



# **VIOLENCE BEGETS VIOLENCE**

**Justice and Accountability for Sexual and  
Gender-Based Offences in South Sudan**

*Draft Report*

A report by Justice Africa in partnership with CEPO and SSWLA  
Researcher, Alicia Elaine Luedke

Justice Africa, 1.05 Chester House, Kennington Park, 1-3 Brixton Road, London SW9 6DE

Tel: +44 (0) 207 354 8400 email: [ja@justiceafrica.org](mailto:ja@justiceafrica.org)

© Justice Africa, May 2016

# VIOLENCE BEGETS VIOLENCE

## Justice and Accountability for Sexual and Gender-Based Offences in South Sudan

*Draft Report*

Justice  Africa



## TABLE OF CONTENTS

4	<b>ABBREVIATIONS</b>
5	<b>LIST OF BOXES AND FIGURES</b>
6	<b>SUMMARY</b>
	<i>Overview</i>
	<i>Policy Considerations</i>
	<i>Methodology</i>
11	<b>HISTORY AND BACKGROUND</b>
	“Even if you cry, no one will help you”
	<i>Sexual and Gender-Based Violence Before the 15<sup>th</sup> of December 2013</i>
	<i>Sexual and Gender-Based Violence After the 15<sup>th</sup> of December 2013</i>
	Sexual and Gender-Based Violence on a “Day-to-Day” Basis
30	<b>DRIVERS OF SEXUAL AND GENDER-BASED VIOLENCE</b>
	“The girl is so precious...she is like an elephant tusk”
37	<b>CHALLENGES TO JUSTICE AND ACCOUNTABILITY</b>
	“There is no justice and that is why these things of rape are very rampant”
48	<b>PERCEPTIONS OF JUSTICE AND ACCOUNTABILITY</b>
	“If she has human rights she can choose another man”
55	<b>NEED FOR REFORM</b>
	“It will cause madness...we will all walk naked”
	<i>Conclusions</i>
63	<b>ACKNOWLEDGEMENTS</b>
64	<b>ANNEX</b>
	<i>Annex 1</i>
65	<b>NOTES</b>

## **ABBREVIATIONS**

AU – African Union	PTSD – Post-Traumatic Stress Disorder
AUICSS – African Union Inquiry Commission on South Sudan	RVI – Rift Valley Institute
CCCM – Camp Coordination and Camp Management	SAF – Sudan Armed Forces
CPA – Comprehensive Peace Agreement	SAS – Small Arms Survey
CRSV – Conflict-Related Sexual Violence	SEA – Sexual Exploitation and Abuse
CSEC – Commercial Sexual Exploitation of Children	SGBV – Sexual and Gender-Based Violence
DPKO – Department of Peacekeeping Operations	SOFA – Standard of Forces Agreement
FGD – Focus Group Discussion	SPLA – Sudan Peoples Liberation Army
GBV – Gender-Based Violence	SPLA IO – Sudan Peoples Liberation Army In Opposition
GBV-IMS – Gender-Based Violence Information Management System	SPLM/A – Sudan Peoples Liberation Movement/Army
GOSS – Government of South Sudan	SPU – Special Protection Unit
HCSS – Hybrid Court of South Sudan	SSDF – South Sudan Defense Forces
HIV – Human Immunodeficiency Virus	SSHRC – South Sudan Human Rights Commission
HRW – Human Rights Watch	SSLS – South Sudan Law Society
ICC – International Criminal Court	SSPS – South Sudan Police Services
ICG – International Crisis Group	STI – Sexually Transmitted Infection
ICTR – International Criminal Tribunal of Rwanda	UNDP – United Nations Development Program
IDP – Internally Displaced Person	UNFPA – United Nations Population Fund
IGAD – Inter-Governmental Authority on Development	UNMISS – United Nations Mission in South Sudan
INGO – International Non-Governmental Organization	UNPOL – United Nations Police
IPV – Intimate Partner Violence	UNOHCHR - United Nations Office of the High Commissioner for Human Rights
MSF – Médecins Sans Frontières	USIP – United States Institute of Peace
NFI – Non Food Items	VAW – Violence Against Women
NGO – Non-Governmental Organization	WASH – Water, Sanitation and Hygiene
OAGs – Other Armed Groups	
POC – Protection of Civilian	

## **LIST OF BOXES AND FIGURES**

### Charts & Tables

- 26 Chart 1. Gender Differences in Whether it Possible for a Man to Rape his Wife
- 39 Chart 2. Do You Think That Men and Boys Can Be Raped?
- 51 Chart 3. Preferences for Punishment of SGBV-Related Offences

### Boxes

- 23-24 Box 1. Sexual Transgression vs. Sexual Violence: Defilement, Adultery, Elopement and Deception
- 28 Box 2. Sub-National Variation in Sexual and Gender-Based Violence
- 33-34 Box 3. Bridewealth, Stigma & Sexual Violence: Married versus Unmarried Women
- 42-43 Box 4. Assistance without Protection
- 46 Box 5. Jurisdictional Vacuums in UNMISS Protection of Civilian (POC) Sites
- 55 Box 6. Addressing SGBV Crimes Committed in the Conflict

## SUMMARY

### **Report Overview**

The mass coverage of rape and other-related offences since the start of the conflict in South Sudan in December 2013 has highlighted the horrific scale of civilian abuse, shedding a much needed gender perspective onto violence dynamics in the country. Detailed accounts of sexual violence at the hands of South Sudan's warring parties and their related forces have come to dominate commentary on the country's conflict, suggesting that women's (and at times men's) bodies are among the battlefields where the war is being fought. Both the government under the Sudan Peoples Liberation Army (SPLA) and the opposition under the SPLA-In Opposition (IO), as well as other armed groups (OAGs), have been accused of using sexual violence as a "weapon of war," offences that have been labeled "war crimes" and "crimes against humanity."<sup>12</sup>

Drawing on in-depth interviews and focus-group discussions with around 360 research participants across three field sites (Juba, Mingkaman and Akobo), this report attempts to clarify some of the oft-noted assumptions about sexual and gender-based violence (SGBV) in South Sudan's conflict, while at the same time emphasizing South Sudanese understandings of SGBV and preferences for redress for sexual crimes. While the report documents and details some of the sexual violence atrocities committed by the warring parties since the start of the conflict in December 2013, it also demonstrates that an exclusive focus on sexual violence by armed actors in South Sudan can be misleading in terms of the actual SGBV-related security concerns of families and communities, as well as the realities of local-level violence. One of the key findings of the report is that, the lack of accountability for acts of sexualized and gendered violence in the country contributes to what has been referred to elsewhere as "cycles of violence within violence"<sup>3</sup> where one form of violence begets another.

The report makes a number of interrelated claims along these lines. First, despite common wartime tropes of rape and other-related offences as a "weapon of war," sexual violence in South Sudan is not *merely* a "terror tactic." While there is some evidence to suggest that sexual violence has been used as a weapon of war, other instances of rape and other-related offenses appear to be far more indiscriminate, the result of indiscipline and/or a compensation mechanism/recruitment incentive for participating in violence. In the face of a collapsing economy, for example, government soldiers' and their allied forces have been said to extend the license to loot and pillage, where combatants are paid in "what they loot and the women they abduct."<sup>4</sup> Further investigations and prosecutions of war crimes and crimes against humanity, therefore, need to search for evidence above and beyond that of an explicit *strategy* of wartime sexual violence. Failing to make this distinction would be denying recognition to a large number of victims and survivors. Either way, perpetrators in South Sudan have to be held accountable – "[u]nlike a stray bullet, rape is always intentional – whether it's ordered from above or emerges from below."<sup>5</sup> And as illustrated by the International Criminal Court (ICC) indictment of former Democratic Republic of Congo (DRC) Vice President Jean-Pierre Bemba, failing to prevent subordinates from

committing gross violations of human rights, including sexual crimes is a cause for conviction.<sup>6</sup>

Second, notwithstanding the current focus of reports on SGBV by the warring parties since December 2013, as mentioned above there is also a need to pay attention to the kinds of offences that South Sudanese experience on a daily basis, including forced and/or early marriages, domestic and intimate partner violence (IPV) and marital rape. While a number of South Sudanese told us extraordinarily harrowing stories of sexual assault at the hands of government and opposition forces, more often than not, the main SGBV-related security concerns of families and communities reflected other, less publicized forms of gendered and sexualized harm. As the report highlights, conflict-related sexual violence does not occur in a vacuum<sup>7</sup>: it is conditioned by, and exists alongside more “everyday offences,” such as the rise in domestic violence inside South Sudan’s various internally displaced person (IDP) sites. Although justice and accountability is critical for war crimes and crimes against humanity, there is also “a need to respond to everyday justice issues.”<sup>8</sup>

Last but not least, the report examines the different ways in which impunity for sexual crimes leads to cycles of violence at different levels of South Sudanese society – both in terms of the revenge attacks, or “punishment rapes”<sup>9</sup> tied to the wider conflict, as well as retaliatory violence enacted at local levels between communities and families. This is also the case for individuals where one form of SGBV leads to another, for instance, customary solutions to rape, which dictate that a survivor wed her attacker, with rape leading to forced and/or early marriage and domestic abuse. Indeed, the research findings presented in this report add to the volume of already existing evidence on how politically and socially embedded violence and atrocity are in South Sudan in general, and against women and girls in particular. Developing accountability mechanisms that cater to *all* experiences of injustice is one of the foremost ways of ensuring that survivors of sexual violence can seek redress, interrupting the cyclical relationship between impunity and continued violence.

### ***Policy Considerations***

Addressing SGBV requires a long-term approach that recognizes the lasting impact of SGBV on individuals, families and communities and the cycles of violence it perpetuates. Strategies aimed at mitigating and responding to SGBV, therefore, need to proceed with the view that South Sudan is more than just a “perpetual emergency” and try to remedy the accountability gaps *that both characterized and predated* the current conflict. This does not mean blindly promoting access to justice at the statutory level, without first considering whether justice mechanisms exist, or are functional. In fact, at the current juncture it may actually make little sense to speak about access to justice, as this often entails sending survivors into systems that do them more harm than good. While addressing gaps in current statutory legislation can be significant, both in terms of the advocacy *process* and in ensuring that the laws of South Sudan adequately reflect lived experiences of sexual violence, improving formal legislation is not a panacea for addressing SGBV. As Justice Africa and their partners discovered during separate community consultations, many civic initiatives are about providing oversight into formal processes, without recognition that state structures, including the justice sector are absent for most people.



The same could also be said of transitional justice. Chapter V of the August 2015 Compromise Peace Agreement includes provisions for the establishment of a Commission on Truth, Reconciliation and Healing (CTRH), a Hybrid Court for South Sudan (HCSS) and a Compensation and Reparations Authority (CRA). However, these processes are likely to be slow and may not be able to immediately provide a locally acceptable form of justice. As such, there must be other ways for South Sudanese communities to reconcile incidences of SGBV before, during and after whatever transitional justice transpires in South Sudan. As the report points out, if there are no viable means for resolving disputes surrounding sexual violence, including atrocities committed by the warring parties, the result will only be further violence. Strengthening community responses to SGBV while at the same time rectifying practices that re-victimize survivors can help facilitate a long-term process of judicial reform and contribute to the resiliency of South Sudanese to resolve issues in the absence of formal structures of accountability.

Although a majority of the participants interviewed communicated a strong preference for retributive forms of justice for sexual crimes due to their perceived deterrent quality and the likelihood that such solutions would reduce the probability of an escalation of further violence, a number of people also conveyed a desire for customary compensation geared towards social repair. Thus, policies aimed at supporting and strengthening community and judicial responses to SGBV must be mindful of South Sudan's unique socio-political and legal context and recognize the value of "localizing" serious crimes to encompass aspects, such as customary compensation.<sup>10</sup> This is especially important for the statutory justice system, which is largely viewed as "alien" to people on the ground.<sup>11</sup> As the research found, there has been a negative response to the universalizing tendencies of the kinds of liberal human rights frameworks that are often associated with statutory law and the efforts of international actors to promote human rights. Hence, attempts at reform in the country that are not couched in South Sudanese terms will likely be met with resistance.

More effort also needs to be made to combine emergency response and short-term crisis management with long-term peace and development goals. Although humanitarian relief is vital, a focus on life saving measures and immediate needs is not enough to prevent sexual crimes from resulting in further violence between individuals, families and communities in South Sudan. What is needed instead is a balanced approach where equal weight is given to post-incident care and prevention. When this research was being conducted in 2015 the word 'prevention' was hardly employed, and when it was it often came in the form of one-off trainings with customary and statutory authorities aimed at behavioral change, or awareness raising through mass-messaging, which have had little effect on improving conditions for the South Sudanese women, girls, men and boys who are subject to SGBV. This trend appears to have shifted in 2016 with the majority of emphasis now placed on prevention. Yet, just as post-incident care necessitates a prevention strategy, prevention also requires post-incident care.

Further research is definitely needed to understand the full scope of the SGBV problem in South Sudan. As the research findings show, there is significant variation in the patterns and types of SGBV experienced by South Sudanese in various parts of the country, which have

to be considered when designing programmes and policies. There is also a need to better comprehend South Sudanese understandings of sexualized and gendered violence. This is especially true when it comes to the rationale of those who perpetrate acts of sexual assault. Though the research here emphasizes male perceptions of sexual violence, including the perspectives of commanders and combatants, this report is only a preliminary step in that direction. As highlighted elsewhere, “[i]n order to understand how injustice is produced and experienced by individuals, we have to take seriously the perpetrators of [such] violence.”<sup>12</sup> Additionally, as has been noted before in relation to conflict-related sexual violence in places like the DRC, exploring the ways in which individuals and groups responsible for sexual violence think about acts of rape and other-related offences can serve as an important tool for thinking about the conditions that lead to the acceptance, or rejection of practices of sexual assault.<sup>13</sup>

Finally, even though sexual violence has always been a problem in South Sudan’s past conflicts and in people’s daily lives, there is more attention to SGBV in South Sudan than ever before. In 2014, for instance, a Communiqué was signed between the Government of South Sudan, the SPLA-IO and the UN Special Representative on Sexual Violence in Conflict, Zainab Bangura, to outline a strategy for managing sexual offences, including command responsibility for the armed forces, as well as broader reforms, such as strengthening current legislation and developing new laws and national policies for preventing SGBV. To capitalize on this newfound attention, national and international actors will have to pay attention to the real and perceived concerns and realities of South Sudanese. At the same time, they will also have to think critically about how to promote community and judicial solutions to SGBV that are sensitive to South Sudan’s context and recognize that, left unaddressed, SGBV will continue to propagate further violence.

## **Methodology**

Data collection occurred between June and August 2015 and entailed visits to three separate field sites, including Juba, Mingkaman and Akobo (see Annex 1 for description of the field sites). The researcher conducted in-depth interviews and focus group discussions (FGDs) with over 100 participants per field site. The interviews encompassed a number of different actors, including government and opposition authorities, law enforcement officials, commanders, combatants, civil society representatives, international non-governmental organizations (INGOs), IDPs, men, women, youth and adolescents, including sexual violence survivors and witnesses. The research prioritized the perceptions and views of South Sudanese, while at the same time providing basic descriptive statistics for some of the key findings. Not surprisingly, given the paucity of reliable data on sexual and gender-based offences in South Sudan we were unable to acquire accurate figures on incidences. To remedy this gap the research included a number of interviews with social workers, health care providers, police, prosecutors and sexual violence survivors, themselves. The research is primarily qualitative since qualitative documentation of peoples’ experiences helps to shed light on local understandings and perceptions, and moves beyond seeing sexual violence as just a numbers issue, which often fails to capture the true nature of sexual abuse and its consequences for individuals, families and communities.<sup>14</sup>

The subject matter of the research is incredibly sensitive, particularly considering the politicization of rape and other-related offences since the outbreak of the war, as well as the enormous levels of stigma and social opprobrium for survivors in South Sudan. Many survivors were not able or willing to talk about the nature of their experiences in first person, often narrating their stories from the perspective of a “witness.” Repeated visits was one way in which to gain the trust of survivors, however, the preference was to be very cautious and collect stories from individuals who approached us, and provide the space for people to narrate their experiences from whatever point of view they were most comfortable with. Another challenge encountered was the disincentives for reporting abuses by warring parties. For people living in government-held areas, it is taboo or dangerous for women to lodge allegations, or complaints against the SPLA.<sup>15</sup> The same was said of women living in opposition-controlled areas who felt that speaking out about SGBV and issues like survival sex would be tantamount to a betrayal of the SPLA-IO. This phenomenon has also been noted with respect to survivors from the last civil war, as well.<sup>16</sup> Moreover, access to perpetrators was a significant challenge. Although this was never a direct objective, the research was limited in terms of understanding the rationale of those who carry out sexual violence. The equal focus on male and female respondents, however, including commanders and combatants, provided some means for grasping perspectives that could be driving sexual violence.

## HISTORY AND BACKGROUND

### “Even if you cry, no one will help you”

#### *Sexual and Gender-Based Violence Before the 15<sup>th</sup> of December 2013*

Despite local-level narratives about the relative absence of sexual violence in South Sudan’s past conflicts, the kinds of sexual offences witnessed in the last two years are by no means new. Historically speaking, the rape of women, children and other vulnerable groups was viewed as dishonorable, forbidden by customary rules of war amongst Nilotic groups.<sup>17</sup> However, practices changed during the 1983-2005 conflict with the North.<sup>18</sup> This is particularly true of the period following the breakdown of Southern unity in the 1990s. After the fracturing of the SPLA in 1991, women, children and the elderly, once reportedly protected from sexual assault, became the primary targets of such violence.<sup>19</sup>

Though not well documented, sexual violence committed by rival factions of the SPLA was considered rampant, with rape employed as a “tool of war.”<sup>20</sup> Traditional rules of warfare were broken as the SPLA and its opponents, including the SPLA-Nassir and later the SPLA-United abducted women and girls as sex slaves and wives.<sup>21</sup> Southern forces were alleged to “rape...[women and girls] and take the ones they liked.”<sup>22</sup> During military raids into factional territory “rape, abduction, forced marriage, and survival prostitution were all common place.”<sup>23</sup> There are even recorded instances where warring Southern parties would take women and rape them until they became pregnant with enemy children.<sup>24</sup> Southern militias, including the SPLA, were also known to commit brutal rapes of wives on top of their husbands in abhorrent acts of humiliation.<sup>25</sup> It was said to us that this kind of humiliation and intimidation sometimes ended up serving as an incentive for people to join the SPLA so that they could protect their families and communities from “inside” the movement.<sup>26</sup> Unfortunately, most new recruits were transferred outside of their home areas, which limited their ability to protect their families from abuse.<sup>27</sup>

While precise statistics on the scale of sexual violence in the last war do not exist, a 2009 GBV assessment found that 33 per cent of people during the last war had witnessed the rape of a women, 10 per cent had been raped themselves, nine per cent had traded sex for food and eight per cent reported sexual slavery and forced prostitution.<sup>28</sup> In another study conducted by the Small Arms Survey (SAS), all women interviewed spoke about being raped or knowing a family member who had been raped by the Sudan Armed Forces (SAF), SPLA, South Sudan Defense Forces (SSDF), or OAGs.<sup>29</sup> As one respondent remarked to SAS:

*“A group of women, friends of my wife, were walking from Wau to Juba when they were captured by SPLA soldiers. They were tied to a tree and abused for days; raped and used like a toilet...The SPLA were like animals then, totally out of control.”<sup>30</sup>*

This lack of discipline amongst Southern forces was met with little sanction from their commanders. Like many other liberation movements in the region, the SPLA initially prided itself on preventing violence against civilians.<sup>31</sup> The movement had an elaborate code

of rules that regulated the behavior of troops, known as the Sudan People's Revolutionary Laws, which dictated death by firing squad for anyone found guilty of committing acts such as rape.<sup>32</sup> While these rules were thought to be more than “paper tigers,”<sup>33</sup> existing evidence suggests that disciplinary measures were rarely enacted or followed up on. In one example, a SPLA combatant raped a girl he encountered by the river and the girl's father went with her to the combatant's commander who arrested him, only to release him after the father left.<sup>34</sup> A 1993 Human Rights Watch (HRW) report on intra-South violence during the last war noted that, “punishment for the most egregious and widespread human rights abuses is profoundly lacking in both factions [of the SPLA]” citing that, “neither faction demand[ed] that its soldiers and officers be held responsible for wrongful acts...including...rape.”<sup>35</sup> The report also said that the military code of conduct was often applied in an ethnically discriminatory manner wherein which Dinka soldiers were transferred for rape, whereas other ethnic groups were shot on the spot.<sup>36</sup>

High levels of militarization with low levels of accountability resulted in the production and reproduction of other forms of sexual and gender-based violence, causing an increase in less publicized acts of violence against women and girls, as well. Indeed, Dr. Jok Madut Jok noted:

*“[b]eyond the usual ways in which...violence in Sudan affects women and children – through rape, abduction, sexual slavery, and labor exploitation, it is also important to draw attention to how women live with such violence on a day-to-day basis.”<sup>37</sup>*

Commonplace even today, forced and/or early marriages were widespread during the last civil war, as underage girls entered into marriages as a protection strategy from sexual assault and/or in order to generate livelihood opportunities for their family through the exchange of bridewealth.<sup>38</sup> At the same time, there was a restructuring and break down of norms around marriage and family life, leading to higher demands on women's productive and reproductive capabilities.<sup>39</sup> Rules respecting sexual taboos, such as the “weaning taboo,” which prevented sexual relations during breastfeeding, were broken, as men were urged to expose their wives to pregnancy to replenish the reserve of male fighters.<sup>40</sup> Women were raped not only by soldiers, but also by their husbands. Moreover, many civilian men felt emasculated, unable to protect their families, which when combined with the increase in alcohol and drug abuse, resulted in increased levels of domestic and intimate partner violence.<sup>41</sup>

Not surprisingly, SGBV did not end with the 2005 Comprehensive Peace Agreement (CPA). The term “post-conflict” is relative, especially in South Sudan where localized violence and inter-communal fighting were routine even after the signing of the CPA in 2005 and independence in 2011. In the same 2009 GBV assessment referenced above, 41 per cent of respondents said that they experienced some form of GBV in the last year, including physical violence, psychological violence, economic violence and sexual violence.<sup>42</sup> More than half of the women surveyed, 59 per cent, reported incidences of GBV in their home and an additional 19 per cent reported incidences of GBV in their communities.<sup>43</sup> At a social level in South Sudan ‘day-to-day’ forms of gendered and sexualized violence seems to often be tolerated with most people viewing it as a private matter - turning a blind eye to domestic



and/or intimate partner violence. This attitude often means that violence against women is rarely considered a matter of importance, particularly when it comes to police intervention and criminal justice. A 2013 study, for instance, found that 82 per cent of women and 81 per cent of men agreed that, “women should tolerate violence in order to keep their family together.”<sup>44</sup>

In addition to sexual and gender-based violence at home and in the community, rape and sexual torture by the integrated security services after South Sudan’s independence was considered to be widespread, with reports of police brutally raping women and girls.<sup>45</sup> Undisciplined and “renegade” soldiers were also said to go around indiscriminately looting and raping civilians. According to the UN Secretary-General, in 2012:

*“[s]everal communities located near SPLA camps or barracks reported sexual violence, particularly rapes, perpetrated by SPLA soldiers. These communities reported that they felt that SPLA operated in their areas with impunity, and that they frequently could neither protect themselves from such abuses nor seek redress.”<sup>46</sup>*

There was also an increase in cattle-raiding and inter-communal fighting, especially in places like Jonglei State where low level attacks between militias shifted to more savage assaults on civilians.<sup>47</sup> In 2009, for example, Médecins Sans Frontières (MSF) recorded eight attacks where women and children were targeted. In one clash between two sub-clans of the Nuer in Jonglei State – the Lou and the Jikany - women were said to have been killed in the process of being raped with blunt foreign objects.<sup>48</sup> The Jikany said that these attacks were the result of retaliatory violence for grievances that had begun sometime during the last civil war.<sup>49</sup> Apparently taking cattle was not even a direct objective anymore, with rival groups cited as saying “[t]his time is for killing only. Just to revenge our women.”<sup>50</sup> There are also the oft-noted incidences of sexual violence that accompanied the South Sudan Government’s disarmament campaigns, where women and children were said to be subject to unlawful killing, torture and other forms of sexual violence by the SPLA and the South Sudan Police Service (SSPS) Auxiliary Force.<sup>51</sup>

Similar to the failure to prosecute combatants for sexual and gender-based crimes in the last civil war, perpetrators of sexual offences post-2005 were rarely brought to justice. Whether state security forces, cattle camp youth participating in cattle raids, or fellow community members, individuals and groups responsible for sexual crimes have been able to consistently escape punishment. While part of this has to do with normalization of violence against women in South Sudanese society, the involvement of national armed forces and the interplay between unaddressed grievances and the historical lack of accountability makes justice for sexual and gender-based violence a difficult undertaking. In the case of the national army, a weak and inefficient statutory justice system characterized by a lack of judicial independence, together with the controversial nature of investigations involving the SPLA, means that military officials are seldom tried in civilian courts.<sup>52</sup> As referenced above in relation to fighting between the Jikany and Lou Nuer in Jonglei State, past enmities, many of which stem from the intra-South violence during the 1983-2005 conflict also act as a powerful justification for increasing the scale and intensity of violence, including sexual violence.

