



Policy Brief

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Fighting sexual and gender-based violence (SGBV): rape as an issue in South Sudan



South Sudan Democratic Engagement,
Monitoring and Observation Programme
(SSuDEMOP)



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Summary

This policy brief discusses the need to pay more attention to sexual and gender-based violence (SGBV) in the Republic of South Sudan and outlines challenges that need to be addressed within communities, and at national government and international levels. It outlines a need for policies that, through national and local processes, can help open up dialogue between policymakers and citizens to ensure SGBV is an issue of priority at the national level. The aspirations for independence that South Sudanese died for, would not be fully realised if the sexual and gender-based violence is not addressed.

We publish this document with the knowledge and understanding that national actors, regional and international agencies, and civil society organisations have invested enormous efforts to pull South Sudan out of a civil war that began in 2013. Conciliation Resources has been working in South Sudan since before the country's independence, focusing on communities affected by the Lord's Resistance Army (LRA). Since independence Conciliation Resources is progressively moving towards engagement on reconciliation, with a particular focus on excluded groups such as women and young people. The research for this publication was carried out by our partner organisation South Sudan Democratic Engagement, Monitoring and Observation Programme (SSuDEMOP) with support from Conciliation Resources. SSuDEMOP is a national civil society organisation that was founded in 2009 and works on governance and democracy, conflict mitigation and gender mainstreaming. In

the work that SSuDEMOP does, SGBV has been identified as one of the factors that impedes women's participation in national development.

Conciliation Resources believes that transforming broken relationships is not simply a post-conflict endeavour but a continuous process that can start at an early stage, before a formal settlement.¹ Together with SSuDEMOP we propose the following priority areas for action:

Legal frameworks and reporting processes

- The Parliament of South Sudan should apply the relevant legislation to address repugnant cultural practices such as forced marriage, bride kidnapping and child marriage.
- In collaboration with non-governmental organisations and relevant institutions – The Government of South Sudan should review and amend necessary laws, including the Penal Code 2008, in order to strengthen the legal system, and prescribe stiffer punishments for perpetrators of rape, gang rape and defilement in case of fear. Lawyers handling rape, gang rape and defilement cases are advised to expand their scope of argument on the offences in order to attract comprehensive penalties for these crimes.

Public communication and education

- Public institutions, the army and other organised forces should establish clear mechanisms for

¹ Accord Insight 3. Transforming broken relationships: making peace with the past. Conciliation Resources (2016) <https://www.c-r.org/accord/reconciliation-and-peace-processes-insight>

reporting incidences of sexual and gender-based violence and develop internal policies to guard against SGBV within their ranks. Non-governmental organisations, in partnership with the Ministry of Justice, should work together to simplify and disseminate the existing laws in clearly understood language, so there is wider public awareness of the existing legal protection and penalties.

- Enhance the education curriculum and engage religious leaders, in order to provide good moral orientation from childhood and throughout the entire society.
- Provide women and girls with training on survival techniques and the importance of alternative options for reporting any incidence of sexual harassment, rape, gang rape and defilement, in case of fear.
- Programmes of psychosocial support must be designed and provided for survivors. Create safe forums and encourage survivors to talk about their experiences, and families to seek justice and report incidences of sexual violence. This should be accompanied by designing awareness programmes that enhance understanding of the value of women in the society and socialise children (boys and girls) in a manner that enables them to speak out and have better understanding of their own and others' fundamental rights.

Strengthen civil-military relations as part of security sector reform

- The army and other organised forces should enhance their codes of conduct and internal procedures, protect against human rights violations and sexual harassment during operations, and respond appropriately when breeches occur.
- Develop processes that allow for joint civil-military dialogue and liaison on planning the location of military barracks away from civilian settlements, and embed conversations about respect to human value, women and children's rights during confinement and the training curriculum.

Background

The Republic of South Sudan has experienced protracted conflict since its independence in July 2011. During this period, the prevalence of sexual and gender-based violence (SGBV) has grown, with women and children particularly at risk. According to UN figures, 2,300 cases of sexual violence were reported in South Sudan in the first half of 2018

alone.² In this context, SGBV and particularly rape, gang rape and defilement (child rape) pose a significant ongoing threat and source of fear for women from all walks of life. These crimes also present huge peace and security issues for South Sudan as a whole.

