Exploring Primary Justice in South Sudan: Challenges, concerns, and elements that work

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Cordaid
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Colophon

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South Sudan country report of the project 'Supporting Primary Justice in Insecure Contexts: South Sudan and Afghanistan'. This project was funded by NWO-WOTRO in collaboration with the Knowledge Platform on Security and Rule of Law.

Carried out by:
Van Vollenhoven Institute for Law, Governance, and Society, and Cordaid in cooperation with the Justice and Peace Commission of the Catholic Diocese of Tombura-Yambio

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Preface and acknowledgment

This report is a reflection of a socio-legal research project that started on 1 October 2014, as a collaboration between Cordaid and the Van Vollenhoven Institute (VVI) of Leiden University's Law School. The idea for this collaboration between academics and practitioners came about at the Knowledge Platform on Security and Rule of Law, organized by the Netherlands Ministry of Foreign Affairs. When the Netherlands Organisation for Scientific Research (NWO) launched a call for 'applied research'-proposals titled 'Embedding Justice in Power and Politics', the VVI and Cordaid discussed with their partners in Afghanistan and South Sudan as well as some leading academics what research would be most interesting and useful. The Justice and Peace Commission (JPC) of the Catholic Diocese of Tombura-Yambio (CDTY) and The Liaison Office (TLO) were both keen to work together on the interaction between customary and statutory justice authorities, in particular in relation to land and family disputes. The consortium therefore applied to the NWO-call with a proposal titled 'Supporting Primary Justice in Insecure Contexts: Afghanistan and South Sudan'. The consortium is grateful for the funding that was provided by NWO-Wotro for this project.

The author would like to take this opportunity to acknowledge the contributions of our field researchers with the JPC in South Sudan. Their curiosity, enthusiasm and expertise have been vital to this project. It is through their eyes that I was able to see things that I alone would have never seen or understood. Some of the most important translating processes happened not between interviewers and interviewees, but within our research team. For reasons of privacy and safety, we have agreed not to disclose the names of the field researchers here. Former JPC-manager Mr Minaida Peter Giamusu Kpio was instrumental in the early stages of this research project, and helped to write the Epilogue to this report.

The research team should also like to thank the countless respondents in South Sudan who took the time to sit with us to share their views and experiences. Some respondents had been interviewed many times before, for others this proved a strange new experience. This report aspires to offer a fair depiction of the complicated choices in life and disputing that our respondents have had to make. By at times citing respondents at length, we hope that this report gives a voice to those who are often not heard.

Our fieldwork in South Sudan has received generous assistance from various sides. The staff of the Catholic Diocese of Tombura-Yambio facilitated the research with space for the research team to meet and accommodation for the international researchers. The local government, judiciary and police were generally very accommodating – they greeted our curiosity with interest and constructive feedback. We hope that our research has succeeded to strike that same right balance between critique and constructive ideas for improvement.

Pritha Belle, Cherry Leonardi, Sarah Marriott, Peter Minaida and Suzan Yeno all read versions of this report, and contributed useful additions and corrections. Carolien Jacobs and Jan Michiel Otto were instrumental in every phase of this research project. A number of people provided useful comments during our final expert workshop in Leiden, for which we are grateful. Hannah Mason edited the final drafts of the chapters, and has helped make our writing more coherent and accessible.

This word of gratitude is not meant to dilute any responsibility for the content of these pages. The findings in this report are my responsibility, and any critiques or questions are best brought to me.

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1. Introduction

> When following all these steps, nobody helped me. I did it all alone because the situation was worsening, and I decided to go before the law since we are staying in the area of the government which has laws and regulations to be followed.
> *Justice-seeker, Akorogbodi-area in Yambio*

South Sudan has captured international headlines in recent years with humanitarian crises and meta-level political developments: the Comprehensive Peace Agreement (2005), independence (2011), the outbreak of the South Sudanese Civil War (2013), its formal end (2015) and the return of Vice-President Riek Machar (2016). For ordinary South Sudanese these events are historic and significant, but everyday life occurs in the countless days in between. Children are born, people get married, farmers work their land, herders care for their cattle, fights occur, churches fill up on Sunday, boys watch Premier League football.

This study in South Sudan's Western Equatoria State (WES) delves into people's everyday 'concerns and conceptions of justice,' and what responses and remedies 'justice providers' offer[1]. It aspires to show how (and to what extent) laws and institutions drawn up in the centre[2] are received, translated and appropriated by people living in the periphery. Land and family matters are cornerstones of life for this largely agriculturalist part of the country, and so it is on these subject matters and their intersections that the report focuses most strongly. But the scope of our research expands slightly at times to include phenomena that help elucidate the interaction between statutory judges, customary authorities and the local government.[3]

This introductory chapter provides some background on the context of the country and region, and about this research's methodology. We then introduce seven case studies, in-depth accounts of present-day land and family disputes in Western Equatoria State and the workings of the customary and statutory authorities. These case study reports present findings of a first, exploratory research phase of this project, enriched with the findings of a second research phase. Importantly, that second research phase has been

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1 The four main research questions were:
   1. To what extent, how, and with which degree of success do men and especially women facing serious justice concerns, notably property dispossession and other property disputes, engage with the available state and non-state mechanisms and practices to achieve justice and peace?
   2. To what extent do the available justice institutions provide adequate responses and remedies?
   3. How can successes and failures in dispensation of justice through state and non-state mechanisms be explained, in particular by reference to:
      a. Institutional and legal aspects of justice mechanisms and their interrelations;
      b. interaction and communication between justice-seeker and provider;
      c. contexts of severe insecurity and power imbalances;
   4. Which norms, mechanisms and practices among the whole spectrum of justice providers proved to be the main 'elements that work'? How can justice interventions effectively build upon those elements, and strengthen the linkages and complementarity between them, shaping coalitions for primary justice, for women in particular, and ultimately, adequate primary justice systems at the district/county level?

2 The centre-periphery dichotomy is based on works by Alex de Waal on the Sudan. Importantly, Yambio is peripheral to the national government in Juba, but as a state capital it is in turn a centre relative to its own periphery in more marginal parts of the state. This is true both in terms of laws (through the state-level legislature), policies (through the respective state ministries), and more generally socio-political relations.

3 Unless otherwise indicated, the term 'local government' here is used to refer to the state's county, *payam* and *boma* administration. The Local Government Act (Section 15) does not include the state-level administration in its definition of 'local government'.

hampered by the consequences of the violent conflict that gradually engulfed WES over the course of 2015 and early 2016. Because this conflict has affected everything – communities, the justice sector, individual cases and also our research effort – we will devote an epilogue to it.

1.1 Legislative framework

Although this report is primarily about the everyday experiences of justice seekers and providers, it is important to offer a brief introduction into the legal framework in general. Customary courts and traditional authorities will be elaborated on in the second case study, because even though they are of fundamental importance locally, the legal framework guiding their conduct is relatively meager. Each case study will offer some additional remarks on the specific legal context. In our conclusion, we will address some of the divergences between law and practice.

The South Sudanese government has devolved a wide range of powers to its ten states in the Transitional Constitution (2011).[4] State governments are headed by an elected governor,[5] who in turn appoints a cabinet of ministers. One level lower, the county government is headed by a county commissioner who on paper should be elected, but is in practice often chosen by the governor. Below the county are the *payam* and *boma* level with an administrator each.

South Sudan has a hybrid legal system where both customary and statutory authorities and laws play vital roles. Chiefs are incorporated as dispute resolvers in customary A, B and C-courts at the *boma*, *payam* and county level respectively. Each of these courts has a rather limited jurisdiction (see table) and none of them has the competence to hear criminal cases except for "those criminal cases with a customary interface referred to it by a competent Statutory Court" (Local Government Act, 2009: Section 98: 2). The Act also established an appellate system from the customary courts to the judiciary courts[6] which conduct is regulated in the Judiciary Act (2008). And so appeals can go from the customary court system to the county court,[7] the state-level high court, the court of appeal in Juba,[8] and – ultimately – to the Supreme Court in Juba.

The high court has jurisdiction to try original suits "without limit as to value or subject matter" (Code of Civil Procedure Act, 2007, Section 20: 1). As the highest statutory judicial authority at the state level, the president of the high court also has the power of "administrative supervision over the Courts within his or her Jurisdiction" and is answerable to the governor of the state in which it operates for the functioning of the state judiciary (Judiciary Act, 2008, 15: 3).

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4 Specifically in Schedule (B): Powers of States.

5 Whereas the previous Governor Bakosoro was elected, the current 'caretaker Governor' of WES/Gbudue Colonel Patrick Zamoi was appointed by President Salva Kiir after he had sacked Bakosoro.

6 The statutory *payam* courts have a very limited jurisdiction. They can hear criminal cases only summarily and sentence to no more than one year imprisonment and/or a fine not exceeding 300 SDG (Code of Criminal Procedure Act, 2008: 15). It can hear civil suits with a value no greater than 500 SDG. Importantly, since independence in 2011 South Sudan has a new currency – the South Sudanese Pound – but there hasn't been an amendment to specify the maximum fine in SSP.

7 The jurisdiction of county courts is specified in two pieces of pre-independence legislation, and depends on whether the court counts a first grade or second grade magistrate. In case of the former, it has jurisdiction "to try any suit without limit as to value and shall also have jurisdiction to hear and determine appeals against judgements and orders of Payam Courts" (Code of Civil Procedure Act, 2007, Section 21: 1). In terms of sanctioning powers, it is limited to a maximum of seven years imprisonment and fines not exceeding SDG 5000.

8 There are three courts of appeal in South Sudan, one for each former province.

Table 1: Judicial Hierarchy below County-level by Law

Local government unit	Local Government Act: customary courts	Judiciary Act: judiciary courts
County	***C court: county paramount chief*** Head chiefs as members Appeals **from** B courts and **to** county judge Criminal cases referred by statutory courts; cross-cultural civil suits Supervised by county commissioner (not judiciary)	**County judges** (first and second grade)
Payam (Note: it is not clear whether the courts at this level provided for by both acts are to be combined as a single court or exist in parallel.)	***B (regional) court: head chief*** Chiefs as members Appeals **from** A courts and **to** C court Major customary disputes (including land); minor public order cases Supervised by paramount chief	***Payam* judge** (legally trained)
Boma	***A (chief) court: executive chief*** Subchiefs as members Appeals **to** the B court Family/marriage cases, traditional feuds, local administrative cases Supervised by head chief	

Note: Arrows denote direction of appeal.

Source: Leonardi et al, 2010.

These introductory remarks are by no means comprehensive, but they offer the reader a basic framework within which to understand the more nuanced and detailed accounts of specific functionaries and processes presented in the case studies. It also allows for an analysis of the extent to which administrative and judicial dispute resolution systems function in line with the relevant legislation.

1.2 Political context

In 2005 decades of civil war between the Government of Sudan and the Sudan's Peoples Liberation Movement/Army (SPLM/A) came to an end when the Comprehensive Peace Agreement (CPA) was signed. The CPA provided that the South would vote in a referendum on 9 January 2011 to determine whether its people wanted unity or separation. 98.83 percent voted for separation, and on 9 July 2011 South Sudan became independent.

The Sudanese state had been one that focused its resources on the centre, at the expense of peace and prosperity in the peripheries (Waal 2007). Since the early 1990s, it had also pursued the twin policies of Arabisation and Islamisation, even at times subjecting the southern – largely Christian – population to sharia-based law. Under the leadership of Dr John Garang (1983-2005), the Sudan's Peoples Liberation Movement/Army (SPLM/A)[9] had initially not fought for secession, but for a 'New Sudan' where religious and ethnic diversity would be accommodated by a secular state. His was not just an African, Christian vision, but one which included the peoples of Darfur, 'the three Areas'[10] and East Sudan. It was only later and in part in response to Sudan's resistance to talk seriously about secularism, that the SPLM began to call for self-determination (Johnson 2007).

Independence in 2011 provided the South Sudanese with the opportunity to re-conceptualise their identity, and to re-write its laws to fit it. The Transitional Constitution (2011) reflects that ambition by aspiring "to lay the foundation for a united, peaceful and prosperous society based on justice, equality, respect for human rights and the rule of law." Independence was envisioned to be more than a change of rulers, it was hoped to mean a change of rule – leading to more equitable modes of governance that would accommodate diversity (Deng 2011).

But since independence,[11] violent conflict has divided South Sudan and its fledging national identity. On 16 and 17 December 2013, shots rang out in several parts of Juba. To this day, it remains contested 'who started,' but it is clear that forces loyal to President Salva Kiir clashed with those loyal to the then-recently dismissed First Vice President Riek Machar. The patterns of mobilisation and violence displayed clear ethnic elements, but the rapid escalation into civil war is better explained by reference to the "power struggle within the SPLM, the general militarisation of South Sudanese society, and the country's weak governance" (Rolandsen 2015).[12] Although a formal peace deal was signed on 26 August 2015, violations have been widespread. With the long awaited return of First Vice President Riek Machar to Juba on 26 April 2016, an important step towards the implementation of the peace agreement was made. Hopes that peace on paper would result in peace on the ground were dashed when widespread fighting erupted in Juba from 7 July 2016. The Equatorias have been especially restless since. Two aspects of the civil war and the governments' response to it are especially relevant for this study.

First, while the Republic of South Sudan increased spending on security and law enforcement by 56 percent in 2014, it did so against the backdrop of general austerity measures (Nield 2014). These austerity measures were necessitated by a financial crisis that hit South Sudan in part due to the dwindling global oil price,[13] which had until 2013 amounted to 98 percent of the export revenue of South Sudan. These macro-economic trends had ramifications for the local government apparatus in Western Equatoria State. Ministries, county offices, and courts were underfunded and understaffed; citizens whose land

9 The SPLA was the military wing of the SPLM. With independence in 2011, the SPLA became the official army of the Republic of South Sudan, and the SPLM is the ruling political party. The 2013 civil war led to the differentiation between the SPLM-Juba – led by President Salva Kiir – and the SPLM-IO – led by Dr Riek Machar.

10 South Kordofan, Blue Nile and Abyei.

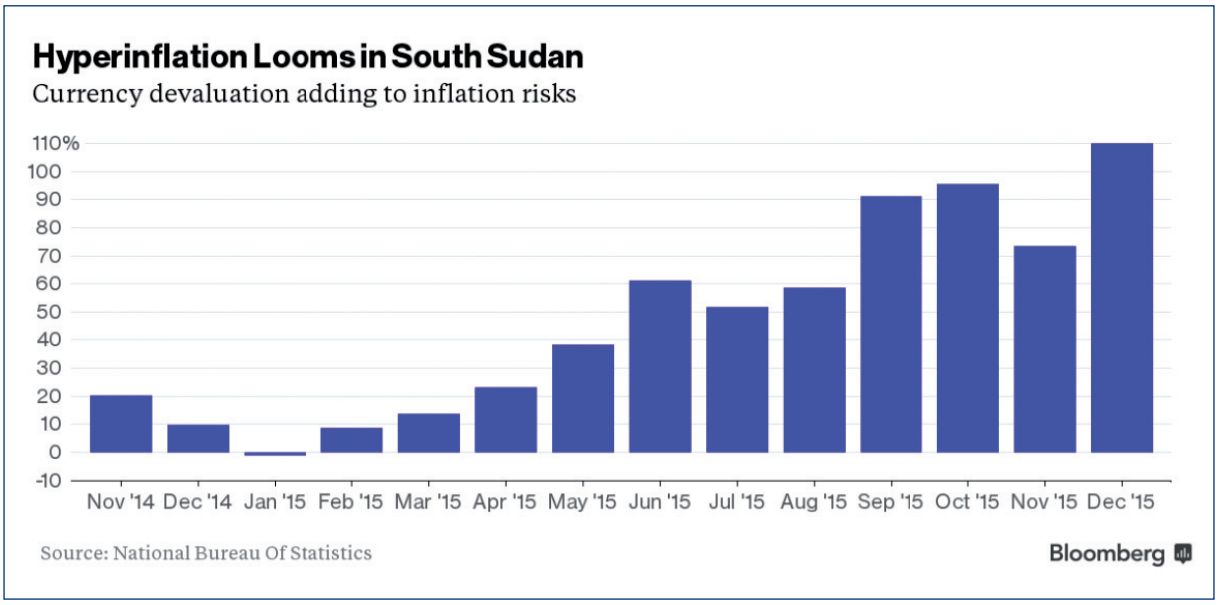
11 Even before independence, during the 2005-2011 Interim Period, many southern Sudanese died as a result of inter-communal violence in the South.

12 Some critics hold that prior to independence, both the South Sudanese government and the international donor community should have invested more in nation building, and not just in building the state apparatus (Jok 2011; Hemmer 2015). But since 2013, non-military government spending has declined rapidly and donors have largely shifted from long-term development projects to shorter-term humanitarian ones. While the country is in crisis-management mode, little has been done to answer the fundamental questions about nationhood, identity, and the distribution of power between various levels of the government.

13 The World Bank reports that "oil production had fallen by around 20 percent due to the conflict [and] oil prices [have dropped] from 110 USD per barrel to 55 USD per barrel."

had been expropriated were not compensated by the government; and the construction of public infrastructure slowed down.[14] What is more, citizens saw their monetary income or wealth rapidly evaporate as inflation skyrocketed (see table). In December 2015, the South Sudanese government decided to liberalise the exchange rate of the South Sudanese Pound, which has in turn caused the currency to lose close to 90 percent of its value in six months (IMF 2016). By October 2016, the South Sudan Bureau of Statistics estimated that the annual inflation of the SSP had risen to 682 percent. Together with the protracted violence in parts of the country, this contributed (locally) to food scarcity and higher food prices everywhere.

Table 2: Inflation of the South Sudanese Pound to the US Dollar per month



Source: Francis, 2016.

Second and very fundamentally, the civil war laid bare some of the divisions within the ruling party – and created a climate of fear and a more general securitisation of political dissent. The Juba-based national government seemed especially nervous about the possibility of the hitherto neutral 'Equatorians' joining the fold on the side of the SPLA-IO. The then-governor of Western Equatoria State, Joseph Bakosoro, was careful to avoid being aligned with the SPLM-IO when he advocated a federal system.[15] But still discussions of federalism were stifled at the national level. It is in this fragile and fearful context, that micro-level violent incidents that took place in Mundri and Maridi could so rapidly escalate into almost state-wide insecurity over the course of 2015 (see Epilogue).

1.3 Western Equatoria State

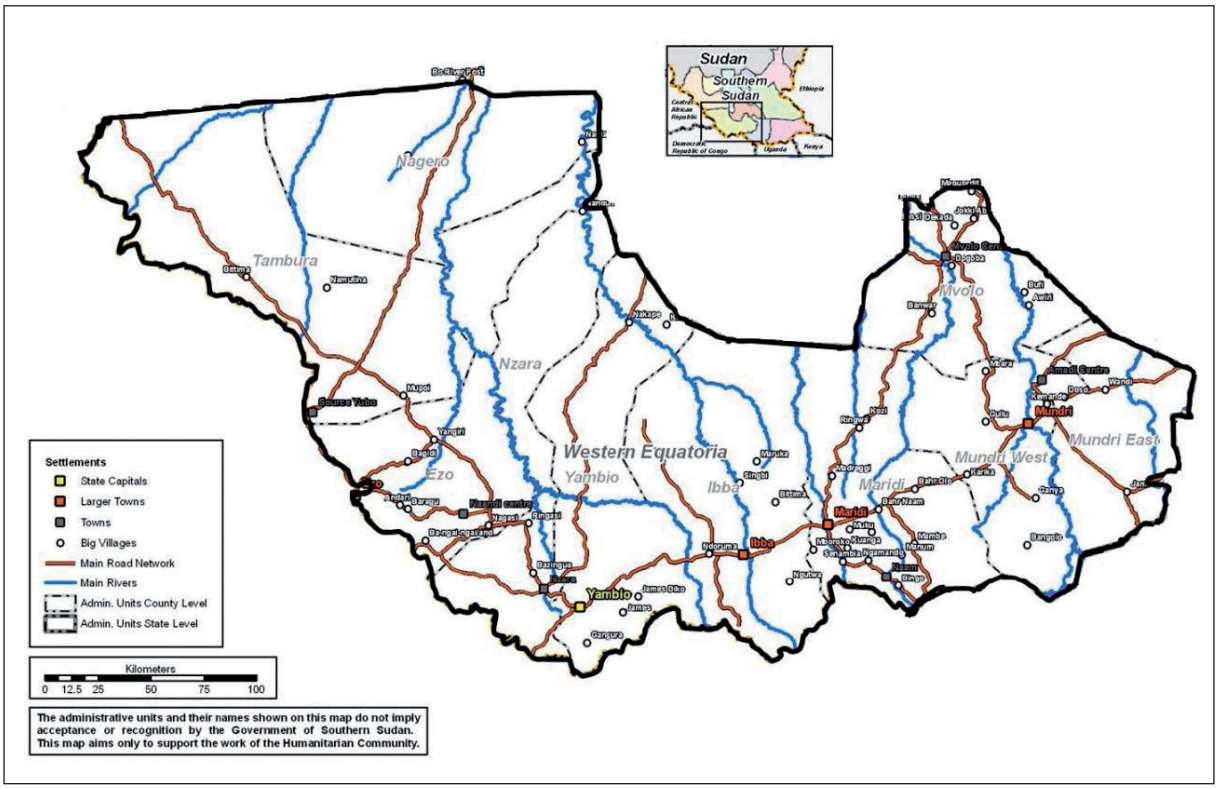
In the most southwestern corner of South Sudan, bordering the DR Congo (DRC) and Central African Republic (CAR), is Western Equatoria State. The slightly elevated area with its thick forests is part of the

14 Although the austerity measures were something that came up in interviews with government officials frequently, it remains an open question whether in times of fiscal abundance the government would actually perform all listed functions and services.

15 There is an important difference between the two in that the SPLA-IO proposed to break up the existing ten states into smaller ones, whereas many Equatorians advocated "strenghtening existing states, rather than breaking them apart." (Radio Tamazuj, 'Western Equatoria governor urges debate on federalism,' 16 October 2014).

'green belt' that stretches from the CAR to the DRC. Its high annual rainfall renders the area suitable for subsistence agriculture.

Map 1: Western Equatoria State



Source: based on OCHA.

Historically, this region is inhospitable to cattle in part due to the sleeping sickness-bearing tsetse flies, and in part due to the tension between the local farmer communities and cattle-herding peoples. The eastern counties of WES – Mvolo, Mundri and Maridi – count some sedentary cattle-keepers but also witness a seasonal influx of cattle keepers from drier (and less safe) areas such as Lakes State. [16]

Western Equatoria State is traditionally the heartland of the Azande[17]-peoples, who are still the biggest ethnic group[18] in the state as well as the third-largest ethnic group in South Sudan[19] after the Dinka and Nuer. In pre-colonial times, the political, military and spiritual leadership of the Azande became dominated by the Avungara-clan. Around the turn of the 20th century, a powerful Azande King called Gbudue ruled from what is now Yambio over a territory that stretches into the DRC and CAR. This area lay at the crossroads of the spheres of influence of three colonial powers: Belgium, Britain and France (Evans-Pritchard 1971). Gbudue resisted foreign domination until a British expedition conspired

16 Smaller herds of cattle heeded by Dinka and occasionally Mbororo can also occasionally be seen in and around Yambio, and in the western parts of the state.

17 Azande is the plural, 'Zande' the singular.

18 The Azande were originally not a singular ethnic group, but rather a group of ethnic groups united under one rule by campaigns of conquest. Princes and chiefs have historically come from the Avungara-clan, which according to the Azande as well as external observers were originally a different ethnic group (Leitch 1936; Lloyd 1978).

19 Numbers, let alone reliable ones, are hard to come by. According to the 2011 pre-referendum census data available at the Yambio office of the National Bureau of Statistics, the total population of Western Equatoria State would count 619,029. But even if we assume the methodological challenges of doing a census in this environment were sufficiently overcome, much has changed since 2011 due to waves of displacement, urbanisation, returning refugees and IDPs.

with other Zande princes to defeat him in 1905. The area where the Azande live became part of three colonial states that today are the DRC, CAR and South Sudan.[20] The Azande had lived in a dispersed manner, but were coercively resettled under British colonial rule along the roads and in towns.[21]

Today the Azande are still the majority in WES, but there are many other smaller ethnic groups, some of which are being rapidly assimilated by the dominant Azande. The fast-growing state capital Yambio now counts some 152,000 inhabitants.[22] Smaller ethnic groups that can be found in WES include the Balanda, Baka, Moro, and Azande from CAR and DRC who often moved to the state as refugee or economic migrant.[23] The bigger towns have also seen migrants from different parts of South Sudan, Sudan and East Africa. In addition, the UN, NGOs, religious missions, USA military and teak companies also brought in a small but visible and wealthy group of people from Asia, Europe and North America.

Political and spiritual leaders in WES have tried vigorously to keep their people away from the national violent conflict. Bishop Eduardo Hiiboro Kussala of the Catholic Church and other religious leaders would stress outwardly that WES is the 'peaceful state' and preach messages of peace and forgiveness inwardly throughout the state. Similarly, the popular governor Bangasi Joseph Bakosoro (2010-2015) attempted to steer his state away from what was locally often seen as a war between the Nuer and Dinka. The national government and the SPLA considered such 'neutrality' suspicious – especially when the "region struggled to meet a government recruitment quota" (ICG 2016). At times, Equatorian populations like the Azande would express anger or despair when the 'cowboys' (i.e. the cattle-keeping tribes like Dinka and Nuer) would clash again. Interestingly, although the ruling SPLM-party is perceived to be dominated by Dinka – certainly at the national level – Azande still seem to pride themselves in being South Sudanese and expect a great deal from the government. Many Azande express support for the reinstatement of the Zande King[24] (Rigterink 2014). But these plans have been shelved for the time being, with the paramount chief citing the politically tense situation as a reason to hold back on plans that could upset the central government (Interview, 1 October 2014). In the second half of 2015, WES saw a surge of violent conflict – the nature and consequences of which shall be elaborated on in an epilogue at the end of this report.

Importantly, on 2 October 2015 President Salva Kiir announced the further division of the present 10 states into 28 states whereby Western Equatoria State would be divided into Gbudwe State, Amadi State and Maridi State (see map on following page).

20 This history is frequently reminisced by elders, who stress that the Azande were purposefully divided over three territories in order to weaken them.

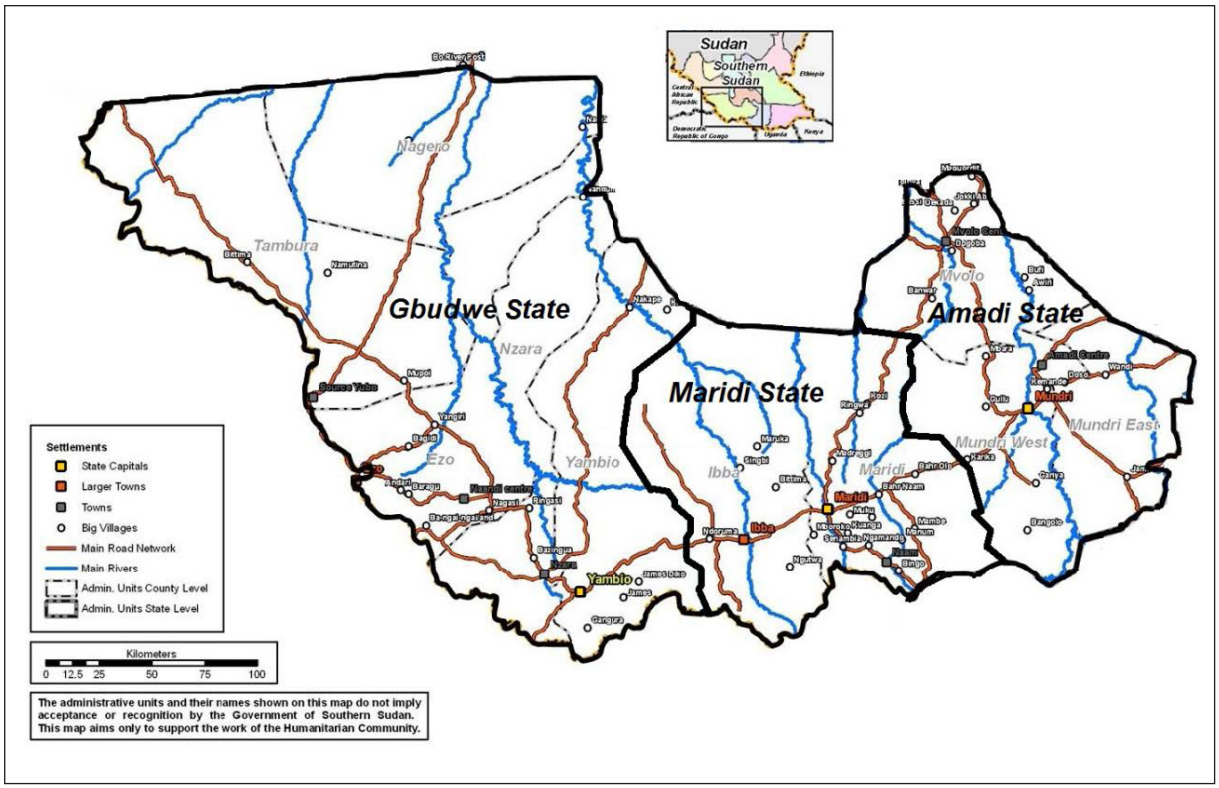
21 Partly due to campaigns to combat sleeping sickness in the 1920s, but later as part of efforts to promote agricultural development as part of the 'Zande Scheme' (Marriott forthcoming).

22 Reliable numbers are hard to come by, but this figure provided by UNMISS gives an indication.

23 Although they are also Azande, their national background seems to matter too. Migrants from these areas often do casual farm labour for the richer South Sudanese Azande. Representatives of the CAR community stressed that their relations with the Congolese are strenuous.

