



STATE-BUILDING AND LAND CONFLICT IN SOUTH SUDAN



PETER HAKIM JUSTIN

Propositions

1. A post-conflict state-building intervention that ignores history and local contexts can cause renewed conflict and violence.
(this thesis)
2. Decentralising land governance in war-torn societies in Africa as a way of redressing past injustices on land can result in further tenure insecurity.
(this thesis)
3. National environmental laws can only be successfully implemented when they are acknowledged by stakeholders rather than enforced by an authority.
4. Social scientists are better equipped to research their own settings than settings abroad.
5. The vision of the African Union presented in 'Agenda 2063' builds on the very colonial heritage it intends to dismantle.
6. Integrating 'better governance' of the oil revenues into peacebuilding interventions can enhance peace and stability in South Sudan.

Propositions belonging to the thesis entitled:

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State-building and Land Conflict in South Sudan

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State-building and Land Conflict in South Sudan

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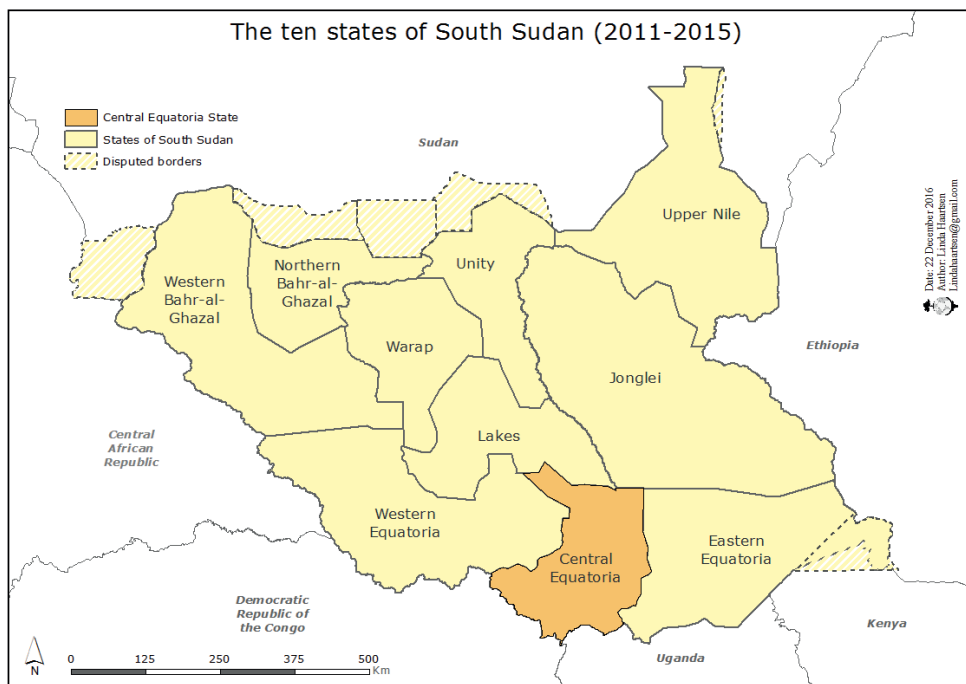
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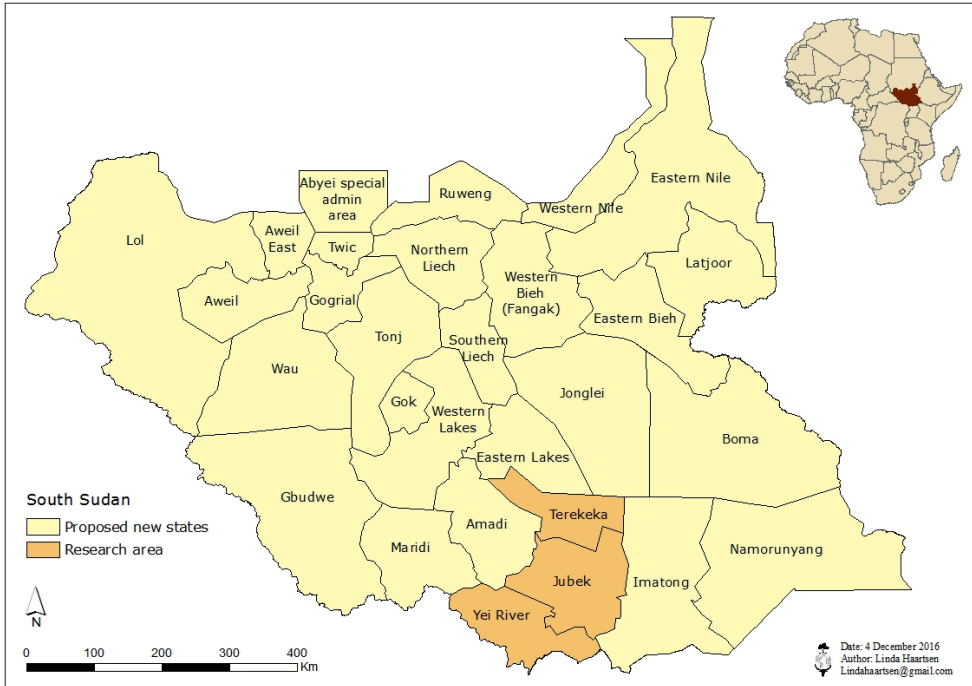
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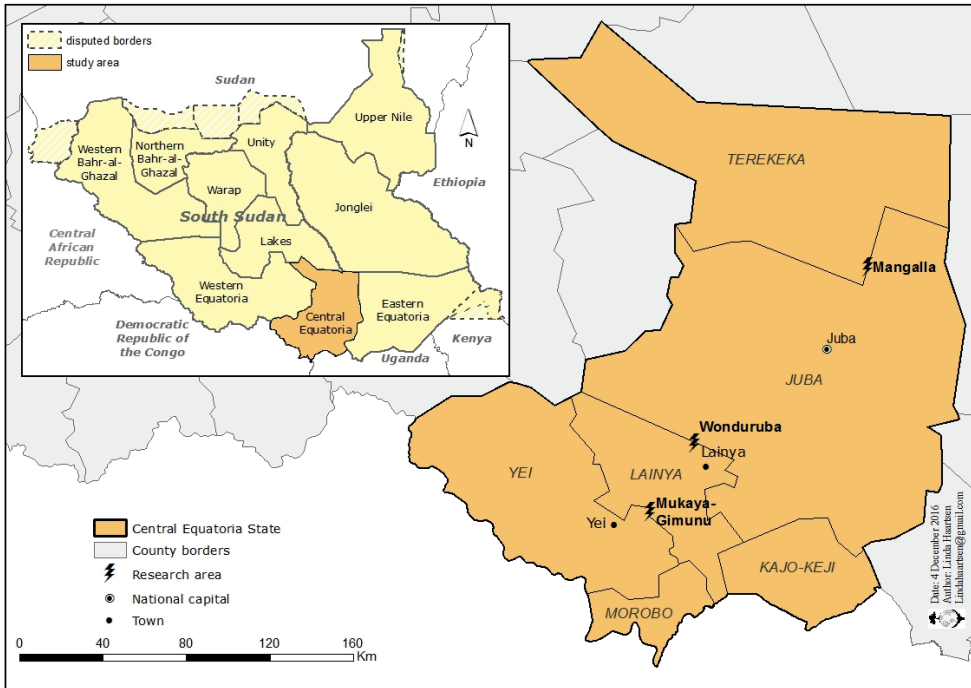
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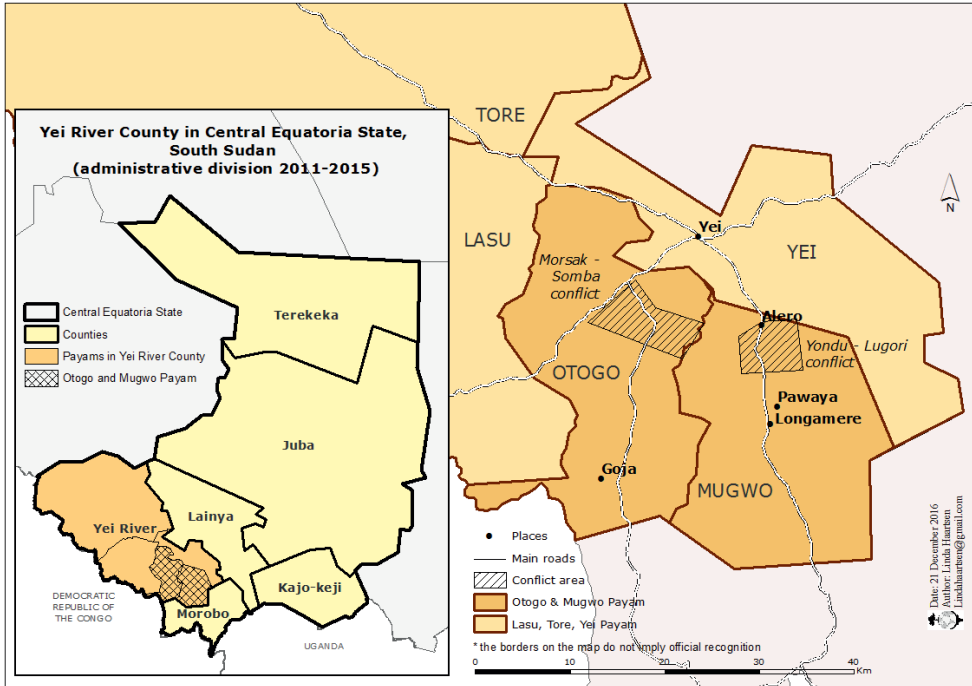
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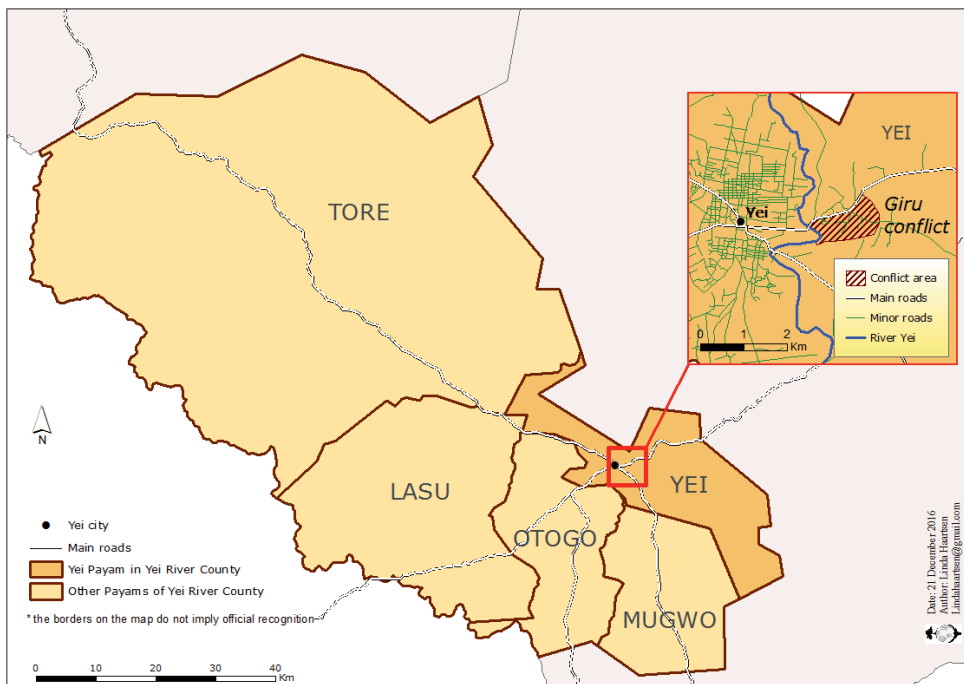
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1. General Introduction

1.1. Background

This thesis explores the relationship between state-building and land conflict in South Sudan that started after the Comprehensive Peace Agreement (CPA) in 2005. In January 2005, the Government of Sudan and the rebel group - the Sudan People's Liberation Movement/ Army (SPLM/A) - signed a landmark peace agreement, the Comprehensive Peace Agreement (CPA). This agreement ended the longest civil war in Africa that lasted for over two decades (1983 – 2005) and contributed to the death of an estimated 2.5 million people and the displacement of more than 4.5 million others (Reeves, 2002; Assal, 2011; Natsios, 2008).

Right after the start of the implementation of the CPA, what was then called the Government of Southern Sudan (GOSS) embarked on a state-building project. Despite the massive presence and heavy investments of international and non-governmental organisations and bilateral donors, who have been attempting to assist the South Sudanese government in the development of state institutions, this has not been an easy process. Shortly after the CPA, some areas in South Sudan experienced sporadic levels of conflicts and violence, including those which had been relatively peaceful before the CPA. In late 2013, widespread violence broke out between different factions of the ruling party (de Vries and Justin, 2014), and the situation remains volatile until today.

A major aspect of this state-building project was to address the causes of the civil war that was ended through the CPA, the negative consequences of that war on citizens and to avoid future conflict. This approach to state-building demanded revisiting the perceived injustice on South Sudan by successive Sudanese governments in Khartoum which included the marginalisation of rural communities in taking part in governance affairs of their areas, their lack of representation at the national level, and the efforts by those Sudanese governments to claim ownership of land that belonged to rural communities in various areas in South Sudan. As the civil war had resulted in the displacement of more than 50% of the population of South Sudan (Nilsson, 2000; Pantuliano, 2009a), addressing the question of displacement also became an important aspect of the state-building. Inclusive governance was the keyword for this state-building project (Jok, 2011).

The SPLA-led government intended to achieve this inclusivity by introducing a decentralised system of governance to replace the centralised system that existed in the pre-CPA period, and to introduce a land tenure regime that would prevent the state and powerful actors in the society from interfering with land rights of rural communities as it has been the case before the CPA (Hirblinger, 2015). Based on this approach to state-building, the government introduced new structures of governance and institutions, by dividing the country into States, and States to lower levels of government called Counties, Payam, and Bomas. Ultimately, this structure was to provide the basis for the implementation of activities linked to this state-building project such as decentralisation, land reform, reform in the justice sector and addressing the question of internal displacement, among others.

However, instead of contributing to peace and stability as intended, this state-building project became a trigger to tensions, violence, civil war, displacement and human suffering. The introduction of the new States, Counties, Payam, and Boma led to the emergence of contested claims on territories and borders; and land reform gave rise to new laws that challenged the existing rights (Schomerus and Aalen, 2016). The lack of reliable conflict resolution mechanisms at the time made tensions arising from competition over the new territories, disputes over borders or land rights to quickly flare up to violence, sometimes along ethnic lines (Pantuliano, 2007). The reason for this, I argue, is the complex dynamics the SPLA-led government inherited at the start of the CPA in 2005, exacerbated by the limited attention paid by external actors to this state-building project on the history and local context. Specifically, limited attention was paid to legacies of colonialism, postcolonial governments and of the civil war that was ended through the CPA, which substantially shaped outcomes of the post-CPA state-building project in South Sudan.

This thesis, therefore, seeks to understand how post-CPA land conflict and other conflicts that followed are connected to this heritage of the past and the subsequent state-building project, to provide lessons for future state-building interventions in post-conflict settings in Africa. Exploring these relationships sets the objective of this study: **to understand how decentralisation and land reform, as key elements of state-building efforts in South Sudan, and displacement relate to local land conflicts and how these conflicts link to wider outbreaks of violence after the Comprehensive Peace Agreement of**

2005. This thesis will contribute to the debates on state-building in three ways. First, it will establish a relationship between state-building as a project and state formation as a process in post-conflict settings in Africa by showing how state-building projects have produced different outcomes than intended and why actors in state-building should pay attention to history and local context to contribute meaningfully to peace and state formation while supporting countries emerging from civil wars. Secondly, it will contribute to the debates on decentralisation in post-conflict settings by showing that despite the emphasis on the usefulness of decentralisation in contributing to equity, fairness, and stability in post-conflict settings, decentralisation can also be a significant contributor to tensions, conflict and even civil wars. Thirdly, this thesis will contribute to the debates on internal displacement by connecting displacement to land occupation and control, which sheds new light on several assumptions in the existing literature on displacement.

1.2. Research question

To arrive at this objective, the research project started with the following central question:

1. How do decentralisation and land reform, as key elements of state-building efforts in South Sudan, and displacement relate to local land conflicts and how are these conflicts linked to wider outbreaks of violence after the Comprehensive Peace Agreement of 2005?

To answer this question, the following sub-questions guided the research:

1. How do hybrid institutions, as a legacy of history, function at a local level, particularly in meeting the needs of citizens and solving local conflicts?
2. What is the role of decentralisation, understood as the creation of internal borders, in instigating territorial conflicts between population groups?
3. What is the contribution of land reform laws to the configuration of land governance institutions and their authority and the emergence of violent conflict between communities?

4. What are the implications of contested land occupation and changes in land governance resulting from displacement for relationships between displaced and host communities?

1.3. Theoretical Framework

1.3.1. Post-conflict settings in Africa: state-building and state formation

The historical, political science, anthropological and sociological literature provides the analytical framework to analyse state-building and state formation, decentralisation and displacement in South Sudan. This literature will be explored to develop an analytical framework for understanding state-building and state formation in South Sudan after the CPA in 2005. I use the concepts colonialism, post-colonialism, civil war, state-building, hybridity, and state formation to develop this framework.

The normal definition of the state is based on the Weberian model of the state which perceives the strength (or weakness) of a state in terms of its ability to monopolise the use of legitimate violence within its international borders and to deliver services to its citizens (see Risse, 2011). Institutions are linked to a state in the sense that the performance of a state in delivering its core functions is determined by the collective performance of its institutions.

State-building continues to be the common intervention strategy in addressing problems of countries emerging from civil wars. In its conventional approach, state-building in post-conflict settings in Africa has been based on a Weberian view on the state and is commonly linked to the introduction of new structures of governance and institutions to replace those that might have been delegitimised by civil war or have become irrelevant to the new context. The common approach in achieving this is for state authority, usually with the support of international donors, to develop new structures of governance and institutions which they think are best suited to the new context. Often, actors involved in state-building consider the institutions they introduce as formal and legitimate and those that existed, including the local ones informal or illegitimate (Fukuyama, 2004). With such differentiation, the focus of state-building has commonly been on strengthening the formal and legitimate institutions while bypassing the informal ones and those they consider illegitimate. In contrast to state-building, state formation refers to the complex

interaction between the state and the society that lead to the emergence of the particularities of a state in a given setting, through a variety of historical developments some more autonomous and others imposed by outsiders (Azam, 2002). However, by exploring the colonial history and developments that have taken place in most African countries in the postcolonial period and during civil wars, it becomes clear that the dependence on the Weberian model the state in post-conflict settings in Africa is rather simplistic. This is because most post-conflict settings in Africa are characterised by the presence of multiple institutions and actors that are legacy of historical developments, including colonialism, postcolonial government and civil wars; and these actors and institutions often interact and influence each other's performances in different ways.

Though colonialism in Africa belongs to history, it continues to influence most African countries in different ways; through the legacy it left, but also actively through various forms of political relationships created by colonial governments. Despite the initial resistance by African elites against colonialism in the late nineteenth century, most postcolonial states in Africa ended up inheriting the colonial systems of governance and institutions at Independence (Young, 2012; Touval, 1967). By inheriting the colonial model of governance, most postcolonial governments in Africa started to impose governance models the way colonialism did, usually taking top-down approaches without considering views of their citizens (Griffiths, 2005). Postcolonial countries that have also inherited the institution of the chiefship introduced by the colonisers also ended up ruling their subjects remotely the way it has been happening during the colonial period (Mamdani, 2005; Touval, 1967), often disconnecting the ruled from their rulers. In addition to the legacy of colonialism, colonial powers continue to influence the affairs of their former colonies actively. These countries usually assert this influence through bilateral relationships, aid and other forms of 'support' including in state-building. Indeed, and as the history shows, after the formal ending of colonialism in the mid-twentieth century, European colonising countries resorted to the use of economic, political and other forms of pressure to control their former colonies (Boshoff, 2009; Young, 2012). Authors like Kieh Jr (2012, p.164) and Luttwak (1999) even argue that foreign aid to Africa has taken the form of neo-colonialism whereby donor countries in the West provide aid to their former colonies in return for a certain level of control and loyalty. Therefore, through its legacy or active involvement in the continent, colonialism

continues to be present in Africa and continues to influence state-building projects in the continent.

A civil war is yet another factor that has a great influence on state-building in post-conflict settings in Africa. After the end of colonialism, the repressive forms of governance inherited by various postcolonial governments from their colonial masters led to different forms of resistance, some in the form of civil wars. The uneven development of human and capital resources in various colonies by the colonisers also led to social exclusion by the end of colonialism, which in some cases, contributed to civil wars (Coplan, 2009). In some cases, former colonisers contributed to those wars as a way of causing chaos and instability, by supporting rebel movements or government that were loyal to them (Blanton et al., 2001).

In some way, the continuity of civil wars in Africa remains a major legacy of colonialism, and these wars will continue to influence state-building projects in Africa. As most civil wars are the expression of dissatisfaction by some sections of the society against the state and those people who run the state, insurgent groups might aspire to change the regime in power or replace the institutions it established by new ones, and particularly when those institutions have contributed to the war. This way, a military victory by insurgent groups can mean the replacement of the institutions that existed by new ones. Even if such a war is ended through a negotiated settlement, some changes in institutions might still occur, particularly on institutions that parties to the conflict may see as irrelevant to the new context (Fukuyama, 2004; Hartzell and Hoddie, 2003). In such a situation, a sitting government might try to consolidate the institutions it defended during the wartime whereas an insurgent group will lobby for the inclusion of the institutions and the social order it developed during the civil war (Raeymaekers et al., 2008; Oosterom, 2017).

Changes in institutional setup resulting from those negotiations and contestations might also trigger a reshuffle in the authority of the institutions that existed by introducing new positions or replacing the old by new actors. In situations where a great deal of the population depends on land for their livelihoods as it is the case in most countries in Africa (Peters, 2004), such changes often target the land sector, and can potentially make land to be a source of contestations and conflict. In such contexts, the military and former

warlords could also use land as a reward for those who supported them during the civil war (Peluso and Lund, 2011). Conditionalities attached to reform programmes by superpowers and international organisations such as the United Nations and the World Bank can also play substantial roles in causing conflict as well as in shaping outcomes of state-building after the end of a civil war.

In essence, a post-conflict setting in Africa comprises of the presence various actors – formal and informal – resulting from the legacy of colonialism and direct interference by former colonial powers, postcolonial governments and civil wars, superpowers, and international institutions – legacy these actors often dictate formal and informal institutions to influence each other's performance in various ways through contestations and negotiations. Indeed, and as many authors have argued, the distinction between state and non-state actors in this context is blurred, and the official state actors are far from being the only ones that exercise authority and offer security provision (e.g. Migdal, 2001).

Therefore, rather than departing from the top-down approach to state-building in its current form, it might be more appropriate to focus on the process of state formation and to understand the interactions surrounding state-building interventions as a process of continuous negotiations as argued in different literatures emanating from the fields of sociology and anthropology. To understand the complex and interactive processes involving the various players, Hagmann & Péclard (2010) suggest analysing actors' *resources* and *repertoires*, the negotiation *arenas* where the interactions take place, and the *objects* of the negotiation. Resources refer to the material bases of action, including finance, capacities, and control over violence, alliances, and access to state resources. Repertoires are the ways in which actors legitimise their actions, by referring to and (re)inventing discourses, from good governance and development discourses to nationalism and identity politics.

Thus, instead of creating a Weberian state as intended, state-building interventions to post-conflict settings in Africa have produced institutions that are the outcomes of externally introduced ideas that interacted with local realities, resulting to what has been termed as hybridity or hybrid political order (Volker Boege et al., 2008). Though the concept hybridity taps into local knowledge, broadens peace constituencies and

generates legitimacy (Mac Ginty, 2011), it is increasingly used more in a prescriptive than a descriptive way (Björkdahl et al., 2016; Millar, 2014). However, as of yet little is known about how such systems work out in practice and whether, how, and under what circumstances they benefit citizens.

Another way of looking at hybridity is to understand the interactions surrounding state-building interventions as a process of continuous negotiations (Hagmann and Péclard, 2010). These negotiations often include state bureaucrats at different levels involving different actors (Bayart, 1989; Hagmann and Péclard, 2010; Lund, 2006; Mamdani, 1996). In this regard, the distinction between state and non-state actors is blurred. Though the concept of hybridity rightly draws our attention to the mixed nature of institutional arrangements emanating from state-building interventions, the literature on negotiated state formation helps us to nuance this concept by uncovering the fluid and dynamic nature of these arrangements as well as the multifaceted agency local actors have to give shape to state formation processes.

What remains unclear in the theory is how the resulting institutional landscape functions for ordinary citizens. As will be discussed in Chapter Two on hybrid governance in South Sudan: the negotiated state in practice, post-conflict settings in Africa such as South Sudan provide the landscape for institutions to have variable levels of interactions, ranging from congruent relations to a contradictory rivalry between institutions (e.g., Lund, 2006, p.698). Moore (1978) uses the concepts regularisation and situational adjustment to describe the processes that come about from these interactions. Processes of regularisation are the 'processes which produce rules and organisations and customs and symbols and rituals and categories and seek to make them durable' (Moore 1978, p.50). It is the result of people's efforts to fix social reality, to harden it, to give it form and predictability. Situational adjustment, on the other hand, is the process whereby people exploit the indeterminacies in the situation or generate such indeterminacies by reinterpreting or redefining rules and relationships (ibid. 1978). As these processes work simultaneously, then the 'making' and 'unmaking' of institutions and hence the state, will be continuous processes that involve negotiations and constellations by a multiplicity of actors

1.3.2. Decentralisation and land conflict in post-conflict settings in Africa.

Decentralisation is commonly defined as 'any act through which a government formally cedes power, resources, and institutions to a lower level in a politico-administrative and territorial hierarchy, to improve service delivery to its citizens' (Mawhood, 1983). It is fundamentally implemented in post-conflict settings as part of a process of state-building (Kobusingye, 2018). Building on this idea of decentralisation, Gerhard Töttemeyer (2000, p.108) gives more emphasis on roles in decentralisation by suggesting that 'decentralisation entails a process of dividing and distributing authority, power and responsibility for programmes and policy implementation to subunits, as well as reassigning decision-making responsibilities to lower governmental units on a geographical basis'.

Depending on the type of power and resources to be devolved and the way these resources are or intended to be shared, the literature identifies three types of decentralisation; devolution, deconcentration, and delegation. In devolution, there is an increased reliance on the sub-national level of elected government with some degree of political autonomy. Through this arrangement, sub-national governments are not under the direct control of the central government but subject to general policies and laws. In a deconcentration system, powers are transferred from the centre to administrative units of the central government at lower levels of the government, administered by officials appointed by the centre. This means the central government controls power and resources by assigning its officials to oversee how resources are allocated. This way, local government authorities are upwardly accountable to the centre rather than to the people they serve. In a delegation system, the central government transfers managerial responsibility for specifically defined functions outside the realm of the centre. Local government officials may be elected to their positions by their constituencies but will account to the centre on specific tasks. In this situation, there are two levels of accountability; to the centre but also to electorates (Satria and Matsuda, 2004).

Since the late 1980s, many countries in Africa embarked on different levels of decentralisation, often under pressure from donors. During that period, decentralisation became the condition for funding by agencies such as the World Bank (e.g., Galvin and Habib, 2003). As it is the case with other political systems, expectations of

decentralisation have been changing over time. Earlier decentralisation reforms emphasised national cohesion and effective rule and management of subjects (Mamdani, 1996). Since the re-emergence of the debate on decentralisation in the 1980s, the emphasis on decentralised governance has shifted to focus more on democracy, pluralism, and rights; to improve efficiency, governance, and equality in service delivery (Larson and Ribot, 2004). Decentralisation is, therefore, linked to state-building through complex processes wherein agents of the state draw upon activities of multiple actors and their rules to negotiate their unequal power relations (Subramanian, 2009).

Despite the various efforts to address the problems of war-torn societies in Africa through decentralisation, this has not been an easy process. Instead of contributing to resolving problems faced by countries emerging from civil wars, decentralisation projects have contributed to post-war conflicts and violence, often between the state and the society, but sometimes between different levels of the government (Daudelin, 2003; Justin and Kenyi, 2015). These unexpected outcomes of decentralisation in post-conflict settings in Africa can be understood in light of history, namely by highlighting the roles of colonialism, postcolonial governments and civil wars in shaping those outcomes.

In addition to the repressive model of governance inherited by postcolonial governments highlighted in the previous section, most postcolonial governments in Africa inherited the colonial governance structures and institutions that were intended to achieve colonial objectives, largely exploitation of resources. Some of the governance structures inherited by those governments included the internal borders mostly created to enhance colonial rulers' capacity to manage their subjects within their territories (Touval, 1967; Johnson, 2009). By depending on the colonial ideas of governance and institutions, most postcolonial governments in Africa inherited authoritarian forms of centralised rule based on top-down approaches practiced by colonial powers throughout the continent. In contrast, proponents of decentralisation support decentralised governance as a mechanism that focuses on the promotion of democratic principles based on Human Rights, Rule of Law and international conventions (see Crawford, 2005; Blunt and Turner, 2005; Reerink, 2011; Özcan, 2000). It builds on the principle of consensus-building, whereby those in power govern with and on behalf of the governed (Özcan, 2000). In such contexts, the introduction of decentralisation projects can imply a clash between authoritarianism inherited from colonial governance strategies and democratic

principles promoted by decentralisation. Repressive regimes might resist the introduction of decentralisation projects as this could challenge their centralised system of governance and authority (Crook, 2003) or accept this strategically to manipulate its implementation to serve their interests (Oyono, 2004). At the same time, local elites will see the introduction of decentralisation as an opportune moment for them to have a say in the governance affairs of their constituencies and could challenge the resistance by the state to decentralise its authority. When decentralisation projects are introduced into such settings, elites claiming to represent local people may also capture the benefits of decentralisation to strengthen their patron-client relationship (Bardhan and Mookherjee, 2000). With such complexities, the introduction of decentralisation projects in post-conflict settings in Africa cannot necessarily mean benefit to local people, as this can be a potential trigger to conflict between the state and the society, and at the local level, between local elites and those they claim to represent.

Secondly, and as discussed in the section on state-building and state formation in Africa, decentralisation in a post-conflict setting can also be connected to the changes in the structure of governance and institutional setup. Parties to civil wars often try to change institutional setup and systems of governance in place with those that will best suit their objectives. Whether a civil war ended through a military victory by a party to the conflict or through a negotiated settlement, changes in the institutional setup will still take place, and some of those changes might be reflected in the way a decentralisation project are implemented after the war. Changes in institutional setup and governance structures that result from civil war might become institutionalised and may not be necessarily used by parties to the conflict for the benefit of citizens, but for the promotion of the objective that led to the civil war. In such a case, support by external actors on decentralisation projects that build on such territories could trickle down to supporting party politics, contestations between parties to civil, and even post-war violence, which is not uncommon in Africa (Dunn, 2009).

Lastly, external factors such as international donors also play an important role in determining how decentralisation projects are implemented, which can have some implications on their outcomes. Since the end of colonialism in Africa in the twentieth century, there has been a tendency by external actors to state-building to attach strings to funding projects, such as the conditionality of funding by the World Bank and bilateral

donors during the period of the structural adjustment (Van Der Spuy, 2000; Pender, 2001). In response to some of those pressures, many countries in Africa have claimed to have adopted certain forms of reform, including decentralisation (Platteau, 1992; Ribot, 2002). But in practice, most of these claims were intended for attracting funding. In some cases, governments manipulated those funding to centralise some institutions more than it had been the case before the introduction of decentralisation projects (Munga et al., 2009). In a way, the massive failure of decentralisation projects in the 1990s in Africa, as pointed out by Olowu (2003) and Conyers (2007), can be explained in light of that conditionality.

As the cases that will be discussed in Chapters Three and Four will later demonstrate, implementing decentralisation projects in post-conflict settings in Africa like South Sudan at the start of the CPA can be reasonably complex, influenced by historical interventions that led to the emergency of hybrid political orders in such context as well as the local contexts.

1.3.3. Displacement and land conflicts in post-conflict settings in Africa

Another element of land governance in post-conflict settings is the relationship between internal displacement and land occupation and reshuffle on land governance and governing institutions in post-conflict settings in Africa. The point of departure in establishing this relationship is that the seemingly innocent movement of displaced civilians who are often perceived as victims can result in changes in land tenure during wartime, and such changes can be linked to state-building at the end of a war that displaced them.

Migration is as old as human history, and involves voluntary or involuntary movement of people from one locality to the other. Throughout the past, reasons for people to undertake these movements varied from one locality to the other and have been changing over time. Because of those variations, academics and practitioners have come up with different categories to help distinguish various groups of migrants. The conventional approach has been to link migration to its causes and the destinations migrants choose to settle in, described by the 'push' and 'pull factors' (Kline, 2003; Kunz, 1973). A push factor is a reason(s) that makes people (migrants) flee their traditional settlements and

a pull factor the one(s) that motivates them to choose their destination. Based on this categorisation, several groups of migrants emerged, broadly grouped into two groups as economic, social, political, and environmental migrants; and internal and external migrants. While the first group is based on the causes of their migration, the second one is on the destination they choose to go to (Kline, 2003).

Of recent, the category 'forced migrants' was added to the list, comprising of persons moved against their will to settle elsewhere, such as slaves or when their movements are initiated by factors such as natural disasters or civil wars (Cohen and Deng, 2009). Within this category, the framing 'war-induced migrants' is used to refer to people forced to flee their localities because of a (civil) war; called internally displaced persons (IDPs) when they settle in safe areas within their countries, or refugees when they cross international borders to settle in other countries (Bhattarai-Ghimire and Upreti, 2008).

Because of changes in warfare, the equilibrium between IDPs and refugees has been changing over time. After the end of the Cold War in the 1990s, there has been a remarkable shift in warfare, from interstate to intrastate or civil wars (Sarkees et al., 2003). This shift was reflected in an increase in the number of IDPs compared to refugees to the extent that populations of IDPs outnumbered refugees at a certain point (Weiss, 1999). This increase, in turn, attracted the attention of academics and practitioners to focus on understanding the plight of IDPs to help address the causes of their plight and suffering. The publication of 'Guiding Principles on Internal Displacement' is a major outcome of those efforts, which provides the legal framework for the protection of IDPs during and after civil wars (see Deng, 1999; Cohen, 2004; Kalin, 2000).

Despite the extensive efforts to understand the plight of internal displacement to support them, some gaps still exist in the literature on internal displacement, which needs to be filled up. Shared narratives in the publications on the IDPs, for example, is to perceive displacement as an unintended consequence of a (civil) war and would end once the wars that caused this end. The international community gives governments the primary responsibility to protect their displaced civilians based on the framing 'sovereignty as a responsibility to protect', coined by Kofi Annan (e.g., Annan, 2005; Barbour and Gorlick, 2008; Cohen and Deng, 2009; Etzioni, 2006). The guiding principles on internal displacement also suggest IDPs should be assisted by their governments to return

voluntarily to their original areas of displacement, supported to integrate into host communities or to be resettled to other areas altogether after civil wars end (Deng, 1999). By interpretation, those arguments suggest displacement is the movement of innocent people often caused by civil wars, and things will return to normalcy once a war that caused displacements end. However, displacement can be more complicated than this: it can be used as a mechanism for land occupation by elites and the displaced as the agents of such occupation. Protracted displacement can also contribute to changes in land governance and land governing institutions, whether intentional or unintended. Land occupation and changes on land governance resulting from displacement may persist after the end of the civil war, and some of these might become institutionalised, and could potentially threaten land rights based on old norms of land acquisition. Several factors can contribute to changes in land resulting from displacements.

Looking at displacement and civil war in terms of cause – effect relationships, for example, displacement can occur in intertwined ways. While civil wars continue to be the primary cause of displacements of people, displacements can also be the cause of a civil war. In some cases, states can be motivated to depopulate some areas in the country by forcefully displacing some sections of the society, often for economic, political or strategic reasons (e.g., Le Billon, 2001). In such cases, some of those targeted for displacement might resist such displacements, and such resistances could escalate to civil unrest or take the form of insurgent groups against the state. Military confrontations between the state and insurgent groups resulting from those forms of resistance may contribute to the displacement of more people, adding to those displaced before the situation escalated to violence. At the same time, the movement of more (new) displaced to settle alongside those displaced earlier can potentially cause tensions between the old and new IDPs, which can be a source of instability. In such a case, displacement may become the primary cause of a civil war. When a state causes displacement, confrontations between the state and the insurgent groups resisting such a displacement can make the state perceive those in areas they target, including the displaced as "enemies" of the state. This way, the state cannot be the right entity to offer protection to the displaced as suggested by the guiding principles on internal displacement, as the state would see the displaced as part of the problem. As a result of the ongoing tensions between PKK and the state of Turkey, the government is reluctant to protect displaced Kurds as it perceives them to be part of the

insurgent groups against the state (Ayata, 2011). The fact that the Dinka ethnic group dominated the SPLA forces in the pre-CPA period made the government of Sudan to prosecute rather than protect displaced communities from the Dinka (Moro, 2009).

