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TRIAL CHAMBER I

Before: Judge Joanna Korner, Presiding Judge
Judge Reine Adélaïde Sophie Alapini-Gansou, Judge
Judge Althea Violet Alexis-Windsor, Judge

SITUATION IN DARFUR, SUDAN

***IN THE CASE OF THE PROSECUTOR v. ALI MUHAMMAD ALI ABD-AL-
RAHMAN (ALI KUSHAYB)***

Public Document

Annex IV to Amicus Curiae Observations on Reparations

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Rights for Peace

Darfur Women Action Group Uganda

Darfur Network for Human Rights

Queen's University Belfast Human Rights Centre

Annex 4 – Local Compensation Benchmarks and Loss of Fur Language

1. Local compensation benchmarks/blood-money analogues

According to the Sudanese Criminal Act of 1991, as amended in 2020, Chapter Three addresses compensation (*diya* -blood money)).

Chapter Three: Compensation (*Diya* -Blood Money))

Article 42: *Diya* (blood money) shall be determined by law.

Diya (blood money) for injuries and *ghurra* (foetal compensation) shall be assessed in accordance with the Second Schedule annexed to the Act.

Diya (blood money) shall be multiplied by the number of victims; however, it shall not be multiplied by the number of perpetrators in the offence giving rise to it. Rather, it shall be apportioned equally among them where their participation was in execution of a joint criminal agreement; otherwise, each shall be liable according to the extent of their individual act.

No other compensation may be claimed alongside *diya* (blood money) in respect of killing or injury.

The amount of *diya* (blood money) shall be reduced in cases of accidental killing or injury in proportion to the victim's contribution to causing the offence.

Article 43: Cases in which *diya* (blood money) is awarded

Diya (blood money) shall be awarded in accordance with the Second Schedule annexed to the Act in the following cases:

- a. Intentional killing or intentional injury where qisas (retaliation) is waived.
- b. Quasi-intentional killing or injury.
- c. Accidental killing or accidental injury.
- d. Killing or injury committed by a minor or a person lacking discernment.

Article 44: Entitlement to *diya* (blood money)

The right to *diya* (blood money) is initially established for the victim. In the event of death, it shall pass to the heirs in accordance with their respective shares under the rules of inheritance. Where no heirs exist, it shall revert to the State.

Article 45: Liability for *diya* (blood money) and methods of enforcement

Diya (blood money) shall be borne solely by the perpetrator in cases of intentional killing or intentional injury.

It shall be borne by the perpetrator and the ‘*aqila* in cases of quasi-intentional killing or injury and accidental killing or injury.

The ‘*aqila* refers to the perpetrator’s agnatic relatives, the insured entity, any entity financially jointly liable with the perpetrator, or the employer where the incident occurred during or as a result of employment.

Diya (blood money) in cases of intentional acts shall be payable immediately unless otherwise agreed to be paid in instalments. In cases of quasi-intentional or accidental acts, it may be payable immediately or in instalments. The party liable for payment shall provide the necessary guarantee if requested by the entitled parties.

Diya (blood money) shall be enforced in accordance with the Civil Procedure Act of 1983.

Article 46: Restitution of property or benefit and compensation.

This Article provides that, upon conviction, the court may order the restitution of any property or benefit obtained by the offender. It may also, upon the request of the victim or their representatives, award compensation for any damage resulting from the offence, in accordance with the Civil Transactions Act and the Civil Procedure Act.

Chief Justice Circulars on *Diya* (Blood Money)

One of the earliest circulars issued following the enactment of the Criminal Act 1991 was Criminal Circular No. (3) of 1991, which set the full *diya* (blood money) at 200,000 Sudanese pounds, regulated its recovery through civil procedures, and linked this to Article 42(1) of the Criminal Act.

In 2000, Criminal Circular No. (1) of 2000 was issued, revaluing full *diya* at 2,000,000 dinars and aggravated *diya* at 3,000,000 dinars. It also clarified cases involving imprisonment in relation to *diya* and the procedures for its enforcement, and repealed previous circulars.

2010 Criminal Circular

In 2010, the Chief Justice issued a further circular amending the value of full *diya* (blood money) to approximately 30,000 Sudanese pounds and aggravated *diya* (blood money) to 40,000 Sudanese pounds, citing changes in economic conditions and price values.

This valuation remained in force for a period but became inconsistent with inflation, which led to subsequent revisions culminating in the 2016 circular.

Criminal Judicial Circular No. 4 of 2016 (Latest Available Circular)

Legal reports indicate that in March 2016, Chief Justice Haidar Ahmed Dafallah issued a circular increasing the value of full *diya* (blood money) from 30,000 to 330,000 Sudanese pounds. The decision was implemented in practice, with insurance companies and courts required to apply the new value.

Subsequent legal analyses confirm that the standard *diya* (blood money) remained at 330,000 Sudanese pounds under the 2016 circular, with a higher value for aggravated *diya* (blood money) (approximately 370,000 Sudanese pounds). There is no publicly available, reliable indication of any subsequent circular amending these amounts to date.

Impact of the 2020 Amendment to Article 42

Following the amendment to Article 42(1) in the 2020 Act, the provision now states that “*diya* (blood money) shall be determined by law.” This is understood to mean that the amount should be determined by legislation rather than by judicial circular. Accordingly, some legal commentators consider that the authority of the Chief Justice to determine the value of *diya* (blood money) under the previous framework has, in principle, ceased.

In practice, however, due to the absence of a new law determining the value of *diya* (blood money) following the amendment, courts and insurance companies continue to rely on the most recent applicable judicial circular (the 2016 circular) as a reference point, while the matter remains subject to legal and academic debate.

