

# Justice and Conflict in South Sudan

## Observations from a pilot survey

BRIEFING PAPER

Intersections of Truth, Justice and Reconciliation in South Sudan

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Cover photo: © Rens Willems 2015. Street in Juba, Central Equatoria State.

The views expressed and analysis put forward in this report are entirely those of the authors in their professional capacity and cannot be attributed to organizations involved in the project or the Dutch Ministry of Foreign Affairs.

## Summary

- The preliminary findings presented in this paper are intended to stimulate research and debate on the needs and opportunities for justice and reconciliation in South Sudan. The sample size of the pilot survey presented in this report is 163 respondents, and drawn from Kator, a payam (or administrative district) in Juba.
- High incidence rates for violent crimes were evident in the sample population. 41% of the respondents said that they or a household member had experienced a violent crime in the last 5 years. These findings affirm anecdotal evidence of rising crime rates in Juba, particularly since the start of the conflict in December 2013. In 62% of these cases, the respondents reported that no action was taken to deal with the case, because people didn't know where to go, and because of costs, time and corruption.
- When asked, hypothetically, what they would do if confronted with violent crimes such as murder, armed robbery or rape, respondents were most likely to say they would contact the police. However, when confronted with actual crimes, respondents were more likely to contact other dispute resolution mechanisms, such as traditional authorities. The fact that people would prefer formal justice mechanisms but rely on less formal mechanisms in practice suggests an unmet demand for formal justice services among populations in Juba.
- Of all respondents, 22% reported to have been victimized by an armed group or military actor in the context of conflict. Of these people, 61% of the cases that respondents identified as most significant had taken place after December 2013. For such a large number of citizens to have been victimized by an armed group or actor in the heart of the capital city highlights both the devastating impact that the ongoing conflict has had on the people of South Sudan as well as problems associated with the culture of impunity in the country.
- In relation to the conflict that erupted in December 2013, the majority of respondents place the root of the problems in South Sudan at the leadership level (62%). However, one third of the respondents said grass-roots dialogue and peace conferences are needed to resolve the current conflict. This finding conforms with a narrative that sees the conflict as being triggered by a crisis at the national level but quickly becoming entangled with more local grievances. A reconciliation effort focusing solely at the leadership is therefore necessary but not sufficient to resolve the crisis and broader grassroots engagement will be needed.
- A large majority of respondents believed that it is important to speak publicly about what happened during the conflict (69%) as opposed to avoid speaking about what happened. If a public dialogue were organized, 84% of respondents felt this should be done at the national level, 36% at the state level, and 33% at the local level.
- When asked at which levels of society reconciliation efforts should be undertaken, 82% of the respondents believes this should be at the national level and much less respondents feel it should also be undertaken at the state level (44%) and local

level (42%). Churches and religious institutions are considered the most important institution for reconciliation in South Sudan (83%).

- 80% of the respondents believed that those suspected to be responsible for abuses during the conflict should be tried before a court, 74% believed that court trials would have a positive effect on peace, and 82% believed it would positively affect reconciliation. When asked which court should bring cases against those suspected to be responsible for abuses during the conflict, an international court was mentioned most often (28%), followed by statutory courts (21%), and customary courts (16%).

The project takes a holistic approach to understanding violence, and investigates people's experiences in seeking justice in relation to both conflict-related and non-conflict-related violence.

## Introduction

This briefing paper presents initial observations arising from a pilot survey conducted in Juba in April 2015, as part of the research project "Intersections of truth, justice and reconciliation in South Sudan".<sup>1</sup> The project takes a holistic approach to understanding violence, and investigates people's experiences in seeking justice in relation to both conflict-related and non-conflict-related violence. This includes looking at the differences and similarities in the ways people deal with conflict-related violence, and with violent crimes such as armed robbery and murder outside the context of conflict (here referred to as justice in everyday life). It aims to 1) investigate the strengths, weaknesses and interrelationships of different types of justice systems (both statutory and customary), 2) identify opportunities for reform, and 3) identify existing and potential opportunities for truth, justice and reconciliation that can be identified with regard to past and present conflicts.

An underlying assumption of the project is that justice in everyday life and transitional justice related to conflict are intrinsically connected. In many cases, the same justice mechanisms involved with everyday justice provision can support justice and reconciliation efforts in relation to past and current crises. Addressing South Sudan's crises is furthermore necessary for laying the groundwork for future accountability and justice mechanisms. After independence in 2011, the first reconciliation efforts were initiated at the national level, but they were severely limited by the political context.<sup>2</sup> After the conflict broke out in 2013, many observers considered the failure to adequately promote reconciliation in relation to past conflicts and address communal tensions to be a contributing factor to the swiftness and ruthlessness with which the conflict spread outside Juba; a conflict that since has only deepened divisions in the country.

In this present situation of ongoing conflict, what steps can there be taken to support justice and reconciliation for the people of South Sudan? Answering this question requires a better understanding of the needs, perceptions and opportunities for justice and reconciliation as seen by the South Sudanese citizens. How has the conflict affected justice provision in their daily lives? How do people's experiences with justice provision in their daily life affect their expectations of justice with regard to South Sudan's conflicts? And what roles do formal justice mechanisms and transitional justice mechanisms play in reconciliation? And is this different for the different levels of crimes committed (national vs local)?

<sup>1</sup> The project is carried out in cooperation between the University for Peace (UPEACE) Centre The Hague (the Netherlands), the South Sudan Law Society (SSLS), and PAX. It is funded by the Dutch Ministry of Foreign Affairs as a part of the 'Knowledge Platform Security & Rule of Law', and is administered by the Netherlands Organization for Scientific Research (NWO). A short summary of the project, its methods and activities, can be found here: <http://www.upeace.nl/cp/uploads/publications/One%20Pager%20-%20ITJR%20in%20South%20Sudan.pdf>.

<sup>2</sup> The former vice president, Dr. Riek Machar Teny, led the National Reconciliation Committee, the first major post-independence reconciliation initiative. In 2013, the president, Salva Kiir Mayardit, dissolved the National Reconciliation Committee and established the Committee for National Healing, Peace and Reconciliation, under the leadership of three prominent faith-based leaders.



Conflict in South Sudan manifests itself in different forms and on different yet interrelated levels, from struggles over political leadership of the country to communal violence. How does this affect needs and opportunities for justice and reconciliation at national and local levels? Since the outbreak of the violence, there have been several calls to bring perpetrators to justice, and provisions for tribunals are included in the agreements that have been signed by the warring parties. But what type of justice do the people of South Sudan require in order to move to a more stable future, and what types of mechanisms can address the various types of conflicts in South Sudan?

Reconciliation and healing are thought to resonate more with South Sudanese cultural and religious values. Despite great differences within and between ethnic and cultural groups, customary laws in South Sudan tend to focus on rebuilding relationships and restorative forms of justice over criminal prosecution and punishment. Alongside this tendency to emphasize restorative forms of justice, however, South Sudanese justice systems also have a strong retributive element, as can be seen in the liberal use of imprisonment, corporal punishment, fines and other criminal sanctions in many customary and statutory courts. How do these two approaches to justice coexist in South Sudan's justice systems? To what extent have people's preferences for restorative or retributive justice changed over time? Do preferences differ from one crime to another, or do they differ for crimes taking place in the context of war?

