

CAN TRANSITIONAL JUSTICE REDRESS THE USE
OF STARVATION AS A METHOD OF
WARFARE?*

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I. INTRODUCTION

“War is not carried on by arms alone. It is lawful to starve the hostile belligerent, armed or unarmed, so that it leads to the speedier subjection of the enemy.”¹ Civilians have increasingly been the primary targets of indiscriminate tactics of war, where the union commanders were permitted to starve the unarmed belligerent if it helped achieve the speedier subjection of the enemy.² Starvation is now prohibited under international humanitarian law.³ Thus, today this “prohibition” reflects customary international law.⁴ In this context, the present paper is written in the wake of the report of the Commission on Human Rights in South Sudan (HRC Report)⁵ The HRC Report was an attempt by the commission to investigate the brazen brutality on the part of both government and opposition forces to use starvation of civilians as a method of warfare, amounting to acts constituting war crimes and creation of food insecurity.⁶ The HRC Report indeed paints an alarming picture: the phenomenon of starvation of civilians as a method of warfare, as a predicament at an international level.

The main argument in this paper, using the example of South Sudan, is that even though transitional justice would be an appropriate mechanism to help achieve peace and create accountability, there is a need for a holistic transitional justice policy which avoids the tendency to mimic mechanisms of one state with a completely different infrastructure than that of an-

1. Instructions for the Government of Armies of the United States in the Field (Lieber Code), § 1, 24 Apr. 1863, <https://ihl-databases.icrc.org/applic/ihl/ihl.nsf/Article.xsp?action=OpenDocument&documentId=3AB37BF0A12AA202C12563CD00514AA1> (last accessed Feb. 20, 2021, 12:05 PM).

2. Patryk I Labuda, *Lieber Code in MAX PLANCK ENCYCLOPEDIAS OF INTERNATIONAL LAW* (Sept. 2014) <https://opil.ouplaw.com/view/10.1093/law:epil/9780199231690/law-9780199231690-e2126>.

3. *Jurisdiction, Admissibility and Applicable Law in ROME STATUTE OF THE INTERNATIONAL CRIMINAL COURT: A COMMENTARY* (Otto Triffterer and Kai Ambos eds., 2016).

4. *Id.* at 5; see also *Customary IHL – Rule 53. Starvation as a method of warfare*, https://ihl-databases.icrc.org/customary-ihl/eng/docs/v1_rul_rule53#refFn_91BB58A1_00001.

5. U.N. HRC, “*There is nothing left for us: starvation as a method of warfare in South Sudan*,” U.N. Doc. A/HRC/45/CRP.3 (Oct. 5, 2020).

6. *Id.* ¶ 5.

other state where the mechanism is to be applied.⁷ Transitional justice ought to be engaged with the immediate term, without waiting for democratization to occur.⁸ Hence, I endeavour to take the reader through some steps which should give an idea of what constitutes a “context-driven” solution.

II. WHAT CONSTITUTES “STARVATION” AND TO WHAT EXTENT IS STARVATION PROHIBITED UNDER HUMANITARIAN CUSTOMARY INTERNATIONAL LAW?

To many people, it might seem rather obvious and natural that it is the killings, sexual violence, torture, etc. that call out for justice.⁹ When human rights activists condemn “impunity,” it is often precisely the lack of punishment for these sorts of harms that they have in mind.¹⁰ When political scientist Kathryn Sikkink talks about a “justice cascade,” an emerging global norm of accountability, it is a norm entwined exclusively with such harms. Not surprisingly then, the dominant script of transitional justice has historically tended to focus heavily on the need to respond to egregious acts of “physical violence”—including murder, rape, starvation, and torture.¹¹ The most ordinary meaning of starvation is the condition of being deprived of food.¹² Customary international law on prohibition of starvation, as prevalent today, does not define ‘starvation.’ Tracing all the historical events of warfare, there were two methods by which starvation of the enemy could be achieved—one, cutting down the surrounding areas from the

7. U.N. HRC, *Report of the Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence on his global study on transitional justice*, U.N. Doc.A/HRC/36/50/Add.1 (Aug. 7, 2017)

8. Noha Aboueldahab, *Transitional justice policy in authoritarian contexts: The case of Egypt*, BROOKINGS (Apr. 12, 2021), <https://www.brookings.edu/research/transitional-justice-policy-in-authoritarian-contexts-the-case-of-egypt/>.