## ***Sexual and Gender-Based Violence After the 15<sup>th</sup> of December 2013***

This section goes into much more detail about the nature and patterns of sexual and gender-based offences since December 2013. It looks at the abuses directly linked to the warring parties, namely the SPLA and the SPLA-IO, as well as the less publicized forms of SGBV that South Sudanese continue to experience on a daily basis. We attempt to document the types of SGBV that respondents felt most important and possible motivations for such violence. While the sheer magnitude of sexual crimes committed in the context of the current war have shocked many, as highlighted in the preceding portion of this report, wartime sexual violence is not new to South Sudan. And just as quickly as the conflict started, the warring parties were accused of the same kinds of sexualized and gendered violence that marred the South during the 1983-2005 war.

The most widely reported of these offences appears to be rape and gang rape, described to HRW as “just a normal thing” in mid-2015.<sup>53</sup> In the three field locations that we visited, women consistently expressed a preference for rape over the other atrocities that they were forced to bear witness to. As one IDP woman in Akobo County told us:

*“...things are happening when we left. The women were raped...[this is] a minor issue because they are killing women...being raped is less.”<sup>54</sup>*

In a report on violence in Unity State it was noted that because men are seen as the primary targets of murder, the rape of women is often weighted against this, with rape “...deemed comparably preferential.”<sup>55</sup> At times this has meant that women choose to leave the Protection of Civilian (POC) camps in search of firewood and food knowing that they will likely, “only be raped” versus their husbands and brothers who are at a greater risk being killed.<sup>56</sup> Additionally, many women were given the harrowing choice to either be raped or be killed. As government soldiers told one Nuer survivor we interviewed in Juba: “[s]he is not killed, she is alive, so we will rape her.”<sup>57</sup> A Dinka women raped by opposition fighters told us that when she was hiding in the bush with her family they were ambushed by soldiers, her mother refused to be raped and was shot – “for me, I gave in and I was raped,” she said.<sup>58</sup> In fact, a number of female respondents told us how:

*“the best they could do was give their bodies so that they could survive being killed.”<sup>59</sup>*

Most of these reported incidences of rape were carried out by multiple perpetrators. Women were abducted by men in uniform and taken to secluded areas where different men would repeatedly rape them. In one incident from December 2013 in Juba recorded by HRW, a Nuer woman’s Dinka boyfriend picked her up from the UNMISS camp in Tongping and took her to a house where he and eight other men raped her, after which they dropped her back off at the camp.<sup>60</sup> Some of these rapes also involved penetration with foreign objects. In another case in Juba in December 2013 recorded by Amnesty International, a woman was gang raped by 15 government soldiers over approximately three hours.<sup>61</sup> The soldiers were alleged to have also thrust sticks into the vaginas of other women, resulting in internal injuries. It is believed that some of the women involved died as a result.<sup>62</sup> We also heard eye witness accounts about the violence that had occurred around an Episcopal Church in Bor

during December 2013, where opposition forces were said to have used sticks to destroy the reproductive organs of women they had already gang raped and killed. There are also the more recent reports of “rape camps” established by the Government and their allied militias in Unity State in 2015, many of which are believed to be in Mayom County. Indeed, as the recent assessment by the UNOHCHR found, armed militias, mostly from Mayom, or Koch would commit sexual violence as part of a “do what you can and take what you can” agreement.<sup>63</sup> After killing the young boys, it was reported that soldiers came through villages around Koch county abducting women and girls.<sup>64</sup> Once at these “rape camps” the women would be forced to have sex with multiple men during the night. Whereas the younger girls were distributed as “wives,” it was reported that older women were held in the cattle carrels and tied to polls in groups of 25.<sup>65</sup> In the evenings they would be retrieved to have sex with up to ten men in one night.<sup>66</sup>

It is worth noting, as well that it is not just women and girls who are the targets of rape and gang rape. Although massively underreported due to the heightened levels of stigma, men and boys have also been subject to this kind of sexual violence. A Nuer woman who escaped from Bor to Akobo informed us that in the initial days of fighting in Bor in December 2013 she had witnessed the rape of two boys, one of nine and one of ten.<sup>67</sup> She said there were three government troops, two of which participated in the act, while the other stood guard and watched. While there are reports of girls as young as two being raped, most of the victims of attacks by armed groups are adolescent age (12-18). This is also reflected in a statement that the Special Representative of the Secretary-General on Sexual Violence in Conflict, Zainab Bangura, made in October 2014, in which she noted that, 74 per cent of the victims of sexual assault in South Sudan were under 18.<sup>68</sup> As adolescent girls in a focus group discussion in Mingkaman told us, “it is we...[who] are captured by the raping.”<sup>69</sup>

Some of the incidences of SGBV tied to the larger conflict between the government and the opposition seem to be perpetrated as part of a collective targeting occurring along a strategic logic, whether that be forcible displacement, or thwarting the survival of rival groups. Based on the evidence collected by other human rights organizations, as well as the evidence we collected, females (and at times males) are targeted for sexual violence as a direct result of their ethnic and/or political affiliation, with government forces asking “where are the Nuer women,” and opposition forces searching out Dinka and Shilluk<sup>70</sup> women.<sup>71</sup> In one oft-noted example in Bentiu in April 2014 it was reported that opposition forces used the local radio station to broadcast hate speech, or what one reporter referred to as “rape speech,” inciting people to rape Dinka women and other ethnicities supportive of the Government, an incident that the reporter called “chillingly reminiscent of Rwanda’s genocidal ‘hate radio’.”<sup>72</sup> It is clear that the conflict has provoked pre-existing and new hostilities, a reality that has materialized in cycles of revenge, or “punishment rapes,”<sup>73</sup> that have taken on a worrying ethnic dimension. As a sexual violence survivor told a reporter, “[i]t’s a war revenge thing. Revenge war. Where you go and do something that has been done to your people.”<sup>74</sup> This was also apparent in our interviews with the White Army in Opposition-held territory who told us this when asked how they felt about the use of rape in the current conflict:



*“this one [rape] will increase the power of us. We feel very mad. [This is] why we went to that side of Bor...When the fighting happened in Juba in 2013...we heard of this thing of rape, even male rape...We didn’t like it.”<sup>75</sup>*

This “weapon of war” or revenge dynamic also presented itself in our interviews with sexual violence survivors. When the SPLA recaptured Bor Town in December 2013, for example, they were conducting house-to-house searches when they found a woman who had been gang raped by opposition fighters. According to the woman, government troops identified her as Dinka by checking for her scarification (traditional facial and body scarring used to distinguish ethnic groups) and opening her mouth to see that her lower anterior teeth had been removed (a type of dental extraction linked to tribal identity amongst Nilotic groups), after which they took her to the hospital.<sup>76</sup> Another woman told us about how a group of opposition soldiers were divided over whether to rape her given that she was Nuer on her mother’s side and Dinka on her father’s side. After an argument ensued between the four men present, two of them still decided to rape her, while the other two left in protest.<sup>77</sup>

The strategic nature of rape and gang rape also appears to be the logic driving other forms of SGBV, including sexual mutilation. The castration of young boys has been a relatively consistent feature of the conflict. In June 2014 it was reported that women were being detained and gang raped, forced to watch their young sons be castrated and bleed out. Boys were “singled out on ethnic lines”,<sup>78</sup> a trend that was also evident during the government offensive in southern Unity in 2015.<sup>79</sup> In South Sudan, where most local societies are patrilineal and social organization is based on male lineage lines, this kind of violence has a clear ethnic dimension by both literally and figuratively cutting off the lifeline of communal survival for certain groups. When asked about this kind of violence one male participant living in an IDP settlement in Juba remarks, “[t]hey don’t like people to produce...It is a policy to reduce the number of men in the future.”<sup>80</sup> It is not surprising that research participants associated castration with the “tribal” aspect of the current conflict:

*“this one of castration...[is] because it is fighting on tribal lines. In fighting with North Sudan, this didn’t happen. They are doing it because it is a tribal conflict and not a government conflict. The boy will not produce tomorrow.”<sup>81</sup>*

This distinction between “tribal conflict” and “government conflict” is evidence of the fact that sexual violence on the ground is driven, at least in part, by local-level antagonisms. It also reflects historical developments during the last civil war. After the split in the SPLA in 1991 there was an attempt by educated elites to convince civilians that there were two types of war – government wars and homeland wars.<sup>82</sup> Whereas violence committed during government wars was considered to be free of social risk, violence in homeland wars was thought to be morally and ethically deplorable.<sup>83</sup>

The use of sexual violence as a “terror tactic” is also characteristic of the smaller bouts of inter-communal violence that have persisted against the backdrop of the larger conflict. During inter-communal clashes in Lakes State, throughout 2014 and 2015, women were allegedly raped in revenge attacks between Dinka sub-clans. In Western Equatoria too,

Dinka cattle raiders supported by elements of the SPLA also allegedly “took their revenge on the local population.”<sup>84</sup>

That being said, the ethnic dimension of sexual violence is just one of many patterns of violence by armed groups. Indeed, as has been noted elsewhere, tribal affiliation is just “one component of a complex web of political power, marginalization, competition over resources and unaccountable governmental structures” in South Sudan.<sup>85</sup> In some instances rape and other related offences seem to be indiscriminate, or part of a larger repertoire of violent atrocities perpetrated against civilians, some of which are not easily linked to the strategic objectives of warring parties. Like other conflicts in the Great Lakes and Horn of Africa Regions, sexual and gender-based violence in South Sudan serves numerous and diverse purposes<sup>86</sup> above and beyond that of a “weapon of war,” rationales that are difficult to untangle when it comes to both the form and the intention of sexual abuse. The “rape camps” mentioned in a preceding paragraph, for example, might be tied to a larger strategy aimed at impregnating “enemy” women. As one respondent told a reporter, government forces were choosing “the most beautiful ones to take as wives...to produce children.”<sup>87</sup> At the same time, however, it was also said that soldiers “pay is what they loot and the women they abduct,”<sup>88</sup> lending credence to the idea that rape camps are also a form of compensation for combatants and/or a recruitment incentive for participation in the conflict. To be clear, this does not necessarily mean that soldiers are being directed to use sexual violence in the absence of monetary, or other forms of material compensation. Rather, in giving soldiers *carte blanche* for all manners of behavior, sexual violence emerges as a common practice, or manifestation of a purposeful lack of command responsibility.

Like rape and gang rape, abduction has been widely reported since the outbreak of the conflict, and is a type of violence that sometimes encompasses multiple and overlapping motivations, some of which are not sexual in nature. While the fate of abductees often differs, in most instances the abduction of women and girls involves sexual slavery and/or forced marriage. In terms of “forced marriage,” which is slightly different than a female’s relatives coercing her to marry a man, the “wife” is usually forced to become the spouse of her abductor, or sometimes someone else, after which she essentially becomes a “sex slave.” In December 2013, for instance, Amnesty International recorded cases where Nuer women were stopped on the streets of Juba by SPLA soldiers and taken to unknown locations and raped, after which the survivors were taken as so-called “wives.”<sup>89</sup> A Nuer survivor of forced marriage narrates her experience to us in one of the POC camps in June 2015:

*“When the fighting...erupted in Juba I was at a school in Malakal...[I went] to Renk and the parents went to Nasir...trying to escape to Renk...there were some Dinka sleeping there [on the road]. The driver didn’t stop and then the Dinka started shooting. The driver was shot and so were two others. I jumped outside the car, but the Dinka took me. [They] didn’t kill me because I speak Dinka. They took me to Renk [and] they did something bad to me there. They forced me to be a wife. The time I was with those people, they beat me...when I refused to do something...They make me a maid and then they beat me.”<sup>90</sup>*

Because of the commonality of early/child marriage in South Sudan, the same fate usually exists for young girls, who are either sold for their value in bridewealth, amounting to

human trafficking, or forced to marry their abductor.<sup>91</sup> Akin to the “rape camps” described above, there are other documented cases where women are captured and repeatedly raped, compelled to offer their sexual services without being conferred the status “wife.” On other occasions, the violence that women and girls endure after being abducted by armed groups is not sexualized, taking on the form of domestic servitude or slavery. For instance, HRW documented cases where Bul Nuer fighters allied with the government abducted women in southern Unity in May and June 2015 and forced them to act as porters, transporting looted goods back to their home areas after which they allowed them to return home.<sup>92</sup>

Similar to rape and gang rape, abduction does not only affect women and girls. In fact, one of the most widely cited examples of abduction in South Sudan is arguably related to the abduction of young boys as child soldiers. One documented example was the forced recruitment of at least 89 schoolboys from Wau Shilluk reported by UNICEF in February 2015. While it has been debated whether child soldiering constitutes a form of gendered violence, we have included it here since this kind of abduction is targeted against boys specifically and is often justified by normative assumptions about the militarized and masculine male fighter.<sup>93</sup> Furthermore, when asked, “*what are the main forms of sexual and gender-based violence affecting you and your communities,*” many of the adolescent males that we spoke to during the field research talked about their fear of forced conscription by armed groups. As one boy told us:

*“I was taken to be a soldier when I was 15 years and I ran from one village to another village...When you get some soldiers in Jonglei they will catch you and then they take you to the field of recruitment for soldiers.”<sup>94</sup>*

A boy abducted by a government commander and taken to the training camp tells HRW:

*“I was conscripted, put into a cattle corral, held there and [then] we were taken to the training camp, there were three cars of us [boys] ... we were taught to stand still for some hours - if you faint you get beaten.”<sup>95</sup>*

Along these lines, not all forms of sexual and gender-based violence in conflict fit neatly into a “weapon of war” category. One such trend is the sexual assault of women around the various POC camps in the country. Women leave the camps in search of food, firewood or other items, such as grass for grass-thatched roofing for their *tukul's* (traditional housing) and are raped by armed men just outside the camps perimeters.<sup>96</sup> In Malakal, a 20-year old woman told Amnesty International about how when she left the POC in February 2014 to go get flour she was raped by two opposition soldiers who took her to a nearby area in a vehicle and sexually assaulted her throughout the night, after which they returned her to the UNMISS camp.<sup>97</sup> As one social worker in Juba working in the non-UN protected IDP settlements noted, women who leave the camps are taken at gun-point and raped – “even if you cry, no one will help you,” she said.<sup>98</sup>

In most cases these sorts of assaults by armed men right outside IDP camps are connected to food security and survival issues. For example, many women living inside the camps often rely on the sale of firewood, which they have to collect outside. Due to the scarcity of

resources these women have to walk upwards of four hours to find suitable wood during which time they face acute security risks. Displaced women from Koch County in Unity State told HRW that when they went to collect firewood in early June 2015 they saw a group of women running in the opposite direction saying that four of the women they were with were captured by government troops.<sup>99</sup> Both men and women interviewed by an INGO in Bentiu POC said that there was fear of soldiers, raping, beating and killing women when they went out to collect firewood.<sup>100</sup> Many women have developed their own coping mechanisms to deal with the threats posed by armed men outside the camps and the protection concerns that they present. For instance, there are cases where women move out in groups walking only part of the way and then sending and paying elderly women, or pre-pubescent girls to travel the remaining distance since they are less likely to be raped because of the cultural norms concerning sex with old woman and girl children.<sup>101</sup> It is important to note as well, that while not easily discernable from rape, women are also forced to engage in “survival sex,” trading soldiers’ sex for passage, food and other basic needs.

It is hard to tell how and in what ways sexual assault perpetrated by armed men outside IDP camps and the survival sex that women are coerced into engaging in order to meet their basic needs, is tied to the larger conflict. At a general level, scarification, dental extraction and other tribal markers, as well as the ethnic composition of South Sudan’s displaced person sites, i.e. POC camps being inhabited by groups affiliated with the opposition, means that a lot of women are easily identified on the basis of their ethnic/political affiliation. At the same time, however, since the victims of these crimes are already living in displaced persons camps, or fleeing from armed violence, it is not clear that this would fit a “terror tactic” logic aimed at destroying the social fabric of a group or driving people out of their home areas. It is possible that such violence is an intimidation strategy meant at scaring people into staying in displaced persons camps, a matter of indiscipline and opportunism, a punishment for perceived enemies, or all three. For example, it was said by one key informant that because the Bentiu POC is viewed by the SPLA to be a so-called “fifth column” feeding the opposition, the government has encircled the camp, placing checkpoints at footpaths to prevent women from bringing food out of the camp.<sup>102</sup> At the same time, as many of our participants explained with respect to the sexual and gender-based violence happening outside of IDP camps:

*“it’s a matter of chance if they [armed men] find a woman any place, they don’t wait. They are like hunters.”<sup>103</sup>*

This kind of violence was often associated with the “I take what I want” attitude amongst men in uniform. On a number of occasions, we had also heard instances where the SPLA had distributed condoms to combatants as part of a tacit acknowledgement that they would be engaging in sexual violence. This was alleged to be part of a “public health concern,” rather than a strategy of wartime rape, as such. Numerous research participants also noted the lack of command and control and oversight in both the government and the opposition and their allied militias. Despite provisions and penalties for violence against civilians in the 2009 SPLA Act, to which both the SPLA and the SPLA-IO are bound to follow,<sup>104</sup> neither party seems to demand that their combatants be held accountable for sexual and gender-based violence against civilians.

## Sexual and Gender-Based Violence on a “Day-to-Day” Basis

Up until now the report has focused on the nature and patterns of sexual and gender-based violence connected to abuses by the warring parties and their related militias, such as the South Sudan Liberation Army. However, as referenced in the above section, SGBV in conflict does not occur in a vacuum: it is conditioned by, and exists alongside other less publicized forms of gendered and sexualized violence, such as domestic violence and early and/or forced marriage. Although justice is critical for the kinds of war crimes and crimes against humanity described above, as noted earlier in the report there is also “a need to respond to everyday justice issues.”<sup>105</sup> In fact, while a number of respondents we spoke to in the three field sites chronicled horrific forms of assault at the hands of armed groups since the start of the conflict in December 2013, many people’s SGBV-related security concerns involved the kinds of violence that women, girls, men and boys experience on a daily basis, whether that be rape or sexual exploitation and abuse (SEA).

First, there are the more generalized forms of sexual assault occurring *inside* the IDP settlements across the country. This is particularly accurate in the POCs where there is a high density of people, which continues to pose security concerns for women and girls, especially around WASH (Water, Sanitation and Hygiene) facilities and boreholes (water wells). Many of the key informants that we interviewed detailed a worrying trend in criminality in the POCs in Malakal, Bentiu and Juba. Criminal gangs comprised of male youth are said to hover around latrine areas where they commit rape and harassment. Women and girls have been noticing that males cut small holes in the plastic sheeting surrounding the women’s showers so that they can peer in as women bathe.<sup>106</sup> It was also reported that males enter into latrines and urinate on women while they are using the toilet.<sup>107</sup> As one woman living in POC 1 in Juba told us:

*“...the common sexual violence in the camp here is when you go the public toilets, you will meet with other boys, they will force you to do that in a public toilet.”<sup>108</sup>*

Another woman from POC 1 in Juba:

*“women are living in fear these days...within the camp, you go for showering, there are inconveniences that happen there.”<sup>109</sup>*

Furthermore, women sometimes have to wait hours to get water, often arriving before dawn.<sup>110</sup> There, they are vulnerable to abuse by young men who have been sitting drinking alcohol at the markets.<sup>111</sup> A women remarks to a reporter, “[i]t is too much...They attack as at the toilets or at night when we collect water.”<sup>112</sup>

Outside of the POC setting there is also reportedly increasing criminality resulting in heightened levels of sexual assault. Reports indicate rape and gang rape by so-called “niggas” – a term with cultural associations that often connotes criminal activities by youth who have adopted behaviors associated with African-American, or foreign cultures,<sup>113</sup> have also been increasing. In Wau Town in former Western Bahr el Ghazal State, over 100 rape



cases were recorded between October and early November 2014. The Police Commissioner blamed members of gangs, known locally there as “niggas.”<sup>114</sup> Although the issue of criminal gangs is not new to Wau, where the County Government had previously issued a special order criminalizing “nigga behavior” in 2008,<sup>115</sup> the increase in sexual violence incidences associated with these groups (at least insofar as victims are reporting the abuse) appears to be a new trend. A state-level civil society representative from Torit County in Eastern Equatoria State also told us about “niggas,” or groups of “spoiled children,” who gang rape women when they go to collect firewood or tend to their fields.<sup>116</sup> A woman interviewed in Akobo similarly remarked:

*“This one is being done by...niggas...they engage themselves in alcohol taking and they will do any bad thing to females...when you refuse boys...youth will make a plan to catch you. They will be more than five and take you, or they lock you in a room.”<sup>117</sup>*

Similar incidents are also evident in the capital, Juba, often referred to us as “gun rape,” or rape by armed men. As one civil society representative noted when asked about the main forms of SGBV - “rape is occurring with...armed people – we call it gun rape.”<sup>118</sup> A locally run legal aid clinic working with female survivors of sexual violence likewise noted that the majority of the SGBV cases that they dealt with were rapes that had occurred alongside armed robbery.<sup>119</sup> According to a top-ranking official in the Special Protection Unit (SPU) at the Central Equatoria State Police Headquarters, “it happens at night because there is no security...during the night hours people are moving with guns and attack people in their homes.”<sup>120</sup> Most of these so-called “gun rapes” were attributed to men in uniform with representatives from both the SSPS and SPU admitting that the majority of perpetrators were members of the organized forces, particularly the SPLA, police, or wildlife authorities. Even though the victims of these crimes differed in age, including victims as young as three and as old as 50 in the cases that we heard about, similar to rape by the warring parties, the majority of victims are adolescents, aged 12-18.

Comparable issues are also occurring outside of urban areas when women collecting firewood are raped. This is not the same as the women and girls who are captured by armed groups outside of the POCs and other IDP settlements in the country. In Mingkaman, Lakes State one of the biggest threats to women was when they went into forested areas in search of firewood and were assaulted by members of *either* the host or the IDP community. A displaced chief from Twic East in Jonglei State currently living in Mingkaman tells us, “women go to get firewood and...are raped and [the] younger ones are defiled.”<sup>121</sup> Similarly, when asked to ‘define’ the main forms of SGBV, IDP women in Mingkaman said that “sexual and gender-based violence is when you go to collect firewood and you encounter someone who forces you to have sex with him.”<sup>122</sup> For female-headed households the situation is even more precarious. For instance, in Akobo, IDP women from Canal in upper Jonglei State noted that:

*“of course the separation of the husband...is affecting...the man is here he can bring timber...[now] we are fearing that in the bush there are things [people] that will attack us.”<sup>123</sup>*

Although the common perception amongst both service providers and displaced persons is that this kind of sexual assault only affects IDPs, when asked the same question about the main forms of SGBV affecting their communities, adult females from the host community in Mingkaman, as well as Akobo, also cited rape during firewood collection as a major concern.

