Observations on the Mandate of South Sudan’s Commission on Truth, Reconciliation and Healing (CTRH)

POLICY BRIEF

Intersections of Truth, Justice and Reconciliation in South Sudan

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The views expressed and analysis put forward in this report are entirely those of the authors in their professional capacity and cannot be attributed to organizations involved in the project or the Dutch Ministry of Foreign Affairs.
Summary
This brief assesses options for the framing of the mandate of South Sudan’s Commission for Truth, Reconciliation and Healing (CTRH), with a particular focus on the temporal scope of the CTRH’s inquiries. The brief is structured in four sections. The first section summarizes the provisions on the CTRH in the August 2015 Agreement for the Resolution of the Crisis in South Sudan (ARCISS). The second section examines issues relating to the substantive and temporal scope of the CTRH mandate. The third section emphasizes the need for a consultative process to inform the public about the CTRH and to support a citizen-owned and driven truth-seeking process. The final section provides concluding remarks and a series of recommendations to inform the design and establishment of the CTRH.

Two key recommendations emerge from this analysis. First, the Transitional Government of National Unity (TGoNU) should consider framing the mandate of the CTRH to focus on a core set of abuses within a limited timeframe, while allowing for targeted inquiries into specific incidents outside of those boundaries. Such an approach would strike a balance between a focus on more recent conflicts that arguably have the most direct relevance to the South Sudanese population as whole, and past conflicts that provide an important lens on the structural causes of violence and the role of unaddressed historical grievances in driving contemporary conflict.

Second, in light of the low levels of awareness about the ARCISS and the peace process among segments of the population, the TGoNU, in cooperation with civil society and other stakeholders, should conduct comprehensive public consultations with a broad and diverse cross-section of society in order to ensure that the CTRH (and other transitional justice institutions in the ARCISS) are tailored to the context in South Sudan and well-understood by populations throughout the country. These consultations should go far beyond the one month of consultations provided for the ARCISS and should continue throughout the lifespan of the CTRH, including design, establishment, operations, conclusion of its mandate and any follow-up activities.

Introduction
In August 2015, the warring parties in South Sudan — the Government of the Republic of South Sudan (GRSS) and the Sudan People’s Liberation Movement-in-Opposition (SPLM-IO) — and other stakeholders signed the Agreement for the Resolution of the Crisis in South Sudan (ARCISS). Chapter V of the ARCISS, entitled, “Transitional Justice, Accountability, Reconciliation and Healing,” details the parties’ plans for combating impunity and addressing the legacies of past human rights abuses. Among the institutions provided for in Chapter V is a Commission for Truth, Reconciliation and
Establishing a truth commission such as the CTRH in the South Sudanese context presents a host of challenges. South Sudan has been at war for 40 of the 60 years since Sudan’s independence in 1956 and successive conflicts have affected different groups in different ways and at different times. Determining where the CTRH should place its focus will necessarily involve trade-offs that risk excluding sections of the population. Furthermore, while considerable demand for various processes of truth, justice and reconciliation exists among sectors of society, very little has been done in terms of civic engagement to encourage local ownership of the truth-seeking effort and ensure that it is framed in accordance with South Sudanese needs and aspirations.

In light of these and other challenges, the development of an appropriately framed mandate for the CTRH is of utmost importance. The mandate should provide guidance on various aspects of the CTRH, including its objectives, the substantive and temporal scope of its inquiries, the process that the institution will follow in carrying out its work, and the powers and capacities that it will require to conduct thorough investigations. In defining the task for the CTRH, the mandate should be flexible enough to allow the CTRH to adjust its activities as necessary in order to make maximum use of available time and resources, but not so vague or ambiguous that the CTRH has to waste its energy defining the parameters of its task.