9. Dustin N. Sharp, *Justice for What?*, 19-38, CAMBRIDGE UNIVERSITY PRESS (2018), <https://doi.org/10.1017/9781108609180.003>.

10. *Id.* at 19.

11. *Id.* at 20.

12. *Starvation*, *OED.com*, <https://www.oed.com/view/Entry/189208?redirectedFrom=starvation&> (last visited Feb. 20, 2021).

supplies of sustenance, and two, targeting areas on which populations rely for sustenance.¹³

In view of the rampant destruction and loss of mankind, caused by the starvation of civilians, it was after the first world war, that a Responsibilities Commission was set up in 1919, which listed 'deliberate starvation of civilians' as a violation of the customs of war, which was subject to criminal prosecution.¹⁴ Prohibition of civilian starvation, is a well-established norm under both treaty and customary international law, binding on all belligerents, including non-state actors,¹⁵ for instance, Article 54 of Additional Protocol I.¹⁶ However, the provision seems to be couched in various ambiguities.¹⁷ If incidental starvation of civilians is permitted, then to what extent? Shouldn't starvation of civilians be prohibited, not only directly but even indirectly? Is the codification of customary international law on prohibition of starvation of civilians rendered futile if incidental or indirect starvation is permissible? These questions definitely do not signify that the occurrence of starvation is minuscule with codification in place without implementation and accountability. However, for years starvation has been a stagnant area of international criminal law,¹⁸ it is indeed arduous to provide a concrete answer without much evidence to these questions.

Some other provisions prohibiting starvation include a more simplified version of Article 54 of Additional Protocol I,

13. Alexander Gillespie, *Starvation in A HISTORY OF THE LAWS OF WAR: VOLUME 2: THE CUSTOMS AND LAWS OF WAR WITH REGARDS TO CIVILIANS IN TIMES OF CONFLICT* 52-102 (2011).

14. *Commission on the Responsibility of the Authors of the War and on Enforcement of Penalties*, 14 Am. J. Int'l L. 95, 95-154.

15. U.N. HRC, *Report of the Commission on Human Rights in South Sudan*, U.N. Doc. A/HRC/43/56 (Jan. 31, 2020)

16. Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the protection of victims of international armed conflicts (Protocol I), 8 June 1977, 1125 U.N.T.S. 3.

17. Official Records of the Diplomatic Conference on the Reaffirmation and Development of International Humanitarian Law applicable in Armed Conflicts, Geneva (1974-1977), Volume XV, pp. 348-349

18. Boston Review, 'Mass Starvation is a Crime – It's time we treated it that way.' <http://bostonreview.net/global-justice/alex-de-waal-mass-starvation-crime%E2%80%94its-time-we-treated-it-way> (last accessed: March 22, 2021). Also see Waal, Alex de. *Mass Starvation: The History and Future of Famine*. 1st ed. Polity, 2018.

which is found in Article 14 of Additional Protocol II.¹⁹ Similarly, the Rome Statute of the International Criminal Court has also provided for the prohibition of starvation as a method of warfare, declaring it as a war crime, in consonance with the provisions of the Geneva Convention.²⁰ Despite this prohibition under international humanitarian law and customary law, deliberate starvation of civilians does not seem to have gained as much attention as the more obvious war crimes against civilians,²¹ for instance persecutory rapes in Bosnia or the genocide in Rwanda.²² This, combined with a lack of clarity and understanding and the absence of possible avenues to bring perpetrators to justice, has made it difficult to prosecute and potentially deter the deliberate starvation of civilians.²³ The U.N. Security Council Resolution 2417(2018) acknowledged the link between armed conflict and violence and conflict-induced food insecurity and the threat of famine.²⁴ However, it failed to provide any concrete mechanism for adjudicating the crime of starvation and merely seemed to reiterate the existing law that the use of starvation of civilians as a method of warfare is prohibited by International Humanitarian Law.²⁵

