

Access to Justice: Perceptions of and Experiences with Violent Crime in South Sudan

FINAL REPORT

Intersections of Truth, Justice and Reconciliation in South Sudan

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Summary

This report investigates people's perceptions and experiences with violent crimes in South Sudan, and the steps people take in pursuit of justice after experiencing a violent crime. The main data-collection was undertaken by means of a survey, for which 1,912 respondents were interviewed in November and early December 2015 in Juba town, Juba Protection of Civilian site (POC), Wau town and Bentiu POC. Qualitative information was gathered during subsequent interviews and workshops aimed at sharing, fine-tuning and verification of findings.

The first set of questions in the survey focused on hypothetical crimes, and respondents' perceptions on appropriate actors to seek support with after experiencing a crime and appropriate remedies. Respondents that had also experienced any of the crimes in real life were more likely to contact traditional authorities over the police in comparison to people who did not experience a crime. This difference between preferred dispute mechanisms in the hypothetical situation and the actual dispute mechanisms that respondents used when confronted with the situation also suggests that there may be a disconnect between the demand for justice services and those services that are available in practice, and that police are considered inaccessible or inadequate.

The second part of the survey focused on people's experiences with violent crimes. Respondents were asked whether someone within their household had experienced any of the following crimes within the last five years: cattle raiding, armed robbery, physical assault, murder, sexual assault, abduction and torture. As to be expected in a country that has been experiencing large-scale conflict for more than two years, people in South Sudan have been exposed to very high rates of violent crime. A total of 1,147 respondents, or 60% of the entire sample, reported that their household experienced one or more cases of violent crime in the past five years. Respondents in the UN protection of civilians (POC) sites in Juba and Bentiu reported more crimes than those in Juba or Wau towns. The high incidence rates in the POCs are directly linked to the conflict. Also respondents outside the POCs reported high levels of crime, with 29.5% of respondent households in Juba town and 19.4% in Wau town having experienced at least one violent crime in the past five years.

The types of violent crimes also vary across survey locations. In Bentiu POC, the most common crime was cattle raiding (61.8%), followed by armed robbery (31.5%) and murder (31.3%). Cattle raiding was also most common in Juba POC (53.3%), followed by murder (46.7%) and armed robbery (12.6%). In Wau town, households most commonly experienced physical assault (4.9%), followed by armed robbery (4.5%) and cattle raiding (4.0%). Lastly, in Juba town, households most commonly experienced armed robbery (10.5%), followed by murder (7.8%) and torture (4.3%). Compared to Wau and Juba towns, households in Juba POC (8.7%) and Bentiu POC (23.4%) also experienced higher rates of sexual assault. The high prevalence of sexual assault

among populations in the POC is a direct consequence of the tactics that the warring parties are using in waging war.

In almost three-quarters of cases (72.8%), the household simply did nothing in response to the violent crime; meaning that they did not report the crime to anyone and did not engage in self-help options, such as negotiation or revenge. The lack of justice options was particularly evident in Juba POC, where almost every respondent that experienced a violent crime (96.1%) said that no action was taken to address the incident. When asked why no action was taken, the majority of respondents answered that they did not know what to do or where to go for support or advice (58.7%), suggesting that a lack of information about available justice services and/or unavailability of reliable justice services are prominent barriers to justice. Respondents in Bentiu POC (39.1%) and Juba POC (35.4%) emphasized that justice service providers were geographically too far removed to access. The lack of action is also influenced by the difficulty of getting results in a criminal investigation, mistrust in security and justice providers and prevalence of corruption. The lack of justice options was also directly linked to the conflict, as justice providers were reported absent or considered to be part of the opposing party.

When people do aim to seek redress after violent crimes, they contact both statutory actors, such as the police or state prosecutor, and non-statutory actors, such as traditional authorities, religious leaders or friends and family. Across all crimes investigated, in a bit more than half of the cases where action is taken, people pursue multiple steps. There seems no clear preference for either statutory or non-statutory justice provision, and people generally follow a response-pathway based on who is available, reachable, and where people think they can reach the best results.

There is some variety between the types of crimes. In cases of cattle raid respondents are more likely to first contact traditional authorities or other non-statutory actors, or to organize a revenge attack by themselves. Revenge is also relatively prevalent in cases of murder, which may in certain cases be linked to cattle raids. In cases of sexual assault traditional authorities are contacted much less, indicating that the solutions they generally provide are often not desired by victims. What is striking is the relatively small number of cases where the statutory court is mentioned in the response-pathway. This may indicate that people themselves do not go to court, but that this is a step to be taken by the public prosecutor. But when looking at the outcomes of cases further in this report, it becomes clear that very few cases result in the arrest of a suspect and many cases may never appear before court for that reason.

While most respondents cited compensation as a reason for taking action, respondents were actually compensated in only 6,6% of all cases where actions were taken. In comparison, in 18,5% of the cases where respondents took action the perpetrator was put in jail. The outcomes for cases where action was taken do therefore not completely match the reasons for which actions were taken by

respondents, and highlight a gap between people's justice needs and the services that are available.

Most respondents that took steps to seek redress incurred some costs in doing so. Types of costs included administrative fees and court fees, fees for legal advice (e.g. lawyer fees), traveling costs and bribes. The type of costs and monetary value of costs varied greatly between cases. Cases in which respondents invested larger amounts of money into seeking redress resulted in a greater chance of the perpetrator being jailed than cases where little or no costs were made. This implies that access to justice is much easier for those who are able to invest time and resources.

In brief, the report makes the following recommendations based on its findings:

To the (transitional) Government of South Sudan:

- Ensure that rule of law and access to justice programming form an integral part of any post-conflict reconstruction and stabilization effort in South Sudan.
- Using the judicial reforms provided for in the August 2015 peace agreement as an entry point, develop a more detailed reform agenda to stimulate meaningful change in the justice sector. Points to include:
 - Develop a policy and legislation that focuses specifically on legal aid in order to increase access to justice
 - Establish and enforce specific types of justice mechanisms during conflict situations, make a sustained investment into services that expand the reach of justice beyond what is possible through state action alone, and seek to reinforce these mechanisms as important services in emergency situations.
 - Establish and support the functioning of military courts to try military actors involved in crimes.
 - Invest in the capacity of police investigators to investigate crimes, so that people can gain confidence in the police and their ability to help them to find justice.
 - Vetting of judges and other justice sector institutions to ensure that the most qualified people are employed.
- Improving transparency in the reporting of justice sector data, particularly crime statistics and judicial opinions.
Invest in the capacity of police investigators to investigate crimes, so that people can gain confidence in the police and their ability to help them to find justice.
- Ensure special attention for SGVB and tackle the widespread impunity for SGVB-related crimes.
- Invest in the capacity of customary courts, particularly in their ability to deal with cattle raids, as cattle raids have become increasingly complex and linked to conflict and organized crime.

To all guarantors of the ACRISS, including UNMISS, the AU and IGAD+:

- As part of the protection of civilians mandate, take a pro-active stance on bringing perpetrators to justice in order to end impunity and break the repeated cycles of violence.
- Facilitate access to justice for displaced populations in the POCs.
- Ensure programmatic connections transitional justice and justice reform efforts.

To donors and (I)NGOs and national civil society:

- Make a sustained investment into services that expand the reach of justice beyond what is possible through state action alone, such as paralegal or legal aid programming
- Support the (transitional) government in developing a detailed justice reform to stimulate meaningful change in the justice sector.
- Invest in knowledge/information sharing and capacity building on civil rights and the justice mechanisms among the South Sudanese population.
- Connect work on access to justice to transitional justice by investing in trust building and reconciliation efforts at local and state levels.

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Introduction

This report investigates people's perceptions and experiences with violent crimes in South Sudan, and the steps people take in pursuit of justice after experiencing a violent crime.

This introduction first presents the overall research project from which this report culminated. It then discusses the qualitative and quantitative research methods used to collect data, and presents the characteristics of the survey sample. In order to contextualize the research findings, it finally provides an overview of the justice system in South Sudan.

The section "Perceptions and experiences of violent crimes in South Sudan" presents the research findings and starts with a chapter on perceptions and preferences. This chapter is based on people's responses to questions about hypothetical crimes, and what they consider appropriate responses and solutions. The chapter then turns to actual crimes experienced by the respondents, focusing on a select set of violent crimes. The third chapter looks at access to justices, and discusses the large percentage of cases where no action is taken in response to violent crimes, the impact of conflict on justice, and what actions are taken in response to violent crimes. Finally, two types of violent crimes that frequently occur in South Sudan – Sexual and Gender-Based Violence (SGBV) and cattle raiding – are highlighted and discussed in closer detail.

Project overview

This report is one of two final reports of a research project entitled, "Intersections of truth, justice and reconciliation in South Sudan".¹ The project is implemented by the University for Peace Centre The Hague (the Netherlands), South Sudan Law Society (SSLS), and PAX, and started in November 2014. 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).

The project takes a holistic approach to understanding violence, and investigates people's experiences in seeking justice in relation to both conflict-related and non-conflict-related violence. In order to build peace and stability, people must be able to access justice services when faced with criminal violence in their daily lives. Peace also requires dealing in some way with the violence that people have experienced as a consequence of conflict. From this perspective, the aim is to investigate people's perceptions, needs and experiences with truth, justice and reconciliation. The three main research questions of the project are:

¹ See, Deng & Willems (2016) *Perceptions of Transitional Justice in South Sudan*.

- What are the strengths, weaknesses and interrelationships of different types of justice systems (both statutory and customary)?
- What opportunities for reform can be identified in order to bring justice services into greater conformity with user needs?
- What existing and potential opportunities for truth, justice and reconciliation can be identified in South Sudan with regard to the past and present conflicts?

This report primarily focuses on the first two questions, and investigates access to justice in South Sudan. Published alongside this report is the report “Perceptions of Transitional Justice in South Sudan”, which places its focus on efforts to promote truth, justice and reconciliation in relation to violent conflict.

Methodological note

The study used complementary quantitative and qualitative methods. The main data-collection was undertaken by means of a survey, which sought to better understand people’s perceptions of and experiences with violence and justice, particularly from the perspective of access to justice services. Qualitative information was gathered during subsequent interviews and workshops aimed at sharing, fine-tuning and verification of findings.

Quantitative Research

In total 1,912 respondents were interviewed for the survey in November and early December 2015. The survey was conducted in four locations: Juba town, Juba Protection of Civilian site (POC²), Wau town and Bentiu POC. Due to limitations in time and resources only a select number of locations could be targeted. A deliberate choice was made to focus both on general populations and populations in the POCs, as both populations are affected differently by the conflict. Juba was included as it is the capital and the most populous city in South Sudan. As anecdotal evidence suggested high and rising crime rates, it presented a key target for the survey. Bentiu was included as this location was omitted in an earlier survey project conducted by SSLS, and could therefore fill a knowledge gap. What further inspired the choice of locations was geographic, ethnic and political diversity. By selecting Juba, Bentiu and Wau the regions of Greater Equatoria, Greater Upper Nile, and Greater Bahr el Ghazal were all represented, and the sample would likely include several of the main ethnic groups as well as respondents from both sides of the political divide of the conflict.

A pilot survey of 163 respondents was conducted in Juba in April 2015, with the primary goal of verifying the relevance and logic of the questions asked, and whether

² The UN is currently operating six POC sites including UN House Juba POCs 1 and 3, Bor POC, Malakal POC, Bentiu POC, Melut POC and Wau POC. More than two hundred thousand South Sudanese are currently seeking refuge in these POCs.

respondents understand the questions in the way we intended.³ Based on the experiences of the pilot the questionnaire was then revised and prepared for the survey in November.

The survey was conducted on smartphones using KoBoToolbox, an open source survey tool developed for data collection in challenging environments.⁴ In each location a group of eight enumerators conducted the survey. Prior to the survey they received a two or three-day training, depending on whether they had prior experience with the KoBoToolbox application. Enumerators received training on the use of the KoBoToolbox application, and each question was elaborately discussed to ensure enumerators understood the questions. The questionnaire was developed in English, and during the training focus was also placed on finding agreement among enumerators on the translation of terms in local languages. Enumerators were monitored during the data collection by assigned supervisors in the field, as well as online by the project leaders through the monitoring tools provided by the KoboToolbox application.

Individual households were selected using a detailed random walk technique with a built-in skip pattern. Enumerators randomly selected the oldest or youngest man or woman present according to a preset randomized table. Due to the highly sensitive and gendered nature of some questions, male enumerators only interviewed male respondents and female enumerators only interviewed female respondents. Eligible respondents had to be 18 years of age or older and South Sudanese nationals. Enumerators were instructed to interview respondents as privately and shielded from disturbances as possible. Before each interview, enumerators briefed the respondents on the purpose of the survey, stressed the confidentiality of their responses, and obtained informed consent.

Qualitative methods

A range of qualitative methods were used to enhance our understanding of the data gathered in the survey. Interviews were conducted with ordinary citizens across the four locations to gain more in-depth knowledge on peoples' perceptions of and experiences with violent crimes and the justice process. Interviews were also conducted with experts in the field, such as lawyers, representatives of the Ministry of Justice, community leaders and representatives from various NGOs and intergovernmental organizations. A semi-structured approach was taken in interviews to be able to adapt to local variation through changing the order of questions, framing questions so as to maximize their relevance to the context and to the experiences of research participants, and in general to have a structured conversation rather than extraction of knowledge that did not pertain to local circumstances.

³ For findings of the pilot, see Willems and Deng (2015) *Justice and Conflict in South Sudan. Observations from a pilot survey.*

http://www.upeace.nl/cp/uploads/hipe_content/Justice%20and%20Conflict%20in%20South%20Sudan%20-%20Pilot%20Survey%20-%20Briefing%20Paper.pdf

⁴ <http://www.kobotoolbox.org/>

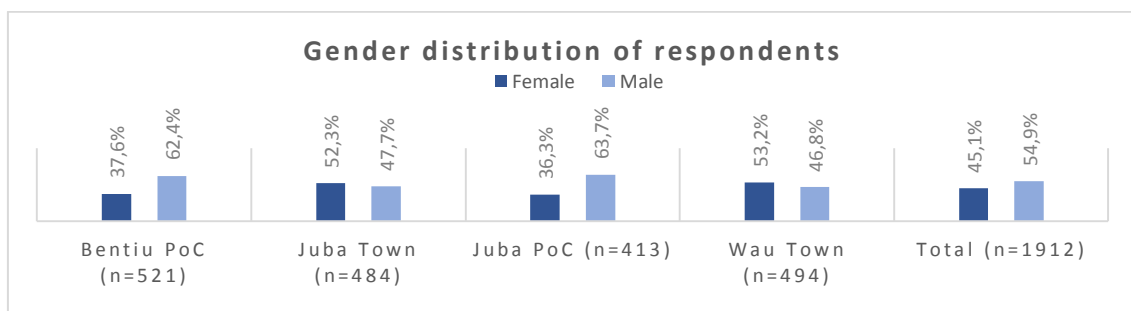
Across all four locations the team also organized workshops with the goal of sharing initial findings from the survey, and to verify and polish our interpretation of the findings. During the workshops, short presentations of findings were followed by semi-structured discussions with workshop participants. Participants included representatives of government institutions, the justice sector, intergovernmental organizations, civil society and youth and women’s groups in Juba and Wau town, and local camp leadership, civil society and youth and women’s groups in Juba and Bentiu POCs.

Sample

The target of the survey was to gather between 400 and 500 filled questionnaires for each location. After cleaning the dataset by deleting erroneous and incomplete forms, we had a sample of 485 in Juba town, 413 in Juba POC, 493 in Wau town, and 512 in Bentiu POC, coming to a total of 1,912. With limitations in time and resources, the survey focused on areas with relatively dense populations at the expense of a specific focus on rural areas. However, many respondents had previously lived in rural areas, and particularly in Bentiu POC many respondents were recently displaced from rural areas. The experiences of rural populations were also reflected in the locations where respondents said that they experienced crimes, many of which were in rural areas.

Gender

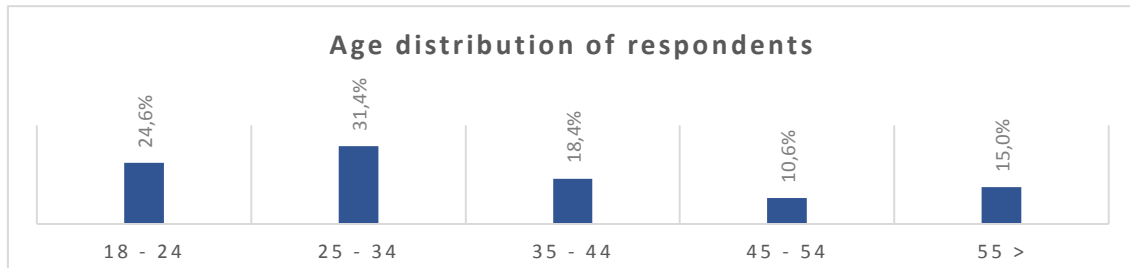
Our aim was to get an even distribution of men and women in the sample, with the results being dependent on the people present in the household and willingness to participate. In total, the sample consists of 45.1% women and 54.9% men, although this distribution does vary slightly across locations. In the POCs more men were interviewed than women, whereas in the towns more women were interviewed. This can be explained by the fact that in the POCs people are less likely to be employed, and men are therefore more likely to be in or around the household.



Age

The age distribution of the sample roughly corresponds with the census data of South Sudan’s population as a whole. 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 30.⁵ The relatively large share of respondents older than 55 (15%) reflects the larger age-range, and the fact that older people are more likely at home during the day when interviews were conducted.



Household makeup

A majority (71%) of the respondents were married, almost a quarter never married (22%), and a minority of respondents were widowed (4%), or divorced or separated (3%). In the majority of all cases (60.5%) the person interviewed was also the household head. 70.9% (n=1050) of the men interviewed and 47.9% (n=862) of the women interviewed for the survey indicated that they were the head of the household.

More than half (52.1%) of all persons interviewed said they had no source of livelihood, a percentage that was similar among men and women. The indicated rates of unemployment were the highest in the POCs (87.9% in Juba POC and 53% in Bentiu POC). A side note to these figures is that people without a source of livelihood are more likely to be found at home, and may have been responsible for the household with other family members being responsible for providing an income.

Of the sample population, 7.5% had completed university, 24.2% only completed secondary school and 23.2% only completed primary school. Almost half of the respondents (44.8%) indicated that they did not complete any formal education. The sample was very well educated compared to the general population of South Sudan. In 2009 only 15.9 per cent of the population of South Sudan had completed primary education.⁶ Only 60% of children in their early teens reported to have ever been enrolled in school, with about one third of those enrolling in primary education also

⁵ 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.sqspcdn.com/static/f/750842/11454113/1301369111513/Key+Indicators_A5_final.pdf?token=0JDCa5z2y%2Ffz8rrK6WdcNNk7b0o%3D.

⁶ *South Sudan Statistical Yearbook 2011*, p. 34.

completing it.⁷ The relatively high education among the sample is likely due to the fact that the survey was conducted in urban areas.

