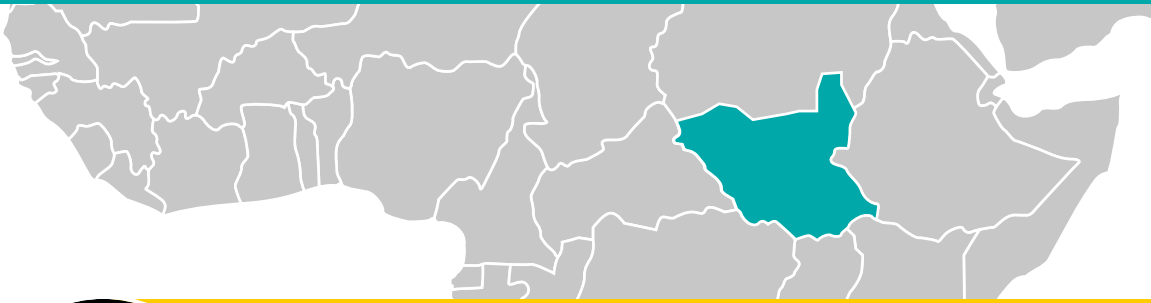


REPARATIONS FOR SURVIVORS OF CONFLICT-RELATED SEXUAL VIOLENCE



COUNTRY BRIEFING: SOUTH SUDAN

Official Register of Survivors of conflict-related sexual violence (CRSV): None.

Official number of CRSV Survivors: Thousands.

Estimated Real Number of CRSV Survivors: Over 50 thousand.

Domestic Legal Framework for Administrative Reparations Programme: The 2018 [Revitalised Agreement on the Resolution of the Conflict in South Sudan](#) (R-ARCSS) foresees a Reparations and Compensation Authority amongst other mechanisms, for which implementing legislation is required.

Mechanism to implement Administrative Reparations Framework: According to R-ARCSS, the Commission on Truth, Reconciliation and Healing, when established, should (according to R-ARCSS) recommend measures for reparations and compensation.

Domestic Avenues for Reparations through Courts: Some isolated trials backed by UN Agencies in South Sudan have awarded reparations for CRSV, including to foreign aid workers ([Terrain Hotel case](#)), though no monies have been paid out and serious reprisals against victims are reported.

Approximate Number of Survivors having received any formal Reparations for CRSV: 0

Survivor Perception regarding state of Implementation of Reparations: Survivors are not generally aware of the legal framework for reparations in R-ARCSS and have little trust in government capacity to deliver peaceful and fair transitional justice mechanisms.

Ongoing CRSV: Despite conflict-related violations having largely decreased since the signing of (R-ARCSS) in September 2018, CRSV including rape, gang rape and sexual slavery [persist](#). The UN Human Rights Commission for South Sudan recently [stated](#) that "*conflict related sexual violence continued to be **widespread and pervasive** in South Sudan*".



Nature and Scope of CRSV

South Sudan has seen some of the highest levels of sexual violence in the world. Whilst it is extremely challenging to measure exact numbers, at least tens of thousands of women, men and children have been subjected to CRSV in South Sudan since civil war broke out in 2013. Incidents of CRSV also date back to the civil war between the North and South of Sudan from 1983 to 2005.

Sexual violence has been used as a military tactic in all ten states of South Sudan. Forms of CRSV used rape, gang rape, sexual slavery, mutilation, torture, forced nudity, castration and [forced abortion](#). The UN Special Representative on Sexual Violence in Conflict has [highlighted](#) CRSV as "a consistent, systematic feature of the conflict that has been used as a tactic of war to displace populations and instil fear within particular ethnic groups". Sexual violence has also been used in an attempt to transform regional demographics as part of an [ethnically based strategy](#).

Transitional Justice Mechanisms in R-ARCSS

- Hybrid Court (HCSS)
- Commission on Truth Reconciliation and Healing (CTRH)
- Compensation & Reparations Authority (CRA)



Harm caused to Survivors, Families and Communities

The widespread use of systematic, ethnic and politically motivated CRSV in South Sudan has had a devastating impact on communities and the nation at large, causing widespread communal harm. The use of sexual violence to assert dominance over, degrade and humiliate civilians of a rival ethnic group and - by association - their communities at large, stokes deep fear and animosity between South Sudanese. This identity-based nature of CRSV is contributing to nation-wide trauma and [mental health crisis](#).

