**Report to the Office of the United Nations High Commissioner for Human Rights on the Contribution of Transitional justice to Sustaining Peace and Realizing SDG 16**

**Preamble**

Believing in the importance of thematic reports by the OHCHR and in light of its interest in providing the OHCHR with the information and opinions on issues to which they attach particular importance in order to include such issues in their thematic reports to the United Nations Human Rights Council (UNHRC) or the UN General Assembly, Maat for Peace, Development and Human Rights would like to present this report with a view to include the information therein in the report of “How addressing a legacy of gross violations and abuses of human rights and serious violations of international humanitarian law through transitional justice measures can contribute to sustaining peace and the realization of Sustainable Development Goal 16”, which will be presented in the 49th session of the UNHRC, scheduled for March 2022.

In recent years, the Arab region has experienced an intensification of the human rights violations against the background of massive protests against governments demanding better living conditions in view of the escalated social injustices. Some governments often responded to those protests by systematic suppression and committed serious human rights violations that amounted to crimes against humanity, causing the death of several victims and the suffering of their relatives, not to mention the lack of confidence in state institutions and widespread impunity. On the other hand, some of these protests managed to restore the power to the popular demands and replace the suppressive governments as well as initiating the drafting the transitional justice process that includes mechanisms to achieve justice for all segments of society and hold accountable the perpetrators of human rights crimes against citizens in an attempt to address this heavy legacy of violations and to provide remedies for victims. This is in addition to acknowledging the suffering incurred by victims and developing various programs and mechanisms to restore confidence in the institutions of the state and law enforcement forces. Meanwhile, in other Arab countries, human rights violations remain unsupervised and several government leaders and armed factions have been legitimized to participate in the political process, even though they were never held accountable for their human rights crimes. Accordingly, this paper by Maat sheds a light on the contribution of transitional justice in the Arab region to sustaining peace and realizing SDG 16.

**Transitional justice measures addressing the legacy of serious human rights violations**

Following the removal of the repressive governments through protests and widespread popular demands, several governments in the Arab region have established a number of transitional justice mechanisms. In Sudan, protests erupted against the rule of former President Omar al-Bashir against the background of social injustices, including the human rights violations during his reign, which promoted the Sudanese army to respond to the people’s demands by removing al-Bashir and suspending the constitution in April 2019[[1]](#footnote-1). Furthermore, the Sudanese government established some mechanisms to ensure there is no impunity for the perpetrators of such human rights violations and to address the roots causes of the conflict in Sudan. These mechanisms varied from issuing legal documents, taking judicial measures and concrete action, which all aim towards achieving justice.

With regard to legal documents, the interim Sudanese government issued the Constitutional Charter for the 2019 Transitional Period, which stipulates that all the human rights violations committed during the reign of Omar al-Bashir shall not be extinguished by prescription[[2]](#footnote-2). This charter also provided for an institutional reform and the establishment of a national investigation committee to investigate the violations committed in June 2019 during the dispersal of the sit-ins by the General Command of the Armed Forces, with the committee possessing full powers. This is in addition to establishing 11 independent commissions, including social justice and human rights commissions, in order to guarantee institutional and constitutional reform. Furthermore, the charter provided for the abolition of provisions and laws that limit freedoms and discriminatory laws as well as the regularization of those who were arbitrarily dismissed from civil and military service within the context of remedies. This comes in conjunction with promoting the role of women and youth and reforming state organs to combat corruption and discrimination on a large scale[[3]](#footnote-3). In addition, in November 2020, the Sudanese Ministry of Justice announced the finalization of the amendments to the draft law of the transitional justice commission[[4]](#footnote-4). In July 2020, a law was passed to reform the Sudanese judicial system in order to ensure there is no impunity for human rights violations[[5]](#footnote-5).

