



International Peace Support Training Centre Nairobi, Kenya

Traditional Dispute Resolution Mechanis A Case Study Of Western Equatoria State, South Sudan



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DR EUNICE NJAMBI

Changing Trends of Conflicts and Response Strategies in Eastern Africa

**Traditional Dispute Resolution Mechanisms
A Case Study Of Western Equatoria State, South Sudan**

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SERIES 6, Nº 5

Dr Eunice Njambi
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Edited by
Geoffrey R. Njeru (PhD)

Design, Layout and Print by: **Timeless Limited**

Email: timelessaviationltd@gmail.com

Cell: 0721 337255

Foreword

The International Peace Support Training Centre (IPSTC) has made considerable contribution in research and training on peace support operations in the Great Lakes region and Horn of Africa. The Centre is a training and research institution focussing on capacity building at the strategic, operational and tactical levels within the African Peace and Security Architecture and has developed to be the regional centre for the African Standby Force (ASF) in Eastern Africa. It addresses the complexities of contemporary UN/AU integrated peace support operations through exposing actors to the multidimensional nature of these operations. The research conducted covers a broad spectrum ranging from conflict prevention, management, and post-conflict reconstruction.

The Peace and Security Research Department (PSRD) of the IPSTC presents Occasional Paper Series 6 No. 5 of (2015) on various themes on peace and conflict situations in Eastern Africa. IPSTC produced six Occasional Papers in 2015. Three of them focussed on Kenya while the others covered South Sudan, Uganda and Rwanda. This publication titled: **Dispute Resolution Mechanisms a Case Study of Western Equatoria State**, examine the existing functional traditional dispute resolution mechanisms the authority, capacity and effectiveness of the TDRM in addressing current and future disputes.

These papers provide insight into pertinent peace and security issues in the region that are useful to policy makers. These publications also provide significant contribution to the security debate and praxis in the region. The research products from IPSTC have been developed by researchers from Kenya, Burundi, Uganda and Ethiopia and will inform the design of training modules at IPSTC.

This Occasional Paper is an important contribution to the vision and mission of IPSTC. The research and publication of this paper has been made possible by the support of the European Union.

Brigadier R.G. Kabage

Director, IPSTC

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TABLE OF CONTENTS

Foreword.....	iii
Table of Contents.....	v
Abbreviations and Acronyms.....	vii
Definition of key terms.....	viii
Abstract.....	ix
CHAPTER 1: INTRODUCTION AND BACKGROUND.....	1
1.1 Introduction.....	1
1.2 Background of Western Equatoria State (WES).....	2
1.3 Problem Statement.....	6
1.4 Research Questions.....	7
1.5 Objectives.....	7
1.6 Justification of the study.....	6
CHAPTER 2: LITERATURE REVIEW.....	8
2.1 African Customary Systems of Dispute Resolution.....	8
2.2 Existing TDRMs in Africa.....	9
2.3 Leadership of TDRM.....	11
2.4 Types of Dispute in Africa.....	12
2.5 Individual characteristics related to disputes.....	13
2.6 TDRM Methods and Processes.....	14
2.7 Strengths and Challenges Facing TDRM.....	16
2.8 Capacity of the Traditional TDRM in responding to current trends of Conflict.....	18
2.9 Theories of dispute and conflict Resolution.....	20
2.10 Conceptual framework on traditional dispute resolution mechanisms.....	21
CHAPTER 3: METHODOLOGY.....	22
3.1 Study Design.....	22
3.2 Study Area.....	22
3.3 Study Population.....	22
3.4 Sample size Determinaton and Sampling Procedure.....	22
3.5. Data Collection Methods and Tools.....	23
3.6 Data Analysis.....	23
3.7 Quality Control and Ethical Considerations.....	24
CHAPTER 4: FINDINGS.....	25
4.1 General characteristics of the respondents.....	25
4.2 Existing functional TDRMs.....	28
4.3 The authority that drives TDRM.....	31

4.4	Capacity of tdrm in responding to current trends of disputes.....	32
4.5	Effectiveness of TDRM in preventing future conflicts.....	33
CHAPTER 5: DISCUSSION		36
CHAPTER 6: CONCLUSIONS AND RECOMMENDATIONS.....		40
6.1	Conclusions.....	40
6.2	Recommendations.....	41
6.3	Reference.....	42
6.4	Appendices.....	45
Appendix 1: Household Questionnaire.....		45
Appendix 2: Focus group and key information guide.....		49
Appendix 3: Map of South Sudan showing states.....		52

Figures and tables

Figures

Figure 1:	Change of social structures.....	20
Figure 2:	Age Distribution by sex among Respondents.....	25
Figure 3:	Education Level by Occupation.....	26
Figure 4:	Respondents' Perceptions of Dispute.....	27
Figure 5:	Types of Community Dispute and Actors.....	27
Figure 6:	Name and Type of TDRM Institution.....	28
Figure 7:	Qualifications Needed for TDRM Leadership Selection.....	29
Figure 8:	Training Recommended for TDRM Leadership.....	29
Figure 9:	Capacity of TDRM Institution in Responding to Current Conflicts.....	32
Figure 10:	Effectiveness of TDRM in Preventing Future Conflicts.....	33
Figure 11:	TDRM's Capacity to Resolve Conflict.....	34
Figure 12:	Number of Disputes Handled by TDRM Annually.....	34

Tables

Table 1 :	Sampling frame.....	22
Table 2 :	Tool distribution.....	23
Table 3:	Core Activities of TDRM Institution.....	30
Table 4 :	Geographical and Population Coverage of TDRM.....	30
Table 5 :	Achivenments of TDRM Instution.....	31
Table 6 :	Challenges facing TDRM.....	31
Table 7 :	Model Summary of Variables influencing TDRM.....	35

Abbreviations and Acronyms

ADR	Alternative Dispute Resolution
ATDRM	Azande Traditional Dispute Resolution Mechanism
BATNA	Best Alternative Negotiated Approach
CBA	Community Based Approach
CBM	Community-Based Mechanism
CBO	Community-Based Organization
CDD	Community-Driven Development
CMS	Church Missionary Society
CPA	Comprehensive Peace Agreement
DPMF	Development Policy Management Forum
DRC	Democratic Republic of Congo
FGD	Focus Group Discussion
GOSS	Government of South Sudan
IDP	Internally Displaced Person
KII	Key Informant Interview
LRA	Lord's Resistance Army
OCHA	Office for Coordination of Humanitarian Affairs (UN)
OECD	Organization for Economic Cooperation and Development
SGBV	Sexual and Gender Based Violence
SPLA	Sudan Peoples Liberation Army
TDRM	Traditional Dispute Resolution Mechanism
UPDF	Uganda Peoples Defence Forces
UN	United Nations
UNICEF	United Nations Children's Fund
UNMIS	United Nations Mission in Sudan
USAID	United States Agency for International Development
WES	West Equatoria State
WHO	World Healthn Organization

Definition of key terms

1. **Community:** A group of people, often living in a defined geographical area, who may share a common culture, values and norms, and are organized in a social structure according to relationships which the community has developed over a period of time, (WHO, 2004).
2. **Community-based mechanism (CBM):** Method or plan chosen by a community to bring about a desired future or solution to a problem. CBMs seek to empower local community groups and institutions by giving them direct control over decisions, project planning, execution and monitoring, through a process that emphasises inclusive participation and management.
3. **Dispute resolution mechanisms:** A wide range of procedures and approaches other than I on that aim to identify resolutions to disputes that will be mutually acceptable to the constituent parties, (University for Peace, 2005)
4. **Dispute:** A a short-term disagreement in which the issues in contention are negotiable and the disputants may reach some sort of resolution with time. The principal idea is that if left unchecked and/or unexplained, a dispute could easily turn into a conflict (Burton, 1990).
5. **Traditional structures:** Institutionalized governance relationships established by a community with regard to rules and principles defining values and regulating behavior. Such structures may be social, economic, political, or technological.
6. **Negotiation:** Voluntary or involuntary formal or informal discussion through which the parties to a dispute may reach a mutually acceptable agreement. As the name implies, the parties seek out the best options for each other through persuasion and compromise towards an agreement.
7. **Mediation:** An attempt to end a disagreement between two or more parties undertaken with the intervention of an external party that fosters the settlement of differences or demands between or among the disputants. It is also a 'voluntary, informal, non-binding process undertaken with an external party that fosters the settlement of differences or demands between directly interested parties' (University for Peace, 2005).

Abstract

Throughout history, communities struggle to manage disputes in order to minimize the undesirable effects or forestall conflict. Communities in South Sudan, the world's newest state, are no exception. This study was conducted in Yambio County, Western Equatoria State (WES) in South Sudan. Here, the Azande traditional dispute resolution mechanism (ATDRM) heritage has maintained relative peace and enhanced governance but its authority to effectively address future disputes is being challenged by new realities. The study's main objective was to examine the existing functional ATDRM and evaluate its authority, capacity and effectiveness in addressing current and future disputes.

This was a descriptive study using both qualitative and quantitative methods of data collection and analysis. The quantitative data were collected from 210 household heads dispersed through 4 villages: Masia (33.3%), Baiporu (33.3%), Akorogbodi (16.7%) and Kpirobe (16.7%). Key informant interviews (KIIs) and focus group discussions (FGDs) were conducted with paramount and boma chiefs. Permits and consent to conduct the study were obtained from the relevant authorities.

Gender distribution in the sample was male (41%) and female (59%). The mean age was 32 years and median 30 years. A majority (88%) of the respondents stated that the community had experienced disputes in the past one year and most (43%) of them involved family while 39% were on land. Over half of the disputes (56.2%) were reported to the Boma chief. Skills to solve disputes was the main quality needed for ATDRM leadership. Inheritance and elections were the main modes of selection and replacement of ATDRM leadership. Solving problems and reducing conflict were the core activities of ATDRM. The main challenge facing the ATDRM was lack of training on human rights issues as reported by 35.2% of the respondents.

Dispute resolution was measured using five variables which included: number of disputes resolved; involvement of disputing parties; improved community relationships; and compliance with settlement agreements. A total of 21 disputes were reported to the TDRM every week totaling to about 1,018 per year. About 60% of the disputes was resolved using the criteria above. The study concludes that WES has existing functional TDRM in all administrative levels (Boma, Payam, County, State). The authority and effectiveness of TDRM is undergoing a transition in a post-independence environment. Based on the findings, there is need to equip the TDRM with knowledge and skills on human rights issues, County by-laws, peace-building and trauma healing. There is need to conduct further research to establish the peace building (PB) strategies that include women and the youth.

CHAPTER 1: INTRODUCTION AND BACKGROUND

1.1 introduction

In conflict-affected and fragile contexts, growing attention has been paid in recent years to the adoption of community-based approaches (CBAs) in addressing the extensive needs. In such contexts, communities have often proven to be resilient, providing survival and coping mechanisms with respect to insecurity and fragility. Experience has shown that even in areas of sheer desolation, social life and organisational systems can readily re-emerge within community networks (Pouligny, 2005). In fragile state structures, there is lack of political capacity to provide the basic functions needed for dispute resolution and dispensation of justice, poverty reduction, development, and to safeguard the security and human rights of their populations (OECD-DAC, 2007).

According to the World Bank (2010), in fragile conflict and post-conflict contexts, CBAs seek to empower local communities by giving them direct control over social wellbeing through inclusive and participatory decision-making, planning and management processes for peace and security. The basic premise for demand-led approaches is that local communities are better placed to identify their shared needs and the actions necessary to meet them. Taking charge of these processes contributes to community ownership, which can contribute to the sustainability of interventions.

Throughout history, communities have traditionally tried to manage disputes in order to minimize the negative and undesirable effects. TDRM has gained widespread acceptance among both the general public and the legal profession in recent years. TDRM contributes to building an effective dispute settlement system that bridges the gap between the modern formal legal system and traditional African justice systems. In conflict management, there is need for a change of attitudes so that TDRM may be treated as a mechanism that is most appropriate and effective in the resolution of certain kinds of disputes.

TDRM has been used as a practical tool to foster peace-building and conflict resolution at both the inter-personal and community levels. TDRM is also a potentially valuable mechanism for stabilization and state-building efforts. The notion of TDRM fits comfortably within traditional concepts of African justice, particularly its core value of reconciliation. This study focuses on comparing the established community-based dispute resolution mechanisms in Western Equatoria state of South Sudan. It analyses the existing and functional traditional TDRM, the authority that drives it, its capacity to deal with conflict and lastly, its effectiveness in conflict prevention (Gene, 2010).

1.2 Background of Western Equatoria State (WES)

1.2.1 Geographical Profile

The Western Equatoria State (WES) is part of the Greater Equatoria Region of South Sudan. WES shares international borders with the Central African Republic and the Democratic Republic of Congo. WES borders Warrap, Western Bahr el Ghazal and Lakes states to the north and Central Equatoria State to the west. With area of 79,319 km², it is bigger than Kenya and its capital is Yambio. Other important towns are Maridi, Nzara, Tambura and Mundri.