One of the methods used by this project to search for an answer to these questions is a household survey. A pilot survey was conducted in Juba, with the primary goal of verifying the relevance and logic of the questions asked, and whether respondents understand the questions in the way we intended. In total 163 people were interviewed in this pilot study. This is insufficient to claim any broader statistical significance of the findings in relation to the South Sudanese population as a whole. Nonetheless, the findings can still support the further development of hypotheses and research questions. Rather than providing definitive conclusions and recommendations, the findings presented in this paper should be considered as stimulants for research and debate on the needs and opportunities for justice and reconciliation in South Sudan. Before presenting these initial observations, first a contextual background of the conflict and recent efforts to promote reconciliation and justice is given.

## A contextual background

### A conflict (re-)ignited

For 40 of the last 60 years, the region that would eventually become South Sudan has been embroiled in conflict. The first civil war in Sudan broke out in 1955, a few months before its formal independence from Britain, and lasted until 1972 only to resume again in 1983. The second civil war came to an end in 2005 with the signing of the Comprehensive Peace Agreement (CPA) between the SPLA and the government in Khartoum, and resulted in a referendum in 2011 and an overwhelming vote for secession of South Sudan.

After a joyous celebration of South Sudan's independence in July 2011, most international donors and observers considered South Sudan to be moving past the crisis stage. These hopes were shattered with the outbreak of large-scale violence in December 2013. A power-struggle over the leadership within the SPLM triggered the crisis, but the violence was also fueled by unresolved grievances between different identity groups; remnants of South Sudan's past crises.<sup>3</sup> Fighting began in Juba, before quickly spreading to Jonglei, Unity and Upper Nile states. Over the past two years, fighting has continued between government forces and forces loyal to the former vice-president Riek Machar fighting under the banner of the Sudan People's Liberation Army-in-Opposition (SPLM-IO). The fracture line that divides commanders and communities today is reminiscent of many of the internal divisions in South Sudan during the second civil war.

Since the conflict broke out 1.6 million people have been internally displaced and almost 600,000 people have fled to neighboring countries, displacing in total almost 20 percent of the population.<sup>4</sup> Reliable statistics for the number of people killed are not available, but the figure is thought to be over 50,000.<sup>5</sup> The UN, AU and human rights organizations have documented serious violations of international human rights and humanitarian law by all sides of the conflict including mass killings, rape, sexual mutilation, torture, enforced disappearances and recruitment of child soldiers.<sup>6</sup>

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<sup>3</sup> For more on events leading to the outbreak of the conflict, see African Union (AUCISS) (2014) *Final Report of the African Union Commission of Inquiry on South Sudan*, available at: <http://www.peaceau.org/uploads/auciss.final.report.pdf>.

<sup>4</sup> UN OCHA (2015) Humanitarian Bulletin – South Sudan. Bi-weekly update 30 June 2015. Available online: [http://reliefweb.int/sites/reliefweb.int/files/resources/OCHA\\_South\\_Sudan\\_BiWeekly\\_30\\_June\\_2015.pdf](http://reliefweb.int/sites/reliefweb.int/files/resources/OCHA_South_Sudan_BiWeekly_30_June_2015.pdf).

<sup>5</sup> Martell, P. (2014) 50,000 and not counting: South Sudan's war dead, L'Agence France-Presse (AFP), 15 Nov. 2014 available online: <http://news.yahoo.com/50-000-not-counting-south-sudans-war-dead-205218445.html>.

<sup>6</sup> AUCISS Final Report, supra note 3; UNMISS (2014) *Conflict in South Sudan: A Human Rights Report*. Available online: <http://www.unmiss.unmissions.org/Portals/unmiss/Human%20Rights%20Reports/UNMISS%20Conflict%20in%20South%20Sudan%20-%20A%20Human%20Rights%20Report.pdf>; Human Rights Watch (2014) *South Sudan's New War: Abuses by Government and Opposition Forces*. New York: HRW. Available at: [https://www.hrw.org/sites/default/files/reports/southsudan0814\\_ForUpload.pdf](https://www.hrw.org/sites/default/files/reports/southsudan0814_ForUpload.pdf); Amnesty International (2014) *Nowhere Safe: Civilians Under Attack in South Sudan*. London:

### Agreement on the Resolution of the Crisis in South Sudan (ARCISS)

Shortly after the outbreak of violence in December 2013, the Intergovernmental Authority for Development (IGAD) initiated a mediation effort in order to secure a ceasefire and political settlement to the crisis. After more than 20 months of on-again, off-again negotiations, the warring parties finally agreed to the terms of a peace agreement in August 2015. The agreement addresses a range of issues, including: power sharing, security arrangements, humanitarian assistance, economic arrangements, justice and reconciliation, and the parameters of a permanent constitution.<sup>7</sup>

The compromise agreement signed in August 2015 calls for the establishment of the CTRH, the HCSS, and the CRA.

Chapter V of the agreement, entitled “Transitional Justice, Accountability, Reconciliation and Healing,” outlines the parties’ plans for how the proposed Transitional Government of National Unity (TGONU) will address the legacy of violence and culture of impunity in the country. The agreement provides for the establishment of three national-level institutions to guide the transitional justice and national reconciliation program moving forward: Commission on Truth, Reconciliation and Healing (CTRH); the Hybrid Court for South Sudan (HCSS); and the Compensation and Reparations Authority (CRA).

The CTRH would be responsible for documenting and reporting on past human rights abuses over a specific time period in order to generate improved understanding of the facts and circumstances of human rights violations and to develop informed recommendations to ensure that they do not recur. The HCSS would be comprised of judges, lawyers and staff from South Sudan and other African countries and would be responsible for bringing cases against those responsible for violations of international human rights and humanitarian law in South Sudan since 15 December 2013. Lastly, the CRA would provide compensation and reparations to people who were harmed by the conflict, including survivors of conflict-related abuses.

### South Sudan’s Justice System

South Sudan has a plural justice system comprised of parallel systems of statutory courts presided over by judges and trained legal personnel and customary courts presided over by chiefs and elders.<sup>8</sup> The statutory courts are structured in a single hierarchy with the Supreme Court as the highest court of law, followed by three courts of appeal, high courts in each of the ten states and magistrate courts at the county level. The Judiciary Act envisages statutory courts at the payam level as well,

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Amnesty International. Available at:

<https://www.amnesty.org/download/Documents/8000/afr650032014en.pdf>.

<sup>7</sup> Intergovernmental Authority on Development (IGAD) (2015) Agreement on the Resolution of the Crisis in South Sudan (ARCISS), available at: <http://www.sudantribune.com/spip.php?article56093>.

<sup>8</sup> See e.g. Cherry Leonardi et al. (2010) Local Justice in Southern Sudan, United States Institute of Peace (USIP), available at: <http://www.usip.org/publications/local-justice-in-southern-sudan>; David K. Deng (2013) Challenges of Accountability: An assessment of dispute resolution processes in rural South Sudan, SLS and Pact, available at: [http://www.pactworld.org/sites/default/files/Challenges%20of%20Accountability\\_FINAL%20May%2016.pdf](http://www.pactworld.org/sites/default/files/Challenges%20of%20Accountability_FINAL%20May%2016.pdf).



South Sudan has a plural justice system comprised of parallel systems of statutory courts presided over by judges and trained legal personnel and customary courts presided over by chiefs and elders.

but those courts have not yet been established.<sup>9</sup> Indeed, there are not even magistrate courts present in many of the counties.

Customary courts are primarily administered as organs of local government under the terms of the 2009 Local Government Act, and as such, chiefs are primarily answerable to county commissioners.<sup>10</sup> Whereas statutory courts are mainly accessible only in urban areas, customary courts are found at every level of local government in South Sudan.

