



SOUTH SUDAN STUDY ON THE STATUS OF AND OPPORTUNITIES FOR REPARATIONS FOR SURVIVORS OF CONFLICT-RELATED SEXUAL VIOLENCE



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ACRONYMS

ACHR	African Charter on Human and People's Rights	MGCSW	Ministry of Gender, Child and Social Welfare
AMA	Assistance Mission for Africa	MOJCA	Ministry of Justice and Constitutional Affairs
AU	African Union	MSF	Médecins sans Frontières (Doctors without Borders)
AUCISS	African Union Commission of Inquiry on South Sudan	NAS	National Salvation Front
ARCSS	Agreement on the Resolution of the Conflict in the Republic of South Sudan	NGO	Nongovernmental Organisation
CAT	Convention Against Torture	NSS	National Security Service
CCCM	Camp Coordination and Camp Management	OHCHR	Office of the High Commissioner for Human Rights
CEDAW	Convention on the Elimination of All Forms of Discrimination against Women	OSIEA	Open Society Initiative East Africa
CEDAW-OP	Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women	PoC	Protection of Civilians
CIGPJ	Centre for Inclusive Governance, Peace and Justice	PTSD	Post Traumatic Stress Disorder
CPA	Comprehensive Peace Agreement	R-ARCSS	Revitalised Agreement on the Resolution of the Conflict in the Republic of South Sudan
CRA	Compensation and Reparation Authority	R-JMEC	Reconstituted Joint Monitoring and Evaluation Commission
CRSV	Conflict-Related Sexual Violence	R-TGoNU	Revitalised Transitional Government of National Unity
CSO	Civil Society Organisation	SGBV	Sexual and Gender-Based Violence
CTRH	Commission for Truth, Reconciliation and Healing	SPLM/A	Sudan People's Liberation Movement/Army
DDR	Disarmament, Demobilisation and Reintegration	SPLM-IO	Sudan People's Liberation Movement-in-Opposition
DRI	Dialogue & Research Institute	SPLA-IO	Sudan People's Liberation Army-in-Opposition
EAC	East African Community	SSPDF	South Sudan People's Defence Forces
GSF	Global Survivors Fund	TJWG	Transitional Justice Working Group
HCSS	Hybrid Court for South Sudan	UN	United Nations
HIV	Human Immunodeficiency Virus	UNCHRSS	United Nations Commission on Human Rights in South Sudan
ICGLR	International Conference on the Great Lakes Region	UNICEF	United Nations Children's Fund
IDP	Internally Displaced Person	UNDP	United Nations Development Programme
IOM	International Organisation for Migration	UNHCR	UN High Commissioner for Refugees
LAW	Legal Action Worldwide	UNMISS	United Nations Mission in South Sudan
		WASH	Water, Sanitation and Hygiene



EXECUTIVE SUMMARY

After a bitter conflict that lasted twenty-two years, South Sudan became the youngest country in the world in July 2011 when a referendum delivered independence from Sudan. Peace was short-lived, and civil war broke out in December 2013 between rival forces loyal to the President (Salva Kiir) and Vice President (Riek Machar). The conflict has led to the killing of at least 383,000 people (the number is likely to be higher as this estimate covers only the period December 2013–April 2018) and has displaced nearly four million people.¹

This study finds that conflict-related sexual violence (CRSV) is ongoing and endemic in South Sudan, with devastating effects on individuals, families, and communities.

Survivors interviewed as part of this project were often aware of their rights, though this may not be representative of all survivors. Poignant assertions for their rights to be given effect were noteworthy.

Survivors indicated extreme unmet needs, including urgent medical, psychological, social, and economic needs directly resulting from the specific sexual violence experienced. The social impacts faced by survivors are particularly acute, with stigma and discrimination the norm in society. A sea change of awareness in government and in communities across South Sudan is needed to end a destructive culture of blame against survivors.

The most expressed needs of the survivors who participated in this study were related to assistance and services (such as medical assistance and psychological support). Psychosocially, survivors emphasised the need for trauma healing and community awareness, with targeted awareness programmes for their husbands and other men.

There are specific needs of children born of CRSV who suffer devastating stigma, discrimination, neglect, and abuse. Survivors' economic needs include gaining economic independence via their own livelihoods.

The legal basis for opportunities to address transitional justice needs in South Sudan can be found in Chapter V of the 2018 Revitalised Agreement on the Resolution of the Conflict in the Republic of South Sudan (R-ARCSS).

The R-ARCSS outlines a three-pronged transitional justice architecture, made up of a Hybrid Court for South Sudan (HCSS), a Commission for Truth, Reconciliation and Healing (CTRH) and a Compensation and Reparation Authority (CRA). Progress towards establishing these mechanisms has been slow, and only now is there starting to be some momentum towards establishing the CTRH. The CTRH feeds into the process for reparations, as it has a mandate to make recommendations on enabling victims' rights to a remedy.²

The context of marginalisation and gender discrimination in South Sudan, combined with the fragile peace, legacies of decades of conflict, and weak institutional and judicial infrastructure, result in a highly challenging environment for survivors to advocate for their right to a remedy and reparation.

The government has, in the past, been hostile to the concept of reparations. Although there now appears to be some government support for transitional justice through the CTRH, there are concerns that the political and military leadership are obstructing progress on the HCSS whilst appearing to be implementing other transitional justice provisions to hold off the international community.³

1 Francesco Checchi PhD and others, 'Estimates of Crisis-Attributable Mortality in South Sudan, December 2013–April 2018' (London School of Hygiene and Tropical Medicine, 2018) 2; Council on Foreign Relations, 'Global Conflict Tracker: Civil War in South Sudan' (2021) <<https://www.cfr.org/global-conflict-tracker/conflict/civil-war-south-sudan>> accessed 9 July 2021.

2 Revitalised Agreement on the Resolution of the Conflict in the Republic of South Sudan (R-ARCSS) (2018) Clause 5.2.1.5.

3 Kuyang Logo, 'Pushing too hard for transitional justice? Lessons from South Sudan' (Chr. Michelsen Institute, 2021) <<https://www.cmi.no/publications/7748-pushing-too-hard-for-transitional-justice-lessons-from-south-sudan>> accessed 24 February 2022.

KEY RECOMMENDATIONS

1. The Revitalised Transitional Government of National Unity (R-TGoNU) of South Sudan should adopt legislation to establish all three transitional justice mechanisms under the 2018 R-ARCSS, giving effect to survivors' rights. Truth telling and acknowledgment are fundamental, but accountability is also needed to reverse the culture of impunity for CRSV.
2. The Government of South Sudan should publicly support the Technical Committee on the Commission for Truth, Reconciliation and Healing (CTRH), providing it with sufficient time and resources for effective consultations and drafting of legislation.
3. The Government of South Sudan should facilitate survivor-centric processes that, in and of themselves, restore survivors' dignity, and allow them to benefit from reparative measures.
4. The Government of South Sudan must open and protect civic space: workshops and events should not require government clearance. Journalists and civil society actors should be able to speak openly without fear of arrest or surveillance to create an environment where truth seeking, reconciliation and healing can begin.
5. The Government of South Sudan should take leadership in condemning all forms of SGBV, and in particular CRSV, in order to reverse stigma and end the culture of acceptance of sexual violence.

WITH REGARD TO REPARATIONS

1. A survivor-led approach to reparations is needed, where survivors are able to identify their needs and participate in the design of reparations.
2. Transitional justice mechanisms in South Sudan should be enabled to provide urgent interim reparations to CRSV survivors including:
 - Increasing access to free and accessible survivor-specific holistic healthcare
 - Providing survivor-centric psychosocial support (also available to children born of CRSV)
 - Providing special educational or other dedicated programmes for survivors and for children born of CRSV
 - Creating survivor-friendly spaces for survivors to meet, receive psychosocial and livelihoods support, and raise awareness and visibility about CRSV
 - Developing a national strategy and awareness programmes to counter stigma

A neighbourhood in Wau deserted due to conflict (2017)
© UNMISS / Nektarios Markogiannis





I. BACKGROUND AND METHODOLOGY

| 1. About the project

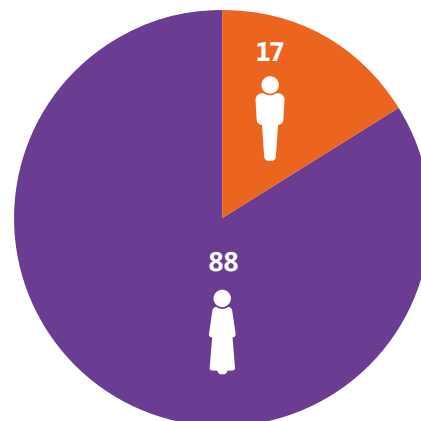
Rights for Peace, Dialogue & Research Institute (DRI) and the Centre for Inclusive Governance, Peace & Justice (CIGPJ) have, in collaboration with the Global Survivors Fund (GSF), conducted a study to identify the reparative needs of survivors of CRSV in South Sudan, as well as the opportunities for delivering reparations to survivors through judicial and administrative processes. This study presents and analyses survivors' perceptions and expectations for reparations and offers practical, concrete, and context-specific recommendations to policy makers and other relevant actors at national and global levels to inform the design and delivery of survivor-centred reparations in South Sudan. The South Sudan Reparations study further aims to increase the understanding and awareness of survivors' rights to reparations and to create increased momentum for the delivery of meaningful survivor-centred reparations to CRSV survivors in South Sudan.

The South Sudan Reparations Study is part of a Global Reparations Study launched by GSF in 2020, which focuses on the status of and opportunities for reparations for survivors of CRSV in over 20 countries. The Global Reparations Study is a multi-actor effort led by GSF in collaboration with over 40 local and international partners, including survivors' networks and groups. It makes recommendations for further action based on survivors' needs and aspirations and identifies potential support available among key actors and concrete action to enhance access to reparations for CRSV survivors around the world.

| 2. Research methodology

This report was informed by a series of focus group discussions and individual interviews with 105 survivors from 6 locations across the South Sudanese States of Unity, Jonglei, Western Equatoria, Central Equatoria, and in northern Uganda.⁴ A pre-defined questionnaire developed by GSF was used, focusing on survivors' personal experiences, views, and expectations. For the data analysis process, the study followed a mixed-methods approach using qualitative information to capture information on survivors' perceptions of reparations for CRSV and quantitative data to analyse survivors' demographic profiles.⁵

GENDER OF SURVIVOR PARTICIPANTS



Total participants: 105

⁴ Six Focus Group Discussions took place, with a total of 103 survivors participating. Two Semi-Structured Interviews took place, each with one survivor respectively.

⁵ The data was systematised through Kobo Forms and analysed using descriptive statistics with Rstudio. The qualitative information was analysed using Nvivo. The interviews and focus group discussions resulted in 469 pieces of code that refer to the categories mentioned in the methodology and that are analysed in Section IV. Survivors' Perceptions, Needs, Priorities and Risks.



Credit / Source: © Global Survivors Fund

A practice of 'reparative research' was developed, embedding psychosocial support and survivor-led advocacy into the research process. The reparative approach to research ensured that all survivors interacting with the process were able to participate in trauma alleviating activities, which in turn enabled each cohort to develop trust with the facilitators and for a conducive group dynamic to form.

A desk-based review of existing open-source materials,⁶ coupled with bilateral interviews with a range of stakeholders, also informed this report. In January 2021, a round table meeting was held at the offices of the UN Development Programme (UNDP) in Juba, bringing together survivors, members of the South Sudan Transitional Justice Working Group (TJWG), the UN Commission on Human Rights in South Sudan (UNCHRSS), the United Nations Mission in South Sudan (UNMISS), and other organisations working with survivors. In September 2021, a Survivors Meeting and Advocacy Event (the “Survivors Speak” Conference) were also held at UNDP in Juba.

3. About the project partners



Rights for Peace is a UK-based human rights organisation working to prevent mass atrocity crimes in fragile states by supporting and collaborating with local organisations. Rights for Peace's mission is to counter identity-based violence and promote survivor-led transitional justice through training, human rights education, advocacy, and research. For more information, visit www.rightsforpeace.org/.



DRI is a transformative human rights, peacebuilding, justice and democracy national organisation which works with communities and national institutions to effect change in public policies. DRI contributes to transitions from the politics of war to politics of peace by promoting democratic governance and active citizenship. For more information, visit <https://dri-ss.org/>.

6 Open source materials included UN reports and resolutions, NGO reports, legislation, and international and national-level policy documents.



**CENTRE FOR INCLUSIVE GOVERNANCE,
PEACE AND JUSTICE - (CIGPJ)**

CIGPJ is a not for profit and non-partisan national Non-Governmental Organization founded by South Sudanese nationals to promote civic engagement and inclusivity in promoting peace and accountable governance. For more information, visit <https://twitter.com/CIGPJ1>.



GSF was launched in October 2019 by Dr Denis Mukwege and Ms Nadia Murad, 2018 Nobel Peace Prize laureates. Its mission is to enhance access to reparations for survivors of conflict-related sexual violence around the globe, thus seeking to fill a gap long identified by survivors. GSF acts to provide interim reparative measures in situations where states or other parties are unable or unwilling to meet their responsibilities. GSF also advocates for duty bearers, as well as the international community, to develop reparations programmes and provides expertise and technical support to guide states and civil society in the design of reparations programmes. GSF's survivor-centric approach is the cornerstone of its work. For more information, visit www.globalsurvivorsfund.org.



The project to undertake this study was designed as a survivor-centric and collaborative endeavour, supporting the existing work and objectives of the South Sudan **TJWG**,⁷ whose members advocate for transitional justice measures. A key strategy of the group is to strengthen survivors' capacities to advocate for their rights in relation to the transitional justice mechanisms outlined in Chapter V of the 2018 Revitalised Agreement on the Resolution of the Conflict in the Republic of South Sudan (R-ARCSS).

4. About the authors

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5. Acknowledgements

Rights for Peace would like to thank its South Sudanese co-partners who have been instrumental in delivering this project: DRI, CIGPJ, and the South Sudan TJWG, as well as the Dr. Denis Mukwege Foundation. We thank, too, the partners and CSOs we worked with who we have not named for security reasons. We would also like to thank the many individuals and organisations with whom we spoke in bilateral interviews, those who shared advice and information, as well as all those who participated in the Round Table and Survivor Speak Conference.

Most importantly, we would like to thank the survivors for their courage and determination in participating in this study. In bravely coming forward to raise their voices, share their experiences, and advocate for their rights, they have shed important light on the lived reality of those affected by CRSV and contributed to the movement for change.

⁷ The South Sudan Transitional Justice Working Group was established in 2016 and is comprised of a number of South Sudanese civil society organisations. See: www.tjwgsouthsudan.org.



II. INTRODUCTION

Since the outbreak of the civil war in December 2013, the country has seen some of the highest levels of sexual violence in the world.⁸ Whilst it is extremely challenging to measure the exact numbers of CRSV victimisation due to chronically low levels of reporting and insecurity in the country, thousands of women, men, and children have been subjected to CRSV in South Sudan since the start of the conflict.⁹ Zanaib Bangura, the UN Special Representative of the Secretary-General on Sexual Violence in Conflict, stated in 2014 that, in her thirty years of experience, what she witnessed in South Sudan was unparalleled.¹⁰

Sexual violence has grave physical, psychological, and socioeconomic impacts for survivors, and yet in South Sudan, there has been limited progress towards redressing or mitigating those harms. Whilst there has been some recent movement in progressing the establishment of the Commission for Truth, Reconciliation and Healing, reparations for survivors of CRSV remain elusive. As a direct consequence of this failure to provide reparations, survivors continue to endure the consequences of the harms suffered without redress.