1.2.2 State Government

WES and its 10 counties have fully integrated their administrations into the civil service of South Sudan. The state has its own constitution and functional executive, judiciary and legislative organs. Power is devolved from the State executive to the County, Payam, and Boma levels as part of the decentralized system. Counties are headed by County Commissioners, appointed by the President on the recommendation of the Governor, while payams and Bomas are headed by administrators appointed by the State Governor upon recommendation by the Ministry of Local Government.

1.2.3 Socio-demographics

WES has an estimated population of 770,600. Two-thirds of the population is under the age of 30 years. Almost 83% of the population reside in rural areas. Only 27% of the population aged 15 years and above is literate, with significant gender disparities: the literacy rate for males is 40% compared to 16% for females. During 2009, approximate 87,670 people were displaced by the Lord's Resistance Army (LRA) attacks or forced across the border from neighbouring states into South Sudan. Since the beginning of 2010, there has been an influx of refugees into WES (OCHA, 2010).

1.2.4 The Economy

WES is the most agriculturally productive of the 10 states that make up South Sudan. As such, its economy is largely agriculture-based. During the rainy seasons large parts of the State remain isolated due to poor road conditions. The major crops grown include sorghum, maize, beans, groundnuts, cassava, sesame and fruits such as mangoes, granadillas, oranges, guavas and pineapples. Livestock ownership is generally low compared to other States in South Sudan. WES has not been affected by cattle raiding which has had such serious devastation on other states. In spite of its rich agricultural potential, there have not been any major agricultural industries established in WES.

The textile industry was established in Nzara by the colonial administration, but it was halted by the civil war. One of the major developments that have been taking place in WES is road construction. WES has trade links to formal and informal markets within the state, to other parts of South Sudan and with neighboring countries. Consequently, there is greater availability of goods in the local markets and shops than in most of the other states. High quality timber and related products is key product from WES. During the post-conflict period, connectivity to the mobile telecommunication network has been considerably undertaken.

1.2.5 Cross-border Disputes

Between 2007 and 2011, attacks by the LRA displaced between 70,000 and 100,000 civilians in WES. In addition to hundreds of violent killings, mutilations and abductions, roving LRA units closed access to farmlands, clean water supplies, schools and health services, resulting in a significant increase in vulnerability and deprivation across the state. Despite the presence of thousands of Sudan Peoples Liberation Army (SPLA), Ugandan Peoples Defence Force (UPDF) and United Nations Mission in Sudan (UNMIS) troops during this period, it was not until 2011 that a civilian armed group, the 'Arrow Boys' or 'Home Guards', succeeded in pushing the LRA back into the DRC. As of 2012, there have been no confirmed LRA attacks in WES (UNMIS, 2010).

1.2.6 Socio-cultural Background

There are eight ethnic groups in the state: Moru, Azande, Avokaya, Beli, Balanda, Baka, Fertit and Mundu. The Moru are the country's 10 largest ethnic group with smaller numbers in the Democratic Republic of the Congo and Uganda. They are highly educated largely because of the work of the Church Missionary Society (CMS) with a good number trained as medical professionals.

Traditionally, the Moru have no formal political institutions. Land is held by the community and the economy is agriculturally-based although they have recently started to acquire livestock. The administrative authority lies with the paramount chiefs, chiefs, sub-chiefs, and headmen who adjudicate minor cases such as elopement and adultery. Their main role in society is conflict resolution, peace and reconciliation between families and clans.

The Azande are also one of the few groups in South Sudan that do not embrace the cow culture by which bride price during marriage is paid in cows. Prior to colonialism, the Azande were organized into a number of chiefdoms (sometimes called kingdoms), each of which was independent from the others.

The Azande chiefdom was/is formally structured in a clear-cut hierarchy, from the chiefs at the top through their deputies, armies, local governors, and ending with individual householders at the lower end of the echelon.

With 62 different ethnic groups and many sub-groups, South Sudan is rich in terms of cultural diversity and traditional heritage. Traditional, customary law is close to the people and offers mechanisms for conflict resolution and social safety nets for the South Sudanese. In South Sudan, system-immanent resources include a body of traditional conflict resolution mechanisms and processes at local or community level. Community-based people-to-people peace processes, often initiated and supported by civil society and church organisations, have built upon these traditional approaches.

1.2.7 Common Types of Disputes and Social Relationships

Family Disputes: Family disputes arise frequently when partners in marriage separate or divorce; when a boy elopes with a girl as a prelude to marriage; and when there is an incident of adultery. **Family Separation and Reunion:** Issues arising from war-related family separation became frequent during the returnee process of IDPs, refugees and other groups of people separated for over two decades of war. The lives of some people were completely ruined by the war. For instance, some of the people affected by the war returned only to find their partners married to other people thus becoming a major cause of conflict.

Land Ownership and Use: Disputes associated with land have tended to be diverse in the post-CPA period. Land-related disputes manifest themselves in the form of inter-personal, intra-communal and inter-communal disputes. Traditional authority is vested in the native administration consisting of hierarchies of tribal chiefs and their assistants, elders and opinion leaders.

1.2.8 Traditional Conflict Resolution Mechanisms of the Azande

The traditional dispute/conflict resolution institutions are hierarchical and they rotate around the concepts of mediation, compensation and restitution. They involve tribal chiefs and their assistants, elders and community opinion leaders. They act as intermediaries between communities and local governments. The contradictions between the different sources of traditional authority constitute the basis of post-CBA conflicts and disruption of social order at the community level. Strict observance of traditional authority is incompatible with the human rights especially those of women.

The causes of conflict and process of conflict resolution are complex compared to the other groups examined so far. Causes of conflict are both imaginary and real. Imaginary causes of conflict consist of all misfortunes attributed to magic and sorcery, called *ngua* and *mangu*. Bad health, physical injury, death and crop failure, among others, are believed to be caused by mystical powers of evil people. Besides actual disputes caused by recognised incidents, relationships deteriorate in the society and tension builds due to imaginary causes of conflict associated with magic and sorcery.

Addressing these types of conflict involves the chief (*gbia*), the courtiers (*agbiangbanga*) and other community leaders such as headmen (*abairagene*) and influential elders called the *abakumba*. All these actors interact in court locally known as the *ngbanga*. The courts are also hierarchically structured. There are courts at the level of the chief, sub-chief and headman.

1.3 Problem Statement

The Azande heritage has maintained relative peace and enhanced governance in WES (UN 2009). Traditional dispute resolution mechanisms (TDRMs) have played an important role in the past. They rotate around the concepts of mediation, compensation and restitution. The application of these principles differs from one ethnic group to another. TDRM is still very relevant in WES because there is a vacuum in the system of justice and the rule of law, especially in the rural areas. It is logical to maintain an existing system that has survived for centuries while building alternatives such as a functional judiciary that would gradually address weaknesses in the TDRM system.

The emerging nature, trends of disputes and TDRM actors are changing in the post-independence environment. The complexity of current disputes has challenged the capacity of traditional TDRM's ability to resolve disputes sustainably and prevent conflict. Although the TDRMs have been an important gap-filler in conflict resolution in the past, they have found their authority challenged by modern realities. The improvement of the traditional system of conflict resolution would involve subjecting it to substantial reforms. Local negotiations can lead to practical agreements which keep broader inter-communal relations cordial such as in restoring mutual sharing of water and grazing lands. Traditional conflict resolution is often based on mediation aimed at restoring social harmony and consensus within communities instead.

There is need therefore to assess the existing TDRM in terms of its authority, capacity and effectiveness in dealing with current and future disputes. Based on the findings of this study recommendations are made on replication of the best practices of TDRM. In addition, recommendations on improving the current TDRM so as to be able to deal with the future conflict trends have been made.

1.4 Research Questions

1. How is the existing TDRM in WES constituted?
2. Where does it derive the authority that drives it?
3. What is the capacity of the TDRM in responding to current disputes?

How effective is the TDRM in preventing or mitigating future disputes?

1.5 Objectives

1. To examine the constitution of the existing TDRM in WES;
2. To investigate the sources of the authority that drives it;
3. To assess the capacity of TDRM in responding to current disputes; and
4. To analyze the effectiveness of TDRM in preventing or mitigating future disputes.

1.6 Justification of the Study

Effective community-based TDRMs can help strengthen and improve the way people relate to one another by working at the grassroots level to bring communities together to resolve conflicts and develop cooperation that leads to peace and stability. They also show the people that their voice is heard and valued in the community. Effective TDRM is also a potentially valuable mechanism for stabilization and state-building efforts besides assisting communities to achieve social, cultural and economic goals. Its services have the potential of reducing levels of conflict, promoting healing of damaged relationships within communities and enhancing governance in the communities.

However, these potential benefits have neither been realised nor adequately documented. There is therefore need to establish the sustainability and effectiveness of community-based TDRMs and to document tangible lessons that can be replicated elsewhere. Community-driven conflict resolution has tremendous potential for sustainable change.

Communities have local knowledge, know better the specific needs, sensitivities, assets and limitations of a particular area, as well as the sources of strife. Communities need to own and propel the process of reconciliation so as to make peace sustainable in the long term.

There is need to also to establish the capacity of the existing TDRM in WES to deal with conflict. The local actors who resolve differences at community level are usually older community members but with the currently changing nature and trends of disputes, there is need to establish the effectiveness of community-based TDRM especially in terms of the required skills and tools to enable them succeed in various situations.

CHAPTER 2: LITERATURE REVIEW

2.0 Introduction

Globally, the crucial role of traditional dispute resolution mechanisms has been noted over time with scholars stating that courts only deal with a fraction of all the disputes that take place in society (Marc, 1981). Disagreements and misunderstandings are key characteristics of human relationships whether domestic, national or international. The potential for disputes is even higher where the parties are from different cultural, economic and political backgrounds with different legal systems. Since disputes are such a critical part of human relationships, many countries have mechanisms to resolve them in a manner which maintains the cohesion as well as economic and political stability of the state.

2.1 African Customary Systems of Dispute Resolution

In Africa, traditional or customary law is generally the accepted norm in any community. Customary laws, though unwritten, are accepted by the greater proportion of community members. One of its most commendable characteristics is its flexibility besides the fact that it is the accepted norm.

The resolution of disputes was a major function under the indigenous system of governance. The role was taken up by the elders or the chief and was meant to maintain social cohesion. In its operation, African dispute resolution was much like arbitration in that resolution of disputes was not adversarial. Any person concerned that a given dispute threatened the peace of the community could initiate the process. In the process, parties had the opportunity to state their case and their expectation but the final decision rested with the elders.

African traditional conflict resolution processes were part of a well-structured, time-proven social system geared towards reconciliation, maintenance and improvement of social relationships. The methods, processes and regulations are deeply rooted in the customs and traditions. Indigenous mechanisms are time-tested and effective to handle disputes that arise.

When compared with the non-indigenous ones, indigenous mechanisms for the prevention and resolution of disputes are less complex, save time, and give a chance to the parties in conflict to actively participate in solving their own problems in a relatively more acceptable way. Whereas the western-type arbitration is attractive because of its private nature, customary arbitration was not private but organised to socialise the whole society. The other distinction is that the process was gender-insensitive since women were excluded from male-driven communal dispute resolution processes.

2.2 Existing TDRMs in Africa

2.2.1 Kenya

Article 159 (2) of the Constitution of Kenya (2010) recognizes informal justice systems including TDRM. However, TDRMs are to function on condition that they do not infringe upon the Bill of Rights and should not contravene the Constitution or any other written law. Kariuki (2012) argues that where TDRMs have been used in managing disputes, they have been effective since they are closer to the people, flexible, expeditious, foster relationships, voluntary and cost-effective. In Kenya, the Pokot, Tswana, Samburu, and Marakwet indigenous methods of conflict resolution methods are closely bound with socio-political and economic realities of their lifestyles. The TDRMs are rooted in culture and history and are unique to each community (Pamoja Trust, 2014).

2.2.2 Ghana

In Ghana, many ethnic disputes are protracted mainly because of the type and nature of conflict resolution mechanisms that are used in finding solutions to them. Many of the solutions to these disputes are often unacceptable because they fail to adopt traditional mechanisms of resolving disputes. As documented by Kaderi (2013), many resolution measures have been used and continue to be used in bringing lasting peace to the Bawku. Kaderi also explored the traditional actors and how indigenous mechanisms in the Bawku Traditional Area were used in resolving ethnic conflicts. The study reveals that indigenous methods of conflict resolution can be effective in resolving conflicts through an integration of indigenous approaches.

