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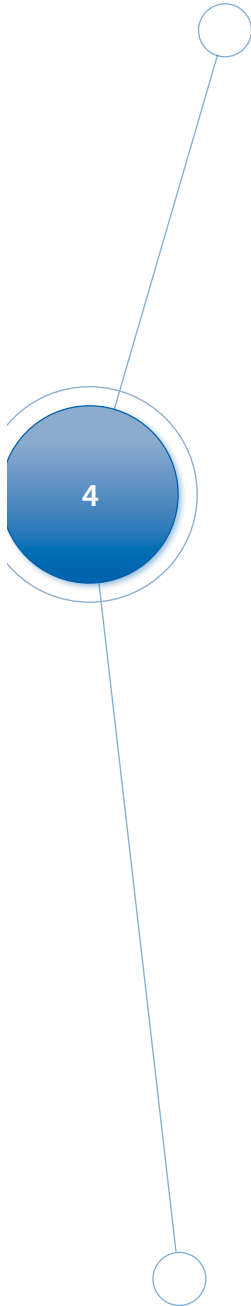
STUDY ON THE
HARMONISATION OF CUSTOMARY LAWS
AND THE **NATIONAL LEGAL SYSTEM**
IN SOUTH SUDAN

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I. INTRODUCTION

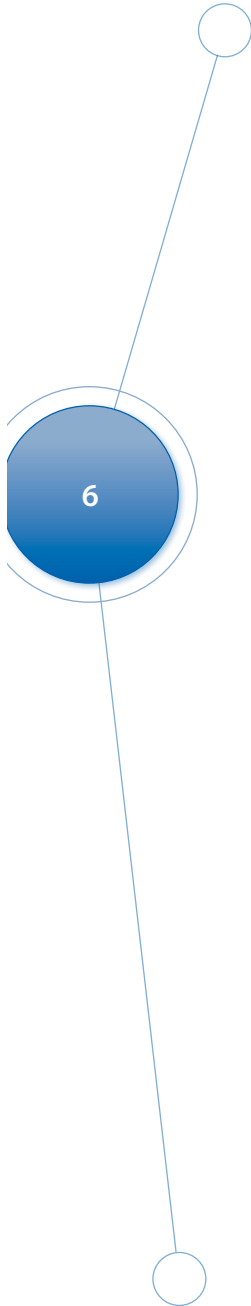
This report relies on the ascertainment study of customary laws in South Sudan to produce an analysis of the harmonisation of the various customary laws across South Sudan, as well as emerging alignment of customary laws with the Transitional Constitution of South Sudan (TCSS), international human rights law, and, as applicable, recent South Sudan legislation, such as the Land Act and Local Government Act that have clarified aspects of customary jurisdiction. The objective of this report is to identify the natural synergies and potential conflicts of substantive law and jurisdiction that characterize the modern plural legal order of South Sudan, with the end goal of crafting a plural legal framework that preserves traditions and culture while strengthening the rule of law to create a peaceful, well-governed and prosperous South Sudan.

The analysis in this report builds on data collected through UNDP's prior customary law self-ascertainment studies of 14 tribes or ethnic groups: Avukaya, Moru, Baka, Jur-Bel, Wa'di, Azande, Lotuko, Lopit, Lango, Ndogo, Mundari, Toposa, Balanda Bviri and Bongo. The territory of these tribes extends across five South Sudan states - Central Equatoria, Western Equatoria, Eastern Equatoria, Lakes, and Western Bahr el Ghazal – with many present in multiple states. Other major tribes, such as the Bari, Dinka and Nuer have been covered extensively by other studies.¹

Data from the self-ascertainment studies is reviewed under three broad categories; a) comparative analysis of major areas of law, such as family and land law across all ethnic groups to discuss similarities and major differences; b) analyses of areas of disagreement between the TCSS and customary law and international human rights and customary law, including its applicability to transitional justice; and c) a streamlined analysis for each ethnic group along the customary laws that require harmonisation with the TCSS and/or international human rights law, including self-identified areas for reform.

The analysis is limited to data obtained through the self-ascertainment studies. Many ethnic groups now only use customary law in civil disputes, while criminal and legal themes, e.g. cattle theft and arms trade (which have become too complex or inter-tribal in nature) are now taken up by the statutory system (according to the Local Government Act, or practice). In some communities, while the subject matter jurisdictional lines have been redrawn, there is still no formal judicial infrastructure, thus the customary system while not having de jure jurisdiction, retains de facto jurisdiction to hear cases and give sentences per criminal statute. Thus, it is important to consider customary law conflicts or areas of reform based solely on positive or active rights violations or conflicts, rather than a customary law's failure to prosecute or punish where criminal jurisdiction clearly applies. Where a failure to respond to human rights violations occurs, such as prosecution of gender based violence, this is as much a conflict of statutory law as it is customary law and requires a broader analysis outside of the scope of this study.

¹ E.g., Deng, Francis (1984). *The Dinka of Sudan*, Waveland Press; Jok, A., Leitch, A., & Vandewint, C., (2004), 'A Study of Customary Law in Contemporary Southern Sudan', World Vision International and SPLM Secretariat of Legal Affairs and Constitutional Development; Fadlalla, Mohamed (2009). *Customary Laws in South Sudan: Customary Laws of the Dinka and Nuer*, i Universe.



II. CUSTOMARY LAW COMPARATIVE ANALYSIS

This section will compare the customary laws of all communities covered by the ascertainment studies across five legal themes: 1) family law, 2) laws of wrongs and obligations (civil and criminal), 3) law of inheritance and succession, 4) land law and 5) environmental law; as well as consider procedural aspects specific to each customary system. The analysis presented here is restricted to the data gathered by the self-ascertainment study, of which it is important to note that the data reflects communities' decisions on what to record. Some ethnic groups did not mention entire areas of law, such as environmental law, or did not detail sub-areas such as polygamy or widow inheritance.

While not detailed in depth or consistently across the customary self-ascertainment studies, there are additional, important procedural aspects that should be highlighted as they potentially run contrary to due process and other rights, including prolonged pre-trial detention and evidentiary standards that are against accepted international practice. Most systems of customary law in South Sudan operate through a tiered structure that extends from family to clan to county. The Local Government Act (LGA) of 2009 recognizes customary law courts as a source of law and establishes a formal hierarchy of Boma ("A" Courts), Payam ("B" Courts) and County ("C" or Paramount Chief Courts) that hear cases on appeals or have first instance jurisdiction classified by the severity of the case or for specific thematic matters. However, many customary law systems operate below this hierarchy at the family and clan level. In particular, family law matters including disputes between spouses and inheritance matters rarely reach the structures identified by the LGA. As a result, it is difficult to monitor and provide for protection of women's rights as accorded by the TCSS or international human rights laws, particularly where they run contrary to customary law.

A full comparison of customary laws is contained in the customary law matrix in Annex A.

1. Family Law

Family law demonstrates considerable consistency in practice and content across the communities studied, with most customary laws emphasizing the importance of family unity in consecrating a marriage and the role of bride wealth, paid from the groom's family to the bride's, in this process. The ascertainment studies focused on a number of common areas within family law.

a. Marriage.

Marriage generally occurs through two forms, with agreement of the families being the most common. Under most customary laws elopement is also common and permitted, even if not preferred. A few traditions, particularly the Balanda and Bongo, encourage "wife swapping"², where two friends marry each other's respective sisters. This is seen as the best mechanism to

² "Wife-swapping" is the term used by participants in the customary law self-ascertainment studies



ensure family unity. In many cultures it is common for the wife to have no say in her choice of husband and for her suitor and future husband to be identified by her father while she is still a child. Ironically, while elopement is generally discouraged and can cause conflict between families, it is a common mechanism by which a woman can choose her own husband.

Elopement occurs when the man and woman abscond with the intention of marrying. In these cases the man or his family will need to reconcile with the woman's family, including negotiating a proper bride price, before the marriage is recognized by customary law. In some cases, the woman's family is allowed to retaliate and lock the couple in a house until the man or his family pays the bride price. In other traditions it is almost expected that there will be a dispute between the families and that the chief will need to intervene and mediate a payment. In many cases, a fine is also imposed for elopement (For the Lotuko the kasarubet (fine) for elopement is 6 to 8 goats or 1 bull), payable to the families or the chief, if he is required to intervene.

Table 1. Bride Price

Lopit - Lolongo	20 cows, 30 goats and 30 spears.
Azande	No fixed amount, based on negotiations between families.
Balanda	Traditional items or money. No standard amount indicated
Mundari	15 cattle (12 cows, 3 bulls) or more depending on status of family.
Moru	No standard amount, depends on clan – from 4 goats to “Gbidri” cash payment, 30 arrows and 10 hoes. In some Moru communities, marriage has been divided into four categories: (i) Actual dowry (lagye) goes to the brothers of the bride; (ii) Traditional fine (labi) goes to relatives of the bride; (iii) Gift (ngapari) goes to the parents and relatives of the bride; and (iv) Work (losi) is provided to parents of the bride (which is the building of 1 or 2 houses and farming). In some Moru clans, gifts like okyoyo (cooked meat, paste and honey) are also provided to the parents of the bride.

b. Bride Price.

In all customary law traditions, marriage means that a woman joins the man's family and leaves her own - thus the importance of bride wealth to restoring her family. The husband and his family pay the wife's family for her, replacing the value and services she provided to her family. Bride wealth varies by culture, but is typically a combination of cows, goats and tools (For example, for the Lopit, the bride price is 20 cows, 30 goats and 30 spears; see Table 1), although this is increasingly being replaced by monetary compensation. In some cultures, such as the Lopit and Lango, the husband also must live with his in-laws for a probationary period of 3 years (or less) to help with farming and other income generating activities to demonstrate that he will be able to take care of their daughter.

c. Divorce.

Divorce was acknowledged by all customary laws studied, but in some cases was cited as a recent development in the law and as a last resort after mediation between spouses has not been successful. The grounds for divorce are similar across many of the ethnic groups (See examples in Text Box 1). Abuse by the husband was listed as a ground for divorce in some laws, but often with a caveat that required the abuse to be “unnecessary”, implying that some level of abuse is permitted and not grounds for women to seek divorce.

Text Box 1. Grounds for Divorce

The Lotuko listed the following grounds for divorce:

Of the husband:

- Impotence of the man.
- Where the husband does not treat and provide for the wives equally. If one of the wives is of the opinion that the husband is not giving her equal treatment with the others, she may opt for a divorce.
- Inability of the man to provide for his family for any reason, including excessive drinking, running away from his family, laziness or any other form of irresponsibility.

Of the wife:

- Barrenness of the woman.
- Excessive drinking by the woman rendering her incapable of discharging her duties as a mother and a wife.

The Azande list the following grounds for divorce:

Of the husband:

- Drunkenness accompanied by domestic violence; impotence; sexual activity with close relatives of the wife; inability to provide for the family; abandoning the wife for a year or more with no justification; theft/thieving by the husband; engagement in the practice of witchcraft; failure to respect his in-laws.

Of the wife:

- Repeated acts of adultery; sexual affairs with the relatives of the husband; failure to discharge the house chores; failure to respect and take care of the relatives of the husband; drunkenness of the wife; theft/thieving by the wife; engagement in the practice of witchcraft.

The various levels of the customary justice system - family, elders, group-leadership, sub-chieftainship, and chieftainship - oversee divorce proceedings, with appeal for difficult disputes reaching the highest level.

Division of assets and even custody of children from a divorce vary extensively but an overarching principle from most ethnic groups is that division of assets or custody is driven by the permanence of the husband's (and children's) membership in the ethnic group and the woman's impermanence and potential return to her ethnic group of origin, especially if bride price had not been paid in full.

Divorce typically results in the return of bride price to the husband or family (if paid in full). Some ethnic groups, such as the Mundari, differentiate where the man initiates the divorce, in which case no bride price is returned; or the woman in which case the bride price is returned. For other ethnic groups, such as the Lotuko, bride price will only be returned if the woman remarries, in which case the new husband pays the former. Other divisions of assets after a divorce vary considerably by ethnic group, with some recognizing the wife's ownership of items, including land (although not clan land attained by way of the husband's membership in the

clan), attained in her own right, while other ethnic groups hold strict rules on what items (such as domestic items like cooking utensils) are the wife's property. Children almost universally go to the husband's family upon divorce, unless the bride price was not paid in full. In some of these instances (such as the Azande) the children go to the maternal uncle of the wife. In other instances still, the woman has rights to the marital house. The wife also usually returns to her family, especially when they are required to return the bride price.

d. Out of Wedlock Pregnancies.

Out of wedlock pregnancies are generally considered a crime and are punishable by fines or other punishment, depending on the marital status of the parties involved. For example, the Toposa provide that 7 cows must be paid to the husband of a woman that has a child with another man. The Lotuko allow for killing of the adulterous parties. A child born out of wedlock to a married woman will belong to the husband, not the father, according to many customary laws. Children born out of wedlock can also result in marriage, if the two families

agree, otherwise the family of the woman will raise the child. The laws and punishments for out of wedlock pregnancies were not discussed in depth in all customary laws and require further research.

e. Arranged Marriage of a Minor.

Many ethnic groups include arranged marriage of minors as one of the acceptable methods for entering into marriage. "Booking" is the practice of families mutually deciding that their children should marry when they come of age. The children are not allowed to defy their parents' decision.

f. Polygamy.

Polygamy is not discussed in depth in all of the customary law traditions studied. Some such as the Lotuko and Balanda Boor have specific mentions permitting multiple wives, where the husband can provide for them. In the case of the Balanda Bviri the maximum number of wives permitted is two. Other ethnic groups, such as the Acholi, recognize the practice but indicate that it is decreasing.

g. Widow Inheritance.

Widow inheritance is common in customary traditions, but its practice is decreasing, according to participants in the study. The Toposa do not explicitly recognize wife inheritance, but do accept the practice of wife co-habitation and producing children with the brothers of her deceased husband. The Acholi also recognize widow inheritance, or levirate marriage as a mechanism that sustains the relationship between the deceased husband's family and the woman. The mechanism is believed to ensure her protection and also ensure that she and her children are catered for. Many customary law studies were silent on this topic.

2. Laws of Wrongs and Obligations

The laws of wrongs and obligations is a body of customary law that covers infractions, mostly of a criminal nature, but also includes personal violations that could be addressed under civil jurisdictions. Customary law does not generally tend to differentiate between criminal and civil jurisdictions, or crimes "against the state" and personal transgressions that require individual compensation. Instead, laws mostly focus on restorative justice that attempts to make the victim whole and restore balance to the community. Punitive measures are less common. The laws reviewed under this section are grouped according to thematic areas in four categories – Sexual Offenses, Physical Offenses, Property Related Offenses, and Other Offenses, including defamation and witchcraft. Sexual Offenses, including rape and adultery, have remained largely under the purview of the customary justice systems, even where jurisdiction has been established by legislation for the more

serious offenses such as rape.³ Criminal jurisdiction under the South Sudan Penal Code of 2008 and Code of Criminal Procedure of 2008 covers most of the Physical Offenses, but civil jurisdiction and restorative justice mechanisms remain within customary law.

Sexual Offenses

a. Rape.

Rape is a serious crime under most customary laws studied, but is largely considered as a civil matter that requires the offending party to make the victim (or her husband) whole through compensation.⁴ For example, the Toposa require the perpetrator to pay 3 cows to the family of the victim as compensation, and a goat for use in cleansing rituals. If pregnancy occurs, 7 cows are paid to the husband of the victim, of which one is a bull to be killed as a cleansing ritual. In some cases, if the victim is not married and the rape has not been made public, the perpetrator will be required to marry her and pay the appropriate bride price. There seems to be more leniency across many customs for unmarried perpetrators, so long as they marry the victim. This is often dependent on the ability of the perpetrator to pay the bride price. It is expected that the victim will agree to the marriage so as to preserve her reputation as well as that of the family. Participants did not discuss additional punishments or compensation to the family if the victim (or family) did not consent to the marriage.

Some customary laws take a punitive stance against rape, including imprisonment, lashings or even death of the perpetrator. The Bongo, for example, do not consider compensation as adequate for rape cases, insisting on marriage or death of the perpetrator instead. Some traditions recognize the practice of revenge killings by the family of the victim, although it appears that customary leaders are largely forbidding this previously tolerated practice. According to Balanda Bviri customary law, the death of the victim is treated as murder and the offender will be killed or required to give his sister to the family of the victim, depending on the agreement between the two families/clans. The Lango provide that if rape results in death of the woman, the perpetrator must pay 12 cows to the husband, a goat for a cleansing ritual, and cover the funeral expenses. Pregnancies resulting from rape, as detailed in the family law section, will typically result in compensation paid to the husband who acquires custody rights of the child.

If the accused does not admit to the rape and there are no eyewitnesses, the parents of the victim will seek the intervention of witchcraft to force the suspect to tell the truth by requiring him to swear before the customary court. It is believed that he will be visited by sickness and misfortunes should he lie.

³ See South Sudan Penal Code, 2008, Article 247.

⁴ Most customary laws provided that rape cannot occur to a man by a woman or between husband and wife. There is also no specific mention of statutory rape (of minors).

Additionally, many customary systems recognize a link to the formal statutory system. In cases where settlement between the parties is not achieved or where customary leaders have determined that a jail sentence or other criminal punishment by the state is required, the formal justice system is involved. However, the standards or procedures applied by the customary courts to determine this are not clear from the ascertainment study. Some ethnic groups, such as the Wa'di of Western Equatoria have abrogated jurisdiction for rape cases in favour of jurisdiction by the formal system.

b. Adultery.

Adultery is seen by most customary jurisdictions under study as a criminal act that threatens the balance of family relationships and community harmony. Adultery in customary law only applies to married women.⁵ Adulterers, both male and female, are usually subject to some form of punishment in addition to compensation that must be paid by the guilty man to the husband. The Lango provide for 6 months imprisonment for the woman; the Lopit provide that a woman is not at fault. The Bongo require the guilty male to pay the equivalent of the bride price to the husband and also require 6 months of hard labour in the chief's compound. Other ethnic groups, such as the Jur-Bel were less punitive, requiring only a fine such as hoes, tusks, or "foodstuffs"⁶ commensurate with the ability of the perpetrator to pay, so as not to prolong payment and potentially escalate the dispute between the husband and guilty party. The Lotuko were the only tribe studied whose laws accepted killing of the guilty adulterous parties.

Where an adulterous relationship results in children, the husband will have ownership of the children. The man will have to pay a form of support, or a fine, under most laws to the guardian (Lotuko - 2 cows; Lopit - 1 bull; Mundari – 3 cows, 1 sheep and 1 goat; Azande – no additional compensation).

Adultery is proven by the occurrence of pregnancy at a time when the husband was absent or by the parties being caught red-handed, although with some ethnic groups there are self-described "witchcraft" methods that are still carried out to punish those that lie (the Avukaya perform rituals like feeding a suspected woman with olo, a potato-like plant, which is believed to cause miscarriage if her husband is not the father of the child) or stimulate the woman to state the name of the men with whom she has been involved (Azande).

Text Box 2.

Toposa Punishments for Adultery: Past and Present

Past -- adulterer will be beaten and required to pay 7 cows to the husband of the woman. One of the 7 cows must be a bull which is to be killed with a spear as part of a cleansing ceremony. The stomach and intestines of the bull are smeared over the entire body of the perpetrator and the woman. It is also smeared on the bodies of the children of the family, to cleanse and protect them from disease and misfortunes. This procedure is also applied to the husband.

Present -- beatings are no longer done but the perpetrator is required to pay 7 cows.

⁵ While not adultery, sexual relations between a married man and unmarried woman could be the grounds for a family to force a man to take their daughter with whom he commits adultery, as a second wife.

⁶ The term used by ethnic groups in the self-ascertainment studies.

c. Other Sexual Offenses.

The ascertainment studies also detailed other sexual offenses such as incest, seduction, defilement (sex with a minor) and “fornication” that are particular to each ethnic group. The Azande and Avukaya discussed defilement specifically, but indicated that tradition now calls for referring these cases to the police and formal courts. The Ndogo, Balanda, and other ethnic groups, punish unmarried minors that are caught engaging in sexual intercourse with beatings or lashings, although this is largely done privately to protect the girl’s reputation and chances of getting marriage. Incest is mentioned in most studies but is generally handled as a family matter with cleansing rituals.

Physical Offenses

d. Murder.

This is an area that is in flux across many customary jurisdictions as the statutory system has criminal jurisdiction over intentional and other degrees of murder and manslaughter. The ascertainment studies indicate that some customary laws have recognized and incorporated this change in jurisdiction, while others make no mention of the formal court process. Where incorporated it seems inconsistently applied, in some cases absolving all customary jurisdiction, in others only serving as a punitive complement. In some ethnic groups only certain types of murder are given to the formal courts, but jurisdiction over other types of

intentional murders, such as by witchcraft (Azande), is retained by the customary system. In general, murder and the harm and grievances it causes between families is largely still addressed through restorative justice at the customary level. This could potentially be equated with the difference between civil (personal) and criminal (state) jurisdictions as in other societies. Most customary laws differentiate between intentional and unintentional killings. Intentional killing is classified as killings done with intent through weapons or even witchcraft. Unintentional killing is classified as road accidents, killing during war or in self-defence, or while hunting wild animals.

Text Box 3. **Mundari murder cleansing rituals**

In addition to compensation, a murder case presided over by a chief will attempt to restore cordial relations between the two families by way of a ritual of breaking a calabash to break the bitter past and concentrate on a peaceful future. A bull will also be slaughtered and a feast held to mark the beginning of a new relationship.

Punishment for murder varies widely across customs. Some ethnic groups focus on restorative measures only, such as payment of cows, while others permit revenge killing as a form of punishment. The punishment is often dependent on the desires of the family of the deceased and based on a brokered agreement between the two families. The Lopit, for example, allow for revenge killing but encourage the offender to plead forgiveness and for a pardon by the community, in which case he will be required to pay compensation of 22 cows and funeral expenses in the form of 5 cows. Many ethnic groups indicated that the traditional practice of “blood compensation” whereby the murderer has to provide a young girl

to the family as compensation is no longer encouraged. “Accidental” or unintentional killings, on the other hand, have a range of punishments ranging from no penalty, to the compensation equivalent to that required for intentional murder. For example, the Lotuko require the same compensation of a girl child to the family of the deceased for accidental as well as intentional murders. The girl may later be married into the family of the deceased or given to another family in exchange for bride price. Alternatively the party has to pay 18-20 cows. Funeral costs are also covered.

Text Box 4.
Toposa cleansing rituals for assault

Cleansing rituals are used when someone is beaten unconscious, wherein the perpetrator will be required to bring a goat for the ritual. Rituals are also used to determine truth when a perpetrator denies having intentionally harmed the victim. In these instances the perpetrator will still pay the fines and court fees and then perform a ritual that involves the cutting of the ears of a goat and throwing ash away while denying the crime. Where the perpetrator’s denials are false, it is believed that he will subsequently become sick.

e. Bodily Harm.

This category includes physical assaults that result in broken bones, lacerations (the common law category of battery), or other similar grave bodily injuries, but also seems to cover the common law concept of assault, which is defined as a threat to do bodily harm. Distinctions are made in most customs between harms caused intentionally and those caused accidentally or by domestic animals. Punishments depend on the severity of the injury and the ethnic group. A number of ethnic groups used to allow retribution by having the same injury inflicted on the guilty party. That practice has largely been abandoned. Compensation by cows or cash to the affected party is the most common punishment, with some ethnic groups applying imprisonment or hard labour at the chief’s compound. A brief summary is included in Table 2 with a full matrix in Annex A.

Table 2. Customary law punishments for Assault

Lango	Loss of limb or eye: 6 cows. Loss of ears, fingers or lacerations: 1 cow. Injury by domesticated animal: same punishment.
Lotuko	Permanent damage to a person’s eye: 6 cows. Removal of front teeth: 1 male cow. Broken or seriously injured leg or arm: 6 cows. Damage to or removal of the ear: 3 cows and 30 goats. Injured or deformed nose: 6 cows.
Azande	Compensation is paid to the victim. The offender is required to work for the chief for a reasonable period of time. The offender may also be imprisoned or ordered to pay a fine. Battery is not handled by the customary courts but referred to the police for investigations.
Ndogo	The culprit must treat the victim. This may be done by applying traditional medicine to aid the healing of the wound. Compensation is also paid, depending on the nature of the injury. Where the injury is caused while trying to steal the animal, no compensation or fine will be paid. Where the person is injured by animals that were let loose by the owner, the owner will be required to pay compensation.
Mundari	Assault - 1 cow.
Avukaya	Assault - Imprisonment or payment of a fine; compensation to the victim for wasting his or her time in pursuit of the matter. Battery - compensation to the injured party of an amount determined by the victim and chief presiding over the case; imprisonment or work in the chief’s house for a reasonable period to be determined according to the injury inflicted on the victim.

f. Wife Beating.

A number of the customary laws studied discussed wife beating as a separate area of law related to assault and battery. According to most of this law, wife beating is tolerated for certain reasons, such as being disrespectful to the husband's family, denying conjugal rights, or failure to take care of the children. Beating without cause, use of excessive force or repeated beatings, however, is not permitted and such actions will be punished by the chiefs or referred to the police. Where determined by the chiefs to be unreasonable, some ethnic groups provide for compensation to the wife. Repeated beatings can also be grounds for divorce. Of the ethnic groups that did not detail specifics on wife beatings (including Azande, Lango, Wa'di, Baka and Moru) it is not clear whether the practice is condemned and punished as a normal assault and battery or whether those ethnic groups neglected to mention it specifically.

Property Related Offenses

g. Robbery and Theft.

Robbery is the forceful taking of someone's property and is the first of the property related offenses detailed by the customary law ascertainment study. In some of the ascertainment exercises, robbery and theft were conflated, thus they will be distinguished here as is possible. Robbery/theft is typically treated as an offense that is punished by an extra payment to the victim. For example, if a cow is stolen, the perpetrator will have to return the cow and pay the victim an extra cow (the Mundari require 4 extra cows as punishment for theft).

A few customs treat robbery more seriously and allow for corporal punishment in the form of beatings or killings. The Bongo also require imprisonment and hard labour at the chief's compound. Other ethnic groups cited the increasing use of weapons in robbery as requiring jurisdiction for the police and formal legal system. The Mundari and Ndogo, for example, have abrogated customary courts jurisdiction, except for robbery of "foodstuffs". The Balanda Bviri were the only ethnic group that has adopted a distinction between armed robbery and normal robbery. Customary punishments range from one-year imprisonment and forced labour, to the payment of monetary damages. Witchcraft or "magic" is used to damage an offender that cannot be located or to determine if an accused is lying. In addition to restorative measures, the Azande, Moru, Jur-Bel and Wa'di apply punitive measures for more serious thefts. These measures are 1-6 months imprisonment, sometimes with hard labour and payment of a fine to the customary court.

h. Arson.

The accidental, deliberate or malicious setting of fire to someone's house or land is categorized as arson under most customary laws. The ascertainment study revealed a trend in most

customary laws to treat intentional and accidental arson as the same and to focus instead on restorative punishments for the victim. Some laws stated that if it was indeed intentional, retaliation through witchcraft will bring harm to the person.

Other Offenses

i. Insults and Defamation.

The uttering of bad words, proclaiming something bad about a person (including that they are a witch), or other insults to a person or their family in a public manner, orally or written, with the intent to damage their reputation is considered an offense under many customary laws. Not all ethnic groups listed this as part of their law in the ascertainment study, so it bears further study whether some do not treat defamation as an offense, and thus statutory laws prohibiting defamation and/or slander would predominate. Punishment for defamation may include:

- Azande – public apology, 10 lashes, 7 days imprisonment and hard labour at the chief’s house
- Moru – lashings, working in the field of the victim
- Avukaya, Wadi – imprisonment and hard labour at the chief’s house
- Mundari – 25 lashes
- Wa’di – working in the field of the victim
- Toposa, Lotuko, Lopit – a goat
- Ndogo – public apology

Insults are typically punished more severely if the victim is an elder. The Balanda and Ndogo also punish insults of women more severely, requiring compensation to the woman and imprisonment and hard labour at the chief’s house.

j. Witchcraft.

Witchcraft appears in many customary law traditions as a severe offense. Witchcraft is not clearly defined in the study but appears to be something perhaps determined on an individual basis by chiefs or elders. The Toposa say that “wizards go around people’s homes at night causing problems and evil.” The Balanda state: “witchcraft is administered through different mediums. These include sending a bird to screech on the roof at night, the use of thunder, the use of a cat, or echoing of one’s name by the unknown at night.”⁷ Punishment can be severe. The Balanda require four months imprisonment and hard labour at the chief’s house. The Lopit

Text Box 5. **Insult of Elders (Lotuko)**

Any young person who insults an elder will be cursed by the elder and if nothing is done to repair the curse, the cursed person may die or experience other misfortunes in life. To repair the curse, the offender will have to call upon an intermediary to resolve the dispute. The young person will have to ask for forgiveness, and swear that he will not repeat the misconduct. The elder will then bless the young person as a sign of forgiveness.

⁷ See Report on the Ascertainment of the Customary Laws of 14 Communities in South Sudan, UNDP, Vol 1, p. 49 and Vol. 2, p 23.

provide that a person found guilty of witchcraft could be killed. The Toposa detail that a person guilty of witchcraft will be killed by inserting a sharp object into the anus.

Witchcraft is also approved of as a punishment for crime that only certain people are allowed to practice.

Text Box 6. **Bad Eyes, Bad Feet**

The Toposa believe that some people have been given certain powers in their eyes to the extent that they can cause harm by looking at something with their eyes. Such persons are believed to cause harm to children and animals by looking into their eyes.

Besides "bad eyes", the Toposa believe that some people have "bad feet". When such persons walk across another person's field, it is believed that the crops will be affected or destroyed.

The two categories of persons mentioned above, do not necessarily intend to commit evil with their inborn capacities. Therefore, they are not given severe punishments. When they are caught, they are lashed and warned not to cross peoples' fields or project their eyes onto other people's properties and children.

3. Laws of Inheritance and Succession

The laws that govern inheritance of property are linked closely to ethnic, societal, patrilineal or matrilineal characteristics. These customs are long-standing and largely internal matters for families and clans. Disputes rarely reach the formal courts. The customary laws studied here are all patrilineal and inheritance rights benefit the male lineage almost exclusively. A few ethnic groups, however, seem to have considerations of equal inheritance along gender lines, similar to contemporary concepts of inheritance. It is unclear if this has always been the tradition for these ethnic groups, or if this is the result of recent influence from statutory and/or international law.

Inheritance is generally described as the distribution of a deceased person's property. Succession is assignment of their title. When a husband dies his property passes to his male children, usually the eldest son. Where he has no male children his brothers or other close male relatives will inherit. In most traditions, the wife of the deceased does not inherit from her husband. Instead, the wife is most often also inherited by the husband's family and she is given the choice of which male relative she will marry or cohabite with. The intention is to maintain the bond of the children with the father's family and the continued support to the mother and children by a male member of the family. Any subsequent children belong to the new husband/biological father. Many ethnic groups indicated that this is a declining practice (due to fear of HIV/AIDS).

The Lotuko and Lopit recognize the right of the wife (or co-wives) to inherit the deceased husband's property when there are no sons. The wife is also given the opportunity to have children with any other male relatives, but not compelled to do so.

Female children are not explicitly discussed in most of the studies, but a few do state what would seem to be a prevailing principle that female children do not inherit property as they will eventually be married to another family to which they cannot take the family's property.

Most customary laws recognize oral or written wills, but most often only to the degree that they do not violate customary law.

When a wife dies her property is inherited by her husband or split between her parents and children, or sons and co-wives (Toposa), or entirely by her parents if she has no children.

4. Land Law

The community owns the land according to customary law across South Sudan. Many ethnic groups also regard minerals, water sources, rivers, and natural vegetation as part of land. Land boundaries are predominantly demarcated through trees, rivers, valleys, foot paths, hills, graves, forests, mountains, roads, piling stones, pegs of ebony woods, and by planting perennial trees at the boundaries. Land is regulated by the traditional authorities (chiefs, headmen, elders) and usually divided into communal land for grazing, hunting and other activities, sacred land, and private land for houses and cultivation. Communal land is land accessible to all members of the ethnic group, subject to restrictions by the chiefs or negotiations between different clans.

Most customary laws provide for some form of family or individual use and acquisition of land, but this largely occurs as a lease, either in perpetuity or undefined, and only with the approval of the traditional authorities. This land may be inherited (from father to son) and most customary jurisdictions have some description of family or ancestral land. A number of the customary law studies included language related to private ownership, but it is unclear exactly what this entails as these same laws provide for community ownership of all land. Some ethnic groups also mentioned the prior prohibition on sale of private land, indicating that recent changes, including from the government, have permitted this practice.

Acquisition of land by someone from outside the community (including IDPs) has to be approved by the headman or chief. Individual transactions for land are also allowed but require the chief's oversight or approval (see example from the Bongo, in box).

Women can own land according to many customs, but cannot pass this land to their new families upon marriage, unless agreed by the traditional authorities. This is more often allowed

Text Box 7.
**Outsider acquisition of land
for the Bongo**

An outsider applying for land must firstly, report to the Paramount Chief who will ascertain whether the applicant is a person of good character. His background and history is normally investigated, by consulting with the chief of his area of origin. The application may be granted or rejected, depending on the judgment of the Paramount Chief, as to the character of the applicant.

for widows, as they are not as likely to leave the clan. They may also sublease the land or make any other form of disposition of land in consultation with the executive chief of the area where the land is situated (Azande).

The use of customary land as collateral in financial transactions is a new development that a number of customary jurisdictions currently allow. The relevant customary laws and practices require more research.

5. Environmental Law

Environmental destruction was treated by the ascertainment studies as a separate area of law for some ethnic groups, while others had no mention of it. The Jur-Bel require clans to protect the trees, forests, water and vegetation that are the source of livelihoods. The Mundari state that cutting a fruit-bearing tree for no reason is prohibited. Accidental burning of forests is not punished, but chiefs will investigate the cause. The Jur-Bel (unspecified fine), Lopit (payment of 1 goat to the landlord), Lotuko (payment of 1 cow) require compensation for intentional (or negligent) cutting of trees or other destruction of the environment, such as use of unapproved water holes protected for the dry season.

III. COMMONALITIES AND CONFLICTS OF LAW

Customary laws across South Sudan have a large degree of commonalities, especially when considering what is a crime or offense. Commonalities differ more when appropriate punishment is considered. One common characteristic across almost all customary systems is the emphasis placed on restorative justice. Concepts of state-based retributive justice are less important than the restoration and preservation of community harmony.

The previous section detailed the content and similarities between major areas of customary laws. This section will focus on where these laws, in common, or on an individual basis, are in harmony or in conflict with the TCSS and international human rights law.

1. Commonalities and Conflicts between Customary Laws and the Transitional Constitution of South Sudan

The Transitional Constitution of South Sudan (TCSS) entered into force in 2011 and represents the highest law of the land. All laws across the country – both customary and statutory - must align with the provisions of the Constitution.

“(1) This Constitution derives its authority from the will of the people and shall be the supreme law of the land. It shall have a binding force on all persons, institutions, organs and agencies of government throughout the Country.”

“(2) The authority of government at all levels shall derive from this Constitution and the law.”

“(3) The states’ constitutions and all laws shall conform to this Constitution”

- Article 3, TCSS

As with all legal systems that recognize constitutional supremacy, the provisions of statutes as well as customary laws will require regular determination by the courts regarding their constitutionality. With this important caveat, this section of the report attempts to identify which customary laws identified in the ascertainment study are potentially in conflict with the TCSS and will require reform/harmonisation. Those not mentioned align with the TCSS.

The TCSS also explicitly recognizes the importance of customary law and as a source of legislation in both Articles 5 and 33:

“The sources of legislation in South Sudan shall be:

(a) this Constitution;

(b) written law;

(c) customs and traditions of the people; ...”

- Article 5, TCSS

“Rights of Ethnic and Cultural Communities

Ethnic and cultural communities shall have the right to freely enjoy and develop their particular cultures. Members of such communities shall have the right to practice their beliefs, use their languages, observe their religions and raise their children within the context of their respective cultures and customs in accordance with this Constitution and the law.”

