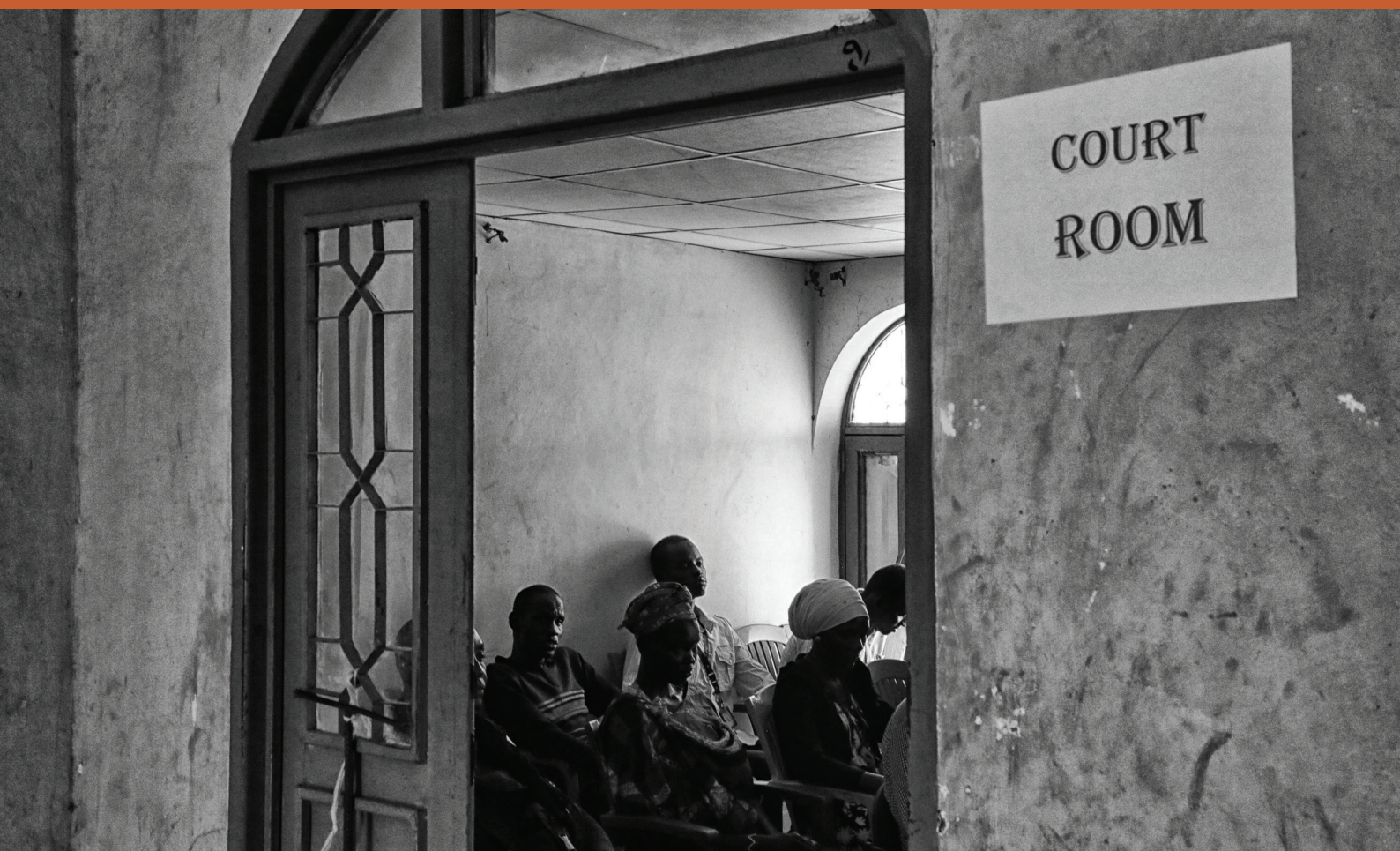


Citizens' perceptions on transitional justice processes in South Sudan

Allan Ngari and Jame David Kolok



In 2013, Africa's newest state, was on the brink of collapse. Internal armed conflict, serious human rights violations and a divided government led to the death or displacement of thousands of people. A 2015 peace agreement ended the conflict and created a range of transitional justice mechanisms to address the country's past. None of these mechanisms are operational. Violence returned in 2016 necessitating a revitalised peace process. This report assesses South Sudanese citizens' perceptions of transitional justice processes.

