Literature Review: Justice in South Sudan

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Colophon

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This literature review offers a rough overview of the most relevant literature that has been produced on legal norms, actors and institutions in South Sudan generally, and Western Equatoria State in particular. The 'Supporting Primary Justice in Insecure Contexts'-project informed its research through the study of a wide range of anthropological and historical works, as well as present-day publications by international organisations.

This review is divided in five parts that evolve around the following key questions: 1) What is the history of legal institutions in Western Equatoria State?; 2) Which justice providers are available? 3) How do they relate to each other?; 4) What preferences do people have?; and 5) Which challenges can be observed? Although excellent literature is available on this topic, this review hopes to demonstrate that especially since Sudan's independence in 1956 and throughout its periods of war, very little in-depth research has been done in Sudan as a whole, let alone in Western Equatoria State in particular.

I. What is the history of legal institutions in Western Equatoria State?

The landscape of justice providers in South Sudan is varied, dynamic and evolving. To be able to understand current constellations, one first needs to go back in history. In pre-colonial times the area that is presently known as South Sudan was not ruled by a single power. Although especially some Nilotic groups are historically believed to have been relatively acephalous, other groups such as the Azande, Shilluk and Anuak had kings and princes. Historical sources tell us about the often violent in-fighting among various Azande princes, but when Azande people – in the 1920s as well as in 2015 – were asked to reflect on the pre-colonial history, they often stress the unity, autonomy and power that their people exercised (Evans-Pritchard 1957).[1] Especially important is King Gbudue (1870-1905),[2] the last independent king who in his lifetime resisted slave traders, the Turco-Egyptians[3] and the British. Significantly, with the 2015 decentralisation decree of Salva Kiir,[4] the core part of Western Equatoria State has been dubbed 'Gbudue State'.

Today's remainders of these kingdoms are reminders that colonial powers did not enter into blank landscapes: justice was being spoken, disputes were resolved and powers were divided or imposed on others, also in a pre-colonial context. Ruling groups within such kingdoms would not necessarily rule over an ethnically homogeneous group. In Western Sudan, it is reported that "ruling groups governed the many different ethnic groups in their empires through their traditional rules" (Crowder 1978). Similarly, the Azande peoples were in origin an amalgam of different groups subjected by campaigns of conquest led by the Avungara kings and princes. In a way, pre-colonial systems of rule were not too different from the indirect rule that the British colonial power would introduce over the course of the 1920s and 1930s (Johnson 2007; Rigterink 2014).

During the colonial period, interesting (although biased) material on chieftaincy, power dynamics and cultural norms among the Azande was written by colonial administrators[5] who worked in Anglo-Egyptian colonial government (Brock 1918; Larken 192;, Leitch 1936). Perhaps influenced by the priorities of their time, colonial sources address chieftaincy and political structures, but barely mention law and justice, let alone the customary laws and practices on property and land. Extensive studies of the Azande peoples and what is now Western Equatoria State, were conducted by E. Evans-Pritchard from 1927 to the 1930s (Evans-Pritchard 1977) and later by his student Conrad Reining in the 1950s (Reining 1966). Their approach to the Azande and their institutions differed, in that Reining stressed the context of perpetual flux and negotiation more than Evans-Pritchard had done. Both, however, did anthropological fieldwork in the sense that they mastered the local language and lived a life as much as possible among the local community. Such research has not been done in the region since.

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1 Evans-Pritchard writes in 1957: "Gbudwe was the Zande ideal of what a king should be and his name epitomizes to them all that they are proud of in their past and all that they have lost by European conquest: their independence and the stability of their political and domestic institutions." Many respondents in Yambio expressed similar sentiments to me in 2014 and 2015.

2 Sometimes written as 'Gbudwe'. Born as Yambio.

3 Parts of Sudan were occupied by a Turco-Egyptian empire and later overthrown by forces loyal to the Mahdi from Omdurman.

4 On 2 October 2015, President Salva Kiir announced with Establishment Order 36/2015 that South Sudan would be divided in 28 states (instead of the ten constitutionally established states). See also Radio Miraya, 3 October 2015. Radio Miraya (2015). President Kiir issues order creating 28 States.

5 Much of this can be found in Durham University's Special Collections or online through the Rift Valley Institute's archive.

