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**UNDERSTANDING ACCESS TO JUSTICE
AND CONFLICT RESOLUTION AT THE LOCAL LEVEL
IN THE CENTRAL AFRICAN REPUBLIC (CAR)**

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Abbreviations and Acronyms

AFJC	Association des femmes juristes de centrafrique
AIDS	Acquired Immune Deficiency Sydrome
APRD	People's Army for the Restoration of Democracy
CAR	Central African Republic
CFA	Central African CFA franc
DRC	Democratic Republic of The Congo
FRELIMO	The Liberation Front of Mozambique
IRC	International Red Cross
NGO	Non-governmental Organization
PCS	*pratique de charlatanisme et sorcellerie*
PDCAGV	Project for Community Development and Support to Vulnerable Groups
RENAMO	The Mozambican National Resistance
SDV	Social Development Department
TBO	Trial by ordeal
UNDP	United Nations Development Programme
UNGA	United Nations General Assembly
UNICEF	United Nations Children's Fund
USAID	United States Agency for International Development
USD	United States Dollar
WB	World Bank
WDR	World Development Report

Acknowledgement

Executive Summary

The Central African Republic (CAR) is coming out of a long period of political and social turmoil that have left the country weak and with fragile institutions. However, over the last few years the security situation has improved and the State institutions have started to stabilize. In order to improve on these achievements, CAR needs to engage in a long process of strengthening State and community based institutions while ensuring that security is improved to show people a reduction of violence relatively quickly.

The 2011 World Development Report (WDR) on *Conflict, Security and Development* sees the delivery of citizen security as central to achieving resilience and returning to stability. This study aims to better understand how people in CAR experience justice and conflict resolution with the objective of exploring opportunities to strengthen access to justice and conflict resolution mechanisms in the country.

The study has carried out a field mapping of how the population is handling issues of justice and conflict resolution at the local level. The authors have also engaged government officials, NGOs, and local experts in a series of workshop to discuss the findings of the mapping and possible operational directions. Finally, on the request of the government, the study has also included an assessment of how issues of local and customary justice where handled in other African countries with a longer experience in this area.

Social and Historical Context

The social and historical context is essential to understanding CAR's justice and conflict resolution realities at the local level. For the past two centuries this part of Central Africa has weathered a series of upheavals which severely undermined social cohesion and left communities grasping for ad hoc means of resolving conflicts and enforcing norms. First as a land of spoils for the trans-Saharan slave trade; then as the target of an extremely minimal and yet also extremely brutal period of colonial administration; and finally subjected to in-turn predatory and neglectful rule when "traditional" and "customary" rules and laws have been drawn asunder and forgotten.

The past two centuries have been period of immense upheaval in Central Africa. New solidarities have been created, and new modes of social organization have been embarked upon, but these transformations have been mostly accompanied by violence and turmoil. This has created a predicament for people living in the area subjecting the limited social cohesion existing in local communities to the pressure of poverty, witchcraft and mistrust. At the same time, people have developed unique strategies for tackling insecurity and dangers in their midst and for resolving the conflicts that arises in their communities. Though these practices maybe outside the formal system, they are not necessarily customary in a strict sense and can be quite ad-hoc. But at the same time, these practices can also be quite resourceful and often effective.

Findings of the field work and case tracking

The research employed consisted primarily of qualitative methods with an anthropological orientation. It consisted of two main components: field research conducted in seven prefectures by local researchers using open-ended interviews to gather information from key informants, focus groups, case studies and general context; and a six-month case tracking project in three regions of the country. The results of the recent representative baseline quantitative survey (PDCAGV) were also used.

Social cohesion is under immense strain. The research revealed how deeply frayed social relations have become across CAR. Social cohesion only exists on the narrowest of bases. The lack of trust in the representatives of the state, in particular tribunal and police forces, is extremely high. There is very little trust in the fairness of institutions, all of which are seen as having a highly personalized character. There is high level of exclusion of the "*Gagango*" people i.e. those not born in the village/community and those of minority groups.

The village chief appears to be perhaps the most important justice and conflict resolution provider in CAR. This is the person on whom people rely on the most when a conflict occurs. The village chief is no more a real customary authority as is the case in some areas that have been ruled by kingdoms in the past, instead they are people recognized by the community and also with a role recognized in CAR's justice system as a mediator and the first point of contact between the community and the State.

Traditional healers (*Angango*) can also play an important role in conflict resolution. Usually their roles are involved in cases of sorcery, which the study revealed as being extremely important. However, people seem to consult healers in the case of wrong doing, whether sorcery or otherwise. Rather than adjudicating disputes, their role is to determine fault and prescribe a course of treatment, usually involving plants and rituals. The process of finding guilt can result in death or very serious wounds. In fact, there are an increasing number of people being killed for reasons of witchcraft.

The study revealed that few cases were brought to formal justice. Part of people's hesitancy to take their disputes to the tribunal has to do with the fact that they do not see tribunals dispensing justice that is viewed as just. The problem of high costs and what people see as corruption was often mentioned but the fact that jail time is not viewed as appropriate punishment for wrong-doing has also contributed to this perception. A dispute is not resolved until the parties have been reconciled, whether as a result of counsel, or payment of a compensation.

Attempts at providing justice by village chiefs and religious leaders have been severely hampered due to the lack of a means of coercion available to them. Coercion might be negotiated which can help maintain some level of cohesion, but then rulings tend to favor the most powerful in the community. Whenever the police are called in, they also often tend to provide impromptu justice in return for payment instead of transferring disputes to tribunals. They can also at times undermine the authority of the village chief.

Meanwhile, youth presented unique challenges in this regard as they tend not to respect the decisions of village chiefs or religious authorities as much as others. At the same time, many issues tend to affect youth such as rape of girls, lack of support for children born outside of marriage, problems with land and access to assets. Youth were seen as prone to intractability: if a decision turned against them, they might leave or otherwise ignore it.

Difference between urban and rural settings was not strikingly different. Village chiefs, in this case neighborhood chiefs, were also the prime interlocutor for conflict resolution concerning urban poor. The type of conflicts however tended to be different with a majority of them revolving around land conflicts in urban area. However, in the urban areas, relatively more people tend to turn to tribunals as well.

The types of disputes were numerous. Domestic disputes happened to be one of the main causes of conflict. This is unsurprising given that several generations of an extended family often lived in the same compound and had to often make do under strained economic circumstances. Disputes between husbands and wives also arose frequently: husbands beating wives, disagreements among co-wives, failure to support children of wives financially etc.

Theft also happened to be widespread with over 32% of the respondents in the quantitative survey been victims of theft in the past six months alone. Sorcery was among communities' chief concerns and extremely complex to deal with when it occurs within the community. Often such cases were resolved violently. Many respondents also cited rape as an important issue in their community. They often involved teenage girls. Usually problems of rape are resolved through financial compensations. Land tenure issues are frequent especially in urban area. This is also reinforced due to the lack of clarity on the land code and the customary practice of providing land for use but with no ownership. Finally, many cases of impunity of state forces were reported, especially in more remote areas or in areas where conflicts are still alive.

The research showed that access to justice is compromised along three main social axes: first, economic and social context seem to play a strong role, people with money are always able to obtain favorable verdicts and functionaries and law enforcement officials benefit from near-total impunity. Second, gender affects also access to justice. It appears obvious that women's opinions and problems are not treated with the same level of respect as those of a man. However, the study also revealed that this situation could be changing. Third, minority/foreigners are very often discriminated against. As Central African society has fractured in the face of generalized insecurity, the status of those markedly different from the majority in any community have become targets of increasing levels of mistrust. Groups like the pygmies and herders face particular challenges, but migrants tend to also face increasing exclusion in the communities where they settle.

The African Experience: National Approaches to Customary Law

In many Sub-Saharan African countries, customary conflict resolution mechanisms remain the most common and often preferred option for redress. This is compounded by the fact that there remains an acute lack of capacity in terms of qualified personnel, equipment, and other resources needed for a functioning justice system. Since independence, nations struggled with trying to establish a balance between creating systems that facilitate modern transactions while maintaining the distinct values of the population.

Adapting legal system to take into account customary law and customary conflict resolution has not been easy and few cases of success exist. Most African countries have attempted to incorporate customary law into modern law. These approaches have essentially run along two lines. The first involves the state's regulation or engagement with customary law as a discrete set of substantive beliefs and principles of justice. The second approach involves the state's attempts to control or manage customary authorities and/or mechanisms for pursuing justice. Both these efforts have been met with very limited success.

Governments benefit from developing policies that allows for regional diversity in justice forums and practices. The emphasis ought not to be on trying to create an ideal, unitary system of justice that conforms to international standards, but one that accounts for the social realities of citizens and responds to their demands for functional justice provision. As Isser (2011) writes, "the starting point should be to improve not the legalistic forms of justice (laws, institutions) but the qualitative function of justices (fairness, effectiveness, legitimacy)."

By accounting for the current realities of the justice system, and taking a realistic view towards institutional capacities and shifting social dynamics over the medium and long term, governments may develop appropriately calibrated, incremental approaches to improving justice provision. While improving the outreach and fairness of the formal justice system, governments should engage with communities to

improve the quality and fairness of local provision of justice while respecting the values of the population and the preferred processes. Such experiences have had some success in Liberia, Namibia and South Africa.

Conclusion and Recommendations

The study has confirmed the limited outreach of the formal justice system outside of the largest cities in CAR and also the weakness and the arbitrariness of the traditional customary justice system. The population seems to call upon various actors to resolve conflict including the police, village chiefs, local influential people, and religious authorities without clear and well defined practices. Among these various actors, the village chiefs were viewed as the most reliable source of mediation/justice. The study also revealed an urgent need to improve local governance in CAR. As such, the recommendations revolved around the themes of improving fairness and efficiency of local justice and conflict resolution, and improving local governance.

1. Improving fairness and efficiency of local justice and conflict resolution
   a. Supporting the development and reinforcing of 'House of Justice' facilities
   b. Clarifying the role of the village chief in conflict resolution and local justice
   c. Using the World Bank Early Recovery and Community Development Program as a platform to support the role of the village chief.

2. Improving local governance
   a. The Government should review how it approaches governance in rural areas and small towns, including the control of armed forces and service delivery at the local level
   b. Develop a program for strengthening local governance by involving the population in ensuring accountability.

Introduction

The Central African Republic (CAR) is coming out of a long period of political and social turmoil that have left the country weakened with fragile institutions. However, over the last few years the security situation has improved and the State institutions have stabilized. The last election has supported the formation of a stable government. In order to improve on these recent achievements, CAR needs to engage in a long term process of strengthening state and community based institutions ensuring that security is improved and that people see relatively quick a reduction of violence and improved access to basic services.

The recent WDR on Conflict, Security and Development sees the delivery of citizen security, justice and jobs as central; in restoring confidence and transforming institutions. Restoring or rebuilding effective reliable justice and conflict resolution systems in fragile and conflict-affected environments is essential to prevent renewal of violence, and to reduce fragility. This reports focus on the two first aspects: security and justice.   The recent Social Development Department study titled "*Societal Dynamics and Fragility, Engaging Societies in Responding to Fragile Situations*" highlights the importance of understanding societal dynamics and how they can increase or reduce fragility. The extended field work carried out for this study is that the perception by some groups that they are treated unjustly compared to other groups is a major cause of breakdown in social cohesion that leads to increased fragility. Perception of injustice does not have to do only with conflict resolution and the justice sector but this is an important component.

In fragile and conflict affected countries, security and justice are offered by a large number of actors, some of whom are state agencies and services, but the vast majority of them are non-state actors. A survey of national approaches to customary law in Africa, conducted as part of this study, found that a vast majority of citizens in sub-Saharan Africa still rely on forums of justice that are not derived from the state. Therefore understanding how to improve access to justice and conflict resolution mechanisms require an assessment of actors and mechanisms available to the population outside of the State system as well as an understanding of the relation between formal justice and informal modalities of justice, mediation and conflict resolution. The main objective of the study is to explore opportunities to strengthen access to justice and conflict resolution mechanisms in the CAR. The study is the result of a process that involved the following activities:

- Assessing justice and conflict resolution needs and gaps in communities
- Mapping non-state justice actors and conflict resolution mechanisms including community based practices and improving our understanding of the links between non-state justice and state justice at local levels
- Engaging with local partners including state and non-state actors on opportunities to improve access to justice and conflict resolution mechanisms at the local level in CAR
- Developing recommendations for access to justice and conflict resolution mechanisms in communities in CAR, and ways to inform existing and planned Bank operations, as well as the funding and projects of international partners

During the field work undertaken for this study it appeared clearly that it was difficult to separate justice and conflict resolution from broader issues of local governance. In every day practices local governance issues that include provision of justice, decision making on issues that concern the community as a whole and brokerage between various sources of power present at the local level are very much connected and cannot easily be separated. The effectiveness of local justice depends very much on other aspects of governance such as how much the local system of power is able to enforce the decision made or how

much collective decision making is inclusive or exclusive of some groups in the community. Because the issue of local governance is also a major preoccupation of the government it was decided to also discuss these broader issues of local governance in the report. It was, indeed, a major topic of discussion during the restitution workshop organized at the end of the field work.

Another issue that comes out through the field work is the issue of social cohesion. It is clear that the lack of cohesion of communities is a major issue for CAR and affects all aspects of collective action and in particular conflict and justice. As we will see the lack of cohesion is an outcome of a complex history of violence and conflict that has seriously undermined trust. For the purpose of this study , the team understood social cohesion to consist of bonds (whether metaphorical or otherwise) that facilitate trust within and across distinctions such as gender, ethnicity or age.

Methodology

The field research employed by this study consisted primarily of qualitative methods with an anthropological orientation. This approach was necessary to take the understanding beyond the mere practices and mechanisms of justice provision to also understand the underlying logic, reasoning, and perceptions. The qualitative research consisted of two main components: field research conducted in seven prefectures by local researchers using open-ended interview guides to gather information from key informants, focus groups, case studies, and general context; and a six-month case tracking project in three regions of the country. The fieldwork was not designed to establish causal relationships or obtain nationally representative results, but rather to provide rich context-specific illustrations of how justice provision works in CAR.

From the research design stage itself, the study benefited from a consultative approach. Local practitioners, academics, and policy makers (government ministry officials, civil society representatives and academic scholars) helped define the research questions and other crucial aspects of the research design at a workshop organized in Bangui in May 2010. This workshop helped in identifying the core research questions and the criteria to select research communities. The workshop also helped in identifying a purposive sample of communities that could best speak to the dynamics the project sought to understand.

The field research was carried out in two main phases. During the first phase, three teams of researchers were deployed to three prefectures (Lobaye, Ouham-Pende, Ouaka) to conduct field interviews. After the preliminary interviews, the researcher teams embarked on the case-tracking stage by following five cases per month over the course of six months. During the second phase of field research, the research team simplified the interview guides to facilitate a more-targeted data collection. During this phase, research was conducted primarily in urban areas: Bangui, Sibut, Kaga Bandoro, and Bangassou. Overall, the field research produced a valuable cache of information about mechanisms for resolving conflicts on the local level and people's perceptions of justice in CAR. The study team also relied on the findings of the World Bank Social Development Department on "*Societal Dynamics and Fragility*" and the case study on CAR developed as part of this study.

At the conclusion of the field research stage, a restitution workshop was held in Bangui in June 2011. The workshop's objectives were to present the data gathered through qualitative field research and collaboratively address recommendations as to next steps. Participants included representatives from the Ministries of Justice, Planning and Social Affairs and NGOs such as International Rescue Committee, Danish Refugee Council, the Association of Women Lawyers, as well as professors from the University of Bangui and several local government officials, including two quarter chiefs.

Structure of the report

This report is structured around four chapters. The first chapter discusses the social historical context in which justice and conflict resolution takes place in CAR. Chapter two discusses the method and the findings of the field work. Chapter 3 looks at national approaches to customary justice in a few other African countries to place the current findings in the context of regional experiences. The final chapter discusses operational implications and policy guidance. The report also draws on findings from the impact evaluation of the CAR Support to Vulnerable Groups Community Development Project's (PDCAGV) baseline survey, which included questions related to security, governance and local justice provision.

Chapter 1: Justice and Conflict Resolution Mechanisms in CAR: Social and Historical Context

Few traces remain of the pre-colonial legal systems of the peoples living in the area maps now designate as CAR. For the most part, people in this region lived in what anthropologists used to call "stateless," "decentralized" or "acephalous" (headless) societies, that is, locally-oriented groupings in which powers of coercion were shared among all residents rather than hierarchically with a governing class. Though some groups had heads of clans and similar honorific positions, these roles generally did not include power to punish – until they were fortified by colonial imperatives. Given the vast expanses open for settlement, farming and hunting, control of territory was a low priority, and people lived semi-nomadically. For the most part, these were "face-to-face" societies: people lived in villages, and because everyone would cross paths with everyone else on a daily basis – looking each other in the face – justice was always bound up in the need to maintain social relations, a goal more pressing than vengeance or retribution. (In the event of an injustice perpetrated by a member of another community, people might respond by raiding or otherwise attacking the wrong-doer's group.) Relatedly, though physical means of coercion might have been limited, social pressure was broadly dispersed and fairly effective at extracting confessions or other concessions necessary to keep the peace.

Social life was organized around the family – in a broad, extended sense – and the clan. The clan was an association of related families, and village groupings were generally clan-based. Within the clan, people abided by clan-specific rules and practices, such as respecting their titular totem creature or avoiding endogamous marriage. Clans further associated into "tribes," a community delineated by a common name and language, but the tribal grouping was largely a fictive category used by befuddled colonial explorers that did not play a role in ordering life on a daily basis (Sharpe 1986).

To the extent that such a status quo could be described as harmonious, it did not last long. As this section will show, for the past two centuries this part of Central Africa has weathered a series of upheavals that have riven social cohesion[1] and left communities grasping for *ad hoc* means of resolving conflicts and enforcing social norms. First as a land of spoils for the trans-Saharan slave trade; then as the target of an extremely minimal and yet also extremely brutal period of colonial administration; and finally subjected to the by turns predatory and neglectful independent government, rural CAR's recent history layers tragedies upon tragedies to produce a situation in which "traditional" or "customary" rules and laws have been sundered and forgotten. In their place, religious texts (principally the Bible and the Koran), negotiations, and remuneration for harm have become the tools of choice for resolving conflicts. Though they work relatively well on narrow social scales such as the village or within a church, these mechanisms are less successful when it comes to mediating between people who do not share immediate social ties (e.g., a dispute between a native of a village and someone who moved to that village ten years previously). Rather than pulling people into a state-building project of political centralization, the past several decades have left residents of rural CAR increasingly fragmented in their loyalties. The goal of expanding access to justice will have to take this reality of extremely frayed social cohesion as its starting point.

The big shock: the trans-Saharan slave trade

Beginning in the eighteenth century, the territory now known as CAR saw massive migrations. These

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[1] For the purposes of this study, the team understood social cohesion to consist of the bonds (whether metaphorical or otherwise) that facilitate trust within and across distinctions such as gender, ethnicity or age.

vast, verdant lands were initially a place of refuge for those sent into flight by raiding and the related projects of political centralization sweeping the continent. Usman dan Fodio's raiders (in present-day Niger) sent waves of Gbaya migrants into northwestern CAR. Eastern CAR, too, saw a flood of people seeking to settle beyond the reach of the powerful raiders to the north in Darfur and Wadai. But the period of respite did not last long. From the middle of the nineteenth century into the twentieth, parts of eastern CAR were brought under the sway of slave-raiding sultanates tied to their more-powerful neighbors to the north, in Wadai and Darfur. To a less pronounced extent, northwestern CAR came under the control of Cameroonian sultanates around the same period.

The main raiding centers were Ndele, in the northeast, which fed Wadai and Darfur to the north, and Bangassou, Rafai and Zemio in the southeast, which turned toward the rulers of present-day Bahr el-Ghazal, in the east. The raiding economy transformed social structures in its wake. It brought a new religion, Islam, and related ways of ruling, adjudicating, profiting and war-making, as well as new modes of learning and new contacts with people from far beyond, such as merchants and pilgrims on the *hajj* (Cordell 1985). Increasing levels of social and political centralization accompanied these changes. For instance, the creation of *zara-ib* (trading and raiding outposts) linked previously disconnected spaces into new networks, and captives were incorporated into the productive life of the raiding hubs as laborers and soldiers. At the same time, the communities targeted by the raiders banded together in order to fend off their attackers and thereby created new social structures as well (Klein 2001). Far from passive, the non-Muslim peoples actively engaged their attackers. In addition to fighting back, flight was a well-developed and often successful resistance tactic (Cordell 2002).

The most-intense period of raiding coincided with the arrival of French explorers and administrators in the area in the last decade of the nineteenth century and first of the twentieth. During the 1890s alone, it is estimated that some 60,000 people were taken into slavery by Ndele's ruler, Mohammed al-Sanusi (Cordell 2002). Many more were killed. Ironically, the treaties the "abolitionist" French signed with leaders like Sanusi actually facilitated the intensification of raiding, for they included provision of firearms (canons, rifles), the sophistication of which afforded a distinct advantage (Cordell 1985). Whereas previously negotiation may have entered into the equation, disputes could now always be settled via the "law of weapons distribution": "the quality of power relations that develops whenever political disagreement can be settled by recourse to the force of arms" (Mbembe 2006: 323).

This is not to say that the raiding polities lacked mechanisms for rendering justice in cases of dispute or wrong-doing. Rather, justice was a highly-personalized affair, with the Sultans themselves dispensing verdicts. Sultan Sanusi had a dedicated space where he would decide the outcomes of disputes. Though an entourage of Muslim scholars and advisers surrounded him, he had the power to make the final decisions. Sanusi sought to control not just criminal matters but commercial and civil ones as well. In the southeastern sultanates, the realms over which these leaders claimed jurisdiction broadened under the tutelage of the arriving Europeans. For instance, the leader at Bangassou only claimed the title of sultan, and related powers over religious and moral affairs, upon urging from the Belgians (the first Europeans to arrive in that area).

The justice dispensed by these Central African leaders – often awe-inspiringly military[2] – only became more brutal with the arrival of French concessionary companies. At the outset of the colonial period, the

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[2] The Sultan of Bangassou had a particularly brutal reputation, though the French reports detailing his depravities are hardly objective (Conrat de Montrozier 2004 [1902]; Metefia 1982).

French leased most of the CAR's territory to concessionary companies to run for profit.[3] These companies in turn ruled and profited by using local strongmen as indirect rulers (Coquéry-Vidrovitch 1977). The concessionaires looked the other way as the sultans used whatever means necessary to force people to collect rubber, ivory and other products available in the bush and to shoulder the burden of transporting goods for the European travelers and explorers. This last task was arguably the most important: the Europeans would have been hindered in the dense bush without porters. The most notorious project was the transport of the Faidherbe battleship from Bangui north to Chad, where it would be used in the French war there. The sultans became "*véritables entrepreneurs de transport*" (Metefia 1982: 79). This system of profiteering required rapacious policies of conscription, which caused people to flee and thereby greatly contributed to the problem of depopulation that the French lamented in later decades, when they required taxable residents to fund their administration.

The "*politique des cadeaux*" (gift policy) established between Europeans and the sultans during these early years included the provision of many firearms. Theoretically, providing weapons was illegal; in practice, it happened all the time, especially as payment for ivory. At the height of his rule, the sultan of Bangassou, head of the dominant Bandia clan of the Nzakara, had an army carrying 2,500 guns, 1,000 of them fusils à tir rapide. In times of crisis, he could summon a force of some 10,000 men (Metefia 1982). Sultan Sanusi's arsenal was perhaps twice that size, and his standing army counted some 6,000 men (Cordell 1985). The sultan of Zemio, too, presided over an army carrying 4,000 guns, half of them *fusils à tir rapide* (Coquéry-Vidrovitch 1977). To put these numbers in perspective, consider that the Central African armed forces today number only about 1,500 well-trained members (Spittaels and Hilgert 2009). Though in theory the concessionary companies' policies were governed by French and colonial law, in practice all manner of abuses were permitted to persist. In effect, in the areas under the sultans' control, the concessionary interlude was marked by a total substitution of gun-backed economics for politics (Metefia 1982). The Europeans explained the depravities that ensued as the expression of African "tradition" – lamentable, perhaps, but entrenched as "custom" (Coquéry-Vidrovitch 1977).

