

**FORUM SHOPPING FOR CONFLICT RESOLUTION IN MODERNIZING
SOCIETIES: A CASE OF YEI MUNICIPALITY – SOUTH SUDAN**

By
Umba Peter Bosco

Submitted to the Institute of Social Sciences
in partial fulfillment of
the requirements for the degree of
Master of Arts

Sabanci University
June, 2016

FORUM SHOPPING FOR CONFLICT RESOLUTION IN MODERNIZING SOCIETIES: A
CASE OF YEI MUNICIPALITY, SOUTH SUDAN

APPROVED BY:

Assist. Prof. Emre Hatipoğlu -----
(Thesis advisor)

Assist. Prof. Kerim Can Kavaklı -----
(Jury Member)

Prof. Nimet Beriker -----
(Jury Member)

Date of approval: 15.06.2016

ABSTRACT

Forum Shopping for Conflict Resolution in Modernizing Polities: A Case of Yei Municipality, South Sudan

Student: UMBA PETER BOSCO

M.A. Thesis, 2016

Supervisor: Assist. Prof. Emre Hatipoğlu

Key words: forum, dispute, venue, shopping, conflict resolution

This study investigates factors that influence disputants' venue selection strategies and preferences in South Sudan where the role of informal dispute resolution systems has been recently supplemented with legal mechanisms in modernizing polities. The study is a contribution to the conflict resolution literature in understating factors that motivate venue selection. Using non-probability convenience sampling method, 288 surveys were conducted in three locations. The overall findings indicate that traditional courts are more preferable than modern courts for resolving debt cases, land grabbing, theft, child custody and fight. However, legal venues are preferred to resolve cases such as murder, road accidents, rape and defilement. Interestingly, both legal and traditional courts are used to resolve theft, adultery and elopement cases in different contexts. The findings also indicate that the accessibility, affordability, nature and speed of resolution (practicality) are the over-riding motivating factors for both modern and traditional courts preference followed by norms and values and lastly, venue characteristics.

ÖZET

Modernleşen Yönetimlerde Anlaşmazlık Çözümü İçin Daha İyi Sonuç Almak: Güney Sudan'ın Durumu

UMBA PETER BOSCO

Uyuşmazlık Analizi ve Çözümü, Yüksek Lisans Tezi, Haziran 2016

Tez Yöneticisi: Yrd. Doç. Dr.Emre Hatipoğlu

Bu çalışma son yıllarda enformel uyuşmazlık çözüm sistemlerinin yerini modernleşen yönetimlerde yasal mekanizmalara bırakan Güney Sudan'da, uyuşmazlık içinde olan bireylerin mekan seçme stratejileri ve tercihlerini etkileyen etkenleri araştırmaktadır. Çalışma, uyuşmazlık çözümü literatüründeki yasal/modern uyuşmazlık çözümlerinin enformel mekanizmalara karşı tanımlama bulmacasını çözmeyi sağlayan bir denemedir. Bu bulmacaya yanıt bulabilmek için, takiben 4 soru sorulmuştur: (1) Hangi özel örneklerde (uyuşmazlığın tarzı) birey uyuşmazlığın çözümü için hangi çözüm mekanlarına başvurmaktadır? (2) Mekan seçimini sağlayan önemli etmenler nelerdir? (3) Hangi faktörler uyuşmazlık içinde olanlar için mekan seçiminde anlaşmazlık yaratır? (4) Anlaşmazlık çözüm yerinin etkililik ve yeterliğini hakkında ihtilafta olan bireylerin algıları nasıldır? Olasılıksız kota örneklemesi yöntemi kullanılarak, 287 lik bir anket örnekleme 3 farklı lokasyonda (Yei Town, Pakula Quarter Council ve Mundu Boma) yapılmıştır. Bulgular şunları ifade etmektedir: uyuşmazlık içinde olanlar daha az belirgin meselerle yüzleştiklerinde enformel anlaşmazlık çözümlerine öncelik vermektedir. Ancak, aşırı durumlarda, cinayet gibi, yasal forumlar tercih edilmektedir. Mekan seçimi sürecindeki en önemli etmen, geleneksel anlaşmazlık çözümünde uzun süre çalışıp deneyim sahibi olan –şefler gibi- enformel mekanların daha pratik hizmet vermesidir.

List of abbreviations

ADRs	Alternative Dispute Resolution
CES	Central Equatoria State
COS	Cultural Orientation Scale
CPN	Communist Party of Nepal
CPV	Community Peace Volunteers
CUU	Cavendish University Uganda
DRC	Democratic Republic of Congo
LGA	Local Government Act
GRSS	Government of the Republic of South Sudan
NGOs	Non-Governmental Organizations
OECD	Organization for Economic and Community Development
PTSD	Post-Traumatic Stress Disorder
SPHC	Sudan Population and Housing Census
SSCCSE	South Sudan Commission for Census and Statistical Evaluation
SSLs	South Sudan Law Society
TCSS	Transitional Constitution of South Sudan
UNDP	United Nations Development Programme
UNMISS	United Nations Mission in South Sudan
UMU	Uganda Martyrs University
US	United States
YRC	Yei River County

Dedication

To chiefs, judges, lawyers, magistrates, arbitrators and all their clients of Yei.

Acknowledgement

First of all, I appreciate the Open Society Foundations (OSF) for the generous financial support it offered to me to pursue my studies. OSF has enabled me to make a big step forward in my war against illiteracy by pursuing higher education. I hope that the successful completion of my graduate degree program transpires into another bigger educational opportunity.

The inspirational character of my supervisor Assistant Professor Emre Hatipoğlu also greatly contributed to the successful completion of this thesis which is a key element in graduate studies. Similarly, I also owe Professor Betül Çelik, Assistant Professors Arzu Kıbrıs, Pinar Akpınar and Kerim Can Kavaklı immeasurable honor for their initial research proposal writing exercises that eventually prepared me for the final thesis.

I also thank my colleagues including, but not limited to, Ahmet Faruk, Buğra Güngör, Lela Mamadashvili, Beyza Özcan, Kübra Nur Güneş Selin Karar and Madeleen Castro for sharing with me academic matters.

The last few weeks before I completed my thesis put me in both joy and unhappiness. While it often excites to have written thesis for the first time in academic life, I also felt uneasy that I was leaving Sabancı University and my instructors from the Conflict Analysis and Resolution Program. The easiness I felt at Sabancı was therefore not because the program I studied was easy but, because of the friendly learning environment.

Table of Contents

Abstract	iv
Özet	v
List of abbreviations	vvi
Dedication	vii
Acknowledgement	viii
1. INTRODUCTION	1
1.1. Background	1
1.2. Aim of the Study	2
1.3. Research Questions	3
1.4. Relevance of this Study	3
1.5. Dependent and Independent Variables	4
2. LITERATURE REVIEW	5
2.1. Introduction	5
2.2. Definition of Key Concepts	6
2.3. Venue Selection Literature	7
2.3.1. Cultural Literature on Dispute Resolution	8
2.3.2. Anthropological Literature on Dispute Resolution	15
2.3.3. International Relations Literature on Conflict Resolution	18
2.4. Main Hypothesis	21
2.4.1. Secondary Hypotheses	21
2.5. Conclusion	22
3. RESEARCH METHODOLOGY AND DESIGN	24
3.1. Background Information about South Sudan	24

3.2.	Site Description – Yei Municipality	26
3.3.	Sample Selection Criteria and Description	26
3.4.	Why this Sample?	28
3.5.	Recruitment of Research Assistants	28
3.6.	Data Collection	29
3.7.	Data Collection Instrument	30
3.8.	Measuring Socioeconomic Status	31
3.8.1.	Pre-test, Internal Validity and Reliability	31
3.8.2.	Obtaining Approval and Maintaining Confidentiality	32
3.8.3.	Consent and Voluntary Participation	32
3.8.4.	Description of Dispute Resolution Processes in South Sudan	33
3.8.5.	Case: Child Custody	35
3.9.	Scope and Constraints	36
3.9.1.	Dissolution and Establishment of Local Government	36
3.9.2.	Limited Resources	36
3.9.3.	Translation	36
3.9.4.	Ethical issues	37
3.9.5.	Distance and related transport costs and sample representativeness	37
4.	PRESENTATION OF FINDINGS	38
4.1.	Sample Description	38
4.2.	Breakdown of the Research Sample	39
4.3.	Tables and chi-squares	40
5.	CONCLUSION	68
5.1.	Recommendations for Further Research	68

REFERENCES	70
INDEX	75
APPENDICES	77

1. INTRODUCTION

1.1. Background

Studying venue selection for conflict resolution in transitioning and multicultural societies emerging from conflict has recently become a popular topic among scholars (Deng 2013; Celik & Shkreli 2010). Meanwhile, abundant literature on peace and conflict resolution focus particularly on legal dispute settlement mechanisms such as mediation, negotiation, arbitration and adjudication (Moore 2014; Lefler 2015). Yet little effort has been shown to the study of culturally cognizant dispute resolution mechanisms (Dialdin & Wall, Jr. 1999; Moore 2014; Fisher et al. 2011; Cooley 2006). While one of the dispute settlement strategies mentioned above may often prove to be more effective than the other in different contexts, (for examples of various levels of mediation success, see *inter alia* (Pinto 2000; Steinberg 2000; Beriker & Kose 2012; Wall et al. 2010), almost all of these studies that have examined this phenomenon have been confined to modern societies with state organizations penetrating through all echelons of society.

Institutions that take the “individual” and her “interests” as their basic units of operation, often emanate from a modernist understanding of state institutions. In this sense, the process of dispute resolution is regulated by state apparatus and focuses on repairing broken relationships and protecting individual perpetrators rather than punishing them for crimes committed. Hence, the element of forgiveness, apology and reconciliation are of less importance when the state acts as the sole mechanism of dispute resolution. Institutions of dispute resolution, however, may not be as firmly entrenched in other societies. Individual-based dispute resolution approaches are often perceived not only as alien by members of traditional societies but, they are also resented for their perceived marginalization of indigenous dispute resolution practices (Deng 1999; Pinto 2000; Winsor & Skovdal 2008).

Pinto (2000) argues that legal mechanisms of dispute resolution are perceived as alternative dispute resolution (ADRs) mechanisms that are largely unsuccessful in resolving cultural conflicts. This is because legal dispute resolution mechanisms are either incompatible with local cultures or they do not incorporate cultural norms and values into the process of dispute resolution. Members of post-

conflict societies where nongovernmental (NGOs) play an active role in conflict resolution often criticize legal dispute resolution processes for fear of erosion of cultures and, disruption of social harmony as well as the threat they pose to local authorities. More specifically, women and the elderly perceive legal dispute settlement processes as a curse to their marriages and threat to well-established cultures. Hence, to understand venue selection processes in greater depth, research into this phenomenon is necessary. Nevertheless, studies show that dispute resolution mechanisms that ignore the cultural element may lead to partial or total failure in resolving conflicts.

Some of the most successful informal dispute resolution mechanisms such as Ubuntu in South Africa demonstrate how unimportant legal court arbitration and adjudication in the resolution of social and cultural disputes may be (Theresa 2014). According to Osei-hwedie's & Rankopo (2010), dispute resolution mechanisms that are based on cultural concepts, values and procedures are preferred by members of traditional societies. Such dispute settlement mechanisms are characterized as transparent, participatory, just and fair. Understanding local cultures and their related conflicts, as well as disputants' venue preferences thus requires keen attention from conflict managers and scholars. An urgent response to the search for effective dispute resolution mechanisms, particularly in transitioning and multicultural societies, is therefore vital to enhancing conflict resolvers' understanding of cultural influences, both on disputants' venue selection strategies and during dispute resolution processes (Barsky 2000).

1.2. Aim of the Study

The literature on conflict resolution has been providing thorough descriptions of processes of endogenous dispute resolution mechanisms for some time (see Kose & Beriker 2012 for Islamic ulema; Celik & Shkreli 2010 for reconciliatory mediation; Silva 2013 for mediations and mediators; and Zhuang & Chen 2015 for revival of mediation in labour disputes). The main points that emanate from such studies show that these mechanisms are culturally sensitive as opposed to legal mechanisms that snub local cultures and beliefs. An interesting assumption has been made that informal dispute resolution venues are chosen as alternatives to existing legal mechanisms (Kose & Beriker 2012; Pinto 2000). Relatively, few studies have specifically looked at why an individual chooses informal over formal dispute resolution mechanisms (or vice versa) in a transitioning society. Consequently, we have scant knowledge over the micro-foundations of the

usefulness of informal dispute resolution mechanisms in polities in which legal institutions consolidate the justice systems. This paper aims to fill in this gap.

1.3. Research Questions

The facts that South Sudanese citizens have not entirely quit old habits of dispute settlement, and still shuffle between different conflict resolution venues prompts the following questions:

- 1) In what specific instances (types of conflict) does an individual resort to a specific dispute resolution venue?
- 2) What are the major factors affecting venue selection?
- 3) Which factors influence disputants' venue selection processes?
- 4) What a disputant's perception is regarding the effectiveness and efficiency of a particular venue of dispute resolution.

To answer these questions, 288 samples were collected in three different localities (Yei, Mundu and Pakula) in South Sudan and surveys were conducted using structured questionnaire. These questions represent varying tribal attributes across age, gender, education, occupation, rural and urban settings. Responses to these questions will therefore help us to understand why and how one venue of dispute resolution is chosen over another. To the extent that dispute resolution scholars have not yet found specific and more effective dispute resolution strategies in transitioning and multicultural settings, third parties need to apply generic dispute resolution models that are sensitive to cultural concerns so as to better meet the parties' needs. Secondly, conflict managers need to develop dispute resolution models that are grounded in the disputants' traditional norms and practices (Barsky 2000).

1.4. Relevance of this Study

The presence and efficacy of informal dispute resolution often fall outside of the purview of most Western-oriented dispute resolution literature. In many transitioning societies, an interesting phenomenon occurs: informal dispute resolution avenues (such as village chiefs, ulema, or local notables) often compete with legal venues (such as the judiciary or legal arbitration). Based on the research questions in the previous page, three streams of literature in conflict resolution research:

the cultural dispute resolution literature (Wall et al. 2010; Kose& Beriker 2012; Silva 2013; Celik & Shkreli 2010, Conteh 2014; Belge & Blaydes 2013; Brickell 2015), the forum design and settlement compliance literature in anthropology (Beardsley 2010, Stasavage 2004, Mitchell et. al. 2009, Shannon, 2009), and venue shopping discussions in the international relations field (Lefler 2015 and Kellow 2012) were synthesized.

A shared claim by the authors of these literatures is that, forum design influences settlement compliance, and that disputants' cultural, practical and structural considerations also have an impact on forum selection. This research is timely and important for South Sudan which is currently undergoing judicial reforms and transformation. The Government of South Sudan(GoSS) and its judiciary are currently trying to assert themselves as the main authority capable of implementing effective justice and dispute resolution mechanisms, a phenomenon which is a problem widely observed in many post-conflict settings. Thus, our understanding of this phenomenon will enhance our knowledge on the topic under study.

1.5. Dependent and Independent Variables

Court type and the factors that cause either agreement or disagreement on a particular court type are the main dependent variables of the study. In addition, demographic characteristics will also be used to measure whether or not they have an influence on individuals' court type selection processes. The independent variables include; perception of legitimacy and reputation of third parties, sense of justice; preservation of communal harmony; venue familiarity and compatibility; anticipated settlement outcomes; cost of venues and physical distance; decision control; transparency; distributional bias; and issue salience. The dependent variable is the agreement/disagreement regarding a particular venue of dispute resolution.

2. LITERATURE REVIEW

2.1.Introduction

Usually, formal legal and informal dispute resolution mechanisms are contrasted on the basis of Western cultural norms. One basic dichotomy that marks the difference between these two sets of norms is the difference between individualism and collectivism. According to Triandis & Gelfand (1998), the culture orientation scale (COS) measures whether or not a society is more traditional or modern in terms of their cultures. Understanding a society's culture is key to getting in-depth information about disputants and third parties vis-à-vis dispute resolution processes.

Dialdin & Wall, Jr. (1999) observe that different cultural groups establish different institutions that formalize their values, behavioral norms, meanings and symbols. As such, societies that value harmony and cooperation set up dispute resolution processes that preserve harmony and vice-versa. Scholars such as Hofstede (1991), Abu-Nimer (2001) and Rogers & Hart (2002) also argue that members of traditional societies feel safer, more secure and more protected in their in-groups than in isolation. An in-group refers to a collective belonging to, and sharing of the same values and norms. Similarly, individuals who deviate from the standard prescriptions of an in-group are considered as out-group members. While conflict is largely viewed as an inevitable phenomenon in modern democratic settings, traditionalists view it as a costly and destructive act. Thus, there resolution warrants different strategies.

Another important element in conflict resolution is restorative justice. Restorative justice system focuses on re-building broken relationships, empowering and addressing disputants' interests (Kose & Beriker 2012; Pinto 2000; Dialdin & Wall, Jr. 1999). Disputants restart fresh relationships through a process called "hozhooji naat' aanii" meaning "*now that we have done all these things, we are back in good relations.*" The process of restoring relationships, or purification and healing is often facilitated by religious leaders who use words and symbols to enhance the reconciliation process.

Moreover, legal mechanisms such as mediation, arbitration and adjudication offer protective measures to both victims and perpetrators. Because of threats and intimidation of weak victims,

courts devise mechanisms and laws that deter perpetrators from threatening or inflicting more harm against victims (Travis 1998). The cooperation of victims in this process is crucial so as to provide substantial information to court officials to be able to effectively respond to cases of intimidation. Where victims are reluctant to cooperate and fail to provide the required information, or fail to testify evidence that a perpetrator is guilty, courts become unable to prevent conflicts from recurring.

2.2. Definition of Key Concepts

Traditional versus modern societies

Based on different cultures, locations and unequal development patterns in the research sites, a traditional society refers to a setting characterized by collectivist cultures whereas a modern society is a setting characterized by democratic values and individualistic tendencies (Hofstede 1991; Triandis 2000). While applying these terms in this paper, members of traditional societies are portrayed as people who admire interdependence, group progress and social harmony whereas those in modern societies prefer personal gain, self-reliance and progress (Triandis & Gelfand 1998; Triandis 2000; Hofstede 1991). Modernists perceive conflict as inevitable and care less about social harmony while traditionalists are risk averse because of the uncertainties associated with dispute outcomes.