In South Sudan, as elsewhere in Africa, law was "the cutting edge of colonialism" (Chanock 1985). This was far from a smooth process, and the different actors involved, ranging from colonial power holders to local level elites and the general population all sought to establish and solidify their position (Merry 1991). British rule in South Sudan impacted on existing authority structures, their legitimacy from below and above, their room for maneuver, and the way in which justice was provided. Leonardi details how the colonial power, often based in urban nodes of *merkaz* (district offices) and *hakama* (government), offered both opportunities and risks for powerbrokers and local populations. Some chiefs were quick to try and occupy a "gatekeeping position" between communities and colonial government (Leonardi 2013). But at times local populations attempted to challenge local power holders by engaging with colonial representatives directly. The demands for dispute resolution from below and of control and order from above, helped inspire the colonial government's establishment of a regulated Native Administration and 'indirect rule'. Chiefs' courts were established throughout the 1920s, but became more formalised with the 1931 Chiefs' Court Ordinance – which established clearer hierarchy and jurisdictions. The trouble for the colonial government remained that these courts were mostly seen as government institutions – even when staffed with "local authorities" – and were thereby only used for certain aspects of certain disputes (Leonardi 2013).

In 1956 Sudan became independent from Anglo-Egyptian rule. But even before independence, there had been extensive debates on whether and how 'the South' should be part of Sudan (Johnson 2014) – and if it should remain so after independence. The independent Sudanese state focused its resources on the centre, at the expense of peace and prosperity in the peripheries (de Waal 2007). Two waves of southern resistance against the centre led to the First Sudanese Civil War (1955-1972)[6] and the Second Sudanese Civil War (1983-2005). But even during the official times of war, there were peaceful spells and vice versa – leading some to describe it as a situation of "no-war-no-peace" (Schomerus 2016). And although the civil wars started with decolonisation, some authors stress that the violence used in the period after 1956 was a continuation of the violence that was already used by power holders before this period (Rolandsen and Leonardi 2014). In part inhibited by the protracted conflict, few long-term empirical studies have been carried out in decolonised southern Sudan in general and Western Equatoria State in particular.

In 1983, the Sudanese President Nimeiri announced the September Laws, which incorporated sharia law and led to a general Islamisation policy that alienated the non-Islamic populations of Sudan – not just in the south. Under the leadership of Dr John Garang (1983-2005), the Sudan's Peoples Liberation Movement/Army (SPLM/A)[7] started to fight not primarily for secession, but for a 'New Sudan' where religious and ethnic diversity would be accommodated by a secular state.[8] His was not just an African and Christian vision, but one which also included the peoples of Darfur, 'the three Areas'[9] and East Sudan.

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6 Some authors hold that the First Sudanese Civil War only broke out in the early 1960s (Johnson 2014: 15). 1955 is significant because various mutinies took place in Torit and a few other places. But the violence at that time did not spread as widely as in the 1960s. The signing of the Addis Ababa Agreement in 1972 marked the end of the First Sudanese Civil War, and the beginning of a period of peace.

7 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.

8 Garang's position may not have reflected that of many rank-and-file SPLM/A-members, who were often reported to be more in favour of self-determination and separation.

9 South Kordofan, Blue Nile and Abyei.

The Sudanese government's resistance to talk seriously about secularism further nudged the SPLM to shift its official focus to self-determination (Johnson 2007).

Importantly, during the Second Sudanese Civil War the SPLM/A set up administrative and judicial structures in the areas it had conquered. And so while many towns remained under the control and law of the government in Khartoum, the SPLM/A-controlled areas had their own improvised legal systems (Rolandsen 2005). The relation between the SPLM/A and traditional authorities during the civil wars was one of cooperation and contestation. In 1994, the SPLM's National Convention "formally recognized chiefs as part of the local government structures for the liberated areas" (Leonardi 2013). But the demands from the rebels – for recruits, supplies or intelligence – weren't always popular with local communities, and made chiefs suspect when the government would re-conquer an area. And so much like before the intermediate position chiefs occupied remained a dangerous one. The Azande people of Western Equatoria State did not contribute as many recruits to the SPLM/A as some other areas, but did provide crucial food supplies.

The 2005 Comprehensive Peace Agreement (CPA) brought a formal end to the military struggle. The Khartoum-based Sudanese government committed itself to 'making unity attractive' for the southern population, who were given the prospect of an independence referendum at the end of the Interim Period (2011). Meanwhile, the southern Sudanese regional government adopted a common law system again in 2006 (2015)[10] and switched to English – not Arabic – as the official language. This also had ramifications for the functioning of courts, as court officials in the south were often trained in Arabic-speaking universities and institutions in Sudan, and remained more familiar with notions of the old system than with the one which was newly introduced.

