

Justice for peace in South Sudan

Civil society perspectives



Women wait for their cases to be heard outside a traditional court in Wau, South Sudan. The judge at this court estimates that over 85 per cent of the cases that he sees relate to domestic violence, which is often not seen as a criminal justice issue unless it results in serious bodily injury or death. © Saferworld/Marcus Perkins

Introduction

Impunity and inaccessible justice are major causes of conflict in South Sudan. When state authorities or informal justice systems fail to deliver effective justice, conflicts can be triggered or fuelled between and among communities and across the country.

Without clear and effective justice mechanisms, many communities have faced repeating cycles of violence linked to cattle raiding, revenge and gender-based violence – including girls' 'elopement' (when a girl is abducted or forced to marry without her consent). When left unaddressed or mishandled through traditional systems, or when delayed in statutory courts, such cases can lead to violent and protracted conflict cycles.

This policy brief presents findings from a three-day national civil society forum organised by Saferworld in Juba, South Sudan from 26-28 June 2018. Twenty-eight civil society representatives attended, from eight of the former ten states of South Sudan (the former Unity and Upper Nile were not represented), as well as Juba-based civil society organisations. The forum provided the space to discuss insecurity and conflict as it relates to justice in South Sudan. While Saferworld facilitated the process, this short briefing outlines the views of the participants, including their recommendations and ideas for how to move forward. These are intended to inform national government institutions, state governments, international organisations, UN agencies, civil society and communities on ways to support the administration of effective and accountable justice in South Sudan.

Main justice issues identified by civil society

At the workshop, civil society representatives identified four major issues to be addressed for better justice delivery in South Sudan.

1. Too few judges at the sub-national level

Participants cited the low number of judges at the state and county levels as one of the contributing factors to conflict in the country. A lack of judges has meant that the most serious cases are left to the discretion of local chiefs and elders, who have limited jurisdiction or capacity to handle them. In the views of civil society representatives, conflicts among communities in South Sudan, and specifically in the former Lakes and Warrap states, could have been avoided if the justice mechanisms were better placed to resolve the grievances that led to the conflicts. Forum participants noted that families often seek retribution due to a perceived lack of justice for crimes committed against relatives by other families, clans or tribes.

In areas where there are judges, specifically state capitals and areas with high courts such as Wau, their numbers are still woefully insufficient, leading to an overload of cases and backlogs in the courts. *Payams* and *bomas*, the smallest administrative levels, depend solely on local courts administered by chiefs.

In some urban settings such as Juba, Wau and other state capitals, customary justice mechanisms go hand in hand with statutory systems. For example in Juba, the bench courts (popularly known as 'B-courts') are credited with handling potential conflict triggers related to customary disputes. Local chiefs preside over the courts in accordance with the customary law and norms of each community. While more serious cases end up at the statutory court, the customary courts provide an accessible means for communities to manage disputes before they turn violent. But they are not a perfect solution to a widespread justice vacuum, and they can present their own challenges, particularly when it comes to women's inclusion and rights, or when dealing with more serious criminal cases.

2. Exclusion of women and youth in customary decision making

The participants were concerned that women and young people are largely excluded from decision making at the customary level across the country. This decision-making responsibility often falls to the chiefs, who are mainly older men. In rural communities and urban settings alike, young people and women have been denied opportunities to serve in the customary justice system because of their status in society. Local government officials and community leaders do little to challenge the status quo.

Excluding young people and women from decision-making roles, especially within already-overstretched institutions and bodies, can mean their voices are not heard and can lead to violent conflict, including cattle raiding. This marginalisation also perpetuates rights abuses and harmful cultural practices, such as the practice of providing girls as compensation for homicide or other crimes, and other forms of violence against women and girls, especially in pastoralist communities where girls are seen as sources of wealth.

3. Ineffective local law enforcement

At the sub-national level, participants expressed concern that law enforcement agencies are unable or unwilling to maintain law and order in communities across the country. The inability of police, prisons and other bodies to enforce the law has been a source of sporadic violent conflict among South Sudanese people. Participants stressed that if law enforcement agencies were quick to respond to cattle raiding, child abduction (in Jonglei, Eastern Equatoria and Central Equatoria for example) and inter-communal violence across the country, communities would be able to live in peace despite the challenges associated with the national political situation.

In areas where police, judges and prison services are absent, participants noted a rise in violent conflict, particularly where local chiefs and elders are perceived to be biased in handling communal disputes or other issues. This perception is also extended to those working in the national police and prison services, who at times are seen as taking sides with their respective communities when attempting to restore security. This can increase hostility between groups and lead to violent conflict.