Key findings

- ▶ Citizens' knowledge of transitional justice mechanisms in the Peace Agreement is very low.
- ▶ Understanding of transitional justice varies among communities and individuals, depending on their expectations and perceived benefits from the process.
- ▶ Some 60% of research respondents wanted the Commission for Truth Reconciliation and Healing (CTRH) to be established first, compared to 49% for the Hybrid Court for South Sudan (HCSS) and 7% for the Compensation and Reparation Authority.
- ▶ Although the peace agreement provides for the revitalised Transitional Government of National Unity to nominate members of the commission, respondents believe an open and transparent citizen-led process would legitimise the nomination process.
- ▶ Reparations should consider individual rather than collective compensation for victims and families whose property was destroyed during the conflict.
- ▶ The narrative that transitional justice is retributive and foreign, and targets certain individuals in the government, is narrowing the space for engagement on other non-judicial mechanisms.
- ▶ Involving international human rights organisations in advocating for transitional justice and accountability is an ideal alternative for national actors – but focusing on the HCSS without supporting other processes, such as the CTRH, confirms the government narrative that transitional justice is retributive and foreign.
- ▶ Although the government is willing to implement the CTRH and has facilitated consultation around it among citizens, it has not shown similar willingness in relation to other mechanisms.

Recommendations

- ▶ Civil society organisations should undertake civic education that focuses on the various processes and mechanisms of transitional justice to enhance citizens' knowledge and improve their participation in transitional justice processes.
- ▶ Involve South Sudanese communities in defining transitional justice and design programmes that meet their expectations.
- ▶ The government should ensure holistic implementation of the transitional justice provisions in the peace agreement including those related to the Commission for Truth Reconciliation and Healing, the Hybrid Court for South Sudan and the Compensation and Reparation Authority.
- ▶ The government should promote an inclusive transitional justice process and ensure South Sudanese civil society and victims participate in the legislative processes intended to design and establish the various mechanisms.
- ▶ The government should establish a gender-sensitive transitional justice process that not only ensures a minimum representation of women at 35%, but also has the expertise to handle transitional justice issues relating to women, children, young people and the elderly.
- ▶ The government should harmonise all transitional justice processes in the country and ensure complementary initiatives such as those undertaken by religious groups, traditional leaders and civil society organisations align with the national transitional justice agenda.
- ▶ The government should facilitate the design of a transitional justice process that adapts to the various community experiences, and support the implementation of familiar mechanisms that address the expectations of affected communities.

Introduction and context

Though South Sudan's current discussions on transitional justice started after the outbreak of the 2013 conflict, the motivation for transitional justice is deeply rooted in historical grievances and unsettled human rights violations that date back to the 21 years of the liberation struggle and earlier. The 2014 African Union Commission of Inquiry on South Sudan (AUCISS) report¹ established the relationship between the resurgence of violence in the country and a history of accumulated grievances. Evidence suggests a sluggish interest among the political establishment in South Sudan to pursue transitional justice.

In the 2005 Comprehensive Peace Agreement, the signatories, which included the government of the Republic of Sudan and the Sudan People's Liberation Movement, agreed to initiate a comprehensive process of national reconciliation and healing throughout the country as part of the peacebuilding process.² However, the government of the autonomous southern Sudan did not implement this initiative, fearing it would cause old grievances to resurface and endanger the unity of the South Sudanese people as they prepared for the January 2011 referendum.³ This perception continued to manifest itself after South Sudan's independence in July 2011. For example, in early 2013 a national reconciliation process was announced. Vice-President Dr Riek Machar, who had earlier apologised for the 1991 Bor massacre and called for the mending of broken ties among communities in South Sudan,⁴ led a series of consultative meetings with different stakeholders including civil society organisations and religious groups, and members of the regional and international communities.⁵ The process, however, did not gain much traction due to growing political animosity between President Salva Kiir and his deputy Machar. The president disbanded a national reconciliation committee chaired by Tor Deng Mawien, the presidential advisor on decentralisation and intergovernmental linkages, stripped Machar of his role in the national reconciliation process and cancelled a planned national reconciliation conference.⁶

Though public outcry prompted the president to decree a new National Reconciliation Committee (NRC)⁷ chaired by Archbishop of the Episcopal Church of Sudan Daniel Deng Bul, the circumstances surrounding

his appointment were divisive. While there seemed to be consensus that the Church should lead the process, the involvement of the president in appointing the committee's chair was seen as procuring political favour, raising concerns that the government might try to influence the reconciliation process and limit the NRC's ability to act as a neutral mediator. As a senior administrative official at the South Sudan Council of Churches said, 'the calling of a bishop is not from the president but from God.'⁸ Despite these reservations, the NRC proceeded to initiate local reconciliation initiatives. But eight months after the committee's formation, conflict broke out in 2013, plunging the country into another cycle of violence.