Militarily, the no-war-no-peace situation continued after the CPA, and skirmishes occurred frequently between Sudanese troops and southern Sudanese armed factions, and especially between various southern armed groups. On 9 January 2011, an overwhelming 98.83 percent voted for independence - which came into force six months later. Independence has not brought traditional authorities and the Azande population what they had expected. Both groups argue today that their effort during the war has not been properly recognised by the post-independence SPLM-government (Schomerus 2016).

[10] The civil law code had in turn been largely copied from the Egyptian one under President Nimeiri (1969-1985) in 1971. Before this time, the Sudanese legal system still followed the largely colonial-era common law codes.

II. Which justice providers are available?

Looking at the current justice systems that are in use, it is clear that the picture is one that defies easy generalisations – and is often very particular to time and place (Leonardi, Moro et al. 2010). Some authors writing on South Sudan have based conclusions about the functioning of the legal system on a review of the laws (Diehl 2015). But there are vast differences between the legal set-up and the manner in which it is implemented. Therefore, this study is based primarily on empirical fieldwork. Still, it is worthwhile first to offer some observations on the relevant legislation.

The statutory court system was designed to include *payam* courts, county courts, one high court in each state capital, three courts of appeal based in regional centers,[11] and the Supreme Court in capital city Juba. The competences of these respective courts are defined in the Judiciary Act (2008). Customary courts are divided in A-, B- and C-courts and the town bench courts, and their form and function, are detailed in the Local Government Act (2009).

The present configuration of customary courts roughly follows the division of the 1931 Chiefs' Courts Ordinance, under which A-courts were supposed to be headed by a single chief, B-courts by a panel of chiefs, headed by a president, and under which C-courts had a special status. Today's A-courts largely coincide with the *boma* level and are headed by a local chief, the B-courts at the regional *payam* level are headed by the *payam* judge according to the Judiciary Act (2008), and by the head chief according to the Local Government Act (Leonardi, Santschi, and Isser 2010). The highest customary court is the C-court at county level, which is led by the county's paramount chief.

In principle, statutory courts are supposed to refer to state and national legislation, but in practice they also refer to "customary notions and customary forums refer to statutory notions" (Leonardi 2010). Customary courts do not have to refer to statutory law, and instead have the judicial competence to adjudicate "customary disputes and make judgments in accordance with the customs, traditions, norms and ethics of the communities" (Section 98: 1). However, the nature and substance of local customs or customary law are subject to debate in South Sudan. Of course both substantively and procedurally, customary laws differ from tribe to tribe – but also within tribal groups there is scarcely consensus on the content of customary law. The national government with assistance of UNDP and outside consultants has undertaken several attempts to codify, self-state or 'ascertain' customary law[12] but some authors warn that such processes risk sacrificing the accessibility, flexibility and context-sensitivity of living law on the altar of legal predictability. What is more, enshrining distinct customary laws for various ethnic groups could "exacerbate perceptions of ethnic difference" (Leonardi 2011).

Academic studies of South Sudanese customary law have often focused on the customary law of the Dinka (Deng 1972; Makec 1988; Deng 2010). In recent years, international organisations have published research on customary law in South Sudan (Aleu Akechak Jok 2004; Mennen 2012) but these often include no or little mention of the customary law of the Azande specifically (Wassara 2007). What is more, very little research has been conducted on the actual daily working of customary courts in Western Equatoria

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11 In the former Bahr El-Ghazal, Equatoria and Upper Nile regions. Judiciary Act 2008: clause 5.

12 See for example the 'Ascertainment Project' commissioned by the Ministry of Justice, the Local Government Board and UNDP South Sudan: www.ss.undp.org/content/south_sudan/en/home/library/reports-ascertainment-of-customary-laws-in-south-sudan.html.

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.

Figure 1: Judicial Hierarchy by Law, Leonardi et al. (2010)

State[13] and since Evans-Pritchard no one has described the workings of out-of-court mechanisms in the region such as the elders, the local youth and the various oracles.

[13] There is one article that discusses customary courts in Western Equatoria State, but it has a specific focus on gender-based violence, and only devotes a few pages to WES (Mennen 2010. Lessons from Yambio).

