

# Search for A New Beginning: Perceptions of Truth, Justice, Reconciliation and Healing in South Sudan

## Discussion paper

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### Introduction

Direct participatory democracy<sup>1</sup> gave way to representative politics as the expansion of empires and high population growth distanced the body politic from the centre of governance. Consequently, political participation, a basic right and concurrent responsibility of citizenship, has had to find various ways to thrive. While electoral processes and referenda have become the widely used methods for securing national consensus in the national polity, national consultations equally represent direct methods of aggregating the views of citizens in relation to national issues of vital importance. Thus, as the December 2013 crisis placed South Sudan at the axis of the debate on transitional justice, UNDP South Sudan in collaboration with the South Sudan Law Society (SSLS), conducted a perception survey to measure the views of South Sudanese on issues of truth, justice, reconciliation and healing.<sup>2</sup> The survey was launched on 28 October 2015. This was timely in that a peace agreement - *Agreement on the Resolution of the Conflict in the Republic of South Sudan (ARCISS)*, was signed two months earlier, and the report by the African Union Commission of Inquiry on South Sudan was released the day before. The survey represents a significant step in the national consultative process on transitional justice. This paper discusses the findings of the survey and their implications for the transitional justice agenda in South Sudan.

### Methodology of the survey

In principle, transitional justice responses must have due regard to the needs of victims and their families. In this regard, the survey focused mainly on those who had borne the effects of the conflict such as those in protection of civilian (PoC) sites and internally displaced persons (IDP) camps. However, to create a holistic response, the survey included respondents from other parts of the country as well. It is important to underscore the need for “a comprehensive process of national consultation, particularly with those affected by human rights violations, in contributing to a holistic transitional justice strategy that takes into account the particular circumstances of every situation and in conformity with international human rights standards.”<sup>3</sup>

A sample plan was designed to take account of debilitating factors associated with conducting surveys in conflict-related environments including large scale displacements and the fear of speaking openly. To address this, the study adopted a four-staged mixed-method approach, designed to improve triangulation, complementarity and reproducibility in a highly fluid environment. Both purposive and random sampling techniques were used to identify respondents that are representative of different ethnic groups, and cut across socio-economic statuses, geographic locations and exposure to conflict, both previous and ongoing. The study specifically ensured that the views of women were fully

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<sup>1</sup> In Ancient Greece, the entire populace met at the Acropolis where they engaged and were directly involved in making political decisions.

<sup>2</sup> Search for A New Beginning: Perceptions of Truth, Justice, Reconciliation and Healing in South Sudan (2015), (“the survey”) available on <http://www.ss.undp.org/content/dam/southsudan/library/Rule%20of%20Law/Perception%20Survey%20Report%20Transitional%20Justice%20Reconciliation%20and%20Healing%20-.pdf>.

<sup>3</sup> Human Rights Commission, Resolution 2005/70.

represented in the consultative process.<sup>4</sup> Where possible, every other interview conducted was with a woman, resulting in 51% female representation.

The survey was conducted among a representative sample of 1,525 South Sudanese in 11 locations, in six states and the Abyei region. The sites cut across rural and urban divides and also included PoC sites and IDP camps. The researchers developed a questionnaire consisting of nine modules with questions on demographics, peace process, reconciliation, truth and remembrance, accountability, amnesties, reparations, exposure to trauma and post-traumatic stress disorder (PTSD). The modules consisted of open and closed questions designed to obtain qualitative and quantitative data. The module on trauma and PTSD incorporated the Harvard Trauma Questionnaire (HTQ), designed to assess 16 different types of traumatic events and PTSD symptoms. The HTQ was translated into Juba Arabic<sup>5</sup> and classical Arabic and has previously been used in South Sudan. For the purposes of the study, the questionnaire was further translated into the Dinka, Nuer, Shilluk and Bari languages.

