

**EFFECTIVENESS OF CUSTOMARY AND STATUTORY COURTS IN
RESOLVING ADULTERY CASES IN WAU MUNICIPALITY, SOUTH
SUDAN**

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DECLARATION

I hereby declare that this thesis is my original work and it has not been presented in any other University for any academic credit.

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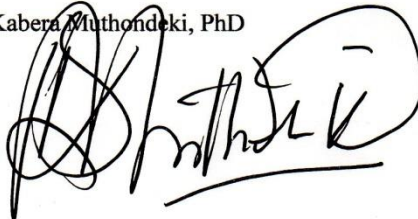
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DEDICATION

To my late daughter Achel, to my twin sons Mathiang and Manyiel

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ABSTRACT

Adultery is considered a criminal offense which violates the rights of adultery victim across the world. Resolving adultery cases require institutions that are independent and competent. Such institutions include customary and statutory courts found within democratic countries such as South Sudan. The objective of the study was to investigate the effectiveness of customary and statutory courts in resolving adultery cases in Wau Municipality, South Sudan. The specific objectives of this study were to determine the nature of evidence use by customary and statutory courts in resolving adultery case, assess the extent of citizens' satisfaction with customary and statutory courts' decisions and examine the challenges customary and statutory courts encounter when resolving adultery cases in Wau Municipality, South Sudan. The study was guided by two theories, the social conflict theory and structural functionalism theory. The study adopted explorative design for survey to examine the research questions. The target population in this study was approximated for 2166 people. This target population includes Police officers, citizens, department of prosecution, customary court chiefs, and statutory court judges within Wau Municipality. The study applied the stratified random technique to bring the same group of elements from which a sample size of 338 respondents was selected via Yamane 1967 formula. Purposive sampling plus simple random sampling method were adopted in selection of participants. The sampled participants were subjected to an interview and focus group discussion. The questionnaire was used as the main primary data collection instrument whose validity and reliability were tested in Rumbek Municipality. A coefficient of 0.5 and above was computed, and it implied that the instruments were valid. Data was analyzed quantitatively by use of descriptive statistics, frequency tables, percentage, pie chart, and means through Statistical Package for Social Sciences while qualitative data was analyzed using narrative and verbatim analysis. The study found out that respondents have agreed on the nature of evidence used by customary and statutory courts in resolving adultery with Mean=1.770, the respondents agreed that Citizenry satisfaction on statutory and customary courts decisions in resolving adultery cases was good and rated with Mean=2.218, the respondents agreed that there are challenges statutory and customary courts encountered in resolving adultery cases with Mean=2.055 and the respondents agreed on the ways of improving the effectiveness of customary and statutory courts with of Mean=2.030. The research recommended the need to encourage legal evidence to be used in courts to prove adultery cases that are committed by the litigants. This evidence should include DNA tests, eyewitness, and exhibits which enabled to resolve adultery cases by chiefs and judges. All courts should ensure citizens' satisfaction on court decision is paramount through a fair trial of adultery cases for all tribes in Wau Municipality. Ministry of Justice and legal affairs to develop strategies and guidelines that assist in ensuring citizens are satisfied with decisions of adultery cases. Customary and statutory courts should develop strategies to curb the challenges hampering the effectiveness of customary and statutory courts in resolving adultery cases in Wau Municipality. In collaboration with customary chiefs, judges, the Ministry of health and police, customary and statutory courts work to improve the effectiveness of courts in Wau Municipality by enhancing proper medical tests and investigation of adultery cases.

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OPERATIONALIZATION OF KEY CONCEPTS

| | |
|----------------------------|---|
| Adultery | A voluntary sexual involvement between a married individual and a person other than the lawful spouse. |
| Cases | Is an issue or topics that is brought to court for trying or resolving by chief or judge |
| Court Users | Refers to people who come to court for their conflicts to be resolved. |
| Citizen | Refers to all people who used customary and statutory courts in Wau municipality. |
| Customary Courts | Is a legal administration that is set up to try cases that are related to customs, traditions, norms and culture of the people |
| Immaterial Evidence | Is the evidence that lacks probative weight. Such evidences are unlikely to influence the court in resolving issues before it. |
| Litigants | Are accused and plaintiffs that have cases brought to customary and statutory court for resolution |
| Material Evidences | Are exhibits are used by court to enable them make the decision in the resolution of adultery cases |
| Municipality | A unique administrative allotment having communal status and powers of self-governance or jurisdiction as granted by national and |

regional laws to which it is subordinate

| | |
|-----------------------------|---|
| Publics | Are the people who use the courts so that their adultery cases and others issues are addressed by the customary and statutory court |
| Resolving | Refers to settlement or find a solution to a problem, dispute, or contentious matter. |
| Revenge attacked | An act of imposing harm on someone for a wrong suffered at their hands |
| Statutory Courts | Is an independent court that is established by the government to resolve cases using penal code with consideration of international standards |
| Tasting spear | Is the process of allowing accused litigants to lick the spiritual spears and given 3 Months to reveal the wrong he/she has done |
| Wanh Alel Dinka | Are acts of customs developed in 1983 by Dinka elders to help address issues related to marriages, adultery |
| Customary Laws | |

ABBREVIATIONS AND ACRONYMS

| | |
|---------------|---|
| CESCR | Committee on Economic, Social and Cultural Rights |
| HRC | Human Rights Campaign |
| RSS | Republic of South Sudan |
| SPSS | Statistical Package for the Social Sciences |
| SSJ | South Sudan Judiciary |
| TCSS | Transitional constitution of South Sudan |
| UN DAW | United Nation Division for the Advancement of Women |
| UNHRS | United Nations Human Rights Council |
| UNICEF | United Nations Children's Fund |

CHAPTER ONE

INTRODUCTION AND BACKGROUND OF THE STUDY

1.1 Introduction

The chapter gives the background of the study, the statement of the problem, objectives of the study, and research questions, significance, scope, limitations, and delimitations and assumptions of the study. The chapter then presents a theoretical framework and finally a conceptual framework.

1.2 Background to the Study

Marriage and family make the foundation of any society in the entire world. Adultery is looked at as part of human existence as much as marriage exists (Human Rights Watch, 2015). However, adultery brings its own conflicts between married partners via sexual desires and a sense of loyalty. It also influences intense emotions into the foreground and at the same time has consequences for all concerned persons. By its definition adultery is voluntary sexual intercourse between a married person and someone other than the lawful spouse (UNHCHR, 2016).

The UN Working Group on Discrimination against women in law and in practice have issued a call to Governments to repeal laws criminalizing adultery as some times parties who participate in this do it under mutual understanding (Stern, 2015). Adultery is prohibited by some religious for example, Christianity and history reveals that prohibitions are discriminatory in nature under various cultural setups (Aldashev and Wahhai, (2015). Adultery sometimes brings emotions to families which in turn make concerned members hardly think of what the law says of the act.

In many countries, however, this is at the forefront of a woman's mind (Patinkin, 2016).

Criminal punishments for adultery range from fines, corporal punishment to jail term depending on the individual country. Criminal punishments for adultery range from fines, corporal punishment. Penalties may include loss of property, money, jail term depending on individual country (Scott & Nick, 2014). This calls for ways of resolving such cases. Customary and statutory laws help in the reduction of discrimination against women accused of committing adultery. According to (UNHCHR, 2016), customary and statutory courts play a remarkable task in the lives of people as the conventions and practices permeate their relationships and dealings with one another.

A joint statement by the UN, Working Group on discrimination against women in law and in practice states that. 'Adultery as a criminal offense violates women's human rights. International organizations have called for the decriminalization of adultery, especially in the light of several high-profile stoning cases that have occurred in some countries. This, therefore, makes adultery cases within customary and statutory courts remain a major issue across the globe. According to the Global Economic Crime Survey (2016), customary and statutory courts decisions indicate that in more than one-third of marriages, one or both spouses commit adultery over the world.

Globally adultery is considered at various dimensions as an issue that required careful resolution. Stern (2015) argued that the allegation of mistreatment was by far the most frequent in many adultery cases in Latin America. According to Stern, infidelity in the United States of America (USA), accounting for 20-40 percent of

divorces which have been resolved through “customary international law”. This law has been an integral part of the law of the United States. Through a decision by customary international law, adultery and divorce case are resolved in the USA. Adultery must not be classified as a criminal offense at all if only one party is accused (leife, 2013). America condemns but many European do not. In the US, there are still states that criminalize adultery, though no one is really prosecuted anymore and if they were, it is likely that the law would be struck down as unconditional constitution by the courts. In Europe, adultery is legal or decriminalized in some countries the paw research survey from 2013 also included other European Nations including Italy, Spain, and the Czech Republic, where acceptance of adultery was also higher than in the United.

Regionally and particularly in Africa, adultery is considered a crime by traditions and religion of a particular group of people in a location. For example, in Rwanda article 136 of Lawn 68/2018 of 30/08/2018 determining offenses and penalties, in general, provides that “Any spouse who has sexual intercourse with a person other than his/her spouse, commits an offense Eugene (2017). Rwanda for example has no discriminatory punishment for adultery victims in African. Adultery is not a crime in Kenya as it is voluntary sexual intercourse between a married person and someone other than the lawful spouse. In Nigeria, adultery is a criminal offense under the penal code of Northern Nigeria, Section 387 and 388 stipulate imprisonments for two years and/or with a fine for adultery (UNHCHR, 2016). It is not prosecuted under the criminal code of the Lagos state of Nigeria. However, it provides for redress if a spouse can prove that adultery occurred. Adultery is not a pertinent crime in South Africa.

The adultery cases are crimes that are punishable by law ((UNHCHR, 2016). Adultery is considered a crime as Transvaal High Court confirmed in 2008. This means that the law of South African prohibited the practices and that anyone who commits adultery is punished by paying the ultimate punishment. The Transvaal High Court reaffirmed in 2008 that the spouse's claim against third-party adulterer damage remains a fragment of South African law. Customary and statutory courts in other countries such as Uganda consider adultery as a crime and its punishment includes a claim for damages. The punishment for adultery is a jail term of maximum of five Months or a fine or both jail term and a fine. Only the male offender is punishable under this section and the adulterous wife cannot be punished not even as a perpetrator.

Uganda's Constitutional Court for instance ordered the changes to the Penal Code, under which it was legal for a married man to have an affair with an unmarried woman but against the law for a married woman to have an affair with an unmarried man ((UNHCHR, 2016). Section 154 of the Penal Code Act which penalizes married women on the offense of adultery is discriminatory according to the Constitutional Court (Museke, 2015). This is different from South Sudan as Nuer, Dinka, and other tribes imposed a punishment of seven (7) cows as "Arouk" and sentenced to three months and a fine of 3000 SSP as per the customary court. The statutory court makes similar judgments of imposing a punishment of seven (7) cows as "Arouk" fine of 7000 SSP and imprisonment of a term not limited to one year.

Nationally, the Republic of South Sudan (RSS) is facing several problems among which access to justice by all is a core and critical issue Museke (2015). Adultery cases have been an issue of the day as well as how effective are those

institutions that resolve adultery cases. Litigants are not contented and satisfied with court decisions on adultery cases. This forced litigant to appeal against the decision to the high court. The process would be delayed and take a long time to get feedback. The law in democratic countries is based on the principle, "Innocent until proven guilty Paridhi and Roja (2018). Providing evidence and the burden of proof in courts is the responsibility of the litigants and the courts. The customary courts applied material and documentary evidence and also witnesses in the trial of adultery cases. The State lacks the capacity to deliver justice in light of the swift adoption of the common law system and is plagued by glaring capacity gaps this include violating the fresh legally permitted laws. Such laws stated that rape cases would be resolved by the rapists by taking the victims as their future wife (Leif, 2013).

Many pieces of evidence such as traditional and medical material have been used and litigants are not satisfied. Because the State does not have the capacity or legitimacy to fill the gap in social ordering and adultery resolution, it relies heavily on the customary justice system to dispense justice (Human Rights Watch, 2015). Outside the urban centers, the statutory courts and other government institutions hardly exist as a force of order in the lives of most citizens. Instead, the State relies on traditional authorities since they are close to the people and can assist in the performance of both executive and judicial functions. The traditional authorities regulate their local affairs by enforcing the unwritten rules and practices that are accepted to drive binding rules traced to the customs and practices of the people (Museke, 2015). In South Sudan, dispute resolution is a function played by different actors across the Country. Such institutions include statutory and customary courts.

The family and community elders are nearly always the first and preferred source of dispute resolution and those that cannot be resolved by elders are referred to the Customary Law Courts. However, under the current constitutional dispensation, there is more interaction and both systems are recognized by the Transitional Constitution of South Sudan (2011). Due to un-established effectiveness on the resolution of adultery cases by both customary and statutory court has created revenge attacked by the litigants and this means they take law into their hand (UN POCS, 2016).

Wau Municipality is the headquarters of Western Bahr el Ghazal states; it is a hub of Bahr el Ghazal region where various communities with different cultures lived. According to British Council Assessment Report (2018), Wau Municipality reported 80% of all adultery cases in South Sudan. The mechanism of resolving cases varies from community to community as each has its own norms and cultural practices in place. The study area Wau Municipality has a total of 12 active customary courts and 9 active statutory courts that tried adultery cases. Initially, the customary courts have been active in resolving adultery cases but after independent, the statutory courts came with statutory laws that use laws of evidence to resolve adultery cases. The records at the police station on daily occasions show that revenge attacks on litigants occurred after resolving adultery cases by customary and statutory courts. The researcher noted that there were challenges in addressing adultery cases and therefore wants to conduct research to investigate the effectiveness of customary and statutory courts in resolving adultery cases in Wau Municipality.

1.3 Statement of the Problem

The resolution of adultery cases by the customary and statutory court has been characterized by the increase of revenge killings and targeting the individuals that escape the punishment (Human Rights Watch, 2015). According to Museke (2015), big towns of South Sudan such as Wau Municipality witness the proliferation of customary and statutory courts that established and operate under the administration of judicial systems to address adultery cases. Customary and statutory courts arbitrators such as chiefs who resolve adultery cases are largely trusted and formally trained professionals. According to Samson and Wassara (2017), customary and statutory law courts can pass judgment on a person based on immaterial evidence such as magic or sorcery, which is an unfair trial in itself and can all be summed up as flagrant violations of human rights.

According to the British Council Assessment Report (2018), Wau Municipality reported 80% of all adultery cases in South Sudan. Operating of the two courts and their effectiveness in resolving adultery cases using both the evidences base, panel codes and the traditional ways of proofing adultery cases right or wrong have not been conducted and established. Because there are more challenges facing both customary and statutory Courts in resolving adultery cases as required by the communities, increased revenge attacks by the litigants is witnessed at police stations in Wau Municipality.

It is noted that customary courts used more traditional evidence-based compare to statutory that used panel code to resolve adultery cases. For these reasons, South Sudanese citizens have a perception of the effectiveness of customary and statutory courts in resolving adultery cases in Wau Municipality South Sudan. The

department of adultery cases registry at Wau Judiciary office shows that 2070 people have been registered for adultery cases from 2011 to 2019. This number recorded in the period of 8 years at Wau Municipality alone seems alarming. Because the State does not have the capacity or legitimacy to fill the gap in social ordering and adultery resolution, it relies heavily on the customary justice system to dispense justice (Human Rights Watch, 2015). This shows that if an increase of adultery cases is not addressed by the state, the revenge attacks and conflicts could increase in Wau Municipality. Therefore, the researcher undertook this research to investigate how effective are the customary and statutory courts in resolving adultery cases in Wau Municipality.

1.4 Purpose of the Study

This study purposes to investigate the effectiveness of customary and statutory courts in resolving adultery cases in Wau Municipality, South Sudan.

1.5 The Study Objectives

The specific objectives of this study were:

- i. To determine the nature of evidence used by customary and statutory courts in resolving adultery cases in Wau Municipality South Sudan
- ii. Assess the extent of citizenry satisfaction with customary and statutory court's decisions when resolving adultery cases in Wau Municipality, South Sudan
- iii. Examine challenges the customary and statutory courts encountered in resolving adultery cases in Wau Municipality, South Sudan

1.6 Research Questions

This study was directed by the following research questions:

- i. What nature of evidence issued by the customary and statutory courts in resolving adultery cases in Wau Municipality South Sudan?
- ii. What extend are citizens satisfied with customary and statutory court decisions when resolving adultery cases in Wau Municipality, South Sudan?
- iii. What are the challenges customary and statutory courts encountered in resolving adultery cases in Wau Municipality, South Sudan?

1.7 Significance of the Study

The significance of the study is the contribution of the research to the wide public (Bryer & Zavattaro, 2011). The study is important to policymakers. The study is important in informing decisions as was guided by empirical research from the study. Secondly, it would be used by Academic institutions such as universities, think tanks as well as colleges to understand how adultery cases were resolved in Wau Municipality. The findings of this study help bring down adultery issues in South Sudan and the region. Other areas such as police, prosecutors, human rights activists, the government policymakers, academia, and scholars, united nations to mention but a few benefited from this study.

1.8 Scope of the Study

The research was conducted in Wau Municipality which is the headquarters of Western Bahr El Ghazal State, South Sudan. The study site was selected because of its high number of customary and statutory courts compare to Rumbek and Kuajok Municipality with less number of statutory

and customary courts. The research focused on the period of 2011 to 2019, when South Sudan got independent and customary and statutory courts was adopted in Wau Municipality. According to Sudan Tribune News (2017) shows that during this period, adultery cases resolved through customary and statutory courts have risen. Adultery is illegal under the South Sudan Transitional constitution 2008 article 2006 and the cases caught some residents by surprise. The research was only conducted in Wau Municipality and not beyond this scope. The reason being time, and other areas were not reachable during the data collection period. The government is yet to enact more laws that could replace the customary laws that deal with the resolution of adultery cases.

1.9 Delimitations of the Study

The delimitations of this study were the attributes that restrict the scope and define the constraints of the research study. The researcher as control over such delimitations and therefore their factors include; correctly stated objectives, research questions, variables, target population and theoretical prospects adopted by the researcher (Simon, 2011). The following are some of the delimitations: The research thesis focused on three objectives only and was also focusing on the period of 2011 to 2019. It was conducted in Wau Municipality only. The thesis was not considering other casual factors of adultery for example poverty, children's ownership after divorce, spouse absence due to work or death.

