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Remaking the Law to Protect Civilians: Overlapping Jurisdictions and Contested Spaces in UN Protection of Civilian Sites

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ABSTRACT

The UN Protection of Civilians sites in South Sudan were separated from adjacent towns by barbed wire fences, mounds, watchtowers and patrolling peacekeepers. Building on and contributing to recent legal geography scholarship on jurisdictions, we explore how legal norms, institutions and rivalrous claims of jurisdiction remake these places of protection and blur spatial boundaries by creating trails that entangle the worlds inside and outside of the sites. The article also provides an unusual example of a powerful public authority – the United Nations – resisting claims that they have jurisdiction. The article is based on qualitative research in Wau and Bentiu.

KEYWORDS

Protection; South Sudan; law; legal geography; peacekeeping; jurisdiction

Introduction

This article offers an analysis of how rivalries over jurisdictions (re)make places of civilian protection. We draw on the example of the United Nations (UN) Protection of Civilian (PoC) sites in South Sudan. From its inception in 2011, the UN peacekeeping Mission in South Sudan (UNMISS) had bases in all the administrative capitals of South Sudan's ten states. These bases were demarcated by high fences and barbed wire, with access restricted. In the last weeks of 2013, the South Sudanese army split and heavy fighting engulfed Juba (South Sudan's capital), and three other state capitals (Bor, Bentiu, and Malakal). Civilians were targeted in this conflict, including by armed forces aligned with the government. UNMISS had a UN Security Council mandate to protect civilians. However, divisions between members in the UN Security Council meant that the meaning of 'protection of civilians' was ambiguous and that UNMISS was reluctant to challenge the South Sudan government's sovereignty in order to protect civilians if at all possible (Cormack and Pendle 2023). Sheltering civilians on UN bases was a way to act out this compromise between protection and sovereignty (Cormack and Pendle 2023). Tens of thousands of people fled to the UNMISS bases seeking protection,

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leading to the establishment of the PoC sites. Over the following years, their numbers swelled as both the government and armed opposition carried out predatory offensives against civilians (Cormack and Pendle 2023). By 2016, more than 240,000 people were living in these sites across South Sudan (Arensen 2016). Many PoC site residents did not leave again for several years, and the sites resembled organised, fortified cities. The physical space of the PoC sites was visibly reinforced by UN peacekeepers' armed patrolling and surveillance. The PoC sites provided South Sudanese civilians with a physically protected space and a militarised enclosure, apparently separated from the warring parties and the polity outside.

Refugee camps are often understood as spaces in which people 'can be contained, controlled and relatively forgotten' (Cooper-Knock and Long 2018, 58). Scholars have critiqued camp-like protection places as a form of spatial bio-political technology that creates the camp as a place of exception by excluding the state and law (Agamben 1998; Diken 2004; Minca 2015a; 2015b). For Agier, refugee camps are 'an edge of the world kept apart' (Agier 2008, 40). Refugee camps are often hundreds of miles from capital cities and hours of travel from the nearest towns and administrative centres. For example, South Sudanese who fled to Kakuma Refugee Camp (Kenya) are at least 14 h' drive from the capital, Nairobi, and need a Kenyan visa to make this journey. UNHCR-supported refugee camps in Sudan are similar distances from Khartoum.

The PoCs were more spatially ambiguous. The PoC sites were located in the national and state capitals, keeping endangered civilians at the spatial centres of the South Sudanese state. As Craze describes in relation to Malakal, living in the PoC sites was a method for people to assert their continued rights to be on that land (Craze 2019). Yet, Das and Poole (2004) have taught us to think critically about 'margins'. PoC site residents still experienced spatial marginalisation, often narrating that the PoC sites were forcing them to the margins of urban centres and onto previously uninhabited land. For example, in Bentiu, the land had been previously rejected for habitation because of the risk of flooding.

At the same time, camp residents contest marginalisation and discrete spatial boundaries (Ansaloni 2020; Millner 2011). Displaced people create meaning, organise politically and socially, and challenge top-down power structures (Allen, MacDonald, and Radice 2018; Gregory 2006; Lecadet 2016). Like other spaces of confinement, camps' 'structures of confinement are lived, negotiated, resisted, and/or reproduced in daily life and through social practice' (Weegels, Jefferson, and Martin 2020, 4). This includes displaced people remaking law and legal structures in these places (Ibreck and Pendle 2017; Ramadan 2013).

This article argues that contestations between and about legal jurisdictions are a key way in which the spatial dimensions of places of protection and their politics of exception are made and challenged. The PoC sites often appeared to be a legal vacuum: the South Sudan government and its judicial mechanisms were excluded from the sites, and UNMISS initially refused to transfer cases out of the sites to South Sudanese courts as the South Sudan Ministry of Justice would not confirm that the death penalty would not be used and that human rights would be protected (Stern 2015, 11). Furthermore, in the PoC sites, UNMISS did not create or recognise legal institutions (Ibreck and Pendle 2017). However, in practice, the PoC sites were experienced as places of plural, jurisdictionally overlapping legal institutions. Refugees do not wait in legal limbo, but seek creative ways to use the law (Das and Poole 2004; Holzer 2013). In the PoC sites, chiefs' courts

quickly emerged (Ibreck and Pendle 2016; Rhoads and Sutton 2020), and UNMISS made use of these courts (Hagemann 2023). At the same time, these chiefs' courts referenced legal norms and institutions that existed prior to and that continued to exist outside of the PoC sites. There were also chiefs' courts beyond the PoC sites, in areas controlled by the armed opposition and areas controlled by the government, which asserted jurisdiction over the sites by hearing appeals cases. This created temporal and spatial continuities, challenging straightforward conceptualisations of sites such as the PoCs as separated from the world beyond. These sites are not defined by a lack of law, but rather are spatially shaped by the plurality of laws and multiplicity of claims over jurisdiction. This article explores the role of law and competing jurisdictions in making places of protection.