This study carries out an assessment of CRSV in South Sudan, its impacts on survivors, their needs and expectations in relation to accessing reparations, and

how these can be met. It takes stock of the scope of CRSV and the obstacles and opportunities survivors face to secure reparation, making recommendations on the ways forward. This study forms part of the GSF's Global Reparations Study, which is being conducted in over 20 countries.

The study is divided into five main sections, the first of which provides an overview of CRSV perpetrated in South Sudan, looking in particular at the profile of survivors and perpetrators. The second section examines the consequences CRSV has had on both survivors and the wider community and presents survivors' perceptions, needs, and priorities for reparations, as well as the associated challenges of making such priorities a reality. The third section explores current survivor access to interim assistance and relief, in the absence of any currently existing reparations schemes in South Sudan. The fourth section analyses the normative frameworks for reparations under international, regional, and domestic law that are relevant to reparations in South Sudan. The fifth and final section explores both opportunities for, and possible challenges to, accessing reparations in South Sudan and concludes with a set of recommendations for ensuring that survivors of CRSV obtain reparations.

8 Devon Cone, 'Still in Danger: Women and Girls Face Sexual Violence in South Sudan Despite Peace Deal', (Refugees International, 2019) 4.

9 Amnesty International, 'Do Not Remain Silent: Survivors of Sexual Violence in South Sudan Call for Justice and Reparation' (July 2017) 9. A South Sudanese CSO interviewed by Rights for Peace estimated that the number is at least tens of thousands (Juba, South Sudan, 18 June 2021).

10 United Nations, 'South Sudan at 'Crossroads' as it Seeks to Combat Sexual Violence, says UN Official' (20 October 2014) <<https://news.un.org/en/story/2014/10/481502>> accessed 23 August 2021.



III. CONFLICT-RELATED SEXUAL VIOLENCE IN SOUTH SUDAN



6. Nature, Scale and Scope of Conflict-Related Sexual Violence in South Sudan

Sexual violence has been used as a military tactic in all ten states of South Sudan,¹¹ with certain areas seeing an increase in prevalence at different points throughout the conflict. The signing of the R-ARCSS in 2018 and the formation of the executive of the Revitalised Transitional Government of National Unity (R-TGoNU) in 2020 saw a reduction in fighting at the national level between the signatories to the agreement,¹² yet forms of CRSV including rape, gang rape, and sexual slavery persisted in South Sudan.¹³

This is due to ongoing organised violence at the sub-national and localised levels (similarly characterised by deliberate attacks on civilians),—the scope and intensity of which at times matches or even surpasses that of the national civil war.¹⁴

Forms of CRSV in South Sudan include rape and gang rape (both often associated with abduction and/or killing), sexual slavery, sexual mutilation, torture, forced nudity, castration, and forced abortion.¹⁵ Participants of this study reported being survivors of rape, gun rape, sexual slavery, and forced prostitution, as well as other types of violations such as torture, arbitrary arrest, imprisonment, and persecution.

¹¹ UN Security Council (UNSC), 'Report of the Secretary-General on Conflict-Related Sexual Violence' (23 March 2015) UN Doc S/2015/203 para 49.

¹² Conflict Sensitivity Resource Facility, 'Adjusting Terminology for Organised Violence in South Sudan' (10 November 2020) <<https://www.csrfsouthsudan.org/repository/adjusting-terminology-for-organised-violence-in-south-sudan/>> accessed 29 November 2021 1.

¹³ United Nations Mission in South Sudan (UNMISS) and the Office of the High Commissioner for Human Rights (OHCHR), 'Access to Health for Survivors of CRSV in South Sudan' (May 2020) 7.

¹⁴ Conflict Sensitivity Resource Facility, 'Adjusting Terminology' (n12).

¹⁵ Legal Action Worldwide (LAW), South Sudan Law Society and the Nuhanovic Foundation, 'Accountability for Sexual Violence Committed by Armed Men in South Sudan' (May 2016) 6.



Aerial of Bentiu Protection of Civilian site in Bentiu (2016)
© UNMISS

The UN Special Representative on Sexual Violence in Conflict, Pramila Patten, has highlighted that rape and other forms of sexual violence have been “a consistent, systematic feature of the conflict that has been used as a tactic of war to displaced populations, to disperse and instil fear within particular ethnic groups”.¹⁶ Indeed, survivors have recounted that they have been targeted based on their ethnicity or their perceived political allegiance and affiliation.¹⁷ The Secretary General’s report on CRSV in 2018 noted that in almost all recorded cases, the perpetrators and victims came from “rival ethnic groups”, with physical violence often accompanied by verbal insults based on victims’ identity and presumed allegiance.¹⁸

Sexual violence has also been used to transform regional demographics as part of an ethnically based strategy. Survivors and eyewitnesses have reported that South Sudan People’s Defence Forces (SSPDF) and National Security Service (NSS) forces deployed in Karpeto boasted of transforming the demographic landscape of South Sudan by producing children with women and girls from other communities in Central Equatoria.¹⁹

There are patterns of attacks against women, who are targeted near checkpoints and roadblocks while travelling to or from urban centres, as well as during home invasions.²⁰ CRSV has often taken place in proximity to Protection of Civilians (PoC) sites,²¹ with armed men targeting displaced women when they leave camps to fetch firewood, tend fields, or access markets, often raping them and confiscating their goods.²²

16 Africa Renewal, ‘UN SRSG For Sexual Violence In Conflict Condemns Use Of Rape As A Tactic Of War In South Sudan’ <<https://www.un.org/africarenewal/news/un-srsg-sexual-violence-conflict-condemns-use-rape-tactic-war-south-sudan>> accessed 12 July 2021.

17 Amnesty International, ‘Do Not Remain Silent’ (n18).

18 UNSC, ‘Report of the Secretary General Report on Conflict-Related Sexual Violence’ (16 April 2018) UN Doc S/2018/250 para 65.

19 UNMISS, ‘Conflict-Related Violations and Abuses in Central Equatoria: September 2018—April 2019’ (3 July 2019) para 75.

20 UNSC, ‘Report of the Secretary General on Conflict Related Sexual Violence’ (3 June 2020) UN Doc S/2020/487 para 47.

21 The most fundamental characteristic of a PoC site (in contrast to an IDP camp) is that they are situated within UN mission bases. This means that the State’s ability to exercise its powers within a PoC site remains at the discretion of the UN – thus offering an extra layer of protection to IDPs. PoC sites were established in South Sudan when the civil war broke out in 2013. They are considered a measure of last resort. Norwegian Refugee Council, ‘Protection of Civilians Sites: Lessons from South Sudan for Future Operations’ (31 May 2017).

22 UNSC, ‘Report of the Secretary General Report on Conflict-Related Sexual Violence’ (15 April 2017) UN Doc S/2017/249 para 62.

Survivors have highlighted that when security agents establish checkpoints along the main road to PoC sites, the checkpoints are considered riskier for men than for women. This situation leads men to hire women to purchase goods from markets outside PoC sites. When women began facing intimidation and confiscation of their goods by the security agents at the checkpoints, they decided to use bush roads to avoid harassment which, in turn, exposes them to further risk of CRSV by armed men. As one survivor put it,

“The rape is the price of working for an agent to earn a living.”²³

Accounts from survivors also show that incidents of CRSV occur during attacks on villages.²⁴ Abductions of women and girls taken as “wives” and/or for the purposes of sexual slavery by both parties to the conflict have taken place.²⁵

7. Profile and mapping of victims/survivors

Women and girls are the primary targets of CRSV in South Sudan.²⁶ Even before the civil war broke out, women and girls experienced high levels of sexual and gender-based violence (SGBV) and had very limited ways of addressing this phenomenon; these dynamics only worsened with the outbreak of conflict.²⁷ A large-scale research study published

in 2016 found that up to 65% of women and girls living in conflict zones in South Sudan experienced physical and/or sexual violence in their lifetime.²⁸ These levels of sexual violence “do not happen in a vacuum” but are instead rooted in everyday structural violence in South Sudan and are linked with the local political economy of the “bride price” which contributes to women and girls being viewed as commodities and/or property.²⁹

Men and boys are also subjected to CRSV in South Sudan. Sexual violence against men has been carried out as a form of torture in detention.³⁰ South Sudanese refugees in Kenya have reported that it was common practice for armed groups to force men and boys to choose between being raped and being killed.³¹ High levels of stigma and shame, enhanced by entrenched sociocultural norms, leads to chronic underreporting from male survivors.³² Although the definition of rape enshrined in South Sudan’s Penal Code Act (2008) is gender-neutral, male survivors fear being classified as homosexuals and liable to prosecution under section 248 of the Code, which criminalizes “carnal intercourse against the order of nature.”³³

Children comprise around 25% of all reported cases of CRSV in South Sudan, though there are concerns numbers may be much higher.³⁴ In 2019, the United Nations Children’s Fund (UNICEF)-led Monitoring and Reporting Mechanism noted that since December 2013, it had recorded over 385 incidents of sexual violence against children, perpetrated by all parties to the conflict.³⁵ Street children and orphans, who are numerous in South Sudan due to the prolonged

23 Focus Group Discussion with survivors in South Sudan (2021).

24 UNMISS and OHCHR, ‘Report on violations and abuses against civilians in Gbudue and Tambura States, Western Equatoria’ (April–August 2018) 1.

25 UNSC, ‘Report of the Secretary General’ (n11).

26 UNMISS and OHCHR, ‘Access to Health’ (n13).

27 Cone, ‘Still in Danger’ (n8).

28 International Rescue Committee and others, ‘No Safe Place: A Lifetime of Violence for Conflict-Affected Women and Girls in South Sudan – Summary Report 2017’ (2017) 12.

29 Alicia Luedke ‘The commodification of women and girls in South Sudan: increased risks and continued violence’ (LSE, 4 April 2019) <<https://blogs.lse.ac.uk/crp/2019/04/04/the-commodification-of-women-and-girls-in-south-sudan-increased-risks-and-continued-violence/>> accessed 13 July 2021.

30 UNSC, ‘Report of the Secretary General’ (n20).

31 All Survivors Project, ‘Submission to the United Nations Committee on the Rights of the Child 88th Pre-Sessional Working Group, 8–12 February 2021 (November 2020) 4; Women’s Refugee Commission, “We Have a Broken Heart”: Sexual Violence against Refugees in Nairobi and Mombasa, Kenya” (23 October 2019) 19.

32 United Nations Human Rights Council (UNHRC), ‘Report of the Commission on Human Rights in South Sudan’ (31 January 2020) UN Doc A/HRC/43/56 Annex II para 56.

33 All Survivors Project ‘Submission to the United Nations’ (n31) 6.

34 UNICEF South Sudan Country Office, ‘Gender-Based Violence’ (December 2019).

35 Ibid.

conflict, are particularly vulnerable to sexual violence by civilians, gangs, and armed groups.³⁶

Victims and survivors of CRSV in South Sudan have ranged in age from 3 to 70.³⁷ People residing in PoC camps are particularly vulnerable,³⁸ and attacks have also been reported against internally displaced persons.³⁹ Individuals with disabilities constitute a victim/survivor group whose suffering is compounded by the intersectional discrimination they face, and as a result, they struggle to access health facilities, safe shelters, or even basic health and legal information.⁴⁰

Survivors who participated in this study were between 14 and 48 years old. The majority were married, just two were divorced, and all others were widowed or unmarried. Most of the survivors are living in extreme poverty and with significantly low education levels. The data shows that some of them left their studies and lost their employment as a result of CRSV.

8. Profile of perpetrators

Armed actors on all sides of the conflict in South Sudan have used sexual violence as a tactic of war.⁴¹ Responsibility for CRSV in South Sudan is shared between:

- The Sudan People's Liberation Movement/Army (SPLM/A) –now the official army of the Republic of South Sudan under the name South Sudan People's Defence Forces (SSPDF)
- The National Security Service (NSS) and the Police Service

- The Sudan People's Liberation Army-in-Opposition (SPLA-IO –an anti-government rebel group which broke away from the SPLM/A)
- Militias aligned to both parties in the conflict (including youth militias)
- Unidentified uniformed men⁴²

Hybrid criminal-terrorist networks have also *"used the bodies of women and girls as a form of currency in the political economy of war"*.⁴³

It was reported in 2015 that government-allied militia groups in South Sudan were *"allowed to rape women in lieu of wages"*, suggesting that CRSV was being actively encouraged through official policy.⁴⁴ The Office of the High Commissioner for Human Rights (OHCHR) has reported on the prevalence of multiple-perpetrator rape in South Sudan.⁴⁵

In 2020, the UN Secretary General's report on CRSV found that perpetrators in South Sudan included community-based militias, civil defence groups, and other armed elements.⁴⁶ The SSPDF were implicated in 27% of the incidents, the SPLA-IO was implicated in 8% of the incidents, civil defence groups accounted for 32% of reported cases, and the remaining cases were attributed to members of the South Sudan National Security Service and National Police Service, and other actors, such as the National Salvation Front (NAS), under Major General Daniel Dongo and Major General James Nando (both of whom defected from SPLA-IO), and unidentified armed men.⁴⁷

36 All Survivors Project Submission to the United Nations' (n31); Women's Refugee Commission (n31) 21.

37 UNSC, 'Report of the Secretary-General on Conflict-Related Sexual Violence' (30 March 2021) UN Doc S/2021/312 para 48.

38 LAW, South Sudan Law Society and the Nuhanovic Foundation, 'Accountability for Sexual Violence' (n15) 18.

39 UNSC 'Report of the Secretary-General' (n37).

40 NGO Working Group on Women, Peace and Security, 'Statement by Ms. Caroline Atim at the UN Security Council Open Debate on Conflict-Related Sexual Violence' (14 April 2021).

41 International Rescue Committee and others, 'No Safe Place' (n28) 4.

42 UNMISS and OHCHR, 'Access to Health' (n22) 8.

43 UNSC, 'Report of the Secretary-General' (n22) para 1.

44 Hannah McNeish, 'South Sudan: Women and Girls Raped as 'Wages' for Government-Allied Fighters' (The Guardian, 28 September 2015) <<https://www.theguardian.com/global-development/2015/sep/28/south-sudan-women-girls-raped-as-wages-for-government-allied-fighters>> accessed 16 March 2022.

45 OHCHR, 'South Sudan: UN Report Contains "Searing" Account of Killings, Rapes and Destruction' (11 March 2016) <<https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=17207&langID=E>> accessed 16 July 2021.

46 UNSC, 'Report of the Secretary-General' (n37).

47 Ibid.



IV. SURVIVORS' PERCEPTIONS, NEEDS, PRIORITIES AND RISKS

This section analyses the survivor participants' profiles and their perceptions, needs, priorities, and perceived risks surrounding receiving reparations, based on six focus group discussions and three individual semi-structured interviews during fieldwork.⁴⁸

9. Impact of Conflict-Related Sexual Violence on Survivors, Families and Communities

Survivors in South Sudan face an array of debilitating impacts from CRSV, including medical, psychological, social, and economic challenges. Most of the CRSV survivors in South Sudan live in rural communities, making access to services problematic due to the presence of armed groups and poor roads. Survivors find it difficult to get to hospitals, communication networks are unreliable, and there is a lack of information and awareness surrounding CRSV. Even in Juba, survivors are led around in circles between hospitals and police stations and left frustrated by the stigma and lack of support.

