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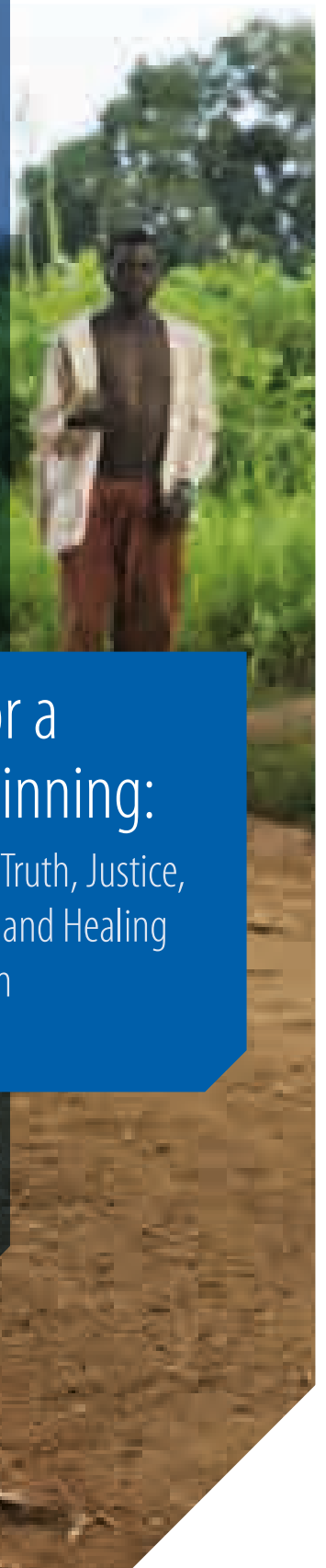
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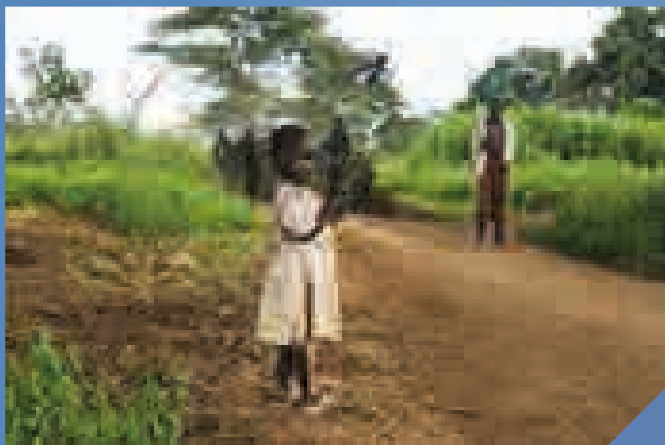


Search for a New Beginning:

Perceptions of Truth, Justice,
Reconciliation and Healing
in South Sudan

June 2015





Cover photo: © Tim McKulka 2015. Photograph was taken in 2007 in Magwi County, Eastern Equatoria State, during a redeployment of troops from the Sudan People's Liberation Army (SPLA).

Acknowledgements

UNDP would like to thank the communities of South Sudan for sharing their views and perspectives on truth justice reconciliation and healing. This study was made possible through financial support provided by the Kingdom of the Netherlands and technical support and delivery of the survey was provided by the South Sudan Law Society (SSLS). The South Sudan National Bureau of Statistics (NBS) provided both technical and logistical assistance. The UNDP would like to extend its appreciation to Paul Seils and Howard Varney at the International Center for Transitional Justice (ICTJ), Rachel Ibreck and Hannah Logan at Justice Africa, and Marieke Wierda of the Dutch Ministry of Foreign Affairs for providing insightful feedback on the draft text. Our appreciation goes to Humanity United for their assistance with the trauma and mental health component of the study. UNDP also acknowledges oversight, review and support provided by Amanda Serumaga, Lealem Berhanu, Rowland Cole, Shahzada Ahmad, Kennedy Chibvongodze, Paola Piccione, Niki Frencken and Sheemah Ahmed Khan. The views contained in this report are those of the authors only and do not necessarily represent the views of the SSLS, UNDP or the project donor.

This survey was conducted by South Sudan Law Society (SSLS). The report authors are David K. Deng, Belkys Lopez, Matthew Pritchard and Lauren C. Ng.

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About the South Sudan Law Society (SSLS)

The South Sudan Law Society (SSLS) is a civil society organization based in Juba. Its mission is to strive for justice in society, respect for human rights and rule of law in South Sudan. The SSLS manages projects in a number of areas, including legal aid, community paralegal training, human rights awareness-raising and capacity-building for legal professionals, traditional authorities and government institutions.

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Acronyms

ACHPR	African Commission on Human and Peoples' Rights
ACtHPR	African Court on Human and Peoples' Rights
AU	African Union
AUCISS	African Union Commission of Inquiry on South Sudan
AUPSC	African Union Peace and Security Council
CCM	Chama Cha Mapinduzi
CNHPR	Committee on National Healing, Peace and Reconciliation
CPA	Comprehensive Peace Agreement
DSM-IV	Diagnostic and Statistical Manual of Mental Disorders-IV
EU	European Union
GRSS	Government of the Republic of South Sudan
HTQ	Harvard Trauma Questionnaire
ICC	International Criminal Court
IDPs	Internally Displaced Persons
IGAD	Intergovernmental Authority on Development
IGADD	Intergovernmental Authority on Draught and Development
IoC	Initiatives of Change
ICJT	International Center for Transitional Justice
ICTR	International Criminal Tribunal for Rwanda
ICTY	International Criminal Tribunal for Yugoslavia
MICT	United Nations Mechanism for International Tribunals
NBS	National Bureau of Statistics
NPPR	National Platform on Peace and Reconciliation
PoC	Protection of Civilian
PTSD	Post-Traumatic Stress Disorder
SPLA	Sudan People's Liberation Army
SPLM	Sudan People's Liberation Movement
SPLM-IO	Sudan People's Liberation Movement-in-Opposition
SSDF	South Sudan Defence Forces
SSLS	South Sudan Law Society
SSNPS	South Sudan National Police Service
TGoNU	Transitional Government of National Unity
UN	United Nations
UNDP	United Nations Development Programme
UNICEF	United Nations Children's Fund
UNMISS	United Nations Mission in the Republic of South Sudan
UPDF	Ugandan People's Defence Force

List of Tables

Table 1: Overview of sample population	14
Table 2: Ethnicities	15
Table 3: Summary of conflict dynamics in survey locations	19
Table 4: Change in view of other ethnic groups	33

List of Figures

Figure 1: Displacement status (%)	16
Figure 2: What is keeping you from returning home? (%)	17
Figure 3: Where would you prefer to live? (%)	18
Figure 4: Awareness of IGAD, by location (%)	22
Figure 5: Awareness of IGAD, by gender (%)	22
Figure 6: What peace processes are you familiar with? (%)	23
Figure 7: PTSD rate by displacement status (%)	24
Figure 8: Exposure to traumatic experiences (%)	25
Figure 9: What is necessary to achieve reconciliation? (%)	27
Figure 10: What should be done with people responsible for abuses? (%)	27
Figure 11: Can people from other ethnic groups be trusted, by location (%)	30
Figure 12: Would you vote for a political leader from another ethnic group, by location (%)	30
Figure 13: Is fighting necessary to protect community, by location (%)	31
Figure 14: Prefer to live in community of own ethnicity, by location (%)	32
Figure 15: Change in view of ethnic groups, by location (scale)	33
Figure 16: Change in view of other ethnic groups, by ethnicity (scale)	34
Figure 17: Change in view of other ethnic groups, by income (scale)	35
Figure 18: Change in view of other ethnic groups, by education (scale)	35
Figure 19: Will peace talks between communities help, by PTSD status (%)	36
Figure 20: Most appropriate court, by PTSD (%)	37
Figure 21: Should people responsible for abuses be prosecuted, by location (%)	38
Figure 22: Why prosecute? (%)	38

List of Figures continued...

Figure 23: Why not prosecute? (%)	39
Figure 24: Which court is most appropriate? (%)	40
Figure 25: Where should trials be held? (%)	41
Figure 26: Should perpetrators be barred from office, by location (%)	42
Figure 27: Who do you think is responsible for abuses? (%)	43
Figure 28: Perceived responsibility for human rights abuses, by location (%)	44
Figure 29: Support for amnesty, by location (%)	45
Figure 30: Would you accept amnesty if necessary for peace, by location (%)	46
Figure 31: Is it better to talk about what happened or put it behind us? (%)	47
Figure 32: Why better to talk about it? (%)	47
Figure 33: Why better to put it behind us? (%)	48
Figure 34: Talk about what happened or put it behind us, by PTSD status (%)	49
Figure 35: Would you want to talk about what happened, by PTSD status (%)	49
Figure 36: Awareness of truth commissions, by location (%)	51
Figure 37: Support for reparations, by location (%)	54
Figure 38: Who should receive reparations? (%)	54
Figure 39: What form should compensation take? (%)	55
Figure 40: Why make efforts to honour victims? (%)	56
Figure 41: What should be done to honour victims? (%)	57

List of Text Boxes

Text Box 1: Dilemmas of internal displacement	16
Text Box 2: The role of customary mechanisms	28
Text Box 3: Impact of PTSD and trauma on perceptions of justice and reconciliation	36
Text Box 4: Hybrid courts	42
Text Box 5: Truth commissions	50

Table of Contents

Acknowledgements	i
About the South Sudan Law Society (SSLS)	i
Acronyms	ii
List of Tables	iii
List of Figures	iii
Table of Contents	v
List of Text Boxes	iv
EXECUTIVE SUMMARY	vi
INTRODUCTION	1
1 CONTEXT	2
Genesis of the Conflict	2
Overview of the Peace Process	4
African Union Commission of Inquiry on South Sudan (AUCISS)	7
Politics of Reconciliation	9
2 SURVEY METHODOLOGY	11
Sample Plan	11
Questionnaire	12
Data Collection	13
3 RESULTS	14
Sample Characteristics	14
Overview of Project Locations	18
Awareness of the Peace Process	21
Prevalence of PTSD and Exposure to Trauma	23
Notions of Restorative and Retributive Justice	26
Current State of Inter-communal Relations	29
Impact of the Conflict on Inter-communal Relations	32
Views on Criminal Accountability	37
Responsibility for Conflict-related Abuses	43
Views on Amnesties	45
Support for a Truth-Seeking Process	46
Design of a Truth Commission	51
Material Reparations	53
Symbolic Reparations	55
4 CONCLUSION AND RECOMMENDATIONS	58
ANNEX – MAP OF SURVEY LOCATIONS	65

EXECUTIVE SUMMARY

This report presents the findings of a survey on perceptions of truth, justice, reconciliation and healing in South Sudan. Over a six-month period from October 2014 to April 2015, the South Sudan Law Society (SSLS), in partnership with the United Nations Development Programme (UNDP), interviewed 1,525 individuals in 11 locations across six of the ten states of South Sudan and Abyei. The goal of the survey was to understand what the people of South Sudan think should be done to address the legacy of violence in the country. The survey also included a post-traumatic stress disorder (PTSD) measure to assess how trauma and mental health issues affect people's perceptions.

CONTEXT

December 2013 Crisis and the IGAD Mediation Effort

In December 2013, a violent conflict erupted in Juba and quickly spread throughout the three states of the Greater Upper Nile region. The conflict was sparked by a political dispute that had been brewing for many months among the leadership of the ruling Sudan People's Liberation Movement (SPLM) party. Though triggered by politics, the speed and intensity with which the conflict spread points to a number of underlying problems, including the failure to separate the military from politics, the inability to transform South Sudan's oil wealth into tangible benefits for the majority of its people and the legacy of decades of violence and trauma from past wars.

Just weeks after the outbreak of violence, the Intergovernmental Authority on Development (IGAD) initiated a mediation process in an effort to secure a political settlement between the Government of the Republic of South Sudan and a rebel group that came to be known as the Sudan People's Liberation Movement-in-Opposition (SPLM-IO). For the past year-and-a-half, the two warring parties have engaged in on-again, off-again negotiations in Ethiopia with little progress towards a negotiated agreement. The intransigence of the warring parties and the geopolitical interests of IGAD member states have proven to be fundamental obstacles for the mediation effort. The process is also largely divorced from the population of South Sudan. Indeed, 41 percent of respondents in this study indicated that they were not aware of the IGAD mediation effort, and 70 percent of those who were aware of the process expressed little or no confidence in its ability to secure peace.

Despite its shortcomings, the IGAD mediation has succeeded in introducing issues of truth, justice, reconciliation and healing as critical areas to be addressed to secure a lasting peace in South Sudan. The discussions thus far have focused on two national level institutions: a Commission for Truth, Reconciliation and Healing and a hybrid court. The Commission would be responsible for documenting and reporting on past human rights violations over an as-yet-to-be-determined time period. The hybrid court would be responsible for bringing cases against individuals suspected of serious crimes in violation of international law committed since 15 December 2013. These national institutions would be embedded

in a larger programme for justice and reconciliation that would be initiated during the transitional period after the conflict has ended.

At the time of writing, in June 2015, a 5 March 2015 deadline for the warring parties to agree on the terms of a political settlement had passed without agreement. Furthermore, IGAD has announced plans to formulate the mediation effort to include a broader range of actors, including five additional African nations (Algeria, Chad, Nigeria, Rwanda and South Africa), the Troika (United States, United Kingdom and Norway), China, the European Union (EU), the African Union (AU) and the United Nations (UN).

In August 2015, after the finalization of this report, the Government of the Republic of South Sudan, SPLM-IO and other stakeholders signed a peace agreement aiming to end the conflict. Although this report does not discuss these recent developments, the final terms of the peace agreement as it relates to transitional justice and national reconciliation are substantially the same as what is discussed in this report.

RESULTS

PTSD and Exposure to Trauma

Levels of PTSD and exposure to trauma in the sample population provide a stark reminder of the impact that repeated exposure to violent conflict has had on the people of South Sudan. Forty-one percent of survey respondents exhibited symptoms consistent with a diagnosis of PTSD. These rates are comparable to those found in post-genocide Rwanda, post-genocide Cambodia, and other countries emerging from large-scale violence. The data also demonstrated high levels of exposure to trauma in the sample population. Sixty-three percent of respondents reported that a close family member was killed at some point in their lives and 41 percent reported that they have witnessed a friend or family member being killed. Respondents experienced a mean of 7.62 traumatic experiences during their lifetime, indicating repeated exposure to trauma.

In addition to being critical areas of concern in their own right, trauma and mental health also have implications for how people relate to processes of truth, justice and reconciliation. Studies from other countries have shown that people with PTSD have less positive attitudes toward trials for people suspected of atrocities, less positive beliefs in a communal or interdependent vision of the future, have greater feelings of revenge, are less willing to reconcile, and are less likely to report satisfaction with punishment of perpetrators, apologies by perpetrators and remuneration for suffering. This study affirms many of these findings in the South Sudanese context. Survey respondents that exhibited PTSD symptoms were less likely to say that peace talks between communities would help to resolve the conflict and were less likely to point towards togetherness, unity, healing and therapy as necessary requirements for reconciliation. This category of respondents also had less confidence in the ability of IGAD to bring lasting peace to South Sudan.

Notions of Restorative and Retributive Justice

Respondent views on what is necessary to achieve reconciliation and what should be done with people responsible for abuses reflect different aspects of restorative and retributive justice in South Sudan. When asked what should be done with people responsible for abuses, two-thirds of respondents said that they should *'face trial'*. These responses are consistent with a retributive approach to justice that focuses on punishing perpetrators for their transgressions. However, in response to a question about what is necessary to achieve reconciliation, respondents emphasised forgiveness, confessions and apologies. These responses suggest a more restorative approach that focuses on rebuilding relationships and maintaining social harmony. Whereas the restorative approach has a strong foundation in customary norms and practices at the local level, the more retributive approach is often associated with harsh colonial policies and wartime justice as practiced by the SPLA and other armed groups during the second Sudanese civil war (1983-2005). Finding an appropriate balance between these two approaches to justice will be a central challenge for any justice and reconciliation programme in South Sudan.

Criminal Accountability

Survey respondents expressed overwhelming support for criminal accountability measures for people responsible for conflict-related abuses. Ninety-three percent of respondents thought that people responsible for abuses should be prosecuted in courts of law, with the most support for prosecutions found in populations directly exposed to violence. When asked an open question about which justice mechanisms they think are best able to provide justice, 35 percent of respondents said national statutory courts, 34 percent of respondents said the International Criminal Court (ICC) or another international mechanism and 9 percent of respondents said a hybrid court (i.e. a court comprised of both international and South Sudanese judges, lawyers, prosecutors, investigators and staff).

Response options were not read aloud to respondents, so these responses may reflect low levels of awareness of international justice mechanisms such as the ICC and a hybrid court as opposed to a clear preference for national justice mechanisms over international ones. Indeed, when asked directly if they would support the involvement of international justice mechanisms in relation to serious abuses committed in South Sudan, 83 percent of respondents said **'Yes'**. Nonetheless, the fact that more than a third of respondents said national courts were the best forums to provide justice suggests considerable demand for the prosecution of international crimes in national courts. This could be done independently or in coordination with prosecutions in a more internationalized mechanism.

Respondents also opposed the granting of amnesties to encourage the warring parties to adhere to the terms of a political settlement. Nearly 60 percent of respondents said that perpetrators of conflict-related abuses should not be granted amnesty. Interestingly, the opposition to amnesties remained pronounced despite the potential impact that it could have on prolonging the conflict. Forty-eight percent of respondents said they would not support an amnesty even if it were necessary for peace. That so many respondents would openly oppose amnesties while the conflict is still ongoing suggests that many South Sudanese no longer view the blanket amnesties and political rewards that were offered to potential spoilers in past peace processes as legitimate.

Impact on Inter-communal Relations

The survey data demonstrates the danger that the conflict poses to inter-communal relations and social cohesion in South Sudan, particularly among populations that have been directly exposed to violence. Nearly 40 percent of respondents said that people from other ethnic groups cannot be trusted. Levels of distrust are highest among respondents in Bor town, the Bor protection of civilian (PoC) site and Mingkaman's internally displaced persons' (IDP) settlement, across the river from Bor (see **Table 3** for summaries of survey locations). The three ethnic groups that are most commonly associated with the conflict—the Dinka, Nuer and Shilluk—are also the most likely to express a negative change in their view of other ethnic groups as a result of the conflict. Beyond the financial, institutional and human costs of conflict, when the fighting stops, it will take many years to restore relationships and repair the harm done to South Sudanese society.

Truth-seeking and Reparations

Respondents also expressed considerable interest in truth-seeking efforts. Nearly three-quarters of respondents said that, if provided the opportunity, they would be interested in speaking publicly about their traumatic experiences. To a certain extent, this willingness to personally engage in a truth-seeking process is mitigated by a desire to see the violence stop and fear about the consequences of speaking openly about abuses in the current environment. In response to the question, *'Is it better to talk about our past experiences with violent conflict or put it behind us and move on,'* responses were split between those who said *'talk about what happened'* (50%) and those who said *'put it behind us'* (46%). Additional research could help to better understand how South Sudanese weigh the opportunity to address old grievances through a public truth-seeking effort against the possibility that such an effort could serve to reopen old wounds.

Despite their willingness to engage in public dialogue on South Sudan's history of conflict-related abuses, survey respondents were largely unaware of the function and role of truth commissions. Seventy-six percent of respondents admitted that they did not know what a truth commission was. However, almost all of those who were familiar with the concept supported the idea of establishing a truth commission in South Sudan.

Mechanisms to provide reparations to survivors of conflict-related abuses and to memorialise people killed or missing as a result of the conflict also enjoyed widespread support among survey respondents. Eighty-one percent of survey respondents said that the state should provide compensation to survivors and 90 percent of respondents said that the state should support efforts to honour those killed or missing as a result of the conflict. Among the preferred means of honouring victims were establishing a national day of remembrance (29%), the creation of memorials (24%) and the development of teaching materials for schools (23%).

CONCLUSION AND RECOMMENDATIONS

The survey data demonstrates a demand for mechanisms to promote truth, justice, reconciliation and healing among populations in South Sudan. Respondents expressed widespread support for various processes of transitional justice and national reconciliation, including the criminal prosecution of people suspected of conflict-related abuses, documenting and reporting the facts and circumstances of human rights violations, providing reparations to survivors, and honouring those killed or missing as a result of the conflict. The Government of the Republic of South Sudan, SPLM-IO and South Sudan's international partners should take this demand into account and ensure that relevant mechanisms are provided for in any post-conflict transition. This report puts forward the following recommendations for the consideration of the Government of the Republic of South Sudan, SPLM-IO and South Sudan's international partners.

On designing and implementing a programme for justice and reconciliation:

- 1. Appropriately frame the objectives** to ensure that the justice and reconciliation programme is tailored to address specific priorities in the South Sudan context.
- 2. Consider sequencing** both in terms of what sorts of initiatives can be pursued in the current context while the conflict still continues and what must wait until after a peace agreement is secured, as well as how the various justice and reconciliation mechanisms are sequenced relative to one another.
- 3. Adopt a holistic approach** to justice and reconciliation that pursues multiple goals simultaneously by creating space for forgiveness and social healing to take place while also promoting accountability and remedying the harms that people have suffered.
- 4. Initiate a justice and reconciliation programme**, including the establishment of a truth commission and hybrid court, during any transitional period that follows the end of the conflict, while building a longer-term strategy to promote justice and reconciliation moving forward.
- 5. Incorporate both top-down and bottom-up strategies** that pursue relevant initiatives at national level while creating space for justice and reconciliation initiatives at the local level.



6. Anticipate and mitigate attempts to politicise justice and reconciliation

by emphasising independence and legitimacy in all aspects of programme design and implementation. Independent mechanisms will require the strong and active involvement of non-state actors and the direct participation of international institutions.

7. Conduct widespread public consultations

to raise awareness about the options for justice and reconciliation and to enable the design of a programme that is responsive to South Sudanese views and aspirations, whether at the local, state or national level.

8. Ensure women's participation

in all justice, peace and reconciliation mechanisms and processes. Staffing and training at all levels of relevant institutions should provide for gender parity and sensitivity, and women's participation should be promoted at the local, state and national level.

On trauma healing and mental health support:

9. Strengthen psychosocial and mental health support services in humanitarian and development interventions

to ensure that mental health issues are given the attention and resources they deserve.

10. Include trauma and mental health as an integral component

of any programme for transitional justice and national reconciliation moving forward.

On the IGAD peace process:

11. Better communicate

developments in the peace process to populations in South Sudan and channel information from the grassroots to the negotiating parties and other stakeholders in Ethiopia.

12. Honour commitments with respect to multi-stakeholder involvement

in the peace process and take steps to ensure that the warring parties do not dominate the talks.

INTRODUCTION

The ongoing violence that erupted in December 2013 is just the latest chapter in a long history of conflict for the people of South Sudan. For 40 of the 60 years since Sudan's independence from British colonial rule in 1956, the region that would eventually become South Sudan has been at war. Despite the relative peace that came with the signing of the Comprehensive Peace Agreement (CPA) in 2005 and independence in 2011, no serious attempts were made to address the legacy of violence in the country. Unresolved grievances linked to decades of civil war, a culture of impunity, the silence and denial that accompany mass human rights abuses, and the mental health consequences of decades of trauma are among the many factors driving the current conflict.

The ongoing conflict has put issues of truth, justice, reconciliation and healing squarely on the agenda. At the time of writing, discussions about transitional justice and national reconciliation are taking place among policy-makers in South Sudan and in the context of peace talks mediated by the Intergovernmental Authority on Development (IGAD) in Ethiopia.¹ The African Union (AU) has also established a Commission of Inquiry to investigate human rights violations and other abuses committed during the conflict, and to make recommendations on the best ways to ensure accountability, reconciliation and healing. The Commission completed its work towards the end of 2014, but the final report has not been made public.²

Since the start of the peace process, discussions on how to approach truth, justice, reconciliation and healing have largely been restricted to select high-level actors involved in the peace talks, policy-makers and a few institutions involved with reconciliation activities. Despite the immense national importance of these issues, the broader population has not yet been engaged in any meaningful way.

This study seeks to address this gap between policy-makers and the people of South Sudan. Over a six-month period, from October 2014 to April 2015, the South Sudan Law Society (SSLS), in partnership with the United Nations Development Programme (UNDP) and with funding from the Kingdom of the Netherlands, conducted a survey on perceptions of truth, justice, reconciliation and healing in South Sudan.

1 According to former United Nations (UN) Secretary General, Kofi Annan, the term 'transitional justice' refers to "the full range of processes and mechanisms associated with a society's attempts to come to terms with a legacy of large-scale past abuses, in order to ensure accountability, serve justice and achieve reconciliation." See United Nations Secretary General, *Rule of Law and Transitional Justice in Post-Conflict Societies*, ¶ 8, U.N. Doc. S/2004/616 (23 Aug. 2004), available at <http://www.unrol.org/files/2004%20report.pdf>.

2 African Union (AU), *Concept Note on the Establishment of the Commission of Inquiry on South Sudan* (2014), available at <http://au.int/en/sites/default/files/Concept%20note%20-%20Commission%20of%20Inquiry-South%20Sudan%20-%20Final%20Version%20-%2016%204%2014.pdf>; Press Release, AU Report of AU Commission of Inquiry on South Sudan not yet released – AU Commission Chairperson Reassures public (16 Mar. 2015), available at http://www.au.int/en/sites/default/files/PR%20066%20-Report%20of%20South%20Sudan%20Commission%20of%20Inquiry%20not%20yet%20released%20-%20AU%20Commission%20Chairperson%20assures%20%20-%20Addis%20Ababa%20ET%20-%2016%20March%202015_0.pdf.

The survey targeted a total of 1,525 individuals in 11 locations across six of South Sudan's ten states and Abyei. The objective of the survey was: (1) to generate statistically significant data on South Sudanese views on truth, justice and reconciliation, and (2) to provide a platform for South Sudanese citizens to add their voices to the complex political process required to develop a strategy for truth, justice and reconciliation. The survey also sought to generate an improved understanding of how trauma and mental health feature into ongoing discussions of transitional justice and national reconciliation, both in terms of how they shape people's views and as a critical area that needs to be addressed in its own right.

This report presents the main findings and recommendations from the survey. The report is structured in four sections. Section one provides background information on the conflict that erupted in December 2013, relevant peace processes and recent efforts to promote reconciliation in South Sudan. Section two summarises the research methods, including the sampling plan, the survey instrument and the approach to fieldwork. Section three presents the research findings and associated analyses. Section four offers concluding remarks and a series of recommendations to guide efforts to promote truth, justice, reconciliation and healing in South Sudan in the months and years to come.

1 CONTEXT

Genesis of the Conflict

Tensions were high in the weeks and months before conflict erupted in Juba in December 2013. Although many observers felt that the political dispute among the senior leadership of the Sudan People's Liberation Movement (SPLM) party had the potential to spark violence, no one was prepared for the speed and intensity with which the conflict spread.

The fighting began among members of the Presidential Guard. Within 24 hours, violence spilled over into residential areas and civilians were targeted along ethnic lines. The conflict quickly spread beyond Juba to the Greater Upper Nile region—Jonglei, Unity and Upper Nile states. Forces loyal to the former vice-president Riek Machar Teny launched attacks on Government forces under the banner of a rebel group that came to be known as the Sudan People's Liberation Army-in-Opposition (SPLM-IO). The three state capitals of Bor, Bentiu and Malakal fell to SPLM-IO forces in quick succession on 18, 19 and 25 December 2013. These towns changed hands between the warring parties multiple times in the months that followed. With each change of control the occupying forces destroyed property, looted and carried out acts of violence against civilians who were unable or unwilling to flee.

