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# NATIONAL PERCEPTION STUDY OF TRANSITIONAL JUSTICE IN SUDAN

Final Report

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# NATIONAL PERCEPTION STUDY OF TRANSITIONAL JUSTICE IN SUDAN

## FINAL REPORT

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## ACRONYMS

ACHPR	African Commission on Human and Peoples' Rights
AU	African Union
CLTG	Civilian-Led Transitional Government
CPA	Comprehensive Peace Agreement
CSO	Civil Society Organization
DBA	Darfur Bar Association
DDPD	Doha Document for Peace in Darfur
DDR	Disarmament, Demobilization, and Reintegration
DPA	Darfur Peace Agreement
DWAG	Darfur Women Action Group
ESPA	Eastern Sudan Peace Agreement
FFC	Forces of Freedom and Change
FGD	Focus Group Discussion
ICC	International Criminal Court
ICTJ	International Center for Transitional Justice
IDI	In-Depth Interview
IDP	Internally Displaced Person
KACE	Al-Khatim Adlan Center for Enlightenment
KII	Key Informant Interview
MoJ	Ministry of Justice
MOLSD	Ministry of Labour and Social Development
NCP	National Congress Party
NISS	National Intelligence and Security Service
OTI	Office of Transition Initiatives
PLACE	People's Legal Aid Center
PTSD	Post-Traumatic Stress Disorder
PWD	Person with Disability
RSF	Rapid Support Forces
SDN	Sudanese Diaspora Network
SGBV	Sexual and Gender-Based Violence
SIHA	Strategic Initiative for Women in the Horn of Africa
SHRO	Sudan Human Rights Organization
SLM/A	Sudan Liberation Movement/Army
SOAT	Sudan Organization Against Torture
SPA	Sudanese Professionals Association
SPLM-N	Sudan People's Liberation Movement-North
SRF	Sudan Revolutionary Front
TNS	Transition to New Sudan
UNDP	United Nations Development Programme
UNISFA	United Nations Interim Security Force for Abyei
UNITAMS	UN Integrated Transition Assistance Mission in Sudan
USAID	United States Agency for International Development

## EXECUTIVE SUMMARY

Transitional justice in Sudan is at an early stage and is developing in an extremely dynamic context. As a result, rendering a clear picture of public perceptions of transitional justice is challenging; public knowledge about the topic is developing and attitudes are shifting in relation to emerging events. Despite this, the study discussed here reveals some broadly agreed precepts to guide priorities for government or development partners implementing and/or supporting transitional justice measures in Sudan.

**Trust in government institutions to carry out transitional justice is low as a result of ineffective public consultation and lack of transparent information sharing to date.**

Study findings underscored two key examples: the ongoing debate over legislative establishment of the Transitional Justice Commission (discussed in section 3) and the work of the *Independent National Committee to investigate the crackdown and killings of peaceful civilians during the sit-in in front of the army headquarters in Khartoum on June 3, 2019* (discussed in section 4.2.1). In an attempt to move rapidly to establish a transitional justice body that could meet requirements of the Transitional Constitution and could serve as a focal point for a multitude of public demands around transitional justice, the government has pushed to finalize legislation that is now the subject of significant civil society critique and frustration. The government has recently responded to domestic and international pressure and held consultative sessions with civil society to determine a way forward. Similarly, in an attempt to respond to public outcry over the 2019 massacre on June 3, a committee was established to investigate. However, lack of consultation and involvement of victims' families, as well as lack of transparency around timelines and political interference, has undermined the Committee's credibility. **Balancing public demands for rapid action while simultaneously ensuring transparency and inclusive consultation on any proposed transitional justice measure will be one of the central challenges in moving transitional justice forward in Sudan, and will be critical to building and maintaining public trust.**

**At this early stage in Sudan's transitional justice process there is broad public agreement on key issues such as accountability and reparations regardless of region, sex, age, and other variables.**

While it was hypothesized that there would be clear differences in perceptions of transitional justice that aligned with certain demographic variables, in contrast, the study found that solidarity of opinion was far more evident. Some differences emerged based on region and gender, as discussed in section 4.1, but broad agreement was a more dominant theme.

Building on the unified public voice that characterized the revolutionary period, study participants expressed strong solidarity about many transitional justice themes, specifically (1) **accountability**, (2) **reforms in line with the goals of the revolution**, and (3) **prioritizing reparations for certain victim groups**. These broadly agreed themes are discussed in detail in section 4.2. This is not to say that there is no diversity of opinion and certainly one can expect this broad agreement to fragment as transitional justice moves toward the stage of more detailed proposals and actual implementation. However, the current unity of perception on overarching issues provides an important opportunity for the government to move quickly to undertake short-term actions in line with broadly agreed themes and the priorities shown below:

## Top Priorities for Accountability

- Symbolic, public trials of high-profile perpetrators
- Whether conducted by international actors or by the Sudanese judiciary, trials should be held in Sudan
- Addressing the June 3 massacre and ensuring accountability for those responsible

## Top Priorities for Reform

- Economic reforms to ease financial burdens on the average Sudanese
- Ensuring an end to ongoing conflict and providing security to the population; the Juba Peace process is not seen as inclusive or transparent enough to lead to sustainable peace.
- Reform the judiciary to ensure that it can credibly hold perpetrators accountable
- Bring Sudan's laws into closer alignment with fundamental human rights principles, including on women's rights, international crime such as genocide, hate speech, removing immunity provisions, etc.
- Ensuring previously marginalized groups (regional, tribal, women, youth) are included in transitional justice processes as well as other decision-making in the new dispensation; de-center Khartoum and address regional concerns
- Addressing controls on freedom of speech and censorship of the internet

## Top Priorities for Reparations

- Reparations should be prioritized for (1) those in conflict-affected areas, (2) vulnerable groups such as victims of SGBV, child soldiers, disabled persons, and women and children generally, and (3) those who were targeted by the former regime for torture and other abuses
- Monetary payments to individuals to compensate for losses
- Provision of medical and psychosocial care for victims, provision of basic services, and ensuring access to educational and livelihood opportunities
- Ensuring the ability for displaced people to return in safety
- Memorials to remember the martyrs

### **Approach with caution those transitional justice measures perceived as low priority.**

Equally important to bear in mind are those measures that are perceived as lower priority, including customary justice mechanisms, amnesty, and truth seeking (discussed throughout section 4.2). The government and its partners should de-emphasize or approach with caution those initiatives that include these types of measures unless a change in public perception about their utility can be demonstrated.

### **Short-term actions aligned with prevailing perception may build trust and lay the foundations for effective transitional justice in the long-term.**

Bearing in mind these findings and the rapidly changing context, the study report concludes with recommendations for various actors, most importantly the current government (section 5). Any action on transitional justice must result from transparent and inclusive consultation with the Sudanese people, especially those most affected. The following are top priorities for short-term government action:

- Prioritize dealing effectively with the June 3 massacre investigation through a credible, comprehensive, and inclusive process that privileges involvement of victims, specifically including victims of sexual and gender-based violence, and results in clear attribution of responsibility for violations;
- Establish the Transitional Justice Commission as specified under the Transitional Constitutional Charter, after consultation and agreement with civil society stakeholders on a compromise for the way forward;
- Develop a strategy of capacity-building for the Sudanese judiciary and criminal justice system, aligned with a strategy on engagement with the International Criminal Court;
- Engage actively with the African Union and other international institutions to negotiate a package of technical support on key transitional justice priorities, such as the June 3 massacre investigation and justice sector reform, that will enhance capacity of Sudan's institutions while also enhancing public confidence in ongoing processes; and
- Led by the appropriate line ministry, urgently begin a process to review and revise laws and policies on freedom of expression and internet censorship in response to public dissatisfaction.

Transitional justice in Sudan is certain to be a process of many years, if not decades, and perceptions of transitional justice may change over time due to a wide array of factors. Accordingly, victim-centered processes to engage stakeholder constituencies must be built into any transitional justice programming. Moreover, transitional justice must ensure that it speaks to the culture, history, traditions, and aspirations of the Sudanese people. This study is certain to be the first of many efforts by government or other actors to examine public perceptions – and rightly so. While there is a significant role for international technical assistance to play in any transitional justice process, regular and transparent **consultation with the Sudanese public** is the most important method for ensuring contextual resonance and public trust.

# I. INTRODUCTION

This report responds to a request for proposals from the United States Agency for International Development/Office of Transition Initiatives (USAID/OTI)-funded Transition to New Sudan (TNS) Program, to support consolidation of Sudan’s democratic transformation by:

1. Enabling the government to demonstrate progress in implementing key transition processes;
2. Reinforcing civic engagement required to implement key transition processes; and,
3. Assisting in the expansion of independent media that serves as a platform to implement key transition processes.

To this end, TNS contracted with Sayara International to conduct a country-wide study on perceptions of transitional justice. The purpose of this study was twofold:

1. To inform relevant Sudanese government institutions about different perceptions of transitional justice around the country to help craft policy, behaviors, and messaging that is sensitive to the diverse perceptions about the meaning of justice; and
2. To inform the programming of bilateral and multilateral donors working on transitional justice, including future USAID/OTI programming, to help them adhere to ‘do no harm’ principles while also helping them to understand the regional nuance that working on transitional justice in Sudan requires.

TNS anticipates that this research will contribute to paving the way for the different actors supporting this transition to understand the various meanings of justice and potentially advance a common path forward.

# 2. METHODOLOGY

The study was proceeded in two phases: Phase I, an in-depth inception period, and Phase II, primary data collection to gather perception information.

The methodology for Phase I included three key components: (1) desk review, (2) stakeholder engagement and mapping, and (3) media monitoring and analysis; Phase II included in-depth interviews (IDIs), focus group discussions (FGDs), and key informant interviews (KIs).

## Phase I Desk Review

Sayara conducted an in-depth desk review that covered both English and Arabic language sources from academic literature, media reports, human rights documentation, and peace accords. Since there is very little actual perception data (e.g. surveys and documented consultations) available, Sayara conducted a thematic review of the literature to extract information that could serve as

## Research Questions

1

What are the variables that influence perceptions of transitional justice in Sudan?

2

Under what conditions (using what transitional justice measures) would people be willing to turn the page and move on?

3

Of the conditions (transitional justice measures) identified, which if any can be undertaken by the transitional government?

a proxy for perceptions where possible. Sources for the desk review are included in the bibliography at the end of this document. Sayara also drew on the desk review and worked closely with project consultants to identify local, diaspora, and international civil society stakeholders in the transitional justice process in Sudan. This mapping provided important guidance for the key informant interviews in Phase II.

### **Phase I Media Monitoring**

Sayara also monitored online media sources during June 2020 to capture relevant information about perceptions of transitional justice issues in the information ecosystem. Sayara used MediaToolkit to scan websites, Twitter, Facebook,<sup>1</sup> and Instagram for mentions of particular key words and phrases related to transitional justice in Sudan. The table below highlights the number of mentions and top influencers related to transitional justice during the monitoring period.

**Table I. Media Mentions**

	ENGLISH (INSIDE SUDAN)	ENGLISH (OUTSIDE SUDAN)	ARABIC (INSIDE SUDAN)	ARABIC (OUTSIDE SUDAN)
MENTIONS <sup>2</sup>	609	2,344	2,472	2,625
ESTIMATED IMPRESSIONS <sup>3</sup>	924,535	36,659,000	10,734,585	16,822,115
PLATFORM WITH MOST MENTIONS	1 <sup>st</sup> = Twitter 2 <sup>nd</sup> = Web	1 <sup>st</sup> = Web 2 <sup>nd</sup> = Twitter	1 <sup>st</sup> = Web 2 <sup>nd</sup> = Twitter	1 <sup>st</sup> = Web 2 <sup>nd</sup> = Twitter
TOP INFLUENCERS <sup>4</sup>	Dabangasudan.org Sudantribune.com	Reliefweb.int AllAfrica.com	Sudanakhbar.com Alrakoba.net	Alsudanalyoum.com Alhowsh.com

Primary data collection took place in July and August, following a qualitative research design with three simultaneous data collection modalities.

### **Phase II In-Depth Interviews (IDIs) with a sample of the general public**

Sayara conducted interviews with 146 members of the general public, selected from a list of randomly selected phone numbers through use of a screening tool.<sup>5</sup> The final respondent sample include 37% women and 21% youth (defined as adults under 30 years of age). More than 50% of the respondents self-identified as having experienced human rights violations. Sayara also posted invitations to participate in the research on relevant social media sites, though this method generated relatively few viable interviews. IDIs were not designed to produce a statistically representative national sample, but instead were designed to provide a diverse group of respondents from across Sudan.

<sup>1</sup> It is important to note that since the Cambridge Analytica scandal related to usage of Facebook data, automated monitoring of Facebook has become much more challenging due to restrictions put in place by the company. Unless pages and postings are marked as public, automated monitoring cannot reveal the content of Facebook pages.

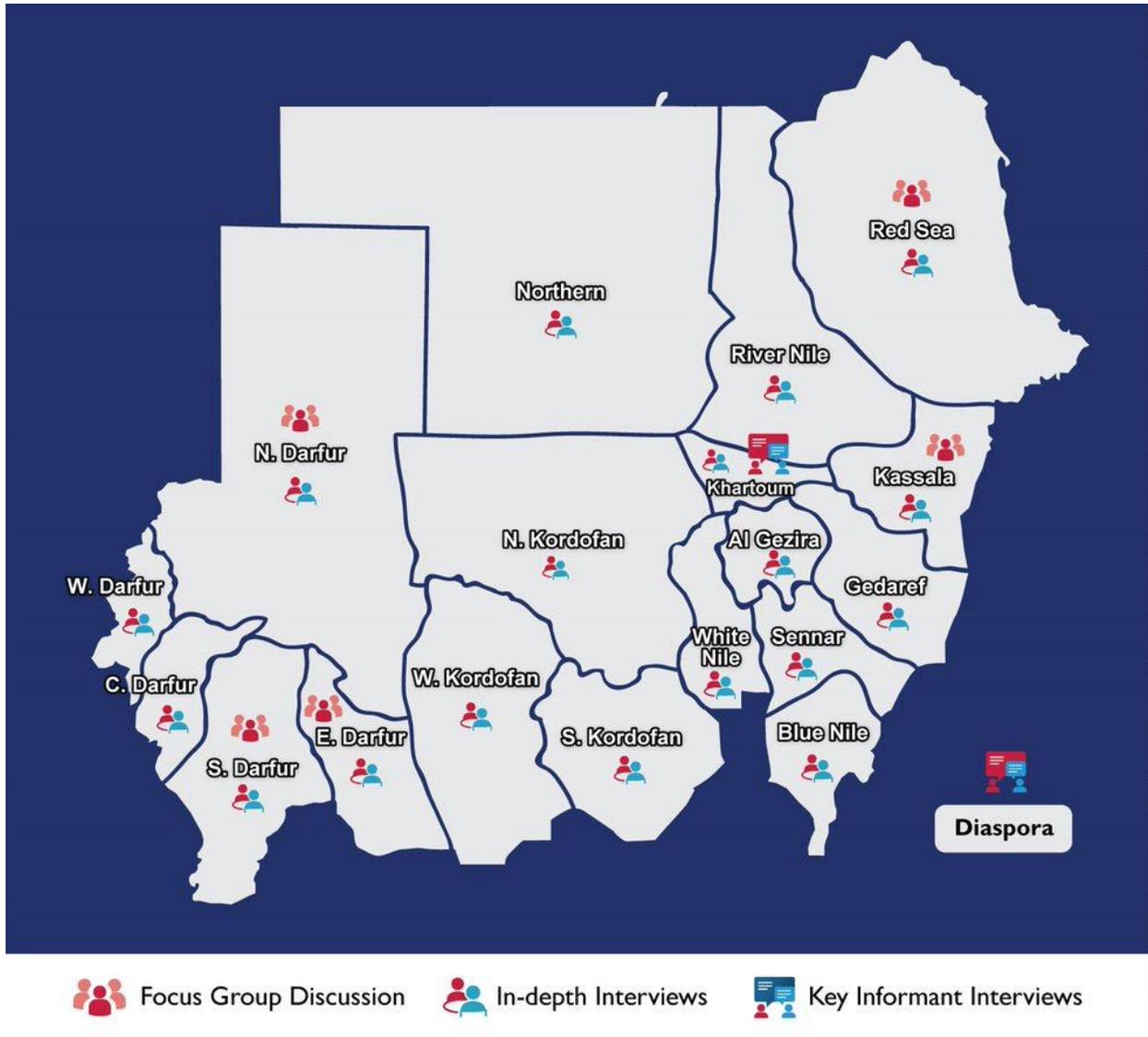
<sup>2</sup> A mention = a post that met the specific key word criteria for inclusion in the monitoring query.

