

GBV MANUAL



**A MANUAL ON INVESTIGATION AND PROSECUTION OF
GENDER BASED VIOLENCE CASES IN SOUTH SUDAN**

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Kingdom of the Netherlands



*Empowered lives.
Resilient nations.*

2019

FOREWORD

This manual represents the desire of the Government of South Sudan in realizing our vision of improving the safety of our citizens. At the heart of our vision as articulated in the National Development Strategy, is the challenge of enhancing transformation of the social system and norms so that we are able to function more effectively within our democratic dispensation and enhance social crime prevention activities to reduce their occurrence. This requires focusing on issues relating to the rule of law institutions and delivery of efficient services to the public. This also requires a dedicated focus on preventing citizens from becoming victims of crime.

The advent of independence in July 2011, no doubt, ushered in the most optimistic era in the history of our people. This offered us with a place of pride of building a new and better life for all our citizens. A comprehensive and robust response to gender-based violence ensures that a section of our society will not be left behind as we pursue our shared values of prosperity. Gender-based violence is a phenomenon deeply rooted in gender inequality and continues to be one of the most notable human rights violations within all societies. Gender-based violence is violence directed against a person because of their gender. Both women and men experience gender-based violence but the majority of victims are women and girls. The Ministry of Gender, Child and Social Welfare has continuously engaged with the rule of law and security sector, to ensure that a coordinated response to the question of gender-based violence is attained. The Ministry of Gender, Child and Social Welfare has developed several policy documents, including Standard Operating Procedures on Gender Based Violence. However, policies and legislations will remain rhetorical statements in the absence of robust structures and enhanced capacities to implement our aspirations as represented in our laws.

The development of this manual has come at a time that the Ministry of Gender, Child and Social Welfare is leading the development of an Anti Gender Based Violence Act for South Sudan and the Judiciary is establishing a Special Court dedicated for the prosecution of gender-based violence cases. These two initiatives supported by UNFPA and UNDP respectively, represent the constructive nature and positive quality of the relationship that the Government of South Sudan desires to have with our international partners. The Anti Gender Based Violence Act, when passed, will play a crucial role in putting in place protective measures for survivors of gender-based violence cases and ensuring that trials are fast-tracked.

I wish to take this opportunity to thank and congratulate all those who supported the development of this manual. Our commitment to respond to and prevent gender-based violence can only be realized by concerted efforts from all sides.

I hereby call upon all our well wishers to continue to make meaningful contributions to our efforts. My profound thanks go to UNDP South Sudan and the Kingdom of Netherlands for supporting this singular important initiative. We can only succeed if we stand together.

Thank you!



Hon. Awut Deng Acuil
Minister of Gender, Child and Social Welfare

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The manual would not have been completed without the support of these individuals and others who participated at the validation workshop held in Juba in September 2017. These included representatives from civil society, the UNDP Access to Justice team, UN Women, UNHCR, UNFPA, UNMISS, UNICEF, IDLO and the GBV Sub Protection Cluster. The follow up comments from Josephine Ngebeh of UNHCR and the Undersecretary of the Ministry of Gender, Child and Social Welfare Hon. Esther Ikere Eluzai. The collective wisdom of the participants has been borne out in a more effective approach to the challenges that animate issues of GBV in South Sudan.

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Hon. Justice James Amum – Judiciary of South Sudan

Col. James Dak – South Sudan National Prisons Services

James Arguin – Director, UNMISS Rule of Law

Christian Mikala – Senior Human Rights Officer, UNMISS Human Rights Division

Alison McFarlane – Judicial Affairs Officer, UNMISS Rule of Law

Lillian Bujwera – Human Rights Officer, UNMISS Human Rights Division

Rukaya Mohamed – Women's Economic Empowerment Specialist, UN Women

Viola Riak – Gender Specialist, UNFPA

Dr. Rowland Cole – Chief Technical Advisor, UNDP

Dr. Brian Kalenge – Consultant

Mr. Taban Romano - Consultant

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2. The Penal Code Act, 2008
3. The Child Act, 2008
4. The Code of Criminal Procedure, 2008
5. The Evidence Act, 2006
6. Advocates Act, 2013
7. Ministry of Legal Affairs and Constitutional Development Organization Act, 2008
8. Local Government Act, 2009

International and Regional Statutes

1. The Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)
2. The Convention against Torture (CAT)
3. The Convention on the Rights of the Child (CRC)
4. The Four Geneva Conventions of 12 August 1949 and their Additional Protocols
5. International Conference of the Great Lakes Region (ICGLR)
6. The African Charter on Human and People's Rights
7. The East African Community Treaty

LIST OF CASES

National Case Law

1. Aluong Kaang Gabriel v Sudan Government, NS-6-62(Malakal)-PL (Juba)
2. Awet James, Juba Court of Appeal, Juba, CR/21/2014
3. Bech Marial Majok Dhuor, NST/22/2013
4. Charles Amin Zambia, CR-APP/39/2014
5. Dudu Hassan Khamis, No. SC/CR.REV/9/2008
6. Government v Adam Ahmed Mohammed, Sup.Ct. /Crim. Rev/16/1978
7. Isaac Celestino Paul and 4 others, NO.COA/GEC/CR-APP/81/2015
8. Marual Muorwel Juong, SC/CR.REVIEW/52/2011
9. Mary Lotiyo Belal, CRA/81/2001

International Case Law

1. Case of Aydin v Turkey, (No.50), 1996-VII, Eur. Ct. H.R.75 (1997)
2. Prosecutor v Akayesu, (Case No. ICTR-96-4)
3. Prosecutor v Tadic, (Case No.IT-94-1-T) (ICTY)

ACRONYMS

AU	African Union
AUCISS	African Union Commission of Inquiry on South Sudan
CBOs	Community Based Organizations
CPA	Comprehensive Peace Agreement
CSOs	Civil Society Organizations
CRC	Convention on the Rights of the Child
CRSV	Conflict- Related Sexual Violence
CAT	Convention against Torture
CEDAW	Convention on the Elimination of All Forms of Discrimination Against Women
DPP	Directorate of Public Prosecutions
FGM	Female Genital Mutilation
GBV	Gender Based Violence
GBW	Gender Working Groups
GoSS	Government of South Sudan
HCSS	Hybrid Court for South Sudan
HIV/AIDS	Human Immunodeficiency Virus/Acquired Immunodeficiency Syndrome
ICC	International Criminal Court
ICGLR	International Conference on the Great Lakes Region
ICTR	International Criminal Tribunal for Rwanda
ICTY	International Criminal Tribunal for Yugoslavia
INGOs	International Non-Governmental Organizations
IDPs	Internally Displaced Persons
JCCs	Justice and Confidence Centres
MoJCA	Ministry of Justice and Constitutional Affairs
NGOs	Non-Governmental Organizations
OXFAM	Oxford Committee for Foreign Relief
SGBV	Sexual and Gender-based Violence
SOP	Standard Operating Procedures
SPLA	Sudan Peoples Liberation Army
SPU	Special Protection Unit
SSBA	South Sudan Bar Association
SSDF	South Sudan Defence Force
SSLS	South Sudan Law Society
SSNPS	South Sudan National Police Service
UN	United Nations
UNDP	United Nations Development Program

UNFPA	United Nations Population Fund
UNHCR	United Nations High Commission for Refugees
UNICEF	United Nation's International Children's Emergency Fund
UNMISS	United Nations Mission in South Sudan
UNPOL	United Nations Police
UNSCR	United Nations Security Council Resolution
UN Women	United Nations Entity for Gender Equality and the Empowerment of Women

ABSTRACT

The occurrence of gender-based violence (GBV) is a widespread and global phenomenon which requires national responses. South Sudan is no exception to this phenomenon. Causes of GBV in South Sudan mainly result from economic, social and cultural factors such as violent conflict, marginalization, pre-existing gender inequalities, cultural practices, low levels of awareness about GBV and high levels of poverty. High rates of GBV both in conflict and peace time remain a serious health and developmental challenge. In armed conflict, one form of GBV, sexual violence, can become so widespread and systematic that it is considered a weapon of war and can constitute a crime against humanity, war crime or act of genocide.¹ Access to justice particularly, for the poor, vulnerable persons and survivors of GBV, particularly sexual and gender-based violence (SGBV) continue to be major challenges, and in some instances community justice mechanisms are preferred over the formal justice systems. GBV incidents are seen as an issue to be resolved by mediation rather than a crime to be punished. The criminal justice system is characterized by inadequate resources and capacity gaps in critical areas such as investigations and prosecution of GBV cases. As a response, the Special Protection Unit (SPU) was established within the South Sudan National Police Services (SSNPS) with support from UNDP, UNICEF, UN WOMEN and UNHCR to ensure effective investigation and management of GBV cases, including referral to complementary services and ensuring safety and security of victims/survivors. However, SPUs are constrained by limited trained personnel to carry out effective investigation of cases. UNDP and UNICEF set up an SPU desk at the hospital in Yambio but to date it is still not functioning because police/SPU consider it as an extra responsibility which require additional remuneration. In addition, the frequent practice of rotating police personnel, including trained police officers from SPUs to other departments further weakens the effective operations of the SPUs.

The Government of South Sudan has supported the enactment of a series of legislation on the protection of women and girls. Relevant provisions of the Transitional Constitution, 2011, Code of Criminal Procedure Act, 2008, Child Act, 2008 and the Penal Code Act, 2008, all deal with cases relating to GBV. South Sudan has also acceded to the UN Convention on the Elimination of All Forms of Discrimination Against Women, 1979 (CEDAW). In order to support the implementation of the United Nations Security Council Resolution (UNSCR) 1325, South Sudan developed the National Action Plan 2015-2020 on UNSCR 1325, thereby demonstrating its commitment to, inter alia, protect women and girls against all forms of GBV especially sexual violence.

This manual has, therefore, been developed with the aim to support capacity strengthening of the SSNPS and the Ministry of Justice and Constitutional Affairs to investigate and prosecute GBV cases and to support other relevant institutions involved in the referral pathway. It is hoped that this effort will complement ongoing institutional capacity building efforts to ensure a more robust legal response to cases of GBV and will be useful in the adjudication of cases in the special GBV Court.

¹ Global Protection Cluster, "Gender-Based Violence". Available at <http://www.globalprotectioncluster.org/en/areas-of-responsibility/gender-based-violence.html> (accessed 20 April 2018).

OBJECTIVE

This Manual addresses the investigation and prosecution of GBV cases by the Special Protection Units of the South Sudan National Police Service and the Directorate of Public Prosecutions, respectively. The Manual should be useful in the soon to be established GBV courts by the Judiciary of South Sudan, with support from UNDP, to specifically deal with such cases in conducive environments, while ensuring their swift disposal. The Manual is intended to serve as a user-friendly tool for capacity building of personnel of the various Government institutions and provide technical guidance on investigation skills and prosecution techniques. Particular emphasis is placed on how to investigate and collect quality evidence to bring GBV cases to trial and ensure effective prosecution of the same. The Manual also identifies practical challenges in investigating and prosecuting GBV cases in South Sudan and addresses these gaps/challenges by making recommendations that can be adopted so as to address GBV crimes and ensure that justice is realized for the survivors of GBV.

The fight against GBV in South Sudan should be complemented with efforts to build capacity through mentorships and other exchanges of best practices from experienced GBV investigators and prosecutors from the region and international community.

HOW TO USE THIS MANUAL

1. Tips to motivate adult learners

- Make the content relevant to learners (i.e. give local examples, without breaching confidentiality).
- Include activities and assignments that enable attendees to participate actively in the learning process.
- Offer feedback which helps participants learn from their mistakes.
- Use graphics (i.e. diagrams) and images to keep participants' attention.
- Emphasize the benefits that accrue from learning.
- Create deliverables that can be completed quickly and conveniently, such as interviewing victims/survivors of GBV, managing a crime scene, etc.

2. Interactive and participatory teaching

- Design assignments on the subject matter and pose questions or a problem.
- Have participants divide into groups so as to collaborate and discuss the issue at length and benefit from one another's experience and skill set.
- Have participants engage in case studies, role plays, quizzes, debates and exercises.

3. Effective use of audio visual tools

Tools that can be used include slides to showcase injuries of the victims (without showing faces or identifying features of victims, survivors or accused); photos to illustrate the crime scene; audio to understand emotion behind words, and video where what is being conveyed cannot be adequately be put into words (i.e. an interview with a victim). When using audio visual tools involving victims, survivors or accused, make sure to obtain their written consent for their stories to be used for awareness-raising purposes, and endeavor to hide their identities.

Audio visual tools can be used for review, for better understanding of concepts, or for clarity. It is however, very important that the tools being used adhere to the highest norms of privacy and confidentiality. Necessary permission should be obtained and where necessary, individuals' identities should be protected.

4. Effective oral presentations

- Speak with authority
- Pause at key points for emphasis
- Modify speed, tone and volume depending on the point being put across.

5. Use of Microsoft PowerPoint

This facilitates teaching by presenting a visual aid with the oral information. You can use PowerPoint to convey two scenarios and ask the difference between the two.

MODULE ONE

GENDER BASED VIOLENCE (GBV)

This module explains the basic gender concepts and their application within the prosecutorial arena, defines gender-based violence, as well as various contributing factors to GBV and its prevalence in South Sudan. The module also provides an overview of the legal framework dealing with sexual violence.

Defining Sex and Gender

Sex is defined as biological characteristics of males and females. The characteristics are congenital and their differences are limited to physiological reproductive functions.¹

Gender is defined as the social characteristics assigned to men and women. These characteristics differ amongst cultures and change with time. They define identities, status, roles, responsibilities and power relations amongst members of any culture or society.²

This Manual focuses on how to investigate and prosecute sexual as well as gender-based violence. Although sexual violence is a form of gender-based violence, GBV encompasses other types of abuse such as physical violence, psychological violence, threats of violence, coercion or arbitrary deprivation of liberty. All these types of abuses are prevalent in South Sudan.

This Manual mostly and purposively uses the term, “sexual and gender-based violence” (SGBV) - interchangeably with GBV, - in line with its primary aim to support the criminal justice sector to investigate and prosecute sexual related offences. Further, as with several other legal systems, the South Sudan criminal justice system recognises SGBV as offences involving specific violations of a sexual nature, while other forms of GBV are considered as offences involving violence generally. SGBV is also the term that has been adopted widely within United Nations (UN) human rights mechanisms. For example, the United Nations High Commissioner for Refugees (UNHCR) defines SGBV as:

... any act that is perpetrated against a person’s will and is based on gender norms and unequal power relationships. It encompasses threats of violence and coercion. It can be physical, emotional, psychological, or sexual in nature, and can take the form of a denial of resources or access to services. It inflicts harm on women, girls, men and boys.³

So, while all sexual violence amounts to gender violence, not all gender violence need be sexual in nature. For example, denial of access to resources, emotional or psychological coercion may amount to gender violence, but have no sexual undertones. The use of SGBV and not GBV or simply “violence against women” is intended to capture all kinds of violence, those that are sexual in nature or those based on some form of attack on one’s gender identity or expression. In other words, it is the preferred “umbrella term” that can mean any and all of those different types of violence.

¹ Global Protection Cluster, “Gender-Based Violence”. Available at <http://www.globalprotectioncluster.org/en/areas-of-responsibility/gender-based-violence.html> (accessed 20 April 2018).

² Ibid.

³ UNHCR, “Sexual and Gender Based Violence”. Available at <http://www.unhcr.org/sexual-and-gender-based-violence.html> (accessed 20 April 2018).

The Meaning, Types/Forms and Causes of GBV

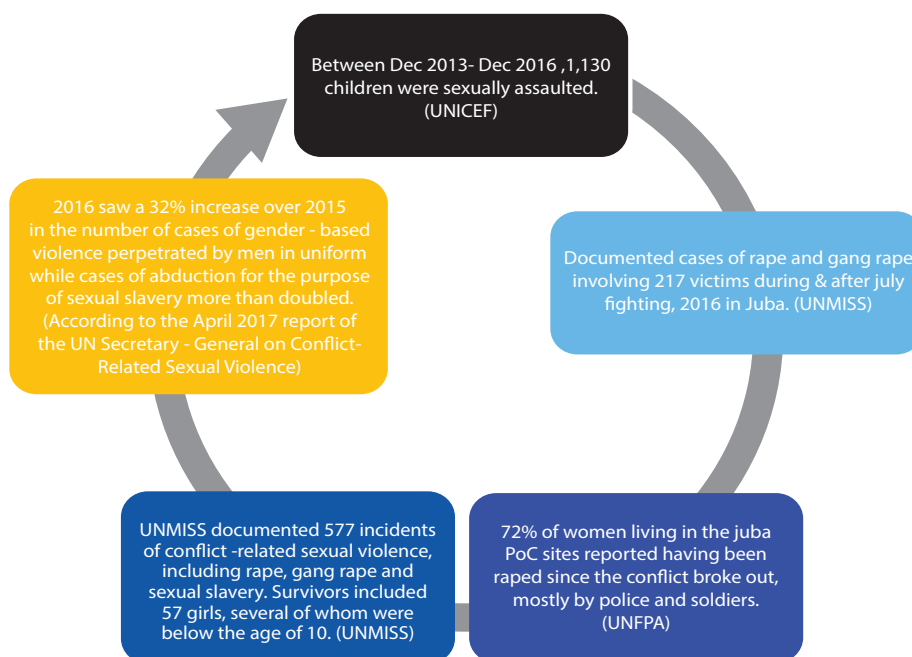
GBV is defined as any act perpetrated against another based on gender norms and unequal power relationships. Women, girls, men and boys can all be victims of GBV. While women, men, boys and girls can be victims of GBV, women and girls are the main victims.

South Sudan has been engulfed by conflict (South Sudan Civil War) since December 2013 when an internal armed conflict erupted. Government and opposition forces and other armed militia have allegedly committed war crimes and other serious human rights violations and abuses.⁴ Sexual violence such as rape, gang rape, sexual slavery, sexual mutilation including castration, forced pregnancies and abortions have reportedly been a consistent feature of the conflict.⁵

As a result of the conflict, there has been an increase in GBV within South Sudanese communities and homes characterized by rape, child/forced marriages and domestic violence.⁶ The conflict has weakened the justice system, which contributes to the increase in GBV due to the fact that law and order and social norms break down as the conflict gives legitimacy to all forms of violence.⁷

Gender Based Violence is facilitated by the overall status of women and girls as subordinate to men and is motivated by patriarchal structures which position men as heads in all aspects.

Figure 1.1 Statistics of SGBV used as a weapon in conflict in South Sudan



⁴ Justice Africa, Violence Begets Violence: Justice and Accountability for Sexual and Gender-Based Offences in South Sudan (Draft Report), May 2016. Available at <http://justiceafrica.org/wp-content/uploads/2016/08/Violence-Begets-Violence-SGBV-South-Sudan-Draft1.pdf> (accessed 20 April 2018) (hereinafter "Violence Begets Violence").

⁵ Ibid., p. 16.

⁶ Amnesty International, "Do Not Remain Silent": Survivors of Sexual Violence in South Sudan Call for Justice and Reparations, 2017, pg.17. Available at <https://www.amnestyusa.org/wp-content/uploads/2017/07/South-Sudan-sexual-violence-report-final.pdf> (accessed 20 April 2018) (hereinafter, "Do Not Remain Silent").

⁷ The mixture of historical precedent, the general acceptance of sexual violence, increased opportunism, impunity and conflict dynamics, particularly inter-ethnic violence, form the context for the surge in sexual violence that has occurred in South Sudan since December 2013.

Table 1.1 Forms of GBV under South Sudanese Law

Form/Type of SGBV	Manifestation	Provision of offense under South Sudan Penal Code Act
Physical violence	The use of physical force with the intention of causing harm. Includes stabbings, detention, and pouring substances such as acid. Sometimes results in murder.	<ul style="list-style-type: none"> • Assault (Section 223) • Force and Criminal Force (Section 224) • Hurt (Section 230) • Grievous Hurt (Section 238) • Murder (Section 206) • Attempted Murder (Section 208) • Kidnapping or Abducting in Order to Subject a Person to Grievous Hurt etc. (Section 274)
Psychological or emotional abuse	Any conduct that makes another person feel constantly unhappy, humiliated, ridiculed, afraid, depressed or inadequate or worthless. Manifested through threats of violence and harm; humiliating and insulting comments; isolation and restrictions on communication; and sexual harassment from unequal power relationships or outdated gender norms.	<ul style="list-style-type: none"> • Word, Gesture or Act intended to Insult the Modesty of a Woman (Section 250) • Confinement (Section 229) • Criminal Intimidation (Section 245) • Criminal intimidation by Anonymous Communication (Section 246)
Sexual violence	Refers to any unwanted act of a sexual nature. It also includes child sexual abuse. Sexual violence manifests itself through rape, sexual abuse, sexual harassment, sexual exploitation, forced prostitution, widow inheritance, sex trafficking, sexual slavery amongst others.	<ul style="list-style-type: none"> • Rape (Section 247)⁸ • Coercing or Inducing Persons for Purpose of Engaging in Sexual Conduct (Section 255) • Procuring (for purpose of prostitution) (Section 254) • Detaining a Person for Purpose of Engaging in Unlawful Sexual Conduct (Section 256) • Child Prostitution (Section 258) • Forced Marriage (Section 273) • Female Genital Mutilation (Section 259) • Trafficking in Persons (Section 282)
Economic abuse	This refers to the use of control over finances to dominate another person. These include deprivation of basic needs, taking money or stealing, having control over career options.	<ul style="list-style-type: none"> • Theft (Section 293)

In South Sudan, many cases of physical assault against women as well as psychological and economic abuses are rarely prosecuted as these offences are considered a family issue.⁹

⁸ Marital Rape: Section 247(3) stipulates that sexual intercourse by a married couple is not rape.

⁹ GBV Leg Review working paper 230CT14.Pdf.



Illustration 1: GBV includes physical and/or sexual abuse

GBV has devastating physical, psychological and social effects on the victim. In the long term, GBV has far reaching consequences on the family, community and the country as a whole.

Causes of GBV

While the underlying cause of GBV is power and control, other factors such as poverty, alcohol or drug abuse, weak community sanctions, traditional gender norms and social norms may also be supportive of violence. For example, in many countries, female genital mutilation (FGM) remains prevalent because it is a traditional practice that belongs to cultures throughout history.

Effects of GBV

Table 1.2 Effects of GBV

Psychological effects	Social/economic effects	Physical effects
<ul style="list-style-type: none"> • Post-traumatic stress • Anxiety • Fear • Anger • Depression • Shame • Substance abuse/addiction • Low Self-esteem • Mental disorders • Suicidal thoughts 	<ul style="list-style-type: none"> • Blaming the victim • Social stigma • Isolation in the community • Loss of role in the society • Exclusion from education • Reduction of work potential • Reduction of parental skill, loss of employment and marriage opportunities which can impact the stability of family units 	<ul style="list-style-type: none"> • Bruises • Wounds • Damage to sexual organs • Infections • Risk of HIV/AIDS • Miscarriage • Unwanted pregnancy • Unsafe abortion • Death

Identifying acts of GBV

These acts vary depending on the form of the violence. Acts such as hitting, suffocating, burning, poisoning, attempted murder, rape, sexual harassment, forcing someone to have sex with another, prolonged criticisms and insults, verbal abuse and isolation, amongst others, are identifying acts of GBV.

GBV crimes are peculiar in nature due to their negative effects on the victim's well-being and participation in society and, therefore, require careful and adequate investigations to ensure effective and efficient prosecution. People who were personally victimized or witnessed GBV during childhood are prone to subsequent victimization or perpetration of GBV themselves.¹⁰

GBV in South Sudan - Myths and Perceptions

Myths and perceptions shape the way in which society perceives and responds to GBV perpetrated against women and men. Such myths and attitudes are harmful as they tend to blame the survivor, rather than holding the perpetrator responsible for his or her acts.¹¹

In IDP and refugee camps, pervasive insecurity inside and outside the camps affects women the most, as they face high threats to their physical and emotional integrity, both in their homes and in the public sphere.¹²

Certain myths contribute to GBV. They include the following:

- A man cannot rape his wife. This myth is enshrined in South Sudan's Penal Code Act.¹³
- It is only women who can be raped; it is more shameful for a man to be raped.

