



**COMBATting GENDER-BASED VIOLENCE IN
THE CUSTOMARY COURTS OF
SOUTH SUDAN**

ACKNOWLEDGMENTS

The research team would like to acknowledge all of the women, chiefs, government officials and other community members that assisted in the compilation of the information contained in this report, with special acknowledgment to the customary court chiefs who opened the doors to their courthouses and facilitated gathering of the results. The team would also like to thank the UNFPA team in Juba, the International Rescue Committee office in Rumbek, Women for Women International in Rumbek, Catholic Relief Services in Yambio and the UNDP Rule of Law office in Bentiu for their willingness to provide support and direction to the Lead Consultant and consultant teams in each location. These organizations helped identify transportation means, provide housing arrangements, give office support, and recruit local personnel. This study was funded by UNFPA South Sudan.

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Cover Photo: Rumbek Town Customary Court

List of Abbreviations

GBV	Gender-Based Violence
NGO	Non-governmental Organizations
GOSS	Government of South Sudan
JOSS	Judiciary of South Sudan
MOLACD	Ministry of Legal Affairs and Constitutional Development—South Sudan
ICSS	Interim Constitution of South Sudan
INC	Interim National Constitution of Sudan
IDP	Internally Displaced Person
UNFPA	United Nations Population Fund
UNDP	United Nations Development Program
SPds	Sudanese Pounds

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I. EXECUTIVE SUMMARY

Gender-based violence (GBV) is a chronic problem around the world, particularly in societies ravaged by conflict. In many countries with weak justice systems and plural legal orders the customary and traditional justice systems composed of chiefs and elders handle the vast majority of GBV cases. Human rights presuppose the violation of women’s rights in these venues, but little is actually known of the character or degree of rights protection. South Sudan is faced with a similar dilemma as it strives toward modernization following independence on July 9, 2011.

...This report summarizes the approach, methodology, results and recommendations of a recent study on the administration of justice for GBV cases in the customary courts of South Sudan. The study is not an attempt to document customary laws or an anthropological study on culture, but instead captures actual results and punishments for GBV, documents good practices, and explores areas of needed reform.¹ The study covered four regions in South Sudan—Central Equatoria, Western Equatoria, Lakes and Unity States—and four main tribes and customary law traditions—Dinka, Nuer, Azande, and Bari-speakers and other tribes such as Mundari, Moru, and Toposa as they were encountered.

Research results were compiled, cross-checked and expanded over the three month period of the study. A total of 609 customary court cases were observed and 64 interview forms conducted across the four project locations. Researchers held focus groups with local women’s groups and workshops with chiefs, judges, health workers, police, government officials and NGOs in each location. The results of the project reveal a system of customary justice that remains vital to dispute resolution throughout South Sudan, but with critical flaws that require immediate action by local and national actors. The final results were presented at a final workshop in Juba for South Sudan policy makers, including the Government of South Sudan (GoSS), Judiciary of South Sudan (JoSS), local government, UN, NGOs and chiefs. The final workshop focused the discussion and elicited recommendations and action points for the next steps needed to address GBV. Results from this collective analysis and associated recommendations are included in this report.

¹ Excellent studies on South Sudan customary law include, Jok, A., Leitch, R., Vandewint, C. *A Study of Customary Law in Contemporary South Sudan*, World Vision International and the South Sudan Secretariat of Legal and Constitutional Affairs, March 2004; Biong Mijak, Deng. *The Traditional Systems of Justice and Peace in Abyei*. UNDP-Sudan, September 2004; Deng, Francis. *Customary Law of the Dinka of South Sudan*. U.S. Institute of Peace, 2003.





CPA Anniversary Celebration, Juba

II. BACKGROUND

The social consciousness of the traditional society expressed in customary law is so deeply ingrained that any developmental scheme which disregards it cannot find its way into the hearts of the people...Francis M. Deng²

South Sudan gained independence on July 9, 2011 but is still slowly emerging slowly from the conflict that has plagued it for almost fifty years.³ The process of forming a southern government that represents and is accountable to the people remains a difficult and long-term task that continues in earnest throughout the new nation.

² As quoted in Jok, A, *et al*, p. 25, *supra* note, 1

³ South Sudan suffered from two civil wars before the Comprehensive Peace Agreement was signed in 2005. A respite of ten years was provided by the 1972 Addis Ababa Agreement.



South Sudan is home to over fifty tribes and countless sub-tribes and clans within each (See Appendix 1). Latent tribal conflicts, enflamed by a half century of civil war and associated in fighting, are still prominent in the social fabric. Dinka, Nuer, Azande, Bari and other tribes form majorities in the different and various states of South Sudan while various other tribes are minorities in all administrative areas above the village level. A deeper look into the current state of the legal system in South Sudan reveals rings of complications. Customary law exists in its unadulterated form in the rural, mono-ethnic regions of the South but has often been compromised in former garrison towns by the imposition of Shari'a law by the northern government. In Juba, the capital of South Sudan, and other areas of large populations of internally displaced persons (IDPs) customary courts regularly collaborate to adjudicate inter-tribal disputes even while each displaced tribe retains its own intra-tribal dispute mechanisms. Since the end of the civil war in 2005 most urban areas have developed semi-parallel systems of statutory and customary law. Attempts are made at defining subject matter jurisdiction, but often to no avail. Instead, individual chiefs adjudicate in customary courts how they see fit rather than abiding by set policies of removal and appeal. In rural areas the effects of the statutory system are even less pronounced. Jurisdiction on all subjects remains squarely in the hands of the local chief even where the Ministry has established jurisdictional guidelines.

In the midst of all this, Gender-Based Violence (GBV) occurs at an alarming rate and is handled almost exclusively at the customary court level. Questions of harmful cultural practices, draconian martial law, lack of professionalism and jurisdictional uncertainty are commonly cited as barriers to the administration of justice for GBV cases. At the same time, traditional and valuable restorative justice practices are lost to the increasing influence of retributive forms of punishment. Customary law in South Sudan largely embraces reconciliation and community harmony as principal tenets. Many of these traditional values place an emphasis on restoring the harmed parties to their previous state and to restoring balance in the family unit and community. Traditional values and the community structure that reinforce them are under siege in post-conflict Sudan. A culture of war has pervaded almost all communities and years of Shari'a and other outside influence has tainted traditional values and institutional structures. Factors such as the influx of returnees, monetization of society, presence of arms and unlawful militias, common use of alcohol and weak security institutions all place extra strain on customary dispute resolution mechanisms. Customary law and associated institutions, however, remain a strong force in the justice sector of South Sudan, if by name alone. Customary courts are overwhelmingly responsible for the administration of justice throughout the 10 states, and application of customary law remains the primary mechanism. However, many of these customary and local institutions including the courts, are seemingly ill-equipped to deal with complex cases such as GBV that result from the breakdown of traditional community and family structures. In addition, customary traditions are often in conflict with international human rights principles and the rights of women and children under the Interim Constitution of South Sudan (ICSS).

In reality, not enough is known of the current South Sudan context, especially as relates to GBV. While research has been conducted on customary law, it often takes place in an academic vacuum



and does not reflect actual punishment and administration of justice. Research on perceptions of customary courts has been conducted by UNDP, UNMIS, the Ministry of Gender and Social Welfare of South Sudan and others, but without a focus on GBV cases in particular and with a different methodology less focused on perceptions of customary court users. Even less research exists on GBV and the courts. Opinions abound about the negative treatment of GBV by traditional practices and on the ineffectiveness of the customary courts, but most information is merely anecdotal. This study proposes to introduce systematic data to inform South Sudan actors on current justice practices in the customary courts and provide tangible results for informed policy-making and program design, while initiating dialogue and awareness-raising in communities and among traditional leaders on the need for reform in GBV practices.





Workshop participants, Rumbek

III. METHODOLOGY

The gender-based violence and customary court study was initiated on November 20, 2007. Team Leader, Tiernan Mennen, traveled to Sudan on December 29, 2007 for four weeks to initiate the field-based research portion of the project and establish the tools and methodologies for the longitudinal study portion of the project. The first month of fieldwork consisted of recruiting and assembling teams of local consultants in each of the four project locations in South Sudan. Extensive trainings of the principal research tools followed—the Customary Court Observation Form and the GBV Interview Form (see Appendix I and II)—and staggered 8-week periods of research were initiated.

The methodology for the Restorative Justice Project was developed recognizing that very little research has been conducted on either GBV or administration of justice in customary courts in South Sudan, let alone the two in combination and with consideration to restorative justice principles. Since there is no baseline data on GBV practices in customary courts from which to build off of, the project focused early activities on developing a ten-week longitudinal study using



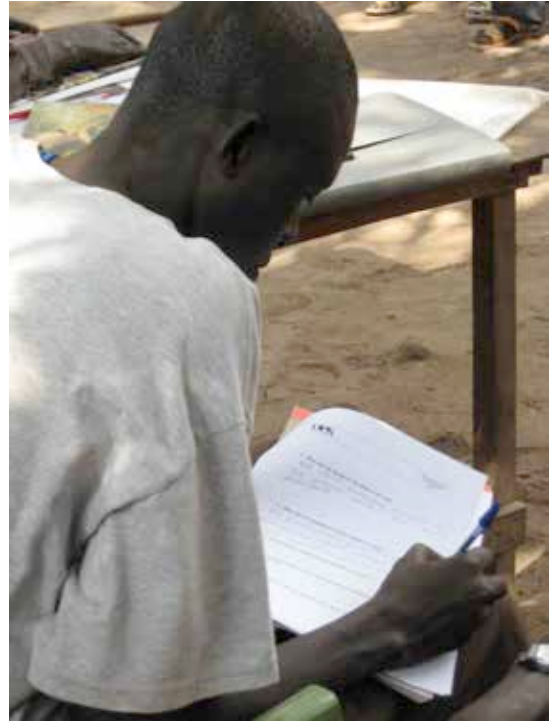
consultants from targeted regions of South Sudan. The project identified four target regions representing a cross-section of important tribes and regions in South Sudan. Each of the three primary regions—Upper Nile, Bahr El Ghazal and Equatoria—were represented as were four principle tribal categories—Dinka, Nuer, Bari-speakers, and Azande. Many of the other tribes present in Equatoria were represented by research conducted with IDP populations in Juba, including Mundari, Kakwa, Toposa, and Madi.

Team Composition

Four teams of two people each were recruited, assembled and trained in the four target areas. Due to the sensitive nature of GBV issues, teams were composed of one man and one woman.⁴ The teams were recruited based on their knowledge of the customary court and justice system in each region, familiarity with human rights principles, sensitivity to GBV issues, and their ability to speak local languages and English fluently. The use of local consultants from each region was essential for facilitating access to the courts and to the handling of often-sensitive GBV issues. Too much presence in the courts by the Lead Consultant could potentially compromise the integrity of the data. For this reason, the Lead Consultant maintained a distance from the actual study courts. The local teams were instructed to gain the trust of the chiefs of each court as they first visited, so as to ensure court judgments proceeded as normal in their presence. The final assembled teams were:

- **Juba**—Gabriel Sostein and Esther Wani Saya
- **Rumbek**—Rebecca Yar Dar and James Meen Dut
- **Bentiu**—Michael Gatluak Deng, Peter Rual both Gatluak, and Gladys Nyamai Tap
- **Yambio**—Sungu Simon Sihengarote and Antonita Ndikiri

The teams were introduced to the project and oriented on the different customary courts and justice system mechanisms in each region. Each team member was trained on the use of the primary data gathering tools—the Customary Court Observation Form and Interview Form (see Appendix I and II). Trainings were carried out by the Lead Consultant and included practical application exercises—using the forms in mock scenarios and in the courts themselves—over a 3-day period.



James Dut taking notes in Rumbek Court

⁴ Three team members were employed in Bentiu as two members agreed to split the time and level of effort between them



Mr. Edmund Yakani was recruited as the Project Lead Facilitator. Mr. Yakani is one of the most highly regarded South Sudanese facilitators on issues of rule of law and human rights. He was identified by the Lead Consultant through past trainings and recruited to serve as facilitator for each regional workshop and to provide general support and direction to the project team. Mr. Yakani also participated in data gathering in Juba and was to visit each team in the four project sites throughout the initial eight weeks of research.



Focus Group Discussion–Yambio

Given the structure of the consultancy, the teams were trained and instructed on specific workplans for visiting various courts and gathering data over the 8-week research period. The teams worked largely independently and without supervision, while support arrangements were put together with local NGOs using contacts of the Lead Consultant. The UNDP Rule of Law Office in Bentiu, International Rescue Committee and Women for Women International in Rumbek, and Catholic Relief Services in Yambio provided limited logistical support to each team.

Data Gathering Tools

Mechanisms for obtaining data for the project were triangulated as much as possible to identify and utilize complementary and redundant sources to ensure reliability of the data. Five principle mechanisms were employed throughout the project: 1) Customary Court Observations, 2) Victim Interviews, 3) Focus Groups, 4) Interviews with professionals, and 5) Data Gathering Workshops. Each source provided overlap of the others, strengthening validity and consistency.

Forms or agendas were developed in association with each of the data gathering mechanisms. The Customary Court Observation Forms (See Appendix I) and Victim Interview Forms (See Appendix II) were developed based on similar forms used in a previous project in Juba customary courts by the Lead Consultant and adapted using GBV and restorative justice materials from New Zealand and Canadian programs. The teams worked together to fill out the Customary Court Observation Forms while attending customary court sessions. One member would take notes and the other would assist in interpreting and clarifying points of law/procedure. The teams attended three courts per location, focusing on one court each week throughout the rotation. The Lead Consultant videoed customary court sessions in each location to illustrate visually the environment in which these cases are heard and its possible effect on the administration of justice. Upon completion of the eight-week research period, the Lead Consultant reviewed each Observation Form with the respective



teams to determine additional details to each case and to understand trends in the customary law concerned in each case.

The Interview Forms were filled out through interviews with victims and participants identified at the courts. Interviews were largely conducted by the female members of the team—all respected members of the community—to ensure that interviewees felt comfortable during the interview process. Sensitivity to these types of gender dynamics is a common, essential theme throughout all GBV-related research in South Sudan and one reflected in the methodology of this project. The questions in the interview form and concepts of “fair” and “justice” were explained to the consultants and a common local language definition adopted. This definition was used in each region to explain to the interviewees if required. Due to the cultural and subjective nature of concepts such as “fairness” and “justice” the project advises that the interview results be regarded as approximate indicators of perception of the customary courts.

The Lead Consultant and female team member carried out focus groups and individual interviews in each of the four locations. Focus groups targeted local women’s groups and medical care workers. A Focus Group Questionnaire was developed borrowing from past similar, gender-focused focus group activities in South Sudan. (See Appendix III) The Focus Groups sought to identify underlying issues that effect the administration of justice of GBV cases in customary courts and to document the needs and opinions of women surrounding restorative justice principles for GBV. The Questionnaire served as a guideline to direct the focus groups, but the sessions often developed more free-form patterns of discussion. Each focus group was videoed to allow for further, more in-depth review by the consultant team.