- Article 33, TCSS

As a result, consideration should be paid to the importance of customs and traditions when determining whether legislation or written law supersedes it. The TCSS does not adopt as strong a stance as other constitutions, such as that of South Africa, which makes customary law the applicable law, in so far as it does not conflict with statutory law and the Constitution.⁸ The following analysis will look closely at provisions in the Bill of Rights in Part Two of the TCSS in comparison to the major areas of customary law examined in the ascertainment study.

a. Family Law

Family law is an important aspect of customary traditions and is specific to each ethnic. The TCSS balances the traditions and customary law provisions with women’s consent to marry, while also retaining the flexibility for the government to enact laws that combat “harmful” customs and traditions. Article 15 of the TCSS is the most relevant to the analysis of customary family law:

“Right to found a Family.

Every person of marriageable age shall have the right to marry a person of the opposite sex and to found a family according to their respective family laws, and no marriage shall be entered into without the free and full consent of the man and woman intending to marry.”

- Article 15

Article 16 of the TCSS is a broader provision on the rights of women, but many of the observed customary laws are affected by this article, particularly articles 16(4)(b) and 16(5):

“Rights of Women

16(1) Women shall be accorded full and equal dignity of the person with men.

16(4)(b) All levels of government shall: ...enact laws to combat harmful customs and traditions which undermine the dignity and status of women; and

16(5) Women shall have the right to own property and share in the estates of their deceased husbands together with any surviving legal heir of the deceased.”

- Article 16

⁸“The courts must apply customary law when that law is applicable, subject to the Constitution and any legislation that specifically deals with customary law.” South Africa Constitution, Article 211(3), 1997; See also C. Rautenbach, Comments on the Status of Customary Law, STELL L.R. 107-114 (2003) (“It is apparent that some traditional cultural practices that still exist are in conflict with the Constitution but, until they are challenged before a court of law, they will remain enforceable in our communities.”)

Areas of customary law that appear to be in direct conflict with the TCSS include:

- The practice of arranged marriage or “booking”, particularly for minors, as is practiced by the Mundari, Lotuko and others, could fall in conflict with Article 15 if the woman is forced to marry without her “free and full consent”. This includes the wife swapping customs of the Bongo and Balanda Bviri, provided either of the women does not agree. Determining “full consent” can be difficult in a society where the cultural norms apply heavy pressure on women to consent to the will of their parents. To be compliant with article 15, the customary courts should incorporate procedures for ensuring that marriages occur between two consenting individuals.
- Additionally, while the inclusion of the “marriageable age” language seems to outlaw the marrying of minors, the TCSS does not explicitly define marriageable age, leaving interpretation potentially to individual customary laws.⁹
- The tradition of bride price does not seem to conflict with any provision in the TCSS, so long as it does not “undermine the dignity and status of women”.¹⁰ Bride price is also a deeply engrained custom that could upset community and family relations if dismantled entirely. However, customary courts should incorporate considerations of the rights of women to own property in the estates of their deceased husband, without any prejudice for bride prices paid by the husband’s family.¹¹
- Divorce is not detailed specifically by the TCSS, but customary law tolerance for wife beating, unless it is repetitive and unnecessary, is in conflict with Articles 16(1) and 16(4) (b). Wife beating is not grounds for divorce or grounds for compensation or legal action under customary law. This violates provisions of the TCSS outlawing acts that undermine a woman’s dignity and status, in equality with men. Similarly, adultery should be grounds for divorce for both men and women, and not only for men.
- Polygamy is not explicitly prohibited by the TCSS and would seem to depend on a determination of whether the wife agrees and if it maintains her dignity and status, per the particular customs and cultural context of polygamous marriages.
- Division of assets from a divorce appears not to be explicitly addressed by Article 16(5), which instead deals with inheritance of estates of a deceased husband. Divorce under many of the observed customary laws leaves the wife without property or assets and in a state of uncertainty between her children and her birth family to whom she is often expected to return. Article 16(4)(b) would also likely be interpreted as applying to the unequal status and indignity many women are placed in upon divorce and division of assets. Some ethnic groups have more progressive laws for division of property based on contribution of both spouses to the marriage.
- Custody of children according to most customary laws, lies with the husband and his family. This brings into question the provision of Article 17(2) which states that all decisions should be made “in the best interest of the child”. The customary chief has an obligation to consider this provision of the TCSS when determining custody of children in a divorce case. It may be argued that in many cases, the best interest of the child lies

⁹ Article 17 defines “child” as under the age of 18, but this is different language than what is used in Article 15, so it is presumed that was done intentionally to not prohibit marriages under the age of 18. Also Article 17 establishes that all actions should be “in the best interest of the child” but this does not necessarily prohibit a marriage of children (under age 18).

¹⁰ Article 16(4) (b).

¹¹ Article 16(5).

with granting custody to the mother, often the primary care giver. This is a consideration that each ethnic group and customary chief will have to determine on a case by case basis, but could be subject to appeal or collateral review should the customary court violate this provision of the TCSS.

- The customary law of some ethnic groups that provide fines, where children are born out of wedlock is not in direct violation of any provision of the TCSS and could be justified as a necessary mechanism for discouraging behaviour that can damage community relations.
- Widow inheritance was recognized by only a few customary laws (“levirate marriage” in Acholi), but it seems to be in direct conflict with Article 15, unless the widow agrees to the marriage. This is a practice that should be prohibited based on the TCSS.

Summary

Figure 1 (right) summarizes the main areas of family customary law that are either in harmony (inner, dark circle), in potential conflict pending interpretation by the customary courts and Supreme Court (middle circle), or clearly in conflict (outer circle) with the Bill of Rights of the TCSS. A majority of the ethnic groups studied have laws in conflict with the TCSS on issues of widow inheritance, forced marriage, wife beating, gender equality, and particularly with regards to adultery as grounds for divorce – a husband may divorce a wife for adultery but not vice versa. Other areas, such as polygamy, marriage of minors, and arranged marriages are potentially in conflict with the TCSS depending on the specifics of the practice and/or the further interpretation of the provisions of the TCSS by the relevant court of law or subsequent legislation.

b. Laws of Wrongs and Obligations

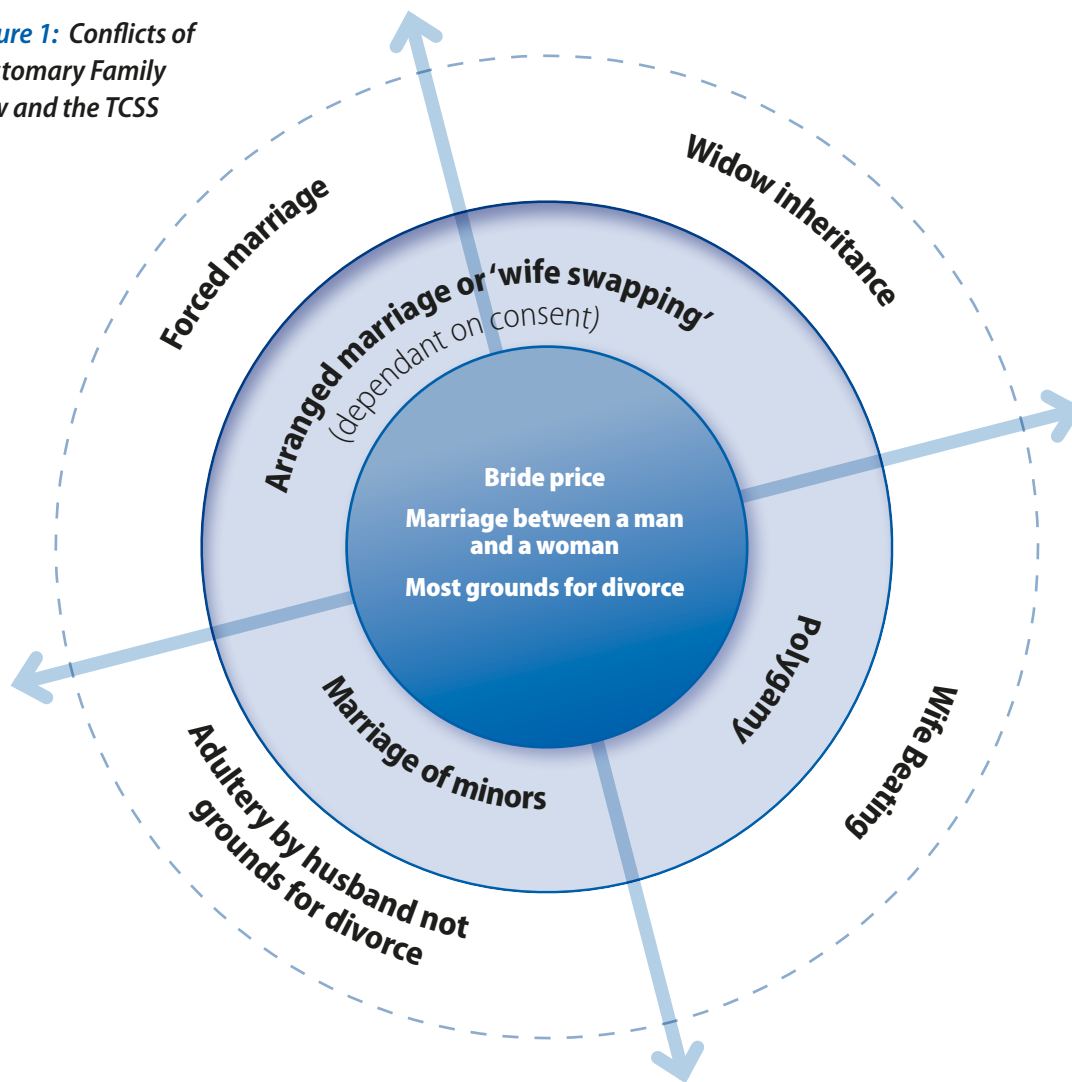
Criminal laws and civil infractions are covered broadly by the category of customary law detailed here. There are some aspects of customary law that are in conflict with the TCSS, but the larger set of potential conflicts derive from the exclusive criminal jurisdiction of the formal justice system for certain crimes, such as murder and rape, as established by South Sudan’s penal code.

The TCSS has clear rights provisions in Article 11 on Life and Human Dignity and Article 12 on Personal Liberty that are in potential conflict with customary law, depending on subsequent interpretations as provided by legislation and court decisions. For example, the definition of “arbitrarily” in the language of Article 11 prohibiting the arbitrary deprivation of life needs to be clarified by the South Sudan Constitutional Court. These grey areas of the TCSS as pertains to the customary laws studied here are detailed further below:

“Every person has the inherent right to life, dignity and the integrity of his or her person which shall be protected by law; no one shall be arbitrarily deprived of his or her life.”

- Article 11

Figure 1: Conflicts of Customary Family Law and the TCSS



"Every person has the right to liberty and security of person; no person shall be subjected to arrest, detention, deprivation or restriction of his or her liberty except for specified reasons and in accordance with procedures prescribed by law."

- Article 12

"Restriction on Death Penalty

- (1) No death penalty shall be imposed, save as punishment for extremely serious offences in accordance with the law.*
- (2) No death penalty shall be imposed on a person under the age of eighteen or a person who has attained the age of seventy.*
- (3) No death penalty shall be executed upon a pregnant or lactating woman, save after two years of lactation."*

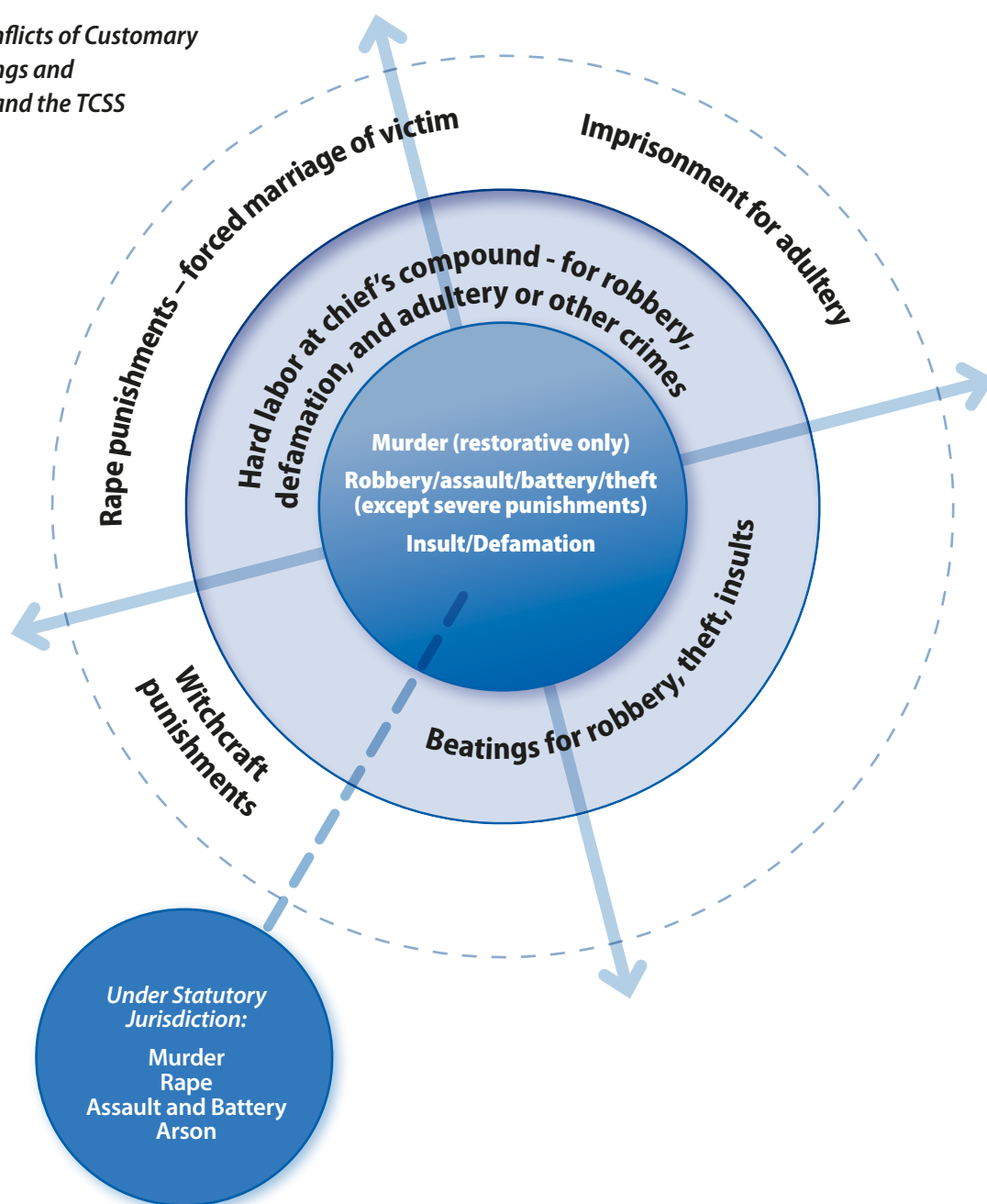
- Article 21

Based on these and other provisions in the TCSS, five main areas of potential conflict with customary law were identified:

- The inherent right to “dignity and integrity of..person” provided by Article 11 potentially conflicts with customary practices of corporal punishment, such as allowing revenge killings, giving lashes, or other physical damages, such as the Toposa punishments for witchcraft, which violate the integrity of a persons’ body. Article 11 further prohibits the “arbitrary taking of life”, which would seem to include revenge killing, but ultimately requires judicial interpretation of what is “arbitrary” with regards to customary law punishments. Further, Article 21 of the TCSS restricts the death penalty to only the most serious offenses. The practice of a few ethnic groups, such as the Bongo, to punish robbery with death would seem to be in violation of both Articles 11 and 21 as an arbitrary deprivation of life and/or punishment for an offense that does not meet the level of severity required, but again, this would require interpretation by the Supreme Court. Article 21 is clear that no death penalty should be imposed on a person under 18. Customary laws were not clear on the age requirements for capital punishment.
- A number of customary laws include imprisonment for acts from robbery to adultery and insults of an elder. These potentially conflict with Article 12’s provision of the right to liberty...and not to be subject to arrest, detention or restriction of liberty... except as prescribed by law. Again, as customary law forms part of the full corpus of laws in South Sudan, the argument can be made that customary law provisions for detention, even for crimes such as adultery, are legal. Specific, subsequent legislation that explicitly outlaws certain practices would provide further clarity on what is “prescribed by law.”
- Similarly, Article 13(2) provides that, “No person shall be required to perform forced or compulsory labour except as a penalty upon conviction by a competent court of law.” This would seem to allow the practice of having guilty offenders perform hard labour at the chief’s compound, provided that the Supreme Court interprets customary courts as a “competent court of law”. However, as discussed above, the use of compulsory labour as a punishment for adultery would seem to violate both Article 14 and Article 12.
- Customary law provisions for rape that require the perpetrator to marry the victim are clearly in violation of Article 15 on the Right to Found a Family, especially where the female victim does not consent. A marriage against her will, even where the purpose is to save her reputation or that of the family is clearly not permitted by the TCSS.
- Some customary punishments for witchcraft come close to violating principles against torture and cruel, inhuman or degrading treatment, as provided under Article 18, Freedom from Torture. The practice of the Toposa of killing witches would seem to be a clear violation, unless a court or legislation has defined witchcraft as “a serious offense”, per Article 21(1).

It is worth noting that the punishments for wrongdoings under customary law are often restorative in nature and thus fall more under civil rather than criminal jurisdiction. Similarly,

Figure 2: Conflicts of Customary Laws of Wrongs and Obligations and the TCSS



some customary laws that do not punish for crimes such as wife beating, manslaughter or arson are not in direct violation of the TCSS for inaction. Instead the state has an obligation to claim jurisdiction over the criminal aspect and ensure the prosecution of such crimes. As a result, customary law should be seen as complementary to statutory criminal law and part of the corpus of laws that is the state's obligation to enforce.

Procedural practices in the customary courts, especially with regard to detention, could also potentially violate due process and other rights enshrined in the TCSS. Given the lack of formal judicial infrastructure, many customary courts exercise de facto criminal jurisdiction, which includes powers to detain persons awaiting trial or to imprison as punishment. The practice of

pre-trial detention could potentially violate international human rights, and the punishment of detention or forced labour for minor crimes would likely not pass the standards for using detention as a form of punishment.

Summary

Figure 2 (previous page) summarizes the main areas of customary laws on wrongdoing that are either in harmony (inner, dark circle), in potential conflict pending interpretation by the customary courts and Supreme Court (middle circle), or clearly in conflict (outer circle) with the Bill of Rights of the TCSS. This graphic only represents actionable customary laws. Other areas of customary law that provide for civil or restorative, or no action, such as for wife beating, rape and murder, and that are likely covered by separate statutory jurisdictions are included in the separate circle below titled "Under Statutory Jurisdiction".

c. Inheritance Law

South Sudan customary law almost universally recognizes inheritance as patrilineal, with fathers passing property and titles to their sons, or other male relatives. Women – wives and daughters – are not accorded inheritance rights, except by only a few ethnic groups (Lotuko, Lopit) that recognize widow inheritance rights in certain circumstances. Article 16 of the TCSS stands in direct opposition to this and is perhaps the most significant area of obvious conflict between customary and constitutional law:

"Rights of Women

...

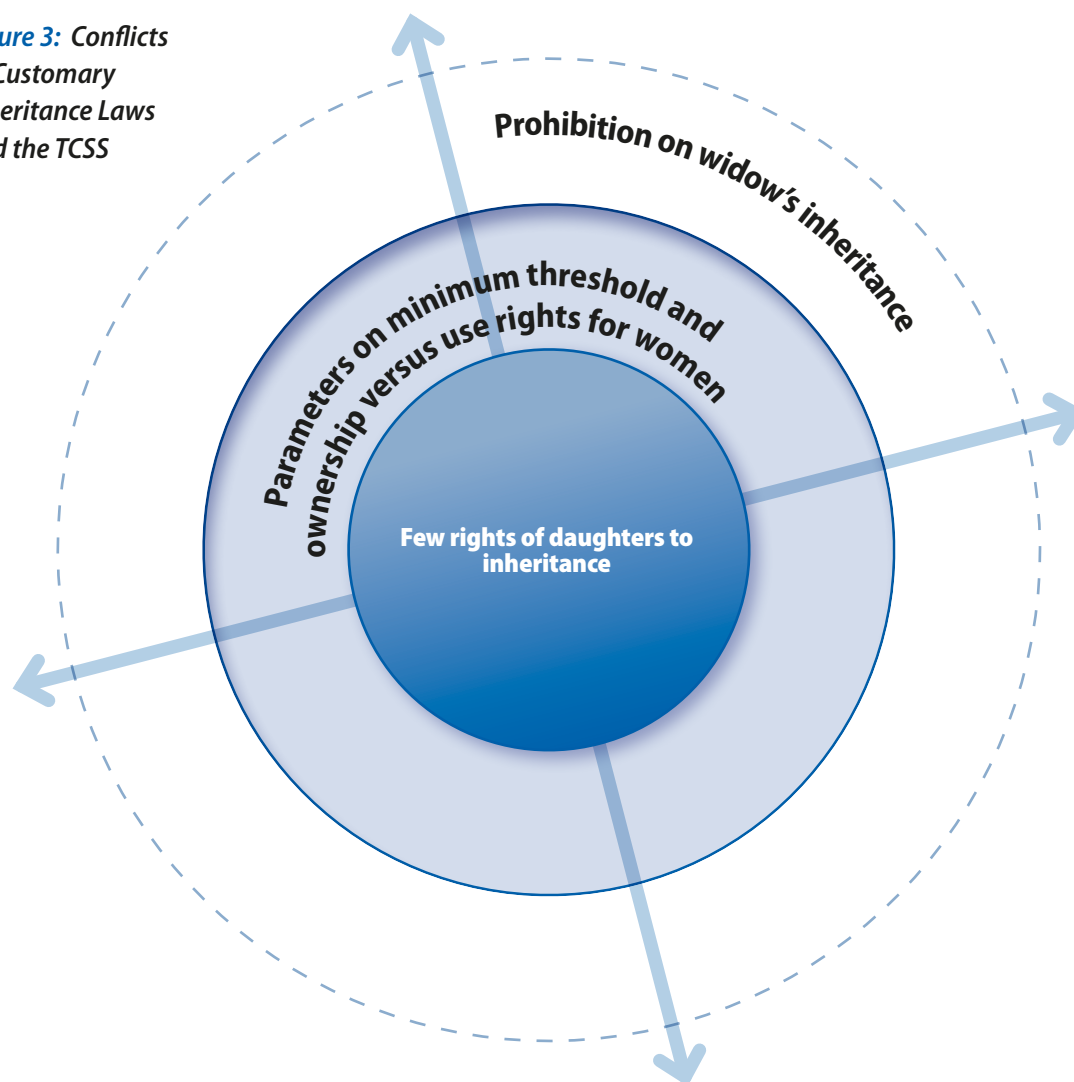
16(5) Women shall have the right to own property and share in the estates of their deceased husbands together with any surviving legal heir of the deceased."

Women are generally not allowed to own property exclusive of their family under customary law, either because once they marry they will take the property with them out of the family, or because all marital property of a significant nature (some ethnic groups exclude "foodstuffs" and cooking utensils) belong to the husband's family. Likewise, women do not participate in inheritance under customary law. Article 16 of the TCSS clearly attempts to reverse this practice. It does not require that women inherit all property from their deceased husbands, but that they *share* in the estates with other heirs. This leaves the door open for interpretation by each ethnic group (and the Supreme Court) regarding what share women are entitled to with respect to other legal heirs (sons and other male relatives). The use of the word "share", as opposed to "own" could also imply that customary law only ensures use of the estate, but not ownership. This would require further analysis of the intention of the Constitution and/or a clarifying decision by the Supreme Court. Article 16(5) only seems to apply to inheritance for widows, but not daughters. Thus, customary laws that restrict legal heirs to widows and sons would not be in apparent conflict with the TCSS.

Summary

Figure 3 summarizes the main areas of customary laws on inheritance that are either in harmony (inner, dark circle), in potential conflict pending interpretation by the customary courts and Supreme Court, (middle circle), or clearly in conflict (outer circle) with the Bill of Rights of the TCSS.

Figure 3: Conflicts of Customary Inheritance Laws and the TCSS



d. Land Law

A number of provisions of the TCSS touch on land rights and land law. The South Sudan Land Act of 2009 provides further legal guidance, including on customary land tenure.

Article 28 of the TCSS addresses land law with regards to state acquisition or eminent domain of private property, but does not directly concern customary land laws that largely provide for communal land ownership and individual usufruct rights:

- "(1) Every person shall have the right to acquire or own property as regulated by law.*
- (2) No private property may be expropriated save by law in the public interest and in consideration for prompt and fair compensation. No private property shall be confiscated save by an order of a court of law."*

Article 171, Land Tenure, covers land tenure in depth:

- "(1) The regulation of land tenure, usage and exercise of rights thereon shall be governed by this Constitution and the law.*
- (2) Without prejudice to sub-Article (4) below, the land tenure system in South Sudan shall consist of:*
- (a) public land;*
 - (b) community land; and*
 - (c) private land.*
- (3) Public land shall include, but not be limited to:*
- (a) all land owned, held or otherwise acquired by any level of government as defined by law; and*
 - (b) all land which is not otherwise classified as community or private.*
- (4) Regardless of the classification of the land in question, rights over all subterranean and other natural resources throughout South Sudan, including petroleum and gas resources and solid minerals, shall belong to the National Government and shall be regulated by law.*
- (5) Community land shall include all lands traditionally and historically held or used by local communities or their members. They shall be defined, held, managed and protected by law.*
-
- (7) Rights in land and resources owned, held or otherwise acquired by the Government shall be exercised through the appropriate or designated level of government which shall recognize customary land rights under customary land law.*
- (8) All levels of government shall institute a process to progressively develop and amend the relevant laws to incorporate customary rights and practices and local heritage.*
- (9) Communities and persons enjoying rights in land shall be consulted in decisions that may affect their rights in lands and resources.*

(10) Communities and persons enjoying rights in land shall be entitled to prompt and equitable compensation on just terms arising from acquisition or development of land in their areas in the public interest.”

Article 171 explicitly recognizes the domain of community land, which, in combination with the TCSS’ recognition of customary law, equates most closely with customary land tenure systems and ownership/use patterns. Article 171(5) leaves the definition of what is community land to what is “traditionally and historically held or used”, seemingly providing ample room for communities and customary systems to self-define based on their traditions.

Article 171(4) classifies all subterranean and natural resources as owned by the national government. This is in direct conflict with most customary laws that provide for community ownership of all natural resources attached to their land.¹² While Article 171(7) recognizes customary land rights, it seems to apply more directly to rights to compensation for expropriation of customary surface land in order to access the government-owned subsurface resources beneath.

Article 171(4) appears to be mostly concerned with petroleum and mineral resources, likely due to their increasing importance to the national economy, but most customary laws are more concerned with natural resources such as water, river and trees and have specific laws for protection of these resources from degradation. Article 171 would seem to extend to all natural resources, including those that communities are dependent on for livelihoods. The South Sudan Land Act of 2009 largely provides clarification of ownership over these resources by the national government or community.¹³

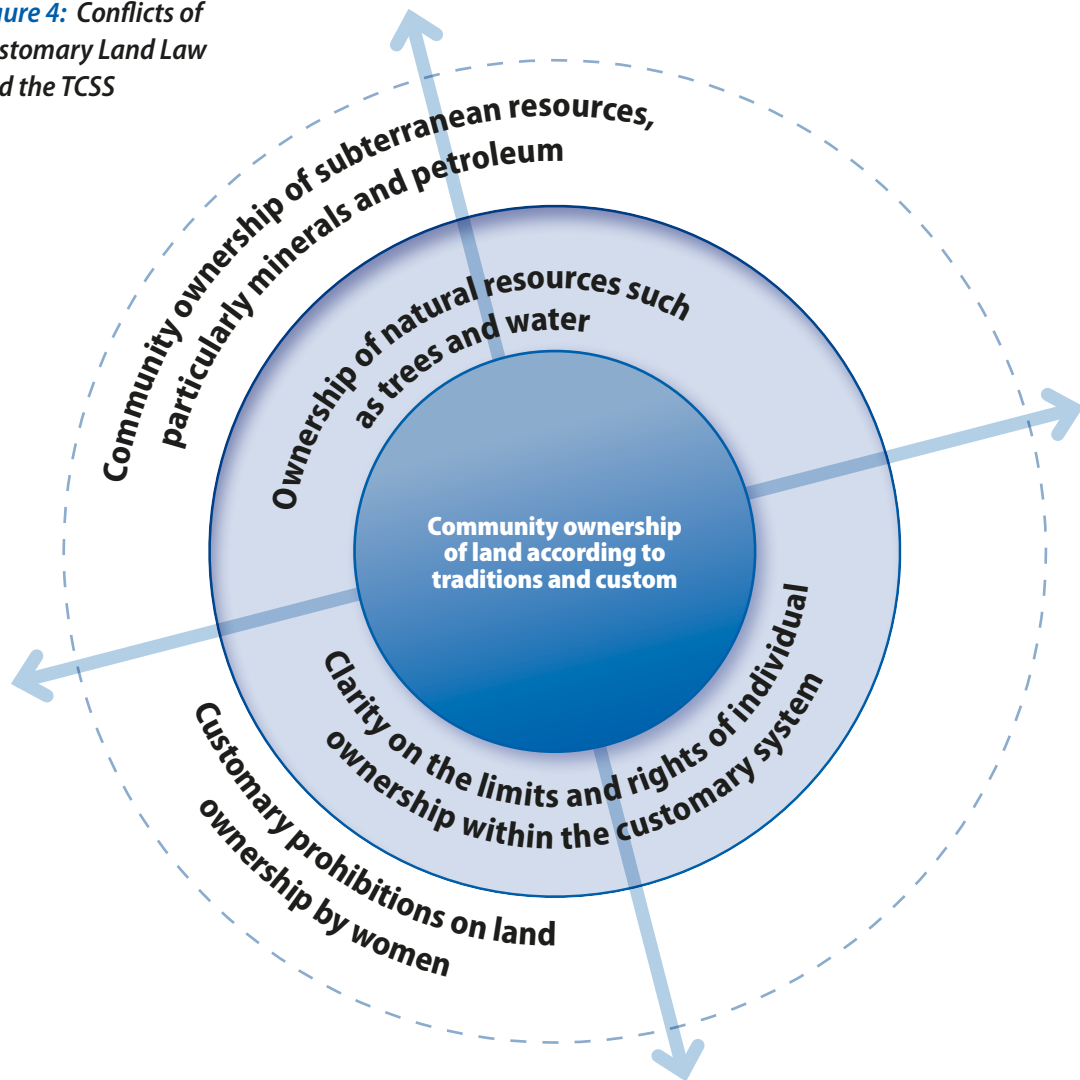
Summary

Figure 4 (next page) summarizes the main areas of customary land laws that are either in harmony (inner, dark circle), in potential conflict pending interpretation by the customary courts and Supreme Court (middle circle), or clearly in conflict (outer circle) with the Bill of Rights of the TCSS.

¹² The South Sudan Land Act of 2009 elaborates further on customary land rights for a subset of natural resources: “Traditional Authority within a specific community may allocate customary land rights for residential, agricultural, forestry, and grazing purposes” (Article 15).

¹³ Article 10. Public Land, Subsection 2(f): Public land includes – ... (f) all rivers, lakes, canals, haffirs, wetlands and other areas of water – (i) for which no customary or other ownership may be established;

Figure 4: Conflicts of Customary Land Law and the TCSS



2. Commonalities and Conflicts between Customary Laws and International Human Rights Law

South Sudan is a young country and the Bill of Rights in the TCSS has incorporated several contemporary human rights principles. Therefore, the previous section will have covered similar topics as this section. Also, because of its recent entry into the community of nations, South Sudan has not signed or ratified many of the leading international human rights treaties, including the African Charter on Human and People's Rights. As a result and considering principles of national sovereignty, customary laws can only be judged to be in compliance with international human rights for treaties it has ratified.¹⁴ These are:

¹⁴ Article 9(3) of the TCSS also provides that all human rights treaties ratified by South Sudan form part of the Bill of Rights.

- The Convention against Torture and other Cruel Inhuman or Degrading Treatment or Punishment (CAT) and the Optional protocol – ratified, 30 April 2015
- The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) – ratified, 30 April 2015
- The Convention on the Rights of the Child (CRC) – ratified, 30 April 2015.

Nonetheless, this harmonisation analysis will also consider potential areas of violation of international human rights from other conventions, particularly those South Sudan might become a party to in the near future and thus be required to comply with through reforms to national laws – statutory and customary.¹⁵

a. Family Law

CEDAW and CRC, both ratified by South Sudan, are the two primary international human rights conventions that refer to family law. CEDAW takes a strong, broad-reaching stance against all forms of discrimination in its Preamble and Articles 1-16. Article 16 of the TCSSS echoes some of this language, but does not go as far in recognizing the often-engrained patterns of discrimination. See Article 5 of CEDAW:

“ States Parties shall take all appropriate measures:

(a) To modify the social and cultural patterns of conduct of men and women, with a view to achieving the elimination of prejudices and customary and all other practices which are based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles for men and women.”

Article 5 has particular significance to customary practices that outlaw women’s ownership of land, participation in inheritance, unequal punishment for adultery, inability to claim divorce for adulterous behaviour of the husband, widow inheritance, and lack of consent in marriage. This Article goes further than Article 16 of the TCSS in calling for the elimination of social or cultural patterns of inferiority of women. As a result, some of the areas of customary law that might be open to interpretation based on the TCSS or that could continue in practice based on “consent” and “tradition”, such as widow inheritance where the widow consents, or more severe forms of bride price that treat women as property, will not pass the stricter provisions of CEDAW.

Article 16 of CEDAW expands further on rights in marriages and family relations:

“1. States Parties shall take all appropriate measures to eliminate discrimination against women in all matters relating to marriage and family relations and in particular shall ensure, on a basis of equality of men and women:

15 South Sudan has submitted the following treaties to the Legislative Assembly for adoption but have not yet ratified in full: International Covenant on Civil and Political Rights, 1966; International Covenant on Economic, Social and Cultural Rights, 1966; African Charter on Human and Peoples’ Rights, 1981; Convention Governing the Specific Aspects of Refugee Problems in Africa, 1969; International Convention on the Elimination of All Forms of Racial Discrimination, 1965; Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on Their Destruction, 1997.

- (a) *The same right to enter into marriage;*
- (b) *The same right freely to choose a spouse and to enter into marriage only with their free and full consent;* (c) *The same rights and responsibilities during marriage and at its dissolution;*
- (d) *The same rights and responsibilities as parents, irrespective of their marital status, in matters relating to their children; in all cases the interests of the children shall be paramount;*

2. *The betrothal and the marriage of a child shall have no legal effect, and all necessary action, including legislation, shall be taken to specify a minimum age for marriage and to make the registration of marriages in an official registry compulsory.”*

Article 16(1)(d), as well as other sections of CEDAW, make a strong case for the elimination of customary practices that provide for automatic custody of children by the husband’s family after a divorce, to instead require considerations in custody determinations of what is “in the best interest of the child”.¹⁶ “In the best interest of the child” is a principle also stated by the South Sudan Child Act of 2008:

“97. Issues to be Considered before Granting Custody.

(1) In determining whether or not a custody order should be made in favour of an applicant, the best interest of the child shall be the paramount consideration of the Court.

(2) In making its decision, the Court shall also consider—

- (a) *the wishes of the child;*
- (b) *the sex and age of the child;*
- (c) *the applicant’s ability and willingness to care and maintain the child;*
- (d) *the ascertainable wishes of the extended family of the child;*
- (e) *the ascertainable wishes of any foster parent, or any person who has had care of the child and under whom the child has made home in the previous three years preceding the application;*
- (f) *the customs and religion of the community to which the child belongs;*
- (g) *whether any judicial order has been made in relation to the child and whether that order remains in force; and*
- (h) *the circumstances of any sibling of the child concerned, and of any other children of the home.”¹⁷*

The Act instructs courts to consider customs of the community to which the child belongs, but places paramount consideration on the best interest of the child. By comparison, most countries have found this principle not to equate with automatic custody by the father, but instead more often with the mother as the primary caretaker.