Physical-Medical Impact

The health and medical impacts of CRSV on survivors in South Sudan is severe. Survivors spoke of suffering from chronic pain, for which they do not have access to any suitable treatment. Survivors also suffer from long term health conditions resulting from CRSV, such as Human Immunodeficiency Virus (HIV) and hepatitis. A South Sudanese CSO working with

women and girls has corroborated that HIV is a severe problem in relation to CRSV, with substantial unmet needs, including lack of testing, awareness, or livelihood support for those living with HIV.⁴⁹

Survivors also spoke of reproductive problems following CRSV, due to gynaecological complications and lack of access to proper medical care. They say they have now given up the idea of having children after having repeated miscarriages. Health provisions for survivors are inadequate, with survivors stating that the medical testing available was only for malaria or that paracetamol was the only medication available. They also expressed that they did not receive any medical examination in relation to the rape. Health and social impacts are also connected: one survivor expressed that when she became pregnant, she feared going to the health services due to the risk of being blamed by the community, who would say *"she looked for it"*.⁵⁰

Psychological

Survivors suffer from challenging psychological impacts.⁵¹ Intense trauma is not being adequately addressed. Survivors speak of *"psychological torture"* and suicidal thoughts. Women survivors who have had children born of CRSV struggle psychologically; many husbands and families do not accept the children and subject them to highly damaging discrimination and stigmatisation. The children are sometimes given names that represent what their mothers experienced; one survivor called her son a name which has the meaning *"during difficulty"*, for example.

48 The data was systematised through Kobo Forms and analysed using descriptive statistics with Rstudio. The qualitative information was analysed using Nvivo.

49 Interview with South Sudanese CSO (2021).

50 Focus Group Discussion with survivors in South Sudan (2021).

51 Of the mentions made by participating survivors in relation to psychological impacts of CRSV, 33.3% were on trauma, 16.7% on post-traumatic stress disorder (PTSD), 12.5% on depression, 8.3% on self-esteem issues, 8.3% on suicidal thoughts, 4.2% on anxiety, and 16.7% on other mental health issues and psychological consequences.



South Sudanese rape victim narrates her ordeal (2018)

© UNMISS / Isaac Billy

One survivor spoke of the psychological impacts that both she and her son (who was born of CRSV) face. Her husband will not support her child with education and gives preferential treatment to the

other children. The survivor highlighted how the situation has affected her son's behaviour, as he has *"developed an attitude of hating anybody"*.⁵² She worries that:

"My son is continuing to live with a stepfather who does not like him and without support, I do not think my child will have a future. I often think, death is a right option to my son."⁵³

⁵² Focus Group Discussion with survivors in South Sudan (2021).

⁵³ Ibid.

One survivor's husband attempted to kill her child. This is not an isolated case, with other survivors sharing graphic details of infanticides and attempted infanticide of babies born of CRSV in their communities, some of which they had personally witnessed. There is a lack of official data mapping such incidences.

Social

The social impacts of CRSV on survivors abound.⁵⁴ Stigma and victim-blaming are common, with survivors stating that people in the community distance themselves from survivors and think they *"did it willingly"* and *"are responsible for the rape incident"*.⁵⁵ In general terms, CRSV has led to a fracture in the social fabric at the family and community level. One survivor stated that:

"Society stigmatises us as if we are responsible for our own problem."⁵⁶

Social stigmatisation prevents survivors from participating in public life. Survivors spoke of fear of participating in political activities, as they may be the subject of gossip or perpetrators may be in attendance. Some survivors' children were forced to leave school because of stigmatisation.

The attitude of men towards CRSV survivors was emphasised as being a significant problem. In particular, the husbands of CRSV survivors were said to be the main people in the community who blamed them. Regarding their partners' reaction, survivors mentioned they suffer domestic violence. One survivor said her husband *"treated me like a dog as he no longer cares for me"*.⁵⁷ Some survivors have been abandoned by their husbands. As stated above,

the partners' most severe reaction has been exerting violence against or even killing babies born of CRSV. In other cases, both the partners and the families of survivors reject the children born of CRSV.

Economic

Another significant impact of CRSV survivors is economic. Survivors mentioned they suffered famine and lacked the means to send their children to school. Some survivors are prevented from earning an income due to CRSV-related health conditions (such as chronic pain) and/or because of their fear of moving freely due to the continued risk of CRSV. One survivor shared that:

"I am jobless because I am afraid of going back to the bush to collect firewood to earn income".⁵⁸

10. Survivors' Perceptions of Reparations

All the participating survivors were aware of their right to reparation. The following are some responses which outline survivors' understandings and perceptions of reparations:

> "[Reparations] are necessary or we will die of stress."⁵⁹

> "Because I am a human being and not an animal, I have the right to reparation – the dignity that belongs to me needs to be restored."⁶⁰

> "The kind of assistance needed by a survivor of any type."⁶¹

⁵⁴ Of the mentions made by participating survivors in relation to the family and societal reaction, 41.3% were on the community's reaction, 31% on the partner's reaction, 17.2% on family's reaction, and 10.3% on other social consequences.

⁵⁵ Focus Group Discussion with survivors in South Sudan (2021).

⁵⁶ Ibid.

⁵⁷ Ibid.

⁵⁸ Focus Group Discussion with survivors in South Sudan (2021).

⁵⁹ Ibid.

⁶⁰ Semi Structured Interview with survivor in South Sudan (2021).

⁶¹ Focus Group Discussion with survivors in South Sudan (2021).

> **“It is a kind of help that I get to help me to 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.”⁶²**

> **“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.”⁶³**

Culturally, some survivors say that justice means to receive your rights back (“*Adala*”). This notion is related to their understanding of the concept of reparations. The notion of “*tesselia*” is associated with repairing, restitution, and healing. When something gets destroyed, it gets repaired and put back to its original position: this is ‘*tesselia*’.

In relation to existing cultural understandings of reparations in South Sudan, survivors spoke about the payment of cows as a form of reparation in rape cases. The survivors highlighted that this form of reparations is often not fair, as the cows go to the girl’s family and as a result:

“*They don’t really benefit the girl.*”⁶⁴

In an interview, one survivor spoke of a traditional “cleansing” ritual whereby the perpetrator must bring a black goat to be slaughtered and have its blood smeared on the house of the survivor and the house of the perpetrator. This ritual was said to be about “repair” rather than justice. However, because the survivor did not know who the perpetrator was, it would not be possible to do this ritual.

Compensation in South Sudan has largely been made available to survivors only through traditional justice arrangements, such as through bloodwealth payments where payment is rendered in cattle to the victim or to the family of the victim –widely considered the most acceptable mode of restitution to an aggrieved party among most pastoralist groups in South Sudan.⁶⁵ Whilst it is traditional practice that the family or clan takes collective responsibility to pay compensation for homicides committed by its members, when it comes to sexual violence, it is the responsibility of the individual to provide compensation, as the community wants to distance itself from this crime.⁶⁶

11. Survivors’ Current Needs

Survivors were clear that their current needs stemming from CRSV are not being met.⁶⁷ Survivors’ most expressed needs were assistance and services (such as medical assistance and psychological support). Survivors expressed a desire for an emergency health response system for new cases, but also services for long-term severe chronic cases. They need specialists, especially in more remote areas. Survivors stated that their lack of money is a challenge in relation to their health needs, as they are unable to purchase their prescribed medications. They also need support to go for their medical check-ups.

Psychologically, survivors emphasised the need for continuous training on trauma healing and awareness, so they are “able to forget this thing in my mind.”⁶⁸

⁶² Ibid.

⁶³ Ibid.

⁶⁴ Ibid.

⁶⁵ Hannah Wild, Jok Madut Jok and Ronak Patel, ‘The Militarization of Cattle Raiding in South Sudan: How a Traditional Practice Became a Tool for Political Violence’ (2018) 3 Journal of International Humanitarian Action.

⁶⁶ Stephen Oola and Luke Moffett, ‘Reparations in South Sudan: Prospects and Challenges’ (30 March 2019) 17.

⁶⁷ Of the mentions made by participating survivors in relation to their needs, 25.7% were on medical assistance, 20% on capacity building for strengthening their agency and voice, 14.3% on psychological assistance, 14.3% on legal services, 14.3% on security assistance, 5.7% on community needs, 2.9% on social services, and 2.9% on other needs.

⁶⁸ Focus Group Discussion with survivors in South Sudan (2021).



Survivors of conflict-related sexual violence in South Sudan (2020)
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“These mothers to these unwanted babies, the mothers need support to be empowered to accept the child.”⁶⁹

Survivors who have children born of CRSV also need a special school or programme for their children up until the age of 18 where they can be educated, due to the stigmatisation they face. They highlighted the need for mothers to be supported and empowered to accept their children but also suggested that an adoption programme could be the best option for some women facing stigma from family members. From a safety perspective, one survivor raised the need to learn self-defence skills to be able to protect themselves.

At the societal level, survivors stated that community awareness should be their priority. They highlighted the need to create more awareness in the community to prevent blaming of the victims, stressing the need for humanitarian organisations’ support in facilitating this goal. In particular, survivors called for an awareness programme that specifically targets their

husbands and other men to help them understand the problems survivors suffer and to discuss solutions together. The problem of men’s victimisation of children born of CRSV was raised again, with survivors noting the need for a particular programme for men to tackle their *“negative stereotypes and discrimination”*.⁷⁰

Regarding economic needs, survivors agreed that *“since our country is still upside down”*, compensation would be *“really convenient”* and could be used *“to solve my immediate problems and especially my family issues”*.⁷¹ One survivor expressed doubt surrounding the idea of monetary compensation, with concerns that it *“may not be sustainable.”*⁷² The survivors felt strongly that economic independence was important and emphasised their desire to have their own livelihoods. One survivor said:

⁶⁹ Ibid.

⁷⁰ Ibid.

⁷¹ Ibid.

⁷² Ibid.



Survivors of conflict-related sexual violence in South Sudan (2020)
© UNMISS

“I want to be independent. I am tired of being dependent on people... The time will come when they will withdraw the humanitarian food.”⁷³

One survivor’s request was to start a coffee shop in their Internally Displaced Person (IDP) camp *“while we wait for justice”*.⁷⁴ Another wanted to raise goats, as they have pre-existing skills in cattle rearing; one said they needed capital to start a business; another needed equipment to build their skills in bead-making and cooking. Survivors also emphasised that free education for their children was a priority. Survivors still at school spoke of the need to complete their studies and *“go further”* to *“make them feel like someone who can fight and advocate for their rights”*.⁷⁵

For a suggestion that would meet a combination of social, economic, and psychosocial needs, survivors said they wanted a women friendly space – *“a centre for socialisation of victims”* – where they could have meetings, do traditional handicrafts, weave, knit, make beads, and sew – including to generate income. At this centre, they could share their stories and be visited weekly by a counsellor or psychosocial expert to help them overcome their challenges resulting from the impact of the harm they have suffered. In relation to the centre, survivors suggested having T-shirts displaying positive messages to promote visibility, raise awareness, and encourage other local survivors to join them. One survivor said:

“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.”

⁷³ Ibid.

⁷⁴ Ibid.

⁷⁵ Ibid.

12. Survivors' Views and Priorities on Forms and Modalities of Reparations

Survivors expressed views on what would constitute adequate forms of reparation in their eyes.⁷⁶ As the figure below shows, participating survivors prioritised rehabilitation at the individual level, including access to free medical and psychological support. One survivor emphasised education as a priority, both for survivors themselves and for their children born of CRSV. Survivors linked rehabilitation with restitution of lost property, including houses and community goods such as schools, roads, hospitals, and infrastructure.

*They called for the government to return their land that was confiscated, stating, "when we question it, we are threatened."*⁷⁷

In terms of reparation priorities, rehabilitation was followed by guarantees of non-repetition. Survivors emphasised that the government should provide them with enough security to seek justice against perpetrators without fear for their lives. There was a distinct lack of trust in the government, summarised by one survivor who said:

*"If the government and rebels cannot unite to form a government, how can we trust them unless they show evidence of unity? They don't trust each other, so we won't trust them either."*⁷⁸

To prevent CRSV happening again in the future, survivors urgently recommended disarmament to minimise the occurrence of rape by armed groups. Another positive step, they said, would be the unification of different armed groups under one command, as currently different factions are scattered across the country without control, which makes it difficult to find perpetrators. As one survivor summarised:

*"They are scattered everywhere, do crimes, no follow up."*⁷⁹

Regarding rehabilitation at the collective level, survivors asked for more training on trauma healing and reconciliation, expanded grassroots advocacy, and more dialogues including survivors and participants from local governments. Concerning collective measures of satisfaction,⁸⁰ one survivor said the government should publicly apologise to the communities, even though a public apology alone would not correct all the errors. Justice is also necessary either for the perpetrator or (if the perpetrator is not found) for those who are responsible for the perpetrators.

*Some survivors said they did not want the government to do or say anything as "it would make the wounds fresh".*⁸¹

Another survivor said they did not believe the government would give a serious apology, and that if the government made an appearance, *"we will run away, we will think they are here to harm us again. We will not turn up."*⁸²

76 Of the mentions made by survivors in relation to their preferred forms of reparations, 23.4% were on individual rehabilitation, 22% on guarantees of non-repetition, 14.48% on collective rehabilitation, 11% on collective restitution, 13.1% on collective satisfaction, 6.2% on financial compensation, 5.5% on individual satisfaction, and 4.1% on individual restitution.

77 Focus Group Discussion with survivors, South Sudan (2021).

78 Ibid.

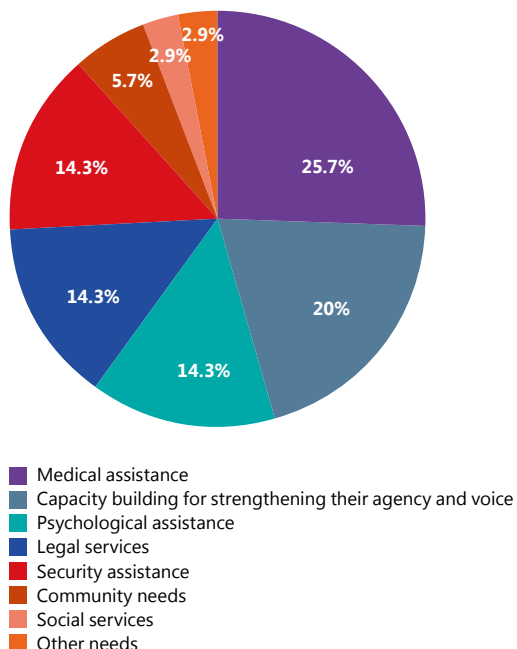
79 Ibid.

80 Here, the main priority for survivors was memorialisation, remembrance, and honouring survivors (31.6%), followed by public awareness (21.1%), community acceptance (21.1%), public apologies (15.8%), and accountability (10.5%).

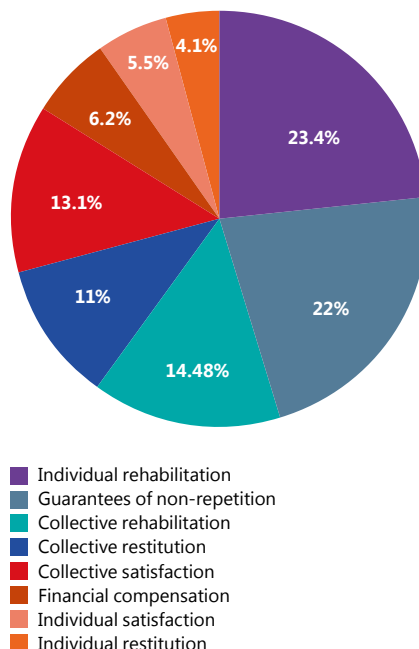
81 Focus Group Discussion with survivors in South Sudan (2021).

82 Ibid.

SURVIVORS' CURRENT NEEDS



SURVIVORS' PREFERRED FORMS OF REPARATIONS



“They will say these are just allegations, propaganda against the government... Our leaders need to acknowledge.”⁸³

Survivors also spoke about their need for measures of collective restitution, such as centres for survivors, better modalities of payment, and financial compensation. This aspect included economic compensation and empowerment to address their immediate needs and restitution at the individual level to generate employment such as seeds, farming and cattle equipment, and support implementing income projects.

