

STILL IN DANGER

WOMEN AND GIRLS FACE SEXUAL VIOLENCE IN SOUTH
SUDAN DESPITE PEACE DEAL

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Cover Photo: Girls prepare and sell firewood in Malakal PoC. Photo Credit: Devon Cone/
Refugees International.

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SUMMARY

South Sudan, already one of the most difficult countries for women, has in recent years seen some of the highest levels of sexual violence in the world. Even before the civil war officially ended in September 2018, women and girls experienced high levels of gender-based violence (GBV) and had limited ways to address these crimes. Once civil war fueled by ethnic divisions engulfed the country in 2013, violence against women and girls grew even more pronounced. From 2013 until the end of 2018, soldiers on both sides of the conflict used sexual violence and torture, especially of women and girls, as part of their military strategies. Furthermore, a complete breakdown of the rule of law permitted armed men to operate with impunity throughout the conflict.

Although most political violence abated when the most recent peace agreement was signed in September 2018, conflict-related sexual violence (CRSV) has persisted. Armed men, some affiliated with various military groups, continue to attack women and girls who are traveling. Additionally, widespread displacement—about 2.2 million people outside of the country and 1.5 million people within the country¹—exacerbates other risks to the safety of women and girls, including intimate partner violence and underage pregnancy.

The United Nations Mission in South Sudan (UNMISS), nongovernmental organizations (NGOs), humanitarian actors, and, in some cases, the government of South Sudan (GoSS) are trying to address these challenges, but the needs are massive and all of these actors must prioritize certain interventions so women and girls are safer in South Sudan.

The GoSS will need to build up basic governance capacity—a complicated and long-term endeavor. Meanwhile, the GoSS, UNMISS, the humanitarian community, and the United States must take immediate measures to address the acute challenges faced by women and girls, especially those who face the added vulnerability of being displaced.

Protection of Civilian sites (PoCs)—areas throughout the country that house some of the most vulnerable displaced people within or adjacent to UN bases—were set up as emergency measures to provide safe zones protected by UNMISS; however, women and girls in the PoCs are not particularly safe. Although UNMISS conducts some regular patrols, such as “firewood patrols”—when UNMISS troops escort women who collect firewood outside of the PoCs and are at risk of sexual violence—attacks on women and girls still occur near the PoCs and throughout the country. UNMISS has limited resources to expand their reach. To provide more effective protection and build respect for the rule of law, the GoSS needs to provide for citizens’ safety and security. The South Sudan National Police Service also has limited capacity and usually refers cases to customary courts.

The humanitarian sector has an outsized role to play in providing services for survivors of GBV. Psychosocial and health care programming is of particular urgency, especially for women and girls both inside and outside of the PoCs. Additionally, many men and women in South Sudan still are unaware of what constitutes GBV. To improve reporting and more effectively prevent GBV, men, women, boys, and girls both inside and outside of the PoCs need a better understanding of their rights and responsibilities.

1. “South Sudan Situation Report,” United Nations Office of the Coordination of Humanitarian Affairs, September 16, 2019, <https://reliefweb.int/report/south-sudan/south-sudan-situation-report-16-september-2019>.

The GoSS has the greatest responsibility for addressing violence against women and girls. Although the mobile court system, instituted in 2012 and restarted with UN support in 2018 to provide formal adjudication for serious crimes, constitutes a good start, its reach is limited in geographic coverage and capacity to address the backlog of cases. By the end of April 2019, the mobile courts had produced several dozen convictions—an important precedent, but not nearly enough to provide justice for the high number of GBV cases throughout the country.^{2,3,4}

The GoSS needs to expand the reach and capabilities of these mobile courts to adjudicate GBV cases across South Sudan. As the courts make decisions, it is important that the government also criminalizes marital rape to signal to both men and women that women and girls have inherent value. Finally, to move forward toward a sustainable peace, accountability for CRSV is a crucial step. The Hybrid Court of South Sudan, which the government already has agreed to set up with the African Union (AU) but has yet to be established, is the clearest path forward to provide accountability for the intense levels of violence women experienced during the active conflict.

RECOMMENDATIONS

To the Government of South Sudan:

- Immediately sign the pending memorandum of understanding (MoU) with the AU to set up the Hybrid Court of South Sudan and ensure that the Court is operational as soon as possible so those responsible for CRSV are held accountable.
- Continue to deploy mobile courts and expand their reach, especially in the northeast and northwest areas of the country, with the support of the UNMISS and the United Nations Development Program (UNDP).
- Build institutional capacity of the formal legal system by training local leaders, prosecutors, judges, and security services on statutory law, and training women police and judges.
- Evaluate the broader set of legislation regarding women's rights and change legislation to criminalize marital rape.

To UNMISS:

- In coordination with humanitarian actors, conduct better analyses of where threats are located—both near the PoCs and farther afield—and prioritize high-quality patrolling of those areas.
- Request additional peacekeeping troops to effectively protect the identified “hotspots” of sexual violence and roads on which women and girls travel to access services, which have

2. “Mobile Courts in South Sudan,” United Nations Development Programme, 2019, <https://reliefweb.int/sites/reliefweb.int/files/resources/mobile%20courts%20sgbv-final.pdf>.

3. “Bringing Justice to the People: How the UN Is Helping Communities Deal with Disputes in Remote and Dangerous Areas,” *UN News*, April 29, 2019, <https://news.un.org/en/story/2019/04/1037411>.

4. “Statement of the Special Representative of the Secretary-General Mr. David Shearer Briefing to the United Nations Security Council on South Sudan,” United Nations Peacekeeping, March 8, 2019, <https://peacekeeping.un.org/en/statement-of-special-representative-of-secretary-general-mr-david-shearer-briefing-to-united-nations>.

increasingly moved outside the PoCs and formal camps for internally displaced people (IDPs).

- Promote attention to human rights—particularly the rights of women and girls—in traditional courts by expanding human rights training programs for paralegals who deploy throughout the country, so traditional court decisions reflect human rights and more closely align with formal law.
- Support the GoSS's capacity to more appropriately handle GBV cases by increasing the number of Special Protection Units (SPUs) in police stations throughout the country, in accordance with the Human Rights Due Diligence Policy (HRDDP).