24 The current Paramount Chief of Yambio county, Wilson Hassan Peni Rikito Gbudwe, is the direct descendant of the last King of the Azande, Gbudwe, and would become king if the kingdom is reinstated.

Map 2: Proposed borders Gbudwe, Maridi and Amadi States



Source: adapted from OCHA.

At the time of our data gathering, government actors in Yambio were inconclusive as to the legal and practical status of the decentralisation. It seemed that by and large the executive had embraced the division – with Governor Patrick Zamoi of erstwhile WES appointing a cabinet for Gbudue State – whereas the judiciary was still awaiting formal instructions. JMEC and UNMISS have encouraged the Transitional Government to debate the decentralisation issue as soon as possible, and have also decided not to formally recognise the new states until that is done.

1.4 Methodology

This research was designed, executed and evaluated jointly by academics, practitioners and local partners. Western Equatoria State was chosen as research location because Cordaid has been cooperating fruitfully with the Justice and Peace Commission of the Catholic Diocese of Tombura-Yambio (JPC) since 2012. What is more, the area had been relatively safe in recent years and after an exploratory visit in September 2014, the Van Vollenhoven Institute (VVI) deemed it a conducive environment to conduct long-term fieldwork. During this exploratory visit, the JPC, VVI and Cordaid also further fleshed out which justice problems were most pertinent in the context of WES, and interesting for research as well as policy-making. We confirmed that the interaction between the statutory and customary justice system, land rights and rights of women would be foci of the first research phase.

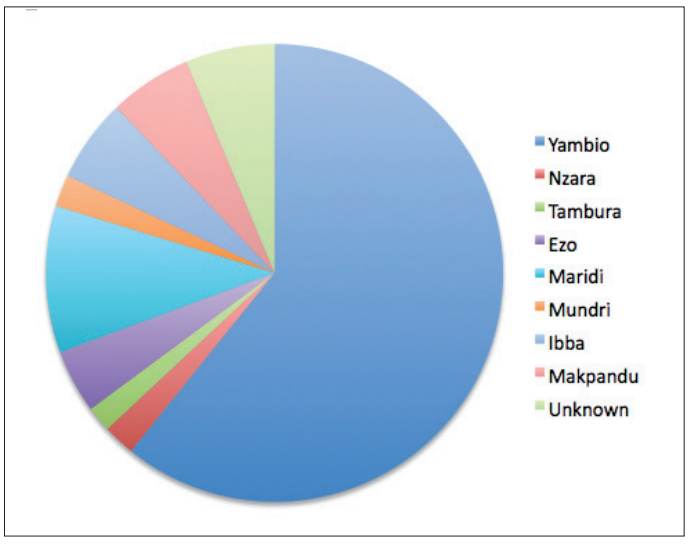
Data for the first research phase were collected between January and July 2015 by a team of eight local researchers[25] and the author. The local researchers' educational background ranged from having a high school diploma to a college degree. All candidates spoke fluent Pazande (the local vernacular), and fair English. Some also spoke good Juba-Arabic, French, Baka, Sango and Balanda. The team translated key terms in the interview guides into the vernacular Pazande.[26]

The research team divided subjects and areas on a weekly basis based on individual preferences and ability. Respondents were selected in three main ways. First, before heading to the field a short list of people of interest was drawn up. This included mainly justice providers and government officials. Second, when arriving at a particular research site – such as a court – the team would speak to disputants and ordinary people. Third, some respondents would mention other people or even suggest other people to talk to. The team attempted to triangulate findings by interviewing the main parties involved in particular disputes or resolution efforts.

Respondents had various reactions to our request to be interviewed. Quite often, they wondered what the use of 'yet another' study was – with especially the more powerful ones and people in refugee camps having been interviewed by various researchers or consultants before. Others wondered more generally how this study would benefit them or their communities. But in many cases, people expressed gratitude to our researchers for having come to their house and for listening to their accounts of (in) justice. In some instances, just having been given the chance to tell their story seemed to have helped the respondents.

Yambio County has been studied most extensively in this research but six other counties of Western Equatoria State were also researched to assess the extent to which our findings from Yambio could be seen as representative for the wider area. The team visited Nzara on various occasions; made a two-week research visit to Tombura[27] and Ezo; a three-week visit to Ibba, Maridi and Mundri-West. Generally, our research has focused on (peri-)urban contexts in part because they tend to offer justice seekers a wider variety of forums to choose from. We also interviewed people in more rural parts of Yambio County – such as in Gangura, Bangasu, Ri-rangu *payams*. We also visited refugee camps in Makpandu[28] and Ezo. The material from those areas offers a glimpse of the relevant land and family disputes, and the various forums available to people – but is not enough to draw firm conclusions or draft comprehensive case studies. Finally, after the draft case studies had been written, Cordaid Juba organized focus

Chart 1: Interviews by county



25 We started out with a team of 10 local researchers, but two left for better-paying jobs.

26 This included both the translation of language, and of culturally sensitive matters. Asking an individual's ethnic group was seen to be sensitive, and so we opted for asking about their mother tongue. Asking someone to give someone else's name (even if it was in a positive context) was sometimes also sensitive.

27 Tombura is sometimes also written as Tambura.

28 Makpandu is part of Bangasu Payam, Yambio County.

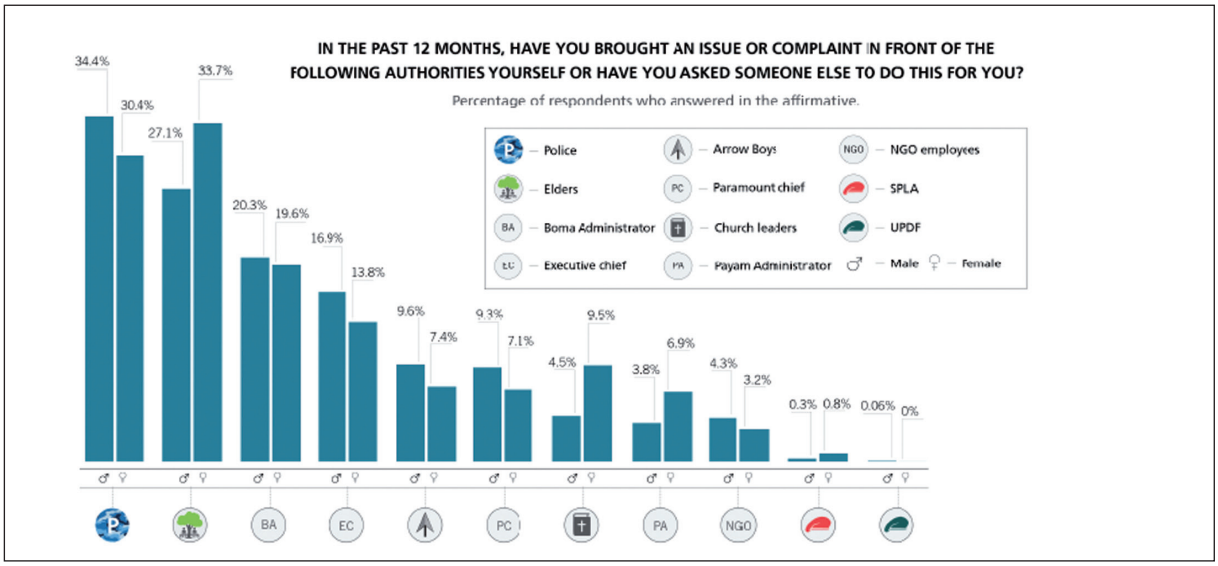
group discussions with civil society organizations to discuss the research findings, and explore sensible recommendations to make.

1.5 Obstacles and limitations

The team encountered various obstacles to doing research in WES. First, it was often difficult to find respondents as they travelled between office, house, farm and other cities and not all of them had mobile phones. Second, it is difficult to assess precisely how our study has been affected by the fact that the Justice and Peace Commission is part of the Catholic Church. Although the Church seemed to be favourably regarded in much of WES and association with it seemed to open doors, it might have also affected peoples' responses in matters that the Church disapproves of. Third, especially the author was sometimes associated with INGOs or the UN and thereby suspected to be aligned with 'those of human right' – a distinctly negative connotation for especially traditional authorities.

But perhaps most crucially, the insecurity, which increased dramatically towards the end of the first research phase and towards the beginning of the second hampered our ability to conduct research. After having postponed and re-evaluated our plans, the second research phase was launched in November 2015. But by this time some of our researchers had left South Sudan, and others were displaced. The limitations of doing research in this context are detailed in the Epilogue. Despite the challenges, the second research phase provided some insights into the everyday consequences of heightened insecurity on the functioning of authorities in the context of conflict. Some of those consequences are integrated into the case study chapters of this report; others have been used for the Epilogue. Altogether, the team conducted some 346 semi-structured interviews,[29] a small number of focus group discussions, and observed dozens of court sessions in both customary and statutory courts.

Table 3: Reporting an issue or complaint to various authorities, by gender



Source: Rigterink, Kenyi et al. 2014

29 This includes 233 interviews by the local research team in the first research phase, 43 interviews in the second phase, and 70 interviews by the author. Those latter interviews were conducted following a less structured interview guide, and so do not include some of the meta-data that the local researchers gathered in their interviews. Consequently, whenever meta-data are presented, those are based on the 233 interviews by the local research team and/or the court records collected for this research.

More substantively, we have largely focused on what we expected to be important 'justice providers' in land and family disputes – elders, chiefs, courts, administrators – but we have not looked as much at the roles played by another important actor: the police. Rigterink et al. found that some 30 percent of their respondents had brought an 'issue or complaint' in front of the police (see table 3). Of course this includes all sorts of problems – including criminal cases – but from the few interviews we conducted with and on the police, it became apparent that they play an important role in non-criminal matters as well.

Previous researchers had found that it was difficult to speak to women in South Sudan (Leonardi, Moro et al. 2010). In our research, that obstacle was not as problematic, with 30 percent of the respondents being women. Some of the women we met were quite confident to speak with outsiders – even a foreigner. But in other cases the fact that our researchers were from the same area and – often – tribe, and that our team counted four female researchers helped.

This research aspired to also discover how geographical or ethnic origin would impact justice provision – e.g. would Dinka also bring their disputes to an Azande-dominated court? Our recruitment process resulted in a group of Azande[30] researchers, which is potentially a shortcoming. But the researchers were instructed to keep a special eye out for the perspectives and experiences of ethnic minorities.[31] The research team had some of the most animated discussions with Dinka respondents who were eager to discuss the challenges they faced.

Chart 2: Education of respondents

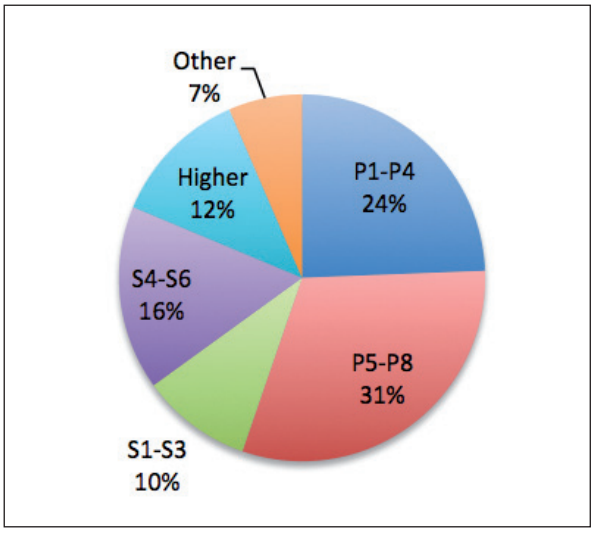
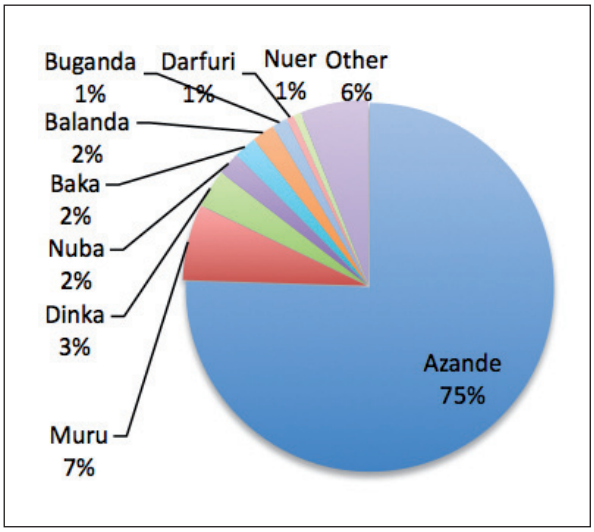


Chart 3: Ethnicity of respondents



A few remarks are worth making to support the reading of the case studies that follow. First, kinship terms among the Azande, as in many other African settings, are not like in English. Male relatives of the same generation are often referred to as brothers; male relatives of the parents' generation (i.e. not per se age) are often referred to as uncles. Second, when it comes to legal terms, some caution is in order. The concept of 'bail' has been appropriated by customary courts to mean paying off prison time. And when the court records or respondents speak of 'rape' this can mean a variety of phenomena – including forced intercourse, defilement, elopement and generally intercourse in the absence of (an agreement on the)

30 And one researcher of mixed Azande/Balanda descent.

31 Importantly, ethnicity was not that clear-cut and yet very sensitive. But as minority belonging was thought to be a potentially important variable in determining a person's social standing, we asked for peoples' mother tongue as a proxy for ethnicity and where people were from. But the Balanda often speak better Pazande than Balanda and so some of those classified as Azande here might include some of Balanda origin. Also, there were people of mixed or unspecified descent.

dowry payment. Third, respondents speaking in English have a polite way of clouding or understating the gravity or sensitivity of any situation.[32]

1.6 Introducing the eight case studies

This report presents eight case studies that aim to elucidate people's 'concerns and conceptions of justice' in Western Equatoria State, and what responses and remedies 'justice providers' have offered them.

The first case in this report investigates three cases of women who claimed their right to land up to the High Court. South Sudan has adopted progressive legislation with regards to women's rights to own and inherit land. But are these laws put in practice? This study starts with observations about the general position of women in dispute resolution. Based on three cases of women who litigated up to the High Court to get their right to land recognised, this study finds that some judges rule progressively – but that enforcement of court rulings is another matter.

The second case investigates the customary courts and traditional authorities. Chiefs play a vital role in the resolution of disputes. This case study will investigate their legal standing and everyday performance. It details the types of disputes that customary courts hear, the procedures that they follow, the sources of law that they refer to, and the sentences they pass. It further tries to elucidate how the customary courts and chiefs relate to the executive and judiciary.

The third case focuses on the County Land Authority (CLA), an administrative body set up to perform a wide variety of land governance-tasks. The case study compares its legal position and responsibilities with the office's actual functioning and reception in Yambio. It details what types of cases typically are brought to the CLA and how people perceive the process. The study shows that the CLA has managed to acquire a central position in the land governance configuration of the county in a relatively short time. It also elucidates some of the challenges that both the office and its clients are facing.

The fourth case is about the demarcation of land and investigates the involvement of various government bodies in the highly controversial process of formalising land tenure and allocating plots. This process has gained momentum since South Sudan's independence in 2011, as the pressure on – and value of – urban land has increased rapidly. This case study highlights the perspective of a nascent state apparatus attempting to regulate and govern, while plagued by a lack of human and financial resources, political interference and a population which has been displaced by waves of conflict.

The fifth case study focuses on land disputes between various churches and LRA-displaced people in Ezo, Tombura and Yambio. The conflicting claims to land are legitimated on different grounds. Displaced people often argue that they were either welcomed by the community and government, or that they found the land 'vacant'. The church often argues that the land might have looked vacant, but that they hold the ownership nonetheless, and that the forced migrants had been welcome initially but are overstaying their welcome in the city. In fact, the disputes are about more than just land, and offer insights into the relationship between forced migrants and 'host populations'. What is more, the case study shows that the boundaries between 'IDP', 'returnee', and 'refugee' are somewhat vague in this part of South Sudan, close to the porous borders with CAR and DRC.

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32 Fights are often referred to as 'misunderstandings', and an aggressive individual is often called 'stubborn'. Sexual intercourse is likewise referred to with coded language, including 'one for the road', 'know her like a woman', 'blanket' or 'entering through the window, not the door' (for an affair without consent of the girls' parents). Talking in a flirting manner – 'communicating', or 'campaigning'. To be corrupt is to 'chop' or 'chew' the money.

The sixth case study investigates disputes over land between Dinka and other ethnic groups in Maridi. It shows that disputes about land are part of a wider constellation of claims and counterclaims that connect and separate different segments of society. The clashing claims are based on notions of autochthony and merit during the liberation war, respectively. The case study shows that micro-level disputes can easily escalate when they are interpreted in the larger politically tense context.

The seventh case study looks into the 'mobile court' of Judge William Kaya in Tombura. Mr Kaya's main responsibility is to hear cases in Yambio's High Court, of which he is the president. After he received a letter from the county commissioner of Tombura, he travelled there to hear a number of pending criminal cases. This case study offers a summary of the cases before him and lists some of the obstacles to and successes of his visit to Tombura. The case elucidates the problematic relation between the statutory and customary court systems but also finds that personal relations can overcome these difficulties.

The eighth case study describes the prosecution of witchcraft and its position in dispute resolution. The various versions of this phenomenon present themselves as indisputable social realities which play an important role in many Azande disputes. The study shows how witchcraft is used historically in Zandeland, and how various justice providers today engage with it. It highlights in particular the legal dilemma that customary courts do not have jurisdiction over criminal cases,[33] and statutory courts have no means to hear witchcraft cases.[34]

Taken together, these eight case studies give an impression of some of the challenges faced by communities in WES, the decisions they take to obtain access to justice and the barriers they attempt to overcome on their way. In the conclusion, we will return to the research questions and highlight some preliminary outcomes from our case studies.

33 "A Customary Law Court shall not have the competence to adjudicate on criminal cases except those criminal cases with a customary interface referred to it by a competent Statutory Court." Local Government Act (2009), Section 98: 2.

34 Unless poison can be proven.

2. Eight case studies on primary justice

2.1 Women's paths to claiming land in court

2.1.1 A brief history of women's access to land among the Azande

Land ownership among the Azande was traditionally not an individual affair, but instead linked closely to the position of an individual in the community. Women would often not have anything resembling a *right* over land, but often *access* or a sort of usufruct. In part, this can be explained by reference to the *patrilocal* marriage customs of the Azande – where a woman would marry and move into the family and land of her husband. And so giving her land was seen as effectively giving it away to a different family. Women would have access to land through male relatives (father, brother, husband, son). When those relations changed, so would her access to land.

This has contributed to practices such as 'widow chasing', which is variously described among the Azande. Some held that once a man died, the widow's "relatives and willing in-laws would build for her a small *tukul* not far away from the house of her deceased husband," a lady at the Women's Resource Center in Yambio explained. "All the properties of her deceased husband belonged to the children" (interview, January 2016). But others describe a different procedure, whereby the widow would simply be "chase[d], clapping hands after her. That is the culture. And collecting everything that belonged to her … and she don't know where to stay." (women's group focus-group discussion, Nzara February 2016). Importantly, widow chasing is presented by those doing the chasing as part of their culture. But increasingly, customary as well as statutory authorities are rejecting patriarchal legitimations of self-interest.

Attempts to ban out practices deemed to be harmful by adopting 'progressive' statutory laws, have historically had quite limited effect. British colonial administrators sought to root out certain customary practices among the Azande that they considered particularly harmful to women.[35] But writing about the Belgian-occupied part of Zandeland, Reyntjens found that "European laws meant very little to the Azande, as they did not reflect the dynamic social framework of their society, but instead represented laws 'given to them by the whites'" (Reyntjes 1992). Nowadays, South Sudan – also under pressure of international donors and civil society organisations – has adopted legislation that explicitly gives women the right to possess and inherit property.[36] But how effectively these rights are implemented remains an open question.

This case study focuses on the observed ability of women to claim their right to land through the respective customary and statutory courts. Three cases from the urban context of state capital Yambio are explored at some length. Yambio is not representative for the whole of WES, but rather offers an insight into the choices made by disputants in a context where they have all the options available: the customary courts[37] and the statutory county court and high court, as well as the administrative County

35 Jackson writes that women could be married against their will or given as compensation for wrong-doings. Other sources report that men in the early 20th century would encourage their wives to seduce other men, with a view of suing them in court for adultery fines.

36 Most notably in the Land Act (2009) and the Transitional Constitution (2011). In addition to non-discrimination clauses, the Land Act (Article 13) and the Transition Constitution (Article 16: 5) explicitly speak of women's rights to owning and inheriting property – including land. Article 28: 1 of the Transitional Constitution (2011) provides that: "every person shall have the right to acquire or own property as regulated by law."

37 Except for the C-court, which was scheduled to be established in 2015 but that has as of yet – April 2016 – not happened.

Land Authority. But before focusing on the three cases, it is worth making a few general remarks about the participation of women in dispute resolution in WES.

2.1.2 Women in dispute resolution

Women did partake in dispute resolution in WES on both sides of the table. Under the late Dr John Garang, the SPLM/A adopted a 25 percent quotum for female representation.[38] Currently, it is the responsibility of the Local Government Authority "to ensure adequate representation of women" (Local Government Act, 2009: Section 97: 2). Most customary courts observed for this study had one female member.[39] The paramount chief of Yambio held that, "the position of women is changing. You can now see female judges – this is a new phenomenon introduced when the SPLM liberated South Sudan. Women can sometimes understand some topics much deeper than a man" (Interview, 1 October 2014). Asked why their court counted no female judges, some respondents held that women are "not courageous" enough. The *payam* administrator in Sakure explained that "[t]hey fear to be court members because when I came here it didn't take a long time before one of the court members died, and the relatives said he died because he passed a wrong judgment and was killed in a traditional way" (interview 2015). But even where a woman works as a judge, she is often still required permission from her husband, and expected to "after her work return home and continue with her house work as usually" (interview 2015 with headman in Rii-Rangu). Interestingly, a quantitative analysis of the court records obtained for this research finds that in all courts, women initiated between 30 and 44 percent of the cases.

Table 4: Cases initiated by women

Yambio B-court (n = 294)		Nzara C-court (n = 81)		Nzara B-court (n = 95)		Rii-rangu B-court (n = 80)		Sakure B-court (n = 47)	
Female	Male	F	M	F	M	F	M	F	M
99	195	24	57	39	56	35	45	15	32
34%	66%	30%	70%	31%	59%	44%	56%	32%	68%

Interestingly though, most customary justice providers in these same places reported that women brought more cases than men do.[40] This contradiction may be variously explained. For one, women were often represented in customary court by a male relative – often a brother or father – especially when it involved dowry and/or defilement.[41] This can be explained in part by the very significant financial aspects of such disputes and the fact that the money invested in a marriage mostly came from a woman's family.[42] Another possible explanation is that women might have brought more cases than they did in the past, leading to the perception that they brough more cases to court than men.

38 Similarly, the Land Act (2009, Article 45 and 49), Local Government Act (2009, Sections 26 and 97) and Transitional Constitution (2011, Articles 16, 109, 123, 142 and 162) include provisions on female representation at various levels of governance.

39 A customary court usually has a chairperson and three members, one of which is often a woman.

40 They were asked: "What is the men/women ratio among disputants?". Justice providers in Tombura A-court, Yambio B-court, two Yambio A-courts, Makpandu A-court, Ikpero A-court, Ibba B-court, and Rii-rangu B-court said that women bring more cases than men. In Gangura, Yambio's VTC Area, and Maridi B-court justice providers said that men and women bring an equal amount of cases. Only in Bazungua and Nzara B-court were men reported to bring more cases.

41 Evidence collected for this research suggests that many husbands never fully pay the dowry, but instead remain indebted to their in-laws for years. This needs not be a problem, but it is often brought up in court cases about divorce, domestic violence and custody. Reining (1966: 51) also wrote that "Zande marriage was not a definite, single act but a continuing process over an indefinite period, and the payment of the bride wealth was also generally protracted."

42 This also links to more fundamental notions of marriage – with Reining (1966: 63) writing that "[t]he Europeans had consistently tried to strengthen the husband-wife relationship, while the Azande had focused upon the relationship between the husband and the wife's parents."

When asked about the types of disputes that women frequently brought, providers listed adultery, marital neglect, alcoholism, domestic violence, or polygamy-related friction. Some also held that men were more reluctant to go to court over such sensitive matters because, "they want to show people that they are good administrators and leaders in their home," a Rii-Rangu headchief explains. "And so when men do bring disputes, it is often about land or about their children and wives when they encounter bad things. (interview, April 2015).

Domestic violence was reported frequently, often as part of a more general degradation of marital relations which commonly involved alcoholism, neglect and adulterous behaviour. Women who were beaten by their husbands would often run to the house of the local headman or headwoman, who would then attempt to solve the dispute the following morning. When domestic violence cases were brought to the customary court, the judges commonly reprimanded the perpetrator. Then, if the husband – then sober – recognised his wrongdoing, the panel often tried to reconcile the couple with a view of restoring the marriage. In such cases, the husband was commonly still fined or held liable for the court fees that his wife had paid. But if the case had been heard by various (out-of-court) dispute resolvers before and the husband proved to be 'stubborn', customary courts could sentence the perpetrator to a mixture of a fine and compensation and disband the marriage. Divorce, however, was not something that was easily granted – see for example the text-box on the right.

Dispute over divorce
Zambandoo A-court, March 2015
Today is my fifth time at the A-court. The kinds of judgment that were passed before were ok and satisfactory to my side ... It only went wrong when his brother was a clerk and that time … they agreed with him and I was not removed from [my husband]. I can remember, that time I also tried to commit suicide so as to die and be free.

Dispute over domestic violence
Yambio B-court, April 2015
I wanted to get a divorce but instead the judge told me to go back to my husband's home. The judges explained to me that if we had been staying only for some two years in this bad relationship, they could release me from him. But because we have been in this bad place for so many years, the judges gave Marc the advice that from today he should start taking care of me and our child. But I don't know if he will change. These problems between us have been settled several times, but he keeps on repeating the same things.

The few 'rape'-cases that this research found in customary courts records had been brought by male relatives. Importantly, what was listed as 'rape' in the court records did not always refer to 'rape' in the statutory legal sense.[43] Instead, it was used as an umbrella term for illegal sexual practices, in which not the consent of the woman but that of her family was decisive in rendering the intercourse illegal.

43 The South Sudanese Penal Code article 247 defines rape as sexual intercourse or carnal intercourse with another person, against his or her will or without his or her consent' and furthermore states that 'consent given by a man or woman below the age of eighteen years shall not be deemed to be consent within the meaning of subsection (1)' and that 'sexual intercourse by a married couple is not rape'. Technically, any sex with a person below eighteen is thus statutory rape.

Four particularly vulnerable groups of women could be distinguished. First, 'barren women' – women that had been in a marriage that had not resulted in children.[44] In some instances women who had only given birth to girls were also more vulnerable (FGD, May 2016). In such instances and especially after a divorce or the decease of their husbands, women could lose their claim to the land of their former husband. Second, girls and women who were impregnated by a boy or man outside of marriage. Her relatives would then always attempt to initiate intricate negotiations over *kasurubeti* or *yongo* (for 'breaking the house/ virginity'), and the various parts of the dowry – a process that would often break down prematurely. Third, illegitimate or 'bought' children and their offspring. Children born out of 'illegal' affairs (including incest) or out of a broken marriage can be 'bought' from the family of the woman by their biological father or the legitimate husband of the mother. In theory, these children will then proceed to be regarded as full children of the particular man. But in some instances, the rights to land and inheritance of these children and their offspring is contested by the other 'biological' children (interview Yambio, January 2016). A fourth group that at times is especially vulnerable, are wives in a polygamous marriage. This is a complicated group. A relatively typical story in WES was that a marriage would start out fine, but that the husband would at some point find a second wife – be it formally recognised or not – to which he would devote his time, affection and money. In some instances, the first wife would still prefer the polygamous union to separation. But often the man's neglect would turn into abuse, leaving the first wife with little choice but to leave.

Testimony of a woman who ran from her husband
Yambio, March 2016
I got married in 2008 when I was very young in senior one. I stayed with him together for 5 years in peaceful way. After that my husband started to complain that I am eating his food for nothing since I don't bear children for him. With all this process the man started to mistreat me, not sleeping in the house, not even providing me food.

Dispute over custody
Yambio B-court, 11 June 2015
He will not get my child because the judgment they passed was not fair. If those judges could look into how I have suffered from that man, they couldn't pass their judgment like that. I was not satisfied at all. He will not take my boy even through the court. That will be the time those judges will know my true color: it will be war that day.

Having sketched this general background, we will now turn to three very specific cases of women attempting to claim their right to land in court. Their pathways to justice past various customary and statutory fora can help us understand the workings of law and legal institutions in practice.

2.1.3 Case 1: Anne vs Peter (Yambio)

Ms Anne (56) was born in Yangiri, South Sudan. She moved to Hai Kuzee, Yambio. In 1988, Veronica, the daughter of her elder sister, came and requested to stay temporarily on her plot. At first Ms Anne was reluctant, but she eventually agreed to host her niece on the condition that she would move away again. But in that same year the SPLA came to the area, and Ms Anne like many others fled to the Central African Republic – first to Bambouti and later to Mboki. Her niece Veronica did not run, and instead stayed on the land with her husband.
"When my niece came to visit us in Mboki, I asked her about my plot. She told me there was no problem, and that she would give me my plot when I would come back," Ms Anne recalls. But shortly

44 Rarely would fertility be tested, but the assumption would often instinctively be that the lack of children was the woman's fault.

after returning to South Sudan, Veronica deceased and her mother-in-law Ms Christine claimed the plot as her own. When Ms Anne and her husband Mr Francis returned from the CAR they moved back to their plot. Ms Anne requested Ms Christine to move away, but she refused saying: "this is my land, and where can I move?»