### **Objectives of the survey**

National consultation is crucial in determining transitional justice processes in post-conflict States. In addition to the fact that the survey provides substantial data required for UNDP South Sudan to design its strategic response and programmatic interventions in relation to transitional justice, it also represents the inception of a transitional justice consultative process. Transitional justice processes require a human rights based approach that is victim-centred, which requires taking into consideration the needs of victims and their families. Hence, the survey was intended to inform the design of programmes that take into account the needs of victims and sufficiently identify their entitlements. Shaping the transitional justice process according to the specific needs of those affected by conflict requires that their actual experiences, needs and entitlements are understood as told by themselves. This is crucial in the development of responses that are tailor-made to suit the context of South Sudan. The survey was also intended to ensure local ownership of the transitional justice process and promote stakeholder participation. These objectives have also been pursued by UNDP through other initiatives such as the co-hosting of workshops, conferences and public lectures on transitional justice with the Ministry of Justice, civil society, traditional leaders and other national stakeholders. The survey results were also shared extensively with officials of various Government institutions at national and state level, civil society, the academic community and through grassroots community level outreach. These activities are in line with the objective of stimulating horizontal dialogue on transitional justice among communities, but also driving vertical dialogue through public demand for responsive national institutions.

### **Synopsis of the survey results**

A synopsis of the survey results demonstrates its usefulness as a resource material that provides the relevant understanding of the perspectives of the respondents. It essentially serves as a useful tool in designing policy and legislative approaches to transitional justice in South Sudan.

#### *Truth-telling*

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<sup>4</sup> Rule-of-Law Tools for Post-Conflict States: National Consultations on Transitional Justice (2009), OHCHR 20.

<sup>5</sup> Juba Arabic, a variant of classical Arabic, is a widely used medium of communication in South Sudan, particularly in the capital city of Juba.

While the results reveal an even split between those who support a truth-telling process, (50% support truth-telling, while 46% want to put the conflict behind them and move on), there is a particularly high demand for truth-telling among those directly affected by the conflict.<sup>6</sup> In this regard, support for truth-telling is as high as 78% among displaced persons.<sup>7</sup> The results are significant in determining the appropriate truth-telling mechanisms, and the objectives which the process should aim to achieve. Consequently, in line with restorative reconciliatory practices, the results show that the survey respondents recognise that admission of the truth is relevant to prevent future violence, to honour the victims and to establish a historical record of the events.<sup>8</sup> Essentially, truth-telling should underlie the commitment of the State to building a culture of respect for human rights and the rule of law, and ensure that the culture of silence associated with decades of conflict is broken.

### *Criminal accountability*

Determining the elements of a criminal prosecutorial strategy is crucial for transitional justice in South Sudan. Consultations on accountability operated within the realm of defined options such as seeking views on whether there is public interest in an international justice mechanism, such as the International Criminal Court (ICC) or a hybrid mechanism, and the factors that influence these preferences. These views are relevant for the prosecutorial strategy and the design of the process of criminal accountability.<sup>9</sup> The survey results demonstrate a strong support (93%)<sup>10</sup> for the prosecution of those responsible for human rights violations, in a court of law. The results illustrate a split between national and international courts with 35% supporting prosecutions in the national courts, 32% at the ICC and 9% in a hybrid court.<sup>11</sup> These responses reflect the institutions with which the respondents are familiar as a full list of options was not provided.<sup>12</sup> The responses also reflect an even split between national and international mechanisms. Moreover, when asked whether they would support the involvement of international justice mechanisms to address serious violations of human rights, 83% of the respondents answered in the affirmative.<sup>13</sup> This may be indicative of support for a hybrid court, or an internationalised special war crimes division established within the judiciary of South Sudan.

### *Amnesties*

The political landscape of South Sudan has a history of amnesties which has witnessed a cycle of defections into rebellions and subsequent reintegration into the national polity. Amnesties tend to entice rebellion in the hope of gaining political capital, thereby securing political and economic rewards in any future peace process. The survey results highlight low support for amnesty (42%). The rejection of amnesty is significantly high among sample populations which have been affected by the conflict with a registration of 91% in Bor PoC site, 88% at Wau-Shilluk and 91% at Mingkaman.<sup>14</sup> This trend is sustained in response to the question whether respondents would accept amnesty if it was necessary for peace. The analysis shows Bor PoC registering 95%, Wau-Shilluk 55% and Mingkaman 69%.<sup>15</sup> The rejection of amnesty signifies the perception that those responsible for the atrocities should be held accountable. Similarly, an overwhelming majority of respondents are of the view that

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<sup>6</sup> See page 46 of the survey.

