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Policy Brief

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Transitional Justice for Stabilizing South Sudan: Lessons from Global and Local Contexts

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Summary

The Agreement on the Resolution of Conflict in the Republic of South Sudan (ARCISS) contains important provisions on transitional justice, including a mandate to put on trials those responsible for masterminding atrocities during the 2013-2015 war. The move has been welcomed by human rights and justice advocates as a victory for the victims, and a strong statement towards ending impunity in South Sudan. Using literature on global application of transitional justice and key informant interviews with local traditional justice experts, this paper explores relevant local and global transitional justice practices and lessons to effectively inform the implementation of the transitional justice in South Sudan.

We draw from a number of experiences. First, countries in transition from civil war to peace rarely put on trials suspects in government and in armed rebellions (Reiter et al., 2013, Olsen et al., 2010, Sooka, 2006). Instead, they mostly prosecute defeated rebels or officials of former regimes. Because of potential for such attempts to meet resistance that are likely to jeopardize transition to stability, countries in transition prioritize peace and stability over punitive justice (Fletcher et al., 2009, Leebaw, 2008). Second, authorities apply an appropriate mix of transitional justice mechanisms. For example, a combination of trials and amnesty or trials, amnesty and truth commissions has proved effective in several contexts. Third, the single most important lesson from local justice practices is looking at justice as a compensation for lost life and property, injury, and abuse (Personal Communication, November 2015, Jok et al, 2004). Revenge is an act of desperation, a last resort when the delivery of justice is inadequate. From a traditional justice standpoint, death or life sentence offers little justice, as it does not necessarily reimburse the aggrieved party. If there is no material reimbursement for the loss, victims can still feel the need for justice, consequently continuing to generate a feeling of vengeance.

Thus, South Sudan should sequence the transitional justice delivery by prioritizing stability, TRHC to provide truth and reconciliation, CRA to provide compensations, inclusive constitutional making process to produce a good constitution and build strong, transparent, accountable, and democratic institutions before the next elections. The TGONU should appropriately design and use reparations to address the country's unique context of traditional justice, which on its own can meet most of the justice needs for atrocities committed during the conflicts. The TGONU should as well put a high premium on community-to-community dialogue & reconciliation, and a political dialogue & reconciliation.

1. Introduction

The Agreement on the Resolution of the Conflict in the Republic of South Sudan (ARCISS), signed in August 2015, has incorporated several forms of transitional justice mechanisms to deliver justice to the 2013 war victims. Transitional justice is a form of justice administered during transition from a violent conflict, genocide or during transition from authoritarian regimes to democracy and the rule of law (Olsen et al., 2010, Huyse, 2008). It includes five main types, namely trials (prosecutions), truth commissions, reparations, amnesties and lustration measures (Olsen et al., 2010). Each of these mechanisms will be defined later in this paper. Human rights and justice advocates have welcomed the incorporation of transitional justice in South Sudan's peace agreement, hailing it as a victory for the victims and a strong stand against impunity in the country, all with an eye to punishing and discouraging political violence as a means to political power.

While this sense of optimism on the part of human rights advocates is understandable, questions remain hanging in the air about the effectiveness of bringing to justice partners of a peace agreement who have *compromised* to end the war. The ARCISS provides for the Truth, Reconciliation and Healing Commission (TRHC), the Hybrid Court for South Sudan (HCSS) and Compensation and Reparation Authority (CRA) as the primary institutions through which transitional justice can be achieved. The three institutions are mandated to promote truth, reconciliation, healing, compensation and reparation. However, the agreement does not cover atrocities that were committed in the previous wars. The ARCISS does not surprisingly provide for amnesty. Perhaps amnesty has been left out because it has proved ineffective. However, "partial or conditional amnesties can also provide a useful means of coping with widespread conflict-related abuses and states' inability to bring all suspects to trial" (Deng & Willems, 2016). Therefore, amnesty, depending on the design, is normally an important component of transitional justice package and lack of it could affect the effectiveness of the transitional justice enshrined in the ARCISS.