To the NGO and UN Humanitarian Actors Operating in South Sudan:

- Maintain support for programs to address intimate partner violence and provide public education that includes men and boys.
- Prioritize psychosocial support programs for survivors of CRSV.
- Invest in specific programs targeting the unique needs of adolescent girls, including sexual and reproductive health (SRH) and the distribution of dignity kits, which provide feminine hygiene products and other necessary materials to women and girls of reproductive age.
- Improve access to and quality of maternal health care, and train midwives on safe deliveries.
- Conduct public outreach to inform communities about the mobile courts and how to access them.
- Within the PoCs, increase the utility of safe spaces for women and girls, and strengthen community-based protection, including women's committees and community watch groups

To the AU and Members of the Troika (the United States, the United Kingdom, and Norway):

- Pressure the GoSS to implement all parts of the peace agreement, especially establishing the hybrid AU-South Sudanese court to ensure accountability for widespread sexual violence during the conflict.
- Support renewal of the Commission on Human Rights in South Sudan (CHRSS) to collect and document evidence of mass atrocities for use in trying those responsible for sexual violence.

To the AU:

- Set up the Hybrid Court of South Sudan in cooperation with the GoSS; if the GoSS does not cooperate, proceed with evidence collection and recruiting personnel with gender and CRSV expertise.

To the Government of the United States:

- Sustain high levels of humanitarian funding for South Sudan, with a focus on rehabilitating health centers that provide SRH both inside and outside of the PoCs, especially given the absence of U.S. funding for the United Nations Population Fund (UNFPA).

RESEARCH OVERVIEW

In July and August 2019, a Refugees International team visited Juba and Malakal in South Sudan and interviewed dozens of UN, government, and nongovernmental organization (NGO) officials, as well as internally displaced people (IDPs) living in Protection of Civilian sites (PoCs) in Juba and Malakal. They also interviewed several local women's groups. The team asked interviewees about the situation generally, but also focused on the unique challenges and protection risks that women and girls face in South Sudan, particularly inside PoCs. Although the PoCs house just 10 percent of all IDPs in South Sudan, they are an important microcosm of the larger issues IDPs face, and those living there are some of the most vulnerable and at risk. One of the main topics the Refugees International team researched was the preponderance of gender-based violence (GBV)—targeted violence against individuals or groups based on gender—in South Sudan and the lack of accountability associated with those crimes.

BACKGROUND

History of Conflict

Following 22 years of war and a referendum in which people voted in favor of secession from Sudan, South Sudan gained its independence and became the world's newest country in 2011. Although there was much cause for celebration among the people who had spent more than two decades fighting the war, the situation in the new country quickly changed. Following President Salva Kiir's forced removal of then-Vice President Riek Machar, widespread politically driven violence with ethnic underpinnings erupted in 2013, starting in Juba and spreading throughout the country.

A significant aspect of the crisis was a dramatic rise in conflict-related sexual violence (CRSV). From the very beginning of the conflict, reports of mass rape emerged, usually perpetrated by uniformed soldiers against civilian women and girls.⁵ In some cases, military forces used sexual violence during the conflict as a form of "payment" to soldiers, and commanders often encouraged sexual violence.^{6,7}

By the end of 2018, the conflict had forcibly displaced more than 4 million people, or about one-third of the population.⁸ When tens of thousands of people fled to UN bases for protection, the United Nations Mission in South Sudan (UNMISS) made the emergency decision to let them in, thus creating what are now known as PoC sites. Although only

5. Sam Jones, "UN report: South Sudan Allowed Soldiers to Rape Civilians in Civil War," *The Guardian*, March 11, 2016, <https://www.theguardian.com/global-development/2016/mar/11/south-sudans-soldiers-allowed-to-rape-civilians-civil-war-says-un-government-torture>.

6. Jones, "South Sudan Allowed Soldiers to Rape."

7. Alicia Luedke, "The Commodification of Women and Girls in South Sudan: Increased Risks and Continued Violence," The London School of Economics, April 4, 2019, <https://blogs.lse.ac.uk/crp/2019/04/04/the-commodification-of-women-and-girls-in-south-sudan-increased-risks-and-continued-violence/>.

8. "South Sudan Situation Report," United Nations Office of the Coordination of Humanitarian Affairs, September 16, 2019, <https://reports.unocha.org/en/country/south-sudan/>; "Operational Portal Refugee Situations – South Sudan," United Nations High Commissioner for Refugees, accessed October 4, 2019, <https://data2.unhcr.org/en/situations/southsudan>.



meant to provide protection for a few days, the PoCs have now existed for several years. Unique to South Sudan, the six PoC sites throughout the country are essentially IDP camps reserved for South Sudanese civilians who need temporary physical protection. Although the government of South Sudan (GoSS) has the responsibility for IDPs generally, PoCs are under the jurisdiction of UNMISS.

In 2015, the major warring parties signed a peace agreement; however, it did not last and they resumed fighting. In September 2018, most parties to the conflict signed the Revitalized Agreement on the Resolution of the Conflict in South Sudan (R-ARCSS), formally ending the five-year conflict. Active violence continues, however, particularly by a non-signatory armed group in the Central Equatoria region. Additionally, what

some describe as “traditional cattle raids” are intensifying, as reflected in the types of weapons used and the scope of violence.⁹

Violence against women and girls also continues at alarmingly high rates and, despite the peace agreement, most people are not returning home. Almost all the people whom the Refugees International team interviewed in South Sudan were skeptical that the R-ARCSS could truly bring peace. It is a fragile agreement currently keeping the key signatories from engaging in active hostilities. However, the UN Children’s Fund (UNICEF) notes that “decades of conflict have created a highly militarized environment and a culture of violence. This allows perpetrators of gender-based violence to operate with greater impunity.”¹⁰

9. 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,” *The Journal of International Humanitarian Action* 3, no. 2 (December 2018), <https://link.springer.com/article/10.1186/s41018-018-0030-y>.

10. “Gender-Based Violence,” UNICEF South Sudan Country Office, August 2019, <https://www.unicef.org/southsudan/media/2071/file/UNICEF-South-Sudan-GBV-Briefing-Note-May-2019.pdf>.