According to the Local Government Act, customary courts do not have jurisdiction over criminal matters unless the case has a 'customary interface'.<sup>11</sup> Though the term 'customary interface' is not defined in the law, it presumably refers to crimes associated with issues such as cattle raiding or adultery, which commonly fall under the purview of traditional authorities. Despite the jurisdictional limitation, however, customary courts typically hear a range of criminal disputes and have the authority to issue a variety of criminal punishments, including prison sentences, fines and corporal punishment. In some areas, customary courts even adjudicate serious crimes such as murder or rape. A common remedy offered in instances of murder is for the perpetrator to be made to pay a certain number of cattle to the relatives of the deceased to compensate them for their loss. The amount of cattle that must be paid vary from community to community and with the nature of the killing, but such remedies provide an important means of managing conflict in areas where formal state institutions do not exist.

## Initial observations of a pilot survey

The following is a collection of initial observations based on findings from a pilot survey and a series of focus group discussions and informal interviews conducted in April 2015. The pilot sample is small (N=163), and drawn from Kator, a payam (or administrative district) in Juba. Observations are representative of the sample only, and do not necessarily reflect perceptions and experiences across Juba, nor South Sudan as a whole. Nonetheless, the findings provide a valuable source of information that can lay the foundations for hypotheses and questions for further research.

## Methodology

The survey focuses on two areas of justice. The first part looks at people's perceptions and needs in relation to truth, reconciliation and justice with regard to conflict generally in South Sudan, and the conflict that started in December 2013 in particular.

<sup>9</sup> GRSS, *Judiciary Act* (2008), available at:

[http://www.africanchildforum.org/clr/Legislation%20Per%20Country/South%20Sudan/ssudan\\_judiciary\\_2008\\_en.pdf](http://www.africanchildforum.org/clr/Legislation%20Per%20Country/South%20Sudan/ssudan_judiciary_2008_en.pdf).

<sup>10</sup> GRSS, *Local Government Act* (2009), available at: <http://mlgi.org.za/resources/local-government-database/by-country/sudan/sub-national-legislation/The%20Local%20Government%20Act%202009.pdf>.

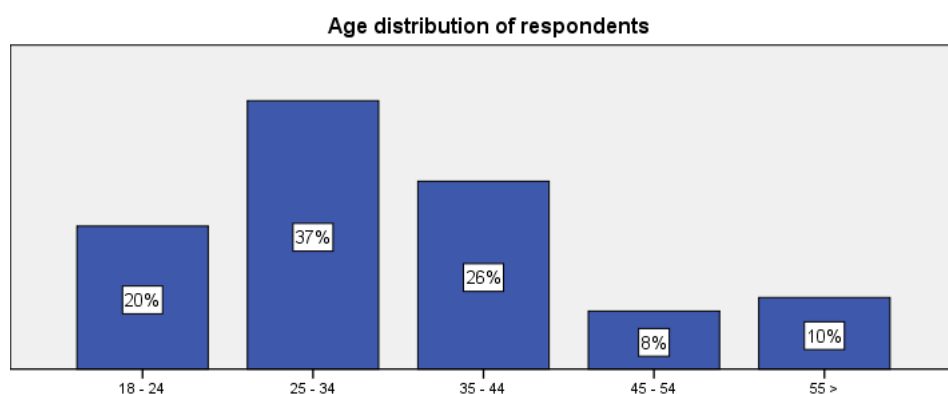
<sup>11</sup> *Id.*, § 98(2).

The second part looks at people’s perceptions, needs and experiences in relation to justice on a daily basis. Here, the focus is on violent crimes, such as murder, rape, armed robbery and physical assault. The research team developed a draft questionnaire during a two-day meeting in Juba. The survey was conducted on smartphones using KoBoCollect, an open source survey tool developed for data collection in challenging environments.<sup>12</sup> A group of 10 enumerators conducted the survey. They had prior experience with KoBoCollect and the use of smartphones, and were given one day of training on the questionnaire.

The purpose of the pilot survey was to verify the relevance and logic of the questionnaire, and find out whether the questions are understandable for both enumerators and respondents. For this reason, the pilot was only conducted in Kator, a payam in Juba, located close to the office of the SSLs. Focusing on one administrative area made it easier to acquire the necessary authorizations from the state authorities. Individual households were selected using a detailed random walk technique with a built in skip pattern. Enumerators randomly selected the oldest or youngest man or woman present according to a preset randomized table. Due to the highly sensitive and gendered nature of some questions, male enumerators only interviewed male respondents and female enumerators only interviewed female respondents. Eligible respondents had to be 18 years of age or older and South Sudanese nationals.

## Sample

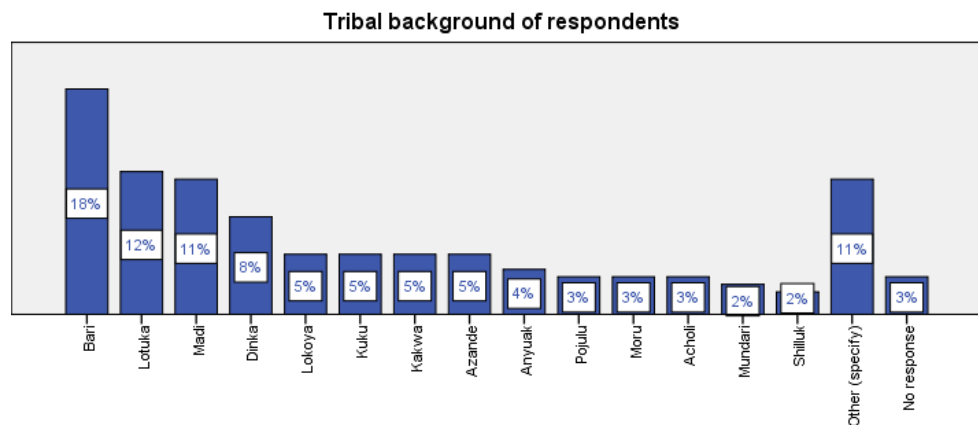
In total, 163 respondents completed the survey, relatively evenly divided between male (56%) and female (44%). The youngest age-group is slightly underrepresented compared to the age-distribution in South Sudan as a whole, which is shaped as an expansive pyramid, implying a relatively large share of young people.<sup>13</sup> For the rest, the age distribution of the sample roughly corresponds with that of South Sudan.



<sup>12</sup> <http://www.kobotoolbox.org/>

<sup>13</sup> NBS (2011) *South Sudan Statistical Yearbook 2011*. Juba: National Bureau of Statistics. Available at: <http://static1.1.sqspcdn.com/static/f/750842/18935415/1349357346780/South+Sudan+Statistical+Yearbook+2011+FINAL.pdf?token=LYJVclnDTNEU6QyxrnlgFCoj1Uc%3D>, p. 11.

The sample included 28 different tribal and ethnic groups.<sup>14</sup> Bari formed the largest group in the sample (19%), which is unsurprising as Juba is situated in what is traditionally considered to be the ancestral homelands of the Bari. By far the majority of respondents were from groups originating from the Greater Equatoria region. A much smaller percentage of the sample is from groups originating from Greater Upper Nile and Greater Bahr el Ghazal (Dinka, 8%; Anyuak 3,7%; Shilluk, 1,8%).<sup>15</sup> Only 2 respondents declined to answer to their background. The sample did not include anyone with a Nuer background, which is unsurprising as the violence of December 2013 displaced most of the Nuer population to UN bases in Juba or to neighboring countries.



