

Submission to the United Nations Universal Periodic Review of South Sudan

Submitted by

Rights for Peace, Centre for Inclusive Governance, Peace & Justice,
and Dialogue and Research Initiative

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



Rights for Peace

Centre for Inclusive

Preventing Mass Atrocities with Human Rights

Governance, Peace and

Justice 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.

Dialogue and Research Institute is a South Sudanese peacebuilding, human rights and advocacy organisation that promotes active citizenship and democracy as a way to ensure peaceful coexistence, equality and respect of human rights and protection through the rule of law in South Sudan.

Rights for Peace is a UK-based non-profit that seeks to prevent mass atrocity crimes in fragile States by collaborating with local organisations, addressing the drivers of mass atrocities - particularly prejudiced or hate-based ideology, and strengthening local capacities and resilience.

A. Executive Summary

1. Rights for Peace, Centre for Inclusive Governance, Peace & Justice (CIGPJ) and Dialogue & Research Initiative (DRI) welcome the opportunity to contribute to the third cycle of the Universal Periodic Review (UPR) of South Sudan. In this submission, we address developments in relation to:
 - Conflict-related sexual violence
 - Transitional justice mechanisms
 - Victims' right to a remedy and reparations
2. The information in this submission is drawn from the work of *Rights for Peace, CIGPJ and DRI* with survivors of conflict-related sexual violence (CRSV) in South Sudan. We have supported trauma healing workshops, focus group discussions and interviews with survivors to seek their perceptions, needs and expectations with regards to reparations for CRSV, as part of the Global Survivors Fund's ***Multi-Country Study on the Status & Opportunities for Reparations for Survivors of Conflict-Related Sexual Violence***.
3. In the period under review, South Sudan has seen "epidemic proportions" of Sexual and Gender Based Violence (SGBV), with amongst the highest levels of CRSV in the world.¹ It is extremely challenging to measure the exact numbers of victimisation due to the range of obstacles preventing reporting, including access issues, availability of services and ongoing insecurity. Nonetheless, through data collection and interviews with service providers on the ground, we know that thousands of women, men and children have been victims of rape, sexual torture and other forms of sexual violence, used as a form of discrimination and military targeting in all ten states.²
4. Most survivors of CRSV in South Sudan are in rural communities, making access problematic due to the presence of armed groups and poor roads. Survivors find it difficult to get to hospitals: transport and communications are costly, and there is still widespread lack of information and awareness surrounding CRSV. Even in Juba, where services are available, survivors are led in circles between hospitals and the police for the required forms or alleged fees and are often left desperate by the stigma, blame and lack of support they face.
5. Witness and victim protection is a major issue preventing survivors from reporting cases. If a survivor knows the perpetrator and decides to report a case of SGBV or CRSV, it is likely that the perpetrator or their relatives will intimidate or inflict reprisals on the survivor's family, contributing to chronic underreporting.

¹ Devon Cone, 'Still in Danger: Women and Girls Face Sexual Violence in South Sudan Despite Peace Deal', Refugees International (2019), <https://www.refugeesinternational.org/reports/2019/10/15/still-danger-women-girls-face-sexual-violence-south-sudan-peace-deal>, p. 4.

² UN Security Council, 'Conflict-Related Sexual Violence: Report of the Secretary-General' (2015), UN Doc S/2015/203, https://www.securitycouncilreport.org/atf/cf/%7B65BFCF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/s_2015_203.pdf, p. 15.

B. Conflict-Related Sexual Violence

6. During its second cycle, South Sudan accepted a recommendation to strengthen efforts to combat sexual violence against women and children, including through the development and strengthening of relevant laws.³ It also accepted a recommendation to investigate and prosecute incidents of sexual violence perpetuated by both parties to the conflict.⁴
7. Some positive steps have been taken by South Sudan with regards to these recommendations. These include trainings by the Military Justice Directorate of the SSPDF on international and domestic legal standards to prosecute sexual violence crimes, and a training curriculum for new recruits on preventing and eliminating CRSV.⁵ In addition, there have been convictions in several trials for CRSV against uniformed personnel from the SPLA⁶, the South Sudan People's Defence Forces (SSPDF), the South Sudan National Police Service, and the SPLA-IO/RM.⁷ However, despite orders to compensate survivors financially and in heads of cattle, to date survivors have not received any compensation, and only low-ranking soldiers have been tried. Concerns were also raised about the absence of protection measures for survivors in court.⁸
8. Since South Sudan's last review in 2016, SGBV has neared "epidemic proportions".⁹ The impact of the conflict on this phenomenon cannot be overemphasised. Survivors continue to recount being targeted by ethnicity or their perceived political allegiance and affiliation.¹⁰ These identity-based patterns of CRSV must be addressed. Whilst hate speech has been analysed as inflaming violent conflict in South Sudan¹¹, more work needs to be done to tackle the nexus between identity-based violence, prejudice, hateful ideologies and CRSV in the country.
9. In recent focus group discussions led by the authors of this submission, survivors detailed an array of devastating impacts when asked about the effect of CRSV on their lives. Survivors spoke of suffering from fistula, repeated miscarriages, stress induced conditions and chronic pain, for which they do not have access to any suitable treatment. Long-term health conditions resulting from CRSV, such as HIV