General Situation for Women and Girls

As the world's youngest country, located in the center of sub-Saharan Africa, South Sudan faces massive challenges. Since its inception, severe underdevelopment, recurring conflict, food insecurity, corruption, and poverty have crippled the country. In addition to these challenges, aspects of South Sudanese society enable an environment in which women and girls are generally viewed as commodities. They are denied decision-making power and are at high risk of abuse and exploitation. Even before the civil war, violence against women and girls was commonplace. These norms were reiterated during Refugees International's recent visit to South Sudan. Several times during interviews, NGO staff and South Sudanese women noted that they are not the decision makers. According to one female activist, "In this culture, men can do anything because women just aren't valued."

The GoSS's own study found that a majority of both women and men believe that in circumstances such as when a woman goes out without telling her husband, a woman or girl argues with the male head of the house, or a mother neglects household duties, men are justified in beating women.¹¹ Similar to beating women, there are usually no consequences for perpetrators of GBV—targeted violence against individuals or groups based on gender—and the rates increased when conflict engulfed the new country in 2013. In 2017, research showed that more than 65 percent of women interviewed had experienced either sexual or

physical violence. This percentage is "double the global average and among the highest levels of violence against women and girls in the world."¹² In early 2019, UNICEF noted that "gender-based violence remains one of the most critical threats to the protection and well-being of women and children in South Sudan. GBV was already rife prior to the conflict and is now nearing epidemic proportions."¹³

According to some South Sudanese human rights experts, these high levels of violence stem from the objectification of women and girls, which can be traced to one of the fundamental elements of South Sudan society: the local political economy of "bride price."¹⁴ In South Sudan, when a man wants to get married, his family pays for a woman or girl based on her negotiated value. Forced and early marriage is a hallmark of society, with more than 50 percent of girls married before the age of 18.¹⁵ This view of women and girls has also contributed to the development of a society in which violence against them is ubiquitous and accountability is lacking. Decades of virtually uninterrupted conflict in what was previously Sudan and is now South Sudan has intensified these already glaring gender inequalities and risks for women and girls.

11. Lydia Stone, "A Continuum of Suffering: Violence Against Women and Girls in the South Sudan Conflict," The Humanitarian Practice Network, January 2017, <https://odihpn.org/magazine/continuum-suffering-violence-women-girls-south-sudan-conflict/>.

12. "No Safe Place: A Lifetime of Violence for Conflict-Affected Women and Girls in South Sudan," WhatWorks to Prevent Violence, Summary Report 2017, <https://www.rescue.org/sites/default/files/document/2294/southsudanlgsummaryreportonline.pdf>.

13. "Gender-based Violence."

14. Luedke, "The Commodification of Women and Girls in South Sudan."

15. "South Sudan," Girls Not Brides, <https://www.girlsnotbrides.org/child-marriage/south-sudan/>.

GENDER-BASED VIOLENCE

Conflict-Related Sexual Violence

Rape and other forms of sexual violence have long been used as weapons of war; the South Sudanese civil war has been no exception.¹⁶ UN human rights observers noted that on both sides of the conflict, “orders have been given within the military forces to perpetrate rapes on the basis of ethnicity.”¹⁷ The frequency and brutality of this sexual violence was extraordinary.

CRSV is one type of gender-based violence. It can be either directly or indirectly linked to a conflict and is often used deliberately to weaken the social structures of a society perceived by combatants as the enemy.¹⁸ South Sudan is a prime example; incidents of known CRSV spiked as formal hostilities escalated. Several women with whom Refugees International met in PoCs recounted that in 2013 and 2014, soldiers attacked their villages or towns and violently gang raped many of the women. Sometimes soldiers raped young girls as well. In 2014, South Sudanese hospital offi-

cials reported that of the patients they were treating for injuries associated with violent sexual assault, 74 percent were below the age of 18.¹⁹ Some of the women with whom Refugees International spoke said they had been sexually assaulted, which was one of the main drivers for them to seek safety in the PoCs. One woman in the Malakal PoC said, “I had to come to the PoC; I had no choice. I was attacked and so I fled with my children. I still don’t feel safe because there are still soldiers in town.”

Deliberate Use of Violence Against Women and Girls by Military Forces

During the active conflict, soldiers targeted women and girls, using rape, gang rape, and abductions for sexual slavery to draw men out of hiding.²⁰ There is no doubt that soldiers used this kind of targeting and deliberate use of sexual violence; in some cases, military superiors sanctioned it. When confronted with these accusations, both Salva Kiir, who controls the Sudan People’s Liberation Army (SPLA), and Riek Machar, who leads the SPLA-in Opposition (IO)-affiliated militias, reiterated that they prohibit CRSV. They further noted that within their ranks, they will punish perpetrators of CRSV. However, there is little evidence that leaders have held anyone accountable.

16. Alexis Arieff, “Sexual Violence in African Conflicts,” Congressional Research Service, November 30, 2010, <https://fas.org/sgp/crs/row/R40956.pdf>.

17. UN Web TV, “Zainab Hawa Bangura (SRSG on Sexual Violence in Conflict) on South Sudan – Press Conference,” October 20, 2014, <http://webtv.un.org/en/ga/watch/zainab-hawa-bangura-srsg-on-sexual-violence-in-conflict-on-south-sudan-press-conference/3849382350001/?term=&lan=english>.

18. According to the UN Secretary General’s Office, “conflict-related sexual violence” refers to rape, sexual slavery, forced prostitution, forced pregnancy, forced abortion, enforced sterilization, forced marriage, and any other form of sexual violence of comparable gravity perpetrated against women, men, girls, or boys that is directly or indirectly linked to a conflict. That link may be evident in the profile of the perpetrator, who is often affiliated with a state or non-state armed group, which includes terrorist entities; the profile of the victim, who is frequently an actual or perceived member of a political, ethnic, or religious minority group, or targeted on the basis of actual or perceived sexual orientation or gender identity; the climate of impunity, which is generally associated with state collapse, cross-border consequences such as displacement or trafficking, and/or violations of a ceasefire agreement. The term also encompasses trafficking in persons for the purpose of sexual violence or exploitation, when committed in situations of conflict. “Conflict Related Sexual Violence: Report of the United Nations Secretary-General,” March 29, 2019, <https://www.un.org/sexualviolenceinconflict/wp-content/uploads/2019/04/report/s-2019-280/Annual-report-2018.pdf>.

