RESEARCH ARTICLE

Community Security and Justice under United Nations Governance: Lessons from Chiefs' Courts in South Sudan's Protection of Civilians Sites

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This article examines the public authority of chiefs' courts within the United Nations Mission in South Sudan (UNMISS) Protection of Civilians Sites (PoCs). After December 2013, UNMISS peacekeepers opened the gates of their bases to around 200,000 civilians fleeing war. This unintentionally created a legal and political anomaly. Over time, conflicts and crimes rose within the sites, and UNMISS improvised a form of administration. But while the internationals sought technical solutions, people displaced within the sites turned to familiar 'customary' methods to manage problems of insecurity, establishing chiefs' courts. The PoC sites became an arena of plural authorities, with chiefs working alongside camp administrators, peacekeepers and humanitarian actors. We explore how and why the chiefs responded to insecurity within the sites and whether they engaged with, or diverged from United Nations actors and international norms. We demonstrate that justice remains central to the provision of security in contexts of war and displacement. International peace interventions are rightly wary of 'customary' justice processes that prioritise communities and families at the expense of individual rights, but this unique case shows that they are sources of trust and consistency that are resilient, adaptable and can contribute to human security.

A husband accused his wife of adultery in a customary court in a 'Protection of Civilians' site (PoC) in Juba, South Sudan, in March 2017. His claim was rejected for lack of evidence and the chiefs ruled that the woman should move to her family's house and the couple should 'receive counselling', but they were not able to enforce this decision. For one thing, the sites were under the authority of the United Nations Mission in South Sudan (UNMISS), a regime which did not regard adultery as a crime. For another, UNMISS did not recognise the authority of the chiefs' courts and kept its distance from many of the disputes they tried to reckon with. The chiefs knew that interfamilial problems could rapidly become intercommunal ones and erupt into violence in the volatile, traumatised setting of the camp. They sought to manage relationships and prevent tensions from

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escalating. In this case, their judgement was ignored, and interpersonal and self-inflicted violence ensued. The husband refused to respect the court's decision and forced the wife to return to his home; she later hanged herself, committing suicide.[1] The case reflects some of the grave dilemmas facing local and international authorities concerned with promoting security during protracted crises and war. It provides grounds to re-examine the connections between justice and security in contexts of war and displacement, and to identify implications for international peace missions and humanitarian interventions.

Situations of protracted violent conflict and crisis are usually defined by the erosion of the rule of law and legitimate political authorities. Yet while states are in crisis and international actors have intervened to 'protect civilians', local authorities may be central to justice and security provision. 'Customary' ideas about security and social accountability flourish even when states or international actors promote competing notions of law and morality (Macdonald and Allen 2015; Porter 2015; Weigand 2017). Relatedly, we know that refugee sites tend to be characterized by plural jurisdictions and understandings of law. The vulnerability of refugees does not stem from their demand for justice (Riach and James 2016) and displaced people do not simply accept a state of 'legal limbo' but show 'agency within the legal field' (Holzer 2013).

Southern Sudan has been mired in civil war, mass killings and extensive human rights violations for decades. In 2011, South Sudan gained its independence and UNMISS was authorised to 'support the Government in peace consolidation' including 'establishing the rule of law, and strengthening the security and justice sectors' (UNMISS n.d.). After war broke out again in 2013, the mission remained with a new priority to 'protect civilians'. UNMISS responded to the crisis by providing temporary asylum within their bases for civilians whose lives were under threat. Within a few years, some 200,000 civilians had taken refuge in sites scattered across the country (UNMISS, 2016). They fled there to escape the targeted killings of civilians, including by government forces, as well as to avoid fighting between the South Sudan People's Liberation Army (SPLA) government forces and rebels of the SPLA in-Opposition (SPLA-IO). As the war continued, the bases became 'Protection of Civilians sites'. They were transformed into unique humanitarian spaces under UNMISS authority, from which warring parties were mostly excluded. Yet the PoCs also reflected in microcosm some elements of the insecurity and plural forms of authority and law that prevailed outside their boundaries, and UNMISS struggled to maintain control.

UNMISS set a precedent in international protection by hosting civilians within its bases for several years, but it fell far short of fulfilling its protection mandate. The mission barely even attempted to protect the majority of civilians who remained outside of the PoCs. It initially pushed back against humanitarian initiatives in the PoC, concerned that these would prolong people's stay, but allowed the supply of food, water, medicine and other necessities. It had difficulty excluding small arms and former combatants from the sites (CIVIC 2015: 13). It concentrated security provision on maintaining a physical barrier to separate those in the PoCs from armed forces outside.

Tragically, on several occasions, the peacekeepers failed to guard the perimeters of the PoCs effectively and to protect residents from attacks. In April 2014, 47 civilians were killed and at least 100 injured in an attack on Bor PoC (Arenson 2016: 34). In February 2016, UNMISS was accused of a 'glaring failure' to defend people in the Malakal PoC against an attack which left more than 25 dead and 120 injured (MSF 2016: 2). In July 2016, 53 South Sudanese civilians were killed and 234 injured in attacks upon the Juba PoC sites; a Chinese peacekeeper was killed and hundreds more people were raped or murdered in the vicinity of the Juba PoCs (UNMISS and OHCHR 2017: 15–16).

