



JUSTICE UNDER PRESSURE:  
CUSTOMARY JUSTICE SYSTEMS AND THEIR ADAPTIVE  
ROLE IN CONFLICT AND CLIMATE RESPONSES

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# JUSTICE UNDER PRESSURE: CUSTOMARY JUSTICE SYSTEMS AND THEIR ADAPTIVE ROLE IN CONFLICT AND CLIMATE RESPONSES

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## EXECUTIVE SUMMARY

Customary justice systems are one of the main institutions managing disputes and containing violence in fragile South Sudanese surroundings such as Jonglei and the Greater Pibor Administrative Area (GPAA). These courts do not primarily operate as institutions of ruling-based justice. Their central function is the disruption of violence through tools such as mediation, processual delay, compensation, and negotiated settlement. Legal rulings are deliberately sequenced rather than prioritised. They often follow only once escalation risks have been reduced. This practice reflects a pragmatic assessment of how violence spreads in highly mobilised communal contexts.

The interface between customary and statutory justice is characterised by ambiguity and negotiation. Fixed jurisdictional boundaries are not practised. Case transfer is shaped by the availability of the statutory system, for instance through mobile courts, and enforcement capacity. Political conditions as well impact this relationship: Cooperation between the systems is much weaker in areas leaning towards the opposition. In contexts where statutory justice is politicised or inaccessible, customary justice systems absorb even severe cases to prevent escalation. Effective coordination therefore depends on professionalisation and depoliticisation of statutory justice, rather than on formal integration alone.

Serious violence and homicide are stress-test cases for customary justice. Even in these cases, customary courts prioritise the containment of violence to prevent revenge and wider mobilisation. Premature legalisation can destabilise communities if mediation has not reduced tensions first. Climate-related stress

– particularly flooding, displacement, and changing land use – further increases dispute frequency and urgency, placing additional strain on mediation capacities.

Efforts to harmonise and codify customary law promise clarity and legibility. However, they carry significant risks. Codification narrows interpretive space, reduces temporal and relational flexibility, and can support the institutionalisation of conservative interpretations of customs in a context of rapid social change. Without safeguards, harmonisation may weaken the very practices that allow customary courts to function under pressure and adapt to specific contextual circumstances which are dynamic in nature. For instance, fixed rules on homicide or land disputes can reduce the ability of chiefs to delay decisions, negotiate compensation, or separate parties to prevent retaliation.

Six key implications for policy and programming are identified.

1. Mediation-ruling sequencing should be explicitly recognised and protected;
2. Coordination with statutory justice must be grounded in professionalisation and political neutrality;
3. Customary authority should be supported as an adaptive governance capacity rather than formalised as a fixed institution;
4. Engagement with customary authorities should be iterative and practice-based
5. Mediation and conflict management capacities must be safeguarded under climate-related pressures.
6. And harmonisation should be treated as a bounded, risk-aware intervention that preserves flexibility and mediation space.

# INTRODUCTION

Customary courts and customary authorities are critical to the administration of justice and the management of conflict in South Sudan. In most parts of the country, they still represent the most accessible and socially legitimate institutions for addressing disputes, including those involving serious violence. Customary justice operates in an environment marked by prolonged political transition and multiple pressures in a condition of limited state presence and weak systems of formal justice. These conditions have intensified demands on customary authorities while simultaneously reshaping the kinds of conflicts they are asked to manage.

This report approaches customary courts as key sites of practice where questions of law, mediation, governance, and violence prevention are negotiated. The analysis focuses on two interrelated interfaces that structure how customary justice functions in South Sudan today:

The first interface concerns the relationship between mediation and adjudication within customary courts themselves. Customary authorities are routinely expected to act both as mediators seeking to contain violence and as judicial actors issuing rulings, determining responsibility, and ordering compensation. In practice, these functions are not neatly separable. The report therefore asks how customary courts navigate the tension between conflict management and legal decision-making, particularly in cases involving homicide and killings related to cattle raiding and inter-communal violence.

The second interface lies between customary and statutory justice systems. While South Sudan's constitutional and legal framework – especially through the Local Government Act 2009 – recognises customary law as a legitimate source of justice, the boundaries between customary and formal jurisdictions remain unclear and inconsistently applied. Serious criminal cases are often handled customarily, at least initially, while referral to statutory authorities is selective and shaped by local security constraints and political control.

Across both interfaces, the report aims to address a central concern: how customary courts function under conditions of uncertainty and stress, and how their practices of conflict management interact with ongoing efforts at justice sector reform and climate-responsive programming.

## Methods and Evidence Base

The findings presented in this report are based on a combination of qualitative research and literature review conducted between November 2025 and January 2026. The analysis draws on four expert interviews with international and South Sudanese researchers with long-standing engagement in South Sudan's customary justice landscape. These interviews provided interpretive insights into the historical development of customary courts, their political economy, and their interaction with formal legal and humanitarian systems.

Second, the report is grounded in field-based interview material collected in Jonglei State and the Greater Pibor Administrative Area (GPAA). This material consists of structured and semi-structured responses from customary chiefs and local leaders, gathered through questionnaires and guided discussions facilitated by IOM partners. These interviews focus on how cases are handled in practice, how decisions are made regarding mediation, adjudication, and case referral, and how customary authorities respond to serious violence and inter-communal conflict.

The analysis also draws selectively on existing documentation produced under related initiatives, including background questionnaires, policy and academic studies addressing customary law in the study areas. Throughout the report, interview material is used to illuminate patterns of practice rather than to attribute individual positions.