19. Louis Charbonneau, “South Sudan Sexual Violence ‘Rampant,’ Two-Year-Old Raped: U.N.,” Reuters, October 20, 2014, <https://www.reuters.com/article/us-southsudan-un/south-sudan-sexual-violence-rampant-two-year-old-raped-u-n-idUSKCN0I92C320141020>.

20. “No Safe Place.”



A woman braids her teenage neighbor's hair in the Malakal PoC. Photo Credit: Devon Cone/Refugees International.



A teenage girl outside her home in the Malakal PoC. Photo Credit: Devon Cone/Refugees International.

This lack of accountability allowed sexual violence to proliferate during the war. CRSV has continued to some extent even after formal hostilities ceased, especially because the two leaders have limited control over the forces loyal to them. Poorly trained and undisciplined armed men, nursing ethnic grudges and just waiting to start fighting again pose a huge security threat to South Sudanese women and girls.

One staff member of an international NGO in South Sudan remarked that “The conflict might have ended, but to be female in South Sudan is still dangerous.”

Although it is not usually clear who the attackers are—soldiers in uniform, former soldiers, independent militias, or criminals—men and boys who have access to weapons continue to prey on women and girls when there is an opportunity. November and December 2018 saw a surge in rapes in some parts of the country.²¹ One woman in Malakal told the Refugees International team that she is afraid

of leaving the PoC because she fears someone will attack her. When asked who would attack her, she explained, “I don’t know. You never know who those guys are. Sometimes they look like soldiers, sometimes they look just like anyone. But you never know them.”

Lack of Data

Even though armed men continue to attack women and girls outside of the PoCs, NGO staff, UN officials, and displaced women all agreed that since official hostilities ended, reports of targeted incidents of sexual violence against women by soldiers have probably dropped overall. Although this is a promising sign, it is important to reiterate that these cases are just the ones reported. According to conflict analysts in the region, there is no way to accurately know whether rates of CRSV have changed since the peace agreement because no one has made this type of data collection a priority. Additionally, because of cultural norms, unless service providers discover the assaults, it is rare for a woman or

21. “South Sudan,” Office of the Special Representative of the Secretary-General on Sexual Violence in Conflict, March 30, 2019, <https://www.un.org/sexualviolenceinconflict/countries/south-sudan/>.

girl to report this kind of attack. One woman in Malakal told Refugees International, “Why would I report something like this if I don’t know who did it?” Although the main factions have agreed to a cease-fire, women continue to fear CRSV, and it makes sense that they still feel at risk.

“Unfounded and Baseless”

One of the starkest reminders that women continue to be exposed to unacceptable levels of sexual violence occurred at the end of 2018. Less than two months after the main parties to the conflict signed the R-ARCSS, specifically prohibiting “acts and forms of sexual and gender-based violence,”²² Médecins Sans Frontières (MSF) initially reported that within a span of a few weeks, armed men brutally attacked and raped 125 women and girls traveling to collect food from a distribution site near the Bentiu PoC.²³ UN agencies reported the number to be even higher. Victims were between the ages of 10 and 65.²⁴ The attacks were particularly severe, involving gang rapes; many assaults lasted for several hours.²⁵ Some of the young men wore civilian clothes and others wore military uniforms.²⁶

Following a two-day investigation, the Gender, Child, and Social Welfare Minister at the time declared all the reports to be

fabricated, claiming they were “unfounded and baseless.” Contrary to the minister’s narrative, NGOs and UN officials told Refugees International that not only did the attacks occur, it is also likely that unreported rapes are taking place on a similar scale throughout the country. One expert on the conflict, based in South Sudan, told Refugees International, “There are huge sections of this country that have limited services, and they don’t have anyone sounding the alarm. I think that there are likely situations like Bentiu happening all over.” Additionally, the UNMISS Human Rights Division conducted its own investigation and found high levels of sexual violence perpetrated by unknown men in southern Unity State between April and May 2018 and northern Unity State between November and December 2018.²⁷ Even the United Nations Special Representative of the Secretary General on Sexual Violence in Conflict remarked in December 2018, “This latest attack in Bentiu is part of a systematic trend and pattern of sexual violence that has escalated dramatically in 2018 despite recent re-commitments by South Sudan’s leaders to a cessation of hostilities and a revitalized peace agreement.”²⁸ Although the individual identities of the men are unknown, it is clear that armed actors deliberately organized these attacks.²⁹

22. “Revitalized Agreement on the Resolution of the Conflict in the Republic of South Sudan (R-ARCSS),” September 12, 2018, <https://www.dropbox.com/s/6dn3477q3f5472d/R-ARCSS.2018-i.pdf?dl=0>.

23. “Unknown Gunmen Rape 125 Women in South Sudan: Aid Agency,” Reuters, November 30, 2018, <https://www.reuters.com/article/us-southsudan-violence/unknown-gunmen-rape-125-women-in-south-sudan-aid-agency-idUSKCN1NZ24D>.

24. “Statement on the Situation in Bentiu, South Sudan,” OCHA, UNICEF, and UNFPA, December 3, 2018, <https://www.unfpa.org/press/statement-situation-bentiu-south-sudan>.

25. Nick Cumming-Bruce, “Sexual Violence on the Rise in South Sudan, U.N. Says,” *The New York Times*, February 15, 2019, <https://www.nytimes.com/2019/02/15/world/africa/south-sudan-rape-sexual-violence.html>.

26. “UNMISS Condemns Brutal Sexual Assaults on Women and Girls Near Bentiu,” United Nations Mission in South Sudan, December 3, 2018, <https://unmiss.unmissions.org/unmiss-condemns-brutal-sexual-assaults-women-and-girls-near-bentiu>.