<sup>7</sup> See page 47 of the survey.

<sup>8</sup> See page 47 of the survey.

<sup>9</sup> Rule-of-Law Tools for Post-Conflict States: National Consultations on Transitional Justice (2009), OHCHR 6.

<sup>10</sup> See page 37 of the survey.

<sup>11</sup> See page 40 of the survey.

<sup>12</sup> See page 39 of the survey.

<sup>13</sup> See page 39 of the survey.

<sup>14</sup> See page 45 of the survey.

<sup>15</sup> See page 46 of the survey.

perpetrators should be barred from public office. In response to the question whether those responsible for the abuses should be barred from public office, 96% of the respondents answered in the affirmative.<sup>16</sup> This provides foundation for the concept of lustration which is articulated by the ARCISS.<sup>17</sup> This means that individuals indicted or convicted by the Hybrid Court for South Sudan (HCSS) will not be eligible for participation in the Transitional Government of National Unity (TGoNU).<sup>18</sup>

### *Ethnic relations and reconciliation*

The views on ethnic relations represent the capacity and willingness of ethnic groups to engage in reconciliation and rehabilitation. While the survey reveals an appreciable distrust among communities (38%),<sup>19</sup> it further shows that the December 2013 conflict did not significantly alter or affect those views. Fifty-two percent of the respondents said that their views of other ethnic groups had not changed since the outbreak of the conflict. Comparatively, 27% said that their views of other ethnic groups were less favourable, while 21% said that their views were more favourable.<sup>20</sup> The fact that a high percentage of respondents say that the ongoing conflict has not changed their views of other ethnic groups, highlights some resilience to ethnic politicisation, and underscores the view that the conflict resulted from political contestations among a small elite rather than ethnic hatred.<sup>21</sup> The fact that 21% of the respondents state that the ongoing conflict had given them a more positive view of other ethnic groups, presents foundations and opportunities for communal and ethnic reconciliation. Moreover, the survey shows that in expressing more favourable views of other ethnic groups, the respondents were actually expressing sympathy with certain ethnic groups who were seen as bearing the brunt of the conflict.<sup>22</sup> While it is apt to surmise that this signals an indication of a willingness to reconcile among the local communities, it must be noted that mistrust amongst communities that are directly affected by the conflict is much higher. However, the survey generally indicates that community reconciliation may thrive in a safe and secure environment.

### *Reparations and memorialisation*

The views on reparations represent the kinds of measures that may be necessary to repair the harm caused by the conflict. The survey results show significant support for reparations, with 81% supporting the notion that the Government should provide compensation to victims of human rights violations.<sup>23</sup> Perspectives differ as to who should be the beneficiaries of reparations. Forty percent of respondents believe that reparations should be paid to individual victims, while 34% state that reparations should be paid to both victims and communities, with 26% stating that reparations should be paid out to communities only.<sup>24</sup> While 36% of respondents support the notion that reparations should take the form of direct cash payment, there is also significant support for more symbolic and collective reparations packages. These include the provision of development projects (35%), direct

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<sup>16</sup> See page 42 of the survey.

<sup>17</sup> Agreement on the Resolution of Conflict in the Republic of South Sudan (ARCISS). Chapter V, [second] article 4.

<sup>18</sup> The Agreement on the Resolution of Conflict in the Republic of South Sudan (ARCISS) provides for the establishment of a Commission on Truth, Reconciliation and Healing (CTRH), Hybrid Court of South Sudan (HCSS) and Compensation and Reparations Authority (CRA). The ARCISS also provides for a Transitional Government of National Unity (TGoNU) comprising of the warring parties and some political parties to implement its provisions, and organise elections within 30 months of its inception.

<sup>19</sup> See page 29 of the survey.

<sup>20</sup> See page 32 of the survey.

<sup>21</sup> See page 33 of the survey.

