

Access to Justice in South Sudan

POLICY BRIEF

Intersections of Truth, Justice and Reconciliation in South Sudan

Rens Willems & David K. Deng

May 2016



University for Peace
UPEACE Centre The Hague



Cover photo: © David Deng 2012. Inmates in Akobo, Jonglei State

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

Summary

This policy brief assesses the rates of seven types of violent crime – cattle raiding, armed robbery, physical assault, murder, sexual assault, abduction and torture – in various parts of South Sudan and examines the choices that South Sudanese make when confronted with an instances of violent crime. The brief is structured in three sections. The first section provides an overview of existing justice systems in South Sudan. The second section provides information on crime incidence rates in the midst of conflict and in more stable settings. The third section provides detailed findings about the choices that people make when confronted with violent crimes. The conclusion summarizes the main findings and provides recommendations for how to cultivate demand for justice and ensure the available services are in line with user needs.

A key finding that emerges from this brief is that if properly supported and incentivized, victims of violent crime can be adept at securing favorable outcomes, even in very difficult circumstances characterized by large-scale conflict and weak justice systems. Efforts to build rule of law and improve access to justice should therefore focus on empowering people to actively seek out remedies while at the same time working to expand the geographic scope of justice services and ensure that they are responsive to user demands.

Introduction

The conflict that erupted in December 2013 has caused a massive deterioration in security and increase in criminality across the country. The conflict has largely wiped out the formal justice sector in conflict areas and squandered investments that have been made into the development of rule of law over the past decade. Criminality has also become increasingly prevalent in more stable parts of South Sudan. Robberies, sexual assaults and murder are often attributed to ‘unknown gunmen’, while most people suspect that justice and security sector personnel themselves are involved with many crimes. It is not surprising that when confronted with violent crime, most South Sudanese do not actively seek redress and are left to live with the costs of other people’s misconduct.

Despite the odds, there are those people who still invest their time and resources into securing redress. As this briefing paper demonstrates, people who take some action to seek justice have more favorable outcomes than those who do not, and the more that people invest into seeking justice, whether in terms of appealing to multiple actors or in terms of financial investment into the process, the better are their outcomes. These trends are apparent whether the violent crime occurs amid large-scale conflict or in more stable settings.

A clear policy objective that emerges from these findings is that cultivating demand in justice systems – in other words, making sure that people are informed about their

rights, that they know where to go to seek redress and that proper incentives are in place to encourage them to invest their resources into obtaining a solution – is equally as important as increasing the supply of justice services and ensuring that they are well-suited to user needs.

In examining these issues, this brief draws on data from a survey that the South Sudan Law Society (SSLS), the University for Peace (UPEACE) Centre The Hague and PAX conducted at the end of 2015, as part of the research project entitled, “Intersections of truth, justice and reconciliation in South Sudan”.¹ The survey targeted 1.912 individuals in four locations – Juba town, Juba Protection of Civilian site (POC²), Wau town and Bentiu POC – and sought to better understand their perceptions of and experiences with violence and justice, particularly from the perspective of access to justice services.

Overview of the Justice System

South Sudan has a plural justice system comprised of parallel systems of statutory courts presided over by judges and trained legal personnel and customary courts presided over by chiefs and elders.³ Whereas statutory courts are mainly accessible only in urban areas, customary courts are found at every level of local government in South Sudan. According to the Local Government Act (2009), customary courts do not have jurisdiction over criminal matters unless the case has a ‘customary interface’.⁴ Despite the jurisdictional limitation, however, customary courts typically hear a range of criminal disputes and have the authority to issue a variety of criminal punishments, including prison sentences, fines and corporal punishment.⁵

¹ The project is carried out in cooperation between the University for Peace (UPEACE) Centre The Hague (the Netherlands), the South Sudan Law Society (SSLS), and PAX. It is funded by the Dutch Ministry of Foreign Affairs as a part of the ‘Knowledge Platform Security & Rule of Law’, and is administered by the Netherlands Organization for Scientific Research (NWO). A short summary of the project, its methods and activities, can be found here:

<http://www.upeace.nl/cp/uploads/publications/One%20Pager%20-%20ITJR%20in%20South%20Sudan.pdf>.

² The UN is currently operating six POC sites including UN House Juba POCs 1 and 3, Bor POC, Malakal POC, Bentiu POC, Melut POC and Wau POC. More than two hundred thousand South Sudanese are currently seeking refuge in these POCs.