Although various efforts have been made to combat sexual violence in South Sudan, these seem to have had minimal impact; the threat persists in domestic settings, workplaces and public settings. The full magnitude of this problem is unclear, however studies indicate that around two-thirds of women and girls have experienced physical and/or sexual violence in their lifetime, while approximately half have suffered intimate partner violence. One-third of women report having experienced sexual violence from a non-partner, with this often occurring during attacks or raids.³

Methodology

During October to December 2018, the South Sudan Democratic Engagement Monitoring and Observation Programme (SSuDEMOP) undertook participatory research to identify and better understand some of the factors that might be exacerbating SGBV in South Sudanese society and contributing to the increased incidences of rape, gang rape and defilement. An initial workshop was conducted with 40 women from the organised forces (the army, police and prison), followed by focus group conversations with smaller groups of women. A follow-up workshop was conducted with 30 participants (15 men and 15 men) from academia, government ministries and civil society organisations. One-on-one interviews were conducted with seven opinion leaders and individual practitioners from different sections of society: the army and the organised forces, representatives from academia, religious ministries and civil society organisations. A final workshop was organised with 30 participants to validate the findings of the research.

On page six this policy brief seeks to provide policy and programmatic recommendations in three areas that can contribute towards addressing this destructive societal problem:

- Legal frameworks and reporting processes
- Public communication and education
- Military protocols and civil-military relations

2 'UN says more than 150 women, girls raped in South Sudan', Voice of America News 4 December 2018 <https://www.voanews.com/a/un-south-sudan-sexual-violence/4685819.html>

3 'South Sudan: Gender Based Violence' (undated) <https://www.unicef.org/southsudan/gbv.html>

Main findings: rape as an issue in South Sudan

Based on the outcome of SSuDEMOP's consultations, it is evident that rape is perpetrated by different categories of men for varying reasons and in a range of settings. It is important to underscore that during the research, participants raised concerns over the fact that rape is a common threat in domestic, public and work settings. Sexual harassment and gender-based violence in workplaces is one of the factors that impede effective women's participation in public life. As well as being a clear and present personal security concern, these threats are also a hindrance to the ability of women and girls to realise their full potential and meaningfully participate in peacebuilding and national development. In addition, research participants also expressed concerns that the unchecked prevalence of SGBV tarnishes the reputation of the wider population of men, who are not necessarily all perpetrators. During the consultations there was a strong feeling expressed that, in order for the severity of the issue to be grasped and mitigation appropriately prioritised, men at all levels in society must take responsibility for addressing rape and sexual violence; in the process, helping to clearly demonstrate that they do not condone these crimes. Perpetrators must be made to take responsibility for their actions.

Rape in all its forms is a crime according to the South Sudan Penal Code and the Constitution; the rape of a child is not differentiated as being defilement but, as the age of consent is set at 18, sex with a minor is statutory rape. However, whatever the age of survivors, most people seem to avoid reporting incidences of rape. This may be because some South Sudanese believe that rape does not exist as per their customary justice system, although, according to one research participant, in previous eras rape was indeed recognised as a crime and subject to "hefty punishment". For many, faith persists in the customary courts: in aiming to protect the dignity and image of the family, they prefer settling their grievances through such mechanisms rather than the statutory justice system. It is important to note that interviewees – a balanced ratio of men and women – also expressed skepticism over the responsiveness of the statutory justice system in the country in comparison with the customary justice system. However, with SGBV influenced by the breakdown of traditional community and family structures, many of the institutions that administer customary laws seem to be inadequately equipped to deal with the complex cases that arise. Where customs and traditions are contrary to international human rights principles, or the rights of women and children as enshrined in the Transitional Constitution

and the penal code 2008, the provisions of the constitution should prevail.

Societal factors that underpin high rates of sexual violence

Rape and defilement perpetrated by soldiers (army and other organised forces)

Incidences of rape, gang rape and defilement have been and persist as one of the priority security issues for women in South Sudan. During the research, participants raised concerns over inadequate mechanisms for reporting rape and other atrocities committed by uniformed personnel, as well as gaps and challenges in understanding the reporting mechanisms within the institution of the army and the organised forces. There was also a recurring theme in the questions posed by participants: What kind of reports are those leading the armed forces required to give their superiors when they return from an operation, and does this also concern the conduct of personnel during operations? How often is sexual violence reported and, in such cases, how do the superiors respond? Who provides oversight for the reports, and who is held accountable?

