

# **GENDER AND ACCESS TO JUSTICE IN UGANDA'S REFUGEE SETTLEMENTS**

## **THE EXPERIENCES OF SOUTH SUDANESE REFUGEES**

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# **Gender and Access to Justice in Uganda's Refugee Settlements**

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Working Paper 27 – September 2022

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# Acknowledgements

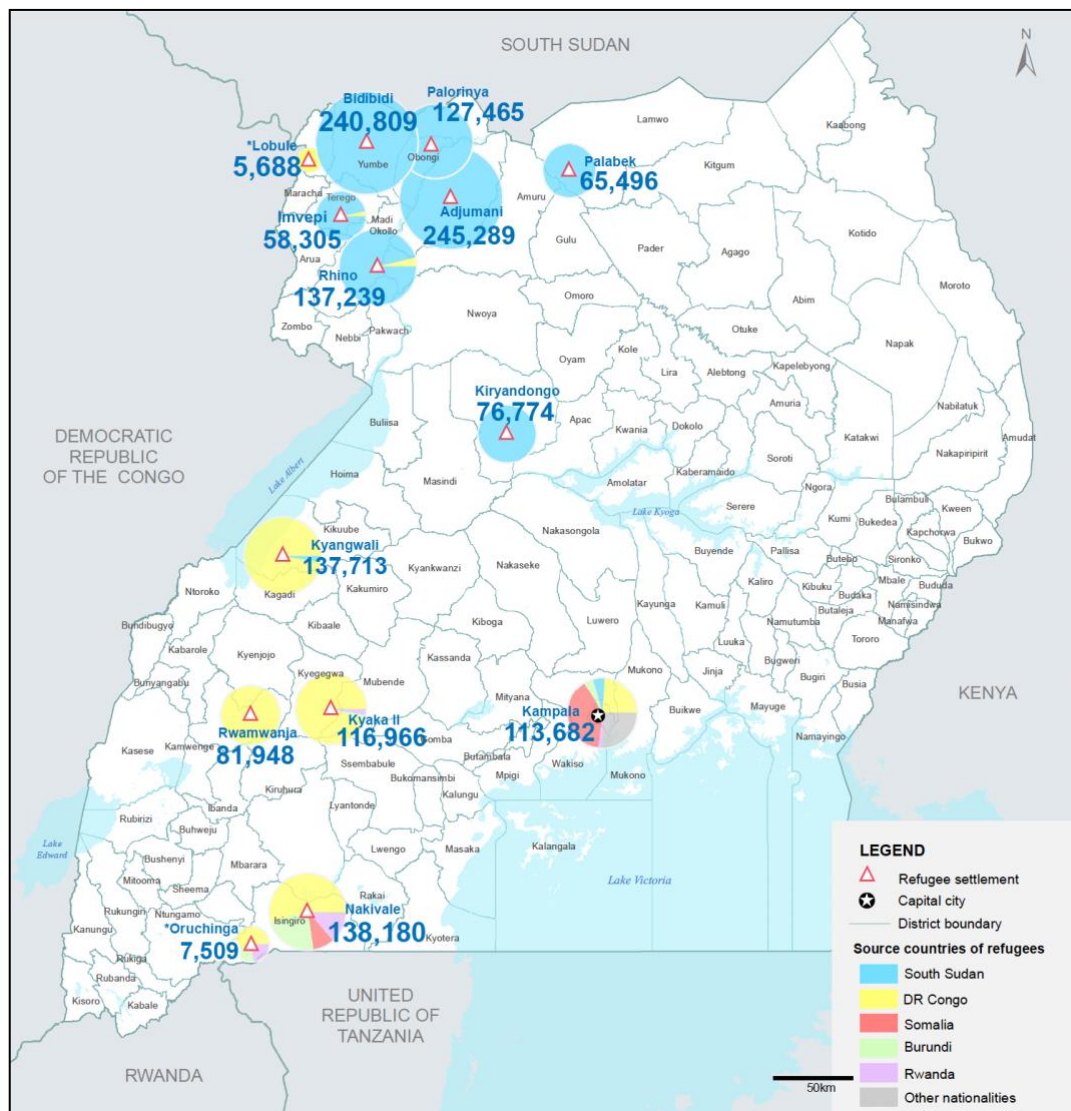
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## Abbreviations

IPV	Intimate Partner Violence
LC	Local Council
NGO	Non-Governmental Organization
OPM	Office of the Prime Minister
RLP	Refugee Law Project
RWCs	Refugee Welfare Councils
SGBV	Sexual and Gender-Based Violence
SPLA	Sudan People’s Liberation Army
UNDP	United Nations Development Programme
UNHCR	United Nations High Commissioner for Refugees
WFP	World Food Programme



Refugees and Asylum-Seekers in Uganda, April 2022 (source: UNHCR).

## Summary

This paper explores the gendered nature of access to justice among South Sudanese refugees in Uganda's settlements. It draws on qualitative research conducted in the three refugee hosting districts of Lamwo, Adjumani and Kiryandongo, between July and September 2021, including 73 individual interviews and groups discussions with a range of officials and refugees. The objectives of the paper are threefold. First, to map the institutions and authorities that govern the resolution of disputes in the settlements, as well as their accessibility and availability to refugees. Second, to understand the gendered nature of the disputes and crimes that are most prevalent in the settlements. Third, to assess how gender norms and power dynamics shape the engagement of refugees with different authorities in the settlements and the responses of different institutions to conflicts.

A dynamic blend of institutions is involved in maintaining order and governing the settlements. These include the Refugee Welfare Councils (RWCs), initiated by the Ugandan government in order to manage settlements and administer refugee populations, a range of "customary" authorities and "cultural" or "ethnic" leaders and associations, representing and responding to the needs of specific refugee groups, various community volunteers and paralegals, guided and trained by humanitarian agencies, as well as the Uganda Police Force, representing the entry-point into Uganda's formal justice system. There is considerable space for forum shopping and competition, but equally, for complementarity, constructive argumentation, and interdependency. Justice processes and norms are constantly being negotiated and contested and are characterised by hybridity and open-endedness.

There is a strong preference among South Sudanese for resolving conflicts outside Uganda's formal justice system, where there is greater room for procedural and normative flexibility and where restorative justice can be pursued through arbitration and debate. Police forces in the settlements are valued for their capacity to use force and prevent brawls from getting out of hand, but the punitive and adversarial approach of the formal justice system is often perceived as detrimental to the maintenance of positive social relations. The formal justice system is experienced as distant, painfully slow, far too expensive to meaningfully engage with, and susceptible to corruption. Individuals turn to the police when social cohesion is not seen as a priority, when they know that a resolution within the community is unlikely, and when in need of protection. They also do so, however, in order to gain leverage and influence discussions in "informal" forums.

Disputes in the settlements, including those leading to domestic violence, most commonly revolve around access to resources. Significant reductions in aid over the past two years, combined with the economic impact of COVID-19 lockdowns, have made it increasingly difficult for families to survive in the settlements and led to a rise in property crimes. These include petty theft, but also land disputes, both among refugees and between refugees and Ugandans. With limited access to income generating activities, men in the settlements often sense that they are redundant, as opposed to women, whose responsibilities and access to resources increase as household heads who manage their families' relationship with humanitarian agencies. Refugees tend to attribute the high levels of domestic violence in the settlements – arguably the most common type of crime alongside petty theft – to the changing gender dynamics in exile. Many of the disputes between partners revolve around access to resources and the sharing of aid. Violence is said to increase when rations are distributed.

Practices of crime reporting, and the uptake of different justice mechanisms, are gendered too. Refugees suffering from domestic abuse may seek the advice and support of church leaders, their extended families, RWCs or community paralegals, though many cases also go unreported. Women often report cases of domestic abuse to the police, particularly when physical violence is involved. While higher rates of female reporting reflect higher rates of female victimisation, there also appears to be a consensus that men are unlikely to disclose physical violence perpetrated by their female partners. When they do report domestic disputes, men tend to first turn to community leaders or their extended families. They are also more likely to report types of female behaviour that contravene traditional gender expectations and norms, such as the denial of cash rations, alcohol consumption, or infidelity.

There is a considerable gap between the ways refugees, state officials, and NGOs understand and evaluate the quality of different justice mechanisms. Criticism of the “patriarchal” and “oppressive” tendencies of informal institutions and particularly of South Sudanese “cultural leaders” and “chiefs” is ubiquitous among Ugandan officials and humanitarians. Customary norms tend to prioritise family cohesion over personal rights and to back the interests of male elders over females and youths. However, concerns about gender or generational biases are less dominant among refugees, who primarily emphasise that community structures are able to place conflicts within a broader social context and address their “root causes”, as opposed to the police force, which rigidly applies the laws of Uganda. The police are often perceived as more lenient towards women, whose detention is more complicated and expensive and who are assumed to be both harmless and needed at home.

Rather than a set of distinct and competing institutions of authority, the different justice mechanisms in the settlements are best understood as part of a single ecosystem. Understanding the horizontal impact various institutions have on each other is essential for further strengthening their collective capacity to respond to disputes effectively and in a



gender-sensitive manner. The strong support for “informal” community justice among refugees does not imply that efforts to render state institutions more accessible are redundant. The existence of multiple dispute resolution forums and institutions addressing conflicts in the settlements can enhance their accountability, not least because it creates competition between them. This can only happen, however, if individuals are genuinely able to choose between different options and are not forced to turn to certain authorities merely because the others are inaccessible to them or are experienced as predatory, exploitative, or biased.

# 1. Introduction

With more than 1.5 million registered refugees, Uganda hosts one of the largest refugee populations in the world and the largest in Africa. Close to a million of these refugees are South Sudanese who reside in vast settlements in the northern parts of the country.<sup>1</sup> Since the mass displacement from South Sudan into Uganda in 2016, policy discussions among international donors and government agencies about the fate of this population and the best ways to respond to its needs have coalesced around the implementation of the Comprehensive Refugee Response Framework (CRRF), and focused on the integration of refugee settlements into Uganda's service delivery systems and into its national development agenda. This strategy aims to render these settlements sustainable and self-sufficient and thus reduce the dependency of their inhabitants on humanitarian aid. A great deal of energy has been invested in renegotiating the distribution of authority and funds between different government institutions and humanitarian and development agencies involved in managing refugee affairs.

Important as they may be, such policy discussions take place thousands of miles away from the daily concerns, experiences, and dilemmas of most refugees, who, at the distant margins of the state, struggle to survive and progress under conditions of extreme precarity and deprivation. Here, integration in Uganda, reliance on humanitarian support, and the maintenance of ties with South Sudan inevitably coexist, as individuals are forced to make pragmatic decisions and draw on whatever economic and cultural networks available to them to generate a sense of predictability and maintain dignity and meaningful social relations despite the adversities they face. The nature of disputes that emerge on a daily basis in this environment, and the contests over justice and the law to which these disputes lead, offer a glimpse into both the challenges and uncertainties of refugee life in Uganda's settlements, and the multiple ways in which South Sudanese seek to address them. These disputes and contests are the focus of this paper.

In particular, this paper deals with gender and access to justice in settlements hosting South Sudanese refugees in northern Uganda. Drawing on qualitative research in the three refugee hosting districts of Lamwo, Adjumani and Kiryandongo, it explores the different justice mechanisms operating in the settlements, the relationship between them, as well as the gender dynamics underpinning trends of violence, practices of dispute resolution, and criminalisation. The paper sheds light on the wider social and cultural environment within

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<sup>1</sup> UNHCR, *Operational Data Portal, Refugee Situations* (last updated 30 December 2021), available at: <https://data2.unhcr.org/en/situations/southsudan>

which Uganda's formal law enforcement institutions operate, and on the dynamic interfaces of these institutions with other "informal" non-state structures of authority. Before turning to the main findings of the research from Uganda's settlements, however, this introduction briefly reviews some of the broader scholarly debates in which this study intervenes and to which it contributes, first, with regard to gender, justice, and the law, and second, with regard to the governance of refugee camps.

## ***Access to justice, gender, and "customary law"***

Access to justice commonly refers to people's ability "to seek and obtain a remedy through formal or informal institutions of justice, and in conformity with human rights standards."<sup>2</sup> Although its precise scope has been debated and articulated in different ways in various contexts, the right of access to justice is enshrined in numerous universal and regional human rights instruments, including the 1948 Universal Declaration of Human Rights.<sup>3</sup> The African Charter on Human and Peoples' Rights, too, provides that "every individual shall have the right to have his cause heard," including the "right to an appeal to competent national organs against acts of violating his fundamental rights as recognized and guaranteed by conventions, laws, regulations and customs in force" (Article 7). Among development actors, discussions on access to justice usually revolve around Sustainable Development Goal 16 on peace, justice and strong institutions, whose targets include ensuring "equal access to justice for all."

The commitment to *equal* access to justice is often translated in the context of development and humanitarian programming to a concern with *women's* access to justice. Commonly grounded in the 1979 Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), this concern has gained considerable momentum in recent years. The 2011-12 edition of *Progress of the World's Women*, a publication of UN Women, was dedicated to women's access to justice.<sup>4</sup> In 2015, the UN Committee on the Elimination of Discrimination against Women published a general recommendation on women's access to justice,<sup>5</sup> and in 2018, a consortium of UN entities published a detailed practitioner's toolkit on women's access to justice programming.<sup>6</sup> The spotlight on the issue has played an important role in attracting renewed attention to the very real structures of abuse, domination and discrimination women are subject to in different parts of the world. It has also helped mobilise various stakeholders to address these structures, combat sexual and gender-based violence (SGBV) and strengthen Rule of Law institutions.

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<sup>2</sup> UNDP, *Programming for Justice: Access for All* (Bangkok, 2005), 5.

<sup>3</sup> See the discussion in F. Francioni, 'The Rights of Access to Justice Under Customary International Law', in *Access to Justice as a Human Right*, ed. by F. Francioni (Oxford University Press: Oxford, 2007), 1-55.

<sup>4</sup> UN Women, *Progress of the World's Women: In Pursuit of Justice* (New York, 2011).

<sup>5</sup> Committee on the Elimination of Discrimination against Women, *General recommendation No. 33 on women's access to justice*, 3 August 2015, CEDAW/C/GC/33.

<sup>6</sup> UN Women, *A Practitioner's Toolkit on Women's Access to Justice Programming* (New York, 2018).

However, as some scholars have pointed out, the liberal concern with women's access to justice is often underpinned by a particular set of stereotypes about women, namely, that they are submissive, helpless, and powerless members of society. In the language of a recent UN publication, for example, women are "the poorest segments of their societies and consequently, *lack voice and agency*," which also means that they are in need of support in order to "assert and claim their social, economic, cultural, political and civil rights."<sup>7</sup> Here, contemporary policy debates about women and justice problematically echo narratives that have dominated the study of crime for many decades. They not only ignore the multiple ways in which women do engage in political action and assert their authority in different societies but also conceptualise criminality as a predominantly masculine behaviour and conformity, vulnerability, and passivity as feminine traits, thus constructing women "as one-dimensional, thereby lacking in the negative traits that complex human beings embody."<sup>8</sup>

Drawing its theoretical inspiration from debates in criminology, this study is not concerned exclusively with *women and access to justice*, but rather, with *gender and access to justice*. The scholarly interest in gender within the fields of criminology and crime history is relatively recent and emerged in the 1990s. Building on the pioneering studies of feminist scholars on women and criminal justice from the 1970s, which first shed light on the experiences of women and girls as offenders, victims, and prisoners, scholars of *gender and crime* have examined how gender norms more broadly impact criminal activity and the responses to it.<sup>9</sup> The intention of the shift in this study from *women and access to justice* to *gender and access to justice* is not to marginalise the violence and hardships female refugees endure. Rather, it is to situate these within a wider historical and cultural context in order to understand how to respond to them in a more holistic manner. This approach takes seriously the fact that gender identities are social constructs, and as such, are historically dynamic and contested.

Institutional practices and norms, much like gender identities, are culturally contingent and shaped by long historical trajectories.<sup>10</sup> In postcolonial Africa, the gendered nature of access to justice has been intimately linked to the evolution of supposedly parallel and yet eternally interlinked systems of "customary" (or "traditional") law, on the one hand, and "formal" state law, on the other.<sup>11</sup> The formal legal systems in place in many African states have their roots

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<sup>7</sup> Emphasis added. UN Women, *Fact Sheet on the importance of women's access to justice and family law*, n.d., available at: <https://www.unssc.org/sites/unssc.org/files/UNWomenFactSheet.pdf>.

<sup>8</sup> L. Stemple, A. Flores, and I. H. Meyer, 'Sexual Victimization Perpetrated by Women: Federal Data Reveal Surprising Prevalence', *Aggression and Violent Behavior*, 34 (2017), 304.

<sup>9</sup> J. Flavin and L. Artz, 'Understanding Women, Gender, and Crime: Some Historical and International Developments', in *Routledge International Handbook of Crime and Gender Studies*, ed. by C. M. Renzetti, S. L. Miller, and A. R. Gover (Routledge: Abingdon, 2013), 9-40; S. Walklate and K. Fitz-Gibbon, *Gender, Crime and Criminal Justice* (Routledge: Abingdon, 2018).

<sup>10</sup> T. Bierschenk and J.-P. Olivier de Sardan, eds. *States at Work: Dynamics of African Bureaucracies* (Brill: Leiden, 2014)

<sup>11</sup> See the discussion in: M. Mukhopadhyay and S. Quintero, *Gender and Access to Justice in Sub-Saharan Africa: Report of the conference held 29-30 October 2008 in Johannesburg, South Africa* (Royal Tropical Institute and the Centre for Applied Legal Studies: Amsterdam, 2008).

in the institutions and norms imported by colonialists to the continent, which were originally used to govern relatively small constituencies of urbanised migrants and elites according to European notions of public order and “civilisation” and European gender ideals and expectations.<sup>12</sup> These legal systems were reformed over the decades, including under the influence of modern constitutionalism and human rights law. However, they remain distant from the daily lives of many Africans, who, as Oloka-Onyango notes, “are disengaged from the operation of official written law except where confronted with its most coercive, criminal, and punitive aspects.”<sup>13</sup>

Most Africans, and particularly those residing outside major urban centres, turn not to the state’s formal institutions but to community justice mechanisms and “customary” legal systems to resolve disputes. What came to be known as “customary law” is the historical product of colonial policies which sought to identify and codify supposedly timeless African “traditions” in order to govern rural populations of colonial “subjects” with as little investment as possible.<sup>14</sup> These “customary” institutions ossified African modes of governance and dispute resolution which were adaptable and historically dynamic. And because these institutions were the product of engagements between colonialists and African patriarchs, with their creation, as Sylvia Tamale writes, “a new form of patriarchy, previously unknown to Africans, was introduced, significantly diminishing the sociopolitical status of women.”<sup>15</sup> As such, the rules and procedures enforced by “customary” authorities until today often continue to reinforce the domination of elderly men, and are routinely criticised by human rights activists and feminists for their oppressive tendencies.

For this reason, many of those who wish to promote gender equality and access to justice believe that it is necessary to expand the outreach and capacities of the modern state’s formal justice system, so as to reduce the dependency of civilians on “informal” institutions. As Tamale observes: “Our training as lawyers orients us to always run to formal statutory laws for redress; indeed, many of us cannot see beyond statutory law reform. We associate ‘progress’ with the modern, the formal.”<sup>16</sup> But as research has consistently shown, community justice is not simply a technical exercise, which rigidly follows a set of pre-determined unjust processes and procedures. It is a site of negotiation and contestation, and

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<sup>12</sup> D. Hodgson and S. McCurdy (eds.), *“Wicked” women and the reconfiguration of gender in Africa*, (Heinemann: Portsmouth, 2001).

<sup>13</sup> J. Oloka-Onyango, *When Courts Do Politics: Public Interest Law and Litigation in East Africa* (Cambridge Scholars Publisher: Newcastle upon Tyne, 2017), 205.

<sup>14</sup> M. Mamdani, *Citizen and Subject: Contemporary Africa and the Legacy of Late Colonialism* (Princeton University Press: Princeton, 1996).

<sup>15</sup> S. Tamale, *Decolonization and Afro-Feminism* (Daraja Press: Ottawa, 2020), 147. See also: M. Chanock, “Making Customary Law: Men, Women, and Courts in Colonial Northern Rhodesia,” in M. J. Hay and M. Wright (eds.), *African Women and the Law: Historical Perspectives* (Boston: Boston University, 1982).

<sup>16</sup> Tamale, *Decolonization and Afro-Feminism*, 134.

as such is amenable to change.<sup>17</sup> With these insights in mind, this study does not focus exclusively on statutory law and the capacities of formal state institutions as the only avenues for securing gender equality and justice in the settlements. Rather, it also examines the processes of contestation and change taking place on the ground, and on the ways in which these are impacted by the unique constellation of authorities, some more formal than others, that govern Uganda's refugee settlements.

### ***Governing refugees in Africa and beyond***

Few spaces have inspired political theorists and geographers more than camps – *refugee* camps in particular.<sup>18</sup> A remarkably prominent body of scholarship in what is now often referred to as “camp studies” – drawing on the theories of Hannah Arendt, Michel Foucault, and Giorgio Agamben – has conceptualised refugee camps as spaces of sovereign power, exception, and the suspension of the law. In camps, this scholarly approach suggests, whole populations who have lost what Arendt called “the right to have rights” in a world neatly divided into nation states are effectively excluded from any polity and are reduced to their mere humanitarian needs, vulnerabilities, and “bare life”.<sup>19</sup> Informed by these ideas, much of the work on the administration and governance of refugee camps has focused on the role of humanitarian organisations, highlighting the inevitable interdependence and intermeshing of technologies of care and control, relief and violence.