An issue perhaps more specific to urban areas and towns (as well as the areas surrounding military barracks) is sexual exploitation and abuse. This is not all that different from the kinds of survival sex discussed above; it is just a more institutionalized version of mistreatment and structural violence perpetrated against individuals involved in transactional sex. The rise in sexual abuse and exploitation is in many ways directly related to the current conflict. Whereas before the war, the vast majority of females engaged in sex work, especially in Juba, were foreigners from Kenya, Uganda and elsewhere,<sup>124</sup> there has been a perceptible shift. For example, while many of the adult women in the commercial sex trade are refugees or migrants from nearby countries, many of the females under 18 are said to be South Sudanese. Though it is hard to know exactly what precipitated this change, it is likely due to the increase in poverty and food insecurity, which has caused younger girls to resort to transactional sex as a way to survive. Furthermore, a number of females involved in transactional sex are also said to be IDPs displaced from the more conflict-affected areas in Greater Upper Nile, i.e. Unity, Jonglei and Upper Nile States.

Prostitution is technically illegal in South Sudan under the 2008 Penal Code Act.<sup>125</sup> Yet, brothels and similar establishments are prolific, particularly in Juba. Sometimes women and girls will solicit sex by visiting popular restaurants, hotels and clubs in town (notably those popular with South Sudanese elites and expats), but most work in what has been referred to elsewhere as “sex camps” – rows of lodges or small lines of rooms composed of iron or papyrus.<sup>126</sup> The illegal status of transactional sex work, however, means that women and girls cannot rely on anyone for protection, opening them up to further abuse and allowing sex workers to be violated with impunity.<sup>127</sup> They are often harassed and raped by government officials. Police raids of brothels, commonplace even in the present-day context, for instance, often result in the mass rape of the sex workers working in a given brothel. As one sex worker remarked to the authors of *Hope, Pain and Patience: The Lives of Women in South Sudan*, “[t]he policemen make us stand naked outside our rooms while they search for guns. When they can’t find any they take us inside and rape us and then take our money.”<sup>128</sup> Key informants said similar incidents have taken place at the brothels in other neighborhoods around the capital city.<sup>129</sup>

Although the clientele in urban areas and towns comprise a mixture of ethnic groups and social statuses, there are also foreigners, including the employees of NGOs, agencies and UN peacekeepers. In the recent “UN Report on Sexual Abuse by Peacekeepers,”<sup>130</sup> South Sudan had one of the highest rates of SEA accusations by peacekeepers, and it is not just in the brothels where internationals have been accused of sexual exploitation. During our research we also heard of incidences where humanitarian staff had allegedly traded food vouchers and NFI (non food items) for sex with citizens – a clear violation of the Codes of Conduct that exist in most organizations.

### **Box 1. Sexual Transgression vs. Sexual Violence: Defilement, Adultery, Elopement and Deception**

There is much confusion surrounding certain “sexual” acts in South Sudan namely, ‘defilement, adultery, elopement and deception.’ Though these acts often involve sexualized and gendered violence, these terms are also closely intertwined with the regulation of sex and sexuality in South Sudanese society, and issues of sexual transgression, which are often conflated with SGBV-offences. Although in some cases defilement, adultery, elopement and what participants referred to as “deception” might be considered social issues, as opposed to SGBV ones, they were not only cited as some of the primary concerns of communities in the three field sites, but can also involve acts such as rape that should be considered in their own right.

The term “defilement” is often used to describe sex with an unmarried girl. However, defilement can be confusing as it also implies a violation of a social norm, in this case the sanctity and purity of an unmarried virgin, which comprises her value in bridewealth. Although defilement can also involve consensual sex between school aged children and adolescents,<sup>131</sup> in the context in which the majority of our respondents referred to it, they were referring to what would typically be conceived of as statutory rape or sexual abuse of minors. A woman in one of the non-UNMISS protected IDP camps in Juba, for instance, told us about a “defilement” case wherein a nine year old girl was raped by her 30-year old caretaker.<sup>132</sup> In Mingkaman, FGD participants informed us about a case where a seven year old girl was raped by a fellow community member, after which the girls family members went to his home and physically assaulted the man as a retaliatory measure.<sup>133</sup>

Adultery is deemed to be a substantial problem in the current context, likely due to the fact that extra-marital affairs often have the potential to spiral into violent inter-familial and even inter-communal tensions - “it is the revenge because of adultery that causes more serious cases. It is not just the immediate family. It becomes wider than the family, village, clan. It can escalate quickly.”<sup>134</sup> Likewise, when we asked the Paramount Chief of Akobo County about the main forms of SGBV he dealt with in his capacity as a local justice provider, he told us that it was adultery. Again, this may reflect the conflation between acts of sexual transgression and sexual and gender-based offences; however, the prospect for violent revenge associated with extra-marital affairs is significant. As will be discussed in further detail later in the report, some adultery cases can also arise when a married woman has reported rape, only to be accused of infidelity.

Elopement means different things from two consenting individuals “running away together,” to abduction and rape.<sup>135</sup> With respect to the former, the term elopement can involve a man and woman having pre-marital sexual intercourse in order to compel her family into consenting to the marriage, or lowering the required bridewealth. The latter usually involves a man forcing a woman into sexual intercourse in order to marry her, sometimes because he lacks the number of cattle/amount of money he would need to exchange for a woman’s hand in marriage. Because an unmarried girl who has been raped is considered “spoiled” in terms of her bridewealth value, the parents of the victims and the parents of the perpetrator will often enter into negotiations so that the survivor is forced to wed her attacker. This clearly constitutes a form of sexual and gender-based violence and one in which one form of sexual violence begets another, with rape resulting in forced marriage and then marital rape and abuse.

This is in contrast to “deception,” which seems to refer to men leading women on in order to procure sex, later abandoning them. Amongst the displaced and host communities in Mingkaman especially, this was considered to be a major offense. A member of the host community remarks, “...if you love her you will convince her with lots of words – you will say you will marry her if we have sex. Later she falls pregnant and that person rejects her and that person can’t marry.”<sup>136</sup> An IDP woman gives an almost uniform response, “when someone say that they will marry you and then...when you are pregnant he throws you somewhere.”<sup>137</sup> The egregious nature of adultery, the first form of elopement and “deception” for the communities that Justice Africa worked with for the research appear to mostly be associated with the prohibition of pre-marital and extra-marital sexual relations (especially for women) and the associated issues of bridewealth, i.e. lowering the value of goods and/or money that can be exchanged for a woman or a girl. It also seems to be connected with the potential of these offences, or transgressions to trigger



violent tensions between families and communities. “Spoiling” an unmarried virgin is not only an affront to existing cultural mores, but also an affront to a family’s livelihood opportunities.

Notwithstanding the fact that SEA is common across South Sudan, in rural areas one of the chief forms of SGBV is forced and/or early marriages. All of the respondents we spoke to, particularly those outside of the capital Juba and the POC camps, cited forced and early marriages as a large concern in their communities. Female adolescents in Mingkaman remark:

*“it is the issue of forced marriage because of cattle...[when] that person with lots of cattle comes to parents and say that I want your daughter...they will not have another choice no matter what the age because the family depends on the cattle.”<sup>138</sup>*

Female youth in a FGD in Akobo likewise told us:

*“[f]orced marriage is there. They force you to marry someone you don’t love. If you refuse your dad will beat you because he wants cows and this guy you don’t love will force you to have sex...Even when a girl is in school...they [the parents] will remove that girl from school and then she will be married.”<sup>139</sup>*

Boys also fear forced marriages at the hands of their parents. When asked about the main forms of SGBV affecting them and their communities, an adolescent male in Mingkaman noted that:

*“[m]e, now, if my father tells me to marry and I don’t want to marry, it is violence. This is considered violence.”<sup>140</sup>*

Once again, this kind of forced marriage is to be distinguished from that which is practiced by the warring parties and the distribution of bush, or rebel “wives” captured during fighting. Early and forced marriages here is when a person, usually a young person, is coerced, often by their relatives to marry someone against their will<sup>141</sup> and has always been widespread in South Sudan. Yet, as mentioned in the background on sexual and gender-based violence before the current civil war, it becomes much more rampant during crises. Families often resort to so-called “negative coping strategies” as means for income generation, including forced/early marriages, or as a protection strategy from sexual assault. Bridewealth has always been tied to livelihoods issues in South Sudan. During wartime, however, the monetary imperative associated with the exchange of bridewealth for a daughter’s hand in marriage becomes even more critical, leading to younger and younger girls being compelled into marriages with the highest bidder. Even before this conflict, it was customarily understood that once girls had menstruated they would be ready for marriage. As a woman from the Dinka host community in Mingkaman noted:

*“girls are married off very early because according to the culture the girl will be married...when she is 14 because someone has come with the cattle.”<sup>142</sup>*

Now, however, it is said that pre-menstrual girls of around 12 are being sold off for bridewealth.

Despite the fact that this exchange is integral to the management of social networks and extended lineages in South Sudanese society, when accompanied by high-stakes financial incentives, women and girls often become commodities, valued primarily in terms of their potential bridewealth. Once married, the domestic and sexual services of a female are placed under the control of her husband. As has been well documented, the conception of women as objects to be bought and sold leads to heightened levels of domestic violence. Citing a government official, a 2012 United States Institute for Peace (USIP) report notes how, “[p]aying dowry for a woman is like slavery. You have no choice before your husband.”<sup>143</sup> Since these marriages are often forced onto women and girls (and in some cases boys), sexual relations within these marriages are often non-consensual and hence amount to rape. A woman from Akobo tells us about her experience with forced marriage:

*“In my case...I was married when I was very young, 15, my father forced me to me marry...during that time...there was domestic violence and there was...abuse.”<sup>144</sup>*

Another respondent from Akobo:

*“...my husband married me when I was young...I was 15 years old...When I get married and I went to his home my husband treat me so badly. I requested my father to divorce but he said no. My father said if you want to get divorced I am going to kill you here in Akobo.”<sup>145</sup>*

A related issue is the denial of resources and opportunities, sometimes referred to as “economic violence” perpetrated against women and girls. It is typically considered to include aspects like the preference to send sons to schools over daughters, lack of access to health care and other resources, exclusion from financial decision making and even discriminatory practices surrounding inheritance and property rights. The denial of inheritance and property rights was considered to be a serious wrongdoing against women and girls, especially amongst the civil society representatives interviewed in the three field locations. As female adolescents in Mingkaman declared in a focus group discussion:

*“[w]hat do we do when we want freedom to go to school, but our parents won’t let us?!”<sup>146</sup>*

The girls said that if they were not pulled out of school in order to enter into a forced and early marriage, they would be given the choice to marry their parents preferred suitor or their family would stop paying their school fees. Though economic violence is something conventionally understood to affect only women and girls, adolescent boys told us similar stories that happened to them where they were “...supposed to marry before their education was finished.”<sup>147</sup> One 15-year old boy also told us an account of how his father stopped paying his school fees when he said he didn’t want to get married.<sup>148</sup>

Finally, domestic and intimate partner violence continues to be widespread in South Sudan, abetted by the current conflict and the attendant problems of worsening food insecurity and

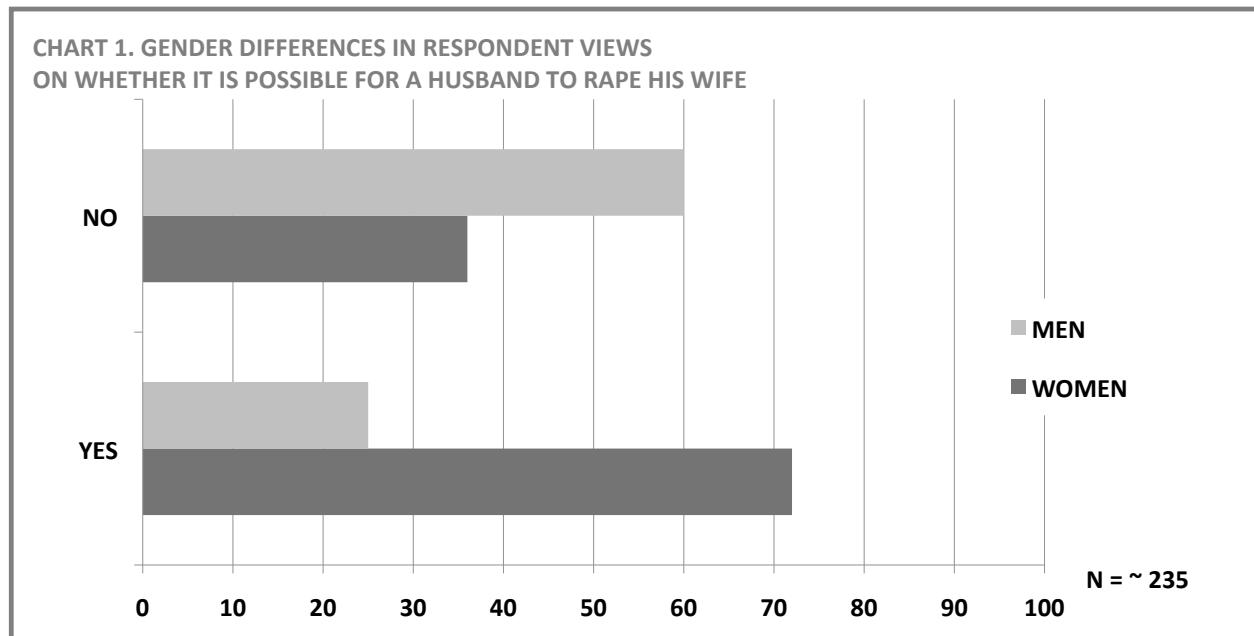
poverty. As one woman living in one of the non-UN protected IDP settlements in Juba noted:

*“we are living in a terrible situation, the poverty and men are beating us – men go and drink and come home and then come and find us with children and beat us.”<sup>149</sup>*

In addition to food scarcity and alcohol abuse, another cause of domestic violence is the previously referenced tolerance of domestic violence against women and girls. A displaced man from Bor in Jonglei State residing in Akobo County puts it poignantly:

*“...in...[our] culture a man always married women with cattle. You pay dowry to parents to get that women to be your wife...you fight with her and beat her up...because she has done a mistake at home.”<sup>150</sup>*

Moreover, as is common in many displacement settings the tensions of living in congested (and in the case of the POCs enclosed) spaces in a high risk, high stress environment with few livelihoods opportunities gives rise to idleness, drug and alcohol abuse, frustration and, for men, feelings of emasculation – factors that contribute to intensifying spousal and familial violence.



Even though much of this violence is often of a physical nature, involving beatings and other analogous forms of bodily harm, it can also involve psychological and emotional abuse, as well as sexual assault. Marital rape was often cited as a routine part of a woman’s conjugal experience with her husband, but forcible or statutory rape in the context of marriage is not considered a crime in South Sudan, a legal exemption, which also exists at a wider societal level. A woman from Bor, displaced in Juba, says:

*“of course if someone forces you it is definitely rape, and....the worst part of the story...[is] you cannot report and you cannot get justice because they will say that this is your husband and it is fine.”<sup>151</sup>*

She continues by saying:

*“even little girls married under age, they are the major ones [meaning victims] – these little girls marry at 13 they refuse the man and he will beat them the whole day.”<sup>152</sup>*

In some ways this can be linked back to trends and patterns of SGBV in the 1983-2005 civil war with the North. As mentioned in the first section, women were not only raped by soldiers, but also by their husbands as the war placed increasing demands on their sexual and reproductive services. A woman in Akobo, commenting on marital rape, notes:

*“...it was not happening before, but now because so many men engage themselves in war and then they come back and try and rape their wives.”<sup>153</sup>*

It is not clear whether this is connected to the same observed imperative in terms of replenishing the reserve of male fighters in the past conflict,<sup>154</sup> but women still feel as though they are being forced to bear children unnecessarily. Another woman in Akobo:

*“this one [marital rape] is happening if the baby is still small...and the man wants to make sex and as a woman you will not accept because...you don’t want to be pregnant and feed that baby.”<sup>155</sup>*

As the primary caretakers of children, women know that they will not have the resources to feed and support additional children in the current context:

*“you won’t have food to feed the baby and if there is fighting you won’t be able to carry small babies with you.”<sup>156</sup>*

However, women who try and resist are raped and sometimes beaten, another respondent noted:

*“...now if you have your husband and say you have no other baby and you have no income, he will force you to have another baby...and beat you and you will accept to have another baby.”<sup>157</sup>*

Not surprisingly there were obvious gendered differences in the way that marital rape was viewed (see, Chart 1 on the above page). Men normally rationalized marital rape on two grounds, the first being the fact that they had paid bridewealth for their wives, making them entitled to women’s sexual services. As a man in POC 1 in Juba put it:

*“she is your wife is she not your wife?”<sup>158</sup>*

Second, and perhaps attached to the restructuring and breakdown of norms around marriage and family life in the last civil war, men thought it was unreasonable that they should have to wait to have sexual intercourse while their wives were breastfeeding. A man living in POC 1 in Juba:

*“this is very normal and is happening and the husband can rape the wife, especially when the child is very young, you may force.”<sup>159</sup>*

**Box 2. Sub-national Variation in Sexual and Gender-Based Violence**

Variation in the purposes and forms of SGBV in South Sudan also applies to sub-national units. While this report has discussed the more generalized patterns of SGBV and the similarities that were revealed through the desk review and the field research, it is important to note that SGBV-related security concerns differed across the three field sites. Some of these differences have already been mentioned, for instance, sexual assault and harassment around WASH facilities and boreholes in the POC settlements and “gun rape” and sexual exploitation and abuse in urban areas. Still, below we have noted the main forms of SGBV by field location. Though response rates differed within the three field locations, we have pulled out the primary concerns of individuals and communities.

Types of SGBV/Field Site		
Juba	Mingkaman	Akobo
<ul style="list-style-type: none"> <li>▪ Sexual assault and harassment in the POC camps and non-UN protected IDP sites</li> <li>▪ Rape and gang rape (often accompanied by armed robbery)</li> <li>▪ Sexual exploitation and abuse and transactional/survival sex</li> <li>▪ Physical assault</li> <li>▪ Domestic and intimate partner violence, including marital rape</li> </ul>	<ul style="list-style-type: none"> <li>▪ Rape and gang rape during firewood collection (both host community and IDP community)</li> <li>▪ Forced/early marriages</li> <li>▪ Domestic and intimate partner violence, including marital rape</li> <li>▪ Denial of resources and opportunities</li> </ul>	<ul style="list-style-type: none"> <li>▪ Rape, gang rape and attempted rape (sometimes during firewood collection, or in connection to groups of male youth)</li> <li>▪ Forced/early marriage</li> <li>▪ Denial of resources and opportunities</li> <li>▪ Domestic and intimate partner violence, including (or rather especially including) marital rape</li> <li>▪ Sexual exploitation and abuse</li> </ul>

As discussed in the above sections, the majority of victims are adolescent aged (12-18), which was true across all three field sites. Over 90% of the 360+ people who participated in this research, indicated that the majority of victims are “young girls” under the age of 18. This necessitates that SGBV be viewed as a child protection concern, while at the same time giving special consideration to the more particularized socio-legal implications of sexual assault against persons under 18.

Another man from the same POC:

*“...when she is lactating you can leave her for six or seven months and then maybe give family planning. Men cannot stay for three years, he will force her.”<sup>160</sup>*

A woman from POC 3 in Juba stated her perspective on the matter as:

*“[b]efore we used to wean for two year, now the husbands are demanding that we wean for only six months. Now it becomes a very big condition, when you refuse your husband because the child is still young, he will go and search for another one [wife, that is].”<sup>161</sup>*

As discussed in the historical background on sexual and gender-based violence, cultural rules respecting things like the “weaning taboo,” which prevented sexual relations during breastfeeding, were eroded in the last civil war as men were urged to expose their wives to pregnancy, leading to intensified levels of marital rape.<sup>162</sup> This trend appears to be replicated in the current conflict.



As indicated at the start of this section, SGBV is not new to South Sudan. This is not to say SGBV is inevitable in a conflict-affected country, such as South Sudan. However, weak (and often non-existent) state structures, coupled with a historic lack of justice and accountability for sexual and gender-based crimes, has led to massive levels of impunity and a certain level of social acceptability for sexualized and gendered forms of violence. Whether they be cattle camp

youth in Lakes State or the top-ranking commanders of more organized forces like the SPLA and the SPLA-IO, armed actors and warring parties to South Sudan’s various internal conflicts from 1991 to now have been largely exempt from punishment for acts of SGBV. This is also true of the more quotidian sexual and gender-based offences outlined above, including forced and/or early marriages and domestic violence. As we have laid out in this report, as well as our previous report on *Justice in Practice*, there is “a need to respond to everyday justice issues,” as well. This means contemplating justice for sexual and gender-based violence at all levels and ending the cyclical relationship between impunity and continued violence. This is true whether it be in the nature of revenge, or “punishment rapes” carried out by armed groups, or the continued victimization that people experience at the individual level when crimes such as forced/early marriage lead to repeated rape and domestic abuse.



## DRIVERS OF SEXUAL AND GENDER-BASED VIOLENCE

### “[t]he girl is so precious...she is like an elephant tusk”

The motivations behind the kinds of sexual and gender-based offences described above are numerous. As a 2014 CARE report noted, “[c]onflict does not simply generate heightened levels of GBV in a vacuum; rather, conflict can draw upon and expose underlying prejudice and gender discrimination.”<sup>163</sup> Accordingly, this section of the report shifts focus towards *some* of the broader socio-cultural, political and economic drivers of SGBV in South Sudan. Some of these drivers have already been mentioned, including the restructuring of gender and sexual relations in the 1983 to 2005 civil war and the commodification of women and girls through bridewealth. Additionally, in the previously referenced 2009 GBV assessment the majority of respondents, both men and women agreed that, “there are times when a woman deserves to be beaten.”<sup>164</sup> This understanding also likely accounts for the belief that “sexual violence is more of a family matter than a criminal matter,”<sup>165</sup> and to the extent that it is treated as a “justice” issue at all, “it is seen as a compensation issue, not a crime.”<sup>166</sup>

This is coupled with the aforementioned entitlement of men to the sexual services of South Sudanese women. The issue was raised before in relation to marital rape. As a male youth in Akobo County admits:

*“you want to have sex with your wife and she says, ‘I don’t like [to have sex] today’, and then you have to rape her.”<sup>167</sup>*

It is not just in marriage, throughout the field research men were generally perceived as having an insatiable appetite for sex, described by most participants as “sex hunger” – “men are too sexually emotional so if they found a woman in the corner, they will never hesitate to take her.”<sup>168</sup> Most participants saw the use of rape by armed groups to be the result of men staying for long-periods of time without seeing their wives. A member of the White Army (a local Nuer armed group that often act as active participants in conflict<sup>169</sup>) interviewed in Akobo notes:

*“...because soldiers are separated from [their] families for so long...so when fighting is happening they see a woman they feel like they can have sex with... they do whatever they like.”<sup>170</sup>*

In fighting they said, “you see her face is good so therefore you want it.”<sup>171</sup> This was also reflected in other research carried out in Unity State where men had suggested that rape was a function of sexual gratification – “maybe these ones are raping because they have been on the front line now for nearly one year; they have no communication with their wives; then you can just force someone.”<sup>172</sup>

It’s important to note that culturally, resistance to the sexual demands of men, or “refusing the hut” is generally not taken seriously.<sup>173</sup> Anthropological research in the last civil war, for instance, revealed that among Western Dinka cultures, men thought that when a woman said no, she was merely angry or trying to appear modest.<sup>174</sup> Hence, sexual entitlement and

the acceptability of violence against women and girls cannot be untangled from the inequitable, patriarchal structures present across many of South Sudan's cultures: structures that have been exacerbated by the historical development of what has been referred to as a "hyper-masculinized and militarized worldview."<sup>175</sup> The current war appears to have further entrenched this perspective, deepening the understanding that men are the decision-makers who control the sexual and reproductive services of women, with violence viewed as an acceptable tool of authority.<sup>176</sup> A displaced Nuer woman living in Juba:

*"...before the crisis women have a lot of problems, cultural problems which is provoking women not to be free...the husband is the master, we don't have education...when you come for marriage, you have no say, men is the decision-maker...these cultural norms have pressed down women before the war."<sup>177</sup>*

The kind of gender inequality described by the woman above is reinforced by the emphasis on the valuation of women and girls in terms of bridewealth in South Sudan. A displaced Bor man remarks:

*"if you want to marry a women you pay a lot of cows to the parents and when you finish the parents give and it is...your own property that you purchased."<sup>178</sup>*

A Dinka host community member in Mingkaman similarly states:

*"[t]he girl is so precious to them she is like an elephant tusk. A rare thing not found."<sup>179</sup>*

This view was echoed throughout the three field sites and generally centered on the notion of females as "bank accounts"<sup>180</sup> – sources of wealth for their families and communities. However, as this report (and many before it) has made clear, the commodification of women through bridewealth acts as a justification for the mistreatment of women in the so-called "private sphere," where domestic and intimate partner violence becomes an "exercise of prerogative rather than an offense."<sup>181</sup> As indicated in the previous section, the potential wealth accrued from bridewealth can also act as a powerful driving force behind forced and/or early marriages with families compelling their daughters to marry the highest bidder, made worse by the steady increase in bridewealth prices since the signing of the CPA in 2005. Between 2005 and 2012, for example, the average bride price rose by 44 per cent.<sup>182</sup> The reliance of parents on their daughters as a source of income has likely only increased in the precarious economic environment that has accompanied the outbreak of the current civil war.