Individual interviews were conducted with important local persons such as executive chiefs, high court justices, county commissioners, local NGO directors and Ministry of Legal Affairs and Constitutional Development (MOLACD) officials. Interviews were essential to both direction of research efforts and for local buy-in to the project and interest in the research findings. Interviews helped identify important GBV issues and organizations and initiatives working to address GBV in the region. The depth of structural and cultural issues identified during observations was reinforced by the insights of these local actors.

Data from each source was compiled in the project sites over week-long periods during the final month of the project. Comprehensive spreadsheets were developed to ensure uniform recording and a format for a narrative description of the courts adopted for application across the sites. Data entry occurred over the week-long period spent in each site, allowing for immediate triangulation and constant input and referral from the local consultant teams.

Regional Workshops

Regional workshops were conducted in each of the four target locations at the culmination of the research. The workshops served as half dissemination tool and initiator of local discussions on GBV and half data gathering mechanism. The workshops brought members of each group of actors in the GBV sphere in each region. The workshops brought together medical workers who treat GBV



cases and fill out Form 8, Chiefs from the Customary Courts, Justices from the High Courts that provide technical oversight to the Customary Courts, and Police officers that are often first responders to GBV cases. Their collective information on the issues provided much depth to the GBV analysis.

In each one-day workshop these four groups were presented case studies of observed GBV cases. Each case targeted an important GBV issue and called on the participants to use restorative justice principles and the Bill of Rights of the ICSS in reaching a judgment in the case. The cases then served as the context from which to initiate discussion between the actors on the proper law and protocol for dealing with GBV cases. The workshop presented restorative justice best practices and discussed how restorative justice principles can be incorporated into each case study and into GBV case resolution in general. The Bill of Rights of the Interim Constitution of South Sudan (ICSS) was presented to the participants and in the context of each case study with the purpose to educate the Chiefs on the legal framework in South Sudan and how the women's rights enshrined in the Constitution effect the administration of justice for GBV cases. Given that many GBV issues are deeply engrained in cultural practices, the workshops were not designed to instruct but to initiate discussion and to begin the thought process on whether and how GBV in the community can be remedied. A representative workshop agenda can be found in Appendix V.

Challenges

Providing for logistical arrangements in South Sudan is a daunting task. Due to the past twenty-plus years of war and lack of development, infrastructure is sorely lacking in most parts of the South. NGOs spend large portions of their operational budget to provide support to their field staff. As a result, working as an independent consultant doing field-research in four different locations without the support of an office proved a significant obstacle. The Lead Consultant was able to use past networks within the UN and NGO community and his own experience in the region to identify support in each area. The International Rescue Committee office in Rumbek, Women for Women International in Rumbek, Catholic Relief Services in Yambio and the UNDP Rule of Law office in Bentiu are thanked in particular for their willingness to provide support and direction to the Lead Consultant and consultant teams in each location. The organizations helped identify transportation means, provided housing arrangements, and gave limited office supplies.





Kator B Court, Juba

V. RESULTS

Beating is a crime, but a woman is like a child in the house. Like a teacher and a student, a wife needs to be beat to make her understand. —Court official

Results were compiled for each of the four locations over an eight week period for each location. The entire research period lasted three months in whole. The project studied five major tribal groups—the Dinka, Nuer, Azande, Bari-speakers and Mundari—representing a majority of geographical coverage of South Sudan. Figure 1 outlines the approximate coverage of the project. While there are noted differences between the customary law of sub-tribal groups among the Dinka and Nuer and within the Bari-speaker groups, the project gauged from discussions with tribal leaders that the results for GBV cases in specific can legitimately extend to the entire region covered by that tribe. The project does caution that results in the courts can vary from rural to urban and across regions depending on composition of the population (ratio of IDPs or returned refugees) and based on the education and attitudes of individual chiefs. Presentation and analysis



of results is best considered for each project location, capturing customs and procedures that pertain to specific tribes. The results reveal differing levels of response to GBV and a varying degree of restorative justice practices in each tribe. However, there were also a number of commonalities identified across the four regions.

In total the project observed 609 cases. 173, or 28 percent of these cases had elements of GBV. The definition of a GBV case ranged from murder of a spouse to beating a girlfriend for cheating. Any case that contained physical or mental abuse by a member of one sex to another was considered a GBV case, even if the abusive act was not the issue under adjudication.

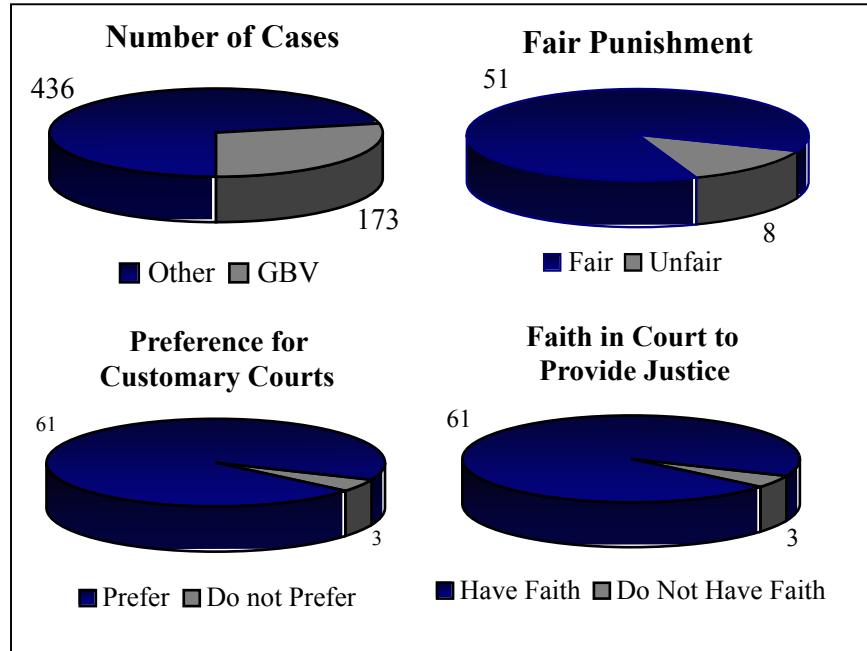


Figure 2. Summary of Findings

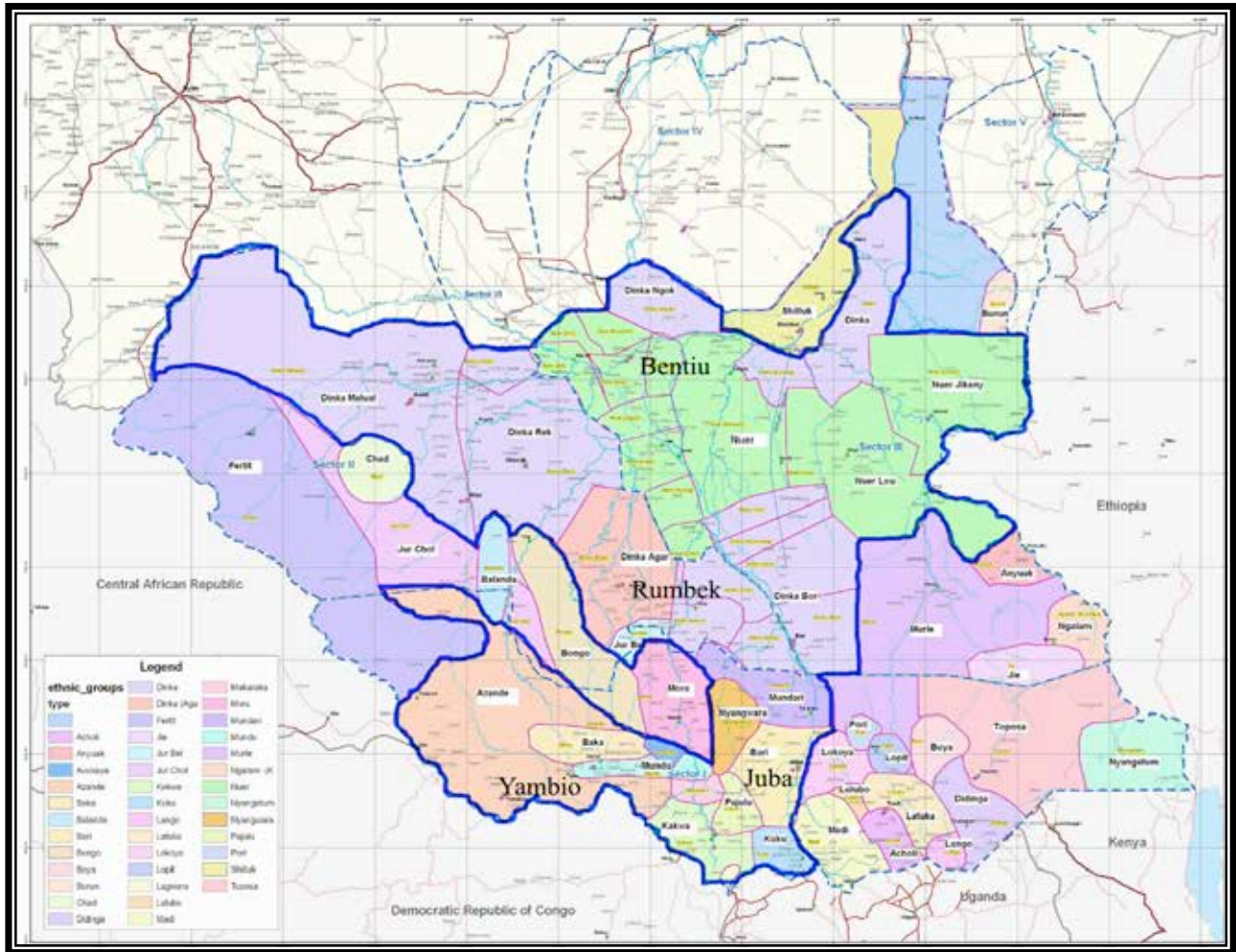
As a result, many cases that involved abusing a wife or girlfriend to “discipline” her for some act she committed did not result in any punishment for abuse, but rather focused entirely on the act of the woman. GBV cases also included violence and abuse by women against men, such as attempted murder, murder, or cutting of sexual organs. These cases represent only 5% of the total number of GBV cases. When these cases were present they were also examined for possible patterns of abuse by the man that led to the action— otherwise known as the “battered wife syndrome.”

Wives are almost universally considered the property of their husbands. This is largely due to the “dowry” paid for wives universally throughout South Sudan.⁵ Men consider the dowry as giving them a right to discipline the woman as they please. Families often reinforce this perception. Wife beating, however, still occurred when no dowry had been exchanged, suggesting a deeper cultural practice not linked entirely to financial considerations. As a result and largely a reflection of these cultural norms, wife abuse is tolerated by customary courts. There are varying degrees and contextual considerations within each tribe, but in all four regions some amount of discipline or wife abuse was accepted.

⁵ The use of the term dowry is misleading as the man is the partner who provides the compensation to the woman’s family. Dowry typically means the opposite. “Bride wealth” is a more accurate term. Dowry will be used in this paper, as it is still the term of common usage in Sudan. See. Jok, A, Leitch, R, Vendwint, C. *A Study of Customary Law in Contemporary South Sudan*, World Vision, MoLACD, March 2004, p. 34



Figure 1. Project Coverage



Customary courts and the chiefs that administer them are largely trusted and preferred over statutory courts and formally trained judges. We will consider differences in each region below, but overall 51 of 59 felt the punishment in their case was fair, 61 of 64 had faith in the court to provide justice (including many who did not agree with the results in their particular case), and 61 of 64 said they preferred to bring a GBV case to customary courts vs. statutory courts. Interviewees regularly cited the importance of traditions and customs on family issues as the reason. Interviewees also cited the quick results of customary courts, the complicated and confusing procedures of statutory courts, the expenses of statutory court, including hiring a lawyer, and familiarity with customary court processes as reasons for preferring to bring their cases to customary courts. The regions studied were either urban or town or close enough to an urban center that litigants could access the statutory court system. Thus, it is presumed that preference for customary courts is not merely a product of geographical access, but a reflection of deeper cultural and structural characteristics.

Restorative justice is an important element in only some of the tribes studied. All regions have dispute resolution processes that occur at the family and clan level that focus on conciliation and restoring harms caused by GBV. However, these restorative practices do not always translate to customary court judgments and in some regions the family/clan proceedings seem to have eroded



significantly during the past 20 years of conflict. Restorative practices are detailed more in each section.

Corporal punishment is a regular practice across the courts and tribes of South Sudan. Lashings are given as punishment to both men and women. Women, however, are often given lashings in addition to beatings they already received at home. Lashings given as discipline to women in the courts reinforce the acceptance of violence against women for misbehavior.



Administering lashings in a Juba court

The use of Form 8—the police and medical form required for GBV cases—was also studied in each location through focus groups and workshops. The results are similar in each region. Form 8 is largely available in the police stations and hospitals but is most often misused or not understood by women victims. Women complained that police would blame them of impropriety while filling out the form. In many cases, women were denied treatment until they completed the form at the police station. As a result, women largely expressed an unwillingness to fill out Form 8, relying instead on the testimony by witnesses and family during customary court proceedings. Chiefs likewise were aware of Form 8 but unsure as whether to require it for GBV cases. Most would hear the case even without the presence of Form 8. In many cases women would keep a Form 8 for months without taking any legal action and present it to the court at a later time, ineffectually, as a record of past abuse. Form 8 also costs money—an average of 32 SPds in Juba. This was mentioned multiple times as prohibitive.

The following results for each region are broken down into four primary categories, all of which affect administration of GBV cases and the type of punishment given. A broad consideration of issues such as infrastructure and procedures is necessary to fully consider the causes and dynamics of providing restorative justice for GBV cases. The results also provide full details on sample cases to provide a more robust picture of administration of justice in the courts. A table for each region documents the varying degrees of customary court punishment and associated customary law. These tables capture customary law precedent through the lens of the user, treating customary law as a dynamic, constantly developing jurisprudence. Since there is no codified or written form of customary law, there is no definitive source to cite on standards for punishment. Instead, punishment according to customary law should be viewed as a continuum, with similarities to common law jurisprudence, where a range of punishment is established with varying degrees



depending on the circumstances for each case. As a result, the customary law jurisprudence tables for each region do not attempt to capture customary law in its pure or codified form, but as a series of judicial decisions for broad categories of crime. The jurisprudence outlined in each table is meant to help define constantly shifting precedents and provide a picture of the range of punishments and legal considerations that affect customary court GBV administration of justice without attempting to ascertain the tradition or custom that should rightfully apply.

JUBA

The results for the Juba area cover two major tribal groups—Bari-speakers and the Mundari. Within the Bari group are five major tribes—Bari, Kakwa, Pujulu, Kuku, and Nyagwara. Three main courts in the Juba area were studied—Kator B, Lainya B and Juba MTC. Kator B is the main customary court in Juba and is often attended by members of other tribes. Lainya B court is predominantly a Pujulu tribe from Lainya County court, but is attended by many other tribes, including Dinka, Nuer and those from Western Equatoria. “B” courts in the Juba area are the appellate courts for “A” courts. However, in practice they have become a common court of first instance and cases are taken directly to them bypassing “A”-level courts. Juba MTC is a court that meets regularly for various tribes from other regions, including Dinka and Nuer, but is predominantly a Mundari court for people from Terekeka and Tali. The court was only studied on the days convened by Mundari chiefs.