III. How do they relate to each other?

The relations between South Sudan's many justice providers are complicated, with history, culture, legislation, and context-specific factors such as vicinity and personal connections playing important roles. Interestingly, the literature on disputing in South Sudan is ambivalent about the first entry point. In an article titled 'Customary Law and Land Rights in South Sudan', Mennen (2012) argues that it is the customary courts that are "the entry point for a majority of South Sudanese citizens to access to justice". But based on their survey in western *bomas* of WES, Rigterink et al. find that police together with elders, are "the most common point of call in case of an issue or concern" (2014). The difference could be geographical, the result of different methods, or based on the availability of the various justice providers. Neither article is clear about how often these authorities are able to reach a sustainable resolution, how often disputants bring their case to other authorities, or how often the authority itself refers the case to another authority.

Legally, the relations between the various courts in South Sudan are stipulated in the Judiciary Act (2008), the Local Government Act (2009) and the Transitional Constitution (2008). In reading this legislation, two countervailing forces become apparent: on the one hand, the nascent South Sudanese government based in Juba is keen to establish its control over the peripheries; on the other, its legal framework (like its people and politicians) stresses the importance of decentralisation. What is more, the debate on decentralisation seems to be split between those that prefer to maintain the current ten states but strengthen their autonomy, and those that argue for the creation of more states.

The current legally sanctioned appellate mechanism runs from the *boma*-level A-court through the higher customary courts and statutory courts all the way to the national-level Supreme Court. Customary courts should be established in line with the legal provisions dictated by the legislature, and have no jurisdiction over 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). Instead, they are tasked to be the court of first instance for lighter civil offences, and have to refer more serious cases to the statutory county or high courts. To what extent this really happens, is not at all clear from the existing body of literature.

Previous research in South Sudan has noted the hybrid nature of the court system. Customary courts might refer to specific articles in the Penal Code (Leonardi et al. 2010: 35) and use written materials that "reinforce the official appearance of the [customary] courts and their links to the government, police, and judiciary" (2010: 34). This is important, because it helps us conceptualise the fluidity of distinctions between state and non-state, formal and informal, traditional and modern.

But courts are not the only relevant justice providers in this context, and what one might term 'appeals' from outside the state-sanctioned court system into the courts are more complicated. For the administrative bodies such as the County Land Authority and the various actors involved with the demarcation of land, often an internal complaints mechanism exists on paper. Only when 'the concerned ministry' offers no satisfactory resolution, can a disputant take the case to court (LGA: 2009, Article 47). Our research will investigate how often that actually happens, as it is expected that this amount of bureaucratic navigating is virtually impossible for most of the little-educated population of Western Equatoria State.

What also remains unclear from the legislation and previous literature, is how non-state dispute resolvers such as elders, Arrow Boys (local militia) and church leaders relate to state-sanctioned justice providers. Rigterink et al. (2014) observe that these three groups of non-state authorities play crucial roles in the dealing with problems in their communities. So why and when do people still turn to the customary and statutory court system? Is the court system of marginal importance for the wheeling and dealing of the communities? Or is there perhaps a stratification of disputes and if so, which disputes go where?

IV. What are the people's preferences?

Based on the literature of legal pluralism and an assessment of the plurality of justice providers in South Sudan, one would expect to find a great deal of forum-shopping and 'shopping forums'. And indeed, Leonardi finds that "people approach the judicial system in a very pragmatic way. While appearing contradictory and confusing to external observers, litigants themselves are generally very good judges of their own justice needs and are adept at using the system, flawed as it may be, to their advantage" (2010: 49). This suggests that people's preferences might be neither uniform nor fixed – but rather react flexibly to the specific strengths and weaknesses of justice providers and obstacles and opportunities that justice seekers find on their way.

Generally the customary court system is seen by various authors to enjoy a few important advantages. Some argue that it is transparent and accountable, and that its "decisions are believed to be fair" (Mennen 2012).

The most elaborate study of people's preferences for dispute resolution in Western Equatoria State, was conducted by Rigterink, Kenyi and Schomerus (2014). Using a survey completed by 433 respondents in 10 *bomas* in Ezo and Tambura County, they addressed a number of topics relevant to our own study – such as general demographic background, history of displacement, attitudes towards various authorities, and experiences of violence. Leonardi et al. note that "there is often a large discrepancy between the expected pathway of dispute resolution, people's expressed preferences, and the actual choices they make" (2010). By asking for what people actually *did* when a dispute arose in addition to what they *would do* in a hypothetical dispute, Rigterink et al. aspire to report on the actual choices made by disputants.