The commodification of females not only leads to violence against individual women through domestic violence and forced and/or early marriages, it also produces cycles of violence between families and communities. When asked about inter-communal violence, a cattle keeper from Mingkaman's host community states:

*"That one is there because when you marry a woman she is there to [make]...girls so that you will have many cows. Should someone attempt to rape that women, or her daughter, all of the people in the community will fight...The source of wealth here in Dinka culture is the girl...so*



*we don't want girls to be harassed or abused sexually...should it happen people will fight...people will use guns to kill one another...its like having a bank and a thief comes and steals everything. What do you do? You react badly if a person stole something.*<sup>183</sup>

Because of the very real bridewealth issues involved, sexual assault (outside of marriage, of course) is viewed as a serious offense, and one that can precipitate retaliatory violence. Many of our participants viewed reprisal attacks on the perpetrator and/or their family and community to be the only vehicle through which to obtain justice. And while revenge oftentimes takes the form of more general inter-group violence, it can also result in revenge cycles of SGBV. In June 2015, for example, a 14-year old girl had been raped by an adult male in Akobo County and as retribution for the assault the brother of the girl abducted the perpetrator's sister and raped her at gunpoint.<sup>184</sup>

Bridewealth contributes to sexual violence in other ways, as well. As was discussed in relation to elopement in box 1 in the previous section, because of customary solutions that demand that rape victims wed their perpetrators, male youth who cannot afford cattle for dowry will rape girls in order to get married. Since pre-marital sexual relations are largely prohibited in South Sudanese society, boys with no prospect of marriage, and consequently sexual intercourse, were also said to resort to the use of force since it is the only way to meet their "bodily needs." As has been well documented in other research,<sup>185</sup> in order to meet the requirements of bridewealth, many male youth also enlist in militias and join in cattle raids. However, as mentioned in the background section, in the post-independence period, cattle-raiding moved beyond low-level attacks to more brutal assaults on civilians, including sexual violence. Indeed, as indicated in the previous section, during the cattle raiding and inter-communal violence that continues to mar Lakes State, women and girls are often raped in revenge attacks between different groups.

There are also the more contextual factors characteristic of the current conflict-environment, including trauma, fractionalization and displacement. Although "we are all traumatized" has become a popular justification for the extreme levels of violence against civilians by those in top leadership positions, it is important to remark on the effects of unaddressed trauma. As a recent joint survey by the United Nations Development Program (UNDP) and South Sudan Law Society (SSLS) noted, "the mental health consequences of...trauma are among the many factors driving the current conflict."<sup>186</sup> The report found that 41 per cent of respondents in South Sudan had symptoms consistent with Post-Traumatic Stress Disorder (PTSD). A displaced man from Jonglei in Mingkaman states the situation as it relates to sexual violence quite plainly:

*"...raping, it came by where you are traumatized. You have no wife and you cannot go to a lady...so you go somewhere else...to reduce that traumatized thing."*<sup>187</sup>

Another man living in one of the POC sites in Juba:

*"people survive in narrow ways...you are civilians and you saw your parents are killed in front of you, it makes us traumatized...it will cause madness."*<sup>188</sup>

Many participants told us that the things they had witnessed, or endured in the fighting led to a sort of “tension” where people “don’t count the consequences, bad, or good.”<sup>189</sup> Notwithstanding the fact that this kind of un-addressed trauma was likely an issue before December 2013, the brutalization of civilian populations in the current civil war has significantly worsened the problem. And despite the increased emphasis on “psycho-social support” to survivors of sexual violence, such programming has often excluded male members of society, whose trauma was consistently referenced as a driving force behind SGBV.

The displacement of over 2 million people because of the fighting has only served to exacerbate the problem. The dislocation of entire families and communities has contributed to a sense of anonymity and isolation where people are not able to draw on their conventional social networks for support and protection. As a civil society representative in Mingkaman remarked:

*“[m]any people are not relatives to the host community. In Bor where we resided [before the war], the community could not let their daughters or sons to have such kinds of criminal cases. They would protect themselves because they belong to a certain community.”<sup>190</sup>*

This is compounded by the high levels of congestion in many of the internally displaced camps, particularly in the POCs. A woman in POC 1 in Juba:

*“[t]he increase in sexual violence in POC 1 are imposed on us by the situation. You see these shelters. Your neighbor, you don’t know him...many boys are...attacking women.”<sup>191</sup>*

As another man living in POC 3 in Juba told us:

*“it happens where people are congested because people can see more women and be tempted.”<sup>192</sup>*

Displacement has also destroyed pre-existing networks of protection for sexual violence, which when combined with the absence of livelihoods opportunities, provides an impetus for cycles of violence by reducing the ability of South Sudanese to resolve issues in culturally specific ways. A woman living in POC 3 in Juba notes:

*“[s]o now in POC...it is very difficult to practice our culture. When that one happened you could have cows. There is no money to solve that problem so this is an issue. When they know that their sister is raped, the elders can talk like they can solve this problem. They can try. But...they [the perpetrator(s)] don’t have money to pay compensation...what they did is very bad. We are going to fight them so they know that they have done something bad.”<sup>193</sup>*

### **Box 3. Bridewealth, Stigma & Sexual Violence: Married versus Unmarried Women**

Bridewealth issues and the associated risk that sexual violence erupts into wider inter-communal fighting also reinforces the stigma and underreporting around acts such as rape for women and girls. In fact, many of the

females we spoke to insisted that they would rather stay silent than report a rape case. As one IDP woman in Mingkaman put it:

*“your girls are a resource, when something happened to them, she cannot be married...they will say this one has been raped and all of the ones that need to marry will go to another family...that is why you don’t want to narrate things to other people...you should stay silent.”<sup>194</sup>*

The stigma around rape and other forms of SGBV in South Sudan cannot be underestimated. Many survivors live in horror that they have somehow broken cultural codes about maintaining their sexual integrity and their identity as women.<sup>195</sup> Women are also afraid of the consequences of public shaming and the prospects of social exclusion.<sup>196</sup>

A displaced woman living in Juba:

*“[i]n our culture, we don’t discuss [rape]...because when people will know that you were raped, all people will fear to greet you, they will say this one was “raped”...your friends will run away from you.”<sup>197</sup>*

Though such stigma exists for all women and girls there are differences between married and unmarried females. Married women, for example, expressed feeling apprehension that if they reported the case their husbands would leave them, or they would be arraigned for adultery (a common occurrence to be discussed in the next section). In rural areas, it was said that if the rape of a married woman had been revealed, her fellow community members and in-laws would not want the woman to remain in the village for reasons of shame. As such, married survivors are sometimes sent to the cattle camps in order to create a distance between the sexual assault incident and the communal memory of it, in the hope that after one or two years people would forget and the woman could return home.<sup>198</sup> For unmarried girls, however, the situation is quite different since it becomes a livelihood issue and compensation matter. Family members, particularly, males appeared to be adamant about “proving” the rape case through “virginity tests,” or the inspection of the female’s hymen so as to facilitate discussions about compensation and arranged marriages between the victim and the perpetrator. Along these lines, responses and perceptions about sexual assault appeared to be determined by bridewealth.<sup>199</sup> A married woman who has been raped is not deemed worthy of the pursuit of justice and compensation, whereas the rape of an unmarried girl is considered to be a great crime because of the diminished bridewealth.<sup>200</sup> As a chief in Mingkaman noted:

*“[s]o we differentiate them in two ways. One is for the underage girl. We call it defilement because the body has been destroyed and she may not menstruate or produce. Two is for the woman. It can be handled in a soft way if she is raped. We can follow the customary way and...get [the] woman to apologize.”<sup>201</sup>*

Not surprisingly, most women would rather remain silent. Yet, this “silence creates a culture of impunity in which perpetrators are able to violate women without being held accountable.”<sup>202</sup>

It is important to note that the differences in married and unmarried women also influence their susceptibility to certain forms of sexual abuse. As referenced here young girls are valued as potential brides whose sexual “purity” accounts for their worth. Married women on the other hand, most of whom have already born children, are valued less – viewed not as a commodity, but as property. When it comes to SGBV in conflict, these disparities sometimes mean that married women are treated as sex slaves, the property of armed men who use them purely for their sexual services, often subjecting them to gang rape or physical abuse, or passing said services from one combatant onto the next. In contrast, unmarried, young girls are more susceptible to being distributed as “wives” to soldiers who sometimes hold exclusive rights to the sexual services of whatever girl becomes his ‘wife’.

Moreover, as referenced in relation to the 1983-2005 civil war, the process of displacement precipitates feelings of emasculation amongst men. As has been documented in other conflict-affected countries, including the Democratic Republic of Congo, sexual violence is not only the product of a “hyper-masculinized and militarized worldview” that dehumanizes a feminine “other,” but also the inability to live up to idealized norms of

masculinity in society,<sup>203</sup> including the ability to protect loved ones. Not surprisingly, some recorded acts of violence from the current and previous conflict seem to intentionally target masculinity, such as the rape of wives or daughters in the presence of the father or husband. However, in South Sudan, norms of masculinity also include being able to provide for one's family. A man living in POC 1 in Juba commented:

*"...we are people relying on humanitarian aid. Women don't listen to husbands and this creates misunderstandings. She always makes trouble...women don't listen because we are not providing anything."<sup>204</sup>*

A key informant in Akobo remarks:

*"there are different people who have gathered here from Malakal, Bor, Juba and so on...and that increase violent crime because you may find somewhere there in Bor he was a businessman, or police, or soldier, but when he comes here he is doing nothing and he is frustrated."<sup>205</sup>*

While anger and feelings of redundancy might be seen as facile excuses for sexual violence, against the backdrop of massive insecurity, people can begin to (re)enact the violence experienced between soldiers and civilians at home and in their communities.<sup>206</sup> Such sentiments are also connected to an increase in drug and alcohol abuse; something that many respondents perceived to be one of the driving forces behind SGBV. As a camp manager at the former Tomping POC in Juba told a reporter, "[t]he men and boys here have nothing to do and they get alcohol. When they take alcohol or abuse other drugs, they become unruly. Husbands are abusing their wives and girls are constantly chased in the dark."<sup>207</sup> During interviews and FGDs in all three field sites, it was said that, "those who...rape...are those who take alcohol together" with one woman noting that, "if you take alcohol with men, they rape you automatically."<sup>208</sup>

To be clear, these are only a few of the many possible drivers of sexual and gender-based violence in South Sudan. We have barely begun to touch the surface of the range of socio-cultural, political and economic motivators of SGBV, which certainly could (and should) be the subject of another report. A distinction could also usefully be made between the factors that appear to encourage "conflict-related sexual violence" versus the other more day-to-day forms of SGBV that women and girls (and men and boys) experience in their lives; data that we do not have. It is true that sexual violence in conflict cannot be abstracted from the contextual factors, such as gender inequality, that make such violence possible in the first place. But, many of the factors that induce warring parties to use SGBV are fruitfully analyzed at the level of the armed group itself.<sup>209</sup> Disaggregating the drivers of SGBV also makes analyses more amenable to intervention. The abridged, albeit incredibly complex and overlapping web of possible drivers that we introduced here are merely reflective of what the participants in the three field sites emphasized. These could be categorized as: gender inequality, including the permissibility of violence against women and girls and the entitlement of men to women's sexual and reproductive services; the associated commodification of women and girls through bridewealth; and the more contextual, or

circumstantial factors, such as trauma, displacement, emasculation, lack of livelihoods opportunities and drug and alcohol abuse.

Further research is definitely needed to contextualize meanings and understandings of sexualized and gendered violence in South Sudanese society. For instance, throughout the field research and desk review, we were constantly confronted with the oft-noted cultural assumptions about the necessity of using force in sexual intercourse and male perceptions that “no means yes.” While this definitely ties back to a lack of understanding around the meaning of consent, it is also related cultural views on sex and sexuality, which need to be understood. With the exception of the discussion on how stigma and underreporting contribute to impunity in Box 3, we have refrained from a larger discussion on the lack of justice and accountability in this section – even though we feel this is one of the foremost, if not most critical driver of sexual and gender-based violence in South Sudan. Issues of justice and accountability inform the remaining focus of this report.





## CHALLENGES TO JUSTICE AND ACCOUNTABILITY

### “[t]here is no justice and that is why these things of rape are very rampant”

As stated at the start of this report, justice is a difficult undertaking in South Sudan. In addition to the fact that neither of the warring parties to the current conflict appears to demand accountability for sexual and gender-based crimes, there are also the oft-noted challenges including: *the pluralistic legal system; lack of awareness; chronic underreporting for SGBV; lack of capacity amongst statutory and customary authorities; corruption; and an absence of judicial independence.* These were all problems that existed before the conflict; however, the present crisis has more or less destroyed whatever minor gains were made in the justice sector in the post CPA and post independence periods. Any court infrastructure that existed has been razed in many areas of the country and insecurity has prevented any formative attempt to reform the already fragile legal system. As discussed above, displacement has also undermined the ability of South Sudanese to resolve issues like rape in a culturally specific manner. A high-ranking official from the SSNPS tells us:

*“The current civil was [had a] great impact on the rights of women and children. The rule of law has been dissolved by the war...The prosecution, policy and judiciary are powerless and...the administration of justice is non-existent. That’s how there are so many accusations of human rights violations...[in] some states there is no legal practice, no prosecutors, police, or judges....there’s no rule of law. Even here in Juba you find the implementation of the law is not like before.”<sup>210</sup>*

A judge in Akobo County restates this problem in another way:

*“[r]ight now, because of this war everyone has...guns and the law enforcement is not like before...to arrest the person who has guns is not easy, he might be protected.”<sup>211</sup>*

A police officer in Akobo comparably observes that a:

*“...change has been forced by the situation, because of the war...criminals have taken advantage of the situation, rule of law seems to have shattered in the process of fighting the war.”<sup>212</sup>*

What many participants called “rule of the gun” seems to prevail in South Sudan, where people are said to “rely on the barrel of a gun rather than on the legal system.”<sup>213</sup> While the country continued to be overtly militarized even after the end of the war in 2005, the situation seems to have almost completely reverted back to the raw power of force and arms, creating a dependence on violence for justice and security. *Under these circumstances, it makes little sense to speak of access to justice, particularly when it can lead to further structural violence against survivors and their families.*

At the same time, however, unaddressed sexual abuse and the cycle of revenge/punishment rapes by armed groups referenced in the first section of this report illustrate the very real need for justice and accountability, as do the more indiscriminate forms of sexual violence

perpetrated by soldiers taking advantage of the opportunities provided by the conflict and accompanying impunity. Sentiments like the ones of the White Army cited earlier, i.e. “this one [rape] will increase the power of us...,”<sup>214</sup> where sexual assault supplies an impetus for retaliatory violence can only be tackled through some form of criminal liability. As a woman leader in Akobo remarked, “[t]here is no justice and that is why these things of rape are very rampant.”<sup>215</sup>

Justice is not only imperative to interrupting cycles of sexual and gender-based violence tied to the current conflict. It is also necessary to ending the cycles of rape and other-related offences at the communal, familial and individual levels. If a woman or girl was able to access justice and call on the rights already endowed to her through the Bill of Rights in the 2011 Transitional Constitution, the 2008 Penal Code and the 2008 Child Act, the continued sexual and gender-based victimization that she would experience in a forced and/or early marriage, could be avoided. The same can be said of the aforementioned customary solutions to sexual assault that require victims to marry their attackers, wherein one form of SGBV begets another.

It is, therefore, important to comment on some of the challenges that will need to be addressed before sending people into legal systems that will do them more harm than good. Boxes 4 and 5 later in this section also discuss some of the more context-specific challenges to justice and accountability, such as the jurisdictional vacuums that have materialized in the POC sites and the limitations of the current UNMISS mandate, as well as humanitarian/development programming that has emphasized post-incident care and

**2008 PENAL CODE ACT CHAPTER XVII  
RAPE, OTHER SEXUAL OFFENCES AND  
OFFENCES AGAINST MORALITY**

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.

assistance at the expense of prevention and protection (see summary on page 6 for a discussion about the need for a balanced approach).

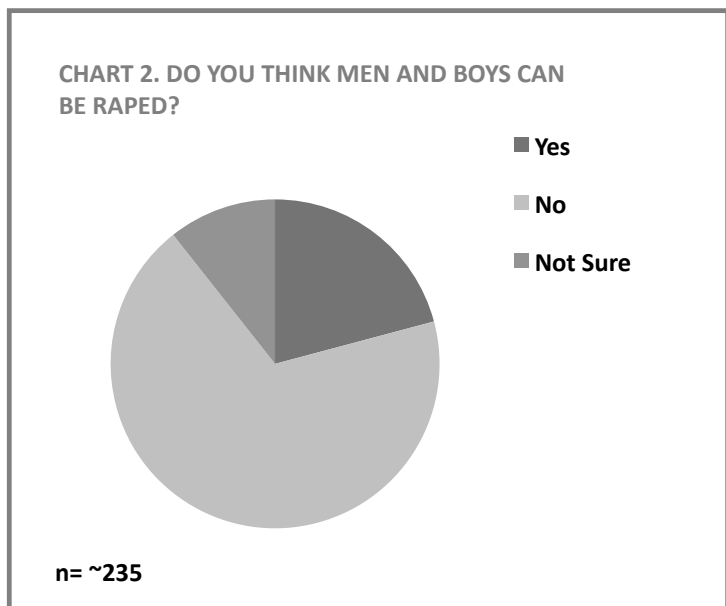
The problems associated with the overlapping and often contradictory sources of customary and statutory law in South Sudan have been well documented since the end of the war with the North in 2005. While the 2011 Transitional Constitution, 2008 Penal Code and 2008 Child Act contain protections against certain forms of SGBV, these laws often conflict with the customary rules and regulations around sexual violence and sexuality in South Sudan. Technically speaking, customary courts are not supposed to hear serious offences including rape, and are instead expected to refer these cases to the statutory system. Yet, this is rarely enacted in practice. Part of this has to do with the absence of local statutory courts in many areas, which precludes survivors from accessing formal justice or appealing decisions made at the

customary level. However, the resultant reliance on customary practices for resolving SGBV-related cases can have negative consequences for survivors. The customary courts, for example, are populated with chiefs who usually hold deeply ingrained patriarchal views

that cater to male interests.<sup>216</sup> While customary courts are an important source of cohesion and order in South Sudanese society, sexual and gender-based crimes are seen as something that demands social repair, rather than justice for harm done to the individual survivor.<sup>217</sup> As mentioned in the above section, sexual violence is also viewed as a compensation issue as opposed to a criminal justice issue. In the instance that a perpetrator is convicted, punishments are mild, comprising of a short prison sentence and/or compensation to a woman's family.<sup>218</sup> In other instances, if the girl is unmarried she might be forced to marry her attacker to avoid the shame and stigma that come with the devaluation in her bridewealth. The result is that perpetrators of sexual and gender-based crimes are usually able to eschew criminal prosecution, creating an "accountability gap" for certain kinds of offences.<sup>219</sup>

What's more, the existing statutory laws only further entrench patriarchal views and practices in South Sudan. As has been noted elsewhere the exemption for marital rape under article 247 of the 2008 Penal Code (see above page) suggests that men are permitted to rape their wives.<sup>220</sup> With no minimum age for sexual consent amongst married persons this legalizes marital rape and early marriage.<sup>221</sup> This is compounded by the fact that the 2008 Child Act does not contain a specific provision on marriageable age,<sup>222</sup> instead vaguely stating that "[e]very child has the right to be protected from early marriage..."<sup>223</sup> Furthermore, by defining rape in the 2008 Penal Code as an "offense against morality" it reinforces the fact that sexual and gender-based violence is not a harm done to the individual, but rather an affront to cultural codes about sex and sexuality.

There is also no clear definition of rape, itself. As a recent 2015 policy brief by the South Sudan Women Lawyers Association (SSWLA) and the South Sudan National Legislative Assembly Women Parliamentary Caucus pointed out, most progressive criminal codes have a clearly elucidated definition of rape that includes penetration of the vagina, anus, mouth, or any other bodily orifice with a part of his/her body or a foreign object.<sup>224</sup> In the current context, this is incredibly important. As referenced in the first section of this report, gang rape by bands of armed men have involved rape with sticks, gun barrels and other objects, sometimes with the direct aim of destroying the reproductive organs of the victim. Along these lines, there is currently no differentiation in punishment for sexual assault resulting in death, or grievous bodily harm. There also needs to be a more sophisticated understanding not only in the definition of rape, but also the nature of the act, i.e. whether it involved multiple perpetrators, or "compelled rape," that is coercing a third party into having sexual intercourse with a victim.





Moreover, given the lack of clarity around the meaning and content of “consent” in South Sudanese society discussed in the past section, the Penal Code also needs to take a step to create an objective standard against views that dictate “no means yes.” The fact that there is no clearly defined element of consent in the penal code simply strengthens the societal ambiguity around consent in sexual relations and gives judges’ substantial leeway in terms of interpretation. If saying “no”/“refusing the hut” is considered by some men as a way that women try to appear modest, for example, it is highly likely that consent will be interpreted in favor of male interests. Such a definition should include considerations, such as violence and coercion, disability status and mental state at the time of the act.<sup>225</sup>

Finally, as discussed in the first section, incidences of male rape have also been reported since the start of the present civil war. Though the South Sudanese penal code defines rape in a “sex-neutral” manner, the inclusion of an “unnatural offences” provision, which prohibits “...carnal intercourse against the order of nature”<sup>226</sup>/ same-sex sexual intercourse, dissuades many men from accessing justice out of fear that by reporting the crime they will be convicted of a crime, themselves. It also enhances the deep stigma that already exists around male rape and societal perceptions that men and boys cannot be raped. Chart 2 on the above page, for example, shows the incredibly small proportion of respondents who answered yes when asked *whether men and boys could also be raped*. The tacit exclusion of male survivors in South Sudanese criminal law goes against understandings of SGBV in International Criminal Law, specifically the Rome Statute of the ICC. As a new country, South Sudan is not yet party to the Rome Statute, which arguably contains the most elaborated understanding of the range of sexual and gender-based offences in wartime, including “rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization, or any other form of sexual violence of comparable gravity.”<sup>227</sup> As mentioned in the first section of this report, one of the concerning aspects of violence perpetrated against males is castration, or sexual mutilation. Without a more substantive law on SGBV that includes violations akin to those detailed in the Rome Statute, charging individuals and groups for the atrocities committed in the context of the civil war, including sexual violence atrocities against males, remains a distant possibility.

As it stands, most citizens and even justice providers are not aware of the statutory protections that exist for SGBV, however flawed they might be. When asked whether they were *aware of the criminalization of sexual and gender-based violence*, for instance, one focus group respondent noted that, “it would be good if it [rape] is made illegal so that it won’t happen again.”<sup>228</sup> While most research participants said “yes” when asked the same question, it was clear that they were not familiar the specificities of the law, with some people citing 25 years in prison, or capital punishment as the penalties for rape (as opposed to the legislated 7-14 years). Leaving aside the fact that most chiefs are unaware of the fact that they do not actually have sentencing rights when it comes to serious crimes like rape, as one chief from Twic East living in Mingkaman told us, “according to what we do if someone rapes a woman, we always send that person to prison for six years,”<sup>229</sup> law enforcement officials also seemed to be unaware of the particulars of the criminal law on rape. When asked *what article sexual offences fell under*, not a single police officer in either Juba or Akobo was able to identify the specific article of the 2008 Penal Code.