The value of aggravated *diya* (blood money) has been subject to considerable criticism, as the prescribed amount is less than 100 United States dollars.

- ***Diya* (Blood Money) within the Native Administration System in Darfur**

Within the traditional local context of Darfur, *diya* (blood money) does not follow a fixed or standardised scale. Instead, it is determined through a customary mechanism known as the *Rakuba*, a local forum in which tribal leaders convene. Deliberations take place through representatives of the tribes to which both the perpetrator and the victim belong. These representatives, known as *Damali*j (singular: Damlaj), are responsible for negotiating and determining the amount of *diya*.¹

Under this system, one third of the *diya* is allocated to the *Rakuba*, while two thirds are paid to the victim or the victim’s family.

In some cases, tribes have established inter-tribal covenants that predetermine the value of *diya*. For example, **Dr Mahmoud Adam Dawoud** explains that in cases of intentional killing, certain tribes—such as the Fur and the Gimir—have agreed upon a fixed *diya* under their customary

¹ Dr Mahmoud Adam Dawoud, Associate Professor at the University of Nyala in Darfur, (2014), *Land and People in Darfur, Chapters 3-4*. Published by College of Graduate Studies and Scientific Research, University of El Fasher, Sudan. ISBN: [978-977-4401400](#). Second Edition, 2024, Salamedia Centre, Kampala.

covenant, equivalent to 12 heads of cattle, with the monetary value calculated according to prevailing cattle prices.²

Conversely, there are tribes between which no *diya* is prescribed under any formal covenant; in such instances, a nominal payment, referred to as *karamat* (ex gratia compensation), may be made instead.

Dr Mahmoud further clarifies that *diya* is not applicable within the framework of native administration or tribal mediation mechanisms in relation to the case of Ali Kushayb. He explained that Ali Kushayb's actions were not committed in his capacity as a member of the Ta'isha tribe, but rather in his capacity as a Janjaweed militia member. As such, responsibility is individual and attributable to him and the entity with which he was affiliated. At the time, the conflict was not between the Fur and the Ta'isha tribes.³

2. Loss of Fur language

Dr Mahmoud Adam Dawoud, a linguistics specialist and a member of the Fur community, has explained that “There has been a significant impact on language and cultural identity. When a community resides within a single geographical area, its members typically share a common language and culture. However, displacement has contributed to the erosion of mother tongues, as individuals have been forced to integrate into communities where other languages, such as Arabic, are dominant. As a result, many children have lost their native language. This phenomenon is particularly evident in refugee and internally displaced persons (IDP) camps.⁴

According to Dawoud, for example, in Kodoom and Bindisi, older generations—particularly mothers—spoke only the Fur language and had little or no knowledge of Arabic. In contrast, younger generations have largely lost the Fur language and, with it, aspects of their cultural

² RfP Interview with Dr. Mahmoud Adam Dawoud, 28 May 2026.

³ *Ibid.*

⁴ Dr Mahmoud Adam Dawoud, Associate Professor at the University of Nyala in Darfur, (2014), *Land and People in Darfur, Chapters 3-4*. Published by College of Graduate Studies and Scientific Research, University of El Fasher, Sudan. ISBN: 978-977-4401400. Second Edition, 2024, Salamedia Centre, Kampala.

heritage. This reflects a broader dynamic whereby individuals in positions of vulnerability are often compelled to abandon their language and traditions in order to adapt.

There were previously institutions dedicated to teaching the Fur language; however, for a period, they were prohibited from accessing camps and supporting younger generations. Following 2019, they were permitted to resume their work in preserving and revitalising the Fur language and reconnecting communities with their cultural heritage. Nevertheless, these efforts remained limited due to restricted resources and the impact of earlier prohibitions.⁵

It is also important to distinguish between voluntary and forced migration. In cases of voluntary migration, individuals typically plan their movement, select their destination, and maintain ongoing ties with their place of origin, often returning periodically. This allows both them and their children to retain their language and cultural identity. In contrast, forced displacement compels individuals to move into communities they did not choose, often under conditions where they are socially and economically disadvantaged. In such contexts, they are expected to adapt, frequently at the expense of their language and cultural practices, while living in harsh conditions.⁶

Data from within camps indicates that younger generations are increasingly disconnected from their native language. Even when they retain some level of fluency, their attachment to it is often weakened, contributing to the erosion of cultural identity. Furthermore, forced displacement has resulted in the loss of not only language but also cultural practices and livelihoods. Many were compelled to leave behind all aspects of their former lives, including elements of their linguistic expression, as well as their livestock—horses, cattle, and goats—which were central to their cultural and economic identity. Consequently, children and youth in camps often lack awareness of, or connection to, the value and significance of these assets within their heritage.⁷

⁵ RfP Interview with Dr. Mahmoud Adam Dawoud, 28 May 2026.

⁶ *Ibid.*

⁷ *Ibid.*

In summary, language has undergone profound change and erosion. Even in everyday communication, there has been a noticeable incorporation of Arabic vocabulary into local languages, reflecting the broader cultural and linguistic shifts resulting from displacement.”⁸

Dr Mahmoud Adam Dawoud, stated that “the impact on the Fur language as a result of the war and violations has been positive. He said that it is now one of the most widely used languages on Sudanese social media after Arabic, and he believes that the war has contributed to strengthening the Fur community’s attachment to their mother tongue. This is evident in the celebrations held by Fur community members in Uganda on International Mother Language Day, where attendance is very high, demonstrating that they remain committed to and proud of their language and culture. He also noted that, according to Ethnologue, which provides indicators on languages worldwide, the Fur language has not become extinct.”⁹

⁸ *Ibid.*

⁹ *Ibid.*