Social norms on gender-based violence are so entrenched that many people may judge and blame the survivor. Instances of gender-based violence are deeply rooted in the unequal distribution of power between men and women that legitimize violence or other culturally-acceptable harmful practices.¹⁴

GBV is deeply anchored in cultural beliefs, where the majority of those affected are women and girls. Rape, for instance, is not treated as a serious crime in some communities, and when an unmarried girl is raped she is expected to marry the perpetrator, even if it is against her will. Similarly, customary laws view wife beating as a normal and acceptable practice intended to "discipline" an "errant" woman. Domestic violence may result from adultery, economic hardship, alcohol abuse or forced marriage, but in South Sudan it is considered largely a private and family matter, and rarely results in police intervention.

In the absence of any statutory family legislation, marriages and marital disputes are governed by the various customary laws of South Sudan's ethnic groups, which generally curtail women's rights to divorce; remarry; to claim custody of children following a divorce or death of spouse;

¹⁰ violence in refugees, asylum seekers and undocumented migrants in Belgium and the Netherlands", Culture, Health and Sexuality, vol. 14, No. 5 (May 2012). Available at <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3379780> (accessed 23 April 2018).

¹¹ Interviews with Officials from Ministry of Gender, Government of South Sudan.

¹² Violence Begets Violence, supra note 4.

¹³ South Sudan, Penal Code Act, Act 2008 ,9, section 3)247) (hereinafter, "Penal Code").

¹⁴ South Sudan, Ministry of Gender, Child, Social Welfare, Humanitarian Affairs and Disaster Management, National Action Plan 2020-2015 for the Implementation of United Nations Security Council Resolution 1325 on Women, Peace and Security and Related Resolutions. Available at <http://www.ss.undp.org/content/dam/southsudan/library/Reports/southsudanothertools/SS20%NAP201325%.pdf> (accessed 23 April 2018) (hereinafter "UNSCR 1325 National Action Plan").

and own and inherit property.¹⁵

Other discriminatory customary practices include: (a) widow-inheritance (where a widow is “inherited” by a brother or other male relative of her deceased husband); (b) girl-child compensation (where the family of an individual who has committed murder compensates the victim’s family with a female child); and (c) ghost marriages (where a woman is married to a deceased man and a male family member consummates the marriage).

A 2011 study by South Sudan’s Ministry of Gender, Child and Social Welfare found that over 60% of men surveyed “strongly agreed” with statements that, “women are subordinate and need to be directed and disciplined,” and “it is a man’s traditional right to punish and discipline women for wrong-doing.”¹⁶

These harmful traditional practices, such as forced/early marriages,¹⁷ girl-child compensation wife battering, polygamy and widow inheritance have reinforced abuse and violation of women’s rights in the name of holding on to traditions and cultural norms. The demand for payment of exorbitant dowries in the form of cattle and the prestige that comes with owning cattle has had dire consequences for women and children.¹⁸

A culture of silence amongst survivors leads to little or no reports being made to the police or any other form of assistance. It is critical that both the government and civil society organizations intensify their planning and increase countrywide sensitization campaigns that create awareness and encourage the reporting and prosecution of gender-based violence.

SGBV and CRSV

The scale and severity of SGBV, particularly conflict-related sexual violence (CRSV) has increased significantly since the outbreak of the 15 December 2013 conflict.¹⁹ The United Nations defines CRSV as: “rape, sexual slavery, forced prostitution, forced pregnancy, forced abortion, enforced sterilization, forced marriages and any other form of sexual violence of comparable gravity perpetrated against women, men, girls or boys that is directly or indirectly linked (temporally, geographically or causally) to a conflict.”²⁰

Whilst all forms of SGBV appear to have risen since December 2013, the most dramatic increase has been in sexual violence perpetrated by armed men associated with security or militia groups. The militias aligned to several conflicting parties to the conflict are reported to have committed rape; gang rape; gang rape and killing; gang rape and abduction; rape and killing; gang-rape and stripping; sexual assault and stripping; sexual slavery; castration and forced abortion.²¹ CRSV has been committed against men, women and children alike in South Sudan in very large numbers, particularly in (former) Unity state, as documented in the UN Secretary-General’s 2015 Report on CRSV.²²

¹⁵ For specific examples of how customary laws regulate divorce, child custody, and inheritance, see UNDP, “In Search of a Working System of Justice for a New Nation: The Ascertainment of Customary Laws”, Volumes 3-1, The Ascertainment of the Customary Laws of 14 Communities in South Sudan (2012). Available from http://www.ss.undp.org/content/south_sudan/en/home/library/democratic_governance/reports-ascertainment-of-customary-laws-in-south-sudan.html (accessed 23 April 2018).

¹⁶ South Sudan, Ministry of Gender, Child and Social Welfare et al., Gender-based Violence and Protection Concerns in South Sudan (2011), p. 11.

¹⁷ Early marriage is prohibited by Art. 1) 23) of the Child Act with other harmful traditional practices that constitute GBV such as female circumcision.

¹⁸ UNSCR 1325 National Action Plan.

¹⁹ Report of the Secretary-General on Conflict-Related Sexual Violence, 23 March 2015, (S/203/2015), para. 48 (hereinafter “2015 UN Secretary-General Report on CRSV”).

²⁰ Report of the Secretary-General on Conflict-Related Sexual Violence, 20 April 2016 (S/361/2016), para. 2.

²¹ UNMISS, Conflict in South Sudan: A Human Rights Report, (8 May 2014) para.274.

²² 2015 UN Secretary-General Report on CRSV, para. 48.

According to the UN Secretary General, sexual violence has been used as a military tactic in all former ten states of South Sudan since the outbreak of the conflict.²³

Even prior to the current conflict, the 2012 South Sudan Comprehensive Country Gender Assessment found that “CRSV is rampant across the country as a result of decades of armed conflict, marginalization, neglect and high rates of poverty.”²⁴

Some of the most intensive violence in South Sudan’s conflict has been documented in the central and southern areas of the former Unity State.²⁵

SGBV cases are increasingly being reported in these areas. Opposing militia groups and/or government forces use sexual violence as a tool of war to degrade, shame and humiliate opposing political groups and sometimes use it also as part of the system of punishment and reward through which they consolidate their power. Women and girls are sexually violated in crisis zones or camps when they go to fetch water or simply go to the market.²⁶

There is an urgent need to address the use of SGBV as a weapon of war in the South Sudan crisis in the ongoing transitional justice process.

Responsibility of the State for addressing CRSV

Since there are no specific laws to combat CRSV, the existing legal regime on SGBV can be employed for CRSV. The primary responsibility to protect groups and individuals against SGBV lies with the State and includes holding perpetrators accountable for their actions through the national legal system. This includes holding proactive, timely and effective investigation and prosecution of wide spread sexual violence without necessarily waiting for the victims or victim organizations to report these cases. There must also be a dissemination of clear orders through the chains of command prohibiting sexual violence crimes by the leadership of SPLA - now South Sudan Defence Force (SSDF), SSNPS and other organized forces. Citizens of South Sudan should also be made aware of the prescription against CRSV.

Table 1.3: Recommendations on How to Raise Public Awareness of GBV and SGBV

Challenges /Gaps	Recommendations	Relevant stakeholder
GBV services are inaccessible in hard-to-reach areas	<ul style="list-style-type: none">- Bring GBV services nearer to people in all areas- Strengthen referral pathways- Establish and facilitate SPUs	<ul style="list-style-type: none">• Government of South Sudan• Ministry of Gender• NGOs/CSOs
Lack of available reparations thus preference to go through customary courts where they may receive some form of compensation	<ul style="list-style-type: none">- Increased awareness campaigns on rights and other aspects of GBV- Increased advocacy for accountability for GBV	<ul style="list-style-type: none">• Government of South Sudan• NGOs/CSOs• Development Agencies

²³ Ibid., para.49.

²⁴ UNSCR 1325 National Action Plan, p. 20.

²⁵ Do Not Remain Silent, supra n. 6, p. 27.

²⁶ Ibid. Between May and December 2015, one of the periods of heaviest fighting in Unity state, humanitarian organizations estimated that 1,200 civilians were killed, 1,430 raped, and 1,630 abducted in Unity’s Leer, Koch and Mayandit counties.

Little or no knowledge on rights of victims/ survivors	<ul style="list-style-type: none"> - Increased awareness campaigns on rights and aspects on GBV 	<ul style="list-style-type: none"> • South Sudan Protection Cluster members • GBV Working Group
Delayed or no justice as per the traditional court rulings or formal courts	<ul style="list-style-type: none"> - Remove unnecessary bureaucratic hurdles to ensure access to legal aid at no cost 	<ul style="list-style-type: none"> • Government of South Sudan • NGOs • UN Agencies
Fear of stigmatization	<ul style="list-style-type: none"> - Capacity building and empowerment of law enforcement, health workers, counselors, social workers and other categories of people who respond to incidents of GBV - Establish clear referral pathways for victims and their communities - Psycho-social support 	<ul style="list-style-type: none"> • Government of South Sudan • NGOs • UN Agencies
Local stakeholders are inadequately equipped to handle cases of GBV and SSNPS has few female officers	<ul style="list-style-type: none"> - Invest in recruitment and retention of female police officers. This could result in better outcomes and more women may come forward to seek help from female police officers - Invest in changing mindsets of male officers and have them be more gender conscious and professional 	<ul style="list-style-type: none"> • Ministry of Interior • UN Agencies
Lack of adequate resources meant to protect victims/ survivors of GBV such as safe houses	<ul style="list-style-type: none"> - Improve relations between police and the community. For example, when police are seen to be helping people, and not harassing them, they are more likely to come forward for help from the police - Need to include victim and witness protection - Need to include safe homes for women 	<ul style="list-style-type: none"> • Government of South Sudan

Exercise

Divide the participants into groups and ask them the following questions. Allow them 5-10 minutes to respond by making presentations.

1. What is the difference between sex and gender and how does gender define the roles and responsibilities of persons in South Sudan?
2. What are the causes and effects of GBV?
3. How do you identify GBV?
4. What is the State's responsibility when allegations of GBV arise?

MODULE TWO

OVERVIEW OF THE SOUTH SUDANESE CRIMINAL JUSTICE RESPONSE TO GBV

“ This module provides an overview of the key actors in the South Sudanese criminal justice response to GBV, and the respective roles they play in addressing GBV crimes. It also covers key challenges facing each actor and offers recommendations to address these challenges. ”

KEY ACTORS AND THEIR ROLES

The South Sudan Police National Service (SSNPS)

The police are the primary government agency responsible for enforcing the laws relating to GBV and SGBV through investigations and arrests. Where a crime has been reported or a law has been broken, the police investigate the allegations by gathering physical evidence and interviewing witnesses in order to determine who committed the crime and where, when, how and why it was committed. This process involves the collection of vital evidence that is needed for the arrest and eventual prosecution of the accused for the crime.

The police are responsible for the following:

- Documenting the results of their investigation and where the evidence is sufficient under the law, arresting the perpetrator(s)
- Obtaining evidence (such as torn garments, victims condition such as residue of dirt, disheveled hair found on her) needed for prosecution of perpetrators of crimes and for coordinating with prosecution officials on criminal cases
- Making every effort to provide for the safety of the victim, the witnesses and the alleged perpetrator of a crime

National laws such as the South Sudan Penal Code criminalize offences relating to GBV and SGBV such as rape, FGM, forced prostitution and sexual slavery, amongst others.¹ South Sudan's Child Act guarantees the rights of children to be protected from physical and psychological violence, injury, abuse or exploitation; from abduction and trafficking; from sexual abuse, exploitation and harassment; and from early and forced marriage. It criminalizes any act infringing on these rights.²

¹ See Penal Code, Chapter XVIII "Rape, Other Sexual Offences and Offences Against Morality."

² South Sudan, The Child Act, Act No. 2008, 10, Sections. 30, 26, 22, 23 (hereinafter, "Child Act").

Section 5 of the Code of Criminal Procedure Act 2008 (Interpretation) defines the Police as any member of the police force of whatever rank.

Section 30(2) provides for the functions of the police service to include:

- Receive complaints/information regarding offences
- Conduct criminal investigations
- Conduct investigations and arrests in accordance with the laws applicable
- To search, detect and seize, in accordance with the directives of the Public Prosecution Attorney, Magistrate or Court, as the case may be
- Execute summons, warrants of arrest and search

The police interview the complainant and take a statement in the manner prescribed under national law. In doing this the police officer assigned to the case should fill out Form 6 and Form 7. **Refer to Appendices for samples of Form 6 & Form 7.**

The statements are meant to be taken in English. However, in practice, Arabic is often used in interviewing and recording statements. This can lead to delays and inaccuracies in interpretation at the time of the trial if the trial is conducted in English.

SSNPS Special Protection Units

The Special Protection Units (SPUs) were established in South Sudan in 2010. The SPUs are units within South Sudanese police stations that were established to provide police services to women, children and vulnerable groups. At major police stations, special units were created, in custom-built buildings, where specially selected and trained police were stationed to provide policing services to vulnerable groups.

During the course of developing of this manual, members of the SPUs were interviewed and raised several issues which have also been captured in a 2014 Assessment of the Special Protection Units, commissioned by the Ministry of Gender, Child and Social Welfare. Below is a summarized version of their findings and recommendations.

Challenges faced by SPUs³

Lack of Policy/Governance Framework

- There is a lack of policy framework under which the SPUs operate. There is neither a policy nor strategy in place.
- Most trained SPU officers are regularly reshuffled and rotated to other departments within the police.
- Although the SPUs were built with the intention of being used to support female, child and vulnerable complainants, in the majority of cases the SPUs are not dealing with these groups.

Lack of Material Resources and Dedicated Space/Offices

- Many of the challenges that the SPUs face are the same as those facing the SSNPS as a whole a lack of resources, funding, training or skilled personnel.
- In several cases, buildings that had been built for the SPUs have been reallocated to the other departments of the police, leaving the SPUs without a dedicated area to operate in.
- Some SPUs have no space in which to interview complainants in private – meaning staff has to interview people while many others sit in the room, this is problematic given the private nature of many matters reported to the SPUs.
- Many of the SPUs lack basic furniture, including tables and chairs and cabinets with locks to store files. Some SPU rooms are unfurnished, and therefore, remain unused. The SPUs also lack communication equipment, generators, and vehicles.

³ Interviews with SPU Officers, 2 August 2017; Social Development Direct, *Report on the Assessment of the Special Protection Units*, 2014, South Sudan National Police Service and Ministry of Gender, Child and Social Welfare (2014).

- In the majority of SPUs, records are neatly kept but not on official SSNPS stationery. Many SPUs lack basic stationery.
- Several SPUs do not have copies of Form 8 – the official police form used to record instances of bodily harm including rape. Members of the community interviewed in various locations reported of complainants having to pay for Form 8 either in the police station or in the hospital. Amongst police and stakeholders working on combating SGBV there was disagreement as to whether the use of Form 8 was obligatory before medical treatment could be administered. It is important to note that Form 8 is not a prerequisite for health care.

Language Barriers

- The language in which statements should be taken has been an issue as the language commonly used in interviews is Arabic but the forms such as Form 6 & 7 are in English.

Insufficient Human Resources

- The SPUs have received welcome support from an array of national CSOs and international organizations in the form of material goods, infrastructure and training.
- Although numerous training sessions have been carried out for SPU staff, there has been a lack of on-the-job mentoring which would have the biggest impact with regard to developing SPU staff confidence. This was previously provided to some degree by UNPOL but the new (post 2013) UNMISS mandate restricts this kind of support.
- All of the SPUs visited were staffed by dedicated and well-intentioned police officers. However, most of the SPUs did not have enough staff and there were not enough female staff members. Appointment of SPU staff was typically based upon an ability to speak English as these were the police officers that were able to attend the training sessions offered by international organizations, even if they were not always the most appropriate officers for the tasks of the SPU.

Lack of Awareness and Coordination

- There is a lack of understanding amongst the various partners about the purpose of the SPUs and about which institution has ultimate ownership of the SPUs. Many organizations have a perception of the SPUs as being multi-service units (as they are in some other countries) rather than police units with other services supporting. This has contributed to a lack of coordination on SPU support.
- In most places there is reasonable coordination between the police and other services such as health providers and social services; however, this could be strengthened, particularly at the national level.

Recommendations⁴

Awareness raising

- An outreach programme should be held by the SSNPS about the SPUs, their existence and their functions. This should make use of radio, events at schools and community forums around the country. Awareness raising about the SPUs should also be conducted at all levels of the SSNPS.

National Coordination of Partners

- Support that is provided to individual SPUs by partner organizations including the UN, INGOs and CSOs, should be coordinated nationally through the SSNPS SPU Department. Trainings, production and distribution of materials, supply of equipment, and mentoring should all be coordinated in this way.

Rolling-out Additional SPUs and Gender Desks

- SPUs and Gender Desks should be rolled-out to rural areas in a staggered fashion. Only after those that are established are judged to be effectively functioning should others be opened. In particular, sites that IDPs will return to, require significant support. The location of new facilities should be based on the needs of the population and accessibility.

⁴ The recommendations made are based on what is feasible and congruent with other police services.

Coordination by the SSNPS SPU Department

- SPUs and Gender Desks should be managed and coordinated through a SSNPS SPU Department. A SPU Working Group should be established, led by the SSNPS. Regular and annual SPU Workshops, led by the SSNPS, should be held for SPU staff and other relevant SSNPS actors.

SPU policies

- An SPU Policy and a Strategy should be developed by the SSNPS. Standard Operating Procedures need to be agreed and implemented for SPUs and Gender Desks. These should address the issues of reshuffles and rotation, commandeering of SPU facilities and equipment as well. Definitions of “Special Protection Unit” and “Gender Desk” need to be agreed and established, and “minimum standards” should be determined for both SPUs and Gender Desks.

SPU staffing

- Job descriptions for SPU and Gender Desk staff need to be clarified and defined. There is also a need to recruit female officers so that female victims/survivors may feel safe to state their case. Those working in SPUs should not be required to perform roles outside of these tasks. The SSNPS’s policy for retaining trained SPU staff should be implemented and enforced. The SSNPS should create a database of all staff who have received SPU training.

Police forms and books:

- The police need to print and distribute their own forms to SPUs around the country. These forms should have translations into the official language used in South Sudan so as to cater for any language discrepancies. Partner support should be focused on supporting a sustainable solution. SSNPS and GBV sub-cluster members need to work together to ensure that Form 8 is used correctly. Steps should be taken to ensure that no complainant has to pay for Form 8. Standard record keeping books should be produced by the SSNPS for use by SPUs and Gender Desks. These should be regularly distributed to all SPUs and Gender Desks, ensuring that they all have a sufficient supply.

The South Sudanese Legal Community

During the era of a unified country, Sudanese law established the Sudan Bar Association (SBA) as the principal organization representing Sudanese lawyers. After the signing of the Comprehensive Peace Agreement (CPA) in 2005, no new law governing the Bar was passed and thus the Ministry of Justice and Constitutional Affairs would license lawyers to appear before the courts in the South. All such licensed lawyers, known as advocates, automatically became members of a new South Sudan Bar Association (SSBA), which was established in 2007.⁵ The SSBA is now regulated by the Advocates Act 2013. The South Sudanese legal system is built on the combination of statutory and customary laws. South Sudan has enacted dozens of laws since 2005, but their use in legal disputes and courts is limited. The legal community plays a significant role in the investigation and prosecution of SGBV. Below we look at the major actors and their roles.

Public Prosecuting Attorney

The prosecutorial services of South Sudan are established within the MoJCA, in the form of a Directorate of Public Prosecution (DPP). The Minister of Justice and Constitutional Affairs is the chief legal advisor and the highest prosecuting authority at all levels of government.⁶

⁵ International Legal Assistance Consortium, Report of Pre- Assessment Mission, South Sudan, 6-13 December 2011 (hereinafter “ILAC Pre-Assessment Mission Report”).

⁶ South Sudan, Transitional Constitution, 2011 (amended in 2013 and 2015), Article 136(2) (hereinafter “Transitional Constitution”); South Sudan, Ministry of Legal Affairs and Constitutional Development Organization Act, Act. No. 8 (2008), sections 25(1) and 25(2)(g) (hereinafter “Ministry of Legal Affairs Act”).

The public Prosecuting Attorney's (prosecutors) responsibilities include:

- *Coordinating with the police and other actors such as health professionals, victim advocates*
- *Evaluating evidence and determining whether or not to prosecute*
- *Keeping the victim/survivor informed of the case i.e. any progress made*
- *Prosecuting the case after he/she has decided to prosecute*
- *Filing and arguing appeals from preliminary rulings*

The DPP heads a team of public prosecuting attorneys (prosecutors) charged with conducting public prosecutions, litigation, adjudication and pre-trial proceedings.⁷ Prosecutors are responsible for presenting criminal cases in court on behalf of the Government and people of South Sudan and are obligated to enforce the Constitution and laws of South Sudan. This means that prosecutors have an obligation to seek justice. Prosecutors are held to a high ethical standard requiring that they fairly evaluate the evidence against an accused and proceed with prosecution when charges are supported by reliable evidence. Prosecutors also owe a duty to victims/survivors and to society at large to use all legal means to bring perpetrators of crimes to justice.

Section 23 (1) (a) of the Code of Criminal Procedure Act 2008 provides for the powers and functions of the Director of Public Prosecution as:

“to supervise the progress of criminal cases, including, but not limited to directing or executing the investigation, framing of the charges, and prosecution of cases on behalf of the Government and, during four years into the Interim Period at the State level, before the criminal courts of Southern Sudan.”

In South Sudan, to be eligible for appointment as a prosecutor, an individual must have citizenship with full capacity, hold a law degree and be of good behavior.⁸

The DPP has established a Women and Juvenile Unit which is dedicated to addressing SGBV cases, among others.

Defense Lawyers/Counsel

Article 19 (7) of the Transitional Constitution provides that:

Any accused person has the right to defend himself or herself in person or through a lawyer of his or her own choice or to have legal aid assigned to him or her by the government where he or she cannot afford a lawyer to defend him or her in any serious offence.

Defense lawyers defend individuals suspected or accused of crimes by providing legal advice and representation in order to protect their legal rights and provide a legal defense against a criminal accusation or charge. These may be hired privately by an individual or may be provided by a public or nonprofit legal services provider.

The primary duty of a defense advocate/attorney is to vigorously defend his/her client and protect that client's legal rights.

The Transitional Constitution enshrines the guarantee of the independence of the legal profession and spells out lawyers' duty to “promote, protect and advance the fundamental rights and freedoms of citizens.” They “shall serve to prevent injustice, defend the legal rights and interests of their clients, seek conciliation between adversaries and render legal aid for the needy.”⁹

⁷ Ibid.

⁸ Ministry of Legal Affairs Act, sections 34(1)-(2) and 46(1).

⁹ Transitional Constitution, Article 137.

Paralegals

Under the laws of South Sudan, only advocates, (and not paralegals) are allowed to represent clients in courts. However, paralegals are an indispensable part of the legal system and provide support to the lawyers, law offices and government agencies by researching legal precedent, performing investigative work on cases and preparing legal documents.¹⁰

Whether working with clients face-to-face or presenting legal precedents, they are expected to be good communicators and adept at conflict resolution and negotiation.

UNDP's Access to Justice and Rule of Law Project, working in partnership with the South Sudan MoJCA and UN Police, have trained over 40 paralegals, including 9 women, on access to justice and human rights at the national level.¹¹

Paralegals do not appear in court as the laws of South Sudan do not acknowledge or provide for them. Nevertheless, they have done a commendable job in Justice and Confidence Centres (JCCs). JCCs are funded by UNDP and provide legal aid and legal awareness to the public especially at the sub-national level. Volunteer paralegals have also been trained to supplement the efforts of the relatively few practicing South Sudanese lawyers.

Paralegals play an advisory role in facilitating victims to report and making their access to the criminal justice system easier as well as accessing medical assistance.

Legal Aid Clinics

Legal Aid Clinics provide free legal services and advice to GBV survivors. They are established to protect the interests of the weak and help obtain justice for victims who cannot afford to hire a lawyer. Article 137(3) of the Transitional Constitution provides that public attorneys and legal advisors serve to prevent injustice, defend the legal rights and interests of their clients, seek conciliation between adversaries and may render legal aid for the needy according to the law. UNDP's Access to Justice and Rule of Law Project has regularly provided small grants to CSOs to establish legal aid clinics.