This brief draws on data from a survey that the South Sudan Law Society (SSLS), the University for Peace (UPEACE) Centre The Hague and PAX conducted at the end of 2015, as part of the research project entitled, “Intersections of truth, justice and reconciliation in South Sudan”. The survey targeted 1,912 individuals in four locations – Juba town, Juba Protection of Civilian site (POC), Wau town and Bentiu POC – and sought to better understand their perceptions of and experiences with violence and

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3 The project is carried out in cooperation between the University for Peace (UPEACE) Centre The Hague (the Netherlands), the South Sudan Law Society (SSLS), and PAX. It is funded by the Dutch Ministry of Foreign Affairs as a part of the ‘Knowledge Platform Security & Rule of Law’, and is administered by the Netherlands Organization for Scientific Research (NWO). A short summary of the project, its methods and activities, can be found here: http://www.upeace.nl/cp/uploads/publications/One%20Page%20-%20ITJR%20in%20South%20Sudan.pdf.
justice. The survey also included a series of questions designed to gauge people’s awareness of the ARCISS and issues relating to the peace process.

Commission on Truth, Reconciliation and Healing (CTRH)
While truth commissions have been provided for in peace agreements in other contexts, the ARCISS is somewhat unusual for the amount of detail that it provides on the CTRH. According to the ARCISS, the CTRH is meant to “spearhead efforts to address the legacy of conflicts, promote peace, national reconciliation and healing,” and as is the case with truth commissions in other contexts, the CTRH’s core task will be to investigate, document and report on human rights abuses and violations over a predetermined time period.

The ARCISS describes the CTRH as a hybrid institution, meaning that it will be comprised of a combination of South Sudanese and international commissioners. The TGoNU Executive, in consultation with the African Union (AU) and United Nations (UN), is to select and appoint seven commissioners to the CTRH, including four South Sudanese nationals and three from other African states. The chairperson is to be South Sudanese and at least three of the commissioners must be female.

The ARCISS requires the TGoNU to establish the CTRH through legislation at the national level. This differs from the process that the Government of South Sudan has used to establish past peace and reconciliation mechanisms. For example, the President established the Committee on National Healing, Peace and Reconciliation (CNHPR) by executive decree in 2013, while at the same time dissolving a pre-existing reconciliation initiative under the office of the then Vice-President, Dr. Riek Machar Teny. Theoretically, the legislative foundation of the CTRH should help to insulate the institution to a degree from political interference. Ensuring the CTRH’s independence will be critically important in light of the political turbulence that is likely to characterize dynamics among the various actors in the TGoNU.

According to the ARCISS, the legislation establishing the CTRH is to be enacted six months from the establishment of the TGoNU, and the CTRH is to submit its final report three months before the end of the 30-month transitional period, giving the institution a maximum of 21 months to do its work. This timeframe is exceedingly short when compared to lifespans of truth commissions in other contexts, which

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5 ARCISS, Ch. V, Art. 2.3.3.
7 The ARCISS requires the Ministry of Justice and Constitutional Affairs in cooperation with civil society and other stakeholders to undertake consultations for a period of at least one month prior to the enactment of the CTRH legislation. ARCISS, Ch. V, Art. 2.1.3.
typically last in the range of two to three years.\textsuperscript{8} Given the prevailing insecurity in South Sudan and the logistical difficulties of operating in the country, the CTRH will likely require more time than other truth commissions — perhaps as long as three to five years — to complete its work. Any longer than this and the CTRH would have difficulty maintaining the public’s attention and generating recommendations that have relevance to the transitional context.\textsuperscript{9}

A major factor defining the scope of a truth commission’s inquiries relates to the time period on which the institution will place its focus. As noted above, truth commissions by definition focus on past human rights abuses and require clear instructions on how this time period is to be defined in order to conduct effective investigations. According to the ARCISS, the CTRH’s temporal scope will be limited to human rights violations and abuses committed from the end of the 22-year north-south civil war in Sudan and establishment of the regionally-autonomous Government of Southern Sudan in 2005 to the signing of the ARCISS in August 2015.