2.2.3 Somaliland

In Somaliland, traditional dispute resolution mechanisms are common in the northwestern region. All clans in Somaliland and some of the larger sub-clans, as late as 1993, had their own Supreme Council of Elders, known as *Guurti*. This Council acts both as legislature and executive, and is responsible for responding to questions within the clan and for arbitrating with other clans. Peacemaking initiatives in this region have been relatively successful compared with the rest of Somalia.

2.2.4 South Africa

The use of alternative methods of conflict resolution by the traditional societies of South Africa is deeply rooted in the customs and traditions of those societies.

These range from the fairly rudimentary processes of the Khoisan of Northern Cape to the sophisticated traditional courts of the Zulu in KwaZulu-Natal.

2.2.5 Rwanda, Burundi and Democratic Republic of Congo (DRC)

Rwanda, Burundi and DRC are among the African countries that have been most affected by violent disputes in the last twenty years. Various demonstrations of local conflict mediation initiatives can be found in these countries. Endogenous *Gacaca* courts were revived in post-genocide Rwanda to promote peace, justice and reconciliation as well as to end the culture of impunity while promoting accountability. Critics of endogenous approaches assert that these methods are neither completely adequate nor practicable in advancing healing and post-conflict reconstruction, while proponents argue that such endogenous methods as the *gacaca* courts represent a model of alternative or restorative justice that fosters healing and reconciliation.

2.2.6 South Sudan

In post-conflict South Sudan, there is a strong national and international focus on state building measures at the national and state levels. At the same time, reintegration of the communities and ongoing identity and resource disputes keep challenging communities every day. Traditional mechanisms for conflict resolution are an accessible and available source of current conflict resolution in the country.

South Sudan is primarily organised along ethnic, tribal and kinship lines. It can be argued that fragmentation has increased during the civil war, especially during the south-south wars of the 1990s. Traditional customary law is close to the people and offers mechanisms for conflict resolution and social safety nets. However, traditional rivalry among different ethnic groups can hamper this potential. Reconciliation and mediation are part of tradition in South Sudan. At community-level, knowledge and experience are available about peacebuilding initiatives, including how to deal with traumatic events (e.g. storytelling, listening, and forgiveness).

2.3 Leadership of TDRM

Community members involved in conflicts participate in the dispute resolution process. Such community members include traditional authorities (elders, chiefs). Throughout the process, elders prepare, moderate, listen, and often arbitrate procedural problems. They help formulate an eventual consensus among the clans.

Various intra and inter-clan deliberations occur on the sides simultaneously. The key authority bearers of the conflicting parties are included in the process including traditional, military, administrative, and religious leaders. The elders or other traditional mediators use their superior judgment and moral integrity to find acceptable solutions. Decisions may be based on consensus within the elders' or chiefs' councils and may be rendered on the spot. Resolutions may involve requests for forgiveness and mutual formal resolution of the problem, and, if necessary, an arrangement for restitution.

In many African traditional societies, religious men are somewhat detached from society. They are considered separate from warriors and are the repository of traditional wisdom and sometimes the vehicle of religious judicial systems, such as *shari'a law*. This special place in society makes them an ideal link between feuding groups who might otherwise be unable to establish dialogue.

The elders function as a court with broad and flexible powers to interpret evidence, impose judgements, and manage the process of reconciliation. The mediator leads and directs discussion of the problem. Parties typically do not address each other thus eliminating direct confrontation. Interruptions are not allowed while each party states their case. Statements are followed by open deliberation which may integrate listening to and cross-examining witnesses, free expression of grievances, caucusing with both groups, reliance on circumstantial evidence, visiting dispute scenes, seeking opinions and views of neighbors, reviewing past cases, holding private consultations, and considering solutions.

2.4 Types of Dispute in Africa

Traditional mediation is effective in dealing with interpersonal or inter-community disputes. This approach has been used at the grassroots level to settle disputes over land, water, grazing rights, fishing rights, marital problems, inheritance, ownership rights, murder, bride price, cattle raiding, theft, rape, banditry, inter-ethnic and religious disputes. The disputes that plagued African states are typical of those afflicting states in Eastern Europe and Asia, (Adeleye, 2011). They could roughly be grouped as follows: Boundary disputes: African states' frontiers are "more fluid" than at independence as thousands of economic and political refugees move around the continent. Conflict governance: State dictatorships trying to shore up ethnic autocracies are under attack by increasingly militant opposition groups encouraged by both internal and external pro-democracy and human rights organisations.

Conflict of economic development: The economic sovereignty of African states, never strong before, is being almost terminally undermined by pressures to join regional trading blocs as well as the growth of cross-border trading networks.

This conflict also includes the crisis of production and distribution of resources and the competition arising therefrom. Conflict resulting from foreign intervention: Refers to foreign intervention and withdrawal during and after the Cold War; and conflict arising from the militarisation of the Society in form of abundance of weaponry and trained soldiers, as well as untrained volunteers available to any would-be warlord with resources and determination to hire them.

Urban Violence and Conflict: Urban violence is now becoming more common than in the past, as Africa's rate of urbanisation is the highest in the world. Population is increasing dramatically in urban centres, while the economies of most African countries have been deteriorating thus raising urban unemployment to unprecedented levels. The youth (under 18 years) make up more than half of the population of many African countries. The social sector comprising education, hospitals, housing and other urban social services are insufficient and often provoke and sustain violence in several urban areas in Africa. It is a miracle that a high level of violence has not been reached (Abdalla, 2002).

Corruption

One of the major factors responsible for internal disputes in Africa is the devastating impact of corruption. Corruption, manifested mostly in embezzlement and misappropriation of public funds, has paralyzed development efforts and caused debilitating effects in the march towards socio-economic transformation and political integration in Africa. Africa's resources have been badly managed over the years that masses have expressed disillusionment with their leaders. This has sometimes provoked militant nationalism against African leaders. The result, expectedly, is the unending conflict across African states. The African Union acknowledges the debilitating impact of corruption on the political and socio-economic stability of African states (Aremu, 2010).

2.5 Individual characteristics related to disputes

Research has identified that certain demographic factors become consistently observable and statistically significant in relation to the experiencing and reporting of legal events. Demographic factors may result in a generally higher or lower number of legal issues, but may also be indicative of the likelihood of specific types of legal issues arising. These include age, gender, education level and main source of income.

The Law and Justice Foundation study (2004) found that ‘age, country of birth, disability status, personal income and education level were statistically independent predictors of reporting legal events (of any type)’. Of these, there was a clear trend that disability was significant, with the finding that people with a chronic illness or disability have increased vulnerability to experiencing nine out of the 10 most frequently occurring legal issues. Some demographic trends became important in relation to vulnerability to experiencing particular types of events.

Fathima (2006) study on demographic variables and outcomes of disputes concluded that age has been reliably linked to the incidence of disputes. The study further ascertain that a person’s age was relevant to their likelihood of experiencing a legal event and vulnerability. In addition the study shows that younger people tend to experience legal issues at a higher rate than older people. Studies indicated that females experience higher rates of family law issues, domestic violence. There was a complex relationship between a person’s socio-economic position and levels of reporting of legal issues.

2.6 TDRM Methods and Processes

Indigenous processes are long-term interactions since mediation continues until a solution is found that is acceptable to all parties. There are no quick fixes. They may take more time than outside observers are accustomed to, and the discussion of “important” issues will generally occur only after other obligatory issues have been ironed out. Some peace conferences can go on for months but traditional conflict resolution mechanisms can bring about long-term reconciliation within a relatively shorter period of time. Indigenous mediation of disputes can occur at any stage of a conflict, from on-the-spot mediation to prevent a violent outbreak, through efforts to mitigate the more violent aspects of the conflict to efforts toward reconciliation after the dispute has escalated to violent conflict. These processes can take place before formal peace structures have been established. Traditional forms of mediation and legal sanctioning often appear in the aftermath of widespread conflict when no other mechanisms for social regulation exist. This is particularly true in the case of failed states such as Somalia or Zaire, where indigenous mechanisms, some *ad hoc*, others traditional and long-established, provide order where an outsider’s eye sees only chaos. In many areas of Somalia including parts of Mogadishu, *Shari’a* courts enforce law and order, a welcome novelty for residents who have been deprived of a functioning judicial system for years.

Historically, international law has been regarded by the international community as a means to ensure the establishment and preservation of world peace and security. Diplomatic methods of dispute settlement are negotiation, enquiry, mediation, conciliation, and good offices. Negotiation is the oldest, most common, and simplest method of settling international disputes. Where treaties fail to settle a dispute by negotiation, this sets a precedent for compulsory arbitration or judicial settlement. It is therefore not surprising that negotiation comes first in the list of means of pacific settlement of disputes stipulated in Article 33 (1) of the UN Charter.

One of the common obstacles preventing the successful dispute settlement by negotiation is the difficulty of ascertaining the facts that may have given rise to the differences between the disputants. Most international disputes involve an inability or unwillingness of the parties to agree on points of facts. Herein lies the significance of the procedure of inquiry as a means of pacific settlement of disputes.

Mediation, conciliation and good offices are three methods of peaceful settlement of disputes by which third parties seek to assist the parties to a dispute in reaching a settlement. All involve the intervention of a supposedly disinterested individual, state, commission, or organization. When the parties are unwilling to negotiate, or fail to negotiate effectively, assistance by a third party through mediation, conciliation, or good offices may be necessary.

Conciliation is described by some as a combination of enquiry and mediation. The conciliator investigates the facts of the dispute and suggests the terms of settlement but conciliation differs from enquiry in that the main objective of the latter is the elucidation of the facts in order to enable the parties through their own accord to settle their dispute. The main objective of conciliation is to propose a solution to a dispute and to win the acceptance of the parties.

Adjudicative methods of dispute settlement consist of two types of procedures, “arbitration” and “judicial settlement”. Arbitration and judicial settlement are two methods that involve the determination of differences between States through legal decisions by tribunals. Whereas in case of judicial settlement the decision is made by an established court, permanent (such as the International Court of Justice) or *ad hoc*, in the case of arbitration, it is made by a single arbitrator or arbitral tribunal.

2.7 Strengths and Challenges Facing TDRM

Indigenous conflict management and resolution mechanisms aim to resolve disputes locally, preceding or replacing external dispute resolution and thereby reducing reliance on external structures. Traditional mediation helps the community to keep control over the outcome of the dispute. Implementing this approach does not require sophisticated party structures or expensive campaigns. Rather, it provides a low-cost, empowering means of resolving disputes within a relatively short timeframe.

In many societies, elders have traditional jurisdiction in facilitation, arbitration, and monitoring outcomes. Local conflict mediators typically possess moral authority, seniority, neutrality and respect of the community. They are acceptable to all parties and demonstrate leadership capacity. Resolutions are generally accepted and respected by all concerned parties.

Documentation of the effectiveness of grassroots conflict prevention mechanisms is inconsistent, yet there are indications that indigenous mediation may be powerless to address the root causes of some conflicts such as some locally-instigated ones, predatory behavior linked to exploiting economic advantage, and external meddling. Indigenous mediators often bring important social influence but may lack the power and means to enforce the resolutions adopted. Advice is only accepted when both parties agree to it, and both parties must feel that their concerns were properly addressed.

The power of traditional structures to prevent the occurrence of violence is limited. Some traditional conflict mitigation efforts may be weakened by age or gender bias, for example, in cases with no women elders, some women may believe that male elders are biased against women and that this will be reflected in their decisions. Indigenous, traditional authorities generally are not progressive elements of social change. Local conflict management's potential effectiveness is diminished where traditional authority gets eroded and armed authority increases, because these trends run counter to traditional values of justice and social organization. International agencies' efforts to build local capacity and enhance participation should question whether traditional authority structures are being undermined, what their role is in keeping the society intact and in managing conflict, and whether it is important to make efforts to retain such structures.

Indigenous mediation has a dynamic of its own and does not always respond positively to external prompting. Indigenous mediation requires delicate and knowledgeable management, and external actors must bring an intimate understanding of local conditions.

The major disadvantage of the diplomatic methods of dispute settlement is that the parties to them are under no legal obligation to accept the proposals of settlement suggested to them. Thus, the adjudicative methods of dispute settlement are preferable because they provide the issuance of binding decisions, rather than mere recommendations as in cases of diplomatic methods. It is this binding force of the decisions rendered at the end of the adjudicative methods that distinguishes traditional from other methods of dispute settlement, (Deborah et al, 2009).

TDRM programs in Africa face key challenges including inadequate political support, human resources, legal foundations, and sustainable financing. Many governments are slow to understand or recognize the need for TDRM hence the latter's programs are often donor-initiated. The lack of national or local government support constrains institution-building that in turn spurs the development of personnel and creates an enabling legal framework. Furthermore, some lawyers view TDRM as a threat to their incomes especially those without any TDRM exposure. Some judges may also resist TDRM for fear of losing "control" over non-litigation resolution or out-of-court settlements.