At the level of prosecutions, the Sudanese government conducted fair trials for all members of the former Sudanese government who were involved in human rights violations, led by President Omar al-Bashir and 34 people from his regime[[6]](#footnote-6), in addition to handing Ali Kushayb to the International Criminal Court, a militia leader in Darfur in Central Africa, to ensure that he is held internationally accountable for the human rights violations he has committed. The transfer of Kushayb to The Hague is an important step in the search for justice and accountability on the world stage.[[7]](#footnote-7)

On the other hand, in Libya, following the removal of former President Muammar Gaddafi from government, the government adopted a number of laws and judicial mechanisms to ensure the achievement of the transitional justice process, such as Law No. 37 of 2012 on the criminalization of glorifying the tyrant and insulting the revolution and Law No. 50 on compensation for political prisoners, in addition to Law 51 on Amnesty for some human rights crimes, and Law No. 29 on transitional justice. However, despite all these laws, the transitional justice process has been stalled for a long time in Libya against the backdrop of various political crises,[[8]](#footnote-8) but soon a real sign of hope appeared to achieve transitional justice in Libya. In January 2020, with the holding of the Berlin Conference among all Libyan political parties and with the support of the European Union and the United Nations, and during the conference, a set of items was agreed upon, in essence representing the beginning of the process of achieving the process of transitional justice and institution-building, as it was agreed to end all military movements by the parties to the conflict in Libya, the exit of mercenaries and all foreign forces, and the silencing of guns in preparation for the process of building institutions and holding perpetrators of violations accountable, not to mention Calling for the establishment of a presidential council and the formation of a unified and inclusive government.[[9]](#footnote-9)

In continuation to the completion of the transitional process, and in October 2020, the Libyan parties signed a ceasefire agreement in preparation for the establishment of a political settlement that includes the election of strong state institutions working to sustain and build peace. This is a direct result of the United Nations good offices to end the conflict after four rounds of negotiations that have begun since February 2020[[10]](#footnote-10). In February 2021, the Libyan Transitional Government was formed to bring about a peaceful end to the conflicts and to unite all political parties in the country, headed by Abdul Hamid Mohamed Debiba[[11]](#footnote-11). In addition, a decision was adopted by the Libyan Presidential Council in April 2021 to establish the National Interest Commission to oversee the completion of the construction of the remaining institutions of the Libyan Government, not to mention the end of the division within society, the deposits of hatred of hatred of hatred of hatred of hatred of hatred of hatred of hatred of war.[[12]](#footnote-12)

In this regard, the Libyan government affirmed at the Second Berlin Conference that was held in June 2021 that it is continuing with all its might to direct the country to the national presidential and parliamentary elections scheduled to take place on December 24, 2021[[13]](#footnote-13), and on October 4, 2021 the Libyan Parliament ratified the legislative elections law, in light of the completion of the building Libyan state institutions in order to promote peace in the country, and despite the controversy surrounding the law. However, this is normal in the context of consultations among all Libyan political forces.[[14]](#footnote-14)

On the other hand, in Tunisia, all human rights assessments indicate that transitional justice efforts have achieved strenuous results, especially in the fight against impunity. . In 2014, the Government established the Truth and Dignity Commission to investigate human rights violations committed by the Government of President Ben Ali, and the specialized judicial departments are looking through the commission. Crimes related to physical human rights violations[[15]](#footnote-15). For example, in May 2021, the Criminal Chamber specialized in transitional justice at the Court of First Instance in Gabes continued to consider the issue of torture and enforced disappearance against activist Kamal Matmati, whose family demands to know where he was buried in an attempt by the Tunisian Government to acknowledge the suffering of his own.[[16]](#footnote-16)

**The Role of Civil Society organizations in promoting Transitional Justice**

Civil society organizations play a role in promoting transitional justice in the Arab region through activities and events. In Lebanon, in November 2018, the Lebanese Parliament passed a law dedicating families to knowing the fate of their relatives; due to the Committee of the Families of Kidnapped and Disappeared efforts. Those missing and disappeared who missed during the Lebanese civil war from 1975 to 1990; 41,517 people disappeared, and 144,240 people dead. The law recognizes the suffering of families who have lost their relatives. With the participation of the families and relatives of the victims, the national commission was established. It aims to reveal the fate of the missing and forcibly disappeared in Lebanon to reach the truth and justice for the disappeared[[17]](#footnote-17).