Often, justice in the sense of punishing people for crimes rarely happens in a situation where the accused are also the ones expected to bring peace (Reiter et al., 2013, Olsen et al., 2010, Sooka, 2006). Such justice can only happen in a win-lose situation of conflict. Or else, the parties to the war and to the peace agreement that ends the war should be the ones to agree in the end to provide justice in a way that does not sacrifice them. For example, in a post authoritarian regime's context where non-violent opposition groups or violent rebels take over, it is easy to prosecute former officials of the regime who might have committed atrocities. In addition, in a situation where the government in power has defeated the rebels, it is also easy to put on trial the former rebels who might have committed war crimes or crimes against humanity. However, it is counterproductive and impractical to try suspects of atrocities on both sides of a civil war following a win-win political settlement. For example, the approach does not achieve both stability and justice for the victims, as it takes long to bring justice and antagonizes

communities, leading to further instability.

Using literature on global application of transitional justice and key informant interviews with local traditional experts, this paper explores relevant local and global transitional justice practices and lessons to appropriately inform transitional justice as an attempt to stabilize South Sudan. It does this by answering a number of questions. First, what lessons can be learned from the practices of transitional justice mechanisms in other countries, particularly in the context of a civil war? Second, what form or combinations of transitional justice mechanism are effective, and in what contexts are they effective? Third, what lessons can be learned from traditional justice practices available in South Sudan to inform appropriate design and application of transitional justice in ARCISS?

From prevailing experience, we argue that justice in the sense of punishing perpetrators can happen in a win-lose context but not in a win-win (compromise) political settlement as with the ARCISS. We also contend that transitional justice in the way it is stipulated in ARCISS could further inflame the conflict if it does not include past atrocities committed in similar conflicts, e.g., the 1980s & 1990s. Furthermore, we argue that reparations, if designed to suit the local context, can adequately meet the justice needs, as this is the way in which it is delivered among most communities in South Sudan. In short, a form of justice that is not comprehensive and inclusive, one that clearly separates victims from perpetrators, and one that does not meet the traditional justice need, would be more damaging than just.

The rest of the analysis is structured as follows. Section 2 provides background of transitional justice mechanisms, Section 3 examines application of transitional justice in other countries, Section 4 looks at the traditional justice in South Sudan, and Section 5 concludes with policy recommendations.

2. Transitional justice mechanisms

Transitional justice is defined as a “set of judicial and non-judicial measures that have been implemented by different countries in order to redress the massive legacy of human rights abuses” (International Center for Transitional Justice –ICTJ, 2015). Olsen et al., (2010) define it as “array of processes designed to address systematic or widespread human rights violations committed during periods of state repression or armed conflict.” The aspect of human rights violations in the definition simply refers to “extrajudicial killings, disappearances, torture and arbitrary arrests and imprisonments” (Olsen et al., 2010).

The development of this concept was triggered in part by responses to World War Two atrocities, and coined in 1995 as “Transitional Justice: How Emerging Democracies Reckon with Former Regimes” (Villalba 2011). The Allied Forces during the World War Two tried thousands and executed hundreds of thousands of German Nazis under the “Allied Control Law” number 10 (Leebaw, 2008). Since then advocates of accountability for war related atrocities have often

been calling for a Nuremberg style trials and executions. In addition, the 1948 UN Convention on the Prevention and Punishment of Crime of Genocide established an international obligation to hold perpetrators accountable under an international law (Villalba, 2011). This did not only provide an international mandate, but also added a significant dimension to the development of transitional justice system.

Despite this early development, wider and comparative studies on the subject matter did not take root “until the period of “third wave” transitions to democracy in Latin America” (Leebaw, 2008). Initially, founding scholars of the concept “framed the discussions around the issues that arise” within the context of transition from repressive period where a government has committed atrocities and human rights violations (Olsen et al., 2010, Reiter et al., 2013). However, over the last two decades, the practice has also been applied in the contexts of civil wars. To reflect the civil war’s context and new realities, scholars have added as part of the definition the “recognition for the victims and [the promotion of] possibilities for peace, reconciliation, and democracy” to its older definition of transitional justice as “a response to systematic or widespread violations of human rights” (Reiter et al., 2013, Olsen et al., 2010).