The sample included more than 40 different tribal and ethnic groups and sub-groups.⁸ Due to the inclusion of Juba POC and Bentiu POC, where almost all inhabitants are Nuer, Nuer are overrepresented and make up 47% of the total sample (96.6% in Juba POC and 92.9% in Bentiu POC). The second largest group is Dinka, which makes up 10.4% of the total sample and 26.5% of the sample in Wau. Other groups with more than 5% representation in the total sample are the Balanda (8.8% of the total sample, 30.6% in Wau) and the Bari (5.2% of the total sample, 19.4% in Juba town).

A total of 637 respondents (33.3%) considered themselves to be a current or past combatant. This illustrates the level of militarization of South Sudanese society.

Combatants, displacement and victimization

Out of all 1,912 respondents a total of 530 (27.7%) answered positively to the question: “Do you currently consider yourself to be a combatant in the military, a militia or a group defending your community?”, and of those who responded negatively 107 respondents said they consider themselves to have been a combatant in the past. Therefore, a total of 637 respondents (33.3%) considered themselves to be a current or past combatant. This finding does not assess whether the respondents have had any form of military training, whether at any point of time they answered to a commander, or whether they have been engaged in armed battle. Yet, the high percentage of self-identification as a combatant nonetheless illustrates the level of militarization of South Sudanese society.

With two out of four locations being a POC, it is not surprising that half of the sample population indicated they were currently displaced. This was the case for almost all of the respondents in the POCs, but also for 11% in Juba town and 7.7% in Wau town. After the survey was conducted, large scale violence erupted in Wau in June 2016 displacing some 65,000 people in and around Wau town and in July in Juba displacing again several thousand people, illustrating the unpredictable and constantly changing conflict dynamics in South Sudan.⁹

More than half of the respondents (51.6%) say that at one point in time they have been victimized by an armed group or military actor in the context of conflict. The percentage is of course much higher in the POCs (87.3% in Bentiu POC and 84.7% in Juba POC), as people living there have generally fled violence by armed actors, and being displaced is in itself a form of victimization. Yet also in Juba town (22.3%) and Wau town (15%) a considerable number of people reported to have been victimized

⁷ World Bank (2012) *Education in the Republic of South Sudan: Status and Challenges for a New System*. Washington D.C.: World Bank. Available at: http://www-wds.worldbank.org/external/default/WDSContentServer/WDSP/IB/2012/06/28/000333038_20120628035809/Rendered/PDF/705950PUB0EPI0067902B09780821388914.pdf, p. 59.

⁸ South Sudan is often said to have 65 ethnic groups, but that figure includes ethnic sub-groupings such as the Lou or Jikany Nuer and Bor, Twic or Ngok Dinka. This survey does not report on ethnic sub-groupings.

⁹ Irwin, T. (2016) ‘Escaping violence in South Sudan: Lives uprooted, families torn apart.’ Unicef website, available at http://www.unicef.org/infobycountry/southsudan_91807.html

at one point in their lives. This illustrates the impact of violence and conflict on the daily lives of South Sudanese.¹⁰

Overview of the Justice System

South Sudan has a plural justice system comprised of parallel systems of statutory courts presided over by judges and trained legal personnel and customary courts presided over by chiefs and elders.¹¹ The statutory courts are structured in a single hierarchy with the Supreme Court as the highest court of law, followed by three courts of appeal, high courts in each of the ten states and magistrate courts at the county level. The Judiciary Act envisages statutory courts at the payam level as well, but those courts have not yet been established.¹² Indeed, there are not even magistrate courts present in most of the counties.

Customary courts are primarily administered as organs of local government under the terms of the 2009 Local Government Act, and as such, chiefs are primarily answerable to county commissioners.¹³ Whereas statutory courts are mainly accessible only in urban areas, customary courts are found at every level of local government in South Sudan.

According to the Local Government Act, customary courts do not have jurisdiction over criminal matters unless the case has a 'customary interface'.¹⁴ Though the term 'customary interface' is not defined in the law, it presumably refers to crimes associated with issues such as cattle raiding or adultery, which commonly fall under the purview of traditional authorities. Despite the jurisdictional limitation, however, customary courts typically hear a range of criminal disputes and have the authority to issue a variety of criminal punishments, including prison sentences, fines and corporal punishment. In some areas, customary courts even adjudicate serious crimes such as murder or rape. A common remedy offered in instances of murder is for the perpetrator to be made to pay a certain number of cattle to the relatives of the deceased to compensate them for their loss. The amount of cattle that must be paid vary from community to community and with the nature of the killing, but such

¹⁰ See for a more elaborate discussion of victimization and its impact on South Sudanese citizens see Deng & Willems (2016) *Perceptions of Transitional Justice in South Sudan*.

¹¹ See e.g. Cherry Leonardi et al. (2010) *Local Justice in Southern Sudan*, United States Institute of Peace (USIP), available at: <http://www.usip.org/publications/local-justice-in-southern-sudan>; David K. Deng (2013) *Challenges of Accountability: An assessment of dispute resolution processes in rural South Sudan, SLS and Pact*, available at: http://www.pactworld.org/sites/default/files/Challenges%20of%20Accountability_FINAL%20May%2016.pdf.

¹² GRSS, *Judiciary Act* (2008), available at: http://www.africanchildforum.org/clr/Legislation%20Per%20Country/South%20Sudan/ssudan_judiciary_2008_en.pdf.

¹³ GRSS, *Local Government Act* (2009), available at: <http://mlgi.org.za/resources/local-government-database/by-country/sudan/sub-national-legislation/The%20Local%20Government%20Act%202009.pdf>.

¹⁴ *Id.*, § 98(2).

remedies provide an important means of managing conflict in areas where formal state institutions do not exist.

Less formal forms of dispute resolution, such as mediation by family, friends and neighbors, various forms of assistance from local government officials, or services offered by UN agencies or NGOs also provide an important source of justice services in many areas. The less formal institutions assume additional significance in circumstances of large-scale conflict in which formal justice sector institutions are often destroyed or otherwise unable to act.

Perceptions and experiences of violent crimes in South Sudan

This section presents the main findings, and consists of five chapters. The first chapter looks at perceptions and preferences based on people's responses to questions about hypothetical crimes. The second chapter then turns to actual crimes experienced by the respondents, focusing on a select set of violent crimes. The third chapter looks at access to justices, and discusses the large percentage of cases where no action is taken in response to violent crimes, the impact of conflict on justice, and what actions are taken in response to violent crimes. The last two chapters highlight two types of violent crimes that frequently occur in South Sudan: Sexual and Gender-Based Violence (SGBV) and cattle raiding.

Perceptions and preferences

This first chapter looks at people's perceptions and preferences regarding violent crimes in South Sudan. In particular, it investigates what people consider to be appropriate steps to take in response to a violent crime, and what they consider to be acceptable remedies for these crimes.

Steps taken in response to violent crimes – hypothetical cases

The survey focused on seven types of violent crime: cattle raiding, armed robbery, physical assault, murder, sexual assault, abduction and torture. For each of these crimes, respondents were asked a hypothetical question about what their course of action would be if a member of their household were confronted with these crimes. For example, respondents were asked: "If someone from your household is murdered, what action would you take first to deal with the case?" A follow-up question then asked for what would be a logical second step. Respondents were not presented with a set of possible answers, but were asked freely about the course of action they would pursue. The answers given therefore also include actors that traditionally may not be considered justice or security actors. The findings are presented below, and the individual charts can be found in annex 1.

In case of **murder**, the majority of the respondents indicated that the first step would be to contact the police or prosecutor¹⁵ (57.9%). The second most common first step in response to murder would be to contact the traditional authority or chief¹⁶ (21.8%). For Bentiu POC, the responses were the other way around, with 38% indicating they would contact the traditional authority and 33.6% contacting the police. With 29.7%, the most common second step across all survey locations would be to contact the statutory court. In Bentiu POC, however, the most common second step would be to

¹⁵ Often police serve as prosecutors both in terms of overseeing investigations as well as preparing cases in court. The two positions were therefore listed under one label.

¹⁶ Traditional authorities could for instance be a clan headman or chief.

contact the police (14.5%), while in Juba POC the most common second step would be to do nothing (27.6%).

In case of **physical assault**¹⁷, the most common first step would be to contact the police (57.9%), followed by contacting traditional authorities (18.6%). This was also the case for all locations individually. The most common second step for all locations combined was again to contact the police (21.3%), followed by contacting the statutory court (18.6%) and the hospital (18.3%). There was variation here between locations, with the most common second step in Bentiu POC contacting the traditional authorities (35.5%), in Juba POC the hospital (34.9%), and in Juba and Wau town the statutory court (respectively 33.7% and 23.9%).

In case of a **sexual assault**¹⁸, the most common first step across the total sample is to contact the police (46.8%) followed by the traditional authorities (14.9%) and the hospital (14.8%). Only in Bentiu POC the most likely first step taken is to contact the traditional authorities (29%). The most commonly taken second step is to contact the hospital (23%) for the sample as a whole. There is some variety per location, as in Juba town the most common second step is to contact the statutory court (40.8%), and in Bentiu POC again the traditional authorities (29.9%).

In case of **armed robbery**¹⁹, the most common first step across the total sample is to contact the police (55.7%), and this holds for all locations individually. The most common second step is contacting the statutory court (24.9%). For the individual locations, this is also the case for Juba town and Wau (40.6% and 34.6% respectively). In Bentiu POC the most common second step is contacting the traditional authorities (32.8%) and in Juba POC not doing anything (28.5%).

In response to **cattle raid**²⁰, the most common first step across the total sample is contacting the traditional authorities (34.3%), followed by contacting the police (29.6%). For the locations individually, Juba town is an outlier, with the most common response being to contact the police in response to a cattle raid (37.6%). This can be explained by the fact that the majority of people living in Juba town are not from pastoralist communities. The most common second step for the total sample is contacting the police (23.9%). There is some variety across locations, as the most common second step is contacting the traditional authority in Bentiu POC (31.2%) and the statutory court in Juba town (32.7%).

¹⁷ Respondents were asked what they would do in case someone from their household is beaten severely in the street.

¹⁸ Respondents were asked what they would do in case someone from their household is raped.

¹⁹ Respondents were asked what they would do in case someone from their household is robbed at gunpoint from money.

²⁰ Respondents were asked what they would do in case the cattle belonging to someone in your household is raided.

In case of **abduction**²¹, the most common first step across the total sample is contacting the police (43.8%), followed by contacting the traditional authorities (21.9%). This holds for the locations individually, except for Bentiu POC where the most common first step taken is contacting the traditional authorities (40.3%). The most common second step across all locations is again contacting the police (23.9%), followed by the traditional authorities (15.7%) and the statutory court (14.9%). There is variety across the different locations. The most common second step in Bentiu POC is to contact the traditional authorities (31.7%), in Juba town to contact to statutory court (35.7%), and in Juba POC not doing anything (28.5%).

In case of **torture**²², the most common first step across the total sample is contacting the police (46.7%), followed by contacting the traditional authority (14.7%). This also holds for all locations individually, although in the case of Bentiu POC the percentages are much closer (32.8% police and 30.5% traditional authorities) than in the other locations. The most common second step across all locations is contacting the statutory court (19.7%). This figure is driven up by Juba town and Wau town, where contacting the statutory court is the most common second step (42.2% and 25.5% respectively). In Bentiu POC the most common second step is contacting the traditional authorities (29.8%) and in Juba POC contacting the hospital (30.8%).

When asking about hypothetical cases, in most cases respondents indicate they would first contact the police. There is some variation across locations, as respondents in Bentiu POC are often more likely to first contact traditional authorities. As became clear during interviews, this is largely attributable to a lack of availability of state security providers as a result of the fighting in Unity State. There is also some variation depending on the crime experienced, as respondents say they would contact traditional authorities first in case of a cattle raid. This indicates that cattle raid is considered to be part of the jurisdiction of traditional authorities. The responses in Juba POC also indicate a lack of justice options, as people relatively often indicated they would not do anything. The responses from the POCs combined furthermore demonstrate the overall inaccessibility of formal justice services for displaced populations in the POCs.

Respondents that had also experienced any of the crimes in real life were also more likely to contact traditional authorities over the police in comparison to people who did not experience a crime. The answers to hypothetical cases were disaggregated using the responses to a question further down the survey that asked whether any of the listed crimes were experienced by someone in the household in the past five years. For all crimes, respondents that had experienced a violent crime within the household were less likely to say they would first contact the police in comparison to respondents that did not experience a violent crime within the household, and more likely to say they would first contact traditional authorities. This may be because people with actual experiences have been more likely to contact traditional leaders

Respondents that had experienced a violent crime within the household were less likely to say they would first contact the police in comparison to respondents that did not experience a violent crime within the household, and more likely to say they would first contact traditional authorities.

²¹ Respondents were asked what they would do in case someone from their household is abducted.

²² Respondents were asked what they would do in case someone from their household is tortured.

over police in practice, and therefore also include this experience in their answers to hypothetical cases. This difference may in part be caused by socially desired answering. However, the discrepancy between preferred dispute mechanisms in the hypothetical situation and the actual dispute mechanisms that respondents used when confronted with the situation also suggests that there may be a disconnect between the demand for justice services and those services that are available in practice, and that police are considered inaccessible or inadequate.

Most respondents considered a jail sentence the most appropriate remedy or solution for violent crime, followed by payment of compensation.

Appropriate remedy or solution for violent crimes

Respondents were also asked what they considered appropriate remedy or solution in case of the crimes listed above. Respondents could give more than one answer. The individual charts can be found in annex 2. For all crimes, a jail sentence for the perpetrator was mentioned most often (ranging between 63.2% and 81.5% depending on the crime). For most crimes, the second most often mentioned solution was the payment of compensation (18.4% to 47.9% of respondents), except for murder where the second most often mentioned solution was the death sentence (39.3%).

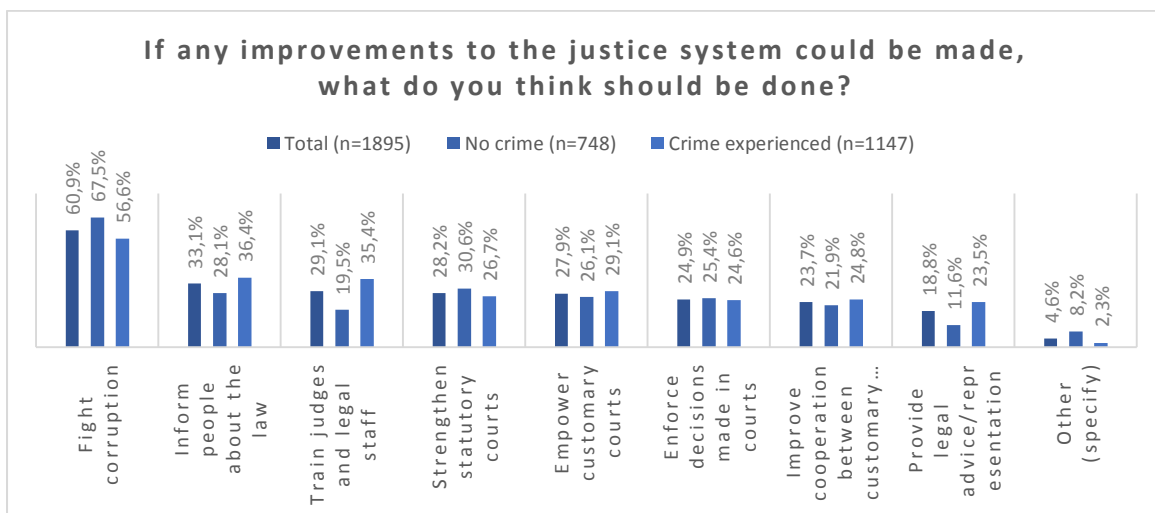
For the case of cattle raid, the percentage of respondents that considered compensation an appropriate remedy was the highest at 47.9%, although a majority (69.1%) also considered jail an appropriate solution. This may be counter-intuitive, as compensation is in pastoralist communities a common way to resolve conflicts over raided cattle. Yet, the same percentages apply for Juba POC and Bentiu POC, where almost all respondents are from traditionally pastoralist communities and would therefore be familiar with customs of compensation. This may be an indication that mere compensation is no longer considered a sufficient remedy in a context where raiding is accompanied by wide-scale violence, and connected to illicit international markets and criminal networks.²³ However, as discussed in chapter "Assessing Justice" below, people's motivation for taking action is in most cases to seek compensation or restitution. This also becomes evident when disaggregating the findings on hypothetical cases for respondents that experienced crimes with their household in the last 5 years. Respondents that reported a violent crime in the household are more likely to list compensation as an appropriate remedy compared to respondents that did not report experiencing a crime in the household. Nonetheless, sentencing perpetrators to jail remains to be considered as the most appropriate remedy for violent crimes overall. Restorative forms of justice are thought to resonate more with South Sudanese cultural and religious values and – despite great differences within and between ethnic and cultural groups – customary laws in South Sudan tend to focus on rebuilding relationships through reconciliation and compensation. But alongside this South Sudanese justice systems also have a strong retributive element, as can be seen in the liberal use of imprisonment, corporal

²³ Mkutu, K. 2003. *Pastoral Conflict and Small Arms: The Kenya-Uganda Border Region*. London: Saferworld, 15-16; Walraet, A. 2008 "Governance, violence and the struggle for economic regulation in South Sudan: the case of Budi County (Eastern Equatoria)." *Afrika Focus*. 21(2): 53-70; Leff, J. 2009 "Pastoralists at War: Violence and Security in the Kenya-Sudan-Uganda Border Region," *International Journal of Conflict and Violence*. 3(2): 188-203, 193

punishment, fines and other criminal sanctions in many customary and statutory courts.

Improvements to the justice system

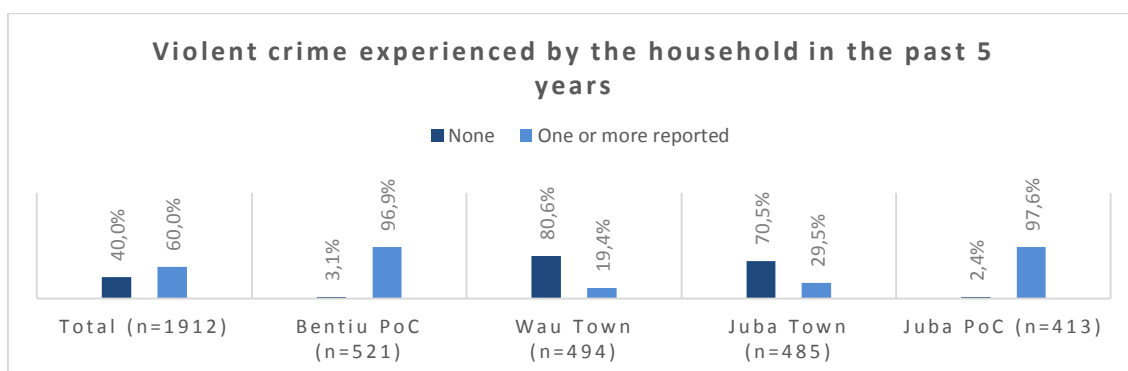
When asked what could be done to improve the justice system, most respondents (60.8%) said fighting corruption. The second most common response was to inform people about the law (32.9%) and the third most common response to train judges and legal staff (28.9%). In comparison to respondents that did not experience a crime within the household in the past five years, respondents that had experienced a crime were less likely to mention fighting corruption (although also for this group it was the issue mentioned most often), and more likely to mention the need to inform people about the law and to train judges and legal staff. Respondents that experienced a crime in the household were also more likely to emphasize the empowerment of customary courts than the strengthening of statutory courts, where this was the other way around for respondents that did not experience a crime in the household. This indicates that people in practice lack trust in statutory courts and often seek support with customary institutions, but also find the capacity of customary courts to resolve their issues to be lacking.