¹⁶ See footnote 18 for more discussion on the definition of the “in the best interest of the child” provision.
¹⁷ See. Article 97, South Sudan Child Act, 2008.

The Convention on the Rights of the Child provides further guidance on the principle of “in the best interest of the child” for custody of children (Articles 9 and 10).¹⁸ Most of these provisions are not taken into consideration by the customary laws studied.

Underage marriage is addressed in both CEDAW and CRC, but not to the degree that there is a clear violation by customary laws that allow for “booking” or other forms of early marriage. CEDAW, Article 16(2) states: *“the betrothal and the marriage of a child shall have no legal effect, and all necessary action, including legislation, shall be taken to specify a minimum age for marriage and to make the registration of marriages in an official registry compulsory.”* This leaves open definition of a minimum age for marriage to the country. The CRC defines a child as a person under the age of 18 and prohibits practices *“prejudicial to the health of children”* and requires states to *“protect children from sexual exploitation”*, but does not go as far as to explicitly prohibit marriages of persons below the age of 18 years.

b. Law of Wrongs and Obligations

As discussed above, the customary laws related to “wrongdoings” present complications in determining adherence or conflict with constitutional or international human rights law because they are not exclusive in their jurisdiction, but instead often only represent the civil or restorative side of a case, while the state has retained criminal jurisdiction. With this in mind, there are a few areas of customary practice that appear to be in direct conflict with international human rights law and will require reform, while a few areas require further interpretation.

The Convention Against Torture (CAT) defines “torture” as *“any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person”* by a public official (Article 1) and prohibits *“acts of cruel, inhuman or degrading treatment or punishment”* (Article 16), except where the *“pain or suffering arising only from, inherent in or incidental to lawful sanctions”* (Article 1). Customary laws that provide for beatings, lashings or hard labor would seem to fall within the “lawful sanction” provision, but subsequent interpretations of CAT and implementing legislation by other countries suggests that this form of corporal punishment should be considered “cruel, inhuman or degrading”. Severe punishments for witchcraft that involve physical pain and suffering, as detailed by a few ethnic groups such as the Toposa, would more clearly come in conflict with the CAT.

¹⁸ See Article 10, CRC (“1. States Parties shall ensure that a child shall not be separated from his or her parents against their will, except when competent authorities subject to judicial review determine, in accordance with applicable law and procedures, that such separation is necessary for the best interests of the child. Such determination may be necessary in a particular case such as one involving abuse or neglect of the child by the parents, or one where the parents are living separately and a decision must be made as to the child’s place of residence”); For more discussion, see *General Comment No. 14 on the right of the child to have his or her best interests taken as a primary consideration*, Committee on the Rights of Children 2013, http://www2.ohchr.org/English/bodies/crc/docs/GC/CRC_C_GC_14_ENG.pdf.

The CRC prohibits the death penalty for any child (under 18). This could potentially conflict with customary laws allowing or condoning revenge killings or imposing the death penalty.

As discussed previously, CEDAW (and the TCSS) prohibit a number of customary laws of wrongdoing. The punishment of women for adultery, while men are not, falls foul of the equal treatment clauses in CEDAW (Articles 1 and 2). Forced marriage of women to the perpetrator of a rape, as provided by the criminal laws of some ethnic groups, is not permissible under Articles 1 and 16.

c. Inheritance Law

As with the TCSS, inheritance restrictions for women (widows and daughters) under customary law are in violation of international human rights law, specifically CEDAW. Given CEDAW's stronger discussion and prohibition on cultural norms that promote the inferiority of women (Article 5), the guarantees of the TCSS on the "participation and sharing" of a wife in her deceased husband's estate would be inadequate as it stops short of providing women with equal ownership rights in inheritance, as compared to other legal heirs.

"States Parties shall take all appropriate measures:

(a) To modify the social and cultural patterns of conduct of men and women, with a view to achieving the elimination of prejudices and customary and all other practices which are based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles for men and women;"

- Article 5, CEDAW

d. Land Law

There is no international human rights treaty on land law and the only human rights provision relating to land is in the Universal Declaration of Human Rights, which mostly prohibits expropriation. Nonetheless, CEDAW addresses unequal property ownership frameworks for women and like the TCSS, customary laws that do not allow for women ownership of land are in violation of CEDAW.

"States Parties shall accord to women, in civil matters, a legal capacity identical to that of men and the same opportunities to exercise that capacity. In particular, they shall give women equal rights to conclude contracts and to administer property and shall treat them equally in all stages of procedure in courts and tribunals."

- Article 15, CEDAW

"(h) The same rights for both spouses in respect of the ownership, acquisition, management, administration, enjoyment and disposition of property, whether free of charge or for a valuable consideration."

- Article 16(1)

3. Suitability of Customary Law for Strengthening the Rule of Law and Achieving Peace and Reconciliation

Customary systems of justice are a largely untested mechanism for promoting peace and reconciliation. In theory, however, the positive aspects of customary justice systems - particularly in South Sudan - such as ease of access, rapid results, trust of the community, and a focus on restorative justice would seem to coalesce with many principles of transitional justice. The Gacaca courts of post-genocide Rwanda provide perhaps the closest example of the use of a community-centered justice mechanism as a localized approach to resolving disputes, revealing truth, and building peace in a post-conflict setting.

The Gacaca courts resurrected an old tradition of community dispute resolution that had largely disappeared. In their reincarnated form communities at the local level elected judges to hear the trials of genocide suspects accused of all crimes except planning of genocide. The Gacaca courts were part of a larger three-tiered transitional justice framework for Rwanda that included national courts and the UN-administered International Criminal Tribunal for Rwanda (ICTR). The ICTR had jurisdiction over crimes of genocide, with concurrent jurisdiction by the Rwanda national courts. The national and Gacaca courts had jurisdiction as described by the following table¹⁹:

	Cat. 1	Cat. 2, 1st & 2nd	Cat. 2, 3rd	Cat. 3
Crime	1. Planners, organizers, supervisors, ringleaders 2. Persons who occupied positions of leadership 3. Well-known murderers 4. Torturers 5. Rapists 6. People who committed dehumanizing acts on a dead body	1. 'Ordinary killers' in serious attacks 2. Those who committed attacks in order to kill but without attaining this goal	3. Those who committed attacks against others, without the intention to kill	Those who committed property offences
Court	Ordinary court	Sector Gacaca	Sector Gacaca	Cell Gacaca
Sentence	Death penalty or life imprisonment	25–30 years	5–7 years	Civil reparation
<i>Without confession</i>				
<i>Confession before appearance on the list of suspects</i>	25–30 years	7–12 years *	1–3 years *	Civil reparation
<i>Confession after appearance on the list of suspects</i>	25–30 years	12–15 years *	3–5 years *	Civil reparation
<i>Accessory sentence</i>	Perpetual and total loss of civil rights	Permanent loss of a listed number of civil rights	/	/
* Commutation of half of sentence to community service on probation				

¹⁹ Bert Ingelaere, "The Gacaca Courts in Rwanda", ch 2., *Traditional Justice and Reconciliation after Violent Conflict: Learning from African Experiences*, International Institute for Democracy and Electoral Assistance, 2008, p. 40

The Gacaca courts were empowered to give criminal sentences of varying degrees, but also had the freedom and in fact were instructed to give lower punishments if the person was repentant and sought reconciliation with the community. Often, confessing prisoners returned home without further penalty or received community service orders. The Gacaca trials also served to promote reconciliation by providing a means for victims to learn the truth about the death of their family members and relatives. They also gave perpetrators the opportunity to confess their crimes, show remorse and ask for forgiveness in front of their communities.²⁰

Over the course of the 7 years of their existence, more than 12,000 community-based courts were established. They tried more than 1.2 million cases throughout the country. The Gacaca courts officially closed on 4 May 2012.

Many observers have criticized the Gacaca system for adopting procedures that fall short of due process requirements, in some cases, fomenting conflict. But given the overall volume of cases and relative peace and reconciliation established through the post-genocide process in Rwanda, it is hard to dismiss the experience as having no value. Based on these critiques and the Rwanda experience, a potential variation of the Gacaca approach, would be to reduce the emphasis on criminal, retributive punishments, such as long prison sentences, for cases under the jurisdiction of community tribunals. A focus on restorative forms of punishments such as open confessions, acts of forgiveness, community service, and payments to the victim and/or family would mitigate some of the questionable human rights practices observed in the Gacaca courts,²¹ while allowing for a greater focus on healing and reconciliation.

In this respect, the largely restorative nature of South Sudan's customary legal system would be a natural fit for a reconciliation process that aims to promote the peaceful resolution of dispute and the public repentance of mass crimes. The restorative customary laws identified in this ascertainment study could potentially be beneficial for developing a transitional justice framework that builds on local traditions and thus harnesses the support of affected communities. Jurisdictional lines, however, would have to be clearly drawn for more serious crimes that deserve the full prosecution and punishment by the state.

South Sudan's existing customary justice structures offer both benefits and potential pitfalls to future truth and reconciliation processes, as compared to the Gacaca courts.

²⁰ For more information see, Linda Carter, "Justice and Reconciliation on Trial: Gacaca Proceedings in Rwanda", *New England Journal of International and Comparative Law*, Vol 14:1, 2007; Christopher J. LeMon, "Rwanda's Troubled Gacaca Courts", *Human Rights Brief* 14, No 2 (2007): 16-20; "Rwanda: Jury Still out on Effectiveness of 'Gacaca' Courts", IRIN News, June 23, 2009; <http://www.irinnews.org/report/84954/rwanda-jury-still-out-on-effectiveness-of-gacaca-courts>.

²¹ E.g., presumption of guilt, double jeopardy, no access to criminal defense, and forced confessions (See Linda Carter, "Justice and Reconciliation on Trial: Gacaca Proceedings in Rwanda", *New England Journal of International and Comparative Law*, Vol 14:1, 2007; Christopher J. LeMon, "Rwanda's Troubled Gacaca Courts", *Human Rights Brief* 14, No 2 (2007): 16-20).

Unlike the Gacaca courts, whose judges had to be elected in each community, the customary courts are largely already in existence and staffed with respected elders or leaders. The existing presence, trust and legal infrastructure of the customary courts would make them an easily recognized and accessible mechanism for implementing reconciliation efforts. However, their largely tribal nature would make them potentially unsuitable for inter-ethnic disputes, of which would be the majority of South Sudan disputes. A number of customary courts in multi-ethnic communities have already adapted to inter-ethnic disputes by having a panel of elders or chiefs from different ethnic groups adjudicate these cases. These panels take into consideration the laws and punishments that govern the crime according to their respective traditions. Customary courts could be used for reconciliation and restorative justice only if they were required to have a multi-ethnic panel of respected chiefs/elders that could work together to encourage open, transparent trials with appropriate, fair and consistent punishments.

IV. AREAS FOR REFORM AND HARMONISATION

The self-ascertainment studies conducted by UNDP required each ethnic group to make suggestions for areas in need of reform in their customary laws. Using this content as a foundation this section will look at the laws of each ethnic group compared to the prior analysis of conflicts with constitutional and international human rights law to suggest areas of potential and obvious conflict.

Areas of conflict and harmonisation are demonstrated graphically below for each of the studied ethnic groups using a gradient of conflict, potential conflict, and no conflict for laws under each major category of customary law. Not all customary laws that are in harmony are detailed, so where a law is left unmentioned it should be assumed to be part of the no conflict category. Distinctions are made where a need for reform is identified uniquely through the self-suggestion of the ethnic group (*), the TCSS (#), or international human rights law (^). It also worth noting that this study does not necessarily identify which law is in need of reform, but rather highlights apparent conflict between laws. In some instances it could be argued that the statutory law, rather than the customary law, is in need of reform (such as community ownership of natural resources), or that further interpretation of human rights law is required. In many of the potential conflict scenarios, there is need for further interpretation by the courts of South Sudan as to whether the degree of punishment prescribed by customary law is appropriate for the crime or amounts to cruel and inhumane treatment, or another rights violation.

a. Topasa				
	Family Law	Laws of Wrongs and Obligations	Inheritance Law	Land Law
Conflict	<ul style="list-style-type: none"> Beating for out of wedlock pregnancy Forcing marriage* Wife beating not legal grounds for divorce Custody by husband *^ 	<ul style="list-style-type: none"> Sole criminal jurisdiction for rape cases No adultery for husband Revenge killings ^ Wife beating*^ Witchcraft punishments 	<ul style="list-style-type: none"> No inheritance for daughters or wives 	<ul style="list-style-type: none"> Community ownership/ management of trees and water holes #
Potential Conflict	<ul style="list-style-type: none"> Refusal of marriage Wife not entitled to property upon divorce Bride price*^ Acceptance of wife back to her family after divorce 	<ul style="list-style-type: none"> Fines of 7 cows for male adulterer Civil jurisdiction and fines for murder Civil jurisdiction only for arson 		<ul style="list-style-type: none"> Clarification on woman ownership of land*^ Parameters for collective v. individual ownership of land #
No conflict	<ul style="list-style-type: none"> Ritual cleansings Wife inheritance is not a practice 	<ul style="list-style-type: none"> Civil jurisdiction and fines for rape Cleansing rituals for adultery and incest Insult/defamation punishments 	<ul style="list-style-type: none"> Wills cannot contradict customary law Inheritance by co-wives 	<ul style="list-style-type: none"> Communal grazing land Allocation of land to IDPs by elders



b. Lotuko				
	Family Law	Laws of Wrongs and Obligations	Inheritance Law	Land Law
Conflict	<ul style="list-style-type: none"> • Beating for elopement * • Forced marriages * • Automatic custody for husband ^ 	<ul style="list-style-type: none"> • Death penalty for rape ^ • No adultery for husband • Revenge killings • Wife beating • Child payment for murder *^ 	<ul style="list-style-type: none"> • No inheritance for wives except when no sons • No inheritance for daughters 	<ul style="list-style-type: none"> • Community ownership/ management of trees and water holes #
Potential Conflict	<ul style="list-style-type: none"> • Refusal of parents to allow marriage • Wife not entitled to property upon divorce • High bride price *^ • Polygamy ^ 	<ul style="list-style-type: none"> • Fines of 7 cows for male adulterer • Civil jurisdiction and fines for murder • Civil jurisdiction only for arson 		<ul style="list-style-type: none"> • Clarification on woman ownership of land ^ • Parameters for collective v. individual ownership of land #
No conflict	<ul style="list-style-type: none"> • Wife inheritance is not a practice 	<ul style="list-style-type: none"> • Civil jurisdiction and fines for rape • Theft/robbery civil punishments • Insult/defamation punishments 		<ul style="list-style-type: none"> • Communal grazing land • Allocation of land to IDPs by elders

c. Lango				
	Family Law	Laws of Wrongs and Obligations	Inheritance Law	Land Law
Conflict	<ul style="list-style-type: none"> • Beating for elopement * • Forced marriages * • Automatic custody for husband ^ 	<ul style="list-style-type: none"> • Imprisonment for adultery • Death for robbery • Witchcraft killings • Child payment for murder *^ 	<ul style="list-style-type: none"> • No inheritance for wives or daughters • Wife inheritance by brothers ^ 	<ul style="list-style-type: none"> • Community ownership of minerals and vegetation#
Potential Conflict	<ul style="list-style-type: none"> • Locking doors during elopement * • Unequal division of property upon divorce^ • High bride price ^ • Polygamy ^ 	<ul style="list-style-type: none"> • Fines for adulterers 	<ul style="list-style-type: none"> • No recognition of wills 	<ul style="list-style-type: none"> • Women can own land under supervision ^ • Parameters for collective v. individual ownership of land *#
No conflict	<ul style="list-style-type: none"> • Wife inheritance is not a practice • Farming for in-laws before marriage 	<ul style="list-style-type: none"> • Civil jurisdiction and fines for murder, rape, and theft/robbery • Insult/defamation punishments 		<ul style="list-style-type: none"> • Allocation of land to IDPs by elders

d. Lopit (Note: the Lopit did not self-identify areas of reform according to the ascertainment study)

	Family Law	Laws of Wrongs and Obligations	Inheritance Law	Land Law
Conflict	<ul style="list-style-type: none"> • Unequal treatment of adultery as grounds for divorce • Consideration of child's best interest for custody in divorce ^ 	<ul style="list-style-type: none"> • Death penalty for rape ^ • Witchcraft killings ^ 	<ul style="list-style-type: none"> • No inheritance for wives or daughters • Wife inheritance by brothers 	<ul style="list-style-type: none"> • Community ownership and stewardship of trees and water sources #
Potential Conflict	<ul style="list-style-type: none"> • Unequal division of land in divorce ^ • High bride price ^ • Polygamy ^ 	<ul style="list-style-type: none"> • Fines for adulterers 		<ul style="list-style-type: none"> • No discussion of women's land ownership • Parameters for collective v. individual ownership of land #
No conflict	<ul style="list-style-type: none"> • Farming for in-laws before marriage 	<ul style="list-style-type: none"> • Civil jurisdiction and fines for murder, rape, and theft/robbery • Insult/defamation punishments 	<ul style="list-style-type: none"> • Wife inheritance is not practiced 	<ul style="list-style-type: none"> • Allocation of land to IDPs by chiefs/elders

e. Balanda Bviri

	Family Law	Laws of Wrongs and Obligations	Inheritance Law	Land Law
Conflict	<ul style="list-style-type: none"> • Arranged/forced marriages • Wife beating • Wife swapping, against will ^ • Automatic custody for husband ^ 	<ul style="list-style-type: none"> • Forced marriage of rape victim • Rape revenge killing • Murder revenge killing, paying of girl child • Beatings for fornication • Other capital punishment 	<ul style="list-style-type: none"> • No inheritance for daughters or wives 	<ul style="list-style-type: none"> • Community ownership of rivers, mountains, forests # • Women cannot inherit land
Potential Conflict	<ul style="list-style-type: none"> • Unequal division of property upon divorce^ • Polygamy ^ • Requiring a pregnant woman out of wedlock live at the man's house 	<ul style="list-style-type: none"> • Cleansing ritual for rape • Magic intervention for theft or robbery • Criminal jurisdiction for theft 	<ul style="list-style-type: none"> • Wife inheritance by brothers, consent 	<ul style="list-style-type: none"> • Parameters for collective v. individual ownership of land #
No conflict	<ul style="list-style-type: none"> • Wife inheritance is not practiced • Farming for in-laws before marriage 	<ul style="list-style-type: none"> • Civil jurisdiction and fines for murder, rape, and theft/robbery • Punishment for destruction of property by animals 		<ul style="list-style-type: none"> • Allocation of land to IDPs for temporary use • Land allocated to outsiders by chief

f. Bongo				
	Family Law	Laws of Wrongs and Obligations	Inheritance Law	Land Law
Conflict	<ul style="list-style-type: none"> Forced marriages Automatic custody for husband ^ Bride exchange ^ Adultery by husband not grounds for divorce 	<ul style="list-style-type: none"> Forced marriage of rape victim Revenge killings – murder, rape, robbery Paying of girl child Wife beating ^ Adultery imprisonment 	<ul style="list-style-type: none"> No inheritance for wives or daughters Wife inheritance by brothers 	<ul style="list-style-type: none"> Community ownership of soil, rivers, and forests # Women cannot inherit land
Potential Conflict	<ul style="list-style-type: none"> Unequal division of property upon divorce^ Bride price 	<ul style="list-style-type: none"> Cleansing ritual for rape Magic intervention for theft or robbery Imprisonment for theft Witchcraft 	<ul style="list-style-type: none"> Inheritance of property of married woman 	<ul style="list-style-type: none"> Parameters for community v. individual ownership of land # Widows can inherit land from husband
No conflict	<ul style="list-style-type: none"> Wife inheritance is not practiced Farming for in-laws before marriage 	<ul style="list-style-type: none"> Civil jurisdiction and fines for murder, rape, and theft/robbery Punishment for destruction of property by animals 	<ul style="list-style-type: none"> Succession of chief by his son 	<ul style="list-style-type: none"> Land only allocated to outsiders by chief

g. Ndogo (Note: the Ndogo did not self-identify areas of reform according to the ascertainment study)				
	Family Law	Laws of Wrongs and Obligations	Inheritance Law	Land Law
Conflict	<ul style="list-style-type: none"> Arranged/forced marriages Wife beating Wife swapping, against will ^ Automatic custody for husband ^ 	<ul style="list-style-type: none"> Forced marriage of rape victim Rape revenge killing Murder revenge killing, paying of girl child Beatings for fornication Other capital punishment 	<ul style="list-style-type: none"> No inheritance for daughters or wives 	<ul style="list-style-type: none"> Community ownership of rivers, mountains, forests # Women cannot inherit land
Potential Conflict	<ul style="list-style-type: none"> Unequal division of property upon divorce^ Polygamy ^ Requiring a pregnant woman out of wedlock live at the man's house 	<ul style="list-style-type: none"> Cleansing ritual for rape Magic intervention for theft or robbery Criminal jurisdiction for theft 	<ul style="list-style-type: none"> Wife inheritance by brothers, consent 	<ul style="list-style-type: none"> Parameters for collective v. individual ownership of land #
No conflict	<ul style="list-style-type: none"> Wife inheritance is not practiced Farming for in-laws before marriage 	<ul style="list-style-type: none"> Civil jurisdiction and fines for murder, rape, and theft/robbery Punishment for destruction of property by animals 		<ul style="list-style-type: none"> Allocation of land to IDPs for temporary use Land allocated to outsiders by chief

h. Mundari (Note: the Mundari did not self-identify areas of reform according to the ascertainment study)

	Family Law	Laws of Wrongs and Obligations	Inheritance Law	Land Law
Conflict	<ul style="list-style-type: none"> Wife beating Automatic custody for husband ^ 	<ul style="list-style-type: none"> Marriage of rape victim No civil punishment for unmarried rapist Imprisonment for adultery 	<ul style="list-style-type: none"> No inheritance for daughters or wives 	<ul style="list-style-type: none"> Community ownership of water, valleys, forests #
Potential Conflict	<ul style="list-style-type: none"> Unequal division of property upon divorce^ Polygamy ^ Requiring a pregnant woman out of wedlock live at the man's house 	<ul style="list-style-type: none"> Criminal jurisdiction (1 year imprisonment) for theft Lashes for defamation, incest, other 	<ul style="list-style-type: none"> Wife inheritance by brothers, consent 	<ul style="list-style-type: none"> Parameters for collective v. individual ownership of land # Land cannot be sold Women can own land if its not clan land
No conflict		<ul style="list-style-type: none"> Civil jurisdiction for murder, rape, Criminal jurisdiction for rape 	<ul style="list-style-type: none"> Written or oral wills given effect 	<ul style="list-style-type: none"> Land can be allocated to outsiders for use only Women can purchase land

i. Avukaya (Note: the Avukaya did not self-identify areas of reform according to the ascertainment study)

	Family Law	Laws of Wrongs and Obligations	Inheritance Law	Land Law
Conflict	<ul style="list-style-type: none"> Wife beating Custody by husband or maternal uncle, only^ Husband "owns" wife Husband adultery not grounds for divorce 	<ul style="list-style-type: none"> Marriage of rape victim Imprisonment for adultery 	<ul style="list-style-type: none"> No inheritance for wives or daughters Widow inheritance 	<ul style="list-style-type: none"> Community ownership of water, valleys, forests #
Potential Conflict	<ul style="list-style-type: none"> Unequal division of property upon divorce^ Bride price 	<ul style="list-style-type: none"> Criminal jurisdiction for theft, battery, assault Adultery rituals Imprisonment for defamation 		<ul style="list-style-type: none"> Parameters for collective v. individual ownership of land #
No conflict		<ul style="list-style-type: none"> Civil jurisdiction for murder, rape, Criminal jurisdiction for rape 	<ul style="list-style-type: none"> Written or oral wills given effect 	<ul style="list-style-type: none"> Land can be allocated to outsiders for use only Women can purchase land

j. Moru (Note: the Moru did not self-identify areas of reform according to the ascertainment study)

	Family Law	Laws of Wrongs and Obligations	Inheritance Law	Land Law
Conflict	<ul style="list-style-type: none"> Custody by husband or maternal uncle, only[^] 	<ul style="list-style-type: none"> Marriage of rape victim Imprisonment for adultery Revenge killing for robbery 	<ul style="list-style-type: none"> No inheritance for wives or daughters Widow inheritance 	<ul style="list-style-type: none"> N/A
Potential Conflict	<ul style="list-style-type: none"> Unequal division of property upon divorce[^] Polygamy [^] Bride price Arranged marriage with consent of children 	<ul style="list-style-type: none"> Criminal jurisdiction for theft, battery, assault Adultery rituals 		<ul style="list-style-type: none"> N/A
No conflict	<ul style="list-style-type: none"> Wife can retain land from marriage 	<ul style="list-style-type: none"> Criminal jurisdiction only for rape and murder 	<ul style="list-style-type: none"> Written or oral wills given effect 	<ul style="list-style-type: none"> N/A

k. Baka (Note: the Baka did not self-identify areas of reform according to the ascertainment study)

	Family Law	Laws of Wrongs and Obligations	Inheritance Law	Land Law
Conflict	<ul style="list-style-type: none"> Wife beating Custody by husband or maternal uncle, only[^] Arranged marriage of children [^] 	<ul style="list-style-type: none"> Marriage of rape victim Imprisonment for adultery Only married women guilty of adultery 	<ul style="list-style-type: none"> No inheritance for wives or daughters 	<ul style="list-style-type: none"> Community ownership of water, valleys, forests #
Potential Conflict	<ul style="list-style-type: none"> Bride price 		<ul style="list-style-type: none"> Widow inheritance rare 	<ul style="list-style-type: none"> Parameters for collective v. individual ownership of land #
No conflict	<ul style="list-style-type: none"> Equal division of marital assets 	<ul style="list-style-type: none"> Only civil jurisdiction for offenses No criminal jurisdiction for rape, murder or other offenses 		<ul style="list-style-type: none"> Land can be bought by outsiders with chief's consent

I. Wa'di (Note: the Wa'di did not self-identify areas of reform according to the ascertainment study)

	Family Law	Laws of Wrongs and Obligations	Inheritance Law	Land Law
Conflict	<ul style="list-style-type: none"> Some wife beating tolerated Custody by husband or maternal uncle, only[^] Husband adultery not grounds for divorce 	<ul style="list-style-type: none"> Imprisonment for adultery 	<ul style="list-style-type: none"> No inheritance for wives or daughters Widow inheritance 	<ul style="list-style-type: none"> Community ownership of water sources, rivers, minerals, valleys, forests #
Potential Conflict	<ul style="list-style-type: none"> Unequal division of property upon divorce[^] Bride price – bride's mother's fee, building a food storage, etc. 	<ul style="list-style-type: none"> Criminal jurisdiction for theft, battery, assault Adultery rituals Imprisonment for defamation 		<ul style="list-style-type: none"> Parameters for collective v. individual ownership of land #
No conflict		<ul style="list-style-type: none"> Civil jurisdiction for murder, rape, No customary jurisdiction for rape 	<ul style="list-style-type: none"> Written or oral wills given effect 	<ul style="list-style-type: none"> Land can be leased by land owners Women can purchase and own land

m. Jur-Bel (Note: the Jur-Bel did not self-identify areas of reform according to the ascertainment study)

	Family Law	Laws of Wrongs and Obligations	Inheritance Law	Land Law
Conflict	<ul style="list-style-type: none"> Custody by husband[^] Arranged marriage without consent Husband adultery not grounds for divorce Imprisonment for elopement 	<ul style="list-style-type: none"> Marriage of rape victim Imprisonment for adultery Revenge killings Child payment for murder Wife beating not a crime 	<ul style="list-style-type: none"> No inheritance for wives or daughters Widow inheritance 	
Potential Conflict	<ul style="list-style-type: none"> Unequal division of property upon divorce[^] Bride price 	<ul style="list-style-type: none"> Criminal jurisdiction for theft, battery, assault Adultery rituals Lashing for defamation Witchcraft punishments 		<ul style="list-style-type: none"> Women may own land through their children
No conflict		<ul style="list-style-type: none"> Civil jurisdiction for murder, rape, 	<ul style="list-style-type: none"> Written or oral wills given effect 	<ul style="list-style-type: none"> Land can be allocated to outsiders for use only Land is communal with individual rights to ancestral land Overlapping rights to land based on use

n. Azande (Note: the Azande did not self-identify areas of reform according to the ascertainment study)

	Family Law	Laws of Wrongs and Obligations	Inheritance Law	Land Law
Conflict	<ul style="list-style-type: none"> • Custody by husband, or paternal uncle^ • Imprisonment for elopement 	<ul style="list-style-type: none"> • Imprisonment for adultery 	<ul style="list-style-type: none"> • No inheritance for wives or daughters 	<ul style="list-style-type: none"> • Community ownership of water sources, rivers, valleys, vegetation #
Potential Conflict	<ul style="list-style-type: none"> • Bride price • Elopement fines 	<ul style="list-style-type: none"> • Rape not always referred to statutory courts for punishment • Work in chief's house for defamation 		
No conflict	<ul style="list-style-type: none"> • Equal division of property 	<ul style="list-style-type: none"> • Civil jurisdiction for murder, rape. • Murder cases referred to statutory court for criminal punishments • Criminal and civil jurisdiction for assault 	<ul style="list-style-type: none"> • Widow inheritance no longer practiced 	<ul style="list-style-type: none"> • Land can be allocated to outsiders for use only • Women may own land

V. CONCLUSION

Customary law in South Sudan is an important local institution intertwined with local culture, values and livelihoods. It is not easily dismissed or replaced by statutory systems constructed at the national or state level. Nevertheless, it is also in need of critical reforms where it conflicts with human rights and where unclear jurisdictional parameters create confusion. It is also important to recognize that customary law is not static and that changes to laws and practice are constantly occurring in response to internal and external factors – from changing community norms to national legislation. Thus, harmonisation of customary and statutory laws should be seen as a process.

The self-ascertainment studies revealed the ongoing process of reform within many ethnic groups as they contemplate changes to practices and traditions, such as child compensation or widow inheritance, and/or have abdicated jurisdiction over some complex or serious crimes to the statutory system, such as murder or armed robbery. Considering this self-analysis, this report identifies a number of customary laws that are in direct conflict with the TCSS and international human rights law. In particular, practices of widow inheritance, forced and arranged marriage, child compensation (from one family to another as compensation for a murder), lack of women's right to own land, and revenge killings, among others will need to be changed at the customary level to comply with the national legal framework. Still other areas of law are potentially in conflict, but require further definition and interpretation by the South Sudan courts. Customary practices of automatic child custody by the father, unequal division of property from a divorce, detention for elopement and other minor crimes, and bride price may conflict with rights provisions in the TCSS and human rights treaties to which South Sudan is a party if a competent court so decides. Community land and natural resource ownership is also not sufficiently defined between the TCSS and customary practices. While the TCSS explicitly recognizes customary communal land ownership, many customary laws also recognize community ownership over water, forests and minerals (potentially including petroleum). The TCSS recognizes customary law but is silent on whether communities, according to customary laws, can also own natural resources. Subsequent legislation such as the Land Act and Petroleum Act have defined resource ownership to various degrees,²² but whether these Acts are unconstitutional vis-à-vis the TCSS's recognition of customary law is subject to judicial interpretation.

Further still, while not necessarily a human rights violation, jurisdiction over certain crimes is inconsistent from one ethnic group to another. Clear parameters need to be established on whether and/or when a customary court may try and apply civil and/or

²² The Land Act recognizes customary ownership of natural resources such as community forests or grazing areas (Article 15) and states that public land includes "all rivers, lakes, canals, haffirs, wetlands and other areas of water – (i) for which no customary or other ownership may be established" (Article 10). The South Sudan Petroleum Act is clearer on petroleum ownership: "The entire property right in and control over petroleum existing in its natural state in the subsoil of the territory of South Sudan is hereby vested in the Government" (Article 4).

criminal sanctions across all crimes, from minor ones such as defamation to more serious crimes such as murder, rape and robbery.²³ When establishing jurisdiction over criminal and civil wrongs, the value of the customary restorative approach, versus the statutory retributive approach should be considered for each crime in order to balance community ideals of harmony with the state's interest in retribution and law and order. There also needs to be a clearer established relationship between customary and statutory trials for the same offense in order to avoid double jeopardy and to provide guidance on use of evidence and *res judicata*.²⁴ Jurisdiction in cross-ethnic disputes, while not a focus of the ascertainment exercise, is also an area that needs further definition to avoid confusion and forum shopping.

Finally, a fully functional system of appeal, review and remand between the customary and statutory courts would reinforce implementation of the areas of harmonisation identified by this study, as well as those created by future legislation.

The harmonisation of customary laws and statutory laws through an integrated systemic process with clear jurisdictional lines reinforced by independence, autonomy, and a system of judicial appeal and remand, can establish a responsive justice system that harnesses the best aspects of customary justice, including restorative justice, while limiting negative practices.

²³ The Local Government Act of South Sudan only establishes a broad competency: "A Customary Law Court shall not have the competence to adjudicate on criminal cases except those criminal cases with a customary interface referred to it by a competent Statutory Court." (Section 98.2).

²⁴ The Cornell Legal Information Institute defines *res judicata* as: "Literally "a matter judged", *res judicata* is the principle that a matter may not, generally, be re-litigated once it has been judged on the merits. *Res judicata* encompasses limits on both the claims and the issues that may be raised in subsequent proceedings" available at: < https://www.law.cornell.edu/wex/res_judicata>.