Survivors expressed differing views on their desire to receive reparations from the government. Some survivors said they would *“never go and ask the government”* since *“they are the perpetrators”* and

“the ones who caused the pain”.⁸⁴ On the other hand, one survivor who was raped by a government soldier stated that the government should be the one to repair the harm as they are the one responsible. Survivors also stated that other parties, such as NGOs, could assist with training on trauma healing. However, survivors emphasised that this should supplement government responsibility.

One group of survivors mentioned that the government was doing nothing. In one group, survivors did not believe this would ever change. One survivor expressed:

“If you go to the government, who will listen to you? It will just bring problems.”⁸⁵

⁸³ Ibid.

⁸⁴ Ibid.

⁸⁵ Ibid.

| 13. Survivors' Sense of Agency

Survivors 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.⁸⁶ In terms of their capacity to engage in advocacy and pursue justice, some survivors said that if they were before the President, they would speak and face him. However, survivors also spoke of fearing for their safety:

"I can be hunted down here at state level."⁸⁷

Having their voices recorded with no video image was suggested as a mitigating option, as it would allow survivors to stay anonymous whilst also having their voices heard. Some men, women, and youth suffer at the grassroots level and *"really want to speak up about what happened but do not have that platform"*.⁸⁸

One survivor stated that survivors need networking opportunities so they can be linked together to discuss what they need as survivors, share their views, and create 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 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.

| 14. Main Risks Faced by Survivors of Conflict-Related Sexual Violence

Exploitation, stigmatisation, and reprisals

Survivors raised fears about the risk of reprisals when exercising their right to a remedy and reparation. The rule of law is severely lacking in South Sudan, and survivors expressed that they may live in fear of revenge attacks after receiving reparations. Widows were highlighted as a particularly vulnerable group for revenge attacks.

Survivors said risks could arise if the community views survivors as 'better off' because they received reparations. Fears of stigmatisation after receiving reparations were raised:

"Sometimes the outcome of reparation is that you can be attacked. People will stigmatise you. They will avoid you if you are a 'user'."⁸⁹

⁸⁶ Here, the survivors prioritised support for their participation in reparation processes. Of the mentions made by survivors in relation to this issue, 70% were on the creation or strengthening of structures that can multiply survivors' efforts, and 30% on other types of support for survivors' participation in the reparation processes.

⁸⁷ Focus Group Discussion with survivors in South Sudan (2021).

⁸⁸ Ibid.

⁸⁹ Ibid. The word 'user' in this context is akin to the English word 'scrounger', meaning someone who profiteers from receiving things, such as money, without working for them.

It was also highlighted that paying compensation may make perpetrators believe they are entitled to the survivor:

*"If a girl is abducted, usually a number of cows are paid. If he has paid his compensation, then he will keep following up the girl until she is given to him. This is a consequence of the compensation."*⁹⁰

Survivors raised concerns that monetary compensation could leave them open to exploitation by their husbands or family members, who might take the money away from them –leaving them vulnerable again. Speaking about marital relations, one survivor said

*"I will have to submit it... In the end, he controls your cash."*⁹¹

Survivors who have testified in court have been subjected to reprisals. Following the District Court Martial in Yei in 2020 established by the SSPDF, several survivors faced reprisals, including death threats and stigmatisation from their communities and SSPDF military officers.⁹² In one instance, the husband of one complainant (a survivor of rape) was shot and killed while travelling on a country road on 29 September 2020, with his body dragged into the bush by unidentified perpetrators.⁹³

The high levels of insecurity and risk of reprisals highlighted by survivors appears to point to the need for a holistic and community-based approach to reparations in South Sudan – an approach that does not set survivors apart from their communities or draw negative attention to them. In this respect, support for a sustainable livelihood was prioritised by survivors over monetary compensation, which some survivors associated with risks of exploitation, attacks and stigmatisation.

Insecurity

The permanent ceasefire continues to hold in most parts of the country and overall levels of political violence remain lower than they were prior to the signing of the R-ARCSS in 2018.⁹⁴ However, significant levels of sub-national and localised organised violence have continued.⁹⁵ The UN Secretary General's Report of December 2021 found this especially in Upper Nile, Unity, Jonglei, Warrap, Lakes, Central Equatoria and Western Equatoria, where insecurity and resource scarcity was fuelling conflict and violence.⁹⁶ The human rights, humanitarian, food security, and economic conditions in South Sudan are severe, with devastating effects on civilians.⁹⁷

"We don't fear animals in South Sudan, we fear the humans."⁹⁸

⁹⁰ Ibid.

⁹¹ Ibid.

⁹² UNHRC, 'Detailed Findings of the Commission on Human Rights in South Sudan' (18 February 2021) UN Doc A/HRC/46/CRP.2 para 153.

⁹³ Ibid.

⁹⁴ Security Council Report, 'March 2021 Monthly Forecast: South Sudan' (26 February 2021) <<https://www.securitycouncilreport.org/monthly-forecast/2021-03/south-sudan-12.php>> accessed 17 August 2021.

⁹⁵ Conflict Sensitivity Resource Facility, 'Adjusting Terminology' (n12).

⁹⁶ UNSC, 'Report of the Secretary-General on the Situation in South Sudan' (7 December 2021) UN Doc S/2021/1015 para 19.

⁹⁷ Security Council Report, 'March 2021 Monthly Forecast' (n94).

⁹⁸ Focus Group Discussion with survivors in South Sudan (2021).

Since 2020, all but one⁹⁹ of the PoC sites have transitioned to IDP camps, moving from UNMISS security to government jurisdiction.¹⁰⁰ The transition has provided South Sudan's national and state governments with more direct influence over the life of IDPs in the sites.¹⁰¹ Survivors in Bentiu IDP camp have spoken of their increased insecurity since the transition, with high levels of harassment by the South Sudan National Police Service towards the site residents.¹⁰² Theft and armed robberies at night are a real concern to survivors, as is sexual harassment and rape within the periphery or vicinity of the camps where women and girls venture to collect firewood.¹⁰³

Cantonment

The proximity of cantonment sites to civilian population centres creates a significant risk of CRSV in South Sudan and causes increased insecurity.¹⁰⁴ Survivors have repeatedly highlighted that the presence of armed men creates a serious risk to their safety and have called for disarmament and other security sector reforms to mitigate this.

The R-ARCSS stipulates a process of cantonment of large numbers of young men in preparation for either their integration into a new national army or becoming beneficiaries of the Disarmament, Demobilisation and Reintegration (DDR) programme.¹⁰⁵ Alan Boswell and Alex de Waal have explained that this is an example of *"payroll peace"*, whereby large numbers of soldiers and civil servants are put on the state payroll as an

incentive to accept a peace agreement.¹⁰⁶ This has led to the mobilisation of new forces across the country, incentivising young men to form organised armed groups.

Boswell and de Waal argue that this is: "helping lay the seeds for the next round of violence".¹⁰⁷

Mitigating Measures

The analysis of participating survivors' data shows that high levels of stigmatisation increase the level of risk surrounding receiving reparations. The survivors suggested mitigating measures, such as community centres to counter social exclusion, awareness-raising programmes specifically targeting the husbands of survivors and other men, and a national campaign to counter the culture of acceptance of CRSV and SGBV in general.

Survivors also expressed that an improved security situation would mitigate the risk of reprisals. Increased protection, including victim and witness protection during reporting of cases (for example in police stations) and during trials, is essential. It is necessary to uphold this at the international level; the UN Committee on the Elimination of Discrimination Against Women (CEDAW), for example, does not currently allow women and girls to protect their full identities from the state or state agents when they file a communication.¹⁰⁸

99 At the time of writing, Malakal PoC is the only remaining PoC site. IOM South Sudan, 'Malakal PoC Brief' (15 September 2021).

100 ACAPS, Movement Patterns and Humanitarian Needs in South Sudan: Scenarios' (2021) UNMISS, 'UN Protection of Civilians Sites Begin Transitioning to Conventional Displacement Camps' (4 September 2020) <<https://unmiss.unmissions.org/un-protection-civilians-sites-begin-transitioning-conventional-displacement-camps>> accessed 17 August 2021.

101 Conflict Sensitivity Resource Facility, 'Conflict Sensitivity Analysis: Malakal and Bentiu PoC sites' (2021) ii.

102 Interviews with survivors and South Sudanese CSO (South Sudan, 2021).

103 Ibid.

104 OHCHR, 'Commission on Human Rights in South Sudan: Statement to the Media, Juba, Delivered by Commission Chair Yasmin Sooka, Commission Member Andrew Clapham, and Commission Member Barney Afako' (7 February 2020) <<https://www.ohchr.org/en/newsevents/pages/DisplayNews.aspx?NewsID=25535&LangID=E>> accessed 20 August 2021.

105 Alan Boswell and Alex de Waal, South Sudan: The Perils of Payroll Peace' (LSE, 4 March 2019) para 2 <<https://www.lse.ac.uk/ideas/Assets/Documents/Conflict-Research-Programme/crp-memos/Revisiting-payroll-peace-revised.pdf>> accessed 16 August 2021.

106 Ibid para 3.

107 Ibid para 38.

108 LAW, 'Request for a General Recommendation, CEDAW 10 May 2021' (10 May 2021) <<https://www.legalactionworldwide.org/gender-equality-gbv/request-for-a-general-recommendation-cedaw-10-may-2021/?accept-cookies>> accessed 16 February 2022.



South Sudanese survivors participate in Focus Group Discussion (2021)
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V. ACCESS TO ASSISTANCE OR INTERIM RELIEF

Almost 70% of South Sudan's population needs urgent humanitarian assistance.¹⁰⁹ The design and delivery of reparations programmes can intersect with existing humanitarian operations, for example with regards to urgent forms of reparative measures such as medical assistance. There are opportunities for reparation and humanitarian programmes to intersect and strengthen each other to provide survivors with a holistic and comprehensive package of support.

Humanitarian assistance in South Sudan is mainly limited to urban areas, PoC sites, IDP camps, and refugee camps. Services provided by international organisations and NGOs include shelter/non-food items, water, sanitation and hygiene (WASH), health, education, cash, food and nutrition, livelihood recovery, health, and psychosocial support. The IOM and the UN High Commissioner for Refugees (UNHCR) co-lead the Global Camp Coordination and Camp Management (CCCM) Cluster, which facilitates the delivery of services to IDPs in displacement sites across South Sudan.¹¹⁰

HEALTHCARE

For survivors of CRSV, there is limited medical and mental health care available.¹¹¹ A 2020 report by UNMISS and OHCHR found that there is, on average,

only one health facility per 10,000 people, and an estimated 72% of the population lives more than five kilometres away from a clinic.¹¹² Many of these facilities are not capable of providing specialised care, and sexual violence survivors are not receiving adequate care.¹¹³ Most available testing is for pregnancy and malaria only, and survivors report being given only paracetamol in the aftermath of CRSV. For some CRSV survivors, assistance is available through humanitarian SGBV, reproductive, and maternal health services, which since 2013 have been mostly concentrated in PoC sites and refugee camps.¹¹⁴

LEGAL ASSISTANCE

Legal aid is extremely limited in South Sudan. Where legal aid exists, it is more often provided to perpetrators as opposed to survivors of SGBV.¹¹⁵ Due to South Sudan's weak formal justice system, customary courts in practice hear cases including for rape and other sexual violence crimes.¹¹⁶ The fact that so many survivors do not know their perpetrator also represents a challenge to the provision of justice and victims' right to a remedy. One survivor, who was raped by an armed gunman, expressed that, *"I do not have access to justice because I do not know the person."*¹¹⁷

109 European Commission, 'South Sudan', European Civil Protection and Humanitarian Aid Operations', <https://ec.europa.eu/echo/where/africa/south-sudan_en> accessed 18 August 2021.

110 Camp Coordination and Camp Management, 'About', CCCM Cluster <<https://cccmcluster.org/about>> accessed 18 August 2021.

111 UNMISS and OHCHR, 'Access to Health' (n13). See also Amnesty International, 'South Sudan: "Our Hearts Have Gone Dark": The Mental Health Impact of South Sudan's Conflict' (2016).

112 UNMISS and OHCHR, 'Access to Health' (n13) para 48.

113 Ibid para 57.

114 South Sudan GBV Sub-Cluster and Ministry of Gender, Child and Social Welfare, 'National Humanitarian Strategy for Prevention and Response to Gender-Based Violence 2019-2021' (2020) 10.

115 Ibid 8.

116 Godfrey Musila, 'The Rule of Law and the Role of Customary Courts in Stabilizing South Sudan', Africa Centre for Strategic Studies (29 May 2018) <<https://africacenter.org/spotlight/the-rule-of-law-and-the-role-of-customary-courts-in-stabilizing-south-sudan/>> accessed 18 August 2021.

117 Focus Group Discussion with survivors in South Sudan (2021).



VI. AVENUES FOR REPARATIONS

15. International human rights obligations and legal and policy frameworks relevant to reparations

South Sudan has ratified several international treaties, which have relevance to the right to reparation and an effective remedy for CRSV, and can be used as tools by South Sudanese survivors and civil society: the Convention against Torture (CAT)¹¹⁸ and its Optional Protocol (CAT-OP)¹¹⁹, the Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW)¹²⁰ and its Optional Protocol,¹²¹ and the Convention on the Rights of the Child (CRC)¹²² and its two Optional Protocols.¹²³

These treaties provide opportunities for survivors to address UN treaty bodies. The Optional Protocol for **CEDAW** contemplates **both individual complaints and inquiry procedures** that allow victims and survivors of alleged violations to submit complaints to the Committee, and which can result in the Committee making recommendations to the State party concerned to provide reparations.¹²⁴ South Sudan has also accepted the **inquiry procedure of the CAT**, meaning that South Sudanese survivors can submit information to the Committee on how the

rights contained in the CAT are being systematically violated by the State party, with the aim of having an inquiry conducted.¹²⁵

However, it must be emphasised that South Sudan's level of treaty ratification is highly lacking. Despite the Transitional National Legislative Assembly (TNLA) of South Sudan voting to ratify the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR) without reservations in June 2019 (as well as the First Optional Protocols to both instruments which establish individual complaints procedures), the decision still needs to be signed by the President of South Sudan.¹²⁶

South Sudan is also bound by international humanitarian law, including the four Geneva Conventions of 12 August 1949 and their Additional Protocols, which it acceded to in 2013. The conflict in South Sudan is a non-international armed conflict governed by Article 3 common to the Geneva Conventions and Additional Protocol II.¹²⁷

South Sudan has signed several regional instruments and has membership of regional bodies. South Sudan ratified the African Charter on Human and People's

118 Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (adopted 10 December 1984, entered into force 26 June 1987). Accession to CAT by South Sudan on 30 April 2015.

119 Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (adopted 18 December 2002, entered into force 22 June 2006). Accession to CAT-OP by South Sudan on 30 April 2015. South Sudan has not made the necessary declaration under Article 22 of the CAT to accept the individual complaints procedure, however, it has accepted the inquiry procedure of the CAT.

120 Convention on the Elimination of All Forms of Discrimination against Women (adopted 18 December 1979, entered into force 3 September 1981). Accession to CEDAW by South Sudan on 30 April 2015.

121 Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women (adopted 6 October 1999, entered into force 20 December 2000).

122 Convention on the Rights of the Child (adopted 20 November 1989, entered into force 2 September 1990). Accession to CRC by South Sudan on 23 January 2015.

123 Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict (CRC-OP-AC) (adopted 25 May 2000, entered into force 12 February 2002) and the Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography (CRC-OP-SC) (adopted 25 May 2000, entered into force 18 January 2002). Accession to CRPC-OP-AC and CRC-OP-SC by South Sudan on 27 September 2018.

124 South Sudan accepted individual complaint procedures and the inquiry procedure on 30 April 2015.

125 Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (adopted 18 December 2002, entered into force 22 June 2006). Accession to CAT-OP by South Sudan on 30 April 2015. South Sudan has not made the necessary declaration under Article 22 of the CAT to accept the individual complaints procedure.