To do this, we draw on a relatively nascent legal geography literature that encourages us to think about the role of law in shaping places, spaces, scales and territories, as well as the role of places and cultural and environmental contexts in shaping law (Bennett and Layard 2015; Delaney 2016; Robinson and Graham 2018). Neither law nor place are static, but are dynamic processes that are constitutive of relationships of power. Legal reasoning can play a role in the construction of geographies and space, inscribing meaning onto lived landscapes (Delaney 1998). Law plays a role in the framing of things, and court cases and legal struggles can bolster or undermine spatial configurations of power and identity, how people experience space, and how place is redefined (Bennett 2016; Delaney 1998). Law can be used to enclose spaces (Layard 2010), but can also make legal and political continuities that disrupt simple geographies. For example, in her book on empires, Benton shows how colonial power was variegated over space with differentiated legal patterns and practices, as well as the different legal institutions that they interacted with in different places (Benton 2010). This produced political geographies that were uneven. Legal space-making can also be 'volatile, contradictory, and fractured' (von Benda-Beckmann and von Benda-Beckmann 2014).

One way in which power, space and law intersect is through claims of jurisdiction (Dorsett and McVeigh 2014). We understand jurisdiction not as a naturalised fact but as 'the power and authority to speak in the name of law', to inaugurate law and to bind people to it (Dorsett and McVeigh 2012, 2). Sociolegal scholars have used discussions of jurisdiction not only to recognise the plurality of laws and the authority to constitute laws, but also to push against assumptions that state authority, law and jurisdiction are necessarily normatively superior to other authorities' laws and jurisdiction claims. This scholarship resonates with, and sometimes explicitly evokes, the concept of 'public authority', used in a broader social science scholarship to recognise the reality that authority is not limited to the state, and to explore how authority is formed through practice and everyday interactions (Kirk and Allen 2021). Dorsett and McVeigh explicitly use this 'public authority' concept (Dorsett and McVeigh 2014) and Huizenga uses jurisdiction to provide a sociolegal perspective to Lund's ideas of 'fragmented sovereignties' (Huizenga 2022). This focus on public authority helps us to move beyond state/non-state binaries, and to focus on how jurisdiction and its authority are actually made (Dorsett and McVeigh 2014, 584). Crucially, the encounter between rival jurisdictions allows us to see the making of law as an ongoing activity and social practice (Pahuja 2013).

This article contributes to literature on jurisdictions in two ways. Firstly, we provide an example of rivalrous jurisdiction when an institution is trying to deny (not claim) jurisdiction. Leading scholarship on jurisdiction has largely focused on rival jurisdictions that are

made visible through contestations for land and resources (Huizenga 2022; Pahuja 2013). The assumption is that institutions want and are competing for jurisdiction. However, the PoC sites provide a unique example in which one of the main public authorities, UNMISS, was eager to deny their jurisdiction. Staff in UNMISS were anxious that if they *de facto* claimed jurisdiction by constituting courts and enforcing law, they could be accused by the South Sudanese government of acting as sovereign in these sites.¹ Politics at the highest levels of the UN made it important for UNMISS to not encroach on state sovereignty whenever possible (Cormack and Pendle 2023). At the same time, chiefs' courts claimed 'the power and authority to speak in the name of law' (c.f. Dorsett and McVeigh 2012) in the PoC sites. UNMISS actively contested this legal authority and, therefore, jurisdiction, as they feared that allowing courts in the PoC sites could be understood as UNMISS constituting courts and *de facto* claiming sovereignty. Yet, there were two unnecessary assumptions in UNMISS's reasoning. One assumption was that claiming jurisdiction was equivalent to claiming sovereignty. Scholarship on jurisdiction and plural public authorities has argued that jurisdiction is not necessarily indicative of claiming sovereignty (Dorsett and McVeigh 2014; Orford 2011b). Therefore, even if UNMISS or chiefs in the PoC sites claimed jurisdiction, they need not be understood to have been claiming sovereignty. UNMISS was eager not to appear to be challenging South Sudanese government sovereignty because of UN Security Council divisions (Cormack and Pendle 2023). The second assumption was that sovereignty was claimed by speaking in the name of the law, but that suspending law was not a sovereign claim. Reversely, in Agamben's notion of the sovereign, the sovereign is the one who suspends the law. Therefore, if the law had been suspended through the denial that the chiefs' courts in the PoC site were legal institutions, the UN, however unintentionally, could be argued to have asserted sovereignty. In reality, UNMISS interactions did not end jurisdictions. Experienced UNMISS lawyers and staff knew that, in reality, the chiefs' courts would be essential for the peaceful running of the PoC sites.² Plus, in reality, UNMISS did reshape some of their legal practices.

