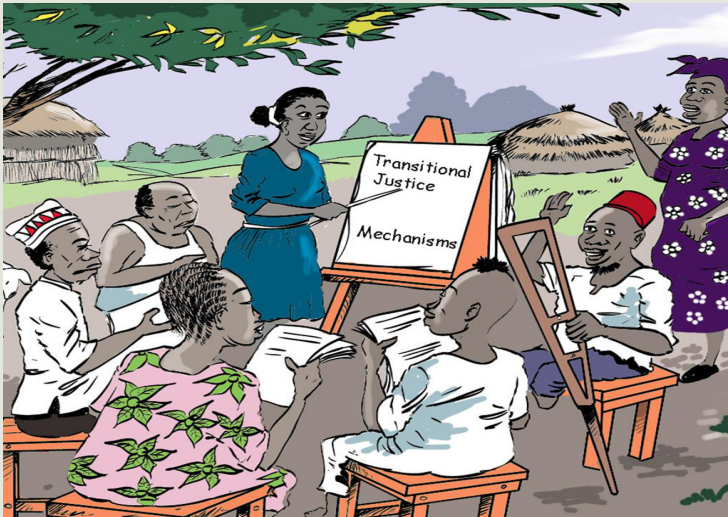




TRANSITIONAL JUSTICE IN SOUTH SUDAN

A Citizen's Handbook

**Understanding the Commission for Truth,
Reconciliation and Healing (CTRH)
and the
Compensation and Reparation Authority (CRA)**
February 2025



CENTRE FOR INCLUSIVE GOVERNANCE,
PEACE AND JUSTICE - (CIGPJ)

Rights for Peace
Preventing Mass Atrocities with Human Rights

What is Transitional Justice?

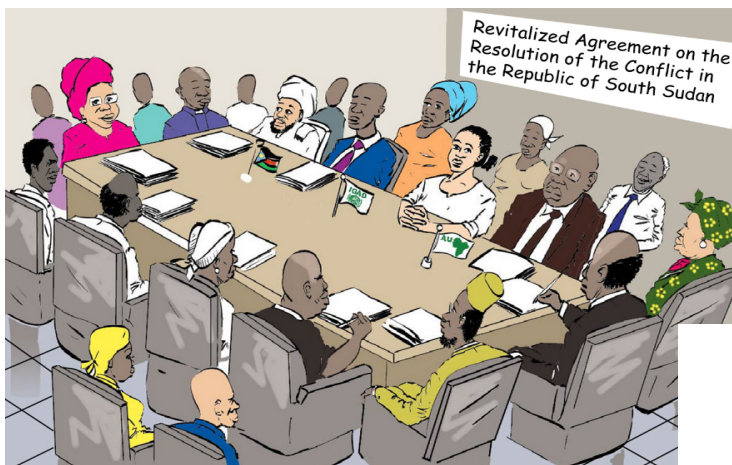
Transitional justice is made up of judicial and non-judicial processes to address massive human rights abuses of the past. Transitional justice includes prosecutions, truth seeking, reconciliation efforts, institutional reforms and reparation measures.

It offers dignity to victims and their families. It provides an opportunity to clarify the past, understand causes, investigate crimes, identify and hold those responsible to account and provide reparation to victims.

What does the Peace Agreement say about Transitional Justice?

Chapter 5 of the 2018 Revitalised Agreement on the Resolution of Conflict in the Republic of South Sudan (R-ARCSS) imposes an obligation on the Revitalised Transitional Government of National Unity (RTGoNU) to initiate legislation for the establishment of the following 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)



Progress in establishing the Commission on Truth, Reconciliation and Healing (CTRH)?

On 30 June 2021, the Ministry of Justice and Constitutional Affairs (MoJCA) established a Technical Committee which conducted public consultations with citizens, including survivors, in 10 States and the administrative areas in accordance to gather public views on the CTRH.

In May 2023, a National Transitional Justice Conference was organised by the Ministry of Justice to discuss the CTRH.

The CTRH Bill was drafted in 2023 and adopted by the Transitional National Legislative Assembly on 3 September 2024.

The CTRH Bill was signed into law by the President on 11 November 2024, along with the Compensation and Reparation Act, establishing two transitional justice mechanisms, namely the Commission for Truth, Reconciliation and Healing and the Compensation (CTRH Act 2024) and Reparation Authority (CRA Act 2024).