Not much later, Ms Christine sold off her part to Mr Peter – a journalist – without the consent of Anne. This is where the dispute really started in earnest. Anne complains: "One of her sons even beat me when I refused to agree with the transaction." To solve the dispute, Mr Peter who had bought the piece of land from Christine, then brought in the government surveyors to demarcate the plot and determine who would get to stay on the plot and who would have to move elsewhere. The surveyors found that the piece that Peter had bought was small and that Ms Christine's part was bigger. That would mean that she could buy the lease, and that Mr Peter would have to move away. He then took the case to the B-court.

At the B-court, the case was referred back to the County Land Authority. The County Land Authority found itself confronted with multiple leases to the same plot of land. They then visited the disputed plot, and asked people in the neighbourhood if they recalled who was the original owner of the plot. People all named Francis, the husband of Anne as the rightful owner. On 26 September 2013 the CLA ruled that Anne and her husband were the rightful owners of the plot; that the transaction between Ms Christine and Mr Peter was therefore illegal; that everyone but the rightful owners should evacuate the plot; that if anyone else had a land lease to the same plot it should be confiscated and cancelled; and that the Ms Christine and Mr Peter could apply to the CLA if they wanted a piece of land. Mr Peter appealed the decision of the CLA at the High Court.[45] In this case, President Kaya found that the CLA had followed the correct procedures, and thus that the ruling was adequate.

Having exhausted the legal means at his disposal, Mr Peter started to explore different avenues to try and force Ms Anne into surrendering the plot to him. Using his network, Mr Peter managed to get Anne detained by the police. More controversially, Anne's family alleged that Mr Peter used to work with the Ministry of Physical Infrastructure before, and that he had close friends there. That ministry refused to release the land lease to Ms Anne, "until the dispute about the land is settled." "We told the Director of the Ministry of Physical Infrastructure that the judge of the high court had passed the ruling that my mother Anne is the right owner of the plot … and that a new land lease should be given to her," one of her sons told us. "But still the Director totally rejected the decision made by the judge. Even to get that file back is a problem. Whenever we ask for it he tells us to go and come back tomorrow" (interview, June 2015).

But things had really started to escalate at the time of our first interview with Ms Anne. "Three days ago he brought witchcraft oil and poured it near my kitchen, then he put three 1SSP-notes all around it." Anne called in the charismatic group from the church, and "yesterday evening they came to pray on the charms to disarm them". But while working in her kitchen, she found a 5SSP-note rolled up with knotted bits of tree branch around it. Anne is afraid that Mr Peter has access to different types of traditional medicine – among which *azile* ('birds'), "now I decided that I am taking it to the church."

Having followed and won four lawsuits, Ms Anne is fed up. "Who is to come and take him away? I have no power to remove his buildings! So up to now my right was given to me in court, but it has not been

45 That court, the highest statutory court at the state level, has the jurisdiction to inter alia, "hear and determine appeals against judgments and order of County Courts … and review decisions made by State or County Authorities or any authority there under" (Code of Civil Procedure Act 2007, Article 2: sub c and d). It does not, however, investigate the case again - only courts of original matter do. "We review their reports," President William Kaya of the high court explains, "An appeal is only a review of the procedures followed by the lower court."

put in practice." When our researchers spoke with Ms Anne in April 2015 she is glad to talk, but also keen to ask for help: what can she do to get her legal right implemented? When the case was brought again to the CLA in June 2015, our researchers attended the session. The CLA decided to write another letter to the Ministry of Physical Infrastructure, urging them to release the number of her plot and the land lease. The secretary of the CLA even added: "if the ministry fails to act accordingly, that is when we shall give you a chance to summon the director of infrastructure to appear in court to answer why his office has failed to release the land lease" (interview, June 2016).

2.1.4 Case 2: Mary vs Edward (Yambio)

Ms Mary (52) is the widow of a church leader. She lives in a stone building in Hai Kuzee, Yambio. Her compound has a fence, a tall mango tree and a few ancestral graves. "When I was still young my mother and my father were living in Nzara County and decided to come back to Yambio," Mary recalls. "We were living on a small piece of government land like so many others" (interview, 25 February 2015).

Mary's grandfather had bought a big plot of land in Yambio's Kuzee-area in the 1950s when the area was a lot less densely populated. Part of the land he gave to Ms Mary's mother: "in 1952, my mother planted a teak tree on the land – hoping that it would help her children later on." But when the SPLA came to the area in the 1980s, Mary fled to Khartoum. While she was there, her father either lent, leased or sold part of his land to Ms Victoria – a displaced female friend of the family and the sister of Edward.

The nature of that transaction was not documented, and all the involved parties have long since deceased. But all parties agree that in the years that followed the relationship between Mary's family and Ms Victoria and Mr Edward was good, "whenever I would visit Yambio he would give me some letters to give to his relatives in Khartoum" (interview, March 2015). By the account of Mr Edward, his sister Victoria stayed on the land until 1992 when the SPLA occupied the region. But according to Ms Mary, Ms Victoria only stayed on the land for a short while. Certain is that upon returning from refuge in Congo, Ms Victoria bought an additional plot to where she moved, after which she passed away in 2003. That same year, Ms Mary moved back to Yambio after 18 years in the North.

The dispute started in 2006, when Mr Edward started to construct a house on the plot for his brother who wanted to return from exile. The Comprehensive Peace Agreement was signed in 2005, and many people started to think about coming back to Southern Sudan. In 2007, Ms Mary went to the predecessor of the County Land Authority to consult Chairman Wilson Peni.[46] Mr Peni questioned Mr Edward: "who bought the land? Where is your sister? Seeing as she has deceased, where is the proof that she had bought the land? How much did she pay?" When Mr Edward could not answer these questions well, the committee ruled that the land did not belong to Mr Edward but instead to Ms Mary.
But Mr Edward did not give up. He continued to go to the County Land Authority, and the case was eventually referred to the high court. Both parties brought witnesses and their land leases. Then it was decided that Ms Mary's lease was the valid one. The high court ruled that Mr Edward had 12 days to vacate the plot and remove all his belongings. But instead, he decided to bury his nephew on the plot, and he started construction on the disputed land. Ms Mary's brother intervened, stressing to our researchers: "I am telling you no one will stay in that land unless I pass away or all the family members are no long existing. My father planted a teak tree which is still there and it is our witness." He halted the construction, and told Mr Edward that he was not allowed to build on the land. In response, Mr Edward says he went to the judge who then sent for the arrest of Ms Mary's brother. But Ms Mary alleged that this arrest was illegitimate, and the result of bribery or favouritism.

46 Wilson Peni is now paramount chief of Yambio.

Ms Mary then turned to the county court[47] in an attempt to get her brother released, and settle the land dispute once and for all. Her brother was freed, and the judge wrote to the CLA to inquire whether Ms Mary was indeed the rightful owner. The CLA confirmed it, after which the Ministry of Physical Infrastructure processed a new land lease for her.

The disputants seemed to be confused on the status of the case. Mr Edward denied that Ms Mary won the case conclusively:

> Right from the high court she was told to take her case to Juba and then the case was transferred there and up to date no results have managed to come back. It has taken something like three or four years now since the case was taken there, and last time I went there I tried to know something about it but there was no way. They said we shall keep on waiting. All of us were told not to do anything on that plot until the result comes (interview, March 2015).

Ms Mary's brother stressed the same, except that according to him it was Mr Edward who had appealed, saying that: "what I know is the land was given us but he was not satisfied with the ruling, that is why it was referred to Juba and we are still waiting for the result." Meanwhile, Ms Mary was happy with the outcome, "I have all the documents for the land and I am going to see who will complain" (interview, June 2015).

When asked whether she had faced difficulties accessing the various justice fora, Ms Mary said this was not the case. But the trouble was with the implementation of the court's rulings. "If the land was bigger, I would give some of it to that man to solve the conflict," Ms Mary narrated. "But it is small, and there are graves of my parents – so it is very hard for me to surrender it to someone else." Based on her experience, Ms Mary warned others against lending part of their land to friends or relatives because it can easily spark conflict among the people. Ms Mary did not know how much she spent on her pursuit of justice, she estimated some 300 SSP.[48] The high court ruled that Mr Edward was to pay for the court fees incurred by Ms Mary, but at the time of our interview he had not paid. He was still unsure about the status of the land, and had left his construction materials lying on that plot.

2.1.5 Case 3: Suzy vs Fr Isaac (Yambio)

Ms Suzy was in a relationship with priest Fr Isaac until 2011. In that year, he built a concrete house for her in her plot. But in that same year, their relationship started to deteriorate, and they ended up separating. In the process of separation Fr Isaac claimed ownership over her plot, for he had spent a lot of money on its development, and stressed that she didn't bear him any children.

Suzy called on her family and well-educated brother Angelo to come and mediate in the dispute, but Fr Isaac did not acknowledge their authority to resolve the dispute. Suzy's family then decided to take the case to the county court in order to have the case settled, and to win back the ownership of the plot. "But then Fr Isaac used money to buy some security organs to arrest and imprison Suzy," her brother claims. "But then we went there, the police found Suzy not guilty and the rightful owner of the plot. They let Suzy go after finding out that the priest was trying to grab her land" (interview, March 2015).

From the police Suzy's family took the case to the CLA and eventually to the high court. At the high court, the family presented their legal documents as well as witnesses who testified that Ms Suzy was the rightful owner of the plot. Among them was a reputable chief who had signed the document of Suzy's

47 Interestingly, the county court is a lower court than the high court.

48 It is difficult to translate this to a value in USD because of the high inflation rates in South Sudan from 2014 to 2016. At the time of the interview, this would have roughly equated to 50 USD.

purchase of the land. Based on this evidence, the high court judge ruled that Suzy was the legal owner of the plot. Soon after the verdict was passed, Fr Isaac demolished the building that he had built on Suzy's land, so as to leave only bare ground for Suzy.

The family certainly found many obstacles in their way: they had spent three years and some 360 SSP on the respective processes. Still, Suzy's brother Angelo holds that the ruling was fair, "it took a long time and it involved some corruption and intimidation at a certain stage. But all not in vain – we won!"

2.1.6 Analysis: Obstacles for Women

These cases show how for both men and women land ownership is highly contested. Throughout South Sudan, episodes of violent conflict have led and continue to lead to displacement (Leonardi and Santschi, 2016). When people are displaced, seek refuge abroad, or return to their hometowns, competition over land often ensues (see also the case study on the LRA-displaced people). These cases further reveal that the crucial bottleneck to obtaining real ownership over land seems to be one of enforcement – and not 'just' of law. Getting a court ruling implemented requires a lot more than being in the right. In other words, access to courts and fair rulings do not equate access to justice.

Much has been written about patriarchal notions on women and in particular their rights to land. Although elements of that are significant barriers to women's equality, it is important to be nuanced. The three women in this case study managed to get their right to land recognised. And they were not *a priori* discriminated against by the County Land Authority and high court. Even in the customary courts – often thought to be the bastions of patriarchy – the position of women seemed to be changing. In these three cases, it was the woman and not the man who won the legal battle for the land. This seems to reflect a more general sense among our respondents that the position of women is changing with one rural headchief in Rii-Rangu claiming that, "we also give equal rights to the people before the court whether it is a woman or a man. Nowadays we even issue plots to women. We do not follow what our ancestors used to do in the past when women were not entitled to own land" (interview, April 2015).

Importantly, while the norms in both customary and statutory law seem to be changing, that development is not in everyone's interests. In the context of dire poverty and increasing pressure on land, it is not surprising that some invoke tradition as a justification for claiming ownership over land. Typically, it would be the in-laws of the widow to chase her away – even if the deceased husband had indicated that his wife should inherit his property. But nowadays in both Yambio and Nzara, women's groups seek to counter such actions by, for example, immediately upon the death of a man, "call[ing] the widow not to leave the house or the land and to stay with the children at their late house" (interview, February 2016).

The three cases illustrate that disputes over land were shaped by disputants' status and social relations in a community. And so in a dispute that seemed to be about land at first glance, elements of family relations and witchcraft allegations often did come up at later points in the dispute. It might be significant that all three women in this case study were over 50 years of age. Women of a given age have generally acquired a certain status – especially when they are still married and have children. Further research could delve deeper into women's claims to land in court, and differentiate between different generations of women. Certainly, the prior general observation that 'barren women' are a vulnerable group is confirmed by the case of Ms Suzy. Her former partner Father Isaac alleged that he was the rightful owner of the land because he had invested in it, but also (implicitly) because Ms Suzy did not bear him children.

Another obstacle to justice comes in the form of (the threat of) violence. This played a significant role in the three cases presented above – as well as many others. It would seem that in present-day Western Equatoria State, it is still possible for powerful individuals to call upon state organs such as (elements

of) the police and armed forces to intimidate and even arrest others. We have not found evidence to suggest that non-state armed groups – such as the Arrow Boys – have been similarly involved in intimidation practices.

Both men and women in Western Equatoria State struggled to find enough money to take their case to court. Although the costs of the various customary and statutory courts varied, it was often cited as an insurmountable hurdle. The fees and fines associated with dispute resolution were not a gender-specific obstacle as such, but women had on average less access to money. It is clear that the three women interviewed for this chapter belonged to a somewhat privileged group that had access to enough money – in part because they were not alone. These women were supported by their husbands or families throughout the various stages of the dispute. In cases were a woman stood alone – especially in opposition to a (former) husband – they were often much less able to pay for the proceedings.

2.2 Customary courts and traditional authorities

This case study will briefly introduce the legal position of traditional authorities and customary courts in South Sudan, as well as their everyday observed performance in Western Equatoria State. We find it important to describe the functioning of customary courts in practice because it deviates quite substantially both from the legal framework and some key stereotypes that are often made in literature about customary law. In this case study, B-Courts will figure rather prominently as it is a court that was quite commonly established throughout Western Equatoria State. [49]

2.2.1 Historical and legal position

Chiefs often present themselves as 'custodians of the land', firmly grounded in local cultural and historic context. But while chieftaincy certainly has roots in the distant pre-colonial past (Evans-Pritchard, 1957 and 1971), just about every aspect of their form and functions has been thoroughly shaped by the policies of the respective powers ruling this territory. From the exploitative early Egyptian days; to the British 'Native Administration' (1921) which used the chiefs for indirect rule; through to the marginalisation and 'Arabisation'-policies by the Sudanese government; to the civil wars where chiefs were forced to supply food, recruits and intelligence to both sides of the conflict. Chiefs always had to balance between the overwhelming power of the outsider, and the demands of their own peoples (Reining 1966; Leonardi 2012).

Chiefs in South Sudan continue to operate in a somewhat hybrid position – they are neither completely state or non-state, formal or informal, traditional or modern, and their incorporation is not clearly as part of the executive or judiciary. They are tasked to preside over the customary courts, but also given administrative responsibilities. The Local Government Act (2009) describes the various chieftainships at the various administrative levels (see Figure 1), and some of their responsibilities. The LGA stipulates that customary court rulings can be appealed against in statutory courts[50] but only the executive can remove a chief and their salaries are paid by the Ministry of Local Government.[51] Chiefs are not allowed to obtain revenue in other ways – e.g. through taxation or business. Lower-level sub-chiefs and headmen are 'volunteers' who receive a share of the revenues of the customary court sessions that they hear.[52] In those courts only the clerk and court police receive a government salary.

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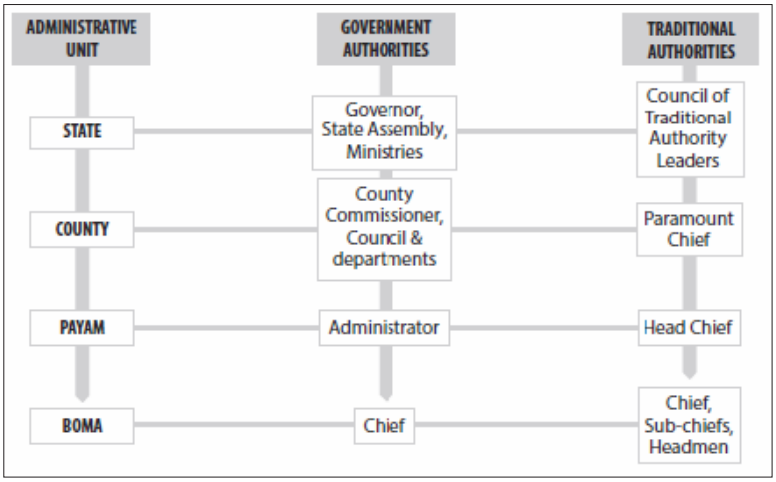
49 Yambio had no C-court at the time of research. In other places such as Tombura, Ezo and Maridi the C-courts were present and very active.

50 The appellate chain runs from the lowest A-court, through the B-court to the C-court – the highest customary court – up to a statutory magistrate – the county court judge of first grade and further.

51 In Yambio County, the executive chief receives 825 SSP per month and the deputy chief 350 SSP.

52 The procedure followed in most counties under research stipulated that at the end of every month the court revenue would be brought to the local government. The customary court's chair and clerk would bring the money and receipts to the accounts section of local government, and fill out 'Financial Form 15'. After the total had been calculated, the customary court staff would bring back a percentage to divide amongst each other. Interestingly, that percentage was often unclear – varying from 40 to 60 percent. The rest of the money would go to the local government. In either case, local government officials estimate that customary courts remit at most 1000 SSP – and often a lot less.

Figure 1: Administrative structures and governance in South Sudan



Source: Leonardi and Santschi, 2016.

2.2.2 People's use of customary courts

Justice seekers facing family disputes often first ask elderly neighbours to mediate in disputes.[53] But especially in the urban centres where customary courts are rather accessible – such as in Yambio, Ezo and Tombura – some courts are full on weekdays with people bringing their disputes.[54]

Table 5: Percentage of Azande disputants in three customary courts

% of disputants Azande	Yambio B-court	Rii-Rangu B-court	Nzara C-court
Claimant	94%	96%	98%
Defendant	93%	100%	97%

Both the justice providers and seekers in customary courts appear to be rather homogenous. C-courts, the highest level customary court, have the competence to hear 'cross cultural civil suits' (Local Government Act, 2009: Section 99: 7). In Tombura, the panel of judges was composed of both Balanda and Azande. But as the court records of that court could not be obtained, we do not know if this translates into a more mixed body of disputants.

Court records of the statutory courts were not accessible to this research project and so little can be said about the ethnic character of its disputants. Importantly though, judges in statutory courts are often not native to the area in which they work. And so one hypothesis would be that disputes that cross ethnic boundaries are more likely to end up in front of a statutory court because the non-majority disputant might feel ill represented in a customary court of the majority.

2.2.3 Types of disputes

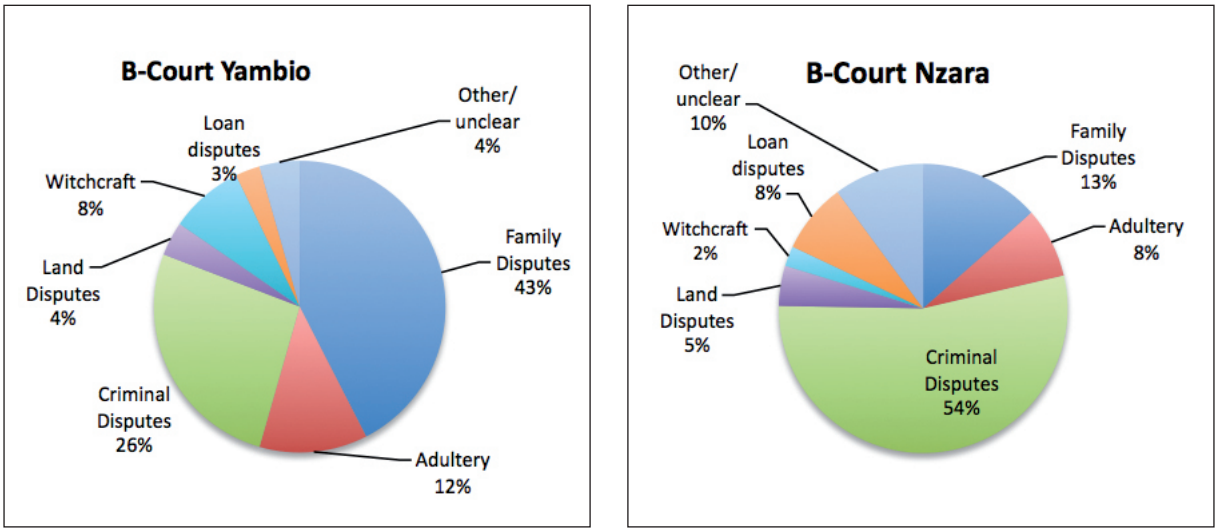
The jurisdiction of customary courts is described succinctly in the Local Government Act (2009). Customary courts have no legal competence in adjudicating criminal cases – "except those criminal

53 Funerals are also important places for cementing family ties and resolving tension. All the family is gathered, and problems can be brought forward to the elders of the family.

54 The case-load of customary courts differs greatly between and within cities. In Yambio, the B-court easily hears four or five cases per day. But in Ezo the B-court only heard 25 cases between 22 July 2014 and 14 January 2015. That may be explained by the fact that Ezo also has an operational C-court whereas Yambio does not.

cases with a customary interface referred to it by a competent Statutory Court" (Local Government Act, 2009: Section 98: 2). The B-courts are the court of first instance in major customary disputes and minor public order cases. Additionally, they are given the competence to decide: "major customary civil suits of marriage; divorce, adultery and elopement; inheritance; child rights and care; women rights; and customary land disputes" (Local Government Act, 2009: Section 100: 4).

Chart 4: Nature of accusations in B-court Yambio (n=314) and Nzara (n=105).



Meta-data collected for this research[55] reveal that the types of cases handled by the customary courts studied in this research differ greatly but always include a large amount of criminal cases such as theft, assault and sometimes even murder. At times, the boundaries between 'criminal' and 'civil' or family matters – and therefore the jurisdiction of customary courts – are not that clear. Adultery, for example, is a criminal offence according to the Penal Code Act (2008: 266) that can result in up to two years imprisonment, but the Local Government Act (2009) stipulates that adultery-allegations can be ruled on by B-courts which have no jurisdiction in criminal cases.[56] From these charts one might deduce that land disputes are not common, but that would be misguided. First, many land disputes do not come to the B-courts. Second, disputes are often multi-faceted yet can be categorised as 'family matters' or 'witchcraft' even if they would have a component involving land. The B-court records also frequently make mention of rape-cases. Closer examination, however, reveals that these are not always rape-cases in the Western sense of the word: in a crude way it may not be the absence of consent of the girl but that of her relatives that renders the intercourse illegitimate. Crucially, it is often impossible to neatly divide disputes into categories like 'family', 'land', 'witchcraft' – more often than not cases span these divides. Especially witchcraft (more specifically what Zande refer to as *mangu*) often comes in at later stages of a dispute.

55 Through the digitalisation of court records of five customary courts. It is important to be candid about the limited reliability of these court records, as the categorisations used may at times be vague or altogether not reflect the nature of the case. Often, the clerk would summarise the dispute as being about a 'fight' – leaving it unclear if there had been a verbal argument or a physical fight, and whether this had taken place in the domestic sphere (possibly domestic violence) or somewhere else. Questions about interpretations of the English word 'rape' in customary court records have been discussed earlier in this report.

56 In a similar fashion the Penal Code Act includes articles on 'Cohabitation by Deceit', Marriage Ceremony Fraudulently gone through without Lawful Marriage', 'Enticing, Taking Away or Detaining a Married Woman' and 'Sexual Harassment'. Interestingly, the Criminal Procedure Act (2008: 50 and 51) stipulates that "no Public Prosecution Attorney, Magistrate or Court shall take cognizance of an offence under [these] sections of the Penal Code, except upon a complaint made by the spouse or the aggrieved."

Chiefs often complained that their power over land is being taken away by the state. But they often still allocated bits of community land in undemarcated areas, and customary courts continued to hear land disputes. These issues were resolved in consultation with the specific headmen or elders of the area concerned. In Yambio, land cases were often referred to the County Land Authority. In Ezo, a B-court judge explained that some cases are too complicated for them to resolve. Especially "when someone has been there for a long time and has graves and trees on the plot" (interview, 25 March 2015). But even where administrative bodies of the state take over, chiefs are often still consulted.

2.2.4 Procedures

The LGA stipulates that B-courts should be staffed by a head chief or executive chief as chairperson, sub-chiefs as members, two clerks, and court police. The court clerk and court police are paid by the *payam* administration.[57] Customary courts commonly have panels of three judges, some of whom are chiefs or headmen from the area, under the leadership of the administrative unit's main chief. Frequently, those panels would include one woman. Sometimes, the judges were appointed because they gained a reputation as out-of-court problem solver in their neighbourhood. On average, the traditional authorities interviewed for this research have enjoyed less education than the people who bring their disputes.

The Local Government Act specifies that justice administered by B-courts should be equal and swift, and that they should award adequate compensation to victims; recognise voluntary mediation; and administer substantive justice. Evidence collected for this research suggests that B-courts are most certainly swift – most cases being resolved in a matter of days. Whether the justice administered is equal is a more contested question.

2.2.5 Sources of law

In adjudicating cases, customary courts are not expected to refer to legislation and instead tasked to "make judgments in accordance with the customs, traditions, norms and ethics of the communities" (LGA, 2009: Section 98: 1). What those customs, traditions and norms are, however, is not specified in any legislation. At most, the legal framework explains what it *cannot* be through 'repugnancy clauses.'[58] Efforts to codify or 'ascertain'[59] customary law have been discussed in detail elsewhere (Leonardi, Isser et al. 2011, Hinz 2012). In interviews conducted for this research, chiefs frequently expressed a desire for clearer guidelines on their jurisdiction and sentencing powers.

The sources of law that customary courts refer to vary in practice. Often, a B-court would have an old copy of a law. In Ezo, for example, B-court judges say that "we pass verdicts in accordance with the rule that was given to us" (interview, 25 March 2015). Interesting in this regard is the fact that the Zande word for 'rule', *ndjiko*, is also used for 'law'. The 'rule' referred to in Ezo *payam* is the Criminal Procedures Code of 2003. A copy of this code is also the present in the B-court in Yambio. The customary courts in Western Equatoria State have also been targeted by UNMISS and UNDP for trainings on human rights. One B-court judge in Tombura remembered how: "a man from Rwanda came, and he organised a meeting to give us a copy of our customary law. I keep it at home. The Rwandan man worked with the

57 In Nzara, the chairman of the B-court held that the clerk was paid 272 SSP per month and the court police 315 SSP.

58 See for example Transitional Constitution, 2011: Article 167: 3 and Code of Civil Procedure Act, 2007: Section 6, a.

59 In 2014 and 2015 UNDP conducted an ascertainment project in partnership with the South Sudanese Ministry of Justice. The aim was to ascertain the customary laws of various ethnic communities, culminating for each group in a description of a few pages for each group on marriage, divorce, various sorts of offenses and appropriate responses to them. Although an attempt was made to ascertain the Azande 'customary law', the traditional authorities involved rejected the end product and the product of that ascertainment has consequently not been published.

UN, that is where he stayed. We took from the training what works for us. But he used examples from Rwanda, which are not relevant for us" (interview, 18 March 2015).

2.2.6 Sentencing

The legislative framework is rather unclear on the maximum sentences that customary courts can pass. The Judiciary Act stipulates maxima for statutory courts, but makes no mention of customary ones. The Local Government Act dictates the jurisdiction and composition of customary courts, but offers no sentencing guidelines. In the absence of clear laws or regulations, local customary courts seem to have their own maximum.[60]

The sentencing by customary courts usually includes three elements: the court fees to be paid, the compensation to the victim, and a prison term to be served or bought off. Although some judges held that "we forward cases that require prison" (interview B-court, March 2015) this seems to be withspoken by the court records. Even for minor civil cases, people are commonly sentenced to a few months in prison. This may be due to the fact that the judges in customary courts depend for their income on the court revenues. When they sentence someone to prison, they often offer the opportunity for the accused to buy off prison time – referred to as 'bail' – for a set amount of money.

The perceived fairness of court proceedings and sentencing differs greatly, and no easy generalisations can be made. Customary courts are often accused of being biased towards the powerful as they are more pre-occupied with maintaining order in the community than with a strict conceptualisation of 'blind' justice. But evidence collected for this research suggests that this is not true: women, ethnic minorities and poor people at times win cases against people who are in many ways more privileged (see box and case on women's claims to land in court).

B-Court corrects headman's mistake
Interview Congolese (F, 27) in Yambio, March 2016

"I came from Congo in 2007 and settled in Gangura Payam. For two years I was doing my small scale business. When I got I some small money, I came to Yambio and found one good plot through a headman … He sold it to me for 1,500 ssp. I built 3 small *tukuls* [clay, grass-thatched huts] on the plot, and one of my sisters also followed me and we were staying there together.
In 2012 I went to Central Africa with my boyfriend to carry out some business there. I came back after 9 months and found that they had chased my sister out of the plot. When I asked the headman, he told me that the land was empty and that that was the reason that made him to sell it away. But the owner had come back and claimed the land, so he decided to give the land to him and chase away my sister.
I decided to go to the B-court with that case. I summoned both the owner of the land and the headman. The ruling was that the headman was to pay me back 1,500 ssp plus the money that I used to summon him 180 ssp. The total was 1,680 ssp. The owner of the plot had to compensate the buildings. They calculated for each room how many bricks, the pole rope and grass. One room cost 800 ssp, for all the three rooms they came up with 2,400 ssp plus my 180 ssp all total of 2,580 ssp. The two paid the amount of 3,260ssp …
I was really satisfied with the ruling. It was beyond my expectation, because before I was warned that since I am a foreigner maybe these people will not give my right. I really appreciate the justice provider who are working in Yambio B-court."

60 The functionaries of the B-Court in Ezo held that they could sentence up to 6 months in prison. In Nzara meanwhile, the B-Court sentences people up to 9 months.

