Report of the Transitional Justice Workshop of December 2019, organised by the United Nations Commission on Human Rights in South Sudan

5 October 2020

This report summarises the discussions and conclusions from the workshop on transitional justice and the promotion of peace in South Sudan from 16th - 18th December 2019. The workshop was organised by the Commission on Human Rights in South Sudan. It took place Addis Ababa, Ethiopia. The report was first published as an annex to “Transitional justice and accountability: a roadmap for sustainable peace in South Sudan: Conference room paper of the Commission on Human Rights in South Sudan,” published on 5 October 2020. [[1]](#footnote-1)

1. Background and Context

1. In August 2015, the parties to the conflict in South Sudan signed the Agreement on the Resolution of the Conflict in the Republic of South Sudan (ARCSS), committing to “national reconciliation, accountability, healing and combating impunity” among other priorities. Chapter V of the Agreement provided for the establishment of three transitional justice institutions: (i) the Hybrid Court for South Sudan (HCSS), to investigate and prosecute individuals suspected of committing genocide, war crimes, crimes against humanity, serious human rights violations, and violations of international humanitarian law; (ii) the Commission for Truth, Reconciliation, and Healing (CTRH), to address the legacy of past human rights abuses; and (iii) the Compensation and Reparation Authority (CRA), to administer the Compensation and Reparation Fund (CRF), to be established by the Transitional Government of National Unity.

2. Despite commitments made by the parties, the Agreement has never been fully implemented. On the contrary, renewed conflict between Government forces and the opposition heightened in July 2016, after fighting had broken out in Juba, resulting in the virtual collapse of the Agreement. The clashes further resulted in the departure of opposition leader Dr. Riek Machar from his position as Vice President, who was replaced by Taban Deng Gai, his chief negotiator. It also transformed the crisis from a conflict primarily between the Sudan People’s Liberation Army (SPLA) and the SPLA-in-Opposition (SPLA/IO) to one that spread into new areas in the Equatoria region which had hitherto remained untouched, with multiple defections and splinter groups. Since then, the political landscape in South Sudan has become contentious, with hardliners on all sides of the political divide openly expressing dissatisfaction with the terms of the Agreement.

3. Amidst increasing repression by the National Security Service (NSS) and other intelligence arms of the Government, civic space for debate and dissent has continued to shrink, which has given rise to myriad human rights violations including activists and journalists being deprived of their fundamental freedoms. Moreover, little effort has been made to establish any of the Chapter V mechanisms during this period. Amidst the increased insecurity and new conflicts, the Government launched a national dialogue process in December 2016, as a new forum to promote national unity, healing, and reconciliation, which many observers and South Sudanese saw as a means to deflect attention from the Chapter V mechanisms. The national dialogue also attracted deep scepticism among displaced persons and the refugee communities who continued to make the point that there could be no genuine national dialogue without Chapter V being implemented. Within this context, the Intergovernmental Authority for Development (IGAD) – the mediating body – launched a high-level forum to revitalise the 2015 Agreement.

4. In September 2018, the Government and the other parties to the conflict signed a Revitalised Agreement on the Resolution of the Conflict in South Sudan (R-ARCSS). The new Revitalised Agreement reaffirmed the commitment to the transitional justice framework adopted in the 2015 Agreement, and almost maintained in full the Chapter V provisions. It however set new timelines for the establishment of the transitional justice institutions. Under the R-ARCSS, the responsibility for initiating legislation for establishing the three transitional justice mechanisms, namely the Truth, Reconciliation, and Healing Commission, the Hybrid Court for South Sudan, and the Compensation and Reparation Authority now rested with a Revitalised Transitional Government of National Unity, which was expected to be formed in May 2019. Another noteworthy provision introduced in the Revitalised Agreement was that women’s participation in the transitional justice institutions must now meet the 35 per cent general threshold of the 2015 Agreement.[[2]](#footnote-2)

5. In May 2019, when the parties to the R-ARCSS agreed to extend the pre-transitional period leading to the formation of a unified Government for an additional six months, key reasons were to enable: the implementation of critical prerequisites for the transition, including the resolution of the number of states and their boundaries; the review and drafting of key legislation; the incorporation of the Revitalised Agreement into the Transitional Constitution; and the cantonment, training, and redeployment of the Necessary Unified Forces. More than halfway into this period, implementation of these tasks continues to face delays, while key timelines and benchmarks have remained largely unmet.

6. The foregoing Workshop fell under the backdrop of the end of the pre-transitional period in November 2019, presenting an opportunity to reflect on the progress and challenges in implementing the Chapter V mechanisms of criminal prosecutions, truth seeking, reparations, and institutional reforms. South Sudanese women, men, and children are desperate for genuine peace and reconciliation, but many are asking what channels exist to support a just and meaningful transitional justice process to achieve accountability, peace, reconciliation, and to establish the rule of law.

1. Goals and Objectives

7. The workshop looked at the following key issues among others;

* Examine the role of national, regional and international mechanisms including the UN, African Union and other stakeholders in assisting with the implementation of R-ARCSS and strengthening justice and accountability mechanisms;
* Discuss critical issues that implementing actors, including the AU, the Government of South Sudan, the RJMEC and civil society need to take into account when considering the establishment of the hybrid court, and the truth seeking and reparations mechanisms of the RARCSS;
* Assess and analyze the, security challenges and political context that need to be taken into account to create a conducive environment for a successful transitional justice program in South Sudan including political will, national ownership and security;
* Examine the coordination and sequencing (where necessary) of the various transitional justice mechanisms outlined in the RARCSS with a view to ensuring their timely establishment;
* Assess the challenges of ensuring a victims centered, gender sensitive transitional justice process which pays particular attention to women and girls as well as the youth who have been disproportionately affected by the conflict.;
* Identify and examine best practices for a holistic approach to the pursuit of accountability, justice, truth, reconciliation and reparation in South Sudan;
* Examine the complimentary role of traditional justice and reconciliation mechanisms in shaping transitional justice processes in South Sudan;
* Explore the viability of domestic accountability options and the reach of the formal justice system in ensuring meaningful accountability for serious conflict related crimes;
1. Expected Outcomes
* A comprehensive policy framework and strategy for:
* implementing Chapter V of the R-ARCSS in accordance with international norms and standards;
* securing a conducive environment for the implementation of a holistic transitional justice programme that includes a strengthened domestic legal system, an enhanced role of local indigenous reconciliation and justice processes, and an effective public awareness programme;
* strengthening civil society engagement with the African Union, Reconstituted Joint Monitoring and Evaluation Commission (R-JMEC), and the Government of South Sudan on the implementation of the Chapter V mechanisms taking into account linkages and sequencing; and
* produce a report that will summarise the discussions and outcomes/recommendations.

Summary

8. Between 16 to 18 December 2019, the Commission on Human Rights in South Sudan (CHRSS) convened a workshop on *Transitional Justice and Promotion of Peace in South Sudan*. The meeting was held in Addis Ababa, Ethiopia, and symbolically marked six years since the outbreak of the conflict in South Sudan.