Despite a variety of other mechanisms, prosecutions (trials), truth commissions, amnesties, reparations, and lustration measures have been widely recognized by scholars (e.g. Olsen et al., 2010) as constituting the standard definition of transitional justice. Trials are defined as holding accountable through a court of law those who have committed genocide, crimes against humanity and violations of human rights during conflict and repressive regimes (Olsen et al., 2010). Truth commissions are defined as temporary institutions established by a sovereign state or by an international organization to investigate past human rights violations and make a report (Olsen et al., 2010). Reparations are defined as state sponsored initiatives to give money, property or any other forms of payments to victims or relatives of the victims of atrocities and human right violations during civil war or repression. Amnesties are defined as official declaration of forgiveness for those who have been accused of atrocities as a way to incentivize peace implementation and restoration of stability. Lustration measures involve vetting and removing individuals accused of human rights violations from positions of authority.

3. Lessons from global application of transitional justice

Which context is each form of transitional justice applied? Each context, from authoritarian regime’s repression to civil war’s atrocities, poses its own unique challenges and calls for a selection of appropriate mechanisms or applications. In some situations, transitional justice mechanisms have been instituted in the middle of a conflict, as it was the case in Columbia. In South Africa, it was immediately established at the beginning of transition or long after the period of transition in Chile and Argentina (Olsen et al., 2010).

To understand which context each kind of the transitional justice mechanisms has been applied, we reviewed the work of Olsen et al (2010), which examined 421 cases applied worldwide from

1970 to 2007. The authors used Transitional Justice Database Project (TJDP) at the University of Wisconsin-Madison. The TJDP has been updated since the last analyses (Reiter et al 2013; Olsen et al 2010). For the purposes of this study, we also reviewed and analyzed the newly updated version of TJDP. Their study looked at trials, truth commissions, reparations, amnesties and lustration. The database allows scholars to look at transitional justice in a variety of contexts, including transition from civil war and authoritarian rule.

Analysis of the updated data from TJDP reveals that majority of countries tend to offer amnesties to opponents of the state during or after civil war to bring about or sustain peace. For example, of the 1,116 transitional justice mechanisms applied worldwide between 1970 and 2007, 64% (712) of the cases granted amnesties, suggesting greater preference for amnesties. Exactly 81% (577) of these amnesties were granted to non-state agents (e.g. rebels and opponents of the government), while only 7% (52) were granted to state agents (e.g. government officials) and 12% (83) amnesties were provided to both state and non-state agents. In addition, 99 trials were carried out against state agents and 153 against non-state agents.

The application also differs across regions and continents. For example, Europe leads in trials and lustration instruments. Most of the European trials and lustration measures targeted former officials of the former regimes in post communist Europe. Africa leads in amnesties, followed by Asia and Americas in that order (see table 2). Most of the amnesties in Africa target rebels to put down arms. Some amnesties target agents of state, as was the case with apartheid regime in South Africa. Our analysis reflects Olsen and colleagues' (2010) finding, which shows that amnesties are more preferable in a civil war context. Overwhelming majority of these are often granted to the rebels, demonstrating that amnesties incentivize the rebels to lay down arms.

Table 1: Amnesties and trials and the situations in which they were applied between 1970 and 2007 (Source: Transitional Justice Database Project, University of Wisconsin- Madison)

Type	State agents	Non-state agents	Both	Total
Amnesty (Civil war)	2	150	40	192
Amnesty (authoritarian rule)	21	2	14	37
Trials (civil war)	8	27	5	40

Trials (authoritarian rule)	41	0	0	41
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Table 2: Amnesties and the locations in which they have been applied world wide between 1970 and 2007 (Source: Transitional Justice Database Project, University of Wisconsin- Madison).

Continents	Number of amnesties
Africa	268
Asia	247
Americas	121
Europe	73
Oceania	2

In a civil war context, trials are more practical where there is an outright winner. For example, majority of either the non-state actors or state actors that were put on trials between 1970 and 2007 were not incumbent, indicating that justice in the sense of punishing perpetrators happens in a win-lose situation. Second, most of the trials happen in countries with stronger institutions of governance, particularly judicial and law enforcement institutions, as it was the case in post communist Eastern Europe. In countries with weak institutions and culture of using judicial process coupled with polarized communities, however, authorities prioritize peace and stability over punitive justice. The reason for prioritization of peace and stability over punishment is to encourage powerful perpetrators to implement a peace agreement. For example, in Kenya, following the 2007 elections-related ethnic violence, stability and transformation of institutions of the rule of law, such as judiciary, were prioritized over immediate transitional punitive justice.