³ Matrice of Recommendations, 126.44, South Africa.

⁴ Matrice of Recommendations, 126.60, Sierra Leone.

⁵ United Nations Security Council, 'Conflict-related sexual violence: Report of the Secretary-General', UN Doc S/2021/312 (2021), https://reliefweb.int/sites/reliefweb.int/files/resources/S_2021_312_E.pdf, p. 19.

⁶ 'Report of the Secretary General on Conflict Related Sexual Violence', S/2018/250 (2018), <https://www.un.org/sexualviolenceinconflict/wp-content/uploads/reports/sg-reports/SG-REPORT-2017-CRSV-SPREAD.pdf>, p. 33.

⁷ United Nations Security Council, 'Conflict-related sexual violence: Report of the Secretary-General', UN Doc S/2021/312 (2021), https://reliefweb.int/sites/reliefweb.int/files/resources/S_2021_312_E.pdf, p. 19.

⁸ Ibid.

⁹ UNICEF South Sudan Country Office, 'Gender-Based Violence' (2019), <https://www.unicef.org/southsudan/media/2071/file/UNICEF-South-Sudan-GBV-Briefing-Note-Aug-2019.pdf>.

¹⁰ Amnesty International, 'Do Not Remain Silent: Survivors of Sexual Violence in South Sudan Call for Justice and Reparation' (2017), https://www.amnesty.org.uk/files/2017-07/Sexual%20Violence%20in%20South%20Sudan.PDF?E9qgExj7h4_4L1NDRCGvwqSkclyj_Gw=, p. 9.

¹¹ PeaceTech Lab, 'Social Media and Conflict in South Sudan', <https://www.peacetechlab.org/south-sudan-lexicon>.

and hepatitis, are frequent consequences. The unmet needs in this domain are vast, including lack of HIV testing, lack of awareness and lack of medical or livelihoods support for those living with HIV.¹²

10. Survivors suffer from challenging psychological impacts. Women survivors who have had children born of rape struggle psychologically with keeping them. Some families will not accept the children, and the children themselves experience damaging long-term stigmatisation. Survivors recount instances of infanticide and attempted infanticide of babies born of rape by husbands or family members.
11. The social impacts also abound. Stigma and victim-blaming are the norm, with survivors stating that people distance themselves from survivors as soon as they know what happened, and that people think they “did it willingly”. One survivor stated that “society stigmatizes us as if we are responsible for our own problem”. The attitude of men towards CRSV survivors was emphasised as being a significant problem. The husbands of CRSV survivors were said to be the source of blame in the community. One participant stated that her brother-in-law's wife was abandoned by her husband after the incident because of her “status”.
12. Another significant impact on CRSV survivors is economic. Many survivors are prevented from earning an income due to physical or psychological trauma, CRSV-related health conditions or because they fear 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”.
13. Survivors shared that CRSV could be prevented by ensuring the unification of armed forces, in order to reverse the scattering of different factions across the country, which makes it difficult to find perpetrators.

The government of South Sudan should:

- Accelerate the implementation of the Disarmament, Demobilization and Reintegration programme¹³, including by ensuring sufficient funding and resources for the Disarmament, Demobilisation and Reintegration Commission.¹⁴
- Ensure that principles of Gender Equality permeate the constitution drafting process.
- Expedite law reform to give effect to equal rights and equal treatment (which sometimes require additional rights, measures or adjustments to facilitate equal treatment) and outlaw harmful practices. For example, reform the definition of rape in Article 247 of the Penal Code to ensure it meets the highest international

¹² Interview with Juba Centre – AYA.