Any effective TDRM system must have a flexible design structure that is rooted in satisfying the interests of the parties in dispute and professionally administers fair justice in a dynamic yet culturally appropriate manner. To integrate TDRM as a popular and effective tool in building a stronger culture of justice in Africa, several steps by governments and donors are required to enact robust ADR legislation.

A framework for reference, review, and reform as well as institutionalizing much needed education and professional training is lacking. There is also inadequate capacity building by way of training of local and religious leaders, traditional authorities, election officials, police and security personnel, human rights organizations, public complaints bureaus or offices of Ombudsmen, and women and youth leaders. TDRM also lacks efficient and systematic monitoring tools to assess key qualitative and quantitative data that would lead to adjustments in the scope and focus of ADR efforts.

With nearly 70 percent of the African population 30 years old or younger, a substantial rate of youth restiveness is inevitable and poses a major challenge to the already strained criminal justice systems. Lack of TDR techniques to address youth unrest and violence based on peace education and restorative justice principles should be integrated into school programs.

2.8 Capacity of the TDRM in responding to current trends of conflict

A dispute resolution mechanism is a structured process that addresses disputes or grievances that arise between two or more parties engaged in business, legal, or societal relationships. Dispute resolution mechanisms commonly used include conciliation, mediation and negotiation. Dispute mechanisms are typically non-judicial in nature, meaning that they are not applied in a court of law. Dispute mechanisms comprise the need to meet requirements of corporate responsibility to reduce risk while capacity-building or developing the processes that create positive social change.

Dispute mechanisms are an increasingly effective tool for establishing communication channels between communities. When successful, they offer a trusted way for local peoples or communities to voice and resolve concerns related to development projects. According to a publication by the Compliance Advisor/Ombudsman of the World Bank Group, locally-based grievance resolution mechanism(s) provide a promising avenue by offering a reliable structure and set of approaches where local people and foreign companies can find effective solutions together. Generally, a well-functioning dispute resolution mechanism should: provide a predictable, transparent, and credible process to all parties, resulting in outcomes that are seen as fair, effective, and lasting; build trust as an integral component of broader community relations and activities; and enable more systematic identification of emerging issues and trends for facilitating corrective action and preemptive engagement. According to UN Human Rights Council (2008), those who design and oversee non-judicial mechanisms should acknowledge core UN human rights treaties. Such mechanisms must at a minimum be: Legitimate: the mechanism must have clear, transparent and sufficiently independent governance structures to ensure that no party to a particular grievance process can interfere with the fair conduct of that process; Accessible: the mechanism must be publicized to those who may wish to access it and provide adequate assistance for aggrieved parties who may face barriers to access, including language, literacy, awareness, finance, distance, or fear of reprisal.

Predictable: the mechanism must provide a clear and known procedure with a time frame for each stage and clarity on processes and outcomes it can (and cannot) offer, as well as a means of monitoring the implementation of any outcome; Equitable: the mechanism must ensure that aggrieved parties have reasonable access to sources of information, advice and expertise necessary to engage in a grievance process on fair and equitable terms; Rights-compatible: the mechanism must ensure that its outcomes and remedies accord with

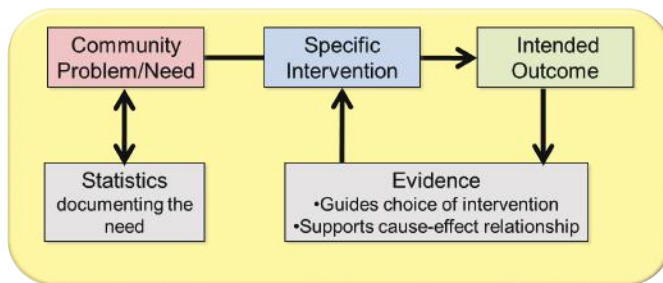
internationally recognized human rights standards; and Transparent: the mechanism must provide sufficient transparency of process and outcome to meet the public interest concerns at stake and should presume transparency wherever possible. Non-State mechanisms in particular should be transparent about receipt of complaints and the key elements of their outcomes.

2.9 Theories of dispute and conflict Resolution

Theories of change efforts focus primarily on changing individuals, relationships, and social structures. Changing individuals involves promoting cognitive, emotional, and behavioral change. Changing relationships focusing on changes in intergroup relations often assert that networks, coalitions, alliances, and other cooperative group relationships are key in promoting both individual and social change. Relationships change suggests that an essential ingredient of healing and reconciliation involves group processes of acknowledgement, mourning and forgiveness.

Explicit acknowledgement and acceptance of moral responsibility for past events that victimized the other group, along with assurances that similar events will not happen in the future can activate a response of forgiveness that releases, on a deeper level, resilience in completing the mourning process and moving forward into problem-solving for a better future. Change of social structures is at the heart of many conflict resolution interventions. Most ethnic conflict interventions have explicit goals of creating some form of social or systemic change. It aims to improve problem-solving capacities, forums, and mechanisms within a system, and foster new attitudes, values, skills, and norms for interaction among people who make up the system. Social change is also promoted through institutional, legislative, and policy change as well as influencing or changing leadership, (Shapiro, 2005).

Figure 1: Change of social structures

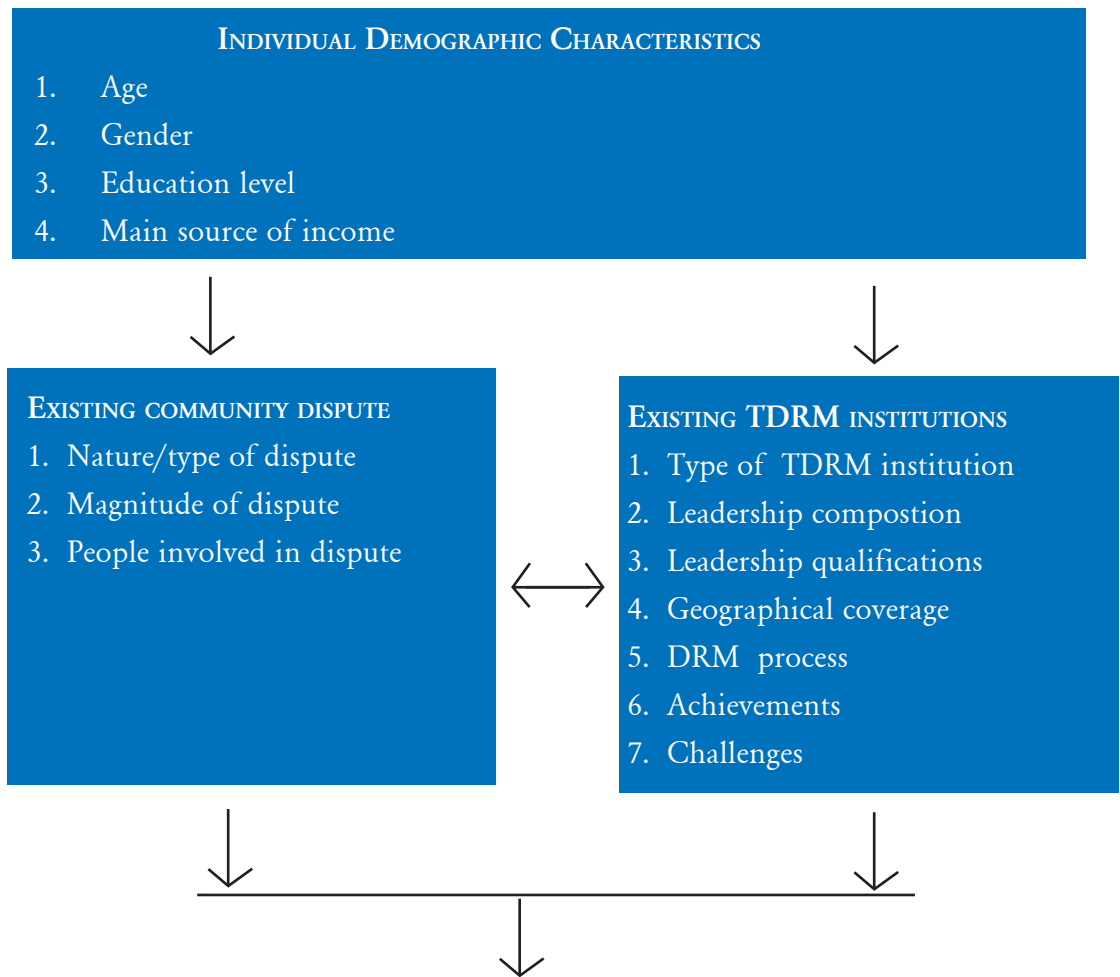


Source (Shapiro, 2005).

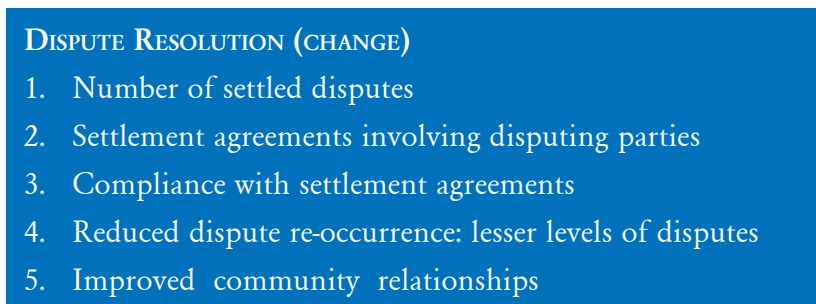
Most programmes appear rooted in optimism about the opportunities for positive change inherent in conflict situations, as well as human capacity for learning and growth. Within the field of conflict resolution, conflict is often described as a vehicle for positive social change (Schellenberg, 1996; Pruitt and Kim, 2004). If addressed constructively, scholars suggest that conflict can create positive change in individuals' perceptions and behaviours (Bush and Folger, 1996; Lederach and Maiese, 2003); relationships between parties (Bush and Folger, 1996; Assefa, 1993) and political, social and economic structures (Dukes, 1997; Rupesinghe, 1995). Some of the most prevalent distinctions in both the academic and programme literatures about the causes of conflict and theories of change centre around levels-of-analysis or whether change efforts focus primarily on individuals, inter-group relationships or structures and systems.

2.10 Conceptual framework on traditional dispute resolution mechanisms

Independent Variables



Outcome/Dependent Variables



CHAPTER 3: METHODOLOGY

3.1 Study Design

A descriptive cross-sectional study was conducted using both quantitative and qualitative data collection methods.

3.2 Study Area

The study was conducted in Yambio County, Western Equatoria State, South Sudan. The County was selected because it is the home of the Azande Community whose well established traditional dispute resolution mechanisms was a subject of the researcher's case study.

3.3 Study Population

The study population comprised members of the Azande and other chiefdoms in South Sudan while the sample was drawn from community-based TDRM groups, group leaders, and the local administration.

3.4 Sample Size Determination and Sampling Procedure

The cluster sampling method was adopted to determine the sample size. The study clusters were villages representing the main ethnic groups in WES belonging to the 4 Counties. Select village clusters included Masia, Baiporu, Akorogbodi, Kpirobe. A sampling frame was made from the local administration using the list of all the households served by the TDRM Buma chief. A total of 210 household heads (HHH) were interviewed. Simple random sampling was used to select the households.

Table 1 : Sampling frame

Ethnic group	County Represented	Villages	Sample
Azande	Yambio, Ezo	Masia	70
Muru	Muniri	Baiporu	70
Abukaya , Baka, Mundri	Miridi	AKorogbodi	35
		Kpirobe	35
Total	4	4	210

3.5. Data Collection Methods and Tools

The quantitative data were collected using a semi-structured questionnaire which was administered to the HHHs (Appen. 1).

Qualitative data were collected using key informant interviews (KIIs) using an interview guide and focus group discussions (FGD) using a discussion guide. 4 KIIs were conducted the interviewee included WES Azande Paramount Chief and 3 Buma chiefs representing the villages of (Masia, Baiporu , AKorogbodi , Kpirobe). 3 FGDs were conducted, with 6 members. Respondents for qualitative data were purposively selected.

Table 2 : Tool distribution

Tool	Respondent	Total
Household questionnaire	House hold heads	210
KII	Paramount chief	1
	Buma chiefs	3
FGD	Paramount chiefs	1
	Buma chiefs	2

3.6 Data Analysis

For the quantitative data, descriptive analysis was done to establish the distribution of the survey variables. The mean, median and mode were used to describe the magnitude of the study variables . The data were presented in tables, graphs, frequencies, pie-charts using the Statistical Package for Social Scientists (SPSS) and Microsoft Excel packages. Chi square test was used to establish statistical association between the dependent variables and independent variable. Significance was at 0.05 levels.