Displacement is also not a mere movement of innocent civilians but is often connected to land occupation elsewhere (Peluso and Lund, 2011). When people are forced to flee their locality, the choice of areas they flee to is not always arbitrary but can be influenced by a 'pull factor': areas, where the displaced, are expecting to get better livelihood opportunities (Davenport et al., 2003; Portes and Böröcz, 1989). Regarding land, a pull factor can be an area where they are expecting to have access to land or where host communities are willing to share their land resources with them. Pull factors can also be motivated by historical claims on land whereby the displaced will choose to go to areas they perceive to be their ancestral land. These pull factors can also be politically motivated whereby groups of displaced can move to occupy land elsewhere for political reasons. Whatever the reason may be for displaced to move to a given locality, displacement often comes down to the occupation of land by the displaced, and protracted settlement by the displaced in changes on land governing laws, institutions and authority. The same factors that attract people displaced from elsewhere can also influence decisions by host communities whether or not to welcome the displaced. Host communities may be reluctant to accept people fleeing violence from elsewhere if they have historical grievances or if they perceive that their presence might lead to permanent settlement on their land. At the same time, the displaced can also use violent means to occupy lands, turning displacement to be a mechanism for land occupation. The concept 'warrior refugees' (e.g. Haslie, 2006; Salehyan, 2008) underscores the active role of displaced people and refugees in their involvement in violence and forceful occupation of land. Regardless of their motives, protracted settlement displaced can contribute to changes in land tenure through the redefinition of land rights and regulation of access to land.

After the end of a civil war, some of the displacement-related changes in land tenure that occurred during wartime might be continued into the post-conflict setting and can have implications for state-building. In a situation of a protracted civil war and displacement, the displaced might feel obliged to settle permanently on their displacement areas as they might have built networks and established new patterns of livelihoods that may not be

relevant in their pre-war areas of settlement (Duncan, 2005; Wood, 2008). Such a protracted settlement by the displaced can be a potential source of conflict and particularly when host communities expect them to leave after the end of the conflict that displaced them (Brun, 2003). In such cases, local communities might resist initiatives to integrate the displaced into their society as host communities may see such integration as a strategy for permanent occupation of land. Resettling the displaced to other areas of their choice, as suggested by the guiding principles on internal displacement, might equally be problematic as the new host communities will expect the displaced to return to their pre-war settlements. Such resistance can be particularly the case when displaced are known to have histories of conflict and violence. Indeed, and as the case in Chapter Five will later demonstrate, what was perceived to be a temporary presence of IDPs in Yei River County has amounted to a permanent occupation of land of host communities by the displaced. As a result of a protracted settlement of the displaced and the arrival of new ones after the start of the CPA in 2005, displacement had also resulted in a drastic change in land governing institutions and authority in favour of the displaced, leading to the marginalisation of the host communities. As a result, displacement came to be perceived as a mechanism for land occupation by the state and the displaced as agents of land occupation, including those who genuinely fled violence from elsewhere.

1.4. Methodology and study area

1.4.1. Methodology and methods for data collection

This study, based on a qualitative methodology, uses ethnography based on a case study approach. It draws primarily on empirical data gathered in seven sites in Central Equatoria State, mostly from Yei River County. The primary data was complemented by data from secondary sources comprising of the analysis of policy documents, publications by various governmental and non-governmental organisations, historical records from the national archives in Juba, websites, and various news outlets. After the end of the fieldwork, the author visited Sudan's archives at Durham University in the United Kingdom to gather more data on South Sudan's history.

The data collection took place over sixteen months, during four visits between November 2011 and March 2013. The methods for gathering the data included Focus Group

Discussions (FGDs), workshops, extended interviews and participant observation. Before the start of the data collection, the author organised a workshop for each research site, followed by a second one by the end of the data collection. The first workshop provided the platform for the author to gather more research ideas from key informants to complement those he developed during the writing stage of the proposal, and the second workshop was held to present the preliminary findings of the research to the informants for validation. Following the first workshop, the author organised FGDs, followed by extended interviews and participants' observations in each research site. Informants for the interviews and the FGDs and the subjects for the observations included government officials, representatives of civil society, chiefs, traditional leaders, elders, and communities in the research sites.

After the completion of the fieldwork, data from each site were collated and analysed to form a case; some cases developed as standalone to a chapter and other chapters comprise a group of cases. Chapter Two consists of a single case in Yei Town, Chapter Three of three cases in Mangalla, Wonduruba, and Yei – Lainya border area, Chapter Four of two cases in Mugwo and Otego, and Chapter Five of a single case in Giru village. Chapters Three, Four and Five, are co-authored and published in peer-reviewed academic journals, and Chapter Two is submitted for publication. Chapter Three is also published as a chapter in a book titled "The Struggle for South Sudan: challenges for security and state formation". Thus, this thesis is a compilation of published academic papers and a book chapter.

After the end of the fieldwork in March 2013, many changes occurred in the political landscape in South Sudan, such as the start of the civil war in December 2013, the increase in the number of the states from ten to twenty-eight in October 2015 and to 32 in January 2017, and the division of what was Central Equatoria State at the time of the data collection to the three states of Terekeka, Jubek and Yei River State. Some of the relevant changes that are not reflected in the published chapters will be highlighted in Chapter Six in the general discussion.

1.4.1.1. Ethnography

Ethnography is the basic methodology that guided this research project. Ethnography follows a constructivist's philosophical principle, which allows researchers to gather data by studying people in their daily settings, or in situations where researchers participate in the social interactions of their research subjects to understand their world (Williamson, 2006). Through such interactions, researchers can link narratives of respondents obtained through interviews, group discussions or workshops to their daily lives, which will contribute to the development of an accurate description of the group under study or a 'thick description of cultures' (Geertz, 1973). The strength of ethnography in gathering reliable data is rooted in its ability to combine the different research methods the author used for collecting the data under a case study approach. A case study by itself is a powerful research tool in qualitative research which can also be used independently for gathering data (Noor, 2008; Krusenvik, 2016).

To elaborate a case study further, it is a research method that focuses on understanding dynamics within one setting by involving single or multiple cases (Eisenhardt, 1989; Yin, 1984). It typically combines data acquired through interviews, questionnaires, and observations (Eisenhardt, 1989, p.534), commonly used in qualitative research. A case study can be used to accomplish various aims, including a description of a social setting or testing a theory (Anderson, 1983), and the knowledge produced through cases can be generalised to larger segments of the society (Kennedy, 1979, p.661; Gerring, 2004, p.342). In this research, I use the case study approach to produce context-specific data to describe the post-CPA relations between state-building and land conflict on the one hand, and between displacement and land conflict, on the other.

1.4.1.2. Research Methods

The methods for the data collection for the cases included workshops, Focus Group Discussions, interviews, and participant observation. My choice of these methods is based on their relevance for gathering the data for this research project and their suitability for collecting data for case studies. As highlighted in the preceding section, the workshops and the FDGs were used to gather more research ideas from informants and to provide platforms for the validation of preliminary findings of the fieldwork. The Focus Groups,

interviews and observations in the research sites were conducted after the first FDGs and workshops for each research site.

The reason to combine the four research methods is so that each can complement for a loss in data that can potentially result from the weakness of each method. Total dependence on interviews for conducting qualitative research is, for example, receiving increasing criticism that it might not produce reliable data (Robinson and Driscoll, 1993; Mishra, 2016). Reliance on FDGs, participants' observation and workshops as standalone methods for data collection can potentially compromise the quality of the data, as each of those has their downside. Therefore, the choice to combine workshop, FDGs and participants' observations under a case study approach for this research project is to increase the reliability of the quality of the data and the knowledge that will be produced.

1.4.1.3. Field approach

The fieldwork was conducted in seven locations in Central Equatoria State namely, Mangala Payam in Terekeka County, Wonduruba Payam in Lainya County, Yei – Lainya border area, Giru village in Gimunu Boma, Yei Town, and in the two Payams of Mugwo and Otogo in Yei County. The data collection for each of the seven sites started by a workshop, followed by Focus Group Discussions, interviews and field observations. The first workshop was held in Juba, on 28 October 2011. This workshop brought together various stakeholders to land and local governance from different institutions including representatives from South Sudan Land Commission (SSLC), South Sudan Human Rights Commission (SSHRC), Rajaf Payam in Juba County, academics from the University of Juba, and Norwegian People's Aid (NPA) in South Sudan.

Following this workshop and before the start of the data collection, a workshop was conducted for each research site, followed by a Focus Group Discussion. A validation workshop concluded the fieldwork for each research site, followed by a general validation workshop in Juba. This last workshop was conducted on 25 May 2015, attended by the participants who attended the first workshop held on 28 October 2011.

1.4.1.4. *Reflexivity*

Reflexivity is a crucial aspect of qualitative research that links the person of the researcher to the data collection and research work produced. It involves reflection on self, research processes and researcher's accountability to the data produced. It, therefore, strives to maintain the quality of research work while recognising the limitations of the knowledge produced (e.g., Guillemin and Gillam, 2004; Etherington, 2007). In this research, I consider reflexivity as the challenges and opportunities I faced during the data collection that had the potential to influence outcomes of the collected data, and I highlight how I dealt with those challenges or benefited from the opportunities. In this specific case, what I acknowledged as a challenge was my failure to apply the four research methods uniformly in all the research sites as intended at the planning stage; and opportunities, my familiarity with the norms and cultures in the research sites and my fluency with the languages spoken in the research area. My failure to cover all the sites equally was associated with insecurity in Mangala and Wonduruba and my (ethnic) identity as 'native' to Yei in Giru.

Shortly after the start of the data collection, the security situation in Wonduruba became tense, and later in Mangala. The insecurity in the two sites was connected to land disputes discussed during the Juba workshop on 28 November 2011. The civil war that started in December 2013 added to the tensions in the two sites, making it difficult for me to have free and regular access to those sites as I had planned. During the period of the data collection, it became mandatory for me to seek for travel permits from security services before visiting those areas and getting the permits has not always been easy. Because of those restrictions, I had to conduct the workshops planned to be held in the two sites in Juba. I, however, visited the locations to conduct interviews and observe situations though less frequent than I had planned.

The second challenge was in Giru, connected to my identity as a 'native' to Yei, linked to the tense relationship between the local population and IDPs with Dinka background. This specific situation concerned a local land dispute in Giru that later escalated to what came to be framed as 'ethnic conflict' between Dinka and 'Equatorians'¹. Before this

¹ Author's observation, September 2012 – January 2013. This conflict is discussed in Chapter 5 as a case study.

incident, the relationship between host communities and IDPs from Dinka had been deteriorating because of the increased involvement of Dinka in what is locally perceived as land grabs. As a result, IDPs and host communities could not communicate with easiness. For this reason, it became impossible for me to discuss land issues with IDPs with a Dinka background. But the fact that most IDPs in Yei and Giru are from the Dinka group made it necessary for me to consider their views in this research. To overcome this challenge, I hired a Dinka research assistant who was an IDP living in Giru to assist in collecting data from Dinka respondents. Before starting his assignments, I gave the research assistant extensive coaching on the research project and guided him on conducting interviews and in organising and moderating group discussions. The research assistant conducted most interviews on internal displacement with Dinka respondents and I constated those with non-Dinka respondent.

Despite the challenge I faced in gathering data in Giru because of my identity as a native to Yei, this identity proved to be useful in collecting data from the other (six) research sites. As a result of my knowledge of the local culture and languages, I didn't need to have interpreters for interviews and transcription of data, which is a significant challenge ethnographer researching in foreign settings usually face (Freed, 1988; Westermeyer, 1990). In this regard, my experiences of researching at home area' fit into the emerging literature on auto-ethnography, which emphasises on the usefulness of researching at one's home area or place of work (e.g., Kinchin and Francis, 2017; Hernandez et al., 2017).

1.4.1.5. Ethical considerations

Maintaining ethical standards had a high priority throughout the various stages of the development of this thesis, especially in the conflict-ridden context of South Sudan. 'Do-no-harm' has been the underlying principle for this research (see Mackenzie et al., 2007), which entails the protection of the participants from possible harm that could result from their participation in the research. As the participants included individuals from different sectors of the society and various institutions (governmental, non-governmental and traditional), the do-no-harm principle entailed protection of personal security and interests of individuals and maintaining the integrity of the institutions that were involved in the research. The measures I undertook to protect respondents and their

institutions varied from one level of the research to the other, with each measure tailored to address potential risks that could come about at each stage of the research.

During the period of the data collection, maintaining the integrity of institutions meant that I got the right research permits from the relevant authority, kept local authorities informed about the research project and its progress, and adhered to local norms linked to researching in those sites. I conducted discussions with government officials at their workplace, and treated information suggested by respondents as off-record as such, but I sometimes used those to explore other sources of data, such as in interviewing other respondents, observations or group discussions without making their sources known.

For individual interviews, I conducted discussions with strict adherence to the research ethics, which included providing the relevant information about the research project, getting consent from respondents before conducting interviews and group discussions, and informing them of their rights, including the right to withdraw from the interview at any stage. I also informed respondents of their rights to demand the withdrawal of information they had provided before such information is included in public reports. Furthermore, I scrutinised data collected through interviews and group discussions, and discarded those with the potential to implicate respondents, or information that can be easily traced to the source. I also gave high priority to data protection, by keeping data and reports in a secure place, and at the same time, not sharing information obtained from respondents with a third-party.

At the writing stage, I coded the data so that information is not easily traced to the source. As a result, citations in this thesis are made with reference to places and dates of interviews and names of institutions rather than of individuals who participated in those events.

1.4.2. The Study area: Central Equatoria State and Yei River County

This study was conducted in Central Equatoria State, covering five Payams (Mangala, Wonduruba, Yei, Mugwo, Otego) and a contested border area between Yei and Lainya. The study covered seven cases, two outside Yei County (in Mangalla and Wonduruba), one at the contested Yei – Lainya border area and four in Yei River County. This section provides a contextual background to Central Equatoria State and Yei River County as the

main research sites and justification for using these areas for understanding the relationship between state-building and land conflict in South Sudan in the post-CPA period.

1.4.2.1 Central Equatoria State

Central Equatoria State was one of the ten states inherited by the SPLA-led government from Sudan at the state of the CPA; got divided into three states of Terekeka, Jubek and Yei River after the increase in the number of the states to 28 in October 2015 (see figures i, ii, and iii - highlighted in brown). The data collection took place before this division, when this state was divided into six Counties of Terekeka, Juba, Lainya, Yei, Kajo-Keji and Morobo; and each County was divided into Payams, and Payams into Bomas. Hence, I will frequently use Central Equatoria State and Yei River County throughout the thesis but will clarify if it is necessary to refer to the new administrative structures introduced after 2015.

Central Equatoria State covers a big part of the green-belt zone in South Sudan, bordering Uganda and the Democratic Republic of Congo. Because of its strategic location, this area attracted various actors during different historical periods to establish this as their administrative centre, the Ottoman Empire during the period of the slave trade, Belgian and British colonial rulers during the colonial period, and the SPLA forces in the pre-CPA period. In contrast to other areas in South Sudan, Central Equatoria State witnessed numerous changes in local governance resulting from the multiplicity of interventions by external actors, which justified my choice to collect the data for this research in this state.

Before the colonial invasion of what became South Sudan at the Sudanese independence in 1956, most parts of current Central Equatoria were part of the so-called Lado Kingdom (Leopold, 2009). This kingdom comprised of various clans with unique governance systems and structures. The predominant governance system was based on joint decision-making whereby leaders and elders jointly decided on governance affairs of this area on behalf of their clans, and they tasked responsibility of each sector to individual

actors within the group.² This area extended westward up to Faradji in the current Democratic Republic of Congo and southwards up to West Nile District in Uganda.

The first intervention into the Lado Kingdom by colonial powers occurred in 1894 by the Belgians, followed by the British colonial occupation. After the intervention by the Belgians, King Leopold II renamed this area 'Lado Enclave' and annexed it to Belgian Congo to become his personal property. It became part of current South Sudan in 1910 after the death of King Leopold II (de Vries, 2012). At the Independence of Sudan in 1956, the British colonial authority left Sudan divided into eight provinces, three (Equatoria, Bahr el Ghazal, and Upper Nile) in Southern Sudan and five in Northern Sudan. The three provinces in Southern Sudan were divided into 21 districts.

In 1992, nine years after the start of the North-South civil war in 1983, the government in Khartoum abolished the provincial system and replaced the three provinces in Southern Sudan by ten states. As a result of the introduction of the states' system, the two districts of Juba and Yei were merged to become what was Central Equatoria State, replacing Lado Enclave which was the renaming of Lado Kingdom by King Leopold II. In 1994, the administration of the Sudan People's Liberation Movement/ Army (SPLM/A) introduced the County - Payam- Boma system of the government as its official administrative structure in areas it controlled by upgrading villages introduced by colonial rulers to become part of the local government (Young, 2003; Zambakari, 2017). When negotiating the peace talks that led to the signing of the Comprehensive Peace Agreement, the SPLA administration objected to the idea of the ten states by arguing that the division of South Sudan to the three provinces and later to the ten states was a continuation of the divide-and-rule policy of the Sudanese government which led to the 1983 civil war (Beswick, 1991). But as a result of the pressure by mediators on the SPLM/A to reach an agreement with the government, the SPLA administration reluctantly accepted the subdivision into ten states. Despite the initial resistance to ten states, the SPLA-led government later increased in the number of states from ten to the 28 and then to 32. In addition to changes in governance by colonial administrations and

² Interview, Lasu Payam, 17 November 2012

postcolonial government, the changes introduced by the SPLA in the pre- and post-CPA period led to substantial changes in Central Equatoria, more than in other states.

1.4.2.2 Yei River County

As part of the pre-colonial Lado Kingdom, external intervention that occurred within Central Equatoria State had direct consequences for Yei River County. When the Lado Kingdom became part of the Belgian Congo, the Belgian authority pioneered the changes in the governance structures that existed in Yei by introducing chiefdoms and chiefs replace those that existed before this intervention.

When Yei was under the Belgian Congo as part of Lado Enclave, the priority of the Belgian authority was to appoint individuals fluent in Lingala, the Lingua Franca in Congo³. After the British took over Lado Enclave in 1910, they replaced most chiefs appointed by the Belgians by those who spoke local languages in South Sudan and Uganda for the ease of communication within South Sudan with chiefs of other areas and across the border with Uganda which was also a British colony⁴. Those chiefs also became in charge of land, taking over this authority from their predecessors appointed by the Belgians.

After the Sudanese independence in 1956, more changes occurred on local governance in Yei as in most parts of South Sudan. In 1970, the government in Khartoum officially abolished the chiefs' authority and introduced the Unregistered Land Act that gave the state ownership of lands in rural areas (Komey, 2008). As a result of those changes, chiefs lost their governance authority and authority over land governance given to them by the British colonial administrations. After the start of the North-South civil war in 1983, the government in Khartoum reintroduced the idea of the chiefship but used those for the conscription of local militias to fight SPLA forces. Following the footsteps of the government in Khartoum, the SPLA introduced chiefs and made use of them for military purposes. In 1997, SPLA forces captured Yei from Sudan Armed Forces and piloted the County – Payam – Boma system of governance it introduced in 1994 in this area: what is being implemented in the post-CPA period is partly an outcome of the pilot carried out in Yei. The substantial changes in local and land governance that occurred in Central

³ Interview, Yei River County, 27 November 2012.

⁴ Interview, Kakwa Community Association – Yei, 16 November 2012.

Equatoria State and Yei River County make this area to be suitable for understanding the implication of state-building on land conflict in South Sudan in the post-CPA period.

1.5. Thesis outline

This thesis comprises six chapters, including this introductory chapter (Chapter One), and a chapter on general conclusions (Chapter Six).

Chapter Two is titled '*Hybrid governance in South Sudan: the negotiated state in practice*'. This chapter draws on a case study from Yei River County to explore the relationship between state-building and state formation in the context of the hybrid governance adopted by South Sudan after the CPA. It illuminates the role of history in producing this hybridity, and shows how hybrid institutions function at a local level, and whether and under what circumstances they meet the needs of citizens and solve their local conflicts.

Chapter three is titled '*Governing Unclear Lines: Local Boundaries as a (Re)Source of Conflict in South Sudan*'. This chapter draws on cases in Mangala, Wonduruba, and Yei – Lainya border area to explore the relationship between decentralisation and conflict from the perspective of territories and internal borders. It shows how the introduction of new structures of governance in light of the post-CPA state-building linked to decentralisation led to the emergence of contested claims on territories and internal borders, and how conflicts resulting from those contests feed into broader conflict dynamic in the country in the post-CPA period.

Chapter four is titled '*Land Reform and Conflict in South Sudan: Evidence from Yei River County*'. This chapter builds on cases in Mugwo and Otogo in Yei River County' to explore the relationship between decentralisation and conflict from the perspective of competition over authority in rural areas. It shows how changes in local governance resulting from the post-CPA land reform linked to decentralisation led to violence between communities in rural areas resulting from competitions by local elites over authority on land governance.

Chapter five is titled '*The Politics of displacement-related land conflict in Yei River County, South Sudan*'. This chapter builds on a conflict case in Giru village in Yei River County and shows how land occupation and changes in land governance resulting from displacement

led to the emergence of contested claims on land ownership between Internally Displaced Persons (IDPs) and host communities and how conflicts resulting from these contestations shapes the relationship between displaced and host communities. Importantly, this chapter shows the roles of history in this conflict dynamic.

Finally, chapter six is the concluding chapter of the thesis. It draws on the four principal chapters (Two – Five) to provide the main findings of this research project and their contribution to academia and policy implications.

2. Hybrid governance in South Sudan: The negotiated state in practice

Abstract

This chapter draws on empirical data collected from Yei River County in South Sudan to contribute to the debates on hybridity and state formation in a context of state-building in post-conflict settings in Africa. Current literature offers a limited understanding of the practical workings of hybridity, and particularly on whether and under what circumstances hybridity may meet the interests and solve the problems of citizens. This chapter discusses how subsequent historical attempts at state-building have left a complex and layered governance system and analyses how this system functions on the ground in Yei River County, focusing on the land and justice sectors. The empirical analysis reveals institutional development to be ongoing and to be shaped through continuous negotiations among local stakeholders. While in the land sector, this process has produced power imbalances and violence, in the justice sector, unexpected institutional cooperation has improved access to justice for local citizens. Important factors in determining these institutional outcomes have been what we have termed the two P's: pragmatism and power.

Keywords:

South Sudan, State-building, State formation, hybridity, colonialism, postcolonial governments, civil war, Africa.

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2.1 Introduction

This chapter draws on a case study in Yei River County and the literature to understand how contemporary state institutions in South Sudan are the outcome of centuries of state formation and state-building, and how the resulting 'hybrid' institutions function as they regulate citizens' daily lives. As the chapter will show, understanding the legacy of colonialism, postcolonial governance and wartime rebel governance can help us to analyse the complexities of post-CPA state-building in South Sudan.

The CPA of 2005 marked the end of the longest civil war in Africa and the start of a new phase of state-building in South Sudan. This agreement provided for a referendum on self-determination to be held in 2011. The arrangements around the referendum were negotiated in such a way that South Sudan and Sudan were treated as separate entities within the 'same state' during the six years' interim period of the CPA (Johnson, 2014). State-building projects that started after the CPA took different approaches in each of the two regions. In South Sudan, this marked the start of a state-building project that was to continue after the country became independent in 2011. This project, undertaken by the SPLA-led government, with strong involvement of various UN agencies, bilateral and multilateral donors, sought to address the grievances that had led to the war (Pantuliano, 2009b). As the division of the Southern Regional Government into three regions of Greater Equatoria, Bahr el Ghazal and Upper Nile in 1983 by the government in Khartoum had contributed to causing the war (Beswick, 1991), this state-building project intended to introduce a 'new' structure of governance. In addition, the pressure Khartoum-based governments had put on land rights of rural communities in South Sudan was cited as a crucial issue to be addressed. The new government aimed to introduce a land tenure regime that would prevent the state and powerful actors in society from interfering in the land rights of rural communities. The development of a judicious and independent justice system was considered a crucial element to protect these rights (e.g., Baker and Scheye, 2009).

As a result of this approach to state-building by the SPLA and its international donors, the SPLA-led government introduced a new structure of governance and institutions to replace those that had existed at the start of the North-South civil war in 1983. The new structure comprises three levels of government: national, sub-national and local. At each

of these levels, both formal and informal institutions are present. This restructuring became the basis for various state-building projects such as the introduction of a decentralised system of governance, land reform, and reform in the judiciary sector. Starting after the CPA in 2005, these initiatives continued after the independence of South Sudan in 2011.

Despite a large presence and heavy investment of international and non-governmental organisations and bilateral donors, which have been attempting to assist the South Sudanese government in the development of state institutions, this has not been an easy process. In late 2013 widespread fighting broke out between different factions of the ruling party (e.g., de Vries and Justin, 2014), and the situation remains highly unstable today. Violence regularly flares up and contributes to displacement, disease and persistent poverty.

It appears, therefore, that recent attempts at state-building in South Sudan have so far had limited success. In this chapter, we suggest that a reason for this is a lack of attention to the complexity of governance in the country. In the literature on peace- and state-building, a currently popular concept to understand these complex dynamics is *hybridity*. This concept describes the complex outcomes of state-building interventions by national and international actors, the latter often in a context of peacebuilding, as promoting strong and accountable state institutions is generally seen as an appropriate way to prevent future violence. The literature on hybridity describes how newly introduced institutions meet existing local ways of doing things, producing mixed outcomes. (e.g. Mac Ginty, 2010, 2011; Richmond, 2015; V. Boege et al., 2008). Initially, this literature saw hybridity as an unexpected outcome that highlighted the limits of what intervention can achieve. More recently, however, it has been treated as a desirable outcome that could reconcile international standards with local realities and that, moreover, can be planned as part of state-building intervention (see Millar, 2014). Others disagree that hybridity can be planned, stressing the emergent and unexpected nature of institutional hybridity (Björkdahl, Höglund, G. Millar, et al., 2016). Either way, policies and literature focusing on (hybrid) state-building have often disregarded longer historical processes of state formation (e.g., Verkoren and Kamphuis, 2013) which may best be characterised as processes of continuous negotiation (Hagmann and Péclard, 2010). Moreover, the literature on hybridity so far offers little insight into how hybrid governance actually

works out in practice for ordinary citizens, and whether, and under what circumstances, it meets their interests and solves their conflicts.

This chapter draws on the analysis of fieldwork in Yei River County in Central Equatoria State helps to fill gaps left by existing literature by responding to the following questions:

How did hybrid institutions come about in South Sudan?

How do hybrid institutions function at a local level?

To what extent do they meet the needs of citizens and solve local conflicts?

The first part of this chapter highlights the methodology and the methods for data collection. The second part draws together relevant literature on state-building, hybridity, and the negotiated state. In order to illuminate how the current 'hybrid' or 'negotiated' institutional setup in South Sudan has come about, the third part provides a historical perspective on state-building and state formation in South Sudan. The fourth part will discuss state-building in South Sudan after the CPA by focusing on the land and justice sectors. The fifth part draws on our empirical research in Yei River County to examine how the hybrid or negotiated state works out in practice for local citizens. The sixth part will conclude this chapter.

2.2 Methodology

The data collection took place over six months' period, during three visits between November 2011 and March 2013. The methods for gathering the data included Focus Group discussions (FGDs), workshops, extended interviews, and participants' observations. Two workshops were conducted in the course of this study, the first before the start of the field data collection and the second one after the data collection was completed. The first workshop provided the platform for the authors to gather more research ideas from key informants and the second one to present to the informants the preliminary findings of the research for validation. Following the first workshop, the authors organised FGDs, followed by extended interviews and participants' observations in each of the five Payams of Yei River County. Informants for the interviews and the FGDs and the subjects for the observations included government officials, representatives of

civil society, chiefs, traditional leaders, elders, and residents in the five Payams of the County.

2.3 Understanding State-Building in Africa: Hybridity and Negotiated State Formation

This section explores the literature on hybridity and negotiated state formation in a context of state-building in a post-conflict setting in Africa. We consider state-building as a purposeful action to develop the capacity, institutions and legitimacy of the state in relation to an effective political process for negotiating the mutual demands between state and societal groups. In recent decades, state-building has been the primary approach of international actors (the UN, other international organisations, bilateral donors, NGOs) to solving the problems of war-torn countries. Essentially following the same blueprint everywhere, such efforts focus on the promotion of Weberian state institutions (e.g., Cramer and Goodhand, 2002). These contemporary state-building policies have tended to pay little attention to the political context in which they intervene, or to the history that has given rise to this context. However, state-building in Africa has a long history. Key actors have been the colonial powers, whose legacies have strongly influenced current institutional setups. As postcolonial authors such as Young (2012) have shown, newly independent states in Africa incorporated many colonial practices and institutions.

In contrast to state-building, state formation is less purposeful, understood in this chapter as the coming about of particular state institutions in a given setting through a variety of historical developments, some more autonomous and others imposed by outsiders (Azam, 2002). In South Sudan as elsewhere, both processes occur simultaneously. This results in complex interactions among government officials, informal (often traditional) governing structures, civil society actors, rebel groups, and international interveners. As a result, recent state-building interventions have not created Weberian states as intended, but generated complex outcomes, mixing global and the local elements and formal and informal institutions (e.g., Mac Ginty, 2011). In the peace and conflict literature, these outcomes have been termed 'hybridity' (Boege et al., 2008; Mac Ginty, 2010; Richmond, 2015). Whereas hybridity was initially seen mostly as an unfortunate and unintended consequence of interventions that met their limits, today

it is increasingly considered a desirable outcome; a more authentic alternative to the 'liberal peace' blueprint imposed by interveners, as it taps into local knowledge, broadens the peace constituency and generates legitimacy (Mac Ginty, 2010). The hybridity concept, then, is increasingly used more in a prescriptive than a descriptive way (Björkdahl et al., 2016; Millar, 2014). However, as of yet little is known about how such systems actually work out in practice and whether, how, and under what circumstances they benefit citizens.

Adding to the hybridity literature, a useful way to understand the interactions surrounding state-building interventions is as a process of continuous *negotiation*. Following Hagmann and Péclard (2010, p.539), one might even speak of 'negotiated statehood', referring to 'the dynamic and partly undetermined processes of state formation (...) by a multitude of social actors who compete over the institutionalisation of power relations'. These actors include local, national and transnational actors, though different coalitions arise across these categories. They include state bureaucrats at different levels and in different government entities (including the judiciary, the administration, the customs service, the army and the police), political parties, professional associations, trade unions, neighbourhood organisations, national and international NGOs, churches, guerrillas, warlords, businessmen, multinational corporations, regional and international institutions and foreign states (Bayart, 1989; Hagmann and Péclard, 2010, p.546: 7; Lund, 2006; Mamdani, 1996, p.199). The distinction between state and non-state actors in this context is blurred, and the official state actors are far from being the only ones that exercise authority and offer security provision (Migdal, 2001).

The negotiation processes that make up state formation are unequal, messy, and a-linear. Power and resource differentials among stakeholders severely limit the room for negotiation of weaker actors (ordinary, poor people), and allow stronger actors (elites) to influence outcomes to a much greater extent (Doornbos, 2010, pp.766-767; Hughes, 2013, p.146). In addition, the process is ongoing and open-ended (De Sardan, 2005). State formation is not a straightforward move towards increasing institutionalisation, but also includes resistance to institutionalisation and the waxing and waning of state authority (Lund, 2006, pp.698-699). Moreover, the practice of governance may vary from place to

place, and even from field to field (security, property relations, and so forth) (Bayart et al., 2001).

Though the concept of hybridity rightly draws our attention to the mixed nature of institutional arrangements emanating from state-building interventions, the literature on negotiated state formation helps us to nuance this concept by uncovering the fluid and dynamic nature of these arrangements as well as the multifaceted agency local actors have to give shape to state formation processes.

What the theory does not yet tell us, however, is how the resulting institutional landscape functions for ordinary citizens. As the analysis of the case of Yei River County will later show, post-conflict settings in Africa such as South Sudan provide the landscape for institutions to have variable levels of interactions, ranging from congruent relations to contradictory rivalry between institutions (e.g., Lund, 2006, p.698). Moore (1978, p.50) uses the concepts regularisation and situational adjustment to describe the processes that come about from these interactions. Processes of regularisation are the 'processes which produce rules and organisations and customs and symbols and rituals and categories and seek to make them durable'. It is the result of people's efforts to fix social reality, to harden it, to give it form and predictability. Situational adjustment, on the other hand, is the process whereby people exploit the indeterminacies in the situation or generate such indeterminacies by reinterpreting or redefining rules and relationships (ibid. 1978). As these processes work simultaneously, then the 'making' and 'unmaking' of institutions and hence the state, is a continuous process that involves negotiations and constellations by a multiplicity of actors. We now turn to the analysis of South Sudan to understand how these processes work out in practice, and with what results.

2.4 The Institutional Legacies of Colonialism, Postcolonial Governments and SPLA Rule

To make sense of the hybrid or negotiated forms of governance that developed in the post-CPA period, we start by exploring history to understand how colonialism, postcolonial governments and SPLA governance during the war all contributed to current institutions. In this chapter, our emphasis will be on the development of land governance and justice institutions. Since both these sectors have proven to be drivers of conflict in

South Sudan in the past (e.g., Leonardi and Santschi, 2016; Pantuliano, 2007; Moro, 2009), their reform is seen as crucial to achieving lasting peace (de Vries, 2012; Leonardi and Santschi, 2016).

Legacies of colonial times include the internal borders (Cormack, 2016; de Vries, 2012; Schomerus et al., 2013) which now demarcate the newly introduced States, Counties and Payams. Those borders were often created around territories consisting of communities of the same ethnic groups or given a new identity by colonial administrators when a territory consists of more than one ethnic group or clan. In the latter case, such a group is often named after the chief appointed by the colonial administrators who claim autochthony to this area or belongs to a majority group. In Yei, for example, the two Payams of Lasu and Mugwo are named after the first chiefs appointed by the British colonial District Commissioner in Yei.⁵

Chiefs are another institutional legacy of colonial times in South Sudan. Though chiefs are regularly referred to as 'customary institutions', suggesting a pre-colonial heritage, this institution was introduced by the British colonial authority to facilitate its indirect rule strategy. Postcolonial governments in (South) Sudan inherited it at will, incorporating chiefs into their governance structures in various ways at different times. Sometimes chiefs were considered traditional, customary and outside the formal government structures, while in other cases they were made official representatives of the state and ruling parties at the local level. In 1970, the government of President Numei issued a decree to abolish the chieftaincy institution, arguing that it was designed to serve colonial interests (Deng, 2007, p.87).

Nevertheless, chiefs continued to play roles in local governance, and chief courts functioned throughout the country (e.g., Leonardi, 2013). Shortly after the start of the North-South civil war in 1983, the Numei government reinstated the chieftaincy institution and made chiefs the focal point for the mobilisation of government-allied militias on its fight against SPLA (e.g., Johnson, 1998). Chiefs also became the local representatives of Numei's political party (e.g., Sidahmed and Sidahmed, 2004).

⁵ Interviews, Mugwo Payam, 3 February 2013, Lasu Payam, 3 May 2011, and Lasu Payam, 25 May 2012.

A third colonial legacy is in the justice sector. As Mamdani (2001) notes, the distinction of inhabitants in colonies by the colonisers formed the basis of the legal system during the colonial period, which was also the case in South Sudan. 'Outsiders' to the colonies were regarded as citizens governed by civil laws and the 'locals' as subjects ruled by 'customary laws' invented by the colonisers (Lentz, 2000; Mamdani, 2001). After independence, various postcolonial governments in Sudan continued with this practice, though with some variation in forms and over time. Before the formal abolition of the institution of the chiefs in 1970, the justice system in Sudan distinguished between statutory and customary courts, the latter also known as *Mahakim el Urf/ Ahliya* or traditional courts (Abdul-Jalil, 1985). In 1983, the same government introduced Islamic Laws – also known as *Sharia laws* – applicable to Muslim communities in the County while most South Sudanese who were considered Christians or animists, were governed by different laws (Sidahmed and Sidahmed, 2004).