The United Nations Mission in South Sudan (UNMISS) and human rights organizations have documented serious violations of international human rights and humanitarian law by all sides in the conflict including mass killings, rape, sexual mutilation, torture, enforced disappearances and recruitment of child soldiers.³

Examples of atrocities include:

- On 16 December 2013, at least 300 Nuer men, possibly as many as 450, were killed in Juba in a compound that had been used for joint police and military operations.
- Local authorities in Bor estimate that 2,007 individuals were killed during the first few months of the conflict, including dozens found dead in a hospital and church.
- On 15-16 April 2014, hundreds of civilians were killed in Bentiu, including more than 200 killed in a mosque.
- Malakal changed hands six times between December 2013 and April 2014, resulting in the destruction of more than 10,000 residential and commercial structures, or 22 percent of the city. During their respective occupations, both sides conducted extensive house-to-house searches during which they committed extra-judicial killings and acts of sexual violence, often along ethnic lines.
- In February 2015, the United Nations Children’s Fund (UNICEF) reported that a government-allied militia conscripted more than 1,000 people in Wau-Shilluk, an area outside of Malakal where much of the displaced population of Malakal had fled. The abductees included 89 schoolboys, some as young as 13, who were preparing to take their exams.⁴
- UNICEF reported that Government forces and allied militia killed at least 129 children in Unity state during a three-week span in May 2015. According to UNICEF’s Executive Director, survivors of the Government offensive reported numerous acts of violence against children, including instances of boys being castrated and left to bleed to death, girls as young as eight being gang-raped and murdered, children being

³ United Nations Mission in the Republic of South Sudan (UNMISS), *Conflict in South Sudan: A Human Rights Report* (8 May 2014), available at <http://www.unmiss.unmissions.org/Portals/unmiss/Human%20Rights%20Reports/UNMISS%20Conflict%20in%20South%20Sudan%20-%20A%20Human%20Rights%20Report.pdf>; Human Rights Watch, *South Sudan’s New War: Abuses by Government and Opposition Forces* (7 Aug. 2014), available at <http://www.hrw.org/reports/2014/08/07/south-sudan-s-new-war>; Amnesty Int’l, *Nowhere Safe: Civilians Under Attack in South Sudan* (8 May 2014), available at <https://www.amnesty.org/fr/documents/AFR65/003/2014/en/>

⁴ UNICEF condemns new child abductions by armed group in South Sudan, UNICEF (21 Feb. 2015), available at https://www.unicef.org/media/media_80205.html

... tied together with their throats slit, and others being thrown into burning buildings.⁵

At the time of writing, the conflict in South Sudan is a year-and-a-half old. Two million people, approximately 20 percent of the population have been displaced, including 1.5 million internally displaced persons (IDPs) and 500,000 refugees.⁶ More than 100,000 of these IDPs are being housed in crowded conditions in UN protection of civilian (PoC) sites. Three-and-a-half million people are likely to require food assistance by June 2015 when the lean season reaches its peak.⁷ Reliable statistics for the number of people killed are not available, but the figure is thought to be over 50,000.⁸

Overview of the Peace Process

On 19 December 2013, just days after the conflict erupted, IGAD sent a high-level ministerial delegation to Juba for a three-day emergency visit.⁹ IGAD's rapid response reflects the strategic importance that South Sudan, Africa's third largest oil producer, has in the region and the desire of neighbouring countries to contain the situation. IGAD appointed three special envoys from Ethiopia, Kenya and Sudan to oversee a mediation effort between the warring parties.¹⁰ On 6 January 2014, representatives of the Government of the Republic of South Sudan and the SPLM-IO met face-to-face for the first time in what would be many months of on-again, off-again negotiations.

The IGAD-led peace talks have led to a string of agreements. The Government of the Republic of South Sudan and SPLM-IO signed the first cessation of hostilities agreement on 23 January 2014, and proceeded to violate it immediately thereafter. On 5 May 2014, the warring parties signed a recommitment to the cessation of hostilities agreement, followed by a 9 May 'Agreement to resolve the crisis.' The 9 May agreement called for a transitional government of national unity to be established, which would involve both the current Government and the SPLM-IO, and set the terms for an inclusive peace process involving

5 UNICEF *estimates up to 129 children massacred in South Sudan last month*, Radio Tamazuj (18 Jun. 2015), available at <https://radiotamazuj.org/en/article/unicef-estimates-129-children-massacred-south-sudan-last-month>.

6 United Nations Office for the Coordination of Humanitarian Affairs (UN OCHA), *South Sudan Crisis: Situation Report No. 70* (22 Jan. 2015), available at http://reliefweb.int/sites/reliefweb.int/files/resources/South_Sudan_Crisis_Situation_Report_No_71_as_of_23_January.pdf.

7 Famine Early Warning Systems Network (FEWS Net), *South Sudan Food Security Outlook* (Apr. – Sep. 2015), available at http://reliefweb.int/sites/reliefweb.int/files/resources/South%20Sudan%20FSO_04_2015.pdf.

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

9 The Intergovernmental Authority on Development (IGAD) was created in 1996 to replace the Intergovernmental Authority on Draught and Development (IGADD). IGAD is composed of eight member states (Kenya, Uganda, Somalia, Ethiopia, Eritrea, Djibouti, Sudan and South Sudan), with a mission to assist member states in issues related to food security, environmental protection, peace and security, as well as economic cooperation and integration.

10 The three IGAD special envoys are Seyoum Mesfin of Ethiopia, Lazarus Sumbeiywo of Kenya, and Mohammed Ahmed Moustafa El Dabi of Sudan.

religious leaders, civil society and political parties other than the SPLM.¹¹ Once again, these agreements were violated in days (if not hours) after signing.

On 25 August 2014, IGAD issued a *Protocol on Agreed Principles on Transitional Arrangements Towards Resolution of the Crisis*, a document that raised issues relating to transitional justice, reconciliation and healing for the first time.¹² Articles 23 and 24 outline two institutions that would be at the centre of these efforts: a Commission for Truth, Reconciliation and Healing, and an independent judicial body. According to the Protocol, the Government and SPLM-IO would be required to:

23. Establish during the Transitional Period, a National Commission for Truth, Reconciliation and Healing, which will be hybrid in composition, to spearhead efforts to address the legacy of conflict in South Sudan; the terms and mandate of the Commission shall be negotiated by the stakeholders in the negotiations;
24. Establish during the Transitional Period, an independent judicial body to investigate and prosecute individuals bearing the greatest responsibility for violations of international humanitarian law, and/or applicable South Sudanese law, committed since 15 December 2013; the terms and mandate of this body shall be negotiated by the stakeholders in the negotiations.

Although the Heads of State of the eight IGAD countries, including the President of South Sudan, endorsed the Protocol, the SPLM-IO and other stakeholders involved in the peace process disavowed it, saying that certain aspects of the agreement diverged from what had been previously agreed in the talks.¹³

As the peace process dragged on with little progress, issues pertaining to transitional justice, reconciliation and healing continued to feature in the IGAD talks and other related processes. In October 2014, the Tanzanian Chama Cha Mapinduzi (CCM) party initiated a parallel intra-party dialogue in Arusha, Tanzania, aimed at resolving the rift in the SPLM. The rationale of the intra-party dialogue was that since a rift among the SPLM leadership

11 Intergovernmental Authority on Development (IGAD), Agreement on Cessation of Hostilities Between the Government of the Republic of South Sudan (GRSS) and the Sudan People's Liberation Movement/Army (in Opposition) (SPLM/A in Opposition) (23 Jan. 2014), available at http://www.sudantribune.com/IMG/pdf/signed_agreement_cessation_of_hostilities.pdf; IGAD, Recommitment on Humanitarian Matters in the Cessation of Hostilities Agreement Between the GRSS and the SPLM/A in Opposition) (5 May 2014), available at <http://cewarn.org/attachments/article/252/Recommittment%20to%20Humanitarian%20Matters%20of%20COH,%205%20May%202014.pdf>; IGAD, Agreement to Resolve the Crisis in South Sudan, Addis Ababa (9 May 2014), available at http://www.sudantribune.com/IMG/pdf/agreement_to_resolve_the_crisis_in_south_sudan.pdf.

12 IGAD, Implementation Modalities in Support of the Agreement on Cessation of Hostilities Between the Government of the Republic of South Sudan (GRSS) and the Sudan People's Liberation Movement/Army (in Opposition) (SPLM/A-IO) (24 Aug. 2014), available at <http://www.southsudan.igad.int/attachments/article/251/Implementation%20Modalities%20for%20CoH.pdf>; IGAD, Protocol on Agreed Principles on Transitional Arrangements Towards Resolution of the Crisis (25 Aug. 2014).

13 *Rebels accuse IGAD mediators of bias as talks adjourn*, Sudan Trib. (27 Aug. 2014), available at <http://www.sudantribune.com/spip.php?article52190>. The eight IGAD countries are: Djibouti, Eritrea, Ethiopia, Kenya, Somalia, South Sudan, Sudan and Uganda.

triggered the conflict, the reunification of the SPLM should help to resolve it. On 21 January 2015, the intra-party dialogue released an agreement signed by President Salva Kiir Mayardit on behalf of the Government, by Riek Machar Teny on behalf of the SPLM-IO, and by Deng Alor Kuol on behalf of a non-aligned group of former political detainees (sometimes referred to as the G10) that had fled Juba after having been accused by the Government of involvement in the rebellion. According to the Arusha Communiqué:

2. SPLM Leadership shall make a public apology to the people of South Sudan for what has happened since December 15th 2013.
3. Develop and implement a comprehensive programme for national unity, peace, reconciliation, healing and promoting harmony amongst the People of South Sudan.

...

11. Any individual SPLM member convicted by a competent court or tribunal of crimes against humanity, war crimes, crimes against peace or gross human rights violations and abuses during the crisis that erupted in the country since 15th December 2013 shall not be eligible to hold public office in the Party and the Government.

...

15. SPLM commits to and supports the establishment of a comprehensive system of transitional justice, (the core elements of which are truth and reconciliation, criminal prosecution, reparations, compensation and institutional reforms), to look into the issues of atrocities, human rights violations and abuses in the country.¹⁴

The intra-party dialogue was immediately followed by another agreement from the IGAD peace process in Addis entitled *Areas of Agreement on the Establishment of the Transitional Government of National Unity (TGoNU) in the Republic of South Sudan*. Section VI of the agreement addresses issues of justice, accountability, reconciliation and healing:

1. The Commission for Truth, Reconciliation, and Healing shall be established to spearhead efforts to address the legacy of conflict in South Sudan. Eminent African personalities and others shall assist the process. The mandate of the Commission shall be to establish an accurate and impartial historical record of human rights violations, identify victims and perpetrators, record the experiences of victims, and facilitate local and national reconciliation and healing.

¹⁴ Chama Cha Mapinduzi (CCM), Intra-SPLM Dialogue, The Arusha Communiqué, Agreement on the Re-unification of the SPLM (21 Jan. 2015), available at <http://www.gurtong.net/LinkClick.aspx?fileticket=FTCuK-FBDzs%3D&tabid=124>.

2. The independent hybrid judicial body, with participation from South Sudanese and eminent African lawyers and jurists, shall be established to investigate and prosecute individuals bearing the greatest responsibility for violations of international humanitarian law, and/or applicable South Sudanese law, committed since December 15, 2013.¹⁵

Despite these provisional agreements, on 5 March 2015, a deadline for the parties to approve terms of a permanent settlement passed without agreement. In anticipation of continued intransigence among the warring parties, the UN Security Council enacted Resolution 2206 on 3 March 2015. Resolution 2206 established a framework for targeted individual sanctions in South Sudan including asset freezes and travel bans for individuals that undermine the peace process or commit violations of international human rights and humanitarian law.¹⁶

As of this writing in June 2015, the IGAD-process is making another attempt to secure a peace agreement through an initiative called IGAD-plus, which provides for the involvement of a broader group of actors.¹⁷ The expanded group includes representatives from five additional African nations (Algeria, Chad, Nigeria, Rwanda and South Africa), the Troika (US, UK and Norway), China, the EU, the AU and the UN.

African Union Commission of Inquiry on South Sudan (AUCISS)

African governments were quick to assume ownership of efforts to resolve the conflict in South Sudan. Shortly after IGAD initiated its peace process, the AU Peace and Security Council (AUPSC) called for the creation of the African Union Commission of Inquiry on South Sudan (AUCISS) in order to 'investigate the human rights violations and other abuses committed during the armed conflict in South Sudan and make recommendations on the best ways and means to ensure accountability, reconciliation and healing among all South Sudanese communities.'¹⁸

15 IGAD, Areas of Agreement on the Establishment of the Transitional Government of National Unity (TGoNU) in the Republic of South Sudan (1 Feb. 2015), available at <http://www.gurtong.net/LinkClick.aspx?fileticket=reaNmg1rToQ%3d&tabid=124>.

16 United Nations Security Council, Resolution 2206, Adopted by the Security Council at its 7396th meeting, U.N. Doc. S/Res/2206 (3 Mar. 2015), available at [http://www.un.org/ga/search/view_doc.asp?symbol=S/RES/2206%20\(2015\)](http://www.un.org/ga/search/view_doc.asp?symbol=S/RES/2206%20(2015)).

17 In August 2015, after this report was written but prior to publication, the Government of the Republic of South Sudan (GRSS), SPLM-IO and other stakeholders signed a peace agreement purporting to end the conflict. Although this report does not discuss these recent developments, the final terms of the peace agreement as it relates to transitional justice and national reconciliation is substantially the same as what had been included in the documents cited above.

18 African Union Peace and Security Council (AUPSC), Communiqué, 411th Meeting at the Level of Heads of State and Government, PSC/AHG/COMM.1 (CDXI) Rev.1 (30 Dec. 2013), available at <http://www.peaceau.org/uploads/psc-com-411-south-sudan-30-12-2013.pdf>.

As the first commission of its kind for the AU, the AUCISS provided an opportunity for the intergovernmental body to prove that its mantra, 'African solutions for African problems,' could work in practice, and that the AU is committed to condemning and rejecting impunity (as provided for in its Constitutive Act).¹⁹ Some member states may have also seen the AUCISS as a way to prevent the International Criminal Court (ICC) from becoming involved, as the ICC is already embroiled in a number of high profile and politically loaded cases in the region.²⁰

The AU announced its intentions to establish the AUCISS in December 2013, but committee members were not appointed until March 2014. Former Nigerian president, Olusegun Obasanjo, was appointed as chairperson, and accompanied by four other prominent African scholars, jurists and human rights experts.²¹ Over a six-month period, from March to September 2014, the AUCISS made numerous visits to South Sudan and spoke to hundreds of people in country and in the diaspora. The final report is rumoured to provide a detailed account of war crimes and crimes against humanity perpetrated by both sides in the conflict, including a list of dozens of names of people responsible for atrocities. The report was to be presented at a meeting of AUPSC members in January 2015, but consideration of the report was put off at the request of the prime minister of Ethiopia so as not to jeopardise the ongoing IGAD-led peace process.²²

A few weeks after the report was deferred, a document purporting to be a draft of the report was leaked to the media.²³ The AUPSC quickly distanced itself from the leaked document, saying that it was not the report of the AUCISS. Nonetheless, the extent to which the document places the blame for the conflict on South Sudan's political leadership and recommends that the entire political establishment as of July 2013 be barred from serving in the transitional government shocked many South Sudanese. The document also recommends that South Sudan be placed under the administration of a three-person panel answerable to the AUPSC. At this time of writing, the final report of the AUCISS has not yet been officially released.

19 Constitutive Act of the African Union (2000), available at http://www.au.int/en/sites/default/files/ConstitutiveAct_EN.pdf.

20 South Sudan is not a signatory to the Rome Statute of the International Criminal Court (ICC), so the only way that the ICC could become involved in efforts to hold perpetrators of international crimes in South Sudan accountable would be if the UN Security Council referred the matter to the ICC or if South Sudan issued a declaration consenting to ICC jurisdiction under Article 12(3) of the Rome Statute.

21 In addition to Obasanjo, the other members of the AUCISS include: Mahmood Mamdani, a scholar and professor at Makerere University in Uganda and Columbia University in New York; Sophia Akuffo, President of the African Court on Human and Peoples' Rights (ACtHPR); Bineta Diop, the AU Chairperson's Special Envoy for Women, Peace and Security; and Pacifique Manirakiza a professor of law at the University of Ottawa and a commissioner with the African Commission on Human and Peoples' Rights (ACHPR).

22 David K. Deng, *No Peace, No Justice: How the African Union is Failing South Sudan*, African Arguments (2 Feb. 2015), available at <http://africanarguments.org/2015/02/02/no-peace-no-justice-how-the-african-union-is-failing-south-sudan-by-david-k-deng/>.

23 See Michelle Nichols and Aaron Maasho, *Exclusive: Bar South Sudan leaders from Transition – inquiry draft*, Reuters (5 Mar. 2015), available at <http://www.reuters.com/article/2015/03/05/us-southsudan-unrest-inquiry-idUSKBNOM129M20150305>.

Politics of Reconciliation

Before the IGAD-led peace process, issues of justice and accountability did not feature prominently in the post-conflict transitional agenda for South Sudan. The pre-independence Government of Southern Sudan and its international partners generally viewed reconciliation and healing to be more politically feasible and practical. Since so many political and military leaders had been implicated in serious human rights abuses during the decades of war, the general assumption was that these individuals were unlikely to commit to any process that could hold them and their supporters accountable. Furthermore, reconciliation and healing are thought to resonate more with South Sudanese cultural and religious values, which tend to emphasise restorative over more retributive forms of criminal justice.²⁴

With the signing of the Comprehensive Peace Agreement (CPA) and the end of the second Sudanese civil war (1983-2005), the SPLM leadership made a political decision to sideline reconciliation efforts in the interest of consolidating peace and focused their attention on the referendum on self-determination scheduled to take place in 2011. Despite a provision in the CPA in which the SPLM and the Government of Sudan pledge, 'to initiate a comprehensive process of national reconciliation and healing throughout the country as part of the peace building process,' no serious efforts were made in this regard during the interim period.²⁵

It was not until after South Sudan's independence in 2011 that reconciliation began to feature in the Government's agenda. In November 2012, then Vice President Riek Machar Teny began preparations for a national reconciliation initiative in partnership with a Swiss-based organization called Initiatives of Change (IoC).²⁶ The Council of Ministers authorised funding for the initiative in January 2013, and a National Reconciliation Committee was established with plans to launch the programme in Juba on 18 April 2013.

The Vice President's reconciliation initiative began to gain momentum alongside increased political tensions in the SPLM. In 2013, senior SPLM figures—including Machar—began to openly challenge President Salva Kiir's leadership and voice their ambitions to contest for the office of president in the next election (scheduled for 2015). The President's response was swift. On 15 April 2013, President Kiir issued a decree temporarily suspending the Vice President's reconciliation initiative and dissolving the National Reconciliation Committee. One week later, on 22 April 2013, Kiir issued a decree establishing a Committee on National

24 Despite notable variations within and between ethnic and cultural groups, customary laws in South Sudan overwhelmingly focus on rebuilding relationships and redressing harms over criminal prosecution.

25 Comprehensive Peace Agreement between the Republic of Sudan and the Sudan People's Liberation Movement/Sudan People's Liberation Army (9 Jan. 2005), available at <http://unmis.unmissions.org/Portals/UNMIS/Documents/General/cpa-en.pdf>.

26 See Kwesi Sansculotte-Greenidge, Emile Yakani Taban and Nhial Gogok, *Reconciliation Without Regret: National Reconciliation and Healing in South Sudan*, African Centre for the Constructive Resolution of Disputes (ACCORD), Policy & Practice Brief No. 27 (Nov. 2013) available at <http://www.accord.org.za/images/downloads/brief/ACCORD-policy-practice-brief-27.pdf>.

Healing, Peace and Reconciliation (CNHPR) led by Archbishop Daniel Deng Bul (chairperson) and Bishop Paride Taban (deputy chairperson). President Kiir's decree also provided for committee members to be appointed from a number of constituencies. These included a representative from each of the ten states and one representative each for women's organizations, youth organizations and civil society organizations. As stipulated in the decree, the terms of reference for the Committee are:

- a)** to develop objectives of national peace and reconciliation;
- b)** to determine short term and medium term activities;
- c)** to research modern and traditional conflict resolution;
- d)** to liaise with the Government to provide security, financial support and mobility;
- e)** to solicit funding from local and international bodies and to seek their expertise;
- f)** to form consultative body comprising of South Sudanese elders as advisory body.

Although the decree states that, '[t]he Committee shall be an independent body which shall not be subject to control and direction from anybody or any institution,' the politics surrounding the establishment of the CNHPR led some observers to question its ability to oversee an independent and inclusive national reconciliation effort. Given these concerns, and in an effort to better coordinate the activities of actors working on reconciliation initiatives, in 2014 the CNHPR, Peace Commission and Specialised Committee on Peace and Reconciliation in the National Legislative Assembly came together to form the National Platform for Peace and Reconciliation (NPPR). Despite these changes, perceptions of partisanship remain.

Reconciliation in conflict-affected societies is an inherently political undertaking and South Sudan is no exception. In July 2013, a few months after dissolving Vice President Machar's reconciliation initiative, President Kiir stripped the Vice President of all his powers and dissolved the Government. This move not only sidelined Machar and many of the political heavyweights in the SPLM, but also started a political standoff that eventually led to the eruption of violence in December 2013.

2 SURVEY METHODOLOGY

Sample Plan

The sample plan employed in this study was designed to account for key challenges facing large-scale surveys in fluid and conflict-affected environments. Most notably, researchers had to account for the ways that ongoing conflict limited their access to certain areas of the country, and the fact that large-scale displacements dramatically reduced the potential for a nationally representative sample. To account for these and other obstacles, this study employed a four-stage mixed-methods approach designed to improve triangulation, complementarity and reproducibility in a highly fluid environment. Specifically, a series of purposive and random sampling techniques was used to identify a representative sample of participants from different ethnic groups, socio-economic statuses, livelihood strategies, geographic locations and exposure to conflict (both previous and ongoing).

First, researchers stratified the population of South Sudan at the state and county levels according to ethnicity, socio-economic status, livelihood, exposure to conflict and the ability of field teams to safely access the field site. This initial stratification led to 11 field sites in six of South Sudan's ten states and Abyei (including PoC sites and IDP camps, as well as rural and urban communities). Second, *payams* were selected using a multi-stage sample.²⁷ Third, individual households within each of these *payams* were selected using a detailed random walk technique with a built in skip pattern. Finally, participants within each selected household were identified using the 'Hagan-Collier Alternative' method.²⁸ Eligible respondents had to be 18 years of age or older and South Sudanese nationals.

When possible, every other interview was conducted with a woman to achieve 50 percent gender parity. Given the sensitive nature of our questions and prevalence of sexual and gender-based violence, whenever possible researchers worked to ensure that women interviewed women, and men interviewed men.

27 A 'payam' is a unit of local government in South Sudan that roughly corresponds to the district level. 'Multi-stage sampling' is a technique whereby a large population and/or a population spread over a large geographic area is successively broken down into smaller clusters, with a sample population selected from each cluster.

28 The Hagan-Collier 'Alternative' method is a simplified variation of the Troldahl-Carter (TC) technique that is particularly useful in conflict-affected environments. The main advantage of the Hagan-Collier 'Alternative' over similar non-probability techniques is that participants are not required to complete a household roster or know their date of birth. Respondents in contexts characterised by decades of conflict and forced migration rarely know their exact date of birth, and are often unwilling to share detailed information on household composition (especially in environments characterised by targeted killings of ethnic groups and widespread sexual assault).

Questionnaire

Researchers developed a questionnaire by drawing on similar studies conducted in South Sudan and other post-conflict environments.²⁹ The questionnaire consisted of nine modules with questions on demographics, peace processes, reconciliation, truth and remembrance, accountability, amnesties, reparations, exposure to trauma and post traumatic stress disorder (PTSD). The trauma exposure and PTSD module used the Harvard Trauma Questionnaire (HTQ) to assess 16 different types of traumatic events and PTSD symptoms.³⁰ The HTQ has been translated into Juba and classical Arabic and has been used previously in South Sudan and with South Sudanese refugees.³¹ Each module of the questionnaire combined a series of open and closed questions designed to triangulate qualitative and quantitative data. The combination of closed and open questions also reduced the extent to which responses were guided by the questions asked and available response options.

Prior to launching the survey, researchers convened a committee comprised of representatives from the South Sudan National Bureau of Statistics (NBS), Ministry of Justice, South Sudan National Police Service (SSNPS), the Specialised Committee on Peace and

29 David K. Deng, *Challenges of Accountability: An Assessment of Dispute Resolution Processes in Rural South Sudan*, South Sudan Law Society (SSLS) and Pact, Inc. (2013), available at http://www.pactworld.org/sites/default/files/Challenges%20of%20Accountability_FINAL%20May%2016.pdf; Michael Bratton, Massa Coulibaly and Boniface Dulani, *Maliens Want a United Country, Post-conflict Justice, Afrobarometer*, Policy Paper 13 (2014), available at http://www.afrobarometer.org/files/documents/policy_brief/ab_r5_5_policypaper13.pdf; Phuong Pham et al., *Forgotten Voices: A Population-Based Survey of Attitudes about Peace and Justice in Northern Uganda*, International Center for Transitional Justice (ICTJ) and the Human Rights Center, University of California Berkeley (2005), available at <http://hhi.harvard.edu/sites/default/files/publications/publications%20-%20vulnerable%20-%20forgotten%20voices.pdf>; Harvard Humanitarian Initiative (HHI), PeacebuildingData.org website, <http://www.peacebuildingdata.org>.

30 The PTSD symptoms correspond to the Diagnostic and Statistical Manual of Mental Disorders-IV (DSM-IV) criteria of PTSD. Participants were determined to have a symptom of PTSD if they scored a 3 (quite a bit affected) or 4 (extremely affected) on a corresponding item, and were determined to have met the clinical threshold for PTSD if their symptoms met DSM-IV criteria. The traumatic events were events commonly reported by communities impacted by displacement, war and genocide. The number of repeated events were grouped into categories of Once=1, 2 to 5 times=2, 6 to 10 times=6, and more than 10=10. Due to technical and user error, two items ('Has a family member disappeared', 'Ill without medicine') were only asked of 937 and 722 participants, respectively. Therefore total trauma exposure was calculated as the sum score of the number of times the remaining 14 items were experienced. See Richard Mollica, Yael Caspi-Yavin and James Lavelle, *The Harvard Trauma Questionnaire (HTQ) manual: Cambodian, Laotian, and Vietnamese Versions*, 1 (Suppl.) *Torture Quarterly Journal on Rehabilitation of Torture Victims and Prevention of Torture* 19 (1996); American Psychiatric Association, *Diagnostic and statistical manual of mental disorders (DSM)* (1994), available at <http://www.psychiatry.org/practice/dsm>. The HTQ has been translated into Juba and Classical Arabic and has been used previously in South Sudan and with South Sudanese refugees.

31 See Bayard Roberts et al., *Post-conflict mental health needs: a cross-sectional survey of trauma, depression and associated factors in Juba, Southern Sudan*, 9 *BMC Psychiatry* 7 (2009), available at <http://www.biomedcentral.com/content/pdf/1471-244X-9-7.pdf>; Tourage Ayazi et al., *Disability associated with exposure to traumatic events: results from a cross-sectional community survey in South Sudan*, 13 *BMC Public Health* 469 (2013), available at <http://www.biomedcentral.com/content/pdf/1471-2458-13-469.pdf>; Alia Badri, Rik Crutzen, H. W. Van den Borne, *Exposures to war-related traumatic events and post-traumatic stress disorder symptoms among displaced Darfuri female university students: an exploratory study*, 12 *BMC Public Health* 603 (2012), available at <http://www.biomedcentral.com/content/pdf/1471-2458-12-603.pdf>; Susan M. Meffert et al., *Feelings of betrayal by the United Nations High Commissioner for Refugees and emotionally distressed Sudanese refugees in Cairo*, 26 *Med. Confl. Surviv.* 160 (Apr-Jun 2010); Robert Schweitzer et al., *Trauma, post-migration living difficulties, and social support as predictors of psychological adjustment in resettled Sudanese refugees*, 40 *Aust. N. Z. J. Psychiatry* 179 (Feb. 2006), available at <http://eprints.qut.edu.au/3879/1/3879.pdf>; Belkys López and Hazel Spears, *Stabilizing Abyei: Trauma and the Economic Challenges to Peace*, *Kush* (May 2013) [on file with author]; see also *Trauma, poverty barriers to peace in Abyei: Report*, *Sudan Tribune* (29 Aug. 2013), available at <http://www.sudantribune.com/spip.php?article47845>.

Reconciliation in the National Legislative Assembly, the Committee on National Healing, Peace and Reconciliation (CNHPR), and Juba University to review the research methods and questionnaire. After the committee's review, researchers held a stakeholder validation workshop to seek feedback from civil society actors involved with issues of truth, justice and reconciliation. Researchers then tested a preliminary version of the questionnaire with 39 respondents in Juba. The pretest allowed researchers to further refine questions according to the quality of the data collected, comfort and security of participants, and length of interviews.