## Structure of the Report

The report is structured to trace how customary courts in South Sudan manage conflict under conditions of political fragility and increasing external pressure. Following this introduction, Chapter 2 situates contemporary customary courts within the historical formation of customary authority, showing how colonial and post-colonial governance shaped their current roles as custodians of social order. Chapter 3 then examines how customary courts function in practice, focusing on mediation, delay, compensation, and negotiated settlement as primary modalities for disrupting cycles of violence. Chapter 4 analyses the interface between customary and statutory justice systems, highlighting how cases are dealt with in the absence of clear jurisdictional boundaries and under conditions of political interference.

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<sup>1</sup> <https://docs.southsudanngoforum.org/sites/default/files/09-2017/Local20%Government20%Act202009%.pdf>

Chapter 5 focuses on serious violence and homicide as stress-test cases for customary justice, exploring how courts navigate the tension between community-based conflict containment and the demands of formal criminal law. The subsequent chapters examine two sets of pressures that further reshape customary practice: ongoing efforts to harmonise and codify customary law, and climate-related stress, such as flooding and displacement, which increase disputes over land and mobility. The report concludes by returning to the core interface questions and outlining implications for policy and programming, with particular attention to mediation support, coordination with statutory justice, and climate-responsive peacebuilding in Jonglei and the GPAA.

## HISTORICAL FORMATION OF CUSTOMARY JUSTICE

Contemporary debates on customary courts in South Sudan often treat them as long-standing, culturally continuous institutions. This obscures the extent to which the roles and legal authority of chiefs and customary courts have been historically produced and politically shaped. The present tensions between mediation and adjudication, and between customary and statutory justice, cannot be understood without tracing how authority has been successively reconfigured over time. Customary authority has not followed a linear path of continuity; rather, it has been repeatedly adapted to respond to shifting forms of external rule (Leonardi et al. 2011; Mamdani 41-37 :1996).

Exercising customary authority happened through plural and situational arrangements rather than through fixed offices or standing courts in the pre-colonial period (Beswick 2004). Dispute handling was embedded in social relations and oriented toward restoring coexistence. Elders, lineage heads, ritual specialists, and other figures intervened as needed. Authority predominantly was grounded in social recognition. Normative orders overlapped and were navigated pragmatically, reflecting what legal pluralism later conceptualised as the coexistence of multiple, partially autonomous normative fields (Moore 2000; Merry 1988). Negotiation and mediation, compensation, and the separation of conflictive groups served as the central techniques. The aim was to contain violence and repair relationships rather than to issue definitive legal judgments.

Colonial rule introduced a qualitatively different logic. In order to stabilise their fragile authority, colonial administrations sought to render legible the rule of customary authorities. Chiefs were formalised as offices, endowed with jurisdiction, and positioned as intermediaries between communities and external authority. In this process, selected norms and practices were articulated as “customary law” (Hessbruegge 2012). Other practices, which could be broadly situated as conflict management, for instance inter-communal negotiations on migration routes, were reinterpreted and sometimes utilised. This was not the invention of custom *ex nihilo*. What can be observed is rather a selective institutionalisation of certain traditions to serve administrative purposes, a process Hobsbawm and Ranger (2012) have termed “invented tradition”.

In the late colonial and post-colonial period, the legal expectations placed on customary authorities expanded further, especially as state capacity remained unequal or even declined. Chiefs and customary courts were increasingly framed as components of a broader justice system, expected to adjudicate disputes, maintain order, and apply recognisable legal norms. Statutory courts often remained geographically distant. They were notoriously under-resourced and thus inaccessible to much of the population. The absorption of legal tasks by customary courts happened mainly by default and included areas formally belonging to statutory criminal law.

Decades of civil war and militarisation continuously reshaped these dynamics. Armed conflict weakened formal institutions while increasing the violent conflict risks associated with unresolved disputes. In this context, the legitimacy of customary authorities came to rest less on legal correctness than on their ability to manage conflict: preventing escalation, breaking cycles of revenge attacks. Chiefs operated as brokers, often prioritising negotiation and compensation or applying delay tactics over adjudication. Legal categories blurred under conditions where enforcement was uncertain, and violence could easily spiral beyond control (Leonardi et al. 2011).

# CONFLICT DISRUPTION BEFORE LAW: WORK MODALITIES

Customary courts operate primarily as institutions for managing the risk of violence where escalation is already under way or imminently expected. “Our responsibilities include maintaining peace, resolving disputes among individuals, families, and clans, and preventing conflicts from escalating. We also lead reconciliation efforts, particularly in cases that could trigger revenge or inter-clan violence.”<sup>2</sup> This framing establishes a hierarchy of functions in which peace and containment come first, and legal determination follows.

This hierarchy becomes clear in the way serious cases enter customary processes. Rather than being filtered immediately into statutory systems, even the gravest incidents are first handled within customary space. Interviews showed that “serious cases, including killings, rape, or incidents involving firearms, are first addressed customarily to calm tensions and prevent revenge. Where possible, such cases are then referred to the police or other formal authorities.”<sup>3</sup> The sequencing is crucial. Customary intervention does not deny the seriousness of such acts, nor does it reject the relevance of formal law. Instead, it reflects an assessment that premature legalisation risks intensifying violence rather than containing it.

