



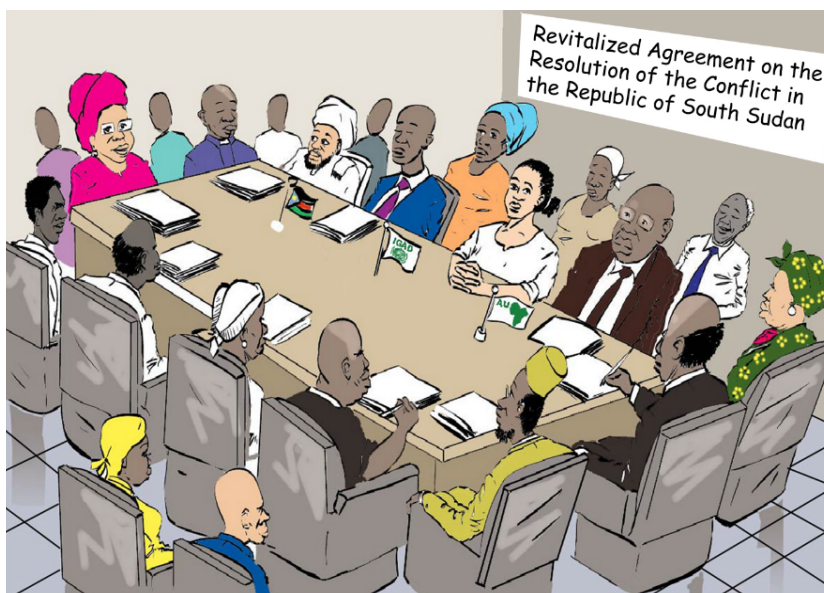
**A Citizen's Handbook on  
Transitional Justice Processes in  
the 2018 Peace Agreement  
focusing on the  
Compensation and Reparation  
Authority**

**July 2023**

# 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; the 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.

# 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.

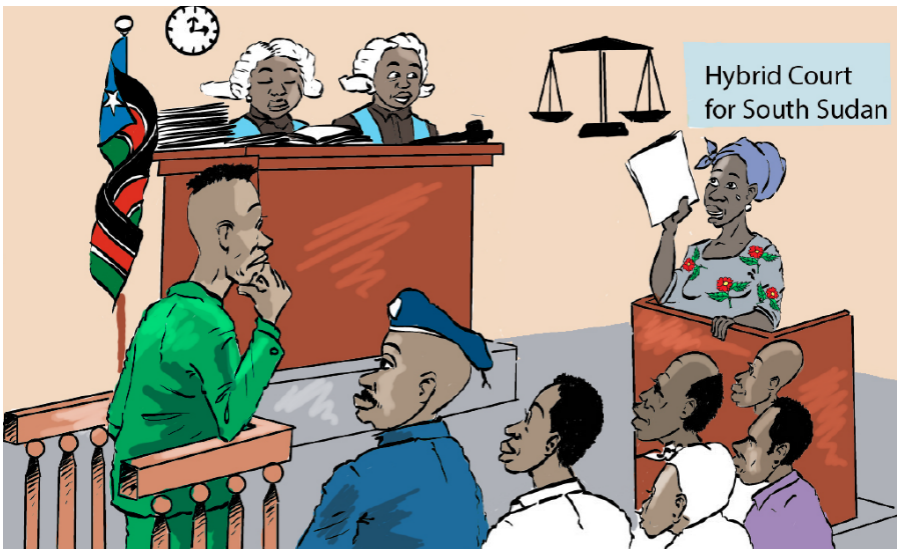
The MoJCA, in collaboration with relevant stakeholders and civil society organisations, is tasked with facilitating the establishment of the CTRH informed by a nationwide public consultation process.



# 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.

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.



# What is reparation?

Reparation refers to material or symbolic measures to repair harm caused by the most serious human rights violations or war crimes. Reparation should uphold victims as rights holders, reinforcing this as the basis for awarding reparations.

The 2005 UN Basic Principles and Guidelines on Victims' Right to a Remedy and Reparation sets out international best practice standards on reparation as follows:

## Reparation measures include:

- **Restitution** should restore the victim to before the violations occurred. Including restoring liberty, citizenship, employment, return to one's place of residence, or return of land and property.
- **Compensation** should be provided for assessable harm, proportional to the gravity of the violation, including; physical or mental harm; lost opportunities (such as employment, education or social benefits) or 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.

## **Administrative vs Judicial reparation**

Reparation can be awarded to victims by a judge as part of a judicial process. However, in the case of **mass violations**, reparation may be more easily ensured through the establishment of an administrative programme that recognises categories of victims regardless of the identity of the perpetrators. Victim status is based on a lower evidence threshold, like the balance of probabilities so as to be faster.

An administrative programme should provide prompt access to reparation at no cost. Victims can receive a range of measures based on the harm suffered through an established procedure (free medical treatment, compensation, etc.). Reparation is only one part of justice, it does not replace accountability.

## **Transformative reparations**

Transformative reparations are measures that aim to address socio-cultural injustices and gender inequalities that allowed the violations to take place. Where restoring the previous situation would merely reinstate or reinforce the structural conditions within society that allowed the violations to occur in the first place, transformative reparations should be designed.

## **Urgent Interim reparation**

Interim measures may be provided to address the most urgent consequences of such violations and to avoid irreparable harm. It should not be confused with humanitarian or other assistance.



# What does the Peace Agreement say?

In recognition of the destructive impact of the conflict to the citizens of South Sudan, Chapter V of R-ARCSS specifically mandates the RTGoNU to *“establish within six months from the commencement of the Transitional Period, a Compensation and Reparation Fund (CRF) and Compensation and Reparation Authority (CRA) to administer the Compensation and Reparation Fund”*. - Article 5.4.1

## Key features of the CRF and CRA:

- Administration of 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 shall make compensation and reparations.
- The CRA shall provide material support to citizens to help them rebuild their livelihoods based on criteria
- The RTGoNU is to establish transparent mechanisms to control the use of funds.

## The CTRH has a role in relation to reparation:

- To receive applications from alleged victims and identify and determine their right to remedy
- To facilitate victims' participation in hearings
- To produce a final report that includes recommendations on reparation.

## Who would be eligible to apply (beneficiaries)?

- Individual victims that participated in the CTRH
- Individuals that did not participate in the CTRH
- Legal persons (including companies)

## Harm suffered during what time period?

The 2018 Peace Agreement mandates the CTRH to establish an accurate and impartial historical record of human rights violations, and other abuses of power committed by State and non-state actors from July 2005 to 2018. It is assumed the same dates would apply to the CRA.

## Who will run the Compensation & Reparations Fund?

Article 5.4.2. stipulates that the Fund shall be managed by an Executive Body of the Compensation and Reparations Authority. The **Executive Body** shall chaired by an Executive Director appointed by the RTGoNU. Members of the body shall be drawn from

- Parties in RTGoNU
- Representatives of CSO's
- Representatives of women groups, faith leaders, the business community, outh and traditional leaders.



# 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.



# What are Victims' Rights?

## 1. 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 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. 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 to protect privacy, avoid intimidation or retaliation before, during or after 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
- Use of 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.

PN / OTR Collective

## 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)

"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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