Mirroring a similar situation in South Sudan, where the government itself was involved in starvation of its civilians, I argue that, notwithstanding these instances of international recognition of starvation as a war crime, attribution of fault and accountability remain elusive.²⁶ At a more domestic level, there ought to be an obligation on the government to meet the needs of the civilians.²⁷ This includes creating proper ac-

19. Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the protection of victims of international armed conflicts (Protocol II), 8 June 1977, 1125 U.N.T.S. 609.

20. *See*, Article 8(2)(XXV) of the Rome Statute

21. Mark Kersten, Exposing hidden weapons of war: Justice and accountability for the deliberate starvation of civilians (Apr. 12, 2021, 11:26 AM) <https://justiceinconflict.org/2020/12/01/exposing-hidden-weapons-of-war-justice-and-accountability-for-the-deliberate-starvation-of-civilians/>

22. Catriona Murdoch and Wayne Jordash QC, 'Clarifying the Contours of the Crime of Starvation,' (27 June 2019), <https://www.ejiltalk.org/clarifying-the-contours-of-the-crime-of-starvation/>.

23. Protocol II, *supra* note 19.

24. Kersten, *supra* note 21.

25. UN SC Resolution 2417 (2018), S/RES/2417 (2018).

26. Murdoch and Jordash, *supra* note 22.

27. U.N. HRC, *supra* note 5, ¶ 38.

accountability mechanisms to punish perpetrators, to only set an example for future perpetrators, to prevent any further violence in the form of starvation of its civilians or even otherwise. But on a second thought, when the perpetrators of starvation of civilians, include the government of a state as well, would it be logical to expect the same government to fulfil the basic needs of its civilians, notwithstanding its duty to do so anyway?

III. ACCOUNTABILITY AND TRANSITIONAL JUSTICE EFFORTS

“The notion of ‘transitional justice,’ comprises the full range of processes and mechanisms associated with a society’s attempts to come to terms with a legacy of large-scale past abuses, in order to ensure accountability, serve justice and achieve reconciliation.”²⁸ Mechanisms could include judicial and non-judicial means, with varying amounts of international involvement and individual prosecutions, reparations, truth-seeking, institutional reform, vetting and dismissals, or some combination of these remedies.²⁹ In the context of South Sudan, the government was involved in the act of starvation. Thus, answering the question of governmental obligation, the United Nations created an external commission as a mechanism to collect and preserve evidence of violations of international humanitarian and human rights law and thereby ensure accountability of crimes perpetrated in South Sudan.³⁰ This led to signing of the Revitalised Agreement on Resolution of the Conflict in South Sudan (R-ARCSS),³¹ which provided for the establishment of an independent hybrid judicial body, known as Hybrid Court for South Sudan (HCSS), including the establishment of a Commission on Truth, Reconciliation,

28. U.N. SC, ‘The rule of law and transitional justice in conflict and post-conflict societies: Report of the Secretary General’, U.N. Doc. S/2004/616 (Aug.23, 2004) ¶ 8.

29. *Id.*

30. Joint Letter to UN HRC, Extend the mandate of the UN Commission on Human Rights in South Sudan, (5 Feb 2021), <https://www.hrw.org/news/2021/02/05/joint-letter-un-hrc>.

31. The Revitalised Agreement provides a roadmap for the challenging task of rebuilding South Sudan and reversing its deep crisis and culture of impunity, including by ensuring accountability and reparation for the violations and abuses that have characterised South Sudan’s recent conflicts. U.N. Doc. A/HRC/45/CRP.3.

and Healing (CTRH), and Compensation and Reparations Authority (CRA),³² as a part of transitional justice measures.