ANNEXES

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ANNEX A: CUSTOMARY LAW MATRIX

1. FAMILY LAW		
a.	Marriage	Dowry/Bride Price
Toposa	<p>The man has the freedom to choose his spouse, that freedom is limited to the extent of the approval by his parents;</p> <p>Marriage can also arise from elopement. A man and a woman may elope, and subsequently inform their parents, seeking their consent to marry. The parents may either decline or allow them to get married.</p>	<p>Bride price will have to be paid in hundreds of cattle depending on the number of paternal uncles and step mothers that the bride may have.</p> <p>In the allocation of cows to be paid as bride price, provision is made for at least 10 step mothers and 10 paternal uncles of the girl.</p>
Lotuko	<p>Marriage may be contracted in three ways: elopement, abduction and forced or arranged marriages.</p> <p>Immediately after the elopement, the man will send a mediator to the parents of the woman, informing them of the whereabouts of the woman and of his marriage intentions. Perpetrators are required to pay Kasarubet (fine) which is about 6 to 8 goats or 1 bull;</p> <p>The relatives of the woman will each place a padlock on the door of the house where the man and woman are found. The man will be required to pay SSP 500 to unlock each padlock.</p> <p>Spousal obligations:</p> <p>Husband</p> <ul style="list-style-type: none"> • Take care of the property of the family including the livestock and construct a house for the family. • Respect their in-laws, the clan elders and other members of the clan. • Duty to raise their children to become responsible members of the community who know how to live according to the culture and the customary laws of the Lotuko. <p>Wife</p> <ul style="list-style-type: none"> • The wife has the obligation of performing domestic chores such as fetching firewood, water and preparing food for the family. • Respect their in-laws, the clan elders and other members of the clan. • Duty to raise their children to become responsible members of the community who know how to live according to the culture and the customary laws of the Lotuko. 	<p>All the different methods of contracting marriage (elopement, abduction and arranged marriages) are formalized and institutionalized by the payment of bride price. Bride price can vary in amount from one village or community to another.</p> <p>Horiok SSP 5000 and 50 goats, and 7 years of gardening or 35 goats.</p> <p>The Ilieu 20 cows and 6 bulls.</p> <p>People of Hiyala 16 cows and 80 goats.</p> <p>Torit, Abalwa, Mura hatiha, oronyong etc. 13 cows and 120 goats.</p>

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1. FAMILY LAW		
a.	Marriage	Dowry/Bride Price
<p>Lango (Dongotono, Lokwa, Logir, Katebo, Imotong, Lorwama, Lotuko sub-tribes)</p>	<p>There is significant differences between the different ethnic groups in relation to marriage:</p> <p>Generally, if the father of the man agrees, the next move will be to approach the parents of the woman to seek their consent to the marriage of their daughter to his son. This is normally done by the father of the man.</p>	<p>The family of the man will have to pay a bride price of 22 heads of cattle.</p> <p>The man will further have to stay with his in-laws for a period of 3 years, during which he will be involved in farming for the in-laws - probationary period during which the in-laws will have the opportunity to determine whether the prospective son in-law will be able to take care of their daughter.</p> <p>Neduku - mother in-law will also be given a bull as a sign of respect for the labour pains and difficulties she endured while giving birth to the bride.</p> <p>A goat known as the 'edaton' must be given to the mother of the bride (Dongotono subtribe).</p> <p>Bride price among the Logir may vary from one family to another ranging from 26-30 heads of cattle. In practice, however, bride price can be more than that, sometimes even up to 100 heads of cattle.</p> <p>When the woman gives birth to her first child, the husband will have to pay 10 heads of cattle to the first uncle of the wife.</p> <p>Among the Imotong, the bride price is 15 heads of cattle and 5 goats. The son in-law will also be required to cultivate the farm of the in-laws for 3 years (Imotong).</p> <p>A spear, hoe, tobacco and a goat are paid to commence marriage negotiations. This may vary from family to family. Bride price is set at 25 cows but additional goats may be offered. The man must also cultivate a farm for the in-laws for 3 years. He may build a granary where he is unable to cultivate (Katebo).</p> <p>The groom is required to build a house for his in-laws or provide them with a cow where he is unable to do so (Lorwama).</p> <p>The man pays another 8 cows for the first child produced by the wife, 7 cows for the second child, 6 cows for the third child, and 5 cows for the fourth child and so on. The man must also build a house and cultivate a farm (Lotuko).</p>

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1. FAMILY LAW		
a.	Marriage	Dowry/Bride Price
Lopit	<p>Marriage arrangements commence with the man and woman. Upon deciding to get married, they may decide to elope. The man will inform his parents of the elopement and his marriage intentions afterwards.</p>	<p>family of the man and woman will then convene to agree on a bride price. Among the Lopit, the amount of animals to be paid for the bride may differ from place to place. In Otuho, the bride price is 22 cows, 30 goats, 60 spears and a bull. In Lolongo, the bride price is 20 cows, 30 goats and 30 spears. In Lotuhok it is 20 cows, 40 goats and 6 spears. In Lomiaha it is 26 cows, 40 goats, 20 spears and 6 bulls. In Ihmejek it is 16 cows, 30 goats, 100 spears and 1 bull. In Ibohi/Omeha it is 18 cows, 40 goats, 100 spears and 1 bull. In Dorrik and Ngotira it is 16 cows, 30 goats and 100 spears.</p> <p>In North Lopit 6 cows are given to the maternal uncle. In South Lopit and Central Lopit, the maternal uncle receives 8 and 7 cows respectively.</p> <p>Before the man is allowed to take the wife home, he must work in the compound of the in-laws for a period of 2-3 years, cultivating the family's farm and building a house for them.</p>
Balanda Bviri	<p>Fathers seek out wives for their sons by making a formal proposal to the family of a suitable woman. Formal marriage arrangements commence where the family of the woman accepts the proposal.</p> <p>It is also very common for men wishing to marry to swap their sisters as wives.</p> <p>Elopement - The family of the man should within a few days of the elopement, inform the family of the woman that their daughter is in the company of their son. If it is sensed that there will be no attack from the other side, the parents of the man may visit the house of the woman to express their son's intention to marry the woman.</p>	<p>Marriage is concluded by the payment of dowry in the form of hoes, <i>sim sim</i>, honey, bundles of dried meat of wild animals, and elephant tusks. These days, money has replaced these traditional items. Local brew and food accompany the payment of dowry. Dowry is paid to the father and mother of the girl.</p>

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1. FAMILY LAW		
a.	Marriage	Dowry/Bride Price
Bongo	<p>Marriage may proceed in one of the following ways:</p> <p>Barter marriage:</p> <p>This is a marriage wherein two young men simultaneously exchange their sisters as wives. This type of marriage occurs where both families have ascertained that there are no blood relations between them.</p> <p>This kind of marriage does not require the payment of dowry.</p> <p>Early marriage arrangement/ betrothal by parent of young man. Marriage may be contracted by booking a girl at birth. The booking is performed by the father of the boy by placing an object at the house of the mother of the newly born baby girl.</p> <p>Elopement occurs when the woman and a man decide to 'use a shortcut', and start cohabiting without the consent of the parents of the woman. This is normally encouraged by the parents of the man, as a way of avoiding the bureaucracies relating to betrothal, especially where they do not have the means to pay the dowry. Elopement ordinarily causes misunderstandings between the two families involved, especially when the family of the man does not have the means to pay dowry, and do not have a daughter to give in exchange for the one that has eloped.</p> <p>A man who elopes with a woman may be beaten, in the heat of passion, by the relatives of the woman. To avoid this, elopement is normally reported at the earliest opportunity. Elopement leads to marriage, subject to payment of dowry and a fine for trespassing.</p> <p>Female Consent: The consent of the woman is not required in most types of marriages. In relation to marriage by booking, consent cannot be obtained because the child is of a tender age, and is incapable of forming consent. In relation to betrothal, the consent of the woman is also not obtained, as she is expected to accept the spouse that her parents have chosen for her. With regard to elopement, the consent of the woman is implicit, from the fact that she willingly agreed to elope with her lover.</p>	<p>Dowry (actually bride price) is paid in the form of spears, shotguns formerly brought by Arabs, hoes, food and sometimes, elephant tusks. Three pounds is also paid as part of the dowry.</p> <p>The amount of dowry to be paid is not fixed or standardized. Rather, it is determined by negotiations between the families of bridegroom and the bride, regard been had to resources of the family of the bridegroom.</p> <p>Dowry is paid in the form of hoes, shotguns formerly brought by Arabs, elephant tusks and food items.</p> <p>Dowry can be paid by installments.</p> <p>Dowry is paid to the father and mother of the woman and it is they alone who decide amongst which relatives they wish to share.</p>

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1. FAMILY LAW		
a.	Marriage	Dowry/Bride Price
Ndogo (Fertit)	<p>Barter marriage takes place when families exchange their daughters in marriage. This is the preferred method of contracting marriage because it ties the two families together in a more profound way than marriage by dowry, making divorce almost impossible. Where a woman married in this manner fails to bear children, her family will have to provide another girl for the husband. Under these circumstances, the first wife is required to pay the dowry for the second wife.</p> <p>Arranged marriage takes place where the parents of the man assume the responsibility of securing a wife for their son, by betrothing a woman from another family. Betrothal may take place while the boy or the woman is still young or when they attain adulthood. Sometimes, this occurs while the woman is still a baby.</p> <p>Should the family of the woman consent to the marriage proposal; the family of the man will be required to pay a fine for elopement, at an amount and manner to be agreed by the parties. The payment of dowry is also concluded. In some instances, dowry takes the form of the exchange of a girl by the family of the man.</p> <p>Elopement: While elopement is forbidden, the parties may resolve the issue especially where the family of the man takes the responsibility of marrying the woman. If the two families agree, elopement will lead to marriage, subject to the payment of a fee for trespass, and dowry.</p> <p>The man is required to pay compensation to the family of the woman, at an amount agreed between the families with the guidance of the chief. The man is also required to pay the court fee.</p>	<p>Dowry is negotiated and paid in the form of hoes, <i>simsim</i>, honey and bundles of wild meat. Increasingly, money is becoming the medium of dowry.</p>

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1. FAMILY LAW		
a.	Marriage	Dowry/Bride Price
Mundari	<p>Betrothal-through the door: This is the most common way of contracting marriage. In this case, a girl and boy who have been dating for some time and want to get married will go to the next level of seeking their consent of their parents. The procedure begins with the boy breaking the news to his parents. If his parents react positively, they will approach the parents of the girl.</p> <p>The girls of the parents of the girl will also seek the consent of the girl before marriage formalities take place.</p> <p>Pregnancy: accidental pregnancy is another door to marriage.</p> <p>Marriage is most predictable when a boy impregnates a girl. If the two families are in agreement, marriage will be concluded subject to payment of applicable fines for trespass and dowry.</p> <p>Elopement: marriage may also take place by elopement.</p>	<p>Among the Mundari the minimum amount of cattle to be paid in dowry is 15 cattle (12 cows and 3 bulls). However, in most cases it can go beyond that to 25, 30 or 60 depending on one's wealth status of the family of the bridegroom. In some cases, the amount of dowry increases depending on how many people are competing for the girl.</p> <p>On the day of dowry payment, the family of the boy will also pay five goats for entering into the home of the girl as well one he goat and 100 SSP for opening the gate.</p> <p>Dowry is divided amongst the relatives of the girl in the following manner:</p> <ul style="list-style-type: none"> • Three heads of cattle (1 bull, a cow and a calf) for the father of the bride, • 1 bull for the girl's brother, • 3 heads of cattle (a cow, bull and a calf) for the girl's mother, • 3 heads of cattle (1 cow, a bull and 1 calf) for the grandfather, • The rest of the cattle remain for the family.
Avukaya	<p>There are two methods of contracting marriage. These are the formal and informal methods.</p> <ul style="list-style-type: none"> • In relation to the formal method (through the door), the man and woman who have been dating for some time and wish to get married will make their intention known to their parents. When the parents are in agreement, they will proceed to determine the payment of dowry. The marriage settlement proceeds with the payment of dowry and the bride's mother's fee (<i>hagaleben/bati</i> for breast feeding). The dowry and mother's bride's fees are two separate payments. The quantum and method of payment is the subject of negotiations between the families. • In relation to the informal method, marriage can result when a girl is pregnant following a relationship with a man. This is followed by the payment of a fine and dowry. Elopement does not exist within the Avukaya Community. This may only be raised when an outsider elopes with a girl from the Avukaya Community. • Under both methods of marriage, the marriage will be concluded by rituals and traditional ceremonies where people from both families prepare and serve different types of drinks and food. The feasting will also be accompanied by traditional dances that can go on for days. • The marriage ceremonies normally take place during the dry season when there is abundant harvest, honey and bush meat so that people have enough food to eat. 	<p>Dowry is money given to the bride's father and his relatives by the bridegroom and his family. The <i>hagaleben/bati</i> is given to the bride's mother and is not considered as part of the dowry. <i>Hagaleben/bati</i> is normally distributed amongst the relatives of the bride's mother. No marriage arrangement can proceed without the prior payment of <i>hagaleben/bati</i>.</p> <p>In the past, dowry was paid in hoes, iron bars, arrows and spears. These traditional means of paying dowry have now been replaced by monetary payment. The current practice is to pay the monetary value of these traditional items. There is no fixed amount and dowry is normally negotiated.</p> <p>In cases of elopement, <i>kasur baid</i> will also be paid. This does not form part of the dowry.</p> <p>Significance of dowry</p> <ul style="list-style-type: none"> • It has exchange value, and is meant to replace the bride in her family home. • It legalizes the marriage. • It gives the husband a right to the children of the family. • It shows appreciation to the girl's parents for having raised their daughter. • It gives the husband the right to own his wife.

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1. FAMILY LAW

a.	Marriage	Dowry/Bride Price
<p>Moru</p>	<p>Marriage is a union between a man and a woman or women of mature ages, to form a family with the purpose of producing children.</p> <p>Marriage binds the wider family of the couple, even beyond the immediate family.</p> <p>The proper age of marriage is determined by maturity signs, and not necessarily by numerical years.</p> <p>There are two methods of contracting marriage. These are formal marriage and informal marriage.</p> <ul style="list-style-type: none"> • In terms of the formal marriage, the man and woman agree to get married, and then inform their parents of their intention. When the families agree to their proposal, formal marriage arrangements such as the payment of dowry and gifts will be concluded. • Another formal method of contracting marriage is through arranged marriages wherein the parents of the bridegroom and the bride arrange for their children to get married. The consent of the children is, however, obtained before the marriage is concluded. • In relation to informal marriage, the woman and man will elope, or the woman will fall pregnant. However, the parents are involved in the marriage negotiations after elopement. The marriage is finalized after the payment of a fine (<i>Mari</i>). 	<ul style="list-style-type: none"> • In every marriage, dowry is paid in cash or in kind. <i>Gbiri</i> (iron rod of ¾ cm and 10-15 in number) is paid. • Previously, <i>gbiri</i> alongside with some traditional items such as 30 arrows (<i>Atu</i>), 10 hoes (<i>kebo</i> or <i>modolongo</i>) were used to pay for bride wealth. • In Moru community, bride wealth has no definite or standard amount. It is the subject of negotiations between the two families. • In some Moru communities, marriage has been divided into four categories: (i) Actual dowry (<i>lagye</i>) goes to the brothers of the bride; (ii) Traditional fine (<i>labi</i>) goes to relatives of the bride; (iii) Gift (<i>ngapani</i>) goes to parents and relatives of the bride; and (iv) Work (<i>losi</i>) is for parents of the bride (which is the building of 1 or 2 houses and farming). In some Moru clans, gifts like <i>okyofa</i> (cooked meat, paste and honey for all relatives) are also provided to the parents of the bride. • Four (4) goats are paid for dowry as follows: two (2) she-goats, one (1) he-goat for rearing and one (1) castrated he-goat is offered to the in-laws for family celebration. However, some Moru clans do not have the tradition of giving goats and spears in their marriages. If dowry cannot be provided in a single payment, it may be paid in installments as determined by oral or written agreement.

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1. FAMILY LAW		
a.	Marriage	Dowry/Bride Price
Baka	<p><i>There are three types of marriages:</i></p> <ul style="list-style-type: none"> • Arranged marriages. The future bride is normally booked at the tender age of 10 years or below. The booking is done by placing a ring on the finger of the girl. When the girl is about 20 years of age, the two families convene a meeting and agree on a date for the payment of dowry and the finalization of other marriage formalities. The bride is accompanied to her husband's house by her aunts, sisters and brothers. They sing and dance as they escort the bride. There is feasting when they arrive the husband's house. Those who accompany the bride are called tongo. • Betrothal. Besides the 'booking arrangement', marriage is also contracted by a formal betrothal process wherein the woman and the man, seek the consent of their parents to marry after a period of courtship. When consent is granted, the marriage formalities commence. The marriage settlement normally involves the payment of dowry. In the past, dowry would usually be in the form of 40 arrows and 4 hoes. Presently, a monetary equivalent is usually paid. The mother of the bride will also be paid money for breast feeding (foum). • Pregnancy. Marriage may arise by default in the event of pregnancy. Where a man impregnates a woman during the course of their courtship, marriage may take place with the agreement of the parents, subject to the payment of a fine for 'trespassing' (<i>kasur baid</i>). The amount payable is not fixed but negotiable. 	<p>During the payment of the dowry, traditional items are given to the aunt of the girl, while the breastfeeding money is paid to the mother of the girl. Dowry is in the form of items like <i>biri</i> (hoes). Where the dowry cannot be paid in a single payment, it may be paid in installments on terms provided by a written agreement.</p>

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1. FAMILY LAW

a.	Marriage	Dowry/Bride Price
<p>Wa'di</p>	<p>Marriage may be contracted formally or <i>through the door</i>. In this regard, a man and a woman in courtship inform their parents and families of their intention to marry. The parents of the man will go to the parents of the woman to tell them of their intention. The consent of the woman is sought by her parents. Where she consents, she will be required to make this known in the presence of both sides. The marriage settlement proceeds with the payment of dowry. A bride's mother's fee, <i>hagaleben</i> (money for breast feeding) is also paid. The amount paid in respect of dowry and <i>hagaleben</i> is agreed by negotiation. The bridegroom may be asked to build a house or cultivate farmland for the family of the bride or build a food storage (<i>quara</i>).</p> <p>Marriage may be contracted by informal means. This occurs where a man and woman decide to elope, an act which carries a penalty; the penalty for breaking into some body's house (<i>kasur baid</i>) without his permission is paid in cash to the father of the woman. The man's parents usually seek an amicable settlement by proposing a proper marriage. The matter is usually settled by the payment of <i>kasur baid</i> and dowry. In case the bride is pregnant, the payment of dowry will be suspended until she puts to birth.</p> <p>Marriage in Wa'di community is concluded by the performing of rituals and traditional ceremonies where people from both parties prepare and exchange different types of drinks, food and traditional dances (<i>yeru & tuga</i>) throughout the day and night.</p> <p>Two chairmen are usually appointed to steer the marriage settlement, one from the bride's family and the other from the bridegroom's family. The chairmen are usually the brothers/nephews of the bride and bridegroom respectively. They preside over discussions relating to the marriage settlement, payment of dowry, <i>hagaleben</i>, and payment by installments. After the agreement is concluded and the dowry is paid, a ring is put on the finger or leg of the bride to signify that she is married.</p>	<p>Bride wealth has no definite amount and is subject to negotiation between the two families. <i>Hagaleben</i> – money for breast feeding – goes to the mother of the bride, while the bride wealth goes to the father or relatives of the bride. In most cases dowry is paid in installments on the basis of a written agreement.</p> <p><i>Kasur baid</i> is paid where the bridegroom and bride had eloped. This payment is regarded as compensation for entering the bride's father's house through the window (elopement), instead of the door. <i>Kasur baid</i> is paid to the father of the bride.</p>

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1. FAMILY LAW		
a.	Marriage	Dowry/Bride Price
Jur-Bel	<p>Barter marriage occurs where two families who are not related by blood and who respect each other may decide to create a bond by exchanging their daughters in marriage for their respective sons. Dowry is not required under this arrangement.</p> <p>Early marriage, arranged marriage or marriage by booking occurs where the father of a boy goes to a family of his choice to book a young girl at birth for his son by placing an object on the roof of the house of the baby's mother. Other marriage arrangements like the payment of dowry will be pursued when the girl attains the age required for marriage.</p> <p>One of the effects of the war and the massive displacement that followed is that the Jur-bel have interacted with other cultures in urban areas. As a result, other cultures, (including Arabic culture), have influenced Jur-bel customary marriage. In this regard, it is now very common for young people to co-habit without following customary law. Thus, the parents of the boy are known to the family of the girl when they decide to get married or if the girl falls pregnant.</p> <p>Elopement occurs where a boy and girl decide to marry without seeking the permission of their parents. Elopement can create a bitter relationship between the two families. Attempts are usually made to resolve the dispute at the earliest opportunity. The matter is usually resolved with the family of the boy paying compensation for trespass and making a formal marriage proposal. Upon acceptance of the proposal by the family of the girl, a marriage settlement will be reached upon payment of dowry.</p>	<p>The dowry is usually very expensive and the wedding celebrations are elaborate. This kind of marriage is the same as elopement but in this case no penalties are involved.</p>
Azande	<p>The bride and groom should be adults (18 years and above) who are not related by blood.</p> <p>Marriage by betrothal (through the door) is usually preceded by courtship. Upon deciding to get married, the couple will inform their respective parents. The family of the man will then proceed to the parents of the woman to make a marriage proposal.</p> <p>Marriage can also result from elopement (through the window) wherein the girl and the boy decide to elope without seeking the consent of their parents. Elopement is considered a civil wrong which attracts severe penalties. After the elopement, the boy will normally seek the intervention of his parents to plead with the family of the girl for a peaceful settlement and ultimately to give consent for the two to get married. The boy's parents will be required to pay <i>yongo</i> (compensation), which is non-refundable, to the bride's father for not following the required procedure. Payments are also made in respect of dowry (<i>mara de</i>) and in respect of the mother of the bride (<i>mara negude</i>).</p>	<p>Dowry and other payments are made in cash, and there is no standard or fixed amount. In other words, the amount paid is the result of negotiations between the two families. Spears (<i>baso</i>), hoes (<i>gita</i>), arrows (<i>abamara</i>), and other items may also be exchanged as dowry, and fines for elopement.</p>

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1. FAMILY LAW

b.	Divorce	Custody/ Division of Assets
<p>Toposa</p>	<p>Causes that warrant:</p> <p>Wife:</p> <ul style="list-style-type: none"> ● Excessive drinking by the husband and neglect of the family. ● Wife beating without good reason. ● Inability on the part of the husband to father children. ● Repeated and willful disobedience of the lawful orders of the husband. <p>Husband:</p> <ul style="list-style-type: none"> ● Excessive drinking by the wife and failure to discharge her duties as required by customary law. ● Inability by the wife to bear children. ● Failure to take care of the family (e.g. failure to cook food and fetch water etc.). ● Repeated acts of adultery. <p>Divorce technically doesn't exist: wife just leaves and returns to her family. The wife is not entitled to any properties except a few household goods like beddings and cooking utensils.</p>	<p>No bride price is paid back to the man.</p> <p>Where the children of the wife are grown up, they will usually go and bring their mother back home.</p>
<p>Lotuko</p>	<p>Divorce is not a very common practice among the Lotuko and it is generally discouraged as it interferes with family bonds that have been created by the institution of marriage.</p> <p>Divorce occurs for the following reasons:</p> <ul style="list-style-type: none"> ● Impotence of the man. ● Barrenness of the woman. ● Excessive drinking by the woman rendering her incapable of discharging her duties as a mother and a wife. ● Where the husband does not treat and provide for the wives equally. If one of the wives is of the opinion that the husband is not giving her equal treatment with the others, she may opt for a divorce. ● Inability of the man to provide for his family for any reason, including excessive drinking, running away from his family, laziness or any other form of irresponsibility. 	<p>Household goods like furniture, utensils and food are shared equally between the woman and the man.</p> <p>The children will normally remain with the father, or with the mother while they are still young.</p> <p>The cattle will remain with the man and no cattle will go to the woman.</p> <p>Where a woman managed to acquire cattle or goats with her money during the duration of the marriage, she will be allowed to retain them.</p> <p>The bride price will not be returned to the husband except if the woman remarries. The said repayment will, however, be borne by the new husband.</p> <p>Land will remain with the husband since it is clan land which cannot be given to outsiders. The woman can only claim rights to land while she is married and considered part of the clan.</p>

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1. FAMILY LAW		
b.	Divorce	Custody/ Division of Assets
Lango (Dongotono, Lokwa, Logir, Katebo, Imotong, Lorwama, Lotuko sub-tribes)	<p><i>Reasons for divorce are similar among the different sub-groups of the Lango group. The following are the recognized grounds for divorce:</i></p> <ul style="list-style-type: none"> Excessive drinking by the woman to the extent that she is not capable of attending to her duties in the house and to her family. Excessive cruelty by the husband towards his wife, including beating, violence and any other act which will make the marriage unbearable for the wife. Inability of the woman to have children. The husband may decide to keep the wife and marry another wife to bear children. Where the husband initiates divorce due to inability of the wife to have children, the bride price will not be paid back because the wife has done nothing wrong. When the husband does not respect the in-laws, the latter may decide to recall their daughter thus bringing the marriage to an end. Unfaithfulness on the part of the woman. Repeated incidences of adultery will warrant a divorce by the husband. Unfaithfulness on the part of the husband will not lead to divorce. When the woman is lazy, disrespectful to her husband and disobeys his commands. Where the wife is a thief thereby discrediting her husband and his family. Impotence of the husband may lead his wife to demand a divorce. In many cases, the wife will simply get her children from other men, sometimes with the full knowledge of the husband. However, the children will belong to the husband. When the husband is a loiterer, irresponsible and does not take care of the children and his family. In a polygamous marriage, failure to treat the wives equally provides grounds for the wife affected by the unequal treatment to seek a divorce. Frequent death of children. Poverty. Practice of witchcraft or wizardry. 	<p>Division of assets:</p> <ul style="list-style-type: none"> The Dongotono: The husband takes everything in the house. Where the husband takes the children the bride price will not be reimbursed. The Lokwa: The wife may take the children. Where the relationship is still amicable she may be given some sorghum. The wife takes her clothes and the cooking utensils. The husband retains the house. The Katebo: The children stay with the husband. The bride price is not returned if the woman produced children. The woman gets the house. The Lorwama: The wife retains the household items. The husband retains the children, house and the cows.

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1. FAMILY LAW

b.	Divorce	Custody/ Division of Assets
Lopit	<p>Divorce occurs when one of the spouses fail to discharge the functions expected of him or her under customary law. Divorce is a very undesirable occurrence and efforts are usually made by the elders and relatives to resolve misunderstandings among couples.</p> <p>Reasons to be Advanced by the Wife:</p> <ul style="list-style-type: none"> ● Impotence. ● Inability to provide for the family. ● Excessive drinking and violence. ● Lack of respect for the in-laws. ● Influence of the parents. ● Laziness. <p>Reasons to be Advanced by the Husband:</p> <ul style="list-style-type: none"> ● Barrenness. ● Excessive drinking. ● Jealousy of the co-wives. ● Inability to discharge house hold duties. ● Repeated acts of adultery. ● Influence of the parents. ● Laziness. 	<p>Division of assets:</p> <ul style="list-style-type: none"> ● The wife retains custody of the children where the divorce was initiated by the husband. In this vein, the bride price must be refunded to the husband. ● If the cause of the divorce is barrenness, the bride price will be refunded to the husband. ● The garden or farm will be divided equally between the husband and wife. ● The household goods and implements will also be shared. ● Where divorce is initiated by the husband, he is required to give each child a bull and a cow. The children are given the cows because they will need to start a living without the assistance of their father. The children will remain in the custody of their mother. The bride price is returned to the husband. ● Furniture and harvested crops are divided equally. The land is retained by the husband since a woman cannot own clan land.

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1. FAMILY LAW		
b.	Divorce	Custody/ Division of Assets
Balanda Bviri	<p>Failure of the spouses to discharge their roles may lead to quarrels, which are normally resolved at the earliest opportunity. The spouses will normally try to resolve the issues themselves. Where they are unable to do so, the assistance of the extended family will normally be sought. Failure by the family to resolve the dispute may cause the husband to marry a second wife. This may cause the first wife to seek a divorce.</p> <p>Divorce may only take place after numerous attempts to resolve the conflict at various levels (family, eldership, group-leadership, sub-chieftainship, and chieftainship) have failed –</p> <p>Grounds:</p> <p>Persistent misunderstandings between the wife and husband, arising from failure of one of the spouses to properly discharge their duties.</p> <ul style="list-style-type: none"> ● Failure of the wife to respect her in-laws. ● Failure of the husband to respect the parents and relatives of the wife. ● Where the wife or husband is discovered to be a thief, a witch, or of any other bad character, which may bring disrespect and misfortunes to the family of the husband. ● Barrenness of the wife may lead to divorce, depending on the choice of the husband. ● Impotence of the husband. ● Repeated acts of adultery by the wife or husband. ● Repeated physical assault on the wife, by the husband, without good cause. <p>Divorce is a choice of last resort. Thus, marital disputes go to various levels of resolution. The following institutions are involved at the different levels:</p> <ul style="list-style-type: none"> ● Family; ● Eldership; ● Group leadership; ● Sub-chieftaincy; ● Chieftaincy; ● Paramount chieftaincy <p>Where a party is of the view that the decision is unfair, he/she is at liberty to take the case to another level of traditional authority. However, the court of the paramount chief is the final court of appeal within the customary system.</p>	<p>Where dowry was paid in full, the children will remain with their father. If the husband did not pay the dowry, the family of the wife takes the children as compensation in respect of the dowry, which remains unpaid. The husband can redeem the children, by completing the payment of dowry.</p> <p>Where the wife did not bear children, the horse which forms part of the dowry will be paid back to the family of the husband.</p> <p>Matrimonial assets are divided, depending on the contribution of the spouses in their acquisition. The husband automatically retains the house and the wife may take her clothing, beddings, utensils and foodstuffs.</p>

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1. FAMILY LAW

b.	Divorce	Custody/ Division of Assets
Bongo	<p>Common reasons for divorce include: denial of conjugal rights by either spouse, repeated acts of adultery by the wife, gossiping by the wife, unwarranted acts of beating by the husband, failure of the husband to provide for the family, failure of the wife to perform her house hold chores, impotence on the part of the husband, and barrenness on the part of the wife.</p> <p>The procedure of divorce commences with a meeting convened by members of the immediate family, to which the spouses are invited. The purpose of the meeting is to find out the source of the misunderstanding, and to resolve the conflict. Where the conflict cannot be resolved at this stage, the matter is referred to the traditional authorities for further consideration.</p>	<p>Common reasons for divorce include: denial of conjugal rights by either spouse, repeated acts of adultery by the wife, gossiping by the wife, unwarranted acts of beating by the husband, failure of the husband to provide for the family, failure of the wife to perform her house hold chores, impotence on the part of the husband, and barrenness on the part of the wife.</p> <p>The procedure of divorce commences with a meeting convened by members of the immediate family, to which the spouses are invited. The purpose of the meeting is to find out the source of the misunderstanding, and to resolve the conflict. Where the conflict cannot be resolved at this stage, the matter is referred to the traditional authorities for further consideration.</p> <p>Division of matrimonial assets depends on the manner in which they were acquired, during the subsistence of the marriage. Each party retains property acquired by them. In several cases, the husband takes the lion share, given the fact that most of the assets would have been acquired by him. In most cases the wife will only take her personal belongings.</p>
Ndogo	<p>Divorce typically arises due to the failure of one or both of the spouses to discharge their responsibilities under customary law. Divorce also arises due to a number of specific factors. These factors are adultery, witchcraft, theft, excessive brutality by the husband, and incapacity by either spouse to produce children.</p> <p>A meeting is called to resolve the issue. During the meeting, the party seeking divorce will be given an opportunity to present her/his case, after which the other party is given an opportunity to challenge the allegations. After both parties have been heard, the customary law authority passes judgment in favour of the party adjudged to be more truthful. Any party aggrieved by the decision of the judgment is at liberty to appeal to the next court in the hierarchy of the customary law court institution.</p>	<p>Where dowry was paid in full, the children of the marriage will remain with the father. Where dowry was not paid, the children will be taken by the parents of the woman. The children remain with them until dowry is paid in full.</p> <p>Where the wife did not bear children, the dowry will be paid back to the family of the husband but consumables are not requested.</p>
Mundari	<p>Divorce proceedings begin within the ranks of the family where reasons brought forward by one the couples are critically examined and attempts are made to rescue the marriage. Should the parties fail to be reconciled; the party pursuing divorce will go through the different customary law institutions until s/he gets what s/he wants. In most cases, divorce cases happen at the 'B' court.</p>	<p>If it is the husband filing for divorce, no dowry will be returned but if it is the wife initiating it then dowry will be paid back to the husband and his family.</p> <p>Children will go with the father/husband and it does not matter who initiated the divorce proceedings. If dowry was not paid in full the children will go to their maternal uncles. If the husband wishes to have the children, he must pay 7 cows for a male child and 7 cows for a female child.</p> <p>Other assets will be distributed according to the manner in which they were acquired. The wife is allowed to go with the properties she acquired by her own efforts. Family land will however remain with the husband.</p>

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1. FAMILY LAW						
b.	Divorce	Custody/ Division of Assets				
Avukaya	<p>Divorce occurs where there is a complete breakdown of the marriage. This occurs where the spouses have ceased performing their marital obligations to each other. Divorce is not desirable, and only serves as a course of last resort when all attempts to rescue the marriage have failed.</p> <table border="1"> <thead> <tr> <th>Reasons which may be advanced by the husband</th> <th>Reasons which may be advanced by the wife</th> </tr> </thead> <tbody> <tr> <td> <ul style="list-style-type: none"> • Repeated incidences of adultery by the wife. • Stealing habits on the part of the wife. • Sex with the husband's relatives. • Barrenness and objects to her husband getting married to another woman. • Laziness and carelessness. • Lack of generosity to the relatives of the husband. • If the wife is a witch or practices witchcraft. • Gossiping and defamation of character. </td> <td> <ul style="list-style-type: none"> • Sexual intercourse with the relatives of the wife by the husband. • Continuous assaulting and beating of the wife. • Impotence of the husband. • Laziness and in particular failure to construct a house or feed the family. • When the wife discovers that her husband is a wizard or practices witchcraft. • Theft by the husband. </td> </tr> </tbody> </table>	Reasons which may be advanced by the husband	Reasons which may be advanced by the wife	<ul style="list-style-type: none"> • Repeated incidences of adultery by the wife. • Stealing habits on the part of the wife. • Sex with the husband's relatives. • Barrenness and objects to her husband getting married to another woman. • Laziness and carelessness. • Lack of generosity to the relatives of the husband. • If the wife is a witch or practices witchcraft. • Gossiping and defamation of character. 	<ul style="list-style-type: none"> • Sexual intercourse with the relatives of the wife by the husband. • Continuous assaulting and beating of the wife. • Impotence of the husband. • Laziness and in particular failure to construct a house or feed the family. • When the wife discovers that her husband is a wizard or practices witchcraft. • Theft by the husband. 	<p>Normally, dowry will not be returned because of the services performed by the wife to the husband and his relatives during the course of the marriage. Matrimonial assets will be distributed according to the manner in which they were acquired by the parties. Each party will be given whatever he or she acquired during the course of the marriage. If a woman, for example, acquired land at the time of the marriage, she will be allowed to retain it as her property. Family land and buildings will, however, remain with the husband.</p> <p>The children will be taken by the husband if dowry was paid in full. Where the payment of dowry was incomplete, the children will be taken by the maternal uncles. The husband will, however, have the option of buying the children from the maternal uncles at a price to be agreed between the parties. The husband may redeem his children by the transfer of the dowry of one of his daughters to the maternal uncles.</p>
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b.	Divorce	Custody/ Division of Assets				
Moru	<p>Divorce occurs where the marriage comes to a complete end and the obligations of the spouses towards one another and their extended families are extinguished. Divorce is only permitted to take place after all attempts to rescue the marriage have failed.</p> <table border="1"> <thead> <tr> <th data-bbox="486 644 722 747">Reasons which may be advanced by the husband</th> <th data-bbox="722 644 951 747">Reasons which may be advanced by the wife</th> </tr> </thead> <tbody> <tr> <td data-bbox="486 747 722 1911"> <ul style="list-style-type: none"> ● Repeated acts of adultery by the wife. ● Theft/thieving by the wife. ● Sexual affairs with relatives of the husband. ● Barrenness, especially where the wife objects to the husband marrying another wife. ● Wife objects to the husband marrying another wife. ● Laziness combined with extravagance and reluctance to cook for the household. ● Engagement in the practice of witchcraft. ● Irresponsibility on the part of the wife, to the extent that she cannot take care of the husband and members of his extended family. ● If the wife fails to amend her behaviour after successive counselling by family members, in-laws and chiefs. </td> <td data-bbox="722 747 951 1911"> <ul style="list-style-type: none"> ● Excessive drinking by the husband to the extent that he cannot provide for the family. ● Repeated acts of domestic violence against the wife and children. ● Impotence. ● Sexual intercourse with the relatives of the wife. ● Laziness, particularly failure to erect a house or feed the family. ● Sexual intercourse by the husband with other women who are not married to him. ● Theft/thieving by the husband. ● Engagement in the practice of witchcraft by the husband. ● If the husband fails to amend his bad behaviour after successive counselling by family members, in-laws and chiefs. </td> </tr> </tbody> </table>	Reasons which may be advanced by the husband	Reasons which may be advanced by the wife	<ul style="list-style-type: none"> ● Repeated acts of adultery by the wife. ● Theft/thieving by the wife. ● Sexual affairs with relatives of the husband. ● Barrenness, especially where the wife objects to the husband marrying another wife. ● Wife objects to the husband marrying another wife. ● Laziness combined with extravagance and reluctance to cook for the household. ● Engagement in the practice of witchcraft. ● Irresponsibility on the part of the wife, to the extent that she cannot take care of the husband and members of his extended family. ● If the wife fails to amend her behaviour after successive counselling by family members, in-laws and chiefs. 	<ul style="list-style-type: none"> ● Excessive drinking by the husband to the extent that he cannot provide for the family. ● Repeated acts of domestic violence against the wife and children. ● Impotence. ● Sexual intercourse with the relatives of the wife. ● Laziness, particularly failure to erect a house or feed the family. ● Sexual intercourse by the husband with other women who are not married to him. ● Theft/thieving by the husband. ● Engagement in the practice of witchcraft by the husband. ● If the husband fails to amend his bad behaviour after successive counselling by family members, in-laws and chiefs. 	<p>There is no repayment of dowry, where there are children of the marriage. Should there be no children, the dowry will have to be repaid. The man may, however, decide not to demand repayment of dowry. While the dowry may be repaid, the gift (<i>ngapari</i>), fine (<i>mari</i>) and traditional fine (<i>labi</i>) may not be recovered.</p> <p>All matrimonial assets are divided according to the manner in which they were acquired at the time of the marriage, the principle being that each spouse retains what he or she brought to the family. The woman is allowed to retain land acquired during the course of the marriage. The woman will, however, not be allowed retain clan land.</p> <p>The children belong to their father. Therefore, the children will go with their father. However, if dowry was not paid in full, they will go to the maternal uncles. However, the father or his relatives may redeem them at a later date if they so desire.</p> <p>When the children grow up, their mother may come back, or the children may invite her to come back and live with them.</p>
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1. FAMILY LAW					
b.	Divorce	Custody/ Division of Assets			
Baka	<p>Divorce is the complete breakdown of a marriage relationship. It extinguishes the obligations of the spouses to each other and to their extended families. Divorce is undesirable and strenuous efforts are usually made to rescue the marriage. According to the customary laws of the Baka, the following are the common grounds for divorce:</p>	<p>Where divorce is initiated by the wife, half of the dowry is returned to the husband. Breast feeding money is not returned, whatever the circumstances of the case. There is no return of dowry if the couple was blessed with children. Dowry is not repaid where the divorce proceedings are initiated by the husband.</p>			
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1. FAMILY LAW

b.	Divorce	Custody/ Division of Assets				
Wa'di	<p>Divorce signifies the complete breakdown of marriage. It results in dissolution of the marriage. Divorce occurs where all the marriage obligations are at an end. It is usually discouraged and is seen as a last resort.</p> <table border="1" data-bbox="505 621 932 1161"> <thead> <tr> <th data-bbox="505 621 725 716">Reasons which may be advanced by the husband</th> <th data-bbox="725 621 932 716">Reasons which may be advanced by the wife</th> </tr> </thead> <tbody> <tr> <td data-bbox="505 716 725 1161"> <ul style="list-style-type: none"> ● Continuous adultery. ● Theft. ● Sexual relations with a close relative of the husband. ● Barrenness. ● Laziness and carelessness. ● Failure to perform her obligations to her husband's relatives. </td> <td data-bbox="725 716 932 1161"> <ul style="list-style-type: none"> ● Sexual relations between the husband and a close relative of the wife. ● Continuous assaulting or beating of the wife. ● Impotence. ● Laziness, especially failure to build a house or feed the family. </td> </tr> </tbody> </table> <p>Divorce is not easily granted, especially where the couple was blessed with children.</p> <p>Attempts are usually made to resolve the dispute at the family level with the assistance of the marriage chairmen. The matter is referred to the chiefs' courts upon failure by the chairmen to resolve the matter.</p> <p>Divorce matters are determined by the 'B' Court under the head chief.</p> <p>There is no return of dowry, unless where no child or children were born during the marriage. The spouse initiating the divorce is required to pay for the divorce certificate.</p>	Reasons which may be advanced by the husband	Reasons which may be advanced by the wife	<ul style="list-style-type: none"> ● Continuous adultery. ● Theft. ● Sexual relations with a close relative of the husband. ● Barrenness. ● Laziness and carelessness. ● Failure to perform her obligations to her husband's relatives. 	<ul style="list-style-type: none"> ● Sexual relations between the husband and a close relative of the wife. ● Continuous assaulting or beating of the wife. ● Impotence. ● Laziness, especially failure to build a house or feed the family. 	<p>All matrimonial assets are divided by the court. Each party retains property acquired on their own. Assets acquired jointly are divided equally. Farm produce is divided equally while the woman always retains the kitchen items. The plot with its buildings and any other structure belongs to the owner who is the husband in most cases. However, the wife retains land acquired by her.</p> <p>The children belong to their father. If dowry was not paid, the children are placed in the custody of the maternal uncles. The father is at liberty to buy his children from their maternal uncles.</p>
Reasons which may be advanced by the husband	Reasons which may be advanced by the wife					
<ul style="list-style-type: none"> ● Continuous adultery. ● Theft. ● Sexual relations with a close relative of the husband. ● Barrenness. ● Laziness and carelessness. ● Failure to perform her obligations to her husband's relatives. 	<ul style="list-style-type: none"> ● Sexual relations between the husband and a close relative of the wife. ● Continuous assaulting or beating of the wife. ● Impotence. ● Laziness, especially failure to build a house or feed the family. 					