9. The Commission organised the Workshop against the backdrop of mounting anxiety and uncertainty due to significant delays in the initiation of transitional justice measures anticipated in Chapter V of the 2018 Revitalised Agreement on the Resolution of the Conflict in the Republic of South Sudan (R-ARCSS). Despite the creation of a Technical Committee in December 2016 to conduct national consultations on a truth-seeking process, the Commission for Truth, Reconciliation, and Healing (CTRH) intended to address the legacy of past human rights abuses was yet to be established. Likewise, the process of establishing the Hybrid Court for South Sudan (HCSS) to investigate and prosecute individuals suspected of committing conflict-related crimes had stalled since 2017, following the Transitional Government of National Unity’s (TGoNU) failure to adopt the draft Statute and sign a Memorandum of Understanding (MoU) with the African Union for establishment of the Court. At the same time, the conceptualisation of a comprehensive reparation programme including setting up the Compensation and Reparation Authority and Fund had not begun. On a parallel level, the National Dialogue process continued to gather and analyse information from within and outside of South Sudan in preparation for a national conference. However, many South Sudanese remained profoundly cynical about the process, and expressed concern that it was purposely designed to circumvent accountability processes anticipated in Chapter V of the RARCSS.

10. The workshop drew over 70 participants from the TGoNU, including the Minister for Justice and Constitutional Affairs, parties to the R-ARCSS including Sudan People’s Liberation Movement (SPLM) and Sudan People’s Liberation Movement-in-Opposition (SPLM-IO), the Real SPLM, the Transitional Justice Working Group, and other South Sudan civil society and faith-based organisations, international non-governmental organisations, the Revitalised Joint Monitoring and Evaluation Commission (R-JMEC), United Nations Development Programme (UNDP), United Nations Mission in South Sudan (UNMISS), United Nations Secretary General’s Representative to the African Union, Chairperson of the African Commission on Human and Peoples’ Rights and South Sudan Country Rapporteur, the African Court on Human Rights and Justice, and diplomatic corp.

11. Participants and experts with technical and contextual knowledge on various aspects of transitional justice and the socio-political situation in South Sudan led panel presentations, including by sharing lessons learned and observations drawn from comparative post-conflict and transitioning contexts. Presentations were followed by plenary discussions and breakout sessions to generate consensus among participants on the way forward for transitional justice and national reconciliation in South Sudan.

12. This report presents the outcomes of the workshop, including key policy considerations and proposals that implementing actors, civil society organisations, and development partners should take into account to surmount political obstacles and ensure a holistic and context-specific approach to transitional justice in South Sudan.

13. The main highlight was the formation of an informal inter-agency working group from the participants focused on six main areas, namely: (i) creating tangible solutions for the security and political challenges; (ii) engaging with the AU; (iii) alternative traditional justice mechanisms and victim-centred processes; and (iv) advocacy for institutional reform and strengthening of domestic systems.

Transitional justice as a means to promote accountability, national reconciliation and healing in South Sudan

14. There was recognition among the participants that South Sudanese are craving for sustainable peace. With an objection from a participant from the Ministry of Justice, most participants concurred that the agreements reached in the R-ARCSS, including specific mechanisms anticipated in Chapter V, provide a watershed opportunity to initiate transitional justice as one of the means to secure sustainable peace in South Sudan.

15. The Hon. Angelina Teny from the SPLM-IO emphasised that genuine commitment is required from all parties to ensure the realisation of transitional justice measures, particularly to: address historical grievances, marginalisation and injustices that have led to protracted conflict; cultivate a common nationhood and identity on what it means to be South Sudanese; provide individual and collective criminal and political accountability for past violations; and promote institutional reforms and other systemic changes that can catalyse effective societal transformation.

16. Dr. Lam Akol from the Democratic Change party acknowledged that the R-ARCSS creates an opportunity for implementation of preceding negotiations, agreements, and processes, and highlighted key priorities to achieve accountability, national reconciliation, and healing through transitional justice in South Sudan. Mr. Akol stated:

“*As a result of the fighting there were atrocities committed on both sides of the divide, though not at the same scale. At least there is acknowledgment of those atrocities. These atrocities need to be addressed because at least there are no perpetrators that should go free.*”

To this end, Dr. Akol noted that it is important that the Commission on Truth, Reconciliation, and Healing (CTRH), Hybrid Court for South Sudan (HCSS), and Compensation and Reparation Fund and Authority are all conceived and implemented in a mutually reinforcing manner, to *“promote the common objectives of facilitating truth, reconciliation, healing, compensation, and reparation in South Sudan”*.[[3]](#footnote-3)

17. The Chairperson of the United Nations Commission on Human Rights in South Sudan, Ms. Yasmin Sooka, reflected on the AU Commission of Inquiry on South Sudan’s report that provided detailed proposals on potential solutions to address documented human rights and humanitarian law violations and underlying causes of the conflict, including truth-seeking, a Hybrid Court, compensation and reparation, and political arrangements and approaches. The AU Inquiry was then followed by various negotiations that resulted in the 2015 ARCSS and 2018 R-ARCSS.

18. During a plenary discussion, participants noted that the workshop provided a timely and critical opportunity to deliberate on the policies, institutions, and processes that would be necessary for the design and implementation of proposed transitional justice measures to effectively meet the needs of South Sudanese as articulated in the R-ARCSS, and initiate a process that will lead to significant transformation in South Sudan.

19. The workshop further underscored South Sudanese people’s views, as reflected in the R-ARCSS, that justice and peace must be pursued together as mutually reinforcing, rather than diametrically opposed, objectives. Commissioner Barney Afako emphasised that the transitional justice measures and mechanisms should, in a complementary manner, ensure: holistic interrogation of the past to accurately understand and document what took place before and during the conflict, how and why it happened, who was affected, and responsible actors.

20. Participants acknowledged that a few positive actions have already taken place, for instance a thorough and high-level fact-finding mission capable of establishing responsibility for serious crimes, gross violations of human rights, and violations of international humanitarian law set up by the UN Human Rights Council, and the public acknowledgement by all parties to the conflict of the sheer loss that South Sudanese have experienced. Participants also recognised, however, that there is need for tangible remedies and reparation measures that will guarantee non-recurrence of conflict and related violations in future, such as the Hybrid Court and constitutional and institutional reforms within the security and justice sectors.

1. Security and political context

21. H.E. Paulino Wanawilla Unango, Minister of Justice, Government of South Sudan, observed that the prevailing security and political context in South Sudan has not been conducive for the effective initiation of transitional justice. Although there has been a decline in widespread armed fighting since the adoption of the R-ARCSS, there is still on-going conflict and insecurity in parts of the country, including recruitment of local “youth” and children, contrary to the permanent ceasefire agreements.

22. South Sudanese human rights activists emphasised that civic and political space is still severely constricted and South Sudan is essentially run as a police-state. Participants additionally submitted that the Government has restricted dissemination of the peace agreement, demonstrating its lack of political will to ensure citizens’ full and meaningful participation in implementation of anticipated transitional justice and reform measures.