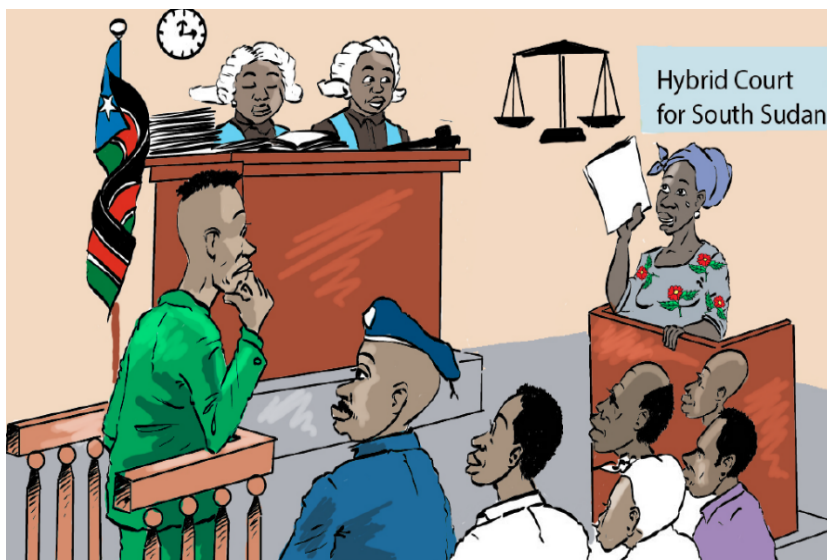


The Hybrid Court

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.

While the CTRH and the CRA Acts both became law in November 2024, the Hybrid Court **has yet to be established**.



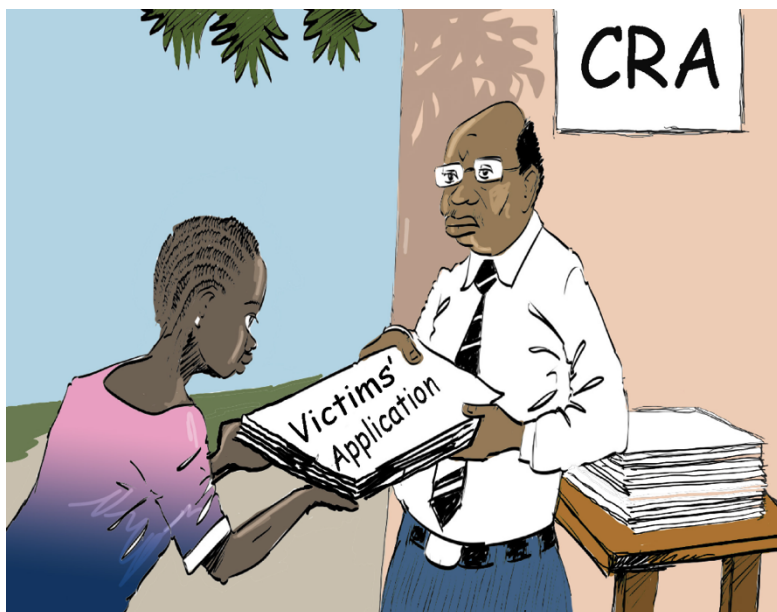
The Compensation and Reparation Authority

The Compensation and Reparation Authority Act (CRA) was signed by the President on 11 November 2024.

The Act empowers the **Compensation and Reparation Authority (CRA)** to receive applications from victims, including natural and legal persons referred by the Commission, and to make the necessary compensation and reparation.

The CRA will administer a **Compensation and Reparations Fund** to provide compensation and reparation.

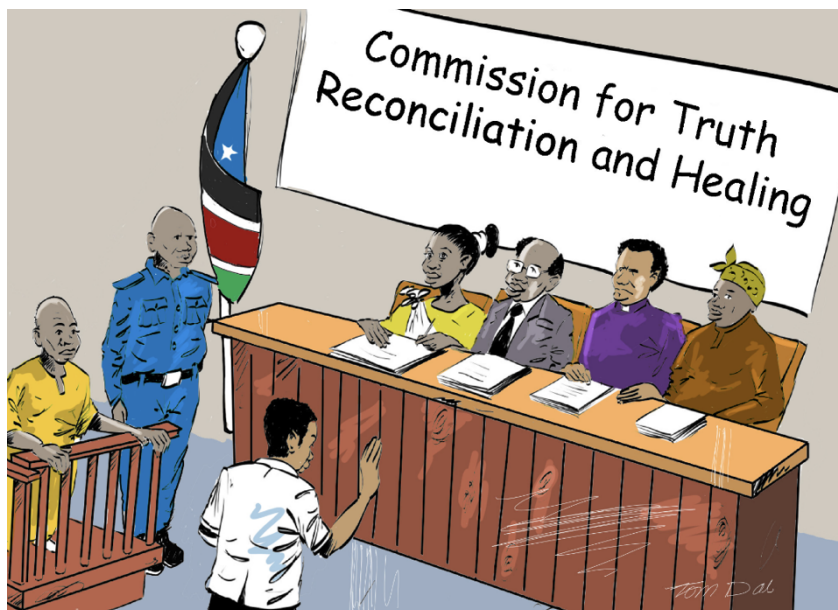
The CTRH will contribute to this process, as it has a mandate to make recommendations on enabling victims' rights to a remedy and can make referrals to the CRA.



