



Joint Monitoring and Evaluation Commission
(JMEC)

Transitional Justice Working Committee

Report to H.E. Festus G. Mogae Chairperson of JMEC

On

The Status of Implementation of Chapter V of the ARCC

JUBA
September 2017

CONTENTS

ABBREVIATIONS	3
A. INTRODUCTIONS	4
B. METHODOLOGY	6
C. STATUS OF IMPLEMENTATION	6
Article 1: Principles and Stipulation of CTRH, HCSS, CRA mandates and jurisdiction	6
Article 2: The CTRH Mandate, Functions, Personnel and Appointment Procedures Rights and Victims and Witnesses	7
Article 3: The Hybrid Court for South Sudan	8
Article 4: The Compensation and Reparation Authority (CRA)	10
Article 5: Ineligibility for Participation in the TGoNU or Successor Governments.	10
D. CHALLENGES	10
E. OBSERVATIONS AND RECOMMENDATIONS	11
Annex: Chapter V Monitoring and Evaluation Matrix	



ABBREVIATIONS

ACHPR	African Commission on Human and Peoples Rights
ARCSS	Agreement on the Resolution of the Conflict in the Republic of South Sudan
AUC	African Union Commission
AU	African Union
CHRSS	Commission of Human Rights in South Sudan
CNHPR	Committee for National Healing, Peace and Reconciliation
CTRH	Commission for Truth Reconciliation and Healing
CRA	Compensation and Reparations Authority
CRF	Compensation and Reparations Fund
HCSS	Hybrid Court for South Sudan
HRC	United Nations Human Rights Council
IDPS	Internally Displaced Persons
JMEC	Joint Monitoring and Evaluation Commission
JWC	JMEC Working Committee
NPPR	National Platform for Peace and Reconciliation
TGONU	Transitional Government of National Unity
TNLA	Transitional National Legislative Assembly
UNDP	United Nations Development Program
UN	United Nations
UNSCR	United Nations Security Council Resolution
UN SG	United Nations Secretary General



A. INTRODUCTION

The JMEC Working Committee (JWC) on Transitional Justice was established for the purpose of monitoring and evaluating the implementation of Chapter V of the Agreement on the Resolution of the Conflict in the Republic of South Sudan (ARCSS). The JWC is required to critically assess and evaluate progress, as well as make observations and recommendations for remedial action to implementing parties.

The Working Committee is chaired by Ambassador Professor Joram Biswaro (AU), and draws its membership from TGoNU, Uganda, Sudan, the European Union, JMEC member representing the Faith Based Community and a representative from the JMEC Secretariat who also acts as secretary to the committee. Observers from Kenya, Ethiopia, the Netherlands and the United States actively participate in the JWC. Since its establishment, the JWC on Transitional Justice has met five (05) times. Members and Observers have also engaged bilaterally with officials of TGoNU, the African Union Commission and the United Nations involved in the implementation of Chapter V.

Background

Chapter V focuses on Transitional Justice and the establishment of mechanisms intended to promote accountability, truth, reconciliation and healing. The rationale for Chapter V flows from South Sudan's experience and legacy of violent conflict and historical grievances that have not been addressed. Throughout these cycles of conflict, a lack of accountability has resulted in impunity that contributes to continuing violations of human rights, war crimes and crimes against humanity.

The lack of accountability, coupled with a lack of adequate documentation of histories of conflict, absence of justice for victims of violations, lack of acknowledgement of wrong doing has resulted in the destruction of social cohesion and a highly polarized and militarized society. This state of affairs undermines prospects for stability and sustainable peace.



In the articulation of Chapter V, the Parties to the Agreement on the Resolution of the Conflict in the Republic of South Sudan (ARCSS), acknowledged that social strife, disharmony between communities and mass violations of human rights had profound historical roots in the society, which pre-dated the conflict of 2013 and thereby committed themselves to national reconciliation, accountability, healing and combating impunity as among the highest priorities for the Transitional Government of National Unity (TGoNU). Chapter V of the ARCSS provides for the establishment of three complementary mechanisms for accountability, justice, healing and reconciliation.

These institutions are the :

1. Commission for Truth, Reconciliation and Healing (CTRH),
2. Hybrid court for South Sudan (HCSS) and
3. Compensation and Reparation Authority (CRA).

The CTRH is mandated to inquire into all aspects of human rights violations and abuses, breaches of the rule of law and excessive abuse of power, committed against all persons in South Sudan by State, non-State actors and their agents/allies and lead efforts to address the legacy of past conflict, abuses and promote healing, peace and national reconciliation.

The HCSS is an independent judicial body which will investigate and prosecute individuals bearing responsibility for violations of international law and/or applicable South Sudanese law committed from 15 December 2013 through the Transition Period. The HCSS shall have jurisdiction over crimes of genocide, crimes against humanity, war crimes and other serious crimes under international law and relevant applicable South Sudanese law, including sexual and gender based crimes.

