A War Within:

Perceptions of Truth, Justice, Reconciliation and Healing in Malakal POC

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About the 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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Cover photo: © Matthew Pritchard 2015. Young boy with a gun fashioned from mud in the Malakal protection of civilians (POC) site.

Acronyms

ARCISS ..... Agreement on the Resolution of the Conflict in the Republic of South Sudan
AU ..... African Union
CNHPR ..... Committee on National Healing, Peace and Reconciliation
CPA ..... Comprehensive Peace Agreement
DSM-IV ..... Diagnostic and Statistical Manual of Mental Disorders-IV
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
IOM ..... International Organization for Migration
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
SSLS ..... South Sudan Law Society
SSP ..... South Sudanese Pounds
TGONU ..... Transitional Government of National Unity
UNDP ..... United Nations Development Programme
UNICEF ..... United Nations Children's Fund
UNMISS ..... United Nations Mission in the Republic of South Sudan
USAID ..... United States Agency for International Development
VISTAS ..... Viable Support to Transition and Stability Program

Contents

About the SSLS i

Acknowledgements i

Acronyms ii

EXECUTIVE SUMMARY iv

INTRODUCTION 1

1 CONTEXT 3

1.1 Agreement on the Resolution of the Crisis in South Sudan (ARCISS) 3

1.2 Conflict Dynamics in Malakal 4

2 METHODS 7

2.1 Sample Plan 7

2.2 Data Collection 7

3 RESULTS 9

3.1 Sample Characteristics 9

3.2 Displacement Trends 9

3.3 Awareness of the Peace Process 12

3.4 PTSD and Exposure to Trauma 14

3.5 Inter-communal Relations 20

3.6 Reconciliation and Forgiveness 23

3.7 Demilitarization of Malakal 27

3.8 Criminal Accountability 28

3.9 Existing Justice Systems 33

3.10 Responsibility for Abuses 36

3.11 Amnesties 38

3.12 Truth-Seeking 41

3.13 Reparations 43

3.14 Land Conflicts 46

4 CONCLUDING REMARKS 50

EXECUTIVE SUMMARY

This report presents the findings of a survey on perceptions of truth, justice, reconciliation and healing carried out in the United Nations Mission in South Sudan (UNMISS) protection of civilians (POC) site in Malakal, Upper Nile State. In August 2015, the South Sudan Law Society (SSLS), in partnership with the Viable Support to Transition and Stability (VISTAS) program, surveyed 1,178 people in the Malakal POC. The primary goal of the survey was to determine what people in the POC think should be done to address the legacies of conflict and widespread impunity in South Sudan. The survey included a post-traumatic stress disorder (PTSD) measure to help understand the psychological impacts of war trauma. Thus, the results also assess how trauma and mental health affect people's perceptions of truth, justice, reconciliation and healing.

CONTEXT

In August 2015, the Government of the Republic of South Sudan (GRSS), the Sudan People's Liberation Movement-in-Opposition (SPLM-IO) and other stakeholders signed the *Agreement to Resolve the Crisis in South Sudan* (ARCISS). Chapter V of the agreement outlines the signatories' plans for how to promote truth, justice, reconciliation and healing in the context of a 30-month transitional period. Although the ARCISS aims to move beyond short-term peace to address impunity, unresolved historical grievances and other root causes of violence, the agreement was negotiated among a small number of high-level actors with little to no input from the broader population. The low levels of awareness of the terms of the ARCISS and the lack of ownership among populations in South Sudan are likely to complicate efforts to implement the agreement.

Moving forward, the 2.2 million people displaced by the conflict will be an important constituency to engage in the peace process. As people who are most directly impacted by the violence, a thorough understanding of the views of refugees and internally displaced persons (IDPs) would help to capitalize on the ARCISS and leverage the agreement to promote long-term and sustainable peace. The Malakal POC site—home to some of the most conflict-affected communities in the country—provides essential data on how to proceed with justice and reconciliation, as well as key obstacles and opportunities facing long-term peace.

The Malakal POC site is the most diverse of the six POC sites in South Sudan. Whereas Nuer who fled violence in Juba, Bor and Bentiu predominantly occupy the other POC sites, the Malakal POC has sizeable populations of Dinka, Nuer and Shilluk. Relationships among these communities are determined by a range of factors, including access to humanitarian support, the political and military interests of armed groups outside the POC, and preexisting inter-communal disputes linked to the access, use and management of land and land-based resources. Inter-communal tensions manifest in periodic rioting, as well as more discrete actions designed to restrict the movement of individuals and goods (mainly food and water) between the different ethnic communities.

To the extent that relationships among communities in the POC are intertwined with the political and military interests of the warring parties, it is difficult to envisage genuine reconciliation among communities on the ground until disputes among the political leadership are addressed. At the same time, communities in the POC are striving to create an environment that is insulated from the animosity that drives the conflict outside. In this sense, the POC could provide an entry point for reconciliation alongside efforts to secure a permanent ceasefire.

RESULTS

PTSD and Exposure to Trauma

Survey data demonstrate high levels of post-traumatic stress disorder (PTSD) and exposure to trauma among populations in the Malakal POC. Fifty-three percent of respondents exhibit symptoms consistent with a diagnosis of PTSD. While these rates of PTSD are on an order of magnitude larger than what one would find in more stable contexts, they are not unusual for conflict-affected countries. The high levels of PTSD in Malakal POC are likely a consequence of widespread exposure to trauma. At some point in their lives, 77 percent of respondents have had a close family member killed, 58 percent have witnessed a friend or family member being killed, 84 percent have had their home or other real property destroyed, and 73 percent have had other assets destroyed. The overwhelming majority of traumatic experiences occurred in 2014 as a result of the on-going conflict. There is no statistically significant difference between the number of male (48%) and female (52%) respondents with respect to PTSD symptoms.

Findings from this study and from similar projects in other conflict-affected environments show that people with PTSD tend to have less positive beliefs in a communal or interdependent view of the future, are less willing to forgive or reconcile with those who have harmed them, and display a greater retributive sentiment. Addressing the mental health impacts of conflict would thus go a long way towards creating an environment that is more conducive to truth, justice and reconciliation by increasing opportunities for forgiveness and reconciliation. Providing relief to traumatized populations could also reduce retributive sentiments and help to manage expectations of what criminal prosecution can deliver in a context of widespread human rights abuses and limited institutional capacity.

Inter-Communal Relations

In addition to its devastating impacts on mental health, the conflict is also doing severe harm to inter-communal relations. Eighty-three percent of respondents indicate that their view of other ethnic groups has changed for the worse as a result of the conflict, and 60 percent assert that people from other ethnic groups cannot be trusted. However, key variations emerge across demographic groups. Ninety-one percent of Shilluk respondents state that their views of other ethnic groups have changed for the worse as a result of the conflict compared to just 78 percent of Dinka. Impacts also vary across age groups, with younger respondents expressing higher levels of trust for people from other ethnic groups than older respondents. A more pronounced desire for stable inter-communal relations is not necessarily surprising as younger generations are often more cosmopolitan, have had better access to education and may not have been exposed to the same level of repeated trauma that older generations have. As indicated above, PTSD and exposure to trauma also play a role in undermining inter-communal relations. People with PTSD display higher levels of distrust and a greater negative change in their views of other ethnic groups than those without PTSD.

Reconciliation and Forgiveness

In response to an open question about what is necessary for reconciliation, respondents from the Malakal POC emphasize forgiveness (53%), apologies (46%) and confessions (28%). Despite widespread recognition that reconciliation requires forgiveness and apologies, 54 percent of respondents in the POC assert that they are not willing to forgive those who have committed abuses. Furthermore, respondents with PTSD are less willing to forgive than those without PTSD. This variation highlights the impact that PTSD and trauma have on people's belief and desire for a communal or interdependent vision of the future. Willingness to forgive also varies

across ethnic communities. Seventy-eight percent of Nuer and 65 percent of Shilluk state that they are not willing to forgive, while 81 percent of Dinka say that they are willing to forgive. Similar to results on inter-communal relations, younger people are also more willing to forgive than older people. Unpacking people's views on forgiveness will be an important first step for any reconciliation strategy.

Criminal Accountability

Survey data demonstrate widespread support for the criminal prosecution of people responsible for conflict-related abuses. In response to an open question about what should be done with perpetrators of conflict-related abuses, a majority of respondents support criminal justice mechanisms including imprisonment (54%) and trials (50%). Similarly, in response to a closed question on whether perpetrators of conflict-related abuses should be prosecuted in courts of law, 85 percent of respondents say *'Yes'*.

When asked an open question about which court is best able to secure justice for abuses committed since December 2013, the two most prominent responses are the '*International Criminal Court (ICC)*' (53%) and '*Hybrid court*' (18%), or a court comprised of a combination of South Sudanese and international judges, prosecutors, investigators and administrative staff. As field staff did not provide respondents with response options, these findings demonstrate that the populations of the Malakal POC have a high level of awareness of internationalized justice mechanisms. Support for internationalized justice mechanisms is also coupled with low levels of trust in the ability of existing justice mechanisms, whether statutory or customary, to hold perpetrators of conflict-related abuses to account. Overall, 58 percent of respondents believe that it is not possible for existing statutory courts to hold perpetrators accountable, and 69 percent assert that customary institutions cannot hold perpetrators accountable.

Lastly, respondents largely oppose using amnesties to entice armed groups to stop fighting. Overall, 69 percent of respondents do not think people suspected of conflict-related abuses should be offered amnesty. Opposition to amnesties is highest among Nuer and Shilluk respondents. Ninety percent of Nuer and 78 percent of Shilluk respondents oppose amnesties compared to just 35 percent of Dinka. Participants who oppose amnesties were asked a follow up question about whether they would accept amnesty if it were necessary for peace. Interestingly, 86 percent of those who oppose amnesties maintain that they would still oppose them if they were necessary for peace. The demand for criminal punishment to discourage future conflict-related abuses demonstrates a significant break from past peace agreements in South Sudan, which have tended to use blanket amnesties and political rewards as incentives to entice potential spoilers into the fold.

Responsibility for Abuses

Sharply diverging views over which parties are most responsible for conflict-related abuses present additional challenges for justice and reconciliation efforts. Whereas Nuer and Shilluk respondents overwhelmingly blame the Government and its allied militia, Dinka respondents mostly blame the SPLM-IO and its allied militia. Respondents also place primary responsibility on the two leaders of the warring factions as opposed to the larger political and military establishment. Large-scale abuses committed by professional soldiers and supporting militias are increasingly explained with reference to disputes between President Salva Kiir and Former Vice-President Riek Machar that go back several decades.

This individualization of blame presents important opportunities and challenges to the peace process. On the one hand, reducing violence to historically rooted disputes between two leaders

fighting for political control suggests that reconciliation between President Salva Kiir and Dr. Riek Machar could create significant peace dividends. On the other hand, the explicit focus on the actions of these two individuals risks obscuring the complex nature of the violence within and between local, regional and national actors, and absolving the overwhelming majority of perpetrators from responsibility for abuses. In addition to the roles played by President Kiir and Dr. Machar, sustainable peace requires attention to the myriad of other contests between the political-military elite who are responsible for and benefitting from the conflict.

Truth-Seeking

Whereas respondents express a clear demand for criminal accountability and reparation, support for truth-seeking efforts is more equivocal. When asked whether it is better to talk openly about people's experiences with conflict-related abuses or to forgo a public discussion, the majority of respondents (56%) answer that it is '*better to avoid talking about what happened*'. Support for a public discussion about conflict-related abuses varies dramatically across groups. The majority of Nuer respondents support the idea of a public discussion whereas the majority of Dinka and Shilluk oppose it. Women (60%) are also more likely to want to avoid talking publicly about abuses that occurred during conflict than men (52%). The varying levels of support for speaking publicly about conflict-related abuses illustrate the importance of framing any potential truth-seeking initiative in a way that appeals to a large cross-section of population rather than only those directly affected by the most recent violence.

Another challenge to overcome is the low levels of awareness of the institutions that would be responsible for spearheading efforts to address the legacies of violence in South Sudan. For example, overall knowledge of truth commissions in the sample population is quite low. Seventy-seven percent of respondents admit that they do not know what a truth commission is. However, those who are familiar with it overwhelmingly support the idea of establishing a truth commission in South Sudan (97%). Read together, these findings indicate the importance of generating awareness though public outreach thereby improving ownership of truth and reconciliation mechanisms.

Reparations

Survey data demonstrate widespread support for providing both material and symbolic reparations to survivors of conflict-related abuses. Overall, 64 percent of respondents assert that survivors of abuses should be provided with compensation. Once again, considerable differences are apparent across ethnic communities. While 81 percent of Nuer and 72 percent of Shilluk support compensation, a majority of Dinka (54%) oppose it. The preferred form of compensation is the collective provision of development projects to victims (77%), followed by cash (45%) and in-kind payments (23%). In response to the question, '*What should be done to honor victims of conflict?*', a national day of remembrance (63%), development of teaching materials for schools (35%), the construction of monuments or memorials (27%), or the renaming of buildings and streets (21%) emerge as the most popular initiatives.

Land Conflicts

Inter-communal land disputes have long been a source of conflict in Upper Nile State. The most contentious land dispute in the region involves the Shilluk and Padang Dinka communities, and relates to which group has the right to access, use and manage land on the Eastern bank of the Nile River. Specifically, Shilluk and Dinka populations use competing narratives surrounding how the region was first settled to justify access to land-based resources on the Eastern bank. Although the immediate trigger of the national crisis can be traced to politically motivated

violence in Juba, data from the Malakal POC demonstrate that preexisting disputes over land have significant impacts on inter-communal relations, and are critical areas of concern for the peace process moving forward.

CONCLUSION

Research findings illustrate the physical and psychological toll that the conflict has taken on the population in the Malakal POC. In addition to high levels of trauma and PTSD, relations among the various communities residing in the POC are at an all time low. The distrust and enmity that pervade these relationships provide a stark reminder of the threat that the conflict poses to social cohesion and long-term peace in South Sudan. Even if the ARCISS manages to stop the fighting, it will take many years to repair the harm that the conflict has done to socio-political and economic relations. Despite the sobering findings, the ARCISS peace agreement provides some hope that South Sudan will find a way out of this difficult period. Although much remains to be done in terms of raising awareness and generating ownership among populations in South Sudan regarding the terms of the agreement, the reform agenda provides a starting point to revisit in earnest peace- and nation-building efforts in the country.

INTRODUCTION

On 15 December 2013, a violent conflict erupted in Juba and quickly spread throughout the three states of the Greater Upper Nile region—Jonglei, Unity and Upper Nile. In the first few weeks of the conflict, tens of thousands of civilians fled their homes and sought refuge in bases of the United Nations Mission in South Sudan (UNMISS).[1] Two years later, the populations in the six UNMISS protection of civilians (POC) sites are larger than ever.[2] Although the POCs offer little beyond security, rudimentary shelter and access to a minimal amount of food and water, the on-going conflict continues to prevent the approximately 200,000 people living there from returning to their homes or resettling elsewhere.[3] Given the widespread exposure to conflict, difficult living conditions within the camps, and on-going violence in parts of the country, understanding the views of people residing in the POCs is indispensible to charting a way out of the crisis.

In August 2015, the South Sudan Law Society (SSLS), in partnership with the Viable Support to Transition and Stability (VISTAS) program, surveyed 1,178 people in the UNMISS POC site in Malakal, Upper Nile State. The primary goal of the survey was to determine what people in the POC think should be done to address the legacies of conflict and widespread impunity in South Sudan. The survey included a post-traumatic stress disorder (PTSD) measure to help understand the psychological impact of war trauma. Thus, the results presented here also assess how trauma and mental health affect people's perceptions of truth, justice, reconciliation and healing. This report summarizes the study's main findings.

In many respects, the picture that emerges from the Malakal POC is bleak. The conflict has generated a great deal of animosity among the three major ethnic communities in the camp—Shilluk, Nuer and Dinka. The deterioration in relations between these communities reflects the damage that the conflict has done to inter-communal ties more broadly in South Sudan. Basic facts about the violence are hotly contested, and views on responsibility for conflict-related abuses are deeply politicized.[4] People residing in the POC have little confidence in the ability of South Sudanese institutions and individuals to resolve the conflict on their own, and have largely ceded responsibility for securing a solution to the international community. At the same time, the role of various international actors—whether neighboring countries that are actively involved in the violence or the broader international coalition that is pushing for a diplomatic solution—are viewed with a high degree of skepticism.

Although the population of the Malakal POC faces a number of difficult challenges, people are striving to make the best of their situation and develop ways of coexisting. Despite repeated attempts to politicize the populations living within the POC as supporters of one or the other warring parties, residents are trying to build a community that is insulated from the military and political interests driving the conflict. As a dynamic community of individuals and social groups directly affected by the violence, residents have clear ideas about how public discussions of the

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[1] Unless otherwise specified, 'the conflict' refers to the protracted violence between state and non-state actors that erupted in Juba on December 15th, 2013 and quickly spread to other areas of the country.

[2] The six POC sites currently in operation include UN House Juba POCs 1 and 3, Bor POC, Malakal POC, Bentiu POC, Melut POC and Wau POC.

[3] According to the International Organization for Migration (IOM), as of 21 September 2015, a total of 194,816 people are seeking shelter in the six POC sites. IOM, Humanitarian Update #55 (Sep. 2015), *available at* https://www.iom.int/sites/default/files/situation_reports/file/IOM-South-Sudan-Humanitarian-Update-No55-21-September-2015.pdf.

[4] We operationalize 'conflict-related abuses' as coordinated violence that goes beyond conventional warfare between the GRSS, SPLM-IO and various militias to target the larger civilian population. For example, our understanding of 'conflict-related abuses' includes (but is not limited to) the purposive targeting of civilians, forced recruitment, rape and sexual slavery.

facts, circumstances and causes of the conflict can help to support sustainable peace. Residents also have a clear understanding of how South Sudan's culture of impunity must be curtailed for the state to retain its legitimacy and viability.

This study seeks to better understand the factors that account for the convergence and divergence of views among groups in the Malakal POC—whether defined in terms of ethnicity, gender, age or psychosocial factors such as exposure to trauma and PTSD diagnosis—as they relate to issues of truth, justice, reconciliation and healing. In addition to a detailed breakdown of key trends, this study highlights the ways in which local narratives on conflict and priorities for long-term peace present both obstacles and opportunities for the peace process. The report is structured in four parts. Section One provides an overview of relevant provisions of the peace agreement that the warring parties signed in August 2015 and conflict dynamics in Malakal. Section Two summarizes the research methods used in the assessment. Section Three presents the study's main findings on key priorities for truth, justice, reconciliation and healing. Finally, Section Four offers concluding remarks to summarize the main findings.

1 CONTEXT

South Sudan's secession from Sudan in 2011 has done little to promote peace and prosperity in the country. In December 2013, just two years after independence, the new Republic of South Sudan descended into a brutal and intractable conflict. Initially triggered by a political dispute among the leadership of the ruling Sudan People's Liberation Movement (SPLM) party, the intensity and intractability of the on-going conflict point to a number of underlying problems. Most notably, protracted conflict in South Sudan cannot be separated from the failure to delineate the military from politics, the inability to transform the country's oil wealth into tangible benefits for the majority of its people, widespread impunity for conflict-related abuses and the legacy of decades of violence and trauma from past wars.

The conflict has had a devastating impact on the population of South Sudan. Fighting has displaced over 2.2 million people, including 1.6 internally displaced persons (IDPs) and another 600,000 that have sought refuge in other countries. More than 4.5 million people face severe food insecurity, including 250,000 severely malnourished children.[5] The warring parties signed a peace agreement brokered by the Intergovernmental Authority for Development (IGAD) in August 2015, but at this writing, intense fighting persists in parts of the Greater Upper Nile region and there are troubling signs that the security situation in parts of Greater Equatoria is deteriorating. The subsections below provide additional information on the recently signed peace agreement and conflict dynamics in and around Malakal.

1.1 Agreement on the Resolution of the Crisis in South Sudan (ARCISS)

In August 2015, the Government of the Republic of South Sudan (GRSS) represented by President Salva Kiir Mayardiit, the Sudan People's Liberation Movement-in-Opposition (SPLM-IO) represented by Dr. Riek Machar Teny, and other stakeholders signed the *Agreement on the Resolution of the Conflict in the Republic of South Sudan* (ARCISS) purporting to end the 20-month-long conflict in the country.[6] The ARCISS lays out the terms of a Transitional Government of National Unity (TGONU) and commits the warring parties to an ambitious post-conflict stabilization and reform program. Over the course of the 30-month transitional period, the TGONU is expected to secure a permanent ceasefire, establish law and order, ensure humanitarian support for conflict-affected populations, facilitate the return or resettlement of displaced populations, organize national elections, develop a new constitution and enact comprehensive reforms across a range of governance sectors.

> *"I need peace to come so that I can manage myself, because I am still alive. But now, I'm getting old. I hope that peace shall come while I am still alive and healthy."*
> *- Resident of Malakal POC*

In addition, the ARCISS gives the TGONU responsibility for initiating a comprehensive program for truth, justice, reconciliation and healing. Chapter V of the agreement, entitled, "Transitional Justice, Accountability, Reconciliation and Healing," is structured around three national-level institutions: the Hybrid Court for South Sudan (HCSS), the Commission for Truth, Reconciliation and Healing (CTRH) and the Compensation and Reparations Authority (CRA). The HCSS would be staffed by a combination of South Sudanese and other African (non-South Sudanese) legal professionals, and would be responsible for bringing cases against individuals suspected of committing serious violations of

[5] United Nations Office for the Coordination of Humanitarian Affairs (UNOCHA) website, http://www.unocha.org/south-sudan/.