To ensure stability and transformation, the arrangements in the peace accord spared key players whose roles were instrumental in implementing an agreement. The International Criminal Court (ICC) indicted suspects who allegedly played key roles in the violence but who at the same time posed less risk to the implementation of the accord and transition to stability. While this backfired after the main suspects namely Mr. Uhuru Kenyatta and Mr. William Ruto united ranks and won elections, and worked together to clear their names, it was effective in terms of allowing the parties of the new accord to restore stability, produce a new constitution, and reform the institutions of the rule of law. Nine years later the Kenyan victims of the elections related

violence have not received justice, as many cases have been dropped due to lack of evidence. Instead, the Kenyan authorities chose to prioritize stability and transformations to save the country from collapsing.

In a civil war context, the widely cited transitional justice objectives include (1) restoration of peace, (2) establishment of rule of law (e.g. preventing anarchy as a result of people taking law into their own hands for lack of justice), (3) respect for human rights, and (4) restoration of security, stability, and democracy. First, Reiter et al (2013) find that 118 of 151 civil wars that occurred between 1970 and 2005 were ended and only seven of them recurred, suggesting inadequate link between transitional justice and peace (Reiter et al., 2013, Olsen et al., 2009). In other words, peace can be achieved and sustained without or with transitional justice. Second, despite inadequate general link between transitional justice and peace, amnesties can help in securing “peace when used during conflict” (Reiter et al., 2013, Olsen et al., 2009). Third, to ensure human rights protection, trials can be instituted to address past atrocities but they cannot alone adequately respond to human rights violations and improve democracy (Reiter et al., 2013, Olsen et al., 2009). Fourth, a holistic approach, which combines trials, amnesties, truth commissions, reparations and lustration measures, is appropriate but this also falls short of getting the appropriate combination that can achieve the objectives of transitional justice (Reiter et al., 2013, Olsen et al., 2009). Instead, either of two different combinations, namely trials and amnesties or trials, amnesties and truth commissions, can, to a certain extent, achieve the objectives of transitional justice.

What explains the effectiveness of a combination of trials and amnesties or trials, amnesties and truth commissions? Trials and amnesties provide the balance (Olsen et al (2009). For example, trials provide criminal accountability and amnesties provide security guarantee for peace spoilers. Amnesties are necessary as a matter of pragmatism, as one cannot try everybody, in addition to the fact that it takes a long time, consumes, and stretches thin resources to try so many people (Olsen et al., 2009). In this context, serious cases are selected for trials as deterrence but the rest of these are considered for amnesty that is conditional on truth. For peace partners, amnesties are preferred to incentivize the rebels to sign and implement peace. Trials are then sequenced, with restoration of peace first, followed by constitution making, and establishment of institutions of good governance. In other words, trials are postponed until the institutions become stronger. Based on South African experience, truth and amnesty can be effective in securing a smooth transition if amnesty is exchanged with truth and reforms, or sequenced in such a way that amnesty creates a conducive atmosphere for peace to prevail. Here, future trials are tied to individual cooperation with the system to tell the truth, repent, and support reforms that lead to durable peace, democracy, respect for human rights, and stability.

4. Lessons from local traditional justice practices¹

What lessons from local traditional justice practices are applicable to South Sudan's ARCISS? There are various forms of conflicts in South Sudan for which a transitional justice has been sought, and from which useful lessons can be drawn. Communities have, since time immemorial, fought over grazing land, cattle, fishing territories, farming land, hunting territories and marriage disputes, among others. These kinds of conflicts often result in killings. While the approach to bringing justice to the victims varies across ethnic communities, the main purpose of justice is to reimburse for the loss to bring relationships back to where they were before the conflict, or to "restore social equilibrium" (Personal Communication, November 2015, Jok et al., 2004). This is done through paying life compensation in cattle or money, depending on the community (Personal Communication, November 2015, Jok et al., 2004).