³ See e.g. Cherry Leonardi et al. (2010) Local Justice in Southern Sudan, United States Institute of Peace (USIP), available at: <http://www.usip.org/publications/local-justice-in-southern-sudan>; David K. Deng (2013) Challenges of Accountability: An assessment of dispute resolution processes in rural South Sudan, SSLS and Pact, available at:

http://www.pactworld.org/sites/default/files/Challenges%20of%20Accountability_FINAL%20May%2016.pdf.

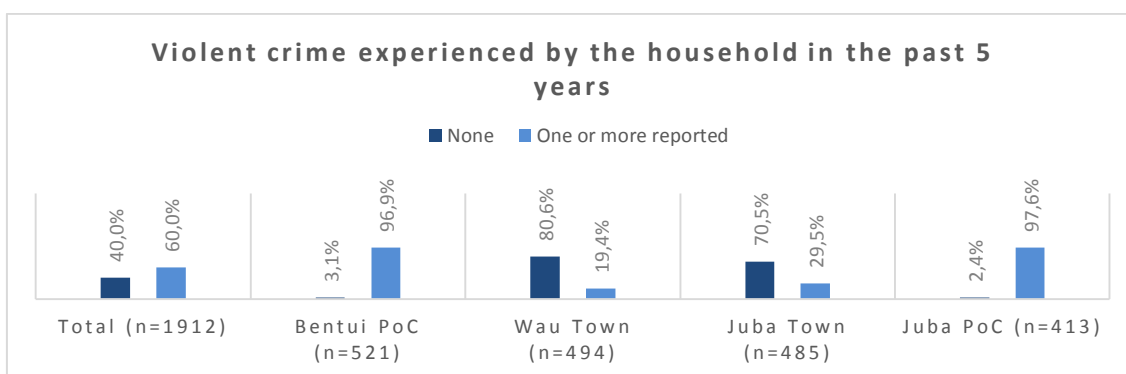
⁴ GRSS, Local Government Act, § 98(2) (2009), available at: <http://mlgi.org.za/resources/local-government-database/by-country/sudan/sub-national-legislation/The%20Local%20Government%20Act%202009.pdf>.

⁵ In some areas, customary courts even adjudicate serious crimes such as murder or rape common remedy offered in instances of murder is for the perpetrator to be made to pay a certain number of cattle to the relatives of the deceased to compensate them for their loss. The amount of cattle that must be paid vary from community to community and with the nature of the killing, but such remedies provide an important means of managing conflict in areas where formal state institutions do not exist.

Less formal forms of dispute resolution, such as mediation by family, friends and neighbors, various forms of assistance from local government officials, or services offered by UN agencies or NGOs also provide an important source of justice services in many areas. The less formal institutions assume additional significance in circumstances of large-scale conflict in which formal justice sector institutions are often destroyed or otherwise unable to act.

Crimes Experienced

As to be expected in a country that has been experiencing large-scale conflict for more than two years, people in South Sudan have been exposed to very high rates of violent crime. A total of 1.147 respondents, or 60% of the entire sample, reported that their household experienced one or more cases of violent crime in the past five years (with violent crimes being defined as cattle raiding, armed robbery, physical assault, murder, sexual assault, abduction and torture).⁶



Much of this crime can be directly traced to the conflict that broke out in December 2013. Respondents in the UN protection of civilians (POC) sites in Juba and Bentiu reported more crimes than those in Juba or Wau towns, with Bentiu POC having the highest number of reported crimes, at more than 1.015 incidents by 512 respondents.⁷ According to respondents, most of the violent crimes experienced in the Juba POC (65,1%, n=578) and Bentiu POC (92,1%, n=999) were said to have taken place within the context of large-scale conflict.⁸ In Bentiu, the vast majority of incidents occurred in 2015, and can be directly linked to the GRSS offensive that