Actual crimes experienced

Having discussed people’s perceptions of justice, we now turn to people’s actual experiences with violent crimes. The survey asked respondents whether someone within their household had experienced any of the following crimes within the last five years: cattle raiding, armed robbery, physical assault, murder, sexual assault, abduction and torture. For each crime that a household member had experienced, a number of follow-up questions were asked about the details of the particular crime and the steps taken in response.²⁴

²⁴ If a respondent said that the household experienced one particular form of violent crime more than once in the last five years (e.g. multiple armed robberies), the respondent was asked to answer the questions that followed for the incident that he or she considered to be the most significant. It was assumed that what the respondent considered the most significant would be the incident for



As to be expected in a country that has been experiencing large-scale conflict for more than two years, people in South Sudan have been exposed to very high rates of violent crime. A total of 1,147 respondents, or 60% of the entire sample, reported that their household experienced one or more cases of violent crime in the past five years.

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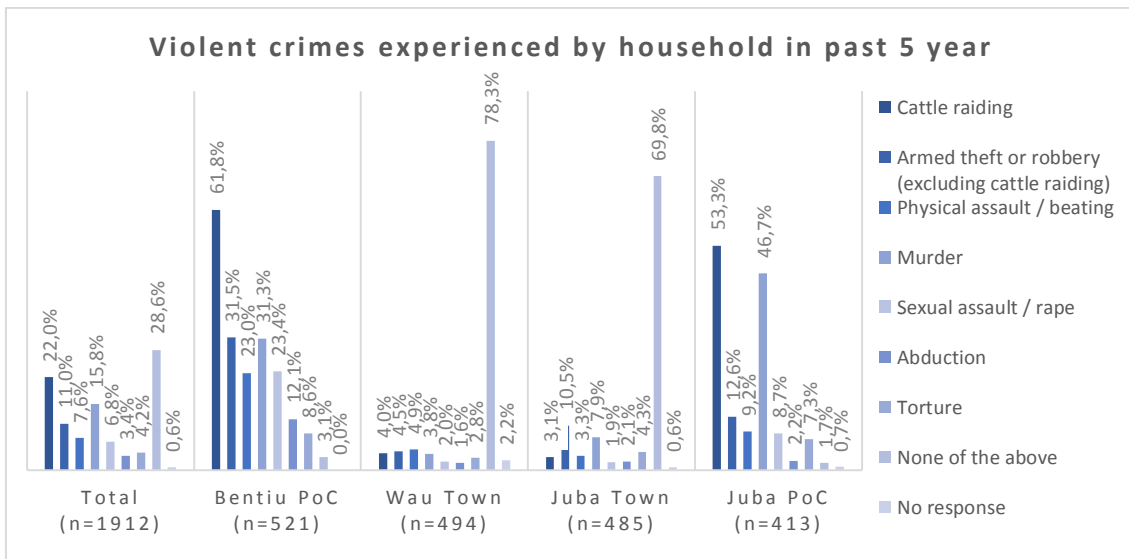
Respondents in the UN protection of civilians (POC) sites in Juba and Bentiu reported more crimes than those in Juba or Wau towns, with Bentiu POC having the highest number of reported crimes, at more than 1,015 incidents by 512 respondents.²⁵ The high incidence rates in the POCs are directly linked to the conflict. According to respondents, most of the violent crimes experienced in the Juba POC (65.1%, n=578) and Bentiu POC (92.1%, n=999) were said to have taken place within the context of large-scale conflict.²⁶ In Bentiu, the vast majority of incidents occurred in 2015, and can be directly linked to the GRSS offensive that started in March 2015 and lasted for much of the year. In Juba POC, on the other hand, most incidents occurred in 2013 when violence erupted in Juba sending tens of thousands of people to seek refuge in bases of the United Nations Mission in South Sudan (UNMISS). A significant number of incidents in Juba POC also took place 2014 and 2015, and can be traced to incidents in Greater Upper Nile that displaced people to Juba POC.

Though incidence rates were highest among populations in the POCs who have been directly exposed to the conflict, respondents outside the POCs also reported high levels of crime, with 29.5% of respondent households in Juba town and 19.4% in Wau town having experienced at least one violent crime in the past five years.

which he or she could recall the most detailed information, and for which it would be most likely that the household took actions in response.

²⁵ The figure for the number of incidents in Bentiu only counts each type of crime once for each household, and does not include crimes that households experienced multiple times. For example, if a household experienced one murder or ten murders over the past five years it would only be counted once in either case.

²⁶ As follow-up questions were focused on what the respondent considered to be the most significant case, this number does not necessarily reflect the percentage of cases during conflict for all crimes experienced.



The types of violent crimes also vary across survey locations. In Bentiu POC, the most common crime was cattle raiding (61.8%), followed by armed robbery (31.5%) and murder (31.3%). Cattle raiding was also most common in Juba POC (53.3%), followed by murder (46.7%) and armed robbery (12.6%). In Wau town, households most commonly experienced physical assault (4.9%), followed by armed robbery (4.5%) and cattle raiding (4.0%). Lastly, in Juba town, households most commonly experienced armed robbery (10.5%), followed by murder (7.8%) and torture (4.3%). The rates of violent crimes, including murder, experienced by households in the POC is very high. Many of these crimes were experienced during the violence in 2013 and 2015.

Compared to Wau and Juba towns, households in Juba POC (8.7%) and Bentiu POC (23.4%) also experienced higher rates of sexual assault.²⁷ The high prevalence of sexual assault among populations in the POC is a direct consequence of the tactics that the warring parties are using in waging war. A March 2016 report by the UN Office of the High Commissioner on Human Rights, for example, provides a detailed account of rape, sexual slavery, genital mutilation committed by GRSS during an offensive in Unity State that took place in 2015.²⁸

²⁷ See for a more detailed discussion of Sexual and Gender Based Violence (SGBV) the chapter “Highlighted crime: SGBV”, and Willems and Deng (2016) *SGBV in Unity State*, available at: <http://www.upeace.nl/cp/uploads/downloadsprojecten/SGBV%20in%20Unity%20State%20-%20Policy%20Brief.pdf>.

²⁸ Office of the High Commissioner of Human Rights (OHCHR), Assessment mission by the Office of the United Nations High Commissioner for Human Rights to improve human rights, accountability, reconciliation and capacity in South Sudan: detailed findings, U.N. Doc. A/HRC/31/CRP.6 (10 Mar. 2016), available at http://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session31/Documents/A-HRC-31-CRP-6_en.doc.

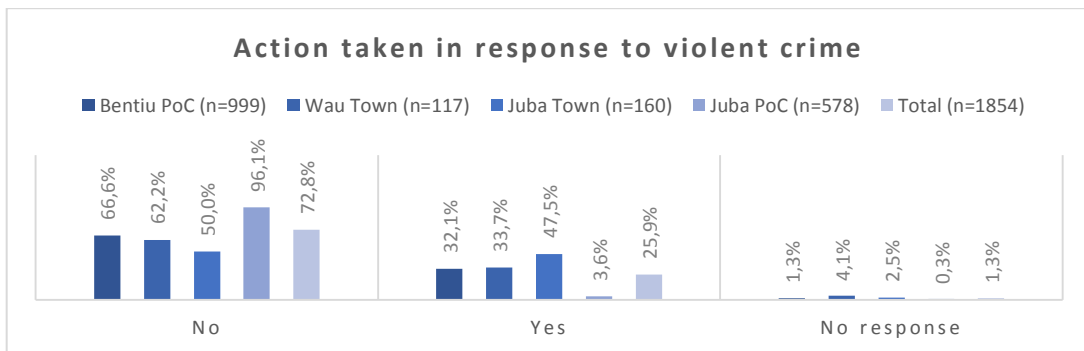
In almost three-quarters of cases (72.8%), the household simply did nothing in response to the violent crime; meaning that they did not report the crime to anyone and did not engage in self-help options, such as negotiation or revenge.

Accessing justice

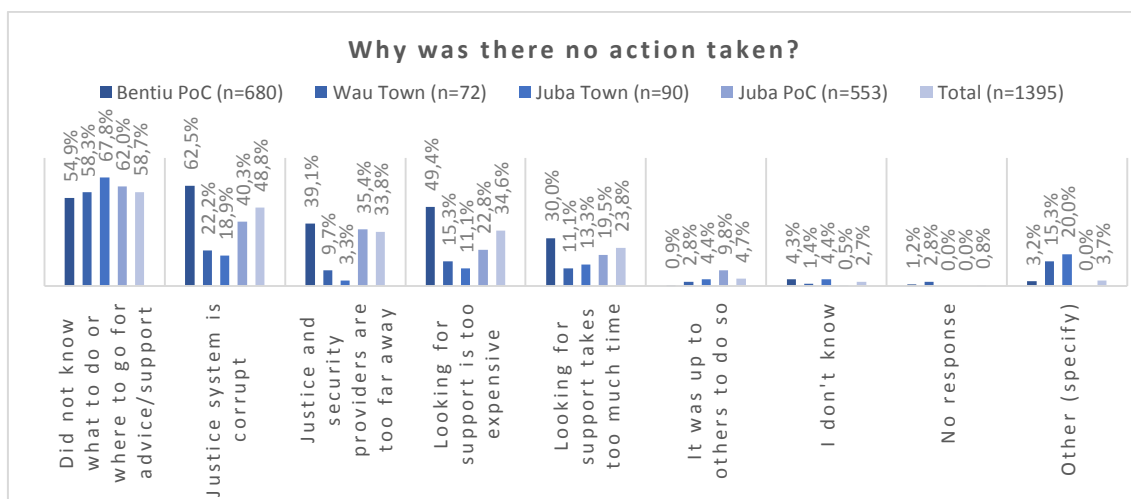
The survey targeted people's experiences at the household level, rather than users of a particular justice provider. Instead of analyzing the effect of a particular justice provider, the survey therefore helps analyze people's experiences with the full scope of actors that they turn to after a violent crime. Below, we first discuss the large percentage of cases where no action is taken in response to violent crime. We then look at the impact of conflict on justice. Finally, we analyze what actions are taken in response to violent crimes.

Inaction in Response to Violent Crime

Access to justice for violent crimes was severely restricted across the sample population. In almost three-quarters of cases (72.8%), the household simply did nothing in response to the violent crime; meaning that they did not report the crime to anyone and did not engage in self-help options, such as negotiation or revenge. The lack of justice options was particularly evident in Juba POC, where almost every respondent that experienced a violent crime (96.1%) said that no action was taken to address the incident. Respondents in other locations also demonstrated little ability to access justice, though not as pronounced as in Juba POC, with 66.6% of households in Bentiu POC, 62% in Wau town and 50% in Juba town taking no action to address the incidents.



Respondents took no action in 73.0% of cattle raids (n=577), 64.7% of armed robberies (n=289), 75.3% of physical assault cases (n=198), 83.8% of murder cases (n=413), 79.7% of sexual assault cases (n=177), 73.3% of abduction cases (n=90), and 80.0% of torture cases (n=110).



When asked why no action was taken, the majority of respondents answered that they did not know what to do or where to go for support or advice (58.7%), suggesting that a lack of information about available justice services and/or unavailability of reliable justice services are prominent barriers to justice. Respondents in Bentiu POC (39.1%) and Juba POC (35.4%) emphasized that justice service providers were geographically too far removed to access.

The majority of respondents answered that they did not know what to do or where to go for support or advice (58.7%), suggesting that a lack of information about available justice services and/or unavailability of reliable justice services are prominent barriers to justice.

The lack of action is also influenced by the difficulty of getting results in a criminal investigation. Comments that respondents made during the survey included: “it is a usual thing and the government has never bothered to do anything on this issue” (cattle raid, Juba), and “the robbers were not identified” (armed robbery, Juba). A lawyer confirmed that, “for instance, with robbery and murder the biggest obstacle is investigation.”²⁹ He indicated that the standard of proof in courts is quite high, and the resources for criminal investigations are very limited. “It is therefore difficult to get evidence, and if there are no witnesses and clear evidence, it is difficult to make a case.”³⁰ With the chances of investigations leading anywhere being very low, many people choose not to bother to take any action.

There is also a high level of mistrust in security and justice providers. As a lawyer explained during an interview, “people often do not believe in the police and courts, or fear that they do or say something that will get them in trouble when filing a complaint, and that they will end up in prison themselves. Courts can be very intimidating environments for people.”³¹ Such fears were confirmed by a participant of a workshop in Juba POC: “I know of a rape case here in Juba, where the people went and filed a case, and they were arrested and accused of being the rapists themselves.”³²

²⁹ Interview, lawyer, 14 April 2016, Juba

³⁰ Ibid.

³¹ Interview, lawyer, 14 April 2016, Juba

³² Group discussion, Juba POC, 14 April 2016

The lack of actions taken and distrust of trust in justice providers is also caused by corruption of justice sector actors, and is related to more general questions around state legitimacy that are particularly prominent among populations in the POCs. It is also related to issues of tribalism and decisions being enforced in favor of those with power. A high-level official with the Ministry of Justice admitted, “we have stigma: people believe that if the man behind the bench is not from their tribe, the decision will not be in their favor.”³³ This is more than a belief alone, as this official himself had also experienced.

*The issue of implementation of court decisions is also impacted by relations to people in powerful positions. I had a land case, and the court ruled in my favor. But it cannot be implemented, because the people who took my land are soldiers. There are eight of them and on two occasions I have witnessed them turning the police who came to evict them after the court ruling away. There is nothing I can do.*³⁴

The abuse of power by elements within the security and justice sector therefore has an impact on levels of trust in the security and justice sector as a whole, as well as the perceived legitimacy of the government:

*“The reason people don’t report cases, is because people don’t know where to go. The police and soldiers are the ones who are committing the crimes, they are government employees. So there is nowhere to go. And if you do, you can get arrested yourself. It is dangerous for you.”*³⁵

The many years of conflict in South Sudan, and the involvement of uniformed personnel on different sides of the conflict divides, has further contributed to this. The following section will look closer at the impact of conflict on justice.

Respondents who were victimized in the context of conflict were less likely to take action than those who were victimized outside of a conflict situation.

Impact of Conflict on Justice

In explaining why they did not take action in response to violent crimes, many respondents simply said that “it was war,” implying that war by definition precludes justice. Indeed, respondents who were victimized in the context of conflict were less likely to take action than those who were victimized outside of a conflict situation. This trend was apparent in the data across all crimes, although the strength of the correlation differs for the various crimes.³⁶ The chart below indicates the percentage of cases where no action was taken, differentiated between cases during conflict and not during conflict. For instance, in case of armed robbery respondents indicated no action was taken in 55% of the cases that did not take place in the context of conflict, whereas no action was taken in 67% of the cases that occurred during conflict. A note

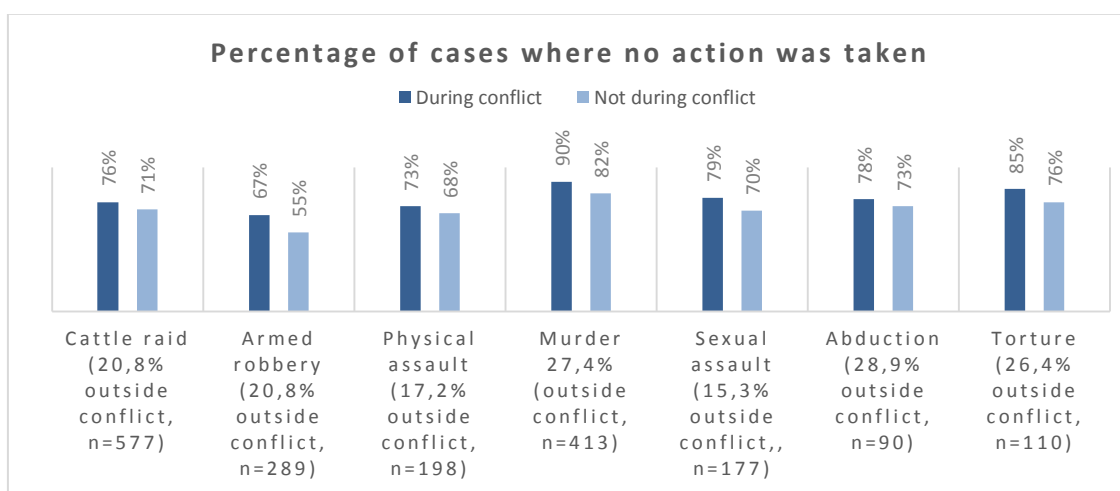
³³ Interview, Ministry of Justice, 13 April 2016, Juba

³⁴ Ibid.

³⁵ Group discussion, Juba POC, 14 April 2016

³⁶ The fact that the majority of all crimes occurred in the context of conflict also limits our ability to draw strong conclusions

to that is that the majority of cases were experienced during conflict, and only 20,8% of the 289 reported cases of armed robbery did not occur in the context of conflict.



Access to justice services was restricted even in relation to crimes that did not arise during active conflict. The fact that people are often not able to obtain redress even in more stable contexts demonstrates how decades of conflict has undermined justice systems in South Sudan as a whole. Investment into building the capacity of justice sector institutions must be approached as both an immediate means of post-conflict stabilization as well as a long-term initiative if the country is to provide justice services that meet the needs of its citizens.

But the impact of conflict on justice is of course particularly visible in areas directly affected by violence. People feel that the conflict has impacted their ability to respond to crimes they experience: “since the eruption of the war, we have no power, we cannot do anything.”³⁷ People sometimes explained this in terms of the involvement of justice providers in crimes, as explained above. But often it was also simply because justice providers were simply no longer present nearby due to the violence and insecurity: “Before the war, when there was a case of cattle raid you could take action. You could mediate with the raiding community, because there was a government. But now there is no way to take any action.”³⁸

Respondents furthermore observed how the situation of lawlessness created by the conflict contributed to further crimes and violence:

*Before the conflict there was accountability. If someone was killed, there would be someone in jail or compensation would be paid. The absence of the law is real now. And this is a problem that brings so much crime now.*³⁹

³⁷ Group discussion, Juba POC, 14 April 2016

³⁸ Group discussion, Bentiu POC, 19 April 2016

³⁹ Ibid.

The situation of lawlessness is not only caused by the absence of state justice providers, but also linked to the break-down of social fabric of South Sudan's communities and the resulting loss of influence of traditional authority structures.

People reported that criminals also feel less restricted to commit crimes among members of their own communities, and argued that crimes have become increasingly brutal. The situation of lawlessness is not only caused by the absence of state justice providers, but also linked to the break-down of social fabric of South Sudan's communities and the resulting loss of influence of traditional authority structures. This issue will be discussed when we investigate experiences of and responses to cattle raids and SGBV in more detail further in this report. We now first turn to responses to violent crimes in general.