This graph reveals the importance of non-state sanctioned authorities in the resolution of disputes. Elders, Arrow Boys (local militia) and church leaders stand out as often-used and effective authorities. Importantly, we do not know from this survey if people took a problem to these authorities because they regarded them as the most effective and legitimate, or because the authority was simply *there*. Especially in the more rural *bomas* one does not expect a great spread of options available to a justice seeker. Even if a person could theoretically take his or her dispute to any of the listed authorities, there might be important obstacles for him to do so. Our research will aspire to find out what obstacles disputants face in their pursuit of justice.

In a countrywide study of local justice in South Sudan, Leonardi et al. (2010) argue that people generally have a poor opinion of the police, although "they appear to voluntarily seek their assistance with increasing frequency". In their survey in the eastern part of Western Equatoria State, Rigterink et al. find that people often first bring their dispute to the police, and that in 57.4 percent of the cases the police "helped a lot" in addressing the concern. It is important to note that the level of trust in the police (80.2 percent[14]) reported in WES offers a striking contrast with that in the national SPLA-army (29.7 percent). Respondents also report seeing the SPLA as one of the main perpetrators of both killings and forced recruitments or abductions.
The functioning of the justice system in South Sudan should be understood in the context of power, politics and civil war. Western Equatoria State was largely uninvolved in the 2013-2015 civil war, but people were dissatisfied with the central government nonetheless. A survey conducted in the area found that 58.9 percent of those interviewed (strongly) disagreed "that their expectations of the Juba government have been satisfied". Meanwhile, support for Azande institutions such as reinstating a Zande

[14] 80.2 percent of the respondents reports trusting the police "always" or "most of the time".

