

South Sudan: Justice and Reconciliation in a Divided Country

POLICY BRIEF

Intersections of Truth, Justice and Reconciliation in South Sudan

Rens Willems

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University for Peace
UPEACE Centre The Hague



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Introduction

This policy brief presents the results of the conference “South Sudan: Justice and Reconciliation in a Divided Country” in Nairobi, Kenya on 27 September 2016 and the Hague, The Netherlands on 4 October 2016. The conference discussed the findings of the research project “Intersections of Truth, Justice and Reconciliation in South Sudan”, which has been jointly implemented by University for Peace (UPEACE) Centre The Hague, South Sudan Law Society (SSLS) and PAX.¹

The first part of this brief presents a summary of the research project and the final reports that formed a basis for the discussions in Nairobi and The Hague. The second part presents the key issues that were raised by presenters, panelists and participants during the conferences.² The third and final part presents recommendations.

Project and Summary of Reports

The research 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. In order to build peace and stability, people must be able to access justice services when faced with criminal violence in their daily lives. Peace also requires dealing in some way with the violence that people have experienced as a consequence of conflict. From this perspective, the project investigated people’s perceptions, needs and experiences with truth, justice and reconciliation.

The project used both quantitative and qualitative research methods. A survey was conducted in November and early December 2015 in four locations: Juba town, Juba Protection of Civilian site (POC³), Wau town and Bentiu POC. In total 1,912 respondents were interviewed for the survey. A range of qualitative methods were used to enhance understanding of the data gathered in the survey. Interviews were conducted with ordinary citizens across the four locations to gain more in-depth knowledge on peoples’ perceptions of and experiences with violent crimes and the justice process. Across all four locations the team also organized workshops and interviews with the goal of sharing initial findings from the survey, and to verify and polish our interpretation of the findings.

¹ The project 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 Organisation for Scientific Research (NWO). See for more: http://www.upeace.nl/index.php?page=Thematic_Programmes-Thematic_Programmes-&pid=154&id=1&projid=39

² This brief presents the author’s summary of the points raised during the conferences, and does not necessarily reflect the opinion of individual participants.

³ The UN is currently operating six POC sites including UN House Juba POCs 1 and 3, Bor POC, Malakal POC, Bentiu POC, Melut POC and Wau POC. More than two hundred thousand South Sudanese are currently seeking refuge in these POCs.

The research project has resulted in several publications.⁴ The two final reports formed the basis of the discussions in Nairobi and The Hague: *Access to Justice: Perceptions of and Experiences with Violent Crime in South Sudan* (Willems & Deng, 2016) and *Perceptions of Transitional Justice in South Sudan* (Deng & Willems, 2016).⁵

- *Access to Justice: Perceptions of and Experiences with Violent Crime in South Sudan.*

The report documents people's experiences with justice after violent crimes. Of all respondents, 60% indicated to have experienced a violent crime within the household in the past 5 years. In 72% of these cases, no action was taken to pursue justice or seek redress. The report finds that security and justice services are often unavailable, or considered inaccessible or inadequate. People with more time and resources to invest have a higher chance of obtaining justice for a crime. Both punishment of perpetrators and compensation of victims are considered vital elements of justice, yet overall justice remains unattainable for most victims of violent crimes. The lack of justice contributes to spirals of violence prevalent in South Sudan.

- *Perceptions of Transitional Justice in South Sudan.*

This report documents people's perceptions and experiences of truth, justice and reconciliation in relation to the past and present conflicts in South Sudan. It finds that more than half of the people interviewed have been victimized by an armed group or actor, and that women are increasingly targeted in the post-2013 period. Respondents that identified themselves as (past or present) combatants were almost twice as likely to report victimization, suggesting a high victim-perpetrator overlap. People diverge widely on the causes and possible solutions to the conflict, as well as on how to balance punishment (and amnesties), compensation and reconciliation. This shows the importance of continued discussions on transitional justice and reconciliation in the current context. At the same time, space for this is decreasing.