Moreover, as referenced in Box 3 in the previous section, there is considerable stigma for survivors of sexual and gender-based violence in South Sudan. Most women interviewed said that they would rather stay quiet than report the case to authorities. There was also a perception amongst both men and women that reporting would lead to publicization of the incident within the community. As one civil society representative in Mingkaman put it, “[i]f it has happened, it needs to be solved confidentiality so nobody will hear about it...A girl cannot speak out because no one will marry her,” noting that, “this causes more harm because she has to remain silent and...perpetrators take advantage of that.”<sup>230</sup> In fact, in the same 2014 CARE report cited earlier, only seven per cent of survey respondents who experienced SGBV said that they reported the incident to police, 43 per cent said they kept quiet out of fear and another 57 per cent did nothing because they felt that there was no point in reporting cases.<sup>231</sup> Most women we interviewed said they would rather report an incident to their friends and family. When asked *would you report a case of SGBV and to whom?* one IDP woman in Mahad Camp in Juba remarked that, “your friend, your best friend, this is the one you tell first.”<sup>232</sup> Another woman from the same camp:

*“you know most of the sexual violence victims always prefer telling to the closest, trusted friends – someone can commit suicide or go insane if you don’t tell.”<sup>233</sup>*

This is supported by a 2013 study by the SSLs where it was discovered that most people used informal complaint mechanisms to resolve sexual crimes, going to their family, friends and neighbors.<sup>234</sup> Many women also neglect to report out of fear that knowledge of the offense could lead to further violence between families and communities. One key informant in Akobo noted that:

*“...fear of clan attacks and reprisals is a key barrier that hinders access to justice.”<sup>235</sup>*

A female leader in Akobo:

*“if someone finds you being raped, they will report to the family...and that is why there is fight.”<sup>236</sup>*

A female youth repeats this saying:

*“if you tell your brother, he will fight with those people. There is no need, let me keep quiet.”<sup>237</sup>*

Similar trends have been documented in neighboring Northern Uganda where women prioritize social wellbeing over the pursuit of just punishment.<sup>238</sup>

When it comes to other incidences of SGBV that fall outside of rape and sexual assault, such as domestic violence, women are equally unlikely to report out of fear that justice providers won’t take the mitigating factors of their abuse into account,<sup>239</sup> calling her a “trouble-maker.” With domestic and intimate partner violence women are even less likely to report since it is seen to be normal culturally. However, this kind of discrimination

discourages women, particularly married women, from reporting abuses, perpetuating the very views and practices that undermine women's rights. As has been observed elsewhere, low expectations for justice coupled with the potential for further violence produces particular choices for women and girls,<sup>240</sup> at times precluding access to justice for sexual and gender-based violence survivors.

Along these lines, the prospect of being arraigned for adultery is a major factor discouraging women, especially married women, from reporting. Adultery is a crime in South Sudan under article 266 of the 2008 Penal Code, which dictates that the issue "...be addressed in accordance with the customs and traditions of the aggrieved party and in lieu of that and upon conviction, shall be sentenced to imprisonment."<sup>241</sup> Yet, as one respondent commented in relation to being raped in South Sudan:

*"police won't protect me! You are the one who is imprisoned because you committed adultery."*<sup>242</sup>

A 2008 survey of South Sudan's prison population found that 8.7 per cent of inmates were charged, or convicted with adultery, many of whom were women.<sup>243</sup> While adultery is theoretically supposed to apply to both men and women according to the 2008 Penal Code definition, it is an accusation more commonly lodged against females, even when they have been forced into sexual intercourse. As a chief in Akobo noted:

*"[t]he definition [of adultery] is a woman who is married to the husband...and then after two or three children...she goes and has an affair with another man. This is what they call adultery according to the law."*<sup>244</sup>

The 2008 Code of Criminal Procedure reflects this attitude by considering adultery an offense against a husband, committed by his wife and another man, or men.<sup>245</sup> Such a perspective is likely reinforced by the fact that polygamy is both a legally and culturally acceptable practice in South Sudan and is often deemed to be the norm amongst men. However, this has incredibly adverse consequences for vulnerable groups subject to sexual assault. For instance, in a recent report on the Special Protection Units (SPUs), the police organ charged with protecting women and children, it was found that at least half of the women held in detention were there on adultery charges.<sup>246</sup> Though it has been said that police sometimes arrest rape victims for adultery for "their own protection,"<sup>247</sup> this reflects a massive gap in understandings of how to protect women and girls from sexual assault.

#### **Box 4. Assistance Without Protection**

*"The international community...overlooks...[women's] specific security needs – not least due to its inability to address its own patriarchy"*<sup>248</sup>

A trend that became apparent during the research is that, although, there had been substantial awareness raising around the public health consequences of sexual and gender-based violence, this effort has not been paralleled by developments in programming aimed at addressing justice and accountability issues. This amplifies the already huge "accountability gaps" that exist for sexual crimes. When asked *what are the main consequences of SGBV*

almost all respondents, male and female alike, would uniformly cite “HIV/AIDS, unwanted pregnancy” and a list of other sexually transmitted infections (STI’s). In many ways this demonstrates the successes of humanitarian/development programming in raising awareness about the health issues associated with SGBV, which has had the substantial benefit of strengthening incentives for reporting, at least to health care providers. As one IDP woman living in Juba stated, “this one is not like last time...nowadays people can say it because of disease...you can go to the hospital to know your status. That is the only thing that lets people say it.”<sup>249</sup> However, as another IDP woman in Juba noted, “try and put yourself in...my shoes...we were helped by humanitarian agencies. We were given food and if the same could be done for them to get justice it would be better.”<sup>250</sup>

It is sensible that in a humanitarian emergency, efforts would be concentrated on life-saving measures in the short-term. Indeed, a common narrative that we heard throughout the research was that “we are too busy saving lives to worry about sexual violence.” However, this standpoint fails to recognize sexual violence as a trigger for further violence and misses the importance of accountability to long-term violence-reduction and conflict resolution in South Sudan. Again, this is not to discount the life-saving work of humanitarian organizations, but the implications of sexual violence on individuals, families and communities in South Sudan cannot be overlooked, nor can the complex linkages between issues of humanitarian relief and protection from sexual and gender-based violence. As one humanitarian in Mingkaman remarked, “when people came here they wanted food only, but the pillars of humanitarian assistance are protection and assistance. Without one there cannot be the other.”<sup>251</sup> While there are more responsive protection efforts, such as those focusing on civilian protection and peacekeeping, these tend to be underfunded and understaffed.

Furthermore, much like the customary courts, most of the police stations and statutory courts are populated by males who are not sensitive to the needs of SGBV-survivors. As one civil society activist in Juba observed in relation to the SPUs:

*“you go to the Special Protection Unit in the police if you need help, but the unit is dominated by men, even the gender desk. Culturally, if a woman is raped she doesn’t feel comfortable speaking to men.”<sup>252</sup>*

Indeed, female staffing is considered to be a major impediment to justice and accountability for SGBV. The same report on the SPUs referenced above, for example, found that out of 13 SPUs visited, only one had a single female staff member.<sup>253</sup> Because of the shortage of educated and literate women in the SSNPS, the few female police that are trained are often transferred to other divisions,<sup>254</sup> such that most women end up working as traffic police.<sup>255</sup>

Accordingly, there is a marked lack of capacity amongst the police in South Sudan, including training on SGBV. In addition to lacking adequate communications equipment, transportation and basic training, most police officers and law enforcement officials have little knowledge of women’s rights. In FGDs conducted by the SAS, it was said that many police would refuse to deal with women who came to report domestic violence, declaring that this was not within their jurisdiction.<sup>256</sup> As is common even in the West, women stated that police met reports of sexual and gender-based violence with disinterest and counter-allegations.<sup>257</sup> In one anecdotal example we received from a man whose 15-year old family member had been raped in Juba, police asked the survivor and her caretaker, “*what clothes were you putting on when this happened?*” and “*what time at night were you walking?*”<sup>258</sup> Although the SPUs were originally set up to protect women, children and other vulnerable groups, it was found that the SPUs are instead being used to deal with perpetrators who fall into these

categories.<sup>259</sup> As a police commissioner explained, the purpose of the SPUs was for locking up women and children criminals, a perception allegedly shared by others in the SPUs.<sup>260</sup>

Part of the lack of capacity amongst law enforcement officials also has to do with evidence-collecting issues. As we heard from a number of lawyers and prosecutors in the capital city, Juba, many SGBV cases are dismissed on the basis of a lack of evidence. The SPU report mentioned above found that there were no proper forensic evidence gathering tools for sexual crimes, and in the hospitals that did treat survivors, the only thing available was basic medical exams for determining penetration.<sup>261</sup> Then there are the oft-noted ‘Form 8’ issues – a medico-legal exam used for evidence and treatment purposes. Across the three field sites, the accessibility of the form was a huge issue, particularly in Akobo, where their status as a “rebel controlled territory” meant that police had not received updated training, or forms. On top of that, it has been reported that women are charged around 10-20 South Sudanese Pounds for Form 8<sup>262</sup> when they report an incident of SGBV to the police. While there is nothing mandating that survivors go to the police to get Form 8 before going to the hospital, the perception amongst police, hospital workers, and even community members themselves, is that victims have to a) go to the police to open a case and get Form 8 then b) go to the hospital. As a result, hospitals will often turn women away if they are not in possession of the proper paper work, which outside of many urban centres is not even available. This deters women from seeking medical treatment, either out of fear that their case gets publicized, or because they cannot afford the fees the police are charging for the forms. Given the need to receive treatment for sexual assault within 72 hours, both evidence-wise and in terms of vital HIV prophylaxis, this creates unnecessary delays in both justice and health care delivery. As police presence is virtually non-existent outside of the major urban centres and towns, the situation is even direr for rural populations.

Further complicating the situation is the almost complete absence of judicial independence in South Sudan. A civil society representative from Eastern Equatoria State told us, judges are unable to execute just punishment because of harassment from perpetrators families, which is especially acute when the perpetrator is in, or connected to someone in the government or military. The result, she said, was that, “you find someone who is out of prison who was just there.”<sup>263</sup> Police officers are also known to free suspects of SGBV in exchange for small bribes.<sup>264</sup> Citizens also fear to report abuses committed by government or army officials because of the chance of retaliatory violence by security forces. As it happens, many of the key informants interviewed for this research spoke of intimidation by “big men” as a major impediment to accessing justice. At a general level, the justice system was considered by respondents to be far too politicized to deal with SGBV cases in an even-handed manner. As a 2014 HRW report noted, prosecutions for serious crimes are hindered by a lack of independence and a climate of intimidation and insecurity for judges.<sup>265</sup> According to South Sudanese law, prosecutors fall under the executive branch through the Minister of Justice, who is also a legal advisor to the national government.<sup>266</sup> However, this deprives prosecutors’ actual and perceived independence as they need approval to take action on cases involving government officials, leading to fear amongst lawyers and prosecutors when it comes to sensitive cases.<sup>267</sup>



With respect to dealing with sexual abuse by the military/armed forces, this generates significant challenges. The 2010 SPLA Act requires that soldiers who commit crimes against civilians be punished and tried in the civilian court system.<sup>268</sup> While this is a laudable step towards accountability, in the absence of a functioning and independent judiciary, it normally means that armed forces govern themselves.<sup>269</sup> As an officer working in one of the SPUs in Juba noted with respect to punishment for soldiers found guilty of SGBV-related crimes:

*“some of them [being armed forces] are suspended or some are not paid, it depends on the nature of the crime, the military has its lawyers and they are being tried under military law and not under the national penal code.”<sup>270</sup>*

Similar trends were evident in 2013 SSSL study where it was found that, despite the creation of a special court in Akobo Town to deal with cases involving the SPLA in the post-2011 period, penalties for serious crimes including rape were limited to small fines.<sup>271</sup> There is a perception that anyone “in uniform” found guilty of sexual abuse should be court marshaled, even if the abuse occurred outside of combat. Since many members of the SPLA are unpaid or underpaid as it is (which may actually have informed their motivation for criminal activity in the first instance), suspension, salary freezes, and small fines do not constitute much in the way of a punishment, enabling government troops to commit sexual abuse with impunity.

As mentioned in the background section, the exemption of Southern combatants for sexual and gender-based offences has a long history in the region stemming back to the last civil war, where commanders demonstrated a propensity for turning a blind eye towards sexual crimes committed by their troops. This did not change with independence in 2011. Just prior to the outbreak of the conflict in December 2013, for example, prosecutors failed to begin investigations into numerous cases of violence against civilians by government forces in Pibor, Jonglei State.<sup>272</sup> It was discovered that there was a lack of seriousness at senior levels of the SPLA regarding the investigations.<sup>273</sup> The government and rebel leadership in the current conflict seem equally unwilling to hold troops responsible for sexual and gender-based atrocities. Notwithstanding the trial and subsequent imprisonment of two SPLA officers found guilty of abuse of power under the 2008 Penal Code for their roles in the outbreak of the conflict in December 2013,<sup>274</sup> there is generally little faith in the ability of the judiciary to prosecute government abuses, or the SPLA to carry through on its own investigations. Although local commanders and authorities in SPLA-IO controlled territory reiterated that they continued to observe the laws of South Sudan, it is clear that, like the SPLA, there have been no concrete efforts on the part of IO forces to hold combatants accountable. This is in spite of declarations that they would support probes on sexual violence.<sup>275</sup> In fact, after the mass rape and killings that were incited and perpetrated by the SPLA-IO in April 2014 in Bentiu, IO leader, Riek Machar vowed to investigate allegations of human rights abuses, but never followed through.<sup>276</sup>

### Box 5. Jurisdictional Vacuums in the UNMISS Protection of Civilian (PoC) Sites

The Protection of Civilian Camps, or POCs are different than the so-called “safe-havens” that the United Nations has established in other conflict zones, including the former Yugoslavia and Iraq where they had pre-planned areas for civilians seeking protection.<sup>277</sup> Rather, the POCs were the pre-existing bases of UNMISS where civilians fled when fighting erupted in the country in December 2013. The initial understanding was that these bases would be “temporary” sites for those wanting protection from prosecution and violence. As time went on, however, they developed into something closer to full-fledged IDP camps, albeit patrolled and protected by UNMISS forces.<sup>278</sup>

Given that the UNMISS bases around the country were never designed to shelter the tens of thousands of South Sudanese that sought refuge there, over-crowding and sanitation quickly became a problem. At the same time, so did crime *within* the camps. Protection agencies and other organizations working in the POCs tried to develop ad-hoc community watch programs and under-resourced UN Police Officers (UNPOL) monitored the situation as closely as they could, but this did not discourage crime rates.<sup>279</sup> Part of the problem has to do with the change in UNMISS’s mandate when the conflict started in 2013. When the Mission was established in 2011 its mandate included strategies for security sector reform (SSR), rule of law and capacity building within the justice sector. When the conflict started in December, however, the mandate of UNMISS shifted entirely towards the protection of civilians “under threat of physical violence,” monitoring and investigating human rights abuses and facilitating humanitarian assistance and access. While such a modification was important, it also created what has been described as a “rule of law vacuum.” When it comes to the POCs, UNMISS is no longer authorized or resourced to handle criminal justice functions. Right now, there is no Standard of Forces Agreement (SOFA) between UNMISS and the Government of South Sudan (GOSS) when it comes to handling criminals seeking shelter in UN bases. While some expulsions have been occurring, there is a fear that the expelled will be subject to abuse and possibly death. It would also be a potential violation of “the principle of non-refoulement, as the IDPs, including the criminals amongst them, had sought protection from persecution.”<sup>280</sup> Although UNMISS has said that the 2008 South Sudan Penal Code applies to crimes committed on their bases, with no executive mandate, powers of arrest or implied authority as an occupier, they don’t have the legal basis to create a separate justice system.<sup>281</sup> The result is that perpetrators of crimes, including sexual crimes, are held in detention centers, or holding facilities within the various bases. The apparent approach of UNMISS under these conditions is to consult with the family and community in looking at the incident and resolve the situation therein. For the most part, protection actors and communities in the POCs are forced to rely on informal dispute resolution mechanisms, such as customary chiefs and community leaders, as well as the protection INGO partners in the POCs. As one paralegal working in the POCs in Juba told us, “we are involving the traditional leaders...that is the only avenue we have at the moment.”<sup>282</sup> The problem is that many of the chiefs, or elders inside the camps have lost the trust of the communities. As mentioned in the preceding section on ‘Attitudes and Drivers’ the disintegration of families and communities has also undermined the ability of South Sudanese to resolve problems in a culturally specific way. The consequence is that there is not much in the way of accountability for criminal cases, including SGBV-related offences. Unless there is a demonstrated risk against the community or the offender, they cannot be held for more than 72 hours, meaning that more often than not they are released back into the camp where they can re-offend. As one IDP woman living in a POC in Juba mentioned:

*“[T]hey need punishment that when you do something bad you go to jail. Here when you do something bad, the camp management doesn’t take you out. When you are not taken out, or to jail, they youth will know that they can mobilize to do these things.”<sup>283</sup>*

The above challenges to justice and accountability in South Sudan will need to be addressed before there can be a meaningful discussion on increasing access to justice for SGBV survivors. Again, it makes little sense to send people into systems that are likely to do them more harm than good. Yet, to address the cycles of SGBV that exist at all levels of society in South Sudan, there needs to be an end to impunity. The contention that justice is imperative to halting cycles of violence in South Sudan is not new. Indeed, a number of rights agencies

and South Sudanese activists have been staking this claim since the outset of the newest civil war in December 2013. Although the independent Hybrid Court of South Sudan (HCSSS)



proposed by the Inter-Governmental Development Authority (IGAD) is a necessary and significant step towards justice and accountability in the country, efforts also need to focus on remedying the “rule of law vacuum” at the local level so that individuals, families and communities can respond to “everyday justice issues,” as well. As this report has attempted to clarify, cycles of violence, and sexual and gender-based violence specifically, do not exist at the national level between the government and the opposition

alone – an implication, which will be critical in engendering peaceful relations and security for all citizens in the long-term future of South Sudan.

## PERCEPTIONS OF JUSTICE AND ACCOUNTABILITY

### “If she has human rights she can choose another man”

In many ways perceptions of justice and accountability amongst South Sudanese are coloured by the challenges discussed above. The corruption and mismanagement of the justice sector referred to in the preceding section, for instance, has resulted in widespread distrust in statutory institutions, especially when it comes to their capacity for justice delivery. As one representative from the Central Equatoria Police Headquarters noted:

*“you go to the community and talk to them...the civilians are seeing the police as enemies...some put on uniform and go and rob them, therefore, civilians think they are bad.”<sup>284</sup>*

For many people, customary law was considered to be the preferred dispute resolution mechanism only insofar as law enforcement was seen to be unable to fulfill its role in deterring future crime. As one displaced man living in POC 1 in Juba remarked:

*“people are put in prison and then they pay to leave...that one will not control the mind of that person to not repeat the same crimes.”<sup>285</sup>*

A woman in the same POC:

*“we are preferring customary law for a simple reason....there is no way of escaping out and it is clear and final...there is no suspicion that someone has been released in jail.”<sup>286</sup>*

Because of the flagrant violation of the statutory provisions protecting people from sexual and gender-based violence by those in top level leadership positions, there was an understanding that since state authorities did not take the law seriously, why should others.

As indicated in the preceding section, there was also a perception that, unlike customary solutions to SGBV, which were “confidential,” statutory solutions often ended in the publicization of the incident and heightened levels of social opprobrium for the survivor and his/her family. A man working in Mingkaman noted, “there is no confidentiality in the court.”<sup>287</sup> A male FDG respondent in Mingkaman correspondingly observes:

*“the best law is customary law because it keeps information confidential...it is important to keep that one secret.”<sup>288</sup>*

However, the non-partisan and inclusive nature of national law meant that many people thought that if the courts were to function properly they would be more desirable. A displaced man residing in Akobo tells us:

*“[national law] is important because it involves people from different backgrounds and the constitution and the law are articles documented so when you are judged it will be based on this.”<sup>289</sup>*

This was also reflected in a 2010 study on local justice mechanisms where respondents thought that, in their “normal operation,” the courts and laws of South Sudan were “fair and non-discriminatory,”<sup>290</sup> particularly when compared to customary solutions.

This is significant considering that many South Sudanese see the introduction of a liberal human rights agenda in the country to be both foreign and ineffective in controlling violence, including sexual violence.<sup>291</sup> While the universality of individual liberties means that statutory law is supposed to remain above factional societal and political relations, as has been documented elsewhere, the “outsider status” of national law also makes it somewhat alien to people on the ground.<sup>292</sup> It is something connected to the “hakuma,” or the government/military, as opposed to the local community.<sup>293</sup> As Dr. Cherry Leonardi and colleagues have observed, the term “human rights” in South Sudan has developed a negative association for many people.<sup>294</sup> Haphazard attempts, they say, to reform the statutory and customary systems in line with principles of human rights have had a limited effect and may have even reversed the human rights cause in South Sudan.<sup>295</sup> Even among customary chiefs sympathetic to human rights, including protections from SGBV, there is a reticence to enact these norms out of fear of losing legitimacy in the community, who would view them as acting against culture and traditions. Alienated, people may simply choose to go elsewhere to settle their disputes, leading to a loss of power and legitimacy that customary authorities may be unwilling to relinquish.<sup>296</sup>

What’s more, many of the principles of a liberal human rights framework regarding individual criminal liability and individual rights for groups, such as women and youth, are incompatible with local norms and ideas about collective responsibility.<sup>297</sup> A chief in Mingkaman:

*“...we are happy with our laws. They are binding. Now with the current laws of South Sudan, which we consider foreign, they are incompatible, we don’t understand the meaning of these things. We think of them like foreign laws. Ours are the laws at the community level. This is the one that we value. Our culture is oral, but the generation these days are getting their laws from somewhere else. We used to use the firing squad and now cultures are broken.”<sup>298</sup>*

As has been noted in past research, the very introduction of human rights in South Sudan made efforts to manage violence difficult as timely punishment was no longer the effective option it once was.<sup>299</sup> Having grown up under the repressive laws of North Sudan, the SPLA code of conduct and other laws, the statutory system is entirely new for many older South Sudanese generations. This is especially true in rural areas where people have remained relatively cut off from the formal structures and aspects of government. Shifts towards human rights that have occurred have often been met with resistance. As a chief told us:

*“[i]t is the right of a woman to look for a young man. It wasn’t like this before. It is common because of the current crisis and the human rights. According to human rights principles that girl can choose which is contrary to a culture. The father is the one to choose because he wants to get cows.”<sup>300</sup>*



Paralegals operating in the country expressed the difficulties they faced in translating the language of human rights to a local context, noting that awareness raising was usually met with – “your wife has so many rights, she can divorce you,” “if she has human rights she can choose another man,” or “the daughter should be...forced...if a daughter chooses someone this is becoming bad human rights.”<sup>301</sup>

Part of this also has to do with a wider rejection, or reversion to foreign influence in South Sudan. As indicated in the first section of the report with respect to youth gangs/criminals, young people who adopt behaviors associated with African-American or other East African cultures, particularly those in Kenya and Uganda, are viewed as social pariahs. A man in POC 1 in Juba:

*“like, before young people used to not drink, but cultures are now disappearing because of some Western cultures that have come to Africa. You see someone is holding hands with your daughter in front of you and they will tell that this is human rights. Also before, people used to respect one another and now there is no more respect. That is the way of human rights. They have brought problem to the South Sudanese community.”<sup>302</sup>*

Clearly, the ad hoc spread and diffusion of a liberal human rights framework has provoked a reactionary response. Yet, what is considered “custom” and tradition in South Sudan has been heavily impacted by decades of war (as evidenced by the chief’s statements on the firing squad above). The combination of corruption, inefficiencies in the statutory system and the limited effectiveness and backlash against “that thing of human rights” has produced a reliance on customary law. Coupled with a lack of awareness of statutory protections for SGBV, people’s knowledge is often restricted to what they consider to be “custom.” For instance, a displaced woman in Juba tells us:

*“[w]e just known our culture. If it happens the chief can do it according to Nuer culture. The one who raped the girl can pay some cattle.”<sup>303</sup>*

When asked whether she thought this was fair, however, she said that:

*“...it is not good. It is not good. When the problem is solved and the one who raped has paid cattle, the girl will be taken home and will be married by other people.”<sup>304</sup>*