With regard to land rights, laws provided for private ownership of land in vast areas of Northern Sudan, whereas in Southern Sudan, private ownership of land was limited to the acquisition of residential pieces of land in urban areas (e.g. Komey, 2008). This disaggregated approach to landownership was also a legacy of colonialism. Per the Unregistered Land Act of 1970, lands not registered in accordance with the colonial Land Registration Ordinance of 1925 would be owned by the state. As land registration based on this ordinance was limited to northern Sudan and a few urban areas in Southern Sudan, the Land Act of 1970 gives the state the right to claim ownership of land in most areas in South Sudan, and this claim generated tensions between the governments in Khartoum and political elites in Southern Sudan and contributed to the civil war that started in 1983 (Pantuliano, 2007; Komey, 2008).

During the 1983-2005 war, the SPLA effectively governed much of what is now South Sudan. Though it rebelled against the postcolonial Northern government, it nonetheless ended up building on the combined legacy of colonialism and postcolonial governments. The SPLA upgraded the villages created by the British colonial powers to become part of the local government structures, now renamed Counties, Payams and Bomas. It also introduced a different version of chiefship by distinguishing chiefs as paramount, head and executives' chiefs who respectively headed Counties, Payams and Bomas. Following in the footsteps of its predecessor - the government of Sudan - SPLA added to the military

and political dimensions of the chiefship institution by giving chiefs military training, involving them on local mobilisation of youth to become its militia and by making them representatives of the political wing of SPLA (SPLM) in their areas (see Johnson, 1998; Leonardi, 2007a). Today, this latter role as political representatives has become a key element in the power of the chiefs. This is a typical legacy of colonialism and postcolonial governments combined: the chiefs appointed by the colonial administration had represented the colonial state in villages in Southern Sudan (Leonardi, 2007a, p.391), and those appointed by president Numeri had represented the Sudanese Socialist Union (see Sidahmed and Sidahmed, 2004).

Clearly, then, the institutional setup in the post-CPA period may be seen as a hybrid political order comprising of legacies of colonialism, postcolonial governments and SPLA wartime governance. As the British colonial authority established most territories in its former colonies along ethnic or clan lines, by promoting those structures to become part of the official government structures, SPLA has promoted ethnic or identity-based type of governance. In turn, the connection between identity and land rights or in making claims on territories is making it increasingly difficult for 'outsiders' such as internally displaced persons and migrants to have access to land. Also, the division of the justice system into statutory and traditional realms potentially excludes some groups from accessing justice, such as IDPs in Yei – discussed in chapter five -, which prepares the ground for tensions, violence and conflicts along ethnic lines. Though a great deal of the interactions resulting from the hybrid form of the institutions in the post-CPA period seems to be contributing to tensions and violence, the case of Yei will also demonstrate that some of those interactions could be useful to local people. Before elaborating on this, we will now discuss state-building and institutions in the post-CPA period.

2.5 State-Building and Institutions in the Post-CPA Period

To understand the state-building project that started in the post-CPA period, we start by giving an overview of the governance structure and institutions introduced by the SPLA-led government, followed by sections on the analysis of the land and the justice sectors in Yei River County. We distinguish between three levels of government; national, sub-national and local; and two kinds of institutional setup; national - local and formal-informal. The national institutions are the institutions at the national and sub-national

levels of the government and the local ones include a County and below. Formal institutions are the institutions introduced by the state, supported by external actors as part of the state-building project, while informal institutions are existing institutions not considered by the state as part of its institutions. Within the formal institutions, there is also a distinction between the statutory and traditional; the latter is popularly referred to as customary institutions.

2.5.1 Structures of Governance

The post-CPA structure of the government in South Sudan consists of three levels of government; the national, sub-national (state) and local (County and below) governments. Based on this structure, South Sudan was divided into ten states, and each state into Counties. Each County was divided further to lower levels of Payams and Bomas, and in some cases, Bomas are divided into sub-Bomas and villages. Alongside these formal institutions, informal institutions continued to operate, namely traditional and community leaders with 'spiritual connections' such as rainmakers, land custodians – *Monye Menu* –, and traditional healers (Schomerus and Aalen, 2016).

At the start of the CPA in 2005, South Sudan was divided into ten states, collectively divided to 79 Counties (Schomerus and Aalen, 2016). In October 2015, President Salva Kiir issued a decree to increase the number of states from ten to 28⁶ and in January 2017 to 32⁷, followed by an increase in numbers of Counties, Payams and Bomas. The number of Counties increased from 86 in 2011 to more than 400 today.⁸ Unlike at the start of the CPA where most Counties and some Payams and Bomas consisted of communities from different ethnic backgrounds, this change resulted in a change in the social composition of most Counties, Payams and Bomas, with most of their inhabitants consisting of individuals with similar ethnic or clan backgrounds. This development echoes the colonial period when villages comprised of communities from the same ethnicity or clan became local government units. By turning these colonial units of governance into Counties, Payams and Bomas, the government has effectively inherited the colonial

⁶ Sudan Tribune, <http://www.sudantribune.com/spip.php?article61403>, 17 January 2017.

⁷ Sudan Tribune, <http://www.sudantribune.com/spip.php?article61403>, 17 January 2017.

⁸ Interview, faculty of law, University of Juba, 22 October 2019.

pattern whereby structures of government followed ethnic lines.⁹ Before this change, for example, Yei River District consisted of diverse ethnic groups; namely the Kakwa, Pojulu, Kuku, Nyangwara, Kaliko and Adiyu. Today, however, each of these groups is aspiring to have its own Counties, Payams and Bomas.¹⁰

2.5.2 Land Governance and Institutions

At the national level, the post-CPA government introduced the South Sudan Land Commission (SSLC) as the highest land governing institution in the country. This commission was tasked with the development of land policies and laws in coordination with national institutions that are connected to land tenure such as the Ministry of Land and Physical Infrastructure and the Ministry of Agriculture and Forestry (GOSS, 2005).

Based on the decentralisation policy adopted by the SPLA-led government, SSLC was to be decentralised to the sub-national (state) and local levels of the government as a way of extending its services to all sectors of the society. Each state obtained a State Land Commission (SLC), which were further decentralised into County Land Authorities (CLA), Payam Land Councils (PLC), and Boma Land Administrations (BLA). A CLA is headed by the County Commissioner who is appointed by a state governor, a PLC by the Payam director appointed by the County Commissioner, and a BLA by the Boma administrator who is also a staff of the County.¹¹ Chiefs also play roles on local land governance sometimes formally and in some cases informally. As part of the formal institutions, chiefs discuss land issues in their areas with Payam Directors and Boma Administrators who are the heads of PLC and BLA. At the same time, they (chiefs) engage non-state actors on local land governance on land issues in their areas as they are also considered part of the informal institutions.¹² Like the other staff of the local government, chiefs are appointed to their positions, usually by the County commissioner. Those appointments became the practice though the existing laws suggest individuals holding those positions should be elected by and become answerable to the constituencies they serve (GOSS, 2005).

⁹ Interview, Centre for Peace and Development Studies – University of Juba, 29 October 2011.

¹⁰ Interview, Centre for Peace and Development Studies – University of Juba, 29 October 2011.

¹¹ Interview, Government of Central Equatoria State, 7 February 2015.

¹² Interview and presentation, Yei Crop Training center, 31 January 2012.

As part of the process of land reform, the SSLC developed the Land Act of 2009, which introduced a new regime of landownership by distinguishing land rights as public, private and community land; respectively owned by the state, private entities and communities (GOSS, 2009a). This is notable, as pre-CPA land laws gave ownership of land in rural areas in South Sudan to the state. Parallel to the formal institutions introduced during this time discussed above, various informal actors play a role in land governance, particularly in rural areas. In the areas where we collected the data, the most prominent of the informal stakeholders to land governance is *Monye Menu* (land custodian) who is traditionally tasked with governing land in rural areas on behalf of landowning communities.¹³

2.5.3 Institutions of the Justice Sector

Like the land sector, the justice sector in the post-CPA period distinguished between the statutory and traditional systems, with each system drawing on a different body of laws. Once again, this is a legacy of colonialism and postcolonial governments as colonialism distinguished between civil and customary laws, and postcolonial governments between statutory and traditional, and later Islamic and other laws.

The statutory sector draws mainly from the Judiciary Act of 2008 (GOSS, 2008), but also incorporates international laws such as Human Rights and the Rule of Law (GOSS, 2005). A combination of these laws provides the basis for the establishment of the statutory justice sector, including the establishment of courts and the appointment of judges to different levels of the court. The traditional (or the customary) justice system, on the other hand, draws from local traditions and customs specific to inhabitants of each area (GOSS, 2009b). As most Bomas, Payams and some Counties consist of uniform clans or ethnic groups, the underlying assumption in the introduction of this system is that laws within each local government structure (Payams and Bomas) should be applicable to its residents, which would increase the perception of fairness in the traditional justice system.¹⁴ The customary legal system has a wide coverage of the society, as more than 80% of the population of South Sudan live in rural areas¹⁵ and depend on this system to

¹³ Interview, Community leader – Yei Town, 16 November 2012.

¹⁴ Interview, Yei River County, 27 November 2012.

¹⁵ World Bank, <https://data.worldbank.org/indicator/SP.RUR.TOTL.ZS?locations=SS>, 11 January 2019.

resolve disputes. As a result, a special law – the Local Government Act - was developed by the government – supported by donors - to guide the establishment of traditional courts in Counties, Payams and Bomas (GOSS, 2009a).

In terms of roles, the division of the institutions of the justice sector into statutory and traditional would limit the presence of statutory courts to urban areas and the customary ones to villages in Payams and Bomas. The existing laws do not specify any levels of interaction between statutory and traditional courts, meaning that formally, cases of customary nature cannot be referred to the statutory courts or the other way around. In practice, however, both types of institutions closely coexist at each level of government. Statutory courts have been established in Counties and Payams, respectively headed by first-grade and second-grade judges. On the traditional side, there is a representation of the institution of the chiefship at all levels of the government¹⁶. Whether and how this coexistence has led to interaction, and with what consequences for citizens, will be examined in the next section.

As the following paragraphs will demonstrate, the interactions in the land and justice sectors in South Sudan in the post-CPA period have yielded unpredictable outcomes, some contributing to conflict and violence, but others conducive to finding local solutions that provide a certain level of peaceful coexistence.

2.6 Hybrid Governance in Practice: Local Governance and Land Conflict in Yei River County

It is time to turn to the analysis of the empirical data gathered in Yei River County in order to understand how the hybrid or negotiated structure that has developed over the centuries works out in practice.

¹⁶ At the central government, a Local Government Board was established, headed by a chairperson appointed by and answerable to the president of the republic. This board was tasked with the provision of the Constituency Development Fund (CDF) to Counties, bypassing authorities of the sub-national (state) levels. Part of this fund is dedicated to improving the performance of chiefs' courts; creating a direct link between the central and the local. At the sub-national level, each state has a Ministry of Local Government and Law Enforcement (MLGLE), which oversees the legislative and judicial aspects of governance in Counties and below. There is also the presence of the Council of Traditional Authority (COTAL) in each state, which further strengthens the connection between formal and informal institutions and between states and Counties.

In theory, the governance structure introduced in the post-CPA period would provide the platform to decentralise the formal institutions. Through this approach, each of the three levels of the government will have dedicated institutions to address issues at their levels based on policies developed at the national level. Per these arrangements, Yei River County – the main research site- would have six magistrate courts, one in the County presided by a first-grade judge and one in each of its five Payams, presided by a second-grade judge. On the traditional side, the County headquarters in Yei Town would have a paramount chief, each of the five Payams a head chief, and the seventeen Bomas an executive chief for each. In the land sector, this County would have a County Land Authority, five Payam Land Councils and 17 Boma Land Administrations.

However, this was not yet the case during the period of data collection. At the time, the County had one magistrate court in County headquarters, but not in any of its five Payams. Though the traditional justice sector was better organised and well-equipped than the statutory, with most courts having chiefs, the County lacked a paramount chief to oversee the work of head and executive chiefs in Payams and Bomas.¹⁷ In the land sector, a County Land Authority was established at the County's headquarters in Yei, but there was no presence of Payam Land Councils and Boma Land Administrations in the five Payams and the seventeen Bomas.¹⁸ The gap created by the minimal presence of the statutory courts and the uncoordinated arrangements within the traditional ones contributed to the emergence of hybrid forms of governance that resulted from interactions among the existing institutions. Some of these interactions were contentious and contributed to conflict and violence, but others occurred more peacefully.¹⁹ We will now discuss this in more detail.

2.6.1 Land Tenure and Conflict

After the start of the CPA in 2005, the land sector in Yei River County became a major source of contestation, conflict and violence. This was a dramatic change compared to the pre-CPA period. While landownership and governance were centralised by the state before the start of the civil war in 1983, land governance in rural areas in Yei was not

¹⁷ Author's observation, Yei River County, November 2011 – March 2013.

¹⁸ Author's observation, Yei River County, November 2011 – March 2013.

¹⁹ Author's observation, Yei River County, November 2011 – March 2013.

severely affected by those policies. This was partly because the presence of the state (institutions) was limited to Yei Town and partly because of the popularity of the traditional ways of land governance among local communities. The limited presence of 'outsiders' in the County also made land tenure less problematic. Land allocation in Yei Town was regulated by the district authority and in the villages by traditional leaders under the custodianship of *Monye Menu*.²⁰

During the civil war, however, new land governing institutions and laws were introduced. Combined with the continued settlement of internally displaced persons (IDPs) and soldiers on lands previously owned by others, this had a strong impact on land tenure. After the introduction of the County – Payam- Boma system, most chiefs who inherited their authority from their ancestors, as has been the practice since the colonial period, were replaced by SPLA appointees, and the new chiefs were given authority by SPLA over their subjects and land. In many areas, those changes resulted in contentious relations between old and new chiefs, as well as between the new chiefs and the land custodians (*Monye Menu*).²¹ Following the decentralisation of SSLC to Payams and Bomas and giving Payam directors and Boma administrators the authority to head Payam Land Council and Boma Land Administrations, a new dynamic of contestation around land governance emerged, this time involving chiefs, traditional land custodians and the statutory staff of Payams and Bomas.²² As the new land law gives ownership of land in rural areas to local communities in villages, local people also became involved in those conflicts, often in support of *Monye Menu*, chiefs or local government officials claiming to protect land rights of local communities. Those contestations escalated into violent conflicts in some villages around Yei, initially between authorities of the formal and informal institutions and later between communities. Some examples include the conflicts between Lugori and Yondu clans in Mugwo and Somba and Morsak clans in Otogo that will be discussed in chapter four.

Also, a combination of the new land laws and the continued presence of IDPs and soldiers in the County added another layer of complexity around land conflict, particularly between IDPs and returning landowners who fled the war before the CPA. Often,

²⁰ Interview, Asole Boma – Lasu Payam, 20 May 2012.

²¹ Interview, Yei B Court, 9 November 2012.

²² Interview, Yei County, 3 March 2011.

returnees attempted to reclaim their land occupied by IDPs or soldiers on the basis of the pre-war norms of land acquisition by arguing that those pieces of land were allocated to them by the 'legal authority' – the government of Sudan.²³ However, many IDPs and soldiers resisted those claims by referring to the post-CPA land laws in the constitution that suggest 'the land belongs to the people of South Sudan', or a provision in the Land Act that indicates that those who have been occupying lands 'unlawfully but in good faith' for at least three years are entitled to own those lands on permanent basis or compensation by those claiming those lands (see GOSS, 2009a). Though this clause is enshrined in the land act and the transitional constitution of 2011 (GOSS, 2011), its legality has been contested even among elites of the ruling party and an amended version of the Land Act has been developed, passed by the national assembly to the presidency to be signed into a Land Policy to address gaps in the existing Act. Drawing on the (mis)interpretation of the existing laws, some soldiers and IDPs even demanded 'buckets of blood' from land claimants as a condition for them to return lands they occupy (Leonardi, 2011); a demand locally interpreted as a threat to kill returnees attempting to reclaim their grabbed lands.

As most land occupied by IDPs and soldiers were allocated to them by chiefs of IDP communities,²⁴ tensions between communities of the IDPs and returnees around land also caused tensions between 'local' chiefs and chiefs of IDP communities²⁵. The direct involvement of soldiers in land grabs and the support they give IDPs to resist eviction by returning landowners also caused locals to speculate that the state was directly involved on those land grabs as the involvement of the military (soldiers) in those disputes was perceived as the involvement of the state.²⁶ All in all, the introduction of the new land governing institutions contributed to contentious interactions throughout the County between statutory and traditional institutions of the formal sectors, between different stakeholders of the informal institutions and among communities. The conflicts in Mugwo and Otogo Payams mentioned earlier are some of the outcomes of those contestations among communities. In Mugwo, for example, competition over authority on land between headmen of Lugori and Yondu led to violence between the two

²³ Interview, Yei Crop Training Centre 16 November 2011.

²⁴ Interview, Yei Payam Court, 3 March 2012.

²⁵ Interview, Kakwa Community Association – Yei, 16 November 2012.

²⁶ Interview, Yei County, 3 March 2011.

communities that resulted in the injury of dozens of individuals. In Otogo, competition over authority between chiefs of Goja and Morsak led to violence between two clans of Morsak and Somba.

2.6.2 Conflict Resolution Mechanisms in the Justice Sector

In contrast to the contentious relationship between institutions in the land sector, in the justice sector, formal and informal institutions interacted in relatively peaceful ways. Because of the limited presence of statutory courts in the County, the magistrate and chief's courts in the County were confronted by a heavy caseload to the extent that they could not handle disputes. They both needed each other to relieve this pressure.

On the side of the statutory sector, the only statutory court in Yei Town covered for the five Payams that lacked statutory courts at the time of research. However, it was overwhelmed with cases from within the town alone. To add to the challenge, this court would address land cases, as land disputes in urban areas fall under the jurisdiction of statutory courts (GOSS, 2009a, 2009b, 2011). This broadened strongly to the caseload, as most conflicts within the town revolved around land.²⁷

On the traditional side, the lack of a paramount chief in the County became problematic, as Payam chiefs were supposed to refer cases they could not resolve to a C court headed by a paramount chief, and chiefs in rural areas were expected to consult with a paramount chief before deciding on cases involving large-scale land disputes or those involving litigants from different Payams of the County. In addition, the limited interactions between local chiefs and chiefs of communities of IDPs discussed above, presented problems as chiefs cannot resolve disputes and enforce sentences of conflicts involving disputants from local communities and communities of the displaced.²⁸

However, as the challenges facing the justice sector in addressing the needs of the people of the County increased, unexpected levels of interactions emerged; initially between the

²⁷ Interview, Yei Payam Court, 3 March 2012.

²⁸ Author's observation, Yei River County, November 2011 – March 2013.

statutory and the traditional courts, and later among the traditional courts between courts led by chiefs from various communities.

The interactions between the statutory and the traditional sectors started between the statutory court and the Payam (B) court led by the head chief. Through those interactions, local arrangements emerged between the presiding judge of the statutory court and the chief of the B court whereby the statutory court started to refer 'light' criminal and civil cases that can be interpreted on cultural ground to the B court to be resolved by the head chief. In the same way, this head chief started to refer 'complex' customary cases to the statutory court to be resolved by the judge²⁹. After what was seen by others as a positive outcome of the referral mechanisms between the statutory and the traditional courts, more courts followed suit. Chiefs' courts in the surrounding Payams started to refer cases to the statutory court in Yei Town as they lacked any in their areas. This referral mechanism also became useful in filling the gap that resulted from the lack of a paramount chief (C Court) in the town, as head chiefs could refer cases designated to the paramount chief to the statutory court. In return, the statutory court also started to refer cases to courts in the Payams and Bomas around Yei Town.³⁰

Also, within Yei Town, those arrangements had resulted in the development of unexpected working relationship between the local chiefs and chiefs of IDP communities, and later between the latter and County authority. This happened despite the fact that local chiefs and the County authority initially perceived chiefs of IDP communities and their courts as illegal and illegitimate. The perception of the illegality of those courts is because they fall outside the County – Payam– Boma structure of the governance and their illegitimacy because the chiefs do not pay taxes to the local government.³¹ The mistrust between the chiefs also trickled down to local people whereby members of each community became reluctant in taking cases to courts presided by chiefs not from their ethnic group or community.³² Most IDPs chose not to take their cases to local chiefs because of perceptions of unfairness from local chiefs as they are 'outsiders' and accused

²⁹ Interview, Yei Magistrate Court, 13 December 2012; Kakwa Community Association - Yei, 14 November 2012.

³⁰ Interview, Yei Magistrate Court, 13 December 2012; Kakwa Community Association, 14 November 2012.

³¹ Interview, Yei Payam Court, 9 May 2012.

³² Interview, Kakwa Community Association – Yei, 16 November 2012.

of involvement on land grabs. At the same time, local people do not take cases to courts presided by IDP chiefs, arguably, 'most of those chiefs judge their cases based on the Dinka culture'³³. This perception of the courts of IDPs and their chiefs was to have some influence on their relationship with the other justice providers and law enforcement agents such as the police and prison officers who were often reluctant to enforce sentences passed by the chiefs of IDP courts.³⁴ There were also formal arguments used to resist the courts headed by IDP chiefs: first, that these courts fell outside the County – Payam– Boma structure, and second, that their chiefs did not pay tax.

However, after the 'success' of the working relationship between the statutory and the chiefs' courts, chiefs from both communities started various levels of working relations to resolve cases. This relation was started by the head chief of the B court in Yei Town who had established a working relationship with chiefs of courts of IDP communities. He initiated this relationship by inviting chiefs 'foreign' to Yei to attend court sessions involving litigants from their communities. During such sessions, the invited chiefs are given a chance to give their opinions on the case before and after the presiding chief passes a verdict; and this became the practice in several courts in Yei. In some cases, chiefs of those courts had decided to form joint court sessions at the B court in Yei Town attended by chiefs from various communities, which others suggested provided the opportunity for chiefs to understand the cultures of other communities in the multi-cultural setting of Yei Town.³⁵ The improvement of the working relationship between the traditional courts in Yei also resulted in the improvement of the relationship between the 'illegitimate' and illegal' courts and the local government authority that started to invite chiefs of those courts to attend meetings concerning chiefs. This level of cooperation was to have a positive influence on the working relationship between the chiefs representing IDP communities and justice providers in the County whereby the latter started to assist those chiefs in administering justice and in the enforcement of sentences on verdicts passed by the chiefs.

A direct implication of the working relationship between the statutory and customary courts and between local chiefs and chiefs of IDP communities on local people in the

³³ Interview, Kakwa Community Association – Yei, 9 May 2012.

³⁴ Interview, Yei County, 12 December 2012.

³⁵ Interviews, Yei Payam Court, 9 May 2012.

County was a gradual development of perceptions of fairness of those courts among litigants. At the level of the chiefs' courts, the presence of chiefs of IDP communities in courts presided by local chiefs led to a certain level of assurance and an increase in perceptions on fairness in addressing cases in those courts. As a result, some IDPs started to take cases to courts presided by the local chiefs. In turn, some local communities started taking their grievances to courts presided by chiefs of IDP communities. The increase in the level of interactions between the statutory and chiefs' courts and among local chiefs and chiefs representing IDP communities also led to a gradual improvement of the relationship between courts of IDP communities and County authority and between those chiefs and law enforcement agents such as the police and prison officers.

Despite the fact that some of those chiefs have started resolving cases in joint sessions after the emergence of the working relationship among various courts in the County, the land factor continued to be a contentious issue. Most chiefs of the IDP communities preferred not to attend court sessions on land involving their communities.

2.7 Discussion: Negotiated State Formation and Hybridity in Practice

What do our findings contribute to ongoing debates regarding hybridity and negotiated state formation in post-war settings? In this section, we first critique the design-based approach to building (hybrid) state institutions based on our findings, which in contrast, highlight the unpredictability of negotiated state formation. Second, we attempt to identify factors that explain the variety of institutional outcomes that this process produces. Finally, we discuss how these outcomes benefit or harm, local citizens.

2.7.1 Unpredictability of Negotiated State Formation

Despite the increasing level of acceptance of the concept hybridity within the debates on peace and state-building and its application by practitioners in the field, there is still a tendency to prescriptively formulate peace and state-building projects, planning the interactions that are expected to occur among the various stakeholders and their intended outcomes. In the case of South Sudan, the government and its external supporters designed the institutions introduced in the post-CPA period by dictating the levels of interactions that would occur at the various levels of the government between

state and societal actors to ultimately produce predictable results. Based on this designed-based approach, the formal institutions introduced at the time were categorised as statutory and traditional. In the justice sector, chiefs of the traditional courts were to address cases of customary nature, and the role of statutory courts would be limited to resolving civil and criminal cases. In the land sector, the mandate of the chiefs was limited to resolving disputes on community land in rural areas, whereas the statutory court would deal with land disputes in urban areas where most lands are privately or state-owned. In neither sector were provisions made for interactions between the statutory and the traditional institutions, such as the referral of cases.

However, our case in Yei River County demonstrates that this designed-based intervention was mainly theoretical. In the land sector, existing laws legitimise the statutory courts to resolve land cases within Yei Town and limit the roles of chiefs to resolving land disputes in rural areas in Bomas and Payams. But because of the heavy caseload within the town, the magistrate court started to refer some land disputes in the town to the B court presided by a head chief. The lack of a paramount chief at the C court in Yei town also compelled Payams chiefs to refer large-scale land disputes that would be addressed by a paramount chief to the magistrate court. In the justice sector, rather than the statutory and the traditional legal system operating in parallel, interactions among them emerged throughout the County in order to deal with staff shortages and a heavy caseload. On the other hand, traditional courts that were expected to cooperate, namely those headed by local and IDP chiefs, were unwilling to work together initially because the local chiefs considered the IDP chiefs to be foreign, illegal and illegitimate. However, here too, practical concerns prompted them to begin resolving cases together. In the legal sector, distinctions between the statutory and traditional, local and foreign, legitimate and illegitimate or urban and rural thus became increasingly blurred.

In terms of whether or not hybrid institutions can be planned and designed, our research suggests that they cannot. By all means, the institutional interactions we observed in Yei River County were unexpected and different from what state-builders had intended. In addition, the case also demonstrated that reasons for local actors to interact or not can vary substantially and can also be context-specific. For example, the contentious relationship between local communities and IDPs on land questions, an issue that is relatively specific to Yei River County, strongly influenced developments in both the land

and justice sectors. However, as elaborated in the next section, it is possible to identify factors that influence the outcome of negotiated state formation.

2.7.2 Explaining Institutional Outcomes: The Two P's

Why did negotiated state formation produce violent contention in the land sector, while leading to cooperation and increased institutional effectiveness in the justice sector? Two P-words appear to have been of particular importance: power and pragmatism. Before explaining this further, we first return to two concepts that were discussed in the literature review in the context of negotiated state formation, namely regularisation and situational adjustment. These concepts describe how negotiated state formation involves processes producing rules and institutional constellations to make governance relations durable and predictable (regularisation), but also how the indeterminacies of hybrid governance are exploited to reinterpret and relationships according to the interests of those able to wield power (situational adjustment). In Yei, we saw both processes at work. Regularisation occurred in the justice sector when statutory and traditional courts, which were formally supposed to operate separately, began to work together in order to deal with the heavy caseload and the shortage of local courts. Pragmatism dictated these developments: cooperation was simply the only way to meet local demands for justice in view of practical constraints.

Aside from pragmatism, power relations play a strong role in determining the functioning of 'negotiated' institutions. As in any hybrid system, it is necessary to look beyond formal hierarchies and to uncover the actual power relations at play, as with the IDP chiefs in Yei whose formal authority is questioned, but who were able to wield power as their community is armed and politically well-connected in South Sudan, producing situational adjustment whereby their authority was accepted by other actors. The support the IDPs got from soldiers in relation to land control gave their chiefs the powers to challenge the authority of the local chiefs and of the County authority, which were supposed to have more authority on land and local governance than the chiefs of the IDP communities. Also, because of the support IDPs get from the soldiers, they became preparators of conflicts in the County victimising local people rather than being the victims of displacement as suggested in the existing literature and the guiding principles on internal displacement (see Cohen and Deng, 2009; see Deng, 1999; Kalin, 2000). After the local chiefs reached a

deal with chiefs of the displaced communities, a new power dynamic emerged whereby chiefs of the IDPs started to engage local chiefs at an equal level, though this is limited to cases not related to land disputes. As a result of this change, the County authority also started to engage those chiefs, which changed the power dynamic between chiefs of the IDP communities and the local government.

Power and pragmatism continuously interplay. Though the judge of the statutory court, formally has more power than the traditional courts, the limited presence of the statutory courts in the Payams forced this judge to negotiate with traditional chiefs. The development of these power relations was guided by the practical need to deliver core governance functions. The question which institution was formally responsible turned out to be less relevant than the question who was best able to deliver under the given circumstances. Because the chiefs of the displaced communities were backed by the hard power of the soldiers among their ranks, they were able to manipulate the laws in place to serve their interests. The fact that the two groups of chiefs agreed to resolve some cases together is an indication of the recognition and hence the legitimation of some of the 'illegitimate' practices these chiefs have been undertaking, such as the forceful allocation of lands to the communities they serve.

In both the justice and land sectors, all parties creatively use discourse to make claims about the legitimacy and desirability of institutional solutions, referring to laws in order to define what is formal and legitimate. This means that formal institutions – laws – are not irrelevant to negotiated state formation; rather, they are applied creatively and in different ways depending on the context, power and interests. For example, because courts led by the chiefs of the IDP communities do not fall under the County – Payam-Boma structure of governance and because their chiefs do not pay taxes to the County authority, the local chiefs and the County authority considered them illegal and illegitimate. In contrast, IDP chiefs and soldiers attempted to consolidate the claims on lands they occupied based on the allocation of those land to them by chiefs appointed by SPLM/M during the wartime or post-CPA laws that threatened existing land rights based on the pre-CPA norms of land acquisition.

2.7.3 How Hybridity Works out for Citizens

The case in Yei River County has demonstrated that the emergence of hybrid arrangements in war-torn societies like South Sudan can occur in an unpredictable manner, which raises questions on the conventional designed-based approach to hybridity. This unpredictability, in turn, raises the question how and under what circumstances hybridity works out for citizens. This case demonstrates that outcomes of hybrid arrangements can be context-specific, can contribute to conflict, tensions and human suffering but can also produce workable solutions for local problems. The land sector has, for example, demonstrated that the unexpected interactions between local communities and IDPs – supported by soldiers – led to more marginalisation and suffering of local people. Returning local communities could not reclaim their land occupied by IDPs and soldiers because the existing mechanisms to resolve land disputes are either weak or favour IDPs. The support IDPs received from soldiers increased the power imbalance between local communities and IDPs, resulting to further victimisation of the former.

In contrast to the land sector, the justice sector witnessed a different type of interactions which benefitted local communities as well as communities of IDPs. On the one hand, the increasing level of cooperation between the statutory and local courts led to the emergence of conflict resolution mechanisms that could address grievances in the town as well as in rural areas. The working cooperation between the statutory court and among local chiefs and chiefs of IDP communities in Yei town resulted in the reduction of caseloads which was becoming challenging to both the statutory and chiefs' courts. For local citizens, this meant they had a better hope of seeing their cases resolved within a reasonable time. For IDP communities, access to the regular justice system was gained when the working cooperation between the local chiefs and the chiefs representing IDPs community led to a gradual acknowledgement of the latter by the County authority and subsequently by the law enforcement agents in the County. As a result, law enforcement agents, gradually, started to attend to and enforce cases judged by the chiefs representing IDP communities.

The outcome of the negotiations between the two groups of chiefs benefitted the IDP communities over the local communities. In comparison, the negotiations between the

statutory and the traditional courts produced a more equitable outcome which seems to mutually benefit the two types of courts as well as the communities they serve. In these regards, our research in Yei River County has demonstrated that the emergence of hybrid governance arrangements in war-torn societies such as South Sudan can produce both negative and positive outcomes for local citizens and that these outcomes are shaped by the two P's of power and pragmatism. How these P's will influence negotiations, and with what outcomes, is difficult to predict, limiting the potential for designing hybrid institutions.

2.8 Conclusions

This chapter drew on an analysis of data collected from Yei River County in South Sudan to contribute to debates on hybridity and state formation in a context of a state-building in a post-conflict setting in Africa. Responding to gaps in existing literature, it focused on the following questions: *How did hybrid institutions come about in South Sudan? How do hybrid institutions function at a local level? To what extent do they meet the needs of citizens and solve local conflicts?*

In responding to these questions, this chapter started by unpacking hybridity in the case of South Sudan, showing how it combines legacies of colonialism, postcolonial government and wartime rebel governance. The resulting institutional landscape is characterised by the presence of a multiplicity of actors and institutions that influence each other through negotiations. In line with theory on the *negotiated state*, these institutional negotiations are ongoing and continue to shape state institutions at the local level. These interactions occur unpredictably, limiting the feasibility of design-based approaches to state-building and even to hybridity.

In contrast with the prescriptive approach, this chapter has descriptively shown how institutional developments in hybrid governance orders vary substantially according to the context. Institutional outcomes were influenced in particular by two P's: *pragmatism* (referring to practical considerations: which institution is best able to deliver needed services?) and *power* relations (which institution has the power to steer institutional developments in its desired direction?). With respect to the latter factor, it should be added that actors holding formal power are not necessarily the most powerful in practice

(as with the IDP chiefs who did not have formal jurisdiction but were supported by armed soldiers); moreover, actors holding power in one arena of negotiations may not necessarily be powerful in other arenas.

These complex and varying circumstances produce both *regularisation* and continuous *situational adjustment*, with varying outcomes for ordinary citizens. In this case, the negotiated state produced an unexpected but successful working relationship among institutions in the justice sector, which seems to become increasingly regularised and to be largely beneficial to citizens. In contrast, in the land sector, one group was able to enforce a situational adjustment that promoted its interests over those of others.

3. Governing Unclear Lines in decentralised governance: Local Boundaries as a (Re)source of Conflict in South Sudan

Abstract

This chapter draws on three case studies conducted in Central Equatoria State to illuminate the relationship between decentralisation as an aspect of the post-CPA state-building and identity conflict linked to territories and administrative borders. South Sudan's administrative boundaries stem from the colonial period. Since its independence in 2011, multiple changes occurred on the political system, internal borders, and power relations in South Sudan, and those changes have been a source of confusion, elite manipulation, and conflict throughout the country. This chapter explores the impact of this confusion by focusing on multiple shifting linkages between administrative boundaries and identities and shows how the mobilisation of ethnic identities has become central to territorial claims and creating territorial borders. We use three local conflicts in Central Equatoria State to illustrate how claims of belonging and entitlement are being used by elites for economic, political, and socio-cultural gains, and how small-scale conflicts can escalate to wider violence. The three cases also show how such manipulation increases the likelihood of conflict between communities along ethnic lines. Drawing on analysis of the three cases, the chapter also shows that the increase in the number of the states from 10 to 28 in October 2015 and then to 32 in January 2017 is likely to strengthen the connection between territories and identity, with the potential to increase violence, ethnic-based conflict, and human suffering.

Keywords:

Decentralisation, local government, local boundaries, ethnicity, colonialism.

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3.1. Introduction

At the start of the Comprehensive Peace Agreement in 2005, South Sudan started as a semi-autonomous state divided into ten states and the ten states collectively to the 79 Counties. In October 2015 the South Sudanese president, Salva Kiir, announced the annulment of the ten states that had existed since 1992 and decreed the creation of 28 new ones³⁶ and then 32 in January 2017. The president's decision to increase the number of the states was received by mixed feelings, gaining a certain level of support from patrons of the state whereas a great deal of the political elites opposed this.³⁷ However, changes to the administrative structures in South Sudan, and opposition to those changes, are not new: before Sudanese independence in 1956, southern elites lobbied for a federal system of governance as an acceptable alternative to southern independence, which northern political elites rejected (e.g., Johnson, 2014). In the 1980s, some elites in South Sudan resisted the division of the Southern Regional Government into the three regions of Equatoria, Upper Nile and Bahr el Ghazal and that resistance contributed to the Bor mutiny of 1983 that led to the formation of SPLA. Thus, attempts by Khartoum-based governments to change administrative structures within South Sudan generated tensions between north and south as well as creating a sense of unity among elites of South Sudan to confront their counterpart in northern Sudan.