<sup>3</sup> An impression = an estimated number of views of the identified posts.

<sup>4</sup> Influence is determined by how many users are reached through posts.

<sup>5</sup> Sayara purchased from a reputable company that has been used in multiple other contexts a randomly generated list of phone numbers from all telecom providers in Sudan.

IDI respondents were interviewed in Arabic using the qualitative interview guide in Annex 3. Interviews were recorded with respondent permission. Recordings and all interview notes were maintained in encrypted files on a secured server. Any personally-identifying data were maintained in a separate dataset from the narrative response to ensure anonymity.



### **Phase II Focus Group Discussions (FGDs)**

FGDs were intended to hear from small groups in urban and rural areas of key conflict-affected states, including three Darfur states, Red Sea, and Kassala. Due to the emergence of the COVID-19 pandemic, Sayara took special measures to protect participants, such as conducting most data collection via phone and ensuring that FGDs were smaller enough in size to ensure that social distancing and other precautions could be observed. FGDs were designed to provide more nuanced information about regional issues and to reach individuals who might not have access to phones, such as persons with disabilities, women, or

youth.<sup>6</sup> Information about the demographic composition and locations of the focus groups is available in Annex I.

### ***Phase II KIs with Special Population Segments***

To obtain the perspective of experts, government officials, CSO representatives, and other special groups, Sayara reached out to more than 95 key informants. Each potential interviewee was contacted multiple times through phone and/or email; interviews were conducted either via phone or face-to-face (in Sudan). Ultimately, Sayara was able to complete 42 KIs during the study period – 6 individuals associated with the former regime or security forces; 6 members of the current government; 17 representatives from Sudanese civil society organizations (local and diaspora-based); and 13 officials from international NGOs and diplomatic missions. KIs were conducted by Sayara research staff in the language that was most comfortable for the respondent, whether English, Arabic, or in some cases French.

## **2.1 LIMITATIONS AND CHALLENGES**

The information presented in this report is based on a qualitative methodology and was not designed to generate statistically significant findings. This limits the ability to present descriptive statistics (e.g., proportions of respondents who held a particular view) or to generalize from the data at national or regional level. The findings presented here should be understood to be a snapshot of public perceptions at a specific moment in time.

The political sensitivity of the concepts being discussed also have influenced some participants' responses or led to self-censorship when responding. Interviewers made every attempt to ensure that IDI and FGD respondents felt confident that their responses would be kept confidential and would not be linked back to them. Indeed, respondents were never asked for any names or other identifying information (this was not an option for KIs in which respondents were specifically selected due to their identity or expertise). Nevertheless, it is likely that some participants who had concerns about confidentiality self-selected out of the process and others may have censored their responses in light of Sudan's history of state control.

The complexity of concepts and terms related to issues of transitional justice also may have been a challenge for some respondents, though every effort was made to ensure that participants understood the terms being used. It is nevertheless possible that some respondents had different understandings of the terminology used in the in-depth interviews and focus group discussions.

Finally, obtaining interviews with Sudanese government officials and domestic civil society organizations proved more challenging than expected; we posit that this is a result of the significant challenges that individuals inside Sudan are facing, including power cuts, challenges with phone connectivity, economic pressures, and political uncertainty as well as concerns about conducting interviews on a topic viewed as sensitive.

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<sup>6</sup> Sayara had also planned to conduct FGDs with IDPs, however delays in obtaining Humanitarian Aid Commission approval made these focus groups impossible.

## 2.2 ANALYSIS

Qualitative recordings and transcripts from IDIs, FGDs, and KIs were analyzed by senior Sayara staff using manual coding. Analysts included both Arabic and non-Arabic speakers to ensure that the richness of data was captured and that analysis could be accelerated without having to wait for lengthy translation delays. Analysis was a hybrid process, which began by categorizing narrative data against the framework in Annex 4 and then allowing for themes to emerge from the data itself. Analysis focused on identifying dominant themes, patterns, and commonalities, as well as highlighting outliers and contrasting perceptions among the respondent pool.

Implicit bias is a concern in all research, particularly qualitative research. Sayara attempted to mitigate any bias by: (1) engaging a team of both Sudanese and non-Sudanese analysts, (2) verifying findings between analysts, and (3) cross-checking analytical results with the field research team who gathered the primary data directly from respondents.

### 3. CURRENT TRANSITIONAL JUSTICE CONTEXT

#### KEY FINDINGS

- Transitional justice initiatives such as trials and investigations are already underway in Sudan, however, public participation and victim/survivor input has been insufficient. Insufficient victim/survivor engagement to date has undermined public confidence in nascent transitional justice processes, such as committee investigations.
- The current legislative effort to establish the Transitional Justice Commission is not supported by civil society, which is engaging in significant advocacy to stop approval of pending legislation. Ongoing negotiations between government and civil society should be encouraged and supported in efforts to reach a compromise solution.
- Any future transitional justice measures established in Sudan must be contextual, consultative and coordinated.
- Though civil society coordination is increasing amongst local, diaspora, and international civil society organizations, engagement and coordination remains uneven.

The socio-political, economic, and transitional justice context in Sudan is changing rapidly. To set the stage for the following discussion, this section provides an overview of emerging and ongoing contextual concerns related to transitional justice legislation. The rapid pace of change means these issues must be continually monitored in order to undertake effective decision-making.

#### **Contextual, Consultative, and Coordinated**

Key informants in international and domestic civil society organizations expressed broad agreement on a number of priorities and process considerations for transitional justice in Sudan. Past experience with

#### Participant Voices

*“Transitional justice must be the first national project of the transitional government because it guarantees internal and social peace, stability, and development.”*  
(KII, Local CSO)

*“Seeing the Sudanese people develop their own local processes using their dispute resolution processes, traditional processes that have been successful between cultures, between ethnic groups, so that they would then find the system that would best speak to the mass atrocities that have happened over the years.”*  
(KII, Int’l NGO)

*“Before the transitional justice law was promulgated, it was assumed that a national committee would be formed that conducts extensive research by interviewing the displaced, people from conflict areas, and victims’ families, and included the experiences of countries that went through the period of transitional justice – this has not happened.”*  
(KII, Former Regime)

transitional justice around the world and across the African continent underscores the crucial role of national and local **context**.

Any transitional justice process must speak to the culture, history, traditions, and aspirations of the Sudanese people. While many study participants emphasized the need for engaging international technical assistance, they highlighted regular and transparent **consultation with the Sudanese public** as the most important method for ensuring contextual resonance.

Transitional justice in Sudan is certain to be a process of many years, if not decades, and opinions regarding transitional justice may change over time as a result of a wide array of factors. Periodic broad consultations, as well as mechanisms to receive communications from stakeholder constituencies, must be built into the system. Ensuring that these consultations are victim-centered and validate the experiences and demands of victims is another central tenet of transitional justice models emphasized by respondents.

The **coordinated** and holistic nature of transitional justice is also a priority according to interviewees and will require both political and financial resources. Unfortunately, ongoing processes do not yet reflect such a coordinated approach. While the transitional constitution mandates transitional justice measures, the approach so far has been reactive and ad hoc. There has also been a lack of victim participation and significant delays, as well as reluctance to take advantage of regional and international offers of assistance, which have been key demands of some victim groups.

### ***Transitional justice legislation***

Legislation to establish a Transitional Justice Commission, as required by Sudan's transitional constitutional document, is currently pending approval by government. The law is based primarily on proposals from the Forces of Freedom and Change (FFC) but has not been subject to public consultation nor derived from an overarching policy document (e.g. the African Union Transitional Justice Policy). Finalization of this legislation remains an area of significant disagreement between government and civil society, with negotiations ongoing at the time of writing. The government lead on legislative development, the Ministry of Justice, proposes that the Commission should be established and then should be responsible for undertaking a broad national consultation on the design and implementation of various transitional justice measures in Sudan, at both national and regional levels. Civil society is concerned that the ongoing legislative process may be the only opportunity to establish the parameters of transitional justice in Sudan, and accordingly holds the view that broad national consultations should take place before any legislation is finalized, so that the law can be as detailed and comprehensive as possible in establishing a road map for specific transitional justice. Civil society organizations have expressed concerns that establishment of a Commission without a highly specific mandate and clear powers (e.g., prosecution, subpoena, witness protection) would lead to the failure of transitional justice in Sudan before it had begun.

Interviews with legal advisors at the Ministry of Justice confirm that the ministry has been focused primarily on the technical aspects of drafting. While the Ministry had hoped to hold broader public consultations, the context of the COVID pandemic made such discussions challenging to conduct.

A number of domestic and international civil society organizations (CSOs) and coalitions are engaged in transitional justice work to varying degrees in Sudan. While there are increasing efforts to more effectively coordinate amongst the international, diaspora, and domestic civil society networks that are working on this issue, there remains room for improvement. Moreover, inclusion of victim networks appears to be uneven (e.g. Darfuri and June 3 victims groups being actively engaged, while victim groups from other areas, such as Red Sea, are less integrated) and modalities for engagement with other grassroots structures

in Sudan, such as Resistance Committees, remain unclear. While many organizations are holding discussions or providing some public education about issues of transitional justice, there is not always consistent documentation of the outcomes and perceptions revealed in these efforts.

Civil society representatives hold that, while establishment of the Commission is a priority, any broader legislation that addresses transitional justice processes and promulgates key legal definitions (such as what constitutes a “victim”), must be preceded by much broader consultation. Should the current legislation establishing the Commission not reflect demands for inclusion of women, youth, and marginalized groups it is unlikely to serve as a credible foundation for moving the transitional justice agenda forward in Sudan. Moreover, if civil society broadly rejects the legislative foundation that the government is attempting to push through, it is much less likely that Sudan will receive the technical and financial assistance that it needs to carry out a comprehensive transitional justice process over many years. Many in the international community are taking a wait-and-see approach and do not consider the current measures (investigations and local trials) to constitute transitional justice.<sup>7</sup> If the government fails to heed the warnings of civil society and international experts in relation to the foundational legislation for transitional justice in the country, international support is unlikely to ever materialize.

Regardless of the outcome of negotiations on transitional justice legislation, once established, the Commission will need to address the themes raised in the sections below as it shepherds the country through a lengthy process of transitional justice.

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<sup>7</sup> KII08, Diplomatic Mission Representative.

## 4. FINDINGS

This study, designed as a qualitative research effort, was not designed to provide statistical comparisons between regions or groups, but to examine whether key themes were more pronounced or unique to certain groups. Accordingly, the findings do not assert that a specified proportion of respondents expressed a certain opinion, because such assertions would have little meaning based on the study design. Instead, the findings discuss emergent themes and sentiments from the research, highlighting where these diverged or aligned amongst various groups.

### 4.1 RESEARCH QUESTION I

**What are the variables that influence perceptions of justice in Sudan and how do these variables differ by region and individual experience?**

#### KEY FINDINGS

- At this early stage in Sudan’s transitional justice process there is broad public agreement on key issues such as accountability and reparations regardless of region, sex, age, and other variables.
- Outside of Khartoum concerns about racism and regional discrimination were highly salient demands for transitional justice.
- Knowledge of the ICC and its possible role in transitional justice was somewhat lower in regions outside Darfur.
- While both men and women recognize the unique needs of women in relation to transitional justice, women were able to specify more clearly their demands, in particular in relation to oppressive sociocultural roles imposed on women, which contributed to violations of women’s rights during conflict and the former regime.
- Youth, as leading participants in the revolutionary period, were clear in their perception that transitional justice cannot be successful without specific provisions for youth leadership and inclusion.

IDIs and FGDs were designed to gather the perspectives of a broad cross section of Sudanese society. Sayara gathered basic demographic information on IDI participants in particular, including region, rural/urban locality, sex, age, self-reported experience of human rights violations and participation in the recent revolution. Because the design was qualitative, the same was not intended to provide statistically representative comparisons on the basis of these variables. However, were there extremely pronounced differences between groups, this would have been evident in the cross-group analysis and certain themes/perceptions could be attributed to specific variables. Instead, there was strong consistency of perception around many of the key issues examined in the study, and even variables such as region and gender did not clearly align with specific perception themes. Differences in perception based on variables other than those below would need to be examined in a larger sample quantitative study to ensure validity.

#### **Region**

The desk review revealed a number of region-specific concerns related to transitional justice (see Annex 2), but also a dearth of data about perceptions of transitional justice in key regions. Analysis of primary

data indicates that region, while important, may not play as large a role as anticipated in some of the broad transitional justice concerns examined in this research. Building on the unified public voice that characterized the revolutionary period, study participants expressed strong solidarity about many transitional justice themes, specifically (1) accountability, (2) reforms in line with the goals of the revolution, and (3) prioritizing reparations for certain victim groups

For example, responses to questions about prioritizing victims revealed broad agreement across regions; most study participants are in agreement that conflict-affected populations need to have priority and this appears to hold true regardless of what state the respondent comes from.

In addition, there seems to be general agreement across regions that traditional or customary justice mechanisms<sup>8</sup> may not be as useful as is often assumed based on experience elsewhere in Africa. Concerns about customary justice measures were raised by individuals from multiple different states and are discussed in more detail below (section 4.2.1).

One key difference across regions is in relation to knowledge and understanding of the ICC, which not surprisingly appears to be stronger in Darfur and amongst interviewees in Khartoum. While respondents from Darfur consistently raised the ICC as a high priority component of transitional justice, individuals in other locations displayed less knowledge about the ICC and expressed skepticism that it could contribute to justice for victims. Some individuals were not aware of the ICC at all while others were not aware of its current mandate in Sudan, suggesting that it could try those who were responsible for the June 3 massacre.

Another important theme that emerged in interviews and FGDs outside of Khartoum is concerns over racism and marginalization of the periphery, discussed in more detail below.

*“Women should be treated with some kind of privilege throughout the transitional justice. A positive or affirmative action towards the women should be done.”*  
(KII, Local CSO)

*“My family and I have suffered a lot of violence and attacks... In Sudan we need to respect women’s rights and empower them to continue education, work, and be independent. Women in Sudan always take the blame, they should be equal and have the same opportunities as men.”*  
(IDI, Female, Khartoum State)

*“Consequences of conflict are different for women because they bear the burden of violence, they suffer the social stigma, and they have to take care of the extended families and children...Based on the above, they have special needs, including the need for special health services, trauma counseling, and psycho-social support, provision of basic needs such as shelter, food, water, and sanitation.”*  
(KII, Local CSO)

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<sup>8</sup> Customary justice mechanisms include a wide variety of processes that derive from the customs (formal or informal) of a particular community and may involve mediation by elders, traditional forms of compensation or restitution, reconciliation, negotiated settlements, as well as tribunals that apply customary laws.

While this study did not reveal extensive regional differences on broad issues of transitional justice, both IDIs and KIIs highlighted the need for transitional justice to be regionally tailored. Exploration of additional regional differences likely requires much more in-depth consultation over a longer period of time, such as the type of consultations proposed by civil society to be undertaken by the Transitional Justice Commission or other entities in government.