27. “Conflict-Related Sexual Violence in Northern Unity September–December 2018,” United Nations Mission in South Sudan and United Nations Office of the High Commissioner of Human Rights, February 15, 2019, https://www.ohchr.org/_layouts/15/WopiFrame.aspx?sourcedoc=/Documents/Countries/SS/UNMISS_OHCHR_report_CRSV_northern_Unity_SouthSudan.docx&action=default&DefaultItemOpen=1.

28. “Remarks of the Special Representative of the Secretary-General on Sexual Violence in Conflict, Pramila Patten, to the Security Council on South Sudan, 18 December 2018,” United Nations Office of the Special Representative of the Secretary-General on Sexual Violence in Conflict, December 18, 2018, <https://www.un.org/sexualviolenceinconflict/statement/remarks-of-the-special-representative-of-the-secretary-general-on-sexual-violence-in-conflict-pramila-patten-to-the-security-council-on-south-sudan-18-december-2018/>.

29. “Conflict-Related Sexual Violence in Northern Unity,” UNMISS and United Nations Office of the High Commissioner of



RAISING A FAMILY AWAY FROM HOME: MARY DANIEL'S STORY OF DISPLACEMENT

Raising five children as a single mother is always difficult. For Mary Daniel, 28, it's especially hard in the Malakal PoC. Mary was living in Malakal town in 2015, but armed fighting forced her to flee with her children. They fled to the safety of the PoC, but Mary did not expect to be living there for years. She now survives on limited resources under a tarp with her children, including 18-month-old twins.

Mary is lucky—and grateful—she has an aunt in the PoC who helps her raise the children. But Mary is frustrated that she and her family still live in the POC because they have no where else to go. In June 2019, Mary ventured out of the PoC with some other women and returned to her house in town for the first time since she fled four years ago. What she found did not give her hope. Most of her home was destroyed and a family from another ethnic group was living in the only portion of the house still standing. She left quickly and has not returned since, fearing she will anger the strangers now living there.

“My biggest problems inside of the PoC are that there is very little food and I don't feel safe,” she said. “You have to mind your own business in the PoC so that you don't get harassed. As for food, rations have just been cut and I don't even have enough milk to feed my twins.”

To make ends meet, Mary goes outside the PoC grounds to collect firewood and grass that she can sell in the PoC market. Increasingly, she must travel farther and farther for wood and grass, often walking four hours each way. But venturing too far from the PoC is dangerous.

“Right next to the PoC I don't usually hear gunshots, but I still hear gunshots as soon as I get farther away,” she said. “These could be poachers, but I don't think so. Either way, it still makes me feel very unsafe. If people start going back and they still have problems or are treated poorly, that is not peace,” she said as she breastfed both of her twins at the same time. “Peace means going back to my house and feeling safe.”

What to Do?

Although these continued brutal attacks are unacceptable, and despite the difficulty of getting accurate numbers, conversations with GBV experts/monitors on the ground indicate that during 2019, likely as a result of a slow but steady implementation of the current peace agreement, the levels of reported CRSV overall have reduced. For this trend to continue, however, and for further attacks on women and girls like those near Bentiu to cease, the peace process must move forward and the GoSS needs to fully implement the R-ARCSS, including holding accountable those responsible for sexual violence.

Additionally, as NGOs and humanitarian actors plan their programming, they should be acutely aware of two considerations. First, as organizations conduct awareness-raising activities about CRSV, the number of reported cases will likely increase, not necessarily because incidents of CRSV are on the rise but possibly because more women will become aware of what constitutes CRSV and therefore report it. Organizations should have resources in place to effectively deal with survivors' needs. Second, as humanitarian actors begin shifting services outside of the PoCs into harder-to-reach areas, the risk of CRSV against women and girls will increase because they must travel to reach those services. In the short term, UNMISS needs to be prepared to protect roads. In the long term, the government must demobilize soldiers and provide political security.

Finally, accountability for atrocities committed against women and girls during the war and protection for women and girls are now crucial. For more on this topic, refer to the following section of the report—“Accountability for Gender-Based Violence.”

Other Forms of GBV, Particularly Within the PoCs

Intimate Partner and Domestic Violence

Compared to the first two years that the PoCs were operational (2013 and 2014), humanitarian actors noted that the current rate of intimate partner violence (IPV) within the sites has increased. Although the PoCs house just 10 percent of all displaced people in South Sudan, they are important to analyze, particularly because the people living there are some of the most vulnerable and at risk.

The Refugees International team heard from nearly all the agencies working in both the Juba and Malakal PoCs that IPV was one of their biggest safety concerns, and that the rate of violence is “staggering.” One medical service provider said, “The biggest risk for women is still within the household level. They are not allowed to make decisions about their own bodies; they cannot say yes or no to sex.” Another NGO representative explained that men beat the women in their households, deny them resources, engage in marital rape and sexual assault, and forcefully marry young girls, “Yet no one is really talking about this. It is difficult to get South Sudanese women to talk about these issues that the community believes should be handled at home.”

Refugees International's interviews with women in the Juba PoC confirm that exposure to violence during the conflict has led to an increase in domestic violence. One woman said, “We have a lot of problems here. There has just been so much fighting for so long people are used to it in a way, we expect it [violence] in our homes.”

Some other contributing factors to the increasing rates of IPV—especially in the PoCs

and other IDP camps—include poor living conditions, lack of livelihood opportunities, cramped quarters, and changes in traditional gender norms. A local man working for an NGO told Refugees International that, “Men in the PoCs have lost their traditional role in society. They have no money to marry; they aren’t living on their own property. They feel emasculated in a very patriarchal society.”

Within the Malakal PoC, NGOs provide some basic psychosocial support for survivors of IPV. They also provide small grants to help women start businesses that include the male heads of household—if there is one—so as not to exacerbate family tensions. In addition, outreach workers from various NGOs conduct awareness-raising sessions to inform women and girls about their rights and what constitutes IPV. It is equally important that organizations engage men and boys in programming to combat IPV.