Actions Taken in Response to Violent Crime

While in the large majority of cases respondents took no action in response to the violent crimes, there was nonetheless a significant number of cases where respondents did take action. Respondents that took some action to seek redress were asked to explain the different steps that they took and the outcome of the case. This was an open question, and enumerators were instructed to list whether respondents contacted any one of a series of dispute resolution actors (including the police, statutory courts, traditional authorities, friends, etc.), whether they negotiated themselves with the offending party, or whether they took violent revenge attacks against the other party. Respondents that took steps to seek redress were also asked about their motivations for taking action.

Below the steps most commonly taken in response to violent crimes – the response-pathways – are discussed. We then look at the reasons why people take action and how that relates to the outcomes of cases, and finally investigate the costs made by people in the process.

Types of actions taken

We first turn to the most common types of actions that respondents took in response to violent crimes. Annex 3 provides a table with the most common response-pathways, based on the first three actions cited by respondents.⁴⁰

With **cattle raiding**, the most common response was to seek violent revenge (24.4%, n=156) without further steps, followed by contacting family and friends without further steps (9.6%), and contacting the police without further steps (7.7%). Group discussions reaffirmed the level of approval of revenge as a response to violent crimes:

"We have no power to revenge. If we would have power, we could take revenge."⁴¹

⁴⁰ Respondents could list up to five different steps taken in response to a crime. The majority of respondents took between one and three steps, and where four or five steps were listed the last two steps were generally repeating the steps taken before that. We therefore focus on the first three steps for the analysis.

⁴¹ Group discussion, Juba POC, 14 April 2016

“Elsewhere, reconciliation is possible, but not here. If you see your cattle and those who raided it near you, you cannot reconcile. You take revenge.”⁴²

With cattle raiding, the most common response was to seek violent revenge (24.4%, n=156) without further steps.

The cultural importance of taking revenge among pastoralists not only leads to cycles of revenge killings and a constant renewal of the violence,⁴³ it also hampers cooperation in justice processes and attempts to hold perpetrators accountable: “a perpetrator of a crime can in his own community be considered a hero, and they are hidden and protected.”⁴⁴

But despite the prevalence of revenge, with 26.2% of the respondents indicating this was the first of the three steps in the response-pathways, the most common first step was to seek help from traditional authorities (32.7%). This suggests that traditional authorities provide an important mechanism for containing spirals of violence associated with cattle raids. When traditional authorities were contacted first, this was only in one instance followed by revenge, and in most cases followed by the contacting of the police. The police were the first point of contact in 16% of the cases.

With cases of **armed robbery**, the most common response-pathway was to contact the traditional authorities >then> traditional authorities >then> traditional authorities (23%), closely followed by contacting the police without taking any further steps (20%). When looking only at the first step in the action-pathways, traditional authorities are contacted in 39% of the cases and the police in 34% of the cases. There is much variety across locations, with the police being contacted more often in Juba town, and the traditional authorities in almost all instances in Bentiu POC.

With cases of **physical assault**, statutory actors are contacted far less often. The most common response-pathways were to contact a religious leader >then> traditional authorities >then > traditional authorities (9.1%), or to contact family and friends >then> the traditional authorities > police (9.1%), or to contact traditional authorities without further steps (9.1%). When looking at only the first step in the response-pathways, church leaders are contacted first in 27.3% of the cases, friends and family in 22.7%, and traditional authorities in 20.5%. The contacting of religious leaders is particularly prevalent in Bentiu POC.

With cases of **murder** the most common response-pathway is to contact the police without further steps (12%), followed by taking revenge without further steps (9.2%). When looking at only the first step in the response-pathways, police are contacted first in 32.3% of the cases, friends and family in 20% of the cases, and traditional authorities in 10.8% of the cases.

⁴² Group discussion, Bentiu POC, 19 April 2016

⁴³ Simonse, S. (2011) *Human Security in the borderlands of Sudan, Uganda and Kenya*. Utrecht/Nairobi: IKV Pax Christi/SOPA, 5; Abbink, J. (2005) “Being young in Africa: the politics of despair and renewal.” in: J. Abbink, and I. van Kessel (eds.) *Vanguard or vandals : youth, politics and conflict in Africa*. Leiden: Brill, 16-17.

⁴⁴ Group discussion, Juba town, April 13, 2016

In cases of **sexual assault**, the most common action-pathway is to contact the hospital >then> family and friends >then> police (12.5%), or directly contacting the police and not take any further steps (12.5%). When looking at only the first step in the action-pathways, the hospital is contacted first in 28.1% of the cases, the police in 21.9% of the cases, and CSOs or NGOs in 15.6% of the cases. Traditional authorities are mentioned far less often in cases of sexual assault, when compared to other crimes. This indicates that the solutions for sexual assault generally provided by traditional authorities are in many cases not preferred by the victims and/or their families.

With cases of **abduction** the most common response-pathway is to contact a religious leader and not take any further steps (13.6%) or to contact the police and not take any further steps (13.6%). When looking at only the first step in the action-pathways, the police is contacted first in 31.8% of the cases, family and friends in 18.1% of the cases, and religious leaders also in 18.1% of the cases.

In cases of **torture** the most common response-pathway is to contact the police and not take any further steps (26.3%). When looking at only the first step in the action-pathways, the police is contacted first in 36.8% of the cases, and family and friends in 15.8%, and traditional leaders also in 15.8% of the cases.

For all crimes people contact both statutory actors, such as the police or state prosecutor, and non-statutory actors, such as traditional authorities, religious leaders or friends and family. Across all crimes investigated, in a bit more than half of the cases where action is taken, people pursue multiple steps. In the majority of cases where non-statutory actors are contacted first, statutory actors are contacted secondly. Similarly, when statutory actors such as the police are contacted first, the most common second step is the contacting of a non-statutory actor. The data therefore do not show a clear progression from less formal to more formal, but rather indicate that people simply contact both formal and informal justice providers. There seems no clear preference for either statutory or non-statutory justice provision, and people generally follow a response-pathway based on who is available, reachable, and where people think they can reach the best results. There are also various instances where respondents have repeatedly contacted the same (category of) justice provider, indicating that it sometimes is necessary to continue to work and communicate with the same actor in pursuit of an outcome.

There is some variety between the types of crimes. In cases of cattle raid respondents are more likely to first contact traditional authorities or other non-statutory actors, or to organize a revenge attack by themselves. Revenge is also relatively prevalent in cases of murder, which may in certain cases be linked to cattle raids. In cases of physical assault, there are surprisingly few respondents that contact statutory actors, and this may indicate that this is generally considered a crime that falls under the jurisdiction of traditional authorities, or that this type of crime is not considered severe enough to take to the police. In cases of sexual assault traditional authorities

There seems no clear preference for either statutory or non-statutory justice provision, and people generally follow a response-pathway based on who is available, reachable, and where people think they can reach the best results.

are contacted much less, indicating that the solutions they generally provide are often not desired by victims. During interviews it was mentioned that traditional authorities are known to sometimes propose marriage between victim and perpetrator and the payment of dowry by the perpetrator as a solution. The findings indicate that this practice causes victims to look for solutions elsewhere.

There is only a few cases where the statutory court is mentioned in the response-pathway.

What is striking is the relatively small number of cases where the statutory court is mentioned in the response-pathway.⁴⁵ This may indicate that people themselves do not go to court, but that this is a step to be taken by the public prosecutor. According to the South Sudanese legal system, with a criminal case the Criminal Investigations Department (CID) of the police takes on the case. The police then investigate the case and take it to the public prosecutor.⁴⁶ He then decides if the case can proceed to court, and an investigate officer will conduct further investigations and prepares the case for court. During the court case, the investigative officer reads the charges and evidence, and is then cross-examined by the lawyer of the accused. The judge then asks for clarification if needed, and frames a charge.⁴⁷ Respondents may therefore not always themselves take the step to court and therefore may not have reported it. But when looking at the outcomes of cases further in this report, it becomes clear that very few cases result in the arrest of a suspect and many cases may never appear before court for that reason. As one lawyer explained, “the standard of proof required in court is quite high. It is difficult to get evidence, and if there are no witnesses and clear evidence, it is difficult to make a case.”⁴⁸

Sources during the research also indicated that most cases appearing before statutory courts today are civil cases, often involving borrowed money, employment contract matters or land disputes. Problematic, however, is that many civil cases are treated as criminal cases in the justice system and courts. According to one source, an estimated 70-80% of the criminal cases in courts in Juba are actually civil cases:

*If you have lent someone some money, it is easier to go to the police and have them conduct the case, instead of filing a civil case. It is often also cheaper as there are fewer court costs. It would be the task of the public prosecutor to have such cases being denied as a criminal case in court, but since there is often money involved some prosecutors want a part of it.*⁴⁹

Taking action: goals and outcomes

Before looking at the outcomes of cases where respondents have taken action, it is important to first know people’s reasons for taking action in response to a crime and

⁴⁵ No distinction was made between the traditional authority or chief and the customary court, as these are generally the same actors.

⁴⁶ People who can afford it often hire a private attorney to bring a criminal case against someone on their behalf. It is also common for the investigating police officers to play the role of prosecutor in court as there are so few prosecutors.

⁴⁷ Interview, lawyer, 14 April 2016, Juba

⁴⁸ Interview, lawyer, 14 April 2016, Juba

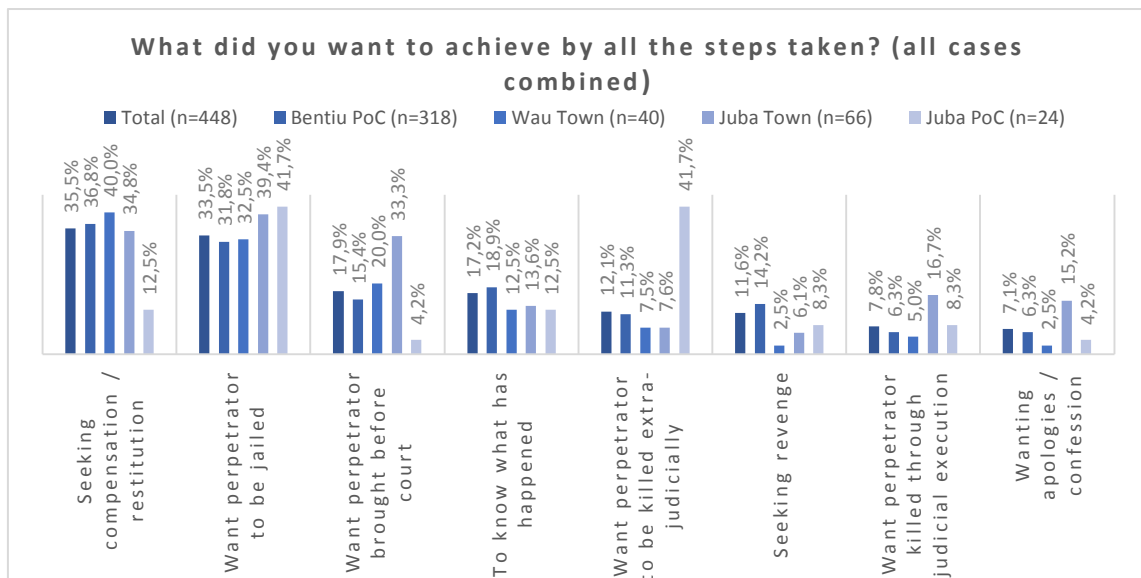
⁴⁹ Interview, lawyer, 14 April 2016, Juba

their preferred outcomes. In other words, when someone is a victim of a violent crime, what is he or she looking for as a remedy?

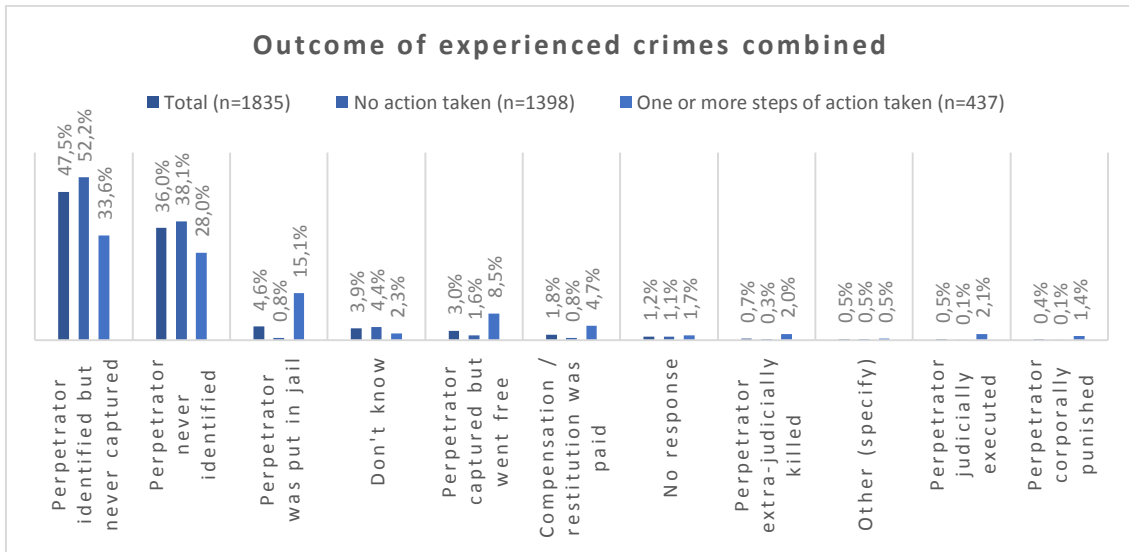
The most often cited reason for taking action, was to seek compensation (36,5%), closely followed by the desire to have the perpetrator put in jail (33,5%).

The most often cited reason for taking action, was to seek compensation (36,5%), closely followed by the desire to have the perpetrator put in jail (33,5%), indicating a prevalence of both restorative sentiments based on compensation for harm that has been incurred as well as retributive sentiments based on criminal sanctions. Other reasons for taking action included wanting to bring the perpetrator before a court (17,9%), to know what happened (17,2%), to see the perpetrator killed, to take revenge, or to receive an apology.⁵⁰

While most respondents cited compensation as a reason for taking action, respondents were actually compensated in only 6,6% of all cases where actions were taken. In comparison, in 18,5% of the cases where respondents took action the perpetrator was put in jail. The outcomes for cases where action was taken do therefore not completely match the reasons for which actions were taken by respondents, and highlight a gap between people’s justice needs and the services that are available.



⁵⁰ This was an open question to which respondents could answer freely, and enumerators would fill the appropriate answers. Multiple answers could be given.



For the vast majority (59,0%) of cases in which action was taken, the perpetrator was never captured (35,0%) or never even identified (24,0%). Nonetheless, taking action did increase the chances of capturing the perpetrator or securing compensation. Where no action was taken, less than one percent of the cases resulted in the perpetrator being put in jail (0,6%) or the payment of compensation (0,4%), compared to 18,5% of the cases resulting in imprisonment and 6,6% of cases resulting in compensation where action was taken. In addition, the perpetrator was not captured or identified in 92,1% for cases where no action was taken, whereas this figure drops to 59% when some action was taken. Thus, while most perpetrators still avoid sanction, taking action does increase the chances of a perpetrator being captured or compensation being paid.

For the vast majority (59,0%) of cases in which action was taken, the perpetrator was never captured (35,0%) or never even identified (24,0%).

When respondents took multiple steps to secure redress (e.g. first complained to traditional authorities, then police, etc.) the cases were more likely to result in the capture of the perpetrator and/or payment of compensation. In cases where only one action was taken, it was more likely that the perpetrator was never captured, or never even identified. Respondents were also much more likely to report being satisfied with the outcome of the case when multiple steps were taken than for cases where only one step was taken.

The differences in outcomes among cases depending on whether or not the respondent took some action, or the amount of steps that the respondent took in seeking redress, indicate the importance of supporting the demand side of justice, in addition to whatever support is provided to the supply side of justice. If people are made aware of their rights and the justice services that are available to serve their particular needs, they are sometimes able to secure favorable outcomes, even in very difficult circumstances associated with large-scale conflict or its immediate aftermath. Policies that tailor justice services to the specific needs of local populations can further incentivize people to pursue non-violent means of resolving disputes, thereby contributing to post-conflict stabilization efforts.

The Costs of Justice

Most respondents that took steps to seek redress incurred some costs in doing so. Types of costs included administrative fees and court fees, fees for legal advice (e.g. lawyer fees), traveling costs and bribes. Other costs that respondents mentioned included the loss of lives in cases where people sought revenge (particularly in response to cattle raids). The monetary amount of costs ranged greatly per case, from a few South Sudanese Pounds (SSP) to several thousand SSP, with most costs falling between 250 and 2500 SSP. It is difficult to get a precise picture of the costs that the households incurred as the respondents may not have always been directly involved in the pursuit of the case themselves and were not always aware of the exact amount spent in the process. Furthermore, the data does not show distinctions for costs among different types of justice service providers, as respondents were asked to list costs for the whole process rather than for each individual actor they contacted. It is furthermore often difficult to distinguish between the types of costs, as bribes can easily be interpreted as necessary fees or vice-versa.

Spending money in the pursuit of justice certainly does not guarantee success, but it does appear to result in more favorable outcomes for complainant parties.

These limitations notwithstanding, incurring costs appeared to have an impact on the outcome of cases. As a lawyer explained, “the CID gets a salary, but usually little to no resources to conduct investigations. If you cannot contribute financially as a victim’s family, the investigation often stalls.”⁵¹ Cases where respondents did not incur any costs were most likely to end in the perpetrator being identified but never captured (45,6%). In addition, in cases where respondents incurred a small cost, the most common outcome was that the perpetrator was never captured or never identified. These results can be interpreted in various ways. For example, the household may have chosen not to invest too much resources into pursuing justice because the perpetrator was either unidentified or was considered too difficult to apprehend (e.g. being a member of armed forces, politically well connected, or from a community far away). On the other hand, respondents could also be too poor to invest resources into conducting a thorough investigation.

Furthermore, cases in which respondents invested larger amounts of money into seeking redress resulted in a greater chance of the perpetrator being jailed than cases where little or no costs were made. When the household invested between 1.001 and 5.000 SSP in seeking redress, 50% of the cases resulted in the perpetrator being jailed, and in cases where more than 5.001 SSP was invested the percentage of incarcerations rose to 61,3%.⁵² Spending money in the pursuit of justice certainly does not guarantee success, but it does appear to result in more favorable outcomes for complainant parties.

⁵¹ Interview, lawyer, 14 April 2016, Juba

⁵² The correlation between cost and positive outcome was less apparent in relation to compensation.

Highlighted crime: SGBV⁵³

Of all respondents, 6.8% indicated one or more cases of sexual assault were experienced by someone within the household in the past 5 years. In Bentiu POC this was 23%.

