

**Prosecuting Sexual and Gender-Based Crimes in South Sudan: UN Commission on Human Rights in South Sudan working session on strategies for evidence collection**

**Addis Ababa – 4-5 March 2019**

**BACKGROUND INFORMATION**

The Human Rights Council (HRC) established the Commission on Human Rights in South Sudan (CHRSS) for a one-year term on 23 March 2016 by [**resolution 31/20**](http://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/RES/31/20), subsequently extending its mandate for an additional year in 2017 and again in 2018, with its current term due to expire in March 2019. The mandate of the CHRSS specifically includes investigation of sexual and gender-based violence (SGBV). The CHRSS mandate is unique in South Sudan in that it extends beyond traditional human rights monitoring and investigation, to include identifying alleged perpetrators and collecting and preserving evidence for the purpose of future prosecutions, truth seeking, and reparations.

In March 2018, the CHRSS reported to the Human Rights Council “that sexual and gender-based violence remained the central feature of the conflict in South Sudan”. The Commission documented many accounts of rapes and gang rapes, forced stripping and nudity, forced sexual acts, castration and mutilation of genitalia, perpetrated by all parties to the conflict. The Commission identified different characteristics of SGBV perpetrated by the warring factions, including sexual violence as torture, and the use of sexual violence as a weapon of war and method of punishment or humiliation. Sexual and Gender-Based Violence (SGBV) in South Sudan has also been characterised by its repetitiveness and gruesomeness, with many victims being assaulted multiple times and/or with the use of various objects.

Impunity for these crimes remains at an all-time high in South Sudan as government and armed groups deny committing sexual violence. According to a 2017 study by the Global Women’s Institute and the International Rescue Committee, more than 65 per cent of women and girls in South Sudan have reportedly experienced some form of sexual violence at least once in their lives. UNICEF reports that 25 per cent of those targeted by sexual violence are children, including the rapes of girls as young as 7. Elderly and pregnant women have also been raped. The Commission also received reports of male victims of sexual violence. Sexual and gender-based violence against men and boys is even more underreported than that against women and girls as there is a greater level of stigma.

As recently as November 2018, a number of women and girls were reportedly raped at various locations near Bentiu by unidentified armed men in military and civilian clothing. Approximately 125 of them sought medical treatment from Doctors Without Borders for sexual assault.

Victims of sexual and gender-based violence in South Sudan continue to face significant challenges in seeking justice as a result of the stigma attached to sexual violence. As a result, many survivors do not report their experiences or seek justice.

The transitional justice mechanisms set out in Chapter V of the Revitalized Agreement on the Resolution of the Conflict in South Sudan (R-ARCSS) provide a framework for addressing gross violations and international crimes that have occurred during the conflict including SGBV, and to starting the reconciliation, healing and institutional processes necessary to move South Sudan beyond its cycles of recurring violence toward enduring peace. However, in the long term, sustainable peace will require South Sudan to develop a robust domestic legal system of prosecutions of crimes buttressed by strong justice institutions. Currently, there remains a large gap between reports of sexual violence documented by organizations like UNMISS or the CHRSS and the number of formal prosecutions for sexual violence. In 2016, the most recent year for which statistics are available, the Ministry of Justice and Constitutional Affairs recorded 255 sexual and gender-based crimes cases which resulted in 45 convictions, including 147 rape cases, which resulted in 25 convictions.

The Commission notes that proper documentation and investigation of SGBV is critical for the success of any future criminal prosecutions and transitional justice mechanisms be it at the national or international level. International tribunals have on many occasions pointed out to insufficiency or inadmissibility of evidence coming from third parties, or dismissed the prosecution’s arguments intending to establish criminal responsibility for SGBV.

With the aim of enhancing documentation and evidence collection, contributing towards the establishment of an effective prosecutorial system for future justice mechanisms, including criminal accountability for sexual and gender-based crimes at national and international levels, the Commission will hold a working session with a panel of experts and practitioners in the field in Addis Ababa, March 4 and 5.

The panel of experts and practitioners discussing approaches to investigating and documenting conflict-related SGBV in South Sudan will include representatives of UN Agencies, the African Union, representatives of the Government of South Sudan and members of civil society.

Discussions in the working session include:

* patterns and trends of conflict-related SGBV in South Sudan;
* how the Commission can improve partnerships with other agencies dealing with SGBV in South Sudan;
* possible improvements in evidence collection for criminal accountability;
* prosecutorial policy and strategy to prosecute conflict-related SGBV; and
* what has been done by the Government of South Sudan to date in dealing with SGBV and on justice and reparations for victims.

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