



THE REPUBLIC OF SOUTH SUDAN

**TECHNICAL COMMITTEE ON THE
ESTABLISHMENT OF THE COMMISSION FOR
TRUTH, RECONCILIATION AND HEALING
(TC-CTRH)**

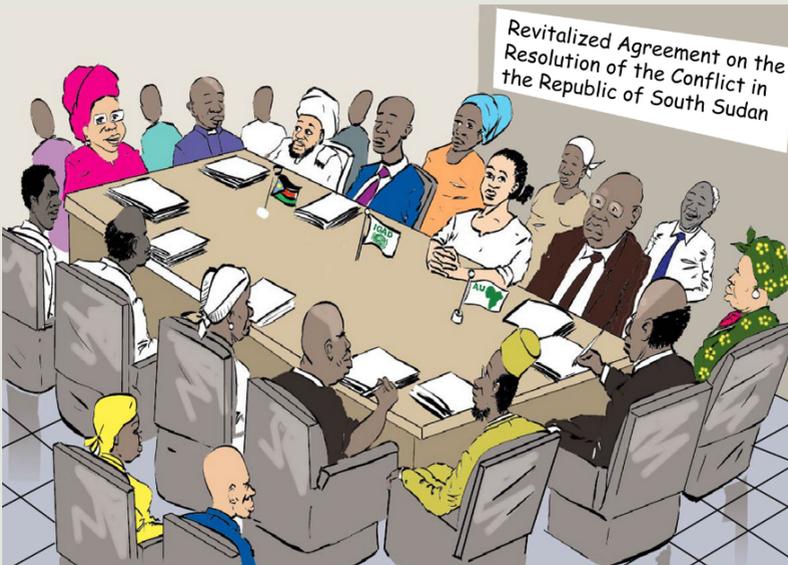
**A Citizen's Hand-Book on Understanding the
Commission for Truth, Reconciliation and
Healing**

January 2022

What does the Peace Agreement say about Transitional Justice?

Chapter V of the 2018 Revitalised Agreement on the Resolution of the Conflict in the Republic of South Sudan (R-ARCSS; peace agreement) imposes an obligation on the Revitalized Transitional Government of National Unity (RTGoNU) to initiate legislation for the establishment of the following three transitional justice mechanisms:

- The Commission for Truth, Reconciliation and Healing (CTRH)
- An independent hybrid judicial body, to be known as the Hybrid Court for South Sudan (HCSS)
- A Compensation and Reparation Authority (CRA)



The Three Mechanisms

The Commission for Truth, Reconciliation and Healing (CTRH)



- 7 Independent Commissioners (3 women, 4 men)
- 4 Sudanese: nominated by the Executive, endorsed by Parliament
- 3 International: nominated by the Executive in consultation with the African Union Commission and UN Secretary General
- Mandated to establish an accurate historic record of human rights violations and excessive abuses of power from 2005 to 2018.
- Shall inquire into causes of the conflict & recommend measures to prevent
- Shall implement measures to protect victims and witnesses, including closed hearings and protection of identity
- Shall issue a final public report of findings and recommendations
- Shall recommend guidelines for determining reparations

The Hybrid Court (HCSS)



- To be established by the African Union Commission
- Independent and separate from national judiciary with own investigations, prosecution, trial and appeals chamber
- Primacy over national courts of the Republic of South Sudan
- Majority of the judges to be nationals from other African states
- To investigate and, where necessary, to prosecute individuals bearing responsibility for violations of international law or applicable South Sudanese law from 2013 to the end of the Transitional Period
- Jurisdiction over international crimes: genocide, war crimes, crimes against humanity, and other serious crimes (including sexual violence)
- Defendants have the right to a fair trial and to select their own defence counsel in addition to duty counsel of HCSS
- Shall implement measures to protect victims and witnesses in line with applicable law and international standards

Compensation & Reparations Authority (CRA)