Mediation

Mediation in this paper implies intervention in a dispute by village chiefs, respected individuals and legally trained mediators to assist disputants in resolving their disagreements through persuasion, compromise and concession. Mediators facilitate communication between two or more parties to a conflict but have no authority to impose their own decisions and agreements on the parties. The mediation process is voluntary thus, allowing conflict parties to have control and influence over the process (Moore 2014; Bercovitch 1991; Fisher et al. 2011).

Legal versus informal dispute resolution mechanisms

In this paper, legal dispute resolution mechanisms refer to formal conflict resolution practices such as mediation, negotiation, court arbitration and adjudication that are administered by trained

professionals capable of helping disputants agree to, and sign legally binding and enforceable settlements. On the other hand, informal dispute resolution mechanisms (also called alternative dispute resolution, or ADR) refer to venues where customary laws are applied in the resolution of disputes. In these venues, village chiefs, religious leaders, elders, and other notable community leaders act as informal third parties. In exercising their duties, these informal third parties infer cultural norms and beliefs in order to help disputants understand why it is important to resolve their disputes. Henrysson et al. (2009) noted that customary laws are most often applied in rural areas to resolve civil conflicts such as marriage, inheritance disagreements and, commonly used to resolve criminal offences such as murder and robbery.

2.3.Venue Selection Literature

Globalization and modernization have massively increased contact among members of different societies, particularly in the Third World, and the application of multiple dispute resolution mechanisms has become problematic. A key factor that hinders effective implementation of rule of law in post-conflict contexts is the continued and simultaneous utilization of alternative dispute resolution mechanisms alongside legal mechanisms (Dahal & Bhatta 2008). Dahal & Bhatta also noted that there is rapid erosion of informal dispute resolution mechanisms in post-conflict contexts due to the adoption of legal constitutional mechanisms of dispute resolution. Thus, the major challenge faced by post-conflict societies is simultaneously applying the informal and legal dispute resolution mechanisms without alienating either. Relying on three streams of literatures on conflict resolution, I would like to offer a schematic organization of the factors influencing venue selection.

First, the cultural dispute resolution literature maintains that (1) perceptions of the legitimacy and reputation of third parties, sense of justice and fairness, and preservation of communal harmony influence decision-making for dispute resolution venues (Wall & Beriker 2010; Kose & Beriker 2012; Celik & Shkreli 2010; Silva 2013; Daldin & Wall, Jr. 1999). Similarly, international relations literature maintains that (2) forum design/nature allowing for decision control and transparency plays an important role in venue selection for resolving salient issues where compliance is key (Stasavage 2004; Lefler 2015; Kellow 2012; Gent & Shannon 2011). According to the anthropological literature, (3) anticipated settlement outcomes, cost of venues and physical

distance influence decision-making for dispute resolution venues(Deng 1999; Pinto 2000; Steinberg 2000; Barsky 2000; Conteh 2014, Kim et al. 1993, and De Juan et al. 2015).

2.3.1. Cultural Literature on Dispute Resolution

Research has shown that informal venues of conflict resolution such as village chiefs, elders, and religious leaders are more preferred to modern courts in traditional societies. The motivation for preference of informal mechanisms is based on third parties' reputation and knowledge of resolving local disputes (Kose & Beriker 2012; Wall & Beriker 2010; Silva 2013; Celik & Shkreli 2010; Shea 2016). Since informal conflict resolvers wield moral authority and sense of spiritual responsibility, disputants tend to trust them and respect their decisions. Informal mediators are further perceived as less threatening and capable of resolving contentious issues peacefully and building trust between disputants. They also favor moderate over extremist views as a way of de-escalating conflict. For example, Abraham's decision to choose neither "right" nor "left" during the conflict over grazing land with Lot depicts his willingness to avoid violent conflict and promote peace (see Genesis 13:5-7).

Aaron's¹ decision to accept a popular demand to produce an idol also helped to suppress conflict, and facilitate compromise and reconciliation. As such, informal dispute resolution is concerned with societal harmony and peace rather than individual rights and well-being (Henrysson et al. 2009). Yet, the desire for social order and stability by members of traditional societies plays an important role in venue selection. Informal conflict resolvers in traditional societies therefore pursue consensus and compromise in order to restore societal order and stability. They do this by urging disputants to concede rather than sticking to irreconcilable interests and solutions that are difficult to achieve.

Coercive dispute resolution mechanisms are resented by members of traditional societies for their negative role in disrupting established order and peace. In the Jewish culture in Israel, in South Korea during Kwon Kun's and Chong Tojon's eras respectively from 1310 to 1392 and from 1342 to 1398, in Eastern Turkey before the birth of the Turkish Republic in 1923, and in Northern Albania in 1990s, reconciliation through persuasion was the ultimate goal of dispute resolution.

¹ Aaron is a Jewish High Priest during the Golden Calf incident in Israel (1457-1504) during Moses' rule in Egypt.

According to Daldin & Wall, Jr. (1999), disputants' compliance and cooperation rates were lower in South Korea than in Israel. This is because South Korean mediators had no official power that the Israeli rabbis possess. It is also important to note that Northern Albanians, Jewish and Eastern Turks were bound by their religious beliefs in dispute resolution (Kose & Beriker 2012; Celik & Shkreli 2010; Steinberg 2000). Thus, validating the argument that informal mechanisms are capable of resolving disputes peacefully through consensus and compromise.

Most religious people in the above mentioned societies and communities believe that forgiveness and reconciliation are important aspects of dispute resolution. In Pakistan and Afghanistan, truce, remorse, forgiveness, and repentance play a pivotal role in reinforcing disputants' commitment to preservation of lives and property within tribes (Benson & Siddiqui 2014). Thus, incidences of dispute recurrence are minimal in such societies allowing for peaceful societal co-existence to prevail.

Mac Ginty (2014) and Celik & Shkreli (2010) also argue that some societal norms and values dictate against individual behavior that endangers societal peace and harmony. In addition, dispute resolution strategies that escalate conflict and increase uncertainty are highly discouraged by members of traditional societies. Celik & Shkreli's study in Northern Albania also indicates that although disputants trust legal agencies, they eventually prefer informal venues. The study also shows that Northern Albanians view informal venues as more reliable for restoring broken relationships and facilitating reconciliation. State institutions of dispute resolution that focus on win/loss outcomes as well as penalizing wrong-doers and rewarding the wronged are therefore undesirable to many people in traditional societies like those in Northern Albania, Eastern Turkey and Sierra Leone because they escalate conflict.

Unlike informal mechanisms, legal dispute resolution practices have negative impacts on traditional societies. Citing Walker (2004), Winsor & Skovdal argue that when applied blindly, legal dispute resolution practices escalate violence. According to Barry & Porter (2012), the practice of appointing individuals to predetermined positions of authority grounded in legal and political traditions undermines indigenous governance aspirations and structures by rendering them irrelevant in dispute resolution. Despite Barry and Porter's argument, several African collectivist societies believe that the resolution of interpersonal conflicts is a collective and

participatory process that involves not only the primary disputants, but those indirectly affected by it. Based on this argument, informal venues are suitable for resolving social conflicts and restoring peace and harmony (Winsor & Skovdal 2008).

Reflecting similar arguments by Lederach (1995), Celik & Shkreli's findings show that Northern Albanians prefer informal dispute resolution mechanisms that "pursue justice in ways that respect people, and [at the same time] restore relationships based on recognition and amendment of injustices." Northern Albanians are also found to cherish interdependence but, fear isolation as well as loss of societal benefits accruing from compliance with collective norms and belief systems. Similarly, Mac Ginty (2014) argues that "civility examines rural communities in which individuals rely on one another for agricultural assistance." Interdependence as such is well conceived by members of collectivist societies whose survival is at risk at the individual level but certain at the societal level.

The arguments in the above paragraphs therefore clearly show that disputants in Northern Albania, Israel and in Eastern Turkey prefer informal venues. For instance, religious leaders refer disputants to religious texts and other sources of material containing moral teachings on the importance of consensus, compromise, conformity and cooperation as the most desirable ways of resolving disputes. One of the ultimate goals of dispute resolution in Jewish cultures is to preserve peace and prevent disputes from escalating to violence. The Jewish sages explain it clearly that "pure justice kills peace" and vice versa (Steinberg 2000). As this argument shows, social pressures compel disputants to observe social order and peace. Disputants who fail to concede and compromise face serious punishment by highly respected local leaders.

Furthermore, disputants' cultural differences play a key role in venue selection. According to Powell & Wiegand (2014), similar ethnic backgrounds, gender, and strategic values lead disputants to agree on informal and/or non-binding dispute resolution strategies. Contrarily, differences in gender and ethnicity lead to disagreement over venues. For the Sudanese, Navajo and Jewish people, modern dispute resolution mechanisms are alternatives to indigenous mechanisms because they are ambiguous, foreign and alien to local contexts. In the three societies, rituals play a significant role in facilitating disputants' transition from confrontation and competition to cooperation and mutual acceptance (Deng 1999; Pinto 2000).

Dahal & Bhatta (2008) also observed that reconciliation and forgiveness ceremonies during *New Year* celebrations in Afghanistan and Pakistan indicate successful dispute resolution. During these special events, disputants visit each other, exchange gifts and good wishes, and receive blessings from elderly people and religious leaders. It is these exchange visits and blessings that lead to improved communication, restoration of broken relationships and confidence building among disputants and their families.

According to Pinto (2000), young and institutionally educated Navajo people prefer legal dispute resolution mechanisms such as litigation, adjudication and arbitration. On the other hand, elderly and less educated people tend to prefer informal mechanisms. Pinto's article further argues that young people are more likely to contest agreements characterized by gender and social caste biases under informal dispute resolution processes. Conversely, legal venues that are capable of making fair, just and legitimate agreements are preferable to young people than the elderly (Powell & Wiegand 2014). In this sense, it can be argued that members of Western societies are less willing to compromise fair, just and legitimate court decisions for inter-personal relationships and interdependence.

Violent conflicts that involve death, injury and murder are serious crimes that require more competent and authoritative conflict managers capable of making binding and enforceable decisions. Monographic work by Sansculotte-Greenidge (2012) indicates that most African traditional dispute resolution institutions exist in political and structural vacuum that are irrelevant in terms of governance and dispute prevention. For instance, ADRs are perceived as less effective for resolving systematic and structural conflicts that result from poverty, inequality, discrimination, exclusion, competition over power and resources.

Although arguments over worthy causes such as "life after death" are tolerable in the Jewish tradition, rabbis often seek assistance from third parties when such arguments threaten a community's internal cohesion (Steinberg 2000). In resolving such cases, conflict managers adjust to disputants' local cultures and institute community development program-like dispute resolution processes rather than typical legal mediation. According to Barsky (2000), managing dispute resolution processes like a community development program prevents conflict from escalating to

violent and destructive nature. This style of dispute resolution is considered relevant for addressing and eliminating underlying conflict causes (Mac Ginty 2014).

Further, dispute resolution mechanisms that promote tolerance and peaceful co-existence are relevant in culturally embedded societies. For instance, where calmness is considered as an appropriate trait, informal venues with no formal rules are preferable whereas legal venues are suitable for open expression of frustration and anger (Barsky 2000). When individuals openly express their emotions, it allows them release unnecessary anger that would cause conflict if suppressed.

Dispute resolution is not an entirely “pure” process whether informal or formal venues, particularly in multicultural settings. Both consensual and adversarial or indigenous and legal laws are applicable in dispute resolution processes (Furnish 1995). In dispute resolution processes, conflict resolvers balance between informal and formal strategies while preserving indigenous dispute resolution mechanisms (Pinto 2000). Informal conflict resolvers in modern individualistic contexts rely on democratic dispute resolution mechanisms to resolve both ethnic and cultural disputes while being cautious not to violate traditional customs and norms. To be specific, mediating within a familiar context enables conflict resolvers to demonstrate topical, contextual and process/procedural expertise in the issues at stake (Shea 2016). As such, disputants tend to choose familiar venues in terms of procedures and mediator’s cultures (Powell & Wiegand 2014). Similarly, societal and cultural orientation, as well as level of exposure to foreign cultures influence disputants’ venue selection preferences. Despite divergent venue preferences, conflict resolvers in some societies simultaneously utilize formal and informal mechanisms to resolve disputes (Dahal & Bhatta 2008).

Knowledge of local context, norms and values are also other motivating factors for venue selection. According to Silva (2013), educated people with good jobs and high social capital, as well as outstanding Christian values are the preferred conflict resolvers in modernizing Timor Leste. These conflict resolvers are sometimes referred to as spokespersons during marriage settlement negotiations. The spokespersons are basically selected because they are members of the same society and know about local cultures and traditions. Regardless of education, knowledge of

local context, Christian values, and financial status, both informal and formal conflict resolvers are eligible to help in dispute resolution.

The formalization of traditional dispute resolution in Timor Leste started immediately when law number 15/92 was introduced by the state. From then, traditional judges were automatically empowered to resolve post-conflict crimes and abuses. The formalization of amnesty law number (15/2000) in Mozambique also empowered traditional judges to adjudicate cases perceived by Mozambicans as “unforgivable and unforgettable” at the local level. Despite being able to resolve post-conflict crimes and abuses, traditional chiefs were restricted to resolve particular minor cases (Igreja 2010). The law granted blanket amnesty to perpetrators of more serious wartime crimes and abuses thus, preventing traditional judges from adjudicating more complex cases. Nonetheless, the disjuncture between the needs of disputants, and of the state in relation to transitional justice reflects Wilson's (2001) argument. Wilson maintains that legal institutions alone cannot fulfil the task of providing justice because different people perceive the law and legal institutions differently.

According to Kose & Beriker (2012), disputants in traditional societies prefer informal mediators such as imams, priests, village muhtars, and rabbis to legal mediators to resolve their disputes. Disputants in traditional settings also perceive informal mediators as knowledgeable, morally and religiously authoritative, as well as acting in fair and just manner. The ability by legal mediators to detach cultural norms, beliefs and rituals, and religious values from dispute resolution processes is also an important determinant for venue selection (Fisher et al. 2011). In addition, Kose & Beriker (2012) and Fisher et al. (2011) have stated that disputants tend to liken their venue preference with the ability of conflict resolvers to persuade disputants to consensus with an aim of preserving social harmony. As shown in the preceding paragraph, less assertive mechanisms of dispute resolution that result in harmony, apology, forgiveness, reconciliation, in-group obedience, personalized relationships and group success are admirable to members of traditional societies. As such, disputants' ability to gain inner peace, restore pride and dignity play critical roles in venue selection in favor of informal venues.

Traditional conflict resolvers also have the potential to assist disputants to apologize, forgive and reconcile. Thus, relieving disputants (particularly perpetrators) from guilt feelings and being held

accountable for damage and harm caused. The assertion that an individual's survival is dependent on those around him or her also influences disputants' choice of informal or non-binding third parties who are capable of helping them to reconcile and continue to live harmoniously (Kose & Beriker 2012; Wall & Beriker 2010). Where the "york of commandments" (or symbolic authority) is threatened such as during the times when Korakh rebelled against Moses in the wilderness (see Numbers Chapter 17), and after the "golden calf" incident involving Abraham and Lot over grazing land (see Exodus Chapter 32), punishments are acceptable at the expense of compromise. Such conflicts that threaten symbolic authorities necessitate intervention by more authoritative conflict resolvers who are endowed with leverage and enforcement capability.

The resolution of disputes such as domestic violence that threaten to erode societal values and traditions also necessitate the role of notable family, religious and community members (Zion & Zion 1993). In the Navajo community, informal dispute resolution is perceived to be effective in preventing disputes from spiraling and disrupting social life. According to Dahal & Bhatta (2008), highly contested disputes are managed by encouraging disputants to cooperate and concede rather than demanding for evidence and relying on majority vote for decision-making. Kose and Beriker (2012) maintain that elopement and murder are two examples of complicated crimes in Eastern Turkey whose resolution requires the intervention of informal conflict resolvers. In their article, Kose and Beriker argue that when elopement is likened with abduction, killing the couple is a preferred way to cleanse the woman's family's "honor", and where compensation (in cash or giving another woman to the affected family) is possible, the statuses of the two families, level of violence in the elopement, history of dispute between the two families and statuses of the eloped woman determine the mediation outcome. Thus, compromise is undesirable for resolving complex social and cultural disputes like elopement that threaten social order in the case of Eastern Turkey.

Nonetheless, the Mozambican adjudication of "unforgivable and unforgettable" offenses offers informal mediators alternatives to resolve complex issues by persuading perpetrators to either acknowledge or deny the accusations made by victims. Both victims and conflict resolvers invoke spiritual powers as a means to inflict catastrophic consequences for concealing truth about a particular crime (Igreja 2010). Where wrong-doing is acknowledged, disputants negotiate reparation and compensation upon whose payment, a dispute is finally resolved, and peace and

social life would be restored. Otherwise, the occurrence of tragedies implies that truth was never said despite crime being committed.

2.3.2. Anthropological Literature on Dispute Resolution

The anthropological literature outlines numerous factors that influence venue selection strategies for dispute resolution, but the most critical ones include amount of financial, social and material power and anticipated settlement outcome. Some anthropological scholars argue that weak disputants prefer informal conflict resolvers while strong disputants prefer legal mechanisms (Powell & Wiegand 2014; Dahal & Bhatta 2008; Brickell 2015; Barsky 2000). Weak disputants, according to these scholars are more likely to lose cases in legal than in informal courts. Despite the worry of losing cases by weak disputants in legal courts, conflict resolvers address power asymmetry by persuading strong parties to act with sincerity and show peaceful intentions in order to encourage consensus and compromise.

Due to weak financial statuses among female Cambodian disputants who were more vulnerable than men during negotiations and court arbitration, traditional venues served as their most preferred dispute resolution avenues. According to Barsky (2000), powerful and competitive negotiators who conceal information and threaten weak disputants are better placed in dispute resolution than those who are weak and afraid of seeking court arbitration. Weak disputants are noted to fear legal venues because of their settlement uncertainties that would drastically affect their marriage relationships in the case of Cambodia. In some modern societies, bottom-up or social code based on caste system obstructs attempts by conflict resolvers to address educational, social, and financial disparities between males and females, and between weak and strong disputants (Dahal & Bhatta 2008). A caste system thus discriminates against particular groups of people while favoring others.