In all, 199 cases were observed in Juba, with 62, or 31% of cases containing GBV elements. 10 of 20 cases in the Mundari Juba MTC court were GBV and 52 of 179 in the combined court of Kator and Lainya. Of these cases 40 were wife beating, six were rape and nine were other abuse, such as girlfriend abuse, beatings by soldiers, or random, non-family related violence. There were more instances of random, non-family related violence against women in Juba than in other locations, conceivably due to Juba being a large city. Still, the customary courts of Juba were a regular court for adjudication of random as well as familial forms of violence. The Lainya court alone registered six rape cases in the eight weeks of study. The Attorney General for Juba, who attended the Juba-level workshop, told us a total of 20 rape cases had been registered with his office since January 2006. Extrapolating the six cases seen over eight weeks in the Lainya court to an equivalent 64-week period and the result is approximately 54 cases—more than double the amount seen by the Attorney General’s office for all of Juba, without even considering the arguably larger catchment population of the Attorney General versus the smaller Lainya court. This again speaks to the critical role customary courts play

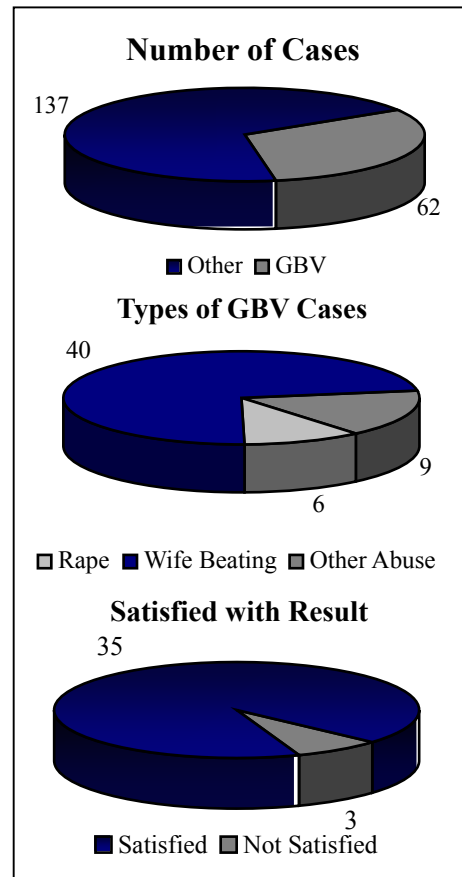


Figure 3. Juba Findings



in adjudicating violence against women, even in the more developed part of South Sudan such as Juba.

The study's finding of perception of the courts supports the observed rate at which GBV cases are brought to customary courts in Juba. The courts and chiefs were largely viewed favorably. 35 of 38 women were satisfied with the result of their case and 20 of 21 preferred to bring a GBV case to customary courts. The courts are favored by most people and trusted to provide justice, reflected by high attendance. In Juba approximately 80 people were present in the court each day, equally divided between men and women.

The Juba-level workshop to present the results of the project and engage local actors in discussion about GBV cases in the customary courts was held on Friday, March 29, 2008. Eleven chiefs, police and judiciary members attended the workshop and identified concerns related to Form 8, use of restorative justice principles to solve cases, and areas of needed training. Open discussions were held with all addressing how customary law can better meet the needs of women victims and incorporate women's rights from the Interim Constitution of South Sudan into their judgments.

Sample Cases

Summary statistics for the cases observed in Juba provides only a limited picture of the entire justice spectrum for GBV. To create a more robust understanding of the administration of justice in these courts, representative sample cases have been detailed below. The details and language for each case is taken directly from the observation forms for that case:

Case 1

Date: 15/2/08; Kator B Court, Kator Payam, Juba County

Kator B is a Bari Customary Court located in Juba. The court hears cases daily from throughout Juba, including many cases from other tribes. The court is held in a dilapidated, open-air building in the middle of the Kator neighborhood. On the day of the current case there were approximately 60 women and 50 men at the court. Three cases were heard, including two GBV cases. The cases were heard by a panel of three chiefs from the Bari tribe. In one case a 24 year-old wife from the Zande tribe who works at the GoSS Ministry of Commerce brought a case against her 25 year-old husband from the Bari tribe for spousal abuse. She claimed that Edward did not give her enough money for daily food and medical care and one day he "jumped on her neck" and said he "would kill her if she was not quiet." He is also not happy with his wife's job with GoSS. The man said the woman "is bad" and that he does not want her. The chiefs ruled that according to Bari Customary Law wife mistreatment is a crime and is to be punished before the court. The court ruled that the husband is responsible and that divorce is granted to the wife. The husband was made to pay for the court fee of 135 Sudanese Pounds (SPds), for the divorce certificate (50 SPds) and 300 SPds to the parents of the wife for mistreatment. Since the husband had not paid any dowry the parents did not have to return anything to him. If the wife agreed, the court left open the option of the husband paying dowry to the parents and taking the wife back. The woman expressed satisfaction with the result.



Case 2

Date: 5/2/08; Kator B Court, Kator Payam, Juba County

On this date there were approximately 40 men and 40 women at the court. Four cases were heard, including one on GBV. In this case the wife, 29 years old, of the Bari tribe brought a complaint against her husband, 37 years old, of the Lukuya tribe, a retired soldier with the Sudan Armed Forces. She claimed that approximately nine years ago he raped and impregnated her. She demanded that he take her as his wife. Since then they have had other children, but recently he stole money from her, mistreated her, threatened to kill her, and does not pay or help with care to the children. She wants a divorce. The man denies having raped her, saying it was consensual and a normal courtship. The chiefs examined the use of customary law to judge rape cases, while citing the relevance of statutory law as well. The chiefs found the husband guilty on all counts and approved the divorce request. The husband was ordered to pay 60 SPds or go to jail for six months; to return the 280 SPds stolen from his wife and to pay three cows, six goats and 500 SPds (1/4 of the dowry) to the wife's parents. The wife was also ordered to pay 60 SPds instead of going to prison for six months (the reason was not clear), 135 SPds for the court fee, 50 SPds for the divorce certificate, and to declare the children's names before the court. There did not appear to be any punishment specific to the rape issue, despite the chiefs seemingly deciding in favor the wife. The wife expressed satisfaction with the result.

Case 3

Date: 4/2/08; Kator B Court, Kator Payam, Juba County

On this date there were approximately 40 men and 40 women at the court. Three cases were heard, including one on GBV. In this case a wife, 30 years old, from the Bari tribe brought a case against her husband, 32 years old, also from the Bari tribe. The wife accused the husband of failing to give her money for food, medication and welfare of the children and drinking alcohol and beating her. The husband was found guilty of drinking too much and being under the influence of alcohol while beating his wife. He agreed and admitted to drinking alcohol. He was made to swear according to Bari customs by licking a traditional spear in public while pledging not to drink alcohol and beat his wife. The husband was charged 10 SPds for the spear swearing and 25 SPds for court fees. The woman was hopeful that the husband would change his behavior.

Case 4

14/1/08; Kator B Court. Plaintiff—26 year old female from Bari tribe, housewife by profession. Defendant—28 year old male from Bari tribe, soldier in the 2nd division of the Joint Integrated Unit—Torit. The wife brought the case claiming the husband came home one night from Torit and started claiming she was cheating. He was claiming she is pregnant not with him but with his brother. He beat her and the other young child and kicked her with his army boots. The man was under the influence Bangi (opium), which in his defense he says is necessary if you are to survive as a soldier. The head chief quotes Bari law, "According to Bari customs and traditions mistreatment of wife is punishable." The chief was particularly concerned because the wife is pregnant. At first the chief sent the case back to be solved at family level, but the protests of the family persuaded him



that that was not possible. The accused brother was brought to the court and him and the wife had to vow by licking the ceremonial spear that they did not commit adultery, If nothing happens for the next 3 months (until 14/4/08) then the vow is truthful. The husband was sentenced to 6 months imprisonment for beating his wife and for smoking opium and charged a fine of 300 SPds plus 35 SPds court fees. The man acknowledged his guilt before the court and apologized to his wife. She did not accept.

Case 5

Date: 27/2/08; There are four Mundari chiefs from Terekeka and Tali today at the Juba MTC Court. There are approximately 30 women and 50 men. The court is held under a large tree behind the Juba Stadium. The wife brought a case against her husband for abuse. She was beaten badly by her husband because she had been drinking too much alcohol and insulting everyone at home. The chiefs said beating your wife is a crime and that if she did something wrong she should be spoken to instead. The wife was punished for drinking alcohol and sworn by the spear and Holy Bible to not drink again. She paid 25 SPds for court fees and 25 SPds for table fees. The man was reprimanded for beating his wife but was not punished.

Case 6

Date: 19/2/08; The Lainya B Court is in a government garage building with dirty walls and children's drawings. It is noisy and near to beer bars and public bus transport station. There are 50 men and 50 women present. Five chiefs are present from Pujulu, Kakwa and Zande tribes from Lainya, Yei and Yambio counties. A Kakwa woman was raped coming home from the night-market in Juba by a strange man. She is worried she now has HIV. The head Pujulu chiefs advised the Kakwa chief and ruled that rape is a crime under customary law and punishable by 1 year prison and 25 lashes. The chiefs also punished the man 500 SPds to the wife's family for committing adultery and 35 SPds to the court.

Case 7

Date: 7/2/08; Lainya B Court. Plaintiff—40 year old man, Bari tribe. Defendant—26 year old female, Kakwa Tribe. The defendant found the Plaintiff at a party and offered to escort her home. When they reached a quiet place he raped her. Afterwards he gave her a good amount of money to keep her quiet. She did, but to her surprise he went and told the story to everyone. He now brings the case because the woman's brothers are after him. The chiefs blamed both parties—the man for forced prostitution and the woman for staying quiet. They ordered the man jailed for six months as punishment and to cool the situation with the brothers. They also ordered 25 lashes for the man and 10 lashes for the woman. They are both to pay 25 SPds as a fine and 25 SPds as court fees.

The seven cases detailed above illustrate a range of different treatments for gender-based violence in the customary courts in Juba. In Case 1 the chiefs found no fault of the woman and severe fault of the man because he both denied money for food and then subsequently beat his wife. Even



though she brought the case they did not charge her for court fees or for the divorce certificate and gave her punishment preference to take the husband back. In contrast, in Case 2 the woman was ordered to pay a fine, the court fee and for the divorce certificate despite the fact that the chiefs found the husband guilty for mistreatment. The difference between these case in punishment to both the husband and wife is unexplained and is an example of needed consistency. Case 3 illustrates the type of traditional restorative justice practices present in the Bari courts, even when GBV is concerned. The husband was not punished otherwise besides paying court fees. His swearing of the spear was sufficient restoration for both parties. Case 4 provides yet another example of punishment for wife beating but with additional extenuating circumstances. The punishment of 6 months prison was greater than that seen in the other cases, as the crime of wife beating was compounded by drug use and the wife’s pregnancy. Again the spear was used to pledge the wife and accused brother that no adultery was committed.

Case 5 illustrates a typical Mundari case where wife beating was condoned by the chiefs but was not punished because it occurred for a reason—in this instance for drinking and bad behavior by the wife. Mundari traditions are often similar to Bari in certain regards. The wife was also sworn by the spear (and Bible) to not drink again. Court fees and table fees apply to different administrative aspects of the court, both are part of the general judicial fee scale for Mundari courts.

The first case detailed for the Lainya court, Case 6, details the treatment of a rape case under Pujulu customary law. Rape is punishable by 1 year in prison and 25 lashes. Additional punishment is given for extenuating circumstances, in this instance, adultery (500 Pds) to the wife’s family or husband. This case also demonstrates the collaboration of customary court chiefs on inter-tribal disputes. Case 7 contrasts significantly as the woman is blamed as well for having accepted the money and not reporting the rape. The man was only jailed for 6 months. This is an example of a complex case that should have been appealed and where the judicial reasoning applied by the chiefs was seemingly in error and in contrast to principles of human rights.

Punishment and Customary Law

This section will focus on the punishments and associated customary law for GBV cases of the two major groups in the Juba area—Bari-speakers and the Mundari. There are generally two categories of GBV cases. The first test is whether the woman (or man) abused is a family member. If the woman is not a family member, i.e. a strange man abuses the woman, then a range of punishment or remedies can occur depending on the degree of the crime and the preferences of the victim or victim’s family. Rape cases that are brought to the court normally have already reached a consensus that the man must be punished. Where a woman is not yet married, the rapist will often be forced to marry the girl before the case is ever brought to the court. This is often a preferred alternative for both parties, as the man does not receive jail time or have to pay a large fine and the woman and her family do not face the public stigma of having an abused and now, unwanted or “tainted” daughter who would be difficult to marry. Where the woman or family does not agree to marriage, or where the woman is already married and abused by a stranger, the courts will punish the man on multiple accounts. Here the treatment varies by the different courts and different traditions. The



Kator B court now refers all murder and rape cases to the Juba statutory or County court. Lainya B and MTC will hear rape, but not murder cases.

Rape cases in the Lainya court are punished by one year in prison and 25 lashes. The convicted will also be made to pay a fine depending on whether the woman was married—500 SPds to the husband for adultery, 300 SPds to the parents for an unmarried woman—and the cost of any medical treatment required in the hospital. Other cases of non-related abuse were handled by punishing the convicted with 30 lashes or 30 SPds payment and with compensation to the woman. Compensation was determined based on the injuries and treatment needed and any damage to property.

Table I. Bari Jurisprudence for GBV Cases			
Crime	Punishment		Details of case-by-case Compensation
	for Man	for Woman	
Rape	1. 1 year prison; 25 lashes; Compensation	1. None	1. 500 SPds—adultery if married; 300 SPds—adultery not married
Abuse by Stranger	2. for beating—30 lashes or 30 SPds; compensation for damages	2. None	2. 627 SPds and repair necklace
Spousal Abuse ▪ Beating with reason	3. One sheep fine; feeding allowance	3. 75 SPds	3. 100 SPds feeding allowance
	4. Counseling	4. None	4. None
▪ Beating w/o reason	5. 6 mo. Prison or 60 SPds; 25 lashes; compensation	For divorce—6 mo. or 60 SPds; 25 lashes or 25 SPds; 135 SPds court fee; 50 SPds divorce certificate	5. 150 SPds
	6. 300 SPds for injuries	5. None	6. 300 SPds for cleansing
	7. 20 lashes; compensation	6. None	7. 200 SPds for feeding allowance for past year
	8. Compensation	7. None	8. 300 SPds for medication
	9. 500 SPds fine; 100 SPds for monthly feeding allowance	8. None (no divorce)	9. Past feeding allowance
▪ Psychological Abuse or Neglect	10. Provide a male goat for slaughter	9. None	10. Slaughter a goat for cleansing of abuse in house
	11. 300 SPds compensation for threaten to kill	10. 185 SPds for court fee and divorce certificate	11. Paid to parents
	12. Swearing by spear	11. None	12. 100 SPds to father



If the victim and accused are family members the punishment and associated law becomes more complicated. Under Bari law, wife beating is a crime. Resolution is supposed to be attempted at the family/clan level before being taken to the court. Once taken to court punishment will vary depending on the degree of abuse, any additional crimes committed, and whether the woman is pregnant or not. When the degree of beating is slight and the woman has insulted or committed some wrong to the husband, there will often be no punishment, but simply admonishment by the chiefs of the man and attempt to counsel the couple to preserve the relationship and cleanse any ill feelings. If the woman seeks a divorce once the case finally reaches the court she will in many cases be punished almost equally. Table 1 provides a range of punishments for different observed GBV cases. Each number refers to a different case. As seen in Table 1, punishments for wife abuse can range from an oral reprimand and ceremonial swearing by the spear to 6 months in prison and 25 lashes.