1.10 Limitations of the Study

The limitations of this study were characterized by research design and methodology that influenced the interpretation of the findings from your research (Simon, 2011). Insecurity was considered one of the limitations of the researcher. The researcher avoided areas that are experiencing violence. Again, the researcher

soughed approval from the South Sudan national security office which is in charge of allowing data collection for research. The researcher soughed approval from the local government in charge of the Wau Municipality to allow the researcher to go to customary courts, policies, and communities' area. The literature review was not sufficient. The respondents for an interview and questionnaire filling were a struggle to find them.

1.11 Assumption of the Study

The study assumes things that are out of the researcher's control. However, eliminating them could make the study not be applicable. Assumptions are fundamental in that the exploration issues could not prevail without them (Leedy & Ormrod 2010). It is assumed that the respondents were willing to honestly reveal the required information for the study. It was also assumed that respondents were willing to cooperate and welcome the researcher to conduct the interviews. It was assumed the respondents filled questionnaires honestly.

1.12 Theoretical Framework

This research thesis was guided by two theories: The Social Conflict theory and Structural Functionalism theory. These were theories perspectives offer sociologists theoretical paradigms for explaining how society influences people. Below is the explanation of these two theories.

1.12.1 Theory of Social Conflict

This theory was a Marxist-based social conjecture that contends that people in society may act on ideas of conflict rather than making agreements. This argument is in line with the character of proof utilized in customary and statutory courts that show

litigants may build revenge attacked on the suspect when the trial of extramarital sex cases in Wau Municipality. This shows that social conflict theory, recommended by Koop (2019), claims society is during a state of perpetual conflict owing to competition for restricted resources. This theory argument supported the study during a sense that the adulterous person may take a married married person once the litigants enter into a relationship together with her.

In my opinion, generally extramarital sex may end in going away your official husband and joint the person World Health Organization has committed extramarital sex with resources and power. During this state of affairs, social conflict theory has relevancy to the current study within the sense that society will survive basis of conflict instead of agreement and so people satisfaction is coupled to social conflict theory. Committing extramarital sex with another man may be a conflict that needed an establishment to resolve the problems. Ethnic conflicts square measure specific styles of social conflict in this they involve ethnic teams and nations. Social conflict theories emphasize the role of conflict as Associate in nursing integral think about shaping social conditions and therefore the dynamics of social life (Jinadu, 2007). The research worker was fascinated by the reason given by this theory in relevance the analysis objective and topic. Pakistani monetary unit (1998), emphasizes the impact of beliefs, attitudes, stereotypes, and desires in conflict things. In this study, Social Conflict Theory explains the encounters that arise from adultery committed by couples in society and what motivated the litigants to committed adultery.

The theory holds that social order is maintained by domination and power, rather than consensus and conformity. This theory tells us that the interest of that

society interacts on basis of conflict which arise from adultery commission and that women have committed adultery could go with another man if has more resource then the one she had. In this situation, power and resource play major roles in letting women commit adultery. Because this theory explains the conflicts that arise from adultery, it does not look at the resolution of these problems.

This theory emphasized the conflict that is caused by adultery. This theory is weak in the sense that it does not provide resolution of the conflicts that happen in the community and therefore the structural functionalism theory is an alternative mechanism that looks at how society addresses conflicts. This theory addresses objective one which is “the nature of evidence used by customary and statutory courts”, the theory fails to address objective two “extent of citizenry satisfaction with customary and statutory court decisions” and hence the introduction of the theory of structural functionalism.

1.12.2 Structural Functionalism Theory

This theory by Herbert Spencer and Robert Merton supported the resolution mechanism of adultery cases by an independent institution. It has strong references for resolutions of adultery conflicts compared to social conflict theory (Parsons & Thomas 2015) mentioned in his work that dynamic equilibrium within the social system required enabling community that has institutions. Jeffery (2007) Structural functional theory holds that society is best understood as a complex system with various interdependent parts that work together to increase stability. The conflict resulting from a decision that is made in favor of the accused is to be resolved by society as well as the adultery cases itself. This theory explains why society functions

the way it does by emphasizing the relationships between the various social institutions that makes up society (e.g., government, law, education, religion).

Adultery committed required an institution that would resolve the matter in amicable ways. Parsons (2015) has been concerned with the search for functions that institutions may have in society. Because people are leaving behind the traditions of revenge attacks and resorts to change as a society continues to function. Parsons (2015) also emphasized the concept of the "functional Prerequisites" of the system to refer to the essential functional problems which every social system must solve in order to continue existing as an independent and distinctive entity. Most people do not worry or refused to take adultery cases to functional courts who address these issues successful.

Pieters (1999) posits that change is approached from a systems perspective considering all key components of the system in change, including its environment. Trying adultery cases required an independent institution to resolve the issue (Atkins & Jacobson, 2001). These indicate that people are looking for where to resolve their conflicts. Deciding a case by chief or judge requires knowledge of adultery. Those involved with changes understand the dynamics and use them to improve change efforts. Plans for change are designed to optimize acceptance, maximize readiness, and assure success (Pieters, 1999).

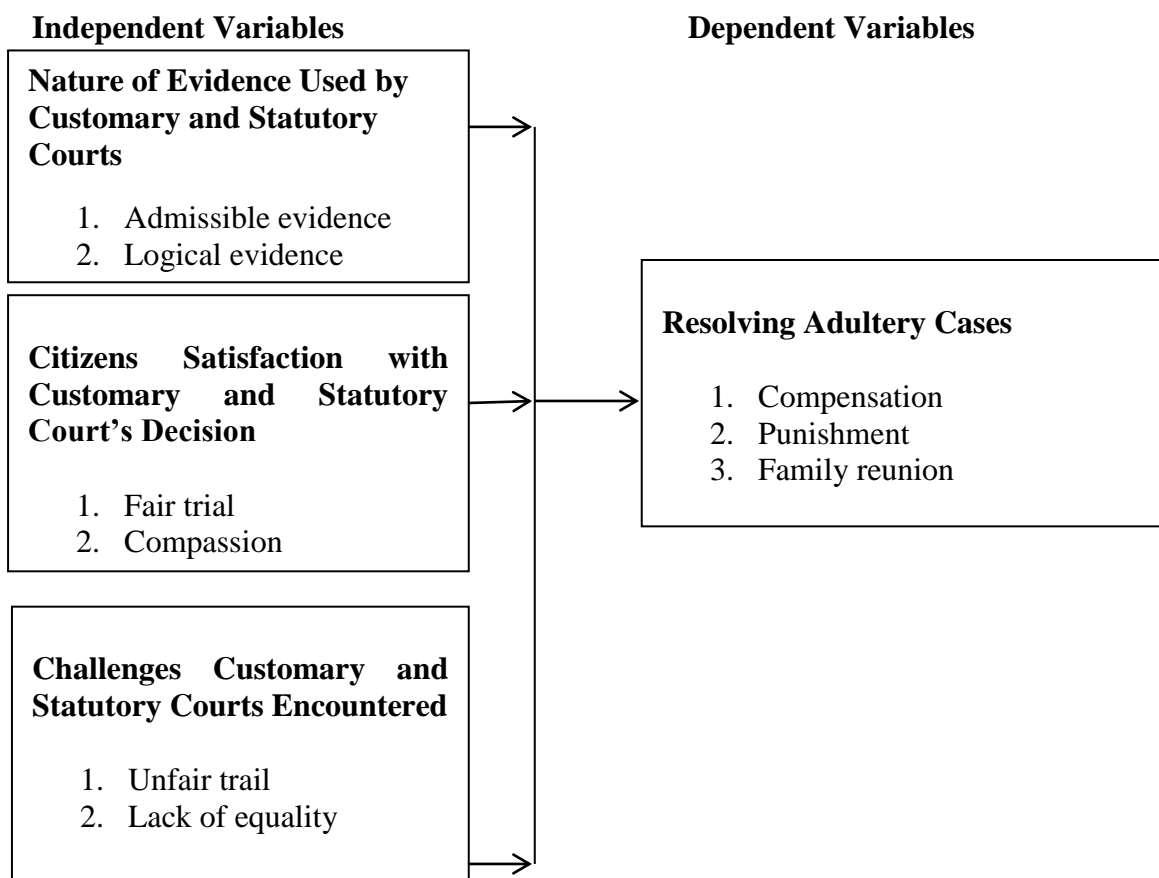
1.13 Conceptual Framework

A conceptual framework is an analytical tool with several variations and contexts (Kothari, 2014). The overall aim of the frameworks was to make research findings more meaningful, acceptable, and generalization. It was used to make conceptual distinctions and organize ideas. Strong conceptual frameworks capture something real

and do this in a way that is easy to remember and apply. The conceptual model showed how customary and statutory courts resolve adultery cases. It helped to show customary and statutory courts are effective in resolving adultery cases. With evidence the resolution of adultery was useful. Both admissible evidence and logical evidence were revealed during the manipulation of data.

Citizen satisfaction by customary and statutory court’s decision was revealed fair trial and compassion of citizens. The challenges customary and statutory courts faced revealed during data manipulation including unfair trial and lack of equality. The conceptual framework reveals the intervening factors such as government policies and panel codes. Below is the conceptual framework.

Figure 1.1 Conceptual Frameworks.



Source: Researcher (2020)

CHAPTER TWO

LITERATURE REVIEW

2.1 Introduction

This section evaluates empirical compositions related to the customary and statutory courts use to resolving adultery cases, from the theoretical review, global perspective, and regional to national and local jurisdiction guided by the study-specific objectives. The chapter focuses on the nature of evidence used in customary and statutory courts in resolving adultery cases, citizen satisfaction by customary and statutory court decisions and resolving adultery cases, challenges customary and statutory courts to encounter in resolving adultery cases and how to manage them, a summary of literature review and research gaps

2.2 Empirical Literature Review

From a global perspective, adultery is a universal challenge; it is seen as both a social and religious wrong which can have remedies according to the various laws possessed by each Country. According to Rachel (2017), handling adultery cases require a competent legal institution. The legal system is to a large extent the product of the reaction of authority to seeking private vengeance by wronged parties' Monopolization of violence is achieved by the gradual institutionalization of vengeance through law (Museke, 2013). In the case of adultery, permissive remedies have existed side-by-side with co-opted remedies provided by the state. Adultery laws have often been drafted and implemented in a manner prejudicial to women, both because religious procedural law in some countries makes it difficult to prove adultery by a man, as well as because women who have been raped and are unable to prove the

crime are then charged with having committed adultery explain the Macaulay penal code (Rachel, 2017).

In many countries, resolving adultery cases for nearly 150 years now has been under punishment through a court of law. On the other hand, Museke (2015) argues that committing adultery was not a serious wrong before society became monogamous. But when Caser invaded Britain in 55 BC, Britons were not monogamous by then; they rather shared common wives within a kinsman. Once monogamy came into effect in Britain, society recognized adultery as a serious wrong that invades a husband's rights over his wife.

In the Republic of South Sudan, both resolving adultery cases through customary and statutory courts are the independent judiciary system that addresses public issues. The concept of resolving adultery cases through customary and statutory courts in the Wau Municipality in South Sudan. Customary courts have long been the mainstay of the justice system and remain so today (Rachel &Pendle, 2017). Currently, there are 12 active customary courts in Wau Municipality according to the British Council assessment report (2018). Customary chiefs who head the customary courts rely on weighing up the statements of the two parties, and some contributions from witnesses; occasionally they take account of or demand documentary evidence (Museke, 2015).

Decisions are usually justified by reference to local customary' norms, but some chiefs cite statutory legislation as the basis for their decisions. Elements of negotiation and arbitration are central to customary practice, but chiefs may also act in inquisitorial roles akin to those of the judges in statutory courts. Yet the courts tend to reach settlements quite rapidly and the crowd present often seems to accept the

judgment as fair, only rarely raising complaints. Customary law continues to give a man power over his wife and children (Paridhi, 2018).

The inequalities and injustices arising in courts relate to the wider social and economic significance of the bride price, which has increasingly been commercialized and binds women into subordinate relationships to spouses and parents. Disputes related to bride price payments are typically addressed in customary courts. But the social norms established in customary law are carried through into cases of adultery, elopement, and pregnancy that might be dealt with in either statutory or customary forums (Rachel & Pendle, 2017). Adultery is punishable by law and, especially when a married woman is involved, both men and women can expect to be harshly punished. In this situation, the researcher is to conduct research to examine the effectiveness of customary and statutory courts in resolving adultery cases in Wau municipality, South Sudan. Studying these courts will enable research to understand how they work.

2.2.1 Nature of Evidence Used by Customary and Statutory Courts in Resolving Adultery Cases in Wau Municipality

Customary and statutory courts have long been the mainstay of the justice system and remain so today across the world. They are accessible and prolific, dispensing frequent and swift judgments, with cases often reaching the courts in a matter of days and being decided rapidly (Leonardi & Musa, 2011). They have been uniquely responsive and adaptable during resolving conflicts. The decisions are taken by these courts; especially those relating to marital and sexual relationships frequently violate international human rights norms; although in some cases, there are efforts to uphold these rights. Customary and statutory justice is a mechanism for making social order, constituting public authority, and shared identities and norms. Customary chiefs and their courts are closely engaged with protection issues and their activities

are closely relevant to the questions of how to prevent and transform conflict (Leonardi & Musa, 2011).

According to Wendy (2011), expert evidence could reveal any confirmation that is consistent with the complainant's allegations; that one piece of the potential exhibit is considered as evidence is used in the court as a major source of decision making by the arbitrator. The nature of the evidence is used here to refer to the state under which materials meant for confirming an incident have what it takes to strongly confirm the incident. Customary and statutory courts use evidence for proofing and resolving adultery cases which are based on traditions and customs in various regions. In customary and statutory courts within African countries, evidence encompass local oath-taking and this includes tasting spiritual ashes or smearing spear, hoe, and other ritual performance, witness, pregnancy, accepting liability by the two accused (Rachel & Pendle, 2017). Unlike men, women are often given the option of paying a fine instead of serving time in prison but because most women do not have incomes of their own and because their money and possessions belong to their aggrieved husbands, they are more likely to spend time in prisons.

The evidence law has evolved recently and even scientific evidence is being made admissible in courts the problems faced by evidence law are timeless (Paridhi, 2018). In Statutory Courts adultery case that is brought to statutory court goes under thorough investigation as well as call witnesses as evidence. The accused will be charged with assault with intent to do grievous bodily harm in the court a quo. After a plea of not guilty, the State made its case by calling a single witness. At the end of the evidence-in-chief, the

defense reserved their cross-examination of the witness. When alliances put forward to give confirmations of facts, the Judges may query the party suggesting to give the evidence in a manner that the alleged fact would be relevant if proven. Hence, the Judges admit the evidence if the fact is proved pertinent. Otherwise, the claim is nullified (Wendy, 2011).

Accordingly, witnesses are summoned and with the provision of material which includes the underpants, medical checkup for females who have committed adultery and a test is conducted to determine whether the female is pregnant. We have seen customary and statutory courts does accept the local beliefs in proving adultery cases such as local oath-taking, tasting spear, ashes, hoe, and other materials (Bonolo & Dinokopila, 2012). Based on the provided evidence, both the customary and statutory court may or may not prove or make good judgment and decisions on the cases. In some cases, clients may go unsatisfied with decision and judgment in favor of the other sides. Therefore, is important to provide concrete evidence for use by both the customary and statutory courts for making decisions on adultery cases

In other African countries, adultery is rigorously condemned and punished, usually only as a violation of the husband's rights (Bonolo & Dinokopila, 2012). South Sudan's republic has her traditional authorities who are mandated by law to execute all those functions to resolve adultery cases. The Local Government Act, 2009 Section 19 (2) provides that traditional leaders shall represent their people in the County Legislative Council as determined by this Act and regulations there under that their case is decided by a person with no interest in the case and who is obliged to render a decision solely on the basis of facts and objective rules rather than on personal preferences, and that anyone making an assertion or accusation must provide verifiable evidence to support it. In research conducted on justice delivery by the

South Sudan law Society (SSLS 2016). The evidence applied in resolving adultery cases vary from Country to Country and from traditions to traditions by either customary or statutory court. Justice cannot effectively be achieved if there are no rules of procedure and evidence to regulate how the rules of substantive law are to be applied while safeguarding the rights of all parties. There to be qualitative judgment and safeguard of human rights, there has to be rules of evidence and procedure (Rachel &Pendle, 2017). The remedies for example where adultery has been proven beyond reasonable doubt, one is fined Seven or prisoned as per the customary court (Customary Law in South Sudan, 2013).

South Sudan Transitional constitution 2008 has panel codes that address issues related to adultery. Article 206 of this constitution clarified what the remedy could be and that panel code and the article be used together with each and every tribe customary laws and how they deal with adultery. As this is different from Sudan, the Sudanese have mixed the state laws with Islamic laws which created clearly that three witnesses be available to testify in the court that they have seen the victim naked at the time of adultery commission. Here in South Sudan, the case is different; you deny in the statutory court, there needs to be taken for another taking in the local context by customary courts.

2.2.2 Citizen Satisfaction with Customary and Statutory Court's Decisions when Resolving Adultery Cases in Wau Municipality

Across the globe, adultery is seen by most customary statutory jurisdictions as a criminal act that threatens the balance of family relationships and community harmony. Adultery in customary and statutory law only applies to married women.

Adulterers, both male, and female are usually subject to some form of punishment in addition to the compensation that must be paid by the guilty man to the husband in some communities. Adultery is proven by the occurrence of pregnancy at a time when the husband was absent or by the parties being caught red-handed (Rachel & Pendle, 2017). Jurisdiction laws is a body of customary and statutory laws that cover violations, mostly of a criminal nature, these laws also include personal violations that could be addressed under civil jurisdictions.

Customary and statutory law does not generally tend to differentiate between criminal and civil jurisdictions or crimes against the state and personal transgressions that require individual compensation. Instead, laws mostly focus on restorative justice that attempts to make the victim whole and restore balance to the community. Punitive measures are less common (Wendy, 2011). The sexual offenses, including rape and adultery, have remained largely under the purview of the customary justice systems, even where jurisdiction has been established by legislation for the more serious offenses such as rape and adultery. The litigants of the customary and statutory court lack satisfaction by the court's decisions and the judgments as the proceeding and evidence used by the two courts (Wendy, 2011).