Of all respondents, 6.8% indicated one or more cases of sexual assault were experienced by someone within the household in the past 5 years. The incidence of sexual assault were particularly high in Bentiu POC (n=122), where 23% of the respondents indicated that someone in their household had been sexually assaulted in the past five years.⁵⁴ The next closest location in terms of numbers of sexual assaults was Juba POC, in which 8.7% of respondents (n=36) said someone in their household had been sexually assaulted in the past five years. Although these figures may seem large, the actual incidence rates are likely even higher, as survivors of SGBV are often reluctant to speak about their experiences due to the stigma that society attaches to sexual assault, feelings of shame, and fear of retaliation by their abusers.

Human rights organizations have documented the use of SGBV as a weapon of war by all sides in the conflict.⁵⁵ The GRSS offensive in Unity State was particularly brutal in its widespread use of rape and sexual slavery. According to humanitarian organizations, at least 1,300 women and girls were raped and 1,600 women and children were abducted in the counties of Leer, Mayendit and Koch between April and September 2015.⁵⁶ Given the restrictions on access and the intensity of the violence, it is reasonable to assume that many thousands of people have been subjected to SGBV over the course of the conflict.

This is corroborated by the survey findings. Most of the reported incidents of sexual assault were conflict-related. According to respondents, 92.6% of the sexual assaults in Bentiu POC took place in the midst of large-scale conflict, and 86.9% took place in 2015, which coincides with the GRSS offensive in Unity State. The high incidence of sexual assault thus appears to be a direct consequence of the use of SGBV as a weapon of war by the warring parties and their proxies. During interviews and group discussions people also gave witness accounts of this:

"I was inside the POC in Bentiu, and there were 6 girls outside the fence. Two girls were able to make it inside the fence but the other 4 were grabbed by

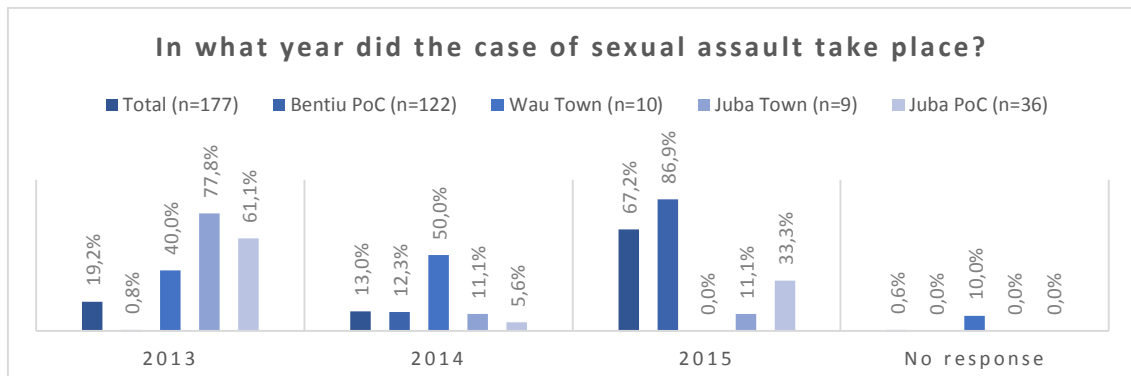
⁵³ This chapter draws on Willems and Deng (2016) *SGBV in Unity State*, available at: <http://www.upeace.nl/cp/uploads/downloadsprojecten/SGBV%20in%20Unity%20State%20-%20Policy%20Brief.pdf>

⁵⁴ The survey did not gather information on the identity of the victim. As a result, it is not possible to determine exactly how many of these sexual assaults targeted females and how many targeted males. Nonetheless, given the scale of SGBV against females that has already been documented in the context of the conflict, it is safe to assume that females are being disproportionately impacted. That is not to say that SGBV targeting males is not occurring. Human rights reports have documented numerous acts of SGBV against males, including genital mutilation and forcing men to have sex with relatives. However, male rape and other forms of SGBV targeting males is an under researched issue and it is difficult to make broad generalizations about its prevalence.

⁵⁵ Radio Tamazuj has compiled a useful timeline of human rights reports on South Sudan. See: *Timeline: Key Investigations into Human Rights Abuses in South Sudan*, Radio Tamazuj, 12 March 2016, available at <https://radiotamazuj.org/en/article/timeline-key-investigations-atrocities-south-sudan>.

⁵⁶ Protection Cluster South Sudan, *Protection Situation Update: Southern Unity, April – September 2015* (n.d.), available at <http://reliefweb.int/report/south-sudan/protection-situation-update-southern-and-central-unity-april-september-2015>.

soldiers. They were raped and then killed. They were raped but also tortured by the soldiers. They used a knife to torture them, and cut in their ears, armpits, sensitive areas where you can feel much pain. 1 survived and dragged herself to the POC site but she died days later from her wounds. I have seen all this with my own eyes.”⁵⁷



Almost all (96.7%) of the cases of sexual assault reported in Bentiu POC took place in Unity State, and 47.2% of those reported by respondents in Juba POC also took place in Unity State. The cases of sexual assault that took place in Unity State account for three-quarters (76.3%) of the cases of sexual assault that were reported across all four survey locations, pointing to the impact that the conflict has had on local populations.⁵⁸

Access to Justice for Survivors

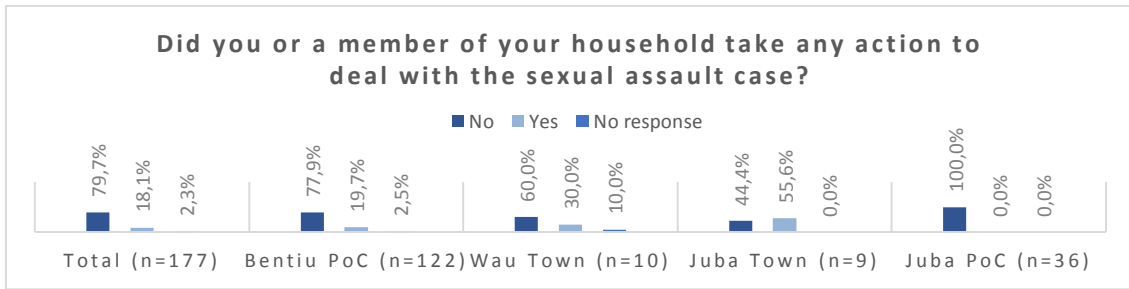
Access to justice was severely restricted across all survey locations. Eighty percent of respondent households that experienced sexual assault said that they did not take any action to address the issue.⁵⁹ In Juba POC, none of the 36 respondent households that reported sexual assault took any steps to address the issue. The most common reasons that respondents in Bentiu POC gave for not seeking redress was that the justice system was too corrupt (53%) and that they did not know what to do (51%), suggesting problems relating both to a lack of trust in existing justice mechanisms as well as low levels of awareness about where to look for assistance. Further details about the lack of access to justice have been discussed earlier in this report.

80% of respondent households that experienced sexual assault said that they did not take any action to address the issue.

⁵⁷ Group discussion, Juba POC, April 14, 2016

⁵⁸ To a certain extent, some of these incidents may also be traced to acts of sexual assault perpetrated by people who are known to the victim. SGBV is known to increase in situations of displacement due to the cramped living conditions, the lack of livelihood opportunities, economic hardship and high levels of trauma. The survey did not elicit information on the identity of the perpetrator and we are therefore not able to make definitive findings on who exactly is responsible for the acts of SGBV.

⁵⁹ Limited ability to access justice services was also apparent for other crimes. In 84 percent of murders, 80 percent of torture incidents, 65 percent of armed robberies, 73 percent of abductions, 73 percent cattle raids and 75 percent of physical assaults, the respondent household did not take any action to address the issue.



For the 24 respondents (20% of those who experienced sexual assault) in Bentiu POC that took some action to address the sexual assault, the most common first step (37%, n=9) was to contact a hospital and the second most common first step (21%, n=5) was to contact a civil society organization (CSO) or non-governmental organization (NGO). This differs from Juba town and Wau town where the formal justice sector institutions of police or prosecutor were most common as a first step. These differences likely point to the impact that the conflict has had in Bentiu in terms of wiping out any formal justice services, as well as the central role of the UN and NGOs in providing assistance to populations in Bentiu POC.

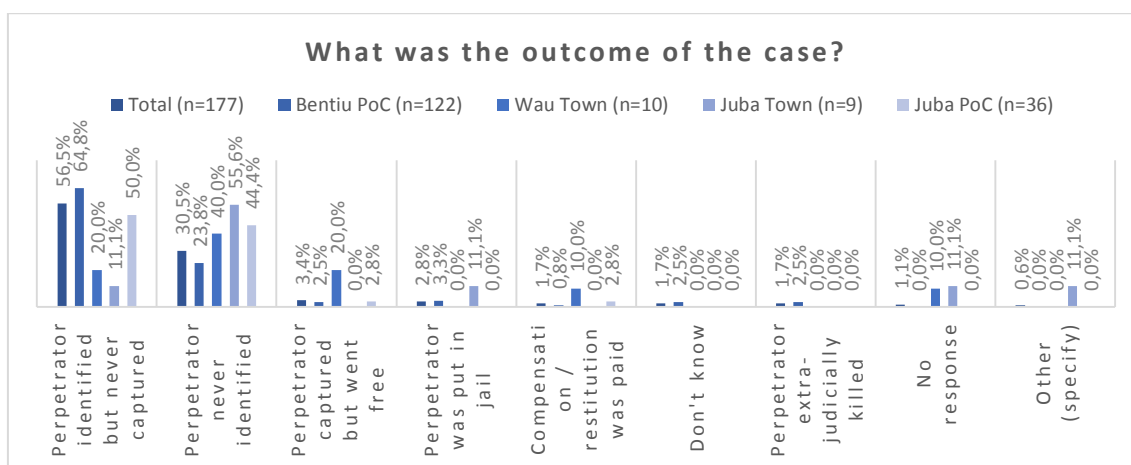
The less emphasis placed on hospitals in Juba and Wau towns may also reflect the inaccessibility of those services to rape victims. Common practice in most areas requires a rape victim to get 'Form no. 8' from the police before a doctor will treat her for rape and take evidence to inform the investigations.⁶⁰ Although the forms are meant to be free, often the police will charge women fees.⁶¹ The cost coupled with many people's distrust of the police discourages many women from obtaining medical services after being raped. In the POCs, these bureaucratic constraints are not present and as a result women were much more likely to visit hospitals as a first step in seeking to address the situation.

Despite serving as prominent service providers in relation to other crimes, Customary courts did not feature prominently as dispute resolution actors in relation to sexual assault.

Customary courts did not feature prominently as dispute resolution actors in relation to sexual assault, despite serving as prominent service providers in relation to other crimes, such as cattle raiding. South Sudan has an extensive network of customary courts in which chiefs and other traditional authorities mediate disputes in accordance with local customary laws. Although customary courts are often characterized as being more accessible in terms of geographic proximity and cultural appropriateness than more formal justice mechanisms such as statutory courts, they are also criticized for discriminating against women and minority populations. Women who have been sexually assaulted may therefore not feel comfortable bringing their grievances to customary courts, which tend to be male dominated spaces. The weak enforcement power that traditional authorities have over military personnel may also play a factor in people's choices, in that survivors of SGBV may not have confidence in the ability of chiefs to secure satisfactory remedies.

⁶⁰ Leonardi, C. (2013) *Dealing With Government in South Sudan: Histories of Chiefship, Community and State*. Woodbridge: James Currey, 211

⁶¹ Radio Miraya (2015) "'Though action' for police officers caught selling 'form-8'." <http://radio-miraya.org/news/though-action-for-police-officers-caught-selling-form-8/>



Survey data shows widespread impunity for perpetrators of sexual assault. For the 23 percent of households (n=122) that experienced sexual assault in Bentiu POC, the most likely outcomes were that the perpetrator was identified but never captured (65%, n=80) or that the perpetrator was never identified (24%, n=30). While these findings likely reflect the difficulty of apprehending suspects and conducting investigations in the midst of a large-scale conflict, the data from Juba and Wau towns, which have been relatively stable for most of the conflict, show a similar trend. Of the 10 cases of sexual assault documented in Wau, two perpetrators were temporarily detained before being set free and one was made to pay compensation, and in one of the nine cases documented in Juba the perpetrator was put in prison, but across all four locations, the vast majority of perpetrators went free without sanction and survivors were left without redress.

This was also confirmed during interviews and group discussions, where people indicated usually not much is done with a rape case other than bringing the victim to the hospital. This situation of impunity contributes to the continuation of sexual assault on a regular basis:

Rape still happens a lot outside the POC. I don't know who does it exactly, but they are young men with guns. I know of a case that happened a short time ago. Two girls were in the POC and they went outside to collect charcoal. They found three men outside with guns and in a military uniform. The girls were raped and reported to MSF.⁶²

⁶² Interview, female, Bentiu POC, April 18, 2016

Survey data shows widespread impunity for perpetrators of sexual assault. The vast majority of perpetrators went free without sanction and survivors were left without redress.

Highlighted Crime: Cattle raiding

Cows play a central role in pastoralist cultures, and represent much more than their monetary value alone. Cattle is also used as dowry or bridal wealth, where the mutual exchange during marriage solidifies kinship ties between the families. The cultural component of cattle raiding, coupled with the limited economical alternatives and at times thrill seeking behavior of young men, is firmly ingrained in South Sudanese society. The practices of cattle raiding go back more than a century, and there are longstanding social structures that support them. Women often encourage raids by singing songs of praise for the warriors and shame those who do not join (Willemss and Rouw 2011, 18; ICG 2014b, 5-6). Raiding is also often accompanied by killings and abductions. The perceived necessity to revenge after being raided so as to retrieve cattle to compensate for those that were lost and to deter further raids is another key driving force in the communal conflicts between pastoralists, resulting in cycles of tit-for-tat clashes. A comment made during a discussion with residents of the Bentiu POC illustrate this: "When it happens in Nuer culture that your cattle is raided or killed, you go for revenge."⁶³

Raiding has become entangled with political conflict at the state and national level. 78.5% of all reported cattle raids (n=577) having occurred in the context of large-scale conflict.

However, practices of cattle raiding have changed significantly over the decades. In the past, raiding was guided by strong ethical principles, which for instance prescribed youth warriors not to ambush or kill their enemy outside the battlefield, and that harming women and children was strictly forbidden.⁶⁴ Over the past decades, many of these social constraints gradually unravelled as communities were dragged into the national conflict between Khartoum and the SPLA and both sides forcibly drafted people into their armies.⁶⁵ Also the raiding of cattle for the purpose of marriage is a relatively new phenomenon. Two generations ago, it was still considered unacceptable to marry with cattle that were raided or bought, and only cattle obtained through marriage or bloodwealth compensation and natural expansion of one's herd could be used for marriage. Nowadays, few such restrictions exist and people can even marry with the monetary equivalent of cattle if they have access to hard currency.

The dynamics of cattle raids

Raiding has become entangled with political conflict at the state and national level. This was evident in the survey findings, with 78.5% of all reported cattle raids (n=577) having occurred in the context of large-scale conflict. Young men may conduct raids in order to obtain weapons and ammunition,⁶⁶ tactical support, or the promise of the spoils of war. Furthermore, there have also been reports that through politicians raids

⁶³ Group discussion, Bentiu POC, 19 April 2016

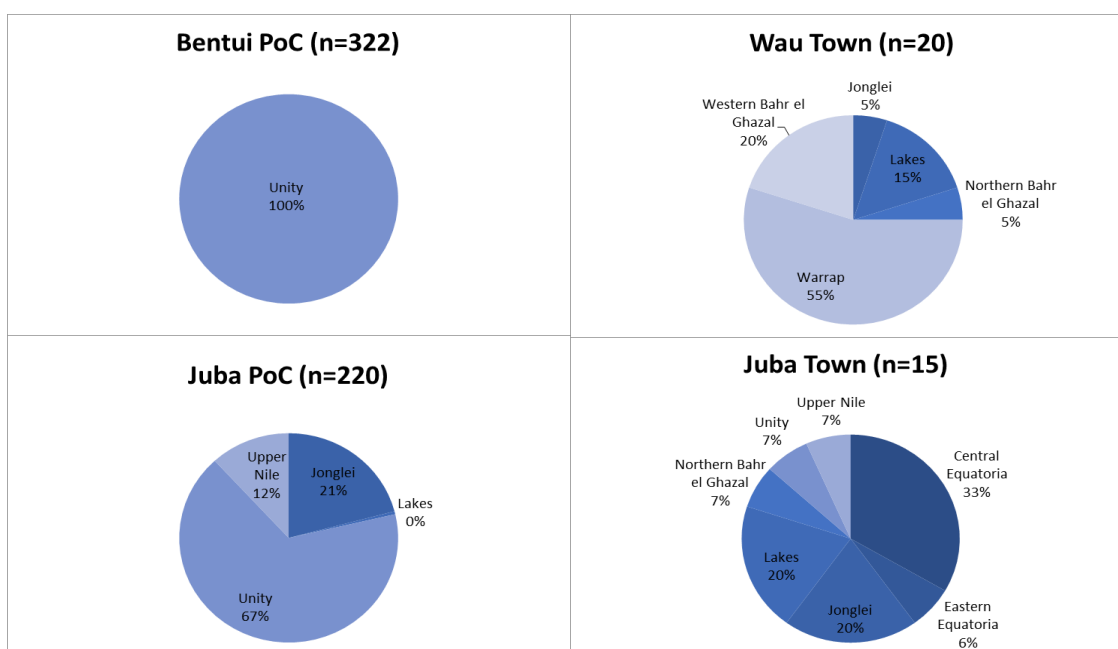
⁶⁴ Deng, Francis M. 1998. "The Cow and the Ting Called "What": Dinka Cultural Perspectives on Wealth and Poverty." *Journal of International Affairs*. 52(1): 101-129, p 107.

⁶⁵ Hutchinson, Sharon Elaine. 2000. "Nuer Ethnicity Militarized" *Anthropology Today*. 16(3): 6-13.

⁶⁶ The International Crisis Group for instance reports how Lou Nuer that joined the rebellion of Georg Athor in 2010 and 2011 returned home with weapons they used in attacks on Pibor in December 2011, how the Lou Nuer were supported in their July 2013 attack on the Murle by the SPLA, and how Murle were subsequently supported with weapons by David Yau Yau's Sudan Democratic Army-Cobra Faction (ICG 2014b, 5-6-7).

are linked to international trade networks of stolen items.⁶⁷ The involvement of politicians and SPLA commanders was also corroborated during a group discussion in Bentiu POC, where someone for example mentioned that “of course the raiding of cattle comes from the top level.”⁶⁸

The survey captured a relatively large number of cattle raids, and therefore provides a fruitful basis for further analysis. That being said, the sample is not representative of South Sudan as a whole, and includes a relatively large share of predominantly Nuer residents in the POCs. Therefore, the data may not show the entire picture of raiding dynamics in the regions where the survey was conducted. Nonetheless, the linkages between conflict and cattle raiding become even more clear when looking at the data in more detail. Of all 577 respondents that reported to have experienced cattle raids, almost all were the POCs (Bentiu POC 55.8% of total and Juba POC 38.1% of total).



The cattle raids experienced by people in Bentiu POC all occurred within Unity state, whereas cattle raids in other places were not necessarily experienced in the same place as where respondents were interviewed. By far, the majority of all cattle raids experienced by all respondents took place in Unity State (81.5%). Cattle raids experienced by respondents in Juba POC occurred mainly in Unity (66.8%), but also in Jonglei (20.9%) and Upper Nile (11.8%). People in Juba POC either kept their cattle in or close to their former home region before moving to Juba, or have fled from their former home region to Juba PoC after the outbreak of the conflict in December 2013.