If interpreted strictly, the time period stipulated in the ARCISS would exclude human rights abuses committed during the north-south civil war in Sudan (1983-2005). The linkages between abuses that were committed during the civil war and the current conflict can be seen in the manner in which political and military actors use historical grievances to mobilize groups against their perceived enemies, as well as through structural causes of conflict that have their roots in the manner in which the civil war was fought. However, despite the explicit temporal restriction in the ARCISS which would exclude civil war abuses, the ARCISS also includes language indicating that the timeframes for the CTRH may be revised in the legislation establishing the institution, which may allow for some flexibility in this regard.\textsuperscript{10}

**Temporal Scope of the CTRH Mandate**

The determination of appropriate time period for the CTRH to focus its work on is rendered more complex by the size of the victim population and the different impacts that successive conflicts have had on different populations at different times. More than half (52\%) of the individuals surveyed as part of this study said that they have been victimized by an armed group or military actor in the context of conflict at some point in their lives. While the survey locations included two POCs, which may have skewed the sample towards the victim population, significant numbers of

\textsuperscript{8} For example, the South African Truth and Reconciliation Commission (TRC) was established by law in July 1995 and presented its report to President Nelson Mandela in October 1998, and the TRC of Liberia spanned a timeframe of three years and four months from February 2006 to June 2009. See Priscilla Hayner, *Unspeakable Truths: Transitional Justice and the Challenge of Truth Commissions* (2\textsuperscript{nd} ed.) (2011).

\textsuperscript{9} For additional insights on the timeframe of the CTRH and other aspects of institutional design, see South Sudan Law Society (SSLS), United Nations Development Programme (UNDP) and the Embassy of the Kingdom of the Netherlands in South Sudan, *New Beginnings: Transitional Justice in South Sudan*, Conference Report (forthcoming).

\textsuperscript{10} ARCISS, Ch. V, Art. 2.2.1 (stating that “Such inquiry shall investigate, document and report on the course and cause conflict and identify or review cut-off timeframes for the operations of the CTRH, as may be determined by legislation, this Agreement or both.”).
respondents in Juba town (22%) and Wau town (15%) also said they had been victimized in the context of conflict. Across all survey locations, respondents were most likely to report victimization taking place after the outbreak of conflict in December 2013. However, respondents in the POCs were more likely to report victimization between 2005 and 2013 than respondents in the towns, and respondents in the towns were more likely to report victimization during the 22-year civil war (1983-2005) than respondents in the POCs.  

To a certain extent, the emphasis that respondents in the POCs and the towns place on different time periods reflect different conflict dynamics across geographic regions in South Sudan. For example, the first Sudanese civil war (1955 to 1972) is sometimes characterized as having a disproportionate impact on the southern parts of southern Sudan, whereas much of the most intense violence of the second Sudanese civil war (1983-2005) was in the northern parts of the region. More recently, during the six-year interim period following the signing of the CPA in 2005, the most intense violence was experienced in the Greater Upper Nile Region, as has been the case since December 2013. While these types of characterizations of conflict dynamics risk overgeneralizing the differences among geographic regions, they nonetheless support a broader temporal scope for the CTRH mandate to maximize its relevance to populations in different parts of the country.

Another factor to consider is the relative youth of the South Sudanese population. More than 50 percent of respondents in the sample population were younger than age 35. This reflects a more general trend in South Sudan’s population as a whole,
which is disproportionately young. According to South Sudan’s National Bureau of Statistics, more than half (51%) of the population is below age 18 and 72 percent of South Sudanese are younger than age 30.\textsuperscript{13} This means that the majority of South Sudanese were not even alive at the start of the civil war in 1983. Nor did most people directly witness the human rights abuses that took place during the first decade or so of the civil war, such as the political assassinations and massacres that the Sudan People’s Liberation Army (SPLA) perpetrated as it was consolidating its role as the dominant rebel movement in southern Sudan the mid-1980s, or the intense violence associated with the ‘split’ of the SPLA in the mid-1990s. Contrary to the preceding point about conflict dynamics across geographic regions, the relative youth of the South Sudanese population would favor a shorter temporal mandate that directly addresses the more recent human rights abuses with which younger populations have had direct experience.