The way this intervention unfolds further underscores that customary courts operate according to a logic of disruption rather than resolution. The logic is well captured by Roger Mac Ginty’s notion of conflict disruption (Mac Ginty 2021), which shifts analytical attention away from definitive settlement toward the practices that interrupt or divert cycles of violence before they harden into sustained confrontation. From this perspective, peace is not achieved through closure, but through repeated acts that unsettle escalation and keep social relations from tipping into open conflict. The concept of “tajility”, brought into the debate on conflict management and transformation by Alex de Waal and colleagues (de Waal et al. 2019), follows a similar reasoning by pointing to the strategic quality of delay.

Customary courts in South Sudan operate squarely within this register. Their interventions are designed to disrupt trajectories of collective mobilisation before they produce final legal outcomes. Viewed through the lens of pragmatic peace (Bargues-Pedreny 2020; Pospisil

2019), customary adjudication treats law not as an endpoint but as a tool deliberately layered to preserve space for coexistence. Conflict disruption emerges as a governing strategy oriented toward survival under conditions where escalation is the dominant risk.

Interview material emphasises that the objective of a case is not confined to determining responsibility but extends to the preservation of social relations under conditions of stress. “The objective is not only to determine responsibility but also to restore relationships and maintain peace within the community.”<sup>4</sup> Responsibility matters, but it is subordinated to the broader task of preventing further harm.

This ordering challenges external expectations that courts should prioritise foreseeability and consistency. Stabilisation is achieved through a set of techniques that are often misread as weakness or informality but are better understood as deliberate conflict-disruptive practices. Interview notes describing responses to various forms of inter-communal violence are explicit on this point: “Chiefs intervene immediately in cases of revenge killing, cattle raiding, or inter-community violence. Families are separated, compensation negotiations begin, and peace meetings and cross-community dialogues are organised.”<sup>5</sup>

Immediate intervention often does not take the form of investigation or ruling. It takes the form of spatial and social reorganisation: the separation of families to break cycles of retaliation, the removal of mobilised youth from flashpoints, or the proactive convening of dialogues before narratives harden. These actions create time, and time reduces the likelihood of escalation. Compensation occupies a central place in this stabilisation process (Ngepriah 2025). Rather than serving as a final settlement or a substitute for justice, compensation operates as a signal that violence will not continue. One insight notes that “Compensation is usually paid in cattle, particularly in cases of injury or killing ... Reconciliation may include shared traditional rituals aimed at cleansing anger and preventing revenge.”<sup>6</sup>

A related and equally important practice is the deliberate avoidance of early closure. Interview material repeatedly indicates that customary authorities resist making immediate or definitive determinations of responsibility when doing so could result in further conflict. In the Jonglei interviews, traditional leadership is described as playing a role in “managing communication breakdowns and intervene in disputes before they escalate into violence, maintaining order within the community

especially when it comes to cattle raiding, revenge attack or clan to clan fight.”<sup>7</sup> Fixing responsibility too early might even risks the escalation of a containable dispute into a wider conflict.

This reluctance to close cases is reinforced by the broader security environment in which customary authorities operate. One Jonglei-based statement highlights a critical constraint: “According to some correspondent local leader in Jonglei state, work with police or local committees to prevent crime and promote community-based safety measures but with current situation youth are more armed more than the police making it difficult for the traditional authorities in the state to achieve their give roles and responsibilities.”<sup>8</sup> In contexts where customary authorities lack coercive capacity and formal enforcement is weak or absent, maintaining space for negotiation becomes a survival strategy. Customary courts cannot rely on force to impose decisions. Their authority mainly rests on social, “grounded” legitimacy (Clements 2014) based on the ability to manage collective expectations.

Customary courts do not aim to resolve disputes definitively at the moment they intervene. Instead, they interrupt cycles of violence, reduce intensity, and create conditions under which the likelihood of further harm decreases. From a legal perspective, this way of working can appear deficient. Delayed decisions or provisional outcomes sit uneasily with expectations of rule application and legal certainty. These features are not accidental. They are the means through which customary courts remain effective in conflict-prone environments. Attempts to impose early legal categorisation risk undermining precisely the capacities that allow customary authorities to function.

Customary courts operate on the basis that ruling-based justice is not the sole or necessary endpoint of dispute handling. Their core contribution is mixed and contains elements such as the management of volatility or violence reduction – classic conflict prevention tasks. In doing so, they sustain fragile forms of coexistence in contexts where neither the state nor the market can reliably do so.

## THE FORMAL-CUSTOMARY INTERFACE: TRANSFER, REFERRAL, AND UNGOVERNED JUSTICE

The relationship between customary courts and statutory justice institutions is not defined by jurisdictional clarity or institutional hierarchy. This is especially true in Jonglei and GPAA, even more pronounced in areas only marginally or not under government control. The relationship is selective and defined by the focus on self-contained justice delivery. The interface between the two systems is not governed by fixed rules.<sup>9</sup> This makes the interface functional in practice, but structurally unstable.

A central feature of this interface is that customary processes typically precede engagement with formal authorities, even in cases that clearly fall within the domain of criminal law. Referral to formal institutions is treated as conditional on a prior management of violence and the general socio-political relationship to state authorities. It is not an automatic response to the type of offence.

There is not a clean division of labour but a negotiated process of transfer. No clear written guidelines exist on when cases should be transferred from customary courts to statutory courts. Decisions are often made on a case-by-case basis.<sup>10</sup> The absence of formal criteria does not mean that transfer decisions are arbitrary. It means they are relational and contextual. Chiefs assess whether families are calm, whether youth mobilisation has subsided, whether compensation negotiations have reduced pressure, and whether referral is likely to reignite conflict.