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1. FAMILY LAW		
b.	Divorce	Custody/ Division of Assets
Jur-Bel	<p>Divorce marks the end of a marriage between a husband and a wife. It is not a desirable event in the life of the couple but is accepted when all attempts to rescue the marriage have failed.</p> <p>Divorce should only occur where the customary law authorities have failed to resolve the dispute. Members of the family initially attempt to resolve marital disputes. The parties may refer the dispute to the traditional authorities where it cannot be resolved by the family.</p> <p>The role of the traditional institution in most cases is to mediate between the two parties and assist them in arriving at a solution on their own. However, when the two parties fail to arrive at a resolution, the traditional institution is compelled to make a decision in favor of the side that has presented more convincing evidence.</p> <p>Grounds for divorce</p> <ul style="list-style-type: none"> ● Break down in the relationship between the wife and husband. ● Disagreements in relation to household responsibilities. ● Failure of the wife to take care of the children and to cook. ● Failure of the wife to relate to the in-laws in a respectful manner. ● Failure of the husband to respect the parents and relatives of the wife. ● Failure of the husband to pay the balance of the dowry for a considerable period despite repeated reminders by the in-laws. ● Where it is discovered that the husband and wife are related by blood. ● Incapacity of one of the parties to bear or produce children. ● Acts of adultery by the wife. ● Repeated acts of wife beating without acceptable reasons. 	<p>The children will remain with the father if dowry was paid in full. If dowry was not paid, the children will be taken by the wife.</p> <p>Dowry will be repaid if the wife did not bear children.</p> <p>The matrimonial assets will be divided according to the manner in which they were acquired by the couple. Each party will retain property acquired by them. The family house and family land will be taken by the husband.</p>

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1. FAMILY LAW

b.	Divorce	Custody/ Division of Assets
Azande	<p>Reasons which may be advanced by the wife:</p> <ul style="list-style-type: none"> ● Drunkenness accompanied by domestic violence. ● Impotence. ● Sexual activity with close relatives of the wife. ● Inability to provide for the family. ● Abandoning the wife for a year or more with no justification. ● Theft/thieving by the husband. ● Engagement in the practice of witchcraft. ● Failure to respect his in-laws. <p>Reasons which may be advanced by the husband:</p> <ul style="list-style-type: none"> ● Repeated acts of adultery. ● Sexual affairs with the relatives of the husband. ● Failure to discharge the house chores. ● Failure to respect and take care of the relatives of the husband. ● Drunkenness of the wife. ● Theft/thieving by the wife. ● Engagement in the practice of witchcraft. <p>The husband will normally write a letter to the woman intimating the divorce and asking the woman to leave his house. Where the wife is of the view that there is an irreconcilable dispute in the marriage, she first informs the relatives of the husband for the purposes of securing a solution. Where a solution cannot be found, the matter is forwarded to the chief. If the woman disputes the contents of the husband's letter and intends to contest the divorce, she will report the matter to the chief. The chief then invites the two parties to appear before him to explain the source of the conflict. The two parties will thereafter be told to go home and try to resolve their problem within a month. If no amicable settlement is reached within one month, a divorce will be declared by the chief by a written letter, which is given to both parties.</p>	<p>All assets are divided in accordance with the manner in which they were acquired. Properties and assets acquired jointly are divided equally, including farm produce. The wife retains land acquired in her own right. The children of the marriage belong to the husband. If dowry was not fully paid, the children will be put in the custody of the maternal uncle. However, the husband has an option to buy his children from the maternal uncles. Children under the age of 7 years stay with the mother while children of 8 years and above are allowed to stay with the father.</p>

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1. FAMILY LAW	
c.	Out of Wedlock Pregnancies
Toposa	<p>Illicit sexual intercourse between lovers may result in pregnancy. When this is brought to the attention of the woman's family, the man will be beaten and a fine of 7 cows imposed on him. One of the 7 heads of cattle must be a bull which will be speared for a cleansing rite.</p> <p>Impregnating a girl does not automatically lead to marriage. Both families must accept the marriage. In the event that the proposed marriage is declined, the child from the pregnancy will be taken to the family of the woman and she may marry someone else depending on the choice of her family.</p>
Lotuko	Not discussed in data.
Lango (Dongotono, Lokwa, Logir, Katebo, Imotong, Lorwama, Lotuko sub-tribes)	<p>Pregnancy outside wedlock is not permitted under the laws of the Lango. Different Lango groupings have different ways of dealing with this.</p> <ul style="list-style-type: none"> • Katebo: Fine of 1 cow or 15 goats, and 1 goat for a cleansing ritual. The child goes to the husband. The wife also goes back to her husband. • Lotuko: Fine of 1 cow or 15 goats, and 1 goat for a cleansing ritual. The child goes to the husband, and the woman and husband are separated. • Dogontono: 4 cows and a goat. A bull is also required for the uncles of the woman. <p>One way of proving that a married woman was impregnated by a person other than the husband is if she falls pregnant while her husband is away. If a man impregnates another woman, the wife has no cause of action since the husband had paid bride price. A married woman is regarded as the property of the husband and she is 'voiceless because of the cows'.</p>
Lopit	<p>Where an adulterous relationship results in pregnancy, one cow and one bull is paid to the husband. A bull is paid to the parents of the woman.</p> <p>A child born of an adulterous relationship will remain with the family of the woman.</p>
Balanda Bviri	<p>Pregnancy outside marriage is considered a serious trespass to the family of the woman. Where a man impregnates a woman, the father of the woman will send his daughter to the house of the man's father after confirmation that the woman was impregnated by the man. The woman stays in the house of the man until she gives birth.</p> <p>Failure to pay the fine will cause the father of the girl to take his daughter back. The woman may then marry another man, and the man who impregnated her loses his rights to the child. The man who marries her will take care of the child, and if it is a girl, he will benefit from part of the dowry paid when she gets married.</p>
Bongo	<p>Pregnancy outside wedlock is regarded as 'passing through the window', to surreptitiously get children from a woman, without performing the require marriage formalities. This typically leads to quarrels between the perpetrator and family of the girl. In the case of pregnancy before marriage, the parents of the woman retain the child, until the relevant fine and dowry are paid in full.</p> <p>Where the woman is married, pregnancy outside wedlock will be treated in the same manner as adultery. The husband is at liberty to divorce or forgive the woman. A married woman who gets pregnant outside wedlock may be divorced, or tolerated, depending on the will of the husband.</p> <p>Where the woman is unmarried, the man responsible for the pregnancy will be required to marry her. Where marriage is not contemplated, the child will be taken by the family of the woman. In some cases, the woman may be married by the elderly son of the chief.</p>

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1. FAMILY LAW

c.	Out of Wedlock Pregnancies
<p>Ndogo</p>	<p>Pregnancy outside marriage is not acceptable under Ndogo customary law. The person responsible for the pregnancy is required to pay compensation to the family of the woman. He is also required to take the woman to the house of his parents until she gives birth. Only after delivering the baby is she accepted into her parents' home.</p> <p>Pregnancy outside wedlock is a crime, resulting from adultery. The male lover and married woman who engage in adultery are both guilty. The crime of pregnancy outside wedlock also occurs when a married man impregnates another woman.</p> <p>The man involved in the adultery is imprisoned in the house of the chief, and subjected to hard labour, though this is changing. The woman may also be detained in the house of the chief, until the case is finalized. The husband may also send the woman to her parents' home.</p> <p>Where the man accepts liability, he is required to pay compensation to the husband, for the embarrassment and humiliation caused. Compensation is in the form of money and increases where the adultery is repeated. The adulterers are also required to pay a fine to the court. Where the woman conceives a child as a result of the infidelity, the child belongs to the husband of the woman.</p>
<p>Mundari</p>	<p>Accidental pregnancy is another door to marriage. Marriage is most predictable when a boy impregnates a girl. If the two families are in agreement, marriage will be concluded subject to payment of applicable fines for trespass and dowry.</p> <p>This is the act of conceiving of a child outside marriage. Pregnancy outside wedlock is a crime under the customary laws of the Mundari. It is worse if it happens to a married woman. Pregnancy outside wedlock in most cases leads to divorce for married couples and the illegitimate child remains with the husband. Pregnancy outside wedlock for a married woman is punished according to the laws dealing with divorce.</p> <p>Where the woman is unmarried, the culprit will be imprisoned for a term not exceeding 6 months or required to pay a fine of 3 cows and 1 bull per month, for a period of 6 months, to the customary law court. The wrong doer will also pay 4 cattle (3 cows, 1 bull), 1 sheep and 1 goat to the father of the girl as compensation and <i>ruke (kasur beid)</i>.</p>
<p>Avukaya</p>	<p>This is a situation where a married woman conceives a child outside marriage.</p> <p>This crime is not tolerated under the customary laws of the Avukaya. Pregnancy outside marriage is treated in the same manner as adultery. The fines, compensation and punishment related to adultery are applicable to pregnancy outside wedlock.</p> <p>Closely related to pregnancy outside wedlock, is the impregnation of a woman to whom a man is not married. In this case, the guilty man is required to pay <i>kasur baid</i>. He may also marry the woman (if he is willing), subject to the payment of dowry. If the man denies paternity, or does not wish to marry the woman, the child will be taken by the father of the woman.</p>
<p>Moru</p>	<p>This is a situation where a married or unmarried woman falls pregnant outside marriage. If the woman is married, the matter will be dealt with in the same manner as adultery.</p> <p>Where the matter concerns an unmarried woman, the man will be required to marry her, subject to the payment of fines and dowry. Where the man denies paternity, no further action is taken. The child will belong to the family of the woman and the man is warned not to contact the woman and the child.</p>
<p>Baka</p>	<p>Marriage may arise by default in the event of pregnancy. Where a man impregnates a woman during the course of their courtship, marriage may take place with the agreement of the parents, subject to the payment of a fine for 'trespassing' (<i>kasur baid</i>). The amount payable is not fixed but negotiable.</p>

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1. FAMILY LAW	
c.	Out of Wedlock Pregnancies
Wa'di	<p>Where a man and woman decide to elope the act carries a penalty; the penalty for breaking into some body's house (<i>kasur baid</i>) without his permission is paid in cash to the father of the woman. The man's parents usually seek an amicable settlement by proposing a proper marriage. The matter is usually settled by the payment of <i>kasur baid</i> and dowry. In case the bride is pregnant, the payment of dowry will be suspended until she puts to birth.</p> <p>Where a woman conceives a child outside her marriage. According to Wa'di community practice, pregnancy outside wedlock is only recognized as a crime where the woman is married and is under the laws governing adultery. Where the pregnancy is in relation to an unmarried woman, it is merely regarded as a civil wrong.</p> <p>When the perpetrator of the pregnancy is known, the two families will meet to resolve the matter amicably. Marriage will normally be the outcome of the negotiations which are concluded after the payment of a fine and dowry.</p> <p>The issue of marriage does not arise where the man disputes paternity or the man responsible is not known. Under such circumstances, the child resulting from the pregnancy belongs to the father of the woman.</p> <p>The money paid in fine by the man responsible for the pregnancy is handed to the brothers of the husband.</p>
Jur-Bel	Not discussed in data.
Azande	<p>Pregnancy outside wedlock is a crime which is punishable. It is regarded as adultery and may result in divorce.</p> <p>Where an unmarried woman falls pregnant, she is asked to name the person responsible for the pregnancy. The two families will thereafter hold a meeting to resolve the matter. Where the man accepts responsibility, the woman is left to deliver at her home, while the man is asked to construct a house for her since it is assumed that she is his future bride. After delivery, marriage settlement takes place consequent to the acceptance of a marriage proposal. In some instances, the man accepts the child but not the mother. In this regard, he is required to buy the child. Where the putative father denies paternity, the illegitimate child belongs to the father of the woman.</p> <p>Compensation of dowry to the husband by the perpetrator (the man who commits adultery). In addition, if the adulterous act was committed on the husband's property, the perpetrator is required to pay the price of the given property. For instance where the adultery was committed on the husband's bed, the adulterer will be required to pay compensation in the value of the bed.</p> <p>A fine will be levied on the adulterous couple (both man and woman) by the chief presiding over the case. There is no standard fine</p> <ul style="list-style-type: none"> ● Imprisonment - the perpetrators (both woman and man) will be required to work at the chief's home for a period not exceeding 3 months where the case is heard in an 'A' Court, 6 months in respect of a 'B' Court and 1 year in respect of a 'C' Court. Imprisonment may be accompanied by a fine. ● The woman remains with her husband and any child resulting from the adulterous relationship remains with the husband. However, the biological father of the child may with the consent of the husband, reclaim paternity of the child upon payment of a sum of money. <p>The man will however be required to pay <i>yongo</i> , (fine for breaking into the house), to the girl's father, at an amount to be determined by the aggrieved father or his relatives.</p>

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1. FAMILY LAW

d. Arranged Marriage of A Minor

Toposa	Not indicated in data – “parents force their daughters to marry men of their choice. Should a woman reject the choice of her parents, she will be beaten until she accepts.”
Lotuko	Not indicated: selection of a husband by a family for their daughter. A rich elderly man is normally selected. The woman is not expected to defy the decision of her parents.
Lango (Dongotono, Lokwa, Logir, Katebo, Imotong, Lorwama, Lotuko sub-tribes)	Not discussed in data.
Lopit	There are no forced marriages among the Lopit even though this practice existed in the past (age of marriage not discussed in data).
Balanda Bviri	In some cases, the woman will be betrothed from the time of birth, or during pregnancy by placing an object (branch of tree) on the roof of her mother’s house while she is a baby. At the ages of between to 3-6 years, the girl starts being acquainted with her future husband through occasional visits from him.
Bongo	<p>Marriage may be contracted by booking a girl at birth. The booking is performed by the father of the boy by placing an object at the house of the mother of the newly born baby girl. When the girl reaches the age of three years, the future husband will commence visitation of her mother’s house to establish a bond. Such visitations represent an indication of his interest in the girl as a future bride. Sexual activity between the girl and the future husband is prohibited during this period. It is only permitted after all marriage processes have been finalized. When the girl reaches marriageable age, payment of dowry will be effected.</p> <p>The consent of the woman is not required in most types of marriages. In relation to marriage by booking, consent cannot be obtained because the child is of a tender age, and is incapable of forming consent. In relation to betrothal, the consent of the woman is also not obtained, as she is expected to accept the spouse that her parents have chosen for her.</p>
Ndogo	<p>Arranged marriage takes place where the parents of the man assume the responsibility of securing a wife for their son, by betrothing a woman from another family. Betrothal may take place while the boy or the woman is still young or when they attain adulthood. Sometimes, this occurs while the woman is still a baby.</p> <p>In the case of arranged marriages, the consent of the man and the woman are not required. Consent is granted by their parents. It is unacceptable to reject the choice of one’s parents. However, this is gradually changing.</p>
Mundari	Marriage is the union of a man and woman to form a family with the purpose of producing children. It takes place between matured male and female who are not related by blood in any way.
Avukaya	Not discussed in data.
Moru	Another formal method of contracting marriage is through arranged marriages wherein the parents of the bridegroom and the bride arrange for their children to get married. The consent of the children is, however, obtained before the marriage is concluded.
Baka	<p>The future bride is normally booked at the tender age of 10 years or below. The booking is done by placing a ring on the finger of the girl. Those who do the booking are called <i>musanda</i>. Green leaves or vegetables (<i>soro</i>) are placed on the site where the girl’s umbilical cord was buried.</p> <p>When the girl is about 20 years of age, the two families convene a meeting and agree on a date for the payment of dowry and the finalization of other marriage formalities. During the payment of the dowry, traditional items are given to the aunt of the girl, while the breastfeeding money is paid to the mother of the girl. Dowry is in the form of items like <i>biri</i> (hoes).</p>
Wa’di	The age of marriage is between 18 to 45 years.
Jur-Bel	Early marriage, arranged marriage or marriage by booking occurs where the father of a boy goes to a family of his choice to book a young girl at birth for his son by placing an object on the roof of the house of the baby’s mother. Other marriage arrangements like the payment of dowry will be pursued when the girl attains the age required for marriage.
Azande	The bride and groom should be adults (18 years and above). The consent of the woman is formally requested in the presence of the two families. The marriage formalities commence where the woman consents to marriage.

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1. FAMILY LAW	
e.	Polygamy
Toposa	Unclear from the data but seems to be permitted ("The son bears the expenses relating to the marriage of his subsequent wives.").
Lotuko	Not discussed in data.
Lango (Dongotono, Lokwa, Logir, Katebo, Imotong, Lorwama, Lotuko sub-tribes)	Not discussed in data.
Lopit	Not discussed in data.
Balanda Bviri	Customary law permits a man to marry a maximum of two wives. In certain cases, however, a man may be allowed to go beyond the maximum threshold.
Bongo	Not discussed in data.
Ndogo	Not discussed in data.
Mundari	Not discussed in data.
Avukaya	Not discussed in data.
Moru	Not discussed in data.
Baka	Not discussed in data.
Wa'di	Not discussed specifically, but seems to be present given data ("Marriage is a union of a man and woman or women.").
Jur-Bel	Not discussed in data.
Azande	Not discussed in data.

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1. FAMILY LAW

f.	Widow Inheritance
Toposa	<p>Wife inheritance does not exist among the Toposa since a woman is married to her husband forever. When the husband dies, the wife can co-habit and bear children with one of the brothers of the deceased husband provided she is not forced to co-habit with any of them. The wife selects a man from amongst the brothers of the deceased husband to co-habit with and to 'produce' children. The wife will remain, however, married to her deceased husband in absentia.</p> <p>Any man (besides brothers) who impregnates the widow will be fined 7 cows.</p>
Lotuko	<p>The wife of the deceased will normally be given the opportunity to choose to have children with any of the brothers of the deceased. The widow is not compelled to make a selection from among the brothers of the deceased husband. She may select any other man as long as he hails from the clan of her deceased husband. Any children born out of the new relationship belong to the deceased husband. The 'new husband' will not inherit the properties of the deceased nor will he acquire any rights over the properties of the widow.</p>
Lango (Dongotono, Lokwa, Logir, Katebo, Imotong, Lorwama, Lotuko sub-tribes)	<p>The wife is inherited by a close relative. This is done with the consent of the wife. The brother of the deceased takes full responsibility of the widow and her children.</p>
Lopit	<p>Not discussed in data.</p>
Balanda Bviri	<p>The widow of the husband is inherited by a younger brother of the husband, who is selected by the wife. She usually selects a brother with whom she has a cordial relationship. The children are taken care of by the new husband. However, the children, including those that are a product of the new marriage, will bear the name of the deceased husband.</p>
Bongo	<p>The wife is given an opportunity to select from among the deceased's brothers to inherit her. Where the brothers contest who should inherit her, they will each be required to choose a symbol (arrow, spear, and knife). The wife is called upon by relatives to the symbol of the brother she prefers. She normally chooses the person with whom she had a good relationship when the husband was alive. The person whose symbol is chosen becomes the legitimate successor of the deceased, and without any further claim from others. The children of the deceased are provided for and maintained by the brother who inherits the wife.</p>
Ndogo	<p>The wife of the deceased may marry one of his surviving brothers selected by her. The selection is made without any coercion from the family or traditional authorities. The children that are born out of the new marriage will belong to the new husband.</p>
Mundari	<p>The widow is inherited if she is still young. She chooses a person to inherit her from the brothers of the deceased husband. The elderly son of the deceased may also inherit his stepmother based on his good behavior and sense of responsibility. In some cases the widow can get married outside the family if the brothers of the deceased husband are not of good behavior, provided that the new husband comes from the same clan.</p> <p>Where the widow marries outside the clan, the new husband is required to pay back the cattle paid by the deceased husband's family, and the children produced thereafter belong to the new husband.</p> <p>Where the widow marries a person outside the family of the deceased, the children will remain in the family of the deceased.</p>
Avukaya	<p>Widow inheritance is practiced in Avukaya culture, (though the idea is dying out these days) provided that the widow has children and is of good character. The widow is allowed to choose another man from among the brothers or other close male relatives of her deceased husband. Widow inheritance is used by the family of the deceased, to retain their children in the family. The children born thereafter belong to the biological father – the relative of the deceased who inherited the widow.</p>
Moru	<p>The wife of the deceased is normally taken over by one of the brothers or close relatives of the deceased selected by her. The children born of the latter marriage belong to their biological father.</p>
Baka	<p>In the past, the wife of the deceased will be inherited by his brothers but the practice is very rare these days due to fear of HIV/AIDS. Where the widow of a man is inherited, the children born after the deceased will belong to their biological father.</p>

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1. FAMILY LAW	
f.	Widow Inheritance
Wa'di	The widow is inherited and married by one of the brothers or relatives of the deceased. All children born into this new marriage will belong to the new husband.
Jur-Bel	The widow will resume her normal duties, but will not be inherited before a period of 2-3 years from the time of the death of her husband. At the end of the 2-3 years, the elders consisting only of relatives of the deceased will convene a meeting to discuss the inheritance of the widow. The clan elders will then select one of the brothers of the deceased to inherit the widow.
Azande	Widow inheritance was previously practiced. The children born to the male relative who inherited the widow belong to him and not to the deceased husband. Widow inheritance takes place with the consent of the widow. The practice of widow inheritance is on the decline due to the risk of sexually transmitted diseases such as HIV/AIDS.

Table ends.

2. LAWS OF WRONGS AND OBLIGATIONS (CRIMINAL AND CIVIL)	
a.	Rape
Toposa	<p>Rape occurs when a man forces a woman to have sexual intercourse with him without her consent. Rape is prohibited and is considered a violation of the highest magnitude to the victim and her family. 3 cows will be paid to the family of the victim as compensation by the Perpetrator. In addition, the perpetrator must provide a goat for cleansing purposes. Rape cases may be settled under the customary law system. The Paramount Chief considers the evidence and determines whether the parties can resolve the case by customary law. Where the parties are unable to settle the matter under the customary law system, the matter is referred to the formal courts.</p> <p>Marital rape does not exist in Toposa customary law. While forceful sexual intercourse is discouraged when the wife is tired, this does not attract any penalties since it does not amount to rape.</p> <p>If pregnancy results from rape, a fine of 7 cows will be paid to the husband of the victim. One of the 7 cows must be a bull which is killed with a spear as a cleansing ritual. Where the victim is a girl, 3 cows are paid and a bull is killed with a spear as a cleansing ritual.</p>
Lotuko	<p>Rape is common among the Lotuko but it is considered a serious violation of the victim and her family. Rape is normally equated with death. The offender will normally be required to pay a fine which varies from one area to another. The fine may range from 1 to 13 goats, or 2 cows, to be paid to the husband or family of the victim as the case may be. The <i>mwonyomiji</i> will also force the offender to provide a goat for a cleansing ritual.</p> <p>Where the rape leads to death, the guilty person will be required to pay the bride price to the husband or father of the victim as the case may be, as well as for her funeral expenses.</p> <p>In some cases, more especially where the guilty person does not have cows, a girl child is provided as compensation for the death of the victim. This will, however, depend on the negotiations between the parties involved.</p> <p>These days it is very common for rape cases to be referred to the formal court system (to the first grade judge). A conviction usually results in a sentence of 7 years imprisonment.</p>
Lango (Dongotono, Lokwa, Logir, Katebo, Imotong, Lorwama, Lotuko sub-tribes)	<p>Rape is a serious offence under the customary laws of all the Lango groups. There are, however, slight variations in the punishments and fines that are imposed on the culprits. In some cases, no punishment is imposed. A cleansing rite is performed instead. Among the Lokwa, rape is compensated by paying 1 cow to the family of the victim. In cases of attempted rape, 2 goats are paid as a fine. If a man rapes a married woman the punishment in the formal courts of law is 7 years imprisonment, but the chiefs sometimes imprison the perpetrators for 2 years only. The man must also pay the woman 3 cows and a goat for a cleansing ritual. If a woman falls pregnant as the result of rape, the man must pay an additional 15 goats plus 1 goat for the cleansing ritual. The child will belong to the husband. Where rape results in the death of a woman the man must pay 12 cows to her husband, a goat for the cleansing ritual, and the cost of the funeral.</p> <p>A man cannot rape his wife as marriage includes consent to sexual intercourse. There is no provision in the law relating to the rape of men by women.</p>

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2. LAWS OF WRONGS AND OBLIGATIONS (CRIMINAL AND CIVIL)	
a.	Rape
Lopit	<p>Rape is a serious abomination among the Lopit, and is equated to killing in terms of seriousness. It therefore attracts a very serious punishment. The rapist is required to pay 4 cows to the family of the woman. The amount can be higher, ranging from between 5 to 10 cows depending on the clan, and the gravity and effect of the crime on the family. Sometimes, a rapist is killed outright by the relatives of the victim. Such killing does not amount to an offence since rape is equivalent to killing.</p> <p>No marriage is allowed to proceed from a rape case. The rapist will not be allowed to marry from the clan or area of the victim as no woman will agree to be married by a rapist. A goat will be slaughtered for a cleansing rite at the site where the rape took place. The stomach and intestines will be poured at the site of the rape. If this is not done, it is believed that the future children of the rapist and the victim may experience abnormalities and misfortunes.</p>
Balanda Bviri	<p>Rape is a serious sexual offense that often causes fights between the families or clans of the victim and the rapist. Rape is regarded to be on the same level of gravity as murder. Rape cases are dealt with by traditional authorities, though they are sometimes heard in the modern courts. Women are incapable of raping men. Women are only able to entice men to engage in sexual activity. This does not amount to rape. Where a husband forces his wife to have sexual intercourse with him while he is under the influence of alcohol, this will not amount to rape.</p> <p>Rape is proven to have taken place by eyewitnesses who were present at the scene. It may also be proved through the presence of physical harm on the body of the victim, at the time of reporting the rape. Should the rapist reject liability, the parents of the victim will seek the intervention of witchcraft to force him to tell the truth. Sometimes the rapist is caused to swear before the court. In this vein, it is believed that he will be visited by sickness and misfortunes should he fail to tell the truth. When the rapist confesses to having committed the crime, he will then be dealt with by appropriate authorities.</p> <p>Traditionally, rape can result in the offender being killed on the spot, by the relatives of the victim. Where the victim is not married, the offender may be required to marry her. These days, a person convicted of rape may be sentenced to 12 years imprisonment. Traditional authorities however impose fines and imprisonment. The level of the punishment depends on what the chief decides. The offender is required to pay compensation, for physical and social harm done to the victim and her family. The offender is required to pay a fine to the chief, or the court where the matter has is determined. Where the rape results in the death of the victim, it is treated as a case of murder, and the offender will be killed or required to give his sister to the family of the victim, depending on the agreement reached by the two families or clans. If the victim was pregnant and the child died in consequence of the rape, the offender is charged with the murder of the victim and the unborn child. In such an event, the offender may be killed, depending on the agreement reached by the two families. Rituals may be performed to repair the ruined relationship between the two families.</p>
Bongo	<p>Bongo customary law defines rape as a brutal sexual crime. The offender may be killed if he is caught committing the rape.</p> <p>In the past, the offender would be killed on the spot. Where the rape has not been made public, the culprit will be forced to marry the victim. The law does not specify the relevant compensation, since nobody would accept compensation for rape. Where the rape leads to death of the victim, the culprit will be killed in retribution.</p>
Ndogo	<p>Rape is an act, whereby, a man forces a woman to have sexual intercourse with him, without her consent. It is a crime of the highest degree, and is usually equated with murder. The perpetrator may even be killed, in the heat of passion. There are circumstances wherein sexual intercourse between a husband and a wife will not amount to rape even though such intercourse was forcefully obtained by the husband. For instance, it does not amount to rape where a husband forcefully has sexual intercourse with his wife while he is under the influence of alcohol. Rape can be proved by the offender being caught in the act, where a woman reports the incident to the authorities, or bodily harm or bruises on the person of the victim.</p> <p>In recent times, rape is dealt with by the formal courts, which provides for a prison term of 12 years. The offender is also required to pay compensation, for physical and social harm, caused to the victim and her family. The offender is forced to marry the victim, where the incident is discovered much later on, or where the rape results in pregnancy. The offender is forced to marry the victim because her worth is diminished in the eyes of the society, and no other man may be interested in marrying her. Where rape causes the death of the victim, the matter is treated as murder, and the offender will be killed or will be required to give his sister to the victim's family, depending on the agreement reached by the two families or clans. Where the victim was pregnant, and the child dies in the process, the offender will face a charge of murder in respect of the death of the unborn child.</p>

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2. LAWS OF WRONGS AND OBLIGATIONS (CRIMINAL AND CIVIL)

a.	Rape
Mundari	<p>Rape can only be a way of looking for a wife by the man committing it. If rape takes place, the families of both sides will meet to conclude marriage arrangements. If marriage is allowed to proceed, a goat will be slaughtered to celebrate the agreement and peacemaking. Mundari customary differentiates between a married rapist and an unmarried rapist. An unmarried rapist is punished with leniency since he may have been looking for a wife in the process of rape.</p> <p>Payment of fine (<i>ruke or kasur beid</i>); 5 cattle (4 cows + 1 bull) and 1 goat to the husband of the wife/victim by the rapist for purification of the house. 6 months imprisonment without option of paying a fine for a married rapist and 6 months with option to pay fine to court for an unmarried rapist. The payment is done to the customary law court presiding over the matter. The criminal pays 4 cattle (3 cows and 1 bull) to the girl's parents if the victim is unmarried. However, this does not apply where rape leads to marriage. Where the rape results in pregnancy but does not lead to marriage, the child will belong to the father of the woman.</p>
Avukaya	<p>Rape occurs where a man forces a woman to have sexual intercourse with him against her will. Rape is a very serious crime in the customary laws of the Avukaya. It is normally equated with murder. The perpetrator is required to pay compensation in monetary terms to the relatives of the woman, where the woman is married, and to the father of an unmarried girl or woman. The amount of compensation is not fixed and is normally determined by the father of the girl, or the husband of the woman, as the case may be. The perpetrator will be sent before the statutory court. In some instances, the relatives of the victim may demand that the perpetrator marries her since she may no longer be considered for marriage by any other man. If the rape leads to pregnancy, the child will belong to the husband or father of the victim, as the case may be. Cases of rape are normally dealt with by the statutory courts.</p>
Moru	<p>Rape is among the gravest of offences in Moru customary law and is usually referred to the police and the formal courts. Trial and punishment is handled by the formal courts, unless the victim is an unmarried girl, and her relatives demand that the perpetrator marries their daughter. In such an event, the usual marriage procedures will take place. However, fines will be imposed, and the amount will depend on negotiations between the two sides.</p> <p>Trial and punishment is handled by the formal courts, unless the victim is an unmarried girl, and her relatives demand that the perpetrator marries their daughter. In such an event, the usual marriage procedures will take place. However, fines will be imposed, and the amount will depend on negotiations between the two sides.</p>
Baka	<p>Rape is a type of sexual assault, and includes one or more persons, having sexual intercourse with another person, without that person's consent. Rape includes having sexual intercourse with an insane person. Rape is very rare among the Baka. Rape is usually reported to the police. Rape cannot take place within marriage. Therefore, the offence of rape is not committed where a husband forces his wife to have sexual intercourse with him. Such incidents are not usually reported. This is because sexual intercourse forms part of marital obligations.</p>
Wa'di	<p>Rape is the forceful engagement in sexual intercourse with a woman by a man without her consent. Rape is a very serious crime. Forceful sexual intercourse of a woman by her husband, without her consent, is not considered as rape. Such cases are very rare and are hardly made known. However, should they arise, they are dealt with by the couple concerned behind closed doors. Rape is considered a crime of the highest order and is always handled with care, or handed over to the police, hospital and a judge of the formal courts. Rape does not fall within the jurisdiction of customary law courts.</p>
Jur-Bel	<p>The traditional court may impose a punishment of 12 years imprisonment. In addition to imprisonment, the rapist will be required to compensate the victim and her family for the damage and the social embarrassment caused. A rape victim is regarded to have been 'spoiled' by the offender. Therefore, the offender may be required to marry her.</p>
Azande	<p>Rape is a sexual assault, usually involving sexual intercourse, which is initiated by a male against a woman, girl or man without the consent of the latter. Forcible sexual intercourse with a wife by a husband is not considered rape, since it is not possible for one to rape his wife. The fine payable in respect of rape differs in respect of a married woman and an unmarried woman. Should the rape cause the death of the victim or her unborn baby, if she was pregnant at the time of the rape, the matter falls out of the jurisdiction of the customary law courts and should be handled by the police and the statutory courts. While rape is considered a very serious offence under Azande customary law, if the two sides decide to resolve the matter amicably, the police are usually not involved. The procedure required for establishing rape involves visitation of the crime scene by the nearby local authority, appearance of the victim to tell the story, and where appropriate, display of the affected parts of her body and tattered clothes. The matter will then be reported to the police and the hospital.</p> <p>Where a married woman is raped, the husband is compensated. In this regard, the dowry that the husband had paid is paid back to him by the perpetrator. In respect of an unmarried woman, compensation in cash determined by the relatives of the victim is paid to the father of the girl by the perpetrator. The offender may also be imprisoned at the home of the chief, where he performs manual work or pays a fine instead.</p>

