

SOUTH SUDAN

Submission to the United Nations Committee on the Rights of the Child 88th Pre-Sessional Working Group, 8 – 12 February 2021

November 2020

All Survivors Project (ASP) is an independent, impartial, international non-governmental organisation that seeks to support global efforts to eradicate conflict-related sexual violence (CRSV), strengthen the national and international responses thereto, and ensure that the rights and dignity of all victims and survivors are respected and protected. Through its research and advocacy, ASP aims to complement and reinforce existing work on CRSV against women and girls, by focusing on men, boys and people with diverse sexual orientation, gender identity, gender expression and/or sex characteristics (SOGIESC)¹ victims and survivors who are not always easily identified or supported within existing responses to CRSV.

ASP makes this submission to the United Nations (UN) Committee on the Rights of the Child (the Committee) in advance of the 88th Pre-Sessional Working Group's review of South Sudan. This submission focuses on sexual violence against boys in the context of the armed conflict in South Sudan. It relates to Articles 19, 24, 32, 34, 36, 37, 38 and 39 of the UN Convention on the Rights of the Child (UN CRC) and to Articles 1, 2, 4 and 6 of the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict.

This submission is based on publicly available information and interviews with a limited number of key informants. There remains a dearth of reliable information on the issue, and ASP calls for addressing this knowledge gap to ensure an effective response by national and international actors to CRSV against male (and LGBTI+) survivors.

Background

On 12 September 2018, the Government of the Republic of South Sudan, Sudan People's Liberation Army in Opposition pro Taban Deng (SPLA-IO (TD) and opposition armed groups, including SPLA-IO (RM), the Sudan People's Liberation Movement (SPLM/former detainees), and the South Sudanese Opposition Alliance, signed Revitalised Agreement on the Resolution of the Conflict in South Sudan (R-ARCSS). This agreement, which was facilitated by the Intergovernmental Authority on Development (IGAD), arose from the 2015 Agreement on the Resolution of the Conflict in South Sudan (ARCSS), which was waylaid by the resumption of conflict in July 2016. The R-ARCSS provided for an arrangement to establish a permanent ceasefire and power sharing arrangements at both the national and local level.

¹ ASP uses the phrase 'people with diverse SOGIESC' to refer to all individuals who have diverse sexual orientation, gender identity, gender expression and/or sex characteristics, including individuals who are lesbian, gay, bisexual, transgender and intersex (LGBTI+). ASP also uses the acronym LGBTI+ in instances where it is most relevant.

Non-state armed groups and government security forces have continued to sporadically clash and fighting between ethnic groups surged dramatically in 2020, with worrying reports indicating that more organised forces are participating in the violence.²

Grave violations against children in the context of the armed conflict

Recruitment and use of children

Delayed progress and the selective implementation of the R-ARCSS has had a disproportionate impact on the lives of children. Severe acute malnutrition, absence of critical services and the ongoing brutality of intercommunal, internecine and sexual and gender-based violence continued to victimise South Sudanese boys and girls on multiple grounds. Despite the many pledges by government and armed groups to end use and recruitment of child soldiers, including in the 2015 peace agreement, South Sudan's war has continued along with abuses against civilians, including the recruitment and use of child soldiers.

The exact number of child soldiers in South Sudan remains unknown because of low rates of reporting and poor birth registration which makes age verification difficult.³ As of late July 2019, some 19,000 children were thought to still be in the ranks of the South Sudan People's Defense Forces (SSPDF) and armed opposition groups.⁴ In 2020, a total of 37 boys were verified as victims of recruitment and use, 7 girls were verified as survivors of rape in seven incidents of violations, 4 children (3 boys and 1 girl) were abducted, 3 children (2 boys and 1 girl) were killed and 2 boys were injured. In addition, two attacks on health-care facilities and one incident involving denial of humanitarian access were verified. Children were affected in Central Equatoria, Western Equatoria, Upper Nile, Western Bahr el-Ghazal and Unity.⁵