⁶⁷ Cf. Mktu, K. 2003. *Pastoral Conflict and Small Arms: The Kenya-Uganda Border Region*. London: Saferworld, p.15-16; Leff, J. 2009 “Pastoralists at War: Violence and Security in the Kenya-Sudan-Uganda Border Region,” *International Journal of Conflict and Violence*. 3(2): 188-203, p.193; Walraet, A. 2008 “Governance, violence and the struggle for economic regulation in South Sudan: the case of Budi County (Eastern Equatoria).” *Afrika Focus*. 21(2): 53-70

⁶⁸ Group discussion, Bentiu POC, 19 April 2016

Whereas most respondents in Juba POC reported cattle raids took place in 2013 (55.5%), most respondents in Bentiu POC reported raids took place in 2015 (89.4%). This reflects the conflict dynamics in South Sudan, in that all of Greater Upper Nile was in conflict in 2014 and the most intense fighting of 2015 was in parts of Unity State.

Respondents were also asked whether they knew from which state, and which county the perpetrators were suspected to come from. While this does not provide any factual information on the origin of perpetrators, it does say a lot about the perceptions communities have of others. Moreover, in many cases perpetrators may be identified by tribal markings or may even be known from earlier raiding experiences. The suspected perpetrator locations therefore do provide an interesting insight in recent inter-communal raiding. The description of recent raiding is based on the reported location where raiding took place, the tribe of the respondent⁶⁹, and the suspected origin of the perpetrators.

In Unity, most evident is the cattle raiding by Bul Nuer on other Nuer communities, and by Dinka communities from Lakes (Gok Dinka or Agar Dinka) and from Warrap (likely Rek Dinka). Of all 577 raids reported by the respondents in all four locations, 470 cases took place in Unity State (81.5%). Of these 470 cases, 21.9% occurred in Rubkona county, 22.1% in Guit, 19.4% in Leer, 17.2% in Koch, 9.4% in Mayom and 7.9% in Mayiendit. In 71.5% of the cattle raids reported to have taken place in Unity, the respondents believed the perpetrators were also from Unity State. In 256 cases or 54.5% of the reported cases in Unity, the perpetrators were believed to come from Mayom county, and 35 or 7.4% from Koch county. Also during interviews and focus group discussions in Bentiu, people often identified the suspects to originate from Mayom county. This is illustrative of the conflict in Unity within the Bul sub-section of Nuer and with other Nuer sub-sections, with certain parts of the Bul Nuer having allied with the government and most other Nuer sub-sections with the SPLM-IO.⁷⁰ In 19 or 4.0% of the cases the perpetrators were believed to originate from Lakes, with 12 of the suspects from Lakes thought to come from Rumbek North, likely from the Dinka Agar. In 75 or 16.0% of the cases the perpetrators were believed to originate from Warrap. Whereas for other states most respondents said they also knew from which county the perpetrators came from, for Warrap the majority of respondents said they were not able to narrow down the origin of the suspects to county level. With the same Rek Dinka section living in most of the counties of Warrap, this could have contributed to the inability of respondents to identify which county suspects were from.

For the cases of raiding reported in Jonglei, most respondents believed that Murle from Pibor were the perpetrators. Other raiding is conducted by Dinka from Twic and

⁶⁹ There is an inaccuracy in this, as the respondent may be from a different tribe than the household member or members who owned the cattle that was raided.

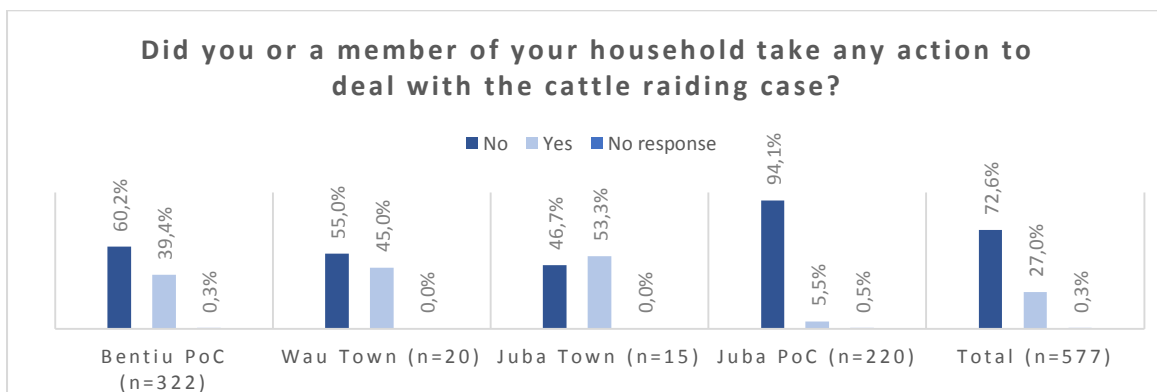
⁷⁰ See for a detailed analysis, ICG (International Crisis Group). 2015. *Sudan and South Sudan's Merging Conflicts*. Africa Report No 223. Nairobi/Brussels: International Crisis Group

Duc on Gawaar Nuer from Ayod and Lou Nuer. The data also show a few cases of raiding between Gawaar Nuer, Lou Nuer and Jikany Nuer from Upper Nile. Of all reported cattle raids, 50 or 8,7% occurred in Jonglei. Of these 50 cases, 32% occurred in Akobo, 26% in Ayod and 18% in Urur. In 42 cases or 84% the perpetrators were believed to come from within Jonglei. In 19 cases or 38% of all raids reported to have taken place in Jonglei the suspects were believed to come from Pibor, and in 14 cases or 33,3% from Duk. In 3 cases suspects were believed to come from Longechuck, Maiwut and Ulang (Jikany Nuer). For cases that took place in Akobo (n=15), 66,7 reported that suspects came from Pibor and 13,3% from Twic East. Of the 11 cases that occurred in Ayod, 72,7% of the suspects were believed to originate from Duk. Of the 8 cases in Urur 62,5% of the suspects were believed to come from Pibor and 37,5% from Duk.

In Upper Nile, data indicate raiding of Jikany Nuer by Dinka Abiliang from Upper Nile, and by Padeng Dinka, Lou Nuer and Murle from Jonglei. Cattle raided from Malakal county were reported by Nuer, who suspected raiders from Fashoda and Manyo (Shilluk), and Maban. Of all reported raids, 27 or 4,7% occurred in Upper Nile. Of these 27 cases, 10 or 37% occurred in Nasir, 7 or 25,9% in Malakal, and 4 or 14,8% in Longechuck. In 5 cases or 18,5% the respondents believe the perpetrators come from Melut. Other counties mentioned are Maban (7,4%) and Manyo (7,4%) in Upper Nile (7,4%), and Pibor (7,4%) and Pigi/Canal (7,4%) in Jonglei.

In Warrap, data indicate raiding of Rek Dinka and Twic Dinka by Nuer from Upper Nile, and raids of Dinka by Jur Chol. In Warrap 11 or 1,9% of the total reported cattle raids occurred. 5 or 45,5% of these raids occurred in Gogrial East, 2 or 18,2% in Tonji East and 2 or 18,2% in Twic. Suspects of raids in Gogrial East were reported to come from Unity State, and particularly Mayom and Guit counties. Suspects of raids in Twic were reported to come from Leer and Mayom in Unity State, and suspects of raids in Tonji East to come from Tonj South in Warrap.

Responses to cattle raids



Of all respondents who reported a cattle raid in the household in the past 5 years, 72.6% said no action was taken by them or another member of the household. The

lack of response was particularly high in Juba PoC (94.1%), but also in Bentiu and Wau town more than half of the respondents reported no action was taken. Only in Juba town a small majority of the respondents said action was taken, although this only represents a small share of the total sample. The reasons for not taking action are very similar from other crimes, as discussed in more detail in chapter "Accessing justice" of this report.

Type of actions taken

As discussed earlier in this report, the most common action-pathway is revenge without further steps, a response given by 24.4% (n=156) of those respondents who took some action, followed by contacting family and friends without further steps (9.6%), and contacting the police without further steps (7.7%).

The most often mentioned first response was contacting the traditional authorities (32.7%), closely followed by the revenge (26.3%). A second step was most often a state official, although in more than half of the cases no second step was taken. A third step after the state official was generally followed by either (again) contacting the traditional leaders or contacting the army. Most first responses were contacting the traditional authority (32.7%, n=156). In 82.4% (n=51) of these cases there was a second step taken. In 50% (n=42) of these cases, the second step was to contact the police, and in 33.3% the second step was to again contact the traditional authorities. This indicates that cattle raiding is considered a crime that traditional authorities are best positioned to deal with, and that customary courts should be given jurisdiction over such crimes as stipulated in the local government act.

The second most often cited first action after a cattle raid was revenge (26.3%, n=156). In 92.7% (n=41) no further action was taken. This lack of further action, however, did not necessarily result in success, as in 78.9% (n=38) of these cases the perpetrator was identified but never captured, and in most cases the respondent indicated to be unsatisfied with the outcome of the case.

The third most often cited first response to cattle raid was to contact the police (16.0%, n=156). In almost half of these cases no further action was taken (48.0%, n=25). In the 52% in which action was taken, the second actions were very diverse. Most often contacted was a local government official (30.8%), followed by contacting a traditional authority (15.4%), contacting a state government official (15.4%), or contacting family, friends or neighbors (15.4%).

In 31.6% of all cases (n=155), the respondents said that actions were taken with the aim of putting the perpetrator in jail. This was closely followed by seeking compensation (30.3%) and seeking revenge (29.0%). For most cases (54.6%, n=577) the perpetrator was identified but never captured, followed by 30.2% of cases where the perpetrator was never identified. In cases where one or more steps of action were taken in response to the cattle raid (n=155), in 14.1% of the cases was the perpetrator jailed and 11.5% resulted in compensation payments.

Conclusions and recommendations

Respondents indicate that for most cases they would first contact the police, although this is much less the case for respondents that had first-hand experiences with violent crimes, and respondents located in Bentiu POC. As became clear during interviews, this is largely attributable to a lack of availability of state security providers. State security providers were also less contacted actual cases investigated in the research. The discrepancy between preferred dispute mechanisms in the hypothetical situation and the actual dispute mechanisms that respondents used when confronted with the situation also suggests that there may be a disconnect between the demand for justice services and those services that are available in practice, and that police are considered inaccessible or inadequate.

Restorative forms of justice are thought to resonate more with South Sudanese cultural and religious values and customary laws in South Sudan tend to focus on rebuilding relationships through reconciliation and compensation. Nonetheless, sentencing perpetrators to jail is considered as the most appropriate remedy for violent crimes overall. This may indicate people have less faith restorative forms of justice than is commonly assumed. At the same time, people's first response to the question how the justice system should be improved are focused on the statutory system, and include fighting corruption and training legal staff.

A staggering 60% of the entire sample reported that their household experienced one or more cases of violent crime in the past five years (with violent crimes being defined as cattle raiding, armed robbery, physical assault, murder, sexual assault, abduction and torture). Access to justice for violent crimes was severely restricted across the sample population. In almost three-quarters of cases (72.8%), the household simply did nothing in response to the violent crime; meaning that they did not report the crime to anyone and did not engage in self-help options, such as negotiation or revenge. In most cases respondents found it necessary to approach multiple actors, or repeatedly approach the same actor, and to push for their case to be resolved. The ability to persevere, as well as the ability to commit financial resources, increase the likeliness of the case being resolved. Access to justice is thus clearly not on an equal basis.

When actions in response of a violent crime are taken, people often approach a combination of both statutory actors (e.g. police) and non-statutory actors (e.g. traditional authorities, religious authorities, friends and family). There seems no clear preference for either statutory or non-statutory justice provision, and people generally follow an action-pathway based on who is available, reachable, and where people think they can reach the best results. Nonetheless, there is some variety between the types of crimes. In cases of cattle raid respondents are more likely to first contact traditional authorities or other non-statutory actors, or to organize a revenge attack by themselves. Revenge is also relatively prevalent in cases of murder, which may in certain cases be linked to cattle raids. In cases of physical assault, there

are surprisingly few respondents that contact statutory actors, and this may indicate that this is generally considered a crime that falls under the jurisdiction of traditional authorities. In cases of sexual assault traditional authorities are contacted much less, indicating that the solutions they generally provide are often not desired by victims. What is furthermore striking is how few cases in the sample at one point reach the statutory court.

Conflict has a great impact on people's ability to access justice for several reasons. The involvement of uniformed personnel in crimes greatly impact people's trust in security and justice services. Corruption and ethnic favoritism further contributes to this. But as a result of the violence, justice providers are in certain places also simply no longer present nearby. Access to justice is restricted even in relation to crimes that did not arise during active conflict. For the most part, people do not know what they can do to seek redress. And also those who have some understanding of their rights are confronted with a situation in which justice services are considered unreliable or inaccessible, either because they are too far away or because they simply do not exist. The fact that people are often not able to obtain redress even in more stable contexts demonstrates how decades of conflict has undermined justice systems in South Sudan as a whole. Investment into building the capacity of justice sector institutions must be approached as both an immediate means of post-conflict stabilization as well as a long-term initiative if the country is to provide justice services that meet the needs of its citizens.

While expanding the geographic reach of justice service providers and improving their ability to provide services that meet the needs of the population is a vital task of post-conflict stabilization efforts, activities to empower people so that they understand their rights and what they can do to obtain redress is equally important. Survey data shows that if people actively seek redress through non-violent third-party intervention, their chances of obtaining favorable outcomes are considerably increased, even in very difficult circumstances characterized by large-scale conflict and an absence of formal justice services.

In order to strengthen existing justice services, expand their reach, and build interest in and demand for justice among populations in South Sudan, this policy brief recommends the following:

To the (Transitional) Government of South Sudan:

- Ensure that rule of law and access to justice programming form an integral part of any post-conflict reconstruction and stabilization effort in South Sudan. In doing so, policy-makers should take stock of where rule of law programming failed during the 2005-11 interim period and in the aftermath of independence so as not to replicate past mistakes, such as the issues of non-accessibility, partiality, corruption, funding shortages, etc.

- The judicial reforms provided for in the August 2015 peace agreement provide an entry point, but in addition to this a more detailed reform agenda must be developed to stimulate meaningful change in the justice sector. The lack of justice contributes to spirals of violence prevalent in South Sudan. The development of this reform agenda could benefit from comparative studies on what other countries in similar circumstances have done to improve access to justice. Possible points to be included in this agenda are presented below.
 - Develop a policy and legislation that focuses specifically on legal aid in order to increase access to justice. This could be facilitated through the development of a legal aid strategy in consultation with non-state actors and populations throughout the country.
 - Establish and enforce specific types of justice mechanisms during conflict situations, and make a sustained investment into services that expand the reach of justice beyond what is possible through state action alone, such as paralegal or legal aid programming, customary justice mechanisms or ad hoc justice services offered in IDP camps. Where possible, seek to reinforce these mechanisms as important services in emergency situations. There are high percentages of cases of violent crimes where no action is taken because of a lack of justice providers.
 - Establish and support the functioning of military courts to try military actors involved in crimes, both within and outside the context of large-scale conflict.
 - Invest in the training of judges and other legal personnel to fill the capacity gaps in the long term, and allow international judges to serve directly on the judiciary alongside South Sudanese judges to fill capacity gaps in the short term.
 - Vetting of judges and other justice sector institutions to ensure that the most qualified people are employed.
- Improving transparency in the reporting of justice sector data, particularly crime statistics and judicial opinions. Addressing crime trends demands adequate and updated data and development of the law requires sharing and evaluating judicial opinions. Reporting of crime statistics and judicial opinions must be integrated in regular work of the police and judiciary.
- Invest in the capacity of police investigators to investigate crimes, so that people can gain confidence in the police and their ability to help them to find justice. This includes both providing adequate training, but also adequate

resources, including transportation and fuel, for investigators to follow up on crimes.

Ensure special attention for SGVB and tackle the widespread impunity for SGVB-related crimes. Make sure that no charges are requested for Form no 8, and ensure that both police officials and health care workers are all aware that this form is no longer a requirement for receiving medical care. Enter into dialogue with customary courts to refrain from (forced) marriage as a way to settle SGBV cases. This is in their interest, as our research shows that this approach undermines the trust of communities in customary courts.

- Invest in the capacity of customary courts, particularly in their ability to settle cattle raids and preventing revenge, as cattle raids have become increasingly complex and linked to conflict and organized crime.

To all guarantors of the ACRISS, including UNMISS, the AU and IGAD+:

- With the mandate to protect civilians and the increased use of SGBV as a weapon of war, there should be a pro-active effort to not only support victims but also to bring perpetrators to justice in order to end impunity and break the repeated cycles of violence.
- Facilitate access to justice for displaced populations in the POCs. While overall few respondents indicated to take action after having experienced a violent crime, in the POCs almost nobody took any action. This contributes to a sense of victimhood and hinders reconciliation.
- Ensure programmatic connections between justice reform and transitional justice efforts. With the large number of crimes being committed in the context of conflict, transitional justice and justice sector reform cannot be treated as completely independent from each other. Transitional justice efforts should include a focus on justice reform and capacity building. Supporting access to justice can also support transitional justice efforts when bringing suspects at leadership levels is not (yet) possible.

To donors and (I)NGOs and national civil society:

- Make a sustained investment into services that expand the reach of justice beyond what is possible through state action alone, such as paralegal or legal aid programming. In almost three-quarters of the cases investigated people did not take any action to resolve the crime. This shows the urgent need to increase access to justice in South Sudan.
- Support the (transitional) government in developing a detailed justice reform to stimulate meaningful change in the justice sector, both at national and

local levels. The development of this reform agenda could benefit from comparative studies and possible points to be included in this agenda are presented above.