126 OHCHR, 'Press Briefing Note on South Sudan' (7 June 2019) <<https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=24683&LangID=E>> accessed 16 July 2021.

127 Amnesty International, 'Do Not Remain Silent' (n9) 46.

Rights (ACHR)¹²⁸ in 2016, allowing individuals, groups of individuals and NGOs to bring claims alleging violations of the Charter by a State party before the **African Commission on Human and Peoples' Rights**. South Sudan has also signed the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (the Maputo Protocol) but has not yet ratified it.¹²⁹ The State is a member of the **International Conference on the Great Lakes Region** (ICGLR) and is bound by ten legally binding Protocols, including the Protocol on the Prevention and Suppression of Sexual Violence against Women and Children (2006).¹³⁰

South Sudan has committed to several UN frameworks surrounding CRSV, including a Joint Communiqué of the Republic of South Sudan and the United Nations on the Prevention of Conflict-Related Sexual Violence agreed upon in 2014.¹³¹ South Sudan has also endorsed the UN Declaration of Commitment to End Sexual Violence in Conflict, launched at the General Assembly on 24 September 2013.¹³²

International and regional Commissions of Inquiry and Sanctions Committees have been set up in relation to South Sudan and the widespread conflict-related human rights violations occurring there:

- The **UN Commission on Human Rights in South Sudan** (UNCHRSS) was established by the Human Rights Council for a one-year term on 23

March 2016 and has been renewed on a yearly basis since. It has the mandate 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, to end impunity and provide accountability.¹³³

- The **AU Commission of Inquiry on South Sudan** (AUCISS) was set up in 2013 to investigate human rights violations and other abuses committed during the armed conflict in South Sudan and released a report a year later calling for a process of national healing and reconciliation, as well as political justice and reparations for victims.¹³⁴
- The **UN Security Council Sanctions Committee on South Sudan** was established to oversee the sanctions measures imposed by the Security Council. The sanctions measures (travel ban, assets freeze and arms embargo) apply to individuals who are leaders or members of any entity, including any South Sudanese government, opposition, militia, or other groups, that has, or whose members have engaged in, among other things, *"planning, directing, or committing acts involving sexual and gender-based violence in South Sudan."*¹³⁵

128 African Charter on Human and Peoples' Rights (adopted 27 June 1981, entered into force 21 October 1986).

129 Protocol to The African Charter on Human and Peoples' Rights on the Rights of Women in Africa (adopted 1 July 2003, entered into force 25 November 2005). South Sudan signed the Protocol on 24 January 2013.

130 International Conference on the Great Lakes Region, 'Protocol on the Prevention and Suppression of Sexual Violence against Women and Children' (30 November 2006). As a member of the ICGLR, South Sudan is also a Party to the Declaration of the Heads of State and Government of the Member States of the ICGLR on Sexual and Gender-Based Violence (the Kampala Declaration).

131 United Nations Office of the Special Representative of the Secretary-General on Sexual Violence in Conflict, 'Joint Communiqué of the Republic of South Sudan and the United Nations on the Prevention of Conflict-Related Sexual Violence' (12 October 2014).

132 UK Foreign and Commonwealth Office, 'A Declaration of Commitment to End Sexual Violence in Conflict' (24 September 2013).

133 UNHRC, 'Transitional Justice and Accountability: a Roadmap for Sustainable Peace in South Sudan: Conference Room Paper of the Commission on Human Rights in South Sudan' (5 October 2020), UN Doc A/HRC/45/CRP.4 7.

134 With "recognition that sexual and gender-based violence (SGBV) is often dismissed as an unfortunate consequence of conflict, and keeping with its gender-sensitive approach", the Commission investigated specific gender-based violations and abuses. It considered gendered aspects of truth, healing, reconciliation and reparations in its recommendations. AU Commission of Inquiry on South Sudan, 'Final report of the AU Commission of Inquiry on South Sudan' (15 October 2014).

135 UN Security Council, Resolution 2521 (2020) (29 May 2020) UN Doc S/RES/2521 para 15 (e).



Flooding in Bentiu PoC site (2014)
© UN Photo/JC McIlwaine

INTERNATIONAL SOUTH SUDAN-FOCUSED CRSV CASES

Complaint to CEDAW Committee Against the Government of South Sudan

CEDAW'S Optional Protocol allows individuals or groups of individuals to submit individual complaints to the UN Committee on the Elimination of all Forms of Discrimination against Women for alleged violations of the CEDAW by States. On 6 December 2018, the NGO Legal Action Worldwide (LAW) submitted to the CEDAW Committee the first-ever case against the Government of South Sudan for the rape, mass rape, and sexual slavery of 30 South Sudanese women and girls by members of the South Sudan army (now known as the SSPDF and formerly the SPLA) and the Presidential Guard (Tiger Battalion) between 2016 and 2017. However, the case has been dismissed on two occasions by the Committee's Secretariat on the grounds that complainants must consent to the disclosure of their identities to the State concerned.¹³⁶

The Lundin Oil Case

On 11 November 2021, the Swedish public prosecutor charged the former Chief Executive of Lundin Energy (Alex Schneider) and the Chairman of the Board (Ian Lundin) for complicity in war crimes committed in Sudan (now South Sudan) between 1999-2003.¹³⁷ In 1997, the Swedish Company Lundin Oil AB formed the Lundin Consortium with Petronas Carigali Overseas Sdn Bhd from Malaysia, OMV (Sudan) Exploration GmbH from Austria, and Sudapet Ltd., a Sudanese state-owned company.¹³⁸ Lundin Consortium signed a contract with the Government of Sudan for the exploitation of oil in a concession area called Block 5A, which set off a conflict in which international crimes were committed, **including the rape of women**.¹³⁹ Thousands of people died, and almost 200,000 were violently displaced.¹⁴⁰ In 2016, representatives of the affected communities filed a claim calling for effective reparations for the crimes committed against them, particularly collective reparation from the Consortium members and their shareholders and for the government of Sweden to oversee the process.¹⁴¹ However, to date, they have received no response from the company or its investors.¹⁴² The case is ongoing.

136 LAW, 'Factsheet: Complaint to CEDAW Against the Government of South Sudan'.

137 Business and Human Rights Resource Centre, 'Lundin Energy Lawsuit (Re Complicity in War Crimes, Sudan)' <<https://www.business-humanrights.org/en/latest-news/lundin-petroleum-lawsuit-re-complicity-war-crimes-sudan/>> accessed 5 November 2021.

138 European Coalition on Oil in Sudan, 'Unpaid Debt: The Legacy of Lundin, Petronas and OMV in Block 5A, Sudan 1997 - 2003' (June 2010), 5 <https://www.ecosonline.org/reports/2010/UNPAID_DEBT_fullreportweb.pdf>.

139 Ibid.

140 Ibid.

141 PAX, 'Remedy Claim' <<https://unpaiddebt.org/remedy-claim/>> accessed 5 November 2021.

142 PAX, 'Lundin Petroleum to go on Trial for War Crimes' (12 December 2018) <<https://paxforpeace.nl/news/overview/lundin-petroleum-to-go-on-trial-for-war-crimes>> accessed 9 March 2022.

16. Relevant domestic legal and policy frameworks

There are several provisions in South Sudanese domestic law relevant to CRSV:

- Transitional Constitution – Bill of Rights (2011)
 - Commits South Sudan to “*respect and promote human rights and fundamental freedoms*” including the right to life, dignity and the integrity of their person (Article 11), the right to liberty and security of person (Article 12), and freedom from torture and other ill-treatment (Article 18)
 - The Transitional Constitution sets out the **South Sudan Human Rights Commission (SSHRC)**. Still, there is no recognition of a right to remedy for victims for violations of their rights. The Commission does not have the power to order reparations for victims whose rights have been violated.¹⁴³
- Penal Code Act (2008)
 - Prohibits bodily injury and intimidation (Chapter XVII), rape (Chapter XVIII, Article 247) and other sexual offences, including Article 256, 259 and 261-2.
 - Chapter XX prohibits kidnapping (Article 269), abduction (Article 270) and “kidnapping or abducting a woman to compel her marriage” (Article 273).
- The crimes of torture, crimes against humanity and genocide are not defined or criminalised in South Sudan’s domestic law. Therefore, sexual violence cannot be prosecuted within South Sudan as any of these crimes, but only as a war crime (see below).¹⁴⁴ In addition, modes of liability for the commission of crimes under international law, including command and superior responsibility, are not codified in domestic law.¹⁴⁵
- South Sudan’s Geneva Conventions Act of 2012
 - Incorporates the provisions of the four Geneva Conventions and their Additional Protocols into domestic law; accordingly, South Sudanese courts are empowered to prosecute breaches of Common Article III of the Geneva Conventions, including for war crimes.¹⁴⁶
- Child Act (2008)
 - Guarantees children’s rights to be protected from physical and psychological violence, including abduction and trafficking; sexual abuse, exploitation and harassment; and early and forced marriage. (Articles 23, 22, 26, 30)
 - The Child Act places an obligation on the government to ensure that every child victim of ‘abuse’ is appropriately treated and rehabilitated.¹⁴⁷

Different gender-focused domestic policy frameworks are also in place in South Sudan, which have among their goals the reduction of the impact of conflict on women and girls and protecting them from SGBV.¹⁴⁸ An Anti-Gender-Based Violence Bill was also initiated in 2019, but it is still waiting to be tabled in Parliament.¹⁴⁹

¹⁴³ Oola and Moffet (n66) 15.

¹⁴⁴ Amnesty International, ‘Do Not Remain Silent’ (n9) 46.

¹⁴⁵ Ibid.

¹⁴⁶ UNMISS and OHCHR, ‘Access to Health’ (n13) 37.

¹⁴⁷ All Survivors Project, ‘Submission to the United Nations’ (n31) 5.

¹⁴⁸ The South Sudan National Action Plan 2015-2020 on United Nations Security Council Resolution (UNSCR) 1325 and Related Resolutions (2015) has the overall goal of reducing the impact of conflict on women and girls and increasing women’s representation and participation in decision-making. The National Gender Policy (2012) provides a framework for implementing the Transitional Constitution, the South Sudan Bill of Rights, and Security Council Resolutions 1325, 1880 and 1889, that all aim to, among other things, protect women from SGBV.

¹⁴⁹ LAW, ‘Written Statement on South Sudan’s Implementation of CEDAW: Submitted by Legal Action Worldwide on 15 June 2020 - For the Attention of CEDAW Pre-Sessional Working Group - 13-17 July 2020’ (15 June 2020) 3.



SOUTH SUDAN PENAL CODE ACT

Article 247. Rape.

- (1) Whoever has sexual intercourse or carnal intercourse with another person, against his or her will or without his or her consent, commits the offence of rape, and upon conviction, shall be sentenced to imprisonment for a term not exceeding fourteen years and may also be liable to a fine.*
- (2) A consent given by a man or woman below the age of eighteen years shall not be deemed to be consent within the meaning of subsection (1), above.*
- (3) Sexual intercourse by a married couple is not rape, within the meaning of this section.*

This definition does not conform with international standards in several respects. For example, it excludes marital rape from the definition of rape. It also does not recognise penetration with an object as rape, is limited to "intercourse" (with no provision for oral rape), and does not take account the presence of coercive circumstances inherent in situations such as detention, armed conflict or military presence, which under international criminal practice make consent impossible. Whilst the definition is gender-neutral, male survivors of CRSV fear being classified as homosexuals and liable to prosecution under section 248 of the Penal Code, which criminalizes "carnal intercourse against the order of nature".



A member of a women's association which leads community peace talks and workshops (2017)
© UNMISS

17. Domestic avenues for reparations

Reparations can be sought either through administrative or court proceedings. In South Sudan, the 2018 R-ARCSS foresees the creation of the CRA, amongst other mechanisms, for which implementing legislation is required.¹⁵⁰ According to R-ARCSS, the CTRH, when established, should recommend measures for reparation and compensation.¹⁵¹

South Sudan's domestic justice system contemplates different avenues for reparations through formal and customary courts that CRSV victims could access:

- Special Court for Gender-Based Violence and Juvenile Cases
 - Established in March 2019 by the Judiciary of South Sudan with the support of UNDP and UNMISS and operationalised in December 2020.¹⁵²
 - Proceedings began in October 2019 with more than 600 cases of GBV filed, and in December 2020, the judiciary of South Sudan declared the operationalisation of the Court.¹⁵³ Thirteen cases of rape have come before the court, resulting in twelve convictions and one dismissal.¹⁵⁴
- Mobile Courts
 - Judges and prosecutors travel from Juba to remote areas to hold court sessions.¹⁵⁵ Generally, these courts deal with 'ordinary criminal' cases between civilians, ranging from petty crimes to serious crimes, including rape.¹⁵⁶
- Military Courts
 - Military courts in South Sudan do not have jurisdiction over crimes against civilians committed by the army.¹⁵⁷ In practice, military courts often claim jurisdiction over any offence committed by army officials, including crimes against civilians.¹⁵⁸
- Customary law
 - Whilst the jurisdiction of customary courts (established under the Local Government Act of 2009) is limited in law to "*customary disputes*", in practice, they hear and determine a wide range of cases, including rape.¹⁵⁹
 - Referrals from customary to statutory courts are said to be made "*inconsistently and without clear regulatory guidelines*"¹⁶⁰, resulting in violence against women and girls being reduced to a 'second tier' crime that is adjudicated by local chiefs who have limited legal training and in an environment seen as supportive of patriarchal norms and biased against survivors seeking justice.¹⁶¹
 - It is estimated that 90% of cases are resolved through customary courts, which often require unmarried rape victims to marry the perpetrator as a form of settlement.¹⁶²

¹⁵⁰ R-ARCSS (n2) clause 5.4.2.4.

¹⁵¹ Ibid, clause 5.2.2.3.7.

¹⁵² David K. Deng, 'South Sudan: Justice Landscape Assessment', South Sudan Transitional Justice Working Group (January 2021) 14.

¹⁵³ UNDP, 'South Sudan's Gender Based Violence Court Inaugurated During #16DaysOfActivism' (3 December 2020) <<https://www.ss.undp.org/content/south-sudan/en/home/presscenter/pressreleases/2020/gbv-court-south-sudan-launch.html>> accessed 3 August 2021.

¹⁵⁴ Ibid.

¹⁵⁵ Amnesty International, "Do You Think We Will Prosecute Ourselves?": No Prospects for Accountability in South Sudan' (2019), 17.

¹⁵⁶ Ibid.

¹⁵⁷ Ibid.

¹⁵⁸ Ibid 18.

¹⁵⁹ Musila, 'The Rule of Law' (n16).

¹⁶⁰ Cone, 'Still in Danger' (n8) 19.

¹⁶¹ CARE International and others, 'Intersections of Violence Against Women and Girls with State-Building and Peace-Building: Lessons from Nepal, Sierra Leone and South Sudan' (2018) 34.

¹⁶² UN Security Council, 'Conflict Related Sexual Violence: Report of the Secretary General' (20 April 2016), UN Doc S/2016/361 para 10.



Special Court for Gender-Based Violence and Juvenile Cases, Juba (2021)
© Rights for Peace

EXAMPLES OF CRSV COURT CASES IN SOUTH SUDAN

Some isolated trials are taking place, and some have awarded reparations for CRSV, though no monies have been paid out, and serious reprisals against victims are reported.