A three-step procedure was used to analyze the qualitative data. Step one involved documentation of all the issues as recorded during focus group discussions. Step two involved clustering of all the issues under specific thematic areas while step three involved development of meanings and conclusions from the thematic areas in relation to the key study objectives. Issues emerging from the KIIs and FGDs were clustered into thematic areas upon which meanings/conclusions were drawn. The researcher used the qualitative data to support the quantitative findings. The purpose of using more than one method of data analysis was to counter-check the strengths and limitations of each method.

The Chi square test was conducted to assist in answering both the hypothesis that individual characteristics, existing community dispute, TDRM institutions influenced dispute resolution. The Chi square is a non-parametric test of statistical significance for bivariate tabular analysis (also known as cross tabulation (Howell, 1992).

Any appropriately performed test of statistical significance lets the researcher know the degree of confidence that one can have in accepting or rejecting a hypothesis.

Typically, the hypothesis tested with chi-square was whether or not two different samples (of people, texts, etc.) were different enough in some characteristic or aspect of their behaviour that researchers may generalize from samples to the populations from which the samples were drawn.

3.7 Quality Control and Ethical Considerations

Ethical clearance for the study was obtained from the Ethics and Research Committees in both Kenya and South Sudan. A research permit to conduct the study was obtained from the Ministry of Higher Education (department of National Council for Research and Technology). Further approval was obtained from the local administrations of the study areas and finally, informed written and verbal consent was obtained from the participants and/or respondents themselves. The confidentiality of participants was maintained at all times. To further maintain confidentiality, no form of identifier was in the questionnaire and the information in the report was presented in an anonymous format. Participation was voluntary and participants were informed that they could withdraw from the study at any stage of the interview if they so desired, without any penalty.

CHAPTER 4: FINDINGS

4.0 Introduction

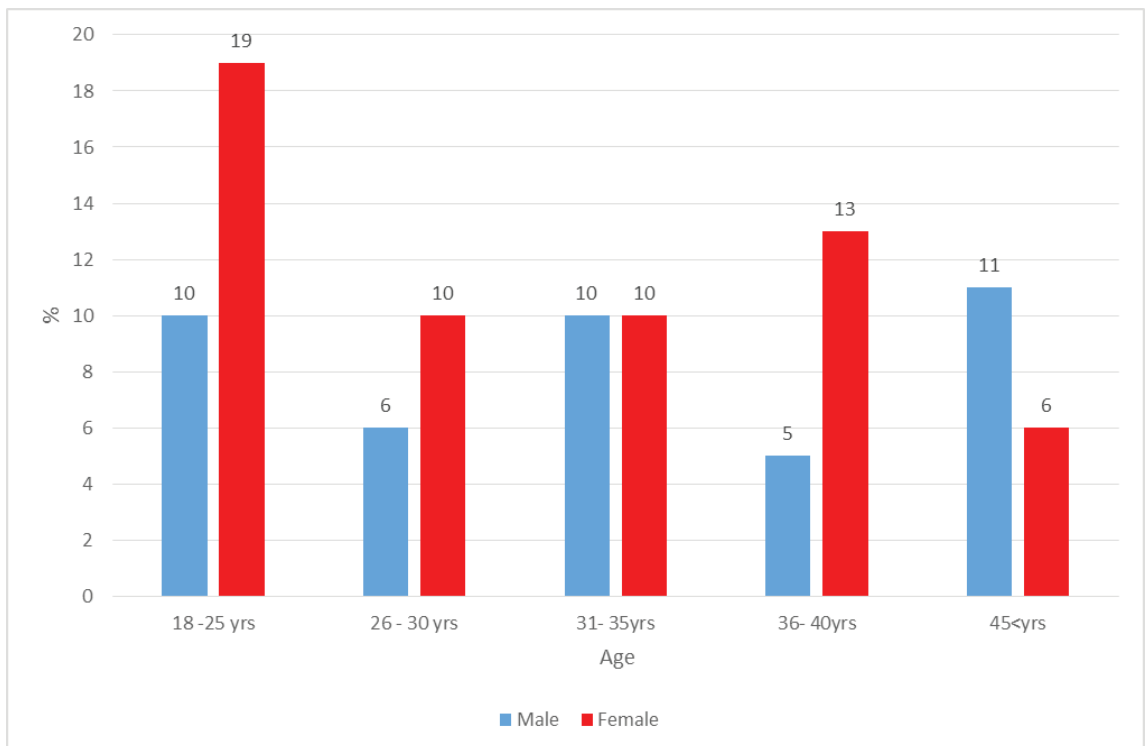
This chapter describes the findings of the study based on the objectives and operational variables. Descriptive analysis was done to establish the distribution of the study variables. The Inferential analysis was done to assess and establish relationship between the independent variables (existing community dispute and TDRM institutions) and the dependent variable (dispute resolution). Chi square test was done to establish the relationship at the significance level at 0.05.

4.1 General Characteristics of the Respondents

4.1.1 Age and Sex

A total of 210 respondents participated in the study and were drawn from the villages of Masia (33.3%), Baiporu (33.3%), Akorogbodi (16.7%) , Kpirobe (16.7%). The males were 41% and females accounted for 59 %. The mean age was 32 yrs, median 30 yrs and mode 30 years.

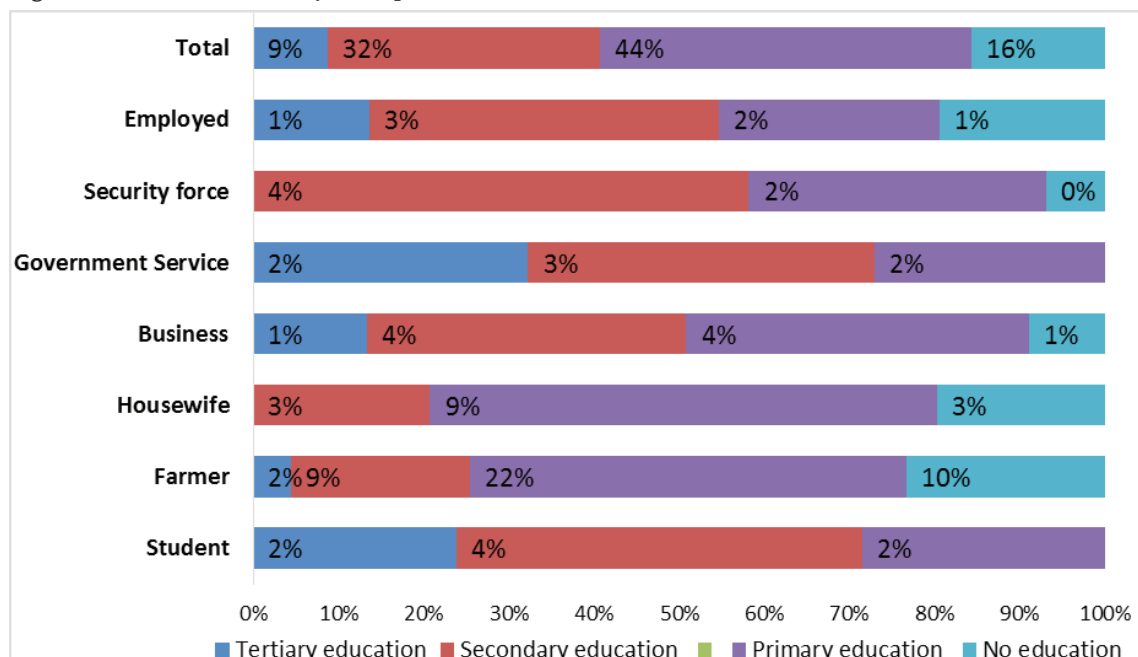
Figure 2: Age Distribution by sex among Respondents



4.1.2 Marital Status, Education Level and Occupation of Respondents

More than half (69%) of the respondents were married; single (11.9%) and separated and widowed (12.9%). Slightly less than half (44%) of the respondents had primary education while 16% had no formal education. About 2% each of government workers and farmers had attained tertiary education although farmers were also the least educated with 10% having no formal education (see Figure 3).

Figure 3: Education Level by Occupation



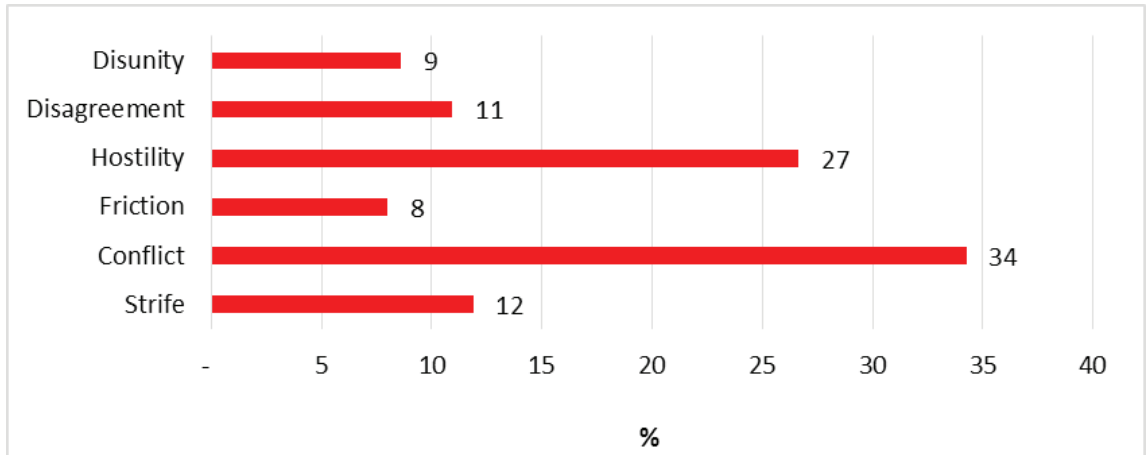
4.1.3 Group Membership

Slightly less than half (46.7%) of the respondents were not involved in any social group. The respondents who belonged to a village group dealing with (security, CBO, school management) were (25.7%), youth group (17.1%), women’s group (10.5%). Nearly half (48.6%) of those who belonged to a social group were ordinary members and (4.8%) were office bearers.

4.1.4 Community Views on Dispute/Conflict

Majority (87.6%) of the respondents stated that their community was involved in disputes as compared to 12.4% who stated that there were no disputes in their community. Conflict was the main word used to define disputes as reported by 34%. Other key words used were hostility (27%) and strife (12%), as indicated in Figure 4.

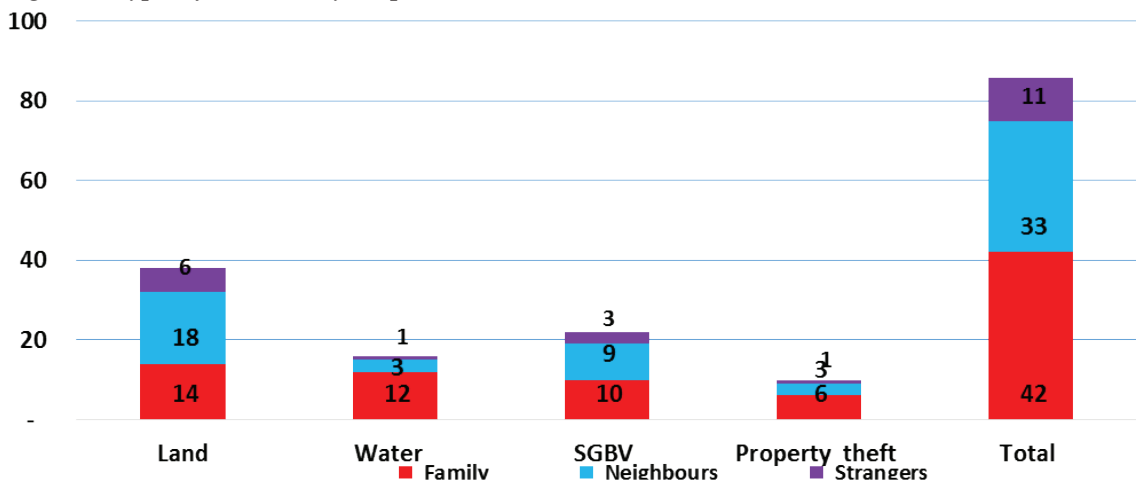
Figure 4: Respondents' Perceptions of Dispute



4.1.5 Types of Community Dispute and Actors

Majority of the respondents (88%) indicated that their community experienced disputes, as compared to 12% who said there were no disputes. Family people were mostly involved in disputes (43%), as compared to strangers (11%). The main disputes were on land (39%) followed by SGBV at (21%).