In contrast, the post-CPA demand for a federal system of governance or the increase in the division of the country into 28 and then 32 states have created tensions within South Sudan between different levels of the government and the political elites (de Vries and Justin, 2014; Schomerus and Aalen, 2016). With his decision to change the structure of the government by increasing number of the states, President Kiir superficially responded to some of his critics' demands without addressing fundamental governance issues that fuelled political contestation and the continued demand for federalism in the country. This chapter illustrates how confusion over levels of authority and the absence of clear boundaries between administrative units have contributed to tensions between communities, which risk escalating into conflicts along ethnic lines.

³⁶ Sudan Tribune, <http://sudantribune.com/spip.php?article56581>, 11 January 2015.

³⁷ Nyamilepedia, <http://nyamile.com/2015/10/08/s-sudan-the-creation-of-28-states-and-the-implications/>, 15 January 2015.

This chapter draws on extensive socio-anthropological fieldwork carried out in Central Equatoria State (CES) to understand the relationship between local government, internal borders and conflict in the post-CPA period in South Sudan. Studying internal boundary conflicts in CES is of methodological and theoretical relevance for two reasons. First, most writings on peace and conflict in South Sudan tend to give little attention to the relationship between territories and internal borders, which, we argue, is crucial to understanding the increasing levels of "ethnic conflict." Second, Central Equatoria State was relatively peaceful compared to the other states in the country, which offers additional insights into the relationship between political manipulation and violent manipulation that resulted from the introduction of the new structure of the government after the start of the CPA in 2005. Through the three case studies, we demonstrate how elites use ethnic identity or sense of belonging as a strategy to make claims on political, economic and socio-cultural aspects of land. To show this relationship, we organise this chapter as follows. The first section after this introduction highlights the research methodology and the methods for data collection. The second section draws on history to give some insights on colonial intervention in Africa and how this intervention resulted in linking identity to territories and conflict in the post-CPA period. The third section gives an overview of the historical development of internal borders in South Sudan. The fourth section draws on Central Equatoria State and zooms into the three cases to discuss how socio-cultural, political, and economic interests are stirring up conflicts over internal boundaries in the state. The fifth section concludes the chapter.

3.2. Methodology

This chapter draws on extensive socio-anthropological based on a case study approach. The data was collected in three sites in Central Equatoria State (Mangalla, Wonduruba and Lainya – Yei border area) over six months during three visits, between November 2011 and March 2013. The methods for the data collection included Focus Group Discussions (FGDs), workshops, extended interviews, and participants' observations. Two workshops were conducted for each field site, one before the start of the field data collection and one after the data collection was completed. The first workshop provided the platform for the first author to gather more research ideas and the second one for the validation of the preliminary findings of the fieldwork. The first workshop for each

research site was followed by FGDs, extended interviews, and participants' observations. Informants for the interviews and the FGDs and the subjects for the observations included government officials, representatives of civil society, chiefs, traditional leaders, elders, and residents in the three research sites.

3.3. The Colonial Legacy of Linking Ethnicity to Territory

This section draws on the literature to illuminate the relation between ethnic identity and territories and the implication this relation has on state-building in post-conflict settings in Africa. The Organization of the African Unity (OAU), established in 1963 adopted the *uti possidetis* principle, which demanded that newly independent states in Africa 'respect' their borders introduced by colonial powers (Touval, 1967, p.643). Although the South Sudan - Sudan border at the South Sudanese independence in 2011 seemed to have diverged from this principle of borders because it gained independence from Sudan which gained independence from colonial rule since 1956, the international border between these countries builds on the legacy of colonialism, based on borders created by the British colonial authorities. In this regard, both countries recognise the borders of 1 January 1956 as the official administrative borders, which refer to the borders left by the British colonial rule at the Sudanese independence. The South Sudanese government acknowledged this international border and consolidated this by including this into its constitution. Within South Sudan, the borders from 1 January 1956 are also used as the reference for internal borders between states and between territories that constitute local government structures (see Figure i).

The *uti possidetis* principle assumes that boundaries between African states were clearly defined and demarcated at independence, which is not the case. In fact, most African borders remain disputed and a source of contestations between and within states (Asiwaju, 2012). The Sudan-South Sudan border is not an exception, as evidenced by the ongoing disputes over the border town of Abyei (Craze, 2013). According to Andrew Natsios (2008, p.419), former US special envoy to Sudan, 'the exact demarcation of what is now heavily militarised border had not been agreed on by the two countries and will continue to be a source of considerable tension' (also see Schomerus et al., 2013; Copnall, 2014, pp.221-223). Higli (known as Panthou in South Sudan), another disputed border

town, became the cause of military confrontations between the two countries in 2012 (Johnson, 2012).

Border contestation in Sudan and South Sudan can be traced to the pre-independence period, which points to an important aspect of the colonial heritage of African boundaries that are not sufficiently reflected in the literature. Most postcolonial governments not only inherited the international borders imposed on them by the colonisers, but also the internal boundaries which were meant for achieving colonial objectives in Africa which was the exploitation of its resources (Hamid, 2002). The common practice by the colonial powers was to create those territories along identity (ethnic) lines whereby groups with similar ethnic backgrounds are put into the same territory (Lentz, 2000). As a result, the link between identity and territories became a fundamental aspect in determining how claims on landownership are made and access to land regulated. In turn, this determines how borders between communities are negotiated or contested (Berry, 2013; Lund and Boone, 2013). As will be discussed below, internal borders within most countries of postcolonial Africa are increasingly contributing to conflict, but it remains unclear the extent to which those conflicts are related to the question of landownership or internal borders. In the case of South Sudan, very little is known why conflict around territories and internal borders intensified in the post-CPA period and the extent to which local conflicts can be linked national politics. Likewise, implications of the changes in administrative borders structures – such as the increase in the number of the states from ten to 28 and then 32 – is yet to be established. As our three cases will show, legacies of history on boundaries continue to play a major role in shaping everyday manifestations of power and authority. Perhaps the most striking of those legacies in South Sudan is the strong correlation between identity and territory, which has become instrumental in defining relations between the state and the society, on the one hand, and between communities, on the other.

Before the colonial intervention, many African societies were characterised by a great deal of mobility. Boundaries were never fixed and shifted between overlapping networks and communities. Communities were based on proximity, kinship, or common loyalty to a king (Lentz, 2000, p.107). Territorial borders were defined through alliances between leaders and could change according to changes in those relations or through wars and conquests. With extremely low population densities, power and authority were

organised and legitimised around people rather than territories. As a result, leaders were to some extent accountable towards their subjects because people could simply decide to move elsewhere (Englebert, 2009, p.226). Colonial intervention radically changed most of those dynamics. Borders became fixed lines with administrative powers attached to it. As Herbst (1989, p.231) notes, boundaries became the mechanism in 'determining who is a citizen and who not,' giving meaning to 'the cadastral boundary lines created by the Europeans.' The internal borders created by colonial administration laid the foundations for the establishment of provinces and districts. However, many of these internal boundaries are as undefined and unmarked as some of the international borders. Cormack (2016) refers to such borders as galaxies that materialise in a constellation of 'points' such as trees, streams, and hills, which may well have different meanings to different people. Nonetheless, by attaching political power to territorial boundaries, the creation of those territories went hand-in-hand with strengthening or 'constructing' ethnic identities.

There is a consensus among scholars that the colonial intervention in sub-Saharan Africa resulted in the creation of territories inhabited along ethnic lines (e.g., Lentz, 2000; Leonardi and Santschi, 2016; Mamdani, 1996). More contested, however, is whether colonial intervention contributed to the 'construction' and 'invention' of ethnic identities (Israel, 2001). Contrary to the pre-colonial structure of leadership, which depended on a set of 'traditional leaders', the colonial approach was to select an individual chief from the majority group in a new territory or from those claiming to be autochthonous to the area (Mamdani, 1996). This forced groups to abide by the powers of autochthones or majority groups, who in many cases were strangers (Lentz, 2013; Leonardi, 2013). Over time, those policies contributed to the reinforcement of ethnicity or even the 'construction' of 'new identities' in many countries in Africa, which indeed became strongly linked to the territories inhabited. As our three cases in Central Equatoria State will later show, the increased connection between identity and territories provided South Sudanese elites with tools of manipulation with which to consolidate territorial claims.

3.4. Internal Borders in South Sudan

At the start of the Comprehensive Peace Agreement (CPA) in 2005, South Sudan started as a semi-autonomous region consisting of ten States, divided into 79 Counties, each

County divided in lower levels of Payams and Bomas. The establishment of states, Counties and the underlying Payams and Bomas along identity lines was a fundamental strategy of the SPLA-led government in the creation of those structures of government. Common criteria for defining identities included claims of autochthony as well as being the majority groups by those living in a given area. Regardless of those criteria, ethnicity or affiliation to a clan come to play central roles. Coupled with increased interest in political, economic, and land resources following the CPA, this approach to the establishment of structures of local governments facilitated the manipulation of identities by elites at the national level as well as at the local levels. Understanding how manipulation of identities happens in practice and how these are related to internal borders requires an understanding of the genesis of internal borders in South Sudan, which is rooted in periods of slavery, colonialism, postcolonial governments and SPLA-wartime governance in the pre-CPA period.

Recent history suggests that the Turco-Egyptian authority pioneered the creation of the Sudanese state in the early 19th century by amalgamating different kingdoms, sultanates, and 'tribal' communities (Spaulding, 1974). The British colonial authority consolidated this territory by restructuring the territories left by the Turco-Egyptian rule by introducing provinces and districts, to suit their interests, which was the exploitation of resources. At independence in 1956, Sudan was divided into eight provinces, three (Upper Nile, Bahr El Ghazal, and Equatoria) in present-day South Sudan and five in northern Sudan. The three provinces in South Sudan were divided into 21 districts (Hamid, 2002).

As part of its indirect rule strategy, inter alia, the British colonial authority forcefully relocated communities to settlements that were suited to achieve its objectives.³⁸ In most areas in Equatoria province, this authority justified those resettlements as a strategy to eradicate sleeping sickness, which it claimed was prevalent in the area (e.g., Bloss, 1960). However, these resettlements were followed by the appointment of chiefs and the establishment of borders delineating jurisdictions of the chieftainships headed by those chiefs.³⁹ Borders between those chieftainships were arbitrarily created, frequently

³⁸ Interviews, Tore Payam, 20 May 2011; Lasu Payam, 31 January 2012.

³⁹ Interview, Asole Boma, 3 May 2012.

marked by landmarks such as rivers, mountains, or big trees, often along main roads leaving parts of those territories without borders.⁴⁰ In areas predominantly inhabited by cattle-herding communities such as in Greater Bahr el Ghazal, this authority even designated cattle camps as borders between communities (Cormack, 2016), although those camps can be moved to different locations depending on changing circumstances. After independence in 1956, Sudan maintained the territorial administration developed by the colonial authorities. Occasionally, governments renamed these provinces and districts, altered the administrative status of those units, or redrew borders (see Hamid, 2002, p.2).

In 1992 the Sudanese government replaced the eight provinces with 26 states, 16 in northern Sudan and 10 in southern Sudan (Hamid, 2002, p.4). Following footsteps of the government in Khartoum, in 1994, the Sudan People's Liberation Movement/Army (SPLM/A) introduced the three-level local government structure, consisting of the Counties, Payams, and Bomas (see Leonardi, 2013). Importantly, both the government and the SPLM used the territorial divisions implemented by the colonial authorities, either by merging colonial districts to create states or by including chieftaincies in the local government structure as it has been the case in the SPLA controlled areas. Reflecting colonial practices, ethnicity became a prominent aspect of the restructuring of these units, at least in South Sudan. Hence, the ten states and the 79 Counties at the start of the CPA in 2005 were a combined legacy of past practices, comprising elements of colonialism postcolonial government and SPLA's wartime governance. At independence in 2011, the government formally recognised those structures of governance by including this into the Transitional Constitution of South Sudan. The presidential decrees to increase the number of states from ten to 28 and then to 32 were yet to be enshrined into the country's constitution. Administrating the 79 Counties and the unclear boundaries between those presented enormous challenges to the government during the interim period, contributed to conflict and violence particularly after the increasing interests by investors to acquire pieces of land in the country (Deng, 2011a).

⁴⁰ Interview, Longamere Boma, 12 May 2012.

Although current conflicts over land, administration, and political power are the result of contemporary circumstances, some of these find their roots in Sudan's colonial history. First of all, several communities in the settlements created by the colonial authorities continue to claim ownership of the land they were relocated from. At the same time, these communities are attempting to consolidate their grip on their 'new land'. This often results in contested claims on landownership or ownership of territories based on indigeneity, majority status, or forced resettlement, inter alia. Secondly, the lack of clear borders between the chieftaincies upgraded to local government structures (Payams and Bomas) has triggered border disputes. As a result of the establishment of those territories along identity lines, most tensions arising from those contestations often occurred along identity lines. Lastly, and importantly, the rationale behind the establishment of the County-Payam-Boma administrative system is unclear, which has resulted in different interpretations of how it should be implemented. Some contend that boundaries between these units should be established along ethnic lines and that autochthony should be the basis of ownership claims in those territories, whereas others argue that majority group status ought to be the basis of such claims.⁴¹ Within the normative framing 'the land belongs to the community (Badiey, 2014; Hirblinger, 2015), defining what constitutes a community is unclear and the lack of clarity on this became a source of conflict between communities, often supported by their political elites. The apparent lack of institutional capacity to mitigate or resolve conflicts throughout the country means that conflicts arising from such disputes take violent turns, sometimes along ethnic lines (e.g., Schomerus et al., 2008). Changes to the administrative and political systems within these territories also have an impact on the local power balance and contributed to increased tensions and violence (Pendle, 2015; Schomerus et al., 2013).

3.5. Old Borders and New Stakes in Central Equatoria State

The ongoing civil war in South Sudan started in December 2013 as the result of a power struggle between President Salva Kiir and the former vice president, Riek Machar. This violence quickly took hold in the three states of Greater Upper Nile (Unity, Upper Nile, and Jonglei) and sporadically in some parts of Greater Bahr el Ghazal. As the war continued, parts of Greater Equatoria also became sucked into the conflict and started to

⁴¹ Interviews, Yei River County, 27 November 2012; Pojulu community, Yei, 27 November 2012.

witness local rebellions or attacks by groups allied to the SPLM-In Opposition (SPLM-IO) on government positions and military convoys (de Vries and Justin, 2014).⁴² Specifically, the conflict in Equatoria soared after the increase in the number of the states from ten to 28 and subsequently to 32, extending beyond Central Equatoria State to include Western Equatoria States (Kindersley and Rolandsen, 2017). Understanding the history of borders and territories in Central Equatoria can enhance our understanding of the conflict dynamics in this state, hence, the three conflict cases that we will discuss later.

Historically, Central Equatoria State comprised the Yei and Juba Districts, which were established by the British colonial authority. Before colonialism, most parts of this state belonged to Lado Kingdom, annexed to the Belgian Congo in 1894 and became part of current South Sudan in 1910 (Collins, 1960; de Vries, 2012; Marzorati, 1954). At the start of the CPA, what used to be Yei River District in the pre-CPA period became divided into the four Counties of Morobo, Yei, Kajo-keji, and Lainya, and Juba District split into the two Counties of Juba and Terekeka (GOSS, 2011). As a result of the presidential decree to increase the number of the states, Central Equatoria was divided into the three states of Terekeka, Juba (renamed Jubek), and Yei River State (see figure ii).⁴³ Once again, the recent change is a reflection of the legacy of colonialism in a sense that the new states were not only based on the territories and borders introduced by the colonial powers, but also followed the ethnic pattern of creation of territories based on autochthony and majority groups in those areas.⁴⁴ Based on the latest changes, for example, Terekeka is considered a Mundari state, Jubek a Bari state and Yei River a Kakwa state – despite the fact that various minority groups live in those states alongside the majority group. As will be discussed later, because of the perception that Terekeka is a Mundari state, elites of Mundari pushed their claims on ownership of Mangalla which is in Terekeka despite the fact that Bari in that area were the first settlers and majority in Mangalla.

⁴² In August 2015 an agreement was signed between the worrying groups (the government and SPLM/A-IO), which resulted in the formation of the Transitional Government of National Unity (TGONU) in April 2016. Mistrust between the government and the SPLM/A-IO led to renewed violence in July 2016 at the presidential palace between forces loyal to the president and those loyal to the reinstated first vice president. Riek Machar acquired this position based on this agreement.

⁴³ Gurtong, <http://gurtong.net/ECM/Editorial/tabid/124/ctl/ArticleView/mid/519/articleId/17532/President-Kiir-Creates-28-States-In-South-Sudan.aspx>, 15 January 2016.

⁴⁴ South Sudan Nation, <http://southsudannation.com/ethnic-balance-with-42-increased-dinka-land-if-28-states-approved/>, 15 January 2015.

The tendency to establish local government units based on ethnicity began during the interim period, initially at the local level but expanded to state levels after the latest changes in the number of the states. Before this increase, ethnic belonging became an important element in the selection of executive power holders at the local level, which was not the case in the pre-CPA period. Appointments of 'outsiders' to those positions were often criticised or even blocked by local elites. In 2012, for example, the governor of Central Equatoria State appointed a commissioner to Lainya County who came from neighbouring Terekeka County. This appointment generated lots of resistance from chiefs and elders of Lainya because the appointee was not 'native' to Lainya.⁴⁵ A year earlier, the same governor appointed a commissioner to Yei River County from the Adiyio community, a minority group in the County. Because of the perception that Yei River is a Kakwa County, that appointment also drew criticism, with local leaders and chiefs pointing out that the appointee was not from the Kakwa majority group in the County.⁴⁶ In both cases, the state governor succeeded imposing the two commissioners to be in charge of Yei and Lainya, but this imposition soared the relations between those commissioners and their respective constituencies.⁴⁷

To illustrate the complexities of identity, autochthony status, and majority status in relation to political and economic interests witnessed in the post-CPA period, we now turn to discuss three cases in Central Equatoria State, namely, the contested claim on the ownership Mangalla Payam in Terekeka County, the disputed geopolitical status of Wonduruba Payam in Lainya County, and a border dispute between Yei and Lainya Counties (see figure iii).

3.5.1. The Economic Prospects of Mangalla Payam

Mangala is a Payam in Terekeka County. It borders Juba County to the south and is located some 70 kilometres north of Juba town along the White Nile. Mundari is the majority ethnic group in Terekeka County, but its community in Mangalla is the minority group

⁴⁵ Interview, SPLA officer - Lainya, 6 March 2013.

⁴⁶ Interview, Yei River County, 25 March 2013.

⁴⁷ Interview, Reconcile International - Yei, 20 March 2013.

after the Bari community. At the same time, the Bari ethnic group is the majority in Juba, hence the reference to Juba as Bari County.

According to local narratives, the Bari were the first settlers in Mangalla and throughout the past, had coexisted peacefully with the Mundari,⁴⁸ even after the division of Juba District into two Counties of Juba and Terekeka at the start of the CPA in 2005. This peaceful coexistence between these communities was shuttered in 2009, triggered by an investor who had expressed an interest to lease a piece of land in the Payam. As a result of this investment, the question of landownership between the two communities became a contentious issue, resulting from the notion 'the land belongs to the community'. Within a short time, what started as an attempt to define land rights among elites of the Bari and Mundari living in Mangalla escalated to a border dispute between the two Counties of Juba and Terekeka and later to violence between Bari and Mundari communities. This investment project was one of the many projects whereby foreigners aspired to acquire land in South Sudan shortly after the start of the interim period in 2005 (e.g., Deng, 2011a). The investment in question was a joint venture between Madhvani Group, an Indian-owned Ugandan conglomerate and the Government of South Sudan.

In 2007, the Madhvani Group expressed its desire to lease a piece of land in Mangalla for agricultural and industrial purposes. It eventually signed two memoranda of understanding with the government of South Sudan, the first for a land lease and the second to build a sugar cane processing facility (Deng, 2011b, p.16). According to legislation, negotiations leading to land lease in rural areas should involve landowning communities that are presumed to be the landowners. Such negotiations should also lead to determining adequate compensation to be paid to those who will be affected by the presence of an investment project (e.g., GOSS, 2009b). The Investment Promotion Act also gives landowning communities employment priority and precedence in service delivery associated with the investment in their area (GOSS, 2011). A combination of the expected benefit from these investment projects and the lack of clarity on which of the two communities is the legitimate claimant of Mangalla led to fierce contestations, initially elites of two communities living in Juba and Terekeka, and later between chiefs and elders in Mangalla. Hence, the local contestations between the chiefs in Mangalla on the

⁴⁸ Interviews, Mangalla Payam, 10 October 2012; CES' parliament - Juba, 10 October 2012.

ownership of this territory is an extension of the tensions that started at the higher level of the authority.

The Bari's claim to be the legitimate owners of Mangalla and hence of the land Madhvani Group aspired to lease, arguing that they are autochthonous to a majority in Mangalla. The Mundari, on the other hand, argued that Mangalla is in Terekeka County, where its community forms the majority.⁴⁹ Unsurprisingly, both Mundari and Bari chiefs, elders, and intellectuals who lived outside Mangalla backed the claims made by their respective communities in Mangalla, taking the dispute beyond the borders of the Payam.⁵⁰ The expansion of this dispute beyond the borders of Mangalla made conflict between individuals from Bari and Mundari to be framed as ethnic conflict between Mundari and Bari, partly as a way to mobilise communities from the two groups to take part in violence or provoke violent clashes. In January 2015, for example, a dispute between two families in Kworijik-Luri in Juba quickly escalated to a wider conflict that came to be framed as 'ethnic conflict' between Bari and Mundari. Because of this framing to conflict, it led to a wider confrontation and led to the death of 11 individuals from both communities and the injury of about two dozen others.⁵¹

As a result of the escalation of this conflict, Madhvani Group suspended its activities and would resume once the question of the landownership in Mangalla was resolved.⁵² However, this was never to be resolved. In an attempt to resolve this dispute, the governor of Central Equatoria State proposed that Mangalla Payam should be divided into two Payams, Mangalla North for Mundari and Mangalla South for Bari. This way, Mangalla North will remain to be part of Terekeka County under the authority of a Mundari chief and Mangalla South to become part of Juba County under the authority of Bari chief. However, this proposal was rejected by representatives of both groups. Those representing the Bari community argued that the division of Mangalla to the two Payams Mangalla North and Mangalla South would deprive them of their ancestral land rights.

⁴⁹ Interview, CES governor's office - Juba, 10 April 2014.

⁵⁰ Interviews, South Sudan's Human Rights Commission, April 10, 2013; CES' Ministry of Agriculture and Forestry, 10 April 2013.

⁵¹ South Sudan Nation, <http://southsudannation.com/memorandum-on-the-recent-clashes-between-mundari-and-bari-tribes-in-kworijik-luri-jan-18th-19th-2015/>, 15 February 2015.

⁵² Interview, CES governor's office, 7 March 2013.

On the other hand, those representing the Mundari argued the introduction of two new Payams would lead to the annexation of part of their County by Juba.⁵³ The failure by representatives of the two groups to agree on the proposal of the governor meant a failure in resolving this dispute. As mentioned earlier, after the increase in the number of the states to 32, each of the two Counties was upgraded to a state, with their borders at the disputed territories in Mangalla. If the establishment of the 32 states is approved, the next tension around the ownership of this area will be between the two states of Terekeka and Jubek, with the potential to escalate what started as a small-scale dispute between elites in Mangalla to tensions between states.

3.5.2. Shifting around Wonduruba's Electoral Constituency

The second conflict case was in Wonduruba Payam and provided us with another illustration of contestation between identity and territory. Unlike in Mangalla where a contested claim on landownership was the trigger to the dispute, the case Wonduruba resulted from the contested geopolitical status of this area as an electoral constituency. Wonduruba is located in Lainya County, inhabited by various clans of Nyangwara ethnic group. Nyangwara forms the minority group Lainya County and Pojulu the majority ethnic group. An immediate cause of the conflict in Wonduruba Payam was the 2010 national elections that preceded the referendum on self-determination of 2011. As part of the arrangements for the national elections, the National Elections Commission in Khartoum designated Counties, Payams and Bomas in South Sudan as political and electoral constituencies for the general elections to be conducted.⁵⁴ As a result, those became the platforms for SPLM elites and a few independent candidates to campaign for votes.

During the elections' campaign period, an influential SPLM candidate from Wonduruba Payam proposed to the central government in Juba that Wonduruba Payam should be annexed to Rokon village which is part of Juba County so that it becomes a political constituency of Juba County rather than of Lainya County where the Payam is administratively located. This demand led to contestations within the Payam, between elites of different clans Nyangwara and between Nyangwara and Pojulu ethnic groups in

⁵³ Interview, CES Ministry of Agriculture and Forestry - Juba, 7 February 2015.

⁵⁴ Interview, CES governor's office - Juba, 7 March 2013.

the County. At the level of the state, this led to tensions between authorities of the two Counties of Lainya and Juba, as this would annex the territory of the former to the latter.

At the local level, the SPLM elite who proposed this annexation of Wonduruba to Rokon argued that this would give their clan (Nyangwara) a numerical advantage over the Pojulu as the politics of the central government in Juba gives priority of appointment to political position to majority groups. Most local elites in Wonduruba contested this, arguing that this annexation will make their clan to be a minority group among Nyangwara clans of Rokon and the Bari of Juba who are well-connected to the central government. At the County level, proponents of this move foresaw it resulting in an SPLM victory and thus vigorously supported it; a view also shared by political elites at the national level of the government. Those opposed to this, including some from the SPLM, argued that this change could result in the permanent annexation of Wonduruba by Juba County.⁵⁵

Failure at the local level in resolving this contestation led to local conflicts that almost escalated to armed violence. The ensuing violence led to an attempt to assassinate the SPLM member who proposed the change in this constituency.⁵⁶ As a way of mitigating this local conflict from escalating to wider violence, the authority of the Central Equatoria State took control of the management of Wonduruba Payam until it was decided whether Wonduruba would remain part of Lainya County or become part of Juba County. As a result of this decision, Wonduruba was considered an independent constituency during the general elections of 2010, administered by the officer of the governor of Central Equatoria State. With the division of Central Equatoria State into three states after the increase in the number of the states to 32, Lainya County has become part of Yei River State. With the abolition of the authority of Central Equatoria State following this division, there is no authority in place to oversee the administration of Wonduruba. This means the contestations around Wonduruba will come back to the spotlight, this time between the two states of Yei River and Jubek.

⁵⁵ Interview, Centre for Peace and Development Studies - University of Juba, Juba, 29 November 2011.

⁵⁶ Interview, paramount chief - Lainya, 30 October 2012.

3.5.3. The Border Contests between Yei River and Lainya Counties: The Choice between Cultural and Administrative Borders

Lastly, this third conflict case was at the Yei – Lainya border area and demonstrates how the 'ethnic' or 'identity-based' decentralisation adopted in the pre-CPA period can trigger contestation on borders on cultural or administrative grounds. It also shows how a small-scale dispute can escalate to wider conflict to the extent of causing tensions between Pojulu and Kakwa, and between authorities of the two Counties of Yei River and Lainya as well as involving the authority of Central Equatoria State. This case also shows the 'domino effect' of border conflict by illustrating how attempts to resolve one aspect of conflict become a trigger for another conflict, and how the resulting conflicts came to be framed as 'ethnic conflict' between Kakwa and Pojulu.

The disputed border is Koya River, introduced during the colonial period as a border between two chiefdoms it established in this area. At the start of the CPA, the government in Juba adopted this river as the border between the newly introduced Counties of Yei River and Lainya. Koya River is 16 kilometres from Yei Town towards Lainya County. With the increasing perceptions that Counties, Payam and Bomas are established along identity lines (ethnicity or clan affiliation), tensions started at this border point, by questioning whether Koya should continue to be the border between the two Counties. Elites of Pojulu in Lainya County demanded that the border should be moved towards Yei Town whereas the Kakwa argued that Koya was the official border. On two occasions, Pojulu communities around Koya River threatened to attack Kakwa in this area who wanted to perform some rituals at this river.⁵⁷ The ultimate trigger to the tension that escalated to the perceived 'ethnic conflict' between Kakwa and Pojulu occurred in 2007, started as a dispute between two families.

The families involved in this dispute are from Mukaya Payam of Lainya County and Gimunu Boma in Yei County. The conflict between these families started as a dispute on the boundary demarcating their farms. When they could not agree on resolving this dispute, they decided to involve a chief, as chiefs are presumed to know traditional borders between families living under their authority and often have good mediation

⁵⁷ Interview, Kakwa Community in Yei, 16th November 2018

skills in resolving local conflicts. However, each of the two families decided to take their complaints to their respective chiefs: the family from Gimunu reported this to the executive chief of Gimunu Boma and from Mukaya to the head chief of Mukaya Payam.⁵⁸ Reporting the same case to local government authorities in two different Counties raised the question of who of the two chiefs should resolve this case. The executive chief of Gimunu claimed that this incident occurred within his territory and he was the legitimate authority to resolve it, whereas the head chief of Mukaya claimed that this area was in Mukaya. As this contestation has come down to defining borders between Counties, each chief decided to report this case to their respective commissioners as a way of getting their backing to claim legitimacy in resolving this dispute.⁵⁹ However, County commissioners are expected to resolve disputes within their Counties, negotiate less contentious issues between Counties with their counterparts in neighbouring Counties and refer complex matters to State Governor for mediation or arbitration. As border dispute between local governments was considered to be one of the complex issues – because of their connection to identity – the two commissioners decided to take this case to the State Governor who in turn, formed a committee to look into the border dispute and propose a solution. As in the case of Mangalla, representatives from the two Counties framed their narratives in a way that supported claims made by their respective communities regarding the location of the border.⁶⁰

The committee from Lainya County argued that the existing border (Koya River) divided two chiefdoms headed by Pojulu chiefs, and the border needed to be moved to a location where it divides Pojulu (of Lainya County) and Kakwa (of Yei County). Accordingly, this border should be moved towards Yei Town to Yei River, some 13 kilometres from its current location. However, the committee representing Yei County rejected this proposal by arguing that moving the current border towards the proposed location would either displace most of its people in Gimunu Boma or include them to Lainya County against their will.⁶¹ Though many elders and chiefs in Lainya supported the idea to change the

⁵⁸ Interview, Head chief - Mukaya Payam, Yei, 9 September 2012.

⁵⁹ Interviews, Chairman - Pojulu community Association - Yei, 31 October, 2012; Kakwa Community Association - Yei, 16 November, 2012; Gimunu Boma, 9 September, 2012, and Paramount Chief – Lainya County, 6 February, 2015.

⁶⁰ Interview, Paramount Chief – Lainya County, 6 February 2015.

⁶¹ Interview, Yei River County – Yei, 27 November, 2012.

border from its current location, some do not, particularly those near the borders who sometimes refer to themselves as 'Eastern Kakwa'. This group argued that moving this border towards Yei could have some implication on their 'other identity' as 'Kakwa'.⁶² After consultations with various stakeholders in Lainya, Yei and Juba, findings of the committee to the governor's office suggested that Koya River should continue to be the border between the two Counties. The commissioner of Yei River County was happy with this decision but not the commissioner of Lainya.⁶³ During a public rally held after this report was produced, the commissioner of Lainya stated that maintaining Koya as the border as suggested in the report might contribute to 'bloodshed' between the Pojulu and the Kakwa.⁶⁴ Like in Mangalla and Wonduruba, this dispute was not resolved when the data collection for this chapter was completed. It also remains unclear whether the initial dispute between the two families that led to this border dispute was resolved. It also remains to be seen whether the inclusion of Yei River County to become part of Yei River State after the increase in the number of the states to 32 will make any difference regarding territories and borders in this state.

3.6. Linking (Territorial) Borders, Identity and Local Government

As the three cases discussed above have shown, the territorial borders established by the British colonial authorities in Sudan continue to form the basis of the internal borders in South Sudan. Like in other countries of colonial Africa (e.g., Lentz, 2000), the internal borders in South Sudan have been subjected to multiple administrative and political changes by various postcolonial governments. Changes to those borders are still ongoing. For instance, the latest administrative shift that occurred in October 2015 will trigger the establishment of new Counties, Payams, and Bomas. The colonial authorities and the South Sudanese authorities exhibit a noteworthy similarity in their approach towards establishing administrative units based on ethnic majorities. This increasingly contributes to the exclusion of those who are locally perceived as 'outsiders' or minority groups. The contestation around the appointment of commissioners to Lainya County in

⁶² Interviews, Chairman - Pojulu community Association - Yei, 31 October, 2012; Kakwa Community Association - Yei, 16 November, 2012; and Gimunu Boma, 9 September, 2012.

⁶³ Interviews, Kakwa Community Association - Yei, 16 November, 2012; and Pojulu Community Association - Yei, 16 November, 2012.

⁶⁴ Interview, Central Equatoria State Governor's office - Juba, 10 April 2013; and 7 April 2015.

2011 and Yei River County 2012 are illustrative of this. However, the literature and local narratives suggest that changes in governance structures used to be less violent during the colonial era than they are today. This raises questions about the relationship between local conflicts and national politics and its link to access to land and resources.

In the three cases, we observe many intertwined factors contribute to the increasing levels of local conflicts in rural areas. Most of these conflict cases were sentimentalised as identity-related land conflicts or border disputes between communities. However, and as the three cases have shown, competition over natural resources and economic and political power struggles are among the immediate causes of the conflict. They are further exacerbated by the weak institutional capacity to mitigate or resolve conflicts at the local and national level. Two aspects that deserve further illumination are the linkages between resource and identity conflict and the use of identity as a political tool.

3.7. Linking Resource Conflicts to Identity

The marginalisation of rural communities by various postcolonial governments in Sudan has been a central factor in the protracted civil war between the south and the north (e.g., Deng, 2007). The interim period offered opportunities to develop policies that would address the injustices of the past. However, most policies introduced in the post-CPA period turned out to be counterproductive: they not only failed to address the historical marginalisation of communities but increased local conflicts. Based on the 2009 Local Government Act, the government placed rural areas under the authority of chiefs, thus making chiefs local government officials. Yet the 2009 Land Act gave more land rights to rural communities, including the right to decide on how to use their land. The government adopted both of these acts at independence in 2011 and enshrined them in the Transitional Constitution. With the lack of clarity about what constitutes a community, the policy gap in the two acts made it easier for elites to manipulate local people based on identity for personal economic, political or socio-cultural gains. From 2005 onwards, SPLM elites became deeply involved in leasing land that was traditionally owned by rural communities (Deng, 2011a). With the government resorting to the creation of local administrative units along identity lines, the manipulation of these identities by elites became even more prominent.

In Mangalla, for example, the main question was how to share the spoils of the investments in the area. The lack of clarity on what defines a community prompted intellectuals, chiefs, elders, and other traditional leaders to "construct" identities for the benefit of their communities at the cost of excluding "others." Similar dynamics could also be observed in the conflict in Wonduruba and the border dispute between Yei and Lainya Counties. In Wonduruba, for example, the attempt by the national political figure to win elections in the area shifted the discussion from a political debate to a question of identity, first, within the Payam and then between the two neighbouring Counties of Juba (Bari) and Lainya (Poju). Likewise, the land dispute that started between two neighbouring families from Mukaya and Gimunu grew into a border conflict between the two Counties of Lainya (Poju) and Yei (Kakwa).

The use of identity as a mobilisation strategy to exclude "others" as a result of competition over resources is not uncommon in Africa. In Ivory Coast, for example, Babo (2013, p.100) notes that indigeneity is used as a means to establish control over land and to distinguish between those entitled to land and those not. In Uganda, the Buganda people continue to call for federalism with the hope that it will limit landownership within the Buganda Kingdom to Buganda (Apter, 2013). In Ethiopia, the country introduced 'ethnic federalism' as a strategy to distribute resources equally among the different 'nationalities' in the country (Abbink, 2011). Though it is too early to tell what impact the decision to increase the number of states in South Sudan to 32 will have on the relationships between identity, resources, and local conflicts, emerging evidence suggests it is likely to contribute to more conflict, violence, and instability.

3.8. Identity as a Political Tool

As the mobilisation of identities around resources, the use of identity as a political tool was also evident in the cases discussed, particularly in Wonduruba Payam. Identity manipulation for political gain has a long history in Sudan (Deng, 2007; Jok, 2011).

During the 1983–2005 civil war, for instance, the SPLM leadership appointed chiefs to head ethnic groups or clans in areas it controlled, indoctrinated those groups with liberation ideologies, and used them to conscript youth into soldiers and secure food for its fighting forces (Johnson, 1998; Leonardi, 2011). After independence, SPLM retained

most chiefs it appointed during wartime, included them on the government payroll, and made them upwardly accountable to local government officials who are predominantly from the party. In this regard, chiefs became government agents rather than advocates for rural communities.