The largest concession was the *Compagnie des sultanats du Haut-Oubangui*, which covered some 140,000 sq km. In addition to leaning on the sultans for muscle, these concessionaires employed their own private militia. Murder of recalcitrant workers was common; other tactics included rounding up all the women in a village and locking them in a hut until the men produced the desired quantity of rubber (Coquéry-Vidrovitch 1977). André Gide, who traveled through Oubangui-Chari in the 1920s, brought these abuses to the attention of a larger audience in France and beyond; his account is notable for, among other observations, its mention of house-burning, which to this day remains one of soldiers' favored tactics of terrorization:[4]

> Sergeant Yemba left Boda with three guards (whose names I carefully took). This small detachment was accompanied by Baoue, the captain, and two or three men he commanded. En route, Sergeant Yemba requisitioned two or three men in each village they passed, chained them and took them along. When they arrived at Bodembere, the punishment began: they attached twelve men to some trees, while the village chief, named Cobele, fled. Sergeant Yemba and a guard, Bonjo, fired on the twelve men and killed them. Afterward there was a grand massacre of women, who Yemba beat with a machete. Then, after getting a hold of five young children, he locked them in a house and lit it on fire. There were a total of thirty-two victims, Samba N'Goto

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[3] As Hardin (2002) has shown, the concessionary system has left a deep legacy, and it continues to organize governance relationships in the southwestern part of the country.

[4] See, for instance HRW (2007) for an account of the thousands of houses burned by government soldiers in northwestern CAR in 2005-2007.

told us[5].

The abuses of the concessionary period were well-known and even decried among administrators. From the outset of the concession experiment onward, a raft of laws was passed to reform the brutal practices and abuses that made the system productive. But the continual penury of the colonial administration – lack of human resources as well as financial ones – made enforcement impossible, and impunity reigned. The system finally came to an end by 1930. Some of the companies had reaped considerable profit, while others had lost large sums. All succeeded in transforming the area's inhabitants' conceptions of labor, justice and domination.

Colonial penury

The departure of the concessionary companies did not exactly herald a renaissance of French administration. The French policy of colonialism on the cheap (the colonies should not cost anything to the motherland) meant that justice, in the sense of organized tribunals, was all but non-existent in as poor a place as Oubangui-Chari. An administrator in Ndele in the mid-1930s pleaded with his superiors in the capital to allocate some chains for his prisoners:

> It would be good if some chains could be sent to me in order to be used with some of our prisoners. I have here one prisoner, Outoundou, seriously dangerous, specialist in theft and evasion, and, moreover, capable of anything. I could only attach locally-made chains (made with an old oil drum given to me by a merchant) around his legs. When we put these chains on him, Outoundou declared 'that or nothing, it's all the same and it's not that chain that is going to stop me when I want to go' (Lignier 1936; my translation).

In the absence of an effective tribunal system, the much-feared "*gardes régionnaux*" – soldiers drawn from throughout the French colonies – incarnated the law and enforced policies, often with the aid of their *chicottes* (animal-hide whips) (Mollion 1992). Though the colonial system had a legal code, which was particularly well-developed from the 1920s onward, this system existed only on the books. In practice, the power held by isolated officials was almost entirely personal in nature. Severed from their hierarchical superiors, they could hide many of their activities (or failure to undertake activities, such as the onerous *tournées* – rounds – to remind natives in outlying areas of their presence) under the anodyne conventions of bureaucratic report-writing (Brégeon 1998).

As elsewhere in French colonial holdings, the formal legal order was bifurcated into European and indigenous law. This dual system persisted until 30 April 1946. The indigenous system comprised four levels of courts. The lowest were the *tribunaux de conciliation*, established in 1927 and presided over by the village chief. Next came the *tribunaux de premier degré*, for civil and commercial disputes, with one

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[5] [*Le sergent Yemba quitta donc Boda avec trois gardes (dont nous prîmes soigneusement les noms.) Ce petit détachement était accompagné de Baoué, capita, et de deux ou trois hommes commandés par ce dernier. En cours de la route, le sergent Yemba réquisitionnea deux ou trois hommes dans chaque village traversé, et les emmena après les avoir enchaînés. Arrivés à Bodembéré, les sanctions commencèrent: on attacha douze hommes à des arbres, tandis que le chef du village, un nommé Cobelé prenait la fuite. Le sergent Yemba et le garde Bonjo tirèrent sur les douze hommes ligotés et les tuèrent. Il y eut ensuite grand massacre de femmes, que Yemba frappait avec une machette. Puis, s'étant emparé de cinq enfants en bas âge, il enferme ceux-ci dans une case à laquelle il fit mettre le feu. Il y eut en tout, nous dit Samba N'Goto, trente-deux victimes* (Gide 1927: 103).]

per subdivision and large *groupement*. In each capital city of a *circonscription* (today's prefectures) there was a *tribunal de deuxième degré*, presided over by the *Chef de l'unité administrative* and used as the appeals court for the matters decided in the lower courts, as well as criminal cases. The highest level was the *Chambre spéciale d'Homologation*, an appeals court in Brazzaville for all of French Equatorial Africa.

Much of the contemporary Sango legal vocabulary developed in order to describe the notorious innovations of the colonial system of justice: words like "*kanga*" (prison), "*zinguéré*" (chains), "*sourourou*" (cell) had not previously existed in the language (Kouroussou 1985). "*Largeau*" also entered the lexicon; it was the name of a prison in central Chad where those sentenced to death and other hardened criminals served out their terms and came to connote a place of brutality and no recourse.

Those laws that were enforced tended to have the goal of restricting the activities of natives, whereas Europeans often enjoyed impunity. For instance, in northeastern CAR the most prevalent offense with which natives were charged was hunting, a crucial aspect of how people secured their livelihoods. The French set aside most of this terrain as protected – national parks, hunting and fauna reserves. Only Europeans, or Africans specially deputized with gun permit rights, were allowed to carry firearms until the abolition of the *Indigénat* in 1947, and a native found hunting with an unlawfully-held weapon in the protected areas faced steep penalties (Roulet 2004). The hunting and wildlife laws were among the main preoccupations of the colonial authorities in the territory's outlying regions. Placet's 1948 annual report for Ndele, for instance, lists the year's "judicial activities" as all relating to a "rebellion" against the hunting guards who policed the parks; nine "delinquents" were charged and sentenced to two months' prison each for the insurrection (Placet 1949). Failure to perform the work that would acquit a person of his head tax was another common reason that people were sent to languish in the gaol.[6] Theft and the related crime of "loss of confidence" rounded out the frequently-occurring infractions (Lignier 1936).

Given such capricious enforcement of repressive laws, it is unsurprising that Central Africans came to refer to the colonial period as the "*Grissi*" (the time of crisis). The French system of prison and forced labor was as incomprehensible to the Africans as the Africans' processes of divination were to the French, and all their projects proceeded in this fog of mutual mistrust (Kouroussou 1985). Family and clan heads continued to try to adjudicate disputes in their communities, but their authorities were severely undercut by the intermittent arrival of the colonial guards and other repressive forces. During this period Central Africans were forced into new forms of social organization – such as those of plantation laborers, or town or city dwellers – with only the barest of minimal attempts to set up any system for resolving disputes among them. The colonial tribunals dealt almost exclusively with those matters of concern to officials. In sum, Central African legal structures went from decentralized, clan-based means of settling disputes and enforcing social norms to a situation marked by periods of violence, impunity and personalized rule by those in power alternating with periods of neglect. This legacy has haunted the post-independence years.

Independence: The past's deep legacy

Independence initially changed little in the legal system. The state[7] legal system of the Central African

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[6] Despite being by far the poorer federation, people in Equatorial French Africa paid about double the taxes of those in French West Africa; Oubanguiens paid the highest rates of all (Coquéry-Vidrovitch 1977). The colonists justified this inequity as a necessity given the small population in the equatorial regions and subsequent need to get more per "*contribuable*" (tax-payer).

[7] Legal anthropologists have long struggled with how to classify the systems they study. Scholars have variously distinguished between "colonial" and "traditional" law; "formal" and "informal" law; "state" and "non-state" law, "indigenous" and "imposed" law, "internal" and "external" law, etc. Since legal orders are always plural, none of

Republic (CAR) provides the archetypal example of what Mahmood Mamdani (1996) has termed the "minimalist" school of post-colonial reform. That is, many – if not most – of the colonial laws remained on the books. In the early years following independence, the state legal system functioned more or less as it had during the colonial period. Many French officials in Bangui and the rural areas remained in their posts during a transition that lasted a couple of decades and they continued to exercise their functions largely as before. A perusal of the tribunal "archives" (a pile of dusty files stacked in a corner, seemingly untouched for decades) in Ndele reveals that it remained common in the 1960s and 70s for locals to be charged with offenses such as public drunkenness, fabrication and/or consumption of locally-brewed alcohol, or even failure to maintain one's concession (excuses such as being away from home to work on sugar or cotton plantations were insufficient grounds for dismissal of charges of concession-maintenance negligence).[8]

With subsequent years, however, the state legal system deliquesced together with the rest of the Central African state apparatus. Plummeting commodity prices and falling levels of foreign aid in the 1980s-90s contributed to this decline, but the central government's deteriorating economic position also owed to policies pursued by the country's leaders. For instance, Jean-Bédel Bokassa nationalized all the foreign plantations in 1974, a move that resulted in a steep diminution of tax revenue. Perhaps more detrimentally, Ange-Felix Patasse founded his 1992 campaign on the promise to eliminate the personal taxes that had until then sustained local-level administration (village chiefs, health posts, schools). Upon taking office in 1993, he promptly followed through, a move that left local officials bereft of revenue. Their authority suffered as a result.

It bears emphasizing that these village chiefs do not reflect some kind of pre-colonial tradition but rather were placed in their positions of authority by French administrators looking for local-level acolytes to enforce their will. Heads of clans may have become village chiefs, but in assuming these new responsibilities their roles were irrevocably transformed. As Bierschenk and Olivier de Sardan have summarized:

> Having fully embraced the tradition of a purely 'administrative chieftainship' devoid of all aristocratic pre-colonial roots, most of today's chiefs, despite being elected, see themselves first and foremost as representatives of the state in a quite literal interpretation of Ordinance No. 6 of 1988, section 9: 'It is the duty of the village chief to implement the decisions passed by the administrative authority and the local authority'. They visually emphasize this by sporting an official medal which symbolically reinforces the official definition of their duty. However, the state provides practically no resources for chiefs to exercise the role it has assigned to them. They do not have access to official disciplinary structures, for example.... In effect, the chiefs have to exercise their influence by participating in a permanently informal process of negotiation, to a far greater extent than was the case during the colonial era when their fathers and grandfathers were in power (1997: 445).

Despite these handicaps, the chiefs still play an important role mediating disputes on a local level. Presidents of associations and religious leaders also work to keep the peace among residents. In

these imagined dichotomies are adequate to describing the social context of law, because they imply a clear division where in fact overlapping legal sensibilities (Geertz 1983) coexist and inform each other (Merry 1988). "State" and "non-state," for their part, suggest a neat distinction between two self-contained entities, when in reality state and non-state are inseparable in so entangled that their division is not analytically valid.

[8] Author's research in the Ndele archives.

prefectural capitals, representatives of centralized state agencies theoretically handle disputes and crimes. However, these offices often stand empty because functionaries prefer the comfort, security, and easier access to their salaries afforded by life in the capital and rarely alight to their rural postings.[9] For instance, from May 2009 until late 2010, the Ndele tribunal stood empty. Only the court clerk remained to exercise his functions; both the president of the tribunal and the prosecutor had been relieved of their positions and their replacements had not yet made the trek north. At one point, the clerk liberated all the prisoners in the local jail (most had waited longer than their eventual sentences would have stipulated, had they ever faced trial) in an attempt to shock the central authorities into dispatching new tribunal heads. The move was met with silence from the ministry in Bangui.

As the above discussion of the tactics village chiefs and others use to resolve the disputes that arise in their communities and the dysfunctionality of the state tribunals illustrate, there remains a cavernous gap between the theoretical laws promulgated in Bangui and popular ways of understanding and dealing with harm fault and redress. To this day, law students at the University of Bangui are more likely to study and write theses and dissertations on French law than that of Central Africa, because they lack the necessary resources (books, articles, legal texts) for their own country. In many cases, colonial-era laws, such as the interdiction of home-brewed alcohol (an edict decreed already in 1908!), technically remain in force, though they are never applied and few – whether justice practitioner or layperson – know they persist. (Indeed, in the case of local brew, the gendarmes and other state forces that should theoretically enforce the interdiction are often the main consumers of it.)

Post-colonial laws have accumulated on top of their predecessors. Though there have been noteworthy recent efforts to homologate the laws, with new "codes" either recently produced (e.g., the Family Code) or currently in production (e.g., the Wildlife Code), the dissemination of the new policies is often lacking, and the officials charged with enforcing the laws often have but a spotty knowledge of them. This situation is attenuated outside of Bangui, where state officials often operate using out-of-date legal codes because they have not been sent the new ones. For example, in 2010 the head of the Ministry of Water and Forests division in Ndele, a prefectural capital set amid national parks, worked with a copy of the 1984 Wildlife Code that delineated proper modes of elephant hunting – a practice outlawed since 1985. Further, the Code included directives that no one could properly carry out, because they were never defined. Notable in this regard was the provision permitting "customary" hunting practices, whatever they might be.

Moreover, the laws associated with different ministries are often either not in sync with each other or else understood as not in sync. For instance, the 1965 law regulating nomadic herders' passage through Central African territory (promulgated by the Ministry of Agriculture) states that the herders benefit from "free pasturage" across all areas not consecrated to agriculture or national park, but subsequent safari hunting concessions have claimed former herding corridors without alerting the herders to the changes, which have been enacted through the Ministry of Water and Forests. Untold numbers of cattle, as well as many humans, have been killed as a result of the violent clashes that have ensued as each group attempts to enforce its sense of the just division and use of space.

Insecurity

All of this descriptive information about the localized and centralized arenas available to people when disputes arise must be understood in a broader context of insecurity. Insecurity has come to pervade all

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[9] The payment of civil servant salaries into individual bank accounts (as opposed to handing out cash) has alleviated the problem of functionaries' urban loitering somewhat.

aspects of Central Africans' lives; what little social cohesion may have existed before has shattered as a result.[10] For instance, the country's founding fathers outlawed using ethnicity as a way to identify and divide the populace already prior to independence in 1959. Children of this period did not even necessarily know their ethnic heritage. But amid the austerity and economic crisis of the 1980s, ethnic affiliation became a criterion used to gauge trustworthiness and access to resources. In the years since, ethnicity has only become more important, and more divisive, throughout the country.[11]

In a word, the past two decades have been traumatic. A generalized crisis – economic, social, political, spiritual – persists. Plantation agriculture disappeared already in the 1970s following Bokassa's nationalization of farming. Today, almost all of the country's farmers engage in subsistence agriculture, with cash crops a memory from a distant past. (Cotton had been a substantial sector of the economy, but it was disrupted during the events leading up to and immediately following the 2003 coup. The value of primary commodities of all kinds plummeted in the 1980s.

With the demobilization of thousands of men who had fought in the Chadian civil war in the 1970s and 1980s, gangs of armed robbers – known either as "*zaraguinas*" or *"coupeurs de route"* (Issa 2006, 2010) – came to prowl the CAR countryside and target travelers, especially in the country's Northwest. After the end of the Cold War, donors pushed for multi-party elections as a mark of democratization. Democratization amid the broader economic crisis ushered in years of salary arrears and "*années blanches*" during which schools were shuttered over striking teachers; military mutinies in the mid-1990s; a series of coup attempts leading up to Bozize's successful takeover in 2003; and a cycle of rebellion that has resulted in the ceding of much territory to armed group control. Death strikes often, and unexpectedly; some of this excess mortality can be traced to AIDS, but other diseases and the poor quality of care in the country's few capitals contribute as well.

In short, insecurity attacks from all angles, even those previously assumed to be impervious to such assaults. As a result, physical danger is only the easily visible side to these phenomena; 'spiritual insecurity' (Ashforth 2005), the sense that one is but a pawn in a larger invisible world of spirits and danger, strains people's relationships as well. To understand what this all means for people's lives, it bears briefly investigating the problem of witchcraft in CAR.

Witchcraft: an illustration of the challenge of dealing with different systems of meaning

Witchcraft:[12] the word alone breeds misunderstanding. In Western contexts, it conjures images of a pre-modern, superstitious way of life. In Central Africa, in contrast, the word is more often used to describe

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[10] Nunn (2009) has demonstrated that low levels of trust in Africa correlate with the degree to which places were raided during the various slave trades. Though CAR is not part of his sample, it seems to bear out his findings.

[11] Sango has one broad term to refer to race or ethnic/linguistic group: "*mara*." Kouroussou (1985) observed how the signification of the term was changing in the 1980s: "The word's meaning has come to take a violent connotation, because it has come to indicate a climate of tribalism detrimental to national unity" ("Le contenu du mot commence à prendre une coloration assez violente, car pour des considérations politiciennes, on entretient autour de 'Mara', un climat de tribalisme néfaste pour l'unité nationale" (30); my translation).

[12] The terms "witchcraft"and "sorcery" are loaded. Some scholars worry that they inherently connote backwardness (West 2007). Their use as descriptive categories dates to the colonial era and some argue that they reflect a post-Enlightenment intellectual cordoning-off of these phenomena that does not capture the all-encompassing way that the supernatural realm can inflect people's lives, especially in Africa (Ashforth 2005). Nevertheless, the present study has retained these terms for the same reason that Geschiere (1997) does: because they are the preferred terms of the people among whom he does research, for whom they have taken on new, broader meanings, and in order to minimize jargon.

the domestication of the invisible realm of the spirits ('*toro*' in Sango), and to understand how 'unfortunate events'[13] come to pass and how they should be dealt with. In the pre-colonial years, these kinds of spiritual attacks would be dealt with through ordeals, other processes of divination, social pressure and the application of remedies (usually herbal treatments). Then as now, witchcraft was understood as a form of violence and as such a grave problem in communities. People differentiate between the sorcerer, who uses occult powers for evil ends, and the *nganga* (healer), who uses occult powers and herbal medicines to determine blame and reparations/healing in cases of suspected witchcraft.

British colonists in Africa saw witchcraft as a thoroughly backward belief and so outlawed not the practice of witchcraft (which they saw as non-existent and hence impossible to outlaw) but the divination of witchcraft (which they saw as nefarious charlatanism). As a consequence, people worked hard to keep witchcraft-related matters out of the courts, for the tribunals risked to disrupt the practices that people saw as crucial in order to keep witchcraft in check. In French colonies such as Oubangui-Chari, in contrast, both witchcraft and 'charlatanism' were outlawed under the umbrella category of "*pratique de charlatanisme et sorcellerie*" (known by the acronym PCS), and witchcraft has become one of the main types of crime treated in state courts.[14] International outcry has accompanied reports of summary executions of witches (see UNGA 2009), with particular concern about the case of children accused of occult misdeeds (UNICEF 2010). The rights of people accused of witchcraft are often grievously abused; death and torture are not uncommon. The problems of summary execution and torture are particularly pressing in areas controlled by rebels, who are known for their expedient, violent prosecution of this kind of charges.

However, simply outlawing the means people use to combat witchcraft will not work unless these efforts recognize and deal with the fact that witchcraft fears index instances of major social upheaval.[15] Unless the root causes of these upheavals are dealt with, insecurity will only grow. Formal legal systems are ill-equipped to deal with the circular logic that passes as evidence in witchcraft cases, but the abdication of responsibility for dealing with witchcraft – as has happened in South Africa, for instance (Ashforth 2005) – has diminished people's already-compromised confidence in the state as an entity organized for their protection (Geschiere 2006). This is the slippery reality that efforts at justice promotion must come to terms with.

In CAR, the majority of cases heard in the state tribunals' concern witchcraft; in localized dispute resolution arenas, too, sorcery is one of people's major preoccupations. In 2009, the Central African National Assembly debated eliminating the legal code banning PCS (art. 162-163), but in the end they made no change. The challenge of witchcraft is a microcosm of the problems besetting access to justice in CAR. The invisible world of spirits represents the main danger people see in the world around them; neither local leaders and *nganga* nor the state tribunals have succeeded in domesticating these dangers, and perceptions of insecurity have only grown.

'*Customary' governance in the formal legal system*

With independence, an attempt was made to expunge all references to "customary" laws and thereby be

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[13] E.E. Evans-Pritchard's *Witchcraft, Oracles and Magic Among the Azande* (1937). This seminal study describes the traditional ways of people residing in southeastern CAR (through Evans-Pritchard studied them in Sudan).

[14] In Cameroon, this division in how witchcraft is treated remains today: in the Anglophone regions, it is rarely dealt with through the courts, while in the Francophone regions witchcraft cases are some of the most-commonly heard complaints (See Geschiere 1997).

[15] The anthropological literature abounds on this point. See especially Ashforth (2005).

quit the legacy of the *Indigénat* in favor of a thoroughly "modern" system. Despite these changes to the state laws, the village chiefs retained their positions as the local-level officials to whom people turned when they had a problem. The new government had few resources for de-centralizing justice provision, but the chiefs were there to fill that need. As mentioned earlier, the village chief was largely a colonial creation; the position of chief was intended to help the French with tax collection and other administrative imperatives. With time, however, the village chiefs came to take on other social roles, and those who acquitted their functions with wisdom gained broad respect from their communities.

In Ordinance No. 88.006 of February 12, 1988, President Kolingba made an effort to formalize the role of the village and quarter chiefs. Article 12 states that "in civil and commercial matters, the village or quarter chief is invested with power to reconcile parties to disputes. When he takes up this function, he must take an oath in front of the judge and in the presence of the village council."[16] In reality, few village or quarter chiefs end up taking this oath, and instead they accede directly to their responsibilities upon nomination/election. This brief mention is the only text relating to localized arenas for justice provision in CAR.

The law gives the chiefs broad authorities to reconcile the parties to disputes. But the law does not detail the modalities of this work. No guidance is given as to the procedure for apprising the chief of a case or how the conciliation itself should play out. The specific powers of conciliation that the chief should hold are not elaborated; the mechanisms for enforcement of the chief's conciliation outcome are not explained; and the parties' possibilities for recourse are left to the imagination. The question of fees, and who should pay, is also left to individual discretion or negotiation. Though chiefs often express eagerness for some kind of training in conciliation and the laws of the land, they currently only benefit from *ad hoc* programs organized by NGOs or aid projects.

The fact that the roles of village chiefs and others intervening in disputes on a local level are not formalized is not a problem in and of itself. In fact, it most likely contributes to their effectiveness, because it means that they have the flexibility to respond to the circumstances of particular cases and their protagonists and to incorporate locally-salient values into their reasoning. At the same time, there is currently a major lack of clarity over whether chiefs serve a "conciliators" or "judges." People often refer to them as judges, and they often issue judgments – and punishments – but the above-mentioned ordinance only gives them the authority of conciliation.

This confusion risks being exacerbated by the proposed law concerning the organization and functioning of territorial collectivities, administrative circonscriptions and communities (*Loi portant organnisation et fonctionnement des collectivités territoriales, des circonscriptions administratives et des communautés de base*). This could change with the Under article 271, the proposed law states that "In matters of civil, commercial and customary justice, the village chief is invested with powers to reconcile the parties…The judgments that he pronounces should generate revenue, of which some should be handed over to the commune."[17] The proposed law thus introduces two new major ambiguities into the functioning of the chiefs. First, the realm of "customary" justice is nowhere defined. Could matters otherwise described as

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[16] "…en matière civile et commercial, le chef de village ou de quartier est investi du pouvoir de conciliar les parties. Lors de sa prise de function, il est tenu de preter serment devant le juge d'instance en présence du conseil de village."