2.2.7 Court revenues

The monthly court revenues differ greatly per county. In Ezo, the figure is estimated to be between 150 and 200 SSP monthly. In both Tombura and Yambio, the revenue is estimated to fluctuate between 200 and 350, depending on the cases they get. In Ezo, Nzara, Tombura and Yambio there is some unclarity around the remittance of this money to the *payam*. Different officials in Ezo *payam* reported that they returned either 40 or 60 percent of the revenues back to the B-courts (interviews, 23 and 24 March 2015). B-court judges interviewed for this study have usually held that they get 40 percent of the revenue.

The court clerk is responsible for bringing the money and receipts to the relevant local government office. They will check the case records occasionally to see if it matches the receipts handed in. Some of the income that the customary courts generate, however, does not have to be remitted. Fines imposed on people for 'misbehaving' in court for example. What is more, in Ezo the B-court judges indicated that they would sentence people to 'casual work' such as renovating houses or cultivating land. This is reminiscent of older days where an accused would be sentenced to work on the chief's fields.

2.2.8 Position of chiefs and customary courts

There are a number of ways in which the position of chiefs is undermined from below and above, and much of that has to do with their financial position. Chiefs frequently complained that they lacked the financial means to properly exercise authority. The local government pays paramount chiefs, executive chiefs and deputy *payam* chiefs a monthly incentive (varying from 300 to 1000 ssp). But the lower chiefs depend at least partly on the government-monitored revenues from the customary courts. But that revenue is hardly enough. The *payam* administrator in Yambio stressed that working in the B-court is primarily voluntary work: "most of them also cultivate, they work in the court for the prestige" (interview, 19 March 2015).

The highest chief in Yambio held that it would be better not to be paid by the government at all because it brings with it dependence. Instead, levying local taxes would offer them some autonomy vis-à-vis the national government. Chiefs interviewed for this research were generally hoping that the *kofuta*, an old social service-tax, would be reinstated. This tax used to be collected through the chiefs in old Sudan, and they were able to keep part of the revenue. In Tombura County, the tax was collected in 2012 for the construction of a bridge.[61] Reinstating the *kofuta* would require a decision by the county legislative council, although some senior state government officials also held that the tax regime for the state should be uniform.

For now, chiefs complement their income with other activities. Some cultivate land, and in one instance in Ezo a low-level chief was working as an electrician with the UN-mission. A county commissioner interviewed for this research suggested that chiefs could easily generate extra income by "watch[ing] carefully if someone litters the street and fine them! [They] can make your their own money! But the chiefs are lazy" (interview, 27 January 2015).

Their financially fragile position seems to be aggravated by the legal framework. Customary courts are to be independent and serve justice "without interference, fear or favour" (LGA, Section 103). But chiefs are ultimately held accountable not by the judiciary on the basis of the quality of the justice they administer,[62] but by the executive. And so it is perhaps not surprising that power and politics can be major considerations for the chiefs judging in customary courts. Especially when one of the disputants

61 That bridge had subsequently been destroyed by an army truck which was loaded too heavily.

62 There are provisions in the Judiciary Act for the High Court to exercise administrative review over all lower courts – which would technically include customary courts. But no chiefs are removed by the judiciary.

is part of the SPLA or a 'big man', customary court members seem ill at ease, and prefer to refer the case on to the statutory courts.

2.2.9 Analysis

The customary courts are omnipresent, and indispensable for the everyday administration of justice in South Sudan. Customary courts present an accessible and public arena in which disputants can initiate relatively simple and affordable cases that are dealt with swiftly and in the local vernacular. Based on our findings it is difficult to say much about the quality of justice being dispensed by customary courts. However, two common assertions about customary law can be withspoken based on our findings. First, contrary to much scholarships on 'customary law', these courts are not just working to restore the harmony in their communities through reconciliatory proceedings; in fact, the court ruling results in a clear loser and winner and comparatively harsh punishments are handed down. Secondly, customary courts in Western Equatoria State seem to be less discriminatory than is often alleged – and there are cases of women, minorities and poor people who manage to get their rights recognised in customary courts.

The incorporation of traditional authorities into local government remains a complicated affair, and a marriage of convenience rather than affection. Since colonial times, chiefs have been part of the state apparatus in some shape or form. In present-day South Sudan, their position between the judiciary and executive seems especially contradictory. Chiefs receive small salaries from the state and are disallowed from obtaining their own revenue through local taxation. This has left many of them disgruntled and combining their chieftaincy and service in customary courts with odd jobs.

2.3 The County Land Authority

This case study will investigate the legal position and responsibilities of the County Land Authority (CLA); the establishment of its office in Yambio; the 'Land Dispute Committee' that falls under it; typical cases that the CLA deals with; disputants' perceptions of the CLA; and how respondents in other cities reflected on the CLA in Yambio. The case study on demarcation will also investigate the role of the CLA.

2.3.1 Legal position of the CLA

The County Land Authority (CLA) is an administrative body that has its legal roots in the Land Act (2009) which stipulates rather succinctly what the position and role of the CLA should be. All members of the CLA are to be appointed by the state governor, and the CLA is to be chaired by the county commissioner. The day-to-day proceedings are presided over by a secretary. The other members should be representatives of the town councils, the Ministry of Physical Infrastructure, the traditional authorities, civil society groups, and women. To ensure the technical competence of the CLA, "at least one member … shall have qualifications and experience on matters pertaining to land" (Article 45). What sort of qualification or experience suffices is left unspecified.

Land Act 2009, Article 46. Attribution of the County Land Authority.
The County Land Authority shall have the following attributions –

(a) hold and allocate public lands vested in it with the approval of the Concerned State Ministry in the State subject to town and municipal planning in the County;
(b) make recommendations to the Concerned State Ministry on gazetted land planning;
(c) advise the Concerned State Ministry on any matter connected with the resettlement of persons in the County;
(d) facilitate the registration and transfer of interest in land;
(e) support and assist any cadastral operation and survey in its jurisdiction;
(f) assist the Traditional Authorities on the exercise of their attributions, and liaise between them and the Concerned State Ministry;
(g) advise the local community on issues related to land tenure, usage, and exercise over land rights;
(h) chair the consultation process between community and State Government if required;
(i) liaise with the Southern Sudan Land Commission;
(j) any other function or duty prescribed by this Act, and any other law, rules and regulations.

What is striking from reading these attributions, is that the CLA is positioned here as an organ that advises and assists the concerned state ministries and local communities, as well as the traditional authorities, in fulfilling their mandate. There is no explicit mention of private or community land. Neither is there an explicit role for the CLA in land dispute resolution. Decisions by the CLA may be appealed against to the concerned state ministry "within a period of one year from the date he or she became aware of such a decision" (Article 47: 1). Should such an appeal be dismissed by the ministry, "the aggrieved party shall have the right to institute court proceedings" (Article 47: 2).

For this chapter, we spoke with members of the County Land Authority, and attended hearings by the Land Dispute Committee. We also interviewed the county commissioner, the director of survey of the Ministry of Physical Infrastructure, the Minister of Physical Infrastructure; a headwoman; and interviewed 11 people who were at the CLA or at some point had been there for their land dispute.

2.3.2 The establishment of the CLA in Yambio

In Yambio County, the CLA was established in 2013. The state authorities were assisted by Tetra Tech ARD which in turn was funded by a 9 million dollar USAID-project called 'South Sudan: Rural Land Governance' (SRLG). Yambio and Bor were chosen as sites for piloting the establishment of CLAs. Interestingly, the donors seem to have had a very different and more specific view of what the CLA should be doing than was stipulated in the Land Act. A press release by the USA Embassy in Juba quotes then-Ambassador Susan Page as saying:

> The project is helping South Sudan to establish a comprehensive land policy that is equitable and transparent – and thus promotes the peaceful resolution of disagreements over land ownership and use. Moreover, with a rational land policy in place, investor confidence will increase and trade, industry and agri-business will have a solid base on which to grow (Office of Public Affairs 2013).

Investor confidence and trade are not stipulated in the relevant Land Act-articles establishing the CLA, nor is the "resolution of disagreements over land".

The self-contained office of the CLA was built on the compound of the county and *payam* administration. The idea was that after 2014, the county would start funding the CLA itself – but according to CLA members this has never happened due to the government-wide austerity measures. As a result, some CLA members told us they had not been paid for months, and that their work was on a voluntary basis. Work for the CLA is effectively part-time, with most members only coming in once or twice per month and only a handful of members coming in more regularly. All members have additional positions – as chief, civil servant, or youth leader. The interviews conducted for this study did not find proof or even strong allegations of corruption at the CLA, but if the office remains unpaid, it is hard to see how CLA members could withstand the temptation of making money with their work in a more inventive manner.

The attributions given to CLA by the Land Act are only partially implemented in Yambio. The secretary of the CLA held that his office has three core tasks: 1) to aid in the demarcation of land; 2) to resolve disputes about plot boundaries; and 3) to issue land leases for business and residential plots.

One task that the CLA is performing in Yambio is to assist in the demarcation of community[63] land. "When the state is extending," as the secretary of the CLA put it, the commission assists the Ministry of Physical Infrastructure in acquiring community land to convert it into private or public[64] land. To do so, the CLA negotiates with the local chiefs, who in turn talk with their people to come to an agreement.[65] After this, the Ministry of Physical Infrastructure "plans the area, and we come to survey and allot the plots" (interview secretary of CLA, 29 January 2015).

Land leases:
1st class: 45 by 40 for 30 years, for 605 SSP.
2nd class: 35 by 30 for 20 years, for 455 SSP.
3rd class: 21 by 20 for 10 years, for 255 SSP.
After the lease relapses, the leaseholder has to renew his lease.

63 "Community land shall be held by communities identified on the basis of ethnicity, residence or interest." (Land Act, 2009: Article 11: 1).

64 "Public land is land owned collectively by all people of Southern Sudan and held in trust by the appropriate level of government." (Land Act, 2009: Article 10: 1).

65 The Land Act, Chapter XII 'Expropriation of Land for Public Interests', stipulates detailed steps that any expropriation should follow – including a 'consultative process', and compensation 'in cash or in kind'.

2.3.3 The Land Dispute Committee

Dispute resolution is not explicitly listed as an 'attribution' for the CLA in the Land Act. However, it is probably the activity that the Authority is known for best in Yambio County. The CLA in Yambio has set up a specialised 'Land Dispute Committee' which has hearings on Tuesday and Thursday afternoon. At those times, a group of people cues patiently outside in the shadow on the porch or under the mango tree, awaiting their turn. Inside, the secretary[66] of the Land Dispute Committee presides over the hearings.

Although the committee is theoretically composed of five members, during our study we found the secretary at times only accompanied by an elder and sometimes also by a women's representative. Cases are dealt with quickly – almost impatiently – by the secretary. In front of him lies an overflowing binder with handwritten case reports, hand-made drawings from the survey, and copies of documents such as land leases and court rulings. Around the table are some twenty chairs – all filled with disputants or witnesses awaiting their turn. This, and the open windows and door, render these sessions highly transparent in a narrow sense – everyone can be present and observe the manner in which these disputes are addressed by the committee.

When someone brings a land dispute, the complainant has to pay 10 SSP[67] to summon the defendant. "Then we send the surveyors to go and find out the proper boundary of the plots," the secretary of the CLA explains. "They do so by identifying the 'block corners' with a GPS-device. They work from there" (interview, January 2015). These surveyors work under a special directorate of the Ministry of Physical Infrastructure, and their work is in large part steered by a 'Masterplan' and work plan that has to be approved by the Council of Ministers at state level (see also the case study on the demarcation process). After the surveyors have identified the plots, the CLA sets up an ad hoc committee composed of a member of the County Land Authority and one of the traditional authorities. "Then the complainant has to pay 50 SSP[68] to have the case heard with the committee," the Secretary of the CLA explains. "If they fail to reach a solution, the case is referred to the county judge, I believe that is the B-court" (interview, 29 January 2015). Another member of the same CLA explained to us that when a case gets "too complicated for them, the [committee] has to pass it on to the high court" (interview, 16 February 2015). These quotes are revealing for a number of reasons, but mostly for the internal confusion – is the CLA referring cases to the customary B-court, to the statutory county court or even to the high court (see also 'Legislative Framework')?

Where dispute resolution is concerned, the committee's work overlaps to no insignificant extent with that of headmen and chiefs. In many instances, the committee still calls on elders and traditional authorities to help determine histories of ownership. But the traditional authorities also continue to hear cases about land themselves.

2.3.4 Typical cases and responses

When a dispute over land arises, people generally try to resolve it locally first. "If they can sit together as brothers, they can call their elders to resolve the dispute," the secretary of the CLA explains. "If they don't manage, they might go to the headman. If he also fails, they might come here – to avoid having to go to the courts" (interview, January 2015). Disputants often travel a relatively logical and incremental pathway to justice. But there are exceptions. It can be advantageous to be the first one to bring a

66 The secretary of the Land Dispute Committee is not the same as the secretary of the CLA.

67 At the time of this interview, 10 SSP would have translated to between 1,50 and 3 USD, depending on whether one would use the black market or the bank rate exchange. It is unclear to what extent the CLA and other justice providers have adapted their fees to the latest inflation rates.

68 Between 7,50 and 15 USD.

dispute to a higher forum, but at the same time this practice of 'escalation' is often frowned upon. And so especially in the urban context – where social ties can be weaker and there are more fora available – some disputants seem to experience a sort of 'prisoner's dilemma'. The committee deals mostly with three types of disputes.

First, when the demarcation has joined multiple people into one plot. The committee then measures the respective portions and gives the land to the one who owns the largest part. In this, the CLA is different from the traditional leaders. "The one with the biggest portion of land gets it," the secretary of the Land Dispute Committee explained. "We do not consider ancestors or concrete buildings" (interview 10 March). The other claimants are scheduled to be compensated with land elsewhere. This should be done by the allotment committee under the CLA, but that committee seems not to function as well. The trouble is that it is not at all easy to find land to compensate people with. When we visited the CLA, there was a list of 50 people waiting to be compensated with a plot of land in town.

A good example of this is the case of John vs Wilson.[69] When the demarcation team came to their part of the city, the plots of John, Wilson and Francis were joined together. And so according to the new grid, only one of the three men could become the owner of the newly demarcated plot. John preferred to resolve the issue amicably and informally. But Wilson is a powerful man who refused, "and summoned us to the CLA right away" (interview with John, 6 March). The CLA sent a group of surveyors who measured the portions of each of the three men, and found that John had the largest part. Consequently, the CLA ruled that he should be allowed to buy the land lease and that the other two men should be compensated with plots elsewhere.

Interview Peter in Yambio, 6 March 2015: Case with Alice

"In 2011 I bought a resident plot from Matthew for 700 SSP. He is the father of Alice. When I paid for the plot, Alice as well as other witnesses were present. When her father died, Alice wanted to reclaim the land that her father sold. She went to the CLA and summoned the five of us who bought plots from her father. Alice either wanted the land back, or she wanted us to add more money."

The CLA ruled that there is no article to support Alice's claim to the land. They said, "your father knew that you – his daughter – are there, and he still decided to sell the land. So you have no right to take this plot from the owner". But then the CLA told Alice that if she wanted additional money she could open a case in the B-court.

Peter expressed that he felt that the CLA had handled the dispute fairly, saying that: "I am ready to pay her addition if it is of my expectation but if it is beyond my level of income I will not agree to pay anything".

Second, people sometimes attempt to reverse a previous land transaction. Often this happens when one relative sells off the land that was considered by others to be family property. But this type of complaint is also used strategically to make some extra money – as the price of land has risen quite rapidly, people try to get 'the balance' of what the land was sold for a few years ago, and what the land is worth now. "Sometimes people complain as business," the secretary of the Land Dispute Committee alleges. "They say it was sold too low, and that they want extra money or the land back. But we don't agree" (interview, 10 March).

69 For the purpose of confidentiality, all names used for disputants in this case study are pseudonyms.

Third, unrelated to the demarcation it sometimes happens that multiple people claim ownership of the same plot of land. Often, this has to do with spells of displacement and return. In many instances, the informal agreements about land ownership or use that were made decades ago have not been recorded. The offspring of the original parties end up disputing the nature of past agreements. In such instances the CLA as well as the customary and statutory court systems often rely on the memory of local elders. Sometimes both parties have legal documents, but they were issued by different authorities and at different times. One case observed in the Land Dispute Committee was between two disputants who both had a land lease for the exact same plot of land – one of them a brand new document issued in Juba, and another a crumpled old lease from Yambio. Interestingly, to determine who was the original owner the CLA in these cases often relies on the testimonies of local chiefs, elders and neighbours, as well as on the possible presence of old trees and graves of ancestors on the land.

In its attempts to resolve disputes resulting from the demarcation process, the CLA at times refers to block corners and the Masterplan. And often, traditional authorities make reference to indigeneity when attempting to resolve land disputes. But in the everyday reality, the cooperation between the CLA and traditional authorities is flexible, and the authorities refer cases to each other.

2.3.5 Perceptions of the CLA

From the point of view of disputants, the CLA is a vital – if not decisive – step on the road to winning a land dispute. Given that the CLA has only existed for two years, it has been quite successful in becoming a crucial actor in land governance. Especially the Land Dispute Committee hears at least a dozen cases during its twice-weekly hearings. And so it is not at all difficult to find people who have experience with the CLA. The CLA appears to operate in a manner that is both rule-based and pragmatic – for example in its frequent reliance on elders. The secretary of the Land Dispute Committee is an ambitious and capable young man who seems to treat disputants equally – and ostensibly not favouring the rich and powerful.

When we asked disputants about their perceptions of the CLA, it quickly transpired that the boundaries between the CLA, the county and the Ministry of Physical Infrastructure are not at all clear to most people. These bodies cooperate intensively, and also share staff. CLA-members often have another position either in the county or in the Ministry of Physical Infrastructure, and will work from both offices. And so peoples' perceptions of these actors are often bundled as well – even though functionaries of the respective organisations are quick to stress the limits of the mandate of their organisation, and the responsibilities of the other ones.

Disputants interviewed for this study reported a wide variety of obstacles faced when trying to bring a case before the CLA. First, a process at the CLA can take a very long time, with one respondent claiming to have attended 12 hearings between October 2013 and March 2015 before a resolution was reached. This is further complicated by the fact that people in this area often spend time in their garden fields outside the city to work the land and harvest, and do not appear before the CLA. In other cases, one of the parties – often the one on the losing side – simply refuses to show up. "I came to the CLA 4 times but she is nowhere to be seen," one justice seeker lamented. "I left my number to the CLA members so that in case the lady appears they could call me" (interview, March 2015). Second and related, the Land Dispute Committee is simply overburdened. On every Tuesday and Thursday afternoon they hear disputes, but there is never enough time for all the people who come. Third, the CLA is a relatively costly forum. One disputant reported having paid 255 SSP[70] on a single case. Given that a land lease for a first-class plot

70 Thomas James Dafi said he had spent 150 SSP on land lease resolution, 40 SSP on stamps, 25 SSP on type setting and printing, and 40 SSP on photo copies of the document.

costs 605 SSP for 30 years, this is a significant amount. Fourth and more serious, there are allegations of corruption. An executive chief accused the CLA of selling off public land – more specifically the land designated for the new air strip (interview, 6 March). It is hard to determine the validity of such claims especially as few people seem to know what the government regulations and public mandates are – and thus what falls outside of it – and traditional authorities have a stake in overstating the level of corruption at competing institutions.

2.3.6 Seeing Yambio from Ezo and Maridi

The CLA has been set up with USAID-funds in Yambio and in Bor, and it was envisioned to serve as an example for other counties. Evidence collected for this study suggests that other towns in WES are keenly following the developments in Yambio – and some officials reported that they would like to set up their own CLA. This, however, is complicated both in technical, financial and political terms. Land administration and dispute resolution is a vital and heavily-contested field, and any attempt at regulating it is quickly (perceived to be) politicised.

In Ezo the demarcation of land had been frozen altogether at the time of our study. "We had a land committee that sat and processed land leases. But it didn't function well," the county commissioner of Ezo explained. "Now the County Land Authority was supposed to be established but it hasn't yet. Currently land is dealt with by the paramount chief, the county's Department of Physical Infrastructure, and the Department of Survey" (interview, 23 March 2015).

The local government in Maridi too aspires to establish a CLA, as disputes about land are a major concern. Worryingly, the tension around land is often perceived to have acquired an ethnic dimension, with the county commissioner alleging that the Dinka "grabbed most of the land saying that they are the ones who fought for it, and they took it through blood" (interview, April 2015). Most of Maridi town has at some point been demarcated, but disputes have now arisen between some veterans of the SPLA who settled in Maridi in 1991 after liberating the city from the Sudanese. At present the executive chief[71] seems to take on most of the land administration responsibilities. But as land and its regulation are such a sensitive matters, it is highly questionable if any one individual can enjoy enough political neutrality to be accepted by all parties involved.

2.3.7 Analysis

In a relatively short time, the County Land Authority (CLA) in Yambio has acquired a central position in the land governance configuration of the county. It did not just present disputants with an additional arena – but it also operates by reference to relatively predictable rules. This demonstrates that Yambio can offer a conducive environment for innovative policy ideas that align with local needs. There is, however, quite a discrepancy between the tasks that the CLA was given by law, and the tasks it performs in practice.

In Yambio, the CLA is different from the legal set-up in a number of ways. First and foremost, it has two separate committees that in fact do much of the work. Second, rather than being merely an advisory organ, it has taken on a much larger role in land registration and land disputes. Third, decisions by the CLA are appealed against not with the ministry (as envisioned in the Land Act) but with the judiciary. Fourth, evidence collected for this research suggests that disputants are confused as to the distinctions between the CLA, the surveyors, the ministries and other government bodies.

71 The executive chief is the second-highest chief, just below the paramount chief.

2.4 Demarcation and land dispossession

The importance of formally owning a piece of land in Western Equatoria State (WES) has grown tremendously over the last decade or so. Although land had always been important to the life of the mostly agricultural population of WES, it seems to have been less under pressure in the past and in the rural areas than in the present-day (peri-)urban contexts. Urbanisation has been fuelled by war and displacement but also by the economic and social benefits of city-life. One result of this complicated process is the increased pressure on land in and near the cities, as well as close to the main roads.

The rationales for demarcating land differ between various actors. For the local government apparatus the process presents an opportunity to establish its authority by regulating land tenure: by demarcating the land, categorising land as either private, public or community-owned, and by registering people in specific plots. For international donors operating much in line with the recommendations of Hernando de Soto's *Mystery of Capital*, have encouraged the South Sudanese government to regulate land in order to unlock the economic potential of land, encourage investments and improve the provision of services. A project that was inspired by that latter rationale, was the South Sudan Rural Land Governance Project by USAID and sub-contractor Tetra Tech International Development Services, which "established and operationalized" the County Land Authority (CLA) in Yambio as one of its pilot projects (USAID 2012). But international assistance to land governance and legislation was also widely seen as a way of mitigating conflicts in a context where "returning IDPs and refugees, uncertainties over customary practice in the settlement of land disputes, and the lack of codified title to land have led to many local disputes, some of which have escalated into wider conflict" (Bennett 2010). Although this diagnosis seems to be widely shared, the envisioned end-goals and steps towards it are much more contested.

Few state projects in WES are as controversial as the formalisation of land tenure and the demarcation of land. In fact, it both justice seekers and providers in all the seven counties[72] named the demarcation of land as one of the main sources of conflict.[73] The Land Act (2009) stipulates that all land will be classified as either public, private or community.[74] Although in WES there are many questions around the administration and use of community land, this chapter focuses on the process of demarcation of public and private land.[75]

2.4.1 Local government: in pursuit of the Masterplan

The legal framework in South Sudan urges the executive to expand the registration of land – so that it is known how land is classified. At present, much remains unclear and the respective ministries of WES are often unable to estimate how much land is registrered in the three categories. In Ezo county, the

72 The interviews for this chapter were conducted in seven counties: Yambio, Nzara, Ibba, Ezo, Tombura, Maridi and Mundri-West.

73 A notable exception was the refugee camp in Ezo, where the camp leader explained that UNHCR had demarcated all the plots before the camp was opened and from then it was upon the camp leadership to ensure that the inhabitants of the camp would comply. However, it must be noted that these plots were significantly smaller than the ones in other parts of the city. And refugees still struggled to obtain access to – let alone rights over – land to cultivate outside of the camp.

74 "Community land shall be held by communities identified on the basis of ethnicity, residence or interest." (Land Act, 2009: Article 11: 1). "Public land is land owned collectively by all people of Southern Sudan and held in trust by the appropriate level of government." (Land Act, 2009: Article 10: 1).

75 Private land is defined in Article 12 of the Land Act (2009) to be:
(a) any land held and registered by any person under freehold land tenure;
(b) land held by any person or group of persons under lease hold tenure; and
(c) any other land that may be declared private by law.
It is defined identically in the state-level Land Administration, Management and Regulations Act (2013).

Director of Physical Infrastructure estimated that some 10 percent of the central town is demarcated – "but everything else will be demarcated eventually" (interview, 24 March 2015). In Yambio, no civil servant was willing or able to provide such an estimate. The cadastral system there is still handwritten. "UNHABITAT once proposed to link that system to smarter technologies, but that idea was not adopted," the director of survey in Yambio recounted (interview, February 2015).

The state-level Ministry of Physical Infrastructure does have a so-called 'Masterplan' for the allocation of land within Yambio *payam*. This is a PDF-map developed by the Juba-based Ashang Engineering Company in 2009. The director of survey was kind enough to share a digital copy of the plan. The map offers a very rudimentary overview of the city and the plans that the ministry has with it. Since the Masterplan was made seven years ago, the city of Yambio has expanded – in part planned but in large part organically. "Parts of the plan don't match reality," the director of survey acknowledged. "Now we have to determine which areas should be used for industry, the graveyard, and so on. That is supposed to be done in a consultative manner with the *payams*" (interview, 17 February 2015). The ministry is currently working on an updated Masterplan, but as always money is scarce.

When land is demarcated and turned into private land, "the community should form a committee for the demarcation, and report to the CLA or county court," the *payam* administrator of Yambio explains. "The CLA can then approve the demarcation, and send surveyors to go and demarcate the area. A CLA-team – headed by an elder from that specific community – should then go after the surveyors to register people and distribute plots to them. But then individuals have to come to take a land lease. And often they don't" (interview, February 2015). Other respondents also stressed that people would often not 'respect' the demarcation by refusing to move away. And that instead of appealing the demarcation, some would "sit idly without standing up" (FGD, March 2016, Yambio).

The 'apathy' of people whose land was demarcated seems to contrast starkly with the fierce anger they displayed once they were faced with the subsequent (threat of) dispossession. But it is important to understand the context of experiences with government. In recent years, but arguably for the last decades, the implementation of government-initiated policies has been distorted by periodic spells of conflict and economic woes. The massive inflation of 2014-16 has meant that the local government in Yambio could not find the financial means to buy fuel for the bulldozers. And when violence has burst out in various parts of WES, the demarcation process simply grinds to a halt. In the absence of a predictable local government, people have tended to take its – often ambitious – policies with a grain of salt. And so even when they are informed of government plans, they might strategically wait to see serious steps toward implementation before taking action themselves. One additional disincentive for registering land particularly were the costs associated with buying a land lease (see also the case study on the CLA).

When people are displaced as a result of public appropriation of land or the demarcation process, they are legally entitled to financial or in-kind compensation.[76] But there simply isn't the budget. In an interview for this study, the Minister of Physical Infrastructure admitted that many people have not been compensated.

76 The Land Act, Chapter XII 'Expropriation of Land for Public Interests' even states in Article 75: 5 that, "No transfer of ownership or rights over land shall be made until the type, amount, method and timing of the payment of compensation has been agreed upon with those affected."

Interview with Minister of Physical Infrastructure, 27 January 2015.

Minister: We come in and we try to organise it. Of course in the process people are going to be uprooted from where they are.
Interviewer: The Land Act stipulates that people are entitled to compensation when they are uprooted, but we hear of many cases where people are not compensated.
Minister: Yes, but the government doesn't have the resources to compensate people. You need to budget for that sort of thing. We are running on an austerity budget. For the complete implementation of the Land Act you need resources.

In the town of Ibba, the local government has been encountering strong resistance to their attempts to re-demarcate. "The place was demarcated and divided a long time ago during the British into big plots of 100 by 50 meters. Each person got such a big area for agricultural or cotton activities," the inspector of local government explained. "Now these people have lived on those plots for decades. When the government came to demarcate plots of 45 by 40 meters, all the community members resisted – saying that their ancestors had lived on the land and that it belongs to them" (interview, April 2015). In other towns too, the post-independence wave of demarcation often isn't the first one. In Yambio[77] and Mundri certain areas were surveyed under 'Old Sudan'. People may have been allocated the land under a previous administration or by their chiefs – and reshuffling all of this is a deeply unpopular business.

Crucially, the demarcation procedure is one that requires tremendous human and financial capital – and seems to inevitably upset the prior systems of land tenure. Perhaps in countries with a strong executive and judiciary, this process can be implemented swiftly and equally, and disputes arising from it can be dealt with adequately by the appropriate judicial authorities. But in South Sudan, neither the executive nor the judiciary is especially strong.

2.4.2 Justice seekers: Dispossessed through demarcation

Evidence collected for this study suggests that there was a widespread sentiment of anxiety and helplessness when it came to land ownership and the prospect of demarcation. There were two main ways in which people were dispossessed through the demarcation process. First, when the survey demarcated an area, two people would often fall in the same plot – and hence one would have to move. Second, the survey demarcated an area and reserved space for the construction of roads or other public infrastructure. Those living on that land would have to move as well.

Like with other processes, the demarcation offered opportunities and risks, some would win and others would lose out – and those who would lose out were generally not the already powerful but those who felt disconnected from government. In some instances, people had been dispossessed twice without compensation,[78] which fed in to a more general feeling of marginalisation (interview Yambio, February 2016). In Ezo, an LRA-displaced person was despondent: "When I came here in 2011, Headman Bazawi gave this place to us. The plot used to be big - including those banana trees there – but then the big people came and decided to give this plot of mine to that other man. So I have no say because they are the people who know what they are doing, but for me I don't know" (interview, 21 March 2015).

