

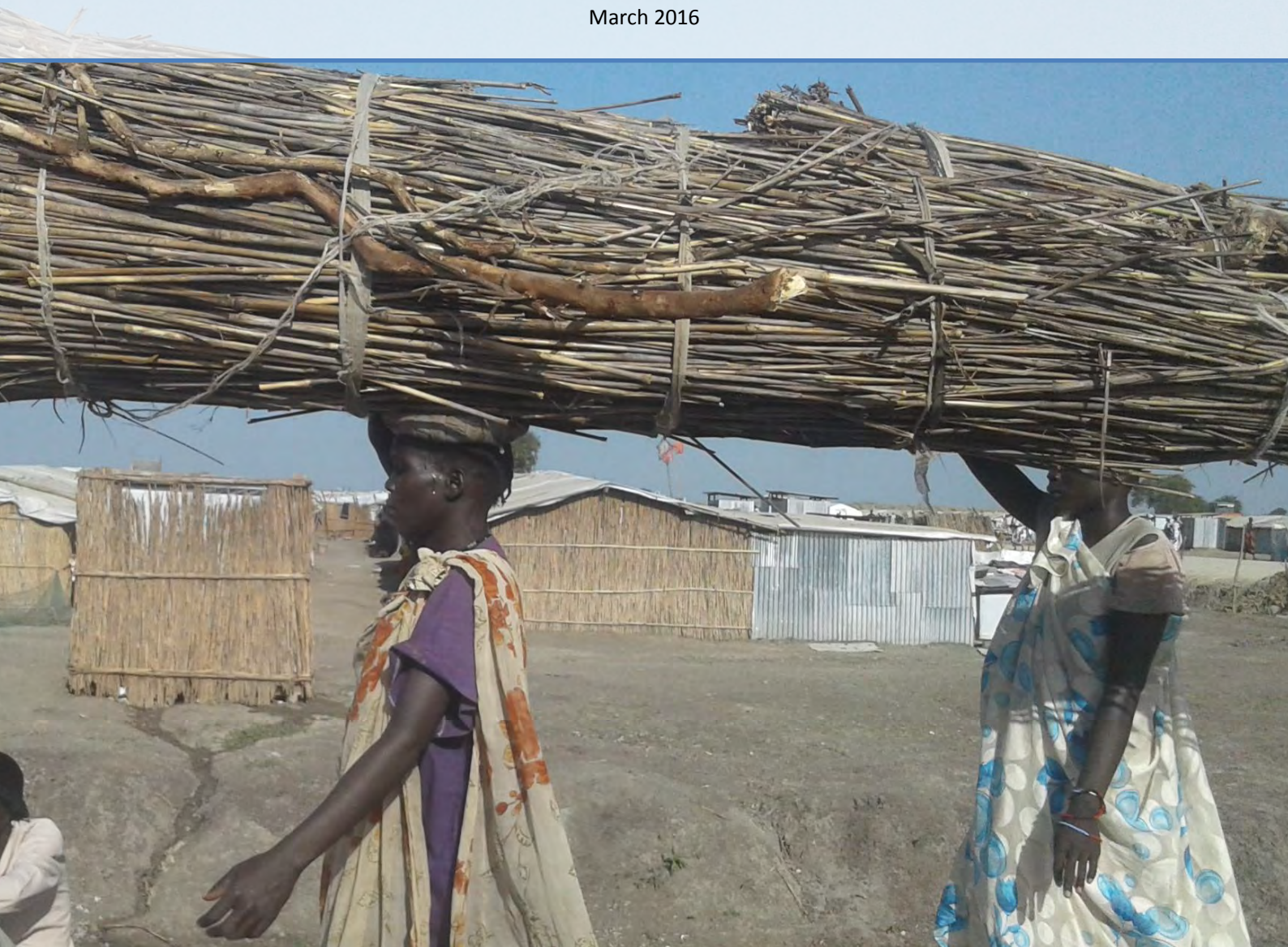
Sexual and Gender-Based Violence (SGBV) in Unity State, South Sudan

POLICY BRIEF

Intersections of Truth, Justice and Reconciliation in South Sudan

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Cover photo: © Opio Moses, Women carrying firewood in Bentiu POC, Unity State, South Sudan

The views expressed and analysis put forward in this report are entirely those of the authors in their professional capacity and cannot be attributed to organizations involved in the project or the Dutch Ministry of Foreign Affairs.