Figure 5: Types of Community Dispute and Actors



4.2 Existing Functional TDRMs

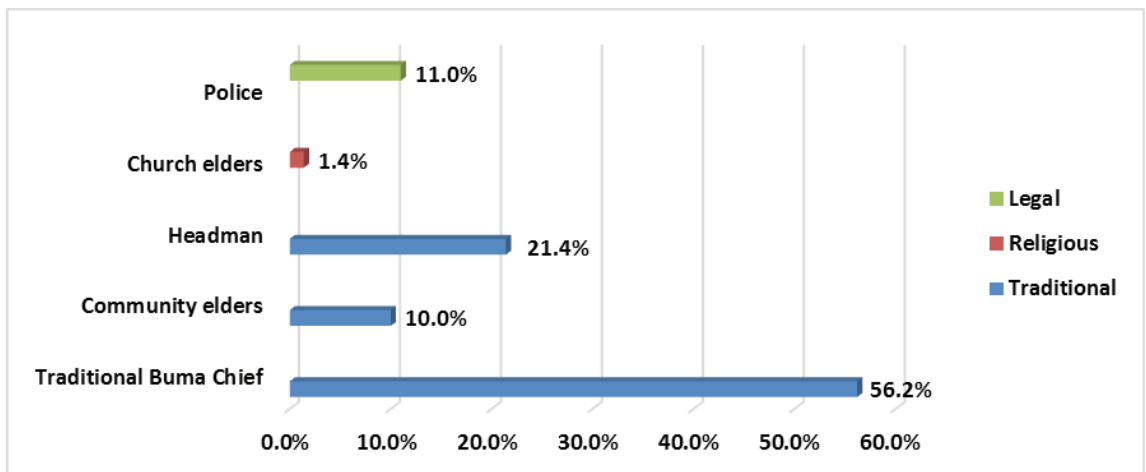
4.2.1 Name and Type of TDRM Institution

Half (56.2 %) of the respondents named the Boma chief as the main TDRM institution. The other TDRM institutions in order of ranking included the headman (21%) and police (11%) as indicated in Figure 5. Majority (87.6%) of the TDRM institutions were traditional.

The other TDRM leadership included community elders who accounted for 11.4%, mostly men, and were involved in TDRMs at the village and family levels.

The police officers (11%) who were mostly men were also involved in TDRM at the police stations.

Figure 6: Name and Type of TDRM Institution



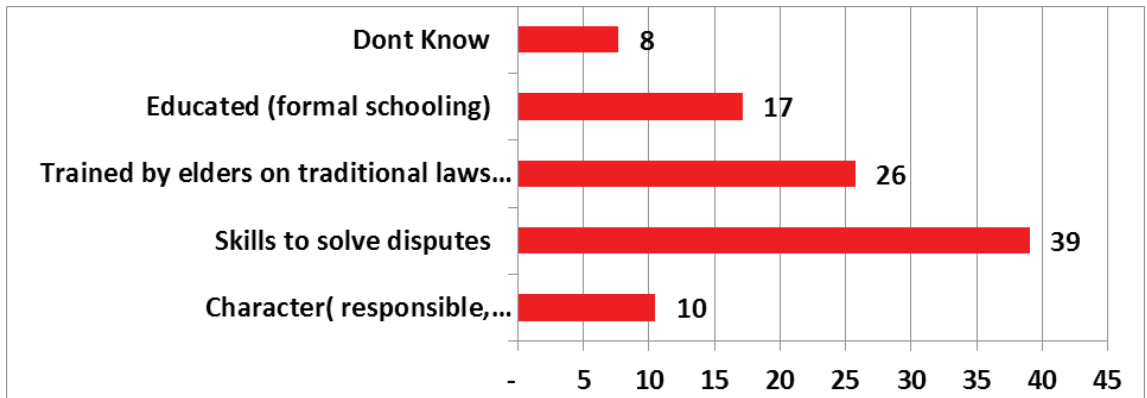
4.2.2 Selection, Composition and and Replacement of TTDRM Leadership

The selection and replacement of TDRM leadership was mostly (43%) by inheritance and 20% election. Despite the existence of the TDRM, 37% of the respondents did not appear to know how the leadership was selected or replaced. About 88% of TDRM institutions' leadership comprised the Buma Chief who was assisted by four elders who included 3 men and 1 woman.

4.2.3 Qualifications of TDRM Leadership

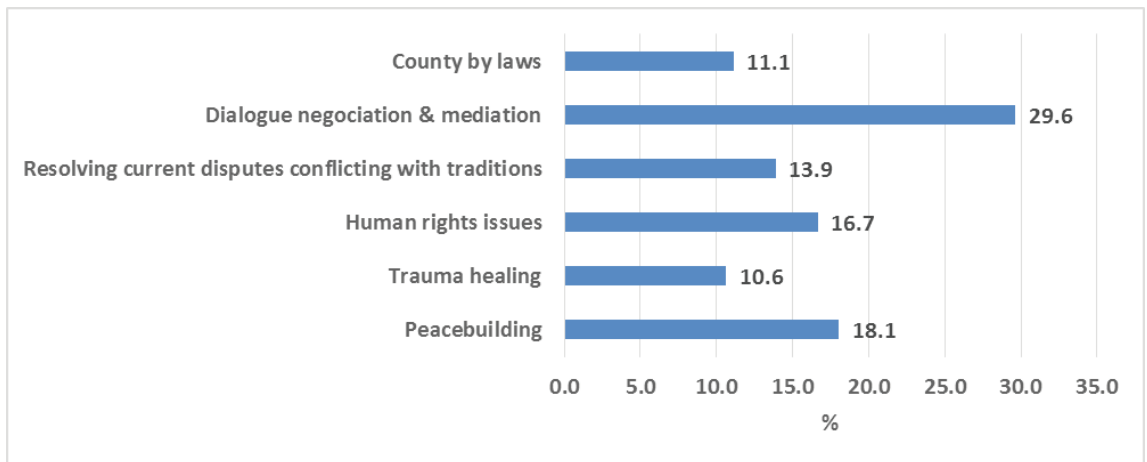
When asked about the qualifications needed to be elected as TDRM leader, skills to solve disputes was the main quality (39%), followed by training in traditional laws and culture (26%). Formal education (17%) was not a main qualification so long as the leader was able to solve the disputes (see Figure 7).

Figure 7: Qualifications Needed for TDRM Leadership Selection



When asked to recommend the type of training needed for effective TDRM leadership in order to serve better, the respondents gave six types of training. The first three included dialogue, negotiation and mediation (29.6%), peacebuilding (18.1%) and human rights issues (16.7%). These are indicated in Figure 8.

Figure 8: Training Recommended for TDRM Leadership



4.2.4 Core Activities of TDRM Institution

According to the respondents, the core activity (32.9%) of the TDRM institution was solving problems and reducing conflict and promoting peace, unity and harmony in the community (22.9%).

Table 3: Core Activities of TDRM Institution

Core Activities of TDRM Institution		
Activities (N= 210)	n	%
Solving problems and reducing disputes	69	32.9
Promoting peace, unity and harmony	48	22.9
Maintaining peace	38	18.1
No achievements	30	14.3
Maintaining justice, law and order	25	11.9
Total	210	100.0

4.2.5 Geographical/Population Coverage

Less than half (33.3%) of the respondents stated that the geographical coverage of their TDRM institution was one Boma; 500 households and below (35.2%); and more than 1 Boma (13.3%). About 18.1% did not know. (see Table 4).

Table 4 : Geographical and Population Coverage of TDRM

TDRM Geographical and Population Coverage		
Coverage (N=210)	n	%
Below 500 households	61	29.0
500 households	13	6.2
1 Boma	70	33.3
More than Boma	28	13.3
Don't Know	38	18.1
Total	210	100.0

4.2.6 Achievements of the TDRM Institution

The respondents were then asked to state the achievements of the TDRM institution in their community. Slightly less than half (43.3%) mentioned ‘solving current community disputes’ followed by ‘peacebuilding’ at 19%, as shown in Table 5.

Table 5 : Achivenments of TDRM Instution

TDRM Achivements (N= 210)	n	%
1. Solving current community disputes, problems	91	43.3
2. Peace building	40	19.0
3. Uniting the community members	30	14.3
4. Enforcing the law and justice	21	10.0
5. Investigating disputes	13	6.2
6. Don't know	15	7.1
Total	210	100

4.2.7 Challenges facing TDRM

The main challenges facing the TDRM institution included lack of training on human rights which accounted for 35.2% and conflicting cultural diversity (21%), as shown in Table 6.

Table 6 :Challenges facing TDRM

Challenge	n	%
1. Lack of training on human rights laws, County by-laws	74	35.2
2. Conflicting cultural diversity	44	21.0
3. Disrespect from community members	38	18.1
4. Lack of financial support (transport, housing)	24	11.4
5. No challenges	18	8.6
6. Don't know	12	5.7
Total	210	100.0

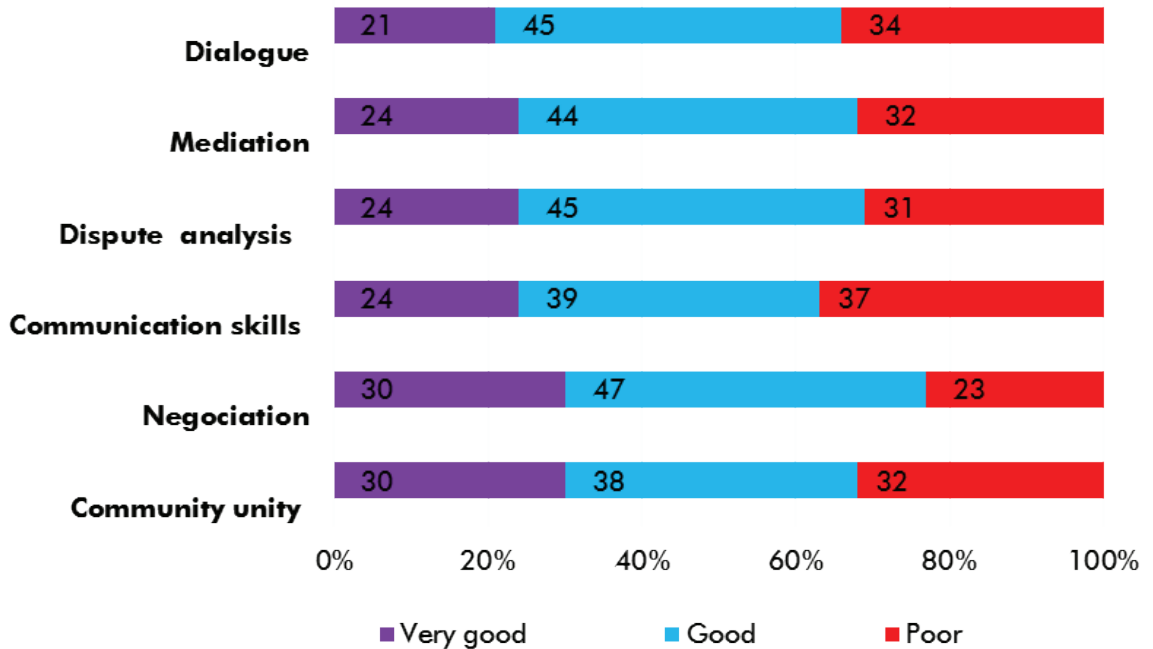
4.3 The Authority that drives TDRM

The TDRM institution is mainly (88%) driven by the traditonal authority, followed by legal at (11%) and lastly religion at (1%).

4.4 Capacity of TDRM in responding to current trends of disputes

The capacity of the TDRM institution in responding to current trends of disputes was measured using 6 variables which were rated in a scale of 1-3 (poor, good, very good). These included the institution's skills in communication, dialogue, negotiation and mediation; dispute analysis and enhancement of community unity (see Figure 9).

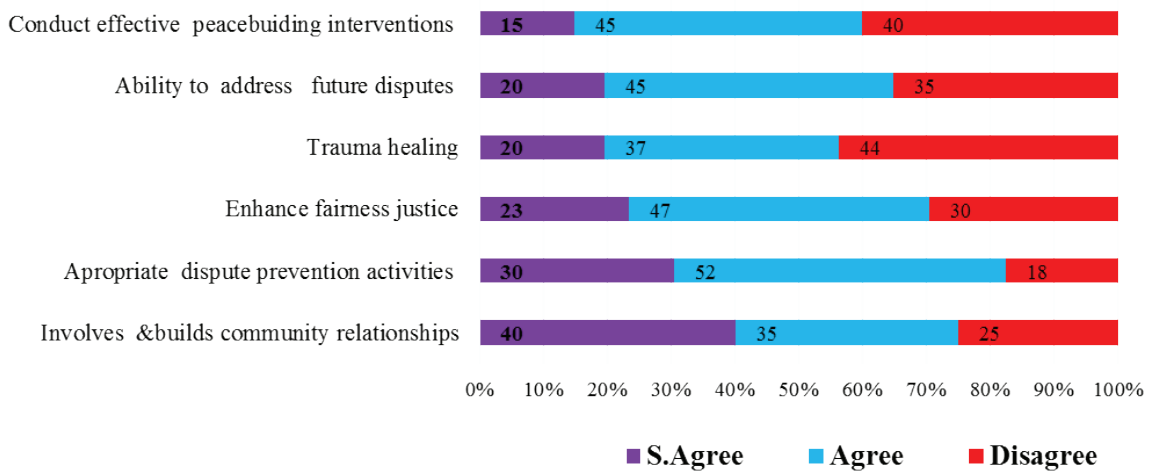
Figure 9: Capacity of TDRM Institution in Responding to Current Conflicts



4.5 Effectiveness of tdrm in preventing Future Conflicts

The effectiveness of the TDRM institution in responding to future disputes was assessed using 6 variables. These were: building community relationships; appropriate dispute prevention activities; enhancing fairness and justice; trauma healing; ability to address future disputes, and conducting effective peacebuilding interventions. All these were associated with involvement in a culture of dispute prevention, justice and reconciliation. The respondents were asked to rate the TDRM process using the 6 variables. About 40% strongly agreed that TDRMs were involved in building community relationships while 40% disagreed that TRDM was involved in trauma healing. Figure 10 summarises these responses.