Legal aid means the provision of legal services to those who cannot otherwise afford to access the court system or obtain legal information.

Legal aid programs are aimed at enhancing access to justice, focusing on the plight of the poor and disadvantaged, the marginalized and the vulnerable.¹² Under international law, indigent persons accused of serious crimes have a right to free legal representation before the courts and States have an obligation to provide legal aid. The provision of government-sponsored legal aid is a part of the duty incumbent on all States to protect and uphold human rights such as equality before the law, the right to legal representation and the right to a fair trial as enshrined in the Transitional Constitution.¹³

Private organizations or NGOs usually provide a spectrum of legal aid services in conflict affected

¹⁰ Center for Advanced Legal Studies, "The Paralegal Profession". Available at <https://www.paralegal.edu/paralegal-profession> (accessed 24 April 2018).

UNDP, "Paralegals bring justice to women in South Sudan", available at: <http://www.undp.org/content/undp/en/home/ourwork/ourstories/paralegals-bring-justice-to-women-in-south-sudan.html> (accessed 24 April 2018).

¹¹ UNDP, "Paralegals bring justice to women in South Sudan", available at: <http://www.undp.org/content/undp/en/home/ourwork/ourstories/paralegals-bring-justice-to-women-in-south-sudan.html> (accessed 24 April 2018).

¹² UNDP, *Baseline Perception Survey of Access to Justice and Rule of Law Institutions in South Sudan* (UNDP, August 2013) (hereinafter "2013 Baseline Perception Survey on Access to Justice").

¹³ GBV Legal Aid Report. <http://legalactionworldwide.org/wp-content/uploads/2014/10/GBV-Legal-Aid-Report-final-29.10.pdf>

States. Such services include representation in civil matters, assisting and representing survivors of crime in the prosecution process, assisting and representing clients in mediation processes and providing legal information and advice. However, in the case of South Sudan, it has been reported that non-governmental institutions have assisted only about 16% of those in need of legal aid while about 28% have been assisted by State institutions.¹⁴

Medical Practitioners

South Sudan faces a severe shortage of all categories of trained medical professionals, including physicians (1 per 65,574 population) and midwives (1 per 39,088 population). Health workers are inequitably distributed among the states, (with Central Equatoria having the highest number of health workers) and between urban and rural areas.¹⁵

The most urgent required service is referral of SGBV survivors to health clinics for medical attention. The immediate referral to a clinic is crucial both for the health of the survivor and to gather medical evidence regarding the offence. Medical professionals may also play a role in the criminal justice process by gathering evidence from the survivor's body, such as samples of bodily fluids, hairs, fibers and fingernail scrapings, which may be used as evidence in a criminal prosecution. However, it is important for a survivor to consent to the medical examination before anything is done by the practitioner. Such evidence is not available in every case of sexual assault or abuse and where there is such evidence, it must be properly collected, preserved and submitted for analysis by trained technicians working in properly equipped laboratory facilities to be of evidentiary value.

It should be noted that South Sudan does not have equipped facilities or the required number of medical practitioners who are efficiently skilled to collect and preserve such forensic evidence obtained from an SGBV survivor for trial purposes.



Illustration II: Medical personnel treating an SGBV victim/survivor

¹⁴ 2013 Baseline Perception Survey on Access to Justice.

¹⁵ Global Health Workforce Alliance, "South Sudan". Available at <http://www.who.int/workforcealliance/countries/ssd/en> (accessed 24 April 2018).

Medical professionals perform an important function in addressing issues related to survivors of sexual assault and abuse by completing the required national standardized sexual offense medical examination Form 8 documenting the survivor's injuries and treatment. With the survivor's consent, this form may be a key exhibit at trial, and the medical practitioner or a representative may be called to testify to its content.

Reference should be made to Appendix 3 for the Medical Examination Form

Other Key Players

Social Workers

Social workers are people who have acquired knowledge and skills regarding many concepts, perceptions, methods, theories and principles to assist others enhance their well-being. Social work services are vitally needed in South Sudan, as an estimated 95% of the population has been affected by the war and have suffered physical abuse, sexual abuse or sexual exploitation, emotional abuse, torture and beatings, amongst others.¹⁶

Social workers who work directly with women and girls who have survived SGBV must be trained directly in dealing with and handing victims and survivors. They may receive referrals and are supposed to make follow ups to ensure that the interests and rights of the victims and/or survivors are protected.

CSOs, NGOs and Donors

A Sub-Cluster for Gender-Based Violence Prevention, Protection and Response (GBV Sub-Cluster) was established in South Sudan as a result of a collaborative effort by relevant government ministries, UN agencies, and local and international NGOs to consolidate and coordinate the activities of all relevant stakeholders working to improve and support GBV prevention and response.¹⁷ Membership of the GBV Sub-Cluster is comprised of representatives from various government ministries involved in providing health, psycho-social, legal and security services pursuant to the Standard Operating Procedure (SOP) for Prevention, Protection and Response to GBV in South Sudan, UN Agencies, Funds and Programs, UNMISS, donors, and national and international NGOs.

Civil society organizations directly dealing with the issue of SGBV advocate for and work with survivors and contribute to the development, review and implementation of national policies and action plans on violence against women.

Table 2.1: Challenges/Gaps and Recommendations for NGOs, CSOs and Donors

Challenge /Gap	Recommendation
Inadequate skills amongst social workers in dealing with SGBV cases	Carry out capacity building on SGBV psychosocial counseling
Lack of a safe shelter/safe houses for SGBV victims	<ul style="list-style-type: none"> - Establish a safe house for survivors with counseling services to enable reintegration into the community. - Adhere to guidelines of establishing such a facility (e.g. location must be safe and not identified as a shelter)

¹⁶ David Matiop Gai, 19 January 2017, "The Provisions of Human Services and Roles of Social Work in South Sudan". Available at <https://paanluelwel.com/2017/01/19/the-provisions-of-human-services-and-roles-of-social-work-in-south-sudan> (accessed 24 April 2018).

¹⁷ South Sudan, *Standard Operating Procedures for GBV Prevention, Protection and Response in South Sudan*, Ministry of Gender, Child and Social Welfare (2014). Available at <http://southsudanhumanitarianproject.com/wp-content/uploads/sites/21/formidable/GBV-SOPs-South-Sudan.pdf> (accessed 24 April 2018).

Challenge /Gap	Recommendation
CSOs lack appropriate data to properly address the issue of SGBV in South Sudan since they are engrossed in providing humanitarian services	Establish, strengthen and support SGBV Management Information System
Inadequate national laws (e.g. family law, failure to criminalize marital rape as well as weak penal sanctions for SGBV) hinder efforts by CSOs, NGOs and other parties to properly implement strategies aimed at ending SGBV in South Sudan	<ul style="list-style-type: none"> - Advocate and lobby for enforcement and implementation of SGBV related laws, policies and programs, including family law. - Harmonize existing legislation and policies on SGBV, especially on issues such as child marriage and traditional mechanisms of dealing with SGBV

South Sudan Traditional Structures

Traditional structures may take the form of elders within the family, chiefs or even customary courts which apply the customary laws of their respective ethnic groups. Chiefs and their courts remain a common and affordable form of justice across South Sudan. South Sudan is made up of more than 60 ethnic groups and each of them has its own customary laws and traditions. Customary law courts do not have jurisdiction to hear criminal cases unless they have a “customary interface”, meaning that a statutory court must refer the case to the customary court.¹⁸ However, because of the absence of formal courts in rural areas, customary courts often hear family and domestic disputes, including those involving SGBV crimes in line with their existing laws.

The Local Government Act (2009) recognizes customary courts and outlines principles of decision-making for them such as non-discrimination, compensation, substantive justice, possible mediation and quick dispensation of justice.¹⁹

Statutory courts are not easily accessible to people because of their prohibitive costs, use of English that is yet to be understood by many people, and unfamiliar procedures. As such, customary courts are the preferred option for many South Sudanese.

The customary laws of the tribes are characterized by significant variations and differences as well as many commonalities, particularly in the area of family issues such as marriage, divorce, custody, and inheritance. All these issues have a strong impact on women’s rights and security.

Customary law is inherently patriarchal in nature and relegates women to a lower status in the family and community, while perpetuating customs and traditions that are harmful to women. Customary courts are often held in the open, for example under a large tree, and community members are free to observe the proceedings. For many SGBV survivors, customary courts governed by the laws of South Sudan’s various ethnic groups are the only accessible form of justice. Indeed, most disputes in South Sudan are resolved through customary legal systems. Customary courts, however, are ill-suited to handle sexual violence.

Cases are usually heard in public, presided over by panels of chiefs and elders, most of whom are men. The resolution of cases under customary law generally focuses on compensation and reconciliation, rather than punishment. Rape, therefore, is usually resolved through payments – in cash or livestock – to the family of the victim.²⁰

¹⁸ South Sudan, Local Government Act (2009), section 98(2) (hereinafter, “Local Government Act”).

¹⁹ Local Government Act, section 98(3).

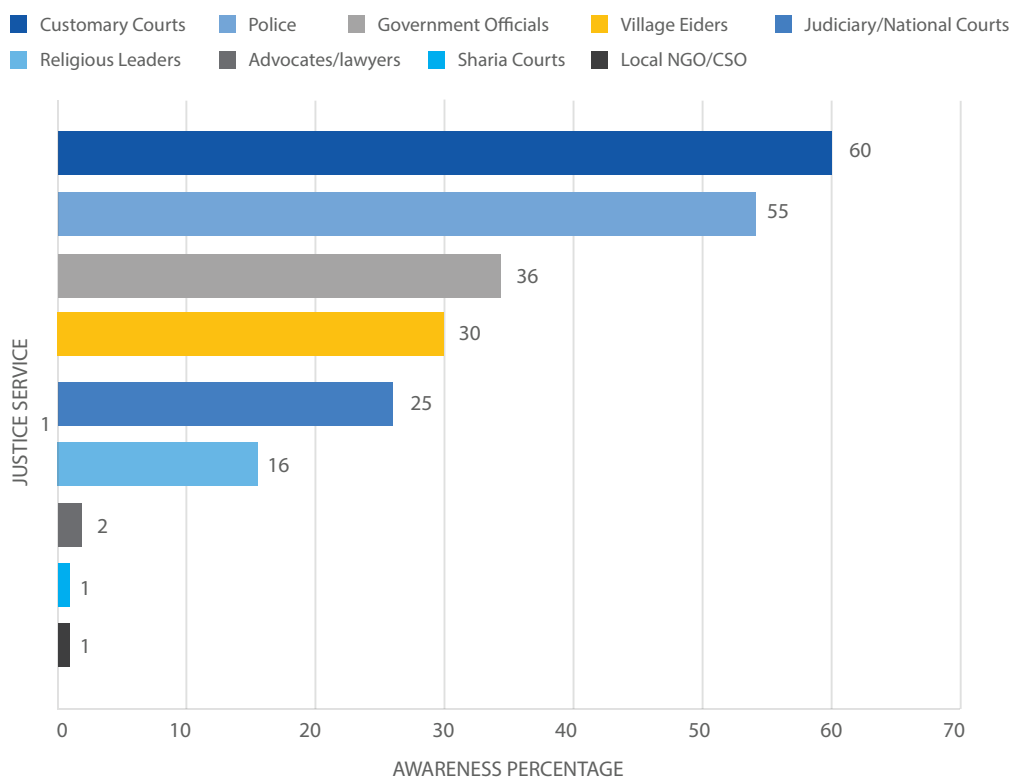
²⁰ David K. Deng, *Challenges of Accountability: An Assessment of Dispute Resolution Processes in Rural South Sudan*, March 2013, p. 21. Available at <http://www.pactworld.org/challenges%20of%20accountability> (accessed 12 May 2018).

Customary courts are usually male dominated with many more men than women presiding, and rarely practice principles of fairness and justice, despite the requirement to do so by the Local Government Act (2009).



Illustration III: Traditional courts can be intimidating for the survivor

Figure 2.1 Public Awareness of Justice Services



Source: Baseline Perception Survey of Access to Justice and Rule of Law Institutions in South Sudan, UNDP, 2014, pg.34.

This chart shows that the levels of trust by communities in local institutions are highest compared to the other rule of law institutions. Customary courts presided over by the chiefs and the police were the best-known justice institutions.

A 2011 report on the treatment of GBV cases in customary courts in South Sudan²¹ found that “Customary courts and the chiefs that administer them are largely trusted and preferred over statutory courts and formally trained judges.”²² In interviews with victims and participants in customary court proceedings, the study found that 51 of 59 persons interviewed considered the punishment in their case to be fair, while 61 of 64 persons interviewed had faith in the court to provide justice (including individuals who did not agree with the results in their particular case).²³ Overall, 61 of 64 persons interviewed reported that they preferred to bring a case involving GBV to customary courts, as opposed to statutory courts.²⁴ Some of the reasons given included the prohibitive costs, inaccessibility and unfamiliar procedures.²⁵

It should be noted that a greater number of SGBV cases are dealt with by the customary courts because of the small number of formal courts, difficulty in accessing formal courts, and the compensation typically offered by customary courts, in the form of cows or the offer of marriage. However, the conflict has undermined the importance and authority of customary justice systems, due to the displacement and separation of chiefs and communities.²⁶ Amnesty International has reported that “some chiefs have been killed, while others have been detained or threatened.”²⁷ There is thus a crucial need to make statutory courts more functional and accessible to victims/survivors of SGBV.

Victims and Survivors

Since the outbreak of South Sudan’s internal armed conflict in Juba in December 2013, thousands of South Sudanese have been subjected to sexual violence including rape, gang rape, sexual slavery, sexual mutilation, torture, castration, or forced nudity.²⁸

Different individuals and groups tend to use the words “victim” or “survivor”. “Victim” is often used in legal settings, while the term “survivor” is more often used by advocacy groups. A victim is an individual that has suffered or is currently experiencing SGBV. The term “survivor” tends to be used to describe a person who has begun to heal from the experience. This Manual has attempted to use both of these terms, as appropriate.

SGBV victims are usually in a vulnerable and distressed state and those responding to them and dealing with their case must be cautious and take special care to avoid retraumatizing them. Due to social and cultural attitudes in South Sudan which stigmatize and disfavor the SGBV victims further, the following important issues should be addressed.

²¹ Haki, “Combatting Gender-Based Violence in the Customary Courts of South Sudan” (2011), Available from http://south-sudanhumanitarianproject.com/wp-content/uploads/sites/21/formidable/Combating-GBV-in-South-Sudan_Haki.pdf (accessed 1 May 2018) (hereinafter “Haki”).

²² Haki, p. 12.

²³ Ibid.

²⁴ Ibid.

²⁵ Ibid.

²⁶ Amnesty International, “Do Not Remain Silent”: *Survivors of Sexual Violence in South Sudan Call for Justice and Reparations*, 2017, pg.47. Available at <https://www.amnestyusa.org/wp-content/uploads/2017/07/South-Sudan-sexual-violence-report-final.pdf> (accessed 20 April 2018) (hereinafter, “Do Not Remain Silent”).

²⁷ Ibid., p. 48.

²⁸ Ibid., p. 9.

Table 2.2: Important Guarantees for Victim Safety

Action to be taken	Subject matter
Protect the victim/survivor	Take measures to minimize inconveniences to victims/survivors, protect their privacy and ensure their safety/the safety of their families from intimidation and retaliation. Safety measures aimed at protecting the victim/survivor are not present in South Sudan and there is need to establish shelters that act as safe houses or rehabilitation centers. Shelters would provide avenues for victims/survivors to access support systems to assist in their healing and reintegration into society. Safe accommodation as well as psychological counseling is vital to SGBV victims/survivors.
Ensure victims' rights	SGBV victims/survivors have a number of rights that are guaranteed by various international, regional and national laws applicable to South Sudan. These include rights to: (a) medical care; (b) access to police protection; and (c) free legal aid & legal advice, as guaranteed by the Bill of Rights in the Transitional Constitution.
Respect confidentiality	It is vital that information provided by SGBV victims/survivors is kept confidential, including any identifying information. In South Sudan, confidentiality is often not respected. Women and children are interviewed in public and investigations are carried out openly. Without confidentiality, victims/survivors are less likely to talk about their experience. Their physical safety also depends on confidentiality. Respect for confidentiality ensures the victim/survivor does not face further threats of violence or reprisals from the perpetrator or the community. Confidentiality may only be broken where there is an imminent risk to the survivor/victim (e.g. in cases of kidnapping to rescue). It is crucial that law enforcement officers respect and uphold confidentiality during investigations. This can be done, for instance by replacing the name of a victim/survivor with their initials or a pseudonym to protect their privacy.
Take necessary precautions to avoid re-traumatization	SGBV victims/survivors should be treated and interrogated in a sensitive, respectful way to avoid the risk of further traumatization. They should not be interviewed unnecessarily or in a repetitive manner. Separate waiting rooms in court buildings can help to avoid confrontation with the perpetrator. According to interviews held with members of the South Sudanese SPU and Prosecutors, these matters are not given priority during their investigations. Specific training should be given on how to handle victims/survivors, and SOPs and policy guidelines on the subject must be communicated to all those involved.

Accused Persons

It is important to treat the accused in a manner that protects his/her rights, particularly when he or she is in custody. This is crucial to ensuring a fair trial consistent with the South Sudan Bill of Rights as a violation of the rights of the accused may result in a successful appeal of a conviction.

Section 6 of the Code of Criminal Procedure 2008 of South Sudan provides for principles that must be observed when dealing with an accused person. These include:

- *Right to a fair and speedy trial*
- *Presumption of innocence until proven guilty*
- *An accused person shall not be forced to incriminate himself or herself*
- *Justice shall be done to all, irrespective of such person's social or economic status, gender, religion or belief*
- *No person shall be subject to cruel or inhuman treatment or punishment*
- *No punishment shall be inflicted upon any person exceeding that prescribed by the law in force at the time such an offence was committed*
- *Substantive justice shall be administered without undue regard to technicalities*

In South Sudan, there is particular need to address periods of detention, ensure that confessions are voluntary, and respect for the presumption of innocence, as well as the right to legal representation. Defense lawyers interviewed during the preparation of this manual highlighted non-observance of fair trial principles before, during and after trials. They particularly raised the issue of long detention (over the prescribed constitutional limit), violation of the right to counsel, right to bail, equity of arms at trial and a slow and inefficient appeals process.²⁹

Section 184 of the Code of Criminal Procedure Act 2008 provides for the right of the accused to be defended by a lawyer in serious offences should the accused be a pauper (indigent). On application to the Minister of Justice and Constitutional Affairs in the interest of justice, an advocate shall be appointed to defend the accused and government shall pay all or part of the cost.

REVIEW/SUMMARY

Table 2.3: Challenges for Key Actors to Effectively Fight Against GBV and SGBV in South Sudan

Challenges/Gaps	Recommendation	Relevant actor
Culture of silence results in minimal reporting of SGBV cases	<ul style="list-style-type: none"> - Increase public awareness of gender inequality, human rights, and the rights of the child - Conduct awareness campaigns aimed at breaking the culture of silence 	<ul style="list-style-type: none"> • GoSS (including line ministries) • MoGCSW • UN Agencies • Development Agencies • CSOs and CBOs
Lack of knowledge and training and resources prevent service providers from following guidelines and protocols when handling victims/survivors providing needed services like collecting evidence and psychological counseling	<ul style="list-style-type: none"> - Establish clear referral pathways to respective service providers - Improve staff expertise of service providers by conducting trainings on relevant subjects (e.g. train SPUs on investigating and handle GBV survivors/ victims) 	<ul style="list-style-type: none"> • GoSS • MoGCSW • Ministry of Health • MoJCA • UN Agencies • Development Agencies
Limited resources restrict ability of key agents such as police to effectively perform their duties (i.e. limited stationery, lack of vehicles for transportation, lack of electricity etc)	<ul style="list-style-type: none"> - Immediate access to resources through donor coordination 	<ul style="list-style-type: none"> • GoSS (including line ministries) • MoGCSW • UN Agencies
Lack of data and coordination on GBV projects handicaps CSOs and other NGOs from fully performing their oversight and advisory	<ul style="list-style-type: none"> - Map GBV related projects and stakeholders - Ensure proper documentation by police and prosecutors at all stages (reporting, investigations, and trial) - Establish a coordinated South Sudan database for GBV Cases 	<ul style="list-style-type: none"> • GoSS • MoGCSW • National Bureau of Statistics • MoJCA • CSOs and NGOs • UN Agencies • Development Agencies

²⁹ Interviews with R-DC 3 and R-DC 8 on 8 August 2017.

Challenges/Gaps	Recommendation	Relevant actor
Rape, especially in marriage, is still not widely acknowledged as a crime	<ul style="list-style-type: none"> - Sensitize communities on marital rape and its effect to the family and country at large. - Review and amend laws to criminalize marital rape 	<ul style="list-style-type: none"> • GoSS • MOGCSW • UN Agencies • Development Agencies • CSOs and CBOs

Table 2.4: Matrix of Key Actors and Their Roles in the Criminal Justice Process

Actors	Roles
Police	<ul style="list-style-type: none"> - Primary government agency responsible for enforcing the laws relating to SGBV through investigation and arrest - Responsible for gathering physical evidence and interviewing witnesses needed for prosecution of perpetrators and coordinating with prosecution officials on criminal cases - Responsible for making every effort to provide for the safety of the victim/survivor, the witnesses and the alleged perpetrator of a crime
Medical Practitioners	<ul style="list-style-type: none"> - Provide medical treatment to victims of sexual assault and abuse - Gather evidence from the victim's body, such as samples of bodily fluids, hairs, fibers and fingernail scrapings, which may be used as evidence in a criminal prosecution
Defense Lawyers	<ul style="list-style-type: none"> - Represent individuals suspected or accused of crimes by providing legal advice and representation in order to protect their legal rights and provide a legal defense against a criminal accusation or charge
Public Prosecuting Attorney	<ul style="list-style-type: none"> - Responsible for presenting criminal cases in court on behalf of the government and people of South Sudan and is obligated to enforce the Constitution and laws of South Sudan - Keep the victim/survivor informed about the case - Coordinate with police and others - Evaluate evidence to determine whether to prosecute - Prosecute the case in court - Appeal cases or represent government on appeal
Legal Aid Entities	<ul style="list-style-type: none"> - Provide legal services to victim/survivor of SGBV, including legal counseling and court representation - Prepare and guide victim/survivor on the court processes - Advocate on behalf of the victim/survivor throughout the legal process
Judiciary/Courts	<ul style="list-style-type: none"> - Ensure that human rights violations do not go unpunished where these are brought to the attention of the court. Where perpetrators are brought to book, it restores public confidence in the workings of the justice system

Group work

1. Identify the key players that are vital in an GBV case?
2. What roles does each relevant actor have to play?
3. What challenges do they face while playing a role in GBV cases?
4. How can each player be more effective in handling GBV cases?
5. Identify the challenges faced by SPU and state how they should be resolved.

MODULE THREE

THE INTERNATIONAL LEGAL REGIME ON GBV

“ This module outlines international law that is relevant to South Sudan and to GBV, and why prosecutors need to know and understand international law and standards. The module also explains how the law can be used in South Sudan and briefly outlines other enforcement mechanisms. ”

What is International Law and How is it Relevant to South Sudan?

International law is the body of rules that governs the conduct of relations between States, although its norms increasingly apply to other entities as well, such as non-State actors (e.g. armed opposition groups) and international organizations. Its primary sources are treaty law and customary international law; many rules of international law are grounded in both sources.¹

These treaties are legally binding on States that have consented to be bound by them (e.g. through ratifying the treaty). When South Sudan seceded from the Republic of Sudan to become an independent State on 9 July 2011, it did not automatically inherit the treaty obligations of the Republic of Sudan.

What International Law Applies to South Sudan?

South Sudan has acceded to several regional and international human rights treaties, including the African Charter on Human and Peoples' Rights (African Charter); the Convention Against Torture and Other Inhuman and Degrading Punishment (CAT); the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW); and the Convention on the Rights of the Child (CRC). South Sudan is also bound by customary international human rights law. The CAT has been used to create jurisprudence against sexual violence. CEDAW is a major norm on women's rights. The CRC centers on the rights and protection of children.

¹ South Sudan Humanitarian Project, "International Legal Frameworks: The Status of UNMISS PoC Sites in South Sudan, 23 February 2016. Available at : <http://southsudanhumanitarianproject.com/wp-content/uploads/sites/21/formidable/International-Legal-Frameworks-South-Sudan-Feb2016-1.pdf> (accessed 7 May 2018) (hereinafter "International Legal Frameworks").