The Compensation and Reparations Authority (CRA) is designed to address the destructive impact of the conflict on citizens of South Sudan by providing reparations to victims. The CRA shall administer the Compensation and Reparation Fund (CRF) and shall receive applications of victims including natural and legal persons from CTRH, and make the necessary Material other

reparations in terms of criteria to be established by legislation, as provided in the Agreement.

The JWC has taken note of the National Dialogue process currently being undertaken following a decree by the President of the Republic of South Sudan, H.E. Salva Kiir Mayardit in December 2016. This initiative *inter alia* seeks to promote peace, national unity, healing and reconciliation. These goals are complimentary and reinforcing of the transitional justice agenda of the ARCSS. The National Dialogue is not intended to replace the CTRH.

B. METHODOLOGY

The parameters of the evaluation are defined in Chapter V. The ARCSS Articles provide the indicators against which evaluation of implementation is done. The Committee used a mix of methods for its evaluation , //

- Interaction with Ministry of Justice and Constitutional Affairs (MoJCA) officials at JWC meeting
- Data obtained by reviewing existing written reports from TGoNU, the AUC and the United Nations .

C. STATUS OF IMPLEMENTATION

Article 1: Principles and Stipulation of CTRH, HCSS, CRA mandates and jurisdiction

Observation: The Parties to the ARCSS have not adhered to the timelines set out in the peace agreement. None of the mechanisms intended to implement a transitional justice agenda have been established. The JWC notes however, that there has been some progress with regard to initiating both the CTRH and the HCSS. On the CTRH, TGoNU has established an inclusive multi stakeholder technical committee to conduct consultations on the CTRH mandate. This technical committee commenced sensitization missions in mid June 2017. As regards the stipulation of the mandate of the HCSS, the AUC Office submitted the Draft Memorandum of Understanding and Draft Statute to the MoJCA. These instruments have been tabled before the Council of Ministers and await their further action.

Recommendations

To ARCSS Parties – On the CTRH

- Create a safe environment conducive for inclusive and meaningful consultations with victims, including refugees and internally displaced persons (IDP's) on the CTRH mandate.
- Contribute resources for consultations to take place throughout the country.
- Increase engagement with civil society groups, including women's organisations in the pre-consultation outreach phase currently underway.

To the TGoNU- On the HCSS

- Create a safe environment conducive to operationalizing the HCSS.
- Finalise the Memorandum of Understanding (MoU) with the AUC on the establishment of the HCSS.
- Expedite the adoption of the draft legislation to establish the HCSS.
- Establish without further delay the CRA and in any event before the expiry of the current transitional period.
- Encourage and facilitate the participation of civil society groups in all processes envisaged in the establishment of the HCSS

Article 2: The CTRH Mandate, Functions, Personnel and Appointment Procedures Rights and Victims and Witnesses

Recommendations

To TGoNU, Parties to the ARCSS and implementing partners AUC, UN, CSO's

- 2.1.1 Create a safe environment conducive for consultations to take place.
- 2.1.2 Expedite pre-consultation awareness raising activities to pave way for consultations.
- 2.1.3 Ensure that the pre consultation forums are participatory and inclusive of all key stakeholders including victim groups, IDP's and Refugees.



- 2.1.4 **TGoNU:** ensure the preservation of all documents and files of the Committee for National Healing, Peace and Reconciliation (CNHPR) and the National Platform for Peace and Reconciliation (NPPR) for eventual handover of the files to the CTRH as soon as it is established.
- 2.1.5 **UN, AU, and CSO's:** Engage with traditional mechanisms to prepare them to support the CTRH process.
- 2.2 /2.3 **TGoNU:** Expedite the establishment of the CTRH.
- 2.4 **TGoNU:** Implement measures to protect witnesses and victims during the consultations phase to build the confidence of victims and witnesses in the process of the CTRH and encourage them to come forward to engage with the process.

Article 3: The Hybrid Court for South Sudan

Recommendations

To the AUC, TGoNU

- 3.1.1. Expedite the establishment of the HCSS. This should be done within the transition period.
TGoNU: Cooperate with the AUC by expediting the necessary legislative process to establish the HCSS.
- 3.1.2. a) In the articulation of mandate, structures and procedures of the HCSS, ensure adherence to international standards including gender sensitivity and equity in appointments and structures of the court, participation, assistance and protection of victims and witnesses; availability of expertise, including gender and sexual violence expertise in the Registry, Office of the Prosecutor and Chambers of the Court.

b) Mobilise sufficient resources in particular from Member States of the African Union to support the establishment and functioning of the HCSS. Engage in consultations with



stakeholders and Civil Society (including women and youth groups) on the proposed legislation particularly as pertains to mandate, appointment of officials and the seat of the court as required under provisions of the ARCSS.