Secondly, in this article, we follow Weegles, Jefferson and Martin's work on prisons where they notice the 'trails that emerge in the social practices of travelling back and forth between 'street' and 'prison' [or within and beyond the PoC site] – sites that are indistinct, overlapping, and inherently entangled' (Weegles, Jefferson, and Martin 2020, 3). Weegles, Jefferson and Martin highlight how prisons are best understood not as discrete sites, but as part of the wider social field (including the 'streets' or towns), and that we should pay attention to the negotiated trails that emerge through people, policies and social practices travelling in and out of the prison as these end up shaping the prison itself (Weegles, Jefferson, and Martin 2020). We apply these conceptual insights from prison research to experiences of confinement in the PoC sites. We combine this with ideas about plural jurisdictions and consider how trails of legal norms and jurisdictions travel in and out of the PoC sites. We explore how overlapping jurisdictional claims have opened up trails between sites and town, blurring clear divisions and binary ideas of the inside and outside, and shaping the PoC sites themselves.

The article focuses on the PoC sites in Bentiu and Wau. The Bentiu PoC site opened in December 2013, but grew significantly in 2015, with nearly 120,000 people living in this site at its peak. By mid 2015, it was the size of 300 football pitches (Arensen 2016, 42). Tens of thousands of people in the PoC site had previously lived in Bentiu town or in foreign

cities or camps, but the majority came from rural areas of Unity State that were often days of walking away. They fled to the PoC after heavy fighting and famine that resulted in an excess death rate of 70,300 between 2013 and 2018 (Checchi et al. 2018, 20). In contrast, the Wau PoC Adjacent Area (AA) was established during later episodes of fighting in 2016 and housed only 40,000 people at its peak. Most of these residents had previously lived in Wau town or close by. In Wau, we also include the ‘collective sites’ in our analysis. The collective sites were physical spaces in Wau in which people sought protection, but they were further away from the UNMISS base.

The article is based on various phases of research.³ In 2020, 20 interviews were conducted in Wau PoC AA and in Hai Masna, a collective site. In Bentiu in late 2020, 31 interviews were conducted with people living in the PoC site. Most of those interviewed held a position of leadership in the community, in or before living in the PoC sites. The research also builds on the first authors’ experiences of conducting fieldwork in Wau and Unity State, including in the Bentiu PoC site in 2014 and in chiefs’ courts in Unity State from 2013 to 2021.

The article begins by introducing the Bentiu and Wau PoC sites. The article then turns to describe legal institutions and norms, as well as competing or collaborative claims of jurisdiction in Wau and Bentiu. We explore how this shaped the experience of these places of protection for those living in these sites, remaking trails and connections to the world beyond the PoC sites and changing the social and political meanings of the PoC sites themselves.

Introduction to Wau and Bentiu PoC sites

Bentiu

On 15 December 2013, the Sudan People’s Liberation Army (SPLA) (the South Sudanese army of the time) violently fractured in Juba. In response to pro-government forces targeting Nuer in Juba, Nuer army commanders rebelled across South Sudan, including the leadership of Division 4 in Unity State (Pendle 2020). Fighting for control of Bentiu town continued in the following months and, in 2014, the PoC site rapidly grew to 40,000 people (Arensen 2016). The 2014 rainy season resulted in predictable but extreme flooding throughout the PoC site. Humanitarian donors provided 18 million USD to expand and renovate the site (Arensen 2016). This included the organisation of the site into clear blocks and sections.

From 2015, there was a new series of deadly government offensives in central Unity State. The use of amphibious vehicles and local militia meant that even swamps no longer provided a place of safety.⁴ As one man in Bentiu described, the warring parties have ‘made the land small’ as there is nowhere left to run to except the PoC sites.⁵ The extreme violence and consequent famine-level hunger prompted a large influx of a further 75,000 people to the Bentiu PoC site from rural areas (Arensen 2016).

The move from rural Unity State to the urban Bentiu PoC sites amounted to mass rapid urbanisation, entailing massive spatial changes in everyday life and relationships. Most people had previously lived on family-owned land, adjacent to relatives, and in proximity to their farms and cattle. Now people lived in dense rows in UN-organised blocks of housing, next to strangers as well as relatives, distant from livestock and livelihoods.

This changed social relations and obligations, with declining obligations to help each other and fewer people sharing food (or a plate). As Da Costa describes, gangs became a medium through which these new social contestations were expressed (Felix da Costa 2023). As one man in Bentiu narrated:

When there is a crisis, people will change their lifestyles. They will change how they eat, how they live with other people, and how they do their things. In the past you would find around thirty men around one plate. But now when two people share the same plate they will begin to disagree. That is a punishment from God.⁶

For the first five years of the Bentiu PoC site, there was little movement between the site and the town outside. People in Bentiu Town described those inside the PoC sites ‘the people of Riek Machar’ – the leader of the armed opposition.⁷ In contrast, Bentiu Town was government controlled and often dominated by pro-government forces. As an older man described, ‘this, even a child knows; if you are Nuer, and you reach the camp safely, you never go out’.⁸ Women did leave the PoC site to collect firewood, but there were often reports of women being raped. While the UN did not explicitly prevent all movement, its warning that movement outside the PoC site was at people’s own risk was understood as a tacit instruction to not leave.