[17] "En matière de justice civile, commerciale et coutumière, le chef de village est investi du pouvoir de concilier les parties…. Les jugements qu'il rend à cet effet, doivent générer des recettes sur lesquelles des quotes parts sont versées à la commune."

criminal be treated under the aegis of "customary" ways for dealing with local law-breakers? Second, the proposed law states both that the village chief's role is to reconcile the parties and that the chief can pronounce judgments. "Reconciling" and "judging" are quite different processes, with different powers of coercion and penalties attached to them.

Should this law be adopted in its draft form, it would not be the only Central African law to make passing reference to an undefined "customary" practice. Experiences with other "orphan" mentions of the customary give reason to believe they cause misunderstandings, sometimes grave ones. Notably, the 1984 Wildlife Code (*Code de la faune*) permits "customary" hunting practices, even in the no-go zones around parks. However, nowhere are these practices defined. A strong case could be made that it is customary to hunt with a locally-made gun; guns have been made in this area for at least two centuries. But all local firearm production is illegal. The lack of clarity has contributed to the widespread mistrust between hunters and law enforcement, which have different visions of what constitutes customary practice in this regard. The Wildlife Code is in the process of being revised, but the draft text retains this passing reference to customary hunting practices, and it similarly does not define the category. Often, these laws are drafted by international consultants dispatched to CAR. Perhaps, more familiar with African contexts where the content of customary law is more-clearly defined, they do not realize the extent to which the customary is situational and provisional in CAR. The present study aims to make these specificities of the Central African context available for the use of all intervening in the country's justice sector.

A range of ministries have partially-overlapping authorities over administration outside the capital and could potentially have a relationship with the village chiefs or others intervening in disputes on a local level. These include the Ministry of Public Security (created in 2003), the Ministry for Territorial Administration, the Ministry of the Interior, and the High Commission for Decentralization. Of these, only the Ministry of Territorial Administration explicates its relationship to the village chiefs. The chiefs are inscribed under the commune-level mayors in the Ministry of Territorial Administration's organizational chart. The fact that multiple ministries could and do have authorities and responsibilities over the village chiefs points to a larger issue with the separation of powers. At present, the chiefs carry out executive, legislative and judicial functions. They are charged to administer and make peace in their communities, conciliate the parties to disputes, and to assure that executive and legislative directives are carried out on a local level. Even if they do not always perform all these tasks, they point to a potential democratic deficit (and abuse of power) on a local level in a context of multi-partyism. The chief is supported by a council of advisers, but these advisers are generally of the chief's own choosing, which again indicates a potential for abuse of power given the lack of checks and balances that come from dis-associating the branches of government on the level of the village or quarter.

The village and quarter chiefs are also supposed to apprise the judicial police in the event of criminal matters or other cases above the chiefs' domain of competency. However, the chiefs complain that the police and gendarmes do not respect them. There are inevitable disagreements over who should pay for things like transport costs, and this hinders any possible collaborations.

Ordinance 88.006 also mentions that the village chiefs should receive a monthly payment for the services they provide to the population. Article 14 states that "the village chiefs receive a monthly indemnity, the amount of which will be fixed each year by the finance law. The village chiefs will also receive a percentage of the tax collected in their localities, which will not exceed five percent of the monies collected. Joint orders of the Ministry of the Interior and the Ministry of Finance will set the amounts and

modalities for the payment of these remittances."[18] However, the chiefs have never received these payments. During periods of unrest in the capital, quarter chiefs sometimes receive payments from the government, but these are token offerings rather than part of an institutionalized system of remuneration. Outside of the capital, even these occasional payments are never seen.

As the above indicates, loose legal scaffolding exists that, if implemented, could preserve the village chiefs' flexibility to respond effectively to local circumstances while also including a modicum of oversight to ensure that the rights of all parties are respected. The proposed law on territorial administration indicates the challenges and risks stemming from over-legislating these processes of justice on the local level.

Conclusion

The past two centuries have been a period of immense upheaval in Central Africa. New solidarities have been created, and new modes of social organization embarked upon, but these transformations have mostly been accompanied by violence and turmoil. This has resulted in the predicament people living in the area currently face, namely the straining of the limited social cohesion that had previously glued together communities under the pressures of poverty, witchcraft and mistrust. Far from passive spectators as these developments have unfolded, people have developed strategies for tackling the dangers in their midst and resolving the conflicts that arise in their communities. These practices, informal and *ad hoc* though they may often be, are resourceful and often effective. The following section will present the findings of the field research, and in so doing will draw out some of the strengths and weaknesses of the mechanisms developed for resolving disputes in Central African communities.

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[18] "les chefs de villages perçoivent une indemnité mensuelle forfaitaire dont le montant sera fixé chaque année par la loi des finances. Les Chefs de village perçoivent en outre une remise sur l'impôt effectivement perçu par leurs soins qui ne pourra excéder cinq pour cent des sommes recueillies. Des arrêtés conjoints du Ministre de l'intérieur et du Ministre des Finances fixeront le taux et les modalités de paiement de ces remises."

Chapter 2: The Findings of the Field and Case Tracking

The research employed consisted primarily of qualitative methods with an anthropological orientation. This approach was chosen because it would better enable the gathering of responses to not just broad questions of 'what,' 'when' and 'who', but also the deeper questions of 'how' and 'why' justice provision works as it does in CAR. The qualitative research consisted of two main components: field research conducted in seven prefectures by local researchers using open-ended interview guides to gather information from key informants, focus groups, case studies, and general context; and a six-month case tracking project in three regions of the country. Before describing the mechanics of the research further, it is important to explain the theoretical orientation that guided the methodological choices.

Theoretical Orientation

Centralized and local arenas

How should one go about studying justice in a complex social field with multiple arenas for conflict resolution? This research project draws on the insights developed through the discipline of legal anthropology. Legal anthropologists have long recognized that theory and methods are inseparable, and that by extension no methodology is the neutral "toolkit" that such biases of nomenclature imply, and these observations underlie this research project. This section will discuss the legal anthropological insights relevant for the present project. For further detail, please see Annex TK, "Theoretical Orientation of the Research Project."

From the above discussion of the social context of law, justice and governance in the CAR, it is apparent that these processes incorporate much more than simply those institutions formally part of the Ministry of Justice. Theoretically, this is an obvious point, but it bears exploring in more detail the ways in which this affects methodology and analytical framing. The crux of the problem is how one should conceptualize and study law (justice, governance) when it is no longer assumed to reside solely in state decrees. In a legally plural world, what are the limits of law?[19] Further complicating matters, it is often difficult to determine the boundaries of particular institutions (Scheye 2008).

In CAR, local-level mechanisms for resolving disputes involve several "semi-autonomous social fields" (Moore 1973),[20] such as those of the village chiefs and their councils, religious institutions, and agricultural cooperatives. These social fields are composed of related groups of actors, who Bierschenk and Olivier de Sardan (1997b) refer to as strategic groups. Whereas a focus on demographic groups (women, youth, elderly) assumes uniform alliances and may thereby obscure cleavages and conflicts within these supposedly-homogeneous categories, focusing on strategic groups encourages the researcher

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[19] Legal anthropologists have stepped away from the term "legal pluralism" at the same time that legal scholars have embraced it. From the perspective of the anthropologists, the term is analytically useless because everywhere, even places with highly effective state institutions that capture and regulate disputes, is legally plural – religious groups, social networks, etc. all inform the social order as well. For legal scholars, so long indoctrinated with a legal centralist perspective, this is a new – perhaps even heretical – observation. Both schools have a valid point. From an operational, policy-relevant point of view, it makes sense to retain the descriptor legal pluralism because it more easily permits tracking of the particular powers, symbolic capital, and resources of coercion held by state legal systems.

[20] Moore developed the idea of the semi-autonomous social field as a way to capture the full range of kinds of arenas used to deal with disputes and enforce norms. For further information, please see the annex on the project's theoretical orientation.

to begin by analyzing the actual interests of the people encountered in the research sites, rather than *a priori* assumptions about where their affinities lie. Drawing on H.D. Evers, Bierschenk and Olivier de Sardan define strategic groups as those "actors who defend shared interests in the appropriation of resources" (1997b: 240). Thinking in terms of how institutions are composed of strategic groups enables a better appreciation for the ways that alliances are negotiated and interests represented.

Strategic groups are a particularly important unit of analysis in places characterized by face-to-face relations, because in these places overt conflict might be suppressed for the sake of maintaining surface-level harmony.[21] On the face of it, impunity might seem to reign. But whether people experience this surface-level impunity as a damnable lack of justice or as a legitimate (not necessarily ideal) means of processing disputes (legal anthropologists refer to such strategies as "avoidance" or "lumping it"), or something in between, should remain a question for investigation rather than an a taken-for-granted assumption. Retributive justice has a number of downsides in settings like rural CAR.

The most detailed academic study of governance in rural CAR argued that people had a high degree of ambivalence about justice: impunity was both decried and yet also seen as crucial to stability. The authors, Bierschenk and Olivier de Sardan (1997a), found that because people needed and wanted to maintain harmonious social relations, conflict and accusations tended to simmer just below the sphere of public negotiation. The category of things that "everyone knows" but few discuss openly is both broad and deep. In Bierschenk and Olivier de Sardan's investigations, the conflicts often concerned mistrust and accusations of "*détournement*" (misappropriation) associated with the opaque management of local association (*groupement*) coffers, development aid funds, and other revenues.[22]

Informed by an understanding of the legal realm as composed of semi-autonomous social fields and strategic groups, the research team decided to conceptualize the CAR field as composed of *centralized* and *localized* arenas for dispute resolution. The emphasis on this terminology is not just a semantic point; it is of crucial importance to accurate analysis itself.

Commonly, studies of legal pluralism refer to "state" versus "non-state" forums. However, in CAR, even village chiefs have a formal relationship to the state, so it makes no sense to speak of them as "non-state." Only the blurriest of boundaries exist between those structures that appear to be of the state and those that at first glance do not. Other studies use terminology like "modern" versus "traditional" or "customary" justice. The words "traditional" and "customary" both impart a sense of timeless practice passed down from generation to generation, but, especially in a place as marked by upheaval as CAR, this is misleading. "Tradition" is created and re-created in contemporary response to contemporary dilemmas, not passed down statically. In reality, that which is described as "traditional" is as much a part of the present, modern moment as any codified tribunal justice. Further, that which is marked as "traditional" or "customary" inherently becomes imbued with an unjustified connotation of backwardness. Still other studies use the language of "formal" versus "informal" legal procedures. But, especially in places with rampant corruption and limited institutional capacity, putatively "formal" arenas treat disputes in decidedly "informal" ways, rendering the binary confusing at best.

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[21] For a discussion of cultivated impunity in a very different context – a small town in the southern United States – see Greenhouse (1986).

[22] Several NGOs and other projects have launched trainings in financial management and democratic governance for agricultural cooperative members. The Danish Refugee Council is a leader on this front, and, at least anecdotally, accusations of mismanagement drop following the seminars. This could thus be a promising means of reducing intra-village and intra-commune tensions.

Speaking of "centralized" versus "local" arenas for dispute resolution centers the discussion on the essential differences between the forums themselves, rather than on any of the polemical quagmires that other terminologies fall into. Centralized entities are those that fit into an organizational chart with a multi-level hierarchy with its summit in the capital. Further, centralized arenas' existence is set forth in codified law (though they may play roles that either exceed or fail to live up to these codified mandates). In CAR, the centralized arenas include the tribunals (*tribunaux de grande instance*), gendarmerie and police. Local arenas are those that operate exclusively on a local level. Some draw their mandates from codified law, while others' dispute resolution capabilities grow out of the personal characteristics of particular individuals or social expectations about their functions. For instance, the village chiefs' roles are outlined in an ordinance from the Ministry of the Interior and Territorial Administration, but the range of disputes their communities call on them to mediate often exceeds that stipulated by the law. Other important localized dispute resolvers include religious authorities, *anganga* (healers) and presidents of associations.

Disputes as entries into conflict resolution mechanisms

From its inception as an approach to the study of laws' social contexts, legal anthropology has made disputes the central focus of its methodology. Looking in depth at specific cases enables an understanding not just of the procedures used to determine right and wrong but also of the ways that influence is created and wielded, the ways that coercion operates, the range of possible outcomes, and the ways that decisions are, or, are not respected.[23] The focus on disputes and particular cases fed into a broader anthropological interest in the role of conflict in social life.

A methodological focus on disputes affords rich information about interests and relationships in communities, but what does dispute processing tell us about violent conflict? Traditionally, in differentiating raids (ongoing counter-attacks between groups that lack a relationship and therefore also any a social mechanism for defusing the tensions) from feuds (ongoing counter-attacks between groups with a relationship and a social mechanism for bringing the fighting to an end) and war (a kind of raid in which one group vanquishes the other) anthropologists assumed a correlation between a lack of justice and the outbreak and perpetuation of violence. This research project aimed to make the relationship between justice and violent conflict an explicit object of study in order to identify ways to support the former and avoid the latter. It approached this goal by selecting research sites that have dealt with a range of types of conflict (*coupeurs de route*, politico-military movements, state force abuses, armed cattle herders, etc.) and analyzing dispute case studies with a particular focus on the precipitating factors, local capacities for intervention, and moments when there are break-downs in mediation.

In other words, the study focused more on "procedural justice" than "substantive justice." Procedural justice indexes people's experience of satisfaction with the fairness of the legal process, whereas substantive justice focuses on outcomes (winners versus losers). Often, people express greater satisfaction with the justice received when they feel the process was fair and their side was heard than they do when their side prevailed but the procedural characteristics do not obtain (Conley and O'Barr 1998). What are the local understandings of fairness in dispute processing, and how do they differ among strategic groups? How might it be possible to rectify eventual disconnects between local understandings of fairness and the laws and policies of state and other structures of justice/governance? And what is the role of the people officiating/gate-keeping? All of these questions, guided by an underlying anthropological open-

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[23] Already in *Crime and Custom in Savage Society* (1922) (considered by many to be the first modern work of legal anthropology), Bronislaw Malinowski included discussion of several specific cases. With their book *The Cheyenne Way: Conflict and Case Law in Primitive Jurisprudence*, Llewellyn and Hoebel (1941) entrenched the case method as the main strategy to be employed by legal anthropologists.

mindedness, animated the approach of the field research team.

The Survey Method

Emphasizing participation and local ownership

The research coordinators aimed to make the process as participatory as possible, with Central African colleagues taking the lead in defining the research questions and other crucial aspects of the research design. Toward that end, a workshop was organized in Bangui on 4 May 2010 to determine the criteria to be used to choose research sites and the study's overarching questions. Participants came from several government ministries (principally justice and social affairs), civil society representatives including local NGOs such as the *Association des femmes juristes de centrafrique* (AFJC), and professors from a range of social science disciplines (history, anthropology, law, sociology).

A fruitful day's discussion and debate yielded agreement as to the following core questions for the research:

1. What are the structures of governance at the local level (local authorities, village councils, *groupements*, religious leaders, etc.)? What are their roles and responsibilities? By what process are they appointed? What are the possibilities for sanctioning these authorities?
2. What are the structures of justice at a local level? How do the processes for the management and resolution of disputes and conflicts work? Are there differences among different social groups in terms of their representation and access to these processes?
3. What is the population's perception of the legitimacy and the justness of the diverse leaders involved in the resolution of disputes and conflicts?
4. What typology of disputes and conflicts emerges as a result of following cases for a period of six months?
5. What are the barriers to access to justice (both state justice and non-state justice)? How do the barriers vary for different social groups, especially marginalized persons?
6. How have the processes for the management and resolution of disputes and conflicts been affected by the recent violent conflicts in CAR?

In addition, the workshop attendees reached a consensus as to the criteria to be used to choose research sites. These were (in no particular order):

– site of local authorities
– economic diversity (subsistence agriculture, livestock, cotton, coffee, wood, diamonds...)
– ethnic diversity (include different ethnic groups, both matriarchal and patriarchal, as well as places with two or more groups cohabiting)
– religious diversity
– presence of minorities
– recent armed group presence in the vicinity
– site of exactions by state forces and/or armed groups
– site with internally displaced people
– presence of development projects/NGOs
– presence of World Bank projects
– accessibility (security of research team)

Based on these criteria, the participants proposed conducting the first round of research in the prefectures of Lobaye, Ouham-Pende, and Mbomou. If Mbomou proved inaccessible, the group suggested either Basse-Kotto or Ouaka as substitutes. (In the event, attacks by the Lord's Resistance Army (LRA) in Mbomou meant that the team opted for Ouaka during the first round of field research. Research was conducted in Mbomou during the second round.)

The World Bank team took the lead on writing the qualitative interview guides that the researchers would use. The field research comprised four different interview guides. Upon arrival in their research site, the researcher would fill out a contextual information worksheet. This guide included information about the history, economy, infrastructure and demographics of the locality. The researcher would then seek out people who play a role in adjudicating conflicts, with whom she or he would conduct key informant interviews. Each researcher would also conduct a series of focus group discussions, with participants divided by age and sex. Ideally, each researcher would conduct a total of six focus groups (young women, young men, women, men, older women, older men), but this was not feasible in all sites given truncated research time frame. During the focus group discussions, the researcher would identify one or several people who were involved in a dispute in the course of the past year. The researcher would meet with these people later to conduct case study interviews detailing the specifics of the disputes and how they were/were not resolved. A separate interview guide was used for tracking cases over the six-month period following the field research.

Though the World Bank team took the lead on designing these interview guides, input was sought from local experts throughout the process. Arsène Sendé, a magistrate with experience working with local-level justice practitioners, and Louis Bainilago, an anthropology professor at the University of Bangui who has conducted trainings for legal professionals on witchcraft and human rights, were brought on board as advisers (*personnes ressources*). They provided feedback on the interview guides at various stages during their drafting, and they commented both on substantive issues of content and on how to make them accurately reflect the Central African context, as well as on narrower questions of language choice.

The guidance of Central African partners was also fundamental in identifying members of the research team. For the three team leaders, the World Bank team asked colleagues in civil society and at the university, for suggestions. Candidates were then interviewed in person, and the final three were chosen from among those available, with preference given to people who had some experience in one of the research sites. For the nine researchers, Central African partners with a field presence in the areas where the research would be conducted (primarily the AFJC) suggested candidates. The team leaders had varying levels of familiarity with qualitative research methods and theories, but they worked hard and rose admirably to the task. The benefits of working with local researchers were many. Above all, given the high levels of mistrust that characterize rural CAR, it was crucial to work with people who knew local dialects in the areas where they would be researching. But there were also downsides. The most difficult challenge was that many of the researchers had little to no experience with this kind of project. Some had only a limited grasp of French. In these cases, the research design helped mitigate what could have been a disaster, because of how it built in supervision, feedback and collaboration at multiple intervals.

For logistics and other technical matters, the team worked with a local NGO experienced in facilitating and conducting research in CAR. *Echelle: Appui au Développement* has worked with both national and international researchers on a range of topics related to conflict and development. All contracting for local staff was carried out by Echelle, and Echelle also handled logistics for the training and field research.

Once the interview guides had been validated and the researchers and team leaders located and hired, the World Bank team worked with Magistrate Sendé and Professor Bainilago to organize a six-day intensive

(9-10 hours' study per day) training in qualitative research methods (Briggs 1986; Robson 2002). Particular emphasis was placed on how to most effectively use the interview guides and on the challenges of translation. (The interview guides, and researchers' notes, were both in French; interviews were carried out in Sango and a range of local dialects, depending on the region.) Topics covered during the training included:

- Principles of scientific research (strengths and weaknesses of quantitative and qualitative methods)
- Research ethics
- The relationship between centralized and local-level justice systems in CAR
- Introduction to anthropological methods (participant observation and interviews)
- Research mechanics (e.g., note-taking, translation)
- Role-playing and practical exercises
- Trouble-shooting problems that might arise while researching

In addition to these theoretical and practical matters, the researchers and training staff spent a substantial amount of time going over the interview guides themselves. Each question was explained in at least three different ways, with special emphasis placed on discussion of why the question was important and what kinds of information we hoped to gather by asking it. Translation was also a key topic of debate: the group devoted considerable effort to discussing the nuances of various possible Sango translations.[24] For each interview guide, volunteers would model its use in front of the whole group, who would provide critical feedback once they had finished. Afterward, researchers would work in small groups to continue practical exercises with the interview guides.

The presence of four teachers (two World Bank consultants as well as Magistrate Sendé and Professor Bainilago) was crucial to making the training effective. As Central Africans, three of the four were fluent in Sango, and the fourth had a working knowledge of it as well. The importance of this linguistic dimension cannot be overstated. Making sure that the researchers really understood the questions and the intended progression of the interviews required continual tacking between French and Sango.

During the research training, the researchers and team leaders took the lead on determining the specific research sites. Each researcher would deploy to a village within about a 50km radius from the prefectural capital, where the team leader would conduct research. The reason for conducting all the research within a defined area was primarily that it would enable more effective and thorough supervision by the team leaders and World Bank staff. Since the researchers came from these areas themselves, they provided valuable insight into which towns and villages presented interesting dynamics from the perspective of our research objectives, such as presence of wage labor opportunities (primarily at issue in Lobaye, where there are timber and other corporate concessions), presence of minorities and/or ethnic diversity, or presence of politico-military groups. The choice of sites was thus not randomized, but rather reflected local knowledge about the places with strong and weak systems for resolving disputes. Once a site was chosen, it was assigned a one-letter code. Subsequent documents referred to it only by this code in order to protect the anonymity of respondents. Similarly, researchers never used respondents' real or full names.

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[24] As a trading language that has become a national *lingua franca*, Sango is a language with relatively few words. The easiest 'translation' move is to incorporate technical French words directly into Sango, which happens frequently, but in the process the original French term can take on new meanings that might diverge from the original intent in French. Alternatively, sticking with 'pure' Sango necessitates careful attention to nuance and word order so as to communicate complicated meanings.

They identified people using sobriquets or other shorthand systems ("person x"), also in order to protect their anonymity and encourage them to respond openly.

The research training concluded with the presentation of completion certificates to the researchers and team leaders.

Field Research

The field research was carried out in two main phases. During the first phase, three teams of three researchers and one team leader deployed to three prefectures (Lobaye, Ouham-Pende, Ouaka) to conduct field research. Each researcher spent about four days in his/her research site. Each team leader spent at least one day supervising each researcher on the ground. In addition, the World Bank team, which included a consultant and several *personnes ressources* such as Professor Bainilago, Magistrate Sendé, and Yoann Thines, a cooperant in the Ministry of Justice, visited the researchers and supervisors to provide feedback and guidance as well.

Upon completion of the field research, the team leaders traveled to Bangui to deliver the completed interview guides. Together with the World Bank team and resource people, they spent a week debriefing, discussing findings, and beginning analysis and organization of the research data.

The researchers in the three prefectures continued their work for the next six months. This was the case tracking component. Each researcher tracked about five cases per month over the course of the period. (Though it was intended that the researchers would follow some of the same cases throughout, disputes were often resolved relatively quickly, or else came to the researchers' attention late in the process of their resolution, so they generally reported new cases each month.)

Overall, the field research produced a valuable cache of information about mechanisms for resolving conflicts on the local level and people's perceptions of justice in CAR. However, the team encountered a range of major challenges underway. First, due to a combination of consultant scheduling constraints and the tedious process within the World Bank for issuing a contract to a local NGO, a period of two months elapsed between the research training (June 2010) and the conduct of the field research (August – September 2010). This meant that the researchers forgot much of what they had learned during the training, and the supervisors had to conduct supplementary training sessions underway and offer additional support, encouragement, and critique to overwhelmed researchers.

The varying skill level and determination of the researchers was another challenge. Some of the less-experienced researchers responded by throwing themselves fully into the undertaking, and they improved tremendously over the course of the project. Others were more shy and had trouble asking for help and the quality of their work suffered as a result. The team leaders' active engagement helped even the weakest researchers produce useful findings.