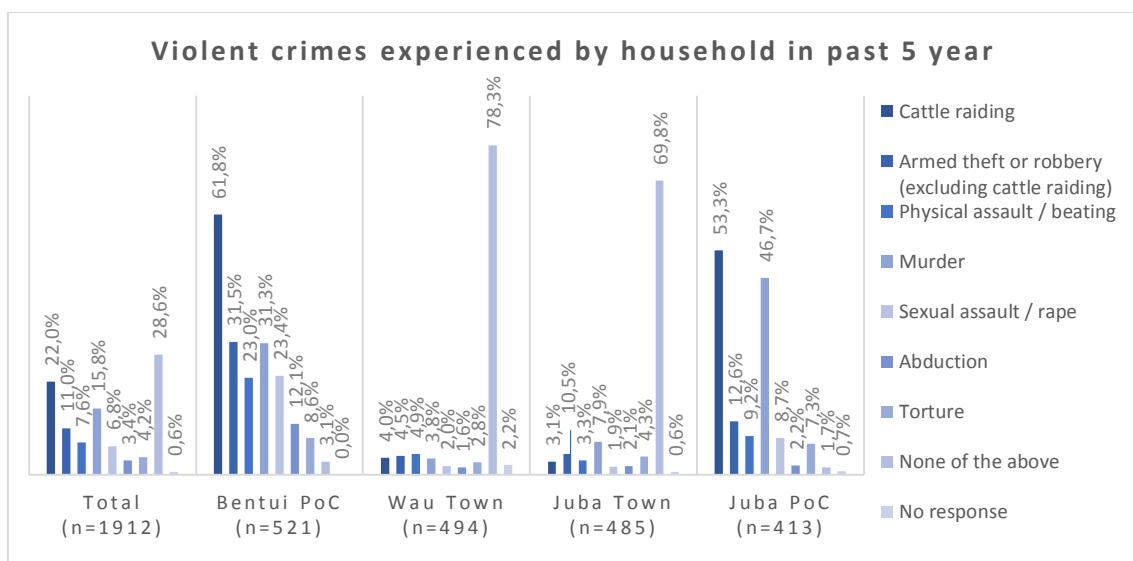
⁶ If a respondent said that the household experienced one particular form of violent crime more than once in the last five years (e.g. multiple armed robberies), the respondent was asked to answer the questions that followed for the incident that he or she considered to be the most significant. It was assumed that what the respondent considered the most significant would be the incident for which he or she could recall the most detailed information, and for which it would be most likely that the household took actions in response.

⁷ The figure for the number of incidents in Bentiu only counts each type of crime once for each household, and does not include crimes that households experienced multiple times. For example, if a household experienced one murder or ten murders over the past five years it would only be counted once in either case.

⁸ As follow-up questions were focused on what the respondent considered to be the most significant case, this number does not necessarily reflect the percentage of cases during conflict for all crimes experienced.

started in March 2015 and lasted for much of the year. In Juba POC, on the other hand, most incidents occurred in 2013 when violence erupted in Juba sending tens of thousands of people to seek refuge in bases of the United Nations Mission in South Sudan (UNMISS). A significant number of incidents in Juba POC also took place 2014 and 2015, and can be traced to incidents in Greater Upper Nile that displaced people to Juba POC.

Although the crime rates are highest among populations that have been directly exposed to large-scale conflict since December 2013, the more stable locations also grapple with high crime rates. 29,5% of respondent households in Juba town and 19,4% in Wau town having experienced at least one violent crime in the past five years.



In addition to differences in crime rates, the types of violent crimes experienced also vary across survey locations. Cattle raiding was particularly pronounced among populations in the POCs, with 61,8% of respondents in Bentiu POC and 53,3% of respondents in Juba POC reporting one or more instance of cattle raiding in the past five years. Much of this cattle raiding can be traced to the wholesale looting of livestock that has taken place in the context of the ongoing conflict, in which combatants sometimes view theft of cattle and abduction of women and children as a form of remuneration in the absence of monetary payments.⁹ The POCs also experienced high rates of murder (46,7% in Juba POC and 31,3% in Bentiu POC),

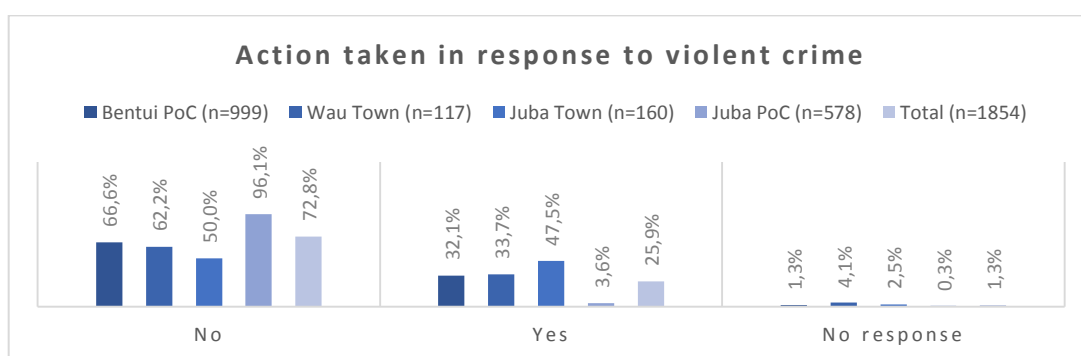
⁹ Office of the High Commissioner of Human Rights (OHCHR), Assessment mission by the Office of the United Nations High Commissioner for Human Rights to improve human rights, accountability, reconciliation and capacity in South Sudan: detailed findings, U.N. Doc. A/HRC/31/CRP.6 (10 Mar. 2016), available at http://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session31/Documents/A-HRC-31-CRP-6_en.doc.