Evidence suggests a sluggish interest among the political establishment to pursue transitional justice

In December 2016, Salva Kiir launched a National Dialogue process⁹ intended to complement the 2015 Agreement on the Resolution of the Conflict in South Sudan (ARCSS) and provide an opportunity for the South Sudanese people to settle historical disputes and sources of conflict among their communities, among other goals. Though civil society organisations initially viewed the dialogue as a replacement for Chapter V of the peace agreement,¹⁰ the two-year process generated substantive views from citizens on how best to deal with South Sudan's past.

The South Sudan National Dialogue steering committee conducted state¹¹ and regional consultations to understand the public's position on the agenda for peace and reconciliation. Among the key demands from the grassroots consultations and regional conferences was speedy implementation of transitional justice processes, such as ensuring accountability for crimes committed during the war, truth telling, reconciliation and healing, and reparations for victims who lost property during the conflict.¹²

The implementation of the National Dialogue and, indeed, transitional justice could pave the way for a genuine resolution of historical grievances, as well as addressing human rights violations that occurred during

the 2013 conflict. The AUCISS report, for example, cited the 1991 Bor massacre as an example of unresolved violence that had inflicted deep wounds in sections of the ethnic-Dinka community and warranted a genuine institution of reconciliation.¹³ The 2013 conflict also inflicted pain on the South Sudanese. Both the government and opposition groups have been accused of gross human rights violations including killings, sexual violence against women and children, and the destruction of civilian property.¹⁴

It is against this background that the AUCISS report¹⁵ and the 2015 Inter-Governmental Authority on Development-led ARCSS recommended establishing transitional justice processes to deal with the troubled past. Chapter V of the ARCSS provided for the CTRH in response to the need to establish a record of the numerous incidents of human rights violations and their impact on communities, and of the need for reconciliation among communities. It could also contribute, through its recommendations, to the accountability process and reparations for victims. Secondly, the agreement provided for an independent Hybrid Court for South Sudan (HCSS),¹⁶ to be established by the African Union Commission (AUC). Once established, the Transitional Government of National Unity (TGoNU) is required to pass legislation to incorporate the court into the South Sudan national legal framework. The ARCSS also tasks the AUC with providing broad guidelines with respect to the location of the HCSS, its infrastructure, funding mechanisms, enforcement, applicable jurisprudence, and the number and composition of judges and their privileges and immunities.¹⁷ The mandate of the court is therefore to:

investigate and prosecute individuals bearing the responsibility for violations of international law and applicable law of South Sudan committed from 15 December 2013 to the end of the transition. The jurisdiction of the HCSS encompasses genocide crimes, namely war crimes, crimes against humanity and 'other serious crimes' under international law and relevant laws of South Sudan, including gender-based violence.¹⁸

Finally, the ARCSS provides for the Compensation and Reparation Authority (CRA).¹⁹ The CRA was included in the ARCSS in recognition of the destructive impact of the

conflict on the citizens of South Sudan and the need to provide reparative justice.²⁰ Reparation has increasingly become not only an important part of addressing past injustices, but also a necessary process of healing and reconciliation in itself.²¹

These three mechanisms are envisaged under the ARCSS as an essential precondition for sustainable peace, a necessary requirement to remedy the past and establish conditions that will prevent similar occurrences in the future. Ultimately, the mechanisms should promote the common objective of facilitating transitional justice, accountability, reconciliation and healing, and to address the legacy of human rights violations in South Sudan.

The implementation of the ARCSS has been marred by several challenges, some of which are discussed in this report, including renewed violence in July 2016. Until a revitalisation process started in 2017, none of the mechanisms had been established. Concerted efforts by national civil society organisations,²² the United Nations (UN),²³ and regional and international human rights organisations²⁴ could not persuade the government to implement these mechanisms.

Three mechanisms are envisaged under the ARCSS as an essential precondition for sustainable peace

The Technical Committee²⁵ established by the Ministry of Justice and Constitutional Affairs to consult South Sudanese citizens on the legislation for the formation of the CTRH ended up collecting views from only government-controlled areas. The AUC and the TGoNU, both of which were mandated by the 2015 ARCSS to establish the HCSS,²⁶ could neither conclude the memorandum of understanding putting the court into operation nor pass the draft statute submitted to the government under the 2015 deal.²⁷

In terms of structure, this report provides a broad legal framework for transitional justice and explains the demographic characteristics of the respondents. Citizens' understanding of transitional justice was established before trying to understand interviewees' level of awareness of transitional justice mechanisms in the peace agreement. Conversely, priorities and expectations

about transitional justice were probed and the question of whether or not the interviewees believed other parallel transitional justice mechanisms were required was raised. A section on challenges and opportunities is presented, and finally the conclusions and recommendations of the study are made.