Indeed, chiefs continue to play crucial roles in local and national politics, often under instruction by the government. Towards the end of the interim period, chiefs vigorously mobilised their communities to vote for an independent South Sudan, which made a significant contribution in shaping the outcome of the referendum in favour of an independent state.⁶⁵ This was also the case for the 2010 national elections. At the same time and as the case in Wonduruba has shown, some chiefs are becoming more critical in their support of the SPLM, especially those who were not included as government officials.⁶⁶ In this particular case, the division among the chiefs on whether Wonduruba should become a political constituency of Juba County or remain part of Lainya County resulted in splits within their respective constituencies. Ultimately, those divisions expanded beyond the identity question and went on to become a political issue in the County and the state.

The cases have also shown that the question of identity remains central to the establishment of local government structures in South Sudan, particularly among the lower levels of local government. Often, the number of Payams or Bomas are reflective of the number of ethnic groups or clans in the area. But the fact that identities can also be constructed, reconstructed, and even negotiated, as argued by Smedt (2011), means that depending on ethnic identity as the criterion for the establishment of local government structures is not a viable option. As pointed out elsewhere, distinctions can be made between members of the same ethnic group. In Burundi, for example, in addition to the general Tutsi–Hutu divide, distinctions are also made between early settlers and later comers and between stayees and those who fled the war (Voors and Bulte, 2014). Before the establishment of the County–Payam–Boma system, districts formed the basic local government structure; borders between Bari and Mundari (both in Juba District) or between the Kakwa and Pojulu (both in Yei District) were not of any political relevance.

⁶⁵ Interview, University of Juba, 12 January 2012.

⁶⁶ Interviews, head chief, Tore Payam, 25 May 2012; and executive chief, Longamere, 16 November 2012.

As Smith (1979) and Ayee (2013) argue, the establishment of local governments is vital to the processes of state-building, yet it remains a complicated process, particularly concerning the creation of borders. With the current trend to place greater emphasis on ethnicity in the establishment of local government, local administrative units in South Sudan have become a source of contestation at the lower levels of society.

3.9. Conclusion

Since the signing of the CPA in 2005, South Sudan has been involved in various stalemates, including bitterly contested politics and armed rebellion. Protracted political differences within the ruling party escalated in December 2013 into a nationwide rebellion that quickly turned into another civil war. The causes of those contests are multifaceted but often intertwined, with those starting at the higher political order trickling down to cause tensions at the societal level. Moreover, local conflicts escalated into wider conflicts that had serious implications at various political levels. Establishment of strong and legitimate local government institutions could mitigate and resolve local conflicts. However, the current tendency to employ ethnic identity as a strategy to establish local government structures makes it challenging to achieve this.

Drawing on the conflict cases in Central Equatoria State (CES) in South Sudan, this chapter focused on understanding the relationships between local administration, borders, and conflicts. First of all, the chapter showed that past governance strategies resulted in the emergence of strong linkages between ethnic identities and territories in South Sudan, making conflicts over territories or borders to occur along ethnic lines. This, in some cases, has contributed to violent conflict between communities with no histories of ethnic conflict, which also explains the widespread violent conflict in the country following the signing of the CPA. Secondly, we have shown that ethnic identities are not the immediate cause of most of those conflicts; rather, the ethnic factor is often manipulated by elites as a mobilisation strategy to achieve individual or group objectives. The increase in political, economic, and socio-cultural stakes in land and territory reinforced this process. The lack of a clear legal and administrative framework contributes enormously to elites' use of manipulation and negotiation at various levels. The creation of 28 states is likely to further deepen this persisting confusion, which will, in all likelihood, also result in new conflict over territory, borders, and identities.

4. Land Reform and Conflict in South Sudan: Evidence from Yei River County

Abstract

Land reform was an important aspect of the post-CPA state-building project in South Sudan, partly to address historical injustices and partly to avoid future conflicts around land. In the process, land became a trigger for conflicts, sometimes between communities with no histories of 'ethnic conflict.' Drawing on cases in two rural areas in Yei River County in South Sudan, this chapter shows how contradictions in the existing legal frameworks on land are mainly to blame for those conflicts. These contradictions are influenced, in turn, by the largely top-down approach to state-building, which has tended to neglect changes in society and regarding land resulting from colonialism and civil wars.

Keywords:

South Sudan, State-building and State formation, Agricultural reforms, land law, Social conflicts, Social change, History.

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4.1 Introduction

Like in many countries of postcolonial Africa, land in South Sudan is not only central to state-building, but also a major contributor to conflicts, poverty, and underdevelopment. As analysts have pointed out, the land question was central to the North-South civil war in Sudan that ended up splitting the country in 2011 (Hirblinger, 2015; Öhm, 2015; Brosché, 2014). Perceptions of marginalisation of peripheral areas by the centre also played a role in the civil war. But those perceptions were linked to land rights, based on increased interference by the state into land rights of rural communities (Deng, 1990). Against this backdrop, the Sudan People's Liberation Movement/Army (SPLM/A), right from its beginnings in 1983, stated that the consolidation of land rights of rural communities and the broadening of the power base for inclusive governance were among its objectives. Based on this articulation of the civil war, SPLM/A adopted the slogans 'the land belongs to the community' and 'taking towns to the people', slogans which attracted many rural communities to join the movement (Hirblinger, 2015, p.710). When negotiating the peace talks that led to the Comprehensive Peace Agreement (CPA) of 2005, the SPLM pushed for the inclusion of land reform into the final agreement, which ultimately paid off (GOSS, 2005, p.48).

During the interim period (2005–2011), state-building in South Sudan emphasised land reform, partly to address historical injustices and partly to avoid future conflicts around land. However, state-building has been taking place alongside increased levels of violent conflicts, including civil wars. Small-scale conflicts escalated into wider conflicts, and conflicts rooted in contestations among political elites trickled down to cause friction between local communities (de Vries and Justin, 2014). Though the causes of those conflicts were intertwined and multifaceted, the land factor came to play a central role, as a trigger to conflicts or platforms for expressing other grievances. It seems as though efforts to build a state through land reform have generated conflicts, civil wars, and forceful displacements.

This chapter draws on cases in two rural areas in Yei River County to illuminate the relations between land reform and conflict in South Sudan. It argues that contradictions

between the Land Act of 2009 and the Local Government Act of 2009 are largely to blame for those conflicts, those contradictions are the manifestations of the top-down approach of state-building. Specifically, the chapter shows how a combination of the Land Act and the Local Government Act has strengthened the links between local authorities and land administration, and between land ownership and rural communities. These relations have resulted in heightened competition over authority in rural areas as a strategy to control land. The link between rural communities and land ownership has caused conflicts around the authority to take the form of land conflicts between communities. To complicate things further, the existing laws are inadequate to address land-related conflicts in rural areas, allowing local conflicts to easily escalate into wider ones. This, we argue, explains the rapid increase in 'ethnic conflicts' in South Sudan during the interim period and since independence in 2011.

To illustrate the connection between competition over authority and land-related conflicts between communities in the post-CPA period, we structure this chapter as follows. The first section after this introductory section highlights the methodology and the methods we used for the data collection. The second section analyses land reform in post-conflict settings in a context of changing relations of governance. In the third section, we will provide some historical background on land governance in South Sudan and how this is related to conflict. In the fourth section, we will highlight changes in governance in Yei River County and zooms-in to illustrate this by the two conflict cases in the two Payams of Mugwo and Otego (see figure iv). The fifth section will discuss land reform and conflict in South Sudan based on findings of the cases in Mugwo and Otego, and the sixth section will conclude this chapter.

4.2 Methodology

This chapter draws on the analysis of land reform in Yei River County in Central Equatoria State and two rural areas of Mugwo and Otego based on a case study approach. The data collection took place over six months' period, during three visits between November 2011 and March 2013. The data for this chapter was collected concurrently with the data for the other three chapters of this thesis. The research methods for the data collection included extended interviews, focus group discussions (FGD), participants' observation, and workshops. Key informants included government officials, traditional authorities,

community leaders, and members of nongovernmental organisations (NGOs) and civil society in Yei River County and in the two Payams where the case studies were conducted.

Six workshops were conducted for this study, three before the start of the interviews, FGDs and participants' observations in Mugwo and Otogo, and three after completion of the data collection. The first workshop was a general one, brought together stakeholders to local land governance from the five Payam of Yei River County to discuss existing and emerging land issues in the County, and the last workshop the author presented findings of the fieldwork to the same group. After the first general workshop, a workshop was conducted for each research site (Mugwo and Otogo), bringing together stakeholders to land governance at the Payam level, followed by a validation workshop. Some participants to the workshops in the two Payams also attended the general workshops held in Yei Town.

4.3 Land Reform in Changing Relations of Governance in Post-Conflict Settings

The debate about land reform continues to be central to the wider discussions on state-building in post-conflict settings. This is particularly true in cases where land played a role in causing conflicts. In such contexts, land reform aims to improve tenure security to ultimately reduce poverty. Poverty is arguably a strong indicator of conflicts, wars, and human suffering (Stewart, 2016). In this chapter, we conceptualise tenure security as a system of institutions or rules on landownership, use, management, responsibilities, and constraints on how land is owned and used (Mitchell and Garibay, 2011).

In Africa, land continues to be a major source of conflict, civil wars, and under-development. Past attempts to consolidate land rights through private ownership of land have not only failed to achieve results, but also contributed to social inequality and conflicts (Stewart, 2016; Peters, 2004). Because of the increasing levels of social inequality and conflict resulting from the private ownership of land, the debates on land reform in Africa had shifted substantially to focus more on the consolidation of land rights of rural communities through customary landholdings based on communal land ownership. This model is favoured because a great number of people in Africa continue

to have access to land through their membership in landowning communities (Leonardi, 2013; Peters, 2009). This is also because of the advantages individuals derive from a clan- and ethnic-based networks (Sikor and Müller, 2009). Yet, land continues to be a challenging aspect of state-building in Africa, particularly in post-conflict settings.

We argue that the reason for these challenges is linked to the contemporary approach to state-building in post-conflict settings, which is largely top-down. As a result, land reform programmes linked to this approach to state-building have tended to produce land regimes that do not correspond to realities on the ground. In South Sudan, the post-CPA land reform had tended to ignore changes in society and regarding land brought about by the British colonial administration, postcolonial governments and SPLA's wartime governance during the North-South civil war. We suggest that a bottom-up approach to state-building can enhance our understanding of those changes, and might contribute to the development of realistic approaches to land reform. Understanding these dynamics requires (1) revisiting the relations between state-building and land reform, (2) taking a critical look at the changing property of land resulting from changes in local governance, and (3) unpacking some of the misconceptions around land rights.

To start with, contemporary state-building embraces the Weberian model of the state, which perceives the strength or weakness of a state in its ability (or inability) in having a monopoly over the use of violence, exert control over its borders, and deliver services to its populace (Schlichte, 2016). With this understanding of the state, the focus is to develop the capacity, institutions, and legitimacy of the state in relation to effective political processes for negotiating mutual demand between the state and the society. It is based on the idea that a post-conflict setting provides a 'blank slate' for Weberian state institutions to be built, often ignoring history and local contexts (Myerson, 2011). Linking this to land reform, state-building will imply strengthening formal land institutions based on success stories from elsewhere. But in practice, a post-conflict setting is neither a blank slate nor a-historic. Even during civil wars, governance by a variety of state and non-state institutions continues (Öhm, 2015), and warfare itself is closely connected to state-building (Tilly, 1990). By the end of civil wars, a public authority is often an amalgamation of local and national institutions, where external institutions are often also imposed (Lund, 2006).

Furthermore, changes to local governance are often associated with changes in social relations and regarding land (e.g., Peters, 2004). This is because land continues to be understood in many African countries in terms of social relations rather than as 'property' (Peters, 2004, 2009). Unpacking the colonial history will shed more light on this. Colonialism in Africa had resulted in coercive resettlement of some communities to areas selected by the colonisers. Instead of being mobile and having overlapping networks and shifting boundaries, as discussed in chapter three (also see Lentz, 2000, p.107), communities became fixed to settlements demarcated by borders. Those changes also shifted the roles of traditional leadership to include paying attention to territories and boundaries rather than primarily people (Mamdani, 1996). Likewise, the colonial powers replaced a great number of precolonial traditional leaders with individual chiefs best suited to achieving colonial objectives, which centered around extraction of resources at a minimum cost (Leonardi, 2013). By the end of the colonial era, most postcolonial governments inherited the colonial idea of chiefdoms; it became deeply rooted in local governance to the extent that some local communities believe these governance structures to be home-grown rather than vestiges of colonial manipulations (Johnson, 2011). Postcolonial countries that went through civil wars experienced more changes to local governance by state and non-state actors. During civil wars, military victories often translated into changes to governance and territorial boundaries (Öhm, 2015). Peluso and Lund (2011) argue that changes in institutional capacities and legitimacies resulting from civil wars might become irreversible by the end of such wars.

Besides, the distinction between different forms of land ownership continues to be a significant problem within debates on land reform. The confusion resulting from this translates into challenges faced by practitioners in addressing the land question. For instance, most African countries distinguish between public, private, and communal land, respectively owned by the state, private entities, and communities. But these categories are often treated as distinct entities, which is not necessarily the case. Communal land is, for example, commonly associated with open access (von Benda-Beckmann et al., 2006). However, in some cases clans and families can privately own land within communal land, sometimes retaining the right to exchange that land for 'gifts.' Recent evidence suggests these 'gifts' are becoming increasingly monetised (Leonardi and Santschi, 2016), causing communal land to take on some aspects of private land. Private land, on the other hand,

is not exclusively private. In some contexts, a certain level of control can be imposed by a variety of actors, including the state, local communities, and users' associations, to mention a few. It is also debatable whether public land is absolutely state-owned. The use of such land for the development of roads, game reserves, and recreational areas for citizens bestows upon this land some aspects of "common access," often associated with communal land. This blurriness leads to some dilemmas on land ownership and particularly on communal land, raising questions such as, "How communal is communal and whose communal is it?" (von Benda-Beckmann and von Benda-Beckmann, 2006, p.194). As we will show later, confusion resulting from this has made it easy for the South Sudanese authority to interfere with community land. Indeed, taking a step back to critically reflect on these categories of land might be useful in developing a realistic approach to land reform in post-conflict settings.

4.4 State-building and Land Conflict in Sudan and South Sudan

To illustrate the conflict dynamics linked to land reform in post-conflict settings discussed above, we are now shifting to discuss how past attempts to build the state in Sudan and South Sudan have been connected to land and how those connections have been influencing land conflict in the pre-CPA period as well as in the post-CPA period. To do this, we will start by illustrating land politics in the pre-CPA period. In the second section that follows, we will then discuss land reform and conflict in South Sudan in the post-CPA period. In the third section, we will then shift to discuss changes on land governance in Yei River County and the implication these changes have on land conflict, by illustrating on conflict cases in the two Payams of Mugwo and Otogo.

4.4.1 Land Politics in the Pre-CPA Period

The connection between the state and land control in Sudan has been a strong one; this strong connection made the land factor to be central in state-building as well as a major contributor to conflicts and instability. Attempts by governments to control territories have been major drivers to conflict, violence and civil wars, and the last phase of the North-South civil war that led to the independence of South Sudan in 2011 was one of those conflicts. Those conflicts often emerged in reaction to the repressive policies designed by successive governments in Khartoum, particularly those that infringed on

land rights of rural communities (Johnson, 2011). As a result of policies of central governments regarding land, at a certain point, the state claimed ownership of up to 80 per cent of the total land area of the country, mostly in rural areas (Wily 2009).

Though a great deal of the policies by postcolonial governments that led to those conflict was designed and implemented by those governments, their foundation is rooted in policies introduced by colonial powers, profoundly, the Land Registration Ordinance of 1925 introduced by the British colonial authorities. Of those policies, the Unregistered Land Act of 1970 and the Land Transaction Ordinance of 1984, which were the extension of the colonial land registration ordinance, contributed directly to the North-South civil war that started in 1983, as those policies gave the state the power to misappropriate land in most parts of South Sudan (Deng, 2011a). The SPLA-led civil war was not new but was a continuation of the first North-South civil war that started in August 1955, four months before the Sudanese independence from the British colonial rule, only to be ended in 1972 through the Addis Ababa Agreement. Like the last North-South civil war, the land factor also contributed to this war, namely the annexation of the territories that formed South Sudan at the time to become part of Sudan (e.g., Mayo, 1994; Rahim, 1966).

The Addis Ababa Agreement of 1972, for example, gave southern Sudan a semi-autonomous status, with northern and southern Sudan separated by the borders left by British colonial rule at Sudanese independence in 1956. Because of that agreement, the High Executive Council and the Southern Regional Legislative Assembly became the respective executive and legislative organs in southern Sudan. In theory, this government was to oversee the management of natural resources in South Sudan, including land. However, the government in Khartoum continued to interfere directly to exploit resources and particularly land. Those interferences included land leases to northern merchants, along with the attempt to construct the Jonglei Canal (Johnson, 2011). Following the discovery of oil reserves in the South by the end of the 1970s, the government in Khartoum started to redraw the North-South borders and renamed some of the resource-rich areas so that those would become part of the North. For example, Western Upper Nile was renamed El Wehda (meaning "unity"), and Panthou, Higlig (Johnson, 2012). In addition to other factors, tensions around land contributed to the 1983 rebellion in Bor, which sparked the formation of the SPLM/A (Öhm, 2015). When negotiating an end to the SPLA-led civil war that was ended in 2005, the land factor also

played a role in ending the war. SPLM/A's representative to this talk pushed for the inclusion of land reform; arguably, the land factor was a significant contributor to the civil war. Ultimately, the government of Sudan accepted this demand, which is why land reform became an essential aspect of the post-CPA state-building in South Sudan, at least in theory.

4.4.2 Land Reform and Conflict in South Sudan

Hence, land reform in South Sudan started against the backdrop of historical injustices around land. It, therefore, aimed to address those injustices and avoid future conflicts. The CPA provided the legal basis for countrywide land reform (GOSS, 2005, p.49), and the authority in South Sudan conceptualised the wartime slogans 'the land belongs to the community' and 'taking towns to the people' to develop the Land Act and the Local Government Act as frameworks on land reform in South Sudan. Per the CPA, and as highlighted in chapters two and three, South Sudan was to institute the South Sudan Land Commission (SSLC), which would be decentralised to the lower levels of the government (states, Counties, Payams, and Bomas). This way, each of the ten states was to have a state land commission (SLC), each SLC was to be decentralised to a County Land Authority (CLA), each CLA to a Payam Land Council (PLC), and each PLC to a Boma Land Administration (BLA).

The agreement also provided for the establishment of local government structures in South Sudan based on the ten states, instituted by the government in Khartoum, and the County-Payam-Boma system, created by the SPLA during wartime (Öhm, 2015). Accordingly, South Sudan was divided into the ten states, each subdivided into lower levels of Counties, Payams, and Bomas, respectively headed by a paramount, head, and executive chiefs who by virtue of this upgrade became local government officials. However, while paramount and head chiefs are included on the government's payroll, executive chiefs are not.⁶⁷ The Land Act gives the authority of land administration in rural areas to community leaders (GOSS, 2009a, p.15), but the Local Government Act acknowledges chiefs as government officials as well as traditional leaders. The latter role given to chiefs made them to assume duties of land administration in rural areas, taking

⁶⁷ Interviews, head chief, Tore, 25 May 2012, and head chief, Mugwo, 2 February 2013.

over the role of the pre-CPA traditional land custodians such as *mony menu* in the case of Yei River County. The complementarity between the Land Act and the Local Government Act led to the local government structures forming the basis of land reform.

At South Sudanese independence, the ruling SPLM adopted these acts as the legal frameworks on land. In coordination with land governing institutions at the lower levels, the South Sudan Land Commission would develop national land policies and advise relevant government institutions on land matters. The Land Act distinguishes between public, private, and community land, respectively owned by the state, private entities, and communities based on autochthony (GOSS, 2009a, pp.13– 14). With this distinction of land rights, land in rural areas falls under the category of communal land and those in urban areas considered public or private. With more than 80 per cent of its population living in rural areas,⁶⁸ a great deal of land in South Sudan falls under the category of community land.

But since the start of the CPA in 2005, the focus of land reform has been on strengthening the SSLC, with little attention paid to institutions at the subnational levels, such as State Land Commission and the underlying County Land Authority, Payam Land Council and Boma Land Administration. Out of the ten states, for example, only Jonglei and the three states of Equatoria (Eastern, Central, and Western Equatoria) managed to institute State Land Commissions, but none of those commissions managed to devolve their duties to the County Land Authority, then to the *Payam* land council and *Boma* land administration. The increase in the number of states from ten to 28 and then 32 will mean the abolition of the State Land Commissions that existed before this increase and their replacement with new ones that will correspond to the new structure of the government. While contestations around the changes in the number of the states were ongoing because of disagreement between SPLM/A's elites whether this change was logical and constitutional, it created a vacuum on land governing institutions at the sub-national and local level, as it led to the abolition of land governing institutions that existed at those levels. As a result of this vacuum, the central government took over the roles of land governing institutions at the state level as well as at the local level.

⁶⁸ World Bank, *Rural Population (% of Total Population): South Sudan*, online: <<http://data.worldbank.org/indicator/SP.RUR.TOTL.ZS?locations=SS>> (13 January 2017).

Alongside this land reform, which is linked to the wider state-building project, South Sudan witnessed increased levels of violent conflicts, covering most parts of the country. Small-scale conflicts escalated to broader conflicts, some to rebellion. Conflicts that are rooted in contestations among political elites also trickled down to cause tensions between communities, often along ethnic lines. In most cases, land is either the immediate cause or a platform for expressing other grievances (de Vries and Justin, 2014). So, (1) how does the current approach to state-building influence land reform? (2) To what extent, if at all, do the existing legal frameworks on land contribute to addressing the injustices that led to the North-South civil war? How can we explain the increased level of "ethnic conflict" within the framework of this land reform? To provide answers to these questions, we are now shifting to discuss changes in local governance in Yei River County and how those changes contribute to land conflict in the framework of the post-CPA land reform project.

4.4.3 Changes on Local Governance and Conflict in Rural Areas in Yei River County

As a result of the changes in local governance linked to the post-CPA land reform project, substantial changes occurred in local governance and resistances to some of those changes led to heightened tensions and conflict at the local levels in various areas in South Sudan. The conflict cases in Mugwo and Otego in Yei River County that will be discussed in the following sub-sections are a few examples of the conflicts resulting from those changes. Before elaborating on the two conflict cases, we start by shedding some light on how some of those changes occurred in Yei River County.

As highlighted in chapters two and three, Yei River County was one of the six Counties of Central Equatoria State, subdivided into five Payams of Yei, Mugwo, Otego, Lasu, and Tore. Central Equatoria State consisted of the six Counties of Terekeka, Juba, Lainya, Kajo-keji, Yei, and Morobo. After the increase in the number of the states to 32, the four Counties of Yei, Morobo, Lainya, and Kajo-keji were merged to become Yei River State, and each of the five Payams of Yei upgraded to Counties. Together, the four Counties that became Yei River State was subdivided into thirteen Counties by upgrading each of the

former Payams of those Counties to a County.⁶⁹ This way, each of the five Payams of Yei River County became a County. As the fieldwork for this chapter was conducted before those changes, a reference to Counties and *Payams* throughout this chapter will be based on the old administrative structure (see Figures i and ii).

Yei River County has rather a complex history of local governance, which justifies our choice to conduct the fieldwork for the analysis of land reform and conflict in the post-CPA period in this County. Interventions into Yei by colonial authorities (Belgian and British colonial rule) and later by the SPLA during the North-South civil war resulted in many changes to the local governance, and most of those changes are reflected on how land is locally perceived and governed today. Demographically, the Kakwa forms the majority ethnic group in the County, so local governance is commonly based on Kakwa traditional practices. In the precolonial period, traditional leadership in Yei was based on a group of stakeholders (*mony menu* – land custodian, *matat lo kudu* – chief of the rain, *katokelanit* – traditional healer, and *matat lo galaka* – chief of the ranch), each tasked with a specific aspect of governance.⁷⁰ A *menu* was (and still is) the basic territorial unit owned by a clan, and the *mony menu* was tasked with land administration within the *menu* on behalf of the landowning clan.⁷¹ During the colonial period, the British colonial administration in Yei forcefully resettled various clans from their traditional settlements to preselected areas, arguably to eradicate sleeping sickness (Bloss, 1960). In the process, however, this administration replaced the most traditional leaders that existed with individual chiefs who became the facilitators between the colonial administration Yei and its subjects.⁷² Most of those settlements remained villages throughout the postcolonial period. During the civil war (1983–2005), the SPLA made more changes to traditional leadership and in villages around Yei by replacing "incapable" chiefs with those who could help achieve its military objectives⁷³ and by upgrading the villages to Counties, Payams, and Bomas (Öhm, 2015). The impact of those changes on land rights and conflict around land became clear in South Sudan after the introduction of its land reform

⁶⁹ *Sudan Tribune*, S. Sudan President Approves Creation of 13 Counties in Yei, 23 August 2016, online: <www.sudantribune.com/spip.php?article60004> (14 July 2017).

⁷⁰ *Sudan Tribune*, South Sudanese President Creates Four More States, 16 January 2017, online: <www.sudantribune.com/spip.php?article61403> (17 January 2017).

⁷¹ Interviews, community leader, Yei, 16 November 2012; and Land Custodian, Yei, 31 January 2012.

⁷² Interview, community leader, Tore, 20 May 2012.

⁷³ Interview, head chief, Mugwo in Yei, 9 November 2012.

programme in 2005. The conflict cases in Mugwo and Otego are some discussed below are some of the implication of the cumulative changes that resulted from colonialism, postcolonial government and SPLA in the pre-CPA period.

4.4.3.1 The Conflict in Mugwo

In October 2011, the sub-chief of Alero Village reported to the County authority in Yei about an ongoing violent conflict between two clans, the Lugori and the Yondu. The conflict involved the use of firearms and resulted in the injury of three individuals from the two clans.⁷⁴ Alero is some seven miles southeast of Yei Town, along the main road connecting Yei to Kaya at the Ugandan border (see Figure iv). The County authority responded to this report by sending police officers to stop the violence and to bring those involved in the conflict to the magistrate court in Yei. Contests over ownership of this village were reported to be the immediate cause of the conflict. But as investigations into this conflict continued, it became clear that the fight was deeply rooted in competition over leadership, which a legacy of changes on authority that occurred during the colonial period as well as those introduced by SPLA in the pre-CPA period.

Oral histories suggest this area was traditionally owned by a clan called the Permasu and gave part of its land to the Lugori clan based on historical relationships. During the colonial era, the British colonial administration in Yei moved the Permasu clan some five miles from Yei Town, leaving the Lugori clan behind. At the same time, this administration moved Yondu clan from Payawa Village, some 11 miles from Yei Town, to settle in this area, opposite the Lugori clan, along the main road. The land where Yondu clan was settled also belongs to the Permasu clan. As Permasu clan gave the authority of its land to Lugori when it was moved away from this area, it implied that Lugori was also in a change of the land where Yondu clan settled. However, the elites of Yondu came to claim legitimacy over this piece of land, arguing that it was allocated to them by the British administrator, leading to contestations between the two clans. Remarkably, the contests over this area started after the start of the CPA in 2005 although the Yondu clan was moved to settle in this area around 1912 – almost a century ago.

⁷⁴ Interview, Lugori member, Yei, 10 November 2012.

Before those contestations, the two clans coexisted peacefully to the extent that some of the families intermarried. As a result of this peaceful coexistence, elders of Lugori clan allocated a certain piece of land on their side to Yondu families who moved and settled there. While in their new settlement, elders of Permasu clan continued to refer to this area as its ancestral land, and elders of Lugori and Yondu gave their rewards (Kewatat) for the use of this land to the land custodian of Permasu. Because Permasu gave the administration of the land elders of Lugori clan, families of Yondu clan gathered their Kewatat and handed over to Lugori elders who, in turn, handed this over to Permasu clan.⁷⁵

In the late 1980s, SPLA forces started to move towards Yei Town, forcing most rural communities around Yei Town, including Lugori and Yondu, to flee their villages to hide deep in the forests, while others crossed borders to take refuge in Uganda and the Democratic Republic of the Congo (DRC).⁷⁶ This was because rural communities settling along main roads were targeted for compulsory conscription into the army by the SPLA or attacked by the Sudanese Armed Forces under allegations of supporting rebels. After the CPA, some families from among the Lugori and Yondu returned to settle in their respective areas, with the Yondu families that settled on the Lugori side of the land settling alongside the Lugori.⁷⁷

But shortly after their return, Yondu elders and their headman put a signpost along the main road with a map covering the entire area, and named it 'Yondu Land.' This act by the Yondu provoked Lugori elders and their headman who, in turn, attempted to evict the Yondu families on their side of the land. But those families resisted eviction. Also, the entire clan of Yondu and their headman supported those families in resisting the eviction. The sub-chief of Alero suggested outside court that the Yondu should not be evicted.⁷⁸ The involvement of the two headmen and the sub-chief in this conflict made it not possible for the three to resolve it, which is why it escalated into violence and the need to involve the police.

⁷⁵ Interview, community leader, Yei, 6 January 2012.

⁷⁶ Interview, Lugori member, Yei, 10 November 2012.

⁷⁷ Interview, Lugori elder, Yei, 27 November 2012.

⁷⁸ Interview, sub-chiefs, Alero, 16 November 2012.

The police forces sent by the County commission to control violence arrested those involved in the violence and presented them to the magistrate court in Yei. The court sentenced each of the two individuals (one from Lugori and one from Yondu) who spearheaded the violence to three months in prison. But the court declined from addressing the land aspect; arguably, it concerned land dispute in a rural area which was outside the mandate of the statutory court (also see GOSS, 2009a, 2009b). For the same reason, the County authority declined from interfering directly in resolving this conflict but responded by sending the police officers to mitigate the violence and proposing a committee to consider the causes of the conflict and suggest solutions. This committee was headed by the County's executive director and consisted of chiefs from the three Bomas of Payawa, Longamere, and Yari, and land custodians (*mose menua*⁷⁹) from Permasu and Bori. The chairman of the committee had extensive work experiences and served in various areas in the country, including in Khartoum in the pre-CPA period. Shortly after the start of the discussion to resolve this conflict, members of the committee disagreed on how the conflict should be resolved.

The County's executive director and the *mose menua* suggested the signpost should be removed and that Yondu families on the Lugori side of the land return to the land allocated to them by the British. However, the three chiefs and representatives of the Yondu on the committee accepted the proposal to remove the signpost but rejected the suggestion that those Yondu families at the Lugori side of the land should be evicted. Yondu representatives in this committee argued the proposal was biased against them because the head of the committee (the County's executive director) was against them and their headman because their headman was on the SPLA side of the war whereas the executive director was with the government. They articulated this bias towards their clan and headman as a continuation of wartime grievances.⁸⁰ Representatives of the Lugori, on the other hand, claimed the objection by the three chiefs of Payawa, Longamere and Yari on the return of Yondu families to the land given to them by the British administration in Yei was biased against them because the chiefs came from the same mother clan as the Yondu (Payawa), and have been aspiring for a long time to have

⁷⁹ Plural of *mony menu*.

⁸⁰ Interview, Lugori member, Alero, 16 November 2012.

control over all of Mugwo. The committee could not impose its proposal, leaving this conflict unresolved.

4.4.3.2 The Conflict in Otogo Payam

The second conflict case was in Goja Boma in Otogo Payam, between two clans of Somba and Morsak. An immediate cause of this conflict was the disputed legality of a land lease between Somba elders and an investor, signed in December 2011. The lease concerns a land area of 210 hectares for ten years in Goja.⁸¹ The chief of Goja and the sub-chief of Morsak challenged this deal as illegal because they were not involved as the legitimate authority in the area in discussing and signing this deal.⁸² Thus, the chief and sub-chief mobilised their communities to stop the implementation of the project for which the lease was signed.⁸³ In turn, Somba elders mobilised their people to confront the Morsak against stopping the project. As tensions around the lease intensified, this case was reported to the County authority in Yei to provide solutions.

Like in Alero, this conflict was over land in a rural area, which made the County authority and the magistrate court not to intervene directly in seeking solutions. The intervention by the magistrate court in the conflict in Alero came about because violence was involved in that conflict, which was not the case in Goja. Like in the case of Alero, the County commissioner proposed the formation of a committee to consider the causes of this conflict and suggest solutions. The committee consisted of elders from the two clans of Somba and Morsak as well as others from among neighbouring clans of Logo and Mongo. Attempts to resolve this conflict lasted for three months, two months longer than in the one in Alero, but ended in a deadlock. During this period, Somba and Morsak elders gave their narratives to justify their claims on the land. The challenge in getting a solution to this conflict is rooted in the contested claims between chiefs of Goja and Morsak and Somba elders on the ownership of this area and the disputed piece of land.

The "founding father" of the Somba migrated from Koboko in present-day Uganda to Goja and was given this piece of land by elders of the Logo clan, who traditionally owned this

⁸¹ Interview, Morsak Sub-Boma, 14 November 2012.

⁸² Interview, Goja Boma, 14 November 2012.

⁸³ Interview, Baraba's family, Yei, 28 March 2013.

area. Over time, the two clans developed good relations, and elders of Logo gave the founding father Somba the disputed piece of land and gave this family an honorary clan name Somba, meaning friendship.⁸⁴ Later, most Logo families migrated to settle some six miles down the Yei-Maridi road, going towards today's Western Equatoria state. Later on, most Somba families moved voluntarily to settle in Kegulu, some seven miles down the Yei- DRC road. During those movements, Logo and Somba clans continued to refer to Goja as their ancestral area.

After the intervention by the colonial rule, the British district commissioner in Yei appointed Baraba from Morsak as chief of Goja. Because of this appointment, more people from Morsak moved to settle in Goja. With the colonial policy whereby chiefship is inherited within the same family, chiefship in Goja became linked to Baraba's family. This family maintained its grip on power even during the time the SPLA replaced many chiefs by new ones because of the support chiefs of this family gave to SPLA forces in terms of food items to its soldiers and recruitment of youth to SPLA-allied militias. As a result of the changes in the local governance brought by the Land Act and the Local Government Act, the chief of Goja (from Morsak) was given the authority to be in charge of this area and of land administrations. Because of the authority given to them by the SPLA-led government, the chief of Goja and the sub-chiefs of Morsak argued that this mandate gave them the legitimacy to negotiate the land lease with the investor. The Somba, on the other hand, consolidated its legitimacy to negotiate the lease based on ancestry. They argued that they had acquired this land legitimately as a gift from the Logo. Logo elders present in the committee substantiated this claim and supported the Somba arguments. Ultimately, the committee ruled that it was legitimate for the Somba to sign the lease, but proposed a reduction in the land lease size from 210 to 21 hectares, and the duration from 10 to 3 years. The size and duration of the lease can be increased only if both clans benefit from the presence of this investment project in the area. However, the committee suggested that payment of the lease which was already signed should be given to elders of the Somba clan.

But both Morsak and Somba chiefs and elders objected to those proposals. Elders of Morsak saw this ruling as violating their legal rights as the authority in the area and their

⁸⁴ Interview, Otogo Payam, Yei, 16 November 2012.

traditional rights as occupants of Goja. As for the Somba, they felt that the reduction of the land size and the lease period were mistakes and that they should have the right to decide on the lease terms as the traditional landowners.⁸⁵ While mediations on the case were ongoing, Morsak elders mobilised their people to settle around the land, obstructing the work of the investor. As a result, the investor was forced to abandon this project.⁸⁶ Just like in Alero, the committee could not impose their solution, leaving this conflict unresolved.⁸⁷

4.5 Understanding Land Reform in South Sudan

Then, what can we understand from these cases in relation to land reform and conflict in the post-CPA period? As these cases have shown, land reform in South Sudan is characterised by a sharp dualism, combining elements of the statutory and customary laws. While the overall objective is to reverse historical injustices through consolidating the land right of rural communities, this reform programme has tended to take a top-down approach based on the Weberian model of the state, which has led to a policy gap between land laws and realities on the ground. Returning to our main questions: How does the current approach to state-building influence land reform? To what extent (if at all) do the existing legal frameworks on land contribute to addressing the root causes of the North-South civil war? How can we explain the increased level of "ethnic conflict" in South Sudan within the framework of land reform?

