Rethinking Transitional Justice in Sudan

Drawing Lessons From the Transition Process and Finding an End to the War

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The war that has plagued Sudan since 15 April 2023 is accompanied by massive violations and abuses of international humanitarian law and international human rights law. Sudanese returning to their homes in Khartoum, which was recaptured by the army in late March, often find graves and decomposing bodies. The UN Fact-Finding Mission on Sudan, meanwhile, recently reported "a sharp rise in sexual and gender-based violence." The Biden administration in the United States even formally determined that war crimes, crimes against humanity, and genocide had taken place, a rare step. Sudan is no stranger to mass atrocities, as violence against civilians, including sexual violence and identity-based attacks on ethnic groups, have marked previous wars as well. Hardly any of the major perpetrators have faced justice.

Addressing this accumulated injustice has proven to be one of the most important stumbling blocs for previous peace and transition processes in Sudan and also remains a key obstacle now. Impunity with the persistence, and indeed rise, of alleged perpetrators is a key dimension of the current war. Many in Sudan associate transitional justice primarily with criminal justice instead of also addressing structural dimensions of atrocities. This has created uncertainty, resentment, and fear among armed actors as well as survivors.

A culture of impunity fueling conflict

Sudan has been plagued by conflict and violence against civilians for decades. For that reason, justice was a key demand of the protestors that helped topple President Omar al-Bashir in April 2019, after thirty years in power. The constitutional declaration that the military and a coalition of political parties, professional associations, and civil society signed in August 2019 to create a civil-military transitional government included a commitment to transitional justice, as had earlier peace agreements that had addressed previous conflicts. Little was ever implemented, though.

The culture of impunity, the lack of reparations for harm, left out institutional reforms, failed investigations, and missing public consensus about the country's past as part of its national identity created grounds for conflict and the return of authoritarianism. Those responsible for violence against civilians not only remained in power, but benefited and prospered. Instead of gradually reducing the power and influence of the security sector, the 2019-2021 transition process ended up entrenching them even further.

This is particularly the case for the Rapid Support Forces (RSF), led by Mohamed Hamdan Dagalo, also known as Hemedti. The RSF emerged out of Arab militias locally known as Janjaweed, which were responsible for mass violence in Darfur in the early 2000s. Omar al-Bashir, Sudan's then President, used the RSF for border protection, counterinsurgency, mercenary services in Yemen, and regime security. Hemedti made himself into a key powerbroker when he joined the intelligence service and the Sudanese Armed Forces to replace Bashir in the face of sustained mass protests in April 2019. His forces likely led a subsequent attack on the main protest camp outside the military headquarters on 3 June 2019 that killed more than 120 people. Still, Hemedti became an influential member of the civil-military Sovereign Council (the transitional collective presidency), styling himself as its deputy chairman and de-facto vice president. In the following years, the RSF grew massively in military strength, with the help of the army and international partners like Russia (Wagner) and the UAE, as well as in economic influence. The RSF's rivalry with the SAF

increased notably after the coup in October 2021, with the army itself staffed by senior officers involved in past atrocities as well. The rivalry between the two armies culminated in the outbreak of open hostilities in the morning hours of Saturday 15 April 2023.

Lessons from Sudan's transition process

Sudan's most recent transition process underlines how transitional justice can fail – and what future efforts must learn. The civilian component of the transitional government took a top-down approach to transitional justice, with victim and survivor groups feeling insufficiently consulted. A key element was the so-called dismantling committee, which investigated the shadow system, assets and staff associated with the former regime, leading to the dismissal of thousands of public officials. They operated without sufficient regard to due process, however. The United Nations Independent Expert on the situation of human rights in the Sudan warned that the Committee's decisions "might degenerate into political purges", as it had the right to dismiss all public employees based on their mere association with the former regime. The UN human rights office worked with the transitional authorities to improve the situation, but these concerns were not sufficiently addressed before the coup.

Furthermore, transitional justice became part of the bargaining process between armed groups and the security forces during the negotiations that led to the Juba Peace Agreement, signed in October 2020. The agreement includes a detailed chapter on "justice, accountability and reconciliation", including a timeline of 60 days to establish a truth and reconciliation committee and 90 days to establish a special court for Darfur. None of those were ever established. Instead, representatives of the armed movements joined the government in Khartoum, brought back troops to Sudan and engaged in major recruitment drives in Darfur, incentivized by the promise of demobilization packages in the peace agreement.

The security institutions remained highly skeptical of transitional justice, increasing their motivation to remove the civilian component from the government. After the coup, they overturned many decisions by the dismantling committee. Investigations into the violent dispersal of the protest camp in June 2019 stopped.