robbery (31,5% in Bentiu POC and 12,6% in Juba POC) and sexual assault (23,4% in Bentiu POC and 8,7% in Juba POC).¹⁰

The crime rates in the towns, though not as high as among populations directly exposed to fighting since December 2013, nonetheless raise concerns of increased criminality and social instability in urban areas. Over the past few years, people in Juba have commonly attributed the increased criminality to ‘unknown gunmen’, many of whom are presumed to be members of the organized forces. This trend was evident in the survey data, in which 10,5% of households in Juba experienced one or more instances of robbery in the past five years, 7,8% experienced one or more murders, and 4,3% had someone in the household tortured. In Wau town, where people also report increases in violent crime in recent years, households most commonly experienced physical assault (4,9%), followed by armed robbery (4,5%) and cattle raiding (4,0%).¹¹

Actions Taken in Response to Violent Crime

Access to justice for violent crimes was severely restricted across the sample population. In almost three-quarters of cases (72,8%), the household simply did nothing in response to the violent crime; meaning that they did not report the crime to anyone and did not engage in self-help options, such as negotiation or revenge. The lack of justice options was particularly evident in Juba POC, where almost every respondent that experienced a violent crime (96,1%) said that no action was taken to address the incident. Respondents in other locations also demonstrated little ability to access justice, though not as pronounced as in Juba POC, with 66,6% of households in Bentiu POC, 62% in Wau town and 50% in Juba town taking no action to address the incidents.

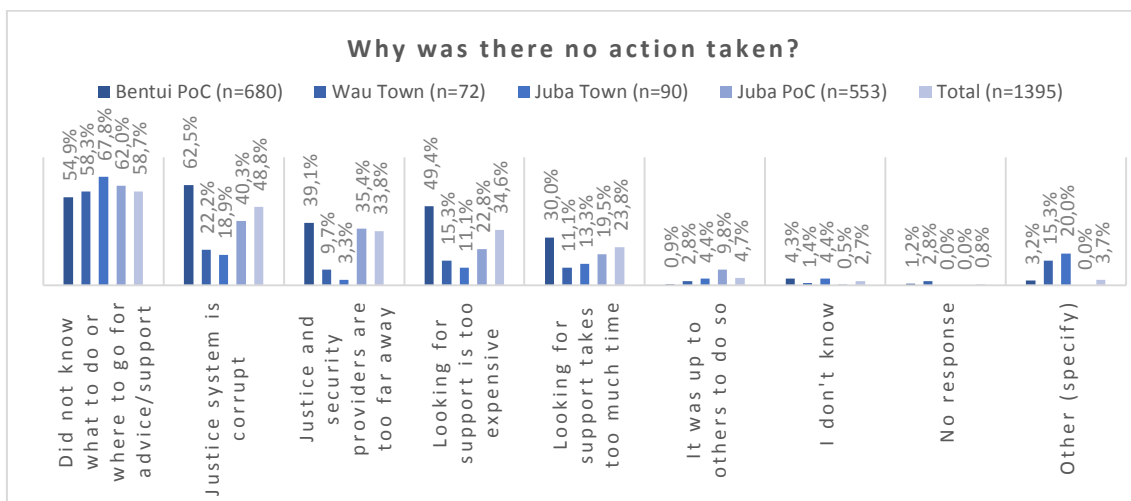


Respondents took no action in 73,0% of cattle raids (n=577), 64,7% of armed robberies (n=289), 75,3% of physical assault cases (n=198), 83,8% of murder cases

¹⁰ See for a more detailed report on Sexual and Gender Based Violence (SGBV) <http://www.upeace.nl/cp/uploads/downloadsprojecten/SGBV%20in%20Unity%20State%20-%20Policy%20Brief.pdf>.