Transfer is therefore less a legal threshold than a political and social judgment. Such judgment is further shaped by the uneven availability of formal justice. Many criminal cases are handled by customary courts because statutory courts are far away, expensive, or not functioning.<sup>11</sup> In many areas, this condition has not changed with the

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<sup>2</sup> Interview notes, GPAA responses, Role and responsibilities – Customary Chiefs

<sup>3</sup> Interview notes, GPAA responses, How do you decide whether a case should be mediated, judged, or referred?

<sup>4</sup> Interview notes, GPAA responses, Processes of justice and mediation – handling a typical case.

<sup>5</sup> Interview notes, GPAA responses, Conflict patterns and prevention.

<sup>6</sup> Interview notes, GPAA responses, How are compensation, apology, or reconciliation agreed upon?

<sup>7</sup> Interview notes, Jonglei responses, Role and responsibilities.

<sup>8</sup> Interview notes, Jonglei responses, Role and responsibilities.

introduction of the mobile courts. Handling severe criminal cases customarily is often not a preference but a necessity. The interface thus emerges not as a designed system but as a response to infrastructural gaps and political contestation.

The asymmetry of this relationship becomes clear once cases do move across the interface. Outcomes are not guaranteed recognition by statutory institutions. Decisions made by customary courts are not always recognised or enforced by statutory authorities.<sup>12</sup> This creates a situation in which customary courts absorb social risk without enjoying formal authority.

The lack of coordination also produces duplication and uncertainty. In some cases, the same dispute may be handled both by customary courts and later by statutory courts, leading to confusion and tension between the systems.<sup>13</sup> Parallel handling can potentially be destabilising. When cases are reopened in statutory forums without regard for prior outcomes, such as compensation agreements, the risk of a relapse to violence increases. What appears as legal rectification from one perspective can appear as betrayal or injustice from another.

The interface problem is not only legal but coercive. Jonglei interview material highlights that traditional leaders may refer cases to the police, but enforcement remains challenging due to limited police presence. Communities thus often rely on customary mechanisms instead.<sup>14</sup> Referral does not guarantee execution. Chiefs can recommend transfer, but they cannot compel police action, nor can they ensure sustained follow-up. This weakens the meaning of referral and reinforces reliance on customary mechanisms, even where formal law would otherwise apply.

This dynamic is compounded by broader security realities. Another Jonglei-based statement notes that “according to some correspondent local leader in Jonglei state, work with police or local committees to prevent crime and promote community-based safety measures but with current situation youth are more armed more than the police making it difficult for the traditional authorities in the state to achieve their given roles and responsibilities.”<sup>15</sup> In such contexts, authority is not simply divided between customary and statutory systems – it is fragmented. The capacity to enforce decisions is uneven, and coercive power often lies outside both systems.

These dynamics illustrate what can be described as “ungoverned” justice (cf. Pospisil 2020). The regulation of the interface between customary and statutory systems does not work through clear mandates or institutional design. It is produced through ongoing negotiation among actors operating under constraint. Customary courts stabilise disputes because they can act immanently and relationally. Statutory institutions intervene intermittently, often after the most volatile phase has passed.

This does not render the interface dysfunctional. Its flexibility might be its strength, as is its pragmatic sequencing that happens when conditions are favourable. Understanding this interface as ungoverned rather than failed is critical. It shifts the analytical focus from institutional deficit to functional adaptation. It also reframes the policy question. The challenge is not how to replace customary processes with formal ones, nor how to subordinate one system to the other. The challenge is how to support sequencing and harmonisation within and between the systems without forcing premature closure or rigid jurisdictional rules.

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<sup>9</sup> Interview notes, Jonglei responses, Processes of justice and mediation.

<sup>10</sup> Interview notes, Jonglei responses, Interaction with government and other authorities.

<sup>11</sup> Interview notes, Jonglei responses, Role and responsibilities.

<sup>12</sup> Interview notes, GPAA responses, What happens if one side refuses a decision?

<sup>13</sup> Interview notes, Jonglei responses, Perceptions of change and reform.

<sup>14</sup> Interview notes, Jonglei responses, *ibid.*

<sup>15</sup> Interview notes, Jonglei responses, Role and responsibilities.

# HOMICIDE AND COMMUNITY VIOLENCE: THE LIMITS OF MEDIATION AND LAW

Homicide is the point at which the dual role of customary courts becomes most strained. Practices that function effectively in managing disputes and preventing escalation are placed under pressure when killing occurs, because homicide triggers competing expectations. On the one hand, there is an expectation that violence must be contained immediately to prevent retaliation and further loss of life. On the other hand, there is also an expectation – rooted in statutory law and reinforced by broader justice norms – that killing must be treated as a serious criminal offence requiring formal accountability. The contradiction between these expectations is structural, and it is most visible in the way customary authorities handle homicide in practice.