77 The demarcated areas included Hai Kuba, Hai Napere and Hai Suguine. The rest of those areas were not surveyed prior to 2005. (FGD, March 2016).

78 One respondent was displaced by the survey in Hai Napere through which he 'fell on the roadside'. He moved to Hai Duduma, but was also displaced from there when the demarcation process in 2013 placed him and another man in the same plot.

In frightful anticipation of the demarcation process, people sometimes decide to hold off on any investment in the land until they have a firm title to it. Others choose a more aggressive strategy of building on undemarcated or disputed plots in order to confront the authorities with a *fait accompli*. Few people reported to take successful action by addressing the Ministry of Physical Infrastructure directly, "as most of them are not aware about the ministry, how it functions" (FGD in Yambio, February 2016). Instead, most took their grievances to their local youth leader or the CLA.

When the demarcation joined two or more people in one plot, the CLA normally measured who had the largest portion (see also case study on CLA). That person was then allowed to buy the land lease, and the others were supposed to be compensated. But the rules that guide CLA-conduct were little-known, and this fuelled suspicions of corruption.

Interview with citizen in Gangara Emilia, Yambio, 17 February 2015
"In 2013 the demarcation took place, and joined me and my neighbour in one plot. My neighbour who had the biggest portion of the land rushed to the County Land Authority and bribed them, so they gave him the title. The CLA told me and the one who had the smallest portion that we will be compensated somewhere else. But up to date no compensation has come … Let them not only favour those who went to school, educated people, colleagues. Let them implement the law and follow it"

Inhabitants of demarcated areas commonly accused the surveyors of selling off plots illegally to the rich and powerful. Associatedly, the surveyors and road constructors were often seen to avoid affecting the property of rich and powerful people. Instead, they would generally be seen to appropriate less-developed plots. As a symptom of this, people often make a comparison with other towns – Malakal and Wau, for example – where according to them 'the roads are straight' and the demarcation process was not discriminatory.

When we questioned a CLA staff member about this practice, he explained: "You know as well as I do who owns those beautiful houses. We survey, give the plan to the minister and he will share it with the council of ministers. They will disagree with the plan" (interview, 16 February 2015). But the director of survey at the Ministry of Physical Infrastructure gave another reason: "We try as much as possible to minimise the destruction of houses. You must minimise the cost, and so a very well built house or church will be avoided because it is costly to compensate. It is easier to compensate a *tukul*, than someone with a large building. But now the government doesn't even compensate a single *tukul*" (interview, 17 February 2015). And this the exact cause of friction. The people who had to leave their plot ended up feeling victimised: especially when they were not awarded compensation.

As part of the compensation scheme, the local government appropriated plots from people who had a lot of land. "If someone has 4 plots, we take 1. If someone has between 7 and 10 plots, we take 2 plots. If someone has more than 10 plots, we take 3 plots," the *payam* administrator of Yambio confirmed. "This is to compensate someone who has been displaced by the main road" (interview, February 2015). But as explained above, many displaced people never received compensation. It was also unclear whether people from whom a plot of land has been taken with a view to compensate others, should again be compensated somehow. "The demarcation took place in the market area where I had two plots," an inhabitant of Nzara told us. "One was taken and I have not heard about compensation to this day" (interview, 11 March 2015).

When people were promised land elsewhere, their responses varied. Some only moved once they were allocated the new plot. But others moved in with relatives for the time being. Still others refused altogether to leave their old plot. This qualitative study has not established *how frequent* these various responses occurred. But even when people were compensated in-kind with another plot, they were often dissatisfied. The plot would often be in another part of town, swampy, or too far from the roadside or boreholes. When Bangasu town was demarcated and some people's land fell on the road, "they were given plots outside as compensation, but some refuse to move away," a citizen called Paul explained. "They don't want to move back there – there simply is no business on the plots which are far from the main roads" (interview, 18 March 2015).

The tensions arising from the demarcation were not just between the state organs and the people, but also within communities. This was especially true when two or more people were joined in one plot by the demarcation. "They don't solve our problem rather they increase tension among the people," complained Mary. "This woman has been threatening me with my children. Our relation is not OK. After the demarcation took place this woman is insulting me day and night without reason. If I am going to stay in this land I don't want anything bad to happen to me or my children" (interview, April 2015). These sentiments of despair and anger were very common for those involved in land disputes. It is worth here to quote at length an interview with a dejected disputant in Yambio:

Interview in Hai Kuzee, Yambio (March 2015)

"My intention of buying these two plots was that in case if I die, I don't want my children to suffer like the way we have suffered in acquiring land. Because we were many and our father did not care to buy plots for us. It is through education, that I have managed to buy a plot both for me and my young brothers. But I don't have land leases. When I went to the County Land Authority they told me that I cannot get a land lease for a plot which is undemarcated because it has no plot number.

In February 2015 those survey came and demarcated the area and all plots were safe and I went again for the land lease program. But they told me to hold on, they would come and register people on plots and give it's plot numbers that is when I will come and get it's land lease. Those survey came back in April to register us on plots. They just registered my name in one plot and said they cannot register my son in the second one, and one person is not allowed to own two plots in one in this area of Hai Kuzee.

But I could not accept their idea because I have suffered with that plots – uprooting the big teak tree in the plots in order to make it clear. People are now trying to get it from me, but that will never happen. My next step is that I will consult other Big people in the authorities so that I can hear their decision. I will never lease this plot to someone else while I am still alive unless they come and slaughter me. Also how will our relationship be with that neighbour? I think it will be war."

Demarcation for the construction of roads – and the associated displacement of the inhabitants of the demarcated land – was an especially ambiguous phenomenon. Although participants in our kick-off meeting in Yambio generally felt that roads were necessary for development – often even calling it the first step – their construction always raises disputes. Often, good roads were built over older smaller

roads that were typically flanked with houses and farms. And as explained above, it would often be the already-poor people who would be least shielded against the demarcating state.

The lack of transparency of the demarcation process was one of the biggest complaints voiced by respondents in this research. Although the Ministry of Physical Infrastructure claimed to announce plans to demarcate given areas over the radio, people oftentimes complained that they had not been informed about government plans until the bulldozers arrived. And rumours would often further fuel angst-ridden anticipation of an impending demarcation process.

2.4.3 Conclusion

In all seven researched counties, the demarcation process was associated with great injustice. The opaque and fickle process has resulted in dispossession without the legally required compensation of those affected, and fuels disputes within communities. People have learned to anticipate the unpredictability of local government with an attitude that some typify as 'apathy'. But once people are forced to move, disputes over land can turn violent (see also case study 'Women's claims to land'). The proponents of the demarcation hold that these disputes are inevitable in the short-term, but that in the long-term a strong well-surveyed system will bring an end to land conflicts.

In the process of state-building, the local government has incorporated chiefs to an extent and has taken many powers from them. Chiefs interviewed for this case study report feeling powerless – especially when land is concerned. "As chiefs these days we don't have any voice concerning things to do with land," the paramount chief of Maridi complained to us. "Because the county has taken over almost everything, even community land!" (interview, 16 April 2015). But in Yambio, chiefs, headmen and elders still served vital roles in the local governments' attempts to survey and demarcate land, and even more so in the resulting dispute resolution. In both processes, they helped the executive to determine the history of land ownership and kinship relations. And so although they did not have the final say, their role in these processes was seen by all involved as invaluable. In this regard, the CLA is an interesting case of an institution that was designed to be a hybrid of state and non-state, customary and statutory, executive and judicial establishment.

2.5 LRA-displaced people coming to the city

> This is my land. I didn't buy it, I just settled.
> *Resident of Hai Nakama, Ezo*

2.5.1 The LRA and civilian displacement

South Sudan's violent history has meant that many people are or have been displaced, either within their borders or across them. By September 2016, FAO estimated that over 2.5 million people were displaced by conflict. In Western Equatoria State (WES), many people have lived in the DR Congo, Central African Republic, Uganda or in northern Sudan. The three major events that sparked displacement in WES were first when the SPLA conquered the area in 1991. Those refugees and IDPs mostly came back in the early 2000s. Second, especially in eastern WES violent spells between cattle keepers and agriculturalists led and continue to lead to small-scale displacement. During such fighting in early June 2015, nine people were killed and many more civilians were wounded and displaced. The third wave of displacement was caused by the '*tong-tong*' (chop-chop) – the Lord's Resistance Army (LRA). In 2011, the Danish Demining Group estimated that between 70,000 and 100,000 people had been displaced in WES alone as a result of LRA-attacks (Danish Refugee Council 2011) – UNOCHA put the number at 440,000.

The LRA – from northern Uganda – first came to southern Sudan in the early 1990s (Prunier 2004). After Juba peace negotiations with the LRA failed in 2008, the Ugandan army aided by USA intelligence launched 'Operation Lightning Thunder' against the LRA-camps in Garamba National Park in the DR Congo (ICG 2011). The LRA-camps in Garamba were bombed, and while the LRA suffered severe casualties, it wasn't defeated and what remained was a scattered but vengeful band of fighters. The UN Office for the Coordination of Humanitarian Affairs (OCHA) estimated that since then, "the LRA has killed more than 2,400 civilians, abducted more than 3,400 and caused an estimated 440,000 to flee their homes in fear" (ICG 2011).

Schomerus and de Vries write that "the majority of LRA fighters [after the aerial bombardment] went westward towards areas around South Sudan's border with the DRC and the CAR" (Schomerus 2014). In South Sudan, the LRA attacked Yambio and Ezo in 2006 and 2009 (UNHCR 2009), but in recent times the movement seems weakened and scattered (ICG 2014) and by consequence its attacks are smaller and have focused on isolated villages in the border area, looting supplies and abducting people.

Armed forces from South Sudan, Uganda, CAR and DRC have united as part of an African Union military response against the LRA (Schomerus and Rigterink 2016). These efforts are supported by 100 USA military advisers who are based between Nzara and Yambio to support the fight against the LRA. Perhaps more effective than these various armed forces, have been the efforts of popular community-based self-defense groups – known as 'Arrow Boys' – that mobilised in response to the threat of the LRA and the perceived lack of protection from the national army, the SPLA. The changing dynamics around the LRA and Arrow Boys have been elaborately described elsewhere (Schomerus and Rigterink 2016); the focus of this case study is on conflict-induced displacement.

People who sought refuge from the LRA often left the countryside for the city. And so the main WES towns such as Yambio, Ezo, Tombura and Maridi received an influx of LRA-displaced people. It is this last wave of displacement that this case study focuses on.

For this case study, our researchers conducted 19 interviews in neighbourhoods in the towns of Ezo, Tombura and Yambio where significant parts of the population came from LRA-affected areas. When IDPs or refugees come to town, they often settle on what they perceive to be empty land; land that is not

occupied by anybody. But in WES – especially in the towns all the land belongs to someone, also when it is not occupied. And as the respective churches are large landholders in WES, the displaced people often come into conflict with the church.

2.5.2 Yambio: a church vs LRA-displaced peoples

In 2008, Yambio town saw an influx of LRA-displaced people from the border area around Gangura and Nabiapai. Upon their arrival in the city, a church[79] offered them shelter in the Vocational Training Centre (VTC) Area**.** The trouble only started in 2014, when the church hired government surveyors to demarcate the area and started registering people. "At first we didn't know why they were registering us," Francis[80] an inhabitant of the area explained. "But later we heard our names over the radio, saying that we should evacuate the area." The church was only willing to sell the plots for 10,000 SSP, while a government-administered plot is sold for 605 SSP.

This has soured the relations between the church and the communities. In addition to their fear for the LRA, many inhabitants have grown accustomed to the services available in the city: "We cannot evacuate this area – we can get better education and health care here than elsewhere. And the LRA is still there" (interview resident, March 2015). In December of 2014, many residents of the VTC Area mobilised and walked to the church. A committee of their members voiced their fear of going back, and they requested that the price of plots be reduced to 455 SSP.[81] Later they suggested that the church could offer them alternative plots to stay in. The church refused and has reportedly not yet come up with a counter-offer. Evidence collected for this study suggests that only three households have so far started paying the 10,000 SSP.

Some of the IDPs have started to dispute the church's claim to the land, arguing that the church had no legal documents showing that they are the rightful owners of the land. "The land used to belong to farmers, but it was then left empty because of war," the county commissioner of Yambio explained. "The late Bishop was then given that land in 1987 by the traditional authorities in order to establish a vocational training centre" (interview, 27 January 2015). That centre was established, but much of the land was left empty. "So then communities started to occupy the land and sell it to others – thinking that the land was very big and the church is not making use of it anyways," a Father Paul says. "When the church realised most of its land had been occupied, they tried to reclaim it, but the people refused to move away" (interview, 19 February 2015).

In 2005 – well before the influx of LRA-displaced people – a local priest raised the problem before the predecessor of the County Land Authority. They then struck a compromise that the size of the land would be decreased from 400 by 700 to 400 by 600 meters. "But those people who were on the main church land refused to move away still," Father Paul explains. It is at this point that the LRA-displaced people and refugees came to Yambio in significant numbers. The situation grew more complicated when government officials like the deputy governor moved into the area, and a commissioner under the Ministry of Physical Infrastructure was allegedly brought in to help represent the community to the CLA. According to Father Paul, "they went and met with the CLA, county commissioner, ministers and governor – and they bribed them to own the land."

The church went to the CLA to present its documents establishing its right to the land. But the VTC-community objected, claiming that the appropriation of the land was done illegally without consultation of the community. As the dispute started to spiral out of the control of the CLA, the governor got

79 The exact denomination has been anonymised out of privacy considerations.

80 The names in this case study have been anonymised.

81 Which is the standard price levied by the government for a 20-year lease on a 2nd class plot of 35 by 30 meters.

involved, deciding that the land belonged both to the people and to the church, and so they should divide it. The governor is the highest government authority in the state, and has close personal ties to the church. "This forced the new bishop to avoid the conflict," Father Paul explains. "He said 'those people are my Christians and I have to protect them, I cannot have conflict with my own people!'" The CLA then came in to demarcate the land to be 400 by 350 meters – half of what they originally claimed.

But the dispute continued. In early 2015, the committee from the VTC Area presented a petition signed by over 500 people to the county authorities (county commissioner, 27 January 2015). "If they do not compensate us, we will not evacuate," one angry resident told us. "And if they keep demanding so much it is better for me to go back to where I came from even though people are killed there" (interview, 19 February 2015). Another resident echoed that angry sentiment, saying that: "We won't listen to the church – only to the government. But if the government acts unfairly, we will disobey them … If they want us to evacuate the land they should come and shoot us all dead. And if any newcomer brings concrete building materials, we will attack them because they want to spoil our decision" (resident, March 2015).

Representatives of this particular church refused to talk with our researchers on this matter, because they are awaiting discussions between the bishop and the county commissioner. Until that time, they did not want to comment. The conflict of 2015-2016 has further interrupted efforts to resolve this dispute as well as our ability to research its development.

2.5.3 Tombura: LRA-displaced peoples in Kony's Area

The dispute between LRA-displaced people and the church in the VTC-area is not unique in Western Equatoria. In Tombura, the LRA-displaced people mostly settled in an area appropriately dubbed 'Hai Kony' (or 'Kony's Area', after Joseph Kony, the leader of the LRA). But some of them also settled on land that belongs to a church. "The community of Tombura welcomed them, but now the IDPs feel that city-life is better and they refuse to go back," the paramount chief of Tombura complained. "So there's a conflict between the church and the refugees from the CAR. They have started to sell of the plots as if they were the owners" (interview, 21 March 2015).

The entrance of one group of displaced people in Tombura was eased by the fact that they all came from Zangamboro as a community, together with their headman. "We fled from the LRA to this land in 2011 and found it empty. Our old headman already had a plot here," one resident recalls. "We asked the headman [who rules over this area] for land and he gave this place to us. A few houses were here before, the rest was mostly garden. The government supported us with canvas to build our shelter from. Now we are all under that headman" (interview, 21 March 2015).

Despite the fact that they were quickly integrated into the existing authority structures, residents of Hai Kony feel neglected. "Since we arrived here there has been no water. They only care about the people on the roadside. We are just sitting idle like this – there is no development," the resident complains. "When someone dies, the headman doesn't even show up at the funeral."

For their livelihoods, the LRA-displaced people who came from villages around Tombura now walk to their old gardens – two hours each way. It seems not at all easy for newcomers to find work, with some respondents blaming the people of Tombura: "Their behaviour cannot help a human being. Jobs only go to their relatives and those they know. This is why most youth go into the bush to hunt. I'm going to the bush now to look for honey." (interview with resident, 21 March 2015)

2.5.4 Ezo: Hai Nakama

In Ezo, there seem to be fewer disputes with the church but other factors render land ownership for LRA-displaced people complicated. The neighbourhood that LRA-displaced people settled in is called 'Hai Nakama' – or 'the area that has been grabbed'. On the outside it looks like a neighbourhood like any other – dirt paths cutting through bits of garden to connect the sets of *tukuls* (clay-brick huts with grass ceilings) that make up a homestead. The people living here mostly came from CAR in 2007 when the LRA became more active there. Some of them were CAR nationals, others South Sudanese who had previously fled WES for CAR in the early 1990s when the SPLA occupied this area.

Testimony by Matthew, resident of Hai Nakama on 24 March 2015
"I was born near the tri-border area of DRC/CAR/SS. We were in Baragu. The *Tong-Tong* [LRA] chased us. So we went to Nabiapai, but then the LRA also came there. We ended up here in Ezo in 2009. We bought this land for 350 SSP from someone who came from CAR – he also sold us the paper from the Survey Office. He was afraid because the LRA were coming closer to Ezo and he decided to move to Yambio. Some of us have moved back to Baragu. Me, I'll stay here. These things may start again if I go back."

Testimony by Peter, resident of Hai Nakama on 24 March 2015
"My parents fled to the CAR before I was born in 1991. We came back from exile in 2007 when the LRA started to trouble our area in CAR. Some people were staying in this area before, but not many. The government allocated the place to some refugees from the CAR when they got here. At that point this area was mostly bush and they had to clear it themselves. Now people have come here from Baragu, Andari, Source Yubu, and the DRC. Everyone was running to get his or her own plot here. That is why the area was called Hai Nakama. Some went to the Survey Office to get their papers. But I cannot sell this land. I have many children who have to go to school here."

These quotes illustrate many things. First and foremost, it illustrates how vague the boundaries are between returnees, refugees and IDPs. War has been such a central theme over the last few decades that these stories are not at all unique: people flee and re-flee and come back and settle elsewhere. Second, it describes a timeframe wherein land grew in importance. With urbanisation and the commoditisation of land, Ezo's Hai Nakama has become a more sought-after area to live in. At first it was relatively easy for the local government to send the displaced people to a bit of bushgarden to settle. But later – after it had been cleared and developed – competition also increased over that land. "This area is so full of people, so if you want to move in you need to pay a lot of money – like 200 SSP," one resident told us. "So some people pack up and move to CAR across the road. Outside there they don't give you any paper. You just go and build." It is in a way a very raw version of western urban gentrification: first the displaced people clear the place, and then when the government and aid organisations have established some services, the price of the land goes up and other people settle.

2.5.5 Conclusion

Land claims in South Sudan are often based on "the assertion that 'land belongs to the community' … by autochthony or antecedent first-coming" (Leonardi 2013: 194).[82] But in this part of the country, close

82 In some parts of WES and certainly in other parts of South Sudan, competing claims to land are often based on a sense of entitlement by having participated in the liberation struggle.

to the borders with CAR and DRC, the boundaries between 'IDPs', 'returnees', and 'refugees' are vague – a South Sudanese Zande might be born in exile, in a Zande-area, and cross the border to trade and visit his relatives. Likewise, the boundaries between 'displacement', 'migration' and 'urbanisation' can be blurry. For people in rural WES, the (at times only alleged) presence of the LRA is one factor in a complicated patchwork of deliberations that drive them away from the countryside and to the cities. And rural migrants often capitalise on the advantages offered to them by their new urban environment – schooling, healthcare and economic opportunities. This, in turn, sometimes leads to friction between host communities and settlers, where notions of solidarity are sometimes explicitly questioned, when newcomers 'refuse to go back'. This in turn contributes to an often-heard perception among displaced people of being marginalised in the city.

The tension between newcomers and host communities is further increased by the commoditisation of land and (anticipated) rises in land prices. This has significantly altered the stakes of having a claim to land recognised, and it is in part why churches are reluctant to give up land rights. Father Paul explains "We need to have bigger land, so that when investors come with development projects, they can also settle on church land" (interview March 2015).

For the justice providers dealing with these contested claims to land, three fundamental questions arise that can be traced to nearly universal discussions about justice and fairness. First, if there are a number of different legal agreements to a piece of land, which one is given more weight? This question has been explored in more depth in the case study on the County Land Authority**.** Second, how do various authorities differentiate between *use* or *access* and *right* to land? In Yambio, the late bishop was allowed by the government and elders to establish his vocational training centre on community land. But was the land *ownership* or *use* transferred to him? What is more, now that that bishop has deceased, does that agreement still hold? Third, should the land rights expire when the land is not used? The LRA-displaced people living in the VTC Area, Hai Nakama, and Hai Kony claim that the land had been vacant or at most used as a garden. In many customary land law regimes vacant land is returned back to the community after four years, so that it can be redistributed by the traditional authorities. While not explicitly referring to their right to land as stipulated in the Transitional Constitution (2011) and Land Act (2009), the displaced people thus base their claims to land on arguments that are part of much bigger discussions. The contestation of land rights is thereby not just a technical and legal affair, but rather a socio-political one, in which elements of fairness and justice are interpreted widely.

2.6. Land disputes and ethnicity in Maridi

> If the commissioner fails to solve this issue rapidly, death is going to occur between me and the commissioner and his brother. Even if it takes 10 years, I will not leave this plot freely to his brother.
> *Ex-SPLA soldier, Maridi*

2.6.1 Migration of cattle keepers

Over the course of 2015, a number of very localised and small-scale violent incidents took place in Mundri and Maridi between cattle keepers (often Dinka) and agriculturalists (often Muru or Azande). The agriculturalist population of the eastern counties of Western Equatoria State[83] has seen Dinka cattle keepers move into their lands periodically, and frequently complains about the damage the cattle does to their crops. These incidents have gradually escalated into a large-scale conflict involving both the national army, SPLA, and local non-state armed groups such as the Arrow Boys and even the SPLA-IO. Disputes between individuals of different ethnic groups in WES can escalate easily, because they are interpreted against the backdrop of troubled historic relations, and the perceived inequality of prosperity and opportunities in independent South Sudan (Vries 2015). What is more, effective non-violent responses are lacking.

During the dry season, Dinka from Lakes State often migrate with their cattle to the wetter pastures of WES. Sometimes this would lead again to friction, like when in late 2005 and early 2006 violence burst out primarily between Dinka and Azande around Mundri (Willems 2015), leading to an estimated 12,000 Dinka fleeing WES (UNHCR 2005). This ultimately led to then-governor Colonel Patrick Zamoi being put under house arrest by presidential decree (Kisanga, 2006).

2.6.2 SPLA-veterans in Maridi

Interviews conducted for this research indicate that unresolved land disputes in the local community in Maridi have contributed to the tensed atmosphere in which the influx of cattle keepers is greeted with such hostility. These tensions linger between the Dinka who moved to Maridi in the early 1990s, and the Azande and Muru groups who claim to have lived in the area for centuries.[84] The county commissioner of Maridi opined that land disputes in his county result from, "the Dinka grab[bing] most of the land, saying that they are the ones who fought for it, and they took it through blood. This threatens the security here in Maridi" (interview, April 2015). The first part of that history seems to be one that the concerned Dinka can agree to. "We came with the SPLA in 1991 when we captured Maridi from the Arabs," one ex-SPLA soldier explains. "My commander gave this area to those soldiers who were injured" (interview, 21 April 2015).

But the land that the SPLA-veterans settled on had belonged to others before. And so tensions rose – especially in the market area, and between Dinka settlers and the Catholic Church. "Now people have taken the chance of entering into the land. They are either stubborn or have no respect for the church. A lot of our land has been occupied by Dinkas," a Catholic Church functionary told us. "This has brought a lot of conflict between us the church and the people" (interview, April 2015).

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83 If President Kiir's decentralisation order of October 2015 is fully implemented, these areas are now part of the new Maridi and Amadi States.

84 Maridi also counts some smaller WES ethnic groups such as the Baka, Avukaya, Mundo and the Belanda, and some ethnic groups from other parts of the country. Importantly, the boundaries between and within ethnic groups aren't always as clear or ancient as they are portrayed to be. The Azande were originally an amalgam of different smaller groups that were united when their territory came under the rule of the Avungara-clan.

Some Azande complained that "even our chiefs have sold land to the Dinka tribe … the area of the paramount chief was sold to the Dinka and now they do not have a place for themselves to live and do their farming" (interview, April 2015). But chiefs in Maridi interviewed for this study stress the decline of their influence over land. The aforementioned paramount chief complained to our researchers, "as chiefs these days we don't have any voice concerning things to do with land, because the county has taken over almost everything even community land!" (interview, April 2015). This points to the divisions that can arise between the local government and traditional authorities.

However, the Dinka who moved to Maridi in the early 1990s see this differently. They complain that other tribes dominate the local government and that especially the demarcation and registration of land are politicised along ethnic lines. Some Dinka complained that their rights to land are blatantly refused and that nepotistic rulers pass around land to their Azande or Muru relatives. "They told us that those plots are for the children of Maridi, not for Dinkas" (interview, 21 April 2015).

And so it seems that all respondents agreed on part of the problem – tension over land between the Dinka who came in the early 1990s and the population who lived in Maridi before and/or came back after being displaced. But there is little in the way of consensus on who should be responsible for addressing the disputes, reaching a solution, and enforcing an outcome.

It is in this fragile context that the recurring friction between migrating cattle keepers and agriculturalists can so easily lead to violence. In 2015, these two sources of tension were further aggravated by a third one: a new group of Dinka migrated with their cattle to WES. In part driven by the escalating war that had erupted in December 2013, the regular cattle migration had now been supplemented with groups from Jonglei State who had initially sought safe pastures in Lakes State. "Lakes State, however, was embroiled in its own cycle of violence between various Dinka clans and their political representation in the state capital Rumbek," De Vries writes. "Due to the increase in cattle numbers, pressure on resources and the instability in Lakes, many herdsmen drove their cows south towards WES" (Vries 2015). These cattle keepers mostly entered the eastern counties of WES, including Maridi and Mundri East and West.

When our researchers conducted interviews in Maridi in April 2015, the situation was tense and local authorities were in many instances attempting to control the violence. A chief of the Dinka was quick to dispel rumours about worsening relations between the Dinka and the other ethnic groups. "We the Dinka community in Maridi we know that we are citizens of Maridi … I don't have a judge here except the judge of Maridi and I don't have any other commissioner but the commissioner of Maridi. What brings problems among us here is politicians who are trying to bring conflict and hatred among us" (interview, April 2015). Nevertheless, in early June 2015, clashes broke out and a group of well-armed Dinka was reported to have occupied the Catholic Church[85] compound with their cattle (2015). The details of the clashes that followed will be described more elaborately in the Epilogue. For reasons of security, our researchers were not able to travel back to Maridi to conduct follow-up interviews over the course of 2015.

2.6.3 Conclusion

The core of the problems in Maridi seems to be that the recurring influx of cattle keepers from outside WES in 2015 added to previous grievances between individual Dinka's that came in the 1990s and other ethnic groups – which are often about land. What is more, these disputes also tie into larger and politically sensitive debates about autonomy, decentralisation and federalisation. So much so that in

85 The Catholic Church is ethnically diverse, but the Tombura-Yambio Diocese of which Maridi is part, is dominated by the Azande.

May 2015 the violent clashes in Mundri and Maridi – which might seem to an outsider as relatively small-scale compared to the violence in the Greater Upper Nile region – invited statements by high-level politicians such as the governor and the president of South Sudan. In a sense, one could conclude that these statements testify of an awareness at the national level of the potential of micro-level conflicts of this kind escalating. Unfortunately the responses that are offered to the region have been securitised, and hardly address the underlying grievances of either the local Dinka or Equatorians (see also Epilogue, and ICG 2016).

The disputes about land are not just legal battles. At the root, they are contestations about identity and belonging, and how that ties in to land ownership. The 1991 Dinka claim that they have earned their right to stay on the land based on participation in the war, while other groups often base their claims on indigeneity. While these disputes often start at a very local level, they can easily spiral out of the control of local authorities because of their complexity, the violence that is sometimes involved, and the fact that few – if any – justice providers enjoy authority in all the different ethnic communities.

Crucially, disentangling the Dinka-narrative into different groups with different agenda's and attributes is essential for a more nuanced analysis, and a smarter approach to the problems. The Dinka community in Maridi is by no means homogenous: some came in 1991, some have settled there since to work (for example as butchers in the market), some migrate with their cattle from Lakes State each season, and this year there was another group that travelled all the way from Jonglei – driven by insecurity in their home areas and in search for the calm and green pastures of WES. The risk of the ethnic discourse that is used persistently, locally, nationally and internationally, is that it entrenches identities, and presupposes that interests are shared within ethnic groups. It inhibits individual freedom as identity is defined by who a person's parents were, not by the choices that they made during their own lives.

The interviews taken for this study suggest that dealing better and in a non-discriminatory fashion with low-level non-violent disputes about land ownership and access, could potentially help to take the sting out of meso-level violent conflict which can rapidly deteriorate relations between various ethnic groups. Possibly, such an approach could be spearheaded by the local statutory judiciary – who are typically not from the region, and therefore may be seen as less partisan. Alternatively, a form of arbitration could be advocated involving ad-hoc committees of figures who amongst each other share legitimacy in the various communities concerned.

2.7 The Mobile Court of Judge Kaya

2.8.1 Judge sets out for Tombura

Judge Kaya is usually hearing cases in the high court in the state capital Yambio. The high court is the highest statutory court in the state, and is supposed to be manned by three judges. In reality, there is only Mr Kaya. Despite the overwhelming workload he faces in Yambio, in March 2015 he made the six-hour drive to Tombura upon the request of the county commissioner of Tombura. "But there was no budget for this visit," judge Kaya explained. "I was only given the fuel, I paid for the rest from my own salary" (interview, May 2015).

