

South Sudan's long crisis of justice: Merging notions of lack of socio-economic justice and criminal accountability

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Abstract

South Sudan's peace agreements offer two versions of justice: The Comprehensive Peace Agreement includes justice as a description of a better future with more equality. The Agreement for the Resolution of the Conflict in the Republic of South Sudan focuses on justice as individual criminal accountability for war crimes. However, the South Sudanese demand for justice combines and goes beyond these two conceptions of justice. Using structured and open-ended interviews conducted in January 2014, the chapter argues that justice is used to describe holistic accountability. This means accountability is understood not as individual accountability for crimes, but additionally as holding leaders formally to account for failing to deliver socio-economic justice and equality, as evoked by the spirit of the CPA. It is a request of sorts to bring leaders to justice for their lack of collective social and economic responsibility in a system where elections do not function as a way to hold leaders to account.

Keywords – South Sudan, justice needs, CPA, socio-economic justice, trial justice, lack of development, justice debate, individual accountability, culpable negligence

Introduction

In early January 2014, South Sudan's capital Juba was a far cry from the usual bustling city it had become since the signing of the Comprehensive Peace Agreement (CPA) in 2005 had focused international development and post-conflict reconstruction efforts in the city. The CPA had paved the way for a particular approach to peacemaking: The agreement's strong emphasis on power-sharing and a governing role for the former rebels of the Sudan People's Liberation Army/Movement (SPLA/M) had required the building of state and government institutions. To implement peace had come to mean building a semi-autonomous government, which in July 2011 had declared independence after a referendum.

Yet in December 2013, internal tensions in the SPLM/A marked the beginning of South Sudan's post-independence civil war. A few weeks after fighting had started in Juba, the steady stream of white UN and NGO cars that had come to symbolise international engagement in South Sudan—and that usually contributed to Juba's growing traffic problem—was missing. Most stalls in the market were closed. Hotels, usually filled with international aid workers, were either empty or occupied by SPLA generals. Thousands of South Sudanese had sought shelter in the UN compounds, having run for their lives when SPLA troops had killed civilians in the city.

The situation was not just a dramatic meltdown of post-independence South Sudan. It also laid bare broader disappointments with South Sudan's path from the CPA to its own civil war. Thoughts and emotions of those who had stayed in Juba—who had not opted to either flee to their home villages or across South Sudan's international borders—were raw and shaped by the recent events. The question dominating conversations was who was responsible for South Sudan's return to war and how those responsible were going to be held accountable. Accountability, however, was not just mentioned in connection with the recent killings in Juba. When discussing the reasons for South Sudan's turn towards civil war, many respondents

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talked about the history of the CPA and independence—and about the need for accountability for what happened during that time, that is for the years from 2005 to 2011.

The CPA had raised the prospect that South Sudan would become a peaceful and just society—and that the leaders would prioritise building such a society. Under the raw impression of violence in Juba and beyond in early 2014, respondents pointed fingers towards South Sudan's leaders. The violence showed that the leaders had failed to deliver on the promises for South Sudan. They had not been accountable to their people.

This recent history of seeking peace under the CPA and losing it under independence is important as it has shaped current expectations. A peace agreement to end South Sudan's current civil war—and the implementation of it—will need to deliver in different ways so that history does not repeat itself. 'Accountability' features prominently in these expectations. However, in international debates the term tends to be equated with accountability for deeds committed. One prominent feature of the CPA was that it did not outline any justice measures to deal with war crimes. In contrast, the Agreement for the Resolution of the Conflict in the Republic of South Sudan (ARCISS)—which the warring South Sudanese parties initially signed in August 2015 and which at the time of writing was proving impossible to implement—addressed justice in very concrete terms, establishing a Commission for Truth, Reconciliation and Healing and a Hybrid Court for South Sudan to persecute individual war criminals.¹

This suggests that a lesson had been learned from the CPA: a peace agreement that fails to acknowledge that atrocities have been committed and that perpetrators need to be held to account had proven to be incomplete. Numerous critiques of the CPA have made the point that consideration of what to do about atrocities and war crimes had been lacking. Yet, while the narrative of South Sudan's coming into existence as being built on grievances of the South

¹ *Agreement on the Resolution of the Conflict in the Republic of South Sudan* by Intergovernmental Authority on Development (IGAD) (Addis Ababa, 2015).

Sudanese against the central government in Khartoum is very strong—both among the South Sudanese and internationally—there is less attention to grievances within South Sudan about the experience of war and building peace after the CPA. These grievances are related to everyday oppression and exclusion that is not captured by the notion of South Sudan’s conflict as being centred around two groups.²

Our interviews with South Sudanese citizens from media, academia or NGO backgrounds show that expectations for justice are more complex than the measures laid out in the internationally-supported ARCiSS suggested. The ARCiSS, with its very concrete justice measures for war crimes, did not acknowledge the need for accountability in implementing a peace agreement and shaping the experience of post-war lives.

Argument and structure

We suggest that taking a broader view of justice and accountability is necessary—broader than in the CPA where justice amounted to broad promises of a better future, and broader than in the ARCiSS where justice was focused on individual accountability. Even in January 2014, under the shock of recent events in Juba and with the prospect of a long civil war looming—a prospect that sadly came true—the South Sudanese we spoke to described a vision for justice and accountability that went far beyond the question of how to deal with recent atrocities. Our respondents articulated a different justice need even during, or maybe because of, violence and atrocities. Their need for justice is rooted in an understanding of accountability that is not limited to individual accountability for crimes, but additionally evokes the spirit of the CPA and its rhetorical commitment to socio-economic justice and equality as a measure against which their leaders need to be held to account also in formal procedures. It is a request of sorts

² Lotje de Vries and Mareike Schomerus, South Sudan’s Civil War Will Not End with a Peace Deal, *Peace Review*, 29(3) (2017), 333–40.

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to hold leaders to account for their lack of collective social and economic responsibility in a system that cannot do such things through elections.

Among South Sudanese, the recent war has reinvigorated a debate about atrocities and injustices of the past. The vocabulary used at first seems familiar and rooted in a well-established human rights and international criminal justice discourse: it is about ending impunity, accountability, delivering justice for victims, as well as about truth and reconciliation. But with this new window into the past, South Sudanese in our research also articulated the understanding of justice as accountability for social, economic and political neglect, which needs to be addressed for South Sudan to become peaceful. Yet it is less clear what steps are needed to hold leaders to account for the failure to implement peace agreements that promise the pursuit of such socio-economic justice. The concrete nature of individual accountability and the fuzzy nature of socio-economic justice mean that often these two are imagined as distinctly different.

This chapter focuses on the link between the lack of socio-economic justice since the CPA and the need to hold individuals to account for war crimes. In the immediate aftermath of the fighting in Juba that started South Sudan's civil war, South Sudanese in media, academia or NGOs talked about the necessity to recognise individual culpability for violating the CPA spirit of socio-economic justice and equality. They argued that it was lack of commitment of individual leaders to the socio-economic justice principles of the CPA that had stalled South Sudan's possibility of establishing socio-economic justice, and with that, a wider peace that was more than the absence of violence and fighting.