These treaties and international customary human rights law protect the rights to physical integrity and to be free from torture and other cruel, inhuman or degrading treatment, including rape, and to be free from all forms of exploitation including sexual exploitation and slavery.

Article 9(3) of the Transitional Constitution provides that “All rights and freedoms enshrined in international human rights treaties, covenants and instruments ratified or acceded to by the Republic of South Sudan shall be an integral part of this Bill.” This means that international conventions ratified or acceded to by South Sudan are applicable and enforceable in South Sudan.

Table 3.1: International Treaties Ratified by South Sudan²

Treaty/ Date of Accession	Subject Matter and Key Provisions
<p>CEDAW 30 April 2015 (with 1999 Optional Protocol)</p>	<ul style="list-style-type: none"> • Article 1 defines discrimination against women to mean “any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field.” • Article 2 condemns discrimination in all forms. • Article 5 requires State parties to take appropriate measures to modify the social and cultural patterns of conduct of men and women, with a view to achieving the elimination of prejudices and customary and all other practices which are based on the idea of the inferiority/ superiority of either of the sexes or stereotyped roles for men and women. • The Convention requires the Government to: (a) refrain from engaging in violence against women; (b) prevent, investigate and punish acts of violence against women whether committed in a household or society; and (c) provide access to just and effective remedies and specialized assistance to victims of violence.
<p>CAT 30 April 2015 (with 2002 Optional Protocol)</p>	<ul style="list-style-type: none"> • Article 1 defines torture as: “any act by which severe pain or suffering whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining [...] information or a confession.” • Such acts constitute a domestic crime, and must be prevented, must be investigated and punished.
<p>CRC 23 January 2015</p>	<ul style="list-style-type: none"> • Children should be protected from all kinds of physical violence or mental abuse by parents or care givers including cruel punishment, sexual abuse and exploitation and neglect.
<p>Four 1949 Geneva Conventions their Additional Protocols 25 January 2013</p>	<ul style="list-style-type: none"> • The provisions of these conventions apply during times of armed conflict, including internal armed conflict. • Common Article 3 provides that civilians (i.e. persons not taking part in hostilities) shall be treated humanely and shall not be subject to violence to life and person, including murder and torture; the taking of hostages; outrages upon personal dignity; and arbitrary or extra-judicial executions.

² Refer to Annex 1 for treaties South Sudan acceded to but not ratified.

Table 3.2: Regional Law that Applies to South Sudan

Regional Law Date of Accession	Subject Matter and Key Provisions
<p>The African Charter on Human and Peoples' Rights 20 May 2016</p>	<p>This Charter gives both rights and duties. Articles 2 to 26 give the rights that include:</p> <ul style="list-style-type: none"> (a) enjoyment of rights without discrimination; (b) equality of people; (c) right to health; and (d) equality before the law. <p>Articles 27 to 29 give duties that include:</p> <ul style="list-style-type: none"> (a) duty towards family and society and every individual; and (b) duty to exercise rights with due regard to the rights of others.
<p>Pact and Protocols of International Conference of the Great Lakes Region (ICGLR) 24 February 2013 (admitted as member on 24 November 2012)</p>	<p>Protocols such as the following impose legally binding human rights obligations:</p> <ul style="list-style-type: none"> (a) Protocol on Democracy and Good Governance; (b) Protocol for the Prevention and the Punishment of the Crime of Genocide, War Crimes and Crimes against Humanity and all forms of Discrimination; and (c) Protocol on Judicial Cooperation.
<p>The East African Community Treaty 15 April 2016 (full member as of 15 August 2016)</p>	<p>Article 6(d) provides for good governance, including adherence to the principles of democracy, the rule of law, accountability, transparency, social justice, equal opportunities, gender equality, as well as the recognition, promotion and protection of human and people's rights in accordance with the provisions of the African Charter on Human and Peoples' Rights.</p>

International Jurisprudence of SGBV

Over the past few decades, the international community has taken many concrete steps in response to increasing calls to recognize sexual and gender-based crimes as serious crimes nationally and internationally. The International Criminal Court and *ad hoc* Tribunals such as the International Criminal Tribunal of Rwanda (ICTR), International Criminal Tribunal for Yugoslavia (ICTY) have developed best practice manuals for the investigation and prosecution of sexual violence crimes in post-conflict regions. The statutes of the ICTY and ICTR both included rape as a crime against humanity.³

The ICTR Best Practice Manual states that the paramount, guiding principle in the investigation and prosecution of sexual violence cases must be the well-being of victims.⁴ As a result, justice for victims/survivors of SGBV will be achieved only if they can testify in a safe and enabling environment thus ensuring that the evidence is reliable and the risk of re-traumatization is minimized.

Reference should be made to the following manuals, which provide guiding principles in the investigation and prosecution of sexual-violence crimes, based on ICTY and ITR experiences and established practices.

³ International Criminal Court, Policy Paper on Sexual and Gender-Based Crimes, June 2014. Available at <https://www.icc-cpi.int/iccdocs/otp/OTP-Policy-Paper-on-Sexual-and-Gender-Based-Crimes--June-2014.pdf> (accessed 7 May 2018).

⁴ International Criminal Tribunal for Rwanda, Best Practices Manual for the Investigation and Prosecution of Sexual Violence Crimes in Post-Conflict Regions, 30 January 2014. Available at http://w.unict.org/sites/unict.org/files/legal-library/140130_prosecution_of_sexual_violence.pdf (accessed 7 May 2018) (hereinafter "ICTR Best Practices Manual").

- a. ICTY Manual on Developed Practices: available at http://www.icty.org/x/file/About/Reports%20and%20Publications/ICTY_Manual_on_Developed_Practices.pdf.
- b. ICTR Best Practices Manual for the Investigation and Prosecution of Sexual Violence Crimes: available at http://w.unict.org/sites/unict.org/files/legal-library/140130_prosecution_of_sexual_violence.pdf.
- c. International jurisprudence of the ad hoc tribunals (ICTY, ICTR) and the ICC have recognized rape and other sexual offences towards women as international crimes. The decisions of such cases can be used as points of reference while prosecuting SGBV cases in South Sudan, including the landmark cases contained in the table below.

Table 3.3: Landmark Judgements from International Courts/Tribunals re: SGBV

Case/Court	Decision
Prosecutor V Tadic, Case No. IT-94-1-T (ICTY)⁵	d. The Court provided an extensive definition on violations of the laws or customs of war potentially enabling the Tribunal to have competence on sexual acts not meeting the requirements for grave breaches, genocide, and crimes against humanity (Article 2, 4 and 5 respectively).
Prosecutor v Akayesu, Case No. ICTR-96-4 (ICTR)⁶	e. This case is a landmark decision with respect to the prosecution of SGBV crimes in international criminal law for its broad and progressive definition of rape as “physical invasion of a sexual nature, committed under coercive circumstances”, in contrast with the definition of rape as “non-consensual sexual intercourse.” The chamber emphasized that sexual violence need not necessarily involve physical contact, hence deciding that forced public nudity amounts to sexual violence. f. This case’s approach of holding a civilian official responsible for international crimes represents a groundbreaking jurisprudential development.
Case of Aydin V Turkey (No. 50), 1996-VII Eur. Ct. H.R. 75 (1997)⁷	g. The Court held that rape can be defined as torture rather than just inhuman and degrading treatment and that it is a grave and abhorrent act that leaves deep psychological scars that do not heal as quickly as other types of injuries.

The Akayesu Trial Chamber stated: “Like torture, rape is used for such purposes as intimidation, degradation, humiliation, discrimination, punishment, control or destruction of a person. Like torture, rape is a violation of personal dignity, and rape in fact constitutes torture when it is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity.”

⁵ Trial Judgement, Prosecutor v. Tadić, Case No. IT-94-1-T, 7 May 1997. Tadić was charged with the following gender crimes: subjecting a female prisoner to sexual intercourse; together with others, forcing two male prisoners to commit oral sexual acts on another male prisoner; and forcing to sexually mutilate him.

⁶ Trial Judgment, Prosecutor v. Akayesu, Case No. ICTR-4-96-T, 2 September 1998. Jean Paul Akayesu was the former mayor of the Taba commune from April 1993 until June 1994. As mayor, he performed executive functions and maintained order in Taba. He was accused and convicted of genocide, crimes against humanity and direct and public incitement to commit genocide.

⁷ In this case female detainee complained of rape and it was argued that this rape constituted torture. Medical evidence showed that there was bruising and a torn hymen.

International Best Practices on SGBV

These are international best practices on SGBV, derived from various international instruments, including treaties, court decisions, guidelines, and pronouncements and decisions by UN bodies:

- Sexual violence is a crime and a human rights violation.
- States should enact a “Women’s Bill of Rights” to include a right against discrimination as per CEDAW.
- States should have a protection mechanism in its laws to protect victims and their rights, as well a preventive mechanism in place.
- Officers of the law should be trained on prevention, protection, investigation and prosecution of SGBV.

BEST PRACTICES ON PREVENTION AND RESPONSE TO SGBV-Mapping the areas of violence sectors so as to develop shelters with minimum acceptable standards of service (i.e. identifying areas such as camps where SGBV is high and establishing shelters for victims/survivors)

- Establish service provision referral pathways and prevention avenues
- Increase awareness about SGBV through establishment of self-help groups for survivors
- Use awareness-raising campaigns/events as a tool for prevention. Campaigns should aim to end the secrecy around SGBV by exposing the magnitude of the issue and changing the general public’s attitudes and stigma surrounding SGBV
- Provide women’s support services for survivors of violence, rape and sexual assault centers (including counseling, practical support, court accompaniment and legal information)

Customary International Law

Customary international law are principles of international law that are ascertained by examining the general practice of States (custom) and whether States accept them as law.⁸

Customary international law is binding on all States once these specific rules and laws have been accepted by the international community as a whole.

Custom is considered by the International Court of Justice (ICJ), the United Nations (UN) and its member states to be among the primary sources of international law. Customary international law is determined by the following factors:

- General practice of States
- What States have accepted as law

Even if South Sudan had not acceded to the four Geneva Conventions of 12 August 1949 and their Additional Protocols, it would be required to follow many of the specific rules included in these and other treaties of international humanitarian law, as they form part of customary international humanitarian law and are thus binding on all parties to the conflict.⁹

⁸ The Statute of the International Court of Justice acknowledges the existence of customary international law in Article 38(1)(b), incorporated into the United Nations Charter by Article 92: «The Court, whose function is to decide in accordance with international law such disputes as are submitted to it, shall apply...international custom, as evidence of a general practice accepted as law.» This law is created by the common practice of states developed over a period of time and the belief that states are legally bound to follow that practice.

⁹ See Jean-Marie Henckaerts and Louise Doswald-Beck, Customary International Humanitarian Law, Vol. I: Rules, Cambridge University Press, 2005 (hereinafter “ICRC Customary IHL Study”).

According to Justice Theodor Meron of the ICTY, crimes recognized by the ICC Statute such as gender specific offences may be taken on as authoritative and largely customary statements of international humanitarian and criminal law and become a model for national laws to be enforced under the principle of universality of jurisdiction.¹⁰

South Sudan signed the African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa ("Kampala Convention") on 24 January 2013. While the Convention is not formally binding on South Sudan until it has formally ratified it, international law places on treaty signatories the obligation to refrain from acts which would defeat the object and purpose of the treaty prior to ratification. (Art 18 Vienna Convention on the Law of Treaties, which is generally considered to reflect customary international law). The Kampala Convention contains specific obligations for non-State actors, inter alia prohibiting them from arbitrarily displacing persons, hampering relief efforts and recruiting or enslaving women and children.

Enforcement Methods for International Law

The obligations and rights imposed by these treaties are owed to the people of South Sudan. For example, under international law a State may be responsible for acts of violence against women committed by non-State actors if it fails with due diligence to prevent, stop and investigate acts of violence, punish perpetrators and provide compensation to the victims, as specified in General Recommendation 19 (1992) of the Committee on the Elimination of Discrimination against Women.¹¹

It is important to note that as a general principle of international law, the obligations of the treaties ratified by South Sudan apply from the moment of ratification and do not cover acts or conduct done prior to ratification. However, acts perpetrated after the ratification are subject to enforcement by national and international courts.

During times of conflict, international humanitarian law primarily imposes obligations upon parties to the conflict, including States and non-State actors. However, under international criminal law, individual perpetrators, their commanders and other superiors may be held personally responsible for gross violations or abuses of international law.

South Sudan's Bill of Rights stipulates that, with respect to the people of South Sudan, all organs of the government (including the armed forces) shall respect, uphold and promote the following non-derogable rights and protections:

- (i) the right to life*
- (ii) prohibition against slavery*
- (iii) prohibition against torture*
- (iv) the right of non-discrimination on the basis of race, sex, religious creed; and*
- (v) the right to fair trial*

¹⁰ Theodor Meron. *The Making of International Criminal Justice. A View from the Bench*. Oxford: Oxford University Press, 2011. Pp. 336. https://oup.silverchaircdn.com/oup/backfile/Content_public/Journal/ejil/24/1/10.1093/ejil/cht006/2/cht006.pdf?Expires=1501663790&Signature=cxergp4fUNGM6Fl96pZG7NUjQhvaCsJ1qG33m6~DjXuEWitXl7XH-C3v1y2KpqpceZPFscrP~g1Rth3EaNXjW0tUB5F~pMqy1hot9zyMZxa2K5NdkzxqOiHMS8bKSi1qQGTYZ400ZaPucrysNZq6PbKyXB7OVmJ9pWOHyiFpTnC6SF1djZSSrvxcOZImwp2iUO-WqOWXHomlvV3XCWtVafMEYt~MTnMuurvakqf2hwMJrvimder6Rl1Pha06A8xOpOf57WOpt259eyqC9G9jL~iHgKHWVTgMlss21ORNGbiNxl8lWmEcsToUalEh-6jUSgo0eVMaJb4GEzNgJlcJnA_&Key-Pair-Id=APKAIUCZBIA4LVPVW3Q.

¹¹ Good Practices in Combating and Eliminating Violence Against Women: Report of the Expert Group Meeting Vienna, -17 20 May 2005, Available at <http://www.un.org/womenwatch/daw/egm/vaw-gp2005-/docs/FINALREPORT.goodpractices.pdf> (accessed 7 May 2018).

According to Article 9 (3) of the Transitional Constitution all rights and freedoms enshrined in international human rights treaties ratified or acceded to by South Sudan constitute an integral part of the Bill of Rights of the Republic of South Sudan. Domestic mechanisms to implement the Bill of Rights may thus be used to enforce South Sudan's human rights treaty obligations. Moreover, the Government of South Sudan should ensure that non-State actors operating within South Sudan are held to account under domestic law.

Other States may invoke the responsibility of South Sudan for violations of international law in international judicial procedures. South Sudan is bound to the compulsory jurisdiction of the International Court of Justice by virtue of being a member of the United Nations. In addition, there are ways in which international courts or tribunals could exercise jurisdiction over South Sudan, including through a referral by the Security Council under Article 13 (b) of the Rome Statute of the International Criminal Court (ICC).

The Government of South Sudan is obligated at all times to respect, protect and fulfill the human rights of all persons within its territory and under its jurisdiction. Alongside applicable treaty provisions, South Sudan is bound to comply with applicable customary international humanitarian law, including with the over-arching IHL principles of distinction, proportionality, precaution, as well as the prohibition on unnecessary suffering.

Exercise

1. Identify relevant international treaties relating to SGBV. (Ratified vs. Unratified). What do these relevant provisions state.
2. To what extent is international human rights law applicable in South Sudan.
3. What does article 9(3) of the Transitional Constitution of South Sudan mean.

MODULE FOUR

SOUTH SUDANESE LEGAL PROVISIONS RELATING TO GBV

“ This module outlines South Sudanese law such as the Transitional Constitution, Code of Criminal Procedure, Child Act and Code of Evidence Act, and identifies how they can be used to address GBV. ”

Under domestic law, the Transitional Constitution, the Code of Criminal Procedure, the Child Act and the Code of Evidence Act all provide rights to GBV and SGBV victims/survivors and methods for their enforcement.

The Bill of Rights (Part Two) in the Transitional Constitution protects the rights to life and to dignity, to liberty and security of the person; prohibits torture and forced labor and contains special provisions on the rights of women, children, persons with special needs, and the elderly.¹

¹ Transitional Constitution, Articles 16-17, and 30.

Table 4.1: South Sudanese National Laws Relating to GBV

Legislation	Article/Section	Offence/provision	Punishment
Transitional Constitution	16	Rights of women	Redress for violation
Penal Code	247	Rape	14 years' imprisonment and/or fine
	223	Assault	Up to 3 months imprisonment and/or fine
	225	Assault or criminal force without provocation	3 months' imprisonment with fine
	249	Acts of gross indecency	Up to 14 years' imprisonment and/or fine
	250	Word, gesture or act intended to insult the modesty of a woman	Up to 2 years' imprisonment and/or fine
	251	Public indecency	6 months' imprisonment and/or fine
	255	Coercing or inducing persons for purpose of engaging in sexual conduct	Up to 5 years' imprisonment and/or fine
	256	Detaining a person for purpose of engaging in unlawful sexual conduct	Up to 1 year imprisonment and/or fine
	273	Kidnapping or abducting a woman to compel her marriage, etc	Up to 10 years' imprisonment and/or fine
	268	Incest	Up to 7 years' imprisonment and/or fine
	259	Female genital mutilation	Up to 10 years' imprisonment and/or fine
	396	Sexual harassment	Up to 3 years' imprisonment and/or fine
Child Act, 2008	9	No discrimination	6 months' imprisonment and fine
	30	Infringement on the rights of a child	7 years' imprisonment and/or fine
	57	Cruelty to children	Up to 3 years' imprisonment and/or fine

Table 4.2: Elements of Sexual Violence Crimes

Offence/Section of Penal Code	Elements
Rape (247)	<ul style="list-style-type: none"> • Sexual intercourse with another person • Against his/her will or without his/her consent (a person under 18 cannot give consent) <p><i>Note: South Sudanese law does not recognize marital rape</i></p>
Acts of gross indecency (249)	<ul style="list-style-type: none"> • Commission of act of gross indecency on another person • Without consent or by force or threat or by compelling another person to join in committing the act
Word, gesture or act intended to insult modesty of a woman (250)	Obscene words, gestures, or acts intended to violate the privacy of a woman
Procuring (254)	Seeking sexual acts with a person for the purpose of: <ul style="list-style-type: none"> • Engaging in unlawful sexual conduct with other person(s), or • Prostitution • Within or outside South Sudan
Coercing or inducing persons for the purpose of engaging in sexual conduct (255)	<ul style="list-style-type: none"> • Threatening, intimidating, administering, or causing someone to take drugs or liquor • With intention to engage in unlawful sexual conduct
Detaining a person for the purpose of engaging in unlawful sexual conduct (256)	<ul style="list-style-type: none"> • Unlawfully depriving a person's liberty including by kidnapping or abducting the victim • With the intention to engage in an act of a sexual nature including sexual slavery
Permitting young person to resort to place for purpose of engaging in unlawful sexual conduct (257)	<ul style="list-style-type: none"> • Ownership of premises • With knowledge allows or induces a young person to enter or be in the premises • The purpose being to engage in sexual conduct with other persons • Sexual conduct must be unlawful
Female genital mutilation (259)	Making or causing female genital mutilation to be performed
Deliberate infection of another person with a sexually transmitted disease (261)	<ul style="list-style-type: none"> • Having unprotected sexual intercourse while having an STD • Intending to infect or not bothering whether the person gets infected • Knowledge by the accused that s/he has STD • The victim is infected by the accused due to the sexual intercourse
Kidnapping (269)	<ul style="list-style-type: none"> • Taking away or enticing a juvenile or a person of unsound mind • Out of the custody of lawful guardian or • Beyond the national border without the consent of the guardian
Kidnapping or abducting a woman to compel her marriage etc. (273)	<ul style="list-style-type: none"> • Kidnaping or abducting a woman • Intent to compel her to marry any person against her will or in order that she may be forced into illicit sexual conduct

Offence/Section of Penal Code	Elements
Kidnapping or abducting a person to subject him/ her to grievous hurt (274)	<ul style="list-style-type: none"> • Kidnapping or abduction • With intention to cause grievous hurt or • For “unnatural lust of any person”
Culpable Homicide (210)	<ul style="list-style-type: none"> • Causing death of another person by unlawful means • Negligently failing to realize that death may result from the criminal conduct; or • Realizing that death will result but negligently failing to guard against that possibility
Assault (223)	<ul style="list-style-type: none"> • Any gesture or act intended to cause another to believe that criminal force may be used <p><i>Note: Spoken words alone do not constitute assault</i></p>

Table 4.3: Crimes Against Children

Article of Child Act	Elements of the crime	Sentence
Abuse against children (22)	<ul style="list-style-type: none"> • Physical or mental violence, injury, abuse, negligent treatment, maltreatment, or exploitation • Abduction and trafficking by any person including parents or guardians • Sexual abuse, exploitation and harassment, including rape, incest, inducement or coercion of a child to witness or engage in sexual activity • Use of a child in prostitution or other sexual behavior while in the care of parents, legal guardians, teachers, police or any other person who has care of a child 	14 years' imprisonment
Child marriage (23)	<ul style="list-style-type: none"> • Marrying a person under the age of eighteen (minor) • Custom or traditional practice that is likely to negatively affect the child's life, health, welfare, dignity or physical, emotional, psychological, mental and intellectual development • Willfully or as a result of culpable negligence 	7 years' imprisonment and compensation to the child
Offences against female children (26)	<ul style="list-style-type: none"> • Marrying or sexual intercourse with a minor • Female circumcision and female genital mutilation • Willfully or as a result of culpable negligence 	7 years' imprisonment and compensation to the child
Offences against children within armed conflict (31/32)	<ul style="list-style-type: none"> • Use or recruitment to engage in (para) military activities, whether armed or unarmed, including working as guards, informants, agents or spies, cooks in transport, labourers; for sexual purposes; or any other work that is not in the interest of a child • Conscription or voluntary recruitment into armed forces or groups under the age of 18 years 	10 years' imprisonment

Table 4.4: Selected National Case Law on SGBV

<p>Rape – section 247 of the South Sudan Penal Code Act</p>	<p><i>Charles Amin Zambia</i> <i>CR-APP/39/2014</i></p>	<p>The court held that a man is said to have raped a woman when he has sexual intercourse with her under the following circumstances – a) against her will, b) without her consent, c) with her consent, when such consent is obtained by putting her or any person in whom she is interested in fear of death or being hurt, d) with her consent where she believes that the accused is a person to whom she is married, while the accused knows that she is not her husband, e) with her consent, when at the time of giving such consent she was of unsound mind or intoxicated, or under the influence of some stupefying substance administered by the accused and she does not understand the nature and consequence of that to which she gives consent, f) with or without consent when she is below the age of eighteen years</p>
<p>Section 247(2) Sexual intercourse with a person under 18 years of age</p>	<p><i>Bech Marial Majok Dhuor</i> <i>NST/22/2013 Bech Marial Majok Dhuor</i> <i>NST/22/2013</i></p>	<p>The court held that a person under the age of eighteen is incapable of giving consent to sex as required by the law. The accused's actions (having sex with a minor) amounted to rape, as the victim was under the age of 18 years</p>
	<p><i>Awet James</i> <i>CR/21/2014</i> <i>Juba Court of Appeal</i></p>	<p>The court held that the best proof of any person's age would be a birth certificate. However, mindful of the fact that few families, especially in rural areas of South Sudan have birth certificates for their children, the court ruled that other documents (e.g. assessment of age certificate, baptism cards, vaccination cards, school records etc.) are equally admissible evidence as proof of age of a child in sexual intercourse or rape offences</p>
<p>Section 249: Acts of gross indecency (sexual assault)</p>	<p><i>Marual Muorwel Juong SC/</i> <i>CR.REVIEW/52/2011</i></p>	<p>The court held that the law applied had not been enacted at the time the offence was alleged to have been committed. The court argued that retrospective application of the law was unlawful under South Sudanese legislation. The sentence was quashed and a retrial under the relevant law (i.e. The Dinka Customary Law of 1984) was ordered</p>
<p>Section 256: Detaining a Person for Purpose of Engaging in Unlawful Sexual Conduct</p>	<p><i>Isaac Celestino Paul and 4 others</i> <i>NO.COAVGEC/CR-APP/81/2015</i></p>	<p>The court held that a customary practice that permits women to be kidnapped for the purposes of marriage without her consent, is inconsistent with the Transitional Constitution. Courts should be mindful of customs that are disrespectful of women's dignity and are repugnant to conscience and inconsistent with the Transitional Constitution</p>
<p>Section 255: Coercing or inducing persons for purpose of engaging in sexual conduct</p>	<p><i>Mary Lotiyo Belal</i> <i>CRA/81/2001</i></p>	<p>The court held that medical evidence was admissible in court when given by an expert with special skills related the offence in question pursuant to Section 51 of the Code of Evidence Act</p>

Table 4.5: Challenges/Gaps and Recommendations

Challenge/Gap in the law	Recommendation	State actor
South Sudan Penal Code under section 247(1), rape is punishable by 14 years imprisonment and a fine. However, in practice much lighter sentences are awarded ²	Judges need to apply stiffer sentences in compliance with the law to act as a deterrent for would be criminals	Judiciary
Section 247(3) negates the need for consent amongst married couples thus allowing marital rape	This section should be amended to criminalize marital rape	<ul style="list-style-type: none"> • MoGCSW • MoJCA • Legislature
Weak implementation of the Child Act's prohibition of child marriages. Underage marriage is common, with 52% of girls in South Sudan being married before their 18th birthday ³	Any amendment on a legal provision for such a practice to be condemned and punished	<ul style="list-style-type: none"> • GoSS • Judiciary
There is no policy for the medical management of sexual violence	Draft a policy on how to handle cases of SGBV by medical practitioners, and other actors. Of particular importance is the need to protect forensic evidence that may be used in trial proceedings	<ul style="list-style-type: none"> • Ministry of Health • MoJCA • SSNPS
No specific law on SGBV or GBV exists. The law providing for the offences that fall under SGBV are generally covered under the Penal Code Act. In most cases, this is not adequate because of the special nature of sexual violence (mostly committed in private, stigma, usually committed by persons victim knows)	Draft and adopt legislation to specifically cater for SGBV. Include mandatory stiffer penalties to act as a deterrent	<ul style="list-style-type: none"> • MoGCSW • MoJCA • Legislature
Low compliance with the use of Forms 6, 7 and 8 as per Section 59 of the Code of Criminal Procedure, due to the fact that printing them is expensive. ⁴ Survivors are often made to pay for the forms, thus compromising the investigation of SGBV crimes	Forms 6, 7 and 8 should be availed to SSNPS at no cost to ensure quick response to SGBV. Under no circumstance should SGBV survivors be required to pay for these forms	<ul style="list-style-type: none"> • SSNPS • MoGCSW • MoJCA • UN Agencies
Insufficient legal framework for victims/survivors. Legislation is silent on how victims/survivors can seek redress for SGBV. There is no procedure for victim participation in the process of advancing the case or method for obtaining reparations. There is no viable network for victim/witness protection or support services	Draft guidelines relating to participation for SGBV survivors in the criminal process should be drafted. Victim and Witness protection laws need to be expedited and passed	<ul style="list-style-type: none"> • MoGCSW

² In the case of Charles Amin Zambia CR-APP/2014/39, the accused was sentenced to three (3) years imprisonment sentence for the offence of rape.