One of the biggest information people do not know is about the litigants of the customary and statutory court is lack of satisfaction by the court decisions and the judgments as the proceeding and evidence used by the two courts. Citizen satisfaction surveys are one of the key elements of policies aimed at the evaluation of quality processes, notably in judicial systems as per the Strengthening the Quality and Efficiency of Justice (SQEJ, 2018). The effectiveness of the evidence and the proceeding that takes place has not yet been established. The customary courts are limited to customary matters, except when a criminal matter has been referred to it by

a competent customary or Statutory Court. There is no clarity on the satisfaction of litigants and they have suffered in dignified silence and the many people who always fault victims of lack of evidence such as used in local material as means to prove the cases of adultery.

Adultery is seen by most customary jurisdictions under study as a criminal act that threatens the balance of family relationships and community harmony. Adultery in customary and statutory law only applies to married women. The importance of customary and statutory courts is that it recognizes that all adulterers are both male and female (Deng, 2013). They are both subjected to some form of punishment if both are found guilty and in addition to compensation, must be paid by the guilty man to the husband of the adulterous wife. For instance, the Lango of South Sudan provides for 6 months' imprisonment for the woman the Lopit provide that a woman is never at fault, while the bongo people believe that guilty male should pay the equivalent of the bride price to the husband and also require 6 months of hard labor in the chief's compound. Other ethnic groups, such as the Lotuko were the only tribe who studied whose laws accepted the killing of the guilty adulterous parties (Deng, 2013).

Where an adulterous relationship results in children, the husband will have ownership of the children. The man will have to pay a form of support, or a fine, under most laws to the guardian (Lotuko - 2 cows; Lopit - 1 bull; Mundari – 3 cows, 1 sheep, and 1 goat; Azande additional compensation). Adultery is proven by the occurrence of pregnancy at a time when the husband was absent or by the parties being caught red-handed, although with some ethnic groups there are self-described witchcraft methods that are still carried out to punish those that lie or stimulate the woman to state the name of the men with whom she has been involved (Tyrone, 2013). The

ascertainment studies also detailed other sexual offenses such as incest, seduction, defilement (sex with a minor), and “fornication” that are particular to each ethnic group. The Azande and Avukaya discussed defilement specifically and indicated that tradition now calls for referring these cases to the police and formal courts. In South Africa, the Ndogo, Balanda, and other ethnic groups punish unmarried minors that are caught engaging in sexual intercourse with beatings or lashings, although this is largely done privately to protect the girl’s reputation and chances of getting marriage (Rachel & Pendle, 2017). Incest is mentioned in most studies but is generally handled as a family matter with cleansing rituals.

According to customary laws cases that are involving denial of one party that he has not committed adultery should take an oath. Sometimes customary court Delay of cases and provision of evidence and likewise to statutory court (Deng, 2013). The Sudan law which South Sudan has inheriting in the article state that witness be present but no one accept be witness in the cases of adultery even if you have physically find the two litigants committing adultery. The uses of this evidence and the proceeding apply in the process are either litigants’ satisfaction or not (Wendy, 2011). This would require the researcher to do community opinion surveys to test community satisfaction on both customary and statutory courts effective in resolving adultery cases in Wau Municipality. A very little information about litigant’s satisfaction with court decisions can exist in Wau Municipality but to test the satisfaction of litigants on court decisions is rarely done. The section is important as intends to find out if citizens are satisfied with a customary and statutory court decision

2.2.3 Challenges Customary and Statutory Courts Encountered in Resolving Adultery Cases in Wau Municipality

For most world regions to access justice, they experience some of the problems through legal pluralism due to the customary and statutory formal justice system. In the same regard, many countries especially developing ones have been undergoing internal wars for decades which greatly impacted the customary justice system (Dudley, 2014). The effects of these wars on the customary and statutory justice system need to be addressed in order to try and be able to effectively handle adultery cases. The Role of Customary and statutory courts do in the delivery of justice in many parts of the world is fundamental and therefore must be treated with utmost care.

The current study of customary and statutory courts is marked by terms such as traditional. The study of traditional and informal justice is marked by a panoply of terms such as informal and non-state local community and popular participatory to mention but a few which are often conflated in practice. In some cases, customary and statutory courts seek to capture the same social phenomenon (Peace Building Initiative, 2013). In this case, customary and statutory courts are used interchangeably to mean a system of laws and community systems that reflect the cultural, traditional, and norms with the history of providing marriage (dispute) resolutions.

The question that comes to mind is why a modern state would constitutionally recognize a customary justice system whose values, practices, and norms sometimes violate the basic human rights guaranteed by the statutory laws of the country. Alternatively, one would question the rationale for the constitutional appropriateness of maintaining a dual legal system in a modern State and this creates problems for the entire system. Questions sometimes arise as to whether justice processes and

procedures under the customary and statutory court justice systems meet international human rights standards. Section 98 (3) of the Local Government Act, 2009 in South Sudan for example lays down the principles that guide the customary law courts in deciding cases, most of which rotate around the concepts of mediation, compensation, and restitution. Customary and statutory courts use laws and some bill of rights which are not stipulated in transitional constitutional of individual countries (Transitional Constitutional of South Sudan, 2011).

However, statutory courts use their own unwritten procedures neither based on the Constitution or on the concept of a fair trial. For instance, the customary courts entertain cases involving immaterial evidence with no clear way of verifying it and punishments which can be passed based on such superficial grounds without according the accused person the opportunity to rebut the evidence, which grossly affects the litigant or the accuser's right to appeal (Mangan, 2015).

Both customary and statutory courts resolved adultery cases using various approaches. Customary applied more traditional evidence-based approaches such as local oath-taking and spear tasting whereas the statutory court used more medical evidence such as a medical checkup, a pregnancy test. Both the customary and statutory have the same punishment and remedy in accordance with each tribe's custom and culture in South Sudan. The major difference is an appeal made against the decision when the litigants are not satisfied with the decision in statutory courts. Kenya for example had her legal system changed immediately after independence after the 1967 magistrate courts act. These changes converted the informal African customary courts that used to hear matters concerning customary laws into formal magistrate courts. under section 2 of the act, customary claims were limited under the

law to matters of land, family, intestacy, the seduction of unmarried women and girls, and enticement of married women to adultery to mention but a few (Ndulo, 2011). This change came through the 1963 constitution adoption which established unwritten customary crimes. Again section 3(2) of the Kenyan constitution acts limits the application of customary law by stating that it is only to guide in civil cases meaning customary laws were not strong enough to stand on their own when it came to resolving adultery disputes in Kenya (Bwire, 2019). In South Sudan, there are problems facing customary and statutory courts Sometimes denial of the accused to admit adultery case meaning the process becomes a liability. On the other hand, the statutory court uses evidence such as a witness to testify on the court and these witnesses sometimes are bribe which neglects the right. It is broadly accepted that customary law refers to the body of traditions, morals, and social conventions and rules that through long usage and widespread acceptance, directly govern traditional societies (Peace Building Initiative, 2013). Customary Law courts in South Sudan fault evidence such as the use of local material as a means to prove the cases of adultery rights are good in the eye of litigants. The issue of passing judgment on a person based on uncontested immaterial evidence such as magic or sorcery is in itself an unfair trial.

The sentencing of adultery cases victims into corporal punishment is not provided for by the law which violates freedom from torture and inhuman and degrading treatment. weaknesses in human rights protection in the customary law courts; lack of equality before the law, unfair trial as courts do not always give the accused the chance to be heard or adequately represented, the decisions that are inconsistent with basic principles of human rights are also witnessed and this makes the courts look like they are incompetent (Wojkowska,2006). This section is important as it assists the study to

determine the problems faced by the customary and statutory courts in resolving adultery cases, thereby identifying possible solutions for these courts to be effective in the delivery of justice to all.

2.3 Summary of Literature Review

The literature reviewed in this study revealed that adultery continues to be a crime punishable by law. Adultery from the societal point of view has existed for quite some time in the history of mankind. The literature shows that there are more discussions on the topic of adultery and that it becomes human rights concerns. The literature review reveals that the use of customary and statutory courts can also bring justice to victims of adultery cases. It is noted in the literature review that having reliable evidence for resolving adultery cases and making good decisions on adultery may also contribute to effectiveness in resolving these cases. On the other hand, bribery of witnesses, delays of cases could provide the basis for the ineffectiveness or effectiveness of the statutory court. Customary and statutory courts' work can also be affected by the evidence used to make decisions. The medical and traditional evidence is applied in making decisions in the courts. If the citizenry is sometimes not convinced by the decisions taken by courts, then conflicts are bound to continue.

2.4 Research Gaps

Adultery is considered a criminal offense that violates the rights of women across the globe. It is suggested that either one or both spouses commit adultery in more than one-third of marriages. Jurisprudence from these customary and statutory courts shows that African customary and statutory law as inferior in the juridical order of legal norms. The inferiority has emanated from the adoption of colonial laws. In addition, the inferiority has been strengthened by the fact that customary law is an

unmodified source of law and therefore must be proved in court. This jurisprudential history if unchecked may act as an impediment to the application of customary laws that are closely interlinked and interconnected.

Hence, there is a need for mindset change and the way of perceiving things amongst judges and the wider citizenry towards customary law. These justice systems are to contribute to enhanced access to justice for communities in South Sudan. South Sudan Constitution must clearly indicate, developed and generate appropriate and relevant customary law jurisprudence that will aid in the growth and promotion of traditional justice systems. Looking at the literature review and the work of other people adultery exists for many years, first gaps noted in the literature is the lack of adaption of both the traditional and scientific evidence in resolving adultery cases in Wau municipality.

CHAPTER THREE

RESEARCH DESIGN AND METHODOLOGY

3.1 Introduction

This section covers the design of research, site of study, targeted population, techniques for sampling, determination of sample size, data collection instruments, validity and reliability of research instruments, and finally describes the process of data analysis and legal and ethical considerations

3.2 Research Design

The study used an exploratory research design. This design brought out a well-rounded picture of the situation being developed, a more systematic investigation, and formulation of new research questions and direction for future research techniques (Muthondeki, 2017). This was an in-depth study that focused on the investigation of the respondent 's understanding of the effectiveness of customary and statutory courts in resolving adultery cases. The researcher applied both quantitative and qualitative approaches of data collection and analysis in the study. Mugenda and Mugenda (2013) argued that exploratory research design provides a detailed examination of a single subject, group, or phenomenon. Quantitative data includes close-ended questions such as that found to measure acceptance of the respondents such as yes/no. The exploratory research design measured the demographic information of the respondents.

3.3 Research Site

The town bordering Warrap, Northern Bahr El Ghazal, and Lake States in South Sudan, and therefore the public brings their adultery cases to this town once there are difficulties in resolving them at their local area. Wau (Arabic: Wāw; also Wow or Waw) is a city in north-western South Sudan, on the western bank of the Jur River, in Wau County, Wau State. Its residents include people of Fertit, Dinka, Luo, and Arab ethnicity. The study was carried out in the Wau Municipality customary and statutory court located in the central part of the Bhar El Ghazal region (Map appendix). The area was chosen because it has more numbers of customary and statutory courts in South Sudan. The region has a total of 12 active customary and 9 statutory courts. This, therefore, means the region handles a huge number of adultery cases through the presence of these numbers of courts from 2011 to 2019.

3.4 Target Population

The target population refers to the total number of representative elements, respondents, or the total environment of interest to the researcher (Kothari, 2014). The target population was selected from five categories: Customary courts heads, statutory judges; south Sudanese police, department of public prosecution, and the general public (Citizens). According to information from Wau Municipality, 2166 people were used as target population and these were from the 12 active customary courts with 54 court chiefs, 9 statutory courts with 12 judges, 15 members from the prosecution department, 15 South Sudanese police seconded to the department, and 2070 citizens (South Sudan Judiciary, Adultery cases Registry Office Wau, 2019) identified to be involved in one way or the other in adultery cases in the in Wau Municipality. These numbers were considered because it represents the population for this study. The result is shown in Table 3.1.

Table 3.1.Target Population

| Category | Target P. | Percent (%) | Sampling Procedure |
|---------------------------|-------------|-------------|--------------------|
| Customary court chiefs | 54 | 2.5 | Simple Random |
| Statutory court judges | 12 | 0.6 | Simple random |
| Department of prosecution | 15 | 0.7 | Purposive |
| South Sudanese police | 15 | 0.7 | Purposive |
| The public/citizens | 2070 | 95.6 | Simple Random |
| Total | 2166 | 100 | |

Source: South Sudan Judiciary, Adultery case registry Office Wau (2019)

3.5 Study Sample

3.5.1 Sample Size

A sample is a subset of elements drawn from a large population. The elements are obtained in a random manner in order to reflect the representative characteristics of the whole population (Kombo & Tromp., 2009). The accuracy of inferences prescribes the degree of generalization applied in order to demonstrate the entire targeted universe. The sample size for this study was based on a selection of citizens, customary court chiefs and the police, Statutory Court Judges, and Department of Prosecution since they were the identified population in the study. The sample size was then arrived at using Yamane, (1967) formula. Yamane formula was selected because it provides a simplified formula to calculate sample sizes that are suitable for the study of this nature of research.

The formula is shown below:

$$n = \frac{N}{1 + Ne^2}$$

Where:

n = Sample Size

N = Size of Population

E = 95% (5% = 0.05) precision

$$n = 2166 / 1 + (2166 \times 0.0025)$$

$$n = 338$$

3.5.2 Sampling Procedure

According to Kothari (2014), the sampling procedure is a technique of bringing together elements of the same characteristics. This study applied a stratified random sampling technique to identify different groups from which respondents for data collection were selected. This was because the population responsible for this study was scattered. Then simple random and purposive sampling method was used to select the actual sample size in the study. Simple random sampling was used on citizens, customary courts heads, and the police; purpose sampling was used to get respondents from the Statutory Court Judges and Department of Prosecution. This was done to select respondents who were interviewed. Purposive sampling was important in the identification of key informants for the interview. The items of research were further put into three groups so as to enable in analyzing research

objectives. A Likert scale type of questions with close-ended questions plus a section of open-ended questions were used for data analysis. The sample size for each stratum was arrived at by multiplying each strata target population by total sample size divided by the total target population.

Table 3.2: Sample Size

| Category | T/population | Sample Size | Percent (%) | S/ Procedure |
|---------------------------|--------------|-------------|-------------|---------------|
| Customary court chiefs | 54 | 9 | 2.7 | Simple Random |
| Statutory court judges | 12 | 2 | 0.6 | Simple Random |
| Department of prosecution | 15 | 2 | 0.6 | Purposive |
| South Sudanese police | 15 | 2 | 0.6 | Purposive |
| The public/citizens | 2070 | 323 | 95.6 | Simple random |
| Total | 2166 | 338 | 100 | |

Source: Researcher (2020)

3.6 Data Collection

The researcher used questionnaires which were self-administered to collect quantitative primary data. The questionnaires had open ended questions and closed ended questions structure. The qualitative primary data was collected using focus group discussion and key informant interviews. The respondents for focus groups discussion and interview signed the consent forms which confirmed their willingness to participate in the study.

3.6.1 Data Collection Instrument

The instruments for data collection were questionnaires, Key informant interview and focus group discussion. The questionnaire (Appendix i) had closed-ended and open-ended questions were used. The instrument was to collect primary data from the following category of the respondents (2 Judges, 9 Chiefs, 2 Police, 2 Prosecutor Attorney, and 135 citizens). The respondents filled the structured and unstructured items. A questionnaire is a schedule containing various sections on which information is sought from respondents. The use of questionnaires made it easier to approach the respondents since they did not have any distribution bias as they do not show any particular preference or dislike for a specific individual (Kothari., 2014). The questionnaires also help to avoid bias arising from any inhibition in answering questions of personal nature and questions that the respondent may hesitate to answer in the presents of the researcher. The method was also economical and the questionnaire helps reduce biasing errors that might have resulted from personal characteristics of questions. However, this tool captures the level of agreement with the statement that is put on a Likert scale of 1 to 5.

The consent forms (Appendix ii) for focus group discussion and the key informant interview guide (Appendix iii) were prepared to enhance face-to-face data collection. The interview guide captures the opinions and views of the respondents on the research objectives whereas consent form seeks acceptance of the respondents for focus group discussion. Interview Guide focuses on the category of the following Citizens (12 Women leaders, 13 Elders, and 12 youth leaders) making a total of 37 respondents. This interview was mean for citizens who engaged, involved, and used customary and statutory courts in South Sudan.

Ten (10) Focus group discussions were organized for a total of 120 respondents (36 community elders, 36 women leaders, 24 traders, and 24 youth leaders). Each group comprised of 12 respondents. This focus group discussion tool captured opinions and views in a verbatim manner from the respondents. This discussion was held for important information to be gathered. A consent formed was signed by the focus group participants

3.6.2 Pilot Testing of Research Instruments

A pilot test of the sufficiency of questionnaire was done before the main data collection was initiated. This was done to discover any weakness in the questionnaire design or content and its ability to procure the essential information for the research study.

A small number of respondents from the neighboring Municipality of Rumbek pilot tested to determine the accuracy of the questionnaire. The study assumed that the rule of thumb at 5% of the sample size was consisting of a pilot test (Babbie, 2016). The outcome of the pretest helped in the improvement of the questionnaire applicable in this study.

3.6.3 Instrument Reliability

The reliability of the research instrument is the ability of the instrument to give out the same results at different places (Kothari, 2014). Reliability is the degree to which the instrument measures the same way each time it is used under the same condition with the same subject. The internal consistency of reliability was achieved by grouping questions in the questionnaire that measures the same concept. In this research, there were questions measuring the same concept and after collecting the responses a correlation was run to determine the reliability of the questions. Reliability was measured using the Cronbach Internal Consistency method and the acceptable scale was $\alpha=0.7$ and above

3.6.4 Instrument Validity

Validity is the ability of the research instrument to measure and generate the intended or desired results of the study (Cooper &Schindler, 2014). This was the most critical criterion that indicates the extent to which differences found with a measuring instrument reflect true differences among those being tested. There were two types of validity to be considered in this study, which include content and construct validity. Content validity refers to the extent to which an assessment represents all facets of tasks within the domain being assessed. Construct validity defines how well a test or experiment measures up to its claims. Content analysis was used to analyze respondent views on the effectiveness of customary and statutory courts in resolving adultery cases, since a set of categorizations for making valid and replicable inferences from data to their context.

In the development of the instruments, research experts who include supervisors were consulted to assist in the framing of the questions. The external validity of the questionnaires was achieved by the selection of a population sample that is representative of the population. The questions asked in the instrument were adequately covering all the variables identified in the problem definition stage. The instruments developed were compared against standard instruments used in earlier studies that formed the baseline of the field of knowledge in which this study was related. This added some predictive utility to the instruments. It involved the assessment and checking of the relevance of the questions to research objectives.