¹³ R-ARCSS (2018), Clause 2.4.9- 2.4.10.

¹⁴ 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’, <https://reliefweb.int/report/south-sudan/rjmec-report-status-implementation-revitalised-agreement-resolution-conflict-1>, para 32.

standards, including by removing the provision ‘sexual intercourse by a married couple is not rape’.

- Prioritise processes and mechanisms to ensure the protection of victims and survivors against reprisals, intimidation and stigma, through a strategy and legal and policy framework that ensures proper assistance from the outset.¹⁵
- In line with the above recommendation, tackle the root causes of CRSV by working to eliminate and prevent societal norms and practices that subordinate women and girls, such as early, forced and child marriage.
- Develop a comprehensive law reform and policy strategy, based on inclusive consultations with affected groups, to counter hateful ideologies, hate speech and prejudice, and to strengthen social cohesion in South Sudan.
- Ratify the International Convention on the Enforced Disappearances in South Sudan, and its additional protocols. The threat to citizens through the acts of Enforced Disappearances is a major issue which affects individuals, families and communities across the country.

C. Transitional Justice Mechanisms

14. During the second cycle, South Sudan accepted 25 recommendations relating to transitional justice. These included a recommendation to ‘work with the African Union to establish a hybrid court and the commission for truth, reconciliation and healing within the time frame set out in the peace agreement.’¹⁶
15. Whilst the Commission for Truth, Reconciliation and Healing, the Hybrid Court and the Compensation and Reparation Authority were due to be operational by August 2020,¹⁷ we welcome the Cabinet’s decision of 29 January 2021 requesting the Ministry of Justice and Constitutional Affairs to take the necessary steps to establish the Commission for Truth, Reconciliation and Healing, the Hybrid Court for South Sudan and the Compensation and Reparations Authority.
16. The recent appointment on 29 March 2021 of a 36-person task force within the Ministry of Justice, as well as a High-Level Consultative Meeting held on 30 June for the establishment of the Commission on Truth, Reconciliation and Healing, are very welcome steps.
17. Momentum demonstrated in recent months, as shown at the High-Level meeting, presided by Vice President Dr. Riek Machar, and attended by Minister of Defence

¹⁵ OHCHR, ‘Protection of Victims of Sexual Violence: Lessons Learned’ (2019), <https://www.ohchr.org/Documents/Issues/Women/WRGS/ReportLessonsLearned.pdf>, p. 4.

¹⁶ Matrice of Recommendations, 126.62, United Kingdom of Great Britain and Northern Ireland.

¹⁷ Human Rights Council, ‘Report of the Commission on Human Rights in South Sudan’, UN Doc A/HRC/46/53 (2021), https://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session46/Documents/A_HRC_46_53.pdf, p. 15.

Angelina Teny, Minister of Federal Affairs Lasuba Wango, and Minister of Gender and Social Welfare Aya Benjamin, must be maintained and backed by dedicated training and funding. Vice President Dr. Riek Machar's words at this Meeting, that "we want to provide the aggrieved a chance to speak" and that "peace without justice will not hold" are encouraging.

18. With regards to the planned consultations required for establishing the Commission for Truth, Reconciliation and Healing, it is essential that survivors, including survivors of CRSV, and civil society are placed at the heart of consultations and given a meaningful say and decision-making power.

To ensure effective transitional justice mechanisms, the government of South Sudan should:

- Complete all the processes of reconstituting the Transitional National Legislative Assembly, which is necessary to enact the domestic legislation for establishing the three transitional justice mechanisms outlined in Chapter V of R-ARCSS (2018) Agreement.
- Sign without further delay the Memorandum of Understanding with the African Union and adopt the draft Statute to establish the Hybrid Court.
- Ensure comprehensive training on victims' rights to a remedy and reparation, CRSV, best practices at ensuring inclusive, survivor-centred and gender-sensitive consultations. It is critical that all those coming into contact with survivors of CRSV receive training in psychosocial awareness.
- Ensure adequate funding for training and sensitisation of the public about the transitional justice measures. Outreach and information about the process must be ensured before consultations can meaningfully take place. This is fundamental also to reduce insecurity, risk and stigma in engaging with transitional justice issues.
- Focus on ***process*** as a guiding principle. Expertise in transitional justice demonstrates that ***the process of justice is as important as the outcome***.
- Initiate inclusive, survivor-centred and gender-sensitive consultations at local and regional levels so that South Sudanese can contribute towards the formation and delivery of the transitional justice processes. It is critical that consultations be undertaken with diverse segments of the population paying attention to the fact that ***survivors have a right to be informed of, and be granted access to, processes that affect them***.
- 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 fully contribute to consultations.

