sup>120</sup> Hazan says without the consent of all the civil and military parties that severe grievances have already occurred in the past. Without a common will, the effect of transitional justice in building democracy will be zero.<sup>121</sup> Given the current circumstances in Sudan, the question of recognition poses a significant challenge. It becomes imperative to establish mechanisms facilitating an impartial inquiry, achieved through comprehensive research involving civil society, academic institutions, and similar entities.

### **2.13. BRAZIL'S CASE STUDY**

In Brazil, the dictatorial government from 1964 to 1985 was somewhat paradoxical, a period in which the economic level grew significantly on the one hand. A period when widespread abuses and repressions took place against the opposition, on the other hand, the military dictatorship gave the army absolute powers to commit atrocities against politicians opposed to the regime.<sup>122</sup> One of the policies of authoritarian regimes is that the continuation of the transitional period is restricted by amnesty to accept any negotiation or deal with the new regime. This is what happened in Brazil in 1979 when the military regime issued a pardon. Despite opposition from victims and the complexities of human rights, an amnesty was added to the 1988 constitution.<sup>123</sup> The amnesty resulted in no trials for more than three decades, thus beginning the transitional phase with the Truth Commission, Memory, and Reparations.<sup>124</sup> As for the compensation set for the victims and the families of the missing, it was supposed to provide the equivalent of \$100,000, but it was not disbursed in one go to the victims.<sup>125</sup> In

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<sup>119</sup> Simic O 2ed (2021) ch1.

<sup>120</sup> Spinner-Halev J 'From Historical to Enduring Injustice' SAGE, University of North Carolina (2007)585.

<sup>121</sup> Hazan P 'Measuring the impact of punishment and forgiveness: a framework for evaluating transitional justice' the Faculties of Economic and Social Sciences (SES) and Law of the University of Geneva. Volume 88 (2016)2.

<sup>122</sup> Galindo B 'Transitional Justice in Brazil and the Jurisprudence of the Inter-American Court of Human Rights: a difficult dialogue with the Brazilian judiciary' f Oxford Transitional Justice Research of the University of Oxford/UK (2021)30.

<sup>123</sup> Simic O 2ed (2021) ch2.

<sup>124</sup> 'As Brazil's Amnesty law is Challenged, Accountability For Crimes Of the Past at Stake' available at:<https://www.ictj.org/news/brazil%E2%80%99s-amnesty-law-challenged-accountability-crimes-past-stake> (accessed 30 August 2021).

<sup>125</sup> Simic O 2ed (2021) ch5.

addition to the committee that was formed to reveal the facts, it did not reveal the full facts due to the lack of political will.

The Inter-American Court of Human Rights issued a report in 2010 stating that the 1970 amnesty for agents of a dictatorial regime contravened the US human rights conventions. Furthermore, the lack of prosecutions leads to the repetition of abuses. It commends impunity that contradicts the existence of the state and international law, adding that the state's primary goal is to protect human rights, not to cover up violations.<sup>126</sup> Thus, transitional justice in Brazil was classified as fragile, helping the country return to its old authoritarian policies.<sup>127</sup> Therefore, Sudan can take lessons from Brazil that as long as the Sudanese army controls the transitional period and decisions related to weapons in Sudan, Sudan does not expect any prosecutions. Furthermore, there will be no prosecution as long as there is still a strong relationship between the current government and the former regime.<sup>128</sup> Thus, the transitional period will pass as fragile as Brazil.

The Sudanese Public Prosecutor explained that the grave violations committed by the security and intelligence forces, the police forces, and the armed forces make it difficult to obtain evidence to convict the police themselves, despite the police's competence to reveal the evidence.<sup>129</sup> For example, the crimes committed by the armed forces and intelligence in 1989 and 1995, the evidence incriminating the officer has disappeared or been disposed of, and only witnesses remain, however, facing challenges and fears in testifying out of fear for their security and safety.<sup>130</sup>

Hence, addressing the primary challenges associated with the reform and restructuring of legal institutions is imperative for the successful execution of the transitional process. This includes prioritizing the elimination of provisions granting immunity to police and military intelligence, which impedes the prosecution process. Additionally, committees and entities dedicated to the success of the transitional process should actively contribute to cultivating

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<sup>126</sup> International Centre for Transitional Justice: Report - As Brazil's Amnesty law is Challenged, Accountability for Crimes of the Past at Stake ICTJ (2013).

<sup>127</sup> Arnould V & Sriram C 'PATHWAYS OF IMPACT: HOW TRANSITIONAL JUSTICE AFFECTS DEMOCRATIC INSTITUTION-BUILDING' Impact of Transitional Justice on Democratic Institution-building (IJD) (2014)7.

<sup>128</sup> Skaar E 'Is Sudan Ready for Transitional Justice' available at <https://www.cmi.no/publications/7071-is-sudan-ready-for-transitional-justice> (accessed 7 November 2021).

<sup>129</sup> The 'Policy Briefing on DOMESTIC ACCOUNTABILITY EFFORTS IN SUDAN' (2021) SOAS University of London.

<sup>130</sup> The 'Policy Briefing on DOMESTIC ACCOUNTABILITY EFFORTS IN SUDAN' (2021) SOAS University of London.

political will. This entails holding government agencies accountable and ensuring the independence of the Sudanese judiciary, thereby fortifying the resilience of the transitional period.<sup>131</sup>

## **2.14. TRANSITIONAL JUSTICE AND THE QUALITY OF DEMOCRACY**

Recent research indicates that the efficacy of the transitional justice phase is notably diminished when its mechanisms are implemented in isolation or are not synergistically integrated with other measures. Conversely, a more substantial impact is observed when these mechanisms are applied consistently over an extended period. This underscores the notion that certain measures may not be universally applicable at all times, especially in the immediate aftermath of a conflict.<sup>132</sup> The quality of democracy is also evaluated based on the quality of the structure of state institutions, the quality of trials, and the rate of participation, in addition to the extent of the activity of the executive, legislative and judicial authorities in the transitional period.<sup>133</sup>

When evaluating, we return to knowing the relationship between transitional justice and national democratic institutions through mechanisms that refer to the quality of democracy; for example, in accountability, we look at the fairness of trials and compensation for each victim. When assessing the victims' trust, we look at the extent to which they engage in the new government, their participation in decision-making, and the extent to which the government responds to the victims' demands. Finally, when evaluating transparency, we look at whether international human rights law provisions are implemented or not, such as the right to redress and examination.<sup>134</sup> Therefore, determining the quality of democracy in Sudan is related to the quality of the structure of state institutions and the quality of trials. This is linked to political will and institutional capacity. The transitional justice perspective shows the

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<sup>131</sup> Justice for Serious International Crimes Committed in Sudan available at: <https://www.hrw.org/news/2020/06/22/qa-justice-serious-international-crimes-committed-sudan> (accessed 30 August 2021). Human Rights Watch.

<sup>132</sup> Thoms O & Ron J & Paris R 'State-Level Effects of Transitional Justice: What Do We Know?' The International Journal of Transitional Justice, oxford university (2010)7.

<sup>133</sup> Mihr A & Herm M Transitional Justice: Between Criminal Justice, Atonement, and Democracy (eds) (2012)12.

<sup>134</sup> Mihr A & Herm M Transitional Justice: Between Criminal Justice, Atonement, and Democracy (eds) (2012)14.



unwillingness of, for example, the military structure that controls decision-making and the recent Military coup.<sup>135</sup> We will discuss this in greater detail in chapter 4.



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<sup>135</sup> Carter Centre: ‘Sudanese youth not enough involved in decision-making’ available at: <https://www.dabangasudan.org/en/all-news/article/carter-center-sudanese-youth-say-they-re-not-involved-in-decision-making> (accessed 10 November 2021).

## CHAPTER 3

### RECENT MILITARY COUP AND ITS IMPACT ON TRANSITIONAL JUSTICE IN SUDAN

#### 3.1. INTRODUCTION

The past decades of Sudan's history witnessed repeated human rights violations and international humanitarian law in Darfur, the Blue Nile, and the Nuba Mountains. The scheme of the military government and the security sector is to suppress the Sudanese people by targeting specific groups in Darfur, including African tribes of Fur, Masalit, and Zaghawa, and groups that support human rights, university students, and politicians opposed to the former regime. Besides this, Sudan has suffered long- practiced the energetic destruction of state institutions and the corruption of its administration and economy, as well as political divisions and the impunity of perpetrators of human rights and international humanitarian law violations.<sup>136</sup>

The Sudanese revolution sought to overthrow the former regime and dismantle the deep state through young revolutionaries and women to reach freedom, peace, and justice for the Sudanese people, establish a state of the rule of law and restructure the justice institutions. As well as the desire of the displaced, the victims of violations, and their families to establish transitional justice mechanisms to achieve justice for them and to make just compensation to repair the damage they have suffered.<sup>137</sup> However, since the fall of Al-Bashir's government in 2019, the rate of violence has increased in Darfur, especially in West Darfur, which used to be the most peaceful state. The violence includes attacks by the security forces and the RSF on peaceful demonstrators and the high cost of living in all parts of Sudan. Darfurian political analysts have argued that the continuation of violence in Darfur is a clear indication that the former regime has not fallen, and it is expected that the coup that occurred on October 25 will lead to the birth of new violence in Khartoum, especially in Darfur, and will also hinder the transitional period. We will highlight the impact of coup d'état on the transitional period.<sup>138</sup>

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<sup>136</sup> The 'Policy Briefing on DOMESTIC ACCOUNTABILITY EFFORTS IN SUDAN' (2021)5 SOAS University of London.

<sup>137</sup> The 'Policy Briefing on DOMESTIC ACCOUNTABILITY EFFORTS IN SUDAN' (2021)6 SOAS University of London.

<sup>138</sup> International Federation for Human Rights - A very short window of hope for peace in Sudan- International Criminal Court Report (2021).

### 3.2. TRANSITIONAL JUSTICE IN THE JUBA AGREEMENT

As we mentioned earlier, one of the most significant achievements of the transitional period in Sudan is the peace agreement signed on October 3, 2020, between the transitional government and the armed movements. We will discuss some of the texts explicitly stipulated in the agreement, namely:<sup>139</sup> Fair trials and reconciliation guarantee peace, stability, and security, fighting impunity and equitable sharing of power and strengthening the social fabric and peaceful coexistence. Ensure the formation of independent and impartial bodies for justice and accountability.<sup>140</sup> As we mentioned earlier, in transitional justice and retributive justice theories, the mechanism of trials is essential to prevent impunity and prevent the recurrence of violations. In addition, retributive justice forbids any arbitrary actions by the previous government.<sup>141</sup> There is no room for trial or investigations under the current situation. The Juba Peace Agreement was a positive step to prosecute violators of human rights crimes and hand over the criminals of the former regime to the ICC. It was also an opportunity to prevent new violations in Sudan, especially Darfur.<sup>142</sup> Nevertheless, after the military coup that occurred on 25 of October 2021, the future of Sudan has become ambiguous again, and it predicted terrible events. The new developments will determine whether the coup government will fulfil its promise to implement the peace agreement or whether there will be space for justice.<sup>143</sup> Each theme we analyse is an example of some complexities of implementing Transitional justice in Sudan.

### 3.2. CHALLENGES FACING OF JUBA PEACE AGREEMENT

Political analyst Mustafa believes that the peace agreements signed since independence in 1956 exceeded 49 agreements, most of which were appropriate and sufficient and included integrated and just solutions to resolve the crisis in Sudan. However, due to the absence of a political and national will, the government's control over decision-making centres and the obstruction of investigations by the central authority, the peace agreements did not achieve peace and

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<sup>139</sup> Juba Agreement for Peace in Sudan Between the Transitional Government of Sudan And the Parties to Peace Process (2020)3.

<sup>140</sup> Juba Agreement For Peace In Sudan Between The Transitional Government Of Sudan And The Parties To Peace Process (2020)30.

<sup>141</sup> 'What is Transitional Justice?' Available at: <https://www.ictj.org/about/transitional-justice> (accessed 3 January 2022).

<sup>142</sup> Mahdi M 'Sudan needs the ICC for more than its Darfur war crimes. As insecurity in the country increases, preventing human rights atrocities is as important as justice for al-Bashir regime crimes' Institute for Security Studies (2021)1-5.

<sup>143</sup> Kersten M 'Sudan Coup Puts Justice for Atrocities in a Lurch' Available at: <https://justiceinconflict.org/2021/11/03/sudan-coup-puts-justice-for-atrocities-in-a-lurch/> accessed 30 December 2021).

stability, and the war did not stop. On the 5th of December 2022, the civilian component signed a political framework agreement with the military component to resolve the political crisis in Sudan, which has been involved since 2021. One of the most prominent civilian components that signed the framework agreement is forces freedom and change - the Central Council. The framework agreement ensured that it continued to restore the constitutional order and the democratic civil path and strive to complete the duties of the glorious December Revolution 2018, such as implementing the Juba Peace Agreement. Unfortunately, this agreement also met with opposition from some political forces.

However, the framework agreement enjoyed broad international support, represented by the tripartite mechanism (TPM), comprised of the United Nations Integrated Transition Assistance Mission in Sudan (UNITAMS), the African Union (AU), and the Intergovernmental Authority on Development (IGAD).<sup>144</sup> As we mentioned earlier, retributive justice seeks to prevent perpetrators who committed international crimes from not involved in the new democratic government. However, this raises the question of how to implement transitional justice in the presence of the former regime leaders at the head of the government? One of the main reasons why the Juba peace agreement was not implemented was the lack of will of a transitional government, currently known as a coup government.<sup>145</sup> Although the Juba Peace Agreement expressly provided for the implementation of transitional justice throughout Sudan, the implementation of transitional justice cannot occur in the presence of the current coup government and those who led the wars in Darfur.<sup>146</sup> The slowness of legal reform and the delay in security arrangements for the protection of civilians in Darfur, in addition to the divisions within the civilian components that helped the military in the October 2021 coup, threaten the fate of the Juba Peace Agreement.<sup>147</sup>

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<sup>144</sup> 'Sudan – Signing of a framework agreement between the military and some civilian opposition leaders (5 December 2022)' Available at: <https://www.diplomatie.gouv.fr/en/country-files/sudan/news/article/sudan-signing-of-a-framework-agreement-between-the-military-and-some-civilian> (accessed 25 January).

<sup>145</sup> Ostapchuk K The Organization for World Peace Report 2021- the Limitations of the Juba Peace Agreement in Implementing Systematic Security Sector Reform in Sudan' Available at: <https://theowp.org/reports/the-limitations-of-the-juba-peace-agreement-in-implementing-systematic-security-sector-reform-in-sudan/> (accessed 2 January 2022).

<sup>146</sup> Ostapchuk K The Organization for World Peace Report 2021- the Limitations of the Juba Peace Agreement in Implementing Systematic Security Sector Reform in Sudan' Available at: <https://theowp.org/reports/the-limitations-of-the-juba-peace-agreement-in-implementing-systematic-security-sector-reform-in-sudan/> (accessed 2 January 2022).

<sup>147</sup> Juba Agreement For Peace In Sudan Between The Transitional Government Of Sudan And The Parties To Peace Process (2020)43.