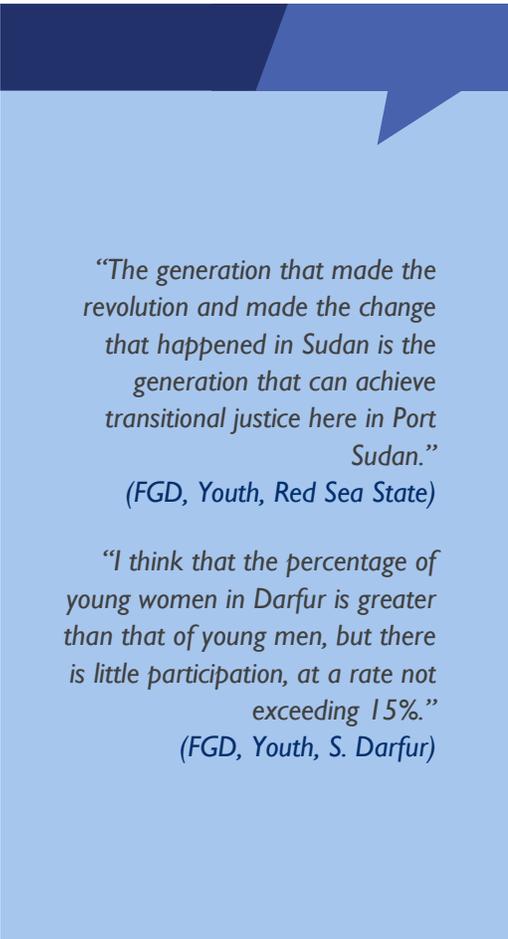
## **Gender**

Sudanese women have experienced significant violations of their political, civil, economic, social, and cultural rights over many decades. For the victims of these and the grievous human rights violations experienced under the Bashir regime—rape, sexual slavery, forced marriage, forced pregnancy/abortion/sterilization, sexual torture/mutilation, and sexual humiliation—transitional justice must not only address violence and injustice retroactively but be forward-looking and set the foundation to transform structural discrimination with a goal of creating a more equitable and just society.

Interviews reflected general (though not universal) recognition among both men and women that women’s needs in the transitional justice process are different from those of men. There was a recognition that women’s – and girls’ – voices need to be heard separately on their own concerns.

Whether amongst women’s CSOs or individual women, a priority concern was providing support to victims of gender-based violence through transitional justice measures.<sup>9</sup> There was recognition that it is more likely for women than men to be targeted for human rights violations. While developing transitional justice measures in Sudan, the government and experts should take into account the structure of Sudanese society, and include women’s special needs for justice. The transitional justice process and those in charge of implementing it must be fair, trustworthy, sensitive and specially trained so that women feel empowered and trust the system enough to come forward.

Women also raised the issue of socio-cultural oppression, describing Sudan as “a masculine country” or a country where “women are always blamed” and noted that one of the key demands of the revolution



*“The generation that made the revolution and made the change that happened in Sudan is the generation that can achieve transitional justice here in Port Sudan.”*

*(FGD, Youth, Red Sea State)*

*“I think that the percentage of young women in Darfur is greater than that of young men, but there is little participation, at a rate not exceeding 15%.”*

*(FGD, Youth, S. Darfur)*

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<sup>9</sup> Sexual violence was not only perpetrated against women and girls, but against men and boys as well, both as part of broader regional conflicts and during the June 3rd attacks in Khartoum. In 2016, researchers conducted an analysis of data collected among 1,136 Darfuri refugees in Eastern Chad by the 2003-04 Atrocities Documentation Survey. The study found that gender-based violence emasculates men and boys through homosexualization, feminization, genital harm, and sex-selective killing and suggests significant gaps in the reporting and investigation of SGBV against males in Sudan. In addition to such violence during conflict, doctors estimated that at least 70 rapes were perpetrated on June 3, 2019, against both women and men. However, the lack of men who have come forward as victims suggests a higher stigmatization of sexual violence against males.

was that these attitudes change.<sup>10</sup> In relation to transitional justice, this requires that women are included in decision-making processes on justice measures, that women victims are prioritized in reparations, and that any traditional justice mechanisms that might be applied do not reinforce gender stereotypes and oppressive gender roles.

Enhancing education for women also emerged as a theme when respondents were asked what should be done for victims and what justice would look like. Enhancing affirmative action in education, especially in marginalized areas could be an important consideration in reparations and institutional reforms under a transitional justice agenda.

### **Youth**

Slightly more than 20% of the IDI sample consisted of youth and researchers also conducted focus groups with youth in five states. In general, youth expressed broadly similar views as those expressed by the population overall. The main area of difference was a focus on youth inclusion and participation in decision-making. Many of the respondents, especially within the youth FGDs, questioned the ability of the transitional government to carry out transitional justice without the participation of youth in decision-making processes, such as the Juba peace talks. Youth asserted that their voices are rarely if ever heard by older generations. While youth participation was occasionally mentioned by participants in other age groups, this was a dominant theme for youth themselves.

### ***Affiliation with former regime***

The study included a small group of interviewees who were affiliated with the former regime, including with the security forces. This group, not surprisingly, expressed more concern about the politicization of potential transitional justice processes, about fairness and the evidentiary basis of legal processes, as well as the role of reconciliation as opposed to accountability.<sup>11</sup> Underlining a tension that emerges in many transitional justice contexts, a member of this interviewee group raised human rights as important for protecting defendants, as well as victims.<sup>12</sup>

Interviews also reflected concern over the arbitrary dismissal of civil servants and others affiliated with the former regime.<sup>13</sup> The issue of how to treat civil servants and others associated with an ousted regime arises in many transitional contexts and must be carefully negotiated through public consultation so as to maintain social cohesion.

Finally, interviews with those affiliated with the former regime emphasized that due process rights for accused persons were a priority that was being largely ignored at present. One interviewee also expressed the opinion that lower level perpetrators should not be held accountable for violence, especially in relation to controlling protests, given the command structure in the security forces. “It is not the duty of anyone who was a combatant to apologize and acknowledge the harm done because these are directives implemented by the highest authorities, and due to the sensitive nature of the work, it is not easy to talk about these events that took place during some operations...”<sup>14</sup> This was an outlier amongst the larger

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<sup>10</sup> E.g., IDI, Female, While Nile.

<sup>11</sup> E.g., KII15, KII16, KII22, KII23.

<sup>12</sup> KII24, Former Regime.

<sup>13</sup> E.g., KII23, Former Regime.

<sup>14</sup> KII26, Combatant.

group of interviews, especially in relation to opinions expressed about amnesty and accountability as discussed below.

## 4.2 RESEARCH QUESTION 2

**Under what conditions (using what transitional justice measures) would people be willing to turn the page and move on?**

### KEY FINDINGS

- Participants prioritize **prosecution**, specifically high-profile trials of those seen as most responsible for violations committed by the former regime, as a primary demand for transitional justice.
- While opinion as to whether trials should be undertaken by international or domestic actors is divided, there is strong support for trials taking place inside Sudan.
- A victim-centered, transparent investigation of the June 3 Massacre is a key priority for building trust in the government's commitment to transitional justice, in the short term; investigation of other mass atrocities will be critical in the longer term.
- There is very little public support for use of amnesty as a component of transitional justice at the present time.
- There are significant concerns about the use of customary justice mechanisms as a component of transitional justice, despite some participants seeing utility in implementing such measures.
- Ensuring cessation of conflict and civilian protection is a key priority for respondents, but the Juba talks are not seen as inclusive or participatory enough to achieve sustainable peace.
- For many Sudanese, justice means economic and social justice in line with the demands of the revolution, comprising a suite of social and institutional reforms.
- Addressing women's equality – from reform of criminal laws on sexual and gender-based violence to addressing educational and livelihood opportunities – is a priority expectation for the transitional justice period.
- Improved inclusion of previously marginalized regions and groups in decision-making bodies of all kinds, specifically including transitional justice processes, is a priority for a broad swath of the public.
- Legal reforms on issues such as immunity for security forces, censorship and internet freedom, hate speech, and women's equality were prioritized by a broad group of respondents.
- There is broad agreement that conflict-affected populations, vulnerable population groups, and those targeted during the former regime should be prioritized for reparations.
- Monetary reparations are important, but there is recognition that non-monetary reparations are equally valuable in the Sudanese context.

Transitional justice traditionally is seen to include four fundamental pillars, or categories of measures, that are common across contexts: Accountability, Guarantees of Non-repetition, Reparation, and Truth Seeking.

Broadly, Sudanese people see accountability as the top priority with reforms (guarantees of non-repetition) and reparations as almost equally important, whereas truth seeking is less prioritized. Perceptions from IDIs, KIs, and FGDs also fall broadly into these general categories and we address overall findings in relation to each category below.



## 4.2.1 ACCOUNTABILITY

Accountability includes a number of possible measures, including criminal trials, investigations (also a component of truth seeking), potential amnesties, and customary justice mechanisms.

Trials of high-profile actors who committed gross human rights violations and war crimes, as well as accountability for those who perpetrated the June 3 massacre, are top priorities for respondents. Today, in Sudan, the mood of the country can be illustrated by the slogans chanted during the demonstrations of last year's revolution demanding retributive justice for the violations committed. On the other hand, while there was some diversity of opinion, respondents saw amnesty and customary justice mechanisms as less useful tools for accountability at this moment in Sudan's transition.

### ***Trials***

Justice in Sudan today is perceived first and foremost as **prosecution**, specifically high-profile trials of those seen as most responsible for the egregious violations of the past decades and the past few years. Many respondents readily admitted that these trials would serve a primarily symbolic purpose, creating a transition between the old Sudan and the new, ensuring a dividing line between the past and a different future.

The public, transparent nature of these trials is important to ensure their symbolic value. Most symbolic of all, of course, are the ongoing cases at the International Criminal Court (ICC). Five Sudanese suspects are currently under indictment by the ICC for crimes committed in Darfur. One of the accused, Ali Kushayb, surrendered and was transferred to the ICC on June 11, 2020. The legal fate of those indicted on war crimes and crimes against humanity

*“Symbols of the former regime should be brought to fair trials and held accountable for the crimes they committed against the Sudanese people... and these trials are open and known to all people.”*  
(IDI, Male, W. Kordofan)

*“The ICC must secure justice for past crimes and must remain a priority for the Government as it directs Sudan towards greater human security, respect of human rights, peace, and prosperity.”*  
(IDI, Male, Khartoum, Youth)

*“Sudan is unable, and the military establishment is unwilling, to transfer the file to the International Criminal Court, and in practice Sudan lacks the ability and desire in this file, and Sudanese courts are not qualified to try those accused of genocide and war crimes cases.”*  
(KII, Current government)

*“The trial of Al-Bashir is a symbolic gesture of justice, for a lot of victims in Darfur.”*  
(KII, Local CSO)

remains in question, with the Attorney General hedging on the question of extradition, on the basis of “sovereignty and other legal issues”.<sup>15</sup>

Amongst interviews with members of the general public, knowledge about and understanding of the role of the ICC was highly variable. Some had never heard of it, some felt that if it would prosecute those who committed crimes during the June 3 sit in it might be useful, many expressed concern that the ICC would not do anything for victims, while others noted that it could be helpful in achieving justice in Sudan but only if it worked closely with the national government. Amongst the KII sample (primarily international and Sudanese CSOs) however, respondents placed a high premium on the ICC’s participation in accountability in Sudan, but many expressed concerns about the willingness of the government to work with the ICC.

Despite this support for the ICC, KII respondents were aware of its limitations. For example, it only takes into account the crimes committed in Darfur and does not include the crimes committed in the other conflict-affected areas such as Blue Nile and South Kordofan.

Perceptions about whether trials of high-profile individuals should be conducted by international or domestic actors were somewhat mixed, but in either case, opinion leans toward **ensuring that trials take place inside Sudan**.

As expressed in their own words, respondents were concerned about the impact of location on national pride, about capacity-building for the Sudanese justice system, and about the ability for Sudanese people to effectively participate in, and monitor, events should prosecutions be conducted outside of Sudan.

Importantly, however, there was significant concern about the institutional and political capacity of Sudan’s judiciary to carry out such trials, as well as the judiciary’s objectivity.

*“I think courts in Sudan are always biased. We need international committees to oversee their work.”  
(IDI, Female, River Nile)*

*“Some see it as a national shame in the sense that their own leader [would be] tried by the outside rather than people within Sudan. That’s it. That would be a shame and a disrespect to the justice system in Sudan.”  
(KII, Diaspora CSO)*

*“[Bashir] should be tried in Sudan and we should have laws that would try him by his peers. I think that would send a stronger message and would help justice long term in Sudan.”  
(KII, Diaspora CSO)*

*“I don’t think there is an excuse in saying that the [government] does not have the capabilities or the resources. Clearly, they have enough money to buy guns. How can they not have enough money to buy pens? So, yeah, you know, they have it. It can be done. It just takes the right mind.”  
(KII, Local CSO)*

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<sup>15</sup> “AG: ICC suspects could be tried in Sudan.” *Radio Dabanga*. 16 June 2020.

There is also significant concern over the legal capacity of the existing judicial organs in Sudan to try cases dealing with such complex international crimes. This is not only an issue of resources, but of a judiciary that was systematically undermined and politicized during the previous regime.

Given the priority that many Sudanese place on these high-profile prosecutions, development of a comprehensive strategy for cooperation with the ICC (that includes capacity-building for the Sudanese justice system) should be a short-term priority for the government. The Ministry of Justice is already considering a number of options including: (1) having the ICC handle the prosecutions independently outside of Sudan, (2) working with the ICC to hold trials in Sudan, (3) asking the ICC to hold trials in another nearby country, or (4) carrying out domestic prosecutions without ICC engagement. The data suggest that the second option is likely to be the most palatable to the Sudanese people, and is more likely to garner international support. After the experience of the International Criminal Tribunal for Rwanda, which held proceedings in Arusha, Tanzania, and the Hague, but ultimately began transferring cases back to Rwanda's domestic jurisdiction due to cost and sovereignty concerns, it seems unlikely that there would be appetite for establishment of another expensive international hybrid tribunal. The economic consequences of the global pandemic of 2020 also make it unlikely that the international community could fund such a multi-country exercise. However, several interviewees advocated for such ad-hoc hybrid courts encompassing both national and international tools, which would address the national lack of capacities and would allow all crimes, and not only those committed in Darfur, to be included.

The Rome Statute does provide for the possibility to conduct ICC hearings *in situ* – meaning trials could be organized, in part or in whole, inside Sudan. The Presidency of the Court, in consultation with judges appointed in the case, has the power to make such a decision on their own initiative or after a request by a party to the proceedings.<sup>16</sup>

Notably, individuals closely affiliated with the former regime and security forces had slightly differing views as compared to the broader interview pool. While they supported prosecutions, they tended to perceive lower ranking perpetrators as having limited responsibility for

“...currently the Committee is not independent and doesn't provide any facts or information to the people. The street is not expecting anything from it, we have lost hope in it.”

(IDI, Female, N. Kordofan)

“We are all going to stand up against whoever is responsible.

This is something that is very emotional because, honestly, they have destroyed our dream, which is the sit-in, the new Sudan, a peaceful, well-recognized international fight. There was no need for this. And, therefore, there is no excuse.”

(KII, Diaspora CSO)

“In Darfur, you don't need to investigate anything. There is a lot of work already being done. You just need a mechanism that should collect all of these documents and that and then act accordingly.”

(KII, Independent Expert)

“Regarding the June 3rd massacre, what happened, a lot of us in the diaspora, we took it very personal.

We saw our families and friends and those who are close to us die on that day. And we are following it through.”

(KII, Diaspora CSO)

<sup>16</sup> KII07, International NGO.

violations, citing the command-responsibility doctrine; they also perceived the high-profile trials as more politically motivated rather than motivated by concerns about absolute justice and procedural due process.<sup>17</sup>

Indeed, given the scope and scale of the crimes committed throughout Sudan, it likely is practically impossible to prosecute every offender. Respondents proposed that transitional justice should include two levels of action, according to the level of involvement of the perpetrators indicted: (1) an institutional transitional justice level for high intensity crimes and high ranked perpetrators and 2) a traditional community-based level for lower levels of responsibility.

### **Investigation Commissions**

While investigations can be seen as both an accountability and a truth-seeking measure in the context of transitional justice, the prevailing public expectation is that investigations are being undertaken primarily for the purpose of holding those responsible accountable, given that the broad perception amongst Sudanese is that the truth of what happened in many instances is already known.