Survivors in South Sudan face a devastating array of medical, psychological, social and economic needs as a result of CRSV. Services are hugely lacking, especially for the majority of survivors who live in rural areas, where there are few hospitals. Where these exist they are difficult to access due to distance, the presence of armed groups and poor roads.

Stigma and victim-blaming are common. Survivors state that people distance themselves and think they "*did it willingly*". The attitude of men and husbands of survivors, is problematic. Many survivors are abandoned or ill-treated by their husbands. There is further widespread neglect, mistreatment and physical abuse of both survivors and children born of rape by family members. A number of survivors have recounted the murders or attempted murders of babies born of rape by husbands. Mothers mention suicide or attempted suicide and repeatedly suggest adoption for these children, stating that there is no future for them, or that "*they would be better dead*".

CRSV in South Sudan is perpetrated in a context where women and girls can be viewed as commodities. Girls are often forcibly married at a young age to collect a dowry known as the 'bride price'. [52%](#) of girls are married before the age of 18 and [one third of girls](#) are pregnant before they reach 15. The [2008 Penal Code](#) currently does not recognise rape within marriage as a crime and domestic violence is common. CRSV in South Sudan occurs in a culture of acceptance of all forms of sexual and gender-based violence.

"When I became pregnant, I feared going to the health services due to fear of blaming by the community. They will say 'She looked for it'."

"Justice without reparation is not justice, we need a justice that provides to all of the people."



Survivors' Perspectives

Needs and Expectations

For the most part, survivors are instinctively aware that they have a right to reparation. One survivor stated, *“because I am a human being and not an animal, I have a right to reparation - the dignity that belongs to me needs to be restored”*. Another described reparation as being *“a kind of help that I get to help me get out of the victimhood and see more to life and get hope to see justice, that somebody actually cares about me and sees that harm was done to me.”* One survivor said *“I am ready to speak openly without fear. Justice without reparation is not justice, we need a justice that provides to all of the people.”*

Survivors are clear that their current needs are not being met. In relation to health, survivors highlight the need for an emergency health response system for new CRSV cases, services for long-term and chronic conditions including HIV, and more access to specialists. The high cost of medicine and survivors' lack of money is also cited as a challenge in relation to survivors' health needs.

Psychologically, survivors emphasise the need for continuous training on trauma healing and awareness, so that *“I am able to forget this thing in my mind.”* They highlight the need for mothers to be supported and empowered to accept their children born of rape, but also note that an adoption programme could be the best option for women and children facing stigma. The need for a special school or programme for children born of rape up until the age of 18 is also emphasised.

At the social level, survivors state that community awareness should be a priority, with a focus on countering stigma and victim-blaming. In particular, survivors call for an awareness programme that specifically targets their husbands and other men to tackle their *“negative stereotypes and discrimination”* around this issue.

Survivors feel strongly that economic independence is important and emphasise their need for their own livelihoods. They also stress that free education for their children is a priority. Survivors who are still at school speak of the need to complete their studies and *“go further”* to *“make them feel like someone who can fight and advocate for their rights”*.

To meet social, economic and psychosocial needs, survivors in different locations have expressed a desire for a women friendly space - **“a centre for socialisation of victims”** - where they could meet and share their stories, produce traditional handicrafts (including to generate income), be visited on a weekly basis by a counsellor or psychosocial expert, and raise awareness in the community.



Survivors discuss impact of CRSV during Focus Group Discussions. June 2021.
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“If we have our own friendly space, then people will listen to our voices. We will come together, our voices will be heard, recorded, we will tell the world that we have overcome it.”

“After paying the compensation, the perpetrators often continued to hunt the victim again until the relatives start forcing her to accept him.”



Survivors' Initiatives

Survivors have emphasised their need to receive support in participating in reparation processes and for their contributions to be meaningful in transitional justice and awareness-raising processes. Some express confidence, others fear reprisals. Having the option to stay anonymous was stressed, while there are some men, women and youth who *“really want to speak up about what happened but [we] do not have that platform”*. Survivors highlight that they need opportunities to network with one another, to share their views and develop tools to advocate for their rights.