When it came to a core demand of the revolutionary protest movement of December 2018, the transition not only delivered little in the way of justice but also created resentments and disappointments in many quarters. It failed to engage with the structural causes of Sudan's atrocities and repression, ultimately contributing to the situation that led to a devastating war – one that has laid waste to the country's institutions, livelihoods, and social fabric.

Dealing with power structures

Getting the full spectrum of measures that transitional justice entails right is therefore essential for any future political and peace process. Crucially, anyone engaging in transitional justice needs to acknowledge from the get-go that a transitional justice process reflects the prevailing power structures and is therefore inherently political.

This is an uneasy discussion. Given the previous experience of impunity, delayed implementation, and power-seeking elites, some associate transitional justice in Sudan with a so-called "soft landing" approach: perpetrators as well as benefactors of past crimes get to go scot-free if they make some superficial commitments to peace and human rights. As a result, they receive the legitimacy to either remain in positions of power or join the dominant kleptocratic system for their own benefit.

Acknowledging existing power structures does not mean accepting them. Rather, civilian actors (and those foreign governments wishing to support them) should anticipate and prepare for dealing with armed and authoritarian forces with their eyes open. Simply calling for justice, truth, reparations and comprehensive institutional reforms does not suffice, as important as a principled stance is.

This insight has guided recent efforts to rethink transitional justice in Sudan. In a series of workshops organized jointly by the Friedrich Ebert Foundation and the German Institute for International and Secu-

rity Affairs (SWP) in Kampala and Addis Ababa between February2024 and May 2025, Sudanese and international leading experts on transitional justice and peace came together to consider some of the challenges, trade-offs and possibilities how transitional justice could contribute to ending the war, and to sustaining peace.

Balancing peace and justice demands in Sudan

One of the challenges of transitional justice globally has been that despite frequent commitments to be context-specific, victim-centered and nationally owned, it can be excessively driven by outside actors. This is particularly prevalent in cases where representatives of an *ancien régime* (like that of Bashir) or those responsible for atrocities during war time retain significant power, not least because most wars end through a negotiated agreement between warring parties, e.g. in Ethiopia and in South Sudan. In such contexts, in trying to reduce the sensitivity of the subject, transitional justice is often reduced to a technical exercise of consultations, legislation, institutions, and processes. Even in situations where, for example, a truth commission has been able to work – such as in Kenya –, the impact remains very limited. International criminal proceedings may be possible, for example at the International Criminal Court, specialized tribunals or in national courts based on universal jurisdiction, yet they remain distant from the communities and survivors involved.

In a situation of active hostilities as in Sudan, balancing the concurrent demands of peace and justice is key. This has been a lesson that one of the members of the expert group, Rifaat Makkawi, mentioned in a podcast of the INSAF campaign for transitional justice. “Our views shifted”, he said. “We used to believe that justice comes first.” Experiencing the devastation of the war firsthand, the campaign now seeks “a balance between justice and peace.”

The key here is that such a balance means aligning peace and justice as much as possible, not just seeking an immediate target instead of a seemingly more long-term one. Makkawi and Amal Hamdan, another member of the expert group, tackled one of the most controversial subjects in this area: amnesty. In a joint paper, they call for shaping conditional amnesty provisions in such a way that they facilitate peace while not precluding prosecutions, for example through a hybrid court with national and international elements. Conditional amnesty would be a novel instrument in Sudanese conflicts, as previous peace processes have always resulted in either explicit or *de facto* blanket amnesty due to lack of implementation.

The role of civil society

Furthermore, transitional justice is about much more than criminal trials. It also needs to speak to a sense of everyday peace and justice that helps not just elites but whole communities to co-exist. Reconciliation, an often-cited goal of transitional justice, seems almost far-fetched in the face of mass atrocities. Changing out leaders responsible for such crimes is important, as is transforming the relationship between state institutions and civilian populations.

Sudan has an extraordinarily active civil society. In many parts of the country, mutual aid networks provide basic services in areas that international aid organisations often do not reach. Women, youth and other civilian initiatives discuss ways with political and military leaders to halt violence and end the war. Even if the war’s polarization and displacement affect them deeply just like everyone else, they can still play important roles in transitional justice, and often already do. These roles include the documentation of violations, combating hate speech, trainings, rehabilitation, peace messaging, psychosocial as well as material support to victims and survivors, in addition to advocacy. They do not need to wait for the warring parties, donors, or international organisations to include them to make a difference.

Moving forward, seeking possibilities as well as creative entry points remain essential. Sudan’s war is a fundamental challenge to its social fabric, state integrity and regional stability. Ending the war and overcoming violence requires a combination of principles and innovation.

Note: The author co-organized the expert group on transitional justice and peace in Sudan with a workshop

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