Civil society representatives also highlighted the bureaucracy involved in accessing police services. In

particular, participants cited Police Investigation Form 8, a document issued by the police to victims of violent assaults to enable them to access medical services, as one cause of delays that can prevent access to life-saving medical care as well as justice. Participants said that in addition to Form 8 being a barrier to emergency medical treatment and justice for survivors, particularly of sexual and gender-based violence, there had also been reports of police officers asking for money before issuing Form 8.

4. Low awareness of the law at community level

Participants cited limited awareness of the law, including major acts of parliament and various legislative frameworks at the lower levels of administration, especially at the *boma*, *payam* and even county levels. They pointed out that in many states, communities and officials alike are not aware of the existence of laws such as the Child Act 2008 and Firearms Act 2016. As a result, leaders and chiefs who oversee customary disputes can agree settlements which are contrary to formal laws. For example, in Torit, there is a long-standing customary practice of giving a girl child in compensation for homicide, infringing the rights of girls provided for under the Child Act 2008.

In addition, early and forced marriages are still practised by the majority of South Sudanese tribes in rural and urban settings. Such marriages are overseen by tribal elders, leaders and chiefs. Participants believed these practices persist because of limited awareness of communities of the laws and the penalties related to the violation of these laws. It is also often not clear to chiefs if the traditional justice mechanisms have power and jurisdiction in certain criminal or civil cases.

Recommendations

In light of the issues identified in the civil society platform forum meeting, participants made the following recommendations.

To the government of South Sudan:

- Enhance justice institutions at local and state levels

The government of South Sudan, through the National Ministry of Justice and Constitutional Affairs, and the Judiciary of South Sudan, should strengthen the capacity of those working in justice institutions, with specific attention to state and county administrations where localised conflicts occur. Training in the law and the provision of resources, equipment and mobility will enable law enforcement agencies to better understand legal instruments and apply them, so that they can work to resolve conflicts across the country.

In addition to enhancing the capacity of law enforcement bodies, the government should seek to increase the number of judges and establish formal courts and responsive police units at *payam* and county level so that matters that cannot or should not be handled by chiefs are handled by competent legal personnel.

- Clarify the roles of customary and statutory justice systems

The government should define the different roles and mandates of customary and statutory courts. Currently, customary courts sometimes handle cases that fall within the jurisdiction of the formal court system, increasing people's confusion over where to turn. The appropriate channels for seeking redress should be made clearer and more accessible so that aggrieved individuals or communities do not take the law into their own hands.

- Invest in responsive and effective policing

The government of South Sudan should prioritise and invest in law enforcement institutions such as the police and prison services. Communities have expressed sympathy for the police and prison services for being incapable of effectively carrying out their duties due to limited capacity, mobility constraints and insufficient staff. This prevents them from responding to communal conflicts quickly and effectively.

To civil society:

- Raise awareness of existing legislation

Civil society organisations should support grassroots awareness-raising campaigns on existing legal instruments to settle differences and address grievances. Instead of seeking revenge or compensation that undermines the rights of girls, people with disabilities and other vulnerable groups, citizens should be made aware of the channels available to them to non-violently address grievances, as well as their rights under domestic and international law.

- Provide oversight of justice delivery

Civil society should provide oversight and advocate for inclusive decision making at the customary courts so that women and young people have their voices heard in the administration of justice at the sub-national level.

About Saferworld

Saferworld is an independent peacebuilding and conflict prevention non-governmental organisation that works to prevent violent conflict and build safer lives. We work with people affected by conflict to improve their sense of safety and security. In South Sudan, we work with the South Sudan Bureau for Community Security and Small Arms Control (BCSSAC), South Sudan National Police Service (SSNPS), and civil society organisations to support effective policies and practice through advocacy, research and policy development, and by supporting the actions of others in peacebuilding and conflict prevention.

Saferworld is registered with Relief and Rehabilitation Commission (registration No 088). Saferworld's South Sudan programme started in 2008 and aims to build community resilience to achieve sustainable peace. We implement our programme through national partner organisations to respond to the complex mix of safety, conflict, and development challenges faced by communities. Saferworld has field offices in Aweil, Bor, Kuajok, Rumbek, Torit, Wau, and Yambio. The country office is in Juba. We will soon open additional field offices in Gok Machar and Maridi and work with partners in Cueibet and Panyagor. We plan to open further offices in Bentiu and Malakal in 2019.

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Saferworld is an independent international organisation working to prevent violent conflict and build safer lives.

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