Finally, the questionnaire was translated from English into six South Sudanese languages: Classical Arabic, Juba Arabic, Dinka, Nuer, Shilluk and Bari. Although the project timeline did not allow for a back translation, a series of different translators verified the accuracy and consistency of key terms across the various languages.

Data Collection

Given significant restrictions related to access, political sensitivities, trauma and fatigue (research and physical fatigue related to food and physical insecurity), research in post-war and conflict-affected environments requires explicit attention to what data can and cannot represent. To this end, physical security, confidentiality and a focus on making sure participants understood the purpose of the research heavily influenced data collection for this study.

Data collection took place between December 2014 and April 2015. A total of 29 enumerators (15 men and 14 women) administered the interviews. All enumerators were South Sudanese nationals, familiar with the local context, proficient in English, and fluent in languages spoken in survey locations. Enumerators received five days of training on the protection of human subjects, gender and trauma sensitivity and techniques for administering surveys. Data was collected using the KoboToolbox programme on Android-based smartphones.³² Respondents were not identified by name or code. Most enumerators interviewed respondents of the same sex, though in some locations a small group of highly trained male enumerators interviewed female respondents when female interviewers were not available. All participants provided verbal informed consent to participate in the study.

At the end of each day of interviews, enumerators used the KoboToolbox software to automatically collect and deposit the information into the database. Data analysts then exported the data to Stata version 12 for analysis.³³ Data was analysed descriptively and

³² KoBo Toolbox is a suite of open source research tools designed to facilitate and improve data collection and analysis in complex environments. KoboToolbox website, <http://www.kobotoolbox.org>.

³³ StataCorp LP, Stata Statistical Software: Release 12.0 (2011).

differences in responses by location, gender, age, education, income, PTSD diagnosis, and combatant status were assessed using Chi-Square tests of differences. Additionally analysts ran multiple logistic regressions clustered by interviewer on key variables to assess whether location, gender, age, education, income, PTSD, or combatant status predicted responses. After data was collected and analysed, the technical committee was again convened to validate the findings and recommendations.

3 RESULTS

Sample Characteristics

The survey sample consisted of 1,525 individuals interviewed in 11 locations across six of the ten states of South Sudan and Abyei (see **Table 1**).

Table 1: Overview of sample population

Location	State	Respondents	Males	Females	Percent of Sample
Juba Town	Central Equatoria	297	145	152	19.5
Juba POC		98	50	48	6.4
Terekeka		212	110	102	13.9
Nimule	Eastern Equatoria	94	51	43	6.2
Mvolo	Western Equatoria	200	98	102	13.1
Bor	Jonglei	106	52	54	7.0
Bor POC		104	51	53	6.8
Wau-Shilluk	Upper Nile	99	50	49	6.5
Mingkaman	Lakes	100	51	49	6.6
Rumbek		100	50	50	6.6
Abyei	—	115	39	76	7.5
Total		1,525	747	778	100

Half of the respondents (51%) were female. Respondent ages ranged from 18 to 86 years, with slightly more respondents falling in the 25 to 34 and 35 to 47 age ranges. Nearly 80 percent of respondents identified themselves as married (in either a monogamous or polygamous relationship) with only a small fraction identifying themselves as divorced (1%) or widowed (2%). Thirty-nine percent of respondents were unemployed. Of those who were employed, the most common livelihood was civil servant (13%)³⁴, followed by farmer (10%) and domestic worker (8%).³⁵

Just under half of respondents (48%) stated that they could read and write in either English or Arabic. While this is considerably higher than the national literacy rate of 27 percent³⁶, in the interest of prioritizing the comfort of the participant and reducing the interview length, researchers did not test respondents' ability to read and write. As such, the actual literacy rates in the sample may be lower than the figures suggest. Forty-eight percent of respondents had no schooling and 43 percent had at least some primary or some secondary school education. Nearly 10 percent of respondents had some university level education. In terms of income, 70 percent of respondent households lived on less than \$1.25 per day, and 21 percent reported no household income at all.

The sample population covered a total of 23 ethnic groups, not including sub-groupings (see **Table 2**).³⁷ The figures below only reflect the ethnic distribution of the sample and are not indicative of the population at a national level. Ethnicities with five percent or more representation in the sample included the Bari, Dinka, Jur, Madi, Mundari, Nuer and Shilluk.

Table 2: Ethnicities*

Ethnicity	Frequency	Percent
Acholi	24	1.6
Azande	13	0.9
Balanda	8	0.5
Bari	73	4.8
Dinka	461	30.2
Kuku	35	2.3
Madi	98	6.4
Mundari	211	13.8
Lotuka	18	1.2
Luo	5	0.3
Nuer	204	13.4
Pojulu	24	1.6
Shilluk	112	7.3
Toposa	2	0.1
Other	44	2.9
Abukaya	1	0.1
Anyuak	1	0.1
Lango	2	0.1
Kakwa	10	0.7
Jur	142	9.3
Lokoya	2	0.1
Moru	18	1.2
Murle	2	0.1
Nyangbara	15	1.0
Total	1,525	100

* Ethnic groups in bold represent five percent or more of the sample.

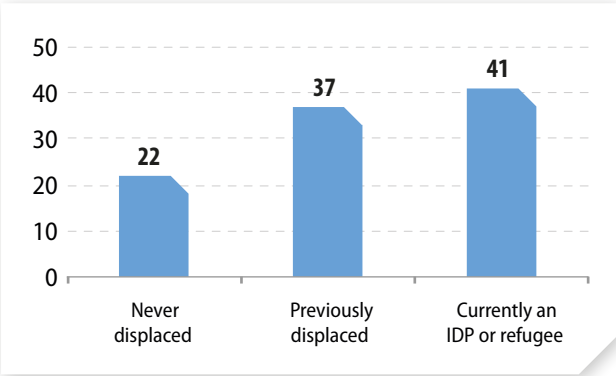
34 The relatively high percentage of civil servants emerged as a result of data collection in key cities and towns affected by the on-going conflict, and is more an expression of significant variation across type of employment rather than concentration in public service.

35 Rather than distinguishing between full and part-time, or formal and informal employment, this was an open-ended question that asked participants about their main source of livelihood. Those that currently had no source of livelihood were coded as 'unemployed'.

36 The national literacy rate is for that portion of the population age 15 and older. South Sudan National Bureau of Statistics (SSNBS), Statistical Yearbook (2011), available at <http://ssnbs.org/publications/south-sudan-statistical-yearbook-2011.html>.

37 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.

Figure 1: Displacement status (%)



The sample also included a high proportion of IDPs. Forty-one percent of respondents identified as currently displaced and another 37 percent had been displaced at some point in the past (**Figure 1**). Eight percent of respondents were presently combatants and 11 percent had been combatants at some point in the past.

Text box 1: Displacement status (%)

Ongoing conflict has displaced an estimated two million people, including 1.5 million IDPs and 500,000 refugees. About 10 percent of the IDPs are being housed in nine protection of civilian (PoC) sites on UN bases around the country.³⁸ Managing this displaced population has become a difficult problem for the UN and the Government. The people residing on PoC sites do not feel safe enough to return to their homes, and until a greater degree of security can be assured, they are unlikely to return voluntarily. At the same time, leaving tens of thousands of civilians in cramped and crowded conditions on PoC sites may itself serve as a source of instability.

When asked what is keeping them from returning home, 73 percent of IDPs cited ongoing insecurity (see **Figure 2**).³⁹ This number reflects the nature of the violence and fact that civilians are often deliberately targeted. Forty-two percent of respondents cited either destruction of property or occupation of land, pointing to the importance of addressing land issues in finding durable solutions to the problem of internal displacement. In some cases military personnel or people displaced from elsewhere in South Sudan have occupied the homes of IDPs that have fled to the PoC sites. Since many IDPs abandoned their legal documents when they fled, they would likely find it difficult to assert claims against those who have occupied their homes. Even if a court award were secured, land grabbing by military personnel was a huge problem before the conflict started and it would be difficult for claimants to enforce court judgments without some sort of support from the military establishment.

³⁸ UN OCHA, *supra* note 6.

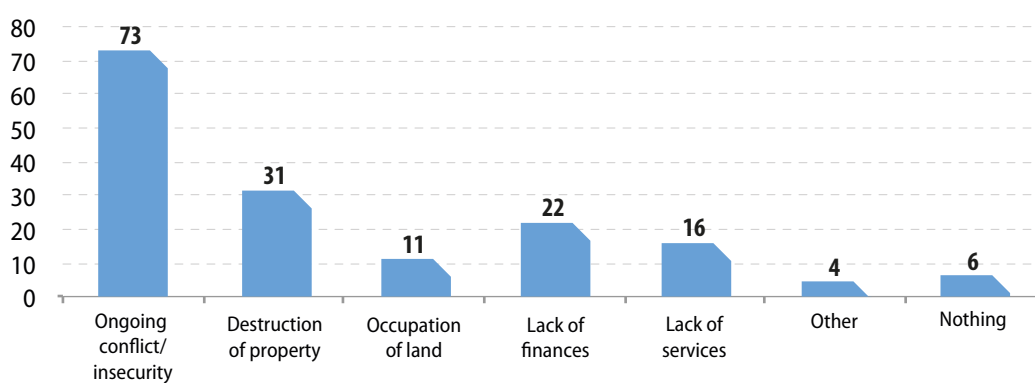
³⁹ A number of survey questions, including this one, allowed for multiple responses. The responses in these questions therefore do not add to 100 percent.

IDP camps outside the PoC sites also face intractable land problems. In Nimule, for example, people displaced by the post-December 2013 fighting have been added to an already large displaced population that had fled to the area during the 22-year civil war. This new influx of people has superimposed additional challenges on an already difficult situation. Abyei has also struggled with a longstanding crisis resulting from chronic insecurity and an ongoing dispute over the status of the region that prevents some 100,000 people from returning to their homes.

Durable solutions to the many dilemmas of internal displacement in South Sudan will require a comprehensive approach that is sensitive to the role that impunity, historical grievances and exposure to trauma have played in exacerbating crises. Interventions must include consultation with affected populations. Extensive experience with resettlement and large-scale rural to urban migration demonstrates that displacement can alter future settlement priorities, making it difficult to assess and predict preferences of displaced persons. Any response requires a deep understanding of the context and should take into account the fluidity of opinion among displaced populations.

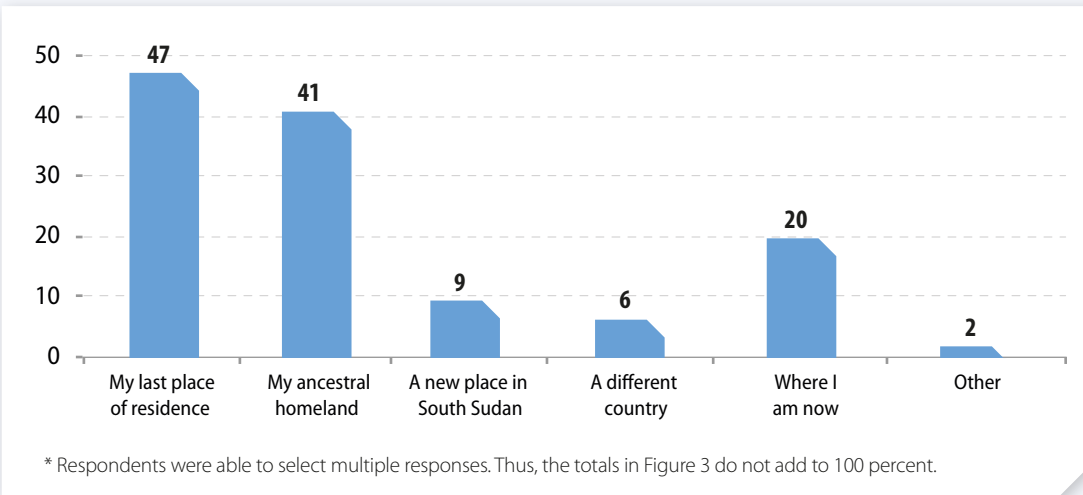
When asked where they would prefer to live, 47 percent of displaced respondents said their 'place of last residence,' highlighting their desire to return to their homes and rebuild their lives (see **Figure 3**). Conversely, 41 percent said they would prefer to return to their ancestral homelands, perhaps a recognition that returning to their last residence is not a safe or feasible option in the current context. Finally, 20 percent say they would prefer to stay where they are, which may be an indication of the lack of options, given how difficult living conditions are in PoC sites and IDP camps.

Figure 2: What is keeping you from returning home? (%)



* Respondents were able to select multiple responses. Thus, the totals in Figure 2 do not add to 100 percent.

Figure 3: Where would you prefer to live? (%)



Overview of Project Locations

The 11 locations selected for the survey represent a diversity of demographic compositions, livelihood strategies and exposures to conflict (both previous and on-going). For populations in Juba and the locations in the Greater Upper Nile region the conflict that erupted in December 2013 is the primary issue of concern. Fighting between Government forces, SPLM-IO forces, and militias allied to either side have brought life in much of Greater Upper Nile region to a standstill. Ongoing conflicts in other survey locations have very different dynamics. For example, fighting in Rumbek is largely separate from the conflict in the Upper Nile region, and is linked to competing sections and clans of Dinka in Lakes state. Conflicts in Abyei and Mvolo are also less directly connected to the national crisis.⁴⁰ **Table 3** (next page) provides a summary of the conflict dynamics across the 11 survey locations.

⁴⁰ Although these and several other protracted conflicts within and between communities were not necessarily caused by disputes between the SPLM and SPLM-IO, they remain critically important to the on-going civil war (e.g. role of militias and proxy-fighting) as well as truth, justice, reconciliation and healing in general.

Table 3: Summary of conflict dynamics in survey locations		
Location	State	Description
Juba Town	Central Equatoria	The conflict that began in December 2013 erupted in Juba. For several days at the start of the conflict the civilian population took cover in their homes as the security forces fractured along political and ethnic lines. Armed actors carried out mass killings, mainly along ethnic lines. ⁴¹ After the initial outbreak of violence, fighting between the Government and SPLM-IO did not return to Juba, though SPLM-IO occupation of Bor in the early months of the war placed Juba at risk of renewed violence. It was not until the Government, with the support of the Ugandan People's Defence Force (UPDF), decisively recaptured Bor that the immediate threat to Juba was minimised.
Juba POC		Following widespread killing in Juba, a large population of mostly Nuer civilians fled to UN bases in the capital out of fear of ethnically targeted killings that were allegedly being carried out in parts of the city. Tens of thousands of people remain in the PoC sites, too afraid to return home. ⁴²
Terekeka		Terekeka lies approximately 85 kilometres to the north of Juba. For a time, Terekeka county and town lay on the front line of battles between Government and SPLM-IO forces. ⁴³ Violence in Terekeka abated once Government forces reestablished definitive control over Bor. However, in recent months, more localised violence has flared up among Mundari, Dinka and Bari clans in the area. ⁴⁴
Nimule	Eastern Equatoria	Nimule is a small town that lies along the South Sudan-Uganda border approximately 194 kilometres south of Juba. The area has hosted a sizeable displaced population who fled fighting in other parts of South Sudan during the second Sudanese civil war (1983-2005). The conflict that erupted in December 2013 has forced a whole new population to seek refuge in Nimule. Disputes between the mostly Madi resident population and displaced populations are frequent and often centre on access to land and other natural resources. Rumors of a rebellion by an SPLA officer from the area have caused a recent increase in tensions, including allegations of arbitrary detentions and abuses by security sector personnel. ⁴⁵

41 AU investigators found South Sudan capital was ethnically cleansed, Radio Tamazuj (6 Mar. 2015), available at <https://radiotamazuj.org/en/article/au-investigators-found-south-sudan-capital-was-ethnically-cleansed>; New UN report outlines rights abuses in South Sudan conflict, ongoing targeting of civilians, UN News Centre (21 Feb. 2014), available at <http://www.un.org/apps/news/story.asp?NewsID=47195#VUE5La1VhBc>; *South Sudan's New War*, supra note 3.

42 UN House PoC 1&2, Juba, Central Equatoria State, Internews Humanitarian Information Service (Aug. 2014), available at http://www.internews.org/sites/default/files/resources/Internews_UNHouse_POC_1-2_Wave-1_assessment_August2014.pdf; Richard Nield, *Fleeing in S Sudan and asked to move again*, Al Jazeera (18 Oct. 2014), available at <http://www.aljazeera.com/news/africa/2014/10/fleeing-s-sudan-asked-move-again-2014101855017316998.html>.

43 *Displaced in Terekeka County call for farm tools*, Radio Tamazuj (7 May 2014), available at <https://radiotamazuj.org/en/article/displaced-terekeka-county-call-farm-tools>.

44 *Terekeka commissioner vows to arrest killers of Kworjijik villagers*, Radio Tamazuj (24 Jan. 2015), available at <https://radiotamazuj.org/en/article/terekeka-commissioner-vows-arrest-killers-kworjijik-villagers>; *Chief reports conflict between Mundari, Dinka in Terekeka*, Radio Tamazuj (29 Mar. 2015), available at <https://radiotamazuj.org/en/article/chief-reports-conflict-between-mundari-dinka-terekeka>.

45 *S. Sudan VP visits Nimule to quell fears of violence*, Sudan Trib. (22 Dec. 2014), available at <http://www.sudantribune.com/spip.php?article53426>; *S. Sudan army says armed rebellion uncovered within Equatoria region*, Sudan Trib. (23 Nov. 2014), available at <http://www.sudantribune.com/spip.php?article53122>.

Table 3: Summary of conflict dynamics in survey locations

Location	State	Description
Mvolo	Western Equatoria	Conflict in Mvolo is centred on competition for land and natural resources between a resident population of sedentary agriculturalists and pastoralists that come into the area on a seasonal basis. Pastoralists seasonally migrate with their cattle into Mvolo in search of water and pasture, where they are brought into conflict with the resident population.
Bor	Jonglei	Bor was a major front line between Government and SPLM-IO forces during the first few months of the conflict. ⁴⁶ The current conflict is the second time that mass killings on this scale have been carried out in Bor. In 1991, forces allied to Riek Machar, who at the time had split from the SPLA, attacked Bor, killing an estimated 2,000 civilians.
Bor POC		As was the case in Juba, when the fighting broke out in Bor, much of the displaced Nuer population sought refuge in the UN base. In April 2014, inter-communal tensions again erupted in violence when an armed mob breached the perimeter of the PoC site and killed at least 47 civilians. ⁴⁷
Wau-Shilluk	Upper Nile	Wau-Shilluk is an area just outside of Malakal town to where much of the displaced Shilluk population of Malakal fled after violence erupted in Malakal in December 2013. In February 2015, UNICEF reported a large forced conscription by Government-allied forces in the area, including dozens of schoolboys who were preparing to take exams. ⁴⁸
Mingkaman	Lakes	Mingkaman is located in Awerial county in Lakes State, just across the Nile River from Bor. A large number of mostly Dinka IDPs settled in Mingkaman after fleeing the fighting in Bor.
Rumbek		Rumbek is the capital city of Lakes State. In recent years, inter-communal conflict, mostly among competing sections and clans of Dinka has resulted in numerous killings and suffering in Lakes State. The conflicts in Lakes predate, and are largely distinct from, the national conflict that erupted in December 2013.
Abyei	Warrap	The Abyei area lies along the border between South Sudan and Sudan and has been the subject of a bitter dispute between the two countries for much of the past decade. On two separate occasions, in 2007-08 and 2011, armed groups from across the border in Sudan forcibly displaced the Ngok Dinka population of Abyei to areas further south. Each time, people eventually returned to their ancestral homelands, but the situation remains volatile and there is a very real risk that it could become intertwined with other conflicts in Sudan and South Sudan.

46 Hannah McNeish, *Counting the dead in South Sudan*, Al Jazeera (16 Feb. 2014), available at <http://www.aljazeera.com/indepth/features/2014/02/counting-dead-south-sudan-2014216115224123347.html>; James Copnall, *South Sudan: the impact of war and the importance of peace*, The Guardian (26 Nov. 2014), available at <http://www.theguardian.com/global-development/2014/nov/26/south-sudan-civil-war-peace-building>.

47 UNMISS, *Attacks on Civilians in Bentiu and Bor*, April 2014 (9 Jan. 2015), available at <http://unmiss.unmissions.org/Portals/unmiss/Human%20Rights%20Reports/UNMISS%20HRD%20-%20Attack%20on%20Civilians%20in%20Bentiu%20and%20Bor%20-%20January%202015.pdf>.

48 UNICEF *condemns abduction of children by armed group in South Sudan*, UN News Centre (23 Feb. 2015) available at <http://www.un.org/apps/news/story.asp?NewsID=50148&Kw1=South+Sudan&Kw2=Malakal&Kw3=#.VUJLYq1VhBd>.

Awareness of the Peace Process

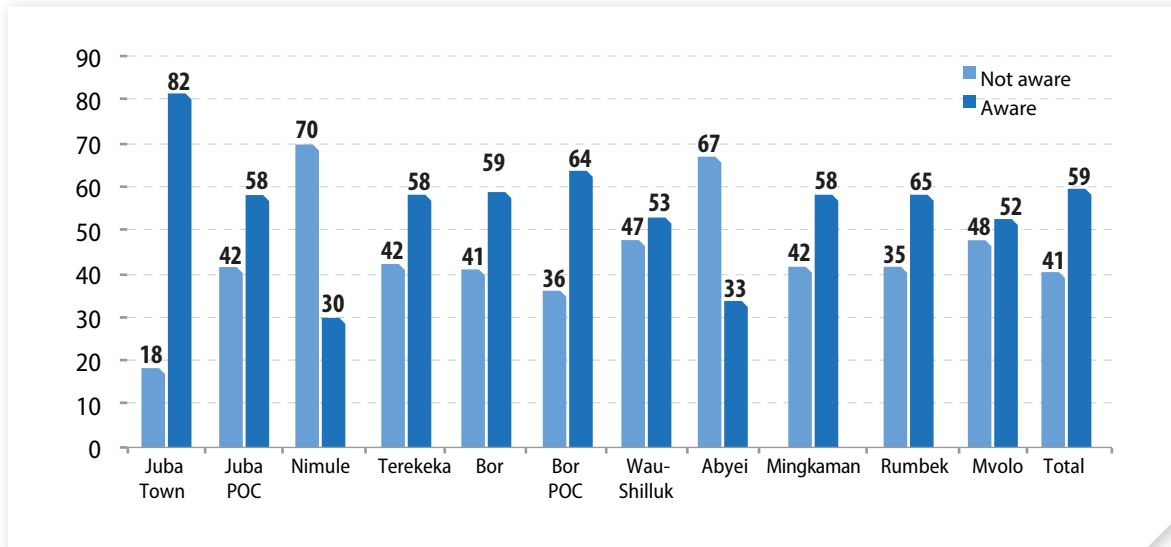
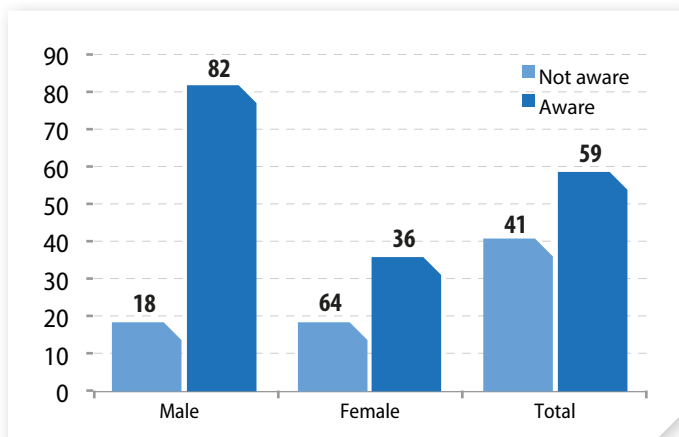
One of the main criticisms of the IGAD-led peace process is the extent to which it is disconnected from the population of South Sudan. Negotiations are held in Ethiopia among an elite group of political and military leaders with little space for contributions from the people most directly affected by conflict. As noted in section one above, IGAD attempted to establish an inclusive mediation format involving a more diverse group of stakeholders with the 9 May 2014 agreement, but by the end of 2014, those efforts had faltered and negotiations were once again restricted to bilateral talks between the two warring parties.

The extent to which South Sudanese citizens feel disconnected from the peace process is evident in several aspects of the survey data. When asked whether they are aware of the IGAD-led peace process, 41 percent of participants said **'No'**.⁴⁹ Unsurprisingly, awareness was highest in Juba (82%), the capital city, where people have better access to news media and political decision-makers. Conversely, respondents were far less aware of IGAD at the state and local levels (see **Figure 4**).

The data also demonstrated a gap with respect to gender. Men were far more likely to be aware of the IGAD-led peace process than women. Only 36 percent of women stated that they were aware of the process compared to 82 percent of men (**Figure 5**). These dramatic variations demonstrate the continued importance of patriarchy to social, economic and political relationships at both the household and community levels. Despite some notable efforts towards achieving gender equality in the public sphere in recent times, such as a constitutional requirement that 25 percent of positions in the executive and legislature be held by women, men are still generally viewed as the main arbiters of socio-political and economic issues.⁵⁰

49 A multiple logistic regression clustered by interviewer to assess whether location, gender, age, education, income and PTSD predicted respondent awareness of the IGAD process. The results confirm that people in Nimule, Wau-Shilluk, and Abyei, women, people aged 18-24, those with less income, and those with less education are less likely to be aware of IGAD.

50 Despite the constitutional requirement, the 25 percent representation of women is rarely complied with in practice. Transitional Constitution of the Republic of South Sudan, pt. 2, § 16(4)(a) (2011), https://www.constituteproject.org/constitution/South_Sudan_2011.pdf.

Figure 4: Awareness of IGAD, by location (%)**Figure 5:** Awareness of IGAD, by gender (%)

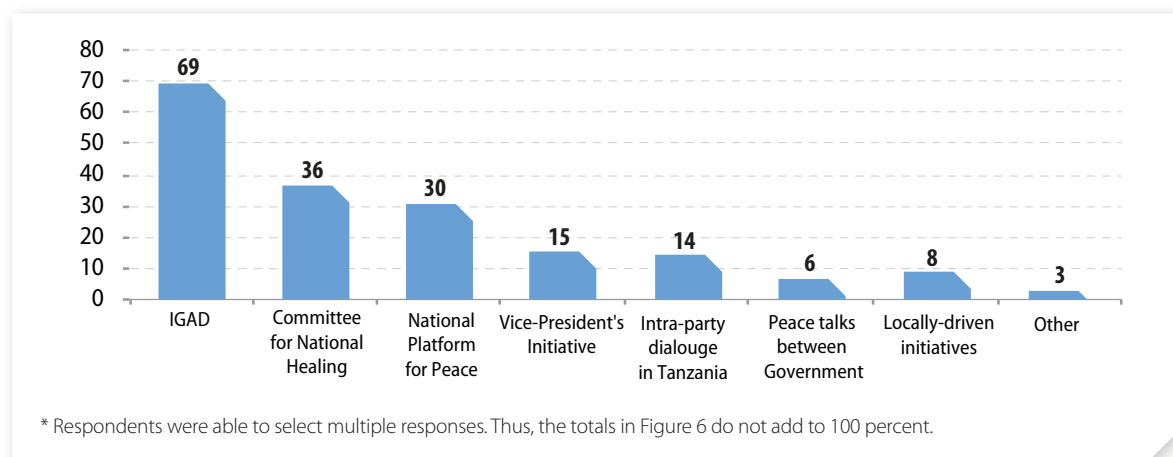
Respondents in Abyei and Nimule had the lowest levels of awareness of the IGAD mediation effort. More than two-thirds of respondents in Abyei (67%) and Nimule (70%) said that they were not aware of the IGAD peace process. Whereas the results in Abyei might be explained by remoteness of the location and the fact that the conflict in that area is more focused on cross-border violence between the Misseriya of Sudan and Ngok Dinka of South Sudan, the findings in Nimule are more surprising. Unlike Abyei, Nimule is just a few hours drive from Juba and a key transit point for the movement of

people and goods to and from Uganda. These results might point to political and inter-ethnic tensions in Nimule associated with a rebellion by a former SPLA officer named Martin Kenyi. Security actors have been accused of arbitrary arrests and other forms of intimidation and abuse in Nimule in response to the rebellion.⁵¹ In addition to the relatively low levels of awareness across geographic locations (outside of Juba), the lack of awareness in Nimule may reflect an unwillingness among some survey respondents to answer questions they view as especially sensitive given the recent threats of rebellion.