Movement between the PoC site and Bentiu town changed significantly after the 2018 peace deal, especially after SPLA-In Opposition (SPLA-IO, the main armed opposition) and government leaders came together in a visit to the PoC site. However, years later, people were still tentative about whether this was a ‘real’ peace and whether their movement outside would be safe.⁹

Wau

In December 2012, during the violent suppression of protests in Wau town, about 5,000 people sought protection on the UNMISS base for a short period, until the immediate violence had ended (Briggs 2017). This formed a precedent for the PoC sites across South Sudan. Yet, after 2013 and despite large-scale conflict elsewhere, violence was minimal in Wau town and only around 200 people fled to the Wau UNMISS base (Arensen 2016). From mid-2015, violence around Wau escalated, prompting larger numbers in 2016 to flee to the UNMISS base. By 2016, UNMISS was more hesitant to open its gates, emphasising that this was a ‘last resort’ and that ‘UN bases are not designed to serve as shelters for displaced populations’ (UNMISS 2016). Therefore, the Wau PoC site remained next to, rather than inside, the UNMISS premises, and was an ‘Adjacent Area’. By mid-July, there were around 25,000 people sheltering in Wau PoC AA (IOM 2016). An increase in violence in 2017 meant that numbers swelled to nearly 40,000 people (South Sudan CCM Cluster 2020).

In Wau, people also sought safety in churches and other sites apart from the PoC AA. These were termed collective sites or centres; they remained under the jurisdiction of the South Sudanese government, with services provided by humanitarian agencies. Hai Masna, a collective site where research for this article was conducted, was formed in 2017 and hosted some 8500 people by 2019 (IOM 2019).

There were jurisdictional differences between the Wau PoC AA and the collective sites. In the PoC sites, non-UN actors – including the government – could not enter without the

explicit permission of UN authorities (Briggs 2017). Interviewees in Wau, both in the PoC sites and the collective sites, felt that the ability to exclude government actors from the PoC site gave it a significant advantage over other spaces where people sought protection. One woman leader in the Wau PoC site described how the fences, as well as peacekeepers, allowed her to sleep without fear: ‘in this place, you sleep without worrying and fearing any attack, but outside people are living in fear of any attack.’¹⁰ In contrast, in the collective sites, government actors could not be excluded and guns were commonplace.¹¹

In Wau PoC AA, compared to Bentiu PoC site, there was much more day-to-day movement between the sites and the town. While there was a small market in the PoC AA, it was limited (especially compared to Bentiu PoC site’s large markets), and people moved to the larger markets in Wau town to buy clothes and goods.¹² Primary schools and clinics were available within the PoC AA, but residents would travel out for secondary school or to visit larger clinics. They would return by 17:00 when UNMISS closed the gates. People in the PoC AA also travelled back to their villages to cultivate or assess the situation.

Yet, the PoC AA still involved a degree of a socio-economic separation that people avoided by staying in the collective sites. For example, some narrated that by being in the collective sites and not the PoC AA, they could remain close to their animals and their land, and had the option to come and go more easily from their farms. One woman leader in Hai Masna said:

In the PoC, if you go there, you will not be allowed to keep your animals there. In addition to that, here we can go back and farm on our farms, because what we are getting here is not enough for us all.¹³

Jurisdictions and making place

With large populations in the PoC sites, people committed offences and caused grievances, prompting residents to demand a legal response. This messiness of everyday realities meant that abstract debates in UNMISS whether allowing courts would amount to UNMISS *de facto* claiming sovereignty could not go unsolved. UNMISS had to enact a detention process (Hagemann 2023). Communities in the PoC sites also quickly remade community legal institutions to provide access to justice and resolve grievances (Ibreck and Pendle 2017). The need for law and order meant that United Nations Police and other parts of UNMISS quickly accepted and worked with these legal institutions in practice, even if they did not recognise their judicial status formally (Hagemann 2023). In this section, we explore the overlapping jurisdictions in the PoC sites, and the extent to which legal norms created a sense of continuity with places outside the sites.

The jurisdictional rivalries of the Bentiu PoC site

Chiefs’ courts in South Sudan have long played a role in jurisdictional rivalries. Across South Sudan, in the early decades of the twentieth century, the colonial government incorporated chiefs’ courts into its legal institutions (Leonardi et al. 2010). Colonial governments exercised jurisdiction by learning customary law and speaking with authority

over this law, including by hearing appeals cases from the chiefs' courts. Governments and rebel groups over the next century continued to use the chiefs' courts to govern (Pendle 2020), and claimed jurisdiction by claiming to be able to revise or confirm chiefs' court rulings.

In the decades of war and migration from the 1980s, chiefs' courts asserted their jurisdiction over Nuer communities irrespective of their physical relocation or their movement into the territories and jurisdictions of other state governments. Chiefs claimed jurisdiction based on their community leadership. In the 1990s and 2000s, many people fled from Unity State to refugee camps and cities across East Africa, and remade chiefs' courts in camps such as Kakuma Refugee Camp (Grabska 2014). Chiefs' courts also emerged in Khartoum, and referred cases or sent orders back to chiefs in Unity State (Kindersley 2017). The Kenyan and Sudanese governments allowed these courts to occur, although they would intervene and assert their jurisdiction in serious cases.

As has been discussed in relation to other legal regimes (Dorsett and McVeigh 2012; Orford 2011b), jurisdiction is not necessarily a claim to sovereignty and the chiefs' courts' claims of jurisdiction were not synonymous with sovereignty over territory. The chiefs' courts in the camps in Sudan and Kenya accepted the authority of national governments and the UNHCR (who governed the camps). However, they still claimed to be able to speak in the name of the law over their communities.