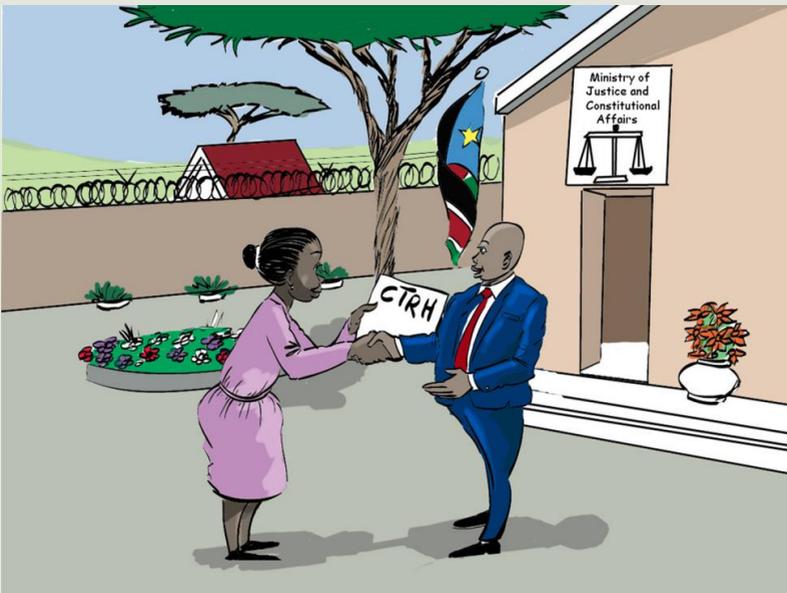


- The CRA is to administer the Compensation and Reparation Fund (CRF)
- Shall be run by an Executive Body, chaired by a Director appointed by the RTGoNU
- The CRA Executive body shall be composed of Parties in the RTGoNU, representatives of CSOs, women's groups, faith-based leaders, traditional leaders, business leaders and youth
- The CRA shall receive applications from victims, including natural and legal persons, and make compensation and reparations
- The CRA shall provide material and support to citizens to help them rebuild their livelihoods in accordance with criteria to be established
- RTGoNU to establish transparent mechanisms to control use of funds.

What progress has been made so far?

On 26 March 2021, the Ministry of Justice and Constitutional Affairs (MoJCA) established a Task Force to coordinate the implementation of the transitional justice mechanisms outlined in Chapter V of R-ARCSS, alongside implementation of Chapter VI and other judicial reform.

On 30 June 2021, the MoJCA launched a reconstituted Technical Committee, responsible for leading public and stakeholder consultations to inform the legislation establishing the Commission for Truth, Reconciliation and Healing.



The Commission for Truth, Reconciliation and Healing

The Commission for Truth, Reconciliation and Healing (CTRH) is mandated by the R-ARCSS to spearhead efforts to address the legacy of conflicts and promote peace, reconciliation, and healing in South Sudan.

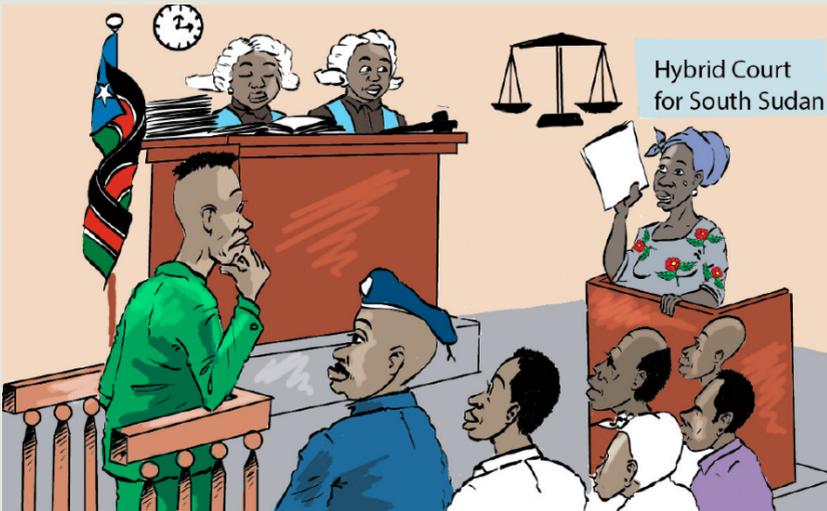
The MoJCA, in collaboration with relevant stakeholders and civil society organisations, is tasked with facilitating the establishment of the CTRH informed by a nationwide public consultation process.