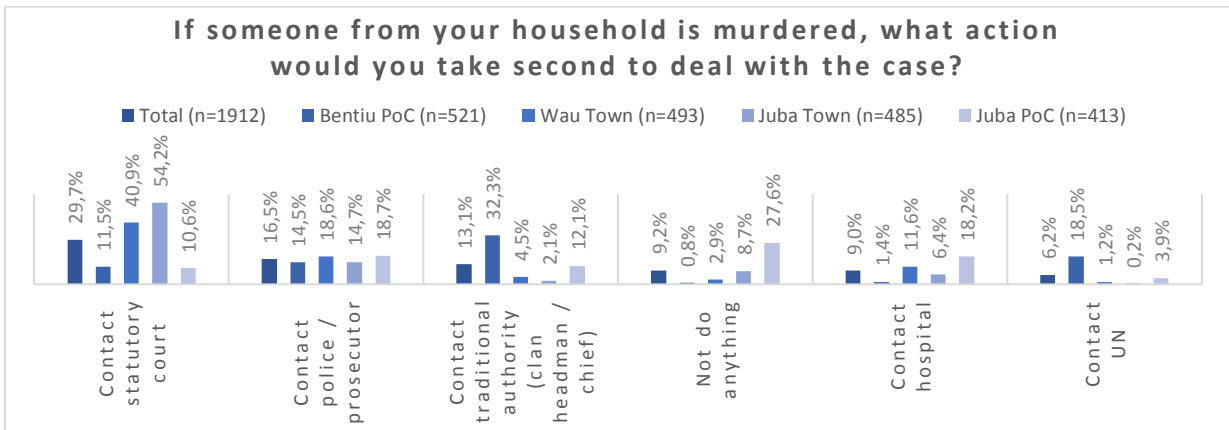
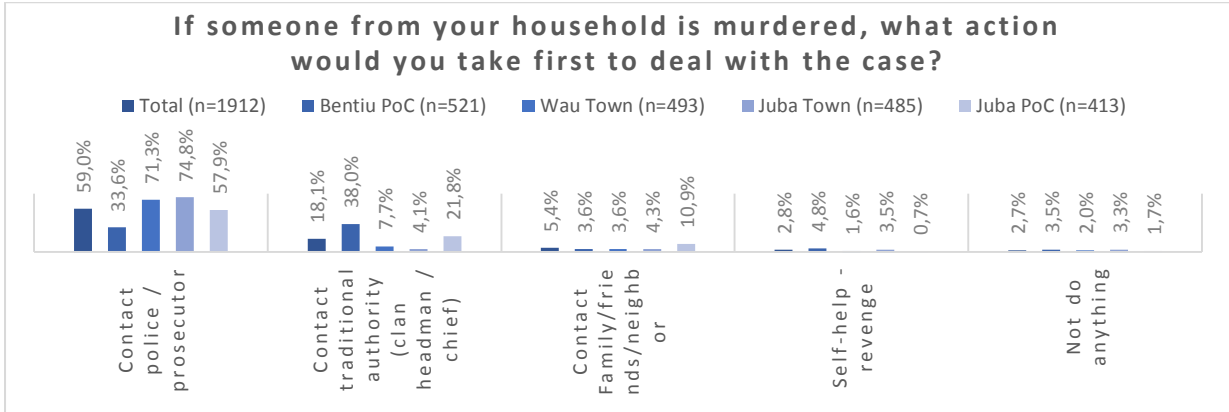
- Invest in knowledge/information sharing and capacity building on civil rights and the justice mechanisms among the South Sudanese population so citizens are better equipped to act.
- Connect work on access to justice to transitional justice by investing in trust building and reconciliation efforts at local and state levels.

Acknowledgements

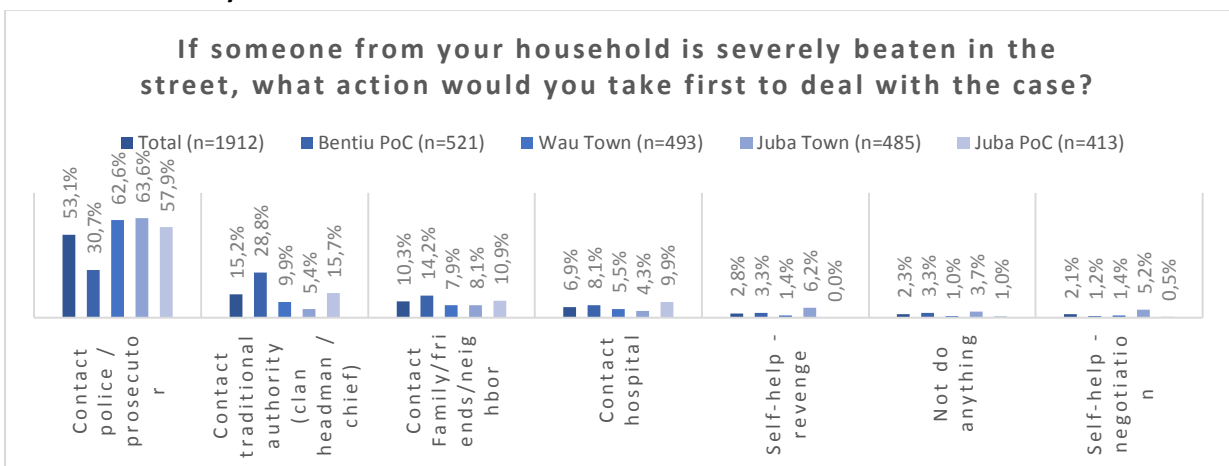
This report was made possible with financial support received from the Netherlands Organization for Scientific Research (NOW-WOTRO), commissioned by the Ministry of Foreign Affairs of the Kingdom of the Netherlands in close collaboration with the Knowledge Platform Security & Rule of Law. The authors would like to thank the team of 34 enumerators that helped to conduct the survey in Juba, Juba POC, Bentiu POC and Wau. The authors would also like to extend their deep appreciation to all who agreed to be interviewed as part of this study. The bravery that they have demonstrated in their willingness to discuss these issues is a testament to the resilience of South Sudanese despite the difficult periods that the country has struggled through.

Annex 1: Steps taken in response to violent crimes - hypothetical cases

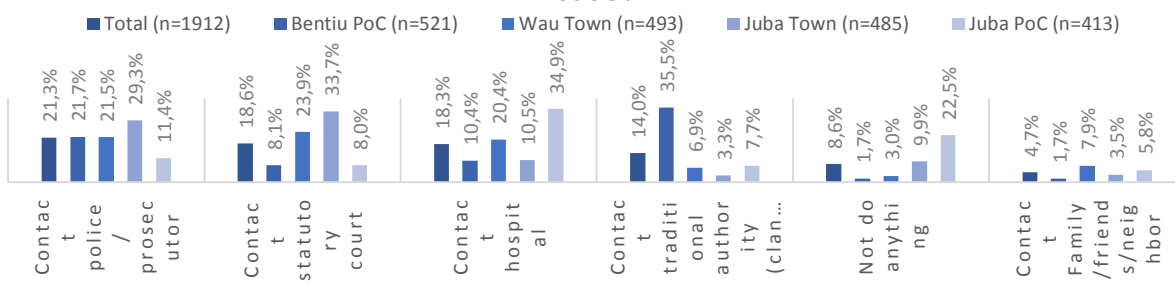
Murder



Physical assault

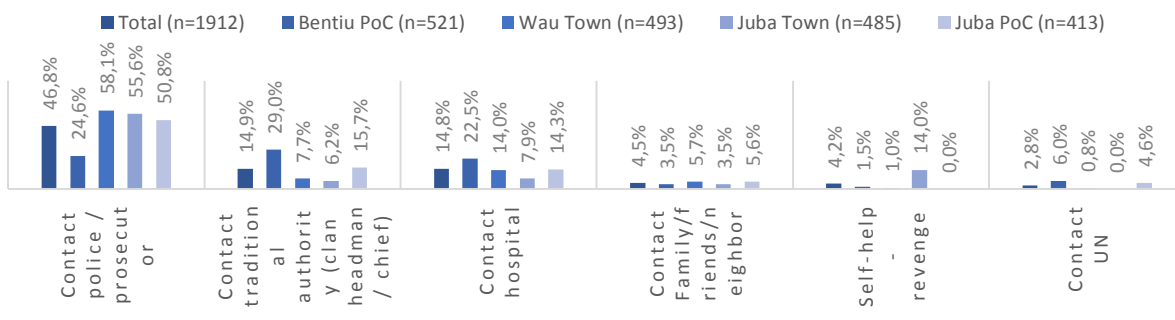


If someone from your household is severely beaten in the street, what action would you take second to deal with the case?

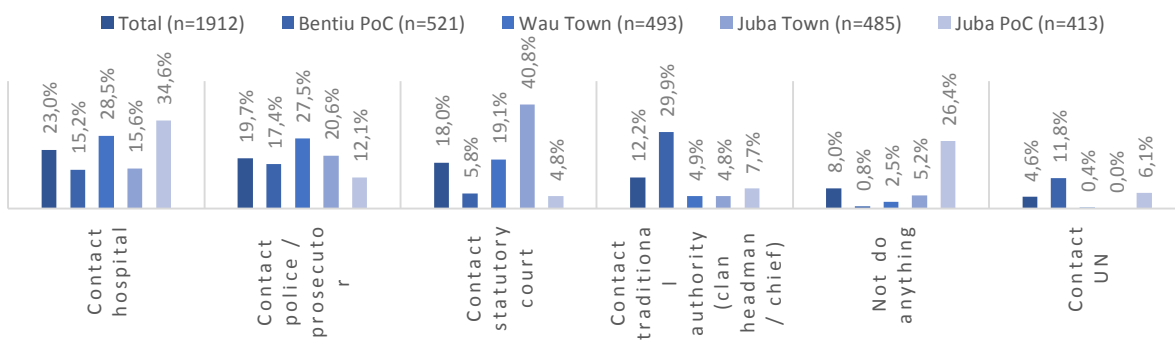


Sexual assault / rape

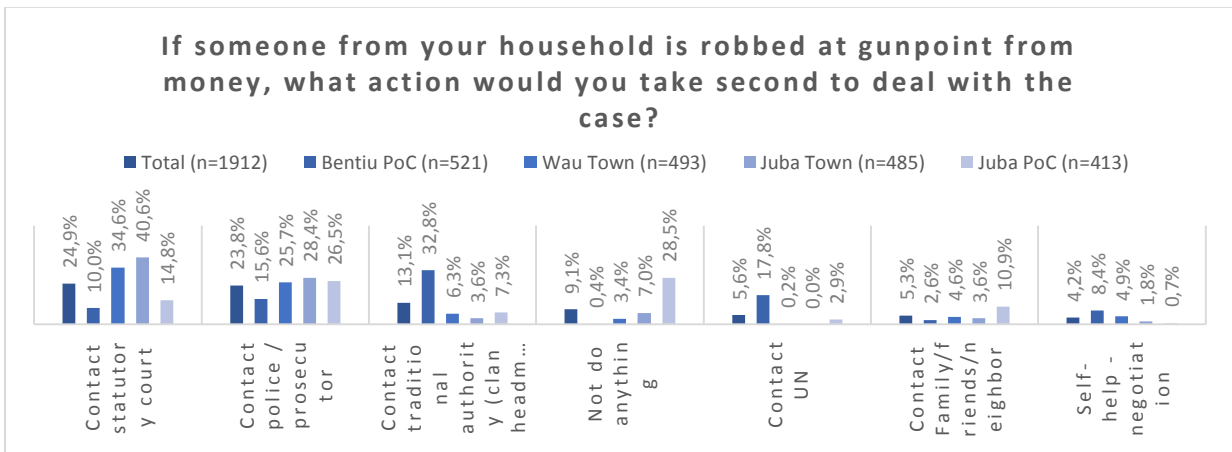
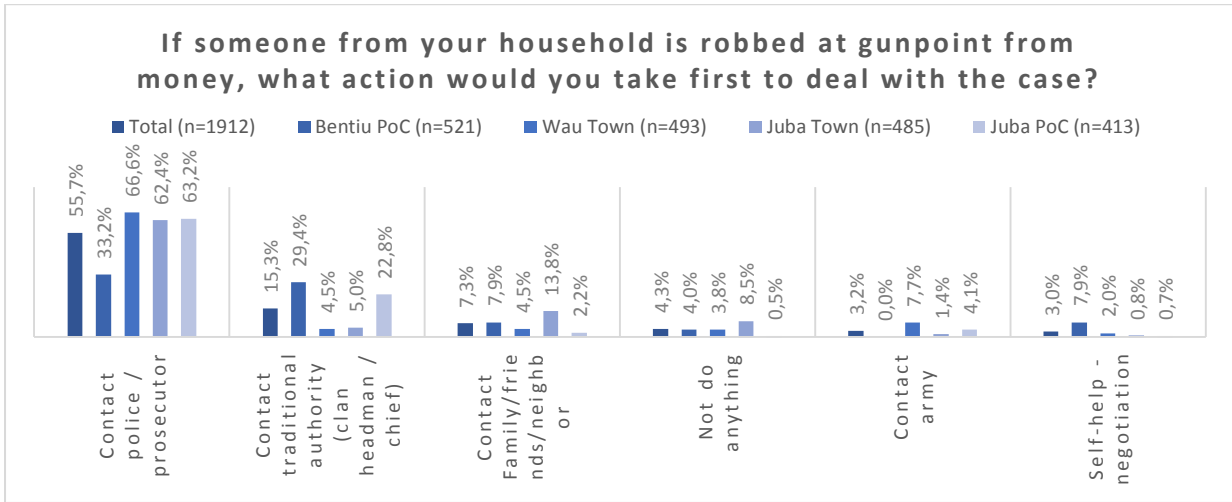
If someone from your household is raped, what action would you take first to deal with the case?



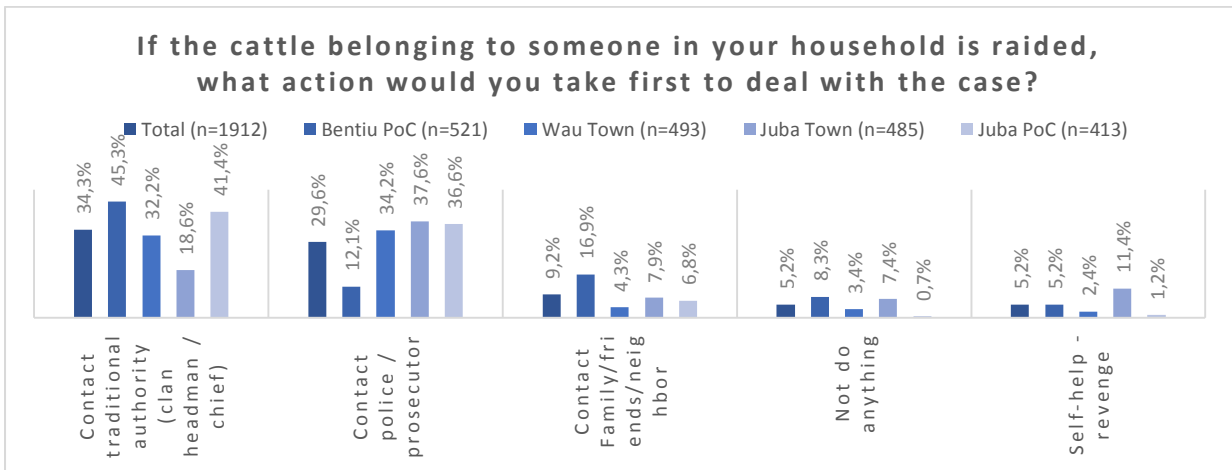
If someone from your household is raped, what action would you take second to deal with the case?



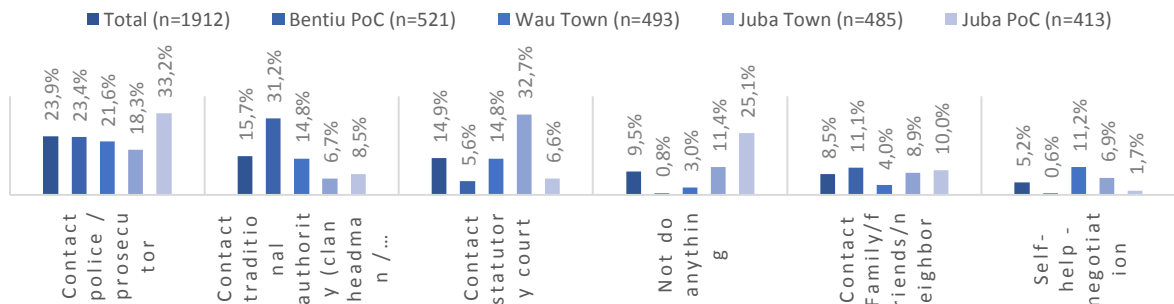
Armed robbery



Cattle raid

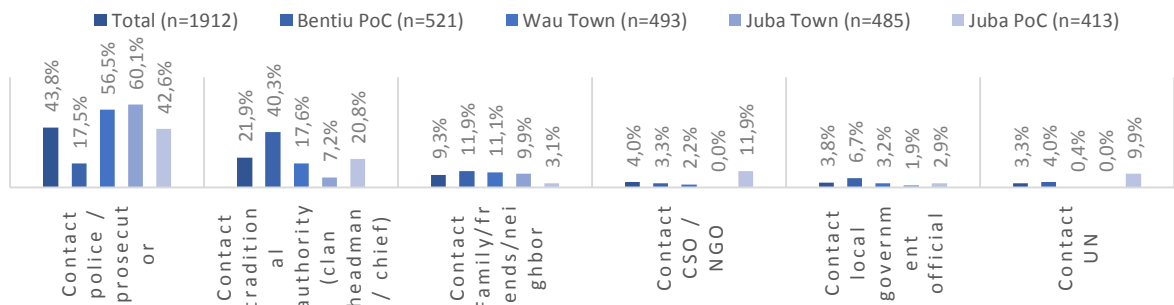


If the cattle belonging to someone in your household is raided, what action would you take second to deal with the case?

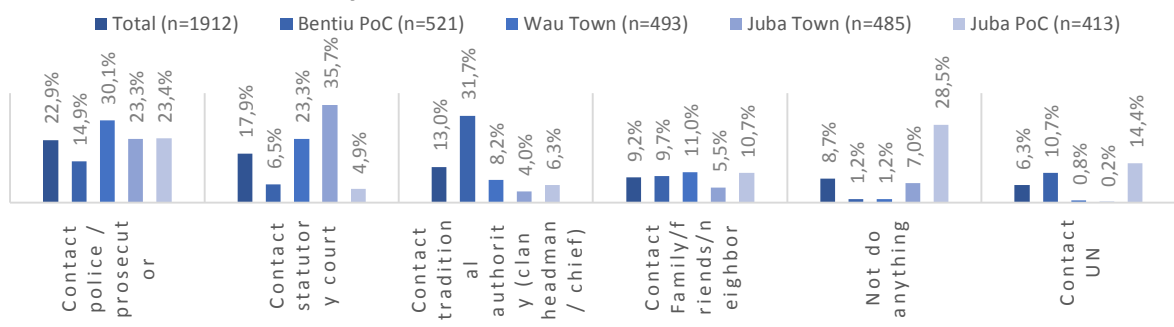


Abduction

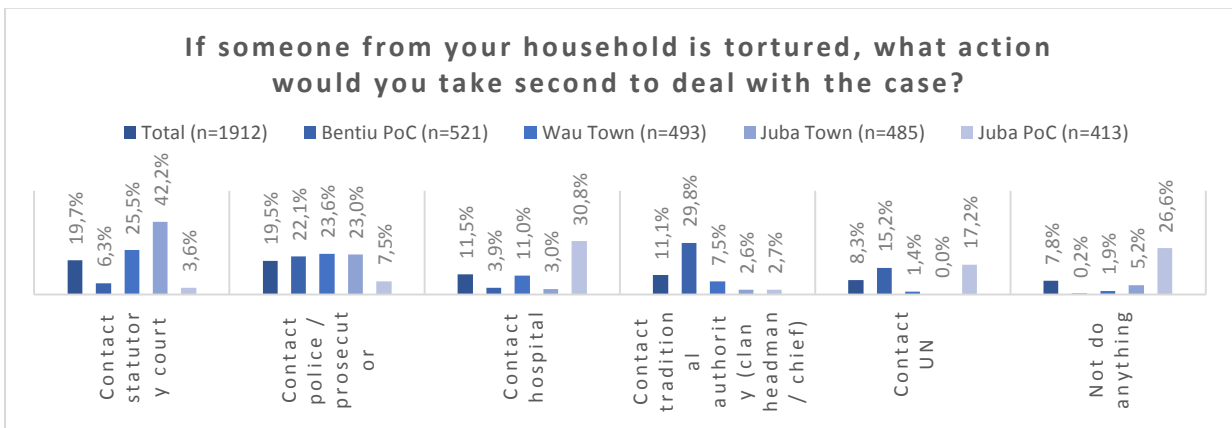
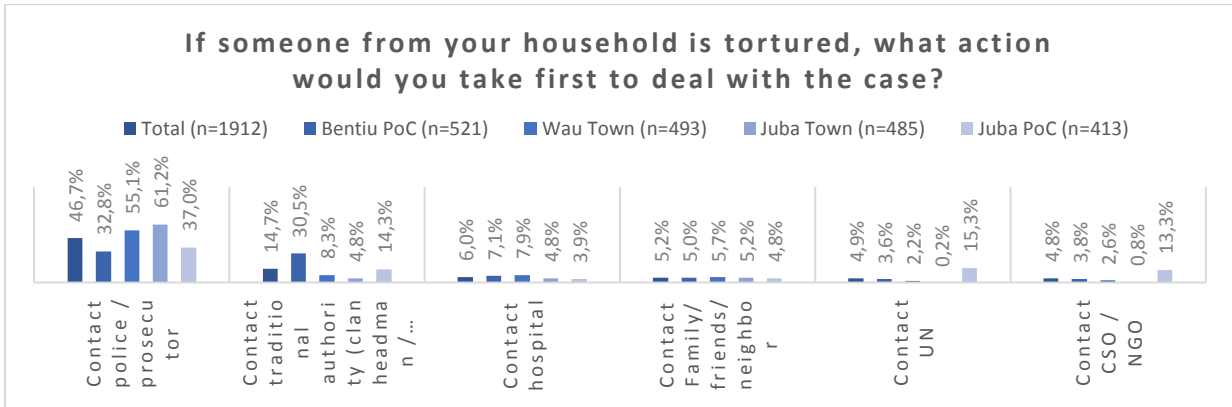
If someone from your household is abducted, what action would you take first to deal with the case?