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 repetition. They should take a victim/survivor-centred, and gender-sensitive, approach.

Truth commissions may pave the way for reparation, prosecutions and institutional reform. They conclude their work with a final report of fact findings and recommendations. There have been successful Truth Commissions in a number of countries in Africa including South Africa and Sierra Leone.



What is the CTRH's mandate in South Sudan?

- To inquire into all aspects of human rights violations and abuses,
- To inquire into all breaches of the rule of law and excessive abuses of power committed against all persons in South Sudan by the State, non-State actors and/or their agents and allies,
- To inquire into any other antecedent circumstances surrounding the aforementioned or any other connected or incidental matters
- To recommend processes for the full enjoyment by victims of the right to remedy including the formulation of measures for reparation and compensation.



How will the CTRH be established?

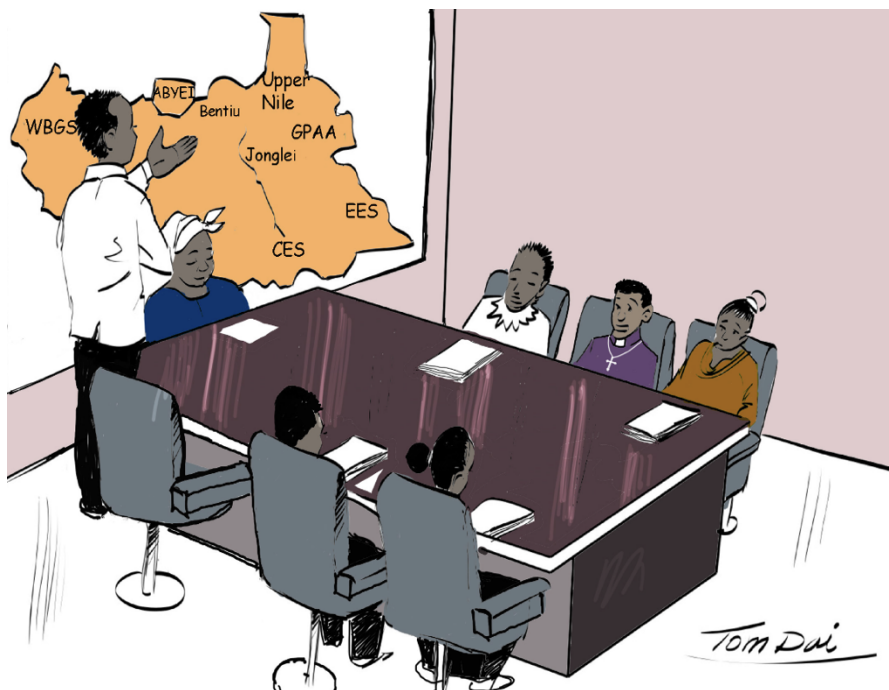
The Commission will be independent and impartial: it will not be connected to the interests of government (Article 6).

The Commission will last for six (6) years from when the Act enters into force and can be extended once by the president (Article 6)

The Commission will have a **Secretariat** that shall function as the administrative arm of the Commission and prepare guidelines and procedures for its proper functioning. Its seat will be in Juba, but it will have offices in all States and Administrative Areas.

It can establish specialized committees (Article 34). Specialized committees in other truth commissions have included:

- human rights committee
- reparations committee
- gender committee.



What is the Composition of the Commission?

Commissioners shall represent diverse backgrounds and perspectives and at least 35% of Commissioners shall be women.

There will be 7 Commissioners:

- 4 South Sudanese, and
- 3 from the African Continent.

At least 3 must be women.

Commissioners shall be of high moral character and must be independent and impartial of any third party.

Commissioners cannot have:

- a) committed a criminal act or corruption
- b) violated human rights or conflict-related sexual and gender-based violence



How will the Commissioners be appointed?