As part of this project, in September 2021, a Survivors Meeting followed by an Advocacy Event (the “Survivors Speak” Conference) were held at UNDP in Juba. The Survivors Meeting provided an opportunity for solidarity building, capacity strengthening, and networking between survivors from different regions and communities. At the Advocacy Event, survivors engaged with officials and policy makers on the impact of CRSV on their lives and their immediate needs; they expressed their expectations, views, and priorities relating to their right to reparation and the transitional justice process in South Sudan. These activities established opportunities for survivors to be heard and empowered. In late 2021, Rights for Peace, GSF, and CIGPJ started a follow-up project to increase survivor-led advocacy concerning transitional justice mechanisms in South Sudan, which is ongoing.



Opportunities

There has been some small progress towards preparing for public consultations on establishing the CTRH, which according to R-ARCSS, shall be mandated to “recommend processes for the full enjoyment of victims’ right to remedy including measures for reparations and compensation”.

On [26 March 2021](#), the Ministry of Justice established a Task Force to coordinate the implementation of the transitional justice mechanisms outlined in Chapter V of R-ARCSS.

A Technical Committee was officially launched on 30 June 2021, responsible for leading public and stakeholder consultations 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. This launch was presided by Vice President Dr. Riek Machar and attended by Minister of Defence Angelina Teny, Minister of Federal Affairs Lasuba Wango, and Minister of Gender and Social Welfare Aya Benjamin. Vice President Machar's commitment at the launch to *“provid[ing] the aggrieved a chance to speak”* and view that *“peace without justice will not hold”* are encouraging.

However, as of March 2022, the Technical Committee mandated to conduct the consultations has been given less than a month to consult and one single day to produce its report, possibly violating the terms set out in the 2018 R-ARCSS. Trust and belief that the government will deliver transitional justice is extremely low.

The existence of a well-formed [Transitional Justice Working Group](#), founded in 2014 comprising a range of civil society members provides a solid foundation for future advancement on these issues.

The fact that the Transitional National Legislative Assembly ratified the [International Covenant on Civil and Political Rights](#) and the [International Covenant on Economic, Social and Cultural Rights](#) in 2019 shows that there is some desire from within South Sudanese politics to recognise international standards and be accepted by the international community, which may have positive implications for advocacy strategies surrounding reparations for CRSV. However, it must be noted that the decision still needs to be signed by the President of South Sudan, and the Government will need to deposit instruments of accession to the UN Secretary-General.

“We want to provide the aggrieved a chance to speak”

“Peace without justice will not hold”

Dr. Riek Machar - Vice President of South Sudan



Key Challenges

- **Ongoing insecurity and lack of victim and witness protection:** There is no effective rule of law in South Sudan. Survivors and stakeholders fear reprisals for attempts to seek justice, which deters them from exercising their rights. Survivors who have testified in court have been subjected to [brutal reprisals](#).
- **Fragile implementation of the Peace Agreement:** The establishment of transitional justice mechanisms, including the Reparations Authority, is dependent on the continued implementation of R-ARCSS, which has stagnated. Analysts fear that disenchantment within Vice-President Machar's camp over the slow progress could fuel outbreaks of violence. Many in South Sudan and beyond question the political will for peace, justice and reparations.
- **Lack of government commitment to transitional justice:** There are concerns that the government is establishing the CTRH as soon as possible as a tick-box exercise for the international community to alleviate the pressure of establishing the HCSS. Those working on these issues in South Sudan feel an insincerity within the government about the CTRH process, believing that the political and military leaders are obstructing the court's progression whilst pretending to implement the other transitional justice provisions.
- **Limited scope of reparations:** The scope for reparations in the R-ARCSS is limited to property damage. Considerable advocacy and strong recommendations from the future CTRH are needed to establish an enabling legal basis and environment.
- **Previous reservations:** In the original 2015 Agreement on the Resolution of the Conflict in South Sudan (ARCSS), the government registered a reservation against the provision on reparations, arguing that the CRA would be [prone to abuse](#): it argued that funds should be used for 'the reconstruction of the infrastructure and rebuilding of livelihoods of communities in the states most affected by the conflict'.
- **Lack of capacity to mainstream reparations into the CTRH process:** There is a current lack technical capacity on how the CTRH will gather information about the impact of violations on survivors to inform future recommendations on reparations. As a result, there is potential for the CTRH process to miss opportunities to mainstream reparations into its findings.
- **Lack of data:** There is an ongoing lack of data, including a lack of comprehensive figures on the scale of CRSV in South Sudan. There are no more precise estimates of victims and survivors than 'thousands' or 'tens of thousands' based on ad hoc documentation.
- **Fragile peace:** There is an ongoing risk that the 2018 peace agreement will break down, leading to renewed conflict; negating the progress made on establishing a semblance of peace.
- **Lack of awareness about support pathways for CRSV:** Even in Juba, survivors are led around in circles between hospitals and police stations, frustrated by insufficient support and stigma.