The interview guides themselves proved both a strength and a weakness of the project. When conducting qualitative research with people who have little experience in the field, a delicate balancing act must be pursued. On the one hand, it is helpful to include carefully-structured questions in order to lead researchers through a process of reasoning that will furnish all the direct and contextual information necessary to make inferences. On the other hand, including too many questions, or otherwise making the interview guides too complicated, risks sending people with limited literacy into a kind of paralysis. The interview guides used had the advantage of being thorough, but the disadvantage of being long. Respondents sometimes got "tired" partway through, and researchers sometimes occasionally skipped
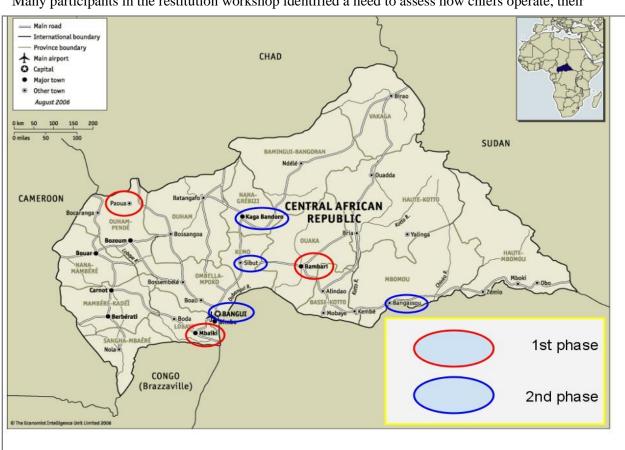
sections or particular questions.

During the second phase of field research, carried out in February – March 2011, the research team simplified the interview guides to facilitate a more-targeted data collection. The three team leaders together with two new (experienced) researchers carried out this research. Most worked in pairs, though some worked singly. Since they already had a deep familiarity with the interview guides and objectives of the research, the interview guides could be shortened, with the researchers themselves filling in the needed additional context. During this phase, research was conducted primarily in urban areas: Bangui, Sibut, Kaga Bandoro, and Bangassou. Approximately four days of research was undertaken in each site.

The responses gathered through two phases of field research and six months' case tracking are in the process of being digitized. Once the digitization is complete, it will be possible to continue analyzing the findings along various matrices. It is also hoped that the data will be of use to others engaged in the domain of justice provision/support to the justice sector in CAR and beyond.

So far two phases of analysis have been carried out. Immediately after completion of each phase of field research, the research team leaders and the research coordinator produced reports that encompassed both an initial synthesis of the data in the interview guides and the team leaders' reflections on what they had observed and learned. Once both the field research and case tracking had reached completion, the research coordinator and international consultant read through all the completed interview guides and tracked the frequency of various kinds of cases and the different modes of their resolution (or not), as well as different aspects of people's perceptions of justice provision in their communities. The following sections present the integrated findings of these analyses.

Restitution workshop

A restitution workshop was held in Bangui on 28 – 29 June 2011. The Minister of Justice, Firmin Findiro, and the Resident Representative of the World Bank, Midou Ibrahima, opened and closed the workshop. The workshop's objectives were to present the data gathered through qualitative field research and collaboratively address recommendations as to next steps. Participants included representatives from the Ministries of Justice, Plan, and Social Affairs and NGOs such as International Rescue Committee, Danish Refugee Council, the Association of Women Lawyers and Echelle, as well as professors from the University of Bangui and several local government officials, including two quarter chiefs. The workshop yielded two full days of fruitful discussion, and the commitment to further work increasing access to justice is broadly shared. The workshop identified an urgent need to clarify the status and strengthen the role of the village chief. At the same time, all participants recognized that this needs to be done very carefully, based on an evaluation of capacity-building programs for village chiefs, which have been carried out by agencies such as UNDP, IRC and DRC.

Many participants in the restitution workshop identified a need to assess how chiefs operate, their

practices in resolving disputes, their legitimacy and how they are nominated, and what possibilities exist for revoking them in the event of misdeeds. It was also clear that the chiefs need more guidance and oversight in order to avoid the blatant human rights abuses in dealing with witchcraft and land issues in particular, as well as some issues related to sexual violence. Support to the centralized arenas such as the tribunals will also be important, but the first step – before such things as infrastructural improvements or

other aid monies – will be a rapprochement between these authorities and communities in order to determine how confidence in their operations might be augmented.

Findings

Data gathered

The following figures should not be taken as statistically representative of the justice sector in CAR. The researchers were reliant on their ability to locate informants and disputes and gain access to the proceedings, and it is likely that the members of communities where they conducted research had to deal with many conflicts that the researchers never became apprised of. Nevertheless, these figures give a sense of the kinds of conflicts preoccupying Central Africans in various regions of the country, as well as the frequency with which these problems occur.

Field research overview

	1st phase	2nd phase	total
Key informant interviews	55	31	86
Focus groups	51	15	66
Case narratives	54	16	70
			222

Phase one

Key informant interviews	# people
Chiefs (of village, quarter, group)	27
Religious leaders	14
Presidents of associations	7
Law enforcement officials (incl. non-state)	3
Nganga	2
Elder	1
Tribunal official	1
Focus groups	**# groups**
Young men	8
Young women	3
Men	17
Women	16
Older men	5
Older women	2

Case narratives	# cases
Domestic disputes	12
Sorcery	12
Economic disputes (misappropriation, debt, fraud, etc.)	9
Theft	5
Land	5
Violence (incl. fighting)	4
Rape	3
Abuse of authority (by law enforcement)	2
Possession of a gun	2
Accident	1

Phase Two

Key informant interviews	# people
Chiefs (of village, quarter, group)	24
Religious leaders	7

Focus groups	# groups
Young men	6
Young women	2
Men	2
Women	5
Older men	2
Older women	1

Case narratives	# cases
Domestic disputes	5
Theft	5
Land	5
Destruction of property	1

Case tracking (results of six months' research)

Paoua

	Religious leaders	**Chiefs (of village, quarter)**	**Gendarmer-ie/police**	**Tribunal**	**APRD**	**Total**
Theft/fraud	1	16	7	1	3	28
Debt/abuse of confidence	0	4	6	1	4	15
Domestic dispute	10	3	0	0	0	13
Sorcery	0	2	0	0	6	8
Disagree-ment/ false accusation	1	6	0	0	0	7
Violence/ fighting	0	2	4	0	1	7
Land	0	3	2	1	0	6
Rape	0	2	0	1	0	3
Totals	**12**	**38**	**19**	**4**	**14**	**87**

Bambari

	Religious leaders	**Chiefs (of village, quarter)**	**Gendarmerie/ police**	**Tribunal**	**Total**
Domestic dispute (incl. adultery)	1	8	4	4	17
Land	0	6	2	4	12
Theft/ fraud	0	0	5	3	8
Fighting	0	4	2	2	8
Sorcery	0	0	4	2	6
Rape	0	3	0	2	5
Disagreement	1	0	2	0	3
Violence (incl. murder)	0	0	0	2	2
Mistreatment of widows	0	0	0	2	2
Total	**2**	**21**	**19**	**21**	**63**

Mbaiki

	Religious leaders	Chiefs (of village, quarter)	Gendarmerie/ police	Tribunal	Total
Theft	0	5	7	7	19
Sorcery	0	5	3	4	12
Domestic dispute	0	7	5	0	12
Debt	0	6	3	0	9
Violence (incl. attempted murder)	0	3	2	2	7
Fighting	0	0	5	2	7
Disagreement/ false accusation	1	6	0	0	7
Rape	0	0	4	2	6
Land	0	2	3	0	5
Homosexuality	0	0	0	1	1
Destruction of property	0	0	0	1	1
Total	**1**	**34**	**32**	**19**	**86**

Data analysis

The research findings have been grouped along three main axes: the main themes emerging from the research; the major types of disputes, including the arenas people seek out to deal with them; and the specific blockages preventing access to justice. The research themes are presented in the order of their relative importance, beginning with the issues of greatest relevance across cases, situations and sites. The disputes are organized loosely in terms of their relative frequency, beginning with the most common. However, it bears noting that the frequency of particular kinds of disputes varies by region

Over-arching Themes

a) Social cohesion under immense strain

The research revealed how deeply frayed social relations have become across CAR. Social cohesion exists only on the narrowest of bases. Communities have folded inward in response to the pervasive insecurity (economic, physical, spiritual) that has pummeled them for the last several decades. The lack of social cohesion is most apparent in regard to people's perceptions of corruption, especially in centralized arenas such as the tribunal and the gendarmerie. It is not an exaggeration to say that every single response that touched on people's opinions of centralized arenas mentioned the corruption (he who can pay will win) and 'tribalism' (family ties trump right) that govern these sectors. Though it was beyond the scope of this study to assess the actual frequency of corrupt practices in these arenas, the data seems to indicate that perceptions of corruption outstrip the actual occurrence of unfair practices. This suggests extremely low levels of trust between Central Africans. There is next to no faith in the fairness of institutions, all of

which are seen as having a highly personalized character.

In villages, the lack of social cohesion is particularly apparent in the case of "strangers" (*étrangers*). Anyone who was not born in the village is referred to using the Sango term "*gagango*," or its equivalent in the local language. "Gagango" stems from the verb "to come" and means "person who comes from elsewhere". It encompasses people from a couple of villages away all the way through to people from hundreds of kilometers away. Agagango (plural) are not trusted in the same way that people from the same village might trust each other, and agagango are at a disadvantage when conflicts arise; they are often the first suspected of wrong-doing and any mediation or trial will slant against them.

The agagango find themselves in an isolated position, and so it is generally hard for them to fight back when they feel they have been victims of injustice. Minority groups (the study looked especially at the position of pygmies and Peulh herders) face the same kinds of problems as the agagango, but, since they generally have the support of the members of their group in the locality, may have more resources to fight back. Conflicts between herders and farmers, especially when cattle destroy crops, have turned violent on numerous occasions. Farmers assume that herders can 'buy' justice because their cows serve as reserves of cash; herders assume that farmers will always get their way, because they are of the same ethnic background and religion as the judges and mediators.

The field work carried out to support the SDV study on *Societal Dynamics and Fragility*, underlines the very weak cohesion. "In CAR people felt that communities were fragmented not so much by state policies, but by internal tensions that prevented them from seeing each other as trustworthy. The internal tensions stemmed from what people saw as a breakdown in social norms and networks that would coordinate social life. Many participants referred to a previous "golden age" in which age, status, family and authority were respected, and provided the communities with a sense of social order and predictability"[25]

> ### Case study: a farmer/herder conflict in Ouaka prefecture, from the perspective of the farmer
> Michel is a 49-year-old farmer; Ibrahim is a 40-year-old herder. Both are natives of the locality. Ibrahim was grazing his cattle some 5km from Michel's fields. One day Michel was tired and did not go to work his fields. Ibrahim's cattle came and destroyed his crops. Having seen what his cows had done, Ibrahim came to Michel to explain the problem. Unfortunately, they did not agree on the damages to be paid, and Michel rebuffed Ibrahim's efforts at peace-making. Michel went to the village chief and complained. The chief was not able to resolve the affair because Michel was demanding a huge sum of money, giving the reason that the cows had destroyed all he had. The chief had to write up a *soit transmis* for the tribunal. After the audience at the tribunal, Ibrahim was found guilty and asked to pay a fine of 750,000 CFA to Michel. According to Michel, Ibrahim went to see the judge and gave him 500,000 CFA and some cows and now the case has been blocked. Michel has not seen his money. Michel says that he no longer has confidence in the Central African justice system because it is a corrupt justice – the judges are in the pockets of the Mobororo (herders) and the Arabs. The biggest problem here is corruption, Michel says. "I have left the affair in the hands of God and God will render his own justice."

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[25] World Bank 2012.
"*Societal Dynamics and Fragility, Engaging Societies in Responding to Fragile Situations*" P37

b) Village chiefs: perhaps the most important justice providers in CAR

Given the near-total lack of confidence in centralized arenas, people most often turn to their village chiefs (or, in urban areas, their quarter chief) to resolve their disputes. Whereas the tribunal is slow, expensive, confusing, and often renders judgments that people do not appreciate (such as jail time), village chiefs provide justice that is rapid, less expensive, and results in judgments that are in keeping with their communities' values. They live among the complaining parties and so have an incentive to find solutions that will allow peace to return. They generally describe their mandate in exactly those terms: to work for peace.

Aggrieved parties pay a fee (known as the "*droit de table*") that varies from 500 to 3,000 CFA (USD 1 to 6) depending on the chief and the gravity of the crime to have their conflict heard. If the complainant cannot pay in cash, chiefs will often accept in kind contributions (e.g., foodstuffs), labor, or will allow the person to pay in installments. The hearings usually proceed with each side telling his/her story and then answering questions from the chief and/or his advisors. Rather than pronouncing a verdict unilaterally, the chief often asks the parties what they think a fair outcome would be. In announcing his reasoning, the judge will often refer to local norms and/or religious texts (primarily the Bible or the Koran). These decisions are often cemented with fines: wrong-doers must pay the wronged, or in the event of mutual fault, both parties must pay the chief. Payment calms tensions and the parties are able to move on and continue as neighbors.

All the chiefs interviewed for this study were men, though there are a few women chiefs. Chiefs generally undergo some kind of election (such as raising hands at an assembly) to legitimate their position, but there is an important hereditary aspect as well, with the role often passed down from father to son. Chiefs are usually supported by a group of up to five counselors, one of whom is often a woman (the "mama makunji" – makunji is the Sango term for chief). Data from the PDCAGV baseline survey showed that village chiefs average 50 years of age, a finding that was consonant with the responses from the qualitative research. The average village chief has held the position for ten years, and in 45% of cases the post was passed from father to son.

The important role played by the village chiefs is evident from the following hypothetical included in the PDCAGV survey. When asked to whom they would turn for help in the event their cell phone had been stolen, 61% of respondents named the village chief. The next-most-frequent response (10.9%) was "I will not ask for help", and the remaining 28% was split among nine different answers.

The village chiefs see themselves as the state's emissaries on the level of the community. That is, they both disseminate information for the central authorities and also carry out the work of administering on a local level. Even the chiefs of minority groups, such as the *ardos* (leaders of the Peulh) described themselves as government representatives charged with reconciling disputing members of their communities. The Ministry of Justice has all but ignored the role of the chiefs in justice provision. The ministry's ten-year plan makes no mention of the chiefs as part of the justice system. The chiefs remain a largely untapped resource. Some NGOs have carried out trainings with the chiefs, but these initiatives are currently quite limited.

The interview guides included questions intended to ascertain mechanisms for accountability in the event that the community felt that chiefs (or other justice providers) were abusing their authority. Unfortunately, this line of questioning did not yield much information. Anecdotally, the team found that in cases where

chiefs became known for egregious miscarriages of justice their communities shunned them and sought out other forums for resolving their disputes. The team learned that it is not unheard of for chiefs to be replaced, though specific cases were not described in any of the interview guides. The issue of chiefly accountability is one that should be followed up on in subsequent research and projects.

c) Anganga plays a broad role in resolving conflicts

Anganga (healers) play important roles in many Central African communities. One healer interviewed said that he had treated some nine hundred people over the course of the past year (357 in the last three months alone!). In recognition of this man's services, the local tribunal gave him an "*attestation d'autorisation*," making him in effect an expert to the court. People consult healers in the case of illness or suspected wrong-doing, whether sorcery or otherwise. In interviews, healers described their functions using the language of research and investigation: rather than adjudicating disputes, their role is to determine fault and prescribe a course of treatment, usually involving different kinds of plants. In this way, they often intervene in a wide range of disputes, including everything from violent crime (if the perpetrator manages to escape detection, the healer will carry out procedures to determine who has committed the crime) to theft to sorcery to conjugal disputes. In witchcraft cases, the conflict is usually averted if the witch accepts to pay for the victim's treatment. In other cases, other kinds of restitution might be prescribed. If the accused refuses these terms, other arenas (the chief, the gendarmerie, the tribunal) might be called.

The healers use a range of procedures in carrying out their investigations. Spirits guide them toward the proper plants and other items they use for their work. One common approach involves placing a plant-based tincture on the eyes of the person harmed. The tincture helps him or her see the person who is causing the harm. Another approach is to ask the suspect to drink a thick liquid made from boiled, powdered plants (a substance known as "*gonda*" in Sango). Refusal to imbibe often results in assumption of guilt; in one such case the researchers encountered, the accused preferred to admit guilt rather than drink the liquid. Yet another practice involves making cuts in a person and then placing powdered plants in the wounds.

> ### Case study: A healer explains how he solved a witchcraft case
> Anne had suffered from a long illness. Michel, a successful farmer in her village, was suspected of having poisoned her. Anne's parents brought her to me and asked me to conduct some research. I found that Michel was at the origin of the illness and asked that he be brought to me. When he arrived I asked everyone else to leave. After a long discussion, Michel recognized the facts and agreed to pay for Anne's treatment. He asked me to wait until nightfall to do the work. He spent the night together with Anne. Two days later, she was back in good health.

> ### Case study: A suspected witch is brought to the tribunal
> Marie is Yvonne's mother. They live together in the same house. One day Yvonne became paralyzed and didn't know what to do. She was brought to a healer, who gave her a powder and told her to boil it with water to make a drink. The person who refused to drink would be the source of Yvonne's illness. Marie refused to drink the potion. People beat her and brought her to the group chief. I asked her whether she was guilty as charged, and she said no. I went into the house and brought the *gonda* and asked her to drink but she refused again. After a while she admitted that she was the cause of Yvonne's problems. She paid for Yvonne's treatment, and Yvonne recovered. The group chief brought Marie to the tribunal, which has the competency to judge her.

d) What is just justice?

Part of people's hesitancy to take their disputes to the tribunal had to do with the fact that they do not see the tribunal as dispensing justice that is just. Beyond the problems of corruption and tribalism discussed above, tribunal officials, following Central African law, often stipulate jail time as punishment for wrong-doing. Quite simply, the research indicates that jail is not justice from the perspective of Central Africans.[26] A dispute is not resolved until the parties have been reconciled, whether as a result of counsel or the payment of a fine.

Respondents appreciated that the locally-available justice arenas, such as religious leaders, village chiefs and association presidents, all include counseling as part of their mediation/judgment. They explain their reasoning in locally-relevant terms, and they emphasize finding ways for people to resume peaceable relations. In centralized arenas, in contrast, the emphasis on assigning blame and finding one side right and the other wrong strikes people as unfair given that almost all see justice in these arenas as something that can be purchased, and/or that will inevitably benefit the wealthy and educated over the poor.

e) The problem of coercion

In local arenas, coercion must generally be negotiated.[27] Religious leaders and village chiefs generally do not have resources to force people to abide by their verdicts. Instead they must cultivate reputations as wise and fair. This can have both positive and negative consequences: in some cases, it encourages them to be more accountable, but in other cases, it means that they must always shape their judgments to please powerful members of the community, who would pull their support in the event of an insufficiently kowtowed chief. Convincing youth to respect an older chief can also be a challenge: youth who have studied or worked in the city and return to the village sometimes decline to abide by the dictates of the often-illiterate chiefs.

In centralized arenas, coercion is also a problem, for it consists in large measure of violent force. People call on the gendarmerie to resolve disputes when they want "muscle" to back up their quest to force someone to recognize the crime they think he has committed. According to the law, the gendarmerie only carries out the investigative functions of the tribunal. However, rather than transferring disputes that are brought to them to the tribunal, gendarmes often adjudicate themselves, a service for which they receive payment. Many respondents complained that the law enforcement officials (police, gendarmes, soldiers) used violence capriciously, and that they were unaccountable. Like the tribunal officials, the police and gendarmes are seen as people who take payment in order to enforce the payer's justice.

f) Youth trapped in an in-between state

Young people face a host of issues specific to their social position, and these issues affect both the kinds of disputes they are frequently involved in and the possibilities they have for resolving them. (The category of youth is a gendered one – whereas women go from girls to mothers and thus have a short adolescence, men face a prolonged phase as youth, which can swallow decades between boyhood and status as heads of households/elders.) In the past, age divisions were of great importance in structuring relationships. With the rise of Western education and the arrival of missionaries, these institutions came under new strains (Giles-Vernick 1996). Initiation ceremonies – previously a main way through which

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[26] The fact that prisons receive no funding and are part of an extremely slow and unaccountable tribunal system (often, people will languish in prison awaiting trial for longer than their sentence would have been had they been judged) do not improve people's opinion of the jails.

[27] In some areas, village chiefs have self-defense groups or other local forces to back them up, but most do not.

binding social roles were maintained – have lost some of their force now, as it has become possible to pay rather than participate. In short, the strict respect young people were expected to show their elders has broken down. At the same time, it has become harder for youth to transition into stable roles as adults because the cost of marriage has become too high for most to afford. This has caused the number of children born out of wedlock to rise. Families often dispute the terms of support requested for the children born of these informal unions and the mothers who most often raise them. Respondents cited the in-between state of so many young men (it was common to see a young man described as "single, father of x children" on interview guides) as a reason for high rates of fist fights, theft, women forced to leave school to care for babies, and neglected children. Moreover, these are issues that seemed especially bereft of accepted norms and correlated mechanisms of coercion. Youth were seen as prone to intractability; if a decision turned against them, they might leave or otherwise ignore it.

Chiefs complained that those youth who have traveled for education in a city and returned, jobless, do not respect their authority, seeing the chiefs as backward and, perhaps more damningly, poor. (Some respondents lamented that the rich are turned to for advice, even though they may in fact not have any wisdom or conflict-resolution prowess.) Some youth have their own arenas for processing disputes. This is especially the case of motorcycle taxi drivers or others involved in a work cooperative. For instance, one moto taxi group president explained that dissatisfied customers will come to him to resolve disputes with drivers, such as alleged theft. These group presidents can also intervene in their members' domestic disputes. These groups could be important interlocutors in efforts to reach out to youth.

> ### Case study: A moto taxi association resolves a domestic dispute
> Jean and Sophie have been living together for some time and have three kids. Jean is a taxi driver, and though he had been with Sophie for a long time he went and found another women. Jean has neglected his responsibilities in that he no longer sleeps at the house and does not take care of Sophie's children. Sophie was forced to come and complain here at the taxi drivers' office. The office convoked Jean and Sophie. After some debate, Jean was deemed culpable because he had fled his responsibilities and thus he should rejoin Sophie and the kids. Eventually he understood and he reconciled with Sophie.

g) Differences between urban and rural settings

Urban and rural settings present both striking similarities and striking contrasts. In both types of living situation, people turn primarily to local chiefs (of the quarter or the village) to resolve their disputes. Domestic disputes troubled respondents across the country, as did witchcraft, theft, and a range of other complaints. Respondents in urban settings – and especially Bangui – were more likely to cite land tenure issues as a cause of conflict. In terms of dispute resolution, people in urban settings were more likely to turn to state authorities than their rural counterparts. Partly this can be explained by their closer proximity to the tribunals and gendarmerie offices, and partly it owes to their need to locate authorities who can compel all the various ethnic and kin groups that might coexist in more densely-populated areas. At the same time, both urban and rural residents see these state authorities as biased in favor of he who can pay the most, and/or the officials' own family members.

Given that the research findings were not representative, it is difficult to state with a high degree of confidence the differential regional importance of particular disputes or of particular forums for resolving those disputes. The tribunals in certain prefectural capitals (e.g., Bambari, Mbaiki) did emerge as more functional than those elsewhere (e.g., Paoua). (The fact that the Paoua area is home to insecurity and has been controlled by APRD fighters for more than five years doubtless contributes to this state of affairs.)

The particular challenges of minority groups were also region-specific, with, for instance, Lobaye home to the greatest concentration of Pygmies and Ouaka home to many herders. The research findings show that certain broad trends are applicable across regions – for instance, the frayed nature of social cohesion and the challenges of coercion and witchcraft – but that their specific manifestations are highly localized. Any efforts to intervene will thus have to start from thorough understanding of the particular context, whether a village or a town.