After the 2005 Comprehensive Peace Agreement (CPA), chiefs' courts were, in practice, almost the only legal authority claiming jurisdiction for much of Unity State. Chiefs' courts heard a wide range of cases. They relied heavily on punitive measures and compensation, often in the form of cattle, to redress grievances and deter revenge (Pendle 2018; 2020). The chiefs' courts also depended on their close relationship with local government, and chiefs' courts struggled to assert legitimacy and solve cases when local government leaders were unpopular (Hutchinson and Pendle 2015; Pendle 2020).

As part of the post-CPA legal arrangements, a High Court was established in Bentiu Town. High Courts in South Sudan have often competed with chiefs' courts for jurisdiction (Pendle and Wal 2021). However, the physical, social, and political distance of the High Court from the communities of rural Unity State meant that it could not, in practice, speak in the name of the law. The government courts were too absent to really contest the chiefs' courts' authority and jurisdiction.

Some Nuer prophets (local religious leaders) challenged the chiefs' ultimate authority over the customary law. Especially when chiefs' courts lacked authority, some Nuer prophets built their authority through the creation of court-like forums. The prophets upheld the legal norms of the chiefs' courts but asserted their superior authority over them (Pendle 2020). They claimed jurisdiction to hear the most serious offences. Popular support for certain prophets forced some chiefs to comply with these demands for prophetic jurisdiction (*ibid*).

When Bentiu PoC site formed, chiefs quickly remade courts within the site, *de facto* claiming jurisdiction to rule over their communities in this space. Initially, these courts were led by chiefs from Bentiu Town who had fled to the PoC site. Over time, more people and more chiefs fled to Bentiu PoC site. This included chiefs from rural areas, often with decades of experience in overseeing chiefs' courts, and extensive experience in dealing with major cases including murder. These rural chiefs, who were often seen as senior to the urban chiefs, became part of and took on leadership of the chiefs' courts.

For the chiefs, the remaking of courts inside the Bentiu PoC site asserted a continuity of jurisdiction. The chiefs' courts had had jurisdiction over Nuer communities, and their movement to the PoC sites did not interrupt this jurisdiction. However, there was no necessary continuity of communities between those the chiefs' claimed jurisdiction over prior to and following arrival in the PoC sites. Before movement to the PoC sites, people had lived in wildly different configurations and groupings, whether in urban or rural spaces, and the PoC sites drew people together in new ways. In this context, the chiefs' courts' jurisdictional claims played a role in shaping understandings of the place of the PoC sites as not an isolated enclave, but a place that was closely linked to the legal and political communities of the past. Even if life in the PoC sites amounted to new urban configurations, the chiefs' assertion of jurisdiction highlighted the continuity of law and moral norms in this space.

The chiefs' courts in the PoC site repeatedly referenced Nuer customary law and would send letters about cases to chiefs in rural, opposition-controlled areas, either asking for their advice or for their support in implementing a judgement. There was a continuity of power stretching between these places, and a continuity of legal, moral and political community, with PoC sites remaining connected to opposition-controlled areas. The PoC site was not a non-place without history and identity, but a place in which the courts were enforcing citizenship and histories of a specific polity. Letters between the courts, in the language of Weegles, Jefferson and Martin, were also creating a 'trail' between opposition areas and the PoC sites which kept these two spaces entangled. The trails did not only emerge through social practice between these spaces (Weegles, Jefferson, and Martin 2020), but also legal practice. At the same time, the legal continuity and trail between the PoC site chiefs' courts and courts in opposition-held areas further emphasised a separation of the PoC sites from the government-controlled areas such as Bentiu Town.

The urban nature of the PoC sites meant that the jurisdiction of the chiefs' courts was not unquestioned. Histories of chiefs' courts in South Sudan since the colonial era had limited the jurisdictions of chiefs' courts and customary law in some urban spaces. The urbanisation of the PoC sites created moral ambiguities associated with the towns, as has often happened as people flee in war (Allen 1996). For decades, there have been social contestations over the extent to which urban residents were expected to comply with norms of rural areas (Hutchinson 1996, 270–298).¹⁴ Therefore, the rupture from the movement and urbanisation of the PoC sites challenged the jurisdiction of the chiefs' courts.

The material realities of the PoC sites also forced changes in legal norms and practice. Chiefs' courts had previously relied on the exchange of cattle compensation and fines in order to resolve tensions and punish wrong-doers. Yet, livestock were not allowed in the PoC sites. Plus, compensation is usually sourced collectively by the family, and the war had scattered families across South Sudan and East Africa, so they could not easily be called upon.¹⁵ Therefore, the courts had to shift to using money rather than cattle, or delay the execution of the ruling until after the conflict. The inadequacy of money in forging social relations meant that these changes were particularly complex (Hutchinson 1992), but delaying the execution of rulings threatened to bring conflict. The PoC chiefs' courts therefore had to deal in money and monetize the customary law because of the material realities of the PoC sites.