One particular area of concern is marital rape. Although South Sudanese law does not recognize rape in marriage, within the UNMISS-controlled PoC, some women are beginning to recognize that it is unacceptable. “A few women are starting to report marital rape,” one medical NGO told Refugees International. “If they report it, we provide them with sexual and reproductive services, and offer them contraceptives. The problem is, husbands believe that if they are asked to use condoms, it means their wives are cheating on them. So often this can lead to even more intimate partner violence.”

Challenges to addressing IPV in South Sudan are daunting, but efforts to address this issue must become a top priority. With almost half of the women and girls within the PoCs experiencing violence,³⁰ the PoCs are not adequately fulfilling a key part of their purpose. Agencies should also expand their programming to reach people outside of the PoCs. Donors should fund programs that

target IPV and organizations should maintain innovative initiatives. For example, in Malakal, NGOs support women’s committees as the “eyes and ears” in the community so they can identify domestic violence when it is particularly severe.

At the national level, when the country’s leaders form the unity government, they must change the existing law and recognize that rape can occur within marriage. As of 2018, at least 152 other countries have criminalized this form of IPV. “You people [international NGOs] have said all of these nice things about our rights and how we have choices, but we can’t refuse men,” said a woman in Malakal. “If we do, they will beat us and then we will have to have sex anyway.” If South Sudan is serious about protecting women and girls, this legislation must be given priority.

Unexpected Pregnancies and Early Marriage

Although not always because of GBV, girls in the PoCs increasingly face unexpected and often underage pregnancies. Forced and early marriage—common throughout South Sudan—is a form of GBV. Forced and early marriage also exist in other IDP communities. However, several NGOs told the Refugees International team that most IDPs have no money to pay the bride price. Therefore, girls are increasingly becoming pregnant within voluntary, coerced, or sometimes forced relationships outside of marriage.

When Refugees International spoke to service providers in the Malakal PoC, they explained more about this growing trend. Because of the powerful stigma of having children out of wedlock, fathers often disappear, while expectant mothers are either taken in by their parents where they are treated badly or else completely ostracized. In the case of the PoCs, if the fathers do remain in the

30. “No Safe Place.”



An older woman buys vegetables at a market within the Malakal PoC. Photo Credit: Devon Cone/Refugees International.

site, family members of unwed pregnant girls have been known to beat the families of the boys or men who have fathered the children. Within the Malakal PoC during the month of July 2019, 54 unmarried girls reported new pregnancies.

The dearth of health care for IDPs makes the situation more severe. First, unmet family planning needs in Malakal are monumental. Many people in the PoC do not receive information related to family planning or sexual and reproductive health (SRH). Second, there is a dire shortage of reproductive health kits, condoms, post-rape kits, and trained staff to provide information related to SRH. Outside of the PoCs, the situation is even worse.

Once a woman is pregnant, maternal health care is severely lacking. The only maternal health facility that performs C-sections in the entire state of Upper Nile is in the Malakal PoC, and transportation to the facility is grossly inadequate. The head of an NGO in

Malakal that provides health services told the Refugees International team that there are no ambulances and roads are impassable during the rainy season. Outside of the PoC, less than 62 percent of the existing health centers are functional. Of the ones that are operational, nearly all of their budgets come from international NGOs, and less than 15 percent offer clinical management of rape.

NGOs noted that funding for women's specific health care needs—including SRH, maternal health services, and clean delivery kits—falls far short of the enormous needs. The United Nations Population Fund (UNFPA), one of the main agencies providing health care to women, requested \$18 million to provide some basic reproductive health services and management of GBV to women and girls in South Sudan in 2018. UNFPA received just over \$5 million—less than 30 percent of what was desperately needed for an adequate response. The U.S. government helped to establish UNFPA in 1969 and was a significant supporter, giving



Outside perimeter of the Juba PoC. Photo Credit: Devon Cone/Refugees International.

just more than \$30 million for its global work in 2016. After the new U.S. administration took office in 2017, it discontinued all funding to the agency. This lack of funding has had sweeping negative effects on the health of women and girls. Last year, for example, an organization that distributes clean delivery kits for safe home births in the absence of appropriate medical facilities received only 100 kits for an entire region of the country.

Although the delivery of services and security outside of PoCs is formally the responsibility of the government, it is in no position to fulfill this function in the near term. Humanitarian actors in South Sudan must strengthen their provision of SRH within the PoCs, but also expand their reach beyond them. Given the outsized responsibilities that women and girls face when pregnant, adequate health care, including SRH, must be prioritized.

ACCOUNTABILITY FOR GENDER-BASED VIOLENCE

Impunity for perpetrators of GBV—both armed men committing acts of CRSV and family members committing acts of domestic violence—is the status quo in South Sudan. In 2016, the most recent year for which statistics are available, only 255 GBV cases went to court. Less than 18 percent of these cases resulted in convictions.³¹ Given the international attention focused on the case of soldiers raping five international aid workers in 2016, the South Sudanese legal system sentenced 10 men to prison.³² This outcome suggests that accountability for CRSV is possible in South Sudan. However, it requires external pressure

31. “Prosecuting Sexual and Gender-Based Crimes in South Sudan: UN Commission on Human Rights in South Sudan Working Session on Strategies for Evidence Collection,” United Nations Office of the High Commissioner for Human Rights,” March 1, 2019, <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=24241&LangID=E>.

32. Cumming-Bruce, “Sexual Violence on the Rise in South Sudan.”

to generate the political will to spur the local judicial system into action.

The civil war devastated the already weak judicial sector in South Sudan. For example, in Malakal town—until recently the second biggest city in South Sudan—the conflict caused what a South Sudanese human rights advocate has described as “a total breakdown of the judicial system.” Recently, police and judges have begun to re-emerge, but a middle-aged woman in the Malakal PoC told Refugees International that law enforcement and security forces are predominately from one ethnic group. “How am I supposed to trust the very same people—who fought against us, took our land, and are now living in our houses—to now protect me?” she asked.

Customary Law

According to Refugees International’s interviews with IDPs and UN, humanitarian, and government staff, most cases of GBV are still—as they were before the conflict—resolved through customary legal systems. As stipulated in the 2005 Comprehensive Peace Agreement (CPA) and Interim Constitution, customary law is legally binding in South Sudan.³³ As war further decimated already weak institutions, customary law took on even greater importance. However, interviewees noted that customary law is highly patriarchal in South Sudan, rarely producing favorable outcomes for women and girls. According to a South Sudanese women’s rights activist, most survivors of GBV feel that “It is better to suffer with my injustice than report [it], [because] the system is rigged against women.”