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2. LAWS OF WRONGS AND OBLIGATIONS (CRIMINAL AND CIVIL)	
b.	Adultery
Toposa	<p>Adultery is defined as the act of having sexual intercourse with another person's wife. Adultery is considered a violation against the husband who has paid bride price for the wife.</p> <p>When adultery occurs, the perpetrator will be fined and required to undergo a cleansing ritual to rid the family of the abomination. In the past, the adulterer will be beaten and required to pay 7 cows to the husband of the woman. One of the 7 cows must be a bull which is to be killed with a spear as part of a cleansing ceremony. The stomach and intestines of the bull are smeared over the entire body of the perpetrator and the woman. It is also smeared on the bodies of the children of the family, to cleanse and protect them from disease and misfortunes. This procedure is also applied to the husband. Presently, no beating is done but the perpetrator is required to pay 7 cows.</p> <p>Any child born out of the adulterous relationship belongs to the husband.</p> <p>Adultery is applicable only to a wife. It is unheard of for a wife to catch her husband in the act of committing adultery.</p> <p>However, if a husband brings another woman to the house of his wife and has sexual intercourse with her there, it is believed that this will bring misfortune and sickness to the children and family. Therefore, a goat is slaughtered to cleanse the family from this misfortune.</p>
Lotuko	<p>Adultery is an offence of the highest order and is not tolerated in Lotuko customary law. Since the man has paid bride price and taken on hard work to get his spouse home, any person who commits adultery with her would have caused one of the biggest of violations. In some instances, adultery causes fights which may even lead to the death of the perpetrator.</p> <p>Any man who commits adultery with somebody's wife will be required to pay 2 cows or the monetary equivalent of SSP 1000 or SSP 1500 to the aggrieved husband. A goat must be slaughtered to cleanse the family of the woman who may suffer misfortunes as a result of the act of adultery. The goat is provided by the man involved in the adultery. As part of the cleansing ceremony, the stomach and intestines of the goat is smeared over the entire body of the wife and her children. The adulterous man is warned not to repeat the crime. Where the adulterous relationship results in pregnancy, the adulterous man is required to pay a fine of 2 cows. A child born out of the adulterous relationship will belong to the husband.</p> <p>The adulterous parties may also be killed. Such killing is accepted in Lotuko customary law.</p>
Lango (Dongotono, Lokwa, Logir, Katebo, Imotong, Lorwama, Lotuko sub-tribes)	<p>Adultery is a serious intrusion into the family of another person and can lead to deadly fights between the perpetrator and the husband of the woman. Cases of adultery are normally referred to the chief. The man involved in the adultery will be imprisoned for a year while the woman will be imprisoned for 6 months. The guilty man is supposed to provide cows as compensation to the husband of the wife, as well as a goat for cleansing purposes.</p> <p>Payment of compensation varies among the various sub-tribes. These are, Lotuko (a cow and a bull), Lorwama (2 cows), Imotong (1 cow), Katebo (4 cows), Logir (2 cows), Dongotono (1 cow) and Lokwa (1 cow).</p>
Lopit	<p>Adultery is a serious crime in Lopit customary law. Any person who commits adultery with another person's wife is required to pay 1 female cow to the aggrieved husband. Where the adulterous relationship results in pregnancy, a bull is paid in addition. A bull is paid to the parents of the woman. A woman who commits adultery is not punished since it is the man who made the criminal advances towards her. A child born of an adulterous relationship will remain with the family of the woman.</p>
Balanda Bviri	<p>Adultery is a serious sexual offense to the husband of a wife. It is considered humiliating and embarrassing to the parents of the wife, and the children of the marriage. Pregnancy is the most credible proof of adultery, especially where the husband has been absent from the matrimonial home for a considerable period of time.</p> <p>The man is detained in the house of the chief for some months, to work for the chief. Compensation, in the form of a hoe, foodstuffs, and elephant tusks, will be given to the husband, by the man who committed the adultery with his wife. The procedure of proving adultery includes catching the adulterers redhanded; accusation of the wife by her husband, which is brought for investigation to the relevant nearby traditional authority; or seeking the intervention of witchcraft. Adultery cases are dealt with at the level of the family, clan and chiefs' courts, with a right of appeal.</p>

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2. LAWS OF WRONGS AND OBLIGATIONS (CRIMINAL AND CIVIL)	
b.	Adultery
Bongo	The adulterous couple is imprisoned in the compound of the chief, for a period of up to six months, and subjected to hard labour. Mostly, only the man involved in the adulterous relationship is punished, since sexual advances emanate from men. The guilty man is also required to pay compensation to the aggrieved husband. The compensation is equated to the dowry paid by the husband. Attempted adultery is not punished. The guilty parties are usually told not to repeat the offence in the future.
Ndogo	Formerly, the man was detained in the house of the chief, for some months, where he performs labour for the chief. The man is also required to pay compensation to the husband of the adulterer. Compensation may take the form of money. The man is also required to pay a fine to the court.
Mundari	<p>This is an act of having sexual intercourse outside marriage between a married woman and a man other than her husband. It is an extra-marital situation, which is dangerous and may spark a serious fight between the parties involved. Adultery in this society applies to married woman only. Attempted adultery is dealt with by warning. For a married woman, adultery could always lead to divorce. An unmarried adulterer is treated with leniency in punishment compared to a married as the former may be looking for a wife.</p> <p>A married man committing adultery will be imprisoned for 1 year without an option of paying fine. An unmarried man will be imprisoned for 6 months with an option of paying a fine of 3 cows and 1 bull per month, for a period of 6 months. Adulterer pays <i>ruke/Kasur beid</i>; 4 cattle (3 cows, 1 bull) and 1 goat to the legal husband as compensation. The woman and the child will remain with husband.</p>
Avukaya	<p>Adultery occurs where a married woman engages in sexual activities with a man other than her lawful husband. Adultery is a serious affront to the husband and his family. If not resolved quickly, adultery cases normally lead to serious fights, which can even result in death. Attempted adultery is a situation where a married woman and another man attempt to have sex, but are interrupted before engaging in sexual relations, or a situation whereby a married woman reports sexual advances from a man who knows her to be married. Adultery also occurs where a married woman is overheard discussing love affairs with another man by her husband or his relatives. Adultery is proved by performing rituals like feeding a suspected woman with <i>olo</i> (potato-like plant) which is believed to cause miscarriage (<i>olia driga</i>), or causes her to give birth to an abnormal child, if her husband is not the father of the child. Adultery is also proved where a woman conceives a child, even though her husband has been away for a significant period of time. Adultery may also be proved where, though the husband is present, he has not come into contact with his wife for a significant period, or where she is caught red-handed with another man.</p> <p>Compensation of dowry to the husband, by the perpetrator (adulterer). The payment of such compensation is actually made to the brothers or father of the woman in question. This is due to the fact that the acceptance of money from the adulterer by the husband is considered a shame in the community. Imprisonment of the adulterer in the chief's house where he is subjected to hard labour for a period of 3-6 months. The woman in question and the illegitimate child remain with the husband should the adultery result in pregnancy. Attempted adultery is punished by a warning, caning and imprisoning/ working for the chief, for a period of not less than 7 days. The adulterers are required to pay customary fines to be determined by the chief.</p>
Moru	<p>A person found guilty of adultery will be required to pay compensation to the husband, in a sum that is equal to the dowry that was paid in relation to the marriage. However, the amount paid in compensation is then handed directly over to the relatives of the woman in question. The adulterer and the adulteress will each be imprisoned for a period not exceeding 6 months. The man will also pay a fine of SSP 50 to the court presiding over the matter. The woman in question and the illegitimate child remains with the husband, should the adultery result in pregnancy.</p> <p>Attempted adultery is punishable. The party who initiated the attempt will be given a stern warning not to repeat the wrongdoing in the future.</p>
Baka	<p>Adultery is sexual relations outside marriage between a married woman and a man other than her husband. Attempted adultery is hard to prove and, therefore, does not form part of Baka customary law.</p> <p>The guilty man will be required to pay to the aggrieved husband half of the dowry he paid to the family of the wife at the time of their marriage. The adulterer will be sentenced to serve 6 months imprisonment. The adulteress will be sentenced to serve 3 months imprisonment. The illegitimate child belongs to the husband if adultery leads to pregnancy. The adulteress remains with her husband, except if he decides to divorce her.</p>

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2. LAWS OF WRONGS AND OBLIGATIONS (CRIMINAL AND CIVIL)	
b.	Adultery
Wa'di	<p>Adultery is sexual intercourse between a man and a married woman other than his wife. Adultery is a crime and usually sparks serious quarrels if not handled immediately. The customary institution which presides over adultery cases in Wa'di community is the 'B' court which is presided over by the head chief. Any party aggrieved by the decision of the court may appeal to a formal court. Attempted adultery occurs where a married woman and a man other than her husband are about to engage in sexual intercourse but are interrupted before the act. The families of the man and woman come together to address the issue.</p> <p>Compensation of dowry to the husband by the perpetrator (adulterer). Imprisonment of the adulterer at the chief's house where he is subjected to labor for a period not exceeding 3 months. The woman in question, and the illegitimate child, remain with the husband should the adultery result in pregnancy. Attempted adultery is punishable by warning, caning and imprisoning/ working for the chief for a period of not less than 7 days. Adulterer and adulteress pay fines to customary court.</p>
Jur-Bel	<p>Adultery is the crime of having a sexual affair with a married woman. It can lead to serious fights between the families of those involved. The man is detained in the house of the chief for some months and subjected to hard labour. Compensation in kind (e.g. hoe, elephant tusks, and foodstuff) is paid to the husband of the wife. Due regard is given to the means of the offender. The intention is to make compensation affordable since prolonged delays in payment can escalate the problem.</p>
Azande	<p>Adultery occurs where a married woman and a man other than her husband engage in sexual intercourse. Attempted adultery occurs where a married woman and a man other than her husband attempt to have sexual intercourse, but are interrupted before commencing the act. Attempted adultery also occurs where a man makes sexual advances to a woman whom he knows to be married or where her husband or any of his relatives hears the woman talking about making love to another man.</p> <p>The adulterer pays compensation to the husband, in an amount equivalent to the dowry he paid in respect of the marriage, or half of the dowry in the case of attempted adultery. The two perpetrators are required to pay a fine to the court or are imprisoned. The amount is determined by the chief who presides over the matter. The woman and the children remain with the lawful husband. The punishment and compensation required, remains the same, whether or not the adultery leads to the pregnancy of the woman. Azande customary law has not yet evolved to deal with cases where adultery leads to the transmission of sexually transmitted diseases, such as HIV/AIDS.</p> <p>However, in case of the transmission other sexually transmitted disease, e.g. gonorrhoea or syphilis, the perpetrator pays for the cost of treatment of the infected person. Cases of adultery are heard in the executive chief's court ('A' Court), the court of the head chief or regional courts ('B' Court) and, in the event of an appeal the court of the paramount chief ('C' Court).</p>

2. LAWS OF WRONGS AND OBLIGATIONS (CRIMINAL AND CIVIL)	
c.	Other Sexual Offenses
Toposa	<p>Incest: When incest occurs, a bull is killed by a spear as a cleansing ritual. During the cleansing ritual, the man is told in very strong terms that he can never take his close relative as a wife.</p>
Lotuko	<p>Incest: Sexual activity is prohibited among persons who are related by blood. A person who commits incest is considered to be a wizard. When incest occurs, a goat will be slaughtered for cleansing.</p>
Lango (Dongotono, Lokwa, Logir, Katebo, Imotong, Lorwama, Lotuko sub-tribes)	<p>Pregnancy out of wedlock is not accepted under the laws of the Lango. (See above).</p> <p>Incest: Sexual activity is prohibited among persons who are closely related by blood. Incest may be intentional or accidental. When two persons commit incest without knowledge that they are related, no punishment will be imposed. However, a goat will be sacrificed to cleanse them from possible misfortunes that may befall them and their offspring. Any person who commits incest knowingly, will be lashed and warned not to repeat the offence.</p>

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2. LAWS OF WRONGS AND OBLIGATIONS (CRIMINAL AND CIVIL)	
c.	Other Sexual Offenses
Lopit	<p>Fornication: Fornication is a serious offence according to the customary laws of the Lopit. Sexual intercourse outside marriage is not common among the Lopit. However, should this occur, the guilty party must be seriously punished. The guilty man must pay a bull to the family of the woman. The man will have the choice of marrying the woman after following all the necessary marriage rites.</p> <p>Incest: Sexual intercourse between people related by blood is prohibited. No punishment is imposed for incest. However, the culprit must slaughter a goat whose bowels must be opened and poured in the area where this abomination took place. The meat of the goat should not be eaten but rather thrown away. If this ritual is not performed, the parties involved in the incest risk producing children who will be afflicted by abnormalities or failures in life. Any person who commits intentional incest will be banished and excommunicated from the family and the community.</p>
Balanda Bviri	<p>Fornication: The family of the girl will be careful in pursuing fornication cases, for fear of it becoming public and ruining the chances of the girl getting married. However, if the two are caught in the act, they are beaten, and in some cases, forced to get married to each other. The unmarried girl is beaten, or strongly reprimanded by her parents or relatives for allowing herself to be misused by a man before marriage. Where the girl was not engaged, the guilty man will be required to marry her, upon conclusion of normal marriage arrangements. Where the girl is engaged to another man, the guilty man will be required to refund the dowry paid by him.</p> <p>Incest: Incest is sexual relations between persons who are closely related by blood. Incest may cause death or other misfortunes to the couple and their relatives if no cleansing ritual is performed soon after it occurs. The two offenders will normally be told to enter into a hole, specifically dug for cleansing, and thereafter, be pulled out of it by members of the family. Cases of incest are resolved by the family and the elders, and never referred to the chiefs or modern courts.</p>
Bongo	<p>Incest: Incest is regarded as a curse, and it is believed that people who engage in incestuous relationships will die, if they do not admit to their transgressions. The punishment for incest is naming and shaming the perpetrators in public.</p>
Ndogo	<p>Fornication: The family of the girl deals with fornication in a discreet manner as public knowledge of this can ruin her chances of marriage. If the man is caught red handed having sexual intercourse with girl by the brothers of the latter, he and the girl are beaten. The girl will, thereafter, be reprimanded by her parents, and warned not to repeat the misdeed. In many cases, the boy will be forced to marry the girl, subject to the payment of dowry. Where another man has already paid dowry for the girl, the guilty man will be compelled to return the dowry to him.</p>
Mundari	<p>Incest: Cases of incest get resolved at the family level-it is not a public affair. The man has to provide a bull of goat to be eaten by the two families. Both will receive 35 lashes.</p>
Avukaya	<p>Defilement: Defilement occurs where sexual intercourse takes place between a male adult and an underage girl. In most cases, defilement is immediately reported to the police and eventually tried in the formal courts. Punishment is delivered by a judge according to the criminal laws of South Sudan.</p>
Moru	<p>Incest: Incest is considered a family affair and is usually dealt with by the family. The perpetrators of this dirty conduct are usually caned and warned not to repeat such conduct. Should the perpetrators stick to the relationship, they would be isolated by their relatives.</p> <p>In case the perpetrators got married unknowingly (in town or in the diaspora), a cleansing ritual is usually performed by putting a container for making local salt (<i>tese</i>) on top of a house (<i>dori zo ro</i>) where the man and woman who commit incest sleep. If the ritual is not performed, the children produced by the couple may die, grow insane, or become barren. Those who commit incest are always pardoned by the community. If they are left unpardoned, this may result in misfortunes to the community.</p>
Baka	<p>Seduction: Seduction is the process of deliberately enticing a person to engage in a conduct of a sexual nature; to lead someone astray so as to induce him or her to make a behavioural choice he or she would not have made if he or she was not in a state of sexual arousal. With regard to the seduction of an unmarried woman, the man may be required to marry the woman, subject to the payment of a fine and possibly dowry.</p> <p>Incest: Cases of incest are resolved at the family level. Rituals are normally performed to cleanse the relatives of misfortunes that may follow the event. A calabash is usually broken. This symbolizes the separation of the perpetrators.</p>

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2. LAWS OF WRONGS AND OBLIGATIONS (CRIMINAL AND CIVIL)	
c.	Other Sexual Offenses
Wa'di	<p>Seduction is the process of deliberately enticing a person to engage in sexual intercourse.</p> <p>Incest: Cases of incest are resolved by the close relatives and not the customary authorities. Rituals are performed to cleanse the relatives from misfortune that are associated with incest. The perpetrators are usually caned and sometimes isolated by their relatives.</p> <p>Defilement: Defilement occurs where a male adult has sexual intercourse with an underage girl. Defilement is usually reported to the police, and determined by the formal courts.</p>
Jur-Bel	<p>Incest: Cases of incest are not referred to the traditional authorities. They are resolved by family elders. Where there is doubt as to whether a pregnant girl is related to the putative father by blood, the family will investigate his background, through his name and place of origin</p>
Azande	<p>Seduction is the process of deliberately enticing a person to engage him or her in a sexual relationship. Seduction causes a person to engage in a sexual relation that he/she would not have engaged in if he/she was not enticed sexually.</p> <p>Where a marriage settlement cannot be reached, the following sanctions are imposed, especially with regard to the male perpetrator.</p> <ul style="list-style-type: none"> • The guilty man will pay compensation in cash to the parents of the girl, the amount of which is determined by the victim's parents or relatives. • The guilty man is imprisoned and is also required to pay a fine to the chief's court presiding over the matter. • Should the unmarried woman fall pregnant, the child belongs to the girl's father if no marriage has taken place. The biological father of the child may claim paternity over the child after paying an amount of money to the father/ family of the girl. <p>Defilement occurs where a male adult engages in sexual intercourse with an underage girl or boy. In most cases, defilement is immediately reported to the police and, therefore, punishment, compensation and fines are determined by the formal courts.</p>

2. LAWS OF WRONGS AND OBLIGATIONS (CRIMINAL AND CIVIL)	
d.	Murder
Toposa	<p>There are two types of killing: unintentional killing and intentional killing.</p> <ul style="list-style-type: none"> • If a person is killed unintentionally, the perpetrator must pay 32 cows (both male and female) to the family of the deceased. A goat is also provided for the purposes of a cleansing ritual. • Where the killing is intentional, the offender will be killed by a member of the family of the victim. The question of intent is settled by the evidence of witnesses. After the offender has been killed, a goat will be brought to the two families and the bones will be broken as a cleansing ritual. • If somebody who has killed runs away, the family will pay 32 heads of cattle as if the killing was accidental.
Lotuko	<p>Killing a human being is the gravest of offences in the customary laws of the Lotuko. Killing may be intentional or accidental. Where the killing is intentional, the perpetrator may be killed in retaliation by the relatives of the deceased. Murder is increasingly being dealt with by modern courts. Where the killing is accidental, the perpetrator will be required to give a girl child to the family of the deceased as compensation. The girl may later be married into the family of the deceased or given to another family in exchange for bride price. If the family of the offender does not have a girl to provide as compensation, they will be required to pay 18-20 cows. A person who commits accidental killing will also be required to meet all the funeral costs of the deceased.</p>

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2. LAWS OF WRONGS AND OBLIGATIONS (CRIMINAL AND CIVIL)	
d.	Murder
Lango (Dongotono, Lokwa, Logir, Katebo, Imotong, Lorwama, Lotuko sub-tribes)	Murder is the gravest of all offences amongst all Lango groups and is, therefore, punished severely. Murder can be divided into deliberate and accidental murder. Deliberate murder is punished by the offender paying the funeral expenses and compensation of 22 heads of cattle. If the offender cannot afford 22 heads of cattle, he is required to provide the family of the deceased with a girl as compensation for the death of the Deceased. Any person who causes accidental murder will be required to pay for the funeral expenses as well as a compensation of 22 heads of cattle. This number has been reduced to 12 heads of cattle.
Lopit	<p>Murder is the gravest of all offences under Lopit customary law. Murder may be accidental or intentional.</p> <ul style="list-style-type: none"> Any person who commits intentional murder is punished by death. Vengeance will normally be done immediately by a close relative of the deceased. Such killing is perfectly acceptable. The killer will also normally plead with the community through the landlords to be pardoned and if the community agrees to his plea, the killer will be required to pay blood compensation, by giving a young girl to the family of the deceased as compensation. However, this practice is no longer encouraged and 22 cows may be paid instead. The offender is also required to pay for the funeral expenses of the deceased in the form of 5 cows. If the killing is accidental, the offender is required to pay for the funeral expenses of the deceased. As compensation for the life of the deceased, the person who committed the accidental killing is required to pay 12 heads of cattle to the family of the deceased. Where the killer does not have cattle, he or she will have the option of paying a girl child instead of the cattle. However, this practice is no longer encouraged. <p>The two affected families will bring 2 goats to be slaughtered for the cleansing ceremony. This signifies reconciliation between the two families.</p> <p>Where the killing is intentional, a cleansing ceremony must be performed at the house of the offender to prevent abnormalities and other undesirable consequences from afflicting his children.</p>
Balanda Bviri	<p>In Bviri customary law, murder may be intentional or accidental. Killing by witchcraft practices amounts to intentional killing. When somebody is killed by being hit by a boda boda (motorbikes used for commercial transportation of persons and goods), or in the process of hunting wild animals, this will not amount to intentional killing. The killing of an enemy during war will not be treated as murder, because it is done in self-defense and for achieving certain purposes that justify the taking away of human life. The method of killing dictates the punishment and compensation to be paid.</p> <p>An individual who commits murder is brought to the local chief/executive/ paramount chief, in the presence of the two families to resolve the case. The culprit is detained in the house of the chief until the case is settled. While in the house of the chief, the culprit is not supposed to go anywhere. The culprit works for the chief for a certain period of time, tilling his land, as well as building houses for him, or any other assignment that the chief dictates. In some cases, the murderer will just be killed by the relatives of the deceased. This is perfectly acceptable to the Bviri society. The family of the deceased could also seek the intervention of a witch doctor, to kill or cause some other harm to the culprit as retaliation. The culprit will also be required to pay compensation, in the form elephant tusks and hoes. Where these items cannot be provided, a girl child is provided as compensation to the family of the deceased. Where the matter is resolved amicably, the two families affected will also share the blood of an animal, which is slaughtered for the purposes of uniting the families. The two parties will swear not to retaliate against each other.</p>
Bongo	<p>Both direct murder and indirect murder recognized under Bongo customary law. Direct murder involves death by assault, the use of weapons such as arrows or spears, or death by poisoning. Indirect murder involves killing by the intervention of witchcraft. Murder may also be accidental. Fatal road accidents are regarded as accidental. The killing of an enemy during war is not treated as murder, but rather an act of revenge and self-defense.</p> <p>Each murder case is treated differently, depending on the agreement, between the family of the deceased and that of the murderer. In some cases, the murderer is killed in retribution. In other cases, the family of the murderer provides a young girl to the family of the deceased as replacement for the life of the deceased. In addition, the culprit is imprisoned at the chief's house for a certain period and subjected to hard labour. If the deceased person is killed by witchcraft, his/her relatives will also seek the intervention of witchcraft to kill or harm the responsible person for the death of the deceased. Cleansing rituals are usually performed to reunite the two families. The rituals are performed by special people called '<i>Bitrama</i>' and such people are not necessarily from the families involved.</p>
Ndogo	The family of the offender is required to give a girl child to the family of the deceased to replace the deceased. The two families are required to take an oath by drinking each other's blood in the presence of the elders and chiefs, and swear not to take revenge against each other.

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2. LAWS OF WRONGS AND OBLIGATIONS (CRIMINAL AND CIVIL)	
d.	Murder
Mundari	<p>Murder means killing another person. This may be intentional or unintentional. Murder is the highest crime that can be committed against another person. It can normally lead to serious fights and further killings between the families and clans involved. Intentional murder is a police case, which is always handled by the statutory system. There are situations where the chiefs will facilitate the payment of blood money, if the verdict passed is payment of <i>dia</i>.</p> <p>If the case of murder was presided over by the chief and after compensation has been paid, a ritual of breaking a calabash is done to break from the bitter past and concentrate on a peaceful future thus restoring cordial relations between the two families. A bull is also slaughtered for feasting to mark the beginning of a new relationship. For unintentional murder the following rules will apply:</p> <ul style="list-style-type: none"> • The wrongdoer will pay 30 heads cattle or SSP 30,000 for <i>dia</i> (blood money) to the family of the deceased. • The wrongdoer will also pay 6 cattle (5 cows and 1 bull) for the funeral services. This is also meant to 'close' the eyes of the deceased and forgive the wrong doer. • The wrongdoer will have to provide for a bull to be slaughtered in the peace making ceremony.
Avukaya	<p>Murder is the killing of a person. Such killing may be intentional or unintentional. Killing by witchcraft is intentional killing and is usually proved by chiefs. The matter is then handed to the formal courts, or determined to finality by chiefs if the two affected families agree.</p> <p>The offender pays compensation called <i>dia</i> or blood money to the family of the deceased. The amount is determined by the victim's family or relatives. Human indemnification which existed in the past is no longer practiced. The offender is also required to pay for funeral expenses. A reconciliatory process is conducted which involves the slaughtering of an animal as a sign of peace between the two affected families.</p> <p>Investigations surrounding the killing are conducted by the police. Where the killing takes place in remote villages where there are no police, traditional authorities assist by looking into the relationship between the deceased and the offender as well as the relations between their families. Issues considered during the investigations include motive such as adultery, debt, retaliation etc.</p>
Moru	<p>Murder is the killing of a human being. The killing may be intentional or unintentional. The scope of murder extends to killing by bewitching. Murder is not determined by the traditional courts.</p> <p>Whereas other incidences of murder are dealt with by the formal courts, killing by witchcraft is dealt with by the chiefs under customary law. In such cases, when it becomes evident that the deceased person was killed by magical intervention, and the culprit is found, he or she will either be pardoned by the relatives of the deceased or the case is forwarded to the competent customary court.</p> <p>Other cases of murder are usually dealt with by the police who will investigate the matter and prosecute the suspect in a formal court with the relevant jurisdiction. In remote areas where the police are not available, traditional authorities will investigate the matter by looking for possible causes of the murder. In this regard, the relationship between the deceased and the suspects will be examined. The authorities will enquire whether there was any misunderstanding between the deceased and the suspects arising from issues such as adultery, debts or elopement. The traditional authorities will, thereafter, hand the matter to the police along with the evidence they have collected.</p>
Baka	<p>Murder is the act of killing another person. Such killing may be intentional or unintentional. Cases of murder are handled by the police and the formal courts.</p>
Wa'di	<p>Murder is the killing of a person. The killing may be intentional or unintentional. The scope of murder includes killing by bewitching. Killing by witchcraft though intentional is always proven by the chiefs. Chiefs sometimes preside over cases of unintentional murder where the affected parties so agree. The method of killing dictates the compensation and punishment to be administered, one of the reasons why intentional murder goes to the judge straight away. Accidental killing by a motorist is dealt with by the police.</p> <p>The murderer pays compensation called <i>dia</i> or blood money to the family or relatives of the deceased. The amount is determined by the victim's family or relatives. Payment for funeral expenses by the murderer, and an animal/white cock from both families is slaughtered as a sign of peace and reconciliation between the two families. Investigation of the killing is done by the police, or traditional authorities, where the police are not available. Both families will swallow red gravel to prevent them from being attacked by leprosy in case they happen to eat together.</p>

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2. LAWS OF WRONGS AND OBLIGATIONS (CRIMINAL AND CIVIL)	
d.	Murder
Jur-Bel	<p>Murder is the deliberate or accidental taking away of another person's life. Interactions with other communities have increased the crime of murder among the Jur-bel. Murder can be committed by the use of bad spirits, physical attack, and poisoning. Both intentional and unintentional killings are considered as murder and should be resolved according to customary law. The killing of an enemy during war will be treated as victory over the enemy.</p> <p>The offender will be detained in the house of the chief for his own safety, as well as for the purpose of securing a settlement between the two families. Where both parties are from the Jur-bel community, a beautiful girl or handsome boy will be given to the family of the deceased as compensation. Where the murder is between a Dinka family and a Jur-bel family, the family of the deceased person will be paid 31 cows. 30 of the cows are paid in respect of compensation, while 1 is paid as a fine. In some instances, compensation and fine can amount to 75 cows. The two families will also take an oath not to engage in retaliatory measures or similar conduct in the future.</p>
Azande	<p>Murder is the killing of a person. The killing may be intentional or unintentional. The scope of murder extends to killing by witchcraft (<i>borongua</i>). The reasons for the crime are always best known to the murderer. Intentional killing is not treated in the same manner as unintentional killing. Cases of intentional killing are always tried before a judge of a statutory court, while unintentional killing can be presided over by the chief, who determines the matter according to customary law, if the parties enter into an understanding to that effect. The method of killing dictates the compensation and punishment to be imposed. In this regard, intentional killings are usually reported to the police and tried before a judge of the statutory court. Killing by witchcraft, though intentional, is always decided by chiefs and not the modern courts. Accidental killing by a motorist is investigated by the police and tried by the modern courts.</p> <p>The perpetrator will be required to pay the entire funeral and burial expenses of the deceased. The perpetrator will also pay blood money (<i>Mara Kure</i>) as compensation to the family of the deceased, the amount to be determined by the deceased's family. He will also pay applicable court fines, and serve a prison term depending on the nature of the murder. A ritual is performed. After the blood money is paid, the two sides (families) converge to drink and eat together to retain their former cordial relationship. Murder cases are dealt with by the 'A' Court, 'B' Court or 'C' Court. If the aggrieved party intends to appeal, such appeal is made to the modern courts.</p>

2. LAWS OF WRONGS AND OBLIGATIONS (CRIMINAL AND CIVIL)													
e.	Bodily Harm												
Toposa	<p>If a person unintentionally hurts another person, there may be an agreement that the offender will pay for the medical treatment of the victim. If the case goes to court, the offender will be sentenced to pay a fine where his actions were intentional. Severe injuries (such as broken bones) result in the fine of 5 or 6 cows. Minor injuries (no broken bones but bloodshed) result in a fine of 1 goat. The cost of medical treatment will also be paid by the offender. In determining the cost of treatment, reference will be made to the doctor or herbalist treating the injury who will be required to describe the seriousness of the treatment required.</p>												
Lotuko	<p>It is an offence to inflict bodily injuries to another person according to the customary laws of the Lotuko. There is no distinction between intentional and unintentional bodily harm in terms of compensation since both have the same effect. Causing serious bodily harm and injuries is regarded as 'killing the victim half-way' and must therefore, be compensated by a deserving number of animals. Injuries and bodily harm are compensated in the following manner:</p> <ul style="list-style-type: none"> • Where the injury is caused by a domesticated animal, the owner of the animal is required to pay compensation to the injured party. • Where a domesticated animal kills a person, the owner of the animal is required to compensate the family of the deceased as if the killing was done by a person. • No compensation will be paid to a person who is injured or killed by a domesticated animal while he/she was trying to steal or harm it. <table border="1"> <thead> <tr> <th>Type of Bodily Harm/Injury</th> <th>Type/Amount of Compensation</th> </tr> </thead> <tbody> <tr> <td>Causing permanent damage to another person's eye.</td> <td>6 cows.</td> </tr> <tr> <td>Removal of front teeth.</td> <td>1 male cow.</td> </tr> <tr> <td>Broken or seriously injured leg or arm.</td> <td>6 cows.</td> </tr> <tr> <td>Damage to or removal of the ear.</td> <td>3 cows and 30 goats.</td> </tr> <tr> <td>Injured or deformed nose.</td> <td>6 cows.</td> </tr> </tbody> </table>	Type of Bodily Harm/Injury	Type/Amount of Compensation	Causing permanent damage to another person's eye.	6 cows.	Removal of front teeth.	1 male cow.	Broken or seriously injured leg or arm.	6 cows.	Damage to or removal of the ear.	3 cows and 30 goats.	Injured or deformed nose.	6 cows.
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2. LAWS OF WRONGS AND OBLIGATIONS (CRIMINAL AND CIVIL)

e.	Bodily Harm
<p>Lango (Dongotono, Lokwa, Logir, Katebo, Imotong, Lorwama, Lotuko sub-tribes)</p>	<p>Lango customary law makes a distinction between bodily injuries that are caused by domesticated animals (dogs, cows, sheep, cats and donkeys) and those caused by human beings.</p> <ul style="list-style-type: none"> • A person who causes injuries to another leading to the loss of a leg, eye, arm or limb, is required to pay 6 cows to the victim as compensation. 1 cow will be paid as compensation for the loss of ears, fingers and the infliction of cuts. • A person whose domesticated animals causes injury to another person, causing the loss of arms, legs or limbs, will be required to pay compensation of 6 cows to the victim and 1 cow for other injuries such as loss of the ear, finger and normal cuts. <p>No compensation will be paid for bodily injuries caused to a person by a human being or animals while in the course of committing a crime.</p>
<p>Lopit</p>	<p>Causing bodily injuries to another person with intent is prohibited. The perpetrator of such harm is required to pay compensation, depending on the gravity of the injury. Any person who breaks another person's arm, rendering him disabled, is required to pay a compensation of 6 heads of cattle. No compensation is payable for injuries that are caused accidentally.</p> <p>Where a goat, sheep or donkey causes serious bodily injury to a person, the animal causing such injury should be given to the injured person. No compensation shall be given for injuries that are caused by dogs and cats.</p>
<p>Balanda Bviri</p>	<p>Injuries and grievous bodily harm may occur when fights take place between individuals, sub-clans or clans. Such fights may occur after alcohol has been consumed, where elopement has taken place, where a girl is impregnated, or sometimes over a land conflict. Injuries can also be caused by domestic animals.</p> <p>Intentional injuries are normally punished by the infliction of similar injuries to the perpetrator. The offender is kept in the house of the chief and given light punishment, where the injury is accidental or where apology has been tendered to the victim. Sometimes, no punishment is administered where the injury was accidental. Where the injury is caused by a domestic animal, no punishment will ensue, especially if the affected person was attempting to steal the animal. Where a person's eyes, ears, legs, arms, fingers, lips, or tongue are lost while stealing an animal, no compensation will be paid. In the past, injuries to body parts (eyes, arms, and legs) were met by retaliation. In this regard, the same injury was inflicted on the culprit. Retaliations of this nature are rare these days due to the influence of Christianity, which encourages forgiveness. In the event that a peaceful solution is arrived at, the culprit will not be required to pay compensation or perform manual labour. Depending on the gravity of the bodily harm, bodily injury cases will normally go to different institutions for determination. Cases involving minor injuries will normally be determined at the family level, while serious incidents will go the elders of the clan, and chiefs, at different levels. After the payment of compensation and fines, a chicken will be slaughtered and eaten, as a sign of reconciliation. The parties are warned not to repeat their mistakes in the future.</p>
<p>Bongo</p>	<p>In the past, injuries similar to those caused to the victim were inflicted on the guilty person. Presently, the guilty person is often required to pay compensation to the injured person, in monetary terms. The amount of compensation will differ, depending on the kind of injury caused.</p> <p>Where the guilty person asks for forgiveness, he may be forgiven and no punishment or compensation will be required. When a person is hurt by domestic animals, the owner will be required to compensate the injured person. No compensation is payable where the injuries occurred while the guilty person was attempting to steal or harm the animal in question.</p> <p>Cases relating to bodily injuries and grievous bodily harm are determined by various levels of customary law courts, depending on the gravity of the injury. Parties dissatisfied with the decision of the courts are at liberty to appeal.</p>