However, despite a considerable lapse of time since the signing of the R-ARCSS, there was no concrete progress in realising any accountability, national healing, or reconciliation.³³ Transitional justice can often lose sight of the current state of affairs.³⁴ For instance, South Sudan had undergone a political transition, becoming independent in 1956. Hence, the predominant reasons, for the lack of progress in remedying the situation, include persistent political contestation, weak governance institutions, impunity for grave human rights violations and crimes,³⁵ and rampant corruption between political elites,³⁶ with a diversion of South Sudan's resources to serve their personal agenda, all inherited from a pre-transition period. Thus, redress of such violations was critical for the achievement of long-term peace and security which could only be accomplished if the parties to the conflict could place the needs of their civilians at topmost priority, along with implementation of an inclusive and holistic transitional justice process that could help achieve the "dream" of freedom.³⁷ However, such drawbacks prevalent in the system, do pose a challenge for the implementation of transitional justice mechanisms. Nonetheless, the presence of challenges does not form the "reason" for avoidance of transitional justice, but in turn highlights the need for accountability, national healing and reconciliation.³⁸

Simply giving up on transitional justice would not be the solution but the challenge is to ensure that the requisites for the implementation of the measures are well established,³⁹ and to choose more suitable models bearing direct relevance and context to the specific complexities, circumstances and violations. Once this is determined, the next step would be to carefully examine the amount of time and quantum of re-

32. Joint Letter, *supra* note 30, ¶ 5.1.1.

33. U.N. HRC, "Transitional Justice and Accountability: a roadmap for sustainable peace in South Sudan", U.N. Doc.A/HRC/45/CRP.4 (Oct 5, 2020).

34. Aboueldahab, *supra* note 8.

35. Protocol II, *supra* note 19.

36. *Id.* at 35.

37. *Id.* at 35.

38. Joint Letter, *supra* note 30, ¶ 39.

39. U.N. HRC, *supra* note 7.

sources to be devoted towards building the required capacities.⁴⁰ Those facilitating transitional justice should continue to revisit the various transitional justice measures to ensure that they are established in a timely manner and implemented in a way that accounts for the evolving social, political, and economic context in South Sudan.⁴¹ Too often, actors do not consider how the dimensions of transitional justice measures can shape the impact of those measures on the societies they affect.⁴²

The most crucial problem identified in the South Sudan situation is more to do with the sheer lack of interest in the implementation of solutions—whether transitional justice mechanisms or even otherwise. In other words, the problem is more to do with a clear lack of political will to actually work towards a solution than with the design of the overall “remedy packet.” South Sudan needs a confluence of accountability measures and support rendered by domestic, regional, and international institutions, in unity.⁴³

A. *Remedying the lack of political will of the South Sudanese government*

The attacks in South Sudan, merely presented as cattle raiding, are extremely politicised and systematically orchestrated, involving organised armed militia groups under the command and control of the main parties to the conflict.⁴⁴ Further, members of the government forces armed the militia groups to carry out brutal attacks against the neighbouring communities, often during periods of cattle migration.⁴⁵ Thus, the situation in South Sudan confirmed that the violence was not only criminal but also political.⁴⁶ Hence, knowing the political context and the potential implications of transitional

40. *Id.* ¶ 83.

41. U.N. HRC, *supra* note 33, ¶ 33.

42. Geoff Dancy and Eric Wiebelhaus-Brahm, *Timing, Sequencing, and Transitional Justice Impact: A Qualitative Comparative Analysis of Latin America*, 16 *Human Rights Review* 321, 325 (2015).