³ Legal Action Worldwide, *Accountability For Sexual Violence Committed by Armed Men in South Sudan*, May 2016. Available at: <http://www.legalactionworldwide.org/wp-content/uploads/05/2016/Legal-Action-Worldwide-Report-on-Accountability-for-Sexual-Violence-Committed-by-Armed-Men-in-South-Sudan.pdf> (accessed 7 May 2018) (hereinafter "Legal Action Worldwide, Accountability").

⁴ Such forms cost an average sum of SSP32 in Juba. See Haki, *supra* n. 51, p. 13.

As the world's youngest nation, it is no surprise that South Sudanese jurisprudence is still developing. However, serious gaps still exist not only in the area of SGBV prosecution, but in criminal law generally. While this module has tried to highlight pertinent areas for reform and review, expedient and effective change will call for aggressive capacity building, advocacy and enhanced national commitment.

Exercise

1. Identify and discuss the relevant national laws and their elements that apply to SGBV in South Sudan?
2. Identify any gaps that need to be addressed as per case law on SGBV in South Sudan?

Participants should be split up into small discussion groups and presentations made following the discussions.

MODULE FIVE

HOW TO CONDUCT INVESTIGATIONS

“

This module outlines the various steps that police and prosecutors should take when investigating GBV complaints. It addresses the difficulties that victims/survivors may have in reporting their experiences and offers best practices to ensure that investigations are effective, efficient and take the needs of the victims/survivors into account.

”

The police are often the first members of the law enforcement system with whom GBV and SGBV victims/survivors interact. As a result, how police officers respond to a victim/survivor can have a significant impact on whether the victim/survivor pursues legal remedies.

Evidence collection is critical in GBV and SGBV cases. Because domestic violence is mostly perpetrated in the home, the testimony of the victim/survivor is often the strongest - and sometimes the only - evidence of the abuse. Thorough investigations ensure that prosecutors have sufficient evidence to support the testimony of the victim/survivor testimony. In some jurisdictions, prosecutors may even be able to proceed with a case without the testimony of the victim/survivor if they have sufficient supporting evidence.

The above notwithstanding, domestic violence is no more difficult to investigate than other crimes. Most crimes do not occur in public, in daytime, or in the presence of witnesses. Burglary and murder often occur in isolated places with no witnesses present. Bank robbers often wear masks to cover their identity and car thieves often steal cars at night. In such cases, the police are able to collect evidence to allow prosecutors to successfully prosecute most of these cases.

It is, therefore, not logical to argue that SGBV cases are difficult to investigate and prosecute because most of the crimes happen in isolated and private places, like the home. Indeed, there is sufficient evidence in relation to sexual abuse and domestic violence cases just like other cases – there is a perpetrator and a victim; there may be witnesses (children, maybe neighbors); there is often physical injury; and, in many cases, there may be broken and damaged items in the home. Under South Sudanese law, it is the responsibility of the prosecutor to ensure that the police carry out adequate and thorough investigations.

Upon receipt of an initial report of a SGBV crime, police and prosecutors should develop a plan on how to carry out the investigation. A meeting should be held between the prosecutor and the police at the beginning of the investigations to answer the following questions:

- **Is the victim/survivor secure?** If not, police should ensure the safety of the victim/survivor.
- **Has the crime scene been secured?** Police must secure the crime scene and gather evidence as soon as possible so that it is not tampered with or lost.

- **Is the suspect in custody?** Police should apprehend and arrest the suspect if there is a risk of escape, visit the crime scene and gather physical evidence, interview witnesses, etc.

Understanding the State of the Victim

In SGBV cases, the initial response of the authorities has a fundamental impact on the future recovery of the victim/survivor from the trauma caused by SGBV. The better the quality of the response provided, the better the chances the victim has for a full recovery and reintegration into the community.

Due to the culture of silence in South Sudan regarding SGBV abuses, it is important to have and/or create gender desks where victims can feel safe enough and are encouraged to come forward to report SGBV. In the SSNPS, the SPU's may fulfill this function. One Stop Centres which provide comprehensive services to victims have also been established in some hospitals by UNFPA.

Investigators and **all** service providers, including the Government of South Sudan, SSNPS, social workers, community leaders, community-based organizations dealing with SGBV, NGOs providing legal aid, and others coming into contact with an SGBV victim/survivor should be guided by the following principles:¹

Table 5.1: Guiding Principles for Investigators

Principles	Explanation
Ensure physical safety of the victim/survivor	Conduct an assessment of security risks to the victim/survivor. All interviews should be held in a safe place. Take actions to ensure safety of the victim (e.g. develop a safety plan, refer to a safe home)
Observe confidentiality by not telling the story of the victim/survivor to others (family, friends, neighbors)	Hold all interviews in a place that guarantees privacy. Keep all documents (i.e. files) concerning the victim/survivor out of sight and locked in a safe place. Do not tell the story of the victim/survivor to others in the family or community without their permission. Obtain informed consent from the victim/survivor before sharing information with other service providers (i.e. for referrals)
Respect the rights and dignity of the SGBV victim/survivor	Demonstrate a supportive attitude by informing the victim/survivor of their rights and options for referral, as well as respecting the fact that the final choice is up to them. Showing belief in a victim goes a long way in establishing trust between the investigator and victim/survivor

It is important to note that SGBV victims/survivors do not often choose to report to the police and sometimes withdraw from criminal proceedings after reporting the abuse/crime because they do not trust the police and the justice system and/or because they do not feel understood.

An investigator showing a supportive attitude to victims/survivors can help to restore their confidence in the police and can be crucial to securing the cooperation of the victim/survivor through the investigation process and court proceedings.

SGBV usually amounts to a criminal offence, which we have learned are prosecutable under the laws of South Sudan. All victims/survivors of SGBV have the right to seek legal redress for what they have suffered and to be supported and assisted while they navigate the justice system.

¹ UNDP, *Guidelines on SGBV Case Management*, 2008. Available at http://www.sl.undp.org/content/dam/sierraleone/docs/focusareadocs/undp_sle_SGBVCaseManagementGuidelines.pdf (accessed 12 May 2018).

Investigators and all actors in the justice system shall make every effort to respect the rights of victims/survivors.²

It is important that investigators and service providers understand that services to victims/survivors are provided based on their rights and not out of courtesy or good-will.

Victims/survivors of SGBV should not be charged money or requested to pay for services at any stage of the investigation.

Table 5.2: Checklist on Victims’/Survivors’ Rights

Right	Explanation
• Right to be treated with compassion and respect for dignity	Investigators (including police and prosecutors) should demonstrate respect and compassion in all their interactions with the victim/survivor
• Right to be informed about their rights in seeking redress	Investigators should share information with victim/survivor on their legal entitlements and the avenues for obtained justice and/or compensation.
• Right to material, medical, psychosocial and social assistance through Government or NGOs	Investigators, Victims’ Advocates and Social Workers should inform victims of the availability of these services
• Right to privacy and physical safety	Investigators and other State actors should take measures minimize inconveniences to victims/survivors, protect their privacy, and ensure their safety (including the safety of their families) from intimidation and retaliation
• Right to a speedy investigation and prosecution of their case	Investigators and Judges should take all measures to avoid unnecessary delays in investigation and prosecution, or in the execution of decisions and orders. “Justice delayed is justice denied”
• Right to be informed about their role in judicial proceedings	Prosecutors should provide victims/survivors with information on the progress of the proceedings and of the disposition of their case
• Most vulnerable victims (children, elderly, pregnant women etc.) have the right to special assistance based on their needs	Investigators, and other State actors (including the MoGCSW) should provide relevant information on special assistance and assist victims/survivors to access this assistance if desired

Reporting and Investigating SGBV

Recording a statement – When taking the victim’s/survivor’s statement, investigators should do the following:

- Treat the victim/survivor with dignity
- Use appropriate interviewing techniques that are sensitive to the victim’s/survivor’s needs. For example, take small breaks so the that victim/survivor can relax and compose themselves when necessary
- Interview the victim/survivor in private, using a separate room, where other persons or police officers cannot hear the story of the victim/survivor
- Do not rush to record the statement – first understand the story of the victim/survivor

²Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, Annexed to General Assembly resolution 40/34 of 29 November 1985 (A/RES/40/34).

- Keep in mind the elements of the offence to be sure that all the relevant details are included in the statement (for elements of SGBV offences, refer to relevant section of the law)
- Look for corroborating evidence from other witnesses (e.g., contemporaneous report of incident, sequencing of events) and physical evidence from crime scene (e.g. signs of struggle or like)

Receiving Complaints of SGBV

How a victim is first handled by the police will determine the confidence that the victim/survivor have in them, which is likely to impact the success of the case. Victims/survivors need to be confident that they have the support of the police investigators and prosecutors.

When the police receive the complaint, they conduct investigations following the legal and criminal procedures as laid out by the law. In accordance with the standard police procedures, they arrest the accused persons, conduct investigations, prepare charges, serve summons and ensure that all potential witnesses appear in court. They work with the Directorate of Public Prosecutions for the expeditious investigation and prosecution of SGBV cases and help the survivor/victim understand the legal and criminal process. Police officers should be sensitive to the needs of the survivor/victim regarding privacy, confidentiality and respect as well as ensuring safety and security.

As previously explained, collection of evidence is crucial in SGBV cases. After a complaint of SGBV has been reported, the police record the statement of the victim/survivor using Forms 6 and 7 (see **Appendix V**). After referring the victim to a referral center for medical checkup, police then record statements of any witnesses available and go to the crime scene.

Treatment of Evidence

Physical evidence that can be gathered with the assistance of medical practitioners and health professionals includes photos of the victim/survivor (or body maps with description of injuries), clothes and underwear worn by the victim/survivor at the time of the abuse, blood, semen, or any other substance found on the victim/survivor. The evidence gathered by health professionals must be:

- Placed in a sealed container/bag in order to prevent tampering.
- Tagged with the name of the victim/survivor, name of the health professional that took the examination, date and place of examination.
- Stored in an exhibit store or any other secure location.

Medical Examination

The victim/survivor should be referred to a hospital/health center within 48 hours from the offence. The referral should be immediate- even before taking the statement - if the victim is wounded, in pain or in extreme distress.

The objectives of the referral include:

- Providing health care to the victim/survivor, including testing and treatment for STIs, HIV/AIDS, and pregnancy
- Obtaining physical and medical evidence from the victim/survivor (blood, semen, saliva, etc.)
- Documenting injuries in a medical report including photos or body maps. For evidentiary purposes it is crucial that the medical report is signed by a qualified medical practitioner

- Providing information to the police and prosecutors about the victim’s/survivor’s physical and mental state of the victim/survivor at the time of referral
- Testifying at trial as an expert Witness.

The health practitioner will test and treat the victim/survivor and provide needed drugs to prevent pregnancy or HIV transmission. If available, the medical examiner may use a “rape kit,” which is a set of items used by medical personnel for treating a victim/survivor and gathering and preserving physical evidence following a sexual assault.³ S/he will also fill out a standardized report that records the medical injuries and the treatment given to the victim/survivor (**See Medical Form 8 in Appendix III**). This medical report form may later be used in criminal proceedings if the case is brought to trial.

Crime Scene

A search warrant may be necessary to search the location of the assault when an investigation has been opened into an SGBV crime. The police should take photos of the crime scene to use as evidence during trial proceedings.

Section 104 of the Code of the Criminal Procedure Act 2008 provides that;
 “The Public Prosecution Attorney and in his or her absence, a Magistrate or Court may issue a search warrant authorizing the person to whom it is addressed to search or inspect generally or in the place or places mentioned in the warrant for any document or thing specified or for any purpose described in the warrant and to seize any such document or thing and to dispose of it in accordance with the terms of the warrant.”
 Section 105 provides that an officer in charge of a police station may apply to the Public Prosecution Attorney/magistrate/court for the issuance of a search warrant.

In sexual assault cases, it may be immediately difficult to determine what is relevant and what is not, especially before comparing the physical evidence with the victim’s testimony. Photos of the crime scene and sketches of it will provide documented evidence later that may have been lost or changed at the scene over time.

How a crime scene is managed determines the quality of evidence collected. It is here that evidence is collected, protected and moved from the beginning of the investigations up to the time it is produced in court.

Table 5.3: Stages of Crime Scene Management

Stage	Action
1. Identification	- Identify the crime scene (area) where the offence was carried out. An investigator can best obtain crime scene identification evidence through eye witness accounts, victim’s testimony or suspect’s admission
2. Securing and protecting the scene	- Secure the crime scene from all other parties except the investigators involved, ensuring that the scene is not tampered with and the evidence is preserved. This can be done by closing off the scene and restricting entry A crime scene register should also be opened to record anyone entering and leaving the scene - Evaluate the crime scene to help in formulating a plan for processing the scene and the collection and preservation of evidence

³ Liberia, Ministry of Justice, SGBV Prosecution Handbook. Available at https://www.cartercenter.org/resources/pdfs/peace/conflict_resolution/liberia/sgbv-prosecutionhandbook-v1.pdf (accessed 12 May 2018) (hereinafter “SGBV Prosecution Handbook of Liberia”).

Stage	Action
3. Conduct a detailed search	<ul style="list-style-type: none"> - Go over every square inch of the scene in an attempt to locate even the smallest particle of evidence - Investigators should be trained to recognize evidence, understand the potential value of tracing evidence, and collect and preserve samples and control samples
4. Record and collect physical evidence	<ul style="list-style-type: none"> - As potential evidence is located it should be recorded on the crime scene sketch and photographs should be taken - The evidence should also be recorded in the evidence log book. Evidence collected must be properly marked and packaged!
5. Storage of evidence	<ul style="list-style-type: none"> - Use the proper type of containers for all evidence collected. Never package objects wet with blood or other physiological fluids in plastic bags, as this will accelerate decomposition - Label and identify all evidence collected, including the notes taken by the investigator

Section 107(2) of the Code of Criminal Procedure provides that a list of all things seized and of the places in which they are found shall be drawn up by the person carrying out the search and shall be signed or sealed by two witnesses.

Section 108 provides that the occupant of any place searched or some persons on his or her behalf shall be permitted to be present at the search and shall receive a copy of the list of things seized therein, signed or sealed by the witnesses.

Exhibit Handling

An exhibit is any item or document recovered during investigations for presentation as evidence in court. It is important to establish a chain of custody and a system of information on the movement of the exhibits. The prevailing rule in gathering, handling and dealing with evidence is to document **everything** from discovery to the time of presenting them as exhibits in court.

The chain of custody is a written record describing how the evidence was identified, collected, stored and handled and by whom, when and for what purpose.

Chain of Custody is defined as chronological documentation showing custody, control, transfer, analysis and disposition of physical or electronic evidence. This evidence can be used in court to convict the accused and thus must be handled in a careful manner to prevent contamination or tampering.

While presenting evidence at trial, the prosecutor will show that the evidence is in the same condition as it was at the time of the crime. The proper practice should be that police and prosecutors document all evidence that is going to be used during the trial proceedings in a chain of custody book that is signed and proves date of acquisition, how, where, and who acquired this evidence material. The police should:

1. Take actual physical possession of an object so that it is kept in the same condition until trial. (If possible, the evidence should be kept in a sealed container).
2. Label the evidence with the name of the defendant, description of the object, and a note on how and when it was obtained.
3. Keep this evidence in a secured area such as a locked drawer, file box, or cabinet.

Procedure to follow when a Confession is Made

A confession is a direct acknowledgment of criminal guilt by an accused, and may be comprised of words or conduct, or a combination of words and conduct.⁴

A confession made by an accused person is not admissible in a criminal proceeding if, in the opinion of the Court, the confession or admission appears to have been made under any inducement, torture, duress, or threat, or as a result of a promise made in connection with the charge against the accused person by or from a person in authority, and which is sufficient, in the opinion of the court, to give the accused person reasonable grounds for supposing that by making the confession of the admission, he or she would gain an advantage or avoid an evil act of any nature in reference to the proceedings against him or her.⁵

For the confession to be valid, it should either be made in the immediate presence of a magistrate,⁶ or confirmed by the accused before a magistrate. In effect, if a suspect makes a confession during the course of the investigations, he or she should be taken before a magistrate who will record the confession in a case diary.

Summary

Service providers such as the police, prosecutors, and medical practitioners face various challenges while carrying out their duties relating to SGBV. This limits their capacity to perform efficiently and effectively so as to effect justice for the victims/survivors of SGBV.

Table 5.4: Challenges/Gaps and Recommendations for Investigations

Challenges/Gaps	Recommendations	Relevant Actor
Little/no knowledge of the statutory protections that exist for SGBV	Engage and train service providers working with SGBV to empower them with the capacity and knowledge to effectively and efficiently deal with SGBV cases	<ul style="list-style-type: none"> • GBV Cluster Groups • MoGCSW • UN Agencies
Police stations and statutory courts are populated by males. Female victims/survivors do not feel comfortable narrating their ordeals to them ⁷	There should be a sufficient number of trained police women at each station	<ul style="list-style-type: none"> • SSNPS • MoJCA

⁴ Code of Evidence Act, Act No. 2, 2006, Section 27. (hereinafter "Code of Evidence").

⁵ Code of Evidence, Section 28. In the case of Sudan Government v Adam Ahmed Mohammed Sup.Ct. /Crim. Rev/16/1978, Court stated that a judicial confession made as a result of torture and coercion is worthless. An arrested person in police custody must be treated with dignity and respect.

⁶ Code of Evidence, Section 30; Code of Criminal Procedure Act, Section 61.

⁷ Civil society activists in Juba observed that the Special Protection Unit is dominated by men even at the gender desk and culturally, a woman who has been raped does not feel comfortable speaking to men. See Justice Africa, *Violence Begets Violence: Justice and Accountability for Sexual and Gender-Based Offences in South Sudan (Draft Report)*, May 2016. Available at <http://justiceafrica.org/wp-content/uploads/08/2016/Violence-Begets-Violence-SGBV-South-Sudan-Draft1.pdf> (accessed 20 April 2018) (hereinafter "Violence Begets Violence").

Challenges/Gaps	Recommendations	Relevant Actor
Police lack capacity, basic training, adequate communications equipment, and transportation. Most law enforcement officials have little knowledge of how to properly investigate SGBV cases, including the rights that accrue to SGBV victims/survivors ⁸	Provide capacity-building for the SSNPS and ensure they have adequate resources to handle SGBV cases efficiently and effectively	<ul style="list-style-type: none"> • SSNPS • MoJCA • CSOs/NGOs • Development Agencies • UN Agencies
Poor evidence collection methods amongst law enforcement and lack of forensic evidence tools for sexual crimes lead to many SGBV cases being dismissed for lack of evidence	Build capacity of law enforcement officials to handle evidence through consistent trainings and providing proper evidence-gathering tools	<ul style="list-style-type: none"> • SSNPS • MoJCA • CSOs/NGOs • UN Agencies • Development Agencies
Hospital facilities are inadequate to deal with victims/survivors of SGBV. Hospitals that do treat survivors only perform basic medical exams to determine penetration	Equip hospitals with necessary staff and tools to treat and assist SGBV victims/survivors, including prevention of pregnancy or STDs	<ul style="list-style-type: none"> • Ministry of Health • GBV Working Groups • UN Agencies • Development Agencies

Exercise

1. Role play: Police Officer and SGBV victim/survivor. (Observe and identify gaps and challenges).

Facts: You are a police officer stationed at Juba North Police Station. You receive a complainant from Mary (16 years old) that alleges that she has just been forced into a sexual act by her landlord, one Mr. Jamal Khan. According to Mary, Mr. Khan dragged her into his house where the act took place. She has a bruised elbow. Establish a role play situation.

⁸ In a study conducted, women stated that police met reports of SGBV with disinterest and counter allegations. In one anecdotal example involving 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?” See Violence Begets Violence, supra n. 7.

MODULE SIX

HOW TO CONDUCT INTERVIEWS

“

This module provides guidance to police and prosecutors on how to interview victims/survivors and suspects. It discusses interview techniques and international best practices for interacting with victims/survivors, including child victims/survivors.

”

Interviewing is one of the main tools of case investigation. Special care should be taken to properly interview in order to obtain the necessary information and not traumatize the victim/survivor any further.

Methods of Conducting an Interview

When conducting interviews, use open-ended questions and closed-ended questions.

- Open-ended questions **allow the investigator to find out more than anticipated because these questions allow** for an unlimited response from the witness in his/her own words. Open-ended responses also tend to be more accurate and promote more effective listening on the part of the investigator. The investigator also is less likely to lead the witness when framing questions in this manner.
- Closed-ended questions require specific responses and therefore, do not indulge the interviewee to say more than what has been asked. They limit the interviewee's answers to only the question.

Table 6.1: Examples of Open-Ended and Closed-Ended Questions

Open-ended questions	Closed-ended questions
Tell me in your own words what happened.	Does he always do this?
What can you tell me about the accused?	Had you met him/her before?
What was he wearing?	Did the accused have a beard?
What are some of the things he said to you during the incident?	Did he rape you?