Meanwhile, UNMISS encountered problems of insecurity and criminality within the PoCs

on an everyday basis. By September 2015, 2,900 security incidents were recorded (UNSC 2015b). These ranged across a wide spectrum from killings, sexual violence, crime and attacks against UN and humanitarian personnel and included issues such as inter-communal fighting, theft, gang violence, and domestic violence (UNSC 2015a; see also UNMISS HRD 2015: 16). Other disputes between individuals, or within families, related to bride wealth, adultery, and minor assaults went unrecorded in such reports, but arose on a routine basis, according to our research. Insecurity was rife amid the social disruption and uncertainty of displacement.

UNMISS faced disorder within the camps but it lacked the legal mandate and mechanisms of justice to resolve disputes and prosecute crimes. The PoCs were under a quasi-government of the UN and the international regimes of law that it embodied. UNMISS' powers were constrained by its mandate and Status of Forces Agreement (SOFA) with the Government of the Republic of South Sudan. The mission was not prepared for an executive policing role, either legally, or in terms of policy and resources. It did not have the legal authority required for prosecutions, and the South Sudanese state retained sovereignty over the PoCs, even if South Sudanese law could not be enforced within the sites without the mission's consent (Stern 2015: 11). In essence, United Nations Police (UNPOL) had responsibility for policing the site, but had neither the mandate, nor adequate personnel to police the displaced people, as acknowledged in a UN review (UNSC 2015: 10).

Customary chiefs and other community leaders rapidly stepped in to fill gaps in justice and security mechanisms within the PoCs. In one sense, this was predictable; customary chiefs and their courts have persisted, adapted and governed at local levels amid South Sudan's previous rounds of conflicts and killings (Leonardi 2013). Yet their establishment in the new setting of the PoCs was a natural experiment. It allows us to observe the invigoration and construction of chiefly

authority, and its changes and continuities under a novel form of global governance. It also calls for us to explore the divergences and interactions between 'customary' notions of security and those promoted by international peacekeepers and humanitarians.

Firstly, we examine the historical significance of chiefs' courts and how chiefs reproduced their authority through the establishment of justice processes within the United Nations sites. In the second part of the article, we discuss UNMISS' efforts to establish security and the extent to which the mission sought to influence customary authority. Finally, we discuss the decisions of chiefs' courts, what these reveal about the contributions of the courts to security, and the relations between local and international norms and practices of justice.

Our findings are principally based on records from 395 court cases gathered in the Juba and Bentiu PoCs from July 2015–2016, as well as ethnographic research and documentary sources.[2] We involved a group of paralegals and researchers from the PoC communities as court observers; their concerns about insecurity in the sites also informed the research. We analysed the archive of court observations and provide selected cases as illustrations.

During the period examined, the status of chiefly authority in the PoCs remained indeterminate and their contribution to security was precarious. The courts and their decisions were not officially acknowledged by UNMISS, even though UNPOL relied upon community actors to help resolve disputes. The lack of clarity in relationships between chiefs and other authorities, and the reluctance of UNMISS to recognise and actively support the courts, contributed to the more general uncertainties of life in the camp. There were opportunities for people to evade the courts and to seek assistance from alternative authorities, so chiefs had no guarantee that their decisions would be implemented. The courts promoted the concept of a common Nuer identity that in some ways paralleled constructs employed by military-political elites to build support for

armed opposition. Plus, court decisions delivered judgements that routinely undermined the rights of women and youth, contradicting international human rights principles that UNMISS aimed to uphold.

Nevertheless, the chiefs contributed to unifying the dispersed sections of the Nuer within the camp, in aid of security. Chiefs' courts became a popular justice forum within the PoCs. Their dialogical and transparent justice processes contributed to binding together the diverse group of displaced people and to managing disputes between them. The accessibility and regularity of the court processes were the bedrock of their contributions to security and to chiefly legitimacy. Customary authorities held sway, despite the presence of international protection forces.

There were tensions between international and customary norms of security and justice, and between different security providers in the camp, but they shared concerns about insecurity and interacted with each other. On occasion, chiefs referenced human rights principles they associated with UNMISS in their decisions, paying some attention to international norms. International actors also innovated, although their responses were *ad hoc* and inconsistent. UNPOL supported community policing, but did not acknowledge the civil authority of the courts, although this was needed to restrain the new community police. With no overarching authority and a lack of consistency and trust in relations between chiefs and UNMISS, the security situation within the camps has been unstable. The chiefs' courts in the PoCs show adaptive responses to the turbulent conditions of war and displacement that international interventions must learn from, and find better ways to engage.