[6] In a 9 May 2014 agreement, IGAD broadened participation in the mediation effort beyond the two warring parties to include a number of other stakeholders, including a group of senior SPLM members and former political detainees known as the G-10, political parties other than the SPLM, religious leaders and civil society, among other groups.

international human rights and humanitarian law since 15 December 2013.[7] The CTRH would be responsible for investigating, documenting and reporting on human rights violations over a predetermined time period, promoting reconciliation and healing and making recommendations for how the Government can best address the legacy of conflict-related abuses.[8] The CRA would be responsible for providing compensation and reparations to victims of human rights violations in South Sudan.[9]

Throughout the mediation process, discussions about these institutions and general priorities for reform were restricted to a small number of high-level political figures, with little to no involvement from the general public in South Sudan. Moving forward, if the TGONU and supporting institutions are to be to be meaningful to and accepted by conflict-affected populations, a larger public consultation process will be required.[10] The on-going conflict in parts of the country and overt politicization and militarization of the public space greatly undermine the ability to conduct free and open consultations with conflict-affected populations. However, if the permanent ceasefire takes hold and South Sudan achieves a certain degree of stability, the extent to which populations are engaged on these issues will be an important indicator of the success of the transitional justice and national reconciliation programs moving forward. Such a community-based participatory approach not only ensures community empowerment, representation and participation, but is also critical to building trust and ensuring the sustainability of long-term peace-building efforts.

1.2 Conflict Dynamics in Malakal

> *"I came to the POC in 2013 on the 24th of December. I don't know where my children are until now. …We all ran in different directions when the war started."*
> - Resident of Malakal POC

Violence broke out in Juba on 15 December 2013, and quickly spread throughout the Greater Upper Nile region. The three state capitals of Bor, Bentiu and Malakal fell to SPLM-IO forces in quick succession on 18, 19 and 25 December 2013. By the third day of fighting in Malakal, 12,000 people had fled to the UN base on the outskirts of town.[11] Over the course of the conflict, Malakal changed hands between the warring parties twelve times.[12] Extensive conflict in and around Malakal town resulted in widespread looting and the destruction of at least 20 percent of the city.[13] During their respective occupations, both GRSS

[7] The HCSS would be established through domestic legislation and an agreement between the Government of the Republic of South Sudan (GRSS) and the African Union (AU), and would be "independent and distinct" from the national judiciary of South Sudan. Intergovernmental Authority on Development (IGAD), Agreement on the Resolution of the Crisis in South Sudan (ARCISS) (Aug. 2015), *available at* http://www.sudantribune.com/spip.php?article56093.

[8] Like the HCSS, the CTRH will be a hybrid institution primarily comprised of South Sudanese commissioners who will be supported by a smaller number of African (non-South Sudanese) commissioners. However, unlike the HCSS, the CTRH will be established entirely within the legal framework of South Sudan, and the executive branch of the TGONU will be responsible for appointing commissioners. ARCISS, *supra* note 7.

[9] Of the three institutions, the CRA has the least detail in the agreement. Most notably, the ARCISS does not stipulate who will qualify as a 'victim' and whether reparations will be provided in relation to past national conflicts, more localized inter-communal conflicts or just the national conflict that erupted in December 2013. ARCISS, *supra* note 7.

[10] The ARCISS provides for 1-month of consultations led by Ministry of Justice and civil society. ARCISS, *supra* note 7. However, given the low levels of awareness, it is unlikely that such a limited consultation exercise would be able to overcome the low levels of awareness with the agreement.

[11] People displaced from Malakal fled mostly in two directions: to the UNMISS base and to Wau Shilluk.

[12] Tim Franks, *Malakal: The city that vanished in South Sudan*, British Broadcasting Corporation (BBC) News (24 Oct. 2015), *available at* http://www.bbc.com/news/world-africa-34571435.

[13] United Nations Mission in 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

and SPLM-IO forces conducted extensive house-to-house searches and committed extra-judicial killings and acts of sexual violence, often along ethnic lines.

The military and political context in Upper Nile grew more complex following the defection of GRSS commander Johnson Olony in May 2015. Government forces instituted a blockade of the area, restricting travel by air, river and road to Malakal and the surrounding region. This blockade effectively cut a large swath of Upper Nile off from the rest of the country, and had a devastating impact on the food security of populations in and out of the POC camps.[14] During fieldwork for this study, approximately 15,000 people left an IDP settlement in Wau-Shilluk (about two hours by boat from Malakal town) and traveled to Malakal POC in search of food and safety. The population in the POC swelled from 30,000 to more than 45,000 people in just a few days, putting additional pressure on the already meager resources.

> *"I have not contributed to the war. I am just trying to hide. Why am I being targeted? …UNMISS here in the POC is a different country; it is not South Sudan. We are in the protection of the international community."*
> - Resident of Malakal POC

The most diverse of the six POCs in South Sudan, the population of the Malakal POC is overwhelmingly made up of people from three ethnic communities—Shilluk, Nuer and Dinka—who reside in segregated settlements within the camp.[15] Although the UN does not officially track populations according to ethnicity, the population of the POC broadly reflects that of Malakal town and the surrounding region, which is diverse but predominantly Shilluk. A considerable number of Dinka from Pigi County in Jonglei State and Baliet County in Upper Nile State have also sought refuge in the POC.

Relationships among these communities in the camp are determined by a range of factors, including access to humanitarian support, the political and military interests of armed groups outside the POC and preexisting inter-communal disputes linked to the access, use and management of land and land-based resources. Inter-communal tensions manifest in periodic rioting, as well as more discrete actions designed to restrict the movement of individuals and goods—mainly food and water—between ethnically segregated sections of the POC.[16]

The widespread land disputes between the communities that make up the POC present a serious challenge to the post-conflict transformation agenda envisaged by the ARCISS. The most pronounced of these disputes concerns a longstanding disagreement over the border between Shilluk and Padang Dinka communities in Upper Nile.[17] In fact, rather than referring to initial violence in Juba, many key informants state that disputes over land are the main reason that the Shilluk are participating in the conflict.[18]

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[14] The Government blockade affected large areas of Upper Nile State including the Malakal and Melut POC sites.
[15] Unlike the Shilluk and Nuer who were predominantly displaced from Malakal town itself, approximately half of the Dinka population was displaced from Pigi County in Jonglei State.
[16] Anonymous, Situational Analysis: Malakal POC Site (Feb. 2015), *available at* http://southsudanhumanitarianproject.com/wp-content/uploads/sites/21/formidable/Malakal-Situation-Analysis-External-Version.pdf.
[17] The dispute centers on a strip of land, anywhere from a dozen to a few dozen kilometers wide on the east bank of the Nile. According to the Shilluk, this land has always belonged to them and the Padang Dinka are trying to occupy this territory in order to build Dinka hegemony in Upper Nile. Conversely, the Dinka assert that the Nile itself forms the boundary between the two communities and that those Shilluk currently residing on the east bank of the Nile are doing so at the invitation of the Dinka.
[18] A presidential order issued in October 2015 seeking to redraw state boundaries and create 28 states out of the existing 10 is likely to further exacerbate the dispute between the Padang Dinka and the Shilluk. Indeed, a group of Shilluk previously aligned with the Government have already announced their defection to the SPLM-IO as a result of the decision to create more states. Sudan Tribune, *South Sudan armed opposition says 28 states order derails peace agreement* (19 Nov. 2015), *available at* http://www.sudantribune.com/spip.php?article57095.

Despite the importance of land disputes to understanding conflict in Upper Nile State, the IGAD-led mediation effort focused exclusively on national-level narratives, ignoring local conflicts that pre-date and fuelled the national crisis. Significant gaps between the way people understand the conflict at the local and national levels, and where they place priorities for reform highlight the inherent shortcomings of peace efforts that focus exclusively on a small number of high-level political actors. Moving forward, it will be important to think beyond the text of the ARCISS and consider how local grievances—such as the border dispute between the Shilluk and Padang Dinka—can be addressed so as to contribute to a longer-term and more sustainable solution to the conflict.

2 METHODS

Given the overall goals and timeline of the research project, our study employed a multi-stage mixed-methods approach designed to collect rigorous and reproducible data in a complex environment characterized by widespread fluidity and distrust. The mixed-methods approach included a household survey, semi-structured key informant interviews and focus group discussions. The sampling procedure drew on a series of purposive and random sampling techniques to provide a representative sample of participants from different ethnic groups, socio-economic statuses, livelihood strategies, geographic locations (prior to displacement) and exposure to conflict (previous and on-going). The household survey collected quantitative and qualitative data on perceptions of truth, justice, reconciliation and healing in the representative sample. The semi-structured interviews and focus group discussions allowed researchers to further triangulate responses and situate findings within historically rooted and evolving socio-political and economic relations.

2.1 Sample Plan

First, researchers stratified the POC population according to ethnic affiliation and geographic location within the camp, focusing primarily on the Dinka, Nuer and Shilluk populations.[19] The size of each stratum was determined using 'disproportionate allocation for between-strata analyses' designed to increase opportunities for comparison within and between groups. Second, researchers selected households in each stratum using a 'random walk technique' with a built-in skip pattern. Third, participants in each randomly selected household were identified using the Hagan-Collier 'Alternative' technique with fifty percent gender parity. Only individuals that were 18 years of age or older and South Sudanese nationals were included in the study.[20] Finally, lead researchers selected key informants and participants for semi-structured interviews and focus group discussions through a series of purposive sampling techniques designed to collect detailed information from key decision-makers and demographic groups (e.g. women, elders, youth and chiefs).[21]

2.2 Data Collection

Data were collected from 11-23 August 2015. During this period, 15 enumerators (13 men and 2 women) performed a total of 1178 household surveys, and two research supervisors performed a total of ten key informant interviews and four focus group discussions. All enumerators were South Sudanese nationals, familiar with the local context, proficient in English and fluent in languages spoken by the respondents. Enumerators received three days of training on the protection of human subjects, gender and trauma sensitivity, and techniques for administering surveys.[22]

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[19] These three groups are not only the largest ethnic groups in the Greater Upper Nile Region (and therefore the Malakal POC), but are also the three ethnic groups most closely associated with the on-going conflict.

[20] The H-C 'Alternative' is especially useful in fragile and conflict-affected environments as it minimizes potential error without requiring participants to complete a household roster or know their exact date of birth.

[21] Researchers used a combination of target, chain and purposive sampling techniques. Target (criterion) sampling was designed to locate key segments of the population (women, elders, and youth, as well as urban and rural inhabitants). Chain (snowball) sampling allowed researchers to follow up on issues raised in specific interviews. Finally, all forms of random and purposive sampling are characterized by a degree of convenience. This is especially true when working with communities that have recently been exposed to violence and other traumatic events.

[22] Previous large-scale research projects in South Sudan's POC sites demonstrate the importance of hiring enumerators from within the POC. Beyond working in partnership with local populations, bringing in outsiders (even from the same ethnic group) can undermine the physical security of the respondent and quality of data collected. To this end, we asked community leaders inside the Malakal POC to short-list 20 enumerators for initial training. Despite repeatedly asking for an equal number of men and women, researchers were unable to recruit more

Quantitative data were collected via a household survey implemented using the KoBoToolbox programme for Android-based smartphones.[23] In the interest of security and confidentiality, respondents were not identified by name or code. The survey instrument consisted of 11 interdependent question modules that drew extensively on similar studies from South Sudan and other post-conflict environments.[24] Modules included questions on demographics, on-going peace processes, reconciliation and social healing, truth and remembrance, accountability, amnesties, reparations, shelter and land disputes, as well as exposure to trauma and post-traumatic stress disorder (PTSD).[25] All participants provided verbal informed consent to participate in the study.

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than two female enumerators. On the one hand, the low number of female enumerators is a direct result of the project timeline, which did not allow sufficient time to translate the survey tool into classical Arabic (the main language of the Upper Nile Region). Unsurprisingly, high rates of illiteracy (in general, and especially among women), unequal access to education, and the premium that NGOs working in the POC place on educated English-speaking women dramatically reduced the number of available candidates. On the other hand, the extent to which we relied on local stakeholders to short-list initial candidates also reduced the number of female enumerators. Specifically, it quickly became apparent during training that local stakeholders sent their wives and family members in place of women that had the linguistic and technical skills needed to participate in the fieldwork.

[23] KoBoToolbox 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.

[24] 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, *Malians 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_policypaperno13.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.

[25] The trauma exposure and PTSD modules used the Harvard Trauma Questionnaire (HTQ) to assess 16 different types of traumatic events and PTSD symptoms. 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 (thus a total score greater than 2.5 on the HTQ), and/or met DSM-IV criteria for PTSD (one or more intrusion symptoms, three or more avoidance symptoms, and two or more hyperarousal symptoms). 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. *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.

3 RESULTS

3.1 Sample Characteristics

The survey sample consists of 1,178 individuals, all of whom reside in the Malakal POC (see Table 1). The sample is 50 percent male and 50 percent female, with most people (36%) falling in the 35 to 47-year-old age group. Thirty-one percent of respondents identify as civil servants, and 28 percent say they have no occupation.[26] In terms of income, 62 percent of respondents report no source of household income, and an additional 16 percent report a household income of 500 South Sudanese Pounds (SSP) per month or less.[27] Forty-two percent of respondents have no schooling, while 11 percent have completed university. The self-reported literacy rate is 55 percent. In the interest of building trust with respondents in an insecure setting, researchers did not test respondents' abilities to read and write. As such, the actual literacy rate may be lower than what is reported.[28] Thirteen percent of respondents have fought as combatants at some point in their lives, and three percent identify as current combatants. Respondents primarily belong to the three most populous ethnic groups in the POC: Shilluk, Nuer and Dinka.[29]

Table 1: Overview of sample population

Ethnicity	No. of Respondents	Males	Females	Pct. of Sample
Dinka	351	177	174	34.0
Nuer	418	213	205	35.5
Shilluk	400	195	205	29.8
Other	9	3	6	0.7
Total	**1178**	**588**	**590**	**100**

3.2 Displacement Trends

Most respondents were displaced from Malakal County (71%) in Upper Nile State or Pigi County (15%) in Jonglei State (see map below). The population displaced from Malakal town is quite diverse and includes people from all three major ethnic groups. Conversely, respondents displaced from Pigi County are primarily Dinka.

[26] The relatively large number of civil servants is indicative of Malakal's status as State capital and South Sudan's 'second city', as well as the neo-patrimonial bureaucratic structure of the newly independent state.
[27] Five hundred South Sudanese Pounds (SSP) is about $167 USD at the official rate and $33 USD at the black market rate.
[28] As of the most recent census in 2011, the national literacy rate in South Sudan is 27 percent. In addition to any errors caused by self-reporting, the relatively high literacy rate in our sample is also characteristic of the urban-rural divide in access to education and public services. Specifically, literacy rates are higher in the Malakal POC simply because the overwhelming majority of the camp (and therefore our random sample) was displaced from Malakal town, where residents had much better access to schools and public services.
[29] A small fraction of respondents (less than one percent) belong to other South Sudanese ethnic groups, including Murle, Anyuak and Pojulu.

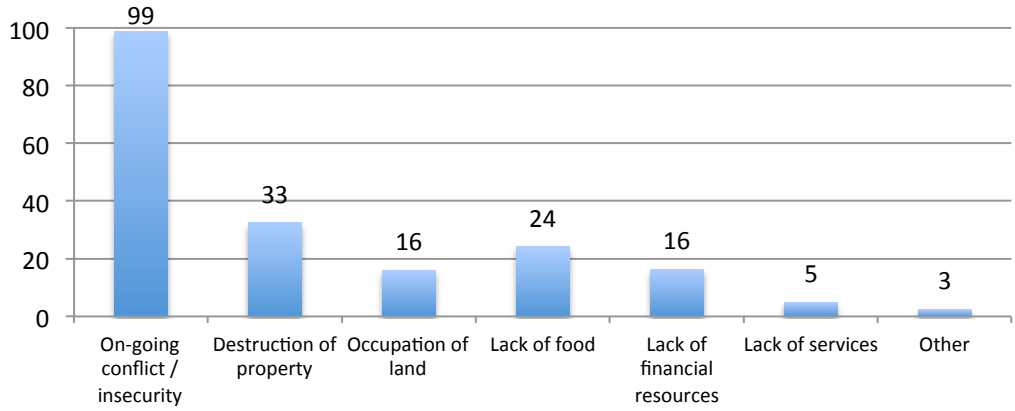
Map of county of origin for IDPs in Malakal POC*

* Map depicts counties of origin as a percentage of the survey sample.

With regard to the obstacles preventing large-scale return or resettlement, an overwhelming 99 per cent of respondents cite the on-going conflict as their primary reason for not returning home (see Figure 1). A sizeable number of respondents also report that property destruction (33%) and occupation of land (16%) inhibit returns. The prevalence and intensity of land disputes within and between communities demonstrates that land use and management systems are essential components of durable solutions to internal displacement. Lastly, almost one quarter of respondents cite lack of food as a reason for not returning home. The conflict has disrupted local modes of production and consumption, and existing food insecurity was further exacerbated by a GRSS blockade of Malakal and other key communities along the Nile River.[30] As noted above, during the period of data collection for this survey, approximately 15,000 people traveled from an IDP settlement in Wau-Shilluk to the Malakal POC in search of food.

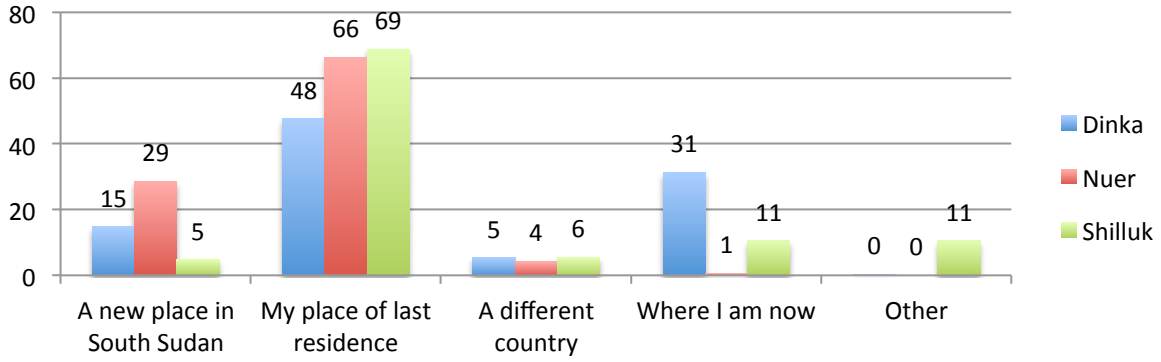
[30] The GRSS lifted the month-long blockade of air and river routes on the second week of August 2015. UN News Centre, *Month-long blockade of aid routes lifted in South Sudan, allowing UN to access conflict-torn areas* (14 Aug. 2015), *available at* http://www.un.org/apps/news/story.asp?NewsID=51637#.Vi5WthCrTu0; Radio Tamazuj, *Rights group calls on President Kiir to end Upper Nile aid blockade* (3 Aug. 2015), *available at* https://radiotamazuj.org/en/article/rights-group-calls-president-kiir-end-upper-nile-aid-blockade.

Figure 1: What is preventing you from returning home? (%)



Despite these obstacles, most respondents (62%) maintain that they would prefer to return to their place of last residence. However, a sizeable portion of Dinka respondents (31%), many of whom were displaced from Pigi and Baliet Counties, state that they would rather stay where they are now (see Figure 2). These results can be attributed to high levels of insecurity in respondents' places of last residence and national trends in rural to urban migration, as displaced populations from rural areas seek out improved security and better access to public services and humanitarian aid in urban areas. Additionally, more males (67%) compared to females (56%) say that they would prefer to return to their place of last residence, while more females (20%) compared to males (7%) would rather stay where they are now. This finding illustrates how the conflict has impacted men and women differently. Most notably, the widespread and systematic use of sexual and gender-based violence by armed groups on both sides of the political divide has produced greater feelings of insecurity among female respondents, preventing them from wanting to return to their prior homes.

Figure 2: Where would you prefer to live? x Ethnicity (%)



Moving forward, it will be critical to anticipate the challenges that are likely to arise in the return and resettlement process, and put in place measures to address them beforehand. There is a pressing need to establish flexible but legitimate and accessible mechanisms for resolving disputes associated with large-scale return and resettlement. Data demonstrate that security is currently the main concern, and people will not be willing to leave the POC until a minimum degree of stability has been achieved. In addition to abiding by the terms of the permanent ceasefire in the ARCISS, the demilitarization of Malakal (discussed in Section 3.7 below) has the potential to further incentivize returns and increase confidence in the peace process.

Land and property issues will also present challenges to the return and resettlement process. The ARCISS calls for a Special Reconstruction Fund to be established within the first month of the transitional period with contributions from the TGONU and its international partners.[31] If established, such a fund could provide valuable assistance to people whose homes and property were damaged, destroyed or lost. The state should also consider providing reparations to people who lost property as a way to account for some of the harm that the conflict has done to local livelihoods and help people to resume their lives.