- 3.1.3. AUC: Conclude Host Country Agreement as soon as possible.
- 3.2. Stipulate the mandate and jurisdiction of the HCSS in accordance with the ARCSS.
- 3.3. AUC Chairperson to appoint personnel as soon as is practicable upon establishment of the HCSS. In the meantime, to consult on criteria for such appointment with key stakeholders, parties and Agreement partners as international best practice demands and as provided in the ARCSS.
- 3.4.1 AUC to ensure that the provisions of the Statute meet internationally recognised standards for witness protection and Victims assistance.
- 3.4.2 AUC to ensure that the provisions of the Statute meet internationally recognised standards on rights of accused persons.
- 3.5. Statute establishing HCSS should meet international standards and best practice.
- 3.6. TGoNU: Institute interim measures to preserve evidence collected by previous bodies established by the Government of South Sudan, the AU and the UN. Cooperate with investigative bodies as mandated by the UN, the AU and the ACHPR and in particular, the Commission for Human Rights for South Sudan (CHSS) established by the United Nations Human Rights Council (HRC) vide HRC Resolution 31/20 and extended by HRC Resolution 34/20 which has the mandate *inter alia* to



"determine and report the facts and circumstances of, collect and preserve evidence of, and clarify responsibility for alleged gross violations and abuses of human rights and related crimes, including sexual and gender-based violence and ethnic violence with a view to ending impunity and providing accountability".

Article 4: The Compensation and Reparation Authority (CRA)

Recommendations

TGoNU /TNLA

Expedite the establishment of the Compensation and Reparations Authority and in any case, before the end of the transition period.

Mobilise resources for the Compensation and Reparations Fund.

Ensure participation of victims including women, refugees and IDP's in all stages of the Reparations process.

Article 5: Ineligibility for Participation in the TGoNU or Successor Governments.

Recommendations

AUC and TGONU

- Expedite establishment of the HCSS (before the end of the transition period)
- Consider a comprehensive Lustration Law to be promulgated by the TNLA

D. CHALLENGES

- Lack of political will to implement accountability measures.
- Ongoing conflict creates significant security challenges and uncertain conditions for undertaking implementation of certain aspects of Chapter V.
- Lack of financial resources to implement the establishment of Chapter V institutions.

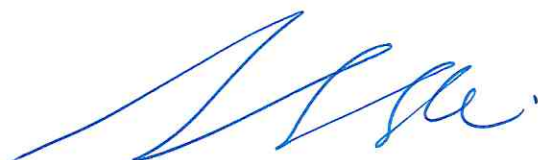


E. OBSERVATIONS AND RECOMMENDATIONS

[Observations and specific recommendations of the JWC are listed above under the specific articles].

The matter of sequencing the application - not the establishment - of mechanisms under Chapter V may have to be considered. The JWC recommends that all efforts be directed at establishing the 3 institutions within the time frame provided, and certainly before the expiry of the transition period.

The United Nations and the international partners are commended for the technical and financial support to MoJCA for the pre-consultation phase initiated under Article 2 towards the establishment of the Commission for Truth, Reconciliation and Healing. TGoNU must be encouraged to continue its cooperation with the AUC in the process of establishing the Hybrid Court for South Sudan. However, resources will be required in particular from Member States of the African Union and the international community to fund the establishment of the HCSS.



Ambassador Professor Joram Biswaro
Chairperson
JWC on Transitional Justice (Chapter V ARCSS)

Annex A. Chapter V JWC M&E Matrix



Joint Monitoring and Evaluation Commission (JMEC)