In the 10 GBV cases studied under Mundari customary law, tolerance of spousal abuse is higher. The chiefs do reprimand husbands for beating their wives, even when there was an apparent reason, but punishment of the man does not go beyond a small fine, even when severe beatings occurred and the wife was pregnant. In most cases there was some legitimate reason for the



Spear swearing ceremony—Kator Court, Juba

beating that placed the blame on the woman rather than the man. Punishment varied from admonishment of the husband and sacrificing a male goat by the woman to cleanse the house of her bad acts that led to her beating, to 300 SPds fine to the man for beating and insulting the wife's relatives. Wife beating without credible reason and without additional crimes resulted in a 25 SPds fine. There were no observed rape or other cases in the Mundari court.

Restorative Justice

Elements of restorative justice were more common in the Bari and Mundari courts than seen elsewhere in South Sudan. Compensation to women for harm committed from the abuse was common. The convicted was regularly ordered to pay for the treatment of the woman or to pay her



for damaged personal items. However, no consideration was given for loss of wages or any mental anguish suffered as a result.

Bari and Mundari courts generally attempt to preserve marriages and family relations, often to the detriment of the woman. Given the importance of family life and traditions to the Bari way of life, the preservation of family maintains the support network for children and the wife herself. This preservation is a form of restorative justice that maintains harmony in the community. But the degree to which the courts attempt to preserve the family can often be detrimental to the woman in the end, forcing her to stay in an abusive relationship that does not have the support of the husband's relatives and that is often detrimental to the children. The chiefs are often too easily swayed by the husband and his family's point of view and overly stress the importance of the dowry the husband will lose if the wife is divorced.

Other important restorative elements linked to timeless customs have been preserved in the Bari courts. Public swearing by the spear is a cleansing ritual that is also a cathartic mechanism for a convicted person to admit their mistakes and swear not to repeat them. The ceremonial spear is kept in the courthouse at all times and brought out when a person admits a mistake and requests leniency for their swearing to never commit the crime again. The spear is then licked in front of the entire court while the promise is repeated out loud. The belief is that if the person does not truthfully swear the spear will cut them. The spear swearing ceremony is often used with cases of alcohol abuse and beating. Men often swear by the spear to leave alcohol and to stop beating their wives.

Jurisdiction and Procedures

One of the more important dynamics of customary courts in Juba is the need and ability to be flexible in adapting to the presence of litigants from other tribes and countries. Juba is the capital of South Sudan and a dynamic, multi-cultural city. People from every tribe can be found in its borders. Juba was also a large center for Internally Displaced Persons (IDPs) settlements. Large numbers of neighboring tribes took up residence in Juba to escape the war and have never left. As a result the customary courts deal with a large number of inter-tribal disputes. People from various tribes bring their cases to the courts, as they remain a more accessible alternative to dispute resolution. To meet the needs of these varying litigants the chiefs of the court will often cite different customs, utilizing the assistance of elders from those tribes that are present or called to the court. Cases are often postponed to summon chiefs from the associated tribes. If there does not seem to be much distinction between the customs of the Bari and the other tribe at issue then Bari customs are used to adjudicate. This is the most common result. However, where a litigant insists that the customs of his/her tribe differ, the chiefs most often complies.

The subject matter jurisdiction of the courts is not consistent. Kator B court is a well-known and established court that was regulated by the Khartoum government when Juba was a garrison town. During this time the power of chiefs to adjudicate murder and high crime cases was removed. Chiefs continue to refer all rape and murder cases to the statutory cases. Lainya B court, however,



does not follow the same regulations, as it has largely been a court for IDP populations from Lainya and Yei counties. The existence of the Lainya court and its jurisdictional mandate is also a subject of some uncertainty. The Paramount Chief from the Kator court insists that the Lainya court is operating illegally and that all litigants, regardless of tribe should bring their cases to the Kator court. Both courts operate primarily under customary law, but the paramount chiefs for each are knowledgeable of the Bill of Rights of the ICSS and the Sudan penal code. Many of their judgments invoke human rights principles and often directly cite sections of the penal code. This influence can create positive changes to judgments, where certain provisions of customary law are not applied as a violation of rights, but they also represent an uncertain transformation and “impure” application of customary law.

There is no easily discernible appeals system within the customary courts of Juba. Cases come to the Kator B and Lainya B courts from clan-level or “A”-level dispute resolution bodies. However many of these structures have broken down during the war and approximately 60% of all cases were brought directly to the “B” courts. As a result, customary courts increasingly act as more of a statutory court of first instance, but one that has no realistic system of appeal to a higher court. If a litigant feels their case was decided unfairly they have to hire a lawyer and bring a separate case to the judiciary, but this practice is rare and was not observed.

RUMBEK

Three courts were studied within Rumbek Central County—the town court of Rumbek, known as Maboric; the Regional court for the three southern payams, known as Malaul Bap; and the regional court for the three northern payams, known as Achol Thien. Chiefs in the customary courts of Rumbek Central County adjudicated almost exclusively according to Dinka customary law. No cases were observed that involved members of tribes other than Dinka.

Out of 55 observed cases, 33 or 60% contained elements of GBV. Out of these 33, thirteen were wife beating, six rape, one attempted murder (by a wife), and thirteen other abuse cases, including one military beating of a woman, one girlfriend abuse, and two cases of genital cutting.

Individual interviews were conducted with victims and participants in the observed GBV cases (where possible). Interviewees largely supported the judgment and punishment of the chiefs in each case. In all, 19 of 25 (76%) women were satisfied with the court’s ruling. The level of confidence in the customary courts was also extremely high. Twenty-four of twenty-five (96%) have faith in the customary court to be fair and provide justice. Interestingly

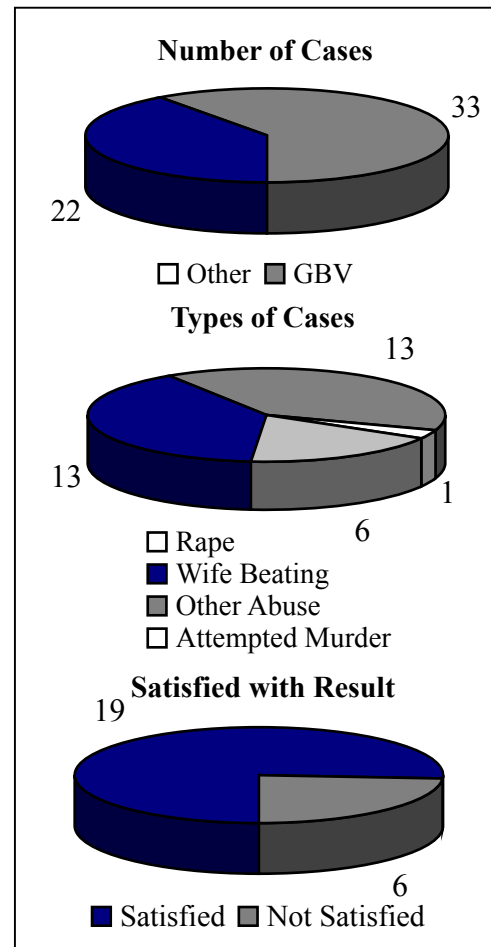


Figure 4. Rumbek Findings



enough, even many of those participants who didn't agree with the decision in their case still said they had faith in the customary court to be fair and provide justice in the future. All interviewees identified a preference for bringing GBV cases to customary rather than statutory courts, citing familiarity, quick decisions, and the importance of judgments based on Dinka customary law. Responding to a question exploring the restorative value of judgments, 19 out of 25 (76%) felt they were now, as a result of the ruling of the court, in a better position than before.

A focus group was held with the local women's center in Rumbek as part of the fact gathering efforts. A Rumbek-level stakeholders workshop was held at the end of the study to present and discuss the results. 54 participants attended the workshop, including chiefs, the judiciary, the police, MoLACD, medical workers and local NGOs. The concept of Gender-Based Violence was not easily established as men continually focused on misbehaving women as the perpetrators of GBV on men, while women were more concerned with men that did not provide money or feeding allowance. The focus group participants indicated a need to train the chiefs on women's rights and on how to better address violence against women, but almost universally felt that customary courts were the proper place for taking GBV cases.

Sample Cases

The six representative cases below detail varying types of GBV issues and punishments that violate women's rights and provide remedies using restorative justice principles. The cases are taken directly from the observation forms filled out by the local consultant team.

Case 1

Date 5/2/08; Malual Bap Customary Court, Rumbek Central County

Malual Bap is a regional customary court located in Rumbek town that serves three rural payams in Rumbek Central County south of Rumbek town. Cases are heard daily by an executive chief, approximately three sub-chiefs, and a court secretary. The court is held under a large mango tree near the main market in Rumbek town. On this day there were approximately 60 men and 10 women at the court. One case was heard, a GBV case. The parents of a woman, 20 years old, brought a case of rape against a man, 35 years old. Both are from the Dinka tribe. Dinka law prohibits a man forcing a woman to have sex. The chiefs found the man guilty and sentenced him to three months in prison. The man was ordered to pay five cows to the woman's parents. One cow was sold for treatment of the woman.

Case 2

Date: 4/2/08; Malual Bap Customary Court, Rumbek Central County

On this day there were 63 men and 4 women at the court. Two cases were heard one was GBV. In this case a wife, 26 years old, brought a case against her husband, 40 years old, for beating her. Both are Dinka. The woman refused to cook food for the husband and told him to "go find his own water." The man was insulted and beat her with a stick. He stated to the court, "when you beat her properly she will listen to you." The chiefs found that Dinka customary law supports beating your wife if she threatens you. The chiefs ordered a punishment of thirty lashes to the woman in order to respect her husband. The woman did not agree with the court's decision.



Case 3

Date: 22/1/08; Malual Bap, Customary Court, Rumbek Central County

On this day there were 25 men and 7 women at the court. There were two cases, both were GBV. In this case a woman, 33 years old, brought a case against her husband, 40 years old, for beating her. The wife was pregnant. The chiefs ruled that Dinka law forbids beating a pregnant woman. They ruled that the husband be sent to prison for three months and to pay one cow for treatment of his wife at the hospital.

Case 4

Date 6/2/08; Malual Bap Court. The Plaintiff is a 15 year old housewife, Dinka tribe. The Defendant is her 40 year old husband, Dinka tribe. The woman brought a case for wife beating and divorce. The case was originally brought to the family level but the family wanted to fight the lady. The husband eloped with the girl to marry her when she was 12. Since then she doesn't cook food for the man and has committed adultery. She is not pregnant and was beaten to respect her husband, but she is a very stubborn lady. The chiefs awarded the right to the husband and sent the lady to prison for three weeks.

Case 5

Date 1/2/08; Achol Thien Regional Court. The Plaintiff is a 26 year old female of Dinka tribe. The Defendant is her 35 year old husband, Dinka tribe. The wife brought a case against her husband for fighting with her and cutting the inside of her vagina with his fingernail. She is pregnant. The chiefs said that if you fight with your wife you cannot fight with the birth canal. They ordered the husband to send the wife to the hospital and to pay for treatment. He was punished by four months in prison.

Case 6

Date 28/1/08; Achol Thien Regional Court. The parents of a 12 year old girl brought a case against a man of 24 years old. The man was friends with the girl and took her from her parents for elopement. He beat the girl after taking her for elopement and then sent her back to her parents. The parents brought the case. The chief said under Dinka law you cannot engage a girl and abuse her, otherwise you must marry her. He ordered that the man be put in prison because he destroyed the value of the girl, as all know she was taken for elopement. He was sent to prison for three months and was ordered to pay five cows to the parents. The punishment in the case was both for beating a girl who is not yet your wife and for defiling an eligible girl, causing financial damage to her family and making her difficult to marry.

Case 7

14/2/08; Achol Thien Regional Court. A man brought a case against his wife because she refused to cook food for him. He has disciplined her at home and brought her to court. Dinka law says that a woman must cook food for her husband. The chiefs order a punishment of 15 lashes for the woman/defendant for not respecting the law and her husband/plaintiff. The parents of the lady must pay one head cow to the man. The woman admits her wrong.



The first case details a punishment for rape of 3 months prison and payment of 5 cows under Dinka law. This case illustrates the Dinka custom of exchange of cows as compensation for crimes committed. A punishment of 3 months prison for rape would seem insufficient, but Dinka customs often place an emphasis on restoration and community harmony. Case 2 illustrates the lack of attention paid to wife beating in the customary courts. The court punished the woman for disrespect rather than the husband for abuse. Case 3, however, shows the importance in Dinka customary law of pregnancy. Punishment is focused on the husband instead if he beats a pregnant wife. In this instance, the husband was ordered to pay for his wife's treatment and to serve three months in prison. Case 4 is presented as a complicated example of the practice of forced elopement of young women creating unhealthy relationships leading to further violent abuse. The focus of the chiefs in this case is on the adultery committed by the wife without any consideration for beatings or prior elopement. Case 5 is an extraordinary case presented to show the sensitivity of Dinka customary law to abuse that potentially threatens the pregnancy or birthing process. Retributive punishment in this case (4 months prison) was greater than that given in the earlier rape case (3 months prison). Case 6 illustrates the punishment given for beating a woman that is not your wife. The man did not marry the girl he eloped with, thus defiling her for future suitors. The combination of the two crimes was the same as the punishment given for rape—3 months prison and 5 cows. No consideration was given for whether the elopement was consensual and it is common practice for parents to consent, implicitly or explicitly, so long as a marriage results. Case 7 is presented to illustrate the reinforcement Dinka customary court corporal punishment creates for beating wives as discipline. The wife was punished with 15 lashes, after she had already been beaten by her husband, so that she respects her husband.

Punishment and Customary Law

Dinka customary law permits wife beating as a form of discipline. As stated in one case by one of the participants, “when you beat your wife properly then she will listen to you.” The emphasis on punishment in most GBV cases is more on the cause of the beating or additional circumstances that compound the issue. The most common issue is the beating of a pregnant woman. Beating of your wife when she is pregnant is strictly forbidden under Dinka law. When a wife/woman is not pregnant there is usually some reason that led to her beating. This reason is dispositive. A woman that has been beaten by her husband for insulting, adultery, or not providing water will also be punished by the court, with either a punishment of 15-30 lashes or with up to one month in prison. The man will not be punished, unless the beating is extremely severe, or again, if the woman is pregnant. In the many cases reviewed there was only one instance where the beating of a non-pregnant woman was due to no fault of the woman herself and the man was punished.