Establishing Chiefly Authority in the PoCs

The political landscape in South Sudan includes plural or competing public authorities that command legitimacy or 'a minimum of voluntary compliance', including chiefs, church leaders and militia groups. Although they do not fit standard institutional categories and have a plastic and contingent tendency, remaining unstable and constantly in formation, these everyday political actors should not be underestimated (Lund 2006). Public authorities can establish their legitimacy through public goods provision (Hoffman and Kirk 2013: 9) including through justice mechanisms. Whether they manifest as a 'protection racket' or 'legitimate protector' (Tilly cited in Kaldor 2014: 65), or combine elements of both, they are of central relevance to the question of how to establish security in protracted conflicts and crises. Chiefs matter politically, both within and outside of the PoCs, based on the resilience of their authority historically and its resurgence in this new humanitarian setting.

Chiefly authority in South Sudan

The political significance of chiefs and their association with government has varied over time and space in South Sudan, but chiefs generally cemented their authority by being able to 'deal' with government, and broker relations between it and 'home' communities (Leonardi 2013). Governments in South Sudan have co-opted chiefs as part of their local structures of government, while chiefs have also made use of governmental power. The chiefs' courts were an initiative of the Anglo-Egyptian government in the early 20th Century (Johnson 1986); they were formally recognised in the 1930s as part of 'native administration' and have been used by colonial and post-colonial governments since. The post-2005 Government of South Sudan entrenched customary law and chiefly authority in its constitutions. However, chiefly authority is not simply delegated; it must be won through displaying allegiance to the community and acting as an arbiter of customary law.

Chiefs' courts and customary law rely on the fiction of continuity with normative traditions that predate colonialism, but have evolved from a complex intermingling of local, national and international influences, having been refashioned to satisfy political and

social pressures, shifting ethical foundations and the demands of daily life. While many chiefs' courts claim to apply an established set of laws – such as the Wathalel laws amongst the Dinka or the Fangak laws amongst the Nuer – there is variation in their application and judgements also depend upon situational interpretations (Leonardi et al 2010: 28).

Most importantly, chiefs' courts have been considerable experience of violence prevention. Chiefs have used courts to set limits to violence: there is still a 'strong perception that the courts are the principal means of avoiding violent outcomes of disputes' (Leonardi et al 2010: 30; Santschi 2014: 49). People have engaged with courts in pursuit of protection, social regulation and security, even when other legal forums are available (such as statutory courts). In turn, local government authorities have held customary courts accountable for insecurity when they fail to settle cases. Both historically and in the present, chiefs and their courts have upheld a form of authority grounded in civil procedures, against military alternatives. But they have also been implicated in violence and human rights abuses. The courts have frequently been responsible for 'chronic miscarriages of justice for violence against women' (Mennen 2010: 218; Ibreck et al 2017: 10–11).

Courts in the PoCs

Local leaders assembled customary chiefs' courts soon after entering the Juba and Bentiu PoCs and they functioned on a routine basis thereafter. Our court reports demonstrate a steady flow of court hearings – an estimated average of fifteen hearings per week. They heard cases within a matter of days after a complaint was reported. The courts were generally held publicly under a tree by a panel ranging from four up to seventeen chiefs, and sometimes including one or two women. The hearings often lasted for several hours. As well as the parties to the case and the court panel, there were always other residents of the PoCs in attendance, usually more than fifteen, sometimes over fifty. The courts collected fees and issued substantial fines and

punishments. Their decisions were taken seriously, and usually accepted, by all the parties. The power of customary authority was apparent in the payment of court fees that ranged from 100 South Sudanese Pounds (SSP) upwards[3] and in the acceptance of decisions that included fines and punishments.

People had the freedom to seek, or comply with, customary prescriptions in the context of the PoCs, at least to a greater degree than was possible in any other part of South Sudan. Indeed, they had reasons not to attend, since the courts were not officially recognised by UNMISS, while elsewhere customary authorities have often been implicitly backed by the force of government. There was some resistance to the voices of custom, especially from youth gangs (Justice Africa 2016: 56). However, there was also considerable evidence of routine justice-seeking and voluntary compliance with the courts.

Constituting Community

Chiefly authority relies on a conception of 'home community', and the courts were active in making this meaningful. The displaced people were far from being a cohesive group, although the majority in both the Juba and Bentiu sites were of Nuer ethnicity.[4] Instead, the residents reflected existing social cleavages among Nuer people, including differences in regional, clan and section identities, and in experiences of wealth, education and urban or rural living. Residents in the Bentiu PoC sites included people who previously lived in urban Bentiu, as well as people who lived abroad and people who had previously never left their rural, home village. In Juba, residents came from across South Sudan and included people who came to the capital for a plethora of different reasons, such as education, jobs and refuge. In addition, Nuer people had diverse experiences of government and political allegiances.

Most people in the PoCs had experienced successive traumatic events. In a survey over 95 per cent of people reported that a member of their household had been victim of one or more violent crimes, most of them conflict

related between 2013 and 2015 (Deng and Willems 2016: 3). Families were torn apart; they had lost relatives, livelihoods and assets, such as cattle and land due to the war (see Deng et al 2015: 16). As people ran to the PoCs, they became detached from former roles and relationships. Notions of community and custom were disturbed and had to be constituted within the new setting of the camp.