The understanding of justice expressed in January 2014 was that there was a need to hold individuals to account not only for war crimes committed, but also for the failure to deliver on the spirit of socio-economic justice that the CPA had projected for South Sudan. This broader articulation of justice needs and the merging of notions of individual accountability and socio-

economic justice suggest that South Sudan's main post-war justice challenge is not only to find mechanisms that hold individuals to account for on war crimes. The justice challenge is to establish accountability for the leadership's failure to deliver on the ideological and developmental promises of the CPA.

This chapter first provides a broad overview of how understandings of post-war transitional justice have moved from narrow definitions of individual war crimes trials to more holistic notions that capture the need for socio-economic justice after war. It highlights the spirit of socio-economic justice that the CPA projected, and how this spirit was not reflected in current debates on accountability as captured in the ARCiSS. A brief section on methodology follows that highlights the challenges of conducting this research and what this means for its conclusions. In seeking to understand how justice needs are influenced by what are understood to be causes of the crisis in South Sudan, we then examine whether the crisis is seen as caused by individual behaviour or by broader socio-economic conditions in South Sudan. This allows us to establish the categories of 'trial justice' and 'socio-economic justice' in the next section, using these to understand how expectations of individual accountability are linked to failure to deliver on socio-economic promises. A last empirical section examines if attitudes towards solutions to the crisis are linked to the justice conceptualisations that individuals hold. A final section concludes with a consideration of what these attitudes mean for ending South Sudan's violence, but also for how the international community might be considered accountable for its role.

Background: Accountability and socio-economic justice after war

In debates about post-conflict accountability, justice tends to be equated with individual culpability for specific crimes. One of the ideas underpinning early debates on transitional justice is that without addressing the past, societies and individuals will struggle to move

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forward after periods of violence. Beyond such broad notions, however, there is no consensus on the exact meaning of the term or concept.³

While the CPA was being negotiated, the debate on transitional justice was in its infancy and anchored in human rights approaches. At the time, transitional justice was interpreted as a 'naming and shaming' practice that would deter further atrocities.⁴⁵ A more recent stream of debate has focused on the practical impact that the dominance of international criminal law frameworks has had on how justice is defined and understood,⁶ in line with Fletcher's argument that international criminal justice came to dominate understandings of post-war accountability, limiting 'the perspective of what transitional justice is and can accomplish.'⁷

Seeking to redefine post-conflict justice and accountability without limiting either to criminal frameworks, practice and scholarship have since broadened the debate to include political change as part of a just post-war transition. While in the early days, transitional justice was often understood to mean individual accountability, the debate has recently shifted towards a more holistic understanding of what justice during a political and war-to-peace transition might mean.⁸ Waldorf calls this 'transitional justice's recent attention towards historically constructed socio-economic inequalities.'⁹ Louise Arbour, in her capacity as United Nations

³ Paige Arthur, 'How "Transitions" Reshaped Human Rights: A Conceptual History of Transitional Justice', *Human Rights Quarterly*, 31(2) (2009), 321–67.

⁴ Lars Waldorf, 'Anticipating the Past: Transitional Justice and Socio-Economic Wrongs', *Social & Legal Studies*, 21(2) (2012), 171–86 at 173; Tom Buitelaar, 'The ICC and the Prevention of Atrocities', *The Hague Institute for Global Justice*, Working Paper 8 (2015), 1–19; United States Department of State Transnational Justice Institute, *Preventing a Recurrence of Atrocities through Transitional Justice* (Washington, D.C., United States Department of State Transitional Justice Initiative); Hyeran Jo and Beth A. Simmons, 'Can the International Criminal Court Deter Atrocity?', *International Organization*, 70(3) (2016), 443–75.

⁵ Laurel E. Fletcher and Harvey M. Weinstein, 'Writing Transitional Justice: An Empirical Evaluation of Transitional Justice Scholarship in Academic Journals', *Journal of Human Rights Practice*, 7(2) (2015), 177–98 at 178.

⁶ Sarah Nouwen and Wouter Werner, 'Monopolizing Global Justice: International Criminal Law as Challenge to Human Diversity', *Legal Studies Research Paper Series*, No. 63/2014 (2014), 1–23; Mareine Schomerus, "'Where Are We Going to Meet?": The LRA's Articulations of Justice and the Proceduralization of Armed Conflict' (forthcoming).

⁷ Fletcher and Weinstein, 'Writing Transnational Justice', 178.

⁸ Waldorf, 'Anticipating the Past'.

⁹ Waldorf, 'Anticipating the Past', 171.

High Commissioner for Human Rights, spelt this out in a public speech a year after the CPA had been signed:

Transitional justice... must reach to, but also beyond the crises and abuses committed during the conflict which led to the transition, into the human rights violations that pre-existed the conflict and caused, or contributed to it. When making that search, it is likely that one would expose a great number of violations of economic, social and cultural (ESC) rights and discriminatory practices.¹⁰

With these broader definitions, recent scholarship has widened and merged categories somewhat, meaning that transition is now viewed as actors seeking social transformation and institutional change.¹¹ One of the major shifts in conceptualising transition was thus from social change as a broad phenomenon to social change ‘as an outcome dependent upon the specific strategies and choices of a distinct political elite’, as Arthur writes.¹² In this interpretation, social change is no longer a somewhat disembodied process: it is driven by actions of individuals.

The importance of the link between transitional justice and development continued to be emphasised shortly after Louise Arbour’s definition,¹³ with the tension between needing to address individual culpability as well as socio-economic structures well noted.¹⁴ As Bell writes, scholarship on transitional justice has also broadened to include restorative justice and reconciliation in addition to individual accountability and political transition towards

¹⁰ Louise Arbour, United Nations High Commission for Human Rights, ‘Economic and Social Justice for Societies in Transition’ (Second Annual Transitional Justice Lecture, Center for Human Rights and Global Justice, New York University School of Law, 25 October 2006), 1–16 at 4.

¹¹ Nicolas Guilhot, ‘The Transition to the Human World of Democracy: Notes for a History of the Concept of Transition, from Early Marxism to 1989’, *European Journal of Social Theory*, 5(2) (2002), 219–42.

¹² Arthur, ‘How “Transitions” Reshaped Human Rights’, 338.

¹³ Roger Duthie, ‘Toward a Development-Sensitive Approach to Transitional Justice’, *International Journal of Transitional Justice*, 2(3) (2008), 292–309; Lisa J. Laplante, ‘Transitional Justice and Peace Building: Diagnosing and Addressing the Socioeconomic Roots of Violence through a Human Rights Framework’, *International Journal of Transitional Justice*, 2(3) (2008), 331–55.

¹⁴ Zinaida Miller, ‘Effects of Invisibility: In Search of the “Economic” in Transitional Justice’, *International Journal of Transitional Justice*, 2(3) (2008), 266–91; Priscilla B. Hayner, *Unspeakable Truths: Transitional Justice and the Challenge of Truth Commissions* (London/New York, Routledge, 2002).