To ensure the Commission is independent, a **Selection Panel** will select the South Sudanese Commissioners. The Panel will be represented by (Article 10):

- a) One representative academia
- b) One eminent personality
- c) One representative from persons with disability
- d) Two religious leaders
- e) Two representatives from civil society organizations, one of whom shall be from a victims' advocacy group
- f) One women's representative
- g) One youth representative

The Survivors Network South Sudan (SUNS) has recommended that one representative be a survivor of conflict-related sexual violence (CRSV).

Within 30 days of being established, the **Selection Panel shall receive applications from interested persons**, compile a shortlist and vet the candidates. The shortlist shall be published in the media and the public will have 7 days to comment.

The **Selection Panel will publicly release the final 4 names**, which will be submitted to the Executive for approval by the Minister of Justice.

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

What are the powers and functions of the Commission?

Truth telling

In order to gather a complete narrative, the Commission shall order and investigate documents relevant to the cause of conflict, record the experiences of victims and summon people to give statements/testimony, including through subpoena (Article 8).

The Commission shall also identify perpetrators of violations and crimes prescribed in the R-ARCSS.

Amnesty

The Commission shall grant amnesty to anyone who truthfully confesses and presents evidence, except for crimes of genocide, crimes against humanity and war crimes, for which no amnesty can be given (Article 31).

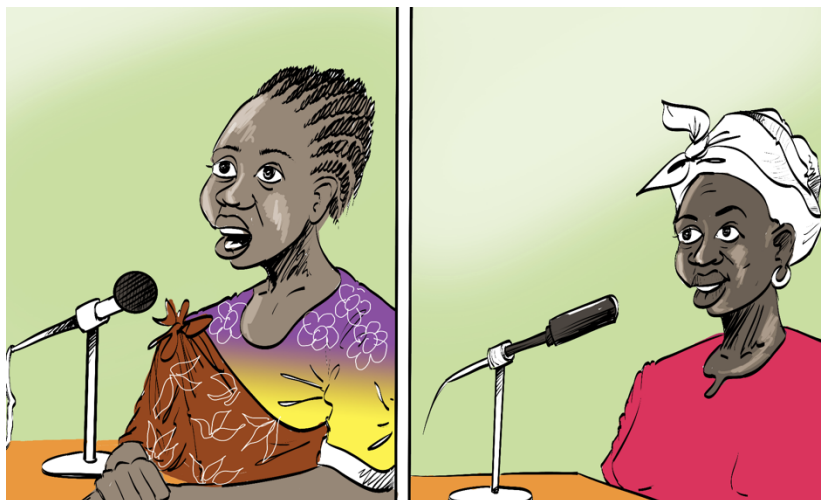
In granting amnesty, the Commission will consider motive, the context in which the act or crime took place and whether the act was committed in response to a command/order.



Public Participation

The Commission shall carry out public education and awareness to inform and engage with the public and ask for feedback (Article 8). In particular, victims, including survivors of CRSV, have the right to be informed about processes and violations that affect their rights.

The CTRH can use different methods for public participation, including statement taking, public hearings, closed hearings, interviews, focus group discussions and community visits.



Victim Protection

Survivors have emphasised the need for security measures to enable participation and trust in the process. The Commission shall implement measures to protect victims and witnesses, including the protection of identity during testimony (Article 8).

These measures should be developed and implemented with the input of survivors with their needs in mind. Survivors have advocated that protection measures should include well paid security, options for private testimony or other arrangements, staff that is trauma trained and temporary safe spaces/houses.



Psychosocial support

The Commission shall ensure the integration of psychosocial support services to address consequences of truth telling for victims, witnesses, perpetrators, Commissioners and staff (Article 36).

Reparation and Compensation Guidance

While the Compensation and Reparation (CRA) authority is empowered to determine and administer compensation and reparation, the Commission shall receive applications from alleged victims and shall record their experiences of human rights abuses. It shall identify and determine their right to remedy. It can make referrals to the CRA.

Compensation is defined in the CTRH Act as a monetary payment or payment in kind made to a direct or indirect victim who has suffered harm as determined by the Commission.

The Commission shall recommend guidelines for determining the type and size of compensation and reparation for victims.

Interim Reparation

Interim services and support may be provided by the Commission to the victims such as women, youth, children and survivors of conflict and of conflict related sexual and gender-based violence.

Interim reparations can be administered in cases involving a health threat or emergency. Guidelines should be developed on what qualifies as an emergency through input and consultations with survivors and affected community members.