¹¹ For more on conflict dynamics in Wau, see Human Rights Watch, *South Sudan: Civilians Killed, Tortured in Western Region: Provide Justice for Army Abuses in Western Region* (24 May 2016), available at <https://www.hrw.org/news/2016/05/24/south-sudan-civilians-killed-tortured-western-region>.

(n=413), 79,7% of sexual assault cases (n=177), 73,3% of abduction cases (n=90), and 80,0% of torture cases (n=110). When asked why no action was taken, the majority of respondents answered that they did not know what to do or where to go for support or advice (58,7%), suggesting that a lack of information about available justice services and/or unavailability of reliable justice services are prominent barriers to justice. Respondents in Bentiu POC (39,1%) and Juba POC (35,4%) emphasized that justice service providers were geographically too far removed to access. Another prominent explanation that respondents in the POCs gave for not taking action was corrupt justice sector actors, reflecting questions around state legitimacy that are particularly prominent among populations in the POCs. In Wau and Juba town respondents also provided other explanations, including: “it is a usual thing and the government has never bothered to do anything on this issue” (cattle raid, Juba), “the robbers were not identified” (armed robbery, Juba), “it was war” (sexual assault, Juba), “they were armed” (sexual assault, Juba, Wau).



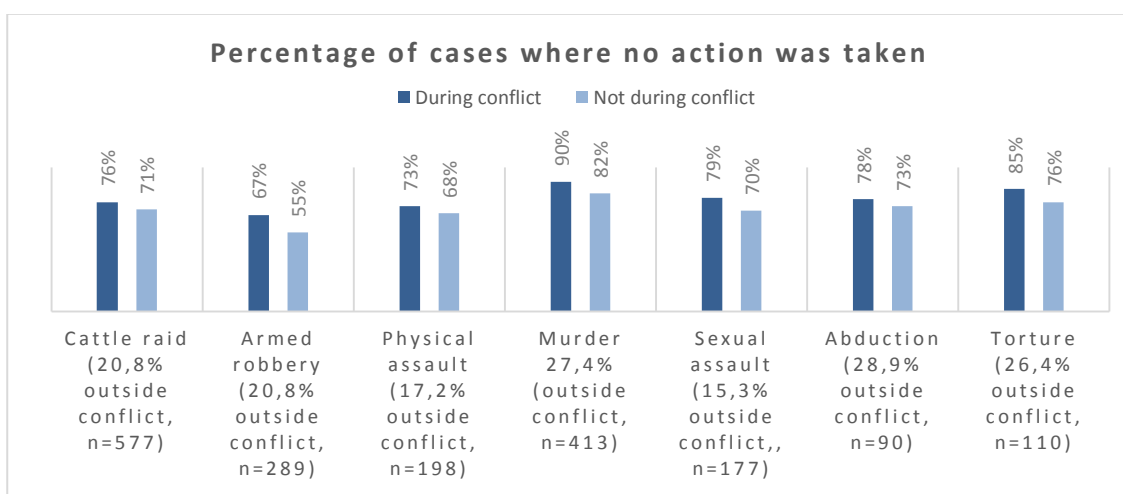
Impact of Conflict on Justice

In explaining why they did not take action in response to violent crimes, many respondents simply said that “it was war,” implying that war by definition precludes justice. Indeed, respondents who were victimized in the context of conflict were less likely to take action than those who were victimized outside of a conflict situation. This trend was apparent in the data across all crimes, although the strength of the correlation differs for the various crimes.¹²

Perhaps more interesting is the degree to which access to justice is restricted even in relation to crimes that did not arise during active conflict. The fact that people are often not able to obtain redress even in more stable contexts demonstrates how decades of conflict has undermined justice systems in South Sudan. Investment into building the capacity of justice sector institutions must be approached as both an

¹² The fact that the majority of all crimes occurred in the context of conflict also limits our ability to draw strong conclusions

immediate means of post-conflict stabilization as well as a long-term initiative if the country is to provide justice services that meet the needs of its citizens.



Taking action: goals and outcomes

Before looking at the steps that households take in pursuing justice and the outcomes of those cases, it is important to first know people's reasons for taking action in response to a crime and their preferred outcomes. In other words, when someone is a victim of a violent crime, what is he or she looking for as a remedy?

In seeking to answer this question, the survey asked respondents what they considered to be an appropriate remedy or punishment in relation to each of the seven types of violent crimes discussed above, irrespective of whether they actually experienced the crime or not.¹³ For all crimes, a majority of respondents considered a jail sentence to be the most appropriate.¹⁴ For most crimes, 20-25% of respondents considered the payment of compensation to be an important solution, or part of a solution. There was a higher preference for compensation in cases of cattle raiding (48,0%) and armed robbery (34,9%).¹⁵ Respondents emphasized death sentences in cases of murder (39,4%), but also in cases of rape (13,7%), abduction (11,0%) and armed robbery (7,4%).