As it stands, the various traditional legal mechanisms usually consist of a group of older men who hear cases and make deci-

sions based on biased traditions that do not recognize the basic human rights of women. For example, on several occasions, people highlighted cases in which women or girls reported rape and traditional courts ruled that the victims had to marry their rapists. Such remedies demonstrate that without training, customary law is not equipped to fairly and sensitively adjudicate cases of sexual violence—especially violence committed at the hands of uniformed men.

Formal Law

Despite the end of explicit active conflict between the SPLA and the SPLA-IO in September 2018, the formal judicial system in South Sudan is still virtually nonexistent. Before the conflict, customary and statutory law worked together. Statutory law—the constitution, national legislation, and precedents created through court judgements—set some standards; in theory, it was available for appeals when complainants did not think customary decisions were fair. Formal courts were and are still led by judges with formal legal training, while such training is not required for customary court chiefs. The GoSS originally set up the judicial system with the idea that customary courts would handle “lesser crimes” and formal courts would use statutory law to adjudicate crimes deemed more serious, including rape and homicide. In reality, “referrals from customary to statutory courts are made inconsistently and without clear regulatory guidelines, with individual chiefs adjudicating in the manner they feel is appropriate.”³⁴ Today, the formal court system has been decimated and there are very few avenues for justice through formal courts. Even before the conflict, the absence of local courts in vast areas of the country prevented many South Sudanese from accessing the formal legal system.

33. “Women’s Security and the Law in South Sudan,” Human Security Baseline Assessment for Sudan and South Sudan,” <http://www.smallarmssurveysudan.org/fileadmin/docs/facts-figures/south-sudan/womens-security/HSBA-women-security-law.pdf>.

34. “Women’s Security and the Law in South Sudan.”



An older woman in the Malakal PoC poses for a photo after recounting the violence in 2013 that caused her to flee. She lives alone in the PoC. Photo Credit: Devon Cone/Refugees International.

According to Refugees International’s interviews of women and service providers in Juba and Malakal—except for some occasional mobile courts—traditional legal mechanisms are essentially the only option for adjudicating GBV cases. In several interviews, South Sudanese women said that women and girls do not report GBV for many reasons, including not wanting to subject themselves to that level of scrutiny by elderly men in their communities, especially because case “hearings” are often public.

Reconciling Customary Law with Formal Law

Customary courts clearly have critical deficiencies. However, in the absence of a functioning formal court system that can reach all parts of the country, the GoSS needs to improve and use traditional courts. The UNMISS Human Rights Division should expand trainings for paralegals or community legal workers to be deployed to customary courts throughout the country and provide these trainings directly to customary court chiefs when possible. Such trainings will encourage traditional courts to make decisions on GBV cases in line with human rights standards—particularly being survivor centered—and help integrate customary with statutory law. The Transitional Constitution recognizes that customary courts are part of the GoSS’s judicial system; thus, the GoSS has the ability and responsibility to influence them. Expanding the use of paralegals could also create more opportunities for greater inclusion of women and other various ethnic groups. For adjudication to be fair, the legal process needs to include women not just as complainants but also as active participants. In some cases, there will still be conflicts between customary and statutory law. In these cases, the UN Handbook on Legislation on Violence Against Women recommends

that “where there are conflicts between customary and/or religious law and the formal justice system, the matter should be resolved with respect for the human rights of the survivor and in accordance with gender equality standards.”³⁵

Mobile Courts

The GoSS should also continue to expand a system of mobile courts that adjudicate a variety of serious offenses, including GBV. Supported by the United Nations Development Program (UNDP) and UNMISS, in 2018 the Ministry of Justice and Constitutional Affairs began helping judges and prosecutors travel to remote areas to adjudicate cases and deal with massive backlogs.

Mobile courts are a pragmatic way to provide survivors access to formal adjudication; these courts are showing promise, having led to a number of convictions. Other countries plagued by frequent conflict, such as the Democratic Republic of the Congo (DRC), have also had some success with this mechanism, and the use of mobile courts by the United Nation’s Organization Stabilization Mission in the DRC can provide some best practices for South Sudan.³⁶ They are an important mechanism to provide formal justice to GBV survivors unwilling or unable to go through the traditional courts. Although these mobile courts are promising, very few survivors in South Sudan report GBV because they fear reprisals, the inevitable stigma associated with being known as a victim of GBV, or because they do not know these courts even exist. UN, NGO, government, and local community leaders need to engage in greater public outreach efforts to inform community members when mobile courts will be in the area, what they can provide, and how people can bring cases before them.

35. “Women’s Security and the Law in South Sudan.”

36. “Bringing Justice to the People.”

Although not perfect, a UN official focused on gender in the Malakal PoC remarked, “Accountability mechanisms cannot be strengthened unless people make use of them.” She told Refugees International that UNMISS monitors each GBV case they refer to the mobile courts from the Upper Nile state, and she is working with NGOs within the PoC to encourage women and girls to report violence they experience.

In addition to mobile courts, with the support of the UN, the GoSS recently set up a court specifically for GBV cases. Some NGOs believe it was an initiative pushed by the UN, with little interest from the government, but it is a step in the right direction. However, it has some serious limitations. The court will operate only in Juba and will not hear cases involving uniformed perpetrators. Observers have yet to see the efficacy of this court.

Police

Most GBV cases in South Sudan do not make it to any type of court, whether customary or more formal. This happens for many reasons, including that even if GBV is reported, the police are often ill-equipped to handle these cases appropriately. Police in South Sudan are poorly trained and under-resourced. Most lack any understanding of women’s rights and often do not treat survivors with respect or sensitivity.