Another question for the temporal mandate of the CTRH concerns whether the CTRH should examine human rights abuses associated with the post-December 2013 crisis or not. The ARCISS already provides for a Hybrid Court for South Sudan (HCSS) that will be responsible for bringing cases against individuals suspected of international crimes.\textsuperscript{14} To a certain extent, the HCSS might be able to provide a degree of ‘truth’ in the sense that court judgements can address both the circumstances of individual crimes as well as the broader context in which the crimes occurred. However, the extent to which the HCSS is able to address the broader facts and circumstances of the conflict will be limited by the procedural rules of criminal trials, which only allow evidence in so far as it is able to prove or disprove facts that are relevant to the matter at hand.

Another factor that would favor the inclusion of post-December 2013 events in the mandate of the CTRH concerns the large amount of disagreement and misunderstanding among the population about the causes of the ongoing crisis. Since the conflict erupted, various groups have characterized the causes as anything ranging from an attempted coup to an effort to exterminate particular ethnic groups, with very little common ground between the various viewpoints. These uncertainties about the causes of the conflict were apparent in the survey data. Forty-three percent of respondents said that they understand the causes of the conflict ‘poorly’ (28%) or ‘very poorly’ (15%). The lack of understanding was particularly pronounced among women, 48% of whom said they understood the causes of the conflict ‘poorly’ (33%) or ‘very poorly’ (15%), compared to 39 percent of men.\textsuperscript{15} As a major function of the CTRH will be to develop a historical record of human rights abuses and informed

\textsuperscript{13} Information taken from the 2008 census. Southern Sudan Centre for Census, Statistics and Evaluation (SSCSE), Key Indicators for Southern Sudan (8 Feb. 2011), available at http://static1.1.sqspscdn.com/static/f/750842/11454113/1301369111513/Key+Indicators%5FA5_final.pdf?token=0JDCa5z2v%2Fz8rK6Wd+NNk76o%3D.

\textsuperscript{14} ARCISS, Ch. V, Art. 3.

\textsuperscript{15} As this data is drawn from a self-reported understanding of the conflict, it is also possible that women do not know less than men, but simply feel less confident about their knowledge or are more willing to admit lacking knowledge than men.
recommendations for how to prevent their recurrence, the inclusion of post-December 2013 events could help to provide clarity on how the country found itself mired in conflict just two years after independence.

Another feature of the victim population that emerges from the data is the different impacts that conflicts have had in terms of gender. Female respondents were far more likely (92%) to report victimization during the post-2013 period than male respondents (68%). This points to the tactics that the GRSS and SPLM-IO have used in the current conflict and the deliberate targeting of women and children in order to undermine and destabilize communities in an effort to weaken the support base for the armed groups.

The emphasis that men and women place on different time periods suggests that the CTRH’s investigations should devote special attention to the gendered impacts of conflict, particularly trends in the use of sexual and gender-based violence (SGBV) as a weapon of war, which seems to be more pronounced in recent and ongoing conflicts.\(^\text{16}\)

One approach that balances the various considerations in the preceding discussion would be to retain the 2005-15 temporal scope provided for in the ARCISS while providing the CTRH with the flexibility to examine specific incidents or types of human rights abuses that predate that time period. This would enable the institution to investigate abuses that are most relevant to specific populations in different parts of the country while focusing the bulk of its work on the more recent abuses that are most relevant to the population as a whole. Examples of specific issues from the civil

war period that warrant attention are enforced disappearances that took place in the
garrison towns of Juba, Wau and Malakal during the 1990s, assassinations of political
and military leaders by the SPLA, and massacres that took place in various locations,
including the Bor massacre of 1991.

Public Consultations and Civic Engagement
As this is the first time that a proposal for a truth commission has been considered in
South Sudan, there is an urgent need for public consultations both to raise awareness
about what truth-seeking entails as well as to ensure that the CTRH is designed in a
manner that makes sense in the South Sudanese context and responds to locally-
framed priorities.