3.3 Awareness of the Peace Process

Respondents in the Malakal POC seem to be more aware of the IGAD-led peace process than communities in many other locations in South Sudan. In a recent survey conducted by the SSLS and the United Nations Development Programme (UNDP) in 11 locations across six states and Abyei, 59 percent of respondents were aware of the IGAD peace process.[32] Comparatively, the current study finds that 75 percent of respondents from the Malakal POC are aware of the IGAD process. The higher levels of awareness in Malakal reflect the ease with which information flows through the POC, as well as a potentially greater stake that a population comprised entirely of IDPs has in the outcome of the peace process. However, the fact that a quarter of respondents in Malakal are still not aware of the primary mechanism by which the warring parties were trying to secure peace demonstrates the extent to which stakeholders involved with the process failed to make the mediation effort meaningful to many South Sudanese.

Despite general awareness of the IGAD-led peace process, significant differences emerge across demographic groups. Most notably, women are far less likely to be aware of the IGAD peace process than men. Specifically, 90 percent of male but only 40 percent of female respondents from the Malakal POC are aware of the IGAD peace process (see Figure 3).[33] The gender discrepancy in these statistics provides a stark reminder of obstacles to women's participation in public life in South Sudan, and the need for programs to account for the ways that asymmetrical access to information impacts opportunities for peace.[34] As a women's leader in Malakal explains:

> "I think part of it is culture. In all the ten states, but especially in Greater Upper Nile, men see women as second class to them. Even some educated men now, when you talk as an educated woman, they will say, 'Woman, what are you talking about?' They still see you as just a woman."[35]

[31] ARCISS, *supra* note 7, Ch. II, § 2.

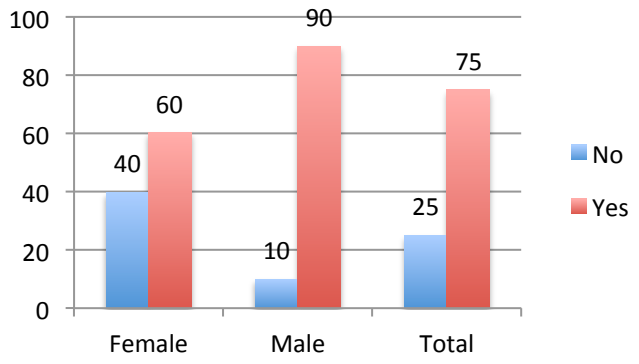
[32] David K. Deng, Belkys Lopez, Matthew F. Pritchard and Lauren C. Ng, *Search for a New Beginning: Perceptions of Truth, Justice, Reconciliation and Healing in South Sudan*, South Sudan Law Society (SSLS), United Nations Development Programme (UNDP), Embassy of the Kingdom of the Netherlands in South Sudan and RSS Ministry of Justice (Jun. 2015), *available at* http://www.ss.undp.org/content/dam/southsudan/library/Rule%20of%20Law/Perception%20Survey%20Report%20Transitional%20Justice%20Reconciliation%20and%20Healing%20-.pdf.

[33] These statistics are similar to those found in the SSLS/UNDP survey, where 82 percent of men but only 46 percent of women were aware of the IGAD process.

[34] Women also demonstrated less confidence in IGAD than men. Whereas 57 percent of men had little or no confidence in IGAD's ability to bring peace, 66 percent of women had little or confidence in IGAD.

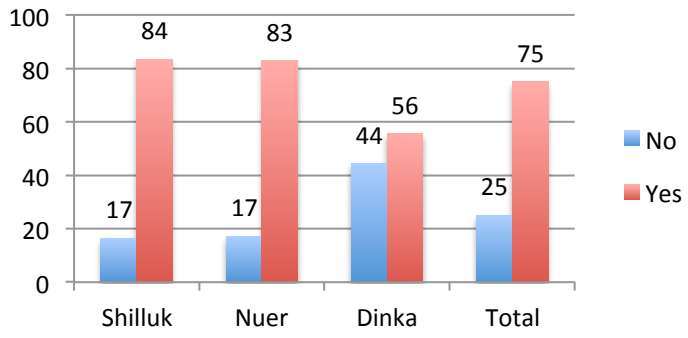
[35] Interview with women's group leader in the Malakal POC (16 Aug. 2015)

Figure 3: Awareness of IGAD x Gender (%)



Differences in the extent to which respondents are aware of the IGAD-led peace process are also apparent across ethnic communities. Eighty-four percent of Shilluk and 83 percent of Nuer are aware of the IGAD process, compared to only 56 percent of Dinka (see Figure 4). The fact that many of the Dinka residents came from rural areas such as Pigi or Baliet Counties, where they would have had less access to information, may account for why they are not as informed about the peace process.

Figure 4: Awareness of IGAD x Ethnicity (%)



Although people in the Malakal POC are more aware of the peace process than communities in other parts of the country, this awareness has not translated into confidence that an IGAD-brokered agreement can bring peace. Of those respondents who are aware of the IGAD process, 61 percent state that they have little or no confidence in its ability to secure lasting peace. At times, people's perceptions of IGAD borders on outright hostility. According to a community leader in the POC: "I'm blaming IGAD. They want to destroy South Sudan. They want to take it over. They are not working for the benefit of the South."[36]

This sense of frustration is a product of several failed peace agreements and the active role that Uganda and Sudan—both IGAD members—have played in both the conflict and mediation effort. However, despite a general lack of confidence in the peace process, many people viewed the 17 August deadline for the signing of an agreement as the only hope to end the fighting.

> "What will happen on August 17th is a final thing. If the peace agreement is not signed then there is nothing that South Sudanese can do. In the eyes of South Sudanese, if there is no

[36] Focus group discussion with Dinka community leaders in the Malakal POC (15 Aug. 2015).

signing of the peace agreement, then this has become a country with no rule of law and we will not be surprised if there is mass fighting that is happening in South Sudan."[37]

In August 2015, shortly after conducting the survey, the GRSS, SPLM-IO and other stakeholders signed the ARCISS. Despite their commitments to adhere to the terms of a permanent ceasefire, the fighting in Unity and Upper Nile intensified almost immediately. Survey data suggest that people are losing hope in the ability of IGAD to broker a sustainable solution to the crisis. Indeed, it is difficult for the peace process to garner support if the parties continue to violate the terms of the agreement. While silencing the guns is an essential first step, a ceasefire will only signal the start of a long and complicated peace-building process. A key challenge facing successful implementation of the ARCISS is that fact that many South Sudanese are unfamiliar with important aspects of the agreement. If the ARCISS is to address key drivers of conflict, a mass civic engagement effort will be needed to educate people about the terms of the agreement and give them some sense of ownership over the outcome.[38]

3.4 PTSD and Exposure to Trauma

Survey data demonstrate the scale of the trauma and mental health crisis in South Sudan. Fifty-three percent[39] of respondents exhibit symptoms consistent with a diagnosis of post-traumatic stress disorder (PTSD).[40] 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.[41] Although the PTSD rates in Malakal are on an order of magnitude higher than those in the United States, they are not unusual for post-conflict environments. Similar rates were documented in the aftermath of the Rwandan and Cambodian genocides, as well as in previous studies in South Sudan.[42]

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[37] Focus group discussion with Nuer community leaders in Malakal POC (16 Aug. 2015).

[38] Awareness of national peace and reconciliation efforts, such as those of the Committee on National Healing, Peace and Reconciliation (CNHPR) and the National Platform on Peace and Reconciliation (NPPR) are considerably lower in Malakal than the level found in the SSLS/UNDP survey. Whereas 36 percent of respondents were familiar with the CNHPR and 30 percent were aware of the NPPR in the SSLS/UNDP survey, just 16 percent of respondents were familiar with the CNHPR and 12 percent with the NPPR in Malakal. These low levels of awareness likely reflect the difficulty that these national institutions, which were formed before the conflict, have had in reaching populations in the conflict zone.

[39] This percentage is considerably higher than the 41 percent of respondents that exhibited symptoms consistent with a diagnosis of PTSD across the 11 locations surveyed in the UNDP/SSLS survey. *Search for a New Beginning*, *supra* note 32.

[40] For ease of reading, we identify participants 'that meet the minimum diagnostic criteria of PTSD' as participants 'with PTSD' for the remainder of the paper. Similarly, those that fall below scale cut-off score have been referred to as participants 'without PTSD' in this paper. However, it should be noted that findings regarding PTSD status are based on the cut-off score used by the Harvard Trauma Questionnaire. Caution should be exercised while making broader generalizations about the clinical significance of the findings.

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

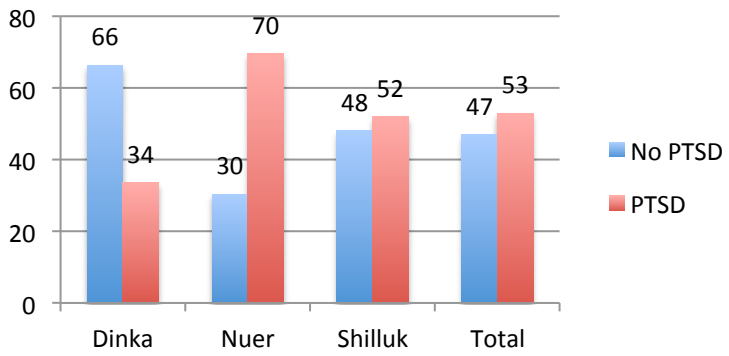
[42] *See* Phuong N. Pham, Harvey M. Weinstein and Timothy Longman, *Trauma and PTSD symptoms in Rwanda: implications for attitudes toward justice and reconciliation*, 292 JAMA 602 (4 Aug. 2004), *available at* http://jama.jamanetwork.com/article.aspx?articleid=199193; Christophe Pierre Bayer, Fionna 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; 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*

High prevalence and incidence rates of PTSD and trauma in a population 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, and have greater feelings of revenge. Furthermore, these studies demonstrate that PTSD reduces an individuals' willingness to reconcile and report satisfaction with the punishment of perpetrators, apologies by perpetrators and remuneration for suffering.[43] Despite the considerable prevalence of PTSD and billions of dollars spent on humanitarian aid in South Sudan, relatively little is being done to address the mental health concerns of populations that have been directly exposed to large-scale violence. According to a community leader in the Malakal POC:

> "These traumatized people, there's nothing that can be done for them now, unless peace comes and then everyone can be helped, and then they will be forgetting the trauma. But if there is no peace, they will remain like this, because there is no help. Nobody will be able to help. The UN here is just giving you food and there are other things that they can't provide up to now."[44]

Although there is no significant difference between male and female respondents, sharp discrepancies emerge across ethnic communities. Most notably, 70 percent of Nuer, 52 percent of Shilluk and 34 percent of Dinka exhibit symptoms consistent with a diagnosis of PTSD (see Figure 5). Beyond variations in exposure to conflict and differences in coping mechanisms, further research can help better understand the dramatic variations within and between ethnic groups.

Figure 5: PTSD status x Ethnicity (%)



The high percentage of people with PTSD in this sample corresponds with exposure to a large number of traumatic events. Seventy-seven percent of respondents had a close family member killed at some point in their lives, and 58 percent witnessed a friend or family member being killed. The destruction of property was the most common traumatic event, with 84 percent of

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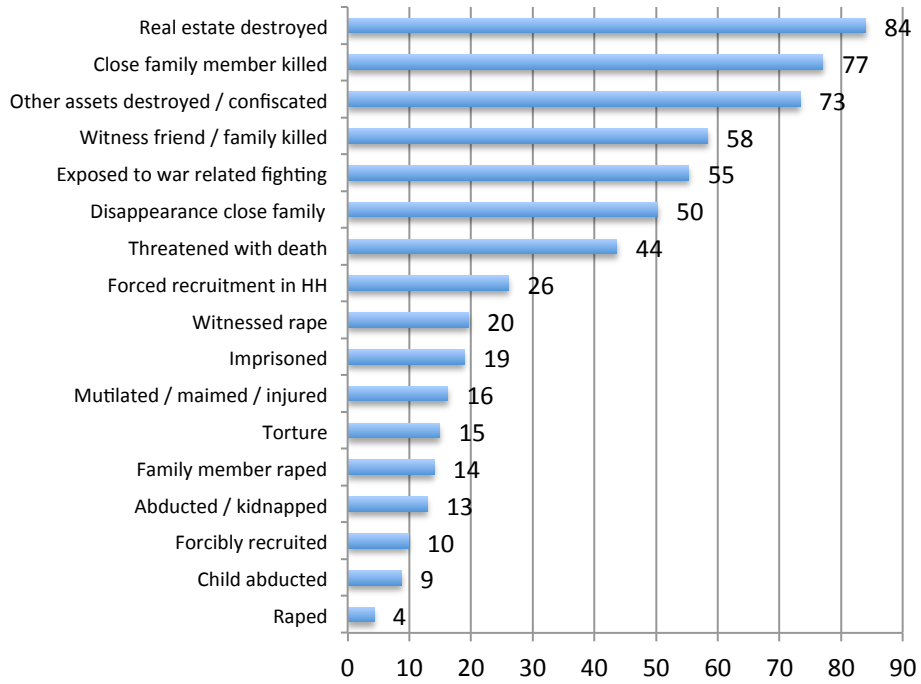
among displaced Darfuri female university students: an exploratory study, 12 BMC Public Health 603 (2012), *available at* http://www.biomedcentral.com/content/pdf/1471-2458-12-603.pdf; Susan M. Meffert *et al.*, *Feelings of betrayal by the United Nations High Commissioner for Refugees and emotionally 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.

[43] *See* Pham *et al.*, *supra* note 42; Bayer *et al.*, *supra* note 42; Sonis *et al.*, *supra* note 42.

[44] Interview with older Shilluk community leader in Malakal POC (15 Aug. 2015).

participants reporting the destruction of their home or other real estate at some point in their lives (see Figure 6).

Figure 6: Exposure to traumatic events (%)



Although the survey collected data on traumatic events throughout the respondent's lifetime, the overwhelming majority of traumatic experiences occurred in 2014 and are associated with the on-going conflict. The extent to which civilians have been exposed to violence is linked to the fact that Malakal has changed hands between the warring parties twelve times since the start of the conflict, with numerous human rights abuses committed with each change of control.[45] A female interviewee in the Malakal POC described one incident in which a woman was shot in front of her when she was working in Malakal hospital:

> "Last year, when I was still in Malakal hospital, when it was under the control of the Opposition, they came and they were asking for money and cell phones from the people. All of a sudden they shot one woman dead, without any cause. So everyone was surprised, wondering why did they shoot this person. They did not even ask her about money and she did not say, 'I don't have'. They were just asking other people around her and all of a sudden they turned the gun to her and shot her dead."[46]

Levels of exposure to trauma vary across ethnic communities. Property damage is highest among the Shilluk and the Dinka. Ninety-five percent of Shilluk and 92 percent of Dinka, but just 68 percent of Nuer report that their homes or other real estate have been destroyed. However, Nuer respondents appear to have been exposed to higher levels of sexual violence than Dinka or Shilluk.[47] Thirty-four percent of Nuer have witnessed rape, 17 percent report that a family

[45] *Malakal: The city that vanished in South Sudan*, *supra* note 12.
[46] Interview with women's group leader, *supra* note 35.
[47] It is highly likely that our results underestimate the prevalence of rape due to several methodological and cultural constraints. First, a household survey designed to collect large-amounts of quantitative data rarely has the nuance or flexibility required to collect accurate and detailed responses on the prevalence of sexual violence. Second, the low number of female enumerators available to collect survey data also impacts responses. Previous experience demonstrates that women are generally much more comfortable discussing exposure to sexual violence with other

member has been raped, and eight percent say that they themselves have been raped at some point in their lives (see Figure 7). The incidence of rape is especially high among female Nuer respondents. Seventeen percent of female Nuer respondents state that they have been raped at some point in their lives. This represents a dramatic increase from the four percent of Dinka women and two percent of Shilluk women (see Figure 8). Abduction also appears to have disproportionately impacted the Nuer community. Twenty-four percent of Nuer respondents report that they have been abducted or kidnapped at some point in their lives, compared to seven percent of Shilluk and six percent of Dinka.

Figure 7: Exposure to rape x Ethnicity (%)

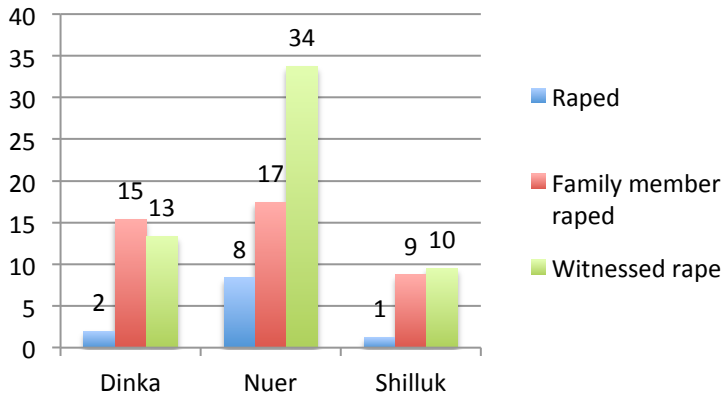
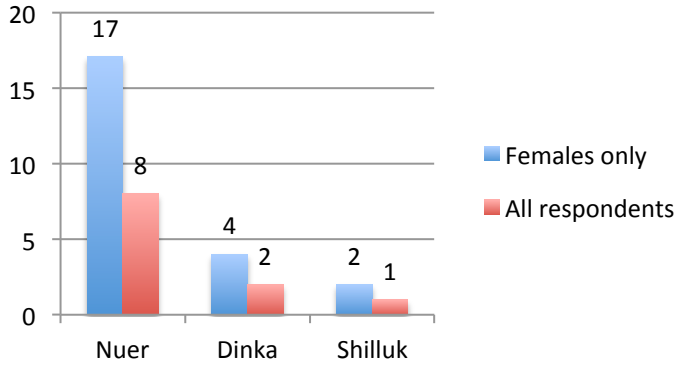


Figure 8: Respondents who have been raped (%)



Numerous reports from media outlets and human rights organizations document the systematic use of sexual violence, including rape and sexual slavery, as a weapon of war by all sides in the conflict. In September 2015, Al Jazeera reported that thousands of women and girls in Unity State had been abducted and taken to military bases or cattle camps to become wives or slaves.[48] According to a report by protection actors, at least 1,000 civilians were killed, 1,300 women and girls were raped, and 1,600 women and children were abducted in Unity State during fighting between April and September 2015.[49] After a trip to Unity State in October 2014, Zainab Bangura, the UN Special Envoy on Sexual Violence, observed:

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women. Finally, we also acknowledged that collecting data on rape and other forms of sexual violence in a highly structured patriarchal society that stigmatizes women's sexuality dramatically reduces incentives to share detailed accounts of sexual violence.

[48] Hannah McNeish, *Reliving the rape camps of South Sudan's civil war*, Al Jazeera (29 Sep. 2015), *available at* http://www.aljazeera.com/indepth/features/2015/09/reliving-rape-camps-south-sudan-civil-war-150929121909936.html.

[49] *Id.*

> "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."[50]

Children have also been targeted in an attempt to maximize the destructive impact of conflict on communities. According to survivors of a Government offensive in Unity State in May 2015, GRSS forces and allied militia castrated boys and left them to bleed to death, gang-raped and murdered girls as young as eight, tied children together and slit their throats, and threw other children into burning buildings.[51] UNICEF reported that at least 129 children were killed in Unity State during a three-week span in May 2015.