The types of disputes

Domestic disputes

Many respondents complained that household-level problems plague their communities, and the case narratives collected bore out this impression. This is unsurprising given that several generations of an extended family often live in the same compound, and they often must make do under straightened economic circumstances. Disputes between husbands and wives arose frequently: husbands beating wives, disagreements among co-wives, failure to support children or wives financially, affairs (by both sexes). But household problems often draw in many different family members. Religious leaders and village/quarter chiefs are the most commonly-called upon authorities in cases of domestic disputes.

Case study: Resolving marital disputes

The narrative of a group chief (*chef de groupement*):

My own brother had problems with his wife. The problem had to do with sexual relations. The wife had not satisfied her husband in a year and the husband had started to beat his wife. As we are neighbors, I intervened to settle the problem. The wife said that her husband had been bothering her a lot, and therefore she was denying him sex. I counseled the woman to cease depriving her husband needlessly and the man to stop beating his wife, and afterward peace returned between them.

Case study: Household jealousies and "sorcery"

Simon (a quarter chief) and his first wife were married in 1971 and divorced in 1991. Danie, one of his grown daughters was having trouble with her husband, so she and her mother, who had been living with her, returned to Simon's concession, where there are two houses – Simon's, and his oldest son's. The two women stayed in the brother's home. Simon was away at his fields. When he returned, he was angry to find Danie and his ex-wife in his homestead, for he worried that there would be problems between his ex and his current wife. He told Danie and his ex to leave. Danie told him they were looking for a house to rent but hadn't found one yet. One of Simon's daughters by his second wife accused Danie and her mother of practicing witchcraft, because her mother had recently fallen ill. Simon recalled that when he had divorced his ex she had said that he would be cursed with impotence. On these grounds Simon went to the gendarmerie to get their help to evict the two "witches" from his property. The gendarmerie found insufficient cause to condemn the women (no proof of Simon's impotence) and told Simon to convoke a household meeting with the aim of making peace. Simon, his ex and Danie each paid 1000 CFA to the gendarmerie to hear the case.

Theft

Theft is also widespread, both in people's perceptions and in the case narratives collected. The PDCAGV survey revealed that 32% of respondents had been victims of theft in the past six months alone. A thief caught in *flagrant délit* will generally receive his punishment at the hands of the crowd that uncovers him in the act. Otherwise, the matter will generally be treated by the village/quarter chief or the gendarmerie.

Case study: Theft of crops in Lobaye

Pygmies have a reputation for stealing farmers' crops. The following dispute, narrated by a farmer, illustrates one case that was successfully resolved:

At harvest time, there were three Aka (pygmies) who, under the cover of rain, went to my agricultural group's fields to steal our peanuts. One of the members of our group caught them in the fields and alerted us others, and we convoked the three Aka. As the president of our group, I counseled them not to steal anymore, and this caused a conflict between me and the members of my group, who wanted me to beat and torture the Aka. For a second time, these Aka went and stole our peanuts and when I found out I told them they must pay a fine of 3,000 CFA each. They went to find the money. One day the members of my group came to threaten me because I had allowed the Aka to leave. To resolve the problem, I asked the Aka to work the fields and they did so, and the conflict passed and peace returned among us.

Sorcery

Respondents uniformly named sorcery as among their communities' chief concerns, a finding the case narratives back up. Sorcery – and beliefs in occult forces more broadly – are incredibly slippery problems to address, because their forms are always changing and adapting and so cannot simply be reasoned away. Respondents generally agreed both that real witchcraft cases have increased in recent years, and that false accusations of witchcraft have also increased. One exception to this perception is Ouham-Pende, where the APRD has taken over witchcraft adjudication; though opinions are split as to whether the ARPD's repressive tactics are a good approach, people generally perceive that these policies have had a deterrent effect.[28]

The kinds of witchcraft understood to be at work in communities are highly localized. For instance, most major cases of witchcraft in the Kaga Bandoro area involve metamorphosis (i.e., a witch transforms a person into livestock in order to profit from selling or killing them), whereas many cases around Paoua involve ngbin (a witch sucks the labor power from others while they sleep; the witch's fields prosper as a result, and the ensorcelled find themselves weak and sickly).

The practice of witchcraft is forbidden by the Central African penal code, and the tribunals hear many cases related to sorcery. However, people often turn first to local leaders to help them resolve these problems. Often, people consult an nganga for the investigation phase and then call on the village chief to help convince the parties to accept the nganga's findings. In other cases, people bring their witchcraft

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[28] The government has effectively ceded control of large swathes of territory to the ARPD and the UFDR (which operates in the Northeast, an area not covered by this study because of security and access concerns). In the case of the APRD, adjudicating disputes has become one of their main money-making tactics, so it is unlikely that they will easily relinquish this role. It was beyond the scope of this study to carry out a full accounting for the ARPD's system of justice or the principles on which they found their legal reasoning. The cases collected suggest that they can be both harsh and extortionate.

accusations directly to the chief, who undertakes the necessary research and investigation to ascertain the validity of the claims.

Case study: A false accusation of witchcraft in Lobaye

Mireille, a woman who lives with her partner and three children, is a *wali gara* (market saleswoman). Yolande, who lives with her partner and four kids, also works at the market selling fried cakes. Here is Mireille's account of the dispute:

Yolande sent a girl at 17:00 to buy two liters of oil so she could make her cakes. The next morning, she sent back one liter of the oil and said that it was not of good quality and that I should reimburse her for one liter. We started arguing. I told her that her sorcery would do nothing to hurt me, and we continued to insult each other. That afternoon, I was boiling water for manioc and it spilled and burned my foot. Remembering our quarrel, the idea came to me that Yolande must have been at the origin of this accident. So I went and lodged a complaint with the chief. The chief decided that I had falsely accused Yolande, and he asked me to pay a fee of 6,000 CFA. Now Yolande and I get along fine – we say hello to each other in the street. Afterward, I realized that I had acted too quickly. This trial cost me a lot of money. Next time, before taking action, I will consult my husband.

Case study: APRD resolution of a witchcraft case in Ouham-Pende

This case occurred in 2008, but it had a traumatizing effect that remains with people in the area. The following account is from an eye witness.

Members of the APRD had fought a battle with highway bandits in which there were some deaths and a number of wounded. One of the APRD fighters hurt his leg. That evening, he saw a woman returning from a nighttime walk [evidence of sorcery, for no one walks at night besides those engaging in occult practices] and arrested her for sorcery [the idea was that she had hindered their effective fighting that day]. Under torture, this woman admitted that she was a witch and named two other women as her accomplices. The APRD fighters told the women to dig their own graves. They told people to come and watch. Then they shot the women and buried them in the tombs they themselves had dug. The law of the APRD cannot be contradicted.

Rape

Many respondents cited rape as a major problem in their communities. All the cases of rape recorded in this study involved teenage girls (generally thirteen to sixteen years old).[29] In some cases, the sexual relations might have been consensual but resulted in a pregnancy that the young man's family was not willing to pay for, leading the young woman's family to label the incident rape and seek damages; in other cases, the young women were taken by force. In all cases, the girls' families sought financial recompense. In the case of non-consensual sexual relations, the families usually sought a fine of 50,000 CFA (about USD 100); in the consensual cases, they wanted the man to care for the young mother and child.

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[29] This is not to say that rape does not occur to younger girls or older women, but rather that the form of rape that occurs most frequently, which people see as tearing the social fabric (and that they feel comfortable discussing with a researcher), is that involving young women in the brief window between puberty and marriage.

Case study: Rape

The following case from Lobaye prefecture illustrates the non-consensual form of rape:

One day in mid-2010 a fifteen-year-old woman was walking through the forest when she was accosted by three men from the village. The men were all inebriated from a long afternoon of local beer, and they took turns raping the young woman before going their separate ways. She ran home crying and told her parents what had happened. They complained to the village chief, who asked the girl if she knew the men who had done it. She said yes. The village chief convoked the men and their families and asked them why they had done it. They plead drunkenness but admitted to having done it. The chief asked the young woman's parents what they sought in damages. They asked for 100,000 F. The men said they had no money. The girl's family rose up in protest, and the village risked descending into violence. Hoping to find a way to resolve the problem and calm tensions, the chief went to the mayor. With back-up from the police, the rapists were made to pay 50,000 to the young woman's family.

Case study: 'consensual rape'

This case from Ouham-Pende, narrated by an uncle of the young woman, illustrates the 'neglectful' form of rape:

Our thirteen-year-old niece Marie was in the 5th grade at the Paoua secondary school, when she was raped and became pregnant. The rapist was a boy named Paul, a teenager who doesn't work. For months, Paul had been making sweet eyes at Marie when she left school. When we found out, we asked him to stop, but he continued. We even convoked his family (our neighbors, with whom we had always had good relations) to come and discuss the matter with the chief, but he kept it up and Marie became pregnant, and she has not been to school this year. We went back to the chief, and he told us that our two families should work out the matter amicably. Marie had wanted to continue her studies, but she was sent by force to live with Paul because the chief reasoned that expectant parents should live together so that the mother-to-be will not be too anxious and the baby will develop well. But after she gave birth, our niece was not treated well. Paul abandoned her at the house. The chief would not intervene, so we went to the gendarmerie and then the tribunal in Paoua. But at the tribunal the prosecutor told us that this is a "small problem," a family matter that should be resolved by the two families. Our relations with Paul's family became cold because Paul said that he would take care of the child only when the child became bigger. And who will take care of our niece? She has returned home to our family. After the hearing at the tribunal, Paul cursed our family. After going to the chief of the quarter, the gendarmerie, and finally the tribunal, still we have no justice.

Economic disputes

Another common kind of dispute is the range of conflicts related to economic transactions, especially fraud, abuse of confidence and debt. Transactions (loans, sales, etc.) are generally entered into orally, and the high level of informality seems to make disagreements in the ensuing months and years all the more common. Abuse of confidence occurred the most frequently; many of the cases encountered during the field research involved people borrowing items, such as bicycles, and failing to return them. These cases

were usually resolved by the village chief or the gendarmerie, with restitution of the item and/or payment of a fine being common outcomes.

Violent crime

According to respondents, fist fights are the most common kind of violent crime. Threatening people (whether with a gun or a knife) occurs as well, but escalation beyond the level of threat appears to be relatively rare. Fist fighting might be dealt with by local leaders, whether association presidents or village chiefs, but graver injuries are generally taken to centralized arenas such as the gendarmerie or the tribunal. There appears to be broad recognition that these cases exceed the local leaders' mandates.

Case study: The APRD deals with a murder

It was the weekly market in a village near Paoua in early February 2011. The area was full of people buying and selling. Daniel and Fidel were drinking locally-made alcohol together and had been imbibing for some hours. They started to discuss the recent elections [the presidential elections on 23 January] and began arguing. Toward 19:30 Fidel suddenly took out his knife that he had next to him and stabbed Daniel, killing him on the spot. Everyone in the area fled into the bush. Immediately thereafter some APRD fighters came to arrest Fidel and his relatives and take them to their base. The APRD men beat and whipped Fidel, and he died of his injuries. They also demanded that Fidel's parents pay a 50,000 CFA fine, which his father did.

Land tenure

Disputes over land tenure are a new phenomenon in CAR. In a country with such a low population density, space was not scarce. Land was not sold but rather given away by the village chief. This is beginning to change, especially in Bangui, where land prices have risen dramatically as the city has grown. The profit to be had in real estate combined with the generalized insecurity and anxiety people feel about strangers coming to settle in their midst have combined to make land rights a fraught issue. With an entire informal system for demarcating plots, disputes often arise between neighbors about where the precise location of the boundaries. The details of oral agreements can be "forgotten" or modified when it suits. Plots might be sold multiple times, or under false pretenses. If a person leaves her home for an extended period, she might return to find that the chief has sold it to someone else. Given the degree to which the current system operates in an ad hoc nature, there is a need to develop a coherent set of guidelines for chiefs engaged in the land market and mediating land-related disputes.

Case study: A land dispute in Ouham-Pende, August 2010

Lucien and Didier live in the same village, but they are members of different ethnic groups. Lucien is Tali and Didier is Kaba. Didier started arguing with Lucien, saying that he is not a native of the village so what is he doing here taking our ancestors' land? Lucien married a Kaba woman and has been living in the village for five years, but still Didier sees him as an outsider. They are members of the same church, so they went to the pastor with their argument. The pastor advised them to forget their dispute and referred them to the Bible. "We are all God's children," he preached. Lucien and Didier reconciled and they live together peaceably.

Impunity for state forces

Part of the reason people have so little confidence in the centralized institutions is the lack of accountability when members of these organizations commit crimes. In the event of a dispute, they can get shifted to a new position in another town and avoid paying the consequences for what they have done. The politico-military conflicts in CAR over the past six years resulted in thousands of abuses of civilians,[30] for which there has been no justice.[31] But the research revealed that not only in conflict-affected areas but also in regions usually understood to be peaceful residents feel gendarmes, soldiers and functionaries' impunity keenly. For instance, in Lobaye many focus groups referred repeatedly to the traumas they suffered when their opposition to the arrival of a logging company was met with armed force. A focus group of older men recounted that "In 2009 our village was really shaken by the arrival of the IFB Company in Batalimo. We make our living from the forest and now this company wants to destroy the trees that give the caterpillars [that we eat and sell]. The population rose up against this company and went to its personnel base and seized some of their equipment. The director sent the gendarmerie down to our village, and they shot all over and the population fled and hid in the forest. ...The problem is that IFB wants to become rich but doesn't look at the secondary effects of doing so, and this has compromised our support for our authorities because they allowed this company to come and destroy the resources that allowed us to live well in our village."

> ### *Case study***: Impunity for a soldier in Ouham-Pende**
> Vitaline bought a motorcycle for 400,000 F (about USD 800). She gave it to her brother, who was going to take it back to his village. As he left town he arrived at the barrier[32] that is 2km from Paoua, which was staffed by four soldiers. The soldiers demanded that he pay 500 CFA (USD 1) in order to pass. He said he had no money, but the soldiers kept insisting. One of the soldiers took the motorcycle and en route back to his base he got in an accident and damaged the bike. Vitaline complained to the gendarmerie. She wanted a new motorcycle. The soldier admitted that he had damaged the vehicle, and the head of the gendarmerie's verdict was that he should pay for the repairs. But one week later the soldier got rotated out to Bangui and never paid for the repairs. Vitaline believes that the head of the gendarmerie knew that the soldier would be leaving and that his verdict was intended as no more than a way to placate her.

Access to justice: Where are the blockages?

The research showed that access to justice is compromised along three main social axes: economic status, gender, and minority status.

Economic and social status:

In people's perceptions, those with money are always able to obtain favorable verdicts. In some cases, this might be because they are able to pay off the adjudicators, but it also might simply be because their higher level of literacy makes them better able to navigate various kinds of legal processes. Functionaries, law enforcement officials and other important people benefit from near-total impunity (for instance, they are not hassled on road barriers the way that other people are). This contributes to the perception that money

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[30] See, for instance, HRW (2007).

[31] The question of how sweeping the amnesty for crimes committed during the period of hostilities should be was one of the main preoccupations of peace negotiations and the ensuing national political dialogue (ICG 2008). In the end, the amnesty came to protect a wide spread of soldiers and fighters.

[32] Roadblocks – both official and unofficial – dot both government and rebel-controlled territory, and they are frequently sites of extortion.

buys justice. Unfavorable outcomes for poor people are often interpreted in this light, and, indeed, the poor often came out the losers in the cases tracked by this research. Witchcraft reveals both sides of the problem of economic status – the particular targeting of the poor and the mistrust of the wealthy: often, poor, elderly or otherwise infirm people are accused of witchcraft; but at the same time, relatively wealthy people are sometimes brought down by charges that their success owes to witchcraft.

Gender

The vast majority of the authorities who help resolve disputes in CAR are men. Women's opinions or problems are not treated with the same respect that those of men are. In Ouham-Pende, the gender inequity is particularly pronounced. However, the research indicated that these attitudes are in the process of changing.

In many respects, Central Africans see men and women as occupying distinct social roles. The work done around the house and the work done in the fields are both divided along gender lines, for instance. Gender further enters into the kinds of knowledge that men and women are seen as capable of possessing (Giles-Vernick 1996). From a young age, women are taught to obey their fathers and then their husbands. The stratification of society along gendered lines has serious implications in terms of access to justice. Quite simply, male perspectives are often counted as more valuable or reliable during dispute resolution processes. Women having trouble with their husbands may be told to make peace (that is, to ignore) their partners' problematic behaviors. As one woman explained during a focus group, "We married women are marginalized. When our husbands mistreat us at the house and we bring the matter to the chief to resolve, the chief will always take the husband's side because they go to work together, where they drink palm wine together. When the chief says that the husband is right it gets even worse in the household. The man and woman don't get along, and that could lead to a full divorce. Then the man will go out and find another wife. And he will continue in this manner because he wears the hat." Women's frustrations about this state of affairs notwithstanding, in the PDCAGV survey, 29% of both men and women agreed that it is legitimate for a man to beat his wife if she is not "behaving well". Women too are party to some of the practices that perpetuate the ways they are subservient to men.

However, there are signs that gender relations are changing. In one focus group with adult men in Lobaye a participant explained, "The man will always win against the woman because we men have always thought that women are the weaker sex and should not win the argument." Though the respondent leaves some ambiguity as to his view of the fairness of this state of affairs, he at least recognizes that women face discrimination in dispute resolution processes. The study did not set out to assess the impact of programs like those run by the AFJC, but the findings indicate that such efforts may be starting to change attitudes, and, with time, norms. Further, there appears to be social support for this work. In the PDCAGV survey, 87% of respondents agreed that "women can be good politicians and need to be supported to take political posts". This recognition indicates an opening that might facilitate changing not just attitudes but also practice.

Minorities/foreigners

As Central African society has fractured in the face of generalized insecurity, the status of those markedly 'different' from the majority in any community have become targets of increasing levels of mistrust. Whereas thirty years ago most people in CAR did not know to what ethnic group they belonged, ethnicity has now become the cause of discrimination and even violence. Not just foreigners, but even people from nearby villages are treated as strangers when it comes to resolving disputes. Religious officials are sometimes able to bridge this gap, but their ability to force people to heed their counsel is limited. The research showed that minorities often face discrimination, but also that they are not passive victims.

Disputes can easily escalate. More research is needed to determine the contours of these fault lines and what measures might help people work together.

Both the field research and the PDCAGV survey drew out the precarious situation of the Pygmies. The latter survey found that Pygmies frequently are not allowed into villages that are the intended beneficiaries of development projects. The field research showed further the prejudices at the root of this mistrust, and especially the issue of theft, with Pygmies often assumed to rob farmers of their crops. Herders, another of the main minority groups in CAR, also face challenges, but their situation is different owing to their often enviable economic position vis-à-vis their agriculturalist neighbors. This gives them a certain clout that people like Pygmies generally lack. It does not make herders more trusted, however, and seems even to exacerbate the tensions between them and other groups, who assume they can pay to win any dispute.

Conclusion

This research project permitted a mapping not only of the various arenas to which Central Africans turn to resolve their disputes but also of the kinds of conflicts that arise most often on the community level. The findings indicate a troubling number of fault lines, high levels of mistrust and low levels of social cohesion. Fostering confidence in institutions – rather than in particular people and the interests they are assumed to represent – will be a major challenge on the road to greater cohesiveness. At the same time, the research revealed the impressive capacity of community-level leaders to mediate and resolve the disputes that people bring to them. They carry out a massive amount of work for which they receive little credit outside their villages or towns. The fact that people do not often turn to the state tribunal to resolve their disputes does not mean that they live in anarchy; there are informal networks and systems in place for resolving conflicts, and they could form the foundation for efforts to improve protection and respect for human rights. The important role that village chief play in this area is clear from the findings of the field work. However they work with very little guidance and support. Also during the restitution seminar for the field work, mechanisms such as the house of justice that are in most cases managed by NGOs, under the overall supervision of the Ministry of justice seem to be quite effective in facilitating the link between the population and formal justice systems as well as playing a role of mediator for some conflict at the level of communities.

A number of areas have emerged as particularly troubling and will require both more research and practical initiatives. Witchcraft, land tenure, relations in mixed communities (places with multiple ethnic groups present), the workings of justice provided by armed groups, and conjugal disputes seem especially pressing as topics for continuing engagement.

Chapter 3: The African Experience: National Approaches to Customary Law

This research project brought out many of the specificities of the Central African context when it comes to the practices and institutions through which disputes are resolved. In particular, the research showed how, partly as a result of its violent history over the past several centuries, the realm of the customary is ill-defined in CAR. That is, rather than drawing on a more-or-less distinct body of 'customary' norms (even if those norms are recognized as changing), in CAR people draw on repertoires that are ad hoc and situational, and that make use of religious tenets and other community values without being formalized into rules that can be summarized in order to generalize about practices. To a certain extent, this owes to the particularly un-institutionalized colonial experience in CAR. Whereas elsewhere colonial authorities

enshrined the customary as the appropriate mode of justice for 'natives' (Mamdani 1996), in CAR the French never had sufficient funds or interest in administration to launch such a system in a comprehensive way.

In order to gain perspective on the specificities of the CAR context it helps to consider experiences elsewhere on the continent, in terms of both the constraints faced and the opportunities taken. This exercise, though also highlighting the CAR's many unique challenges, might offer some ideas for how to improve access to justice in the country.

The history of sub-Saharan Africa in the post-independence era has been defined by an ongoing negotiation of what it means to be a modern African state. In this process, global ideas of modernity marked by economic, political and legal liberalization come face to face with internal pressures to maintain local identity and traditions. An important illustration of this concerns the pursuit of effective and legitimate systems of justice. The vast majority of citizens of sub-Saharan Africa still choose to pursue the resolution of their grievances through forums of justice that are not solely derived from state authority, be it through religious courts, customary authorities, socio-spiritual leaders, or other local forms of authority.(Chirayath et al 2005; Scharf 2003).[33] Throughout the continent, the ongoing effort to define and clarify the state's relationship to these authorities and their position within emerging state systems of justice confront similar challenges: the legacies of colonial structures, the difficulty of reconciling local and national (the latter often informed by international) paradigms of justice, and coping with fast-changing social relations that outpace institutional capacities.   While there is little by way of wholly successful 'best-practice', there is much to learn from the experiences of other countries.

This chapter highlights a small sample of efforts to regulate and harmonize customary law and forums of dispute resolution with national justice institutions that have been adopted by post-independence governments in sub-Saharan Africa. The chapter examines the institutional and statutory forms these approaches to customary law have taken. Importantly, it moves beyond the tendency to look at these issues from a purely legal perspective (de jure) and seeks to examine the impact these approaches have had on citizens' actual pursuit of justice (de facto).

Indeed a common theme arising from these comparative examples is that purely legal approaches to regulate customary law and improve access to justice are insufficient. Moreover, such approaches may serve to advance laws and policies that are divorced from the social realities and limitations that citizens must confront, sometimes with the inadvertent consequences of constraining the functioning mechanisms and innovations through which people have successfully sought justice, failing to eradicate many of the abhorrent practices that progressive laws were meant to combat, and even diminishing the legitimacy of the state from the perspective of much of the citizenry. In essence, attempts at social engineering through de jure legislative and legal mandates have proven to be insufficient, ineffective, and/or unenforceable.

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[33] There is an ongoing debate over the proper terminology for such systems. Common terms include traditional dispute resolution, customary justice or customary law, community-based dispute resolution, popular justice, informal justice, and non-state justice. Terms like customary and traditional often give people a sense of antiquated, historic vestiges which is belied by the very dynamic nature of the belief systems. Likewise community-based may give a false sense of the geographic isolation of a practice, or the different means through which legitimacy is derived. Non-state, as will be seen, tends to oversimplify the complex relationships that may exist in many countries between formal government structures and customary authorities. Informal tends to delegitimize and underestimate the internal predictability and structures of the systems as well. Due to the fact that 'customary' tends to be the preferred term in popular legal parlance for such actors and beliefs, it, along with traditional, will be the term used herein.