Rape cases are punished primarily by compensation to the victim's family. In the case of a married woman cows are paid to the husband and in the case of an unmarried woman to her parents. A cow will be sold to pay for the woman's treatment. Rape cases are not punished severely in terms of imprisonment. Men are only sentenced to three months prison for rape, unless the woman is married, in which case there is additional punishment for adultery with another man's wife.



Elopement is a common practice in Dinka culture. It involves kidnapping and taking away a young woman of marrying age for the purpose of marrying her. Upon return from elopement the couple is pronounced to be married (and is often pregnant). This is often done with consent of the woman, but not always. The issue of consent is irrelevant. As a result, elopement cases are not brought to the court despite their often violation of the woman's will. Elopement will often not work out and cases for abuse will be brought against the man who did not succeed in marrying the woman, or who changed his mind. Dinka law forbids many acts against girlfriends or fiancés, in this instance, that it allows against wives. In elopement the act of taking away and then not marrying the girl is often the more heinous crime and additional issues of violence treated as secondary.

Table II. Dinka Jurisprudence for GBV Cases			
Crime	Punishment		Details of case-by-case Compensation
	for Man	for Woman	
Rape	1. 3 mos prison; compensation	1. None	1. 5 cows
Spousal Abuse ▪ Pregnant	2. 3 mo prison; compensation	2. None	2. One cow for treatment
	3. 4 mo (severe case); pay for treatment	3. None	3. Medical treatment for woman
	4. 3 weeks prison	4. None	4. Medical treatment
	5. Pay for Treatment	5. None	5. Medical treatment
▪ Not pregnant, beating with reason	6. None	6. 30 lashes	6. None
	7. None	7. 15 lashes	7. One cow to man
	8. None	8. 3 weeks prison	8. None
▪ Not pregnant, beating w/o reason	9. Elopement—3 mo prison; 5 cows	9. None	9. 5 cows to parents

Restorative Justice

Restorative justice exists in Dinka customary law primarily to compensate a pregnant woman for injuries or the parents or husband of a woman for mistreatment and any loss to them, financial or otherwise, that occurred from the crime. Preservation of marriages and the family unit is also an important goal of most Dinka court proceedings. However, the breakdown of many families due to the war has destroyed many family support networks and the dispute resolution processes that come with them. Dinka customary courts do not encourage cleansing or other acts of admission of guilt and public apology. In one instance a post-decision beating by a father of his daughter occurred in the immediate vicinity of the court. Apologies between a husband and a wife are done in the privacy of the home. Guilt is never admitted in public. The ratio of men to women—almost 9



to 1 in most courts—also does not create an environment of support for women and in a relatively macho society does not encourage public acknowledgment and absolution.

Jurisdiction and Procedure

Rumbek area courts were exclusively Dinka courts. As such, they did not face many cross-tribal jurisdictional issues and the law applied was exclusively Dinka customary law. From discussions in the workshop any case that involves foreigners or other tribes is taken to the Rumbek statutory court system. The customary courts in Rumbek have a referral relationship with the well-developed Rumbek court system. There are County, High and State Appeals courts located within Rumbek town. If a case deals with other tribes/ nationalities, murder, or is a complicated case involving the military or some aspect of statutory law then the chiefs will refer the case to the statutory court. The statutory court judges see their role in the justice system as a technical oversight of the customary courts, but there is little interaction or appeal and remand of cases between the two systems.

Dinka courts in Rumbek are predominantly male in attendance. There are on average 90% men and 10% women in the courts. Unlike the Bari courts, women only go to court if they are involved in a case. This presents an intimidating environment for women litigants. All chiefs observed in Rumbek were men and on any day there can be up to 80 men at the court.

Dinka courts are presided over by an executive chief who directs cases, delivers judgments and generally administers the court. A panel of three to five chiefs will hear a case and convene together after the arguments are made to reach a mutual decision. Like many other customary courts the sessions are held outside under a large tree and are open to all in the community. Prison time is often given as punishment, but in certain cases chiefs will allow payment as a “bail out” of prison. The rate in Dinka courts is 150 SPds for each month punished.

BENTIU

Three courts were studied in the Bentiu area—Bentiu Town Court, Rubkona Town Court and Mayom Town Court. Bentiu is the capital of Unity State and is a predominantly Nuer area, however there are large Dinka populations in the three most northern counties in Unity state, all of which border Bentiu. Rubkona and Bentiu are located immediately next to each other and Mayom is located approximately thirty minutes away from both. The focus was Bentiu town court as it received the most cases and was the easiest to access for the local consultants. Mayom court was incorporated because it is the district of one of the consultants and the project took advantage of his familiarity with the town to record cases in this more rural setting.



In all 151 cases were studied. Of these, 56 or 37% had elements of GBV. There were 34 wife beating, eight elopement and nine other abuse cases. Interestingly, there were no cases of rape observed in the courts in Bentiu and three gender-based murder cases, each from Mayom Town Court. Murder cases are supposed to be referred to the statutory courts, but the long tradition of Nuer chiefs in hearing murder cases has prevented that from happening entirely. It is noted that the only murder cases were observed in the more rural court of Mayom town.

There were also a number of elopement cases, but like in Rumbek they were not prosecuted as kidnapping, GBV cases but instead for lack of dowry payment after elopement occurred. Apparently the act of taking one’s daughter away, whether consensual or not, for marriage is only a problem when no dowry is paid.

Interviews and focus group discussions revealed similar findings as the other locations. Chiefs and the customary courts are generally trusted and preferred as the location for adjudication of family and GBV cases. Nine out of 11 interviewed felt the punishment in their case was fair, while 15 of 16 had faith in the court to provide justice and 15 of 16 preferred to bring GBV cases to customary courts.

Interviewees were comfortable going to a statutory court if the chief felt it was a better place for the case and referred it there. The Bentiu-level workshop was held on Friday, March 14, 2008 and attended by 35 participants. Members of the judiciary, MoLACD, UNMIS police, Unity State police, chiefs, court secretaries, medical workers and local NGOs attended.

Sample Cases

The following are representative cases of those observed over three courts and eight weeks in the Bentiu area. The cases are taken directly from the forms filled by the consultants and from discussions with the consultants about further specifics for each case. Wife beating cases were by far the most common GBV case:

Case 1

Date: 24/1/08; Bentiu Town Customary Court

Bentiu Town Customary court is the primary court for Bentiu town residents and neighboring payams. On this day there were 40 men and 8 women. The court is held in a thatched hut and is noisy. This was the 2nd GBV case out of 9 cases heard this day. The plaintiff is a 27 year old Nuer woman from Bentiu. She was beaten by her husband and injured with marks on her body. The man

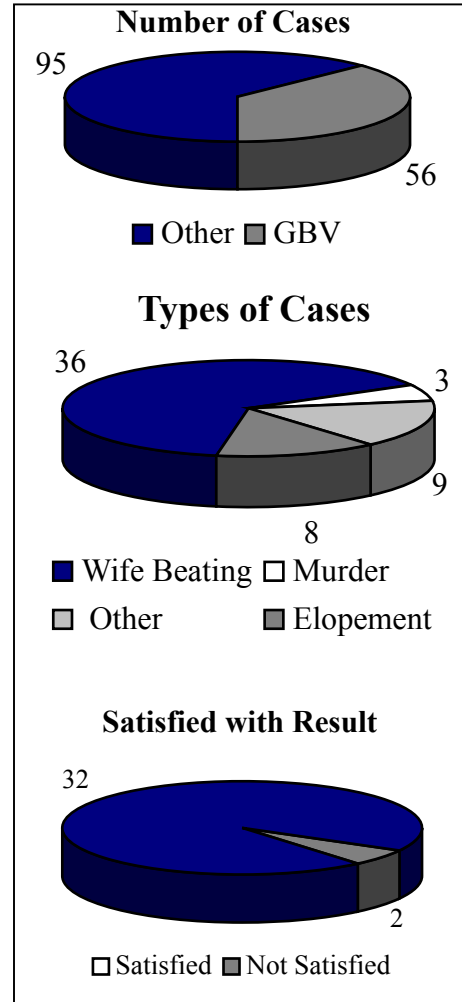


Figure 5. Bentiu Findings



was drunk. She had brought the case before to her husband's relatives but it has not changed his behavior. The chiefs stated that Nuer customary law prohibits beating or wounding a woman for no reason. The chiefs gave a last warning to the man and said they would divorce the woman if he does not change. He was punished by 3 months in prison. The woman is hopeful the man will change his behavior after time in prison.

Case 2

Date: 14/2/08; Bentiu Town Customary Court

On this day there were 35 men and 5 women present. The case involved a 25 year old wife accusing her 30 year old husband of abusing her. The husband beat his wife so severely that he destroyed one of her eyes. The chiefs said Nuer law prohibits beating and injuring a woman for no reason. The chiefs granted the divorce of the husband and wife and fined the husband 2 cows and ordered 6 months imprisonment. The husband was also made to compensate his former wife with 8 cows. The woman was satisfied with the result as she does not have to return to the man's home.

Case 3

Date: 11/3/08; Bentiu Town Customary Court

This was one of only two cases heard today. A 30 year old woman brought a case against her 36 year old husband for beating her without reason. She is requesting a divorce. The woman took the case straight to the court. The chiefs said the man is guilty of beating the woman without reason, but that the case is a minor case and should go the clan elders instead. The divorce was denied and the woman returned to the husband's home. The woman was satisfied because now the chiefs know that it is a problem.

Case 4

Date: 4/3/08; Mayom Town Court

The Mayom town court consists of 8 Nuer and 1 Dinka chief. In this case the husband brought a case against his wife for adultery. The wife also claimed harm because the husband beat her after accusing her of adultery. The chiefs ruled in favor of the man and gave a divorce. The wife's parents were made to pay 2 cows to the husband as compensation. There was no punishment on the husband for beating his wife.

Case 5

29/2/08; Bentiu Town Court

A case of abuse was brought by a 29 year old housewife against her 35 year old husband. The woman was beaten and the man disowned the woman and chased her from the house. The case was not heard at the family level. The court ruled the man guilty and the man apologized. The court ruled that there was no evidence of divorce as the man apologized before the court. The beating was not severe so no punishment given and the woman was returned to the house

Case 6

Date: 26/2/08; Mayom Town Court



The Plaintiff's brother was murdered by his wife. He opened the case against the wife and her family. The Defendant, a 14 year old Nuer woman, was married to the deceased against her will. Her father gave the girl to the husband for 5 cows. She refused to go but the deceased took the girl and she stayed with him for 20 days until she escaped and returned to her father. She was pregnant. The girl then stayed with her father for 2 years while the husband left as a soldier with the SPLA. After two years the husband came back for the girl and the child. She refused to go with the husband and the father and husband beat her until she accepted. After two days with the husband she killed him at night by slicing his neck with a knife. The court found the woman guilty and ordered compensation from the woman's family of 40 cows to the deceased's family and 10 cows as a fine. The woman was given 5 years imprisonment.

The first case illustrates the emphasis placed by the customary courts of the Nuer on preservation of marriage and the family unit. Rather than divorce a husband for severe beating of his wife, the court instead seeks to preserve the marriage and reform the husband by sending him to prison for three months. The case also shows that many of these cases are first taken before the family before being brought to the court. Case 2 shows the opposite instance where an injury was so severe and without reason that the chiefs had no choice but to divorce and punish the husband. The decision that a divorce should be given is influenced by the complaint of the wife, but the standard is uncertain and the best interest of the wife needs to be examined thoroughly by the courts. The strong punishment in this case of a 2 cow fine, 8 cows compensation and 6 months imprisonment is an example of the ability of the customary courts to strongly punish GBV cases when the blame and harm lies squarely on the man. Case 3 provides the opposite end of the abuse spectrum. The abuse was minor and according to the court should be taken up at the clan/family level instead. The woman was satisfied that she made the abuse known to the chiefs, because she now feels they will be more receptive to her case if her husband continues to beat her. However, this case is an example of how dismissing cases of minor abuse can encourage of pattern of abuse that can accelerate to greater harm. Case 4 indicates the harm placed on adultery. A marriage will be dissolved and punishment to the woman and family given if a woman commits adultery and the husband is also allowed to abuse her as punishment. Case 5 again shows the emphasis placed on the man's decision in the case. Because the man apologized and claimed he did not want to divorce his wife it was ordered that she stay with him despite the beating. Case 6 is an exceptional case of a murder by a wife of her husband after years of abuse and a marriage forced against her will. There is no consideration given under Nuer law to the girl being forced to marry. The punishment was normal for a murder case.

Punishment and Customary Law

Wife beating in Nuer courts was the predominant form of GBV. Wife beating is generally allowed as discipline and cases where a beating occurred with reason are generally not taken to the court. However, Nuer courts seem to be stricter about identifying when beating has become too severe or has reached a point of simply being abuse. Women are commonly divorced from their husbands if the chiefs decide the beating was without reason, is a repeated instance and there is evidence that the man has disowned the wife through the course of the beatings. The standards for this



determination are unclear. In such cases of divorce men are typically ordered to pay the woman 1 to 3 cows for treatment or otherwise as compensation. In the case of the man damaging the eye of his wife, the man was ordered to pay 2 cow as fine and 8 cows to the wife as compensation, in addition to divorce. Punishment has also included payment of permanent house and food to the woman when the parents of the woman raised the case after continued beating.

Where a pattern of abuse has not been established Nuer courts will not grant a divorce and order the woman to return to her husband. Instances of abuse are logged by the chiefs and kept as record for future occurrences. No punishment to the man is ordered. As a result, men will often beat their wives repeatedly to force a divorce and often open the case themselves for divorce. Where there is no evidence for divorce, but repeated and severe instances of abuse occur and where family dispute resolutions have not worked, the court will commonly give a sentence of 3 months imprisonment to reform the man. A fine of up to 300 SPds is given if the beating is not so severe and the man expresses regret. Payment for treatment of an injured woman is also sometimes ordered, but not uniformly.

In cases where wife beating was in response to some harm committed by the woman such as insulting the husband or committing adultery, the woman was the only one punished. When adultery is the cause, the woman is divorced from her husband and the parents of the woman are made to return the dowry in full (24 cows).

Psychological abuse and/or neglect was also included as a GBV case as there was a large percentage of instances in the Nuer courts. Husbands would often refuse to provide food or money to the wife for her feeding and for that of the children. Her complaints often led to beatings. The courts would universally rule that the man must pay the feeding allowances immediately, but no divorce or further punishment would be given.

Elopement cases were extremely common in courts in the Bentiu area. Similar to the courts in Rumbek, elopement cases were only brought when an elopement turned wrong and the girl was not married by the man who took her or was impregnated without any payment of dowry. Elopement was included in the results in Bentiu as opposed to Rumbek because the local consultant team considered it a GBV case, as most women, in their estimation were taken against their will. The contention of the elopement issue was apparent and from interviews and focus group discussions the tendency for most elopement cases to be against the woman's will was confirmed. Elopement cases were punished by 6 months imprisonment to the man, to pay redemption of two to three cows (known as *Ruok*) to the woman's family and a fine of two cows. Customs and law surrounding elopement is in need of further study and possibly reform.