3.6.5 Data collection procedures

Self-administered questionnaires were issued to 181 participants to fill; focus group discussion for 120 respondents was organized and interviewed for 37 participants carried out during the study of this research.

3.7 Data Analysis

This was the process of organizing, interpreting, and presentation of data. Since the research was exploratory in nature. Descriptive data were collected therefore descriptive statistics technique was employed to ensure that the masses of numerical data were organized, summarized in such a way that they can be meaningfully understood and communicated (Bryman, 2016).

The questionnaires were checked for completeness and consistency of information at the end of every field, data collection day and before storage. Information from questionnaires was coded and related information grouped together. The coding was considering all the sections of the questionnaire. The quantitative data from the completed questionnaires were cleaned, re-coded, and entered into the

computer using a statistical package for social science (SPSS) for Windows version 26.0 for analysis. This data gathered from the questionnaire was presented in percentages, frequencies, and distribution tables. The qualitative data that was collected from FGD and interviews were organized into themes and reported in verbatim.

3.8 Legal and Ethical Considerations

Any research work which involves the collection of data at times can intrude into the respondent's lives and the same thing to the life of the researcher. To ensure that the study remains ethical, the researcher requested a letter of introduction from Africa Nazarene University. Consent was sought from bodies which authorize permission for conducting research in South Sudan (National Security Service of South Sudan). The researcher sought permission from other stakeholders in this study who include; South Sudanese police, customary and statutory courts department of prosecutions, and citizens of Wau Municipality in South Sudan. Information created from the study may be sensitive which may discredit stakeholder image, hence the right to confidentiality and privacy was observed. This was to make sure that the identity of the respondents was concealed and data collected treated confidentially with access being limited to the study team using passwords and data encryption techniques.

CHAPTER FOUR

DATA ANALYSIS, PRESENTATION AND INTERPRETATION OFFINDINGS

4.1 Introduction

This study aimed at investigating the effectiveness of customary and statutory courts in resolving adultery cases in Wau Municipality, South Sudan. Data analysis and findings were anchored on four main parts; to determine the nature of evidence used by customary and statutory courts in resolving adultery cases in Wau Municipality in South Sudan, assess the extent of citizen's satisfaction with customary and statutory court decisions in Wau Municipality, examine the challenges customary and statutory courts encountered in resolving adultery cases in Wau Municipality in South Sudan and ways of improving the effectiveness of customary and statutory courts. The chapter starts with respondent rates followed by a presentation of demographics of respondents, interpretation and discussion of findings on and research objectives.

4.2 Response Rate

A total of 338 respondents were targeted for this study as a sample size. Self-administered questionnaires of 181 were distributed by the researcher to the respondents. Out of 338 respondents, 150(44.4%) respondents duly filled and returned the questionnaires for analysis; 31 of the respondents representing (9.1%) did not answered or completely filled the questionnaires due to either they have no time to fill or have forgotten to fill completely. A total of 120(35.5%) respondents were groups for focus group discussion. 37 of the respondents representing (11.0%) were interviewed. This makes a total of 307 (90.9%) response rates for this study.

According to Mugenda and Mugenda (2014), a response rate of 60% is considered good for a study; therefore 90.9% of this number is an ideal number allowing the researcher to undertake this study and it is adequate enough for conducting this study, the results are as shown in Table 4.1.

Table 4.1 below shows the General Response categories N=307

| Category of data | Frequency | Percentage |
|-------------------------|------------------|-------------------|
| Questionnaires | 150 | 44.4 |
| Interviews | 37 | 11.0 |
| FGDs (10) | 120 | 35.5 |
| Total | 307 | 90.9 |

Source: Field Data (2020)

4.3 Presentation of Demographic Information

This section sought to find out the gender of the respondents for the study. The finding in Table 4.2 indicated that 98(65.0%) of the respondents were male. The finding also shows that 52(35.0%) respondents were female. The findings revealed that there was more male compared to female respondents who participated in this study. This finding helps the researcher to understand that males are more actively engaged in activities compared to the female counterpart in Wau. The researcher tried to balance gender for the respondents for this study but given the fact that men are more active in the community than women has resulted in gender disparity in this study. Table 4.2 below shows the result.

Table 4.2 Gender of Respondents for questionnaires N=150

| Category | Frequency | Percent |
|-----------------|------------------|----------------|
| Female | 52 | 35.0 |
| Male | 98 | 65.0 |
| Total | 150 | 100.0 |

Sources: Field data 2020

The results in Table 4.3 show that 114(76.0%) were in the age bracket of 46+ above. 34(22.7%) of the respondents were in the age bracket of 36-45, 2(1.3%) of the respondents were in the age bracket of 25-35. These findings suggested that citizens age 46+ were the majority who had experience and took part in resolving adultery case in Wau Municipality. Additional 35-45 age ranges actively aware of adultery cases in Wau Municipality. The finding assisted the researcher to conclude that most of those involved in resolving adultery cases in Wau Municipality were of higher age group. The table below shows the result.

Table 4.3 Age Distribution of Respondents N=150

| Category | Frequency | Percent (%) |
|-----------------|------------------|--------------------|
| 25-35 | 2 | 1.3 |
| 36-45 | 34 | 22.7 |
| 46+ | 114 | 76.0 |
| Total | 150 | 100 |

Source: Field data (2020)

The study was to determine the education level of the respondents. The findings in Table 4.4 indicated that 55(36.6%) respondents were college graduates. 36(24.0%) of the respondents were University graduates. 33 (22.0%) of them, had a secondary level of education, 19 (12.7%) of respondents had a primary level of education. The remaining 7(4.7%) respondents had no formal education. These statistics revealed that majority of the respondents who participated in this study were educated. Wau Municipality, being a big Town with 2 Universities, 4 colleges, and many secondary schools; citizens have basic education levels. This finding allowed the researcher to

administer questionnaires to respondents. Table 4.4 shows the education level of the respondents.

Table 4.4 Highest Education Level of respondents N=150

| Education status | Frequency | Percent (%) |
|-------------------------|------------------|--------------------|
| Illiterates | 7 | 4.7 |
| Primary | 19 | 12.7 |
| Secondary | 33 | 22.0 |
| College | 55 | 36.6 |
| University | 36 | 24.0 |
| Total | 150 | 100 |

Source: Field data (2020)

Table 4.5 indicated 104(69.3%) of the respondents were members of the community's leaders and elders in Wau, 31(20.7%) respondents were traders. Judges and chiefs for customary and statutory were 11(7.3%) respondents and finally the police and public persecutor attorney with 4(2.7%). The findings indicated that majority of the respondents were from community leaders who in one way or another participated, engaged, or involved in resolving adultery cases. These findings suggested that citizens in Wau Municipality are actively involved and aware of adultery cases. The findings also tend to reveal that majority of traders are also aware and have knowledge of the existence of adultery cases in Wau Municipality. The results are as tabulated in Table 4.5.

Table 4.5 Occupation Status of respondents N=150

| Occupation Status | Frequency | Percent (%) |
|--|------------------|--------------------|
| Police/Public attorney | 4 | 2.7 |
| Traders | 31 | 20.7 |
| Judges/chief | 11 | 7.3 |
| Community leaders/elders/Youth leaders | 104 | 69.3 |
| Total | 150 | 100 |

Source: Field data (2020)

The findings in Table 4.6 show that 70(47.0%) of the respondents have lived in Wau Municipality for a maximum of 16 years and above, 87(45.0%) of the respondents have lived in Wau for 11-15 years, 13(8.0%) of the respondents had lived in the area for 5 years and below. These findings helped the researcher to understand how long the respondents have lived in Wau Municipality and how well they are informed about adultery cases in the area. The longer the period respondents have lived in Wau, the better knowledgeable they are on resolving adultery cases in Wau. This therefore shows that more than 90% of the respondents have lived in Wau for 11 years and above. The results are presented as shown in the Table 4.6.

Table4.6 Period Respondents Lived in Wau Municipality N=150

| Period lived in Wau | Frequency | Percent (%) |
|----------------------------|------------------|--------------------|
| 5 Years | 13 | 8.0 |
| 11-15 Years | 87 | 45.0 |
| 16 Years and above | 70 | 47.0 |
| Total | 150 | 100 |

Source: Field data (2020)

4.4 Presentation of Research Analysis and Findings

This section presents research findings and analysis as well as interpretation of data based on research objective.

4.4.1 Nature of Evidence Used by Customary and Statutory Courts in resolving adultery cases

The study used descriptive analysis. It helps determine the views of the respondents on the nature of evidence used in the Wau Municipality. The total respondents in this specific objective were 150. For analysis, descriptive statistics (frequency, percentage, means, and distribution table) were used for the level of agreement on a five-point Likert scale on nature evidence used in the Wau Municipality. These findings were presented as shown in Table 4.7.

Table 4.7descriptive statistics for nature of evidence used by courts **N=150**

| Nature of Evidence Used by Customary and Statutory Courts in Resolving Adultery Cases | SA | | A | | U | | D | | SD | | MEAN | N |
|---|----|------|----|------|----|------|---|---|----|------|--------------|-----|
| | F | % | F | % | F | % | F | % | F | % | | |
| There is probative value on specific items of evidence | 56 | 37.3 | 70 | 46.7 | 14 | 9.3 | 0 | 0 | 10 | 6.7 | 1.82 | 150 |
| Evidence with legal relevance is always in use by courts in Wau Municipality | 60 | 40.0 | 60 | 40.0 | 30 | 20.0 | 0 | 0 | 0 | 0 | 1.69 | 150 |
| Use of sufficient evidences achieved in Wau Municipality | 72 | 48.0 | 54 | 36.0 | 0 | 0.0 | 0 | 0 | 24 | 16.0 | 1.81 | 150 |
| The evidence used by courts in Wau Municipality are mainly admissible | 96 | 64.0 | 36 | 24.0 | 0 | 0.0 | 0 | 0 | 18 | 12.0 | 1.68 | 150 |
| Fair trial is exercised by courts in Wau Municipality using evidences | 27 | 18.0 | 84 | 56.0 | 39 | 26.0 | 0 | 0 | 0 | 0.0 | 1.82 | 150 |
| Aggregate Score | | | | | | | | | | | 1.770 | |

Source: Field data (2020)

Table 4.7 reveals that 70(46.7%) respondents agreed that there is probative value on specific items of evidence, 56(37.3%) strongly agreed, 14(9.3%) undecided, and 10(6.7%) strong strongly disagreed. This finding with (Mean =1.82) indicated that the respondent agreed that there is probative value on specific items of evidence.

An interviewee had this to say;

...Once the evidence is provided and the case is found to be real, the victims are convicted and asked to pay for compensation in the court...
(*Male participant, community elder*)

60(40.0%) strongly agreed that evidence with legal relevance is always in use by courts in Wau Municipality, 60((40.0%) agreed, and 30(20.0%) undecided on the statement. The finding with (Mean=1.69) suggested that respondents agreed on evidence with legal relevance is always in use by courts in Wau Municipality. In focus group discussion the statistic was supported by the respondents who had this to say;

...The nature of evidence is always legal, mainly sufficient in sense that it gives proof of adultery... (*Male participant, youth leader*)

72(48.0%) respondents have strongly agreed that the use of sufficient evidence achieved in Wau Municipality, 54(36.0%) agreed, 24(16.0%) strongly disagreed with the statement. The findings with (Mean=1.81) suggested that respondents agreed on the use of sufficient evidence achieved in Wau Municipality. An interviewee said;

...Statutory could not rule the case without having two or three witnesses despite the admission of liability by the accused. Pregnancy could also be used during the trial of adultery cases by both statutory and customary courts and in this situation; statutory will required eye witness as both the accused have accepted the liability in the process of investigation... (*Female participant, women leader*)

96(64.0%) strongly agreed that the evidence used by courts in Wau Municipality is mainly admissible, 36(24.0%) agreed and 18(12.0%) strongly disagree with statement. The finding with (Mean=1.68) supported the statement that evidence used by courts in Wau Municipality are mainly admissible. In focus group discussion seconded the statement by saying;

...The nature of evidence used by statutory courts is admissible. They are according to the requirement of the law of evidence. The customary courts used local practice such as oath-taking, tasting spears, and hoes... (*Male Participant, trader*)

84(56.3%) agreed, 39(26. %) undecided, and 27(18.0%) strong strongly agreed. This finding with (Mean =1.82) indicated that fair trial is exercise in wau Municipality.

Community elder in focus group discussion had this to say;

...law of evidence 2006 to enhance fair trial and to prove the existences or non-existence of alleged facts based on legal evidence but in a customary law court, they used evidence that is traditional in nature such as oath to prove or disapproved the facts in issues...
(*Female participant, Community elder*)

The respondents had to provide their general comments. The results were presented as shown in figure 4.1 **N=150**

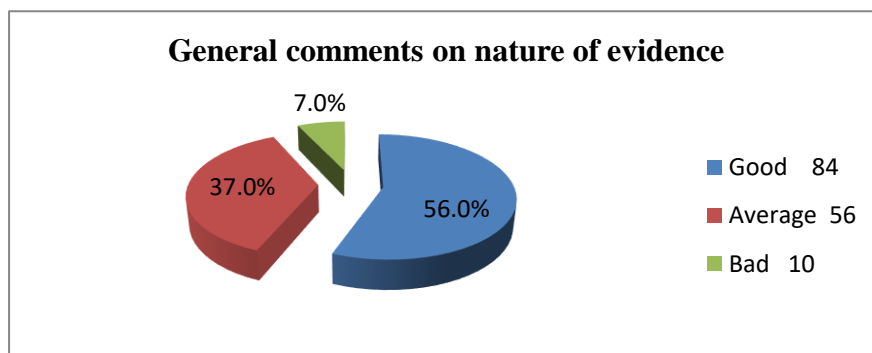


Figure 4.1 General comments on nature of evidence used by customary and Statutory Courts

Source: Field data (2020)

The results of the study in Figure 4.1 indicate that the questions on comments were answered by all 150 respondents. Among the responses, 84(56.0%) of the respondents commented that the nature of evidence used by customary and statutory courts in resolving adultery cases in Wau Municipality was good. 56(37.0%) of the respondents commented on the evidence used as fair; it is fair in the sense that punishment of adultery offenders is based on each tribe's customs and traditions or

customary laws of each tribe. 10(7.0%) of the respondents commented on the nature of evidence used in the customary and statutory courts in Wau Municipality was bad.

4.4.2 Citizens Satisfaction with Customary and Statutory Court's Decisions in resolving cases

In this study, court decisions were important as they assisted in resolving adultery cases in Wau Municipality. The total respondents in this specific objective were 150. The study adopted a descriptive statistical analysis. This helped to assess citizen satisfaction with the court decisions in Wau Municipality. For analysis, descriptive statistics (frequency, percentage, mean, and distribution) for the level of agreement on a five-point Likert scale were used for citizenry satisfaction of customary and statutory courts Decisions in Wau Municipality. Results were tabulated as shown in Table 4.8 below.

Table 4.8 Citizens Satisfaction of customary and statutory court's Decisions

N=150

| Extent of citizenry satisfaction with customary and statutory court decisions | SA | | A | | U | | D | | SD | | MEAN | N |
|---|----|------|----|------|----|------|----|------|----|------|--------------|-----|
| | F | % | F | % | F | % | F | % | F | % | | |
| There is compassion in way adultery case decisions are made in Wau Municipality | 40 | 26.7 | 50 | 33.3 | 23 | 15.3 | 14 | 9.3 | 23 | 15.3 | 2.32 | 150 |
| Subjective decisions are made by courts in Wau Municipality | 70 | 46.7 | 40 | 26.7 | 15 | 10.0 | 25 | 16.7 | 0 | 0.0 | 2.31 | 150 |
| There are low levels of democracy among courts in Wau Municipality | 40 | 26.7 | 0 | 0.0 | 25 | 16.7 | 60 | 40.0 | 25 | 16.7 | 2.92 | 150 |
| Fair trial is exercised by courts in Wau Municipality | 80 | 53.3 | 35 | 23.3 | 18 | 12.0 | 0 | 0.0 | 17 | 11.3 | 1.59 | 150 |
| Evidence is handled with utmost faith by courts in Wau Municipality | 65 | 43.3 | 55 | 36.7 | 0 | 0.0 | 15 | 10.0 | 15 | 10.0 | 1.75 | 150 |
| Aggregate Score | | | | | | | | | | | 2.218 | |

Source: Field data (2020)

Table 4.8 shows 50(33.3%) of the respondents agreed that there is compassion in the way adultery case decisions are made in Wau Municipality, 40(26.7%) strongly agreed, 23(15.3%) undecided, 14(9.3%) disagreed and 23(13.3%) strongly disagreed

with the statement. The findings with (Mean=2.32) confirmed that there is compassion in the way adultery case decisions are made in Wau Municipality. Female women in Focus group discussion agreed with the statement and had this to say;

... If the person is found guilty in the courts as a person who committed adultery, there is always compassion that allows relatives, bailed you out, and prepared to pay compensation. Sometimes the plaintiff leaves the accused without paying adultery compensation...
(*Female participant*, community leader)

In addition, 70(46.7%) respondents strongly agreed that subjective decisions are made by courts in Wau Municipality, 40(26.7%) agreed, 25(16.7%) disagreed, and 15(10.0%) undecided. The finding with (Mean=2.31) suggested subjective decisions are made by courts in Wau Municipality. Male Community leader in focus group discussion agreed with the statement by saying;

... In case a woman failed to admit adultery or accept the liability, community leaders intervened and subjective decisions are made to persuade women to avoid long process of hearing... (*Male participant*, Community leader)

60(40.0%) respondents disagreed that there are low levels of democracy among courts in Wau Municipality, 40(26.7%) strongly agreed, 25(16.7%) strongly disagreed, and 25(16.7%) undecided. The finding with (Mean=2.92) disagreed that there are low levels of democracy among courts in Wau Municipality.

80(53.3%) respondents strongly agreed that fair trial is exercised by courts in Wau Municipality, 35(23.3%) agreed, 18(12.0%) undecided, and 17(11.3%) strongly disagreed with the statement. The findings with (Mean=1.59) support that fair trial is exercised by courts in Wau Municipality. In an interview female youth leader had this to say;

... An adultery case does not go through an unfair trial in Wau, witnesses are summoned immediately, the deadline for hearing is

scheduled and the local oath is administered as evidence to prove adultery case in customary. In statutory courts, a medical checkup could be administered as part of the evidence for a woman who committed adultery... (*Female participant, youth leader*)

65(43.3%) respondents strongly agreed with statement evidence is handled with utmost faith by courts in Wau Municipality, 55(36.7%) agreed, 15(10.0%) disagreed and 15(10.0%) strongly disagreed with statement. The findings with (Mean=1.75) confirmed that evidence is handled with utmost faith by courts in Wau Municipality.