While refugees fall under the jurisdiction of their host nation-state, it is humanitarian organisations that often play the most dominant role in providing them with social services and relief – particularly when they reside in designated camps or settlements. Scholars have therefore pointed out that the construction of authority in such settings is intimately linked to the deployment of various biopolitical technologies designed to measure populations and sustain lives. Michel Agier, writing on humanitarian governance in refugee camps, argues that “every policy of assistance is simultaneously an instrument of control over its beneficiaries.”<sup>20</sup> The implication, others have observed, is a tacit alliance between humanitarian actors and

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<sup>17</sup> See, in the South Sudanese context: R. Ibreck, *South Sudan's Injustice System: Law and Activism on the Frontline* (Zed Books: London, 2019). For a South African example, see also A. Claassens and S. Mnisi, “Rural Women Redefining Land Rights in the Context of Living Customary Law,” *South African Journal on Human Rights* 25(3) (2009): 491-516.

<sup>18</sup> While refugees in Uganda are hosted in settlements which allow for a greater degree of freedom of movement than refugee camps in other countries, these settlements are nonetheless humanitarian spaces of care and control that bear many similarities to refugee camps elsewhere. Insights from the broader “camp studies” literature are of relevance to the Ugandan context, despite the differences in terminology. In everyday language, refugees often refer to Uganda's settlements as “camps”, even though the use of the word in formal discourse is both politically incorrect and legally inaccurate.

<sup>19</sup> C. Minca, ‘Geographies of the Camp’, *Political Geography*, 49 (2015), 74-83. See also: H. Arendt, *The Origins of Totalitarianism* (G. Allen & Unwin: London, 1951); G. Agamben, *Homo Sacer: Sovereign Power and Bare Life* (Stanford University Press: Stanford, 1998).

<sup>20</sup> M. Agier, *Managing the Undesirables: Refugee Camps and Humanitarian Government* (Polity Press: Cambridge, 2011), 12.

security apparatuses. Brankamp, in his study of policing in Kakuma refugee camp in Kenya, notes that humanitarian interventions are “always interwoven with regimes of militarised policing which are integral to administering camps.”<sup>21</sup>

Thinking of camps as spaces of exception or biopolitical domination is analytically persuasive. But any extended ethnographic observation of life in actual refugee camps quickly reveals that reality is far more complicated. Despite the exclusion and abjection of their inhabitants, camps are also hubs of significant political action, contestation, and change, whose residents may be excluded from full citizenship in their host country but are nonetheless included in various social and economic processes that often transcend the refugee-citizen divide.<sup>22</sup> Authority is not simply imposed on passive, helpless refugees by omnipresent state institutions or humanitarian apparatuses. Beneath (or beyond, or above, or in defiance of) their structures of containment, ordering and surveillance, refugees also organise independently, creating what Turner, writing on Burundians in Tanzania, describes as “pockets of sovereign power outside the reach of either the camp commandant’s restrictions or the UNHCR’s benevolent control.”<sup>23</sup> As McConnachie argues, “governance and authority in refugee camps must be understood holistically, as an inter-related normative universe rather than the result of individual forces or policies.”<sup>24</sup>

Legally, states are obliged to provide access to justice to individuals subject to their effective jurisdiction and under their control. Any refugee physically present within the territory of a country, therefore, must be provided with access to its justice mechanisms. The 1951 Refugee Convention provides that “a refugee shall have free access to the courts of law on the territory of all Contracting States” (Article 16 (1)) and requires state parties to provide refugees with the necessary “administrative assistance” to exercise their rights (Article 25), including by providing them with documentation and establishing any necessary mechanism “by which refugees may benefit in practice from their legal entitlements.”<sup>25</sup> The 1969 OAU Convention Governing the Specific Aspects of Refugee Problems in Africa does not make an explicit reference to refugees’ access to justice, but some national laws in African countries do. Uganda’s 2006 Refugees Act, for instance, holds that refugees should “have free access to courts of law, including legal assistance under applicable laws of Uganda” (Article 29 (1)(h)).

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<sup>21</sup> H. Brankamp, ‘“Occupied Enclave”: Policing and the Underbelly of Humanitarian Governance in Kakuma Refugee Camp, Kenya’, *Political Geography*, 71 (2019), 67-77.

<sup>22</sup> For example, A. Ramadan, ‘Spatialising the Refugee Camp’, *Transactions of the Institute of British Geographers*, 38 (2013), 65-77; V. Redclift, ‘Subjects or Agents? Camps, Contests and the Creation of ‘Political Space’’, *Citizenship Studies*, 17 (2013), 308-321; N. Sigona, ‘Campzenship: Reimagining the Camp as a Social and Political Space’, *Citizenship Studies*, 19 (2015), 1-15; L. Oesch, ‘The Refugee Camp as a Space of Multiple Ambiguities and Subjectivities’, *Political Geography*, 60 (2017), 110-120.

<sup>23</sup> S. Turner, *Politics of Innocence: Hutu Identity, Conflict, and Camp Life* (Berghahn Books: New York, 2010), 10.

<sup>24</sup> K. McConnachie, *Governing Refugees: Justice, Order and Legal Pluralism* (Routledge: Oxford, 2014), 155.

<sup>25</sup> For a detailed discussion, see J. C. Hathaway, *The Rights of Refugees Under International Law* (Cambridge University Press: Cambridge, 2021), 915-24.



In practice, governments and UNHCR have long relied on various informal or “traditional” justice mechanisms in the administration of refugee camps in the Global South – a practice that attracted surprisingly little scholarly attention. UNHCR published its first comprehensive study of the “administration of justice” in refugee camps in 2006, based on a survey that examined the situation in 13 countries around the world, of which 7 were in Africa. One of the study’s main conclusions was that there is

a general lack of capacity (resources) or willingness of host governments to take an active role in law and order issues arising between refugees in the camp, preferring to allow refugees to take care of their own affairs quietly. While some policing systems may exist in camps, there is a marked lack of capacity and/or willingness on the part of many host governments to engage directly in conflict resolution and ensure legal protection and remedies when disputes and rights violations affect or occur only between refugees (i.e. when nationals or locals are not involved). This situation is aggravated when refugee camps and settlements are situated in remote areas, where locals as well have little or no access to formal legal mechanisms. Refugees are thus often tacitly permitted to put in place their own justice and dispute resolution mechanisms, which are generally subject to little or no monitoring.<sup>26</sup>

Paying attention to alternative forms of political action, strategies of self-governance, and institutions of authority – as well as to their relationship with formal state institutions – is particularly relevant when studying refugee camps or settlements in Africa. Across the continent, refugee populations are often concentrated in borderland areas whose histories of political and economic marginalisation, violent state expansion, insurgencies, and militarised domination and plunder date back to colonial times. Northern Uganda, which hosts the majority of Uganda’s refugees and refugee settlements, is one such example, but the situation is not fundamentally different in neighbouring countries. In both Kenya and Ethiopia, for example, refugees reside in pastoralist regions whose incorporation into the (imperial or colonial, and later, postcolonial) state has been violent, contested, and partial.<sup>27</sup> In Tanzania, Burundian refugees reside in camps in Kigoma – one of the most impoverished parts of the country. In such regions, state power remains not only contested and fragmented, but often also morally ambiguous from the perspective of local populations – both refugees and citizens.

To properly understand everyday contests over crime, justice, and the law, therefore, one has to look beyond the formal state, considering the operations of state institutions within a broader historical and social context and as part of what is often a rather rugged landscape of power and authority. The preference of refugees for “informal” or “non-state” justice

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<sup>26</sup> R. Da Costa, *The Administration of Justice in Refugee Camps: A Study of Practice* (UNHCR: Geneva, 2006).

<sup>27</sup> In Kenya, refugees from Somalia and South Sudan are concentrated in the northern margins of the country, while in Ethiopia, they are encamped in the western and southern peripheries.



mechanisms is a prominent theme in studies of justice and dispute resolution in camps.<sup>28</sup> But research that examines the workings of different justice mechanisms within camps or settlements has been limited, and often overtly focused on those semi-formal mechanisms introduced by either humanitarian agencies or host governments.<sup>29</sup> Examining the gendered nature of access to justice in Uganda's refugee settlements, this paper builds on, and contributes to, the limited scholarship on dispute resolution and justice in refugee camps in general, and among South Sudanese refugees in particular. It brings them into conversation not only with the scholarship on gender and the law, but also with the rich literature on governance and justice in South Sudanese societies.

## ***Methodology and approach***

This paper is based on qualitative research conducted in the three refugee hosting districts of Lamwo, Adjumani and Kiryandongo in August and September 2021. Interviews and focus group discussions were conducted with a range of actors in each of these locations, in an effort to capture the multiple perspectives and voices that shape everyday struggles for justice in the settlements, and the diversity and fluidity of institutions of authority that operate in these spaces. Participants included police and prison personnel, magistrates, local government officials at the village (LC1s) as well as district level (Community Development Officers, Chief Administrative Officers, Resident District Commissioners, LC5s), officials from the Office of the Prime Minister (Settlement Commandants and their Deputies), members of the RWCs (both male and female), refugee community leaders and "chiefs" or "traditional" leaders (of different communities), refugee paralegals, NGOs working on SGBV in the settlements, former inmates, as well as everyday civilians and refugees (who participated in both mixed-gendered and separate group discussions).

Crucially, however, this study builds on RLP's ongoing work in the field of access to justice in the refugee hosting districts it covers. Interviews and group discussions with all stakeholders in the districts were preceded by interviews with RLP's own Legal Officers and Legal Assistants, whose reflections and insights are included in this paper. RLP staff also led the mobilisation of participants in the settlements, drawing on pre-existing networks. Acknowledging that such networks can often be biased, overrepresenting both certain ethnicities and refugees with specific experiences and backgrounds, however, an effort was also made to speak not only to refugees of different ages and sexes but also to individuals from different refugee communities. As will become clear, this is crucial because different

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<sup>28</sup> Examples from Uganda, include: A. Ntegyerize, Charity Ahumuza, *A Study of Informal Justice Structures in Refugee Settlements in Uganda* (RLP: Kampala, 2016); S. Vancluysen and B. Ingelaere, 'Conflict Resolution as Cultural Brokerage: How Refugee Leaders Mediate Disputes in Uganda's Refugee Settlements', *Journal of Refugee Studies*, 33 (2) (2020), 300–315.

<sup>29</sup> See also: J. Veroff, *Crimes, Conflicts and Courts: The Administration of Justice in a Zambian Refugee Settlement* (UNHCR: Geneva, 2010); C. Jacobs, H. Flaam *et al.*, *Justice Needs, Strategies, and Mechanisms for the Displaced: Reviewing the Evidence*, Social Science Research Council Working Papers, (Brooklyn, 2017).

South Sudanese communities not only uphold different customary norms but also engage differently with state institutions and NGOs. Given the limited number of interviews and group discussions that were held with refugees in each settlement, speaking to individuals from a wide range of communities was often a challenge. However, in each settlement, the study team spoke to leaders and representatives from the most dominant refugee communities.

The gender norms and power dynamics further discussed in this study have also impacted its methodology and the process of data collection. Overall, 131 people participated in this study – 43-45 in each district – in a total of 54 individual interviews and 19 groups discussions of 2-5 people. These participants include 84 men and 47 women. Given that officials and customary authorities in the settlements are predominantly male, there was no attempt to achieve a balance in gender representation among the overall number of participants. Where possible and relevant – for instance, among paralegals, RWC members and the general population – a similar number of male and female participants were engaged. Where purposive sampling was employed and interviewees were identified primarily based on their position – for instance, police officers, local government officials, “chiefs”, or former inmates – men were inevitably over-represented.

Some of the topics covered by this study are of a sensitive nature, particularly as they relate to practices and norms that may be considered illegal in Uganda. It was therefore crucial to make sure interviewees were comfortable sharing their views and experiences openly, rather than feel pressured to respond according to what they believe NGOs and officials want to hear. Reaching out to participants through RLP's pre-existing networks helped mitigate this challenge and build trust. All participants were explained the purpose of the research and guaranteed that the data collected will be anonymised and that they will not be quoted directly against their names in publication arising from the study. Names and any details that could identify speakers do not appear in this report. Participants are usually identified only according to their gender, and, if relevant, position.<sup>30</sup> When interviewees agreed, discussions were recorded and later transcribed. Otherwise, written notes were taken. Most interviews were conducted in English. Some were conducted in Dinka, Nuer, Acholi, Ma'di, Lotuko, and South Sudanese Arabic, with the support of translators, if necessary.

This research did not involve large scale quantitative surveys that could produce statistically representative data. However, after they were transcribed, interviews were manually analysed for common themes. This also helped identify variations between the different study sites. Police and court statistics, where available, were also reviewed, and a comprehensive literature review helped contextualise the findings, empirically and

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<sup>30</sup> Recordings and notes have only been shared with members of the research team. In any case, these do not include identifying details of individuals who may be accused of illegal activity in Uganda, so that there is no risk that notes will be subpoenaed.

theoretically. Finally, once a preliminary draft of this study had been consolidated, three validation workshops were conducted. During these workshops, some of the participants who were interviewed in the districts were presented with the study's key findings and were asked to comment on them. Two workshops, conducted in late January 2022, targeted refugee participants in the settlements. An additional workshop in early February targeted government officials, the police, and the judiciary, both from the districts and the national level. These events proved instrumental for nuancing some of the findings of this study and addressing gaps in the materials gathered in the districts.

## ***The study sites***

South Sudan's civil war broke out in late 2013, but it was the spread of violence into the southern parts of the country since 2015 and the ultimate collapse of the Agreement on the Resolution of the Conflict in South Sudan (ARCSS) in July 2016 that led to mass displacement into neighbouring Uganda. This paper focuses on three refugee hosting districts (Kiryandongo, Lamwo, and Adjumani) and is based on research carried out in three specific settlements (Kiryandongo, Palabek, and Maaji II). All three districts host, almost exclusively, South Sudanese refugees, the vast majority of whom (83-84 percent) are women and children, with adult female refugees outnumbering male adults. However, the ethnic composition of the three settlements is different, and so is their position within their respective districts and their proximity to urban, administrative, and commercial centres.

Kiryandongo Refugee Settlement is located in Kiryandongo District, in Uganda's Western Region. The Settlement hosts some 75,000 refugees of whom more than 74,200 are South Sudanese.<sup>31</sup> Smaller Congolese, Sudanese, and Kenyan communities also reside in the settlement. Located just outside Bweyale town, on the main road linking Juba, Gulu, and Kampala, Kiryandongo is an emerging commercial hub and an important meeting point for South Sudanese. It is far more accessible from Kampala and is therefore often seen as a more developed and interconnected site than those refugee settlements in northern Uganda. Crucially, Kiryandongo already hosted South Sudanese refugees in the 1990s, during Sudan's second civil war. These were predominantly Acholi speakers and members of other Equatorian groups, some of whom have since remained in the area.

Most refugee settlements in northern Uganda – including those covered by this research – are more distant from urban centres and major crossroads than Kiryandongo. Palabek Refugee Settlement, in Lamwo District, is home to more than 60,600 South Sudanese refugees, as well as tiny Sudanese and Congolese communities.<sup>32</sup> It is one of Uganda's newest

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<sup>31</sup> UNHCR, *Uganda – Refugee Statistics December 2021 – Kiryandongo*, January 2022, available at: <https://data2.unhcr.org/en/documents/details/90673>

<sup>32</sup> UNHCR, *Uganda – Refugee Statistics December 2021 – Palabek*, January 2022, available at: <https://data2.unhcr.org/en/documents/details/90679>

refugee settlements, opened in April 2017. Situated in one of Uganda's Acholi-dominated districts, Palabek's first residents were South Sudanese Acholi from Magwi County, just across the border from Lamwo, and particularly from Pajok. Since its establishment, however, the settlement has received populations from other parts of South Sudan, including Lotuko-speakers from Eastern Equatoria and Nuer and Dinka from Jonglei and Upper Nile. As opposed to Maaji II settlement in Adjumani, in Palabek, different ethnic communities are not concentrated in specific zones or blocks but scattered throughout the settlement.

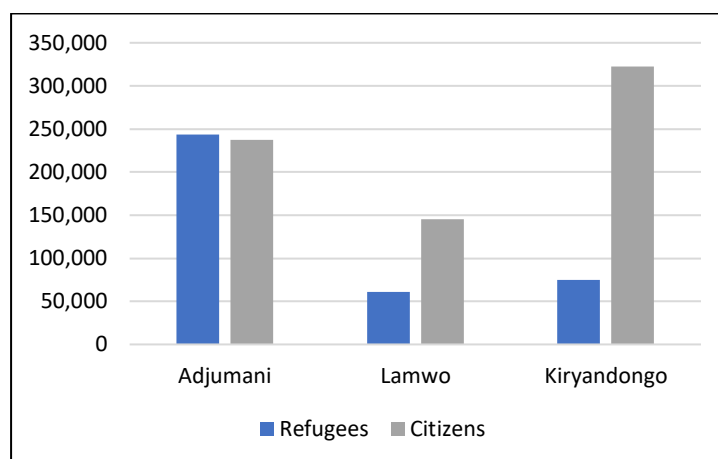


Figure 1. Refugees and host population by district.<sup>33</sup>

Adjumani District hosts a total population of close to 243,300 refugees, almost entirely from South Sudan, who reside in multiple smaller settlements across the district. Of these, Nyumanzi, Pagrinya, Ayilo I and II and Maaji II and III are the largest.<sup>34</sup> Some of these settlements are situated at a considerable distance from Adjumani town and the main roads connecting Adjumani town to Atiak, Moyo and the border town of Elgu. This paper draws on interviews with officials at the district level and refugees in Maaji II settlement, located some 30 km south-west of Adjumani town. Originally established in the late 1990s to accommodate South Sudanese refugees fleeing Sudan's second civil war, the settlement was reopened in 2015, and is dominated by South Sudanese Ma'di speakers from Pageri County, who share the same language with their Ugandan Ma'di hosts. It also hosts substantial Nuer and Dinka communities, however, who reside in separate zones of the settlement.

<sup>33</sup> UNHCR, *Uganda Comprehensive Refugee Response Portal (as of 30 December 2021)*, available at: <https://data2.unhcr.org/en/country/uga>

<sup>34</sup> UNHCR, *Uganda – Refugee Statistics December 2021 – Adjumani*, January 2022, available at: <https://data2.unhcr.org/en/documents/details/90669>

## 2. Interdependent structures of authority

As refugee camps elsewhere in the world, refugee settlements in Uganda are spaces in which multiple legal systems, notions of justice, and structures of authority regularly interact with one another.<sup>35</sup> At times, different institutions complement each other's work. At times, they compete with each other and even undermine each other's efforts. At the most formal level, refugee settlements are governed by the laws of Uganda, and it is these laws that determine the authority and mandate of state institutions within them. But in addition to the formal institutions of the Ugandan state, several other structures of authority govern life in the settlements. These include the semi-formal Refugee Welfare Councils (RWCs), the more informal and often fluid "traditional" justice mechanisms of various ethnicities, as well as religious institutions and other community structures introduced by NGOs.

This section introduces the main authorities operating in the settlements, the moral and legal orders underpinning them, and their relationship with each other. The various structures of authority operating in the settlements are not merely parallel avenues for the settlement of disputes. Each of these structures derives its legitimacy and power from different sources, and each, in turn, has a different mandate, governs different social spheres and types of conflicts, upholds different legal regimes, moral orders and notions of justice, and deploys different instruments or technologies. There is no straightforward distinction between restorative judicial systems and adversarial or retributive ones, but non-state community structures are often seen as more flexible and committed to social harmony and reconciliation, while the police and the judiciary prioritise the strict enforcement of written laws and uphold a more punitive notion of justice.

To understand how authority and justice are structured in the Uganda's settlements today it is important to view current dynamics in relation to previous South Sudanese experiences of displacement and government. This section starts with a brief discussion of the place of refugee camps and settlements in South Sudanese social history and political imagination. It then introduces the different structures of authority that are present in Uganda's refugee settlements today and the physical and economic accessibility of these institutions. While different institutions and justice forums are presented here separately – and are usually described as distinct by refugees, humanitarians, and government officials – in practice they

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<sup>35</sup> Da Costa, *The Administration of Justice*; McConnachie, *Governing Refugees*.

are interdependent, and their operations are intertwined. They are part of a single ecosystem of authority and justice, whose dynamics and internal logic are further explored in the following sections of this paper.

### ***Displacement, cultural change, and government law***

South Sudan is a remarkably diverse country, home to more than 60 different peoples. Kinship and ethnic (or, “tribal”) affiliations, undoubtedly, have played an important role in South Sudanese political history. And yet, one thing that South Sudan’s diverse communities share is their historical experience of violent encounters with modern states, militaries, and markets, starting from the late nineteenth century. These experiences have produced a powerful moral discourse that transcends ethnic divisions and constructs a dichotomy “between the values of an idealised moral economy of kinship and reciprocity, and the immoral, individualistic cultures of money and town.”<sup>36</sup> Regardless of their “tribal” affiliation, therefore, until today, South Sudanese often portray the urban sphere of the state and “government” – associated with modern education, health facilities, roads, courts, markets, and money – as distinct from the rural sphere of “tradition” and kinship. This is so, of course, even if in practice there is no clear separation between these spaces or between the different institutions and practices associated with them.

Refugee camps have long held a complicated position within this political imagination. The very real humanitarian disasters that civil wars have caused in South Sudan throughout history notwithstanding, refugee camps have never simply been places into which vulnerable populations are forced to flee in order to be saved, even if popular narratives among international actors have consistently portrayed them as such. While located in peripheral areas and offering rather basic living conditions, camps have also consistently attracted South Sudanese who sought to acquire modern education and benefit from the knowledge and services offered by humanitarian agencies and governments. As towns, they have also often drawn together South Sudanese of different ethnicities and thus generated new identities and political discourses. For many South Sudanese coming from chronically underdeveloped regions, refugee camps came to represent the promise of “development” and offered the opportunity to gain education, new knowledge, and a taste of “modern” life.