### 3.3. SECURITY SITUATION IN DARFUR

The text of the Juba Agreement is on security arrangements in Darfur. It will be composed of the armed forces, the rapid support forces, and the armed movements that have signed the agreement, and its mission will be to protect civilians.<sup>148</sup> Reichler argued earlier that transitional justice needs to create a new way of thinking about justice theory peacebuilding practice, such as strengthening the foundations of sustainable peace and stability in the political.<sup>149</sup> The parties to the peace agreement agreed on a specific time to implement the text security arrangements, such as merging forces forming joint forces to protect defenceless civilians in Darfur after the exit of UNAMID. The same applies to disarmament arrangements, but these commitments are still deferred.<sup>150</sup> On 6 of June 2021, the commander of the RSF Hemedti, rejection to integrate his forces into the Sudanese army. Hemedti's refusal contradicts the peace agreement, which stipulates the importance of integrating armed movements and other armed forces into a unified national army.<sup>151</sup>

The merging of forces was a fundamental demand for Al-Hilu, the leader of the (SPLM/N), and a condition for accepting negotiations with the transitional government. Hemedti argued that the merger process before the reform of the security sector means the domination of the SAF over its forces and the forces of the armed movements and will also lead to the government's neglect of the issue of security sector reform.<sup>152</sup> With the high frequency of violations in Darfur.<sup>153</sup> Due to the slowdown in security arrangements and divisions within the civilian components, the transitional government pushed the coup on 25 October 2021. The repression of peaceful demonstrators in Khartoum increased daily such as killings, wounded, and missing persons. Despite the return of Prime Minister Hamdok after his arrest, Hamdok did not take any critical measures to protecting human rights or to strengthening

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<sup>148</sup> Juba Agreement for Peace in Sudan Between the Transitional Government of Sudan And the Parties to Peace Process (2020)43.

<sup>149</sup> Reichler L 'CHALLENGES OF PEACE RESEARCH' International Journal of Peace Studies (11) (2016) 6.

<sup>150</sup> United Nations. Sudan Faces Staggering Challenges to Democracy Despite Significant Advances on Political Transition. Report Security Council (2021).

<sup>151</sup> 'Hemetti rejects integration of his RSF militiamen in Sudanese army' Available at: <https://sudantribune.com/article67746/> (accessed 3 January 2022).

<sup>152</sup> Tubiana J 'Delays and Dilemmas: New Violence in Darfur and Uncertain Justice Efforts within Sudan's Fragile Transition' African Centre for Justice and peace Studies (2021)50.

<sup>153</sup> 'Sudan: 250 killed, over 100,000 displaced as violence surges in Darfur' available at: <https://operationalsupport.un.org/en/sudan-250-killed-over-100000-displaced-violence-surges-darfur-un-refugee-agency-says> (accessed 5 September 2021).

the foundations of peacebuilding.<sup>154</sup> Consequently, transitional justice in Sudan can be measured as slow and fragile. Moreover, no political reforms have been achieved, especially security sector reform, which can lead the country to democracy and consolidation.<sup>155</sup> This analysis illustrates the complexities of implementing transitional justice in Sudan.

### **3.4. THE IMPACT OF THE UNAMID EXIT ON THE SECURITY IN DARFUR:**

Following the resolution issued by the United Nations Security Council and the African Union Peace and Security Council, the United Nations-African Union Hybrid Operation in Darfur (UNAMID) has been deployed to consider resolving the ongoing conflicts between the Sudanese government and the armed movements in Darfur, which some have called genocide.<sup>156</sup>

To realise the extent of the impact of UNAMID forces in Darfur, we have to understand that the Sudanese government was completely against the entry of UNAMID forces from the beginning and did not agree until after lengthy negotiations and did not support the mission to accomplish its tasks but instead stopped to create loopholes to obstruct the peacekeeping process. The role of UNAMID forces was marginalized to a small part of Sudanese politics, such as peacekeeping and development support, and it had no presence or space to participate in reforming governmental bodies, justice, protection of civilians, and human rights.<sup>157</sup> Consequently, during its existence, UNAMID failed to devise a solid political strategy to get rid of the constraints of the Sudanese government.<sup>158</sup>

From 22 to 25 October 2020, the United Nations, the African Union, and the Government of Sudan consulted on the future of UNAMID in Sudan. As a result, they concluded the termination of the UNAMID mission in Darfur from 31 December 2020 and the

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<sup>154</sup> International Federation for Human Rights - A very short window of hope for peace in Sudan- International Criminal Court Report (2021).

<sup>155</sup> Ambos K & large J & Wierda M 'Building a Future on Peace and Justice (3 ed) (2009) Studies on Transitional Justice, Peace and Development. The Nuremberg Declaration on Peace and Justice' in Ocampo L.M. International Criminal Court 9 (2009)22.

<sup>156</sup> Mamiya R & Hansen W 'Assessing the Effectiveness of the United Nations-African Union Hybrid Operation in Darfur (UNAMID)' The Effectiveness of Peace Operations Network (EPON). Norwegian Institute of International Affairs (2020)15.

<sup>157</sup> Forti D 'Walking a Tightrope: The Transition from UNAMID to UNITAMS in Sudan' The International Peace Institute (IPI) (2021)2.

<sup>158</sup> Mamiya R & Hansen W 'Assessing the Effectiveness of the United Nations-African Union Hybrid Operation in Darfur (UNAMID)' The Effectiveness of Peace Operations Network (EPON). Norwegian Institute of International Affairs (2020)17.

complete withdrawal of all UNAMID forces on 30 June 2021.<sup>159</sup> Different opinions were received from the Darfurian displaced community in a study conducted by the EPON team that perhaps the UNAMID forces were not a strong protector of the displaced when violations occurred. However, the presence of UNAMID and its monitoring and its patrols throughout Darfur have a positive effect in deterring violations in many cases therefore, the displaced people in Darfur desire UNAMID to stay in Darfur.<sup>160</sup> As mentioned above, transitional justice is in the (interest transitional) when it seeks to address human rights abuses and rebuild trust for victims. However, after the fall of Al-Bashir in 2019, UNAMID forces decided to leave West Darfur because it is the most peaceful state. After that, attacks began continuously on the displaced in the camps.<sup>161</sup> In addition to the recent violations that occurred in Kirinding in January 2020, they occurred only two weeks after the complete withdrawal of UNAMID forces from an area.<sup>162</sup> This supports the opinion of the displaced communities that the deployment of UNAMID forces is a deterrent to perpetrators and protects civilians and it also demonstrates the mistrust of civilians and victims of the Sudanese government.

The decision to withdraw UNAMID forces came after the invitation of the UN and the AU to the Government of Sudan to immediately activate the “National Plan for the Protection of Civilians in Darfur” following international humanitarian law and international human rights law.<sup>163</sup> The National Plan for the Protection of Civilians is keen to implement basic tasks such as the rule of law, restoring confidence to civilians and victims, achieving justice, strengthening mechanisms to prevent conflict, and protecting displaced, vulnerable and other marginalized communities.<sup>164</sup> The attack on Kerinding 2021, and Fatwa Borno 2020 for example, with the Sudanese government’s lack of seriousness in taking the necessary measures to resolve the conflict, prove the impact of the exit of UNAMID forces on the Darfurian citizen, in addition

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<sup>159</sup> United Nations Security Council resolution 2559 (2020) Adopted by the Security Council on 22 December 2020, S/RES/2559 (2020).

<sup>160</sup> Mamiya R & Hansen W ‘Assessing the Effectiveness of the United Nations-African Union Hybrid Operation in Darfur (UNAMID)’ (2020)65 *ISBN* 978-82-7002-349-3.

<sup>161</sup> AL-JAZEERA ‘The revolution was hijacked’: Inside the conflict in Darfur’ Available at: <https://www.aljazeera.com/features/2021/7/6/the-revolution-was-hijacked-inside-the-conflict-in-darfur> (accessed 10 January 2022).

<sup>162</sup> Tubiana J ‘Delays and Dilemmas: New Violence in Darfur and Uncertain Justice Efforts within Sudan’s Fragile Transition’ (2021)53 *FIDH*.

<sup>163</sup> United Nations Security Council resolution 2559 (2020) Adopted by the Security Council on 22 December (2020)2-4.

<sup>164</sup> United Nations Security Council: Letter dated 21 May 2020 from the Permanent Representative Of The Sudan to the United Nations addressed to the President of the Security Council (2020)1-10.

to the apparent ambiguity of implementing the national plan to protect civilians after 25 of October 2021.<sup>165</sup>

### 3.5. PROSECUTION IN SUDAN'S TRANSITIONAL JUSTICE PROCESS

The protest of the Sudanese judiciary raised the violations that are continuing in West Darfur and Sudan in general since the fall of the previous regime and the last Juba Peace Agreement, which did not implement its most important provisions such as legal reform and the security sector. Most importantly, the Darfurian community strongly demands that prosecutions be held for crimes that occurred before and after the fall of Al-Bashir.<sup>166</sup> It was mentioned in the constitutional charter agreed upon by the Transitional Military Council and the leaders of freedom and change in 2019, which stated that one of the duties of the transitional period is to implement the principle of impunity by implementing transitional justice procedures and prosecuting human rights violators and bringing them to international and national trials.<sup>167</sup> Based on this, the Transitional Justice Commission Law was established in Sudan as a model for transitional justice to address human rights violations, trials, compensation, and truth commissions, reform the justice system and build a democratic system.<sup>168</sup> By the 25 October 2021 coup, this bill only becomes a draft.

The Constitutional Charter also stipulates the need to conduct independent and transparent investigations into the violations in front of the military headquarters on 3 Jun 2019.<sup>169</sup> Based on what was stipulated in the constitution, Prime Minister Hamdok formed on October 2019 an “independent investigation committee” to investigate the 3 June massacre, according to which more than 200 protesters were killed and the Sudanese armed forces wounded more than 700. Nabil Adeeb was appointed as head of the committee.<sup>170</sup> In April

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<sup>165</sup> Tubiana J ‘Delays and Dilemmas: New Violence in Darfur and Uncertain Justice Efforts within Sudan’s Fragile Transition’ (2021)53 *FIDH*.

<sup>166</sup> Tubiana J (2021)56.

<sup>167</sup> Draft Constitutional Charter for the 2019 Transitional Period (2019). Available at: <https://constitutionnet.org/sites/default/files/201908/Sudan%20Constitutional%20Declaration%20%28English%29.pdf> (accessed 16 January 2022).

<sup>168</sup> DABANGA: ‘Transitional justice needed to build a viable and sustainable democratic system in Sudan’ Available at: <https://www.dabangasudan.org/en/all-news/article/justice-minister-transitional-justice-needed-to-build-a-viable-and-sustainable-democratic-system-in-sudan> (accessed 16 January 2022).

<sup>169</sup> Draft Constitutional Charter for the 2019 Transitional Period (2019). Available at: <https://constitutionnet.org/sites/default/files/201908/Sudan%20Constitutional%20Declaration%20%28English%29.pdf> (accessed 16 January 2022).

<sup>170</sup> Adeeb N ‘Sudan's investigation committee seeks credible evidence, The SUDAN TRIBUNE 18 January (2022).



2020, the victims' families argued that the investigation committee was slow to investigations, not transparent with them, and the committee had disappointed them. They also would refer the case to the ICC, and human rights organizations supported this opinion.<sup>171</sup>

Adeeb argued that his mission is compassionate. Furthermore, its consequences will significantly negatively impact the state level and may lead to a military coup and disturbance of the demonstrators in the streets.<sup>172</sup> Indeed, the October 2021 coup occurred because the Military Council was keen to ensure their impunity for the crimes committed throughout the previous regime, especially the June 3 massacre. After all, it has clear evidence, and there are close to 3,000 witnesses to the massacre.<sup>173</sup> Among the transitional justice mechanisms mentioned above is that prosecution can prevent impunity and be a deterrent to any new violations and for the transitional government to show victims its seriousness, affirm its political will, and moral commitment to prosecute violators of human rights.<sup>174</sup> Nevertheless, when we look at what is happened in Sudan recently, there is a massive contradiction between what was mentioned by the theories of transitional justice and the Constitutional Charter and between the current situation in Sudan, there is a deliberate obstruction to ensure the failure of the transitional period, for example, there is no justification for not handing over those whom the ICC has issued an arrest warrant. The Rome Statute stipulates in Article 17(2) that the International Criminal Court has the right to intervene to hold perpetrators accountable for committing crimes punishable by international humanitarian law and international human rights law based on the principle of complementarity, namely if:

- (a) The proceedings were or are being undertaken or the national decision was made for the purpose of shielding the person concerned from criminal responsibility for crimes within the jurisdiction of the Court referred to in article 5;
- (b) There has been an unjustified delay in the proceedings which in the circumstances is inconsistent with an intent to bring the person concerned to justice;

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<sup>171</sup> 'Kin of 2019 massacre in Sudan moving to World Court to seek justice' Available at: <https://www.aa.com.tr/en/middle-east/kin-of-2019-massacre-in-sudan-moving-to-world-court-to-seek-justice/2326415> (accessed 18 January 2022).

<sup>172</sup> Nashed M 'How a Human Rights Report Could Upend Sudan' The New Lines Magazine 4 May 2021.

<sup>173</sup> Nashed M 'How a Human Rights Report Could Upend Sudan' The New Lines Magazine 4 May 2021.

<sup>174</sup> Kasapas G (2008)62.

(c) The proceedings were not or are not being conducted independently or impartially, and they were or are being conducted in a manner which, in the circumstances, is inconsistent with an intent to bring the person concerned to justice.’<sup>175</sup>

The Sudanese criminal Code 1991 introduced amendments in 2009 to include international crimes such as genocide, crimes against humanity, and war crimes. These amendments enable the Sudanese courts to prosecute criminals who committed crimes punishable by international humanitarian law and human rights law.<sup>176</sup> Nevertheless, prosecuting criminals in Sudanese courts has many challenges. For example, the first obstacle confronts Sudanese courts to prosecute the perpetrators of grave human rights and international humanitarian law violations. It is impossible to prosecute the perpetrators in Sudan based on the principle of non-prosecution retroactively, which means that the Sudanese judiciary cannot prosecute international crimes committed by members of the armed forces and militias Janjaweed in Darfur before 2009.<sup>177</sup> Theoretically, Sudanese courts can prosecute perpetrators of international crimes in Sudan by not applying the principle of retroactive effect, assuming that perpetrators who committed human rights violations from armed forces and militias have not stopped committing the same mass atrocities in Darfur and Sudan in general, even after the 2009 amendments to the Sudanese Penal Code, which criminalise international crimes.<sup>178</sup>

However, even if the Sudanese judiciary were to prosecute those responsible for crimes committed in Darfur, it would be unable to charge the responsible leaders because the Sudanese criminal law grants immunities to the senior coordinators and planners and supervisors of the administrative operations for mass atrocities. This is according to Article 34 of the Armed Forces Law of 2007 and Article 33 of the National Security Forces law of 1999.<sup>179</sup> These immunities reinforce the issue of impunity.<sup>180</sup> These deliberations clarify one of the complexities of implementing transitional justice in Sudan. At the same time, Sudanese courts prosecute senior political leaders under the law on joint criminal responsibility if they commit crimes through participation, planning, or organization. For example, on 25th October, the

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<sup>175</sup> International Criminal Court: Rome Statute of the International Criminal Court (2002) 11 ISBN 92-9227-232-2.

<sup>176</sup> See Sudanese Criminal Act of 1991 (2009) Article 189.

<sup>177</sup> Horowitz S SUDAN: INTERACTION BETWEEN INTERNATIONAL AND NATIONAL JUDICIAL RESPONSES TO THE MASS ATROCITIES IN DARFUR (Published, Hebrew University, Reykjavik University, University of Amsterdam, and University of Westminster, 2013)16.