Interviewing the Victim/Survivor

Checklist for conducting an interview with the victim /survivor:

- *The officer must ensure that the victim is comfortable and if he/she would like someone else present.*
- *The interview must be carried out in a private room to ensure confidentiality and minimize distractions.*
- *Ask open ended questions that allow the victim to keep talking during the interview and make the victim feel in charge.*
- *Avoid leading questions such as “was he drunk?”*
- *Avoid interruptions while the victim is talking.*
- *Allow for pauses after the victim stops speaking and before continuing to the next question. These periods of silence allow the witness to collect his/her thoughts and continue responding.*
- *The interviewer’s questions should be tailored to the victim’s current thoughts.*
- *Thank the victim and inform them of the services available. Get them in touch with the relevant service providers and remind them of how committed you are that justice should be served.*

When taking a victim’s statement, investigators should ask whether any witness was present before, during, or after the offence. Listen to the victim’s account of what happened then take a written statement about the incident. After the statement is written, it should be read over to the victim so that he/she confirms that it represents the facts as he/she stated. The victim should then sign the statement or fingerprint it.

Investigators have to be careful when dealing with victims to avoid re-victimization.

Table 6.2: Do’s and Don’ts: Interviewing Victims/Survivors.

Do	Don’t
<ul style="list-style-type: none"> ✓ Show belief to the victim/survivor ✓ Maintain boundaries by not touching the victim ✓ Be consistent and reliable by observing appointments and timely updates to the victim on the progress of the case ✓ Provide information on referral mechanisms that can be of help to the victim and where possible have an officer escort the victim 	<ul style="list-style-type: none"> ✗ Blame or judge the victim in any way ✗ Ask questions that show your disbelief in what the victim is saying ✗ Ask the victim about their previous sexual behavior prior to violation ✗ Require victim to unnecessarily repeat his/her story

Interviewing a Witness

The police/investigator will interview witnesses who were present before, during, or after the offense. Before conducting an interview of a witness, the following must be observed by the investigator:

Conditions relevant to the success of an interview process include:

- *Switch off mobile phones to avoid any interruptions*
- *Have materials for recording the statement ready in the interview room*
- *Make sure the interview room is clean and tidy*
- *Provide refreshments such as a bottle of water when necessary*
- *Conduct interview in a quiet and confidential environment*
- *Allow for a lawyer to be present at the time of the interview*
- *Ensure special procedures are used when dealing with minors and children*

Witnesses to SGBV crimes may include relatives and family members, neighbors and other people from the community and any other person who can provide relevant information (i.e. someone who witnessed the incident visually or heard screams, a struggle, saw the victim soon after, or to whom the victim reported the matter soon after).

When interviewing a witness of SGBV crimes, ask questions such as: Who? What? Why? Where? When? How? Explain to me? Describe to me? Who were you with? What happened? Where were you? When did it happen? How did it happen?

Interviewing a Child

Children in South Sudan are protected under the Transitional Constitution and the Child Act. The Child Act provides as follows:

- a. Section 6: That in all cases involving a child, the best interests of a child shall be paramount.
- b. Section 9: Discrimination against children is a punishable offense.
- c. Section 7: Provides for a child's right to participate and be heard in judicial matters that concern him or her, and for the child's welfare. Section 7 also emphasizes that matters relating to children should be expedited.

Children are the most vulnerable to SGBV because of their level of dependence on adults, limited power in the community and little - no life experience. Children tend not to disclose the abuse out of fear or intimidation from the perpetrator or because they have been convinced that the actions against them are not wrong. While interviewing a child, make sure that a social worker or someone the child is comfortable with is present in the interview room.



Illustration IV: Interviewing a Child Victim/Survivor of SGBV

Interviewing and questioning of a child shall be done in a way that does not traumatize or frighten the child. The following aspects should be observed while interviewing a child:

- Be sensitive, taking into consideration the needs of the child and their level of maturity. Have an adult (either the parent or a well trusted close family member) to accompany the child, in order for the child to feel more at ease and confident to share the relevant information.
- Listen to the views of the child. Use language that is appropriate to the age and development stage of the child. The older and more mature the child is, the greater value should be given to their opinion.
- Ensure privacy. All measures should be taken to avoid that the child’s details are NOT given to the public or the media. Details on the child shall be given to service providers on a “need to know” basis, and only after receiving the consent of the child’s parent or guardian.
- Ensure the physical safety of the child during and after the interview process.
- Talk to the child in a quiet and safe environment where he/she can be encouraged to talk about what happened to him or her. Be calm and patient. Give the child positive affirming messages, such as “it is okay to feel scared” or “you are very brave.”
- Tell the child that he or she can say “no” if he or she does not want somebody to be present in the room to listen to his or her story.
- Adopt child-sensitive procedures during investigations and prosecution. Use dedicated rooms to interview the child, schedule interviews/hearings at times of the day which are appropriate to the age of the child, limit the number of interviews. Interview the child out of sight of the perpetrator, questioning the child with patience and sensitivity.
- Protect the child by stopping any activity that is upsetting him or her.
- Keep the child informed of the next phases and the process that is going to take place.

Table 6.3: Do’s and Don’ts: Interviewing Child Victims/Survivors

Do	Don’t
✓ Be calm and patient	✗ Act in any way that might embarrass the child
✓ Use language the child can easily understand	✗ Force the child to talk to you
✓ Stop any activity that upsets the child during the interview	✗ Touch or hold the child
✓ Spend enough time with the child to allow them to explain what happened at their pace	✗ Use an intimidating or threatening ton
✓ Remind the child that he/she can decide who gets to leave or stay in the interview room	✗ Conduct an interview in a noisy or crowded place
✓ Ensure the interview environment is safe and quiet	
✓ Ensure that the child is comfortable	
✓ Inform the child of the next phases to come	

Interviewing the Suspect

Police/Investigators will conduct an interview and take the statement of the accused only if the accused consents. The statement must be voluntary otherwise it will not be admissible in court.

Table 6.4: Do's and Don'ts: Interviewing a Suspect

Do	Don't
<ul style="list-style-type: none"> ✓ Let the suspect freely give his or her side of the story and note any inconsistent information ✓ Use a question and answer approach ✓ Ask specific questions to clarify inconsistent information ✓ Read the suspect's statement back to him or her after it has been written. This should be done in a language that he or she understands. The suspect should confirm that the statement is a true reflection of what he or she said before signing it. ✓ Make sure the suspect signs the statement! 	<ul style="list-style-type: none"> ✗ Make accusatory statements (the suspect has a right to be presumed innocent until proven guilty) ✗ Intimidate, impose or force the suspect to confess (forced confessions are not admissible in court)

When a suspect confesses to the offence, apply section 61 of the Code of Criminal Procedure:

1. If any person, in the course of an investigation but before the commencement of any trial, confesses to the commission of an offence in connection with the subject matter of the investigation, he or she shall be taken before a Magistrate, in order that his or her statement is recorded by such Magistrate in the case diary.
2. When a Magistrate records such confession in a case diary in the presence of the person making the same and after reading over to him or her record the Magistrate shall sign the same.
3. No confession will be recorded unless the Magistrate, after questioning the person making it, is satisfied that it is made voluntarily.
4. No oath is to be administered to the person making the confession. The record of such confession in the case diary shall be admissible as evidence against the person who made the confession.¹

Handling Victims/Survivors of Trauma

A victim's or survivor's emotional reactions immediately after the violence can be very strong (i.e. crying and sobbing, hysterical laughing, anxiety, fear or can be calm and controlled numbness, alienation) depending on the age, personality of the victim and circumstances of the abuse. However, it is crucial to be able to recognize possible emotional reactions of an SGBV victim and be able to provide him or her with the necessary support.

Extra care should be taken when dealing with victims/survivors to avoid any risk of causing further trauma to them. Police officers, medical practitioners or social workers should endeavor to look out for possible indicators of trauma.

¹ Code of Criminal Procedure, Section 61.

Preparing the Witness to Testify

Testifying in a criminal case is a very serious responsibility for anyone in the position to do so. Whether that person is a witness for the prosecution or for the defense, his or her statements make a very significant impact on the outcome of the case.

Proper procedures must be followed when it comes to identifying, preparing and questioning witnesses. For example, in cases involving sexual assault allegations, there may be concerns about witness coaching that call the legitimacy of a witness' statements into question.

Witness preparation is important because it helps witnesses understand the importance of truthful statements and what to expect from the other lawyers and the judge. Preparation can also involve the discussion of possible cross-examination questions and documents that may be introduced. Witness coaching, on the other hand, is unethical. Improper coaching can involve things like encouraging a witness to make a false statement, misrepresent statistical evidence or leave out critical details.

Witnesses must be notified as soon as a trial date is set, and appointments must be made to prepare their testimony. To make the most of the time, prosecutors must prepare direct examination questions before this meeting and identify any additional information needed from the witness. Practice the whole testimony with the witness at least once, and several times if possible.

Witness preparation is allowed to guide the witness on how to behave in court. Also, where the case is delayed for a considerable period, the prosecutor should prepare the witness again before he/she takes the witness stand.

The International Criminal Tribunal for Rwanda has laid out some best practices for the preparation of SGBV witnesses, such as:

- Flexibility is critical when preparing witnesses for trial, particularly victims of sexual violence. Each victim is unique and has different needs, aspirations, and fears depending on their personal circumstances.
- Establish a cooperative relationship with the witness so that the evidence can be presented in a coherent manner.
- Explain the trial process, including how their evidence will be presented. Although witnesses should already have been given some of this information during the investigation phase, it is important that prosecution counsel prepare witnesses by helping them understand the trial process and what will be expected of them when they appear in court.
- Review the procedural matters with witnesses before they testify. For example, where the courtroom is, where they will be seated in the courtroom, when they will testify, and approximately how long they will be on the witness stand.
- Explain that the witness should always tell the truth, listen carefully to questions and answer what is being asked, ask for clarification if a question is unclear, speak up if they genuinely do not know what is being asked and have no answer, remain calm when being questioned even if questions are aggressive.
- Use a process called “proofing the witness” if permissible in your jurisdiction, whereby the prosecutor reviews the witness’s anticipated testimony and likely lines of cross-examination.
- If the prosecutor intends to use exhibits, such as photographs, maps, or other documents during a witness’s testimony, the prosecutor should show these exhibits to the witness beforehand so that the witness can review them and understand how they will be used during the testimony.

- Witnesses should be prepared for other potentially disturbing aspects of appearing in court. The prosecutor, for instance, should remind witnesses that they will likely have to face the accused and may be asked to identify the accused in open court.
- Consequences (such as witnesses being ostracized or stigmatized by family and community members) should be discussed with witnesses so they can make an informed decision before agreeing to testify.
- Witnesses should be given an opportunity to express their concerns, questions, and expectations about testifying. These concerns and expectations should be addressed from the outset in a clear and consistent manner that accurately conveys what can be done and what is not possible.
- Prosecutors should never make promises to witnesses that they are unable to fulfill or in an effort to influence the content of their testimony.²

Table 6:5: Challenges and Recommendations Related to Interviewing SGBV Victims/Survivors

Challenge	Recommendation
Myths and beliefs that SGBV matters must be dealt in a customary court or by the family itself creates low sensitivity for victims/survivors	Increased sensitivity trainings for police officers dealing with SGBV survivors. Conduct awareness campaigns for the public.
Police officers dealing with SGBV lack the necessary skills to conduct interviews that are effective and answer responsive	Capacity building and empowerment of law enforcement officials by training them on interviewing skills
Lack of guidelines on how to properly interview SGBV victims	Draft brief guidelines that can be used as points of reference by law enforcement officials dealing with SGBV crimes

Exercise

Role plays involving a child victim.

1. How does one interview a child victim/survivor of SGBV?

Divide the trainees into 6 groups and give each group a scenario where a child is a victim of SGBV.

² ICTR's Best Practice Manual on Pg. 50 provides for preparation of sexual violence witnesses for court.

MODULE SEVEN

PROSECUTION AND TRIAL PREPARATION

“

This module introduces the participants to the elements of preparation for successful prosecution of a case. Such preparation includes the preferring of proper charges against the accused person by preparing a proper charge sheet; and adequately preparing the witnesses and presenting the case professionally. This module also provides an understanding of the various laws that might be applied in SGBV cases and how they overlap so that prosecutors can make the most informed choices when determining the charge. The module will acquaint prosecutors with the potential types of experts they might need in a case and the necessary documentation. In addition, it will introduce them to the proper method of case file compilation.

”

What is Prosecution?

Prosecution means conducting legal proceedings against someone in respect of a criminal charge. Prosecutors play a central role in contributing to fair and equitable criminal justice and the effective protection of citizens against crime. They have a responsibility to help ensure respect for the principles of justice and fairness and the rights outlined in the Transitional Constitution.

The Code of Criminal Procedure Act states that offences under the Penal Code Act must be investigated, charged and submitted to trial in accordance with its rules and procedures so that all crimes are adjudicated by the statutory legal system.¹ In South Sudan, most of the cases investigated and prosecuted relate to violence.²

The last case statistics report by the Ministry of Justice in 2014 showed that there are more cases under trial (2,410) as compared to those under investigation (1,637). The report states that cases of rape (5%) remain the lowest on record with a completion rate of 13% and 52% of such cases undergoing trial, respectively.³

¹ See Code of Criminal Procedure, Section 8.

² Republic of South Sudan, Ministry of Justice, Case Management Statistics, January-December 2014.

³ Ibid.

The prosecutor must observe the rights of the accused as provided for under the Transitional Constitution. Such rights include the right to be treated equally before the law (Article 14);⁴ the right to be presumed innocent (Article 19(1));⁵ and the right to a fair hearing (Article 19(3)).⁶

The prosecutor's role is to obtain a conviction and ensure that justice is done by presenting all evidence to assist the court in arriving at a conviction. Successful prosecution of a case depends on good preparation which includes preferring proper charges against the accused, adequate preparation of the witnesses/victim, and presenting the case based on law and facts.

Making the Decision to Prosecute

Prosecutors must decide whether there is sufficient evidence to support the prosecution of a criminal case. In cases involving allegations of sexual assault, abuse or exploitation where the stakes are high for the victim, the accused and the community, prosecutors must act in a timely fashion and take every step necessary to access all legally available information and evidence to evaluate a case.

As a general rule, the decision whether to prosecute the case or not must **not be** influenced by:

- The position/influence that the suspect has in the community.
- Pressures from the suspect, his family or other members of the community to compromise the case.
- The will of the victim. Once the case is reported to the Police, the decision to prosecute or not, is left with the competent authorities.

It should be noted that if prosecution is likely to cause the victim harm or societal prejudice, victim protection **MUST** be provided otherwise other forms of dispute resolution should be employed.

Section 57 of the Code of the Criminal Procedure Act provides for the powers of the Public Prosecuting Attorney as:

1. The right to supervise the investigation through the officer-in-charge of a police station, and to issue any directives, as may be related to the progress of the criminal case.
2. The officer-in-charge of a police station shall notify the prosecutor of the progress of the investigation and shall submit the case diary to him or her for such directives as may be issued with respect to the investigation.
3. The right to require, at any time during the investigation, the case diary to be placed before him or her, and issue any directives.

The prosecutor should exercise his discretion to make a decision pertaining to the case before him as per section 36 (1) of the Code of Criminal Procedure Act, which stipulates that the prosecutor may decide to prosecute the matter, refuse to initiate criminal proceedings or dismiss the case and this decision is subject to appeal by a victim or survivor under sections 36(2) and (3).

The prosecutor must analyze all police reports, statements of victims, witnesses and suspects, review the physical evidence and analysis of that evidence, and meet with the victim and witnesses. After thoroughly reviewing the facts of the case, the available evidence and the

⁴ Article 14 of the Transitional Constitution for South Sudan provides that all persons are equal before the law and are entitled to the equal protection of the law without discrimination as to race, ethnic origin, colour, sex, language, religious creed, political opinion, birth, locality or social status.

⁵ Article 19(1) of the Transitional Constitution of South Sudan provides that an accused person is presumed to be innocent until his or her guilt is proved according to the law.

⁶ Article 19(3) of the TCSS provides that in all civil and criminal proceedings, every person shall be entitled to a fair and public hearing by a competent court of law in accordance with procedures prescribed by law.

applicable law, the prosecutor will compare the evidence with the elements of the crime and determine whether or not the evidence is sufficient to proceed with prosecution. For instance, in the case of rape, the elements of the offence have been highlighted in the case of *Trial of Accused: Charles Amin Zambia*, Cr. App/39/2014 Court of Appeal, CE. Circ. Court as follows:

"A man is said to commit rape who-has sexual intercourse with a woman 'girl' under circumstances falling under any of the following descriptions:-

1. Against her will.
2. Without her consent.
3. With her consent, when her consent has been obtained by putting her or any person in whom she is interested in fear of death or of hurt.
4. With her consent, when the man knows that he is not her husband, and that her consent is given because she believes that he is another man to whom she is or believes herself to be lawfully married.
5. With her consent, when, at the time of giving such consent, by reason of unsoundness of mind or intoxication or the administration by him personally or through another of any stupefying or unwholesome substance, she is unable to understand the nature and consequences of that to which she gives consent* See: Ratanlal and Dherajal, The Indian Penal Code, 32 edition updated 2013, LexisNexis, at page 2071.
6. With or without her consent, when she is below 18 years of age. In the light of the above reasons, it is clear that the applicant has committed rape with the consent of the victim girl while she was 15 years, that is to say, below 18 years based on the ground that a consent given by a girl below 18 years of age is deemed not to be a consent under section 247 (2) of The Penal Code Act, 2008. "

The primary criterion in making the decision to prosecute is the sufficiency of evidence. Prosecution should not be commenced in the absence of a reasonable chance of a conviction. In other words there should be a reasonable likelihood of success.

The Process of Prosecution

Section 224 of the Criminal Code of Procedure provides the sequence of trial as follows:

- a. verifying the basic evidence about the accused, the witnesses and the subject of the case;
- b. hearing the prosecution opening speech, statements of the inquirer and the complainant, if any, and discussion of the same;
- c. reply of the accused to the prosecution;
- d. evidence of the prosecution, and discussion of the same;
- e. examination of the accused;
- f. framing of the charge, by drafting the charge sheet, where the Court deems it appropriate;
- g. addressing the accused, with the charge, and his or her reply thereto;
- h. hearing the evidence of the defence;
- i. any procedure in evidence, as the Court may allow;
- j. admission of final pleadings, if any, for the proprietor or private right, the prosecution and then the defence;
- k. delivery of the decision of conviction or acquittal;
- l. hearing reasons of mitigation or aggravation of penalty;
- m. the final orders in judgment.

The role of the prosecutor is to ensure that justice is done pursuant to the laws of South Sudan

and in accordance with ethical standards. In carrying out prosecutorial work, the prosecutor must always remember that both the victim and the accused persons have rights, and they are to safeguard both. Success in the prosecution of an SGBV case depends on good preparation on the part of the prosecutor and witness. By holding offenders accountable through the prosecution of criminal cases, the prosecutor provides for the safety of the community and survivor.

Preparing a Charge Sheet

In South Sudan, a charge sheet is prepared after the case against the accused has been confirmed by the judge. The charge sheet stipulates the crime and should identify all elements of the offence. A charge sheet should contain a statement of the offence, particulars of the offence and a signature of the officer authorized to prosecute.

Under Chapter XVII of the Code of Criminal Procedure, in order for a charge sheet to be filed and recorded, the magistrate must ascertain that the elements and conditions required by law are satisfied. Framing of a charge is equal to making a statement and requires that the offence charged fulfills every legal condition required by law:

Section 233 provides for the charge to state the offence and particulars on a charge sheet. Particulars of a charge Sheet as per Chapter XVII of the Code of Criminal Procedure include:

- state the offence with which the accused is charged;
 - > if the law which creates the offence gives it any specific name, the offence may be described in the charge by that name only;
 - > if the law which creates the offence, does not give it any specific name, so much of the definition of the offence must be stated as to give the accused notice of the offence with which he or she is charged and;
- The law and section of the law against which the offence is said to have been committed shall be mentioned in the charge;
- The charge shall be written in English or when necessary in any other language prevalent in the area;
- The charge shall contain such particulars as to the time and place of the alleged offence and the person (if any) against whom, or the thing (if any) in respect of which the offence was committed, as are reasonably sufficient to give the accused notice of the offence with which he or she is charged.

Section 234 provides for particulars as to time, place of the alleged offence and person (If any) against whom the offence was committed. This is vital because it gives the accused notice of the offence with which he/she is charged.

Section 235 provides for when the manner of committing the offence must be stated.

Section 236 provides for the effect of errors on the charge sheet.

Section 237 gives court power to frame, alter or add to a charge.

Bail

Upon the first appearance of the accused in court, the court will determine whether he or she will be released on bail or remanded in custody. The court may, according to law, permit the accused to post bail or a bond guaranteeing that the accused, if released from custody, will appear in court when required, submit to the orders and processes of the court and not flee the country.⁷

⁷ Liberia, Ministry of Justice, SGBV Prosecution Handbook. Available at https://www.cartercenter.org/resources/pdfs/peace/conflict_resolution/liberia/sgbv-prosecutionhandbook-v1.pdf (accessed 12 May 2018) (hereinafter "SGBV Prosecution Handbook of Liberia").

An accused can post bail by turning over an amount of money set as bail by the judge to the court to be held while his or her case is pending to guarantee that s/he will appear in court.

Bail is defined under Section 5 (Code of Criminal Procedure Act 2008) as the money or sureties provided by the accused to guarantee that he or she shall appear in Court at a later date or on call.

In terms of Section 125 a person arrested for an offence punishable by only a fine, should be released on bail.

In terms of Section 126, where a person is arrested for an offence that is punishable with imprisonment of up to ten years, bail should be granted, unless the court is of the view that the granting of bail will jeopardize the investigations or there is a serious risk of the accused escaping from justice.

Where the offence is punishable with imprisonment exceeding ten years, Section 127(2) provides that bail should ordinarily be granted if the court is satisfied that: a) the investigation of the offence will not be prejudiced nor is there a serious risk that the accused will escape from justice, and b) there are no reasonable reasons for believing that the accused committed the offence, but there are sufficient grounds for further investigations.

In terms of Section 127, a person punishable with an offence punishable by death shall not be released on bail.

Section 124 of the Code of Criminal Procedure 2008 provides that release on bail of an arrested person shall be allowed as follows—

- (a) By the arrested person personally executing a bond to appear, with or without securities or sureties;
- (b) By another person executing a bail, to bring the arrested person, with or without securities; or
- (c) By paying a deposit coupled with bond or bail.
- (D) Upon the fulfillment of the requirement of the bail, an arrested person shall be released from custody.

Protective Measures

Witnesses are key players to a successful judicial process. Their inability to testify because of fear or threat to life is a loss to the justice system, the pursuit of justice for the society as a whole and for the victims of such crimes.⁸

Witnesses testifying in SGBV cases are likely to face serious risks to their security and stability before, during and after giving testimony. They may be confronted with direct threats to themselves or their families and need ongoing psychological support in the aftermath of testifying about the event.

South Sudan has not yet developed effective protective measures for SGBV victims/survivors, due to the fact that displacement affects the cohesion of community structures which are vital to safeguard women, children and other vulnerable groups.⁹ Therefore, it is imperative that members of the Gender Working Groups, such as UNFPA, UNICEF, Nile Hope, Oxfam, Safer World and UNMISS work hand-in-hand with the Government to quickly finalize the development of clear protocols to guarantee safety to SGBV victims and establish safe house.

⁸ See Birgit Gerstenberg, Country Representative, UNHCR Uganda, "Introductory Remarks", Judicial Colloquium on Witness and Victim Protection in Uganda, Gulu, 1 August 2011. Available at <https://www.jlos.go.ug/index.php/document-centre/transitional-justice/witness-protection/-219witness-protection-judicial-colloquium-introductory-speech-by-the-ohchr-rep-birgit-gerstenberg> (accessed 12 May 2018) (hereinafter "Gerstenberg").

⁹ Global Protection Cluster, "Protection Trends South Sudan", No. 4 January-March 2015, May 2015. Available at http://www.globalprotectioncluster.org/assets/files/field_protection_clusters/South_Sudan/files/updates/protection_trends_paper_no_4_jan-mar_2015_en.pdf (accessed 12 May 2018).

Witness protection is important because it protects and promotes human rights for a group of persons who are important for justice delivery, and whose security and well-being should not be compromised at any given time.