JMEC WORKING COMMITTEE ON TRANSITIONAL JUSTICE (JWC-TJ) MONITORING AND EVALUATION MATRIX

Chapter V

TRANSITIONAL JUSTICE, ACCOUNTABILITY, RECONCILIATION AND HEALING

ARTICLE	TIME FRAME	STATUS /ACTIVITIES Towards Implementation	RESPONSIBILITY	RECOMMENDATION
1.	AGREED PRINCIPLES FOR TRANSITIONAL JUSTICE OBSERVATION: The Parties to the ARCSS have not adhered to the timelines set out in the peace agreement. None of the mechanisms intended to implement a transitional justice agenda have been established. The JWC notes however, that there has been some progress with regard to initiating processes towards the establishment of the Commission for Truth Reconciliation and Healing (CTRH) and the Hybrid Court for South Sudan (HCSS). On the CTRH, TGoNU has established an inclusive multi stakeholder technical committee to conduct sensitisation on the consultations provided for in the ARCSS. This technical committee commenced its work in mid-June 2017. As regards stipulating the mandate for the HCSS, the Memorandum of Understanding on the establishment of the court and the Draft Statute were tabled before the Council of Ministers in September 2017. The Compensation and Reparations Authority has not been established. It is the Committees' recommendation to TGoNU and the AUC that all the Chapter V institutions be established within the time frame provided in the ARCSS.			
1.1	Upon inception, the TGoNU shall initiate Legislation for the establishment of the Following transitional justice institutions:	Upon inception of TGoNU	NOT IMPLEMENTED	TGoNU: Provide new realistic timelines and implementation schedule for completion of tasks under Chapter 5. Create a safe environment conducive for inclusive and meaningful consultations with victims, including refugees and internally displaced people (IDP's) on the CTRH mandate. Increase engagement with civil society groups, including women's organisations in the
1.1.1	The Commission on Truth Reconciliation and Healing (CTRH)		TGoNU /TNLA	
1.1.2	An independent hybrid judicial body, to be known as the Hybrid Court for South Sudan(HCSS)		TGoNU	
1.1.3	Compensation and Reparation Authority		TGoNU	

in the selection of their respective members				
1.3 Following their establishment, the CTRH, HCSS, and CRA shall independently promote the common objective of facilitating truth, reconciliation, compensation and reparation in South Sudan		NOT IMPLEMENTED	CTRH, HCSS, CRA	
1.4. The TGoNU shall fully support and facilitate the operations of the CTRH and cooperate with the HCSS		PARTIALLY IMPLEMENTED	TGoNU	Expedite establishment of the 2 mechanisms and in any case no later than before the end of the transition period
1.5 The TGoNU commits to fully cooperate and seek the assistance of the African Union, the United Nations and the African Union Commission on Human and Peoples Rights to design , to implement and to facilitate the work of the agreed transitional justice mechanisms provided for in the agreement		PARTIALLY IMPLEMENTED The United Nations Security Council passed UNSCR 2241 (2015) and UNSCR 2252 (2015). The resolutions mandated the United Nations Secretariat to make available technical assistance for the implementation of Chapter 5 of the ARCSS. The UN has provided such technical assistance to the AU	TGoNU AU AUC UN	

		Commission and TGoNU for the implementation of Chapter V of the ARCSS (See Report of the SG -S /2016/328) Interdepartmental working group set up to discuss provision of technical assistance to the AUC Office of Legal Affairs initiated contact with the Office of legal Counsel of the AUC and has provided technical assistance as required in the elaboration of a draft statute for the establishment of the Hybrid Court UNMISS/UNDP has provided technical, logistic and financial support to the Multi Stakeholder Technical Committee on the CTRH with the purpose of ensuring comprehensive, meaningful and inclusive consultations with key stakeholders UNDP has provided and continues to provide technical assistance to the Ministry of Justice and Constitutional		
--	--	--	--	--

		Affairs on options to be considered in setting up the CTRH and on harnessing traditional mechanisms for reconciliation. UNDP working with the Civil Society Transitional Justice Working Group to promote understanding and increase knowledge on the issues to foster meaningful engagement with the process of the CTRH. A Transitional Justice Tool Kit has been developed and validated by CSO stakeholders and waits final approvals before it is launched for use. Other training tools and outreach materials for the planned public consultations are being developed. UNMISS has offered analysis and comments to the relevant Parliamentary Committee on the amendments to the penal code to include crimes prohibited under international law.		
--	--	--	--	--

ARTICLE 2. COMMISSION FOR TRUTH, RECONCILIATION AND HEALING (CTRH)					
2.1. Establishment of the Commission for Truth, Reconciliation and Healing (CTRH)	Within 6 Months of TGoNU's establishment	NOT IMPLEMENTED	TGoNU	Expedite establishment of the CTRH	
2.1.1 The TGoNU shall establish the CTRH as a critical part of the peace building process in South Sudan, to spearhead efforts to address the legacy of conflicts, promote peace, national reconciliation and healing.	Within 6 Months of TGoNU's establishment	NOT IMPLEMENTED	TGoNU	Create a safe environment conducive for consultations to take place.	
2.1.2 The CTRH shall be established by legislation, which shall be promulgated not later than six (6) months after the formation of the TGoNU and commence its activities not later than a month thereafter. Such legislation shall, among others, outline mechanisms and methods for enabling the CTRH to discharge its duties and responsibilities.	Not later than 6 Months of TGoNU's establishment	NOT IMPLEMENTED	TNLA		
2.1.3 The Ministry of Justice and Constitutional Affairs of the TGoNU, in collaboration with other stakeholders and the civil society, shall conduct public	Within first 5 months of TGoNU's establishment	PARTIALLY IMPLEMENTED Dec 2016: An inclusive Stakeholder Committee established by the Ministry of Justice and Constitutional Affairs (MoJCA)	TGoNU MoJCA CSO's Faith based Traditional Institutions	To TGoNU, Parties to the ARCSS and implementing partners AUC, UN, CSO's 1. Create a safe environment conducive	