This chapter therefore argues that effective approaches to closing the gap between customary and state systems and to improving access to effective and legitimate mechanisms for managing disputes and addressing injustice must be carefully calibrated to local realities. Legal regulation must be informed by citizens' expectations and desires for justice and appropriately sequenced in relation to state capacity. Approaches should focus on functional means of addressing real and specific problems, rather than on developing ideal legal forms on paper. Finally, in contexts of low state capacity and reach, analyzing and encouraging local innovation and intermediary functions (such as community paralegals) can be more effective than hard and fast national regulation.

Why Customary Laws, Practices and History Matter in Africa?

Customary law as it is used herein refers to the general principles and normative values that guide processes of dispute resolution within particular communities or identity groups that typically predate state formation, or are independent of state legitimacy. These values are dynamic, constantly negotiated in and through the actual process of dispute resolution. Often these laws are referred to as living law, as they embody the living practices of justice that are vested with a moral authority by the community.(Bennett 1995) Through dialogic encounters between justice providers, disputing parties, and the broader community, customary laws are given their form and function. Within the relevant communities there is a collective recognition of what and who constitutes a legitimate source of decision making and what does not.

For generations, different ethnic groups, tribal affiliates, kin networks and other forms of social organization in Africa have relied upon customary values and processes to provide mechanisms for dispute resolution and interpersonal and inter-communal adjudication. They are an integral part of almost every community in sub-Saharan Africa, having adapted over time in response to the changing internal and external forces that have acted upon them. In many, if not all sub-Saharan African countries (even the most developed), customary law remains the most viable and preferred option for redress. (Chirayath et al 2005) This is particularly true in fragile and conflict-affected states in which government's have often lacked the capacity or legitimacy to act as guarantor of citizens' rights, and may be perceived to be complicit in high levels of criminality, corruption and violence that affect the citizenry. Frequently, despite increased interest in developing effective, modern legal systems, there remains a lack of capacity in terms of qualified legal personnel, equipment, and other resources needed for a functioning justice system (as defined by idealized international standards).

In addition to a large *capacity gap*, there is also a deep lack of *accessibility,* broadly defined. Access is often hindered by linguistic, financial, literacy and geographic barriers. Both the real and opportunity costs of pursuing justice through formal systems may be prohibitively expensive for communities with limited resources and financial security. Similarly, large subsets of the population with limited literacy skills and educational attainment can't be expected to have a full understanding of their legal rights, and the concomitant expectations of the fulfillment of those rights that come through legal awareness.

In some instances, states may struggle with *legitimacy* amongst particular subsets of the population. Whether based in reality, or misunderstandings of formal legal processes, the formal system in many African countries may often be perceived to be extremely corrupt by the citizens it is meant to serve. And, for many of the reasons cited above, the state maintains a precarious control over the enforcement of judicial decisions. Despite many claims to value African customs in the creation of state government systems, formal legal systems continue to be disconnected from populations' expectations and demands of justice processes. Specifically, state's emphasis on individual rights, adversarial adjudication processes,

due process, empirical standards of evidence and retributive justice all may run counter to popular expectations of appropriate mechanisms for dispute resolution. In communities in which economic interdependence is essential to survival, the severing of social relationships that is seen to be complicit in formal justice processes are viewed to have lasting and deleterious effects on an individual's or community's economic capacity. It is impossible to offer a comprehensive overview of the history of customary law in Africa in a single chapter. Generally speaking, though, we may organize the history of the role of customary law into three distinct periods: *Pre-colonial, Colonial,* and *Post-Independence*.[34] Almost every nation has its own historical legacy of engagements and relationships between different state apparatuses and customary authorities. It is important to emphasize that each nation continues to be effected by its unique historical legacy – and, as a result, contemporary engagements with customary law must be understood in light of that past.

Customary law has never been a unitary system of practice throughout the entirety of sub-Saharan Africa. In the pre-colonial period, systems of customary law tended to fall along a spectrum of practices and beliefs that may have been transmitted both orally and in writing. In many contexts local leaders performed multiple governance functions within the community, while in others certain leaders had more specific adjudicatory roles. In some areas, such as parts of South Sudan, acephalous societies defined local governance structures, while in others like Rwanda there were highly hierarchical systems of political organization. Any discussion of the contemporary role and processes of customary dispute resolution, or those that have come to assume the mantle of 'traditional' or 'customary,' needs to be couched within the distinct historical context of each nation and identity group.

Generally speaking, the Colonial period gave rise to the creation of two classes of law throughout sub-Saharan Africa, Western law and Indigenous Law[35]. (Scharf 2003) The tendency was for Western Law to be given superiority over that of Indigenous Law. Foreign leadership and citizenry were not subject to customary authorities, and Western law was given legal supremacy over Indigenous law, having the capacity to overturn customary decisions.

Quarmyne (2011) writes, "Customary law was only accepted to a certain extent; the particular aspects of African customs that European culture found most appalling, ridiculous, or simply unhelpful were declared repugnant pursuant to repugnancy clauses, which were then incorporated into the customary law definition."(486) Repugnancy clauses came to epitomize colonial regimes' relationships with customary law and customary authorities. It both preserved and invented elements of culture and traditions that were useful to the colonial regimes, while simultaneously transforming them in subtle ways to help maintain order and the subjectivity of indigenous populations. While colonial administrations avowed respect for customary orders, they often altered them to fit within new models of national administration. There was a willingness for long periods to recognize the social value that customary processes played in the lives of the citizenry, but only so long as it did not directly challenge the ultimate authority of the state to rule over certain decisions and to act as the exclusive or ultimate executor of legal force within a geographic domain.

With the coming of independence and the dissolution of colonial power in the sub-continent, nations struggled, and continue to struggle, with the balance between creating systems of government founded upon the distinct values of the population with the need to meet international obligations and facilitate

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[34] These categories are not meant to denote universal approaches or relationships between customary authorities and the state in each period, which were of course complex historical processes.
[35] Different forms of Western Law were applied based upon the legal traditions of the particular Colonial government, with the domestic model of law applied to overseas administrative areas.

modern economic transactions. This has led to multiple approaches to defining contemporary states' relationships with customary law. Brynna Connolly (2005) lays out a useful typography to frame contemporary state approaches to customary law:

Abolition/Prohibition
- The state insists on a single, uniform system of justice and abolishes all other forms, including customary justice.

Incorporation
- The state creates a defined legal space for customary law within formal justice hierarchy, recognizing only aspects or laws that have been explicitly incorporated.

NonIncorporation/Recognition
- The State recognizes that systems of justice operate outside of the state's control and oversight, in parallel to state justice system, but have no formal or statutory relationship with such forums.

Quite often in the immediate post-independence period, the dominant political discussions at the time dictated the approach that each nation took to the **regulation, incorporation** or **abolition** of customary law within the state. As the following section will show, regardless of the approach taken, exclusive dependence upon de jure approaches to justice has often failed to adequately translate into de facto application and applicability. In reality, rather than following the legal mandates of the state, government and customary authorities continue to coordinate processes of resolution as a response to local demands that move beyond de jure protocols - adapting systems of justice at the local level to local justice needs and capacities.[36](Isser et al 2009) These processes are often driven by local political interests as well as numerous historical factors that continue to influence the manifestation of customary law today. (Chirayath et al 2005)

Many Models, Few Clear-Cut Successes – The (un)intended consequences of different regulations of customary law

Abolition/Prohibition:

Generally, de jure abolition of customary law or prohibition of traditional practices, has failed to wholly eradicate the customary beliefs or practices of the people. And, in some instances, such actions have directly contributed to popular discontent with the formal justice system and an increase in traditional practices that are at times in direct contradiction of state law.

Nations such as Cote d'Ivoire, Mali, Niger and Mozambique abolished or prohibited the practice or use of customary law in the immediate wake of independence. The states' pursuit of a single, uniform system of justice led to the abolition of all other justice forums, including customary law.(Mamdani 1996) In Cote d'Ivoire, despite being abolished by law nearly 50 years ago, communities continue to make use of non-state, traditional leadership to resolve local disputes. Mozambique's communist-inspired FRELIMO government came to power in the wake of Portuguese rule, and quickly pushed for the abolition of traditional justice practices that were seen as a hindrance to modernization and the formation of a non-ethnicized, national identity. (Lubkemann et al 2011; Bertelsen 2009) Mozambique offers an extreme example of what the potential, violent blowback from such abolition without adequate alternatives or

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[36] In Liberia, for example, despite judicial restrictions on the role that chiefs and traditional elders may play in the resolution of grievances, local magistrates, police and other state authorities continue to divert cases into customary forums. Local level, state actors recognize the value that such processes for resolution play for litigants despite the de jure provision laid out in the Hinterland Regulations.(Lubkemann, Isser & Banks 2011)

concern for popular opinion can be.[37] It has perhaps been the most open in its reassessment of the state's position vis-à-vis customary law in the wake of its civil war, redefining a space for customary authority and law within its new Constitution and subsequent legislation. (Lubkemann et al 2011) But, almost all countries that statutorily abolished customary law continue to have traditional justice practices operating within the country despite the legal sanctions of the state.

States have also gone so far as to legislate punitive action against those who continue to operate customary forums outside of state control, and who use particular practices that are deemed to be non-compliant with state-mandated judicial processes. The greatest example of this is in regards to state protection of due process, in which customary proceedings, such as Trials by Ordeal,[38] are determined to run counter to both national and international standards. In Liberia, the state's criminalization of Trial by Ordeal, has not only failed to curtail its practice throughout the country. But, has driven many citizens further and further away from the state – as they have accused state judicial forums of being complicit in rising criminality and insecurity through the punishment of customary actors who employ what they believe is their only means of local crime prevention. (Isser et al 2009)

In some instances, the state has also threatened to prosecute customary authorities who have attempted to adjudicate 'criminal' offenses. While actual prosecutions against customary actors seems to be severely limited in practice by states' lack of capacity. It highlights an important disconnect between state and popular definitions of justice. Most customary law in Africa lacks a distinction between civil and criminal offenses. Processes of dispute resolution in most customary forums tend to take a holistic approach to any given case and look beyond any single, acute act to find the root cause of an argument or grievous action. This may involve the incorporation of witnesses and testimony that do not appear relevant to the particular case upon first glance. But, through this process, customary actors work to address the core driver of conflict and rebuild the social relationship between the disputing parties, and perhaps their extended kin group. Thus the process for resolving cases that appear to be criminal in nature under state law and demand punitive action, may involve reconciliation, compensation and rituals of forgiveness within a customary forum. Customary systems tend to be more concerned with the collective interests of the community than that of the individual.

Incorporation:

Most African countries have attempted to define their relationship to customary law through some means of incorporation. These approaches essentially run along two lines. The first involves the state's regulation or engagement with customary law as a discrete set of substantive beliefs and principles of justice. The second approach involves the state's attempts to control or manage customary authorities and/or mechanisms for pursuing justice. In reality it is quite difficult to disaggregate principles of

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[37] The RENAMO rebel leadership exploited many people's dissatisfaction with the abolition of traditional justice practices to recruit fighters and form the basis of their own form of alternative governance to that of the communist FRELIMO.(Lubkemann et al 2011)

[38] Trials by Ordeal, broadly speaking, are prevalent throughout large areas of sub-Saharan Africa. Though their local manifestations and forms differ quite substantially, they typically involve the administering of some sort of trial or test by a traditional leader to determine individual(s) guilt or innocence. In some instances these pose real human rights concerns where the trial involves prima facie danger to supplicants, such as in Liberia or Cameroon where the poisonous bark of local trees are ingested and either rendered deadly or innocuous based upon the sociospiritual interventions. In other instances, there may be limited prima facie danger to participants, where practices are mostly symbolic, such as rituals of swearing upon the Bible or dirt in Liberia.

customary law from their actual application and processes, yet state legislation, often to its detriment, has tended to deal with one or the other exclusively.

Regulating Customary Laws and Codification:

In an effort to create sets of laws that are universally familiar to legal practitioners, many countries have taken various approaches to creating discrete legal codes of customary law. Such sources of law would then be applicable for either the entire country or a particular subset of the population and could be applied by any judicial actor. Through efforts to engage with only the substance of customary laws, states have attempted to transform them into manageable codes that would be predictable and useable in formal courts. Quite often, this has meant taking oral traditions, rooted in flexible processes of negotiation and converting them into a format or template that is compatible with the formal legal frameworks to which judges, magistrates and legal practitioners are most familiar. In the process it renders bodies of laws which can then be modified by external actors such as the state to adhere to modern, international legal standards. In general, state engagements with the substance of customary law have tended to fall into three main methods: codification, ascertainment and restatement.

One of the problematic consequences of codifying customary laws is that it often leads to the *ossification and preservation of conservative or inequitable beliefs*. For example, Lesotho has since its independence sought to create a unified justice system that relies upon both customary laws and modern legislation and statutes drafted by the state. The government created a privileged position for customary beliefs as a source of law and as a forum for adjudication, drawing from the written Lerotholi Laws. The Laws, drafted at the behest of the British colonial administration, were transcribed during a period of very conservative social organization in Lesotho, and ossified a set of principles that severely disadvantages the rights of women. The Lerotholi Laws, captured a series of inequitable beliefs that deprived women of equal legal status, particularly the rights to own land, inherit property and independently enter contracts. These inequalities have essentially locked women into a secondary status, and state law has failed to adequately create procedures to overturn outdated 'customary' practices.

As Laurence Juma (2011) writes, "Laws of Lerotholi are a perfect example of codified rules that have lost their practicability in many respects […] while demands for the widening of democratic space and the expansion of the regimes of rights have created serious contests against rigid and extant traditional rules in other African states, Lesotho has remained insular to such changes."(144) Large segments of the population recognize a greater equality of the sexes, and Lesotho has attempted to pass increasingly progressive laws protecting the rights of women through legislation, such as the 2006 Legal Capacity of Married Persons Act, yet the continued referral and privileging of the Lerotholi Laws' and their disenfranchisement of women has proven difficult to overcome.(World Bank 2010)[39] The creation of codified customary law has provided a statutory protection for those who would seek to cling to antiquated views of women's status and rights.

Tanzania took a similar approach to codification in the early 1960s, through the ascertainment and unification of a single customary code on marriage, divorce and succession. (Harrington 2010) Once customary laws became codified in the 1960s, through the Judicature and Application of Law Act (1961) and the Local Customary Law Declarations (1963),[40] they became a viable source of law equal to other

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[39] Insert footnotes.

[40] Francis Nyalali, the former Chief Justice of the Tanzanian Supreme Court, deemed the 1963 Declarations a success in creating an "indigenous common law" reflective of the country's diverse customary traditions. He may have overstated the success, though, as the full codification and standardization of customary law across the country has never been fully realized. The same year the Declarations were published, parliament passed the Magistrate

written laws. Unlike Lesotho, which had a relatively unified customary law under the King, Tanzania was, and is, comprised of much greater diversity. The codification process in Tanzania created a single corpus of customary law, homogenizing diverse practices from across the country and different ethnic groups. The process was particularly detrimental in its dispossession of women's right to own their own land. Prior to the state's homogenization effort, women had been fully entitled to land ownership under customary law amongst many different ethnic groups, which became obsolete as other practices became representative of all customary law (Harrington 2010).

Another related consequence of the codification process has been the *shift of authority for changing customary law* away from practitioners and participants to elite state actors and apparatuses. In Tanzania, once customary laws became codified, the state and particular elites were given control over the process of changing or altering the laws. Formal actors at the regional and national level moved the right to alteration away from customary actors who had previously been able to adapt customary laws in response to shifting local values. As such, the process in Tanzania, and elsewhere, has often become implicated in political machinations, and been divorced of the practices of dispute resolution at the community level (Verhelst 1970; Harrington 2010).

Botswana's *Handbook of Tswana Law and Custom,* offers a different example of how elites may capture control of the codification process.   Written under the British Colonial government, the process of ascertaining customary law was based exclusively upon key-informant[41] interviews, and failed to adequately observe and document how idealized processes actually functioned in practice. The Handbook essentially crafted a notion of tradition that was handed down exclusively by a small fraction of ruling elite without due consideration for alternative opinions or interpretations of customary law, or any triangulation of the claims of a small subset of the population. The Handbook ultimately consists of abstract rules that are divorced from their social context in which they had arisen and were meant to apply (Bennett 1995).

Creating usable codes of customary law may have actually resulted in *the invention of traditions* that are not wholly derived from and recognizable to the communities they are meant to serve. Much of the enthusiasm amongst post-Independence governments to codify customary laws arose out of the governments' misunderstanding of the rationale behind why social scientists had recorded customary laws and procedures in the past.[42] In many instances, anthropologists' work with community leaders[43] to document, discuss, and edit local understandings of customary laws as academic exercises was manipulated by the state for its own political ends. As in Tanzania, when the ascertained laws became the tool of the state, they underwent processes of harmonization so that they would be consistent across geographic and ethnic divides, and in line with national standards (often based on international principles

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Courts Act. This incorporated customary matters into the formal system, eliminated customary courts and established Magistrate Courts as the primary courts.(Harrington 2010)

[41] Here, 'key informant', refers to a small set of chiefs and other local elite, who dictated the terms of customary law.
[42] The most major of these undertakings was the Restatement of African Law Project through the School for Oriental and African Studies from the 1950s to 70s, in which researchers worked with communities to help document their customary legal procedures. Mamdani (1996) describes the Restatement Project, "It covered the countries of Commonwealth Africa and aimed at codifying the core of customary law: the law of persons, family, marriage and divorce, property (including land), and succession." It's methods were incorporated by independent governments in Kenya, Malawi, Gambia and Botswana, though the research took place in a much larger number of countries.
[43] It is important to emphasize that the selection of these community leaders is somewhat dubious, in that they represented one section of the community elite who described processes that were likely to maintain their superior sociopolitical standing.

and obligations). In rendering customary laws that were palatable to the political hierarchy in the country, codified laws essentially became invented or re-imagined traditions.(Mamdani 1996) As Laurence Juma writes in regards to codified laws in Lesotho, "First was to create a system of administration that would be capable of adopting the traditional institutions of governance into its ranks. Secondly, they had to reinvent African custom and tradition, drain it of all the regenerative and adaptive qualities, and reduce it to rigid concepts and rules so that it could be administered by the colonial judicial system. Thus, the colonial administration became privy to a process that has been referred to as the 'reinvention of tradition'" (2011:110). Bennett similarly criticizes the process, it "contents itself, for the most part, with an almost passive acceptance of ideal norms as truly representing law" (1995).

Processes of creating a unified, national set of customary laws are often complicated and caught up in ethnic or regional tensions and relations that may exist within a country. The process and application of codified customary law cannot be divorced of its political implications. Efforts to harmonize different practices from different ethnic groups in Tanzania led to the creation of laws that were termed customary, but were in essence unfamiliar to any of the groups whom they were meant to reflect. The *Tanganyika Unification of Customary Law Project* of the early 1960s, led by Hans Cory, is but one example of a process that failed to create a legitimate set of principles despite its consultations with leaders from different ethnic groups (Harrington 2010).

In South Sudan, ongoing discussions of a modern codification or ascertainment of customary law has been deeply complicated by broader inter-ethnic tensions within the new country. South Sudan has a number of documented codes of customary law from the last 30 years that are reflective of different individual or government efforts during periods of the war to capture the laws of particular communities. Perhaps most famous is the *Wanh Alel Laws* of Greater Bahr el Ghazal, which became a working set of customary laws for the broad Dinka population of the area.[44](Leonardi et al 2010) The Republic of South Sudan has clearly stated that traditional values and beliefs should be considered a viable source of law in the country, but has failed to explicitly dictate how that would work. Now, the concern of some minority ethnic groups is that a Dinka majority that dominates many central political structures may use their own customary laws to govern all of the country. As such, many of the groups have raced to try and capture their own customary laws in writing, often emphasizing their differences with the Dinka majority as part of a broader ethnic-political design, further creating a chasm towards creating a national identity. All of this in spite of the fact that in more heterogeneous areas of the country, coexisting ethnic groups have arrived at local, negotiated solutions to deal with issues related to customary law between groups.

In recent years, Namibia has developed an interesting and promising new method of ascertainment called self-statements, in which local communities are wholly responsible for the documentation of their own customary laws and practices. (Hinz 2009) The 2000 Namibian Traditional Authorities Act[45] contained a provision that mandated traditional authorities to create customary law. But, rather than being a set of legal principles to be dispassionately applied by legal bodies, the self-statements are meant to be a

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[44] These laws tend to be a general agreement on particular offenses and their corresponding sanctions, rather than an actual documentation of the fluid processes of dispute resolution that occur in practice.(Leonardi et al 2010)

[45] While the 1990 Namibian Constitution had guaranteed the role of customary law in the country, it was only due to later political shifts that the demands for ascertainment arose. At times, these self-statements have become a means for the 'reappropriation of tradition' to reassert local authority and autonomy over local governance and regulation by traditional authorities. Perhaps emphasizing that all of these discussions cannot be divorced from the political factors that influence what parties may be lobbying for certain approaches to customary law reform, which includes traditional authorities as active political agents.

descriptive explanation of customary approaches to resolving disputes. In essence, it is an effort to capture both the substance and process of customary law as a set of guiding principles for judicial actors.

As one of the leaders of the Self-statement project, Manfred Hinz (2009) describes the rationale, it was intended to investigate how justice was administered by customary authorities, and to create a uniform piece of legislation through policy advocacy rooted in self-statement in order to "provide for operation of traditional courts in line with constitutional requirements."(112) The Namibian approach may offer an innovative new approach to ascertaining customary law, as it is rooted in local ownership and not overly structured and bound to western legal standards. It is important to emphasize, that there was a requisite desire from within the community to document their own laws, and a recognition that the resulting self-statements would not wholly capture the process of customary law, and will not be integrated as codified law. Additionally, the benefit of operating in Namibia was that some of the communities like the Ukwangali, had existing written records of traditional codes, and were familiar with processes of documentation (Hinz 2009).

Often state efforts to create static customary legal codes do not adequately represent the dynamic, flexible nature of customary law. It is incredibly difficult, if not impossible, to separate the substantive beliefs of customary law from its processes of resolution. The Namibian self-statement project is one effort that has succeeded in addressing this issue. But, as Leonardi et al (2010) write in reference to South Sudan, "Without constant, rigorous updating, any detailed ascertainment efforts are likely to be rapidly overtaken by changing economies, becoming irrelevant to everyday judicial practice. Even if it is conducted using a language of rules, and even if its outcomes are based to a certain extent on a limited range of penalties seen to be set by government, the defining feature of customary justice is its negotiated and flexible nature."(Leonardi et al 2010) No country has yet successfully created a process through which it may constantly update or re-ascertain customary laws in response to shifting social dynamics so as to adequately represent the beliefs of the local communities.

In addition to trying to create usable documents for legal professionals to apply in formal settings, many states have also found different methods of using customary authorities' expertise on customary law within existing forums. One method has been to incorporate customary mechanisms or actors into the formal system by granting them special status as witnesses on behalf of customary laws within formal court proceedings. In Botswana, for example, the Common Law and Customary Law Act allows for the court to bring in witnesses or textbooks or other evidence to testify to the relevance of customary law in a particular case.(Juma 2010) While there is not always the greatest guidance on whom and what can be considered 'expert' testimony when it comes to customary laws (and quite often these rely on outdated texts or codified laws), it does reflect a willingness on the state's part to recognize the importance of the norms behind customary laws in users' pursuit of justice.

Despite the best intentions, though, there has often been a failure to articulate the process for applying customary law in formal courts. As noted above, codified laws tend to be an ill-adapted tool for applying customary law in formal settings, as they have typically lost much of the social value of customary beliefs that they were meant to reflect. In South Sudan, judges admit confusion over the appropriate set of customary laws to apply in a given case. This can be because they are unfamiliar with local customary practices, unaware of the relevant principles for particular disputants, or overly-reliant on a small, non-representative set of customary laws to guide their thinking (Leonardi et al 2010).