Some local arbitrators and mediators in traditional societies tend to rely on coercive rather than persuasive and collaborative means of dispute resolution because their actions are dictated by societal norms, values and beliefs. Such coercive strategies produce dissatisfying outcomes and biased decisions against weak parties in favor of strong disputants. Although, losers in court arbitration have the opportunity to appeal to higher authorities, their low financial statuses

constrain their willingness to make such appeals. This is because the chances of winning in legal courts are low and uncertain.

In the event that a woman pursues legal arbitration to settle a domestic violence case in a traditional society, the likelihood of this woman experiencing extreme suffering, ridiculing and humiliation is high if the settlement outcome is divorce. This is because the husband will stop giving her the needed financial and material assistance to sustain her life. Upon divorce, poor women find it difficult to resettle in society because they are regarded as social misfits who violate societal norms even if they are seeking justice (Brickell 2015). For this reason, women pursue informal mechanisms to settle their domestic issues with an aim to reconcile and continue living in harmony with their partners.

Some societies that utilize both informal and legal dispute resolution venues such as Cambodia offer the best options for disputants to choose specific mechanisms that suit their problems (Brickell 2015; Pinto 2000). In this case, women as well as other vulnerable disputants do not need to go to legal courts seeking for solutions to their disputes. Thus, the issues of financial, material and social inequality are sufficiently addressed by the mere presence of dual dispute resolution venues. Another argument by Pinto (2000) that also resolves the problem of inequality is that, conflict resolvers often assure disputants that any abuses against (and deviance from) settlement outcome is punishable. Conflict resolvers also assure disputants that no judge or lawyer is involved in the dispute resolution process who can influence the final outcomes.

Disputants' ability and/or inability to afford court fees, time and distance/location where the process of dispute resolution takes place also influences venue selection processes. Kim et al. (1993) argue that (relatively uneducated) disputants in traditional societies are reluctant to go to court because they are suspicious of being suckered by court clerks. In addition to the burden of court fees, disputants are hesitant to go to legal courts for fear of binding settlements that may be unfavorable to them especially when they lose. Because most legal dispute resolution venues are located in urban areas, disputants find it difficult to travel long distances due to related transport, accommodation and feeding costs especially when the process takes place far away from one's own place of residence. In this sense, financially poor disputants tend to prefer nearby informal venues so as to evade these unnecessary costs.

Dahal & Bhatta (2008) also echo similar remarks like those of Kim et al. by arguing that the Communist Party of Nepal (CPN) and Maoist courts were perceived as unpopular and inappropriate to settle local disputes due to their focus on punitive measures, imposition of exorbitant taxes and less experienced adjudicators. Hence, eroding the trust of the Nepalese people in legal courts. According to Henrysson et al. (2009), cost effectiveness, efficiency in terms of speed and time spent on dispute resolution, and familiarity with customary dispute adjudication mechanisms make informal courts more preferable than legal courts. Powell & Wiegand (2014) on their part assert that in commercial disputes, business people risk losing both in terms of time and money if they choose to go to legal courts at far distances.

Conteh (2014) argues that poor disputants often criticize local chiefs for imposing exorbitant fines which they [disputants] cannot afford. As such, community peace volunteers also known as CPVs in Sierra Leone became the most preferred and effective peace makers because their services were free and accessible. Dahal & Bhatta (2008) extends Conteh's argument further by claiming that community mediation is faster, less bureaucratic and time saving. De Juan et al. (2015) also argue that the presence of informal venues such as worship places that are easily accessible presents an attractive alternative to relatively poor disputants with limited financial capabilities. In addition to being seen as legitimate, De Juan et al. argues that religious leaders are also applauded for offering free service to disputants. The arguments by Conteh, De Juan et al. and Kim et al. altogether demonstrate that closeness between disputants and dispute resolution venues minimizes unnecessary financial costs.

Unlike informal courts located far in rural areas, disputants incur financial costs whenever they chose legal venues. Nevertheless, this is not the case with financially stable and well educated individuals who prefer courts and anticipate win/loss outcome regardless of the court procedure. Moreover, legal courts are often overwhelmed with cases hence, making them less appealing to disputants since they take long periods of time before a single case is resolved. Worse still is the complicated procedures of courts that are both tedious and difficult to understand especially by less educated people.

2.3.3. International Relations Literature on Conflict Resolution

According to Lefler (2015), the enforceability of agreements depends on the amount of leverage and legitimacy vested in legal conflict resolvers. Weak venues that lack legitimacy and leverage, according to Shea (2016), are less likely to be accepted by disputants because they are unable to cajole disputants towards agreement. The fact is that weak venues that are unable to induce “sticks” and “carrots” make them less preferable compared to coercive mediators that act proactively in both threatening and convincing manners.

Legal and trained mediators offer attractive dispute resolution venues to members of modern societies. To resolve complex issues such as murder, security and armed robbery that are usually more prevalent in urban centers than in rural settings, disputants require the help of legal mediators, arbitrators and adjudicators who have greater power and means to enforce settlements. Informal third parties are unlikely to mediate complex cases because the implementation process is problematic especially when disputants show little willingness and/or are uncompliant with final decisions. Moreover, the absence of “sticks” and “carrots” constrain informal venues from enforcing settlements.

Research conducted in Turkey and Egypt indicates that female Turkish and Egyptian disputants have different venue preferences for dispute resolution (Belge & Blaydes 2013). The research findings show that the latter prefer informal dispute resolution mechanisms while the former prefer legal mechanisms. In my view, female Turkish disputants should not be worried about settlement enforcement since non-compliance is intolerable in legal courts. For female Egyptian disputants, the level of social capital also influences venue selection. Individuals who are well-connected to the state and its justice system are more likely to report their disputes to legal courts than those without social connections. At the same time, low-income female Egyptian disputants accuse legal courts and court officials of corruption, overloading of cases, lack of independence, and poor settlement enforcement capabilities (Dahal & Bhatta 2008).

The nature of dispute resolution process also poses a challenge to disputants. Conflict parties experience difficulties in choosing either a less or more complex and less or more bureaucratic dispute resolution venue. While deciding, disputants consider rules, procedures, structure and

amount of time spent during a particular dispute resolution process. An example of a dispute resolution venue without specific procedures and rules that does not cater for disputants' cultural norms, values and beliefs is the Jewish mediation (Steinberg 2000). Disputants in modern individualistic societies are less likely to opt for venues such as the Jewish ones without proper rules and procedures. This is because these venues do not show how settlements are arrived at (that is, the outcomes of such dispute resolution venues are uncertain). In traditional societies however, disputants are comfortable with an outcome that restores relationships, social harmony and reconciliation. Whether there are rules and procedures or not, is less of a concern to members of traditional societies.

Kose and Beriker (2012) maintain that the ulema and religious notables are the most preferred mediators for resolving conflicts over theft, money, adultery and elopement in Eastern Turkey. The closeness between the ulema, religious notables and disputants enables them to meet prior to commencement of any dispute resolution process. Prior meeting is important for pre-mediation and enables mediators to better understand and gather more information as well as encourage disputants to cooperate and resolve their differences peacefully. At times, mediators promise financial and material incentives to weaker parties both as a means to persuade them toward concession and to enhance their bargaining capability (Kose & Beriker 2012; Wall & Beriker 2010).

According to Kose & Beriker (2012), Wall et al. (2010) and Steinberg (2000), religious mediators refer disputants to symbolic and moral scripts such as the Holy Quran and Bible to guide disputants on the need to peacefully resolve their differences. The Nepalese dispute resolution process led by council of elders (also known as *gram parishad*) is tasked with resolving disputes by facilitating discussions between adversaries, identifying common interests and assisting disputants to formulate mutually beneficial solutions (Dahal & Bhatta 2008). Final settlements are legitimized by sacred institutional duties (*dharma*) in a manner consistent with local customs and morality.

Venue selection is further influenced by mediators' ability to help their clients to make rational decisions that produce mutual benefits. Based on arguments by rational choice and prisoners' dilemma theorists (see Axelrod 1997; Rapoport 1974; Schelling 1980 for decision-making based on rational choice), dispute resolution denotes a process of making rational decisions aimed at

benefitting the players involved as well as reducing negative outcomes of the dispute resolution process on both sides. Powell & Wiegand (2014) observed that disputants make strategic decisions on whether to resort to legal or traditional venues by focusing on their past experience with a particular venue. For instance, a disputant is more likely to return to a legal venue where the outcome was favorable but, will never return to the same venue if the outcome was unfavorable. Instead, a loser at a previous venue is more likely to switch to a new venue hoping for fair outcome.

Moreover, the uncertainties surrounding legal courts discourage disputants who are unfamiliar with legal laws and processes from pursuing settlements of their problems using formal means. To address the complexities surrounding legal venues and their unpredictable natures, conflict resolvers often persuade disputants to cooperate and bargain so as to arrive at mutually benefitting solutions. As such, disputants seek equal gains with minimal losses by evoking the *give-and-take* strategy – meaning that disputants simply accept any solution as a way out of a problem even if it does not necessarily fully satisfy their needs and interests.

Viewed as a highly competitive game motivated by greed and belief that best outcomes are often achieved by forcing opponents to concede to one's demands, disputants end up with undesirable outcomes as a result of mutual cooperation². Such style of dispute resolution makes stronger parties to push the weaker ones to the brink before arriving at consensus and compromise particularly when anticipated outcomes are unpleasant. Such incidences in dispute resolution also occur when trust does not exist between the parties either because of information problems or general lack of trust in the mediation process. If not well managed, disputants are likely to experience what Madani & Lund (2010) call “chicken game”. The chicken game is a form of legal dispute resolution through rational choice and avoidance of head-on collisions which is, in general, unsuccessful in traditional contexts.

Where disputants are highly competitive, and mediators lack the leverage necessary to persuade them to make consensus, neutral and impartial mediators find it difficult to ensure cooperation and compromise. In such situations, Beardsley (2011) argues that weak mediators offer the best option

²Marina Krakovsky writes about Professor Nir Halevy's perception of game theory and how to better understand and manage disputes in politics and business.

for disputants with sincere intentions of resolving their problems. Disputants who doubt the outcomes of mediation processes tend to seek assistance from more professional mediators capable of helping them to predict settlement outcomes in order to avoid uncertainties and risks. Disputants faced with more contentious disagreements and have little trust in legal venues also often refer to informal venues that offer non-binding agreements without commitment problems.

Based on the literature review above, the following three factors are identified as the most influential in venue selection processes.

- i. Norms and values under which perception of legitimacy and third party reputation, sense of justice and harmony, and venue familiarity can be enlisted.
- ii. Venue characteristics such as fairness, justice and capability of making favorable settlements.
- iii. Practicality in terms of accessibility, affordability, speed of resolution, and nature of dispute resolution processes.

2.4.Main Hypothesis

The critical evaluation of the factors that determine individuals' venue selection processes above indicate that leverage, enforcement capability, competence and track record of successful dispute resolution, procedural setup, desire for justice and fairness, harmony, and an overall familiarity with court systems significantly influence venue preference. Most of these factors characterize legal courts, although harmony matters to a greater extent to members of traditional societies. Therefore, it can be hypothesized that legal disputant resolution mechanisms are more preferable than traditional mechanisms for resolving more serious conflicts.

2.4.1. Secondary Hypotheses

- i. High issue salience leads disputants to prefer formal over informal venues.
- ii. Equal issue salience leads disputants to agree on informal venues.
- iii. Similar cultural background and similar gender lead disputants to prefer informal venues.
- iv. Dissimilar cultural background and different gender lead disputants to disagree over formal venues.

- v. Formal venue preference is dependent on place of residence.

The assumptions below led to the above hypotheses: Issues such as land grabbing, murder, rape and defilement require venues with leverage and authority that can induce and enforce settlements to satisfy “deserving disputants” by making favorable decisions to those who have evidence for their cases. On the other hand, when contested issues are of less salience to disputants such as small amount of money borrowed, fight in drinking places and at water wells, gossiping and suspicion for theft, disputants refer to informal venues. Such decisions to rely on informal venues is influenced by the importance attached to peaceful relationships among members of traditional settings; accessibility and affordability; informality in terms of procedures considering the fact that less educated people do not understand complex rules in courts and police, and speed of resolution. It is also expected that disputants in rural settings prefer informal venues while those in urban areas go to legal venues. Yet, females prefer traditional mechanisms to legal forums of dispute resolution.

2.5.Conclusion

Venue selection for dispute resolution depends on many factors. A disputant’s past experience with a particular venue, related costs and distance, familiarity with venue and compatibility with local cultures; transparency, distributional bias and issue salience; nature and venue procedures; sense of justice and desire to preserve social harmony altogether influence venue selection strategies. As elaborated in the literature review, members of traditional societies align more with informal, casual and less complex dispute resolution processes whose main purpose is to reconcile disputants and restore broken relationships. These informal mechanisms are forums for disputants to discuss their differences and arrive at settlements through consensus and compromise rather than committing to binding decisions as is the case in legal courts.

Often, an agreement is sealed by rituals and traditional celebrations to imply the commitment by disputants to full implementation of settlements. In contrast, members of modern societies perceive legal venues as credible and legitimate. The legal basis of arbitration and adjudication courts reinforces disputants’ trust in, and hope that agreements reached are enforceable provided both parties agree and sign. Unlike in informal dispute resolution, legal processes usually produce

win/loss settlements. Thus, victory is personal rather than communal as may be the case in informal venues.

Furthermore, informal and legal dispute resolution processes differ in terms of procedures and rules. For instance, informal mediators such as religious leaders, elders and chiefs (in Philippines) often start dispute resolution processes with prayers while Catholic mediators in the United States (U.S.) do not pray either (Wall & Beriker 2010). The U.S. – Philippines contrast suggests a refinement in the *cultural effects model* namely, that subjective cultural elements not only affect social behavior and mediators' behavior but, they also moderate the effect of social behavior on mediation (Wall & Beriker 2010). In nut shell, venue selection varies between members of traditional societies and individualists in modern societies, religious or irreligious people, literate and illiterate, poor and rich, and men and women.

3. RESEARCH METHODOLOGY AND DESIGN

3.1. Background Information about South Sudan

South Sudan is a new state established on July 09, 2011 after two decades of civil war with Sudan. The first civil war ran from 1955 before and after Sudan gained independence from Britain to 1972 and ended with the signing of the Addis Ababa agreement in Ethiopia. Eleven years later, the second civil war started in 1983 when the Sudan People's Liberation Army (SPLA) rose against the oppressive Sudanese regime. In 2005, a Comprehensive Peace Agreement (CPA) was signed in which the people of South Sudan were granted the right of self-determination. In exercise of this right on January 9, 2011, ninety-nine percent of the people of South Sudan voted in favor of secession.

However, South Sudan currently faces numerous challenges among them re-building an impoverished justice system. Some of the challenges facing the programme of re-building the justice system in South Sudan include weak institutional capacity, unqualified or semi-qualified personnel, limited budget, poor roads and communications networks that prevent police from accessing rural areas where their help is most needed (Baker & Scheye 2009). In South Sudan, as elsewhere in transitioning polities in the third world, an effective justice system is key to a country's stability and sustainable peace.

An interesting scenario is that, despite efforts by the government of South Sudan to establish and strengthen modern justice systems, customary laws continue to supplement modern justice systems and play an important role in dispute resolution at the grassroots levels (Baker & Scheye 2009; Baker 2010). Because of this complementarity, the distinction between legal and traditional court systems is blurred. In fact, the endogenous institutions have been there in South Sudan forever. The justice system in South Sudan ranges from the lowest levels such as boma and payam where headmen, sub-chiefs, and chiefs preside as judges and magistrates and rely on traditional knowledge to adjudicate, arbitrate and mediate.

The Boma is the lowest administrative unit while the Payam is second lowest in the order of Local Government structures. At these two levels, are traditional courts. Similarly, at the County, State

and National levels are the legal courts such as County Court, Supreme Court and Court of Appeal. The customary law courts at the boma and payam levels deal with minor cases such as disputed marriage, elopement, suspicion for witchcraft, theft and quarrels/fight. Modern courts such as the High Court or Court of Appeal handle more complex issues like murder, rape, defilement and political crimes like treason (Baker & Scheye 2009; Baker 2010).

It is also important to note that, in some cases in South Sudan, both laws complement each other, while, in others, one substitutes the other. Moreover, international organizations like United Nations Development Programme (UNDP) and Organization for Economic Cooperation and Development (OECD) recognize the role of traditional justice systems as the cornerstone of dispute resolution and access to justice in post-conflict societies (Baker & Scheye 2009). These organizations argue that traditional justice systems are perceived by poor people in traditional societies to be effective, affordable and accessible, easy to understand and culturally compatible.

Like in most transitioning polities, court type preference in South Sudan is influenced by individuals' culture; dispute intensity; speed of resolution; perception of legitimacy and reputation of conflict resolvers; sense of fairness and justice; the need to preserve harmony; venue familiarity and compatibility in terms of culture; anticipated settlement outcome based on past experience with a particular court type; cost-benefit analysis; level of transparency and decision control over dispute resolution process and issue salience. Minor disputes are usually referred to local chiefs while major crimes such as murder, theft, adultery, and rape, defilement go to legal courts since they are legally defined as criminal offenses for which more competent legal courts are capable of resolving (GoSS 2009; Ministry of Justice 2008; Deng 2013; Jok et al. 2004).

In rare cases where individuals are confronted with issues like murder, adultery and land grabbing that prompts them to take the law into their hands, the police often directly intervene hence, preventing free choice over courts. The complementarity of customary and modern laws therefore brings to the fore an important question: when individuals choose venues for resolving disputes, under what circumstances do they choose either customary or modern courts? And why?

3.2.Site Description – Yei Municipality

Yei Municipality was established by a presidential decree in 2013. Its estimated population is 11,1268 people according to a household head-count exercise conducted by South Sudan Center for Census and Statistical Evaluation (SSCCSE) in 2010. It is located in Yei River State which is one of South Sudan's most peaceful societies hosting thousands of people from different ethnic groups including foreign nationals. Although Mundu boma was/is not under the administration of Yei Municipality at the time when this survey was conducted, its people often travel to Yei to access social services such as health, education, market, and legal services provided by police and courts.

Pakula is a quarter council under Yei Municipality and both locations (that is, Mundu and Pakula) are approximately twenty miles away from Yei town quarter council. The common language for the people of all the three locations is Juba Arabic while Kakwa/Bari is the dialect for Yei and Pakula respectively. It is also widely known throughout South Sudan that the people of Yei are more civilized, peaceful and religious.