consultations for a period not less than one (1) month prior to the establishment of the CTRH, to inform the design of the legislation referred to in Chapter IV, Article (1.1). This notwithstanding, such consultations shall ensure that the experiences of women, men, girls and boys are sufficiently documented and the findings of such consultations incorporated in the resultant legislation.		to conduct consultations on the CTRH mandate, structure etc. Technical committee consists of 30 % women and is broadly representative of all sections of Civil Society and government. Some Pre-Consultation activities have taken place while others are in advanced stages of planning Capacity Building by the UNDP, UNMISS and CSO's - Sensitization Workshops held in June and July - Development of consultation tools and materials - Pre- consultation Sensitization missions to Bor, Torit, Yambio, Rumbek, Wau and Malakal conducted by the Technical Committee from 19 to 23 June. Additional missions slated for September are planned for Bentiu, Leer, Likuangole, Mingkaman, Terekeka, Mundri, Raja, (not accessible at current time), Kajokeji, Bidibidi (Uganda) and	UN AU	for consultations to take place. 2. Expedite pre-consultation awareness raising and sensitization activities to pave way for consultations. 3. Ensure that the pre consultation forums are participatory and inclusive of all key stakeholders, victim groups, IDP's and Refugees.
--	--	--	------------------	--

		Byala (Uganda). 21-24 August Training for the multi-stakeholder committee on consultation methodologies has taken place and was facilitated by IJR Sensitisation messages had been developed and were being transmitted via Radio broadcasts and that the frequency of the broadcasts was increased to include messages in Arabic and Bari Language on Eye Radio and Radio Bakita. 7 areas are targeted for sensitisation: Leer, Bentiu Yei, Mundri, Yiröl and Kwajok-missions will start on 18th Sept 2017 Accessibility and presence of populations will be a factor, as will be an enabling environment for these awareness raising forums to take place.			
2.1.4. The existing Committee for	15 days after establishment	NOT IMPLEMENTED	Committee for National Healing,	TGoNU: Ensure the preservation of all	

National Healing, Peace and Reconciliation (CNHPR) and the National Platform for Peace and Reconciliation shall transfer all of their files, records and documentation to the CTRH within fifteen (15) days since CTRH has become operational.	of the CTRH			Peace and Reconciliation (CNHPR) National Platform for Peace and Reconciliation (NPPR)	documents and files of the Committee for National Healing, Peace and Reconciliation (CNHPR) and the National Platform for Peace and Reconciliation and the handover of the files to the CTRH as soon as it is established
2.1.5 The CTRH shall recommend processes and mechanisms for the full enjoyment by victims of the right to remedy, including by suggesting measures for reparations and compensation. In the determination of such remedial processes and mechanisms, the CTRH shall draw on existing traditional practices, processes, and mechanisms, where appropriate.		NOT IMPLEMENTED		CTRH Traditional institutions CSO's	UN, AU, CSO's: Engage with traditional mechanisms in the consultative process to prepare them to support the CTRH and the CRA.
Article 2.2 Mandate and Functions of the CTRH	Within 6 Months of TGoNU's Est	ENTIRE ARTICLE HAS NOT BEEN IMPLEMENTED		TGoNU TNLA	Expedite the legislative process to establish the CTRH
2.2.1 Without prejudice to the administration of and access to justice, the CTRH shall inquire into all aspects of human rights violations and abuses, breaches of				TNLA	TGoNU/TNLA Expedite the legislative process to establish the CTRH and I any case no later than the end of the transition period

the rule of law and excessive abuses of power, committed against all persons in South Sudan by State, non-State actors, and or their agents and allies. In particular, the CTRH shall inquire into the circumstances, surrounding the aforementioned and any other connected or incidental matters. Such inquiry shall investigate, document and report on the course and cause conflict and identify or review cut-off timeframes for the operations of the CTRH, as may be determined by legislation, this Agreement or both. In that regard, the CTRH shall recommend processes for the full enjoyment by victims of the right to remedy, including by suggesting measures for reparations and compensation. 2.2.2. Without prejudice to its Mandate, the Functions of the CTRH are to: 2.2.2.1. adopt, in the implementation of its mandate, best practices for promoting truth, reconciliation and healing from Africa and			
--	--	--	--



elsewhere; 2.2.2.2. establish an accurate and impartial historical record of human rights violations, breaches of the rule of law and excessive abuses of power, committed by State and non-state actors from the date of signing of this Agreement to July 2005; 2.2.2.3. receive applications from alleged victims, identify and determine their right to remedy; 2.2.2.4. identify perpetrators of violations and crimes proscribed in this agreement; 2.2.2.5. recommend guidelines, to be endorsed by the TNA, for determining the type and size of compensation and reparation for victims; 2.2.2.6. record the experiences of victims, including but not limited to women and girls; 2.2.2.7. investigate the causes of conflicts and their circumstances and make recommendations regarding possible ways of			
---	--	--	--