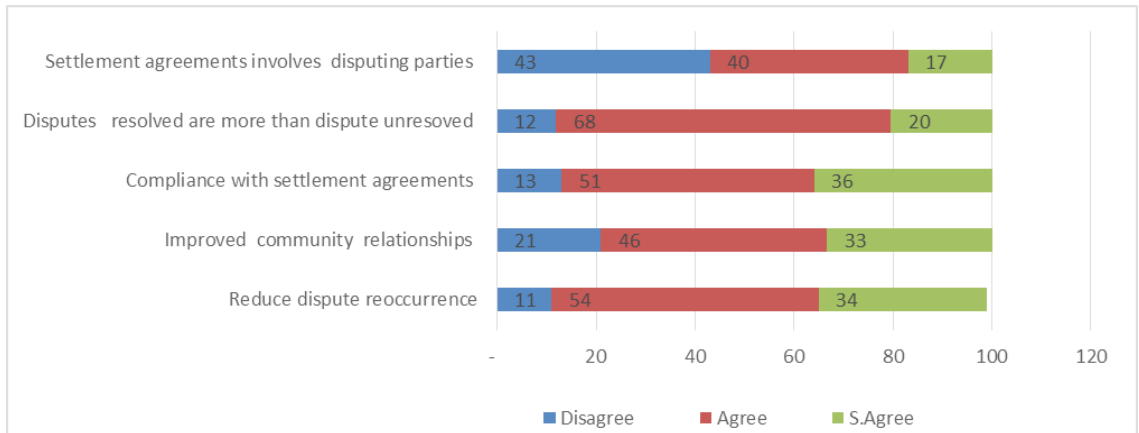
Figure 10: Effectiveness of TDRM in Preventing Future Conflicts



4.6 Assessing TDRM’s Capacity to Resolve Conflicts

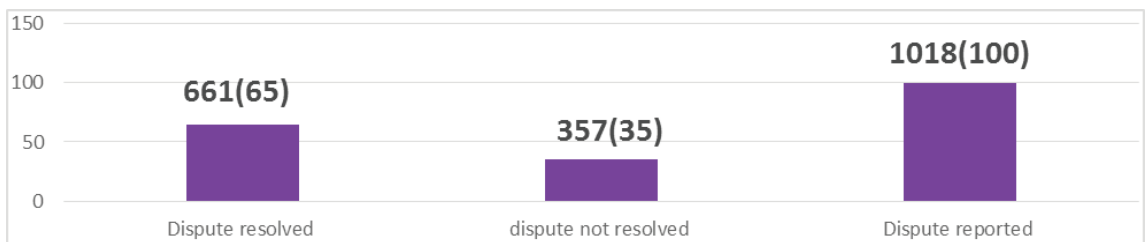
As summarized in Figure 11, conflict and/or dispute resolution was assessed using five variables which included: number of disputes resolved versus disputes not resolved; settlement agreements involving disputing parties; improved community relationships; and disputing parties complying with settlement agreements.

Figure 11: TDRM’s Capacity to Resolve Conflict



A total of 21 disputes were reported to the TDRM every week totalling to 1,018 per month. This was reported by 65% of the sample (see Figure 12).

Figure 12: Number of Disputes Handled by TDRM Annually



4.7 REGRESSION ANALYSIS OF VARIABLES INFLUENCING EFFECTIVENESS OF TDRM

Regression analysis was used to establish a model which could be used to predict TDRM’s effectiveness. A total of 10 independent variables were tested. Going by the findings in Table 6, with $R^2(.087)$, the model assumes that all the 10 variables influenced level of participation at 87%, which is very high probability. This assumption is not likely to be influenced by the fact that there was high co-linearity in the variables. A second regression analysis was done with 5 variables including definition of conflict, dispute prevention, peacebuilding education and intervention, transforming problems into creative solutions, enhancing BATNA (best alternative negotiated approach), R^2 was still high at .078.

This assumption also indicates high co-linearity. Lastly, a regression was done with only 3 variables and R^2 was found at .05. Based on this regression, it was concluded that the top three variables that would predict TDRM were community definition of dispute, ability of TDRM in transforming problems into creative solutions, and enhancing BATNA.

Table 7: Model Summary of Variables influencing TDRM

Top 10 Independent variables	R²	Sig.
1. Village	.087	.001
2. Definition of conflict		
3. Mediation skills		
4. Enhancing BATNA(best alternative negotiated approach)		
5. Dispute prevention		
6. Trauma healing		
7. PB education and intervention		
8. Transforming problems to solution		
9. Community unity		
10. Addressing future dispute		
Top 5 Independent variables	R²	Sig.
1. Definition of conflict	.078	.005
2. Dispute prevention		
3. PB education and intervention		
4. Transforming problems into creative solutions		
5. Enhancing BATNA(best alternative negotiated approach)		
Top 3 Independent variables	R²	Sig.
1. Definition of conflict	.050	.003
2. Transforming problems into creative solutions		
3. Enhancing BATNA (best alternative negotiated approach)		

CHAPTER 5: DISCUSSION

5.1 Existing Functional TDRM

Existing functional TRDM was assessed using 5 variables which included: type of institution; definition and type of dispute; authority that drives TDRM; leadership composition and qualifications; achievements and challenges. The only variable that appeared to influence dispute resolution most was the way the community defined or perceived disputes. Participants in disputes tended to respond on the basis of the way they defined or perceived the situation. People tended to filter their definitions and reactions through their values, culture, beliefs, information, experience, gender, and other variables. People respond to a perceived threat rather than the true threat facing them. Thus, while perception does not become reality per se, people's behaviors, feelings and ongoing responses become modified by that evolving sense of the threat they confront. If we could work to understand the true threats (issues) and develop strategies (solutions) to manage them (agreements), then, that would be acting constructively to manage the conflict.

Disputes are often best understood by examining the consequences of various behaviors at various moments in time. These behaviors are usefully categorized according to response styles. Each style is a way to meet one's needs in a dispute but may impact other people in different ways. Competition is a style that tends to advocate one's own needs over the needs of others. It relies on an aggressive style of communication, and low regard for future relationships. Accommodating, also known as smoothing, is the opposite of competing. Persons using this style compromise or subordinate their needs to those of others, thus trying to be diplomatic. They tend to allow the needs of the group to overwhelm their own, which may never be stated, as preserving a relationship is most important. Avoidance is a common response to the negative perception of disputes. Like a cancer that may well have been cured if treated early, the dispute grows and spreads until it kills the relationship because needs and concerns go unexpressed.

Compromise is an approach to conflict in which people gain and give in a series of tradeoffs. While acceptable, compromise is generally not satisfying. Each disputant stays guided by individual perceptions of their needs and may not necessarily understand the other side well. Often, lack of trust and avoidance of risk-taking characterize even more collaborative behaviors. Collaborating is the pooling of individual needs and goals toward a common goal.

Often called “win-win problem-solving,” collaboration requires assertive communication and cooperation in order to achieve a better solution than either individual could have achieved alone. It offers a chance for consensus building, integration of needs, and potential to exceed the “budget of possibilities” that previously limited initial views of the conflict. It brings new time, energy, and ideas to resolve the dispute meaningfully.

5.2 Capacity of TDRM in Responding to Current Disputes/Conflicts

The capacity of TDRM in responding to current trends of disputes was assessed using 6 variables. These included the institution’s communication, dialogue, negotiation and mediation skills; dispute analysis and enhancement of community unity. The two variables that influenced dispute resolution most were mediation skills and enhancement of community unity.

The paramount and other traditional Chiefs in TDRM in Yambio County acted as mediators when dealing with community disputes. Mediation is a dispute resolution mechanism in which a chief helps the disputing parties to reach a voluntary resolution. Mediation is an informal, confidential, and flexible process in which the mediator helps the parties to understand the interests of everyone involved, and through practical and legal choices the mediator helps the parties to: communicate better, explore legal and practical settlement options, and reach an acceptable solution of the problem. The mediator does not decide the solution to the dispute; the parties do. Mediation can result in a legally enforceable contract agreed to, in writing, by the parties.

Despite the chiefs acting as mediators, the mediation skills were rated average by the respondents. These included: active listening skills; questioning and clarifying skills to grasp both the facts and areas/issues of controversy; emotional intelligence to understand what the underlying emotions were; summarising skills to set out the main points of controversy; and underlying emotions; and to help the participants reframe the issues in less emotive language. Another skill was empathy, to help each party to stand in each other’s shoes and understand each other’s points of view.

The focus of mediation by the Chiefs was usually in the interests of not only the disputants but also community unity. It was designed to provide an opportunity for claimants to have their views heard and undertake a process that satisfies all sides in a way that modern court proceedings cannot.

The mediation process with the Chiefs is most effective and appropriate for dispute resolution in that the parties involved have ongoing or long-term relationships they would wish to preserve, require confidentiality, or are driven by underlying issues rather than the immediate facts or events being disputed. Well-trained mediators know that the process itself is as important as the outcome.

From the household FGDs and KIIs, it was clear that most disputants believed that their positions were seriously considered during the mediation with the chiefs. This increased community buy-in to settle and comply with the verdicts as they valued the integrity of and the opportunity to participate in the TDRM process. In this way, mediation allowed parties to feel they had had their “day in court” in a way that formal trials commonly do not.

5.3 Effectiveness of TDRM in Preventing Future Disputes

The effectiveness of TDRM as an institution for responding to future disputes/conflicts was assessed using 6 variables. These included building community relationships, appropriate dispute prevention activities, enhancing fairness or justice, trauma healing, ability to address future disputes, and conducting effective peacebuilding interventions. The 4 variables that influenced TDRM most in preventing future disputes and enhancing fairness/justice through BATNA, trauma healing, PB education and intervention and ability to address future disputes.

Lack of confidence in the justice sector had a profound impact on governance in a society. The lack of predictability in the legal environment further undermined private sector investment and development. Despite numerous attempts at modernization, many African countries are still struggling to establish functional, timely, and trusted judicial systems. The lengthy delays, in turn, open the court process to manipulation. The courts are often overburdened and sometimes overwhelmed, enabling litigants to exploit the system’s dysfunction to delay or frustrate the course of justice. In many cases, this ineffectiveness reflects the “in-between” state of African justice structures. The formal legal system is overloaded and cannot provide timely and effective closure. It is also more costly in time and money for disputants. Meanwhile, the sphere of influence of the traditional justice system has been greatly diminished by modernization, especially in the urban areas.

All the four variables that appeared to influence dispute resolution most point to the need for broad capacity-building. National and local governments and international partners should invest in training and infrastructural support for ADR networks comprising mediators and advocates who can continually advance best practices. In addition to legal professionals, capacity-building efforts should include training of local and religious leaders, traditional authorities, election officials, police and security personnel, human rights organizations, public complaints bureaus or offices of Ombudsmen, and women and youth leaders. This would increase the country's conflict mitigation or prevention capacity as well as reduce the number of cases that burden court dockets.

CHAPTER 6: CONCLUSIONS AND RECOMMENDATIONS

6.1 Conclusions

The Western Equatoria state has existing functional TDRMs at all administrative levels (Boma, Payam, County, State). The legitimacy or authority driving TDRM institutions is at a transition stage between the traditional and modern post-independence environment. The capacity of the TDRM has fairly managed in responding to current trends of disputes and peacebuilding. The effectiveness of TDRM in preventing future conflict is challenging. Based on emerging trends of disputes and population trends, their skills, knowledge and resources need to be upscaled.