43. General Assembly Res. A/HRC/34/L.34, (March 20, 2017).

44. U.N. HRC, *supra* note 33, ¶ 12.

45. See statement by Commission on Human Rights in South Sudan, 20 February 2020, available at <https://www.ohchr.org/EN/HRBodies/HRC/Pages/NewsDetail.aspx?NewsID=25582>

46. U.N. HRC, *supra* note 33.

justice is crucial.⁴⁷ As acknowledged by the Minister of Justice,⁴⁸ persistent political contestation in South Sudan between parties to the peace agreement has led to a significant amount of delay in implementation of key measures collated in the R-ARCSS.⁴⁹ Thus, the question is not whether to pursue accountability and justice, but rather when and how,⁵⁰ given the prevalent political setting. More robust diplomatic engagement is necessary from a range of international and regional stakeholders, including regional governments which should encourage the Government of South Sudan to abide by its transitional justice commitments.⁵¹

i. *Meeting basic needs*

Before delving into political issues the most basic step would be to cater to the basic rights of the civilians to food and basic amenities for sustenance of life. The engagement of citizens in the transitional justice process and their willing participation requires that their basic needs are met. Attacks by the South Sudanese Government on its civilians were concentrated in areas where agricultural production traditionally fed large parts of South Sudan, resulting in massive displacements and devastating local grain production, leading to hyperinflation in food prices.⁵² Large-scale hostilities and mass displacement, combined with severe economic downturn, means that families in South Sudan need support to rebuild their lives. In this sense, support by international actors would be necessary, especially when the government has flouted its basic obligations and caused the starvation of its own civilians. Monthly assistance programmes in cooperation with civil society or local actors, in terms of distribution of food to families, would be

47. UN, Guidance Note of the Secretary-General, United Nations Approach to Transitional Justice, (Mar. 2010) [chrome-extension://cefhlgghdlbobdpihfdadojifnpgbjj/https://www.un.org/ruleoflaw/files/TJ_Guidance_Note_March_2010FINAL.pdf](https://www.un.org/ruleoflaw/files/TJ_Guidance_Note_March_2010FINAL.pdf).

48. U.N. HRC, *supra* note 33 ¶ 21.

49. *Id.*

50. *Id.*

51. *Id.* ¶ 43.

52. Opinion by George Clooney and John Prendergast, *South Sudan's government-made famine*, (Mar 9, 2017, 12:17 PM EST) <https://www.washingtonpost.com/news/global-opinions/wp/2017/03/09/south-sudans-government-made-famine/>.

a great initiative towards improving the situation of starvation in South Sudan. For instance, the assistance provided by the U.N. World Food Programme to the Syrian people, who were facing unprecedented levels of poverty and food insecurity due to persistent years of conflict.⁵³

ii. *Redressing government-generated starvation*

The South Sudanese Government played a role in the starvation of its civilians. The situation worsened due to other factors, such as corruption of political elites who diverted South Sudan's resources to serve their personal agendas. Having transitional justice measures in place to address such instances is just one side of the coin. What about efforts to counter the networks that benefit financially and politically from the crisis, at an international level?⁵⁴ The international community must make war costlier than peace for governments.⁵⁵ Imposing economic sanctions on the state would not be a wise option,⁵⁶ as it would lead to the creation of additional burdens on states which are already under stress due to their governments.⁵⁷ Hence, choking the illicit financial flows of the kleptocrats is key for peace in the international community, given the vulnerability of stolen assets that are offshored around the world.⁵⁸ The most promising policy approach would combine creative anti-money laundering measures with targeted sanctions aimed at freezing those willing to commit mass atrocities out of the international financial system.⁵⁹ This reflects the idea civilians should not be made to suffer for the crimes of their governments. One can be hopeful that such measures may turn the perpetrators, i.e. the government, towards the implementation of transitional justice measures.

53. UN World Food Programme, *Syrian Arab Republic*, <https://www.wfp.org/countries/syrian-arab-republic>.

54. U.N. HRC, *supra* note 33.

55. *Id.*

56. As was intended by UN SC Resolution 2417 (2018).

57. UN HRC, *COVID-19: Economic sanctions should be lifted to prevent hunger crises – UN expert* <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=25761&LangID=E>.