In February 2017, a group of soldiers raped six women at Kubi village, south-east of Juba, along Juba-Nimule Road. Five low-ranking SPLA soldiers were arrested in 2018 for alleged involvement, but there has been no further progress.¹⁶³

In September 2018, a special tribunal constituted under the General Court Martial of the SPLA convicted ten rank and file soldiers of the SSPDF. It sentenced them to between 10 and 14 years imprisonment for committing sexual crimes at the Terrain hotel compound in 2016.¹⁶⁴

In December 2018, mobile courts in Bentiu sentenced three men identified as soldiers of the SSPDF to imprisonment ranging from 6 to 12 years for sexual violence crimes.¹⁶⁵

In 2019, a civilian court sentenced six pro-Taban Deng SPLA-IO/RM elements and one member of the SSPDF for the rape of four women, with prison terms ranging between two and six years and the obligation to make payments in compensation to victims. Two of the perpetrators escaped detention.¹⁶⁶

In 2020, 26 uniformed personnel from the SSPDF, the South Sudan National Police Service, and the SPLA-IO/RM were *"convicted for conflict-related sexual violence, including the rape and gang-rape of minors, by military and civilian courts, including mobile courts, supported by the [UN] in Kuajok, Malakal, Maridi, Yambio and Wau."*¹⁶⁷

In September 2020, 13 soldiers of the SSPDF were prosecuted and convicted for rape under Article 247 of the Penal Code Act (2008) at the Yei District Court Martial. The resulting sentences ranged from 7 to 14 years of imprisonment and included orders to compensate the survivors financially and in heads of cattle. However, survivors have not received compensation, and only low-ranking soldiers have been tried.¹⁶⁸ Thirteen cases of rape have come before the Special Court for Gender-Based Violence and Juvenile Cases (Juba), resulting in 12 convictions and one dismissal.¹⁶⁹

A customary court in Western Bahr el-Ghazal sentenced perpetrators of two cases of sexual violence against minors, reportedly perpetrated by SPLA-IO/RM elements, to pay compensation to the survivors' families. The amounts ranged from 20,000 to 30,000 South Sudanese pounds (\$153 to \$230 US Dollars, and a fine of 3,000 South Sudanese pounds (\$23 US Dollars), instead of a three-month term of imprisonment.¹⁷⁰

163 Flora McCrone, 'War Crimes and Punishment: The Terrain Compound Attack and Military Accountability in South Sudan, 2016–18', Small Arms Survey (August 2019) 10.

164 UNSC, 'Report of the Secretary General on Conflict-Related Sexual Violence' (29 March 2019) UN Doc S/2019/280 para 81.

165 Ibid para 82.

166 UNSC, 'Report of the Secretary General' (n20) para 50.

167 UNSC, 'Report of the Secretary General' (n37) para 50.

168 Ibid.

169 UNDP, 'South Sudan's Gender Based Violence Court' (n153).

170 UNSC, 'Report of the Secretary General' (n20) para 50.



VII. STATUS OF IMPLEMENTATION OF REPARATIONS

President Kiir has issued several public apologies accepting responsibility and asking for forgiveness for the war in general terms.¹⁷¹ He has, however, not

given a statement directly apologising for any CRSV committed. In a recent interview with Citizen TV Kenya, he stated:

“I have apologized to the people of South Sudan many times. Even in front of Riek Machar, I have apologized. He never apologized. I apologized because I am the leader of the country, not because I have done anything wrong.”¹⁷²

With specific regard to CRSV, various government officials, including the Minister of Defence and Veteran Affairs and Chief of the SSPDF, have publicly acknowledged that members of the Government security forces have been involved in perpetrating sexual violence and urged commanders to ensure that the perpetrators of these acts be held accountable.¹⁷³ However, it is highly troubling that perpetrators of CRSV hold governing positions. In February 2021, the

UN identified the appointed Governor of Western Equatoria for alleged involvement in sexual slavery in his capacity as a former commander of the SPLA-IO.¹⁷⁴

In 2016, Vice President Riek Machar pledged a commitment by the new government to combat sexual violence and other forms of abuses committed by the security sector.¹⁷⁵ In February 2017, President Salva Kiir announced in a speech in Yei that:

“Those who are doing unlawful acts, raping women and girls, this is not the policy of the government ... the body of a woman cannot be taken by force. I want the general chief of staff General Paul Malong and the Defence Minister to report to me from now on if anything like this (rape) happens. In such a case, we will shoot the person who did it.”¹⁷⁶

171 Sudan Tribune, ‘President Salva Kiir Apologies for the December 2013 War’ (7 January 2016) <<http://www.sudantribune.com/spip.php?article57630>> accessed 3 August 2021.

172 Citizen TV Kenya, ‘South Sudan 10th Anniversary’ (7 July 2021) <<https://sw-ke.facebook.com/CitizenTVKe/videos/president-salva-kiir-i-have-apologized-to-the-people-of-south-sudan-many-times-e/2602420926718758/?extid=SEO----->> accessed 6 August 2021.

173 UNHRC, ‘Transitional Justice and Accountability’ (n133) para 64.

174 UNSC, ‘Letter dated 18 February 2021 from the Permanent Representatives of Ireland, Mexico and the United Kingdom of Great Britain and Northern Ireland to the United Nations addressed to the Secretary-General’ (2021) UN Doc S/2021/166 3.

175 UNMISS, ‘1st VP Machar Pledges Government Commitment to Combat Sexual Violence’ (9 May 2016) <<https://reliefweb.int/report/south-sudan/1st-vp-machar-pledges-government-commitment-combat-sexual-violence>> accessed 3 August 2021.

176 Reuters, ‘South Sudan President Says Soldiers who Rape Should be Shot’ (6 February 2017) <<https://www.reuters.com/article/uk-southsudan-war-idUKKBN15L1RC>> accessed 23 February 2022.



An IDP in Yei (2017)
© UNMISS

Regarding reparations, the government's position has been relatively hostile. In the 2015 Agreement on the Resolution of the Conflict in South Sudan (ARCSS), the government registered a reservation against the provision for reparations, specifically arguing that the CRA would be prone to abuse.¹⁷⁷ Instead, the government argued the funds should be channelled to *"the reconstruction of the infrastructure and rebuilding of livelihoods of communities in the states most affected by the conflict"*.¹⁷⁸ Whilst the same reservation was not made in the 2018 R-ARCSS, *"it may not demonstrate a change in perception, rather an acknowledgement that the major focus of the revitalization process was to deal with governance and security arrangements, with the other provision only affected by consequential amendments."*¹⁷⁹

With regards to measures of satisfaction, President Salva Kiir has made clear his preference for a truth commission as opposed to a criminal accountability process. In

2019, the South Sudanese government signed a multimillion-dollar contract with a lobbying firm to convince the United States to *"delay and ultimately block establishment of the hybrid court"*.¹⁸⁰ After public outcry, the contract was scrapped and replaced with one that removed the language on blocking the Court.¹⁸¹ Most recently, in a July 2021 interview with Kenya Citizen TV, President Salva Kiir stated that:

"The hybrid court will not solve the problems of South Sudan. You cannot bring justice or peace through [a] hybrid court. We would want the truth and reconciliation process to start."¹⁸²

177 Clayton Hazvinei Vhumunu, 'Conflict Resurgence and the Agreement on the Resolution of the Conflict in the Republic of South Sudan: A Hurried and Imposed Peace Pact?' (Conflict Trends, 2016) 8 <<https://media.africaportal.org/documents/ACCORD-CT-2016-3.pdf>> accessed 3 August 2021.

178 Ibid.

179 Oola and Moffett, 'Reparations in South Sudan' (n66) 16.

180 Robbie Gramer, 'Former U.S. Diplomats Lobby to Stop South Sudan War Crimes Court' (Foreign Policy, 2019) <<https://foreignpolicy.com/2019/04/29/former-us-diplomats-lobby-to-stop-south-sudan-war-crimes-court-salva-kiir-lobbying-contract-africa-peace-deal-riek-machar/>> accessed 6 August 2021.

181 Robbie Gramer, 'U.S. Quietly Gives Up On South Sudan War Crimes Court' (Foreign Policy, 2021) <<https://foreignpolicy.com/2021/07/20/south-sudan-war-crimes-court-state-department-africa-biden-human-rights/>> accessed 6 August 2021.

182 Ibid.

The lack of commitment of the R-TGoNU to criminal liability is a matter of concern.¹⁸³ In February 2015, President Kiir issued an order granting amnesty to all those “*waging war against the State*”, with no limitations regarding allegations of crimes against humanity, war crimes, or genocide. In April 2016, he also granted an amnesty to the South Sudan National Liberation Movement/Army in Gbudue and Maridi States.¹⁸⁴ The government spokesperson, Michael Makuei, has repeatedly stated that accountability should be delayed.¹⁸⁵

With regards to guarantees of non-repetition, the government of South Sudan has launched several schemes aimed at preventing future occurrences of CRSV. One example is the 2014 Joint Communiqué with the UN, which led the SPLA (now SSPDF) to issue orders prohibiting sexual violence and oblige commanders to ensure that all troops refrain from such acts, conduct nationwide trainings targeting SSPDF personnel on CRSV, and establish a dedicated committee to develop an SPLA action plan (finalised in June 2018).¹⁸⁶ The Military Justice Directorate of the SSPDF has conducted training on legal standards to prosecute sexual violence crimes and finalised a training curriculum for new recruits on preventing and eliminating CRSV (endorsed by the Minister of Defence and the Chief of Defence Forces).¹⁸⁷ The South Sudan National Police Service has also adopted an action plan on addressing CRSV.¹⁸⁸

In 2019, the SPLA-IO issued four command orders, one of which instructed commanders in Western and Central Equatoria to form committees to investigate alleged cases of sexual violence.¹⁸⁹ In 2019, the SPLA-IO released dozens of women and children held against their will on SPLA-IO bases in Western Equatoria, in line with command orders issued by Riek Machar, the leader of SPLA-IO.¹⁹⁰

The NAS, a non-signatory group to the R-ARCSS, issued two similar orders.¹⁹¹ A communiqué was also issued on 18 September 2020 by the leader of NAS, committing to training its forces on the prohibition of sexual violence.¹⁹²

Despite these steps, CRSV has continued to be endemic across South Sudan. In 2020, for example, the number of abductions for the purposes of forced marriage and sexual slavery increased in Jonglei, with over 390 women and girls abducted during violence over access to natural resources between heavily armed rival civil defence groups.¹⁹³ In addition, whilst the government has at least made commitments surrounding non-recurrence (although their implementation remains unfulfilled), there has not been any attempt by the government to provide rehabilitation to survivors or make plans to do so. Real progress requires systemic legal and policy changes, as well as nationwide sensitisation and education challenging harmful, misogynistic, and discriminatory practices, enacted both at community level and in the upper echelons of South Sudan’s political establishment.

183 UNHRC, ‘Report of the Commission on Human Rights in South Sudan’ (6 March 2017) UN Doc A/HRC/34/63 para 60.

184 Ibid.

185 Sudan Tribune, ‘South Sudan Says Establishing Hybrid Court Undermines Peace’ (31 January 2017) <<https://sudantribune.com/article59749/>> accessed 23 February 2022; Voice of America, ‘We Need Peace Before Justice’ (6 May 2015) <www.voanews.com/a/south-sudan-says-proposed-hybrid-court-not-in-the-interest-of-peace/2749533.html> accessed 5 August 2021.

186 UNMISS, ‘Launch of SSPDF Action Plan on addressing CRSV in South Sudan’ (Flickr 2019) <<https://www.flickr.com/photos/unmissmultimedia/46462235175/>> accessed 5 August 2021.

187 UNSC, ‘Report of the Secretary-General’ (n37) para 49.

188 UNSC, ‘Report of the Secretary-General’ (n20) para 49.

189 Ibid.

190 UNSC, ‘Report of the Secretary-General’ (n37) para 49.

191 UNSC, ‘Report of the Secretary-General’ (n20) para 49.

192 UNSC, ‘Report of the Secretary-General’ (n37) para 49.

193 Ibid para 47.



VIII. ANALYSIS OF OPPORTUNITIES AND THREATS FOR REPARATIONS

| 18. Opportunities for Reparations

The context of marginalisation and gender discrimination in South Sudan, combined with the fragile peace and legacies of decades of conflict, result in a highly challenging environment for survivors to advocate for their rights to justice and reparation. However, Chapter V of the 2018 R-ARCSS outlines a three-pronged transitional justice architecture, made up of a Hybrid Court for South Sudan (HCSS), a Commission for Truth, Reconciliation and Healing (CTRH), and a Compensation and Reparation Authority (CRA), which provides the basis for opportunities to address transitional justice needs.

TRANSITIONAL JUSTICE MECHANISMS IN R-ARCSS

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

After years of standstill, on 29 January 2021 the South Sudanese Cabinet formally requested the Ministry of Justice and Constitutional Affairs (MOJCA) to take the necessary steps to establish the CTRH, the HCSS, and the CRA. On 26 March 2021, the MOJCA established a Task Force to coordinate the implementation of the transitional justice mechanisms outlined in Chapter V of R-ARCSS.

Public Consultations to Establish the Commission for Truth, Reconciliation and Healing

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. The 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 Warille. President Dr Riek Machar's words at this Meeting, *"we want to provide the aggrieved a chance to speak"* and *"peace without justice will not hold"*, are encouraging.¹⁹⁴

The Technical Committee is composed of thirty-six members from civil society, faith-based and transitional institutions, academic institutions, political actors, and senior officials from the MOJCA and relevant government Ministries.

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

It is important that this opportunity to progress the topic of reparations is not squandered. The CTRH is mandated by the 2018 R-ARCSS to "recommend processes and mechanisms for the full enjoyment by victims of the right to a remedy, including by suggesting measures for reparations and compensation."¹⁹⁵ As stipulated in Chapter 5.2.2.3 of the 2018 R-ARCSS, the CTRH should:

- Establish an accurate and impartial historical record of human rights violations from July 2005 to the signing of the agreement

¹⁹⁴ Unofficial write-up of Riek Machar's speech by an attendee.

¹⁹⁵ R-ARCSS (n2).

- Receive applications from alleged victims, and identify and determine their right to a remedy
- Identify perpetrators of violations and crimes prescribed in R-ARCSS
- Recommend guidelines, to be endorsed by the TNLA, for determining the type and size of compensation and reparation for victims
- Record the experiences of victims, including but not limited to women and girls
- Investigate the causes of conflicts and their circumstances and make recommendations regarding possible ways of preventing recurrence
- 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
- Lead efforts to facilitate local and national reconciliation and healing
- Where appropriate, supervise proceedings of traditional dispute resolution, reconciliation, and healing mechanisms

“We are now in negative peace –not real peace, not positive peace. We are looking for true reconciliation.”¹⁹⁶

Conference on Sustaining Momentum for Transitional Justice in South Sudan

The UNCHRSS, in collaboration with the Office of the High Commissioner for Human Rights (OHCHR) and UNMISS, convened a high-level Conference on Sustaining Momentum for Transitional Justice in South Sudan from 13 to 15 December 2021.¹⁹⁷ This culminated in the adoption of a series of Resolutions which commit the R-TGoNU (with the support and collaboration of national, regional, and international actors and stakeholders) to a range of key policy measures aimed at sustaining momentum for transitional justice in South Sudan, to be implemented between January and June 2022. The resolutions include:

- Initiation of interim assistance and urgent interim reparation measures to address the immediate rehabilitation and psycho-social needs of conflict-affected victims

- Ensuring meaningful inclusion and participation of all stakeholders, with special measures provided for vulnerable and marginalised groups including victims of CRSV and those born as a result of CRSV
- Creating a conducive environment for transitional justice in South Sudan through the expansion of civic space and assurance of security, safety, and protection of citizens, victims, and witnesses.¹⁹⁸

A follow-up conference will take place in mid-2022 to assess the progress achieved in the implementation of the Resolutions and consider what may be needed moving forward.¹⁹⁹

It is a positive sign that there was high-level government participation at this Conference, including an oral update from the Minister of Justice and attended by the Minister for Defence, the Minister for Peacebuilding, and the Minister for Gender. This is significant as it demonstrates some political commitment to ownership over the transitional justice agenda.