In an interview, an interviewee had this to say in support to statement;

...Because evidences are handling with utmost faith, the chief are able to listen to the need of the litigants. Request for witness is granted by the chief... (*Female participant, Women leader*)

The respondents provided their comments on citizenry satisfaction of customary and statutory court decisions in resolving adultery cases in Wau Municipality. Figure 4.2 below shows the result of the feeling of the respondents toward the satisfaction of the court decision **N=150**

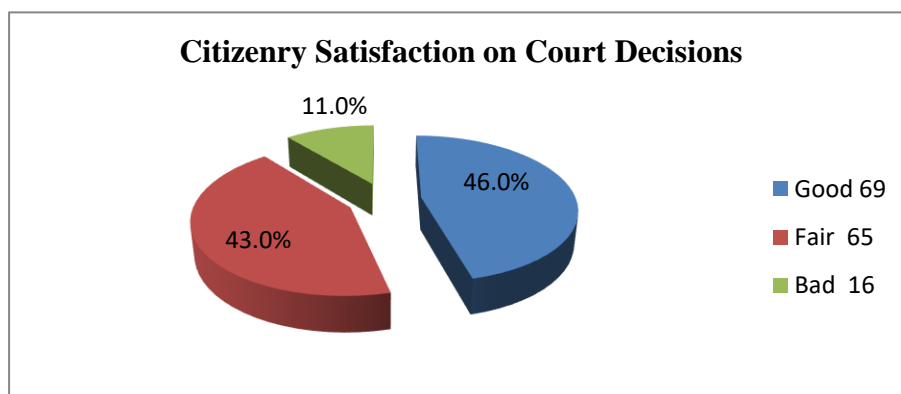


Figure 4.2 General comments on citizens satisfactions with customary and statutory court's decisions

Source: Field data (2020)

The results of the study in Figure 4.2 on citizenry satisfactions in court decisions show that 69(46.0%) respondents believed that customary and statutory court decisions were good. 65(43.0%) of respondents believed that customary and statutory courts decisions for resolving adultery cases in Wau Municipality as fair, 16 (11.0%) of them believed that customary and statutory courts decisions for resolving adultery cases in Wau Municipality were bad. Focus group member said;

...It is fair because the punishment for adultery is the same across the Dinka community ... Fair trial is exercised by customary courts in Wau Municipality; there are no more appeals to the high court...
(*Female participant, Trader*)

69(46.0%) of respondents believed that customary and statutory court decisions for resolving adultery cases in Wau Municipality were good.65(43.0%) of respondents believed that customary and statutory court decisions for resolving adultery cases in Wau Municipality as fair. 16 (11.0%) of them believed that customary and statutory court decisions for resolving adultery cases in Wau Municipality were bad.

4.4.3 Challenges Customary and Statutory Courts Encountered in Resolving Adultery Cases.

This third objective presents challenges the customary and statutory court encountered in resolving adultery cases in Wau Municipality. A total of 150 respondents were recorded for these objectives. The results of challenges of customary and statutory courts encountered in resolving adultery cases in Wau Municipality. For analysis, descriptive statistics (frequency, percentage, and mean distribution) for the level of agreement on a five-point Likert scale for challenges customary and statutory courts encountered in resolving adultery cases. The result was examined summarized as shown in table 4.9.

Table 4.9: Descriptive statistics for challenges customary and statutory courts encountered in resolving N=150

| Challenges Customary and Statutory Courts Encountered in Resolving Adultery Cases | SA | | A | | U | | D | | SD | | MEAN | N |
|---|----|------|----|------|----|------|----|------|----|------|--------------|-----|
| | F | % | F | % | F | % | F | % | F | % | | |
| There is inadequate justice system in use by Wau Municipality courts | 15 | 10 | 25 | 16.7 | 25 | 16.7 | 35 | 23.3 | 50 | 33.3 | 2.02 | 150 |
| Courts use unwritten laws to resolve adultery cases | 55 | 36.7 | 5 | 3.3 | 0 | 0.0 | 35 | 23.3 | 55 | 36.7 | 2.12 | 150 |
| Adultery investigation is a complex process | 50 | 33.3 | 50 | 33.3 | 20 | 13.3 | 15 | 10.0 | 15 | 10.0 | 1.71 | 150 |
| There are no clear written to aid cases under adultery | 40 | 26.7 | 20 | 13.3 | 40 | 26.7 | 20 | 13.3 | 30 | 20.0 | 2.92 | 150 |
| Adultery cases are subjected to inequality | 15 | 10.0 | 20 | 13.3 | 15 | 10.0 | 58 | 38.7 | 42 | 28.0 | 2.00 | 150 |
| Aggregate Score | | | | | | | | | | | 2.055 | |

Source: Field data (2020)

Table 4.9 shows that 50(33.3%) of the respondents strongly disagreed that there is an inadequate justice system in use by Wau Municipality courts, 35(23.3%) disagreed, 25(16.7%) agreed 25(16.7%) undecided and 15(10%) strongly agreed. The study findings indicated that the respondents tended to disagree with (Mean=2.02). In a focus group discussion, a male trader had this to say;

... Inadequate justice system is not seen in Wau court. The court operated while giving rights of each individual on adultery cases...
(*Male Participant, Trader*)

Similarly, the find indicated that 55(36.7%) of the respondents strongly disagreed that Courts use unwritten laws to resolve adultery cases in Wau Municipality, 55(36.7%) Strongly agreed, 35(23.3%) disagreed, and 5(3.3%) agreed. The study findings suggest that the court used both unwritten and written law (Mean=2.12). In an interview, female woman leader from the community says,

...Unwritten laws or customs that are undocumented are applied in customary courts, chiefly rely on verbal information. The statutory court used panel codes and the laws of South Sudan... (*Female Participant, Woman leader*)

Furthermore 50(33.3%) of the respondents strongly agreed that Adultery investigation is a complex process, 50(33.3%) agreed, 20(13.3%) undecided, 15(10.0%) disagreed, 15(10%) strongly disagreed. The finding concluded adultery investigation is a complex process (Means=1.71). These findings indicated adultery investigation is a complex process. Female woman leader in Focus group discussion said;

... In statutory courts, the investigation of the adultery case is very complex. At customary court, the investigation of adultery cases is not very complex. If investigation seems complex at customary courts, local oath-taking could make the process simple... (*Female Participant, Woman leader*)

In addition, the finding indicated that 40(26.7%) of the respondents strongly agreed that there are no clear written to aid cases under adultery in Wau Municipality courts, 30(20.0%) strongly disagreed, 20(13.3%) agreed, 40(26.7%) undecided and 20(13.3%) strongly agreed. The finding with (Means =2.92) suggested that there are no clear written to aid cases under adultery. In an interview a female youth leader had this to say;

... There are no panel codes for customary courts chief in Wau municipality to be used as guidelines when resolving adultery cases. Only statutory panel codes but not updated as carries Sudanese laws such as Sharia law... (*Female Participant, Youth leader*)

58(38.7%) of the respondents disagreed that Adultery cases are subjected to inequality, 42(28.0%) disagreed, 20(13.0%) agreed, 15(10%) strongly agreed, 15(10.0%) undecided and agreed. The finding with Mean= 2.00 concluded that adultery cases were not subjected to inequality in Wau Municipality. Male community elder in an interview had this to say;

...Nobody is compromised when found to be involved in adultery acts by courts in Wau Municipality. Inequality is not there are both courts are active in resolving adultery cases... (*Male Participant, Community elder*)

The respondents also provided comments on the challenges encountered when resolving adultery cases in Wau Municipality. The respondent's comments were summaries in the Figure 4.3 below **N=150**

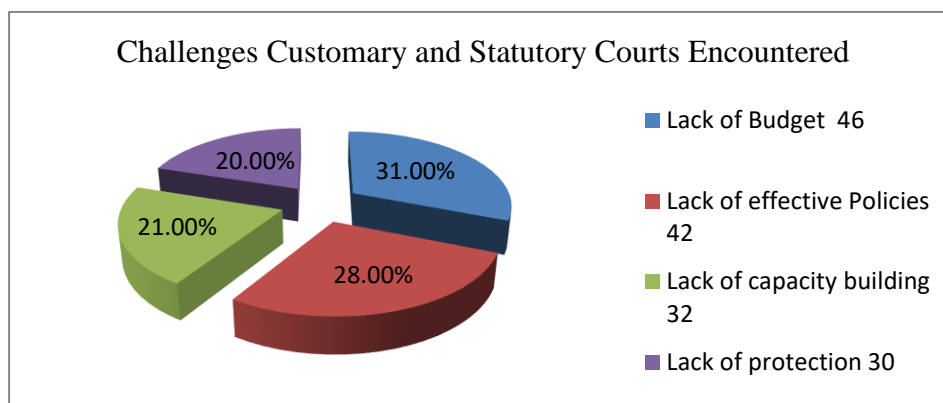


Figure 4.3 Challenges Customary and Statutory Courts encountered in Resolving Adultery Cases

Source: Field data (2020)

The findings of this section as presented in figure 4.3 show additional challenges the customary and statutory courts encountered in resolving adultery cases in Wau Municipality. This included a lack of effective policies, protection, and budgets that were cited as the challenges customary and statutory courts encountered in resolving adultery cases. Figure 4.3 shows that 46(31%) of respondents have stated that lack of budgets is one of the challenges that customary and statutory courts encountered in Wau Municipality. Focus group members said;

...Budgets are an issue in the courts. The court will not operate effectively. The money we collect is very small... (*Female Participant, Women leader*)

42(28%) mentioned the lack of effective policies as challenges that are encountered by courts. It is noted that there is no guideline for the chief to resolved adultery cases. Female woman leader in an interview had this to say;

...The customary courts do not have guidelines in which they operate. They operated on a traditional basis only... (*Female Participant, Woman leader*)

Figure 4.3, suggested that 32(21%) highlighted the lack of capacity buildings for both chiefs and judges for customary and statutory courts.30(20%) of the respondents show that lack of protection for chiefs and judges are encountered during the resolution of adultery cases in Wau.

4.4.4 Ways of Improving Effectiveness of Customary and Statutory Courts in Resolving Adultery Cases

The study adopted descriptive statistics for this analysis (frequency, percentage, and distribution) for the level of agreement on a five-point likert scale of the variable ways of improving the effectiveness of customary and statutory courts in resolving adultery cases, was determined and summarized in Table 4.10 below.

Table 4.10 Improving Effectiveness of customary and statutory courts in resolving adultery cases N=150

| Ways of Improving Effectiveness of Customary and Statutory Courts in Resolving Adultery Cases | SA | | A | | U | | D | | SD | | MEAN | N |
|---|----|------|----|------|----|------|----|------|----|------|--------------|-----|
| | F | % | F | % | F | % | F | % | F | % | | |
| Courts in Wau Municipality use improved laws to resolve adultery cases. | 80 | 53.3 | 30 | 20.0 | 30 | 20.0 | 10 | 6.7 | 0 | 0.0 | 2.45 | 150 |
| Courts in Wau Municipality are mobile | 30 | 20.0 | 0 | 0.0 | 30 | 20.0 | 30 | 20.0 | 60 | 40.0 | 2.39 | 150 |
| Citizenry at Wau Municipality are aware of existence of courts of justice | 30 | 20.0 | 70 | 46.7 | 0 | 0.0 | 25 | 16.7 | 25 | 16.7 | 1.73 | 150 |
| Courts of justice at Wau Municipality are accessible | 79 | 52.7 | 59 | 39.3 | 6 | 4.0 | 0 | 0.0 | 6 | 4.0 | 1.54 | 150 |
| Processes within the courts are automated | 69 | 46.0 | 31 | 20.7 | 30 | 20.0 | 10 | 6.7 | 10 | 6.7 | 2.02 | 150 |
| Aggregate Score | | | | | | | | | | | 2.030 | |

Source: Field data (2020)

Table 4.10 shows 80(53.3%) respondents have strongly agreed that Courts in Wau Municipality use improved laws to resolve adultery cases, 30(20.0%) agreed, 30(20.0%) undecided,10(6.7%) disagreed with the statement. The finding with (Mean=2.45) suggested Courts in Wau Municipality use improved laws to resolve

adultery cases. In a focus group discussion, female women leader had this to say in support of findings;

... Majority of customary courts in Wau used Dinka customary laws to resolved adultery cases. The statutory court used the South Sudan Transition constitution 2008 and the panel code... (*Female Participant, Women leader*)

In addition, 60(40.0%) respondents strongly disagreed that Courts in Wau Municipality are mobile, 30(20.0%) have strongly agreed, 30(20.0%) disagreed, 30(20.0%) undecided. This finding with (Mean=2.39) suggests the courts in Wau are not mobile. Female Youth leader had this to days during an interview;

...Having mobile courts assist in resolving adultery cases at the community level... (*Female Participant, youth leader*)

70(46.7%) respondents strongly agreed that Citizenry at Wau Municipality is aware of the existence of courts of justice, 30(20.0%) agreed, 25 (16.7%) disagreed and 25(16.7%) strongly disagreed. The findings with (Mean=1.73) suggested agreed that citizens are aware of the existence of the court of justice in the Wau Municipality. In the focus group discussion, the female trader supported the statement by saying;

...I know where each court is in Wau Municipality, in the community or inside the Town... it is very important to know our courts so that when you have an issue you reported... (*Female Participant, Trader*)

79(52.7%) respondent strongly agreed that Courts of justice at Wau Municipality are accessible, 59(39.3%) agreed, 6(4.0%) undecided and 6(4.0%) Strong disagreed. The finding with (Mean=1.54) indicated that courts in Wau are accessible by citizen. In a focus group discussion women leader had this to say;

... Courts of justice are everywhere, they are accessible everywhere, you can find them in Wau North and South... (*Female participant, Women leader*)

69(46.0%) respondents strongly agreed that Processes within the courts are automated, 31(20.7%) agreed, 30(20.0%) undecided, 10(6.7%) disagreed, and 10(6.7%) disagreed. The findings with (Mean=2.02) suggested that courts in Wau were automated.

CHAPTER FIVE

DISCUSSIONS, SUMMARY OF FINDINGS, CONCLUSIONS AND RECOMMENDATIONS

5.1 Introduction

This chapter presents the discussion, summary of the research findings, conclusion, and recommendations on the effectiveness of customary and statutory courts in resolving adultery cases in Wau Municipality, South Sudan.

5.2 Discussion

In this section, a discussion of the study findings is presented. This is done in line with the study objectives. The findings are also analyzed in line with findings from other studies.

5.2.1 Nature of Evidence Used by Customary and Statutory Courts in resolving adultery cases in Wau Municipality

The first objective was to determine the nature of evidence used by customary and statutory in Wau Municipality. The findings were presented in Table 4.7 that revealed findings with (Mean =1.82) which indicated that the respondents agreed that there is probative value on specific items of evidence. A key informant argued that the evidence is provided and if the accused is found to be guilty, the victims are convicted and asked to pay for compensation in the court. Wendy (2011) supported the argument that enough evidence is required to justify the decision. In addition, the key informant agreed with the statement that the evidence provided during the adultery case resolution does not compromise the two accused in the courts and punishment takes place immediately.

The reference made in table 4.7, with (Mean=1.69) suggested that respondents agreed on evidence with legal relevance is always in use by courts in Wau Municipality. In

focus group discussion, male youth leaders supported the statement that the nature of evidence is always legal, mainly, sufficient in sense that it gives proof of adultery. In researcher opinion evidence with legal relevancies is always in used by courts in Wau Municipality. The key informant agreed that, evidence with legal relevance is applied in the resolution of adultery cases. Soutik, (2018) continued to argue that, the evidence is important in the trial of such cases. The researchers agreed with, Soutik argument in the sense that, without evidence the accused will go away without being punished.

Statutory could not rule the case without having two or three witnesses despite the admission of liability by the accused. This statement is supported by social conflict theories emphasizing the role of conflict as an integral factor in shaping social conditions and the dynamics of social life (Jinadu, 2007). The researcher suggested that, any exhibits that are brought to court are to be examined and see the relevance of the used in adultery cases.

The findings with (Mean=1.81) suggested that, respondents agreed on the use of sufficient evidence achieved in Wau Municipality. Key informant in an interview supported this statement by saying that statutory could not rule the case without having two or three witnesses despite the admission of liability by the accused. Pregnancy could also be evidence used during the trial of adultery cases by both statutory and customary courts. In this situation, statutory will not require eye witness as both the accused have accepted the liability in the process of investigation. Parsons (2015) agreed that to resolve adultery cases, the court need to be aware of the cases and laws must be implemented accordingly. Social conflict theories emphasized the role of conflict as an integral factor in shaping social conditions and the dynamics of

social life.

The theory focuses on the resource and power to enable a litigant committed adultery with another married woman. Adultery committed required an institution that would resolve the matter in amicable ways which is related to structural functionalism theory. Parsons (2015) agreed that the remedies for example where adultery has been proven beyond a reasonable doubt, one is fined Seven or imprisoned as per the customary court. The sufficient evidenced is used in the resolution of adultery cases in Wau Municipality. The evidence used in the Wau Municipality is legal, mainly sufficient, and admissible in the courts. People invigorate them both as a mechanism to resolve disputes and as a social practice through which they publicly assert their dignity and unity as members of communities (Ibreck and Pendle, 2017).

In reference to the table 4.7, where the respondents agreed to the extent of the finding with (Mean=1.68) supported the statement that evidence used by courts in Wau Municipality are mainly admissible. The argument focuses on group discussions indicated that the nature of evidence used by statutory courts is admissible. They are according to the requirement of the law of evidence. The customary courts used local practice such as oath-taking, tasting spears, and hoes. The most important aspect of resolving adultery cases is for courts to use evidence that effective and that which can aid effective judgments. This means that both customary and statutory courts evidence are admitted by the people in Wau Municipality.