While almost half of the sample population had only primary education (23%) or no education at all (23%), 36% had completed secondary education and 18% had obtained a university degree. The sample was therefore very well educated relative to the general population of South Sudan. In 2009 only 15,9 per cent of the population of South Sudan had completed primary education.<sup>16</sup> Only 60% of children in their early teens reported to have ever been enrolled in school, with about one third of those enrolling in primary education also completing it.<sup>17</sup> Also the literacy rates found in the sample, with 88% saying they were able to read and write English, Arabic or

<sup>14</sup> South Sudan is often said to have 65 ethnic groups, but that figure includes ethnic sub-groupings such as the Lou or Jikany Nuer and Bor, Twic or Ngok Dinka. This survey does not report on ethnic sub-groupings.

<sup>15</sup> The 12% of other ethnic groups are consists of groups of 1,2% of the respondents or less.

<sup>16</sup> *South Sudan Statistical Yearbook 2011*, p. 34.

<sup>17</sup> World Bank (2012) *Education in the Republic of South Sudan: Status and Challenges for a New System*. Washington D.C.: World Bank. Available at: [http://www-wds.worldbank.org/external/default/WDSContentServer/WDSP/IB/2012/06/28/000333038\\_20120628035809/Rendered/PDF/705950PUB0EPI0067902B09780821388914.pdf](http://www-wds.worldbank.org/external/default/WDSContentServer/WDSP/IB/2012/06/28/000333038_20120628035809/Rendered/PDF/705950PUB0EPI0067902B09780821388914.pdf), p. 59.

both,<sup>18</sup> were much higher than the national average of 27% for South Sudan, and 52% for urban areas.<sup>19</sup>

A quarter of the total sample considered themselves to either be a combatant<sup>20</sup> (16%) or to have been a combatant in the past (10%). This relatively high percentage of combatants could be explained by the proximity of Giyada barracks to the survey location. Of the respondents 9% reported to be currently displaced.

For most hypothetical violent crimes respondents considered jail time the most appropriate remedy, whereas with cattle raiding respondents were just as likely to prefer compensation.

## Justice in everyday life

One of the starting points of this project is the interconnectedness of transitional justice and reconciliation and justice in everyday life. An important part of the survey therefore focused on people's perceptions and experiences with justice in daily life. Questions focused on both hypothetical cases, as well as on actual experiences.

In a first set of questions, respondents were asked what they would do in a number of hypothetical situations. These were a household member being murdered, a household member being severely beaten in the street, a household member being raped, a household member being robbed at gunpoint, and cattle belonging to someone from the household being raided.

For most of the hypothetical situations, respondents were more likely to say they would contact the police (69-78%) over family and friends (15-19%) or the clan headmen (9-12%). In terms of appropriate sanctions, most respondents said that a jail sentence by a court would be the most appropriate remedy or punishment (67-73%). A clear difference emerged in how respondents said they would deal with a case of cattle raiding. In such a case, only 47% of respondents said they would contact the police, whereas 35% said they would contact a clan headman. In comparison to the other crimes surveyed, respondents were also more likely prefer compensation (48%) as an appropriate remedy or punishment for cattle raiding than jail sentences (46%).

Responses to the hypothetical diverge from what those respondents did when actually confronted with the situation.

Responses to the hypothetical diverge from what those respondents did when actually confronted with the situation. For example, where 78% of the respondents said they would contact the police in case of an armed robbery, for the actual cases experienced only 50% (n=38) of the respondents actually contacted the police first when faced with an actual armed robbery and 25% first tried to mediate the case with

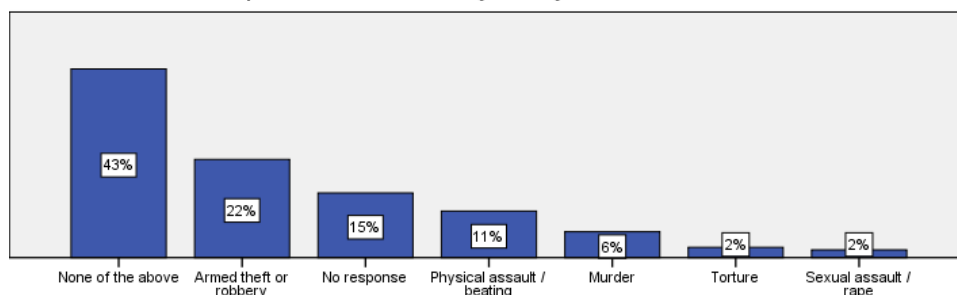
<sup>18</sup> This percentage indicates self-reported literacy. Ability to read was tested by asking respondents to read out the sentence "farming is hard work" in English and Arabic. Of the respondents who reported to read and write English 6% could not read it, and 18% could only read it partially. For Arabic, this was 17% and 24% respectively.

<sup>19</sup> NBS (2012) *National Baseline Household Survey 2009. Report for South Sudan*. Juba: National Bureau of Statistics. Available at: <http://static1.1.sqspcdn.com/static/f/750842/18935272/1340636516527/NBHS+Final+website.pdf?token=BDZ1icK1E9QtJdi2Yzq1IPRHy2U%3D>, p. 25. The NBS defines literacy as being able to read and write a simple sentence, and its data is based on self-reported literacy.

<sup>20</sup> Do you currently consider yourself to be a combatant in the military, a militia or a group defending your community?

the offending side. This difference may in part be caused by socially desired answering. However, the discrepancy between preferred dispute mechanisms in the hypothetical situation and the actual dispute mechanisms that respondents used when confronted with the situation also suggests that there may be a disconnect between the demand for justice services and those services that are available in practice.

Crimes experienced in the last 5 years by someone in the household



41% of the respondents said that they or a household member had experienced a violent crime in the last 5 years. In 62% of these cases, respondents reported no action was taken to deal with the case.

The final set of questions focused on people’s actual experiences with violent crimes. Of the survey sample, 67 respondents (N=163, 41%) said that they or a household member had experienced a violent crime at some point in the last five years.<sup>21</sup> For the purposes of the survey, a violent crime was defined as one of the following: armed robbery, physical assault, murder, rape and torture. The total number of violent crimes was 73, as some respondents reported multiple experiences with violent crime in their household. The high incidence of violent crime in the sample population reinforces anecdotal evidence of rising crime rates in Juba, especially since the start of the conflict in December 2013.

In 45 of these cases (62%), respondents said that no action was taken to try and find support to resolve the case, either through formal or informal justice mechanisms or self-help. When asked for the reasons why no action was taken, most respondents said that they ‘did not to know where to go’ (47%, n=45). Other reasons that respondents gave were that ‘it takes too much time’ (20%), ‘it is too expensive’ (18%), and that ‘justice providers are corrupt’ (16%).<sup>22</sup> These results demonstrate the inaccessibility of justice services even in a more developed urban area, such as Juba, whether due to inefficient or corrupt systems or a general lack of knowledge among the public about the types of services that are available. The survey also included questions about the paths to justice taken when confronted with a violent crime (i.e. who was contacted first, second, etc.) and the motivations people had for doing so (i.e. compensation, punishment, etc.). However, further analysis of these questions would require a larger sample.

<sup>21</sup> Respondents were only asked about the six crimes listed, and there was no ‘other’ option. The 43% that answered ‘none of the above’ may have experienced crimes not discussed in the survey.

<sup>22</sup> Respondents could give multiple answers.