Unfortunately, these types of reports are no longer the exception, but have increasingly become the norm, and demonstrate significant changes in the methods and end-goals of large-scale conflict in South Sudan. Customary norms that traditionally prohibit violence against women and children have done little to curb atrocities. A women's leader in the Malakal POC explained how these cultural attitudes are changing:

> "The general culture, even from the Old Sudan, was that you cannot kill a woman or child, but now it has changed. Now they rape during this war and they can even kill women. Some of the soldiers are saying, 'The woman are just the same like soldiers, why should we leave them?'"[52]

In addition to the erosion of customary norms of warfare, the way in which the on-going conflict is deeply intertwined with national politics cuts across ethnic boundaries and has precipitated a more complete breakdown in law and order than that which typically accompanies more localized violence. This may also account for the use of more extreme tactics by the warring parties and their allied militia. As a community leader in the POC explained:

> "There is a very big difference between a conflict that is in a traditional way and this conflict. In the traditional way it is much more organized and people are a bit loyal to the laws. In this conflict that has happened, it isn't only against the Nuer; it is about all tribes. And also there are people who have been opportunistic and have taken over the conflict because they kill an individual and take money or possessions or whatever they can take from an individual. Some men will want to gratify their desires. And so it is very different from that [traditional] conflict.[53]

The breakdown of customary norms of warfare is not new, and can be traced to the way that South Sudan's military-political elite has repeatedly exploited inter-communal disputes to both reinforce and challenge the state formation process. Yet, a considerable number of respondents claim that the main reason why armed actors are currently targeting women and children is to instill fear and 'wipe people out'. This type of language represents an alarming shift away from the targeting of civilians as a way to control the movement of human and political capital, to

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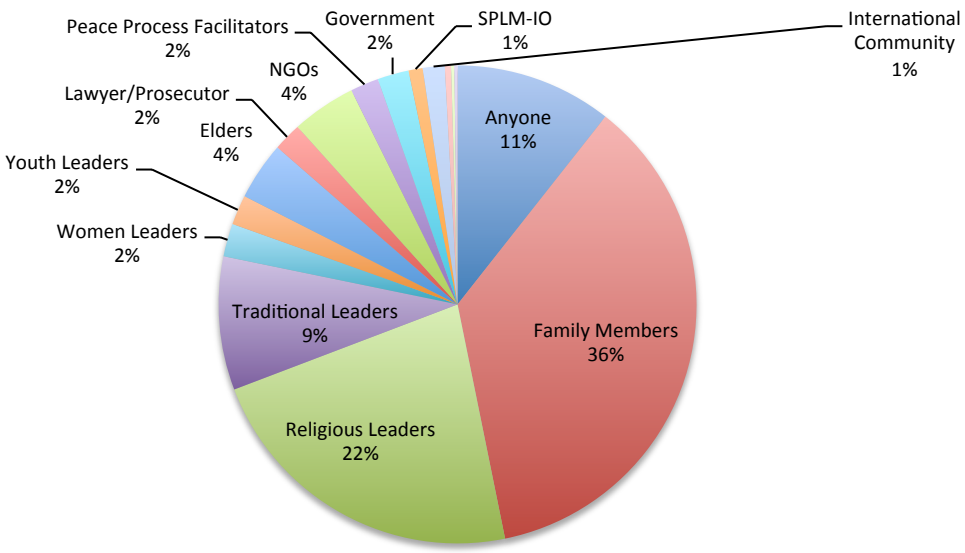
[50] Louis Charbonneau, *South Sudan sexual violence 'rampant,' two-year-old raped: U.N.*, Reuters (20 Oct. 2014), *available at* http://www.reuters.com/article/2014/10/20/us-southsudan-un-idUSKCN0I92C320141020.
[51] *UNICEF estimates up to 129 children massacred in South Sudan last month*, Radio Tamazuj (18 Jun. 2015), *available at* https://radiotamazuj.org/en/article/unicef-estimates-129-children-massacred-south-sudan-last-month.
[52] Interview with women's group leader, *supra* note 35.
[53] Interview with Nuer community leader in Malakal POC (16 Aug. 2015).

something more reminiscent of ethnic cleansing.[54] According to a Dinka leader from Baliet County:

> "We believe group N [Nuer] is trying to finish D [Dinka]. That is why they are killing women and children… Group N wants to eliminate D in Greater Upper Nile. They want to finish D in Greater Upper Nile or tell them to go to Western Bahr El Ghazal."[55]

The widespread exposure to traumatic events and the resulting prevalence of PTSD have major implications for the peace process. In light of the extensive exposure to trauma and lack of institutional (and financial) capacity to address PTSD, a careful assessment of existing coping mechanisms and forms of psychosocial support can provide a useful starting point for reconciliation programs. Survey data suggest that family (kinship) networks and religious institutions are two key areas of support. When asked '*With whom would you want to speak privately about traumatic events experienced since December 2013?*', 36 percent of respondents answer '*family members*' and 22 percent say '*religious leaders*' (see Figure 9). Understanding the types of services that these institutions can provide and where gaps arise can help reinforce and extend existing resources at the local level. Local support mechanisms can also be factored into the truth, justice, reconciliation and healing program more broadly, particularly in terms of providing psychosocial support to survivors of human rights abuses. Moreover, existing and new psychosocial interventions should incorporate social-ecological models[56] to target different levels of the individuals' ecosystems such that coping and support mechanisms encompass individual counseling, family support, traditional healers, community organizations, and international NGOs.

Figure 9: With whom would you want to speak about your traumatic experiences? (%)



[54] At the same time, local narratives of the conflict cannot be removed from the ways that different communities use competing narratives to garner support and assistance.

[55] Meeting with leaders and key informants from the Dinka community. In many cases respondents use a 'code' in order to talk about ethnic groups in the camp without risking conflict. Group D refers to Dinka, N to Nuer and C to Shilluk.

[56] Social-ecological models of health promotion help understand the factors contributing to the individual's health and development by studying the interaction between them, their families, their communities and the infrastructural, political and institutional contexts they are a part of. Interventions targeting these various levels are more likely to have a larger and more long-term impact on health outcomes.

3.5 Inter-communal Relations

In addition to its impact on the mental health of respondents, the conflict is also doing severe harm to inter-communal relations. Most notably, 83 percent of respondents indicate that their view of other ethnic groups has changed for the worse as a result of the conflict, and 60 percent assert that people from other ethnic groups cannot be trusted (see Figure 12 and Figure 13).[57] According to a Nuer woman residing in the Malakal POC:

> "We are very afraid of those [Dinka]. If there are people [Nuer] who want to go to the camp of the Dinka, they will not return. The Dinka will catch them and kill them. They will not come again."[58]

People from Dinka and Shilluk communities express similar sentiments about moving to parts of the POC occupied by other communities.

Participants with PTSD display higher levels of distrust and greater deterioration in their views of other ethnic groups than those without PTSD (see Figure 10 and Figure 11). The more negative attitudes among people with PTSD suggests that efforts to provide psychosocial support and healing for traumatized persons can help to create an environment that is conducive to reconciliation, while at the same time providing relief to individual survivors.

Figure 10: Can people from other ethnic groups be trusted? x PTSD status (%)

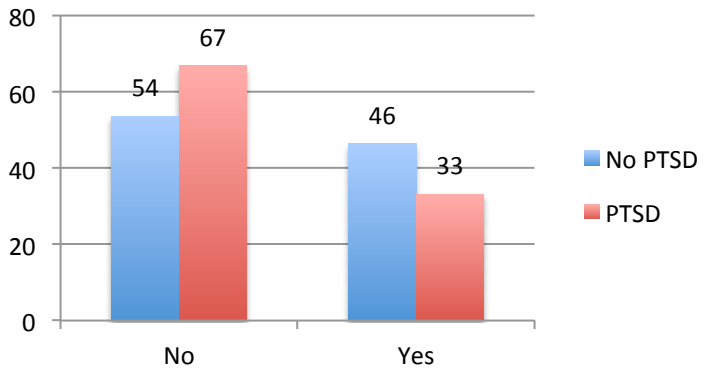
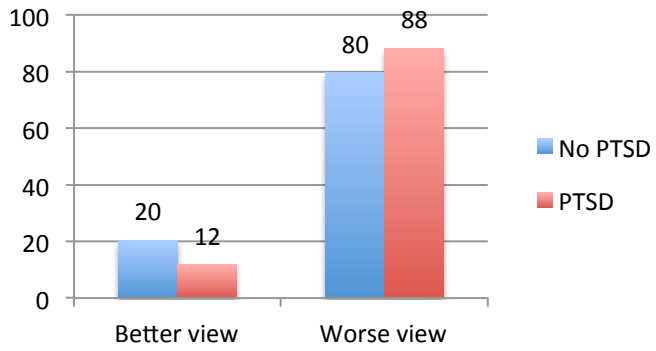


Figure 11: Change in view of other ethnic groups x PTSD status (%)



[57] Communities that are directly exposed to conflict are particularly affected, such as those residing in the Malakal POC. These findings resonate with those of the UNDP/SSLS survey, where the ethnic groups most directly associated with the conflict—Dinka, Nuer and Shilluk—were also the most likely to report a negative change in their view of other ethnic groups. *Search for a New Beginning, supra* note 32.

[58] Interview with older Nuer female in the Malakal POC (14 Aug. 2015).

Of the three ethnic groups in the Malakal POC, the most negative views on inter-communal relations are found among the Shilluk. Ninety-one percent of Shilluk respondents state that their view of other ethnic groups has changed for the worse as a result of the conflict, and 80 percent say that people from other ethnic groups cannot be trusted. Shilluk armed groups have fought with and against both the GRSS and SPLM-IO at various points during the conflict. These shifting military alliances may partly account for their heightened feelings of distrust as compared with those of the Dinka and Nuer. Perceptions of marginalization in national politics may also provide an explanation. Although the Shilluk are the largest ethnic group the Malakal POC and surrounding area, they are the third most populous group nationally, with less representation in national government than the Dinka or Nuer. As stated by a Shilluk elder:

> "This problem actually is caused by two tribes, which is Dinka and Nuer; Salva as President and Riek as Vice President. They are fighting for these posts. And they victimized Shilluk. Shilluk, they don't have interest in this war, but they are forced to fight."[59]

Figure 12: Change in view of other ethnic groups x Ethnicity (%)

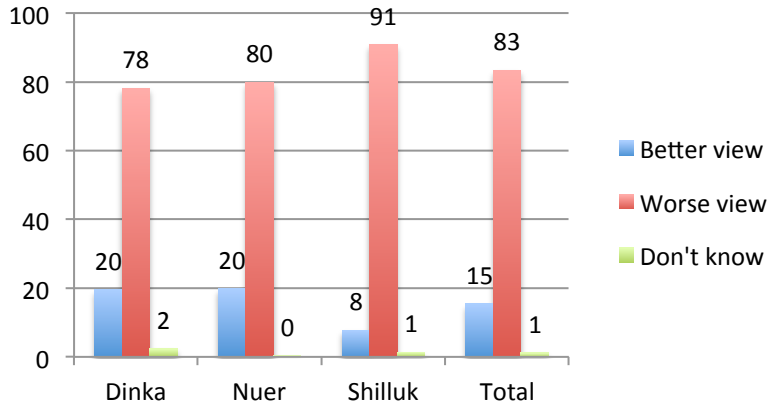
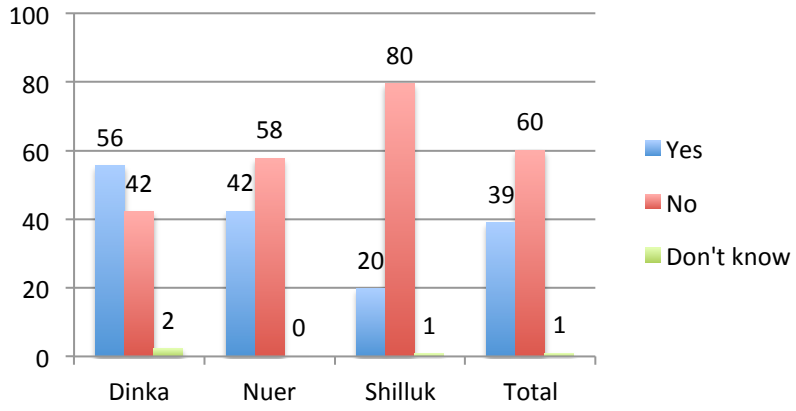


Figure 13: Can other ethnic groups be trusted? x Ethnicity (%)



Both male (83%) and female (84%) respondents state that their views of other ethnic groups have changed for the worse as a result of the conflict, indicating the overall negative impact of the conflict on people's attitudes. Younger respondents express higher levels of trust for people from other ethnic groups than older respondents. When coupled with an increased willingness to forgive among younger generations (see Section 3.6), this finding suggests that the younger

[59] Interview with Shilluk elder in Malakal POC (15 Aug. 2015)

generation has a greater interest in a shared future with people from other ethnic communities. A more pronounced desire for stable inter-communal relations is not necessarily surprising as younger generations are often more cosmopolitan, have better access to education than previous generations, and may not have been exposed to the repeated trauma experienced by older people. This all contributes to a less pronounced retributive mindset among the younger generation.

In addition to gauging levels of trust and overall changes in opinions of other ethnic groups, the survey posed a series of questions designed to provide a more detailed breakdown of socio-political and economic relations between communities. First, with regard to intermarriage, 43 percent of respondents state that they are not comfortable with a family member marrying someone from another ethnic group. Opposition to intermarriage is particularly high among respondents with PTSD, 48 percent of whom oppose intermarriage (compared to just 37 percent of those without PTSD).

Intermarriage has historically been a tool for building ties across communities in South Sudan, and the fact that such a high percentage of people oppose the practice is a signal of how much inter-communal relations have deteriorated. When asked whether she would accept for one of her daughters to marry a Dinka man, a Nuer woman responded: "No, I will not, unless I die first. If I am still alive, no Dinka will marry my daughter."[60] A female leader noted similar changes among the Shilluk community:

> "[Resistance to intermarriage] is increased by the current crisis. Like now, many Shilluk women, the older ones, they are saying they do not want our daughters to get married by Dinka. But the young ladies are not listening."[61]

Second, in addition to reductions in the social acceptance of intermarriage, 51 percent of respondents assert that they would not vote for a political leader from another ethnic group, and another 50 percent say that they would prefer to live in a community of just their own ethnic group. A participant in a focus group of Dinka community elders linked the heightened importance of ethnic affiliation to inter-communal atrocities that have occurred during the conflict: "When our man is killed and they take a nail and cut the stomach open and nail it. Can such people live together?"[62]

Despite the obvious breakdown in relations between ethnic communities, many participants aspire to a situation in which residents of the POC are insulated from political and military contests outside the camp. As a Dinka community leader explained:

> "We as the Dinka, as we are now in POC, we don't have any problem with Nuer or Shilluk. What we say to the UN is to tell the Nuer who support the rebels, when the rebels come, please go out and join the rebels. The same with the Shilluk; if you are *Aguelek*, when you see them approach, please you go and fight with them out there. If you are the Dinka, we will not allow you to annoy anybody here from Nuer or from Shilluk. Please if you see the Government take control, you don't do anything. Let the fight be out."[63]

Similarly, according to a leader from the Nuer community:

> "We are isolated from whatever is happening externally. We are only concerned with food for our children, safety for our children and living together as one. Whatever happens outside there, we don't have a right to go outside because of the security situation and tell

[60] Interview with younger Nuer female in the Malakal POC (14 Aug. 2015)
[61] Interview with woman's group leader, *supra* note 35.
[62] Focus group with Dinka community leaders, *supra* note 36.
[63] *Id.*

> the Government what is right and not right. We are isolated from whatever happens outside."[64]

Although an important step towards stability and recovery, statements that the POC is removed from wider political and military conflicts are largely aspirational. Despite repeated claims that politics within the POC are removed from 'outside forces', survey data and reports of violence between communities demonstrate that inter-communal relations inside the camp are, to a large extent, subject to the influence of political and military authorities in the GRSS and SPLM-IO. According to a leader from the Shilluk community:

> "We cannot be separate from what is happening outside, because the things that happen here are coming from outside. Most of it is political issues; even if now, we become good to one another and have a good relationship, if things change for the worse there, they will change for the worse here also."[65]

Most residents of the Malakal POC have been living in the camp for nearly two years, and are unlikely to leave in large numbers until greater security can be guaranteed in Malakal and the surrounding counties. By working to foster a collective sense of interdependence among communities in the POC, the UN and other stakeholders can capitalize on the relative security that residents enjoy in the camp to establish a solid foundation for reconciliation. Improvements in inter-communal relations within the camp have the potential to provide a bulwark against interethnic conflict when people eventually return to their homes or resettle elsewhere.

However, inter-communal relations within the POC also have the potential to undermine opportunities for reconciliation if they are not properly managed. If the POCs become incubators of politicization and ethnic polarization, the animosity bred inside the camps will present a fundamental obstacle to longer-term peace-building efforts. To improve outcomes, humanitarian and development actors should begin supporting communities in the POC to resolve existing disputes and formulate concrete plans to improve relations between communities. To a certain extent, this is already being done through community leadership institutions that have been established as points of exchange for POC residents and humanitarian actors. However, these activities and institutions need to be scaled up to address the massive deterioration in inter-communal relations as a result of the conflict. As discussed in the next section, a key question to consider in formulating a reconciliation agenda for people in the Malakal POC concerns timing.

3.6 Reconciliation and Forgiveness

Given a significant breakdown in inter-community relations, timing will be a major component of any successful reconciliation effort between groups in the POC. The question remains whether people in the POC can talk through their problems and develop a shared sense of community while the conflict is still on-going, or whether the political and military interests of the warring parties will undermine reconciliation efforts so long as the fighting continues. A detailed understanding of what people view as the most important elements of reconciliation will help determine how to approach this question.

Similar to the national survey performed by SSLS and UNDP, when asked an open question about what is necessary for reconciliation, respondents from the Malakal POC emphasize forgiveness (53%), apologies (46%) and confessions (28%) (see Figure 14).[66]

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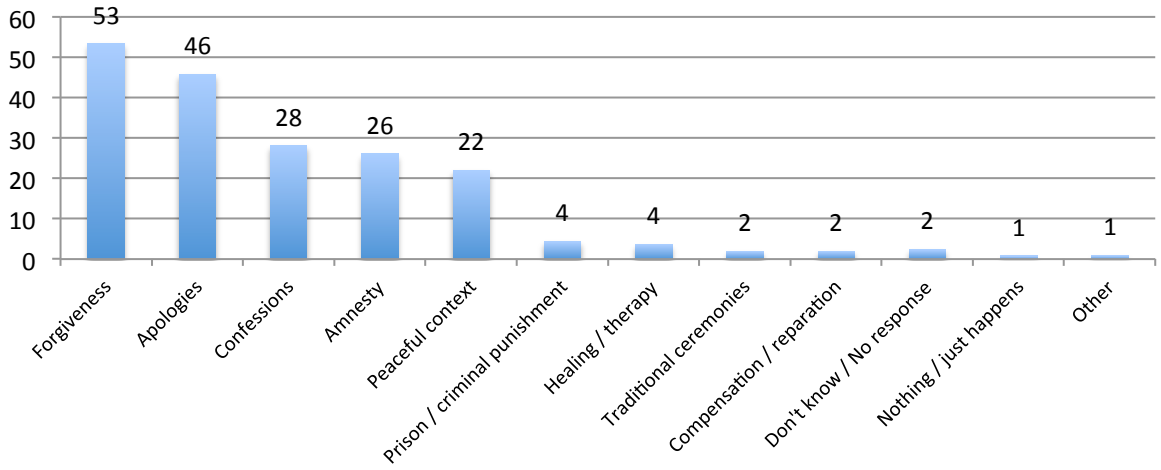
[64] Interview with Nuer community leader, *supra* note 53.

[65] Interview with younger Shilluk community leader (16 Aug. 2015).

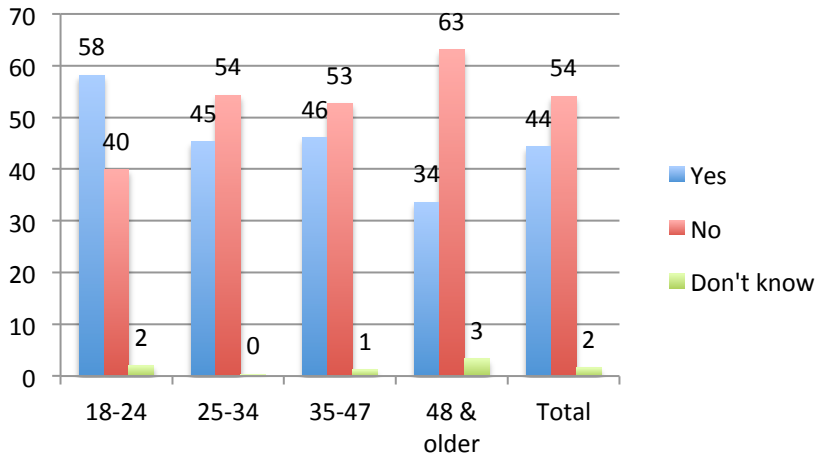
[66] Respondents from Malakal place much less emphasis on criminal punishment as a prerequisite for reconciliation (4%) than participants in the national survey. This represents a break from the national trend, where almost 20

Figure 14: What is necessary for reconciliation? (%)



Despite widespread recognition that reconciliation requires forgiveness and apologies, 54 percent of respondents in the Malakal POC assert that they are not willing to forgive those who have committed conflict-related abuses (see Figure 15). Similar to results on inter-communal relations, younger people are more willing to forgive than older people. Again, this difference reflects a greater interest among younger populations in a shared future with other communities, and an increased retributive sentiment associated with repeated exposure to trauma among older populations.

Figure 15: Willingness to forgive x Age (%)



As noted in Section 3.4, a diagnosis of PTSD is frequently associated with less support for forgiveness and reconciliation. Data from our study confirm this trend. Sixty-five percent of respondents with PTSD are not willing to forgive those who committed conflict-related abuses, compared to just 44 percent of respondents without PTSD (see Figure 16). To the extent that a main objective of any reconciliation effort is to increase the number of people that are willing to forgive, the alleviation of trauma and mental health impacts could support reconciliation and healing by helping to increase the numbers of those willing to forgive.

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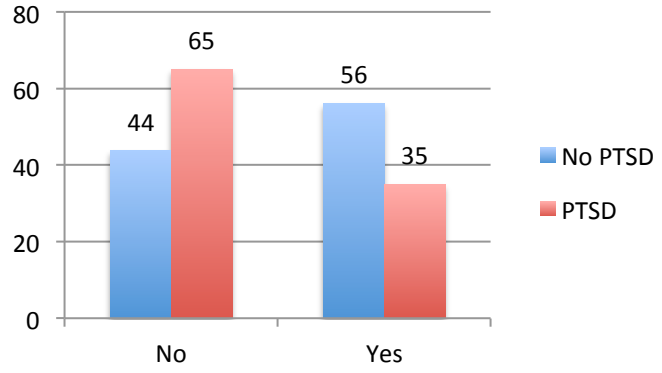
percent of respondents from the SSLS/UNDP survey claim that reconciliation requires criminal punishment. *Search for a New Beginning*, *supra* note 32.