It cannot be overemphasized how important is it to a broad group of Sudanese that the June 3 massacre be effectively and credibly investigated and that the perpetrators be held to account. This was an opinion expressed both in KII with experts and IDIs with the general public around the country, from Darfur to Kordofan to White Nile, and around the world in the diaspora. Primary data collection emphasized what was found in the desk review – that the current investigation effort, *the Independent National Committee to investigate the crackdown and killings of peaceful civilians during the sit-in in front of the army headquarters in Khartoum on June 3, 2019*, is not seen as credible, inclusive, transparent, or timely. The desk review highlighted many of the reforms that stakeholders deem critical to enhancing the work of the investigation.

First, the issue of justice is complicated by the fact that those who are believed to have led the widespread violence on June 3 are currently part of the Transitional Sovereign Council. The Committee is said to lack critical resources and to have not met international investigative standards, such as those for evidence preservation and witness protection.<sup>18</sup> Families of the victims, as well as others in the respondent pool, expressed frustration, dissatisfaction,<sup>19</sup> and discouragement in the face of the committee's slow pace as well as its inaccessibility, especially for victims of SGBV due to its absence of expertise.<sup>20</sup> Families perceive a lack of cooperation from both the police and the prosecution services, who deny access to files and intimidate victims and witnesses.<sup>21</sup> Families also assert that the police have prevented some families from reporting deaths, while state prosecutors provide no assistance in investigating complaints. Thus, some families and CSOs ask for the removal of the chair and/or the entire appointed investigation committee.<sup>22</sup>

Other proposed changes to the process include removing immunities of military personnel, strong mechanisms of protection of witnesses and of evidence preservation, and the establishment of a technical

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<sup>17</sup> E.g., KII22, Former Regime; KII23, Former Regime.

<sup>18</sup> "Sudan: Progress on Rights, Justice, Key to Transition. Expedite Reform, Investigations, Prosecutions", *Human Rights Watch*, 20 February 2020.

<sup>19</sup> "Sudanese stage a demonstration demanding justice for the revolution martyrs", *Sudan Tribune*, 4 December 2019.

<sup>20</sup> "Sudan's new investigation committee raises concerns", *Human Rights Watch*, 24 September 2019; "Sudan: Progress on Rights, Justice, Key to Transition. Expedite Reform, Investigations, Prosecutions", *Human Rights Watch*, 20 February 2020.

<sup>21</sup> Human Rights Watch, *ibid.*, p. 44 (51).

<sup>22</sup> "Delays in Sudan's massacre investigation prompt protests from victims' families", *Middle East Eye*, 27 May 2020.

committee to inspect the weapons used.<sup>23</sup> Furthermore, they request that the attack on the sit-in be considered a crime against humanity.<sup>24</sup> Finally, the Martyrs' Families request to be represented in the investigation committee through their lawyers,<sup>25</sup> a request that has been denied. This has deepened doubts over the impartiality of the results.<sup>26</sup> The Families also demand the inclusion of their representatives in the Legislative Council to follow-up on retribution,<sup>27</sup> and ask to expand the investigation to include all the Martyrs of the Revolution and not only those killed during the June 3<sup>rd</sup> dispersal.<sup>28</sup>

Diaspora organizations report having amassed evidence in relation to this and other crimes and human rights violations committed in Sudan, and they see their role as primarily to use such evidence to lobby international institutions and diplomatic missions to put pressure on the government. If the investigation into the events of June 3 does not produce clear recommendations for accountability for those most responsible, it is likely to lead to backlash within Sudan. Moreover, because this issue is so important to the diaspora, it would likely lead to international repercussions for Sudan's efforts to reestablish itself within the international community of nations (for example, when seeking removal of sanctions).

Sayara interviewed individuals with direct knowledge of the Committee operations.<sup>29</sup> It was reported that despite the public perception, the body is receiving cooperation from the security forces and other government authorities in its investigations, as far as concerns provision of requested documents and other information. However, it was noted that the Committee faces significant challenges, including lack of financial and other resources to complete their investigations and meet international standards. While the Committee is receiving some technical assistance from the African Union on forensic investigation, it was noted that not all promised support had yet been received. It was also highlighted that the Committee is not legally allowed to bring on victims' representatives as members.

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<sup>23</sup> "Sudan's December Revolution victims' families appeal to USA for help"; *Radio Dabanga*, 28 January 2020.

<sup>24</sup> "Sudanese stage a demonstration demanding justice for the revolution martyrs", *Sudan Tribune*, 4 December 2019.

<sup>25</sup> "Sudanese stage a demonstration demanding justice for the revolution martyrs", *Sudan Tribune*, 4 December 2019.

<sup>26</sup> "Delays in Sudan's massacre investigation prompt protests from victims' families", *Middle East Eye*, 27 May 2020.

<sup>27</sup> Families of protestors slain during Sudan's 'December Revolution' call for justice", *Radio Dabanga*, 15 August 2019.

<sup>28</sup> "Sudanese stage a demonstration demanding justice for the revolution martyrs", *Sudan Tribune*, 4 December 2019.

<sup>29</sup> KII41, Current Government.

## **Amnesty**

Amnesty was not perceived as a credible option by the majority of research respondents; even those who could see the utility of amnesty noted that there is no public support for the idea.<sup>30</sup> In fact, amnesty was associated with the corrupt tactics of the old regime, whereas the denial of amnesty and imposition of the rule of law through trials was seen as a critical dividing line between the old and new Sudan.

A minority of interviewees opened the door to amnesties for lower level perpetrators under some circumstances, noting the current provisions for amnesty in Sudanese law, the importance of amnesty in Islamic tradition, and the potential utility of such a mechanism for minor, local crimes, when offered after community consultation and agreement.<sup>31</sup> Others noted that amnesty could help ensure that the Sudanese justice institutions do not become overwhelmed.

Public perception about amnesty might change over time, especially as the reality of conducting trials for what could be thousands of perpetrators becomes clear. Public education about amnesty as a tool of transitional justice and national healing might also change this perception. At the time of writing, however, developing an amnesty process is not a priority for the vast majority of respondents.

### ▪ **Customary Justice Mechanisms**

Establishment of a state on the basis of the rule of law was a key demand of Sudan's revolution. For that and other reasons, there was significant apprehension about whether customary justice mechanisms<sup>32</sup> should be a component of transitional justice.

*“Trials, especially for those who have been given amnesty by the former regime, should be done to improve confidence in the justice system in Sudan and even perhaps rewrite new ways of doing law in Sudan.”*

*(KII, Diaspora CSO)*

*“I don't believe in amnesty before trial. We have tried that through our traditional justice mechanisms and violations never stop.”*

*(KII, Local CSO)*

*“[Amnesty] can be a motion to reconciliation because people can accept the reason why my neighbor, why people who live with me here now come and burn my village and kill my family and take my life... If they understand that [...] these people are real, also innocent, that they have been used by the government... misused and brainwashed then even the victims can also accept amnesty. But if the amnesty comes from the government without any condition, then that is going to be like encouraging impunity.”*

*(KII, Local CSO)*

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<sup>30</sup> KII41, Current Government.

<sup>31</sup> E.g., KII39, International Donor.

<sup>32</sup> Customary justice mechanisms, also sometimes referred to as traditional or informal justice mechanisms, can include a wide array of processes including chief's courts, mediation by elders, or other forms of negotiated settlements in line with local customs and community traditions.

Concerns about customary justice mechanisms were twofold: (1) these mechanisms were never used – nor intended to be used – for violations of the type and scale that have been perpetrated in Sudan; and (2) customary systems in regions such as Darfur and Kordofan were corrupted and co-opted by the previous regime, rendering them untrustworthy in the eyes of many Sudanese. While other research studies conducted with refugees from Darfur previously found that a substantial proportion of them felt customary mechanisms would be important in achieving peace, that study also found that almost none of the respondents believed such mechanisms would be sufficient for dealing with the crimes that occurred.<sup>33</sup>

Some interviewees did note that Sudan might look to Rwanda or Uganda for modalities of integrating customary systems into the transitional justice landscape. Among the sample of general public respondents, some indicated that the Native Administration or local sheiks could be helpful in addressing local conflicts, dealing with tribal conflicts, and addressing land disputes, but other respondents noted that these systems generated as much conflict as they resolved.

What seems clear however, is that integration of customary justice mechanisms should be approached with extreme caution in any transitional justice process. First, use of customary mechanisms should be only at the discretion of the local people in a particular region or state. Second, such mechanisms have traditionally excluded women and youth from decision-making and representation and should only be applied if these shortcomings can be remedied. Finally, any integration of these mechanisms should account for the fact that their authority and credibility may have been undermined by cooptation throughout the years of the Bashir regime.

*“Local customs do not have great roles in resolving conflicts, and sometimes they may be the cause of the escalation of the conflict and the renewal of problems, so I believe that the application of the law is the most appropriate solution.”*  
(IDI, Male, W. Kordofan)

*“In the case of Sudan, the traditional justice mechanisms have been intruded on by politics and the previous government. Thus, I don’t think they are capable of providing justice, especially for women. Furthermore, they are not well informed with the global instruments and the human rights frameworks necessary to effect justice.”*  
(KII, Local CSO)

*“In some of rural areas, they have the tradition of coming together to solve issues or the elder sheikh of the area listens to their needs ... tries to solve them without any interference from the government. ...But traditional justice measures can’t solve or bring back the rights of the victims of the June 3 massacre.”*  
(IDI, Female, N. Darfur)

*“Customs and traditions can play a role in solving problems, especially within the state...but they are insufficient for resolving disputes, as they are agreements to resolve disputes for temporary periods.”*  
(IDI, Male, Kassala)

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<sup>33</sup> “Darfurian Voices: Documenting Darfurian Refugees’ Views on Issues of Peace, Justice, and Reconciliation.” 24 hours for Darfur, July 2010.

## 4.2.2 GUARANTEES OF NON-REPETITION AND INSTITUTIONAL REFORM

While reform was unquestionably the broad agenda of the Sudanese revolution, key areas of reform were prioritized by research participants in relation to transitional justice. Those specifically highlighted include economic justice, cessation of conflict and security, justice sector reform, reform of censorship laws, and inclusion of marginalized groups.

### **Economic Justice**

Among the general-public respondents, economic justice came through as a top priority for reform. While not always considered a component of transitional justice, respondents made it clear that they cannot move on toward a more just and democratic future in Sudan without broad economic reforms. Many respondents also linked economic reform with reparations for victims, which is discussed in more detail below in section 4.2.3.

According to interviewees, economic justice has several components including the removal of sanctions, fighting corruption, provision of humanitarian assistance, and addressing basic commodity prices and subsidies, as well as equitable distribution of wealth and opportunity across Sudan's states.

FGDs with youth participants all revealed economic justice to be a prime concern amongst this group. Inclusion in decision-making processes and providing productive investment opportunities without restrictive conditions were seen as key components of justice for this group.

While this study was not designed to obtain detailed opinions or recommendations about particular economic policy options, it is nevertheless important to highlight the importance of economic issues in relation to transitional justice in Sudan from the perspective of average citizens.

Interviewees did note that the *Committee for the Elimination of Empowerment, Fighting Corruption, and Recovery of Funds* appeared to be a step in the right direction, but several noted that they were concerned about procedural irregularities and political motivation influencing the Committee's work.

*“We have endured years of corruption, armed conflicts, economic situation, inflation, shortage of fuel, electricity and basic commodities...the government should prioritize peace and reforming the economy...in Khartoum, we need basic needs as well including water, electricity, etc.... I can't plant my land without the basic needs.”*  
(IDI, Male, Khartoum)

*“Economic reform must be made and citizens assisted by providing job opportunities through programs such as entrepreneurship.”*  
(FGD, Youth, N. Darfur)

*“...more value would come with a better strategy, better economic plans, better strategies of development and infrastructure works, and then that kind of stuff with education... We can help build the other states and the other cities and allow people the better opportunities where they currently live, where they have their families, where they have their background.”*  
(KII, Diaspora CSO)

*“I want to be able to have a good purchasing power and be able to provide the needs for my family.”*  
(IDI, Male, Sennar)

Corruption investigations were also linked with sectoral reform, especially in the judiciary and security sectors. Dismantling of corrupt links between key leaders in the security forces, corporate interests, and foreign state powers is a critical demand from multiple interviewees.

### **Cessation of conflict and civilian protection**

Ensuring an end to ongoing conflict, including ending humanitarian and human rights violations while disarming populations, was a dominant theme across the respondent pools. Participants across Sudan raised concerns about ongoing outbreaks of violence, inter-tribal conflict, and lack of security for the general population. While the Juba peace talks clearly are a priority for the government, there are significant concerns about this process from the public, in particular whether the talks represent the interests of the people most affected.

For instance (confirming findings from the desk review) FGD participants in Red Sea State noted that the process has been lacking in public participation and is perceived as having little legitimacy in the region. Similar concerns were raised in focus groups and interviews with participants from Darfur. If the Juba talks are concluded without achieving the necessary public support and legitimacy, implementation of any transitional justice measures included in such agreements may be extremely challenging. Moreover, without public support for the outcomes of the Juba talks, sustainable peace as a prerequisite for transitional justice is unlikely to be achieved.

Several participants referred to the **United Nations** as an important touchstone in relation to sustainable peace and cessation of conflict, though there were high expectations based in part on lack of information about the UN role.

The United Nations role in Sudan is undergoing significant transition. Several iterations of UN Peacekeeping missions have been deployed to Sudan since the Second Sudanese Civil War, including both national and region-specific forces. Apart from these forces, in June 2020, the UN Security Council (UNSC) adopted resolution 2524 (2020) establishing a political mission in Sudan—the UN Integrated Transition Assistance Mission in Sudan (UNITAMS)—to assist in the country’s transition towards democratic

*“Justice will not be achieved before peace is achieved”*  
(FGD, Woman Respondents, Red Sea State)

*“I don’t think [the peace negotiations are] talking on behalf of the people anymore. I think you’re just talking on behalf of your organization now and you’re trying to find a deal for your organization.”*  
(KII, Diaspora CSO)

*“The UNITAMS commission will assist the government in attracting financial and economic support and achieving peace during the transitional period.”*  
(KII, Current government)

*“I expect that the UN will play an important role in supporting the civilian transitional government so that it can work on bringing the idea of transitional justice to the ground.”*  
(KII, current government)

*“The UN mission is a political mission that will have a major role in achieving peace. The mission will participate in the constitution-making, and it will supervise the elections to help Sudan achieve democratic transition.”*  
(KII, Local CSO)

governance and peace.<sup>34</sup> UNITAMS does not have a military component, and is instead focused fully on supporting and facilitating a peaceful transition. The scope of the new mission is broad, ranging from Constitution-drafting and rule of law to inclusive civilian governance and strengthening of security institutions and economic reform, as well as promoting human rights including protection of women and children from sexual and gender-based violence.<sup>35</sup>

UNITAMS has been mandated with the following strategic objectives<sup>36</sup>:

- Assist the political transition, progress towards democratic governance, protect and promote human rights, and foster sustainable peace
- Support peace processes and the implementation of future peace agreements, including support to transitional justice, DDR, and monitoring of ceasefires in Blue Nile, South Kordofan, and Darfur
- Assist peacebuilding, civilian protection, and rule of law, with special emphasis on Darfur, Blue Nile, and South Kordofan
- Support economic mobilization and development assistance through coordination with international financial institutions, and facilitate humanitarian assistance

Those respondents who mentioned the UN role in Sudan expressed high expectations for the institution's ability to enhance sustainable peace, with a small number even suggesting that the UN would pay for compensation for victims. Extensive public education regarding the role of the UN is likely to be required to ensure continued public support.

### **Justice Sector and Criminal Law Reform**

On par with economic justice is justice sector reform. Both within and outside Sudan, justice sector reform is broadly seen as a critical pre-requisite for transitional justice. Some civil society organizations in Sudan have called for a rebuilding of the judiciary from scratch.<sup>37</sup> Interviewees highlighted the potential for the judicial system in Sudan to work closely with the ICC as a capacity-strengthening exercise.