Summary

This policy brief examines sexual and gender-based violence (SGBV) in Unity State and offers a number of policy options to help reduce the use of SGBV as a weapon of war in South Sudan moving forward. The brief is structured in three sections. After a short introduction, the first section provides background information on the protection of civilians (POC¹) site that the United Nations Mission in South Sudan (UNMISS) established in the state capital of Bentiu in 2014. The second section presents survey findings on the incidence of SGBV in Unity State. The third section examines the choices that households in Bentiu POC make when confronted with SGBV. The conclusion provides recommendations for how to improve access to justice for SGBV survivors.

A key finding that emerges from this brief concerns the high incidence of SGBV and widespread impunity for SGBV offenses in the context of the current conflict. Twenty-three percent of households surveyed in Bentiu POC said that someone in the household was sexually assaulted in the past five years, and 87 percent of those incidents took place in 2015, coinciding with an offensive that the Government of the Republic of South Sudan (GRSS) launched in March of that year. Eighty percent of those who experienced SGBV did not make any effort to seek redress.

While access to justice services is severely restricted for survivors of SGBV, respondents who invested their resources into seeking redress were able to secure more favorable outcomes than those who did nothing. This suggests that raising awareness about existing laws that prohibit SGBV and informing people about the steps that they need to take to assert their rights can help to improve outcomes for survivors. To the extent that this applies in a conflict situation such as that of Bentiu POC, where justice services are extremely limited, it will become all the more relevant if security conditions improve. Legal empowerment (the demand side of justice) should therefore form a central component of any future efforts to improve access to justice, alongside efforts to provide individuals with the justice services that they want and need (the supply side of justice).

Introduction

Unity State has been a major battleground between the Government of the Republic of South Sudan (GRSS) and the Sudan People's Liberation Movement-in-Opposition (SPLM-IO) throughout the two-year-old conflict in South Sudan. After subsiding somewhat towards the end of 2014, the violence escalated again in March 2015, when the GRSS launched an offensive into central and southern portions of Unity State in an effort to bring the entire state under GRSS control. The numbers of people seeking refuge in the United Nations (UN) protection of civilians (POC) site in the state

¹ The UN is currently operative 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.

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capital of Bentiu increased dramatically, reaching 137,000 people — or nearly a quarter of the state’s entire population — by the end of 2015.²

Human rights organizations have documented the use of SGBV as a weapon of war by all sides in the conflict.³ 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 2015.⁴ 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 brief draws on data from a survey that the South Sudan Law Society (SSLS), the University for Peace (UPEACE) Centre The Hague and PAX conducted at the end of 2015, as part of the research project entitled, “Intersections of truth, justice and reconciliation in South Sudan”.⁵ The survey targeted 1,912 individuals in four locations – Juba town, Juba POC, Wau town and Bentiu POC – and sought to better understand their perceptions of and experiences with violence and justice, particularly from the perspective of access to justice services. Although the brief focuses on experiences in Bentiu POC, it refers to findings in other survey locations for comparative perspectives.

Bentiu Protection of Civilians (POC) Site

After conflict erupted in Juba in December 2013, it quickly spread throughout the three states of Greater Upper Nile Region: Unity, Jonglei and Upper Nile. In the first half of 2014, the GRSS and the SPLM-IO fought furiously for control of Greater Upper Nile, and the three state capitals of Bor, Bentiu and Malakal changed hands between the warring factions multiple times. By the end of the rainy season in 2014, however,

² According to a 2008 census carried out by the South Sudan National Bureau of Statistics (SSNBS), then called the Southern Sudan Centre for Census, Statistics and Evaluation (SSCCSE), the population of Unity State in 585,801. SSCCSE, *Statistical Yearbook for Southern Sudan* (2010), available at <http://static1.1.sqspcdn.com/static/f/750842/11453911/1301368226337/Statistical+Year+Book+For+Southern+Sudan+2010+Final.pdf?token=vgiU6WtV4pnJp8AlsQjZiQj0JUs%3D>.