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democracy.¹⁵ Various authors have made strong cases for the need to include dealing with inequality, including economic inequality, and structural violence in transitional justice interpretations.¹⁶ Waldorf highlights several studies (from Nepal, Kenya, northern Uganda and the Democratic Republic of Congo) that find that everyday survival—that is the ability to get on with a better life after atrocities—is more important to victims than seeing those who wronged them punished, arguing that ‘these findings suggest that everyday injustices rooted in historical inequalities may be as important, if not more important, for many survivors than the extraordinary injustices of gross human rights abuses.’¹⁷ This sets up a tension, however: if justice needs include the need for socio-economic justice, and individuals are seen as violating such socio-economic justice, to what extent is a justice need a demand to hold individuals to account for their failure to address everyday injustices?

Justice, accountability and development since the CPA

While the CPA put an end to the official war between the government in Khartoum and the southern rebels of the SPLA, it was more than a peace agreement between warring parties. The CPA marks an early high point of equating peace agreements with political transition, having mandated both an end to hostilities as well as laid out in a detailed way the steps to be taken to change Sudan.

When the CPA was signed and international attention zoomed in on what was then southern Sudan, peace was understood largely as a period of building: institutions, infrastructure, relationships and, ultimately, the state.¹⁸ This understanding of peace left little

¹⁵ Christine Bell, ‘Transitional Justice, Interdisciplinarity and the State of the “Field” or “Non-Field”’, *International Journal of Transitional Justice*, 3(1) (2009), 5–27 at 9.

¹⁶ Laplante, ‘Transitional Justice and Peace Building’; Miller, ‘Effects of Invisibility’; Joseph Nevins, ‘Restitution over Coffee: Truth, Reconciliation and Environmental Violence in East Timor’, *Political Geography*, 22(6) (2003), 677–701.

¹⁷ Waldorf, ‘Anticipating the Past’, 175.

¹⁸ Wolfram Lacher, ‘South Sudan: International State-Building and Its Limits’, SWP Research Paper, No. 4 (2012), 5–33.

room for consideration of how the South Sudanese were experiencing these processes of institution and state building and whether their own experience of living in South Sudan under a peace agreement felt any more 'just' than it had during war times.

The signing of the CPA put in writing a number of expected developments: the end of fighting, the sharing of leadership responsibilities, the improvement of living conditions through development, and the adherence to human rights standards. Leadership was closely linked with justice—that means, it was seen as a huge achievement that South Sudanese leadership was now justly included in running the country. Implicit in this was the understanding that broader participation in governance would bring broader benefits to those who had been marginalised by previous government models.

The way the CPA implementation was structured emphasized the role of the peace agreement as a blueprint for the transition. While the CPA made many provisions on economic and socio-economic justice, the part that was spelled out in most detail and soon became the focus of implementation was on how to organize the technical details of ending fighting and removing troops. Entirely absent were any justice provisions to address war crimes. This omission has been duly noted, either critically or as evidence of seeking a new model of political transition.¹⁹ Not anchoring justice for war crimes in the CPA was a political necessity and a result of negotiations between parties that were both guilty of atrocities against civilians. It has been argued that in the CPA, peace—understood primarily as the end of hostilities—was prioritized over justice. That may partly be true—but only partly. The omission was also a sign of the times: drafted in the early 2000s, the agreement was not infused with the vocabulary of transitional justice that came to prominence in the years directly after.

¹⁹ John Young, 'Sudan: A Flawed Peace Process Leading to a Flawed Peace', *Review of African Political Economy*, 32(103) (2005), 99–113; Christopher Zambakari, 'In Search of Durable Peace: The Comprehensive Peace Agreement and Power Sharing in Sudan', *The Journal of North African Studies*, 18(1) (2013), 16–31.

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However, the absence of any points on justice that would frame justice as individual accountability also set up an intriguing and possibly unexpected dilemma. As the language of statebuilding became the dominant vocabulary with which processes in South Sudan were described, institution-building and rule-of-law programmes framed how justice was discussed. Implicit in the dominance of this discourse was sequencing: the suggestion was that individual accountability or a broader discourse on justice would come second to institution building—if it was to be addressed at all. This was also due to the fact that for some of the concrete justice provisions to be implemented, setting up institutions was a required first step. Overall, this reflects a more general understanding of where justice would be placed—and who would administer it and how—during political transitions.²⁰

Despite this lack of concrete commitments, the CPA does acknowledge the need for ‘justice’ and offers instead an all-encompassing vision of a society that upholds socio-economic justice. The signatory parties stress that the agreement also provides a spirit of peace that was expected or hoped to ‘guarantee’, among other things, ‘justice and equality in the Sudan.’²¹ This wording creates a tight link between peace and justice, but does not directly connect the pursuit of socio-economic justice to the actions for which individuals ought to be held accountable. While the ARCiSS has introduced a different emphasis on justice procedures for war crimes, it also continues along the same path: it establishes new institutions for concrete justice procedures without introducing the notion that the leaders who are expected to uphold these institutions for the benefit of all South Sudanese ought to be held accountable if they fail to do so.

Methods and limitations

²⁰ Arthur, ‘How “Transitions” Reshaped Human Rights’.

²¹ *The Comprehensive Peace Agreement between the Government of the Republic of Sudan and the Sudan People's Liberation Movement/ Sudan People's Liberation Army*, by Government of Republic of Sudan and SPLA/M (2005), 12.

This paper draws on empirical quantitative and qualitative research conducted over two weeks in Juba in early January 2014. The data was then jointly analysed to draw out connections between the quantitative and qualitative findings. The timing of the data collection and the methods we used provided opportunities and had drawbacks, outlined below. The findings presented here draw on three types of data, collected in two ways: structured survey questions, open survey questions and unstructured interviews. Eighteen of such unstructured interviews were conducted, sometimes in small focus group settings, to ask about causes of and solutions for what was in early January 2014 still referred to as ‘the crisis.’

Open and closed self-administered questions

We asked South Sudanese working in NGOs, media or academia to answer both structured and open questions on a self-administered questionnaire. We chose these representatives because we expected that in a moment of intense political pressure and acute threats to life, it was more likely that those working in these sectors would still be willing to articulate their thoughts, as in their professions they are used to doing that. Without a doubt, this group also uses a particular language—that of an academic or more internationalized discourse—when discussing these issues. The study does not aim to be representative of the population of South Sudanese working in these sectors in Juba, and much less of all South Sudanese, since it was impossible to follow a stringent sampling strategy. As an example, in some cases questionnaires were left with organisations with the request to ask individual staff members to answer them rather than purposefully selecting respondents.

To keep a low profile, the survey was self-administered and did not ask for any personal information that would allow identification—such as name or place of work. It did ask for some demographic information, such as age, gender, languages spoken, histories of education and displacement, or experience of violence. This information provided insights: only one

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respondent, for example, identified as a native Nuer speaker. This highlights that either there were few Nuer speakers left in Juba at the time or that people avoided identifying their mother tongue on paper because the Nuer people had been targeted in the killings in December 2013. In qualitative interviews, all native Nuer speakers that were interviewed were interviewed within the UN protection camp where they had sought refuge.