⁵¹ For background on access to justice in Nimule, see Rachel Ibreck, *Seeking Justice in Nimule*, London School of Economics and Political Science (LSE) Blog (Apr. 2014), available at <http://blogs.lse.ac.uk/africaatlse/2014/12/18/seeking-justice-in-nimule-south-sudan/>.

Of the 60 percent of respondents who say they were aware of ongoing efforts to resolve the crisis in South Sudan, IGAD was the most frequently cited initiative (69%) (see **Figure 6**). However, a significant number of people also expressed familiarity with national-level processes such as the Committee on National Healing, Peace and Reconciliation (CNHPR) (36%) and the National Platform on Peace and Reconciliation (NPPR) (30%).

Figure 6: What peace processes are you familiar with? (%)*



Although 60 percent of respondents were aware of the IGAD-led peace process, most had little confidence in the peace effort. Seventy percent of respondents who were aware of the IGAD process had very little or no confidence in its ability to bring lasting peace to South Sudan.

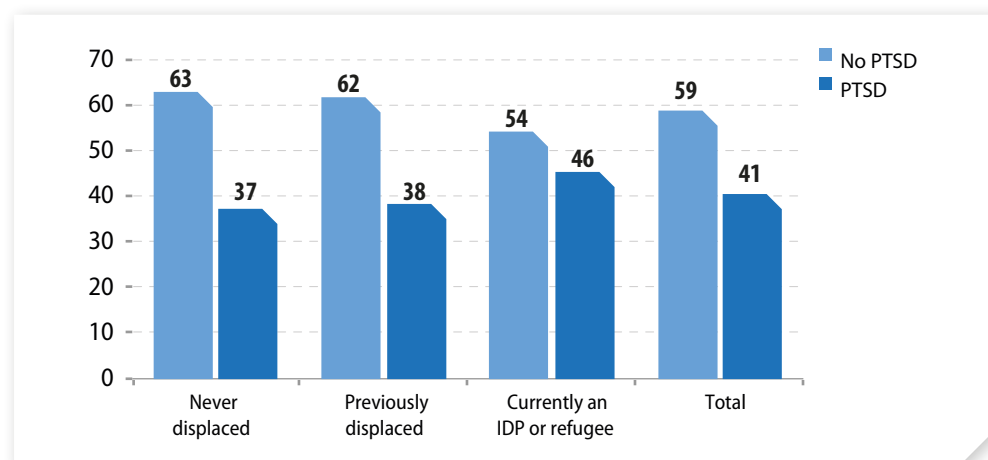
Prevalence of PTSD and Exposure to Trauma

Decades of violent conflict, hunger and economic hardship in South Sudan have resulted in levels of post-traumatic stress disorder (PTSD) that are on par with the worst conflict zones around the world. Forty-one percent of respondents endorsed symptoms consistent with a diagnosis of PTSD. This level of impact is comparable to rates documented after the genocides in Rwanda and Cambodia.⁵² However, widespread variations in the extent to

52 See Phuong N. Pham, Harvey M. Weinstein and Timothy Longman, *Trauma and PTSD symptoms in Rwanda: implications for attitudes toward justice and reconciliation*, 292 JAMA 602 (4 Aug. 2004), available at <http://jama.jamanetwork.com/article.aspx?articleid=199193>; Christophe Pierre Bayer, Fiona Klasen and Hubertus Adam, *Association of trauma and PTSD symptoms with openness to reconciliation and feelings of revenge among former Ugandan and Congolese child soldiers*, 298 JAMA 555 (1 Aug. 2007), available at <http://jama.jamanetwork.com/article.aspx?articleid=208207>; Jeffrey Sonis et al., *Probable posttraumatic stress disorder and disability in Cambodia: associations with perceived justice, desire for revenge, and attitudes toward the Khmer Rouge trials*, 302 JAMA 527 (5 Aug. 2009), available at <http://jama.jamanetwork.com/article.aspx?articleid=184341>. Participants in this study were determined to have a symptom of PTSD if they scored a 3 (quite a bit affected) or 4 (extremely affected) on an item that corresponded to a PTSD symptom as defined by the *Diagnostic and Statistical Manual of the American Psychiatric Association-Version IV (DSM-IV)*. Participants were determined to have met the clinical threshold for PTSD if their symptoms met DSM-IV diagnostic criteria. While a clinical diagnosis of PTSD requires a more thorough assessment than is possible in a survey of this type, the report refers to people who suffer from PTSD in places to facilitate discussion of the topic.

which respondents were exposed to conflict (and the type of conflict they experienced) lead to a number of notable differences across the demographic sample. People who were currently displaced were more likely to exhibit PTSD symptoms than people who were previously or never displaced (see **Figure 7**). Men (45%) were more likely to exhibit PTSD symptoms than women (36%), and people with less income were more likely to exhibit PTSD symptoms than those with more income.

Figure 7: PTSD rate by displacement status (%)



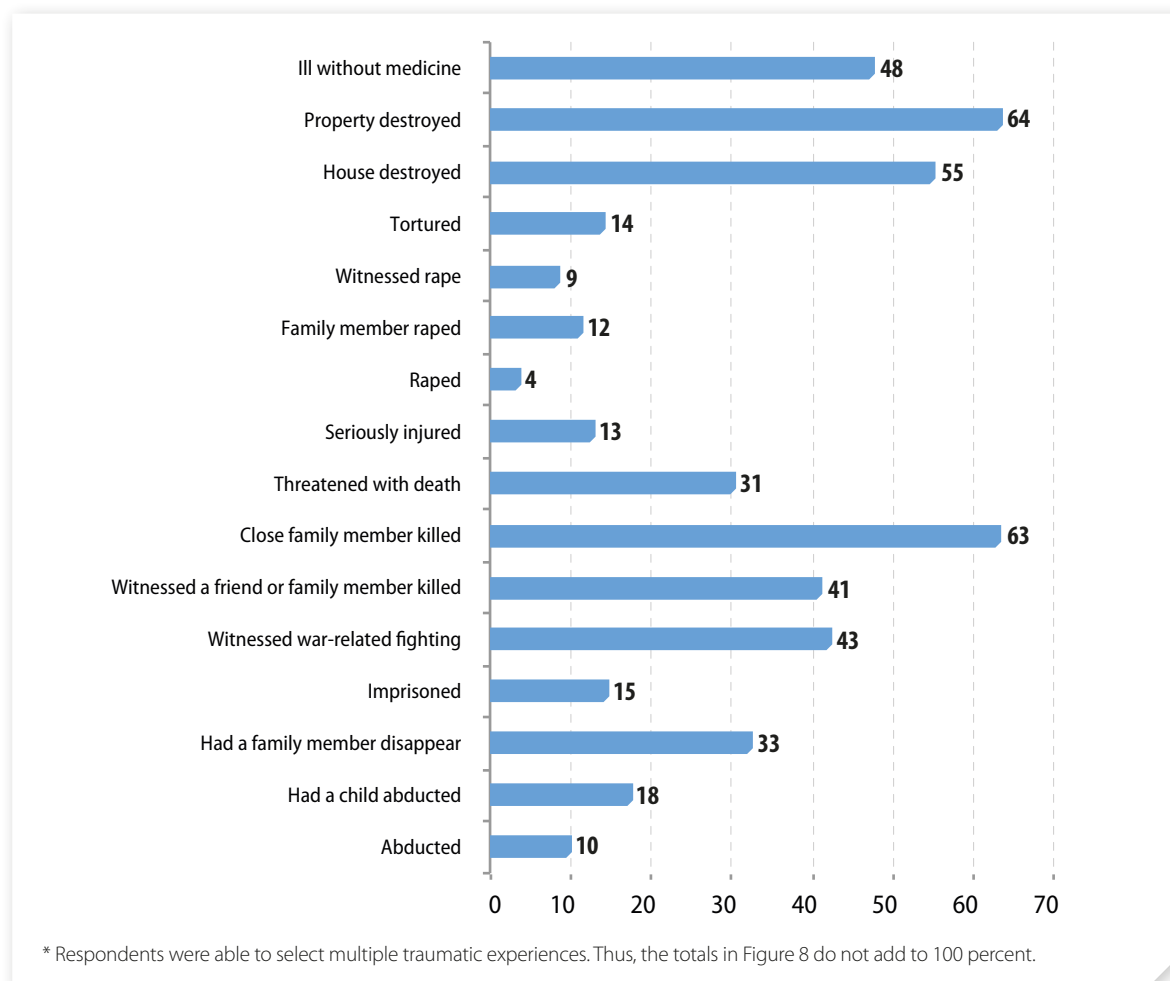
The prevalence of PTSD in the sample population is in line with findings from previous studies in South Sudan that identified rates ranging from 36 to 48 percent among populations in Juba, Abyei and the Greater Bahr-el-Ghazal region.⁵³ To offer some comparison from a more stable context, the National Center for PTSD in the U.S. Department of Veteran Affairs estimates that only seven to eight percent of the population in the U.S. will experience PTSD at some point in their lives.⁵⁴

Survey data also demonstrated high levels of exposure to trauma in the sample population. Respondents were asked whether they had experienced any one of a series of 16 traumatic events in their lifetimes. The most frequent traumatic experiences that respondents experienced were the killing of a close family member (63%) and the destruction of a house (55%) or other property (64%) (see **Figure 8**). Respondents experienced a mean of 7.62 traumatic experiences during their lifetimes, indicating repeated exposure to trauma for many people. People exhibiting symptoms consistent with a diagnosis of PTSD experienced more traumatic events than those who did not meet the criteria for PTSD. There was no difference in number of experiences between men and women.

⁵³ See Ayazi et al., *supra* note 31; Roberts et al., *supra* note 31; López and Spears, *supra* note 31.

⁵⁴ United States Department of Veteran Affairs website, National Center for PTSD, <http://www.ptsd.va.gov/professional/PTSD-overview/epidemiological-facts-ptsd.asp>.

Figure 8: Exposure to traumatic experiences (%)*



The respondents in the Bor PoC demonstrated the most PTSD symptoms and most exposure to trauma of any location. Almost all respondents exhibited symptoms consistent with a diagnosis of PTSD, and the mean number of traumatic experiences for respondents in the Bor PoC was 15. Ninety-five percent of respondents in Bor PoC said that they had a close family member killed, and 23 percent said that they have witnessed rape at some point in their lives. To a certain extent, these figures demonstrate the intensity of the conflict in Bor. As noted in the introduction, Bor changed hands multiple times between the warring parties and serious human rights violations were committed with each change of control. On 17 April 2014, the tension between the Nuer and Dinka population erupted again when an armed mob breached the perimeter of the UNMISS PoC site in Bor and killed at least 47 civilians, further traumatizing an already beleaguered population.⁵⁵

Other locations also stood out for exposure to specific types of traumatic events. In Wau-Shilluk, 23 percent of respondents said that a close family member had been raped.

⁵⁵ UNMISS, *Attacks on Civilians*, supra note 47.

The high rates of exposure to sexual violence in several of the survey locations reflect a dramatic increase in sexual violence since the conflict erupted in December 2013. Following a visit to South Sudan in October 2014, Zainab Bangura, the UN Special Envoy on Sexual Violence, said:

*'In my 30 years of experience, I've never witnessed anything like what I saw in Bentiu. . . .Survivors and health care workers told me heart-breaking stories of rape, gang rape, abduction, sexual slavery and forced marriage. . . .Those who try to fight back against their attackers are often raped with objects instead. Some victims have even been raped to death. . . .The youngest victim they have treated is 2 years old.'*⁵⁶

Wau-Shilluk also had the highest rate of disappearances, with 66 percent of respondents saying that a family member had disappeared. Some of these disappearances may be traced to forced recruitments allegedly carried out by Government and SPLM-IO forces. One particularly egregious spate of forced disappearances occurred in February 2015, when a Government-allied militia reportedly conscripted more than 1,000 people in Wau-Shilluk, including 89 schoolboys who were preparing to take their exams.⁵⁷

Notions of Restorative and Retributive Justice

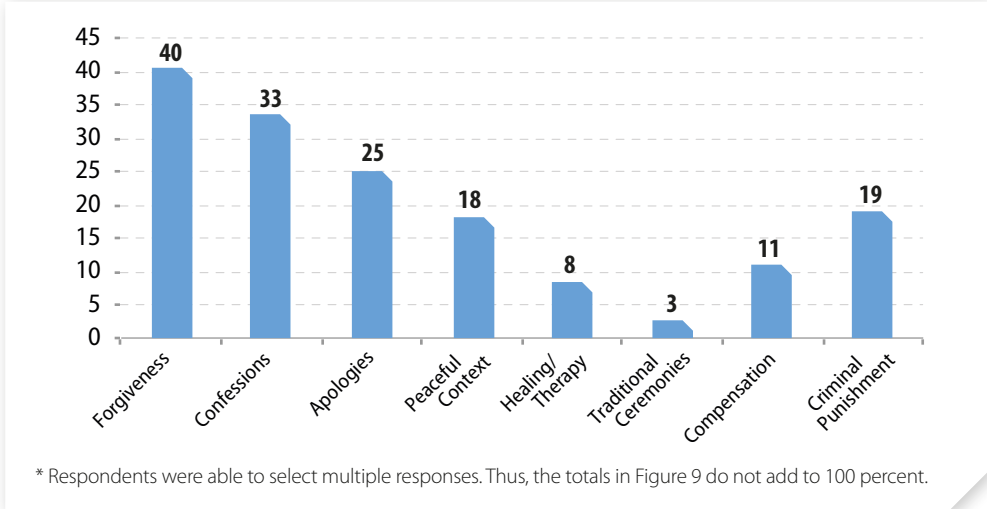
Respondent views on what is necessary to achieve reconciliation and what should be done with people responsible for abuses reflected different aspects of restorative and retributive justice in South Sudan. When asked the open question, *'In your view, what is necessary to achieve reconciliation?'* respondents emphasised forgiveness, confessions and apologies over more retributive forms of justice such as criminal prosecutions (**Figure 9**). These responses are consistent with a restorative approach to justice that emphasises the restoration of social relationships over the punishment of perpetrators.

Interestingly, only 11 percent of respondents felt that compensation was necessary to achieve reconciliation. This finding is somewhat counter-intuitive as compensation is generally viewed as a key component of restorative justice. Under the customary laws of many South Sudanese communities, for example, people found guilty of homicide are required to pay a certain number of cattle to the family of the deceased to compensate them for the loss. However, opportunities for such forms of compensation are more limited in large-scale conflicts where large numbers of people are killed indiscriminately and it is difficult to identify who is responsible. The scale of the ongoing conflict and the extent of grievances may account for the emphasis respondents place on forgiveness, confessions, and apologies over compensation.

⁵⁶ Louis Charbonneau, *South Sudan sexual violence 'rampant,' two-year-old raped: U.N.*, Reuters (20 Oct. 2014), available at <http://www.reuters.com/article/2014/10/20/us-southsudan-un-idUSKCN0192C320141020>.

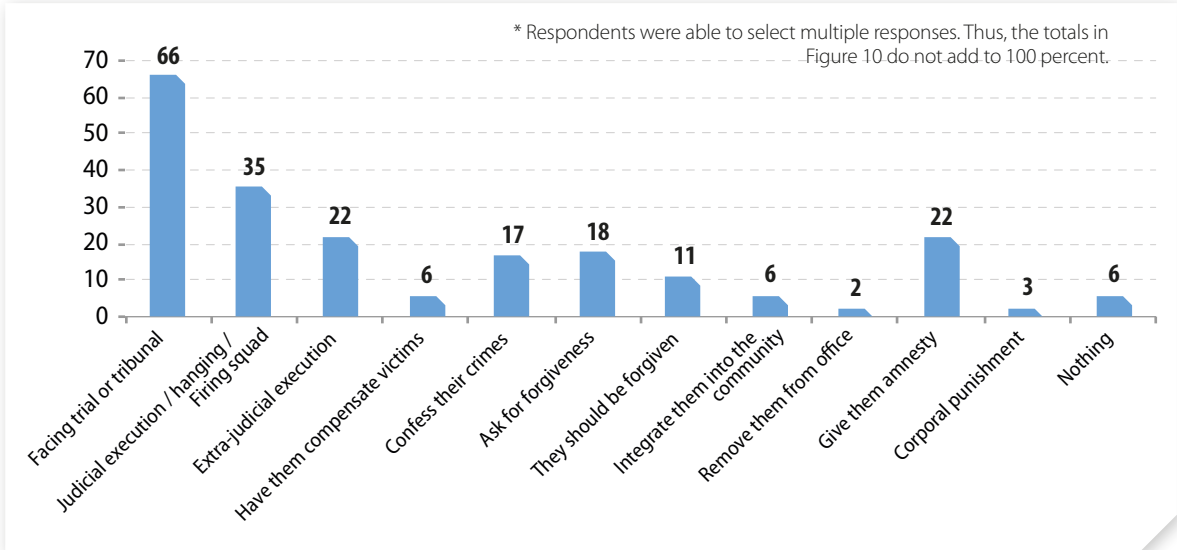
⁵⁷ David Smith, *South Sudan gunmen kidnap at least 89 boys from village near Malakal*, The Guardian (22 Feb. 2015), available at <http://www.theguardian.com/world/2015/feb/22/south-sudan-gunmen-kidnap-89-boys-village-malakal-child-soldiers>.

Figure 9: What is necessary to achieve reconciliation? (%)*



While the question about what is required for reconciliation highlights mechanisms associated with a restorative approach, responses to an open-ended question about what should be done to people responsible for abuses (with no reference to reconciliation in the question) indicated a noticeably greater focus on retributive forms of justice (including criminal prosecutions and executions). Two-thirds of respondents said that people responsible for abuses should ‘face trial’, compared to one-third of respondents that said they should be granted amnesty (see **Figure 10**). Thirty-five percent of respondents said that perpetrators should face judicial execution and another 22 percent said that they should be killed extra-judicially. Whereas the restorative approach has a strong foundation in customary norms and practices at the local level, the more retributive approach is often associated with harsh colonial policies and wartime justice practiced by the SPLA and other armed groups during the second Sudanese civil war. During that time, people found guilty of serious crimes were often publicly executed by firing squad.

Figure 10: What should be done with people responsible for abuses? (%)*



Despite a tendency to view them as two distinct forms of justice, restorative and retributive approaches are reflected at every level of the justice system in South Sudan. South Sudan has a plural justice system in which more formal statutory courts presided over by trained legal professionals coexist alongside more informal customary courts presided over by chiefs and elders. Statutory courts are generally only accessible in urban areas whereas customary courts exist throughout the country. Although restorative justice is most commonly associated with customary courts and retributive justice with statutory courts, both systems reflect aspects of the two forms of justice. For example, statutory courts often apply customary laws, particularly for family disputes, and customary courts can sentence people to prison terms for various violations.

In considering how to promote truth, justice, reconciliation and healing after the conflict has ended, the role that existing justice systems will play is of paramount importance. Any attempt to make use of existing mechanisms would have to be embedded in a larger programme of justice sector reform. As they currently function, both customary and statutory courts fall short of minimum standards of human rights and due process. Other systemic problems include arbitrary detention, gender discrimination and corruption, among many others. Framing the transitional justice and national reconciliation programme in such a way that it supports, strengthens and reforms existing institutions can help to promote more sustainable delivery of justice services in the long-term.

Text box 2: The role of customary mechanisms

Given their prevalence throughout the country and their geographic and cultural accessibility, customary mechanisms could make an important contribution to efforts to promote truth, justice and reconciliation in South Sudan.⁵⁸ However, their role must be carefully crafted to avoid asking more from the institutions than they are able to deliver. Successive conflicts have undermined the authority and influence of traditional authorities in many parts of the country and customary courts are often unable to enforce judgments against individuals who wield political or military power. Customary courts are also criticised for reinforcing patriarchal attitudes and discriminating against women and children.

The survey found some support for the idea of incorporating customary mechanisms in the justice and reconciliation programme. As discussed further in the section on criminal accountability measures below, 18 percent of respondents said customary courts are the most appropriate mechanism for addressing conflict-related abuses (see **Figure 24**).

⁵⁸ It is sometimes estimated that as much as 90 percent of criminal and civil cases are brought in customary courts. See Aleu Akechak Jok *et al.*, *A Study of Customary Law in Contemporary Southern Sudan*, World Vision International and the Southern Sudan Secretariat of Legal and Constitutional Affairs (2004).

Due to their institutional shortcomings and the scale of the atrocities committed in South Sudan, it is difficult to envision customary courts playing a prominent role in adjudicating serious international crimes. However, customary mechanisms could potentially play a role in addressing lesser offences that do not rise to the level of serious international crimes, thereby helping to extend the reach of justice and accountability processes beyond what is possible through formal state institutions alone. For example, customary mechanisms could play an important role in processes relating to truth-seeking, reconciliation or the reintegration of former combatants.

Indeed, the criticisms levelled at customary courts also apply to the statutory system, and to the extent that existing institutions can be used to promote a more sustainable delivery of justice services in the long-term, the advantages of involving customary institutions in justice and reconciliation efforts may outweigh concerns about their shortcomings. The key to making use of customary mechanisms in this manner is to ensure that the broader justice and reconciliation programme incorporates institutional reforms designed to bring customary courts into greater conformity with minimum standards of due process and human rights.

Current State of Inter-communal Relations

The survey posed a series of questions to elicit feedback on the nature of the conflict, particularly the role of ethnicity and politics as drivers of violence and the manner in which the conflict has affected inter-communal relations. The overt politicization and militarization of ethnic identities and prevalence of targeted killings on an ethnic basis are thought to be causing long-term damage to relationships among communities in South Sudan.⁵⁹ However, survey data demonstrated that the impact is not uniform and that different communities and geographic locations experience and articulate the conflict in different ways.

When asked whether people from other ethnic groups can be trusted, 38 percent of survey respondents said '**No**' (see **Figure 11**). Unsurprisingly, populations more directly affected by the conflict that erupted in December 2013 expressed less trust in other ethnic groups than other less affected populations.⁶⁰ For example, 51 percent of respondents in Bor town, 49 percent of respondents in Bor PoC and 80 percent of respondents in Mingkaman stated

⁵⁹ The politicization and militarization of ethnic identities as a means of fighting and driving conflict is by no means new to South Sudan. Although the Sudanese civil war is often pitched as a conflict between an Arab-Islamic 'North' and an African-Christian 'South', a more nuanced explanation looks at how political and economic elite on all sides purposefully reduced historically-rooted disputes over access to power and resources to a series of inter-dependent ethnic proxy wars.

⁶⁰ Furthermore, results from Bor cannot be separated from the lasting impact (i.e. unresolved grievances) of the 1991 Bor Massacre, and the speed with which both the GoSS and SPLM-IO immediately turned to historically rooted grievances to mobilise supporters.

that people from other ethnic groups cannot be trusted. These statistics reflect the highly inter-communal nature of the recent violence in these locations, where the fighting has largely broken down along ethnic lines. Conversely, only 19 percent of respondents in Rumbek said that people from other ethnic groups cannot be trusted. Although Rumbek has experienced a significant amount of inter-communal violence, the survey results reflect the fact that most violence is committed among competing Dinka sections and clans in Lakes State. Similarly, when asked if they would vote for a political leader from another ethnic group, respondents in Bor, Bor PoC and Mingkaman said 'No' (see **Figure 12**).

Figure 11: Can people from other ethnic groups be trusted, by location (%)

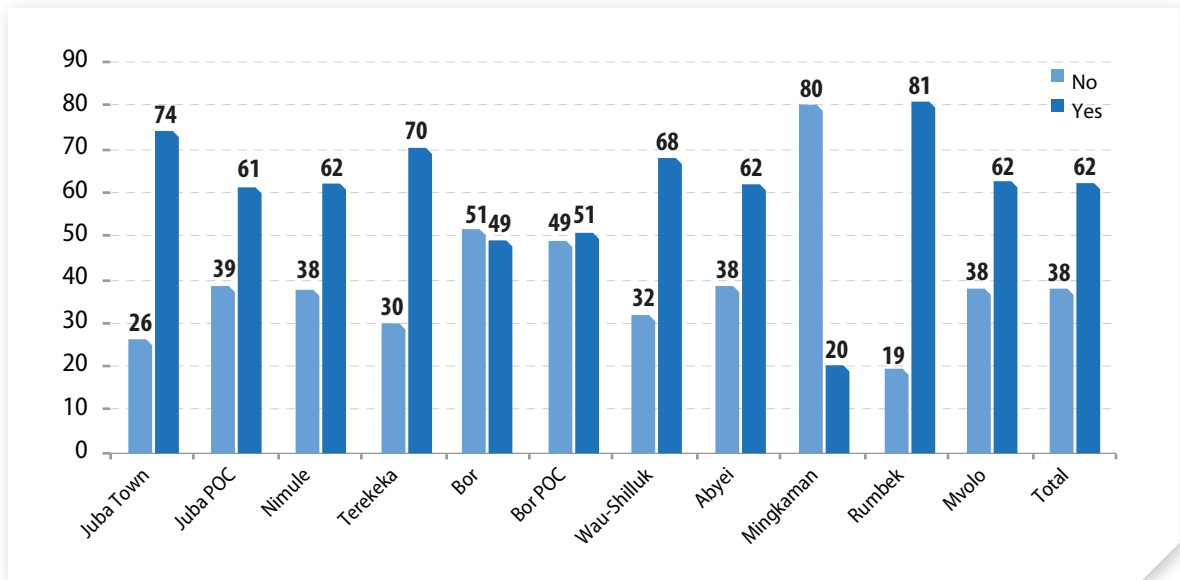
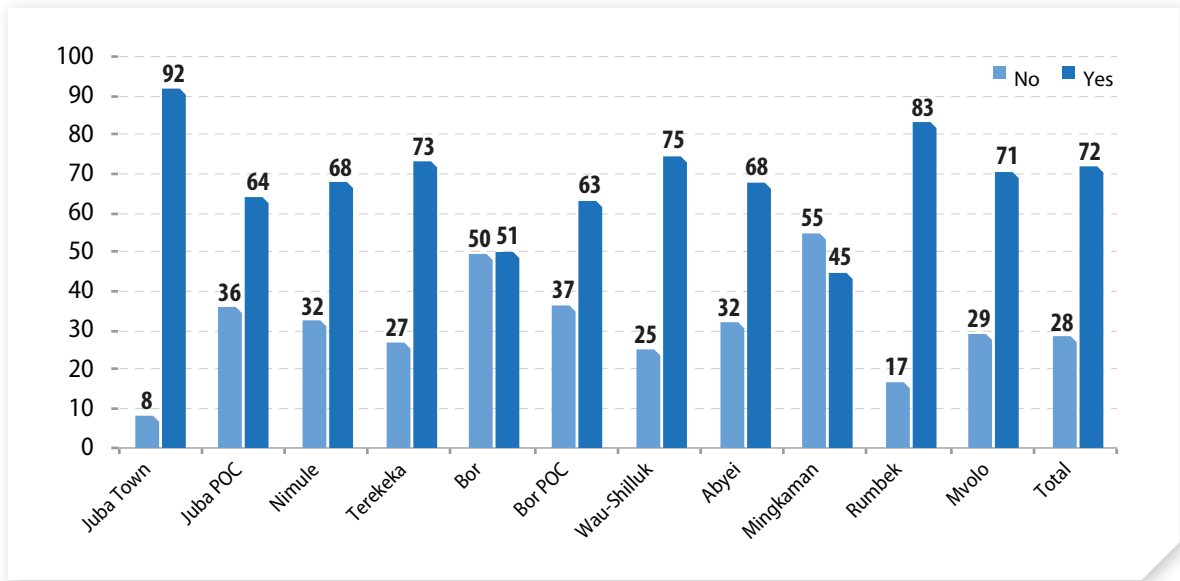
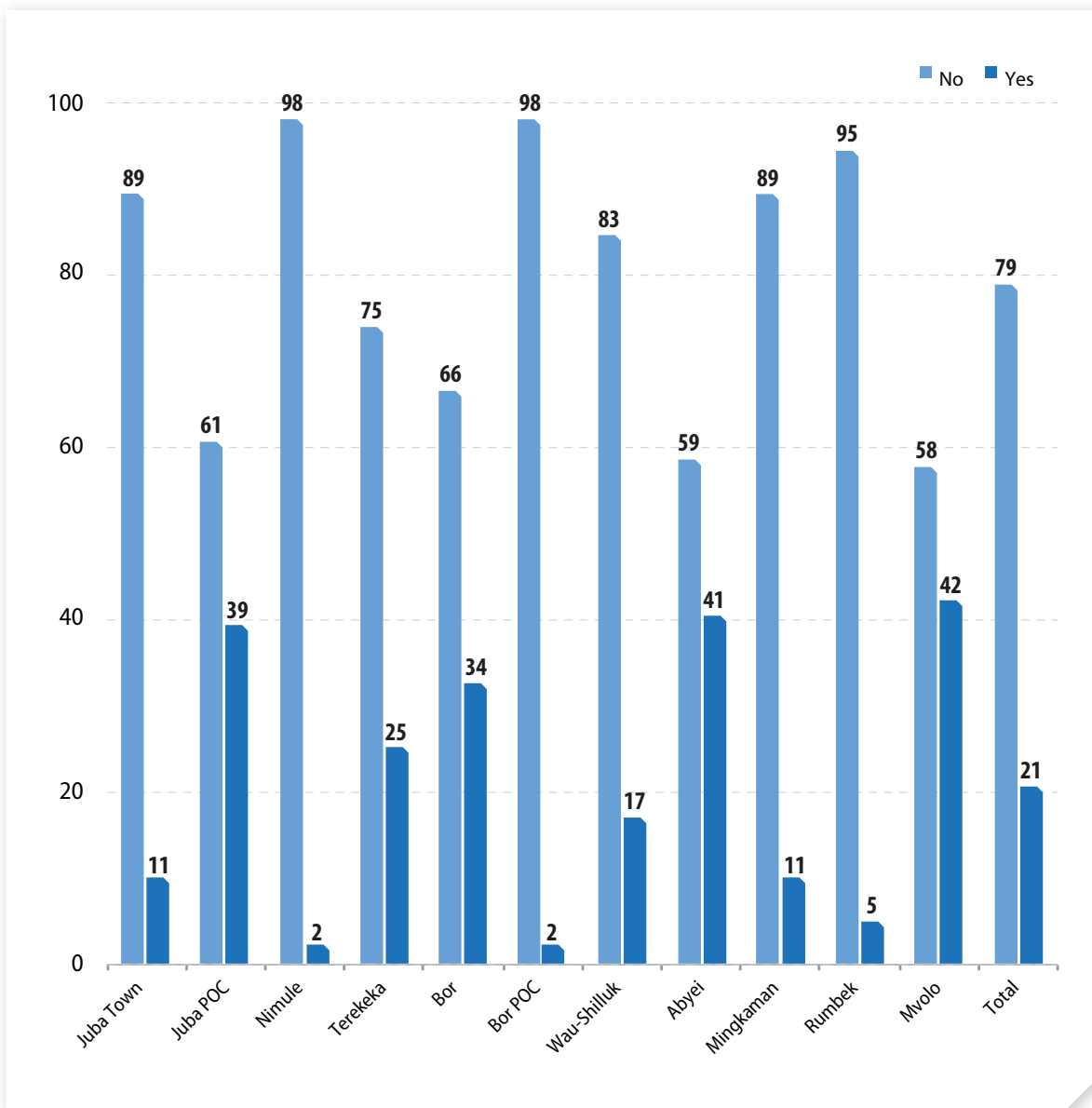