During the 1980s, in the first phases of Sudan’s second civil war (1983-2005) hundreds of thousands of Southerners fled to Itang, in western Ethiopia. Many of them did so in search of schooling, and because the Sudan People’s Liberation Army (SPLA), which led to the rebellion against Khartoum, had its main training camps in the region. Western Ethiopia thus “acted as a magnet for boys, many of whom wanted to be armed and trained, as well as educated.”<sup>37</sup>

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<sup>36</sup> C. Leonardi, ‘Paying ‘Buckets of Blood’ for the Land: Moral Debates Over Economy, War and State in Southern Sudan’, *The Journal of Modern African Studies*, (2011), 216.

<sup>37</sup> A. De Waal, *Food and Power in Sudan: A Critique of Humanitarianism* (African Rights: London, 1997), 83.



Itang itself emerged as a commercial hub and a centre of considerable political and religious activity.<sup>38</sup> During the 1990s, Kakuma refugee camp in northern Kenya,<sup>39</sup> Pugnido camp in western Ethiopia, and the settlements in northern Uganda all emerged as important social hubs for South Sudanese. Again, these camps attracted youths who sought modern education (and, increasingly, the opportunity to be resettled in industrialised countries by the UN), in a context in which schools inside Southern Sudan, and particularly in the SPLA-held areas, remained almost non-existent.<sup>40</sup> These camps were far less militarised than Itang camp in the 1980s, and increasingly offered different education opportunities to women and girls as well.

From the perspective of many South Sudanese, one of the main attractions of Uganda's refugee settlements until today continues to be the education opportunities they offer. In a paradigmatic modernist imaginary, therefore, refugee camps – because of the various opportunities they offer to gain new skills and knowledge – are still viewed as places that enable people to “move ahead”, change, and engage with new ideologies and institutions. This notion of refugee camps as spaces of development, “government” and enlightenment has direct bearing on questions of justice: One of the things refugees sense they are expected to “learn” is how to respect the “government” laws of Uganda. During the course of this research, it was common for refugees to attribute criminality in the settlements to people's failure to “adapt” their “mindsets” to life in Uganda. Both refugees and NGOs often seem to agree that “sensitisation” and “community awareness” have helped reduce crime in the settlements over the years.



*A community policing session in Maaji II settlement.*

<sup>38</sup> S. Manoeli, *Sudan's "southern Problem": Race, Rhetoric and International Relations, 1961-1991* (Palgrave Macmillan: Basingstoke, 2019), 183-210; Y. Gidron, *The Nuer Messianic Jewish Movement: Authority and Authenticity in Ethiopia's Western Frontierlands*, PhD thesis (Durham University, 2020).

<sup>39</sup> On cultural change and gender among South Sudanese in Kakuma, see also: K. Grabska, *Gender, Home & Identity: Nuer Repatriation to Southern Sudan* (James Currey: Woodbridge, 2014).

<sup>40</sup> F. Carver and D. Ruach Guok, *"No-One Can Stay Without Someone": The Role of Transnational Networks to the Lives and Livelihoods of the Nuer-Speaking Peoples of Gambella and South Sudan* (Rift Valley Institute: Nairobi, 2020).

A Dinka paralegal in Kiryandongo, for instance, explained: “The structures which are here – OPM, UNHCR, and other partners – they are actually here to change our mindsets [...] our cultural mindsets.”<sup>41</sup> Such discourses of “enlightenment” and “progress” can also echo older South Sudanese ethnic stereotypes, with certain “tribes” being described by outsiders as less accustomed to the “civilised” norms and ways of life of settlements and towns and thus more prone to committing crimes. One former RWC member in Palabek explained that most crimes in the settlement are committed by recent arrivals who have not yet adopted to the new way of life in the camp – an argument that seemed to have ethnic undertones, given that while early arrivals to the settlement were from Acholi Eastern Equatoria, most recent arrivals were from Jonglei and Upper Nile:

When refugees came from South Sudan, they did not come at once. Now, there are other refugees who came recently, and they still have that mind, which was behind, and they can do things as they like. That is where most of our youth fall under crimes. Because there are still other refugees that are coming, new influx. But those who came early, the way we look in the settlement, there is improvement. They know what is [the] law of Uganda, and they also follow the law. So, that is where those who came recently... they still behave like they behaved in their origin country. That one needs awareness, and they have to be sensitised so that they can also follow the law of Uganda.<sup>42</sup>

A similar discourse is prevalent among humanitarian agencies, where the notion that South Sudanese come from a lawless environment and have to be “enlightened” in exile through intense “sensitisation” is common. One RLP employee, describing South Sudan as a place with no law or “civilised way of solving conflicts,” explained the reduction in crime rates in one of the settlements as a direct consequence of the sensitisation of refugees as well as their experience of witnessing Uganda’s law enforcement institutions at work:

It is well known that South Sudan, currently and for quite a couple of years... the Rule of Law there is not actually there or is not there at all. They [refugees] were coming from a background where there was no civilised way of solving conflicts, especially in court. Now, when they started to see fellow refugees going to prisons, going to court, and the heightened interventions of police, community policing, perhaps that could account for the reduction in some instances.<sup>43</sup>

Government officials and Rule of Law personnel express similar ideas. A police officer in Adjumani, for example, noted that cases of defilement among Nuer and Dinka refugees are prevalent because “their mindsets have not yet changed.”<sup>44</sup> An OPM official in Kiryandongo further elaborated: “What is important is to educate them that some cultures should be deleted. I mean, you know they [are] no longer relevant to modern society.” The official gave

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<sup>41</sup> Interview with a male paralegal, Kiryandongo Refugee Settlement, 30 August 2021.

<sup>42</sup> Group discussion with male refugees, Palabek Refugee Settlement, 8 September 2021.

<sup>43</sup> Interview with a female RLP staff, online, 11 August 2021.

<sup>44</sup> Interview with a female police officer, Adjumani town, 16 September 2021.



the example of early marriage. “Such a tradition should be deleted,” he argued. “But as I have said, it is something to do with mindset, which is a process, anyway.”<sup>45</sup>



*A Refugee Law Project awareness raising session in Maaji II settlement.*



*A mobile legal aid clinic in Maaji II settlement.*

## ***The refugee administration and other intermediaries***

While Uganda’s refugee policies have long promoted the integration of refugees,<sup>46</sup> refugee settlements in the country are governed by administrative structures that have been designed to mirror, but remain entirely separate from, the Ugandan system of local councils (LCs).<sup>47</sup> While Ugandan civilians are governed by LCs at the village (LC1), parish (LC2), sub-county (LC3)

<sup>45</sup> Interview with a male OPM official, Kiryandongo Refugee Settlement, 1 September 2021.

<sup>46</sup> See, for example: International Refugee Rights Initiative, *Uganda’s Refugee Policies: The History, the Politics, the Way Forward* (Kampala, 2018).

<sup>47</sup> S. Meyer, *The “refugee Aid and Development” Approach in Uganda: Empowerment and Self-Reliance of Refugees in Practice* (UNHCR: Geneva, 2006), 35-43; Y. Wawa, *Refugee Aid and Development: A Case of Sudanese Refugees in West Nile, Uganda* (Fountain Publishers: Kampala, 2008).

and district (LC5) levels,<sup>48</sup> refugee settlements have a three-tier system of decentralised governance, with Refugee Welfare Councils (RWCs) at the block (RWC1), zone (RWC2), and settlement (RWC3) levels. In Adjumani, the RWC3 governs all settlements in the districts, with each settlement having only RWC1 and RWC2 structures. The RWC system is thus entirely bounded within the settlement, with the authority of its sub-structures (RWC1, RWC2) limited to the spaces they are mandated to govern. This means that while for Ugandan citizens, the lowest administrative structure and first address for seeking justice is the LC1, for refugees it is the RWC1, at the block level.

In a reality in which the capacities and resources of the police and judiciary are extremely limited, the RWCs are, in practice, the main administrative structure managing life in the settlements. Their position is first and foremost that of intermediaries between the world of “government” and NGOs, and refugees. For NGOs and the Ugandan government, they are the main and often only avenue to access and gain knowledge of the “refugee community” and are therefore instrumental for local mobilisation and the implementation of interventions. For refugees, meanwhile, the RWCs are the main avenue for accessing NGOs, UN agencies, OPM and other institutions associated with the “government”, as well as the resources that these institutions distribute. However, unlike the “traditional” authorities further discussed below, RWCs are not initiated by refugees nor are they entirely accountable to them, even if it is refugees who decide who will hold positions within them. Members of the administration are elected every two years, but their mandate and activities are strictly non-political.<sup>49</sup>

My work entails being a bridge between government, which is OPM, and the refugees. Also, other partners, like the NGOs that are working within this settlement – I’m still a bridge between them and the refugees. That is basically the work that I do in this settlement. And then not just being a bridge: I advocate for the rights of the refugees to make sure that their welfare services are respected.  
(RWC3 Chairman, Kiryandongo)<sup>50</sup>

In many respects, the RWC structure reflects the status of refugee settlements as spaces of legal exception. While the operations of LCs outside the settlements are regulated by the Local Governments Act of 1997, the legal status and mandate of RWCs is more ambiguous. They operate under the authority of OPM and liaise with NGOs and the police, but there is neither specific legislation that regulates their work nor by-laws that define their mandate and that have been agreed upon at the national level. The framework governing their operations is supposed to be articulated as part of the national refugee policy, which is still

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<sup>48</sup> At the county level there is no local council but a representative Member of Parliament.

<sup>49</sup> T. Zakaryan, *Political Participation of Refugees: The Case of South Sudanese and Congolese Refugees in Uganda* (International Institute for Democracy and Electoral Assistance: Stockholm, 2018).

<sup>50</sup> Interview with a male RWC member, Kiryandongo Refugee Settlement, 31 August 2021.

being drafted.<sup>51</sup> In the context of criminal law and the administration of justice, however, RWCs are prohibited from handling those crimes defined as capital offences under Ugandan law. Such crimes include defilement, rape, and murder. According to Uganda's Penal Code, these must always be referred to the police, although in practice, as we shall see, this does not always happen. In addition, community leaders may "arrest but not detain" suspects, meaning that in cases of violence they may restrain offenders and then wait for the police to come and "pick them up".<sup>52</sup>



*RLP Legal Assistant presenting during RWC Training in Maaji III settlement.*

The RWC structure plays an important role in producing a "grid of intelligibility and control" that allows the state and humanitarian agencies to govern the settlements.<sup>53</sup> There are other institutions, however, that enable humanitarian agencies to "penetrate the community", as one OPM official put it.<sup>54</sup> In the context of this study, it is important to mention the role of paralegals. These are community volunteers trained by NGOs, who are supposed to serve as an address for refugees seeking help but also to identify cases of abuse independently and alert the relevant institutions or authorities.<sup>55</sup> As one paralegal in Kiryandongo explained, "to be paralegal is to bridge the community and the services provider, whereby you report cases

<sup>51</sup> OPM official, validation workshop, 2 February 2022. Uganda's Control of Alien Refugee Act of 1960, which governed refugee affairs before the current 2006 Refugee Act, empowered settlement commandants to "give such orders or directions... to any refugee as many be necessary or expedient... to ensure that the settlement is administrated in an orderly and efficient manner" (13(2)(a)). The 2006 Refugee Act also empowers the "Office of Refugees" to "ensure the maintenance of law and order in refugee settlements" (8(2)(m)) but not to order refugees to do so. See also G. Verdirame and B. Harrell-Bond, *Rights in Exile: Janus-Faced Humanitarianism* (Berghahn Books: New York, 2005), 186.

<sup>52</sup> Group discussion with male refugees, Palabek Refugee Settlement, 8 September 2021.

<sup>53</sup> The phrased is borrowed from J. Hyndman, *Managing Displacement: Refugees and the Politics of Humanitarianism* (University of Minnesota Press: Minneapolis, 2000), 110.

<sup>54</sup> Interview with a male OPM official, Palabek Refugee Settlement, 6 September 2021.

<sup>55</sup> RLP trains around 40 community paralegals per year in each of the three settlements covered by this study, and at the time of research worked with 15-30 active ones in each site. Other NGOs that train paralegals across the three research sites include the Lutheran World Federation (LWF), Women and Rural Development Network (WORUDET), International Rescue Committee (IRC), and the Danish Refugee Council (DRC).



to necessary places where a person can get right services.”<sup>56</sup> Since paralegals, like members of the RWCs, need to work closely with NGOs and government authorities and thus usually also speak some English and are literate, there is some overlap between these institutions, and it is not unusual for paralegals to double as RWC members.



*Paralegals training in Maaji III settlement.*

### ***Extra-territoriality and “customary law”***

In addition to the structures of the RWCs, life in the settlements is also governed by a wide range of informal “traditional”, “customary” or “cultural” institutions. Like the RWCs, these form a decentralised system of authority, but unlike the RWCs, their jurisdiction is extra-territorial and transnational, and their structures tend to be highly fluid. Unlike RWC members, who are strictly responsible for those offences and disputes taking place within their geographic sections of the settlement, “traditional” leaders are perceived as responsible for members of their respective communities *regardless* of where they live, and they maintain strong links with their kin in other settlements and across the border. If the RWCs represent the status of refugee settlements as spaces of legal exception within Uganda, therefore, “traditional” authorities represent their enduring linkages to South Sudan. As one Nuer community leader in Palabek explained:

We the cultural leaders, we have a problem, because we have our mindset that we came with, from South Sudan. Even the community that we are leading, they want to bring the law from South Sudan, which is not allowed in Uganda. Because there is a proverb which says: “If you are in Rome, behave like Romans.” So, now, we want to behave like Ugandans, because we are in Ugandan land, but our community whom we are leading, they don’t follow the rules.<sup>57</sup>

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<sup>56</sup> Interview with a male paralegal, Kiryandongo Refugee Settlement, 30 August 2021.

<sup>57</sup> Validation workshop, 28 January 2022.

In some settlements there has been an attempt to incorporate “cultural leaders” into the RWC system by including “opinion leaders” at different levels of the administration. But the authority and legitimacy of such leaders is not preconditioned on them being appointed or elected as RWC members. In most cases they remain separate from the refugee administration, even if in practice RWC leaders interact with them. The precise shape and form of these structures of authority varies between different communities. Outsiders often assume that “chiefs” are specific influential individuals with remarkable judicial powers. This is not necessarily the case. Among many South Sudanese communities, customary law is primarily a system of arbitration that can be managed by any group of trustworthy elders agreed upon by the sides to a dispute in any given context. Some may be elders who have been recognised as chiefs in South Sudan, but others not.

Many recognised chiefs had not left South Sudan, and thus alternative institutions have been installed in exile to take on some of their duties. Different “ethnic” communities in the settlements usually have their own leaders, but these are often chosen through consensus for a limited period of time in order to oversee the arbitration of disputes within the community. They may not have any previous experience as chiefs.<sup>58</sup> Some of them are, in fact, young men, who speak English and have considerable familiarity with the world of NGOs and government. Former chiefs, respected elders, and “cultural” leaders elected in exile ultimately cooperate and complement each other’s work when managing disputes within their communities or when representing their communities before other communities in the settlements or the Ugandan authorities.

Within each community, structures of authority and leadership in the settlements usually correspond with those structures of authority in place in South Sudan. When large communities in the settlements are divided into smaller sections – usually based on a mixture of kinship and territorial affiliation in South Sudan – these sections also have their own leaders. Thus, for example, while the Dinka community in Kiryandongo has one leader who is responsible for all Dinka affairs in this settlement, Dinka refugees in the settlement are also divided into smaller sub-sections according to their payam of origin in South Sudan. Payam is the second-lowest administrative unit in South Sudan, standing above the boma (village). Each payam is usually associated with a specific community – a sub-section, for example, of Nuer or Dinka society. Refugees from specific South Sudanese payams, therefore, often have their own leaders in Uganda’s settlements, who are not part of the RWC and who are able to address shared community issues, using mobile phones to communicate with relatives in other settlements in Uganda or back home.

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<sup>58</sup> See also B. Braak and J. J. Kenyi, *Customary Authorities Displaced: The Experience of Western Equatorians in Ugandan Refugee Settlements* (Rift Valley Institute: Nairobi, 2018); Vancluysen and Ingelaere, ‘Conflict Resolution as Cultural Brokerage’.

The RWCs often work closely with “cultural” leaders and may call upon them to support the mediation of cases. Police officers are also often familiar with some of these leaders in the settlements and call them to help sort out disputes related to members of their communities. OPM is careful to not to empower “chiefs” in order not to encourage “tribalism” in the settlements, and there is a general concern that the norms applied by “customary” authorities are not in line with human rights norms and the laws of Uganda, particularly when it comes to the treatment of women and children and due process. Acknowledging that “traditional” leaders are the most trusted institutions by many refugees and are instrumental for maintaining order in the settlements, however, OPM aims to enable their operations under the auspices of the RWCs. As one OPM official noted: “We encourage the traditional leaders to work in collaboration with the RWCs or to work under the leadership of RWCs.”<sup>59</sup> As we shall see, this does not make it impossible for refugees to avoid the formal justice system and sort out disputes according to customary law when they wish to do so.

A considerable gap exists between NGOs, OPM, and “traditional” community leaders. Lack of codification of customary law, the fact that “traditional” dispute resolution mechanisms are of a highly fluid structure that does not correspond to the grid-like structure of the RWCs, and the use of languages that government officials and NGO workers do not usually speak, all make it difficult for formal actors to engage directly with them. While the RWC system, which is initiated by the government and NGOs, is experienced, by NGOs and the Ugandan authorities, as highly responsive and easy to work with, the “traditional” authorities are often viewed as a “hidden” system that operates “underground”. An OPM official in one of the settlements, for example, argued: “In most cases, what I have observed [is that] anything to do with these traditional systems, the community is very cagey.”<sup>60</sup> One RLP Legal Assistant further indicated that “it is very difficult to detect or determine what they do and how they do their work,” and that this is particularly so in the case of those communities who do not share the same language and cultural traits with their Ugandan hosts or most NGO employees:

When you go to the Acholi, there is a community of the Acholi in Uganda and in South Sudan, so it was easier to infiltrate and know who is part of those traditional systems. But when it came to Nuer and Dinka, where we do not speak the same language, it became harder to work with them. And they do not come out to say that they are members of those kind of courts or systems.<sup>61</sup>

The common labelling of these authorities as “traditional” notwithstanding, as in many parts of Africa, they have their roots in the British colonial policy of indirect rule. Starting from the 1920, Sudan’s colonial government established “native” courts and administrative structures

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<sup>59</sup> Interview with a male OPM official, Palabek Refugee Settlement, 6 September 2021.

<sup>60</sup> Interview with a male OPM official, Kiryandongo Refugee Settlement, 1 September 2021.

<sup>61</sup> Interview with a female RLP staff, online, 11 August 2021.

across southern Sudan.<sup>62</sup> This policy, which sought to clearly delineate the territories of various “ethnic” communities and establish control over them by putting in place so-called “native” administrative structures, was accompanied by the standardisation of “traditional” law. With time, “traditional” authorities have been formally integrated into state structures, and today they are recognised under South Sudanese law as the principal providers of justice at boma and payam levels. There is therefore an important difference between Uganda and South Sudan when it comes to the role of “traditional” authorities. In Uganda, they are not formally part of local government structures.<sup>63</sup> In South Sudan, they are.<sup>64</sup> This partly explains why they continue to play an important role among displaced South Sudanese as well – not only in Uganda.<sup>65</sup>

### ***The judiciary, the police, and public order***

Uganda’s formal justice system is primarily represented in the settlements by the Uganda Police Force. The extent to which this institution is present in the daily lives of refugees varies significantly between settlements, and within them, as police posts have limited resources and are not always within reach. Unlike the RWCs, the police force is not responsible exclusively for refugees. Some police posts are located in the administrative hearts of refugee settlements – often next to the offices of humanitarian agencies and OPM – and therefore serve mostly refugee populations. Other posts serve both refugees and citizens. As a formal security apparatus of the state, the police are the sole actors in the settlements with the authority to use force, and it is often through force (or, at least, the threat of it) that they go about pacifying the settlements and maintaining order.

With its exclusive authority to use force and detain people, the police are viewed by refugees as an institution capable of “cooling down” explosive situations and brawls. Many interviewees, and particularly those serving as paralegals or RWC members, are aware that capital offences such as defilement and rape must be handled by the police. However, the common stance among refugees more broadly is that disputes reach the police when “there is blood” – a phrase used repeatedly by interviewees across all research sites during the

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<sup>62</sup> C. Leonardi, *Dealing with Government in South Sudan: Histories of Chiefship, Community & State* (James Currey: London, 2013).

<sup>63</sup> The LC system in Uganda emerged out of the “Resistance Councils” first established by the National Resistance Movement (NRM) before it came to power in 1986. These councils deliberately disempowered chiefs and “dismantled the indirect rule regime at the local level.” See Mamdani, *Citizen and Subject*.

<sup>64</sup> See also: A. A. Jok and R. A. Leitch, *A Study of Customary Law in Contemporary Southern Sudan* (World Vision International and The South Sudan Secretariat of Legal and Constitutional Affairs: Juba, 2004); C. Leonardi, L. N. Moro *et al.*, *Local Justice in Southern Sudan* (United States Institute of Peace: Washington, 2010); D. Deng, *Challenges of Accountability: An Assessment of Dispute Resolution Processes in Rural South Sudan* (South Sudan Law Society: Juba, 2013).

<sup>65</sup> See, for example, in the Ethiopian context: Y. Gidron and F. Carver, ‘International Organisations and “Local” Networks: Localisation and Refugee Participation in the Ethiopian-South Sudanese Borderlands’, *Refugee Survey Quarterly*, 41/1 (2022), 1–25.

course of this study. This is unsurprising, as earlier research has shown that this is also the common attitude in South Sudan, where there is “a powerful sense that the government police should handle cases involving serious violence or death, even if people currently doubt their capacity to handle such cases.”<sup>66</sup> In other words, disputes reach the police when physical violence escalates and cannot be managed by community leaders.