Other descriptive statistics for respondents to the structured survey are presented in Table 1. Our sample is skewed towards men, although women made up roughly one third of the respondents. Respondents came from a broad age range (18 to 62), although the average age suggests many were relatively young. The level of education among respondents is high by South Sudanese standards, with almost 14 years on average. Among the respondents willing to answer the question, roughly half self-identified as a supporter of either of the parties then negotiating a ceasefire in Addis Ababa (that is the Government of South Sudan and the SPLM in Opposition), and half self-identified as not a supporter of either side. Unsurprisingly, respondents whose home is Juba dominate the sample, although the survey did capture respondents from all (then ten) states in South Sudan.

In total, 257 survey questionnaires were returned out of nearly 500 distributed. Many respondents either left a substantial number of questions in the survey blank (missing) or answered either 'Prefer not to say' or 'Do not know'. This is unsurprising in a self-administered survey in a risky environment. Many questions were of the form: 'to what extent do you believe [...] are a cause of/ solution to the crisis' (on a scale from strongly agree to strongly disagree), followed by a list of potential cause or solution items. From observation of the returned forms, many respondents seem to have picked some items with which they agreed but left other items within the same question blank. We might speculate that respondents who feel a particular factor is not a cause of or solution to the crisis would be more likely to leave this item blank. However, it may also indicate their inability or unwillingness to share their opinion. Therefore,

Table 2 and Table 3 present two sets of results, one in which missing data is omitted and one in which missing data is taken as disagreement with the questions. The latter numbers are presented in brackets.

Structured questions that respondents could answer by colouring a radio button or giving a numerical answer formed the bulk of the survey questionnaire. These questions covered respondents' interpretation of the causes of the crisis and possible solutions, basic demographics, notions of ethnicity and experience of violence. The survey questionnaire also included a number of open questions, requiring answers to be written in an open-text box. These questions asked about respondents' interpretation of causes of and solutions to the crisis that respondents were not able to express elsewhere. The questionnaire ended with three further open questions: 'What can South Sudan realistically achieve in the next five years? How can South Sudan be governed? Do you have any other remarks, including comments on the current crisis or on the questionnaire itself?'

Respondents' thoughts on the survey

This is a brief selection of answers given by respondents when asked about their thoughts about the questionnaire. They highlight how tense the situation was, but also how difficult it had been for South Sudanese to have their views heard. One respondent wrote: 'excellent questionnaire but should be kept confidential otherwise [those who have distributed it] will get problems in South Sudan' while another wrote 'confidentiality matters because this study is too politically [sic]'. A very real sense of threat was expressed: 'It is a critical and sensitive questionnaire considering the current political crisis in South Sudan. If caught by the security agents the respondent will be put in detention.'

Two persons wrote about their 'Appreciation for getting our views' or 'Appreciation for the management for giving out questionnaire', respectively. Another respondent wrote 'I don't

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have any remark to add, I will rather comment that this kind of questionnaire has to be given up to the common person down there so that the government has to know what people are thinking about what they are doing.' Another summed up: 'This questionnaire is the [only] document I have ever ever [had] that allow me to say my own view about the current crisis and more. I wish such research continues over and over again to act as a tool for check and balance.' Yet not everyone saw the usefulness of answering such questions: 'The questionnaire is too bulky and boring', was another comment.

Assigning accountability for the crisis to individuals or living conditions

What stood out from respondents' answers to the survey was a strong tendency toward individual accountability for the outbreak of the crisis. Figure 1 illustrates this: 145 (out of 257) respondents answered 'agree' or 'strongly agree' when asked to what extent individual behaviour was a cause of the outbreak of the crisis.

When confronted with other potential causes of the crisis, respondents' answers were more bifurcated. Figure 2 shows responses regarding institutions and Figure 3 regarding ordinary people's living conditions as a cause of the crisis. For these two questions, the categories 'strongly disagree' and 'strongly agree' were chosen by the largest number of respondents, with fewer respondents opting for the more moderate answers 'agree' and 'disagree'. The immediate follow-up question differentiated institutions further: the justice system, traditional authorities, parliament, the executive and civil society. Respondents noted that the justice system is an important cause of the crisis (Figure 4), along with the executive. This tells us three things: Firstly, that respondents believe that individual behaviour matters greatly. Secondly, that everyday experiences of socio-economic injustice matter as a perceived cause of the crisis according to some respondents but not others. And thirdly, that institutions (or the processes they seem to offer) are important, including institutions that promise to

address the injustices committed by individuals and experienced or perceived by the population.

We see that respondents assign responsibility for the crisis to individuals. When asked in interviews how these individuals could correct this, two points were repeatedly made. The first point was that individual leaders needed to at the very least change their behaviour constructively. The second point was closely connected: if individuals were unwilling to change, a functioning justice system would be able to deal with the issue of individual behaviour. This points towards an understanding that some sort of *trial justice*—more on how that is defined follows below—might help to address both distinct crimes or more broadly, destructive individual behaviour.

Our respondents also emphasized that they have come to view the failure to achieve socio-economic justice as a matter of individual culpability, drawing on their experience of leadership by prominent individuals. It might sound far-reaching to suggest that individuals should be just as closely associated with accountability regarding their pursuit of socio-economic justice—which could be defined as narrowly as corruption or as broadly as failing to establish fair policies and pursue development evenly across the country—as they should be associated with accountability for individual crimes committed during war. However, we see in the responses that narratives on individual accountability and the failure to achieve *socio-economic justice* after the CPA are merging.

In terms of dominant transitional justice discourses, these two groups could be seen as representing the narrower definition of ‘transitional justice as individual accountability for crimes committed in war’ and the more holistic one that includes ‘notions of socio-economic justice.’

Individual versus conditions: what are trial and socio-economic justice?

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To identify how respondents understand socio-economic justice and trial justice, we operationalized respondents' perceptions of justice and individual accountability. To unpack this, we focus on those respondents who hold individuals accountable for the crisis, in the sense that they state that individual behaviour is a cause of the current crisis. Informed by qualitative interviews, we distinguish between respondents who further focused on the justice system and other institutions, and those who further focused on ordinary people's living conditions.

Hence, we distinguish two categories:

1. Those respondents who think both individual behaviour and institutions (including the justice system) are a cause of the crisis, and
2. Those respondents who think that both individual behaviour and socio-economic conditions are a cause of the crisis.

Guided by qualitative interviews, we consider the category one respondents to be indicative of respondents holding 'trial justice' views and category two to be indicative of respondents holding 'socio-economic justice' views. Although these two categories can overlap, we found very little overlap in practice (see below).

Table 1 and Table 2 illustrate a cross-tabulation of individual and institutional cause, and individual and socio-economic cause respectively. The numbers indicate the number of respondents who did not leave the question blank or answered 'unknown', 'refused' or 'neutral', that fall in each category. The cells we have taken as indicative of trial justice and socio-economic justice views of the causes of the conflict are relatively well-populated cells, the second largest category in both cross-tabulations. We could categorize 38 respondents as supporting 'trial justice' and 40 as supporting 'socio-economic justice'. One important point to note is that since answers were not restricted to only one choice, respondents could be categorized as holding concepts of justice simultaneously. This would not be a contradiction. However, we found very little overlap between the trial justice and socio-economic justice

category: Only seven respondents fell in both.²² This increases our confidence in our method of operationalizing ‘trial justice’ and ‘social justice’ as a cause of the conflict: respondents seem to make clear distinctions between the two types of justice.