The survey findings suggest that the CTRH could greatly benefit from a thorough
consultative process. About half of survey respondents said that they had heard of the
CTRH, though levels of awareness varied dramatically across survey locations, with
the highest levels of awareness in Bentiu POC (78%) and Juba POC (67%) and the
lowest levels of awareness in Juba town (33%) and Wau town (25%). These findings
are consistent with other survey findings that suggest that populations in the POCs
tend to be more aware about the peace process and issues relating to the ARCISS. The
higher levels of awareness in the POCs are associated with the insular nature of IDP
communities and the ease with which information flows, in addition to the direct
impact that the conflict is having on populations in the POCs and the arguably greater
stake that they therefore have in the peace process. The relatively high levels of
awareness in the POCs notwithstanding, the fact that two-thirds of the population in
Juba and nearly three-quarters of the population in Wau — the largest and second
largest cities in South Sudan, respectively — are not aware of the CTRH indicates the
large gap in awareness surrounding the transitional justice program envisaged in Ch. V
of the ARCISS.

Despite the gaps in awareness, most survey respondents (74%) supported the idea of
publicly discussing the facts and circumstances of the on-going conflict, suggesting
that the CTRH could enjoy considerable support from the public if they were made
aware of its objectives.
The CTRH could enjoy considerable support from the public if they were made aware of its objectives.

The gaps in awareness coupled with the hypothetical support for a truth-seeking effort among survey respondents emphasizes the importance of civic outreach and public consultation throughout all phases of the CTRH, including institutional design, establishment, operations and conclusion of mandate and follow-up activities. The ARCISS requires the Ministry of Justice and Constitutional Affairs in collaboration with civil society and other stakeholders to conduct public consultations for at least one month prior to the establishment of the CTHR to inform the development of the CTRH legislation.17 One month of consultations is woefully inadequate given the difficulty of operating in South Sudan and the gaps in awareness about the specific terms of ARCISS.

Conclusion and Recommendations

Transitional justice poses formidable challenges in the institutionally weak and politically contested landscape of South Sudan, but it has increasingly become apparent that a failure to address the culture of impunity and historical grievances would at best only secure a temporary peace. The CTRH serves a vital role in this respect, alongside the other transitional justice institutions provided for in Chapter V of the ARCISS.

Among the most important first steps in designing the CTRH is the development of an appropriate mandate. The mandate should provide a clear and manageable task to the CTRH, while still maintaining flexibility for the institution to define its own priorities in a manner that makes sense in the context in which it will be working. One approach that balances these various considerations is to provide a limited temporal mandate for the CTRH, perhaps based on the 2005-15 timeframe stipulated in the ARCISS, while maintaining the flexibility for the institution to examine human rights abuses outside of that timeframe as necessary.

Aside from the specific institutional design questions, creating an institution that is tailored to the context in South Sudan and responsive to South Sudanese views and aspirations requires broad and extensive public consultations. Unless people

17 ARCISS, Ch. V, Art. 2.1.3.
understand the ARCISS’s transitional justice program in its entirety and feel as though the process is owned by the people of South Sudan and not the few political and military elite that were involved in the development of the agreement, the CTRH will not be able to deliver on its objectives. Towards this end, this brief recommends that the Transitional Government of National Unity (TGoNU), with the support of its international partners:

- Consult widely with populations in South Sudan to inform them about the transitional justice program in Chapter V of the ARCISS and obtain their input on various aspects of the program, including the temporal mandate of the CTRH.

- In framing the mandate for the CTRH, consider adopting the 2005-15 time period as the core focus for the CTRH, but ensure that the mandate is flexible to allow the CTRH to examine issues predating that time period.

- Ensure a realistic timeframe for the CTRH to complete its activities and produce its report. As reconciliation and healing are likely to be longer-term initiatives, it might make sense to provide a three to five-year timeframe for the truth-seeking activities and a more open-ended timeframe for the reconciliation and healing activities.

- Ensure that SGBV is devoted special attention at all stages in the lifespan of the CTRH and throughout its truth-seeking, reconciliation and healing activities. In order to best understand trends in SGBV, the CTRH will need examine the issue should be examined in both its contemporary and historical context, and should therefore not feel overly constrained by any temporal restrictions.
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