23. The participants were informed by civil society organisations that they must seek approval to assemble or conduct their civic activities from the National Security Service (NSS), which operates as a fully-fledged military operating unit, contrary to its constitutional function of collecting security intelligence. Civil society organisations supporting accountability for serious crimes and violations are also targeted for surveillance, leading to arbitrary arrests and detention in many cases. Victims and witnesses fear reprisal from authorities if they were to report violations or seek justice. Therefore, they have shunned formal judicial systems.

24. Hon. Angelina Teny observed an overall lack of political will to uphold and implement the agreements reached in the R-ARCSS. Critical political interventions anticipated in the peace agreement, including establishment of the Transitional Unity Government, had not been initiated at the time of the workshop, leading to heightened anxiety and confusion among citizens on advancement of the R-ARCSS and its Chapter V transitional justice measures. Japhet Bigeon from Amnesty International noted that there had been strong resistance to justice and accountability measures from political actors, with some expressing apprehension against the establishment of the Hybrid Court, which they perceive to be a tool for regime change. Dr Lam Akol’s opinion was that, consequently, more attention was given to the National Dialogue, which is widely viewed as a parallel process intended to circumvent accountability mechanisms in the peace agreement.

25. Deliberations at the workshop culminated in the following proposals for measures to be taken by State and non-State actors to address the adverse security and political situation in South Sudan:

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| IGAD | Address the linkages between regional economic and political dimensions of the conflict in South Sudan, which may explain the disinterest of neighbouring countries in supporting implementation of the peace agreement. Explore avenues to build trust and confidence among political actors on the significance of accountability processes in achieving sustainable peace, national reconciliation, and healing in South Sudan. The buy-in of the political leadership is vital for successful implementation of transitional justice in South Sudan. Besides their role in enacting required legislation and policies, political actors must be at the forefront as champions of transitional justice goals and measures. |
| R-JMEC | Support timely and effective implementation of security sector reforms to address on-going securitisation of every aspect of life in South Sudan. |
| CHRSS | Robustly engage the Inter-Governmental Authority on Development (IGAD) and the African Union (AU) to play a more active role in pushing for implementation of the R-ARCSS. Stakeholders were concerned that the IGAD and the AU had not sufficiently deployed their political position to influence the Transitional Government’s timely establishment and implementation of transitional justice measures. |
| Diplomatic corps | Identify and collaborate with other regional (in addition to the AU and IGAD) and international entities, including States, that can direct their political leverage to advance implementation of the R-ARCSS and transitional justice in South Sudan. |
| AU | Continuously explore innovative strategies to overcome political obstacles to the implementation of transitional justice in South Sudan. For instance, participants reasoned that it would have been perilous to peg implementation of Chapter V of the R-ARCSS on formation of the Unity Government, which had been delayed since 2016. They considered that the AU, IGAD, and other actors ought to have considered the establishment of an *ad hoc* tribunal in the event of the interim Government’s further delay in establishing the HCSS |

Overarching principles and issues proposed for consideration in the design and implementation of transitional justice measures in South Sudan

*Holistic and far-reaching*

26. While leading a plenary discussion, Commissioner Barney Afako said that transitional justice measures should aim to include a broad range of conflict-related atrocities, their causes and consequences, affected victims, responsible actors, and geographic locations of the violations. Mr. Afako continued with emphasis on economic crimes, violation of land rights, and patterns of cattle raiding that should be considered alongside other civil, political, and socio-economic violations in the context of the conflict in South Sudan.

Participants in group discussions pointed out areas that require import:

* Measures should be taken to ensure that transitional justice processes cover all affected geographic locations and victims, including opposition-controlled territories, as well as violations committed both by State security and non-State armed groups throughout the country.
* Transitional justice measures should also pay attention to the antecedents and causes of the 2013 conflict, including historical injustices and systemic marginalization, as well as ongoing conflict and violations in parts of South Sudan and within internally displaced persons (IDPs) and refugee camps.
* Traditional justice mechanisms and customary practices are highly valued in South Sudanese society, and should, to the greatest extent possible, be pursued to contribute to truth-telling, reconciliation, healing, reparation, and accountability. Participants noted that restoration of traditional authority to the esteemed position it occupied prior to the conflict may be a form of guarantee of non-recurrence of conflict and related abuses that violated established socio-cultural norms.
* Further, whereas a Hybrid Court is anticipated, there should be continuous exploration of other potential avenues for broader accountability through national courts, including enhanced capacity and reforms within the justice sector. Participants emphasised the need for key actors to also focus their attention on other aspects of Chapter V, besides the Hybrid Court.
* South Sudanese further want to see an inclusive, complementary process that includes various aspects of transitional justice including truth-seeking, reparation (including redistributive and restorative justice), and reforms, rather than an exclusive focus on retributive justice.

*Inclusive and locally driven*

27. One key element Commissioner Afako presented on was local ownership. He advised that transitional justice measures must resonate with the experiences, needs, and priorities of South Sudanese citizens and conflict-affected victims/survivors and communities. Implementation of the R-ARCSS and transitional justice measures should not be viewed or driven as an external, imposed, elitist, technical, or political agenda, devoid of the people’s views and expectations. Inclusion and buy-in of South Sudanese in all segments of society, including rural areas, uneducated citizens, women, marginalised communities, and those in opposition, is essential for the effective design and successful implementation of transitional justice processes and measures in South Sudan.

28. Additionally, participants agreed that a sense of ownership and buy-in into transitional justice processes by the general population can also contribute to addressing unhealed trauma resulting from marginalisation and cycles of violence from one generation to the next. Moreover, South Sudanese must be effectively positioned to steer transitional justice processes long after external actors depart.

29. The proposed action to be taken is to encourage State actors and civil society organisations to initiate robust public awareness campaigns to enhance the South Sudanese citizens’ understanding of the R-ARCSS and anticipated transitional justice measures, and reflect on strategies to promote meaningful inclusion and participation of ordinary citizens in transitional justice discourses.

*Gender sensitive*

30. It will be imperative to incorporate a gender lens during the conceptualisation, implementation, and monitoring of all transitional justice mechanisms. This will require that deliberate policies, measures, and technical capacities are put in place to identify distinct ways in which women, men, boys, and girls have experienced the conflict and its consequences; and address pre-existing gender-based inequalities that caused or exacerbated violations or that continue to pose obstacles to the effective participation of either gender in anticipated truth-seeking, accountability, reparation, reconciliation, and healing processes.

31. During deliberations, Esther Ikere Eluzai Ladu from the Ministry of Gender, Child and Social Welfare agreed, and further reiterated that the Government will be committed to the R-TGoNU ensuring strict adherence to the requirement in the R-ARCSS for 35 per cent women representation in all the Chapter V mechanisms (5.1.1). Participants from civil society mentioned the alarming scale of the use of sexual violence as weapon of war in the South Sudan conflict, and how every effort should be made to address the existing State and societal denial, even tolerance, of its occurrence and stigmatisation of affected victims/survivors and their families – only then would the relevant stakeholders be empowered to ensure effective and comprehensive reporting and documentation of cases, patterns, and consequences of conflict-related sexual violence in South Sudan.