Methodology

Considering this context, this report gives an analysis of citizens' perceptions of transitional justice possibilities and processes in South Sudan. The research was conducted by a local researcher for the Institute for Security Studies (ISS) through a series of key informant interviews and focus group discussions (FGDs). A total of 60 respondents were selected as key informants, while 90 individuals participated in FGDs in five locations (Juba, Yei, Yambio, Torit and Wau) across South Sudan. A detailed breakdown of the demographic characteristics of the respondents is provided below.

The implementation of the ARCSS has been marred by several challenges including renewed violence in July 2016

While selecting the locations and the respondents the researcher considered factors such as the impact of the conflict in these locations (Wau, Yei and Juba); the presence of internally displaced person (IDP) camps (Wau and Juba); peace and reconciliation initiatives by civil society and religious groups (Yambio and Torit); and ethnic representation and logistical and security considerations. Each of these locations had their questionnaires translated into the local language and all discussions were held in Zande, Nuer, Kakwa and Juba Arabic.

The scope of the study was mostly limited to the period after the outbreak of the 2013 conflict. The questions were designed to investigate respondents' perceptions of transitional justice possibilities and processes as informed by the 2015 ARCSS. It is worth mentioning that while Chapter V of the ARCSS provides for the establishment of transitional justice mechanisms, none of these mechanisms have been implemented, confining the research on respondents' perceptions of transitional justice to its establishment rather than on their experiences with the process.

Respondents' demographic information

Taking into account accessibility, security and ethnic representation, the study was conducted in selected areas of Equatoria and Bahr el Ghazal regions. However, mindful of regional and ethnic representation, participants from Upper Nile were interviewed in protection of civilian sites²⁸ and areas hosting returnees around Juba. Interviews were conducted in Juba, Yambio, Yei, Wau and Torit. A total of 60 key stakeholders participated in the research. Of those interviewed: 11% were youths; 15% technical professionals (teachers,



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engineers, lawyers and mechanics); 22% civil servants, including members of parliament and government officials; 15% social workers and international non-governmental organisation staff; and 22% members of South Sudanese civil society.

In addition, 15 FGDs, drawing together participants from various civil society coalitions and internally displaced persons (IDPs), were held in Juba, Yei, Yambio, Wau and Torit to seek citizens' insights on aspects of transitional

justice. In total, 90 respondents representing 60% of total respondents interviewed for this research participated in these FGDs.

Considerations that were used to select respondents for the research included their age, whether they were from locations that had been susceptible to violence and human rights violations, experiences of the peace process, and if they had been victims or witnesses of known gross human rights violations.

Table 1: Socio-demographic characteristics and information of the respondents

Key variables		Frequency (n=60)	Percentage
Age (in years)	18–29	11	22
	30–39	13	29
	40–49	10	22
	50–59	16	35
	Over 60	10	22
Gender	Male	40	67
	Female	20	33
Highest education levels	Primary school leavers	10	20
	Intermediate school leavers	0	0
	Secondary school graduates	8	16
	College graduates	12	25
	University graduates and post-graduates	19	39
Occupations	Youth	11	18
	Technical professionals (teachers, engineers, lawyers, mechanics, etc.)	9	15
	Civil servants (MPs, government, INGOs, etc.)	13	22
	Social workers	9	15
	Members of civil society (activists, IDPs and ordinary citizens)	13	22
	Clergy (pastors and other religious leaders)	5	8

Table 2: Socio-demographic characteristics of focus group discussion respondents

Interview location	No. of FGDs	Total participants	Male	Female
Yambio	2	15	6	9
Yei	3	20	12	8
Wau	3	18	11	7
Torit	2	16	6	10
Juba	3	21	11	10
Total	13	90	46	44

FGD = focus group discussion

Respondents' understanding of transitional justice

In normative terms, transitional justice refers to the approaches, processes and mechanisms that aim to confront and deal with past violations of human rights and humanitarian law following periods of conflict, civil strife or repression.²⁹ However, in the South Sudan context, the study established that understanding of transitional justice was subjective and mostly based on the interviewees' experiences of either customary justice systems, statutory courts or, to a lesser extent, on their understanding of transitional justice in the ARCSS. In other words, the level of understanding of transitional justice processes as provided for in the peace agreement is low among ordinary citizens, such as the majority of those interviewed in the FGDs.