Geographically, Yei is located at the extreme South of the country and borders Uganda to the South and Democratic Republic of Congo (DRC) to the West. This location makes it strategic for business purposes, although subsistence agriculture and hunting are the two major economic activities practiced by the people of Yei to sustain their livelihoods. A map showing rule of law institutions in Yei can be found at appendix 2, and a figure illustrating statutory and customary law courts at appendix 3.

3.3.Sample Selection Criteria and Description

Three hundred (300) respondents were selected for this research using non-probability convenience sampling. In each of the three locations, 100 respondents were selected. Training attendance lists were obtained from local civil society organizations³ (CSOs) operating in Yei Municipality from which respondents were selected based on gender, ethnicity, educational status, occupation and place of residence. Phayal, Khadka, & Thyne (2015) argue that these five variables

³Community Empowerment for Rehabilitation and Development, Center for Democracy and Development, Organization for Socio-Economic Transformation, Center for Democracy Initiative.

are important in the selection of respondents because they help in capturing both community- and individual-level variations in social, cultural, economic and political aspects. For the purpose of this paper, selecting respondents based on the above variables is important in understanding how they influence forum selection. Basedau & Koos(2015) also observe that the above variables are important for testing hypothesis.

Comparatively, Yei is more urbanized, culturally diverse with an emerging individualistic culture, liberal and fast democratizing society. Yei also has higher literacy rate than the two other two research sites. On the other hand, Pakula and Mundu are mono-cultural, rural, and collectivist societies with low literacy rate. Hence, their selection is important in this research to test the research hypotheses. Deng (2013) argues that poor and uneducated rural dwellers go to informal courts while rich and educated urban dwellers prefer legal courts. Because poor and uneducated rural dwellers generally lack basic understanding of the procedures in formal courts, they tend to prefer informal courts, which are less bureaucratic and less complicated in terms of procedures. Moreover, Deng argues that cultural norms and values influence individuals' choice of justice mechanisms differently. For instance, most women rely on informal justice systems that focus on reconciling them with their husbands rather than those that separate them. Women often end up getting less property [inheritance] and child-custody rights compared with men when cases are handled in courts. Men usually choose formal dispute resolution mechanisms if they intend to divorce and take full custody of children and property.

In South Sudan, most court rulings especially on marriage and divorce cases whether in informal or formal courts, grant more child custody and property rights to men than women. This difference in child custody rights stems from women's low economic status who are assumed to be incapable of giving proper care to the children once given to them. Because of the fact that some women seek second marriage after divorcing the first, second or third husband, they end up on the disadvantageous side. Furthermore, cases like rape and defilement are mostly blamed on women for violating established social and moral norms. Upon completion of the interview, the respondents were debriefed about the selection process and the research itself. The selection process was done by the main investigator (while also coordinating on phone, Facebook and email) with experienced research assistants on the ground. Selection and recruitment results are presented in Table 1.

3.4. Why this Sample?

Selecting a random sample for this study required an infeasible budget. More specifically, obtaining a representative sampling frame is almost impossible in the South Sudanese context with current resources. Yet, obtaining a sampling frame for the research was difficult due to inaccessibility to remote locations in Mundu and Pakula that experienced some insecurity during the time of the conflict in South Sudan between 2013 and 2015. As a result, I instead opted to conduct surveys with informed members of their respective communities in Yei Municipality, who are often selected to represent their communities in local meetings as well as in meetings with either NGOs or local government officials. The assumption is that these respondents will – to the best extent possible – render a comprehensive picture of the underlying dynamics of forum selection in conflict resolution in their respective communities. At the time of data collection Mundu boma was under Yei River County. Respondents in Mundu and Pakula were selected for this research because most often people from the area also access services such as health, education, courts, police, and markets in Yei town. In a way, the sampling technique biases our results by mainly representing elite views. Perhaps, if a random technique was used to select the sample, the results would holistically represent the views of the entire population.

3.5. Research Assistants

Interviewers were issued with interview guidelines/handouts so as to act according to professional research ethics. Interviewers were also given a short quiz about survey research and face-to-face interview as a data collection method. The quiz is important to determine the abilities of research assistants in conducting surveys. One of the research assistants was a former census official whom the main investigator worked with in 2008 during the 5th Sudan Population and Housing Census. This raises the level of confidence that the surveys were conducted diligently. Another research assistant also helped two other previous researchers; one from Uganda Martyrs University and another from Cavendish University in Uganda. A third research assistant is a community social worker. The fourth one is a youth leader. The remaining two research assistants were supervised by the census official and the other experienced research assistants. These two inexperienced research assistants collected data from separate communities.

3.6.Data Collection

The survey was conducted in the month of April, 2016. Prior to the survey, research assistants familiarized themselves with the research sites and targeted respondents. By the time the survey started they had established rapport with the respondents. Nonetheless, research assistants were cautioned by the main researcher not to be too intimate with respondents in order to ease their exit from the field. Moreover, maintaining loose relationships with respondents helps to prevent psychological issues such as a respondent missing an interviewer (and vice versa) especially if they had already established strong relationship that none would want to see it end.

Research assistants took advantage of community meetings, workshops, prayers programmes, funeral functions, and marriage functions where most research subjects were present to agree on possible interview data, time and place. Each research assistant was assigned fifty respondents of which twenty-five were males and females respectively for each of the three locations. After successfully completing a survey with a respondent, the research assistant ticks his/her name in the list produced by the main investigator during the sampling process. As such, those respondents who failed to appear in any of the events mentioned above were easily traced based on their telephone numbers and physical addresses provided in the list⁴.

Of the 300 samples, 288 respondents took part in the surveys and twelve others were missed or may have refused despite initial consent. In spite of this small number failing to participate in the research, the response rate was generally high enough to allow for inference to be made on the entire population which is not the purpose of this research. One possible explanation for this high response rate is due to the well-established rapport, as well as some small monetary incentives provided to the research assistants who felt obliged to complete all tasks assigned to them.

Data for this thesis was obtained from three locations; Yei town and Pakula quarter councils and Mundu boma in Tore Payam. Therefore, the analysis and tabular presentations in this paper are based on primary data. The surveys were conducted with the help of six research assistants: two in each location. An additional contact person helped in distributing and receiving back filled

⁴ The names of respondents were obtained from lists provided by project officers of local organizations working in the three research areas.

questionnaires from the field. The contact person also assisted in entering the data in excel sheet before the questionnaires were later scanned and emailed to the main investigator.

Throughout the data collection process, regular phone calls, Facebook and email communications helped in guiding interviewers on some challenges that arose in the field such as non-responses and ensuring equitable gender representation. Moreover, the main investigator was able to supervise and guide the entire data collection process based on the information provided by the interviewers and the contact person. Of the 288 respondents who participated in the surveys, forty received self-administered questionnaires since they are literate and have limited time to attend scheduled surveys. These forty respondents are known to have taken part in a number of research projects conducted by other researchers and were recruited for this particular study based on opportunistic sampling (Topp et al. 2015). The remaining 248 were interviewed face-to-face by six interviewers.

3.7.Data Collection Instrument

A structured questionnaire was used to collect information on respondents' demographics, types of disputes, venue selection and motivation for venue selection, and frequency of visiting a particular venue. Answers to these questions provide information on which court types are more preferable and which ones are not, and whether demographic characteristics influence venue selection processes. All questions asked were open-ended. Open-ended questions are appropriate because they enable the researcher to obtain in-depth understanding of social settings as well as identifying the research subjects' beliefs and values that underlie the phenomena being studied. Asking open-ended questions generated enormous data that was quantified and analyzed using STATA (14).

A few reported challenges such as translating responses from Arabic and Kakwa to English emerged but were rectified by the main investigator by making phone calls to particular respondents whose responses were unclear hence maintaining data reliability. The survey was structured in a face-to-face interactive manner between the respondent and interviewer in which first-hand information obtained from the respondents was immediately recorded in his/her words in English and Kakwa in Yei, and Arabic in Mundu.

Respondents were asked to tell 1) the most recent problem they faced, 2) to which venue the problem was reported for resolution, 3) why the particular venue is preferred? and 4) to where they would report problems such as rape/defilement, elopement/adultery, murder, theft, land grabbing, debt, child custody, and road accident. Despite limiting the responses to the problems outlined here above, different types of problems and venues emerged. These additional problems were therefore classified and coded accordingly into three main categories; that is, civil (1), economic/financial (2), and criminal (3) offences and “others” for unspecified venues. Some issues such as none-response were coded -88 while missing took code -99. Other demographic questions asked include educational attainment, occupation, age, place of residence, means of transport, means of communication, source of news, source of light, and gender.

3.8.Measuring Socioeconomic Status

In this thesis, level of education, occupation, means of transport, means of communication, source of news, and place of residence are used to measure socio-economic statuses. As such, two categories emerged rich and poor. The category of rich people is characterized by attainment of tertiary/higher diploma, some tertiary, employed as civil servants, civil society, private business, in possession of motor vehicle, uses internet/smartphone/newspaper for news and communication, and resides in urban areas in Yei, specifically. Poor people are students, unemployed or employed as casual laborers, tea boilers, office messengers, farmers, boda-boda riders, those who own only a bicycle, cellphone, those who do not have electricity, those without television, those unable to afford newspapers or none of all the above at all, and reside in rural areas in Pakula and Mundu.

3.8.1. Pre-test, Internal Validity and Reliability

Since pre-test was done with five voluntary respondents in English, Arabic and Kakwa in the three locations respectively, threats to internal validity were to a large extent minimized. The feedback from the pre-test helped to clarify issues that were difficult to understand. As such, the language used in the questionnaires was explicitly simplified such that even a primary school pupil is able to read and understand. The only bias that could have threatened internal validity was the method of respondents’ selection which targeted relatively educated people.

Using non-probability convenience, specific individuals who are chosen by their communities to represent them in public meetings were selected. This selection method neglects those individuals who might be interested in the research, but because they do not represent their communities during meetings, their names could not be found in the attendance lists obtained from local civil society organizations. Moreover, this method of sample selection risks the results of the research since it is based on assumption that what the respondents say is also what the community would say had they taken part in the research.

3.8.2. Obtaining Approval and Maintaining Confidentiality

Approval to engage research participants was not directly obtained from local authorities such as the municipal mayor, paramount chief, county commissioners, or even the state governor. Rather, participants were directly contacted to take part in the surveys. For security reasons and worries about being denied access to the research sites, and considering the fact that South Sudan was faced with civil war during the time of data collection, access to all sites was made possible with the help of the local CSOs from whom attendance lists were obtained that also implement projects in the three research sites.

Although not entirely insiders, the research assistants' presence within the research sites was perceived as normal without any suspicion that the project was either government or rebel sponsored (a mentality that most people in Yei have particularly during the civil war). The fact that the research topic closely relates to conflict, dispute, or some sort of disagreement is enough reason to discourage some people from participating. Further, the rampant arrests and detention of political opponents during the 2013/2015 civil war in South Sudan based on suspicion might have also caused the fourteen respondents to decline from participating in the surveys. To gain trust from the research subjects, their anonymity, privacy and confidentiality of every information shared with respondents was assured, and that, unless they accept, no information can be shared with anyone whether being part of the research or not.

3.8.3. Consent and Voluntary Participation

All surveys were conducted with the respondents' verbal consent. Respondents who could not complete one interview at a particular time were allowed to temporarily suspend the process and

resume later at an agreed time. This kind of arrangement was necessary because it enabled respondents to take their own time and rethink whether they should continue the survey or withdraw forever. Furthermore, allowing participants to decide whether to continue or discontinue interviews is ethically appropriate, and is in line with their right of voluntary participation.

Precisely, letting respondents to stop the interview process allowed them to assess whether or not any harm has been caused against them by the research assistants, or if they are being exposed to political risks such as arrest and detention. The research aim and objectives were also clearly explained to each and every respondent so as to create an atmosphere of trust, comfort, and confidence where both the research assistants and research subjects are knowledgeable about the topic being studied, and also to guarantee the subjects that the research is purely for academic purposes which will later benefit them and their entire communities. Since it was not feasible to bring together all the respondents at a single time to be notified about actual survey process, the research assistants took advantage of community meetings and social gatherings to remind research subjects about the program. Indirectly or directly, OSET, the organization where the researcher's main contact person works assisted the research assistants in obtaining voluntary consent of participation.

3.8.4. Description of Dispute Resolution Processes in South Sudan

With the establishment of the new state, the judiciary process in South Sudan was overhauled. This has led to the establishment of the Supreme Court, Courts of Appeal, High Court, and County Courts as formal mechanisms, and Chiefs' Courts, Regional Courts', and Payam Courts as informal mechanisms.⁵ The manner in which both the formal and informal courts operate in South Sudan is almost indistinguishable. That is to say, whether in informal or formal courts, chiefs, magistrates, and judges follow similar dispute resolution processes and strategies.

A case begins with disputants making oral or written petitions addressed to a chief or legal judge depending on the type or magnitude of the dispute in question. After a thorough review, a chief or judge decides to either admit the petition as a case or reject it. Thereafter, disputants (together with their witnesses) are summoned to appear in court. Otherwise, a retainer (police officer) is deployed

⁵ This description of the informal and formal dispute resolution processes emanates from Jok, Leitch, & Vandewint (2004) as well as from the Transitional Consitution of South Sudan (2011).

to collect the accused in case of resistance or failure to show up in court. The police officer who is tasked with investigation and law enforcement is usually assigned by chiefs and judges to arrest and detain perpetrators if found guilty. At later times when a detainee is unable to bail himself or herself, the prisons department takes over the task of long-term detention ranging from one month and more. One major difference between chiefs' and legal courts'/police detention facilities is that, the former basically paroles detainees because of poor detention facilities. While at the latter, perpetrators are detained in concrete prison cells though with relatively poor standards. Therefore, formal justice systems have more enforcement capability than informal systems in terms of detaining culprits.

In informal courts, chiefs preside over cases while trained lawyers and judges preside over cases in formal courts. After comprehensive and inclusive discussions involving both the accused and accuser, judgments are issued by chiefs in informal courts that reflect the main points of the discussion. Similarly, in formal courts, judges rely on discussions by primary parties and their legally assigned representatives, as well as legal instruments to make judgments. In both courts, testimonies and/or oaths and touching of a Bible form part of the evidence or prove of innocence or guilt. Disputants are also entitled to limitless appeals to higher courts to seek redress of their issues if they feel dissatisfied with first settlements. Until a court or police order is implemented, no settlement is done yet. In such instances especially in informal courts, retainers are empowered to demand compensation, if not, any property worth the *fine* is confiscated from the defendant (accused/guilty person) to compensate the victim who is also the case winner.

When a case appears before a court, the first step is to determine whether or not the case falls within the jurisdiction of that particular court to hear it. The Chiefs' Court and Regional Court (referred to as 'A' Court and 'B' court in the 2011 Transitional Constitution of South Sudan respectively) are located at the village and payam levels. Both courts utilize customary laws in dispute resolution. The "B" Court deals with crimes ranging from theft through criminal breach of trust to murder resulting from tribal or sectional fighting. The "A" Court handles marriage cases, child custody, incest and divorce. Appeals from the Chiefs' Court go to the Regional Court, but in practice, appeals from both courts go direct to Payam Court or a court higher than this.

The Payam Court is the lowest court in the hierarchy of formal law in South Sudan. According to the Transitional Constitution of South Sudan (2011), a Payam is the second lowest tier of local government. The Payam Court comprises of three members dealing with criminal and civil cases as prescribed by both customary and statutory laws. The County Court placed at the county level (third tier) of local government, is presided over by state appointed judge. The County Court deals with criminal and civil cases as well as appeals from lower courts. The High Court at the national level in the capital city deals with criminal and civil cases except those matters related to the Constitution. The High Court also receives appeals from lower courts. Lastly, the Court of Appeal is the highest court located in the capital city and final point of appeal. It confirms capital punishment and may be asked to pronounce upon constitutional matters of law. It deals with appeals by relying on both statutory and customary laws which have been passed up through due process.

3.8.5. Case: Child Custody

South Sudanese single mothers (or divorcees) and women who get pregnant out of wedlock often lose cases whether in legal or customary courts. Worst is when the child is a girl. In the South Sudanese context, marriage is often sealed by payment of dowry (in form of money, cattle, goats, and chickens) which automatically grants fathers more rights of child custody in case of divorce, or death of the mother. Fathers are also granted more rights over children born out of wedlock and extra-marital affairs either because the mother is not ready for marriage or disagreements among family members of both partners that prevent them from settling as husband and wife.

In addition, husbands who became step fathers after marrying a widow or a divorcee often feel cheated by courts. This is because the biological father of the children whose mother takes along to her second marriage usually refuses to pay any compensation to the step-father. Sometimes biological fathers deliberately refuse to take the compensation if offered. Nevertheless, efforts are being made by the GoSS to address the injustices that women face in the South Sudanese justice systems. If successful, men who engage in extra-marital affairs only for the shake of having children stand high chances of losing the rights they currently enjoy. Thus, the gap between mothers and fathers in terms of child custody rights would significantly reduce.

3.9.Scope and Constraints

3.9.1. Dissolution and Establishment of Local Government

Much as the conduct of this research was to a greater extent successful, a few challenges ensued. First among these challenges relates to the dissolution of the former local government unit (Central Equatoria State) within which Yei Municipality falls. These political changes cast doubts about the names and administrative boundaries within which the research took place. Should any changes happen, we should also expect changes to the names and boundaries of the three research sites soon or later. Nonetheless, the names Yei, Mundu and Pakula remained the same until the survey was completed. Thus, the research sample as well as the findings, to the best of the investigator's knowledge are not affected and are therefore representative of the three locations.

3.9.2. Limited Resources

One of the major challenges to this research was lack of adequate financial support that could enable the researcher to go to the field and collect the data in person and do some more in-depth interviews with key informants. Despite this challenge, the researcher was able to identify six experienced research assistants – two from each of the three research sites who assisted with data collection. In addition, the little incentives paid to the research assistants was of particular importance because it facilitated their transport and communication costs, tea/water, and some printing/photocopying services. Thus, accelerating the rate at which the data collection process took place.

3.9.3. Translation

Translating the questionnaire from English to Kakwa/Bari and to Juba Arabic was also a problem. However, this problem did not seriously hinder the data collection and analysis processes because the main investigator is a native speaker of Kakwa, and also speaks Juba Arabic which is a simplified version of classical Arabic widely spoken by the people of Yei. Thus, to a greater extent, the data obtained and used in the analysis is reliable. To confirm the accuracy of the questionnaire and data, one native elderly Kakwa/Bari and one eloquent Juba Arabic speakers reviewed it and

recommended as easily readable and understandable. Therefore, worries about accuracy of translation are minimal.