- Specifically consider protection (both physical and psychosocial) around consultations and the future activities of the Commission on Truth, Reconciliation and Healing, and ensure that policies are in place to allow them 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 Hybrid Court.

D. Victims' Right to a Remedy and Reparations

19. During the second cycle, South Sudan accepted a recommendation to adopt measures to ensure the effective access of victims to remedies, including reparation.¹⁸
20. Survivors of CRSV in South Sudan have received very limited judicial remedies and no reparation to date. Survivors interviewed by Rights for Peace and partners indicate extreme unmet needs, including urgent medical, psychological, social and economic needs directly resulting from the specific sexual violence experienced. Urgent measures are required to assist survivors both on humanitarian as well as legal grounds. Survivor's rights to reparation include the right to rehabilitation, which includes medical, psychological, social and economic rehabilitation.
21. In relation to health needs, 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 income is a challenge, as they are unable to purchase prescribed medication.
22. The rights and needs of children born of rape are not being met. The stigma, discrimination, neglect and abuse suffered by them cannot be over emphasised. Their psychosocial needs demand special programmes where they can be educated in a safe and non-discriminating environment. Families of children born from rape need urgent support to accept their children and support them.
23. On the social level, survivors state that community awareness should be the priority. A sea change of awareness in the community is needed to end a destructive culture of blame against the victim. In particular, survivors call for awareness programmes that specifically target husbands and men, to help them find solutions together.
24. With regards to economic needs, survivors agreed that monetary compensation would be a positive development. Survivors indicate that economic independence is important as an integral part of their recovery and regaining of dignity. Survivors also emphasise the importance of free education for their children as a priority.

¹⁸ Matrice of Recommendations, 128.73, Argentina.

25. With a suggestion that would meet a combination of social, economic and psychosocial needs, survivors say they want women friendly spaces including for income generation.
26. Alongside the right to adequate, effective and prompt reparation for harm suffered, victims also have the right to equal and effective access to justice and access to relevant information concerning violations and reparation mechanisms.¹⁹ It is essential that legal and administrative processes in South Sudan protect survivors' safety, physical and psychological well-being and privacy.
27. With respect to facilitating an environment which protects and promotes human rights, South Sudan accepted a recommendation to strengthen the capacity of the Human Rights Commission in South Sudan to facilitate access to justice for victims and witnesses, with due regard for their protection.²⁰ These measures must be implemented.

The government of South Sudan should:

- Ensure that survivors' needs are at the core of the process to establish the Commission on Truth, Reconciliation and Healing as well as the Hybrid Court and the implementation of a reparations programme by the Compensation and Reparations Authority.
- Promote inclusive processes that treat all communities of survivors equally. It is critical for the government to build trust with all communities, through sensitive and meaningful dialogue and consultations, ensuring requisite budgetary commitments.
- Integrate a survivor-centred and gender-sensitive approach to facilitating legal remedies for survivors, with specific attention paid to CRSV and the need to train security, legal and judicial personnel to counter stigma and discriminatory treatment.
- Give effect to victims' right to be treated with humanity and respect for their dignity. For example, by allowing closed hearings and separate rooms for survivors to testify away from the perpetrator, providing psychosocial support throughout transitional justice processes, and providing gender-sensitive provisions.
- Remove the requirement for the use of Form 8 before administering treatment of emergency cases in hospitals and private clinics and for reporting of cases. In the interim, ensure that the forms are readily available and free for survivors to ensure they are not turned away or given contradictory information. Crucially, ensure that service providers are trained on trauma sensitivity and victim and witness

¹⁹ OHCHR, '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', VII.

²⁰ Matrice of Recommendations, 126.22, Spain.

protection.

- Consider establishing interim or prioritised reparations to address the immediate needs of victims and survivors.²¹
- Work with international human rights actors to devise policies for enhancing victim protection mechanisms, to be put in place during and after the establishment of the Hybrid Court for South Sudan, the Commission on Truth, Reconciliation and Healing, and the Compensation and Reparation Authority.

²¹ Human Rights Council, 'Report of the Commission on Human Rights in South Sudan', UN Doc A/HRC/46/53 (2021), https://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session46/Documents/A_HRC_46_53.pdf, p. 17.