Notions of individual accountability and trial justice

It is worth exploring how exactly trial justice—that offered the path of holding individuals accountable through justice institutions—was described in the immediate aftermath of the start of the crisis. The clearest conceptualization respondents offered was using existing mechanisms for clearly defined crimes, such as the International Criminal Court’s (ICC) for dealing with war crimes, crimes against humanity and genocide. A typical answer was ‘the two leaders should be taken to ICC because both of them have committed atrocities.’²³ This answer can also be interpreted to show the extent to which respondents are influenced by a developing international justice discourse. In an interview, a respondent—a government official who had sought shelter in the UN camp—stressed that government actions were also individual actions, pointing directly to the individual leadership of President Salva Kiir:

If you as a government burn down houses and kill innocent people, why? Any government under leadership of Kiir, we will not buy it. Because you cannot kill your own people and burn down government houses [as he did with the house of the Vice President Riek Machar]. Such mentality [of President Kiir]. It’s the house designated for the [Vice President]. It does not belong to anyone. Now all government buildings

²² Not presented are alternative results, obtained when defining trial and socio-economic justice in an alternative, broader way by allowing the less definitive answers equal space. This broadening would allow for more respondents to be characterized as holding one or both views. Under the alternative definitions, all respondents answering ‘agree’ or ‘strongly’ agree to the question ‘To what extent do you agree that ordinary people’s living conditions are a cause of the crisis’ fall into the category of ‘socio-economic justice’, and all respondents answering ‘minor cause’ or ‘major cause’ to the question ‘Do you think the justice system is a cause of the crisis’ fall into the category of ‘trial justice’. Taking this alternative approach, 174 respondents are classified as holding the ‘trial justice’ view and 52 respondents as holding the ‘socio-economic justice’ view. Overlap between these two categories is more substantial: 38 individuals fall in both categories under this alternative definition.

²³ Survey respondent 188.

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are down and it's the same government. And the international community is not condemning them.²⁴

However, individual accountability was not just assigned to those who had been linked to atrocities in the three preceding weeks, but crucially was broadened to individual accountability for failure to pursue socio-economic justice. A respondent argued that she saw individual responsibility also in the neglect of former Vice President Riek Machar to use his power while he was still in office to address the government's shortcomings, anchoring her point in an understanding of socio-economic justice:

In Addis [during meetings and negotiations held there to end the crisis] the rebels don't say what they want. Because they were part of the government. And they have eaten [embezzled] all our money. No roads, no water. Eritreans and Ethiopians are now taking the water to our doors, not our government. ... You [the rebels now negotiating] have been in the government. Why did you not bring concerns then? Why do you wait until after the dismissal [of the Vice President]?²⁵

Some expressed the need for Machar to be held accountable for choosing unlawful ways of protesting against the government: 'If Machar had valued peace we got through dialogue, he would have waited for elections. Even in our constitution it says do not raise arms against your brother. He has gone against our constitution.'²⁶

Others also highlighted that individuals had not used their power to address the visible problems: 'And Rebecca Garang [widow of former SPLA leader John Garang who became a Vice President of South Sudan in the February 2020 unity government], she should stand like a mother. She should tell Machar to stop. Instead she is supporting the war.'²⁷ Some highlighted

²⁴ Interview with government official (Juba, South Sudan, 26 January 2014).

²⁵ Interview with female businessperson (Juba, South Sudan, 23 January 2014).

²⁶ Interview with female religious person (Juba, South Sudan, 17 January 2014).

²⁷ Interview with female member of a group working on healing and reconciliation (Juba, South Sudan, 18 January 2014).

a long list of personal failures of individuals within the government. These ranged from harbouring personal militias to opaque party politics and constitution-drafting processes or the President's dismissal of elected officials.²⁸

Leadership concerns with regards to individuals were also expressed not just for the national level: 'The region of Upper Nile will really suffer a lot. Because the nature of the community found in those states, the leadership found in those states to me are ridiculous. I come from that region, but I am not happy with the kind of leaders we have. After the death of Garang we had nobody to unite the people of that region.'²⁹ This particular comment proved almost prophetic, with both parties to the conflict fragmenting further into different factions as the war progressed.³⁰

The lack of leadership was a prominent theme in both interviews and survey answers. In a long answer to one of the open questions in the survey, one respondent wrote:

People... have the feeling of lack of direction of the country. There is high level of corruption and feeling of dictatorship from the leadership. —The random change of government—injustice for various individuals—lack of trial violators and lack of accountability of many violators—high level of corruption and non-accountability—unresolved bones and mostly undermined not taking into account the process of reconciliation of the people of South Sudan before development is taken into account.

—The crisis has not only created fear but lives have been lost which brings us back to square one of 2005—there will be reconciliation and resettlement for the next five years—there is need to have thorough investigation on what

²⁸ Interview with male high-ranking SPLA official (Juba, South Sudan, 26 January 2014).

²⁹ Interview with male NGO worker from Jonglei (22 January 2014).

³⁰ John Young, *Isolation and Endurance: Riek Machar and the SPLM-IO in 2016-2017* (Geneva, Small Arms Survey, 2017).

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exactly led to ongoing crisis and those perpetrators must be brought to book —the international media should be taken into account...as their report doesn't reduce the level of tension and but rather escalate tensions and fear among south Sudanese inside and outside the country.³¹

The notion of individual accountability—attractive to many who wanted to see trial justice done for atrocities committed—was however also highlighted as being rather complex in the South Sudanese setting. One respondent argued that: ‘We don’t know who is accountable to who? If this man committed a crime and he belongs to my community, even ourselves we don’t know how to do this.’³² This follows a long grappling with accountability within communities in South Sudan and other contexts—for example in neighbouring Uganda—for decades.

The crisis blurred the categories of good and bad leadership said one respondent who holds a leadership position in her community. Her own role as a peacemaker and someone who felt the need to protect her community highlighted the difficulty of assigning accountability: ‘In an indirect way, I even mobilise [others to fight] because I tell them that they have to defend themselves. So in an indirect way, I’m encouraging [violence].’³³

In interviews, respondents talked further about how to find ways to address individual negligence for South Sudan’s unequal socio-economic reality. One respondent reflected that it was very common to overlook such finer points of accountability in order to achieve a peace agreement since it was already difficult enough to establish accountability for concrete crimes: ‘Those things have always been sacrificed in the name of a peace agreement. Only if you deal with them absolutely in criminal trials. They have to work out the modalities. Do you target the leaders? The military? The individual who committed the atrocities?’³⁴

³¹ Survey respondent 230.

³² Interview with male former local government official (Jonglei State, Juba, South Sudan, 21 January 2014).

³³ Interview with female MP from an area highly affected by fighting (Juba, South Sudan, 14 January 2014).

³⁴ Interview with male intellectual (Juba, South Sudan, 20 January 2014).