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2. LAWS OF WRONGS AND OBLIGATIONS (CRIMINAL AND CIVIL)	
e.	Bodily Harm
Ndogo	<p>Bodily injuries often results from fights, arising from a variety of causes such as, adultery, elopement, land conflicts, and inter-clan misunderstandings. Bodily injuries may also result from attacks by domestic and wild animals. The culprit must treat the victim. This may be done by applying traditional medicine to aid the healing of the wound. Compensation is also paid, depending on the nature of the injury.</p> <p>Where the injury is caused by a domestic animal, compensation and fines will depend in the manner in which the victim encountered the animals. Where the injury is caused while trying to steal the animal, no compensation or fine will be paid. Where the person is injured by animals that were let loose by the owner, the owner will be required to pay compensation, or taken to court where he fails to pay.</p>
Mundari	<p>This is an attack to somebody physically or going to another person's home/house with intent to fight. It is considered provocative act and may cause a serious fight with dire consequences to both parties. The assaulter will be required to pay a fine of one cow to the assaulted person.</p>
Avukaya	<p>Assault is an attempt to attack a person, or going to a person's house with the intention to fight. Imprisonment or payment of some customary fine. Compensation to the victim for wasting his or her time in pursuit of the matter.</p> <p>Battery is the attacking of a person and injuring him or her in the process. This involves inflicting bodily harm on the victim. Compensation to the injured party of an amount determined by the victim and chief presiding over the case. Imprisonment or work in the chief's house for a reasonable period to be determined according to the injury inflicted on the victim.</p> <p>Communal Fights: These are fights or violence that involves a group of persons. They are resolved by community leaders and elders. Reconciliation of the parties is the central aim in the resolution of the dispute. Compensation of the injured parties by the attackers. Imprisonment in the chief's house with hard labour. Fine to be paid by the initiators of the fight or violence.</p>
Moru	<p>A person found guilty of assault may be imprisoned at the house of the chief for a period of 1-2 weeks and be subjected to a fine, which is paid to the customary law court presiding over the matter. The guilty person will also be required to compensate the assaulted person, for expenses and valuable time wasted while pursuing the matter.</p>
Baka	<p>Assault is the act of attacking a person physically or going to someone's house with the intention of fighting. Assault is dealt with by the police.</p> <p>Battery is the act of attacking somebody and injuring him in the process. Battery is normally dealt with by the police.</p>
Wa'di	<p>Assaults are usually reported to the chiefs and/or the police. Imprisonment or payment of a fine. Compensation to the victim for valuable time wasted.</p>
Jur-Bel	<p>Bodily injuries occur among the Jur-bel as a result of violence among individuals, sub-clans or clans. Such violence mostly occurs during the consumption of alcohol, misunderstandings created by elopement, impregnation of a girl and land issues. Injuries are sometimes caused by animals. This often occurs when persons try to play with such animals. The person responsible for the injuries, whether intentional or unintentional, is brought to court where the cause and the nature of the injuries are investigated. After serious investigation of the crime by the chief, sub-chiefs, community elders and eyewitnesses, a decision is made on the applicable fines and compensation.</p> <p>Where the injuries were intentional, the offender is required to compensate the injured person. Where the injuries were unintentional, the offender may be forgiven or simply required to pay for the treatment of the injured person. Compensation is paid in respect of injuries caused by animals except where the injured party contributes to his or her injuries by playing with the animal, or attempting to steal or harm the animal.</p>
Azande	<p>A person who physically attacks another person commits an assault. Assault is a crime against the community because it affects its peaceful coexistence. The offender is required to work for the chief for a reasonable period of time. The offender may also be imprisoned or ordered to pay a fine. Compensation is also paid to the victim for wasting his/her time in pursuit of the case. The amount is determined by the local authority dealing with the case. In case of physical injury, the matter is forwarded to the police for investigations.</p> <p>Battery is the violent attack of a person by another person, resulting in the injury of the person who is attacked. This matter is not handled by the chiefs, but rather by the police and the modern courts.</p>

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2. LAWS OF WRONGS AND OBLIGATIONS (CRIMINAL AND CIVIL)

f.	Wife Beating
Toposa	Wife beating is tolerated by Toposa customary law and husbands are allowed to discipline their wives by beating them. Wife beating occurs when the wife is not discharging her duties properly. The beating of a wife without any reason is not permitted. Where a husband continuously beats the wife, both sides of the family will be summoned to a meeting to discuss the matter. The method of beating a wife is also monitored and the use of weapons and heavy sticks are not permitted.
Lotuko	Wife beating is allowed where a woman disobeys the lawful orders of her husband. No compensation is payable for injuries sustained by a wife in the process. Wife beating is, however, becoming less popular these days as compared to the past.
Lango (Dongotono, Lokwa, Logir, Katebo, Imotong, Lorwama, Lotuko sub-tribes)	Not discussed in data.
Lopit	Not discussed in data.
Balanda Bviri	<p>Wife beating is tolerated for a variety of reasons, including committing adultery, visiting other people's houses without the consent of the husband, denying the husband his conjugal rights, showing disrespect to the relatives of the husband, failure to take care of the children, stealing, or any act that will tarnish the reputation of the family. Where a man beats his wife outside the parameters of the law, he faces the authority of elders. Where the man uses excessive force, especially when the woman is badly hurt, harmed or injured, he is brought before the law.</p> <p>Normal wife beating will not attract any fines, compensation or punishment. However, the use of unreasonable force is not tolerated. Excessive acts of violence may lead to divorce.</p>
Bongo	<p>Wife beating is a norm that is largely tolerated in Bongo Customary law. Wife beating may occur where she engages in conduct, which is not permitted, such as, failure to attend to her house chores, extra-marital affairs, drunkenness, theft, loitering, or any other act, which has the potential of lowering the status of the husband and his family.</p> <p>No punishment, compensation or fine will ensue where wife beating occurs in the normal course of disciplining the wife. Unjustified beating or excessive force on the other hand, may cause the woman to seek the intervention of the family. The husband will normally be told not to repeat the act in the future. While such cases are occasionally reported to the chief, they are often dealt with at the family level. In some cases, the husband is fined by the customary law authorities. Such fines are in the form of food, or its monetary equivalent. Repeated acts of unjustified beating are grounds for divorce.</p>
Ndogo	Wife beating is widespread in the community and is tolerated as a means of disciplining a woman who fails to discharge her duties or is involved in acts that are prohibited under customary law. However, a husband may not beat his wife without a justifiable reason, and excessive force must not be used. Wife beating is not punishable since it is considered a family affair. Where excessive force is used, or where the beating is done without justifiable cause, the wife may report the matter to her parents, or to the chief, depending on the gravity of the abuse. The husband will normally be told not to repeat the misdeed. If the husband continues this conduct despite the warning, the wife may institute divorce proceedings.
Mundari	Not discussed in data.
Avukaya	Not discussed in data.
Moru	Not discussed in data.
Baka	Not discussed in data.

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2. LAWS OF WRONGS AND OBLIGATIONS (CRIMINAL AND CIVIL)	
f.	Wife Beating
Wa'di	Not discussed in data.
Jur-Bel	Wife beating is seen as a way of disciplining women who do not adhere to the rules of managing household affairs or do not maintain good relations with immediate family members. Wife beating without good reason and use of excessive force are not permitted. The beating of a wife without good reason and the use of excessive force are not tolerated. In such cases, the parents of the woman who is being mistreated may advise her to file for divorce.
Azande	Not discussed in data.

2. LAWS OF WRONGS AND OBLIGATIONS (CRIMINAL AND CIVIL)	
g.	Robbery and Theft
Toposa	<p>There are two methods of dealing with stealing.</p> <ul style="list-style-type: none"> • First, where the offender is known to the victim, he will be required to pay back the stolen item in double measure. For instance, where goats are stolen, he will return twice the number of the stolen goats to the owner. • Second, where the theft is perpetrated by a group, the victims may defend themselves and kill the thieves. Where the thieves are killed, no further compensation or responsibilities arise. This situation is now changing as Commissioners in different counties intervene and try to reconcile these matters with the assistance of the chiefs. <p>The issue of armed banditry on the roads falls within the jurisdiction of the Government functionaries.</p> <p>Cattle raids are common between the Toposa and their neighbours. People whose cows are stolen will search for them by tracing their footprints. Where the cows are found, they will simply be returned. However, if people are killed by the raiders while rounding up the cattle, the victims' communities will go and avenge the exact same number of killings. These days the Government will step in to prevent revenge raids by bringing the perpetrators to justice. Traditionally, inter-ethnic cattle raids are resolved by the elders of each side by summoning the youths and admonishing them to accept a peaceful settlement and to desist from further acts of cattle raiding. When a peaceful settlement is agreed, a white bull is slaughtered and the blood and intestines poured and smeared on the warring sides. Both sides will also be told to drink water from the same cup as a sign of reconciliation.</p>
Lotuko	<p>Robbery is defined in Lotuko customary law as the forceful taking of somebody's property. Where someone steals a cow or a goat, he is required to return the stolen animal. In addition, the offender is required to pay an extra cow or goat as the case may be, as a fine. Where the stolen animal is not recovered, the offender is required to pay 2 animals in the place of the one that was stolen. Where the stolen animal has been slaughtered, the culprit is required to pay 6 animals as compensation and a fine in addition.</p>
Lango (Dongotono, Lokwa, Logir, Katebo, Imotong, Lorwama, Lotuko sub-tribes)	<p>Robbery according to the customary laws of the Lango is defined as the forceful taking of somebody's property. When a robber is caught, he may be killed or severely beaten. Where the stolen property is recovered from the robber by persons other than the owner, the owner is required to provide food for the persons who retrieved the stolen property. More recently, robbery cases are dealt with by the police.</p> <p>Theft is the taking of a person's property without the person's permission. It is an offence for someone to take somebody's property without his or her permission. A person who steals someone's property will be required to pay double the amount of what was stolen in cash or in kind. Where the offender kills the stolen animal, he is required to repay twice the value of the animal. Where the stolen animal is recovered alive, the offender is required to return the stolen animal and a fine of 1 extra animal is imposed on him.</p> <p>Cattle raiding: When cattle are traced and found, they are returned to the owner. Where a cattle raider is killed by those engaged in its recovery, no compensation or payment is due to his or her family. Where the owner of the stolen animal is killed during a cattle raid, the raiders are required to pay 24 heads of cattle to his family.</p>

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2. LAWS OF WRONGS AND OBLIGATIONS (CRIMINAL AND CIVIL)	
g.	Robbery and Theft
Lopit	Robbery is defined as the forceful taking of a person's property. Where a person steals 1 cow or goat, he is required to return the stolen animal. In addition, the offender is required to pay a fine of a cow or a goat. Where the stolen animal is not recovered, the culprit is required to pay 2 animals in the place of the stolen one. Where the stolen animal has been slaughtered, the offender will be required to pay 6 animals as compensation as well as a fine.
Balanda Bviri	<p>Robbery is the act of taking a person's property by force. There are two categories of robbery, namely, normal robbery, which does not involve the use of arms, and armed robbery. Robbery is a serious crime, which may sometimes lead to the death of the victim. In the past, acts of robbery were unheard of among the Bviri. However, these cases are very common in recent times, due to the proliferation of arms and influences from other communities.</p> <p>The offender will be required to return the stolen item, or pay its monetary value. He will also serve one year in jail, or pay a fine, in the form of food, and he will be required to do hard labour at the house of the chief. Where the offender is not found, or runs away, the person whose property is stolen will seek the intervention of witchcraft to cause damage, death or some other misfortune to the offender. When a person is accused of robbery, the group leader, sub-chief and chief will investigate the case to establish the fact of the robbery. Where the suspect denies committing the offence despite the result of the investigations, the intervention of magic is sought to establish the truth. If the accused is innocent, bad omen will befall the accuser who will have to pay a fine for defamation. No party may question the verdict arrived at through magic intervention, or a decision passed by the paramount chief.</p> <p>Theft is the act of taking a person's property without his consent. This is a very undesirable occurrence, which can ruin the reputation of the offender and his family. The offender will be imprisoned for a period of 3 to 6 months. The offender will also be shamed, by being paraded around the village with the stolen items on his head. In the past, no fine was paid where food was stolen, because it was believed that the offender needed the food. Currently, fines are imposed.</p>
Bongo	<p>Robbery is punished by instant beating, or killing of the culprit, depending on the nature of the goods taken. The stolen property is handed back to the owner where it is found. The robber is required to compensate the owner where the items are not found. Compensation is paid to the value of the stolen items in monetary terms. In addition, the robber is required to pay a fine. Robbery is normally investigated by the chiefs. In recent times, they are assisted by the police.</p> <p>The thief is required to return the stolen property, or compensate the owner, to the full value of the stolen property, in monetary terms. The thief will also be imprisoned, in the home of the chief, for a number of months, during which he/she is subjected to hard labour. In the event that the thief escapes, in an attempt to evade the law, the victim may consult a witch doctor to harm the thief.</p>
Ndogo	<p>Robberies of food stuffs are handled by the traditional courts, other types of robberies are handled by the police.</p> <p>The offender will normally be imprisoned. The offender is shamed by being paraded around the entire village, carrying the stolen items on his head. Where the offender refuses to admit guilt, the owner of the property will normally seek magical intervention to harm him, or to cause him to admit liability. The offender is also required to return the stolen property, or compensate the owner to their full monetary value.</p>
Mundari	<p>Robbery cases are not within the jurisdiction of customary law courts.</p> <p>The thief pays back the stolen property and additional fine of 4 cows as the case may be to the owner of stolen property. In other words should a person steal 1 cow, he/she has to return the 1 cow plus 4 making a total of 5. This fine shall only apply to the individual who committed the offence and not any other family member should be involved except for a child under 18 years of age. Such case is handled at payam court/"B" court. Should the number of cows stolen exceed 1, then the case has to be referred to the magistrate court. 1 year imprisonment. Payment of court fees of SSP20 (boma), SSP30 (payam) and SSP50 (county). Fine of unspecified amount to the customary law court presiding over the matter. Theft cases can be resolved at the sub-chief, head chief and the paramount chief level. Should a party be aggrieved by the decision of the customary law institution that has passed the verdict, he/she can appeal to a modern court.</p>

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2. LAWS OF WRONGS AND OBLIGATIONS (CRIMINAL AND CIVIL)	
g.	Robbery and Theft
Avukaya	<p>Robbery is the taking away of somebody's property by force. It sometimes involves the use of arms such as a knife, stick, gun, or any other weapon used to threaten the victim.</p> <p>Theft is the taking of someone's property without his or her consent, with the intention of depriving the owner of its use. Theft is a crime according to Avukaya custom. Sometimes, thieves are shamed by the composing and singing of songs, which narrate their wrongful deeds. These songs are meant to expose their actions to the community. Cases of theft are treated differently, depending on the quantity and value of the item stolen. Similarly, compensation and punishment differ, depending on the value or quantity of the stolen item. Cases of theft are reported to the chief, and the perpetrator is summoned before him. Minor theft cases are handled by the executive courts. However, some minor theft cases, such as the stealing of chickens can be resolved by the headman. Such cases then follow the appeals process to the higher traditional authorities. Parties that are aggrieved by the decision of the customary law institutions may appeal to the statutory courts.</p> <p>Return of the stolen item or its equivalent. Imprisonment at the chief's home where he or she is subjected to hard labour. The prison term depends on the quantity and the value of the stolen item. Fine to be paid to the customary law court in cash.</p>
Moru	<p>Robbery is the forceful taking of another person's property. It is usually accompanied by the use of weapons like knives, pangas (machetes) and guns. The offender may be killed in the process of being pursued, by those whose properties have been stolen. The offender is required to return the stolen property, or to compensate the owner in the full value of the property. In recent times, cases of robbery are being determined by the formal courts, and the offenders are imprisoned for a specified period of time.</p> <p>Theft is the taking of somebody's property without his or her knowledge, and with the intention of permanently depriving him or her of ownership. Cases of theft are treated differently depending on the quantity and value of the property stolen. Serious cases of theft are handled by the 'B' court, while minor incidences are dealt with by the 'A' court (e.g. cases involving the stealing of goats, sheep and cattle). In all cases of theft, the offender is normally forced to return the stolen properties or their value, in the event that the properties cannot be found. Also, the thief will be imprisoned in most cases, for up to 3 months. In addition, the thief will be required to pay fines to the court presiding over the matter.</p>
Baka	<p>Robbery is very rare among the Baka. Robbery is usually reported to the police and not to the traditional authorities.</p> <p>Theft is the act of taking a person's property without the consent of the owner, with the intention of depriving him or her of ownership.</p> <p>The offender is normally required to return the stolen property or its value in monetary terms. The offender will also be required to pay an additional amount of money (amount depending on the stolen property) as a fine. The fine is paid to the traditional authority presiding over the matter.</p>
Wa'di	<p>Theft is the taking of someone's property without his or her consent and with the intention of depriving him or her of ownership permanently. Theft cases are treated differently based on the quantity and value of the item stolen. The value of quantity determines the compensation or punishment.</p> <p>Return of the stolen item or its value in monetary terms to the owner by the guilty person. Imprisonment in the chief's home where he or she is required to perform hard labour for a period of 2-3 months. Fine to be paid to the customary law court in cash. If the thief does not refund the stolen item within 2-3 weeks, the case is referred to the "B" court.</p>

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2. LAWS OF WRONGS AND OBLIGATIONS (CRIMINAL AND CIVIL)

g.	Robbery and Theft
<p>Jur-Bel</p>	<p>Robbery is the taking of a person's property by force. For instance, snatching of a person's property amounts to robbery. Armed robbery involves threatening a person at gunpoint or with any other weapon for the purpose of obtaining property from him or her. Where the robber is found he may be beaten and killed by members of the public. The offender is required to pay compensation to the victim where the stolen property is not recovered. Fines are paid to the relevant traditional authority determining the matter. Thorough investigation is carried out by the traditional authority to whom the matter is reported such as the group leader, sub-chief, chief, or executive/paramount chief.</p> <p>Theft is the act of taking somebody's property without the permission of the owner, with the intention of depriving him or her of ownership.</p> <p>Where the offender is caught red handed, he or she is taken to the relevant nearby traditional authority for prosecution and sentencing. If found guilty, the offender is sentenced to work for the chief for a given period of time as a way of disciplining him or her so that he or she does not repeat similar conduct in the future. Shaming the offender by publicizing his or her name and conduct to the entire community.</p>
<p>Azande</p>	<p>Robbery (gburi'he) is the taking of another person's property by force. Robbery is classified into two types; armed robbery and normal robbery. The elements of robbery are the use of violence and threats. Robbery is not dealt with by customary law courts and is often immediately reported to the police.</p> <p>Theft ('dii) is the taking of someone's property without his/her consent with the intention of depriving the owner of the use of the property. Cases of theft are treated differently depending on the quantity and value of the stolen item. The quantity and value of the stolen item are factors considered in relation to compensation and punishment. Cases of theft are handled by the executive chief. However, minor theft cases, such as the stealing of chicken can be resolved by the headman. Should a party be aggrieved by the decision of the customary law institution that has passed the verdict, he/she may appeal the decision in line with the hierarchical appeals procedure in the customary law system. Return of the stolen item or payment of its monetary value to the owner. Payment of a fine to the customary court in cases of minor theft, or imprisonment without bail in cases of major theft. Work at the chief's home for 3 weeks to 1 month.</p>

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2. LAWS OF WRONGS AND OBLIGATIONS (CRIMINAL AND CIVIL)	
h.	Arson
Toposa	Where a house is burnt down unintentionally (for example while someone is burning garbage), the person whose house is burnt will kill a goat as a cleansing ritual because it is believed that the incident occurred due to bad luck on his part. Where the arson was intentional, the perpetrator will be required to pay for the house and its entire contents. Witnesses will be called to present evidence in relation to the offence. The accused cannot be held liable in the absence of the evidence of witnesses.
Lotuko	It is not acceptable to destroy a person's property by fire. Compensation for loss resulting from destruction by fire remains the same regardless of whether the fire was accidental or intentional. It is the effect of the destruction and not the intent of the offender that matters. Any person, who destroys a house by fire, is required to pay for the properties that are destroyed in the house, including replacing any domesticated animals that may have perished in the process. The offender is also required to construct another house to replace the damaged one.
Lango (Dongotono, Lokwa, Logir, Katebo, Imotong, Lorwama, Lotuko sub-tribes)	According to Lango customary law, arson can be divided into accidental and intentional burning of a house. It is an offence for someone to burn somebody's house, intentionally. A person who accidentally burns a house will be required to pay compensation amounting to the monetary value of the house and also provide a goat to be slaughtered for a cleansing ritual. A person who intentionally burns down a house will be required to compensate the victim in monetary terms the value of the house and the properties that have been destroyed. In addition to compensation, the guilty person is required to provide the victim with accommodation. The offender is also subjected to corporal punishment.
Lopit	The destruction of a person's property by fire is prohibited. Compensation for losses resulting from destruction by fire remains the same, regardless of whether the fire was accidental or intentional. It is the effect of the harm and not necessarily the intent of the offender that counts. Any person who destroys a house by fire, is required to pay for the properties that were destroyed in the house, including replacing any domesticated animal that may have perished in the fire. Besides paying for the objects that were destroyed, the offender is required to construct another house to replace the one that was destroyed.
Balanda Bviri	Arson is the act of accidentally, or intentionally destroying another person's house, field, crops, or granary by fire. Deliberate arson is very rare because people fear retaliation by witchcraft. Accidental arson, on the other hand, is very common, and may result from the burning of grass and clearing of fields for cultivation. In respect of deliberate arson, the perpetrator is required to compensate the affected person, in monetary terms, to the full value of the properties destroyed. The amount will be computed by the chief, upon successful production of evidence as to the value of the property destroyed. In some instances, the guilty party is required to construct another house for the victim. Failure to comply with the order for compensation will lead to the guilty person being imprisoned in the house of the chief, until he has fully complied with the order.
Bongo	The owner of the destroyed property has the right to take the offender to court. The matter will normally be reported to the chief for investigation, and the guilty party will be told to compensate the owner for the property destroyed. Where the accused person is found liable, he/she is required to pay for the damaged properties and to build another house for the victim. Failure to comply with the order will result in the detention of the accused in the house of the chief, with hard labour, and the chief gets another prisoner to build the house in exchange for freedom.
Ndogo	Arson is the deliberate or accidental destruction of another person's house or property, by fire. Accidental fire is fairly common, especially during the clearing of fields for cultivation. The offender is required to compensate the owner of property to its full value. In some instances, the offender is required to construct a house, to replace the one destroyed by the fire. Where the offender fails to replace the properties, he/she may be imprisoned and subjected to hard labour, until he/she replaces the properties.
Mundari	Accidental burning of a house is not arson and when it does happen, no fine, compensation is imposed. This is because there is no payment for fire accidents in Mundari customary law. The perpetrator is only asked to provide a sheep, which is slaughtered to cool the ash resulting from the fire as a ritual. Failure to provide the sheep, the community believes that the perpetrator will be infected with leprosy.

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2. LAWS OF WRONGS AND OBLIGATIONS (CRIMINAL AND CIVIL)

h.	Arson
Avukaya	<p>Arson is the intentional, deliberate or malicious setting of fire to one's own or somebody else's house, structure, or wild land. The setting of fire to someone's house or structure should be intentional to qualify as arson. The accidental burning of a house is not treated as arson. This latter situation is resolved amicably by the parties affected.</p> <p>Compensation by the perpetrator to the owner of the burnt house, in an amount equivalent to the properties destroyed.</p> <p>Payment of fine in cash to the customary law courts, or imprisonment at the chief's house with hard labour.</p>
Moru	<p>Arson is the intentional destruction of another person's house or field by fire. The accidental burning of a house is not treated as arson, and is normally resolved amicably between the parties involved. A person found guilty of committing intentional arson is required to compensate the owner of the destroyed property of its value in monetary terms. The offender will also be imprisoned for up to 3 months.</p>
Baka	<p>Arson is the act of intentionally or unintentionally setting fire to one's own or somebody else's house, structure or wild land. Where the fire is accidental, the matter is amicably resolved between the parties.</p> <p>In all cases (accidental and intentional), the guilty party will be required to pay compensation in cash in respect of the property that was destroyed. In the case of intentional arson, the culprit will be sentenced to 6 months in prison and will also be required to pay court fines. Cases of arson may be resolved by the headman, sub-chief, head chief and the paramount chief. A party dissatisfied with the verdict may appeal.</p>
Wa'di	<p>Arson is the intentional, deliberate or malicious setting of fire to one's own or somebody else's house, structure or wild land. The setting of fire to someone's house or structure can be accidental or intentional. The accidental burning of a house is not treated as arson. This is resolved amicably by the parties affected. The case may also be referred to the police and the court. With respect to the intentional setting of fire to a property, the victim whose property is destroyed reports the case to the traditional authority and/or the police for the matter to be determined.</p> <p>Compensation in cash by the perpetrator to the owner of the burnt house in an amount equivalent to the properties destroyed. If he or she fails to do so, the case will be referred to the statutory courts. Payment of a fine to the court. If the perpetrator fails to pay the fine, he or she will be required to work in the chief's home for some time.</p>
Jur-Bel	<p>Arson usually occurs as a form of revenge and often takes place where the authorities fail to resolve disputes relating to serious issues such as jealousy, adultery, murder and elopement with the daughter of the perpetrator. Different kinds of arson include the burning down of houses, food storage and other assets. The accidental burning of a house is treated differently from intentional arson. Where the fire is accidental, the matter may be resolved amicably between the parties.</p> <p>Where the setting of fire to another person's property is intentional, the perpetrator may be beaten or even killed on the spot. The perpetrator is required to compensate the owner of the properties, the full value of the loss and destruction. A fine is also paid to the customary law authority presiding over the matter.</p>
Azande	<p>Arson (<i>Zo Bambu</i>) is the intentional, deliberate or malicious setting of fire to one's own or somebody else's house, structure or wild land. The accidental burning of a house is not treated as arson. The two parties involved will have to meet and resolve the matter without resorting to the courts for legal remedies.</p> <p>Payment of compensation to the owner of the house in monetary terms to the full value of properties destroyed where the destruction was intentional. Payment of a fine to the traditional authority presiding over the matter. Work at the chief's home/imprisonment for 1 month to 1 year based on the jurisdiction of the customary court handling the case. Cases of arson are determined by the executive chief or the paramount chief. Any party aggrieved by the decision of the court may appeal to the next court in the hierarchy of the customary court institution.</p>

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2. LAWS OF WRONGS AND OBLIGATIONS (CRIMINAL AND CIVIL)	
i.	Destruction of Property
Toposa	Destruction of other people's property is not tolerated under Toposa customary law. Where the destruction of property is unintentional, the issue will be resolved amicably by the parties involved. The victim may forgive the offender where the matter is not very serious, (for instance, where a child lets a cow to graze onto a vegetable patch). However, the victim will request compensation from the perpetrator where the damage caused is substantial. The perpetrator will be made to pay compensation in the form of cows (1 cow and 1 bull), or greens. The amount of the greens payable depends on the harvest of the perpetrator.
Lotuko	Not discussed in data.
Lango (Dongotono, Lokwa, Logir, Katebo, Imotong, Lorwama, Lotuko sub-tribes)	Not discussed in data.
Lopit	Not discussed in data.
Balanda Bviri	<p>Destruction of property is mostly done by domestic animals like goats, chickens and cows, which sometimes trample on crops, eat planted crops, and destroy houses. Someone may destroy the property of another by mistake. For instance, a person having borrowed a hoe from another for digging may break it while it is in use.</p> <p>The guilty person is required to replace the damaged properties. Failure to do so will lead to the guilty person being imprisoned at the chief's house, until the replacement is made. In the case of destruction by domestic animals, the animals will be detained at the house of the chief, until the owner has shown cause as to why he let his animals loose, and upon replacing the destroyed properties. Destruction of properties by wild animals is not punished because nobody is responsible for their care or control.</p>
Bongo	A person found guilty of destroying another person's property is required to replace the property. The perpetrator will normally be detained in the house of the chief, until he/she has replaced the said property. Where destruction is caused by domestic animals, the animal will be detained at the house of the chief until the owner appears to give reasons why he let his animals unattended. The owner of the animal is required to compensation the owner of the damaged property.
Ndogo	Destruction of property is caused mostly by domestic animals and not human beings, as no person in his/her right mind will destroy another person's property. Destruction of property, however, occurs, where a person breaks another person's implement while using it. When the destruction is in relation to implements, the offender is required to replace it. Where the destruction is caused by animals, such animal will be detained at the house of the chief, until the damaged property is replaced by its owner.
Mundari	Not discussed in data.
Avukaya	Not discussed in data.
Moru	Not discussed in data.
Baka	Not discussed in data.
Wa'di	Not discussed in data.
Jur-Bel	<p>Various kinds of destruction of property can occur. Destruction of property includes impregnation of a woman, burning down of houses, burning of a beehive and burning of produce. A distinction is made between destruction of property by domestic animal and human beings. Human beings are capable of reasoning and are, therefore, accountable to the law. Animals on the other hand, are incapable of reason and cannot be held accountable for their behaviour.</p> <p>Punishment for the destruction of property includes caning and working in the house of the chief for a certain period of time. Compensation for different kinds of destruction to property includes paying an amount commensurate to the damage caused. The amount payable is reached by agreement between the parties. A mere apology may sometimes suffice in the case of accidental arson. Compensation is paid in the form of honey, groundnuts and <i>bamburi</i>.</p>
Azande	Not discussed in data.

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2. LAWS OF WRONGS AND OBLIGATIONS (CRIMINAL AND CIVIL)	
j.	Insults and Defamation
Toposa	Insulting other people, especially the elderly, is prohibited. The elderly usually curse young people who insult them. Telling lies and defaming people is highly discouraged among the Toposa. Insulting the in-laws attracts penalties. When a man insults his mother in-law, he will be required to pay a female goat. When he insults his father in-law, he will have to pay a male goat. Repeated acts of insults to the in-laws may lead to a breakdown of the marriage. No bride price will be paid back since the in-laws or their daughter was not at fault.
Lotuko	Insult and disrespect to other people is generally not acceptable by the Lotuko. An insult to the in-laws must be compensated by a fine. A he-goat must be paid to the insulted father in-law and a she-goat to the insulted mother in-law. Any young person who insults an elder will be cursed by the elder and if nothing is done to repair the curse, the cursed person may die or experience other misfortunes in life. To repair the curse, the offender will have to call upon an intermediary to resolve the dispute. The young person will have to ask for forgiveness, and swear that he will not repeat the misconduct. The elder will then bless the young person as a sign of forgiveness.
Lango (Dongotono, Lokwa, Logir, Katebo, Imotong, Lorwama, Lotuko sub-tribes)	Not discussed in data.
Lopit	Insults are prohibited by Lopit customary law. Insulting of the in-laws is particularly discouraged as spouses are particularly expected to accord respect to their in-laws. Insults to persons other than the in-laws will not necessarily attract a fine even though it is highly discouraged. Any person who insults his mother in-law will be required to pay a fine of a female goat and ask for forgiveness from the mother in-law, swearing never to repeat the insult. Anyone who insults his father in-law will be required to pay a fine of a male goat and swear in his presence, never to repeat the insult. Repetitive insults of the in-laws may lead to a breakdown of the family relationship thereby causing divorce. One is not allowed to greet the mother in-law by a hand shake. This can only be done after a special ritual has been performed.
Balanda Bviri	Defamation usually occurs when people are contesting over leadership, or women. Defamation relates to statements that tarnish the character of a person, or his or her family or clan. Insults are regarded as a minor offence. Insults are characterized in to three categories: <ul style="list-style-type: none"> • Insults from persons of the same age; this is tolerated, provided it does not result in a fight. • Insulting of old men by young men is not tolerated and the young person will normally be required to appear before a council of elders to defend himself. • Insulting women, irrespective of age, is severely punishable, given the respect that women are given in the society. Insults relating to the private parts of women are very serious, as they are believed to feel extreme shame when reference is made to their private parts.
Bongo	Where a young person insults an elder, he/she is subjected to hard labour, and his/her father is compelled to compensate the elder. Insulting a woman invites a severe punishment, especially when it is reported to the chief. The offender is required to compensate the woman in monetary terms, decided by the chief. In addition, he is imprisoned for nine months, at the house of the chief, where he is subjected to hard labour (cultivation, building houses and cleaning the compound).
Ndogo	Defamation refers to utterances about another person that will destroy the reputation of that person. Insult is the uttering of words that are not acceptable to other people in the society. Insults between young people are acceptable, since they are considered as jokes. Insulting elderly persons and women is considered a punishable offence. The punishment for insults varies, depending on the nature of the insult, the age group of the offender and the victim, and the cause of the insult. Where a young person insults an elder, he/she is punished by being assigned to perform manual labour by the elders or his/her father. An apology is demanded and the person is warned not to repeat the act. The insulting of a woman is a serious a very serious offence which warrants the intervention of the chief and elders. The offender is given some lashes and fined. In addition, the offender is required to compensate the woman.

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2. LAWS OF WRONGS AND OBLIGATIONS (CRIMINAL AND CIVIL)	
j.	Insults and Defamation
Mundari	Insult involves saying bad words to another person in a provocative manner and usually by using words that are considered rude. Defamation means spreading false information orally or in writing in a manner that will lower the reputation of another person in the eyes of the public. The perpetrator in insults and defamation will receive 25 lashes.
Avukaya	An insult is the uttering of bad words to someone, especially in an angry manner, relating to the character, family background, parents, relatives or home of the person. Defamation is the saying or writing of bad things about somebody. Defamation can be oral or in written form. The defamatory words bring shame, or belittle the victim in the eyes of the public. Insulting somebody's mother, father, wife or telling someone that he or she is a witch or wizard, is resolved by the headman. Compensation to the victim. Imprisonment/working in the home of the chief.
Moru	<p>Insult involves uttering bad words relating to the body, character or family background of another person, in a manner that is intended to provoke or show disrespect to that other person. Insults are not tolerated under customary law, especially when they are directed at persons who are expected to be respected such as elderly persons and in-laws. Depending on the nature of the insult and the person to whom it is directed, the offender is caned and may also be required to pay compensation to the victim.</p> <p>Defamation means spreading words, in writing or orally, in a manner that is likely to ruin the reputation of another person in the eyes of the public. Defamation raises more serious consequences for the offender, who is required to compensate the affected person depending on the nature of the defamation.</p> <p>Cases of insults and defamation are normally resolved by the relevant court.</p>
Baka	Not discussed in data.
Wa'di	<p>An insult is the uttering or directing of bad words at a person, especially in an angry manner, regarding the body, character, family background, parents, relatives or home of the person insulted. Disputes arising from insults to a person's mother, father, and wife or telling a person that he or she is a witch or wizard are resolved by the headman. Defamation is the saying or writing of bad things about a person. Defamation can take place in oral or written form. A statement is defamatory where it belittles the victim in the eyes of the public.</p> <p>Punishment: Compensation to the victim. Imprisonment/working in the home of the chief.</p>
Jur-Bel	<p>Insult and defamation include inflicting emotional and psychological pain, by the use of abusive words that hurts the feelings of another person. Defamation relates to the character assassination of persons, while insults involve the use of abusive or bad words against a person. Insult is a minor matter that is punishable by lashing the culprit.</p> <p>Defamation is more serious in nature because it has the potential of destroying a person's reputation in the eyes of the community. Insults on the other hand, have a temporary effect. Defamation attracts compensation to the victim as well as a fine of grain or honey, payable to the customary law authority dealing with the matter.</p>
Azande	<p>An insult is the uttering of bad words about a person that may offend that person, regardless of whether the words are uttered in his/her presence. Insulting somebody's mother, father, wife or telling someone that he/she is a witch or wizard is dealt with by the headman. Where the culprit is a repeat offender, the matter is forwarded to a higher customary court. Defamation is words uttered by someone, either in written or spoken form, proclaiming something bad or false about another person, with the intention to harm the reputation of the other person.</p> <p>The guilty person will be caned (10 lashes). Imprisonment to work at the headman's home for 7 days, or 14 days at the sub-chiefs house in case of recurrence. Where defamation is done via the modern media, e.g. radio, the chief will instruct the perpetrator to use the same means to apologise to the victim. Where a person predicts evil or death against another person, the offender is sentenced to imprisonment for 6 months, or 1 year where death actually occurs. The prison term is served at the chief's house unless the person is considered a security risk, in which case he/she is transferred to a State administered prison.</p>

Table ends.