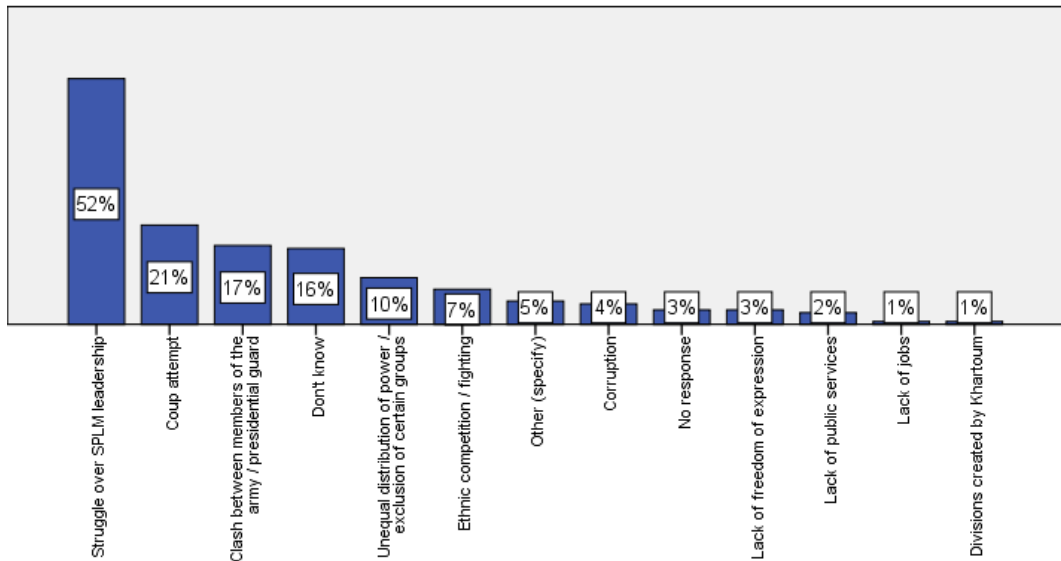


## The conflict

While the majority of the respondents considered the causes of the conflict to originate at the level of the army and SPLM leadership, one third of the respondents said grass-roots dialogue and peace conferences are needed to resolve the conflict.

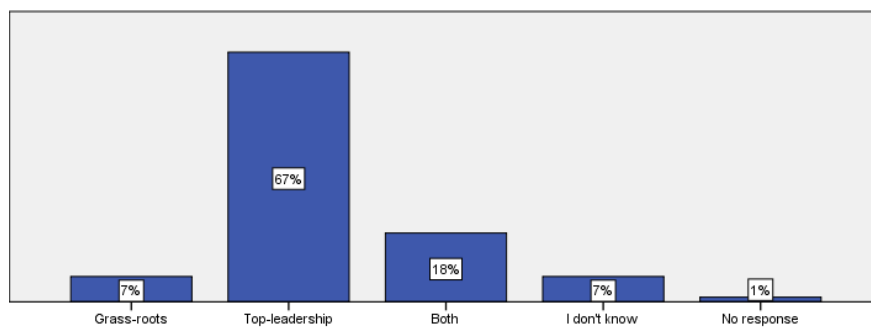
Another set of questions related to people's understanding of the current conflict, including both causes of the conflict and requirements for peace. While responses to these questions reflect people's perceptions only and cannot be presented as evidence of the actual causes of the conflict, they nonetheless help to better understand people's views on truth, justice and reconciliation, and what they consider to be solutions or requirements for peace.

Causes of the conflict according to respondents



The majority of the respondents cited a struggle over SPLM leadership (52%), an attempted coup (21%) and a clash between members of the army (17%) as the main causes of the conflict. Less prominently mentioned were an unequal distribution of power and exclusion of certain groups (10%), ethnic competition (7%) and corruption (4%).<sup>23</sup> When asked whether the current conflict relates to issues at the grass-roots level, the top leadership level or both, a clear majority identifies the main problems as being at the leadership level (67%).

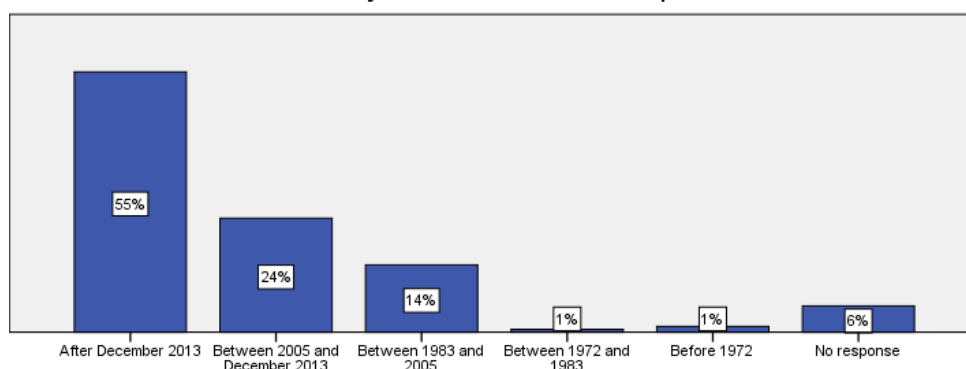
In your view, does the main problem of the current conflict that broke out in December 2013 relate to issues at the grass-roots level, the top leadership, or both?



<sup>23</sup> Respondents were asked to explain what the cause or causes were in their own words, and could give multiple answers.

When asked what would be necessary to resolve the conflict as an open-ended question, most people considered a formal peace agreement between political leaders a prerequisite (59%), followed by reconciliation (37%). And while the majority of the respondents considered the causes of the conflict to originate at the level of the army and SPLM leadership, one third of the respondents said grass-roots dialogue and peace conferences are needed to resolve the current conflict.<sup>24</sup> When asked what is necessary for long-lasting peace, but this time with a closed question, grass-roots reconciliation was considered most crucial (44%), followed by public dialogue (31%), power-sharing (31%) and federalism (28%).<sup>25</sup> While they are perhaps not seen to be a primary cause of the conflict, issues related to inter-communal tensions are thus clearly considered to play a crucial role in the conflict.

When do you think most abuses took place?



Of all respondents, 22% reported to have been victimized by an armed group or military actor in the context of conflict. Of these people, 61% of these cases had taken place after December 2013.

The respondents regarded the recent conflict to be the most violent, in comparison to earlier periods. When asked in which period people think most abuses took place, the majority of respondents (55%) said the period since December 2013, highlighting the intensity of the fighting that has gripped South Sudan over the last 20 months. This finding was reflected in younger age groups as well as among people age 30-40 (51%, N=47), 40-60 (50%, N=32), and 60-80 (50%, N=10), who all considered the post-December 2013 period to be most abusive.