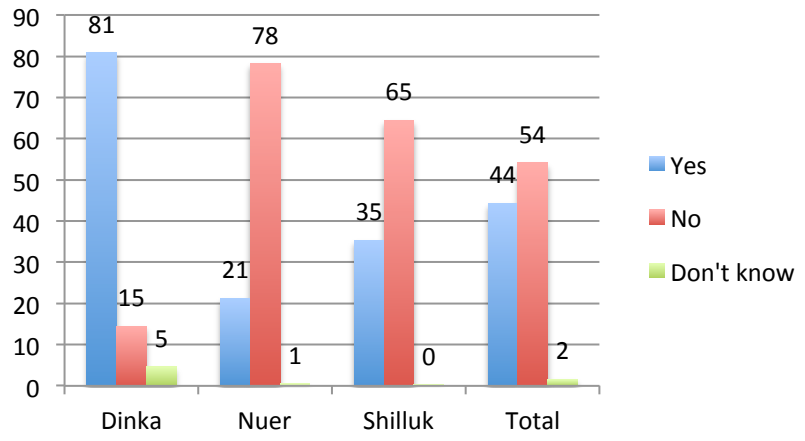
Figure 16: Willingness to forgive x PTSD Status (%)



Significant differences emerge between men and women regarding the factors required to achieve reconciliation. Specifically, beyond widespread support for 'forgiveness' and 'apologies' among both men and women, male respondents emphasize the importance of healing and therapy, while women highlight amnesty and forgiveness.[67] At the same time, men are more likely than women to assert that that imprisonment or capital punishment are necessary means to achieve reconciliation.

Different ethnic communities in Malakal POC also demonstrate sharply diverging views on forgiveness. The unwillingness to forgive is highest amongst Nuer and Shilluk respondents. Seventy-eight percent of Nuer and 65 percent of Shilluk assert that they are not willing to forgive people responsible for conflict-related abuses (see Figure 17). By contrast, the vast majority of Dinka (81%) say that they are willing to forgive.

Figure 17: Willingness to forgive x Ethnicity (%)



Unpacking people's views on forgiveness will be an important first step for any reconciliation strategy. Most respondents believe forgiveness is necessary for reconciliation, but are not willing to forgive those who have committed conflict-related abuses. In other words, residents of the POC have a clear understanding of what is required for reconciliation, but remain unwilling to meet those requirements when it comes to the individuals responsible for the most egregious offenses. To the extent that people can be persuaded to forgive if certain preconditions are met, reconciliation programs could provide incentives to encourage individuals and communities to

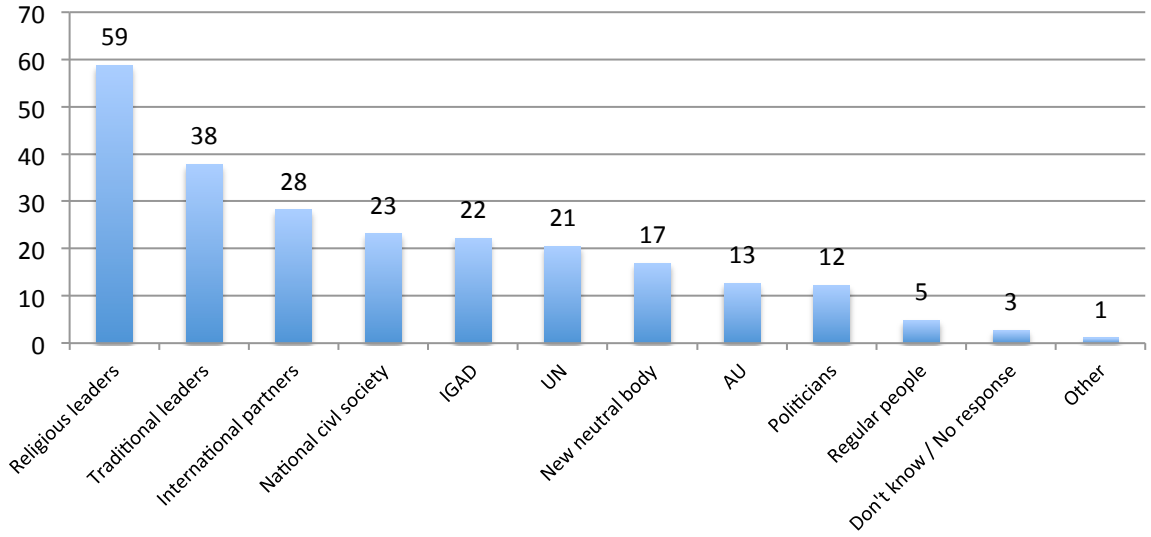
[67] Fifty-four percent of men and 52 percent of women state that forgiveness is necessary to achieve reconciliation, 44 percent of men and 48 percent of women state that apologies are necessary to achieve reconciliation.

participate in reconciliation activities. If appropriately framed, confessions, apologies and a public discussion about abuses that have occurred during the conflict could help to create a fertile ground for reconciliation programs. In addition, respondents' unwillingness to forgive 'conflict-related abuses' demonstrates a pressing need to define what qualifies as a 'conflict-related abuse', and separate individuals accused of these offenses from the general population of combatants.

The individuals and institutions tasked with leading the reconciliation process will also be an important determinant of the trajectory it takes. As was the case with the SSLS/UNDP survey, a majority of respondents in the Malakal POC believe that religious leaders should lead reconciliation efforts (see Figure 18). However, support for the involvement of international partners and intergovernmental organizations is also more pronounced in the Malakal POC than the averages in the SSLS/UNDP study. This increased demand for international support is not surprising given the role the United Nations and NGOs have played (and continue to play) in providing a minimum level of physical, food and livelihood security over the past two years. An elderly man in the POC explained why he thought reconciliation was not possible without robust support from the international community:

> "We are still waiting for the international community. They are the only people who will settle this. Without them, as you are seeing, people they disagree. The tribes here are even saying they will not greet somebody from another tribe. This problem has become very deep. To solve this problem, it will take time for reconciliation. Through the international community, people will accept because there will be witnesses and peacekeepers. If it wasn't for these peacekeepers, people would not even be here."[68]

Figure 18: Who should lead reconciliation efforts? (%)



For some respondents, the importance of international participation in the peace process is coupled with skepticism of what they see as the forced and artificial neutrality of the international community. As a community leader explained:

> "We failed for ourselves to be together. Only the UN can let people to be together. But now the problem is that the UN is not used to accountability. They just want to compromise. It is impossible to take somebody who is wrong and somebody who is right and then you tell them to live together without solving the problem. It is not right."[69]

[68] Interview with Shilluk elder, *supra* note 59.
[69] Focus group with Dinka community leaders, *supra* note 36.

Local demand for and critiques of international involvement in resolving the conflict differ significantly from the narratives put forward by the warring parties that focus primarily on international involvement as a threat to South Sudan's sovereignty. Here, a key challenge moving forward will be to address the warring parties' frustrations with UNMISS and international actors while still meeting local demands for international monitoring and enforcement of the peace agreement.

3.7 Demilitarization of Malakal

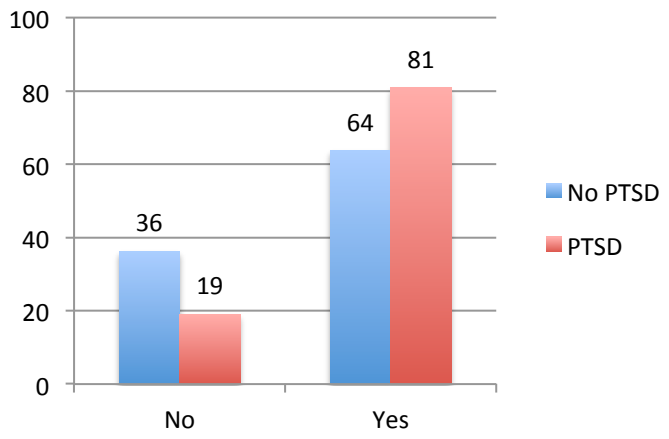
Responses to a question about whether respondents would support the demilitarization of Malakal as part of a peace agreement reflect polarized views on the topic. According to the ARCISS, all military forces should be redeployed to a 25-kilometer radius outside Juba within 90 days of the signing of the peace agreement.[70] The agreement also stipulates that the "size, composition and deployment of forces permitted to remain in Juba, Bor, Malakal, Bentiu and other areas" shall be determined at a workshop to be held within two weeks of the signing of the agreement.[71]

Overall, the potential demilitarization of Malakal is quite popular among respondents. Seventy-one percent of respondents believe that Malakal should be demilitarized as part of the peace deal. As a community leader notes:

> "The military that is outside there [POC] are responsible for killing civilians. Every civilian will say that it is good for the states to be demilitarized. There is also another issue whereby the civilians themselves were armed. Those people should be disarmed too."[72]

However, support for the demilitarization of Malakal is not constant across demographic groups. For example, respondents with PTSD are more likely to favor the demilitarization of Malakal than those without PTSD (see Figure 19). This indicates that people who have been most affected by traumatic experiences during the conflict have a lower level of trust for armed actors.

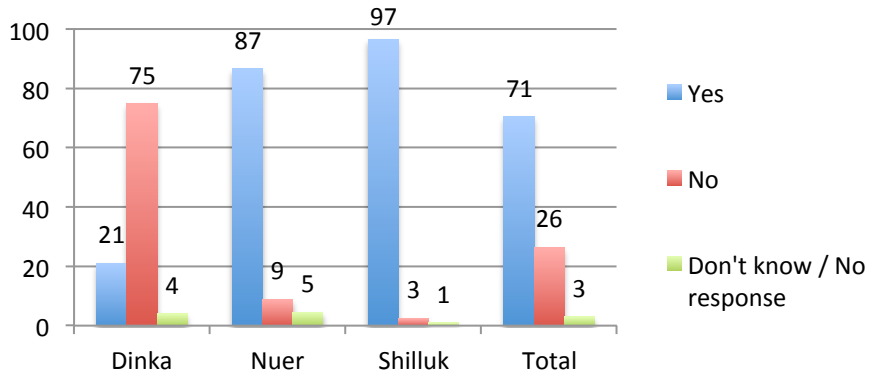
Figure 19: Do you support demilitarization of Malakal? x PTSD status (%)



[70] ARCISS, *supra* note 7, Ch. II, § 5.1.
[71] *Id.*, § 5.3. The warring parties did not agree on the size of the forces to remain in Juba until November 2015. Tesfa Alem Tekle, *IGAD says security agreement officially ends S. Sudan war*, Sudan Trib. (4 Nov. 2015), *available at* http://sudantribune.com/spip.php?article56937.
[72] Focus group with Nuer community leaders, *supra* note 37.

Stark differences are also apparent across ethnic communities. Most notably, 75% of Dinka respondents oppose demilitarization (see Figure 20). This dramatic break from the responses of the Shilluk and Nuer communities in the POC can be linked to the fact that the Dinka are a minority population in Upper Nile State. Given their minority status, many Dinka fear that redeploying Government troops outside of Malakal town will leave them vulnerable to attack by forces aligned with the more populous Nuer and Shilluk communities.

Figure 20: Do you support demilitarization of Malakal? x Ethnicity (%)



The challenge of disarming local populations in an environment characterized by intra-communal fighting is not new to South Sudan, and accusations of selective disarmament have exacerbated violent conflict in the past. On several previous occasions rural communities have accused the Government of disarming its opponents while allowing communities with ties to the State to keep their weapons.[73] When added to the string of failed disarmament campaigns that South Sudan has experienced in past years, the differing demands for and potential impacts of demilitarization demonstrate the importance of incorporating local perceptions of—and priorities for—security into the peace process.

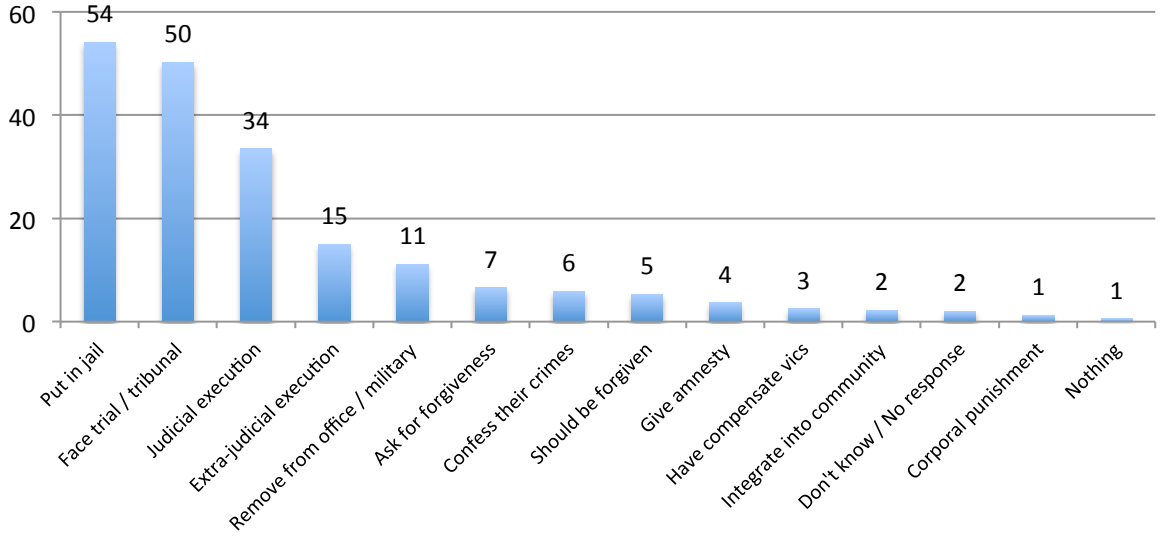
3.8 Criminal Accountability

Survey data demonstrate widespread support for the criminal prosecution of people responsible for conflict-related abuses. In response to an open question about what should be done with perpetrators of abuses, a majority of respondents support criminal justice mechanisms including imprisonment (54%) and trials (50%) (see Figure 21). A considerable number of respondents even go so far as to say that the people responsible for conflict-related abuses should be executed, either through a judicial process (34%) or extra-judicially (15%). A young man in the POC explained why he thought that peace without justice would not be sustainable:

> "All these crimes against humanity—being fed human flesh, being forced to sleep with your mother, forcing your sister to drink blood—these crimes have those who can hear them. They are not in our authority. If these people are not brought to court, the peace will mean nothing."[74]

[73] *See* Sharon E. Hutchinson and Naomi R. Pendle, *Violence, legitimacy, and prophecy: Nuer struggles with uncertainty in South Sudan*, 00 American Ethnologist 1-16 (2015); Jon Bennett *et al.*, *Aiding the Peace: A Multi-donor Evaluation of Support to Conflict Prevention and Peacebuilding Activities in Southern Sudan 2005-2010*, Netherlands Ministry of Foreign Affairs (2010), *available at* http://www.oecd.org/countries/southsudan/46895095.pdf.
[74] Focus group with Nuer community leaders, *supra* note 37.

Figure 21: What should be done with perpetrators? (%)



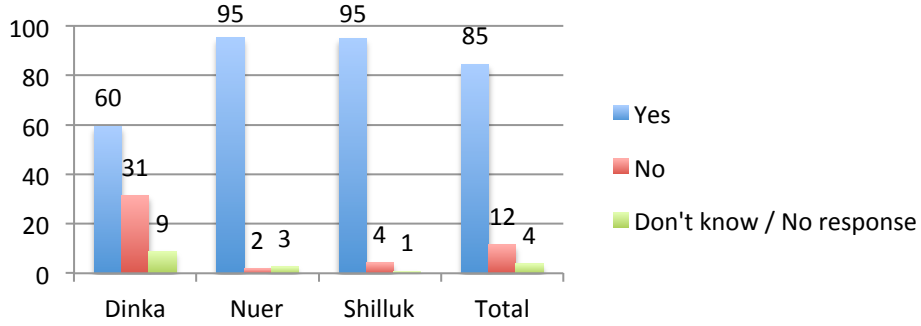
Similarly, in response to a closed question about whether perpetrators of conflict-related abuses should be prosecuted in courts of law, 85 percent of respondents say *'Yes'*. Deterrence (83%) and retribution (61%) (i.e. *'they deserve to be punished'*) are the most common rationales for supporting criminal prosecutions. The attitudes about the use of criminal punishment to discourage future conflict-related abuses demonstrates a significant break from South Sudan's history of peace processes that relied on blanket amnesties and political rewards for individuals and groups that use violence to achieve their political objectives. Increased demand for prosecutions can also be viewed as a response to the ways in which the current conflict has broken from widely recognized (if not essentialized) norms that guide inter-communal violence (discussed in Section 3.4). According to a young man in the Malakal POC:

> "If there is peace, some people around here they will not wait for justice, they will revenge for themselves. For me personally, if I have seen someone who has committed such things going free, I will kill them. This is a war that doesn't know the difference between a woman, a child, a crazy person. We have never reached this stage of war before. Therefore I don't think reconciliation will be the answer."[75]

Although a majority of respondents from all ethnic groups support criminal prosecutions, the level of support is not uniform. Just 60 percent of Dinka respondents believe that people responsible for abuses should be prosecuted, compared to 95 percent of Shilluk and Nuer (see Figure 22). Furthermore, similar to the findings with respect to 'willingness to forgive' (Section 3.6), younger respondents are much less likely to support prosecutions than older participants. Independent of PTSD status, age and ethnicity, those who oppose prosecution tend to justify their choice in the interest of forgiveness (61%) and reconciliation (62%).

[75] *Id.*

Figure 22: Should people responsible for abuses be prosecuted? x Ethnicity (%)

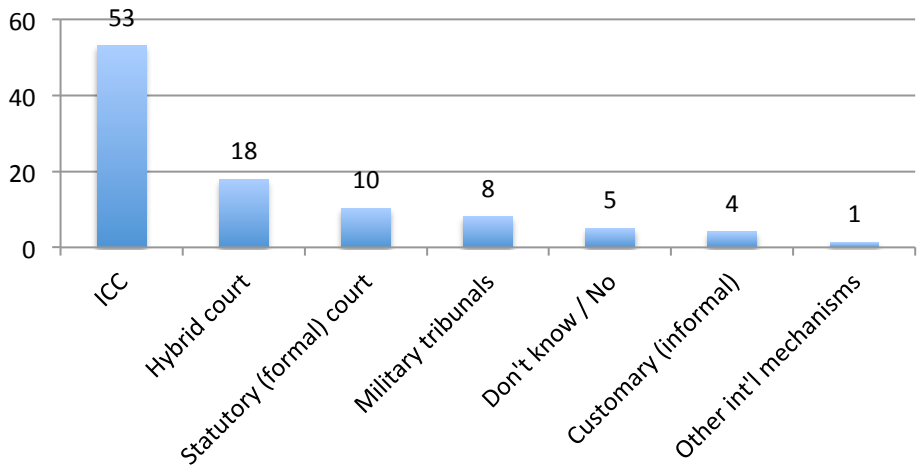


When asked an open question about which court is best able to secure justice for abuses committed since December 2013, 53 percent of participants say the '*International Criminal Court (ICC)*' (see Figure 23). As response options were not read aloud, this finding indicates a high level of awareness of the ICC among the population of the Malakal POC. The second most common response is '*Hybrid court*' (18%), or a court comprised of a combination of South Sudanese and international judges, prosecutors, investigators, and administrative staff. This is twice the level of support recorded in the national survey carried out by SSLS/UNDP, and indicates the degree to which the population in the Malakal POC is following current discussions about accountability in relation to abuses that have been committed during the conflict.[76]

The preference for internationalized justice mechanisms such as the ICC and a Hybrid Court reflects a lack of confidence in the ability of national and local mechanisms to handle complicated cases involving human rights abuses. It also shows how polarized South Sudanese society has become. As such, it would be very difficult for a wholly national process to be free from actual or perceived bias. As a young man explained:

> "For us, we need the international community to take people to court instead of paying cows… There has been mass killing, so the solution has to come from a UN court or the Security Council. At this moment, local courts cannot do anything."[77]

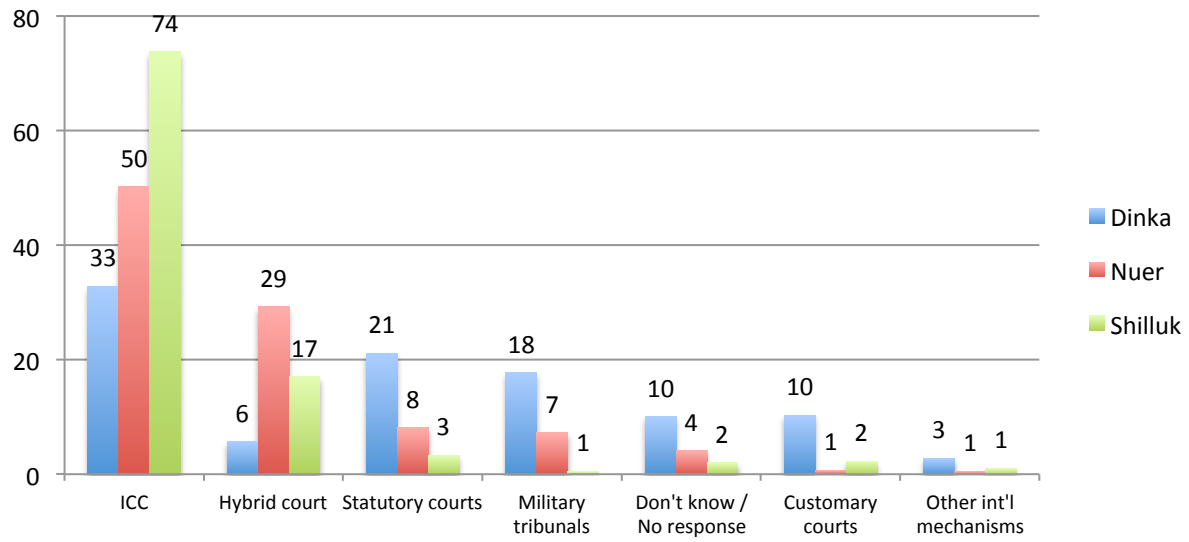
Figure 23: Which court is most appropriate? (%)



[76] As noted in Section 1.1, the warring parties have agreed to establish a Hybrid Court for South Sudan (HCSS) under the terms of the ARCISS. ARCISS, *supra* note 7.
[77] Interview with Shilluk elder, *supra* note 59.