<sup>22</sup> See page 33 of the survey.

<sup>23</sup> See page 53 of the survey.

<sup>24</sup> See page 54 of the survey.

non-cash/payment in kind (23%) and memorials and other symbolic reparations (4%).<sup>25</sup> Memorialisation received significant support. Ninety percent of respondents were of the view that efforts should be made to honour the victims of the conflict. A significant number of respondents (61%) believe that memorialisation initiatives are important as a lesson for future generations.<sup>26</sup> Memorialisation serves to expand the scope of the reparations programme and provides a stark reminder of the past. Efforts should be made to develop educational programmes that teach future generations about their history and create a common national identity to ensure sustainable peace and reconciliation.

### *Customary law*

Customary courts received 18% support, falling third after domestic courts and the ICC. Customary institutions are far more accessible geographically, and in terms of costs as compared with statutory institutions, and can play an important role in extending the reach of the Commission for Truth Reconciliation and Healing (CTRH) to remote parts of the country. Presently, customary courts are the central medium for the settlement of disputes, with 80% of cases being decided in such courts.<sup>27</sup> These courts and their mechanisms present an opportunity for reconciliatory practices that are familiar and acceptable to the people of South Sudan, thereby creating better chances of success. Traditional mechanisms could also serve to take on much of the work load that would otherwise inundate the more formalised processes provided by the ARCISS.<sup>28</sup> However, diligence will have to be exercised to ensure that human rights and due process concerns often associated with customary courts are addressed, without significant interference with the substance of customary law.

### **Implications for programming**

The survey provides reliable data to inform programmatic responses to transitional justice. The consultation process as well as its dissemination and discussion with national stakeholders provide clear and useful information which when conflated with factors that contribute to successful transitional justice processes,<sup>29</sup> should inform valuable areas for intervention. Material interventions will include the following:

- *Provision of technical and material support to rule of law institutions.* Years of marginalisation and conflict have resulted in weak rule of law institutions that are unable to fulfil their mandate or operate effectively in remote parts of the country. The ARCISS recognises the fact that limitations in the judiciary's capacity to resolve disputes, lead to conflict. In this regard, the ARCISS provides for judicial reforms including capacity building and support to infrastructure. A strengthened judiciary that is capable of resolving disputes amicably and enforcing its judgements is important for building citizens' confidence in rule of law institutions which is essential for sustainable peace. With the survey showing an even split as to whether prosecutions should take place at international or domestic courts, there is a clear demand for domestic justice. A strengthened judiciary with relevant capacities should also play a crucial role to a domestic accountability process. This should take place within wider

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<sup>25</sup> See page 55 of the survey.

<sup>26</sup> See page 56 of the survey.

<sup>27</sup> Baseline Perception Survey of Access to Justice and Rule of Law Institutions in South Sudan, UNDP, (August 2013).

<sup>28</sup> Reference here is being made to the CTRH, HCSS and CRA. See note 18 above.

<sup>29</sup> These factors include legitimacy and local ownership; government commitment; involvement of civil society; outreach and awareness raising; and capacity building.

legal reforms, including enhancing the capacities of prosecutors, the police and legal practitioners. Central to this, is an independent judiciary that is insulated from executive interference.