Reconciliation and Healing

The Commission shall adopt practices for truth, reconciliation and healing from religious, traditional and customary justice mechanisms in South Sudanese traditions, from African countries and elsewhere in the world (Article 8).



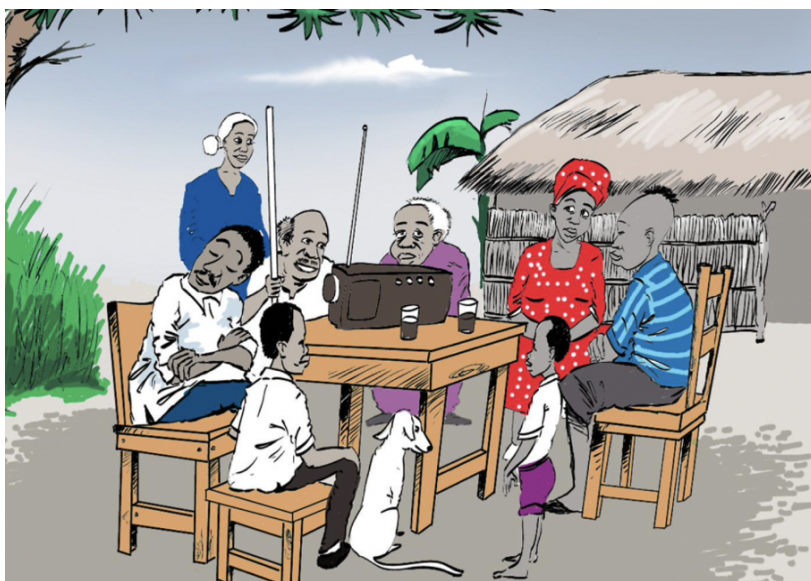
The Commission shall lead efforts to facilitate local and national reconciliation and healing. In so doing, it shall develop Standard Operating Procedures for traditional justice mechanisms. Where appropriate, it can supervise proceedings of traditional dispute resolution, reconciliation, and healing mechanisms.

The practices should facilitate the full enjoyment by victims of the right to remedy and recommendations should follow input and needs of victims.

Sharing of Information

The Commission shall develop guidelines to govern its relationship with the Compensation and Reparation Authority and any other transitional justice mechanism.

It shall make sustained efforts to inform the public. Victims have the right to be informed about violations and processes that affect their rights, including reparations. The public has the right to be informed on the status and of information related to the Commission.



Final Report and Implementation

The Commission shall provide quarterly update reports to the Government. It shall present quarterly reports to the Assembly for deliberation and adoption.

It will issue a final, comprehensive report at the conclusion of the mandate.

The government will develop a program to implement recommendations and proposals from the Commission. A Transitional Justice Policy will be formulated by the Commission for implementation. During these processes, the public should be informed about information related to the Commission.

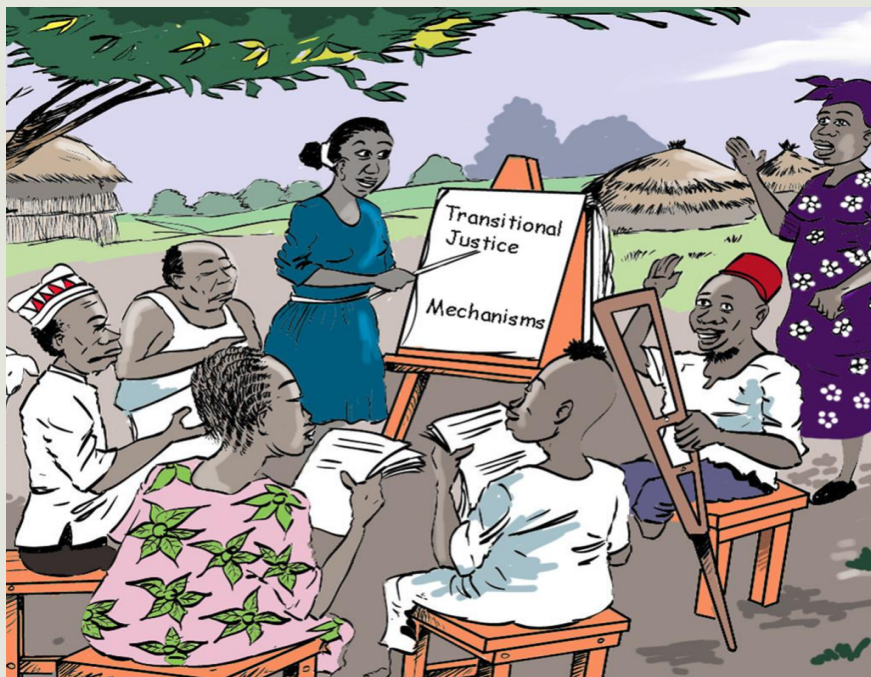


Principles for Effective Truth Commissions

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.