*Respondent A: Anything in the community that has blood – when you see your friend is... has been injured in a bad way – that is confirmed you call the police and they will be the ones to come and solve the case, or they take the victim. [...]*

*Respondent B: And to add on again this issue of fighting. Maybe between the two tribes, like last time it was happening in this settlement last year, the Nuer and that... begin fighting. You will find that a number of youths are coming with a panga. Who are you, the cluster leader, to come and handle such a case? Because... even they can cut you. You immediately, you make a phone call, and you call the police, you report it to them. (Male refugees, Kiryandongo)<sup>67</sup>*

Police posts in the settlements are the gateway into Uganda's formal justice system. From these posts, cases that are not handed “back” for mediation within the community (as further discussed in the following sections) are transferred to police stations outside the settlements. Suspects, too, are therefore transferred to police stations for detention, and then to prisons, as they await trial, on remand. Capital offences are then handled by the High Court, which has circuits operating in different parts of Uganda. Other offences are handled by the Magistrates' Courts in the districts. As opposed to the RWC system, which is unique to refugees and is bounded within the settlements, there is no difference between cases involving refugees and those involving citizens once they reach the judiciary, nor between refugees and Ugandans in prisons and detention facilities.

One unique challenge that is posed to the judiciary by cases involving refugees, however, relates to interpretation. Some settlements host refugees speaking more than 15 languages. Where refugees share languages with host communities – Acholi in Lamwo and to a great extent also in Kiryandongo, or Ma'di in Adjumani – it is more likely that they will be able to find interpreters or officials who are able to understand them. Otherwise, language barriers both delay the handling of cases and hinder justice. “You find majority in Lamwo, the interpreters in court know Acholi, but nothing beyond Acholi,” one of RLP's Legal Officers explained. “You will find someone who speaks Arabic, Lotuko, Dinka, Didinga, if they find themselves in any of these places... they will go unattended to for a long, long time, because of language barrier.”<sup>68</sup> “The only challenge I get because of the refugee settlements [...] is interpretation,” a female Grade I Magistrate in Adjumani reflected. “I have people who speak

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<sup>66</sup> Leonardi, Moro *et al.*, *Local Justice in Southern Sudan*, 36.

<sup>67</sup> Group discussion with (male and female) refugee youths, Kiryandongo Refugee Settlement, 2 September 2021.

<sup>68</sup> Interview with female RLP staff, online, 23 July 2021.



Dinka, Kuku, Arabic and the other ones – I don't know but they are many, quite a number – and I don't have interpreters in those languages.”<sup>69</sup>



*Mobile court at the Kiryandongo Magistrates Court, September 2021.*

## ***Accessibility and geographic distribution***

The availability of different institutions where people can claim their rights is perhaps the most fundamental requirement for promoting access to justice. However, these institutions also have to be affordable and physically accessible to individuals of different socio-economic backgrounds or genders and in different areas.<sup>70</sup> While different institutions in the settlements respond to different needs and uphold different legal orders and ideas of justice, they are also not equally accessible to refugees. Distance (and thus costs of transport or mobile communication), language barriers, the length of procedures, and other monetary costs, all impact the availability of different institutions and therefore also the extent to which refugees are able to turn to them in cases of abuse and violations of their rights. The findings of this study chime with previous research that has shown that the formal justice system is often less accessible to refugees in Uganda as well as less trusted by them.<sup>71</sup>

In terms of geographic distribution, the RWCs are the most accessible authorities – physically within reach in any place – as their hierarchy corresponds with the settlements' grid structure in the first place. In some settlements, members of the RWC3 (the highest tier of the refugee administration) have been provided with offices. Block and zone leaders, who are the first

<sup>69</sup> Interview with a female Grade I Magistrate, Adjumani town, 16 September 2021.

<sup>70</sup> See, for example: Committee on the Elimination of Discrimination against Women, *General recommendation No. 33 on women's access to justice*, 3 August 2015, CEDAW/C/GC/33.

<sup>71</sup> Ntegyerize, *Informal Justice Structures*; C. Mbazira and E. Ibanda-Nahamya, *Report on Rule of Law, Access to Justice and Security Needs of Refugees and Host Communities of Isingiro and Arua Districts* (UNDP and UNHCR: Kampala, 2019).

points of contact for refugees, are usually simply known by their names and place of residence. In those settlements in which “tribes” reside in separate zones, community leaders or “chiefs” may be relatively accessible too. This is the case in Maaji II, for example, where the Nuer and Dinka communities have settled in two separate zones. This also allows for a greater degree of overlap between “cultural” leaders and RWCs. Otherwise, when communities are scattered in different zones of one settlement, reaching a community leader or chief may be more complicated.

The police and Uganda’s formal justice system are usually far more difficult to access. Most settlements are served by one or two police posts, meaning that distance is often a challenge both for individuals who want to report cases, but also for witnesses and victims who are expected to provide statements in order for cases to be investigated and pursued. Distance not only deters people from reporting cases in the first place, but also slows down and hinders the processing of cases already reported. Once cases are transferred from local police posts in and around the settlements to central police stations and the Magistrates’ Courts at the district level, the costs of following up on them become far beyond what the average refugee can afford. “The challenges we are facing here relates to following up the cases,” one RWC in Palabek noted. “You may arrest somebody from there and the person will be taken to Lamwo. [...] If you sell your food rations, that cannot even take you to Lamwo!”<sup>72</sup>

I have been in this settlement for eight years, but I have never attended any court session. There are people in my village whose cases have been forwarded to court, but we have never attended any because we don’t have access. When I was in the RWC as a women’s representative, we only went for a prison visit but not the courts. (Female refugee, Kiryandongo)<sup>73</sup>

The clan leader, elders, the opinion leaders are within the community and as such they are easily accessible. However, for police, it takes about 30 minutes for one to reach the police [post]. For the court, I have never attended any because it is very far. I have never used their services. (Dinka opinion leader, Adjumani)<sup>74</sup>

Capital offences are referred to the High Court’s circuits, which are even more expensive to reach. Kiryandongo is served by a High Court in Masindi (a distance of 60 km), Lamwo’s Palabek settlement, by a High Court in Gulu (80 km away), while Adjumani’s settlements are served by a High Court in Arua (180-200 km away). Those accused of capital offences are transferred to prisons in the respective cities, where they often over-stay on remand – in many cases, awaiting their trials for several years. Case backlogs have long been a problem, including due to lack of government funds to hire defence lawyers for criminal cases. They have worsened over the past two years, however, due to the COVID-19 pandemic, as courts

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<sup>72</sup> Group discussion with RWC members, Palabek Refugee Settlement, 8 September 2021.

<sup>73</sup> Group discussion with female refugees, Kiryandongo Refugee Settlement, 31 August 2021.

<sup>74</sup> Interview with a male Dinka “opinion leader”, Maaji II Refugee Settlement, 15 September 2021.

ceased operations during lockdown periods and the movement of prisoners (including to court) was restricted.<sup>75</sup>



*A mobile court session in Openzizi Prison, Adjumani district, May 2020.*

Mobile court sessions, usually facilitated by NGOs with donor funding, help bring the judiciary closer to refugees and host communities. They cut transport costs for complainants, speed up the justice process, and reduce case backlogs. These usually involve the movement of the Grade I Magistrate or Chief Magistrate to refugee hosting districts and in some case to prisons. Such sessions, however, are expensive to conduct and challenging to coordinate, and therefore do not take place on a regular basis. They also do not usually involve the movement of the High Court, which deals with capital offences. While a High Court session was held in the Magistrate Court in Adjumani in September 2021, no such sessions were held in Lamwo and Kiryandongo.

### ***The costs of justice: money, time, wellbeing***

In many cases there are positive relations and communication between the police and refugee leaders, who regularly rely on, and appreciate, each other's support. However, the police and Uganda's formal justice system, in addition to their limited physical outreach, are also often viewed by refugees as institutions whose ability to deliver justice ultimately depends on how deep the pockets of any complainant are. Police posts operate under extreme resource constraints, and thus complainants may be expected to pay in order to

<sup>75</sup> See also, Ayaru Irene Priscilla, "COVID-19 and the Courts of Law: Access to Justice in Pandemic Times can be a model for a post-pandemic world," *Refugee Law Project*, 29 June 2021, available at: [https://www.refugeelawproject.org/index.php?option=com\\_content&view=article&id=254:covid-19-and-the-courts-of-law-access-to-justice-in-pandemic-times-can-be-a-model-for-a-post-pandemic-world](https://www.refugeelawproject.org/index.php?option=com_content&view=article&id=254:covid-19-and-the-courts-of-law-access-to-justice-in-pandemic-times-can-be-a-model-for-a-post-pandemic-world)

allow them to function. Interviewees in different settlements, for example, mentioned being asked to pay for fuel and airtime when approaching the police. “It happened to me one time, when they broke into my shop and stole some things,” a refugee in Palabek recounted. “When I came and reported it here, they told me to pay for fuel.”<sup>76</sup> A female refugee in Kiryandongo noted that “sometimes also they [the police] delay, they dodge around, because, you know, *kitu kidogo* is also working.”<sup>77</sup> *Kitu kidogo* (literally: “something small” in Swahili), is a colloquial term for a bribe.

In the settlement here, we have also a vehicle for police. We have like two of them. But if you say that you need someone to be arrested, they ask for money, [saying:] “Give money like UGX 30,000 or give for me UGX 40,000 then we shall come and arrest.” [...] Which means [that] if you don’t have money, your case... you’re going to lose the case. (Male refugee, Kiryandongo)<sup>78</sup>

Requests for payments from complainants to cover transportation and communication costs hinder the accessibility of the police. Informal payments, however, also impact how the police handle disputes and consequently their efficiency and impartiality. In the research conducted for this report, complaints of extortion by police personnel were prominent in Kiryandongo and less so in Lamwo and Palabek, but previous research by UNHCR and UNDP recorded similar complaints among refugee and host communities in other districts in Uganda.<sup>79</sup> Some refugees mentioned being asked to “buy” some of the forms necessary for reporting cases at the police post, or being requested to pay unexplained “fees” in order to be given back stolen property that has been recovered by the police.<sup>80</sup> Others mentioned being arrested – often on baseless grounds or for alleged minor offences such as violating the COVID-19 curfew despite having a valid reason for doing so – and then being asked to pay in order to be released.<sup>81</sup>

The risky part, which is a very sensitive matter here, is the police. The police request for money. That is what makes life difficult for refugees, and they have been complaining about it. And that money, they do not give a receipt for it, and it is something that has been happening here. The police tell you that “for the person to be released, you have to give [UGX] 500,000.” Sometimes the police also have weaknesses in that. (Male refugee, Kiryandongo)<sup>82</sup>

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<sup>76</sup> Group discussion with (male and female) refugee youths, Palabek Refugee Settlement, 8 September 2021. See also: Group discussion with female refugees, Palabek Refugee Settlement, 8 September 2021.

<sup>77</sup> Interview with a female refugee, Kiryandongo Refugee Settlement, 31 August 2021.

<sup>78</sup> Interview with a male refugee, Kiryandongo Refugee Settlement, 31 August 2021. And see also: Group discussion with (male and female) refugee youths, Kiryandongo Refugee Settlement, 2 September 2021; Group discussion with male refugees, Kiryandongo Refugee Settlement, 1 September 2021.

<sup>79</sup> Mbazira and Ibanda-Nahamya, *Report on Rule of Law*, 57-59.

<sup>80</sup> Group discussion with (male and female) refugee youths, Kiryandongo Refugee Settlement, 2 September 2021; Group discussion with (male and female) refugee youths, Maaji II Refugee Settlement, 14 September 2021.

<sup>81</sup> Group discussion with (male and female) refugee youths, Kiryandongo Refugee Settlement, 2 September 2021.

<sup>82</sup> Interview with a male refugee, Kiryandongo Refugee Settlement, 31 August 2021.

Releasing someone on bond is free. But for them, they may ask even like [UGX] 50,000, 100,000 from you. And yet you don't have any money in the house. They insist you must have that. Those are the problems. Now even if you are supposed to be released today, they will delay you. You may even sleep inside the cell for three days, four days, before even taking you to court. (Male refugee, Kiryandongo)<sup>83</sup>

There is a general sense, seemingly shared by both refugees and some police personnel, that refugees can be easily extorted from, given their unfamiliarity with the Ugandan justice system and their fears of being caught up in lengthy and expensive processes over which they have no control and which they do not understand. Families know that once a relative vanishes from the settlement – transferred from the local police post to the distant world of courts and prisons – the costs of helping him or her or following up on the case rise steeply. Adding to that are also fears of the torture, psychological and sexual abuse, and general health hazards inmates are said to face in detention or in prison.

*Respondent A:* Psychologically, when someone is arrested, the remaining members panic and think that when someone is arrested, he or she has been thrown into hell and are likely to die. That is why they hurriedly pay the money for police bond. So, they don't wait for the legal proceedings – they just pay whatever the police have asked. They even borrow the money or even contribute. [...]

*Respondent B:* I would also like to add something on that. I remember when I had gone to release my brother from the police, the police officer asked me whether I knew why we pay a lot of money. He said it is because people fear that they will die in prison. As you can see a lot of people are appealing. So, when you pay, you are relieved of that feeling. (Male refugees, Kiryandongo)<sup>84</sup>

A friend of mine was taken to that Masindi prison for defilement. The girl was 20 years old, but the parents said she was 16. Every time he was brought before court, they said that the court is adjourned for 3 months. He stayed there for 4 years; the detention was so long. The parents had given up [on following up on the case] because they did not have the resources and were financially challenged. One day, they surprisingly saw him coming home. He was not looking healthy at all. He had lost weight and looked traumatised. He told us stories of what happened there. He said the first day he reached there, he was told to hit the floor as if he was making a chapati. He had to do it every day. He was told that since he was brought for defilement, they created for him a hole on the wall and [he] was told to put his penis there and have sex with the wall. It was not easy at all... So, if you hear about such things, the family struggles with all they can so that the person is brought back home. (Male refugee, Kiryandongo)<sup>85</sup>

As opposed to the police, which can be expensive and time consuming to engage with, RWC members are not supposed to ask for any payment, and generally do not seem do so. There

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<sup>83</sup> Interview with a male refugee, Kiryandongo Refugee Settlement, 1 September 2021.

<sup>84</sup> Group discussion with male refugees, Kiryandongo Refugee Settlement, 1 September 2021.

<sup>85</sup> Group discussion with male refugees, Kiryandongo Refugee Settlement, 1 September 2021.



sometimes exists, however, an expectation that they will be provided with refreshments if they are required to discuss a lengthy case. There have also been reports of individuals asking for small fees to provide refugees with letters (when referring them to NGOs or the authorities), supposedly in order to cover their own costs.<sup>86</sup> During the course of the research, a common complaint among RWCs across all settlements was that, since they do not receive any salary nor “facilitation” in order to carry out their job, they often struggle to respond to people’s needs and have to invest from their own pockets to cover the costs of airtime (to reach out to the police or NGOs if necessary) and transport. “I am supposed to be a bridge between the police and the community,” one RWC in Palabek explained, “but this connection can only happen when I can move freely. Now, I have to reduce my movement because of transport.”<sup>87</sup>



*Inmates addressed during a RLP detention monitoring visit at Openzizi Prison, Adjumani.*

Community leaders and “chiefs” often charge fees when they arbitrate cases or take a portion of the compensations or fines that they impose on those found guilty in the conflicts they handle. For example, when a case of pre-marital sex is exposed among Nuer refugees, a fine is usually paid by the man involved to the family of the woman, in order to appease them and prevent fighting. The sum of this fine varies between communities and settlements, but it is not uncommon for a small part of it to remain with the “traditional” authorities facilitating the arbitration of the dispute. For instance, in Palabek, the fine following a case of pre-marital sex is UGX 500,000, of which UGX 100,000 remains with the community leaders.<sup>88</sup> A Dinka chief in Kiryandongo explained that complainants usually pay between UGX 10,000 and UGX 30,000 when they bring cases before him, although this money may be compensated by the

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<sup>86</sup> Interview with a female RWC member, Kiryandongo Refugee Settlement, 31 August 2021.

<sup>87</sup> Group discussion with RWC members, Palabek Refugee Settlement, 8 September 2021.

<sup>88</sup> Interview with a male paralegal, Palabek Refugee Settlement, 6 September 2021.

side of the accused if he or she is eventually found guilty.<sup>89</sup> Government officials and humanitarians often protest that fines imposed by customary leaders can be exorbitant. However, particularly among cattle-keeping societies, such as Dinka and Nuer, monetary fines are supposed to correspond with the fines normally imposed by customary authorities elsewhere in cattle, even though conversions between currencies (and thus also the price of a cow in different locales) are always open for negotiations.

The varying degrees of accessibility of the different structures of authority in the settlements, and their different sources of authority, mean that they are ultimately interdependent. The police may use its force to maintain order, but it relies on RWCs and “traditional” leaders to sort out disputes that are not transferred to police stations outside the settlements and the judiciary. OPM and NGOs, meanwhile, rely on the RWCs to access the refugee population, execute projects, and maintain order, while RWCs and “traditional” leaders rely on the police when the use of force is necessary. RWCs, who are viewed by refugees as representatives of the Ugandan government and NGOs, need the support of “traditional” leaders in resolving disputes that have a “tribal” aspect, while “traditional” leaders need to RWCs to access NGOs and OPM. This interdependency, as we shall see, does not mean that various institutions always work in harmony. But it does mean that justice processes are characterised by hybridity and open-endedness and are thus constantly being negotiated and contested.

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<sup>89</sup> Interview with a male Dinka “chief”, Kiryandongo Refugee Settlement, 1 September 2021.

### 3. Precarity, gender, and disputes in the settlements

Any attempt to understand the nature of disputes and trends of crime in the settlements has to consider the extreme precarity and uncertainty of settlement life in Uganda. Food is scarce and cash even scarcer; land is limited and not always cultivable; wage employment is rare and provisional; social services are poor and contingent. The condition of refugeehood is temporary on paper, and yet has no end in sight in practice. Many refugees have experienced extreme forms of violence before their arrival, including rape and other forms of sexual abuse, often by soldiers. The settlements in which they are now hosted, meanwhile, are located in regions whose populations have long been subject to different forms of structural violence and marginalisation within Uganda. Refugees with higher social capital and access to some support leave the settlements, settling informally in urban areas. Those who remain – the majority – are the most impoverished, with the least access to alternatives.

Because of the diffused and fragmented nature of authority in the settlements and the intermeshing of various mechanisms of governance, comprehensive statistical data on crime trends does not exist. Different disputes are reported to, and often mediated or resolved by, different authorities, and are therefore not recorded by any single institution. While police posts in the settlements maintain records of the crimes reported to them – and of those transferred by them to police stations – many incidents go unreported or unrecorded as they are not handled by the police. The situation is further complicated by the fact that not all institutions and constituencies share the same definitions of what sort of acts constitute a crime in the first place. During the course of the research, all interviewees were asked about the most common crimes they encounter in the course of their work or within their communities. Depending on their profession and background, interviewees provided different answers to this question.

As this section demonstrates, on an everyday basis, justice mechanisms in the settlements are predominantly preoccupied with cases of petty theft, domestic violence, and other brawls. These are usually resolved by the RWCs and community leaders and thus rarely reach Uganda's courts. More serious crimes – defilement, arson, grievous harm, burglary and large-scale theft, murder – are transferred to the formal Ugandan justice system. However, previous RLP research has indicated that by far the most common reasons South Sudanese feel insecure in Uganda are not these crimes, but rather, the lack of food, lack of money, and



inability to access schooling.<sup>90</sup> And it is often this scarcity and people's attempts to cope with it that underpin the disputes that occur in the settlements. This section explores how the precariousness of life in the settlements impacts men and women, the main causes of conflicts in the settlements, and the gendered aspects of offending and criminalisation.

### ***Precarious livelihoods and property crime***

Most South Sudanese refugees in Uganda's settlements rely on aid as their primary source of income. A 2018 household survey conducted by the World Bank, for instance, indicated that in the settlements of West Nile, aid accounts for more than 66 percent of the income of refugee households, with income from wages (9.1 percent), agriculture (7.2 percent), or enterprises (6.5 percent) being far less significant.<sup>91</sup> Reductions in aid over the past two years have made it increasingly difficult for families to survive. Food rations were reduced from 100% to 70% in April 2020, and then to 60% in February 2021, leading to a rise in malnutrition and food insecurity.<sup>92</sup> This was further exacerbated as the prices of key commodities and transportation increased,<sup>93</sup> and opportunities to engage in petty trade and other income generating activities were severely limited,<sup>94</sup> due to COVID-19 lockdowns. The reductions in aid led some refugees to cross the border back to South Sudan in search of livelihoods, and some refugees in the settlements therefore benefit from remittances and food items sent by relatives who are cultivating or are employed in their country of origin.<sup>95</sup> Most refugees, however, do not have access to this kind of support.

One implications of the precariousness of life in the settlements, both refugees and Ugandan officials agree, is high levels of petty theft. This is easily one of the most common crimes committed in the settlements, occurring on a daily basis. It is not clearly associated with any gender or age group: men, women, and children are all said to be involved. Stolen goods include food and crops (such as maize or cassavas from people's gardens), animals (goats, pigs, chickens), clothes, as well as other domestic items such as solar panels or kitchen utensils. Both refugees and NGOs attribute the high levels of theft to the significant reduction in the size of rations refugees receive and the rising poverty rates.

<sup>90</sup> C. Dolan, *Hidden Realities: Screening for Experiences of Violence Amongst War-Affected South Sudanese Refugees in Northern Uganda* (RLP: Kampala, 2017), 25.

<sup>91</sup> World Bank, *Informing the Refugee Policy Response in Uganda: Results From the Uganda Refugee and Host Communities 2018 Household Survey* (Washington, DC, 2019), 66.

<sup>92</sup> Integrated Food Security Phase Classification, *Uganda (Refugees): Overview of the IPC Acute Malnutrition Analysis of the Refugee Settlements in Uganda, November 2020 – September 2021* (Rome, July 2021). Rations were later raised back to 70% for the settlements of Bidibidi, Lobule, Palorinya, Imvepi and Rhino, but remained at 60% in the settlements of Adjumani, Kiryandongo and Palabek. See WFP, *WFP Uganda Country Brief*, August 2021, 4 October 2021, available at: <https://reliefweb.int/report/uganda/wfp-uganda-country-brief-august-2021>.