Gender-based murder cases were decided according to usual Nuer law. The convicted and his/her family was ordered to pay 50 cows—referred to as “blood fine”—to the victim's family and the convicted was sentenced to 3 years imprisonment.



Table III. Nuer Jurisprudence for GBV Cases			
Crime	Punishment		Details of case-by-case Compensation
	for Man	for Woman	
Murder	1. 3–5 years prison; 50 cows (same for both men and women)	1. NA	1. 50 cows compensation to victim's family
Rape	2. NA	2. NA	2. NA
Spousal Abuse ▪ Evidence of divorce, beating (punishment based on severity)	3. Divorce	3. None	3. None
	4. Divorce, compensation	4. None	4. 3 cows paid to woman
	5. Divorce, compensation	5. None	5. Provide permanent house and food
	6. Divorce, 6 months prison; 2 cow fine; compensation	6. None	6. 8 cows paid to wife
	7. Divorce	7. 2 cows (fine for adultery)	7. None
▪ No divorce, severe beating	8. 3 months prison	8. None	8. None
▪ No divorce, minor beating	9. Compensation	9. None	9. 300 SPds to wife
	10. Compensation	10. None	10. 2 cows to wife
	11. Admonishment and apology by man	11. None, returned to man's home	11. None
▪ Psychological Abuse or Neglect	12. Payment to woman	12. None	12. Payment of feeding allowance
▪ Elopement	13. 6 months prison, 2 cow fine; compensation to woman's family	13. None	13. 2 cows to family

Restorative Justice

Like most customary law, Nuer law values the preservation of the family unit. The chiefs have a complicated system for determining when a man has disowned his wife and a divorce is necessary, but where maintaining the marriage is possible they will exercise caution and order punishments that encourage reform and conciliation. Cows and money are ordered as compensation to the woman when a marriage is preserved and apologies and acknowledgment of guilt by the man before the court are encouraged and considered as a form of compensation. Where divorce is ordered, there is almost always some payment to the woman to make her whole and to help her transition to being a single woman. As with the Dinka, children belong to the father or his family once they reach the age of seven.



Chiefs regularly reinforce family and/or clan dispute resolution processes. Acts of reconciliation often happen in these venues. Acts of cleansing are not generally found in the courts. There is also some indication that Nuer traditions and culture have suffered dramatically during the war and that many culturally-significant restorative practices have been lost in favor of authoritarian punishment. Prison has replaced many of the



Bentiu Town Court

traditional fines of cows as a punishment for severe crimes.

Jurisdiction and Procedure

Customary courts in Bentiu are presided over by a joint panel of Nuer and Dinka chiefs. There are large numbers of Dinka communities to the north of Bentiu and many Dinkas in Bentiu itself. As a result, the customary courts must be responsive to Dinka traditions and any Dinka litigants that come to the courts. On average a panel of ten Nuer and four Dinka chiefs decide the cases. The Dinka chiefs are only involved in those cases pertaining to Dinka customs. Despite the large number of Dinkas and everyday presence of the chiefs, few cases involving Dinkas were observed. The court is presided over by a Paramount Chief who directs and administers the proceedings. A court secretary is also present.

Nuer courts are approximately 80% male in attendance. Women attendees are only there for their cases. There are a number of women chiefs spread throughout Unity State and many are a strong voice for greater punishment for violence against women. There was no immediate relationship or appeal/referral system between the customary courts and the Unity State statutory court system. The Judiciary has a technical oversight role but little is done to fulfill that role.

There was notable interference in a number of cases by the members of the military. Bentiu is a disputed area given the location of oil fields in the region and its former status as a garrison town. Until recently competing barracks of soldiers from the north and south were located in the Bentiu region. The combined JIU forces are now present and in large number. Like almost all professionals in Bentiu, individual members of the military take disputes to the customary courts. In many of the cases involving a military man's family, the decision of the chiefs was influenced by vociferous protest or involvement of the military personnel. The local consultant team identified multiple instances where the case was decided abruptly and without adequate investigation, always in favor



of the military personnel’s family. The power of the military in South Sudan to influence day-to-day activities remains extremely high even in the post-war period. Their ability to use their power to influence customary court proceedings is a disturbing trend.

YAMBIO

Two courts, each in the town of Yambio, Western Equatoria were studied. The Yambio Payam Court is a lower court. The Yambio County court is a higher court where appeals of customary court cases are taken from the Payam courts. The Azande tribe is the predominant tribe in Yambio and Western Equatoria although there are many other tribes from Western and Central Equatoria such as the Moru, Mundu and Baka. Only two courts were studied as transport to more rural areas proved difficult, but the courts represent a good cross-section of rural disputes at the payam level and more contentious disputes at the county level.

In all 204 cases were observed in the Yambio courts. Of these, 27, or 13% had elements of GBV. The

majority of cases in the courts in Yambio were related to land disputes. Of the 27 GBV cases, 14 were wife beating, 4 were rape cases, 6 were girlfriend abuse—a distinction unique to Yambio, and 3 other forms of GBV. Girlfriend abuse was more common in the Yambio areas as apparently many Azande men take “concubines” akin to second wives that are kept in a separate home not inhabited regularly by the man. They are not accorded full wife status, but have a legal status greater than an unmarried girlfriend.

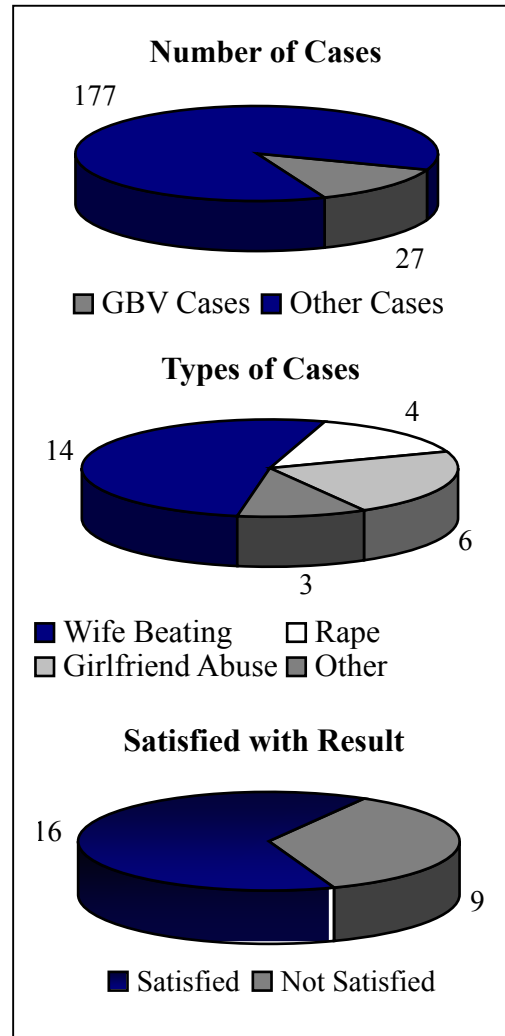


Figure 6. Yambio Findings

The local consultant team was not able to conduct many individual perception interviews due to difficulties locating and securing an interview with victims. The two interviews that were conducted were insightful. The interviewees expressed mixed feelings about the courts, with one favoring statutory courts due to problems of bribery among the chiefs. This problem was confirmed in focus group discussions and at the final workshop. The other felt that tribal traditions are important and unless the crime rises to the level of murder, then the customary courts are the proper venue. Neither agreed with the decision in their case. In the 27 observed GBV cases 9 of the victims expressed dissatisfaction with the result and contested the result in some form, either through verbal protest or by appealing to the County Customary Court.



The Yambio workshop was held on Wednesday, March 26, 2008. Thirty-nine participants from the chiefs, judiciary, hospital, police, and local NGOs attended, including chiefs from rural areas outside of Yambio. The workshop presented the results and explored in-depth the structure of the village headman—an issue related to GBV that was identified in the focus group discussion. Most GBV cases are heard first by the village headman before being referred to the court. A case of wife beating has to be presented three times to the headman before it can be taken to the court and must be heard three times as well at the family level before being taken to the headman. The headman present verified the procedure and requested that the Ministry of Legal Affairs train them on women’s rights in the ICSS so they know how to handle these cases. A group of participants decided to form a group to campaign about GBV issues in Yambio.

Sample Cases

The following sample cases were taken directly from the court observation forms filled over the eight-week period. Each case was reviewed with the local consultant team for additional information:

Case 1

Date: 13/3/08; The County Court for Yambio has one chief and his secretary. This is the fifth case and only GBV case heard today. A man of 27 years is accused of raping a 10 year-old girl. The girl was badly off and in the hospital for some time. The man was under police custody. The chief applied statutory law. He sent the man to prison for 3 years without bail and ordered to pay 400 SPds to the girls parents, to clear all expenses for the court, and to pay for the girl’s school fees. The man apologized before the court.

Case 2

Date: 28/2/08; Yambio County Court

A woman of 22 years from the Nyakara tribe in Central Africa Republic brought a case for abuse against her husband from the Azande tribe. The husband brought the woman back to South Sudan with him last year. They have two children and she is pregnant. He would not provide the basic needs for the family and he or his father would beat her whenever she complained. The man escaped from his wife to Juba, but she followed him. The man refused to show at the family dispute level and a court in Juba would not hear the case, so she brought it in Yambio. The court found the man guilty of beating his wife and not providing for his family. A divorce decree was issued. The man was sent to prison for 6 months and to refund the wife’s court costs and pay 500 SPds for her feeding and transport back to CAR. The woman was not happy, as she wanted her husband to accept his mistake and take care of her.

Case 3

Date: 10/3/08; The Yambio Payam court has 24 men and 16 women present. This is one of four cases heard today. The husband has brought a case against his wife for adultery. He beat her properly when he caught her coming home at dawn. She was taken to the police. Adultery is forbidden by Azande customary law. The chiefs decided to punish the woman and the man she cheated with. Both were sentenced to one year in prison, but were allowed a bail out of 100 SPds



each. The dowry of the woman of 200 SPds was to be refunded. No consideration of punishment for the beating.

Case 4

Date: 8/2/08; Yambio County Court

A family from the Menze village opened a case against the husband of their sister/daughter. The husband and wife had been married for two years. He beat her seriously, such that she had injuries and was bleeding all over her body. He then used a torch to have sex with her and cut her genitals with a razor blade. The man claimed that the wife brought beer to and was in love with his uncle. Azande law calls for a divorce in such a severe case of abuse. The woman was given a preference of punishment to the man or divorce. She chose divorce. The chief issued a divorce letter. No punishment was given. The man apologized and said he was ready to amend. He asked to be fined and to be able to stay with his wife, but the chief denied.

Case 5

Date: 20/2/08; Yambio Payam Court

A 25 year old housewife and her two brothers brought a case against her 38 year old husband and his family for abuse. The in-laws regularly beat the wife when she leaves to attend funerals of her family. The last instance was he beat his wife at her family's home at her sister's funeral. The man was summoned at the family level several times but did not turn up. The man was ruled guilty of not paying full dowry, not responding to his in-laws summons and for beating the wife at a funeral place. He was given one year imprisonment, 150 SPds to the in-laws for disobedience and to complete the dowry if he still wants the wife. He was ordered to meet the in-laws at their home and apologize and make the payments. He admitted his mistakes and swore to not repeat them.

Case 6

Date: 31/1/08; Yambio County Court

The girlfriend or fiancé of a man brought a case against him for abuse. The man had one wife and a second woman as a fiancé or concubine. The wife was fertile and the fiancé barren. The man accused the barren fiancé of witchcraft against the fertile wife and beat her frequently, the last instance so badly she was admitted to the hospital. The woman and her family brought the case to the police and then to the court. According to Azande law the man does not have any right to beat the fiancé as he has not paid any dowry. He was wrong to accuse her of witchcraft and since they were not yet in courtship is to be punished for beating her. He was ordered to pay 200 SPds to the woman. The woman was not happy as she doesn't want to stay in the relationship and says the charges were little compared to the beating.

The customary courts in Yambio often apply or cite statutory law in their judgments. Case 1 is an example of this. The rape case was sentenced according to statutory law with a punishment of 3 years prison—greater than that seen in other locations. The second case was presented to illustrate the range of restorative justice measures Azande courts consider. The woman was given a divorce and husband ordered to pay for her transport back to CAR, even though it appeared the woman did not want a divorce. Case 3 shows similar treatment in Azande courts as seen in the other locations.



Adultery by a wife is punished, but associated beatings by her husband are not. Case 4 is an example of punishment preference given by Azande customary courts. The woman was given a choice and chose divorce. However, the case also shows that courts will sometimes either divorce or punish for beating, but not both. This precedent creates a potential, negative incentive to beat a wife you want to divorce with impunity. This case is particularly disturbing because the severity of the abuse went unpunished. Jurisprudence such as this needs to be reviewed and corrected by appellate courts. Case 5 is presented to illustrate the pattern of abuse that often exists out of the direct influence of the court. This particular case took many instances of wife beating before it could be brought to the court. The final instance was not just the beating, but the beating of his wife in public at the funeral place of his in-laws. Case 6 illustrates an example of the more common instance of girlfriend abuse that occurred in Yambio courts. Violence against girlfriends or concubines is not tolerated, but punished only by a fine and payment to the woman.

Punishment and Customary Law⁶

Punishment varies slightly across payam and county statutory courts in Yambio. The County Court will regularly apply a mixture of statutory and customary law where statutory law is more applicable to the crime at issue. Rape cases handled by the County Court invoked the criminal code and punished the convicted with one to three years in prison and a fine of 130 to 3,000 SPds. The more severe the injuries to the victim the steeper the penalty.

Wife beating is tolerated to some degree. As indicated earlier, a case of wife beating has to be presented six times before it is considered a harmful pattern and taken to the court. This is done to attempt to preserve the marriage. Once a case of normal spousal abuse is presented to the public in the court then divorce is an almost certainty. However, there were many instances where the accused would not show at the family level or there were difficult issues that could not be handled at the family/clan level. In these cases divorce would often be averted and compensation would be ordered for harm caused or damaged property of the woman. Compensation varied from 200 to 300 SPds.

If an abuse case is considered more than normal discipline, it can be brought directly to the court. The court can refer the case back to the family or headman level or if it determines that the case is severe enough order punishment. Punishment for a severe abuse case without reason is 2-8 months imprisonment and a fine of 30-600 SPds depending on the severity and extenuating circumstances. In one exceptional case the beating of a wife and the burning of her tukuls was judged equivalent to attempted murder. The husband was given 5 years in prison and ordered to pay 1.860 SPds to the wife. In most cases the chiefs will give the option for a “bail-out” of 10 SPds per month in substitution for each month of jail (a year in prison is equal to 10 months). This alternative payment is the norm, but chiefs will often eliminate it as an option in a severe case such as rape.