What came out clearly from these cases is that the legacy of the North-South civil war (1983–2005) continues to influence state-building and subsequently, land reform in South Sudan in the post-CPA period. This influence was reflected in the focus by the South Sudanese authority and its partners on enhancing institutions of the central government, partly to maintain historical injustices. Consequently, this served to strengthen the South Sudan Land Commission and to largely undermine lower-level institutions, particularly those categorised as the local level. Surprisingly little attention has also been paid by the state authority to state land commissions and County land authorities, even though these fall under the category of 'formal institutions'. It seems as though the limited attention

⁸⁵ Interview, Kakwa Community Association, Yei, 27 November 2012.

⁸⁶ Interview, Baraba's family, Yei, 28 March 2013.

⁸⁷ Interview, Lugori member, Yei, 10 November 2012.

paid by the government and its development partners to the lower levels of the governance has made it difficult for the SSLC to achieve results.

Development of national and context-specific land policies at state levels, provision of technical advice to relevant government institutions, and arbitration of land conflict are among the core duties of the SSLC. It is supposed to coordinate with state land commissions and the underlying land-governing institutions to reach these goals. But the failure to devolve the SSLC to the lower levels made it difficult for the commission to achieve these objectives. The Land Act of 2009 and the so-called "Land Policy," the latter of which has yet to be signed into law by the president, have been the only achievements of the SSLC since the 2005 CPA. There is little evidence to suggest that the SSLC is actually active in its advisory role vis-à-vis the relevant government institutions.⁸⁸ Even the Land Act it developed has tended to be problematic, as its implementation alongside the Local Government Act has generated contradictions, turning efforts for land reform into a source of conflicts.

The Land Act, for example, considered land in rural areas as 'community land', owned by rural communities based on autochthony, and 'public land' owned by the state and 'private land' by private entities. But the incorporation of rural areas into the local government and the upgrading of chiefs to positions as government officials to oversee land governance in rural areas brought about some problems regarding land rights. As evidenced in the cases on Mugwo and Otogo, chiefs started to interfere directly into the management of lands traditionally owned by other communities. Authority of chiefs on land raised the question of whether communities still have control over their land or not. As is also witnessed in the two conflict cases, the chiefs appointed by SPLA authority attempted to assert their control over the disputed lands despite their acknowledgement that their communities were not the traditional owners of those lands. Also, by suggesting that land in rural areas is owned by local communities based on autochthony, the Land Act has strengthened the link between identity and land ownership, which has led to challenging the authority of some chiefs known to have been appointed from outside those areas by the colonial administration or by the SPLA. In Otogo, for example, the chiefs of Goja and Morsak are not traditionally from Goja. This caused the landowning

⁸⁸ Interview, South Sudan Land Commission, 7 April 2013.

Somba to constantly challenge those chiefs' authority in administering their land. In this specific conflict, they did so by taking charge of the land lease with the investor, overriding the authority of the two chiefs. But the Morsak clan resisted this, resulting in tensions between the two clans.

In Mugwo, we see a similar scenario at a play. Both clans were 'foreign' in Alero, but each attempted to assert its authority over the land. The Yondu clan did so by developing a map that indicated it was in charge. But the Lugori resisted this and won the favour of the County authority and the two *mose menua* of Permasu and Bori. But the Yondu objection to this ruling also made it difficult to resolve the case, as the committee is not legitimised to impose the ruling. If Yondu clan were to succeed in asserting its control over this Alero, its headman would be in charge of land governance in the whole area occupied by the Yondu and the Lugori, meaning the Lugori will seek the permission of the Yondu's headman to use the land even though the Lugori settled there earlier than the Yondu and given this land by Permasu, the precolonial owner of the land.

Contests around traditional leadership concerning land control commonly occur in rural areas, but some cases do occur in urban centres. Within Yei Town and as will be discussed further in chapter five, for example, Dinka chiefs are constantly accused of allocating land belonging to local communities to their displaced people, resulting in conflicts. These chiefs justify their actions based on the wording in the Land Act, which states that 'all land in South Sudan is owned by the people of South Sudan and its usage shall be regulated by the government' (GOSS, 2011). The focus on strengthening institutions at the national level and the subsequent failure to achieve results is not limited to land reform in South Sudan but also occurs in other sectors. Within the security sector reform, for example, Copeland (2015) suggests this approach has contributed to the emergence of various rebellion groups to fight against the government in Juba.

4.5.1 Land Reform and Rights

Among the major causes of the North-South tensions and the subsequent civil war were land policies that misappropriated land rights of rural communities, marginalisation of peripheral areas through governance, and recreation of governance structures that favoured northern Sudan. With the focus of land reform on addressing those injustices,

to what extent is South Sudan on track? In other words, to what extent (if at all) do the existing legal frameworks on land contribute to addressing the injustices that led to the civil war? The case in Yei and examples from other settings in South Sudan suggest a gloomy outlook.

Contrary to the SPLM's wartime articulation that consolidation of land rights was its priority, what surfaced clearly is that the SPLM-led government is increasingly interfering with the land rights of rural communities, perhaps in more detrimental way than its predecessor, the government of Sudan. Following the footsteps of its predecessor, the SPLM government developed land policies that make it easy for the authority of the central government to interfere with the land rights of rural communities. The reframing of the wartime slogan 'the land belongs to the community' to 'all land in South Sudan is owned by the people of South Sudan and its usage shall be regulated by the government' has, for example, given the state the legal basis to interfere with community land under the guise of 'land regulation.' The Land Act strengthens this further by giving the state the right to convert a community or 'unowned' land to public land (GOSS, 2009a, p.13). What is problematic is that conditions for the conversion of community land to public land remain unclear. But the notion of 'unowned land' raises suspicions, as 'all land in South Sudan is owned, in one way or another' (Deng, 2011a, p.1). Also, within this reframing, the change from the community' to 'the people of South Sudan' has contributed to tensions between communities, resulting in speculations that the state deliberately reworded the text to give other communities legal backing to claim land ownership outside their ancestral areas, specifically, the Dinka in Equatoria.⁸⁹ Because of the reframing of the land laws, the Land Act, for example, gives those occupying land in 'good faith' for at least three years from the start of the CPA in 2005 the right of ownership or a right to compensation by the traditional landowner (GOSS, 2009a, p.82), which has contributed to heightened tensions between new occupants and returning pre-war landowners, adding to the speculation that land occupation is politically motivated. These speculations are strengthened by the increasing involvement of Dinka in land conflicts in various areas in Equatoria. As we pointed out earlier, this has resulted in conflicts between Dinka and local communities in Yei. Elsewhere, this has resulted in conflicts between Dinka and Bari in Juba (Badiy, 2013), Dinka and Madi in Nimule (Schomerus

⁸⁹ Interview, academic, University of Juba, 30 October 2011.

and Allen, 2010), and even across the border into the DRC between Dinka and Congolese authorities around Bazi and South Sudan – DRC border area (De Vries, 2011).

Also at the policy level, the incorporation of chiefs (most of whom continue to be SPLM appointees) into local government and their legitimisation to oversee land administration in their jurisdictions has opened more avenues for the state to use chiefs as agents of land control. Between 2007 and 2010, for example, the state leased out an estimated 9 per cent of the total land area of South Sudan to domestic and foreign investors, mainly in rural areas facilitated by chiefs (Deng, 2011b, p.7).

Last, the division of the southern region into the three regions of Equatoria, Upper Nile, and Bahr el Ghazal and the redrawing of the North-South borders were among the land-related causes of the North-South civil war that started in 1983. In South Sudan today, we see history division and violence seem to be repeating itself. The presidential order to increase the number of the states to 28 and then 32 resulted in tensions, at the political level between the government and opposition forces allied to Riek Machar, leader of the Sudan People's Liberation Movement/Army in Opposition (SPLM/A-IO)⁹⁰, and at the societal level among various communities. Because of this increase, it became difficult to implement the peace agreement signed between the SPLM/A-IO and the government in August 2015, as the agreement was based on the ten states. At the local level, this has resulted in tensions between Dinka and Shilluk, as it gives the eastern part of the state of Upper Nile, traditionally owned by Shilluk, to Padak Dinka. The increase of January 2017 to 32 states is likely to exacerbate the tension around land ownership and internal borders. In a nutshell, the South Sudan authority is far from achieving its land reform objectives. On the contrary, what we see is increased levels of violence and civil wars around land resulting from the current land laws.

4.5.2 Land Reform and Conflict

The cases in Mugwo and Otego and other examples in South Sudan also suggest the current reform programme is not only a contributor to conflicts, but also lacks adequate

⁹⁰ The SPLM/A-IO was formed as a rebel movement after the conflict that started between the presidential guards loyal to President Salva Kiir and Vice President Riek Machar in December 2013 (also see De Vries and Justin 2014).

conflict-resolution mechanisms. This, to a great extent, explains the rapid increase in 'ethnic conflicts' in South Sudan during the interim period and after independence. The cases in Otogo and Mugwo suggest that the lack of clarity on the roles of different levels of governance in conflict mitigation and resolution, confusion on the body of laws to be applied in conflicts, and the increasing involvement of traditional leaders in conflicts have all laid the groundwork for violence around land. While the Land Act gives the state the authority to regulate community land in rural areas, it does not explicitly specify the extent to which the state can do so, nor does it delineate the state's role in conflict mitigation and resolution. The same act suggests the authority of the state vis-à-vis land regulation is limited to registered land in urban centres. Concerning the authority of chiefs, the Local Government Act gives chiefs the authority on land regulation but limits their power to the resolution of non-criminal conflicts within their jurisdictions. These contradictions seem to have made County authorities to distance themselves from land-related conflicts in rural areas. At the same time, this has made chiefs unable to resolve criminal cases even if those are linked to land in rural areas.

Regarding the conflicts in Mugwo and Otogo, for example, the County authority could not intervene directly in resolving the two conflicts because both were reported as land conflicts. This authority rather proposed the formation of committees that ultimately could not resolve the conflicts because they did not have the mandate to enforce judgments. In the case in Mugwo, the magistrate court intervened because armed violence was involved, which falls outside the authority of the chief. This intervention was, however, limited to stopping the violence but not the root cause of the conflict. The chiefs in Otogo and Somba and the headmen in Alero would in principle resolve those conflicts at the root. But their involvement in the conflicts made it impossible for them to resolve those. The involvement of chiefs in conflict and the limited authority of the County and the magistrate court in conflicts that are perceived as land-related has led to many such conflicts being left unresolved. This has seemingly set a precedent for rural communities to deliberately escalate conflicts to a violent level to involve higher authorities. As will be discussed in chapter five, the magistrate court in Yei declined from attending a land dispute between families of a returnee and IDPs because it was in a village but became involved after this conflict escalated to open violence involving various communities in the County. This was similarly the case in what came to be framed

as 'ethnic conflict' between Bari and Mundari in Mangalla around Mangalla discussed in Chapter Three.

Besides, challenges in figuring out which laws are relevant to apply remains a significant problem in resolving disputes. While chiefs are trained by government officials, including judges, on conflict resolution mechanisms based on government laws, they are expected to address cases in traditional courts based on local customs (GoSS 2009b: 48). What is challenging is that government laws are mainly based on punishing offenders, whereas customary laws tend to emphasise mediation and reparation. These dilemmas are increasingly leading chiefs to blend the two philosophies, often producing judgments that are easily contested. In Otego, for example, by giving the Somba the right to lease the land, this ruling contradicted both the government laws and the customary land laws. The existing land laws would give the chiefs of Goja and Morsak the right as the legitimate authority to coordinate the lease, and those chiefs would discuss with the Somba how to share the dividends. Based on customs, the Morsak also have the right to use the land, but give the Somba *kewatat*, or 25 per cent of the lease value, in this specific case.⁹¹ But this is only relevant if the land lease can be accepted as secondary land use entitled for use by 'outsiders.' Also based on customs, the committee should have criticised the land lease, as 'Kakwa customs do not allow land sales.'⁹² Though the committee declared the Somba the legitimate party to sign the lease, the Morsak blocked the whole project, and no law could evict or punish them, which resulted in forcing the investor to withdraw the project. In Alero, government laws would support the proposal that the Yondu families leave. However, customary laws will give them the right to stay, as they have buried their ancestors in this area, giving them the right to refer to this area as their ancestral land (also see Leonardi and Santschi, 2016). The challenge in choosing the right law also contributed to the disagreement among the committee members and hence the failure to resolve this conflict.

Last, the involvement of the chiefs in the conflicts is perhaps the main contributor to the failure to resolve the two conflicts. This also made it easy for the chiefs in Goja and Mugwo

⁹¹ "*Kewatat*" comes from a Kakwa word meaning the foreleg of an animal; the term is used to designate a compensation for landing communities when their land is used as a hunting ground. Chiefs around Yei have agreed that *kewatat* should be set at 25% of land value if the land is used for purposes other than hunting (Interview, community leader, Yei, 31 January 2012).

⁹² Interview, Kakwa Community Association, Yei, 16 November 2012.

to mobilise their communities for violence under the pretext of 'protecting their land.' As we have also seen in the two cases, the current laws lack any mechanism to resolve conflicts that involve chiefs, particularly when such conflicts are reported as land-related, which was the case in Ootogo and Mugwo. Even if conflicts between chiefs are reported as competition over authority, it will still be difficult to address this, as the existing laws give chiefs immunity from prosecution (GOSS, 2009b, p.52).

4.6 Conclusion

Drawing on cases in two rural settings in Yei River County, this chapter elaborated on the relationship between land reform and conflict in South Sudan during the interim period and after independence. It showed that contradictions in the existing land laws had strengthened the link between traditional leadership and land administration, and between land ownership and rural communities. These relations resulted in contentious competitions over leadership in rural areas as a strategy for land control. But the link between land ownership and community has caused conflicts around traditional leadership to take the form of land conflicts between communities. The existing laws are inadequate to resolve land conflicts in rural areas, particularly when chiefs are involved in such conflicts. This has made it easy for small-scale conflicts to escalate into wider violence, whether intentionally or unintentionally. This, to some extent, explains the rapid emergence of 'ethnic conflicts' in South Sudan since the start of the CPA in 2005.

The chapter has also shed new light on the debates on state-building by questioning the appropriateness of the top-down approach to state-building in South Sudan, which has tended to neglect changes in society and regarding land that have been caused by historical interventions on the part of various actors. In this specific case, the chapter has highlighted the relevance of understanding history and changes in local governance resulting from historical interventions and the possible implications of these for state-building in countries emerging from civil wars or undergoing land reform. When there is a lack of clarity on existing land laws and a dearth of adequate mechanisms for conflict resolution, small-scale conflicts around land can easily escalate into wider conflicts and can be framed as 'land conflicts' or 'ethnic conflicts' even though land or ethnic belonging is not necessarily the immediate triggers of such conflicts. The conflicts in Mugwo and Ootogo demonstrated this conflation.

5. The politics of displacement-related land conflict in Yei River County

Abstract

This chapter contributes to the debates on internal displacements in post-conflict settings in Africa. Drawing on empirical evidence from Yei River County in South Sudan, it argues that, rather than a temporary phenomenon, displacement may lead to a drastic reorganisation of land occupation and governance. Such reorganisation may become strongly connected to broader political contention. In the case of Yei River County, existing legal frameworks and institutions are inadequate to deal with land conflicts resulting from massive displacement and return. Crucially, historical grievances result in the displaced no longer being perceived as powerless victims, but as agents of a Dinka agenda to (re)occupy territories in Equatoria, and as perpetrators in land conflict. Such politics of land-control and identity may turn land disputes between displaced people and returnees into a major source of instability. At the same time, those displaced people who are not well-connected politically may lose their land rights.

A slightly modified version of this chapter has been published as:

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5.1. Introduction

Massive displacement of civilians has been a dominant feature of violent conflict in South Sudan. Most of the displaced were forced from their ancestral areas by the protracted North-South civil wars that ended through the Comprehensive Peace Agreement (CPA) in 2005. Yet, violent conflicts within the South also caused major movements of people. These included conflicts over grazing land (Jok and Hutchinson, 1999; Dreef and Wagner, 2013) and confrontations between different military factions (e.g., Jok, 2011), such as the factional fighting after the 1991 attempt by Riek Machar to oust John Garang from the leadership of the Sudanese People's Liberation Movement/Army (SPLM/A) (Nyaba, 1997; Dreef and Wagner, 2013). The interim period following the signing of the CPA witnessed a massive return of displaced people and refugees, notably before the referendum on self-determination and after South Sudan's independence in 2011. During that period, many refugees and displaced people considered their home areas unsafe or lacked services, making them to resettle elsewhere (Sluga, 2011). Moreover, new conflicts erupted in various parts of South Sudan (e.g., Yoshida, 2013). In December 2013, disagreement among elites of the ruling party SPLM escalated into a nationwide civil war (Kindersley and Rolandsen, 2017), which resulted in the displacement of almost 1.7 million civilians, mainly from the three states of Unity, Upper Nile and Jonglei and some parts of Greater Bahr el Ghazal.⁹³

Long-term displacement and massive resettlement of displaced people, as well as the return of the displaced and refugees to their home communities, resulted in numerous competing claims on land between returnees and those displaced (e.g., De Wit, 2004; Pantuliano, 2007). The Land Act of 2009, adopted by the Government of South Sudan (GOSS) during the interim period, attempted to resolve such competing land claims. It stipulated that land occupied unlawfully during wartime should be returned to its pre-war owners, and those who had been occupying these lands in 'good faith' should be duly compensated for the investments made on the land (GOSS, 2009a). However, this restitution process is problematic and politically sensitive.

⁹³ Figures as of December 2015, Internal Displacement Monitoring Centre, <http://www.internal-displacement.org/sub-saharan-africa/south-sudan/>

This chapter explores the politics of displacement-related land disputes in Yei River County in South Sudan. It explores how a history of protracted displacement has resulted in structural changes in land occupation and land governance, which become increasingly problematic with the return of refugees and the displaced, and the ongoing settlement of people from other parts of the country. The failure of existing legal frameworks and institutions to address ensuing land conflicts contributed to heightened tensions between host communities, the displaced and other settlers. A critical dynamic in the ethnically diverse context of Yei is that disputes around land and its governance may become the backdrop for broader political contention around land control, state power, and identity. As the conflict case in Giru village will later demonstrate, a local dispute between a returning landowner and a displaced family may become locally understood in terms of higher-level contestations about who belongs where and who is in charge and may trigger large-scale political mobilisation.

This poses challenges to humanitarian and development organisations that aim to protect and assist returning refugees and so-called Internally Displaced Persons (IDPs). The case of Yei River County underscores that the challenge of addressing displacement crises is not so much how to return to the pre-war situation, but rather how to carefully deal with new claims and political realities on the ground. Inevitably, interventions to assist IDPs are complex and politically laden. In contestations about land and its governance, communities of displaced people are not just powerless victims. Some promote or are co-opted into highly controversial agendas. At the same time, displaced people who lack political connections may become vulnerable and lose their land rights.

To make this argument, the chapter is structured as follows. The first section will highlight the methodology and the methods for the data collection. This will be followed by a section that introduces our approach to analysing displacement-related land disputes. The third section reviews displacement in Yei River County and shows how this has affected local land ownership and governance, and the relations between displaced persons and returnees. Building on the case of a dispute in Giru village (see figure v), the fourth section explores what this implies on land tenure and how land disputes are perceived and resolved and highlights the politics involved. The conclusion reflects on what this implies for humanitarian intervention and academic research on land disputes in conflict-affected settings.

5.2. Methods

Data collection for this chapter was carried out in two periods (November 2011 –June 2012, and September 2012–April 2013), following an ethnographic approach. Research methods included extended interviews, focus group discussions (FGDs), participant observations and workshops, covering a wide range of respondents. Key informants included IDPs and the returning residents, victims of land disputes and local authorities, such as government officials, traditional authorities and elders knowledgeable of local (land) governance. Interviews also included academics, and a wide range of non-governmental organisations (NGOs), civil society and local community-based organisations.

5.3. The Politics of Displacement-related Land Disputes

To explore the political dynamics of displacement-related land disputes, we start with three key ideas. First, we consider that, rather than a temporary situation in which original claims to land are put on hold, in practice displacement may result in a drastic and sometimes irreversible reorganisation of land occupation and governance. Once displaced, people search for land elsewhere, and often their resettlement gradually turns into a permanent occupation. Sometimes, such transformations in access to and control over land are intentionally created, facilitated by the instability that characterises post-conflict settings (Peluso and Lund, 2011). Displacement is not only about the retreat of people to safer places, but also about the occupation of territory, which could become a deliberate strategy to secure military control. The chaos resulting from civil wars and the subsequent displacement of civilians creates opportunities for manipulation, settling land-related scores, forceful dispossession, and irregular acquisition of land (André and Platteau, 1998; Van der Haar and van Leeuwen, 2013). Frequently, land becomes booty or is used as a reward for military and political support. Such reordering of land ownership often turns permanent or is even legalised after a war (e.g., Grajales, 2011), and constitutes an important source of tenure insecurity in post-war settings (Unruh, 2003; Peters, 2004; Vlassenroot et al., 2005). Likewise, displacement often results in 'settled facts' on the ground in terms of who is in charge of land governance and what rules apply (Korf and Fünfgeld, 2006). War-related displacement affects the capacities, authority, and legitimacy of land-governing institutions. Institutional capacity to deal

with land issues may be lost when local land-governing authorities have fled or lost legitimacy as a result of their affiliation with the 'wrong side of the conflict'. New land-governing practices may be introduced by displaced people from elsewhere, which implies changes in the 'rules of the game' on land tenure, or the legitimacy of the institutions in charge (Unruh, 2003). This may result in a drastic reorganisation of who can access land, who is in charge of land, and how disputes are solved (Unruh, 2003; Korf and Fünfgeld, 2006). Such displacement-induced changes in land occupation and governance may be difficult to reverse after a conflict is over. As the case of Yei illustrates, policies to return land to the pre-war residents and to compensate those who have been occupying the land in the meantime and invested in it may become contentious and politically sensitive.

Second, displacement and post-conflict policies to deal with it may promote particular political projects around land, sovereignty, state power and identity, or may be perceived as such, resulting in resistance and possibly new violence. In this regard, land and political conflicts may be linked in complex ways. Land is not necessarily a key and deliberate concern for protagonists in civil violence but may become effectively linked to other contentious issues, or become an arena in which other conflicts are manifested (van Leeuwen and van der Haar, 2016). Through their strategic agency, local actors may effectively convince others to understand local rivalries and insecurities as salient manifestations of higher-level cleavages (see Richards, 2005; Kalyvas, 2006). Local land disputes may, for instance, be re-interpreted in terms of higher-level fissures between groups and so help mobilise local communities for a national cause. Examples from Rwanda (André and Platteau, 1998), Sierra Leone (Fanthorpe, 2001) and DRC (Autesserre, 2008) illustrate these dynamics.

Frequently, contestations over access to land or landownership become linked to the question of identity and ethnic belonging, which continues to be the case in many countries of post-colonial Africa, including countries that are less affected by violence than South Sudan (Fanthorpe, 2001; Vlassenroot et al., 2005; Mamdani, 1996). In various African countries, politicians manipulate the notions of 'ethnic strangers' and 'home area' or 'historical rights to land' to gain support among the 'locals' (Mamdani, 2001; Unruh, 2003). As land is the basis of the political order in many African contexts, various authors point out how land issues provide a political space where conflicts about power and the

legitimacy of competing claims to authority are played out, and where the state is redefined (Berry, 2013; Lund and Boone, 2013; Sikor and Lund, 2009). Effectively, contestations about land may come down to a process of negotiating the scope and nature of the state, for instance: who is in charge at what level, to what extent customary institutions may play a role alongside institutions of the state, what citizenship means, and how this relates to land rights.

As we will see in the case of Yei, displacement-related land disputes become connected in various ways to wider political agendas, with the potential to turn small-scale conflicts into major threats to stability. In Yei, displacement-related competing claims over land and land-governing authority feed into conflicts about belonging and authority over land. The land dispute in Giru village shows how, as a result of this, a land conflict at the local level can easily escalate into major political violence.

Finally, displaced people may be crucial players in such politics, being associated with or actively engaging in the promotion of certain political agendas that are to the disadvantage of host communities. Among humanitarian and development organisations, such a political perspective on displaced people and refugees is still relatively new. Only recently, these organisations have come to acknowledge that IDPs and refugees should not be considered as 'victims' only, but that they have agency and may strategically engage in politically contentious actions. In the academic literature, the concept of 'warrior refugees' underscores the active role of displaced people and refugees in violence (Haslie, 2006; Salehyan, 2008), including the case of South Sudan (Haslie, 2006). But even if the agency of the displaced is not violent, it may thwart the interests of residents, or be perceived as such. Such realities may make humanitarian organisations' efforts to identify 'genuine IDPs' or 'victims' problematic. The case of Yei also brings out this real or perceived political agency of displaced people. At the same time, as the Giru case will also show, some displaced people may have more agency than others, and those displaced without political or military backing may be at the losing end.

5.4. Internal Displacement and Changing Land Occupation and Governance in Yei River County

Yei River County was one of the six Counties of Central Equatoria State that existed right from the start of the CPA in 2005 until 2015. At that time, South Sudan consisted of ten states, with each state subdivided into Counties, Payams, and Bomas (GOSS, 2005). Giru village, the site of the case-study below, is part of Yei Payam. Yei River County is located in the south-west of the country, bordering the Democratic Republic of Congo (DRC) to the west, and close to the border with Uganda in the south-east. Yei Town is the main 'hub' of the County and was established during the colonial period as the District headquarters for what was Yei River District (Leonardi, 2007a).

In the late 1980s, Yei became the main battlefield between the Sudan Armed Forces (SAF) and the Sudan People's Liberation Army (SPLA), which ended with SPLA's military victory over the town in 1997. After this victory, the town was turned into SPLM/A's headquarters and remained so until the signing of the CPA in 2005 (Leonardi, 2007b). As a result of decentralisation policies adopted by the Government of Southern Sudan (GoSS) during the interim period, Yei town became the administrative centre of the County, subdivided to five Payams (Yei, Mugwo, Otogo, Lasu, and Tore). A County serves as the first tier of local government in South Sudan, and it is at this level that state institutions interact directly with society (GOSS, 2009b).

As a result of different waves of migrations and displacement in the past, Yei became an ethnically diverse County, representing most of the ethnic groups of South Sudan. This also poses a significant challenge: the settlement of displaced people and migrants had significant consequences for land occupation, as well as for local governance, notably resulting in competition over who should be in charge of land attribution and administration, and what rules should apply.

5.4.1. Displacement, shifting land occupation and land disputes

During the North-South civil war (1983 - 2005) in Sudan, multiple displacements took place in the County which over time resulted in a drastic reordering of land occupation and a reshuffle of the governance structures that existed before the start of the civil war.

As SPLA forces were advancing towards Yei town by the late 1980s, most urban residents fled the town and settled in surrounding villages or crossed to neighbouring countries, for fear that they might be considered legitimate targets by the advancing SPLA forces. Those fears originated in a common belief that the SPLA had grudges against the people of Equatoria for their support to decentralisation policies in the early 1980s, which had resulted in severe violence against Equatorians after the 1983 rebellion (see Scott, 1985; Branch and Mampilly, 2005). In January 1990, SPLA forces succeeded in temporarily taking control of residential areas in Yei town before being forced out by the SAF. While withdrawing, SPLA forces forcefully took along with the remaining civilians in the town and resettled those in the border town of Kaya, which it captured from SAF a few days earlier.

After the repulsion of SPLA forces by SAF from Yei Town, this town became a battlefield between SPLA forces and SAF and remained so until the SPLA captured it in 1997. After taking over the control of this town, SPLA forces turned Yei Town into its headquarters.⁹⁴ This attracted displaced people from other war-affected areas who were sympathetic to the movement to settle in the area. Alongside, soldiers moved in, either to join their commanders or families (Sluga, 2011). Effectively, successive movements of populations resulted in an almost complete replacement of the pre-war inhabitants of Yei Town by a combination of soldiers and civilians from other communities, most of whom were from the Dinka communities. Importantly, the residential areas that came about since the arrival of displaced people and migrants developed largely along ethnic lines, each being mainly inhabited by people with shared ethnic backgrounds. This had important consequences later on.

During the interim period (2005 – 2011), the relative peace and security brought about by the CPA encouraged most of those who had fled Yei during the war to return. In most cases, returnees found their houses and land occupied by soldiers, civilians, and migrants from elsewhere. As mentioned earlier, the Land Act of 2009 stipulates that land unlawfully occupied by others should be returned to the pre-war owners, with due compensation for investments made on the land. It should be observed that many returnees and displaced people manage to come to agreements, either through a

⁹⁴ Interview, retired primary school teacher, Lomuku Residential area, Yei, 2 February 2013.

negotiated settlement or through arbitration. Those who could pay for the needed compensations did so and those who could not abandoned their claims altogether⁹⁵. Nonetheless, in a significant number of cases, the restitution process was problematic and contested.

First of all, attempts by the pre-war owners to reclaim their land were faced by strong and sometimes violent resistance from the 'new settlers', both soldiers and the IDPs (De Wit, 2004; Pantuliano, 2009b). Often, soldiers resisted restitution of the land, claiming that 'we will return your land [only] in exchange for buckets of blood' (see Leonardi, 2011), phrases interpreted by returning pre-war landowners as threats to kill. Local narratives recount how various returnees lost their lives in the process of reclaiming their land. As a result of the history of repopulation of the area during the war, soldiers frequently reside alongside the IDPs and migrants from elsewhere. This contributes to strong relations between the two groups, who share a feeling of having stayed together as 'comrades' during wartime. Moreover, frequently, IDPs in most settlements belong to the same ethnic group as the soldiers.

Consequently, soldiers sometimes come to the aid of IDPs and migrants in resisting land claims of the returnees.⁹⁶ As a result of this, land disputes often pitch communities of returnees against communities of displaced (Sluga, 2011). Though the SPLA is often depicted as Dinka-dominated, not all soldiers, displaced people, and migrants are Dinka. Even then, among the returnees—many of whom are Kakwa—displaced people, migrants and soldiers are increasingly perceived as all belonging to the same group involved in land grabs and violence against host communities.⁹⁷

Moreover, displacement-related land disputes have become persistent, as displacement has become more or less permanent. Many displaced people who arrived during the war are still around, while violence in other parts of South Sudan during the interim period resulted in new arrivals (see Yoshida, 2013). Besides, various returning refugees preferred to settle in Yei County rather than to return to their home areas. The relative

⁹⁵ Interview, Institute for the promotion of Civil Society (IPCS), Yei, 3 May 2013

⁹⁶ Interviews, Yei River County, 27 November 2012; Rwonyi village, Yei, 3 May 2012; Tore B Court, Tore, 25 May 2011 & 2 November 2012, Tore; Yei B Court, 9 November 2012

⁹⁷ Interview, security advisor, Yei River County, 24 November 2011

peace in the area brought economic activity, which further stimulated migration of people from elsewhere, as well as a movement from the rural areas to the town.

Crucially, the displacement-related land disputes are difficult to deal with as land governing institutions lacked the legitimacy, or the power to enforce legislation, while there is disagreement about who should be in charge of land governance, and how to determine legitimate claims to land ownership.

5.4.2. Displacement and Contested Land-Governing Institutions

Before the start of the civil war in 1983, land governance in Yei was based on local customs prevailing among the Kakwa ethnic community, which constitutes a large part of the population. As in other parts of South Sudan, land in most parts of Yei was communally owned, and an individual's land rights were acquired through one's membership of the landowning community. A land custodian, locally known as '*Monye Menu*', managed this community land and advised chiefs or government institutions in relation to land matters. Outsiders could enjoy secondary land rights as long as they adhered to the traditional norms of land use⁹⁸. In contrast, residential pieces of land in Yei Town were allocated and regulated by the local government authorities. Unlike in rural areas, land allocated by local government authority was usually gazetted, demarcated and registered. Local government authorities charged service fees and taxes.⁹⁹ If more land was necessary, government authorities negotiated this with surrounding landowning communities in return for traditional 'gifts' locally known as 'kewatat'. Part of the taxes collected from those allocated pieces of land was paid as the kewatat¹⁰⁰.

As described earlier, when SPLA forces advanced to Yei in the late 1980s, most chiefs and other authorities involved in local (land) governance fled the area. To address the institutional vacuum created by their absence, SPLA appointed new chiefs, some from local communities and others from communities of IDPs who settled in Yei. While their community acknowledged the earlier chiefs for their ability to negotiate and pass

⁹⁸ Interview, Yei River County, 31 March 2013.

⁹⁹ Interviews, Rwonyi village, Yei, 3 May 2012; Tore B Court, Tore, 25 May 2012.

¹⁰⁰ Interviews, Rwonyi village, Yei, 3 May 2012; head chief, Tore b court, 24 May 2012.

convincing judgments, the SPLA was more concerned about chiefs' capacities to provide young conscripts for SPLA-allied militias and collect food for the SPLA's fighting forces (e.g., Leonardi, 2007b; Johnson, 1998). Additionally, with the return of stability after 2005, and the incremental settlement of displaced and migrant communities in the town, the new residents started to elect chiefs from their ethnic groups, or appointed chiefs from among the residents who had not fled. In addition to their roles in conflict mitigation and resolution, these 'new chiefs' were also tasked with the re-allocation of the vacated lands to the new residents.

The Land- and the Local Government Acts of 2009 acknowledged these parallel systems of land governance. The Acts give chiefs the authority to solve land conflicts in rural areas and peri-urban centres as well as small-scale land conflicts in urban areas. The jurisdiction of government courts is limited to registered lands in urban centres. In the case of Yei, this implies that the authority of the government court to deal with land conflicts is restricted to a few residential areas within the town. In most parts of Yei, land disputes fall under the responsibility of chiefs' courts, which base their judgments on 'local custom' of the traditional landowners.

Nonetheless, the multiple displacements that occurred in the area during the war periods had a significant impact on the legitimacy and authority of land governing institutions. In the first place, parties in land disputes invoked different notions of legitimate land claims (Badiey, 2014). During the interim period and after independence, most returnees tried to reclaim their former landholdings with reference to the pre-conflict allocations by local government authorities if they lived in the town or with reference to traditional land rights if their lands were in rural areas. Migrants, displaced people, and particularly the soldiers, legitimised their land claims in various ways. Displaced people and migrants referred to the fact that land had been allocated to them by the authorities in place when they arrived in the area. Force plays an important role in how such claims are made. For instance, soldiers ignored claims from returnees, arguing that they 'liberated' the lands

from the 'Jalaba',¹⁰¹ and thus have the right to settle on these perpetually (also see De Wit, 2004; Pantuliano, 2007).

Unfortunately, the Magistrate's Court in Yei town could not resolve most of such cases. The Magistrate's Court is overwhelmed with land disputes, and it often takes a long time before cases are attended to. Besides, the Magistrate's Court has limited means to ensure that decisions taken by the court are implemented in practice. Moreover, resolving a land dispute is particularly problematic if a party to such a dispute is a soldier: soldiers often ignored calls to appear in court, claiming that they (soldiers) cannot be prosecuted in civilian courts.¹⁰² There are no military tribunals in the County that might intervene in such cases. Even if the government court passes judgments on cases between returnees and those occupying their land, those judgements were often not enforced. This is because the court lacked the institutional capacity to enforce punishments, or because wealthy convicts may 'buy their way out' through bribery. Moreover, it seems that those with good connections to political elites or the military are often left unpunished for fear that their sentencing might result in 'insecurity' or 'instability'.¹⁰³

The traditional (chief's) court system often has problems of legitimacy. Chiefs traditionally from Yei argue that they can legitimately deal with returnee-related disputes, as they base themselves on the customs of the people of Yei, and that their authority is acknowledged in the Land- and the Local Government Acts. However, displaced people and migrants often disqualify the judgments by traditional chiefs as being prejudiced against them. They argued that those chiefs, who are mostly Kakwa, are more sympathetic to the claims of their own 'tribesmen' or lacked understanding of the norms and conventions of other ethnic communities. A related complication is that some displaced communities have been around for so long that some have appointed their chiefs to resolve disputes and allocate land. This turns problematic when the land they

¹⁰¹ The word Jalaba is used by SPLA to refer to the Arabs in the North; This is used to mean the enemy, and increasingly used to refer to South Sudanese who settled in IDP camps in northern Sudan in the pre-CPA period.

¹⁰² Interview, Yei River County, 31 March 2013.