The key informants opined that in customary court evidence such as witnesses are manipulated and influence by the parties even if they are legal. Women leaders said customary and statutory are using legal evidence in solving adultery cases in Wau

Municipality. Both customs and traditional evidences are used in resolving adultery cases. The evidence provided during the adultery case resolution does not compromise the two accused in the courts. Wendy (2011) works on evidence confirmed that evidence is very important in the resolution of adultery cases. The nature of evidence used by statutory courts is always according to the requirement of the code of evidence of 2006 and the one used by the customers is too traditional and not according to the principle of a fair trial. According to Soutik, (2018), effective evidence could reveal any confirmation that is consistent with the complainant's allegations and can be used as an exhibit in the court of law as a major source of decision making by the arbitrator.

The nature of evidence used by statutory courts is always according to the requirement of the code of evidence of 2006 and the one used by the customers is too traditional and not according to the principle of a fair trial. This is in line with the structural-functional theory that holds that society is best understood as a complex system with various interdependent parts that work together to increase stability. According to Rachel &Pendle, (2017) using local evidence for pregnancy could be a basis to resolve adultery cases. A Male trader said litigants denied adultery that involved pregnancy; the customary chief pended the case till the child is born and the accused is brought to court.

According to Paridhi, (2018) the evidence law has evolved recently and even scientific evidence is being made admissible in courts. There is also a heavy fine attached to the case which is imposed on the two people who have committed adultery and arrested for three months in the prison. In the research opinion, it is very important to make awareness to the citizens when resolving adultery cases in Wau

Municipality. The court needs to be aware of the cases and laws must be implemented accordingly. The key informant made it very clear that the law of evidence 2006 is used to prove or disapproved the existence or non-existence of alleged facts but in a customary law court, they used customary evidence such oath to prove or disapproved the facts in issues.

According to Table 4.7, respondents agreed that fair trial is exercised by courts in Wau Municipality using evidence with (Mean= 1.82) suggested that respondents agreed on fair trial is exercised by courts in Wau Municipality using evidence. Community elder in focus group discussion outline that law of evidence 2006 to enhance fair trial and to prove the existences or non-existence of alleged facts based on legal evidence but in a customary law court, they used evidence that is traditional in nature such as oath to prove or disapproved the facts in issues. Any provisions of material evidence being traditional or medical evidence are considered sufficient when brought to courts during the hearing.

According to Rachel & Pendle, (2017) customary court used local practice evidence such as oath-taking, tasting spears, and hoes. Rachel and Pendle argument on used of local evidences such as oath-taking is confirmed by statistic. The statistic result has disputed (Bonolo & Dinokopila, 2012) claimed and argument that customary and statutory courts do accept the local beliefs in proving adultery cases such as local oath taking, tasting spear, ashes, hoe, and other materials. In statutory courts, the judges used clear evidence according to the law of evidence 2006 to prove or disapproved the existence or non-existence of alleged facts. This is in line with the evidence law evolved recently (Paridhi, 2018).

Rachel and Pendle (2017) argument is in line with focus group participants who said fair trial and to prove the existences or non-existence of alleged facts based on legal evidence but in customary law court they used evidence that is traditional. Customary and statutory courts within African countries, evidence encompass local oath taking and this include tasting spiritual ashes or smearing, spear, hoe and other ritual performance, witness, pregnancy, accepting liability by the two accused (Deng 2012). The nature of the evidence is always legal, mainly sufficient. There should be more development in customary court laws. The evidence that is used in our courts includes witnesses and pregnancy. The laws required that there should be three witnesses for adultery cases to be resolved successfully.

Witnesses who have seen it practical that the intercourse took place and that they have found the two accused naked. Once the evidence is provided and the case is found to be real, the victims are convicted and asked to pay for compensation in the court. In the focus group discussion, the participants said the evidence that is used in our courts includes witness, pregnancy, and admission of liability by the litigants. The Sharia laws required that there should be three witnesses for adultery cases to be resolved successfully. In researcher opinion the Sharia law that requests three witnesses who has seen the adultery being committed need to be removed as no one is found naked and accepted to be driven to the police station.

The results of the study in Figure 4.1 indicated that the questions on comments were answered by all 150 respondents. Among the responses, 84(56.0%) of the respondents commented that the nature of evidence used by customary and statutory courts in resolving adultery cases in Wau Municipality was good. For example, most of the evidence is either legal of traditional that help in proofing adultery case. The

finding suggested that the nature of evidence allows the customary court to imposed punishment such as payment of 7 cows and a fine of 15000 SSP. This statistic is being supported by the following interview result by the youth leader who said that the nature of the evidence is always legal, mainly sufficient in the sense that it gives proof of adultery.

Soutik (2018) said in his work that evidence is effective in providing the solution to the cases under disputes. This means that majority of the people want nature evidence should be legal. The respondent suggested the nature of the evidence is good. This means the nature of the evidence is considered good by the majority of the people. Reference made to figure 4.1, 56(37.0%) of the respondents commented on the evidence used as fair; it is fair in the sense that punishment of adultery offenders is based on each tribe's customs and traditions or customary laws of each tribe. In statutory courts, punishment involved a heavy fine and 6 months in prison and is based on customary laws of each tribe.

Figure 4.1, shows that 10(7.0%) of the respondents commented on the nature of evidence used in the customary and statutory courts in Wau Municipality was bad. The finding indicated some respondents have different opinions about the nature of evidence used. For example, taking a local oath or tasting the spears was not considered by respondents as best for evidence. In an interview, Community leaders, he confessed that a woman to admit the adultery could be used as evidence during resolution of adultery cases by customary courts and this made those general comments of the people on the nature evidence is good. From these findings, it can be concluded that the nature of evidence used by customary and statutory courts in

resolving adultery in the Wau Municipality was not that bad as the majority of the respondents supported it.

5.2.2 Citizens satisfaction with customary and statutory court's Decisions when resolving adultery cases in Wau Municipality

The second research objective was to assess citizens' satisfaction with customary and statutory court's decision in resolving adultery cases in Wau municipality. The findings with (Mean=2.32) on Table 4.8 agreed that there is compassion in the way adultery case decisions are made in Wau Municipality. Key informants in the focus group discussion agreed with the statement. There are always compassion that allows relatives, bailed you out, and prepared to pay compensation argued the focus group member. Sometimes the plaintiff leaves the accused without paying adultery compensation as this indicated that he or she is forgiven. In the researcher opinion, the compensation is made by a man who has committed adultery with a married woman and sometimes he is assisted by the relatives of the accused. This shows that citizenry satisfactions with statutory and customary court decisions involved compassion. This result concurred with SQEI (2018), citizen satisfaction on court decisions is one of the key elements of ensuring quality court processes. Deng (2013) believes that the importance of customary and statutory courts should recognize all adulterers who are both male and female.

In addition, the respondents strongly agreed that subjective decisions are made by courts in Wau Municipality. The findings with (Mean=2.31) suggested subjective decisions are made by courts in Wau Municipality. Key informants from Community leaders in focus group discussion agreed with the statement' saying that in case a woman failed to admit adultery or accept the liability, community leaders' intervened

and subjective decisions are made to persuade women to avoid long process of hearing. Deng (2013) believes that legal evidence is important in the courts, making sure that relatives of the woman who has committed adultery are present in the court to ensure that their opinion is heard during the hearing of adultery cases. The evidence provided during the adultery case resolution does not compromise the two accused in the courts. Wendy (2011) works on evidence confirmed that evidence is very important in the resolution of adultery cases.

Table 4.8 shows the respondents disagreed that there are low levels of democracy among courts in Wau Municipality. The finding with (Mean=2.92) disagreed that there are low levels of democracy among courts in Wau Municipality. According to Atkins & Jacobson, (2001), people are looked for where to resolve their conflicts. This statement is in line with structural functionalism theory which focuses on institutions that resolved adultery cases and making society peaceful. Deciding a case by chief or judge requires knowledge of adultery. In the researcher opinion the level of democracy in courts is good as there is one of the principles of democracy being considered, “justice system” an institution that enhances transparency and accountability in resolving adultery cases.

In the researcher's own understanding; the satisfaction of each court decision varies from person to person, and the views put forwards could explain that each court is capable in one way or another in resolving adultery cases. Those who committed adultery normally were convinced and satisfied with a court decision in Wau municipality. The remedies for example, where adultery has been proven beyond a reasonable doubt, one is fined, pay seven cows or prison as per the customary court (Customary Law in South Sudan, 2013). The citizens, satisfaction is based on

individuals with court decision when comes to the resolution of adultery cases in Wau Municipality. The citizens' satisfaction on the resolution of the adultery cases differs from person to person.

According (Mean=1.59) in the Table 4.8 indicated that respondents strongly agreed that fair trial is exercised by courts in Wau Municipality. The findings were being supported by key informant's interview which says, an adultery case does not go through an unfair trial in Wau, witnesses are summoned immediately, the deadline for hearing is scheduled and the local oath is administered as evidence to prove adultery case in customary. In statutory courts, a medical checkup could be administered as part of the evidence for a woman who committed adultery. The statistic revealed what Ibreck and Pendle (2017) have written in her research that their decisions were taken seriously and usually accepted by all the parties.

The power of customary authority was apparent in the payment of court fees that ranged from 100 South Sudanese Pounds (SSP) upwards and in the acceptance of decisions that included fines and punishments. The key informant agreed that adultery case does not go through an unfair trial in Wau, witnesses are summoned immediately, the deadline for hearing is scheduled and the local oath is administered as evidence to prove adultery case in customary courts. In the researcher own views, a fair trial is exercised by courts in Wau which are seen through the summoning of witness and collecting evidences for making decisions.

The respondents strongly agreed with statement that evidence is handled with utmost faith by courts in Wau Municipality, the findings with (Mean=1.75) confirmed that evidence is handled with utmost faith by courts in Wau Municipality. In an interview, with Women leader had this to say in support to statement; evidences are

handling with utmost faith, the chiefs are able to listen to the need of the litigants. Request for witness is granted by the chief. Accordingly, Wendy (2011) witnesses are summoned and with the provision of material which includes the underpants, medical checkup for a female who has committed adultery, and a test is conducted to determine whether the female is pregnant and this provide the satisfaction of citizen.

There are remedies and punishments for an accused. The researcher argued that the satisfaction of citizen is an integral part of the resolution of adultery cases and is in line with (Deng, 2013) statement who said customary and statutory recognized right of adulterers both male and female when resolving adultery cases. The statistic is a clear indication that citizens are satisfied with the decision of both customary and statutory courts in Wau Municipality. Focus group discussion revealed that citizens are satisfied in the sense that once the ruling is made the litigants do not appeal against the decision.

The results of the study in Figure 4.2 on citizens, satisfactions in court decisions show that 69(46.0%) respondents believed that customary and statutory court decisions were good. 65(43.0%) of respondents believed that customary and statutory courts decisions for resolving adultery cases in Wau Municipality as fair, 16 (11.0%) of them believed that customary and statutory courts decisions for resolving adultery cases in Wau Municipality were bad. Key informant argued that it is fair because the punishment for adultery is the same across the Dinka community. The key informant added that fair trial is exercised by customary courts in Wau Municipality; there are no more appeals to the high court.

The decision involved reconciliation between a husband and a wife who has committed adultery. The compensation is paid by a man who has committed adultery

with married. Figure 4.2 shows that 69(46.0%) of respondents believed that customary and statutory court decisions for resolving adultery cases in Wau Municipality were good. From the results presented, it can be concluded that citizenry satisfactions with statutory and customary court decisions in resolving adultery cases in Wau Municipality are strong enough to resolve adultery cases permanently in the region. The result is contrary with explanation during an interview with key informants who echoed that most of the judges at statutory court are professional than customary courts and this was one of the reasons citizens preferred their cases to be tried in statutory courts than customary courts. The statutory used legal evidence more than customary courts. It is simple and clear compare to customary courts.

Figure 4.2, shows that 65(43.0%) of respondents believed that customary and statutory court decisions for resolving adultery cases in Wau Municipality as fair. On another hand, the discussion is in line with the below statement from the focus group discussion. Focus group participant said in statutory courts, citizens are satisfied because the person who has committed adultery with a married wife is convicted and sentence as well as paying the compensation too. A statutory court does not consider other evidence such as kissing and hugging when making decisions on an adultery case whereas the customary used that kissing as evidence of committing adultery.

The researcher personally noted that satisfaction varies from person to person on case resolve by the customary or statutory courts. The statistic is in conformity with Justice Africa (2016). However, there was also considerable evidence of routine justice-seeking and voluntary compliance with the courts in which citizens are satisfied. The uses of this evidence and the proceeding apply in the process are either litigants' satisfaction as (Wendy, 2011) agreed. An explanation by focus group

discussion participants agreed that it is less expensive compare to statutory courts. Most people prefer customary courts as it is cheaper and convenient. 16 (11.0%) of them believed that customary and statutory court decisions for resolving adultery cases in Wau Municipality were bad.

5.3.3 Challenges Customary and Statutory Courts encountered in resolving adultery Cases in Wau Municipality

The third research objective was to examine the challenges encountered by customary and statutory courts in resolving adultery cases in Wau Municipality. The findings with Means 4.9 on Table 4.9 indicated that the respondents tended to disagree that there is an inadequate justice system in use by Wau Municipality courts. The finding is being supported (Ibreck and Pendle 2017) who said the bill of right is applied and an adequate justice system is in place by customary courts. Punishments as a result of adultery are tools to provide justice to the people and ensure fairness and peace in society. Key informants for focus group discussion, said inadequate justice systems are not seen in Wau court. The court operated while giving rights of each individual on adultery cases. Dudley, (2014) argument is in line with chiefs' statement strong perception that the courts are the principal means of avoiding violent outcomes of disputes.

The study findings on table 4.9 suggested that the court used both unwritten and written law with (Mean=2.12). Key informants in an interview said both unwritten laws and customs that are undocumented are applied in customary courts, chiefly rely on verbal information. The statutory court used panel codes and the laws of South Sudan. Mangan, (2015) who said that statutory courts use their own unwritten procedures neither based on the Constitution or on the concept of a fair trial. In a focus group discussion youth, the key informant said no written laws or

customs that are documented lacks legal evidence; it relies on verbal information, no competent Judges or chiefs allowed in the courts, lack of funds to support the courts, information bias. (Museke, 2015) said the traditional authorities regulate their local affairs by enforcing the unwritten rules and practices that are accepted to drive.

The respondents strongly agreed that adultery investigation is a complex process, the finding with mean (Means=1.71) concluded adultery investigation is a complex process. These findings indicated that adultery investigation is a complex process. Female woman leader in Focus group discussion said; in statutory courts, the investigation of the adultery case is very complex. At customary court, the investigation of adultery cases is not very complex. If investigation seems complex at customary courts, local oath-taking could make the process simple. In the researcher's opinion, it is very complex in the sense that the process involved the denial of adultery and change of statement by the litigants. According to Deng (2012) customary and statutory courts Sometimes denial the accused to admit adultery case meaning the process becomes a liability. The two accused could deny the liability and if there is not enough evidence presented, they will be set free leaving the plaintiff in doubt. The key informants said that delays of the witness to appear in the courts were cited as challenges.

The findings with (Means =2.92) suggested that there are no clear written to aid cases under adultery. The finding indicated that the majority of the respondents have strongly agreed with the statement. In an interview, a key informant said there are no panel codes for customary courts chief in Wau municipality to be used as guidelines when resolving adultery cases. Only statutory panel codes but not updated as carries Sudanese laws such as Sharia law. The articles are not clear written in

statutory court and they are not known by the people (Peace Building Initiative, 2013). Customary Law courts in South Sudan fault evidence such as used of local material as means to proof the cases of adultery rights is good in the eye of litigants. While many chiefs' courts claim to apply an established set of laws such as the Wanhalel laws amongst the Dinka or the Fangak laws amongst the Nuer there is variation in their application and judgments also depend upon situational interpretations.

The findings with (Mean= 2.00) show that the respondents disagreed that adultery cases were not subjected to inequality in Wau Municipality. Key informants, in an interview agreed that nobody is compromised when found to be involved in adultery acts by courts in Wau Municipality. Inequality is not there are both courts are active in resolving adultery cases. These findings concurred with that of Mangan (2015) who believe that customary and statutory courts entertain cases involving immaterial evidence with no clear way of verifying it. Punishments which can be passed based on such superficial grounds without the accused person's knowledge can provide the opportunity to rebut the evidence, which grossly affects the litigant or the accuser's right to appeal (Ibreck&Pendle, 2017). The decisions that are inconsistent with basic principles of human rights are also witnessed and this makes the courts look like they are incompetent (Wojkowska (2006). Threatening of judges by the accused or their relatives is seen as problems that face the statutory courts. It interferes with local norms; it takes a long time to seek evidence, political interference. Delay in salary payment, the huge caseload in the customary courts

The findings of this section as presented in figure 4.3 show additional challenges the customary and statutory courts encountered in resolving adultery cases

in Wau Municipality. These challenges included a lack of effective policies, protection, and budgets that were cited as the challenges customary and statutory courts encountered in resolving adultery cases. Figure 4.3 shows that 46(31%) of respondents have stated that lack of budgets is one of the challenges that customary and statutory courts encountered in Wau Municipality. The customary courts have not been allocated budgets for their operation. The fines and court fees that they generated are collected leaving courts without budgets to buy court materials and stationeries. The chiefs are not paid nor have a salary.

The statutory court's judges have salary compare to the chiefs that operated customary courts with pays. Key informants agreed that budgets are issues in the courts and this will not make courts operate effectively. The money we collect is very small. This statistic revealed that challenges customary and statutory courts encountered in resolving adultery cases in Wau is the court operational cost. Many courts operated without money hence does not support court functioning. Deng (2012) customary and statutory courts sometimes do not have enough budgets to sustain their operation. In my own opinion, the customary courts need to be provided with budgets that support their operation under the trees. 42(28%) mentioned the lack of effective policies as challenges that are encountered by courts. It is noted that there is no guideline for the chief to resolved adultery cases.

The customary court used only customs and customary laws of the communities in which they are operating. Woman leader in an interview had this to say; “the customary courts do not have guidelines in which they operate. They operated on a traditional basis only” This statistic is in line with Mangan, (2015) who said that statutory courts use their own unwritten procedures neither based on the

Constitution or on the concept of a fair trial. In a focus group discussion youth, no written laws or customary laws that are documented lack legal evidence, it relies on verbal information, and no competent chiefs allowed in the courts.

According to Museke, (2015) who said the traditional authorities regulate their local affairs by enforcing the unwritten rules and practices that are accepted to drive. finally, these challenges may hinder complainant to open case in statutory courts, it takes time to rule the cases in statutory courts. (Ibreck and Pendle 2017) said Chiefs' courts and customary law rely on the fiction of continuity with normative traditions that predate colonialism, but have evolved from a complex intermingling of local, national, and international influences, having been refashioned to satisfy political and social pressures, shifting ethical foundations and the demands of daily life.