preventing recurrence; 2.2.2.8. develop detailed recommendations for legal and institutional reforms to ensure non-repetition of human rights abuses and violations, breaches of the rule of law and excessive use of power; 2.2.2.9. lead efforts to facilitate local and national reconciliation and healing. 2.2.2.10. where appropriate, supervise proceeding of traditional dispute resolution, reconciliation, and healing mechanisms. In this regard, and without prejudice to traditional justice mechanisms, develop standard operating procedures for the functioning of the latter, in accordance with the principles of natural justice. 2.2.2.11. establish a secretariat that shall function as the administrative arm of the Commission and prepare guidelines and procedures for its proper functioning.			
---	--	--	--

2.3. PERSONNEL AND APPOINTMENT PROCEDURES:		NOT IMPLEMENTED	TGoNU Executive TNLA AUC Chairperson UN SG	Expedite Establishment of the CTRH
2.3.1. Commissioners, investigators and staff of the CTRH shall be persons of high moral character, impartiality and integrity. They shall be independent in the performance of their functions and shall not accept or seek instructions from any third party.		NOT IMPLEMENTED		
2.3.2. The CTRH shall be composed of seven (7) Commissioners, four (4) of whom shall be South Sudanese nationals, including two (2) women. The remaining three (3) Commissioners shall be from other African countries, of whom at least one (1) shall be a woman. The CTRH shall be chaired by a South Sudanese national, deputised by a non-South Sudanese national; .		NOT IMPLEMENTED		
2.3.3. The Executive of the TGoNU shall nominate the four Commissioners of South Sudanese nationality and present to the Transitional National Assembly solely on the		NOT IMPLEMENTED	TGoNU Executive TNLA AUC Chairperson	

basis of the selection of the TGoNU, AUC and UN for endorsement. Furthermore, the Executive of the TGoNU, in consultation with the Chairperson of the African Union Commission and the Secretary-General of the United Nations, shall nominate the three (3) from other African countries and present to the TNA for endorsement.			UN SG	
2.3.4. In order for the CTRH to execute its mandate, the Commission shall have the power to subpoena persons, documents and other materials deemed necessary for the purpose of discharging its responsibilities.		NOT IMPLEMENTED		
2.4. RIGHTS OF VICTIMS AND WITNESSES	CTRH	NOT IMPLEMENTED		
2.4.1. The CTRH shall implement measures to protect victims and witnesses, in particular, youth, women and children. Such protection measures shall		NOT IMPLEMENTED	TGoNU	TGoNU: Implement measures to protect witnesses and victims during the consultations phase to build the confidence of victims and witnesses in the

include, but shall not be limited to the conduct of in camera proceedings and the protection of the identity of a victim or witness.				process of the CTRH and encourage them to come forward to engage with the process.
ARTICLE 3.				
HYBRID COURT FOR SOUTH SUDAN (HCSS)				
3.1. Establishment of the Hybrid Court for South Sudan (HCSS);	15 Dec 2013 to the end of transition period	NOT IMPLEMENTED	AUC TGoNU TNLA AUC AUC	AUC: Expedite the establishment of the HCSS. TGoNU: Cooperate with the AUC by expediting the necessary legislative process to establish the HCSS. Mobilise sufficient resources from Member States and international partners to support the establishment and functioning of the HCSS.
3.1.1. There shall be established an independent hybrid judicial court, the Hybrid Court for South Sudan	Within 6 months of TGoNU	PARTIALLY IMPLEMENTED <i>July 20-22 2017</i> AU Commission's Office of the Legal Counsel concluded a	AUC	TGoNU: Facilitate the early establishment of the HCSS by cooperating with The AUC and

(HCSS). The Court shall be established by the African Union Commission to investigate and prosecute individuals bearing the responsibility for violations of international law and/or applicable South Sudanese law, committed from 15 December 2013 through the end of the Transitional Period.		consultative meeting in Juba jointly with a technical team of the Ministry of Justice and Constitutional Affairs [MoCA], led by the Undersecretary of the Ministry. The two teams received advisory support by technical staff from the UN Office of Legal Affairs, which was led by the Under-Secretary General for Legal Affairs and UN Legal Counsel, New York. The teams discussed the technical aspects of the formation of the Court, and agreed on a draft roadmap. 28TH August 2017 – MoU submitted to Minister of Cabinet Affairs MoU tabled before the Council of Ministers meeting on 8/09/17 ARCSS to be incorporated in the Transitional Constitution prior to finalization of MoU Draft Constitution Amendment Bill to be tabled on 15/09/17 and MoU on HCSS to be tabled before Council of Ministers on 22/07/17		initiating the legislative process to promulgate the necessary legislation to implement the establishment of the HCSS.
---	--	--	--	---