TDRM can contribute to building an effective dispute settlement system and bridge the gap between the formal legal system in WES and traditional justice systems. The institutionalization of TDRM should also bolster security and development. While some bit of conflict is inevitable in any society, its effective resolution directly hinges on the availability of trusted processes and skilled personnel. TDRM is a practical tool to foster peacebuilding and conflict resolution at both the interpersonal and community levels. By reducing disaffection with the lack of access to justice and the perceived need for disputants to take justice into their own hands, the potential for violence and rebellion is reduced.

In the newly emerging state of South Sudan, ADR is also a potentially valuable mechanism for stabilization and state-building efforts. From land disputes to competition for resources aggravated by widespread displacement, TDRM can deliver quick (though not immediate) relief to some recurrent conflict triggers in fragile contexts. This way, it is likely to reduce disaffection with the lack of access to justice associated with the formal justice system and thus, the potential for violence and rebellion will be greatly reduced.

6.2 Recommendations

Training is needed to strengthen TDRM in the areas of:

- Human rights issues versus traditional law
- Dialogue/negotiation and mediation
- County by-laws and peacebuilding

Partnership Building

- Strengthen partnership between County governments and TDRM institutions for the common good in dispute resolution and peace building
- County governments to provide resources to strengthen TDRM institutions for effective dispute resolution processes and peace building.

Areas of Further Research

- Establishing peace building (PB) strategies in WES
- Knowledge, attitudes and practices of women in PB
- Inclusion of the youth in PB strategies

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6.4 APPENDICES

Appendix 1: Household Questionnaire

COMMUNITY BASED DISPUTE RESOLUTION MECHANISMS

CASE STUDY OF TRADITIONAL STRUCTURES
SOUTH SUDAN

QUANTITATIVE TOOL FOR COMMUNITY MEMBERS

IDENTIFICATION PAGE

Region

Sub region

Village

Date of Interview.....2015

Interviewee consent sign..... Sign.....

Interviewer..... Sign.....

Section 1 : Demographic information of respondents		Response
1. Sex	1. Male 2. Female	
2. Age(give in years)		
3. Marital status	1. Unmarried 2. Married 3. Divorced 4. Separated 5. Widowed	
4. What is your education level? (write only one)	1. University 2. Tertiary education 3. Sec complete 4. Sec incomplete 5. Primary complete 6. Primary incomplete 7.No education	
5. What is your main occupation?	1. Unemployment 2. Student 3. Farmer 4. Housewife 5. Business 6. Wage labourer 7. Private sector 8. Government service 9. NGO 10. Security force 12. Political leader	
6. Religious affiliation	1. Orthodox 2. Catholic 3. Protestant 4. Muslim 5. Indigenous	
7. Are you associated with any of the social group/organization or club/network?	1. Not involved 2. Youth club/network 3. Women's group 4. Village group 5. NGO 6. School management committee 7. Local security committee 8. Political Parties/group 9. Others _____	
8. If yes, then what is you status in that particular forum?	1. Attending interaction/meetings 2. General member 3. Executive committee 4. Others..... _____	

Community view on dispute		Response
9. How would you define community dispute?		
10. In the last one years has your communit, neighbours or household been involved in any disputes	1. Yes 2. No	
11. If yes, who are the people involved in the dispute	1. Family 2. Friend/Neighbor 3. Stranger of the same ethnic group 4. Stranger of a different ethnic group	
12. If yes, what kind dispute were they	1. Land/property rights 2. Water rights 3. SGBV 4. Killings 5. Harm to property/theft/robbery 6. Beating 7. Cattle raid 8. Ambush Abduction 9. Household theft 10. Rape Other (specify).....	

Existing Functional Traditional TDRM Institutions in the community	Response
Name of the institution	
Type of Institution 1. Traditional 2. Legal, Religious	
Composition of the leadership of the institution	
Mode of selection, replacement of leadership	
Qualification and training of the leadership	
Describe the traditional TDRM institution core activities	
Geographic Population coverage	

Achievements of the traditional TDRM institutions	
Challenges facing TDRM and suggests to manage them	

SECTION 3

	How would you rate the TDRM institution member in the following areas?	Excellent 5	V. good 4	Neutral 3	Unsatisfactory 2	V.unsatisfactory 1
13.	The training & qualification of the TDRM					
14.	Ability to solve disputing people as partners rather than opponents and bring a win / win					
15.	Creative response: Transform problems into creative opportunities.					
16.	Empathy:Develop communication tools to build rapport. Use listening to clarify					
17.	Appropriate assertiveness: Apply strategies to attack the problem not the person.					
18.	Co-operative power: Eliminate “power over” to					
19.	Managing emotions: Express fear, anger, hurt and frustration wisely to effect change.					
20.	Willingness to Resolve: Name personal issues that cloud the picture.					
21.	Mapping the dispute: Define the issues needed to chart common needs and concerns.					
22.	Development of options: Design creative					
23.	Negotiation skills : Plan and apply effective strategies to reach agreement					
24.	Mediation Skills: Help disputeing parties to move towards solutions.					

Section 4

A Culture of dispute prevention, justice, truth & reconciliation					
How would you rate the community TDRM process	S. Agree	Agree	Neutral	Disagree	S. Disagree
25. Appropriateness dispute prevention					
26. Effective intervention achieved of peacebuilding on based accurate analysis					
27. TDRM is sustainable to address new future					
28. TDRM involves all community members despite social status					
29. Relationship-building among disputing groups enhancing dispute resolution in the community					
30. Tradition TDRM is Trauma healing					
31. TDRM is enhance fairness justice					
32. Capacity-building/TDRM skill: community peace education					
Dispute resolution					
34. Number of settled disputes achieved: vs dispute					
35. Settlement agreements involves disputing parties					
36. Compliance with settlement agreements					
37. Reduce dispute reoccurrence: lesser levels of disputes					
38. Improved community relationships					

Appendix 2: FGD and KII Guide

COMMUNITY BASED DISPUTE RESOLUTION MECHANISMS

CASE STUDY OF TRADITIONAL STRUCTURES SOUTH SUDAN

QUALITATIVE TOOL FOR FOCUS GROUP DISCUSS GUIDE

IDENTIFICATION PAGE

Region

Sub region

Village

Date of Interview.....2015

Interviewee consent sign.....

Interviewer..... Sign.....

FGD / KII GUIDE

Section 1 : Demographic information of discusants

- 1. Gender: Male..... 2. Female
- 2. Age (give in yers).....
- 3. Marital status : 1. Unmarried 2. Married 3. Divorced 4. Separated 5. Widowed
- 4. Main occupation? 1. Unemployment 2. Student 3.Farmer 4. Housewife
- 5. Business 6. Wage labourer 7. Private sector 8. Government service 9. NGO
- 10. Security force 12. Political leader
- 5. Social group/organization associated with :.....
- 6. Status in that social group 1. General member 2 Executive committee

Community dispute

- 7. How would you describe dispute
- 8. Does this community experince disputes
- 9. Describe some of the dispute community (probe for family, community, national disputes)

Objective 1: The Existing Traditional Dispute Resolution Mechanisms (TDRM)

- 10. Describe how this community solves the disputes mentioned above.....
- 11. Are there insitutions/ specific people in this community that deals with TDRM (Yes / No)
- 12. Describe the specific membership of the people involved in TDRM institution (Probe for Composition(male/fe-male).....
- 13. How are the TDRM members selectcted(Probe for mode of selectiton and replacement).

Objective 2: The Authority That Drives Traditional TDRM

14. Describe the role does the institution play in resolving disputes.....
.....
.....

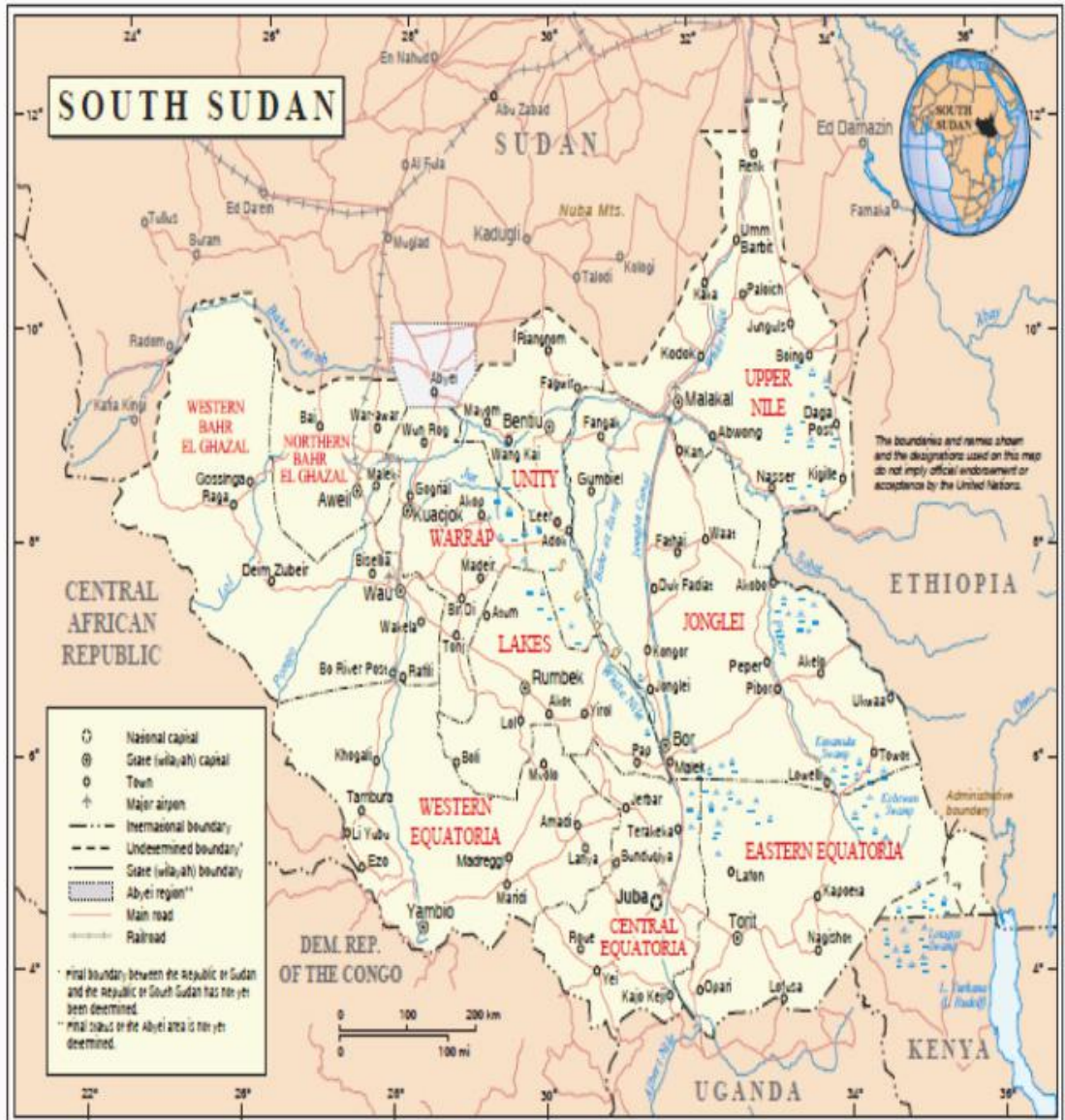
15. What authority drives TDRM institution (probe for traditional , religious, legal) ..
.....
.....
.....

Objective 3: The Capacity of the Traditional TDRM In Responding To Conflict

16. Describe the skills and knowlege of the TDRM members in responding to current conflict (probe for training and skills in dialogue negotiation and mediation, ethical adherence)
.....
.....

Objective 4: The Effectiveness Of TDRM In Conflict Prevention

17. How would you rate the effectiveness TDRM institution in settling community disputes (probe Culture of conflict prevention, justice, truth & reconciliation, Reduce dispute reoccurrence, improve community relationships).....
.....



About the Author



Dr. Eunice Njambi has PhD and a master's degree in community health and development from Great Lakes University, with further training in health systems management from Galilee International Management Institute, Israel. She is community development specialist, with expertise in research consultancy. She has been a principle investigator in national regional research with USAID / KIPPRA, Concern World Wide South Sudan, AMREF/ MOH, UNCHR/ UNICEF/Action Against Hunger, DONONE Baby Nutrition. To date she has supervised Master's degree research for over 50 Students who have graduated. She facilitates development of community based partnerships, strategic plan development and policy development and analysis. Currently working at IPSTC as a curriculum designer and has public one occasional paper on Women Participation in Peace and Security in Northern Kenya and Issue Brief on Human Security Theory and Practice in East Africa.



International Peace Support Training Centre
Westwood Park
P.O. Box 24232 - 00502, Karen, Kenya.
Tel: 00254(0) 20 20 388 3157/8
Fax: +254 20 388 3159
Email: info@ipstc.org
Website: www.ipstc.org



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