In December 2020, the Libyan Network for Supporting Transitional Justice held a closed-door meeting with representatives of local civil society organizations to discuss mechanisms and decisions for strengthening the Libyan transitional justice process. During the meeting, many issues were discussed, including the compensation for victims[[18]](#footnote-18). In June 2021, The Libyan Organization for Transitional Justice organized the dialogue sessions to discuss transitional justice issues in the community[[19]](#footnote-19). In Syria, many civil society organizations tried to prosecute the perpetrators of human rights violations during the Syrian conflict in various European courts through the principle of universal jurisdiction, which is a judicial mechanism that allows the prosecution of perpetrators of human rights crimes. Indeed, these organizations have succeeded in opening more than 80 ongoing investigations against those suspected of belonging to armed or terrorist organizations in Syria. So, Islam Alloush, who was a spokesman for Jaish al-Islam, has been arrested and charged with war crimes. He was one of the armed militias in northeastern Syria affiliated with the Turkish government. In addition to the trial of many symbols of the Syrian government who were involved in committing violations[[20]](#footnote-20).

**Challenges of the achievement of transitional justice in the Arab region**

Transitional justice in the Arab region faces various challenges, the most important of which are the following:-

* The continuation of the conflict in Arab countries without a solution due to the intransigence of one conflict party and its unwillingness for a political settlement, which is the first step towards achieving the transitional justice process. One example of this is the unwillingness of the Houthi group in Yemen to reach a political agreement.
* The existence of institutional instability in some countries, which allows undermining all the results of social justice processes, for example, the state of institutional instability in Sudan. In Sudan, some elements in the Sudanese army moved to control the government and exclude the government, but they failed. It resulted in undermining the results of transitional justice and trust in state institutions[[21]](#footnote-21).
* The continued presence of armed militias in some countries is an obstacle to building the nation-state because they are parallel mini-states and feeds political and societal division and polarization. For example, the group of mercenaries in Libya threatens transitional justice[[22]](#footnote-22). The legitimization of many militia leaders in northeastern Syria, and even considering them as political actors, although they were never held accountable for their human rights crimes, including the assassination of the Kurdish opposition, Afrin Khalaf, leads to the continuation of violations.

**Recommendations: Necessary measures to achieve meaningful transitional justice in the Arab region**

Many countries have succeeded, at least partially, in engaging in transitional justice processes that allow victims to obtain their rights and even acknowledge their suffering. In addition, the effort of civil society organizations is a key factor in achieving justice efforts, especially Syrian civil society organizations. Despite the various challenges facing the transitional justice in the Arab region and based on the foregoing, Maat for Peace, Development and Human Rights recommends the following: -

* The need to consult with victims and civil society organizations on mechanisms to achieve transitional justice and develop programs to assist those affected by human rights violations.
* The need to hold perpetrators of human rights crimes accountable and prevent their impunity.
* Expand the accountability of armed militia leaders and ensure that they are not included in any political processes, given that the perpetrators of violations pose a threat to human rights in the future.
* The necessity of having mechanisms to achieve cases of institutional stability, especially within the military institutions
* Expanding programs to treat victims of the psychological and physical abuse they have been subjected to.