⁶ Further information on Azande Customary Law can be found in the MoLACD/World Vision report: Chivusia, Suzanne. *A Study on Aspects of Zande Customary Law*. Ministry of Legal Affairs and Constitutional Development and World Vision South Sudan, June 2007.



In many instances where a man has been convicted of abuse of some form the woman will be given a punishment preference, typically either payment and jail time or a divorce. Preference is often allowed upon complaint by the woman and family and demanding a divorce from the man instead of punishment. The standards for when this preference is invoked are not well understood.

Girlfriend abuse was a common crime in the Yambio customary courts. The crime relates both to young, unmarried couples and to the common practice of having a “concubine” similar to a second wife. As girlfriends have status lower than a wife and have not been exchanged for dowry, the right of the man to abuse is less. Girlfriends were regularly protected more by the law than wives. Abuse of a girlfriend was punished by 5 months to 1 year in prison and with some compensation to the woman. Since divorce and return of dowry is not a possible punishment and there is no attempt at preserving the marriage or family unit, the tolerance of beating was lower and more in favor of the woman. Girlfriends were not completely immune to punishment, however, as they are expected to not commit adultery and can be beaten within reason if they give themselves to another man.

Table IV. Azande Jurisprudence for GBV Cases

Crime	Punishment		Details of case-by-case Compensation
	for Man	for Woman	
Rape	1. 3 years prison; Compensation	1. None	1. 400 SPds; School fees
	2. 1 year prison; Compensation	2. None	2. 3,000 SPds to parents
	3. 1 year prison; Compensation	3. None	3. 130 SPds to victim
Spousal Abuse ▪ Beating without reason	4. Divorce; 6 months prison; Compensation	4. None	4. 500 SPds for feeding; Transport allowance
	5. 1 year prison/100 SPds; compensation to in-laws; apology	5. None	5. 150 SPds to in-laws
	6. 1 year prison/100 SPds (mother also sent for beating); Compensation	6. None	6. 300 SPds to wife
	7. Divorce	7. None	7. None
▪ Beating with reason	8. None	8. Adultery—1 year prison (bail out of 100 SPds); Divorce	8. Return dowry to man
Girlfriend abuse	9. Compensation	9. None	9. 200 SPds to woman
	10. 5 months prison/50 SPds; 100 SPds fine; Compensation	10. 5 months prison/50 SPds; 100 SPds fine	10. 70 SPds to woman for treatment



Table IV. Azande Jurisprudence for GBV Cases

	11. One year prison/ 100 SPds; Compensation	11. One year prison/100 SPds	11. 1,000 SPds to parents for taking virginity of girl
	12. None	12. 6 months prison (adultery)	12. None

Restorative Justice

Restorative justice practices in the Yambio customary courts focused largely on preservation of the family unit. Family dispute resolution processes are paramount and concerted efforts are made at all levels to ensure these processes are followed before any grievances are made public and any punishment or divorce is issued. Once public court proceedings are undertaken there is an emphasis on compensating the woman for any harm. Women are given money as compensation for abuse and for any costs of treatment, feeding, or transport for return to area of origin. Even in instances where a marriage is preserved and no divorce granted, a wife will often be given direct monetary compensation.

Public apologies and acknowledgment of guilt was a consideration in sentences by the court. Punishment was often reduced and a divorce averted if the man apologized and pledged not to commit the act again. There were no overt cleansing activities per se, such as those seen in the Bari tradition.

Punishment preference is an interesting restorative aspect that was seen only in Azande courts. Women were given their preference of either divorce or punishment and reform of the man and preservation of the marriage. The standards for its application were uncertain and apparently up to the discretion of the court. The either/or aspect did not provide for a full range of remedies for an abused woman but at least let her control her fate to some degree. This practiced seemed to be appreciated by the women involved.

Jurisdiction and Procedure

Azande customary courts were characterized by a strict adherence to the family and clan-level dispute resolution process for GBV cases—more so than in other locations studied. Abuse cases were heard 3 times at the family level, then 3 times at the headman level before being referred to the payam court. The role of the headman was particularly pronounced. Exceptional cases could be and were taken straight to the court. This structure seems to be present in other tribes in South Sudan, but was preserved in Azande courts to a greater degree perhaps due to lesser influence of the war in the region.



The Yambio payam court was the only court studied where a woman chief regularly sat in attendance. She had the specific responsibility of attending to cases regarding women's issues, but generally participated in all rulings. Including the woman chief there was a panel of 4 chiefs at the payam court. Chiefs from throughout the payam are rotated through the court regularly, each serving for four months periods.



Rural Azande Court, Yambio

Cross-jurisdictional issues with other tribes were present in a few cases. In each instance the court ruled that because the event happened in Azande land that Azande law applied. There were no observations of any attempt to bring chiefs from the involved tribe to the court in any of the cases, even where both parties were from the same tribe.

A well-functioning appeal system was in place between Yambio payam courts and the Yambio County Court. Litigants regularly took the opportunity to appeal their case to the County Court. No basis for appeal was needed; instead all payam court users were entitled to an appeal for any reason.

Yambio courts regularly quote statutory law for cases of rape and extreme violence or abuse. The use of statutory law is primarily connected to the Yambio County Court and the head chief in charge of the court. He has received training on the Sudan Penal Code and will incorporate it into his judgments where customary law remedies are not sufficient or do not provide the level of deterrence provided by the Penal Code.

Statistical Validity of Data

There were potential issues associated with compilation of the data in each location that require further study to determine their effect on project results, but that are necessary to detail upon presenting the results in their entirety. In each location the local consultant teams cited the acceptance of the chiefs for carrying out the project, to the degree that the chiefs often facilitated



the gathering of information by clearing up issues of law from the case and allowing the team a place to sit near the chief's bench. The attention paid to the consultants and their presence in the court could potentially have affected the adjudication process, but whether or to what degree is not easily ascertained. The methodology of the project called for local teams and extended research to minimize these concerns.

Individual interviews were conducted to gauge perceptions of the courts and on GBV issues. The local teams, led by the female consultant, were trained to conduct interviews in a manner that encouraged confidence in the interviewee to disclose their true feelings. Interviews were to be conducted outside of the court in a place that would make the interviewee comfortable, such as their home or at a community center. Most interviews, however, were conducted immediately after the case either in or outside of the court. There is some concern that the consultants' presence in the court recording the cases might have created a perceived bias on the part of the interviewee. Despite the use of local consultants not aligned with the court or chiefs, the uniformity of responses by interviewees raises some questions as to whether they were answering truthfully. The sample group of interviewees was also slightly biased as they were chosen from people already in attendance at customary courts, indicating a pre-existing preference. The focus groups and workshops were designed to cross-check the results of the interviews and in large part the same responses were given. In addition, the large number of women and men bringing cases to the courts indicate a high degree of faith and preference. However, it is the project's recommendation that the interview results be taken as approximate, not exact figures.

FINAL WORKSHOP IN JUBA

A final multi-stakeholder workshop was held in Juba to present the findings and to engage South Sudan-wide actors in a discussion on the causes and potential solutions for the GBV issues identified by the project. Fifty-nine participants attended from the GoSS Ministry of Legal Affairs, Ministry of Gender and Social Welfare, Attorney General's office, Human Rights Commission, Police and Local Government Board. UN agencies such as UNDP Rule of Law, UNIFEM, UNMIS Human Rights, UNMIS Rule of law, and UNMIS Police attended, along with members of NGOs working in GBV and rule of law such as CHF, World Vision, IRC and Family Health International. Local chiefs attended and members of the four project teams traveled to Juba to be a part of the discussion.

The results of the project were presented and the participants engaged in a group exercise to utilize their collective knowledge of GBV and customary law to analyze underlying causes of GBV and to propose programs/policies to address. The group exercise was also designed to give ownership over the results to local actors and to stimulate collaboration and knowledge between different sectors in South Sudan. Each group presented analysis and recommendations for moving forward with addressing GBV issues. Their analysis and recommendations are incorporated into the sections below.





Rumbek Town Court

V. ANALYSIS

Gender-based violence is a chronic problem throughout South Sudan. Customary courts are uniquely positioned to handle GBV cases as they are generally more accessible and preferred to statutory courts, especially by the poor and undereducated. GBV falls at the nexus of criminal and family law. Family law is inextricably intertwined with customs and traditions and is the exclusive purview of the customary courts. Criminal law currently exists in a jurisdictional limbo with some cases going exclusively to customary courts and others through the formal legal system. As a result, most GBV cases are heard in customary courts. Even serious cases such as rape are brought with greater frequency for adjudication according to customary law. While courts are more accessible and the judgment of chiefs generally respected, the actual state of customary law appears to be in flux. From analysis and discussion in each location there is a general feeling that many traditions, often those enshrining principles of restorative justice, have been replaced by retributive punishments and the use of prisons and monetary payments. Twenty-plus years of war has had an immeasurable effect on relationships, families and customs, the degree to which customary law and traditional restorative justice practices has also been effective is difficult to ascertain. What is



obvious is that customary law and the role of customary courts has evolved to fill a post-conflict dispute resolution vacuum, combining customary and statutory elements and often operating without guidance or even full knowledge of past customs.

The breakdown of family units due to war has created a strain on customary courts and the ability of customary law to handle cases effectively. Most customary law in South Sudan is founded on the principles of family and the relationships between husband and wife and the wife and her in-laws. Family law is based on the reconciling differences within the family based on a fundamental dependence between the husband and the wife. Multiple interviews and focus group discussions revealed the strain the war and post-war society has placed on this fundamental dependence. Increasingly men are more independent from their wives. They are not reliant on their wife for food or water. They also increasingly make money rather than live off subsistence, such as keeping cattle or tending to crops. The onset of a market economy has given many men the freedom to take the money earned and buy food or drink elsewhere. According to many women this has placed a strain on the family unit and has decreased men's attention and responsiveness to family (and women's) needs. Most beatings they say are the result of women demanding money for feeding and/or men drinking too much. Since many family structures have broken down, either through migration or trauma, and cases are often more difficult to adjudicate at the family level, the customary courts are increasingly used as the primary arbiter for disputes.

Within this context of increased violence against women, the breakdown of the family unit and the strain on customary courts to adjudicate more and increasingly complex cases, the courts have developed and expanded their jurisdiction in a haphazard manner. And in the process have lost some of the valuable restorative justice practices in favor of retributive punishments based loosely off the Sudan penal code. Expansion of the courts and changes to the controlling law has resulted in an inconsistent application of legal standards and punishments. Throughout, the study made note of the complexity of cases and the variety of considerations incorporated into final judgment. There was, however, an underlying inconsistency in judgments and punishments between and even within courts, often dictated by the individual standards of the executive or paramount chief. Noted discrepancies were not severe, but enough of a concern to illuminate the need for supervision and review of judgments. There was no noted established link between the customary courts and the formal system, such as an appeal and remand process, that could provide this review.

Gender-based violence is a difficult concept to address in most of the traditions in South Sudan. The concept of GBV was often taken to mean when a woman mistreats her husband by not cooking him food. Workshop participants commonly expressed this as a definition of GBV, reflecting both unease in discussing violence toward women and a male-centric outlook on harms committed between genders. In each of the tribes studied violence against women is permitted to some degree as discipline for a misbehaving woman or to teach her a lesson. This is rooted in the belief that a wife belongs to a man due to exchange of dowry. Like any other property, a man has purchased his wife and therefore is accorded the right to discipline her. As noted in the results, the degree of the discipline allowed varies from tribe to tribe. Some tribes give extra consideration and



protection if the woman is pregnant. The degree to which the woman was at fault is important in others with most courts ignoring the violence toward the woman if she had insulted the husband, committed adultery, or some similar offense. A priority is often placed on averting divorce and preserving the marriage even if there has been a pattern of abuse and the woman will likely continue to suffer. Chiefs were generally open to discussions of women's rights and the need to protect women from violence. Many have responded to past trainings and knowledge of the South Sudan Bill of Rights by increasing punishments or approving divorces for abusive relationships. The chiefs represent an extremely important and accessible part of the justice sector that can be targeted to change perceptions of violence against women and to reform administration of justice.

The importance of working with chiefs and court personnel is only half the equation, as women themselves are often ignorant of their rights and the level of justice they should expect from the courts. Women are tolerant of beatings and accept them so long as they are able to provide food to their families. It was often cited that when a man beats you he is showing he cares about you. South Sudan tribes are largely polygamist. Beating by your husband is a sign that he is not looking for another woman or more interested in his other wives. This, of course, has its limits and women will expect justice once a relationship has turned abusive. But the justice expected is often limited. Women do not normally expect compensation, but either punishment to the man to reform or a divorce, not both and rarely do they receive justice that is aimed at their restoration. Customary courts are generally responsive to the values of their constituents. Like any system of laws, the courts receive their mandate from the people and must evolve as the expectations of their constituents change. Many women cited statutory courts as a possible alternative for GBV cases should the customary courts not provide proper justice. Increasing awareness of GBV issues and the protection that should be accorded to women across society has the potential to stimulate reform within the courts as well.

There is some concern, identified in each project location and at the stakeholder workshop in Juba, that current practices of the customary courts to punish non-criminal cases such as adultery with prison sentences threatens to further burden already under-resourced prisons in South Sudan. There appears to be a need to reassess prison sentences for minor crimes in favor of monetary punishment. Related to this, is the inconsistent practice of allowing "bail out" payments for offenders ordered to prison. In some courts throughout the study convicted litigants were allowed to pay instead of serving time in jail. This practice requires further study, but it appears from the project results that the use of "bail out" payments is highly inconsistent between and within courts. Its use needs to be standardized.

Many of the issues surrounding reform of customary courts to better address GBV are universal across South Sudan and can be targeted with national policies and programs. There are also specific issues within each region, as identified in the results, that are best targeted through region-specific interventions. An analysis on those issues is presented below.

Juba



The customary courts in Juba cover a wide range of tribes and traditions. Specific courts exist for tribes with large numbers in Juba. The main court, Kator B, is predominantly a Bari court, but receives cases from multiple tribes and from across Juba. Many Bari-speakers from different Central Equatoria tribes such as the Pujulu and Kakwa chose to attend Lainya B court, predominantly a Pujulu court. The legitimacy of this court is apparently in dispute between the chiefs of Kator and Lainya. A third court receives cases from the Mundari tribe. The Kator court has established a much more clear jurisdiction than other courts studied. It has refers all rape and murder cases to the statutory system and claims its jurisdiction covers all Bari-speakers in Juba—hence the conflict with the Lainya court. The Kator court was heavily regulated by the northern government that controlled Juba during the war. Many of the powers of the chiefs were stripped, including the ability to adjudicate rape and murder cases. This has continued in the post-war period, but has at least established a clear jurisdictional line. Jurisdiction between the customary courts in Juba needs to be established and the relationship between the courts and the well-developed statutory system, including attorney general’s office and JoSS, should be better delineated, having the potential to be a model for other locations in South Sudan.

The population in Juba is generally more educated than other locations in South Sudan and their awareness of GBV is higher. This trend also extends to the chiefs. Juba chiefs took some of the more progressive stances on GBV and abuse in the family—particularly in the Lainya B court. Restorative justice and compensation to the woman was also addressed regularly. However, fees and punishment to the woman for wanting a divorce offset most compensation.