While some people opt for revenge if they are not satisfied with the restitution, paying for a life lost, injury or abuse is the kind of justice that satisfies most victims, at least as it traditionally has been the case (Personal Communication, November 2015, Jok et al., 2004, Howell, 1954). Opting for revenge comes as a result of frustration and is not usually the most satisfying outcome and could engender revenge cycle (Personal Communication, November 2015). However, in a situation of cooperation and understanding where there is a benefit cost analysis, the relatives often go for compensation (Personal Communication, November 2015). While a murder or killing during the fighting is treated as a criminal act equivalent to death or life sentence or many years in prison, compensation aspect makes it a civil act, as relatives are asked to choose between pursuing a civil case through customary court or criminal case through statutory court (Jok et al., 2004, Leonardi & Jalil, 2012). Any attempt to pass a death sentence based on statutory law usually does not necessarily enable reconciliation (Jok et al., 2004, Howell, 1954). Usually communities that practice marriage for the deceased as a continuity of the person's name or using the compensation to raise the deceased family find death sentence or revenge as "pointless" as it does not "break the cycle of revenge and raiding" (Leonardi et al., 2010). The legal gold standard of "a life for a life" or capital punishment, in western law, rarely results in everlasting peace among the communities (Howell, 1954).

Major ethnic communities such as Dinka, Nuer, Zande, Shilluk, Bari, Lotuho, Acholi, Taposa and Anyuak, among others use compensation for the loss of life (see table 3 & 4) (Jok et al., 2004). The Dinka, Nuer, Shilluk and Taposa pay compensation in cattle while Zande, Bari, and Anyuak pay compensation in form of money. The Lotuho offer a girl in compensation. The customary law of the victim community is often used to decide the compensation price (Personal Communication, November 2015). In most cases, the payment of the compensation price is not

¹ Most of the information in this section was obtained through interviews with traditional justice experts,

the responsibility of the individual killer alone, even though he/she is put on trial alone as an individual (Jok et al., 2004). When the verdict comes out that the accused is guilty, the family and the community shoulder the responsibility for the payment of compensation by contributing to compensation price. The compensation punishes the perpetrator, and by extension the family and community of the perpetrator, through the heads of cattle given. The collective punishment serves two main purposes. First, it takes away the cattle income of the family and community, which is intended to force the community and family to restrain its members from committing crimes. Second, it is meant to inflict pain on the perpetrator through reduction of cattle income and through social stigma and feeling of shame for inflicting suffering in his family and community through loss in income.

The next paragraphs focus on the practices of traditional justice among the Nuer and Dinka. While the 2013 conflict has touched many ethnic communities, the two largest communities, the Dinka and Nuer, have been at the center of it and looking at their justice practices can in part help better inform the design and application of transitional justice in the ARCISS. For example, in this conflict, the Nuer claim they have a blood feud with the government and the Dinka claim they have a blood feud with the SPLM in Opposition (IO), both of which are now partners in the new TGONU. Therefore, while this conflict is different in terms of scale from local conflicts that are resolved through traditional justice mechanisms, the ways these two ethnic communities settle issues of death, injuries and loss of property in conflict is worth exploring, as it could provide a lesson for better justice and accountability designs (See table 3).

Among the Dinka and Nuer, traditional justice involves elaborate negotiations between the parties through traditional leaders. The first action after the incident is to stop the fighting or deescalate the fighting. A spiritual leader often intervenes during the fighting by drawing the line and since spiritual leaders are respected, revered, and feared, the fighting groups get forced to cease fighting. Sometimes, if a spiritual leader intervenes before the fighting, the fighting would not take place. It is not all the times that the spiritual leader's advice is heeded. Neighboring communities can also stop the fighting.

Table 3: Relevant offences and punishments among the Dinka, Nuer and Shilluk (Jok et al., 2004)

Offence	Compensation by tribe		
	Dinka	Nuer	Shilluk
Murder	31 – 51 heads of cattle	51 -80 heads of cattle	Unknown number of cattle
Robbery/theft	Return of the property plus a fine or imprisonment	Return of the property plus a fine or imprisonment	Return of the property plus a fine or imprisonment
Rape	Compensation made to father plus a fine or imprisonment	Compensation made to father plus a fine or imprisonment	Compensation made to father plus a fine or imprisonment

Table 4: Relevant offences and punishments among Zande, Fertit, Taposa, Anyuak & Bari (Jok et al., 2004)