The Hybrid Court

The Hybrid Court for South Sudan (HCSS) is an independent hybrid judicial body to be established by the African Union Commission to investigate and prosecute international crimes of genocide, crimes against humanity, war crimes and other “serious crimes under international law and relevant laws of the Republic of South Sudan including gender-based crimes and sexual violence” committed from 15 December 2013 through the end of the Transitional Period.

The Court also has a role in the provision of reparations, as it can order the forfeiture of property, proceeds and any assets acquired by a convicted person and for them to be returned to their rightful owner, and award appropriate remedies to victims, including but not limited to reparations and compensation.



The Compensation and Reparation Authority

The Compensation and Reparation Authority (CRA) is mandated to administer the Compensation and Reparations Fund to provide reparation and assistance to affected victims, and to provide material and financial assistance to citizens whose property was destroyed by the conflict and help them to rebuild their livelihoods.

The CTRH will contribute to this process, as it has a mandate to make recommendations on enabling victims' rights to a remedy.

Under the R-ARCSS, the CRA shall receive applications from victims including natural and legal persons from the CTRH, and make the necessary compensation and reparation as provided for in the R-ARCSS.



The Commission for Truth, Reconciliation and Healing: Q&A

What are truth commissions?

Truth commissions are official, independent, non-judicial panels of inquiry that investigate serious violations of human rights or war crimes committed in a country's past, including conflict-related sexual violence (CRSV – see Annex 1), to determine what happened and why, in order to prevent future abuses. They should take a victim/survivor-centred, and gender-sensitive, approach.

Truth commissions may pave the way for reparations, prosecutions and institutional reforms. They often conclude their work with a final report of fact findings and recommendations.



What is the mandate of the CTRH in South Sudan?

The CTRH is mandated to:

- ⇒ establish an accurate and impartial historical record of human rights violations from July 2005 to the signing of the R-ARCSS (12 September 2018),
- ⇒ investigate the causes of conflict, and to make recommendations regarding non-recurrence.

It is empowered to:

- Receive applications from alleged victims and identify and determine their right to remedy,
- Identify perpetrators of violations and crimes prescribed in the R-ARCSS,
- Recommend guidelines for determining the type and size of compensation and reparation for victims,
- Record the experiences of victims, including but not limited to women and girls,
- Develop detailed recommendations for legal and institutional reforms to ensure non-repetition of human rights abuses and violations, breaches of the rule of law and excessive use of power,
- Lead efforts to facilitate local and national reconciliation and healing,
- Where appropriate, supervise proceedings of traditional dispute resolution, reconciliation, and healing mechanisms,
- Without prejudice to traditional justice mechanisms, develop standard operating procedures for the functioning of traditional justice mechanisms, in accordance with the principles of natural justice,
- Establish a secretariat that shall function as the administrative arm of the Commission and prepare guidelines and procedures for its proper functions.

What time frame will the CTRH cover?

The CTRH will look at human rights violations, breaches of the rule of law and excessive abuses of power which took place between July 2005 and 12 September 2018, as set out in Clause 5.2.2.3.1 of R-ARCSS.

Who will the Commissioners be?

Commissioners, investigators and staff of the CTRH shall be persons of high moral character, impartiality and integrity. They are required to be independent in the performance of their functions and shall not accept or seek instructions from any third party.

The CTRH will be composed of:

- 7 Commissioners
- 4 of whom shall be South Sudanese nationals, including two women.
- 3 remaining Commissioners shall be from other African countries, of whom at least one shall be a woman.

The CTRH shall be chaired by a South Sudanese national and deputised by a non-South Sudanese national.

How will the Commissioners be appointed?

The R-ARCSS requires the RTGoNU to establish a legislation that define the mandate, jurisdiction, operations, and selection of members of the CTRH within three months of its formation.

As stated in Clause 5.1.2 of R-ARCSS, the legislation to establish the three transitional justice mechanisms should clearly define the processes for public participation in the selection of their respective members.