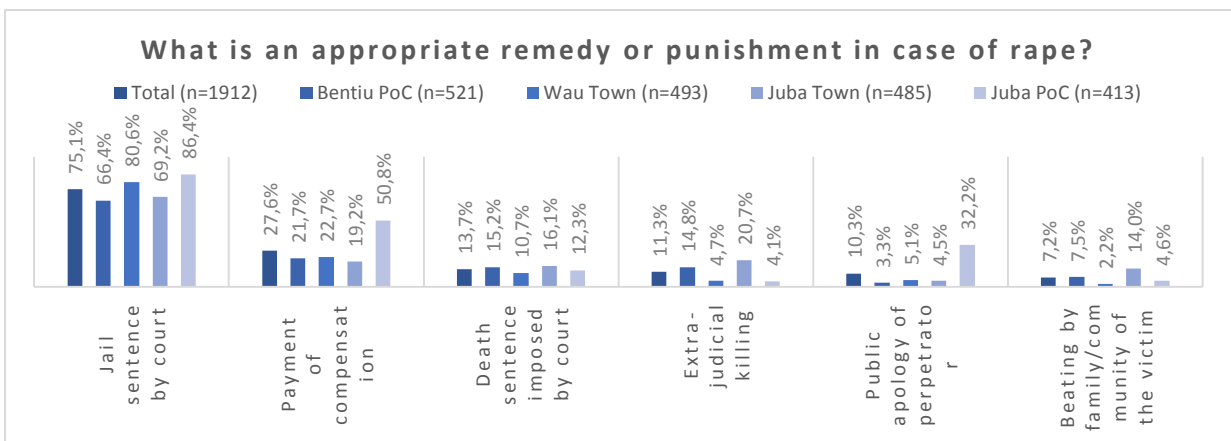
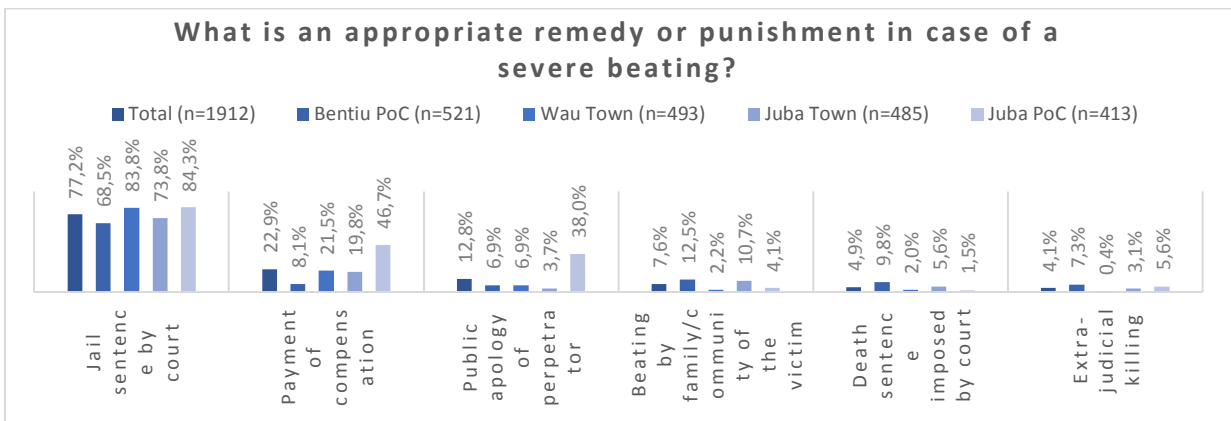
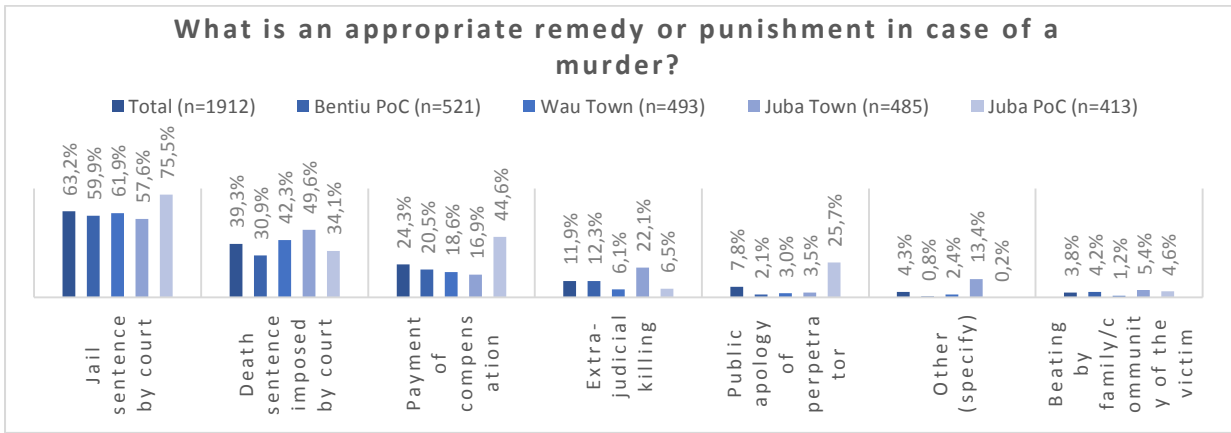
If someone from your household is abducted, what action would you take second to deal with the case?

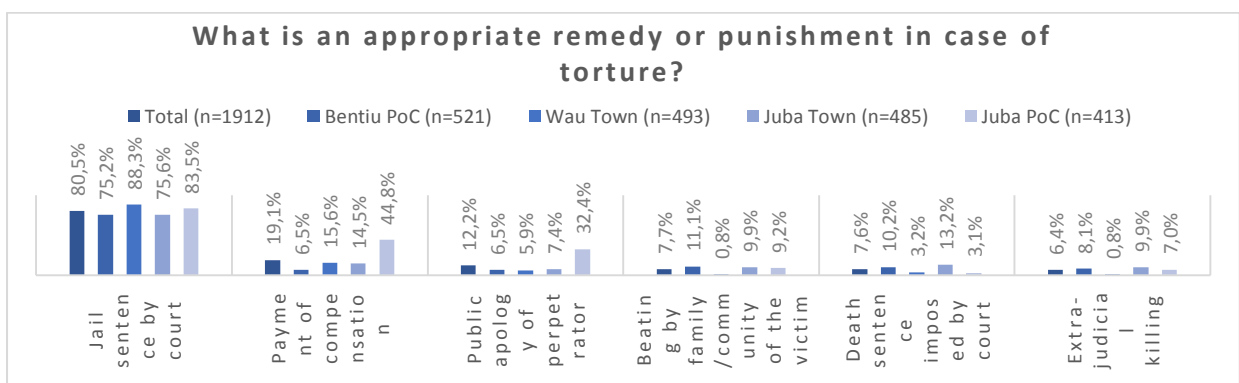
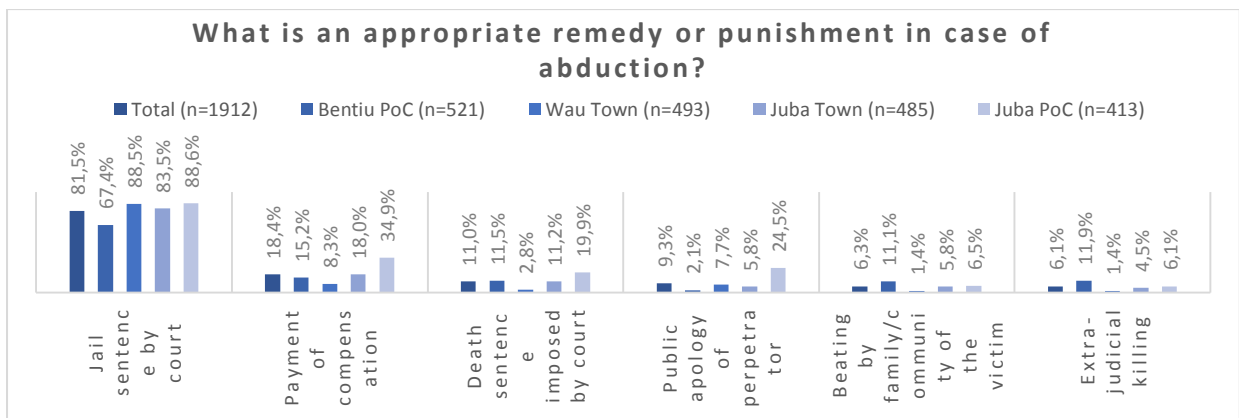
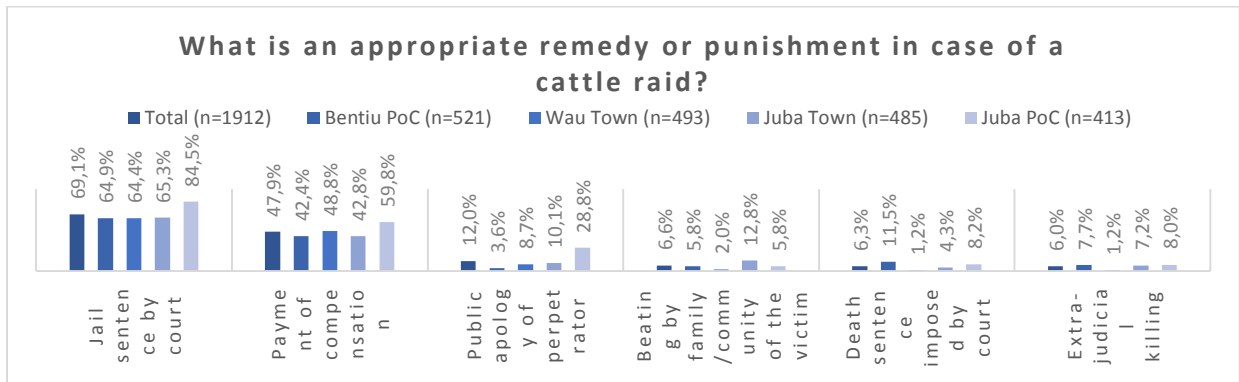
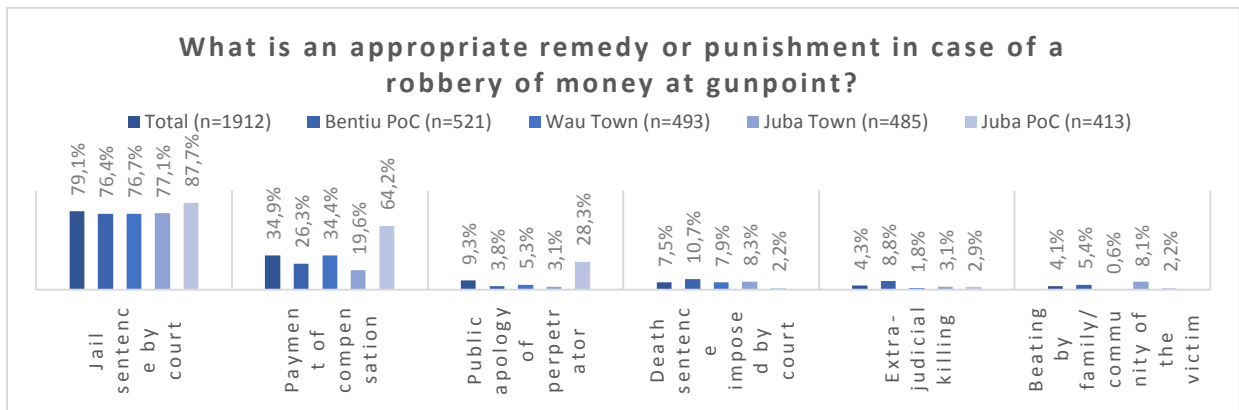


Torture



Annex 2: Appropriate remedy or solution for violent crimes





Annex 3: Most common steps in response to crimes

The table below presents the most common response-pathways taken by respondents in response to violent crimes experienced, based on the first three steps cited by respondents.

Crime (cases where action is taken)	No. occurrences among respondents			
Cattle raiding (n=156)	38	Self-help - revenge		
	15	Contact Family/friends/neighbor		
	12	Contact police / prosecutor		
	11	Contact traditional authority (clan headman / chief)	Contact traditional authority (clan headman / chief)	Contact traditional authority (clan headman / chief)
	10	Contact traditional authority (clan headman / chief)	Contact police / prosecutor	Contact army
	9	Contact traditional authority (clan headman / chief)		
	5	Not do anything		
	4	Contact CSO / NGO		
	4	Contact traditional authority (clan headman / chief)	Contact police / prosecutor	
	4	Contact traditional authority (clan headman / chief)	Contact police / prosecutor	Contact local government official
Armed robbery (n=100)	23	Contact traditional authority (clan headman / chief)	Contact traditional authority (clan headman / chief)	Contact traditional authority (clan headman / chief)
	20	Contact police / prosecutor		
	8	Contact traditional authority (clan headman / chief)		
	4	Not do anything		
	3	Contact church leader / religious leader	Contact traditional authority (clan headman / chief)	Contact traditional authority (clan headman / chief)
	3	Contact police / prosecutor	Contact police / prosecutor	Contact police / prosecutor

	3	Contact state government official	Contact state government official	Contact state government official
	2	Contact church leader / religious leader		
	2	Contact police / prosecutor, Contact hospital,		
	2	Contact statutory court		
Physical assault (n=44)	4	Contact church leader / religious leader	Contact traditional authority (clan headman / chief)	Contact traditional authority (clan headman / chief)
	4	Contact Family/friends/neighbor	Contact traditional authority (clan headman / chief)	Contact police / prosecutor
	4	Contact traditional authority (clan headman / chief)		
	3	Contact church leader / religious leader	Contact traditional authority (clan headman / chief)	Contact church leader / religious leader
	3	Contact Family/friends/neighbor	Contact police / prosecutor	Contact statutory court
	3	Contact police / prosecutor		
	2	Contact church leader / religious leader		
	2	Contact traditional authority (clan headman / chief)	Contact traditional authority (clan headman / chief)	Contact traditional authority (clan headman / chief)
	1	Contact church leader / religious leader	Contact church leader / religious leader	Contact church leader / religious leader
1	Contact church leader / religious leader	Contact church leader / religious leader	Contact traditional authority (clan headman / chief)	
Murder (n=65)	8	Contact police / prosecutor		
	6	Self-help - revenge		
	3	Contact church leader / religious leader		
	3	Contact CSO / NGO		
	3	Contact Family/friends/neighbor		
	2	Contact Family/friends/neighbor	Contact police / prosecutor	Contact army

	2	Contact Family/friends/neighbor	Contact police / prosecutor	Contact statutory court
	2	Contact Family/friends/neighbor	Contact traditional authority (clan headman / chief)	Contact police / prosecutor
	2	Contact police / prosecutor	Contact local government official	Contact state government official
	2	Contact police / prosecutor	Contact UN	Contact local government official
Sexual assault (n=32)	4	Contact hospital	Contact Family/friends/neighbor	Contact police / prosecutor
	4	Contact police / prosecutor		
	2	Contact church leader / religious leader		
	2	Contact CSO / NGO		
	2	Contact hospital	Contact police / prosecutor	Contact army
	2	Other (specify)		
	1	Contact church leader / religious leader	Contact traditional authority (clan headman / chief)	Contact church leader / religious leader
	1	Contact CSO / NGO, Contact church leader / religious leader	Contact church leader / religious leader	
	1	Contact CSO / NGO	Contact CSO / NGO	
	1	Contact CSO / NGO, Contact police / prosecutor	Contact statutory court	
Abduction (n=22)	3	Contact church leader / religious leader		
	3	Contact police / prosecutor		
	1	Contact church leader / religious leader	Contact statutory court	Contact church leader / religious leader
	1	Contact church leader / religious leader	Contact traditional authority (clan headman / chief)	Contact church leader / religious leader
	1	Contact CSO / NGO		
	1	Contact CSO / NGO	Contact UN	Contact UN
	1	Contact Family/friends/neighbor	Contact church leader / religious leader	Contact church leader / religious leader
	1	Contact Family/friends/neighbor	Contact church leader / religious leader	Contact CSO / NGO
	1	Contact Family/friends/neighbor	Contact police / prosecutor	
	1	Contact Family/friends/neighbor	Self-help - revenge	

Torture (n=19)	5	Contact police / prosecutor		
	2	Contact Family/friends/neighbor	Contact traditional authority (clan headman / chief)	Contact police / prosecutor
	2	Contact police / prosecutor	Contact statutory court	
	2	Contact traditional authority (clan headman / chief)		
	1	Contact Family/friends/neighbor	Contact police / prosecutor	Contact army
	1	Contact police / prosecutor	Contact police / prosecutor	Not do anything
	1	Contact statutory court		
	1	Contact traditional authority (clan headman / chief)	Contact police / prosecutor	Contact traditional authority (clan headman / chief)
	1	Don't know		
	1	Not do anything		