³ 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>.

⁴ 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>.

⁵ The project is carried out in cooperation between the University for Peace (UPEACE) Centre The Hague (the Netherlands), the South Sudan Law Society (SSLS), and PAX. It is funded by the Dutch Ministry of Foreign Affairs as a part of the ‘Knowledge Platform Security & Rule of Law’, and is administered by the Netherlands Organization for Scientific Research (NWO). A short summary of the project, its methods and activities, can be found here: <http://www.upeace.nl/cp/uploads/publications/One%20Pager%20-%20IJR%20in%20South%20Sudan.pdf>.

the conflict had reached a kind of equilibrium and the two warring parties occupied distinct and largely uncontested parts of Unity State.⁶

The situation changed dramatically in March 2015 when the GRSS launched an offensive to take control of portions of central and southern Unity State occupied by SPLM-IO forces. The fighting involved scorched earth tactics, including attacks on the civilian population, burning of homes and widespread looting of cattle and other property. GRSS forces and allied militia are also accused of using SGBV extensively as a weapon of war.⁷ 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 2015.⁸ Despite the signing of the Agreement on the Resolution of the Crisis in South Sudan (ARCISS) in August 2015, fighting in Unity State persisted. As the UN Office for the Coordination of Humanitarian Affairs (UN OCHA) reports, the size of the population in Bentiu POC increased steadily from March 2015, reaching 137,000 by the end of the year.⁹

The population in Bentiu POC is comprised of some of the most conflict-affected people in the country. According to a January 2016 report by the UN Office of the Deputy Humanitarian Coordinator for South Sudan, households in Unity State that sent one or more household members to the Bentiu POC experienced on average three times more ‘shocks’ than households that did not send people to the POC.¹⁰ The households that sent people to the POC also had death rates that were on average 1.5 times higher than those households that did not send anyone to the POC. The report concludes that the POC serves as one of several “late” coping resources for the survival and protection of highly vulnerable members of households, including young women, mothers and children.

Incidence of Sexual Assault in Bentiu

The findings from the survey conducted as part of this study are consistent with the report of the Deputy Humanitarian Coordinator cited above with respect to the high exposure to shocks among populations in the POCs. Both Bentiu POC and Juba POC stood out among the survey locations for the numbers of violent crimes that

⁶ Office of the Deputy Humanitarian Coordinator for South Sudan, *Crisis Impacts on Households in Unity State, South Sudan, 2014-2015: Initial Results of a Survey* (Jan. 2016), available at <http://reliefweb.int/report/south-sudan/crisis-impacts-households-unity-state-south-sudan-2014-2015-initial-results>.

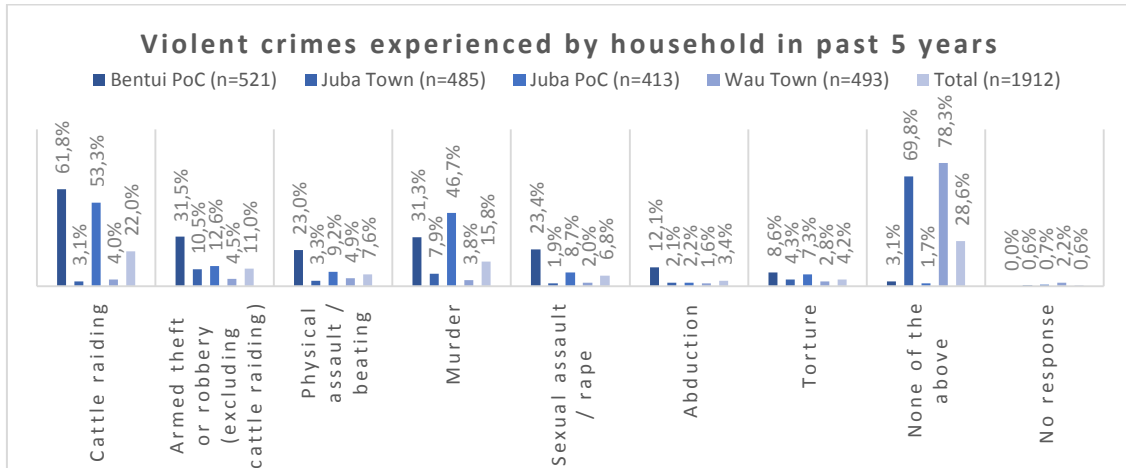
⁷ See e.g. Office of the High Commissioner on Human Rights (OHCHR), *Assessment mission by the Office of the United Nations High Commissioner for Human Rights to improve human rights, accountability, reconciliation and capacity in South Sudan: detailed findings*, U.N. Doc. A/HRC/31/CRP.6, 10 March 2016, available at http://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session31/Documents/A-HRC-31-CRP-6_en.doc.