Of the 60 key informants, 9% envisaged transitional justice as a process that must adhere to different cultural values and help enhance the capacity of traditional chiefs and customary courts to deliver justice that can repair and restore communal relationships through a locally grounded process that all community members can relate to. As explained by a chief who took part in the FGDs, 'the justice that we know is the one that has been with us but not the one that has been brought to us by the 2015 peace agreement.'³⁰

This reality means that while the normative definition of transitional justice has in the main been adopted by transitional justice practitioners, it is important to always consider local context and the history of resolving disputes within communities. In South Sudan, customary dispute resolutions have become an entry point to access justice. While most of the cases handled by these courts involve divorce, adultery and inheritance, customary courts also adjudicate on criminal, land and property cases.³¹

Conversely, those familiar with the statutory courts seemed to understand transitional justice as a process of strengthening national judicial processes and ensuring expeditious delivery of justice to victims of sexual and gender-based violence or torture, and to relatives of those who may have been extrajudicially killed or disappeared during and after the 2013 conflict. This assertion seemed to be informed by challenges of accessing justice in South Sudan. For instance, when asked whether or not,

cases of human rights violations had been reported to the statutory courts, 87% of the interviewees affirmed they had been. Of those who had reported such cases, 72% were not satisfied with the manner in which the cases had been handled. Notably, the high cost of meeting judicial expenses, incompetent judicial officials and delayed processing of court cases featured prominently among the reasons for dissatisfaction.

In some instances, interviewees reported instances of bribery and intimidation of victims by judicial officials. As explained by one of the respondents in Yei, 'I have known a victim of rape who had to abandon her case due to a rigorous and embarrassing interrogation by men in the judiciary.' The fear of reprisal and militarisation of the justice system have also scared away citizens from seeking justice. Evidently, the prolonged years of conflict have had a devastating effect on the institutions of the judiciary, which are underfunded and judges complain of poor working conditions and low pay. In 2017, the president dismissed judges who demanded better working conditions.³² Corruption, nepotism and the influence of the executive are evidently taking over the independence of the judiciary.³³

The fear of reprisal and militarisation of the justice system have scared away citizens from seeking justice

Finally, 67% of the interviewees who were familiar with the legal and normative definition of transitional justice mostly defined transitional justice to mean retributive justice rather than a combination of judicial and non-judicial processes. Understandably, this definition had either been shaped by a government narrative that associates transitional justice with retribution and foreign agenda for regime change³⁴ or was due to low understanding of other non-judicial transitional justice mechanisms such as the CTRH or the CRA.

A cross-section of government officials interviewed portrayed transitional justice as a process to punish war criminals, while victims – especially those of sexual and gender-based violence – viewed transitional justice as an alternative to their own powerlessness to apprehend their tormentors. It is, however, important to underscore

that while respondents were able to link the ongoing conflict to the many human rights violations committed against them, transitional justice is not only about addressing 2013 conflict-related violations, but also about ending the culture of violence that has been part of South Sudanese society.

Respondent's knowledge and awareness of transitional justice mechanisms in the Agreement on the Resolution of the Conflict in South Sudan³⁵

The research endeavoured to establish the level of interviewees' knowledge and awareness of the transitional justice mechanisms provided for in the 2015 ARCSS. When asked about their level of awareness of the three mechanisms in the peace agreement, 68% of the interviewees said they had either heard of or engaged in discussions about the CTRH and the CRA, compared to 20% who said the same about the HCSS. Respondents acknowledged that government officials, civil society and religious groups had mostly raised public awareness about the CTRH and the CRA, but had focused less on the HCSS.

The government narrative has been that the HCSS is an externally driven process intended to bring about regime change

According to civil society activists interviewed for this research, there may have been fewer restrictions on those who engaged and spoke about the non-judicial mechanisms in the peace agreement, such as the CTRH and the CRA.³⁶ However, organisations suspected to be advocating for the establishment of the court were occasionally prevented from speaking and denied clearance by the National Security Service.³⁷ The government narrative has mostly been that the HCSS is an externally driven process intended to target the political establishment for regime change.³⁸ However, this is not accurate as the peace agreement mandates AUC to establish the court.³⁹

In relation to whether or not these transitional justice mechanisms would be adequate in addressing past violations and grievances, 89% of the respondents said they would. However, they expressed strong reservations about the implementation of the mechanisms, believing there was an apparent lack of political will. Observably, these reservations stemmed from their fears and insights in view of the sluggish pace in establishing transitional justice institutions and the narrowing space for civil society organisations (CSOs) to discuss accountability, and particularly the HCSS.

While respondents seemed familiar with the composition of the CTRH,⁴⁰ they expressed doubts over the manner in which the agreement empowered the executive to nominate the four South Sudanese commissioners.⁴¹ They recommended that, instead of the executive nominating the commissioners and presenting the names for endorsement by the National Assembly, the entire process should be subjected to public

60%

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scrutiny. In other words, the public should nominate those they believe are men and women of high moral integrity, who are impartial and able to build people's confidence to engage with the commission.