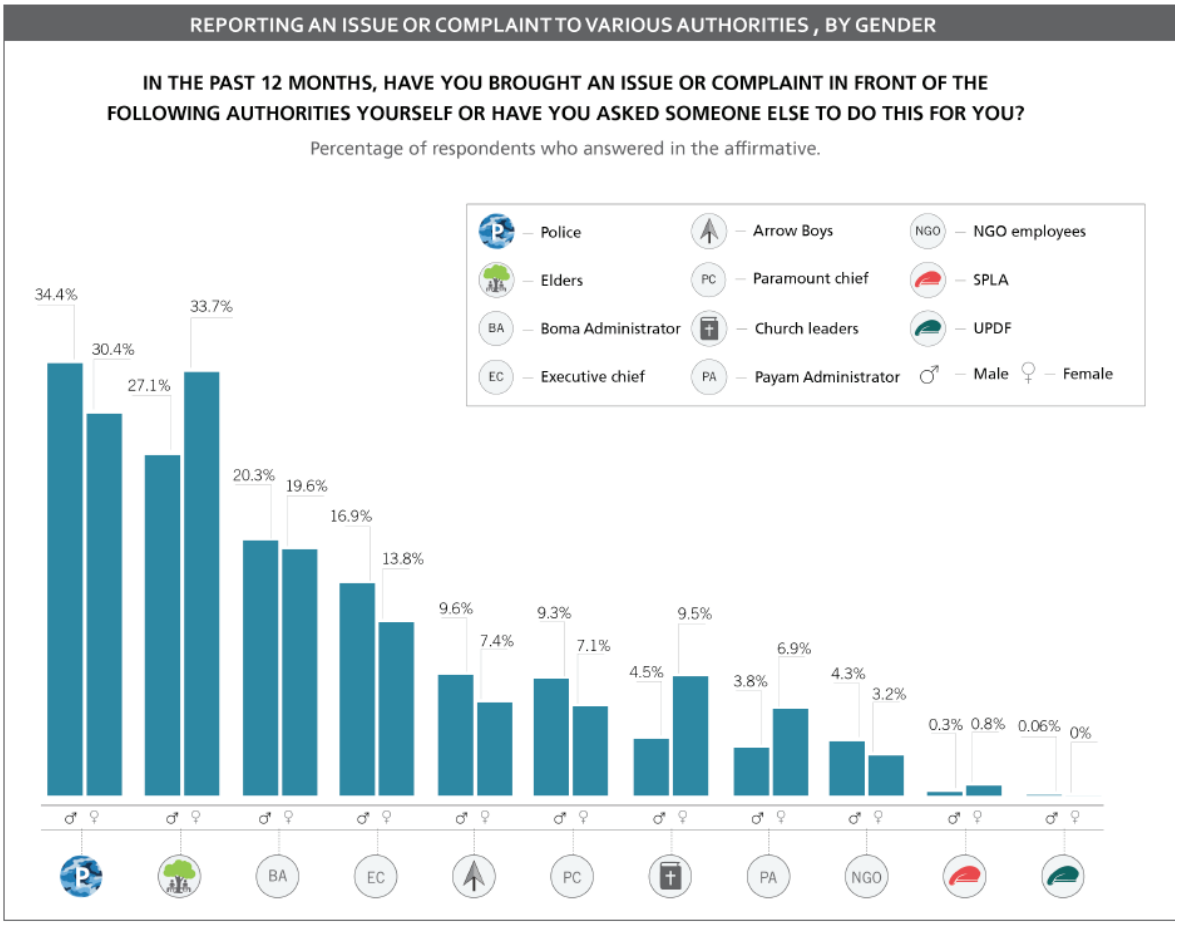

Figure 2: Reporting an issue or complaint to various authorities (Rigterink, Kenyi and Schomerus 2013)

King was high at 94.5 percent – with support being a bit lower among youth (Rigterink 2014). This might suggest that the customary courts – which are operated by locals who speak the vernacular – might also enjoy more legitimacy than the statutory judges who typically come from other parts of the country. This is a question this research hopes to help answer.

Importantly, Rigterink et al.'s report is mostly quantitative and offers important insights into people's experiences with violence and preferred authorities. But a qualitative approach is better suited to elucidate the specific reasons for these preferences. Our research aspires to do just that: offer in-depth accounts of specific disputes, justice seekers, and justice providers to understand how they work, and why they take the pathway to justice the way they do.

V. Which challenges can be observed?

The relation between state and society in Western Equatoria State, is marked by a complicated history of perceived marginalisation of the latter by the powers dominating the former. At times this sense of marginalisation has stemmed from – or led to – violence (de Vries 2015). When the Lord's Resistance Army (LRA) first entered the State in late 2005, local populations felt that the national army (SPLA) offered no protection and so "local youth started to organize itself" into groups that later came to be called Arrow Boys (Schomerus 2016). These groups clashed with the SPLA in the second half of 2015 and early 2016 – but as of yet little has been published on those events. When predominantly Dinka cattle keepers with ties to officials in the SPLA and government clashed with the largely agriculturalist population of Western Equatoria State, the latter felt that the government again offered no protection and even chose the side of the cattle keepers.[15] This has led some to conclude that "we don't have the government, the government belongs to other people" (de Vries 2015).

The justice system seems to be a somewhat separate sphere, and the obstacles and challenges it faces are different. There is a relevant body of grey literature on access to justice and rule of law in South Sudan – although relatively little has been written about Western Equatoria State. Furthermore, the action-oriented nature of much of the grey literature has generally led to a focus on shortcomings and violations rather than on the practical everyday provision of justice. Because the intuitive partner for aid engagement for many donors is the government or statutory judiciary, more elaborate work has been done on their functioning than on the customary courts. There is also a body of literature that looks at transitional justice and accountability for crimes committed during the most recent violent conflict (Deng 2015). Few reports focus on the provision of justice for ordinary land and family disputes.

Two notable exceptions are Deng (2013) and Leonardi et al. (2010), who focus on the experiences of justice at local levels and investigate the interaction between forums. Leonardi et al. signal that South Sudan's local court system is of a profoundly hybrid nature, defying clear distinctions between 'state' and 'non-state', 'formal' and 'informal', and 'customary' and 'statutory'. Still, for the purpose of this review we will differentiate between statutory and customary courts, because such a distinction exists in South Sudan's legal framework and has some bearing on the ground in Western Equatoria State.

The statutory justice system generally is hampered by a lack of human and financial resources as well as the persistent insecurity in much of the country. Consequently, statutory courts remain absent from large parts of the country. For Western Equatoria State, UNMISS reports that the county court and high court in Yambio were the only operational statutory courts in August 2015. The other nine counties of the state had no functioning county courts, due in part to a lack of qualified judges (Human Rights Division 2015) but also due to the insecurity. This is a problem in part because by law only a statutory court can hear criminal cases and civil suits above a certain value. And so in the absence of statutory courts, the most serious cases cannot be dealt with in accordance with the law.