This is significant as the oft-noted familiarity of customary law, which is assumed to lead to a *de facto* preference, may be more circumstantial. Youth had particularly interesting perspectives on the matter, which reflect their precarious position between the government and local spheres in South Sudanese society.<sup>305</sup> When asked whether they preferred customary or statutory law, for example, a focus group with Dinka male youth in Mingkaman said that:

*“we are thinking of culture. But at the time of independence the government was the ruler, but they have confused us. Sometimes there is war. Us of young children, we are confused. Maybe we are still in the rule of the community...”<sup>306</sup>*

Male youth in Akobo similarly remark:

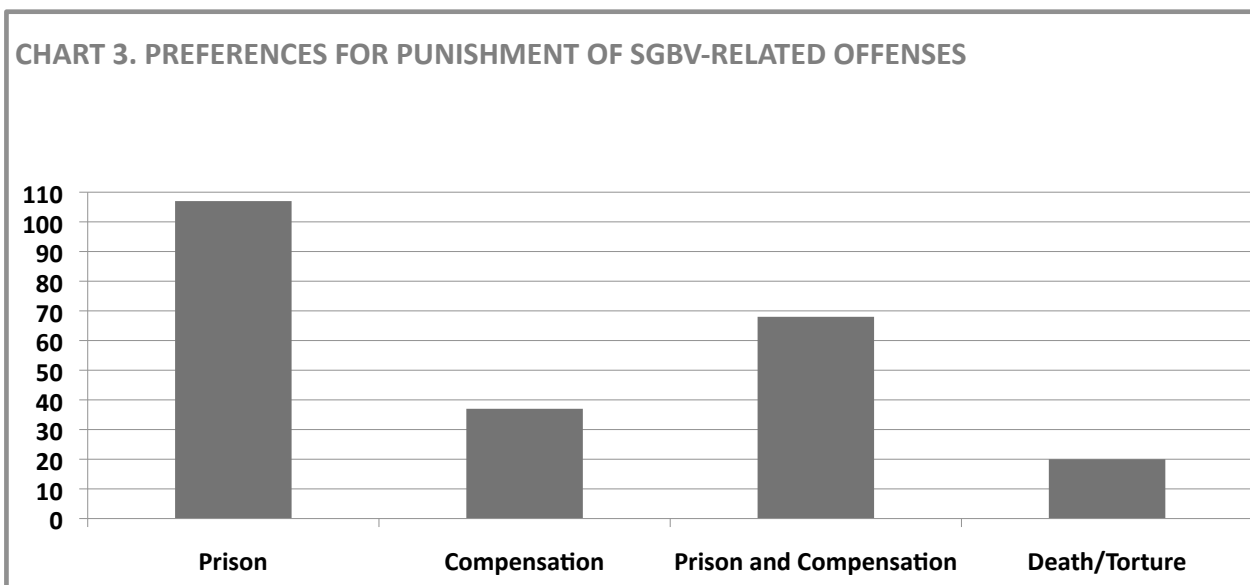
*“maybe there is law of the community and law of the government.”<sup>307</sup>*

Given the reliance on customary solutions to SGBV, it might seem surprising that the majority of respondents preferred prison when asked what they thought the most optimal punishment for sexual crimes was. Indeed, there seemed to be a strong desire for justice for almost all of the 360-plus research participants. This is also reflected in the recent UNDP/SSLS survey, where 93 per cent of people interviewed answered “yes” when asked whether individuals responsible for abuses should be prosecuted in courts of law.<sup>308</sup> While there was a minority of views that held that capital punishment and torture should be employed for sexual and gender-based offences, as a Dinka woman from Mingkaman remarked, *“if the perpetrator gets caught he should be subject to the firing squad,”<sup>309</sup>* another IDP woman in Juba, *“if they rape a little girl, let him be killed,”<sup>310</sup>* for the most part people seemed to be interested in the deterrent quality of punishments like imprisonment. As a female youth comments:

*“if justice is there, those who are doing that act, the perpetrator, wont re-offend because they fear that there will be someone who cares for women.”<sup>311</sup>*

A man in POC 3 in Juba:

*“[i]n local justice...if I have money I know I can rape and the money will solve the problem. I have done a crime, but I don’t go to jail – it’s not fair.”<sup>312</sup>*



The deterrent quality of prosecutions and statutory solutions, including imprisonment, was also rationalized on the basis that such punishments would be far more likely to have an effect on reducing inter-communal violence. In line with the above on understandings of “national law” as fair and non-discriminatory, people expressed a preference for having

statutory authorities, including police, deal with the case so as to prevent retaliatory fighting between the families and communities involved in a dispute. As one woman noted:

*“first, report it [being SGBV] to police. If you report to the husband...he will just find and kill that person.”<sup>313</sup>*

Another woman:

*“[we] prefer to report this issue to police because if this happens it brings fighting to the community.”<sup>314</sup>*

Both judges and police were viewed as having the potential to mediate SGBV cases in an even-handed manner. Adolescent girls in Mingkaman:

*“That one is good [statutory law]. The reason why it is good is because the judge...is separate...and it can reduce the violence among the communities.”<sup>315</sup>*

While customary “chiefs are there for peace and order” most people viewed formal justice to be superior when it comes to controlling the cycles of violence that SGBV incidences produce. Further to this, people understood that:

*“the family will plan to kill him or fight him if he is not in jail.”<sup>316</sup>*

More so than other forms of retribution, prison was seen as having the ability to alter the criminal mentality of perpetrators of sexual and gender-based crimes, while at the same time enhancing the comfort of the survivor. As one woman put it:

*“[w]hen the one who has raped has been taken to jail, the one who was raped will feel comfortable that this man is not there.”<sup>317</sup>*

For the individual responsible, prison was seen to be a good opportunity to reflect on the “wrongness” they had done both to the survivor his/herself and the collective. It would also create the requisite “fear that doesn’t happen to them again.”<sup>318</sup>

That being said, as indicated in Chart 3 above, a lot of South Sudanese attested to the importance of some sort of combination of compensatory justice mechanisms aimed at social repair and retributive justice mechanisms (such as prison) aimed at deterrence and discipline. As was noted in a recent survey this likely reflects the emphasis of restoring social relations in customary law, as well as the more harsh punishment policies of the SPLA and OAGs in the 1983-2005 war where people found guilty of rape were theoretically supposed to be subject to the firing squad.<sup>319</sup> At the same time, as has been demonstrated by research on the Acholi in Northern Uganda, violent retribution and the forgiveness associated with traditional solutions to SGBV-crimes are motivated by the same value of social harmony.<sup>320</sup> Throughout our research in the three field sites it became apparent that rather than viewing approaches that emphasize social repair and those that emphasize retributive notions of justice as opposed to one another, when it comes to South Sudan, it makes far more sense to

view them as two sides of the same coin. Again, as has been observed in Northern Uganda, pitting restorative justice mechanisms, which are understood as “local” against retributive mechanisms, understood as the legal apparatus of the state, “...is as misleading as it is pervasive.”<sup>321</sup> Much like Northern Uganda, most justice local mechanisms in South Sudan contain an element of both.<sup>322</sup> Though customary chiefs in South Sudan do not have sentencing rights when it comes to SGBV, the fact that most traditional leaders purport to apply imprisonment and compensation in the form of cattle to cases of rape is also indicative of the importance of fulfilling the retributive needs of South Sudanese and the previously referenced goal of deterrence with restoration for the harm done because of the damage to the victim’s status.<sup>323</sup> As a displaced woman residing in Akobo told us, “the perpetrator should be taken by police and he should face justice and be sent to jail...and be punished for six to eight cows.”<sup>324</sup> A Dinka woman from Lakes State, “apply all necessary measures: prison; cows; and fine. This is how it is done.”<sup>325</sup> Another woman:

*“[i]t is better to use the South Sudan court because that one can sentence you to some years in prison. All the two laws are important though because customary law used to be there before the other one so they should work together. The perpetrator will also be asked to bring cows. But it is also good to keep this person in prison for a certain time because it will be lesson for him so he will not do the same thing. But, he should not be put in prison without paying cows.”<sup>326</sup>*



It goes without saying that any efforts for reform in the country need to consider the very significant role that compensation for sexual and gender-based offences play in South Sudanese society. As one man put it:

*“the traditional one with the local chiefs is good...when you are fined and you pay seven cows to the husband...the reason why is that the perpetrator will be punished with the cows and then the husband will be comfortable...he will know that the perpetrator is punished.”<sup>327</sup>*

Customary law in this sense plays an important role in reinstating the equilibrium between families and communities affected by SGBV. While statutory law is viewed as having an

effect on violence reduction, so too is customary law, particularly compensation. It is, therefore, important to recognize the value of mediating and perhaps even “localizing” serious crimes to encompass the kinds of reparations that are so critical to the survival of South Sudanese communities alongside a prison sentence for perpetrators.<sup>328</sup> This is particularly accurate if the statutory legal system is to be seen as something that isn’t foreign, existing only in the realm of the government, and if its universalizing human rights values are to be met with less resistance.



## NEED FOR REFORM

### “It will cause madness...we will all walk naked”

The nature and patterns of continued acts of sexual and gender-based violence in South Sudan, the lack of justice for such conduct and the cycles of violence that it perpetuates, demand reform. The African Union Commission of Inquiry into atrocities committed in the

#### **BOX 6. Addressing SGBV Crimes Committed in the Conflict**

1. Criminal Prosecutions of those in top-level leadership positions
2. Amnesties should not be granted for individuals and groups responsible for war crimes and crimes against humanity
3. Further investigations into sexual and gender-based crimes committed as war crimes and crimes against humanity – with the recognition that not all forms of SGBV in wartime are associated with an explicit policy, or utilized as a “weapon of war”
4. Swift and timely establishment of the Hybrid Court of South Sudan (HCSS) – with careful consideration given to location and different mechanisms of redress, including compensation
5. Compensatory mechanisms should be considered as an important form of redress in criminal prosecutions
6. Given some of the challenges faced by other hybrid criminal tribunals, such as the ICTR in delivering a kind of justice that people will accept, careful deliberation should be made with respect to the location of the HCSS
7. The establishment of a body, such as a Truth Commission and/or Reconciliation and Healing Commission, to facilitate reconciliation and social repair – with women stakeholders and a focus on SGBV
8. Psycho-social support to survivors and witnesses of violence, including SGBV

current conflict reflects this concern, highlighting the dire need for accountability, particularly considering the historical impunity for civilian abuses. This necessitates a long-term approach that recognizes the far-reaching implications of SGBV on individuals, families and communities, including the destruction of social ties, the “confusing of bloodlines and inheritances,” trauma and the host of “children born of war.”<sup>329</sup> As has been highlighted elsewhere, if institutions are not able to grapple with the very real legacy of sexual and-gender based violence committed in wartime, the capacity for social repair amongst communities will suffer, potentially derailing whatever sense of peace or stability might emerge in South Sudan in the future.<sup>330</sup> The “rule of law vacuum” referenced in the section on ‘Challenges of Justice and Accountability’ also prohibits the ability of families and communities to resolve issues stemming from SGBV in the present, contributing to what the AU commission referred to as “cycles of violence within violence.”<sup>331</sup>

This does not mean blindly promoting access to justice, but it does mean taking seriously that impunity for sexual and gender-based offences contributes to further violence, precluding the possibility of a

lasting solution to the South Sudan crisis. It also means treating the country as something more than a “perpetual emergency.”<sup>332</sup> The relief atmosphere of current efforts is incredibly crucial, yet as indicated in Box 4. “Assistance without Protection,” so too is remedying the long-term challenges and inefficiencies in the justice sector. Even prior to the outbreak of the December 2013 conflict, it was observed that the spirals of violence in Jonglei State and elsewhere in the country were, at least in part, the result of “quick fix” solutions and crisis management,<sup>333</sup> which “fail[ed] to combine conflict mitigation with peace-building and development.”<sup>334</sup> At the moment, the challenges discussed in section three of this report

mean that existing complaint mechanisms are unable to provide justice. In the absence of justice, families and communities will continue to take matters into their own hands, punishing perpetrators through reprisal attacks leading to violent escalation, which is now evident in both in the revenge/“punishment” rapes tied to the wider conflict and the bouts of inter-communal fighting that have continued in places, such as Lakes State. Violence begets violence in South Sudan in a real way. The stopgap measures characteristic of past approaches to South Sudan will fail to address both local and micro-level violence dynamics. Indeed, as the AU Commission of Inquiry pointed out, the current war was the consequence of privileging a “negative peace” that emphasized violence reduction in the short-term at the expense of the kind of institutional and structural transformation needed for long-term violence reduction.<sup>335</sup>

Along these lines, *one of the first steps* to addressing SGBV in South Sudan will be confronting one of the challenges identified in the third section of the report, that is, SGBV by the armed forces. This entails criminal prosecutions of those in top-level leadership and command positions in the SPLA and the SPLA-IO, as well as the OAGs operating throughout the country. In fact, there is a view amongst South Sudanese that only once those in the upper echelons of the government and the military are held accountable for atrocities committed in the conflict, can there be peace. As local commanders in SPLA-IO territory told us in relation to SGBV committed in the context of the fighting:

*“[t]hese things need to be stopped, but they will only be stopped if this guy [President Salva Kiir] steps down from the presidency.”<sup>336</sup>*

The White Army comparably remarked:

*“[o]ne thing for us, the one who makes the order is the only person to be held accountable.”<sup>337</sup>*

This obviously reflects current divisions in the country and the military perspectives of only those in the opposition, but it is still significant when considering the preferences for retributive forms of justice for sexual crimes expressed in Chart 3 in the above section. Demanding that leaders account for SGBV-related offences serves a deterrent function by providing a signal to would be perpetrators, including commanders and combatants. Holding those in top leadership positions responsible for acts of sexual and gender-based violence directed, or committed under their watch is also a step towards restoring trust in institutions and increasing respect for rule of law in South Sudan. As mentioned before, because of the flagrant violation of the statutory provisions protecting people from sexual and gender-based violence by those in government, or other leadership positions, there was an understanding that since authorities did not take the law seriously, why should others.

Additionally, as has been highlighted elsewhere South Sudan has a long history of “de facto blanket amnesties”<sup>338</sup> as part of peace deals, which has previously allowed those in high-ranking government and military positions to eschew punishment for civilian abuse. As HRW noted, such an approach does nothing to enhance the legitimacy of the “state” and its leaders in the eyes of South Sudanese who see people being rewarded for human rights violations, including sexual violence.<sup>339</sup> Data collected for the previously referenced

UNDP/SSLS survey illustrated that there was “considerable opposition to the idea of granting amnesties to people responsible for conflict-related abuses.”<sup>340</sup> International law makes quite clear that, war crimes and crimes against humanity should be prosecuted and that amnesties for such crimes should not be permitted.<sup>341</sup> It is therefore important that IGAD stay committed to its statements:

*“that no amnesty will be given to any individuals responsible for committing crimes from 15 December 2013, regardless of their positions.”<sup>342</sup>*

At the same time, as referenced in the summary of this report, when it comes to sexual and gender-based offences perpetrated against civilians in the course of the conflict, it is also important to recognize that not all forms, or acts of sexual violence are directed as a “weapon of war.” There is a difference between “systematic” and “widespread” in this respect, as rape can become widespread even when it is not ordered.<sup>343</sup> People are fond of using the “weapon of war” analogy for a reason. It is far easier to hold individuals and groups accountable for sexual crimes when you can clearly link such acts to a strategy and/or command structure. As such, prosecutors will often seek evidence of an explicit policy of sexual and gender-based violence.<sup>344</sup> However, this leaves out those leaders who tolerate, or condone SGBV by their combatants even if they do not order it.<sup>345</sup> As highlighted in the first section, not all patterns of sexual and gender-based violence in South Sudan’s war follow a strategic logic. In some cases sexual violence appears to be a reward, or an incentive for participation in violence, and in others it seems to be a function of indiscipline (that being said, in the face of a collapsing economy, the extension of what at least on the surface looks like a “rape and pillage” model might itself be a strategic move on the part of government forces who can no longer afford to pay their troops). This is particularly accurate in urban areas, such as Juba, which are characterized by chronic insecurity at the hands of government soldiers who indiscriminately loot and rape civilians. As representatives from the SSPS told us in regard to the main offenders of sexual and gender-based offences in the capital, “soldiers from the SPLA are the mains ones. Those from the organized forces.”<sup>346</sup> Even if military and unit commanders do not order rape, they are still responsible, “[u]nlike a stray bullet, rape is always intentional.”<sup>347</sup> While the AU has ruled out genocide, they established that war crimes and crimes against humanity have been committed and necessitate further investigations. During such investigations, while it will be important to document the use of sexual violence as a weapon of war, it will also be important to move beyond this classification so that victims of indiscriminate attacks by armed groups are not alienated from whatever transitional justice process transpires in South Sudan.

Moreover, in order for criminal prosecutions to take place, swift and timely efforts are needed to initiate the proposed Hybrid Court of South Sudan. This court needs to be responsible for trying the range of sexual and gender-based crimes attached to warring parties in the first section of this report. Since the court is supposed to be responsible for investigating and prosecuting “violations of international law and/or applicable South Sudanese law” careful attention will have to be paid to the classification of such offences and efforts made to address gaps in both international and domestic law when it comes to SGBV. For instance, the ICC defines sexual violence crimes as “rape, sexual slavery,

enforced prostitution, forced pregnancy, enforced sterilization, or any other form of sexual violence of comparable gravity.”<sup>348</sup> This excludes other more contextual offences characteristic of the South Sudan’s specific conflict, such as forced marriage at the hands of armed groups and the castration of young boys. It is important that the gendered and sexualized nature of these acts be recognized. The conferral of the status “wife” without the exchange of bridewealth in a society where social organization is based on marriage bonds represents its own harm both to the individual and their family. Likewise the trial of crimes, such as castration has often been subsumed under “other inhumane acts” – as was the case after the 2007 election violence in Kenya; however, prosecutors and investigators need to acknowledge the gendered nature of such acts. As mentioned in the first section, in a patrilineal society like South Sudan this kind of violence literally cuts off the lifeline of communal survival for certain groups, while at the same time symbolically destroying representations of the virile male.

As highlighted in the above section, the Hybrid court should also start with an understanding of the importance of compensation in the country. As International Crisis Group (ICG) commented back in 2014, “...national or international criminal prosecutions should proceed with an understanding that compensation...is an important South Sudanese form of redress.”<sup>349</sup> This is especially true for sexual crimes. Even though a majority of participants communicated a preference for retributive forms of justice, specifically imprisonment when it came to SGBV, a number of people also conveyed a desire for some combination of customary compensation and statutory sentencing, which probably reflects people’s lived experiences navigating the overlapping, plural legal systems in South Sudan. As such, “[i]t is imperative to fix any justice and accountability process in the specific South Sudanese historical, political and judicial context.”<sup>350</sup> The consideration of compensatory justice mechanisms to go alongside retributive justice mechanisms will also help facilitate some form of local ownership over the Hybrid Court Process. Accordingly, it will be important that as plans for such a Court progress that people critically reflect on the failure of other such approaches to bring to bear a locally acceptable form of justice. For instance, the International Criminal Tribunal for Rwanda (ICTR), created to try crimes during the 1994 Rwandan Genocide, was located outside of the country in neighboring Tanzania, which made many feel estranged from the transitional justice process. The location of the court will also be important to providing South Sudanese with a sense that accountability is really taking place.

Once more, there is a propensity to treat restorative and retributive justice as distinct within the transitional justice paradigm. This simply does not reflect South Sudanese realities. While the consideration of compensatory mechanisms is one way in which to restore the social disequilibrium caused by SGBV in South Sudanese communities, there are potentially high social risks attached the extremity of violence at the local level in the current conflict, engendering problems for wider social repair. Reconciliation and healing will, thus, be a critical task. Though this is conceptually discrete from the other forms of retributive and restorative justice discussed above they are part and parcel the same process. Different proposals have been made along these lines, but one thing is certain, that any such approach will have to have a lens that recognizes the gendered nature of sexual crimes and the destruction of social ties that SGBV can cause. One suggestion has been a truth



commission. In the context of sexual and gender-based offences this could be critical since “truth telling” can serve as a way to challenge the stigma around SGBV, while at the same time confronting ideas about the permissibility of certain forms of violence in society by demonstrating injury to survivors. A reconciliation and healing commission could serve a similar function.<sup>351</sup> Whether a truth commission *and* a reconciliation and healing commission, or a truth and reconciliation commission, women will have to be heavily involved in the process. As referenced throughout this section, SGBV, much like any other form of violence in conflict, and perhaps even more so, destroys the fabric of families and communities – in fact, this is what makes it so effective in wartime. Consequently, a neglect of sexual crimes from truth and reconciliation efforts would undermine social stability and sustainable peace in South Sudan.

Part of the healing process will also require dealing with unaddressed trauma. As indicated in the section on “Drivers of Sexual and Gender-Based Violence,” the consequences of trauma can act as a rationale for SGBV. Even though the majority of programs concentrate on psychological support to female survivors of sexualized and gendered violence, it is also important to direct assistance towards other distressed elements of the civilian population, including men and boys. This is vital in both the short-term and the long-term when it comes to violence reduction. Trauma, as disclosed before, can create an emotional numbness and an inability to distinguish between “good” and “bad,” while at the same time validating violence against an “other.”<sup>352</sup> As one man living in POC 3 in Juba noted with respect to mental health services in the camp:

*“[c]ounseling is not here. We really see a need for it. If not it will cause madness. If no [one] takes care of that problem, we will all walk naked.”<sup>353</sup>*

Addressing trauma will also reduce reliance on negative coping mechanisms, such as drugs and alcohol, which were continually named as a driver of SGBV during the research in all three field sites.

Undoubtedly, most efforts will be focused on demanding responsibility for war crimes and crimes against humanity, as well as truth and reconciliation discussed above. Yet, as this report has attempted to demonstrate, it is also important to contemplate justice for sexual and gender-based offences at all levels. Recognizing that legal instruments alone cannot address the drivers of sexual and gender-based violence, or form the basis for the kinds of long-term structural change that are needed, it still represents an important initial step. As indicated in the third section, the current statutory laws on SGBV in South Sudan are limited, while at the same time reinforcing the patriarchal leanings of society discussed in section two. Whether through a separate sexual offences bill, akin to that of Kenya, or amendments to the 2008 Penal Code, statutory protections for SGBV need to be expanded. This is significant not only to the more “day-to-day” violence that people experience, such as marital rape – currently legalized under South Sudanese law, it is also important to having a national legal basis for trying the range of sexual crimes committed in the context of the conflict, including gang rape and rape with foreign objects and sexual violence against men and boys. Accordingly, there also needs to be an effort to eliminate conflicting legal principles. As referenced in the third section, while rape is defined in a “sex-neutral” way in



the Penal Code, the “unnatural offences” provision prohibits male survivors from accessing justice by opening them up the possibility of criminal prosecution.

Given the reversion to, and largely unsuccessful attempts of a liberal human rights framework to translate to a local context and the lack of efforts to engage male stakeholders in conversations around gender equality and sexual violence, any effort at law reform needs to be expressed in South Sudanese terms. As one lawyer in Juba told us:

*“anything couched in international things will fail.”<sup>354</sup>*

Like the Hybrid Court, amending the laws of South Sudan will have to be sensitive to the country’s particular cultural context, especially if statutory law is to be viewed as something that does not only exist in the realm of “hakuma,” or the state. This will be exceptionally critical when and if it comes to defining and applying penalties to war crimes and crimes against humanity in domestic legal frameworks – an element of most other Penal Codes. As mentioned previously, South Sudan is not party to the Rome Statute of the ICC, and while it would be desirable to push towards ratification, at the current juncture, such efforts could be met with resistance, particularly in the government where hostility to foreign interference and influence has been at least as strong as it is at the local level. In fact, there is currently a concern that recent efforts to “domesticate” crimes against humanity, war crimes and genocide into the 2008 Penal Code are an attempt to undermine the jurisdiction of the Hybrid Court and international law within South Sudan. As a result, it will be essential to think about how to contextualize components of international criminal law.