<sup>178</sup> Horowitz S SUDAN: INTERACTION BETWEEN INTERNATIONAL AND NATIONAL JUDICIAL RESPONSES TO THE MASS ATROCITIES IN DARFUR (Published, Hebrew University, Reykjavik University, University of Amsterdam, and University of Westminster, 2013)16.

<sup>179</sup> See CRIMINAL LAW AND HUMAN RIGHTS IN SUDAN (2008)8.

<sup>180</sup> See CRIMINAL LAW AND HUMAN RIGHTS IN SUDAN (2008)8.

military government arrested Prime Minister Abdalla Hamdok and political leaders from the civilian government, for instance, industry minister Ibrahim- Al-sheikh and information Minister Hamza Ballou.<sup>181</sup>

The Juba Peace Agreement stipulated in Chapter 3 Article 1(24) that the peace agreement parties acknowledged their eagerness to collaborate with the ICC and with total commitment to facilitating arrest for those who have been issued subject to ICC warrants. The question here is to what extent the parties to the agreement will be willing to cooperate with the ICC if the ICC issues accusations against the military leaders who currently control the state, such as Hemedti and Al-Burhan.<sup>182</sup> If this is the case, how can the two parties compatibility between their promise to the ICC and the immunities contained in Sudanese laws be reconciled? The Prosecutor of the ICC stated on 23rd August 2022 that the cooperation of the Sudanese Government with the ICC in war crimes took a step back after the 25th of October 2021 coup. That was when the ICC Prosecutor, Karim Khan, visited the displacement camps in Darfur, such as Kalma, Hasahi Camps. Khan also mentioned that the displaced welcomed the ICC and expressed that they believe in justice. He also suggested that a conference be held in Darfur to hear from the displaced themselves in the camps.<sup>183</sup>

In addition, he explicitly stated if the Government of Sudan and the international community did not cooperate in prosecuting the perpetrators who committed international crimes in Darfur, it might lead to violence and impunity in Sudan and.<sup>184</sup> The UNSC adopted Resolution 1593 in which it underscores Sudan's responsibility to cooperate with the ICC.<sup>185</sup> Khan also reiterated his demand to the Government of Sudan to collaborate in handing over the accused when he met with Al-Burhan, the head of the Sovereign Council, in August 2022.<sup>186</sup>

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<sup>181</sup> Amin M 'Sudanese military arrests prime minister, members of gov't' Available at: <https://www.aa.com.tr/en/africa/sudanese-military-arrests-prime-minister-members-of-govt/2401646> (accessed 29 September 2022).

<sup>182</sup> Juba Agreement For Peace In Sudan Between The Transitional Government Of Sudan And The Parties To Peace Process (2020)31.

<sup>183</sup> SUDAN TRIBUNE 'Sudan's cooperation with ICC has taken backward step: Khan tells Security Council' Available at: <https://sudantribune.com/article263167/> (accessed 29 September 2022).

<sup>184</sup> SUDAN TRIBUNE 'Sudan's cooperation with ICC has taken backward step: Khan tells Security Council' Available at: <https://sudantribune.com/article263167/> (accessed 29 September 2022).

<sup>185</sup> International Criminal Court: 'Statement to the United Nations Security Council on the Situation in Darfur, pursuant to UNSCR 1593 (2005)' Available at: <https://www.icc-cpi.int/news/statement- united-nations-security-council-situation-darfur-pursuant-unscr-1593-2005-8> (accessed 30 September 2022).

<sup>186</sup> SUDAN TRIBUNE 'Sudan's cooperation with ICC has taken backward step: Khan tells Security Council' Available at: <https://sudantribune.com/article263167/> (accessed 29 September 2022).

Before the 25th October coup, the civilian component cooperated positively with the ICC in investigating the case of Ali Kushayb and the four accused, the ousted President Omar al-Bashir, the Minister of Interior Abdel Rahim Hussein, Ahmed Haroun, and Abdullah Banda. They also agreed to open an office for the ICC in Sudan to facilitate the investigation process and hear witnesses of human rights violations in Darfur.<sup>187</sup> In line with what was mentioned above, the Sudanese government is unwilling to surrender perpetrators, and its judicial system is not independent, making it unable to pursue prosecutions in Sudan. Indeed, these are vast complexities faced in implementing transitional justice in Sudan.

### **3.6. TRADITIONAL JUSTICE SYSTEM (RESTORATIVE JUSTICE) IN DARFUR**

Zehr argues that restorative justice seeks to satisfy the wishes of the victims and promote communal peace between the community and the victims and perpetrators and restore relations between them.<sup>188</sup> Darfur's long history is characterized by a traditional justice system followed by mayors and tribal leaders to resolve disputes, maintain peace and security, and repair relations between the various tribes.<sup>189</sup> Of course, the prosecution is necessary to punish genocide and war crimes perpetrators. However, some issues are not resolved by trials and need dealing with through traditional justice. One of the essential traditional justice mechanisms in Darfur is called the Ajaweed (Judia), run by mayors, sheikhs, and tribal leaders to resolve the conflicts of Darfur society through negotiations and mediation. This justice is also distinguished because mayors and tribal leaders found acceptance from the Darfurian community and significantly influenced their society.<sup>190</sup> Furthermore, traditional justice has international recognition. For example, the UN Secretary-General recommended that local traditions must be considered when implementing transitional justice and the rule of law, such as negotiations to settle disputes.<sup>191</sup>

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<sup>187</sup> Bekou O & Sheffield E & Vacca E *State of play of existing instruments for combating impunity for international crimes* (Published Trans European Policy Studies Association (TEPSA), University of Nottingham, United Kingdom, 2020) 15.

<sup>188</sup> Zehr H 'RESTORATIVE JUSTICE? WHAT'S THAT?' The Centre for Justice & Peacebuilding. Eastern Mennonite University (2020).

<sup>189</sup> Adam T & Jennings S & Evans-Pritchard B 'Role for Local Justice in Darfur?' The Institute for War and Peace reporting (2010).

<sup>190</sup> Adam T & Jennings S & Evans-Pritchard B 'Role for Local Justice in Darfur?' The Institute for War and Peace reporting (2010).

<sup>191</sup> United Nations Security Council -The rule of law and transitional justice in conflict and post-conflict societies (2004)1-24.

After the violations in Darfur in 2003, the native administration was politicised by the government's National Congress Party, especially after the tribal leaders condemned the violations. As a result, the government classified them as non-Arab leaders, and they were not welcome.<sup>192</sup>

### **3.6. AJAWEED (JUDIA) PROCEDURES**

Ajaweed (Judia) is a social system established by mayors, sheikhs, and tribal leaders, to settle disputes between communities without referring to the courts.<sup>193</sup> Often, Ajaweed resolves the conflicts on land and natural resources, for example, “herders who allow their animals to enter the farms during the agricultural season.” Here, Ajaweed intervenes in the settlement and agreement to compensate for the damages that occurred on the farms.<sup>194</sup>

The Juba Peace Agreement stipulated that transitional justice include inter-tribal conflicts, provided that they do not fall within the jurisdiction of the International Criminal Court or the Special Criminal Court for Darfur.<sup>195</sup> Sudanese courts recognise Ajaweed as an indirect means of resolving disputes. For example, the text of the Civil Transactions Law in Article 141 “Conciliation is a contract that ends disputes between the parties by mutual consent.” The option of reconciliation was placed before the court considered the dispute. Here, the Ajaweeds play an important role. If a decision is reached that is satisfactory to both parties, the court issues a ruling based on the decision of the Ajaweed, and the decision is binding on both parties.<sup>196</sup>

Despite the role Ajaweed play in promoting reconciliation, they face some difficulties, namely the lack of security in Darfur and the spread of weapons among the militias, which makes the militants to not abide by the agreement established by the Ajaweed because they have authority of impunity. Consequently, women in Darfur commented that the role of the Ajaweed will be effective in promoting reconciliation when the Janjaweed are disarmed.<sup>197</sup> Restorative justice was also applied in Rwanda after the genocide by “Gacaca law”. Traditional

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<sup>192</sup> Imam Z Search For Transitional Justice In Darfur: The Role of the Traditional Mechanisms (Published, University of Deusto, 2013)64.

<sup>193</sup> Imam Z (2013)67.

<sup>194</sup> Satti H Danish Refugee Council (DRC) Report 2020- Conflict Analysis Central Darfur, Sudan (2020).

<sup>195</sup> JUBA AGREEMENT FOR PEACE IN SUDAN BETWEEN THE TRANSITIONAL GOVERNMENT OF SUDAN AND THE PARTIES TO PEACE PROCESS (2020)30.

<sup>196</sup> Imam Z (2013)72.

<sup>197</sup> Satti H Danish Refugee Council (DRC) Report 2020- Conflict Analysis Central Darfur, Sudan (2020).

courts played an essential role in dealing with people who had committed atrocious crimes to resolve disputes and reconnect the societal fabric between perpetrators and victims.<sup>198</sup>

### **3.7. DISTRIBUTIVE JUSTICE**

#### **3.7.1. The Case for Reparation in Darfur**

Since the beginning of human rights violations in Darfur in 2003, the wars have had vast and devastating consequences on the people of Darfur. According to 2007 estimates, about 300000 have been killed, 2.5 million people have been forcibly displaced, and about 200000 have escaped Chad and became refugees.<sup>199</sup> The violations targeted men with murder and unlawful arrest, while women were targeted with murder, and about 16% were raped. It is estimated that 80% of the villages have been destroyed, money and livestock looted and rendered without a source of livelihood.<sup>200</sup> Also, the objective of the Janjaweed militia for raping women, was not only to disrupt security and stability in Darfur but to degrade and humiliate women and prove that members of the community cannot protect them.<sup>201</sup> After the fall of Al-Bashir in 2018, the rate of violence escalated throughout Sudan, especially in Darfur; for example, the West Darfur state was affected by fatal incidents, including the Janjaweed militia attack on the Kirinding camp in 2021, at least 12 people were killed, burned the Kirinding camp, and about 1,850 people fled to Chad.<sup>202</sup>

According to international law, the state must bear full responsibility for its citizens to enjoy complete freedom to exercise human rights, appropriate compensation for the victims in the event of any violations, whether the violations were directly from the state itself or through agents of the state.<sup>203</sup> In the case of Darfur Janjaweed, the text of the Juba Peace Agreement states that the victims of violations of human rights and international humanitarian law have the right to obtain prompt, effective, and appropriate compensation for the damages they have suffered and rehabilitation and restoration of rights to the victims.<sup>204</sup>

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<sup>198</sup> Timessen A 'After Arusha: Gacaca Justice in Post-Genocide Rwanda' African Studies Quarterly Vol. 8 (2004)58-76.

<sup>199</sup> The 'Sudan Arms continuing to fuel serious human rights violations in Darfur' (AFR 54/019/2007).

<sup>200</sup> Totten S & Martusen E 'The Darfur Atrocities Documentation project' in Stanton G.M Proving Genocide in Darfur: The Atrocities Documentation Project and Resistance to its Finding. The National Council for the Social Studies (2004)183.

<sup>201</sup> The 'Sudan, Darfur Rape as a weapon of war Sexual violence and its consequences' (AFR 54/076/2004).

<sup>202</sup> Tubiana J (2021) 53.

<sup>203</sup> International Covenant on Civil and Political Rights Art 2(3) of 1996.

<sup>204</sup> JUBA AGREEMENT FOR PEACE IN SUDAN BETWEEN THE TRANSITIONAL GOVERNMENT OF SUDAN AND THE PARTIES TO PEACE PROCESS (2020)33.

Article 28{1} of the Juba Peace Agreement provides for positive distinction. Therefore, the Darfur region should enjoy a positive distinction from the rest of the areas of Sudan due to its historical marginalization and the impact of wars on Darfur to catch up with the rest of the regions that advanced in development and access to national services. The distinction includes: the Sudanese government has pledged to pay \$750 million for ten consecutive years to support the peace process and sustainable development in Darfur. The government also committed to spending \$100 million within 30 days of signing the agreement. In addition, Darfur students in Sudanese universities have also been exempted from tuition fees for a minimum period of ten years.<sup>205</sup>

The perspective of Sudan's economic situation and the empty financial treasury, the partner countries promises by the European Union, UN, UAE, and Saudi Arabia to provide financial aid estimated at billions of dollars to support the transitional process and help the transitional government to implement the Juba peace agreement, such as compensation for victims and rehabilitation, etc.<sup>206</sup> After October 25, the revolutionaries demanded from the partner countries the necessity of suspending financial support to Sudan to avoid legitimizing the coup and because nothing from this contribution will benefit both civilians and victims of Sudan.<sup>207</sup> In addition, the implementation of the Juba Agreement for Sustainable Peace in Sudan is a discrepancy with the interests of the current military coup government. Thus, it is expected that the situation will worsen.<sup>208</sup>

### **3.7.2. The case of land and wealth**

Land and wealth are among the essential mechanisms of distributive justice that helped stabilise peace in Sudan. Therefore, it was mentioned in the Juba Peace Agreement the necessity of the return of displaced persons and refugees to their forcibly usurped lands, and it is not permissible to expropriate land owned by a person historically or traditionally.<sup>209</sup> This raised the fears of those who benefited from the previous regime. Perhaps a new government would seek to

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<sup>205</sup> JUBA AGREEMENT FOR PEACE IN SUDAN BETWEEN THE TRANSITIONAL GOVERNMENT OF SUDAN AND THE PARTIES TO PEACE PROCESS (2020)28.

<sup>206</sup> International Crisis Group Report 2021- The Rebels Come to Khartoum: How to Implement Sudan's New Peace Agreement-Crisis Group Africa Briefing (2021)1-16.

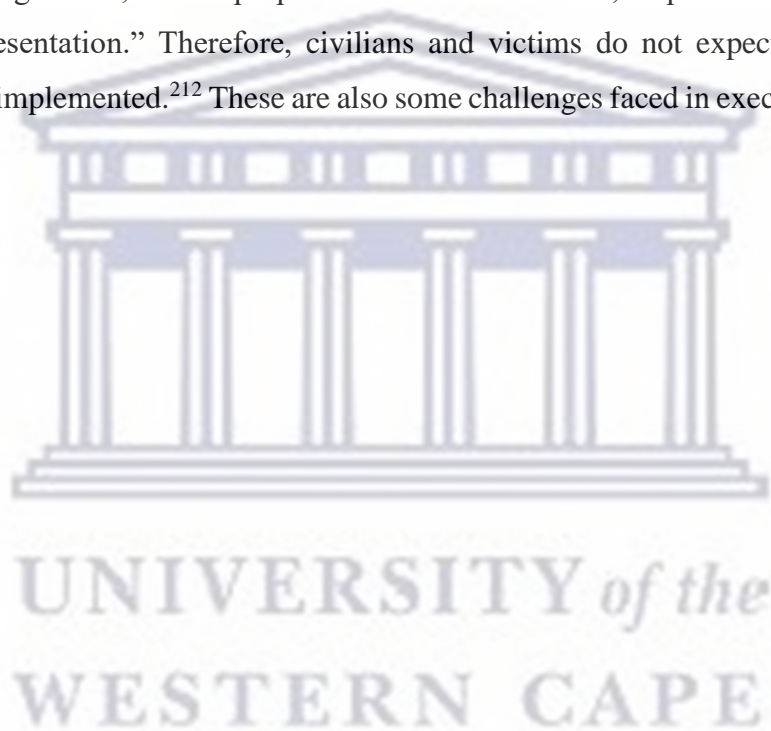
<sup>207</sup> ALJAZEERA 'Sudanese demand freeze of international aid to the military' Available at: <https://www.aljazeera.com/news/2021/12/11/sudanese-demand-freeze-of-international-aid-to-the-military> (accessed 30 January 2022).