3.1.2. The terms establishing the HCSS shall conform to the terms of this Agreement and the AUC shall provide broad guidelines relating to including the location of the HCSS, its infrastructure, funding mechanisms, enforcement mechanism, the applicable jurisprudence, number and composition of judges, privileges and immunities of Court personnel or any other related matters.	8-11 August 2017 The Office of the Legal Counsel of the AU Commission convened a meeting in Addis Ababa with the team from MoJCA and agreed on drafts of a Memorandum of Understanding [MoU], and a Statute for the Court. The draft MoU, to be signed between the Government of South Sudan and the AU Commission, provides for organs of the Court, its expenses, oversight, juridical capacity, responsibility of decision of the seat, privileges and immunities and other practical establishment arrangements. The draft Statute encompasses the competences and responsibilities of the Court, its jurisdiction, composition, rules of procedure, and registry, among others. President Konare and Ambassador Biswaro both met with MoJCA on progress since the Addis Ababa Technical Meeting in Mid- August.		AUC: in the articulation of mandate, structures and procedures of the HCSS, ensure adherence international standards including gender sensitivity and equity in appointments and structures of the court, participation, assistance and protection to victims and witnesses; availability of expertise, including gender and sexual violence expertise in the Registry, Prosecution and Chambers of the Court. Mobilise sufficient resources from Member States and international partners to support the establishment and functioning of the HCSS. Engage in consultations with stakeholders and Civil Society on the proposed legislation particularly as pertains to mandate, appointment of officials and seat of the court as required under provisions of the ARCSS.
3.1.3. The Chairperson of the Commission of the AU shall decide the seat of the HCSS.	NOT IMPLEMENTED	Chairperson – AUC	Initiate Discussions and conclude Host Country Agreement at the earliest

3.2. Jurisdiction Mandate and Supremacy of HCSS		NOT IMPLEMENTED	AUC	Expedite the stipulation of mandate to establish the HCSS
3.2.1. The HCSS shall have jurisdiction with respect to the following crimes: 3.2.1.1 Genocide; 3.2.1.2 Crimes Against Humanity; 3.2.1.3 War Crimes 3.2.1.4 Other serious crimes under international law and relevant laws of the Republic of South Sudan including gender based crimes and sexual violence. 3.2.2. The HCSS shall be independent and distinct from the national judiciary in its operations, and shall carry out its own investigations: The HCSS shall have primacy over any national courts of RSS.				
3.3. Personnel and Appointment Procedures			Chairperson –AUC	Adhere to international standards established for appointments to International Courts and Tribunals in appointments. Consult on criteria for appointment. AUC: Consideration should be made to include legal
3.3.1. Judges, prosecutors, investigators			AUC	AUC: Consideration should be made to include legal

and defence counsel and the registrar of the HCSS shall be persons of high moral character, impartiality and integrity, and should demonstrate expertise in criminal law and international law, including international humanitarian and human rights law.				expertise on specific issues, including, but not limited to, sexual and gender violence and violence against children. Appointments to all structures of the HCSS should ensure a fair representation of female judges, prosecutors and registry staff and include judges with legal expertise on violence against women.
3.3.2. A majority of judges on all panels, whether trial or appellate, shall be composed of judges from African states other than the Republic of South Sudan. The judges of the HCSS shall elect a president of the court from amongst their members.			HCSS	
3.3.3. Prosecutors and defence counsels of the HCSS shall be composed of personnel from African states other than the Republic of South Sudan, notwithstanding the right of defendants to select their own defence counsel in addition to, or in place of, the duty personnel of the HCSS.			Chairperson – AUC	
3.3.4. The registrar of the HCSS			Chairperson – AUC	
			NOT IMPLEMENTED	

shall be appointed from African states other than the Republic of South Sudan.					
3.3.5. Judges, prosecutors, defence counsel and the registrar shall be selected and appointed by the Chairperson of the African Union Commission. The same selection and appointment processes shall apply to South Sudanese judges and judges from other African states.		NOT IMPLEMENTED	Chairperson – AUC		
3.3.6. The prosecutors and defence counsel shall be assisted by such South Sudanese and African staff of other nationalities as may be required to perform the functions assigned to them effectively and efficiently.		NOT IMPLEMENTED			
3.4. Rights of Victims and Witnesses		NOT IMPLEMENTED	AUC		
3.4.1 The HCSS shall implement measures to protect victims and witnesses in line with applicable international laws, standards and practices.				Ensure that the provisions of the statute meet international standards on witness protection and victims' assistance and participation. Make provision in legislation for participation and	

				assistance of victims appearing before the HCSS.
3.4.2 The rights of the accused shall be respected in accordance to applicable laws, standards and practices.				
3.5. Criminal Responsibility, Convictions and Penalties			HCSS	
3.5.1. A person who planned, instigated, ordered, committed, aided and abetted, conspired or participated in a joint criminal enterprise in the planning, preparation or execution of a crime referred to in Chapter V, Article 3.2.1. of this Agreement shall be individually responsible for the crime.				
3.5.2. The HCSS may order the forfeiture of the property, proceeds and any assets acquired unlawfully or by criminal conduct, and their return to their rightful owner or to the state of South Sudan.				
3.5.3. While all judgments of the court shall be consistent with the accepted International Human Rights Law, International				