Several research participants highlighted that rape in many circumstances has been used as a weapon of war by opposing parties towards members of a particular community or group of people perceived as enemies. Rape has also been used as means of provocation, a show of might and/or masculinity. However, in some cases, for uniformed personnel rape has been perpetrated as a means of fulfilling the sexual desire of men who have been away from their wives, girlfriends and/or women in general. Also, after periods of long-term deployment or confinement, there seems to be a general thinking among most men that women are meant to make them happy and relieve their stress. Both these perceived justifications result in systematic and widespread sexual violence. You hear testimonies from survivors such as They lined up to rape us! "Their captors subjected them to systematic sexual violence, with many women and girls gang-raped. Those who tried to resist were killed".⁴

Rape perpetrated by male contemporaries and/or superiors

On several occasions during the research women raised complaints of sexual and gender-based violence perpetrated by male contemporaries and/or superiors. There was particular concern raised among working women of hostility in the workplace and the increase in cases of rape and other forms

4 <https://www.amnesty.org.uk/press-releases/south-sudan-civilians-hanged-trees-and-women-gang-raped-fresh-atrocities-report>

of SGBV in that realm, especially in the process of seeking job opportunities. Rape perpetrated by male counterparts, superiors or employers occurs in several circumstances; as a form of abuse of authority, offering favour for an employment or promotion opportunity, and to buy confidence.

Women often find themselves in situations where they are vulnerable to these threats due to their level of desperation for the particular opportunity. Most alarmingly, women who are targeted for such abuse often find themselves with the perpetrator in an environment that seems not to have any external help: for example, in an office with the perpetrator late in the evening where the only other person is the guard, who may not be able to help given his own status within the institution. Research participants report that the use of force usually happens after several failed attempts in which the subordinate woman has not previously accepted the proposition. In this case the use of rape could be variously to satisfy desire, to humiliate or to punish.

Rape normalised by social customs and legal inaction

Drawing on the research, there are several factors that have contributed to the phenomenon of rape and defilement in domestic and public places. While these should not in any way be used as justification, participants suggest they could include deficits in moral values and challenges of upbringing, the presence of freely roaming armed soldiers among civil populations, the uncontrolled influx of unregulated pornographic media content, and the unregulated trade in narcotics and increase in substance abuse.

The magnitude of rape and defilement cases in South Sudan is alarming. There are too few prosecutions and sentences for those who are convicted, which are not sending a sufficient deterrent to others in society. When the perpetrators are left to commit more sexual attacks, the image of South Sudanese men and society at large is tarnished. If these issues are left unaddressed, it might negatively impact the reputation of both the country and that of South Sudanese men in the eyes of outsiders. This could in time lead to the denial of visas by countries that do take a stand against rape and defilement.

Cultural practices that enable rape, gang rape and defilement

South Sudan is a diverse nation with rich cultures, which play significant roles in shaping societal behaviour. The research process was able to identify several cultural practices that are intended to preserve the human dignity of a woman; however, there are others that have particularly stood out as potentially creating an enabling environment for

sexual and gender-based violence. The examples below were shared by women and men from different sectors and communities of South Sudan. The behaviours described are closely linked to legal definitions of rape, gang rape and defilement.

Child marriage and defilement

Article 15 of the Transitional Constitution of Republic of South Sudan 2011 (as amended) refers to “marriageable age” but does not set a definition. However, South Sudan’s Child Act 2008 and other international human rights instruments, such as the UN Convention on the Rights of the Child, which South Sudan ratified in 2015, are clear in defining a child is any person below the age of 18. Under these legal frameworks, a child has the right to be protected from early marriage. South Sudan’s laws also set the age of consent at 18. Despite this, there are still communities that marry off girls that are far younger than this. For example, in some communities, once a girl child has her first menstrual period – which could be as young as 11 – she is deemed to have attained a marriageable age. This is also the point at which older women are keeping an eye on the young girl and start initiating her into womanhood. The family will hold a ceremony to send a signal to potential suitors. In such cases, there is no age limit for potential suitors, meaning that even men aged 40 or more could apply to marry the young girl. A male research participant in his mid-40s recounted a personal experience of a woman in Bentiu who offered her 12- or 13-year-old daughter to be his bride.