The processes of identity construction were not confined to the camp but were also being shaped by and feeding into wider political processes, including the ambitions of warring parties. Political and military leaders deployed ethnic narratives as a strategy to mobilise supporters during war. Their task was complicated by historical grievances and bloodshed between Nuer, especially in the 1990s (Johnson 2003). The targeting of Nuer civilians during war created a traumatic bond that leaders sought to instrumentalise, but divisions emerged and political allegiances were both forged and contested by Nuer elites during the war. Notably, while most Nuer elites joined the SPLA-IO, members of the Bul Nuer sided with government (Small Arms Survey 2016). Political competitions on the outside contributed to concepts of identity within the sites.

The chiefs forged unity around the idea of a shared territorial homeland – a 'Nuerland'. Chiefs were selected to the court to represent a 'home' county in the 'Nuerland', although the counties were politically-unstable administrative units whose boundaries were changed by military and political interventions during the conflict. The counties served as an organisational device: by having chiefly representatives from each county the courts could claim to represent all the people of the Nuerland. But it also reinforced an ideal of a territorially-linked identity associated with the war, and obscured the reality that most of the displaced people had fled to the camp from multi-ethnic urban settings, not 'home' counties.

Relatedly, the courts were integral to the process of making chiefly authority and legitimacy. The status of chief was conferred within the sites, and had to be reinforced there. The

chiefs volunteered and were chosen by people from their 'home' communities, who were asked to select and vote for a chief based on their reputation for honesty, impartiality and trustworthiness (Ibreck and Pendle 2016: 24). Some of the chiefs who were appointed had no prior experience of the role. They constructed their legitimacy by resolving disputes and nurturing collective identity in the courts.

The courts promoted Nuer unity and constructed the legitimacy of chiefs in the PoC. They physically brought people together on a regular basis, for formal and informal interactions around what it means to be a community. They upheld a notion that all Nuer can receive justice from a common court, irrespective of origin or political or economic status. Chiefs narrated customary laws as if they were a fixed set of principles that constituted a common Nuer tradition, even though 'Nuer law' is known to have persistent local variations (Howell 1954; Johnson 1986). In these ways, they produced an idea of a shared moral community, contrasting with the realities of historical and recent experiences. Law was conceived as a guide to morality and an expression of continuity with an (imagined) peaceful, homogenous past. Still, the authority of the courts remained precarious, given the insecurity of their present situation.

International Justice and Security

UNMISS had a responsibility to confront the problems of justice and security in the camp, but was wary of involving and empowering customary authorities. The mission was expected to conform to and promote international human rights norms – these were at the core of its original purpose and integral to the practical tasks that it set out to achieve, including the promotion of the rule of law, civilian protection and human rights monitoring (UNMISS 2017). The conceptions of security, law and justice espoused by UNMISS contrast with well-known tendencies of chiefs' courts, such as the lack of legal representation, discrimination and violence against women (Mennan 2010).

Although UNMISS lacked the mandate for executive policing, over time it developed policies aimed at improving security in the PoCs, including 'holding facilities' and assessments to determine when a suspect or offender could be excluded from the camp. But these were limited, bureaucratic measures and UN staff themselves expressed concern that their responses failed to meet international human rights standards, due to prolonged periods of 'holding' suspects and risks associated with 'handovers' and expulsions (UNSC 2015b: 8; Stern 2015; Justice Africa 2016).

Unable to resolve the dilemmas of security and justice within the camp independently, UNMISS involved community actors in a variety of ways, both formally and informally. Its main contributions were to support community-led management structures within the camp, and support for community policing. On paper, the mission recognised 'traditional leaders' should be included in conflict transformation initiatives – 'to strengthen their role as arbiters and mediators within dialogue processes' (UNSC 2015b: 10–11), but its interactions with the chiefs were neither coherent nor sustained.

The mission failed to develop clear and effective policies in response to the problem of justice provision within the PoCs. At first it encouraged an Informal Mediation and Dispute Resolution Mechanism (IMDRM). The IMDRM concept echoed elements of the chiefs' courts, but its guidelines aimed to reduce and limit their powers, including by avoiding sexual or gender-based violence cases to avoid breaches of UN standards (Stern 2015: 12). The intention was to mediate and manage conflict – to 'prevent the escalation of and mitigate disputes'[5] – rather than to act in a judicial capacity, and it was expected to work without issuing fines and punishments. The result was opaque, with some PoC residents assuming the IMDRM was the UN name for their chiefs' courts, while UNMISS held back from publicly acknowledging the chiefs' judicial authority.

This equivocation was not surprising. UNMISS Human Rights Division was critical of

customary courts outside the PoCs for acting beyond constitutional limitations during the conflict, and imposing cultural norms that violate the rights of women and girls. An investigation concluded that courts are 'adjudicating on cases beyond their jurisdiction, violating fair trial standards, and imposing illegal fines and sentences in contravention of national laws and international human rights principles' (UNMISS HRD 2015: 30). Humanitarian agencies working in the PoCs also expressed concern about the risks of harm from the customary courts – while recognising that they might contribute to violence reduction, they called for monitoring of court decisions to encourage fairness and prevent harms (South Sudan Protection Cluster 2014).