⁴ All publications can be found here:

http://www.upeace.nl/index.php?page=Thematic_Programmes-Thematic_Programmes-&pid=154&id=1&projid=39

⁵ Willems & Deng (2016) *Access to Justice: Perceptions of and Experiences with Violent Crime in South Sudan*. Available at: <http://www.upeace.nl/cp/uploads/downloadsprojecten/Access-to-Justice-in-South-Sudan---Final-Report.pdf>

Deng & Willems (2016) *Perceptions of Transitional Justice in South Sudan*. Available at: <http://www.upeace.nl/cp/uploads/downloadsprojecten/Perceptions-of-Transitional-Justice-in-South-Sudan---Final-Report.pdf>

Conference Reflections

This section presents the key issues that were raised by presenters, panelists and participants during the conferences in Nairobi and The Hague. The discussions centered around two key questions:

- What does the current situation mean for transitional justice and access to justice in South Sudan?
- What can in the current context be undertaken to promote and support transitional justice and access to justice in South Sudan?

Failing state institutions

A consensus existed on the lack of functioning of state institutions. Participants noted that South Sudan's state institutions are mimicking state institutions, but do not function as such. State institutions are therefore unable to serve the needs of the South Sudanese people. Moreover, they do not serve all equally.

While there was agreement the system is broken, participants disagreed on the necessary steps to address this problem. Where some favored a complete overhauling of the system, others considered it more productive to work with what is there.

The lack of functioning of state institutions has severe consequences for access to justice and transitional justice. State institutions will not be able to provide the access to justice that South Sudanese need. State institutions will also not be able to address all justice and reconciliation needs in the near future.

It is therefore necessary to expand the reach of justice beyond what is possible through state action alone, including traditional justice and reconciliation mechanisms and paralegal or legal aid programs.

Lacking political will

While the peace agreement signed in August 2015 includes concrete provisions to enhance access to justice and initiate transitional justice and reconciliation initiatives, there is a profound lack of political will to undertake sincere action on these issues. Civil society and international actors promoting these topics are also increasingly met with antagonism by some within the government of South Sudan.

The lack of political will forms a serious obstacle to improve access to justice for South Sudanese citizens, and requires continued lobbying and advocacy targeting those who are still receptive and open to dialogue. It also requires continued support for civil society organizations in South Sudan to stimulate dialogue and empowerment on justice issues in communities.

People's justice expectations

Respondents in the research project did not express a clear preference for either statutory or traditional justice mechanisms. Rather, people expressed a desire to increase their chances of obtaining justice after being victimized of a crime. Both compensation of victims and punishment of perpetrators are part of people's justice needs. With regard to violent crimes people experienced, people feel severely limited in their options to pursue justice. This contributes to spirals of violence and impunity.

The limited access to justice is evidence for the need to continue the development of the justice sector, as well as searching for alternative venues for dispute resolution to work in addition to and alongside state justice mechanisms.

With regard to crimes in the context of large-scale conflict, there is a tendency of people to consider their own community as victims and the other as perpetrator. This calls for community dialogue and reconciliation initiatives.

Support traditional justice mechanisms

Participants of the conference in Nairobi expressed the need to support traditional justice mechanisms. Such mechanisms are considered easily accessible, geographically close and addressing justice according to community needs. Yet, support for transitional mechanisms is not straightforward, as they are also faced with considerable limitations. Traditional systems are often biased against women, have been weakened by attempts to replace them with statutory mechanisms over the past decades, and lack power to enforce decisions when perpetrators are armed youth or military. However, in many cases people contact traditional mechanisms after experiencing a violent crime, even when this crime is formally outside the jurisdiction of traditional mechanisms.

Traditional mechanisms should be supported to enhance their capacity to provide equal and fair access to justice. This includes training traditional mechanisms on women's rights and advocating for gender equality in communities. It also includes enhancing their capacity to enforce decisions and investigating where and how their jurisdiction may require to be broadened.