*Complementary*

32. Participants also observed that it will be challenging to achieve the objectives of Chapter V without the effective realisation of other crucial aspects of the R-ARCSS. Security, judicial, and other institutional and constitutional reforms, humanitarian assistance, and rehabilitation of conflict-affected communities, and barring of corrupt officials from holding public office as anticipated in the R-ARCSS, are all essential to create a conducive environment for transitional justice. Commission Chair Yasmin Sooka also noted that transitional justice measures should include an assessment of the manner in which various state security, resource management, and financial institutions have been misused to perpetuate the conflict, and contribute to identification of relevant accountability and reform measures so as to guarantee non-recurrence.

*Prioritisation and sequencing*

33. During group discussions, all participants acknowledged that, in a post-conflict context such as South Sudan, there will inevitably be competing demands for rebuilding, reparation, and accountability. Thus, duty bearers and stakeholders should continuously deliberate on prioritisation and sequencing between and within various transitional justice measures, to ensure their timely establishment and effective implementation within the evolving social, political, and economic context in South Sudan.

34. Stakeholders from the Government of South Sudan agreed that there should be a greater push for implementation of measures where consensus has been achieved, while continuing negotiations on contentious issues. Hon. Clement Kuc Achol, a member of the Transitional National Assembly – Legislation and Justice committee, submitted that it is possible to fast track the initiation of renewed and inclusive national consultations and development of legislation for creation of the CTRH; and provision of urgent and interim reparation measures including health care and land restitution. Other considerations include timing of the establishment of the Compensation and Reparation Fund and Authority and their connection to the CTRH and HCSS.

35. As a note, Commissioner Barney Afako referred participants to the report by late Kofi Annan, on Transitional Justice in Peacebuilding titled “UN, Report of the Secretary-General on the Rule of Law and Transitional Justice in Conflict and Post-Conflict Societies” (UN Doc. S/2004/616). The report points out challenges if a form of weak institutions, unfavourable political environment, and weak security.

*Coordination among state and non-state actors*

36. Civil society participants from the Transitional Justice Working Group identified the need for enhanced information sharing and coordination among State and non-State actors involved in the promotion of transitional justice. Such coordination would enable actors to have a common understanding of the goals and mandate of various transitional justice mechanisms, avoid duplication and optimally utilize available resources to ensure that all conflict-affected communities and transitional justice issues are effectively covered. Civil society organisations were encouraged to consider collaborative approaches for data collection and documentation on patterns of violations, which could support the work of various transitional justice mechanisms. This calls for an urgent review of existing documentation and databases, and action to address any identified gaps. Regional and international civil society organisations and friendly States can also play an active role, including through advocacy, to elicit political action toward implementation of transitional justice in South Sudan.

*Resources and capacity*

37. Participants observed that provision of inadequate financial resources and weak institutional and technical capacity present significant challenges to implementation of transitional justice mechanisms. This situation is compounded by corruption and the lack of transparent and accountable management of available resources within the Government. Some stakeholders proposed that resources raised to support establishment and operation of transitional justice mechanisms should be managed by a third party.

*Role of the African Union*

38. Ms. Hanna Tetteh, Special Representative to the African Union and Head of the United Nations Office to the African Union, during the workshop’s opening remarks, recognised the long history of the African Union’s role in conflict resolution and peacebuilding in South Sudan. Notably, the findings of the AUCISS formed a basis for negotiations that resulted in various elements of the peace agreement, including recognition of the need to address entrenched impunity for past violations and serious crimes, and pursue genuine national processes for truth-seeking, reparation, healing, and reconciliation.

39. Participants were however concerned that the African Union and the African Commission on Human and Peoples’ Rights engagement on implementation of the R-ARCSS has, thus far, been one-sided, with a primary focus on the Government of South Sudan. They called on the AU to enhance its collaboration with opposition parties to the agreement, South Sudanese citizens, and civil society in its future engagements in order to obtain a comprehensive picture of the people’s views and priorities. Participants were also curious about the utilisation of USD $10 million that is said to have been provided to the AU by the United States of America for establishment of the HCSS. They also expressed concern that there was little to no consultation by the AU with local civil society actors and victims/survivors on development of the draft Statute of the HCSS. Moreover, there was a general sense of frustration among key stakeholders on the lack of apparent action by the AU on the interim Transitional Government of South Sudan’s delay in signing the MoU and adoption of the Statute for establishment of the HCSS. This feeling seemed to stem from the belief by key actors and affected communities that the AU would play a more prominent role in pushing for implementation of the R-ARCSS by all parties. It was felt that, while the Transitional Government’s co-operation is necessary for establishment of the HCSS, the AU should strongly consider alternative measures within its broader regional mandate, given the Government’s manifest lack of political will, to end impunity for serious crimes in South Sudan.

40. Solomon Dersso, a Commissioner with the African Commission on Human and Peoples’ Rights, submitted during deliberations that, beyond the R-ARCSS, the AU has a broader mandate to promote regional peace and security, and protect fundamental rights and freedoms enshrined in the African Charter on Human and Peoples’ Rights (ACHPR). The African Commission on Human and Peoples’ Rights Study on Transitional Justice (TJ Study) and the AU’s recently launched Transitional Justice Policy (AUTJP) were identified as important bases for the AU’s support toward realisation of transitional justice in South Sudan. Significantly, the AUTJP mandates the AU to exercise political oversight over all transitional justice processes initiated in the African region.

41. Chris Gitari, an officer with R-JMEC, submitted that the AU holds a pivotal role and responsibility to promote transitional justice and sustenance of the peace agreement in South Sudan. Under the R-ARCSS, the R-TGoNU is obligated to co-operate with the AU in developing and implementing transitional justice measures; for its part, the AU is obligated to establish the HCSS and appoint its judges and prosecutors, and nominate Commissioners to the CTRH; and R-JMEC is required to report to the AU on the progress of implementation of the R-ARCSS.

42. A member of the Secretariat of the IGAD reminded participants that, while calling for enhanced interventions by the AU, all key actors should bear in mind the principle of subsidiarity, which places IGAD as the primary regional intervener in the South Sudan situation. Nonetheless, it was also underscored that subsidiarity anticipates the complementary involvement of the AU, UN, and other regional and international actors to advance peace and security based on their comparative advantage. In this case, the AU should not hesitate to lend explicit support based on its regional mandate to advance transitional justice in South Sudan.

1. Supporting Truth, Reconciliation and Healing in South Sudan

43. Chapter V of the R-ARCSS envisages the establishment of a Commission on Truth, Reconciliation, and Healing (CTRH) to inquire into and establish an accurate and impartial historical record of human rights violations and abuses, breaches of the rule of law, and excessive abuses of power committed by State and non-State actors and/or their agents and allies from the date of signing the Agreement to July 2005. The R-ARCSS requires the R-TGoNU to promulgate legislation to define the mandate, jurisdiction, operations, and selection of members of the CTRH within three months of its formation. To this end, the Ministry of Justice & Constitutional Affairs, in collaboration with other stakeholders and civil society, is obligated to conduct public consultations at least one month prior to establishment of the CTRH, to ensure that the experiences of all key segments of South Sudan’s population, including women, men, and children, are sufficiently documented and incorporated in the legislation creating the CTRH.