Victims of conflict-related violence, including survivors of sexual violence, have a right to be informed of relevant information of processes affecting their rights. Different methods for public participation can be employed during truth commissions, including statement taking in public, public hearings, closed-door hearings, interviews, focus group discussions and community visits and engagements.



Outreach

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.

Complementarity

Truth commissions work better when they complement the full exercise of victims' rights and are part of a comprehensive transitional justice strategy alongside criminal justice, reparations, and reform programmes.

Victims/Survivors' Empowerment

Victims and survivors of mass atrocity are usually 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.

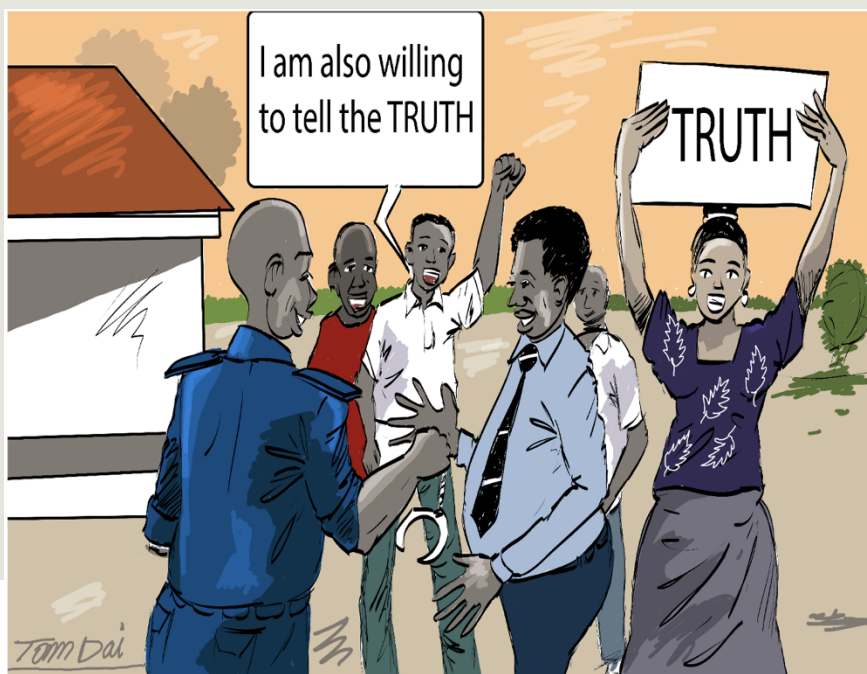


Independence

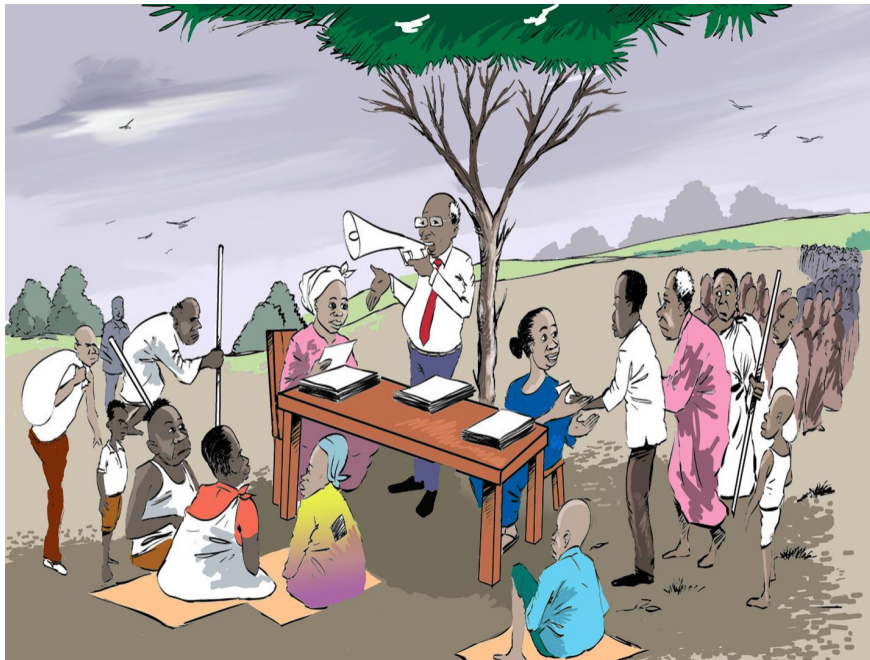
The success of truth commissions depends on their credibility and transparency. A truth commission must have full autonomy to control its resources, investigations and policy proposals. They must also have a credible commissioner selection criteria and process.