South Sudan has recently tried to address this challenge by instituting Special Protection Units (SPUs). These units are housed within police stations and include police officers specially trained to refer survivors of sexual violence to medical and psychosocial support service providers. SPUs are only in a few urban centers, however, and are not available for most survivors. UN agencies should dedicate resources to supporting the GoSS

in this initiative and provide funds and technical support to expand these units to police stations throughout the country. Additionally, the GoSS should hire more female police officers who can work with men in the SPUs and help create a more gender-sensitive environment for survivors. UN agencies should also support police efforts in accordance with the Human Rights Due Diligence Policy (HRDDP), which stipulates that “support to non-UN security forces is provided in a manner that ... is compliant with and promotes respect for international humanitarian, human rights and refugee law.”³⁷

The United Nations Police (UNPOL) has jurisdiction for serious crimes within the PoCs. Women in the Malakal PoC told Refugees International that if they were to report an attack, they would report it to UNPOL. “We don’t trust the police outside the PoC,” one woman said. UNPOL has arrested several men within the PoC for GBV-related crimes, which demonstrates that, at least within these sites, there is some level of accountability. However, the UN does not have the authority to prosecute these cases, and Malakal town does not have the capacity to prosecute many cases at this point. For these reasons, UNPOL held the men in detention within the UNMISS Malakal compound but then released some of them back into the community. Expanding mobile courts thus is even more urgent, as is supporting efforts to rebuild the judicial sector so that UNPOL can refer these types of cases for trial in Malakal town.

Hybrid Court

On a broader level, for the R-ARCSS to be implemented and peace to be sustainable, the GoSS must address the mass sexual and gender-based crimes committed during the active conflict. After years of delay, in Decem-

37. “Human Rights: Due Diligence Policy to Safeguard the Reputation of the UN, Protect Civilians, and Foster Accountability,” United Nations Mission for Justice Support in Haiti, May 8, 2019, <https://minujusth.unmissions.org/en/human-rights-due-diligence-policy-safeguard-reputation-un-protect-civilians-and-foster>.



A girl washes clothes outside her house in the Malakal PoC. Photo Credit: Devon Cone/Refugees International.

ber 2017, South Sudan's council of ministers approved a hybrid South Sudanese-African Union (AU) court to prosecute perpetrators of human rights violations during the war, including CRSV.³⁸ Almost two years later, there has been no progress toward this desperately needed mechanism for accountability. The GoSS has yet to sign the proposed memorandum of understanding (MoU) with the African Union Commission (AUC) to move forward with this court; indeed, members of the South Sudanese government are now actively trying to block the court's creation.

Setting up the Hybrid Court for South Sudan is a clear part of the transitional justice initiatives to which all parties agreed in the 2015 ARCSS and the R-ARCSS. For South Sudanese civilians who experienced horrific abuses during the conflict to have any confidence in the current peace agreement, this court must be set up as soon as possible. An

IDP woman in the Malakal PoC told Refugees International, "The government is not serious about peace. There was so much killing and raping; people need to be held responsible before I can really believe in peace." Women and girls cannot rely on the leaders of South Sudan to address crimes against them during the war; soldiers loyal to the current leaders were often the perpetrators of these crimes. Nor should the international community be surprised that the GoSS is equivocating on the formation of a court that can implicate its forces in gross human rights violations.

As the authorized leader in establishing the Hybrid Court, the AU—with the support of the Troika (the United States, the United Kingdom, and Norway)—needs to ramp up significant political pressure on the GoSS if the government continues to stall and ignore its responsibility to provide some measure of justice, as outlined in Chapter V of the

38. "South Sudan: Stop Delays on Hybrid Court," Human Rights Watch, December 14, 2017, <https://www.hrw.org/news/2017/12/14/south-sudan-stop-delays-hybrid-court>.



Displaced men, women, and children living in the Malakal PoC gather to collect water at the tap stand.
Photo Credit: Devon Cone/Refugees International.

R-ARCSS. Even if the GoSS continues to drag its feet despite AU pressure, the AU should proceed with all possible steps to set up the court, including collecting evidence and recruiting personnel with gender and CRSV expertise.

Simultaneously, the UN Human Rights Council should renew the mandate of the Commission on Human Rights in South Sudan (CHRSS). The Commission is an independent body tasked with collecting, documenting, and preserving evidence of “gross violations and abuses of human rights and related crimes,”³⁹ including GBV, during the conflict. The Commission is necessary to provide crucial evidence of abuses for court proceedings. Absent the GoSS’s cooperation forming the Hybrid Court in a reasonable timeframe, the AU and the CHRSS still need to move forward. The conflict has affected women and girls so abhorrently that they deserve at least some measure of justice.

CONCLUSION

As South Sudan struggles to sustain relative peace and implement the R-ARCSS, violence against women and girls continues among IDPs and within society at large. Whether CRSV perpetrated by men in uniforms or violence at home, South Sudanese women and girls have an extremely high risk of experiencing GBV. Following an investigation, the CHRSS concluded “that sexual and gender-based violence remained the central feature of the conflict in South Sudan.”

The GoSS, UNMISS, NGOs, and South Sudanese people all claim they are committed to peace. For the country to truly have peace, however, the “central feature” of the conflict—that of sexual and gender-based violence—must be addressed. Perpetrators of atrocities need to be held accountable and, going forward, South Sudan must ensure that

39. “Commission on Human Rights in South Sudan,” United Nations Human Rights Council, <https://www.ohchr.org/EN/HRBodies/HRC/CoHSouthSudan/Pages/Index.aspx>.

women and girls know their rights and have confidence that when these rights are violated, the judicial system is capable of producing accountability. As one woman in Juba remarked, “The laws are beautiful on paper, but they are far from being implemented.”

Peace for women and girls in South Sudan is more than a cease-fire. Major cultural shifts and overall development in the country are needed, and patriarchal norms must make way for a more equitable society. Although these goals are important, they will take generations to be realized. In the meantime, there are concrete actions that the GoSS and all of those with an interest in South Sudan can take to ensure that women and girls are safer.

An IDP in Malakal cited an Arabic saying, loosely translated as “One cannot be the judge and be a player at the same time.” Without outside help and pressure, it is likely that nothing will change for women and girls in South Sudan. November 12—the deadline for full implementation of the terms of the peace agreement—is fast approaching. The coming months are crucial for determining past accountability and future progress.

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