Chapter 9
Of Justice, Accountability, and Reconciliation:
Preliminary Stocktaking on Transitional Justice Efforts in South Sudan

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ABSTRACT

This paper analyses South Sudan's long struggle for an inclusive reconciliatory process in the country from the Comprehensive Peace Agreement of 2005 to the peace negotiations in Addis Ababa in 2014/15 and highlights the difficulties that the country has faced in introducing a lasting initiative to bring about justice, achieve reconciliation and ensure accountability in the country. The author considers different judicial and non-judicial mechanisms as elements of a comprehensive transitional justice policy and suggests viable options for South Sudan to confront the historical grievances and to resolve the frictions and tensions that have persisted between the different warring groups and ethnic communities during the decades of war in South Sudan.

In any country ravaged by a legacy of conflict, mass violence, and human rights abuses, there are many challenges to rebuilding a society and effectively addressing the past. In conflict and post-conflict societies transitional justice embodies an attempt to build a sustainable peace through a process that involves complementary measures such as prosecuting perpetrators, revealing the truth about past crimes, providing victims with reparations, promoting reconciliation and reforming abusive government structures (Seibert-Fohr, 2012, pp. 1042). The UN's approach to transitional justice

was set out in detail in two consecutive reports of the UN Secretary-General to the UN Security Council in 2004 and 2011 (United Nations, S/2004/616 (2004); United Nations, S/2011/634 (2011)). According to the definition contained in the latter report transitional justice "consists of both judicial and non-judicial processes and mechanisms, including prosecution initiatives, facilitating initiatives in the right to truth, delivering reparations, institutional reform and national consultations" (UN, S/2011/634 (2011), p. 2). Transitional justice is guided by the multidimen-

sional notion of *reconciliation* and while it is difficult to find a holistic definition of the concept as such, in the particular context of post-conflict peacebuilding reconciliation usually encompasses two core principles: Seeking the truth about the crimes committed and rendering justice through elements of criminal and/or restorative justice (Hazan, 2009, p. 261).

When war ends the inevitable question arises concerning how to deal with crimes and human rights abuses committed during times of conflict. Thereby, the key considerations evolve around elements of retributive and restorative justice. Whereas the notion of retributive justice encompasses issues such as how to punish the perpetrators having committed grave offences, deliver justice to the victims and repair the damages caused to them, elements of restorative justice focus on victim-offender mediation with a view to rehabilitating the offenders through reconciliation with the victims and the community at large (Clamp & Doak, 2012, pp. 342). In the context of transitional justice the more community-centric approach of restorative justice frequently co-exists with the victims' desire for punishment of the offenders. This often creates a natural tension between the elements of restorative and retributive justice and raises the question whether peace and justice can be achieved at the same time (UN, S/2004/616 (2004), p. 8; African Union Panel of the Wise, 2013, pp. 10). In many instances transitional justice strategies are shaped in situations where peace is fragile or perpetrators retain power. Thus, any attempt to secure a durable peace and deliver justice at the same time must carefully balance the demands of justice with the political realities on the ground. There is an inherent tension between the pursuit of justice on the one hand and the process of reconciliation on the other. In cases where perpetrators continue to hold power or are part of a post-conflict power-sharing agreement, mechanisms of retributive justice might be obstructed by those in power since they may very well be the targets of that justice (Van Zyl, 2005, p.

209). Effective transitional justice policies therefore require a balancing act between the quest for societal peace and the pursuit of justice and largely depend on the prevailing political, legal, social and economic realities of the country coming out of conflict. Every country's transitional justice experience is unique and there is no "one-size-fits-all formula" (UN, S/2004/616 (2004), p. 1) providing a blueprint and guarantee for a successful process of reconciliation and healing. Accordingly, in order to develop a legitimate strategy that helps to bring about stability and peace in a post-conflict setting, it is important to take into account both the victims' desire for justice as well as the local populations' needs, perceptions and expectations towards reconciliation and social reconstruction (Hazan, 2009, pp. 263).

South Sudan is the world's youngest nation, a state that emerged on 9 July 2011 after decades of civil war and whose coming into existence was preceded by a long and gruesome fight for independence. Peace between the warring parties was eventually achieved with the Comprehensive Peace Agreement in 2005 and South Sudan's claim for statehood was finally sealed by a positive referendum on self-determination in January 2011. After decades of intermittent civil war South Sudanese society is deeply fractured and scarred. When speaking about South Sudan's violent history, the focus is usually on the North-South conflict in (the then still united) Sudan and the decades of civil war that preceded South Sudan's independence. What is often overlooked is the fact that the "South" has been marred by a history of tribal tensions, sectarian fights and interethnic violence over scarce resources such as water and land necessary for cattle grazing. During the decades of civil war the ethicized, South-on-South, military violence was further instigated by the North, which in an effort to weaken the Southern enemy, recruited some of the ethnic groups from the South and deployed them against others (Copnall, 2014, p. 167; Johnson, 2011, p. 131). Furthermore, leadership struggles within

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