UNMISS's unintentional jurisdictional rivalries

The chiefs' courts in the PoC sites faced new jurisdictional rivalry from the dominant authority of UNMISS. However, UNMISS did not seek to claim jurisdiction or speak in the name of the law. For UNMISS staff, speaking in the name of the law could appear to be an assertion of permanence and power over the PoC site populations that they did not want to have. UNMISS's mandate to protect civilians came from the UN Security Council and its ambiguity and compromise in relation to the UN's ability to restrict state sovereignty to keep civilians safe (Cormack and Pendle 2023). Therefore, claiming legal authority appeared to step beyond the mission's mandate if legal authority amounted to an assertion of sovereignty. UNMISS was also reluctant to recognise any legal institutions in the POC sites including the chiefs' courts. This prompted UNMISS to call the chiefs' courts Informal Mediation and Dispute Resolution Mechanisms (IMDRMs) (Stern 2015, 11), trying to conceal that they spoke in the name of the law.

Yet, this denial itself could be seen as a sovereign act. While jurisdiction need not be synonymous with sovereignty (Dorsett and McVeigh 2012; Orford 2011a), the suspension of law is an act of a sovereign (Agamben 1998). Therefore UNMISS, in denying that the chiefs' courts spoke in the name of the law, claimed sovereignty.

UNMISS also spoke in the name of the law through its rearrangement of these courts and reform of the law. Through workshops, trainings and observations, UNMISS tried to shape the substantive content of the law used in the chiefs' courts in the PoC sites so that they complied with human rights standards. As a former PoC site chairman described, 'UNMISS is the mother and father of all the IDPs'.¹⁶ Years before, in Kakuma Refugee Camp, Nuer used similar language to describe the governance role of UNHCR,¹⁷ and their UN norms had also interacted with similar moral contestations (Grabska 2014). UNMISS restricted the jurisdiction of the chiefs, prohibiting them from hearing anything but minor cases.¹⁸ Plus, punitive measures were often prohibited by UNMISS. Chiefs complained about the lack of ability to imprison people. They discounted the UN holding facilities as inadequate because they were too comfortable for detainees.¹⁹ This added to a general frustration about the lack of 'retaliation' from UNMISS against those who committed crimes.²⁰ UNMISS also encouraged a more equitable approach to gender in the courts. Yet, Ibreck highlights, their ability to bring change was limited (Ibreck 2023).

In addition, the Bentiu PoC sites involved new arrangements of legal institutions. UNMISS supported the reorganisation of the courts into blocks, resembling the physical layout of the camps. UNMISS also created a PoC site Community High Committee (CHC). The CHC had an executive role and liaised between UNMISS and PoC site residents. It also took on a new judicial role and effectively acted as the highest court of appeal in the PoC site. Chiefs' courts in the PoC site would forward cases to the CHC if they were unable to solve them.²¹

The Dingding court

In 2018, President Salva Kiir and SPLA-IO leader Riek Machar agreed to a peace deal. The peace agreement allowed the SPLA-IO to establish an administrative base closer to Bentiu in Dhorbor, and a large military cantonment site a few miles away in Dingding. This brought the SPLA-IO state leadership close to the Bentiu PoC site, and frequent

movement started between the PoC site and Dingding (Manfredi et al. 2020, 19). The SPLA-IO leadership also set up a court in Dingding. This was a senior chiefs' court with chiefs from all counties of Unity State under IO control, and it ruled based on Nuer customary law.²²

The PoC site was included within the Dingding court's jurisdiction, a clear assertion of the inclusion of the PoC in the political and legal community of SPLA-IO areas. The PoC site CHC started referring cases to the Dingding court.²³ By 2020, many cases, including those previously unsolved, had been sent from the PoC CHC to the Dingding Court. In Dingding, they were able to imprison people.²⁴ They also had a better chance of successfully organising cattle compensation payments. The Dingding Court reduced crime in the PoC site as people feared being taken to that court.²⁵

Many of the rulings involved asserting that urban criminality fell within the jurisdiction of the Nuer customary law. This created a legal and moral continuity between the rural and urban. For example, one case concerned a man who had impregnated a girl before coming to the PoC site. The man had refused to marry her but wanted the son from the pregnancy to live with him. According to Nuer customary law, as applied in the rural chiefs' courts, the biological father had the right to custody if cattle were paid. The rural chiefs' court had made him pay the cattle and allowed him to take the son. A few years later, in the PoC site, the same man impregnated the same woman again. This time her parents went to the chiefs' court to demand marriage and a payment of cattle as bride wealth. Refusing their demand, the man claimed the customary law did not apply in the 'town' of the PoC. The chiefs in the PoC did not agree with the man's claim that the customary law did not apply but, without control over the family's cattle, they felt unable to enforce their ruling. Therefore, the PoC CHC sent the case to the Dingding Court, which agreed with the PoC CHC and ruled in favour of the woman's family. The man was ordered to pay bride wealth, and to marry the woman. The children from the two pregnancies would now belong to the parents jointly. The Dingding court imprisoned the man until his family paid the first 15 cattle of the bride wealth payment.²⁶ The case asserted legal continuity between the PoC site, and SPLA-IO and rural areas of Unity State. This created a legal 'trail' between the PoC site and the Dingding court as the Dingding claimed the authority to speak in the name of the law over incidents that occurred within the PoC site. The ruling also paved the way for more cases in the PoC sites to seek resolution in the Dingding court. This blurred the boundaries between life and law inside and outside of the site.