<sup>93</sup> World Bank, *One Year in the Pandemic: Results from the High-Frequency Phone Surveys for Refugees in Uganda* (Washington, DC, 2021).

<sup>94</sup> Interview with a female RWC member, Kiryandongo Refugee Settlement, 31 August 2021.

<sup>95</sup> Y. Gidron, *Mobile Livelihoods: borderland dynamics between Uganda and South Sudan* (Juba, 2022).

You know in this settlement, we have a small plot of land given to us, it is 30 by 30 [meters] and the food that they're giving us is the only source of life that people are depending on. The food ration has decreased to 60% and this has increased the level of theft within the community. The food given cannot even take you for a month and we have no excess land where we can cultivate. Some of the people that get to the host community to get land to cultivate. But in some areas the host community is harsh on the refugees and may not give us land for free. So, people depend on this food and when it gets done it becomes a challenge for them. Then those who were thieves before start stealing from the others and sell it for survival. But before when food was 100% or 70% it was good, the rate of theft was not like it is nowadays, I can confirm. (Male RWC, Palabek settlement)<sup>96</sup>

Food is no longer enough at home because WFP has reduced the rations. Like people who are receiving cash, it's [UGX] 19,000 per month and for those who are receiving food, I think grains are 7.5 kilograms. This one is per month, so the food is not enough, and it leads now to increase in theft and especially now these days children are at home. Those days they used to be in school for those who can afford to take children to the boarding school. (Female RWC, Kiryandongo settlement)<sup>97</sup>

Rations were slashed by a sizable percentage, and of course, the food was never enough in the first place, so imagine reducing what was already limited. So, for some categories, they look at this and say: "I need to survive. So, let me steal this." That is one of the things that really led to a spike in theft cases. (Female RLP Legal Officer, Adjumani)<sup>98</sup>

Land is another valuable resource over which disputes regularly emerge. RWCs and paralegals noted that they often encounter border conflicts between refugees within the settlements. This can be the result of lack of clear demarcation or documentation of the land plots allocated to refugees, but also of the mobility of refugees, who may move between settlements or cross the border to South Sudan.<sup>99</sup> One woman in Adjumani, for example, described a dispute she had with a man who was given a plot by OPM but later left for South Sudan. Upon his return to the settlement in Uganda, he discovered that his plot has been occupied, as it was allocated to another refugee in his absence. He threatened to burn down the hut that was built on it and (allegedly while being drunk) even cut down some of the trees planted by its new occupier, before being reported to the police.<sup>100</sup>

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<sup>96</sup> Group discussion with RWC members, Palabek Refugee Settlement, 8 September 2021. See also, group discussion with female refugees, Maaji II Refugee Settlement, 14 September 2021.

<sup>97</sup> Interview with a female RWC member, Kiryandongo Refugee Settlement, 31 August 2021.

<sup>98</sup> Group discussion with RLP staff, online, 22 July 2021.

<sup>99</sup> Interview with a male RWC member, Kiryandongo Refugee Settlement, 31 August 2021; Interview with a male Acholi "chief", Kiryandongo Refugee Settlement, 1 September 2021; Interview with a male OPM official, Kiryandongo Refugee Settlement, 1 September 2021; Group discussion with (male and female) refugee youths, Kiryandongo Refugee Settlement, 2 September 2021.

<sup>100</sup> Group discussion with male and female paralegals, Maaji II Refugee Settlement, 13 September 2021.

As is often the case with refugee-host dynamics, disputes between refugees and Ugandans, too, often revolve around resources.<sup>101</sup> Land disputes emerge over boundaries,<sup>102</sup> but also due to ambiguous and informal rent agreements of agricultural land.<sup>103</sup> It is not uncommon for refugees who have access to some cash to rent land from Ugandans for the purpose of cultivation, usually on a seasonal or annual basis, in order to supplement their income. In addition to land, disputes between refugees and hosts also revolve around the collection of firewood by refugee women around the settlements (in host community areas),<sup>104</sup> petty theft of crops and animals in both directions (by refugees and from refugees),<sup>105</sup> and animals belonging to refugees grazing in host community lands.<sup>106</sup> These disputes can easily lead to violent incidents. Of all three settlements covered by this study, disputes between host communities and refugees were most prominently mentioned as a concern in Maaji II, particularly due to cases of animals crossing the undermarketed boundaries of the settlement and consequently being killed or “arrested” until their owners pay a fine.

Theft has been highlighted as a justice concern across settings of displacement and encampment,<sup>107</sup> and the common impression that theft is causally linked to the precariousness of life in the settlements – and that property crime has been on the rise as the economic situation worsened over the past two years – is consistent with economic theories of crime. Put simply, these theories posit that property crime is a rational choice made by those who lack access to a stable income. However, there are other social factors at play here, which are also important to acknowledge. Theft and other property crimes are linked to poverty, but often also to lower levels of community trust and social cohesion, which are, in turn, determined by the culturally heterogeneous composition of settlements, the tense relations between refugees and host communities, as well as the lack of employment opportunities that may offer not only access to income but also meaningful social attachments. As some interviewees emphasised, over the past two years, the closure of schools and churches due to the COVID-19 pandemic also undermined social cohesion in the settlements, thus contributing to a rise in petty crime.

### ***Aid, resources, and gender dynamics***

During the 1980s, Ethiopia’s refugee camps were viewed by South Sudanese as places for men and boys to gain new skills and pursue new masculine identities under the auspices of the

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<sup>101</sup> On refugee-host relations in northern Uganda, see also International Refugee Rights Initiative, *Understanding Conflict Dynamics Around Refugee Settlements in Northern Uganda* (Kampala, 2019).

<sup>102</sup> Group discussion with (male and female) refugee youths, Kiryandongo Refugee Settlement, 2 September 2021.

<sup>103</sup> Group discussion with male and female paralegals, Maaji II Refugee Settlement, 13 September 2021.

<sup>104</sup> For example, interview with a male RWC member, Kiryandongo Refugee Settlement, 31 August 2021.

<sup>105</sup> For example: Group discussion with RWC members, Palabek Refugee Settlement, 8 September 2021; Group discussion with male and female paralegals, Maaji II Refugee Settlement, 13 September 2021.

<sup>106</sup> For example, interview with a male LC1, Adjumani, 14 September 2021.

<sup>107</sup> Da Costa, *The Administration of Justice*; Veroff, *Crimes, Conflicts and Courts*.

SPLA. Today, the settlements in Uganda are often described, as one male refugee in Palabek put it, as a place “for women and children, but not the men.”<sup>108</sup> As already noted, female adults do outnumber male adults in the settlements.<sup>109</sup> This is reflected in the population statistics recorded by UNHCR and OPM. However, many of the registered male refugees do not regularly reside in the settlements but in South Sudan, meaning that in practice, the gap between the groups is even wider than formal statistics indicate. The sort of “development” and protection South Sudanese associate with Uganda’s settlements is therefore a distinctively gendered one. Its popular image is powerfully informed by the conspicuous emphasis of humanitarian agencies in the settlements on women’s vulnerabilities, rights, and empowerment – perceived as a particularly “modern” and urban agenda in and of itself – as well as by what is experienced as the damaging impact of settlement life on the social status of men.

Gender expectations and norms transform in exile, where access to resources, knowledge and power is governed by new institutions and ideologies. Uganda’s refugee policy and the settlement model are supposed to make refugees economically “self-reliant”, primarily by allowing them to work and granting them access to land. In practice, as already noted, most refugees have access to neither sufficient cultivable land nor income generating activities. They remain dependent on aid, and struggle to provide for themselves. This reality impacts women and men differently. Women’s authority and responsibilities are often enhanced, as they are the ones who, as household heads, control their family’s access to aid. Men’s status, meanwhile, declines.<sup>110</sup> With access to neither cattle nor money – the most important forms of wealth in South Sudan’s entangled rural and urban economies – refugee men often fail to successfully perform the masculine ideal of being the breadwinners of their families. “Nowadays, women are up, and men are down,” one female RWC in Adjumani summarised.<sup>111</sup>

Put slightly differently, in the settlements, men easily turn from providers into dependants. And in societies in which ideal manhood hinges precisely on one’s ability to turn *others* into dependants and build all sorts of networks of patronage and redistribution through access to resources and wealth, this is naturally experienced as a rather humiliating process. There is a strong sense that men in the settlement have to struggle in order not to become entirely “useless” – that is, socially, economically, and culturally redundant – in the eyes of their wives

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<sup>108</sup> Group discussion with (male and female) refugee youths, Palabek Refugee Settlement, 8 September 2021.

<sup>109</sup> There has long been a tendency to emphasise that women and children are the majority of refugees in Uganda. But as Verdirame and Harrell-Bond note, women and children are the majority in any society, and the focus on their numbers in camps is often the product of a particular humanitarian discourse that emphasises their vulnerabilities and their supposed apolitical tendencies. Verdirame and Harrell-Bond, *Rights in Exile*, 123.

<sup>110</sup> See also, on this topic: D. Mulumba, *Women Refugees in Uganda: Gender Relations, Livelihood, Security and Reproductive Health* (Fountain Publishers: Kampala, 2010); A. A. Nibbe, ‘Women, Camps, and “Bare Life”’, in *The Routledge Handbook of Gender and Development*, ed. by A. Coles, L. Gray, and J. Momsen (Routledge: Abingdon, 2015), 418-428.

<sup>111</sup> Group discussion with female RWC members, Maaji II Refugee Settlement, 13 September 2021.

but also in their own eyes. As one female RWC in Kiryandongo noted: “The UN is the one who takes care now, who brings food, so now they [women] take it as if the UN is their husband... And even they drop out [leave] their husbands in reality.”<sup>112</sup> The reference to the UN in kinship terms, common among South Sudanese and other refugee communities in the region,<sup>113</sup> is an important reminder that kinship is always shaped through acts of exchange and redistribution, and so family dynamics are bound to change under the new realities of life in the settlements.

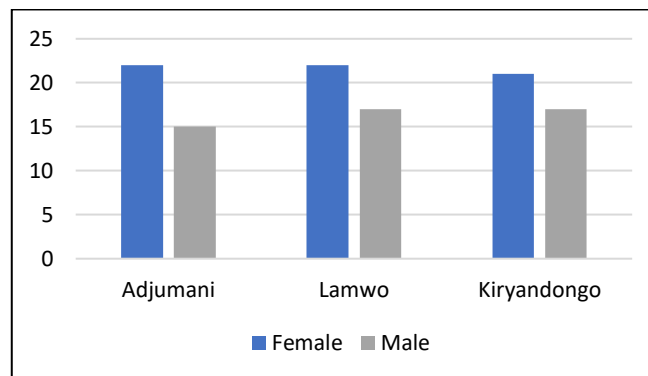


Figure 2. Percentage of male and female adults of total registered refugee population.<sup>114</sup>

Indeed, other refugees in Adjumani expressed a similar view when they claimed that the lack of resources and access to cultivable land or jobs – and consequent idleness of men – have led to an increase in divorce rates: “You, the husband, you are... just useless,” one male paralegal in Adjumani explained. “You don’t have anything to do. Those are the most cases which bring this one, the divorce. Because the men, they have no power.”<sup>115</sup> Several interviewees spoke of denial of conjugal rights as a common concern that is raised by men in the settlements: “Some of the women are refusing their men on the bed, saying that it is better for them now to stay here without men,” a RWC in Palabek noted.<sup>116</sup> Another male refugee in Palabek – a Nuer community leader from Jonglei – reflected on his own predicament in the settlement:

Now, if you come here in Uganda, you don’t have support as a man. Maybe you come with your wife and there is no support. Life is very threatening to you, because you don’t hear good words from the woman, because she sees you as you

<sup>112</sup> Interview with a female RWC member, Kiryandongo Refugee Settlement, 31 August 2021. See also Group discussion with (male and female) refugee youths, Kiryandongo Refugee Settlement, 2 September 2021.

<sup>113</sup> See also, for example, Braak and Kenyi, *Customary Authorities Displaced*, 19; S. Turner, *The Barriers of Innocence: humanitarian intervention and political imagination in a refugee camp for Burundians in Tanzania*, PhD thesis (Roskilde University, 2001), 111.

<sup>114</sup> Based on UNHCR statistics, as of 30 November 2021. Adults are defined as individuals 18 years old and above.

<sup>115</sup> Group discussion with male and female paralegals, Maaji II Refugee Settlement, 13 September 2021.

<sup>116</sup> Group discussion with RWC members, Palabek Refugee Settlement, 8 September 2021. See also interview with a male paralegal, Maaji II Refugee Settlement, 13 September 2021.

are nonsense. [You] know [you can] produce children but you don't know whether you will feed [them]. It is a problem. [...] Whenever there is assistance coming... Like me now, I only give the responsibility to my wife. She is the one who is the head of the family. Her name is there [on the rations card]. And if you see, my wife, she is 29 years old and me I am 45, because I know that the responsibility is with the women in Uganda.<sup>117</sup>

Within the settlements, one avenue for dealing with the sense of socio-economic redundancy is pursuing those minor opportunities the humanitarian system makes available to refugees, such as being a paralegal or a teacher, or joining any of the other committees set up by NGOs. RWC leadership positions can also be an attractive occupation for those educated men who do stay in the settlements – giving them access to informal income, connections, and authority.<sup>118</sup> Those with little formal education who are unfamiliar with the world of government and NGOs, however, have less access to such positions. Opportunities for manual labour for South Sudanese men in Uganda are few. Around Kiryandongo, some refugees found work in commercial farms. In the north, some seek opportunities in the informal economy of the borderlands, trying to generate income through petty trade, smuggling, or transport services.<sup>119</sup> For others, however, staying in South Sudan and seeking opportunities within the humanitarian or military economy is the obvious alternative.

### ***Intimate partner violence***

Along with theft, domestic violence and, more specifically, intimate partner violence (IPV), were mentioned by many interviewees as the most common crimes in the settlements. Both male and female refugees in the settlements often attribute the prevalence of domestic violence to the combination of poverty and the disempowerment male refugees experience in Uganda. Physical IPV is primarily but not exclusively perpetrated by men and reported by women, and the most commonly cited causes of tensions between couples are the idleness of men (and their consequent inability to contribute materially to the household) and disagreements over the distribution and use of the limited resources refugees possess. Dynamics in this context appear to be similar to those documented by researchers in the past. Harrell-Bond and Verdirame described how refugee women in Uganda more than twenty years ago have “often imputed the high incidence of domestic violence in the camps and settlements to the deleterious psychological effects that camp life had on men.”<sup>120</sup>

The crime here in this settlement is the crime between the men and women. Mostly you can see that men bring the crimes on their women because men are

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<sup>117</sup> Interview with a Nuer “chief”, Palabek Refugee Settlement, 7 September 2021.

<sup>118</sup> Although all RWC positions are voluntary, travel refunds and per-diems from NGOs (paid to refugee leaders when they attend training and workshops or participate in research) represent a decent source of income in the settlement environment.

<sup>119</sup> Gidron, *Mobile Livelihoods*.

<sup>120</sup> Verdirame and Harrell-Bond, *Rights in Exile*, 125.



jobless here... The woman is going to ask the husband to give something like money, then these men say there is nothing – there is no money to give you to help you – so right away there is a fighting. (Female Ma'di “opinion leader”, Maaji II settlement)<sup>121</sup>

You as a man, you have responsibility at home... When you ask the woman to do something like washing your clothes as well as maybe like coming onto bed, some women they are now refusing, because the man has nothing maybe to make her happy. So, whenever men ask them, they deny, and at the end you find people are fighting. (Male paralegal, Palabek settlement)<sup>122</sup>

You know, some women also they undermine their men because now they say “You are here, not even contributing [to the] home so I am the one suffering, looking for what...” So, they start conflicts at home so maybe they even fight, and it can bring all those problems, then the men, some men can report but some they keep quiet because they are shy. (Female RWC, Kiryandongo settlement)<sup>123</sup>

Women’s empowerment interventions are often underpinned by the assumption that reducing women’s material dependency on their male partners ultimately also reduces their vulnerability to violence perpetrated by them, as it gives them the power to exit abusive relationships. Sociologists have shown that this is not always the case. The extent to which women’s empowerment correlates with reduction in violence against them is impacted by a range of cultural and material factors. Under certain circumstances, women’s empowerment may trigger an increase in male violence against them, as men try to either reassert their authority in line with prevalent gender norms or extract resources from their (now empowered) partners. This phenomenon is often known as “male backlash” and has been linked to enhanced female access to resources or employment (as men try to gain access to their partner’s income), to the stigmatisation or unfeasibility of divorce (which reduces or eliminates women’s exit option), as well as to conditions of economic uncertainty, where household income is unpredictable and unstable.<sup>124</sup>

The experiences and insights shared by interviewees clearly indicate that much of the abuse that occurs between partners revolves around resources and is of an extractive nature. Interviewees repeatedly argued that violence tends to increase after the distribution of aid (food or cash) due to disagreements over its use and redistribution between household members. At the time of research, and following the reductions mentioned above, refugees who received their rations in cash were given UGX 19,000 (USD 5.3) per person per month.

<sup>121</sup> Interview with a female Ma'di “opinion leader”, Maaji II Refugee Settlement, 15 September 2021.

<sup>122</sup> Interview with a male paralegal, Palabek Refugee Settlement, 6 September 2021.

<sup>123</sup> Interview with a female RWC member, Kiryandongo Refugee Settlement, 31 August 2021.

<sup>124</sup> K. Finnoff, ‘Intimate Partner Violence, Female Employment, and Male Backlash in Rwanda’, *The economics of peace and security journal*, 7 (2012), 14-24; S. Cools and A. Kotsadam, ‘Resources and Intimate Partner Violence in Sub-Saharan Africa’, *World Development*, 95 (2017), 211-230; E. Bulte and R. Lensink, ‘Empowerment and Intimate Partner Violence: Domestic Abuse When Household Income is Uncertain’, *Review of Development Economics*, 25 (2021), 148-162.

This tiny sum of money is below what is required for an individual with no other sources of income to sustain in the settlements for a month. It is said that disagreements thus tend to emerge either over the use of this money, or, when aid is provided in-kind, over the sale of food items in the market.

When they receive rations, mostly these are the root causes in the family – the rations, let me say, the cards. Because some of the families, they are receiving cash. When they receive the cash, maybe the husband is the one receiving the cash, he is not reporting to the woman, then it ends up with violence. Vice-versa, sometimes, the woman, before reaching home, she starts buying things from the market. When the husband asks, “Where is the money?” they end up fighting even. (Male paralegal, Maaji II settlement)<sup>125</sup>

What makes people fight is the lack of jobs. Our men, in South Sudan, they could get [a] job and pay our children’s school fees. Yeah. But when we came here, there is nothing for our men to do. They cannot even support us. I think that is the most problem which can affect women and men to fight. And even these ration cards are also affecting us. You may find that I, I am in my card... Now, when I receive this money, maybe my husband will ask me to give this money for him. And when I rejected, that will also bring violence among us. (Female RWC, Maaji II settlement)<sup>126</sup>

Around the time when food is distributed, we have aspects of food sale. Alcohol intake tends to increase along that time, and around that time, you tend to have physical violence in the house, and it is also that time that you have suicide attempts. I think it is linked to either partners selling part of the food then the other one remaining barely little or nothing, but here there are family and children you have to look [after]... Because of the frustration around that time... to me that is the time when you have increase in violence. (Male refugee and former RWC, Palabek settlement)<sup>127</sup>

Our food, the way they reduced, it is now really putting us [under] pressure. You may see somebody, when she receives the food, it is not like the one they were giving us [before]. When it reaches home... sometimes you may think, it will bring conflict within the children plus the parents. (Female refugee, Kiryandongo settlement)<sup>128</sup>

I think crime increases during the distribution time. This is because when the man is the family head and receives the money, he will straight away go to the drinking point. And the woman left to suffer with the children. If the woman is the family head, she will get the money and go to the market to buy things for the home, but the man will beat her because she did not ask for his permission to buy those things. (Female refugee, Kiryandongo)<sup>129</sup>

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<sup>125</sup> Group discussion with male and female paralegals, Maaji II Refugee Settlement, 13 September 2021.

<sup>126</sup> Group discussion with female RWC members, Maaji II Refugee Settlement, 13 September 2021.

<sup>127</sup> Group discussion with male refugees, Palabek Refugee Settlement, 8 September 2021.

<sup>128</sup> Group discussion with (male and female) refugee youths, Kiryandongo Refugee Settlement, 2 September 2021.

<sup>129</sup> Group discussion with female refugees, Kiryandongo Refugee Settlement, 31 August 2021.

This normally occurs when the ration is received. There is fighting for the little cash. A man may decide, “I should take little,” and on the other hand the woman may decide to take little, because both parties are drinking. Now at the end, you may get there is quarrel and fighting at the end, of which the result will affect mostly the children, not the elders. (Male refugee, volunteer with the Danish Refugee Council, Kiryandongo)<sup>130</sup>

Physical IPV is mostly perpetrated by men against women, but cases of men being physically abused are not unheard of. As further discussed below, men who suffer from such violence are unlikely to disclose it, however, fearing that they will be dismissed or mocked by both their communities and the authorities. More broadly, abuse of men by women – genuine or perceived – tends to be economic or emotional rather than physical and is closely linked to their declining social status in the settlements. For instance, paralegals in Adjumani described how they mediated cases in which women denied their husbands or ex-husbands access to their portion of the cash from the rations, something these women were able to do because they were the ones in possession of the ration cards.<sup>131</sup>

### ***Child neglect, abuse, and desertion***

Other forms of violence within the family that are prevalent in the settlements and are, too, a consequence of the precarity of life in them are child neglect, abuse, and desertion. Several interviewees mentioned that parents often leave their children behind, in the settlements, when they go to fetch firewood or work, or even when they travel to South Sudan. Some spoke of negligence due to alcohol consumption by the parents. Yet others spoke of children being “over-worked” – burdened with chores by their parents who struggle to fulfil their household’s needs, and thus also denied education. This sort of child abuse, in addition to neglect and desertion, featured particularly prominently in interviews in Kiryandongo,<sup>132</sup> but it was impossible to ascertain whether the concern with this offence in Kiryandongo was indicative of higher rates of abuse or of merely higher awareness to it due to sensitisation by NGOs. It could also be the combination of the two.