Offence	Zande	Fertit	Taposa	Anyuak	Bari
Murder	Monetary compensation	Monetary compensation	Compensation in cattle	Monetary compensation	Monetary compensation
Robbery	Refund of property plus a fine	Refund of property plus a fine	The law is silent despite widespread incidents of robbery	Refund of property plus a fine or imprisonment	Refund of property plus a fine or imprisonment
Rape	Monetary compensation made to father plus a fine or imprisonment	Monetary compensation made to father plus a fine or imprisonment	Compensation in cattle made to father	Not Known	Monetary compensation made to father plus a fine or imprisonment
Theft	Refund of property plus a fine or imprisonment	Refund of property plus a fine or imprisonment	Refund of property plus a fine or imprisonment	Refund of property plus a fine or imprisonment	Refund of property plus a fine or imprisonment

When homicide occurs among the Nuer, a village leader, known as leopard skin chief, intervenes by protecting the perpetrator or the murderer as a way of preventing conflict from escalating (Personal Communication, November 2015, Evan-Pritchard, 1940). There are a number of things the leader does to the perpetrator. First, on arrival, the leader cuts the arm of the perpetrator to let the blood out otherwise the murderer would not eat (Personal Communication, November 2015, Evan-Pritchard, 1940). Second, the leader hides the perpetrator from the relatives of the victims because if he is found, he can be killed and the killing can escalate to an uncontrollable level (Personal Communication, November 2015). And third, the leader calls the parties to resolve the conflict (Personal Communication, November 2015). This could take several weeks or months, depending on the nature of the parties involved. While in some cases the Dinka religious leader does not perform the same ritual such as cutting the arm for the murderer to eat, he or she protects the perpetrator and calls the parties to resolve the conflict. Such an intervention often involves a group of elders from both sides or from a neutral community (Personal Communication, November 2015).

When a murder or a communal fighting occurs, the objective response is to bring killers to justice, and compensation for the loss is executed to normalize relationships (Personal Communication, November 2015). The relatives of the victims are asked about the kind of justice they want. For example, do they want compensation or do they want a capital punishment? Death sentence happens through revenge and no chief in most cases issues a death sentence

(Personal Communication, November 2015). In other words, death sentence happens when the relatives of the deceased refuse the compensation and opted for revenge. However, this has changed overtime and relatives choose between statutory and customary courts, depending on the type of justice they want (Personal Communication, November 2015). In most cases, relatives go for the life compensation because the compensation price is used to marry a wife to produce children for the deceased if the deceased did not marry or raise the family of the deceased if the deceased was married (Personal Communication, November 2015, Jok et al., 2004). Using compensation price to marry the wife for the deceased is the essence of the practice itself among the Dinka and Nuer because no person once born is supposed to go into obscurity. The deceased person must have a family and children through living relatives to have continuity of his identity and name after death (Deng, 2008). This is the honor and the best form of memorial the living could give to the dead in those contexts.

This practice dates back to the Anglo-Egyptian Condominium. It was more informal and carried out by religious leaders before the system of chiefs and chiefs' courts were established following the enactment of Chiefs' Courts Ordinance of 1931. Its enforcement was very difficult as it depended on persuasion (Evan-Pritchard, 1940). Sometimes, it depended on whether the affected party could heed the persuasion and threats of curse from the religious leader if they did not comply (Personal Communication, November 2015). Although the concept existed prior to the ordinance, the amount of compensation was formalized and standardized by the new system of chiefs' courts.

Among the Dinka, the life compensation price varies from region to region. Compensation in Bahr el Ghazal is 31 heads of cattle, with 30 heads of cattle going to the relatives and one head going to the government. Among some of the Dinka groups in the Upper Nile region, it has been 50 heads of cattle. Recently, Dinka from Lakes State increased the number to 50 heads of cattle. The life compensation price among the Nuer is 50 heads of cattle (Greuel, 1971; Evans-Pritchard, 1940). There, up to 40 heads of cattle go to the relatives and 10 go to the government.

After agreeing on the compensation, chiefs or religious leaders perform the ceremony to normalize relationships. The Dinka call it "Achuil" while the Nuer call it "Ca Keth Dek" (Personal Communication, November 2015). In most sections of the two ethnic groups, a white bull is slaughtered to mark the cementing of relationship (Personal Communication, November 2015). The slaughtering of the bull is a covenant and whoever breaks it is cursed. For the Nuer, a vile is extracted and drunk by both parties (Personal Communication, November 2015). The compensation price, the offering of the bull and drinking of the vile do not only just renew the broken relationship, they also create a new kind of relationship similar to blood relationship between relatives. This means the newly reconciled families do not from that point marry from each other because the relationship created is similar to blood relationships. Families involved in the blood feud do not interact and eat together until this ritual is conducted.