Respondents that reported a violent crime within the household in the last five years were slightly more likely to list compensation as an appropriate remedy compared to respondents that did not report a crime in the household. This may point to an importance that people ascribe to compensation when they have actually

¹³ The question was posed as an open-ended question and respondents could give multiple answers.

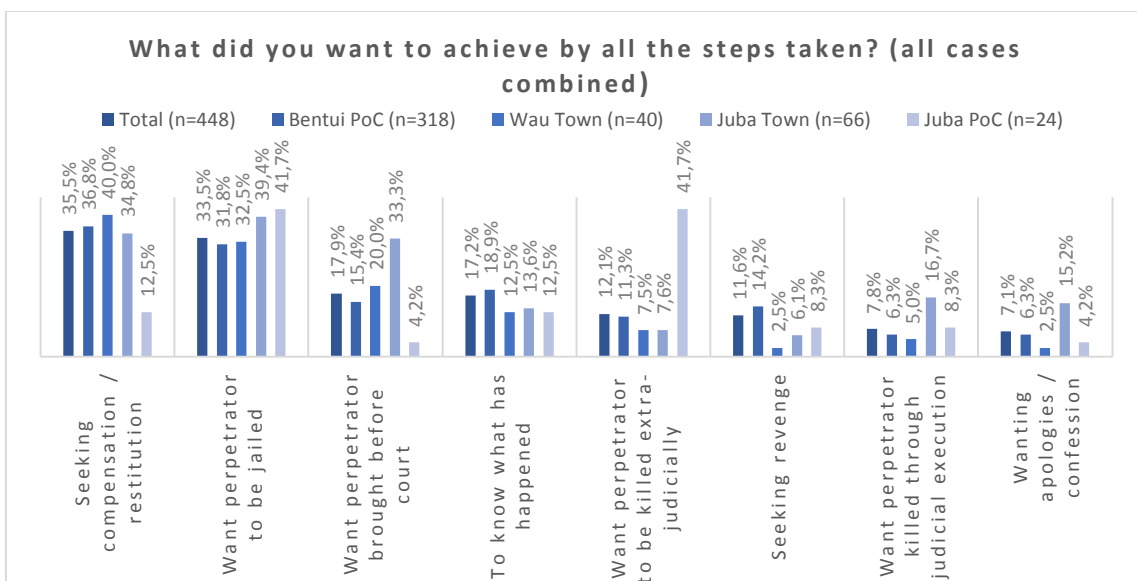
¹⁴ The percentage of people who consider a jail sentence to be most appropriate according to types of crimes are as follows: murder (63,4%), a severe beating (77,3%), rape (65,3%), robbery at gunpoint (79,3%), cattle raiding (69,1%), abduction (81,5%) and torture (80,6%).

¹⁵ Respondents that reported a violent crime was experienced within the household in the last five years were slightly more likely to list compensation as an appropriate remedy compared to respondents that did not report experiencing a crime in the household.

experienced a crime as compared to an emphasis on more retributive forms of punishment for people that can only relate to the issue hypothetically.

While in the large majority of cases respondents took no action in response to the violent crimes, there were nonetheless a significant number of cases where respondents did take action. Respondents that took some action to seek redress were asked to explain the different steps that they took and the outcome of the case. This was an open question, and enumerators were instructed to list whether respondents contacted any one of a series of dispute resolution actors (including the police, statutory courts, traditional authorities, friends, etc.), whether they negotiated themselves with the offending party, or whether they took violent revenge attacks against the other party.