Another respondent—interviewed inside the UN compound where he had sought protection, having been persecuted by government forces despite being a senior member of the government—highlighted the need for a broader debate: ‘Another thorny issue is definition of the problem. What is it that we are going to address?’³⁵ One respondent explicitly stressed how individuals within groups of leaders had contributed to delivering South Sudan’s underdevelopment and violence: ‘The political parties and civil society, we are criminals. We have not raised awareness that [South Sudan’s development and peace] is not for jobs, but to be free.’³⁶

A representative of the opposition spelt out what this might need to mean. Peace talks, he argued, would now first need to discuss root causes of political issues, governance challenges such as rule of law and participatory human rights, a willingness to have outside actors—not the government or the AU (which he did view as too involved in the matters to be considered an outsider)—investigate the killings in Juba, the need for security sector reform to establish a national character of the army, or the need to establish federalism. Further, he argued, there was need to look at the history of development in South Sudan since the CPA to acknowledge that ‘some areas were better than others. This time we are digging deep to put all issues on the table.’³⁷ However, he also acknowledged that achieving both individual accountability and a broader debate on what had gone wrong in South Sudan’s socio-economic development might prove impossible. He argued that a ‘genuine restructuring is needed’ and that future debates on socio-economic reality cannot be about individuals and their leadership.³⁸ This opinion contrasts with that of the majority of the survey respondents: a clear majority agreed that individual behaviour was a cause of the crisis (see Figure 1).

³⁵ Interview with government official (Juba, South Sudan, 26 January 2014).

³⁶ Interview with high-ranking male SPLM official (Juba, South Sudan, 19 January 2014).

³⁷ Interview with male former state government official (Juba, South Sudan, 21 January 2014).

³⁸ Interview with male former state government official.

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However, the way various conceptualisations intersect also expresses that our respondents do not see a clear distinction between accountability for war crimes and accountability for failure to establish socio-economic justice—which, by extension of viewing it as a cause of the crisis is directly linked to renewed violence. Respondents imagined formal justice procedures not just for war crimes, but also for failures of leadership in South Sudan's post-conflict development. Both supporters of trial justice and socio-economic justice supported formalized justice procedures, suggesting the accountability procedures for violations of socio-economic justice principle is part of how justice is understood.

Trial justice and socio-economic justice conceptions and solving the crisis

From respondent answers to the survey regarding the causes of the conflict, we previously created indicators of those who hold 'trial justice' and 'socio-economic justice' views. We now ask whether those who use 'trial justice' and 'socio-economic justice' conceptions of the *causes* of the crisis hold different opinions on potential *solutions* to the crisis.

In early January 2014, when this research was conducted, urgent talks were being conducted, but a sense that the crisis would be solved quickly was far off. Respondents' ideas on solutions ranged from banning individuals from entering the country, deposing of the president, incarcerating opposition members to bringing in foreign militaries to stop fighting. To measure attitudes towards solutions, we asked: 'To what extent do you agree that the following can bring an end to the current crisis and bring improvements for the future?' Answers are scaled on a five-point scale (strongly disagree/disagree/neutral/agree/strongly agree). For ease of presentation, we convert this into a two-point scale, with categories (strongly) agree and (strongly) disagree, considering the answer 'neutral' as missing. Tables 4 and 5 provide a cross-tabulation of these measures with our indicators of 'trial justice' and 'social justice'.

Some differences are noticeable when comparing respondents holding the ‘socio-economic justice’ and ‘trial justice’ views of the causes of the crisis. ‘Socio-economic justice’ respondents express more favourable opinions towards peace-keeping and a truth-telling process and a less favourable opinion of military solutions, which would involve fighting until one party was defeated. ‘Trial justice’ respondents display slightly more support for military solutions but express less support for peace-keeping or truth-telling. Similar patterns hold for both definitions of trial and socio-economic justice (see footnote 23).

Strikingly, respondents holding a ‘socio-economic justice’ and ‘trial justice’ view on the causes of the crisis do not differ noticeably when asked whether prosecution in a court of law is a solution to the crisis. Those who feel that ordinary people’s living conditions are a cause of the crisis feel, to a similar degree as others, that this is a concern of the courts. Similarly, those respondents are also strongly in favour of international sanctions on individuals.

Conclusion

In early 2014, citizens’ articulations of justice needs were much shaped by the recent events and violence. However, it is remarkable that even in such times of violence, many respondents articulated that their justice needs included socio-economic justice and highlighted that individuals had a role to play in achieving social and economic equality and a South Sudan that delivered on its promise of peace made in the CPA.

South Sudan’s civil war with its shocking atrocities has foregrounded the debate on individual accountability. Respondents in our study identify a broad justice void, going beyond individual crimes committed. This justice void might or might not be directly related back to deeds of individuals. Pertinent questions include what measures, processes or experiences (among them passing of time) could address the identified justice void. What would rectify identified bad behaviour of individuals? How would individuals and communities experience

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benefits of justice adjustments? Would changed behaviour or visible attempts at betterment (for example apologies) establish a sense of accountability, rather than impunity? Would these measures make society more just?

Establishing socio-economic justice and tackling socio-economic inequalities through distributive justice, rather than through supporting the elite and addressing individual accountability for war crimes, is vital in a post-conflict setting.³⁹ What this paper argues is, however, that our respondents see accountability for failure to establish socio-economic justice and tackle inequality as similarly worthy of formalised accountability procedures as atrocities. Since we found no difference among our respondents in support for formalised processes in either the trial justice or the socio-economic justice camp, it would be useful to consider the implications of this. One suggestion may be that more formalised justice processes are wanted also for failures to implement socio-economic justice.

The lack of will or action to help establish socio-economic justice also highlights international shortcomings. Some of the responses are very clear not just on the failure of national leaders to take particular actions, but also on international failures.

In justice procedures, the concept of culpable negligence describes not taking action, fully cognisant that this lack of action will have an adverse effect. It might be that culpable negligence could become a useful concept for broader thinking on accountability of actors regarding the socio-economic circumstances that the South Sudanese experience.

This research highlights that once the discourses on development and accountability are merged—as many of the respondents did—a different justice challenge emerges. This broader understanding of South Sudan's justice void does not suggest that atrocities will go unpunished or that a promise of socio-economic justice will do the trick. It does highlight that it might be necessary to consider the broader process towards living without violence and with socio-

³⁹ Rhoda E. Howard-Hassmann, *Reparations to Africa* (Philadelphia, University of Pennsylvania Press, 2011).

economic justice: justice in South Sudan does not start from crimes committed, but from what is lacking in society. Fletcher and Weinstein argue that the field of transitional justice is generated through practice and scholarship.⁴⁰ If practice generates how justice is understood, then it is important not to let practice of individual accountability for war crimes become the dominant understanding of justice needs since it does not capture how justice needs are articulated—at least in the case of South Sudanese working in academia, media or NGOs.

⁴⁰ Fletcher and Weinstein, 'Writing Transnational Justice', 192.