⁸ Protection Cluster, *supra* note 4.

⁹ *Crisis Impacts on Households in Unity State*, *supra* note 6.

¹⁰ The report defines a ‘shock’ as any one of a series of 16 events that include such occurrences as the death of a household member, abduction of a household member or the hosting of displaced persons in the household, among other events. *Id.*

respondents experienced. Ninety-seven percent of respondents in Bentiu POC and 98 percent of respondents in Juba POC said that their household had experienced one or more violent crimes in the past five years.¹¹ Bentiu POC reported the most violent crimes overall, at more than 1015 incidents by 512 respondents.¹²



23% of respondents in Bentiu POC said someone in their household had been sexually assaulted in the past five years.

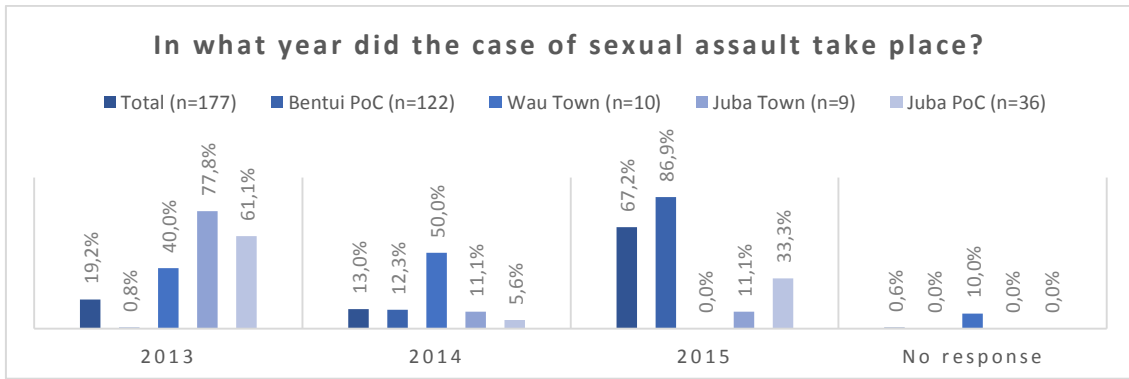
The high incidence of violent crime in Bentiu POC was especially apparent for instances of sexual assault. Twenty-three percent of respondents in Bentiu POC (n=122) said someone in their household had been sexually assaulted in the past five years.¹³ The next closest location in terms of numbers of sexual assaults was Juba POC, in which nine percent 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.

Most of the incidents of sexual assault were conflict-related. According to respondents, 93 percent of the sexual assaults took place in the midst of large-scale conflict, and 87 percent 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.

¹¹ This study defines 'violent crime' as murder, sexual assault and rape, torture, physical assault, armed robbery, abduction and cattle raiding.

¹² This number 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.