The Executive of the RTGoNU shall nominate the four Commissioners of South Sudanese nationality and present them to the Transitional National Legislative Assembly (TNLA) for endorsement.

Furthermore, the Executive of the RTGoNU, in consultation with the Chairperson of the African Union Commission and the UN Secretary General, shall nominate the three from other African countries and present their list to the TNLA for endorsement.



Public Participation in Establishing the CTRH

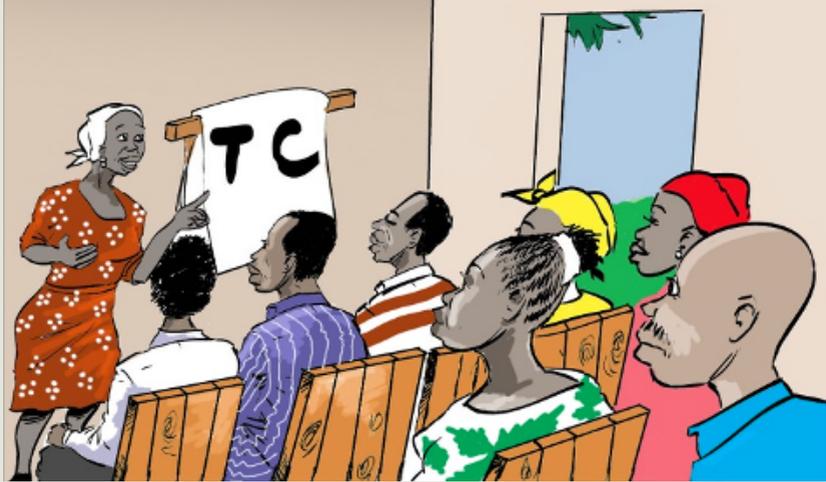
Chapter V (5) of the R-ARCSS states that the MoJCA, in collaboration with other stakeholders and civil society, shall conduct public consultations for a period not less than one month prior to the establishment of the CTRH, to inform the design of the legislation referred to in Chapter V.

Such consultations are to ensure that the experiences of women, men, girls and boys are sufficiently documented, and the findings are incorporated in the legislation.



What is the Technical Committee?

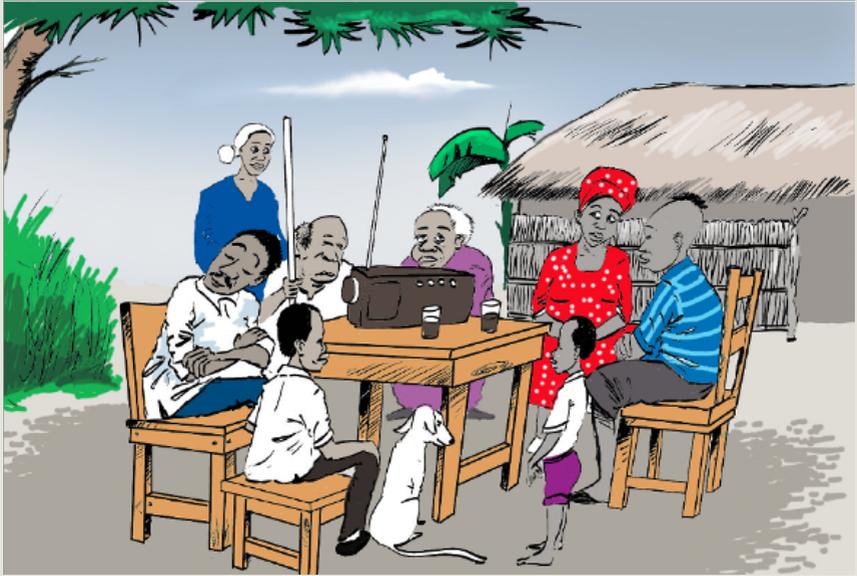
The TC was launched on 30 June 2021 and is responsible for leading public and stakeholder consultations to inform the legislation establishing the CTRH.