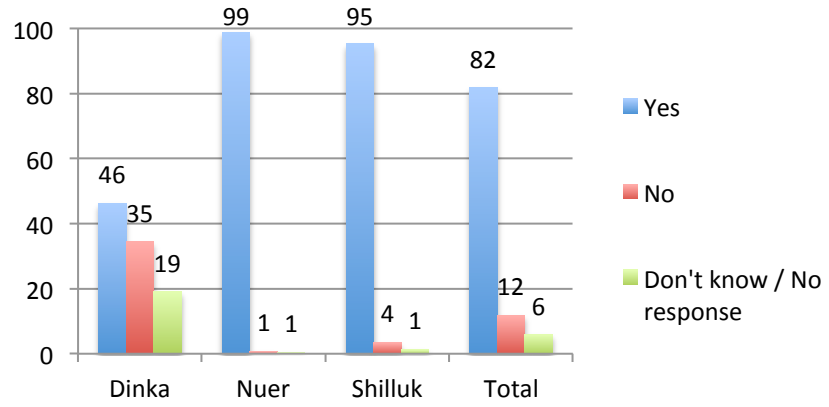
As with other variables, support for different accountability mechanisms varies considerably across ethnic communities. Most notably, support for the ICC and hybrid court is highest among the Shilluk and Nuer communities. Conversely, support for national justice mechanisms, such as statutory courts, customary courts and military tribunals is highest among the Dinka community (see Figure 24).

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



A closed question about whether respondents support the participation of the ICC in relation to abuses committed during the conflict further substantiates these findings. Overall, 82 percent of respondents support ICC involvement (see Figure 25). Support for ICC involvement is highest among the Nuer (99%) and Shilluk (95%). Conversely, only 46 percent of Dinka participants support the involvement of the ICC. As with the question about preferred leaders for reconciliation initiatives, these findings point to fears among the Shilluk and Nuer about the fairness and impartiality of wholly national justice processes in a context where their perceived opponents are more populous (at the national level) and have greater representation in the Government.

Figure 25: Do you support the involvement of the ICC? x Ethnicity (%)



The mental health impacts of conflict are also associated with more retributive sentiments. Of those respondents with PTSD, 94 percent support criminal prosecutions, compared to 81 percent of those without PTSD (see Figure 26). People with PTSD are also more likely to

support ICC involvement than those without PTSD (see Figure 27). This finding corresponds with the fact that respondents with PTSD also have less confidence in existing justice mechanisms (Section 3.8 below).

Figure 26: Should people responsible for abuses be prosecuted? x PTSD Status (%)

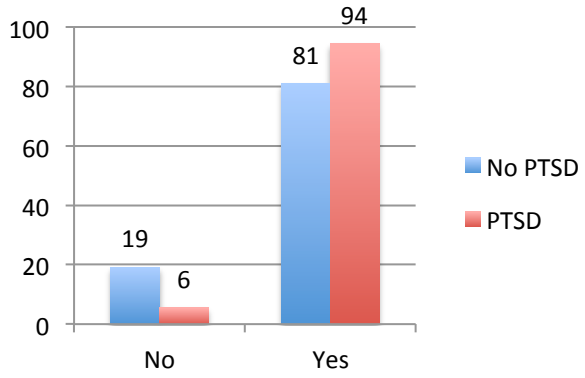
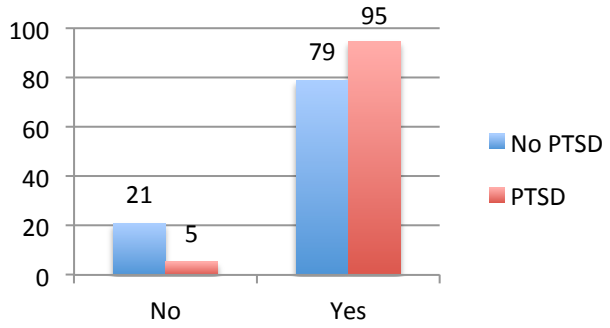
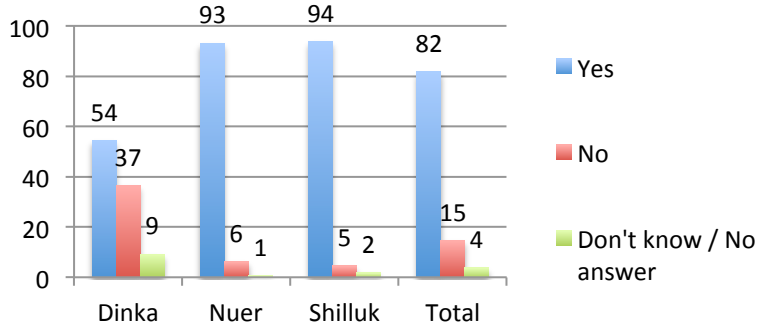


Figure 27: Do you support the involvement of the ICC? x PTSD status (%)



Lastly, the survey asked people whether they thought people responsible for abuses should be barred from public office. As noted in Section 1.1, the ARCISS includes a provision barring people who are indicted or convicted by the HCSS from participating in the TGONU. Participants in our study overwhelmingly support the idea of removing perpetrators of conflict-related abuses from office (political and military). Eight-two percent of respondents assert that individuals responsible for abuses should be barred from (see Figure 28). However, as with our findings on criminal accountability, reconciliation and international justice mechanisms, responses diverge sharply across ethnic groups. Although a majority of respondents across the three main ethnic communities support the idea of barring perpetrators from Government, the greatest opposition to the idea comes from Dinka respondents. Thirty-seven percent of Dinka respondents state that perpetrators should not be barred from Government. Lower levels of support among Dinka may reflect a perception that Dinka are better represented in the GRSS relative to other groups in Upper Nile and that they would have the most to lose from such a provision.

Figure 28: Should perpetrators be barred from office? x Ethnicity (%)



3.9 Existing Justice Systems

As briefly discussed above with reference to people's support for international justice mechanisms, survey data show low levels of trust in the ability of existing justice mechanisms (whether statutory or customary) to hold perpetrators of conflict-related abuses to account. Overall, 58 percent of respondents state that it is not possible for existing statutory courts to hold perpetrators accountable (see Figure 29) and 69 percent assert that customary institutions cannot hold perpetrators accountable (see Figure 30).

Confidence in existing justice mechanisms varies significantly across demographic groups. As indicated in the preceding section, confidence is highest among the Dinka community. Forty-eight percent of Dinka respondents assert that statutory courts can hold perpetrators accountable, and 46 percent believe that customary courts can hold perpetrators accountable.

When disaggregated by gender, women have less confidence in statutory and customary justice mechanisms than men. Specifically, 41 percent of men but just 31 percent of women believe that it is possible for statutory courts to hold people responsible for conflict-related abuses accountable. Similarly, 26 percent of men and 21 percent of women believe that customary courts can hold people accountable. These findings are indicative of the numerous barriers women face when seeking justice in South Sudan (through both statutory and customary mechanisms) particularly in relation to acts of sexual violence.

People with PTSD also have less confidence in existing justice mechanisms. Sixty-seven percent of respondents with PTSD do not think existing statutory courts can hold perpetrators accountable compared to just 56 percent of those without PTSD. Furthermore, 84 percent of those with PTSD think that customary courts cannot hold perpetrators accountable compared to just 63 percent of those without PTSD.

The relatively low confidence in the ability of customary courts to address abuses across demographic groups demonstrates the scale of violence and extent to which local grievances have become intertwined with national politics. Local courts are designed to handle inter- and intra-community disputes, not tens of thousands of cases involving organized armed groups spread across the country. In addition to the fact that abuses extend beyond local political boundaries, customary settlements—which often require perpetrators to pay compensation in the form of cows or other livestock to the victim (or the victim's family)—are difficult to implement in conflicts involving professional armies. According to a community leader in the POC:

> "Those who are killed in fighting they cannot be compensated because these are communities fighting and you cannot identify who killed who. You kill in that community

> and then they kill from that community and so it will be settled like this, without compensation."[78]

The crisis has also undermined the power and influence of traditional authorities. In many cases, chiefs have chosen to remain in their home communities, while those that make it to the POC often find that their unique set of skills do not translate into the new setting. Dramatic changes to socio-political and economic relations within and between groups in the camp have created different demands on the knowledge and skills required of chiefs. In many cases, POC residents have elected new chiefs and leaders who are better able to represent community interests while in the camp. There is a long history of local leaders being marginalized by political and military interests during periods of conflict, and the current crisis is no different. A female informant explained why the Shilluk King was not able to play more of a prominent role in promoting reconciliation in the current context:

> "Like now, for us as Shilluk, our King has not been able to be here because of this crisis; even his own life is threatened. He is now there in Juba and sometimes in East Africa. So some of the roles that he used to play are not being carried out because of the crisis. Sometimes maybe the Government can call him to come and assist in maybe bringing the people together, like the other time with Johnson Olony, but now he is not here."[79]

Figure 29: Possible for existing statutory courts to hold people accountable? (%)

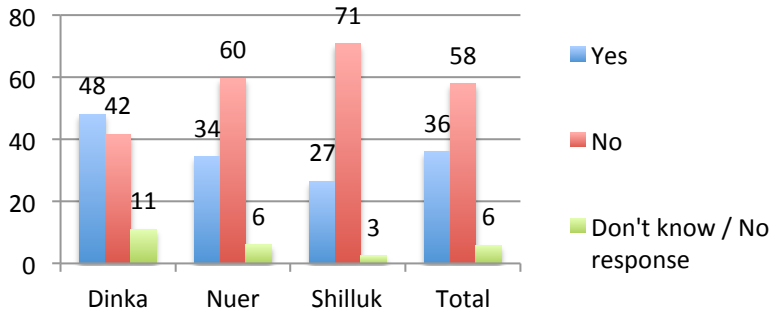
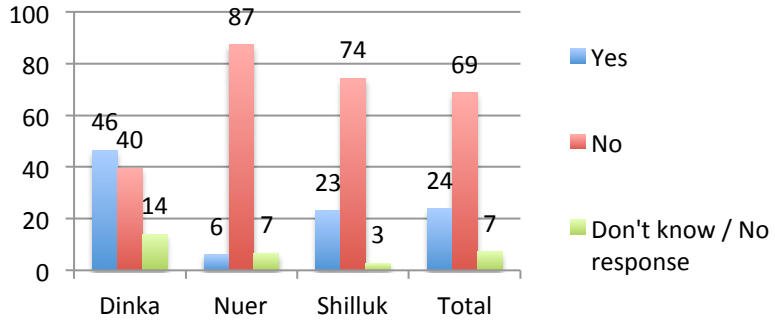


Figure 30: Possible for existing customary courts to hold people accountable? x Ethnicity (%)

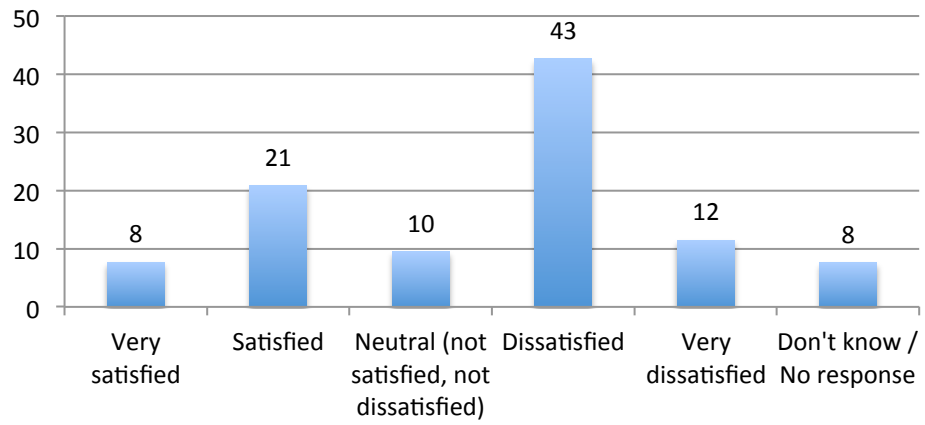


The marginalization of traditional authorities in the current context is also reflected in the survey data. Data show low levels of satisfaction with the role that customary institutions have played

[78] Interview with older Shilluk community leader, *supra* note 44.
[79] Interview with women's group leader, *supra* note 35.

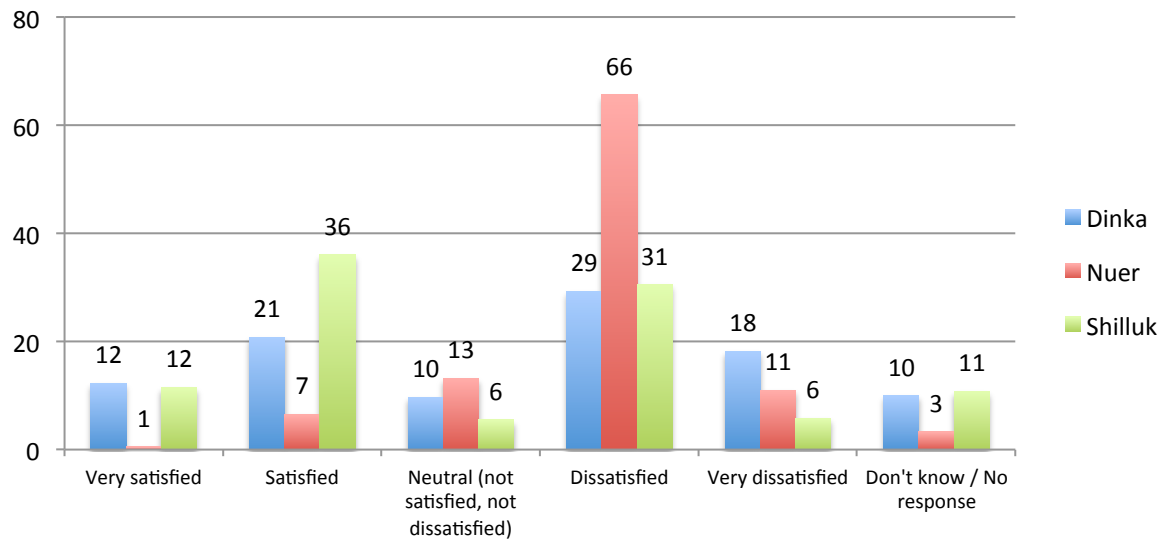
since the conflict broke out in December 2013.[80] Overall, 55 percent of respondents are dissatisfied with customary institutions. Only 29 percent of participants say that they are satisfied or very satisfied with customary institutions (see Figure 31). As one interviewee observed: "Even now I have my relative who is a chief of the area, he is now displaced there under the tree, part of the people who came. Now they don't play a greater role because of this crisis."[81]

Figure 31: Satisfaction with customary institutions (%)



Disaggregating the data by ethnicity shows that Nuer respondents have the highest levels of dissatisfaction with customary institutions. Seventy-seven percent of Nuer are dissatisfied with the role customary institutions have played since December 2013 (see Figure 32).

Figure 32: Satisfaction with customary institutions x Ethnicity (%)



The lack of confidence in customary and statutory courts and polarization of South Sudanese society contributes to the demand for an unbiased internationalized process with the institutional, human and financial capacity required to prosecute conflict-related abuses. As explained by an

[80] This question was not asked of the role of statutory courts since December 2013 because, unlike customary courts which are quite versatile and able to function even in the midst of conflict, the statutory system has ceased functioning in Malakal.
[81] Interview with women's group leader, *supra* note 35.

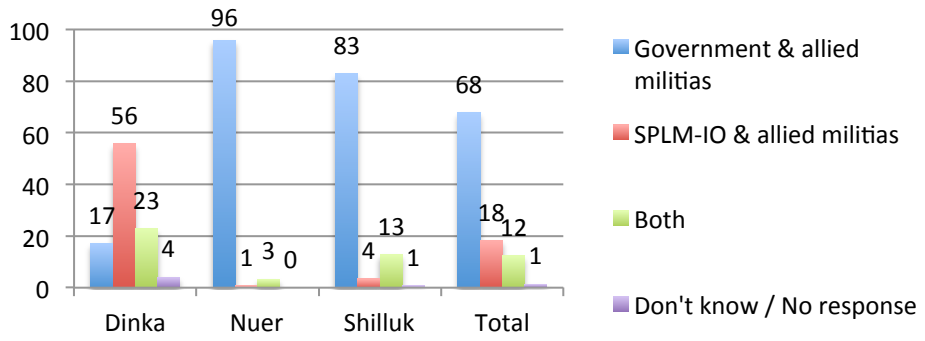
older Shilluk man, "These courts under the Government here they cannot do anything. An international court is the only one that can help this."[82]

While confidence in existing mechanisms is quite low, the ability of statutory and customary courts to hold perpetrators of conflict-related abuses accountable is a key component of a sustainable solution to the crisis. Any international intervention will be temporary in nature and it is vital that existing justice systems are provided with the support that they need to strengthen their independence and their ability to enforce their decisions against political and military actors. Access to viable justice options reduces incentives to engage in revenge attacks and violent self-help. The establishment of a hybrid court could be attractive in this regard, in that would be better positioned to coordinate with existing justice mechanisms in South Sudan and to leave a lasting legacy in the country than a purely international court such as the ICC.[83]

3.10 Responsibility for Abuses

Sharply diverging views across ethnic communities over which parties are most responsible for conflict-related abuses present additional challenges for justice and reconciliation efforts. Whereas Nuer and Shilluk respondents overwhelmingly blame the Government and its allied militia, Dinka respondents mostly blame the SPLM-IO and its allied militia (see Figure 33).[84]

Figure 33: Perceived responsibility for abuses x Ethnicity (%)



As people's views are largely shaped by the larger political context as opposed to an objective assessment of abuses, this indicator may not reliably assess actual responsibility for abuses. However, these findings serve a range of purposes in the design and monitoring of truth, justice

[82] Interview with Shilluk elder, *supra* note 59.

[83] The seat of the HCSS would be particularly important in this regard. While it might be tempting to situate the court outside South Sudan due to the prevailing insecurity in parts of the country, such a decision would undermine the ability of the court to leave a lasting legacy in the national justice system and further perpetuate the notion that South Sudan is a lawless place that does not respect rule of law. Furthermore, while the security situation in the current context might not be conducive to independent and impartial trials, the peace agreement is premised on the idea that it will transition South Sudan to a more stable situation. Decisions to locate the HCSS outside the country should therefore not be made lightly.

[84] Interestingly, only 6 percent of all respondents answered either '*I don't know*' or '*No response*'. This is significantly less than the 41 percent of total respondents that answered '*I don't know*' or '*No response*' for the same question in the national study performed by SSLS and UNDP. This variation can be linked to the fact that participants from the Malakal POC have generally been exposed to more violence and traumatic events than respondents in many of the areas surveyed by SSLS and UNDP, which included both areas directly exposed to violence since December 2013 and areas that have been relatively peaceful since December 2013. Exposure to traumatic events increases the likelihood that respondents will associate with one of the warring parties over another (in an attempt to protect their family and community interests). At the same time, the fact that respondents living inside the POC are already segregated according to ethnic identity and time of arrival dramatically reduces both incentives and the ability to remain (and appear) politically neutral. Comparatively, many of the respondents in the national survey inhabited multi-ethnic communities with dramatic variations in exposure to conflict and traumatic experiences.

and reconciliation initiatives. For example, one of the central aims of a truth-seeking initiative is to generate some consensus on the basic facts surrounding periods of large-scale human rights abuses. This process would presumably narrow differences in perceived responsibility for abuses among various segments of the population. In addition, the diverging views on responsibility highlight the danger that a criminal prosecution initiative seen to favor one group over another could have on the credibility of the accountability mechanism. As people's views on who is responsible diverge sharply according to ethnic and political affiliation, it is critically important that prosecutions target perpetrators on all sides of the conflict and avoid any perception of 'victor's justice'.

To a large extent, respondents place primary responsibility on the two leaders of the warring factions. Large-scale abuses committed by professional soldiers and supporting militias are increasingly explained with reference to disputes between President Salva Kiir and Former Vice-President Riek Machar that go back several decades.[85] The extent to which large-scale human rights abuses have been reduced to the actions of two individuals presents important opportunities and challenges to the peace process. On the one hand, if the violence is understood as a dispute between two leaders fighting for political control, then reconciliation between Salva Kiir and Riek Machar should create significant peace dividends. Indeed, many respondents declare that all that is needed for peace is for 'Salva and Riek to come together.' According to two Nuer informants:

> "When Salva Kiir and Riek Machar come together, no problem. If they come together we in the camp will come together."[86]

> "This conflict has taken 20 months. It means that if people see Riek accept it [the ARCISS] then they will accept. The people who are here have come as a result of him. If he doesn't want it, the people here will reject it. If he wants it, then they will accept."[87]

On the other hand, data demonstrate that reconciliation between the two leaders is not enough for most respondents. Rather, the extent to which participants attribute violence and human rights abuses to the actions of President Kiir or Dr. Machar, reflects how communities on one side of the conflict are generally unwilling to support a peace that sees the leader of the opposing side in power. As a supporter of Dr. Machar explained:

> "This war is political, between two people. When the war started, soldiers came door-to-door killing people. …Salva Kiir has to step down for there to be peace. The leader that has killed people has to be very far from me. I cannot forgive him if he is near."[88]

Those who feel that President Kiir is most to blame tend to emphasize the responsibility that he carries as head of state. As a Shilluk elder explained:

> "So many people have disappeared in Malakal. There are two schools there in Malakia filled with bones of people. People were slaughtered. You'll not get their heads. They were slaughtered. We cannot question them directly. They are killing in favor of Salva. Salva is the one who can be questioned about this because these soldiers are under his authority.