Some compromises and tacit understandings developed. UNPOL did not regulate the daily practices of the courts. But the UN police officers could be contacted when complaints arose. They also insisted that the chiefs should not have the power to handle the most serious cases involving rape or murder, which had to be referred to UNPOL.

UNPOL made efforts to provide guidance and training to volunteer youths to undertake community policing as members of a Community Watch Group (CWG) through occasional workshops. The aim was to reduce violence and criminality within the camps in general, but the hope was also that it would improve communication between UNPOL and the IDPs. During one such training session, UNPOL officers stressed that security for people in the sites required 'cooperation and coordination'; they called on the trainees to help enforce rules and prevent criminal activities, including increasing assaults by IDPs upon UNPOL officers (UNPOL 2015).

The boundaries between UN initiatives and customary authorities were sometimes blurred and the representatives of 'custom' and their relationship with UNMISS evolved over time. But UNMISS' approach was largely a functional one and privileged policing over judicial mechanisms. Its attempt to influence the courts, the IMDRM, exemplified a view that the courts were a potentially useful

mechanism for dispute resolution – that could be reformed and made to function better; it did not reflect a recognition of the courts' role in the constitution of legitimate authority and moral community. Actions by the internationals suggested a willingness to explore cooperation, and an implicit reliance upon customary authorities; but were neither coherent nor consistent.

Courts in Practice

We now turn to an examination of how the courts functioned in practice. The majority of cases brought to the courts during the court observation research period (July 2015–2016) related to familial matters, including petitions for divorce, and claims of adultery. There were also instances of petty crimes, including theft. We focus our analysis on cases relating directly to physical violence and insecurity or human rights issues.

Dealing with Physical Violence

Chiefs' courts were proactive in trying to prevent or stem violence. The chiefs recognized that the most serious cases could not be dealt with and had to be referred to UNPOL, but they were ready to handle a range of accusations relating to beatings, domestic violence and fighting between individuals and groups. They also took cases that were brought in fear of future violence. It was common for a case to be 'brought to court in order to prevent a quarrel and avoid the fighting between two parties'. A common reason given for a judgement was 'to try to avoid a fight and solve the case'.

It is striking how quickly cases that might provoke anger were heard – disputes could be dealt with through the courts in days or even hours when they were treated as urgent matters. For instance, a seven-year-old child in Juba PoC3 was injured in a traffic accident on 10 October 2015 in the evening. The following morning, the motorcyclist accused of the injury was brought to court and the parents received a swift settlement and compensation.

The courts' timely responses did not prevent people from raising longstanding grievances.

A person bringing a case in anger or distress had a good chance that their complaint would be heard at length and accepted, even after the passage of time. We see this in a case on 17 November 2015, brought by a young woman who accused her neighbour of fighting with her and injuring her baby while she was pregnant. Their fight at the water point had occurred nine months previously, and the complainant was convinced that it caused the infant's death. The accused admitted the fight but rejected the charges. The complainant did not report the case at the time, and no medical evidence was presented, but this did not prevent the chiefs from ruling in her favour and awarding compensation of five cows. The crowd was growing restive, 'security was poor'. The chiefs saw the 'need to bring down the tense situation between the two families since the child died.'

The chiefs strived to prevent people taking matters into their own hands. The risks of intercommunal violence were starkly apparent from fighting between hundreds of IDPs, that ended in one death and 32 injuries in the Juba PoCs on 8–11 May 2015 (Arenson 2016: 33). The battle was sparked by the discovery that a girl from one section, the Haak Nuer, had been made pregnant out of wedlock by the member of another, the Bul Nuer, and that the young man refused to pay customary bride wealth. The peacekeepers were unable to halt the clashes which ended only after the chiefs mobilised an 'N4' community security force, made up of youth members of each of the Nuer sections, and brought together parties for mediation.

The courts were persistently engaged in efforts to limit the 'cycles of more revenge and counter revenge' that have been a historic feature of conflicts in South Sudan (Jok 2014: 18). A case in Bentiu is a direct illustration of this. On 14 June 2016, a young man brought a case to the chiefs' court in the Bentiu PoC against an elderly man who attacked him with a knife. The accused explained that he was seeking revenge for the killing of one of his relatives in December 2015 by one of the young man's relatives. The chiefs responded with strong

condemnation: 'We came here [the PoC] for protection and not to kill each other.' They fined the elderly man three cows and a sentence of imprisonment for six months and praised the complainant for bringing the matter to court rather than fighting back. Both parties accepted the judgement.

Many everyday cases of violent assault were also brought to the courts. In these cases, we often see reasoning that seeks to answer the harm with compensation and significant efforts to punish perpetrators with heavy fines or even prison sentences. A financial settlement was often presented as a solution. For instance, on 1 May 2016 a man who admitted to beating another man who had 'verbally abused him' was fined 5500 SSP as 'medical costs', although the details of the treatment were not specified. In most cases fines were issued, and in some cases punishment was more severe. This could include a sentence of 'imprisonment', which had to be improvised as a house arrest under the surveillance of the family, chief or CWG.