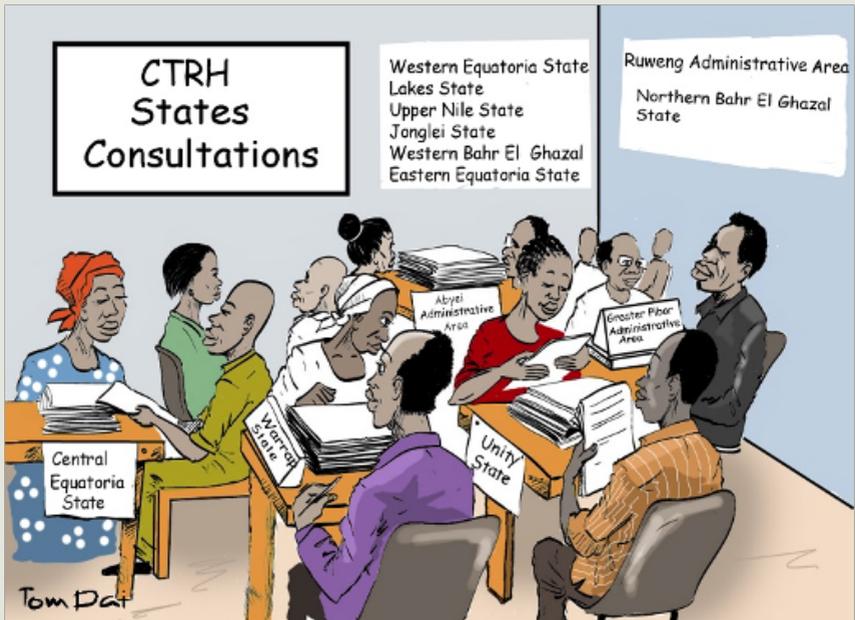
The Technical Committee is composed of 33 members from civil society, faith based and transitional justice institutions, academic institutions, political actors and senior officials from the MoJCA and other government Ministries.

The Public Consultation process was launched in March 2022, and is tasked as follows:

1. **Sensitisation:** The Technical Committee shall undertake 2 weeks of outreach and sensitisation. This may include radio talk shows, radio messages and community engagements, along with other tools such as TV discussions, focus group meetings, and social media engagement.



2. **Consultations:** After the sensitisation programme, consultations will take place for a 4-5 week period.



3. **Report:** A consultation report will be drafted by the Technical Committee and delivered to the Minister of Justice at the end of April 2022.



Elements of the CTRH

Truth

Chapter V (5) R-ARCSS states that the CTRH will “establish an accurate and impartial historical record of human rights violations, breaches of the rule of law and excessive abuses of power, committed by State and non-state actors from the date of signing of this Agreement to July 2005”.

Reconciliation and Healing

Chapter V (5) R-ARCSS requires the CTRH to: “lead efforts to facilitate local and national reconciliation and healing” and to, “where appropriate, supervise proceeding of traditional dispute resolution, reconciliation, and healing mechanisms. In this regard, and without prejudice to traditional justice mechanisms, develop standard operating procedures for the functioning of the latter, in accordance with the principles of natural justice”.



Principles for Effective Truth Commissions

Public Engagement and Participation

Citizens have the right to take part in the conduct of public affairs, directly or through freely chosen representatives, without unreasonable restrictions, as set out in Article 25 (a) of the International Covenant on Civil and Political Rights.

Victims of conflict-related violence have a right to be informed of relevant information concerning violations and reparation mechanisms.



Different methods for public participation can be employed during truth commissions, including statement taking in public, public hearings, closed hearings, interviews, focus group discussions and community visits and engagements.