The customary justice institutions, A, B and C-courts,[86] that are present in Tombura are both by law and by capacity unable to handle serious criminal offences such as murder and rape. Although according to the Local Government Act 2009 each county should have a statutory county court with the appropriate 1st grade magistrate judges, in practice this is often not the case. The last statutory judge based in Tombura was a Sudanese from the north who left in 2011 when his contract was terminated with the independence of South Sudan. The conflict that erupted in WES in the course of 2015 has further deterred judges from settling in their posts.[87]

The serious offences that have happened since, often 'defeat' the customary courts. These courts recognise that they have neither the jurisdiction nor the capacity to deal with serious criminal cases. That limitation has been made very clear to them by the judiciary in Yambio and international organisations alike. Legally, serious criminal cases are to be brought to a competent statutory court (see also 'Legislative Framework'). No court fees are required to open a criminal case in the county court or high court.[88] But the complainant will have to pay for the travel to Yambio, accommodation and food for himself, the accused, the investigator and a guard (interview public prosecutor, 18 March 2015). So in practice this rarely happens: the Public Prosecutor Authority in Tombura could recall only one case ever reaching Yambio.

The result of the limited jurisdiction and capacity of customary courts and the cost of travel to the nearest statutory court, is that those accused of serious crimes are locked up in pre-trial detention for an unspecified amount of time. Their cases can be heard when a statutory judge comes to town. And so when Judge William Kaya came to Tombura in March 2015, the oldest cases in pre-trial detention stemmed from 2010.

2.8.2 Cases before the judge

County Commissioner Gbamisi had sent Judge William Kaya a list of 16 accused who were in prison without trial. This included seven murder cases. Judge William Kaya was received in the meeting hall of the police head office of Tombura. Outside on the veranda, suspects, witnesses and complainants were seated under guard of a policeman. Our researchers conducted interviews with some people outside as well as with Judge Kaya himself. The following overview offers an impression of the types of cases that were awaiting Judge Kaya.

86 Contrary to Yambio, Tombura has all these three types of customary courts.

87 This is especially true for Maridi and Mundri which were unstable for the most part of 2015, but from October Yambio was also increasingly affected.

88 The court fees payable for opening a civil case are usually expressed as a percentage of the value of the suit.

Rough overview of the cases

1. Accused Mary charged with murder
"My husband Francis got a second wife without my permission. When I was walking to the farm one day in February 2014, I saw the second wife with her children in the river. They had already drowned. But their relatives came and saw me, and they said that I had caused their death. They started beating me seriously – Francis was also among those who beat me. A policeman saved my life. Ever since I've been in Tombura Prison. Today is the first time that I will be heard in a court. The accuser is the brother of the deceased second wife of my husband. I don't know why I am in prison. I had no part in the killing. I'm only praying."

2. Accused Suzy charged with Murder
"My husband and I were fine. But in November 2014, we went to visit our neighbours, and he started drinking. I went home, and he came home very late when I was already asleep. He started to beat me, and at some point his hand was in my mouth. I bit him. 3 days later he died. The parents of my late husband said that I had killed their son. The police arrested me, and put me in prison. Judge Kaya has listened to my statement and that of my in-laws. Now he told me to come back on Saturday. I don't know what to expect. Whatever the judge will say is what will happen. But I'm innocent."

3. Accused Matthew charged with murder
"I am accused of murdering my friend, James. We shared a drink one Saturday, and on Sunday afternoon James died. His relatives now accuse me of poisoning him. They have no proof, but I've been in prison since 30 May 2013 to wait for a judge to come and hear the case. I'm not sure what to expect from Judge Kaya. I can either be imprisoned or released."

4. Accused Christine charged with murder by witchcraft:
"I was married, when my husband wanted a second wife. But I didn't want that, and threatened him: 'If you bring her to this house, I will do away with you'. But my husband pursued his ambition. After six months he got paralyzed, fell sick and passed away. The relatives of the deceased husband beat me, and brought me to the paramount chief."
She had been in prison for 2 months before Judge Kaya came to hear her case. "Christine had threatened her husband, who after some time got ill. But then his relatives didn't bother to take him to the hospital." They had heard about the threats and so they assumed it was witchcraft – and therefore not curable by a conventional doctor."

5. Accused Marc (16) charged with defilement
"I am a student in P6. I'm an LRA-orphan, and I live with an uncle who barely takes care of me. Two underage sisters accuse me of breaking their vagina. I know of only one. The police has beaten me to make me confess. The case was heard in the C Court of Tombura. The girls' brother Peter demanded me to pay 12.000 SSP (= roughly 2000 USD). But I didn't have the money, so he brought the case ahead. The C Court doesn't believe that I am 16, they say I am 20. I have no proof of age. The C Court sent me to prison for 5 months. I have been there for 4 months now."

Complainant Peter: "Me and my family we were in the hospital, and my two young sisters stayed at home. The elder sister had gone to fetch water. The boy, Marc, came to our house and when he didn't find the older sister he grabbed the young one and took her inside to play sex. We have tried to settle this case among our families. But Marc has done this before, in Ri Yubu. We have gone to the C Court, but they said it is above their competence. I hope that Judge Kaya will look at the case. I hope that the boy has to go to prison so that he learns a lesson."

Judge Kaya acquitted all the aforementioned accused due to a lack of sufficient evidence.

2.8.3 Challenges and successes

Upon his arrival to Tombura, Judge Kaya was confronted with several difficulties. First, the fact that customary courts and local police had put accused in pre-trial detention for such a long time was unacceptable to him. "In criminal cases, we work with the presumption of innocence," Judge Kaya explained to us. Pre-trial detention is inevitably in breach of a robust interpretation of the presumption of innocence (Duff 2012), but being detained for five years without a form of trial is an altogether new chapter. Second, because the cases were so old some of the witnesses and complainants had left the area or deceased. In cases where they were still around, it was often difficult to find them and to get them to report to Kaya's temporary court which after all was only in town for a little under two weeks. Third, some accused had suffered severely from being imprisoned. One woman was so sick or confused that she was unable to walk or speak. "In accordance with the Criminal Procedures Act," Kaya sent her to Tombura Hospital for treatment before trial could resume. Fourth, Kaya was a native of Wau, Western Bahr el-Ghazal.[89] The court guard, who had a Kalashnikov automatic rifle hanging from his shoulder throughout, provided translations between the judge's Arabic and the disputants' Pazande. Fifth, there was no court clerk and Kaya did all the writing himself. Sixth, much time was consumed by discussions between Kaya and the police investigators and local customary judges on the substance of each case. The documentation that Kaya found in the case files, was often below his standard and incomplete. In cases where litigants had appealed lower courts' verdicts, Kaya's legal role should have been to review the procedures followed by lower courts, not to review the original matter altogether. However, because so little had been written in many cases Kaya did in fact review entire cases.

2.8.4 The Case of Tombura and traditional authorities

When High Court Judge William Kaya visited Tombura in March 2015 he met the paramount chief on several occasions to discuss the pending cases and the dispensation of justice more widely. After these meetings, the paramount chief was enthusiastic about Kaya, saying that: "I coordinate very well with him. I forward cases to him in Yambio, and sometimes I consult him [by phone] when a case is very

89 The population of Wau is ethnically very heterogenous, and many local languages are spoken. But Pazande is not among them. Judge Kaya was trained at the University of Khartoum, and so has enjoyed his legal education in Arabic, which was the official national language until independence in 2011 split the South from Sudan. South Sudan has now opted for English as the official national working language.

complicated." Kaya and him had also discussed the difficulties of solving criminal cases in the absence of a statutory court in Tombura. The paramount chief said they had reached an agreement: "[Kaya] told me that it would be better if we try cases such as theft, rape and arson here" (interview, 21 March 2015). In later correspondence about this agreement, Judge Kaya explained that he had reached no such agreement with the paramount chief: "I cannot make [such an] agreement with the paramount chief, I only explained to him what the law says." (Interview, 17 July 2016) According to him, serious theft and rape have to be resolved by statutory authorities – but adultery and minor theft cases could be resolved locally.

While Kaya had thus established good rapport with the paramount chief, this was not the case for the lower-level chiefs. The *payam* chief of Tombura told us in the very same week that Kaya, "has not called on the chiefs to talk to them about the law that he has come to bring. I wish he would discuss some of the issues we are facing." Kaya had little time and prioritized meeting the higher-level paramount chief. At the time of writing, there was no indication of higher chiefs communicating about these meetings to their subordinates – although that could of course be a more indirect and long-term process.

2.8.5 Cooperation statutory and customary courts

The evidence collected for this research generally suggests that cooperation and coordination between statutory judges and traditional authorities takes place on a personal rather than institutional basis. The serious concerns that both sides of the judicial spectrum voice, can at times be overcome by a general willingness to work together.

Judge Kaya's critique of the Customary Courts (10 February, 2015)
"These Customary Courts were invented by the colonial masters in 1930. The British had spent a lot of money on the administration of the territory, and so they invented indirect rule. The problem with the current chiefs is that they still think they have those powers – they don't recognize the laws. They are not yet well regulated and they haven't been established according to the Local Government Act, so we do not coordinate with them. They only have the powers of third-grade judges: so they can sentence to a maximum of 3 months in prison ... The Customary Courts are supposed to use the customs of the people."
For their part, chiefs are quick to criticise the statutory court system for a variety of weaknesses. The milder critiques focus on the courts' lack of capacity, with one chief in Rii-rongu complaining, "there are too many pending cases in the courts due to the limited amount of judges. While a case is pending, witnesses may die and at the end this will be more difficult" (interview, April 2015). What is more, statutory judges are often not from WES, and they do not speak Pazande. As a result, some local chiefs allege that important details get lost in translation.

But more problematically, many chiefs criticise the normative disposition of the statutory courts. First and foremost, statutory judges at times 'undermine' the decisions of lower chiefs. Judge Kaya is the first to stress the discrepancy between national laws and local norms, saying that: "You cannot say that the laws in South Sudan reflect our culture or will." But by conviction and position, he is bound to enforce national legislation. Legislation that locally is sometimes perceived to be as foreign as it was during the colonial rule of the Egyptians and an English was replaced by a north-Sudanese and – since independence – an SPLM/A-dominated government. Post-independence laws clash with local cultural

ideas in particular when children and women are involved, or when it comes to witchcraft (see case study on 'Prosecuting Witchcraft').[90]

The judiciary is sometimes also accused of either working in tandem with, or being subordinate to, 'those of human rights' – i.e. the local UNMISS Human Rights division. The Human Rights division visits chiefs, courts, police and prisons and monitors whether human rights standards (both procedural and substantive) are upheld.

2.8.6 Analysis

The backlog of serious criminal cases in various counties in WES is worrying. There is no dispute between customary and statutory justice mechanisms about whether the accused deserve a swift trial, but the question is one of ways and means. When asked about ways forward, the paramount chief stressed that, "either way, we can't keep piling cases up like this. The prison will be full of people without trial. We can forward the case to Yambio, but that's very expensive and the complainant would have to pay" (interview, 21 March 2015).

In a follow-up interview with Judge Kaya, he expressed his ambition to visit Tombura again soon as well as Ezo and Nagero. For his next visit, he stressed the need to give the local judiciary and executive the time to organise and gather the relevant disputants. "I'm also thinking of sending a magistrate judge on missions to different county capitals in the state every two or three months alternatingly," he explained to us in-between high court hearings. "In Yambio county court we have 2nd grade magistrate judges with 1st grade powers" (interview, 18 March 2015). It would stand to reason that the state should somehow facilitate faster criminal proceedings. In lieu of more well-trained competent statutory judges, three options come to mind. One, by allowing the president of the high court, who has the power to exercise administrative review over lower customary courts, to temporarily expand the jurisdiction of customary courts pertaining to certain criminal matters. Second, the state could somehow facilitate the transport of the accused to the nearest competent statutory court. Third, the state could facilitate the sorts of local initiatives described in this case, and empower and possibly scale up successful 'mobile courts'.

90 The laws that were written for South Sudan are furthermore quite profoundly shaped by the efforts of donor governments, international organisations, and NGOs to promote certain conceptualisations of human rights. The resulting body of legislation therefore offers an estranging read. For example, the 2008 Child Act offers children the right to be cremated, something which is culturally very alien to South Sudanese.

2.8 Witchcraft and its place in court

> The statutory system neglects witchcraft, and so people take the law into their own hands.
> *Paramount chief of Tombura, 21 March 2015*

> When I was in Bentiu I found 56 people imprisoned for witchcraft, the majority brought by their own family. I released all of them. But that very day, one of them was killed by his own relative.
> *High court judge, 18 March 2015*

The rich descriptions by anthropologist Evans-Pritchard have rendered the Azande of Western Equatoria State (WES) world-famous for their belief in magic, oracles and witchcraft. At present, many of the old beliefs are still widely held and some new ones have arisen. Overall, there seems to be a sense that witchcraft practices are on the rise, with one respondent in the high court saying: "in 1984 witchcraft was not common: it was only in Raja and Maridi. Now it is all over South Sudan, also because people have lived in the CAR and DRC" (interview, March 2015).

Although witchcraft practices seem to not have declined – and possibly even increased – they have become less public in part due to the dominant presence of the respective Christian churches. As an (European) outsider[91] one is easily associated with the Church and it proved difficult to discuss these practices first-hand. The local Azande researchers in our team were better able to get candid accounts on witchcraft and witchdoctors.

2.8.1 History of witchcraft among the Azande

The English term witchcraft appears to be a poor translation of the wealth of related concepts known in the Azande language. "When foreigners talk of 'witchcraft' they generally mean what we call *mangu*," the county commissioner of Tombura explained. A different but closely related phenomenon is *ngua*, which Evans-Pritchard translated as 'magic'. "What [foreigners] call a 'witchdoctor,' is what we call the *abinza*," the county commissioner continued. "But those are traditional doctors who don't do *mangu!*" (interview, 20 March 2015).

Mangu, according to Evans-Pritchard was believed to be an oval-shaped, "blackish swelling … situated somewhere in the upper abdomen" (1929). Evans-Pritchard held that this deformation was believed to be a unilinear "inherited biological trait" – meaning that all the sons of a male *boro*[92] *mangu* (witch) would be witches, and all the daughters of a female witch would be witches.[93] Evans-Pritchard held that members of the royal Avungara clan would not become witchdoctors (1976: 67, 71). The *mangu* was commonly thought to grow in size and power as the witch grew older, and got more experienced. Importantly, people who had this *mangu* were at times oblivious to it themselves. And so their bewitching of others might have been an unconscious action – always committed at night, and often during their sleep.[94] Evans-Pritchard described that when witchdoctors chose to use their talent, they sought to build on their inborn capacities with the study and consumption of particular plants and trees: "the Zande witch-doctor exercises supernatural powers solely because he knows the right medicines and has eaten them in the right manner" (Evans-Pritchard 1976: 73).

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91 The junior field researcher enjoyed the hospitality of the Catholic Diocese – staying at their curia. This might have fostered associations with the Christian Church. Perhaps relatedly, one witch doctor refused to be interviewed by the junior field researcher, explaining that 'the spirits will not allow it'.

92 *Boro* is the Azande word for 'human' or 'person'.

93 Brock held that "a man is considered to be able to inherit mangu from his father and a woman from her mother but not necessarily."

94 Commonly believed to be a struggle between the spirits of the witch and the victim respectively.

Witches *(boro mangu)* were still associated with many of the ills that they were accused of in colonial times. Major Brock[95] reported having heard of cases where "a man has accused another of causing game to eat his crops and of a man saying that one of his wives with *mangu* has caused the others to be barren" (1918). Sometimes, witches are thought to use snakes or nocturnal animals like bats and *azile* (birds, in

Box: My Father the Witchdoctor, interview in Yambio 8 April 2015
Aruma is just a charm which is kept by the owner in a pot and they have different types and different functions. The one my father had was for animals – it improved your chance for hunting. When this one is in the house, the family members are not allowed to quarrel for meat because if they do the owner of the charm will fail to kill an animal and the charm will attack the person immediately. He/she will fall sick with fever and can even die. But if the sick person admit his mistake and is brought to the owner of the charm he can be cured.

This charm is staying in the pot and whenever the animal is killed the owner will take the blood of that animal and smear the pot with it, for the charm to feed on it. Also if the person does not kill an animal for a long period of time the owner must cook food (*riahe aruma*) for the charm and eat the balance. There are two pots: one for keeping their meat for food and one for the charm to stay in. Whenever the owner kills an animal the lungs plus other part of meat specially the one under throat must be roasted and put into the pot for future use. In case the owner fails to kill another animal immediately when instructing the charm to go and attack a person they instruct it through any insect such as bees, snakes or any sting insect.

My father used to treat sick people even those who are suffering from different types of *aruma*. He used to treat them with anti-*aruma* known as *kofora aruma*. He used to consult his *aruma* first before treating any person. The charm would tell him the truth, also if the person is sick and whether the person will be alive or not. If the person would be incurably ill, the charm would tell my father – and he would tell the sick person's relatives to take the patient away because he could not treat anyone who is going to die. My father could not allow anyone to borrow the charm. We as his sons or family members never knew where he brought the charm from, or which method he used to acquire the charm whether by buying it with money or what. But the truth is that with all his charm, none of us has died that is why I came to know that it was just for hunting.

There was a year in my father was treating many sick people – 7 or 8 per day. At that time, snakes would come to our house. My father used to tell us as well as the patients not to kill those snakes, and they were not harmful to people. The snakes could even come and lie on the sick person. All the money he made from treating those people he spent on buying alcohol. Once he also bought a gun with that money. Whenever he drank alcohol, it made him into a mad person. And as he was engaged in those activities, he started losing his five wives. When he would be out hunting and one of his wives committed adultery, both the adulterers would die.

He could tell us that in case he dies, we should take all the instruments of those charms like the pot and pour them into the river so that it does not affect anyone in the family. When we were young, my father would instruct us, his children and especially his sons, to do whatever he wanted. We had no way of saying 'no'. But I resigned when I grew up and was confirmed for Holy Communion. The good thing is that none of us has inherited the manners of our father.

95 Then serving as district commissioner in the colonial government.

particular owls). When a person would hear the call of such an animal at night, he should come to the house of a witchdoctor to strike a compromise. Perhaps most commonly, witches may produce charms or oil that are to be hidden in or near the homestead of the victim. Charm varieties that our study heard of were often constructed of a mix of sprigs, money, and rubber band. Interestingly, some dangerous supernatural agents were and are still beyond the control of witchdoctors, including perhaps most famously the *adandara*[96] – a black cat that comes at night "out of the bush to have sex with a woman, and the women will give birth to small cats. The cry of that cat from the bush can kill a man" (interview March 2015, county commissioner of Tombura).

Importantly, many present-day forms of witchcraft seek first and foremost to do good, and the ill they cause is viewed as a necessary sacrifice. Witchcraft charms and oils are popularly used to promote success in agriculture, business or (especially) hunting. A reputable but dangerous form of witchcraft is called *aruma*, which is a kind of wind kept in a pot. When its rules and sacrifices are respected, it is believed to bring great prosperity to the owner (see Box 1). This anecdote makes clear that witchcraft often serves a number of functions in addition to its purported supernatural function: to impose order, honesty and prevent certain vices like adultery and theft. But it is also clear that, as it was during Evans-Pritchard's time – the logic of witchcraft is quite flexible and can easily incorporate and help interpret events both negative (sickness or death) and positive (prosperity and strength).

But in addition to the older 'traditional' methods of *mangu*, many new or hybrid forms have emerged in part due to the recent history of widespread displacement. Returnees are said to have brought with them the witchcraft from the DR Congo and – even more so – from the Central African Republic. One 27-year old man interviewed by our researchers had journeyed to the Central African Republic to buy his 'medicines' there. Another well-known witchdoctor had purchased his medicines, known as *le pouvoir*, from the border area between Cameroon and CAR. When the Arrow Boys started to mobilise and clash with the SPLA in and around Yambio, there were also rumours of them having contracted a witchdoctor from Kinshasa to aid their cause. A last remarkable form of witchcraft with obscure origins concerns 'the people in the river'[97] – invisible, dangerous, white people who are believed to live in a particular river in Yambio town. They can be heard at night. When somebody approaches them for help, a white baby will come out first. Interestingly, the people in the river are thought to be reachable by mobile phone.[98]

These new forms of witchcraft are often denounced in WES, with the county commissioner of Tombura complaining: "the magic from DRC and CAR has spread. It is not so much new, but rather it has become like a business – people want to make money out of it!" (interview, 20 March 2015).

2.8.2 Uses of witchcraft in disputes

During our study into disputing, we found that witchcraft was often used strategically – for example in theft cases. The victim would go to a witch doctor to put a spell on the person who stole his property. The victim would then announce that a spell had been cast, and that relatives of the thief would continue to fall sick and die until the stolen property had been returned. One story that circulated in Yambio concerned a witchdoctor whose plastic drum had been stolen. He warned the public that the thief and his entire clan would perish if the drum was not returned. "The perpetrator died within 3 days. Then

96 The *adandara* is also mentioned by Evans-Pritchard, who describes it as "a species of wild cat associated with witchcraft, the sight of which is believed to be fatal" (1937: 51).

97 They have also been referred to as *akpihiri*.

98 It was explained to me that they can be reached by dialing 12 times '0'. When I attempted to call that number and the number was out of order, I was quickly assured that only those people who are already in contact with the people in the river can call them.

his relatives came to the witchdoctor and they agreed to buy him a new plastic drum. Then the killing stopped. They didn't go to court. They accepted their punishment" (interview, February 2015).

The power of witchcraft was also reportedly used as a preventive measure. One hunter had allegedly bewitched his house, so that any man who would sleep with his wife would fall sick and die. Another man interviewed for this research said that he had poisonous 'stings' – "in case anyone has a bad heart against me or is trying to do something bad, my magic will fall on him by itself" (interview, June 2015).

2.8.3 Customary dealings with witchcraft

The relationship between the chiefs and witchdoctors has often been a multi-faceted one. King Gbudue was famously cruel against witchdoctors, and Jackson argues that as chiefs became incorporated into the colonial power structures the rift between them and witchdoctors only increased. But this is not to say that witchcraft as such did not play a role in chiefs' work. In the times of Evans-Pritchard, witchcraft accusations were commonly brought to chiefs, who dealt with them according to time-tested procedures. Oftentimes, chiefs relied for evidence on the expertise of *soroka* (oracles) to establish who had bewitched the victim.[99] This study found evidence that suggests that customary courts in Yambio, Ibba, Rii-rangu, Mundri-West and Gangura[100] still cooperate with oracles. The court records of a number of B-courts as well as qualitative interviews with the court officials indicate that in some instances the judges would refer disputes related to witchcraft to a 'native medicine' practitioner. Interviews with traditional authorities in other regions suggest that the oracles are sometimes invited to help determine the truth in a court case.

> **Gangura Executive Chief, April 2015**
> "Witchcraft cases are not so common here, but we solve them natively by investigating through the *dakpa* (termite oracle). We arrange for one of our elders to go with a relative of the accused to investigate the case. If the *dakpa* confirms the accused's guilt, it is believed to be sure. Then the accused is asked to spit water from his mouth, to show that he or she was angry and that is why he/she bewitched the person. Then we wait to see it if the victim recovers. We sentence the witch to 6 to 12 months in prison."

Customary courts still deal with witchcraft accusations but their jurisdiction has been severely curtailed and they have adopted new strategies. Evans-Pritchard observed that it would be common for people who were visiting a sick person, to "take a draught of water and, after swilling his mouth with it, blow it in spray to the ground and say 'O Mbori[101], this man who is sick, it is I who am killing him with my witchcraft let him recover'" (Evans-Pritchard 1976: 62). At present, the spitting of water can still be observed around witchcraft cases. But additionally, we have found that B-courts[102] have developed a new procedure to verify the unknown by swearing on the Bible. The exact phrasing of the oath differs per court but in Yambio, people were observed swearing on the Bible and stating that they shall speak the truth or that otherwise 'they shall be struck down by the power of the Holy Bible'. In various instances, we were told of anecdotes where someone had lied under oath and died a few days later. The relationship

99 There were three main types of oracles, specialists who could determine the reference to a 'rubbing board', a poisoned fowl, and/or two sticks in a termite hill (*dakpa*). For more on this refer to Evans-Pritchard's 'Witchcraft, Magic and Oracles Among the Azande'. Also refer to a documentary film by anthropologist John Ryle and filmmaker André Singer titled 'Witchcraft Among the Azande' (1982) available at: www.youtube.com/watch?v=Rmug_qvO15s.

100 In Maridi no such evidence was found.

101 God, sometimes written as Mboli. The 'r' generally sounds like an 'l' in Pazande.

102 In Yambio, Nzara, Tombura and Ezo.

between the courts and the witchdoctors seems to have deteriorated, with one respondent saying, "there is a fear that if you take a witchcraft case to court, the witchdoctor will keep on killing them silently" (FGD, 10 February 2015).

2.8.4 Statutory dealings with witchcraft

The statutory justice sector often refuses or fails to engage with witchcraft beliefs altogether. "I cannot take a *kujur* (witchdoctor, Sudanese connotation) seriously," explains the public prosecutor in Tombura. "But they are dealt with by the C-court" (interview 28 March 2015). He, like many statutory judges, is not from the region and does not speak the local vernacular. But there is an additional more legal obstacle to the justice sector's approach to witchcraft. "In criminal law you need to prove the relation between the act and the consequence," Judge Kaya explained. "The way I see it, there are two types of witchcraft. The first involves supernatural powers where there can be no proof, no evidence. The second involves poison. That is a criminal offence and can be dealt with as such. We can send material to the laboratory to prove if it was poisonous. We can use the Criminal Procedures Act" (interview, 18 March 2015).

But in some cases, peoples' belief in witchcraft is so strong that they do not take the trouble of going to the hospital. In Tombura we discovered the case of Mariam[103] who had threatened her husband after he had married another wife despite her objections. After six months he got paralysed. Because his relatives knew about Mariam's threat, they did not even attempt to go to a doctor. After 12 months Mariam's husband died, and his relatives wanted to kill Mariam. The Public Prosecution Authority was unable to deal with the case – as it involved a witchcraft allegation – and so the paramount chief of Tombura imprisoned Mariam indefinitely to save her life.

One problem that chiefs and judges face, is that when witchcraft is concerned there is a wide gap between what is real to people in WES, and what can be recognised by national law. One case is especially illustrative in this regard. A man was arrested in Nzara (WES) for causing a traffic accident in Juba (CES) through witchcraft. The relatives of the deceased claimed that the suspect had used medicine that can kill from a distance. The suspect then was brought to the high court, where he admitted guilt. But Judge William Kaya (see also the case study 'the Mobile Court') dismissed the case. There simply isn't any law to prosecute witchcraft with. Even if Kaya at times recognises the social reality of witchcraft: "It does exist, because people believe in it. But it needs to be fought because it sabotages our development (interview, 18 March 2015).

2.8.5 The Church

The position that various Christian Churches have taken vis-à-vis *mangu* is deeply ambiguous. Before the arrival of the Christian missionaries, the Azande already believed in a supernatural god-like entity, *Mbori*. And it seems that the missionaries themselves were quite keenly aware of the importance of aligning their narrative with local beliefs to an extent. But witchcraft and magic beliefs are commonly denounced as superstition by church leaders. In reaction to that, the county commissioner of Tombura lamented: "The Church is very critical of our traditions, and especially of our magic. But some protective charms do exist. It is like a vaccine. You give a vaccine for polio, but not the protection of a charm? Anti-conception pills are also sinful. But the church is mostly critical of our tradition – not of modernisation" (interview 20 March 2015).

The picture is still more ambiguous though, as this research found that it is not at all uncommon for individual Christian priests in WES to be involved in the fight against witchcraft. Both in the more

103 Not her real name.

traditional Catholic Church and in newer Christian congregations, 'charismatic groups' and individual priests admit to having 'prayed on charms' so as to disarm the power of witchcraft with the power of God. Anne, who had a land dispute described in the case study on 'Women's Rights to Land in Court', brought charms to the charismatic group of her Church. "Yesterday evening they came to pray on the charms to disarm them," she recounted. "But while working in my kitchen, I found a 5 SSP-note rolled up with knotted bits of tree branch around it. I'm afraid that Mr Peter has access to different types of traditional medicine – like *azile* ('birds'), so now I decided that I am taking it to the church."

The hybridity between 'Christianity' and 'witchcraft', 'modern' and 'traditional' is complex and fluid – with individual people occupying the various or overlapping realms or discourses in different places and times. The Christian churches are by and large presided over by local Azande clergy who give sermons in Pazande and know their constituents better than did the missionaries. While the confrontation between Christianity and witchcraft in WES is often perceived as a clash, the power of God somehow occupies, dominates, the same conceptual realm as witchcraft. And so the cultural conceptual fertile soil in which Christianity was so successfully nourished, was arguably prepared by prior beliefs and concepts.

2.8.6 The UN

In recent years, witchcraft beliefs and practices in WES have been affected by a new influential group of actors: international organisations and NGOs. That group has provided trainings – often with a strong focus on human rights – to traditional authorities. Representatives of UNMISS have also been active in monitoring violations of human rights – and they see witchcraft accusations and the resulting imprisonment as major violations of human rights. In some instances, expat UNMISS-staff have successfully urged local authorities to release people accused of witchcraft from prison. This had led to resentment among traditional authorities against 'those of human right' as well as the concept of human rights more broadly.

> **Sub-chief in Yambio, April 2015**
> "For the case of witchcraft, it is real. It is found in our traditions and cultures. Each and every one on this earth has their own cultures and traditions, and even the while the judges and those who work for the Human Right always release witchcraft cases from the prison because they do not know how to solve it. But for us who are the traditional leaders, we know how to solve such cases.