Figure 4.3, suggested that 32(21%) highlighted the lack of capacity buildings for both chiefs and judges for customary and statutory courts. The respondents noted the lack of skills and knowledge required to resolved adultery cases. The respondent noted that various tribes are residing in Wau and that they need basic training on each community customary law and how the chief resolves cases. Most importantly, chiefs' courts have been considerable experience of violence prevention (Dudley, 2014). I do not agree with this statement by Dudley as some of the chiefs in the Wau Municipality are new and do not have enough knowledge of resolving adultery cases. 30(20%) of the respondents show that lack of protection for chiefs and judges are encountered during the resolution of adultery cases in Wau.

While courts are operating under the trees, many of the customary court chiefs are not protected, and when the litigants resorted to conflicts in the courts, chiefly become the victims. The statutory courts have one police that could not provide

completed protection to the judges in Wau Municipality. Undergoing internal wars for decades which greatly impacted the customary justice system (Dudley, 2014), the effects of these wars on the customary and statutory justice system need to be addressed in order to try and be able to effectively handle adultery cases (Dudley, 2014). From the results presented, it can be concluded that the challenges statutory and customary courts in resolving adultery cases in Wau Municipality range lack of effective capacity building. In my own opinion as a researcher, I agreed. This is true; most of the courts have a chief that does not have enough skills and knowledge to support a better decision on adultery cases.

5.3.4 Ways of improving effectiveness of Customary and Statutory Courts in resolving Adultery Cases in Wau Municipality

The fourth research objective was to provide ways of improving effectiveness of customary and statutory courts in resolving adultery cases in Wau Municipality. The findings with (Mean=2.45) on Table 4.10 suggested that customary and statutory courts in Wau Municipality used improved laws to resolve adultery cases. The customary court chief is established according to the law of the higher authority. The higher court takes their responsibility to oversee the work done by the chiefs. Focus group discussion participant said that awareness and training for the chiefs to building capacity is the key to make these challenges settled.

In the focus group discussions, female women leader had this to say in support of findings; “Majority of customary courts in Wau used Dinka customary laws to resolved adultery cases. The statutory court used the South Sudan Transition constitution 2008 and the panel code” Parvez Ahmed (nd) argued that there is a need to revisit and review the present provision of the Penal Code dealing with adultery

and bring the necessary changes. The customary law court needs to be established according to local government acts. The statistic supports (Aldashey & Wahhai, 2012) who argued that adultery sometimes brings emotions to families which in turn makes concerned members hardly think of what the law says of the act.

The same Table 4.10 with (Mean=2.39), suggested that respondents disagreed that the courts in Wau are not mobile. Both customary and statutory courts are fixed in their location of operation. Encourage community awareness on how to handle adultery cases and building of criminal centers, training police to enhance capacity to properly investigate adultery cases in Wau Municipality, and encourage mobile court. Female Youth leader had this to days during an interview, “Having mobile courts assist in resolving adultery cases at the community level” The key informant statement is supported by (Aldashey & Wahhai, 2012) who argued that adultery required immediate courts that available. In my own opinion, there is a need to have a mobile court to support the resolution of adultery cases in rural areas.

The findings with (Mean=1.73) indicated that respondents strongly agreed that citizenry at Wau Municipality is aware of the existence of courts of justice, suggested agreed that citizens are aware of the existence of the court of justice in the Wau Municipality. The Mean is according to Leif (2013), customary and statutory courts play a significant role in the lives of people as the norms and practices pervade people’s relationships and dealings with one another. In the focus group discussion, the key informants said “I know where each court is in Wau Municipality, in the community or inside the Town, it is very important to know our courts so that when you have an issue you reported” The key informant agreed that all courts are scattered

in Wau Municipality. This argument is in conformity with Structural functionalism theory which required society to have an independent institution.

The court should ensure that the plaintiff is compensated if the accused is found guilty. The finding with (Mean=1.54) indicated that respondent strongly agreed that Courts of justice at Wau Municipality are accessible by citizen. Key formant in focus group discussion said Courts of justice are everywhere, they are accessible everywhere, you can find them in Wau North and South. The victim person is punished according to the law of South Sudan. Lack of awareness on the resolution of adultery cases in Wau municipality was cited as one of the reasons for poor judgment. Penalty may incorporate loss of money, property and children's custody. This calls for strategies of resolving such cases (Scott & Nick, 2014). This report general indicated that there the respondents have strong and strongly agreed that the resolution of adultery has regular compensation as well as reduce memories and emotional volatility.

The findings with (Mean=2.02) show that respondents strongly agreed that Processes within the courts are automated. In the researcher's opinion, it is disputed that the finding and that may not be right as the researcher is aware that the process is done manually at various courts in Wau Municipality. The finding shows that the system needs to be automated to enable documentation of all adultery cases in a retrieval manner. The respondents said provision of enough budgets to enable the court function very well; we request to have police to provide protection. There need to strengthen the police and rule of laws. The respondents were of the view that capacity building will enhance the way resolving adultery cases is done in Wau Municipality. In my opinion, the chief needs to be trained and build capacity.

The focus group discussion highlighted that the Chief Should be trained on legal matters. Staff should be free from nepotism, should be independents. Allowances for the chiefs are honored. From the results presented, it can be concluded that policy enhancement, provision of budgets, provision of education as well as building capacity are the best ways of improving the effectiveness of customary and statutory courts in Wau Municipality, South Sudan. The finding is in line with youth focus group discussion that reveals the fact that policy and accountability are need for better performance of the statutory and customary courts. Provision of the budget to enable the court to function very well, we request to have police provide protection.

5.3 Summary of Main Findings

This section presents a summary of the main study findings. The summary is presented in line with the objectives of the study.

5.3.1 Nature of Evidence Used by Customary and Statutory Courts in resolving adultery cases

This first objective of the study was to determine the nature of evidence used by the customary and statutory courts in resolving adultery cases. A Likert scale questionnaire shows their majority of the respondents agreed on the probative value on specific items of evidence (M=1.82). This means that citizens in Wau are aware of the nature of evidence used by customary and statutory courts in the Wau Municipality. The respondents agreed that the evidence with legal relevance is always in use by courts in Wau Municipality with (M=1.69). The customary and statutory courts in Wau used legal relevance always when trying adultery cases.

The respondents agreed that the use of sufficient evidence achieved in the Wau Municipality (M=1.81). In very trials related to adultery, enough exhibits have

required the trial of adultery cases. The respondents agreed that the evidence used by courts in Wau Municipality is mainly admissible (M=1.68). This indicated what is used by the court as evidence such as eye witness was accepted by the litigants. The respondents agreed that a fair trial is exercised by courts in Wau Municipality using evidence with (M=1.82). The litigants enjoy a fair trial of adultery cases by allowing them to bring their witnesses and everything needs for trial.

Participants of focus group discussion supported the statement that the nature of the evidence is always legal, mainly sufficient in the sense that it gives proof of adultery. The group's participants continue to state that evidence used by statutory courts is both admissible and none admissible. They are according to the requirement of the law of evidence. The customary courts used local practice such as oath-taking, tasting spears, and hoes. A community elder in a focus group discussion had mentioned clearly that law of evidence 2006 to proof or disapproved the existences or non-existence of alleged facts based on legal evidence is being applied in statutory courts whereas in customary law court they used evidence that is traditional in nature such as oath to prove or disapproved the facts in issue

The key informants explain that the evidence is provided and the case is found to be real, the victims are convicted and asked to pay for compensation in the court. Statutory could not rule the case without having two or three witnesses despite the admission of liability by the accused. The participants agreed that pregnancy could also be used during the trial of adultery cases by both statutory and customary courts and in this situation, statutory will still required eye witness as both the accused have accepted the liability in the process of investigation.

5.3.2 Citizens satisfaction with customary and statutory court's decisions when resolving adultery cases

The second objective of the study was to assess the extent of citizenry satisfaction with customary and statutory courts in resolving adultery cases. A Likert scale questionnaire shows that respondents agreed there is compassion in the way adultery case decisions are made in Wau Municipality with (M=2.32), This means sometimes the chief allows litigants to resolve their adultery cases at home when request at the discretion of elders. The respondents agreed that those subjective decisions are made by courts in Wau Municipality with (M=2.31), it was noted that chiefs sometimes make a subjective decision during the adultery cases resolution and the citizen are aware of this subjective decision.

The respondents disagreed that there is no low level of democracy among courts in Wau Municipality, (M=2.92), the finding suggested that there is democracy among the court in Wau Municipality as the respondent denied the low level of democracy among the courts in Wau. The respondents agreed that there is fair trial is exercised by courts in Wau Municipality with (M=1.75). This means that every citizen gets their rights in the court in a fair manner. The evidence is handled with utmost faith by courts in Wau Municipality with (M=1.75). That evidence such as underpants that required utmost faith is kept well for exhibits in the court. The respondents believed that customary and statutory court decisions were good and fair in resolving adultery cases and the satisfaction of the level of citizen is achieved.

The participants of FGDS agreed with the statement saying that if found guilty in the courts as a person who committed adultery, there is always compassion that allows, and relatives bailed you out and prepared to pay compensation.

Sometimes the plaintiff leaves the accused without paying adultery compensation due to disappointment and desperation seen in the case. In case a woman failed to admitted adultery or accept the liability, community leader's intervened and subjective decisions are made to persuade women to avoid the long process of hearing.

The key informants agreed that an adultery case does not go through an unfair trial in Wau Municipality. Witnesses are summoned immediately, the deadline for hearing is scheduled and the local oath is administered as evidence to prove adultery case in customary. In statutory courts, a medical checkup could be administered as part of the evidence for a woman who committed adultery. It is fair because the punishment for adultery is the same across the Dinka community. The FGDs participants agreed that a fair trial is exercised by customary courts in Wau Municipality; there are no more appeals to the high court.

5.3.3 Challenges Customary and Statutory Courts Encountered in Resolving Adultery Cases

The third objective of the study was to examine the challenges customary and statutory court encountered in resolving adultery cases. A Likert scale questionnaire shows respondents strongly disagreed that there is an inadequate justice system in use by Wau Municipality courts with (M=2.02), the respondents disagreed on the inequality of the justice system in Wau. This suggested that there is no injustice in the justice system in Wau when comes to the resolution of adultery cases.

The respondents strongly disagreed that Courts use unwritten laws to resolve adultery cases Wau Municipality (M=2.12), This finding tells us that there are basic write laws that support the hearing of adultery cases, the customary court has customary laws and the statutory court has a panel court that is used in the courts.

Strongly agreed that Adultery investigation is a complex process with (M=1.71), to investigated adultery is a complex process with a change of statement from times to times by the litigants. strongly agreed that there are no clear written to aid cases under adultery in Wau Municipality courts with (M=2.92), the respondent agreed that despite basic laws available there are no clear written to aid cases under adultery. The customary court needs guidelines that assist them in resolving adultery cases professionally. The respondents disagreed that Adultery cases are subjected to inequality (M=2.00). Customary laws and panel codes are very clear on this and every accused is punished according to the laws. This means that no exception for anybody that has committed adultery.

Focus group discussion participants show that an inadequate justice system is not seen in Wau court. The court operated while giving rights to each individual on adultery cases. The participants said that in statutory courts, the investigation of the adultery case is very complex. At customary court, the investigation of adultery cases is not very complex. The FGDs said if investigation seems complex at customary courts, local oath-taking could make the process simple and this deters many litigants who seem to be denying the allegation.

Key informants in this study agreed that unwritten laws or customary laws that are undocumented are applied in customary courts, chiefly rely on verbal information. The statutory court used panel codes and the laws of South Sudan. The study noted that key informants said there are no panel codes for customary courts chief in Wau Municipality to be used as guidelines when resolving adultery cases.

Only statutory panel codes but not updated as carries Sudanese laws such as Sharia laws. Nobody is compromised when found to be involved in adultery acts by

courts in Wau Municipality. Inequality is not there as both courts are active in resolving the adultery cases. The key informants said budgets are an issue in the courts nowadays. The court will not operate effectively if no money is providing to them to buy operation materials.

5.3.4 Ways of Improving Effectiveness of Customary and Statutory Courts in Resolving Adultery Cases

The fourth objective of the study was to ways of improving the effectiveness of customary and statutory courts in resolving adultery cases. A Likert scale questionnaire shows respondents have disagreed that Courts in Wau Municipality use improved laws to resolve adultery cases with (M=2.45). There are no improved laws used by the courts other than customary laws and panel codes. The respondents strongly disagreed that Courts in Wau Municipality are mobile with (M=2.39), there is no mobile court in Wau Municipality.

The respondent strongly agreed that Citizenry at Wau Municipality is aware of the existence of courts of justice (M=1.73). The citizens are aware of the existence of a court of justice. The respondents strongly agreed that Courts of justice at Wau Municipality are accessible with (M=1.54). The citizen's access court of justice in Wau and they know where these courts are. The respondents strongly agreed that Processes within the courts are automated (M=2.02). In my opinion, the process within the court is not automated as the states have argued.

FGD participants said the Majority of customary courts in Wau used Dinka customary laws to resolved adultery cases. The statutory court used the South Sudan Transition constitution 2008 and the panel code. Citizens should be aware of where each court is located. It is very important to know our courts so that when you have an

issue you reported, argued FGDs participants. Courts of justice are everywhere, they are accessible everywhere, you can find them in Wau North and South.

Key informants who participated in these objectives said having mobile courts assist in resolving adultery cases at the community level. Citizens at Wau Municipality are aware of the existence of courts of justice. Key informants highlighted that Courts of justice at Wau Municipality are accessible and with mixed reaction some said processes within the courts are automated. As a researcher, I disputed this statement of automation. It is not realistic as there are no automated systems in Wau Municipality.

5.4 Conclusions

This section presents the conclusions of the study findings which are based on the research objectives.

5.4.1 Nature of Evidence Used by Customary and Statutory Courts in resolving adultery cases

The study concluded that the resolution of adultery cases in the Wau Municipality was to be addressed by both customary and statutory courts through a unified panel code with the provision of the law of evidence. The nature of evidence used by customary and statutory courts in resolving adultery is both legal and customarily in nature. Both legal pieces of evidence, such as medical checkups by the Ministry of health and local oath-taking administered by the customary chief were considered to be used in proofing adultery cases in Wau Municipality.

Both customary and statutory courts should adopt both admissible and non-admissible evidence to be used during adultery cases resolution. The use of alternative dispute resolution methods, such as mediation and collaborative law, can help to

remove the conflict of divorce resulting from adultery, even where one spouse has committed adultery to be applied.

The citizens have mentioned clearly that DNA testing equipment to prove or disapprove the allegation to be provided by the Ministry of Health in Wau. The study finds out that not all communities in Wau Municipality get the same compensation for adultery case resolution. Others get small compensation based on the customs of people. For example, Lou has compensation of three (3) cows for the commission of adultery by the accused whereas in Dinka the highly compensated adultery cases are related to Dinka in Bahr El Ghazal region where compensation of 7 cows, fine of more than 5000 SSP, and prisons of more or less than 6 Months is imposed. All adultery compensations were to be unified by the Ministry of Justice and legal affairs.

5.4.2 Citizens satisfaction with customary and statutory court decision when resolving adultery cases

Citizens are satisfied with customary and statutory court decisions when resolving adultery cases. There were fair settlements, even where one spouse is still unhappy about the reasons for committing adultery. Communities should continue developing their own culture and customs laws that addressing issues of adultery in each community hence improved citizen satisfaction. The Ministry of Justice and legal affairs should review the civil and criminal laws and the justice system to ensure that adequate prevention of injustice in the customary court during adultery cases resolution. Police are to ensure there are proper investigations and punishment of a violation of women's rights by sending the accused to appropriate courts. The law under which adultery cases are seen must be reviewed and set out a clear article in which judges could apply or else the law decriminalized the adultery to improved citizen satisfaction on adultery cases in the courts

5.4.3 Challenges Customary and Statutory Courts Encountered in Resolving Adultery Cases

Challenges encountered by customary and statutory courts have effects on the resolution of adultery cases in the Wau Municipality. These challenges must be addressed by institutions that are associated with law-making and academia. The panel codes for customary courts Chief in Wau Municipality guideline when resolving adultery cases. Chief should avoid the use of unwritten laws and undocumented guidelines in customary courts.

The statutory courts should continue to use existing panel codes and the laws of South Sudan in resolving adultery cases in the Wau Municipality. Inequalities related to adultery cases resolutions are removed by both courts which are actively in resolving adultery cases. The budgets were considered as major challenges that impaired the performance of customary and statutory courts. The court will not operate effectively if not provide with operational cost by the Ministry of Justice and legal affairs.

5.4.4 Ways of Improving Effectiveness of Customary and Statutory Courts in Resolving Adultery Cases

Although customary and statutory are seen as effective in adultery case resolution, more works need to be done to improve effectiveness in the resolution of adultery cases in the Wau Municipality. The majority of customary courts in Wau used Dinka customary laws which are only suitable to Dinka context to resolved adultery cases. The ministry of justice and legal affairs provided an improved article for resolving adultery cases by customary Courts in Wau Municipality. Citizens should be aware of the existence of courts of justice in the Wau Municipality.

Customary and statutory courts are accessible and processes within the courts are not automated as the respondents have agreed. The statutory court used the South Sudan Transition constitution 2008 and the panel code which is accepted by the people in Wau Municipality. Having mobile courts assist in resolving adultery cases at the community level. The key informant said that he knows where each court is in Wau Municipality, in the community, or inside the Town. It is very important to know our courts so that when you have an issue you reported. Courts of justice are everywhere, they are accessible everywhere, you can find them in Wau North and South.

5.5 Recommendations

Based on the findings of the study, the following recommendations were made:

5.5.1 Nature of Evidence Used by Customary and Statutory Courts in resolving adultery cases

There was a need to encourage the use of legal evidence in courts to prove adultery cases that are committed by the victims. These evidences should include DNA tests, eyewitness, and exhibits to enable resolved adultery cases by chiefs and judges if the cases involved the denial of the allegation by the litigants. The Ministry of Health should take the lead in ensuring the DNA test is conducted in a manner accepted by the laws to enable better resolution of adultery cases in the Wau Municipality. The Ministry of justice, laws, and legal affairs should introduce codified laws to be used by the customary chief to address adultery cases. It should develop clear laws that could be used to resolve adultery cases in Wau Municipality.