Life compensation varies also based on the nature of killing. For example, intentional killing gets the highest compensation (Personal Communication, November 2015). Accidental killing or

manslaughter is compensated with a lower number of cattle. Injury gets compensated for, depending on the body part that has suffered. Rape also occurs in two ways, namely within the community or during intersectional or interethnic fighting. For the one within a community, it is not commonly reported but when it is, it is resolved in several ways. First, the perpetrator is made to pay the compensation for defilement to the father of the girl (see table 3). However, this method makes the girl live with the humiliation. In addition, it becomes hard for the girl to be married with the dignity she deserves, particularly when it is known that she was raped. Second, the perpetrator is made to marry the girl. This act removes the indignity and the stigma of having been raped, as the rapist becomes the husband. One of the problems with this approach is that the girl is forced to marry the person she might not love. However, if a divorce happens after the marriage, the woman wouldn't have the same level of stigma she would have if the rape did not culminate in a marriage.

Rape was rare during intersectional and interethnic conflicts (Personal Communication, November 2015). The magnitude of rape that has been reported in the recent conflicts is nearly “un-South Sudanese,” so to speak. This horrible war tactic crept into South Sudanese culture over many years of exposure to violence. The war tactic among the Nuer and Dinka at the time was kidnapping of women and children. A group of kidnapped women and children was kept and turned into wives and children. The female children are married off as daughters of the kidnappers and males kept as sons. After reconciliation with the ethnic group of the kidnapped women and children, the new husbands of the kidnapped girls or women would seek the relatives of the kidnapped ladies and a formal marriage is conducted if the women are happy with the marriages. The male children would decide to settle and start families in the new community or return to original community. This has happened a lot across many border communities where the raids take place.

What makes the compensation price effective? First, prior existence of interdependence and strong ties among the parties with blood feuds shapes whether a blood feud can be resolved amicably through compensation price (Evan –Pritchard, 1940). Different tribes involved in a blood feud are not obligated to compensate for homicide, unless it happens between communities on the border with strong social ties created through geographical proximity, social, and economic interactions. Interdependence and social relations act as incentives in compensating for homicide (Personal Communication, November 2015). Ethnic groups that do not have social relationships or interdependence have often ended up in a cycle of revenges (Evan-Pritchard, 1940).

Second, use of life compensation as a bride price to marry a wife to produce the children or raise the family to continue the deceased name forces the parties to resolve the conflict through life compensation.

There are challenges with the use of life compensation as justice and reconciliation tool. The most significant challenge is geographical isolation that prevents tribes from developing social ties crucial for the application of this measure. This makes it impossible to end conflicts using life

compensation, for it results in cycles of revenge between parties. However, this isolation is fading with migration to towns where members of different ethnic communities work and live together. Because of these new interactions, some murder cases involving members of different tribes get settled using other types of compensation.

From the preceding background, the single most important lesson learned is the understanding of justice in form of compensation of lost life, property, injury, and abuse. This appears to be more locally preferable than the western gold standard of an eye for an eye. Similarly, we understand that revenge is an act of desperation, a last resort due to the breakdown of understanding between the parties. Death or life sentence does not adequately fulfill the justice purpose of reimbursement of loss. For most South Sudanese communities, it does not matter how many people one puts on trials and gets death or life sentence; if there is no reimbursement for the loss and abuses of human rights, the feeling of injustice remains, consequently causing revenge.

Reparations, as stipulated in ARCISS, could serve the traditional justice purpose of reimbursement of loss as widely practiced by communities in South Sudan. However, it can be challenging to pin down the individual perpetrators. It can as well be difficult to know the exact victims and victims' relatives as anyone can claim to be a relative and a victim to get compensations. While identifying the right victims and paying reparations can be very challenging, it is worth recommending, for if it is properly designed, can help achieve the traditional justice objective. However, deterrence aspect of justice can be difficult to attain given that the government delivers payments instead of the individual perpetrators and their communities as it is the case traditionally. To achieve some balance, some severe criminal acts should be reserved for trials. Reparations should be comprehensive, inclusive, and well informed in terms of targeting the right victims and covering all periods of atrocities (e.g. 1980s, 1990s & 2013). Empirical studies should be conducted to inform the design of reparations. In this light, both individual and communal reparations should be considered.