58. U.N. HRC, *supra* note 33.

59. *Id.*

iii. *Impact of regional considerations*

Regional considerations have always played a prominent role in South Sudan's security landscape, especially given that the country was born from a regional fissure between what are today Sudan and South Sudan.⁶⁰ This schism has been subsequently shaped and influenced to varying degrees by all of South Sudan's regional neighbours.⁶¹ For instance, lessons can be drawn from successful outreach programmes related to transitional justice processes in South Africa.⁶² This has also been recognised by the Commission of Human Rights in South Sudan. For instance, South Africa had established the Truth and Reconciliation Commission (TRC), for the addressal of abuses which were committed during the apartheid era. In fact, following suit, dozens of countries in Latin America also adopted this approach following significant transitional periods.⁶³ One change implemented by the TRC's Human Rights Violations Committee was a statement-taking process through which individuals could explain the abuses they or a close family member had experienced.⁶⁴ It was reported that over 22,000 (predominantly black) South Africans ultimately took advantage of this opportunity. These statements were later used as the basis for declarations of victim status and payments of Urgent Interim Reparations.⁶⁵

Similar mechanisms were also established by the African Union in South Sudan. For instance, the Hybrid Court for South Sudan, the Commission on Truth, Reconciliation, and Healing, and the Compensation and Reparation Authority and the ultimate creation of the R-ARCSS. In fact, the African

60. Luka Kuol, Special Report No. 4: Envisioning a stable South Sudan, 'Navigating the Competing Interests of Regional Actors in South Sudan' African Center for Strategic Studies (May 29, 2018) (last accessed 1 May 2021) <https://africacenter.org/spotlight/navigating-the-competing-interests-of-regional-actors-in-south-sudan/>.

61. U.N. HRC, *supra* note 33.

62. *Id.* ¶ 89.

63. David Backer, *Evaluating Transitional Justice in South Africa From a Victim's Perspective* in VOLUME 12, ISSUE 2, THE JOURNAL OF THE INTERNATIONAL INSTITUTE (Winter 2005), <https://quod.lib.umich.edu/j/jii/4750978.0012.207/-evaluating-transitional-justice-in-south-africa?rgn=main;view=fulltext>.

64. U.N. HRC, *supra* note 33.

65. *Id.*

Union Peace and Security Council responded to the conflict by mandating a Commission of Inquiry on South Sudan (AUCISS) “to investigate the human rights violations and other abuses committed during the armed conflict in South Sudan” and to propose measures to “ensure accountability, reconciliation and healing among all South Sudanese communities.”⁶⁶

While the African Union has played an active role in South Sudan, there is reason for caution in managing conflicting regional interests which can exacerbate the crises and add to their complexity.⁶⁷ For instance, participants in the African Union’s workshops in South Sudan expressed concern that the African Union and the African Commission on Human and Peoples’ Rights engagement on implementation of the R-ARCSS was one-sided, with a primary focus on the Government of South Sudan.⁶⁸ They called on the African Union to enhance its collaboration with opposition parties, South Sudanese citizens, and civil society in its future engagements in order to obtain a comprehensive picture of the people’s views and priorities.⁶⁹ Civil society participants even informed the workshop that the African Union-led negotiations to set up the HCSS ended in a deadlock.⁷⁰

In sum, the creation of pressure tactics and more robust and sustained engagement by the African Union, South Africa, and other regional organisations—including the United Nations Human Rights Council and United Nations Security Council—acting in unison, has a greater chance of ameliorating predicaments of violent conflict, social fracturing, and economic turmoil in South Sudan.⁷¹

B. *Designing a “context-driven” solution*

Notwithstanding the aforementioned, the consequent failure to address the underlying cause of prior conflicts, including ethnic-based divisions and impunity for past human rights violations and crimes, created a conducive environment for re-

66. *Id.* ¶ 2.