Regardless of the ultimate role of the ICC, critical judicial reforms were highlighted through the data collection, including training of judges, establishment of witness protection programs, reduction of the

*“[The government should] pledge to strengthen laws on sexual violence, and draft effective law obligations and commitments to victims of sexual abuse. We need to support every victim, in particular women, girls and young men in their rights for justice.”*

*(IDI, Male, Khartoum)*

*“Review laws related to customs and laws related to women's rights, such as the issues of female circumcision and early marriage, and enact laws for crimes that happen to women in conflict areas”*

*(FGD, Women, N. Darfur)*

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<sup>34</sup> UN Press Release, “Security Council Establishes Integrated Transition Assistance Mission in Sudan, Unanimously Adopting Resolution 2524,” June 4, 2020.

<sup>35</sup> Ibid.

<sup>36</sup> UN S/RES/2524 (2020).

<sup>37</sup> KIII4, Local CSO.

influence of Islamic law, and revision of the criminal code to change the definition of some offenses, add in new crimes such as genocide.

Regarding criminal law reform, respondents also emphasized concerns over legal immunity provisions. Immunity for acts of torture and inhuman or degrading treatment in Sudanese law has resulted in virtually no successful prosecutions for torture throughout the period of the old regime. Unable to seek justice inside Sudan, survivors of torture at the hands of the Sudanese state brought legal cases to regional and international bodies. Reflecting the demands of those survivors, the African Commission on Human and Peoples' Rights recommended key measures to address issues of torture, including (1) legislative reform to bring Sudan's laws into compliance with the African Charter on Human and Peoples' Rights, including removal of immunity provisions in relation to torture, (2) adequate compensation for victims, and (3) training for security forces on the international prohibitions against torture.<sup>38</sup>

Addressing sexual and gender-based crimes through a process of legal reform was also raised by multiple participants.<sup>39</sup> In particular women interviewees and FGD participant highlighted needed changes in laws that address rape and other forms of sexual violence, as well as laws on public order that subject women to levels of social control based on Islamic law.

Recently, the transitional government has taken steps to protect women's rights. In April 2020, female genital mutilation was criminalized, punishable by a three-year prison sentence. However, women FGD participants did not all seem aware of this legal development and still noted that legislation on FGM and early marriage needed to be revised to ensure that the revolution's demands for greater equality for women were realized.

Moreover, in June 2020, the Council of Ministers approved a national plan for the implementation of the United Nations Security Council's Resolution 1325 on Women, Peace, and Security, a longstanding aspiration of women's organizations. The plan was prepared in consultation with feminist and civil society actors in Sudan but there remains significant work to be done in implementing the plan. The Ministry of Labor and Social Development is committed to playing a role in supporting transitional justice mechanisms to include women and girls, both at the national and regional level. The MOLSD may also have a role in coordinating engagement by civil society, representing women's interests with transitional justice institutions.<sup>40</sup>

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<sup>38</sup> Ibid.

<sup>39</sup> E.g., KII24, Former Regime.

<sup>40</sup> KII25, Current Government.

## **Diversity and Inclusion**

Another important theme related to institutional reform centers on inclusion of minorities, women, and youth in decision-making structures of all kinds. This was a particular concern amongst focus group participants who specifically described ongoing racism and regional discrimination as major issues to be addressed through transitional justice.

Interviewees alluded to the regular and systemic exclusion of women from decision-making roles and positions of authority, whether in local traditional authority structures or national bodies. The study sample of IDIs included approximately 20% youth and this group consistently identified inclusion of youth in decision-making and institutional structures as a remedy required for Sudan to move forward.

Respondents doubted the willingness of the transitional government to achieve true justice given the current perceived marginalization of states beyond Khartoum in various decision-making processes. IDI and KII respondents also highlighted the systematic exclusion of regional groups, such as Darfuris, from promotions and civil service positions<sup>41</sup>, and emphasized the direct links between lack of inclusion and conflict. The representation of marginalized groups in public institutions, was also linked by respondents to national and local dialogue on co-existence as a means for ensuring sustainable peace.

Persons with disabilities highlighted the importance of implementation of Article 4 of the Disabled Persons Act of 2017, to address the exclusion and discrimination that people with disabilities regularly experience. Development of laws that address hate speech was raised by PWDs, as well as others who see hate speech legislation as critical in addressing perceived racism.<sup>42</sup>

*“We need to highlight, or at least recognize, the different groups of people who have had injustice to them. So that would mean equal representation or fair representation when it comes to government or in any public sector.”*  
(KII, Diaspora CSO)

*“Include diversity in agreements and negotiations to agree on all arrangements that would create a suitable environment for coexistence and stability.”*  
(IDI, Male Youth, S. Kordofan)

*“One of our main requirements is that the transitional government in all its senior positions must be in every department or government institution to have a representative of persons with disabilities.”*  
(FGD, PWDs, Red Sea State)

*“[There is] real lack of participation... we only watch developments on television. The government must achieve justice for everyone, as most of what is done by the government is concentrated in Khartoum without considering the states.”* (FGD, Youth, N. Darfur)

*“Back in 2002/2003, representation levels of people from Darfur were 11 percent, if not lower. The genocide would have not happened if there was proper representation of people from Darfur in government or public sectors.”* (KII, Diaspora CSO)

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<sup>41</sup> E.g. IDI, Male, W. Kordofan.

<sup>42</sup> E.g., FGD, PWDs, Red Sea State.

### **Censorship and free expression**

During the previous regime, and in particular during the revolution's protests, Sudanese people's right to freedom of expression was severely curtailed. In response to questions about what justice means to them, members of the public in this study often expressed the demand to change regulation of the internet and to ensure an **end to "censorship"**. Respondents told researchers that the current government has not moved quickly enough to roll-back restrictions on freedom of expression, leading to lack of trust in their intentions. While the climate of fear around speaking out about justice and human rights was not a major concern,<sup>43</sup> Sudanese remain frustrated at the slow pace of change in relation to lifting restrictions on internet usage and other controls on freedom of expression. If the transitional government were to urgently implement reforms in this sphere, it might buy public goodwill to implement other more complex reforms.

### **4.2.3 REPARATIONS**

Reparations can include a wide array of measures that address the needs of victims. Ensuring reparation is one of the most important aspects of what makes a transitional justice process victim-centered. Data collection tools all asked about prioritizing victims and how transitional justice measures could meet their needs. Analysis revealed that many in Sudan (1) have a broad concept of reparations that goes beyond monetary compensation and (2) share a broad agreement in relation to their perceptions of which victims should be prioritized for the most urgent assistance.

#### **Prioritizing key victim groups**

More than 50% of study participants from the general public sample identified themselves as victims of human rights violations. Despite this, or perhaps as a result, prioritization of conflict-affected populations was widely recognized, with study participants from across the country indicating that **conflict-affected populations** in Darfur, South Kordofan, and Blue Nile, for example, as well as other conflict-affected areas (a few respondents mentioned South Sudanese communities) should be prioritized when it comes to victim support.

*"Of course, all people deserve urgent justice. However, the priority is for the conflict-affected persons including IDPs, refugees, women and girl victims of sexual violence. The victims of the violations of the previous regime and those affected by the dismantling of the sit-in areas are also priority."  
(KII, Local CSO)*

*"...anybody who was impacted by war, so people in Darfur, people in the South, people in Kordofan, those folks need to be, they need to have priority first. Because then that brings closure."  
(KII, Diaspora CSO)*

*"Trauma, it's generational. So, if your parents or grandparents haven't felt that they have received justice in their lifetime, they will pass on that kind of notion and idea to the next generation and thus the next generation."  
(KII, Diaspora CSO)*

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<sup>43</sup> Most participants responded in the negative when asked they were afraid to speak out on issues of justice, however this finding may present selection bias as those who have fears simply may not have agreed to participate in the interviews. However, social media analysis reflects a robust online discussion which suggests that fear of expression is relatively minimal under the new dispensation.

Study participants also prioritized **vulnerable groups** including women, children, child soldiers, survivors of sexual violence, people with disabilities, and those who have been displaced, as well as **survivors of Bashir regime targeting**, such as torture survivors and those who suffered abuses during the revolution. This prioritization was one of the most consistent findings of the study.

### **Types of reparation measures**

Provision of reparations was unquestionably the priority when study participants were asked about what should be done for victims in Sudan. There was a recognition amongst most respondents that reparations can include a wide variety of measures such as:

- Monetary compensation to individuals,
- Restitution of property and lands,
- Rehabilitation, including psychosocial support, and
- Collective reparations.

The notion of monetary compensation was complex for many respondents who felt that victims would not be able to accept money, because it would be seen as blood money (*diya*) and no amount of funds could ever cover the grave losses they have suffered. Several respondents noted that compensation could only be considered once there had been a determination of guilt by a criminal court and assurances of accountability.

While most respondents in the IDI sample focused on monetary compensation for victims, this was not the exclusive understanding of what should be done. Apart from monetary compensation, there also was recognition of the need for restitution, provision of medical and psychosocial support for survivors of trauma, enhancement of educational and livelihood opportunities, and community-based reparations to restore access to basic needs such as water, shelter, and infrastructure. Youth participants in FGDs for instance, noted that providing education, training, health, and access to basic services would be important reparations. In addition, youth expressed the need for investment opportunities and provision of loans. Restitution of lands was regularly identified as a key priority by respondents from several regions in Sudan. Repatriation of IDPs and refugees to their home areas was part and parcel of this demand.

*“Whatever they’ve lost, it will not come back. But people need to feel some sort of justice, that individual compensation” (KII, Diaspora CSO)*

*“We can see right now in Eastern Sudan, people are fighting about some other people who have been resettled in their land, the same thing in the Nuba Mountains. And it has not been addressed. It may go to other regions of Sudan. So that's very, very important, enabling people the right to restore the stolen properties, including lands, being able to go back peacefully to their lands.”  
(KII, Local CSO)*

*“We believe that the revolution and what happened is mainly about social justice. [...]. So for Sudan to get out of the problem now we have to have sustainable development. And this would not happen if both health and education are not the top priority.”  
(KII, Diaspora CSO)*

*“The absence of social justice actually led to the conflict in the first place. So that should be part of reparations...sharing political power, sharing wealth, you know, actually making key developments in those areas that are affected....people who lost schooling, who really don't have good hospitals. Those all should be included in the broad reparation and compensation for the victims.”  
(KII, Local CSO)*

For a number of participants, all of these forms of reparation were closely linked to overarching goals of the revolution, which centered on the social justice agenda. Reparations is seen by many as the foundation of rebuilding the state, through ensuring redistribution of resources to those who have been historically marginalized and who suffered most under the previous regime as a result.

While current perception on reparations is relatively unified, reparations tend to become a divisive and politically complex endeavor when it comes to the details of implementation. As one respondent noted, reparations may be one of the reasons why the transitional government seems to be so unwilling to pursue justice: "... the price for transitional justice. Transitional justice mean reparation. Reparation means a lot of money for the government to be given to the victims in question in terms of development projects and individual compensation."<sup>44</sup> Political will and unified public opinion tends to evaporate when the cost of a large-scale national reparations program becomes clear.

### **Apologies and Memorials**

Participants in the study used the term moral compensation/ تعويض معنوي to highlight the need for what is termed **symbolic reparation** in transitional justice. While apologies and memorialization were not frequently raised by study participants, interviewers specifically asked about these issues whenever possible.

For respondents, moral compensation could include erecting statues, naming public locations after victims or key events, or proclaiming holidays in honor of the martyrs. While these types of symbolic gestures were recognized as important for national healing, they are not the priority in the current moment, especially when compared with accountability measures. Nevertheless, much informal memorialization is already ongoing amongst communities in Sudan, including online communities. The online ecosystem around the anniversary of the June 3 massacre demonstrates that Sudanese people are already actively engaged in memorializing those who were killed, injured, or who disappeared.

*"The moral compensation, that having the national government having the gut of standing up and recognizing the genocide in Darfur and the harm that experienced by people in the Nuba Mountains and posting a public apology. ...people need to stand up and admit the harm and the guilt that they have committed, whether they were ordered by the government or they choose to do. They have to. That is when people, their heart can feel some sort of healing that they can be able to come together. Otherwise, I don't see any stability can be expected to take place."*

*(KII, Diaspora CSO)*

*"Martyrs' families are vulnerable and need compensation and acknowledgment maybe through memorial of victims. For instance, remember martyrs by announcing an official memorial day for victims since they died for change and democracy. Build them statues."*

*(IDI, Female, River Nile)*

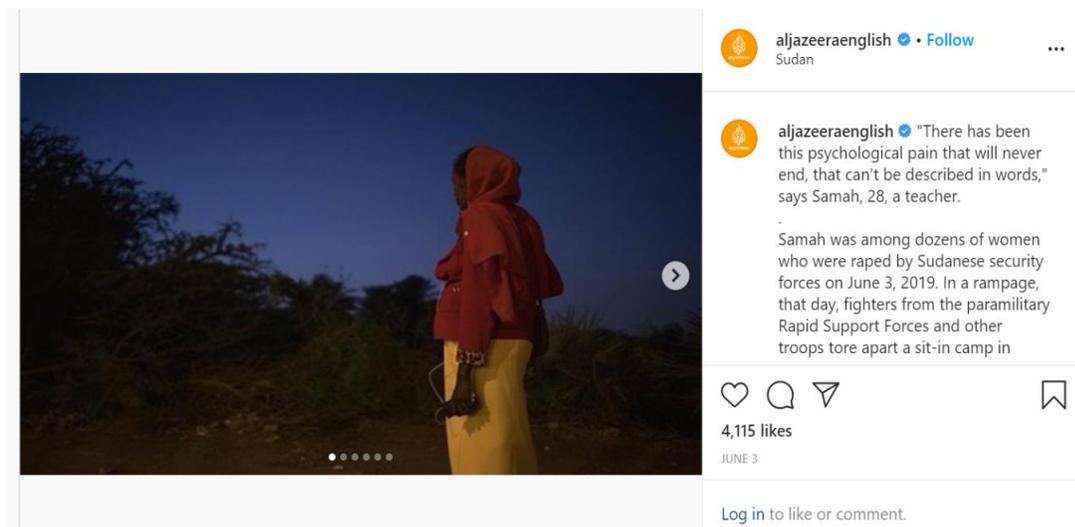
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<sup>44</sup> KII35, Local CSO.

The above Instagram post, which memorializes the names of the martyrs of June 3, is estimated to have reached more than 40,000 users.



Memorialization of survivors of sexual violence during the June 3 crackdown also gained significant attention and engagement online. The post below reached more than 40,000 users and was liked more than 4,000 times.



#### 4.2.4 TRUTH SEEKING

Overall, understanding and awareness of truth commissions as a transitional justice measure was low amongst the general public sample. Many had never heard of such a commission and very few thought that it could be effective in addressing needs for justice in Sudan. Even amongst KIs, there was no broad sentiment that a South African style truth commission is a priority for Sudan, though several noted that truth seeking could be part of the suite of measures implemented. This perception could change over time through public education, but at the moment the concept has little currency amongst the general public.

# 5. RECOMMENDATIONS

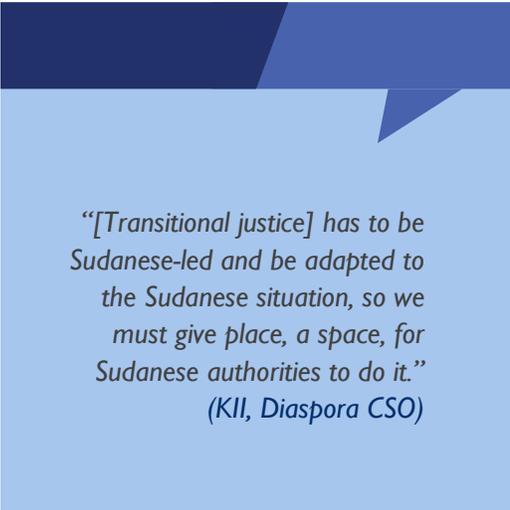
## RESEARCH QUESTION 3

**Of the conditions (transitional justice measures) identified, which, if any, can and should be undertaken by the transitional government?**

While one of the key purposes of the research was to provide actionable information to the Sudanese government, this section also highlights recommendations for other actors who seek to propel Sudan’s process of democratic transition forward. While these recommendations do highlight roles for development and diplomatic actors, one of the key findings of this study was that any action on transitional justice must be the outcome of a process of transparent and inclusive consultation with the Sudanese people, especially those most affected.<sup>45</sup>

Transitional justice policies, strategies and processes must also respect the role of the current government in leading transitional justice efforts as specified in the Transitional Constitutional Charter.