3.9.4. Ethical issues

During the time of conducting the research for this paper, the political situation in South Sudan was tense. Obtaining permission from the municipal administration and other lower levels of administration such as chiefs was a matter of jeopardizing the entire research process. During the civil war that broke out in December 2013 when the research took place, local authorities not only in Yei, but in most parts of South Sudan were by then curious about any activities taking place within their jurisdiction. Thus, a risky, but careful data collection process was designed to allow the main investigator to work directly with research assistants and respondents while maintaining confidentiality of the entire research project. Obtaining respondents' consent to participate in the survey thus addresses any doubts about how access to the field was obtained.

3.9.5. Distance, transport costs and sample representativeness

Another anticipated challenge that was controlled is the issue of sample representativeness. Considering the far distance between Mundu and Pakula which are approximately twenty miles away from the main research site in Yei town, access to these two areas proved to be difficult due to transport costs and fear of insecurity. Research assistants for Pakula and Mundu lived at least ten miles away from the actual research site. However, this challenge was overcome by selecting citizens of Pakula and Mundu who are temporarily residing in any part of Yei town with frequent travels back home to their villages. These category of respondents were those with knowledge of the local dispute resolution processes in their communities.

4. PRESENTATION OF FINDINGS

4.1. Sample Description

This section discusses the findings of the surveys taken during the research. Stata was used to generate cross-tabulations and chi-square tests as presented below in tables. Cross-tabulations and chi-squares are preferred for this particular analysis in order to enable the researcher establish whether or not there exist significant correlations between two or more variables.

For convenience purposes, new variables for demographics were created. First, a variable called level of education was generated under which four categories emerged – tertiary, secondary, primary and no schooling. Similarly, a new variable called employment type was generated in which three categories emerged: formal, informal, and unemployed. Formal employment encompasses civil servants, civil society, and registered private business owners. This category is termed as “formal” because these are employees who work in organized institutions (governmental or non-governmental), sign contracts with clear job descriptions, and have well spelled job descriptions.

Tea makers, casual laborers like builders/porters, brick molders, and motorcycle riders (also called *boba-boda*) fall under informal employees. These are basically people whose work is either unregistered by the government or is on temporary basis and have no legal contracts, or any terms of reference. The unemployed people include rural farmers, housewives, students, and anyone who reported “no work.” Another variable called language was created under which respondents in Yei are considered to be English speakers because they were interviewed in English. The people of Mundu were termed as Arabic speakers while those in Pakula as Kakwa speakers. Age was categorized into three groups: those who were between eighteen and twenty-nine years by the end of the 1983-2005 civil war between Sudan and South Sudan formed one group, from thirty to thirty-nine years formed a second group and a third group consisted of those aged forty years and above.

This chapter proceeds as follows. First, is a tabular presentation and description of the sample demographics (that is gender, education, employment, age, and place of residence). Next is a

tabular presentation and discussion of venue selection according to each of the sample characteristics. And lastly, is a presentation of venue selection for the resolution of each dispute type as well as motivations for venue selection.

4.2.Breakdown of the Research Sample

Table 1. Statistical presentation of demographic characteristics

Demographics	Total
Place of residence	
<i>Yei</i>	94 (32.64%)
<i>Mundu</i>	95 (32.99%)
<i>Pakula</i>	99 (34.38%)
	100.00%
Gender	
<i>Male</i>	151 (52.43%)
<i>Female</i>	137 (47.57%)
	100.00%
Level of education	
<i>Tertiary</i>	20 (6.99%)
<i>Secondary school</i>	127 (44.41%)
<i>Primary school</i>	88 (30.77%)
<i>No school</i>	51 (17.83%)
	100.00%
Type of employment	
<i>Formal</i>	90 (31.47%)
<i>Informal</i>	35 (12.24%)
<i>Unemployed</i>	161 (56.29%)
	100.00%
Language	
<i>English</i>	94 (32.64%)
<i>Juba Arabic</i>	95 (32.99%)
<i>Kakwa</i>	99 (34.38%)
	100.00%
Age group	
<i>18-29</i>	136 (48.06%)
<i>30-39</i>	104 (36.75%)
<i>40 above</i>	43 (15.19%)
	100.00%

The table above shows a breakdown and description of respondents according to demographics. The percentage of people who took part in the survey in Yei is 32.64%, in Mundu is 32.99% and

in Pakula is 34.38%. The percentages for language are also the same as for those for the three locations. Slightly more males (52.43%) than females (47.57%) participated in the survey.

The highest number of participants according to level of education are those people with secondary school attainment (44.41%). The second category is those people who have attended primary school (30.77%), and the third category is those individuals who have not at all attended any school (17.83%). Lastly, is the group of people who have attained tertiary education (6.99%). Most of the participants who participated in the surveys are unemployed (56.29), but ninety (31.47%) are formally employed while thirty-five (12.24%) others are informally employed. In terms of age group, those people aged between eighteen and twenty-nine years (48.06%) constitute the largest group. The second largest number is those people aged between thirty and thirty-nine (36.75%) while the third category is aged forty years and above (15.19%).

4.3. Tables and chi-squares

Table 2. Venue preference according to gender

Gender	Court type		Total
	<i>Modern</i>	<i>Traditional</i>	
<i>Female</i>	20	93	113
<i>Male</i>	47	76	123
Total	67	169	236
Pearson χ^2 (1) = 12.1888 Pr = 0.000			

The finding in the table above rejects the null hypothesis (H0) with Pr=0.000. This means that gender and venue preference are dependent. As shown above, traditional courts are more preferable than modern courts. In addition, women are more likely than men to go to traditional venues to resolve disputes. This findings are also consistent with the arguments by Dodo (2014) and Brickell (2015) in two ways.

First, the former author argues that, to diffuse tension and social disorder, and to avoid being regarded as socially deviant, women turn to local chiefs when seeking solutions to marriage disputes. Dodo argues that marriage is often perceived as a means of resolving social conflicts in Chikomba district in Zambia. Brickell for his part argues that Cambodian women often report cases of domestic violence to traditional courts despite severity of the incidence they face. Such choices are based on fears that when reported to legal venues, marriages often breakdown. Thus,

perpetuating further suffering among poor women or divorcees who rely entirely on their husbands for survival and other basic needs.

In Kenya, women face difficulties in negotiating land ownership rights in legal courts because they are either costly or unable to pay bribes to some court officials (Henrysson et al. 2009). Poor as they are, women cannot afford to pay court fees and other expenses when they choose legal courts, lawyers, and judges. Left with no choice, most Kenyan women are forced to go to traditional courts hoping to find favorable solutions to their problems. Moreover, in traditional settings it is taboo for women to report family issues to public or modern courts.

Being the poorest section of people in society, this finding reflects women's actual state of affairs in Yei and South Sudan as whole. Most often, women are harassed by their husbands, relatives and brothers whenever they report domestic matters to legal courts or police. Concerned about dignity and face-saving, men persuade women against their will to turn to traditional mechanisms. The logic as believed by most men is that women will avoid divorce and continue to live in their marriages peacefully. Nonetheless, deviance leads to divorce, shame, and being viewed as socially and culturally deviant.

Table 3. Venue preference according to level of education

Level of Education	Court type		
	<i>Modern</i>	<i>Traditional</i>	Total
<i>Tertiary education</i>	8	8	16
<i>High School</i>	32	77	109
<i>Primary school</i>	21	48	69
<i>No School</i>	4	36	40
Total	65	169	234
Pearson $\chi^2(3) = 10.6184$ Pr = 0.014			

The finding reported in the table above rejects the null hypothesis (H_0) and accepts an alternative hypothesis (H_a) with a Pr value of 0.014 showing that venue preference and of level of education are dependent. As seen in the table above, it is plausible to argue that less educated people with secondary and primary school education, and no schooling at all prefer traditional mechanisms to resolve their disputes while a few highly educated individuals who have attended tertiary education prefer modern courts. Overall, traditional courts are more preferable than modern courts.

Based on South Sudan's low literacy rate (27%) reported by the census commission, this finding is not surprising. In fact, the number of people who have attended tertiary education as shown by the table is very low compared with those who attended secondary, primary school and those who have not attended school at all. This finding is also consistent with arguments that traditional dispute resolution mechanisms are less complex in terms of rules and regulations, less bureaucratic, and overall easy to understand compared with modern courts that favor elites (Kose & Beriker 2012; Wall & Beriker 2010; Pinto 2000).

Yet, the limited educational levels among some court and police officials in South Sudan generates resentment among people towards legal justice systems thus, making their competence questionable (Alfonse 2015). The militarized nature of the legal justice system in South Sudan also makes it undesirable. Many police officers are former guerrillas of the Sudan People's Liberation Army (SPLA) which is currently the national army of South Sudan. These former armed men and women missed the opportunity to attend school, but their service as liberators makes them to be maintained within the police force. It is also arguable that police arrogance and use of harsh mechanisms to interrogate criminal suspects casts a negative picture among people. Moreover, disputants also worry about incompetence, corruption, bribery, and unexpected negative settlement outcomes caused by incapable lawyers, judges, magistrates and arbitrators when they go to legal systems (Baker & Scheye 2009; Baker 2010; Madut 2014).

Table 4. Venue preference according to place of residence

Place of residence	Court type		Total
	<i>Modern</i>	<i>Traditional</i>	
<i>Yei</i>	37	42	79
<i>Mundu</i>	02	66	68
<i>Pakula</i>	28	61	89
Total	67	169	236
Pearson χ^2 (2) = 35.2963Pr = 0.000			

As shown above, the finding in table 3 rejects the null hypothesis (H0) with Pr=0.000 showing that venue preference and place of residence are dependent. Precisely, traditional venues (169) are more preferable than modern venues (67). Thirty-seven people in Yei prefer modern venues compared with only two in Mundu and twenty-eight in Pakula. Distance is a key determinant of

venue preference as argued by Zhuang & Chen (2015). This means that the further a venue is; the less likely disputants will refer to (and vice versa). Further, it should be noted that respondents in Mundu are the furthest from Yei where legal courts are located and in more insecure areas. Thus, their extremely limited preference for modern venues could be due to transport difficulties as well as fears of traveling along insecure roads. Hence, accessibility and affordability matters to disputants when deciding between modern and traditional courts. Choosing traditional courts by respondents in Pakula and Mundu is not by coincidence as such. Moreover, insecurity, language and cultural differences discourage rural people in areas like Mundu and Pakula from travelling to urban centers where modern courts are located.

This finding also brings to mind the issue of venue familiarity, morals, and cultural values, and how they influence disputants' venue preference, as well as mediators' dispute resolution strategies (Kose & Beriker 2012; Wall & Beriker 2010). Similarly, courts and police that are located mainly in urban settings often appear strange to rural disputants. The new encounter with lawyers, judges, and magistrates can be intimidating to a villager who has never seen how or what a court setup looks like, and how people behave during court proceedings.

Another argument to substantiate the finding shown by the table above also relates to the issue of legality of justice systems. For urban people in Yei, the courts and police are better because that are legally recognized and have the authority to implement settlements whereas rural people often think that traditional courts are appropriate because they are indigenous and culturally appropriate. Unlike in rural areas, the rule of law and justice institutions are apparently more visible in Yei which is modernizing at a faster rate than her two sister neighbors, Pakula and Mundu. The huge presence of nongovernmental organizations including the United Nations Police (also known as United Nations Mission in South Sudan or UNMISS) working on rule of law in Yei which is lacking in Pakula and Mundu is another reason that explains why more disputants in urban areas prefer modern venues than those in rural areas.

Table 5. Venue preference according to language

Language	Court type		
	<i>Modern</i>	<i>Traditional</i>	Total
<i>English</i>	37	42	79
<i>Arabic</i>	2	66	68

<i>Kakwa</i>	28	61	89
Total	67	169	236
Pearson $\chi^2(2) = 35.2963$ Pr = 0.000			

The finding in table 5 above is statistically similar to that in table 4 in that it also rejects the null hypothesis (H0) with Pr=0.000. However, the explanation differs. While table 4 presents venue preference according to place of residence, table 5 presents a finding of venue preference according to language. The finding shows that language and venue preference are dependent. Since the survey was conducted in three different languages – in English in Yei, Arabic in Mundu, and Kakwa/Bari in Pakula, the analysis here is therefore based on how language influences disputants' venue selection strategies.

Since most people in Yei are familiar with all the three languages (see site description in page 30), it is not surprising to see people choosing both modern and traditional mechanisms to resolve their disputes. For those people who speak Arabic in Mundu, their only best choices are traditional venues such as chiefs, elders, and religious leaders. In addition, those people who prefer modern venues like court and police are most likely to be people who are either literate or live in metropolitan settings and understand all or at least two of the languages spoken in Yei.

The fact that English is South Sudan's official language and is commonly spoken in courts and police than in traditional venues can also be said to have an influence on venue preference (GoSS 2011). Notwithstanding, the appropriate venues according to Arabic and Kakwa speakers are traditional courts while those who speak and/or understand English prefer modern courts. The least group of disputants who prefer modern courts are therefore Arabic speakers with only two respondents while twenty-eighty Kakwa speakers and thirty-seven English speakers respectively prefer modern courts.

Table 6. Venue preference according age group

Age	Court type		
	<i>Modern</i>	<i>Traditional</i>	Total
<i>18-29</i>	35	75	110
<i>30-39</i>	27	64	82
<i>40 above</i>	2	28	57
Total	64	167	231
Pearson $\chi^2(2) = 7.7340$ Pr = 0.021			

The finding in table 6 rejects the null hypothesis (H0) with Pr=0.021. This means that age and venue preference are dependent. Although the overall finding indicates that traditional courts are more preferable than modern courts, young people aged between eighteen and twenty-nine years (35) tend to rely more on modern courts followed by those between thirty and thirty-nine (27) while only two others of forty years and above prefer modern courts. The finding further corresponds to Pinto's argument that young people prefer legal dispute resolution processes while old people align with traditional mechanisms administered by chiefs, religious leaders, and elders (Pinto 2000).

As shown in the table, more young people (75) aged between eighteen and twenty-nine, and thirty and thirty-nine (64) prefer traditional courts. The age group from forty years and above (28) people prefer traditional courts. This finding is surprising because for elders in South Sudan, traditional courts are more preferable than modern courts which the youths align with (Baker & Scheye 2009; Deng 2013; Jok et al. 2004). Pinto also argues that young and educated individuals are more comfortable with modern mechanisms of dispute resolution. This is because either the education to which they are introduced enables them to obtain a better understanding of legal dispute resolution processes or it is the media that socializes them into modern ways of life including dispute resolution mechanisms. Based on this argument, the finding that more young and educated people than elders prefer traditional venues are vulnerable to criticism.

Table 7. Venue preference according to dispute type

Dispute Type	Court type		Total
	<i>Modern</i>	<i>Traditional</i>	
<i>Civil</i>	17	82	99
<i>Economic</i>	24	50	74
<i>Criminal</i>	20	15	35
Total	61	147	208
Pearson $\chi^2(2) = 20.4674$ Pr = 0.000			

The information shown by the table above rejects the null hypothesis (H0) with Pr=0.000. This means that dispute type and venue preference are dependent. Comparatively, modern courts (20) are more preferable than traditional courts (15) in resolving criminal cases. Hence, the more severe a dispute is, the more likely disputants will seek for the help of more powerful and competent

courts. Similarly, less severe disputes will be referred to traditional venues where settlement outcomes are non-binding and aimed at reconciliation. Those respondents who prefer traditional courts to resolve civil and economic cases are possibly interested in non-binding settlements especially if the dispute is less contentious. This means that disputants are interested in seeing that they both win rather than lose.

In the South Sudanese context, crimes such as armed robbery, murder by gun or any other weapon or slaughter often go to court or police (Ministry of Justice 2008). It is a constitutional provision that since the court and police have the leverage and authority to make binding and enforceable decisions, it is better for such severe disputes to be resolved by legal justice systems rather than weak traditional mechanisms. Similarly, the fact that traditional mechanisms lack enforcement capabilities and are less experienced in resolving cases such as murder where victims expect justice as the ultimate goal of the resolution process makes them to be less preferred. In isolated cases however, local chiefs and elders assist disputants to resolve murder. Such situations include those where death was/is caused by cursing a thief or murderer. Consider the case below based on the author's account of how theft cases are handled in Yei.

When a thief steals someone's money, the owner institutes some cultural mechanisms in order to induce fear in the thief to return the money. In such situations, if the thief experiences certain unforeseen catastrophes including death, it may be concluded that the cultural measures are successful. In this situation, members of the two families sit down and try to resolve the issue because the reason for the death is already known: theft for which there is no need of going to a lawyer, judge, or magistrate.

Moreover, the deceased's family in this particular case has no any legitimate right to demand compensation from the owner of the money since their fellow committed an unlawful act that is punishable by law. Cases like theft make disputants to opt for traditional venues despite severity of the dispute. Nonetheless, highly contentious issues are resolved by legal courts that possess sufficient leverage, enforcement capability and expertise capable of persuading disputants towards making binding decisions aimed at preventing conflict recurrence.

Table 8. Venue preference for resolving fight

	Court type		Total
	<i>Modern</i>	<i>Traditional</i>	
Gender			
<i>Female</i>	2	131	133
<i>Male</i>	8	140	148
Total	10	271	281
Pearson χ^2 (1) = 3.1070 Pr = 0.078			
Education			
<i>Tertiary education</i>	1	17	18
<i>High School</i>	8	116	124
<i>Primary school</i>	1	87	88
<i>No School</i>	0	49	49
Total	10	269	279
Pearson χ^2 (3) = 6.5000 Pr = 0.090			
Location			
<i>Yei</i>	4	85	89
<i>Mundu</i>	1	92	93
<i>Pakula</i>	5	94	99
Total	10	271	281
Pearson χ^2 (2) = 2.5402 Pr = 0.281			
Language			
<i>English</i>	4	85	89
<i>Arabic</i>	1	92	93
<i>Kakwa</i>	5	94	99
Total	10	271	281
Pearson χ^2 (2) = 2.5402 Pr = 0.281			
Age			
<i>18-</i>	5	129	134
<i>18-30</i>	3	97	100
<i>31 above</i>	2	40	42
Total	10	266	276
Pearson χ^2 (2) = 0.2717 Pr = 0.873			
Employment			
<i>Formal</i>	5	79	134
<i>Informal</i>	2	33	100
<i>Unemployed</i>	3	157	42
Total	10	269	279
Pearson χ^2 (2) = 3.1753 Pr = 0.204			
Motivation	<i>Modern</i>	<i>Traditional</i>	Total
<i>Norms and values</i>	7	84	91
<i>Venue characteristics</i>	3	70	73

<i>Practicality</i>	0	102	102
Total	10	256	266
Pearson χ^2 (2) = 7.8995 Pr = 0.019			

As shown in table 8 above, the data shows statistically insignificant correlations between venue preference and all the six demographic characteristics with $P > 0.05$. Despite this finding, the data does not indicate whether or not venue preference is dependent on gender, level of education, place of residence, language, age, and employment type. Notwithstanding, traditional courts are more preferable than modern courts regardless of all demographic characteristics. Specifically, more males (140) than females (131), less educated than more educated, and unemployed than employed people prefer traditional to modern courts. In addition, the data also shows significant correlation between motivating factors and venue preference with $Pr = 0.019$ which is less than the significance level set at $P < 0.05$. One of the over-riding motivating factors for selection of traditional courts is practicality (102) followed by norms and values (84) and lastly, venue characteristics (70).