The chiefs' responses to instances of violence seemed to depend largely upon the implications of the violence not for the individual victim, but for the community. In this calculation, the needs of vulnerable people could easily be trumped by wider security considerations. Such judgements placed chiefs' courts in contravention of individual human rights norms. The chiefs envisaged an ideal of community security, to be established and maintained through peaceful relationships.

Handling Domestic Issues
Chiefs often heard and dismissed accusations of gender-based violence, especially domestic violence. Such cases were often brought to court by women seeking a divorce, yet they rarely won. Instead, the women's needs for protection were overlooked in favour of the social and economic interests of the husband and family.

Customary norms consider that when a marriage takes place, the newly-related families have social and economic interests in its continuity. Those who provide cattle to the groom, often including his uncles and friends, will expect cattle from his own daughters' marriages. The wife's father will have also gained and shared cattle from the marriage, and divorce would demand that these cattle be returned. The wife's needs are subsumed beneath a collection of interests that extend into the community. Chiefs' courts in the PoCs have generally preferred to uphold marriages to avoid complicated divorce settlements and the conflicts that might follow, even if this comes at the cost of effectively licensing the husband's abuse against the wife.

A typical example was heard in Bentiu PoC on 1 February 2016. A woman opened a case claiming that her husband had beaten her. She had fled her home with her child and gone to her aunt's house within the PoC. Her husband followed her and tried to make her return, but she invoked the authority of her father to allow her to stay. The court ruled in favour of the husband and told the wife to return to him. The chiefs stated that: 'it is normal that two partners can quarrel'. They took time to advise the husband that he should get to know his wife's father better so that there is no quarrel between them. They also advised the accused man that 'he must respect his wife and share with her a better life, not an unfaithful life'. Both parties and the crowd assented to the ruling.

Courts prioritised the interests of the husband and the family over the individual security and rights of the wife in cases of domestic violence. Divorce could be obtained only if the husband or family were willing, and the bride price could be repaid. Chiefs might still condemn the violence, depending on its severity. The probable gains for a woman bringing a case of domestic violence were the chance to expose the problem and obtain mediation, as chiefs intervened to encourage better relations between the couple and their families.

Court Processes: Creating Security and Trust
The court hearings promoted a sense of publicity and the idea that when individual and familial problems and threats are exposed and

shared, then everyone can feel more secure. While dialogue was dominated by chiefs, the parties, their relatives and the audience generally were also able to participate and voice their views. It was not only that the Nuer community was discursively constituted by the chiefs; it was also made real by the people who brought cases to court and attended as observers. Social relations and trust were built through the process.

The courts referred to the individual accused or complainant as a member of a family, binding them together. Families were involved in interrogations and received or gave compensation on behalf of a family member; they were also treated as offended parties in instances of premarital sex or adultery. The chiefs expressed commitments to all who brought cases to the court, whether as perpetrator or victim. They recognised their dignity as Nuer people, with a deep social bond – an idea that was shattered by the violent disputes, tensions or criminality that brought people to court, and had to be repaired through the process. The court panels reinforced this by working together in a cooperative manner, supporting each other, even while airing different opinions. Chiefs sat alongside each other in a spirit of firm collaboration. Through their use and support of the courts, people were able to participate in building trust.

Yet the concepts of social repair and trust advanced by the chiefs were deeply bound up with paternalism, as exemplified in a case on 15 July 2015. A 14-year-old girl was brought to court accused of having a relationship with a 17-year-old. The boy was asked to marry the girl and she was asked to declare her love for him publicly in the court. He refused on the basis that he did not have any money to marry, his father was not there and his elder brother was not yet married. A relative of the girl became angry, criticising him as 'from Rubkona, people from there don't tell the truth'. The chiefs intervened with a lesson on Nuer morality. Four of the chiefs spoke, each in similar tones, advising the relative not to cause trouble after the matter was settled in court. They warned the

girl to 'learn from the mistake that happened to you' and to avoid the boy in order to prevent violence: 'your brothers will take the law into their hands and beat this man'. Finally, they fined the boy 1500 SSP and warned him: 'don't cause instability and insecurity. Please go peacefully.' Relatives of the parties and the wider community voiced their views and encouragement throughout the process.

In the above case, and in many others, the question of evidence – of whether the relationship between the boy and girl was more than hearsay – was barely investigated. The chiefs and observers assumed that the person who brought the case had good reason for his suspicions and indeed parties in the case often confessed. It was accepted as a matter of unspoken principle that the parties would bring a case in good faith, and the chiefs would reach their judgement on the same terms.

Hybrid Justice and Security?

The legitimacy of the chiefs' courts in the PoCs rested mainly on their relationships to the community. Yet they were still concerned to 'broker' relations with UNMISS, as the overarching authority, in the same way that chiefs have historically negotiated their roles with governments (Leonardi 2013). UNMISS' attempts to engage with the community, through the IMDRM and support for community policing, had mixed results. But there is some evidence of adaptations to UN authority.