Finally, they cautioned that subjecting the process of establishing the CTRH to the government that is a party to the conflict may deter victims, witnesses and even perpetrators from participating and testifying at the truth commission.

Citizens priorities and expectation of the three mechanisms in the Agreement on the Resolution of the Conflict in South Sudan

The study found that 68% of the respondents were familiar with the CTRH and the CRA, compared to 20% of those who said they were aware of the HCSS. In line with this, respondents were also asked which of the three transitional justice mechanisms should be given priority and why. Overall, 60% of the respondents recommended CTRH, compared to 33% for HCSS and 7% for the CRA. However, some respondents prioritised more than one mechanism, suggesting that no single mechanism can address all the challenges and demands for justice and reconciliation in the country.

Commission for Truth Reconciliation and Healing

As previously mentioned, 60% of the respondents strongly believe that establishing and implementing the CTRH should take precedence over the other two mechanisms. The reasons presented to justify the ranking showed substantive differences among the different categories of respondents. Government officials, for example, perceived the CTRH as the best alternative to the HCSS. They argued that South Sudan as a country in the process of peace implementation did not require retributive justice, considering that it would target the same people charged with implementing the peace agreement. As a state minister of information put it, 'Why should a military general accept to work for peace when he knows it would broaden his chances of being arrested and prosecuted?'⁴² In other words, South Sudan should focus on implementing peace first and pursue justice later.

In contrast, victims/survivors and civil society organisations believed that prioritising the CTRH would complement peace initiatives, such as those already led

by religious institutions, and help create the necessary environment to engage in the other mechanisms. Conversely, as one respondent said, 'the prioritization of the CTRH should not be viewed as a trade-off to accountability but a strategy to propel constructive conversation with a government that seemed critical and adamant to hold perpetrators of human rights violation to account.' Given the shrinking space for civil society and the government's open resistance to the HCSS, the respondents believed the country would have no other option but to start from where the government has buy-in.

It is therefore important to underscore that, while the CTRH is the preferred process for transitional justice at the moment, the hope of victims and civil society organisations is that South Sudan will eventually be able to implement all the transitional justice mechanisms provided for in the peace agreement in a timely manner.

The peace agreement mandates the AU Commission to establish the HCSS

Interestingly, those who understood the composition of the proposed CTRH believed that unlike the HCSS, where judges would be nominated from other African countries, the CTRH would provide for the nomination of four South Sudanese commissioners, which according to those who understand the composition of the CTRH support a locally owned process. This positive view of the CTRH was echoed by those who thought implementing the requirement that women should make up 35% of the commission would help address issues that specifically affect women.

Hybrid Court for South Sudan

In relation to the HCSS, 49% of the respondents acknowledged that given the nature of human rights violations that occurred before and after the 2013 violence, they cannot go unpunished. While violations such as rape, arbitrary arrest, extrajudicial killings, robbery and destruction of property were cited as some of the crimes that must be prosecuted, the respondents could not categorise the nature of crimes committed or

clearly say whether they should be handled by national judicial processes or referred to the court.

On the other hand, despite the peace agreement mandating the AUC and the TGoNU to establish the HCSS,⁴³ the majority of the 49% of the interviewees who preferred a retributive form of justice against human rights violators did not seem to fully understand how the court would operate. It is, however, understandable given the relatively low level of awareness about the HCSS (20% of respondents).

However, those who knew of the HCSS and wanted it to handle the cases believed that because the majority of judges would be selected from other African countries⁴⁴ the court would not be compromised. It would therefore be better placed to deal with crimes committed after the 2013 conflict.

Compensation and Reparation Authority

Despite 87% of the respondents acknowledging that compensation is a critical part of the peacebuilding process, only 7% considered the CRA to be a priority. For example, most of the victims interviewed saw compensation as restorative, and the most immediate remedy for the pain and suffering caused to them and their families. However, they also believed that upon the CRA's establishment, reparation should be individual other than collective.

The peace agreement acknowledges that the CRA would provide material and financial support to citizens whose property was destroyed by the conflict and help them to rebuild their livelihoods in accordance with 'well-established criteria.'⁴⁵ Some respondents, however, were concerned that the work of the CRA would impose a huge financial burden on the future government of national unity.