On 7th February 2020, the Government of South Sudan signed a comprehensive action plan to end and prevent all grave violations against children. The armed groups which committed to the Action Plan, include the Sudan People's Liberation Army in Opposition (SPLA-IO) led by Riek Machar, listed for child recruitment and use, killing and maiming and abduction of children. It also includes the South Sudan Opposition Alliance (SSOA), which committed itself to better protect children despite not being listed.⁶

However, the practice of targeting children and young people for forced recruitment has remained unabated, and been documented by the Panel of Experts on South Sudan since 2015 and spiked in January and February 2020 ahead of the end of the 100-day extension of the pre-transitional period.⁷ During a visit to Unity in February 2020, the Panel found evidence of SSPDF and SPLA-IO having carried out forced recruitment of children as young as 12 years old and young adults, between 18 and 27 years old, in Koch, Panyijiar, Rubkona and Mayendit Counties. The Panel corroborated information that the following commanders ordered and personally managed the forced recruitment: Brigadier General James Galiak Kai of SSPDF Division 4 controlled by Vice-President Taban Deng Gai in Kuerguini, and Major General

² United Nations Mission in South Sudan (UNMISS), "Escalating intercommunal conflict could unravel the peace agreement", 9 June 2020, <https://perma.cc/J2DT-4JFF>.

³ UNICEF, "Stolen Childhoods, Children in armed groups in South Sudan", <https://perma.cc/GK4E-CWQ5>.

⁴ Report of the Commission on Human Rights in South Sudan, UN Doc. A/HRC/43/56, January 2020, para. 45.

⁵ Report of the Secretary-General on the Situation in South Sudan, UN Doc. S/2020/890, September 2020, para. 62.

⁶ Office of the Special Representative of the Secretary-General for Children and Armed Conflict, "South Sudan: Comprehensive Action Plan to End & Prevent All Grave Violations Against Children Signed by Government," 7 February 2020, <https://perma.cc/MTR2-Z9CR>.

⁷ Final report of the Panel of Experts on South Sudan submitted pursuant resolution 2471 (2019), UN Doc. S/2020/342, April 2020, para. 22.

Turuk Khor of SPLA-IO Division 4A in villages around Dingding, including Kuach and Juach, as well as in Nhialdu and Rubkona.⁸

Information collected by the Panel demonstrated that SSPDF and SPLA- IO have deployed similar methods in their abduction campaigns. In most cases, pickup trucks with armed and unarmed men, some in uniform, arrived at villages during the day, stopped children and young people and forced them into the trucks. The forced recruits were then taken to the SSPDF or SPLA-IO headquarters and later moved to Moum training centre. A victim told the Panel that *'I was picked up and thrown into a truck; there were at least 2 children and 10 other adults'*. According to the victim, who later escaped, SSPDF took the abductees to the Division 4 barracks in Rubkona. Other incidents occurred at night, when armed and unarmed men, some in uniform, forced young men into vehicles.⁹

Documentation by UNICEF shows that more boys than girls are recruited and used by armed forces and armed groups. Out of the formally released children, 12% are girls.¹⁰ While documentation and analysis of links between child soldiering and sexual exploitation remains a major empirical and theoretical gap in research on child soldiers and on sexual violence against children more broadly, the real incidence of sexual exploitation of children involved in armed conflict is likely to be higher for both girls and boys as compared to children who are not involved.¹¹

Sexual violence against boys in the context of the armed conflict

CRSV has remained prevalent throughout and has been perpetrated by the parties to the conflict, community-based militia and other armed young people, exploiting protracted insecurity and a lack of protection by authorities. While women and girls have been the primary targets, men and boys have also been subjected to sexual violence.¹² Incidents of violence have a gendered aspect, as young men are often specifically targeted, killed, beaten and detained under suspicion of being real or potential members of armed groups, while women and girls are raped, beaten and sometimes also killed, and vulnerable people, especially older men, have been killed and burned in their *tukuls* (thatched huts).¹³

Boys and girls suffered brutal forms of sexual violence in South Sudan. In 2015, the UN verified a total of 103 incidents of sexual violence affecting 430 children attributed to the SPLA and other government security forces. Most incidents were documented in Unity State. Boys were reportedly castrated and sexually mutilated, while girls who resisted rape were killed.¹⁴

Testimonies documented by the Commission on Human Rights in South Sudan in 2017 demonstrated vicious acts of violence being inflicted:

'One witness from Malow (Witness 301) told the Commission how she watched as SPLA soldiers castrated her husband then forced her to hold his bloody testicles in one hand as she shielded their newborn child with her other hand. She then watched three SPLA soldiers rape her 70-year-old mother and coerce her 12-year-old son into having sex with his grandmother.'