Transparency

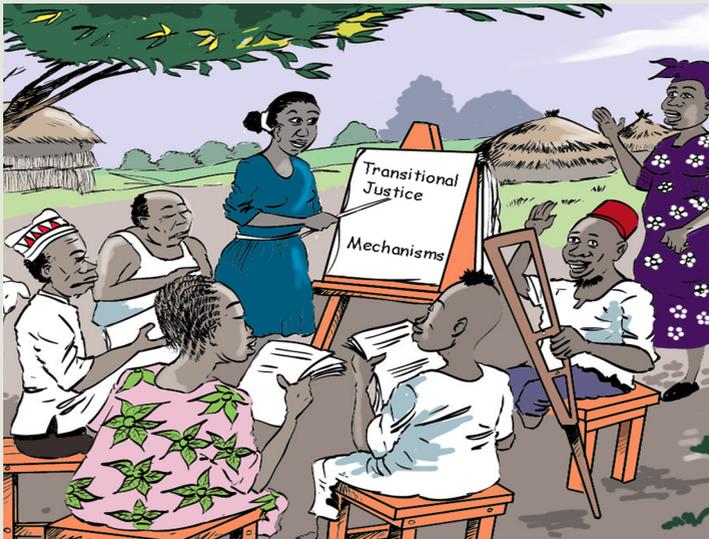
Strong public information and communication strategies are essential to manage public and victim expectations and to advance credibility and transparency, such as public hearings and published reports.

Independence

The success of truth commissions depends on their credibility and transparency. A truth commission must have full autonomy to control its resources, investigations and policy proposals. They must also have a credible commissioner selection criteria and process.

Complementarity

Truth commissions work better when they complement the full exercise of victims' rights, and are part of a comprehensive transitional justice strategy and therefore be considered together with elements such as criminal justice, reparations, and reform programmes.



Victims/Survivors' Empowerment

Victims and survivors of mass atrocity are usually heavily disadvantaged, discriminated against and disenfranchised; truth commissions should focus on their rights, interests and needs. Truth commissions' gender sensitivity and responsiveness to victims must be assured.



Trust

Truth commissions can provide an opportunity for divided societies to begin rebuilding trust among citizens and in the institutions that serve them. They are compromised if they are created through a rushed or politicized process. They are best formed through consultative processes that incorporate public views on their mandates and on commissioner selection.

Highlights from other Truth Commissions

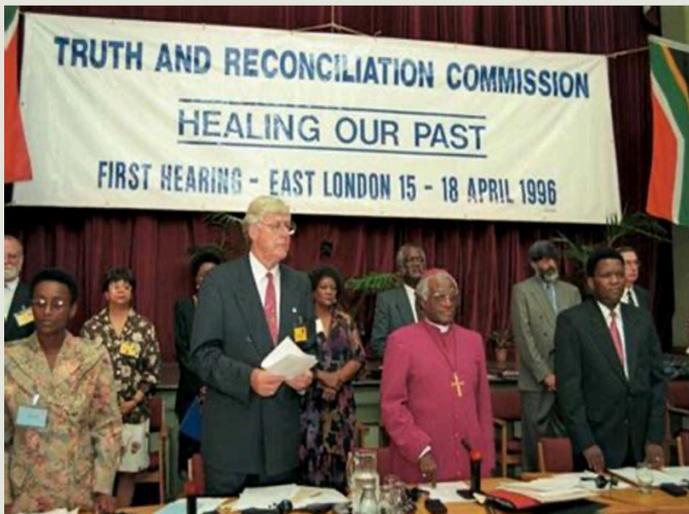
South Africa Truth and Reconciliation Commission

- The public was engaged in nominating Commissioners.
- The preparatory team received over 300 names, and shortlisted these to 25 following criteria
- The role of faith leaders was key (Reverend Desmond Tutu was the chair of the Commission)

It had 3 committees:

1. Human Rights Committee
2. Amnesty Committee
3. Committee for Rehab & Reparations: could make recommendations for urgent interim measures

It officially recognized role for civil society and faith organisations in complementing the TRC's work.



Sierra Leone's Truth & Reconciliation Commission

- The Sierra Leone TRC Act required child-friendly processes: *"special attention to child victims and perpetrators as well as women and girls that suffered violence"* due to the large number of child soldiers involved in the 11 year conflict.
- Hundreds of statement takers were trained across SL
- Thousands of statements were taken from victims and ex-combatants
- There was daily coverage on National TV and Radio
- The final report was published in several versions to ensure impact and legacy (in addition to full 2000 page version):
 - Senior Secondary Version
 - Children's Version
 - Video Version ("Witness to Truth")
- Paramount Chiefs and other traditional or religious leaders could take part in the TRC's work
- The TRC Act had a strong implementation commitment
- The TRC's recommendations for Reparations were implemented by Sierra Leone's National Commission for Social Action (NaCSA) and IOM with regard to sexual violence victims and child victims.

