

Justice in South Sudan

Research Repository Guide

This Research Repository has been compiled by the CSRF to assist donors and aid workers in South Sudan to better understand the context in which they work. The repository is searchable by key words, and is also organised into eight categories to enable easier exploration of specific topics. The CSRF has conducted a meta-analysis for each of the eight categories, analysing a selection of relevant, key literature and extracting some of the most salient questions for donor-funded programming.

Understanding the Literature

The literature on justice in South Sudan prior to the outbreak of armed conflict in December 2013 tends to focus on the justice system that evolved in South Sudan before and since the signing of the Comprehensive Peace Agreement. Literature covers both statutory law and customary law mechanisms and practices, and the way those are perceived. Similarities but also tensions between the intertwined spheres of the pluralistic legal system are discussed. The role of justice in relation to conflict prevention, peace, and reconciliation has also been considered in several studies. Other publications were written with an eye to policy recommendations, exploring the relation between justice, human rights and gender based violence in South Sudan. Publications from the post-2013 era put an emphasis on human rights violations linked to the ongoing armed conflict and transitional justice an issue covered in the peace agreement signed in 2015. Besides this, judicial practices emerging in conflict affected communities such as among IDPs are studied. The questions below were developed with the aim of providing the background for a better understanding of judicial practices and mechanisms and their links to peace and reconciliation in contemporary South Sudan.

Go to the source

Deng, Francis M. (2011). [Customary Law in the Cross Fire of Sudan's War of Identities.](#)

Leonardi, Cherry et al. (2010). [Local Justice in Southern Sudan.](#)

Willems, Rens & Deng, David K. (2016). [Perceptions of Transitional Justice in South Sudan.](#)

1. **What are the limitations of the formal justice system in South Sudan?**
2. **How do statutory courts and chief courts relate in South Sudan?**
3. **What are the tensions between customary law and international norms?**
4. **What is the link between customary law and gender based violence?**
5. **What role does transitional justice play in the current context of South Sudan?**

1. What are the limitations of the formal justice system in South Sudan?

In the first years after the CPA was signed, there were few English trained court administrators, judges and lawyers working in South Sudan.¹ Judges were mostly trained in Sudanese (sometimes Islamic) law and in Arabic but were expected to work in English and apply the new emerging laws of Southern Sudan. These language barrier and new laws undermine the ability of judges to deliver effective justice. For many South Sudanese, statutory law courts and their procedures are difficult to access, hard to comprehend, slow and expensive, compared to chief courts, which are present even in remote areas. Chief have settled the majority of disputes in the past decades and continue to do so.

Go to the source

Ibreck, Rachel, Logan Hannah & Pendle, Naomi (2017). [Negotiating Justice: Courts as local authority during the conflict in South Sudan.](#)

Lokuji, Alfred S. et al. (2009). [Reform in Southern Sudan.](#)

Sudd Institute (2017). [The Importance of Judicial Independence to the Administration of Justice: The Case of South Sudan.](#)

The judiciary has been affected by interference from the executive branch, and enforcement of court rulings is limited. The police have inadequate human and financial resources, limited knowledge of law, a lack of transport and communication capabilities, and a practical inability to enforce decisions against members of the armed forces.

Judges were on strike for much of 2017 demanding better salary and work conditions.² Given the negative impact of the ongoing armed conflict on the justice system, chief courts and informal dispute resolution mechanisms of elders, family and community leaders will remain pivotal. Chief courts have emerged in

Protection of Civilian sites (PoCs), providing mechanisms for the resolution of disputes ranging from minor arguments within families to violent disputes and abuses by local authorities. These embody an attempt to constitute public authority, regulate social life and very importantly, prevent or set limits upon violence, but may complicate consolidation of the formal justice system.

2. How do statutory courts and chief courts relate in South Sudan?

In South Sudan, higher courts and chief courts comprise the same judicial system. Chief courts are answerable to higher courts, with cases originating at that level referred to county and high courts.

Go to the source

Leonardi, Cherry et al. (2010). [Local Justice in Southern Sudan: Rift Valley InSTITUTE.](#)

Both statutory and chief courts apply customary law. Statutory courts often apply customary law in cases related to family issues and compensation. In South Sudan different ethnic groups feature different types of customary law. These different types of customary law however, often share commonalities. Nor should customary law be understood as static and discrete and solely based on traditions - it is dynamic and has been influenced by colonial and post-colonial legal policies and practices, including sharia law.

After 2005, statutory courts gradually emerged in rural areas and took over some cases that chief courts had previously settled. Competition over judicial competencies, court cases and court fees emerged, and the legislative guidance in defining the responsibility of different courts was not always followed. There are also contradictions between the Local Government Act and the Judiciary Act in relation to local justice which are yet to be reconciled.