Malawi and Uganda[46] also offer examples of how the application of customary law, when vested in unqualified actors, can lead to misuse, abuse, or ineffective justice provision. In each instance, the application of customary law was statutorily transferred from the customary authorities to formal justice actors. The first instance magistrates in each country have been given orders to rely on customary law, but provided with insufficient training or understanding of how to apply such laws.[47](Harper 2011) In essence, it has proven problematic in a number of countries when customary law has been deemed a viable source of law, but the mechanisms for the application of such law has been divorced from customary authorities.

Management of Mechanisms and Actors:

In addition to government's taking de jure approaches to managing the substance of customary laws, they have also taken similar legislative or administrative action to control the actors, mechanisms and processes through which customary law may be applied. In reality, it may be difficult to clearly disaggregate the two, but it is clear that some government actions are specifically meant to regulate the processes of resolution more than the content of the law.

One of the state's main interventions has been to regulate the jurisdiction of customary laws, so that customary authorities may only participate in the resolution of particular types of cases. Most often, these are limited to minor civil cases, family and divorce, inheritance, and land. In Liberia, for instance, the Hinterland Regulations explicitly prohibit customary actors from hearing serious criminal offenses, which are meant to be the sole purview of the State (Isser et al 2009).

In Mozambique, the country reversed much of its initial post-independence abolition of customary law and processes with the adaptation of specific laws dealing with Land, Forestry and Mining, Family and Inheritance that recognized the role of customary authorities, though it has not always clearly defined how they fit into the broader judicial system[48].(Lubkemann et al 2011; Bertelsen 2009) The 1997 Mozambique Land Law also granted local communities the right to choose their customary leaders. In essence, the state adopted a law that officially recognize what was already happening at the local level, and has tried to create a system that more closely reflects the way in which traditional actors derive their legitimacy and authority. [49] Functioning customary processes typically derive their legitimacy from the populations whom

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[46] To further complicate things, in instances in which the formal courts have been tasked with the responsibility to apply customary law, as in Malawi and Uganda, the processes tend to be mandated to occur in the national language. As such, practices of customary law that had once been accessible because they were conducted in the language familiar to the litigants have been rendered foreign.(Scharf et al 2002)

[47] Erica Harper (2011) writes, "In Uganda, state course can apply customary law where it is consistent with statute and not repugnant to nature, justice, equity and good conscience, in southern Sudan courts are permitted to 'consider existing customary laws and practice prevailing in each area' in their adjudication of disputes."(83)

[48] Lubkemann et al (2011) write, "Recent legislation and the new Constitution formally recognize the role of customary law and the right of local communities to select local authorities based on customary practices."(24) Mozambique drafted a new Constitution in 2004, which is considered by some to be the most liberal in Africa. It provides for a clear separation of power, and guarantees individual rights. But, many see it as more of an aspirational document, as the judiciary in particular remains weak and incapable of meeting its statutory obligations.(Lubkemann et al 2011) the last sentence her e—what is the point?

[49] There is an emerging grey literature that is beginning to more clearly articulate the relationship between the state and customary authorities. In general the flexibility that currently exists has benefitted the local community when they have been made aware of their right to be active in process. As Lubkemann et al (2011) write, "Especially in situations of local conflict and dispute resolution, the government's general attitude is interpreted largely as an

they serve. With minimal enforcement capacity beyond social sanctioning, the resolution of the dispute is dependent upon the acquiescence of the litigants. In Mozambique, what has resulted is a commitment to customary law, without actually giving complete and rigid legal guidance on the relationship to the formal system.[50]

Some countries have recognized the role that customary forums play in alleviating the burdens on formal courts and their importance as a popular institution, by incorporating customary authorities into the state's appellate structure. South Sudan has created a formal process through which chiefly courts operate as the lowest level of the judicial hierarchy. Unresolved or disputed cases continue upwards through a hierarchy of chief's courts until they are ultimately transferred to the Supreme Court. In this system, customary law has a place within the formal system, but the Supreme Court retains its central role as the ultimate arbiter of both customary and statutory law for the whole of the republic (Leonardi et al 2010).

Malawi has tried to incorporate customary actors and law into the formal justice hierarchy in a wholly different way. The country's 1994 Constitution attempted to fully integrate customary laws and actors into the formal system by simultaneously abolishing the traditional courts as autonomous judicial bodies and making many customary authorities magistrates at the lowest level of the judicial structure.[51] Thus, the government tried to create a unitary system of justice while retaining a role for the norms of customary law, allowing magistrates (both those that were professional magistrates and those that were former customary authorities) to apply customary laws in state courts. (Scharf 2003; Scharf et al 2002) Due to poor planning and implementation, though, the impact on end-users has been regarded as highly problematic. Old magistrates with little to no training in customary law were expected to apply it with minimal oversight or guidance. Similarly, customary authorities were expected to apply laws that had formerly only been the competency of magistrates.[52] Additionally, provisions of the Courts Act prohibited magistrates from handling land cases which had formerly been adjudicated within customary forums. This muddled approach failed to recognize that the magistrates and customary authorities generally had different core competencies in regards to the types of laws that they applied in their respective forums.

Malawi's insufficient training and legislative guidance to the newly formed court of first instance had multiple deleterious impacts on the provision of justice. Accessible, familiar mechanisms of justice were abolished without a viable alternative in place which directly led to backlogs in cases, rise in vigilantism, and a general dissatisfaction with justice provision amongst users.[53](Scharf et al 2002; Harper 2011)

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endorsement of customary legal proceedings and institutions, both because people understand the recognition of local authority in their own terms, which do not conceive of ritual and consultative functions as separate from administrative and judicial ones, and because the government, which is still not trusted, offers no viable alternative."(47) Scharf (2003) also highlights a 1999 law that allows for non-state arbitration, conciliation and mediation which has been read by some as additional legal guidance for customary actors.

[50] Community Authorities are under the Ministry of State Administration, Popular Tribunals are under the Ministry of Justice, Traditional Healers are under the Ministry of Health, and Community Policing Councils are under the Ministry of Interior.

[51] Prior to this series of radical reforms in the mid-1990s, Malawi had had regional Traditional Courts recognized by law, and national Traditional Appeal Courts.(Scharf et al 2002)

[52] Specifically, magistrates were given authority to apply customary law over certain civil offenses, but section 39(2) of the Courts Act prohibited magistrates from handling land cases, custody settlements, and divorce; while the customary authorities had new responsibilities for the application of administrative law.(Scharf et al 2002)

[53] Scharf et al (2002) write, "The fusion of courts resulted in the unfortunate situation whereby courts which were closest to the people were left with no jurisdiction to handle the bulk of cases that concern them."(6) The Malawi Government's Decentralization Report from 2000 found that there were nearly 21,000 customary justice forums

Additionally, the system in Malawi is still entirely dependent upon a de jure framing of justice that tries to shoe-horn customary concepts and practices into a legalistic model and formal court proceedings. Despite these government efforts to fully incorporate customary actors into the state system, reports estimate that 80-90 percent of all disputes in Malawi continue to be resolved through customary authorities outside of state control (Scharf 2003).

A reoccurring issue in many state policies on customary law arises around concern over Separation of Power. In Malawi, despite being stripped of their judicial authority in the mid-1990s, customary leaders retain some responsibility as recognized under the office of the President and his cabinet. As in other countries, like Liberia, the chiefs are deemed executive actors. Their continued actions as justice administrators challenge notions of the separation of powers that have been a hallmark of many modern African constitutions. (Isser 2011; Scharf et al 2002) The chiefs are also economically dependent upon the executive for salaries, and as such, are often accused of being subjects of a proto-patronage system in which the President is vested with unequal authority (Scharf 2003).

Concerns over the appropriate separation of executive and judicial authority do not always conform to the cross-cutting governance role that chiefs or other customary authorities have traditionally played at the local level in many communities. As Julio Faundez (2006) has noted, it may be more fruitful to look at customary authorities as governance mechanisms that resolve disputes without the constraining procedural rules and guidelines that characterize most formal legal systems.

The Trouble of Witchcraft

Customary legal processes and beliefs are often rooted in and rely on sociospiritual dimensions. Amongst many people, notions of justice and injustice are often deeply intertwined with metaphysical realities in which malevolent spiritual forces can act as causal agents of grievous acts in the physical world. The attribution of guilt to supernatural forces seems particularly foreign and difficult to incorporate into Western justice models, and makes it a particularly difficult obstacle in defining a relationship between customary law and the state legal system. Such beliefs directly challenge international standards of evidence and western beliefs of causation and individual agency. But, throughout sub-Saharan African, and in other nations around the world, witchcraft is a social reality with which local communities and individuals must deal every day. It is an integral part of the cosmological organization of social relationships that are as equally valid in forums of justice as they are in houses of worship.[54]

The failure to understand, or the misinterpretation of, beliefs in sociospiritual causation has more often than not led to a confrontational relationship between state justice systems and local communities. There have generally been 2 broad legislative approaches to dealing with witchcraft in post-independence Africa. The first main category consists of attempts by the state to suppress popular belief in witchcraft, with an emphasis on the protection of those accused of occult practices. This can take the form of legislative actions to criminalize accusations of witchcraft in an effort to eliminate the belief. Or, the state may execute targeted prosecutions of individuals who persecute those accused of witchcraft through

operating in an estimated 24,000 villages throughout the country, while there were only 217 magistrate courts for that same area.(Scharf et al 2002)

[54] There is an entire corpus of social science literature on the origins of the rising rates of witchcraft accusation and beliefs in post-colonial Africa. Much of it attributed to radical shifts in social organization, the rise of market economies that has brought inequitable development, and the growth of political power through questionable means. See Ashforth (2005); Comaroff and Comaroff (1999; 1993); Fisiy and Geschiere (1990); Geschiere (2006;1997); Niehaus (2001).

extrajudicial means. The state may make concerted efforts to uphold existing criminal and civil laws, despite the mitigating circumstances in which the victim has been accused of being involved in witchcraft and in which vigilante justice may be accepted practice (HelpAge International).

The second category recognizes witchcraft as a legitimate belief system and places an emphasis on the protection of victims of witchcraft. This occurs in one of two ways. First, through the criminalization of acts of witchcraft, possession of occult objects, or threats of violence through supernatural means.[55] Second, the state may support (or not actively prevent) the work of traditional fora in the resolution, prevention and punishment of witchcraft.)

Protection Against Accusations of Witchcraft	Protection of Victims of Witchcraft
•Attempts to suppress belief in witchcraft •Emphasis on protecting those accused of witchcraft from extrajudicial persecution •Statutory criminalization of witchcraft accusations •Prosecution of individuals who commit acts of violence against accused witches	•Recognizes witchcraft, sociospiritual causation, as legitimate belief •Emphasis on protection of victims of witchcraft •Statutory criminalization of acts of witchcraft •Supports (or doesn't explicitly prohibit) traditional fora from addressing witchcraft

Suppression of Belief / Protection of those accused of witchcraft

South Africa's Witchcraft Suppression Act (1957) offers one example in which the state prohibited accusations of witchcraft, the use of divination, or to use witchcraft.[56] The act was intended to outlaw the belief and practices linked to witchcraft in an effort to dispel the social belief through legislative action. The law also made it a crime to call someone a witch. And, the state ultimately decided to pursue the greatest number of prosecutions against those who accused others of witchcraft, through imputation principles. In essence, punishing those who viewed themselves as the victims of malevolent forces wielded by another member of the community. In the process of trying to suppress the belief in witchcraft, though, the South African government also outlawed the only means the community traditionally had to deal with witches through the use of positive spiritual forces. The law failed to work within popular concepts of what constitutes witchcraft as an offense, as in its negative use against another party for individual gain, versus its positive use as a means of controlling the malevolent forces working to destabilize the community.

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[55] Tanzania Witchcraft Act of 2002 criminalizes the practice of witchcraft, possession of talisman, or the hiring of someone to practice witchcraft on one's behalf. It further stipulates that it is a crime to accuse someone outside of the appropriate authorities.(HelpAge International 2011)   what does this last sentence mean?

[56] Similar approaches have been taken in other British colonies including Zimbabwe (Diwan 2004; Cimpric 2010). In Malawi, a 1911 Witchcraft Act made it illegal to accuse someone of witchcraft, claim to practice witchcraft, claim to be able to hunt or control malevolent witches, or to participate in Trials by Ordeal.(HelpAge 2011)

In South Africa, there was a clear link between the Witchcraft Suppression Act and a loss of confidence in the state, as people were deprived of the one tool that they relied upon for the suppression of malevolent acts through supernatural means. The state was thus perceived to be complicit in the protection of witches in the eyes of many citizens. Ultimately, rather than suppressing the belief, the law drove people to more and more heinous acts of witchcraft trials that were beyond the limited protections of customary laws.(Harper 2011) Legislation that criminalizes accusations of witchcraft without being attuned to popular beliefs in real danger that witchcraft poses will do little to provide greater protection to those accused, despite its intentions, as it is unlikely to be enforced or potentially foment actions of mob violence in the absence of other controlling mechanisms (HelpAge 2011; Chirayath et al 2005).[1]

A similar problem occurred in Liberia, in which the state criminalization of and prosecution for trial by ordeal led the population to pull away from the state and furnish accusations of witchcraft against senior members of the government. The logic being that such actions provided space for witches to operate with impunity, as the people's sole means of recourse was rendered illegal, as such those who passed and enforced such laws must be its beneficiaries and thus witches themselves. (Isser et al 2009) As Harper echoes, "Liberians blame the state for increases in lawlessness and insecurity that they consider a direct result of the ban and hence its reduced capacity to control witchcraft" (2011:47).

Prohibition of Witchcraft Practices / Protection of the victims of witchcraft:

Recognizing the importance and legitimacy of witchcraft amongst the population, many states have incorporated traditional beliefs in metaphysical causality into their justice system. A number of states currently have legal injunctions against the practice of witchcraft, granting judicial authority to try cases of witchcraft to the court of first instance.[57] Many of these laws make it a punishable offense to practice witchcraft, with no clear articulation or distinction between its malevolent or positive use.

Cameroon offers an interesting and well studied study in state's effort to prohibit the harmful practices of witchcraft. Section 251 of the Penal Code (1967) states:

> Whoever commits any act of witchcraft, magic, or divination liable to disturb public order or tranquility, or to harm another in his person, property or substance, whether by taking a reward or otherwise, shall be punished with imprisonment for from two to ten years, and with a fine of five thousand to one hundred thousand francs (As cited in Fisiy 1998).

Yet neither the Penal Code, nor any other legislative guideline, defines what constitutes witchcraft or divination.

Throughout much of the Colonial period under both the common law and civil law governments that administered Cameroon, the government and courts had determined that threats had to manifest themselves through physical action, and the state was incapable of dealing with the metaphysical cause or intention behind the physical manifestation. As such, "The refusal to integrate the local cosmology during criminal trials alienated the courts from the communities."(Fisiy 1998:148) The state often did not believe in and did not feel it was in its purview to try and convict witches.[58] This led to the further disillusion of the populace, who had already seen the role of their customary authorities diminished by the colonial regimes.[59] Government courts felt they lacked the legal standing to convict accused witches, they

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[57] Such countries include Cameroon, Cote d'Ivoire, Gabon, Mali, Mauritania and Benin (Cimpric 2010).

[58] The colonial governments require a cause-effect rationale to evidence, that defines most Western legal systems.

[59] Both the French and British colonial regimes restricted the rights of customary courts to try criminal cases, which has often defined post-independence states' relations with customary authorities.

released them into the community without punishment or reproach.[60]

The 1967 Penal Code had allowed for a great deal of judicial discretion in its application, as can be seen from the disproportionate application in various parts of Cameroon. In the Southeastern section of the country, judges have been more active in responding to popular demands for witchcraft punishment and have actively pursued its prosecution. As Diwan notes, "They have generally subordinated state legal norms to popular ones by basing their decisions on spectral evidence provided by witch doctors."(2004: 386) Meaning that the judges have suspended some of the legal statutes dictating standards of evidence in order to respond to local demands for prosecution (often viewed as deterrent) for supernatural malfeasance. The firm conviction of the judges rooted in the expert testimony of traditional healers has been enough to determine guilt, often regardless of prima facie evidence.[61]

The increased prosecution of witchcraft cases in certain parts of Cameroon, particularly those rooted in the French civil law system and inquisitorial proceedings[62] represents a significant break from the colonial period in which no level of evidence was deemed sufficient to prove witchcraft. In the emerging system, judges rely on the expert testimony of traditional healers in what can be deemed a type of incorporation of customary law into the formal court proceedings. Fisiy writes, "Witchcraft cases in Cameroon represent a turning point in the history of witchcraft convictions by modern courts. These cases represent a marked departure from long-standing judicial precedent whereby witches were set free for lack of concrete evidence and witch-doctors were prosecuted or convicted for defamation when they accused people of witchcraft" (1998:159). But, as Pelican notes, this turning point has not been wholly sufficient in meeting community demands for justice – as the integration of only certain elements of traditional practices into the formal system without the requisite processes of apology and repair of social relationships that are necessary to placate or prevent continued use of malevolent forces.[63]

It should be noted that it is not just the different colonial legacies within Cameroon that affect the processes of dealing with witchcraft in different areas of the country. The different ethnic groups of the North and South of Cameroon have different forms of social organization and internal methods for dealing with the suppression or prevention of occult practices.[64](Pelican 2007) In the north, the last 20 years has seen the steady erosion of authority of chiefs and their counselors, particularly in relation to issues of witchcraft. One of the main reasons behind this decreased role is the state's sanctioning and

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[60] Fisiy describes an interesting historical dynamic that arose between French administrators who recognized the context-specific beliefs of their subjects and tried to work within local systems to change perceptions and the British Colonial Judges who tried to impose standards of evidence based on British cosmologies of causation. "While administrators were fighting to eradicate witchcraft and secret societies, their counterparts, the colonial judges, were zealously setting witches free in colonial courts for lack of proof. Both were working for the same ideal – that of civilizing the 'natives' – even if the results were diametrically opposites."(Fisiy 1998:150)

[61] Spectral evidence is a blanket term used to refer to testimony given by other practitioners of the occult, i.e. witch doctors or witches, who use their relation with the spiritual world for the benefit of the community. Diwan (2004) states how this is necessary in trials that involve witchcraft, but pose serious challenges to standards of evidence and may be vulnerable to accusations of manipulation as they may not be verifiable by any party other than the expert witness.

[62] In British speaking areas of Cameroon, which still use a common law rules of evidence, expert testimony from traditional healers alone tends to be viewed as insufficient to warrant a conviction for witchcraft.(Fisiy 1998)

[63] "Detention is deemed to increase rather than contain the menace of witchcraft."(Pelican 2007:7)

[64] Where it is the ritual, or sociospiritual healer, in many parts of the south who is imbued with popular authority to deal with witchcraft, and is called upon by the state to give testimony; in the north it is the role of traditional chiefs and their counselors to prevent and regulate occult practices. (Pelican 2007)

prohibition of traditional processes of dealing with cases of witchcraft, namely Trial by Ordeal.[65] As a result of the diminished view of the chief and his associates as a moral authority acting on behalf of his constituents, along with the limited willingness of the courts to address witchcraft cases, there is an absence of viable alternatives for dealing with crimes emanating from the occult. In this absence there has been a rise in both the subversive use of Trial by Ordeal practices outside the traditional purview of customary forums, and an increase in mob violence against those accused of witchcraft without any form of due process.(Pelican 2007).

Throughout sub-Saharan Africa vulnerable populations, particularly children (orphaned, handicapped or albino) as well as the elderly (predominantly women) are the most likely to be accused of witchcraft and to suffer associated social ostracism and harmful punitive actions associated with such accusations. (HelpAge International; Cimpric 2010) The targeting of vulnerable subsets of the population, those with limited social protections, may also be seen as a socially-sanctioned mechanism for an adult to absolve themselves of their social and legal obligations to care for a particular dependent. (Cimpric 2010) Shifting systems of social organization has led to an increase in the number of children accused of witchcraft, often due to economic, political and social pressures. As classic anthropology has shown, accusations of occult practices that go against the community increase in periods of unstable or transitioning social order, where social relations have broken down and responsibilities are not being satisfied (Cimpric 2010).

Most laws that have looked to suppress the belief in or practice of witchcraft have rarely succeeded in doing either, and in many instances have had unintentional effects on the traditional justice processes that were meant to mitigate the negative practice of witchcraft and the populace's faith in their preventative capacity. Despite the emergence of competing cosmologies and normative values propagated by the state, the beliefs in supernatural causative agents continue to pervade most nations in sub-Saharan Africa. (HelpAge International) The failed response of the state has led to the obfuscation of abhorrent practices, mob violence, and mass stigmatization. (Quarmyne 2011; Hund 2000) And in some instances, the failure to uphold the social values of the community, or inability to reflect their demands for justice, has lead to the popular perception that the state is colluding with witches. (Isser et al 2009; Diwan 2004) Similarly, laws that attempt to incorporate the cosmological beliefs of their people, without clearly articulating what constitutes positive and negative metaphysical action, i.e. defining criminal use of occult forces versus the healing or investigative use, diminishes local capacity to deal with witchcraft (Pelican 2007).

Conclusion

Customary law was a potent political tool for Colonial governments, and continues to be the site of political contestation in post-Independence states. The lessons from other countries can teach us valuable lessons about the reform process and its potential for improving access to justice and the quality of justice provided at the community level. Effective reform of customary law demands a holistic approach and not just attention to technical legal solutions alone. In the past, the tendency has been to approach justice reform as a technical legal task rather than a deeply sociological and political dynamic. Reinforced by the normative bias of most justice actors, who take international human rights standards and Western models of rule of law as their yardstick, this has failed to lead to lasting social change and convergence with the very standards of justice to which reformers and state governments are striving. (Isser 2011:326) As Alan Watson writes, "A law that fails to take into account the social ethos of the community it is supposed to

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[65] In Cameroon a typical TBO involves the ingestion of Sasswood. Similar prohibitions against such customary actions have been seen in other countries in West Africa including Cote d'Ivoire and Liberia.

guide risks being ignored and hence, remaining a dead letter, incapable of inducing change"(Quoted in Diwan 2004:354).

Deliberate top-down, de jure approaches to engagements with customary law tend to be more akin to social engineering than to providing space for organic change. Efforts at social engineering through statutory mandates have proven to be highly inefficient and failed to gain traction in many countries throughout Africa. As Sally Falk Moore (1978) writes, "Legislation is often passed with the intention of altering the going social arrangements in specific ways. The social arrangements are often effectively stronger than the laws."(4) The social arrangements to which Moore refers are often the more relevant and influential aspect of justice practices, and offer evidence of the unintended consequences that well-intentioned but poorly-thought laws may have. Deliberate top-down policies tend not to reflect organic change, and have in some instances made customary systems more rigid and oppressive, or effectively cut segments of society off from state protection of rights.[66] This is perhaps best seen in efforts to restrict customary practice that are seen as contrary to international human rights standards.

Governments may avoid many of these pitfalls by ensuring policies are based upon sound empirical research, accounting for the full landscape of justice practices operating at all levels of society. In order to build a justice system that is founded upon popular principles and expectations of justice, and responsive to local demands, governments should encourage evidenced-based policymaking.

Governments may benefit from developing policies that allow for regional diversity in justice forums and practices. Empirical research may help governments identify the real problems in justice provision and develop strategies that directly address those problems. The emphasis ought not to be on trying to create an ideal, unitary system of justice that conforms to international standards, but one that accounts for the social realities of citizens and responds to their demands for functional justice provision. As Isser (2011) writes, "The starting point should be to improve not the *legalistic forms of justice* (laws, institutions, structural relationships) but the *qualitative function* of justice (fairness, effectiveness, legitimacy)"(345).