The recommendations below reflect the most salient themes that emerged from the data. These recommendations do not claim to be comprehensive or to address every action that needs to be taken in Sudan in relation to transitional justice implementation, but instead reflect the aspirations and recommendations that emerged from the desk review and qualitative data collection.



<sup>45</sup> E.g., KII08, Diplomatic Mission; KII10, Diaspora CSO; KII12, Diaspora CSO; KII14, Local CSO.

## 5.1 TO SUDAN'S TRANSITIONAL GOVERNMENT

**The following recommendations are intended to be implemented in the shorter term:**

- Prioritize dealing effectively with the June 3 massacre investigation through a credible, comprehensive, and inclusive process that privileges involvement of victims, specifically including victims of sexual and gender-based violence, and results in clear attribution of responsibility for violations.
- Led by the Ministry of Justice, reexamine pending legislation in relation to transitional justice processes and structures to ensure public participation and input from all relevant stakeholders into the process.
- Establish the Transitional Justice Commission after passing the law as specified under the Transitional Constitutional Charter after consultation and agreement with civil society stakeholders.
- Develop a strategy of capacity-building for the Sudanese judiciary and criminal justice system, aligned with a strategy on engagement with the ICC.
- Develop a strategy of cooperation with the ICC based on the principle on complementarity so as to prosecute Darfur crimes.
- Engage actively with the African Union and other international institutions to negotiate a package of technical support on key transitional justice priorities, such as the June 3 massacre investigation and justice sector reform, that will enhance capacity of Sudan's institutions while also enhancing public confidence in ongoing processes.
- Led by the appropriate line ministry, urgently begin a process to review and revise laws and policies on freedom of expression and internet censorship in response to public dissatisfaction.

**The following recommendations are intended to be implemented in the longer term:**

- Ensure that any ongoing or future trials of high-profile perpetrators proceed in a public, transparent manner enabling all interested Sudanese to monitor the proceedings.
- Continue demonstrating commitment to the aspirations of the Sudanese people for a completely civilian-led government.
- Given their strong link to transitional justice, review processes and procedures for broad stakeholder inclusion in the Juba Peace processes.
- Led by the appropriate line ministry, recognize the link between economic reform and the concept of justice in the minds of the Sudanese people and take concrete steps towards ensuring that all Sudanese can meet their daily needs.

- Led by the Ministry of Justice, initiate a process within government to enhance the understanding of the role that multiple ministries can, and should, play in the implementation of holistic transitional justice, such a provision of rehabilitative and mental health services or land redistribution and restitutions programs.
- Led by a Transitional Justice Commission established in line with the parameters of the Transitional Constitutional Charter and the aspirations of the people, undertake structured public consultations on the goals, priorities, and structures of transitional justice:
  - Consultations must prioritize victims' voices and inclusion of all relevant stakeholder groups, specifically war-affected populations, highly-vulnerable groups such as women, children and internally displaced persons, refugees as well as those targeted by the former regime for torture and other human rights and international humanitarian law violations; and
  - Practices which facilitate and promote the participation of women and victims of sexual and gender-based violence (both men and women) must be adopted.
- Led by a Transitional Justice Commission established in line with the parameters of the Transitional Constitutional Charter and the aspirations of the people, reflect on and draw from past experiences of peace and transitional justice in Sudan and other countries in the region, including best practices and prior failings.
- Demonstrate commitment to a victim-centered transitional justice process through prioritizing consultations on a reparation program for the most vulnerable victims, specifically war-affected populations, highly-vulnerable groups such as women, children and displaced persons, as well as those targeted by the former regime for torture and abuse.
- Structure consultations so as to generate actionable steps on priority components of reparations including compensation, rehabilitation, psychosocial support, communal compensation, and other areas such as memorials.
- Led by the Ministry of Justice in consultation with other relevant line ministries, continue progress towards institutional and law reforms that bring Sudan into compliance with international human rights obligations, standards and norms, in particular removal of immunity provisions for security officers and other military officers who commit torture and other crimes.
- Led by the appropriate line ministry, design a process to review diversity and inclusion in the civil service and other key employment sectors in Sudan with the goal of ensuring equal opportunity for women, youth, persons with disabilities, and marginalized regional and ethnic communities.
- Ensure that consultations on comprehensive reform of all law enforcement authorities such as police, public prosecution institutions, security services, and prison systems are a component of public consultation in relation to transitional justice role in reforming such institutions.
- Led by the Ministry of Labor and Social Development, continue progress toward full implementation of the National Action Plan on Women, Peace and Security pertaining to UNSCR 1325, and ensure allocation of sufficient resources to the plan's implementation.

- Proceed with caution in relation to the application of traditional justice mechanisms in Sudan's transitional justice processes, recognizing that many Sudanese have expressed strong concerns about their co-optation by the previous regime and their applicability in the post-revolution period and their gender sensitivity

## 5.2 TO SUDANESE CIVIL SOCIETY

- Continue building networks to enhance coordination within civil society to provide timely, structured input to government bodies and transitional justice processes and structures.
- Commend the government for positive steps in relation to transitional justice progress, while maintaining vigilance and acting as a watchdog to hold government accountable as a duty-bearer.
- Continue to ensure inclusion of marginalized groups, specifically women, children, and regional and ethnic minorities in all relevant activities and consultations.
- Actively engage with colleagues from other countries that have undergone transitional justice processes to share experiences and lessons learned on what capacities are needed, how to work effectively with government, and how to build networks within civil society and among victims.
- Draw on resources in the diaspora to complement capacities within Sudan's domestic civil society and continue to build strong alliances with diaspora groups to amplify advocacy on transitional justice concerns.

## 5.3 TO THE INTERNATIONAL COMMUNITY

- Actively monitor the ongoing legislative process related to transitional justice and encourage the government at every opportunity to engage broadly and ensure consultation with all relevant stakeholders before finalizing any law of establishing any commission.
- Amplify messages from civil society and victim representatives that call for changes to the *Independent National Committee to investigate the crackdown and killings of peaceful civilians during the sit-in in front of the army headquarters in Khartoum on June 3, 2019* regarding (1) its approach towards investigating the crackdown and killings of peaceful civilians during the sit-in of June 3, (2) the manner in which it conducts its operations, with a focus on making its processes more victim-centered and transparent; and (3) improvements to ensure the committee complies with international standards on investigations of human rights violations.
- Encourage and facilitate the government's development of a comprehensive strategy for engagement with the ICC, while recommending that such a strategy includes mechanisms to transform Sudan's judiciary to improve capacity and integrity.
- Encourage and facilitate government outreach to regional institutions such as the African Union to develop a plan for technical support and capacity-building assistance on transitional justice.

- Encourage all Sudanese government ministries to actively engage with, and support, the development of a holistic transitional justice process; amplify the message that transitional justice will require a whole-of-government process, and is not simply the project of one ministry.
- Make funding and support contingent, or conditional, on concrete action towards transitional justice processes and structures that are driven by genuine consultation and wide participation.
- Facilitate the engagement of Sudanese civil society organizations with their counterparts in countries that have undergone transitional justice processes to support the exchange of ideas and best practices.
- Proceed with caution in relation to the application of traditional justice mechanisms in Sudan's transitional justice processes, recognizing that many Sudanese have expressed strong concerns about their co-optation by the previous regime and their applicability in the post-revolution period and their gender sensitivity.

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## ANNEX I. PARTICIPANT DEMOGRAPHICS

**Table 2. IDI Respondents Characteristics**

State	Sex	Youth	Self-identified Victims	Total
Blue Nile	3 Female/ 4 Male	3	4	7
Central Darfur	2 Female/ 4 Male	2	4	6
East Darfur	4 Female/ 3 Male	2	4	7
Gedaref	2 Female/ 4 Male	1	2	6
Gezira	5 Female/ 6 Male	3	5	11
Kassala	2 Female/ 4 Male	1	3	6
Khartoum	6 Female/ 13 Male	4	12	19
North Darfur	3 Female/ 4 Male	2	2	7
North Kordofan	4 Female/ 5 Male	3	5	9
Northern	2 Female/ 5 Male	-	3	7
Red Sea	3 Female/ 6 Male	2	5	9
River Nile	3 Female/ 5 Male	1	4	8
Sennar	2 Female/ 4 Male	1	3	6
South Darfur	4 Female/ 8 Male	4	5	12
South Kordofan	3 Female/ 4 Male	1	4	7
West Darfur	1 Female/ 6 Male	1	5	7
West Kordofan	3 Female/ 3 Male	-	4	6
White Nile	2 Female/ 4 Male	-	3	6
<b>TOTALS</b>	<b>Female 54 (37%)</b> <b>Male 92 (63%)</b>	<b>31 (21%)</b>	<b>77 (53%)</b>	<b>146</b>

**Table 3. FGD Participant Characteristics**

State	Group Label	Locality	Sex	Ages	No. of participants
<b>Kassala</b>	Woman	Kassala	5 Female	35 - 50	5
	Youth	Kassala	2 Female/ 3 Male	20 - 30	5
	PWDs	Wadshriefi	2 Female/ 3 Male	25 - 45	5
	IDPs	Wadshriefi	3 Female/ 2 Male	20 - 45	5
<b>Red Sea</b>	Woman	Greek region	3 Female	25 - 35	3
	Youth	Port Sudan	4 Male	20 - 30	4
	PWDs	Port Sudan	1 Female/ 3 Male	30 - 40	4
<b>South Darfur</b>	Woman	Kass	5 Female	30 - 40	5
	Youth	Nyala	2 Female/ 3 Male	20 - 30	5
	PWDs	Nyala	1 Female/ 5 Male	30 - 40	6
<b>North Darfur</b>	Woman	El Fashir	5 Female	35 - 40	5
	Youth	El Fashir	1 Female/ 4 Male	20 - 30	5
<b>East Darfur</b>	Woman	Al-Daen	4 Female	25 - 45	4
	Youth	Al-Daen	4 Male	23 - 30	4
	PWDs	Al-Daen	3 Male	21 - 35	3
<b>Total</b>	<b>15</b>		<b>34 Female 34 Male</b>		<b>68</b>

**Table 4: List of KII Participant Organizations**

Alliance of Civil Forces
Amnesty International
Committee on Investigation of June 3 Massacre
CSSF Sudan and South Sudan
Center for the Study of Violence and Reconciliation
Darfur Bar Association
Darfur Women Action Group
End Impunity Organization
International Federation for Human Rights (FIDH)
French Embassy in Khartoum
Deutsche Gesellschaft für Internationale Zusammenarbeit (GIZ)
Global Partners Governance
Human Rights Watch
Intergovernmental Authority in Development
Institute for Security Studies
Al-Khatim Adlan Center for Enlightenment (KACE)
Ministry of Interior
Ministry of Justice
Ministry of Labour and Social Development, Gender Directorate
Paralegal & Human Rights Centre
People's Legal Aid Center
Redress
Sudanese Organization for Research and Development (SORD)
Sudan Bar Association
Sudan Doctors Union UK
Sudan Human Rights Network
Sudan Professionals Association
Sudanese American Democratic Alliance
Sudanese American Engineers Association
Sudanese Congress Party
Sudanese Diaspora Network
Sudan Social Development Organization (SUDO)
United Nations Office on Drugs and Crime (UNODC)
Waging Peace

## ANNEX 2: REGIONAL INFORMATION FROM THE DESK REVIEW

### REGIONAL PERCEPTIONS – DARFUR

#### KEY FINDINGS

- Most research on victim perceptions of justice for the crimes committed in Darfur has been undertaken with refugees in Chad.
- Transitional justice in Darfur is inextricably linked with the Juba Peace Talks, however there has been little transparency and victim participation in the process. Substantive participation of Darfuri women has been a particular oversight.
- Current data about Darfuris' perceptions of compensation priorities, amnesty, land rights, intercommunity reconciliation, and traditional reconciliation methods is a gap in the literature.

The conflict in Darfur is estimated to have resulted in the deaths of 300,000 and the forced displacement of some 2.6 million people.<sup>46</sup> Ongoing since 2003, crimes in Darfur have been described as genocide, war crimes, and crimes against humanity, and are being pursued by the ICC.<sup>47</sup> Though all parties to the conflict have been accused of atrocities, the majority of crimes are attributed to government-sanctioned Arab militias, in particular the Janjaweed. Crimes include, but are not limited to large-scale rape—as well as other forms of SGBV—against women and girls, as well as boys and men, abduction, slavery, degradation, rape of children by government-affiliated soldiers, and forced displacement.<sup>48 49 50</sup> In addition, and despite the ongoing peace negotiations, local media regularly report the continued abuses of military, paramilitary, and militia forces against vulnerable Darfuris.<sup>51</sup>

The earliest attempt at peace in the region was the Darfur Peace Agreement (DPA) of 2006. The DPA included agreements on power-sharing, militia demilitarization, wealth-sharing, and a Darfur status referendum.<sup>52</sup> In terms of transitional justice measures, the DPA called for the creation of bodies to resolve land disputes and other harms connected to the conflict, including physical and mental disability and economic compensation. Of the latter, the DPA included some direction related to reparations,

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<sup>46</sup> “Darfur death toll rises to two-year high in Sudan.” *BBC World News: Africa*. 7 June 2010, <https://www.bbc.com/news/10259604>.

<sup>47</sup> “Darfur, Sudan: Situation in Darfur, Sudan.” *International Criminal Court*, ICC-02/05, <https://www.icc-cpi.int/darfur>.

<sup>48</sup> Curry, A. “Sudanese wield rape as a weapon of war.” *NBC News*, 30 November 2006, [www.nbcnews.com/id/15718844/ns/nbc\\_nightly\\_news\\_with\\_brian\\_williams/t/sudanese-wield-rape-weapon-war/](http://www.nbcnews.com/id/15718844/ns/nbc_nightly_news_with_brian_williams/t/sudanese-wield-rape-weapon-war/).

<sup>49</sup> Spielmann, P. “Darfuri Women Report Ominous Pattern of Rape.” *The Washington Post*, 31 May 2009, [www.washingtonpost.com/wp-dyn/content/article/2009/05/30/AR2009053002249.html](http://www.washingtonpost.com/wp-dyn/content/article/2009/05/30/AR2009053002249.html).

<sup>50</sup> Sliwa, M. “Captives recount boy rape in Sudan.” *Raw Story*. 2004, <http://www.rawstory.com/exclusives/maria.htm>.

<sup>51</sup> “North Darfur villagers flee militia attack.” *Radio Dabanga*. 5 January 2020, <https://www.dabangasudan.org/en/all-news/article/north-darfur-villagers-flee-militia-attack>.

<sup>52</sup> “Main parties sign Darfur accord.” *BBC News*. 5 May 2006, <http://news.bbc.co.uk/2/hi/africa/4978668.stm>.

defined as “compensation” to those described as “war affected”.<sup>53</sup> The DPA also proposed the use of traditional dispute resolution mechanisms, which generally emphasize reconciliation. However, the DPA was only signed by the Sudan Liberation Movement/Army-Minni Minnawi faction (SLM/A-MM) and rejected by both the Justice and Equality Movement and the Sudan Liberation Movement/Army-al Nur (SLM/A-al Nur). The 2011 Doha Document for Peace in Darfur (DDPD), signed with the Liberation and Justice Movement, called for a referendum to determine Darfur’s status and established the Darfur Regional Authority to oversee the region in the interim. It also provided for power-sharing at the national level and a compensation fund for conflict victims.<sup>54</sup> The DDPD faced significant implementation challenges following its signing, including lack of financial support, incorporation of the agreement into the constitution, and issues related to security arrangements.<sup>55</sup>

As part of the broader Sudanese Peace Process, the Darfur Track of the Juba Peace Talks is nearing completion as of June 2020, following the adoption in December 2019 of a framework agreement for the negotiations among parties.<sup>56</sup> Members of the SRF negotiations have expressed that the current negotiations have gone beyond the scope of either the DPA or DDPD. The agreements in the framework to some extent reflect public demands for justice, however, broad consultative participation in the peace process has been lacking.