Killings are often addressed first through customary processes for conflict mitigation purposes: “Serious cases, including killings, rape, or incidents involving firearms, are first addressed customarily to calm tensions and prevent revenge.”<sup>16</sup> This practice reflects an assessment of risk. The problem between the systems emerges because the very practice that reduces immediate risk of a continuation of violence also delays or complicates the application of legal categories associated with homicide. At times, this is also mixed with political tensions, especially in counties leaning towards the opposition where the statutory justice system is not reliably available.<sup>17</sup>

This tension is sharpened by the way killings are experienced and understood in contexts of community violence. Often, responsibility is diffuse, and violence is embedded in a broader pattern of conflict. In such situations, killings are often understood as part of an ongoing sequence of action and reaction, often involving multiple actors across time. Homicide becomes collectivised, in responsibility and effect. Criminal law, by contrast, approaches homicide as a discrete offence, committed by an identifiable perpetrator, and judged according to intent and circumstance – and never in terms of the consequences of the judgement. The gap between these framings complicates the translation of lived violence into legal categories.

Customary mediation addresses killing by treating it as a rupture in social relations. Customary responses to homicide often focus on stopping retaliation, separating parties, negotiating compensation, and restoring a minimum level of coexistence.<sup>18</sup> These measures are predominantly designed to prevent further harm. Mediation here does not compete with legal accountability, but it operates on a different temporal logic. It prioritises the next potential act of violence rather than the formal resolution of the last one. Homicide remains a category that resists full absorption into a mediation realm. Both statutory law and international justice norms treat killing as exceptional. It is also a serious offense in customary law, even though circumstances are taken into account differently. Legally, there is an undisputable requirement of formal adjudication and punishment. This insistence introduces pressure on customary authorities to refer cases onward, particularly where killings attract wider attention or political sensitivity.

However, referral does not guarantee resolution.<sup>19</sup> In situations of weak enforcement capacity, for instance, armed youth, for instance, regularly outnumber and even outguns formal security actors. Under these conditions, referral may signal legal intent without producing legal effect. It is not uncommon for cases to be referred back from the statutory to the customary system to guarantee enforceable rulings.<sup>20</sup>

There are hardly any written or agreed criteria objectively determining when homicide cases should be transferred from customary to statutory systems. Customary justice therefore operate at a fault line. Decisions are made case by case, based on assessments of the impact on local community relations and the political relations to the state level. Regularly, customary courts proceed with adjudication and settlement also simply because statutory courts are inaccessible or non-functional.

The fragility of transfer becomes evident when homicide cases are handled sequentially or in parallel across systems.<sup>21</sup> When cases previously settled through customary means are reopened by statutory authorities, confusion and resentment can emerge. Compensation or other forms of reconciliatory agreements may be disregarded, leading affected communities to perceive formal intervention as destabilising rather than corrective. In such cases, the reassertion of legal authority risks undoing the very violence containment it seeks to support.

Efforts to codify customary law bring this contradiction into sharper focus. The Naath (Nuer) Law, newly codified in 2025 supported by UNMISS and other partners, categorises killing as a serious offence, distinguishes circumstances and intent, and specifies sanctions and compensatory obligations. This represents an attempt to stabilise responses to homicide and align customary practice more closely with legal form. At the same time, the Naath Law Commentary emphasises restoration of social order, family responsibility, compensation, and reconciliation as essential responses to killing. Mediation logic is not removed but even written into legal text. This incorporation, however, narrows the space for discretion that previously allowed customary authorities to adapt responses to shifting conditions.

## HARMONISATION AND THE RECASTING OF CUSTOMARY AUTHORITY

The South Sudanese customary justice system operates under the condition of sustained multiple pressures. They are expected both to deliver justice and to maintain social order in contexts marked by prolonged violence and weak state presence. Their role is increasingly scrutinised by statutory institutions and external actors in the rule of law realm, all of which place new demands on how justice should be delivered. These pressures work towards unsettling the bases on which their authority rests. Informal, grounded legitimacy and relational trust are harder to sustain when institutions are asked to be transparent and accountable to objectivised standards (Leonardi et al. 2011).

Under pressure, institutions tend to stabilise themselves by narrowing interpretation. Conservatism is a regular safeguarding mechanism. In the case of customary courts, this often means articulating rules more clearly, but mainly also reinforcing hierarchical authority. Ambiguity, which previously allowed room for mediation and adjustment, becomes a liability. An often-chosen pathway is the fixation of conservative social norms as a way to defend authority against challenge. Such moves are not necessarily inherently ideological. They can be read as a response to uncertainty and contestation, aimed at preserving institutional standing rather than transforming social relations (Scott 70-64 :1998).

One prominent way in which the customary justice system pursues this stabilisation is by presenting itself as a custodian of culture and tradition, which always has been one of its defining roles (de Montmorency 1927). Disputes have been commonly reframed as questions of cultural fidelity rather than matters for negotiation. This shift elevates certain interpretations of custom as authoritative while sidelining others. What counts as “tradition” in this context is not fixed or ancient. It is selectively defined and performed to support claims to legitimacy, especially in moments when authority is under strain.



<sup>16</sup> Interview notes, GPAA, When and how do you cooperate with the police, courts, or local government?

<sup>17</sup> Interview notes, Akobo responses.

<sup>18</sup> Interview notes, GPAA responses, Peacebuilding and resilience.

<sup>19</sup> Interview notes, Jonglei responses, Role and responsibilities.

<sup>20</sup> Interview notes, GPAA responses, Interaction with government and other authorities.

<sup>21</sup> Interview notes, Jonglei responses, Perceptions of change and reform.

The custodianship role tends to favour conservative rulings. Norms governing gender relations, family hierarchy, and social obligation are more likely to be enforced rigidly. Such applications reflect the selective elevation of particular norms as symbols of order and control. As authority becomes more closely tied to rule enforcement, mediation loses ground as an acceptable mode of decision-making, even where it remains socially valued (Merry 1988). This has direct consequences for women's access to justice. The codification of such norms can restrict already limited avenues for contestation even further, and reinforce psychosocial vulnerabilities embedded in personal status regimes.