2.8.7 Analysis

Witchcraft and magic are complicated phenomena in Azande society. Evidence collected for this research suggests that they remain very significant social facts and forces in present-day WES. There is, however, a mismatch between the social reality of witchcraft-related crimes and the current legal framework. Customary courts often recognise the reality of witchcraft themselves, but are by law disallowed from hearing criminal cases[104] and sentencing people to imprisonment.[105]

The statutory courts that are able to hear criminal cases are only willing and able to prosecute suspects of witchcraft when there is material evidence for poisoning – which is then punishable based on the Criminal Procedures Act. But they generally do not recognise the existence of the supernatural side

104 Unless in "those criminal cases with a customary interface referred to it by a competent Statutory Court" (Local Government Act, 2009: Section 98: 2).

105 The sentencing limit of customary courts is not set in the Local Government Act, and understood differently by various customary courts. In Maridi, Ezo the B-court reported "our powers are limited to sentencing people to prison for a maximum of six months" (interview, 25 March 2015); in Ibba it was reported at nine months (interview, March 2015); and in Yambio at one time it was reported at 12 months. Meanwhile, the statutory framework seems not to allow customary courts to sentence people to imprisonment at all.

of witchcraft, leaving those perceived crimes unpunished in the eyes of the local population. And so it happens that suspected witches are imprisoned not because they are found guilty, but rather because releasing them would jeopardise their very lives. The churches occupy an interesting middle ground, on the one hand denouncing witchcraft but on the other also offering remedies to victims by introducing the 'supreme power of the Holy Bible' in the realm of witchcraft.

3. Epilogue: End times or fragmented disorder?

By Bruno Braak and Minaida Peter Giamusu Kpio

> My thought about the current situation is really negative, because I don't see any good and reasonable life. Now it's like the end times with the way things are going. There are very many things that I am dissatisfied with. Like robbing people at night even in their own houses, also the unnecessary killing. There is no say about it by the government.
> *Female respondent (35) in Yambio, February 2016*

When Cordaid and the VVI first visited the Justice and Peace Commission in Yambio in September 2014, the area seemed an exceptionally peaceful one in an otherwise violent region. The South Sudanese Civil War (2013-present) that was raging in other parts of the country did not affect WES directly and the threat of the LRA seemed to have diminished. Indirect consequences were felt mostly through the arrival of refugees and displaced people, the limited functioning of local government, and the soaring inflation. But as the two main warring parties of South Sudan's civil war were signing a national peace agreement in August 2015, fighting broke out in WES. This points to the localised nature of much of the violent conflict in the region. It is difficult to say much with certainty about the number of troops, the command structures and the alliances. All of these factors are fluid, and due in part to our lack of access to the insecure areas we rely mostly on secondary sources where we write about these things. The International Crisis Group has written a fairly comprehensive account of the insecurity in the wider Equatorias (2016). This epilogue aspires to offer an overview of the dynamics of violence in WES specifically, and the complex ways in which it has affected local government and the provision of justice. On a more practical level, it touches on the difficulty of doing research in this context.

3.1 Dynamics of 2015-2016 violence in WES

The fighting in WES has been of a very dynamic and complex nature. The first causes of localised conflict in WES in early 2015, were the almost cyclical disputes between migrating cattle keepers and sedentary agriculturalists and disconnected local-level land disputes (see also 2.6). But these micro-level incidents quickly merged with macro-level narratives of marginalisation and oppression, and with tensions between the SPLA and non-Dinka local populations. This paragraph offers an elementary analysis of some of the most important causes, events and actors.

In most recent years, cattle keepers from Lakes State migrated with their animals to the greener pastures of Western Equatoria State during the dry season. Often, small-scale disputes would follow with the local predominantly agriculturalist populations whose land they encroached on. Such disputes were oftentimes solved through localised compromise agreements involving a commitment to cease the fighting and for the cattle keepers to leave the territory. In 2015, things arguably started escalating in Mundri in May 2015 when five people were killed during an attack on a cattle camp, and the county executive director was shot during subsequent investigations. In early June 2015, a cattle camp was attacked in Maridi too. These small-scale incidents – regrettable as they were – were quickly interpreted by local populations and the national government alike in the light of the national conflict (de Vries 2015). Local non-Dinka populations felt threatened in part due to the influx of cattle keepers but more so because "without question, the Dinka cattle keepers [were] better armed and more militaristic than most agriculturalist communities and are seen to, and sometimes do, have security force backing." (ICG, 2016) By 2 July

2015, the director for the state relief and rehabilitation commission in Yambio reported to Radio Tamazuj that some 4,000 IDPs had arrived from Maridi and Mundri in Yambio, and that he estimated that some 70,000 had been displaced by the fighting.

The violence near Mundri and Maridi combined with local-level grievances, political developments in Juba, and violent incidents in WES to fuel the state of disorder that engulfed the western parts of the state from late July 2015. The violence spread to the central part of WES when members of the local community in Birisi (20 kilometers south of Yambio, close to the border with the DRC) clashed with the SPLA on 29 July 2015 (Human Rights Watch 2016). At least three soldiers and between two (Radio Tamazuj 2015) and eight (Foltyn 2015) civilians lost their lives. The next day, a soldier shot and killed two civilians in Yambio. By 2 August 2015, the fighting had spread to certain parts of Yambio town, and at least four more people had been killed in the city. Some 400 people sought shelter from the violence at the UNMISS-base in Yambio, but were turned away (Radio Tamazuj 2015). Instead they were given shelter at the ADRA Compound under a precarious health situation. On 21 August, the Speaker of the WES Legislative Assembly, James Bage Elisha was shot by unknown gunmen in his car when he crossed the Uze River bridge (Radio Tamazuj 2015; Sudan Tribune 2015).

On 15 August 2016, WES Governor Bakosoro, who was in Juba at the time, was prevented from flying back to Yambio. And the following day, President Salva Kiir issued a presidential decree removing Bakosoro and three other governors without a formal explanation. Bakosoro was replaced with Major General Patrick Zamoi. News sites and social media covering the event referred to Article 101 (R) of the Transitional Constitution (2011) which authorises the president to "remove a state governor and/or dissolve a state legislative assembly in the event of a crisis in the state that threatens national security and territorial integrity." The insecurity in WES then could have been a reason for the president to sack the governor. But in WES, some people saw this differently and suspect that the heavy-handed army tactics the SPLA used in WES were part of a deliberate strategy to condone, if not instigate, perpetual insecurity in the state so that the governor could be removed. Although it is impossible to verify the merit of these allegations, they are indicative of the very tensed relation between the centre and the periphery and the profound distrust that many people have toward the state. Bakosoro was briefly arrested and held without charges from 16 to 21 August 2015 (Radio Tamazuj, 2015). He was again arrested on 22 December 2015 and then held without charge until 27 April 2016. Although respondents in Yambio explained that they were angered in August by the sacking of Bakosoro, at first they did not hold any grudges towards his replacer, Zamoi. One UN-staff member explained that Zamoi enjoyed popular support in part because he had been the governor of WES before and because he had later supported Bakosoro's campaign for governor.

Throughout the violent diffracted conflict in WES, it was often unclear and contested who the SPLA was fighting. Meso-level leaders like the governor, religious leaders and the State Minister of Information, were quick to call local armed factions – often termed 'local youth' – to order, while simultaneously stressing to the outside world the micro-level nature of the violent acts and attempting to dispel rumours of a rebellion forming in Western Equatoria State. Initially this also meant explicitly or implicitly differentiating the WES armed groups from the SPLA-IO whenever allegations of alignment were made (South Sudan Nation, 2015). Local leaders and media called the armed groups 'Arrow Boys' – like the loosely organised

Spokesperson WES government Charles Kisanga, 26 May 2015
"I stand by our earlier story that it was local youth who reacted to the looting and destruction by SPLA unit in Mundri on Friday 22nd May 2015 and took control. The Youth were angry at the assassination of their Executive Director plus random gunfire perpetuated by the army then"

community-based militia which had initially organised to defend their communities against the Lord's Resistance Army (LRA). But some commentators argued that the new armed groups did not deserve to be labelled 'Arrow Boys' because they now aspired to different political goals, and – especially towards the end of 2015 – used more violence against their own communities (Mohandis 2016).

The national peace agreement that was signed on 26 August 2015 – albeit in a spirit of widespread scepticism – seemed to have little positive impact on the ground in WES. By mid-September, most of the cattle keepers had reportedly left the eastern counties of WES – but the SPLA strengthened its presence to quell the armed resistance. Their heavy-handed approach was perceived by much of the local population to be part of the problem. From November 2015 caretaker-governor Colonel Patrick Zamoi seemed to align himself much more closely with the SPLA and Juba-based government than before. For a time, this seemed to affect the trust between him and local populations – who in many instances shared the grievances that the 'Boys' were fighting for, as well as antipathy towards the SPLA.

The picture of armed resistance in WES grew more complicated as the violence was widespread yet the armed elements remained diffracted. In early October 2015, a resident of Yambio town complained that gun shots now sounded every night, "and you cannot know who is shooting and why. In the mornings you see people and try to ask them including the government officials and you cannot get very clear information about such incidents" (personal communication). In the vacuum of reliable information, many rumours circulated. Reliable data about the respective strength, agenda or command structure of the various armed movements were hard to come by.

From October 2015, the non-state armed elements seemed to take two approaches. Some groups pledged allegiance to the IO, probably with a view of being included in the national-level cantonment and DDR-process. The Revolutionary Movement For National Salvation (REMNASA) had formed in early 2015 when SPLA soldiers had defected under the leadership of Losuba Lodoru. The movement had launched some attacks primarily around Maridi county (REMNASA 2015), before declaring its merging with the SPLA-IO in October 2015 (Sudan Tribune 2015). In November, Alfred Futuyo claiming to command some 17,000 Arrow Boys, also declared allegiance to the SPLA-IO (Nyamilepedia 2015; Sudan Tribune 2015).

Others groups engaged in peace talks with the government – often with mediation from church leaders Caretaker-governor of Gbudue State Zamoi announced on 8 October 2015 that the SPLA and the local 'Arrow Boys' in Maridi were discussing a ceasefire and the possible integration of the latter into the former. On 15 November, a peace deal was brokered in Mundri by Bishop Paul Yogusuk between local 'armed youths' and the army. In his explanation, he stressed that the grievances of the youth had been heard, and that "(also) the SPLA soldiers who have caused atrocities in Mundri will be disciplined by their command" (UNMISS 2015). On 16 November, Bishop Eduardo Hiiboro brokered a preliminary peace agreement between the South Sudanese government and the South Sudan National Liberation Movement (SSNLM). SSNLM commander Victor Wanga explained that they "had not 'entered the bush' to fight but rather to raise alarm to get the government to listen to them and address their grievances" (Radio Miraya 2015). Still, in distrust he and his men remained in the bush until a solid peace agreement would be signed.

A particular confusing set of events surrounded the establishment of the South Sudan's Peoples Patriotic Front (SSPPF). On 24 November a press release emerged announcing the formation of this new movement under the leadership of Charles Barnaba Kisanga. Kisanga would also chair the political wing, while the military wing would be headed by Alfred Futuyo (Sudan Tribune 2015), who had been involved with the Arrow Boys for years. The press release further announced that the SSPPF would explore integration

with the SPLA-IO against the "unpatriotic tribal dictatorial regime (Kisanga 2015). The movement claimed to be the true representative of the Arrow Boys, and to have captured "over 90% of Yambio" (Nyamilepedia 2015). Within a week of the first press release, another appeared on Nyamilepedia in which Samson Masiya – 'official spokesman of the SSPF' – corrected Kisanga, saying that Alfred Futiyo Karaba remained the "overall military commander/ C in C of the forces composed mainly of the armed youth and community defense forces, popularly known as the Arrow Boys Battalion, currently Nerran Division" (Masiya 2015).

23 November: Press Release by SSPPF
"Contrary to previous claims the Arrow Boys had not been part of other resistance groups operating in WES like SPLM-IO and REMNASA and had been maintaining their separate commands until this month when we made initial desire for alliance and possible integration with SPLM-IO and we sent delegates to Pagak to meet the chairman of the SPLM-IO"

Shortly after the peace agreements were signed in Mundri, Maridi and Yambio, violence burst out again. On 24 November 2015, an SPLA helicopter gunship attacked in what was alleged to be an SPLM-IO cantonment area in Mundri County (Sudan Tribune 2015). An estimated 50 people were killed – including two top military commanders of the SPLA-IO – and another 100 were wounded (Night 2015). But reliable figures or specifics of the incident were hard to come by, in part because a JMEC-monitoring mission that was sent to investigate the incident was turned away at gunpoint (Joint Technical Committee 2015). Crucially, it is not at all clear who exactly the people targeted in the attack were, and to what extent they belonged to IO and/or the Arrow Boys.

In Yambio town, the largest clashes of 2015 broke out on 8 December. The day before, an "armed group affiliated with the government" had arrested five men that were accused of "undermining the peace agreement" (Night 2015). This triggered fighting between police officers and suspected Arrow Boys. Especially Ikpiro, Hai Napere and Hai Kuba were affected, with houses being burnt and civilians fleeing those parts of town – in some instances heading for the DR Congo to seek refuge. UNMISS patrols could do little to halt the violence. Throughout December the situation remained dire – with frequent gunshots especially at night. On 3 January 2016, the SPLA launched a heavy offensive north of Yambio in Saura and Rii-rangu Payams against the bases of the SSPPF/Arrow Boys under the command of Alfred Futuyo (Nyamilepedia 2016). On 8 January 2016, UNHCR estimated that some 15,000 people had been displaced from Yambio and Tombura since the start of December (UNHCR 2016). Some 7,000 people – some of whom Congolese refugees to South Sudan – had found their way to Dungu, DR Congo (UNHCR 2016).

But Yambio town remained quiet in the new year – with one respondent explaining: "the situation in Yambio is much better than before. It is cool now, there is no sound of gun. Even some people are coming

6 January 2016: communication with resident of Yambio
"A few people have started returning to their homes mainly close to the main road. However, the majority of the citizens are still in their hideouts and some have crossed to DRC and others have even proceeded to Uganda. Life is increasingly getting very difficult, prices of essential commodities is skyrocketing every day. Multiple sicknesses especially with children, women and the elderly people. We hope life will return to normal soon after formation of the state and national government, otherwise the cost of living is becoming unbearable for many citizens in Yambio and South Sudan in general."

back." Caretaker-governor Maj Gen Patrick Zamoi of Gbudue State spoke on the radio on 14 January, asking the Arrow Boys to come back, to turn to a new page of forgiveness.
But on 21 January 2016, Yambio town was disrupted by sudden clashes between soldiers and armed men that led to the deaths of nine to thirteen people – including a commissioner in his office. Thousands of civilians were reported as displaced. The next two days, the SPLA crossed the bridge at Uze, and attacked positions of the SSNLM in the vicinity of Gangura and Birisi. During the fighting, the Commander of the SSNLM, Victor Wanga Aliminio sustained injuries that he would later succumb to. He was replaced by Commander Santos (Africa Confidential 2016; Sudan Tribune 2016).

February and March 2016 were marked by confusing and contradictory statements on the status of the respective armed movements. After the clashes between the SSNLM and the SPLA, the leader of the SPLA-IO in WES, General Henry Malesh Louis, announced that a 8,000-strong group of Arrow Boys of the SSNLM under the command of a 'Brigadier General Abel Mathwo Banga' "defected from the alliance with the government and joined the armed opposition" (Sudan Tribune 2016). The next day, this claim was denied by Abel Mathew Mbaraza, who stated to be the true spokesman of the SSNLM. Similar confusion arose about the SSPPF, when on 31 March spokesman Masiya announced that Kisanga was no longer the leader of the movement (Nyamilepedia 2016). In response, Kisanga issued a press release that same day stating that Masiya was not a member of the SSPPF/Arrow Boys, and that: "WES belongs to SSPPF/Arrow boys and allies such as SSNLM. There are no Riek [Machar] forces in WES to disown me in my own land. Well I can be disowned in Upper Nile but not in Yambio or Equatoria" (Kisanga 2016).

By 17 February, Sudan Tribune reported that county authorities in Yambio "designed a form to be filled by the youth who are coming back home." (2016) They were instructed to come to the county commissioner first to fill out the form, after which they would be brought to security agencies for clearance. They would then not be arrested. In addition, a similar form was designed by the Justice and Peace Commission of the Catholic Diocese of Tombura-Yambio to be filled out by members of the armed youth or relatives of the missing youth. They would then be taken to the county for further security clearance. Hummingbird Action for Peace and Development (HAPD) was also collecting information from the family members of people who had disappeared, allegedly at the hands of the security forces. HAPD shared this information with the UNMISS Human Rights Director and international journalists who had visited Yambio during the crisis. This information was used by UNMISS to expose the human rights abuses that occurred during the crisis. Furthermore, HAPD team members also managed to secure the release of the two young men who had been arbitrarily arrested, detained and tortured by SPLA Commandos in Nzara. Another positive and remarkable effort for peace was the yearly "Ride for Peace" organised by the Bishop of Tombura Yambio Diocese, Eduardo Hiboro in late March. (Sudan Tribune, 2016)

Formal peace returned to Yambio town when the SSNLM and the South Sudanese government signed a peace agreement on 2 April 2016. Bishop Eduardo Hiiboro was again involved as mediator. On behalf of the SSNLM, the deal was signed by John Faustino Mbereke and Bakoyogo Santos. The peace agreement provided for the integration of former SSNLM into the SPLA, police force, and other forms of government-funded employment. The agreement included budget – and so one might wonder how feasible such commitments were. What is more, the agreement was between the SSNLM and the Government of South Sudan – other armed groups were not included.

Riek Machar returned to Juba on 26 April 2016 to take up his old position as first vice-president of South Sudan. Although his coming was met with a certain agnosticism, many in WES saw it as an inevitable first step to implementing the peace agreement that had been signed in Addis Ababa. Another hopeful development came the following day when the former governor of WES, Joseph Bakosoro was released after having spent more than four months in prison without trial (Radio Tamazuj, 2016). At this time,

people in WES were returning to their houses, and markets and schools were open again in most towns. On 18 June 2016, the first members of the SSNLM were reportedly arriving in Yambio for training – "ahead of the reintegration into the government organized forces. Some will be joining vocational training schools while others will continue with their studies in the various schools in the state" (Sudan Tribune, 2016).

But on 7 July 2016 and the days that followed, forces loyal to Kiir and Machar clashed in Juba. Various interpretations of the exact events are circulating, but the results were hundreds of casualties, thousands of displaced, and the breakdown of the peace process (International Crisis Group, 2016; Norwegian Refugee Council, 2016). In Western Equatoria State the towns remained by and large stable but the roads remained dangerous – with caretaker governor Zamoi's convoy being fired at on 8 August 2016. By late September 2016 the security situation in Western Equatoria State remained mixed, fragmented and unpredictable. Some armed groups had surrendered their arms in Yambio, Ri-Rangu and Ezo counties. But parts of the state remained affected by fighting between various armed groups (in the western part of the state also by LRA and Mbororo cattle keepers), the scarcity of goods (including food and medicine), disrupted agricultural activities, and bush fires (personal communication, 21 September 2016).

Since July 2016 military and political events on the ground have steadily grown in complexity. One worrying feature of the recent violence is that ethnic nationalism has become a feature of public discourse as well as the perpetration of violence – also against civilians. What is more, the once peaceful Equatorias have increasingly become the theatre of violent conflict. The eruption of violence in July 2016 demonstrated once again that the hard part of peace making is not the signing of an agreement but rather its implementation and the repeated and deliberate choice to refrain from violence. This last part is especially difficult in a context of dire poverty. Connections or loyalty to violent actors have been rewarded with positions in government and material gain (De Waal, 2016). When WES was poor but peaceful, its leaders complained that the state was forgotten – with NGOs as well as the national government devoting more time and resources to other more conflict-ridden states. After the violence in the Equatorias has reached international headlines, some anticipate more aid, positions in the armed forces and government, and a seat at the national table. This is the bitter lesson of violence in this region, and one that has profound ramifications for the way conflict and peace are waged.

3.2 Consequences of the fighting for civilians

> It wasn't easy, it was very bad. The way that the Boys were acting wasn't good. Even in our area they were coming in the night. People were even sleeping in the Bush.
> *Respondent, 15 January 2016*

> The situation is a bit cool. But people are still panicking when soldiers are moving.
> *Respondent, 4 February 2016*

Conflicts in South Sudan have often resulted in countless civilian – not just military – casualties. Some of these deaths are through direct violence, but most are through displacement, food insecurity, and lack of access to drinking water and medical services. Sometimes, violence occurred in an extremely local manner, and it would often happen that there was fighting in Yambio, while the situation in Nzara (some 20 kilometres away) was calm. But over the course of 2015 and 2016, the violence had engulfed many towns and the economic misery had reached the point that many people fled their homes. Some went to Juba, the DR Congo or CAR, others made their way to Uganda and Kenya.

Especially from October 2015, some of the non-state armed groups scrambling for supplies and recruits started posing an increasing threat to local populations and institutions alike. On 8 October, caretaker-Governor Zamoi reported that young men were being abducted from their homes in Yambio, and forced to join the armed groups (Radio Tamazuj, 2015). People in the towns were afraid to go to their farms in the forest out of fear of being mugged, raped or killed. Women interviewed in Yambio in early 2016 reported fearing sexual harassment from both the Arrow Boys and the army. "The soldiers are not paid and they stay away for a long time from their wives and therefore they decide to do whatever they feel like," one female government official explained in Yambio. "With the crisis here now, it is not good for the future of your children, and gender-based violence cases like rape are increasing" (interview, January 2016). Due to the delayed salary payments, some soldiers have been preying on civilians and their property. Citizens in Yambio and other towns in WES have consistently complained about the barracks being close to the town, in the vicinity of heavily populated areas. A possible solution to some of the friction may have to do with land again. In a workshop organized by Women General Union in both Yambio and Nzara respectively, and facilitated by HAPD, the SPLA in Nzara gave a presentation indicating that they want the government to allocate for them a large plot of land outside the town where they can cultivate their own food.

February 2016, FGD-participant Yambio
"We the women are in trouble. We have families to take care of, but first of all the prices of commodities in the market are very high, and yet money is scarce! Secondly, it is very difficult for us to get out of the town to go and cultivate. Because we may end up being raped by the rebel boys in the bush or else killed. So with all this what can we do? Our children are hungry and no food for them also no school fees. If I analyze it very well, I may say that these are signs of the end times."

By February 2016, the security situation in Yambio town had gotten slightly better, even if respondents reported that theft was still high, and that they could feel tension in daily life.[106] Problematically, the roads remained largely inaccessible. Whereas WES was normally a self-sufficient agricultural producer, due to the insecurity people had not been able to go to their fields to prepare their land for planting. With the non-state armed groups growing predatory, the civilian population was increasingly caught between two fires: "It is not easy to go to my farm. These boys, those in the bush, it is not safe. Even if it is safe to go, you may be stopped by the army: "why is it you are going to the bush and coming back?".[107] Households affected often started collecting food from their granaries. When food ran out, subsistance farmers found themselves scrambling for money to buy food in the market – which due to the shortages as well as the inflation had grown expensive.

February 2016, FGD-participant Yambio
"My thought about the current situation is not OK. There is no peace amongst people, theft is rampant, there are high prices of commodities at the market that a common man like me cannot afford. With all this I am not satisfied and the change I would like see is that the government should try their level best to bring back peace, which will give people chance to go and cultivate and get enough food."

106 Personal communication, 23 February 2016.
107 Personal communication, 4 February 2016.

	15 April 2015	5 January 2016	15 September 2016
Water (0,5 l)	2 SSP	7 SSP	18 SSP
Gasoline (1,5 l)	9 SSP	75 SSP	220-250 SSP (only black market)

After the signing of peace agreement between the SSNLM and the government and the return of the First Vice President Riek, the security situation briefly but significantly improved in Western Equatoria State. The road between Juba and Yambio through Mundri West temporarily became safe enough for travel. Some armed youth were released in Mundri West by the SPLA and this eased the tension a bit. But even at that time, the economic hardship and hunger continued to affect the population severely and some schools were unable to function. After the eruption of conflict in Juba in July 2016, life in Yambio cautiously continued.

July 2016, respondent in Yambio
At the moment Yambio is stable, except for isolated cases to do with killing especially at night. An armed offensive is not seen. People are going about their business. The Only problem is the economic aspect of it, that's really challenging. People are now cultivating for the second season: some are already planting and others are still slashing the bush to prepare for planting.

3.3 Consequences of the fighting for aid delivery

The fighting impacted the provision of aid in myriad ways. From November 2015, aid organisations and internationals working in WES were also explicitly targeted. On 18 November, a UNHCR-truck was stolen by "youths from the Arrow Boys … to loot Ezo warehouse of supplies" (UNHCR, 2015). Two days later UNMISS helped to evacuate their aid personnel. On 23 November, UNHCR reported that the situation in Ezo had continued to deteriorate, that the town was now deserted and the refugees scattered. By February 2016, the county commissioner reported that 40 HIV-patients had died "due to lack of drugs." In January 2016 JMEC found that people were starving from hunger in Mundri and that food aid could not be delivered due to roadblocks and insecurity on the road between Juba and Mundri, and the fact that NGOs were unable to secure guarantees of free passage from the state and non-state armed forces (AFP, 2016).

In Yambio town the compound of the Solidarity Sisters was attacked on 28 December 2015, with foreign nuns being robbed and assaulted by unidentified Zande-speaking men (Catholic Herald, 2016; personal communication). In May 2016 in Andari *payam*, troops affiliated with the SPLA-IO intercepted and confiscated a large amount of looted aid items including a CD4 testing machine for HIV/AIDS and solar panels intended for the hospital. They alleged that a Darfuri trader had bought it from SPLA soldiers in Ezo town, and was taking it to Wau to sell. The leadership of the SPLA-IO in Andari requested the state authorities to come and collect all the confiscated items in an attempt to clear their names from the public, that they were not the only ones who vandalized Ezo town during the crisis.

Foreign aid workers in Juba had been targeted for house break-ins and carjackings in 2015, but their sense of insecurity increased dramatically due to a much-publicized event on 11 July 2016. Between 80 and 100 soldiers overran the Terrain residential compound where foreigners were based: "They shot dead a local journalist while forcing the foreigners to watch, raped several foreign women, singled out Americans, beat and robbed people and carried out mock executions" (Patinkin, 2016). In September 2016 two violent incidents involving aid workers took place near Yambio as well. On the night of 7

September an aid worker with World Vision was killed together with his family by 'unidentified gunmen.' Earlier that same month a driver for MSF and his wife had reportedly been killed on the road between Yambio and Bazungua (Sudan Tribune, 2016).

3.4 Consequences of the fighting for local government and judiciary

> We only hope that the situation especially the current one should come to an end so that people can have peace, not be in pieces.
> *Payam* administrator of Nzara, February 2016

The local government in many instances has gone into crisis-management mode. The positions of county commissioners especially had become very difficult, torn as they were between their loyalty to the communities and to the government in Juba. The commissioners and the executive directors of counties are responsible for maintaining security in their counties, and in many instances had to confront disturbances directly. In Tombura, Source Yubu, Mundri and Yambio, individual officials were shot at, which is indicative of the politicisation of their offices.

The police also got involved with fighting against the non-state armed groups. In a few instances, Arrow Boys attacked the offices of police, prisons and wildlife security to steal weapons. In Nzara, this happened on 26 August 2015. Although this led to antagonism between local functionaries and the Arrow Boys, government officials also stressed that the 'Boys' were – or had been – members of their communities. And so some of them attempted to persuade the Boys to come back: "being an elder who has experienced life in bush, I know it is not a good one" (interview in Nzara, February 2016). Prisons were also indirectly impacted. For their food provision, they would often send inmates to 'prison farms' or to individual plots. With the unrest, that could often not happen. In some instances, parents of inmates would now come to bring food (interview, February 2016). But for others, life had just become incredibly difficult in prison (see text box).

February 2016, Prison inmate Nzara
"Life is not easy for me because I have ulcers and I'm not supposed to stay hungry. I do a lot of heavy work, like carrying water with twenty-liter jerry cans. But I can even go for two or three days without food, and this is affecting so much. Sometimes I have to mash some potatoes and eat just to let the day pass."

The local government apparatus – which had already been struggling with low human and financial resources before the crisis – was further weakened and confused as various reforms,[108] were announced, cabinets changed,[109] and county commissioners were replaced. Further, some officials stayed away longer than usual from their posts.[110] One citizen of Yambio explained in late January 2016 that: "Most of the people have travelled, especially government people."[111] Throughout the crisis, travel had become more dangerous and costly, and so officials living a while away from their office would not come to work. Similarly, the insecurity and inflation kept people away from the markets, and so few taxes could be

108 Most importantly the decentralisation decree, in which President Kiir announced the creation of 28 states on 2 October 2015. But confusion was also introduced through reforms announced by the proposed Gbudwe State's Governor Patrick Zamoi. He announced on 27 April 2016 the creation of "eight new counties on top of the current five" (Sudan Tribune, 2016).

109 Caretaker-Governor Zamoi reshuffled his cabinet on 28 September 2015.

110 Especially after the Christmas break, some officials only returned in February.

111 Personal communication, 28 January 2016.

collected there (interview in Nzara, January 2016). In Yambio, the Land Dispute Committee of the CLA was also struck when its chairman, Reverend Father Charles Bangbe, was shot and left for dead. He survived the attack and later explained that, "I believe it may be connected to the land issues that I am solving to give back the land to the owners" (Sudan Tribune, 2016).

The judiciary was also affected. The judges presiding over statutory courts were mostly not from WES, and so as the conflict developed, "most of them went back to Juba seeking safety" (interview judiciary in Yambio, February 2016). For those justice providers that stayed behind, both in Nzara and Yambio they reported receiving fewer cases since the eruption of the crisis. "This could be because in the current situation, people were not stable, they were like running from place to place," one senior traditional leader explained. "This affected the work so much" (interview Nzara, January 2016). Having said that, from late February 2016 the courts in Yambio had started functioning again.