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[85] Even the way in which respondents refer to the leaders of the two warring parties demonstrates the ways in which they are simultaneously held responsible for abuses and fighting in the best interest of their respective communities. For example, supports of Dr. Riek Machar and the SPLM-IO generally refer to President Salva Kiir as 'Salva', and Riek Machar as 'Dr. Machar', or 'Former Vice President Machar'. Conversely, Government supporters generally use the labels 'Riek' and 'President Salva Kiir Mayardit'.

[86] Interview with older Nuer female, *supra* note 58.

[87] Interview with Nuer community leader, *supra* note 53.

[88] Interview with younger Nuer female in Malakal POC (14 Aug. 2015)

> …So if we want to question someone, we can ask Salva Kiir. He is the one who can stop them. He is the one to give orders to kill people."[89]

Similarly, when asked what should be done with the Nuer soldiers who are allied with the GRSS and who have been accused of committing atrocities, a young Nuer man said that the responsibility should lie with those who are paying them: "They are mercenaries. They have been hired and they are doing it all to serve their president. The Government has hired these mercenaries."[90]

At the same time, those who view Dr. Riek Machar as most to blame tend to point to his ties to past atrocities (most notably the 1991 massacre in Bor) and fact that his rebellion is working to take power by force. As a Dinka elder explained:

> "When two people have fought by themselves and the police catch them and take them to court, should they both be right or should one be wrong? What I know, the two cannot both be put in jail. Riek did the same thing two times. He is the one who can be taken to court. Salva is the one who came up through the democracy. Riek even cast his own vote to support Salva."[91]

Another Dinka elder added:

> "If Riek agrees and comes back, it is not necessary to forgive him because he did it [rebelled] two times and people have died and all the property of the citizens have gotten lost… By now there is no need to be forgiven. If you forgive, he will do it again."[92]

The explicit focus on the actions of President Kiir and Dr. Machar that is evident in these statements risks obscuring the true nature of the violence in South Sudan. Reducing murder, sexual violence and myriad of other abuses to the politically motivated actions of two individuals risks absolving the overwhelming majority of perpetrators from responsibility. In addition to the roles played by President Kiir and Dr. Machar, sustainable peace requires attention to the other contests between political-military elite that are responsible for and benefitting from the conflict.

3.11 Amnesties

Similar to findings on criminal accountability, survey data demonstrate considerable opposition to the idea of granting amnesties to people responsible for serious human rights abuses. Overall, 69 percent of respondents oppose amnesties (see Figure 34). People with PTSD express greater opposition to amnesties than those without PTSD. Eighty-two percent of those with PTSD oppose amnesties compared to just 62 percent of those without PTSD (see Figure 35), corresponding with earlier findings of a more pronounced retributive sentiment among populations with PTSD. Across ethnic communities, support for amnesties is highest amongst Dinka respondents, 54 percent of whom say that perpetrators should be granted amnesty. This level of support is significantly higher than the Nuer (8%) and Shilluk (21%) respondents.

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[89] Interview with Shilluk elder, *supra* note 59.
[90] Focus group with Nuer community leaders, *supra* note 37.
[91] Focus group with Dinka community leaders, *supra* note 36.
[92] *Id.*

Figure 34: Should perpetrators be granted amnesty? x Ethnicity (%)

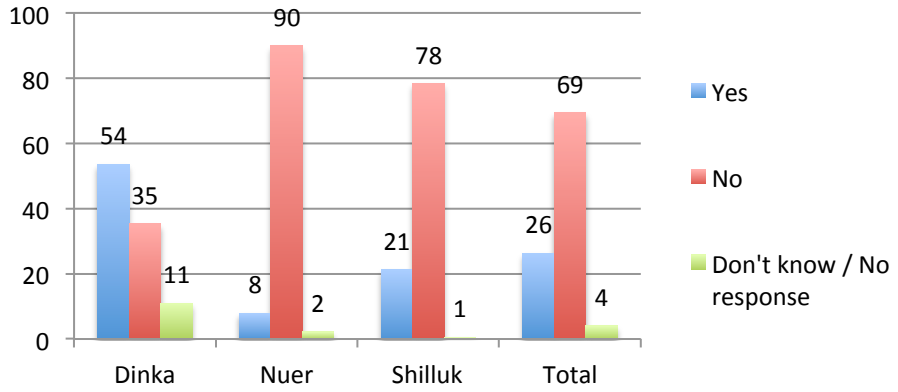
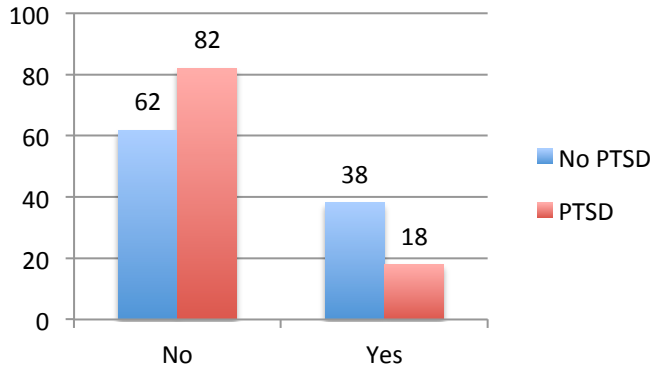
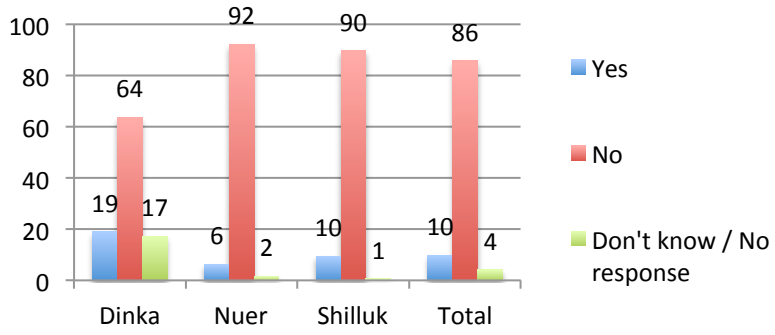


Figure 35: Should perpetrators be granted amnesty? x PTSD status (%)



Respondents who oppose amnesties were asked a follow-up question about whether they would accept amnesty if it were necessary for peace. Interestingly, 86 percent of those who oppose amnesties state that they would still oppose them, even if they were necessary for peace (see Figure 36). These responses demonstrate that participants are willing to sacrifice potential short-term prospects for stability for the longer-term peace that accountability promises. The demand for accountability reflects the intensity of the violence and the widespread human rights abuses, as well as a growing frustration with decades of state-condoned impunity that have failed to bring about sustainable peace.

Figure 36: Would you accept amnesty if necessary for peace? x Ethnicity (%)



Interviews with key informants provide additional nuance to people's understanding of amnesties. For example, a community leader in the POC explained that he is willing to accept amnesties for lesser abuses but not for serious crimes:

> "This amnesty generally is acceptable, but you know, there are some crimes that cannot be exempted. If you have done a crime that is a very serious crime you will remain in jail until the years that you've been sentenced are finished, because this will make you not to repeat the crime that you have done. So not everyone will be exempted in amnesty, but just the small crimes can be exempted in amnesty."[93]

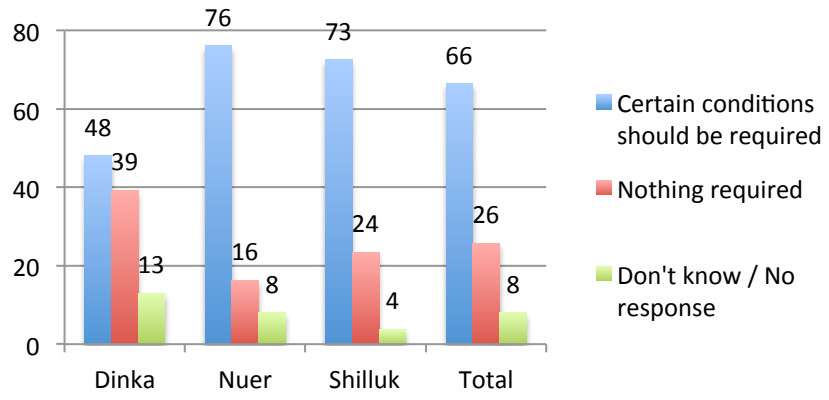
Conversely, a Dinka elder highlighted the historical and on-going importance of amnesties in South Sudan during a focus group meeting of Dinka leaders:

> "When the South and the North fought for 21 years, many things were destroyed. Most of the people they lost their lives and properties. When the peace came up through the CPA, you know, there was no remembrance because Dr. Garang said it was a comprehensive agreement and reconciliation should take time and could make people to fight. We can do it that way also. So it can be closed."[94]

Finally, of the 31 percent of respondents who support amnesties, two-thirds say that conditions should be attached to amnesty (see Figure 37). Confessions (66%) and apologies (58%) were the most prominent requirements for respondents who believe that conditions should be attached to amnesties (see Figure 38). A community leader compared the apologies that would be given by perpetrators who have committed abuses during this conflict to an apology that Dr. Machar made to victims of the Bor massacre:

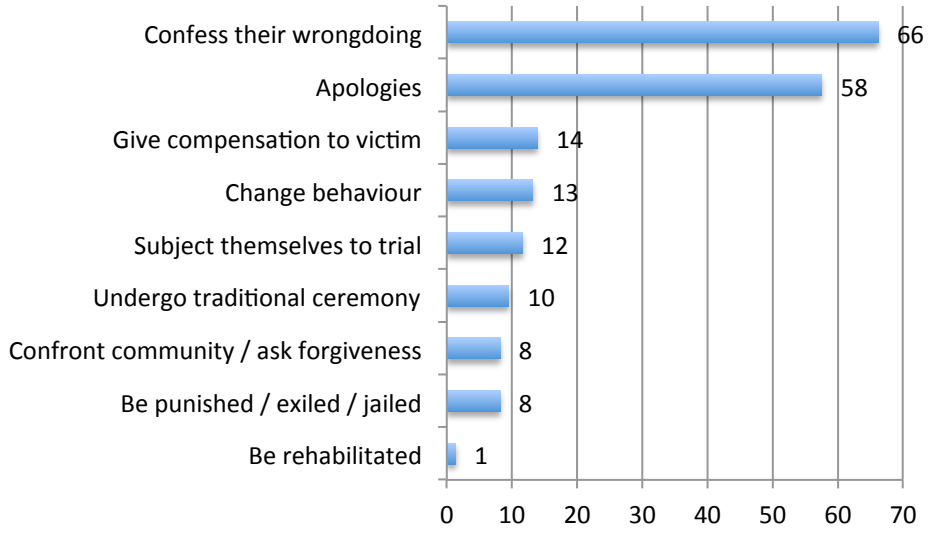
> "The oral apology of what he did in 1991, it should be done the same way. A lot of people they died, even some families are end up with no one remaining. When he report himself to the SPLA, some are saying, 'No, at once let him be killed.' But Garang said, 'No, let us not kill him, but what he did we will always be questioning him about it.'"[95]

Figure 37: Should conditions be attached to amnesty? x Ethnicity (%)



[93] Interview with younger Shilluk community leader (16 Aug. 2015).
[94] Focus group with Dinka community leaders, *supra* note 36.
[95] *Id.*

Figure 38: What conditions? (%)



Similar to the findings on criminal accountability, field data on amnesties demonstrate a growing recognition that short, medium and long-term peace will require any future government in South Sudan to break from the status quo. Specifically, although amnesties designed to incorporate rebel militias were an essential method of consolidating the power of the SPLA in the lead up to independence, these agreements have proven unsustainable in the medium to long-term. Widespread violence and human rights abuses committed along historically rooted ethnic and political divisions demonstrate that previous amnesties failed to generate legitimate reconciliation. The rise of new conflicts along old divisions led the majority of respondents to reject amnesties as a means of resolving the current crisis, even if this means prolonging the conflict. However, of those respondents that continue to support amnesty, the overwhelming majority acknowledge that specific conditions are required to avoid repeating previous failures.

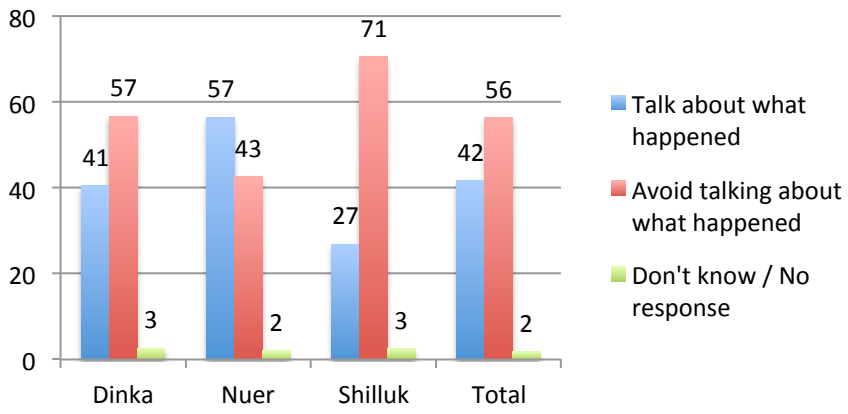
3.12 Truth-Seeking

Whereas respondents express a clear demand for criminal accountability and reparation, support for truth-seeking efforts is more equivocal. This may indicate a certain level of discomfort with talking publicly about abuses in the midst of an on-going conflict. When asked whether it is better to talk openly about people's experiences with conflict-related abuses or to forgo a public discussion, the majority of respondents (56%) answer that it is better to avoid talking about what happened (see Figure 39). The SSLS/UNDP survey found a similar split in opinion between those who support the idea of a public discussion and those who felt that the country was not ready for such a discussion.[96] However, when asked whether they would want to speak publicly about the abuses that happened to them during the conflict, if given the opportunity, 58 percent of respondents in this study said '*Yes*'. This suggests that although opinion may be divided over whether it would be helpful to talk about abuses publicly in the current context, many people still desire an opportunity to vent and discuss what happened. To reduce the potential for re-traumatizing people by reminding them of previous experiences, any truth-seeking process should be accompanied by a carefully planned and context-specific program of psychosocial support.

[96] In the national study by SSLS/UNDP, 50 percent of respondents said that it is important to 'talk about what happened', while 46 percent said that it is better to 'put it behind us'. *Search for a New Beginning*, *supra* note 32.

Whether or not to embark on a truth-seeking effort is a difficult question for countries emerging from conflict. Some countries choose to forgo a public discussion about what happened in an effort to put the past behind them and move on. Mozambique is sometimes cited as an example of a nation that made a collective decision not to discuss the past in order to prioritize reconciliation and unity.[97] Data collected for this study suggest that support for a public discussion about conflict-related abuses varies dramatically across groups. In Malakal POC, a majority of Nuer respondents support the idea of a public discussion whereas the majority of Dinka and Shilluk oppose it (see Figure 39). Similarly, in the SSLS/UNDP survey, many respondents from areas directly impacted by the conflict, including a majority of respondents in Juba POC (73%) and Bor POC (78%), support the idea of a public dialogue.

Figure 39: Talk about what happened or not? x Ethnicity (%)



Suppressing a public dialogue about abuses when there is such a significant demand among key segments of the population would be highly problematic. The varying levels of support for the process could better be used to illustrate the importance of framing the truth-seeking initiative in such a way that it appeals to a large cross-section of population rather than only those directly affected by the most recent violence. One possibility would be to examine a time period designed to encompass abuses committed against a maximum number of groups, thereby reducing the potential for certain groups to feel signaled out or ignored. For example, with respect to the mandate of the CTRH, rather than only examining abuses committed between 2005 and the signing of the peace agreement in 2015, as the text of the ARCISS implies, the CTRH could instead examine abuses committed since the start of the civil war in 1983.[98] This approach would minimize perceptions that the truth-seeking effort is focusing more on abuses committed by or against any particular group while validating the experiences and suffering from previous conflicts.[99]

The survey data also show that women (60%) are more likely to want to avoid talking publicly about abuses that occurred during conflict than men (52%). As with the results on awareness of the IGAD peace process (see Section 3.3), this finding demonstrates the obstacles that women often face when seeking to participate in the public sphere. The significant difference between women and men also reflects the way in which the stigma of sexual violence discourages women from discussing their experiences with rape and sexual assault. Any truth-seeking effort must therefore be sensitive to the gendered impacts of conflict and devote special attention to engaging women.

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[97] Priscilla Hayner, *Unspeakable Truths: Transitional Justice and the Challenge of Truth Commissions* (2nd ed.) (2011).
[98] ARCISS, *supra* note 7.
[99] Extending the time period for review in this manner would have to be weighed against the enormity of the task that the CTRH would have in documenting such an expansive time period.

Although overall knowledge of truth commissions in the sample is quite low, with 77 percent of respondents admitting that they do not know what a truth commission is, those who are familiar with the institution overwhelmingly support the idea of establishing one in South Sudan (97%).[100] The general lack of awareness suggests that the TGONU will have a difficult task ahead of itself in communicating the role of the CTRH to populations in South Sudan. However, once people are aware of the institution and what it aims to do, the truth-seeking effort could enjoy widespread support.

Furthermore, while the majority of respondents reject outright amnesties, they support the idea of granting amnesties to perpetrators in exchange for their testimony in front of a truth commission. Seventy-one percent of respondents state that perpetrators testifying to a truth commission should receive amnesty. Once again, widespread support for preconditions (in the form of confessions) to the provision of amnesties represents a significant break from previous Government practices.

The use of amnesties in the CTRH would have to be approached carefully. Of the dozens of truth commissions that have been formed since the 1980s, the Truth and Reconciliation Commission in South Africa was the only institution 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 right to truth, to access to justice, to reparation and rehabilitation and to 'never again' or the guarantees of non-repetition.[101]

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*.[102] 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, the TGONU must consider carefully the implications of including such an amnesty in the CTRH.

3.13 Reparations

Survey data demonstrate widespread support for providing reparations to survivors of conflict-related abuses. Overall, 64 percent of respondents state that survivors of abuses should be compensated. Once again, considerable differences are apparent across ethnic communities. While 81 percent of Nuer and 72 percent of Shilluk support compensation, a majority of Dinka

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[100] This finding is very similar to the SSLS/UNDP survey, in which 76 percent of respondents said they did not what a truth commission is. *Search for a New Beginning*, *supra* note 32.

[101] *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.

[102] 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 97.