*National Consultations on Establishment of the CTRH[[4]](#footnote-4)*

44. Mr. Lawrence Kamilo, an officer with the Ministry of Justice and in his presentation, informed participants that, in December 2016, the Ministry of Justice and Constitutional Affairs established a Technical Committee, consisting of State and non-State actors, to lead national consultations on the creation of the CTRH. Members of the Technical Committee received training from various partners and experts on ensuring a human-rights based and victim-centred approach to the national consultations, and lessons drawn from comparative truth-seeking experiences in other transitioning/post-conflict countries. The Committee received support from the UNDP to undertake national sensitisation and consultations. The sensitisation programme was rolled out in 2017 to establish rapport with members of the public and provide them with an opportunity to share their views with the Committee.

45. Subsequently, the Committee carried out national consultations between May and June 2018. The table below demonstrates the activities, methodology, and findings of the national consultations of the Technical Committee:

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| Activity | Methodology | Finding |
| Due to the volatile security situation resulting from on-going conflict in some parts of the country, the Technical Committee, with support from UNMISS, conducted a mapping to identify accessible areas. | 28 members of the Committee were divided to conduct consultations across 17 locations, including, Bor, Aweil, Malakal, Kuajok, Rumbek, Renk, Torit, Yambio, Wau, Leer, Bentiu, Mundri, and Yei etc. | UNMISS confirmed that there were no security concerns reported and the environment was generally open in all the areas where the sensitization and consultations took place. Only one location had NSS presence in the building where the consultations were being conducted. Committee members were not able to visit refugee settlements outside of South Sudan. |
| The Committee consulted a total of 4610 respondents, including 1929 women. | Consultations were conducted through targeted and separate meetings to gain insight on the experiences and perspectives of various groups including women, Internally Displaced Persons (IDPs), faith-based groups, academics, political parties, and the business community. A questionnaire was used to elicit specific details from respondents including on the mandate of the CTRH and selection of Commissioners. | There is a desire for the creation of a CTRH with a broad mandate; some respondents stated that they would like to see prosecutions for violations, while others want compensation and reparations for loss of property and physical injuries. Regarding the CTHR’s operations, there were both advocates for open as well as in-camera proceedings. On the composition of the CTRH, participants noted that the Commissioners should not include individuals who have served in the previous nor the current Government. Others proposed that credible individuals to lead the CTRH process could include religious leaders and South Sudanese who have worked with the United Nations and other bodies perceived to be neutral or competent on truth seeking and reconciliation processes. |

46. The Technical Committee presented the outcome of the national consultations to the Council of Ministers, which approved a budget of 25 million SSP for the truth-seeking process. The next step is to present a bill for the establishment of the CTRH to the Transitional National Legislative Assembly (TNLA). However, the process has stalled as the required funds are yet to be released.

47. Mr. Kamillo additionally informed participants that sensitisation and consultations conducted by the Technical Committee are, thus far, the most concrete step taken by the Interim Transitional Government of National Unity (I-TGoNU) to advance aspects of Chapter V of the R-ARCSS, and particularly toward establishment of the CTRH.

48. However, during deliberations, civil society participants felt that the consultations fell short of the process envisaged in the R-ARCSS and expressed a number of concerns that are likely to have considerable implications on the design of the CTRH legislation and legitimacy of any resulting truth-seeking process.

The five main concerns were that:

* The report of the outcome of the national consultations conducted by the Technical Committee should be made public as a matter of priority. The failure to make the findings public raises concerns about transparency in the development of the CTRH legislation and the extent to which it will accurately incorporate the views of affected communities as envisaged in the R-ARCSS. For instance, participants noted that from other assessments, citizens feel strongly that the CTRH’s mandate should incorporate land issues, which, if not addressed, could be a trigger for future violence.
* The consultations conducted thus far have been partial, leaving out a significant proportion of the affected population. When consultation took place, there was on-going conflict and serious violations in certain parts of the country including Western Upper Nile, Southern Unity, and Equatoria (Yei). Consequently, many of these areas were inaccessible, civilians had fled to neighbouring countries, and there was a high level of mistrust of the Government among the victims who were left behind. The Technical Committee ended up collecting views only in Government-controlled areas and protection of civilian sites (PoCs).
* Out of the three Chapter V mechanisms, the CTRH has the greatest potential to draw the broad participation of South Sudanese people. It is, therefore, critical for the CTRH to ensure widespread reach to victims and affected communities. Thus, further mapping is required to ensure that the experiences of victims/survivors left out of the 2018 national consultations, including in hitherto opposition-controlled areas, are obtained and considered in designing the CTRH legislation. It will also be important to identify and collaborate with local actors that have created a trust relationship with affected communities over a period of time to carry out the consultations. Participants also reported that there is a need to enhance women’s participation in the consultations.
* The timing of the consultations, prior to addressing victims’/survivors’ immediate and essential needs, is likely to result in limited and ineffective engagement with affected communities. The immediate priorities of the affected communities are restoration of peace, safe return to their homes and land, and accurate documentation of their experiences. For instance, in Malakal, the consultations coincided with a period when communities were preoccupied with resolving denial of burial rights resulting from re-categorisation of states and boundaries. Furthermore, stakeholders were concerned about the feasibility of conducting consultations among victims who are still highly traumatised from conflict and related atrocities, without any form of psychosocial interventions from the state and other partners.
* The period allocated for the consultations was insufficient. The context of war crimes and dealing with the past in a society that has many cultures will require careful and long-term planning and implementation; it cannot be a rushed process.
* There is a tension between consultations and sensitisation. Participants observed that there is very limited knowledge about the R-ARCSS, Chapter V, and the anticipated transitional justice process among the general population in South Sudan. Under these circumstances, it is difficult to contemplate achieving effective consultations with meaningful contribution to the design of the CTRH. There is need for broad-based civic education on transitional justice and other relevant aspects of the peace agreement. Such sensitisation efforts could, for instance, debunk the growing public misperception that Chapter V and the transitional justice agenda are exclusively focused on retributive justice and aimed at seeking revenge against certain individuals in the Government.
1. Ensuring Criminal Accountability in South Sudan

*Lack of political will for establishment of the Hybrid Court for South Sudan*

49. Commissioner Prof. Andrew Clapham led presentations on ensuring criminal accountability for the establishment of the Hybrid Court. However, during deliberations, the civil society participants raised concerns with the Transitional Government’s continued lack of political will to establish the Hybrid Court or pursue any domestic accountability measures for conflict-related atrocities committed in South Sudan. Dr. Lam Akol pointed out that the R-TGoNU’s rejection of accountability processes was most clearly demonstrated through its hiring of a US-based lobby group in April 2019 with one of its explicit purpose being to “delay and ultimately block establishment of the hybrid court envisaged in the R-ARCSS”.[[5]](#footnote-5)

50. Civil society participants informed the workshop that the African Union-led negotiations to set up the HCSS ended up in a deadlock since 2017, with the R-TGoNU’s failure to sign a Memorandum of Understanding with the AU and adopt the Statute for establishment of the Court. The Hon. Paulino Wanawilla Unango, Minister for Justice, reported that the Council of Ministers had raised a number of reservations on some provisions in the draft Statute for the HCSS that had not yet been resolved at the time of the workshop. Ambassaor Kureng Akuei Pac Garang from the Ministry of Foreign Affairs was also adamant that the HCSS could only be established following formation of the R-TGONU, which would collaborate with the AU.