When we were still getting food at 100% it was okay, because you could budget and use the food for 2 months. But now, food has reduced, even cash. They are now giving us only 19,000 [Ugandan] shillings per person. These means that it is 38,000 for two months. I don’t think people can buy enough food using that money because food stuffs these days are expensive and the weather also due to sunshine

<sup>130</sup> Group discussion with (male and female) refugee youths, Kiryandongo Refugee Settlement, 2 September 2021.

<sup>131</sup> Group discussion with male and female paralegals, Maaji II Refugee Settlement, 13 September 2021.

<sup>132</sup> Interviews with male paralegals, Kiryandongo Refugee Settlement, 30 August 2021; Interview with a female RWC member, Kiryandongo Refugee Settlement, 31 August 2021; Interview with a male police officer, Kiryandongo District, 31 August 2021; Interview with a female Resident State Attorney, Kiryandongo District, 31 August 2021; Interview with a male Acholi “chief”, Kiryandongo Refugee Settlement, 1 September 2021; Interview with a male prison officer, Kiryandongo District, 2 September 2021; Group discussion with (male and female) refugee youths, Kiryandongo Refugee Settlement, 2 September 2021.

is not good for farming. So, that's why the women are going back to South Sudan and leaving their children here. Leaving the children itself becomes a problem.  
(Female refugee, Kiryandongo)<sup>133</sup>

As opposed to IPV and sexual offences, which are primarily seen as male crimes perpetrated against female victims, here it is women who are usually the accused – the common assumption being that they are the ones responsible for taking care of children in the first place. One prison official in Kiryandongo argued that child desertion “is common among women so much” that it is “the most common offense they commit.”<sup>134</sup> As one RLP staff in Lamwo reflected: “When it comes to such offences, because of society’s norms, it is more catastrophic for a woman not to look after children as opposed to a man not doing the same.”<sup>135</sup>

## ***Adultery and divorce***

Adultery is no longer a criminal offence under Uganda’s Penal Code. It was in the past – and still is defined under Section 154 of the Code – but it was scrapped by the Constitutional Court in 2007. Nonetheless, as is the case with pre-marital sex, adultery is illegal under most South Sudanese customary legal systems. Ironically, this illegality is often a consequence of colonial influences on African customary norms, which framed adultery as a threat to public order and cemented its place as a serious “criminal” offence that is of concern for customary authorities.<sup>136</sup> More recent influence has been that of Sudan’s Islamic law, where adultery is one form of fornication (“zina”) that is criminalised. Adultery is also a criminal offence under South Sudan’s Penal Code of 2008, where it is defined as “consensual sexual intercourse with a man or woman who is and whom [the offender] has reason to believe to be the spouse of another person” and is punishable by fine, imprisonment of up to two years, or both. The offence can be tried in customary courts, where it is “addressed in accordance with the customs and traditions of the aggrieved party.”<sup>137</sup>

Not surprisingly, South Sudanese “chiefs” and cultural leaders are reporting that adultery is one of the main causes of disputes they are required to deal with in the settlements. While it is not necessarily a common offence – in the sense that it does not occur, like theft or IPV, on a daily basis – it is viewed by community leaders as an extremely explosive one that can easily trigger violence. Hence, the silence of the formal justice system in Uganda with regard to

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<sup>133</sup> Group discussion with female refugees, Kiryandongo Refugee Settlement, 31 August 2021.

<sup>134</sup> Interview with a male prison officer, Kiryandongo District, 2 September 2021

<sup>135</sup> Interview with female RLP staff, online, 23 July 2021.

<sup>136</sup> On the evolution of Nuer law with regard to adultery, for example, see S. E. Hutchinson, *Nuer Dilemmas: Coping with Money, War, and the State* (University of California Press: Berkeley, 1996), 217-22.

<sup>137</sup> South Sudan Penal Code Act 2008, Section 266. Under the Sudan People’s Liberation Movement’s Laws of the New Sudan of 2003, adultery was defined only as extra-marital sex with or by a married woman. The language of the 2008 Act is gender neutral language though culturally the focus usually remains on the sexual lives of married women rather than married men.

these acts is regarded as problematic.<sup>138</sup> Concerns surrounding this offence, particularly among men, are compounded by the fact that many married women reside in the settlements without their husbands.

Like now, we are here in Palabek settlement. Many fathers send the wife and children to come and study in Uganda because there is no good school in South Sudan and there is insecurity. So, if you send your wife to come here [and] you remain there, maybe the woman brings those boys, some are 18 some are 17... some are 16. If you, the person who came here, sleep with the wife of another person, that one is a crime according to our community. If you do that, there is no law that can govern you in Uganda because in Uganda, they say that if you are mature and you have sex with someone's wife, there is no problem. But to us, there is a problem. Maybe, if it is in South Sudan, it can even cause death. (Nuer community leader, Palabek)<sup>139</sup>

Under customary legal systems, the offence of adultery is primarily understood as violating the husband's sexual rights in his wife. It is therefore the man that is commonly required to compensate the husband of the woman with whom he had sexual relations.<sup>140</sup> Among Nuer and Dinka communities the compensation is usually of six to seven cows, or the equivalent in cash. While the authorities in Uganda are unable to address such disputes, they have an obvious interest in having them mediated and resolved by customary authorities in order to prevent the outbreak of violence in the settlements. A related concern is the issue of divorce. Divorce as such is not a crime, but it springs from complicated domestic disputes and cases of adultery – when these are not resolved according to customary law – and leads to equally complicated conflicts over the return of bridewealth payments and the redistribution of wealth and access to aid. These then require the interventions of both cultural leaders and RWCs or paralegals.

### ***Defilement and pre-marital pregnancies***

Along with theft, assault and domestic violence, “defilement” was also repeatedly mentioned by interviewees as “rampant” in the settlements. Defilement is defined in Uganda's Penal Code as “a sexual act with another person who is below the age of eighteen years” (Section 129(1)). Aggravated defilement is a sexual act with another person who is under the age of 14 or a person with a disability, or when the perpetrator is HIV positive, the parent or guardian of the victim, or a serial offender. Whether aggravated or not, defilement is a capital offence and therefore must be reported to the police when it occurs. It cannot be legally handled by other community mediation mechanisms – RWCs, chiefs or family members – even though in

<sup>138</sup> Interview with a male Nuer “opinion leader”, Maaji II Refugee Settlement, 15 September 2021.

<sup>139</sup> Interview with a male Nuer “chief”, Palabek Refugee Settlement, 7 September 2021.

<sup>140</sup> See also J. A. Magot, “Under the Veil of the Law on Adultery in South Sudan: Men's Laws, Women's Lives,” *Andariya*, 8 July 2019, available at: <https://www.andariya.com/post/Under-the-Veil-of-the-Law-on-Adultery-in-South-Sudan-Mens-Laws-Womens-Lives>.

practice this often occurs. How “rampant” defilement cases really are in the settlements? This is difficult to establish. Many interviewees mentioned it as one of the most common crimes in the settlements, but when asked to list how many cases they have usually encountered, mentioned only a few every year.

Defilement is nonetheless of huge interest to NGOs and the Ugandan authorities, and police records indicate it is often the most common offence for which refugees are charged in Uganda. For instance, Adjumani Central Police Station – which covers all of Adjumani’s settlements and thus a population of more than 240,000 refugees – handled 18 cases of defilement (both aggravated and regular) perpetrated by refugees in 2020, of which 13 alone were recorded in the second half of the year. Second to defilement were only cases of theft, of which 9 were registered in 2020. An additional 9 cases of defilement were recorded in the first half of 2021 – again, more than any other offence. As further discussed below, however, not all cases of defilement are reported to the Ugandan authorities. The real number of cases is therefore likely to be higher. Several interviewees noted that the closure of schools due to COVID-19 lockdowns led to increase in defilement cases,<sup>141</sup> though Nuer and Dinka community leaders in Adjumani also argued that cases of pre-marital sex among youths in the area decreased, because many youths left for South Sudan as schools in Uganda were closed.<sup>142</sup>

As previous RLP research notes, “defilement” is a term that can be “used to portray a considerable cross section of social scenarios and alleged crimes, from the rape of girls under the age of 18, to consensual sex that had come to the attention of the girl’s family.”<sup>143</sup> While various actors may state that “defilement” is “rampant” in the settlements, therefore, they may not all be talking on quite the same thing. “The laws themselves are structured in such a way that they encourage lumping together cases of consensual and non-consensual sex, as well as cases where both parties are the same age with those in which the age difference is significant.”<sup>144</sup> While the paradigmatic image that is associated with this offence is that of an elderly man taking advantage of a female minor, in practice, many cases of defilement involve consensual sex between youths. And while defilement is often said to be “rampant” in the settlements, rape was described by interviewees as rare, and in many cases was not mentioned at all as a concern. Notably, rape cases also rarely feature in police statistics. It seems likely that the conspicuous preoccupation with defilement and the broad definition of

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<sup>141</sup> Group discussion with female refugees, Maaji II Refugee Settlement, 14 September 2021; Interview with a male paralegal, Palabek Refugee Settlement, 6 September 2021; Interview with a male OPM official, Kiryandongo Refugee Settlement, 1 September 2021; Interview with a female RLP staff, online, 22 July 2021; Group discussion with RLP staff, online, 22 July 2021; Group discussion with (male and female) refugee youths, Palabek Refugee Settlement, 8 September 2021.

<sup>142</sup> Interview with a male Nuer “opinion leader”, Maaji II Refugee Settlement, 15 September 2021; Interview with a male Dinka “opinion leader”, Maaji II Refugee Settlement, 15 September 2021.

<sup>143</sup> M. C. Okello and L. Hovil, *“Where Justice is a Dream”: A Report of a Study of Formal and Informal Justice Mechanisms in Adjumani* (RLP: Kampala, 2009), 29.

<sup>144</sup> Ibid.



this offence lead to under-reporting of rape cases, or at least to their mischaracterisation as defilement cases.

Moreover, there is an important disjuncture between Ugandan law and South Sudanese customary norms in this context, which impacts the ways in which different authorities and refugees understand what constitutes defilement and thus their responses to it. Under Dinka, Nuer, and other South Sudanese customary legal systems, *consensual* sexual relations with a person under 18 are not considered an offence merely because of the age threshold. The relationship between those involved, the context in which they had sexual relations, as well as their identity and age, are all taken into account when customary authorities are required to determine how to respond to such cases. Sexual relations with a young child, for example, may be prosecuted as a form of rape, with perpetrators punished harshly. But individuals under 18 can also marry, in which case sexual relations between them will not be deemed illegal. In any case, pre-marital sex, particularly when it leads to pregnancy, is consistently regarded as an offence under customary law, and this is regardless of both the age of those involved and the question of consent.

Defilement is Ugandan law. In our law, our defilement is this: If the girl does not have menstruation, if the girl is too young, and you went to sleep with that girl, when people caught you, you are likely to be killed. If you are lucky and you are not killed, when you are brought to court... Ah! You will receive fines. A lot of cattle will be taken from you. But if the girl has reached 14 years, 15 years... while she has menstruation, and maybe you did not take the girl by force, it is not rape. [...] When a girl is impregnated, even though she is underaged, in South Sudan, [...] what is going to happen [is that] they ask you for cattle. (Nuer community leader, Palabek)<sup>145</sup>

When sexual relations between unmarried youths lead to pregnancy or are exposed for any other reason, a violent conflict may ensue between male relatives of the girl and the boy, particularly when there are existing grievances between their communities or “clans” and if their relatives object to the relationship. The boy’s family is required to pay a certain compensation to the girl’s family – the specific amount changes between locations, contexts, and currencies – in order to swiftly “cool down” the situation. If both sides are interested, they may then negotiate the bridewealth payment necessary to secure the couple’s marriage. Otherwise, the two may be separated, in which case an additional fine (paid by the boy’s family) is usually imposed. Whether the couple is separated or not is influenced by a wide range of factors, including their own preferences, the boy’s ability to deliver the required bridewealth, and the preferences of the parents. Both families and youths often view marriage as the preferable outcome of such cases, however, and girls, in particular, may feel that marriage is the only way to restore their dignity when impregnated.

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<sup>145</sup> Interview with a male Nuer “chief”, Palabek Refugee Settlement, 7 September 2021.

Marriage that is negotiated following an unplanned pregnancy or elopement usually requires a significantly lower bridewealth (colloquially but inaccurately referred to as “dowry”), paid in the form of cattle or cash. It is often known, in English, as “illegal marriage” – as opposed to the “legal” marriage that requires the man to formally approach the family of his future-wife and negotiate the bridewealth *before* having sexual relations with her or, at the very least, before impregnating her. Thus, the cases which NGOs and the Ugandan authorities label “defilement” are often what customary leaders and indeed refugees in general view as “illegal marriage” – an offence that violates not so much the agency and rights of the girl involved but the authority of communal norms and traditions and the rights of her relatives, who expect to benefit from the bridewealth upon her marriage. And while impregnation out of wedlock is sometimes indeed an accident, in a context in which “formal” marriage can be remarkably expensive, “illegal marriage” by the way of impregnation or elopement can also be used by youths to circumvent the authority of elders and to “railroad” marriage agreements without consulting them and without relying on their patronage.<sup>146</sup>

The popular notion that “defilement” occurs because desperate families “sell” their daughters to powerful elderly men for the sake of bridewealth cattle should not be assumed to represent all cases of defilement in the settlements. Stereotypes with regard to Dinka and Nuer communities – most commonly accused by the authorities, NGOs and other refugee communities of practicing forced and early marriages and thus also defilement – play an important role in discourses on defilement. And that humanitarians and government officials are far more likely to be able to meaningfully communicate with other groups of South Sudanese than with Nuer and Dinka refugees helps sustain stereotypes with regard to the latter. While it is true that bridewealth payments impact people’s calculations with regard to marriage arrangements and that Nuer and Dinka refugees uphold their customary norms in this context far more consistently than other communities, the assumption that these norms are in all cases abusive towards youths or females may also be the product of lack of familiarity with the dynamics that underpin their implementation. Injustices certainly take place. But addressing them requires attentiveness to the particular circumstances of each case, to the interplay between Ugandan law and South Sudanese customary systems, and to the ways in which these impact practices of reporting, further discussed in the following section.

What is equally clear is that gender stereotypes also play an important role in determining what is perceived as defilement and which cases are brought to the attention of the authorities. The offence of defilement is defined in Uganda’s Penal Code in gender neutral terms, meaning that both male and female minors can be defiled. In practice, however, it is widely perceived as an offence committed by males against females. Cases of defilement in

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<sup>146</sup> Hutchinson, *Nuer Dilemmas*, 204-9; Gidron, *The Nuer Messianic Jewish Movement*, 429-53. Cases of elopement are largely unheard of in the settlements because fleeing is not a practical option for refugee youths in Uganda.

which boys are the victims are rarely reported. This is not because they do not occur, but because they are not usually perceived as a violation of anyone's rights – a perception that is arguably fuelled by the gender stereotype according to which men are necessarily interested in pursuing any opportunity for sex that comes their way. Conviction of females for defilement is largely unheard of. However, while respondents in the settlements agreed that it is more often men that commit this offence, they also noted that boys are victims too – for instance, those who reside with older women because the latter are willing to support them.<sup>147</sup> “People just ignore [these cases] because it is a boy and he's the one who is interested,” a RWC in Kiryandongo noted, “but sometimes it doesn't look nice.”<sup>148</sup> As the discussion above suggested already, such cases are more likely to raise people's concerns due to their adulterous nature rather than because they constitute defilement.

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<sup>147</sup> Group discussion with (male and female) refugee youths, Palabek Refugee Settlement, 8 September 2021; Group discussion with (male and female) refugee youths, Kiryandongo Refugee Settlement, 2 September 2021.

<sup>148</sup> Interview with a male RWC member, Kiryandongo Refugee Settlement, 31 August 2021.

## 4. The politics of crime response

Having introduced the structures of authority and justice operating in the settlements and the common disputes and crimes that take place in them, this part of the paper examines responses to crime as well as people's perceptions of these responses. The quality of the service (and ultimately, of the justice) different institutions are able to provide to those whose rights have been violated is arguably the most vital component of the right of access to justice. This quality is determined by procedural norms and practices, institutional capacities, as well as the levels of corruption, favouritism, and other biases, including those related to gender: "Good quality of justice systems requires that all components of the system adhere to international standards of competence, efficiency, independence and impartiality."<sup>149</sup> In settings of legal pluralism and contested authority such as refugee settlements, however, it is also important to consider that different institutions not only have different capacities or leniencies but are also geared towards delivering different types of justice.

As already indicated earlier, while the different structures of authority and legal systems that govern life in the settlements appear to be distinct and grounded in very different moral economies, in practice they are highly interdependent and thus constantly intermesh as disputes arise and individuals seek redress. Refugees, NGO representatives and government officials speak confidently of ideal "referral pathways" or a "hierarchy" through which cases are reported, transferred between different institutions, and handled.<sup>150</sup> But neat institutional hierarchies and referral pathways exist mainly in theory. In everyday practice, they are highly contested, particularly in complicated cases in which different values and norms clash. And it is cases relating to the individual rights of women and minors that are most prone to generating such clashes and thus also to leading to contests over the administration of justice.

### ***Who handles what?***

Trends of crime in the settlements are not fundamentally different from wider trends, either in other refugee camps around the world nor in Uganda in general. Theft and SGBV (including domestic violence) are often viewed as the most pervasive justice issues in refugee camps worldwide.<sup>151</sup> Across Uganda, meanwhile, the most common crimes reported to the police

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<sup>149</sup> Committee on the Elimination of Discrimination against Women, *General recommendation No. 33 on women's access to justice*, 3 August 2015, CEDAW/C/GC/33.

<sup>150</sup> See also Vancluysen and Ingelaere, 'Conflict Resolution as Cultural Brokerage'.

<sup>151</sup> Da Costa, *The Administration of Justice*, 10.

are theft, assaults, domestic violence, and other “sex-related crimes” (including rape and defilement).<sup>152</sup> There is nonetheless a greater tendency among South Sudanese refugees – compared to both Ugandan civilians and other refugee communities – to settle cases outside the formal justice system.<sup>153</sup> One reason for that is the enduring influence and legitimacy of customary law among South Sudanese, even in contexts of displacement, and as we shall see, the sense that only resolutions within the community can effectively bring conflicts to an end. But Ugandan authorities also see the value in community mediation, which ultimately saves them time and resources.

The implication is that those cases involving refugees that not only reach police posts in the settlements but are also eventually transferred to police stations and to the courts – rather than handed back to the RWCs or paralegals in the settlements – are a small number of more serious, capital offences: defilement, arson and grievous harm (the latter two often the consequence of domestic violence), rape, and large-scale theft (shop breaking, cattle stealing, etc.). Cases of petty theft, simple assault and domestic violence that do not lead to serious physical harm – the majority of the cases occurring in the settlements on a daily basis – are not necessarily reflected in court statistics. They may reach the police posts in the settlements but then be “sent back” to be mediated by the RWCs, or with the support of paralegals and other volunteers with NGOs. Land disputes also do not reach the police and are usually handled by RWCs, who may turn to OPM for guidance.

For all the time I’ve been here, I found that the refugees prefer to have their cases handled by their own local communities. Maybe it’s because they understand them best. But just imagine if all cases were brought to police – we would never rest! (Male police officer, Kiryandongo)<sup>154</sup>

There are those [crimes] that are common in court, and those that are common at the police or in those in informal structures. In the police, most cases are domestic violence, threatening violence, assault, arson, theft, and shop breaking. Those are notorious. They are there. Each time you go to the police, you find someone that has committed one of those offences. It is always happening. In a week, you will find each day there is a domestic violence case. So, if you ask me for the top three, it would be domestic violence, threatening violence, and assault. These are at the police. More often than not, these are mediated. When they are mediated, when there is an out-of-court settlement, you will not see them in the court statistics. They don’t make it there. When you go to court, you may think that domestic violence is not reported, that is because usually it is mediated at the police. (Female RLP legal officer, Lamwo)<sup>155</sup>

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<sup>152</sup> The Uganda Police Force, *Annual Crime Report, 2020* (Kampala, 2021).

<sup>153</sup> Interview with a female RLP staff, online, 22 July 2021; Group discussion with (one male and one female) RLP staff, online, 22 July 2021.

<sup>154</sup> Interview with a male police officer, Kiryandongo District, 1 September 2021.

<sup>155</sup> Interview with female RLP staff, online, 23 July 2021.

Community leaders and “chiefs” in different settlements mentioned similar types of conflicts they regularly deal with. These include fighting between youths (often in the football fields), fights between women queuing at the water points, as well as disputes surrounding cases of impregnation out of wedlock (“illegal marriage”) and adultery. Cases handled by customary authorities, of course, do not make it into police crime statistics as well – that is, unless quarrels surrounding issues such as adultery or “illegal marriage” lead to an outbreak of violence which then requires the intervention of the police. In such a case, what begins as a matter of impregnation out of wedlock or adultery evolves into communal clashes, often of a “tribal” nature, with members of one “clan” or ethnicity fighting members of the other. It may thus eventually be recorded by the police in a decontextualised manner as a case of assault, threatening violence, grievous harm, or even murder. Again, as in other cases, the police may “neutralize” the violence but will ultimately leave it for the RWCs and chiefs to mediate the conflict and restore peace.