67. *Id.*

68. *Id.* ¶ 39.

69. *Id.* ¶ 39.

70. *Id.* ¶ 50.

71. *Id.* ¶ 60.

newed violence.⁷² The prevalence of weak laws, lack of accountability against perpetrators, inadequate data collection and reporting on sexual and gender-based violence, etc., have collectively exacerbated the situation in Sudan.⁷³ These root causes of violence do not need to be completely remedied for effective implementation of transitional justice mechanisms. However, it is key to analyse the situation, acknowledging the root causes or situations of violence and customizing remedial measures to suit the situation. Transitional justice measures should also discourage perpetrators' belief that their crimes will not meet any consequences.⁷⁴

Thus, rather than beginning with the question, "what are the most effective ways of realizing the rights to truth, justice, reparation and nonrecurrence?" transitional justice measures often skip this question and simply implement a set of familiar initiatives.⁷⁵ Further, States often fail to analyse whether they have adequate resources and the necessary infrastructure to work with transitional justice mechanisms. The "templatzation"⁷⁶ approach will not achieve the intended result. Instead, mechanisms should identify an intended result at the beginning and then determine which measures would achieve it. However, "adapting" a template into the local context of a particular country is not necessarily wrong—using templates may have its advantages, serving as a basic guideline which has already been tried and tested in another country. Rather, when templates are implemented without consideration of the local context, it leads to more harm than good. Implementing transitional justice measures like prosecutions and amnesties in certain contexts would not only be disastrous, but also ineffective. In South Sudan, establishing a base for transitional justice mechanisms would help create the necessary political will.

A preliminary mapping exercise, similar to that carried out in the Democratic Republic of the Congo (DRC), could be carried out in South Sudan with the help of the United Nations, to identify both the rights violations and the particular context in which they were committed. The United Nations

72. *Id.* ¶ 11.

73. *Id.* ¶ 13.

74. *Id.* ¶ 14.

75. U.N. HRC, *supra* note 7, ¶ 84.

76. U.N. HRC, *supra* note 33.

created an external commission in South Sudan for the collection of evidence and sent a team of human rights and correction officers to the U.N. Mission in South Sudan. However, apart from mere discussions on the mandate of the team, it does not seem to have made significant progress. Some suggestions for greater efficiency in the mapping exercise are outlined below.

i. *Division of U.N. Teams*

The entire team could be divided to collect evidence and look into events that meet a particular “gravity threshold.” The teams could also cater to the immediate needs of victims. While nearly all South Sudanese citizens have been subject to starvation, certain groups also experience other harms, like rape or murder. Without specified groups, mapping exercises may overlook many victims and families and some groups of victims may receive a disproportionate amount of support or legal aid. Certain forms of violence may require additional resources and a higher degree of support. Thus, categorizing the crimes based on gravity threshold and allocating particular teams to those crimes could help generate greater efficiency.

ii. *Collection of evidence and information*

Collection of evidence would ideally include details of the form of crime, the nature of such crime or violation, location, time, details about the perpetrator (including physical attributes if possible), connection of the perpetrator to a particular group, and an analysis and assessment of the information, including witness interviews. Documents would likely come from various sources and would have to be collated to form a logical sequence or chronology. The evidence gathering process should be carried out with the engagement and support of local NGOs and civil society participants, who would be ideal sources to guide the team in their pursuits.

iii. *Civil society engagement and victim-participation*

While civil society actors are fundamental drivers of transitional justice process in South Sudan,⁷⁷ they are also one of