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 politicised process. They are best formed through consultative processes that incorporate public views on their mandates and on commissioner selection.



The Compensation and Reparation Authority (CRA)



What is the Structure of the CRA?

The Authority is made up of the **Board** and the **Secretariat**. The Board will be the policy-making body, and the Secretariat will support the work of the Authority through administrative work, preparing guidelines and procedures. The Authority shall administer a **Compensation and Reparation Fund**.

An **Executive Director** shall head the Secretariat. The Board shall manage a **competitive and public recruitment process** and recommend the most suitable candidate to the Minister for appointment by the Council of Ministers.

What is the Composition of the Board?

At least 35% of members of the Board shall be women:

- seven representatives from the Parties in the Government
- two representatives of Civil Society Organizations
- two representatives of Women Groups
- two representatives of Faith-based leaders
- one representative of Youth
- one representative from the Business Community
- one representative of Traditional Leaders
- one representative of Persons with Disabilities

How will the Authority determine and grant compensation and reparation?

The Authority will receive applications from victims both natural and legal persons, including referrals from the CTRH (Article 7). **It will make the necessary compensation and reparation.**

To do so, it shall verify information and receive evidence to determine compensation and reparation and will define and classify the victims to determine eligibility. It will make **recommendations to the Commission** for personal reparations where communal reparations are not appropriate.

The **Authority shall implement all referrals for compensation and reparation made by the CTRH** (Article 26). It will award communal reparation following the public release of the Final Report of the CTRH.

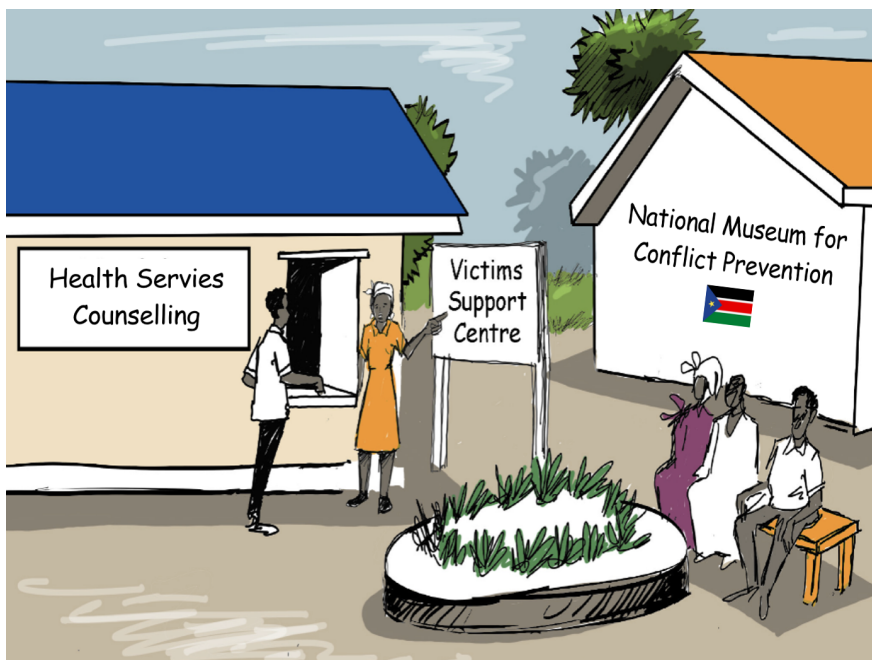
What is Compensation?

Compensation is defined in the CTRH Act as a monetary payment or payment in kind made to a direct or indirect victim who has suffered harm as determined by the Commission.

What are the Reparation Measures?

The CRA outlines the following communal measures of reparation:

- Verification of the facts and public disclosure of the truth to the extent that such disclosure does not cause further harm.
- Inquiry into the whereabouts of disappeared persons. Assistance in the recovery, identification and reburial accordance with the wishes of the victims, or family or the cultural practices of a community of victims.
- Public apologies, including acknowledgement of the facts and acceptance of responsibility by the perpetrators (s).
- Reaffirmation of the duty of government to ensure non-repetition of violence, including the introduction of structural and institutional reforms.
- Commemorations and tributes to the victims.
- Inclusion of victims in the formulation of an education curriculum that may include an accurate account of crimes and human rights violations that occurred.
- Any other measure that may reasonably address root causes and their effects on individuals, communities and society as a whole



What are the CRA's powers and functions?