Perspectives on other parallel transitional justice mechanisms

Given participants' reservations over the transitional justice mechanisms in the peace agreement, the study sought to establish whether other parallel transitional justice processes, such as those led by civil society and religious groups, could actively help in addressing the gaps identified in the formal processes outlined in the agreement. Respondents did not explicitly suggest parallel processes, but emphasised the need to involve

the Church and traditional leaders in the proposed mechanisms of the peace agreement, particularly the CTRH. However, considering that the majority of respondents did not have a full appreciation of the transitional justice processes in the agreement, it is doubtful that they would have an appreciation of the utility of parallel transitional justice processes.

Going into more detail about the perceptions of respondents about the parallel processes, they believed current transitional justice mechanisms were silent about the role of religious institutions, and ambiguous about how the customary and traditional justice system fitted into the overall transitional justice agenda. The peace agreement indicates that the CTRH would supervise the proceedings of the traditional dispute resolution, reconciliation and healing mechanisms.⁴⁶ However, respondents believed that the peace agreement should have provided for the strengthening of the customary judicial system and defined jurisdictions of the customary courts in terms of the nature of the cases to be handled by the customary court.

There is an incredibly low level of awareness about transitional justice among citizens in South Sudan

The issue of land and property rights should be part of the transitional justice inquiry. When respondents were asked about what they perceived as major causes of conflict in their communities, 78% affirmed that disputes caused by land grabbing could potentially trigger more violence between communities and the army, which has been accused of making land grabbing its official position, especially after the outbreak of the 2013 conflict.⁴⁷ The respondents said that, upon the establishment of the CTRH, a specialised unit should handle land cases according to the customs and the transitional constitution of the Republic of South Sudan.⁴⁸

Challenges and opportunities for transitional justice in South Sudan

Challenges

Lack of political will to prioritise the implementation of transitional justice – Until the 2015 peace agreement

elapsed, the TGoNU could not implement any of the transitional justice mechanisms. Apart from establishing a technical committee for the formation of the CTRH and conducting consultations to gather views on the nature of legislation required to form the commission, the legislation could not be drafted. Similarly, though later reversed, the government attempted to hire US lobbying firm Gainful Solutions to obstruct the establishment of the HCSS⁴⁹ was an obstacle to the holistic implementation of transitional justice in South Sudan.

The call for accountability through the establishment of the court has been mostly driven by foreign governments, the UN⁵⁰ and international human rights organisations based outside of South Sudan.⁵¹ While this would remedy the problem of the shrinking space for local CSOs and human rights groups, focusing on accountability alone would undermine the prospects for and complementary functions of other forms of transitional justice in the country.

There is an incredibly low level of awareness about transitional justice among citizens in South Sudan. The findings indicate that the level of knowledge and understanding of the various mechanisms for transitional justice in the peace agreement is very low. The majority of respondents could hardly explain the purpose of the different institutions, highlighting a serious challenge to their effective participation in the design, implementation, monitoring and evaluation of transitional justice processes.

Delayed implementation of the R-ARCSS – Peace in South Sudan remains precarious, despite marginal successes achieved in the past year.⁵² Without a demonstrated commitment by the government to fully implement the peace agreement, citizens' participation in transitional justice in South Sudan is greatly hampered.

Transitional justice without a transition – Since becoming independent in 2011, South Sudan has not had a genuine transition of power.⁵³ The same political and military leaders who oversaw some of the worst human rights violations in the country remain in power. Considering that implementation of a comprehensive transitional justice process in South Sudan would include the investigation and prosecution of individuals responsible for violations of international law and

applicable South Sudanese laws,⁵⁴ it makes it difficult for the same leaders to fully embrace and commit to the transitional justice process.⁵⁵

Absence of victim-centered programmes – Thousands of victims of human rights violations have been conspicuously absent in spearheading the transitional justice agenda in South Sudan. While victims interviewed for this research expressed fear of reprisals as the main reason for their absence from the transitional justice process,⁵⁶ they also expressed concern over their increasing isolation on matters of human rights advocacy. That is, they are quite often left out by those civil society and international human rights organisations leading advocacy on their behalf. Until recently, engagement around transitional justice mainly focused on documenting human rights violations and less on establishing programmes that would put victims at the centre of transitional justice.

Opportunities

The R-ARCSS is the only framework through which South Sudanese citizens can engage in issues of transitional justice. While there have been no significant achievements made towards implementing transitional justice since the 2015 peace agreement, there have at least been public pronouncements by the parties to ensure the full implementation of the peace agreement. Citizens and civil society organisations an opportunity to ensure that the parties to the agreement do not renege on their commitments to it, including the chapter on transitional justice.

Political and military leaders who oversaw some of the worst human rights violations remain in power

Despite the absence of political will to establish the HCSS, the establishment of the Technical Committee⁵⁷ to lead consultation on the design of legislation to form the CTRH provides an opportunity for civil society organisations and partners working on transitional justice to directly engage with government officials in this mechanism, build trust and broadly advocate for the establishment of the other transitional justice mechanisms, including the HCSS.