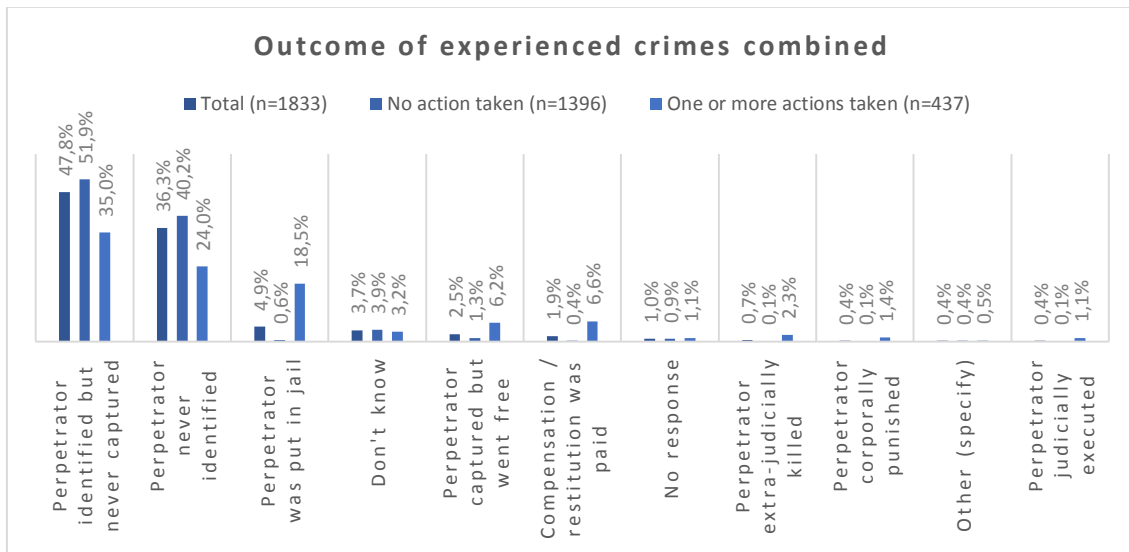
Respondents that took steps to seek redress were also asked about their motivations for taking action. The most often cited reason for taking action, was to seek compensation (36,5%), closely followed by the desire to have the perpetrator put in jail (33,5%), indicating a prevalence of both restorative sentiments based on compensation for harm that has been incurred as well as retributive sentiments based on criminal sanctions. Other reasons for taking action included wanting to bring the perpetrator before a court (17,9%), to know what happened (17,2%), to see the perpetrator killed, to take revenge, or to receive an apology.¹⁶



While most respondents cited compensation as a reason for taking action, respondents were actually compensated in only 6,6% of all cases where actions were taken. In comparison, in 18,5% of the cases where respondents took action the perpetrator was put in jail. The outcomes for cases where action was taken do therefore not completely match the reasons for which actions were taken by

¹⁶ This was an open question to which respondents could answer freely, and enumerators would fill the appropriate answers. Multiple answers could be given.

respondents, and highlight a gap between people’s justice needs and the services that are available.



For the vast majority (59,0%) of cases in which action was taken, the perpetrator was never captured (35,0%) or never even identified (24,0%). Nonetheless, taking action did increase the chances of capturing the perpetrator or securing compensation. Where no action was taken, less than one percent of the cases resulted in the perpetrator being put in jail (0,6%) or the payment of compensation (0,4%), compared to 18,5% of the cases resulting in imprisonment and 6,6% of cases resulting in compensation where action was taken. In addition, the perpetrator was not captured or identified in 92,1% for cases where no action was taken, whereas this figure drops to 59% when some action was taken. Thus, while most perpetrators still avoid sanction, taking action does increase the chances of a perpetrator being captured or compensation being paid.

When respondents took multiple steps to secure redress (e.g. first complained to traditional authorities, then police, etc.) the cases were more likely to result in the capture of the perpetrator and/or payment of compensation. In cases where only one action was taken, it was more likely that the perpetrator was never captured, or never even identified. Respondents were also much more likely to report being satisfied with the outcome of the case when multiple steps were taken than for cases where only one step was taken.

The differences in outcomes among cases depending on whether or not the respondent took some action, or the amount of steps that the respondent took in seeking redress, indicate the importance of supporting the demand side of justice, in addition to whatever support is provided to the supply side of justice. If people are made aware of their rights and the justice services that are available to serve their particular needs, they are sometimes able to secure favorable outcomes, even in very difficult circumstances associated with large-scale conflict or its immediate aftermath.

Policies that tailor justice services to the specific needs of local populations can further incentivize people to pursue non-violent means of resolving disputes, thereby contributing to post-conflict stabilization efforts.

The Costs of Justice

Most respondents that took steps to seek redress incurred some costs in doing so. Types of costs included administrative fees and court fees, fees for legal advice (e.g. lawyer fees), traveling costs and bribes. Other costs that respondents mentioned included the loss of lives in cases where people sought revenge (particularly in response to cattle raids). The monetary amount of costs ranged greatly per case, from a few South Sudanese Pounds (SSP) to several thousand SSP, with most costs falling between 250 and 2500 SSP.¹⁷ It is difficult to get a precise picture of the costs that the households incurred as the respondents may not have always been directly involved in the pursuit of the case themselves and were not always aware of the exact amount spent in the process. Furthermore, the data does not show distinctions for costs among different types of justice service providers, as respondents were asked to list costs for the whole process rather than for each individual actor they contacted.