- *Providing support to transitional justice institutions.* In response to the widespread human rights violations, the ARCISS provides for truth-telling. This is consistent with the high demand for truth-telling as shown by the survey, particularly among those directly affected by the conflict. Truth-telling is critical from the early stages of post-conflict transition,<sup>30</sup> since documenting of past events and shaping of a nation's collective memory can be highly contested during times of transition. Also, the ARCISS provides a timeline of six months for the establishment of the CTRH, subsequent to the formation of the TGoNU. The timely establishment of the CTRH will facilitate the securing of detailed, fresh and reliable information to facilitate a credible process. Providing technical support for developing the legislative framework of the CTRH and allocating resources for its establishment should be a matter of priority.
- *Enhance the role of civil society in engaging in the official transitional justice process.* Civil society is positioned to play a critical role in driving dialogue, supporting awareness raising and providing needed oversight and commentary so as to enhance a people-owned and legitimate transitional justice process. Weak capacities, fragmentation and high political risk require that civil society organisations (CSOs) form a network so as to complement each other, and act with concerted response to engage in the transitional justice process. CSO networks will play a key role in providing technical input regarding the design of the transitional justice process, engage in necessary advocacy and awareness raising, and lobby national and international stakeholders for credible implementation of the ARCISS. Through their connectedness with grassroots communities, CSOs are capable of establishing solid relationships with affected populations throughout the country. This places them in a position to engage in documentation, establish and support victims' groups and create entry points for victims to transitional justice mechanisms. CSOs may also complement the transitional justice process by implementing bottom-up reconciliation programmes.
- *Support traditional mechanisms and empower traditional leaders to support the transitional justice process.* Customary law plays an important role in social relations and 80% of disputes are resolved by customary courts.<sup>31</sup> Traditionally embedded justice, reconciliation and healing mechanisms can form a core element of the process. As each post-conflict context is unique, the mechanisms adopted to restore the social and political equilibrium of society, needs to be context specific and familiar to South Sudanese. Among other things, it is necessary to map out traditional mechanisms that have worked in South Sudan in the past and factors that influence success or failure. While a reasonable amount of research has been conducted on customary law, there remains a paucity of documentation on conflict resolution mechanisms and the structures available to deliver their implementation. It is important to enhance research on customary justice systems through the mapping out of traditional dispute resolution mechanisms. Recent ascertainment of customary law studies conducted by UNDP South Sudan has incorporated aspects of traditional conflict resolution mechanisms.<sup>32</sup> Under customary law, reconciliation typically forms part of the dispute resolution process. On the basis of mapping traditional dispute resolution mechanisms, support should be provided for harnessing traditional mechanisms for conflict resolution, peace and reconciliation.
- *Provide support to address trauma and healing.* The high levels of trauma shown by the survey creates an urgent need to establish platforms to support understanding and share research

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<sup>30</sup> However, truth seeking may also be pursued over longer periods, depending on various factors including political will and public demand.

<sup>31</sup> Baseline Perception Survey of Access to Justice and Rule of Law Institutions in South Sudan, UNDP, (August 2013).

<sup>32</sup> The report is in draft stage.

on the nexus between mental health and peacebuilding in post-conflict societies. Furthermore, studies in South Sudan and elsewhere have shown that people who suffer from PTSD tend to have less positive beliefs in communal or interdependent views of the future, are less willing to forgive or reconcile with those who have harmed them, and display greater retributive sentiments. Therefore, addressing the mental health impacts of conflict would go a long way towards creating an environment that is more conducive to truth, justice and reconciliation by increasing opportunities for forgiveness and reconciliation. It is crucial to build the capacities of traditional leaders and CSOs to integrate healing practices and trauma sensitivity into community-based reconciliation initiatives.

## **Conclusion**

Dealing with the past is a precondition for the prevention of conflict and securing sustainable peace and stability. Local perceptions are important and should influence the design and implementation of the peace process in South Sudan. The perception survey is important as it contributes to generating strong local ownership of the transitional justice process. The survey gives recognition to victim-centeredness, an essential requirement for transitional justice responses, by placing adequate focus on the experiences and requirements of victims as told by themselves. The dissemination of the survey has triggered debate at community and national levels. This is significant in that its publication and release was closely sequenced with the signing of the ARCISS and the release of the African Union Commission of Inquiry report. The dissemination of the survey also involved engagement with national institutions, thereby promoting stakeholder participation in the process. Such engagement is crucial for stakeholder buy-in. In the wider human rights context, the dissemination of the survey and the resultant debate could possibly contribute to freedom of expression. The right to freedom of expression bears relation to the right to participation which is part of the democratic process of transformation that South Sudan essentially requires. This is important as the transformative democratic process is a crucial output of the transitional justice process. More essentially, the choices of the respondents in relation to transitional justice mechanisms, clearly demonstrate the demands and opportunities for justice, healing and reconciliation in South Sudan. The survey clearly demonstrates support for accountability, truth-telling, reconciliation (including community-based reconciliatory processes) and reparations.

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