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2. الوثيقة الدستورية في السودان أسس الانتقال إلى الحكم المدني وآليات تقاسم السلطة، بي بي سي عربية ، أغسطس 2019 <https://bbc.in/3aamg5R> [↑](#footnote-ref-2)
3. النص الكامل لوثيقة الإعلان الدستوري في السودان (صور)، مصراوي ، أغسطس 2019 ، <https://bit.ly/3masS6V> [↑](#footnote-ref-3)
4. قانون العدالة الانتقالية ما قبل الإجازة، السودانية، نوفمبر 2020 ، <https://bit.ly/3oVFmRH> [↑](#footnote-ref-4)
5. السودان يجيز قانون إصلاح العدالة لتفكيك أخونة القضاء، العين الأخبارية ، يوليو 2020 ، <https://bit.ly/3njvHUj> [↑](#footnote-ref-5)
6. إرجاء محاكمة البشير و34 من مدبري انقلاب 1989، الشرق الأوسط ، سبتمبر 2020 ، <https://bit.ly/37iAQXr> [↑](#footnote-ref-6)
7. اعتقال علي كوشيب زعيم مليشيا بدارفور في إفريقيا الوسطى وتسليمه الجنائية الدولية، روسيا اليوم ، يونيو 2020 ، <https://bit.ly/3afdcgp> [↑](#footnote-ref-7)
8. العدالة الانتقالية في ليبيا تشريعات عدة بلا مردود في الواقع، مجلة سياسات عربية ، <https://bit.ly/3p6Z28o> [↑](#footnote-ref-8)
9. مؤتمر برلين حول ليبيا ، الأمم المتحدة ، يناير 2020 ، <https://bit.ly/3mYzkA9> [↑](#footnote-ref-9)
10. الأمين العام: توقيع اتفاق وقف إطلاق النار في ليبيا خطوة أساسية نحو السلام والاستقرار، الأمم المتحدة ، أكتوبر 2020 ، <https://bit.ly/3lkICpx> [↑](#footnote-ref-10)
11. منتدى ليبيا انتخاب عبد الحميد محمد دبيبة رئيساً للوزراء لفترة انتقاليّة، مرجع سابق ذكره [↑](#footnote-ref-11)
12. المصالحة الليبية تشق طريقها، الخليج ، أبريل 2021 ، <https://bit.ly/30nZtRh> [↑](#footnote-ref-12)
13. تحليل: مؤتمر برلين زمن الخيارات الصعبة في ليبيا، قناة تي دبيلو ، <https://bit.ly/3pbwnza> [↑](#footnote-ref-13)
14. ليبيا: البرلمان يصادق على قانون الانتخابات التشريعية المقررة نهاية العام، فرنسا 24 ، أكتوبر 2021 ، <https://bit.ly/3vinQLA> [↑](#footnote-ref-14)
15. تونس: مفوض حقوق الإنسان يشيد بمسار العدالة الانتقالية في البلاد، أخبار الأمم المتحدة ، مايو 2018 ، [↑](#footnote-ref-15)
16. قضية كمال المطماطي غاب المتّهمون وحضر المرزوقي والهاروني (فيديو + صور)، موزيق ، [↑](#footnote-ref-16)
17. الذاكرة الجماعية والنسيان الجماعي بعد الحرب في لبنان، مركز بروكنجز، ديسمبر 2020 ، <https://brook.gs/3aIYehx> [↑](#footnote-ref-17)
18. الشبكة الليبية لدعم العدالة الانتقالية تعقد أول اجتماع مباشر لها في طرابلس، المركز الليبي لدعم الديمقراطية وحقوق الإنسان ، ديسمبر 2020 ، <https://bit.ly/2XkBO3b> [↑](#footnote-ref-18)
19. حوارية حول العدالة الانتقالية في مدينة الخمس، المنظمة الليبية للعدالة الانتقالية ، يونيو 2021 ، <https://bit.ly/3vjKnaY> [↑](#footnote-ref-19)
20. آفاق غير معهودة: العدالة الانتقالية في سوريا، مركز بروكنجز، ديسمبر 2020، <https://brook.gs/3aKeSxd> [↑](#footnote-ref-20)
21. السودان: حمدوك يؤكد تمسكه بالتحول الديمقراطي ويحذر من هذا الأمر، حفريات ، أكتوبر 2021 ، <https://bit.ly/3FTVJY7> [↑](#footnote-ref-21)
22. المصالحة الليبية تشق طريقها مرجع سابق ذكره [↑](#footnote-ref-22)