Efforts to harmonise and codify customary law emerge from understandable concerns. Predominantly, they promise to make customary justice more legible and manageable for state institutions and international actors. For customary authorities themselves, codification can also offer protection. Written law may shield chiefs from exposure to political pressure and provide a recognised framework within which authority can be exercised.

Codification fundamentally alters how authority is exercised. Customary courts have historically relied on a repertoire of practices that extend beyond rule application and the adjustment of outcomes to shifting social relations. Writing norms into legal text fixes categories that were previously negotiated in practice. Once rules are stabilised, deviation requires justification, and discretion becomes more difficult to defend. Delay, earlier identified as a key mechanism of conflict disruption, risks being reinterpreted as indecision or failure to apply the law. Codification thus strengthens legal certainty at the cost of reducing temporal and relational flexibility (Moore 2000).

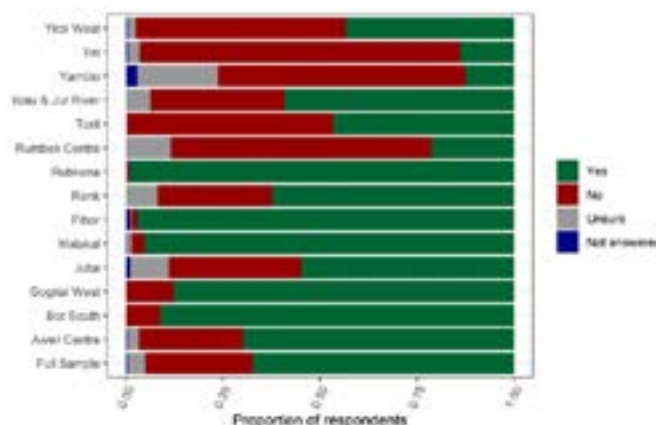
This trade-off becomes sharper because codification efforts tend to focus on outcomes rather than processes, and there is always the risk of support perceived as neo-colonialist (Pimentel 2010). Legal texts specify offences and sanctions, but they rarely codify mediation itself as a practice with legitimacy equal to adjudication. In contrast to some public law systems, where mediation or other conciliation mechanisms are formally embedded as a procedural stage before the court stage, harmonisation initiatives in South Sudan have largely treated mediation as residual. The result is a framework that privileges ruling over management. Customary courts are recognised as courts, but not fully as mediating institutions. Such leaning risks making them less effective in precisely those contexts where mediation and delay are most needed to prevent escalation.

When harmonisation intersects with the custodianship role described earlier, these effects are amplified. Codification tends to stabilise the interpretations that are already dominant within customary authority structures. Conservative readings of custom, once written into law, acquire a durability that negotiated practice did not previously have. Moral authority becomes embedded in legal form, and alternative interpretations are more easily dismissed as unlawful rather than debated as legitimate variations.

## CLIMATE STRESS AND THE REORDERING OF CUSTOMARY AUTHORITY

Climate change does not introduce entirely new forms of conflict into South Sudan's customary justice landscape. Yet, it intensifies existing pressures by altering the conditions under which disputes arise and must be managed. The primary climate-related driver in South Sudan is flooding. Recurrent and increasingly severe floods reshape settlement and migration patterns and disrupt agricultural cycles. These dynamics place customary authorities at the centre of conflict management under conditions of instability that are no longer episodic but structural.

Survey-based research on climate security in South Sudan shows the scale of these pressures. In flood-affected areas, more than half of respondents reported having been displaced at least once due to flooding, with significantly higher rates in Jonglei and Upper Nile (see Graph 1). Many households reported repeated displacement rather than a single shock event, resulting in prolonged uncertainty around land use and residence. Graph 1: Have members of your community been displaced due to flooding and/or droughts in this area in the past three years? x Location (N = 4,769, data from 2024, Deng et al. 2024)



This pattern is confirmed in field interviews. Interviewees consistently described displacement as cyclical rather than exceptional. Communities return, rebuild, and then often are displaced again the next year, making it increasingly difficult to determine who holds legitimate settlement rights and which authority is responsible for resolving disputes when populations move repeatedly between the same locations.<sup>22</sup> Under such conditions, customary courts are required to adjudicate claims that are unsettled not because of disagreement, but because the material basis of land use keeps shifting.

Flooding also interacts with state- and donor-led planning initiatives, particularly those related to relocation and climate resilience. These initiatives often rely on spatial planning frameworks that sit uneasily with local understandings of land tenure and seasonal use. In practice, customary authorities are frequently expected to translate externally designed relocation or land-use decisions into locally enforceable outcomes. This creates a triangular tension between national and international planning processes and customary authority, where chiefs are often positioned as intermediaries without control over the underlying decisions.

The pressures are pronounced in relation to pastoralist mobility and transhumance. Climate variability has altered grazing availability and seasonal migration routes, increasing the frequency and intensity of disputes between pastoralist groups and between pastoralists and farming communities. Survey data indicates that nearly four out of five pastoralist respondents reported that climate-related changes had directly affected cattle movement and access to grazing (Deng et al. 2024).

Changing living conditions do not automatically translate into violence, but they significantly increase the volume of disputes that require negotiation. Customary courts address these disputes primarily through extended decision-making patterns and tactical delays.