The peace agreement empowers civil society organisations to engage in the process of designing legislation for the formation of the CTRH.⁵⁸ Most importantly, it mandates the Technical Committee and civil society to jointly conduct consultations to ensure citizens' views on the nature of the legislation is sought. This means citizens could equally determine, among other things, the composition and scope of the CTRH, its mandate and functions, as well as procedures for nominating commissioners.⁵⁹

The National Dialogue⁶⁰ process could pave the way for constructive engagement with the government and open up space for citizens and civil society organisations to engage in transitional justice issues. While the peace agreement is not clear on complementarity between transitional justice and the National Dialogue process, at least one of the objectives of the National Dialogue is to further national healing, peace and reconciliation.⁶¹

Parties to the peace agreement in South Sudan need to use transitional justice mechanisms as tools to win public trust and confidence

Most of the resolutions from National Dialogue regional conferences for Equatoria, Upper Nile and Bahr el Ghazal recommend the government should undertake security measures and ensure the protection of civilians during and after the transitional period.⁶² Acting on the resolutions from these regional conferences would improve the security situation in the country and complement efforts to implement transitional justice processes.

Concerted efforts by national, regional and international partners who are keen to see transitional justice implemented⁶³ are an opportunity to share expertise with local transitional justice actors and draw lessons on designing effective transitional justice processes in South Sudan.

Conclusion

Overall, the need to establish inclusive transitional justice processes that build hope for citizens that justice and accountability will be fulfilled cannot be overemphasised. Absence of a clearly demonstrated commitment on the part of the country's leadership in making transitional justice a reality is counterproductive in the long run, posing potential threats and a possible return to violence.

Parties to the peace agreement in South Sudan need to use transitional justice mechanisms as tools to win public trust and confidence in long-term political transformation and nation building. Conversely, any political transformation that allows impunity compounds and limits the existing opportunities offered by the R-ARCSS and could derail the process of building a prosperous, peaceful and stable country.

Involve communities in defining transitional justice and design transitional justice programmes that meet citizens' expectations There seem to be



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differences among different communities in the understanding of what transitional justice means to different communities in South Sudan. Before establishing the various mechanisms, different communities should be consulted to provide an opportunity for them to make suggestions about the design of the mechanisms.

Support holistic implementation of transitional justice and ensure a collaborative strategy between national, regional and international organisations – The environment in South Sudan for transitional justice is becoming increasingly narrow, especially for those advocating for accountability within the country. To remedy this challenge, regional and international human rights actors should complement internal efforts by speaking out on the need to achieve a holistic transitional justice process in the country. Similarly, international human rights organisations that are advocating for the HCSS should also consider supporting other locally driven peace and reconciliation processes, such as those led by religious institutions, as well strengthening internal judicial processes.

The environment in South Sudan for transitional justice is becoming increasingly narrow

Ensure the participation of all citizens in the process of establishing the various transitional justice mechanisms – Both civil society organisations and the Technical Committee established by the Ministry of Justice and Constitutional Affairs should take advantage of the 2018 R-ARCSS to conduct more consultations on the design of the legislation for the CTRH and ensure they reach out to areas not accessed during the first round.

Support communities to undertake sequencing of the transitional justice mechanisms and ensure priority is given to processes that they feel comfortable with – This research has established that 60% of the respondents would like the CTRH to be given priority over the HCSS or the CRA. It is therefore important to conduct a comprehensive study to ascertain whether or not the majority of South Sudanese hold the same opinion.

Undertake civic education that focuses on the various transitional justice processes and mechanisms – There is no doubt that the level of understanding of transitional justice is very low in South Sudan. Most of the people interviewed either knew about only one of the mechanisms or none of the them. Ensure a partnership between government and civil society is established to support a nationwide public awareness programme to enhance citizens' understanding of the different mechanisms, their composition, mandates and the procedure for their formation if people are to effectively participate in them.

Invest in victims and victim protection programmes – This research has established that the biggest challenge to victim participation is fear of reprisals and inability to access opportunities that could strengthen victims' capacity to engage in the process of designing transitional justice processes. The government should ensure that procedures for protecting victims are clearly spelt out in the early stages of developing legislation for the design of the various transitional justice mechanisms.

Support complementary transitional justice initiatives such as those undertaken by religious groups and traditional leaders – Given increasing mistrust between the government and citizens, leveraging the authority of the Church and traditional leaders could build citizens' confidence in the transitional justice process, and reduce fear of reprisals and concerns about the government taking over the entire process.

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