Evidence that is used by some communities to proofing adultery cases in the customary and statutory such as local oath-taking, hoe, and spear tasting

should be abolished as there are no bases for them to be applied. The law enforcement agency such as polices and customary chiefs should help have to work with the court to stop it. Both the customary and statutory courts should speed up the process of resolving adultery cases so that to avoid litigants resorting to attacking the accused.

There should be unified customary laws that assist in resolving adultery cases in Wau Municipality. The ministry of justice, laws, and legal affairs should introduce codified laws to be used by the customary chief to guide adultery cases resolution. All communities in Wau Municipality are encouraged to draft their own customs and policies on addressing and resolving adultery cases. The issues of recommending three witnesses as Sharia law demanded should be abolished as there are no accused that are found by the three witnesses naked by the three witnesses unless hand-tied. The judiciary of South Sudan takes the led in abolishing these three witnesses' evidence-based issues.

5.5.2 Citizens satisfaction with customary and statutory court's decisions when resolving adultery cases

All courts should ensure Citizen's satisfaction on court decision through a fair trial of adultery cases for all tribes in Wau Municipality is achieved. Strategies and guidelines that assist in ensuring that citizens are satisfied with decisions to be developed by the Ministry of Justice and legal affairs as well as customary court themselves.

The female accused who involved in the adultery commission is to be punished like other male litigants. It is revealed in this study that some women are the ones who look for men to commits adultery outside the marriage. This is a result of poverty that led to such an act in the Municipality, therefore punishing women by customary courts like male litigants reduced the tendency of women looking men to commit adultery. Since punishment and compensation are 7 cows, other women make

it a business. They go from place to place to avoid the same area where they have once committed adultery.

As the litigants do not get satisfied with court decisions regarding adultery it is recommended that those who denied that they have not committed adultery to be sent for medical checkup or DNA test by the Ministry of Health as bases to prove the adultery case right. This would increase the chance of citizen satisfaction on the decision of the courts.

5.5.3 Challenges Customary and Statutory Courts Encountered in Resolving Adultery Cases

Customary chiefs and in collaboration with statutory courts Judges to develop Strategies that curbed the challenges that hampered the effectiveness of customary and statutory courts in resolving adultery cases in Wau Municipality and present it to the Ministry of Justice and legal affairs.

Ministry of Justice and legal affairs improve the good fare of customary court chiefs by allocating a budget that covered their salary and operation cost. Since the Customary court's chiefs have no effective police guidelines to use in the court, it is recommended that customary laws be simplified and guiding policies drawn from it. This would be used by customary chiefs when resolving adultery cases.

The Ministry of Justice and legal affairs should provide unified panel codes that would guide both customary and statutory courts in resolving adultery cases in Wau Municipality. The Ministry is to liaise with the police department to provide enough protection to both customary and statutory courts while resolving adultery cases.

5.5.4 Ways of Improving Effectiveness of Customary and Statutory Courts in Resolving Adultery Cases

In collaboration both customary chiefs, judges, Ministry of health and police should work hand in hand in resolving adultery cases to improve the effectiveness of courts in Wau Municipality by ensuring that all obstacles that hampered the effectiveness of customary and statutory is removed.

Local chiefs and judges should ensure there are mobile customary courts to resolve adultery cases that happened in the community and do not have the capacity to reach Wau Municipality courts. Introduction and provision of an automated system that recorded adultery case at courts, the Ministry of Justice and legal affairs work hand in hand with both customary and statutory courts to automate the system. The Ministry should build the capacity of the clerks to the operated automated machines in the courtyard.

The Ministry of justice and legal affairs is to provide written policies that could guide the work of chiefs in the various locations, for example, panel code in simplified ways for the chief and could also be translated into local languages.

The Universities and academic institutes enhance awareness on human rights and how adultery should not bring conflicts to the communities. Educations at the house to house to ensure people understand the disadvantage of committing adultery

The communities and customary court chief should ensure that people's customs and traditions are respects and that compensation is in line with the customs of each community. Churches to enhance the provision of counseling and trauma healing to the victims of adultery as well as children which are deserted due to effects of adultery

Schools and other learning institutions should enlighten the community on the dangers of committing adultery. The future researchers should take a study on abolishing and decriminalized adultery to enhance peaceful co-existence among the communities as adultery is resulting in conflicts among the communities.

5.6 Areas of Further Research

Further research should be carried out on the application of both local and medical evidence in the resolution of adultery cases, research on abolishing adultery, and decriminalized adultery to enhance peaceful co-existence among the communities. The other issues that came up in the study are poverties and adultery and how their influence can encourage adultery in Wau Municipality.

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APPENDICES

APPENDIX-I QUESTIONNAIRES

Dears Respondents,

Ref: Consent form for Questionnaires Respondents

“Effectiveness of Customary and Statutory Courts in Resolving Adultery Cases in Wau Municipality”

My names are Ayuel Ayuel Madut, a student at Africa Nazarene University. I am currently conducting a study on the **“Effectiveness of Customary and Statutory Courts in Resolving Adultery Cases in Wau Municipality”** Your participation will be of great importance to me as a student and Wau Municipality, South Sudan. I therefore take this opportunity to request your consent to give your input through filling the questionnaire. This questionnaire seeks your views on the issue raised above. Do not provide your identity, the information you will provide will only be applied in the academic purposes.

By signing below, you are indicating your consent.

Signed.....Date.....

Thank you in advance for your cooperation,

Yours Faithfully

Ayuel Ayuel Madut

Consent to: 2 Judges, 9 Chiefs, 2 Police, 2 Prosecutor Attorney, 135 citizens (35 Community elders, 34 Women leaders, 33 traders, and 33 Youth leaders). This questionnaire aims at investigating the effectiveness of customary and statutory courts in resolving adultery cases in Wau Municipality, South Sudan. Kindly answer all the questions as truthfully as possible. All information volunteered, including respondent identity, will be confidential.

Section One: Demographic Information

Instructions: Kindly Tick the correct box

1. What is your Gender?

Male Female

2. Age bracket:

25 – 35 36 – 45 45+

3. Highest Education Level:

Illiterates Primary Secondary College University

4. Occupation

Police () Traders () Judges/chief () Unemployed ()

5. For how long have you lived in Wau Municipality?

Below 5 years 5- 10 years 11-15 years 16 years & above

Section Two: Nature of Evidence Used by Customary and Statutory Courts in Resolving Adultery Cases

In a scale of 1-5 tick the following statements appropriately; where 1 = Strongly Agree; 2 = Agree; 3 Neutral, 4 = Disagree; And 5 = Strongly Disagree

| Nature of Evidence Used by Customary and Statutory Courts in Resolving Adultery Cases | | 1 | 2 | 3 | 4 | 5 |
|--|--|-----------|----------|----------|----------|-----------|
| | | SA | A | U | D | SD |
| 6 | There is probative value on specific items of evidence | | | | | |
| 7 | Evidence with legal relevance is always in use by courts in Wau Municipality | | | | | |
| 8 | Use of sufficient evidences achieved in Wau Municipality | | | | | |
| 9 | The evidence used by courts in Wau Municipality are mainly admissible | | | | | |
| 10 | Evidence in use is mainly sufficient | | | | | |

11 What is your general comment on nature of evidence used by customary and statutory courts in resolving adultery cases in Wau Municipality, South Sudan?.....

Section Three: Citizens' Satisfaction with Customary and Statutory Court's Decisions when Resolving Adultery Cases

In a scale of 1-5 tick the following statements appropriately; where 1 = Strongly Agree; 2 = Agree; 3 Neutral, 4 = Disagree; And 5 = Strongly Disagree

| Extent of citizens' satisfaction with customary and statutory court decisions | | 1 | 2 | 3 | 4 | 5 |
|--|---|-----------|----------|----------|----------|-----------|
| | | SA | A | U | D | SD |
| 12 | There is compassion in way adultery case decisions are made in Wau Municipality | | | | | |
| 13 | Subjective decisions are made by courts in Wau Municipality | | | | | |
| 14 | There are low levels of democracy among courts in Wau Municipality | | | | | |
| 15 | Fair trial is exercised by courts in Wau Municipality | | | | | |

| | | | | | | |
|----|---|--|--|--|--|--|
| 16 | Evidence is handled with utmost faith by courts in Wau Municipality | | | | | |
|----|---|--|--|--|--|--|

17. What is your general comment on the extent of citizenry satisfaction with customary and statutory court decisions in resolving adultery cases in Wau Municipality, South Sudan?.....

Section Four: Challenges Customary and Statutory Courts encountered in resolving Adultery Cases

In a scale of 1-5 tick the following statements appropriately; where 1 = Strongly Agree; 2 = Agree; 3 Neutral, 4 = Disagree; And 5 = Strongly Disagree

| Challenges Customary and Statutory Courts encountered in Resolving Adultery Cases | | 1 | 2 | 3 | 4 | 5 |
|--|--|-----------|----------|----------|----------|-----------|
| | | SA | A | U | D | SD |
| 18 | There is inadequate justice system in use by Wau Municipality courts | | | | | |
| 19 | Courts use unwritten laws to resolve adultery cases | | | | | |
| 20 | Adultery investigation is a complex process | | | | | |
| 21 | There are no clear written to aid cases under adultery | | | | | |
| 22 | Adultery cases are subjected to inequality | | | | | |

23 What is your general recommendation to manages these challenges customary and statutory courts encountered in resolving adultery cases in Wau Municipality, South Sudan?.....

Section Five: Ways of Improving Effectiveness of Customary and Statutory Courts in Resolving Adultery Cases

In a scale of 1-5 tick the following statements appropriately; where 1 = Strongly Agree; 2 = Agree; 3 Neutral, 4 = Disagree; And 5 = Strongly Disagree

| Ways of Improving Effectiveness of Customary and Statutory Courts in Resolving Adultery Cases | | 1 | 2 | 3 | 4 | 5 |
|--|---|-----------|----------|----------|----------|-----------|
| | | SA | A | U | D | SD |
| 24 | Courts in Wau Municipality use improved laws to resolve adultery cases. | | | | | |
| 25 | Courts in Wau Municipality are mobile | | | | | |
| 26 | Citizenry at Wau Municipality are aware of existence of courts of justice | | | | | |
| 27 | Courts of justice at Wau Municipality are accessible | | | | | |
| 28 | Processes within the courts are automated | | | | | |

29 What are your general comments on ways of improving effectiveness of customary and statutory courts in resolving adultery cases in Wau Municipality, South Sudan?

.....

APPENDIX-II FOCUS GROUP DISCUSSIONS (FGD)

Re: Consent form for Focus Group Discussion

“Effectiveness of Customary and Statutory Courts in Resolving Adultery Cases in Wau Municipality”

Researcher: Ayuel Ayuel Madut

I have been given information about research **“Effectiveness of Customary and Statutory Courts in Resolving Adultery Cases in Wau Municipality”** and discussed the research project with researcher Ayuel Ayuel Madut who is conducting this research as part of Master of Science of Governance, Peace and Security Studies of Africa Nazarene University. I understand that my participation in this research is voluntary, I am free to refuse to participate and I am free to withdraw from the research at any time. By signing below, I am indicating my consent.

Signed.....Date.....

Focus Group Discussion guide

These focus groups discussions targeted Citizens who includes 36 community elders, 36 women leaders, 24 traders and 24 youth leaders. This focus group discussion will target the citizenry above who in one way or another have participated, engaged or have involved in resolve adultery cases at customary and statutory courts in Wau Municipality.

1. Number of participants in term of Gender?

| Male | Female |
|------|--------|
| | |

2. Name of focus group:

- I. The nature of the evidences used by customary and statutory courts in resolving adultery cases in Wau Municipality
 - a) Can you explain the nature of evidence used by customary and statutory in resolving adultery cases? Specifically explain for customary and statutory court.
 - b) Do you think the evidences used by customary and statutory courts in Wau Municipality are mainly admissible?
 - c) Do citizens have confidence in the evidences use by the customary courts in resolving adultery cases? Discuss
 - d) Do citizens have confidence in the evidences use by the statutory court in resolving adultery cases? Discuss

- II. The extend of Citizens satisfied with customary and statutory court decisions in resolving adultery cases in Wau Municipality, South Sudan
 - a) In your own opinion, are citizens in Wau Municipality, satisfied with customary and statutory court decisions when resolving adultery cases?
 - b) In particular, are citizens satisfied with decision by customary court when deciding adultery cases? Explain why?
 - c) In particular, are citizens satisfied with decision by statutory court when deciding adultery cases? Explain why?

d) Do you think fair trial is exercised by courts in Wau Municipality when come to adultery?

III. The challenges customary and statutory courts encountered when resolving adultery cases in Wau Municipality, South Sudan.

a) What are the challenges that you know encountered by customary and statutory court in resolving adultery case?

b) What can be done to address those problems that face customary and statutory court in resolving adultery cases?

IV. The recommendation to improve effectiveness of customary and statutory courts

a) Do you think customary and statutory courts are effective in resolving adultery cases?

b) What do you think can be done to improve customary and statutory court effectiveness in resolving adultery cases?

c) What are your recommendations to improve customary and statutory court effectiveness in resolving adultery cases?

Thanks

APPENDIX-III KEY INFORMANT INTERVIEWS

Re: Consent form for Key Informant Interviews

“Effectiveness of Customary and Statutory Courts in Resolving Adultery Cases in Wau Municipality”

Researcher: Ayuel Ayuel Madut

I have been given information about research **“Effectiveness of Customary and Statutory Courts in Resolving Adultery Cases in Wau Municipality** “and discussed the research project with researcher Ayuel Ayuel Madut who is conducting this research as part of Master of Science of Governance, Peace and Security Studies of Africa Nazarene University. I understand that my participation in this research is voluntary, I am free to refuse to participate and I am free to withdraw from the research at any time. By signing below’ I am indicating my consent.

Signed.....Date.....

Interview Guide for key informant Interview

These respondents include 11 community Elders, 10 Women leaders, 8 Traders and 8 youth leaders. This interview is targeting the citizens above, who have opinions, participated, engaged or have involving resolving adultery cases at customary and statutory courts in Wau Municipality.

1. The Gender and Occupation?

| | |
|------|--------|
| Male | Female |
| | |

- I. The general comments on the nature of the evidences used by customary and statutory courts in resolving adultery cases in Wau Municipality
- a) Can you explain the nature of evidence used by customary and statutory in resolving adultery cases? Specifically explain for customary and statutory court.
 - b) Do you think the evidences used by customary and statutory courts in Wau Municipality are mainly admissible?
 - c) Do citizens have confidence in the evidences use by the customary courts in resolving adultery cases? Discuss
 - d) Do citizens have confidence in the evidences use by the statutory court in resolving adultery cases? Discuss
- II. Generally, are Citizens in Wau Municipality, South Sudan satisfied with customary and statutory court decisions when resolving adultery cases?
- a) In your own opinion, are citizens in Wau Municipality, satisfied with customary and statutory court decisions when resolving adultery cases?
 - b) In particular, are citizens satisfied with decision by customary court when deciding adultery cases? Explain why?
 - c) In particular, are citizens satisfied with decision by statutory court when deciding adultery cases? Explain why?
 - d) Do you think fair trial is exercised by courts in Wau Municipality when come to adultery?

- III. The challenges customary and statutory courts encountered when resolving adultery cases in Wau Municipality, South Sudan.
- a) What are the challenges that you know facing customary and statutory court in resolving adultery case?
 - b) What can be done to address those challenges that face customary and statutory court in resolving adultery cases?
- IV. The recommendation to improve effectiveness of customary and statutory courts
- a) Do you think customary and statutory courts are effective in resolving adultery cases?
 - b) What do you think can be done to improve customary and statutory court effectiveness in resolving adultery cases?
 - c) What are your recommendations to improve customary and statutory court effectiveness in resolving adultery cases?

Thank

APPENDIX-IV INTRODUCTION LETTER

AFRICA NAZARENE
UNIVERSITY

11th June 2020

RE: TO WHOM IT MAY CONCERN

Ayuel Madut (18S03DMGP001) is a bonafide student at Africa Nazarene University. He has finished his course work and has defended his thesis proposal entitled: - *"Effectiveness of Customary and Statutory Courts in Resolving Adultery Cases in Wau Municipality, South Sudan."*

Any assistance accorded to him to facilitate data collection and finish his thesis is highly welcomed.

Rodney Reed, PhD.

DVC Academic & Student Affairs.

APPENDIX-V SOUTH SUDAN NATIONAL SECURITY APPROVAL LETTER



National Security Service
Internal Security Bureau
Wau State Security Department

Ref: NSS/ISB/WSSD/2020

Date: 16th June, 2020

TO WHOM IT MAY CONCERN.

Dear Sir.

This office of National security Service, Internal Security Bureaus of Wau Security Department testifies that **Mr.Ayuel Madut**, from Africa Nazarene University, Kenya is permitted by Administration for research.

Therefore, is allowed to carry out his thesis proposal research in Wau Town in the topic " **Effectiveness of Customary and Statutory Courts in Resolving Adultery Case in Wau Municipality, South Sudan**" for a month.

With us **Mr.Ayuel** is loyal and trust citizen. Therefore, he deserved assistance to further his Studies Research since the country is looking for Social Law and development. I recommend him for any assistance you fit and appropriate for his research without hindrances.

Yours Comradeship.



Signed.....
Administration of NSS-ISB
WBGS

APPENDIX- VI WAU MUNICIPALITY LETTER OF APPROVAL TO COLLECT DATA

16th June 2020

The Executive Director,
Wau Municipality, Western Bahr El ghazal State-Wau,
South Sudan,

Dear Sir,

Re: **Request for passing the letter of data collection in Wau Municipality**

I'm a student at Africa Nazarene University, Kenya. I have finished my course work and defended my thesis proposal entitled: - *"Effectiveness of Customary and Statutory Courts in Resolving Adultery Cases in Wau Municipality, South Sudan."*

It is time to collect the data in the above location at various customary courts, statutory courts and other places, therefore am requesting your office to pass the **letter attached** to allow me to collect the data without any hesitation.

Your cooperation is highly appreciated

Thanks
Ayuel Madut

Cc: File

If any concerned is request to Co-operate with this student data collection



II A/CEOs BKs A A B

To please assist him accomplish her mission.

Shimel Lewis

17/6/2020

APPENDIX-VII MAP OF WAU MUNICIPALITY IN WESTERN BAHR EL GHAZAL STATE