The Community Watch Groups were the most tangible point of connection between the courts and UNPOL. At times, it seems the CWGs collaborated effectively with both the chiefs, and UNPOL (UNMISS 2017). But cooperation was undermined by the fact that ongoing support was limited. For instance, CWG members pointed out that they lacked basic resources and did not even have a supply of notebooks in which to write down complaints they received (interview, Juba PoC3, 15 July 2015).

UNPOL's encouragement of community security actors entailed some risks – a point best illustrated by the fate of the N4 in the

Juba PoCs. Initially, the N4 was closely linked to customary authority as it comprised members from four areas in the Nuerland and had over 250 youth members. On occasion, its members were responsible for abuses and were brought to court and disciplined (Ibreck and Pendle 2016: 30). But the group was harnessed by community-led camp management structures recognised by UNMISS, and it gained a new name in 2016, the 'Community Emergency Response Team' (CERT). By 2017 it had merged with the CWG as part of a 'public order team' under the authority of the camp chairman. Over time new challenges emerged, but UNPOL stopped providing them with 'capacity building'. By May 2017, the security team had become notorious for demanding taxes and issuing threats or administering beatings, as the court observers commented: 'The N4 has gone beyond repair. This cannot be solved by training, they are continuing committing these beatings. We are receiving women complaining every day. . . Two women had abortion [miscarriage] because of beating' (group discussion, Juba, 18 May 2017).

Even though UNMISS maintained its distance from the courts, the chiefs showed some consideration of the mission's perspective, by paying lip service to international human rights norms. On 29 July 2015, in Juba PoC3, a woman brought a case against her husband for divorce, accusing him of being abusive and irresponsible for not supporting her. During the trial, all the chiefs advised the woman that wife beating was normal because it is a way of 'disciplining the women in our custom as Nuer'. In closing, the head chief declared that the panel had found no proper reason for a divorce and that the woman should go back to home to her husband. But he warned the husband of the dangers of physical fighting or beating, and reminded him that human rights abuses were not accepted by UNMISS in the PoCs.

In a few cases, there were more concrete examples of respect for UNPOL. A court report from 7 September 2015 in Juba PoC3 noted: 'punishments were not given as UNPOL was present and they do not allow beatings or corporal punishments.' In this case, the Community Watch Group had found a group of men who were beating another man 'almost to the point of death because of a misunderstanding.' The weapons used included knives, sticks and *pangas.* The case was brought to court within hours of the offence and a panel of 11 chiefs settled the matter promptly, issuing a series of heavy fines to each of the defendants.

In contrast, chiefs and affected parties were anxious about the time it took for UNPOL to respond to violence, especially in the cases of rape that they had referred directly to the mission. A creative response to this problem was apparent in a case in Juba PoC3 in May 2016. The case was brought by a middle-aged Nuer woman against a young man, whom she accused of raping her child. She brought the case to customary authorities immediately after her discovery of the incident. The court swiftly gave its ruling before referring the case to UNMISS. A panel of seventeen judges and more than forty people were in attendance. The woman expressed her fear that the harm to her daughter was so extensive that it was possible she would die. The defendant admitted responsibility: he promised that he would marry the young girl and that would pay 'everything needed' to her mother. The court rejected this proposal for forced, child marriage and instead decided that the man should be sentenced to jail for six years and would pay compensation for treatment of 10,000 SSP and a fine of 5000 SSP. The perpetrator handed over 5000 SSP, but complained that he should not face imprisonment or the rest of the fines. Witnesses to the proceedings supported the judgement.

Chiefs improvised in the courts, and norms were evolving and being contested within the PoCs. In a case on 3 November 2015, a young woman, who accused her husband of beating her, spoke out against the chiefs for their failure to grant a divorce, and criticised their 'outdated traditional rules that do not respect the rights of women.' The courts became forums in which residents grappled with the competing

claims of authority, and views of security and justice, in an unfamiliar environment.

The chiefs' reasoning was in tension with the norms of international humanitarian 'protection' and yet the differences were not irreconcilable. The UN protection actors sought connections to community actors, and customary courts were attentive to their new context. Some court cases indicate the scope for a dialogue in the interests of protection. In theoretical terms, a blending process could be informed by a relational perspective on human security (Held 2005). This would value relations of care – while acknowledging that they are 'not always good or pure' – and treat dialogue and 'moral deliberation' as central to security (Held 2005: 158), while also challenging inequalities and injustices (Robinson 2011: 5). In practical terms, the chiefs' courts could, and sometimes did, serve as a public space for honest 'moral deliberation'.

Conclusion

After December 2013, thousands of South Sudanese sought security by physically moving to the UNMISS PoCs. They gained a form of sanctuary and access to basic humanitarian needs due to the military protection of patrolling UN peacekeepers, and the efforts of international humanitarian organisations. However, the PoCs remained insecure and unpredictable environments.