Figure 12: Would you vote for a political leader from another ethnic group, by location (%)



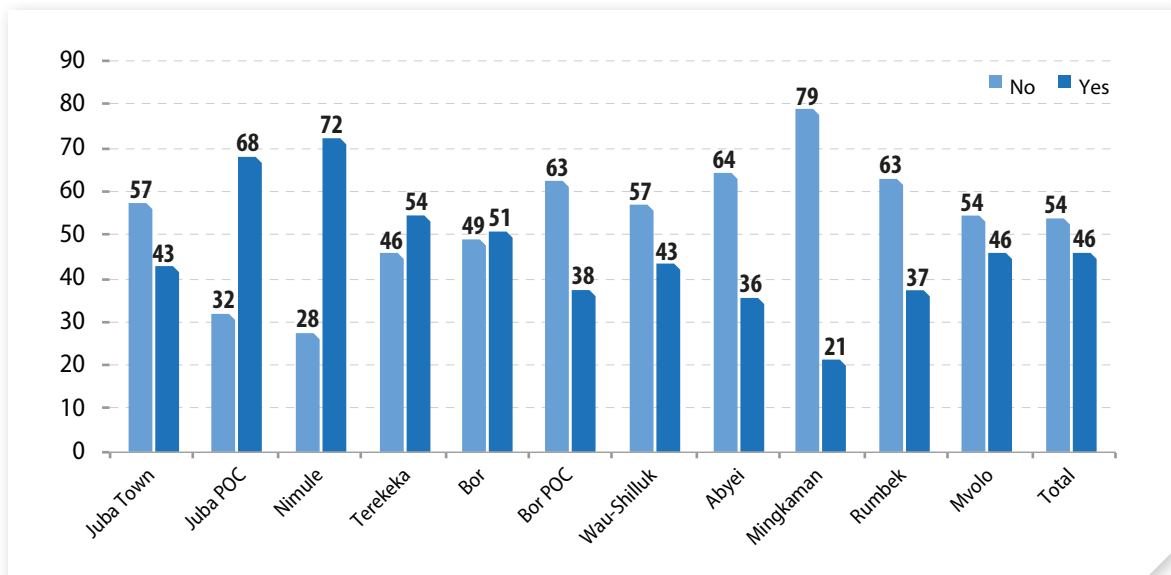
Responses to the question, 'Is fighting necessary to protect the interests of your community?' reflected additional idiosyncrasies of conflict dynamics in the various locations. Responses varied according to a number of intervening variables, including respondent experiences during the second Sudanese civil war, their exposure to recent fighting and the timing of the survey. Despite the challenge of deconstructing responses within and between field sites, survey data demonstrated that the percentages of people that believe fighting is necessary to protect their community are much higher in Abyei, Mvolo, Juba PoC and Bor than the average across the entire sample (see **Figure 13**). Rather than a direct response to the national conflict, variation within and between communities likely indicates the impact of historical grievances and ongoing disputes linked to migration, livelihood, security and inter-communal violence at the local level.

Figure 13: Is fighting necessary to protect community, by location (%)



As opposed to the preceding questions, where a considerable majority of respondents across the entire sample give responses that affirm their relationships with people from other communities, when asked whether they would prefer to live in a community of their own ethnicity, nearly half of respondents (46%) said 'Yes'. The most resistance to living in ethnically mixed communities was found in Nimule, where 72 percent of respondents said that they would prefer to live in a community of their own ethnicity (see **Figure 14**). These rates likely reflect the tensions between the resident population in Nimule and populations that have been displaced to Nimule from elsewhere in South Sudan, whether during the second Sudanese civil war or in more recent times.

Figure 14: Prefer to live in community of own ethnicity, by location (%)



Impact of the Conflict on Inter-communal Relations

The questions in the previous section targeted perceptions about the current state of inter-communal relations in survey locations. Respondents were also asked directly how, if at all, the conflict that erupted in December 2013 has changed their view of other ethnic groups. A little more than half of respondents (52%) said that their view of other ethnic groups was not changed. Comparatively, 27 percent of respondents said that their view of other ethnic groups was less favourable, and 21 percent said that their view of other ethnic groups was more favourable (see **Table 4**).⁶¹

⁶¹ Out of the 1,525 respondents, only 1,460 as indicated in the table answered this question.

Table 4: Change in view of other ethnic groups

Change in View	Frequency	Percent
1 = Much less favorable	156	10.7
2 = Less favorable	240	16.4
3 = No change	756	51.8
4 = More favorable	107	7.3
5 = Much more favorable	201	13.8
Total	1,460	100

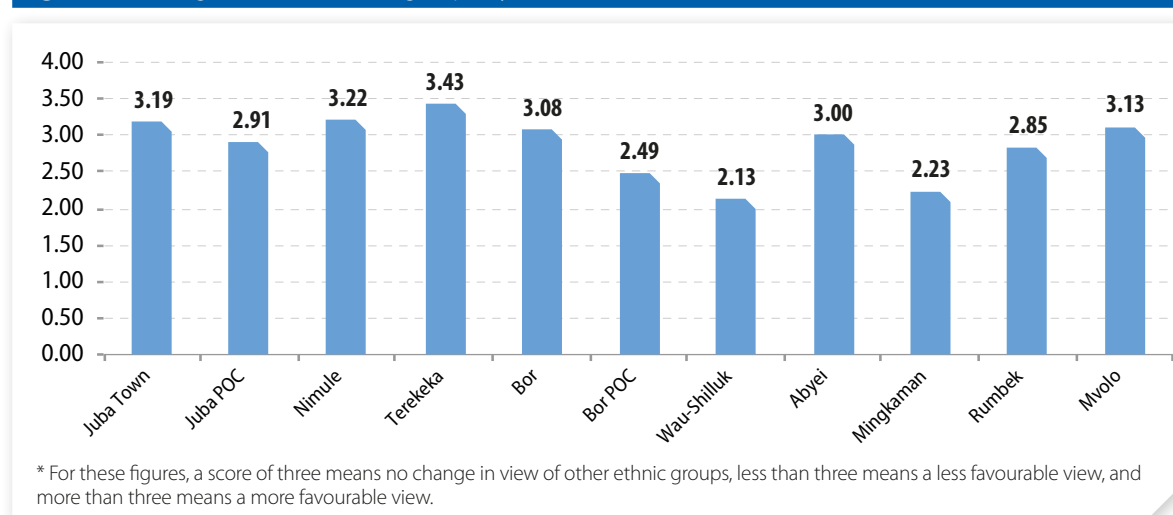
The relatively high percentage of respondents that say the ongoing conflict has not changed their view of other ethnic groups may suggest a degree of resilience to the politicization and militarization of ethnic identities, and support the view that the crisis in South Sudan is first and foremost a contest for power among a small number of political elites (as opposed to a

tribal war that is driven by ethnic hatred). However, the lack of change may also indicate that people’s views of other ethnic groups had already solidified (whether positively or negatively) prior to the conflict, rather than an endorsement of ethnic pluralism.

More puzzling is the 21 percent of respondents who said that the ongoing conflict had given them a more positive view of other tribes. To a certain extent, the positive change in views of other ethnic groups may be more aspirational and reflect people’s desire for the conflict to end and for different groups to be able to live together in peace. For example, feedback from enumerators suggests that in some cases, respondents who said their view of other ethnic groups was improved were apparently expressing sympathy with other ethnic groups who were perceived to have borne the brunt of the harm in the conflict.

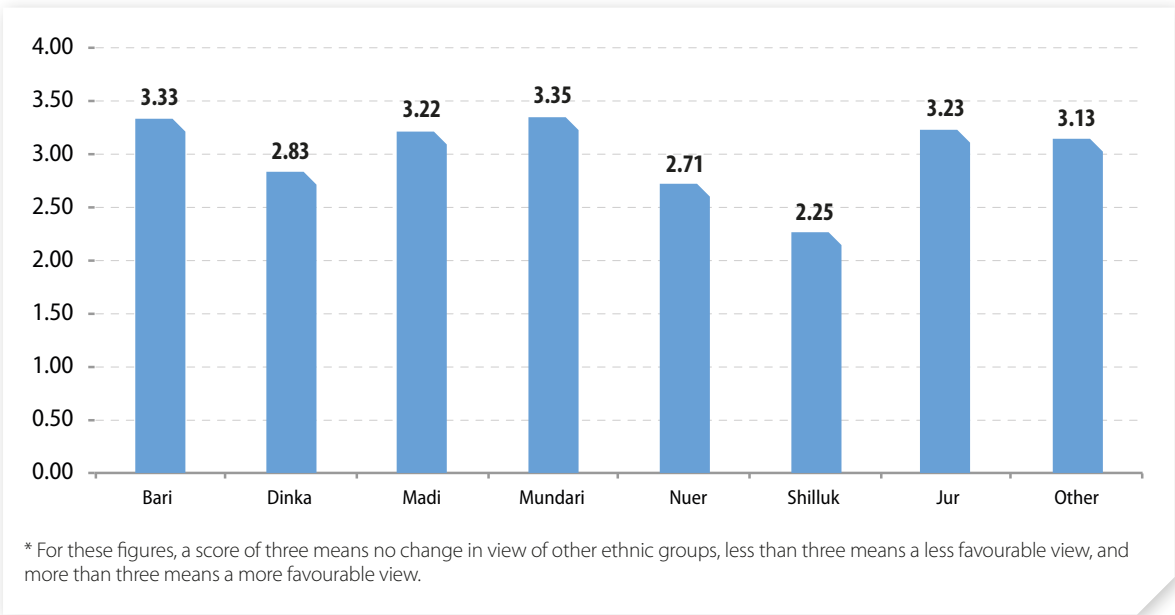
Independent of these outstanding questions, an examination of the differences across demographic groups demonstrates the serious risk that the conflict poses to inter-communal cohesion. Populations in Wau-Shilluk, Mingkaman and Bor PoC reported the most negative change in their views of other ethnic groups (see **Figure 15**). Unsurprisingly, geographic locations with a high concentration of people directly affected by conflict generally had a more negative view of other ethnic groups.

Figure 15: Change in view of ethnic groups, by location (scale)*



Disaggregating the data by ethnicity shows that the three ethnic groups that are most commonly associated with the current conflict—the Dinka, Nuer and Shilluk—were also more likely to express a negative change in their views of other groups as a result of the conflict (see **Figure 16**). Addressing the different impacts that the conflict has had across ethnic communities will be a central challenge for any national reconciliation effort. In order to avoid deepening the divide among groups, a reconciliation programme must be sensitive to divergent perspectives while building on narratives that emphasise the shared experiences of the South Sudanese people as a whole. There is no one-size-fits-all approach to reconciliation, but it is important that the violence that broke out in December 2013 be acknowledged as the latest in a series of conflicts driven by similar factors, including fear, mistrust and residual trauma from repeated exposure to violence. Situating the conflict in its historical context can create space for all communities to reflect on the legacy of human rights abuses, irrespective of whether they have been directly affected by the current conflict or not.

Figure 16: Change in view of other ethnic groups, by ethnicity (scale)



In addition to the inter-communal dynamics, differences were also apparent across gender and socio-economic statuses. Regarding gender, women were more likely to report a less favourable view of other ethnic groups as a result of the conflict than men. On the scale of 1 to 5 (see **Table 4** above), the mean score for women was 2.89 and the mean score for men was 3.05. These numbers mean that female respondents (as a whole) expressed a negative change in their views of other ethnic groups and male respondents (as a whole) expressed a neutral or positive change in their view of other ethnic groups as a result of the conflict. To a certain extent, this finding may reflect the unique protection concerns that women face in the midst of conflict, including rape, child abduction and sexual exploitation. The data also brings into question the commonly held notion of women as inherent peacemakers, and highlights the need to more carefully consider women’s role in conflict.

Regarding socio-economic status, respondents with lower monthly incomes were also more likely to report negatively impacted views of other ethnic groups than those with higher income (see **Figure 17**), as were those with less education (see **Figure 18**). Again, as was the case in comparing locations that were more or less directly exposed to conflict, the more difficult life circumstances of these respondents may translate into more negative views of other ethnic groups.⁶²

Figure 17: Change in view of other ethnic groups, by income (scale)

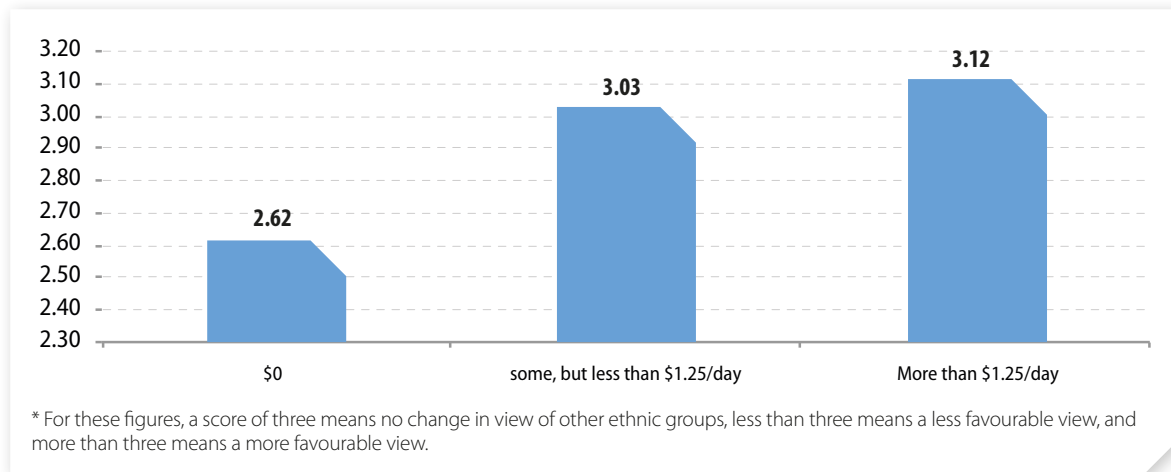
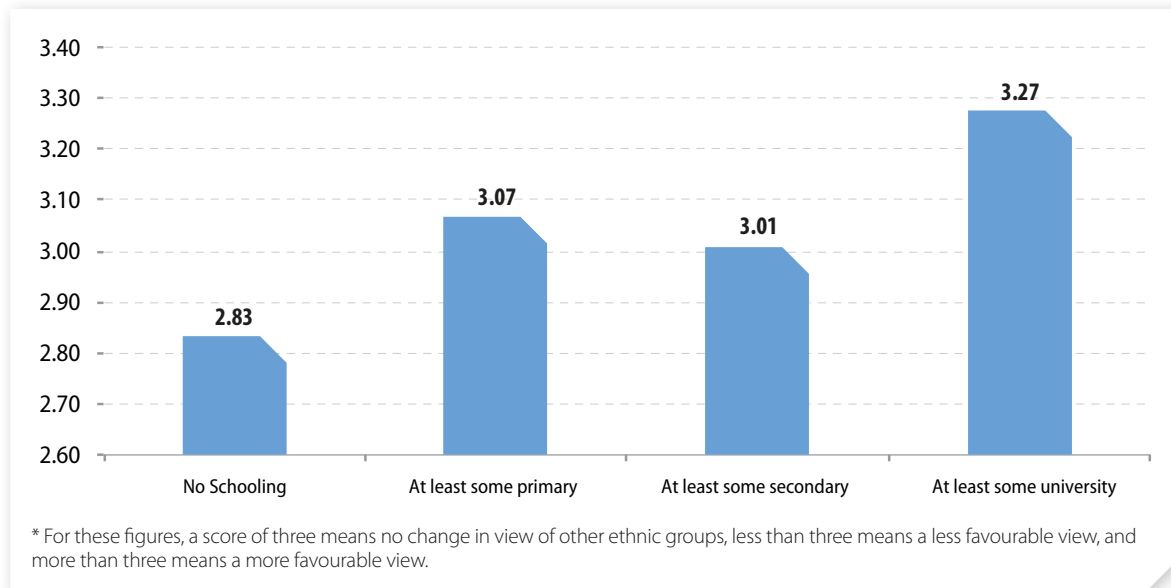


Figure 18: Change in view of other ethnic groups, by education (scale)



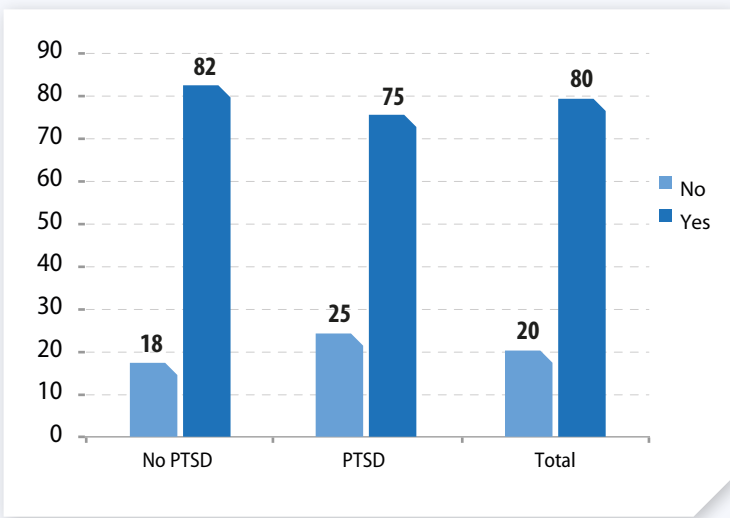
62 Furthermore, individuals that spend more time in school are also generally exposed to a wider range of people from other ethnic groups as well as narratives that compete with more restrictive community-based versions of historically-rooted and ongoing conflicts.

Text box 3: Impact of PTSD and trauma on perceptions of justice and reconciliation

In addition to the importance of providing support services to those suffering from PTSD and other conflict-related mental health issues, PTSD and trauma have implications for how people relate to processes of truth, justice and reconciliation. Studies in Rwanda, Uganda, the Democratic Republic of Congo and Cambodia have found that people with PTSD have less positive attitudes toward trials for people suspected of committing atrocities, less positive beliefs in a communal or interdependent vision of the future, have greater feelings of revenge, are less willing to reconcile, and are less likely to report satisfaction with punishment of perpetrators, apologies by perpetrators and remuneration for suffering.⁶³

This study confirms many of these findings in the South Sudanese context. Survey respondents that exhibited symptoms consistent with a diagnosis of PTSD were less likely to say that peace talks between communities would help to resolve the conflict (see **Figure 19**) and were less likely to point towards togetherness and unity, or healing and therapy as necessary requirements for reconciliation. This category of respondents also had less confidence in IGAD's ability to bring lasting peace to South Sudan. Fifty-seven percent of respondents that met the criteria for PTSD had no confidence in IGAD to bring peace compared to just 16 percent of respondents that did not meet the criteria for PTSD.

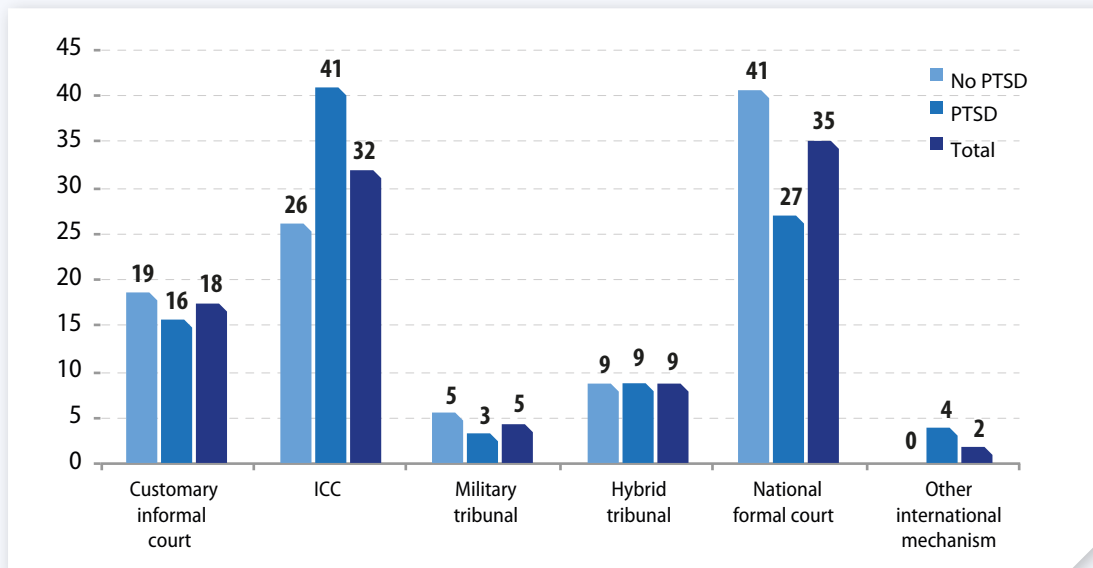
Figure 19: Will peace talks between communities help, by PTSD status? (%)



In addition, people with PTSD expressed a preference for international justice systems to hold perpetrators of abuses responsible (see **Figure 20**), perhaps indicating a lack of trust in national justice mechanisms.

63 See Pham et al., *supra* note 52; Bayer et al., *supra* note 52; Sonis et al., *supra* note 52.

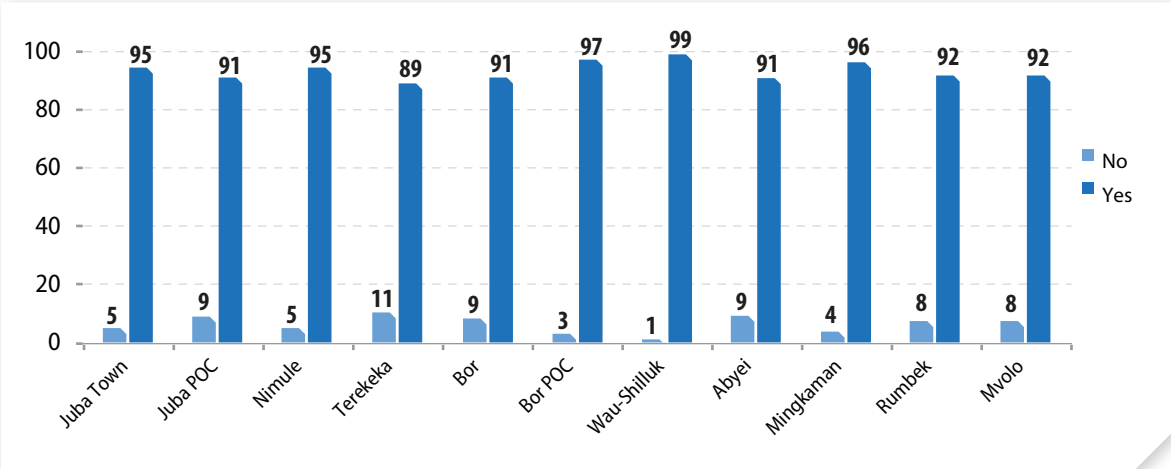
Figure 20: Most appropriate court, by PTSD (%)



Views on Criminal Accountability

Throughout South Sudan’s long history of conflict, very little has been done to hold perpetrators of serious human rights abuses accountable. This culture of impunity arises from many factors, including the weakness of the justice system and fact that senior political and military leaders are implicated in many of the abuses. South Sudanese are desperate for justice, and survey data shows strong support for prosecuting the people responsible for abuses related to the ongoing conflict. When asked whether the individuals responsible for abuses should be prosecuted in courts of law, 93 percent of respondents said ‘Yes’. Although support for prosecutions was high in each location, the locations most directly exposed to violence showed the highest levels of support. Ninety-nine percent of respondents in Wau-Shilluk, 97 percent of respondents in Bor PoC and 96 percent of respondents in Mingkaman said that people responsible for abuses should be prosecuted (see **Figure 21**).

Figure 21: Should people responsible for abuses be prosecuted, by location (%)



A follow up question asking respondents to explain their response showed that deterrence and retribution were the most common goals for people supporting the idea of prosecutions (see **Figure 22**). The majority of those who opposed prosecutions explained their choice in the interest of forgiveness and reconciliation (see **Figure 23**).