Capacity building of security and justice sector

While traditional justice mechanisms were emphasized in the discussions, this should not be at the cost of building the statutory security and justice sector. Particularly critical is investing in the capacity of police investigators to investigate crimes, including training and resources. This also includes investing in the capacity to report and file judicial opinions. Where the justice system should rely on precedents, this is hardly functioning due to the lack of administration of and access to judicial opinions.

Need to continue to promote transitional justice and reconciliation

The widely diverging views on the causes of and possible solutions to conflict in South Sudan attest to the need for truth-seeking. The research also shows there is wide support for truth-seeking efforts, bringing perpetrators to justice, and promoting reconciliation between communities. The capacity of state institutions and political will to support transitional justice and reconciliation processes may be limited, and there is a risk that any transitional justice effort becomes hijacked by political agendas at the national level. Yet the continuing cycles of violence and impunity can only be stopped if some form of transitional justice takes place.

It is therefore essential to continue with the implementation of Agreement on the Resolution of the Conflict in South Sudan (ARCISS), and in particular the establishment of the institutions proposed in Chapter V. In the meantime, a hybrid investigative unit with an official mandate to begin compiling evidence of international crimes to lay the groundwork for the HCSS can be established by the AU, and supported by the guarantors of the ARCISS. Efforts can also be undertaken at all levels to monitor and document cases of violations and victimization.

Lobby and advocacy on transitional justice

The space for public debate and promotion of transitional justice and reconciliation efforts is increasingly shrinking in South Sudan. Nonetheless, there are key actors in South Sudan that continue to be receptive to think about and further efforts of transitional justice and reconciliation. Lobby and advocacy efforts should continue to work with those who are open to dialogue, and aim to widen the space for debate.

Support of community reconciliation initiatives

Initiatives to promote peace and reconciliation at the community level continue to be initiated and greatly contribute to reconciliation between communal groups even when the conflict at the national level continues or exacerbates. Pockets of peace need to be utilized and expanded where possible, by supporting community initiatives and empowering communities. This includes supporting civil society at the community level and stimulating knowledge exchange on peacebuilding, reconciliation and human and civil rights.

Civil society has a key role

Participants in Nairobi and The Hague acknowledged the key role of civil society in supporting access to justice and transitional justice, and the increasing scrutiny civil society faces in South Sudan. Public space for open and free debate is increasingly shrinking, and organizations that are critical are quickly considered by the government as opposing.

Civil society organizations present also acknowledged to be as divided as the political landscape, across political and ethnic divides, and that this disunity hinders the

effectiveness of civil society. In The Hague it was mentioned that also diasporas suffer from this and diasporas stressed the need to work together as South Sudanese rather than as members of a specific ethnic community. In Nairobi it was also emphasized that freedom is not given, and that civil society has to come to terms with the fact that the struggle for freedom contains risks.

From both the reports and the discussions it became clear that civil society has a key role in supporting access to justice, transitional justice and reconciliation. When efforts at the national level may be difficult or delayed, community initiatives can continue to promote inclusive truth seeking and public debate, and continue with the monitoring, documentation and research on the human rights impacts of conflict. Civil society should be supported, particularly at this moment in time, to involve and empower communities, stimulate debate and engage with government actors.

Focus on Victims' Needs

The needs of victims should be central to all efforts of transitional justice. Discussions on accountability can become highly political and focused on bringing perpetrators to justice, to the extent that the needs of victims are neglected. This requires further investigation of what victims want, as well as ongoing monitoring and documentation of cases of violations and victimization. It also requires the protection of witnesses and victims in processes of the Commission for Truth, Reconciliation and Healing (CTRH) and the Hybrid Court for South Sudan (HCSS).

Gendered approach focus

Women have increasingly been targeted in conflicts since 2013 and there have been high levels of Sexual and Gender-Based Violence (SGBV) reported. This calls for special attention for SGBV and tackling the widespread impunity for SGBV-related crimes. South Sudanese security officials should make sure that no charges are requested for Form no 8, and efforts should be made to ensure that both police officials and health care workers are all aware that this form is no longer a requirement for receiving medical care. Dialogues should be started with traditional authorities to discourage (forced) marriage as a way to settle SGBV cases. This would also be in the interest of traditional authorities, as our research shows that this approach undermines the trust of communities in customary courts.