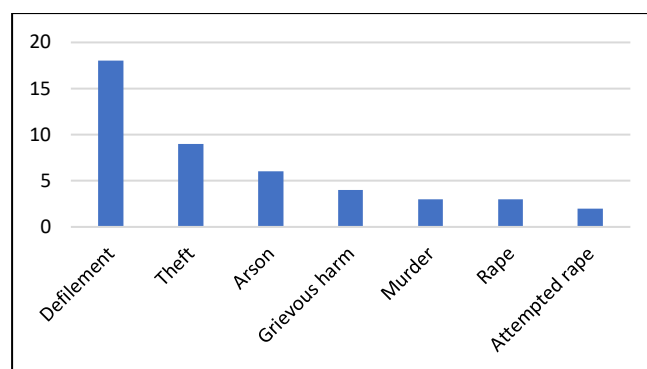


Figure 3. Crimes committed by refugees, Adjumani Central Police Station, 2020.<sup>156</sup>

Other clashes between official definitions of crime and community priorities occur in cases of alleged poisoning and witchcraft. Though not an equally central concern across all communities of South Sudanese refugees, the issue was raised in interviews in all three districts. There is a long history to the dissemination and spread of practices of witchcraft and poisoning between communities along the Uganda-South Sudan borderlands. Allegations of such activities – which tend to be associated with women – have long posed a challenge for formal justice institutions.<sup>157</sup> In this context, communal attempts to deal with suspects, which often involve mob attempts to isolate, expel, or kill them, may be undermined by the police. One OPM official in Adjumani, for example, noted that one of the crimes he encounters in the settlements is the forceful eviction (by refugees) of those suspected of practicing

<sup>156</sup> Compiled from the station’s monthly crime returns of foreigners, which were shared with RLP for the purpose of this research.

<sup>157</sup> C. Leonardi, ‘The Poison in the Ink Bottle: Poison Cases and the Moral Economy of Knowledge in 1930s Equatoria, Sudan’, *Journal of Eastern African Studies*, 1 (2007), 34-56; Leonardi, Moro *et al.*, *Local Justice in Southern Sudan*, 56-58; C. Leonardi, E. Storer, and J. Fisher, ‘Geographies of Unease: Witchcraft and Boundary Construction in an African Borderland’, *Political Geography*, 90 (2021), 102442.



witchcraft.<sup>158</sup> In Palabek and Kiryandongo, there have been cases in which the police took those suspected of practicing witchcraft or poisoning into custody and RWCs hid them in their homes for their own protection.<sup>159</sup>

## ***Exile and the durability of justice***

Among government and humanitarian agencies, a common perception is that refugees often “resort” to community justice because they are unable to access Uganda’s formal justice system.<sup>160</sup> Turning to “informal” justice is thus perceived as a compromise – something refugees are “forced” to do due to the limited capacities of state institutions. The reality is a bit more complicated. While it is certainly true that the formal justice system is remarkably distant from the lives of most refugees, and that the costs of accessing it can be high, there are also qualitative differences between the sort of justice this system promises to provide, and the justice pursued in non-state community processes. In many cases, therefore, individuals are not simply “forced” into one mechanism or the other, but take calculated decisions based on what they believe each mechanism is able and likely to provide.

The main distinction refugees draw between Uganda’s formal justice system and community structures in the settlements is that the latter are able to address “root causes” of conflicts and thus promote more durable resolutions to conflicts. They are able to do so, interviewees repeatedly explained, because of their familiarity with the people involved and their histories and cultures, and because of their commitment to maintaining relationships and the general unity and peace of the community over the long term. These are objectives to which the police are understood as being largely indifferent, instead basing their activities in the laws of Uganda. As one male refugee in Kiryandongo exclaimed: “There is nothing like reconciliation in police. You win the case, that is it. You fail, that is it. But with those chiefs, they have those tendencies of making sure they handle the case to the fullest.”<sup>161</sup>

Whatever offence takes place in the settlement, if it is not within the family, then it is connected to [...] the conflict in South Sudan. If it is in the family, then you know it started from there. But if it is across families – let’s say, me and John, we fought – in most cases it is difficult for the police and the formal justice system to handle it. Because for them, they will handle, “Okay, this is John versus Michael.” But most of these conflicts have their roots in South Sudan. [...] So, if the police comes and handles it as a simple case, and says, “No, this is a simply assault, you go back,” next time it will scale up to the next level. It might be... it might scale to two, three, four people getting involved, it might get to tribe – this tribe

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<sup>158</sup> Interview with a male OPM officials, Adjumani District, 13 September 2021.

<sup>159</sup> Group discussion with (male and female) refugee youths, Kiryandongo Refugee Settlement, 2 September 2021. And see also C. Atukunda and R. J. O’Byrne, *A Poisoning in Palabek: The Fragility of Public Authority in Palabek Refugee Settlement Uganda* (LSE: London, 2021).

<sup>160</sup> See for example the assessment in Mbazira and Ibanda-Nahamya, *Report on Rule of Law*.

<sup>161</sup> Group discussion with (male and female) refugee youths, Kiryandongo Refugee Settlement, 2 September 2021.

confronting another tribe – it might get to... the victims maybe teaming up with other people. So, this is a challenge we meet, and why it is very necessary that the formal justice system work together with the informal justice system. Because there are certain things that the informal justice system understands about the people that the formal justice system does not understand. Because the formal justice system will base it on the book, while the informal will try to visit the history. (Male refugee, a former RWC3, Palabek settlement)<sup>162</sup>

The retributive justice that formal mechanisms promise – grounded, as it is, in the capacity of the police to detain people and use force – is sometimes described by South Sudanese as no justice at all. Imprisonment, which is the most likely outcome of any “successful” criminal process within the formal justice system, is rarely the desired outcome of justice processes within the community. A Nuer RWC in Adjumani, for example, explained that in his block (the “Nuer block” of the settlement) a decision has been reached that any conflict “without blood in it” is to be solved within the community. He highlighted that even when cases are reported to the police, they are eventually returned to community leaders for mediation:

This issue of the police... we set up a rule in the block. Anything that happens in the block, as long as it is not a capital offence, if you go to police, we are not going to solve it. You will go and solve it with the police. It is like a way of guiding people not to get the habit of going to police... Let us solve our problems locally at the block level. But we are not forcing those who wish to come to police. Still, the police will call those local leaders to come and solve this. Because the police is not after justice. It is just to keep law and order. They cannot sit down with the community and say, “Let us solve this.” No. They are just here for our security.<sup>163</sup>

The decision to turn to the police may be driven by the hope that they will be able to provide protection, but also by a “desire for retributive justice” that is often viewed as anti-social.<sup>164</sup> This is precisely why turning to the police can be a highly contentious act and a source of friction. As one female refugee in Maaji II explained: “Sometimes, there are conflicts in the settlement that are caused by people reporting cases directly to police, which causes enmity in the settlement thus causing fights.”<sup>165</sup> An NGO employee in Palabek observed: “We have seen also some incidents where one family will go and attack or just threatening... threatening violence, [complaining to those who reported the case,] ‘You have reported’ or ‘You have arrested my son.’”<sup>166</sup> Another refugee in Palabek noted that going to the police may generate long lasting grievances and exacerbate conflicts rather than bring them to an end:

When you report your fellow man to the police, it’s just that in Uganda here we survive, but think of your children and family when you go back to South Sudan. The relative of that man in prison will not be in peace forever! That’s why they

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<sup>162</sup> Group discussion with male refugees, Palabek Refugee Settlement, 8 September 2021.

<sup>163</sup> Interview with a male Nuer “opinion leader”, Maaji II Refugee Settlement, 15 September 2021.

<sup>164</sup> Leonardi, Moro *et al.*, *Local Justice in Southern Sudan*, 50.

<sup>165</sup> Group discussion with female refugees, Maaji II Refugee Settlement, 14 September 2021.

<sup>166</sup> Group discussion with 3 female staff of different NGOs working on SGBV, Palabek Refugee Settlement, 7 September 2021.

decide to handle it within the low level, so that the case will not increase and be taken on from there.<sup>167</sup>

The restorative justice community structures prioritise and their ability to engage with a wide range of actors, including across the border, render the resolutions they promote more lasting and thus reliable. Life in exile, as the quote above suggests, is understood to be temporary, and so is the relevance of the laws of Uganda to the lives of refugees. Movement across the border, after all, is common, and the social and cultural links communities in the settlements maintain with relatives in South Sudan are strong. Kinship or ethnic affiliations are experienced as far more lasting attachments that are not contingent on one's presence in a certain territory. Over the long run, therefore, there is a sense that agreements that are negotiated within community structures are more likely not only to promote social cohesion and unity, but also to retain their validity and authority. In conditions of extreme precarity and uncertainty, community justice has important durational qualities.



*A mediation session in Palabek settlement.*

## ***Hybridity and gender in community justice***

What does it mean that cases are handled “by the community” or “informally”? The answer is far from straightforward or clear-cut. In theory, RWCs are expected to oversee all mediations in the settlements and be the first point of contact for both refugees and the police. In practice, in some cases concerning “cultural” issues, they may be bypassed by “traditional” authorities and family members. But even those mediations that do involve the RWCs often bring together paralegals, “opinions leaders” or “chiefs”, religious leaders, as well as any other actors that are understood to be relevant for the case in question, such as

<sup>167</sup> Group discussion with (male and female) refugee youths, Palabek Refugee Settlement, 8 September 2021.

refugee child protection counsellors, ration cards management committee, humanitarians, OPM, and so on. Conflicts between refugees and host communities are mediated with the support of LCIs. The implication is that a wide range of legal, moral, and cultural influences thus shapes – directly or indirectly – the outcomes of mediations.

Cases may also split between different authorities, each addressing a different dimension of a particular dispute. A case of adultery and divorce, for example, may require the intervention of RWCs in order to sort out the IDs and ration cards of the couple (and by implication, their access to aid), but also the assistance of “chiefs” and community elders in order to sort out the return of bridewealth and any other associated compensations. Several interviewees mentioned that in their communities, a quarrel between a married couple during which either of them throws out of the house the belongings of the other requires the intervention of a “traditional” leader. In Ma’di culture, for instance, reconciliation following such a fight will require the ritualistic slaughter of a sheep.<sup>168</sup> Others noted that a suicide case may necessitate the ritualistic cleansing of the area in which it was committed.<sup>169</sup>

The flexibility and fluid nature of “informal” justice – the fact that it is usually grounded in lengthy debates and processes of arbitration involving a wide range of actors rather than the strict application of written legal codes – means that it can be influenced by the normative input of other institutions and authorities.<sup>170</sup> It also means, therefore, that it is adaptable to the varied nature of conflicts in the settlements. Particularly in settlements where different “tribes” have been dispersed between blocks and zones, RWCs might be perceived as biased due to their ethnic affiliation. The inclusion of other community leaders in mediation processes can help address such concerns. Deciding who (and in what capacity) may join a discussion or mediation is therefore an important part of any such process. Community leaders and “chiefs” as well as member of the inter-religious councils of the settlements, formed of refugee leaders of different churches, are also regularly called upon when conflicts emerge between members of different communities.

The inclusion of women in RWC structures is vital for making these accessible to female refugees. While some positions within the RWC structures are reserved for females (namely, the Women’s Affairs role, at different levels of the administration), in most settlements, men remain overrepresented, particularly in senior positions. The role of RWC structures as the main bridge between NGOs, OPM and the refugee community necessarily attracts individuals who are literate, speak English (or at least Arabic), and often have some experience in government work or urban life. This makes women less likely candidates for RWC roles. That

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<sup>168</sup> Group discussion with female RWC members, Maaji II Refugee Settlement, 13 September 2021. See also, group discussion with (male and female) refugee youths, Kiryandongo Refugee Settlement, 2 September 2021.

<sup>169</sup> Group discussion with female refugees, Kiryandongo Refugee Settlement, 31 August 2021.

<sup>170</sup> R. Ibreck and N. Pendle, *Customary Protection? Chiefs’ Courts as Public Authority in Un Protection of Civilian Sites in South Sudan* (London, 2016).

women are often those taking care of children and maintaining their households – queuing for water, cooking, collecting firewood – also leaves them with less time for additional, unpaid, administrative work. The efforts of OPM and NGOs to increase the number of female RWC members have nonetheless had a significant impact and helped even out the numbers in some cases. Across the settlements in Adjumani, for example, many of the RWCs include an equal number of men and women, with women outnumbering men in some committees.

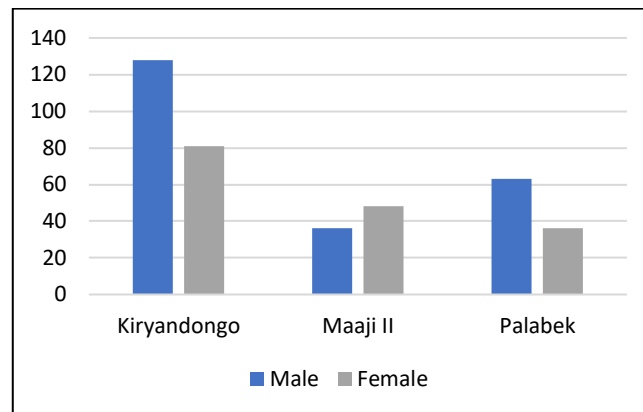


Figure 4. Gender balance in RWC structures.<sup>171</sup>

The involvement of “chiefs” and other “cultural leaders” in the resolution of conflicts is, ironically, viewed by the authorities and NGOs as both controversial and essential. It is essential because it is widely acknowledged that it is often these leaders alone that can bring disputes to an end. It is also controversial, however, because their procedures and rulings can be inconsistent with human rights law, particularly when they are handling cases involving women and children. Having taken shape during the colonial period, and being dominated by men, “traditional” authorities tend to perpetuate gender and generational inequalities, prioritising the interests of elder men over those of women and youths. This is particularly so due to their focus on protecting the institution of marriage (as defined in customary norms) and their central role in policing the sexual behaviour of youths.<sup>172</sup> The rigid application of customary laws may lead, for example, to children and youths being forced into marriages or to women being trapped within violent marriages.<sup>173</sup>

Nonetheless, it is telling that while criticism of the “patriarchal” and “oppressive” tendencies of these institutions is ubiquitous among Ugandan officials and NGOs, concerns of gender or generational biases appear to be less dominant among refugees, both male and female. There

<sup>171</sup> The figure for Maaji II includes the RWC1 and RWC2 committees, as there is no RWC3 responsible for this settlement alone. There are no refugees from Maaji II in the RWC3 responsible for all settlements in Adjumani, though it comprises an equal number of male and female refugees from other settlements in the district.

<sup>172</sup> T. Mennen, ‘Lessons from Yambio: Legal Pluralism and Customary Justice Reform in Southern Sudan’, *Hague Journal on the Rule of Law*, 2 (2010), 218–252.

<sup>173</sup> See, for example, the cases in: Ibreck and Pendle, *Customary Protection*; Ibreck, *South Sudan’s Injustice System*; Deng, *Challenges of Accountability*.

can be several reasons for that. One is that the laws and norms customary authorities uphold have considerable legitimacy at the community level. While individuals certainly challenge practices they perceive as harmful and unfair within the context of specific cases and disputes, there is also a strong sense that customary law cannot simply be set aside altogether, and that its application is generally justified, necessary, and desired. Another reason may be that the authority of customary leaders is already relatively restricted in the settlement environment, where a range of other institutions and norms influence justice processes and where communities are increasingly attentive to humanitarian socio-legal norms.

*Respondent A:* I think it depends on the gravity of the crime that one commits and not basically about their sex.

*Interviewer:* There is nothing like, culturally men are supposed to be superior and as such when they bring cases against women there are high chances that they will win?

*Respondent A:* No, it is not there.

*Respondent B:* What they do is that when there is an issue, the two conflicting persons are sat down, and the elders assess. If they find that it is the man in the wrong, they clearly say that he is wrong and the same applies for the woman. There is nothing like shielding the man or woman when they have done a wrong. The punishment is given according to the gravity of the offence. (Female refugees, focus group discussion, Palabek)<sup>174</sup>

According to what I have been seeing, they just see the way how you were behaving in the community, if you are a rough woman, they even treat you rough like that. If you are a rough man, they even treat you rough like that. They just observe the way how you have been behaving. (Female refugee, Maaji II settlement)<sup>175</sup>

Indeed, when “cultural leaders” are seen as biased, it is more likely to be not because of the conservative gender norms they uphold, but rather, due to their closer relationship with other men in the community.<sup>176</sup> “The men in most cases are friends or acquaintances of the local leaders and as such, the women don’t think that they will get justice from the local leaders,” one male Dinka “opinion leader” in Adjumani explained. “So, women prefer to go to the police station because they believe the police will act directly and quickly on a matter.”<sup>177</sup> Regardless of the common notion that the comprehensive resolution of conflicts is only possible outside the realms of the formal state, therefore, domestic violence of men against women is one context in which the force of the police is regularly called upon.

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<sup>174</sup> Group discussion with female refugees, Palabek Refugee Settlement, 8 September 2021.

<sup>175</sup> Group discussion with female refugees, Maaji II Refugee Settlement, 14 September 2021.

<sup>176</sup> These views, it should be noted, resonate with the views documented in the past in South Sudan with regard to the chiefs’ courts. See: Leonardi, Moro *et al.*, *Local Justice in Southern Sudan*, 41.

<sup>177</sup> Interview with a male Dinka “opinion leader”, Maaji II Refugee Settlement, 15 September 2021.



## *Dealing with domestic violence*

When domestic abuse involves physical violence and “blood”, it often reaches the police. Either the victim or other witnesses in the community will report it. Otherwise, before violence breaks out and sometimes even if it does, refugees suffering from domestic abuse and tensions within the household may also reach out and seek the advice and support of church leaders, their extended families, RWCs or paralegals. An unknown number of cases of domestic abuse, however, are not reported at all. And although paralegals and RWCs are encouraged by NGOs to actively identify and report (even discretely) cases of domestic violence in their communities, they may not always feel comfortable to do so. When domestic violence is reported to the police, in most cases, it is reported by female victims – a reflection of the fact that male physical violence against female partners is more widespread, but also of a tendency among men to either avoid disclosing IPV or approach other institutions in order to address it.



*Participants carrying out a group exercise during an RWC Training, Maaji II.*

In line with the general preference for “informal” justice and sorting out conflicts within the community, there is a general sense that, ideally, the first forum in which domestic quarrels must be dealt with is the extended family, and that they should only proceed from there to any external authorities if no agreement is reached and physical violence is involved. The extent to which this norm infringes on women’s rights depends on the case in question. On the one hand, both family members and customary authorities are likely to be reluctant to grant divorce to women suffering from domestic abuse and will normally prioritise reconciliation and the mending of relations within the family.<sup>178</sup> On the other hand, because of the priority they place on family unity, they are also likely to hold men accountable when failing to perform their duties as prescribed by the social ideologies of their communities.

<sup>178</sup> Ibreck and Pendle, *Customary Protection*, 38.

Women's marital complaints about alcohol consumption, idleness, and even impotency, are likely not only to be entertained but also taken seriously.<sup>179</sup>

When you come to the lowest levels of the informal justice system – that is the family level, the expanded family level, where you have the father-in-law, the mother-in-law, the uncles – these ones will respond quickly to the concerns of the female. Why? Because they believe... because they married, you pay dowry to marry that woman and then the woman is going to reproduce children in the family. There is a continuity of the family in the woman. So, that is why the informal justice system at that level will respond quicker. (Male refugee and former RWC, Palabek)<sup>180</sup>

Despite the ideal of settling family disputes within the community, domestic violence cases often reach the police. A common notion among men is that women tend to turn more quickly to the police to report domestic abuse, including “minor” cases that do not, in their eyes, merit turning to these authorities. As several female interviewees noted, the fact that women, unlike men, do not have the freedom to walk away from their household when tensions arise – or even go back to South Sudan, as men often do following disagreements with their spouses – leaves them with few options but turning to the authorities and asking for advice or shelter.<sup>181</sup> While turning to the police may be driven by the hope that it will provide protection from male physical violence, it may also represent an attempt to gain leverage in other forums or practically force community leaders (or the husband) to attend to a problem which they may otherwise dismiss or ignore.

In most cases when a woman reports a case and a man is involved, the case collapses. Even before the RWCs, they will ask why the woman reported the case, yet she could have stayed with it. [...] For example, when your husband is not providing for you and the children, and you report such a case, they will say that you are spoiling the name of the man. That you should have called only the relatives of the man and sat down. (Female refugee, Kiryandongo)<sup>182</sup>

If it is the domestic violence, the men sometimes undermine the block leaders and so sometimes when the block leader calls for him [a man] to solve a problem he may not turn up. So, women say “No, I am not going to the block leader. Let me go the police.” (Female refugee, Maaji II settlement)<sup>183</sup>

When they [women] come here, you pick a man, [but] the man says, “I also report the issue to the block leader, and we are supposed to sit tomorrow.” Now the woman has come here [to the police]. That is the time when we call that block

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<sup>179</sup> See also the examples from South Sudan in Leonardi, Moro *et al.*, *Local Justice in Southern Sudan*, 41.

<sup>180</sup> Group discussion with male refugees, Palabek Refugee Settlement, 8 September 2021.

<sup>181</sup> Group discussion with (male and female) refugee youths, Kiryandongo Refugee Settlement, 2 September 2021.

<sup>182</sup> Group discussion with female refugees, Kiryandongo Refugee Settlement, 31 August 2021.