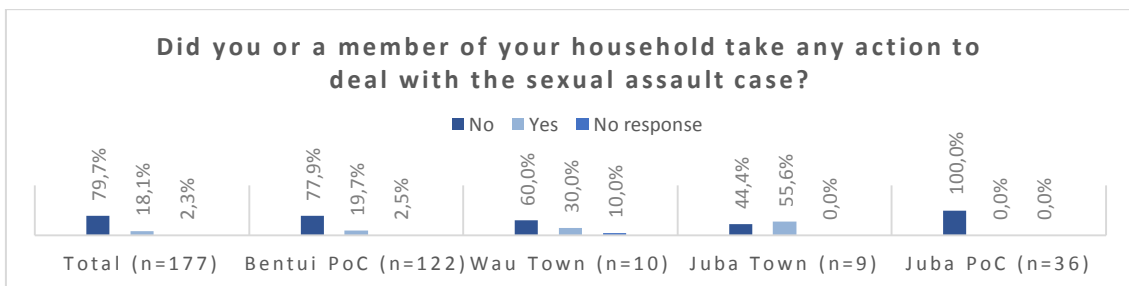
¹³ The survey did not gather information on the identity of the victim. As a result, it is not possible to determine exactly how many of these sexual assaults targeted females and how many targeted males. Nonetheless, given the scale of SGBV against females that has already been documented in the context 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.



Almost all (97%) of the cases of sexual assault reported in Bentiu POC took place in Unity State, and 47 percent 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%) 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.¹⁴

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.¹⁵ 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.



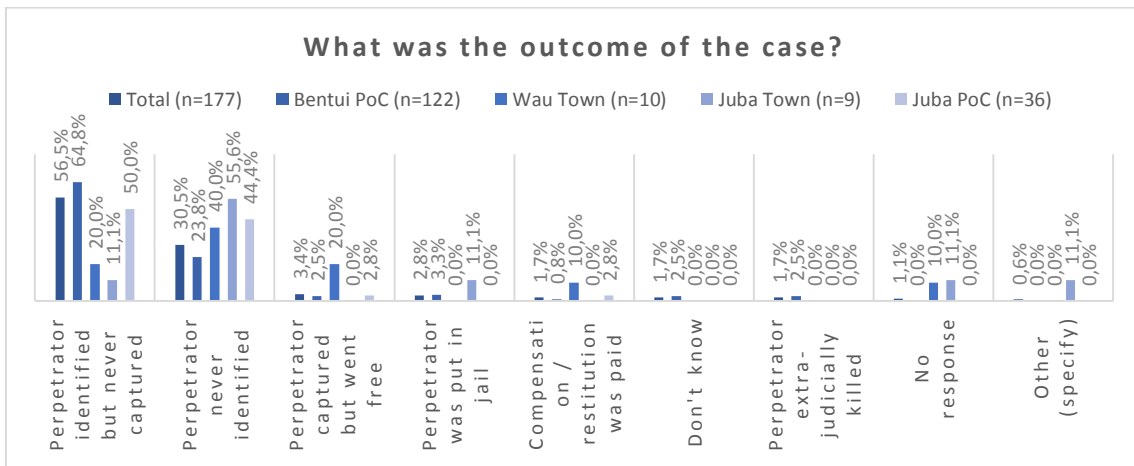
¹⁴ To a certain extent, some of these incidents may also be traced to acts of sexual assault perpetrated by people who are known to the victim. SGBV is known to increase in situations of displacement due to the cramped living conditions, the lack of livelihood opportunities, economic hardship and high 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.

¹⁵ 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.

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

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.

Customary courts did not feature prominently as dispute resolution actors in relation to sexual assault in Bentiu POC, 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.