⁸ Final report of the Panel of Experts on South Sudan, UN Doc. S/2020/342, April 2020, para. 22.

⁹ Final report of the Panel of Experts on South Sudan, UN Doc. S/2020/342, April 2020, para. 22.

¹⁰ UNICEF, "Stolen Childhoods, Children in armed groups in South Sudan", <https://perma.cc/GK4E-CWQ5>.

¹¹ Alfredson, Lisa, Sexual Exploitation of Child Soldiers, Child Soldier Newsletter, 2001.

¹² UNMISS and OHCHR, Access to Health for Survivors of Conflict-Related Sexual Violence in South Sudan, May 2020, para. 24, <https://perma.cc/5XSH-WEEN>.

¹³ Report of the Commission on Human Rights in South Sudan, UN Doc. A/HRC/40/69, February 2019, para 41.

¹⁴ Report of the Secretary General on Children and Armed Conflict, UN Doc. A/70/836–S/2016/360, April 2016, para. 125.

*After raping the grandmother, the SPLA soldiers shot and killed her. The woman's husband and one-month-old baby subsequently died during their flight to Ethiopia.*¹⁵

Documentation of sexual violence against refugees in Nairobi and Mombasa in Kenya by the Women's Refugee Commission showed that CRSV against men and boys appeared to be commonplace in South Sudan.¹⁶ In particular, South Sudanese refugees (across ethnic groups) said that it was common practice for armed groups to force men and boys to choose between being raped and being killed.¹⁷ In addition, a key informant noted that street children and orphans, who are numerous in South Sudan due to the prolonged armed conflict, are particularly vulnerable to sexual violence by civilians, gangs, and armed groups.¹⁸

High levels of stigma contribute to massive under-reporting of sexual violence by South Sudanese men and boys. Most male survivors remain unwilling to speak about their experiences with underreporting attributed in part to limited awareness, societal stigma and shame.¹⁹

Access to health services

The consequences of sexual violence are often devastating, potentially affecting all aspects of survivors' lives. In addition to severe physical harm, mental health consequences of sexual violence are severe and long-lasting. In the context of South Sudan's armed conflict, sexual violence has been used as a weapon of war to tear apart the social fabric of families and communities, and to inflict individual and collective trauma.

In accordance with international humanitarian law, South Sudan is obliged to ensure and provide access to appropriate health care for victims of sexual violence, to the maximum extent of its available resources.²⁰ Nevertheless, the UN found that the Government has not sought to make funding of the public health sector a priority. For the 2019-2020 fiscal year, 1.2 per cent of the national budget was allocated to the entire public health sector, amounting to approximately USD 14 million.²¹ In addition to limited availability of health provision for survivors of CRSV, and low ratio of skilled healthcare workers, a third major challenge relates to social barriers. The stigmatisation of victims of sexual violence, coupled with the risk of being exposed as a survivor in seeking out health care, has compelled many to suffer in silence, with limited access to mental health care or psychosocial support. The capacity of the health system to provide mental health care, though critical in addressing trauma resulting from sexual violence, is nearly non-existent. Mental health care has not been considered as a high priority by government actors or international partners.²²

¹⁵ Report of the Commission on Human Rights in South Sudan, UN Doc. A/HRC/37/71, March 2018, para. 91.

¹⁶ Women's Refugee Commission (WRC), *"We Have a Broken Heart": Sexual Violence against Refugees in Nairobi and Mombasa, Kenya*, 23 October 2019, page 2, <https://perma.cc/AP32-3FHN>

¹⁷ WRC, *"We Have a Broken Heart"*, 23 October 2019, page 19, <https://perma.cc/AP32-3FHN>

¹⁸ WRC, *"We Have a Broken Heart"*, 23 October 2019, page 21, <https://perma.cc/AP32-3FHN>

¹⁹ Report of the Commission on Human Rights in South Sudan, UN Doc. A/HRC/43/56, January 2020, Annex II, page 38, para. 56.