The finding is reflected in actual experiences amongst respondents. Of all respondents, 22% reported to have been victimized by an armed group or military actor in the context of conflict. Of these people (N=36, see figure)<sup>26</sup>, 61% reported to have experienced abuse by a military actor after the outbreak of the conflict in December 2013. This was the case for all respondents under 40, and also the

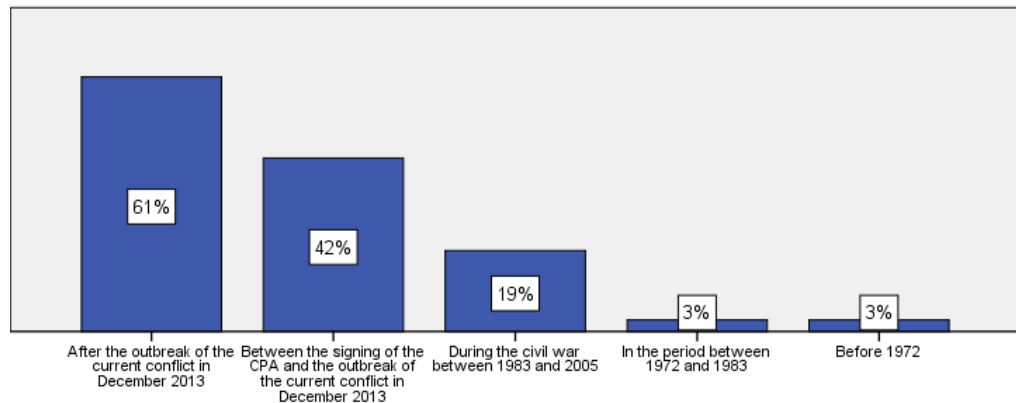
<sup>24</sup> Respondents were asked to explain what it would take to resolve the conflict in their own words, and could give multiple answers. Other requirements for peace included power-sharing (13%), truth-seeking (11%) and institutional reform (6%).

<sup>25</sup> Respondents were asked "which of the following do you think is necessary for long-lasting peace?". Other answers were trials of people who committed abuses (10%), none of the above (4%) and no response (3%).

<sup>26</sup> The total is more than 100% as several respondents said to have been victimized on multiple occasions.

respondents aged 60 and above. Only for the age-group 40-60 the most abuses were reported during the period from 2005 until 2013, and a higher number of abuses during the civil war from 1983 until 2005.

**Period when respondents reported having been victimized by an armed group or military actor**



Among survey respondents, the period after the outbreak of the conflict in December 2013 appears to have been most abusive. One factor influencing this is the age distribution of the respondents, with a large share of respondents that only experienced the later periods. The proximity of time, with the most recent violence more fresh in people’s memories, may also have contributed to the perceptions of recent conflict as more violent. The findings therefore do not say what period has been the most violent, but rather which is most violent in the perceptions of people (or in their personal experience). The results may also be affected by the relatively high percentage of combatants in the sample, as well as the proximity of survey location to the Giyada barracks in Juba, where the conflict in December 2013 started. Fighting among soldiers over a pay dispute also spilled over from Giyada to the surrounding neighborhoods again in March 2014. But the findings do concur with observations in the Final Report of the AUCISS, which similarly indicate that the rate and brutality of killings has been worse than in previous conflicts.<sup>27</sup>

A large majority of the respondents believed that it is important to speak publicly about what happened during the conflict (69%) as opposed to avoid speaking about what happened.

### Truth and dialogue

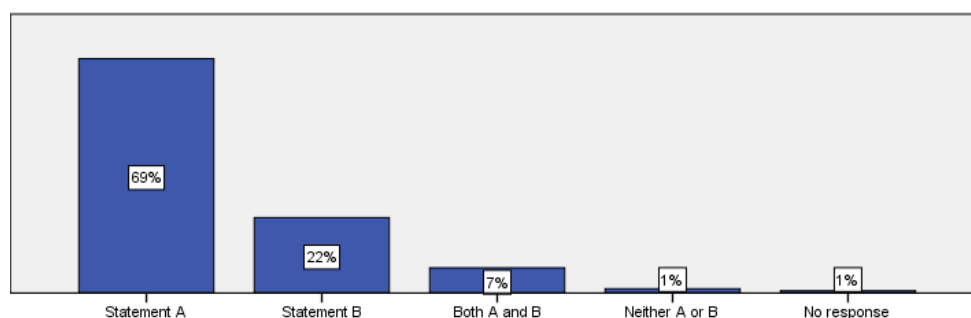
Another module focuses on people’s perceptions regarding national dialogue, the ability to talk publicly about events related to the conflicts, and the need to undertake truth seeking.

The respondents had a clear preference to speak publicly about the events and atrocities that occurred (and continue to occur) during the conflict. This was apparent in several questions on this subject. A large majority of the respondents believed that it is important to speak publicly about what happened during the conflict (69%) as opposed to avoid speaking about what happened. Men were slightly more inclined to

<sup>27</sup> AUCISS Final Report (2015), p. 114.

believe it is important to speak publicly than women (respectively 79% and 56%). This discrepancy reflects the patriarchal nature of South Sudanese society which tends to privilege the views of older men and presents barriers to women’s participation in public life.

**Which of the following do you agree with most: A) It is important for people to speak publicly about what happened during the conflict ? B) It is important to avoid speaking publicly about what happened during the conflict.**



71% of respondents felt it would benefit peace if people would speak publicly about what happened, and 83% believed that a public dialogue would have a positive effect on reconciliation with only 6% believing it will have a negative effect. This strong preference for openness and dialogue about what happened highlights the important role of public dialogue in practices of conflict resolution and reconciliation in South Sudan. While exact forms and shapes of conflict resolution practices may differ across communities, talking about events that occurred and listening to the different sides of the story is generally a crucial element of customary dispute resolution.

While there appears to be much support for dialogue, it should be noted that the environment for public dialogue is worsening. During several focus group discussions and informal conversations, people expressed an increasing fear to talk about issues related to the conflict and politics in public. People mentioned they are less inclined to discuss politics in places such as bars, cafés and tea gatherings under a tree out of fear who might overhear their conversation. The decreasing space for dialogue is also exemplified by the detentions of journalists and prominent civil society members, and introduction of new laws restricting freedom of association.<sup>28</sup> Since the outbreak of the conflict in December 2013, print runs of the independent newspaper *Juba Monitor* have been confiscated five times and the paper was threatened to close, and in February 2015 the independent newspaper *Nation Mirror* was shut down by the

<sup>28</sup> See e.g. International Center for Not-for-profit Law (ICNL), *NGO Law Monitor: South Sudan*, available at: <http://www.icnl.org/research/monitor/southsudan.html>; Human Rights Watch, *South Sudan: Abusive Security Bill* (15 Oct. 2014), available at: <https://www.hrw.org/news/2014/10/15/south-sudan-abusive-security-bill>.

If a public dialogue would be organized, 84% of the respondents felt this should be done at the national level, 36% at the state level, and 33% at the local level.

National Security Service (NSS).<sup>29</sup> More recently, in August 2015, the English daily *The Citizen*, the Arab daily *Al Rai*, and the media group *Free Voice* were shut down.<sup>30</sup>

If a public dialogue were organized, 84% of the respondents felt it should be done at the national level, 36% at the state level, and 33% at the local level.<sup>31</sup> There are several explanations for people's preference to organize a dialogue at the national level. First, the space for open dialogue is decreasing, which affects people's willingness to participate in public discussions. Second, the majority of the respondents considered the primary cause of the conflict to be within the SPLM/A and its leadership. Both issues contribute to the overall feeling that national level leaders should take the first steps in organizing public dialogues, should they be organized. Lastly, the fact that the survey was conducted in Juba where the national government is seated may have biased people in favor of dialogue at the national-level. One might assume that people from other areas of South Sudan might prioritize state and local solutions.

## Reconciliation

The reconciliation module looks at the need for reconciliation, as well as at how reconciliation should be organized.

When asked at which levels of society reconciliation efforts should be undertaken, 82% of the respondents believes this should be at the national level.