¹⁹⁶ Focus Group Discussion with survivors in South Sudan (2021).

¹⁹⁷ UNHRC, ‘High-Level Conference Held to Sustain Momentum for Transitional Justice in South Sudan (15 December 2021)’ <<https://www.ohchr.org/EN/HRBodies/HRC/Pages/NewsDetail.aspx?NewsID=27972&LangID=E>> accessed 16 February 2022.

¹⁹⁸ OHCHR, ‘Conference on Sustaining Momentum for Transitional Justice in South Sudan, 13th – 15th December 2021: Summary of Resolutions’ (31 January 2022).

¹⁹⁹ Ibid.



The re-designation of UNMISS Bor Protection of Civilians site (2020)

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However, there are some concerns that a fine line is being walked between wanting to establish the CTRH as soon as possible, whilst simultaneously viewing it 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 be implementing the other transitional justice provisions.²⁰⁰

19. Threats to Effective Reparations for Conflict-Related Sexual Violence

Threats to effective reparations for CRSV can be identified within the very parameters set out within the 2018 R-ARCSS. Clause 5.4.2.4 sets out that "[t]he 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 a well-established criterion by the R-TGoNU." This extremely limited criteria for reparations falls far short of international standards, including the provisions set out in the UN Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law.²⁰¹

It is unclear to what extent this narrow interpretation of reparations was due to intentional obfuscation from the government negotiators or a lack of knowledge of international guidelines regarding reparations. However, we do know that during the 2015 ARCSS, negotiations, the compensation and reparations element of Chapter V was a sticking point for Salva Kiir's government: Aly Verjee, Acting Chief of Staff at R-JMEC for the ARCSS (2015–16), has recalled that the CTRH and the HCSS were largely agreed to by the negotiators – but it was compensation and reparations which the government negotiators rejected and "were forced to accept."²⁰²

200 Logo, 'Pushing too hard for transitional justice?' (n3).

201 UN General Assembly, Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law: resolution adopted by the General Assembly (21 March 2006) UN Doc A/RES/60/147 ('UN Basic Principles and Guidelines on the Right to a Remedy and Reparation').

202 Aly Verjee, 'The Future of South Sudan and the Peace Agreement' (Chatham House, 2016) <<https://www.chathamhouse.org/sites/default/files/events/2016-10-26-future-south-sudan-peace-agreement-transcript.pdf>> accessed 13 August 2021.

Expectations

- wifi, practical
- survivor centred approaches X3
- survivors rights
- what is TJ
- tips for consultations
- experiences **HANDOUTS**
- Understand Chap. V
- way forwards on Chap. V.
- new skills on consultation
- share handouts = monitoring trials
- survivor protection
- techniques on consultation
- transitional justice
- Do No Harm

Public consultation objectives
witness protection

Indeed, one of President Salva Kiir's reservations to Article 1.1.3 and Article 4 on the 'Reparation and Compensation Authority' in the 2015 ARCSS was that reparations and compensation were not considered in other instances "*where South Sudanese suffered immensely*", such as during the Addis Ababa Agreement of 1972, the Comprehensive Peace Agreement (CPA) of 2005, nor the aftermath of the Sudan People's Liberation Movement/Army (SPLM/A) split in 1991, which resulted in the Bor massacre.²⁰³ The explanatory comment given that "[p]riority will be given to the reconstruction of the infrastructure and rebuilding of livelihoods of communities in the states most affected by the conflict"²⁰⁴ makes it clear therefore that the narrow description of the CRA's mandate in the 2018 R-ARCSS is likely to be ideologically intentional.

"I do not believe the government will come up with a serious apology. If the government tries to call us, we will run away, we will think they are here to harm us again. We will not turn up."

President Salva Kiir's reservation – that reparations for previous conflicts were not recognised in the ARCSS – does signal a potential challenge. The extent of victimisation across many decades in the country could also mark an opportunity: as so many people have been victims and survivors of violations, there are clear incentives for popular support for reparations.

Similar challenges have also been noted regarding the establishment of the HCSS. A research project that gathered the views of former SPLA soldiers, youth groups, community elders, civil servants, and active soldiers in Juba and Bor (including the PoC

sites in the latter) found that there were high levels of apprehension and scepticism about the government's ability to allow the HCSS to successfully operate and, equally, the court's ability to bring perpetrators of abuses to justice.²⁰⁵ Respondents were sceptical about the feasibility of such an accountability process; they asked which atrocities the Court would address – the ones committed in 2013 or 1991? The ones committed by warlords or ethnic militias?²⁰⁶

The government emerging as clear victor and the SPLM-IO beginning to break apart²⁰⁷ and form new splinter groups²⁰⁸ could prove worrying developments for the realisation of reparations. This is partly because the split within the SPLA-IO has already led to clashes and may still lead to further tensions and threaten the country's fragile 2018 peace agreement.²⁰⁹ There is also less support for reparations from the government's perspective, as Salva Kiir regards them as designed to serve the victims of the current government. The opposition, on the other hand, are more supportive as they perceive themselves to be the victims and therefore the beneficiaries of any reparations programmes; the support from Riek Machar is more likely to be informed by political advantage rather than a principled position.

In July 2021, the US State Department signalled its plans to reallocate most of the \$5 million US Dollars in funding it had set aside for the HCSS, with the aim of sending some back to the US Treasury and another portion to other programmes in South Sudan.²¹⁰ This signifies growing international frustration with the South Sudanese leadership (and with the perceived lack of action from the AU over the HCSS), which may have wider implications for international support for transitional justice in South Sudan.

203 Carleton University, 'The Reservations of the Government of the Republic of South Sudan, on the "Compromise Peace Agreement on the Resolution of the Conflict in South Sudan"' (26 August 2015) 8 <<https://carleton.ca/africanstudies/wp-content/uploads/GRSS-reservations.pdf>> accessed 13 August 2021.

204 Ibid.

205 Abraham Diing Akoi, 'The Hybrid Court in South Sudan Could be a Recipe for Further Conflict' (LSE, 1 July 2021) <<https://blogs.lse.ac.uk/africaatlse/2021/07/01/hybrid-court-south-sudan-recipe-for-further-conflict-law-ethnic-violence/>> last accessed 24 August 2021.

206 Ibid.

207 Reuters, 'South Sudan's Machar says 'peace spoilers' backed his removal as party leader' (5 August 2021) <<https://www.reuters.com/world/africa/south-sudans-machar-says-peace-spoilers-backed-his-removal-party-leader-2021-08-05/>> accessed 30 September 2021.

208 UNSC, 'Letter dated 14 April 2021 from the Panel of Experts on South Sudan Addressed to the President of the Security Council' (2021) UN Doc S/2021/365.

209 World Food Programme, 'South Sudan Situation Report #293' (16 August 2021).

210 Robbie Gramer, 'U.S. Quietly Gives Up' (n181).



IX. RECOMMENDATIONS

i. Recommendations to all Parties to the conflict

- 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.
- All parties to the conflict should promote awareness raising about conflict-related sexual violence to reduce stigma against survivors and children born of CRSV

ii. Recommendations to the Revitalised Transitional Government of National Unity of South Sudan

Enable civic space

- Open and protect civic space: journalists and civil society actors should be able to speak openly without fear of arrest or surveillance to create an environment where truth seeking, reconciliation and healing can begin.

Ensure effective public consultations on transitional justice mechanisms

- Publicly support the work of the Technical Committee: acknowledge the importance of consultations in building trust in the future CTRH and publicly iterate the important role of all segments of the population in the truth, reconciliation, and healing process.
- Provide the Technical Committee on the CTRH with the requisite time, resources, and civic space for effective sensitisation and meaningful consultations.

- Ensure the Technical Committee on the CTRH conducts inclusive, survivor-centric, and gender-sensitive consultations, giving effect to survivors' right to be informed of and granted effective access to participation in processes that affect them.
- Ensure comprehensive training to those conducting consultations on victims' rights to a remedy and reparation, CRSV, and best practices at ensuring inclusive, survivor-centric, and gender-sensitive consultations. It is critical that all those encountering survivors of CRSV receive training in psychosocial awareness and psychological first aid.
- Focus on process as a guiding principle. Expertise in transitional justice demonstrates that the process of justice is as important to survivors as the outcome. This goes to the heart of how survivors are respected and can have their dignity supported and restored by the process itself.
- Strengthen and give credence to survivors' voices, and in particular, ensure a safe and enabling environment for survivors of CRSV who might otherwise be stigmatised to be able to meaningfully contribute to consultations.
- Specifically provide protection (both physical and psychosocial) around consultations and the future activities of the CTRH and ensure that policies are in place to allow survivors to genuinely shape the conversations and processes surrounding transitional justice in South Sudan. Similar due attention should be envisaged early on with regards to the HCSS.
- Initiate nationwide, inclusive, survivor-centric, and gender-sensitive consultations covering the entire range of transitional justice mechanisms laid out in the R-ARCSS, including on the CRA and the HCSS, so that the South Sudanese people can contribute towards the formation and delivery of the complete transitional justice process. In general, the consultations should not be viewed as a one-off to inform legislation, but as comprehensive engagement done before, during, and after transitional justice interventions.

Enact effective transitional justice mechanisms

- Adopt legislation to establish all three transitional justice mechanisms under the 2018 R-ARCSS. Ensure that survivors' needs and rights are facilitated in line with 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 particularly vulnerable survivors, following the example of the Truth and Reconciliation Commission in East Timor, which provided interim reparations before a final report was produced.
- 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.
- Sign the Memorandum of Understanding²¹¹ with the African Union and adopt the draft Statute to establish the HCSS. Whilst the MOU has been negotiated and been given approval by the South Sudan Cabinet, its finalisation and signing has been delayed.²¹²
- Develop a comprehensive law reform strategy, based on inclusive consultations with affected groups, to counter hate speech and prejudice to strengthen social cohesion in South Sudan.

Promote survivor-sensitive processes

- Facilitate survivor-centric processes that, in and of themselves, restore dignity and empower survivors to benefit from transformative reparative measures.
- Ensure that women (in accordance with UNSC Resolution 1325) and survivors in general can engage in shaping effective transitional justice mechanisms that meet their needs.
- Promote inclusive processes that treat all communities of survivors equally, in line with peacebuilding and reconciliation efforts.
- Ensure comprehensive assistance and protection of survivors and witnesses consistent with international human rights standards.²¹³
- Ensure the protection of survivors against reprisals, intimidation, and stigma, through a strategy and legal policy framework that ensures proper assistance from the outset.²¹⁴
- Give effect to survivors' right to privacy and confidentiality, treating them with humanity and respect for their dignity, including by making provisions for closed hearings and other protective measures.
- Ensure that reparative measures are identified by and implemented with survivors as rights-holders, noting that the process of receiving reparation is as important as the substantive remedy.

211 According to the ARCSS, the African Union Commission (AUC) is responsible for the establishment of the HCSS and is required to sign a Memorandum of Understanding (MoU) with the government to operationalise the court. Agreement on the Resolution of the Conflict in the Republic of South Sudan (ARCSS) (2015) Appendix V 70.

212 UNHRC, 'Renewed Political Commitment to Initiate Transitional Justice in South Sudan Must Deliver for Victims, UN Experts Note' (1 February 2021) <<https://www.ohchr.org/EN/HRBodies/HRC/Pages/NewsDetail.aspx?NewsID=26704&LangID=E>> accessed 23 February 2022.

213 UN Basic Principles and Guidelines on the Right to a Remedy and Reparation (n201).

214 OHCHR, 'Workshop Report: Protection of Victims of Sexual Violence: Lessons Learned' (2019) 4.

Deliver holistic reparations

- Increase access to survivor-centric one stop centres to address emergency and chronic conditions resulting from CRSV, including psychosocial support and specialist referrals for fistula or chronic pain.
- Make available specialised and free HIV/AIDS testing and treatment for survivors of CRSV and children born of CRSV.
- Ensure survivor-centric psychosocial support is also made available to children born of CRSV, to enable them to cope emotionally, psychologically, and socially with their trauma.²¹⁵
- Develop a national strategy to counter stigma, with specific programmes to support mothers and children born of CRSV.
- Develop and implement awareness programmes that specifically target survivors' families and wider communities to tackle negative stereotypes, discrimination, and stigma.
- Conduct special educational or other dedicated programmes for survivors and for children born of CRSV.
- Create survivor friendly spaces for survivors to meet, receive psychosocial and livelihoods support, and raise awareness and visibility about CRSV.

Ensure security sector reform

- Accelerate the implementation of the DDR programme,²¹⁶ including by ensuring sufficient funding and resources for the Disarmament, Demobilisation and Reintegration Commission.²¹⁷
- Ensure that the disarmament process is not rushed or 'top down', allowing for meaningful consultations with communities to ensure that post-DDR community security arrangements are put in place.²¹⁸
- Set up systems to reduce the availability of guns and create a policy for arms regulation, keeping in mind the high rates of rape at gunpoint and the everyday use of guns by both civilians and armed forces.

Champion gender equality

- Ensure that principles of Gender Equality permeate the drafting of transitional justice legislation, the constitution, and all other legal reform.
- Gender-sensitivity should be mainstreamed across all elements of the transitional justice process in South Sudan. This could include measures such as providing forms of protection specifically adjusted to the survivor's gender, ensuring the availability of gender-appropriate support staff, providing gender-sensitive accessibility provisions such as on-site childcare, and avoiding the use of harmful gender stereotypes and forms of gender discrimination.²¹⁹

215 Eithne Dowds, 'Children Born of Rape in Bemba: Can the ICC Close the Accountability Gap?' (IntLawGrrls, 16 January 2018) <https://ilg2.org/2018/01/16/children-born-of-rape-in-bemba-can-the-icc-close-the-accountability-gap/#more-21868> accessed 20 August 2021.

216 R-ARCSS (n2) clause 2.4.9-2.4.10.

217 RJMEC, 'RJMEC Report on the Status of Implementation of the Revitalised Agreement on the Resolution of the Conflict in the Republic of South Sudan for the Period 1st January to 31st March 2021' (2021) para 32.

218 South Sudan Action Network on Small Arms, 'Press Release: Civil Society Group Cautions Against Hasty Top-Down Civilian Disarmament' (6 August 2020) <https://drive.google.com/file/d/1F2z-JOTdbghxgRGoIZn3R8rNof-P5N5/view> accessed 30 September 2021.

219 OHCHR, 'Workshop Report' (n214).

- Tackle the root causes of CRSV in society by working to eliminate and prevent societal norms and practices that subordinate women and girls, such as early, forced, and child marriage.
- Create special awareness-raising programmes for the partners of CRSV survivors to prevent re-victimisation with regards to SGBV.²²⁰

Reform the legal system

- Expedite legal reform to give effect to equal rights and treatment and outlaw marital rape and harmful practices. This may require the creation of additional rights, measures, and adjustments to facilitate equality. For example, bring the definition of rape in the Penal Code (2008) in 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.
- Track and disaggregate data about cases of sexual violence to understand how conflict-related cases are being addressed at the national, regional, and local level.
- Remove the requirement to use Form 8²²¹ when giving emergency treatment or reporting of cases. In the interim, ensure that the forms are readily available and free for survivors so they are not turned away or given contradictory information.

iii. Recommendations to the donor and international community

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

220 Ellsberg, M and others, 'No safe place: Prevalence and correlates of violence against conflict-affected women and girls in South Sudan' (2020) 15 PLoS one.

221 Form 8 refers to 'Police Investigation Form 8' which is required for the administration of treatment of emergency cases in hospitals and private clinics in South Sudan.





X. CONCLUSION

“A hungry person cannot forget easily, because their problems are not resolved.”

As has been evidenced above, the impacts of CRSV on survivors in South Sudan have been devastating. Survivors have very often lost not only their health, psychological well-being and livelihoods, but also their social standing –their familial and social bonds within the community.