77. Aboueldahab, *supra* note 8.

the most repressed.⁷⁸ Stakeholders have expressed concerns that there has not been enough consultation with civil society and victims regarding the implementation of the R-ARCSS.⁷⁹ Victims have also raised concerns regarding the lack of inclusivity and broad participation of all stakeholders and conflict-affected communities on the creation of the CTRH.⁸⁰ The importance of understanding how locals view reconciliation, justice, and accountability and the expectations local actors have for transitional justice mechanisms, has greatly been undermined.⁸¹

iv. *Programmes for creating awareness*

Outreach programmes for public awareness about the R-ARCSS and processes of national reconciliation and healing could improve the government's relationship and engagement with victims and conflict-affected communities.⁸² Further, these programs could serve to identify victims' priorities and concerns regarding their rights to truth, justice, and reparations.⁸³ Such programmes could be managed with local NGO and civil society participants, who have a deeper understanding of the local infrastructure. Yet, in many cases, "this inclusion remains a top-down process that only marginally involves communities in international or national efforts, at best endeavouring to improve their experience of the process rather than to give them agency within it."⁸⁴ If left unaddressed, these concerns have the potential to undermine the quality and credibility of transitional justice institutions and, ultimately, the goals of achieving national reconciliation and healing.⁸⁵ A significant benefit of this approach is the capacity for those involved to understand community dynamics, create dialogue,

78. U.N. HRC, *supra* note 33, ¶ 36.

79. *Id.*

80. *Id.* ¶ 38.

81. Maryam Jamshidi, 'How transitional justice can affect Yemen's future,' (20 Dec. 2018), <https://www.washingtonpost.com/news/monkey-cage/wp/2018/12/20/how-transitional-justice-can-affect-yemens-future/>.

82. Aboueldahab, *supra* note 8.

83. *Id.*

84. Hollie Nyseth Brehm and Shannon Golden, *Centering Survivors in Local Transitional Justice*, 13 ANN. REV. L. & SCI. 101, 108 (Oct. 2017) <https://www.annualreviews.org/doi/10.1146/annurev-lawsocsci-110316-113444>.

85. Aboueldahab, *supra* note 8.

and create context-specific programs in the wake of violence and repression.⁸⁶

v. *Rebuilding schools and other educational structures for children*

To inculcate a sense of normalcy among affected families, and to support future generations, efforts should focus on rebuilding schools and educational structures where they have been destroyed. Families may have hesitated in sending their children to school due to fear of violence, so generating awareness around the role of the future generation and implementing additional measures like protection of educational buildings could encourage families to send their children back to school.

vi. *Creating camps for rendering mental and health services and rehabilitation measures*

Victims and their families are often in a perpetual state of terror, having faced starvation and other specific atrocities. Thus, providing psychological and rehabilitation services, especially to address ongoing trauma within affected communities, is necessary to redress the harms. These services may be especially important to ensure the safety of victims and survivors, specifically women and children, who are often neglected and are especially vulnerable.

vii. *Creation of job opportunities for women and men*

Support measures should prioritise the provision of adequate and long-term financial and technical resources to facilitate the operation of civil society organisations, including in remote and marginalised areas of South Sudan. These measures should aim to generate trust among citizens after they have lost faith in their government and institutions. A strengthened civil society movement which includes conflict affected communities and citizens, has the potential to stand as a strong bulwark against political machinations to undermine the realisation of the victims' rights to truth, justice, and reparation.⁸⁷

86. Jamshidi, *supra* note 84.

87. U.N. HRC, *supra* note 33, ¶ 78.

IV. CONCLUSION

Broadly, a victim-centred approach focuses on how so-called victims experience transitional justice processes. If these concerns or issues are left unaddressed, they have the potential to interfere with the intended goals of national reconciliation and healing.⁸⁸ The CTRH has stated that targeted measures need to be developed and deployed, aimed at enhancing the capacities of civil society to effectively organise, collaborate, coordinate, and scale up its participation in the transitional justice process.⁸⁹ This paper accentuates the idea that transitional justice mechanisms reflect the full panoply of human rights abuses that may occur as a result of war crimes like starvation. At the same time, such mechanisms could be used to challenge structures of violence and the power dynamics that caused them, in a manner which contributes to a long-lasting change.

88. U.N. HRC, *supra* note 33, ¶ 38.

89. Aboueldahab, *supra* note 8.