¹⁰³ Presentation and group discussion, South Sudan Land Commission, Juba, 28 October 2011.RB, Chairman,

have distributed is now reclaimed by returnee communities.¹⁰⁴ Moreover, returnees do not recognise the authority of these 'new chiefs' and object to attending their courts.¹⁰⁵

Finally, there is a contestation about the authority of chiefs that have been appointed during the war by the SPLA. By the end of the civil war, most SPLA-appointed chiefs kept their positions and were acknowledged as part of local government through the Local Government Act.¹⁰⁶ However, these non-traditional chiefs often operate in a disconnect from the traditional land custodians, the *Monye Menu*, and fail to involve them in land allocations. Returnees tend to consider decisions on land by these SPLA-appointed chiefs as illegal, and thus claim that the land should be returned to the pre-war owners. Soldiers and the IDPs, on the other hand, consider that the new chiefs are recognised by the state as part of local government and that land allocations by them are thus legitimate.

To deal with the contestation about their authority and as discussed in Chapter Two, most chiefs' courts in Yei had started to organise joint court sessions, which included traditional leaders, elders and chiefs from both parties involved in such conflicts.¹⁰⁷ Though this approach had been instrumental in resolving some disputes, it is not always effective in land conflicts. Often, migrant chiefs declined from attending land-related court sessions.¹⁰⁸

Displacement in Yei has thus come down to a drastic reorganisation of how land is occupied, and to contestation about its governance. Obviously, part of the struggle about land-governing authority is about the efforts of the civilian administration and the judiciary to re-assume their 'normal' roles in a situation where there is uncertainty about these roles and the prerogatives of the different institutions involved. It is problematic that this contestation takes place in the context of an uneasy transition from military rule to civilian administration, in which the military has difficulties in getting adjusted to their new role, with the risk of such contestations turning violent.

¹⁰⁴ Interview, Yei B Court, 9 November 2012.

¹⁰⁵ Interviews, Mugwo Payam, 19 November 2012; Yei Payam, 9 November 2012 and Longamere Boma, 2 February 2013.

¹⁰⁶ Interview, Head-chief, Tore Payam, 22 May 2012.

¹⁰⁷ Interviews, Episcopal Church of South Sudan, Giru, 14 November 2012; Yei Magistrate Court, 13 December 2012; Yei B Court, 9 November 2012

¹⁰⁸ Interviews, Yei B Court, 10 November 2012 & 14 November 2012.

Such contestation about displacement-related land disputes and their resolution may become strongly connected to larger political conflicts. We will illustrate this by the case of a land conflict in Giru village that broke out at the end of 2012. In this case, competing claims over landownership between returnees and displaced people were re-interpreted in terms of grievances of the past, and resentments against other ethnic communities, and eventually to IDPs in general. As a consequence, a local dispute that started between neighbouring families quickly escalated to a wider conflict that threatened the security of the entire town.

5.4.3. The Giru Land Conflict

Giru village is located some three kilometres north-east of Yei Town, is part of Gimunu Boma of Yei Payam in the County. As in most parts of Yei, the traditional inhabitants of this village, who are predominantly Kakwa from the Gimunu clan, fled their homes to escape SPLA forces in 1990. Giru is located in the vicinity of the main military barracks in Yei. After the capture of Yei by SPLA forces in 1997, it attracted many soldiers and their relatives to settle in the area, including civilians displaced from elsewhere. As settlement of displaced people largely followed ethnic lines, most soldiers and displaced people settling in this area happened to be from the Kuku ethnic group. Like the Kakwa, the Kuku originate from Central Equatoria State and speak the same language: Bari. Both ethnic groups have been known for peaceful coexistence with their neighbours (Schomerus et al., 2008; Rands and LeRiche, 2012).

Upon the settlement of the displaced people, a senior SPLA officer from the Kuku ethnic group appointed a village headman from the Kakwa, who was related to the pre-war residents through kinship. As was the case elsewhere in Yei, this headman allocated pieces of land to the soldiers and the displaced people who settled in his village. During the interim period, more people from the Kuku ethnic group moved to settle in this area, mostly comprising returnees from Uganda and the DRC.¹⁰⁹

In 2008, one of the Kakwa families that had lived in the area before the war returned, but found that most of their land was occupied by a group of IDPs and soldiers, including the

¹⁰⁹ Interview, landowning family in Giru, 9 September 2012,

SPLA officer.¹¹⁰ The returnee family failed to persuade the displaced families and the soldiers to leave their land and thus took the case to the Head-chief of the Payam court in Yei. However, the involvement of an SPLA officer, as well as the fact that the displaced people belonged to another ethnic group, made it challenging for the Head-chief to resolve the case. As the dispute was in a rural area, the magistrate court in Yei also declined from resolving this dispute. After more than three years of ineffective efforts to persuade the occupants to leave – and probably also out of disappointment with the lack of help from both the chief and the magistrate courts – in November 2012 the head of the family of returnees destroyed some of the properties belonging to the IDPs and set on fire six of their grass-thatched houses.¹¹¹ In response, the SPLA officer mobilised soldiers from his ethnic group (Kuku) and attacked the returnee family. Eight members from the family were injured and had to be hospitalised.¹¹² After that, the SPLA officer arrested the head of the family and ordered the police in Yei Town to put him in custody. One day later, the SPLA officer mobilised some of the IDPs and soldiers to protest at the County offices in Yei, for being discriminated against by the returnee family, based on their identity as Kukus, and they demanded protection from the police as IDPs.

The fact that most of the soldiers involved in the assault against this family were Kuku made other Kakwas in the village to see this as an ethnically-motivated attack against their group. As a result, they organised a series of meetings to prevent further escalation of the conflict, first at the level of the village and later at the County level, including Kakwa elders, youth and chiefs.¹¹³ After that, a meeting was organised at the County with chiefs and elders representing various ethnic communities in Yei, and another one with government officials and senior SPLA officers. During the last meeting, the SPLA officer involved in the conflict in Giru alleged that Kakwa communities had been preparing for violent attacks, not only against the Kuku, but also against the Dinka and Nuer ethnic groups, and the military barracks, in retaliation for the attack on the Kakwa family in Giru village.¹¹⁴ Those allegations struck a chord with the other ethnic communities and

¹¹⁰ Interview, landowning family in Giru, 9 September 2012,

¹¹¹ Interviews, resident of Giru, 2 February 2012; displaced family, Giru, 13 February 2013 & 25 February 2013

¹¹² Authors' observation during court testimonies of victims of the conflict in Giru at Yei Magistrate Court, on 14 December 2012.

¹¹³ Authors' observation during a meeting held by Kakwa community on 9 November 2012.

¹¹⁴ Authors' observation during a general meeting held in Yei on 12 November 2012.

resulted in mobilisation in preparation for the expected attacks from the Kakwa. At the military barracks, Kakwa soldiers were disarmed and ordered to report to their superiors from other ethnic groups periodically.¹¹⁵

In the meantime, two court cases were being pursued. The first case was at the Magistrate Court in Yei, filed by the head of the assaulted family against the SPLA officer. The SPLA officer initially rejected the request to attend this court case against him, but later complied after being ordered by the Ministry of Defence in Juba to do so.¹¹⁶ Nonetheless, the SPLA officer continued to show his defiance at the court. During the final court session, his colleagues from the army, mainly Dinka this time, threatened everybody in the court premises at gunpoint, including the judge.¹¹⁷ The Ministry of Defence responded to this threat swiftly by sending military police to arrest the soldiers involved on those threats, and to stand guard during the remaining court sessions. Ultimately, the court found the officer guilty of assaulting the returnee family and sentenced him to four months' imprisonment.¹¹⁸ On the sixth day of serving his prison sentence, the County commissioner unilaterally decided to release him, arguably to keep 'peace in the County'.¹¹⁹ Indeed, right from the start of the court session against the SPLA officer on 14 December 2012, Yei Town witnessed a series of night raids by presumably 'unknown' gunmen who set many houses on fire.¹²⁰ These raids continued throughout the detention period of this officer but stopped the very day he was released. This resulted in speculations in town that his colleagues in the army had coordinated the raids as a way of protesting his detention.¹²¹ Those raids led to the destruction of seventy-three houses.¹²²

The second court case was to take place at the chief's court in Yei, to be presided by a Kakwa chief appointed by the SPLA. This case was brought by a group of displaced people whose properties had been destroyed by the head of the returnee family. However, this

¹¹⁵ FGD, Yei military barracks, 15 December 2012.

¹¹⁶ Interviews, resident of Giru, 2 February 2012; displaced family, Giru, 13 February 2013 & 25 February 2013

¹¹⁷ Authors' observation during a court session held in Yei magistrate's court on 14 November 2012.

¹¹⁸ Authors' observation during a court session held in Yei magistrate's court on 14 November 2012.

¹¹⁹ Interview, Yei magistrate court, 15 December 2012.

¹²⁰ Authors' observation at Yei Magistrate court in Yei, on 14 December 2012.

¹²¹ Authors' observation.

¹²² Authors' observation.

case was never to be resolved. Unlike at the Magistrate Court, events at the chief's court followed a different path altogether. The displaced people failed to get their case attended to by the chief. Every time they went to the court, they were either told their case had been postponed because of other urgent cases the court needed to attend to or that their case files could not be found, and those who were still interested in pursuing the case should open it afresh. As a result of those delays, some of the displaced people abandoned their cases altogether.¹²³ During follow-up discussions by the author with these displaced people and with representatives of the chief's court, different versions of what happened were collected. Representatives from the chief's court claimed that the claimants were actually 'land grabbers', who had tried to acquire the land under the pretext of being IDPs, and that the court was therefore not interested in assisting them. The displaced people themselves had the impression that their case was not taken seriously, for the simple fact that they were not Kakwa, and thus not favoured by the chief's court.¹²⁴ Probably because of the sensitivity of this case or doubts about the actual status of the displaced people, neither international NGOs providing humanitarian assistance to IDPs, nor government institutions in the County came to the aid of these displaced families.

This case of a returnee-related land dispute in Giru village illustrates the different dynamics explored in the previous section. It highlights how power relations and the use of violence have come to play a significant role in consolidating claims on the land. It also illustrates the weakness of land-governing institutions and the difficult transition from military to civilian rule. Through the use of violence, the SPLA officer managed to de facto consolidate his claims on the disputed land, and defy state legislations on how land claims by returnees should be dealt with. Though the Magistrate Court reprimanded him for violence against the returnees, it was not capable of enforcing justice. Instead, his release by the County Commissioner was locally understood as de facto giving in to his claims on the land.

In contrast, though the SPLA officer had aggressively protected the displaced families, in the court nobody came to their assistance, and eventually, their claim was not attended by dispute-resolving institutions. Unfortunately, as they were associated with the army,

¹²³ Interviews; IDP from Kajo-keji, Giru, 13 February 2013; IDP from Lainya, 25 March 2013

¹²⁴ Interviews; IDP from Kajo-keji, Giru, 13 February 2013

as a group, they were seen as aggressors rather than as victims. The consequence of this was that lacking strong connections to the military, they failed to get what they were legally entitled to, such as compensation for their lost investments in the land, nor did they receive assistance to resettle on alternative lands.

Notably, in this case, the conflict resulted in widespread violence and further fuelled negative perceptions among returnees of the displaced population in Yei. During the conflict period, authorities in Juba sent in soldiers to assist the police in Yei to control the deteriorating security situation. Unfortunately, the soldiers ended up causing more chaos by assaulting civilians. The violence was thus locally understood as being between Dinka soldiers and Equatorians, between 'illegitimate' migrants or 'falsely' displaced and 'disregarded' returnees. This disturbing development brings us to a critical element in the dispute, namely, the issue of identity.

5.5. The Politics of Identity and Perceptions of Displaced

Identity has come to play an important role in the tensions around land between returnees, displaced people, migrants, and soldiers. To the returnees, changing land occupation and land governance effectively comes down to a consolidation of identity and hence of authority over territories by people from outside their community. In the context of Yei, the result is that returnees started to question the extent to which displaced people are vulnerable victims that genuinely fled civil violence from elsewhere, or instead are part of a political agenda to grab their land. Such suspicions were especially aroused about displaced people belonging to the Dinka ethnic community, but are increasingly being associated with those displaced from other ethnic groups.

To understand this dynamic, we need to take into account the political history of South Sudan, notably the historical grievances by the people of Equatoria against the Dinka and fears of imminent 'Dinka dominance'. This fear is a legacy of the period following the Addis Ababa agreement of 1972, which ended the first North-South civil war in Sudan. The agreement resulted in the establishment of a semi-autonomous Southern Regional Government. Yet, elites from other ethnic groups perceived that the Dinka were overrepresented in the regional government (e.g., Dreef and Wagner, 2013). This resulted in vigorous campaigns, particularly by political leaders from Equatoria, to

administratively decentralise the South to achieve ethnically balanced representation in government institutions (Scott, 1985; Dreef and Wagner, 2013). This proposal was opposed by Dinka politicians and resulted in a rift within the regional government along ethnic and regional lines (Johnson, 2011, 2014). Even then, it was pushed through by President Nueri, who decreed to divide the South into the regions of Equatoria, Upper Nile, and Bahr el Ghazal, serving the interests of northern elites who had been opposed to a semi-autonomous status for South Sudan in the first place (Scott, 1985; Branch and Mampilly, 2005).

However, the implementation of the decentralisation policies became very contentious. Rather than an administrative decentralisation as suggested by its proponents, communities and government institutions in the three regions started to send away government officials to their regions of 'origin', sometimes violently. Even if such measures were meant as purely administrative and to promote lower-level officials to work in their respective regions, in practice, members of ethnic groups were forced to return to their 'ancestral regions'. This resulted in increased tensions within the South among different communities (Branch and Mampilly, 2005). Many people in Equatoria came to believe that the 1983 rebellion by the SPLA, which was dominated by the Dinka, had primarily been to take revenge on the Equatorians for pioneering the division of the South, rather than to liberate Sudan from the grip of the northern ruling elites (Scott, 1985; Dreef and Wagner, 2013). Such perceptions were consolidated by the high levels of brutality and cases of human rights violations by SPLA soldiers in various parts of Equatoria during the early stages of the civil war (Branch and Mampilly, 2005).

Against this historical background, to many of the returning refugees in Yei, the large presence of Dinka among the displaced and soldiers in Yei and elsewhere in Equatoria is not a mere coincidence, but rather a political strategy to reverse the decision that chased Dinka communities out of Equatoria more than three decades ago. Further evidence for this is found in the continuation of Dinka resettlement in Yei even after the 2005 peace deal, their involvement in various cases of land-grabs, and the support displaced people get from presumably Dinka soldiers to resist evictions by returning landowners. Statements used by some soldiers such as 'we liberated you and the land' or 'you must pay buckets of blood to get back your land' are often quoted by returnees to justify these perceptions. The recent presidential order to increase the number of states to twenty-

eight and then to 32 is another confirmation to some Equatorian elites that the central government aims to 'wipe out' the name Equatoria, as none of the newly created states bears this name.

This history certainly came to play a role in the conflict in Giru as well. It is important to mention that the SPLA officer, the main protagonist in this conflict, was not the 'usual suspect' of a displaced Dinka but belonged to the Kuku ethnic group, a Bari-speaking community, just like the Kakwa, to which the family of returnees belonged. But playing on the historical grievances between the people of Equatoria and the Dinka and generally the military, the SPLA officer came up with the allegations that the Kakwa community was planning to attack ethnic groups that had come from outside Yei. This allegation turned the conflict into one between Dinka and Kakwa, as well as between the army and the people of Equatoria. And when the violence reached its climax, the soldiers patrolling the streets of Yei, who were mainly from the Dinka community, harassed and assaulted everyone from Equatoria they came across, irrespective of whether they belonged to the Kakwa community or not.

Likewise, the evolution of land governance in the area is interpreted as serving the interests of displaced and migrants. As described earlier, after the take-over of Yei by the SPLA, in the absence of the original inhabitants and their chiefs, the military authorities appointed new chiefs, some from local communities, others among the displaced and migrants. The new chiefs were also given the authority to allocate pieces of land to the needy displaced and soldiers, effectively bypassing other authorities customarily involved in land allocation, notably the traditional land custodian, the *Monye Menu*. In the case of Giru, the headman appointed by the SPLA happened to be from the Kakwa and related to the traditional landowners before the war. Nonetheless, the original residents disqualified his role in allocating land without properly consulting the *Monye Menu*. In the eyes of most returnees, land allocated by the new chiefs is irregularly acquired, amounting to land grabbing, and must be returned to the pre-war owners. For the soldiers and the displaced, on the other hand, the new chiefs are recognised by the state as part of the local government, and whatever land they allocate is legal. When making his case at the magistrate court in Yei, the SPLA officer involved in the Giru conflict argued

that he had legally acquired the land from the legitimate headman of the village, who after all is recognised by the SPLM establishment.¹²⁵

Moreover, returnees increasingly associate the displaced with soldiers, which results in blaming the displaced –alongside the soldiers– for their involvement in land disputes. The identification of one with the other is an outcome of patterns of displacement and resettlement during the war. The fact that the town was deserted by its civilian population when the SPLA 'liberated' Yei in 1997 meant that the displaced communities, who were seeking for security and settled alongside the soldiers, created 'camp-like', mixed settlements. Such camp-like settlements in which displaced people and soldiers lived together resulted in the development of close social relations between those groups. Currently, the social closeness works against the displaced, who are now seen as collaborating with the soldiers in what the returnees consider 'irregular' acquisitions of land. Indeed, various instances occurred where soldiers and the displaced cooperated to consolidate their claims to the land they occupied during the war. Again, the fact that a majority of both the displaced and soldiers are Dinka (e.g., Sluga, 2011) makes distinguishing the displaced from the soldiers even more difficult and contributes to blanket generalisations of the misconduct by the different groups along ethnic lines. In the case of Giru, to the returnee community of Yei Town, it came as no surprise that the senior SPLA officer could easily mobilise for violence, and organise demonstrations at the Commissioner's office, as the displaced were seen as his affiliates.

Finally, what contributes to the perception that the displaced and migrants are an occupying force is that temporal displacement seems to turn into a permanent settlement. While at the end of the war, pre-war residents hoped that the displaced would eventually return to their areas of origin, they now observe that many of them stay and that even more displaced arrive and settle in the County. Most of the newly displaced fled from violence during the interim period, like in Jonglei State.¹²⁶ Residents argue that, even if the 'new displaced' genuinely fled from violence, they could as well settle in safe areas closer to the war-affected areas they come from, rather than travelling all the way to settle in Yei.¹²⁷ Furthermore, some locals believe that some of the 'new displaced' have

¹²⁵ Author's observation, Yei magistrate court, 14 December 2014.

¹²⁶ Interview, Yei River County, 27 November 2012.

¹²⁷ Interview, Institute for the promotion of civil society (IPCS), Yei, 3 May 2012.

moved from relatively safe areas.¹²⁸ Considering the fast urbanisation of Yei at the time of the fieldwork, the continuity in settlement of displaced people is likely a result of economic opportunities in the County. Yet, the continuing arrival of displaced people and migrants contributes to negative perceptions from the returnees. Returnees increasingly raise the question of whether the 'new IDPs' are actually 'victims', being people that have been displaced by violence, or 'migrants', that seek economic opportunities at the disadvantage of the returnees.¹²⁹

Unfortunately, these developments – the notion that displacement contributes to the reoccupation of territory by the Dinka, a perceived closeness between the displaced and the military, and growing fear among returnees that the displaced may settle in the County permanently – contribute to the fact that displaced people are now associated with a political agenda of claiming territory. Incidents like the Giru case, which are seen to exemplify the close relationship between the displaced and soldiers, tend to be generalised to the whole community of displaced people, and as such result in widespread violence.

Moreover, such perceptions affected all the displaced: also those that lacked the backing of military associates or political affiliations to make claims to land. This has several unfortunate consequences. Even those displaced that are genuinely seeking refuge from violence in their communities may be denied protection. Moreover, such perceptions impact the extent to which their legitimate claims on land are taken seriously, or whether they may be able to get what they are legally entitled to, such as compensation for investments in the lands they return to the owners.

It was evident that such perceptions of the displaced were also shared by representatives from the government and other institutions that intervened in the Giru case, and had consequences for the ways they dealt with the conflict. A clear example is the reluctance of the County authorities to order the police to protect the displaced during the violence resulting from the Giru conflict. Another instance is the apparent avoidance of the Payam court in attending to the complaints from the displaced. The prevailing negative labelling

¹²⁸ Interview, Morsak sub-Boma, 3 May 2012

¹²⁹ Interview, Community-based organisation, 3 May 2012

of displaced people might also explain the reluctance of NGOs present in the area to protect the displaced in the Giru case or to assist them in resettling elsewhere.

Such selective intervention by government institutions further fuels an already politically sensitive situation. When the County and Payam authorities failed to listen to their pleas, the displaced in Giru village interpreted this as taking sides with local communities. Moreover, it is increasingly difficult for local conflict resolution institutions to address disputes that are no longer understood as between individuals but as between different communities. The failures of land governing institutions to deal with these conflicts may contribute to mobilisation along with community or ethnic lines, as shown by the case of Giru.

5.6. Conclusion

This chapter explored the impacts of war-related displacement of civilians on land occupation and land governance in South Sudan and showed how this affects the relationships between returning refugees and displaced people and migrants from elsewhere. The case study of Yei River County shows that, rather than a temporary situation in which original claims to land are put on hold, in practice, displacement may come down to a drastic reorganisation of land occupation and control. This reorganisation is not easily reversed after a conflict is over, and becomes increasingly problematic with the incremental return of refugees and the displaced, and with the ongoing settlement of people from other parts of the country. The case study illustrates the failure of existing legal frameworks and institutions to address the ensuing land conflicts between returning host communities, the displaced and new settlers.

Crucially, the case study highlights the importance of such reshuffles in land occupation and governance for the relationship between returnees and the displaced, as these are interpreted in terms of the political history of the country and the problematic question of identity. Though external interveners tend to associate displacement with seeking safe havens by those fleeing violent conflicts, local perceptions may be entirely different, depending on (historical) relations between host communities and the displaced. In the case of Yei, historical grievances between Dinka and Equatorians result in (Dinka)

displaced being perceived as agents of a political agenda to (re)occupy territories in Equatoria.

Such references to identity to consolidate rights on land and authority – or instead to disqualify land ownership and land-governing authority of others – are certainly not limited to Yei, but also occur elsewhere in South Sudan. In some cases, this has not only resulted in divides among different communities, as in Yei, but also in rifts between the government and certain communities, or between different levels of government (see Justin and Kenyi, 2015). In Juba Town, for instance, resistance by the Bari community to give land for government buildings seemed to have been inspired by the fear for the occupation of land and take-over of the land governing authority by outsiders (Badiy, 2013). Likewise, the current government crisis that started in December 2013 quickly encompassed the identity factor, and as the fighting continued, perceived efforts to occupy land of other ethnic groups came to play an important role in this. In Upper Nile State, for example, land disputes between Dinka and Shilluk contributed to large numbers of Shilluk in joining the rebels led by Riek Machar (Deng et al., 2015).

As the dispute in Giru village illustrates, these dynamics around land control and identity may play an important role in the continuation of instability. In this case, a local dispute between a returning landowner and a displaced family became locally understood in terms of a general political contestation about the meaning of citizenship and related land rights, and about who is in charge of land governance, and triggered large-scale political mobilisation.

In this respect, it is important to emphasise that while land conflicts in Equatoria are increasingly framed as between Dinka and Equatorians, the situation in Yei reveals that such conflicts may also occur between communities with no historical grievances. At the same time, as the case underscores, the wider ethnopolitical contestations between Dinka and Equatorians may provide a convenient opportunity for local actors to frame their claims to land in terms of this antagonism and so have a better chance of success.

Finally, the case underscores that displaced people are not necessarily victims, as humanitarian organisations tend to assume, but may be perceived as the source of (tenure) insecurity themselves, or as collaborators in a political project of regaining

territory. Particularly problematic are cases in which the displaced strengthen their claims to land by military means. At the same time, local perceptions of displaced people as perpetrators of land grabbing and violence may leave those displaced who lack political and military connections more vulnerable.

6. General Conclusions: Understanding State-building and Land Conflict in South Sudan

6.1. Background

The thesis started with the research question '*How do decentralisation and land reform, as key elements of state-building efforts in South Sudan, relate to local land conflicts and how are these conflicts linked to wider outbreaks of violence after the Comprehensive Peace Agreement of 2005?*'. Four sub-questions were drawn from this central question to guide the fieldwork for the data collection. Each sub-question then resulted in a chapter. The first sub-question focused on the negotiated nature of state formation in light of the hybrid governance introduced at the start of the CPA. The second and the third sub-questions centred on understanding the relationship between decentralisation and land conflict from two different perspectives, namely, the introduction of new territories and borders, and competition over power and authority through the lens of land reform. Finally, the fourth sub-question focused on the politics of displacement-related land conflict after the start of the CPA through the lens of land occupation and changes in land governance. Each of these topics is discussed in turn below. After that, a number of overall conclusions are formulated.

6.2. Negotiated Statehood, Hybrid Governance, and Conflict

The post-CPA state-building in South Sudan adopted a hybrid form of governance that distinguished between formal and informal institutions and provided for a certain division of roles between them. However, this intervention became a trigger for local conflicts that flared up to broader outburst of violence. The first sub-question explores the nature of this hybrid governance to understand how this contributed to the conflicts that emerged after the CPA by shedding light on how the hybrid institutions came about, how they function at a local level, and whether they meet the needs of citizens and solve local conflicts.

6.2.1. Hybrid Institutions as a Legacy of History

Governance in South Sudan is a hybrid system. With hybridity, I mean an institutional setup that is characterised by interactions between the formal and informal local institutions at different levels of the government. In Chapter Two, we have seen how hybrid governance results from the combined institutional legacies of different historical periods. Conscious efforts at state-building, including the one currently under way, should be seen in the wider context of an ongoing and complex process of state formation, consisting of continuous negotiation between local interests and practices, and top-down institutional interventions. The post-CPA state-building project is part of this process, on top of various historical legacies and combines informal and formal institutions at the local level. This resonates with the peace-building theory which in recent decades has placed increasing emphasis on hybridity as not only an unconscious outcome of consecutive political interventions interacting with local practices, but also as a desirable and possibly even plannable institutional setup (see Millar, 2014).

However, as we have seen, it thereby increasingly overlooks the emergent and unexpected nature of local institutional dynamics. Also, as of yet, the literature has had little to say on how hybrid institutions actually work out on the ground, whether they necessarily benefit local citizens, and if so, under what circumstances. The findings from the field research in Yei River County have yielded new insights with regard to these questions. This was helped by drawing on theory on the negotiated state, using concepts such as regularisation and situational adjustment in order to nuance and deepen the concept of hybridity.

Despite its recognition of the complexity of society and the historical legacy of the civil wars, the South Sudanese government, supported by international donors, adopted a top-down approach to state-building. The introduction of the ten states and their division into the underlying Counties, Payams and Bomas would provide the platform for the devolution of power and resources to a lower level of the society to contribute in addressing the marginalisation that led the pre-CPA north-south civil war. These new administrative structures were also to provide the platform for the land reform project intended to address past injustice around land by consolidating land rights of rural communities.

However, instead of contributing to the intended objectives, the newly introduced territories and borders of these new administrative entities became bitterly contested, and land reform led to contestations over authority over land governance. In addition, some of the changes in land governance threatened pre-existing land rights and contributed to heightened tensions, particularly between returnees who fled their areas in the pre-CPA period because of the civil war and internally displaced persons (IDPs) who occupied their land. Local conflict resulting from these contestations escalated into broader violence between communities, and sometimes pitted different levels of the government against each other. I argue that the top-down approach to state-building paid too little attention to local context and history, thereby contributing to these conflicts. In fact, the ten states are the outcome of the compounded legacy of the past, resulting from conquest, marginalisation, and population control by colonial and postcolonial governments and the SPLA in the pre-CPA period when it was still a rebel movement.

After all, the district system introduced by the British, as well as its consecutive reorganisation by the Khartoum and SPLA government, had the ambition to control resources and populations and was accompanied by violence, marginalisation, and manipulation. The latest round of reform implemented by the SPLA turned out no different in this respect. All the changes that resulted from the interventions by the colonial, postcolonial and SPLA government had implications for governance at the local level after the CPA, which was evident in the conflict cases discussed in the principal chapters of this thesis. As my analysis of decentralisation will later demonstrate, different communities and institutions (formal and informal) have tended to use narratives of different historical periods (pre-colonial, colonial, postcolonial and the pre-CPA wartime) to make claims on territories and borders, land rights, and regulation of access to land. In a way, this legacy of history influences the various aspects of the post-CPA state-building.

6.2.2. The Working of Hybrid Institutions at a Local Level

Then, how do hybrid institutions function at a local level? The findings demonstrate that hybrid governance introduced at the post-CPA period function in ambiguous ways, more so at the local level, often producing unpredictable results. This unpredictability is demonstrated by the functioning of the justice and the land sectors in Yei River County discussed in Chapter Two.

For example, the justice sector distinguished between statutory and customary courts, with each set of courts given the room to interact within but not across the different levels. Customary courts are expected to address cases of customary nature at lower levels, but can refer cases upwardly within the customary hierarchy up to the level of a County. On the other hand, roles of the statutory courts were limited to resolving disputes of statutory nature, not allowed to refer such cases to customary courts. Regarding land governance, the Land Act legitimised statutory courts to handle land cases within Yei Town and customary courts in rural areas in Bomas and Payams.

However, the practice on the ground is more diffuse, as interactions within and between institutions occur in subtle ways, determined by local circumstances. Interactions not guided by law occurred between institutions, while this was not the case within institutions that are supposed to interact. At the same time, some of these interactions resulted in cooperation, whereas others to contestations.

Indeed, and the cases in Yei River County demonstrate, cooperation emerged between the statutory and the customary courts though existing laws do not prescribe such interactions. At the same time, local chiefs were not interacting with chiefs of IDP communities in Yei despite the fact that the Local Government Act demands that customary courts interact through case referral, for instance. Apparently, the unexpected interaction between the statutory and the customary courts was triggered by the increasing caseload in both the statutory and the customary courts resulting from the limited presence of statutory courts in the County and the lack of a paramount chief in Yei Town. Because of this lack, judge of the only magistrate court in Yei started to refer cases that can be interpreted in local customs to the chief of the B court. In return, this chief started to refer complex cases that would be addressed by a paramount to the judge because of the lack of the paramount chief at the time. As the case of the justice sector in Yei River County also demonstrates, what started as local cooperation between a judge of the statutory court and the and chief of the customary court in Yei expanded to include chiefs in rural areas as well as chiefs of IDP communities in Yei, and authority of the local government.

In other instances and as the case in Yei River County has also demonstrated, interactions between institutions can occur in a competitive and conflictive manner. This kind of

interaction was evident in the lack of cooperation between local chiefs and chiefs of the IDP communities in Yei at a time when laws demanded that customary courts cooperate. Competition and conflict notably occurred in the land sector, often the result of interference from higher level authorities. Such interfaces were evident in this case in Yei as well as the three conflict cases (Mangalla, Wonduruba, and the Yei – Lainya border area) discussed in Chapter Three. Basically, these cases started as competition between national elites for economic, political, and sociocultural resources and trickled down to cause tensions and violence between communities at local level. For example, the land lease that triggered the 'Bari – Mundari' ethnic conflict' in Mangalla started as a contest between elites of the two communities at the national level, as this lease was signed between the then Government of Southern Sudan and Madhvani Group (also see Deng, 2011). The conflict around Wonduruba also started at the national level, as a political manoeuvre by Nyangwara elites to use their communities for political gains. Likewise, the Pojulu – Kakwa' ethnic tensions around the Lainya – Yei border area started at the national level, driven to the desire by some Pojulu elites to control larger territories as a way of gaining political favour in Juba.

6.2.3. Hybridity and the needs of citizens

Considering the complex history of hybridity after the CPA and how it works at a local level, to what extent does this meet the needs of citizens and solve local conflicts? As the case of Yei also demonstrates, the justice sector witnessed interactions that benefitted local communities as well as communities of IDPs. On the one hand, the increasing level of cooperation between the statutory and local courts led to the emergence of conflict resolution mechanisms that could address grievances in the town as well as in rural areas. The active cooperation between the statutory court and among local chiefs and chiefs of IDP communities in Yei town resulted in the reduction of caseloads, which was becoming challenging to both the statutory and chiefly courts. This cooperation meant better possibilities for local citizens to see their cases resolved within a reasonable time. This also made it possible for IDP communities to access the official justice system which they could not before the emergence of the active cooperation between the local chiefs and the chiefs representing IDPs community and led to a gradual acknowledgement of their court

by the County Authority and the law enforcement agents in the County which had not been the case before.

In contrast to the justice sector, the land sector witnessed contentious outcomes, in the form of local conflicts that escalated to larger-scale violence. These antagonistic interactions between local communities and IDPs, which were supported by SPLA soldiers, led to more marginalisation and suffering of local communities. Returning local communities could not reclaim their land occupied by IDPs and SPLA soldiers because the existing mechanisms to resolve land disputes were either weak or favoured IDPs. The support IDPs received from soldiers increased the power imbalance between local communities and IDPs, resulting to further victimisation of the former.

Clearly then, we see Moore's (1978, p.50) concepts regularisation and the situational adjustment described in Chapter Two at work, which describes the congruent relations and contradictory rivalry between institutions. In the case in Yei, regularisation occurred in the justice sectors through the emergency of working relationships between institutions, which are formerly supposed to operate separately. In contrast, the 'illegitimate' and 'illegal' IDP chiefs were able to wield power as their community is armed and politically well-connected in South Sudan, producing situational adjustment whereby their authority was accepted. This case also links regularisation and the situational adjustment to power and pragmatism. Though the judge of the statutory court, formally has more power than the traditional courts, the limited presence of the statutory courts in the Payams forced this judge to negotiate with traditional chiefs. The development of these power relations was guided by the practical need to deliver core governance functions. Likewise, the fact that chiefs of the displaced communities were backed by SPLA soldiers among their ranks gave them the power to manipulate the laws in place to serve their interests. Thus, the agreement between the two groups of chiefs to resolve some cases together is an indication of the recognition and, therefore, the legitimation of some of the 'illegitimate' practices these chiefs have been undertaking, such as the forceful allocation of lands to the communities they serve.

As regularisation and the situational adjustment, guided by power and pragmatism, occurs simultaneously, the resulting interactions lead to the making and unmaking of institutions, which is aptly described by Haggmann and Péclard (2010) theory of the

negotiated state formation as a continuous process. This unexpected and continuous interactions between institutions make it hard to tell how hybrid institutions work at the local level and whether these will meet the needs of citizens and solve local conflicts. Whereas interactions in the justice sector have produced outcomes that are beneficial to the local people, the land sector proved to be problematic, continued to be a source of contestations, conflict and violence.

6.3. Decentralisation and Land Conflict

The introduction of the new structures of government (Counties, Payams, and Bomas) and the land reform constituted important aspects of the post-CPA decentralisation project linked to state-building. Through this approach, decentralisation would contribute to addressing injustices of the past, including those around land and to prevent future land conflict. This approach to decentralisation builds on the broader assumption in the literature that decentralising governance in post-conflict settings like South Sudan at the start of the CPA will contribute to peace-building, stability, democratisation and development (see Blunt and Turner, 2005; Conyers, 1986; Braathen and Bjerkreim Hellevik, 2006).

But instead of contributing to the intended objectives, territories and borders that resulted from the introduction of the new structures of governance became bitterly contested, and changes in land governing institutions resulting from land reform led to contestations over authority over land governance. Local conflicts arising from those contestations led to widespread violence between communities, and sometimes pitted different levels of the government against each other. In this regard, decentralisation became a significant conflict driver in state-building efforts in South Sudan, and feeds into conflict in two ways; through changes in territories and internal borders; and through the generation of competition over authority on land governance. To put this into perspective, this section explores the conflict dynamics in post-conflict settings under a decentralised system of governance from the perspective of territories, territorial borders and competition over authority.

6.3.1. Decentralisation, Local Boundaries and Conflict

This section explores the relationship between decentralisation and conflict by showing the relations between territories and territorial borders and conflict, the extent to which this relationship is linked to the evolution of territories in South Sudan and the roles of elites in those conflicts.

Territories, Internal Borders, and Conflict

An important outcome of the post-CPA decentralisation project is a drastic reorganisation of territories and borders that existed before the start of the north-south war in 1983, resulting from the introduction of the ten states and their subdivisions into Counties, Payams, and Bomas. This change added another layer to the complexity of territories and borders that existed before this intervention, which was already problematic and contributed to the civil war that was ended through the CPA. As a result of the introduction of the new territories and borders, regulation of access to land within those territories became sources of contestations that had often escalated to violent conflicts. Crucial aspects of this decentralisation that contributed to those conflicts were the introduction of territories and government structures along ethnic lines and the lack of credible conflict resolution mechanisms to resolve local disputes.