<sup>208</sup> The Rift Valley Institute Briefing Paper 'WHAT NEXT FOR THE JUBA PEACE AGREEMENT AFTER THE COUP IN SUDAN' (December 2021)1-5.

<sup>209</sup> JUBA AGREEMENT FOR PEACE IN SUDAN BETWEEN THE TRANSITIONAL GOVERNMENT OF SUDAN AND THE PARTIES TO PEACE PROCESS (2020)43.

recover the usurped lands and remove the empowerment of the previous regime. The Janjaweed also feared that the displaced would return to their lands, especially in areas rich in gold.<sup>210</sup>

Furthermore, the Juba Peace Agreement triggered a violent reaction by the Arab components in Darfur for fear of political re-arrangement in Darfur. This resulted in the Janjaweed attacking IDPs camps near the disputed areas and preventing them from cultivating their original lands during the agricultural season. Moreover, they tried to strengthen their relations with the transitional military component, especially Hemedti's forces (SRF), to help them with impunity and protect their interests.<sup>211</sup> In the current situation in Sudan, it is difficult to achieve the aspirations of the displaced and the victims, although the victims' demands are essential such as “security arrangements, land expropriation from new settlers, dispossession of goods, and political re-representation.” Therefore, civilians and victims do not expect the Juba peace agreement to be implemented.<sup>212</sup> These are also some challenges faced in executing transitional justice in Sudan.



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<sup>210</sup> The RIFT VALLEY INSTITUTE SUDAN RAPID RESPONSE UPDATE ‘What next for the Juba Peace Agreement? Evolving political and security dynamics in Darfur’ (March 2022).1-7.

<sup>211</sup> The RIFT VALLEY INSTITUTE SUDAN RAPID RESPONSE UPDATE ‘What next for the Juba Peace Agreement? Evolving political and security dynamics in Darfur’ (March 2022).1-7.

<sup>212</sup> Tubiana J (2021)74.



## CHAPTER 4

### THE COMPLICITY OF THE SUDANESE GOVERNMENT THROUGHOUT HISTORY AND ITS IMPACT ON THE CURRENT SITUATION IN SUDAN

#### 4.1. Introduction

After the overthrow of Al-Bashir's government in 2018, the Sudanese revolution brought a historic opportunity for the military government to facilitate the building of an inclusive democratic state.<sup>213</sup> The formation of civilian rule at the beginning of the transitional period was a necessary step for the balance of power in a country like Sudan, but military involvement, including some remnants of the former regime remaining in power, led to the continuation of disputes between civilians and military group. This resulted in the 25th October coup, according to which the coup government completely dissolved the civilian-led government.<sup>214</sup>

#### 4.2. Challenges facing the application of theories of policy change in Sudan

As previously mentioned theories that change the state's policies, in order for these theories to be applied in the perspective of transitional justice, important questions must be raised about whether it closed the door to change in Sudan, and whether the government and the people seek to move forward for change, or did the military government return to its previous regime in different ways?

##### 4.2.2. Sudan's Cultural Violence

Cultural violence was not a new-born in Sudan but rather has its roots in the British colonization of Sudan, which classified the Arab tribes as superior to the African tribes and created privileges in educational opportunities, position to senior jobs in the state, and domination over

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<sup>213</sup> Abdulbari N 'A Transitional Period Constitutional Question in Sudan: The Handover from Military to Civilian Leadership of the Sovereignty Council Chairmanship' (2022) Just security.org, available at: <https://www.justsecurity.org/80164/a-transitional-period-constitutional-question-in-sudan/> (accessed 15 March 2022).

<sup>214</sup> Abdulbari N 'A Transitional Period Constitutional Question in Sudan: The Handover from Military to Civilian Leadership of the Sovereignty Council Chairmanship' (2022) Just security.org, available at: <https://www.justsecurity.org/80164/a-transitional-period-constitutional-question-in-sudan/> (accessed 15 March 2022).

economic resources.<sup>215</sup> Cultural violence persisted even after the independence of Sudan in 1956. For example, from 1981-1989, the former president, Sadiq al-Mahdi, armed the Misseriya tribes in Darfur under the leadership of Fadlallah Barama Nasser, which resulted in the killing and burning of the southern Sudanese tribes residing in Darfur (Al Daein). Also, the former President of Sudan, Nimeiri, appointed a person from the Arab tribes and from outside the region to be governor in the Darfur region. He stated that he made the appointment based on the Arab tribes having sovereignty over the African tribes.<sup>216</sup> After the coup made by Omar al-Bashir in 1989, cultural violence intensified when al-Bashir exploited the Islamic religion for purely political purposes and the stereotypical division between African and Arab tribes and gave privileges to certain Arab tribes, such as the tribes of (Al-Jaaliya and Al-Shawaiga).<sup>217</sup> As a result, Sudan entered in a state of severe cultural violence in general, especially in Darfur and South Sudan before secession from Sudan. As a result, many tribes have lost their languages, and the Sudanese media has been reflective of Arab culture only. Also, only light skinned people are appointed on the national TV of Sudan. Furthermore, cultural violence extended to language policies that imposed Arabic as exclusively the country's official language of education. African tribes are also subjected to bullying, humiliation, and a sense of inferiority, and the repercussions of that bullying led to some girls' use of chemicals to lighten their colour.<sup>218</sup>

Throughout history, Sudan's political elites have restricted their clan-based sphere of action to specific group and geographically focused on maintaining power. For instance, the National Congress Party (NCP) focused on mobilizing certain tribes in Sudan, especially northern and central Sudan and manipulating and making false promises to them. Who would vote for Al-Bashir in the elections, thus ensuring their survival in power. Despite this, the (NCP) did not provide any services to northern and eastern Sudan. As a result, North Sudan continues to be marginalized as well.<sup>219</sup> In Darfur, al-Bashir's government used, recruited, and armed Arab tribes to carry out ethnic cleansing against African tribes.<sup>220</sup> The Juba Peace Agreement stipulated in chapter 1 of the Agreement on National Issues the equal rights for all

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<sup>215</sup> Yousif A & Rothbart D 'Ideology and cultural violence in Darfur' ACCORD 1 January 2016 3.

<sup>216</sup> Yousif A & Rothbart D 'Ideology and cultural violence in Darfur' ACCORD 1 January 2016 3.

<sup>217</sup> Abubakr M 'The History behind Sudan's Identity Crisis' the Woodrow Wilson International Centre for Scholars' Blog of the Africa Program (2021)1-4.

<sup>218</sup> Abubakr M 'The History behind Sudan's Identity Crisis' the Woodrow Wilson International Centre for Scholars' Blog of the Africa Program (2021)1-4.

<sup>219</sup> Yousif A & Rothbart D 'Ideology and cultural violence in Darfur' ACCORD 1 January 2016 3.

<sup>220</sup> Tubiana J 'Delays and Dilemmas: New Violence in Darfur and Uncertain Justice Efforts within Sudan's Fragile Transition' African Centre for Justice and peace Studies (2021) 5.

Sudanese citizens based on cultural, civil, social, and economic rights. Also, recognizing the principle of national unity and mutual respect between one state's religious, cultural, political, and social groups. Also, Juba Peace Agreement mentioned the importance of enacting laws that would redefine Sudan as a multi-ethnic, multi-cultural and multi-lingual country. Furthermore, in addition to recognizing all languages as national, they must be developed and strengthened. This is based on ratified international human rights and international humanitarian law instruments.<sup>221</sup>

The Juba Peace Agreement came to address the identity crisis and racism in Sudan, but even after the agreement, discrimination is still practiced at all levels. For example, the hot microphone caught two defense lawyers, Muhammad Shawkat and Abu Bakr Abdel Razek, during the trial of some former regime leaders. They described the former national TV director Luqman Ahmed, dismissed after the 25th October 2021 coup, at the break time as a "slave" and a "big nose."<sup>222</sup> As we mentioned above, throughout history, the Sudanese government has been built on an ethnic, religious, and cultural basis inherited since the colonial era. Therefore, to achieve stability and peace in Sudan, we need a unified revolutionary, political, and economic project based on a peaceful community contract in which all of Sudanese people can participate.<sup>223</sup> Therefore, we believe that the first step to bringing justice and democracy to the Sudanese people is to restore power to the civilian government from the hands of the dictatorship government. In addition, the purposes of the December 2019 revolution are not only to oust the military government from power but to establish a national project that unites all Sudanese based on the right to equal citizenship and the recognition of diversity in a democratic civil state.<sup>224</sup>

#### **4.2.2. Political culture for the military in Sudan**

It is known in the history of Sudan that the political culture of the military still remains, demolishing any chance of democratic transition in the country.<sup>225</sup> For instance, after Nimeiri's coup in 1969 against the elected government, a revolution took place in 1983. The protest

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<sup>221</sup> Juba Agreement for Peace in Sudan Between the Transitional Government of Sudan And the Parties to Peace Process (2020)2.

<sup>222</sup> DABANGA: 'Hot mic catches Sudan lawyer's racist tirade against director on trial' Available at: <https://www.dabangasudan.org/en/all-news/article/hot-mic-catches-sudan-lawyer-s-racist-tirade-against-director-on-trial> (accessed 16 October 2022).

<sup>223</sup> Yousif A & Rothbart D 'Ideology and cultural violence in Darfur' ACCORD 1 January 2016 3.

<sup>224</sup> See: Charter to Establish the Authority of the People (2022)2.

<sup>225</sup> Good Governance Africa – Eastern Africa Report\_ Sudan's Political Crisis and the Uncharted Course (2021)6.

leaders allied themselves with the head of the Sudan People's Liberation Movement, John Garang, and defined their mutual goals for the revolution, and that solidarity for the opposition led to the overthrow of Nimeiri's government in 1985. And a transitional government was formed for a year.<sup>226</sup> However, after the elections that were held in 1986, the civilian government did not win, because the rate of internal corruption increased in the country, civilians lost popular support, and could not resolve the internal divisions among the political elites. The elected military government remained until Al-Bashir came with a coup d'état in 1989.<sup>227</sup> Thus, while the successes registered in the past year are encouraging, as it stands now, there is a possibility that the current transition could regress into another military dictatorship, in the same way as Sudan's two earlier experiments in democratic transition.<sup>228</sup>

### **4.2.3. Political alliances with the military component**

The armed movements that signed the Juba Peace Agreement in 2020 were formed and joined into the civilian-led government in the transitional period, but later decided to stand and ally with the military component on 25th October coup. Although the two main movements, the Al-Hilu and Abdel-Wahid movement, have fixed their position from the beginning towards any agreement or alliance with the military government, and they are considered to some extent, resistance movements to the military coup.<sup>229</sup> The theory of change states that there must be political alliances between political elites or groups who hold the same beliefs to implement transitional justice.<sup>230</sup> Thus, the alliances of the signatories to the Juba Peace Agreement are analysed with varying degrees of commitment by these armed groups to the principles for which they fought and disregard for the interests of their communities in favour of power-sharing in Khartoum.<sup>231</sup> This led to an imbalance of power in the transitional government in support of the military component.<sup>232</sup> This analysis is an example of some of the difficulties of implementing transitional justice in Sudan.

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<sup>226</sup> Woldemichael S 'The Sudan's transition what are the chances of success?' The Africa Peace and Security Governance Programme of the Institute for Security Studies (2020) 4.

<sup>227</sup> Woldemichael S (2020)4.

<sup>228</sup> Woldemichael S (2020)3.

<sup>229</sup> Espanol M 'Rebel groups take sides on Sudan coup' available at: <https://www.almonitor.com/originals/2021/11/rebel-groups-take-sides-sudan-coup> (accessed 18 March 2022).

<sup>230</sup> Jones H 'A guide to monitoring and evaluating policy influence' Overseas Development Institute UK, (2011)5.

<sup>231</sup> Espanol M 'Rebel groups take sides on Sudan coup' available at: <https://www.almonitor.com/originals/2021/11/rebel-groups-take-sides-sudan-coup> (accessed 19 March 2022).

<sup>232</sup> Hoffmann A 'Military coup betrays Sudan's Policy Brief revolution: Scenarios to regain the path towards full civilian rule' The Netherlands Institute of International Relations. Clingendael (2021) 6.

#### 4.2.4. The role of political elites in Sudan's Transitional Justice

At the time of writing this thesis, the civil component, so-called Forces of Freedom and Change (FFC) became much weaker than it was at the beginning of the transitional period.<sup>233</sup> The FFC in January 2019 consisted of three groups. The first group were the political parties that became opposed to the Bashir regime at the time of the revolution, and includes the political and social elites controlling Sudan throughout history, such as the National Umma Party (NUP). The second group consisted of the movements that signed the Juba Peace Agreement, except those movements allied with the Military group like the Sudan Liberation Movement led by Minni Minawi, and the Justice and Equality Movement led by Jibril Ibrahim, which are historically marginalized groups. The third group were the neighbourhoods' committees that were formed during the revolution and represented by the revolutionaries and were called the "Resistance Committees".<sup>234</sup>

As mentioned earlier under the theory of policy change, political elites must work collectively as well as must organise work to solve the crises facing the country.<sup>235</sup> However, the FFC alliances have collapsed due to the control of some political parties over the Forces of Freedom and Change, such as the NUP, which always seeks to form a good relationship with the military component. Also, 5 dominant members of the FFC were appointed to the 11-member Transitional Sovereign Council.<sup>236</sup> In April 2019, the dominant political parties on FFC and the sovereignty council signed a constitutional declaration without the participation of armed movements, resistance committees, and the rest of the Freedom and Change, such as the Sudanese Professionals Association (SPA). Thus, the role of the FFC became less as a civilian component and it also lost popular support.<sup>237</sup>

When discussing the theory of political power or political elites that was mentioned earlier, it was stated that they can contribute to the political change of the problem through the influence of elites in decision-making or participation in decision-making.<sup>238</sup> Prime Minister Hamdok was not able to fully use his powers to make the transitional period a success, which disappointed many Sudanese who believed he was the leader who could change the fate of

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<sup>233</sup> Gallopin J B 'Bad company: How dark money threatens Sudan's transition' The European Council on Foreign Relations (ECFR) 2020 13 ECFR/324.

<sup>234</sup> Bertelsmann Stiftung, BTI 2022 Country Report — Sudan. Gutersloh: Bertelsmann Stiftung, (2022)16.

<sup>235</sup> Jones H A 'A guide to monitoring and evaluating policy influence' Overseas Development Institute UK, (2011)5.

<sup>236</sup> The white paper on Sudan: Opposition to the government (COI Version 3.0 of 7 April 2021).

<sup>237</sup> Gallopin J B (2020)13.

<sup>238</sup> Jones H A 'guide to monitoring and evaluating policy influence' Overseas Development Institute UK, (2011)5.