Determining and Granting Reparation and Compensation

The Authority shall receive applications from victims through the CTRH and verify information and evidence. They will establish a system to define and classify victims on the basis of eligibility and make the necessary compensation and reparation. They will also make recommendations to the Commission on compensation and reparation.

Encouraging Participation

The Authority shall encourage and promote awareness and involvement of victims, community-based organisations, faith-based organisations and the general public. They will also encourage the participation of vulnerable people.

Disseminating Information

The Authority shall disseminate information about available remedies for gross violations of human rights. They will ensure transparency in the process and facilitate media outreach and other public engagement activities.

Supporting the Healing Process

The Authority shall establish victim support and memorial centres at the State and Community levels to provide a continuous healing process.

It is important that commemorations and tributes are sensitive to survivors and witnesses and involve survivors in the decision-making process.

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 the criteria,
- The role of faith-based 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 Rehabilitation & Reparations: could make recommendations for urgent interim measures

It officially recognized the role of civil society and faith organisations in complementing the its 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 Sierra Leone
- 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 and persons who have suffered harm in intervening to assist victims or to prevent victimization.

“Survivor” generally refers to victims of conflict-related sexual violence 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 survivor 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' roles in Truth Commissions

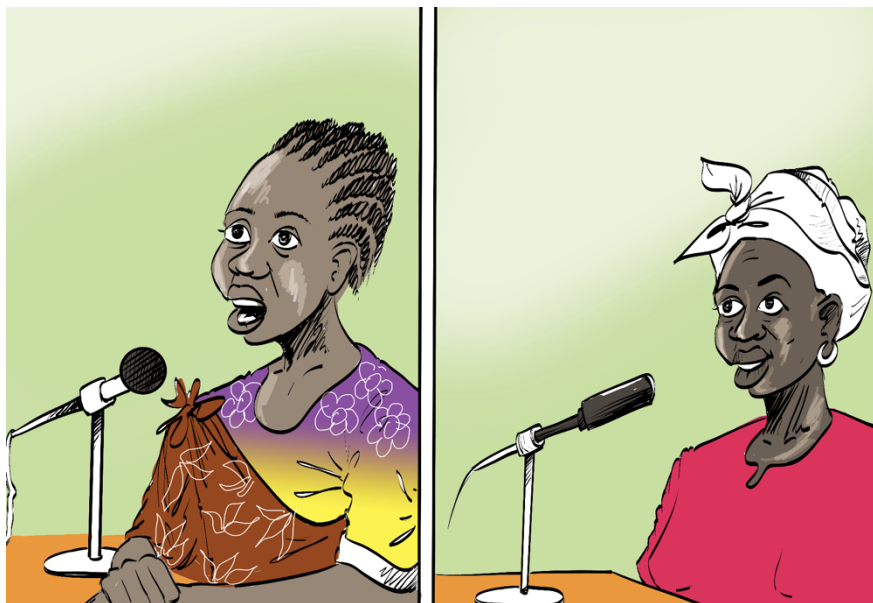
Truth commissions, and transitional justice processes in general, **should be victim/survivor-centred**, with an emphasis on victims' protection, recognition and empowerment. This is critical because:

- 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. If the process is not trauma-informed, it could create more harm for the victim.



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 responses,
- 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 law.

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 protect against interference with their privacy, intimidations 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 needs, 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:

- **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.

Checklist for survivor-centred outcomes

DO: Use Survivor-centred approach	DONT: Allow Typical negative impacts
Always give full information to help them make their own decisions. Ensure informed consent.	Never proceed without fully informed consent.
Treat with compassion and respect for dignity, privacy and confidentiality.	Never treat with prejudice, discrimination or victim-blaming attitudes. Avoid reinforcing public shaming and stigma.
Enable survivors to choose their own course of action in dealing with the violence.	Never force or compel survivors to tell their story or be a show case.
Protect and avoid exposure, for instance use pseudonyms in records and accounting	Never put survivors at risk of reprisals
Allow time and ensure follow up.	Do not rush.
Listen and support so as to reduce stress, anxiety and re-traumatisation	Never engage with traumatised victims without a support plan
Be aware of your own biases and treat everybody equally (which may require extra measures for some people)	Never discriminate on the basis of gender, ethnicity, etc.

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



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