Sierra Leone TRC Act 2000

Article: 17

"The Government shall faithfully and timeously implement the recommendations of the report that are directed to state bodies and encourage or facilitate the implementation of any recommendations that may be directed to others."

Who is a Victim or Survivor?

The UN defines **victims** as:

“persons who individually or collectively suffered harm, including physical or mental injury, emotional suffering, economic loss or substantial impairment of their fundamental rights, through acts or omissions that constitute gross violations of international human rights or international crimes (e.g. genocide, crimes against humanity and war crimes).”

[The UN Basic Principles and Guidelines [on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law]

“Victim” also includes those who are deceased or disappeared. It can include **indirect victims**, such as the immediate family or dependants of the direct victim who have suffered harm as a result of the crime (like a child born of rape), and persons who have suffered harm in intervening to assist victims or to prevent victimization.

“Survivor” is preferred by some as a more empowering word than “victim”.

- It has no legal meaning and is not used in court
- It is popular in advocacy and support contexts.
- It has a slightly narrower meaning as it does not include deceased, disappeared or indirect victims, such as children born of rape.

⇒ Children born of rape are victims of the crime, though they might not identify as “survivors”.

The use of the term “survivor” does not detract from the legal status of persons as victims of crimes and violations under international law.

Who is a victim of conflict-related sexual violence (CRSV)?

Women and girls are the primary victims of CRSV. The sexual violence they experience during conflict is a manifestation of the denial of women and girls’ human rights, and is rooted in the structural patterns of gender discrimination, inequality, and sexual and gender-based violence (SGBV) which exist during ‘peacetime’.

Men and boys are also victims of CRSV, with gendered stereotypes linked to masculinity, homophobia, social taboos and biased legal frameworks underlying their victimisation and stigmatisation. Sexual violence against men and boys has often been recognised as torture, mutilation or degrading treatment, omitting the gendered and sexual aspects of these abuses.



Survivors' Role in Truth Commissions

Truth commissions, and transitional justice processes in general, should be victim/survivor-centred, with an emphasis on victims' protection, recognition and empowerment.

Why?

- Truth commissions are designed to deal with large numbers of participants
- Acknowledging and recognising the past is a first step towards reconciliation and healing
- It is important to address the bitterness of those who suffered to avoid vengeance
- Many people suffered, so they should be involved

Gender-sensitivity should be mainstreamed across all areas of a truth commission. This should include providing forms of protection specifically adjusted to the gender of the victim, providing gender-appropriate staff, ensuring accessibility from gender point of view, providing on-site childcare, countering gender discrimination or stigma

What role can victims play?

- They can participate in hearings
- They can make statements before the Commission.
- They can contribute to the collective history

When handled well, participation can be a chance for victims to tell their story and receive recognition from society about what happened. An acknowledgment or apology for their suffering can provide some healing or satisfaction.

What are Victims' Rights?

1. The Right to be Treated with Humanity and Respect

Victims have the right to be treated with humanity, compassion and respect for their dignity and privacy. Their rights must be enabled without discrimination of any kind.

Survivors of **conflict-related sexual violence** may need additional measures to ensure they are treated with dignity, humanity and respect due to the high levels of stigma and the blame they experience.

2. The Right to Information

Victims have the right to be informed of all available legal, medical, psychological, social, administrative or other services or mechanisms to which they may have a right to access.

- Victims are entitled to seek and obtain information on the causes and truth regarding the violations,
- Information should be accurate, timely, neutral and culturally sensitive,
- Victims should have ample time to prepare contributions,
- Victims should be informed of and see the results of their input.

3. The Right to Access Justice

Victims have the right to access an effective judicial remedy as provided for under international law, including adequate, effective and prompt reparation for harm suffered. Other remedies include administrative or other mechanisms as provided for under national laws.

In addition to individual rights, procedures should be developed for groups to make claims.