The survey made use of a common question to gauge trust in society, 'Do you think that most people can be trusted or do you think that you must be very careful in dealing with other people?' Of the respondents, 59% said you must be very careful, as opposed to 38% finding most people can be trusted. The same question was posed by the Afrobarometer program in 33 other African countries, where depending on the country between 44,2% and 94,2% of respondents believed you must be very careful in dealing with people, and 80% of all respondents combined.<sup>32</sup>

When asked the same question about trust of other ethnic groups, the results were roughly similar. About half of the respondents said that their perception of other ethnic groups had changed (47%, with 48% not changed). Of this group (N=77) 58% said to feel less favorable towards other groups, and 35% to feel more favorable. This may be caused by some people perceiving others increasingly as perpetrators of violence, whereas others may have increased sympathy for other ethnic groups that have been victimized. Although the causes of the conflict were mainly believed to be

<sup>29</sup> Rodes, T. (2014) "Mission Journal: As South Sudan conflict continues press still suffers." *Committee to Protect Journalists*. 16 December 2014, available at:

<https://cpj.org/blog/2014/12/mission-journal-as-south-sudan-conflict-continues-.php#more>

<sup>30</sup> Wheeler, S. (2015) Dispatches: Fresh Blows to South Sudan's Media Freedom. *Human Rights Watch*, 5 August 2015, available at: <https://www.hrw.org/news/2015/08/05/dispatches-fresh-blows-south-sudans-media-freedom>;

Wudu, W.S. (2015) "South Sudan Orders Dutch Media Group, Newspaper to Close." *Voice of America*, 4 August 2015, available at:

<http://www.voanews.com/content/south-sudan-media-rights-censorship/2901047.html>

<sup>31</sup> Multiple answers could be given

<sup>32</sup> Afrobarometer, 2011/2013 findings, available at: <http://www.afrobarometer.org/online-data-analysis/analyse-online>

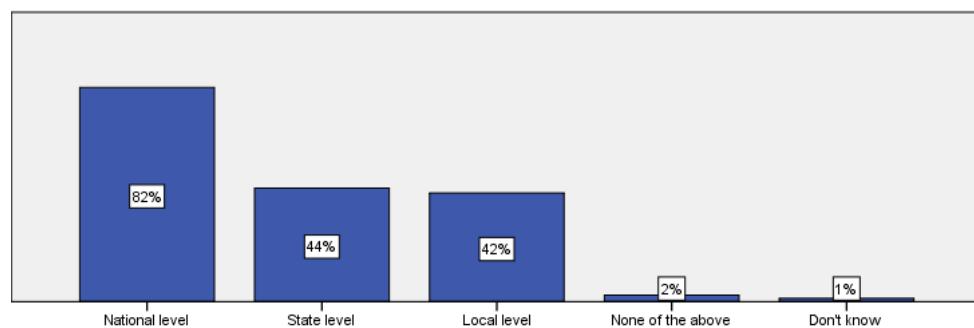


of a political nature at the national level, almost all of the respondents considered reconciliation between ethnic groups to be very important (92%).

When asked what should be done to promote reconciliation, 49% of the respondents said conferences and meetings at the national-level, and 47% said grass-roots conferences and meetings, followed by 29% calling for public dialogue and 21% for dialogue between the principles to the conflict.<sup>33</sup> Yet, when directly asked at which levels of society reconciliation efforts should be undertaken, 82% of the respondents believes this should be at the national level and much less respondents feel it should also be undertaken at the state level (44%) and local level (42%).<sup>34</sup> When asked why reconciliation is important, 60% mentioned the need to reconcile communities and 40% the need to reconcile the leadership.

Churches and religious institutions are considered the most important institution for reconciliation in South Sudan (83%).

At which level of society do you think reconciliation should be undertaken?



The data are therefore not completely clear on where people think reconciliation is most necessary or effective. It is possible that answering was affected by the order of the questions, an issue to be investigated in the redevelopment of the survey. But responses could in part also be explained by the fact people consider the problems and responsibilities to lie primarily with the leadership levels, and expect first steps should be taken at that level. At the same time people recognize that there is a real need to deal with the tensions between different communities and identity groups.

80% of the respondents believed that those suspected to be responsible for abuses during the conflict should be tried before a court

Much more agreement is on which institutions are most important for reconciliation in South Sudan. This is by far churches and religious institutions (83%), followed by the government (39%), NGOs (29%) and traditional leaders (26%).<sup>35</sup>

### Transitional justice

Survey respondents expressed a strong preference for justice in relation to atrocities committed during the conflict, although opinions on what justice means are diverse. There was overall agreement that court trials are important. 80% of the respondents believed that those suspected to be responsible for abuses during the conflict should be tried before a court, 74% believed that court trials would have a positive effect on

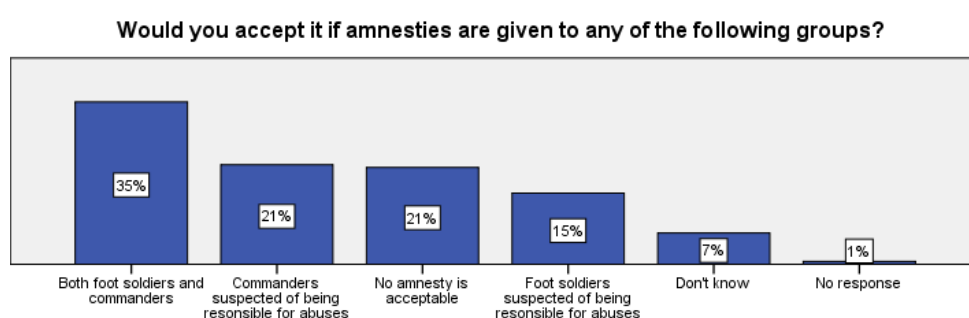
<sup>33</sup> Respondents could give multiple answers.

<sup>34</sup> Respondents could give multiple answers.

<sup>35</sup> Respondents could give multiple answers.

peace, and 82% believed it would positively affect reconciliation. When asked an open question on what should be done to achieve justice regarding abuses committed during the conflict in South Sudan, most people consider jail-time an appropriate punishment for those convicted (26%). However, this was closely followed by judicial execution (23%), confessions (18%), amnesty (17%), and forced to pay compensation to victims (17%).

A little less outspoken are opinions on amnesty, of which 61% believe it will have a positive effect on peace and 21% believe it will have a negative effect. When asked whether people would accept amnesties, 21% said they would not accept any amnesties.



Interestingly, the 21% that would not accept any amnesties is not the same 21% that believe it will have a negative effect. Of those who think amnesties will negatively affect peace (N=34), 42% would still accept amnesties of commanders, foot soldiers or both. And of those who do not accept amnesties (N=34), 30% believe amnesties would have a positive effect on peace.

When asked which court should bring cases against those suspected to be responsible for abuses during the conflict, an international court was mentioned most often (28%).

The high level of acceptance of amnesties seems to contradict the high desire for justice and trials. In part, this may be attributed to the lack of understanding of what amnesties are. Many people were unfamiliar with the concept, and it was explained to mean ‘to forgive and not prosecute’. With forgiveness being an important element in reconciliation processes, and with many people stressing the need for reconciliation, this may have influenced the findings.

For 64% of the respondents, amnesties would require at least confessions or apologies. 43% find changed behavior a requirement, and 20% think those receiving amnesty should pay compensation to victims.