By accounting for the current realities of the justice system, and taking a realistic view towards institutional capacities and shifting social dynamics over the medium to long-term, governments may develop appropriately calibrated, incremental approaches to improving justice provision. Through the use of government sponsored, or sanctioned, efforts to work with local communities in finding the practices and principles of customary law that are positively serving communities, and giving them the room they need to continue to innovate local solutions to local problems. Simultaneously, government should engage with such authorities in a dialogue of equals to curtail beliefs or practices that suppress human rights and dignity. For example, in Liberia, the Ministry of Internal Affairs is working with customary authorities to identify various methods of Trial by Ordeal that are more or less prima facie dangerous, and to encourage local leaders to use those that do not run the risk of grievously injuring or killing participants through its use. By working with customary authorities, states may create policies that are responsive to their own unique histories and identities, while also encouraging movement toward a higher quality provision of local justice.

One of the strengths of customary systems is their flexibility and capacity to adapt to changing social environments. One of the best methods for evoking positive changes in the customary system can be through creating more competitive formal courts that adequately address the justice needs of the populace. The more that people feel they can get a satisfactory result in the formal system, the more pressure will mount on the customary leadership to change their processes in order to remain relevant to their

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[66] See Bennett and Pillay 2003, Isser 2011

constituency (Isser 2011).

The flexibility of customary law also means that there may be opportunities to encourage communities to adopt more inclusive composition of customary authorities. As Harper (2011) has noted, in 1993 Namibian traditional leaders made a concerted effort and collective decision to encourage women's full participation in customary forums. The experiment has had very positive effects on the provision of justice, and the level of inclusion in customary forums over the last 18 years. Methods of insuring female or minority participation in adjudication processes need to be done in consultation with the communities they affect, and seldom work when done through external imposition with little understanding of local contexts. Quoting Harper (2011), "where change is voluntary and has the support of the local leadership, inserting new decision-makers who are responsive to the needs of different user groups can help to transform the normative aspects of customary systems"(43).

Paralegals programs in sub-Saharan Africa have proven to be a highly successful program for helping individuals navigate complex and at time confusing legal landscapes.[67] The Timap for Justice Program in Sierra Leone offers an innovative and inclusive approach to providing legal aid services for the poor that recognizes the value and engages with all of the available forums for justice in the community. [68] Governments can help support programs that facilitate mobile paralegals entering communities, increasing legal awareness, and helping litigants pursue cases through the forums that are most likely to give a fair, equitable and legitimate resolution.

If governments are willing to experiment and allow themselves flexibility in their policy and engagements with customary law, they may find innovative methods of linking customary actors and processes with existing state judicial mechanisms. The role of the state should be to promote linkages between the systems that will maximize justice within its distinct circumstances. If done effectively, and based on locally-logical methods, such approaches may reduce courts case loads, increase the legitimacy of the state, ensure cultural relevance of process to population, provide awareness of customary decisions by state bodies, offer minimal safeguards against abuse by customary authorities and minimize negative forum shopping. By working collaboratively with customary authorities, governments may better understand the incentives needed to encourage them to move away from practices that might be abhorrent to generally-accepted standards of rights, and help them maintain their legitimacy and authority in line with changing social standards.

Local experimentation, premised on the idea of reversibility may help governments identify strategies that are most compatible to their unique historical, economic, and cultural context. As Isser (2011) notes, *"justice reform strategies should provide space for developing a justice system that uniquely reflects the values and identity of the population as a whole."* Governments should view this as an opportunity to reflect on the values, identity, and nature of the political order being constructed in the design of its future justice system. Governments may explore alternative approaches like developing more flexible and nuanced criteria for determining jurisdiction, integrating restorative justice into penal processes, developing better linkages between forums, or creating hybrid mechanisms or paralegal programming.

As noted at the outset of this chapter, the CAR context presents unique challenges in the extent to which 'customary' practices are situational, rather than institutionalized. Nevertheless, experiences so far have shown that some of the interventions that have worked elsewhere – notably paralegal programs – are having positive effects in CAR as well. The success of these efforts has in large part depended on whether

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[67] See Maru 2006.
[68] See Dale 2009.

they have taken the current context as a starting point.

Conclusion and Recommendations

The study and field research has confirmed the limited outreach of the formal justice system outside of the largest cities in CAR. It has also shown the traditional customary justice system to be really a hybrid form of mediation and conflict resolution which, in most cases, was not based on very clear and well defined practices. The application of customary justice is not very systemic in CAR. The population calls upon a variety of actors to help mediate and to resolve conflict including the police, village chiefs, local influential people, and religious authorities. Among these various actors, the study revealed, that village chiefs were often seen as the most reliable source of mediation and sometime even of justice. Though this seems to vary a lot according to specific local circumstances and the legitimacy/authority of the village chiefs, it also highlighted a much broader governance issue in rural areas. The study also revealed a general urgent need to improve local governance in CAR. The problems with justice and conflict resolution are in large part linked to poor governance outside of large city centers.

A.   Improving fairness and efficiency of local justice and conflict resolution at the local level

The research revealed that many conflicts go unresolved in CAR and that there are problems with trust and legitimacy of various mechanisms used to resolve conflict and provide justice. The very limited reach of the State in rural areas and small towns, and the weakness of customary systems that function in its stead, have produced a significant vacuum in the delivery of justice. **Therefore, efforts ensure a better presence of the justice system outside of Bangui and the large Cities should be supported. However, since this is likely to be a long-term goal, approaches such as introducing mobile courts and improving the connection between judges and various mediators, including the village chiefs, should be reinforced in the meantime. In general, efforts at creating more constructive interaction between customary process of conflict resolution and law enforcement and formal justice is urgently needed.**

- **Existing approach of supporting 'House of Justice' facilities developed by the UNDP Program and NGOs should be developed and reinforced**

    - o   As a first step, an overall review of the effectiveness of the House of Justice approach in CAR should be carried out using some of the evaluation work that have already been conducted.
    - o   If the review confirms the importance of these House of Justice facilities, efforts should be made to expand their use to cover all regions of the country. And these structures should be reinforced further as mediating and facilitating centers with strong outreach to the justice system and the village chiefs. It should be equipped to intervene when issue of respect for human rights arises especially in the case of accusation of witchcraft
    - o   Additional financing from donors should be identified to maintain and carry out support to House of Justice facilities, while the government continues the improvement of the formal justice system.

- **The role of the village chief in conflict resolution and local justice should be clarified:**

    - o   Government should update and strengthen the jurisdictional framework for defining the

role and functions of the village chief and in particular their role as mediators. Their role should include some limited responsibility in the field of criminal law for small offenses—a role they already play in practice. Mechanisms of accountability of village chiefs should be better defined. The role of village chief should be clarified and checks and balances at the community level should be introduced. However, adequate flexibility will have to be provided to allow the community and the village chief to operate according to local constraints and opportunities.

- o Study showed that it is important to improve the capacity of village chiefs in mediating conflicts urgently. It is essential that all village chiefs that are recognized by the community as legitimate and be trained so that they are clear about their role and responsibilities. It is important that they are able to implement competencies recognized by law, that they understand and have in their possession the legal texts they need to inform their role of mediators, that they receive advice on how to interact with the community, and that they work closely with the legal justice system (subsidiarity principle).
- o Different NGOs and a UNDP project have prepared different manuals and training programs on the role and responsibility of village chiefs. These should be reviewed and widely distributed throughout the country.
- o Minimum equipment and supplies should be provided to village chiefs so that they can perform their functions more effectively.

- **The World Bank Early Recovery and Community Development Program could be an excellent platform to support the role of the village chief**

  - o The projects should define a role for the village chief in sub-project cycles and ensure that the projects do not undermine the role of the chief when he/she is legitimately recognized by the population.
  - o The projects should develop training for the community and the chiefs on the role and responsibility of the village chief and the organization of village governance and on how the chief should interact with the community and how checks and balances should be established.
  - o The Projects could help with improving and rehabilitating local house of justice and community centers where the population could meet and engage on issues of collective action, local justice and other local governance actions
  - o The Projects can be used as an entry point to engage with Village Chiefs and rural communities on the theme of local justice. Projects provide physical and institutional access to most communities, including in very isolated areas. They should also be used as channels to deliver training, assistance, and equipments to chiefs and communities.

B.   Improving government approach to local governance

The research revealed that CAR authorities need to improve local governance urgently and that they need to clarify how communities could organize to carry out tasks of common interest including justice, security, delivery of services (especially health and education but also basic infrastructure) and how the State would mediate with traditional authorities to ensure this. The representation of State authority outside of large urban centers is still quite limited and, therefore, these mechanisms need to be urgently clarified and strengthened. Improvement of local justice and conflict resolution will be difficult without an overall improvement of the local governance and a better anchorage of the state in rural areas that is not

only focused on security.

At the moment local governance in CAR has the following characteristics**:**

Leadership and authority are personal, rather than institutional. The quality of the services and reconciliation provided by village chief and his advisers depends in large measure on the capacity and character of the people involved rather than on fixed norms. Their procedures tend to be ad hoc and situational. There is not much of a separation of powers or check and balances.

The ability to enforce decision is very limited. For this, village chiefs depend on goodwill and those who would back them up, such as a local defense force (archers) if the village has such a group. In these cases, the chief can become quite powerful. In addition, chief's coercion can also be based on their reputation and negotiating skills. City-educated youth and members of armed groups frequently defy their authority refusing to treat the often–illiterate chiefs with much respect, indicating the tenuous hold that village chiefs have over the community.

There is an urgent need to reinforce social cohesion in rural areas. Institutions that can foster increased cohesion at the local level are very weak. In mixed communities (for instance, places with both farmers and herders), there are no institutions to resolve conflicts that arise between groups. When recourse is made to government authorities (e.g. tribunal) both sides feel that the eventual decision is biased against them due to what they perceive as influence on the process by the other group. Meanwhile, rampant use of witchcraft has undermined trust making it difficult for the community to launch collective projects. There are very few associations for mutual benefit (people more or less work alone), except in places where NGOs have actively sought to foster community development groupings called "groupements." Very often the few tireless individuals who try to organize communities to work together are disappointed. Formerly strong associations like the cotton growers' guild in the northwest cotton zones have disappeared due to the decimation of cash crops over the past fifteen years.

There is an urgent need to improve the behavior and attitude of State representatives in rural areas. Road travel is often disrupted by random roadblocks and various kinds of fees. Officials in regional capitals come and go and are never held accountable for crimes they commit. Rural residents have no confidence in the fairness of government's organs, which are too difficult for them to access.

The study shows therefore clearly that issues with justice and conflict resolution at the local level poses questions on the overall model of local governance outside of urban centers. Now that stability has improved and security situation is better than it has been for many years it is important to address these issues urgently. The priority should be to reinforce social cohesion in rural community by rethinking the system of local governance and by developing a framework by which the local population can feel involved and by which collective action can be encouraged.

The overall recommendations can be separated into immediate recommendations in the area of justice and longer term issues of focusing on improved local governance and collective action at the community level.

The issues having to do directly with justice and conflict resolution are concerned with developing mechanisms to improve formal justice at the local level, the strengthening of mediation and outreach mechanisms, and improving the role of the village chiefs.

- The Government should engage in a review of how it approaches governance in rural area and

small town. This should include:

- o Undertaking a comprehensive assessment of local governance issues, looking and assessing all aspects relating to governance at the local level with a special focus on the practices of village chiefs. The assessment should try to understand the relationship between the central and local governance structures and the interaction between formal and traditional mechanisms.
- o Identifying mechanisms to improve the control of armed forces including the police. In particular, their practice of setting up non-official road blocks to collect fees should be prevented and the respectful treatment of village chiefs and community members should be ensured.
- o Service delivery at the local level by the State—especially relating to social interventions and economic development—should be better coordinated and integrated within a governance framework. I.e. Service delivery should be embedded in a framework for local governance that involves accountable local government and participation of local community with a place for both central state and customary institutions.
- o Working groups on local governance involving the Ministries active in service delivery, including justice and security and civil society and NGOs, should be created to come up with recommendations to improve local governance and rule of law in rural area and small town centers.

- A program for strengthening local governance should be developed.

  - o The program could include improvement of local justice, conflict resolution, and involvement of the population in ensuring accountability for local services including security.
  - o The program could provide a framework for government institutions in rural areas and for improving productive activity.

Annex: Theoretical Orientation of the Research Project

Theoretical background

Though legal anthropologists are quick to point out that legal pluralism exists everywhere, in Central Africa the negotiated and informal character of many of the arenas where disputes are dealt with makes determining their boundaries and rules especially difficult. Lund (2006) has proposed the idea of "twilight institutions" as a way of studying public authority in contexts where a wide variety of institutions are at play and the boundaries of state institutions are hard to determine, an indeterminacy partly attributable to the profusion and co-existence of "traditional" institutions (which may have government recognition) and those of the state:

> …governmental and chieftaincy institutions negotiate, forge alliances and compete to constitute public authority and political control... . In addition, associations and organizations which do not appear at first sight to be political may also exercise political power and wield public authority. Similarly, ostensibly non-political situations may reveal themselves to be active sites of political negotiation and mediation over the implementation of public goals or the distribution of public authority in which local and regional identities and power relations are reshaped and recast (686).

In such messy contexts, of which the CAR provides an archetypal example, a more flexible approach to the understanding of how law works in people's lives is necessary. One such flexible approach was proposed by Moore (1973), who suggested that because law resides in a range of institutions and in ethical orientations with multiple foundations, legal anthropologists should focus their attention on what she termed "semi-autonomous social fields." Moore defined the semi-autonomous social field as a forum that can generate rules, customs, and symbols internally, but which is also "vulnerable to rules and decisions and other forces emanating from the larger world by which it is surrounded" (720). The semi-autonomous social field's ability to generate rules, customs and symbols means that it is oriented toward process, which facilitates the researcher's tracking of disputes through time.[69] Moore envisioned that any given study would focus on a single semi-autonomous social field. For the present study, the focus was necessarily broader, if not as "deep" in traditional anthropological terms.

In rural CAR as elsewhere, people choose among a range of means/arenas for processing disputes and pursuing strategic advantage. In such "forum shopping" people are very often also "shopping forums" – that is, not only do people seek out the dispute-resolution forums that they feel will be most sympathetic to their case, but the members of the different forums also seek out the cases that they feel best-qualified to adjudicate (Benda-Beckmann 1981).[70] Our goal in the

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[69]   Moore elaborates on her idea of the semi-autonomous social field with two widely divergent examples: the dressmakers' union in New York City, which runs on an ideology of voluntarism but is actually strongly coercive; and the dispute processing strategies of the Chagga, an ethnic group in Tanzania, as they came under the sway of invasive state centralism in the 1970s.

[70]   The forum shopping terminology is a bit misleading because it suggests falsely that the legal

present study was to map these semi-autonomous social fields and show how/when they work together and how/when they do not.

Whereas the international community's interest in the effects of conflict on development and social life dates only to the post-Cold War moment, already in the 1950s anthropologists made the relationships among conflict, development and social harmony objects of study. Gluckman (1955), the South African founder of the "Manchester School" (also known as the "Conflict School"), argued that everyone has complicated networks of allegiances that are bound to conflict, as the interests at stake in different social fields sometimes contradict each other. In Gluckman's view, the resolution and negotiation of these conflicts are what bind societies together, and hence they are a privileged locus for anthropological attention.[71] Turner (1968) extended Gluckman's analysis to focus not just on the fact of conflict as a determinant of the social order but more specifically on the processes through which the conflicts are resolved, which he called "social dramas." This focus on process enabled him to take change and history into account.[72]

Gluckman's and Turner's work has informed subsequent approaches to legal research methods, particularly through the continued dominance of the "dispute processing" approach.[73] Nader (and Todd 1978) originated this school, which updated the case method (that is, following an affair from its origins to its resolution and the aftereffects of its adjudication) to focus especially on the means through which conflicts are resolved. Disputes condense information about conflicts between groups and individuals, between rights and responsibilities, and between authorities and resources. Focusing on disputes facilitates a mapping of conflict resolution and

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sector is a "free" marketplace in which to "shop for" decisions. Access to justice depends in large measure on power and capital, both social and material. But the idea of forum shopping can be a useful way to begin conceptualizing the terrain.

[71]   Gluckman also has a fascinating discussion of rituals of rebellion, i.e., the ways that systemic inequalities create tensions that are eventually defused through a ritualized reversal of the social order. One is tempted to apply this model to the rebellion phenomenon that has erupted in the CAR in recent years; Gluckman has been rightly critiqued for his functionalist bias, but his insights nevertheless give pause for reflection as armed groups continue to sprout on Central African territory.

[72]   By emphasizing the importance of conflict and change through time, both Gluckman's and Turner's work represented a step away from the structural-functionalist bias of early anthropology (that is, the idea that all elements of social life play a functional role in the maintenance of social harmony). However, contemporary observers critique their tendency to assume functionality rather than, for instance, unequal power dynamics ("out of conflict itself unity is engendered" [301], wrote Turner).

[73]   One immediately apparent challenge with the dispute processing approach is the issue of how/when the researcher learns of the dispute. How does one know when a dispute is taking place? A researcher is usually the last to know what is going on in a particular locality, and for this reason she usually ends up studying disputes after the fact – narrated by people with a range of strategic interests in the way they tell the story – rather than following their evolution in real time. Though this necessarily limits and shapes analysis in certain ways, focusing on past disputes is arguably a more effective strategy in places home to violent conflict, where current disputes may be too charged for people to feel free to discuss openly.

the interests of and actions of strategic groups across social fields.

Nader aimed to develop a formal typology of dispute processing: mediation, arbitration, retribution, etc. In studies carried out by her students and colleagues, the social realities they uncovered proved too messy for a strict typology. Most often hybrid forms of dispute processing are used. For instance, a case might first be brought to a religious authority for mediation, then be brought to a village chief who gives advice while also asking for a the payment of a fine. Nevertheless, Nader's work provides a useful rubric both for studying the arenas where conflicts might be resolved as well as the range of responses that constitute the broad category of justice, from "lumping it" (refraining from pursuing a wrongdoer for the sake of maintaining harmonious social relations) to retribution. This is a useful reminder that the issue of what kind of justice is considered just itself depends on constellations of factors in particular situations.

Projects that inspired the research design

Three approaches in particular inspired the design of this research project. These were ECRIS (*Enquête Collective Rapide d'Identification des Conflits et des Groupes Statégiques*) (Bierschenk and Olivier de Sardan 1997b), the World Bank's Justice for the Poor unit, and the United States Institute of Peace/George Washington University's project on access to justice in Liberia.

Developed by Thomas Bierschenk and Jean-Pierre Olivier de Sardan, ECRIS is a means of assessing influence in rural governance structures. One of the first places this approach was tested was in CAR in the mid-1990s (Bierschenk and Olivier de Sardan 1997a), and it proved a fruitful technique for elaborating interests, processes of governance, and power. ECRIS draws on methodological strengths of anthropology (participant observation, respondent-centered lines of inquiry) while multiplying their returns through a team approach. Also, ECRIS condenses the usually immersive anthropological research methodology into a much shorter time frame (a few days per site) so as to enable the team to cover a much larger area and thereby facilitate comparison.

ECRIS has important differences from its more-prevalent cousin, Participatory Rural Appraisal (PRA). PRA consists of a set of research "tools" (transect mapping, Venn diagrams, etc.) that researchers use in collaboration with their informants. Though intended as a way of empowering people to take control of the research process rather than allowing a foreign researcher who may understand little of the local context to dictate responses (Chambers 1994a, 1994b), in reality PRA (and the watered-down versions that often pass for PRA in development/social research) often rests on problematic assumptions, which in turn bias the results it produces. As Bierschenk and Olivier de Sardan explain,

> The very choice of the specific tools is predicated upon an implicit populist ideology, in as far as it is based on preconceptions about consensus in rural communities and the spontaneous and immediate collaboration between 'the population' and 'the researchers'. And even though the notion of 'focus group' in PRA-RRA [Rapid Rural Appraisal] allows

for differentiation within a community ('the women,' 'the young,' 'the poor') it also implies the internal homogeneity of each group, while 'participatory ranking methods' presuppose a community consensus on the criteria of local social differentiation. This implicit theoretical 'location' of PRA-RRA seems to us at least a partial explanation for why, in the tool kit, there is hardly any place for individual interviews, for participant observation, for paying attention to local languages and problems of translation, for studying individual strategies, or for doing case studies of conflicts (1997b, p. 239).

Indeed, even research techniques often described as "Rapid Ethnographic Appraisal" (McNall and Foster-Fishman 2007) tend to lack the receptiveness to harvesting information that is in fact one of the main advantages of ethnography and instead rely exclusively on key informant interviews, questionnaires and existing data sets (Bentley et al. 1988; Guerrero et al. 1999; Kresno et al. 1994). The current research, drawing on the ECRIS experience, worked to inculcate receptiveness and thoroughness on the part of the research team, so as to more-fully represent the diverse local contexts. In addition to its thoroughly anthropological orientation, one of the key strengths of the ECRIS approach is the interplay it affords between individual research and group discussion/collaboration.[74]

ECRIS relies on working with local researchers, but Bierschenk and Olivier de Sardan give few specifics on the modalities of these collaborations. The current project placed the Central African researchers at the center of the process as the collectors of the majority of the data. In order to do so successfully, it built upon and learned from the experiences of the World Bank's Justice for the Poor and Understanding Processes of Change in Local Governance (J4P/LG) program, especially their Sierra Leone research project, which shared many of the CAR project's objectives. J4P/LG's transparency in terms of its methodology and lessons learned (Manning 2007, 2008) was especially helpful.

J4P/LG's work plan was similar to that of the present project. They partnered with a respected Sierra Leonean NGO to hire seven Sierra Leonean researchers. They then conducted a rigorous training in anthropological/ethnographic field methods and governance and law in Sierra Leone. The training began with classroom lectures and exercises and then applied the lessons through supervised practical field work. The bulk of the eventual research, which consisted primarily of in-depth interviews and observation, was carried out by the Sierra Leonean

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[74]   Two main ways in which the present study dis not employ an ECRIS approach owe to the logistical and capacity constraints in the country. First, because transport options are so limited and time-consuming, instead of the individual/collective research framework, in which the whole team converges on each site to collect data together, the researchers conducted research on their own and then met to evaluate, discuss and collaborate with their team leader (supervisor) during the supervisor's 1-2 day visit to their sites, as well as with the project coordinator (whose responsibilities also include being the head supervisor), during his visit to each site. Second, whereas ECRIS ideally involves an open-ended interview structure, this project employed researchers from the regions of study themselves (both to build capacity and to strengthen local ownership), and that meant the researchers had little previous research experience and thus benefited from the use of structured (yet still open-ended) interview guides. Using structured guides also facilitates analysis and comparison across sites.

researchers. They chose four main sites (a total of thirty-one villages) and five minor ones in order to encompass the country's ethnic, geographic and socioeconomic diversity.

The current project also partnered with a local NGO to hire nine researchers and three team leaders (supervisors), and covered a total of sixteen sites in seven prefectures. In a preliminary assessment of the experience, the J4P/LG program's designers and implementers reflected that additional supervision would have been helpful for the researchers, because it would give them a chance to solidify and build their skills (Manning 2007). By combining individual and partnered research (an insight gleaned from ECRIS), and joining the two with collective workshops, the current project built feedback and exchange between more- and less-experienced researchers into the process.

Profitable techniques employed by the United States Institute of Peace and George Washington University project "From Current Practices of Justice to Rule of Law: Policy Options for Liberia's First Post-Conflict Decade" also informed the research design. The USIP/GW team employed Liberian researchers to implement structured interview guides in order to conduct inquiries across the country. One innovative technique they used was case tracking and case histories, which involved following particular disputes through time to see the strategies people use to resolve problems and to locate the factors facilitating and/or blocking these processes. The current project also included a case tracking component.

It bears highlighting one main difference between the J4P/LG and USIP/GW studies and the current project in CAR: time. Whereas both the former projects benefited from extended periods of field research (six months or more), the CAR project team had to balance its need for in-depth, rigorous information with a limited budget, difficult security situation in much of the country, and need to produce results in a timely manner. Therefore, the CAR team tried to blend the rapid research approach of ECRIS with the capacity-building approaches of J4P/LG and USIP/GW.

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