Forced marriage and rape

Throughout the research and consultation, it became clear that several cultures in South Sudan practice forced marriage. In these kinds of arrangements, a girl or woman is often married off to a man against her will. She is then forcefully accompanied to the man’s house, on the assumption that after forceful consummation, she will have no choice but to accept and remain as his wife. A similar approach is also identified relating to rape in other circumstances. For example, in cases of workplace rape or even in domestic settings, one perceived intention shared by research participants is that rape is used to subjugate and subdue the survivor, and compel them to accept the man’s proposal or intentions.

In some cultures, when a woman is reported to have been raped, the perpetrator is asked to compensate the family of the girl (pay dowry) and she is handed over to him as a wife. This is in an effort to save their purported ‘family pride’ and prioritises the family interest above that of the survivor. This approach has been exploited by men – who have little to lose – and has also contributed to less reporting of rape cases.

Bride kidnapping and gang rape

Cultural norms have many good elements, but when the application of a particular cultural practice infringes on the rights of others then this has to be addressed. In some South Sudanese cultures, bride kidnapping is a common practice and is generally allowed. If a young man loves a girl and she does not seem to reciprocate, he will mobilise his friends and wait for an opportunity when she is alone or in the company of young children. They will kidnap her and take her to the suitor's home. Once the suitor is able to have sexual intercourse with her, then his friends will report to the girl's family that she is with their friend and the process of marriage will begin.

However, when the girl is kidnapped and still does not agree to have sex with the young man, the young man will again mobilise his friends to help restrain her so that he is able to have sexual intercourse with her by force. In this case the friends of the man will witness the entire process, which in itself is humiliating to the girl. Such experiences carry the additional risk of desensitising the wider group of men to future participation in gang rape.

Recommendations

Legal frameworks and reporting processes

1. Parliament should apply the relevant legislation to address repugnant cultural practices such as forced marriage, bride kidnapping and child marriage.
2. Parliament – in collaboration with non-governmental organisations and relevant institutions – should review and amend necessary laws, including the Penal Code 2008, in order to strengthen the legal system, and prescribe stiffer punishments for perpetrators of rape, gang rape and defilement.
3. Lawyers handling rape, gang rape and defilement cases are advised to expand their scope of argument on the offences in order to attract comprehensive penalties for these crimes.

Public communication and education

4. Public institutions, the army and other organised forces should establish clear mechanisms for reporting incidences of sexual and gender-based violence and develop internal policies to guard against SGBV within their ranks.
5. Non-governmental organisations, in partnership with the Ministry of Justice, should work together to communicate the existing laws in clearly understood language, so there is wider public awareness of the existing legal protection and penalties.
6. Enhance the education curriculum and engage religious leaders, in order to provide good moral

orientation from childhood and throughout the entire society.

7. Provide women and girls with training on survival techniques and the importance of reporting any incidence of sexual harassment, rape, gang rape and defilement.
8. Programmes of psychosocial support must be designed and provided for survivors. Create safe forums and encourage survivors to talk about their experiences, and families to seek justice and report incidences of sexual violence.
9. Design awareness programmes that enhance understanding of the value of women in the society and socialise children (boys and girls) in a manner that enables them to speak out and have better understanding of their own and others' fundamental rights.

Military protocols and civil-military relations

10. The army and other organised forces should enhance their codes of conduct and internal procedures to protect against human right violations and sexual harassment during operations, and respond appropriately when breeches occur.
11. Locate military barracks away from civilian settlements, and embed conversations about respect for human value, women and children's rights during confinement and the training curriculum.

Conclusion

It is important to note that rape, gang rape, defilement and all forms of sexual and gender-based violence are societal problems that affect both men and women, boys and girls. Silence and inaction favours the perpetrators and reflect badly on the country. The law must be applied and sexual crimes prosecuted, so that others understand that they should report their own experiences. SGBV pervades the entire society and there must be institutional mechanisms for reporting and mitigating its impact. Survivors deserve humane and dignified treatment and must receive effective psychosocial support. This can only be achieved through comprehensive planning and interventions. Addressing issues relating to rape, gang rape and defilement requires a multifaceted approach to tackle what are both peace and security concerns and criminal offences. The key remedy is to strengthen the relevant institutions and collaborate to address the social and cultural factors that contribute to South Sudan's high prevalence of sexual and gender-based violence. The perpetrators of sexual abuse must be made to take responsibility for their actions regardless of their previous or current status in the society.

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