51. Several stakeholders were also apprehensive about the National Dialogue process initiated by President Kiir in December 2016, which appears to have an overlapping mandate with several transitional justice, national, reconciliation, and healing mechanisms envisaged in the R-ARCSS, except accountability. Dr. Lam Akol noted that, in a sense, the National Dialogue process seems to have been set up to circumvent the Hybrid Court.

*Persisting impunity and weak capacity for accountability at the domestic level*

52. Civil society participants raised concerns regarding capacity of the judiciary, in its current state, to handle the magnitude of conflict-related violations, interference of the executive in accountability processes, and lack of independence of judicial officers. As such, impunity for conflict-related violations has continued in the absence of a HCSS or other domestic mechanisms to pursue effective investigations and prosecutions.

53. Notably, participants echoed concerns of persisting impunity for conflict-related sexual violence. Extensive documentation has been done in emblematic cases since 2013, some resulting in Government-led inquiries, but no meaningful action has been taken by the state to guarantee prosecution of perpetrators. The Terrain Hotel case is the only known prosecution of conflict-related sexual violence in South Sudan, to date.

54. Colonel Mayiel Chamtang, the lead Prosecutor in the Terrain case, informed participants that his prosecution in the military court and resulted in the conviction of 10 SPLA soldiers and NSS officers for charges of sexual violence against six foreign humanitarian workers, murder of a South Sudanese journalist, and theft and robbery during attacks against civilians in Juba in July 2016. However, civil society participants asserted that it was a confluence of political factors, including pressure from the international community and a fallout within the SPLM/A leadership, that led to the eventual prosecution and conviction of the military soldiers in the Terrain case in September 2018.

55. Participants agreed that the Terrain case confirmed that even with practical challenges, domestic accountability is feasible where political will and state support exists. However, since then, the Government of South Sudan has maintained a public stance of willingness to pursue accountability against perpetrators of conflict-related sexual violence, while effectively turning a blind eye to several cases reported prior to and following the Terrain case.

56. A good governance activist, from a civil society organisation, informed participants that efforts to hold perpetrators of sexual violence committed by military forces against women and girls in Kubi village in February 2017 and Bentiu in November 2018 have stalled. Five low-ranking soldiers were arrested in 2018 for alleged involvement in the Kubi attacks following military investigations, but there has been no further progress since. Participants were informed that women in Juba protested in the hundreds and presented a petition to the Minister for Justice to demand for accountability in the Bentiu incidences. A Government-led committee of inquiry was established by President Kiir in December 2018 to investigate these allegations. The committee submitted its report to the President in May 2009. The findings of the inquiry however have never been made public and no individuals have been charged for the related crimes. Instead, the Government issued verbal communication asserting that no rapes took place in Bentiu.

57. Paulino Wanawilla Unango, the Minister for Justice, however, reported that more than 400 conflict-related cases involving SSPDF officers had already been concluded, but had not been given the same coverage as the Terrain Hotel case.

58. The recent establishment of specialised courts for sexual and gender-based violence and juvenile justice in Juba in 2019 presents a promising opportunity to improve accountability. However, some of the civil society participants were concerned that the mandate of these specialised courts does not explicitly extend to 2013 conflict-related violations. Nonetheless, the discussions emphasised the need to consider the causes and consequences of peace time and conflict-related sexual violence in a continuum rather than as isolated concerns. Additional measures should also be established to support the rehabilitation of victims and survivors of conflict-related sexual violence, including persisting psychological trauma.

59. Participants heard from civil society presentations on the mobile courts – learning that they were re-established in 2018 with support from UNMISS and the UNDP, in collaboration with the South Sudan Ministry of Justice and Constitutional Affairs. David Deng, an independent Transitional Justice researcher on South Sudan, reported that the mobile courts have, thus far, held proceedings in more than 10 areas where protracted conflict resulted in significant neglect of the justice system and delayed trials. Mr. Deng informed participants during deliberations that the courts deal with the backlog of cases involving serious crimes, including murder, rape, robbery, and theft. While hailed as a positive step toward enhancing access to justice, participants noted several concerns regarding the mobile courts’ potential to reduce the impunity gap for conflict-related crimes in South Sudan:

* First, the geographic scope and cases covered by the mobile courts thus far are quite limited relative to the large magnitude of serious crimes, pending cases, and suspects still held in detention without trial.
* Second, there are concerns on due process and the potential that the approach adopted by the mobile courts may compromise fair trial principles due to the limited time allocated to the hearing of cases and the absence of early engagement between prosecutors and affected victims prior to trial. For instance, mobile courts recently heard 12 cases and sentenced accused persons in less than two weeks.
* Third, the proceedings have highlighted the need for more deliberate efforts to cultivate local ownership and effective participation of victims and affected communities in the mobile courts’ proceedings, if they are to contribute to truth, national reconciliation, and healing. Participants observed that there appears to be heavy involvement of external actors that are not well versed or connected with local contexts, authorities, or communities in preparing for and conducting the mobile courts’ proceedings.
* Participants were also concerned about the potential effect of public hearings of sexual violence cases on the safety and well-being of victims and their families. Further, the mobile courts’ hearings are characterised by a large presence of security personnel, which unwittingly has the effect of limiting the participation of local communities and individuals not associated with the cases. Consequently, some cases that could easily be resolved through alternative dispute resolution are brought for hearing before the mobile courts, thereby reducing the already limited time available for determination of serious crimes.

*Potential avenues for obtaining justice and accountability for atrocities in South Sudan*

60. Despite the existing political hurdles, it was felt that the quest for accountability for past atrocities must not be abandoned as it is a cornerstone of sustainable peace in South Sudan. Some participants felt that the government’s willingness to ensure that perpetrators of conflict-related crimes are held responsible would be the clearest signal of its intention to genuinely pursue national reconciliation and healing and rebuild a transformed South Sudanese society. They further questioned the value of pursuing implementation of all other aspects of the R-ARCSS in the absence of accountability for past violations.

61. During group discussions and cognisant of the foregoing reality, participants deliberated on potential domestic, regional, and international avenues to keep the quest for accountability in South Sudan alive.

* 1. *Political measures*

62. US Ambassador Kelly Currie indicated that sanctions against politicians and Cabinet Ministers blocking implementation of the peace agreement and accountability processes, including those already issued by the US Government were cited as a progressive measure. In addition, participants called for the AU to engage more robustly on the establishment of the HCSS, including requiring the R-TGoNU to sign the MoU and adopt the draft Statute within specific timelines. Most participants proposed that, in the absence of concrete movement by the R-TGoNU, the AU should consider alternative avenues to initiate an accountability process as envisaged in the R-ARCSS. However, some participants were of the view that collaboration with the Government of South Sudan is essential if any accountability process is intended to effectively contribute to the broader goals of national reconciliation, healing and sustainable peace.