4. Protection and Support

Measures should be taken to ensure the safety, physical and psychological well-being and privacy of victims and survivors, as well as their families. Special care and attention should be given to avoid re-traumatisation and to minimise inconvenience to victims and their representatives. These may include:

- Vetting of personnel,
- Use of safe spaces, safe houses or other measures to avoid interference with privacy or intimidation or retaliation before, during or after relevant processes
- Closed or private hearings or remote testimony,
- Use of pseudonyms and redacting of records to ensure
- anonymity (to protect identity),
- Onsite counsellors, helpers, childcare or disabled access,
- Availability of accompanying personnel of the gender
- chosen by the victim (and a relative for minors),
- Trained female personnel,
- Trauma awareness training for related staff,
- Updated definitions of sexual violence and related rules of procedure and evidence in line with international standards.

5. The Right to Assistance

Victims have the right receive the necessary material, medical, psychological and social assistance through governmental, voluntary, community-based and indigenous means.

Victims should be **informed** of the availability of services and other relevant assistance and be readily afforded access to them, and all personnel concerned should receive training to sensitise them to the needs of victims.

6. The Right to Reparation

Reparation should be adequate, effective, prompt and proportional to the gravity of the violations aiming to repair the harm suffered. States should seek to establish national programmes for reparation and assistance to victims when the parties liable are unable or unwilling to meet their obligations.

Forms of reparation include:

- **Restitution** should restore the victim to the situation before the violations occurred. Including: restoration of liberty, enjoyment of rights, citizenship, employment, return to one's place of residence, or return of land and property.
- **Compensation** should be provided for assessable damage, proportional to the gravity of the violation, including:
 - Physical or mental harm;
 - Lost opportunities, including employment, education and social benefits;
 - Material damage
- **Rehabilitation** should include medical and psychological care as well as legal and social services
- **Satisfaction** should include any or all of the following:
 - Measures to end violations
 - Verification of facts and disclosure of the truth
 - Search, identification and reburial of disappeared
 - Public apology or declaration restoring dignity
 - Judicial sanctions against those liable
 - Commemorations, memorialisation or tributes
- **Guarantees of non-repetition** includes security sector and other reforms, strengthening judiciary, etc.

Sources: UN Basic Principles of Victims' Rights to a Remedy & Reparation (2005), and UN Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power (1985)

What are Survivor-Centred Approaches?

A survivor-centred approach seeks to minimise re-traumatisation by providing the support, services and empowerment for survivors to meaningfully engage in the process at hand.

In a survivor-centred approach, the survivor's wishes, safety, and well-being take priority in all matters and procedures.

UN Security Council Resolution 2467 (2019) calls for:

“a survivor-centred approach in preventing and responding to sexual violence in conflict and post-conflict situations.”



A survivor-centred approach should be considered in (e.g.):

- **Planning:** choice of location, refreshments, sanitation
- **Building trust:** introductions, consents, explaining
- **Trauma sensitivity:** listening skills, empathy, awareness
- **Effective processes:** not repetitive
- **Follow-up and referrals:** appointing a follow-up focal point.

Check list for survivor-centred outcomes

Dos: Use Survivor-centred approach	DON'Ts: Allow Typical negative impacts
○ To be treated with dignity and respect	○ Victim-blaming attitudes
○ To choose their own course of action in dealing with the violence	○ Feeling powerless
○ Protected and not exposed	○ Put at risk of reprisals
○ Given privacy and confidentiality	○ Public shaming and stigma
○ Supported so as to reduce stress, anxiety and re-traumatisation	○ Re-traumatised
○ Not being discriminated against for gender, ethnicity or on any other basis	○ Discriminated on the basis of gender, ethnicity, etc.
○ Given comprehensive information to help them make their own decisions	○ Increased risk of re-victimisation and abuse

Source: Ward, J. (2010), adapted from UNICEF "Caring for Survivors Training Manual"

"A Victim-Centred Approach prioritizes listening, avoids re-traumatisation, and systematically focuses on victims' safety, rights, well-being, expressed needs and choices. The purpose is to give back as much control to victims as feasible and ensure empathetic delivery of services in a non-judgmental manner." - UNHCR 2020



Illustrations by Tom Dai

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