Following the District Court Martial in Yei in 2020 established by the South Sudan People's Defence Forces (SSPDF), several survivors received death threats, reprisals, and faced stigma from their communities and SSPDF military officers. In one instance, the husband of one complainant (a victim of rape) was shot and killed.

"I don't have any expectation from the government since they are the perpetrators. They won't do anything."

"We need to create more awareness in the community, not to blame the victim."

"I am ready to speak openly without fear. Justice without reparation is not justice, we need a justice that provides to all of the people."



Recommendations

- All Parties to the conflict should immediately end hostilities and cease all violations and abuses of international human rights law and international humanitarian law, including ongoing CRSV.
- The Government of South Sudan should take meaningful steps to address impunity for CRSV, including by ensuring the independence of the judiciary and removing any features of national law or policy which obstruct investigation, prosecution, and adjudication of crimes of sexual violence, such as amnesties.
- The Government of South Sudan should provide the Technical Committee on the Commission for Truth, Reconciliation and Healing with the requisite time and resources for effective, inclusive, survivor and gender-sensitive consultations ensuring that survivors can inform effective transitional justice legislation, giving effect to their right to be informed of, and be granted access to processes that affect them.
- The Government of South Sudan should adopt legislation to establish all three transitional justice mechanisms under the 2018 R-ARCSS and ensure that survivors' needs and rights are facilitated along the lines of the 2005 UN Basic Principles of Victims' Rights to a Remedy and Reparation, including participatory processes such as hearings and statement-taking (for instance as conducted by the Truth and Reconciliation Commission in Sierra Leone).
- Legislation establishing the CTRH should enable it to provide urgent interim reparations to victims that are particularly vulnerable, following the example of the Truth and Reconciliation Commission in East Timor, that was able to provide interim reparations before a final report was produced.
- The Government of South Sudan should initiate a strategy and legal framework to ensure the [protection of victims and witnesses](#) against reprisals and intimidation.
- A holistic, community-based and survivor-led approach to reparations is needed in South Sudan, which may include awareness-raising to counter stigma, medical and psychosocial care, and livelihoods support. Specific provision for children born of CRSV is needed.
- The Government of South Sudan should establish a national strategy to address stigmatisation as part of a reparations programme, with specific awareness programmes that target husbands, men at large, and communities. Also establish awareness programmes to break down stereotypes and negative attitudes towards children born of rape, including through specific engagement with husbands of survivors.
- The Government of South Sudan should expedite legal reform to give effect to equal rights and treatment. This may require the creation of additional rights, measures and adjustments to facilitate equality. The definition of rape under the [Penal Code](#) should be urgently brought into line with international standards, including by incorporating marital rape, rape by penetration with an object and oral rape, as well as taking into account coercive circumstances.



Next Steps

Urgent action is needed by the government of South Sudan, the international community and South Sudanese civil society organisations to obtain the implementation of the above recommendations and lay down the foundations to enable survivors to achieve recognition and effective reparation. These include:

- Support for a comprehensive mapping of survivors including CRSV survivors, to address the data gap and provide a basis from which to consider strategic approaches to reparations and other transitional justice interventions.
- Support to the creation of a survivor network in South Sudan and to strengthen capacities for victims to advocate for their needs and rights.
- Support to build the capacity of survivors and civil society on the role of the CTRH and other mechanisms in relation to reparations.
- Support to survivor-led or centred initiatives to empower survivors, including trauma healing activities.
- Support to training and technical assistance to the Ministry of Justice, Task Force and other entities entrusted with progressing transitional justice mechanisms to ensure effective knowledge of victims' rights to a remedy and reparation.
- Support to the implementation of interim reparations by the CTRH, so that particularly vulnerable survivors need not wait until the CTRH makes final recommendations.
- Increase diplomatic pressure and high-level engagement on the lack of implementation of R-ARCSS, with specific attention on the transitional justice agenda.