Rumbek

Rumbek courts had the highest percentage of GBV cases out of any of the study locations. The courts are generally unresponsive to wife beating cases unless the wife is pregnant. The emphasis on pregnancy cases is that the beating might injure the child. The courts regularly ignored any beatings that were induced by misbehavior of the woman and would punish the woman instead with up to 30 lashes. Rape cases were ruled in favor of the woman, but with only a 3 month prison term and 5 cows compensation as punishment. The issue of elopement was not well-defined, but it appears that many of the cases are essentially kidnappings whereby the young woman is taken away and forced to marry the man. Elopement is generally tolerated by the parents, so long as a marriage results and no cases were seen in the courts that addressed elopement issues specifically. Instead, when elopement issues were presented in the courts the issue for adjudication never considered whether the act of elopement itself was a crime.

As indicated in the results, the customary courts are a male-dominated arena and a hostile location for women participants. This environment potentially discourages women from bringing cases. The Rumbek customary courts have a closer relationship with the statutory system, partly due to their proximity to the County and High Courts. Chiefs are in regular contact with the justices in the statutory court and there is some referral of cases. Use of this relationship could potentially be valuable to reform some of the more serious issues in the customary courts of Rumbek.

Bentiu



Bentiu-area courts did not hear any rape cases over the eight-week study period. This is an interesting and potentially disturbing trend. According to the local consultant team rape cases are brought to the customary courts but none during this period. When compared to the other locations that averaged three to six cases, the lack of cases raises questions. Unfortunately this trend was not noticed until after the local level workshop, so its reason could not be proved further among local actors. The most likely reason is that rape cases are simply not taken to the courts regularly but instead dealt with through family mechanisms or by forcing the perpetrator to marry the woman. This a potentially effective type of restorative justice, but would require further study, including interviews with affected women to gauge whether the resolution was favorable to them, or done instead to benefit the family and avoid any public stigma. If forced marriage is the underlying reason for the lack of reported rape cases, there is little disincentive for men to not commit rape. In fact, it provides some incentive to men to rape a woman they would like to take as a wife.

As in Rumbek, elopement cases are common, but not for the crime of elopement itself but for beatings, dowry payments or other acts that resulted in no marriage after the elopement happened. Consideration was not given as to whether the woman consented. The issues created by elopement need to be studied and addressed specifically with tribal leaders and its practice examined as a violation of women's rights.

Bentiu courts are also predominantly male and their gender composition needs to be examined as a disincentive for women to bring cases to the courts. The Bentiu court practice of having chiefs from both Dinka and Nuer tribes present to adjudicate inter-tribal cases is an important practice whose feasibility should be studied for potential application in customary courts in multi-ethnic regions across South Sudan. The Bentiu model is also applicable to proposed regional customary courts that hear cross-jurisdictional and complex cases on appeal.

Yambio

Azande courts were the most responsive courts to women's restorative justice needs. Once cases reached the court punishment would generally focus on compensation to the woman, including giving preference of punishment to the woman. The problem in Yambio was reaching the court. Cases were heard at the family and clan levels first to such a degree that a woman would have to suffer through years of an abusive relationship before she could get a court decision for punishment or divorce. Preservation of the marriage is paramount.

Like the other courts, there was a good deal of inconsistency in court judgments. Seemingly identical cases would be given different verdicts –divorce, prison term and monetary compensation in some, divorce alone in others. An appeal system between the payam and county customary courts was regularly used, but did not seem to have any direct effect on consistency of judgments. There probably needs to be a more active role of customary court officials such as the Paramount Chief and/or statutory court judges to review and standardize customary court judgments.



The Yambio courts were the only courts where constituents actively complained about corruption. Corruption is a potential plague for any judicial system. The transparency of the customary courts should limit the degree to which corruption can take root, but the examples noted in Yambio illustrate the need to incorporate chiefs and customary court personnel into greater judicial integrity and oversight efforts.





Lainya B Court, Juba

VI. RECOMMENDATIONS

A number of important initiatives are already underway in South Sudan that address GBV issues in the courts. The Ministry of Legal Affairs is developing programs that will research and codify customary law, while Local Government Boards throughout the country collaborate daily with chiefs on important local matters. The recommendations of this section are born out of a collaborative process with many of these local actors that attempts to reinforce on-going important initiatives and propose new ones where feasible. These recommendations target GBV issues specifically, addressing larger structural issues in the process.

- Documentation efforts of the customary laws of South Sudan have value only in so much as they identify violations of women's rights and increase consistency of judgments according to principles in the ICSS. Documentation should not occur in an academic vacuum or equate to codification, but be linked to traditional authority bodies and judicial review efforts that



treat customary law as an evolving oral tradition. Throughout the documentation process customs should be continually analyzed and differentiated from modern, non-customary practices that violate women's rights. Identification of needed areas of legal reform should be passed to coordinating bodies and incorporated into strategic planning.

- The scope of the current study should be expanded in some form to cover all areas and tribes of South Sudan and to address a larger sample size of litigants and both rural and urban courts.
- Continued work to organize regional chiefs forums should continue. Programs by UNDP, MoLACD and others should be expanded in a coordinated effort to cover all regions of South Sudan. A universal approach needs to be agreed upon that incorporates the variable tribes in each region and that links these fora in a meaningful manner to customary documentation and reform efforts. The collective involvement of executive and paramount chiefs in the fora is the most effective way to identify champions for needed reform.
- Documentation efforts of customary law are also important to identify restorative and community-based dispute resolution mechanisms and similar traditions that have been lost during the war years. Customary law can be revived and its restorative elements embraced by involving elders and historical texts that detail customs from before the war.
- Culture is not static and recognition is needed that some traditions are not well-suited to the current South Sudan context. Returnees from the Diaspora and the increased influence from East Africa and further abroad have introduced values that are often in conflict with traditions and customary law. Workshop participants specifically identified the practice of polygamy and the need to standardize the definition of marriage. South Sudanese need to continue this discussion to a broad spectrum of cultural values and decide for themselves what values work best for South Sudan as it moves forward in peace. To this end, awareness campaigns need to be conducted regionally on women's rights and specifically on GBV and the protection that should be afforded women for GBV cases in the courts.
- Institutional reform needs to occur within the Judiciary of South Sudan to increase the application of their mandate to provide technical supervision to the customary courts.⁷ Education and reform of the customary courts through the chiefs can only occur if reinforced by technical oversight and review, correction and remand of cases misjudged by the customary courts. Once jurisdictional standards are set, harmonization of customary and statutory law is also reinforced by appellate review. Proactive case review polices need to be developed and applied to foster a healthy appeal and remand system between the customary courts and the judiciary. The importance of this developing this system is heightened by the constant evolution of South Sudan legislation and the still nascent inception of the ICSS and Bill of Rights.

⁷ See Chapter 11 of the South Sudan Code of Criminal Procedure, 2003 (outlines the hierarchical structure of the courts and the relationship between customary and statutory law systems)



- Clear lines of jurisdiction need to be established between customary and statutory law and between and within the customary and statutory courts. Family law currently falls squarely under customary law but many areas of GBV that have criminal elements currently exist in jurisdictional purgatory, such as rape. Clear lines of subject matter jurisdiction should be established giving deference to the traditions of tribes solving criminal matters through restorative justice practices. Where specific legislation outlaws traditional practices, the courts should be incorporated into the process and assisted in applications. Lines of territorial or personal jurisdiction also need to be established at the customary court level. In some instances customary courts use the traditions of the region exclusively and in other instance chiefs from the traditions of the litigants are brought to help adjudicate. A uniform standard and practice needs to be established across all tribes for such cross-tribal jurisdictional issues and reinforced through regular appellate review. Beyond this, the territorial breadth of courts need to be firmly linked to administrative boundaries such as payams or counties and a decision made on the existence of courts for other tribes that exist in large numbers within these boundaries. The Bentiu court system of having a sitting panel of chiefs from the two major tribes in the region (Dinka and Nuer) is one possible model.
- Professionalism in the office of the chief and customary court judge needs to be strengthened and institutionalized. The current status quo of low corruption in the courts due to transparency of process can only be maintained through introduction of systems for reinforcing professional conduct and giving voice to citizen complaints. Chiefs should be incorporated into the broader judicial oversight and discipline framework. A code of conduct for all customary court personnel should be developed in conjunction with the chiefs fora and enforced through internal ethics review committees. Current citizen participation and court transparency should be further encouraged by giving greater voice to customary court users. An anonymous complaint office should be established with the chiefs fora and/or local government board to allow reporting of ethics abuse and impropriety such as bribery.
- Police play a critical role in the processing and enforcement of GBV cases. Workshop participants continually raised the importance of increased training and sensitization to police for handling GBV cases. Misapplication of Form 8 has discouraged reporting of rape and other severe violations and in some cases has been used as a rationale to deny medical treatment resulting in death. Use of Form 8 should be suspended throughout South Sudan until its use is fully understood by all sectors and police are well-trained in its applications. Focal points in the police should be placed at clinics and hospitals specifically for handling GBV cases. The Thuthzela Centre program in South Africa—emergency GBV response units composed of police and medical workers are placed directly in hospitals—is a model for addressing GBV cases in high-incident areas. Chiefs need also to be informed that Form 8 is not an evidentiary requirement for hearing or finding guilt in GBV cases, given its current



inconsistent application. At present, chiefs are unsure of when Form 8 is required and whether its use is required or dispositive.

- Civil society actors, especially women’s legal representation and advocacy organizations, should receive more support to monitor and challenge gender-based violence cases in customary courts. Civil society are perhaps the most effective actors in straddling the plural legal orders of South Sudan. They can assist women victims to find the best forum for protecting their rights and ensuring adequate compensation and support. As active members of communities they are also best positioned to advocate with traditional leaders for changes in their interpretation and application of customs to GBV cases and to demand oversight and reform from the government. Civil society can also ensure access to the full range of support services – legal and non-legal – that victims of GBV should be accorded.

VII. CONCLUSION

Even now restorative justice is happening in the courts. It is there. But we can help empowerment so parties solve their disputes in absence of the courts. –Central Equatoria Attorney General–Juba Workshop, March 29, 2008

The importance of customary courts to the administration of justice for GBV cases is evident. More cases are brought to the courts, the chiefs are generally trusted as arbiters of disputes, and the courts hold a unique position at the intersection of family law and criminal law that heightens their importance to GBV disputes. While many of the traditions in South Sudan are contrary to human rights principles and current legislation, the restorative justice elements of these traditions have the capacity to heal and promote unity better than their statutory retributive counterparts. As such, it is important to work within the context of customary courts and customary law to improve justice without destroying or replacing existing, effective traditional practices. The community-level discussions and follow-up activities initiated by this project need to be reinforced at once through progressive policy-making and the implementation of GBV-focused projects in accordance with the recommendations of this report and the multiple stakeholders that contributed to its development. Collaboration of all GBV-related sectors is essential in moving forward to effectively address the harms of GBV and promote justice and reconciliation in the communities of South Sudan.



APPENDICES

APPENDIX I—CUSTOMARY COURT OBSERVATION FORM

APPENDIX II—INTERVIEW FORM

APPENDIX III—FOCUS GROUP QUESTIONNAIRE



Appendix I

Customary Court Observation Form

Observer's Name _____

Court Name and Location _____

Tribe _____

Date _____

Fill out each day you visit the court

THE COURT

1. What is the environment like in the court house—is it noisy, is it a building or a tree, are there many people?

2. How many women are present? How many men?

3. How many chiefs are present? What tribes are the chiefs from?

4. How many cases were there total today?

How many cases on gender based violence?



FOR EACH GENDER BASED VIOLENCE CASE:

Who are the Participants?

Plaintiffs

How many?

Male/Female:

Age(s): _____

Village/town(s): _____

Tribe(s): _____

Defendants

How many?

Male/Female:

Age(s): _____

Village/town(s): _____

Tribe(s): _____

What is the crime? (circle one)

- | | | | |
|----------------------------------|-----------------------|---------------------|------------------|
| Rape | Other sexual abuse | Wife beating | Girlfriend abuse |
| Police/Military beating of woman | Family abuse of woman | | |
| Genital cutting | Murder | Forced Prostitution | Other |

What is the status of the woman? Is she a family member? Is she pregnant? Is she a single mother or disadvantaged (IDP, etc.)?



- 1. Summarize in your own words, very briefly what the case is about.**
- 2. What law is being applied—customary or statutory? If customary, which tribe's law?**
- 3. What does the law say about the gender-based violence in issue?**
- 4. Was the case heard before at the clan/family level? What was the decision?**
- 5. Are there many observers and is anyone disputing what law should apply?**



5. What was the decision of the chiefs in the case?

6. What was the punishment? Prison? Payment to victim?

7. Did the woman express satisfaction with the result?

8. Was the convicted made to make amends and compensate the victim? In what way?

9. Do you think it was the right outcome? Why? Why not?

10. Were there any vulnerable groups involved in the case—children, IDPs, handicapped, etc...?



11. Other notes, observations (including whether HIV positive, children or abortion related):

.....

Did you have problems observing the case or when taking notes and why?



Appendix II

Interview Form

Interviewer's Name _____

Location _____

Date _____

Interviewee's Name _____

Village/Town _____

Tribe _____ Gender _____

Age _____ Member of Disadvantaged Group (IDP, Returning Refugee)? _____

Fill out for each person interviewed in conjunction with a customary court GBV proceeding

12. Is interviewee a victim, accused or observant?

13. What was the crime in the GBV case at issue?

14. Did interviewee agree with the decision of the court?



15. Was the proper law applied? What was the law?

Customary?

Statutory? What tribe?

16. Did the chiefs interpret the law properly?

17. Was the punishment fair?

18. Did most observers agree with the decision?

19. Do you have faith in the court to be fair and provide justice?

20. Do you feel that you, or the victim, is in a better situation because of the court's judgment?



21. **Would you prefer to bring a GBV case to a statutory court?**
22. **Are you aware of the rights of women in GBV cases under the Constitution of South Sudan?**
23. **Other notes, observations (including whether HIV positive, children or abortion related):**



Appendix III

Focus Group Questionnaire

Gender Based Violence

- What is Gender-Based Violence (GBV)? Give examples.
- Is GBV a problem in the community?
- Where does this occur? In the home, at work, on the street, etc...?
- Who commits the offense?
- Why does this occur? Is it encouraged by customs or lack of punishment of the person who commits the offense?

Enforcement/Customary Courts

- When GBV occurs what do women do in response? Nothing, take case to family, take case to police, take case to court, etc...?
- What is done after the case is reported? Is adequate action taken?
- Do women trust law enforcement officials, chiefs or court officials?
- Do women go the hospital/clinic after a GBV offense?
- Do women fill out Form 8 or get medical forms that document their injuries?
- If take to court, what is the punishment of the person who commits?

Restorative Justice

- Is the woman compensated for the act? By money or cows/goats? Is the accused made to apologize to the woman?
- What is the best compensation that can be given to the woman?
- Will women seek a divorce from their husband after a GBV case?