In another example, an armed thief in the PoC site stole a man's money. The victim had managed to take a photo of the thief. The man was caught and taken to a PoC site sector chairman to solve the case. This chairman referred the case to the CHC. The thief refused to agree to repay the money, and so the CHC referred the case to the Dingding Court. The Dingding Court ordered the thief's arrest and invited his parents to witness the hearing. The court investigated the case and ruled that the thief should return the money. His parents repaid the money within seven days. The thief was also given a jail sentence in Dingding and rebuked for using a gun in the PoC site. The case asserted the court's authority over the man in the PoC site and the family in rural Unity, highlighting a shared jurisdiction and a lack of discrete legal boundaries between these places. Again, the movement of the thief, his family and the Nuer law left a trail between the PoC site and the Dingding court.

However, for some, even the Dingding Court did not bring certainty. People knew that the court would likely be dissolved when the peace agreement was fully implemented. If people did not receive the ruling they wanted, they could wait for a change in government and court. As one chief described, ‘When you are given your letter of complaint, you would sit with it, waiting for better government’.²⁷

Sometime after the CHC started using the Dingding Court, UNMISS supported the formation of a mobile court in government-controlled Bentiu town to hear cases from the PoC site (Ndikumana 2019). Another court claimed jurisdiction over the PoC site residents. UNMISS used these mobile courts as an opportunity to clear cases where people were being detained in their holding facilities in the PoC site (Hagemann 2023). The chairman of a community in the PoC site that was more aligned with government described sending 18 cases to the court in Bentiu town.²⁸

People in the PoC site understood that there was jurisdictional competition between the Dingding court and the mobile court. With one backed by the SPLA-IO and the other by the government, for some, the existence of the mobile court without its collaboration with the Dingding Court was itself indicative of the lack of peace, and of distinct legal and political spaces. As the mobile court had been formed without the backing of the SPLA-IO leadership, many in the PoC site felt as if they could not trust it.

Wau

The situation in Wau was very different, with significant legal continuities between Wau PoC AA, the collective sites, and Wau town. Those living in the PoC AA and collective sites had never separated themselves from the legal regimes and institutions that govern Wau Town, and from the outset, more serious cases in the PoC and collective sites were referred to the town’s police stations and courts. There were clear legal trails from the PoC AA into Wau Town that blurred the PoC AA boundary. From the outset, it was evident in everyday legal practice, that there were significant flows of people, knowledge, laws, understandings and legal cases between the PoC AA and Wau Town.

In Wau, there was already a complex plurality of legal arrangements, many of which had been operating for decades. After the CPA, county judges were appointed but many chiefs’ courts kept operating. The Wau town bench chiefs’ court was housed in the original colonial building and contained three different courts, each representing one of the main ethnic groups in Wau (Leonardi et al. 2010). The chiefs’ courts’ jurisdictions were often loosely ethnically defined but there were established procedures to deal with multi-ethnic cases and claimants often selected a court based on their likelihood of success (Leonardi et al. 2010). As Leonardi et al. described, ‘this is all the more impressive in light of the history of the town, which became divided along ethnic lines during the war [of the 1980s and 1990s]’ (Leonardi et al. 2010, 68). Therefore, in Wau, there was a history of overlapping legal institutions and jurisdictions, resisting a clear mapping on to political divides.

In Wau PoC AA, individuals and block and zonal leaders reported serious offences to the site’s community police. These community police would refer cases to government police stations in Wau town and the main Wau court.²⁹ Courts in the town thus continued to hear cases related to incidents that had taken place within the PoC site. The leaders within the PoC site asserted the continued jurisdiction of the courts in the town over those in the PoC site.

At the same time, zonal and block leaders in the PoC site took on roles previously played by town-quarter chiefs or rural courts. It was now these block and zonal leaders that would resolve minor disputes³⁰ and decide if a case was serious enough to be referred to the community police and the town court. While block and zonal leaders were eager not to speak in the name of the law and were clear that they were ‘not judges or lawyers’,³¹ they had taken on a role akin to the chiefs. As chiefs had previously done, these block and zonal leaders would then play a role in enforcing the ruling of the Wau town court. For example, one block leader described how she would attend cases in the Wau court relating to her block. If this resulted in someone being excluded from the PoC for causing trouble, as a block leader, she would help enforce this.³²

A further significant shift was that UNMISS insisted that women be included in the block leadership. Block leaders were selected through election, and many women were appointed to leadership positions for the first time.³³

Conclusion

Naomi (co-author of this article) first visited a PoC site in June 2014 to visit Gatkuoth (another co-author) who was resident in one of the sites at the time. When she first visited the PoC site, her impression was of a discrete space divided from the world outside by barbed wire fences and security guards. Gatkuoth was living in the PoC site to keep apart from the warring parties. Humanitarian protection is often associated with enclosure and the creation of places that separate vulnerable people from the polity outside. Yet, watching people’s everyday movements and hearing people’s phone conversations quickly showed us that these PoC sites were not political deserts nor discrete places. Social, political and economic trails connected the sites to the world beyond the gated spaces. As we watched over time and more closely, and as we interviewed people, it also became clear that these multi-layered trails also had legal dimensions.