* 1. *Regional accountability measures*

63. It was noted that, as South Sudan has ratified the African Charter on Human and Peoples’ Rights, the African Commission on Human and Peoples’ Rights may provide a feasible avenue for state accountability and reparation for conflict-related human rights violations committed in South Sudan, subject to admissibility considerations. Solomon Dersso encouraged participants to join in advocacy efforts aimed at promoting ratification of and amendments to the Protocols of the African Court on Human Rights and Justice, by South Sudan and other AU member States, as the Court may provide a viable opportunity in future to pursue individual criminal responsibility against perpetrators of conflict-related crimes in South Sudan.

* 1. *Universal jurisdiction*

64. Commissioner Prof. Andrew Clapham elaborated upon the possibility of initiating accountability for atrocities committed in South Sudan through the application of universal jurisdiction. Under universal jurisdiction, a national court may prosecute individuals for serious crimes against international law, such as war crimes, crimes against humanity, genocide, torture, and enforced disappearances, based on the principle that such crimes go against established international norms. Universal jurisdiction may be invoked in instances where the accused person is not a national of the prosecuting State and/or where crimes were committed in the territory of another state against foreigners. In most cases, universal jurisdiction has been pursued against individuals present in the territory of a prosecuting State, due to the practicalities of conducting investigations and arrests. The prosecuting State exercises its jurisdiction on the basis of national legislation prohibiting the relevant crimes and authorising their prosecution based on customary international law or international treaties such as the Convention Against Torture.

65. Illustrations cited included cases that have been successfully pursued against Liberian nationals involved in committing atrocities during the Liberian First Civil War between 1989 and 1996, under criminal and immigration laws in the United Kingdom and United States of America. These cases have been initiated through the relentless efforts of local victims’ groups, journalists, and civil society organisations under the banner of the Global Justice and Research Project, in collaboration with an international non-governmental organization, Civitas Maxima, based in Geneva.[[6]](#footnote-6)

* 1. *International Criminal Court*

66. Prof. Andrew Clapham also reminded participants that South Sudan is not yet a State Party to the Rome Statute of the International Criminal Court (ICC). Moreover, given the existing impunity and lack of state political will to pursue accountability for conflict-related atrocities, it seems improbable that the present Government would seek the ICC’s intervention. The backlash against the ICC by the African Union and the ensuing geopolitics further complicate the prospects of a referral of the South Sudan situation by the Security Council under Article 13(b) of the Rome Statute. Nonetheless, the meeting identified two potential opportunities, which should be explored further, to invoke the ICC’s jurisdiction over international crimes committed in South Sudan, as a last resort. One, is the potential to initiate cases against suspected South Sudanese with dual nationality, where their second country of citizenship is a State Party to the Rome Statute or agrees to lodge a declaration to accept the ICC’s jurisdiction under Article 12(3) of the Rome Statute. Second, a future South Sudan government could ratify the Rome Statute and lodge a declaration under Article 12(3) to trigger the ICC’s jurisdiction over the 2013 conflict-related crimes retrospectively or retroactively.

1. Supporting a sustainable reparation program in South Sudan

*Victims and survivors’ experiences and priorities must inform the design and implementation of a reparation program*

67. Howard Varney, an expert with the International Center for Transitional Justice, led discussions that emphasised that victims’ and survivors’ needs and priorities must be at the core of the development and implementation of a reparation programme for South Sudan. Mr. Varney used his research experience to inform participants that the involvement of victims and survivors will be vital to resolve persisting questions and dilemmas associated with reparations in South Sudan, and to ensure that proposed measures result in the intended aims of acknowledging and addressing harms suffered, preventing recurrence of conflict-related violations, national reconciliation, and healing. Several preliminary surveys and assessments involving victims across South Sudan already provide useful insights on key aspects that ought to be considered in designing a reparation program.

68. South Sudan Law Society representatives referred to an assessment conducted by South Sudan Law Society between January and February 2017, entitled Reparations for Conflict-Related Abuses in South Sudan: A Preliminary Assessment of Public Priorities, which sought to understand victims’ perspectives on options for reparations, and to contribute to the development of a credible and transparent reparation process in South Sudan. The assessment was conducted in Juba, Bor, Wau, Bentiu, and Malakal, which are five of the most conflict-affected areas of South Sudan. Notably the findings of that assessment were that:

* While 85 per cent of the respondents had heard about the ARCSS, the majority of them, particularly the less educated, were not informed of the transitional justice or reparation measures therein. This points to the need for extensive outreach programmes to elicit understanding of the reparation programme and its goals, anticipated procedures, and avenues for participation among victims and conflict-affected communities. Such programmes should be targeted at all levels and segments of the society, including those who lack formal education and in rural settings.
* Nonetheless, given the extensive nature of the conflict – affecting a vast population of South Sudanese – there was widespread agreement (92 per cent) within the surveyed locations, that affected victims should receive reparations. Respondents believed that reparations would signify the State’s intolerance for conflict-related violations committed against civilians, which defied existing norms, including rape and other abuses against women, children and elderly people; and enable victims to overcome practical obstacles in rebuilding their livelihoods. Respondents viewed murder (92 per cent), rape and SGBV (79 per cent), displacement (74 per cent), destruction of property and looting (72 per cent), and torture (52 per cent) as the most serious conflict-related abuses. Participants across all field sites believed that women, children, and elderly persons were most severely affected by conflict-related abuses in comparison to other groups. They considered victims of rape and SGBV (78 per cent), those who were physically injured or disabled (77 per cent), those experiencing psychological trauma (69 per cent) and widows (66 per cent) to be the most vulnerable.
* Furthermore, 83 per cent of the respondents surveyed favoured provision of material reparations commensurate to the harm suffered by affected individuals rather than symbolic measures. Yet, at the same time, 53 per cent of those surveyed believed that reparations should prioritise entire communities while 47 per cent considered individual reparations to be more suitable.
* Despite widespread agreement on the need for reparations, there were variances in participants’ views based on their geographic location, related experiences of conflict, and ensuing or persisting needs. For instance, a higher percentage of respondents in Bentiu, Bor, and Juba considered rape and SGBV to be the most serious conflict-related abuse compared to other sites; respondents in other sites prioritised health care and other essential services compared to Juba, which is considered to have relatively better access to basic services than other parts of South Sudan; and demand for individual reparations was highest in Bentiue PoC (85 per cent) and Bentiu Town (82 per cent), and lowest in Malakal PoC (0 per cent) and Malakal Town (7 per cent). Thus, a reparation programme must also take into account specific local needs and challenges, which are likely to impact the nature and potential success of reparation measures in different contexts.
* Even though there were little to no statistical differences between responses from male and female respondents in the study, participants generally highlighted the impact of conflict on women and challenges that widows and victims of SGBV are likely to encounter in rebuilding their livelihoods. It will, therefore, be imperative to include a detailed understanding of the gendered nature of violence and structural inequalities, and identify practical measures to dismantle and overcome such inequalities, in all stages of the design and implementation of a reparation programme.