Transitional justice in Darfur will be extensive and of a broad scope, though the negotiation framework seeks to tackle the root causes of the conflict at both the national and Darfur levels. National-level issues include regional identity, the relationship of state and religion, public freedoms and human rights, constitution-making processes and power- and wealth-sharing, as well as security reform. Darfur-level issues include the administrative situation during the transitional period; power- and wealth-sharing at regional and state levels; land ownership (including the matters of internally displaced persons (IDPs) and refugees, as well as nomadic and herder populations); compensation; transitional justice, accountability, and reconciliation; development and reconstruction; security reform and arrangement, including incorporation of militias and amnesties; and intraregional dialogue among communities in Darfur.<sup>57</sup>

## VICTIM PERSPECTIVES

The last large-scale research study on victims’ perceptions of transitional justice in Darfur was conducted in 2009 among refugees in Chad.<sup>58</sup> This study provides an important benchmark to examine changes over time in the perspectives of Darfuris.

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<sup>53</sup> Baldo, Suleiman, and Lisa Magarrell. International Center for Transitional Justice, 2007, *Reparation and the Darfur Peace Process: Ensuring Victim’s Rights*, [www.ictj.org/sites/default/files/ICTJ-Sudan-Darfur-Reparations-2007-English\\_0.pdf](http://www.ictj.org/sites/default/files/ICTJ-Sudan-Darfur-Reparations-2007-English_0.pdf), pp. 3-4

<sup>54</sup> “Doha Document for Peace in Darfur (DDPD).” 2011, <https://www.internal-displacement.org/sites/law-and-policy/files/sudan/DDPD-English.pdf>.

<sup>55</sup> “Implementation of Darfur peace agreement hampered’: DRA Minister.” *Radio Dabanga*, 24 March 2014, <https://www.dabangasudan.org/en/all-news/article/implementation-of-darfur-peace-agreement-hampered-dra-minister>

<sup>56</sup> “Sudan, armed groups sign framework agreement for peace in Darfur.” *Sudan Tribune*. 29 December 2019, <https://sudantribune.com/spip.php?article68772>.

<sup>57</sup> Ibid.

<sup>58</sup> “Darfuri Voices: Documenting Darfuri Refugees’ Views on Issues of Peace, Justice, and Reconciliation.” 24 hours for Darfur, July 2010.

The research examined conditions for peace as well as opinions on trials, compensation, amnesty, land rights, and traditional justice mechanisms among more than 2,000 respondents in refugee camps in eastern Chad.

Some of the required conditions for peace that were identified by refugees, including the arrest of Omar Al Bashir and the unification of the rebel movements, have come to pass. However, respondents also believed that individual victim compensation and development in Darfur were important for the maintenance of lasting peace. Related to reconciliation, more than half of respondents thought that tribes whose members committed crimes in Darfur bear *collective* responsibility whereas one-third believed that only the individuals who committed crimes should be held responsible. More than 90% of participants reported that perpetrators should be held accountable through criminal trials in international courts. The research revealed almost no support for amnesty, even for low-level combatants.

Considering traditional justice mechanisms, nearly 90% of interviewees considered those to be very important for ensuring sustainable peace.<sup>59</sup> However, almost none of the respondents believed they would be sufficient for dealing with the crimes that occurred, because those mechanisms were never intended to deal with violations on the scale that occurred in Darfur.

Virtually all respondents stated that victims deserved to be compensated for their losses during the conflict, strongly agreeing that this compensation should be given directly to individuals and to communities in the form of health and education projects. Reflecting the critical importance of land rights as a trigger of conflict in Darfur, a minority of respondents supported giving or sharing land with landless tribes. There was a widespread belief that tribes considered to have come to Darfur from elsewhere should be made to leave.<sup>60</sup>

Tensions remain throughout Darfur, including reports of attacks on villages, followed by pillaging, displacement, assault, and murder.<sup>61</sup> While local leaders express hopefulness that the peace agreement (which reinstates land and *hawakir* rights) will solve such disputes, the fact that these attacks seem to continue along ethnic lines highlights the need for restorative transitional justice mechanisms to address underlying tensions and grievances beyond land use.

Despite a dearth of literature in the post-2010 space, past studies of PTSD, depression, and other mental ramifications of conflict on Darfuris suggests very high rates of PTSD among the population, including IDPs in Fasher and Nyala (54%),<sup>62</sup> Juba (36%),<sup>63</sup> and West Nile region (46-48%),<sup>64</sup> and displaced children living in Southern Darfur (75%).<sup>65</sup> Significantly, studies indicate women have higher levels of PTSD than men,

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<sup>59</sup> “Darfuriian Voices: Documenting Darfuriian Refugees’ Views on Issues of Peace, Justice, and Reconciliation.” 24 hours for Darfur, July 2010.

<sup>60</sup> Ibid.

<sup>61</sup> “North Darfur villagers flee militia attack.”; Gunmen kill displaced farmer in South Darfur.” *Radio Dabanga*. 17 June 2020, <https://www.dabangasudan.org/en/all-news/article/gunmen-kill-displaced-farmer-in-south-darfur>.

<sup>62</sup> Hamid, A. and Musa, S. “Mental health problems among internally displaced persons in Darfur.” *International Journal of Psychology*, Volume 45, Issue 4. 25 May 2010. <https://doi.org/10.1080/00207591003692620>

<sup>63</sup> Roberts, B. et al. “Post-conflict mental health needs: a cross-sectional survey of trauma, depression and associated factors in Juba, Southern Sudan.” *BMC Psychiatry*, 9, 7. 2009. <https://doi.org/10.1186/1471-244X-9-7>

<sup>64</sup> Karunakara, U. et al. “Traumatic events and symptoms of post-traumatic stress disorder amongst Sudanese nationals, refugees and Ugandans in the West Nile.” *African health Sciences* Vol. 4(2). 2004.

<sup>65</sup> Morgos, D. “Psychosocial effects of war experiences among displaced children in Southern Darfur.” *OMEGA*, Vol. 56(3) 229-253, 2007-2008. doi: 10.2190/OM.56.3.b

with the study in Juba finding that PTSD rates were 42.5% among women and 29.7% among men;<sup>66</sup> literature suggests the experience of rape may be a prevailing cause of this, given it is one of the most adverse experiences, with roughly half of all victims developing chronic PTSD.<sup>67</sup>

In the context of transitional justice, the prevalence of PTSD and depression, among others, must be incorporated into implementation strategies. Studies have shown that “people with PTSD have less positive attitudes towards trials for people suspected of atrocities, less positive beliefs in a communal or interdependent vision of the future, have greater feelings of revenge, are less willing to reconcile, and are less likely to report satisfaction with punishment of perpetrators, apologies by perpetrators and remunerations for suffering.”<sup>68</sup> In the context of Darfur—and as is evident in many other regions of Sudan—PTSD is not only prevalent but has likely become generational. In this context, a variety of standard transitional justice mechanisms might face unique implementation challenges, such as victims refusing to accept amnesties, and psychosocial support systems should be considered in all planning.

Results of a fact-finding mission conducted by the International Federation for Human Rights (FIDH) and African Centre for Justice and Peace Studies (ACJPS) were published in 2019. The study included interviews with approximately 100 victims of SGBV residing in Chad, including both men and women. The recommendations in the report reflect the justice demands of survivors, as well as input from lawyers handling SGBV cases:

- Full inclusion of victim/survivors in decision-making on justice mechanisms
- Reform of Sudanese criminal law to align with international standards, in particular, removal of immunity provisions and inclusion of command responsibility doctrine
- Criminalize all forms of sexual violence
- Structural reform of the judiciary, including enhancing independence, ensuring adequate resources for the criminal justice system, recruiting more women to work in the justice and security sector, and ensuring avenues for victim participation in trials
- Enhanced outreach and education to refugees, especially refugee women, many of whom had no knowledge of the ICC and other justice processes related to Darfur<sup>69</sup>

Other groups have also documented demands of victims in Darfur. Women’s groups, such as DWAG, have collaborated with diverse experts in the field of transitional justice to put forward a strategic framework reflecting the perspectives and voices of Darfuri women. In September 2019, DWAG submitted a Strategic Framework for Sustainable Change in the Republic of Sudan, which detailed immediate, short-term, and long-term needs among victims in the regions of Darfur, the Two Areas, and Eastern Sudan. Those include:

- Cessation of government attacks to ensure the safety and security of IDPs;
- Establishment of selection criteria and mandatory qualifications of interim government members;
- Comprehensive DDR (disarmament, demobilization, and reintegration);
- Creation of an enabling environment for return, including associated infrastructure development;

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<sup>66</sup> Roberts, B. et al.

<sup>67</sup> Karunakara, U. et al.

<sup>68</sup> Deng, D. et al, “Search for a New Beginning: Perceptions of Truth, Justice, Reconciliation and Healing in South Sudan.” *South Sudan Law Society*. June 2015, p. vii

<sup>69</sup> FIDH & ACJPS, Will There Be Justice For Darfur? Persisting impunity in the face of political change: Fact-finding mission report, December 2019.

- Peace negotiations, including incorporation of women’s substantive inclusion in decision-making processes and within the legislature/executive;
- Inclusive and proportional representation of historically excluded and marginalized groups;
- Criminal and financial accountability;
- Long-term human rights protections, rule of law restoration and reform;
- Land and property rights;
- Genocide recognition;
- Transitional justice; and
- Development and reconstruction.<sup>70</sup>

Many of the aforementioned victim needs are included in the Juba Peace Talks framework agreement. However, the clear and most pressing sentiment among Darfuris is a need for justice.

## REGIONAL PERCEPTIONS – EASTERN SUDAN

### KEY FINDINGS

- Little research has examined the perceptions of individuals and communities in Eastern Sudan in relation to justice for past atrocities.
- Existing literature highlights the Port Sudan Massacre, the ongoing Juba Peace Talks, as well as recent intercommunal clashes in the region as key transitional justice concerns. Examination of perceptions on these issues will be an important component of Phase II.

The desk review did not reveal any available research on transitional justice perceptions in Eastern Sudan. However, key transitional justice issues emerged through other sources. Demands relating to transitional justice in Eastern Sudan revolve around two main elements: (1) the Port Sudan Massacre<sup>71</sup> and (2) the ongoing Juba Peace Talks.

Regarding the 2005 Port Sudan Massacre, the Eastern Sudan Peace Agreement (ESPA) stated that “the political system in the Sudan shall ensure the respect, protection and promotion of human rights and

<sup>70</sup> “Strategic Framework for Sustainable Change in the Republic of Sudan.” *Darfur Women Action Group*. September 2019, [http://www.darfurwomenaction.org/wp-content/uploads/2019/10/Strategic-framework-for-Sudan-English.pdf?fbclid=IwAR2eTMh4kT\\_xZLub7tdpRpYe-f\\_9cljaUtlU7UUwh9OtnlXRi08ZiHxkILE](http://www.darfurwomenaction.org/wp-content/uploads/2019/10/Strategic-framework-for-Sudan-English.pdf?fbclid=IwAR2eTMh4kT_xZLub7tdpRpYe-f_9cljaUtlU7UUwh9OtnlXRi08ZiHxkILE).

<sup>71</sup> On 26 January 2005, a group of protestors, who are believed to be from the Beja Congress, organized a peaceful demonstration in Port Sudan and presented a certain number of demands to the Red Sea State Governor. They demanded: recognition of the BC-Armed struggle, based in Asmara, as the legitimate representative of the Beja people; a power and wealth sharing reassessment, and asked the Governor to provide the Beja people in Port Sudan and throughout the whole East with jobs. On January 29, a march was organized, and police and Special Forces from Khartoum started firing indiscriminately into Beja homes and at people dressed in traditional Beja clothing. 22 people were killed, only two of whom were not Beja, and hundreds of others were injured<sup>71</sup>. On the same day, other protests were held in Kassala and other cities in the East, and the Government detained more than 150 members of the Beja Congress throughout the region. (Sudan: Saving Peace in the East. *Africa Report*, n° 102. 36.)

fundamental freedoms for all citizens”<sup>72</sup> and that “the Parties reaffirm their commitment to respect and promote human rights and fundamental freedoms as detailed in the INC, and in international human rights covenants ratified by the Government of Sudan.”<sup>73</sup> However, this has not been followed by concrete action and, despite the Eastern Front’s call for an independent investigation to address the massacre, transitional justice has been completely shelved.

The previous regime did attempt to address the problem: a pro-NCP committee that was formed in February 2005 offered the victims’ families a “traditional” compensation in the form of *diyya* (of which 16 accepted). And in 2015, despite a 2011 statement from the Governor of the Red Sea State asserting that there were no legal grounds for criminal charges against the “regular forces”,<sup>74</sup> the Prosecution Service of Port Sudan agreed to reopen the file and the Constitutional Court filed a case against those involved.<sup>75</sup>

## VICTIM PERSPECTIVES

Despite these attempts, Eastern Sudanese people commemorate “the martyrs” and call for justice and accountability for the alleged perpetrators of the Massacre,<sup>76</sup> going as far as requesting international justice actors to intervene.<sup>77</sup> Responding to regional sentiment, the Attorney General established a Committee of Investigation to investigate the Port Sudan Massacre in March/April 2020. Understanding perceptions of this committee would be a key focus in Phase II.

Despite regularly facing violations, such as harassment, arbitrary detention, ill treatment, and sometimes torture,<sup>78</sup> accountability remains among the main priorities of advocacy groups in Eastern Sudan. In 2009, victims’ families and Beja youth and students established the High Committee for 29<sup>th</sup> January Martyrs, which is widely popular among the Eastern Sudanese and, at present, has thousands of supporters. The Eastern Alliance’s founding declaration demands “an independent and just investigation of the Port Sudan massacre” and to bring “to justice the perpetrators of this crime”,<sup>79</sup> It stresses the importance of a “fair trial in accordance with the provisions of international human rights law of perpetrators of war crimes, ethnic cleansing, and human rights violations”.<sup>80</sup>

The second key transitional justice element in Eastern Sudan focuses on the Juba Peace Talks. An agreement on the Eastern Track was finalized and signed in February 2020<sup>81</sup> and addressed political

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<sup>72</sup> ESPA, article 1, 4.

<sup>73</sup> ESPA, article 6, 13.

<sup>74</sup> International Crisis Group (November 2013). Sudan: Preserving Peace in the East. *Africa Report*, n°209. 36

<sup>75</sup> “Court: File against culprits ‘Port Sudan Massacre’”, *Dabanga Sudan*, 7 July 2015.

<sup>76</sup> “Beja determined to claim their rights over Port Sudan massacre”, *Dabanga Sudan*, 30 January 2017; “Port Sudan Massacre commemoration calls for justice”, *Dabanga Sudan*, 30 January 2018; “Thousands commemorate victims of Port Sudan massacre”, *Sudan Tribune*, 29 January 2019; “2005 Port Sudan Massacre commemorated”, *Dabanga Sudan*, 30 January 2020.

<sup>77</sup> “Eastern Sudan group urges ICC to investigate ‘Port Sudan Massacre’”, *Sudan Tribune*, 29 January 2017; “Sudan: Those Responsible for Indiscriminate Port Sudan Killings Must be Brought to Justice”, *Amnesty International*, press release, 31 January 2005.

<sup>78</sup> African Centre for Justice and Peace Studies, Defend, FIDH (April 2012). *Human Rights Violations in the Republic of Sudan: A Shadow Report to Sudan’s Fourth and Fifth Periodic Report to the African Commission on Human and Peoples’ Rights*. 29 p.

<sup>79</sup> “Final Declaration of the Eastern Front conference held in the liberated territories”, 29 March 2005, quoted by ICG (January 2006). Sudan: Saving Peace in the East. *Africa Report*, n°102. p 15/20.