(54%) oppose it. The preferred form of compensation is the collective provision of development projects to victims (77%), followed by cash (45%) or in-kind payments (23%) (see Figure 41). A community leader in the POC explained why he thought reparations were a key component of sustainable peace:

> "Compensation is very important because many families have been killed, father or mother is killed, or children are killed and it remains he or she alone, all the properties were looted, the houses destroyed, so it is very important. If Government or international community could support people, the point of compensation should be done when peace comes. This will attract people to come, those who ran away to another country. When they hear there is compensation they will come back."[103]

Figure 40: Should victims receive compensation? x Ethnicity (%)

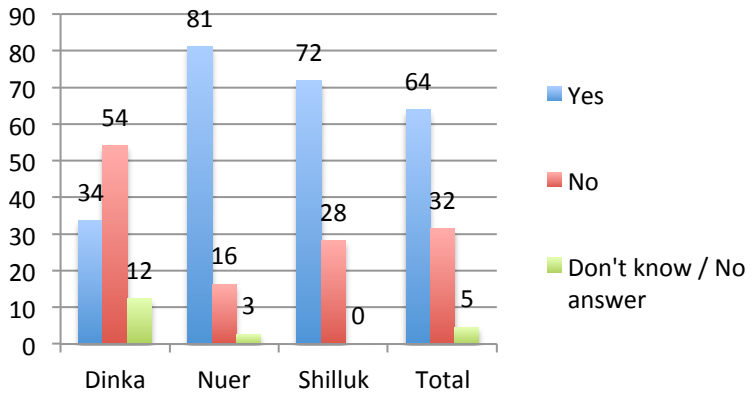
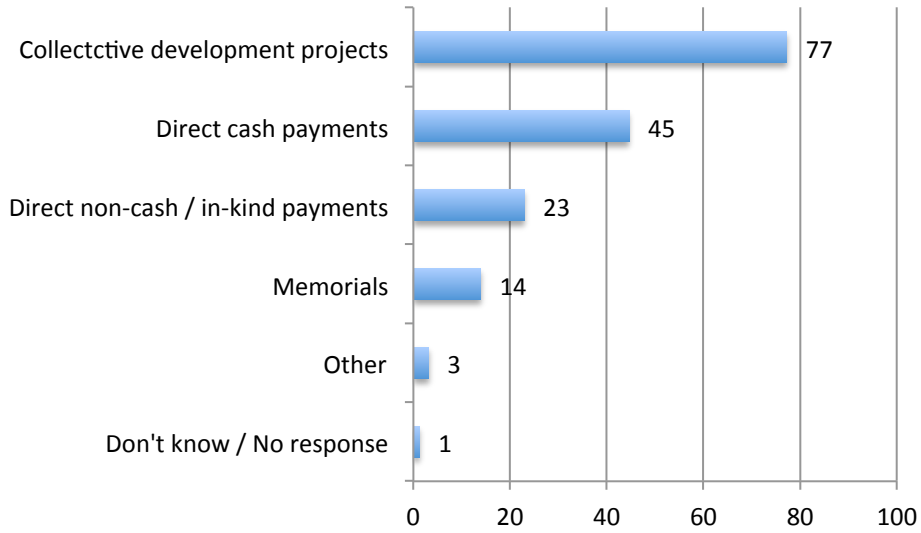


Figure 41: What form of compensation? (%)

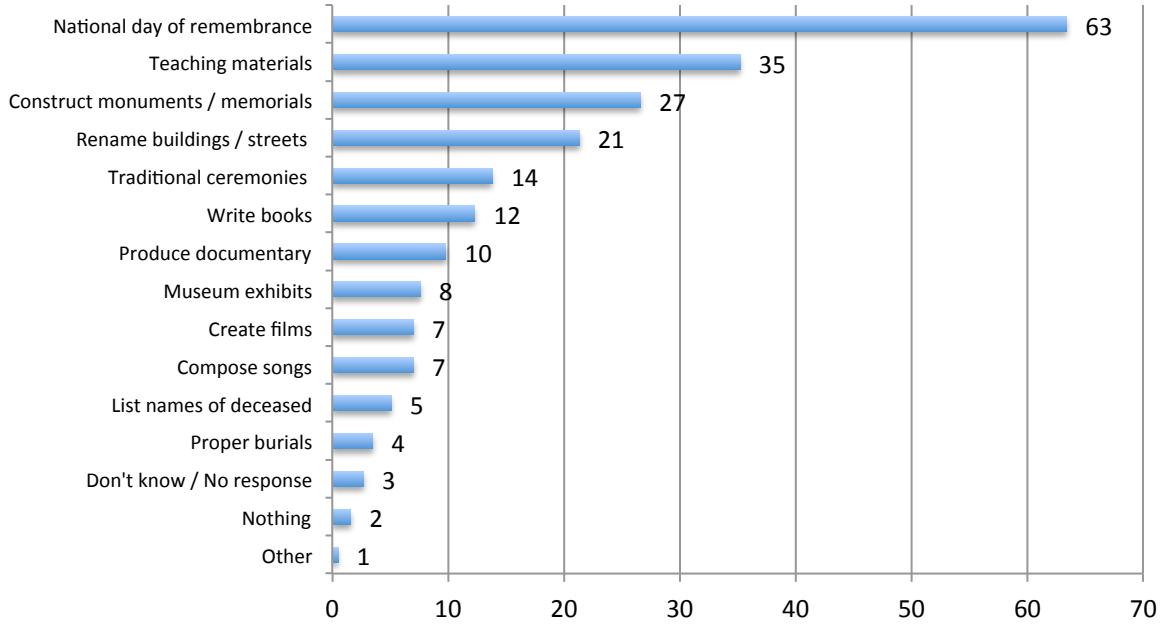


A key challenge given the scale of conflict and displacement is what form of compensation should be provided and by whom. In response to an open question about type of compensation, respondents focus primarily on material reparations such as the collective provision of development projects (77%) and cash payments to the victim (45%). Although only 14 percent of respondents mention the importance of memorials, support for symbolic reparations increases dramatically when respondents are asked *'What should be done to honor victims of conflict?'*. Here,

[103] Interview with younger Shilluk community leader, *supra* note 93.

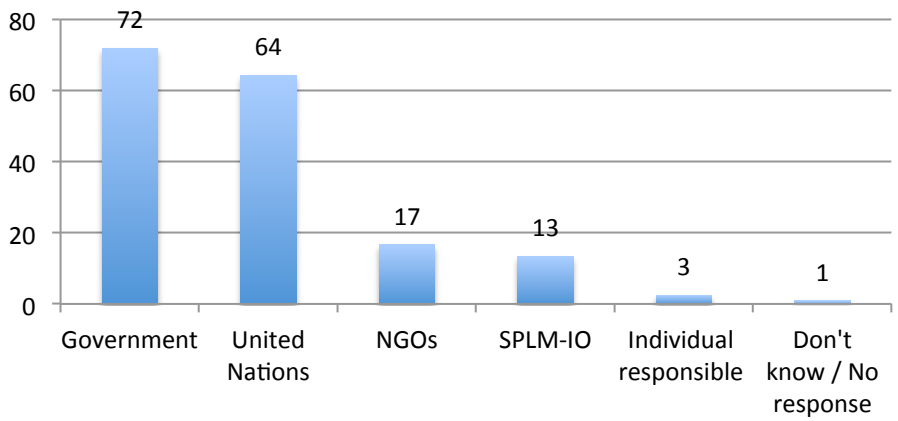
respondents provide a wide range of options, with a national day of remembrance (63%), development of teaching materials for schools (35%), the construction of monuments or memorials (27%), or the renaming of buildings and streets (21%) emerging as the most popular (see Figure 42).

Figure 42: What should be done to honor victims? (%)*



When asked *'Who should provide compensation?'*, most respondents (72%) point to the Government (see Figure 43). These responses are consistent with the notion that reparations provide a means for the State to acknowledge that it has failed in its duty to protect its citizens and is committed to making amends, however small the compensation might be. However, 64 percent of respondents think that the UN should have some responsibility to provide reparations. That so many people associate this function with the UN demonstrates the governance responsibilities that the UN has assumed, particularly in the POC sites, as well as the lack of confidence that people have in the willingness of the state in South Sudan to follow through with a reparations program.

Figure 43: Who should provide compensation? (%)

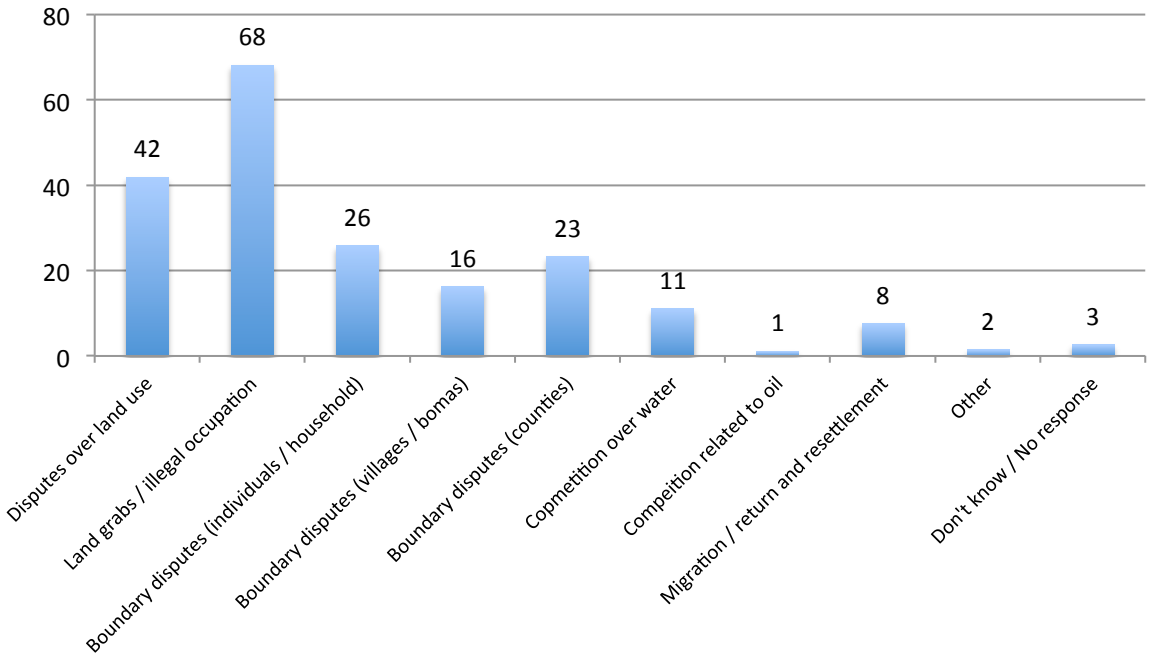


Despite widespread demand for reparations, the nature and extent of violence in South Sudan presents significant challenges to both traditional and modern forms of reparation. Reparations are notoriously difficult to implement, in even the most stable of contexts. It is also difficult to envision an individualized reparations program being successful in South Sudan, given the scale of violence and the sheer number of victims. However, it is essential that the TGONU acknowledge and account for the extent to which the State has failed to protect its citizens, and provide people with the material resources that are needed for them to rebuild their lives. Given a significant lack of human, financial and institutional capital, the TGONU would need to work in partnership with conflict-affected communities, local institutions that make use of traditional compensation mechanisms, and international partners to define and implement new forms of reparations. Any future reparations program would need to prioritize transparency, manage expectations and situate local demands within the financial and institutional capacity of the post-conflict state. Practically speaking, in the short- to medium-term, the reparations program would need to focus on collective and symbolic reparations, until the State is in a position to consider the possibility of an individualized reparations program.

3.14 Land Conflicts

As noted in Section 1.2, inter-communal land disputes have long been a source of conflict in Upper Nile State. Most respondents characterize these disputes as efforts by neighboring groups to grab their community's land by claiming primary ownership rights or using their control of the State to redraw boundaries in favor of specific ethnic polities (see Figure 44). While the immediate trigger of the national crisis can be traced to politically motivated violence in Juba, data from the Malakal POC demonstrate that preexisting disputes over land have significant impacts on inter-communal relations, and as such, are critical areas of concern for the peace process moving forward.

Figure 44: Causes of land disputes (%)



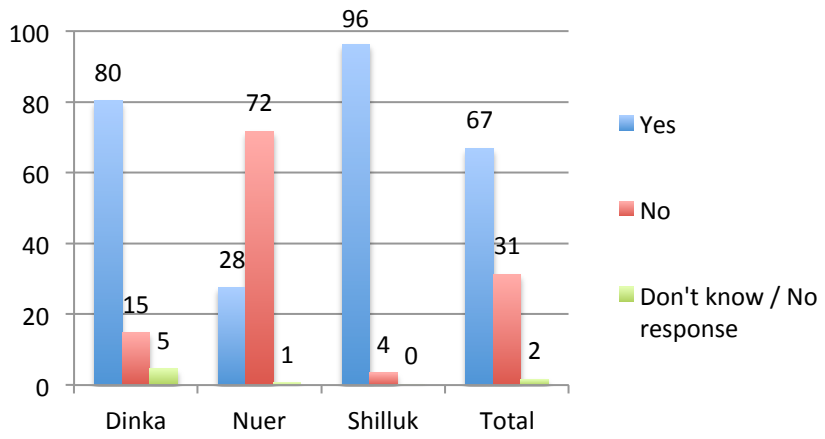
Rather than a direct cause of conflict, many disputes over land in the region can be linked to competing narratives of historical settlement patterns and access to land-based resources in the

oil-rich state. In many cases, these disputes have existed for generations, but became increasingly politicized leading up to and following independence. According to one key informant:

> "They [land disputes] were being used for politics by the politicians for when the election comes. They [politicians] will go to them and say, 'If you vote for me, I will give this land to you.' And it is the land of people of Panyduay, it is not their land [to give]. So when they are trying to get into office, now the difficulty comes, because the owner of the land will say, 'How can you give our land to them?'" [104]

Probably the most contentious land dispute in Upper Nile involves the Shilluk and Padang Dinka communities, and relates to which group has the right to access, use and manage land on either side of the Nile River. Specifically, the Shilluk and Dinka communities use competing narratives surrounding how the region was first settled to justify access to land on the Eastern bank of the Nile. Interestingly, these types of inter-communal land disputes appear to be less of a concern among Nuer groups in this part of the country (see Figure 45).

Figure 45: Are other groups encroaching on your land? x Ethnicity (%)



According to key informants in the Shilluk community, the Shilluk are the 'original' inhabitants of the Upper Nile region, and agreed to settle the Dinka east of the Nile when a large group of pastoralists arrived in the early nineteenth century. As a Shilluk elder asserted: "This land historically belongs to Shilluk, east and west of the Nile. Both of them they belong to Shilluk at that time. What I say is fact. The Dinka are new arrivals."[105]

From this perspective, although the Shilluk King initially settled Dinka migrants in the forested-region east of the river, the Dinka have since expanded back towards the river and onto Shilluk territory. This narrative cannot be separated from regional perceptions of Dinka expansionism and belief that the minority Padang are trying to leverage connections with ruling SPLM into a greater role in the region. As a Shilluk elder explained:

> "The Dinka here are a minority and are scattered, so they want to become a majority. They want South Sudan to be ruled by Dinka… Because the president is from Dinka they want to take this land. Now the Dinkas want to say this area is for Dinka. The map has been completely changed because the Government belongs to them and can do anything they want."[106]

[104] Interview with women's group leader, *supra* note 35.
[105] Interview with Shilluk elder, *supra* note 59.
[106] *Id.*

Conversely, the Dinka's competing narrative claims that the ancestors of the Dinka have lived in the region for hundreds of years, and that the Shilluk and Nuer are simply using arguments of Dinka expansionism to further undermine the minority status of the Padang Dinka. According to a Dinka elder:

> "My family has been in Baliet [County] for 400 to 500 years. They [Shilluk and Nuer] know it is our land, but they want us gone, they want to remove us by force so they can have their own state."[107]

In addition to the ways in which competing narratives of initial settlement and ethnic expansionism impact local understandings of conflict in Upper Nile State, on-going disputes over land have significant implications for short- and medium-term peace under the ARCISS. For example, the power-sharing agreement between GRSS and SPLM-IO has the potential to dramatically alter the abilities of ethic groups to leverage collective grievances over landholdings to push new boundaries within and between communities. Here, Dinka elders express concern that giving greater power to SPLM-IO at the state level will increase the ability of the Nuer and Shilluk to claim Dinka lands (much like Shilluk complain that Dinka politicians are responsible for exacerbating existing land disputes and annexing holdings in favor of the Dinka). The impact of the ARCISS on on-going land disputes thus has the potential to dramatically undermine peace and security in the medium and short-term. As a Dinka elder explains:

> "It is not a solution to give a greater percentage [of power to the opposition] in greater Upper Nile. When you give the percentage you give the land. People will go to the bush and we will have another conflict. Then fighting is all or nothing, as people see this as loosing access to ancestral lands… This conflict will not end because if you give my land to another person it is not okay. Even me I will fight. If the Government passes a law that will be against us, we do not accept that."[108]

The implications that land and land-related disputes have for peace and security place a tremendous amount of importance on existing mechanisms of dispute resolution. To this end, respondents were asked to whom they would bring a land-related dispute depending on whether the dispute involved an individual dispute over registered land, an individual dispute over unregistered land or an inter-communal dispute over communal land. Data demonstrate that respondents are more likely to try to resolve their individual disputes over registered or unregistered land through mediation efforts by friends, family or neighbors (see Figure 46), or by appealing to traditional authorities (see Figure 47). Disputes over community land show a more prominent role for state and local government officials (see Figure 48). That these disputes require the intervention of state actors is an indication of how contentious they are.

[107] Interview with Dinka elders in Juba (8 Aug. 2015).
[108] *Id.*

Figure 46: Resolution preferences for dispute over registered land (%)

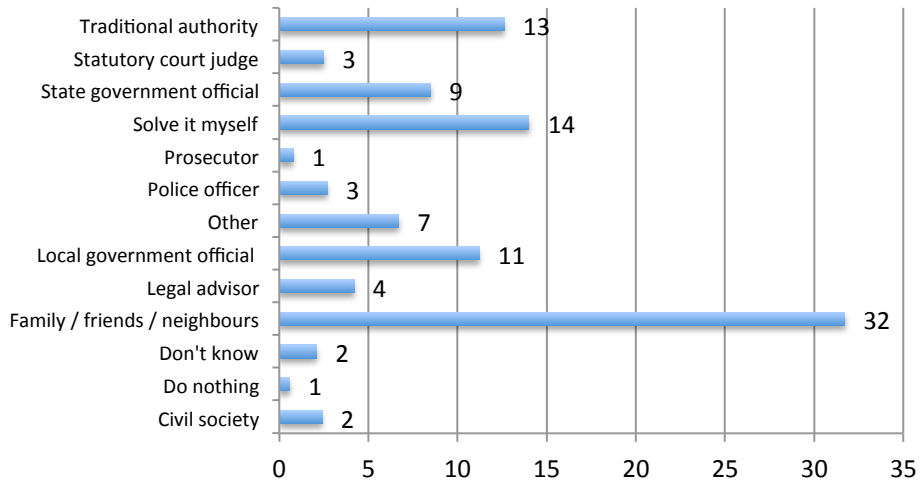


Figure 47: Resolution preferences for unregistered land (%)

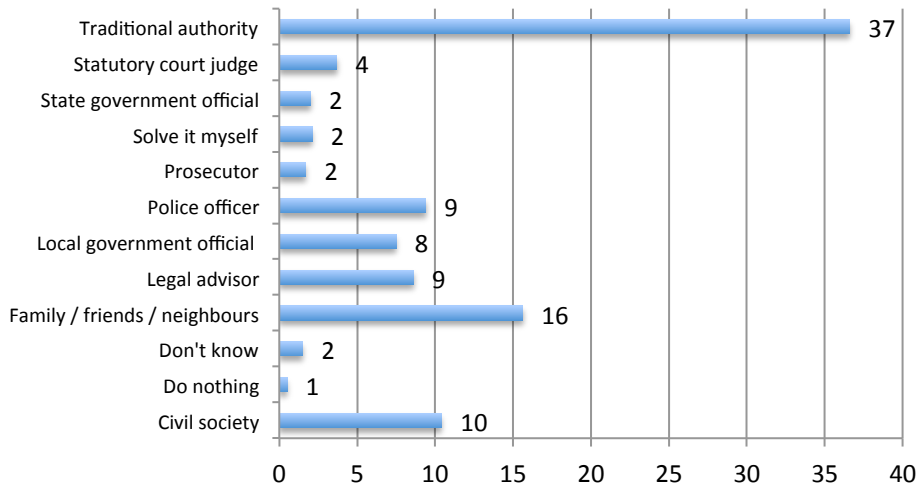
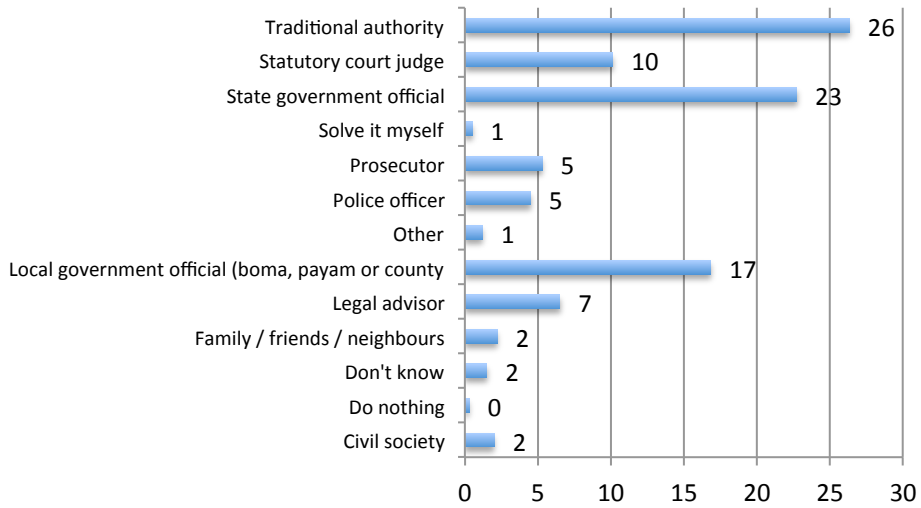


Figure 48: Resolution preferences for community land (%)



4 CONCLUDING REMARKS

Research findings demonstrate the serious toll that the conflict has taken on the population in the Malakal POC. Relations among the various communities residing in the POC are at an all time low and provide a stark reminder of the threat that the conflict poses to social cohesion in South Sudan. Relationships among communities are inextricably intertwined with the political and military interests of leaders on either side of the political divide. In this sense, until the disputes among the leadership are addressed, it will be difficult to envisage genuine reconciliation among communities on the ground. At the same time, communities in the Malakal POC are striving to create an environment that is insulated from the animosity that drives the conflict outside. In this sense, the POC could provide an entry point for reconciliation efforts alongside efforts to secure a permanent ceasefire between the warring parties.

High levels of trauma and PTSD reported by the participants further represent the complexity of the situation. South Sudan is in the midst of a mental health crisis on par with those of the most conflict-affected countries of the world. Addressing the mental health impacts of successive and extended periods of violence is critical to the success of any transitional justice and national reconciliation program. People who meet the diagnostic criteria for PTSD have less positive beliefs in a communal or interdependent view of the future, are less willing to forgive or reconcile with those who have harmed them, and display a greater retributive sentiment. 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. Providing relief to traumatized populations could also reduce retributive sentiments and help to manage expectations of what criminal prosecution can deliver in a context characterized by widespread abuses by many thousands of perpetrators.

The prospects for peace in South Sudan remain elusive, and until a minimum degree of security is established, little can be done to promote truth, justice, reconciliation and healing. Given the scale and breadth of current and past conflicts, the enormity of the task when it comes to addressing legacies of violence and combating the culture of impunity should not be underestimated. It will take generations to repair the harm that conflict has done to South Sudanese society. Nonetheless, the ARCISS has provided a window of opportunity to begin addressing one key component of sustainable peace by closely examining human rights abuses and developing an informed and evidence-based plan to ensure that they do not recur.

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