Humanitarian Law and International Criminal Law, the HCSS shall also award appropriate remedies to victims, including but not limited to reparations and compensation.					
3.5.4. The HCSS shall not be impeded or constrained by any statutes of limitations or the granting of pardons, immunities or amnesties.					
3.5.5. No one shall be exempted from criminal responsibility on account of their official capacity as a government official, an elected official or claiming the defence of superior orders.					
3.5.6. The HCSS shall leave a permanent legacy in the State of South Sudan Upon completion of its HCSS Mandate.					
3.6. Use of Findings, Documentation and Evidence	Upon establishment of HCSS			TGoNU, HCSS, UN HCSS, AUC	Expedite the establishment of the HCSS
3.6.1. In carrying out its investigations, the HCSS may use the report of					TGoNU: Institute interim measures to preserve evidence collected by



the African Union Commission of Inquiry (COI) on South Sudan and draw on other existing documents, reports, and materials, including but not limited to those in the possession of the African Union, or any other entities and sources, for use as the Prosecutor deems necessary for his or her investigations and/or prosecution of those alleged to have committed serious human rights violations or abuses, war crimes, or crimes against humanity. Such documents, reports and materials shall be used in accordance with applicable international conventions, standards and practices.			previous bodies established by the Government of South Sudan, the AU and the UN Cooperate with investigative bodies as mandated by the UN, the AU and the ACHPR. In particular, the Commission on South Sudan established by the United Nations Human Rights Council which has the mandate <i>inter alia</i> to “determine and report the facts and circumstances of, collect and preserve evidence of, and clarify responsibility of, alleged gross violations and abuses of human rights and related crimes, including sexual and gender-based violence and ethnic violence, with a view to ending impunity and providing accountability.”
ARTICLE 4. COMPENSATION AND REPARATION AUTHORITY (CRA)			
4.1. The TGoNU, in recognition of the destructive impact of the Conflict to the citizens of South Sudan, shall establish within six (6) months of the signing of this	6 months from 29/4/16	Not Implemented	TGoNU Expedite the establishment of the CRA and the CRF. Ensure participation of victims including women, refugees and IDP's during all stages of the Reparations process, (in the

Agreement a Compensation and Reparation Fund, CRF and Compensation and Reparation Authority, CRA to administer the CRF.				design, legislation and implementation)
4.2. The CRA: a) Shall be run by an executive body to be chaired by an executive Director appointed by TGoNU. b) Shall be composed of an Executive body that shall include but not limited to: i. The parties in TGoNU ii. Representatives of CSOs, Women's bloc, Faith-based leaders, Business Community and Traditional leaders; c) The criteria for the selection of the members of the Executive body and the Executive Director of the CRA shall be established by law. d) The CRA shall provide material and financial support to citizens whose property was destroyed by the conflict and help them to rebuild their livelihoods in accordance with well-established criteria by the TGoNU. e) The CRA shall manage the Compensation and Reparation Fund, the utilization of which should be guided by a law enacted by the Parliament. f) The CRA shall	6 months after establishment of TGoNU	NOT IMPLEMENTED	TGoNU TNLA	Ensure inclusion, participation and representation of women in the Executive Body and inclusion of relevant legal and gender expertise in the management of reparations programs and that the legislation creating CRA is gender responsive.

receive applications of victims including natural and legal persons from CTRH, and make the necessary compensation and reparation as provided in Chapter V Article 2.2.2.5.				
4.3. The TGoNU shall establish transparent mechanisms to control the proper use of these funds for the intended purpose.	On establishment of CRF	NOT IMPLEMENTED	TGoNU	
ARTICLE 4				
INELIGIBILITY FOR PARTICIPATION OR SUCCESSOR GOVERNMENTS				
Individuals indicted or convicted by the HCSS shall not be eligible for participation in the TGoNU, or in its successor government(s) for a period of time determined by law, or, if already participating in the TGoNU, or in its successor government(s), they shall lose their position in government. If proven innocent, individuals indicted shall be entitled for compensation as shall be determined by law.	After HCSS issues its first indictments and convictions	NOT IMPLEMENTED	TGoNU, TNLA AUC	TGoNU: Expedite Lustration law