The people in the PoCs sought to address the problems within the sites with their own familiar protection strategies. Chiefs' courts were swiftly established and became one of the key institutions of public authority within this unique legal space, under UN governance. They produced their authority through the provision of justice; remaking custom; and fostering a sense of a common Nuer community. The courts did not have the jurisdiction to deal with the most severe crimes, but were still important in tackling physical violence and pre-emptively dealing with threats of widespread insecurity. They filled a gap in justice and security provision that could not

be addressed by UNMISS due to legal and resource constraints.

Close examination of the processes and judgements based on extensive court records suggests that the guiding principle in many rulings was the holding together of the moral community of the PoC and the promotion of a relationship of trust between its members. The courts did not treat the litigants as individuals, but instead as members of a family and community. Legal consequences were generally corporate and reproductive of gender and generational inequalities. Court rulings focused on remaking communities and trust within families, the PoC communities, and the wider Nuer community.

The courts were positioned precariously between the PoC communities and the 'government' of UNMISS. The chiefs could not fulfil their historical role of brokers on behalf of the community since their judicial authority was not recognised, and there was an abiding risk that their decisions could be questioned. But the courts continued to operate and to make rulings that contravened international norms. From the perspective of the courts, security continued to depend upon prioritising the family and community in decisions. UNMISS routinely asserted commitments to individual rights and security, but could not respond quickly to uphold their protection. The indeterminate and tense relations between customary authority and UNMISS eroded the principle upon which the courts operate: that a sense of community and relations of trust are foundational for security.

These experiences in South Sudan provide wider lessons in relation to settlements of displacement, refuge and protracted crises around the world, especially when there are plural justice and security providers. They affirm that notions of trust, social unity, and 'social harmony' (Porter 2017) may be dominant in popular understandings of justice and security. They also encourage recognition of the role of customary justice processes in

the construction of legitimate authorities and the fostering of collective identities and norms. People do not abandon their politics or agency when they flee into political exile (Malkki 1996).

Our findings are relevant to recent recommendations for reforms in peace missions towards greater 'engagement' with communities (HIPPO 2015). The communities that are made real in the courts have exclusionary dimensions and implications in the broader political landscape. Their focus on maintaining community relations undermines individual human rights, especially the rights of women. But this presents a conundrum, since the role of the courts in building a notion of a community of trust and legitimate authority is also central to their security function and persistence in crisis settings.

The lessons of the chiefs' courts in South Sudan are threefold. Firstly, even during a civil war, and among displaced people, where security may seem to depend mainly upon the actions of militaries and police, justice practices endure and remain essential. People invigorate them both as a mechanism to resolve disputes and as a social practice through which they publicly assert their dignity and unity as members of communities.

Secondly, in South Sudan and other countries with long histories of war and political turbulence, legitimacy can be constructed by providing accessible and predictable forums to resolve conflicts (Weigand 2017). The authority and legitimacy of customary chiefs is related to their consistent availability, and capacity to achieve fast settlements. The aspiration for continuity is surely part of the explanation for the slow penetration of international human rights norms.

Thirdly, in such settings, the question of security depends less upon empowering a single authority, than upon building relations of trust between plural authorities, and 'custom' is not averse to problem-solving, adaptation or 'hybridization' (Lawrence 2017). Therefore, we should consider not only whether justice and security providers conform to certain norms, but also whether they are prepared to enter into cooperative relationships and dialogues with competing authorities, including international peace missions. We should also ask international actors to reflect on their own limitations and adopt approaches to human security that are relational (Held 2005) and focus on justice (Human Security Group 2016) – these would be more familiar to, and inclusive of, the communities they seek to protect.

Notes

[1] This account was recorded during a discussion with four paralegals and a chief who were involved in trying to resolve the case (18 May, Juba).

[2] Six researchers in Juba PoC3 documented 338 court cases and two researchers at Bentiu PoC documented 57 cases from July 2015-2016. Naomi Pendle undertook fieldwork in Bentiu in 2014 and Rachel Ibreck in Juba in July 2015, January 2016, May and August 2017. The analysis also draws on Pendle's doctoral research in the western Nuer in 2012–14. More than twenty South Sudanese lawyers, paralegals and activists contributed to the court observation project established by Rachel Ibreck and Alex de Waal at the Justice and Security Research programme (JSRP) at LSE and facilitated with the support of Justice Africa. For further detail on the methodology see Ibreck and Pendle (2016).

[3] The costs varied and rose with inflation, exceeding 1000 SSP by 2017. The South Sudanese Pound (SSP) lost more than half of its value during the court observation research period and one dollar averaged around 18 SSP on the official exchange rate, but more unofficially.

[4] The ethnic composition of the camps changed in Juba after an upsurge of violence in the capital in July 2016 and the spread of the war to surrounding areas. This brought its own set of challenges and alterations in chiefs' courts. For

instance, the Shilluk elected their own chief who sometimes sat on court panels. The details of these changes are not explored since during the court observation research period (July 2015–2016) the Nuer and their courts predominated in both research sites.

[5] As stated on an UNPOL form designed to refer cases to the IMDRM, and given to the Community Watch Group in Juba PoC3, 11 January 2016.

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Competing Interests

The authors have no competing interests to declare.

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