Sudan. Nor did he take any decision without the approval of the military council, the civilian component, or both.<sup>239</sup> For example, on January 28, 2020, Hamdok sent a letter to the UN Security Council requesting to send a new political mission to monitor the transition process across Sudan, starting with monitoring security reforms, restructuring institutions, supporting peace, and so on.<sup>240</sup> But, Al-Burhan forced him to retract his request, forcing him to send another letter on 27 of February 2020, explaining that the role of the UNSC should be limited to financial aid and support for the signing of the Juba Peace Agreement. By passing the monitoring of reform of the security structures in the country.<sup>241</sup>

The FFC and Hamdok underestimated the military council's procrastination in pursuit of the goals of the transitional period. They also did not look at the political environment surrounding the transitional period and abandoned the agenda designed to achieve the transition, such as the period specified for the formation of the Transitional Legislative Council.<sup>242</sup> They also did not resort to popular support when they faced consequences of the military Council. All these consequences helped the Military Council to continue the inherited traditional political process, and became the party responsible for making decisions. In this way, the military was able to seize power at any time.<sup>243</sup> For example, the attempted coup by Abdel Fattah Al-Burhan that occurred on 21 of September 2021, which was allegedly planned by an army officer loyal to former President Omar al-Bashir.<sup>244</sup> Also, days before the coup, Al-Burhan demanded from Hamdok to dissolve his entire government, arguing that Sudan needs a government that has the ability to overcome challenges and political solution to crises.<sup>245</sup> Political analyst Omar Al-Qaray stated that the announcement made by the head of the Sovereign Council, Abdel-Fath Al-Burhan, on Sudan National TV immediately after the dispersal of the sit-in for peaceful demonstrators in the army headquarters in Khartoum on 3rd of June 2019, was the same as the slogans of the recent military coup d'état on 25 October

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<sup>239</sup> Bertelsmann Stiftung, BTI 2022 Country Report — Sudan. Gütersloh: Bertelsmann Stiftung, (2022)15.

<sup>240</sup> United Nations Security Council Report 2020 - Letter dated 28 January 2020 from the Prime Minister of the Sudan addressed to the Secretary-General (2020)1-4.

<sup>241</sup> United Nations Security Council Report 2020 - Letter dated 27 February 2020 from the Prime Minister of the Sudan addressed to the Secretary-General (2020)1-2.

<sup>242</sup> Terefe F & Mohammed Z 'Sudan's Political Crisis and the Uncharted Course' Good Governance Africa – Eastern Africa. Subject: Political Development Civil War (2021)7.

<sup>243</sup> Bertelsmann Stiftung, BTI 2022 Country Report — Sudan. Gütersloh: Bertelsmann Stiftung, (2022)16.

<sup>244</sup> Terefe F & Mohammed (2021)7.

<sup>245</sup> 'Sudan's Burhan Calls for Dissolving Hamdok Gov't' the ASHARQ 12 October 2021 available at <https://english.aawsat.com/home/article/3241261/sudan%E2%80%99s-burhan-calls-dissolving-hamdok-gov%E2%80%99t> (accessed 10 Mar 2022).

2021.<sup>246</sup> Al-Burhan announced the coup d'état from the very beginning that he does not tolerate a partnership with the civilian government and that the country must prepare for urgent elections.<sup>247</sup>

### **4.3. Understanding the Sudan's economic deterioration in the transitional stage**

The economic crisis in Sudan diminished after the United States classified Sudan among the list of countries sponsoring terrorism due to violations of human rights committed under the former regime.<sup>248</sup> Also, after the secession of South Sudan in 2011, the Sudan's economy deteriorated and Sudan lost about 70% of its oil reserves. In addition to the security and military sector's control over the Sudanese economy.<sup>249</sup> The US Congressional Research Service issued a report on 9 of November 2020, commenting on Sudan's removal from the state sponsors of terrorism list. This is because former Prime Minister Abdullah Hamdok sought to achieve peace with the Darfur rebel movements, improving the exercise of religious freedom and human rights in the country. Despite this, Hamdok's government, which was formed from a military and civilian coalition, faces a challenge and general frustration due to the crises it inherited from the previous regime, such as the economic crisis and security.<sup>250</sup> The Juba Peace Agreement also changed some of the dynamics in Sudanese politics, for example, the Juba Peace Parties' participation in power-sharing.<sup>251</sup> However, whether the transitional government will lead to a democratic transition or the resettlement of military actors is debatable.<sup>252</sup>

We mentioned that transitional justice for (interest of the transition) seeks to heal the wounds of the past and to resolve the political crises by seeking to grow the economy and rebuild state structures and institutions to gain the confidence of the victims.<sup>253</sup> Since Sudan's independence in 1956, the army's high commands have dominated the basic sectors of the

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<sup>246</sup> Interview with Omar Al-Qarai, Director of the National Centre for Curricula and Educational Research and a leader in the Republican Party. The interview on 'the sit-in dispersal and its relationship to the current situation in Sudan, via the Zoom application, on 3 June (2022).

<sup>247</sup> Interview with Omar Al-Qarai, Director of the National Center for Curricula and Educational Research and a leader in the Republican Party. The interview on 'the sit-in dispersal and its relationship to the current situation in Sudan, via the Zoom application, on 3 June (2022).

<sup>248</sup> Stevens L & Wang D & Ismail H 'Sudan: Freedom, Peace, and Justice' The Norman Paterson School of International Affairs, Carleton University. (2019)6 INAF5499.

<sup>249</sup> Sweeney J 'Sudan economic crisis' The ACAPS 13 February 2019 2.

<sup>250</sup> The 'Sudan's Removal from the State Sponsors of Terrorism List' (Publish in IN11531 of 9 November 2020).

<sup>251</sup> The white paper on Sudan: Opposition to the government (COI Version 3.0 of 7 April 2021).

<sup>252</sup> The 'Sudan's Removal from the State Sponsors of Terrorism List' (Publish in IN11531 of 9 November 2020).

<sup>253</sup> Nesiiah V (2016)9.

economy, and the situation has worsened under Bashir's regime.<sup>254</sup> The army has run more than 250 companies and companies affiliated with the army do not pay taxes.<sup>255</sup> For example, the security services control companies that export gold, gum, and sesame, import wheat, cars, banking services, and medicines. Even companies that manufacture Sudanese banknotes are under the control of the security and military services.<sup>256</sup>

In addition Hemetti, the head of the RSF, he became a major businessman in Sudan in the transitional period by controlling the gold mines in Darfur and using his forces to participate in the war in Yemen, where his forces participated as mercenaries in the war between Saudi Arabia and Yemen.<sup>257</sup> In addition to agricultural projects, livestock and rubber, without any tax revenues for the country.<sup>258</sup> For instance, Al-Junaid Company, among the military establishments under Hemetti's control, which sold about 1 ton of gold to the United Arab Emirates, worth \$30 million, in just one month in 2018. Hemetti established multiple branches of the company, which indicates the amount of funds that this company enters in one year.<sup>259</sup> Outside Sudan, there are illegal transactions of funds by Al-Bashir and his followers, for example, in 2010 the former ICC General prosecutor Luis Moreno stated that there are funds withheld for Al-Bashir in the UK, about \$9 billion in Lloyd's Banking Group.<sup>260</sup> Carliright Smith and Kar suggested that the illegal transactions of Sudanese funds by the Sudanese amounted to \$16.6 billion dollars in the period of 1979 - 2008.<sup>261</sup> For this purpose, in December 2019, a committee was established to dismantle the pillars of the previous regime from the Sovereignty Council and the civilian component, called the Committee to remove the empowerment and recover the money of the previous regime.<sup>262</sup>

In April 2020, the committee announced that it was able to recover more than one million acres of agricultural land and 20 million square meters of residential land seized from

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<sup>254</sup> Mansour A & Yousif A 'Attitudes of the Sudanese people towards the performance of new transitional government: An exploratory study' *African Journal of Political Science and International Relations* 15(2) (2021)67 AJPSIR 1332.

<sup>255</sup> Hoffmann A 'Military coup betrays Sudan's Policy Brief revolution: Scenarios to regain the path towards full civilian rule' *The Netherlands Institute of International Relations. Clingendael* (2021) 4.

<sup>256</sup> Gallopin J (2020)22.

<sup>257</sup> Carboni & Raleigh & Andrea 'et al' 'Regime cycles and political change in African autocracies' *Journal of Modern African Studies*, 59 (4) (2021) 429 VERSUS 726504.

<sup>258</sup> Woldemichael S (2020)16.

<sup>259</sup> Gallopin J (2020)23.

<sup>260</sup> Anne L & Bartlett 'Dismantling the 'Deep State' in Sudan' *Australasian Review of African Studies* Vol. 41(1) (2020)64 ARAS 2020.

<sup>261</sup> Report of the High-Level Panel on Illicit Financial Flows from Africa 2016\_ Illicit Financial Flow (2016)93.

<sup>262</sup> El- Geziwa & Idris W 'Elements of Sudan's former Al Bashir regime dismantled' *DABANGA* Available at: <https://www.dabangasudan.org/en/all-news/article/former-elements-of-sudan-s-al-bashir-regime-dismantled-in-el-gezira> (accessed 10 May 2022).



the remnants of the previous regime, in addition to recovering dozens of companies and institutions.<sup>263</sup> Also among the achievements of the Deep State Empowerment Removal Committee is that it issued a decree dissolving the National Congress Party (NCP) and depriving its members of holding any electoral position or participating in any political activity for a period of a decade.<sup>264</sup> In the implementation of this decree, Ibrahim Omar, Speaker of Parliament in the former regime, and some remnants of the former regime were arrested for their participation in demonstrations organised by the NCP for opposing the Empowerment Removal Committee.<sup>265</sup>

After the name of Sudan was removed from the list of countries sponsoring terrorism Sudan was allowed to cooperate with foreign countries to obtain financial aid, debt relief, and engage in foreign investment.<sup>266</sup> In June 2020, a conference was held in Berlin on Sudan's high-level partnership, and the conference ended with financial commitments of 1.8b US dollars from 50 countries. The World Bank also pledged to provide 400 million dollars to Sudan to help the transition process succeed.<sup>267</sup> However, this aid was suspended due to the hegemony of the army on the authority, especially after the 25<sup>th</sup> of October coup, and all aid is still suspended.<sup>268</sup> Some political analysts protested that the transitional government did not seek to remedy the economic imbalance. The people suffer from severe high costs of living and poor local crop production, for example, there are approximately 18 million Sudanese suffering from severe hunger.<sup>269</sup>

At the time of writing this thesis on 17 of March 2022, demonstrators mobilised in the streets of Khartoum to oppose the coup and protest about the cost of living in Sudan, and the police suppressed the demonstrators, resulting in injury to 187 demonstrators.<sup>270</sup> On 28 of March 2022, the US envoy Volker Perthes warned that there were fears that Sudan was coming

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<sup>263</sup> 'Reversing Sudan's Dangerous Coup' available at: <https://www.crisisgroup.org/africa/horn-africa/sudan/reversing-sudans-dangerous-coup> (accessed 16 May 2022).

<sup>264</sup> Anne L & Bartlett (2020)64.

<sup>265</sup> Anne L & Bartlett (2020)66.

<sup>266</sup> The 'Sudan's Removal from the State Sponsors of Terrorism List' (Publish in IN11531 of 9 November 2020).

<sup>267</sup> Ismail A '\$1.8 billion pledged to assist Sudan's people on the road to peace and democracy' available at: <https://peacekeeping.un.org/en/18-billion-pledged-to-assist-sudans-people-road-to-peace-and-democracy> (accessed 8 May 2022).

<sup>268</sup> Woldemichael S 'The Sudan's transition what are the chances of success?' The Africa Peace and Security Governance Programme of the Institute for Security Studies (2020)15 ISS.

<sup>269</sup> CRISISWATCH 'Tracking Conflict Worldwide' Available at [https://www.crisisgroup.org/crisiswatch/print?page=1&location%5B0%5D=14&date\\_range=custom&from=&t=CrisisWatch+Database+Filter](https://www.crisisgroup.org/crisiswatch/print?page=1&location%5B0%5D=14&date_range=custom&from=&t=CrisisWatch+Database+Filter) (accessed 9 may 2022).

<sup>270</sup> CRISISWATCH 'Tracking Conflict Worldwide' Available at [https://www.crisisgroup.org/crisiswatch/print?page=1&location%5B0%5D=14&date\\_range=custom&from=&t=CrisisWatch+Database+Filter](https://www.crisisgroup.org/crisiswatch/print?page=1&location%5B0%5D=14&date_range=custom&from=&t=CrisisWatch+Database+Filter) (accessed 9 may 2022).

to an economic and security collapse as long as the government did not perform its role for economic reform. Also, Sudan lost external support from the International Bank and countries suspended their financial aid. In addition to stopping foreign investments in light of the instability and the dominance of state by the military.<sup>271</sup> The US Senate President Jonas Horner also said that the financial support granted to Sudan by America will stop if the government is not handed over to civilians and Prime Minister Abdalla Hamdok allowed to return.<sup>272</sup>

After the coup, Al-Burhan cancelled all decisions issued by the Empowerment Removal Committee (ERC) to dismantle the deep state and recover the money embezzled by the previous regime.<sup>273</sup> Alongside, Judicial authorities annulled the decisions of the Empowerment Removal Committee (ERC) to restore the economic possessions that had been confiscated by the Islamists (ERC). For example, in April 2022, the Judicial Department cancelled the decision of the (ERC) to dissolve the Islamic Call Organisation (MADA), an organisation that acts as an incubator for Islamists that covers all their actions, political, financing and terrorist activities.<sup>274</sup> Of course, the coup government seeks to restore the leaders of the Islamists (NCP) who dominated the country during the era of the previous regime, and who were brought down by the revolution in 2018.<sup>275</sup> For instance, in January 2022, the court ruled for the release of Anas Omar, a senior member of the National Security Service, as well as the return of the fugitive Ali Karti from Turkey after the coup, who was the Secretary-General of the (NCP).<sup>276</sup> The court also cancelled the (ERC) decisions to confiscate property and looted funds, such as cancelling the decision to confiscate the house of Ali Uthman Muhammad Taha, the deputy of Former President Omer Al-Bashir.<sup>277</sup> Sudanese Communist Party political activist, Sidqi Kabalu, stated that the goal of the coup government is to re-employ the (NCP) leaders in government jobs, banks and the judiciary to return to the deep state "re-empowerment".<sup>278</sup>

Sudan's ongoing economic crisis is leading the country to real dilemma of high prices of medicines and fuel. At the time of writing, the value of 1.0 US dollar is equal to 450, 00

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<sup>271</sup> Perthes V 'Remarks to the Security Council' The OCHA 24 May 2022.

<sup>272</sup> 'Military takeover could deepen Sudan's economic crisis' The 14 May 2022.

<sup>273</sup> Salim K 'Facts and lies about the 25 October Coup in Sudan' The Sudan Tribune 10 February 2023.

<sup>274</sup> Salim K 'Facts and lies about the 25 October Coup in Sudan' The Sudan Tribune 10 February 2023.

<sup>275</sup> Sudan Uprising report: 3 major challenges facing the post-coup uprising in Sudan (2022)3.

<sup>276</sup> Sudan Uprising report: 3 major challenges facing the post-coup uprising in Sudan (2022)3.

<sup>277</sup> Espanol M 'Coup generals bring back party of Sudan's ousted dictator' Available at <https://www.al-monitor.com/originals/2022/04/coup-generals-bring-back-party-sudans-ousted-dictator> (accessed 17 May 2022).

<sup>278</sup> Sudan Uprising report: 3 major challenges facing the post-coup uprising in Sudan (2022)3.