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Table 1: Descriptive statistics

Variable	Obs	Mean	Min	Max
Gender				
Male	250	68%		
Female	250	32%		
Age	234	31.8	18	62
Years in education	233	13.8	2	22
Employment				
Fulltime, paid	236	61%		
Parttime, paid	236	10%		
None	236	16%		
Supporter of either party negotiating in Addis	165	48%		
Has been injured or lost family member through violence	257	49%		
Home is in Juba	230	64%		
Home State				
Northern Bahr-el-Ghazal	167	5%		
Western Bahr-el-Ghazal	167	4%		
Eastern Equatoria	167	17%		
Central Equatoria	167	48%		
Western Equatoria	167	10%		
Upper Nile	167	3%		
Warrap	167	4%		
Lakes	167	4%		
Unity	167	2%		
Jonglei	167	3%		

Table 2: Institutions and individuals as the cause of the crisis

	The behaviour of individuals is a cause of the current crisis	
	(strongly) disagree	(strongly) agree
Institutions (including justice system) are the cause of the current crisis	(strongly) disagree 6 [12]	44 [56]
	(strongly) agree 11 [16]	<i>“Trial justice”</i> 38 [38]

Missing: 60 [37]

Refused / unknown: 50 [50]

Neutral: 48 [48]

N: 257

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Table 3: Socio-economic circumstances and individuals as the cause of the crisis

The behaviour of individuals is a cause of the current conflict			
		(strongly) disagree	(strongly) agree
People's socio-economic circumstances are a cause of the current crisis	(strongly) disagree	12 [14]	52 [68]
	(strongly) agree	4 [8]	<i>“Socio-economic justice”</i> 40 [40]

Missing: 65 [43]

Refused / unknown: 49 [49]

Neutral: 35 [35]

N: 257

Table 4: Perspectives on justice and views on solutions

	Justice definition	
	Trial justice	Social Justice
	(narrow)	(narrow)
Negotiations in Addis		
(Strongly) disagree	7	3
(Strongly) agree	23	34
Other negotiations in South Sudan		
(Strongly) disagree	7	8
(Strongly) agree	20	25
Military solution		
(Strongly) disagree	16	28
(Strongly) agree	6	3
Peacekeeping		
(Strongly) disagree	12	9
(Strongly) agree	11	25
Prosecution in a court of law		
(Strongly) disagree	10	14
(Strongly) agree	16	20

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National dialogue

(Strongly) disagree	3	3
(Strongly) agree	25	30

International

sanctions on
individuals

(Strongly) disagree	10	8
(Strongly) agree	16	25

Organize a truth-
telling process

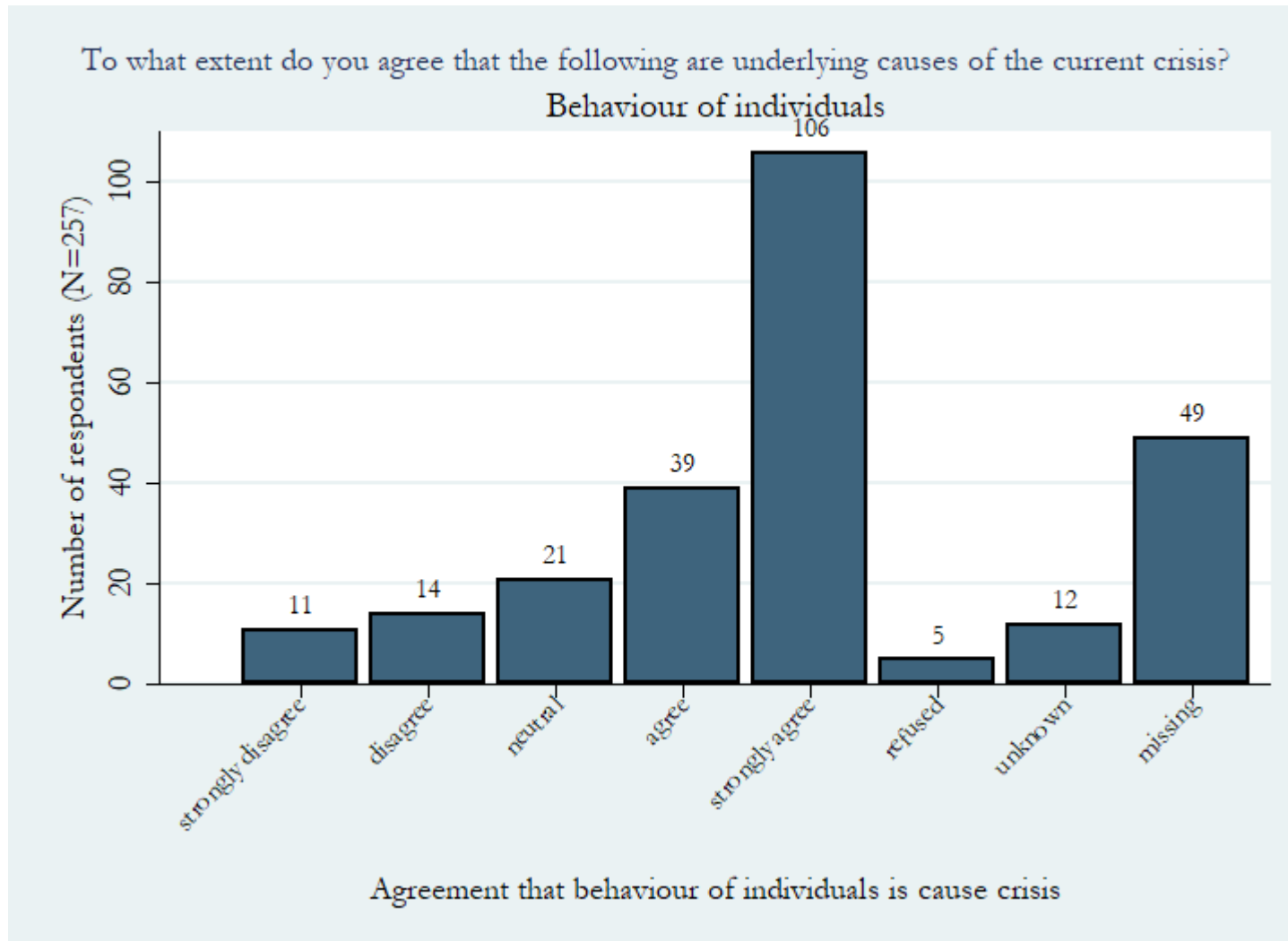
(Strongly) disagree	8	5
(Strongly) agree	19	29

Constitutional and
electoral review
process

(Strongly) disagree	5	6
(Strongly) agree	24	29

TOTAL classified	31	40
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Figure 1: Individuals as cause of the crisis



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Figure 2: Institutions as cause of the crisis