As a result of introducing territories of local government along ethnic lines, majority groups in Counties, Payams, and Bomas started to claim ownership of those territories, often excluding minority groups. Even in territories with single ethnic groups, claims on territories came to be articulated based on clan affiliation. On the other hand, 'strangers' who might have immigrated from elsewhere to settle in a given area can also make claims on such territories on different accounts, including through violent means.

Within Central Equatoria State, for example, this approach had led to the perception that Terekeka belongs to the Mundari, Juba to the Bari, Lainya to the Pojulu, Yei and Morobo to the Kakwa, and Kajo-Keji to the Kuku. This perception of ownership of territory also came to be linked to landownership and regulation of access to land within territories based on the normative framing in the land act that 'the land belongs to the community.'

However, and as the case studies demonstrate, the notion of ethnic belonging as the basis for making claims on territories is problematic, prone to reinterpretations, contestations and can be a potential conflict driver for various reasons. This is mainly because most Counties, Payams, and Bomas that are presumed to have single ethnic groups often have various minority groups or clans, and these groups could also emerge to articulate their claim on such territories when the occasion presents itself to do so.

The conflicts in Mangalla and Wonduruba discussed in Chapter Three, for example, clearly demonstrate the challenges associated to this one-to-one relation of ethnic belonging to a territory. As I pointed out earlier, the fact that the Mundari is the majority group in Terekeka County made this County to be referred to as a Mundari County. By extension, Mangalla Payam belongs to the Mundari as it is a Payam within Terekeka County. However, elites of the Bari clan in Mangalla Payam challenged the Mundari by arguing that their community was the legitimate 'owner' of Mangalla. Something similar happened in Wonduruba. Though Lainya is referred to as a Pojulu County because the Pojulu constitutes the majority group in this County, the conflict around Wonduruba came to be framed as an ethnic conflict between Pojulu and Bari because of the attempt to annex Wonduruba from Lainya County to Rokon Payam in Juba County. This conflict started between the elites of the Nyangwara community in Wonduruba, despite being a minority group.

Similarly, the conflicts in Mugwo and Otego that resulted from competition over authority, discussed in Chapter Four, were also linked to territory but occurred between clans of the same ethnic group. Thus, the notion of ethnic belonging for making claims on land, in this case, is irrelevant, as it occurred between clans of the same ethnic group. I will return to discuss this in the following section.

Lastly, it was also shown that the lack of credible conflict resolution mechanisms at the local level and contradictions in the existing legal framework on land and local governance led to the escalation of local contestations to rising tensions and violence. Most strikingly, these conflicts occurred between groups with no histories of violence between them along ethnic or clan lines. Then, how can we explain the rapid emergence of contested claims on territories and the challenges in resolving local conflict? And what

roles do elites play on these conflicts? Below I will attempt to provide answers to these questions based on the findings of this thesis.

Conflict in Relation to the Evolution of Territories and Borders

The system for indirect rule introduced by the British colonial administration divided the population into different ethnic groups, administered by chiefs. However, the colonial regime did not demarcate borders around territories as this was not its priority. If necessary, it designated physical features such as mountains, rivers, or even big trees as borders between territories, often limited along main roads. As Cormack (2016) notes, this administration had even suggested cattle camps as borders in areas inhabited by cattle herding communities such as in Bahr el Ghazal, although camps are mobile on a seasonal basis. Secondly, the pattern with which this administration moved subjects into the territories it established was equally problematic and became a significant conflict driver after the CPA. Though the overriding policy with respect to those ethnic territories was to settle clans of the same ethnic group in the same or neighbouring territories, in some cases, it distributed clans of the same ethnic groups over different territories.

Over time a number of those territories were grouped into a district and districts into a province; thus, the three provinces and 21 districts that constituted South Sudan at the Sudanese independence in 1956 consisted of porous borders that are easily contested with a chaotic distribution of some of its populations. The 1992 intervention by the government in Khartoum to replace the three provinces in South Sudan by ten states, and by SPLA in 1994 to introduce the County – Payam – Boma structure of governance complicated things further as those interventions built on the structure left by the British colonial administration. In essence, the post-CPA structure of the government consisted of the messy and chaotic structure of governance that resulted from the various layers established by those interventions, and the three conflicts cases discussed in Chapter Three, is a reflection of this legacy.

For example, elites of the Bari community claimed ownership of Mangalla simply because the British colonial administration moved them to settle in this area before the Mundari. The lack of clear borders between Terekeka and Juba made it difficult to resolve this conflict after it escalated to border tensions between the two Counties. The conflict in

Wonduruba resulted from the arbitrary resettlement of population and at the Yei – Lainya border, the lack of clear borders between communities.

Roles of Elites on Conflicts over Territories and Borders

The findings also demonstrate that competition between elites over resources is the main driver in those conflicts, but they used the narratives of territories and borders as a strategy for mobilising communities in supporting them in their quest for these resources. This tendency to use territories and borders is mostly attributed to the introduction of the ethnic-based structure of the government but also the lack of clarity on the existing legal frameworks in defining land rights.

In Mangalla, for example, the leading cause of the conflict was the contest over ownership of the piece of the land Madhvani Group aspired to lease for investment purposes. This contract was signed in Juba between the Government of Southern Sudan and Madhvani Group, facilitated by elites of Mangalla in Juba. This led to local contestations between elites of the two communities about which community owned the land in order to benefit from the returns from this investment concluded in Juba. For those elites, a success in claiming ownership of the land in question would imply more political support from their communities. The conflict in Wonduruba also started in Juba, and was rooted in the politics of ethnicity and majoritarianism practised by the central government. This government often rewards majority ethnic groups by giving their elites political positions, as a way of creating/strengthening its patronage with communities in rural areas. By attempting to annex Wonduruba Payam from Lainya County to Rokon in Juba County, the Nyangwara elites hoped to increase their number in one political constituency, Juba County in this case, so that they become politically relevant to the central government by demonstrating that they also constitute a majority group in Juba. The conflict in the Lainya – Yei area was also stirred by political elites at the Juba level and was rooted in competition over resources by political elites. Elites of the Pojulu community would have more say over the territory they claimed had they succeed in moving the contested border towards Yei Town as they had demanded.

In these cases, territories, borders, and ethnic belonging were not the primary cause of conflicts, but elites used those arguments to mobilise popular support for their own

economic, political, and sociocultural gains. Sadly, the manipulation of borders and territories by these elites contributed to increased levels of violence between communities in those areas.

6.3.2. Decentralisation and competition over land governing authority

This section explores the conflict dynamics around decentralisation from the perspective of competition over authority that resulted from land reform, by highlighting the reconfiguration of governance arrangements that resulted from this reform and how these changes contribute to violence.

The Legal Framework of the Post-CPA Land Reform

The post-CPA approach to land reform entailed revisiting laws, policies and practices that led to the marginalisation of rural communities through misappropriation of their land and the replacement of those by laws that are relevant to the post-CPA context. This reform project aimed to repeal and replace the Unregistered Land Act of 1970 and the Land Transaction Ordinance of 1984 as policies that had substantially contributed to the misappropriation of land in South Sudan. The Unregistered Land Act of 1970 gave the Sudanese state the right to own land in rural areas. The Land Transaction Ordinance of 1984 removed the powers of courts in resolving land cases against the state. The combination of the two Acts prepared the ground for of state to misappropriate lands in rural areas at will. In addition, it was planned that this land reform would reconsider changes in local land governance that resulted from the intervention by British colonial administration as a way of returning land to their pre-colonial owners.

Based on these points of departure, the SPLA-led government, supported by international partners, developed the Land Act and the Local Government Act as the frameworks for this reform. The introduction of the Land Act was presumed to be an attempt by the state to redistribute land to a broader section of society by distinguishing land rights in public, private, and community land, respectively, owned by the state, private entities, and communities. This Act also provided for the restitution lands misappropriated in the pre-CPA period, including those confiscated by the state based on the Unregistered Land Act of 1970 and the Land Transaction Ordinance of 1984. The Local Government Act, on the other hand, stipulated the structures and functions of land governing institutions and

authority at different levels of the society as well as mechanisms for conflict resolution. The newly introduced land governing institutions and their hierarchies are based on the same structure for the decentralisation in the form of the County – Payam – Boma system, which was also introduced by this Act.

Land Reform and the Reconfiguration of Governance Arrangements

Ideally, a combination of the Land Act and Local Government Acts would bring an end to land misappropriation that occurred in the past and ensure future land conflicts are resolved according to the law. However, the implementation of this land reform project led to the emergence of contested claims on authority over land governance in rural areas, contributing to local conflicts that escalated to communal violence such as those in Mugwo and Otego discussed in Chapter Four. Before discussing the conflict dynamics linked to this reform project, I am turning to discuss the reconfiguration in land governing institutions and authority that resulted from this reform and the consequences of this reconfiguration for those conflicts.

A key outcome of the land reform was the replacement of the land governing institutions that existed in the pre-CPA period by new ones stipulated in the Land Act and the Local Government Act.

As Counties, Payam and Bomas provided the platforms for the introduction of land governing institutions, decentralising the South Sudan Land Commission, the central land governing authority, to the lower level of the society led to the establishment of 79 Land County Authorities, 172 Payams Land Councils and numerous Boma Land Administrations, to replace the traditional local governing structures that existed. In Yei River County, the main research site, this approach to land reform led to the introduction of a County Land Authority, five Payam Land Councils, and 17 Bomas Land Administration to replace all the traditional land governing institutions that existed. This replacement of institutions also entailed the restructuring of the customary land governing authority that existed.

At the local level, the SPLA-appointed chiefs heading Payams and Bomas became in charge of land governing institutions because the Local Government Act considers them as staff of government institutions. At the same time, the Local Government Act considers

chiefs as traditional and customary leaders because they draw on customs, giving them a dual mandate. This dual mandate of the chiefs is a continuation of the colonial governance strategy, as it considered the chiefs it appointed as customary but also representatives of the colonial state in rural areas or what Cherry Leonardi (2013) would call *Hakuma*. At the County level, County Land Authorities were headed by County Commissioners, who are either SPLA soldiers in active military service or civilians with strong affiliation to the SPLM, the SPLA's political wing.

The changes in the land governing institutions and authority of those institutions are also reflected in land rights, and more so at the local level. As a result of the dual mandate of chiefs, they represented the state in matters regarding land as well as serving as community leaders with custodianship roles on community land, often competing and contesting the customary custodians of the land, the *Monye Menu*. More problematic, laws give chiefs the mandate to lease up to 250 acres of land without necessarily consulting with their local counterparts or superiors at the County level. Laws also provide them with immunity from prosecution, making it challenging to hold them accountable to communities in rural areas.¹³⁰ Effectively, this land reform project led to a total shift in power relations by shifting the authority of local land governance from the pre-CPA traditional authority who are locally considered as the legitimate authority by inhabitants of most rural areas to the SPLA appointees who represent the central government.

Changes in Land Governance and Relations with Violent Conflict

Most conflicts and violence that resulted from the contestation over authority resulted from resistance by local elites against the new institution imposed on them and their communities by the state through this land reform project. Therefore, instead of contributing to reversing injustice of the past and the prevention of future land conflict as intended, the post-CPA land reform became a trigger for conflict and violence.

This change in land governance had generated various forms of local resistance from the pre-CPA stakeholders to local governance, and a great deal of those resistances had

¹³⁰ The immunity from prosecution given to chiefs and other government officials in relation to local governance is a continuation of the pre-CPA land policies, as the 1984 Land Transaction Ordinance prevented courts from attending land cases brought against the state.

escalated to violence such as in the cases in Mugwo and Otogo in Yei – discussed in Chapter Four. As these cases demonstrate, the emergency of contested claims on authority over land is the main cause of those conflicts, and the lack of credible conflict resolution mechanisms to resolve conflicts at the local level made it easy for those local conflicts to flare up to broader violence.

In both Mugwo and Otogo, for example, the SPLA appointed chiefs claimed authority in those areas as their reward from the SPLA government in Juba because they contributed to the 'liberation struggle' by supporting SPLA forces before the CPA through recruitment of youth for its militias. In contrast, leaders of Lugori in Mugwo and Somba in Otogo used narratives of the pre-colonial period and before their displacement by the civil war towards the end of the 1980s to claim authority in those areas. The involvement of chiefs in the two conflicts presented an additional hurdle in resolving those, as chiefs cannot be prosecuted in courts because the Local Government Act gives them immunity from prosecution. As a result of the challenges in resolving local conflicts, powerless actors in the society have tended to escalate local conflicts to wider violence as a strategy for seeking justice at higher levels, as it was the case in the conflict in Mugwo, and the Giru conflict, discussed in Chapter Five.

Clearly then, these cases demonstrate that instead of contributing to the consolidation of land rights, the changes in local governance linked to the post-CPA land reform had become the cause of contestations, conflict and violence.

6.4. Displacement-related land conflict and land reforms

The debates on internal displacement revolve around the guiding principles of internal displacement. These principles perceive displacement of civilians as a temporary phenomenon caused by civil war and will end once the war that causes it ends. It also proposes assisting the displaced on voluntary return to their pre-war settlements, integration into host communities, or their resettlement to different locations altogether (see Deng, 1999). However, my findings demonstrate that displacement is more complex than this. It can lead to a drastic reorganisation of land tenure through land occupation and changes on land governance; such changes might be strongly connected to the broader political contestation. To illuminate of these complexities, this fourth and final

theme draws from the main findings to show the relationship between displacement and land conflicts, how this relationship is linked to land occupation and changes on land governance, the political history of the country, and the implication this has on the relationship between the displaced and host communities.

6.4.1. Displacement and Land Conflict

This first section illustrates how the displacement of civilians in the pre-CPA period came to be linked to land conflict after the CPA. The period following the return of relative peace and stability in the country after the CPA witnessed a rapid return of people displaced by conflicts in the pre-CPA period. Those returnees comprised people returning from the neighbouring countries and internally displaced people who took shelter in areas other than their pre-war settlements within the country. This rapid return led to the emergence of unprecedented levels of conflict around land, resulting from contested claims on landownership, mostly between returning landowners and people displaced from elsewhere in the pre-CPA period who settled on their abandoned land.

Contestation and conflict around landownership after the end of a civil war is a common phenomenon in countries emerging from civil wars; it has often resulted in the expulsion of vulnerable groups, such as internally displaced persons (IDPs), from lands they have been occupying during wartime. However, and as the case in Yei River County discussed in Chapter Five demonstrates, the post-CPA conflict dynamics around displacement and land conflict in South Sudan exhibited a shift in this pattern, whereby returning landowners faced challenges in reclaiming their land from the presumably weak and vulnerable IDPs.

Many IDPs successfully resisted evictions by returning landowners, often supported by SPLA soldiers who were equally occupying land of the returnees. Attempts by those returnees to reclaim their land through the conflict resolution mechanisms that existed at the time have also been unsuccessful, primarily because of changes in laws that guided restitution of land. In the situation of Yei River County, this shift in the conflict dynamics is attributed to multiple factors, profoundly, the patterns of land occupation that occurred in the County and the associated change in local governance and political history of the country, which are discussed further in the following sections.

6.4.2. Land Occupation, Changes on Land Governance and Conflict

As the case discussed in Chapter Five has demonstrated, SPLA's intervention into Yei led to a complete reshuffle of the demographic composition of the town, whereby – at a certain point - IDPs and SPLA soldiers from of Dinka origin became the majority group and in charge of power. This change in the demographic composition resulted from the controlled movement of the population by SPLA forces whereby it forcefully moved the pre-war inhabitants of Yei out of the town in the early 1990s and replaced by IDPs and soldiers from elsewhere after SPLA forces captured Yei Town in March 1997.

This change in the demographic structure of Yei Town laid the foundation for the land occupation and changes in land governance that followed. The land conflict around displacement we observed after the CPA resulted from contestation over land rights linked to the new land Act and land laws that existed before this intervention by SPLA forces. An important aspect of this change was the replacement of stakeholders of land governing authority – chiefs and local land custodians - that were forcefully moved out of Yei by SPLA forces in 1990 by those appointed by local SPLA commanders. The use of military force became an additional aspect of protecting the newly acquired land rights of the displaced and SPLA soldiers. Interestingly, a great deal of the wartime land laws introduced by the Dinka-dominated SPLA forces to protect land rights of their communities became incorporated into the laws for land reform, which as demonstrated by the case in Yei, made it difficult for returning landowners to reclaim their lands occupied by IDPs and solders.

6.4.3. Changes in Governance and Relations to Political History

Why then were the Dinka so keen on occupying land in Yei? History tells us, the 1983 Bor mutiny that led to the emergence of SPLA was partly to resist the expulsion of Dinka from Equatoria that resulted from *Kokora*,¹³¹ the division of the then Southern Regional Government into the three provinces of Equatoria, Upper Nile, and Bahr el Ghazal. The ongoing occupation of land in various areas in Equatoria and changes in land governance to favour the presumed IDPs, therefore, seems to be a continuation of the SPLA's attempt to reverse this history by forcefully occupying lands and territories in Equatoria to

¹³¹ Kokora is a Bari word meaning to divide.

facilitate the return of Dinka. Some evidence to support this includes the way how SPLA forces entered Equatoria region in the late 1980s, patterns of land occupation and the changes in land governance that occurred in this region, and the way the SPLA-dominated government in Juba address (or not) land conflicts involving Dinka IDPs and host communities in Equatoria.

First, the entry of SPLA forces into Equatoria was characterised by all forms of human rights violations, including incidents of public executions of civilians, rapes, and torture, among others. In addition to this violence, SPLA forces have tended to change the demographic composition of areas it controlled in Equatoria by settling communities of Dinka ethnic background alongside the local communities or by displacing them before they occupy such lands as it occurred in Yei Town. Areas in Equatoria that have experienced a similar level of change in its demographic composition include Chukudum and Nimule in Eastern Equatoria and some parts of Muru land in Western Equatoria such as Mundri (see Newhouse, 2017; Wijk, 2014; Gore, 2014). It was only after the civil war that started in December 2013 that government-allied forces had started occupying territories outside Equatoria, such as Shillukland in Upper Nile and Fertit-lands in Western Bahr el Ghazal (see Craze, 2019).

Secondly, rather than the return of the presumed Dinka IDPs to their pre-war areas of settlement following the return of relative stability after the start of the CPA, most displaced continued to stay, supported by SPLA soldiers, to resist evictions by returnees. In addition to this protracted settlement of the old IDPs, new IDPs moved to settle in different areas in Equatoria, also taking part in forceful occupations of land.

Lastly, returning landowners strongly perceive that the central government in Juba intervene selectively in addressing land conflict between Dinka IDP and local communities in various areas in Equatoria, making them argue the government supports land occupation in Equatoria. These returnees often, blame the government for turning a blind eye on land conflicts between Dinka IDPs and host communities in various areas in Equatoria, and come to the support of the IDPs when it intervenes. In Yei, for example, after the escalation of the conflict in Giru wider violence, the SPLA forces sent from Juba to address the situation ended up siding with the IDPs by assaulting Equatorians on the streets of Yei. As Kindersley and Rolandsen (2017) observe elsewhere, the spread of the

civil war that started in December 2013 to various areas in Equatoria seems to have given the Dinka-led government in Juba the chance to displace more populations in rural areas in Equatoria as a way of occupying the land.

6.4.4. Implications for the Relations between Displaced and Host Communities

These politics and land occupation by Dinka in Equatoria significantly shaped the relationship between displaced and host communities in Yei as well as in other areas in Equatoria. As a result of these politics around land occupation, displacements in many areas in Equatoria came to be perceived as a mechanism for land occupation by the Dinka, and the displaced as the agents that occupy the land.

Unfortunately and as the case in Yei River County demonstrates, this generalisation of displacements and the displaced works to the disadvantage of displaced that genuinely needed protection such as the Kuku IDPs in Giru, who had their properties destroyed by the returning landowner. As a result of this generalisation, the County authority declined from sending police to Giru to protect the IDPs after the demonstration they held at the office of the County commissioner. Likewise, the chief's court refused to address the case those displaced took to his court; arguably, they were Dinka agents of land occupation. There was also a reluctance from humanitarian organisations working on the ground to aid those displaced, probably for the fear that they could be supporting Dinka soldiers in and occupation.

In conclusion and as the situation of displacement in South Sudan has demonstrated, displacement is more complex than it is suggested in the guiding principles on internal displacement. It is not a mere movement of innocent civilians but can be associated with land occupation, changes on land governance and permanent settlement of the displaced even after the end of the civil war.

6.5. Synthesis and Theoretical Contribution

The post-CPA state-building in South Sudan took a top-down approach. Through this approach, the government of South Sudan, supported by international donors, introduced a hybrid system of governance that distinguished formal and informal

institutions and prescribed when and under what circumstances interactions should occur within and between the formal and informal institutions to produce the results they intended to achieve. However, the data demonstrate that this approach to state-building did not take into account the local context and the history that led to this hybridity, and this oversight contributed, in one way or another, to the upsurge of violence we observed in the post-CPA period.

As a result of this oversight, this state-building project ended up reintroducing the same injustices of the past it intended to reverse. The introduction of the new structures of government became a trigger to reformulate historical claims on territories dating back to the colonial period, including changes made by postcolonial governments and SPLA wartime governance before the CPA. Addressing disputes arising from those contested claims in light of the contradictory legal frameworks of local governance became problematic, as claimants to those territories referred to different historical moments and legal frameworks to make their claim.

Likewise, the land reform led to contestations over the authority of land governance resulting from challenging the legitimacy of stakeholders in local governance who acquired their authority through different historical moments. Some claim authority over land based on the traditional pre-colonial norms. In contrast, others attempted to assert their claims based on their forefathers' land by referring to the colonial authority or by SPLA authority as a reward for their contribution to the north-south civil war before the CPA. Most importantly, this approach to state-building prepared the ground for the re-emergence of historical grievances between the people of Equatoria and the Dinka, which has become problematic during the current civil war.

By analysing post-conflict land governance in Central Equatoria State and Yei River County, four theoretical debates were relevant: that on hybrid governance in a context of a state-building in post-conflict settings; that on decentralised governance; that on land reform; and on internal displacement.

First, the evidence challenges the idea that hybrid institutions in war-torn societies like South Sudan can be pre-designed to produce predictable outcomes. It demonstrates instead that the understanding of history and local context can enhance our

understanding of complexities in countries emerging from civil wars. Based on this understanding of the history and the context, it has been shown that whether and how institutions interact is determined by the 2 Ps, pragmatism and power relations, which is always dynamic. Depending on the 2 Ps, the findings demonstrate that these interactions can be beneficial in serving the interest of citizens but can also be a trigger of conflict and violence. Whereas power and pragmatism have led to cooperation and within the justice sector, this had not been the case in the land sector. In this case, chiefs of IDP communities used the power of the gun they acquired through the support they get from SPLA soldiers to the disadvantage of local communities. Based on the unpredictability and the context specificity of these interactions, we can see that it is difficult to predict the outcomes of hybrid governance.

Second, a contribution was made to the debates on decentralisation by highlighting the roles of territories and territorial borders in shaping outcomes of decentralisation projects in post-conflict settings in Africa. The introduction of new structures of government is a common practice in countries emerging from civil war. These new structures are often introduced as part of decentralised governance needed to help war-torn society to recover from conflict, but also as part of the power-sharing deal between peace partners. On the other hand, the evaluation of the success or the failure of decentralisation in post-conflict settings in Africa has focused on understanding whether power and resources are devolved to the sub-national structure of the government, often with little attention on structures into which power and resources are devolved. The making of territories and territorial borders are under-researched aspects of decentralisation to understand their influence on the outcomes of decentralisation projects in countries emerging from civil wars like South Sudan at the start of the CPA. Findings show that the making of territories and territorial borders greatly determine the outcome of decentralisation project; the lack of clarity on how territories are owned or territorial borders contested or negotiated can turn decentralisation projects to be a source of contestation, violence and displacement of civilians.

Third, the thesis also contributes to the debates on decentralisation, but this time by shedding light on the roles land reform can play in determining the outcome of decentralisation projects in countries emerging from civil wars. Land reform constitutes an important aspect of post-conflict reconstruction projects, often coined as

decentralised land governance. Such reforms are particularly relevant when land was a source of conflict in the war that was ended. But like the introduction of the new structures of government, not much research has highlighted the influence of land reform in shaping the outcome of overall decentralisation projects in post-conflict settings. The findings show that land reform is often linked to changes in institutional setup, and such changes can be a potential cause of tensions, conflict and even violence. In the case of South Sudan, land reform led to changes in authority; contestations resulting from these changes trickled to lower levels to cause violence between communities. In other words, these findings demonstrate that decentralisation does not necessarily contribute to peace-building, stability and democratisation as suggested in the existing literature (see Blunt and Turner, 2005; Conyers, 1986; Braathen and Bjerkreim Hellevik, 2006), but can also result to social exclusion, tension, and violence.

Fourth, a contribution was made to the debate on displacement by shedding new light on the dominant narratives in the existing literature that displacement is a temporary phenomenon that will end once the war that caused it ends, and the displaced as victims that need be assisted through voluntary rerun, integration into host communities or resettlement to new areas together. These findings instead demonstrate that displacement can turn to a permanent occupation of land and changes on land governance that will challenge pre-existing land rights. It also demonstrates that the displaced can be agents of violence that could be shaped by historical grievances. In such a case, displacements contribute to the victimisation of local host communities and further marginalisation of displaced who genuinely need support.

6.6. Further Research

The research conducted for this thesis has explored four themes that established the relationship between state-building and conflict in South Sudan after the Comprehensive Peace Agreement of 2005. These themes explored seven case studies conducted in Central Equatoria State, focusing more on Yei River County. Central Equatoria State and Yei River County have been relatively peaceful at the start of the CPA, and their selection for conducting this research was strategic: to understand the conflict dynamics of the post-CPA state-building in the country, including in areas that have been relatively peaceful. Findings across the four themes support the hypothesis of this thesis, which

argues that, if not carefully navigated, state-building in post-conflict settings like South Sudan can be a potential conflict driver rather than a tool for building a viable state after the end of a civil war. Despite the limited scope of the fieldwork for this research in terms of research sites covered, the findings invite further research. This section outlines a number of research activities that could complement and build upon the results presented in this thesis:

- Updating the empirical data on the cases presented in this thesis: A more detailed analysis of the relationship between state-building and conflict would require more data after the start of the civil war in December 2013 to date. This data should give more emphasis on the themes on decentralisation and displacement as aspects that are heavily impacted by the civil war. Exploring the impact of the civil war on decentralisation should include understanding the role of the changes in the number of the states during the wartime from 10 to 28, and then to 32 and later to 10 in February 2020; and on internal displacement, the active involvement of the state in displacing its civilians, especially, from the three states of Equatoria.
- Improvement of the comparative aspect of this research: The data for this thesis unpacked conflict dynamics linking state-building to land conflict in relatively peaceful areas. Understanding the implication of this state-building on conflict in areas inhabited by cattle herding communities with periodic cycles of violence, such as Jonglei State, would substantially enhance the analysis of state-building and decentralisation in South Sudan .
- Expansion of the analysis to include other forms of governance: The findings established a strong link between state-building and conflict in relation to land governance. The selection of territories, territorial borders and changes in authority in exploring this relationship has generated some ideas in linking local conflicts to the broader state-building project. A similar methodology can be used to establish a relationship between this state-building project and governance in other sectors. Exploring the relationship between state-building and governance in the agricultural sector seems to be a relevant choice: agriculture had been the main source of livelihood in South Sudan before the discovery of the oil reserves and is likely to be the main source of revenue once the oil existing oil reserves get depleted.

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Summary

This thesis analyses the relationship between state-building and land conflict in South Sudan after the start of the Comprehensive Peace Agreement (CPA) of 2005. This analysis focuses primarily on understanding the modality of introducing new structures of government and land reform as aspects of the post-CPA state-building, and displacement as a consequence of civil wars and the implications these have on land conflict.

Following a short period of relative peacefulness after the CPA, various areas in South Sudan experienced increased levels of conflict around land, linked to state-building and displacement. Territories and borders resulting from the introduction of the new structure of government became bitterly contested, and land reform led to contestations over authority over land. On the other hand, a massive return of refugees and continued settlement by internally displaced persons (IDPs) on lands of returnees led to violent contestations over landownership. Local conflict resulting from those contestations flared up to broader violence between communities, and sometimes pitted different levels of the government, leading to tensions. This thesis is organised into six chapters.

Chapter One gives a contextual background on post-CPA conflict dynamic to establish the relation between state-building and land conflict on the one hand, and between the displacements and land conflict on the other. Drawing on this context, the chapter formulates an objective for this research, which is to understand *'how decentralisation and land reform, as key elements of state-building efforts in South Sudan, and displacement are related to local land conflicts and how these conflicts are linked to a broader outbreak of violence after the CPA of 2005'*. Four themes are drawn from the central question that emanated from this objective, and each theme is guided by a research question that investigated various aspects of these relationships. The chapter also provides theoretical frameworks for the analysis of the four themes, methodology and the methods for data collection, and description to the research area.

Chapter Two uses Hagmann and Péclard's (2010) analytical framework of negotiated state formation to understand the interactions within the between institutions in light of the hybrid governance introduced after the CPA. Central to this theme is the

understanding of *'how hybrid institutions, as a legacy of history, function at local levels in meeting the needs of citizens and solving problems'*. The chapter seeks to understand the complexity of the institutions in the post-CPA period from the perspective of history, how these hybrid institutions function at a local level and whether they meet the needs of citizens and solve local conflicts. In responding to these questions, the chapter links the complexity of post-CPA institutions to history, as a legacy of colonialism, postcolonial government and SPLA's wartime governance; rooted in the history of conquest, divide-and-rule policies, violence and population control. The chapter, therefore, argues that conflict and violent interactions between institutions that occurred after the CPA is the continuation of this history. Secondly, it shows that interactions between hybrid institutions at local levels are context-specific, determined by pragmatism and power relations. Whereas pragmatism determines the needs for institutions to interact, power relations steers the direction of such interactions. A case study in Yei River County supports this by demonstrating how local needs triggered interactions that are not provided for in the existing legal frameworks but proved to be useful to citizens. In contrast, chiefship institutions that are supposed to interact had bitter relationships, characterised by high levels of violence. Linked to pragmatism, power relations played roles by steering the direction of those interactions, but this relationship is dynamic and everchanging. The case in Yei River County also supports this, by demonstrating that powerful actors in the society are not necessarily the ones in charge of steering directions of interactions, and being successful in one forcefield does not automatically translate to being influential in another forcefield. Thirdly, this case demonstrates that outcomes of such interactions are unpredictable; can be beneficial citizens, but can also trigger conflicts and violence. In summary, findings of this chapter challenge the post-CPA conception of hybridity that hybrid institutions in war-torn societies like South Sudan can be pre-designed to produce predictable outcomes; oversights which resulted from the limited attention paid by stakeholders to this state-building project to local context and history that led to this hybridity.

Chapter Three analyses the post-CPA conflict dynamic through the lens of decentralisation, from the perspective of contested claims on territories and borders that resulted from the introduction of new structures of government. The chapter explores *'the roles of creation of territories and new borders, as aspects of decentralisation, in*

instigating conflict between communities'. In this case, the chapter seeks to understand the relationship between territories, borders and conflict after the CPA, whether this relation is connected to the evolution of territories and borders in the past, and the roles elites play on conflicts around territories and borders. Its main findings demonstrate that the genesis of these territories is rooted in the history of conquest, extraction of resources and violence, and the conflicts that transpired after the CPA is a legacy of this history. The chapter shows how the colonial conquest introduced territories with no clear borders for extraction of resources, and how postcolonial governments and SPLA in the pre-CPA period manipulated those territories and their borders to divide-and-rule or control populations, as part of their strategies for orchestrating violence or winning wars. Following the footsteps of their predecessors, local and national elites have tended to use territories, borders and identity as a strategy for mobilising communities for personal economic, political or sociocultural gains, which is demonstrated by three conflict cases discussed in this chapter. These findings paint a different picture on the increased labelling of conflicts South as 'ethnic conflict' around territories and borders by showing that neither ethnic belonging nor territories and borders caused the three conflicts discussed in this chapter but resulted from territories, borders and ethnicity manipulation by elites for economic, political and sociocultural gains, which is not different from past practice by colonialism and postcolonial governments.

Chapter Four addresses a different aspect of the relationship between decentralisation and land conflict, namely, competition over authority resulting from the introduction of land reform. It explores *'the contribution of land reform laws to the configuration of land governance and land governing institutions and their authority and how those changes contribute to conflict between communities'*. It seeks to understand the basis of and legal frameworks for the land reform, roles of this reform in the reconfiguration of governance, and how the resulting changes contribute to conflict and violence. The need to address past injustices around land and prevention of future land conflict was the basis of this land reform, which infirmed the development of legal framework land. This approach to land reform led the devolution of central land governing institution (South Sudan Land Commission) to the lower levels of the government including to rural areas that had not experienced the presence of state institutions. However, this proliferation of land governing institutions led to a complete replacement of the authority and land governing

institutions that existed in the pre-CPA period by the new ones, which resulted in contested claims on authority over land. This proliferation of land governing institutions also led to a shift the conflict dynamics linked to these competitions to occur more in rural areas where communities traditionally own land. As a result of contractions in existing legal frameworks on land and the lack of credible conflict resolution mechanisms, contestations between local elites over authority led the escalation of local conflicts and violence between communities. The cases in this chapter demonstrate that the escalation of local conflicts to wider violence is sometimes a deliberate strategy by weak actors in society as a way of seeking justice at a higher level.

Chapter five sheds light on the politics of displacement-related land conflict after the CPA through the lens of land occupation and changes on land governance. This chapter shows how a combination of a rapid return of refugees and protracted settlement of IDPs on lands of returning refugees has led to contested claims of landownership between returnees and IDPs. It also shows how the forceful occupation of land and changes on land governing institutions led to those contestations. In addition to the protracted settlement by the IDP in causing those changes, the chapter demonstrates that political grievances of the past, between the people of Equatoria and Dinka, played a role in what turned out to be a permanent settlement by the displaced. These findings critique the popular narratives in the debates on internal displacement that tends to perceive displacement a temporary phenomenon that will end once the war that caused it ends, and the displaced as victims that need be assisted through voluntary rerun, integration into host communities or resettlement to new areas together (see Cohen, 2004; Deng, 1999). Rather than a temporary settlement, displacement in Yei River County had turned to permanent settlement of displaced and came to be associated with violent land occupation and changes in land governance that consolidated claims of IDPs communities on lands they forcefully occupied. This violence by the displaced – supported by soldiers - towards the returning landowners comes in line with the notion ‘warrior refugees’, which questions some of the conventional perceptions of displacements and the presumed vulnerability of the displaced. As a result of the violent nature of land occupation by the displaced, relationship between IDPs and host communities soared to the extent that it became challenging to integrate those who had fled genuine violence from elsewhere into host communities. Likewise, the politics associated with the

perception of displacement as a strategy by Dinka to occupy land in Equatoria made it difficult for communities to voluntarily accept hosting IDPs to be resettled to their areas by humanitarian actors.

Chapter Six is the concluding chapter, draws from the four principal chapters to summarise the main findings of the thesis. By exploring the post-CPA institutional landscape through the lens of history, this thesis argues that the limited attention paid by the actors to this state-building to local context and history that led to the emergence of the institutions that became bitterly contested on different accounts, and hence conflict drivers. Rather than introducing institutions that would contribute to addressing the injustice of the past, these actors ended up re-introducing the same institutional landscape that contributed to the civil war that was ended in 2005 through the CPA. As a result, those institutions facilitated powerful actors in society to continue with past practices that led to the marginalisation of rural communities. Territories intended for local government structures became platforms for elite capture, and land reform for competition between elites over authority. Importantly, this approach to state-building prepared the ground for the re-emergence historical grievances between the people of Equatoria and Dinka, which has become problematic.

About the Author

Peter Hakim Justin (1968) is a South Sudanese national by birth. He holds master's degree in Environmental Science and Technology, majoring on Environmental Policymaking and Management from IHE Delft; and a bachelor's degree (Hons) in Natural Resources and Environmental Studies, majoring in Forestry from University of Juba in South Sudan. He worked as a researcher at the African Studies Centre (ASC) in Leiden on the programme 'Grounding Land Governance', focusing on Governance, Conflict Studies and Land Tenure. Alongside his ASC's assignments, Peter consults for various International Nongovernmental Organisations (INGOs) in South Sudan and academic institutions elsewhere. He started his employment carrier in the academia as a Teaching Assistant in Upper Nile University in South Sudan, and later as a research assistant in different institutions in the Netherlands.

Colophon

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