Sudanese pounds.<sup>279</sup> Janas Horner argued that economic reform is an essential weapon for the success of any transitional process. The chances of the transition process in Sudan succeeding is slim as long as the government does not make an effort to address the crisis.<sup>280</sup> We mentioned earlier that the goal of transitional justice should strengthen the foundations of peacebuilding from various aspects such as economic, security and building the confidence of victims and civilians in the new government towards a better life.<sup>281</sup> In light of this, what is happening in Sudan shows that there is no hope to achieve peace or to reform the economic situation. The main objective of Al-Burhan and Hemetti's coup was to cut off the date for handing over power to civilians, as it threatens their personal interests. Moreover, dismantling the deep state for the NCP is not their priority.<sup>282</sup>

#### **4.3.1. Understanding the economic Situation in Darfur**

Historically, Darfur was in a state of peace and stability within its various communities and tribal groups except for some entanglements between farmers and herders, then the situation worsened during the era of Al-Bashir's regime in 1989, and his era witnessed massive violations of human rights that reached their climax in 2003, which continued even after the December 2018 uprising.<sup>283</sup> The consequences of the wars in Darfur cause millions of victims to live in displacement camps, and others to the outskirts of cities "margin". The main source of income and livelihood for the people of Darfur was agriculture and livestock.<sup>284</sup> After displacement, people lost their livelihoods and were forced to engage in hard work, such as making bricks.<sup>285</sup>

Besides, a displaced person who owned land or a farm is forced to cultivate on his land for the new settlers or the Janjaweed, by agreeing between them to divide the crop by 50% or 30% at the time of harvest. Despite all this, the displaced person face constant violations when they go to the farm or collect firewood. Displaced Persons experience yet another conflict while living in displacement camps, and once they leave the camp, women can be killed and raped

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<sup>279</sup> Yeboua K & Cilliers J 'Development prospects for the Horn of Africa countries to 2040' Institute for Security Studies (2021) 16 ISS.

<sup>280</sup> Yeboua K & Cilliers J (2021)16.

<sup>281</sup> Cheng-Hopkins UN Peacebuilding: An Orientation: Report of the Secretary-General on Peacebuilding in the Immediate Aftermath of Conflict of June 2009. United Nations (2010) 6.

<sup>282</sup> Hoffmann A (2021) 5.

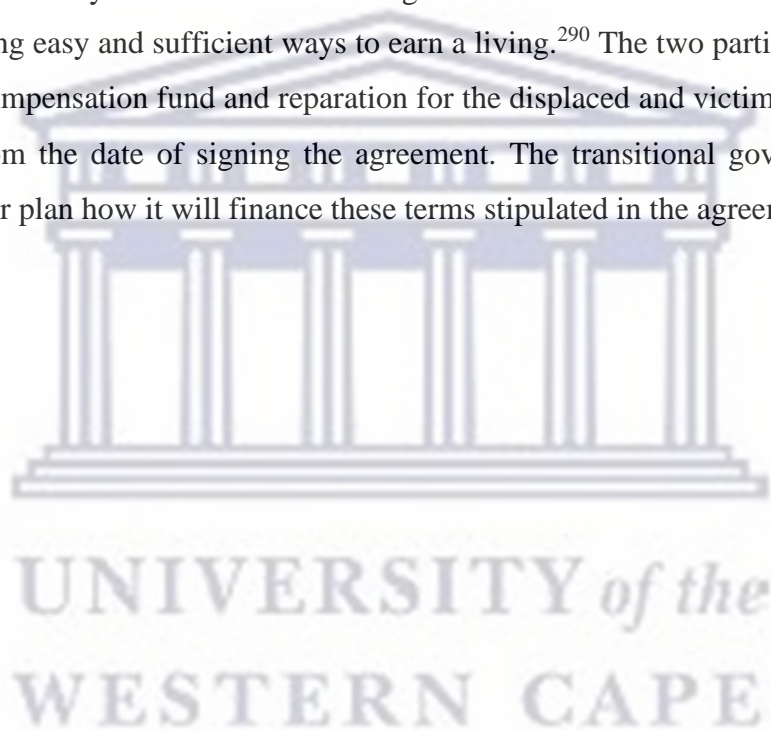
<sup>283</sup> Bertelsmann Stiftung, BTI 2022 Country Report — Sudan. Gütersloh: Bertelsmann Stiftung, (2022)19.

<sup>284</sup> Sweeney J 'Sudan economic crisis' The ACAPS 13 February 2019 4.

<sup>285</sup> Bertelsmann Stiftung, BTI 2022 Country Report — Sudan. Gütersloh: Bertelsmann Stiftung, (2022)19.

without any intervention by the authorities for protection.<sup>286</sup> The approach used by the Sudanese governments to empower the Arab tribes in Darfur since the 1980s is based on Arab sovereignty over the indigenous African component.<sup>287</sup> Likewise, the total marginalisation and racial discrimination that the Bashir government planted in Darfur and their exclusion from the economy and politics made Darfurian second-class citizens.<sup>288</sup>

The transitional justice in Sudan has disappointed the Sudanese people, especially the displaced people of Darfur, and the government has remained in contradiction and political divisions and the pursuit of personal interests as we mentioned previously. For example, Chapter IV, Article (11) of the Juba Peace Agreement stipulated financial compensation for communities affected by violations of human rights and international humanitarian law.<sup>289</sup> In addition providing easy and sufficient ways to earn a living.<sup>290</sup> The two parties also agreed on establishing a compensation fund and reparation for the displaced and victims within a period of (90) days from the date of signing the agreement. The transitional government has not developed a clear plan how it will finance these terms stipulated in the agreement.<sup>291</sup>



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<sup>286</sup> An interview with a member of the Sudan People's Liberation Movement\North, Techni Qidi, (displacement camps in the Darfur region, a life for the lifeless) Via Zoom. On 11 My 2022.

<sup>287</sup> Flint J Beyond 'Janjaweed': Understanding the Militias of Darfur (2009)12.

<sup>288</sup> Flint J (2009)11.

<sup>289</sup> Juba Agreement for Peace in Sudan Between the Transitional Government of Sudan And the Parties to Peace Process (2020)33.

<sup>290</sup> Juba Agreement for Peace in Sudan Between the Transitional Government of Sudan And the Parties to Peace Process (2020)34.

<sup>291</sup> Juba Agreement for Peace in Sudan Between the Transitional Government of Sudan And the Parties to Peace Process (2020)38.

## CHAPTER 5

### FINDINGS DISSECTION, CONCLUSION AND RECOMMENDATIONS

#### 5.1. Introduction

The Sudanese revolution at the end of 2018 brought about a remarkable development in the history of Sudan's political and military dictatorship since its independence in 1956, which managed to overthrow President Omar al-Bashir.<sup>292</sup> However, at the time of writing this thesis, Sudan is still in a significant political quandary over whether the revolution can wrest power from the hands of the former regime towards access to prosecution and the rule of law.<sup>293</sup> Despite the Juba Peace Agreement, many analysts see it as an agreement to support military putschists in exchange for positions of power, and it has nothing to do with peace.

#### 5.2. The necessity of truth commissions as a tool in the transitional justice process

Truth commissions are necessary to reveal past facts and human rights violations. Through truth commissions, the challenges facing the transitional period can be overcome. It also encourages the government to acknowledge past mistakes to take a step toward the future.<sup>294</sup> Truth commissions also help to record facts in the historical record and recommend corrections to past mistakes.<sup>295</sup> The truth commissions program in Sudan must show the violations that took place in Darfur, as mentioned in the reports; for example, according to the word of the British Parliament that the number of deaths reached 300,000 people as a result of the Janjaweed attacks on villages in 2003.<sup>296</sup>

The Janjaweed also targeted males to kill them and forced them to stand in line to shoot them. These facts must be shown to the Sudanese people.<sup>297</sup> Truth commissions allow victims to

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<sup>292</sup> Elsheikh E 'Sudan after Revolt: Reimagining Society, Surviving Vengeance' Critical Times Journal. 2019NC-ND466.

<sup>293</sup> Elsheikh E (2019)466.

<sup>294</sup> Olsen T & Payne L & Reiter A & Brahm 'When truth commissions improve human rights' The International Journal of Transitional Justice. Vol (4), *University of Denver*, (2010) 460.

<sup>295</sup> United Nations Security Council Report 2004 \_ The rule of law and transitional justice in conflict and Post-conflict societies (2004) 1-24.

<sup>296</sup> Costantinos C Sudan at Cross roads – The Saga of Decadence, Regime Change & Building Democratic Institutions (publish PHD thesis, Addis Ababa university,2018)4.

<sup>297</sup> Costantinos C (2018)4.

directly address the people to learn their stories and tell them about the trauma and suffering they have experienced from human rights violations and international humanitarian law.<sup>298</sup>

Interviews conducted by the UN Commission of Inquiry on IDPs and Victims, collectively or individually, confirm that attacks on villages were well organised by military operations in 2003. The Janjaweed attack villages during market days, when villagers gather for trade as well as during prayer, or on the weekend. The African tribes inhabited all villages that were burned. In addition, Sudanese government aircraft carried out some attacks. At the same time, the Janjaweed attacks were carried out with horses.<sup>299</sup> The IDPs also confirmed that after the militias burned the villages, the Sudanese ground forces intervened and fired to ensure that no one was left in the village. The IDPs confirmed that they did not differentiate between the Janjaweed and the Sudanese armed forces in the attacks.<sup>300</sup> Many adverse factors would affect the truth commissions in current transitional justice in Sudan, such as the lack of justice for the victims, the fear of witnesses to share their stories or testify, the instability of the security and political situation in Sudan, In addition to the failure of the transitional government to make efforts to make the transition process a success.<sup>301</sup> Therefore, all the above are the complexities faced in implementing transitional justice in Sudan.

### **5.2.1. Lessons from Countries with Successful Implementation of Truth Commissions**

Here, it is imperative to briefly draw some lessons from the experiences of countries that have implemented truth commissions and who have managed to overcome the situation to reach democracy and sustainable peace, in order to see if we can use them as excellent examples in the case of Sudan:

### **5.2.2. The Morocco Truth and Reconciliation Initiative**

Suppose we go back to take some of the previous practices of truth commissions in some countries in order to know if it can be an excellent example for the case of Sudan, for instance, the Morocco Truth and Reconciliation Initiative, which was established in 2004. Human rights

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<sup>298</sup> Imam Z Search For Transitional Justice In Darfur: The Role of the Traditional Mechanisms (Published, University of Deusto, 2012)27.

<sup>299</sup> Costantinos C (2018)4.

<sup>300</sup> Costantinos C (2018)5.

<sup>301</sup> Imam Z Search For Transitional Justice In Darfur: The Role of the Traditional Mechanisms (Published, University of Deusto, 2012)27.

activists contributed to the success of the reconciliation process that brought democracy to Morocco.<sup>302</sup> The reign of King Hussein II, from the early 1960s to the late 1990s, was also known as the "Reign of Lead," which means bullets with peaceful demonstrators killed during protests. During this period, human rights violations in Morocco intensified, which included murder, torture, forced displacement, kidnapping, denial of expressing their opinions, threatening imprisoned men with rape, and beating women in prison for expressing their opinion on political matters.<sup>303</sup> Although the Moroccan Truth and Reconciliation Commissions had their powers confined to complaints and the search for truth, recommendations, and investigations, they were able to play a positive role in achieving reconciliation; for example, in 18 months, they were able to pay compensation to about 16,000 victims and their families, as well as being transparent about the human rights violations that occurred in Morocco.<sup>304</sup>

The positive role played by the Moroccan Truth and Reconciliation Commission could be a lesson for Sudan because there are similarities, for example, in the killing of peaceful demonstrators. But the case of Sudan is more complex because the conflict did not involve only the government. Still, the human rights violations that occurred in Darfur were committed by the Janjaweed, targeting the indigenous tribes of Africa with the support of the central government. For the truth commissions to be successful, the Sudanese government must admit the past mistakes, considering the Moroccan experience to benefit from them.<sup>305</sup>

### **5.2.3. South Africa's experience**

Between 1960 and 1990, the African National Congress Party (ANC) fought against the apartheid government after which the country entered into a transitional phase. This began with the settlement process, and the government of the apartheid regime promised the black majority, to tell the truth, reveal the human rights violations that occurred, provide redress for the victims, and release political activists. As a result, Nelson Mandela was released in 1990 after 27 years in prison.<sup>306</sup> The government of the apartheid regime and Mandela began to

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<sup>302</sup> The 'Human Rights Watch: Country Summary Morocco' (January 2006).

<sup>303</sup> The 'Human Rights Watch: Country Summary Morocco' (January 2006).

<sup>304</sup> Abdallah N Sudan's Transitional Justice: The Moroccan Equity and Reconciliation Commission (ERC) as a Good Practice Role Model Example in the MENA Region – the Case of Darfur (Published, University of Louaize, 2020)25.

<sup>305</sup> Abdallah N Sudan's Transitional Justice: The Moroccan Equity and Reconciliation Commission (ERC) as a Good Practice Role Model Example in the MENA Region – the Case of Darfur (Published, University of Louaize, 2020)25.

<sup>306</sup> Holdt K 'South Africa: the transition to violent democracy' Review of African Political Economy (2013)592 ISSN 0305-6244.

prepare a transition chart to end the apartheid regime and establish a new symbolic system based on democracy and the rule of law.<sup>307</sup>

Negotiations began between the ANC and the government of the apartheid regime in South Africa, and the two parties agreed on broad outlines of democracy and human rights based on building the rule of law. At the same time, the negotiations were complicated, reflecting the state of the conflict over the attempt to reconcile the political and economic spheres to reach democracy and correct past mistakes because the apartheid government requires ensuring the protection of property, land, and real estate seized by white “capitalist.” In some cases, the apartheid government requested amnesty for human rights abuses committed by whites. At the same time, ensuring compensation for racial discrimination, confessing about the poverty they caused and enslavement, fair compensation, and providing fundamental human rights such as education, housing, health, and peaceful coexistence.<sup>308</sup>

In 1994, elections were held, in which the African National Congress Party won, and Mandela was elected South African president. After that, the Truth and Reconciliation Commission expanded its circle. In many instances, The Interim Constitution stipulated in section (1) 32 of the Final Constitution, “Everyone has the right of access to— (a) any information held by the state; and (b) any information that is held by another person and that is required for the exercise or protection of any rights”.<sup>309</sup> In 1995, the South African Parliament declared the need to establish truth and reconciliation commissions. In 1998, held testimony hearings, and more than 22,000 victims gave their testimonies. In addition, the TRC recorded testimonies through public hearings. This is in implementing the provisions of National Unity and Reconciliation (Act No. 34) held in Cape Town. That was the first time the black majority were recognised as citizens with all rights.<sup>310</sup>

In 1995, Mandela appointed 17 Truth and Reconciliation Commission members. The Commission began implementing the reconciliation provisions in 1996, and the members of the TRC concluded their duties by submitting a detailed report in 1997. The Truth and Reconciliation Commission was formed from three sub-committees: The Commission for

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<sup>307</sup> Holdt K (2013)593.

<sup>308</sup> Holdt K (2013)592.

<sup>309</sup> See> PROMOTION OF ACCESS TO INFORMATION ACT 2 OF 2000.

<sup>310</sup> Holdt K (2013)592.