5. Conclusions and Recommendations

We have looked at the global practices of different forms of transitional justice models and their relevance to the South Sudanese context. We have also explored the traditional justice system within South Sudan to complement international experience. First, countries in transition from civil war to peace rarely put on trials suspects in government and in armed rebellions in a win-win situation (Reiter et al., 2013; Olsen et al., 2010; Sooka, 2006). Instead, authorities mostly try defeated rebels or officials of former regimes. While the former repressive regime officials and rebels get put on trials, these happen mostly in countries with strong institutions.

Because of the potential for such attempts to meet resistance that is likely to jeopardize transition to stability, countries prioritize peace over punitive justice (Fletcher et al., 2009; Leebaw, 2008). Second, countries use a specific mix of transitional justice mechanisms to ensure effectiveness. For example, a combination of trials and amnesty or trials, amnesty, and truth commissions has

proved to work well in South Africa. Third, Amnesties can secure peace when applied conditionally and in the middle of a conflict (Reiter et al., 2013, Olsen et al., 2010). However, ARCISS does not advance amnesty. Fourth, compensation of the loss of life and injury, which results in normalization of relationships between communities, is the most satisfactory form of justice among communities in South Sudan. Relatives of the deceased usually opt for compensation because it is used to continue and memorize the deceased names by establishing a family in their names. From a South Sudanese traditional justice standpoint, it does not matter how many people one puts on trials or on life sentence, material compensation is more preferable to attain satisfactory justice.

Based on the above lessons, implementing the clause on the HCSS will be an uphill task just as it has been difficult in similar contexts. The ARCISS has divided the transitional government power between the government and the rebels. It is the same transitional government that is supposed to implement the transitional justice whose members are to be indicted. The experiences of similar contexts show this will be like putting the cart before the horse. To make the matters worse, the country is violently militarized, coupled with weak institutions. If an individual is indicted, other institutions may not have the strength to support the indicting authority.

Using the modern courts to deliver justice has not been adequately developed. Therefore, the HCSS may not succeed. While it may succeed in financing, staffing, setting up, and indicting the suspects, arresting and appearance for trials may not be possible, unless the suspects willingly walk to the HCSS. Some people see external pressure and intervention as possible tools to make the HCSS work. While this role is a crucial part of the equation in achieving peace and stability, it could prove risky and ineffective without internal support and cooperation.

What is the way out? South Sudan should sequence the transitional justice by giving the first priority to restoration of peace and stability—establishment of TRHC to provide truth and reconciliation, CRA to provide compensations, inclusive constitutional making process to produce a good constitution and building of strong transparent, accountable and democratic institutions before the next elections. HCSS, while it can be established anytime within the transitional period, should start full operation after a complete transition to stability, as exemplified by a complete establishment of strong, transparent, accountable, and democratic institutions.

Stability and transformations should be the first priority because they provide the greatest good for the greatest number of people, as John Stuart Mills would say, compared to an immediate pursuit of punitive justice that may jeopardize transition to stability and transformations. Conditional amnesty should be included so that the country can have a fusion of amnesty, trials (HCSS), reparations (CRA), truth and reconciliation (TRHC). As proven effective in similar contexts, a composite of amnesties, trials and truth commissions strikes the necessary balance as trials address criminal accountability focusing on the most serious crimes while conditional

amnesties and truth commissions prevent spoilers from rocking the boat, as well as saving the authorities from having to literally try the whole country. South Sudan, given its history of violence, should not conduct a partial transitional justice. Coverage should also include 1980s and 1990s. Partial transitional justice as stipulated in ARCISS will be counterproductive. Reparations, both individual and communal, should be designed to address South Sudan's unique context of traditional justice that on its own can meet most of the justice needs for atrocities committed during the conflicts. The TGONU should also place a high premium on community-to-community dialogue & reconciliation and a political dialogue & reconciliation.

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The Sudd Institute is an independent research organization that conducts and facilitates policy relevant research and training to inform public policy and practice, to create opportunities for discussion and debate, and to improve analytical capacity in South Sudan. The Sudd Institute's intention is to significantly improve the quality, impact, and accountability of local, national, and international policy- and decision-making in South Sudan in order to promote a more peaceful, just and prosperous society.

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