<sup>80</sup> *Ibid.*

<sup>81</sup> “Govt, SRF groups sign Eastern Sudan agreement”, *Sudan Tribune*, 21 February 2020.

marginalization and the participation in politics of the Eastern Sudanese people. In addition, it gave the regions of Eastern Sudan more powers within the framework of the federal government system and stipulated the establishment of a reconstruction fund for better provision.<sup>82</sup>

The agreement has been widely criticized by many in Eastern Sudan.<sup>83</sup> Current perception information suggests that the accord is a replication of the ESPA and would, therefore, risk a similar failed implementation. The agreement includes many advantages for the Eastern Sudanese people, regarding development, education, health, provision of electricity and water, building of roads, reconstruction of war-affected areas, demobilization, and compensation for opposition fighters. However, transitional justice concerns and mechanisms have been largely left unresolved. For that reason, both the negotiations and the recent agreement on the Eastern Track do not enjoy popular support from the East regions.<sup>84</sup>

The people specifically demand the inclusion in the agreement of the recent and violent ethnic clashes that have erupted in various parts of Eastern Sudan, between people from Nuba ethnic groups from South Kordofan who settled in the East, and members of the Eastern Sudanese Beni Amer ethnic group. In particular, there has been conflict in Port Sudan and Kassala. Recent protests seek implementation of the first Eastern Sudanese tribal agreement signed in September 2019 in Port Sudan, and the ones that followed over the next few months.<sup>85</sup> In addition, they demand the implementation of judicial mechanisms to provide justice for the victims, accountability for any potential wrongdoers, and rules for coexistence in the region. The tribal agreement mentioned the establishment of a federal fact-finding commission and potential compensation, as well as holding reconciliation conferences.<sup>86</sup>

## REGIONAL PERCEPTIONS – ABYEI

### KEY FINDINGS

- Data focused on the perceptions of Abyei residents about transitional justice in Sudan is lacking in the literature.
- Existing information indicates that key transitional justice concerns include resolution of Abyei's status, inter-communal reconciliation, land rights, and traditional justice measures.

In May 2011, as South Sudan's referendum approached, the Sudanese Armed Forces seized control of Abyei, destroying civilian property and displacing over 100,000 of the Ngok Dinka people. The Comprehensive Peace Agreement (CPA) had also mandated a 2011 referendum for Abyei, which was never held. However, in October 2013, an "unofficial" self-determination referendum was held in the Abyei region, following the killing of the Paramount Chief of the Ngok Dinka by Misseriya gunmen. Though

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<sup>82</sup> "Sudan peace talks: Agreement on Eastern track finalized", *Dabanga Sudan*, 23 February 2020.

<sup>83</sup> "Eastern Sudanese peace accord severely criticized", *Dabanga Sudan*, 28 February 2020.

<sup>84</sup> "Eastern Sudanese oppose the peace talk on East Track", *Dabanga Sudan*, 18 February 2020.

<sup>85</sup> "Beni Amer and Nuba sign reconciliation deal under threat", *Sudan Tribune*, 8 September 2019; "PM Hamdok in Kassala for Beni Amer-Nuba reconciliation", *Dabanga Sudan*, 3 March 2020; "Reconciliation accord aims to end tribal strife in Kassala", *Dabanga Sudan*, 19 May 2020.

<sup>86</sup> "Nuba and Beni Amer sign accord in Port Sudan", *Dabanga Sudan*, 9 September 2019.

the election was condemned by the AU, US, and even South Sudan, thousands voted. According to the final results, 99.9% of voters had chosen unification with South Sudan.<sup>87</sup>

The area remains a source of tension, with the most recent attack occurring in January 2020.<sup>88</sup> Transitional justice needs in the Abyei region will center around land and migration issues, including displacement, herder-farmer relations, and rights to natural resources.

## VICTIM PERSPECTIVES

A 2015 study of perceptions of transitional justice in South Sudan included respondents from Abyei, given their close geographic and cultural ties to South Sudan.<sup>89</sup> Though the 2015 study findings<sup>90</sup> specifically examined the conflict *within* South Sudan, they still provide insight on perceptions among people from Abyei that can inform the Sudanese peace processes. According to the findings, Abyei respondents overwhelmingly supported reparations (89%), at both the community and individual level, as well as in the form of monetary compensation and development initiatives. A similar proportion supported memorialization initiatives as a transitional justice mechanism (90%); the most-selected types of memorialization among the group were the construction of monuments, the establishment of a national day of remembrance, and the development of teaching materials for schools.<sup>91</sup>

Sixty percent also thought it was best to “talk about what happened” to them, while a third (33%) believed it was preferable to “put it behind us”. This is despite the fact that a very high proportion (90%) of Abyei respondents were unaware of the purpose of a truth commission. Notably, of those participants who would rather leave the past in the past, 61% responded that they felt talking about things would cause more violence. Meanwhile, among those who supported open discussion, 54% felt it could help prevent violence, while roughly a third each thought it was a way to honor victims (35%), establish a historical record (30%), or achieve reconciliation (29%).<sup>92</sup>

Regarding amnesty, Abyei displayed very negative views: only 22% supported amnesty, though that figure rose to 39% if amnesty were necessary to secure peace.<sup>93</sup> This suggests that, at best, just over a third of people from Abyei would view amnesty as a legitimate justice mechanism, likely reflecting their protracted displacement and lack of meaningful reparations. The study found that 41% of all surveyed participants exhibited symptoms consistent with PTSD. These figures are on-par with findings from other contexts of genocide, including Darfur, and are likely easily extrapolated to the majority of the victims discussed in this paper. As previously discussed, PTSD can negatively impact receptiveness to a variety of transitional justice mechanisms, with the 2015 perception study confirming key aspects of this among the surveyed population. Specifically, those exhibiting PTSD symptoms were “less likely to say that peace talks[...] would help to resolve the conflict and were less likely to point towards togetherness, unity, healing and

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<sup>87</sup> “Abyei opts to join South Sudan in unofficial referendum.” *BBC Africa*. 31 October 2013, <https://www.bbc.com/news/world-africa-24761524>.

<sup>88</sup> Schlein, L. “UN Urges Calm After Deadly Attack in Disputed Abyei Border Area Between Sudan and South Sudan.” *VOA*. 25 January 2020, <https://www.voanews.com/africa/un-urges-calm-after-deadly-attack-disputed-abyei-border-area-between-sudan-and-south-sudan>.

<sup>89</sup> Deng, D. et al, “Search for a New Beginning: Perceptions of Truth, Justice, Reconciliation and Healing in South Sudan.” *South Sudan Law Society*. June 2015.

<sup>90</sup> The study did not provide disaggregations of Abyei respondents by key demographics.

<sup>91</sup> Deng, D. et al, *ibid*, p. 57.

<sup>92</sup> *Ibid*, pp. 46-48.

<sup>93</sup> *Ibid*, pp. 45-46.

therapy as necessary requirements for reconciliation.”<sup>94</sup> Further research in Phase II is proposed to update these perception findings.

Besides the study referenced above, little data has been collected on the perspectives of people from the Abyei region regarding the abuses that have occurred over time. Media reports from the region indicate that land disputes remain contentious among the Ngok Dinka and Misseriya who currently reside in the region, most likely due to unresolved farmer-herder issues.

While not implementing strict transitional justice measures, international humanitarian organizations are engaged in a variety of community cohesion, rule of law, and security reform initiatives in Abyei, which can be viewed as a foundation for future transitional justice initiatives and provide a guide to local reception of such measures, as detailed below.

In 2018, a joint Dinka-Misseriya post-migration conference was organized by the Food and Agriculture Organization, International Organization for Migration, and UNISFA to discuss issues with local leaders and members of the Joint Peace Committee. The Conference resulted in agreements to jointly undertake peace- and confidence-building activities in order to strengthen trust, peaceful coexistence, and economic interdependency. Leaders of the two groups also agreed to participate in initiatives to address resource scarcity, environmental issues, and security.<sup>95</sup>

UNISFA reports collaboration with the Joint Peace Committee in Abyei to hold weekly meetings of Ngok Dinka and Misseriya representatives, in support of intercommunity dialogue. Discussions at the meetings cover a variety of topics, including cases of murder, livestock rustling, blood money compensation, and seasonal migration issues. UNISFA also held a traditional leaders’ conference, which was attended by traditional leaders of both groups, as well as the Paramount Chiefs.<sup>96</sup>

The Force has taken steps to improve existing conflict-resolution arrangements, providing assistance to traditional judges in understanding and incorporating judicial procedures. UNISFA engagement with the Joint Traditional Court at Amiet led to local calls for the “review and reform of the current use of restorative justice principles involving payment of blood money, and to calls for their replacement with other means of punishment, including criminal prosecution of offenders to stem the increased criminality in the Area.”<sup>97</sup>

Despite the positive aspects of this model, UNISFA confirms a lack of women’s participation in decision-making processes, which the Force has tried to mitigate through regular consultations, meetings, and training sessions.

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<sup>94</sup> Deng, D. et al, “Search for a New Beginning: Perceptions of Truth, Justice, Reconciliation and Healing in South Sudan.” *South Sudan Law Society*. June 2015, p. vii.

<sup>95</sup> Office of the Spokesperson. “UNISFA hosts a joint Misseriya-Dinka post-migration conference.” *UNISFA*. 5 July 2018, <https://reliefweb.int/sites/reliefweb.int/files/resources/PR%2074.pdf>.

<sup>96</sup> “The Situations in Abyei: Report of the Secretary-General.” *UNSC, S/2020/308*, 16 April 2020 [https://www.un.org/ga/search/view\\_doc.asp?symbol=S/2020/308](https://www.un.org/ga/search/view_doc.asp?symbol=S/2020/308).

<sup>97</sup> *Ibid.*

There is also a general lack of information about the perspectives of key stakeholders and victims. Additional field work and consultation with victims is needed to understand ongoing needs and the extent to which the 2015 perception findings hold true and may impact transitional justice measures.

## REGIONAL PERCEPTIONS – TWO AREAS: SOUTH KORDOFAN (NUBA MOUNTAINS) AND BLUE NILE

### KEY FINDINGS

- Literature reflects a paucity of information on perceptions of residents of the Two Areas on transitional justice.
- Perceptions of self-determination would also be an important issue to investigate, given its importance in peace negotiations. The literature fails to identify whether, and to what extent, this is a key issue for the local population more broadly.

The conflict in the Two Areas region has been ongoing since the 1990s and is closely linked to the conflict that led to the independence of South Sudan in 2011. Government-directed violence in the Two Areas region has impacted an estimated 1.4 million Sudanese, forcibly displaced 800,000 people, and caused widespread, severe human rights violations.<sup>98 99</sup>

The two different armed groups entered the Juba talks with separate delegations, largely due to differing views regarding self-determination of the Two Areas as well as secularism and the relationship between religion and the state. Few details have been published regarding the content of the March 15, 2020 Political Document signing between the Sudanese Government and SPLM-N Agar, though it reportedly covers issues of governance, powers, and authorities in the Two Areas.<sup>100</sup> In May 2020, the Agar faction called for the establishment of an independent religious freedom commission in Sudan, to address the “systematic religious-based discrimination carried out by the former regime.”<sup>101</sup>

The El Hilu faction suspended talks for nearly two months over the topics of self-determination and secularism but announced in early June a framework to resume talks, starting with humanitarian issues and cessation of hostilities while leaving the more contentious topics for the final negotiation rounds. Despite criticism of the El Hilu faction’s emphasis on self-determination, Prime Minister Hamdok recently expressed support for such discussions, saying: “there should be no red lines for peace. Any issue, whether

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<sup>98</sup> Jal, E. “We must act to stop South Kordofan becoming the next Darfur.” *The Guardian*. 8 August 2011, <https://www.theguardian.com/global-development/poverty-matters/2011/aug/08/south-kordofan-preventing-next-darfur> <https://www.danmorrison.net/2011/07/18/sudan-the-uns-report-on-southern-kordofan/>; Phase II may also explore the role of traditional justice in Abyei and assess perceptions whether it is still a viable formula of TJ in terms of reparations to communities and how people perceive it.

<sup>99</sup> “South Kordofan and Blue Nile Country Report.” *Asylum Research Consultancy*. 1 June 2016, [https://www.ecoi.net/en/file/local/1304762/90\\_1464788859\\_arc20160601-sudan-south-kordofan-blue-nile.pdf](https://www.ecoi.net/en/file/local/1304762/90_1464788859_arc20160601-sudan-south-kordofan-blue-nile.pdf), p. 67

<sup>100</sup> “Sudan govt, SPLM-N initial Political Document on Two Areas”. *Radio Dabanga*. 15 March 2020, <https://www.dabangasudan.org/en/all-news/article/sudan-govt-splm-n-initial-political-document-on-two-areas>.

<sup>101</sup> CSW.

secularism, self-determination or self-government, should be discussed. If we address these issues with impartiality, we can put an end to the suffering of our people.”<sup>102</sup>

## VICTIM PERCEPTIONS

There is generally a lack of information about victim perspectives or needs, though truth-seeking and steps towards protecting and creating equity of cultural, ethnic, and religious identities are likely to be key demands in the region. Land and return rights as a result of forced displacement should also be a top priority considering ongoing displacement. Longstanding marginalization of the region, coupled with protracted conflict, will further require broad infrastructure rehabilitation or construction, ensuring access to basic and long-restricted services as well as a measure of reparation.

Truth-seeking and punitive measures will be important transitional justice mechanisms to explore in the region, given the countless human rights violations by the Al Bashir regime. Reported violations include jailing residents for giving food to rebels, imprisonment and torture without due process, and rates of detainment in the hundreds in a given village. According to the African Centre for Justice and Peace Studies, there are many detainee testimonials against the NISS, though there have been “no known prosecutions of NISS officers for torture or other ill-treatment.”<sup>103</sup>

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<sup>102</sup> “SPLM-N al-Hilu will resume peace talks with Sudan: Amun.” *Sudan Tribune*. 8 June 2020, <https://www.sudantribune.com/spip.php?article69445>

<sup>103</sup> *Asylum Research Consultancy*, pp. 88-89.

## ANNEX 3. TOOLS



TJ\_IDI Guide\_General  
Public.docx



TJ\_KII Guide\_Two  
Areas.docx



TJ\_KII  
Guide\_International Cr



TJ\_KII  
Guide\_Government.doc



TJ\_KII Guide\_Former  
Regime Officials.docx



TJ\_KII  
Guide\_Diaspora.docx



TJ\_KII Guide\_CSO  
Leaders.docx



TJ\_KII  
Guide\_Combatants.doc



TJ\_KII  
Guide\_Abyei.docx



TJ\_KII Guide\_Victim  
Groups.docx



TJ\_FGD  
Guide\_Darfur\_Women



TJ\_FGD  
Guide\_Darfur\_PWDs



TJ\_FGD  
Guide\_Darfur\_Youth.d



TJ\_FGD  
Guide\_Kassala\_Wome



TJ\_FGD  
Guide\_Kassala\_PWDs



TJ\_FGD  
Guide\_Kassala\_Youth



TJ\_FGD Guide\_Red  
Sea\_Women.docx



TJ\_FGD Guide\_Red  
Sea\_PWDs.docx



TJ\_FGD Guide\_Red  
Sea\_Youth.docx

## ANNEX 4. ANALYSIS FRAMEWORK

1) What are the variables that influence perceptions of transitional justice in Sudan?		2) Under what conditions (using what transitional justice processes) would people be willing to turn the page and move on? 3) Of the conditions (transitional justice processes) identified, which if any can be undertaken by the transitional government?	
<i>Transitional Justice Process Stakeholders</i>	<i>Disaggregation Variables</i>	<i>Transitional Justice Processes</i>	<i>Responsible Party to Undertake Transitional Justice Process</i>
Direct victims/survivors Indirect victims/survivors Direct perpetrators/ combatants Complicit/ indirectly responsible General public	Region (18 states + diaspora) Ethnicity Age Gender Level of education Livelihood/Profession Political affiliation Level of involvement during the 2019 revolution (or previous power transitions)	Amnesty Apologies Community-based/traditional justice mechanisms Formal prosecutions Investigations Memorialization Reconciliation Reparations <sup>104</sup> Truth-telling Vetting & Lustration	Transitional Government Formal Justice System Traditional/informal systems Civil society International community Perpetrators Sudanese public

<sup>104</sup> Reparations include a suite of options including restitution, compensation, rehabilitation and guarantees of non-repetition.