<sup>183</sup> Group discussion with female refugees, Maaji II Refugee Settlement, 14 September 2021.

leader [saying] that “we need you here for help,” and he’s the one now to tell us what is there. (A policewoman, Adjumani)<sup>184</sup>

While higher rates of female reporting reflect higher rates of female victimisation, there appears to be a consensus among refugees that abuse of men also occurs but that men are unlikely to report physical violence perpetrated by their female partners. This is primarily attributed to shame and embarrassment – both of being the victims of female physical violence but potentially also of inviting such violence in the first place by failing to perform their role as husbands.<sup>185</sup> Examples described by interviewees suggest that men are more likely to report types of female abuse – again, genuine or perceived – that do not reflect badly on their own masculinity, such as the denial of cash rations by their partners, alcohol consumption, or infidelity. When they do report domestic disputes, men are more likely to first turn to community leaders or their extended family and other members of the community.<sup>186</sup>

If they fight with the husband, women will rush to the leaders and report the case. But when a man is beaten off by the wife, the man cannot go to report the case. [He will] remain inside. There was even one [case] last month, that man was beaten off – the whole face swollen! – but he is still in the house. Not until we were moving, collecting data, [that] we came across him. (Male refugee, volunteer with the Danish Refugee Council, Kiryandongo)<sup>187</sup>

For the men, they don’t use to report because they fear the stigma – people will stigmatise them, and will say, “Ah, you see these are so and so... his wife used to beat him.” This is what I have analysed, what men are doing. But for women, they are very fast. Sometimes they will cross – they will leave block leader. They will leave even RWC3. They will run straight to police. Sometimes police will say, “No, this case is... you have to go back and see this case at home.” Yeah, because some cases, it needs block leaders to see, maybe RWC2 or 3 – they have to solve that problem. But for them, sometimes they run straight to police. (Male religious leader, Palabek)<sup>188</sup>

The ability of women to leverage the force of the police against men is often viewed as yet another manifestation of the rising status of women in the settlements and the extent to which these are not designed to accommodate the interests of men. This impression is reinforced by the notion – prevalent among both refugees and humanitarians – that the

<sup>184</sup> Interview with a female police officer, Adjumani District, 13 September 2021.

<sup>185</sup> See also: Interview with a male paralegal, Palabek Refugee Settlement, 6 September 2021; Group discussion with 2 male RWC members, Maaji II Refugee Settlement, 13 September 2021. These arguments resonate with the suggestion of Stemple, Flores and Meyer, that male victims may be reluctant to report abuse when doing so appears to clash with popular expectations of “proper” masculine behaviour. See, Stemple, Flores, and Meyer, ‘Sexual Victimization’.

<sup>186</sup> See also Interview with a male Dinka “chief”, Kiryandongo Refugee Settlement, 1 September 2021.

<sup>187</sup> Group discussion with (male and female) refugee youths, Kiryandongo Refugee Settlement, 2 September 2021.

<sup>188</sup> Group discussion with male refugees, Palabek Refugee Settlement, 8 September 2021.

police tend to be more receptive to women's concerns and more lenient towards female suspects. Indeed, shortage of policewomen makes it difficult for the police to handle female victims and offenders.<sup>189</sup> Inadequate detention infrastructure (including lack of detention facilities for females) and lack of a feeding system for detainees encourage officials to avoid arresting women or to release them quicker than men.<sup>190</sup> In addition to these institutional constraints, policing practices are arguably also shaped by common stereotypes of female vulnerability and innocence, as well as of South Sudanese societies being "backward" and South Sudanese men being violent and impulsive.



*A mediation session in Maaji II settlement.*

"When it is a minor offence, usually the women are given police bond, and it is usually because... you know, they are looking after children," one of RLP's Legal Officers explained. "You find the woman has got to the police with a toddler and left 2-3 other children at home... So, it is easier to get police bond for female suspects."<sup>191</sup> Other interviewees described a similar pattern – even if they did not necessarily perceive it to be a problem.

The law doesn't separate, whether this is a man or a woman, it is forty-eight hours [that a person may be detained before being released on bond]. That is what the law says. Maybe they will say we are going to adjust a bit but maybe on

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<sup>189</sup> Interview with a female RLP staff, online, 11 August 2021; Interview with a male police officer, Kiryandongo District, 1 September 2021.

<sup>190</sup> Some police posts do not have separate detention facilities for men and women. This is the case, for example, in the police stations in Maaji I and Maaji III, in Adjumani District. When a woman is detained in these police posts, she may be held in one of the offices. The police posts in Maaji II as well as in Palabek and Kiryandongo were recently reconstructed – with funding from the Dutch government – and now have separate detention facilities for men and women. Elsewhere, detention cells may be inadequate, with broken toilets and no water, as is the case, for example, in Adjumani Central Police Station. Moreover, police posts do not have any feeding system for detainees, and instead rely on the (usually female) family members of detainees or even on the complainants themselves to feed them. For female detainees, police stations rely on NGOs for donations of sanitary pads.

<sup>191</sup> Group discussion with (one male and one female) RLP staff, online, 22 July 2021.



humanitarian grounds, [as] it is very costly to keep a woman in a cell... I have experienced here issues where I ended up buying pads. And so, if the crime committed is not so heavy, I prefer to just... on humanitarian grounds, not the law itself, I would prefer giving bond to a woman very fast. (Male police officer, Lamwo)<sup>192</sup>

“Generally, the criminal justice system, while I do not think it is the intention of it to be lenient to women, that is how it passes off,” one of RLP’s Legal Assistants in Kiryandongo observed.<sup>193</sup> Many Ugandans and refugees – men and women – seem to share this impression. It is also an impression that is consistent with criminal justice theories and empirical studies that suggest that perceptions of female vulnerability and harmlessness often lead to milder outcomes for female offenders, including lower rates of arrests.<sup>194</sup> Ultimately, however, this partiality is also linked to the notion that the police in the settlements are primarily responsible for the maintenance of order and the curbing of physical violence, but not for the resolution of conflicts. For even when the police are called upon to deal with a case of domestic violence, it is clear to all involved that this intervention is temporary, and that at the end of the day, the dispute that led to the outbreak of violence is likely to be resolved outside the realms of the state.



RWC handover and inauguration ceremony in Kiryandongo (left) and Palabek (right).

## Reporting defilement

While most disputes within the settlements are mediated outside Uganda’s formal justice system, one of the most common offences refugees are formally charged with in Ugandan courts is defilement. This should not imply, however, that all or even most cases of defilement actually reach the formal justice system. Since this offence, as already described, covers a wide range of scenarios, and since these scenarios are also often governed by customary legal norms that refugee communities uphold, whether or not it reaches the police depends on the

<sup>192</sup> Group discussion with 2 male police officers, Lamwo District, 7 September 2021.

<sup>193</sup> Interview with a female RLP staff, online, 11 August 2021.

<sup>194</sup> C. Spohn and P. K. Brennan, ‘Sentencing and Punishment’, in *Routledge International Handbook of Crime and Gender Studies*, ed. by C. M. Renzetti, S. L. Miller, and A. R. Gover (Routledge: Abingdon, 2013), 231-248.

specific power dynamics and interests at play in any given case. What is clear, however, is that it is not always due to the interests of the girl or boy involved that the case reaches the police, but rather, the interests of their family members, often the male ones. Here, rather than undo problematic gender and generational power dynamics and patterns of abuse, the formal justice system and force of the state can easily be leveraged to perpetuate them.

Under three common circumstances, cases of defilement are unlikely to reach the formal justice system. The first is when the families of the couple involved agree to separate them according to the customary norms of their own communities, which may require the payment of a compensation to the girl's family. If the individuals involved have any blood ties – in some cases, as far as 5 to 7 generations back – their separation may also require the ritualistic slaughter of an animal. This is a common practice across several South Sudanese communities in cases of sexual relations that are considered incestuous, though the performance of the ritual in the settlements is generally said to be rare.

One of our neighbours went into a mess of defilement. So, when they investigated and found the girl was underaged, and on top of that, they were relatives. [...] So, afterward, the parents agreed, that they should solve the case and make sure they are not separated. They did not want the family to get separated due to the conflict – due to the defilement case. So, they had to give what was required in order to make sure the case is solved, and also during the occasion, elders were gathered, and goats were slaughtered and sheep, in order to make them [the couple] separate. [...] If they try to come together again after they slaughtered, they will receive the curse from the elders. (Male refugee youth, Maaji II)<sup>195</sup>

Second, cases of defilement also do not reach the police when the families involved endorse the marriage of the couple. Whether this is an “illegal marriage” negotiated following an impregnation out of wedlock or a formal marriage agreement involving an under-aged girl or boy which was negotiated between the families in advance, so long as both sides are content with the process and outcome, they have no interest to turn to the police or the RWCs. As one male RWC in Adjumani explained: “When it is early marriage, then they sneak, they don’t need [RWC] leaders, because they know we carry the law in our hands, and we can apply the law.”<sup>196</sup> Community leaders realise that despite the legal requirement to refer all cases of defilement to the police, the consequences of doing so can be detrimental to those involved. They thus inevitably turn a blind eye. “We will not force them to go to the police, because there is no benefit even to go to the police and there is no benefit for this boy to go to prison,” one Nuer opinion leader in Maaji II explained. “He better stay around and maybe work for the wife and the child.”<sup>197</sup>

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<sup>195</sup> Group discussion with (male and female) refugee youths, Maaji II Refugee Settlement, 14 September 2021.

<sup>196</sup> Group discussion with 2 male RWC members, Maaji II Refugee Settlement, 13 September 2021.

<sup>197</sup> Interview with a male Nuer “opinion leader”, Maaji II Refugee Settlement, 15 September 2021.



These kinds of cases are actually solved at a local level, and actually... because even with the law of Uganda, the law of Uganda is against them. We prepare to do it traditionally. Because if in case of defiling... we don't have defiling [in our culture] because according to [Dinka] culture, if you defile the girl [she] is given to you officially in marriage and you pay dowry. That [is] against the law of Uganda, and those are the things which are there being solved locally. But actually, to report that case [to the police] and you are known... you can be killed. You can be killed. (Male Dinka paralegal, Kiryandongo)<sup>198</sup>

People do arranged marriages silently. You see that a girl has disappeared only to see that she has come back with a pregnancy, yet she is 13 or 14 years of age. [...] You start complaining as a child protection officer, you end up bringing fire on yourself. So, you leave it like it is. (Female refugee, Kiryandongo)<sup>199</sup>

The third scenario in which cases of defilement will be handled outside the Ugandan justice system is when the offender manages to leave the settlement before being caught. This appears to be a common scenario. Knowing that under Ugandan law, sexual relations with an underaged girl constitute a criminal offence, refugee men or boys often run away, either to other settlements in Uganda or to South Sudan, upon realising that they have impregnated a girl or that her family has become aware of the relationship.<sup>200</sup> This means that even if the case is reported to the police, there is no one that can be arrested and therefore no way to proceed with the case in the formal criminal justice system. This is where the extra-territorial authority of “traditional” leaders comes into play. These can easily reach out to the boy’s family, usually by mobile phone, and request the matter to be resolved:

Many people prefer cultural leader than police. Because the boy who impregnated the girl, they usually run away, and once they [the girl’s relatives] come to seek for justice, they find that the police only need the person who impregnated the girl. But in other ways of cultural leader, he will call the family of the boy who ran away. After calling the family, sitting down with them, and telling them that “Your son has done this and this, so, you talk to your parents in South Sudan, let them do this so that this issue will be solved, if you don’t want the problems.” So, they will talk straightaway to their relatives in Sudan. (Male Nuer community leader, Palabek)<sup>201</sup>

As a female police officer in Adjumani noted, in cases of defilement, refugees see the police “as a last resort.”<sup>202</sup> And when they do reach out to the police, this is more likely to be because of a dispute between the families involved. “According to what I observe,” a male youth in Adjumani noted, “it depends on the parents’ tensions. If they fail to understand themselves,

<sup>198</sup> Interview with a male paralegal, Kiryandongo Refugee Settlement, 30 August 2021.

<sup>199</sup> Group discussion with female refugees, Kiryandongo Refugee Settlement, 31 August 2021.

<sup>200</sup> Interview with a male Dinka “chief”, Palabek Refugee Settlement, 7 September 2021; Interview with a Nuer “chief”, Palabek Refugee Settlement, 7 September 2021; Interview with a male Nuer “opinion leader”, Maaji II Refugee Settlement, 15 September 2021; Interview with a female police officer, Adjumani District, 13 September 2021; Interview with a male paralegal, Palabek Refugee Settlement, 6 September 2021.

<sup>201</sup> Interview with a male paralegal, Palabek Refugee Settlement, 6 September 2021. See also: Group discussion with 2 male RWC members, Maaji II Refugee Settlement, 13 September 2021.

<sup>202</sup> Interview with a female police officer, Adjumani town, 16 September 2021.

then it is directly to the police.”<sup>203</sup> Indeed, cases of defilement are rarely reported to the police by the girl or boy involved themselves, but rather, by their families, and more particularly, their male relatives. In some cases, reporting to the police may simply be a bargaining strategy, used to force family members of the offender to pay what they are due according to customary law.

The problem we have here most of these cases are not reported or others are reported because the complainant just want to have a bargaining power. The person will go to police, he will report the case, [but] after reporting the case he will only ask for the reference number. If the number is given, then he goes now to the village to the other person [who was] reported [to tell him:] “If you can’t cooperate then your son will go to prison.” (Male police officer, Lamwo)<sup>204</sup>

By reporting cases to the police, however, elders can also undermine affairs to which they object on moral, cultural, or financial grounds. This is more likely to occur when disputes involve individuals from cattle-keeping societies on the one hand and non-cattle-keeping societies on the other, as members of the latter are far less likely to be able or willing to pay the necessary compensation or bridewealth as required among cattle-keepers. Most families may accept cash in lieu of actual cattle, but with a cow usually priced at around USD 300, a family with no cattle will struggle to raise the necessary funds. A refugee leader in Kiryandongo, for example, described a case that involved a Nuer girl who was impregnated by an Acholi.<sup>205</sup> The two wanted to marry, but the family of the girl refused, allegedly on the grounds that the boy was not Nuer and unable to pay the bridewealth required according to Nuer law. They therefore took the case to the police – despite the girl’s insistence that they should not do so and her threats to kill herself if they do.

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<sup>203</sup> Group discussion with (male and female) refugee youths, Maaji II Refugee Settlement, 14 September 2021.

<sup>204</sup> Group discussion with 2 male police officers, Lamwo District, 7 September 2021.

<sup>205</sup> Group discussion with (male and female) refugee youths, Kiryandongo Refugee Settlement, 2 September 2021.

## 5. Implications and recommendations

Rather than a set of distinct, competing institutions of authority, the different justice mechanisms and authorities in the settlements are best understood as part of a single ecosystem. RWC structures play an important role as bridges between the Ugandan government, NGOs, and refugees, but chiefs, “traditional” authorities, and other types of “cultural” leadership structures remain vital to the resolution of disputes. From the perspective of most refugees, Uganda’s formal law enforcement institutions and justice system are distant, challenging to engage with, and potentially exploitative. And yet, the capacity of the police to use force makes it viewed as instrumental to the maintenance of order in the settlements. The implication is that the state is, ironically, both valued for its ability to provide protection and feared due to its ability to inflict violence. All forums and actors ultimately need each other’s support and remain in constant conversation, even though they are grounded in very different cultural worlds and political orders.

Gendered social expectations and power dynamics impact the operations of different institutions and actors in different ways. Women are not equally represented in all institutions and remain under-represented in all of them. The proximity of some institutions (RWCs, paralegals, and even the police) to the world of humanitarian agencies and the laws of Uganda renders them more attuned to the concerns of women and more critical of the practices of customary or “traditional” institutions. But ultimately, the norms and procedures applied within “informal” dispute-resolution forums and by customary authorities are not static. They are the product of various historical and contemporary influences and as such are flexible and dynamic. New ideas and interpretations are inevitably introduced within these forums – including with regard to gender norms – and these new ideas and interpretations can gradually gain legitimacy. The challenge faced by those committed to advancing gender equality and access to justice, as Tamale observes, is to devise ways “to protect the space where such shifts happen.”<sup>206</sup>

Understanding the horizontal impact various institutions have on each other, and their interdependency, is essential for further strengthening their collective capacity to respond to the concerns of refugees and civilians effectively and in a gender-sensitive manner. The strong support for “informal” community justice among refugees does not imply that efforts to render state institutions more accessible are redundant. Mobile court sessions, community policing and “sensitisation” and the work of paralegals are all important and should be

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<sup>206</sup> S. Tamale, *Decolonization and Afro-Feminism*, 151.

pursued and supported. The existence of multiple dispute resolution forums and institutions addressing conflicts in the settlements can enhance their accountability and gender-sensitivity, not least because it creates competition between them. This can only happen, however, if individuals are genuinely able to choose between different options and are not forced to turn to certain authorities merely because the others are inaccessible to them or are experienced as predatory, exploitative, or biased.

- **The Ugandan government should expand and routinise mobile court sessions.** These should be held regularly on a quarterly, semi-annual, or annual basis, depending on the needs in each district. They should also include High Court sessions, to handle cases of capital offences and ensure that those accused of such offences do not over-stay on remand. Humanitarian and development agencies can support these efforts, financially and logistically.
- **The Ugandan government and humanitarian agencies should provide RWCs with resources to enable them to respond efficiently when approached by refugees.** RWCs can be provided with airtime, for example, or have their numbers included in closed user groups, to manage communication costs and prevent misuse of resources. They can also be provided with a travel allowance or even bicycles, to facilitate movement around the settlements.
- **The Ugandan government should ensure that police posts and stations are adequately resourced.** In particular, it should recruit female police personnel; identify, hire, or train interpreters that can be contacted as necessary; renovate (or construct) adequate detention facilities; and provide police posts with sufficient funds and vehicles to reach different areas of the settlements when contacted.

There are, undoubtedly, multiple disjunctures between the “informal” community justice refugees generally prefer and the priorities of Uganda’s formal justice system. However, attempts to promote compliance with Ugandan law by banning or undermining the activities of “traditional” or “customary” authorities in the settlements are likely to further incentivise refugees to avoid the formal justice system altogether and settle disputes confidentially. Open engagement with such structures and their priorities represents a more constructive approach, which will also promote gradual social change and the incorporation of new norms and practices. That customary law and “informal” community justice is usually based on a flexible process of arbitration and debate means that it is responsive to processes of cultural and social change, including with regard to issues of gender.

- **The Ugandan government and humanitarian agencies should engage with “cultural leaders” and “chiefs” and include them in their outreach activities** in the settlements in order to better understand how they operate and what needs they are able to address

which other institutions cannot. This will help foster a more constructive conversation on the relationship of these structures with other authorities in the settlements.

- **The Ugandan government and humanitarian agencies should continue supporting community paralegals and disseminating information on the rights of refugees and civilians in Uganda.** Research from South Sudan and elsewhere indicates that complainants leverage human rights principles in local courts and “informal” forums, and that these can impact the outcomes of community justice processes.<sup>207</sup>
- **The Ugandan government and humanitarian agencies should place a greater emphasis on documenting the activities of “informal” justice institutions.** This will allow these agencies to better understand both the gender-sensitivity of “informal” structures as well as the horizontal impact of the various institutions of authority in the settlement on their everyday operations. Paralegals can play an important role in this documentation effort.

While the laws of Uganda are not viewed as discriminatory by refugees, there is still a sense that the implementation of some of them is, and that trends of criminalisation and practices of policing are not gender neutral. This is particularly evident in cases of defilement, where persecution of female perpetrators is largely unheard of while persecution of male perpetrators is often the outcome of disagreements between families rather than a consequence of the impartial implementation of the law. Both trends of reporting and the responses of law enforcement and justice mechanisms reflect gender-biases that should be tackled in order to promote a more gender-equitable access to justice.

- **The Uganda Police Force and the judiciary should ensure law enforcement and justice officials handle cases in a gender-sensitive manner.** This can be done by fostering an open conversation on gender stereotypes and norms and developing a clearer understanding of how these undermine the impartiality of the formal justice system and hinder the access of both women and men to justice.
- **The Ugandan government and humanitarian agencies should continue supporting the inclusion of women in RWC structures, including in leadership positions.** The presence of female leaders helps render these institutions more accessible to women. Actively reaching out to community members who are not English speakers and do not share the same languages with officials and humanitarians is crucial for making the RWCs more inclusive and accessible to different communities of refugees.

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<sup>207</sup> See, for example: Ibreck, *South Sudan's Injustice System*; V. Maru and V. Gauri, *Community Paralegals and the Pursuit of Justice* (Cambridge University Press: Cambridge, 2018).

- **The Ugandan government and humanitarian agencies should raise awareness of the rights of victims of sexual abuse, both female and male, and of the multiple forms such abuse may take.** Particularly attention should be paid in this context to girls and boys (children and adolescent) who face unique challenges when it comes to speaking up and gaining access to justice.

Efforts to address domestic violence and SGBV in the settlements must view these phenomena within a broader social and cultural context, considering the multiple factors that contribute to their persistence. Attempts to empower women – for example, by improving their access to information and to material and legal support – are important. But interventions must also address the wider impacts of life in the settlements on gender relations. Otherwise, they risk unintentionally provoke a backlash and nurture the very ills they endeavour to curb. There is therefore a need to think about Uganda's "self-reliance" and "local integration" model not merely in economic terms but also in relation to questions of public health and social justice, considering how access to aid, services, and income generating activities impacts gender dynamics and patterns of violence and abuse among refugees.

- **Humanitarian agencies should devise strategies for engaging with male adults and youths as part of their SGBV responses.** Interventions that seek to foster communal debates on gender issues and promote social change by increasing people's access to information are likely to have a more sustainable impact over the long-term and avoid the backlash that ad-hoc interventions generate.
- **The Ugandan government, donors, and international partners should continue to promote the economic integration of refugees,** including through targeted vocational training programmes that are linked to job opportunities, and by devising new policies that allow refugees to move out of settlements and engage with the wider Ugandan economy. That refugee settlements are viewed as spaces for (aid-dependant) women and children is a testament to the shortcomings of the current self-reliance approach, entirely focused on designated settlements.
- **The Ugandan government and humanitarian agencies should seek funding to increase the support provided to refugees.** Disputes in the settlements are often the consequence of the extreme poverty in which refugees live, worsened in recent years due to the COVID-19 pandemic and significant reductions in aid. At the very least, until sufficient opportunities for "self-reliance" in the settlements and urban areas are available to refugees, the assistance provided to them should not be further reduced.



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