Traditional authorities, although often native to the area in which they work, were often also temporarily displaced and severely affected by the violent conflict. In July 2016 in Naandi the local payam chief and payam administrator had left their offices, leaving a sub-chief in charge. That sub-chief was in turn "arrested, detained [and accused] of being a collaborator of the rebels. They alleged that he does not show who is a rebel supporter to them." Non-state armed groups were similarly threatening to local authorities and communities when the latter were seen to assist the SPLA. Some citizens offered to cut some trees that rebels had obstructed the roads between Diabio and Naandi with, but then "rebels appeared to them threatening that if they continue to clear the road for easy passage and the enemy comes to attack them then they (civilians) will face the consequences bitterly. So they decided to leave the initiative." (personal communication, 26 July 2016).

3.5 Consequences of the fighting for our research

The violence has severely impacted our research project as well as some of the individuals involved in it. When the researchers returned to Yambio for the second research phase in early December 2015, the security situation quickly deteriorated and the research had to be put on hold. Some of our research team were displaced or sought refuge themselves, and all were affected in one way or another. When a small group tried to resume work in late January 2016, they found that it had become hard to secure permission from the local government to conduct research. There had been many changes in staffing, and some of the functionaries only returned to their office in February. The security situation by this time allowed some careful travel between Yambio and Nzara – and so our researchers focused on conducting interviews there. The research project, like all other economic activities, was also struck by the crippling inflation – which demotivated the team to an extent.

4. Conclusion

This study has chosen to look at justice in Western Equatoria State[112] (WES), South Sudan from the perspective of individuals at the grassroots level. We focused on peoples' justice concerns and conceptions of justice, and the responses and remedies that justice providers have offered. This is reflected in our methodology: we conducted hundreds of semi-structured interviews, and analyzed court sessions and court records. By doing so, our disposition was to investigate *how things work* rather than *how things deviate from state law*, human rights, or other external benchmarks of justice. While the case studies make reference to the relevant legal framework, they focus especially on *law in practice*

This research reveals some important lessons about local justice in WES. Based on our raw data, we have analysed what we see as important successes and failures in the dispensation of justice, and attempted to indicate what elements of the justice systems 'work'. All of that will be further elaborated on in the Policy Brief[113], Synergy Report[114] and Strategy Document[115]. This conclusion will summarise the main findings of the case studies in South Sudan, and offer initial answers to our four main research questions.

4.1 An insecure context

The case studies in this report have focused mainly on the micro- and meso-levels, but it is important to emphasize that two macro-level developments have thoroughly shaped the lives of ordinary people in WES: the increasing insecurity and economic turbulence.

Having remained relatively peaceful throughout the first years of the South Sudanese Civil War (2013-present[116]), WES became more affected by violence over the course of 2015 (see 3). In fact, as the peace agreement between the SPLA and SPLA-IO was signed in Addis Ababa in August 2015, fighting only intensified in WES. This serves to illustrate that the connections between conflicts at the national and local level are complex, and in some ways counterintuitive (ICG, 2016). In April 2016 a fragile peace had been established around Yambio through local-level agreements, but sporadic fighting and assassinations has continued. The implementation of the often ambitious agreements remains uncertain as commensurate budgets and political will have often been lacking, and the national peace agreement seems to have broken down. Especially problems with the disarmament, demobilization and reintegration (DDR) of armed elements[117] could pose a stumbling block for local stability. Armed factions may resist

112 As explained in the introduction, WES may be divided into three states: Gbudwe, Maridi and Amadi States.

113 Braak, B. 2016 'Policy Brief South Sudan: working with customary courts to improve the provision of justice.'

114 Jacobs, C. and Otto, J.M. 2016 'Exploring Primary Justice in Insecure Contexts: South Sudan and Afghanistan: Challenges, concerns, and elements that work.'

115 Cordaid, 2016. Primary Justice in Insecure Contexts: Strategy Document on Policy and Programming Recommendations South Sudan and Afghanistan.

116 These dates are arbitrary markers of transitions from 'peace' to 'war'. Parts of South Sudan have seen so much war during official peace time, that it may be better to speak of a 'no war, no peace'-scenario. But after the alleged coup attempt on 15 December 2013, the violence certainly peaked in much of the country. In August 2015 the two main warring parties – the RoSS and SPLA-IO signed a peace agreement, but as discussed in the Epilogue that did not result in peace on the ground.

117 Most notably of the SSNLM which has signed a local peace agreement with the government, and of the SSPPF which claims to be part of the SPLA-IO (and thereby should be included in the provisions to offer cantonment and DDR offered to SPLA-IO troops). Neither of these agreements were accompanied by clear budgets or pledges of support from the outside. In a context where the national army is often not paid for several months, it remains to be seen if newly integrated elements would receive a living wage on time.

the two 'D's without a clear prospect of the 'R'. The seasonal influx of cattle keepers in the eastern counties of WES[118] also contributes to local tensions, likely along ethnic lines.

Less visible but perhaps as crippling for local populations as the insecurity, is the economic malaise that South Sudan continues to face (see 1 and 3). The war has disrupted local agricultural production as well as conventional trading routes, and made more people dependent on fewer goods in the market, and on food aid. The low global oil price, lack of foreign currency, and the liberalization of exchange rates, have further fuelled hyperinflation (Bloomberg, 2016). In many instances, people in formal employment have not been paid for months (Gonzalez Farran, 2016). Those that have been paid have seen the real value of their wages decimated by the economic crisis. This further contributes to insecurity and the fragility of state institutions, and may lead to banditry and corruption.

This context has also impacted our research in manifold ways. The salary we agreed upon in January 2015 had decreased in value drastically over the course of the year, and adjusting for that has proven difficult. Further, the insecurity lead some of our researchers to flee the country, while others were displaced from their homes. Doing qualitative research in such a volatile context has proven extremely challenging, but nonetheless it remains vitally important (see 3). We hope that this report contributes to our understanding of how micro-level disputes tie in with meso- and macro-level violent conflicts.

4.2 People's justice concerns[119]

People in WES have much to be concerned about. The context of war and economic hardship has shaped people's lives, their land disputes, and the options they have for solving them. Economic hardship has led people to adopt strategies to cope with the shocks of the market, by for example cultivating land for self-sufficiency instead of being dependent on a monetary income (see 3). This has further increased pressure on land. Analytically, one could divide people's justice concerns thematically (i.e. 'land', 'family', 'criminal') but for the purpose of this conclusion, and especially with a view towards recommendations, it may make more sense to divide justice concerns based on where they emanate from. Here, we will differentiate between problems that emanate from everyday social life, from the state system and from major violent conflict. Although these categories overlap and impact each other, the sphere and mode of influence of the justice providers and outside supporters is slightly different in each category.

4.2.1 Everyday social life

Whether it is war or peace, people's lives continue to evolve around family, work and property. Case 2.2 'Traditional authorities and customary courts' shows that most disputes at that level are about dowry, marriage, domestic violence, adultery, divorce, custody, petty crime, witchcraft, and domestic violence. Our in-depth analyses of cases brought before customary courts reveal that violence and poverty have permeated the domestic sphere – where domestic violence, economic and psychological neglect, and alcoholism are all too common. Because these disputes are so closely connected to social and economic relations they are often multifaceted, and different problems are tabled at any attempt at resolution (2.2). At this level, no dispute seems ever about just one thing. Witchcraft allegations are commonly voiced at some point of the evolution of a dispute – a dispute rarely starts with witchcraft only. The context of economic hardship and insecurity serves to complicate even small disputes, and it can also render compromises more difficult to achieve (2.1).

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118 These are the proposed Maridi and Amadi States.

119 Research question: How, and with which degree of success do men and especially women, facing serious justice concerns, notably property dispossession and other property disputes, engage with the available state and non-state mechanisms and practices to achieve justice and peace?

Driven by insecurity and lack of opportunities and drawn by the prospects of a more prosperous and peaceful life, many people have flocked to the cities of WES. This peculiar form of urbanization has led to a rising demand for land and expanding urban frontier. Urban land is growing increasingly monetised and so the stakes of owning land have changed. There are peculiar tensions around sought-after land in the markets, but also residential land is perceived to be scarce[120]. This increased pressure on land is both a consequence and cause of conflict (2.6). Local government responses to demarcate land as 'public' or 'private' (two categories administered by the state)[121] have often proven counterproductive. The process has catalysed disputes over land between family members, but also with the government, churches and between different ethnic groups (2.6).

4.2.2 State-driven injustices

Contrary to popular analyses of South Sudan's 'start from scratch' in 2011 (Moszynski, 2011), the territory and its people have a long and often troubled history of dealing with government (Leonardi, 2013). It goes without saying that Westphalian notions of statehood and Weberian ideas on bureaucracy are not useful in analysing statehood in South Sudan. Indeed, some analyse its clientelist workings by reference to the 'political marketplace'[122] (de Waal, 2016) or a 'violent kleptocracy' (Prendergast, 2016). Our research indicates that while the national government and especially the national army were generally unpopular in WES, people often had higher expectations of, and better experiences with, local government. Perhaps paradoxically, the ambitious character of elements of the South Sudanese state and its donors can result in disruptive policies and laws that have at times resulted in injustices. Often, plans with good intentions and a sensible desk-design fall short in practice because they presuppose an institutional and judicial landscape that is absent in South Sudan. We have found three examples of such unintentional state-driven injustices.

The first relates to the county and state government's attempts to assert their authority over land tenure to overcome uncertainty and disputes about land ownership. They demarcated private and public land in the urban settings of WES. But the under-funded and under-staffed offices in the state-level Ministry of Physical Infrastructure and Ministry of Local Government[123] struggle to implement the process fairly, and often fail to provide adequate compensation for expropriation. In all the seven counties studied for this research, the demarcation process had resulted in considerable friction between neighbours, between co-owners of a hitherto informally held plot, and between communities and the expropriating government bodies. Injustice was felt in particular when people were dispossessed by the demarcation without the legally required compensation, which happened often (2.4). The proponents of the demarcation held that land disputes were inevitable in the short-term, but that in the long-term a strong well-surveyed system would bring an end to land conflicts. However, besides the lack of compensation, the way the demarcations were carried out also seemed to lack transparency and accountability. Especially the survey process was often perceived to be corrupt and to offer opportunities for powerful individuals to grab land. The process has also sparked fundamental debates about individual and communal rights to

120 To the outside observer land seems abundant in South Sudan, but part of the shortage is due to the different land use patterns. Those coming to the cities still tend to seek a relatively large plot of land – ideally with space for a small house (often grass-thatched, clay huts called *tukul*) for each adult family member.

121 'Community land' (an ill-defined category of land administered mainly by chiefs) is rarely registered as such, but arguably still makes up the majority of the land. (REFER TO DENG!)

122 Defined as: 'the transactional politics whereby political loyalties and political services are exchanged for material reward' (de Waal, 2016)

123 These ministries were reorganised by caretaker governor Patrick Zamoi on 28 September 2015: "the former minister of Local Government has been moved to the portfolio of Information and Communications … The Ministry of Physical Infrastructure has been divided into two; seeing the creation of the separate ministries of Roads and Bridges, and another of Housing, Electricity and Water (Radio Miraya, 28 September 2015).

property and the state's legitimate ability to infringe on those rights in the interest of development and the 'common good'.

State-driven initiatives can result in injustices that are perceived to be benefiting local elites and ethnic groups. In Maridi, ethnic Dinka reported feeling that their claims to land were side-lined by a local government that was dominated by other ethnic groups (2.6). In this dispute two conceptions of justice clashed: one claiming the right to land based on indigeneity, and the other on having liberated the area during the Sudanese Civil War. This dispute, which was brought into the open during the 2014 demarcation, foreshadowed the violent events of 2015, and is illustrative of the tensed relationships between various groups of Dinka and local populations in the eastern counties of WES. It also indicates that small-scale disputes over land can contribute to the escalation of violence when they are framed or interpreted in the wider context of civil war and ethnic divisions. Solving these sorts of individual disputes early on in a non-discriminatory fashion, could be seen as a way of preventing inter-ethnic conflict.

Another state-driven injustice follows from legislative guarantees to have criminal cases heard by a statutory judge. This seems to overlook the actual absence of statutory judges in most of the country's counties. In some instances, this has resulted in suspects spending years in pre-trial detention awaiting a hearing by a competent judge (2.7). The solution to a perceived problem (that criminal cases are heard by chiefs) under this conditions becomes a problem of itself that ends up violating the presumption of innocence (see also Braak, B, 2016, Policy Brief).

4.2.3 Concerns due to violent conflict

The violent conflict has resulted in the proliferation of weapons, large-scale displacement and return, and a political arena that is dominated by those who can sustain themselves and their supporters militarily.

The proliferation of weapons in civilian hands is both a cause and consequence of insecurity. In a context where the state army is often perceived to be absent or predatory, people in WES have often taken the task of protection upon themselves or on community-based armed groups like the Arrow Boys (Schomerus and Rigterink, 2016). But over the course of 2015 and 2016 some of those community-based groups have killed, raped and pillaged among their own people. Sometimes members of local Arrow Boys-factions were involved, but very often the identity of the gunmen remained unknown. Equally threatening were SPLA-elements that targeted civilians (3). At least three of the local government functionaries whom we interviewed for this research in March 2015, have been shot, one of whom killed. But already earlier, disputants often reported to fear (the threat of) violence exercised by people with access to weapons or powerful connections (2.1).

Millions of people have been displaced by violent conflict with Sudan and within South Sudan, and by LRA-activity in its borderlands with CAR and DRC. During the Sudanese Civil Wars (1955-1972; 1983-2005) many left for the north of Sudan, and for other countries near and far. But when the Comprehensive Peace Agreement was signed in 2005 and especially towards independence in 2011, at least 2,5 million returned to South Sudan (IRIN, 2013). Often, returnees found the land that they considered their own to be occupied by others. In some instances, informal land-sharing agreements that had been reached by the land owners decades ago now caused confusion and friction among their offspring (2.1).

Since 2006 increased LRA-activity in the borderlands of South Sudan with CAR and DRC has led to widespread displacement. For Congolese and Central African nationals fleeing the LRA, there are a number of refugee camps in WES. In other parts of the country, there are also protection of civilian (PoC) sites for people displaced by the civil war. But there are no IDP-camps in WES for South Sudanese

nationals displaced by the LRA. Instead, those IDPs commonly move to the urban centres where they are often concentrated in particular neighbourhoods. Case 2.5 'LRA-displaced people coming to the city' details the way in which these people moved to the cities of Yambio, Tombura and Ezo, and some of the land-related disputes that followed. The case highlights the friction that can arise between 'hosts' and 'newcomers', and also demonstrates how vague the boundaries between 'IDPs', 'returnees', and 'refugees' can be, and how 'displacement', 'migration' and 'urbanisation' overlap.

The South Sudanese Civil War that broke out in 2013[124] initially did not lead to much displacement within WES, but some cattle keepers from other states shifted their seasonal migration away from more violence-stricken areas to the safe and fertile pastures of WES (2.6). This was one of the many factors contributing to friction between cattle keepers and farmers in the eastern counties of WES. But the fighting among local armed groups (with or without ties to SPLA-IO) and with the SPLA, had the biggest impact on the people of WES (International Crisis Group, 2016), resulting in the displacement of tens of thousands of people (IOM, 2016). Based on prior waves of displacement and return it is to be expected that their return will lead to land disputes again (see also Ngor, 2012).

4.3 Justice providers: adequacy of responses[125, 126]

Following our assessment of the most important justice problems, we studied the ways in which people attempt to resolve them. Confirming prior research by Rigterink et al (2014), we found that a rich variety of actors resolve disputes locally: from those endowed with the responsibility to do so by law, to informal authorities like elders, church leaders, and neighbours. Justice providers across the spectrum have distinct and limited spheres of influence, and peculiar properties that can change quickly due to personnel changes or insecurity. Importantly, problems involving the armed forces or government are often too big to be addressed even by the highest judicial officials, and people try rather to cope with them. This is the realm of politics, and perhaps international pressure. This notwithstanding, a great deal of disputing and resolving happens at the grassroots level.

4.3.1 Obstacles to justice

Many problems are solved at home or are not solved at all. Justice seekers make complicated calculations based on the gravity and nature of the case, the relation and power of the parties involved, and the various social and financial costs involved with bringing a problem to an outsider. When people do decide to take a case outside, they face numerous obstacles. Some of those obstacles are particular for women, others are faced by men too.

First and especially when a case has been heard out of court before for example by local traditional authorities, there is the risk of being stigmatised over taking a case to court. In family disputes, stigma is even more likely because for men it amounts to admitting not being an adequate custodian of the homestead (2.1). Women sometimes fear being regarded as 'stubborn' for bringing a case to the court.

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124 It arguably never really ended, but lulled briefly at times when a formal peace was signed in August 2015, and when Riek Machar came back to Juba in April 2016. It resumed full force after the incidents in Juba around 8 July 2016, with insecurity increasing especially in Central Equatoria.

125 Research question: To which extent do the available justice providers offer adequate responses and remedies?

126 Research question: How can successes and failures in dispensation of justice through state and non-state mechanisms be explained, in particular by reference to:
a - Institutional and legal aspects of justice mechanisms and their interrelations;
b- interaction and communication between justice-seeker and provider;
c- contexts of severe insecurity and power imbalances.

Second, the higher up in the appellate chain a case gets, the more do people feel that the process becomes adversarial – rather than reconciliatory – in nature. When all is said and done, a court case will result in a winner and loser, which can be problematic when the disputants have to continue living in the same community. A third obstacle that became apparent in the 'Demarcation'-case (2.4) and the case on 'LRA-displaced people' (2.5), is a general lack of knowledge of the law and legal institutions. In a context where even the ministries and courts often do not have copies of the law, it is not remarkable that people are ill-informed about their legal rights. Fourth, disputants often have to travel long distances, in particular to access statutory courts. Travelling from one side of the state to the other can be expensive, especially as the plaintiff will have to pay for the transport, accommodation and food for the defendant, investigator and guard as well (interview public prosecutor Tombura, 18 March 2015). A court case can also take a long time, and require the parties involved to travel back and forth a few times. Fifth and related, court cases can be expensive. It has proven difficult to find out precisely how much is paid on court fees, fines and extra-legal incentives. But especially women, who are typically dependent on their husbands or male relatives for giving them money, often reported not pursuing a dispute further because they had no money. What is more, some women report preferring to have an abusive husband at home than one in prison – whereby they would lose the breadwinner of the household. Sixth, in some instances disputants have no faith in the justice system or the dispute resolving abilities of local government. They feel that there are no authorities available that are neutral enough to be of assistance (2.6).

The position of women in seeking justice is generally disadvantageous, as the financial costs, stigma and distance tend to be more difficult for them to overcome. But evidence collected for this research suggests that things may be improving. In customary courts visited for this study, between 30 and 44 percent of the cases were filed by women. Although comparative figures for earlier times could not be obtained, interviews suggest that there might be a more general improvement in the position of women in present-day Western Equatorian State, especially in the urban context (2.1).

4.3.2 Transformation of disputes, linkages between justice providers

Much in line with Felstiner, Abel and Sarat's *The Transformation of Disputes* (1980), this research found that disputes neither begin nor end in court. In most instances people try to solve their dispute with the help of neighbours, elders, local youth or religious leaders. This is especially true for civil cases, but often also for minor criminal disputes. In some instances, the same headmen and chiefs that rule in customary courts also hear cases out of court. A case in point are women facing domestic violence, who would run to the house of a local leader at night after which the latter would attempt to resolve the matter the next morning.

Disputes that are part of everyday social life are quite aptly dealt with at the local levels. The customary courts and non-state[127] justice providers are often perceptive to the intricate details that matter to the disputants. So when a man brings his wife to court over adultery (a common case in customary courts), he may expect counter-accusations: that he did not attend the funeral of one of his in-laws, that he had not paid the dowry in full, and perhaps that he has not provided enough money to provide for his wife and children. The statutory and customary system differ in the extent to which they are focusing on disputes narrowly defined (the violation, mitigating circumstances, the sanction); or on disputes more widely defined (which includes a broader look at the social context and the position of disputants in it).

Various authorities compete to resolve land disputes in the urban contexts of WES. Whereas in rural areas this is undisputedly the purview of traditional authorities, in the cities administrative bodies –

127 This distinction is made because customary courts and traditional authorities (headmen and chiefs) are not completely non-state (Customary courts and traditional authorities), whereas elders, neighbours, local youth and church leaders are more clearly 'non-state'.

more particularly the Ministry/Directory of Physical Infrastructure and the Count Land Authority[128] (in Yambio) – tend to get involved. At times their involvement is invited, and at other times these administrative bodies get involved through the demarcation process. These state organs rely heavily on traditional leaders to help determine histories of land ownership, customary boundaries, and kinship relations. But those leaders often express frustration with their lack of authority in resolving land disputes. They are consulted, but they can no longer decide.

4.3.3 Legal framework and observed reality

The legal processes and institutions observed in WES deviate from the laws ostensibly guiding their conduct. Some institutions exist only on paper and often not on the ground – such as the Judiciary Act's (2008) '*payam* courts'. Other institutions play important roles in dispute resolution processes even if there is no law recognising or regulating their conduct – such as elders, neighbours and local organised youth. But even more frequently, legal institutions operate in a manner that is not in line with their legal mandate. The County Land Authority and its committees play vital roles in resolving land disputes, but perform functions that are not part of their attributions in the Land Act (2009) (2.3).

The Local Government Act (2009) guides the conduct of customary courts, and stipulates that the appellate chain runs from the lowest A Court to the Supreme Court in Juba. But lower courts do not always work to the standard of the higher courts (2.7). Further, the statutory judiciary is heavily affected by the insecurity (3), the economic crisis, and a general lack of human and financial resources. Consequently, some judges who on paper were working in peripheral counties instead spent much of their time in Juba, or elsewhere. And so in many counties there simply isn't the real option of bringing a case to a statutory judge.

Customary courts have no jurisdiction over criminal cases[129], but in reality regularly hear such cases (2.2). Often no statutory judges are available: many counties counted no statutory judge during peacetime, and during the 2015-6 violence in WES many judges fled to Juba (3). So when criminal cases are brought to customary courts, they are left to choose: not to hear the case at all; put the suspect in pre-trial detention; or trying the case themselves. Case 2.7 'The mobile court of Judge Kaya' illustrates that when customary courts opt for the middle option, suspects can spend years in pre-trial detention before a competent statutory judge hears their case.

A complicated gap between law and practice, stems from normative disconnections between local cultures and legislation. A case in point is witchcraft, which is a dangerous reality in the eyes of most people in WES but does not exist in the eyes of the legislature and judiciary. And so even though these cases can involve murder, statutory judges are unable to offer legal responses and remedies (2.8). This leaves a vacuum for customary authorities and mob justice.

Another set of divergences between law and practice stems from the lack of financial and human resources to implement the law. For example, the Ministry of Physical Infrastructure is by law obliged to provide adequate compensation for people whom it expropriates but does not do so because of the austerity measures (2.4). Similarly, the high court was envisioned to count one president and two other judges (Judiciary Act 2008: 14) but in Yambio only the president was present regularly. Even more severe shortages of legally prescribed institutions and the required competent staff are likely to occur

128 The CLA is chaired by the County Commissioner, and includes in its membership members of relevant ministries and county departments, as well as traditional authorities. Its decisions can be appealed against first to the Ministry of Physical Infrastructure, and then by instituting court proceedings (Land Act, 2009: 47). The CLA has a separate Land Dispute Committee that resolves the main types of land disputes.

129 Except for those cases "with a customary interface referred to it by a competent statutory court" (LGA, 2009: 98, 2).

if the 28-state decentralization would require that the new Gbudue, Maridi and Amadi States all have a high court, and all their counties a county court. At the time of writing (September 2016) local judicial officials interviewed were still unsure whether the October 2015 decree would also require a judicial decentralization.

4.3.4 Enforcement

This research followed the transformation of disputes, and also investigated the enforcement of resolutions or court judgements. In some instances, we were granted access to records of statutory court cases that had been concluded a year prior, so that we could trace the disputants and learn from them what had happened since the case had been concluded (2.1). We found that both customary and statutory courts are at times willing to follow progressive legislation and, for example, rule in favour of women's rights to property – but that the problem is often one of enforcement, more than 'just' of law.

All justice systems studied in this research suffered from an inability to enforce compliance with their judgements, especially against more powerful actors. Although at times customary and statutory courts would pass rulings favouring the weaker party, they would or could do little to monitor compliance. Some of the defendants who had lost a case in a customary court expressed that the process had not been fair – and that they would resist enforcement. But even verdicts passed by the high court were sometimes resisted, especially where the losing party had access to other sources of power (2.1).

Legally, it is not the judge or even the court itself that has the primary responsibility to monitor the execution or enforcement of court judgements. In civil cases, it is up to the claimant to come back to the court if the defendant resists the implementation of a judgement. In criminal cases, the police service should play its role. But our case studies confirm what prior studies have indicated (Jok, 2013): that elements in the police service are vulnerable to corruption and nepotism (2.1). And that state organs and public authority more broadly often function in a selective way, not based primarily on a legal mandate but also on socio-political expediency (Tapscott, 2016).

4.4 Ways forward[130]

This report has listed numerous challenges and obstacles which disputants face in their pursuit of justice. In a country like South Sudan, people are often disheartened or cynical about the pursuit of justice, peace and development. But the author of this report feels that it would do injustice to the perseverance and resilience of the people concerned, to paint a picture in just grey. In the midst of injustices, conflict and poverty our research team met inspirational individuals who worked hard for progress. Perhaps indicatively, Western Equatoria State was for a long time a relatively peaceful area in a violent region, and part of that had to do with good leadership and a reluctance to use violence.

It is easy to find flaws in the work of judges, chiefs, headmen, elders and administrators in WES. There are countless cases of customary courts passing verdicts that defy the statutory legal framework, allegations of corruption, and powerful actors influencing outcomes. The justice providers interviewed for this research seemed especially powerless when injustices were the result of the overall insecurity, or when they emanated from the state. But the functioning of local justice systems is impressive when understood in the context of insecurity, underdevelopment and rapid change. The customary courts are presided

130 Research question: Which norms, mechanisms and practices among the whole spectrum of justice providers proved to be the main 'elements that work'? How can justice interventions effectively build upon those elements, and strengthen the linkages and complementarity between them, shaping coalitions for primary justice, for women in particular, and ultimately, adequate primary justice systems at the district/county level?

over by people who are often illiterate, have barely enjoyed education, and known a life of hardship. But still, many of them do their utmost to uphold a level of dignity both in symbols and processes – meticulously placing a table under a mango tree or in a run-down building, and decorating it with a tablecloth, national flag, and Bible before commencing a day of hearings. In many urban centres, these courts are full for several hours per day and some people report being very satisfied with the rulings received. Perhaps surprisingly, these courts count women among their judges, and hear many disputes that are filed by women themselves.

Legal processes on the ground bare only a passing resemblance to the ones on paper. At times this results in grave injustices – such as when people are locked up for years awaiting a trial, or when people's property is expropriated by the state without any form of compensation. But there are also positive forms of deviation: laws and institutions are appropriated – or 'vernacularized' (Levitt and Merry 2009) – and contextualised in the local culture, language and power dynamics. Case 2.3 on the CLA demonstrates that innovative ideas from the outside can be welcomed and adapted to local contexts. In this process, there is significant room for manoeuvre. In many instances, that may benefit the rich and powerful. But in other instances, justice providers stretched their budget and mandate in an attempt to hear cases of the powerless, too (2.3 and 2.7).

The described institutional weaknesses can be overcome, or compensated for, by personal connections and individual willingness (Lipsky 1980). The cities and towns of WES are small enough for the justice providers to have personal connections. And so in a way, it is not the courts that are cooperating but their respective functionaries. This suggests that any reform initiated or promoted from the outside requires a thorough appraisal of the local interests involved in promoting or hindering change. Constructive personal connections among customary and statutory authorities could be fostered and strengthened (Braak, B, 2016. Policy Brief). Although on paper these authorities are part of the same judiciary, working in an integrated manner towards a mutual goal, in practice there are a lot of misunderstandings and prejudices.

While the national crisis oscillates on the continuum between war and peace, people's everyday lives in Western Equatoria State continue to evolve around the pursuit of happiness. The local justice sector is crucial for resolving disputes that occur at this level. But it is presently not well equipped to handle disputes involving the state or armed factions. Therefore, outside actors should think critically about the leverage they have to support a constructive political settlement that may move the country to a more peaceful politics and to eventually help make justice at the local level the standard rather than a vulnerable exception.

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List of abbreviations

CAR	Central African Republic
CDTY	Catholic Diocese of Tombura-Yambio
CLA	County Land Authority
CPA	Comprehensive Peace Agreement
DRC	Democratic Republic of Congo
IDP	Internally Displaced People
JMEC	Joint Monitoring and Evaluation Commission
JPC	Justice and Peace Commission
FAO	Food and Agriculture Organization
FGD	Focus group discussion
HAPD	Hummingbird Action for Peace and Development
LGA	Local Government Act
LRA	Lord's Resistance Army
NGO	Non-governmental organization
REMNASA	Revolutionary Movement For National Salvation
SPLM/A	Sudan People's Liberation Movement/Army
SPLM-IO	Sudan People's Liberation Movement/Army-In Opposition
SRLG	South Sudan Rural Land Governance
SSNLM	South Sudan National Liberation Movement
SSPPF	South Sudan's Peoples Patriotic Front
SSP	South Sudanese Pound
UN	United Nations
UNDP	United Nations Development Programme
UNHABITAT	United Nations Human Settlements Programme
UNMISS	United Nations Mission in the Republic of South Sudan
UNOCHA	United Nations Office for the Coordination of Humanitarian Affairs
USAID	United States Agency for International Development
VTC	Vocational Training Center
VVI	Van Vollenhoven Institute
WES	Western Equatoria State

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