Investigation on Human Rights Violations, the Compensation, Reparation, and Rehabilitation Commission, and the Amnesty Commission.<sup>311</sup>

The role of the Human Rights Violations Committee was focused on an independent investigation of human rights violations that occurred between 1960 -1994; for example, counting the number of victims of human rights violations and the magnitude of the damage, and whether the grave violations were committed by apartheid regime or groups or any other organisations. The role of the Reparations and Compensation Committee was to present proposals and plans on how to rehabilitate the victims and their families and establish a compensation fund.<sup>312</sup> The Amnesty Committee's tasks was to determine a specific time for submitting requests for amnesty by the law for any acts of violence caused mainly by whites against blacks between 1960-1993. In addition, the Truth and Reconciliation Commission submitted a report on about 50,000 cases resulting from grave human rights violations.<sup>313</sup>

Sudanese researcher Qassim Bashir Hamid, on restorative justice in Sudan, said that the Sudanese political structure is highly complex and needs a collective reconciliation in which all the components of Sudan participate by acknowledging the mistakes of the past and seeking to build a trauma-free future based on the love of the homeland and seeking the interest of the people away from conflicts and invisible agenda that destroyed Sudan.<sup>314</sup>

He added that the practice of national reconciliation in any country has proven that they can achieve it only after stopping grave violations and acknowledging justice.<sup>315</sup>

Amnesty International has set standards and mechanisms to be followed for any reconciliation process, which are as follows:

- (i) Establishing effective national means to reveal the facts about past violations.
- (ii) The necessity of establishing committees to investigate the grave abuses that occurred in the past.

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<sup>311</sup> Gade & Christian B.N 'Restorative Justice and the South African Truth and Reconciliation Process' Department of Culture and Society Aarhus University (2013) 19.

<sup>312</sup> SAHO 'Truth and Reconciliation Commission (TRC)' The South African History Online 31 March 2011.

<sup>313</sup> SAHO 'Truth and Reconciliation Commission (TRC)' The South African History Online 31 March 2011.

<sup>314</sup> Hamid Q ('Transitional justice experience in South Africa and Guatemala and how to benefit from it in case of Sudan' Iraqi-African Centre for Strategic Studies (2022)30.) قاسم بشير حامد ' تجربة العدالة الإنتقالية في جنوب أفريقيا و غواتيمال وكيفية الاستفادة

منها في حالة السودان' (2022) 30

<sup>315</sup> Hamid Q ('Transitional justice experience in South Africa and Guatemala and how to benefit from it in case of Sudan' Iraqi-African Centre for Strategic Studies (2022)30.) قاسم بشير حامد ' تجربة العدالة الإنتقالية في جنوب أفريقيا و غواتيمال وكيفية الاستفادة

منها في حالة السودان' (2022) 30 .

- (iii) The Truth and Reconciliation Commission must be independent, impartial, and transparent
- (iv) Develop effective plans and recommendations to compensate the victims and their families with fair compensation.<sup>316</sup>

He also epitomises lessons from the experience of the South African Truth and Reconciliation Commission: that transitional justice in Sudan cannot succeed if the government of Sudan continues to ignore and evade the human rights violations that have occurred and are ongoing. Therefore, the government of Sudan must embrace all the bitterness of the past, address them through direct confrontations, and reveal the truth to the Sudanese people to reach a complete stage of complete satisfaction and seek a democratic transition. In addition, it must ensure that the same violations will not be repeated in the future.<sup>317</sup>

We note that the Sudanese researcher Qasim focused on restorative justice, avoiding retributive justice, and relied on the experience of South Africa, which relied on conditional amnesty to achieve justice instead of prosecutions and bringing perpetrators of human rights to the trials. The South African Truth and Reconciliation Commission relied on bringing the accused to confess their mistakes.<sup>318</sup> Of course, the formation of the Truth and Reconciliation Commission is necessary to reveal the facts and tell the truth to the Sudanese people about the violations that occurred in Sudan specifically Darfur, Nuba mountains and the Blue Nile during the era of the former regime and take a lesson from previous transitional justice practices, such as the experience of South Africa. Also, to expand the transitional justice cycle to include all groups to reach societal reconciliation and work together to achieve the Revolution goals and pursue democratic transition.<sup>319</sup>

However, we think retributive justice has priority in Sudan because it is a fundamental demand of the Sudanese revolution. In addition, the revolutionaries agreed on transitional

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قاسم بشير حامد ' تجربة العدالة الإنتقالية في جنوب أفريقيا وغواتيمال وكيفية الاستفادة  
منها في حالة السودان' (2022) 26

Hamid Q ('Transitional justice experience in South Africa and Guatemala and how to benefit from it in case of Sudan' Iraqi-African Centre for Strategic Studies (2022)26.)

قاسم بشير حامد ' تجربة العدالة الإنتقالية في جنوب أفريقيا وغواتيمال وكيفية الاستفادة  
منها في حالة السودان' (2022) 27

Hamid Q ('Transitional justice experience in South Africa and Guatemala and how to benefit from it in case of Sudan' Iraqi-African Centre for Strategic Studies (2022)27).

<sup>318</sup> Gade C Restorative Justice and the South African Truth and Reconciliation Process' Department of Culture and Society. Aarhus University (2013) 19.

<sup>319</sup> Jakobsson E Transitional Justice – An Analysis of Restorative and Retributive Mechanisms in Sub-Saharan Africa (Bachelor Thesis in Peace and Development Studie2FU33E, 2018) 2.

justice mechanisms.<sup>320</sup> They gave priority to accountability, for example, the prosecution of the perpetrators of international crimes in Darfur and those responsible for the continuous violations of the peaceful revolutionaries, including arbitrary arrest and torture of political activists, as well as the Independent and transparent investigation of the June 3, 2019 massacre. Accountability is vital for the Sudanese people to build confidence in the Sudanese government and to confirm its commitment to transitional justice. Therefore, the Truth and Reconciliation Commission's role should complement the prosecution mechanism.<sup>321</sup>

Restorative justice also appeared in Faith Community Hearings in East London on 17 November 1997. The Secretary-General of the Institute for Contextual Theology, Reverend Wesley Mabuza, mentioned that restorative justice without retributive justice means pardoning the perpetrators without paying any price for their violations. Causing them to escape punishment for their criminal acts and causing dissatisfaction and resentment among the victims and their families. But when the perpetrators are held accountable for their actions, it will be a positive step towards the success of transitional justice and democracy.<sup>322</sup> Some researchers who criticise restorative justice without retributive justice consider justice without trial of the perpetrators of human rights violations that do not heal peoples' pain and does not deliver to them a sense of justice because all victims dream is trials and then restorative justice.<sup>323</sup> Paul Van Zyl has also argued that often the options proposed to civilians are not between restorative justice and retributive justice but that the only option for civilians is restorative justice for absolutely nothing, which leads to amnesty for the perpetrators of international crimes to settle disputes. They also consider that giving up on trials has paid a heavy price to the victims to reach peace; at the same time, it is excruciating not to hold the perpetrators of war crimes accountable, which makes the prosecutions politically unrealistic. This is what happened in Brazil as discussed previously.<sup>324</sup>

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<sup>320</sup> Laura A & Babiker M & Ashmore H 'et al' 'NATIONAL PERCEPTION STUDY OF TRANSITIONAL JUSTICE IN SUDAN' The United States Agency for International Development. (2020) 3 USAID.

<sup>321</sup> Laura A & Babiker M & Ashmore H 'et al' (2020) 17.

<sup>322</sup> Gade C 'Restorative Justice and the South African Truth and Reconciliation Process' Department of Culture and Society Aarhus University (2013) 19.

<sup>323</sup> Kauffman C 'Transitional Justice in Guatemala: Linking the Past and the Future' South Conference Miami, Florida (2005) 7 ISA.

<sup>324</sup> Kauffman C (2005)7.

### **5.3.1. The Sudanese government's seriousness about cooperating with the International Criminal Court:**

In August 2021, there was a positive step by the Government of Sudan regarding cooperation with the ICC to ratify the Rome Statute of the ICC, as well as to extradite the five accused of war crimes, crimes against humanity, and genocide to The Hague; namely Al-Bashir, Harun, and Hussein.<sup>325</sup> Nevertheless, all decisions related to Sudan's transitional justice program, including accountability, compensation, and others, should be subject to joint decisions by the civilian and military components. But after the 25<sup>th</sup> October coup, Al- Burhan dissolved the Military Sovereignty Council and the Civil Council of Ministers, further complicating the possibility of extraditing the accused to the ICC.<sup>326</sup> There are different opinions within the transitional government about handing over Al-Bashir and the rest of the wanted persons to the ICC; for example, Al-Burhan refuses to extradite the accused to be prosecuted internally because he fears that if the wanted persons are handed over, they may be the next, as we mentioned in our discussion of the role of Al-Burhan in the Darfur conflicts of 2003.<sup>327</sup>

Some senior officers endorse the principle of complementarity that the accused will be tried in Sudan under the supervision of the ICC because the trial in The Hague indicates the weakness of the Sudanese judiciary and the fault of the national army. They also stress that it will affect the dignity and pride of the country.<sup>328</sup> The Juba Peace Accord stipulated the need to respect international humanitarian and human rights laws. It also mentioned the importance of implementing transitional justice mechanisms to achieve justice for the victims and prosecute human rights violators in Darfur.<sup>329</sup> It also stated its total commitment to cooperate with the ICC to extradite the accused for whom an arrest warrant was issued.<sup>330</sup> In June 2021, the ICC Prosecutor, Fatou Bensouda visited Darfur. She was received with honour by the displaced and victims. She conducted interviews with the displaced, and they demanded that the accused be handed over to the ICC. Because of the developments that occurred in Sudan, the displaced lost confidence in the Sudanese government's willingness or ability to prosecute

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<sup>325</sup> Elsheikh E (2019)471.

<sup>326</sup> Tubiana J 'Delays and Dilemmas: New Violence in Darfur and Uncertain Justice Efforts within Sudan's Fragile Transition' African Centre for Justice and peace Studies. 2021 64 *FIDH*.

<sup>327</sup> Nangalama M 'ICC prosecutor calls for enhanced cooperation over Darfur cases' Available at: <https://perilofafrica.com/2021/08/icc-prosecutor-calls-for-enhanced-cooperation-over-darfur-cases.html> (accessed 30 June 2022).

<sup>328</sup> Tubiana J 'Delays and Dilemmas: New Violence in Darfur and Uncertain Justice Efforts within Sudan's Fragile Transition' African Centre for Justice and peace Studies. 2021 67 *FIDH*.

<sup>329</sup> Juba Agreement for Peace in Sudan Between the Transitional Government of Sudan And the Parties to Peace Process (2020)27.

<sup>330</sup> Juba Agreement for Peace in Sudan Between the Transitional Government of Sudan And the Parties to Peace Process (2020)31.

the violators of human rights.<sup>331</sup> They also question the government's ability to establish transitional justice mechanisms to achieve justice in Sudan.<sup>332</sup>

The armed movements that signed the Juba Peace Agreement also have interpretations of the trials. The head of the Sudan Liberation Movement, Minni Minawi believes that the scope of the ICC should be expanded to extradite wanted persons and others accused of human rights violations. Still, the head of the Justice and Equality Movement, Jibril Ibrahim, believes that the role of the ICC should be limited to the five accused.<sup>333</sup> We also note that many perpetrators seek to avoid judicial justice in Sudan and activate traditional reconciliation mechanisms.<sup>334</sup>

At the time of writing this thesis, Hemetti, the commander of the Rapid Support Forces, is leading a random compensation campaign in West Darfur, following the violations that have occurred in West Darfur during the past three years, which accuses the RSF of causing the attacks.<sup>335</sup> Hemetti's goal of compensation is to improve his image in case of the next elections.<sup>336</sup> Therefore, it can be said that the transitional period in Sudan did not lead to the rule of law and democracy and did not consider trials, truth commissions, or compensations in the required manner, but instead was poorly used and became an extension of the old dictatorial regime.<sup>337</sup> Each theme we analyse exemplifies the complexities of implementing Transitional Justice In Sudan.

### **5.3.2. Guatemalan Transitional Justice as a Good example for Sudan's transitional Justice:**

Between 1960 and 1996, Guatemala witnessed civil wars that lasted 36 years after the Guatemalan army made a coup against the elected government. As a result, the people of

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<sup>331</sup> DABANGA: 'ICC Prosecutor Bensouda meets with the displaced during her visit to Darfur' Available at: <https://www.dabangasudan.org/en/all-news/article/icc-prosecutor-bensouda-meets-with-the-displaced-during-her-visit-to-darfur> (accessed 2 July 2022).

<sup>332</sup> DABANGA: 'ICC Prosecutor Bensouda meets with the displaced during her visit to Darfur' Available at: <https://www.dabangasudan.org/en/all-news/article/icc-prosecutor-bensouda-meets-with-the-displaced-during-her-visit-to-darfur> (accessed 2 July 2022).

<sup>333</sup> Tubiana J 'Delays and Dilemmas: New Violence in Darfur and Uncertain Justice Efforts within Sudan's Fragile Transition' African Centre for Justice and peace Studies, 2021 73 *FIDH*.

<sup>334</sup> Tubiana J 'Delays and Dilemmas: New Violence in Darfur and Uncertain Justice Efforts within Sudan's Fragile Transition' African Centre for Justice and peace Studies, 2021 73 *FIDH*.

<sup>335</sup> Kulkarni P 'Security situation in Darfur remains very dangerous' *The Peoples dispatch* 30 May 2022.

<sup>336</sup> Sudan: (Hemetti) in Darfur to polish his image and convince the Arab tribes to stop the violence (2022).

السودان: (حميدتي) في دارفور لتلميع صورته واقناع القبائل العربية بوقف العنف (2022).

<sup>337</sup> Simic O 2ed (2021) ch1.

Guatemala have been subjected to gross human rights violations by the Guatemalan government. The conflicts were caused when President Jacobo Arbenz Guzmán attempted economic and political reforms and campaigns to redistribute Guatemala's lands controlled by capitalism.<sup>338</sup>

In 1960, the people of Guatemala revolted against the dictatorial government due to the systematic racial discrimination against the indigenous population, especially the Mayan people, and rebellion movements also appeared against the government. In 1982 the revolution and the rebellion forces increased, establishing a national revolutionary unit on the one hand. On the other hand, the Guatemalan government conducted counter-insurgency campaigns.<sup>339</sup> Also, it made campaigns against the revolutionaries which resulted in massive human rights violations of the people of Guatemala, especially the Mayan people, such as genocide, rape, torture, and forced displacement. The Guatemalan government also practiced marginalisation and exclusion against the indigenous population, including political marginalisation.<sup>340</sup>

In 1996, a permanent peace agreement was signed between the Guatemalan government and the rebel movements under the auspices of the United Nations and the European Union of Guatemalans to end the wars that lasted 36 years.<sup>341</sup> The agreement contained many provisions, for example, dealing with human rights violations, such as disarmament, non-pardoning of those responsible for human rights violations, and removing those responsible for the genocide from their positions. Transitional justice mechanisms (retributive and restorative justice, compensation, and rehabilitation) were established. Commissions were set up to monitor the non-recurrence of past abuses. The agreement parties agreed to work to address the issue of impunity by stating, " the government shall not sponsor the adoption of legislative or any other type of measures designed to prevent the prosecution and punishment of persons responsible for human rights violations. Furthermore, no special law or exclusive jurisdiction may be invoked to uphold impunity concerning human rights violations."<sup>342</sup>

Although the peace agreement provisions were fair in bringing justice to the Guatemalan people. But, the government did not take any steps to implement the peace

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<sup>338</sup> Paz C & Valle R & Rodenas N 'Human Rights Violations in Guatemala' Institute for the Comparative Study of Criminal Law in Guatemala, (2006)13.

<sup>339</sup> Paz C & Valle R & Rodenas N 'Human Rights Violations in Guatemala' Institute for the Comparative Study of Criminal Law in Guatemala, (2006)13.

<sup>340</sup> Wise M. B. 'Judicial Review and Its Politicization in Central America: Guatemala, Costa Rica, and Constitutional Limits on Presidential Candidates' Santa Clara Journal of International Law (7) (4) (2010) 149.