Figure 22: Why prosecute? (%)*

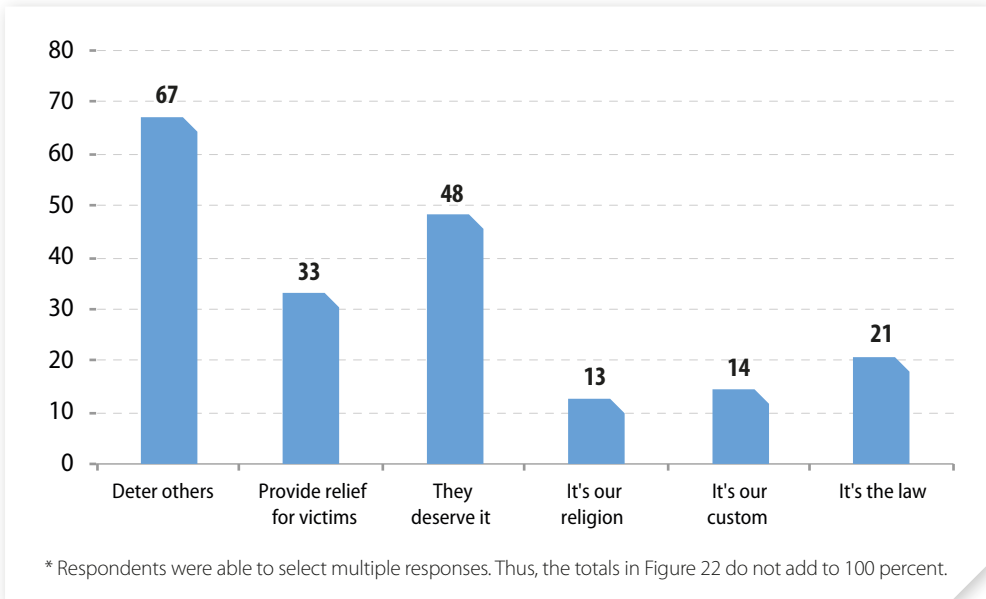
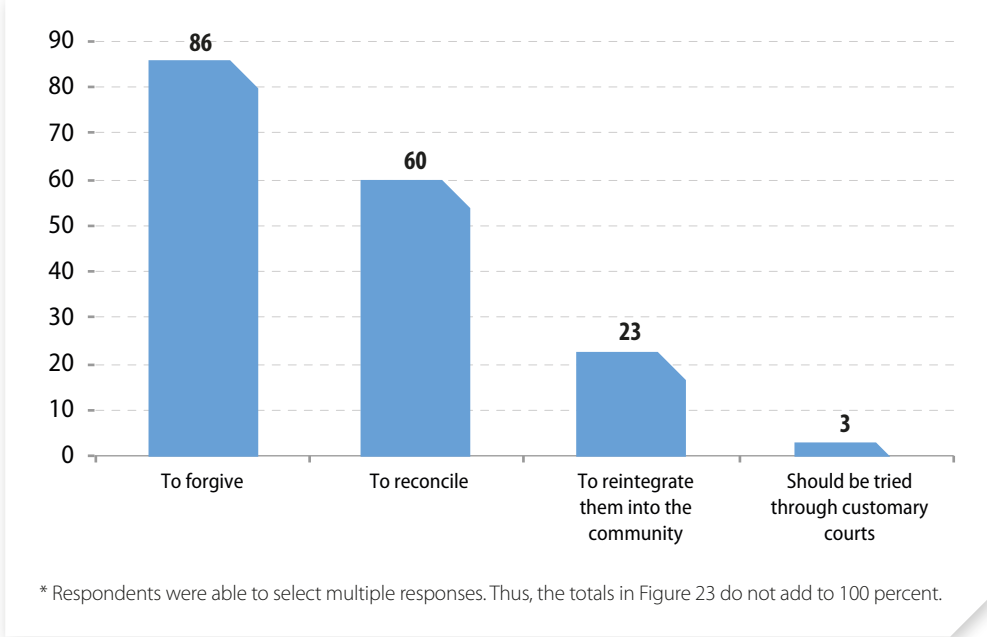


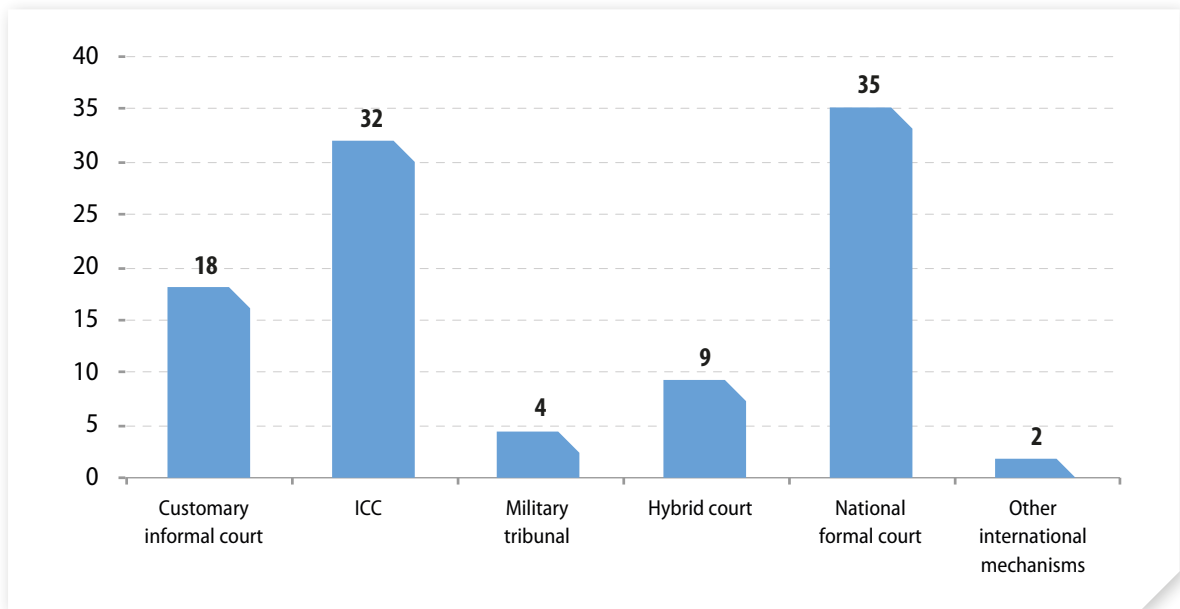
Figure 23: Why not prosecute? (%)*



When asked which court is most appropriate to bring cases against individuals responsible for abuses, responses were split evenly between national and international accountability mechanisms (see **Figure 24**). Thirty-five percent said that South Sudanese statutory courts are most appropriate and 34 percent said that the International Criminal Court (ICC) or another international mechanism is most appropriate. Response options were not read aloud during the interview. Responses, therefore, only reflect accountability mechanisms that are already familiar to respondents and do not necessarily indicate where people would place their priorities if they were fully aware of all the options. Nonetheless, the fact that 35 percent of people selected statutory courts suggests a considerable demand for prosecutions of international crimes in national courts.

At the same time, the data also shows support for a more internationalised process. When asked directly whether they would support the involvement of international justice mechanisms in response to serious abuses committed in South Sudan, 83 percent of respondents said **'Yes'**. This finding suggests that although many people might prefer the national statutory justice system, challenges of weak institutional capacity and widespread impunity may lend significant support to a more internationalised process, if the opportunity were available. With certain reforms, such as the enactment of international crimes legislation and the creation of a special international crimes division within the judiciary, national prosecutions could also be conducted alongside prosecutions in a more internationalised tribunal, such as the ICC or a hybrid court.

Figure 24: Which court is most appropriate? (%)



The accessibility of these various accountability mechanisms is a key factor to consider. South Sudan is not a party to the Rome Statute or many of the other treaties that would give South Sudanese access to international accountability mechanisms.⁶⁴ The only way that the ICC could investigate and bring cases against people suspected of war crimes or crimes against humanity would be if the UN Security Council referred the matter to the ICC or if the Government of the Republic of South Sudan signed a declaration consenting to ICC jurisdiction.⁶⁵ Given the AU's staunch opposition to ICC involvement in Africa, the low likelihood of the UN Security Council referring the matter to the ICC over the objections of the AU, and the Government of the Republic of South Sudan's clear opposition to the ICC's involvement, the chances of the ICC becoming involved are slim.⁶⁶

Recognizing the weakness of justice mechanisms at the national level and the inaccessibility of international mechanisms, a number of human rights organizations have raised the

64 South Sudan recently ratified the Convention Against Torture (CAT), the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) and the Convention on the Rights of the Child (CRC), but it is still not party to the International Covenant on Civil and Political Rights (ICCPR), the International Covenant on Economic, Social and Cultural Rights (ICESR) or the African Charter on Human and People's Rights (ACHPR). See Press release, UN Committee hails South Sudan's ratification of the Convention on the Rights of the Child, Office of the High Commissioner for Human Rights (OHCHR) (4 May 2015), available at <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=15919&LangID=E>.

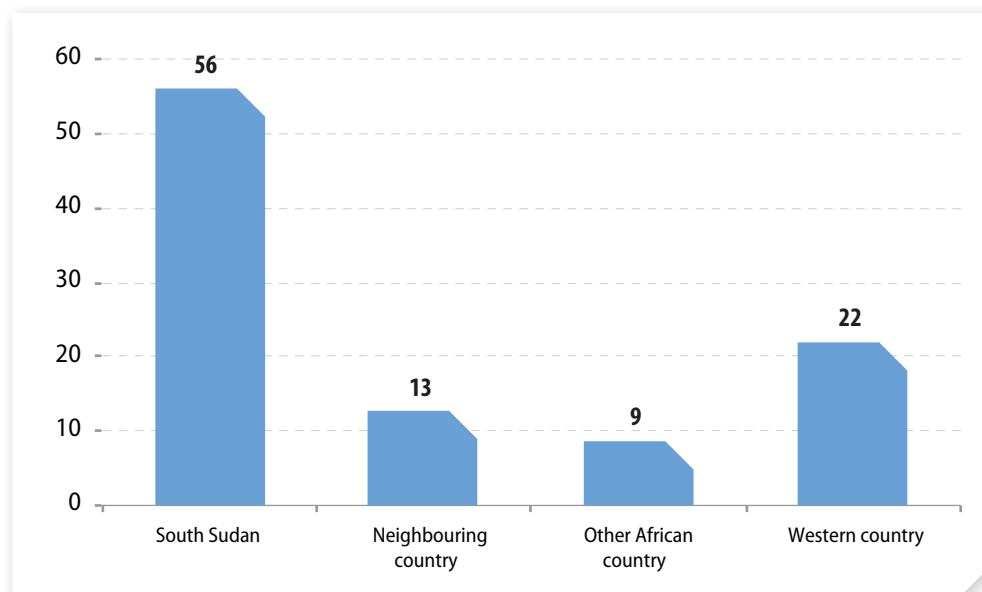
65 Rome Statute of the International Criminal Court, S 12, U.N. Doc. A/CONF.183/9, (1 Jul. 2002), http://www.icc-cpi.int/nr/rdonlyres/ea9aeff7-5752-4f84-be94-0a655eb30e16/0/rome_statute_english.pdf.

66 South Sudan Justice Minister: We will not join International Criminal Court, Radio Tamazuj (1 Apr. 2015), available at <https://radiotamazuj.org/en/article/s-sudan-justice-minister-we-will-not-join-international-criminal-court>.

option of a hybrid or mixed tribunal as an alternative.⁶⁷ As discussed further below, a hybrid tribunal would be established through a partnership between the Government of the Republic of South Sudan and an intergovernmental organization such as the UN or AU. The institution would be staffed by a combination of foreign and national judges, prosecutors, defense attorneys, investigators and administrative staff. The main advantage of the hybrid tribunal is that it enables greater local ownership and skills transfers to South Sudan while ensuring that trials are conducted in a fair and impartial manner in accordance with international standards.

Although the warring parties and IGAD have considered a proposal for a hybrid court in the context of the peace talks in Ethiopia, awareness of what such an institution would entail is very low in South Sudan (only nine percent of respondents say that a hybrid court is most appropriate for prosecuting conflict-related abuses). However, the data also shows significant interest in justice and accountability, which could be well served through a tribunal that is more visible and accessible to the local population. Indeed, when asked 'Where should trials be held?', 56 percent of respondents said South Sudan (see **Figure 25**).⁶⁸ To the extent that the security situation does not allow for trials, particularly those that are considered to be very politically sensitive, to be conducted in South Sudan, another option could be to hold some or even all the trials in another country. The United Nations Mechanism for International Tribunals (MICT) in Arusha, Tanzania, where the International Criminal Tribunal for Rwanda (ICTR) was housed, could serve as a useful alternative forum, in these circumstances.

Figure 25: Where should trials be held? (%)

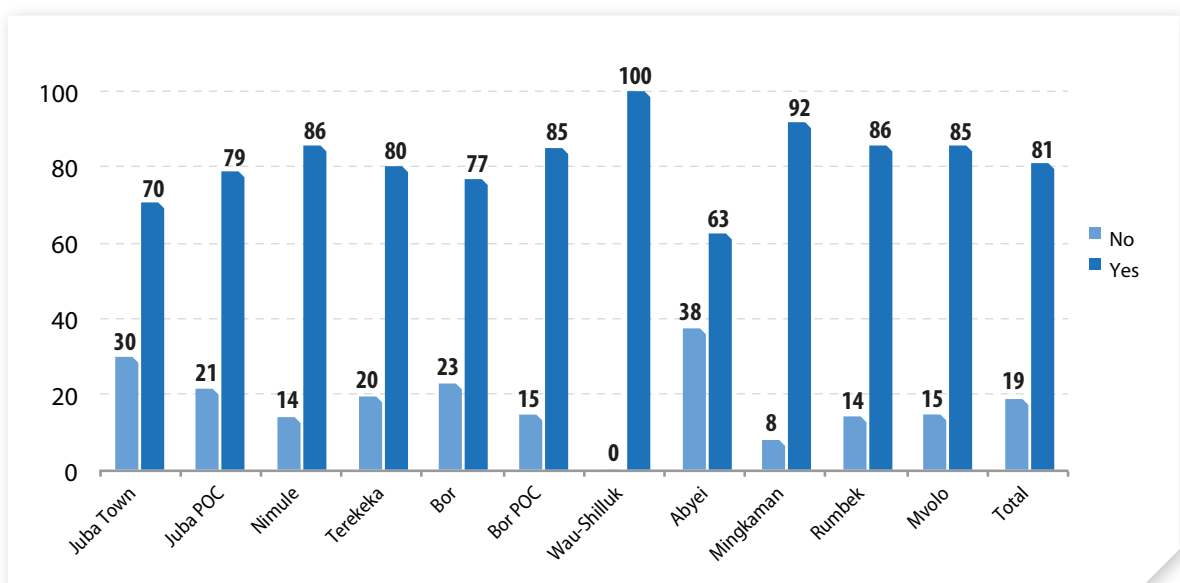


⁶⁷ See David K. Deng, *Special Court for Serious Crimes: A proposal for justice and accountability in South Sudan*, South Sudan Law Society (SSLS) (May 2014), available at http://sslawsociety.org/public_html/SSLS_SCSC_Proposal_for_a_Hybrid_Court.pdf; Human Rights Watch, *South Sudan: One Year Later, Injustice Prevails* (11 Dec. 2014), available at <http://www.hrw.org/news/2014/12/10/south-sudan-one-year-later-injustice-prevails>.

⁶⁸ Due to a technical error, this question was only asked of 510 people.

Finally, respondents were asked whether people responsible for abuses should be removed from office and banned from holding political positions. As discussed in section one above, although no specific mechanism has yet been proposed, both the IGAD-led peace process and the intra-SPLM dialogue have raised the issue of vetting office-holders for the transitional government. Eighty-one percent of respondents for this study said that people responsible for abuses should be removed from public office. Individuals in areas more directly exposed to violence expressed more support for the idea of barring people who are responsible for abuses from public office. All 96 respondents who answered this question in Wau-Shilluk and 92 percent of respondents in Mingkaman said that perpetrators should be barred from office (see **Figure 26**).

Figure 26: Should perpetrators be barred from office, by location? (%)



Text box 4: Hybrid courts

Hybrid courts first arose around the turn of the millennium as a way for post-conflict countries to prosecute international crimes while avoiding the exorbitant cost and lack of local participation that characterised efforts by ad hoc international tribunals (e.g. the International Criminal Tribunal for Yugoslavia (ICTY) and the International Criminal Tribunal for Rwanda (ICTR)). Unlike hybrid courts, the ICTY and ICTR were located in the Netherlands and Tanzania, not in the affected countries, limiting both local participation in the trials and their significance for affected populations. These courts applied international law only, limiting the positive influence that the cases would have on domestic jurisprudence in Yugoslavia and Rwanda. The courts were also run by international personnel, which limited opportunities for knowledge transfers to the domestic legal workforce.

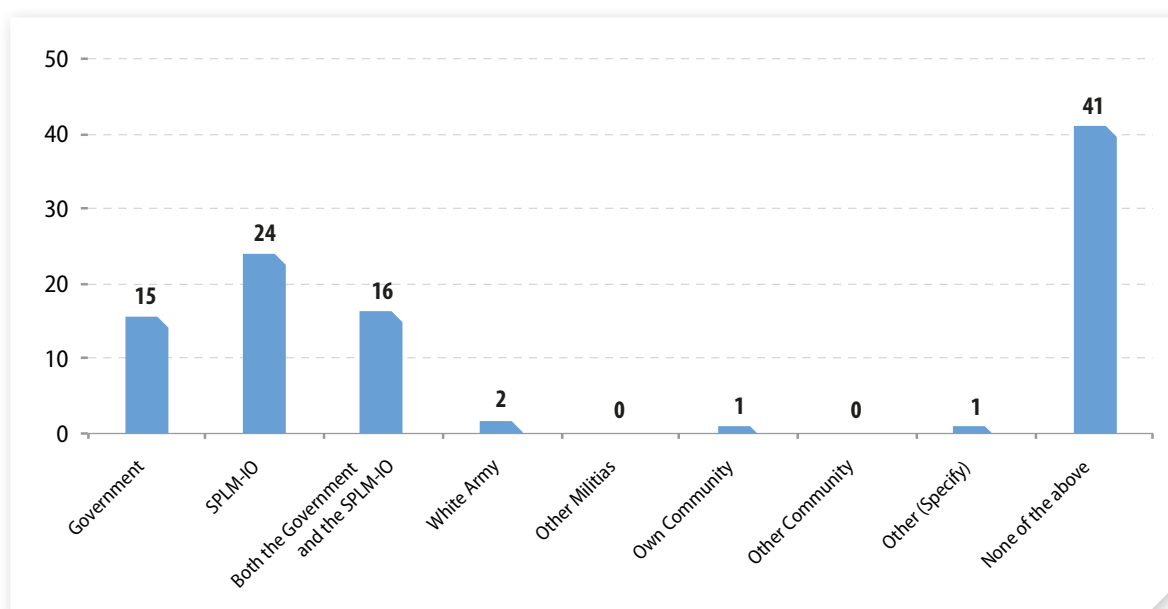
After the International Criminal Court (ICC) was established in 2002 as the preferred international institution to prosecute international crimes, ad hoc tribunals such as the ICTY and the ICTR lost much

of their appeal. Hybrid courts arose as a more desirable alternative due to their lower cost and local ownership. Since hybrid courts are established with the support of the state where the atrocities took place, they are seen as a way for conflict-affected states to meet their international obligations without encroaching on the jurisdiction of the ICC. The ICC operates on the principle of complementarity, meaning that a case is only admissible before the ICC if a country is unable or unwilling to carry out genuine investigations and prosecutions.⁶⁹ Hybrid courts thus fill an important gap by providing states that lack the capacity to prosecute international crimes with a viable means to do so in accordance with international standards.

Responsibility for Conflict-related Abuses

The conflict in South Sudan has polarized society and forced many people to throw their support behind one side or the other. This division of allegiances is apparent in responses to the question, 'Who do you think is responsible for abuses?' As interviews were only conducted in Government-controlled areas, the results in Figure 27 cannot be taken to represent an accurate picture of who South Sudanese perceive to be responsible for most conflict-related abuses. Furthermore, the large number of respondents who say that none of the actors listed were responsible for abuses (41%) reinforces the difficulty of asking highly sensitive questions such as these in the midst of an ongoing conflict. Despite these shortcomings, the fact that our data capture a significant range of responses from within Government-controlled areas demonstrates considerable disagreement about who is most responsible.

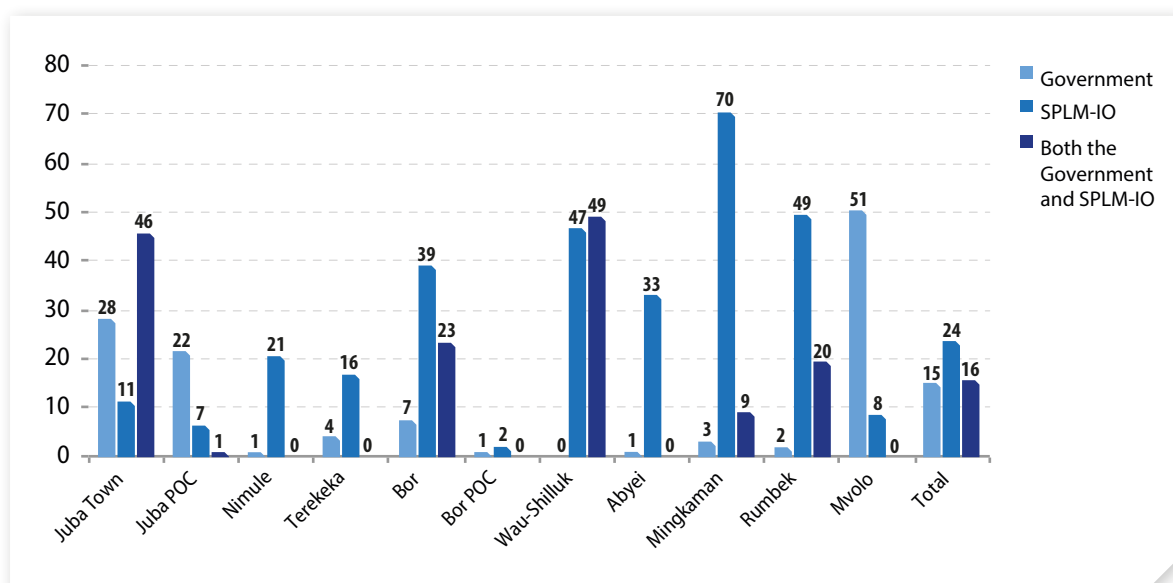
Figure 27: Who do you think is responsible for abuses? (%)



⁶⁹ Rome Statute, §§ 1, 17, supra note 65.

Considerable differences were apparent across the survey locations. Juba town, Juba PoC and Mvolo were the only three locations where people thought the Government was more responsible for human rights violations than SPLM-IO (see **Figure 28**). Nearly half of respondents in both Juba and Wau-Shilluk felt as though the two groups were both to blame, far more than in any of the other locations. Finally, respondents in Nimule, Bor, Wau-Shilluk, Mingkaman and Rumbek generally felt that SPLM-IO shoulders greater responsibility. While these findings may be explained by tracing the spread of the conflict across survey locations, respondents from Rumbek add an additional perspective. Twelve percent of respondents in Rumbek blamed members of their own community for human rights abuses. As discussed above, this response further demonstrates that much of the conflict in Rumbek is linked to intra-communal violence among groups in Lakes state rather than the national crisis.

Figure 28: Perceived responsibility for human rights abuses, by location (%)



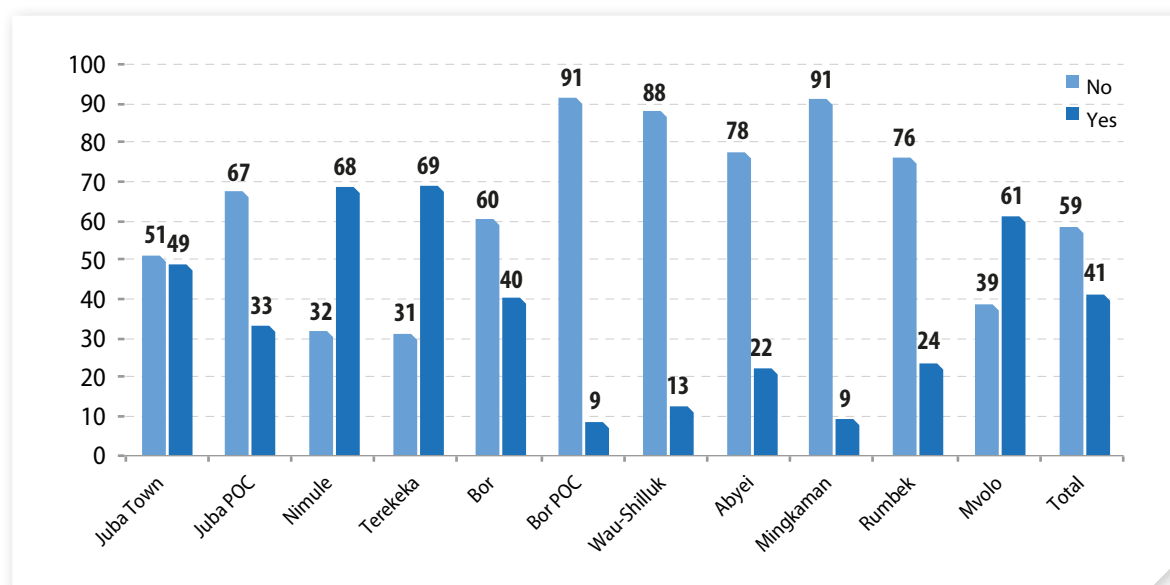
Findings on who is seen to be responsible for abuses committed during the conflict are especially relevant when combined with preferences for accountability. Given that respondents overwhelmingly supported criminal prosecutions, people's perceptions of who is responsible for abuses indicate where they place priorities for future trials. The diversity of responses in **Figure 28** show how polarised South Sudanese are on this question. High levels of PTSD and exposure to trauma deepen the divide by reinforcing feelings of bias towards one's identity group. Any justice strategy must take this into consideration and ensure that accountability mechanisms are approached in an independent and balanced manner so as not to exacerbate inter-communal tensions and undermine peace by targeting one side more than another.

Views on Amnesties

Since the signing of the CPA in 2005, South Sudan has experienced numerous rebellions by disgruntled politicians and military personnel. The typical response from the Government in these situations has been to offer a blanket amnesty to the rebelling forces in order to entice them back into the fold. Although several recent amnesties have succeeded in bringing non-state armed groups into the military (e.g. the Juba Declaration and the reintegration of the South Sudan Defense Forces (SSDF) in 2006), the policy has generated criticism for creating a marketplace for insurrection. Critics argue that amnesties increase incentives for people to mobilise rebellions in their home areas in the hopes of being granted political and economic rewards in any future peace processes.⁷⁰ Amnesties can also alienate victims of human rights abuses, who see those that harmed them rewarded for their acts. Data collected for this survey demonstrated considerable opposition to the idea of granting amnesties to people responsible for conflict-related abuses. Fifty-nine percent of respondents said that people responsible for abuses should not be offered amnesty.⁷¹

However, levels of opposition varied significantly across locations. People in Terekeka, Nimule and Mvolo were far more likely to support amnesties than those in Bor PoC, Mingkaman, Wau-Shilluk, Abyei and Rumbek (see **Figure 29**). The large opposition to amnesties in Bor, Mingkaman and Wau-Shilluk may indicate higher levels of frustration with the toll that the ongoing fighting is taking on civilians in these areas.

Figure 29: Support for amnesty, by location (%)

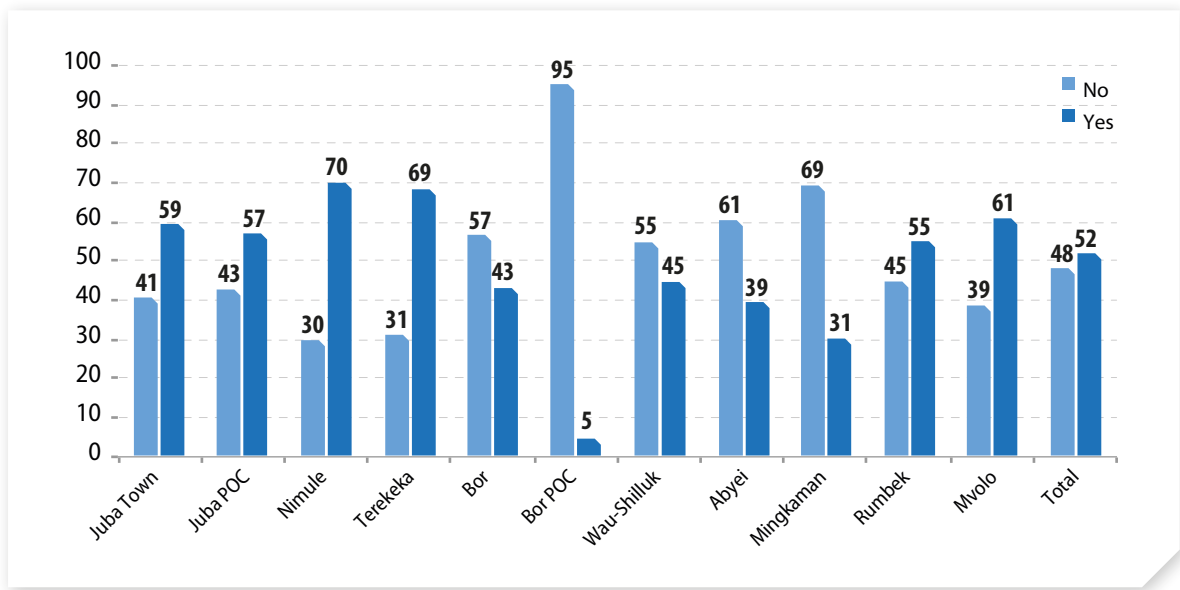


⁷⁰ See Ken Obura, 'Duty to Prosecute International Crimes Under International Law', in Chacha Murungu and Japhet Biegon (eds.), *Prosecuting International Crimes in Africa* (2011).