The immediate needs of survivors of CRSV in South Sudan are clear and urgent. Action by the government of South Sudan, the international community, and South Sudanese civil society organisations is needed to ensure the implementation of the above recommendations and to lay down the foundations to enable survivors to achieve recognition and effective reparation.

The scale of CRSV victimisation and the pressing needs which have resulted from this mean that advocacy towards interim reparative measures is a crucial next step. Survivors cannot wait until the end of an already-stagnated peace process to be granted what they need immediately.

Positively, there are concrete steps that can be taken to advance this agenda. There is a window of opportunity regarding the consultations on establishing the CTRH. If the consultations are designed and delivered in a way that is survivor-centric and gender-sensitive, there is a real opportunity for the transitional justice process to be effective. Important issues, views, and concerns about how the Commission will operate need to be raised and addressed to ensure a process that is inclusive of all communities and enables the participation of women, youth, children, and other marginalised groups. It is also necessary to build the capacities, visibility, agency, and decision-making power of CRSV survivors in South Sudan and to sensitise survivors about the transitional justice process.

For this to happen, the Government of South Sudan must provide the Technical Committee with the requisite support, including the necessary time, resources, and civic space to conduct widespread consultations. A concerted effort is needed by all stakeholders to maximise the potential of this moment to ensure that survivors’ rights to a remedy and reparation are upheld and justice can be realised. There is no time to lose, expressed no better than this quote from a survivor:

“Let transitional justice take place very soon. Why do we wait? Our leaders don’t know that people are crying.”²²²

²²² Focus Group Discussion with survivors in South Sudan, (2021).



The road to UN House, Juba (2021)
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GLOSSARY

The definitions in this glossary are limited to the use of these terms in the context of the Global Reparations Study.

SURVIVORS AND VICTIMS

Survivors. Persons who individually or collectively suffered harm as a result of violations of their fundamental rights through acts or omissions that constitute gross violations of international human rights law and/or serious violations of international humanitarian law. This non-legal term is often used interchangeably with the term victim (see *infra*), as the latter is the one most generally used in legal instruments. The term survivor is seen by many as empowering as it emphasises their strength and resilience instead of focusing on their suffering, but it is narrower and does not include deceased victims or indirect victims. Those who suffered or suffer harm are the ones who should decide which term best describes their situation. Both terms are used, depending on the context and the wishes of those who suffered harm.

Victims. Persons who individually or collectively suffered harm, including physical or mental injury, emotional suffering, economic loss, or substantial impairment of their fundamental rights, through acts or omissions that constitute gross violations of international human rights law and/or serious violations of international humanitarian law. The term ‘victims’ also includes the immediate family or dependants of the direct victim and persons who have suffered harm while intervening to assist victims in distress or prevent victimisation.²²³ Victims include not only natural persons but also organisations or institutions, and the environment.

REPARATIONS AND REMEDIES

Administrative remedies. Non-judicial mechanisms or procedures that victims/survivors of violations of gross international human rights law and/or serious violations of international humanitarian law can use to access their right to reparations and/or to prevent violations.

Collective reparations. Forms of reparation owed to groups of people who have suffered collective forms of harm as a result of gross violations of international human rights law and/or serious violations of international humanitarian law. Such groups are often bound by a common identity, culture, or ancestry. They may also have shared experiences, such as living in a community of those with such bonds or being subjected to similar violations. These collective measures can be symbolic and/or material.

Domestic / administrative reparation programmes. Out-of-court/non-judicial processes or mechanisms established at the domestic level by States to provide reparation to certain categories of victims/survivors when large-scale, gross violations of international human rights law and/or serious violations of international humanitarian law occur. Such programmes are more sensitive to victims’ situations and the realities of armed conflict as they are, in theory, meant to provide prompt access to reparations at no cost and with a lower evidential threshold than required before a court. In such programmes, States identify the violations and the victims/survivors to be redressed and provide them with reparation through an established procedure.

Judicial remedies. All judicial and quasi-judicial mechanisms and procedures at the national or international level to protect survivors’ rights or to adjudicate cases involving the international crimes they have suffered. Many of these mechanisms can also order or recommend forms of reparation for the survivors. Their decisions are, *per se*, a form of satisfaction.

²²³ UN Basic Principles and Guidelines on the Right to a Remedy and Reparation (n201).

Remedies. Appropriate mechanisms that seek to address a gross violation of international human rights law and/or serious violation of international humanitarian law and are provided by the State or other duty-bearers.

Right to reparation. Right of victims of gross violations of international human rights law and/or serious violations of international humanitarian law. It consists of measures that the State or other duty-bearers must provide in response to those violations to recognise and address their consequences and the society's structural and gender inequalities that uphold systems of discrimination and violence. Reparations that victims/survivors are entitled to are generally recognised to include the five following forms: restitution, compensation, rehabilitation, satisfaction, and guarantees of non-repetition. These five forms of reparation are not mutually exclusive but complement each other as each addresses different needs that victims/survivors may have.

Transformative reparations. Reparation measures that aim to have a transformative effect by addressing socio-cultural injustices, political, economic, gender, and structural inequalities, rather than simply bringing victims/survivors back to the *status quo ante*, one of inequality and discrimination. Doing so would merely reinstate or reinforce the structural conditions within society that allowed the violations to occur in the first place.²²⁴

Urgent interim reparation. Interim measures provided by States to victims/survivors of gross violations of international human rights law and/or serious violations of international humanitarian law to address the most urgent and immediate consequences of such violations and avoid irreparable harm.²²⁵ It should not be confused with humanitarian or other assistance measures. Urgent interim reparation is based on the recognition of State responsibility and requires State and political support. It is granted while victims/survivors wait for

comprehensive reparation. Such measures have been provided by States in, for example, South Africa or East Timor.

FORMS OF REPARATION

Compensation. Monetary measures that seek to address harms by economically assessing and quantifying them. These harms can include economic loss, loss of one's life plan, physical and mental harm, and moral damage.²²⁶

Guarantees of non-repetition/non-recurrence.

A key form of reparation that includes different measures aimed at addressing the structural causes of the violation, including any kind of discrimination, that can contribute to preventing further violations, such as (a) ensuring effective civilian control of military and security forces; (b) ensuring/putting in place justice system reforms and strengthening the independence of the judiciary; (c) providing international human rights and international humanitarian law education to all sectors of society and training for law enforcement officials as well as military and security forces; (d) reviewing and reforming laws and practices contributing to or allowing violations of international human rights and/or international humanitarian law; (e) working with all sectors of society to challenge expressions of patriarchal power and transform masculinities; (f) fostering an enabling environment for civil society; (g) investing in education, arts, and other cultural interventions.²²⁷ Guarantees of non-repetition do not depend exclusively on State actors: civil society organisations, religious and community leaders, artists, and educators, among others, have a crucial preventive role and contribute to creating and sustaining an environment conducive to the full realisation of rights.

Recognition. Form of satisfaction for victims/survivors. It is the acknowledgement of the victim/survivor as an individual, who has a value of their own, and an acknowledgement of the fact that they have suffered

224 United Nations, 'Guidance Note of the Secretary-General on Reparations for Conflict-Related Sexual Violence' (June 2014) Guiding Principle 4; Nairobi Declaration on Women's and Girls' Right to a Remedy and Reparation (March 2007) International Meeting on Women's and Girls' Right to a Remedy and Reparation, Nairobi, Kenya; González et al. ('Cotton Field') v. Mexico (Preliminary Objections, Merits, Reparations and Costs) Inter-American Court of Human Rights Series C No. 205 para. 450.

225 United Nations, 'Guidance Note of the Secretary-General' (n224), Guiding Principle 7.

226 UN Basic Principles and Guidelines on the Right to a Remedy and Reparation (n201) Principle 20.

227 Ibid, Principle 23. See also United Nations General Assembly, 'Report of the Special Rapporteur on the promotion of truth, justice and guarantees of non-recurrence,' Pablo de Greiff, A/72/523 (12 October 2017).

gross violations of international human rights law and/or serious violations of international humanitarian law, that they are not responsible for what happened, and that they are entitled to reparations to address the harms they suffered. It implies the consideration and acknowledgement of how the person has been affected and has suffered due to the environment and actions of others. Recognition can take place through different measures such as the investigation, prosecution, and punishment of perpetrators; a public apology; or the provision of reparations as part of a domestic reparations programme.

Rehabilitation. Measures that include all essential services that victims/survivors need to carry out their lives in a dignified way. It includes adequate, comprehensive, and timely medical and psychological care, as well as legal and social services.²²⁸

Restitution. Measures that, whenever possible and advisable, seek to restore the victim/survivor to the original situation prior to the violations. Restitution can include measures such as restoring someone's liberty or enjoyment of rights, return to their place of residence, or restoring employment.²²⁹

Satisfaction. Forms of reparation that aim to provide victims and survivors with a sense of dignity and recognition. Different types include (a) measures aimed to stop continuing violations; (b) full and public disclosure of the truth; (c) search for the whereabouts of disappeared persons and the remains of those killed; (d) official declarations or judicial decisions that restore the dignity, reputation, and rights of the victims and their next of kin; (e) public apologies, including acknowledgement of the facts and acceptance of responsibility.²³⁰

INTERIM REPARATIVE MEASURES

Interim reparative measures. Term coined by the Global Survivors Fund to refer to measures provided to victims/survivors of gross violations of international human rights law and/or serious violations of international humanitarian law by non-duty bearers (e.g., international organisations, civil society organisations, and other actors) in situations

where States or other duty-bearers are unable or unwilling to comply with their responsibility to provide reparations. Receiving these measures does not substitute the obligations that States or other responsible parties have to provide reparations.

ASSISTANCE

Assistance/relief. Provision of resources or services that aim to respond to the basic needs of populations suffering from armed conflict, natural disasters, or other human-made crises. They are generally provided as part of development aid and humanitarian assistance programmes.

Interim assistance/relief. Provision of resources or services that apply during a particular period to respond to the urgent and immediate needs of populations suffering from armed conflict, natural disasters, or human-made crises.

PRINCIPLES AND APPROACHES

Intersectionality/intersectional. Term coined by Kimberlé Crenshaw, it describes an approach and category of analysis that considers how social, cultural, political, economic, generational, racial, ethnic, gender, and territorial hierarchies connect or interconnect to condition the position and roles of individuals and communities. An intersectional approach seeks to understand the ways in which patriarchy, racism, social, and class inequalities and other systems of discrimination converge and overlap, emphasising the impact of such convergence as limiting access to opportunities and rights.

Gender-sensitive. Approach that seeks to analyse and acknowledge how acts, experiences, violence, and harms can have different meanings and impacts for individuals because of their gender or gender identity, sexuality, or sexual orientation. This approach should be used in the mapping, design, implementation, monitoring, and evaluation of reparation processes. It should include the adoption of safeguards against gender biases, adequate training, and the development of gender-sensitive research methodologies.

228 UN Basic Principles and Guidelines on the Right to a Remedy and Reparation (n201) Principle 21.

229 Ibid, Principle 19.

230 Ibid, Principle 22.



Sunset in South Sudan (June 2021)

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Participation. The process by which affected individuals or groups of people, such as victims/survivors, take part in an activity. It can imply different modalities and levels of involvement. Regarding reparation measures, victims/survivors have a right to participation, which should be meaningful and effective throughout the whole process of mapping, design, implementation, monitoring, and evaluation.

Survivor-centred. Approach that places survivors at the centre of the process by prioritising their rights, needs, and wishes and ensures they are treated with dignity and respect. Often, the term survivor-centred refers to the actual approach of working with victims/survivors. The term survivor-centric refers to the policies, procedures, and broad responses that prioritise the rights, needs, and wishes of the victim/survivor.

SEXUAL AND REPRODUCTIVE VIOLENCE

Conflict-related sexual violence (CRSV). Acts or patterns of sexual violence against people of all genders and ages occurring during a conflict or post-conflict setting that have direct or indirect links with the conflict or that occur in other situations of concern such as in the context of political repression.²³¹ CRSV includes all violations of a person's sexual autonomy and sexual integrity; it can be an expression of discrimination exacerbated by the conflict and is generally characterised by humiliation, domination, and destruction. CRSV can take many forms, including but not limited to acts of

rape, forced pregnancy, forced sterilisation, forced abortion, forced prostitution, sexual exploitation, trafficking for sexual purposes, sexual enslavement, forced circumcision, castration, sexual torture, forced nudity, or any other form of sexual violence of comparable gravity.

Forced marriage. Marriage in which one and/or both parties have not personally expressed their full and free consent to the union. In the context of CRSV, the term forced marriage is often mistakenly used to refer to conjugal or sexual slavery, which takes place when a person is made to serve as a *de facto* spouse, coerced to conduct acts or carry out tasks of both sexual and non-sexual nature. Child marriage, a union in which at least one of the parties is under 18 years of age, is considered forced marriage.

Sexual slavery. Situation in which a person exercises ownership over one or more persons and coerces them to engage in an act or acts of a sexual nature.

Sexual violence. Acts of a sexual nature or attempts to obtain a sexual act or other acts which target sexual functions against people of all gender and ages committed without consent or in a coercive context that makes genuine consent impossible. These acts violate their sexual autonomy or sexual integrity; sexual violence is an expression of discrimination that is generally characterised by humiliation, domination, and destruction. Under certain conditions, sexual violence can amount to genocide, crimes against humanity, and war crimes.

²³¹ United Nations, 'Guidance Note of the Secretary-General' (n224) 2.



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ANNEX 1

International human rights obligations and legal and policy frameworks relevant to reparations

International Peace Agreements

- Revitalised Agreement on the Resolution of the Conflict in the Republic of South Sudan (R-ARCSS) (2018): Chapter V: Transitional Justice, Accountability, Reconciliation and Healing (5.1.) calling for the establishment of the following bodies:
 - A Commission for Truth, Reconciliation and Healing (CTRH) (5.1.1.1.)
 - An independent hybrid judicial body, to be known as the Hybrid Court for South Sudan (HCSS) (5.1.1.2.)
 - A Compensation and Reparation Authority (CRA) (5.1.1.3.)

International human rights treaties

- Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (CAT) (30 Apr 2015)
 - Optional Protocol to the Convention against Torture (CAT-OP) (30 Apr 2015)
- Convention on the Elimination of all forms of Discrimination Against Women (CEDAW) (30 Apr 2015)
 - Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW-OP) (30 Jul 2015)
- The Convention on the Rights of the Child (CRC) (23 Jan 2015)
 - Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict (CRC-OP-AC) (27 Sep 2018)
 - Optional Protocol to the Convention on the Rights of the Child on the sale of children child prostitution and child pornography (CRC-OP-SC) (27 Sep 2018)

Regional treaties, bodies and instruments

- African Charter on Human and People's Rights (ACHR) (23 October 2013)
 - Protocol to The African Charter on Human and Peoples' Right on the Rights of Women in Africa (signed 24 January 2013)
- African Commission on Human and Peoples' Rights
 - Guidelines on Combating Sexual Violence and its Consequences in Africa
- International Conference on the Great Lakes Region (ICGLR)
 - Declaration of the Heads of State and Government of the Member States of the ICGLR on Sexual and Gender-Based Violence
- East African Community (EAC)
 - East African Court of Justice

International Commissions of Inquiry and Sanctions Committees

- UN Commission on Human Rights in South Sudan (UNCHRSS)
- AU Commission of Inquiry on South Sudan (AUCISS)
- UN Security Council Sanctions Committee on South Sudan

UN Frameworks endorsed by South Sudan

- Joint Communiqué of the Republic of South Sudan and the United Nations on the Prevention of Conflict-Related Sexual Violence (2014)
- UN Declaration of Commitment to End Sexual Violence in Conflict (2013)



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FA painted mural for peace in Yei town (2017)
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