<sup>341</sup> Kauffman C 'Transitional Justice in Guatemala: Linking the Past and the Future' South Conference Miami, Florida (2005) 12 ISA.

<sup>342</sup> Kauffman C (2005) 13.

agreement provisions. The agreement also drew strong criticism from the military, political parties, and the wealthy of the former regime. The government also launched massive campaigns against the peace agreement and sought to sow discord and suspicion among the revolutionaries. Also, the signatories did not try to implement the peace agreement.<sup>343</sup>

Guatemala's experience has shown that the implementation of transitional justice was limited because the military was not restructured and was still in control of power. As a result, those responsible for human rights violations for previous crimes have not been held accountable.<sup>344</sup> Sudanese political analyst Qassim Bashir Hamid mentioned in his article on transitional justice in Sudan that the Guatemalan experience can be an excellent example of Sudan's transitional justice. He also noted that Guatemala's experience after the 1996 Permanent Peace Agreement relied on the establishment of the Truth Commission to narrate past violations.<sup>345</sup>

In addition, he argued that the experience of Guatemala was able to stop wars and that it was able to restructure state institutions after a war that lasted more than 36 years. He added that implementing justice requires a real national will based on consent for democratic transformation and appropriate power-sharing.<sup>346</sup> However, through my study of Guatemala's experience in transitional justice, we observed that it emphasised that human rights violations in Guatemala continued even after the signing of the peace agreement. According to the report issued by the United Nations in late 2004, which outlined the continuation of the issue of impunity in Guatemala for instance, torture and death threats to supporters of human rights and journalists. Moreover, although the Guatemalan government admitted that it was responsible for human rights violations in Guatemala between 1960 - 1996, the admission is not clear and it was weak compared to the Truth and Reconciliation Commissions in South Africa.<sup>347</sup>

As for trials, the Guatemalan government did not make any effort to achieve justice for the Guatemalan people, even those responsible for human rights violations for example, in the case of Dos Erres and the issue of Edgar Ordanez Porty, a businessman killed at the hands of

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<sup>343</sup> Kauffman C (2005) 16.

<sup>344</sup> Kauffman C (2005) 16.

<sup>345</sup> Hamid Q ('Transitional justice experience in South Africa and Guatemala and how to benefit from it in case of Sudan' Iraqi-African Centre for Strategic Studies (2022)30.) قاسم بشير حامد ' تجربة العدالة الانتقالية في جنوب أفريقيا و غواتيمال وكيفية الاستفادة منها في حالة السودان' (2022) 30

<sup>346</sup> Hamid Q ('Transitional justice experience in South Africa and Guatemala and how to benefit from it in case of Sudan' Iraqi-African Centre for Strategic Studies (2022)30.) قاسم بشير حامد ' تجربة العدالة الانتقالية في جنوب أفريقيا و غواتيمال وكيفية الاستفادة منها في حالة السودان' (2022) 30

<sup>347</sup> Kauffman (2005) 16.

the Guatemalan military in 1999. Moreover, the commission in charge of investigation and justice faced death threats to stop the investigations.<sup>348</sup> Therefore, we did not find Guatemala's experience an excellent example of Sudan's Transitional Justice. Nevertheless, it was similar to the current situation of Sudan, which is limited to signing the Juba Peace Agreement without implementing any provision in it. The question of how Qasim Bashir view the Guatemalan experience as an excellent practice of transitional justice in Sudan.

### **5.3.3. What does the continuation of violence mean for the military government all over Sudan?**

As we argued earlier about the Sudanese government's slow pace in implementing security arrangements in Darfur, conflicts continued to rage in all parts of Sudan.<sup>349</sup> When this thesis was being written, the Arab militias attacked the Kreinik village in West Darfur on 22 April 2022, killing about 200 people and wounding 230 people.<sup>350</sup> It was proven that all the attacks in West Darfur involved the participation of the RSF, as Hemetti failed to control his forces, who were committing massive crimes against the citizens of Darfur. Also, the Sudanese security forces in the state could not stop the parties that participated in the attacks using government weapons to support the militias during the attacks.<sup>351</sup>

The Juba Peace Agreement stipulated the necessity of ensuring disarmament and a ceasefire, as well as training 6000 soldiers to implement the provision of security arrangements in Darfur.<sup>352</sup> Here, the question arises about the presence of the police, security forces, and Rapid Support Forces in the Darfur region when conflicts occur. Yet, the central armed forces did not intervene to protect defenseless civilians. On the contrary, in some cases, they participated in the attack and increased the violence. So, what is the role of the armed forces in the state? Unfortunately, there is procrastination and unwillingness on the part of the Sudanese

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<sup>348</sup> Paz C & Valle R & Rodenas N 'Human Rights Violations in Guatemala' Institute for the Comparative Study of Criminal Law in Guatemala, (2006)103.

<sup>349</sup> Juba Agreement For Peace In Sudan Between The Transitional Government Of Sudan And The Parties To Peace Process (2020)43.

<sup>350</sup> Dabanga 'West Darfur violence leaves 200+ dead – 'cautious calm' as hospitals, markets stay closed' Available at: [West Darfur violence leaves 200+ dead – 'cautious calm' as hospitals, markets stay closed | Radio Dabanga \(dabangasudan.org\)](https://www.dabangasudan.org/) (accessed 5 July 2022).

<sup>351</sup> Baldo S 'What Happens in Darfur Doesn't Stay in Darfur' Sudan Transparency and Policy Tracker (STPT) (2022) 9.

<sup>352</sup> Juba Agreement For Peace In Sudan Between The Transitional Government Of Sudan And The Parties To Peace Process (2020)43.



armed forces to carry out their tasks. Therefore, I believe one of the priorities of the Sudanese armed forces is to carry out their duties till the formation of peace and security forces in Darfur..

Transitional justice in any country is applied in different ways according to the country's circumstances from a historical, political, and cultural point of view. Nevertheless, international law has established principles of commitment that must be followed in any transitional justice process.<sup>353</sup> These principles are:

- (i) The duty to hold accountable those responsible for human rights violations and to disclose the facts related to the atrocities;
- (ii) Duty for independent investigations of any acts of violence as well as judicial reforms;
- (iii) Duty to prevent a recurrence of past abuses.

The current Sudanese government lacks constitutional legitimacy and a concrete political agenda to guide the transitional period. A critical concern in Sudanese Transitional Justice is the limited objectives of the Junta, solely focused on retaining power, maintaining complete control over the state, ensuring impunity, and safeguarding wealth acquired during the former regime's era.<sup>354</sup> In my perspective, the continued perpetration of human rights violations by the Sudanese government, whether directed towards demonstrators in Khartoum or the defenseless citizens of Darfur, serves the purpose of instilling fear and discouraging resistance against the coup.<sup>355</sup> At the time of writing this thesis, on the 6 of June 2022, 2 anti-coup protesters were killed, bringing the total number of deaths to 100 since the 25th of October 2021 coup.<sup>356</sup>

In addition, the Military Sovereign Council does not desire to apply the principles of international law, establish transitional justice mechanisms to account for past violations or lead Sudan to a democratic transition. Instead, their focus was on how to hold elections speedily. On the 25th of October 2021, Al-Burhan declared the necessity of having elections

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<sup>353</sup> Martin L 'Overcoming corporate-related human rights abuses in transitional justice: Lights and shadows from the case of Argentina' *Journal of Human Rights*. JOURNAL OF HUMAN RIGHTS. Vol.20 (5) (2021)549.

<sup>354</sup> Baldo S 'What Happens in Darfur Doesn't Stay in Darfur' *Sudan Transparency and Policy Tracker (STPT)* (2022) 9 STPT.

<sup>355</sup> Bertelsmann Stiftung, *BTI 2022 Country Report — Sudan*. Gütersloh: Bertelsmann Stiftung, (2022)35.

<sup>356</sup> Abdallah M 'Sudan security forces kill 100th person in anti-coup protests' Available at: <https://www.reuters.com/world/africa/one-protester-killed-by-security-forces-sudans-omdurman-medics-2022-06-06/> (accessed 8 July 2022).

in 2023.<sup>357</sup> Al-Burhan's declaration about the elections contradicts what was agreed upon in the Juba Peace Agreement, which stipulated that the elections should be held after the necessary conditions are met, for instance, reviewing the electoral law, returning the displaced and refugees to their areas, reforming state institutions, resolving the economic crisis, disarming and creating a political environment in which political parties can take complete freedom to conduct the election.<sup>358</sup>

## 5.4. Conclusion

Almost two decades have passed since the human rights violations in Darfur began, the proxy war in which former president Omar al-Bashir armed and recruited Arab tribes to systematically destruction of the indigenous African tribes in Darfur, especially Fur, Zaghawa, and Masalit tribes. After the violations of international humanitarian law and international human rights law that happened to civilians, armed struggle movements emerged in Darfur, The Sudan Liberation Army Movement and the Justice and Equality Movement struggled to end the war, demand participation in power, and end the marginalization that occurred in the Darfur region throughout history.

The Sudanese government has practiced violations against the Darfuri people. For instance, murder, torture, forced displacement, rape, burning of villages and properties, and complete control of lands. After the December revolution, al-Bashir was overthrown, and Sudan entered a phase of transitional justice to promote the country toward a democratic transition. However, the transitional government in Sudan faced many difficulties during the transitional period due to the presence of the military government in power and in all state agencies. Those who were managing the violations in Darfur now preside over the transitional process and they also signed the Juba Peace Agreement with the armed struggle movements. These complications obstructed the path of democratic transition in Sudan. In addition, the violations are continuing in Khartoum, Darfur, Blue Nile, and more recently in eastern Sudan.

In this thesis, we critically analysed the challenges that faced the transitional process and also discussed the effects of the presence of the former regime government in the

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<sup>357</sup> Hamdan A 'Sudan's military is calling for elections in 2023: Here is why that's a bad idea' Available at: <https://www.cmi.no/publications/8119-sudans-military-are-calling-for-elections-in-2023-here-is-why-thats-a-bad-idea#project-details> (accessed 8 July 2022).

<sup>358</sup> Juba Agreement For Peace In Sudan Between The Transitional Government Of Sudan And The Parties To Peace Process (2020)90.

transitional period. Also, we discussed the mechanisms of transitional justice that seek to address past violations, such as justice and compensation for victims and truth and reconciliation commissions that may help to create a better political future for Sudan.

My perspective posits that the disregard for the requisites of the transitional period exerts a deleterious impact on the transitional process within Sudan. For example, the demand that the government is civilian and federal at any stage of the transitional period. Furthermore, I posit that initiating elections without the return of displaced individuals and refugees residing outside the country is ethically untenable, because there are more than 5 million displaced and refugees. whose exclusion from the electoral process is a deliberate maneuver by the former regime to safeguard its vested interests. In addition, the importance of linking the elections to dismantling the former regime at all levels, such as judicial institutions and all centers of power in Sudan.<sup>359</sup> We previously mentioned in our discussion of the theories of transitional justice that the evaluation of the transitional process and the quality of democracy depends on whether trials and compensation for victims were conducted, the extent of the work of the legislative and judicial authorities, and the application of the provisions of international humanitarian law.<sup>360</sup> We hold the belief that the fragility of transitional justice in Sudan is a matter of concern, with its current evaluation registering a deficiency in all facets. Should this trajectory persist, Sudan is poised to face significant adverse consequences in the foreseeable future.

## **5.5. Recommendations**

The Military Sovereign Council should cooperate with the ICC to hand over those involved in crimes against humanity, genocide, and war crimes in Darfur during the era of the former regime, for whom the ICC issued an arrest warrant. Furthermore, the Military Sovereign Council must cooperate with ICC in the investigation's procedure in Darfur because severe violations have risen to the genocide level.

It is necessary to put forward a clear and official vision for the transitional justice program in Sudan that includes mechanisms to ensure that all perpetrators involved in human rights violations are held accountable because there are crimes with clear evidence which are supposed to be submitted to the prosecution to punish perpetrators directly, for example, the 3rd of June 2019, sit-in massacre and the violations that occurred in Darfur from 2019-2022.

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<sup>359</sup> Interview with Bashir Othman, Political analyst and A leader in the forces of freedom and change, interview on overthrowing the coup: the phased and strategic overthrow, via the Zoom application, on 24 June (2022).

<sup>360</sup> Mihr A & Herm M Transitional Justice: Between Criminal Justice, Atonement, and Democracy (2012)12.

Also, the transitional justice mechanisms must include wide consultations, including the victim's families in Darfur, the families of the martyrs in Khartoum, and the displaced people in Darfur.

The slogans of the Sudanese revolution lie in freedom, peace, and justice. To be justice in Sudan, the security services must be restructured, and state institutions must be reformed. Perhaps Sudan cannot restructure the entire Security services. Still, the Sudanese police, army and RSF must have knowledge of the concepts of international human rights law and international humanitarian law. They must know that their primary obligations are to protect the citizens. Because there is a defect in the current training of the Sudanese armed forces that leads them to believe that they only have to follow the instructions issued by the higher authorities.

I think It is essential to expedite the implementation of the security arrangements file stipulated in the Juba Agreement and its spread in Darfur, especially the areas of the current conflict in West Darfur. And to the disarmament of government-backed militias. In addition to merging the Rapid Support Forces and the armed movements' forces to become a vital, prosecutable force, whose goal is to protect the citizen and the state. The Human Rights Council and the United Nations Security Council should establish independent commissions to investigate human rights violations in West Darfur, after the December 2019 revolution and the violence committed against the anti-coup demonstrators on 25th October 2021.

I believe that the matter of transitional justice in Sudan has a political nature. that demanding both courage and capability alongside a sincere political will. To embark on a truly transformative democratic transition, it necessitates a historic and earnest agreement. This pivotal moment calls for the Sudanese government to acknowledge the gravity of past transgressions, demonstrating a readiness to initiate a formidable project for transitional justice. such as the models of transitional justice put forward by different countries in Latin America, South Africa, Morocco, and Rwanda. For Sudan to reach an actual transitional stage, as we mentioned above, the former regime, “the deep state,” must be dismantled with all its institutions and apparatuses controlling the state. Therefore, the Sudanese government that seized power must hand it over to the civilian government and return the constitutional document that the Military Sovereign Council nullified. The decisions of the Empowerment Removal Committee against the former Al-Bashir regime, which Al-Burhan nullified, must be

implemented. The prospect of achieving justice becomes untenable in the presence of members affiliated with the National Congress within Sudanese government institutions.

In my perspective, the primary responsibility of the revolutionaries lies in fostering unity within the revolutionary force. A singular, transparent, and well-coordinated centre for decision-making is imperative, especially considering the prevailing disagreements among the Forces for Freedom and Change, Political Parties, and Neighborhood Resistance Committees. The focus of the revolutionary unity should be directed towards establishing new institutions and reaching decisions within these entities. This includes the creation of a parliament for a process that rejects the authority of the military government, as well as the establishment of localities within neighborhoods. The execution of these initiatives is incumbent upon the strength and determination of the revolutionary force, as historical precedent suggests that the military government tends to relinquish power only in the face of a parallel force ready to challenge and confront them.

In this thesis, we have delved into the analysis of certain intricacies associated with implementing transitional justice in the aftermath of the genocide in Darfur. Our aspiration is that scholars within this field will further delve into extensive research, recognizing that Sudan's challenges extend beyond mere power and wealth dynamics; they are fundamentally rooted in an identity crisis. Objective analysis of Sudan's history is essential, including an examination of the military government's exploitation of tribal and regional divisions. The junta's propagation of hate speech among the Sudanese people is considered one of the most reprehensible discourses and a distinctive of the former regime.

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