Participants also indicated women should be given a stronger role in activities related to reconciliation and transitional justice.

Transitional justice and access to justice should be programmatically connected

It is essential to view transitional justice and access to justice as two sides of the same coin, and therefore ensure programmatic connections between efforts to promote them. With the large number of crimes being committed in the context of conflict,

transitional justice and justice sector reform cannot be treated as completely independent from each other. Transitional justice efforts should include a focus on justice reform and capacity building. Supporting access to justice can also support transitional justice efforts when bringing suspects at leadership levels is not (yet) possible.

Confronting learning cycles and funding cycles

Discussions showed how many years of efforts to support peace in South Sudan have resulted in many lessons learned, yet these lessons are rarely reflected at the level where political decisions are made. Several issues hinder the taking up of lessons learned from past experiences, including the high turn-over of staff, short funding cycles limiting a long-term outlook and the focus of many donors on stability rather than a true interest in durable peace and justice. Notwithstanding, some donors do make efforts to overcome limitations in funding cycles and staff turn-over. Donors should continue to make longer-term commitments even when this is difficult due to funding cycles, and enhance the sharing of knowledge between departments and position generations.

Recommendations

Based on the findings of the research and the discussions in Nairobi and The Hague, this policy brief recommends the following:

To the (Transitional) Government of South Sudan:

- Allow for open public discussion and debate on issues related to justice and reconciliation to take place but avoid polarization.
- Investigate and support the potential of the various traditional authorities in reconciliation and transitional justice processes in order to connect local and national efforts and help to make reconciliation and justice more meaningful for South Sudanese and extend the transitional justice initiatives to the grassroots level.
- Continue with the implementation of Chapter V of the ACRISS, and actively support and promote the establishment of the CTRH, HCSS and CRA in order to promote peace.
- Actively promote an inclusive truth-seeking effort in order to support the development of a shared national narrative of the conflict, recognising different experiences.
- Invest in the capacity of customary courts, particularly in their ability to settle cattle raids and preventing revenge, as cattle raids have become increasingly complex and linked to conflict and organized crime.

- Invest in the capacity of police investigators to investigate crimes, so that people can gain confidence in the police and their ability to help them to find justice.
- Ensure programmatic connections between justice reform and transitional justice efforts.

To all guarantors of the ACRISS, including UNMISS, the AU and IGAD+:

- Actively promote continued public discussion on reconciliation and justice among South Sudanese, both within and outside South Sudan.
- Ensure continued support for and by civil society to keep the process of reconciliation and transitional justice moving forward by continuing discussions on and dissemination of ideas and concepts of reconciliation and justice.
- Continue with the monitoring, documentation and research on the human rights impacts of conflict.
- Ensure special attention for SGVB and tackle the widespread impunity for SGVB-related crimes.
- Initiate a hybrid investigative unit with an official mandate to begin compiling evidence of international crimes to lay the groundwork for the HCSS, while building national capacity to participate effectively in the HCSS, and keeping in mind that there are fears such activities might undermine peace.
- Move forward with the establishment of the HCSS and ensure it receives considerable political and material support from the region, and investigate ways in which the HCSS can support in building capacity of the South Sudanese judiciary and justice system, including traditional justice mechanisms.

To donors, South Sudanese civil society and (I)NGOs:

- Ensure continued support for and by civil society to keep the process of reconciliation and transitional justice moving forward by continuing discussions on and dissemination of ideas and concepts of reconciliation and justice.
- Continue with the monitoring, documentation and research on the human rights impacts of conflict. These documentation efforts could help to advance the collective understanding of the context and support the efforts of the

CTRH, while also giving civil society additional valuable information that could be leveraged in civil society's advocacy efforts and in their engagement with communities.

- Continue to find space for public discussion on reconciliation and justice.

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