Cases such as fight or quarrel between two people in the South Sudanese context are often perceived as less contentious and their resolution is also assumed to take place at the local level with the help of informal conflict resolvers like chiefs and *guards* at the water wells. Based on traditionally acquired knowledge, chiefs are often viewed as qualified, competent and experienced people in resolving local disputes (Jok et al. 2004; Deng 2013). Consider a brief explanation of a case based on the author's personal experience where the role of *guards* is crucial in resolving disputes in Yei which is an urban setting⁶.

In Yei, water points or wells are often hot spots for disputes. To resolve emerging disputes, some men assume the role of *managers* or *guards* to oversee issues pertaining to the use of water facilities. At the same time, these *managers* help to resolve any disputes among women that result from scramble over water. The role this category of people play in dispute resolution is not constitutionally defined, but locally, they are perceived as capable of handling local disputes.

⁶ This case is based on personal account of the author who has ever witnessed several cases of fight at water wells in Yei town during his internship between the months of July and August, 2015 before the surveys were undertaken. Because the author resides in Yei, and the fact that there is a water well near his homestead, he was able to witness such cases.

Further, when disputes arise at the water wells and destruction of water containers or injuries take place, the *managers* usually act in a manner similar to that of judges or court officials. This is because the aim is to make sure that whoever causes a destructive fight takes responsibility and compensates any losses incurred. For instance, *managers* often ensure that whoever is found guilty first compensates the opponent whose water container is broken during a fight. Non-compliance implies suspension from fetching water from the particular water well where the fighting occurs. In this sense, conflict *managers* act as arbitrators or adjudicators who make binding and final judgments on both parties. Nevertheless, these kinds of settlements are not binding because most of them are not officially written. That is to say, they are simply discussed and agreed to verbally without the disputants having to sign any paper. Moreover, the ultimate goal of dispute resolution is to discipline disputants never to repeat the same mistake and learn to peacefully co-exist at the water wells.

Table 9. Venue preference for resolving child custody

	Court type		Total
	<i>Modern</i>	<i>Traditional</i>	
Gender			
<i>Female</i>	7	127	134
<i>Male</i>	7	143	150
Total	14	270	284
Pearson χ^2 (1) = 0.0469 Pr = 0.829			
Education			
<i>Tertiary education</i>	4	15	19
<i>High School</i>	6	118	124
<i>Primary school</i>	3	85	88
<i>No School</i>	1	50	51
Total	14	268	282
Pearson χ^2 (3) = 11.8538 Pr = 0.008			
Location			
<i>Yei</i>	11	80	91
<i>Mundu</i>	2	93	95
<i>Pakula</i>	1	97	98
Total	14	270	284
Pearson χ^2 (2) = 14.7622 Pr = 0.001			
Language			
<i>English</i>	11	80	91
<i>Arabic</i>	2	93	95
<i>Kakwa</i>	1	97	98

Total	14	270	284
Pearson χ^2 (2) = 14.7622 Pr = 0.001			
Age			
18-	9	124	133
18-30	4	99	103
31 above	1	42	43
Total	14	265	279
Pearson χ^2 (2) = 1.7857 Pr = 0.409			
Employment			
Formal	6	81	87
Informal	4	31	35
Unemployed	4	156	160
Total	14	268	282
Pearson χ^2 (2) = 5.8477 Pr = 0.054			
	<i>Modern</i>	<i>Traditional</i>	Total
Motivation			
Norms and values	1	89	90
Venue characteristics	4	69	73
Practicality	9	98	107
Total	14	256	270
Pearson χ^2 (2) = 5.3164 = 0.070			

To understand how child custody cases are resolved, respondents were asked which venues they prefer and why. As shown in the table above, the data rejects the null hypotheses (H0) that venue preference, level of education, place of residence and language are independent with $P < 0.05$. On the other hand, the data fails to show any significant correlation between venue preference, gender, age, and employment type with $P > 0.05$. This finding shows that when deciding over court type, gender, age, and employment type do not matter whereas level of education, place of residence, and language have an influence on disputants' decision-making processes for conflict resolution venues.

Traditional venues are particularly more preferable than modern courts irrespective of all demographic characteristics. Moreover, slightly more men (143) than women (127) prefer traditional venues and an equal number (7) prefer modern courts. Although the data shows that there is no significant correlation between venue preference and the motivating factors with $P = 0.070$, practicality (98) happens to be the most influential factor influencing the choice of traditional courts followed by norms and values (89) and venue characteristics (69) being the last.

Although child custody is a contested issue among couples and family members in South Sudan, traditional venues take precedence over modern mechanisms in resolving rivalry over children in the aftermath of divorce, death, and in cases where a child is born out of wedlock and marriage could not take place. This is because people often worry that when taken to court or police, the outcomes to a great extent favor one side (Jok et al. 2004; Deng 2013). This means that the husband wins the case especially if dowry was paid in full, or if the wife committed adultery and is seeking another marriage. In most South Sudanese cultures, though now disappearing, upon death of either husband or wife, the marriage relationship between the two families breaks down and the uncles' rights over their nephews also start to diminish.

The decision to grant fathers full rights over children has recently become a common phenomenon among traditional conflict resolvers in South Sudan. This is because some chiefs are being introduced to legal laws through trainings by local NGOs and CSOs. This shift in conflict management empowers traditional conflict managers with legally binding mechanisms that are less admired in traditional settings where interdependence, peace, harmony, and reconciliation are vital (Wall & Beriker 2010; Kose & Beriker 2012; Celik & Shkreli 2010; Pinto 2000; Steinberg 2000). Thus, it is not surprising that few people prefer modern mechanisms such as police and court to resolve child custody cases whereas majority prefer traditional mechanisms as illustrated by the table.

In addition, cultures such as the South African Ubuntu which is also prevalent in most African settings hinder individuals from seeking modern mechanisms. Ubuntu is basically a culture where an individual's survival and well-being depend on his/her close attachment to collective societal norms and values. In such societies where survival is based on interdependence and compliance with established norms and traditions, referring to legal and binding mechanisms of dispute resolution implies defiance and disrespect (see Conteh 2014; Brickell 2015). In fact, some cultures among the people of Yei do not entertain total ownership of children by a single parent. Rather, with the help of clan or family members, disputants discuss ways of how to jointly take care of children whose mother is either dead, or has ventured into another marriage (Jok et al. 2004; Deng 2013). Some interesting responses from the survey such as *"the child belongs to both"*, *"the child belongs to the community"* and *"it's a family issue"* imply that solving child custody is not a public

event. Therefore, traditional dispute resolution constitutes part of the local cultures in South Sudan, and is the most preferred as shown by the research findings in the table.

Table 10. Venue selection for resolving road accidents

	Court type		Total
	<i>Modern</i>	<i>Traditional</i>	
Gender			
<i>Female</i>	96	35	131
<i>Male</i>	114	26	140
Total	210	61	271
Pearson χ^2 (1) = 2.5747 Pr = 0.109			
Education			
<i>Tertiary education</i>	19	1	20
<i>High School</i>	101	18	119
<i>Primary school</i>	61	21	82
<i>No School</i>	27	21	84
Total	208	61	269
Pearson χ^2 (3) = 19.9924 Pr = 0.000			
Location			
<i>Yei</i>	79	7	86
<i>Mundu</i>	46	43	89
<i>Pakula</i>	85	11	96
Total	210	61	271
Pearson χ^2(2) = 50.8803 Pr = 0.000			
Language			
<i>English</i>	79	7	86
<i>Arabic</i>	46	43	89
<i>Kakwa</i>	85	11	96
Total	210	61	271
Pearson χ^2(2) = 50.8803 Pr = 0.000			
Age			
<i>18-29</i>	112	15	127
<i>30-39</i>	66	33	99
<i>40 above</i>	28	12	40
Total	206	60	266
Pearson χ^2 (2) = 16.2454 Pr = 0.000			
Employment			
<i>Formal</i>	72	14	86
<i>Informal</i>	28	3	31
<i>Unemployed</i>	108	44	152
Total	208	61	269
Pearson χ^2 (2) = 8.4036 Pr = 0.015			

	<i>Modern</i>	<i>Traditional</i>	Total
Motivation			
<i>Norms and values</i>	63	22	85
<i>Venue characteristics</i>	57	13	70
<i>Practicality</i>	82	20	102
Total	202	55	257
Pearson χ^2 (2) = 1.5430 Pr = 0.462			

The test statistics in the table above reject the null hypotheses (H0) that venue preference, education, location, language, age, and employment type are independent with $P < 0.05$. This finding means that venue preference is dependent on all the five demographic features mentioned above. Nonetheless, the data shows insignificant correlation between venue preference and gender with $Pr = 0.109$.

Overall, modern courts are more preferable than traditional courts in resolving road accidents. Males (114) are particularly more likely than females (96) to refer to modern courts to resolve traffic accidents. Similarly, more females (35) than males (26) prefer traditional to modern courts. It is however, unusual to have a high number of people (85) in Pakula which is remote with no traffic accidents preferring modern to traditional courts. This kind of finding is irrelevant because in rural areas like Pakula and Mundu, there are relatively fewer motor vehicles and road networks than in Yei which is Urban with more traffic.

The data in the table also shows that there is significant correlation between venue selection and the motivating factors outlined above because $Pr = 0.0462$. The finding also shows that practicality (82) is the over-riding motivating factor for selection of modern courts while venue characteristics (57) is the least motivating factor. Nonetheless, it is unusual to find out that some respondents state norms and values (63) as their main motivating factors for selecting modern courts to resolve traffic accidents which is not supported by the literature on forum shopping. Rather, Western-oriented literature on conflict resolution maintains that culture is not important in venue selection.

The literature reviewed for this paper on venue selection strategies for highly salient issues shows that when disputants expect material gains and are concerned about fairness, and speed of resolution, they prefer legal courts (see Belge & Blaydes 2013). In this case, modern courts are perceived as competent, and have the leverage and enforcement capability to fulfill disputants' expectations. Modern courts are therefore perceived as suitable venues for resolving road accidents

because they are capable of making fair judgments based on expertise on traffic rules. Moreover, legal courts and police are capable of arresting and detaining culprits if found guilty of violating traffic rules. For the few people who prefer traditional venues such as chiefs, elders, and religious leaders to resolve accidents, it can be argued that there are no police or courts in the areas where they live such as Pakula and Mundu.

Table 11. Venue selection for resolving debt cases

	Court type		Total
	<i>Modern</i>	<i>Traditional</i>	
Gender			
<i>Female</i>	37	95	132
<i>Male</i>	46	100	146
Total	83	195	278
Pearson χ^2 (1) = 0.4001 Pr = 0.527			
Education			
<i>Tertiary education</i>	9	10	19
<i>High School</i>	48	75	123
<i>Primary school</i>	23	62	85
<i>No School</i>	3	46	49
Total	83	193	276
Pearson χ^2 (3) = 21.1229 Pr = 0.000			
Location			
<i>Yei</i>	41	46	87
<i>Mundu</i>	10	84	94
<i>Pakula</i>	32	65	97
Total	83	195	278
Pearson χ^2 (2) = 29.4228 Pr = 0.000			
Language			
<i>English</i>	41	46	87
<i>Arabic</i>	10	84	94
<i>kakwa</i>	32	65	97
Total	83	195	278
Pearson χ^2 (2) = 29.4228 Pr = 0.000			
Age			
<i>18-29</i>	50	79	129
<i>30-39</i>	27	74	101
<i>40 above</i>	5	38	43
Total	82	191	273
Pearson χ^2 (2) = 12.1298 Pr = 0.002			
Employment			

<i>Formal</i>	27	60	87
<i>Informal</i>	9	24	33
<i>Unemployed</i>	47	109	156
Total	83	193	276
Pearson $\chi^2(2) = 0.1615$ Pr = 0.922			
	<i>Modern</i>	<i>Traditional</i>	Total
Motivation			
<i>Norms and values</i>	20	68	88
<i>Venue characteristics</i>	26	44	70
<i>Practicality</i>	31	74	105
Total	77	186	263
Pearson $\chi^2(2) = 3.9180$ Pr = 0.141			

Table 11 shows that the null hypotheses (H0) for independence between venue preference and level of education, place of residence, language, and age are rejected by $P < 0.05$. This means that there exists significant correlation between venue preference and all the demographic features mentioned above. Therefore, an alternative hypothesis (Ha) stressing relationship between venue preference and the four demographic features should be accepted. On the other hand, the data shows insignificant correlation between venue preference, gender, and employment type with $P > 0.05$ meaning that gender and employment type have nothing to do with venue selection for resolving debt cases.

The data also shows insignificant correlation between venue selection and the three motivating factors with $Pr = 0.141$ which is greater than the significance level set at $P < 0.05$. Nonetheless, a large number of respondents (74) claim that practicality plays a crucial role in the selection of traditional courts. The second most important factor that influences preference of traditional courts is norms and values (68) while the least is venue characteristics (44).

As a matter of fact, traditional courts lack leverage to enforce resolutions in dealing with contentious economic disputes like debt that involve huge sums of money. For instance, chiefs or elders do not have the necessary inducements to persuade a resistant party to concede. Neither are they able to threaten defiant parties. This finding also casts doubt on whether or not those who prefer traditional to modern courts are consciously aware of their decisions. For instance, unemployed young male people in rural areas would in fact prefer legal mechanisms to settle their debt issues with an expectation of compensation or recovering their money.

The resolution of debt cases in Yei is often viewed as complete after compensation is done for creditors or imprisonment of a bad debtor. Hence, it is noteworthy to argue that debt cases are better resolved by modern courts. While a creditor's interest is in recovering his or her money, a debtor's interest is often that of avoiding jail among other measures that might be taken by the creditor. This competitive and divergent interest-based conflict resolution often leads disputants to disagree on traditional mechanisms of conflict resolution.

Interest incompatibility also tends to perpetuate tension and distrust between disputants who eventually opt for legal mechanisms. As shown by the finding in the table above, most debt cases are resolved by traditional courts which ought not to be the case according to the literature on forum shopping for salient issues. Nonetheless, the amount of debt, and how such a problem is approached matters in the decision-making process for venue selection. It should also be noted that only major debt cases are resolved by modern courts while minor ones are resolved by traditional courts.

Table 12. Venue preference for resolving land disputes

	Court type		Total
	<i>Modern</i>	<i>Traditional</i>	
Gender			
<i>Female</i>	19	117	136
<i>Male</i>	34	114	148
Total	53	231	284
Pearson χ^2 (1) = 3.7840 Pr = 0.052			
Education			
<i>Tertiary education</i>	3	17	20
<i>High School</i>	16	100	126
<i>Primary school</i>	15	71	86
<i>No School</i>	9	41	50
Total	53	229	282
Pearson χ^2 (3) = 0.5921 Pr = 0.898			
Location			
<i>Yei</i>	24	70	94
<i>Mundu</i>	11	81	92
<i>Pakula</i>	18	80	98
Total	53	231	284
Pearson χ^2 (2) = 5.6535 Pr = 0.059			
Language			
<i>English</i>	24	70	94

<i>Arabic</i>	11	81	92
<i>kakwa</i>	18	80	98
Total	53	231	284
Pearson $\chi^2(2) = 5.6535$ Pr = 0.059			
Age			
<i>18-29</i>	25	110	135
<i>30-39</i>	19	83	102
<i>40 above</i>	8	34	42
Total	52	227	279
Pearson $\chi^2(2) = 0.0059$ Pr = 0.997			
Employment			
<i>Formal</i>	14	76	90
<i>Informal</i>	8	26	34
<i>Unemployed</i>	31	127	158
Total	53	227	282
Pearson $\chi^2(2) = 1.1887$ Pr = 0.552			
	<i>Modern</i>	<i>Traditional</i>	Total
Motivation			
<i>Norms and values</i>	19	70	89
<i>Venue characteristics</i>	12	61	73
<i>Practicality</i>	20	88	108
Total	51	219	270
Pearson $\chi^2(2) = 0.6472$ Pr = 0.724			

The finding as shown in the table above is not surprising because of the land dynamics in Yei and South Sudan as a whole. The data shows insignificant correlations between venue preference, gender, level of education, place of residence, language, age, and employment type. This means that all of the five demographic characteristics have no influence on decision-making over court type for resolving land disputes. Traditional mechanisms are of particular preference to disputants faced with land disputes. Further, no significant correlation exists between venue selection and the three motivating factors as Pr=0.724. In spite of this finding, the data shows that practicality (88) is a crucial factor in choosing traditional over modern venues, norms and values (70) are the second most influential while venue characteristics (61) are least.

Land ownership and land acquisition in South Sudan is well articulated both in the Land Act and 2011 Transitional Constitution of South Sudan. The constitution states that land belongs to the people and the government plays a regulatory role such that no tensions arise (The Land Act 2009). Every citizen is entitled to own land as long as he or she is a member of a particular community.

One of the most common causes of conflicts in South Sudan is illegal land sale and/or acquisition and land grabbing mostly by cattle keepers as well as powerful and rich people.

The government's primary roles, particularly that of the land commission and local land tribunals is to ensure that conflicts over land do not arise, and if they do, they are managed amicably without escalating to violence (Heegde et. al 2011; The Land Act 2009). Further, the belief and tradition among South Sudanese people particularly local chiefs and elders that land ownership is ancestral tends to attach value to the role of traditional leaders in land dispute resolution. The fact that chiefs and elders are more aware about land boundaries and ownership gives them the leverage to make decisions that facilitate compensation for grabbed land. Hence, in most land dispute resolution processes, the ultimate goal is to ensure that any illegally acquired land is returned to the owner or compensated with an exact piece of land elsewhere.