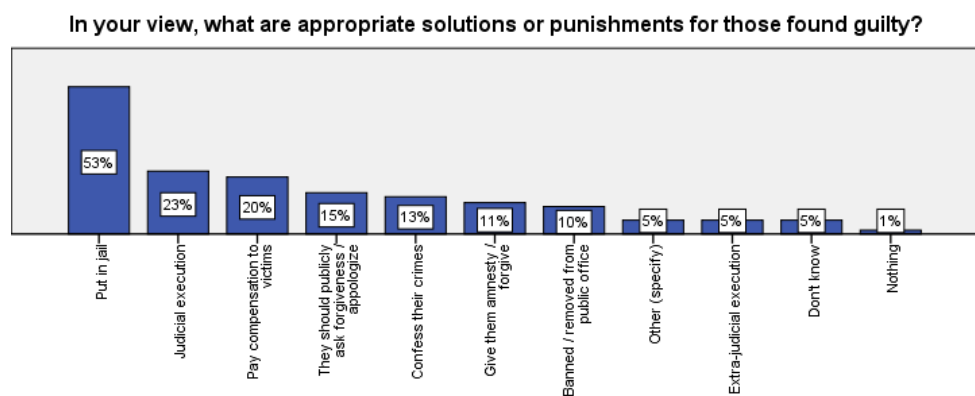
When asked which court should bring cases against those suspected to be responsible for abuses during the conflict, an international court was mentioned most often (28%), followed by statutory courts (21%), customary courts (16%). Very few respondents mentioned a preference for a special court set up for the conflict or a hybrid court, most likely because not many respondents are aware of these possibilities. The support for international involvement in justice resonates with

findings of a survey conducted in six of the ten states of South Sudan. When asked what respondents considered the most appropriate court to handle cases related to the conflict, 35% mentioned statutory courts and 34% the International Criminal Court (ICC) or another international court. When asked if they would support the involvement of international justice mechanisms 83% said ‘yes’.<sup>36</sup> While there is much resistance to international involvement in transitional justice at the leadership level, there seems to be more support amongst citizens, perhaps due to a lack of trust in state courts and fear of political bias. This resonates with people’s experiences with justice services in their daily lives (see below). Word of caution is that such support for international justice mechanisms can quickly wane were political leaders really to be indicted and opinions in support of these leaders come more central in national media.

### Perspectives on justice

When asked the open question what ‘justice’ is, for more than half of the respondents said it means equality and fair treatment. More than one-third considered it to imply access to police and judiciary. A quarter of the respondents said it is addressing the needs of victims, which is almost twice as much as the number of respondents that said it is prosecution of a perpetrator. One-fifth of the respondents understand justice to mean the application of the law, and only a few referred to compensation. This question did not find a clear preference of respondents for retributive or restorative justice. When asked what would be appropriate solutions or punishments for those found guilty of atrocities committed during the conflict by a court the preference for retributive justice seemed more eminent. With N=142<sup>37</sup>, 53% favored jail-time, followed by judicial execution (23%) and payment of compensation to victims (20%).

When asked directly whether punishment of those responsible for abuses or compensation of victims of abuses is most important, the majority considers punishment of perpetrators an important element of justice.

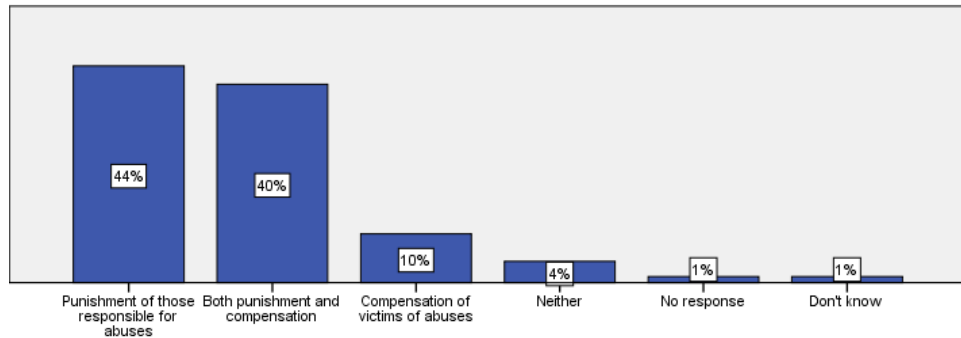


When asked directly whether punishment of those responsible for abuses or compensation of victims of abuses is most important, the majority considers punishment of perpetrators an important element of justice. Only 10% said to prefer compensation over punishment.

<sup>36</sup> SSLS (2015) *Search for a new beginning: Perceptions of truth, justice, reconciliation and healing in South Sudan*. Juba: UNDP, p. 34.

<sup>37</sup> Multiple answers were possible. Answers referring to “trial or criminal prosecution” removed.

In your view, which of the following is most important?



This finding compares to people’s views on proper remedies of violent crimes – i.e. crimes in everyday life not related to conflict, presented earlier in this brief. When asked what would be appropriate solutions or remedies in a number of hypothetical cases, people answered jail sentences over compensation (i.e. retribution over restorative justice). Only in cases of cattle raids, there was a slight preference for compensation.

It is difficult to determine to what extent these findings truly relate to people’s understandings of justice, and to what extent findings are influenced by the order of questions and the fact that the survey was conducted by people who introduced themselves as representatives of SSLS, a legal organization. However, investigation of people’s actual experiences with violent crimes in the past 5 years show a different picture, as the one of the main reason victims looked for support was to find compensation first, or on par with retribution. This means that the preference for retributive sentences in relation to transitional justice requires further investigation.

### Concluding remarks

As mentioned, this brief does not present any final conclusions or recommendations. Yet, a few further points for debate can be drawn from the findings that have been presented.

With regard to violence experienced in daily life, the pilot survey suggests that people are more likely to report favoring retributive justice in hypothetical cases, while choosing for restorative justice in actual cases. To a certain extent, this may reflect people are inclined to give socially desired answers. But it might also very well show a disconnect between the type of justice that people want in an ideal world and the type of justice services that are available in practice. Since power is diffused away from formal state structures in many places, the state does not always have the monopoly of force that is needed to enforce criminal punishments, especially when perpetrators wield military or political power. As a result, they tend to fall back on compensation as the best available option. Nonetheless, the data warrants caution when drawing conclusions about preferences for retributive justice based on

hypothetical cases, both relating to crimes committed in daily life and during periods of conflict.

Of the sample, the majority of people considered the top-leadership of the country to be responsible for the conflict, and also argued that activities relating to public dialogue, truth finding, reconciliation, or justice, should first be taken at the national level, by the political leadership. There are a few possible explanations for this. One argument is that people consider the conflict to be primarily a leadership conflict, and that resolving that conflict will also help resolving the communal conflicts in the country. Another argument is that people have little faith in their ability to start at the grass-roots level, and require an initiative from the leadership first. This may also be related to the decreasing space for public dialogue in the country. Furthermore, the pilot was conducted in Juba. The visual presence of the national government in the capital may also cause people to place more emphasis on the government.

Yet, at the same time, people emphasize the importance of local level reconciliation efforts and the need to address communal conflicts. People therefore do see the impact of local level tensions, and the need to address them. It may also imply that, unlike issues related to power sharing or public dialogue, reconciliation is considered something that is in the power of people to achieve, reflecting a certain level of agency and confidence in the power of South Sudanese to solve their own problems.

With regard to justice in relation to crimes committed during the conflict, in the sample international courts were favored over other courts. While, other research finds this preference might be more evenly divided between international and national courts, there nonetheless seems a relatively high level of support for international involvement. Although the reasons for this cannot be ascertained, diverging perceptions of the state's ability to provide justice could explain this. There are a part of the population that trusts that the government can take this responsibility, yet there is also a part of the population that has little faith in state justice provision. The actual experiences with violent crimes and justice testify to the motivations of this last group. Yet, overall, it seems that the hybrid judicial body proposed in the IGAD-process would be a solution that fits these different needs.



## Acknowledgements

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