⁷¹ Respondents were asked whether they thought individuals responsible for abuses should be 'forgiven and not prosecuted', as the more technical term of 'amnesty' was not familiar to many respondents and did not lend itself easily to translation.

Asking whether individuals would support an amnesty if it were necessary for peace did not have much of an effect on respondents' positions. Forty-eight percent (a drop of 11 percent) said they would not support an amnesty even if it were necessary for peace. Resistance to amnesties was particularly pronounced in Bor PoC, where 95 percent of respondents said they would not condone amnesties even if they were necessary for peace (see **Figure 30**). The history of blanket amnesties and their inability to provide lasting solutions to ongoing conflicts suggest that many respondents feel peace without accountability is not sustainable in the long-term.

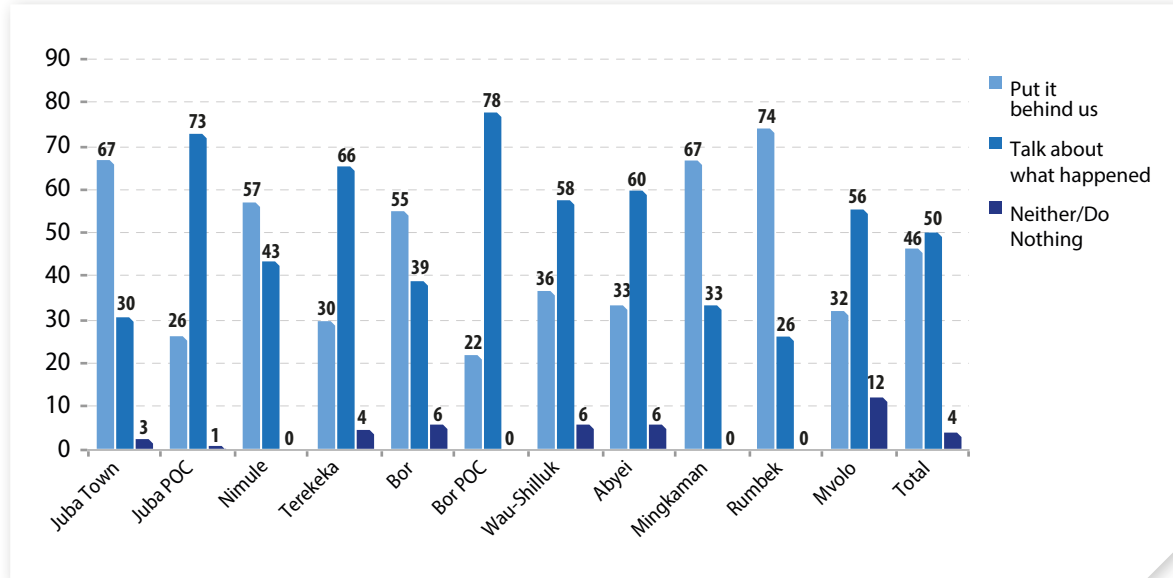
Figure 30: Would you accept amnesty if necessary for peace, by location? (%)



Support for a Truth-Seeking Process

In order to gauge demand for a truth-seeking process in South Sudan, respondents were asked a series of questions to determine whether they thought it would be helpful to have a public dialogue about human rights abuses, and whether they would want to engage personally in such a process. In response to the question, *'Is it better to talk about our past experiences with violent conflict or put it behind us and move on'*, 50 percent of respondents said *'talk about what happened'*, and 46 percent said *'put it behind us'* (see **Figure 31**). These results indicate a fairly even split between individuals who think it would be helpful for South Sudanese to talk openly about human rights abuses and those who would prefer to forgo the public discussion. The largest support for talking about what happened can be found among the displaced populations in the Juba and Bor PoC sites.

Figure 31: Is it better to talk about what happened or put it behind us? (%)



When asked to explain their choice, respondents who said ‘talk about what happened’ emphasised the role that talking about human rights abuses could play in preventing similar acts from being committed in the future (see **Figure 32**). Conversely respondents who said ‘put it behind us,’ give a variety of justifications for their response, including the fear that talking about what happened could cause violence, that the experiences were too painful to revisit and that it is better to forgive and forget (see **Figure 33**).

Figure 32: Why better to talk about it? (%)*

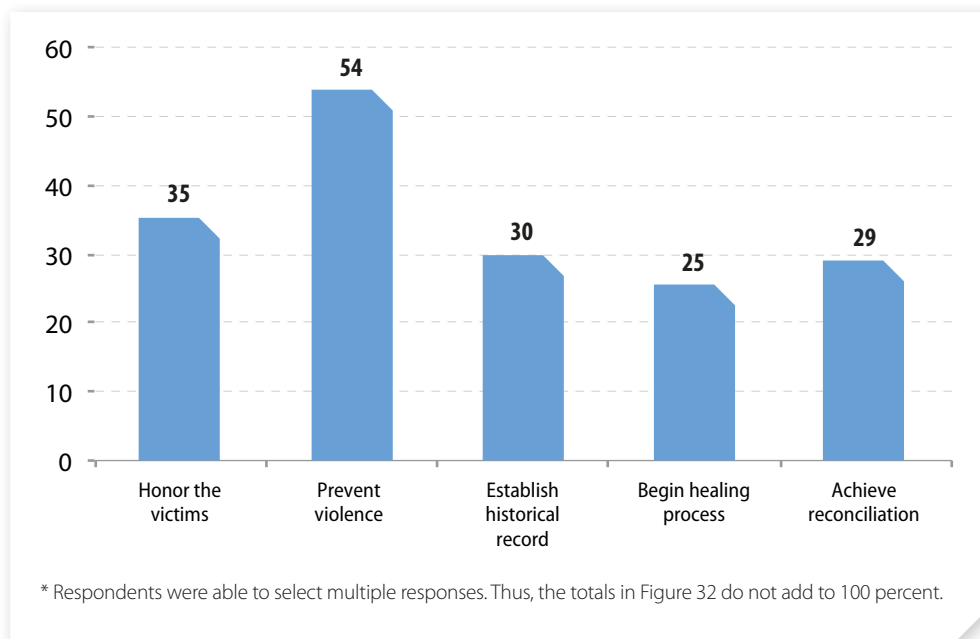
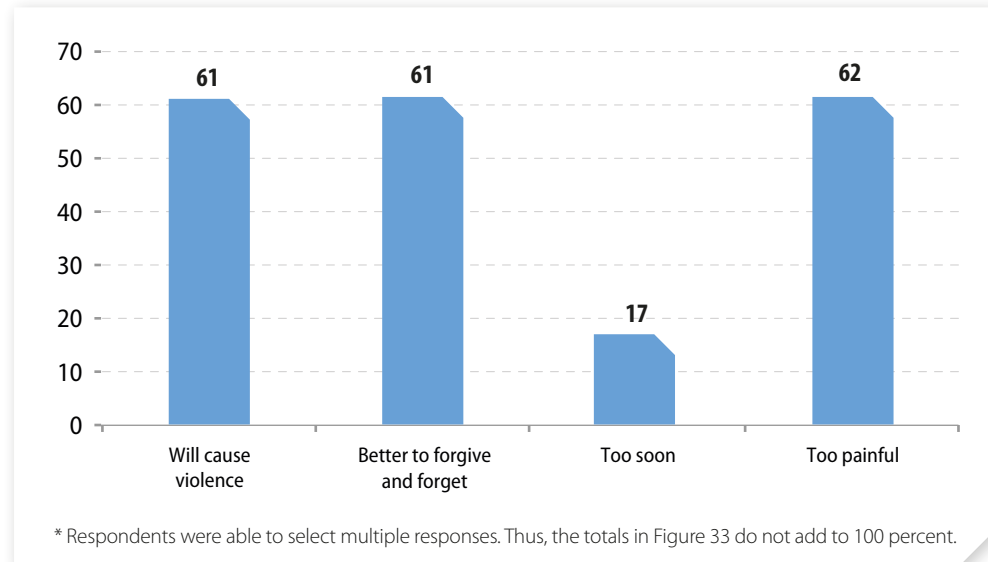


Figure 33: Why better to put it behind us? (%)

While responses regarding whether it is better to talk about our experiences or put them behind us and move on suggest a difference in opinion on whether a public dialogue would be helpful, there is far more consensus among respondents when it comes to personally engaging with a truth-seeking process. Nearly three-quarters of all respondents stated that they would be interested in speaking publicly about traumatic experiences that have happened to them if the opportunity were provided.

Although it is difficult to discern the precise reasoning that accounts for the difference in responses to the two questions, people's fears about the resurgence of large-scale conflict may provide one explanation. While the conflict is ongoing, people may feel that it is better to forgo a public discussion of abuses and focus efforts on stopping the violence, hence the split between those who think it is better to talk about what happened versus those who would prefer to forgo a public dialogue. At the same time, this difference may be due to the collective versus individualised nature of the question, where individuals prioritise sharing their own experiences over more collective forms of 'truth telling' (within and between communities).⁷² However, the fact that most respondents said that they themselves would like to speak publicly about the atrocities they have experienced suggests possible support for a truth-seeking process if sufficient stability is achieved.

The high rates of PTSD and exposure to trauma appear to heighten the extent to which people feel torn between wanting the conflict to end and wanting to bear witness to the atrocities that have occurred. In response to the first question, people exhibiting symptoms

⁷² Different responses to 'talking about experiences' and 'speaking publicly about traumatic experiences' cannot be separated from the legitimacy (real and perceived) sharing can provide. Specifically, members of smaller or more marginalised communities (politically, economically, geographically, etc.) may feel widespread sharing will further diminish their experiences, while the opportunity to talk about what happened to them will legitimise their experiences.

consistent with a diagnosis of PTSD (50%) were more likely to say that 'it is better to put it behind us' than those without PTSD (44%). This suggests that those who suffer from PTSD are more likely to want to forgo a public discussion. However, in response to the question about whether they would personally want to speak publicly about their traumatic experiences, people with PTSD (81%) were more likely to want to speak publicly about their own experiences if the opportunity were provided than those without PTSD (67%) (see **Figure 35**). To the extent that these findings reflect the manner in which people prioritise peace above all else during an active conflict, an assessment of how attitudes have changed if at all after the conflict has ended might help to shed additional light on how they perceive the trade-off between speaking publicly about abuses and closing the door on the past.

Figure 34: Talk about what happened or put it behind us, by PTSD status (%)

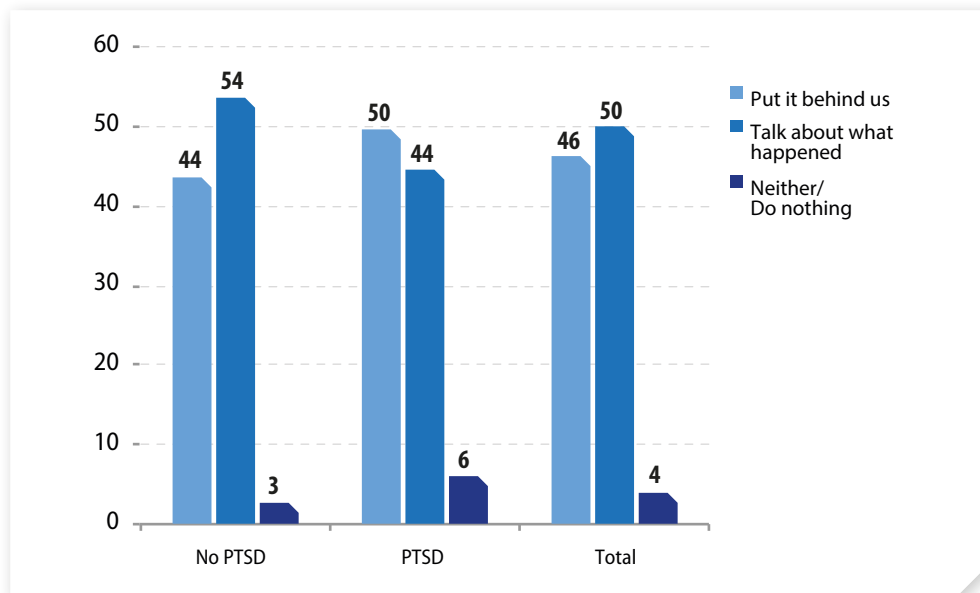
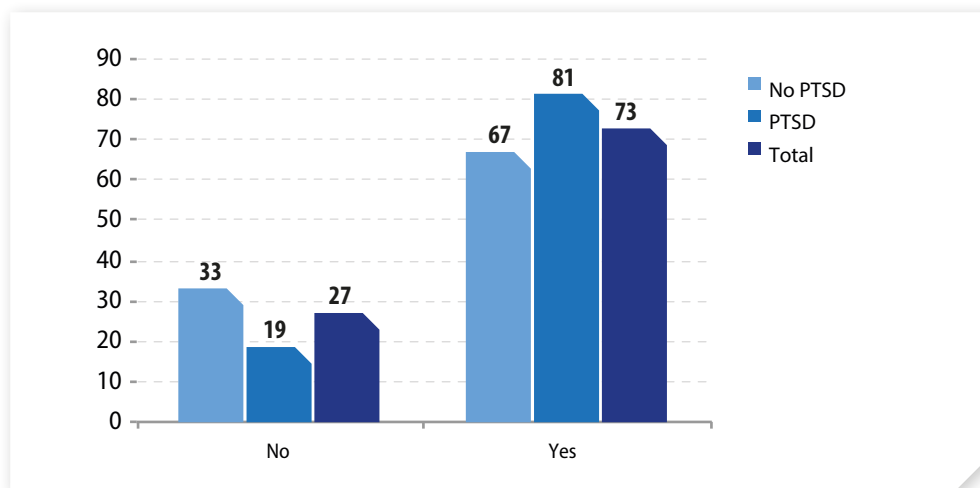


Figure 35: Would you want to talk about what happened, by PTSD status (%)



Text Box 5: Truth commissions

The outbreak of violence in December 2013 has highlighted the importance of a nationally owned process for documenting the facts and circumstances of human rights abuses and publicly acknowledging the role that state and non-state actors have played in committing violent acts against civilians in current and past conflicts. Proponents of the idea argue that a truth-seeking process could allow the state to demonstrate its commitment to building a culture of respect for human rights and rule of law in South Sudan, and that a public dialogue about the legacy of violence in the country could help to dispel the fear and silence that result from decades of civil conflict.

One way in which other countries have organised this type of public dialogue is through the creation of truth commissions.⁷³ Truth commissions arose in the 1980s as mechanisms employed by states emerging from conflict or periods of authoritarian rule to come to terms with their histories of human rights abuse. The first truth commission was established in Uganda in 1974. However, it was not until the National Commission on the Disappeared was established in Argentina in 1983 that truth commissions began to gain prominence. Since then, more than 40 truth commissions have been established around the world in the aftermath of conflicts, transitions from authoritarian rule, or in otherwise stable states seeking to come to terms with a particularly abusive aspect of their history.⁷⁴

Truth commissions are typically tasked with a number of objectives that may include: uncovering, clarifying and formally acknowledging past abuses; addressing the needs of victims; promoting individual criminal accountability; outlining institutional responsibility for serious crimes and recommending institutional reforms; promoting reconciliation; and reducing the likelihood that past injustices contribute to contemporary conflicts.⁷⁵ The function around which most truth commissions organise their operations is the gathering of testimonies from victims, witnesses and perpetrators. Commissions may also examine official documents, visit places that contain evidence and conduct studies into particular aspects of a country's history. At the end of their mandate, truth commissions issue a report that aims to provide an accurate and impartial record of human rights violations and offers recommendations designed to promote social and political transformation.

⁷³ Priscilla Hayner, *Unspeakable Truths: Transitional Justice and the Challenge of Truth Commissions* (2nd ed.) (2011); Public Int'l Law and Policy Group (PILPG), *Truth and Reconciliation Commissions: Core Elements* (May 2013), available at http://syriaaccountability.org/wp-content/uploads/PILPG-Truth-and-Reconciliation-Memo-2012_EN.pdf.

⁷⁴ Due to a lack of consensus on the definition of a truth commission, statistics on the number of truth commissions that have been created range from less than two dozen to more than 75. Eric Brahm, *What is a Truth Commission and Why Does it Matter?*, 3 *Peace & Conflict Review* 1-14 (2009), available at <http://www.review.upeace.org/index.cfm?opcion=0&ejemplar=17&entrada=83>.

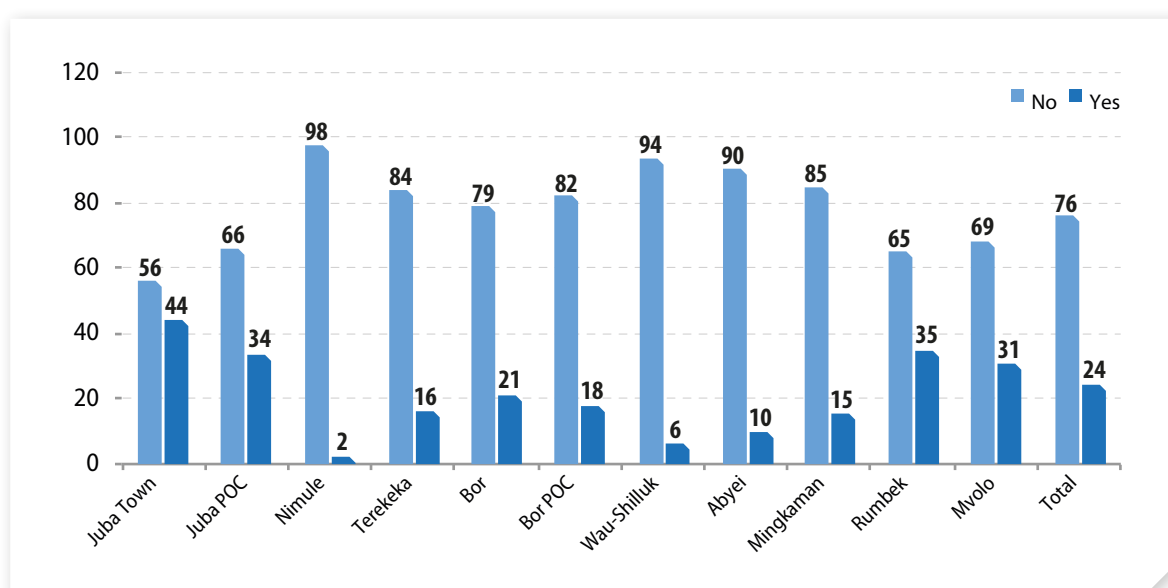
⁷⁵ *Unspeakable Truths*, supra note 73.

Design of a Truth Commission

As noted in section one above, discussions about the development of a truth-seeking process taking place in the context of the IGAD-led mediation effort in Ethiopia have centred on a Commission for Truth, Reconciliation and Healing that would be responsible for documenting and reporting on human rights violations in current and past conflicts. The discussions are still in the very early stages and have not yet engaged citizens in South Sudan in any meaningful way. Determining appropriate entry points for such a conversation requires policy-makers to account for the low level of awareness about truth-seeking processes among populations in South Sudan. Three-quarters of survey respondents admitted that they did not know what a truth commission is (see **Figure 36**).

Particularly striking are the differences between locations. Juba stands out with 44 percent of respondents saying that they know what truth commissions are, but locations outside the capital show far less awareness (see **Figure 36**). Only a small fraction of respondents in Nimule, Wau-Shilluk and Abyei said they know what a truth commission is. Similar to the findings on awareness of the peace process, these results suggest that special efforts must be made to engage people at the state and local level in the design and implementation of any truth-seeking process in South Sudan. Civic engagement strategies must also account for variations according to key demographic factors. Similar to other findings, men, people with more education and people with higher incomes were all more likely to know what a truth commission is than women, those with less education and those with less income.

Figure 36: Awareness of truth commissions, by location (%)



While general knowledge of what a truth commissions is was quite low, those who were familiar with the concept overwhelmingly support the idea of establishing a truth commission. Ninety-six percent of respondents who knew what a truth commission is said that a truth commission should be established.

One central question that would have to be addressed in the design of a truth commission would be whether any incentives are extended to perpetrators in order to encourage them to come forward and provide testimony. One way that some truth commissions incentivise people who have committed crimes to engage in a truth-seeking process is by offering them amnesties in exchange for their testimony. This idea had considerable support among survey respondents. Fifty-eight percent of respondents who knew what a truth commission is said that people appearing in front of a truth commission should not be prosecuted.

The use of amnesties in the context of truth commissions is a tricky issue. Of the dozens of truth commissions that have been formed since the 1980s, the Truth and Reconciliation Commission in South Africa was the only one that allowed amnesties for perpetrators of serious human rights violations who provided testimony to the truth commission. Since that time, a prohibition on amnesties for war crimes, crimes against humanity and genocide has emerged at the international level. Such amnesties are now considered to be violations of international law, particularly the rights to truth, to access to justice, to reparation and rehabilitation, and to 'never again' or the guarantees of non-repetition.⁷⁶

Other truth commissions have permitted amnesties, but only for crimes that do not rise to the level of a violation or abuse of international human rights or humanitarian law. For example, the Commission for Reception, Truth and Reconciliation in Timor-Leste allowed amnesties, but persons suspected of murder, sexual offenses, organizing or instigating the violence or undertaking other serious crimes were not eligible. Instead, the Commission only offered amnesties to perpetrators of lesser crimes who admitted and apologised for their acts and agreed to undertake community service or make symbolic reparatory payments. The perpetrators were then reintegrated into communities through the indigenous East Timorese process of *adat*.⁷⁷ As the United Nations and many bilateral donors would not support a truth commission that was able to grant amnesties for serious crimes under international law, South Sudanese must consider carefully the implications of including such an amnesty in a truth commission.

⁷⁶ See General Assembly Resolution, U.N. Doc. A/RES/60/147 (2006), available at http://www.un.org/en/ga/search/view_doc.asp?symbol=A/RES/60/147; see also Economic and Social Council (ECOSOC), Commission on Human Rights, Promotion and Protection of Human Rights: Impunity, Report of the independent expert to update the Set of principles to combat impunity, Diane Orentlicher, Updated Set of Principles for the Protection and Promotion of Human Rights through Action to Combat Impunity, U.N. Doc. E/CN.4/2005/102/Add.1 (Feb. 8, 2005), available at <http://www.derechos.org/nizkor/impu/principles.html>.

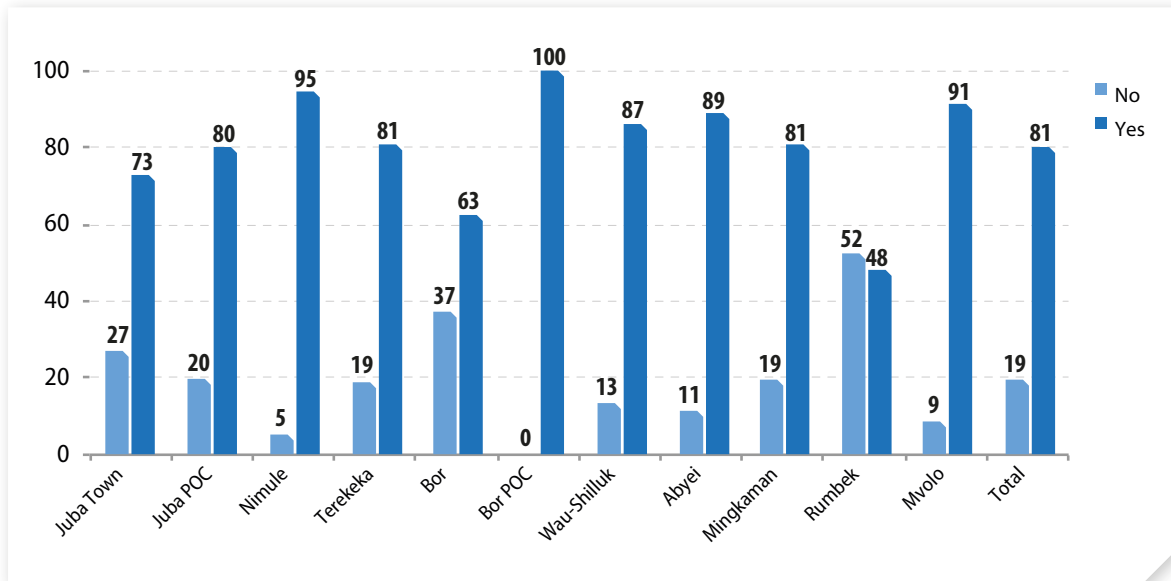
⁷⁷ The office of the prosecutor of the Serious Crimes Unit reviewed applications for amnesties to ensure that there was no evidence of serious crimes. *Unspeakable Truths*, supra note 73.

In addition to mechanisms for securing victim and perpetrator participation, a truth-seeking process in South Sudan would also have to be sensitive to gendered roles in the public sphere. Male respondents expressed more willingness to speak publicly than female respondents, with 80 percent of men saying that they would be interested in speaking publicly about their experiences compared to just 66 percent of women. Again, this could be linked to strong patriarchal attitudes among some segments of society that hinder women from participating in public life, or feelings of shame associated with the stigma attached to survivors of sexual violence. One important way in which a truth-seeking process could support female participation would be to ensure gender parity both at the level of commissioners as well as in staffing at every level of the institution. The truth commission mandate could also devote special attention to human rights abuses that disproportionately affect women and girls, such as sexual violence and human trafficking, and provide for anonymous testimony so that survivors are not stigmatised for sharing their experiences.

Material Reparations

The issue of whether reparations should be provided to survivors of human rights abuses that have occurred since December 2013 has been a source of disagreement in the IGAD-led peace talks. While the SPLM-IO favours the provision of reparations and has called for the establishment of a reparations commission to guide the process, the Government opposes the idea.⁷⁸ Despite this disagreement among the warring parties, the idea of providing reparations to survivors of human rights abuses enjoyed widespread support among those surveyed. Eighty-one percent of respondents said that the Government should provide compensation to victims of human rights abuses (see **Figure 37**). Disaggregating the data by location shows greater support for the idea of reparations among displaced populations and those most directly impacted by the conflict that erupted in December 2013. In Bor PoC, for example, all respondents said the Government should provide compensation to survivors of abuses.

⁷⁸ In his first speech upon returning to Juba after the collapse of the peace talks in early March 2015, President Kiir asked why victims in the current conflict would be compensated while those who were abused in past conflicts were not. *Major differences between Kiir's speech and advisors' text*, Radio Tamazuj (22 Mar. 2015), available at <https://radiotamazuj.org/en/article/major-differences-between-kiirs-speech-and-advisors-text>

Figure 37: Support for reparations, by location (%)

Forty percent of respondents said that reparations should be provided to individual victims, while 34 percent stated that reparations should be provided to both individuals and communities. Twenty-six percent believed that reparations should be provided to communities only. When asked what form compensation should take, responses were generally divided between those who favour cash and those who favour development projects.