2. LAWS OF WRONGS AND OBLIGATIONS (CRIMINAL AND CIVIL)	
k.	Witchcraft
Toposa	<p>The Toposa believe that some people have been given certain powers in their eyes to the extent that they can cause harm by looking at something with their eyes. Such persons are believed to cause harm to children and animals by looking into their eyes. Besides 'bad eyes', the Toposa believe that some people have 'bad feet'. When such persons walk across another person's field, it is believed that the crops will be affected or destroyed. The two categories of persons mentioned above, do not necessarily intend to commit evil with their inborn capacities. Therefore, they are not given severe punishments. When they are caught, they are lashed and warned not to cross peoples' fields or project their eyes onto other people's properties and children.</p> <p>Witchcraft is considered an extreme evil and vice. The Toposa believe that wizards go around people's homes at night causing problems and evil.</p> <p>Such persons are punished by death. The person is killed by inserting a sharp stick or object into the anus.</p>
Lotuko	Not discussed in data.
Lango (Dongotono, Lokwa, Logir, Katebo, Imotong, Lorwama, Lotuko sub-tribes)	Not discussed in data.
Lopit	Witchcraft is absolutely not tolerated. A person practicing witchcraft may suffer death at the hands of the community. A person suspected of practicing witchcraft will be cursed by the landlords until he/she agrees that he/she is a witch.
Balanda Bviri	<p>Witchcraft is very pronounced in Bviri community and used, mostly, as a method of retaliation against people who have committed crimes. Witchcraft is administered through different mediums. These include sending a bird to screech on the roof at night, the use of thunder, the use of a cat, or echoing of one's name by the unknown at night.</p> <p>A person who practices witchcraft with evil intentions is imprisoned at the house of the chief, and subjected to hard labour for months.</p>
Bongo	<p>Where a person refuses to admit to liability in respect of a crime, the aggrieved person usually procures the services of a witch, to punish the offender. Punishment may be in the form of sending lightning to strike offender, or an invisible stick to beat the offender.</p> <p>Cursing is rare among the Bongo community, and is not permitted under its customary law. A child who misbehaves towards old people is disciplined by caning and not by cursing.</p>
Ndogo	Ndogo people practice witchcraft, as a means of punishing offenders, as well as dealing with people who flee after committing crimes.
Mundari	Not discussed in data.
Avukaya	Killing caused by witchcraft is considered intentional murder by the community.
Moru	Not discussed in data.
Baka	Not discussed in data.
Wa'di	Not discussed in data.
Jur-Bel	<p>Witchcraft is very common among the Jur-bel. It is normally used to compel a person to tell the truth in court. Different kinds of witchcraft exist in Jur-bel customary law. These are female witchcraft, which is the most dangerous form of witchcraft, and male witchcraft or local herb witchcraft, which involves the use of poison to kill persons. Some clans and families are believed to possess powers of witchcraft. The girls of these clans or families find it very difficult to get married.</p> <p>Where a person is suspected of practicing bad witchcraft, he or she is instructed by the elders to partake of wild fruit, to prove their guilt or innocence. If the suspect is innocent, he or she will not die from eating the fruit. However, if he or she is guilty, he or she will die and the body will be taken to the bush to be eaten by birds. Sometimes, when a person is found guilty, a bundle of grass is tied on him or her, and honey is poured on the grass and set on fire, resulting in the death of the offender. Payment is made to the family of the deceased. In the past, a handsome boy or beautiful girl was selected from the family of the witch as replacement to the family of the victim.</p>
Azande	Not discussed in data.

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3. LAWS OF INHERITANCE AND SUCCESSION

Toposa	The properties of a married man will be inherited by his sons. Distribution of property does not really arise because in his lifetime all his cows would have been distributed to his wives and their sons. The properties of an unmarried man will be inherited by his elder brother. The properties of a married woman will be inherited by her sons. If she has no sons, her properties, including her animals, will be inherited by her co-wives. The properties of an unmarried woman will be inherited by her brothers. Wills (written or oral) should not interfere with customary law principles of inheritance and succession.
Lotuko	Where a married man dies, his properties (cattle, garden and land) are inherited by his first son. In many cases, cattle would have already been distributed to the wife and sons during the life time of the man. Where a married man dies without children, his estate is inherited by his wife/wives. The wife of the deceased will normally be given the opportunity to choose to have children with any of the brothers of the deceased. The widow is not compelled to make a selection from among the brothers of the deceased husband. She may select any other man as long as he hails from the clan of her deceased husband. Any children born out of the new relationship belong to the deceased husband. The 'new husband' will not inherit the properties of the deceased nor will he acquire any rights over the properties of the widow. Where an unmarried man dies, his properties are inherited by his brothers. If he has no brothers, his properties are inherited by his father and mother. Where an unmarried woman dies, her properties are inherited by her brothers. Her father and mother will inherit her properties where she has no brothers.
Lango (Dongotono, Lokwa, Logir, Katebo, Imotong, Lorwama, Lotuko sub-tribes)	<p>Where a married man dies, his brothers will inherit his properties. Where he has no brothers, his properties are inherited by his son. The cows/bride price will be placed under the responsibility of the father and brothers of the deceased husband. Upon the death of an unmarried man, his properties are inherited by his parents.</p> <p>Upon the death of a married woman, her husband inherits her property. If her children are young, they are raised by their grandmothers. A married woman may not make a will. If she does, it will not be followed. The properties of an unmarried woman are inherited by her parents.</p>
Lopit	Upon the death of a husband, his properties will be inherited by his eldest son. Where he has no sons, the wife will inherit the properties. Upon the death of a wife, the properties will be inherited by the husband. If she is a widow, her properties will be inherited by the eldest son. Girls generally do not inherit the property of the family as they will eventually be married by another family to which they cannot take the property of their parents. When an unmarried woman dies, any property she may have accumulated will go to her brothers. When an unmarried man dies, his properties are inherited by his brothers.
Balanda Bviri	<p><i>Inheritance and succession of the properties of a husband</i></p> <p>Upon the death of a husband, his clothes are inherited by his brothers. Household items are inherited by his wife and children. His house and farm will be taken by his eldest son, who remains head of the family. Sometimes, the husband may determine how his estate should be distributed, prior to his death. In the event that he makes such a determination, no departure from his decision is permitted. Failure to execute his will may cause misfortunes to the members of the family. Where a wife dies without children, her properties are inherited by her parents. If she is survived by children, her properties are divided equally between her parents and the children. In the case of unmarried man, his properties are inherited by his parents, brother or close relatives.</p> <p>The succession of chiefs is hereditary. The eldest son of a chief ascends to the throne upon his death. Where the son is too young to manage community affairs, one of the chief's relatives is appointed by the sub-chief to manage the affairs of the community, until the son is of the appropriate age and capacity. Where the chief has no son, the chieftaincy passes to one of his brothers or one of his cousins.</p> <p><i>Inheritance and succession of the properties of a wife</i></p> <p>When a married woman dies, her properties are inherited by her children. However, if she has no children, her properties are inherited by her parents or relatives. If she made a will, it will not be recognized.</p>

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3. LAWS OF INHERITANCE AND SUCCESSION	
Bongo	<p>Inheritance and succession is the taking over of a deceased person's property of title, by those surviving him/her. Inheritance and succession occurs in the event of death or old age. The properties of the deceased are inherited by his children; the eldest son becomes the head of the family. A woman has no right to inherit property.</p> <p><i>Inheritance and succession of the properties of a husband</i></p> <p>The eldest son inherits the properties of a deceased man. Where he has no children, his properties are inherited by his young brother. A man may decide how his property should be divided upon his death. His will may be respected, provided it is not contrary to customary law. The children of the deceased are provided for and maintained by the brother who inherits the wife.</p> <p>The chief is succeeded by his eldest son. If the son is still young at the time of his death, the clan men will appoint a person among themselves to act as chief, until the son is old enough to assume office. Inheritance and succession formalities are normally done by calling a meeting, which will be presided over by the relatives of the deceased, to discuss the division of the properties and other matters connected with it. One person among them will be chosen to lead the formalities.</p> <p><i>Inheritance and succession of the properties of a wife</i></p> <p>When a married woman dies, her relatives are entitled to inherit her properties. If she has children, the property will be divided equally between her relatives and the children. Where a wife makes a will, it will be followed, provided it does not run contrary to customary law. Where an unmarried woman dies, her properties are inherited by her parents.</p>
Ndogo	<p>Inheritance and succession is the procedure of distributing a deceased person's property and title. Generally, inheritance and succession rights benefit the male lineage of the deceased.</p> <p><i>Inheritance and succession of the properties of a husband</i></p> <p>Where a husband dies, his properties are inherited by his eldest son who also becomes head of the family. If he has no sons, his properties are inherited by his younger brother. Where the husband makes a will, it will be respected but only to the extent that it does not run contrary to customary law.</p> <p><i>Inheritance and succession of the properties of a wife</i></p> <p>Where a wife dies without children, her properties are inherited by her parents. If she has children behind, her property will be divided equally between her parents and the children. The properties of an unmarried woman are inherited by her parents.</p>
Mundari	<p>Matters of inheritance and succession are resolved at the family level without reaching the customary law court. The family will normally sit together to determine the distribution of the properties of the deceased person. The properties of a married man will be inherited by his male children. Should the children be young, the task is given to an elderly man to take care of the properties until the children are grown up to handle the properties. The will of the deceased is always respected provided it is in concert with customary law. Children born of the second marriage belong to the deceased. Where the widow marries a person outside the family of the deceased, the children will remain in the family of the deceased. Where the widow marries outside the clan, the new husband is required to pay back the cattle paid by the deceased husband's family, and the children produced thereafter belong to the new husband. When the wife dies, the properties remain with the widower. When the wife dies, the husband has to pay 3 heads of cattle (1 cow, 1 calf and 1 bull) and 6 goats to the brother of the late wife.</p>

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3. LAWS OF INHERITANCE AND SUCCESSION

<p>Avukaya</p>	<p>Inheritance is the taking charge of the properties of a deceased person. It means taking over the deceased's belongings which may be a farm, produce, land, cars, bicycles, debts etc. Succession is the taking over of the position or title of someone, including a political position. Succession struggles are not common because they take place mostly when the title holder is very old or deceased, and title holders, who are advanced in years, always select their successors from among their male children or relatives. The properties of deceased persons are mostly inherited by male relatives such as the sons or brothers of the deceased. The division and administration of the property of the deceased is done through discussion, by the family members.</p> <p><i>Inheritance of the properties of husbands</i></p> <p>The property of the husband is inherited by his male children and relatives. Written or oral wills are also given effect. Widow inheritance is practiced in Avukaya culture, (though the idea is dying out these days) provided that the widow has children and is of good character. The widow is allowed to choose another man from among the brothers or other close male relatives of her deceased husband. Widow inheritance is used by the family of the deceased, to retain their children in the family. The children born thereafter belong to the biological father – the relative of the deceased who inherited the widow. Should the deceased be an unmarried man, his properties pass on to his brothers or relatives.</p> <p><i>Inheritance of the properties of wives</i></p> <p>The property of a deceased wife belongs to her relatives. Written or oral wills are also given effect. Should a woman die in the house of her husband, her body is taken by her brothers to their home for burial. She will only be buried at her husband's house if she has grown up children. If the wife dies at a young age without bearing children, the husband is allowed to marry another girl from the same family. This practice is however dying out due to modernization.</p>
<p>Moru</p>	<p>Inheritance is the taking charge or taking over of the property of a deceased person. Succession is the taking over of the position or title of a deceased. Matters of inheritance and succession are normally discussed and finalized at the family level and are hardly referred to the formal system of dispute settlement.</p> <p><i>Inheritance of the properties of husbands</i></p> <ul style="list-style-type: none"> ● The property of a deceased husband is inherited by his children and relatives. ● A written or oral will made by a deceased husband is usually given effect, provided it does not run contrary to customary law. ● The wife of the deceased is normally taken over by one of the brothers or close relatives of the deceased selected by her. The children born of the latter marriage belong to their biological father. ● The properties of an unmarried man are inherited by his parents, and if the parents are dead, by his brothers. <p><i>Inheritance of the properties of wives</i></p> <ul style="list-style-type: none"> ● The property of a deceased wife with children, belongs to her children. ● Where a wife leaves behind a written will it will be effected only to the extent of its conformity with customary law. ● The properties of an unmarried woman without children are inherited by her parents. <p><i>Inheritance of properties of unmarried persons</i></p> <ul style="list-style-type: none"> ● The properties of an unmarried man are inherited by his family. ● The properties of an unmarried woman without children are inherited by her relatives.

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3. LAWS OF INHERITANCE AND SUCCESSION

<p>Baka</p>	<p>Inheritance is the taking over of the property of a deceased person. This involves taking over the deceased person's belongings (farm produce, land, cars, bicycles, debts etc). Succession is the taking over of an official position or title from someone regardless of whether the person is alive or dead.</p> <p><i>Inheritance of the properties of husbands</i></p> <ul style="list-style-type: none"> ● The property of the husband is inherited by his male children, or by his brothers, where he has no male children. However, the will of a deceased man will be effected. ● In the past, the wife of the deceased will be inherited by his brothers but the practice is very rare these days due to fear of HIV/AIDS. ● Where the widow of a man is inherited, the children born after the deceased will belong to their biological father. ● The properties of an unmarried man are inherited by his brothers, or his father where he has no brothers. <p><i>Inheritance of the properties of wives</i></p> <ul style="list-style-type: none"> ● Upon the death of a woman, her properties will be inherited by her relatives. ● Where a woman leaves a will behind, it will be respected fully. ● Where an unmarried woman dies, her properties will be inherited by her parents and in the absence of parents, by her brothers.
<p>Wa'di</p>	<p>Inheritance is the taking over of the property of a deceased person. It involves taking over the deceased's belongings which may include farms, produce, land, cars, bicycles and debts. Succession is the taking over of a position or title of a person. This usually relates to a political position. Matters of inheritance are decided at the family level and do not go to the formal courts. The matter can be referred to court when there is disagreement among family members.</p> <p><i>Inheritance of the properties of husbands</i></p> <ul style="list-style-type: none"> ● The property of the husband is inherited by his male children. A written or oral will left behind by the deceased husband is always respected, provided that it is consistent with customary law. ● The widow is inherited and married by one of the brothers or relatives of the deceased. All children born into this new marriage will belong to the new husband. ● Where the deceased man was not married, his properties will be inherited by his brothers or relatives. <p><i>Inheritance of the properties of wives</i></p> <ul style="list-style-type: none"> ● The properties of a deceased wife belong to her relatives. A written or oral will left behind by the deceased wife is always respected provided that it is consistent with customary law.

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3. LAWS OF INHERITANCE AND SUCCESSION

<p>Jur-Bel</p>	<p>Inheritance is the passing on of property including a wife, to another person, upon the death of the owner. On the other hand, it can be noted that hereditary succession is not common since the system of governance among the Jur-bel community is not well defined as leadership is determined by physical strength rather than by lineage. Upon the death of a clan's chief, the elders meet and select a leader whom they consider to be strong and most capable to lead the community against external aggression.</p> <p>Procedures for processing inheritance and succession</p> <ul style="list-style-type: none"> • When a husband dies, the wife and children are required to sleep outside the house for a period of three months. During this period, they may not speak to the relatives and should be clad in black garment. • The elders usually console the widow and send the youth to sing songs to console the rest of the bereaved family. • The widow will resume her normal duties, but will not be inherited before a period of 2-3 years from the time of the death of her husband. At the end of the 2-3 years, the elders consisting only of relatives of the deceased will convene a meeting to discuss the inheritance of the widow. • At this stage, a tomb will be built around the grave of the deceased to honour him. • The clan elders will then select one of the brothers of the deceased to inherit the widow. <p>Inheritance of the Properties of a Husband</p> <ul style="list-style-type: none"> • The properties of a married man are inherited by his eldest son. If there are no sons, one of the brothers will take over. • Where a husband made a will, it will be respected only to the extent that it is consistent with customary law. • The wife of the deceased is inherited by a close member of the family and in most cases, his younger brother. • The children born after the death of the husband will still belong to him. The new husband only inherits conjugal rights and responsibilities and not the children or properties. • The properties of an unmarried man are inherited by his father. <p>Inheritance of the Properties of a Wife</p> <ul style="list-style-type: none"> • The relatives of a married woman are entitled to her property. No consideration is given to a will if there is one. • The inheritance of the properties of an unmarried woman and a married woman are treated differently. The properties of an unmarried woman are handled by her family, while those of a married woman are handled by the two families.
<p>Azande</p>	<p>Inheritance (<i>Ahu'kumbo</i>) is the taking over or receiving of a deceased person's property. Succession is the taking over of the position or title of someone, such as a political position. Chieftaincy succession struggles are uncommon since chiefs usually choose their successors from among their male children or relatives. The property of a deceased are inherited by the male or female lineage. Succession to chieftaincy is attained only by the male lineage. Matters pertaining to the administration of a deceased person's estate are normally discussed at the family level. The property of the husband is inherited or taken over by his male children and in their absence, by his relatives. However, the relatives shall manage the property for and in the interest of the children of the deceased person. A written or oral will of a deceased husband is always respected, provided it is in conformity with customary law. Should the deceased man be unmarried at the time of his death, his property will be inherited by his family. A guardian is assigned to the young children of the deceased. The guardian manages the deceased's property for the interest of the children until they attain maturity when they take over the management of the property. A widow may stay in her late husband's house for as long as she remains unmarried.</p> <p>The property of the deceased wife belongs to her children and parents or relatives. A written or oral will of a deceased wife will be respected to the extent of its consistency with customary law. The property of an unmarried deceased woman belongs to her father or relatives.</p>

Table ends.



4. LAND LAW

Toposa	<p>Land is owned collectively but priority of use lies with the clan and family members. Grazing land is communal and everybody has access to such land subject to negotiations between different clans. However, land is also available for individual use such as for cultivation and construction of homesteads.</p> <p>Traditionally, land may not be sold. However, the Government has recently introduced commercial transactions in land especially around urban areas. Land may be allocated to outsiders such as IDPs. The land to be allocated is determined by the community elders. A person may dispose of land to his friend. Disposal of the land requires the consent of the elders. Many IDPs receive land in this way.</p> <p>When land is allocated to an outsider, the property owner will perform a ritual to hand over the land otherwise the land will not be productive.</p>
Lotuko	<p>All land belongs to the entire community but remains under the custody and protection of the landlords, the chiefs and <i>Mwonyemiji</i>. Land is, however, distributed amongst the different clans who have priority rights in their locations over other Lotuko clans and non-Lotuko. Besides communal land, land is also available for private use such as for farming and family use.</p> <p>Grazing land is communal and every member of the tribe is allowed to graze through a priority of rights arrangement. The consent of the clan occupying the piece of land is required to secure grazing rights. The landlord must perform rituals for the new occupants or users. In the absence of such ritual, it is believed that diseases will befall the animals and people on the land.</p> <p>Non-Lotuko, including IDPs may acquire Lotuko land by special arrangement. Outsiders wishing to acquire Lotuko land must initially pass through a friend who will introduce him/her to the chief of the area. The chief will then consult with the <i>Monyomiji</i>, the clan elders and the landlord about the application. Where the application is successful, the land will be shown to the applicant by the <i>Monyomiji</i>. These days the county government must be consulted prior to the allocation of land to outsiders. The landlord will have to perform the necessary rituals before occupation takes place so that the land may be productive and not harmful to the new occupier. This is done by blessing the house with water and charcoal.</p> <p>The daughters of the Lotuko may be given land for building houses and farming purposes. However, they may not pass on such land to their children or husbands. This is because land belongs to the clan and cannot be given to outsiders without following the proper procedure.</p>
Lango (Dongotono, Lokwa, Logir, Katebo, Imotong, Lorwama, Lotuko sub-tribes)	<p>Land belongs to the community who settle in specific areas. Land includes vegetation, and minerals. The land belongs to the landlords. Land is acquired by consultation with the landlords. IDPs can acquire land temporarily. The process of allocation involves the local authorities and the community. There is no law regulating the purchase and sale of land. Women and widows can own land under the supervision of their relatives. Land is given free of charge to any relative. Land is inherited through family lines or through a friend. Land is divided according to the clans. Land is designated for communal use such as for grazing and agriculture. Land is available for individual purposes.</p> <p>Sacred land is available for spiritual and cultural purposes e.g. shrines, forests, mountains, caves, rivers and huge trees.</p> <p>The ownership of land can be proved through long occupation, graves, crops, trees, permanent structures and fixtures. Boundaries are demarcated by big trees, piling stones, pegs of ebony woods, and by planting perennial trees at the boundaries. The ancestral rules are used for the inheritance and the use of land.</p>
Lopit	<p>All land belongs to the community. Territories are further subdivided into clan land. Notwithstanding this subdivision, every Lopit has a right to use any part of Lopit land for grazing, subject to the principles of priority of rights and reciprocity. IDPs and outsiders wishing to get land among the Lopit must obtain the consent of the chiefs, landlords, <i>Monyomiji</i> and clan elders. However, they must initially pass through a Lopit who is willing to give them land. The landlord must, however, perform the necessary rituals so that the land becomes productive and harmless to the new comer. At the start of the planting season, every member of the community must take their seeds to the landlord to perform certain rituals, to ensure the productivity of the land and an abundant harvest.</p>

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4. LAND LAW

<p>Balanda Bviri</p>	<p>Land is defined to include rivers, mountains, natural vegetation and forests, of a specified community. Ownership of land is communal. In other words, land is owned by the community. Each family lives on the land of their ancestors. Natural resources such as forests, rivers and grazing land belong to the entire community, and no person outside the community can claim title to them. Land is classified or divided into communal land, clan land, and land for individual use. Fathers allocate land to their sons when they reach marriageable age. Girls are not expected to get land from their father, since they will get land upon marriage from their new families. Though the law prohibits the inheritance of land by women, a widow may inherit the land of her husband with whom she has children. Outsiders cannot easily access land among the Bviri. This is because outsiders may cause disruption to the peace of the society. Good character is a prerequisite for obtaining land. A person who wishes to acquire land must first report to the Paramount Chief, and explain his reasons for requesting the land. The Paramount Chief will use the opportunity to inquire into the background of the applicant. The Paramount Chief will consult the chief of the area where the applicant is ordinarily resident, to determine whether the applicant is of good character. When the Paramount Chief is satisfied that the applicant is of good character, land will be allocated as requested. Apart from residential land, land is also set aside for spiritual and cultural purposes. Internally Displaced Persons (IDPs) may acquire land only for temporary use. Ownership of land can be proved through long occupation, the presence of permanent crops and trees, permanent structures and fixtures of old buildings, broken pots. etc. Boundaries are demarcated by rivers, trees, and the drawing of border lines, which is in most cases in the memories of the people.</p>
<p>Bongo</p>	<p>Land is defined to include the soil, forests, rivers and grazing land. Land is owned communally and belongs to the entire community. Land is also set aside for allocation to families and clans. Apart from the residential land, land is also set aside for spiritual and cultural purposes. Fathers allocate land to their sons when they reach marriageable age. No land is given to the girls, since they will acquire land from their new families, upon marriage. Bongo customary law prohibits the inheriting of land by women. However, a widow can inherit the land of her husband with whom she has children. Outsiders do not acquire land easily since land belongs to the community. In addition, outsiders are regarded as sources of bad influence in the community. An outsider applying for land must firstly, report to the Paramount Chief who will ascertain whether the applicant is a person of good character. His background and history is normally investigated, by consulting with the chief of his area of origin. The application may be granted or rejected, depending on the judgment of the Paramount Chief, as to the character of the applicant.</p>
<p>Ndogo</p>	<p>Land includes the earth's surface, the grass and trees that grow on it, as well as the rivers and mountains. All land belongs to the tribe. Land is divided into communal, clan and family land. Land can be acquired by inheritance and through allocation by fathers to their sons, when they attain marriageable age. Generally, girls are not allocated land, since land belongs to the clan. Outsiders can acquire land through a very rigorous process, which includes ascertaining whether they are of good character. Widows may inherit land, but only to the extent that they have children to inherit the land in the future, to ensure that the land remains within the clan. Nobody is allowed to sell land, or use it as collateral in transactions with financial institutions. Internally displaced persons may be allocated land on a temporary basis. They are permitted to remain on the land until they are able to return to their own territories. Land boundaries are identified through big trees, permanent crops, rivers, fences, hills and graves.</p>
<p>Mundari</p>	<p>Reference to land includes what is naturally found on it including water, forests and vegetation, valleys, etc. Ancestral land belongs to the community but can be shared among clans and families for purposes of farming and settlement. Land can be acquired through inheritance and gifts. Outsiders can acquire land for use only and not for ownership. IDPs can get land for temporary use only. Land cannot be sold. Women can own land provided that it does not belong to the clan. Families and clans occupy ancestral land whose boundaries are known to other members of the community. Boundaries are demarcated by trees, valleys etc.</p>

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4. LAND LAW	
Avukaya	<p>Land includes water sources, rivers, natural vegetation and valleys. The law governing land is no different from that governing the community. Land belongs to the community and is regulated by traditional authorities, being the headmen and chiefs.</p> <p>Acquisition of land</p> <p>Avukaya land is acquired by the following means:</p> <ul style="list-style-type: none"> • Inheritance. • Gift by an individual, or by the headman. Good behaviour plays a paramount factor in giving land to a person from another community. The headman gives the land through the supervision of the sub-chief. An individual is given the land through the supervision of the head man. • Lease for a certain period of time. • Purchase (buying) from any person of the community, through the witness of the elders, headman and sub-chief. • IDPs and all the returnees go to their ancestral lands. Those who are unable to locate their ancestral lands are assisted by the headman and the sub-chief. • Where an individual intends to sell his or her land; the two parties involved (seller and buyer) go to the headman. The buyer's character is traced to satisfy the entire community that he or she is of good reputation. • Women and widows may own land. A woman can sell or dispose of land in any manner she deems appropriate. • The use of land as a collateral in financial institutions is a new development in Avukaya community. • Land is divided into communal land, private land, clan land, as well as land reserved for farming, beekeeping and hunting. • Different land rights may co-exist in relation to the same parcel of land, in accordance with the understanding and agreement of the parties. • Boundaries are known even to children, who are given land by their parents. Land boundaries are predominantly demarcated through trees, rivers, valleys, foot paths, hills, graves, forests, mountains, roads etc. • There are no specific rules that govern the occupation and use of land. Land is governed by the general rules and customary laws that govern the community. The headmen and chiefs are the heads of the community and at the same time the heads of the land.
Moru	Not discussed in data.
Baka	<p>Land includes water sources, rivers, natural vegetation and valleys. All land belongs to the Baka community and remains under the supervision of headmen and chiefs in their respective areas of authority.</p> <p>Land is divided into communal land, clan land, and land for individual use. Land is also available for cultural and spiritual purposes. Land is also designated as reserve land for future use.</p> <p>Land acquisition. Land may be acquired through the following means:</p> <ul style="list-style-type: none"> • Inheritance. • Gifts from an individual. This means of land acquisition is subject to the supervision and approval of the headman and sub-chief. In this regard, the chief must be satisfied of the good character of the person to whom the land is to be transferred. This requirement is especially necessary in relation to the acquisition of land by outsiders. IDPs can normally acquire land in this way. • Land can also be bought or leased from individuals subject to the consent of the headman, sub-chief and elders of the clan. • Ownership of land in the Baka community is proved through names of rivers, graves, trees etc. Since most of the land is inherited, the ownership of land is known to every member of the community.

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4. LAND LAW	
Wa'di	<p>Land includes water sources, rivers, natural vegetation, valleys, minerals and land itself. Land is divided into communal land, clan land and family land. In addition, land is set aside for collective purposes such as customary rituals. Land is governed by traditional authorities such as headmen and head chiefs.</p> <p>Acquisition of land</p> <p>Land is acquired through the following means:</p> <ul style="list-style-type: none"> ● Inheritance. ● Gift by an individual or by the headman. ● Foreigners may apply for land through the headman and its distribution is supervised by the sub-chief. The good character of the applicant is a prerequisite for the allocation of land to a foreigner. ● Leasing from existing land owners. This is a very recent development. ● Purchase (buying) from any other person in the community. Purchases are witnessed by elders, the headman and the sub-chief. ● Returnees are entitled to their ancestral land. They will be directed to their ancestral land, if they cannot recall its location. ● Women and widows are allowed to own and acquire full rights to land, including the right to sell or lease after consultations with her parents or relatives. ● Boundaries and demarcation are done by using trees, valleys, footpaths, hills, graves, forests, mountains, rivers and roads.
Jur-Bel	<p>Under Jur-bel customary law, each family may allocate a piece of land to their adult sons provided that they do not go beyond their boundaries of the land.</p> <ul style="list-style-type: none"> ● An individual may not take land without consulting the owner. ● Land is generally owned communally. However, individuals have rights to their ancestral lands. ● Each clan undertakes activities within the boundary of their territory without encroaching into the land of other clans. Clan land boundaries are recognized by natural vegetation and rivers. ● Land boundaries are respected in the community and no one is allowed to trespass on another person's land. ● Land is acquired mainly through inheritance. ● A stranger may secure land through a friend, provided that the new comer is prepared to respect the rules of the Jur-bel community. Land is set aside for outsiders. IDPs may benefit from such land. ● There are no laws governing the purchase and sale of the land since land is not sold. ● A woman may own land through her children, upon the death of her husband. ● Different rights to land may co-exist in relation to the same parcel of land, depending on the size and the nature of the land. These rights may relate to water sources, drinking water, fishing areas, cultivation and bee hiving. However, different people may not claim different rights to the same parcel of land. ● The following are different ways through which one can prove ownership of land: through the presence of a grave, through long occupation, through permanent crops and trees, and through permanent structures and fixtures.

Table continued next page...



4. LAND LAW

Azande

Land (*ngbakungo*) includes the surface of the earth, water sources, vegetation, valleys etc. Land belongs to the whole community and falls under the supervision of the chief who consults with the sub-chief, headman and community leaders.

Acquisition of land

Land is acquired through the following ways:

- Inheritance.
- Allocation by headman (*bairagene*) in consultation with sub-chief and chief.
- An outsider wishing to acquire land must produce a letter from the chief of his community of origin, stating the reasons why he left his place of origin, and that he is of good character. Where the headman is satisfied with the letter, he may dispatch the sub-chief and the chief to supervise the process of giving land to the applicant. Proof of good character must be provided in acquiring land whether the person wishing to acquire land is an Azande or from another community.
- Leasing from an Azande person for a certain period of time, and subject to compensation mutually determined between the two parties and the executive chief.
- Internally Displaced Persons (IDPs) are entitled to their ancestral land through the headman, sub-chief and executive chief. This entitlement does not preclude them from obtaining land by other regular means.
- Women and widows can own land. They may also sublease the land or make any other form of disposition of land in consultation with the executive chief of the area where the land is situated.

The following principles also apply to the regulation of land:

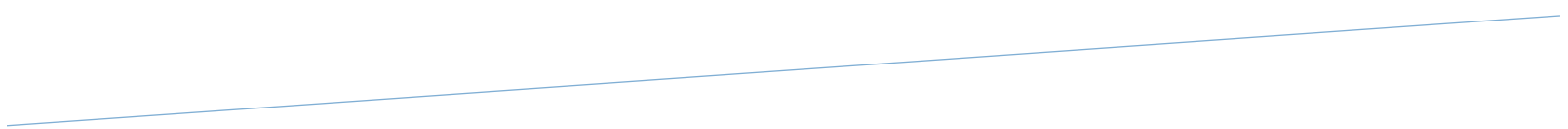
- Land as collateral in financial institutions is a new development in Azande community but can be done through the supervision of the headman or chief, based on the agreement with the financial institution. The role of traditional leaders includes confirmation that the applicant is the actual owner of the land.
- Land is divided and designated as communal land, individual land, clan land, reserve land-forests (*Gbokungbo*), and land for cultural and spiritual purposes.
- Different rights to land can co-exist in one parcel of land according to the understanding and agreement of the parties. For instance, a beneficiary of land may acquire a right of use but not ownership.
- Land boundaries are usually known to the general community, including children who are given land by their parents. Land boundaries are demarcated by the community through trees, rivers, valleys etc.
- There are no specific rules and customary laws that govern the occupation and use of land. They are governed by the general rules and customary laws that govern the community. The traditional authorities are the heads of the community and at the same time, the heads of community lands.

Table ends.

5. ENVIRONMENTAL LAW	
Toposa	There is no specific grazing land. There are specific trees that cannot be cut down, called ' <i>nyakirit</i> '. It is forbidden to destroy trees that bear fruit. Grass cannot be burnt as it is used for animals. Persons who break these laws are punished. First offenders are warned. Second offenders are beaten and chased away. Some watering holes are protected and reserved for use during the dry season. Any person who uses them during the rainy season commits an offence. Everyone is aware of, and responsible for ensuring the protection of these areas.
Lotuko	The environment is a very important aspect of Lotuko customary law. The water, pastures and fruit trees are the daily fountain on which life thrives and should therefore be respected. The cutting down of fruit trees and edible plants such as coconuts, tamarind, passion fruits, mangoes and avocados is prohibited. Any person who cuts down an edible tree is liable to a fine of 1 cow by the <i>Monyomiji</i> . Any person who destroys or contaminates a water source will be liable to pay a fine of 1 cow to the <i>Monyomiji</i> . Where the contamination is a minor one, the perpetrator will be required to pay 1 goat. In all cases, a warning is given to the offender not to repeat the offence.
Lango (Dongotono, Lokwa, Logir, Katebo, Imotong, Lorwama, Lotuko sub-tribes)	Not discussed in data.
Lopit	The Lopit are natural conservators and take every care to protect the environment. To protect the environment, Lopit customary law prohibits the unnecessary felling of some trees especially the very large ones. For example, it is an offence to fell and cut the tamarind tree. When one cuts a tamarind tree, he/she must report immediately to the landlord of the area where the tree is located. Any person who cuts down a tamarind tree or any other large tree that is protected, shall pay a fine of 1 goat to the landlord for each tree that is cut down. It is an offence to destroy water sources.
Balanda Bviri	Not discussed in data.
Bongo	Deliberate destruction of the environment is not permitted by customary law. However, unintentional burning of forest sometimes occur when a fire accidentally erupts and becomes uncontrollable, or possibly, in the process of clearing fields, or when burning garbage. There is no defined punishment for destruction of the environment. However, where a person accidentally burns down a forest, he/she is brought to traditional court for investigations into the cause of the fire. No compensation is required or fine imposed, since the forest is considered so vast that an individual will not be able to afford the payment of compensation. The culprit is merely issued with a warning against being careless, when dealing with public assets.
Ndogo	The deliberate destruction of the environment is prohibited. A person may not cut fruit bearing trees without reason. Unintentional burning of forests may occur, during the burning of weeds or other unwanted materials. This may result in immense damage to trees that produce edible fruits. Punishment, fines and compensation. There is no defined punishment for destruction of the environment. A person who accidentally burns down a forest is brought before a traditional court, to investigate the cause of the fire. The culprit is warned against being careless in dealing with the environment.
Mundari	Not discussed in data.
Avukaya	Not discussed in data.
Moru	Not discussed in data.
Baka	Not discussed in data.
Wa'di	Not discussed in data.
Jur-Bel	The customary law of the Jur-bel gives primary importance to the protection of the environment. Every clan is under an obligation to protect the trees, forests, water and vegetation, as these are sources of their livelihoods. The law prohibits the unnecessary making of fire and cutting down of vegetation because these activities interfere with economic activities such as bee hiving and wild fruits. They also scare animals away. The use of water for farming and grazing is also regulated to ensure that they are not subjected to abuse and destruction. There are many traditional beliefs that condition people to respect the environment for fear of suffering some misfortune. For example, it is believed that if someone fishes without permission, he or she will be bitten by crocodiles and snakes, or may hurt himself or herself with the implement used for fishing. An offender may be subjected to a fine for destroying the environment. The fine will be imposed by the elders. The word of the elders carries more weight than that of the chief in the Jur-bel community. It is believed that a person who destroys the environment will be punished by natural causes.
Azande	Not discussed in data.



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