The capacity of a country to render justice to the victims and end impunity regarding crimes of past and current human rights abuses comes into question if the justice system is unable to secure convictions because of failures in the production of witness evidence and the participation of victims.

Under the CAT, States have the obligation to adopt specific measures to protect the rights of victims and witnesses.¹⁰ A close review of the key human rights treaties and other key instruments reveal clear references to the rights of victims and witnesses to be protected from threats and reprisals, and to have their dignity respected in the pursuit of justice.

States must make sure that the practice of tying assistance to victims to their cooperation as witnesses in SGBV prosecutions does not undermine the safety and rights of victims.

Protective measures are applied in courts of law under Section 195 of the Code of Criminal Procedure, which provides that the Court shall prevent the putting of irrelevant questions to the witnesses and shall protect them from any language, remarks or gestures likely to intimidate them. The Court shall also prevent the putting of any question of an indecent or offensive nature unless such question bears directly on facts which are material to the proper appreciation of the facts of the case.

Table 7.1: Checklist of Basic Protective Measures to be Taken¹¹

Protective Measure	Responsible Party
Prevent disclosure of the identity or whereabouts of a victim or witness (or persons related to or associated with a victim or witness) to the public or media	<ul style="list-style-type: none"> • Court officials involved with the case at all levels • Prosecutor
Control the manner of questioning to avoid any harassment or intimidation	<ul style="list-style-type: none"> • Court • Prosecutor (through objections)
Take in-court protection measures, including: (a) voice and image distortion (enabling the witness to enter and leave the courtroom during closed session); (b) submitting evidence by alternate means such as a sworn statement or taped testimony; (c) conduct closed proceedings and suppress identities of witnesses in court documents. (Closed proceedings should be mandatory in cases involving children, and any witness whose security is at risk); and (d) maintain separation between the witness and suspect throughout the investigation and trial process	<ul style="list-style-type: none"> • Court
Allow witnesses to take breaks during difficult testimonies (this is considered as an international best practice)	<ul style="list-style-type: none"> • Court
Take measures to protect child victims and witnesses such as removing the child from the custody of the accused and placing them with a trustworthy guardian	<ul style="list-style-type: none"> • Court • Prosecutor • MoGCSW

¹⁰ See CAT, Article 13.

¹¹ See Gerstenberg, *supra* n. 8.

Expert Evidence

Experts are professionals in specific areas of expertise and are duly qualified in their area of specialization. Not all medical personnel can be called to court as an expert witness. For one to qualify as an expert witness, the practitioner must have particular knowledge or skills in the area being examined before court in order to elaborate on the area for the benefit of the court.¹²

Expert evidence is crucial in proving sexual offences and often in explaining the trauma to and behavior of victims of SGBV. An expert witness testifying before court must have his/her testimony corroborated. Therefore, admissibility of an expert's report without corroborating testimony is not admissible.¹³

Table 7:2: Relevant Sections/Laws Regarding Expert Evidence in South Sudan

Law	Provision
Code of Evidence Act (Section 51)	Provides for expert opinion: "When the court has to form an opinion upon a point related to a foreign law, or of science or art, or as to identity or genuineness of handwriting or finger print or other impressions, opinions upon that point are admissible if made by an expert specially skilled in such foreign law, science, art, or in questions as to identity or genuineness of handwriting or finger print or other impressions."
Code of Criminal Procedure Act (Section 213)	Provides for the report of a scientific expert: "Any document purporting to be a report under the hand of any expert in bacteriology, physiology, biology, pathology, chemistry or other branch of scientific knowledge in the civil service of Southern Sudan or other parts of the Sudan, regarding any matter or thing duly submitted by him or her for examination or analysis in the course of any proceedings under this Act, may be used as evidence in any trial or other proceeding under this Act."

The Case Diary

In practice, the accused is not allowed to peruse her/his case diary, since it is not considered evidence, according to Section 56 of the Code of Criminal Procedure, which provides:

1. A case diary shall not be admissible as evidence against any accused person in any magisterial inquiry or trial, except as follows—
 - a. Any Magistrate or Court may in any magisterial inquiry or trial refer to the case diary to aid him or her or it in conducting the investigation or trial;
 - b. any Public Prosecution Attorney, Magistrate or Court may in any magisterial inquiry or trial use any relevant part of the case diary for the purpose of examining any witness whose testimony at the magisterial inquiry or trial is at variance with his or her statement entered in the case diary as to such variance with a view to testing his or her credibility; and
 - c. Any relevant part of the case diary may be used by the officer-in-charge of a police station or investigating policeman who made the same to refresh his or her memory if called as a witness.
2. Except to the extent to which the case diary is used for the purposes set out in subparagraphs (1) (b) and (c) above, the accused or his or her agent shall not be entitled to call for or inspect such case diary or any part thereof.

South Sudanese law does not provide for pretrial motions such as motions for disclosure. The accused or his representatives are not entitled to look at the prosecution's case before the trial,

¹² In Scots Law, *Davie v Magistrates of Edinburgh* (1953) SC 34.

¹³ *Aluong Kaang Gabriel. Sudan Government v NS-6-62(Malakal)-PC* (Juba) where court stated that the written report of a handwriting expert is not a "report ... of any expert in (a) ... branch of scientific knowledge" within the meaning of Code of Criminal Procedure 1925, s. 229. and may not be admitted without calling the handwriting expert as a witness.

nor can they contest the source of that evidence. Although this is seen as protecting the victim and the prosecution's witnesses, it could also undermine the accused's right to a fair trial.

The Trial

Opening Statements

An opening statement involves the prosecutor and the defense attorney summarizing their case before the court. The primary purpose of a prosecution's opening statement is to highlight the legal issues and summarize the facts. Opening statements allow the prosecutor and the defense attorney to briefly tell their account of the events. These statements are usually brief and do not involve witnesses or evidence. Under Section 221(1) (a) of the Code of the Criminal Procedure, the prosecutor makes an opening statement first because the State has the burden of proving that the defendant committed the crime. After this, the defense attorney replies pursuant to Section 221(1) (b) of the Code of Criminal Procedure.

Conditions relevant to the success of an interview process include:

Tips on making an opening statement

- *Physical appearance should show competence, friendliness and trustworthiness*
- *Open with a lively statement*
- *Convey your views and feelings to the judge*
- *If you are allowed to move during your opening statement, give advance thought to your positioning in the courtroom*
- *Be enthusiastic about your message*
- *Your opening statement should not differ from your case argument*
- *Do not overstate your case*
- *Anticipate the defense's case and address any potential weakness in your case that the defense may lay out*

Examination-in-Chief

In this phase, the prosecutor asks questions to their own witnesses in order to begin proving their case. This examination should be done in a logical and organized manner while drawing out evidence proving that a crime as reflected in the charge sheet was committed by the accused. In leading his/her witnesses, the prosecutor must ensure that all the elements of the offense is proved. Therefore, witnesses do not just tell stories. Where a witness does not cover an issue which is relevant to prove the case of the prosecutor, the prosecutor must lead the witness to issue that such issue is covered.

Section 146 of the Code of Evidence Act provides for types of examination of witnesses, summarized below:

- (1) The examination of a witness by the party who calls him or her (examination-in-chief).
- (2) The examination of a witness by the adverse party (cross-examination)
- (3) Examination by the party who called the witness after he or she has been cross-examined (re-examination)

Cross-Examination

After a witness has given his/her examination-in-chief evidence, the opposing side (defense attorney) will put questions to the witness. This is referred to as a cross-examination. The purpose of a cross-examination is to dispute the evidence of the witness and establish that he/she is not telling the truth, challenge his/her credibility and put the opposing side's case to the witness.

Section 151 of the Code of Evidence prohibits leading questions except in the circumstances provided below:

- (1) Leading questions must not, if objected to by the adverse party, be asked in an examination-in-chief or in a reexamination, except with the permission of the court.
- (1) The court shall permit leading questions if the matter is introductory or undisputed, or which has, in the court's opinion, already been sufficiently proved

The conduct and scope of cross-examination merits particular attention. While the defense unquestionably has a right to cross-examine witnesses, care should be taken to ensure that the questioning of sexual violence victims is not unnecessarily repetitive or harassing.¹⁴ If the area of questioning under cross-examination has already been adequately covered, prosecution counsel should object and judges should impose reasonable restrictions on the scope of cross-examination.

Prosecution counsel must be alert for improper or overly aggressive lines of cross-examination. Counsel should object, for instance, to any misstatements or attempts to mislead the witness as to their prior testimony or statements. Matters that intrude too far into the witness's privacy (including prior sexual history) should be challenged.¹⁵

Re-Examination

Under this phase, the prosecution's witness is given an opportunity to clarify matters raised during the cross-examination done by the defense attorney and is, therefore, limited only to those matters that were raised during cross-examination.

Section 147 of the Code of Evidence provides for order and direction of examinations, stating: "Witnesses shall first be examined-in-chief, then, if the adverse party so desires, cross-examined, then, if the party calling them so desires, re-examined."

Re-examination must be restricted to matters that were covered during the cross-examination and may not stray beyond this boundary. The purpose of re-examination is to enable the witness to explain and clarify relevant testimony which may have been weakened or obscured in cross-examination.¹⁶

The role of the judge during re-examination is to intervene as and when needed (e.g. if the questions being asked are beyond the scope of cross-examination). The judge also has the power to allow or disallow certain questions being raised during the process of a trial and should exercise this power where necessary.

Objections

An advocate may raise an objection to prevent the court from hearing or seeing unfair evidence presented by the opposing party. Objections are made when one wants a question or certain evidence to be disallowed from trial proceedings. Objections must be based on a legal point. They are generally made on specific grounds according to specific rules of procedure.

¹⁴ ICTR Best Practices Manual.

¹⁵ Ibid.

¹⁶ J. Sopinka, S.N. Lederman & A.W. Bryant, *The Law of Evidence in Canada* (Toronto: Butterworths, 1992), p. 879.

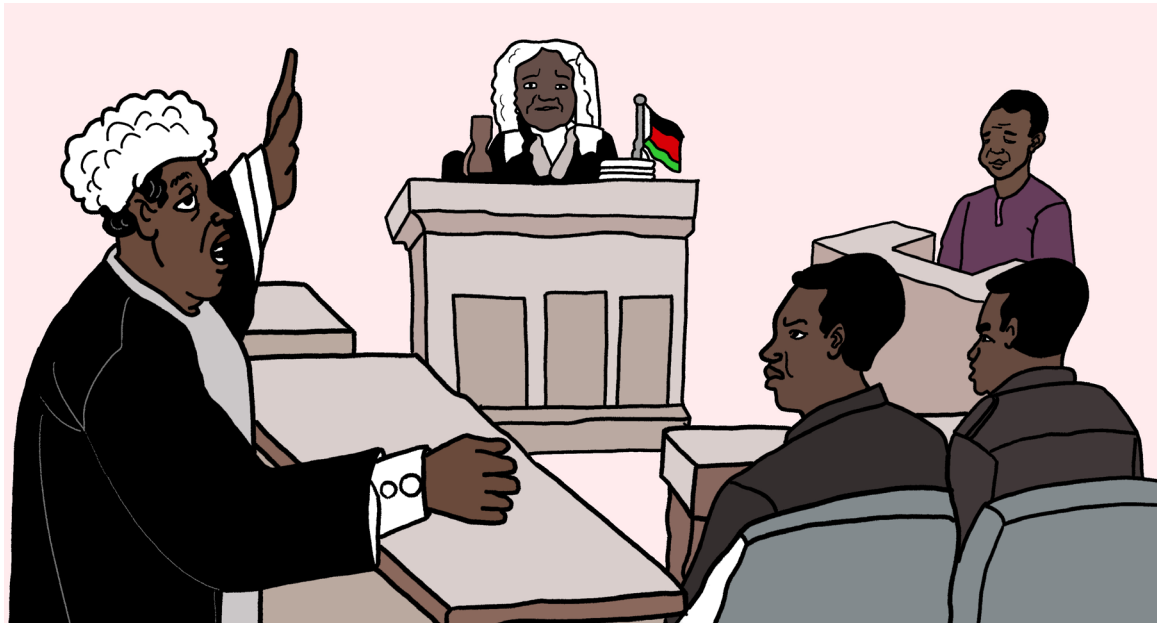


Illustration V: An objection is raised in court

Generally, prosecutors should object to prevent irrelevant and prejudicial information from being introduced in court. Evidence and questions offered to prove that a victim engaged in other sexual conduct, has a certain sexual predisposition, or opinion evidence regarding the victim's character must be objected to.

Arguments to **exclude** evidence include:

- The information is irrelevant;
- The evidence has no probative value;
- The evidence has no bearing on the victim's credibility or on any other material issue;
- The evidence is unduly inflammatory;
- The danger of harm or prejudice to the victim or other witnesses outweighs the evidence's probative value;
- The exclusion of the evidence does not violate the accused's due process right to a fair trial; and
- The evidence is inadmissible under the Transitional Constitution or a statute.

Table 7:3: Types of Objections

Objections	Subject matter
Misleading	The question being objected to is misleading, confusing, vague, ambiguous and not clear
Argumentative	A lawyer is not permitted to repetitively ask the same question of the witness or directly dispute what the witness is saying
Asked and answered	Once a question has been asked and answered, it is generally not allowed for that question to be asked again
Speculation	A speculative question or evidence is normally disallowed from trial on grounds that it is not based on fact (i.e. when a witness is asked to give an answer on something to which they have no immediate or factual response)
Hearsay	The evidence being given is second hand

Objections	Subject matter
Inflammatory	A question directed to the witness that is meant to produce a response and is disallowed on grounds that it is manipulative and irrelevant
Leading questions	Questions meant to suggest an answer. Section 150 of the Code of Evidence Act defines a leading question as: "any question suggesting the answer which the person putting it wishes or expects to receive or suggesting a disputed fact as to which the witness is to testify."
Privilege	The witness does not have to give testimony in certain areas if that witness holds information that is considered confidential or privileged. For example, a doctor may not give answers to questions on grounds of doctor-patient confidentiality
Questions of prior sexual conduct in SGBV cases	Details of a person's sexual life lay close to the heart of privacy considerations. Without this privilege, victims will be hesitant to come forward and press charges, or guilty defendants will get off because they succeed in playing to the judge's prejudices by putting the victim on trial. In either case, dangerous criminals will not be brought to justice, which endangers society

Final Submissions and Closing

Closing argument is the prosecutor's final opportunity to persuade the judge that the facts prove the defendant's guilt. It is an opportunity to argue inferences from the evidence in an effort to persuade the judge. A closing argument is defined as the final address by the attorney for each side of a case in which the attorney usually summarizes the evidence and his/her client's position. In final submissions, the prosecutor goes first and sums up his/her case before the judge, pointing out how the offence has been proven with the evidence that has been presented to the court. Thereafter, the defense attorney sums up their defense with a view to discrediting the prosecutor's case and emphasizing that the elements of the offence have not been proven to the standard required by law.

One of the most important restrictions on prosecutors is against shifting the burden of proof or implying that the defense should put evidence to prove that the accused is innocent

An effective closing argument ties together all the pieces of a trial and tells a compelling story. Generally, a closing argument should include the following:

- A summary of evidence
- Any reasonable inferences that can be drawn from the evidence
- Respond to defense's argument and rebut them with your own argument
- A summary of the law for the judge and its application to the facts
- A plea to the court to take a specific action such as convicting the accused

Closing statements usually occur at the end of the trial.

Judgment

After hearing the closing statements, the court will consider the evidence and deliver a judgment. A judgment may result on a conviction or acquittal. A conviction is a formal declaration that the accused is guilty of a criminal offense, made by the decision of a judge in a court of law. A conviction ensues where the courts that the prosecution has proved its case against the accused beyond reasonable doubt.

In the case of *Accused: Dudu Hassan Khamis*, No. SC/CR.REV/9/2008, Supreme Court Southern Sudan, the following elements of a judgment were noted:

- i) Accurate narrative of the salient facts believed by the Court.
- ii) Points or issues for determination.
- iii) The decision of the judge or the court on each point or issue for determination.
- iv) The decision of statement of the reasons which support the decision on each point. This is where the judge or court is expected to discuss and evaluate the evidence on records; discuss and apply the relevant law or the general legal principles or the judicial precedents.
- v) The judgment shall be signed and dated. This means that at the foot or the bottom of the judgment, the judge shall not only append his/her signature, but he or she must write his or her full name."

Sentencing

While sentencing is a decision for the court, prosecutors generally have a duty to assist the court in reaching its decision as to the appropriate sentence. Before sentencing, mitigating circumstances may be brought to the attention of the court to procure a lesser sentence.

South Sudanese courts have no sentencing guidelines. Therefore, the court will consider aggravating and mitigating factors in SGBV cases. Sentencing recommendations should be based on the accused's sexual criminal history (more specifically, his success/failure on probation, prior periods of incarceration and any history of domestic violence). Sentencing recommendations must also take into consideration the severity of the incident, the safety needs of the victim, his or her family, and the community at large.

In situations where prosecutors can make recommendations regarding the appropriate sentence, they should ensure that sentences are commensurate with the gravity of the crimes committed. Prosecutors should supply the court with relevant authorities or precedent cases on sentencing, if any.

Under section 231(2) of the Code of Criminal Procedure Act, if the accused has not previously called any character witness, before announcing his or her findings, the magistrate will call upon him or her to produce such witnesses if he or she so desires and he or she wishes to make a statement in mitigation of punishment. If records of the accused's previous convictions (if any) have not already been put into evidence, they should be produced at this stage and if necessary, proven by the police.

Relevant Sections on judgment and sentencing as per the Code of Criminal Procedure (Chapter XVIII):

- *Section 248 – language and mode of delivering Judgment*
- *Section 249 – contents of Judgment*
- *Section 250 – providing for combination of sentences*
- *Section 251 – reason for not passing death sentence to be stated*
- *Section 252 – provides for cases in which death sentence shall not be passed against an accomplice*
- *Section 253 – provides for the sentence of imprisonment*

Appeal

Criminal cases may be appealed to a higher court even after a guilty verdict has been reached and the accused has been sentenced.

Prosecutors should explain to the victims the perpetrators’ post-conviction rights, including the availability of appeals. Where the perpetrator appeals the conviction, it is important to notify the victim of the appeal and any other post-conviction matters. Victims, who may initially have felt a sense of closure upon the conviction and sentencing of the perpetrator, can become unnerved when an appeal is filed. Prosecutors should meet with the victim to discuss the legal issues on appeal. If practical and possible, the prosecutor who conducted the actual prosecution of the case should remain involved in the appeal, either as part of the appellant team or as a focal point or a go-between for the appellant team and victim.

Section 254 of the Code of the Criminal Procedure Act stipulates that “When a judgment of conviction is one from which may be appealed against, the presiding Magistrate shall inform the convicted person that he or she has a right to appeal and of the period within which if he or she desires to appeal, his or her petition is to be presented.”

Section 259 of the Code of the Criminal Procedure provides for the right of a convicted person to present petition of appeal: “(1) Whenever a judgment of conviction subject to confirmation under section 258 of this Act, the convicted person, may submit to the Supreme Court by way of petition of appeal, a statement in writing of his or her reasons, why such judgment should be reversed.”

There are several challenges associated with prosecuting and trying SGBV cases in South Sudan. The table below addresses these challenges and makes recommendations on how best to tackle them.

Table 7:4: Challenges/Gaps and Recommendations on Trial Preparation and Presentation

Challenges/Gaps	Recommendation	Relevant actor
Shortage of staff with specialized knowledge to try and prepare for GBV cases	- Train additional law enforcement officers to deal with and prosecute GBV crimes	<ul style="list-style-type: none"> • MoJCA • MoGCSW • Gender and GBV Protection Cluster
Trial adjournments caused by unavailability of witnesses	<ul style="list-style-type: none"> - Ensure adequate protective measures for the safety of GBV victims/survivors. This will help to ensure their availability for trial - Prepare witnesses psychologically ahead of the hearing and enlighten them on the value and weight of their evidence to help not only them, but also a wider section of the community and population - Sensitize the witnesses on the entire process and why they should appear in court 	<ul style="list-style-type: none"> • MoGCSW • MoJCA (incl. DPP) • NGOs/CSOs • Development Partners
No specific provision/law on filing pre-trial motions such as Motion to Disclose, Motion to Dismiss, ¹⁷ or Motion to Change Venue ¹⁸	- Draft and adopt a law to caters to pre-trial motions that can be filed by a prosecutor or defense lawyer	<ul style="list-style-type: none"> • MoJCA • Parliament

¹⁷ An application to the judge to dismiss a charge or the case. This may be done if there is not enough evidence or if the alleged facts do not amount to a crime.

¹⁸ This application may be made for various reasons including unfavourable pre-trial publicity. If the local news has covered the case a great deal, it may be necessary to move the trial to another venue to protect the victims/survivor’s right to privacy.

Challenges/Gaps	Recommendation	Relevant actor
Prosecutions for serious crimes are hindered by a climate of intimidation and insecurity for law enforcers ¹⁹	- Design and implement a plan on establishing and enforcing principles of independence in prosecuting GBV cases against high profile persons	<ul style="list-style-type: none"> • MoJCA (incl. DPP) • CSOs

Exercise

1: Prepare a charge sheet based on the interview conducted between the police officer and the SGBV victim/survivor in Module 5.

2: Role play for prosecutors for the purpose of learning how to examine -in- chief, cross-examine, re-examine as well as making objections in court.

Scenario: Sarah was going to fetch water at 7pm. Her neighbor's husband, Jack, who is a local leader in the village, also picked up jerry cans and followed her. When they were far from the neighborhood, he forced her to have sex with him. He threatened to kill her and harm her children if she reported the matter to anyone. Sarah was terrified but reported the matter to the police and the case is presently before a judge. Sarah is in court testifying about the case against the accused Jack.

Role Play: Members should be grouped in 6 categories to role play as Public Prosecuting Attorney and the Accused's Defence Attorney.

Key aspects to be noted include;

- Opening statements
- Relevant evidence to be presented by the state
- Anticipation of possible defences
- Examination -in- chief, issues for cross-examination and where necessary re-examination
- Objections to be made during examination in chief

Comments/Discussion Points for the Above Case Scenario

- Opening statements; your first sentence can make all the difference in a case for example; "Sarah, the victim was on her way to fetch water when she felt someone jump her from behind. She didn't have time to run or move before the accused pinned her to the ground. She feared for her life..."

During this time, the prosecutor must be objective and state only facts. Some key phrases will help one remain objective such as:

"The evidence will show that..." "This testimony corroborates this evidence..."

"X will also testify, and you will hear that..."

"You will see the medical report, which will show that..."

- Prepare the testimony carefully. You may wish to write out all of the questions. At the very least, you should have a clear outline for each witness of the topics that you want to cover. Organize these topics in a logical order.

¹⁹ Human Rights Watch, *Ending the Era of Injustice: Advancing Prosecutions for Serious Crimes Committed in South Sudan's New War*, 11 December 2014. Available at <http://www.refworld.org/docid/548fe8d74.html> (accessed 12 May 2018).

For example, the testimony of a victim might be organized as follows:

1. Introduce the witness and his or her personal background
2. Description of the location/scene of the sexual offense
3. What occurred just before the incident
4. How the offense actually took place
5. What happened immediately after
6. The evidence must be presented relating to initial treatment and continued treatment obtained at a health Clinic
7. The evidence must cover the elements of the offence
8. Present physical limitations, if any

- Examination -in- chief questions; ask short, not leading questions. For instance -

Ask: "Please describe what the offender looked like."

NOT: "Was he tall and around 20 years old?"

Ask: "What happened as you were on your way to fetch water?"

NOT: "Did he find you on your way to fetch water?"

- Have the witness explain any answers that may not be clear. Use follow up questions, such as, "what do you mean when you say ..."
- Objections that may be made by the defense during direct examination of victim/survivor include:
 - > Witness's answer violates the rules of evidence
 - > The question is leading the witness or asking for a narrative answer
 - > The question's relevance is not clear

In a case of sexual assault or abuse, the defense may try to portray the victim as a promiscuous woman or a woman with loose morals. This is character evidence that does not relate to honesty and, therefore, is inadmissible.