There were significant legal continuities between the PoC sites and other spaces that complicated a geography of clearly bounded spaces of protection and that highlighted the reach of external politics into the camps. In Wau, people kept moving between the PoC AA, the collective sites, and Wau town. Access to courts was one reason for such movement. This left a trail of legal influence back from the town into the PoC AA. The continued use of the courts in the town by authorities in the PoC site meant that the site was never an extraterritorial space – the space was still part of the state in practice. In contrast, in Bentiu, there was a rupture between legal institutions in the PoC site and Bentiu town. Yet, the continued application of customary law and use of chiefs’ courts created a notion of continuity with the rural, opposition-controlled spaces outside the PoC site. After 2018, the PoC site’s use of the Dingding Court brought the space of the PoC sites legally and socially closer to this SPLA-IO controlled area. These legal pluralities and (dis)continuities, as well as efforts both to claim and deny jurisdiction, reinforce the idea of law and jurisdiction as dynamic and contested processes, unfolding in particular ways in particular places (c.f. Huizenga 2022). They also show how jurisdiction claims and legal practice reshape space, sometimes by reinforcing boundaries, but also sometimes by blurring spatial boundaries through creating trails between spaces.

De jure, legal jurisdiction within the PoC sites was ambiguous and the UNMISS mandate from the UN Security Council provided no indication of how it should be resolved. This

was a dilemma for UNMISS staff. In practice, laws were being actively used to recreate spatial and political continuities and to draw the rights and political identities of the outside into the everyday lives in the PoC sites. There were no clear distinctions between the inside and outside of the PoC site. Instead, actors in the PoC sites evoked long-established structures to create continuities, and legal and political rights. There were jurisdictional rivalries as courts created different legal and political communities and spoke with the authority of different kinds of law.

Scholarship on jurisdiction has moved us beyond a focus on state legal institutions and encouraged us to pay attention to a variety of public authorities and jurisdictional claims. By adopting this recognition of a plurality of public authorities and jurisdictional claims, we are better able to understand law in the PoC sites. Building on this understanding of jurisdictions in the PoC sites that, allows us to pay attention to a plurality of legal actors, has also allowed us to see the legal making of place in and around the PoC sites, and the legal trails that blur boundaries between the inside and outside of the sites.

Our focus on the PoC sites also adds to this literature by providing an example of a public authority – UNMISS – that sought to *avoid* claiming jurisdiction. Yet, UNMISS still ended up speaking in the name of the law and asserting sovereignty (however unsuccessfully) by denying legal authority of others in the PoC sites. In contrast, with their long histories of non-territorial jurisdiction, the chiefs' courts inside (as reformed as they were) and outside the PoC sites were the dominant legal institutions and remade space through their jurisdictional, community-making claims. At the same time, while their authority was not based on territory, they remade space as their legal connections created trails of legal activity and the movement of letters and people between the PoC sites and areas outside.

Notes

1. Interview with former member of UNMISS staff who was in Juba in 2014, February 2023, New York City (USA).
2. Interview with former UNMISS staff, December 2022, on-line.
3. The research for this article was approved by the Research Ethics Committee (REC) at the London School of Economics and Political Science (LSE) as part of their approval for research on the Safety of Strangers grant. All participants in this research gave informed consent and this was provided orally as approved the LSE's REC.
4. Interview with Kuony, Bentiu PoC site, 17 September 2020.
5. Interview with Nykuon, Bentiu PoC site, 17 September 2020.
6. Interview with William, Bentiu PoC site, 17 September 2020
7. Interview with court chairman, 17 September 2020, Bentiu Town.
8. Interview with Isaac, Bentiu PoC site, 17 September 2020.
9. Interview with chief, September 2020, Bentiu town, in Nuer.
10. Interview with female block leader, Wau PoC site, 14 September 2020.
11. Interview with female block leader, Wau PoC site, 14 September 2020.
12. Interview with female block leader, Wau PoC site, 14 September 2020.
13. Interview with women leader, Hai Masna, September 2020.
14. Interview with Simon R., Bentiu PoC site, 17 September 2020.
15. Interview with elder, Bentiu PoC site, 15 September 2020.
16. Interview with former PoC site chairman, Bentiu PoC site, 18 September 2020.
17. Conversations in Kakuma Refugee Camp (Kenya), May 2014.
18. Interview with PoC site community leader, Bentiu PoC site, 16 September 2020.

19. Interview with Makuil, Bentiu PoC site, 17 September 2020.
20. Interview with former Sector Chairman in Bentiu PoC site, 17 September 2020.
21. Interview with court chairman, 17 September 2020, Bentiu Town.
22. Interview with Makuil, Bentiu PoC site, 17 September 2020.
23. Interview with James, Bentiu PoC site, September 2020.
24. Interview with court chairman, 17 September 2020, Bentiu Town.
25. Interview with former PoC site chairman, 18 September 2020, Bentiu PoC site.
26. Interview with Riw, Bentiu PoC site, 15 September 2020.
27. Interview with chief, Bentiu town, September 2020.
28. Interview with William, Bentiu PoC site, 17 September 2020.
29. Interview with female block leader in Wau PoC site, 15 September 2020; Interview with female block leader in Wau PoC site, 14 September 2020; Interview with female block leader in Wau PoC site, 16 September 2020.
30. Interview with female block leader in Wau PoC site, Wau PoC site, 17 September 2020.
31. Interview with female block leader in Wau PoC site, Wau PoC site, 16 September 2020.
32. Interview with female block leader in Wau PoC site, Wau PoC site, 15 September 2020.
33. Interview with female block leader in Wau PoC site, Wau PoC site, 17 September 2020.

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