¹ By 2007, there were an estimated 28 high court judges and 89 court judges working in South Sudan.

² Due to hyperinflation, the purchasing power of judges has severely eroded. (Reuters (2017). South Sudanese judges on strike over poor salaries. <http://www.reuters.com/article/us-south-sudan-strike-idUSKBN17Z125>.)

3. What are the tensions between customary law and international norms?

Some customary law principles and chief court practices contradict international human rights standards and are criticised for supporting discrimination against women, children and youth. Customary law is perceived as reproducing gender inequality and male dominance over women, thereby contradicting South Sudanese legislation enshrining gender equality.

Go to the source

Human Rights Watch (2013). [“This Old Man Can Feed Us, You Will Marry Him”:
Child and Forced Marriage in South Sudan.](#)

Jok, Aleu Akechak, et al. (2004). [A Study of Customary Law in Contemporary Southern Sudan.](#)

Van Cutsem, Chantal & Galand, Renaud (2007). [Equal Access to Justice in Southern Sudan: Assessment Report.](#)

In customary law, women are disadvantaged in matters of property and divorce. Land is expected to remain in the family of the father and is therefore often not inherited by married daughters. In agro-pastoralist communities, both chief and higher courts regularly try to discourage divorce as the families of women frequently have no desire to return the bride wealth received for their daughters. As a result, it is often difficult for women to divorce, even if they suffer from domestic violence. Customary law is also criticised for tolerating forced marriage, the marriage of minors and violence against children.

Customary law prioritises communal interests and restoring local relationship over the rights and interests of individuals. Accordingly, customary law rulings often favour parental or marital rights and concerns about intra-familial or communal conflict over individual rights. Given that mostly senior men from influential families dominate political positions, the civil administration and chief courts, chief courts practices and interpretations of customary law are likely to reflect the interests of these senior men and reproduce not only gender but also generational, socio-economic and socio-political inequalities.

4. What is the link between customary law and gender based violence?

In patriarchal societies in South Sudan, domestic violence and violence against women in marital relations is widespread. Customary law is perceived by human rights and protection advocates as legitimising or at least tolerating gender based violence (GBV). GBV victims often face difficulties to access justice, and some victims are reluctant to report cases due to stigma and a lack of confidence in law enforcement and justice institutions. When customary law is applied to domestic violence and marriage matters, its application often favours men. Cases of sexual violence are not necessarily investigated on grounds of consent but as to whether the case involves adultery, defilement or impregnation and therefore requiring compensation to the victim’s husband or family for “both humiliation and the value of lost bride wealth” (Leonardi et al. 2011).

Go to the source

Jok, Madut Jok (1999). [Militaryization and gender violence in South Sudan.](#)

Luedke, Alicia E. (2015). [Violence Begets Violence: Justice and accountability for sexual and gender-based violence offences in South Sudan.](#)

Tiernan Mennen, et al. (2011). [Combating Gender-Based Violence in the Customary Courts of South Sudan.](#)

5. What role does transitional justice play in the current context of South Sudan?

Transitional justice mechanisms are provided for in the Agreement for the Resolution of the Crisis in South Sudan (ARCSS), which stipulated the formation of a Commission for Truth, Reconciliation and Healing (CTRH), a Hybrid Court for South Sudan (HCSS) and a Compensation and Reparations Authority. Staffed by judges and lawyers from South Sudan and other African countries, the HCSS is intended to have primacy over the national

judiciary. However, it is not expected this Court could adjudicate more than a few dozen of the most serious cases.

Go to the source

Deng David K. & Williams, Rens (2016).

[Expanding the Reach of Justice and Accountability in South Sudan.](#)

The timelines for the HCSS and for the CTRH have not been respected, and the African Union has failed to meet its obligations to establish the HCSS as provided for in ARCSS. Even with successful implementation, due to the sheer numbers of crimes and victims, future transitional justice mechanisms will need to go

far beyond ARCSS' scope. To maximize impact, its mechanisms would best aim for the inclusion of civil society, traditional courts and national dialogue on issues such as truth, reconciliation and alternative sentencing. Suggestions made by David Deng and Rens Williams include:

- initiating a national dialogue that allows people to express their preference for truth, justice and reconciliation and consider a possible role for various forms of partial amnesties and alternative sentencing
- examining how existing practices relating to mitigating and alternative sentencing in customary courts could be incorporated into efforts to prosecute crimes committed during the conflict
- engaging with traditional authorities in conflict areas to identify and appropriate modalities for involving customary institutions to promote justice and accountability
- examining how customary and statutory courts typically treat confessions and apologies for possible incorporation into the transitional justice program

[Further publications on justice in South Sudan are available in the CSRF repository](#)