Focusing on formal recourse for sexual and gender-based offences alone will, of course, not be enough. While there does appear to be a preference for statutory solutions to sexual crimes based on the research presented here, the stark reality of the situation is the reliance on customary law, even if a more of a matter of convenience, will continue for sometime. As Justice Africa and civil society partners discovered during separate consultations, many civic initiatives are about providing



oversight into state processes, without recognition that state structures, including the justice sector, are absent for many people. Thus, there needs to be a way for people to reconcile incidences of SGBV in the short-term. This entails strengthening local accountability mechanisms and the ability of South Sudanese to resolve SGBV issues in a culturally specific way. It does not entail mindlessly endorsing “indigenous” structures without

questioning their legitimacy amongst communities, but you cannot rule out customary solutions entirely since oftentimes they are all that exist. If there are no viable means for resolving disputes surrounding sexual violence, as discussed throughout this report, the result will be further violence. Strengthening community responses to SGBV whilst addressing the practices that re-victimize survivors, for example, forced marriage to perpetrators and imprisonment for adultery, can help cushion and facilitate a long-term process of justice reform.

A surprising finding of the research was what could be perceived as some element of, or capacity for independence amongst law enforcement, especially police in South Sudan. Despite the highly politicized context around sexual abuse by the military and the intimidation that even judges and prosecutors face when dealing with sensitive cases, police were quick to name and shame government soldiers as the primary offenders of sexual crimes. Hence, there is, or could be a basis for enhancing the independence of security providers in South Sudan. Capacity building and infrastructural support is one way to do this. But, this will necessitate a shift for donors and other organizations supporting South Sudan. Box 5 on the jurisdictional issues in the POC sites, for instance, discussed the problems associated with the change in mandate for UNMISS away from security sector reform, rule of law and capacity building within the justice sector, to purely civilian protection and humanitarian access. While such a shift in mandate was in some ways needed considering the fact that “state building” would mean supporting an active participant in the conflict, unchecked it can also contribute to the larger “rule of law vacuum” in the country. In many ways, the shift in focus also underpins the short-term crisis emphasis of the past, while at the same time missing important opportunities for correcting pre-existing accountability gaps.

Finally, justice sector reform will not be able to usher in change in the prevailing societal norms that make sexual and gender-based violence possible in the first place. Despite the huge amounts of funding put towards police training, and capacity building, the willingness to engage in SGBV cases in a way that is fair to survivors is just not there. Most efforts to address sexual crimes focus on post-incident care, such as medical and psychosocial support – an emphasis reflected in Box 4 on “Assistance without Protection.” When the research was being conducted in 2015, the word prevention is hardly employed – and when it is, it often comes in the form of one-off trainings with statutory and customary authorities, or awareness raising through mass messaging, such as t-shirts and radio. SGBV prevention is not a universal concept and cannot be applied successfully in the same way everywhere. While lessons from elsewhere can, and have been successfully employed, it is not true that just because something worked elsewhere it will work in South Sudan. Based on the discussion in sections two and three, there are some context-specific factors in South Sudan that need to be considered, including the valuation of female bodies in terms of bridewealth and other norms about collective, rather than individual criminal liability for sexual crimes and the associated emphasis on social repair as opposed to the harm done to the actual survivor. These factors will need to be reviewed when thinking about the receptivity of awareness raising and behavioral change around sexual violence.

## **Conclusions**

At the outset of this report, we aimed to provide a broad overview of the nature of patterns of sexual and gender-based crimes in South Sudan. We also hoped to be able to shed even a minimal light on possible drivers of such violence and challenges and perceptions of justice and accountability for rape and other-related offences – some of these challenges will already be familiar to those who have read the proliferation of reports on similar issues before the conflict. However, it is important to acknowledge that the same challenges that typified the immediate post-independence period continue to plague South Sudan – which risk being ignored by approaches that view the country as a “perpetual emergency.” As we maintained at the end of the second section, we have only begun to touch the surface. More detailed research is needed to contextualize sexual violence in South Sudan in order to better understand South Sudanese insights and experiences of SGBV. It is important to note that although this report documents and details some of the horrific sexual violence committed since the December 2013 conflict whilst demonstrating that an exclusive focus on sexual violence by warring parties is misleading in terms of the actual SGBV-related security concerns of families and communities as well as the realities of local-level violence. We also hope to have also shown the different ways in which impunity for sexual crimes contribute to cycles of violence at different levels of South Sudanese society, where one form of violence begets another.

## **ACKNOWLEDGMENTS**

This report would not have been implemented without our local partners South Sudan Women Lawyers Association (SSWLA) and Community Empowerment for Progress Organization (CEPO) who highlighted the need for such research. It was also made possible through the research conducted by the hired consultant, Alicia Elaine Luedke and greatly enhanced by her considerable knowledge of the subject area and the country. We are also thankful for our other partners within civil society, including, but not limited to South Sudan Law Society (SSLs), Nile Hope, Global Street Samaritans (GSS), SADDO, End Impunity Organization (EIO) and Voice for Change (VFC) who this research is for, and would not have been possible without. We are also incredibly appreciative for all of the assistance provided by the different international NGOs, rights groups, the protection clusters and UN agencies, including UNMISS who facilitated and supported our research. It would not have been possible without their contributions. We would also like to recognize the help of local authorities, customary chiefs, community leaders, police, lawyers, prosecutors, commanders, combatants and, most important of all, the citizens of South Sudan and most especially the courageous sexual violence survivors and witnesses who chose to bravely share their stories for the purpose of this research.

## ANNEX

### Annex 1

#### Box 1. Field Sites

**Juba** is the capital city and the most populous urban area in South Sudan. It was also the site of the outbreak of violence in December 2013. While stability was restored there relatively quickly it is now home to a large number of IDPs, around 30,000 of whom are currently sheltering in UNMISS Protection of Civilian (POC) camps. There are also numerous other non-UN protected IDP settlements scattered throughout the city, which house individuals and families fleeing from violence in other conflict-affected areas in Jonglei, Upper Nile and Unity States. As the administrative capital of South Sudan, many of the government structures that existed prior to the conflict are still intact and there is a large, albeit ill-trained and under-resourced security and police service, as well as a semi-functional formal court system. It is also headquarters to the large amount of humanitarian and development organizations that operate throughout the country. Juba was selected as a field site both because of the direct impact of the conflict there in the initial days of fighting, as well as the diversity of experiences and views that could be gathered. It also represented a unique opportunity to explore urban security dynamics in relation to sexual and gender-based violence in a more institutionalized context than can be found elsewhere in the country.

**Mingkaman** is located in Lakes State, Awerial County. After the eruption of violence in December 2013, a number of IDPs fled to Mingkaman via the River Nile from Bor and other areas of Jonglei State. Now it is home to just over 71,000 IDPs. The composition of Mingkaman is mostly Dinka sub-clans from both the IDP and the host communities. The site was selected in order to obtain an understanding of experiences of SGBV amongst a relatively stable community of displaced persons, as well as the ways in which interactions between IDP and host communities affect the protection of individuals and groups from sexual and gender-based crimes.

Unlike both Juba and Mingkaman, **Akobo** County is not under the control of government forces, and is instead held by forces loyal to Dr. Riek Machar and the SPLM-IO and is a hub for political and military elites in the opposition. Located on the border with Ethiopia, Akobo has experienced a large influx of IDPs, mostly on route to refugee camps in Ethiopia. At the same time, it has also been a place where people, mostly Nuer, have sought refuge from persecution. Because it is under the control of the SPLA-IO it is largely cut off from the national economy and other government processes, although it does appear to have a decently functioning local administration. At the same time, it is also the location of a number of “blood feuds” between different Nuer-sub clans, as well as conflicts between the Lou Nuer and the Anyuak and Murle. Owing to the neglect of opposition held areas in other research on South Sudan since the outbreak of the conflict, which has by and large focused on the experiences of people living in the POC sites in Jonglei, Upper Nile and Unity States (or Greater Upper Nile), we felt that it was a timely opportunity to look at the SGBV-related security concerns of South Sudanese living under “rebel control.”



## NOTES

<sup>11</sup> African Union, *AU Commission of Inquiry on South Sudan* (Addis Ababa, 2015).

<sup>12</sup> OHCHR, "Assessment Mission by the Office of the United Nations High Commissioner for Human Rights to Improve Human Rights, Accountability, Reconciliation and Capacity in South Sudan: Detailed Findings." *A/HRC/31/CRP.6* (10 March, 2016).

<sup>13</sup> African Union, *AU Commission of Inquiry on South Sudan* (Addis Ababa, 2015).

<sup>14</sup> Hannah McNeish, "South Sudan: women and girls raped as 'wages' for government-allied fighters," *The Guardian*, 28 September 2015, accessed at, <http://www.theguardian.com/global-development/2015/sep/28/south-sudan-women-girls-raped-as-wages-for-government-allied-fighters>.

<sup>15</sup> Elisabeth Jean Wood and Dara Kay Cohen, "How to counter rape during war," *New York Times*, 28 October 2015, accessed at, [http://www.nytimes.com/2015/10/29/opinion/how-to-counter-rape-during-war.html?\\_r=0](http://www.nytimes.com/2015/10/29/opinion/how-to-counter-rape-during-war.html?_r=0).

<sup>16</sup> See, Al Jazeera, "Ex-Congolese VP Jean-Pierre Bemba guilty of war crimes," *Al Jazeera*, 21 March, 2016, accessed at, <http://www.aljazeera.com/news/2016/03/congolese-vice-president-charged-160321124707011.html>

<sup>17</sup> CARE, "'The girl has no rights': Gender-based violence in South Sudan," *Report* (May 2014): 1-12.

<sup>18</sup> Justice Africa, JRSP, The Patriot, *Justice in Practice: South Sudan* (Spring 2015).

<sup>19</sup> Karen Allen, "South Sudan: Women raped under the noses of UN forces," *BBC News*, 10 June 2014, accessed at, <http://www.bbc.com/news/world-africa-27765898>.

<sup>20</sup> Cherry Leonardi, et al., *Local Justice in Southern Sudan* (USIP/Rift Valley Institute: Washington, D.C., 2010).

<sup>21</sup> Cherry Leonardi, et al., *Local Justice*.

<sup>22</sup> Anna Hedlund, "Why study the 'bad guys'?" *Open Democracy: Free Thinking for the World* (9 May 2016), accessed at, <https://www.opendemocracy.net/beyondslavery/anna-hedlund/why-study-bad-guys>.

<sup>23</sup> See, Maria Baaz and Maria Stern, "Why do soldiers rape? Masculinity, violence, and sexuality in the armed forces in the Congo (DRC);" *International Studies Quarterly* 53.2 (2009): 495-518; "Making sense of violence: voices of soldiers in the Congo (DRC)." *The Journal of Modern African Studies* 46.01 (2008): 57-86.

<sup>24</sup> Global Protection Cluster: GBV Prevention and Response, "South Sudan Crisis: Why we must broaden the conversation on GBV data," August 2014.

<sup>25</sup> Small Arms Survey, *Women and armed violence in South Sudan* (Geneva, Human Security Baseline Assessment).

<sup>26</sup> Jok Madut Jok and Sharon Elaine Hutchinson, "Sudan's prolonged second civil war and the militarization of Nuer and Dinka ethnic identities," *African Studies Review* 42, no. 02 (1999): 125-145.

<sup>27</sup> David K. Deng, *Challenges of Accountability: An Assessment of Dispute Resolution Processes in Rural South Sudan* (Juba: South Sudan Law Society, 2013).

<sup>28</sup> Jok Madut Jok and Sharon Hutchinson, "Sudan's prolonged second civil war."

<sup>29</sup> Small Arms Survey, *Women and armed violence*.

<sup>30</sup> Jok Madut Jok and Sharon Hutchinson, "Sudan's prolonged second civil war"; Human Rights Watch, *Civilian devastation: Abuses by all parties in the war in Southern Sudan* (1993)

<sup>31</sup> Human Rights Watch, *Civilian devastation*.

<sup>32</sup> Small Arms Survey, *Women and armed violence*.

<sup>33</sup> Ibid.

<sup>34</sup> Cherry Leonardi, "'Liberation' or capture: Youth in between 'hakuma', and 'home' during civil war and its aftermath in Southern Sudan," *African Affairs* 106, no. 424 (2007): 391-412.

<sup>35</sup> Interview, Ex-Combatant, Juba, 16 February 2016.

<sup>36</sup> Ibid.

<sup>37</sup> Jennifer Scott et al., "An assessment of gender inequitable norms and gender-based violence in South Sudan: a community-based participatory research approach," *Confl Health* 7, no. 4 (2013).

<sup>29</sup> Small Arms Survey, *Women and armed violence*.

<sup>30</sup>

<sup>31</sup> Marjoke Oosterom, "'It May Approach as Quickly as a Bushfire': Gendered Violence and Insecurity in South Sudan," (2014)

<sup>32</sup> See, Marjoke Oosterom, "'It May Approach as Quickly as a Bushfire'"; Friederike Bubenzer and Orly Stern, *Hope, pain & patience: The lives of women in South Sudan* (Jacana Media, 2011).

<sup>33</sup> Zachariah Chierian Mampilly, *Stationary bandits: Understanding rebel governance* (ProQuest, 2007).

<sup>34</sup> Human Rights Watch, *Civilian Devastation*.

<sup>35</sup> Ibid.

<sup>36</sup> Ibid.

<sup>37</sup> Jok Madut Jok, "Violence and resilience: Women, war and the realities of everyday life in Sudan," *Ahfad Journal* 23, no. 2 (2006): 58.

<sup>38</sup> Amira Awad Osman, "Caught between War and its Aftermath: The Experience of Internally Displaced Women in Sudan," *Predicaments in the Horn of Africa* (2012): 397.

<sup>39</sup> Alicia Luedke, "'I wanted to be free': Women, marriage and resistance in South Sudan" (paper presented at the annual conference of the International Studies Association, New Orleans, Louisiana, February, 2015).

<sup>40</sup> See, Jok Madut Jok, "Militarism, gender and reproductive suffering: The case of abortion in Western Dinka," *Africa* 69, no. 02 (1999): 194-212; Sharon Elaine Hutchinson, "Nuer ethnicity militarized," *Anthropology Today* (2000): 6-13.

<sup>41</sup> See, Marian TA Tankink, "The silence of South-Sudanese women: social risks in talking about experiences of sexual violence," *Culture, health & sexuality* 15, no. 4 (2013): 391-403; Marian Tankink and Annemiek Richters, "Silence as a coping strategy: The case of refugee women in the Netherlands from South-Sudan who experienced sexual violence in the context of war," In *Voices of Trauma*, pp. 191-210. Springer US, 2007.

<sup>42</sup> Jennifer Scott et al., "An assessment of gender inequitable norms."

<sup>43</sup> Ibid.

<sup>44</sup> Care, "South Sudan: Gender in Brief."

<sup>45</sup> US Department of State, *2011 Country Reports on Human Rights Practices – South Sudan* (Washington, DC., 2011).

<sup>46</sup> UN General Assembly Security Council, "Report of the Secretary-General on Conflict-Related Sexual Violence," *A/66/657\*-S/2012/33\** (13 January 2012).

<sup>47</sup> See, Claire Mc Evoy and Emile LeBrun, *Uncertain Future: Armed Violence in Southern Sudan* (Geneva: Small Arms Survey/Graduate Institute of International and Development Studies, 2010); Richard Garfield, *Violence and victimization in South Sudan: Lakes State in the post-CPA period* (Geneva: Small Arms Survey/Graduate Institute of International and Development Studies, 2007)

<sup>48</sup> See, Asylum Research Consultancy, *South Sudan Country Report* (2013).

<sup>49</sup> Ibid.

<sup>50</sup> Ibid.

<sup>51</sup> Ibid.

<sup>52</sup> David K. Deng, *Challenges of Accountability*.

<sup>53</sup> Human Rights Watch, *"The burned it all": Destruction of villages, killings, and sexual violence in Unity State South Sudan* (2015).

<sup>54</sup> Cathy Huser, *Micro Level Insights into Context Analysis in Unity State: Interpretations of the experience of violence* (December 2014).

<sup>55</sup> Ibid.

<sup>56</sup> Interview, INGO Representative, Juba, 8 November 2015.

<sup>57</sup> Interview, Survivor 2, POC 3, Juba, 11 June 2015.

<sup>58</sup> Interview, Survivor 1, Mahad IDP Camp, 15, June 2015.

<sup>59</sup> Interview, Survivor 6, Mahad IDP Camp, 15, June 2015.

<sup>60</sup> Human Rights Watch, *South Sudan's New War: Abuses by Government and Opposition Forces*, 2014.

---

<sup>61</sup> Ibid.

<sup>62</sup> Ibid.

<sup>63</sup> OHCHR, "Assessment Mission by the Office of the United Nations High Commissioner for Human Rights to Improve Human Rights, Accountability, Reconciliation and Capacity in South Sudan: Detailed Findings." *A/HRC/31/CRP.6* (10 March, 2016).

<sup>64</sup> Hannah McNeish, "Reliving the rape camps of South Sudan's civil war," *Al Jazeera*, 29 September 2015, accessed at, <http://www.aljazeera.com/indepth/features/2015/09/reliving-rape-camps-south-sudan-civil-war-150929121909936.html>

<sup>65</sup> Ibid.

<sup>66</sup> Ibid.

<sup>67</sup> FGD, Woman, Akobo, 31 July 2015.

<sup>68</sup> Louis Charbonneau, "South Sudan sexual violence 'rampant,' two-year-old raped: U.N." *Reuters*, 20 October 2014, accessed at, <http://www.reuters.com/article/2014/10/20/us-southsudan-un-idUSKCN0I92C320141020>.

<sup>69</sup> FGD, Female Adolescent, Mingkaman, 7 July 2015.

<sup>70</sup> *This was according to data collected in 2015, since then General Johnson Olony defected to SPLM-IO strategies have probably changed.*

<sup>71</sup> Interview, Human Rights Activist, Juba, 4 June 2015.

<sup>72</sup> Anna Therese Day, "From hate speech to rape speech: Women in South Sudan are targets of sexual violence," *New York Times*, 9 July 2015, accessed at, <http://nytlive.nytimes.com/womenintheworld/2015/07/09/from-hate-speech-to-rape-speech-women-in-south-sudan-are-targets-of-sexual-violence/>.

<sup>73</sup> BBC News, "South Sudan: 'Rape is a war revenge thing,'" *BBC News*, 10 June 2014, accessed at, <http://www.bbc.com/news/world-africa-27785436>.

<sup>74</sup> Ibid.

<sup>75</sup> FGD, White Army, Akobo, 1 August 2015.

<sup>76</sup> Interview, Survivor 4, Mahad IDP Camp, Juba, 15 June 2015.

<sup>77</sup> Interview, Survivor 7, Mahad IDP Camp, Juba, 15 June 2015.

<sup>78</sup> Karen Allen, "South Sudan: Women raped under the noses of UN forces," *BBC News*, 10 June 2014, accessed at, <http://www.bbc.com/news/world-africa-27765898>.

<sup>79</sup> UN News Centre, "Unspeakable violence against children in South Sudan must stop – UNICEF chief," *UN News Centre*, 18 June 2015, accessed at, <http://www.un.org/apps/news/story.asp?NewsID=51189#.Vei4skUc8fo>.

<sup>80</sup> FGD Men, Juba, POC 1, 9 June 2015.

<sup>81</sup> FGD, Male Youth, Akobo, 30 July 2015

<sup>82</sup> Sharon E. Hutchinson, "A curse from God? Religious and political dimensions of the post-1991 rise of ethnic violence in South Sudan," *The Journal of Modern African Studies* 39, no. 02 (2001): 307-331.

<sup>83</sup> Ibid.

<sup>84</sup> Sudan Tribune, "Western Equatoria state condemns South Sudan army crackdown," *Sudan Tribune*, 2 July 2015, accessed at, <http://www.sudantribune.com/spip.php?article55554>.

<sup>85</sup> Mareike Schomerus and Tim Allen, *Southern Sudan at odds with itself: Dynamics of conflict and predicaments of peace* (2010).

<sup>86</sup> Michele L. Leiby, "Wartime Sexual Violence in Guatemala and Peru\*," *International Studies Quarterly* 53, no. 2 (2009): 445-468.

<sup>87</sup> Hannah McNeish, "Reliving the rape camps."

<sup>88</sup> Hannah McNeish, "South Sudan: women and girls raped as 'wages' for government-allied fighters," *The Guardian*, 28 September 2015, accessed at, <http://www.theguardian.com/global-development/2015/sep/28/south-sudan-women-girls-raped-as-wages-for-government-allied-fighters>.

<sup>89</sup> Amnesty International, *Nowhere Safe*.

<sup>90</sup> Interview, Survivor 1, POC 3, Juba, 11 June 2015.

<sup>91</sup> Asylum Research Consultancy, *South Sudan Country Report* (2013).

- 
- <sup>92</sup> Human Rights Watch, “*The burned it all.*”
- <sup>93</sup> See, Charli Carpenter, “Recognizing gender-based violence against civilian men and boys in conflict situations,” *Security Dialogue* 37, no. 1 (2006): 83-103.
- <sup>94</sup> FGD, Male Adolescent, Mingkaman, 7 July 2015.
- <sup>95</sup> Human Rights Watch, “*The burned it all.*”
- <sup>96</sup> Interview, Human Rights Activist, Juba, 4 June 2015.
- <sup>97</sup> Amnesty International, *Nowhere Safe*.
- <sup>98</sup> Interview, Social Worker, Juba, 3 June 2015.
- <sup>99</sup> Human Rights Watch, “*The burned it all.*”
- <sup>100</sup> Cathy Huser, *Micro Level Insights*.
- <sup>101</sup> See, Human Rights Watch, “*The burned it all*”; Global GenCap on mission in South Sudan, “Leer town: Food insecurity and GBV,” *A brief note for GBV sub cluster* (2014).
- <sup>102</sup> Interview, Key Informant, Nairobi, Kenya, 16 March 2016.
- <sup>103</sup> Interview, SSNPS, Juba, 15 July 2015.
- <sup>104</sup> *In conversations with SPLA-IO commanders in Akobo in July-August 2015, they indicated that IO continues to follow the laws of South Sudan (with the exception of then newly tabled legislation pertinent to national security)*
- <sup>105</sup> Justice Africa, JRSP, The Patriot, *Justice in Practice: South Sudan* (Spring 2015).
- <sup>106</sup> CARE, “We don’t want to see men when we go to the toilet!” *CARE Rapid Gender Analysis: Focus on WASH Upper Nile State, South Sudan*; CARE, “CARE Rapid Gender Analysis (RGA) – Bentiu, South Sudan” (November 2014).
- <sup>107</sup> Ibid.
- <sup>108</sup> FGD, Woman 6, POC 3, Juba, 9 June 2015.
- <sup>109</sup> FGD, Woman 3, POC 3, Juba, 9 June 2015.
- <sup>110</sup> Human Rights Watch, “*The burned it all.*”
- <sup>111</sup> Ibid.
- <sup>112</sup> The Guardian, “Women in South Sudan: ‘The attack us at toilets or where we collect water,’” *The Guardian*, 11 September 2014, accessed at, <http://www.theguardian.com/global-development/2014/sep/11/women-south-sudan-sexual-violence-camps>.
- <sup>113</sup> Cherry Leonardi, et al., *Local Justice*.
- <sup>114</sup> Radio Tamazuj, “100+ rape cases reported over the last month in South Sudan’s Wau town,” *Radio Tamazuj*, 12 November 2014, accessed at, <https://radiotamazuj.org/en/article/100-rape-cases-reported-over-last-month-south-sudan%E2%80%99s-wau-town>.
- <sup>115</sup> Cherry Leonardi, et al., *Local Justice*.
- <sup>116</sup> Interview, Civil Society Representative, Juba, 5 June, 2015.
- <sup>117</sup> FGD, Women Leader, Akobo, 30 July 2015.
- <sup>118</sup> Interview, Civil Society Representative, Juba, 25 June 2015.
- <sup>119</sup> Interview, Lawyer, Juba, 10 June 2015.
- <sup>120</sup> Interview, SPU, Juba, 10 June 2015.
- <sup>121</sup> Interview, Chief, Mingkaman, 7 July 2015.
- <sup>122</sup> FGD Women, Mingkaman, 4 July 2015.
- <sup>123</sup> FGD IDP Women, Akobo, 31 July 2015.
- <sup>124</sup> Confident Children out of Conflict, ‘*Behind the papyrus and mabatti*’: *Sexual exploitation and abuse in Juba, South Sudan* (July-August 2010).
- <sup>125</sup> See, South Sudan Penal Code Act 2008, Chapter XVIII, *Offences Relating to Prostitution*, available at, [http://www.sudantribune.com/IMG/pdf/penal\\_code\\_act\\_2008-2.pdf](http://www.sudantribune.com/IMG/pdf/penal_code_act_2008-2.pdf).
- <sup>126</sup> Confident Children out of Conflict, ‘*Behind the papyrus and mabatti.*’
- <sup>127</sup> Friederike Bubenzer and Orly Stern, *Hope, pain & patience*.
- <sup>128</sup> Ibid.
- <sup>129</sup> Key Informant, Juba, 8 November 2015.
- <sup>130</sup> See, Al Jazeera, “UN releases report on sex abuse by peacekeepers,” *Al Jazeera* 16 June 2015, accessed at, <http://www.aljazeera.com/news/2015/06/peacekeepers-sex-abuse-150616012115509.html>.
- <sup>131</sup> Cherry Leonardi, et al., *Local Justice*.
- <sup>132</sup> FGD Women, Mahad IDP Camp, Juba, 7 June 2015.