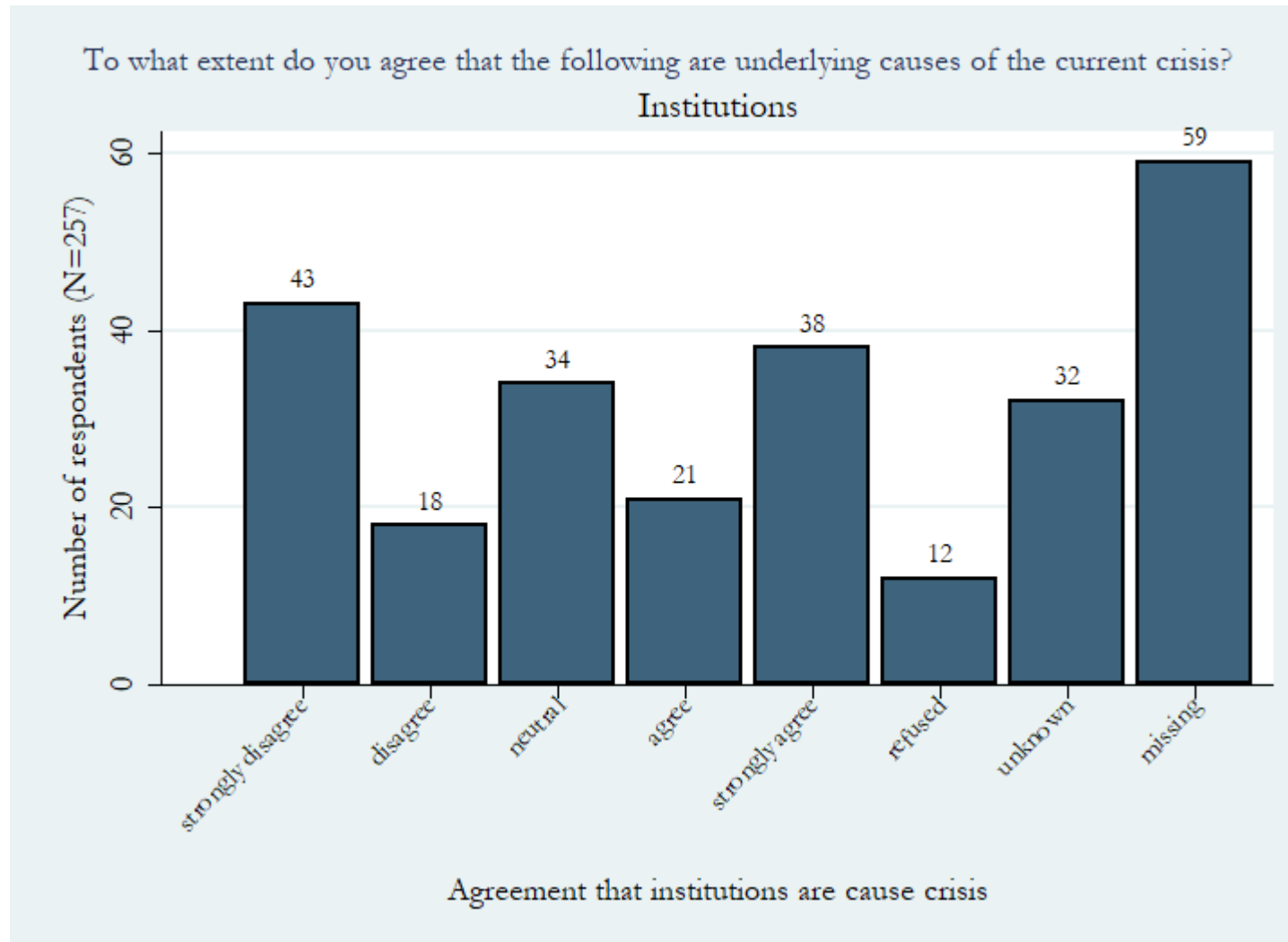
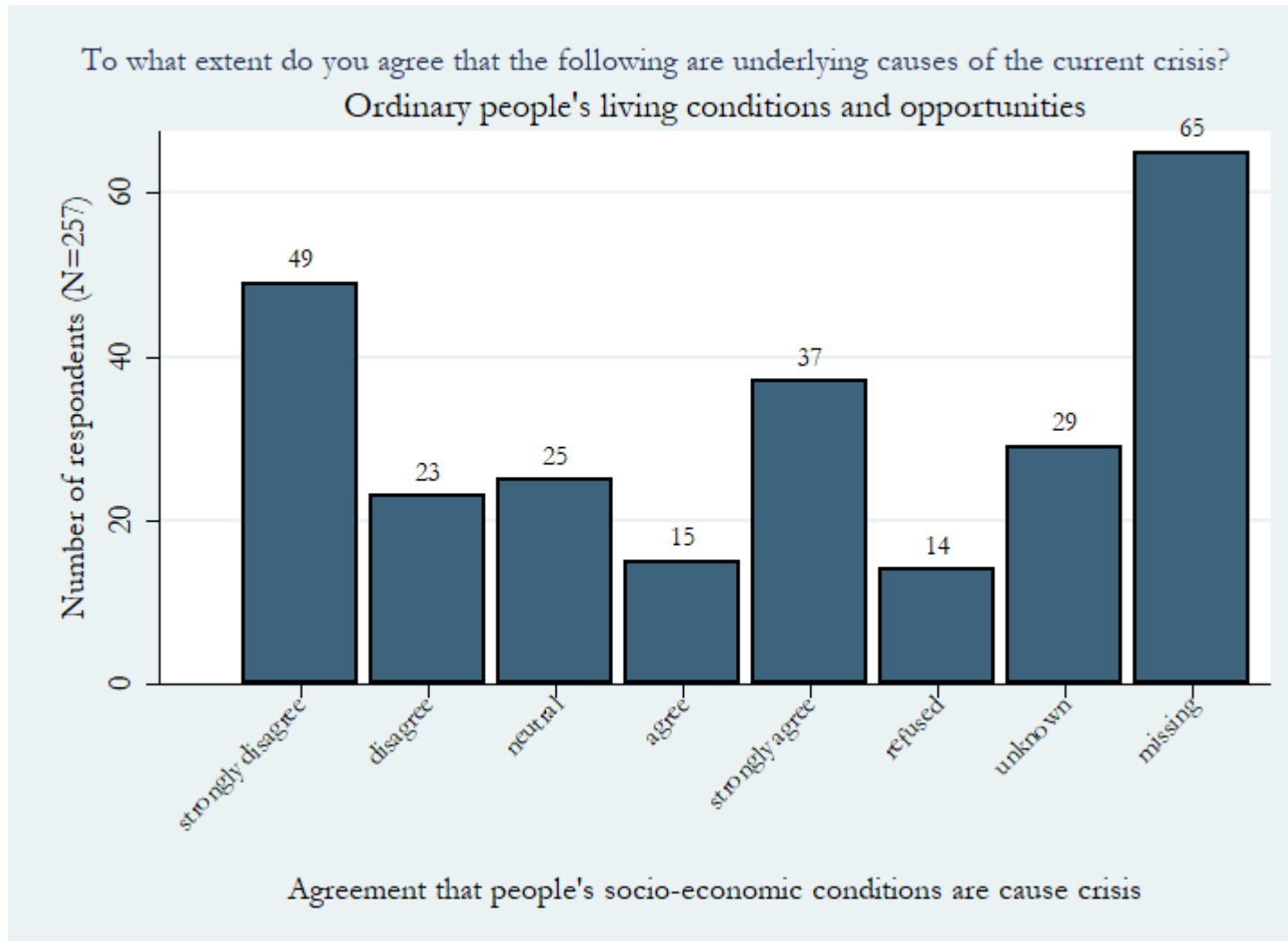


Figure 3: Ordinary people's living conditions as cause of the crisis



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Figure 4: Justice system as cause of the crisis