Where the statutory courts are present, court users often find it hard to access them and experience a number of obstacles to justice. First, statutory courts are often perceived to have complicated procedures, and its judges are often-times not well-versed with the local languages and customs. Judges are routinely accused of focusing too much on the black letter of the law, rather than on the details of the case and its litigants (Leonardi, Moro et al. 2010). Second, due to their limited spread statutory courts are often

[15] Most notably in the eastern counties of WES, such as Mundri and Maridi. Heavy fighting took place in November and December 2005, 2014 and 2015. But clashes also took place between the Dinka and Azande in 2002, and most of the state became engulfed in violence in the second half of 2015 and early 2016.

far away from justice seekers. And because the infrastructure in South Sudan is extremely limited, travel is often slow, costly and at times dangerous. Third, a court procedure can take a long time and involve many hearings (Deng 2013). The slow proceedings are a problem in and of themselves, but also have ramifications for the costs people have to make to access them as well as the income that they miss by attending.

The customary courts are often present in some shape or form in every state, county and *payam*. The Local Government Act (2009) stipulates that every *boma* should have an A-court, but to what extent this is in fact the case has not been studied comprehensively. Although many authors are on balance positive about the quality and reach of justice provided by the customary court system (Wassara 2007; Mennen 2012), some problems or limitations are well-documented. Challenges specific to customary courts include the low level of education that those administering justice have enjoyed; ignorance of the statutory law; and the inability of customary leaders to hold powerful members of the community to account. Some international organisations have criticised customary courts for disregarding international human rights and fair trial principles, and to routinely overstep their jurisdiction (Human Rights Division 2015). Costs do constitute an obstacle, albeit not as problematic an obstacle as in the statutory system. Leonardi et al. (2010) write that the court fees necessary to open up a case range from 5 to 40 South Sudanese Pounds, depending on the region and court. Some forums also charge disputants for opening a case, summoning the defendant, and providing written documents. But how much money is paid for the summons and written documents is not clear.

Whether women are discriminated against in customary courts remains a matter of debate. Some reports state that the customary authorities presiding over cases have inherently patriarchal attitudes and regard women as inferior (HSBA 2012; Kircher 2013), while others hold that "there is surprisingly little complaint that the courts are inherently biased along gender or generational lines" (Leonardi, Moro et al. 2010). The one does not have to exclude the other, of course, as women whose statutory rights are being violated might not be aware of those rights and perceive the resolutions as fair, or they might not dare to speak up. What is more, some of the patriarchal notions and customs seem to be changing. Some researchers have witnessed local innovations whereby women have gained a more prominent position in customary court proceedings (Deng 2013).

Allegations of corruption are routinely made to customary courts and – slightly more often – to statutory courts. But Leonardi et al. note that it is often the disgruntled loser to voice such complaints. Corruption is notoriously difficult to observe, let alone measure, and so while these allegation are often made, we have not found publications that have been able to convincingly detail the kinds and proliferation of corruption in the South Sudanese justice sector.

An overlapping problem in all the forums is the lack of cooperation. By law, there is an appellate mechanism from the customary courts to the statutory courts, and the jurisdiction of each court is somewhat delineated. But presently authorities often compete for the right to resolve disputes, and there are multiple normative orders by which such resolution occurs – something also known as *legal* or *normative pluralism*. This enables justice seekers to strategically choose the most advantageous forum for their case – a phenomenon termed *forum shopping*. In the wider socio-legal literature, the effects of legal pluralism on the administration of justice is a much-debated topic. Often, it is argued that legal pluralism causes confusion, inefficiency and is detrimental to legal certainty. What is more, the stronger party would be better able to navigate this institutional quagmire than the more vulnerable parties who

lack money, connections and knowledge. Leonardi et al. on the other hand find that litigants are generally able to make "complex pragmatic calculations to identify a forum most likely to satisfy their aims."

Despite the seemingly daunting list of challenges and weaknesses that the justice system in South Sudan faces, Leonardi et al. find that people generally report seeing it as fair and non-discriminatory. The root of many injustices, they find, are to be found not within the customary and statutory courts, but rather in "the extensive militarization of young men, police incompetence or abuses, the power and corruption of the government, and the perceived relative erosion of the power of elders, chiefs, and even judges." (Leonardi, Moro et al. 2010)

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