- <sup>133</sup> FGD Men, Mingkaman, 3 July 2015.
- <sup>134</sup> Key Informant, Juba, 15 June 2015.
- <sup>135</sup> Cherry Leonardi, et al., *Local Justice*.
- <sup>136</sup> FGD Host Community Women, Mingkaman, 6 July 2015.
- <sup>137</sup> FGD IDP Women, Mingkaman, 4 July 2015.
- <sup>138</sup> FGD Adolescent Females, Mingkaman, 7 July 2015.
- <sup>139</sup> FGD Female Youth, Akobo, 29 July 2015.
- <sup>140</sup> FGD Adolescent Males, Mingkaman, 7 July 2015.
- <sup>141</sup> See Annex, David K. Deng, *Challenges of Accountability*.
- <sup>142</sup> FGD Host Community Women, Mingkaman, 6 July 2015.
- <sup>143</sup> Marc Sommers and Stephanie Schwartz, "Dowry and Division: Youth and State Building in South Sudan," *Special Report 295*(2012): p. 5
- <sup>144</sup> Woman 1, FGD Women, Akobo, 2 August 2015.
- <sup>145</sup> Woman 3, FGD Women, Akobo, 2 August 2015.
- <sup>146</sup> FGD Adolescent Females, Mingkaman, 7 July 2015.
- <sup>147</sup> FGD Adolescent Males, Mingkaman, 7 July 2015.
- <sup>148</sup> Ibid.
- <sup>149</sup> FGD Women, Mahad IDP Camp, Juba, 7 June 2015.
- <sup>150</sup> FGD Male IDPs, Akobo, 31 July 2015.
- <sup>151</sup> FGD Women, Mahad IDP Camp, Juba, 7 June 2015.
- <sup>152</sup> Ibid.
- <sup>153</sup> FGD Female Youth, Akobo, 29 July 2015.
- <sup>154</sup> See, Jok Madut Jok, "Militarization and gender violence in South Sudan," *Journal of Asian and African studies* 34, no. 4 (1999): 427-442; Jok Madut Jok, "Militarism, gender and reproductive suffering: The case of abortion in Western Dinka," *Africa* 69, no. 02 (1999): 194-212; Sharon Elaine Hutchinson, "Nuer ethnicity militarized," *Anthropology Today* (2000): 6-13.
- <sup>155</sup> FGD Female Youth, Akobo, 29 July 2015.
- <sup>156</sup> Ibid
- <sup>157</sup> Ibid.
- <sup>158</sup> FGD Men, POC 1, Juba, 9 June 2015.
- <sup>159</sup> Ibid.
- <sup>160</sup> Ibid.
- <sup>161</sup> FGD Women, POC 3, Juba, 11 June 2015.
- <sup>162</sup> See, Jok Madut Jok, "Militarization and gender violence in South Sudan," *Journal of Asian and African studies* 34, no. 4 (1999): 427-442; Jok Madut Jok, "Militarism, gender and reproductive suffering: The case of abortion in Western Dinka," *Africa* 69, no. 02 (1999): 194-212; Sharon Elaine Hutchinson, "Nuer ethnicity militarized," *Anthropology Today* (2000): 6-13; Alicia Luedke, "'I wanted to be free': Women, marriage and resistance in South Sudan" (paper presented at the annual conference of the International Studies Association, New Orleans, Louisiana, February, 2015).
- <sup>163</sup> CARE, "'The girl has no rights': Gender-based violence in South Sudan," *Report* (May 2014): 1-12.
- <sup>164</sup> Interview, Lawyer, Juba, 10 June 2015.
- <sup>165</sup> Ibid.
- <sup>166</sup> Jennifer Scott et al., "An assessment of gender inequitable norms."
- <sup>167</sup> FGD Male Youth, Akobo, 31 July 2015.
- <sup>168</sup> FGD Women, Mahad IDP Camp, Juba, 7 June 2015.
- <sup>169</sup> See, John Young, *The White Army: An Introduction and Overview* (Geneva: Small Arms Survey, 2007).
- <sup>170</sup> FGD White Army, Akobo, 1 August 2015.
- <sup>171</sup> Ibid.
- <sup>172</sup> See, Cathy Huser, *Micro Level Insights*.
- <sup>173</sup> See, See, Jok Madut Jok, "Militarization and gender violence in South Sudan," *Journal of Asian and African studies* 34, no. 4 (1999): 427-442; Jok Madut Jok, "Militarism, gender and reproductive suffering: The case of abortion in Western Dinka," *Africa* 69, no. 02 (1999): 194-212
- <sup>174</sup> Ibid.



- 
- <sup>175</sup> Cited in, Marjoke Oosterom, "It May Approach as Quickly as a Bushfire."
- <sup>176</sup> Ibid.
- <sup>177</sup> FGD Women, POC 1, Juba, 9 June 2015.
- <sup>178</sup> FGD IDP Men, Akobo,
- <sup>179</sup> FGD Male Host Community, Mingkaman, 6 July 2015.
- <sup>180</sup> Interview, Chief, Mingkaman, 7 July 2015.
- <sup>181</sup> SIHA Network, *Falling through the cracks: Reflections on customary law and the imprisonment of women in South Sudan* (Nairobi: Vision Printing, 2012).
- <sup>182</sup> Marc Sommers and Stephanie Schwartz, "Dowry and division."
- <sup>183</sup> FGD Male Host Community, Mingkaman, 6 July 2015.
- <sup>184</sup> Interview, Humanitarian, Akobo, 30 July 2015.
- <sup>185</sup> See, Marc Sommers and Stephanie Schwartz, "Dowry and Division"; David K. Deng, *Challenges of accountability*; SIHA Network, *Falling through the cracks*.
- <sup>186</sup> David K. Deng et al., "Search for a new beginning": *Perceptions of truth, justice, reconciliation and healing in South Sudan* (UNDP: South Sudan, 2015).
- <sup>187</sup> FGD Men, Mingkaman, 4 July 2015.
- <sup>188</sup> FGD Men, POC 3, Juba, 11 June 2015.
- <sup>189</sup> FGD Men, Mingkaman, 4 July 2015.
- <sup>190</sup> Interview, Civil Society Representative, Mingkaman, 6 July 2015.
- <sup>191</sup> FGD Women, POC 1, Juba, 9 June 2015.
- <sup>192</sup> FGD Men, POC 3, Juba, 11 June 2015.
- <sup>193</sup> FGD Women, POC 3, Juba, 11 June 2015.
- <sup>194</sup> FGD Women, Mingkaman, 4 July 2015.
- <sup>195</sup> See, Marian TA Tankink, "The silence of South-Sudanese women: social risks in talking about experiences of sexual violence," *Culture, health & sexuality* 15, no. 4 (2013): 391-403; Marian Tankink and Annemiek Richters, "Silence as a coping strategy: The case of refugee women in the Netherlands from South-Sudan who experienced sexual violence in the context of war," In *Voices of Trauma*, pp. 191-210. Springer US, 2007.
- <sup>196</sup> Ibid.
- <sup>197</sup> FGD Women, Mahad IDP Camp, Juba, 7 June 2015.
- <sup>198</sup> Interview, Key Informant, Mingkaman, 5 July 2015.
- <sup>199</sup> SIHA Network, *Falling through the cracks*.
- <sup>200</sup> Ibid.
- <sup>201</sup> Interview, Chief, Mingkaman, 7 July 2015.
- <sup>202</sup> See, Friederike Bubenzer and Orly Stern, *Hope, pain & patience*.
- <sup>203</sup> See, Maria Eriksson Baaz and Maria Stern, "Why do soldiers rape? Masculinity, violence, and sexuality in the armed forces in the Congo (DRC)," *International Studies Quarterly* 53, no. 2 (2009): 495-518.
- <sup>204</sup> FGD Men, POC 1, Juba, 9 June 2015.
- <sup>205</sup> Interview, Key Informant, Akobo, 30 July 2015.
- <sup>206</sup> Judy El-Bushra and Ibrahim M.G. Sahl, *Cycles of violence: Gender relations and armed conflict* (Nairobi: Accord, 2005).
- <sup>207</sup> IRIN, "Sexual violence soars in South Sudan," *IRIN Humanitarian News and Analysis*, 13 May 2014, accessed at, <http://www.irinnews.org/printreport.aspx?reportid=100085>.
- <sup>208</sup> FGD Women Leaders, Akobo, 30 July 2015.
- <sup>209</sup> Dara Kay Cohen, Amelia Hoover Green and Elisabeth Jean Wood, "Wartime sexual violence: Misconceptions, implications, and ways forward," *USIP Special Report* 323(2013): 1-16.
- <sup>210</sup> Interview, SSNPS, Juba, 15 June 2015.
- <sup>211</sup> Interview, County Judge, Akobo, 31 July 2015.
- <sup>212</sup> FGD Police, Akobo, 1 August 2015.
- <sup>213</sup> Interview, Key Informant, 10 June 2015.
- <sup>214</sup> DFG White Army, Akobo, 1 August 2015.
- <sup>215</sup> FGD Women Leaders, Akobo, 30 July 2015.
- <sup>216</sup> Sudan Human Security Baseline Assessment, *Women, security and the law in South Sudan* (Geneva: Small Arms Survey)

- <sup>217</sup> David K. Deng, *Challenges to accountability*.
- <sup>218</sup> Sudan Human Security Baseline Assessment, *Women, security*.
- <sup>219</sup> David K. Deng, *Challenges to accountability*.
- <sup>220</sup> Ibid.
- <sup>221</sup> Ibid.
- <sup>222</sup> Ibid.
- <sup>223</sup> The Child Act, 2008, 23. Right to protection from marriage and other negative and harmful cultural and social practices (1), available at, <http://www.refworld.org/pdfid/49ed840c2.pdf>.
- <sup>224</sup> SSWLA & South Sudan National Legislative Assembly Women Parliamentary Caucus, "Policy Brief: A call for enactment of a sexual offences act," 2015, accessed at, <http://justiceafrica.org/wp-content/uploads/2015/02/SSWLA-WLA-FINAL-POLICY-BRIEF-ON-SEXUAL-OFFENCES-ACT-.pdf>.
- <sup>225</sup> SSWLA & South Sudan National Legislative Assembly Women Parliamentary Caucus, "Policy Brief."
- <sup>226</sup> See, South Sudan Penal Code Act 2008, Chapter XVIII, 248. Unnatural Offences, available at, [http://www.sudantribune.com/IMG/pdf/penal\\_code\\_act\\_2008-2.pdf](http://www.sudantribune.com/IMG/pdf/penal_code_act_2008-2.pdf).
- <sup>227</sup> Rome Statute of the International Criminal Court, 2002, available at, [https://www.icc-cpi.int/nr/rdonlyres/ea9aef7-5752-4f84-be94-0a655eb30e16/0/rome\\_statute\\_english.pdf](https://www.icc-cpi.int/nr/rdonlyres/ea9aef7-5752-4f84-be94-0a655eb30e16/0/rome_statute_english.pdf).
- <sup>228</sup> FGD Women, Mingkaman, 4 July 2015.
- <sup>229</sup> Interview, Chief, Mingkaman, 7 July 2015.
- <sup>230</sup> Interview, Civil Society Representative, Mingkaman, 6 July 2015.
- <sup>231</sup> Care, "The girl has no rights."
- <sup>232</sup> FGD Women, Mahad IDP Camp, Juba, 7 June 2015.
- <sup>233</sup> Ibid.
- <sup>234</sup> David K. Deng, *Challenges to accountability*.
- <sup>235</sup> Interview, Key Informant, Akobo, 20 August 2015.
- <sup>236</sup> FGD Women Leaders, Akobo, 30 July 2015.
- <sup>237</sup> FGD Female Youth, Akobo, 29 July 2015.
- <sup>238</sup> See, Holly Porter, "After rape: justice and social harmony in northern Uganda," PhD diss., The London School of Economics and Political Science (LSE), 2013; "Justice and rape on the periphery: the supremacy of social harmony in the space between local solutions and formal judicial systems in northern Uganda," *Journal of Eastern African Studies* 6, no. 1 (2012): 81-97.
- <sup>239</sup> See, David K. Deng, *Challenges of accountability*.
- <sup>240</sup> See Holly Porter, "After rape"; "Justice ad rape on the periphery."
- <sup>241</sup> See, South Sudan Penal Code Act, Chapter XIX. Offences Relating to Marriage and Incest, 266. Adultery, available at, [http://www.sudantribune.com/IMG/pdf/penal\\_code\\_act\\_2008-2.pdf](http://www.sudantribune.com/IMG/pdf/penal_code_act_2008-2.pdf).
- <sup>242</sup> Interview, Key Informant, Juba, 8 June 2015.
- <sup>243</sup> Human Rights Watch, *Prison is not for me': Arbitrary detention in South Sudan* (2012).
- <sup>244</sup> Interview, Paramount Chief, Akobo, 4 August 2015.
- <sup>245</sup> Cherry Leonardi et al., *Local justice in Southern Sudan*.
- <sup>246</sup> Social Development Direct, *Report on the assessment of the special protection units, 2014*.
- <sup>247</sup> Ibid.
- <sup>248</sup> Marjoke Oosterom, "It may approach as quickly as bushfire'."
- <sup>249</sup> FGD Women, Mahad IDP Camp, Juba, 7 June 2015.
- <sup>250</sup> Ibid.
- <sup>251</sup> Interview, Key Informant, Mingkaman, 6 July 2015.
- <sup>252</sup> Interview, Key Informant, Juba, 3 June 2015.
- <sup>253</sup> Social Development Direct, *Report*.
- <sup>254</sup> Ibid.
- <sup>255</sup> Interview, Social Worker, 3 June 2015.
- <sup>256</sup> Sudan Human Security Baseline Assessment, *Women*.
- <sup>257</sup> Ibid.
- <sup>258</sup> Interview, Key Informant, Juba, 8 June 2015.
- <sup>259</sup> Social Development Direct, *Report*.
- <sup>260</sup> Ibid.

- 
- <sup>261</sup> Ibid.
- <sup>262</sup> This research was conducted in 2015. Given the inflation of the pound, the price for Form 8 has likely increased markedly over the past year.
- <sup>263</sup> Interview, Key Informant, Juba, 5 June 2015.
- <sup>264</sup> See, Sudan Human Security Baseline Assessment, *Women*.
- <sup>265</sup> Human Rights Watch, *Ending the era of injustice: Advancing prosecutions for serious crimes committed in South Sudan's new war* (2014).
- <sup>266</sup> Ibid.
- <sup>267</sup> Ibid.
- <sup>268</sup> David K. Deng, *Challenges to accountability*.
- <sup>269</sup> Ibid.
- <sup>270</sup> Interview, SPU, Juba, 5 June 2015.
- <sup>271</sup> David K. Deng, *Challenges to accountability*.
- <sup>272</sup> Human Rights Watch, *Ending the era of injustice*.
- <sup>273</sup> Ibid.
- <sup>274</sup> Justice Africa, JRSP, The Patriot, *Justice in Practice*.
- <sup>275</sup> Sudan Tribune, "S. Sudan rebels vow to support probe on sexual violence," *Sudan Tribune*, 24 September 2015, accessed at, <http://www.sudantribune.com/spip.php?article56503>.
- <sup>276</sup> Human Rights Watch, *Ending the era of injustice*.
- <sup>277</sup> Andrew Green, "Women in South Sudan: 'They attack us at toilets or where we collect water'" *The Guardian*, 11 September 2014, accessed at, <http://www.theguardian.com/global-development/2014/sep/11/women-south-sudan-sexual-violence-camps>.
- <sup>278</sup> Ibid.
- <sup>279</sup> Ralph Mamiya, "Legal challenges for UN peacekeepers protecting civilians in South Sudan," *American Society of International Law* (18) 26 (2014).
- <sup>280</sup> Ibid.
- <sup>281</sup> Ibid.
- <sup>282</sup> Interview, Paralegal, Juba, 5 June 2015.
- <sup>283</sup> FGD Women, POC 3, Juba, 11 June 2015.
- <sup>284</sup> Interview, CES Police, Juba, 5 June 2015.
- <sup>285</sup> FGD Men, POC 1, Juba, 9 June 2015.
- <sup>286</sup> FGD Women, POC 1, Juba 9 June 2015.
- <sup>287</sup> Interview, Key Informant, Mingkaman, 5 July 2015.
- <sup>288</sup> FGD Men, Mingkaman, 3 July 2015.
- <sup>289</sup> FGD Men, Alobo, 31 July 2015.
- <sup>290</sup> Cherry Leonardi, et al., *Local Justice*.
- <sup>291</sup> Mareike Schomerus and Tim Allen, *Southern Sudan at odds with itself*.
- <sup>292</sup> Cherry Leonardi, et al., *Local Justice*.
- <sup>293</sup> Ibid.
- <sup>294</sup> Cherry Leonardi, Deborah Isser, Leben Moro, and Martina Santschi, "The politics of customary law ascertainment in South Sudan," *The Journal of Legal Pluralism and Unofficial Law* 43, no. 63 (2011): 111-142.
- <sup>295</sup> Ibid.
- <sup>296</sup> Ibid.
- <sup>297</sup> Ibid.
- <sup>298</sup> Interview, Chief, Mingkaman, 7 July 2015.
- <sup>299</sup> Mareike Schomerus and Tim Allen, *Southern Sudan at odds with itself*.
- <sup>300</sup> Interview, Chief, Mingkaman, 7 July 2015.
- <sup>301</sup> Interview, Paralegal, Mingkaman, 6 July 2015.
- <sup>302</sup> <sup>302</sup> FGD Men, POC 1, Juba, 9 June 2015.
- <sup>303</sup> FGD Women, POC 3, Juba, 11 June 2015.
- <sup>304</sup> Ibid.
- <sup>305</sup> see, Cherry Leonardi, "'Liberation' or capture."
- <sup>306</sup> FGD Male Adolescents, Mingkaman, 7 July 2015.

- 
- <sup>307</sup> FGD Male Youth, Akobo, 30 July 2015.
- <sup>308</sup> See, David K. Deng et al., “*Search for a new beginning.*”
- <sup>309</sup> FGD Women, Mingkaman, 4 July 2015.
- <sup>310</sup> FGD Women, Mahad IDP Camp, Juba, 7 June 2015.
- <sup>311</sup> FGD Female Youth, Akobo, 29 July 2015.
- <sup>312</sup> FGD Men, POC 3, Juba, 11 June 2015.
- <sup>313</sup> FGD Women, Akobo, 31 July 2015.
- <sup>314</sup> Ibid.
- <sup>315</sup> FGD Female Adolescents, Mingkaman, 7 July 2015.
- <sup>316</sup> FGD, Woman 2, POC 3, Juba, 11 June 2015.
- <sup>317</sup> FGD, Woman 4, POC 3, Juba, 11 June 2015.
- <sup>318</sup> FGD, Woman 5, POC 3, Juba, 11 June 2015.
- <sup>319</sup> David K. Deng et al., “*Search for a new beginning.*”
- <sup>320</sup> Holly Porter, “Justice and rape on the periphery.”
- <sup>321</sup> Ibid.
- <sup>322</sup> Ibid.
- <sup>323</sup> Ibid.
- <sup>324</sup> FGD Women, Akobo, 31 July 2015.
- <sup>325</sup> FGD Host Women, Mingkaman, 6 July 2015.
- <sup>326</sup> Ibid.
- <sup>327</sup> FGD IDP Men, Akobo, 31 August 2015.
- <sup>328</sup> Cherry Leonardi, et al., *Local Justice*.
- <sup>329</sup> Robert Jenkins and Anne-Marie Goetz, “Addressing Sexual Violence in Internationally Mediated Peace Negotiations,” *International Peacekeeping* 17, no. 2 (2010): 261-277.
- <sup>330</sup> Ibid.
- <sup>331</sup> African Union, *AU Commission of Inquiry on South Sudan* (Addis Ababa, 2015).
- <sup>332</sup> Volker Riehl, *Who is ruling in South Sudan?: the role of NGOs in rebuilding socio-political order*, Vol. 9. Nordic Africa Institute, 2001.
- <sup>333</sup> ØYSTEIN H. RoLANdSEN and INGRId MARIE BREIdLIId, “A critical analysis of cultural explanations for the violence in Jonglei State, South Sudan,” *ct1 | 2012* 1 (2012): 149.
- <sup>334</sup> Mareike Schomerus and Tim Allen, *Southern Sudan at odds with itself*.
- <sup>335</sup> African Union, *AU Commission of Inquiry on South Sudan* (Addis Ababa, 2015).
- <sup>336</sup> FGD Local Commanders, Akobo, 30 July 2015.
- <sup>337</sup> FGD White Army, Akobo, 1 August 2015.
- <sup>338</sup> See, Human Rights Watch, *Ending the era of injustice*.
- <sup>339</sup> Ibid.
- <sup>340</sup> David K. Deng et al., “*Search for a new beginning*”:
- <sup>341</sup> Human Rights Watch, *Ending the era of injustice*.
- <sup>342</sup> ACP Environmental Observatory: Status and Trends in the African, Caribbean, and Pacific Group of States, “No amnesty for perpetrators of war crimes in S/Sudan-IGAD,” 27 July 2015, accessed at, <http://acpobservatory.jrc.ec.europa.eu/content/no-amnesty-perpetrators-war-crimes-ssudan-igad>
- <sup>343</sup> Elisabeth Jean Wood and Dara Kay Cohen, “How to counter rape during war,” *New York Times*, 28 October 2015, accessed at, [http://www.nytimes.com/2015/10/29/opinion/how-to-counter-rape-during-war.html?\\_r=0](http://www.nytimes.com/2015/10/29/opinion/how-to-counter-rape-during-war.html?_r=0).
- <sup>344</sup> Ibid.
- <sup>345</sup> Ibid.
- <sup>346</sup> Ibid.
- <sup>347</sup> Ibid.
- <sup>348</sup> Rome Statute of the International Criminal Court, 2002, available at, [https://www.icc-cpi.int/nr/rdonlyres/ea9aef7-5752-4f84-be94-0a655eb30e16/0/rome\\_statute\\_english.pdf](https://www.icc-cpi.int/nr/rdonlyres/ea9aef7-5752-4f84-be94-0a655eb30e16/0/rome_statute_english.pdf).
- <sup>349</sup> ICG, “South Sudan: A civil war by any other name,” *Africa Report* 217(2014), 1-47.
- <sup>350</sup> Ibid.

<sup>351</sup> South Sudan Law Society, *Transnational Justice Strategy for South Sudan* (September 2014); *Truth and Dignity Commission: A Proposal to Reconcile the Many Truths of South Sudan from 1972 to the Present* (August 2014).

<sup>352</sup> See, Belkys Lopez, “Trauma, healing and the pursuit of durable peace in South Sudan,” in “Trauma, healing and the plight of displaced persons in South Sudan” *Peace and Justice: Newsletter by the South Sudan Law Society* (November 2014).

<sup>353</sup> FGD Men, POC 3, Juba, 11 June 2015.

<sup>354</sup> Interview, Lawyer, Juba, 6 June 2015.



# VIOLENCE BEGETS VIOLENCE

## Justice and Accountability for Sexual and Gender-Based Offences in South Sudan

*Draft Report*

Justice  Africa