The increase in land grabbing cases by armed people and some powerful government officials in most parts of South Sudan has recently prompted people to express lack of confidence in legal justice systems in resolving land disputes. This lack of confidence and distrust result from alleged corruption, bribery and incompetence (Alfonse 2015). In addition, the loss of trust and confidence are allegedly fueled by reluctance by legal justice institutions to immediately resolve land cases. Nonetheless, traditional courts still retain people's confidence and trust that any grabbed land can be compensated.

Table 13. Venue preference for resolving theft

	Court type		Total
	<i>Modern</i>	<i>Traditional</i>	
Gender			
<i>Female</i>	64	66	130
<i>Male</i>	71	72	143
Total	135	138	273
Pearson χ^2 (1) = 0.0048 Pr = 0.945			
Education			
<i>Tertiary education</i>	12	7	19
<i>High School</i>	70	51	121
<i>Primary school</i>	38	46	84
<i>No School</i>	14	34	48
Total	134	138	272
Pearson χ^2 (3) = 13.3386 Pr = 0.004			

Location			
<i>Yei</i>	54	33	87
<i>Mundu</i>	16	75	91
<i>Pakula</i>	65	30	95
Total	135	138	273
Pearson $\chi^2(2) = 56.1903$ Pr = 0.000			
Language			
<i>English</i>	54	33	87
<i>Arabic</i>	16	75	91
<i>Kakwa</i>	65	30	95
Total	135	138	273
Pearson $\chi^2(2) = 56.1903$ Pr = 0.000			
Age			
<i>18-</i>	77	50	127
<i>18-30</i>	42	56	98
<i>31 above</i>	15	28	43
Total	134	134	268
Pearson $\chi^2(2) = 11.6704$ Pr = 0.003			
Employment			
<i>Formal</i>	46	39	85
<i>Informal</i>	16	15	31
<i>Unemployed</i>	72	84	156
Total	134	138	272
Pearson $\chi^2(2) = 1.4733$ Pr = 0.479			
	<i>Modern</i>	<i>Traditional</i>	Total
Motivation			
<i>Norms and values</i>	43	41	84
<i>Venue characteristics</i>	32	40	72
<i>Practicality</i>	52	50	102
Total	127	131	258
Pearson $\chi^2(2) = 0.9139$ Pr = 0.633			

The data in the table above shows a significant correlation between venue preference, level of education, location, language and age thus, rejecting the null hypotheses (H_0) with $P < 0.05$. On the other hand, the data shows insignificant correlation between venue preference, gender and employment type with $P > 0.05$. Traditional venues are slightly more preferable than modern courts. Interestingly, almost an equal number of respondents prefer both modern and traditional courts for resolving theft cases. In addition, the data shows insignificant correlation between venue selection and all the three motivations listed in the table with $Pr = 0.633$ which is greater than the significance level set to be 0.05. Contrary to this finding, respondents identify practicality (52) as the most

influential factor for choosing modern over traditional courts. Similarly, norms and values (43) are the second most influential factors for choosing modern over traditional courts while venue characteristics (40) are influential in choosing traditional over modern courts.

Theft is a criminal offense punishable by law according to the South Sudan Criminal Code (2008). In situations where a thief is caught while stealing in public, the police often intervene directly thus, preventing free choice over court types for resolution. In spite of this hindrance, in rural areas where police are either absent or inaccessible, disputants refer to local chiefs and elders. In order to prevent mob justice, police intervene with an aim to rescue thieves by dispersing wild crowds and taking or locking them up in prison cells to be later arraigned either in court or police for interrogation. As discussed in the literature review in chapter three, criminal offenses fall under highly salient issues for which their resolution requires venues with expertise, leverage and enforcement capability (Powell & Wiegand 2014).

In South Sudan, the tendency by people accused of, and charged with theft to delay compensating property owners is prevalent. As such, people whose property is stolen often turn to the police who are perceived as the right venues capable of making favorable, binding, and enforceable decisions competently. Fearing long-term prison sentences and public shame/humiliation, thieves often attempt to escape, thus prompting intervention by police either voluntarily or upon request. Although the reasons given by respondents are varied and not specific, some responses obtained from the survey such as “*the police are powerful*”, “*they are strong*”, “*they know how to resolve theft cases*”, and “*they can arrest and imprison thieves*” that were all coded as competent and favorable obviously informed the respondents’ decisions to choose modern courts to resolve theft cases.

Table 14. Venue preference for resolving rape or defilement

	Court type		Total
	<i>Modern</i>	<i>Traditional</i>	
Gender			
<i>Female</i>	100	35	135
<i>Male</i>	116	34	150
Total	216	69	285
Pearson χ^2 (1) = 0.4113 Pr = 0.521			
Education			

<i>Tertiary education</i>	15	4	19
<i>High School</i>	109	17	126
<i>Primary school</i>	60	28	88
<i>No School</i>	30	20	50
Total	214	69	283
Pearson $\chi^2(3) = 17.4732$ Pr = 0.001			
Location			
<i>Yei</i>	82	10	92
<i>Mundu</i>	44	50	94
<i>Pakula</i>	90	9	99
Total	216	69	285
Pearson $\chi^2(2) 64.2847$ Pr = 0.000			
Language			
<i>English</i>	82	10	92
<i>Arabic</i>	44	50	94
<i>Kakwa</i>	90	9	99
Total	216	69	285
Pearson $\chi^2(2) 64.2847$ Pr = 0.000			
Age			
<i>18-29</i>	114	20	134
<i>30-39</i>	72	31	103
<i>40 above</i>	26	17	43
Total	212	68	280
Pearson $\chi^2(2) = 13.7146$ Pr = 0.001			
Employment			
<i>Formal</i>	69	18	87
<i>Informal</i>	29	6	35
<i>Unemployed</i>	116	45	161
Total	214	69	282
Pearson $\chi^2(2) = 2.7501$ Pr = 0.253			
	<i>Modern</i>	<i>Traditional</i>	Total
Motivation			
<i>Norms and values</i>	68	23	91
<i>Venue characteristics</i>	57	16	73
<i>Practicality</i>	80	26	106
Total	205	65	270
Pearson $\chi^2(2) = 0.2694$ Pr = 0.874			

As illustrated in the table above, the null hypotheses (H0) that venue preference, education, place of residence, language, and age are independent are all rejected with $P < 0.05$. Therefore, the data shows significant correlations between venue preference and all of the demographic features listed above. On the other hand, the data fails to show any significant correlation between gender and

employment type with $P > 0.05$. This means that when deciding over venues, gender and employment type do not matter while level of education, place of residence, language, and age do. In addition, there is no significant correlation between motivating factors and venue selection since $Pr = 0.874$ which is greater than 0.05. The data also shows that modern courts are preferred to traditional courts for resolving rape and defilement cases.

Practicality (80) highly influences disputants' selection of modern courts. Norms and values (68) are second while venue characteristics (57) are third in influencing disputants' preference of modern courts. This finding is unsurprising since the literature on venue selection by Lefler (2015) maintains that modern courts are suitable for resolving contentious issues in which rape and defilement in the South Sudanese context are part. Although the overall finding reveals modern courts as the ultimate venues for resolving rape and defilement, the people of Mundu boma prefer traditional courts while modern courts are preferred in Yei and Pakula.

At the time of conducting this research a man was convicted of, and sentenced to fourteen-years imprisonment for defiling a child⁷. Resolving such complex cases requires more competent and powerful venues that possess leverage to enforce binding settlements. Perhaps, the perception of modern venues like police as suitable for resolving rape and defilement can be attributed to the improvement in the legal justice system in Yei by organizations such as UNMISS or UN Police. Moreover, a number of non-governmental organizations like South Sudan Law Society (SSLS) are helping to improve the legal justice systems in Yei and South Sudan as whole, all of which can be attributed to the preference of modern courts in resolving rape and defilement cases. These two organizations also provide training on the rule of law and law enforcement to police and court officials so as to enhance their capacities.

Nonetheless, in rare cases and in some particular cultures where rape and defilement are not perceived as criminal offenses, traditional conflict managers usually assume the responsibility of resolving them. Moreover, most cases of rape and defilement end up as marriage between the rape or defilement victim and rapist or defiler (see Dodo 2014 for marriage as a way to resolve social conflicts). It should also be noted that informal conflict resolvers only become involved when

⁷<https://radiotamazuj.org/en/article/yei-man-receives-14-year-prison-sentence-raping-child>

disagreements arise particularly after a rapist or defiler attempts to escape or refuses to take responsibility for the incident.

Table 15. Venue selection for resolving murder

	Court type		Total
	<i>Modern</i>	<i>Traditional</i>	
Gender			
<i>Female</i>	131	6	137
<i>Male</i>	136	14	150
Total	267	20	287
Pearson $\chi^2(1) = 2.7103$ Pr = 0.100			
Education			
<i>Tertiary education</i>	19	1	20
<i>High School</i>	119	7	126
<i>Primary school</i>	80	8	88
<i>No School</i>	47	4	51
Total	265	20	285
Pearson $\chi^2(3) = 1.1705$ Pr = 0.760			
Location			
<i>Yei</i>	90	3	93
<i>Mundu</i>	85	10	95
<i>Pakula</i>	92	7	287
Total	267	20	287
Pearson $\chi^2(2) = 3.8659$ Pr = 0.145			
Language			
<i>English</i>	90	3	93
<i>Arabic</i>	85	10	95
<i>kakwa</i>	92	7	287
Total	267	20	287
Pearson $\chi^2(2) = 3.8659$ Pr = 0.145			
Age			
<i>18-29</i>	128	7	135
<i>30-39</i>	96	8	104
<i>40 above</i>	38	5	43
Total	262	20	282
Pearson $\chi^2(2) = 2.1445$ Pr = 0.342			
Employment			
<i>Formal</i>	84	6	90
<i>Informal</i>	33	1	34
<i>Unemployed</i>	148	13	161
Total	265	20	285
Pearson $\chi^2(2) = 1.1585$ Pr = 0.560			

	<i>Modern</i>	<i>Traditional</i>	Total
Motivation			
<i>Norms and values</i>	85	6	91
<i>Venue characteristics</i>	67	6	73
<i>Practicality</i>	101	7	108
Total	253	19	272
Pearson χ^2 (2) = 0.2348 Pr = 0.889			

The data in table 15 above does not show any significant correlations between venue preference and all of the five demographic characteristics because $P > 0.05$. Despite this finding, the data shows that modern courts are preferable to traditional mechanisms across all the demographic characteristics. In addition, there is no significant correlation between venue selection and all the motivating factors because $Pr = 0.0889$ which is greater than 0.05. The data also shows that practicality (101) is highly influential than norms and values (85) and venue characteristics (67) respectively in informing disputants' selection of modern over traditional courts. This finding is consistent with the literature on forum shopping by Lefler (2015) which argues that highly contentious issues such as murder are better resolved by legal courts with an aim to arrive at enforceable and binding settlements. Therefore, although disputants prefer modern courts, their demographic characteristics do not influence their decisions.

The finding in the table implies that murder is a criminal case for which the law in South Sudan recommends legal justice systems to deal with. When asked the question: "*When somebody you know is murdered, and you are affected by it, who do you go to and resolve such a problem, and why?*" – responses such as "*it's a police case*", "*it's their responsibility*", and "*such that the killer is arrested and jailed*" were obtained. All of these responses substantiate the finding shown in the table. Based on this argument, the resolution of murder as a criminal offence to a greater extent requires legal instruments.

Although the 2008 South Sudan Criminal Law and Penal Code both classify murder as a serious crime only resolvable by legal means, in exceptional situations murder cases are referred to traditional venues for resolution. Consider the case below based on the author's personal observation of events in his life in Yei. The scenario as I explain is also reflected in the cultures and traditions of the people of Yei. In South Sudan, cases where the chiefs' intervention is required include those related to death resulting from sorcery or witchcraft, or any sort of cultural factor

leading to an individual's death. Sometimes if the death is unintentional, disputants agree on non-binding resolution whereby family members, elders, clan leaders, and influential individuals discuss ways of compensation, cleansing and reconciliation.

Table 16. Venue preference for adultery and elopement

	Court type		Total
	<i>Modern</i>	<i>Traditional</i>	
Gender			
<i>Female</i>	37	87	124
<i>Male</i>	75	67	142
Total	112	154	266
Pearson $\chi^2(1) = 14.3379$ Pr = 0.000			
Education			
<i>Tertiary education</i>	9	8	17
<i>High School</i>	52	61	113
<i>Primary school</i>	42	43	85
<i>No School</i>	9	41	50
Total	112	153	265
Pearson $\chi^2(3) = 15.2900$ Pr = 0.002			
Location			
<i>Yei</i>	34	44	78
<i>Mundu</i>	26	66	92
<i>Pakula</i>	52	44	96
Total	112	154	226
Pearson $\chi^2(2) = 13.0334$ Pr = 0.001			
Language			
<i>English</i>	34	44	78
<i>Arabic</i>	26	66	92
<i>Kakwa</i>	52	44	96
Total	112	154	226
Pearson $\chi^2(2) = 13.0334$ Pr = 0.001			
Age			
<i>18-29</i>	54	68	122
<i>30-39</i>	40	58	98
<i>40 above</i>	14	28	42
Total	108	154	262
Pearson $\chi^2(2) = 1.5508$ Pr = 0.461			
Employment			
<i>Formal</i>	37	41	78
<i>Informal</i>	17	15	32
<i>Unemployed</i>	58	97	155

Total	112	153	265
Pearson $\chi^2(2) = 3.8928$ Pr = 0.143			
	<i>Modern</i>	<i>Traditional</i>	Total
Motivation			
<i>Norms and values</i>	36	54	90
<i>Venue characteristics</i>	32	33	65
<i>Practicality</i>	39	57	96
Total	107	144	251
Pearson $\chi^2(2) = 1.5703$ Pr = 0.456			

Table 16 presents interesting findings with almost the same number of people preferring modern and traditional courts simultaneously. The data shows insignificant correlations between venue preference, age, and employment type with $P > 0.05$. Thus, disputant's age and employment type are not important to be considered when deciding over court types. On the other hand, venue preference, gender, level of education, place of residence, and language are significantly correlated with $P < 0.05$. As such, the data rejects the null hypothesis that venue preference, gender, level of education, place of residence, and language are independent. As shown in the table, more males (75) than females (37) prefer modern courts. Similarly, more females (87) than males (67) prefer traditional courts. In addition, many respondents (66) in Mundu prefer traditional to modern courts whereas in Pakula which is a rural setting, many people (52) prefer modern courts and is the opposite in Yei where forty-four people prefer traditional courts while thirty-seven others prefer modern courts.

This kind of relatively similar finding is interesting for two reasons. First, in some contexts, adultery is perceived as a less contentious issue whose resolution does not require binding decisions. Secondly, in modernizing societies like Yei, adultery is perceived as a criminal offence that requires competent and powerful conflict managers who can enforce settlement decisions. Ideally, legal courts are preferred to deter disputants from taking the law into their hands by physically confronting one another (an adulterous person in most cases).

Therefore, in such cultures where adultery is not so serious as criminal offense, traditional courts are the most preferred dispute resolution forums whereas in societies where adultery is seen as sinful and criminal, it is usually the police or courts that resolve the matter because they wield enforcement power and leverage. This finding is consistent with the cultural literature on conflict resolution that maintains that modern and traditional mechanisms are simultaneously applicable in

multicultural settings as long as mediators are sensitive to the local contexts in which they operate (Kose & Beriker 2012; Pinto 2000; Steinberg 2000).

Further, the data shows no significant correlation between venue preference and all of the motivating factors with $Pr=0.456$ which is greater than the significance level set at $P<0.05$. Despite this statistically insignificant data, practicality (57) is the most important factor that influences disputants' selection of traditional courts. Norms and values (54) take the second place while the least is venue characteristics (33) as a motivating factor for selection of traditional courts.

5. CONCLUSION

This paper is a result of field survey conducted over a period of one month in Yei Municipality in South Sudan. The main aim was to examine factors that influence venue preference for dispute resolution. The results are in discordant with the assertion by Western-oriented literature that modern dispute resolution mechanisms are applicable in multicultural settings without any restraints. The statistical analysis conveys traditional courts as the most preferred venue across gender, age, level of education, type of employment, place of residence, language, and dispute types. Categorically, more females than males prefer traditional courts; less educated people agree the traditional courts are the most suitable venues. In terms of location and language, traditional courts are still more preferred, and many young people compared with old people also view traditional courts as more suitable.

Moreover, traditional courts are more preferred in resolving cases like fight, child custody, land disputes, and debt. Modern courts are preferred in the resolution of road accidents, theft, rape/defilement and murder. However, both traditional and modern courts are viewed as capable of resolving adultery depending on how the case is perceived in different settings. Further, practicality (that is, accessibility, affordability and speed of resolution) is the most influential factor for venue selection for resolving all of the nine disputes examined. The second most influential factor is norms and values and lastly, venue characteristics. This paper is a significant contribution to the conflict resolution literature because it offers a detailed understanding of venue selection processes according to specific individual disputes in modernizing societies based on first hand field data. It also offers in-depth analysis of the motivations for venue selection for resolving specific disputes as well as the understanding of the relationship between demographic characteristics and venue selection.

5.1.Recommendations for Further Research

Much as the research is by large successful in answering the research questions, it does not tell us more about the measures being undertaken by the government of South Sudan to improve its justice systems. Future research should investigate this question in order to provide a clearer understanding of the capacity of the justice system in South Sudan and how it manages local disputes at the local level. In order to successfully implement judicial reforms, there is need for

the South Sudanese government, civil society, think tanks and research institutions in South Sudan to launch nationwide research to find out what people think about synchronizing legal and traditional laws such that one single law is applied throughout the country for dispute resolution. Doing so has the prospects of resolving challenges faced by disputants in their simultaneous utilization of modern and traditional mechanisms of dispute resolution.