Existing gendered vulnerabilities are amplified. Flooding disproportionately affects women through loss of livelihoods, increased care burdens, and heightened

exposure to insecurity during displacement. Women's access to customary justice, however, remains constrained. Disputes over land rights, for instance, are often mediated through male lineage structures, limiting women's ability to influence outcomes that directly affect their survival. As climate stress increases the frequency of such disputes, these structural exclusions become more consequential rather than less.

In addition, customary law governing personal status – including marriage, divorce, and inheritance – directly shapes women's life conditions and psychosocial wellbeing. In contexts of displacement and insecurity, these frameworks can limit women's ability to seek redress while increasing exposure to practices such as forced marriage or abduction, which are managed within customary conflict frameworks rather than treated as isolated criminal acts.

Institutional overload and role confusion are additional likely consequences. Several interviewees described courts being asked to handle matters that were already violent or politically charged, even though their authority rests on mediation and social sanction rather than enforcement.<sup>23</sup> This expansion of responsibility occurs without corresponding resources or clarity of mandate, increasing the risk that courts are perceived as ineffective or partial.

Climate change acts less as an external shock and more as a persistent stressor on customary authority. It narrows the space for mediation by increasing urgency and accelerates disputes by destabilising settlement patterns. Authority is complicated by inserting additional layers of planning and intervention. The cumulative effect is a transformation of customary authority under pressure, with direct implications for how conflict management and mitigation and rule-based judgements are practised in climate-affected contexts.

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<sup>22</sup> Interview notes, GPAA responses, Adaptation and new pressures.

## CONCLUSION

Two interfaces shape the operation of customary courts in South Sudan: the interface between mediation and judgement, and the interface between customary and statutory justice. Neither interface is best understood as a question of institutional hierarchy or legal design. Both operate in practice through pragmatic sequencing, oriented toward containing violence, preserving social relations, and managing uncertainty under conditions of political fragility and climate stress.

The first interface – mediation capacity versus legal judgement – is not resolved through clear functional separation. The gathered empirical evidence demonstrates that customary courts do not choose between mediating and judging. They sequence these practices. The priority is to stop escalation, while judgement is often deferred or contingent. This sequencing is pragmatic in the most literal sense: it is result-oriented and guided by what prevents further violence rather than by formal completeness. Attempts to prioritise ruling over mediation, or to stabilise outcomes too early through codification, risk undermining the very practices that make customary courts effective as mechanisms of conflict disruption.

The second interface – customary versus statutory justice – is shaped less by legal pluralism than by political conditions. Statutory justice in South Sudan is frequently perceived as politicised and inaccessible, particularly in cases involving intercommunal violence or actors with political or military connections. Under these conditions, customary courts absorb cases not because they are formally competent, but because they retain the capacity to act without immediate political capture based on grounded legitimacy. A functional interface depends on keeping statutory justice insulated, as far as possible, from political interference, while allowing customary mechanisms to perform their stabilising role without being forced into premature legalisation.

Again, sequencing emerges as central. Customary mediation can mitigate conflict and sustain communication between families or communities at risk of getting engaged in escalating revenge cycles. Statutory intervention, where it occurs, is more likely to be effective when it follows these processes rather than replaces them. This does not imply abandoning accountability but recognising that accountability pursued without prior stabilisation may also deepen contestation.

Across both interfaces, climate change intensifies the costs of getting sequencing wrong. Flood-induced displacement and altered cattle migration routes increase the frequency and urgency of disputes, narrowing the space for rigid or purely legal responses. It is their adaptive capacity that keeps customary courts in a critical role in South Sudanese social settings.

## IMPLICATIONS FOR PROGRAMMING AND POLICY

### 1. Protect Mediation-Ruling Sequencing as a Core Function of Customary Justice

Conflict mediation is not an auxiliary function of customary courts in South Sudan. It is their predominant domain and their main source of legitimacy. Across cases, achieving negotiated and partially ruled settlements are the primary means through which violence is contained and social relations are stabilised. Legal rulings are rarely the starting point. Quasi-legal practices are sequenced and negotiated. Rulings are selectively applied once mediation has created sufficient space for acceptance.

For this reason, mediation should be explicitly recognised and integrated in codification and harmonisation efforts. It is not just an informal practice that exists alongside formal law. The risk of separating mediation and ruling into “informal” and “formal” domains is that it creates a dual system in which catalogues and legal texts exist on paper, while chiefs continue to manage disputes through parallel, unofficial practices driven by immediate demands. Such separation undermines both legitimacy and coherence.

Mediation and judgement should be treated as a joint and interdependent process, reflecting the actual demands placed on customary authorities. This is critical in the context of climate change, where disputes over land and mobility are becoming more frequent and time sensitive. Preserving pragmatic sequencing allows customary courts to remain responsive under pressure, while reducing the risk that formalisation displaces the very practices that prevent escalation in the first place.

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<sup>23</sup> Interview notes, Jonglei responses, Processes of justice and mediation.

## 2. Strengthen Coordination with Statutory Justice through Professionalisation and Legal Clarity

Effective coordination between customary and statutory justice systems predominantly depends on the perceived integrity of statutory justice itself. Customary courts absorb cases not because of formal competence but because they retain a degree of social legitimacy. Strengthening coordination therefore requires, as a first step, sustained investment in the professionalisation and depoliticisation of statutory justice. Without this, closer linkage risks importing political contestation into customary processes rather than improving access to justice.