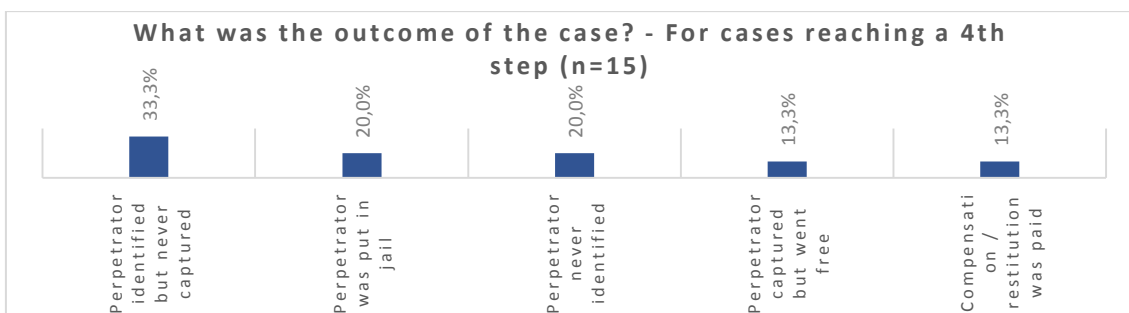
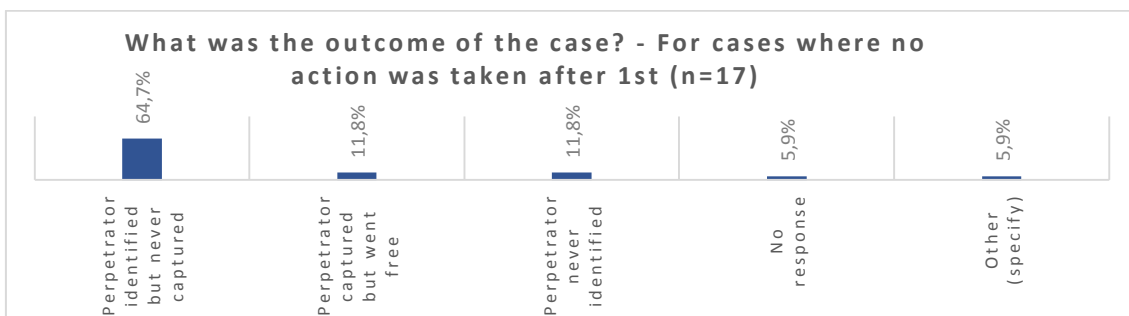


Survey data shows widespread impunity for perpetrators of sexual assault. For the 23 percent of households (n=122) that experienced sexual assault in Bentiu POC, the most likely outcomes were that the perpetrator was identified but never captured (65%, n=80) or that the perpetrator was never identified (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

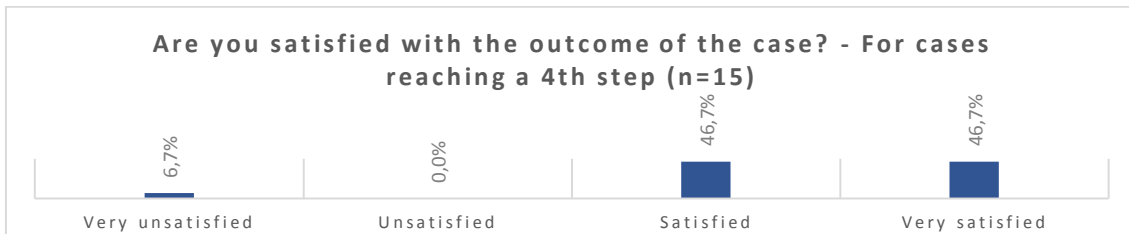
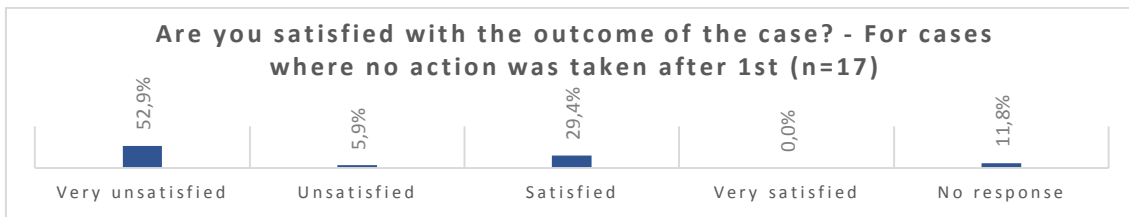
Survey data shows widespread impunity for perpetrators of sexual assault.

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.

Across the four locations, respondent households that took more steps to seek redress were able to achieve more favorable outcomes for the victim. In none of the instances in which just one step was taken was the perpetrator successfully detained or made to pay compensation. However, for the 15 cases that reached a fourth step, three of the perpetrators were put in jail (20% of the cases) and compensation was paid twice (13% of the cases).



In addition, the more steps that respondent households took in seeking redress, the more likely they were to report satisfaction with the outcome of the case. For the 17 sexual assault cases in which just one step was taken to address the issue, 59 percent of respondents were either 'very unsatisfied' (53%) or 'unsatisfied' (6%) with the outcome, 29 percent were 'satisfied' and none were 'very satisfied'. In contrast, for the 15 cases that reached a fourth step, almost all (94%) said they were either 'very satisfied' (47%) or 'satisfied' (47%) with the outcome of the case.