These limitations notwithstanding, incurring costs appeared to have an impact on the outcome of cases. Cases where respondents did not incur any costs were most likely to end in the perpetrator being identified but never captured (45,6%). In addition, in cases where respondents incurred a small cost, the most common outcome was that the perpetrator was never captured or never identified. These results can be interpreted in various ways. For example, the household may have chosen not to invest too much resources into pursuing justice because the perpetrator was either unidentified or was considered too difficult to apprehend (e.g. being a member of armed forces, politically well connected, or from a community far away). On the other hand, respondents could also be too poor to invest resources into conducting a thorough investigation.

Furthermore, cases in which respondents invested larger amounts of money into seeking redress resulted in a greater chance of the perpetrator being jailed than cases where little or no costs were made. When the household invested between 1.001 and 5.000 SSP in seeking redress, 50% of the cases resulted in the perpetrator being jailed, and in cases where more than 5.001 SSP was invested the percentage of incarcerations rose to 61,3%.¹⁸ Spending money in the pursuit of justice certainly does not guarantee success, but it does appear to result in more favorable outcomes for complainant parties.

¹⁷ Exchange rates at the time the research was conducted were approximately 30:1.

¹⁸ The correlation between cost and positive outcome was less apparent in relation to compensation.

Conclusion and Recommendations

Survey data demonstrates the enormity of the challenge in improving access to justice in South Sudan. Whether violent crime arises in the context of conflict or relative peace, people for the most part do not know what they can do to seek redress. Even those who have some understanding of their rights are confronted with a situation in which justice services are considered unreliable or inaccessible, either because they are too far away or because they simply do not exist. Conflict further undermines people's ability to access justice. Not only does conflict impede service provision, but the lack of justice options further incentivizes conflict, as people are left with no option but to accept the harm of other people's misconduct or pursue often violent self-help options.

While expanding the geographic reach of justice service providers and improving their ability to provide services that meet the needs of the population is a vital task of post-conflict stabilization efforts, activities to empower people so that they understand their rights and what they can do to obtain redress is equally important. Survey data shows that if people actively seek redress through non-violent third-party intervention, their chances of obtaining favorable outcomes are increased, even in very difficult circumstances characterized by large-scale conflict and an absence of formal justice services. In order to strengthen existing justice services, expand their reach, and build interest in and demand for justice among populations in South Sudan, this policy brief recommends that the Government of South Sudan:

- Ensure that rule of law and access to justice programming form an integral part of any post-conflict reconstruction and stabilization effort in South Sudan. In doing so, policy-makers should take stock of where rule of law programming failed during the 2005-11 interim period and in the aftermath of independence so as not to replicate past mistakes.
- The judicial reforms provided for in the August 2015 peace agreement provide an entry point, but a more detailed reform agenda must be developed to stimulate meaningful change in the justice sector.
- Make a sustained investment into services that expand the reach of justice beyond what is possible through state action alone, such as paralegal or legal aid programming.
- There is an urgent need for the Government to develop a coherent strategy for improving access to justice in South Sudan. One activity that could help to support such efforts is the development of policy and legislation that focuses specifically on legal aid.
- Examine the types of justice services that are available in conflict situations, such as military courts, customary justice mechanisms or ad hoc justice

services offered in IDP camps. Where possible, seek to reinforce these mechanisms as important services in emergency situations.

- Vetting of judges and other justice sector institutions to ensure that the most qualified people are employed.
- Allowing international judges to serve directly on the judiciary alongside South Sudanese judges
- Improving transparency in the reporting of justice sector data, particularly crime statistics and judicial opinions.

Acknowledgements

This policy brief was made possible through support from the Ministry of Foreign Affairs of the Kingdom of the Netherlands and the Netherlands Organization for Scientific Research (NWO). The authors would like to thank the team of 34 enumerators that helped to conduct the survey in Juba, Juba POC, Bentiu POC and Wau. The authors would also like to extend their deep appreciation to all who agreed to be interviewed as part of this study. The bravery that they have demonstrated in their willingness to discuss these issues is a testament to the resilience of South Sudanese despite the difficult periods that the country has struggled through.