²⁰ Common Article 3(2) of the Geneva Conventions, Article 12 of Geneva Convention I; Article 12 of Geneva Convention II; Article 10(2) of Additional Protocol I, and Article 7(2) of Additional Protocol II; See also Rule 110 of the ICRC's Customary IHL Study, available online at <https://perma.cc/8PJH-9MLG>.

²¹ UNMISS and OHCHR, *Access to Health for Survivors of Conflict-Related Sexual Violence in South Sudan*, May 2020, para. 5, <https://perma.cc/5XSH-WEEN>.

²² UNMISS and OHCHR, *Access to Health for Survivors of Conflict-Related Sexual Violence in South Sudan*, May 2020, para. 12, <https://perma.cc/5XSH-WEEN>.

Applicable legal framework

Insofar as is relevant, South Sudan is a party to: the 1949 Geneva Conventions and 1977 Additional Protocols; the African Charter on Human and Peoples' Rights and its Protocol on the Rights of Women in Africa; the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and its Optional Protocol; the Convention on the Elimination of All Forms of Discrimination against Women and its Optional Protocol; the UN CRC and its two Optional Protocols related to the involvement of children in armed conflict and the sale of children. In addition, the Government has endorsed the Principles and Guidelines on Children Associated with Armed Forces or Armed Groups ("Paris Principles") of 2007 as well as the Safe Schools Declaration of 2015.

In terms of domestic law, the 2008 Child Act places an obligation on the government to ensure that every child who is a victim of 'abuse' shall be accorded appropriate treatment and rehabilitation. The Act defines 'abuse' in broad terms to include:

- (a) all forms of physical or mental violence, injury, abuse, negligent treatment, maltreatment or exploitation;
- (b) abduction and trafficking, for any purpose or form, by any person including parents or guardians;
- (c) sexual abuse, exploitation and harassment including, but not limited to rape, incest, inducement or coercion of a child to witness or engage in a sexual activity;
- (d) the use of a child in prostitution or other sexual practices; and
- (e) the use of a child in pornographic performances and materials.

Section 36 of the Child Act requires that the state "provide effective remedies to redress violations of the child rights, including through access to child friendly, independent complaints procedures and competent Courts."

Article 17(1) (d) and (4) of the 2011 Transitional Constitution (as amended) specifies that a child shall not be required to serve in the army and that a child is any person under the age of 18 years. Article 31 of the Child Act reiterates that the minimum age for conscription or recruitment into armed forces is 18 years and that children shall not be used in any military or paramilitary activities contrary to the law. This law also explicitly lays out penalties for recruitment or use of a child in an armed force as "imprisonment for a term not exceeding ten years or with fine or with both." Under the Sudan People's Liberation Army Act, 2009, which sets the principle for the establishment, governance and discipline of the SPLA, a person must be 18 years of age or older to be eligible for enlistment.²³

Moreover, South Sudan has the obligation to prevent all acts of rape and other forms of sexual violence, torture and inhuman or degrading treatment, and to take effective measures to prevent and promptly investigate violations and abuses of international human rights law; and to ensure accountability for those responsible for these acts. Under international criminal law, individuals can be held criminally responsible (through both individual and command modes of liability) for war crimes and crimes against humanity. While not a State party to the Rome Statute of the International Criminal Court, South Sudan is obligated in accordance with peremptory norms of international law to prosecute the perpetrators of any such acts committed on its territory, including bearers of command responsibility.²⁴

²³ See Sudan People's Liberation Army Act, 2009, <https://perma.cc/NUP4-GBXG>.

²⁴ UNMISS and OHCHR, Conflict related sexual violence in northern Unity, September-December 2018, 15 February 2019, <https://perma.cc/PNU7-2MJY>.