Justice services are extremely limited in Bentiu POC. Community leaders provide some mediation services, UNMISS provides rudimentary detention facilities, and humanitarian actors provide access to medical care, but these are inadequate to even address the crimes that take place within the POC, much less the widespread SGBV that has occurred in the context of the conflict.¹⁶ Nonetheless, the survey findings suggest that if justice services are made available to people and if they are adequately informed about the steps that they need to take to assert their rights, survivors of sexual assault have better chances of achieving satisfactory outcomes when they invest their efforts into the process. To the extent that this applies in a conflict situation such as Bentiu POC, it would apply all the more so were some degree of stability to return to Unity State. Legal awareness and empowerment (the demand side of justice) should therefore form a central component of any effort to improve access to justice moving forward, alongside efforts to provide individuals with the justice services that they want and need (the supply side of justice).

Findings suggest that raising awareness about existing laws that prohibit SGBV and informing people about the steps that they need to take to assert their rights can help to improve outcomes for survivors.

Conclusion and Recommendations

More than two years into the conflict and six months after the signing of the ARCISS, rape, sexual slavery and genital mutilation continue to be used as weapons of war in the conflict. In the past, the idea of SGBV in the context of a conflict was considered unthinkable and abhorrent. Indeed, the customary laws of the various peoples of South Sudan include strong prohibitions on rape and the targeting of women, children or elderly persons during conflict. However, given the prevalence of SGBV in the current context, it appears that whatever social norms against the practice that used to exist now hold less sway among combatant populations. The dramatic increase in SGBV in South Sudan will leave a lasting legacy not only on individual survivors, but also on entire communities. In order to address the issue moving forward, this brief recommends that the GRSS and SPLM-IO:

¹⁶ For more additional information on how UNMISS treats criminal activity in the POC sites, see South Sudan Humanitarian Project, *International Legal Frameworks: The Status of UNMISS PoC Sites in South Sudan* (23 Feb. 2016), p. 13-14 available at <http://southsudanhumanitarianproject.com/wp-content/uploads/sites/21/formidable/International-Legal-Frameworks-South-Sudan-Feb2016-1.pdf>.

- **Ensure that the increasing use of SGBV as a weapon of war is addressed as a priority issue in any transitional justice processes** that follow the end of the conflict, as well as in the context of a national dialogue in South Sudan.
- **Ensure that survivors of SGBV are provided with legal support**, particularly in terms of awareness raising of their rights under South Sudanese and international law and the mechanisms that are available to protect those rights. Although justice services are limited in Bentiu POC, it is still important that people are made aware of those services that are currently available and avenues for redress that would become available once the conflict is resolved. These activities can also help to ensure that when some minimum degree of stability returns to the area, justice services can be established in a manner that is responsive to the needs of SGBV survivors.
- **Explore options for lowering the threshold to report sexual assault cases** so that survivors are encouraged to come forward. This could include removing unnecessary bureaucratic hurdles, such as the need to obtain special forms for medical exams to document evidence of SGBV, establishing a referral service that links survivors with justice service providers, or ensuring access to legal aid at no cost for people who would otherwise be unable to afford legal services. This applies to a limited extent in the current setting of the POC, but will become more relevant if the security context improves.
- **Develop SGBV policy and legislation** targeting both conflict-related SGBV and SGBV more generally. This should include both national law and policy and initiatives to domesticate international norms, such as UN Security Council Resolution 1325, which affords specific protection to women in situations of conflict. The regulatory framework for SGBV should be developed in close consultation with male and female survivors of SGBV, in addition to more broad consultations with interested members of the public.
- **Design and implement a plan to comprehensively investigate and prosecute instances of SGBV by organized forces** and proxy militia. Ensure that individuals found guilty of sexual assault are criminally punished and permanently removed from military service. Pursue prosecutions of military officers for either directly ordering troops to commit acts of SGBV or for knowing about or having reason to know about acts of SGBV and not taking steps to stop it or to punish the individuals responsible.

Acknowledgements

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