The defense's strategy during the direct examination is to:

1. **Listen intently.**
2. **Take notes.** Listen to any inconsistencies in the witness's statements to raise on cross-examination or in closing argument.
3. **Make objections.** Review the previous section on evidence for advice on whether to object, how to object, and on what grounds to object.

The prosecutor has an opportunity to cross-examine defense witnesses. There are a few basic goals of a cross-examination:

1. Discredit the witness and impeach the testimony given;
2. Reinforce the State's version of events; and
3. Create doubt about the defense's position

SAMPLE VICTIM TESTIMONY

DIRECT EXAMINATION OF SARAH SURVIVOR

Q. Ms. Survivor, please state your full name.

A. Sarah Survivor.

Q. Ms. Survivor, on May 12, 2007, where were you at approximately 7am?

A. I was on my way to the borehole.

Q. What were you doing there?

A. I was going to fetch water.

Q. While on the way to fetch water did anything happen?

A. Yes. I was attacked by a man.

Q. What is the name of the man who attacked you?

A. Jack Mvamvu.

Q. And is he present here?

A. Yes.

Q. Can you point him out?

A. Yes, he is there at that table.

Prosecutor: *Thank you. Let the record reflect that the witness is pointing to the defendant.*

Q. And what happened next?

A. Well, he hit me at the back of my head as I was walking and I felt automatically dizzy and fell to the ground.

Q. How do you know that he had hit you?

A. As I fell to the ground I turned around to see who was behind and saw Mr. Jack with a big stone in his hand.

Q. What did you do?

A. I tried to run, but then he ran after me and caught me and pinned me to the ground.

Q. Did anything happen after that?

A. I screamed and clawed at him. But he grabbed me tight and carried me to the bushes on the side of the road.

Q. What did he do after?

A. He forced himself on me.

Q. What do you mean by that? I know this is difficult, but can you describe exactly what happened?

A. He pinned me down. And he forced me to have sex with him.

Q. Did you scream?

A. I screamed at first, but there was no use. So sometimes I clawed, but then I just tried to turn my mind off.

Q. Did you agree to have sex with him?

A. No.

Q. Could he have had any doubt that you wanted to sleep with him?

A. No. I begged him, pleaded with him not to.

Q. How many times did this happen?

A. One time.

Q. Did he talk to you?

A. Yes. He told me that I had caused him shame by refusing his advances, and so he would shame me, too. He said that he would always have me in his grasp, that I belonged to him.

Q. And where were you at this point?

A. Still there – in the bush. I was half naked.

Q. And then what happened?

A. My friend Agnes came and found me there and brought me back to her house. She suggested we go to police.

Q. And did you?

A. Yes.

Q. And what happened?

A. An officer took my statement.

Q. Did you go to the hospital?

A. Yes, the policeman recommended that I go, and went she with me to the hospital.

Q. Which hospital did you go to?

A. JTH.

Q. And did they complete a medical report form?

A. Yes.

Q. Did they give you a copy of it?

A. Yes.

Q. And did you suffer from physical injuries after this time?

A. Yes. The doctors treated me, but I was sore for a very long time. And I had those bruises from the beating.

Q. Thank you, Ms. Survivor. Is there anything else that you would like to tell us?

A. Yes. I came forward because I just could not do this any longer. I see now that what he did to me was very wrong. I hope that he is punished for what he did.

Prosecutor: No further questions.

MODULE EIGHT

CONCLUSION

This Manual on investigating and prosecuting SGBV in South Sudan is a training tool to enhance the knowledge, skills and attitudes, which are necessary to detect and offer services to SGBV survivors. The manual will enhance the capacity of stakeholders such as health professionals, police officers, and prosecutors to address SGBV crimes by improving their skills of detection, listening, counseling and referring. It further aims to provide an overview of best practices of how to carry out effective investigations and prosecutions while respecting the human rights of SGBV victims/survivors and the perpetrator of the crime.

From its onset, the Manual is meant to highlight challenges faced with investigating and prosecuting SGBV crimes in South Sudan with an aim to address these challenges in accordance with best practices. Challenges faced and perceptions that perpetuate SGBV crimes have been highlighted. SGBV is a widespread problem in South Sudan that is likely to lead to personal suffering, health complications, and even the death of women, children and men, in addition to significant costs for healthcare systems and society at large.¹

It is important to align customary courts and customary law with the basic principles of fairness and justice, as well as observance of human rights, so as to improve justice regarding SGBV crimes without necessarily destroying or replacing existing traditional practices.

All stakeholders in the fight against SGBV and GBV should work together to put into practice recommendations highlighted in this Manual to adequately and effectively fight against SGBV crimes and establish a society in South Sudan that upholds and respects the rights of the people.

¹ Measure Evaluation, Family Planning and Reproductive Health Indicators Database, "Sexual and Gender-Based Violence". Available at https://www.measureevaluation.org/prh/rh_indicators/womens-health/sgbv (accessed 12 May 2018).

GENERAL RECOMMENDATIONS

To Government of South Sudan

- Attach high penalties to GBV and SGBV offences and ensure their enforcement. Fines should be avoided since such fines go to the State rather than as restitution to the victim. Imprisonment should be prioritized, as fines would not sufficiently deter perpetrators (who can afford to pay them) from committing similar crimes in the future.
- Reissue notice that Form 8 is not required for accessing medical care for SGBV victims/survivors.
- Establishing specialized courts within South Sudan's existing judicial system to try cases of SGBV crimes.
- Establish a victim and witness protection program to ensure the security of victims/survivors and their families.
- Restrict chiefs and traditional leaders from trying rape and other grievous SGBV cases.
- Make continued legal and judicial training mandatory for law enforcement officials to enable them to meet the evolving demands of society and deal with SGBV cases in South Sudan.
- Initiate the legal process of a family legislation that seeks to respond general to GBV including SGBV.
- Train prosecutors to identify and combat the use and consideration of gender stereotypes, including when they are used by the defense or judicial officers in criminal trials, as gender stereotyping continues to play a large role in the sentencing of perpetrators in SGBV cases.
- Make use of the various legal instruments and conventions, including and in particular, the Transitional Constitution of South Sudan , to create an enabling environment for SGBV victims/survivors to seek justice and obtain redress.
- Supervise customary courts to ensure that principles of justice and fairness are applied and the rights of victims are upheld.
- Increase training and sensitization for SPUs and police to interact with complainants, as police play a vital role in processing and enforcement of SGBV crimes.
- Create more gender desks and recruit more women to make it easier for women and girls to report incidents of sexual violence.

To Civil Society, Gender Working Groups, NGOs, Development Partners

- Advocate for legal and policy reforms for SGBV crimes not provided for in the current laws.
- Conduct awareness-raising campaigns about SGBV while addressing underlying risk factors for violence including social norms that condone violence and inequality.
- Roll out a perpetrators program.
- Establish safe homes for victims/survivors of SGBV.
- Increase funding to improve criminal enforcement and victim advocacy in SGBV cases.
- Assist women and girls who have been violated to find the best forum for protecting their rights and ensuring adequate support.
- Provide access to the full range of support services (legal or non-legal) to victims/survivors of SGBV.
- Establish programs that address stigma and discrimination of SGBV victims/survivors as well as addressing the culture of silence relating to sexual violence.
- Establish mechanisms such as rehabilitation centers, safe houses to provide psycho- social support for victims/witnesses of SGBV crimes.
- Create a database for statistics of SGBV crimes in South Sudan to be used as points of reference as well as enable entities seeking to participate in the fight against SGBV crimes identify key areas that are under performing thereby requiring increased support.

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Annex 1: Treaties on GBV signed or acceded to but not yet domesticated.

Treaty	Provision/Subject Matter
ICERD – International Convention on the Elimination of All Forms of Racial Discrimination	<p>Article 5 provides: “In compliance with the fundamental obligations laid down in article 2 of this Convention, States Parties undertake to prohibit and to eliminate racial discrimination in all its forms and to guarantee the right of everyone, without distinction as to race, colour, or national or ethnic origin, to equality before the law, notably in the enjoyment of the following rights:</p> <ul style="list-style-type: none"> (a) The right to equal treatment before the tribunals and all other organs administering justice (b) The right to security of person and protection by the State against violence or bodily harm, whether inflicted by government officials or by any individual group or institution
ICCPR- International Convention on Civil and Political Rights	<p>Obligates countries that have ratified the treaty to protect and preserve basic human rights, such as: the right to life and human dignity (Article 6) equality before the law (Article 3); freedom from slavery (Article 8); freedom from torture, ill-treatment, and arbitrary detention (Article 7); gender equality; the right to a fair trial, and; minority rights</p>
ICESCR – International Covenant on Economic, Social and Cultural Rights	<p>Obligates countries that have ratified the treaty to protect and preserve basic human rights, such as: equal rights for men and women (Article 3); right to the enjoyment of just and favourable conditions of work (Article 7); right to an adequate standard of living (Article 11); and right to the enjoyment of the highest attainable standard of physical and mental health (Article 12)</p>
CMW – International Convention on the Protection of the Rights of All Migrant workers and Members of their Families	<p>Article 9 - The right to life of migrant workers and members of their families shall be protected by law.</p> <p>Article 10 - No migrant worker or member of his or her family shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment</p>
CRC-OP-AC- Optional Protocol to the Convention of the Rights of the Child on the Involvement of children in armed Conflict	<p>Article 2 - persons who have not attained the age of 18 years are not compulsorily recruited into their armed forces.</p> <p>Article 4 - Armed groups that are distinct from the armed forces of a State should not, under any circumstances, recruit or use in hostilities persons under the age of 18 years</p> <p>Article 4(2) - States Parties shall take all feasible measures to prevent such recruitment and use, including the adoption of legal measures necessary to prohibit and criminalize such practices</p>
CRC-OP-SC- Optional Protocol to the Convention of the Rights of the Child on the sale of children child prostitution and child pornography	<p>Article 1- States Parties shall prohibit the sale of children, child prostitution and child pornography</p> <p>Article 3 - State parties are to ensure that acts of Sexual exploitation of the child, Transfer of organs of the child for profit; Engagement of the child in forced labor are fully covered under its criminal or penal law, whether such offences are committed domestically or transnationally or on an individual or organized basis</p>

Treaty	Provision/Subject Matter
CRPD- Convention on the Rights of Persons with Disabilities	<p>Article 3 provides general principles of the Convention as:</p> <ul style="list-style-type: none"> (a) Respect for inherent dignity, individual autonomy including the freedom to make one’s own choices, and independence of persons; (b) Non-discrimination; (c) Full and effective participation and inclusion in society; (d) Respect for difference and acceptance of persons with disabilities as part of human diversity and humanity; (e) Equality of opportunity; (f) Accessibility; (g) Equality between men and women; (h) Respect for the evolving capacities of children with disabilities and respect for the right of children with disabilities to preserve their identities.

APPENDICES

Appendix I

Warrant of arrest

THE REPUBLIC OF SOUTH SUDAN
MINISTRY OF JUSTICE



Legal Administration &

Public Prosecution Attorney

JUBEK, TEREKEKA AND YEI RIVER STATES

WARRANT OF ARREST

See section (75-96 of Criminal Procedures Act, 2008)

To.....whereas.....
..... stands charged with the offence
under Section of the Penal Code Act, 2008, you are directed to arrest the said person and bring
him/her before the crime officer in charge of the Police Station
Investigator's Namesignature
Case Number
Public Prosecution Attorney's Name
Title.....signature

Appendix II

Sample of an abstract of a Criminal Case

ملخص البلاغ

رقم البلاغ:

تاريخ البلاغ: / / 2014 م

المادة في القانون:

اسم الشاكي

اسم المتحرى

اسم المتهم

خلاصة البلاغ:

.....
.....
.....
.....
.....
.....

شهود الاتهام:.....

شهود الدفاع:.....

الضمان:.....

المعروضات:.....

مستندات الاتهام:.....

.....
.....
.....

رأى المتحرى:.....

.....
.....
.....
.....

من قانون العقوبات لسنة 2008 م من قبل وكيل النيابة احالة البلاغ الى

بتاريخ / / 2014 م وجه التهمة للمتهم تحت المواد

المحكمة للفصل فيها

Appendix III

Form 6 for Medical Examination

Police Criminal Form No.6

FORM TO ACCOMPANY PERSON OR BODY SENT FOR MEDICAL EXAMINATION Section 59 of Code of Criminal Procedure Act 2008

Station Diary No..... Information No..... Date & Time.....
Station: Sections

1. To be filled by Police:

Name Sex..... Age
Nationality or Tribe Occupation.....Address

- **Type of Medical Examination**

a. Injury b. Converted to Morgue c. Alcoholism d. Sexual Assault e. Any (by medical examination)

2. To be filled by Public Prosecution Attorney

a. Autopsy to determine cause of death and Medical Report b. to hand over the body to the relative by police c. buried body (after finger printing and photography)
Signature and seal.....
Public Prosecution Attorney Name.....

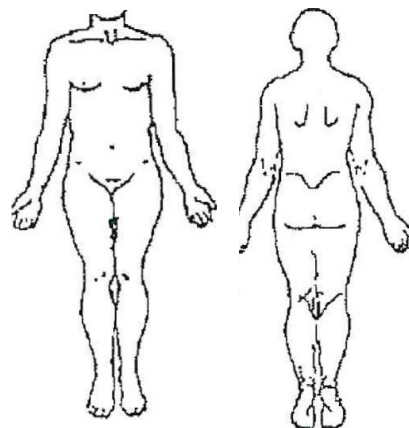
3. To be filled by Doctor

Place of Examination Date and Hour.....
Statement by person examined as to condition and injury:

In case of Injury or Death

Description of injuries (in simple terms)

- Is condition grave?
 - In case of admission in Hospital.....
 - In case of death.....
 - Time of Death.....
 - Reasons led to (medical examination) death.....
 - Opinions as to problem cause of injury or death.....
 - Degree of Alcoholism:.....
- a. Drunk
b. Slightly under influence of drink
c. Smelling of drink but apparently sober.....
d. Sober
e. Cans/he drive a vehicle safely.....
- Signature and seal.....
Doctor or Expert Name



Appendix IV

Police Criminal Form 7 –Investigation Diary

Police Criminal Form No. 7

CASE DIARY

(Section 55 of the Code of Criminal Procedure Act 2008)

First Information Report/ Crime No. and Year	
Police Station	
Sections of Law	
Diary No.	
From Page No.	To Page No.

Appendix V

Police Criminal Form 8 for First information report of Cognizable Crime to police

Police criminal form (8)

First Information Report (F.I.R) of Cognizable Crime to Police

(Section 53 (1) (a) (b) (c) (e) and (2) of the code of criminal code Act 2008)

P.S _____ County _____ State _____

F.I.R No: _____ Date & time of crime _____

I.D No: _____ Date & time of F.I.R -----

Complainant's Name					
Complainant's Address					
Act(s) and Sections of the Law					
Particulars Value description of properties					
Name of Accused					
Age of accused					
Complainant 's Name		Nationality		Tribe	
Occupation		Address		Phone No	

Summary Information:

Complainant's Signature: -----

Directives by police officer in charge: _____

Date: _____ Officers signature -----

Directives by Public Prosecution Attorney/Magistrate/Court

Appendix VI

List of Public Prosecuting Attorneys in South Sudan.

S/N	NAME	GRADE	LOCATION
1	Filberto Mayuot Mareng	Counsel General	Headquarters
2	Sabri Wani Ladu	1st Legal Counsel	Headquarters
3	Harison El Haj Paul	1st Legal Counsel	Headquarters
4	Philemon Alphonse	2nd Legal Counsel	Headquarters
5	Bior Philip Tit	2nd Legal Counsel	Headquarters
6	Simon Wang Yiec	2nd Legal Counsel	Headquarters
7	Sista Samuel Lupai	2nd Legal Counsel	Headquarters
8	Kucwuou Raphel Amum	3rd Legal Counsel	Headquarters
9	Deng Malang Piok	3rd Legal Counsel	Headquarters
10	Flora Mario Kuol	3rd Legal Counsel	Headquarters
11	Francis James Odhong	3rd Legal Counsel	Headquarters
12	Awuoi Paulino Nyok	Legal Counsel	Headquarters
13	Blaise Tombe Fiorentino	Legal Counsel	Headquarters
14	David Charles Ali	Senior Legal Counsel	Central Equatoria
15	Angelo Sebit Gaitano	1st Legal Counsel	Central Equatoria
16	Peter John David	2nd Legal Counsel	Central Equatoria
17	Agum Samuel	2nd Legal Counsel	Central Equatoria
18	Akon John Jok	2nd Legal Counsel	Central Equatoria
19	Nyanagun Arop	3rd Legal Counsel	Central Equatoria
20	Akol Deng Bak	3rd Legal Counsel	Central Equatoria
21	Peter Ayoub	3rd Legal Counsel	Central Equatoria
22	Jada Nyijak Lado	3rd Legal Counsel	Central Equatoria
23	Mary Alphonse	3rd Legal Counsel	Central Equatoria
24	Johnson Marino	3rd Legal Counsel	Central Equatoria
25	Wilson Cirilo Jada	3rd Legal Counsel	Central Equatoria
26	Henry Wani James	3rd Legal Counsel	Central Equatoria
27	Wafa Khamis Morjan	3rd Legal Counsel	Central Equatoria
28	Simon Cjol	3rd Legal Counsel	Central Equatoria
29	William Jada	3rd Legal Counsel	Central Equatoria
30	Clement Louis	3rd Legal Counsel	Central Equatoria
31	Peter Paulino	3rd Legal Counsel	Central Equatoria
32	David Gatwich	3rd Legal Counsel	Central Equatoria
33	Dr. Khalid Ismail	3rd Legal Counsel	Central Equatoria
34	Chuol Giek Gua	3rd Legal Counsel	Central Equatoria
35	Marial Eli	3rd Legal Counsel	Central Equatoria
36	Alex Wilson	3rd Legal Counsel	Central Equatoria
37	Labana Benjamin Warille	3rd Legal Counsel	Central Equatoria
38	Sabri David	3rd Legal Counsel	Central Equatoria

39	Benjamin Anyang	3rd Legal Counsel	Central Equatoria
40	Josephine James	3rd Legal Counsel	Central Equatoria
41	Gathak Rout Machar	3rd Legal Counsel	Central Equatoria
42	Mangisto Matadio	3rd Legal Counsel	Central Equatoria
43	Diing Deng Diing	3rd Legal Counsel	Central Equatoria
44	Emmanuel John Loro	3rd Legal Counsel	Central Equatoria
45	Tino Samson	Legal Counsel	Central Equatoria
46	Emmanuel Loro	Legal Counsel	Central Equatoria
47	Kapuki Laku Loggale	Legal Counsel	Central Equatoria
48	Othwon Luigi	Legal Counsel	Central Equatoria
49	Regina John	Legal Counsel	Central Equatoria
50	Simon Joseph	Legal Counsel	Central Equatoria
51	Alex Martin	Legal Counsel	Central Equatoria
52	Jackline Akuin	Legal Counsel	Central Equatoria
53	Aywen Alaak Awang	2nd Legal Counsel	Eastern Equatoria
54	Chan James Twang	3rd Legal Counsel	Eastern Equatoria
55	Dominic Edward Anikpara	3rd Legal Counsel	Eastern Equatoria
56	Marko Bol Deng	3rd Legal Counsel	Eastern Equatoria
57	John Wani Lado	3rd Legal Counsel	Eastern Equatoria
58	Morris Sebit James	3rd Legal Counsel	Eastern Equatoria
59	Abraham Awan Akulen	3rd Legal Counsel	Eastern Equatoria
60	Madelin Epemako Amuda	Legal Counsel	Eastern Equatoria
61	Jackson Marino Wani	Legal Counsel	Eastern Equatoria
62	Abraham Arop Otong	Legal Counsel	Eastern Equatoria
63	Deng Aculi Adija	Senior Legal Counsel	National Security Legal administration
64	Paul Joseph Akol	3rd Legal Counsel	Western Equatoria
65	Akkwoc Deng Akowy	3rd Legal Counsel	Western Equatoria
66	Deng Cyer Rehan	Senior Legal Counsel	Western Bahr Ghazal
67	Barnaba Akwoch Mading	2nd Legal Counsel	Western Bahr Ghazal
68	Tong Dut Deng	3rd Legal Counsel	Western Bahr Ghazal
69	Sebit Dunia Ali	3rd Legal Counsel	Western Bahr Ghazal
70	Butrus Yai Adhieu	3rd Legal Counsel	Western Bahr Ghazal
71	Anei Anei Anei	3rd Legal Counsel	Western Bahr Ghazal
72	George Aleu Deng	3rd Legal Counsel	Western Bahr Ghazal
73	Marko Chan Kuot	3rd Legal Counsel	Western Bahr Ghazal
74	Ismail Ishag Turkash	Legal Counsel	Western Bahr Ghazal
75	Joseph Marko Karlo	Senior Legal Counsel	Northern Bahr Ghazal
76	Marino Onguri Fidele	3rd Legal Counsel	Northern Bahr Ghazal
77	Kuot Rec Yuot	3rd Legal Counsel	Northern Bahr Ghazal
78	Akol MakueiWeno	3rd Legal Counsel	Northern Bahr Ghazal
79	Mohammed Zzin Makuac	3rd Legal Counsel	Northern Bahr Ghazal
80	Lual Mathok Diing	3rd Legal Counsel	Northern Bahr Ghazal

81	Kawac Wol Kuot	3rd Legal Counsel	Northern Bahr Ghazal
82	Arop Maguery Mou	3rd Legal Counsel	Northern Bahr Ghazal
83	Deng Dut Deng	2nd Legal Counsel	Northern Bahr Ghazal
84	Awad Haroun Andal	3rd Legal Counsel	Warrap
85	Valentino Dot Mel	3rd Legal Counsel	Warrap
86	Lal Monyluak Jurdit	3rd Legal Counsel	Warrap
87	James Deng Kuau	3rd Legal Counsel	Warrap
88	Machar Ader Ader	3rd Legal Counsel	Warrap
89	Majok Ngong Kuel	3rd Legal Counsel	Warrap
90	Andreano Anyuon Madut	3rd Legal Counsel	Warrap
91	Eduard Mou Malueth	3rd Legal Counsel	Warrap
92	Deng Juma Rihan	3rd Legal Counsel	Warrap
93	Riing Mawien Mawien	3rd Legal Counsel	Warrap
94	Machar Akuei Chol	Legal Counsel	Warrap
95	Akol Arop Agany	Legal Counsel	Warrap
96	Deng Majak Deng	1st Legal Counsel	Lakes
97	Francis Khamis John	3rd Legal Counsel	Lakes
98	Hassan Jalaledien	2nd Legal Counsel	Lakes
99	Morris Adolvo	3rd Legal Counsel	Lakes
100	Albino Bot Cikom	3rd Legal Counsel	Lakes
101	Daniel Deng Kuereng	Senior Legal Counsel	Jonglei
102	Madol Anyuat Madol	2nd Legal Counsel	Jonglei
103	Simon Reech Deng Diar	2nd Legal Counsel	Jonglei
104	Aluong Riak Ajak	3rd Legal Counsel	Jonglei
105	Augustino Obang Kur	3rd Legal Counsel	Jonglei
106	Madit Mayen Riak	3rd Legal Counsel	Jonglei
107	Moses Gong Alier	3rd Legal Counsel	Jonglei
108	Akec Deng Jioh	2nd Legal Counsel	Upper Nile
109	Sadiga Abdalla	3rd Legal Counsel	Upper Nile
110	Dauidi Othom	3rd Legal Counsel	Upper Nile
111	Deng Mayik	3rd Legal Counsel	Upper Nile
112	Hakim Simon	3rd Legal Counsel	Upper Nile
113	Biong Pieng Kuol	Senior Legal Counsel	Abyei Administrative Area
114	Thomas Mario	3rd Legal Counsel	Abyei Administrative Area
115	Mijok Deng Alor	3rd Legal Counsel	Abyei Administrative Area

S/N	TELEPHONE NUMBERS	
1	JUBA David Charles	955552223
2	WAY Dengtiel	955403403
3	TORIT Dominic Edward	955177452
4	BOR Madul Anyuat	955732042
5	RENK (UPPER NILE) Akec Akec Deng	921417828
6	AWIEL (AWIEL) NORTH BARHAAZEL Joseph Marko	921477440
7	RUMBEK (YIROL) Morris (Adonko) Adolfo	955776677
8	KUAJOK (WARRAP) TONJ Valentino Thuc	956741968



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