South Sudan punishes “carnal knowledge against the order of nature” with up to 10 years in prison and a fine, under section 248 of its 2008 Penal Code Act.²⁵ The code also criminalises forms of gender expression by condemning “any male person who dresses or is attired in the fashion of a woman in a public place” to up to one year in prison or a fine, or both. ASP is seriously concerned that this law discriminates against people with diverse SOGIESC, by criminalising consensual same-sex sexual relations and/or diverse gender identities and expressions. Such laws deny legal protection to victims/ survivors and lead to impunity for perpetrators. Such laws can also contribute to stigma for survivors and deter them from accessing justice, medical care and other necessary support.

Recommendations

In light of the above concerns, ASP urges the Committee to include the following in its recommendations to the Republic of South Sudan:

(i) Demonstrate full commitment to the implementation of the comprehensive Action Plan to end and prevent all grave violations against children by:

Continuing efforts to put an immediate end to all violations against children, especially the recruitment and use, killing and maiming and sexual violence against children; supporting the UN Country Task Force for monitoring and reporting by verifying, registering, releasing and reintegrating children associated with armed forces and groups; supporting measures to establish monitoring, oversight and accountability mechanisms to ensure that perpetrators of grave violations against children are held to account.

(ii) Strengthen data gathering and safe, confidential information sharing on sexual violence against boys, as part of broader efforts to monitor and report on CRSV:

There should be a working assumption that men and boys may be at risk of sexual violence, and data gathering, and monitoring processes should be designed to identify male and female survivors. Data sharing and co-ordination among stakeholders should be strengthened while prioritising at all times the safety and wellbeing of survivors.

(iii) Ensure that awareness raising and sensitisation activities on sexual violence are gender-inclusive:

Concerted effort is needed to build broader awareness of sexual violence against men and boys in South Sudan and to counter the stigma associated with it, including by ensuring that messages on sexual violence are gender-inclusive, and awareness and outreach activities are designed to reach men and boy survivors and others who are in a position to support them. This effort should include engagement with and training of community-based protection mechanisms and community leaders in community sensitisation initiatives. Care should be taken that these activities do not detract or otherwise negatively impact from the specific and grave needs of female survivors of sexual violence.

²⁵ Penal Code Act, 2008, <https://perma.cc/RK5P-X6JK>.

(iv) Strengthen the provision of comprehensive care for sexual violence survivors, in particular medical, mental health and psychosocial services so that they are available to all survivors of sexual violence, including those in IDP camps.

Accelerated efforts are needed to strengthen availability, accessibility and quality of services for all survivors and to ensure that gender-competent services for men and boys are integrated into programme delivery without jeopardising access, confidentiality, safety and security for female survivors. In particular:

- Minimum responses should include immediate access to safe, free, confidential, survivor-centred, and high-quality medical care for men and boys in public hospitals, health centres or in mobile clinics and in facilities run or supported by non-governmental health providers;
- Minimum responses should also include access to psychosocial support for male and female sexual violence survivors, witnesses and for their family members. These services should be widely advertised and made available to survivors;
- Coordination among key stakeholders should be improved especially child protection, gender-based violence and health actors; and safe and confidential referral systems for male survivors to providers of medical, psychosocial and legal services should be adopted and implemented.

(v) End impunity for crimes of sexual violence and fulfil victims' right to remedy by holding perpetrators to account and providing comprehensive reparations to survivors. Including by:

- Reviewing existing laws and policies, particularly in the penal code to identify and eliminate gaps in the protection of men and boys against sexual violence and barriers to accountability;
- Strengthening the capacity of the justice system to investigate and prosecute CRSV against all victims and survivors, including by ensuring that police, prosecutors and judges are adequately trained to respond to the needs of all survivors in a safe and ethical manner; and ensuring that legal aid services are available;
- Signing the Memorandum of Understanding with the African Union for the establishment of the Hybrid Court on South Sudan which will have jurisdiction over war crimes and crimes against humanity, as well as other serious crimes under international law. The Hybrid Court on South Sudan, once established, has primacy over national jurisdictions to prosecute individuals, both civilian and military, who have reportedly committed these crimes.