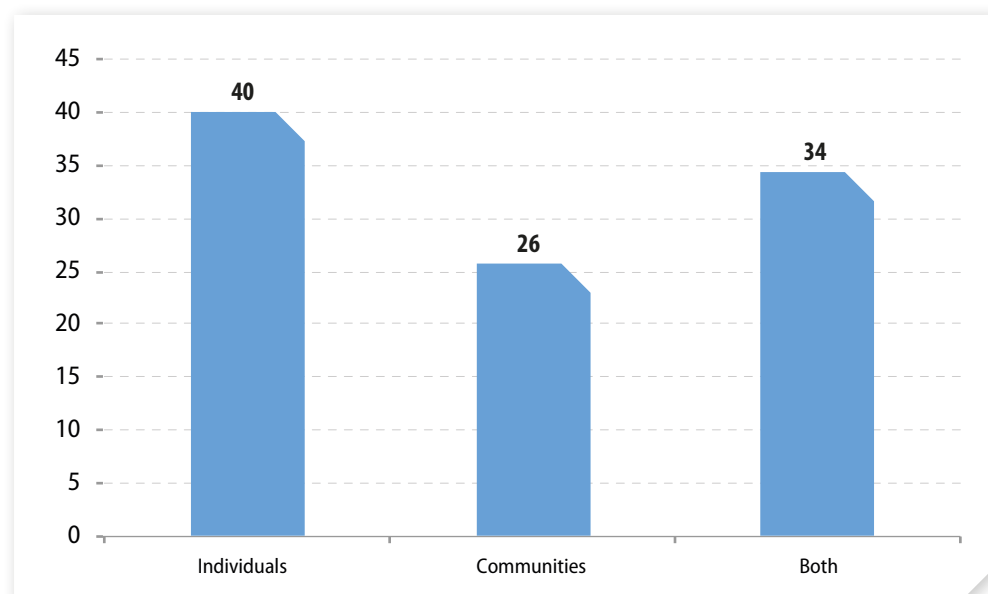
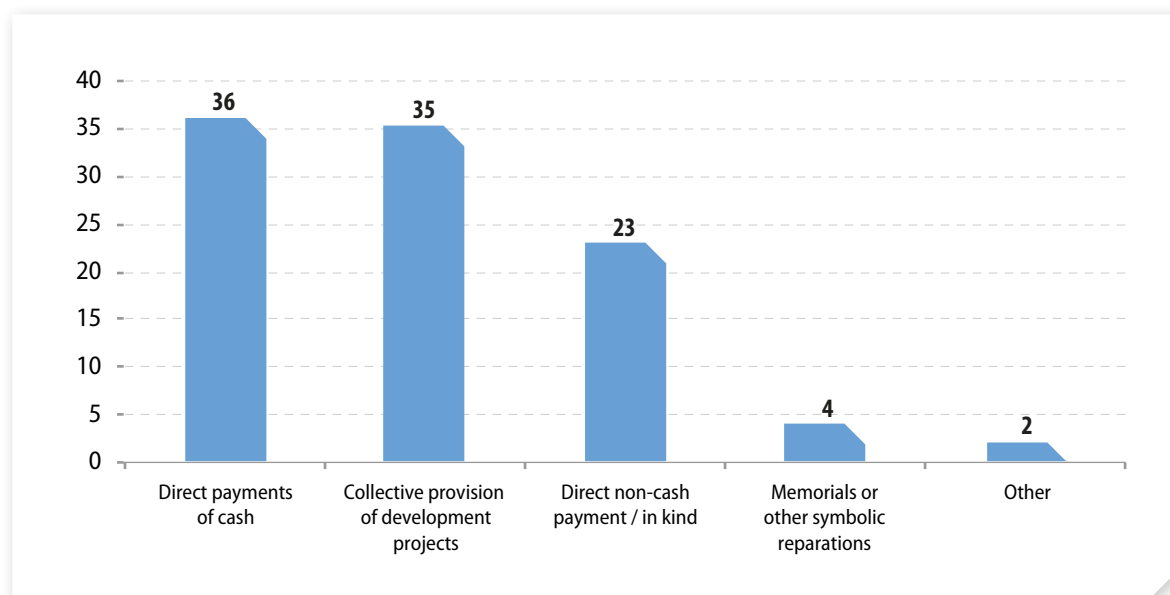
Figure 38: Who should receive reparations? (%)

Figure 39: What form should compensation take? (%)



Reparations programmes are notoriously difficult to implement and there are few success stories to cite. Although respondents preferences indicated widespread support for reparations, the designers of a justice and reconciliation programme may want to consider whether try to tackle this process immediately or whether it is better to address reparations as an outgrowth of the truth-seeking process. The information on the nature and extent of human rights violations compiled during the truth-seeking process would provide a good starting point for the design of a reparations programme. It is, of course, not possible for the Government and SPLM-IO to completely repair the harm that the conflict has done to the people of South Sudan, but the provision of development projects and social services in addition to any cash payments could help to further extend the scope of reparations programme.

Symbolic Reparations

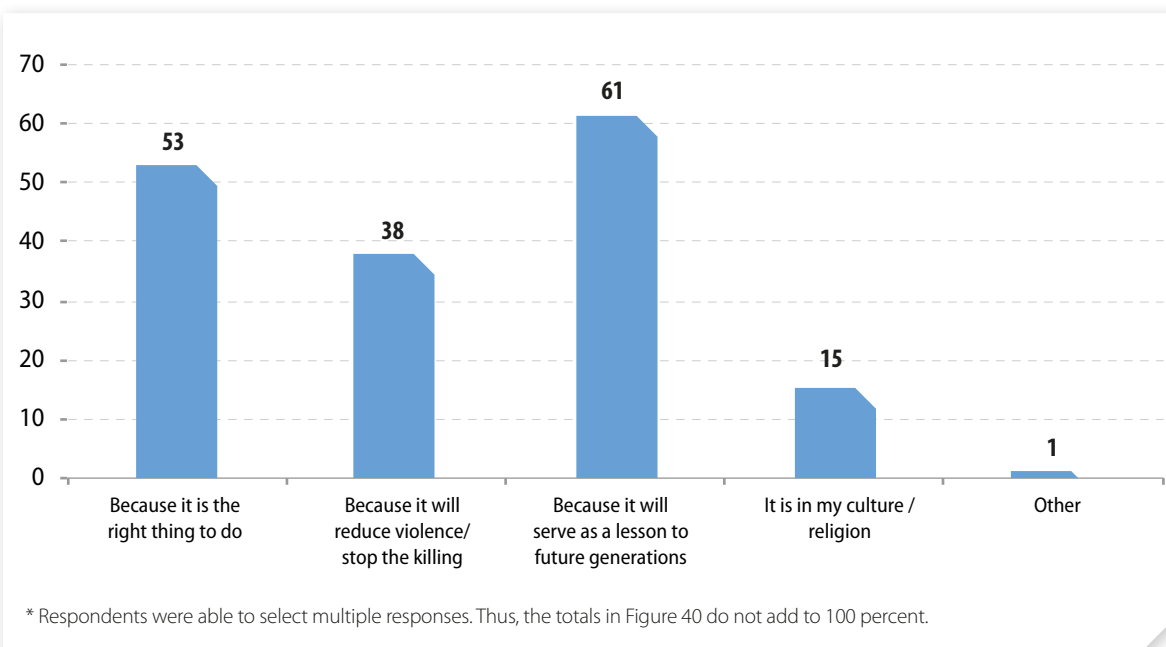
Memorialisation initiatives, sometimes referred to as symbolic reparations, can also help to further expand the scope of reparation programmes. Memorialisation is a term used to describe a process through which society acknowledges past human rights abuses and transforms them into tools for understanding both historical and contemporary injustices.⁷⁹ Public memorials come in many forms, from museums and monuments that take years to

⁷⁹ David K. Deng, *Memory, Healing and Transformation in South Sudan*, Transitional Justice Working Paper No. 2, SSLS (July 2014), available at http://sslawsociety.org/public_html/SSLS_Memory_Healing_and_Transformation.pdf.

construct and cost millions of dollars, to collections of condolence notes, flowers, and pictures of victims at sites where they died or vanished.⁸⁰ Graffiti art, photos and poster exhibitions have also been recognised as a form of memorialisation in the context of Syria, Peru and Timor-Leste's transitions from conflict and authoritarian rule.⁸¹

Memorialisation initiatives enjoy strong support among survey respondents. Ninety percent of respondents said that efforts should be made to honour victims of conflict in South Sudan. Respondents stated that commemoration could help deter people from committing similar crimes in the future, and could serve as a lesson to future generations about the harm that South Sudanese have done to one another (see **Figure 40**).

Figure 40: Why make efforts to honour victims? (%)*

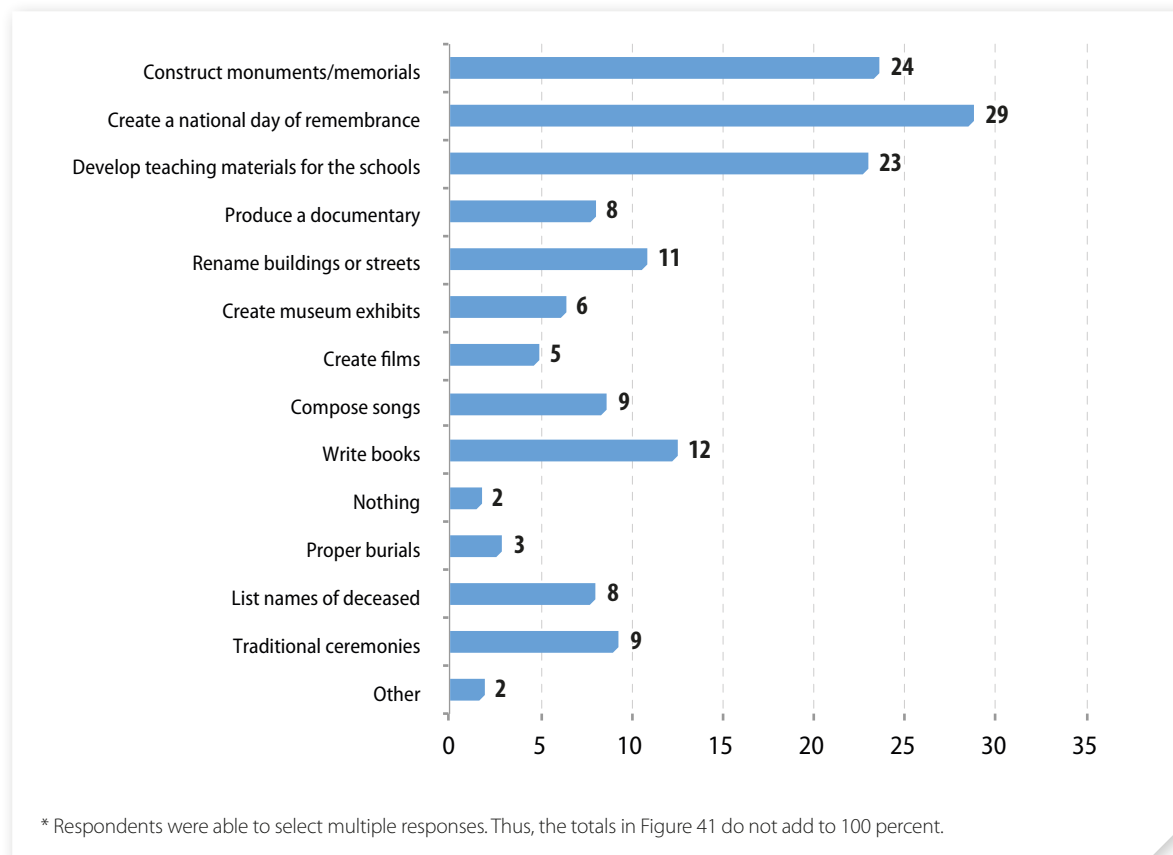


80 Judy Barsalou and Victoria Baxter, *The Urge to Remember: The Role of Memorials in Social Reconstruction and Transitional Justice*, United States Institute of Peace (USIP) (Jan. 2007), available at <http://www.usip.org/sites/default/files/srs5.pdf>.

81 Mark Kersten, *Transitional Justice and Graffiti in Libya*, Justice in Conflict (12 Dec. 2011), available at <http://justiceinconflict.org/2011/12/12/transitional-justice-and-graffiti-in-libya/>; Elizabeth Arrott and James Brooke, *Libyan Graffiti Shows Newfound Freedom*, Voice of America (VOA) (26 Sep. 2011), available at <http://www.voanews.com/content/libyan-graffiti-shows-new-found-freedom--130652083/158909.html>; *Report of the Special Rapporteur in the field of cultural rights*, Farida Shaheed, U.N. Doc. A/HRC/25/49, ¶ 17 (23 Jan. 2013), available at <http://www.ohchr.org/EN/Issues/CulturalRights/Pages/AnnualReports.aspx>, citing Pablo de Greiff, 'On making the invisible visible: the role of cultural interventions in transitional justice processes', in *Transitional Justice, Culture and Society: Beyond Outreach*, Clara Ramírez-Barat ed. (New York, Social Science Research Council) (Jan. 2014).

When asked what should be done to honour victims, the most frequent response was to create a national day of remembrance (29%) (see **Figure 41**). Other prominent responses included the construction of monuments or memorials (24%) and the development of teaching materials for schools that discuss the history of conflict in South Sudan (23%).

Figure 41: What should be done to honour victims? (%)*



4 CONCLUSION AND RECOMMENDATIONS

The survey data demonstrates a clear demand for mechanisms to promote truth, justice, reconciliation and healing among populations in South Sudan. Respondents expressed widespread support for various processes of transitional justice and national reconciliation, including the criminal prosecution of people suspected of conflict-related abuses, documenting and reporting the facts and circumstances of human rights violations, providing reparations to survivors of human rights abuses, honouring those killed or missing as a result of conflict, and reforming security and justice sector institutions in order to build civic trust and discourage cycles of violence.

Preferences for justice and reconciliation depended in large part on how the objectives are framed. When reconciliation was taken as the preferred objective, respondents tended to emphasise more restorative forms of justice, such as confessions, apologies and forgiveness, as the most important elements. When the focus shifted to what to do with people suspected of abuses, more retributive attitudes emerged, and criminal prosecution and punishment become the preferred options. Interestingly, this demand for justice, whether restorative or retributive, remained pronounced despite the potential impact that it could have on prolonging the conflict. The emphasis respondents placed on justice and accountability suggests that many South Sudanese no longer view the blanket amnesties and political rewards commonly offered to entice potential spoilers into the fold as legitimate.

High rates of PTSD and exposure to trauma further complicate the situation. The trauma and suffering that the people of South Sudan have experienced in current and past conflicts are a consequence, and possibly a driver, of violence in the country. PTSD and trauma must be considered both in terms of how they shape views on justice and reconciliation, and as important issues that must be addressed in their own right as integral components of humanitarian and development programs, including any effort to promote truth, justice and reconciliation.

The survey data supports the idea of incorporating transitional justice and national reconciliation mechanisms and processes in the agenda for the proposed transitional government. How to do so in an environment characterised by weak institutions, high levels of distrust, and where senior political and military actors are alleged to have played a role in human rights violations and abuses remains a central difficulty. The complexities of pursuing truth, justice and reconciliation in the South Sudanese context highlights the importance of developing a strategy that is carefully tailored to the context and enjoys the support of the people. The following recommendations are meant to inform efforts to develop such a strategy:

On designing and implementing a programme for justice and reconciliation:

- 1. Frame the objectives** – It is important from the outset that the objectives of the justice and reconciliation programme are carefully framed to address the specific problems that arise in the South Sudanese context. A national effort to promote transitional justice and national reconciliation could serve multiple goals. Criminal accountability measures could be seen as a means of deterring violence against civilians, combating the culture of impunity or individualizing guilt so that entire groups of people are not blamed for the misconduct of a few. A truth-seeking effort could focus on violations of civil and political rights, such as mass killings, torture, enforced disappearances and sexual violence, or it could broaden the scope to address economic crimes and corruption. Justice sector reforms could improve access to justice for people in rural areas and reduce incentives for people to engage in revenge killings as a means of protecting themselves and deterring violent acts against their communities. In order to design a programme that is tailored to the context and prioritises the most pressing issues, policy-makers must first take stock of the various objectives that the programme could serve in consultation with populations in South Sudan.
- 2. Consider sequencing** – Sequencing is a central consideration in any justice and reconciliation programme. While it may be tempting to try to do everything all at once, the political, financial and security context may not allow for such an approach. The first question of sequencing relates to what can be done prior to the signing of a peace agreement while the conflict continues and what must wait until after a peace agreement has been signed. For the most part, any mechanism or process that requires the creation of new state institutions requires greater stability and security than is currently present in South Sudan. It is difficult to envision a hybrid court or truth commission carrying out its duties in a safe and impartial manner in the current context. However, it is never too early to start the discussion about truth, justice, reconciliation and healing and how to best approach these issues in the South Sudanese context. By initiating a public dialogue on these issues now, the nation can prepare itself when the time comes to actually implement the programme. Other activities that can be pursued in the current context include monitoring, documenting and reporting on human rights violations and abuses and various forms of advocacy at the national, regional and international level.

A second aspect of sequencing relates to how the various mechanisms and processes are sequenced vis-à-vis one another. For example, should South Sudan initiate a truth-seeking process concurrently with criminal prosecutions or should one or the other come first? Can a reparations programme be initiated during the transitional period following the signing of a peace agreement, or is it better to conduct the truth-seeking process first so that it informs the design of the reparations programme? There are pros and cons to the various approaches and definitive answers to these questions of sequencing would have to wait until policy-makers take stock of existing capacities and constraints. The important consideration at this point is that whatever decisions made with respect to the sequencing of various initiatives are made in deliberate and conscious manner that foresees potential problems and put in place procedures to address them.

3. Adopt a holistic approach – The Government of the Republic of South Sudan, SPLM-IO and South Sudan’s international partners should consider investing efforts into developing a holistic approach to justice and reconciliation that pursues multiple goals simultaneously by creating space for forgiveness and social healing to take place while also promoting accountability and remedying the harms that people have suffered. Such a holistic approach could encompass anything ranging from a vetting programme designed to remove people responsible for conflict-related abuses from the security services, to a memorialisation programme that honours people killed or missing as a result of conflict through cultural activities and the arts. In designing a holistic programme, it is important that the various mechanisms and processes are not seen as mutually exclusive. For example, an appropriately designed truth-seeking process could reinforce efforts to hold perpetrators of serious crimes accountable, while a truth-seeking and criminal accountability could help to promote reconciliation and healing in the longer-term.

4. Manage expectations – Given the large demand for justice and reconciliation in South Sudan, the Government, SPLM-IO and South Sudan’s international partners must be careful not to unduly raise expectations about what a justice and reconciliation programme can deliver in the short-term. Current discussions among the warring parties suggest that the transitional government is likely to be established with a timeframe of 30 months, preceded by a six-month pre-transitional period. In this period, the transitional government will be responsible for establishing law and order, returning and resettling displaced populations, ensuring humanitarian access, preparing for elections, and initiating a constitutional development process, among many other tasks.

Expecting the proposed transitional government to deliver fully on the justice and reconciliation agenda during such a short transition is not realistic. However, government institutions and partners should plan to at least initiate the process during the transitional period. Initial steps include the full establishment of a truth commission and hybrid court, with the understanding that the justice and reconciliation programme would then continue into the post-transitional period. These efforts should also be integrated with longer-term efforts to build capacity in the rule of law sector, and to repair the harm that successive conflicts have done to inter-personal and inter-/intra-communal relationships.

5. Adopt both top-down and bottom-up strategies – The underdeveloped institutional framework in South Sudan presents a fundamental challenge to efforts to promote justice and reconciliation in the country. The establishment of institutions at the national level would be an important first step and would help demonstrate the government's commitment, provide visibility and ensure that the programmes have national relevance. At the same time, given the difficulties of institutional development in South Sudan, national level institutions alone will not suffice. Policy-makers should also create space for a bottom-up approach that allows justice and reconciliation initiatives at the local level to inform the national discourse.

The role of customary mechanisms and processes should be carefully considered, in this regard. Given their prevalence throughout the country and their accessibility to local populations, customary institutions could help to broaden the reach of the justice and reconciliation programme far beyond what formal state institutions can provide. The role of customary institutions could encompass anything from facilitating truth-seeking and reconciliation processes at the local level to more formal adjudication of disputes that arose during the conflict.

The precise form that such local initiatives could take should be dictated by local capacities and experiences in particular locations. Policy-makers must be careful, however, not to expect more from customary institutions than they can deliver, given the difficulty customary institutions often face in enforcing decisions against political and military actors. The justice and reconciliation programme should also promote the progressive reform of customary institutions to bring them into conformity with minimum standards

of human rights and due process, particularly as it relates to women and children's rights.

6. Protect the process from political interference – Building from the preceding point, the importance of insulating transitional justice and national reconciliation mechanisms from political interference cannot be overstated. South Sudan is currently in a state of extreme political flux, and the situation is not likely to change fundamentally when the fighting stops. If discussions about the transitional government proceed according to what has been discussed thus far, the transitional government, if and when it is established, will be a power sharing government in which both the current Government and SPLM-IO leadership will each control a portion of national power. Such a government would be characterised by extreme distrust and a high risk of insecurity.

Strategies to promote transitional justice and national reconciliation must take existing and potential levels of distrust and insecurity into account by taking steps to maximise independence and legitimacy in all aspects of programme design and implementation. Providing for strong representation from faith-based institutions, research institutions, civil society and other non-state actors in justice and reconciliation initiatives can help to shield the processes from political interference. International representation in relevant institutions can further protect institutions from actual or perceived bias. In this regard, international staff should serve directly alongside national staff in institutions such as a truth commission or hybrid court, in addition to the technical assistance that is already being provided. National processes should also be coordinated with more internationalised processes, whenever possible. Prosecutions in a hybrid court, for example, could be coordinated with prosecutions in national courts to maximise positive spill overs into the national justice system.

7. Conduct widespread public consultations – Given the low level of awareness about mechanisms and processes of transitional justice and national reconciliation, and the importance of designing a programme that is responsive to the views and aspirations of the South Sudanese people, investing time into public consultation and civic engagement activities will be of utmost importance in the short to medium-term. Existing institutions should be involved whenever possible to ensure that the programme is deeply embedded in the context of South Sudan. If the warring parties agree on the creation

of a truth commission and hybrid court as being discussed in the context of the IGAD mediation, an extensive outreach effort will be necessary to make these institutions meaningful to South Sudanese. Non-state actors such as faith-based institutions, civil society organizations, academic institutions and think tanks and others would be key interlocutors in these efforts.

8. Ensure women's participation – Gender sensitivity should be mainstreamed into all justice, peace and reconciliation mechanisms and processes, including the ongoing IGAD mediation. Survey data contradicts the assumption that women are marginal to political and military struggles. Conflict also affects men and women in different ways, and efforts to promote justice and reconciliation must be sensitive to these differences. Particular attention should be devoted to securing women's participation in truth-seeking mechanisms and supporting them to speak publicly about traumatic experiences that they have suffered.

On trauma healing and mental health support:

9. Strengthen psychosocial and mental health support services in humanitarian and development interventions – Survey data points to an alarming rate of PTSD and exposure to trauma in South Sudan. Humanitarian agencies, NGOs and donors cannot afford to wait for the conflict to end before addressing the problem. Psychosocial and mental health support should be mainstreamed into humanitarian and development interventions as an important means of building resilience in conflict-affected populations. Strategies should promote mental health issues as community-wide problems that require a comprehensive response. In addition to ensuring formal support services such as those provided by social workers, psychiatrists and hospitals, the Government and South Sudan's international partners should identify and support any existing informal mechanisms at the community level. Any such effort must also be tailored to the South Sudanese context.

10. Include trauma and mental health in the justice and reconciliation agenda – Trauma is a natural consequence of large-scale conflict. Unlike other illnesses, the feelings of rage and distrust that often result from exposure to trauma have direct implications for how people relate to conflict. Policy-makers should

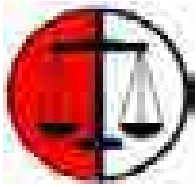
take note of how exposure to traumatic events, PTSD and mental health issues affect the way people perceive solutions to conflict, and how those perceptions might change over time when designing justice and reconciliation mechanisms. The Government and its supporting partners not only need to engage South Sudanese citizens on these issues, but also incorporate their feedback into the design and implementation of programmes and policies on an ongoing basis. Psychosocial and mental health support services should also be incorporated into the justice and reconciliation programme itself.

On the IGAD peace process:

11. Maintain lines of communication with populations in South

Sudan – IGAD, the negotiating parties, and South Sudan’s international partners should take note of the low levels of awareness about the mediation effort itself, and endeavour to better communicate developments to populations in South Sudan and to channel information from the grassroots to the negotiating parties and other stakeholders in Ethiopia.

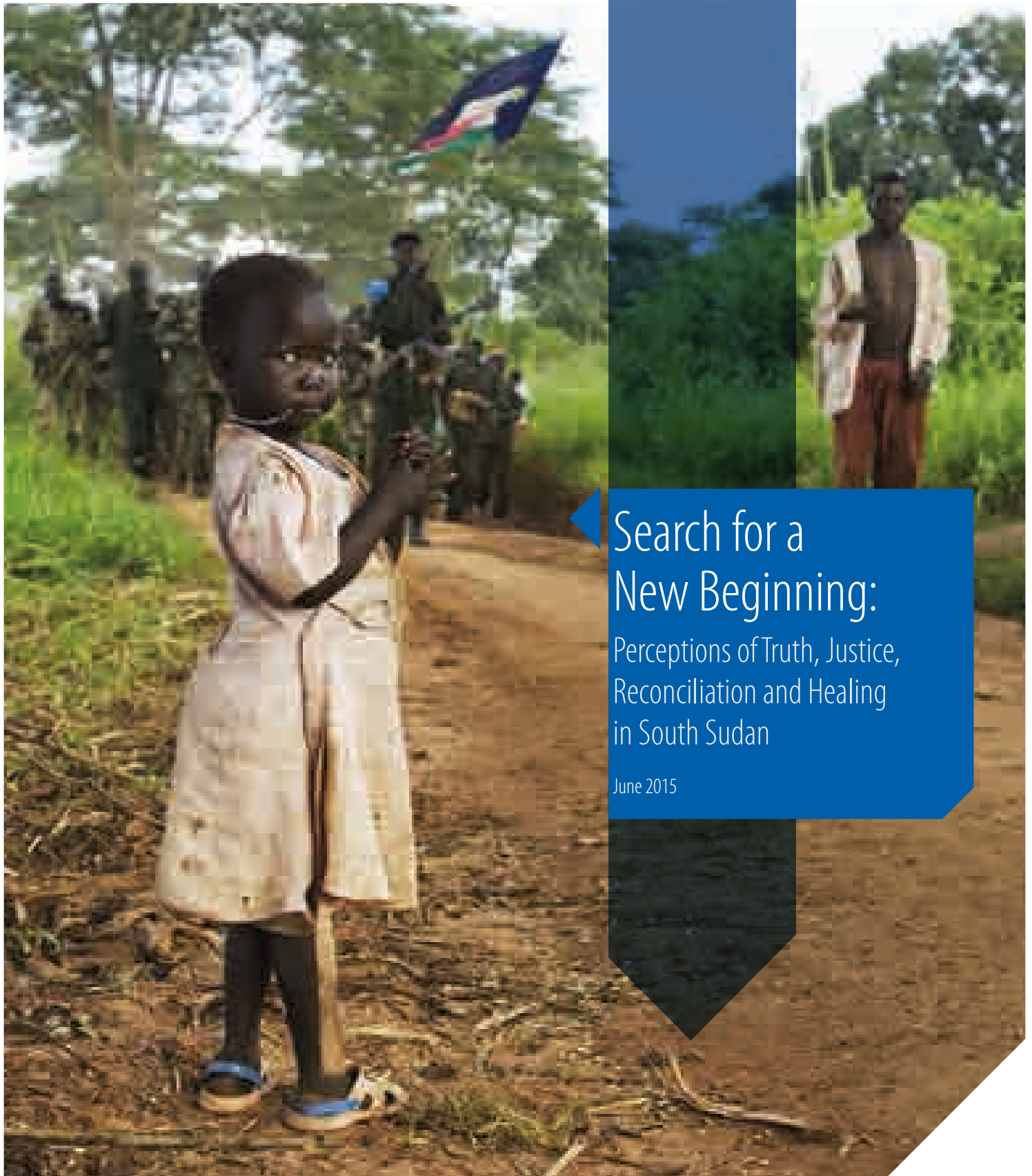
12. Ensure an inclusive process – As they prepare to launch the IGAD-plus initiative, IGAD, the negotiating parties, and South Sudan’s international partners should honour their commitments with respect to multi-stakeholder involvement in the peace process and take steps to ensure that the warring parties do not dominate the talks. IGAD-plus should consider the wealth of information that has been compiled by South Sudanese both in South Sudan and in the diaspora in the design of any agreements or frameworks. Civil society organizations, faith-based institutions and other non-state actors can support these efforts by ensuring that their positions are informed by the views of the people.



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June 2015





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Editors

Journal of Modern African Studies

Volume 53, Number 2

June 2015

Cambridge University Press

978 0 521 87943 0

Hardback £55.00

Paperback £28.00

ISBN 978 0 521 87943 0

978 0 521 87943 0