REFERENCES

- Abu-Nimer, M., 2001. Conflict Resolution, Culture, and Religion: Toward a Training Model of Interreligious Peacebuilding. *Journal of Peace Research*, 38(6), pp.685–704.
- Alfonse, 2015. Literacy for Police pressing issue in South Sudan. Available at: <http://northdenvernews.com/literacy-for-police-pressing-issue-in-south-sudan-southsudan/>.
- Axelrod, R.M., 1997. *The complexity of cooperation agent based models of competition and collaboration*, Princeton University Press.
- Baker, B., 2010. Linking state and non-state security and justice. *Development Policy Review*, 28(5), pp.597–616.
- Baker, B. & Scheye, E., 2009. Access to Justice in a Post-conflict State: Donor-supported Multidimensional Peacekeeping in Southern Sudan. *International Peacekeeping*, 16(January 2015), pp.171–185.
- Barry, J. & Porter, L., 2012. Indigenous recognition in state-based planning systems: understanding textual mediation in the contact zone. *Planning Theory*, 11(2), pp.170–187. Available at: <http://dx.doi.org/10.1177/1473095211427285>.
- Barsky, A.E., 2000. Cross-Cultural Issues in Community Mediation: Perspectives from Israel. *Jewish Political Studies Review*, 12(3/4), pp.83–94. Available at: <http://www.jstor.org/stable/25834493>.
- Basedau, M. & Koos, C., 2015. When Do Religious Leaders Support Faith-Based Violence? Evidence from a Survey Poll in South Sudan. *Political Research Quarterly*. Available at: <http://prq.sagepub.com/cgi/doi/10.1177/1065912915603128> \n <https://opac.giga-hamburg.de/r/c-00935202>.
- Beardsley, K., 2011. Peacekeeping and the Contagion of Armed Conflict. *The Journal of Politics*, 73(04), pp.1051–1064.
- Belge, C. & Blaydes, L., 2013. Gender, social capital and dispute resolution in informal areas of Cairo and Istanbul. *Studies in Comparative International Development*, 49(4), pp.448–476.
- Benson, B.L. & Siddiqui, Z.R., 2014. Pashtunwali—Law for the lawless, defense for the stateless. *International Review of Law and Economics*, 37, pp.108–120. Available at: <http://www.sciencedirect.com/science/article/pii/S0144818813000574>.
- Bercovitch, J., 1991. International Mediation. *Journal of Peace Research*, 28(1), pp.3–6.
- Brickell, K., 2015. Towards intimate geographies of peace? Local reconciliation of domestic violence in Cambodia. *Transactions of the Institute of British Geographers*, 40(3), pp.321–333. Available at: <http://doi.wiley.com/10.1111/tran.12086>.

- Celik, A.B. & Shkreli, A., 2010. An Analysis of Reconciliatory Mediation in Northern Albania: The Role of Customary Mediators. *Europe-Asia Studies*, 62(6), pp.885–914.
- Conteh, F.M., 2014. Chiefs, NGOs and alternative conflict resolution mechanisms in post-conflict Sierra Leone. *Review of African Political Economy*, 41(142), pp.516–529. Available at: <http://www.tandfonline.com/doi/abs/10.1080/03056244.2014.928614>.
- Cooley, J.W., 2006. *The mediator's handbook: Advanced practice guide for civil litigation*, Louisville, CO: National Institute for Trial Advocacy.
- Dahal, D.R. & Bhatta, C.D., 2008. The Relevance of Local Conflict Resolution Mechanisms for Systemic Conflict Transformation in Nepal. *Berghof Foundation for Peace Support*.
- Deng, D., 2013. Challenges of Accountability An Assessment of Dispute Resolution Processes in Rural South Sudan. , (March).
- Deng, F., 1999. Reaching Out: A Dinka Principle of Conflict Management. In W. Zartman, ed. *Traditional Cures for Modern Conflicts: African Conflict "Medicine."* Lynne Rienner, p. 262.
- Dialdin, D. a & Wall, Jr., J. a., 1999. Third parties and culture. *Negotiation Journal*, 15(4), pp.381–387. Available at: <http://doi.wiley.com/10.1111/j.1571-9979.1999.tb00736.x>.
- Dodo, O., 2014. Societal Conflicts: Marriage as a Possible Conflict Resolution Mechanism in the Zezuru Culture of Chikomba District Obediah Dodo 1. , 2(1), pp.191–204.
- Fisher, R., Ury, W. & Patton, B., 2011. Getting to yes : Negotiating an agreement without giving in. , p.xxix, 204 p.
- Furnish, D.B., 1995. The Navajo Nation : A Three-Ingredient Mix. *Electronic Journal of Comparative Law*, 12(1), pp.1–27. Available at: <http://www.ejcl.org>.
- Gent, S.E. & Shannon, M., 2011. Decision Control and the Pursuit of Binding Conflict Management: Choosing the Ties that Bind. *Journal of Conflict Resolution*, 55(5), pp.710–734.
- Mac Ginty, R., 2014. Everyday peace: Bottom-up and local agency in conflict-affected societies. *Security Dialogue*, 45(6), pp.548–564. Available at: <http://sdi.sagepub.com/cgi/doi/10.1177/0967010614550899>.
- GoSS, 2009. *Local Government Act*,
- GoSS, 2011. *Transitional Constitution of the Republic of South Sudan*, Ministry of Justice.
- Heegde et. al, 2011. South Sudan food security and land governance factsheet. , (February 2011), pp.1–6.
- Henrysson, E., Joireman, S.F. & Joireman, F., 2009. On the Edge of the Law : Women ' s Property

Rights and Dispute Resolution in Kisii , Kenya Published by : Wiley on behalf of the Law and Society Association Stable URL : <http://www.jstor.org/stable/29734170> On the Edge of the Law : Women ' s and Dispute R. , 43(1), pp.39–60.

Hofstede, 1991. *Cultures and organizations : software of the mind*, London, New York: MacGraw-Hill.

Igreja, V., 2010. Traditional Courts and the Struggle against State Impunity for Civil Wartime Offences in Mozambique. *Journal of African Law Journal of African Law Victor Igreja Journal of African Law*, 54(54), pp.51–73. Available at: <http://journals.cambridge.org/JAL> http://journals.cambridge.org/abstract_S0021855309990167.

Jok, A.A., Leitch, R. a & Vandewint, C., 2004. Customary Law Overview in South Sudan. , pp.1–67.

De Juan, a., Pierskalla, J.H. & Vullers, J., 2015. The Pacifying Effects of Local Religious Institutions: An Analysis of Communal Violence in Indonesia. *Political Research Quarterly*, 68(2), pp.211–224. Available at: <http://prq.sagepub.com/cgi/doi/10.1177/1065912915578460>.

Kim, N.H. et al., 1993. Community and industrial mediation in South Korea. *Journal of Conflict Resolution*, 37(2), pp.361–381.

Kose & Beriker, 2012. Islamic Mediation in Turkey : The Role of Ulema. , 5(2), pp.136–161.

Lederach, J.P., 1997. *Building Peace: Sustainable Reconciliation in Divided Societies*,

Lefler, V. a., 2015. Strategic forum selection and compliance in interstate dispute resolution. *Conflict Management and Peace Science*, 32(1), pp.76–98. Available at: <http://cmp.sagepub.com/cgi/doi/10.1177/0738894214544618>.

Madani, K. & Lund, J.R., 2010. California's SacramentoSanJoaquinDeltaConflict: from Cooperation to Chicken. , p.22. Available at: http://watershed.ucdavis.edu/pdf/Madani-Lund_Delta_Conflict_A.pdf.

Madut, J.J., 2014. Special Report : *Sudd Institute*. Available at: https://www.suddinstitute.org/assets/Publications/572b7eb4e2286_PoliceServiceAndLawEnforcementInSouthSudan_Full.pdf.

Ministry of Jusitce, 2008. *Article 5 Chapter 1 Code of Criminal Procedure Act: Act 9*, South Sudan Ministry of Justice and Legal Affairs.

Moore, C.W., 2014. *The Mediation Process: Practical Strategies for Resolving Conflict* , Fourth., Jossey-Bass.

Osei-hwedie, K. & Rankopo, M.J., 2010. Chapter 3 : Indigenous Conflict Resolution in Africa : The Case of Ghana and Botswana. , 1966, pp.33–51.

- Phayal, A., Khadka, P.B. & Thyne, C.L., 2015. What Makes an Ex-Combatant Happy? A Micro-Analysis of Disarmament, Demobilization, and Reintegration in South Sudan. *International Studies Quarterly*, pp.654–668.
- Pinto, J., 2000. Peacemaking As Ceremony: the Mediation Model of the Navajo Nation. *International Journal of Conflict Management (1997-2002)*, 11, p.267. Available at: <http://library.norwich.edu/login?url=http://search.ebscohost.com/login.aspx?direct=true&db=aph&AN=3993072&site=ehost-live&scope=site>.
- Powell, E.J. & Wiegand, K.E., 2014. Strategic Selection: Political and Legal Mechanisms of Territorial Dispute Resolution. *Journal of Peace Research*, 51(3), pp.361–374. Available at: <http://www.scopus.com/inward/record.url?eid=2-s2.0-84899965545&partnerID=40&md5=5c417d731e969ec30aa1de1887c83a69>.
- Rapoport, a, 1974. *Game theory as a theory of conflict resolution* A. Rapoport, ed., Springer. Available at: https://books.google.co.in/books?hl=en&lr=&id=tt_5gSOBd3MC&oi=fnd&pg=PA1&dq=Rapoport+1974+conflict&ots=E8sord86TT&sig=dXPi2iQ3uCIT029zKlK0Ls75Ik0.
- Rogers, E.M. & Hart, W.B., 2002. Edward T . Hall and The History of Intercultural Communication : The United States and Japan. *Communication*, 24(24), pp.3–26. Available at: <http://www.mediacom.keio.ac.jp/publication/pdf2002/review24/2.pdf>.
- Sansculotte-Greenidge, M.M. and K. ed., 2012. *Integrating Traditional and Modern Conflict Resolution: Experiences from selected cases in Eastern and the Horn of Africa Africa*, Available at: <http://accord.org.za/images/downloads/monograph/ACCORD-monograph-2012-2.pdf>.
- Schelling, T., 1980. *The Strategy Of Conflict*, Harvard University Press. Available at: elcenia.com/iamapirate/schelling.pdf.
- Shea, N., 2016. Nongovernment organisations as mediators: Making peace in Aceh, Indonesia. *Global Change, Peace & Security*, 28(2), pp.177–196. Available at: <http://www.tandfonline.com/doi/full/10.1080/14781158.2016.1162778>.
- Silva, K., 2013. Negotiating Tradition and Nation: Mediations and Mediators in the Making of Urban Timor-Leste. *The Asia Pacific Journal of Anthropology*, 14(5), pp.455–470. Available at: <http://dx.doi.org/10.1080/14442213.2013.821155>.
- South Sudan Ministry of Legal Affairs and Constitutional Development, 2008. Act 5 CHAPTER I Code of Criminal Procedure Act: Act 9.
- Stasavage, D., 2004. Open-Door or Closed-Door? Transparency in Domestic and International Bargaining. *International Organization*, 58(3), pp.667–703.
- Steinberg, G.M., 2000. Conflict Prevention and Mediation in the Jewish Tradition. , 4(Fall), pp.3–4.

- The Land Act, 2009. Laws of South Sudan. , 59(2), pp.1–41.
- Theresa, A., 2014. Methods of Conflict Resolution in African Traditional Society. , 8(33), pp.138–157.
- Topp, S.M. et al., 2015. Motivations for entering and remaining in volunteer service : findings from a mixed-method survey among HIV caregivers in Zambia. *Human Resources for Health*, pp.1–14. Available at: <http://dx.doi.org/10.1186/s12960-015-0062-y>.
- Travis, J., 1995. National Institute of Justice The Rights of Crime Victims — Does.
- Triandis, H.C., 2000. Culture and Conflict. *Psychological Science*, 35(2), pp.145–152.
- Triandis, H.C. & Gelfand, M.J., 1998. Converging measurement of horizontal and vertical individualism and collectivism. *Journal of Personality and Social Psychology*, 74(1), pp.118–128.
- Wall & Beriker, 2010. Turkish Community Mediation. *Journal of Applied Social Psychology*, 40, pp.2019–2042.
- Wilson, R.A., 2001. *The Politics of Truth and Reconciliation in South Africa: Legitimizing the Post-Apartheid State*, Cambridge Studie in Law and Society.
- Winsor, R. & Skovdal, M., 2008. Agency, resilience and coping: Exploring the psychosocial effects of goat ownership on orphaned and vulnerable children in Western Kenya. *Journal of Community & Applied Social Psychology*, 450(January), pp.433–450. Available at: <http://www3.interscience.wiley.com/journal/5625/home>.
- Zhuang, W. & Chen, F., 2015. “Mediate First”: The Revival of Mediation in Labour Dispute Resolution in China. *The China Quarterly*, 222, pp.380–402. Available at: http://www.journals.cambridge.org/abstract_S0305741015000739.
- Zion & Zion, 1993. Stay together nicely: Domestic Violence under Navajo Common Law. *Arizona State Law Journal*, 52(2), pp.407–426.

INDEX

- (ADRs), 3
- “chicken game”, 25
- “civility examines rural communities in which individuals rely on one another particularly for agricultural assistance, 16
- “golden calf” incident involving Abraham and Lot, 23
- “hozhooji naat’ aanii”*, 8
- “pure justice kills peace”, 16
- 2009 Local Government Act, 34
- Abraham’s decision to choose either “right” or “left”, 13
- abusive husbands, 29
- alien, 17
- apology, capstone, handshake, kiss on the cheek, or a reconciliation banquet, 23
- avoidance of head-on collision, 25
- blanket amnesty, 22
- calmness and rationality, 18
- clients to make rational decisions, 24
- clinical mediation, 18
- community development program, 18
- community peace volunteers, 20
- competitive “game of chicken” motivated by greed, 25
- dispute management, 18
- dispute recurrence, 14
- continuity, 14
- CPVs, 20
- cultural effects model, 31
- dilemma of choice, 7
- Dinka, 17
- disputants say they trust state agencies, 14
- Disputants with less economic power such as the Khmer women in Cambodia, 27
- echelons, 2
- effects model., 5
- Elopement and murder, 24
- exorbitant fines, 20
- expansive dispute transformation, 18
- external assistance, 18
- face-saving, 30
- generic, 5
- give-and-take, 24
- Globalization and modernization, 9
- high court, county and payam courts, 35
- inner peace., 23
- interdependence, 16
- interdependence., 16
- intergenerational and intractable conflicts., 18
- irreligious people, 32
- Islamic Ulema, 4
- judge in courts, 20
- Korakh rebelled against Moses in the wilderness, 23

Kurds, 23
 law number 15/92, 22
 less assertive, 23
 Lot, 13
 Modernists, 10
 moral and religious guidance, 20
 Muslim cultures, unlike those of Christians
 and Jews, require people to refrain from
 praying for divine intervention, 31
 no official power, 14
 Northern Albania, 4
 persuasive mechanisms, 14
 potential spoilers of an agreement, 27
 Power/financial asymmetry, 27
 presidential decree in 2013., 33
 pride and dignity, 23
 rabbis, 14
 rationalized and bureaucratized., 7
 regional and boma courts, 35
 Revival of Mediation in Labour Dispute
 Mediation in China, 4
 sages, 16
 secularists and non-secularists, 7
 social misfits, 29
 social pressures, 16
 state organizations, 2
 subjective cultural elements, 32
 such style of dispute resolution makes the
 stronger party to push the weaker one to the
 brink, 25
 Talmud, 7
 the amnesty law (15/2000), 22
 Timor-Leste, 4
 truce, remorse, forgiveness and repentance,
 14
 Ulema mediators, 26
 verdict, 20
 win-lose outcomes, 14
 wrong-doer, 14
 wronged, 14
 Yoruba and Igbo tribes in Nigeria and Pondo
 tribe in South Africa, 3

APPENDICES

Appendix 1. Questionnaire

Hello respondent!

My name is Umba Peter Bosco. I am a South Sudanese student studying Master of Arts in Conflict Analysis and Resolution at Sabanci University in Turkey. I am interested in knowing from you how you choose between/among different mechanisms of resolving problems/disputes.

1. What was the most recent problem you had, for which you had to go to a higher authority to resolve the problem? _____ (write it down)

2. Which authority did you go to and resolve the problem? _____

3. Which of the following reasons was essential for you to choose the authority in question 2? Tick in only one box to represent your answer.

- ☐ Morally, religiously and culturally appropriate
- ☐ Is affordable and accessible
- ☐ Fairness

4. Did any of the reasons below play a role for you to go to the authority in question 2? Tick only one to represent your answer.

- ☐ Speed of resolution
- ☐ Justice and preservation of communal harmony
- ☐ I expect favorable settlement outcome based on past experience

5. If someone you know gets into a fight with another person at the water point, who do you go to and resolve such a problem? Why do you say so?

6. When a husband and a wife separates or divorces or in case of death of one of the couples, who do you go to and resolve issues of child ownership, care and responsibility? Why do you say so?

7. If you get involved in a road accident, say two motorcycles collide, who do you go to and resolve such a problem? Why do you say so?
8. In a situation where somebody borrows your money and is not willing to pay back, who do you go to and resolve such a problem? Why do you say so?
9. If you face a problem over land, or another person forcefully takes your land, who do you go to and resolve this problem? Why do you say so?
10. If you suspect or want to accuse someone of theft, who do you report such problem to for resolution? Why do you say so?
11. When somebody you know becomes a victim of rape or defilement, who do you go to and resolve such a problem? Why do you say so?
12. When somebody you know is murdered, and you are affected by it, who do you go to and resolve such a problem? Why do you say so?
13. When somebody you know is involved in an adultery or elopement case, who do you go to and resolve such a problem? Why do you say so?
14. Do you remember ever going to the following people below?
 - a. Court ----- how often ----- why? -----
 - b. Chief ----- how often ----- why? -----
 - c. Elders ----- how often ----- why? -----
 - d. Religious leaders -----how often -----why? -----
 - e. Police -----how often -----why? -----

14. DEMOGRAPHICS

- a. Village -----

- b. Gender -----
- c. Age/year of birth -----

15. What is your level of education? Tick in only one box to represent your answer.

- ☐ University and higher diploma
- ☐ Some tertiary
- ☐ Secondary school certificate
- ☐ Some secondary school
- ☐ Primary school certificate
- ☐ Some primary school
- ☐ No school

16. SOCIO-ECONOMIC STATUS

- a. Do you work? if yes, what is your work?
- b. What means of transport do you use?
- c. What is your main source of electricity/light in your house?
- d. What means of communication do you use?
- e. What is your main source of news?

Appendix 2. Map of Yei