*Reparation measures should go beyond compensation and material measures*

69. Commission Chair Yasmin Sooka encouraged the R-TGoNU and all stakeholders involved in the design of a reparation programme should consider other forms of reparation that may be implemented alongside compensation and material measures.

70. Commission Chair Sooka also advised on options that may be considered include the potential to design return to one’s place of residence or land for the vast population of displaced South Sudanese as reparative restitution measures. Rehabilitation measures, including medical and psychological care, can also be initiated to address physical injuries, psychological trauma, and other persisting health-related complications experienced by victims. Participants observed that, due to the history of poor governance, some of the victims may have no expectation of tangible benefits from the state and may therefore emphasise symbolic measures that would greatly promote sustainable peace. Such satisfaction or symbolic measures may include truth-seeking and an accurate documentation, and the state’s acknowledgement of and public apologies for the harm and losses experienced by victims as a result of conflict-related violations; commemoration, tributes, and memorials of significant events or departed members of community such as renaming of schools and roads, among other measures. Security sector and other institutional reforms envisaged in the R-ARCSS should also be considered and designed as potential measures of reparation, which could contribute to prevention of cycles of conflict and related abuses in South Sudan.

*Relationship between reparation, development and humanitarian assistance*

71. Participants noted with concern the varying interpretations of reparation envisaged in Chapter V of the ARCSS, with state actors being more focused on development-based interventions such as building schools and other infrastructure. These concerns demonstrate the dilemma faced by several post-conflict countries who grapple with addressing competing demands for resources for humanitarian assistance, development, and reparation. Moreover, in most cases, as in South Sudan, victims of massive or systemic violations have historically been socially, politically and economically marginalised, and are in need of essential services and infrastructure that development and humanitarian assistance efforts can provide. Experts underscored the importance of drawing a distinction, as well as potential linkages. between the concepts of reparation as a transitional justice measure and development or humanitarian assistance, which are all contemplated within the ARCSS. Post-conflict reconstruction, development, and humanitarian assistance to address victims’ immediate basic needs such as shelter, food, healthcare, and education, will have to be pursued in tandem with reparation measures in South Sudan. However, the key criterion for determining whether any overlapping measures can be considered as reparation, will be the existence of state acknowledgement in the design and delivery of such measures.

72. Reparation requires direct and explicit state acknowledgement of victims and past violations committed against them; victims’ right to remedies for violations as the basis for provision of reparations; and state responsibility and commitment to provide remedies in recognition of violated rights and to address the consequences of violations suffered by victims. Experience in other transitioning contexts has demonstrated that any measures, including monetary payments, provided to victims in the absence of state acknowledgment, risk being perceived as mere hand-outs or “blood money,” thereby negating the intended aim of reparation – to promote truth, national reconciliation, and healing, including rebuilding a trust relationship between citizens and the state. The case of victims involved in the 9/11 terrorist attacks in the United States of America was cited as an illustration where, even though affected individuals and families received incredible amounts of money from the state, they were unsatisfied because there was no acknowledgement about what happened.

*Important issues to resolve during the development and implementation of a reparation program for South Sudan*

* *Linkage between the Compensation and Reparation Authority (CRA), Commission on Truth, Reconciliation, and Healing (CTRH), and Hybrid Court for South Sudan (HCSS)*: participants observed that it is unclear how the reparation mandates and operations of the CRA, CTRH, and HCSS will be linked in order to avoid double reparation, maximize available resources and reduce the burden on victims seeking reparations. The R-ARCSS anticipates the establishment of a CRA with powers to provide material and financial support to citizens whose property was destroyed, help victims to rebuild their livelihoods, receive applications from victims from the CTRH, and make necessary compensation and reparation. The CTRH will be expected to receive applications from alleged victims, identify and determine their right to remedy, and recommend guidelines to be adopted by the legislature for determining the type and size of compensation and reparation for victims. The HCSS will is also be required to award appropriate remedies to victims within its jurisdiction including reparations and compensation.
* *Designing a reparation process capable of impacting long lasting peace, national reconciliation, and healing:* participants underscored the importance of an inclusive reparation process that is responsive to the needs and priorities of affected communities and individual victims and survivors. In addition, responsible mechanisms should be granted the autonomy to establish their own policies and ensure that registration, verification, and implementation processes are not overly restrictive or burdensome on potential beneficiaries. Public outreach and awareness creation will be essential to understand and manage victims’ expectations, and develop a public consensus on the aims of and feasible approaches for achieving reparation in South Sudan.
* *Prioritisation and sequencing:* fundamental questions regarding the universe of victims, who will be considered the most vulnerable, who could be excluded, or whether the reparation programme should include victims of conflict-related violations committed prior to the 2013 conflict, are yet to be resolved. Experts advised that difficult choices and compromises often have to be made in post-conflict contexts such as South Sudan, which are literally undergoing reconstruction. In a similar context, Sierra Leone, the choice was made to prioritise reparations for children affected by violence, followed by women and then amputees. These decisions were reached following consultations with victims’ and survivors’ groups. Women, for instance, prioritised reform of marriage laws and education of girls, due to existing gender-based and structural inequalities. Victims also received specialised surgery to repair injuries suffered as a result of SGBV.
* *Urgent and interim reparation*: It will be important to consider feasible avenues and measures to address some of the victims’ crucial needs, such as healthcare, in the interim period, before the establishment of an elaborate reparation programme.
* *Cost of reparations*: The reparation programme must explicitly identify the state sources for funding the reparation programme. The practice from other transitioning contexts has been that development partners and donors will be apprehensive to support domestic reparation programmes in the absence of direct funding from the government. In this regard, civil society organisations and victims’ groups were encouraged to consistently engage government institutions and Ministries in deliberations regarding feasible and effective options for reparations in South Sudan, as these are the actors who will eventually have to make critical policy, administrative and budgetary decisions.

1. UN Document no. A/HRC/45/CRP.4 [↑](#footnote-ref-1)
2. R-ARCSS, Article 5.1.1. [↑](#footnote-ref-2)
3. R-ARCSS, Article 5.1.3. [↑](#footnote-ref-3)
4. *See* https://reliefweb.int/report/south-sudan/undp-supports-government-s-public-sensitization-efforts-establishment-commission; https://www.ss.undp.org/content/south\_sudan/en/home/presscenter/pressreleases/2017/08/25/technical-committee-for-the-commission-for-truth-reconciliation-and-healing-completes-training-in-conducting-inclusive-consultations.html; and https://www.ss.undp.org/content/south\_sudan/en/home/presscenter/pressreleases/2018/ministry-of-justice-and-constitutional-affairs-launches-consulta.html. [↑](#footnote-ref-4)
5. *See* https://efile.fara.gov/docs/6667-Exhibit-AB-20190418-2.pdf; and https://www.hrw.org/news/2019/04/30/south-sudans-cynical-bid-block-war-crimes-court). [↑](#footnote-ref-5)
6. *See* TRIAL International Universal Jurisdiction Annual Review (2020); *see also* https://www.civitas-maxima.org/en/trials/legal-monitoring-of-the-jungle-jabbah-case. [↑](#footnote-ref-6)