Coordination must be grounded in existing legal frameworks rather than improvised through ad hoc arrangements. The relationship between customary and statutory justice is already recognised in South Sudanese law. Both the 2009 Local Government Act and the 2011 Transitional Constitution recognise customary courts and affirm the role of customary law subject to constitutional principles. These instruments provide a legal basis for both cooperation and differentiation of roles.

An intervention framework should focus on clarifying how cases move between systems, and how customary adjudication and statutory prosecution are sequentially processed. Where statutory justice is able to operate impartially, it can complement customary mediation in substantial ways. Where it is not, forcing coordination risks undermining both systems. The implication is not to bypass statutory justice, but to recognise that its effective engagement with customary courts depends on political neutrality, professional capacity, and respect for the sequencing through which disputes are stabilised before formal legal intervention occurs. In parallel, investment in preventive capacities within law enforcement – including community policing and early warning mechanisms – can reduce the volume of cases reaching both customary and statutory systems, thereby lowering pressure on mediation and adjudication processes.

## 3. Support Customary Authority as an Adaptive Governance Capacity

Customary authority in South Sudan functions as an adaptive governance capacity. Chiefs and customary courts operate in environments where authority must be continually negotiated and recalibrated. Support to customary authority therefore needs to focus on strengthening this adaptive capacity. This implies prioritising support that enhances problem-solving as well as situational and relational judgement.

Skills-based interventions, ideally framed as mutual learning exercises, are promising pathways that also help avoiding the pitfall of stabilising authority around conservative or exclusionary norms. Treating customary authority as adaptive governance allows programming to reinforce its responsiveness to change, including shifting land use, mobility patterns, and social relations, without locking institutions into forms that may quickly become misaligned with local realities.

## 4. Engage Customary Authorities through Iterative, Practice-Based Programming

*Treat engagement as an ongoing process, not a discrete intervention.* Customary authority operates under conditions of continuous change, shaped by multiple pressures such as violent conflict, often aggravated by climate stress, and complex political dynamics. Any approach assuming stability – through one-off trainings, fixed institutional designs, or time-bound legal reform exercises – will likely struggle to remain relevant. Iterative engagement recognises that practices evolve and that support must be revisited and adjusted accordingly. This implies designing engagement in cycles rather than as standalone activities or allowing programming to respond to shifting demands rather than locking institutions into arrangements that may quickly become misaligned with local realities.

*Prioritise continuity of relationships over scale of engagement.* Effective engagement depends less on reaching many actors than on sustained interaction with the same ones. Iterative engagement emphasises continuity, for instance by working repeatedly with the same customary authorities with the aim of building a shared understanding of challenges and constraints. This approach creates institutional memory and allows programming to remain grounded in actual practice. It also reduces the risk that external interventions overlook informal adjustments made by chiefs in response to complex pressures.

*Use iteration to identify and correct unintended effects.* Iterative engagement creates space for learning and correction. As the analysis shows, interventions can have unintended consequences, including the hardening of conservative norms or the displacement of mediation by formal procedures. Treating engagement as iterative allows such effects to be identified early and addressed through recalibration rather than becoming entrenched. This is particularly important where efforts of codification and institutionalisation are involved.

## 5. Safeguard Mediation and Conflict Management under Climate-Related Pressures

Climate-related pressures – most notably flood-induced displacement and conflicts over land use, as well as shifting cattle migration routes – are placing distinct and increasing demands on customary authorities. These pressures often involve multiple communities and overlapping claims. Programming should therefore prioritise strengthening peacemaking and conflict management capacities in climate-affected contexts over defaulting to legalisation or formal adjudication. Strengthening local conflict prevention mechanisms, including links between customary authorities and community-based security actors, can help anticipate and manage disputes before they escalate under climate-related stress.

Such practices may include the support of negotiations over land and transhumance, managing displacement-related tensions, and sustaining social redistribution practices that help absorb climate shocks. Customary authorities require support to resist macro-level

pressures – whether from neighbouring communities or political actors at the national level – that risk overriding local mediation processes. Protecting space for locally grounded conflict management is essential if customary institutions are to remain effective as climate impacts accelerate.

## 6. Approach Harmonisation as a Bounded and Risk-Aware Intervention

Harmonisation and codification of customary law respond to real challenges, including the problem of consistent rulings and the need for clearer interfaces with statutory justice. Yet, harmonisation is not a neutral technical exercise. By fixing norms in legal text, it risks narrowing interpretive space and reducing the flexibility through which customary authorities manage conflict under conditions of climate stress and displacement. Where disputes increasingly require contextual mitigation and judgement, premature or overly rigid codification can undermine the practices that allow customary courts to contain violence and sustain coexistence.

These risks are amplified by the tendency of harmonisation processes to privilege conservative interpretations of custom. Under pressure from social change, customary authorities may assert their role as custodians of culture by reinforcing restrictive norms, including those that marginalise women or younger generations. When such interpretations are codified, they become institutionalised and harder to contest, even as social conditions continue to evolve.

Programming that engages in harmonisation should therefore be deliberately bounded and risk-aware: distinguishing between areas where clarification is necessary and areas where flexibility must be preserved. Embedding safeguards against a reactionary turn in rulings in the social space are necessary. It is also necessary to ensure that mediation practices and adaptive judgement are not displaced by formal rulemaking. In climate-affected contexts, where disputes are becoming more frequent and more complex, harmonisation should support the capacity of customary institutions to respond pragmatically to change.

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