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

Peter Hakim Justin and Han van Dijk

Abstract: Following South Sudanese independence in 2011, land reform became a major aspect of state building, 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 paper shows that 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.

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Keywords: South Sudan, nation and state building, agricultural reforms, land law, social conflicts, social change, history

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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; Justin and van Leeuwen 2016; Öhm 2014; 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, argued on the basis of increased interference by the state in the 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. It articulated those objectives through the slogans “the land belongs to the community” and “taking towns to the people,” which attracted many rural communities to join the movement (Hirblinger 2015: 710). When negotiating the peace talks that resulted in the Comprehensive Peace Agreement (CPA) of 2005, the SPLM pushed for the inclusion of land reform in the final agreement, which ultimately paid off (GoS 2005: 48).

During the interim period (2005–2011), state building in South Sudan emphasised land reform, partly in order 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 are multifaceted, land has come to play a central role as a trigger for conflicts or a platform for expressing other grievances (Justin and van Leeuwen 2016). It seems as though efforts to build a state through land reform have generated conflicts, civil wars, forceful displacements, and human suffering.

This paper 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, and that those contradictions are the manifestations of the top-down approach of state building. Specifically, the paper 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 authority to take the form of land conflicts between communities. 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.

Data for this paper were collected in Yei River County in South Sudan during three visits (November 2011 to June 2012, September 2012 to April 2013, and January to February 2015), based on an ethnographic field approach. Research methods included extended interviews, focus group discussions (FGD), participant observation, and workshops. Key informants included government officials, traditional authorities, community leaders, and members of non-governmental organisations (NGO) and civil society.¹ This paper is structured as follows: The first section analyses land reform in post-conflict settings in a context of changing relations of governance. The second section provides some historical background on land, statehood, and conflict in Sudan and South Sudan. The third section highlights changes in governance in the study area and contextualises this to the two conflicts. The fourth section discusses land reform in South Sudan, and in the fifth section conclusions are elaborated.

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 the 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 paper, we conceptualise tenure security as a system of institutions or rules on land ownership, use, management, responsibilities, and constraints on how land is owned and used (Mitchell 2011).

In Africa, land continues to be a major source of conflict, civil wars, and underdevelopment. Past attempts to consolidate land rights through

1 This paper is an output of the research programme “Grounding Land Governance,” funded by WOTRO – Science for Global Development – NWO; The Netherlands: Grant number W 01.65.332.00.

private ownership of land have not only failed to achieve results, but also contributed to social inequality and conflicts (Stewart 2016). Because of the increasing levels of social inequality and conflict resulting from the private ownership of land, the debates on land reform in Africa have shifted to focusing 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). This is also because of the advantages individuals derive from 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 contemporary approach to state building in post-conflict settings, which is largely top-down, has tended to produce land-reform regimes that do not correspond to realities on the ground. In South Sudan, land reform has tended to ignore changes in society and regarding land brought about by the British colonial administration and the SPLA during the North–South civil war. We suggest that a bottom-up approach to state building could 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 statehood through its ability (or inability) to have a monopoly over the use of violence, exert control over its borders, and deliver services to its populace (Schlichte 2016). With this understanding, 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, statehood implies strengthening formal land institutions based on success stories from elsewhere. But in practice, a post-conflict setting is neither a blank slate nor ahistoric. Even during civil wars, governance by a variety of state and non-state institutions continues (Öhm 2014), and warfare itself is closely connected to state building (Tilly 1999). By the end of civil wars, public

authority is often an amalgamation of local and national institutions, where external institutions are often also imposed (Lund 2006).

Further, changes to local governance are often associated with changes in social relations and regarding land. This is because land continues to be understood in many African countries in terms of social relations rather than as “property” (Peters 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 (Lentz 2000: 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 achieve colonial objectives (Leonardi 2013). By the end of the colonial era, a great number of post-colonial governments had inherited the colonial idea of chiefdom, and became deeply rooted in local governance to an extent that some local communities believe these governance structures to be fully 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 2014). 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.

In addition, the distinction between different forms of land ownership continues to be a major problem within debates on land reform. 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 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: 194) As we 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.

Land, Statehood, and Conflict in Sudan and South Sudan

Land Politics in Pre-Secession Sudan

Land has been central to statehood in Sudan and a major contributor to conflicts and instability. The North–South civil war that ended up splitting the country into Sudan and South Sudan was one such conflict. Those conflicts often emerged in reaction to "repressive" policies of the government in Khartoum, particularly those that infringed on land rights of rural communities (Johnson 2011). At a certain point, those policies resulted in the state claiming ownership of up to 80 per cent of the total land area of the country, mostly in rural areas (Wily 2009). The foundation of most of those policies was laid by colonialism. Of those policies, the Unregistered Land Act of 1970 and the Land Transaction Ordinance of 1984 – the latter of which builds on the 1898 Land Registration Ordinance, enacted under British colonial rule – directly contributed to the North–South civil war that started in 1983 (Deng 2011). This war was a continuation of the first North–South civil war ended through the Addis Ababa Agreement of 1972.

That agreement, 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 southern 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 1970s, the government in Khartoum started to redraw the North–South borders and renamed some of the resource-rich areas so that they 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 2014). Land also played a role in ending the civil war. When negotiating the Comprehensive Peace Agreement, the SPLM/A pushed for the inclusion of land reform, which ultimately succeeded. This made land reform a crucial aspect of state building in South Sudan, at least in theory.

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 a countrywide land reform (GoS 2005: 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, 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 10 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 10 states, instituted by the government in Khartoum, and the county–*payam*–*boma* system, instituted by the SPLA during wartime (Öhm 2014). Accordingly, South Sudan was divided into 10 states, each subdivided into lower levels of counties, *payams*, and *bomas*, respectively headed by paramount, head, and executive chiefs who by the 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.² The Land Act gives the authority of land administration in rural areas to community leaders (GoSSa 2009: 15), but the Local Government Act acknowledges chiefs as government officials and traditional leaders. This caused chiefs to assume duties of land administration, taking over the role of *monyé menu*, the traditional land custodian. 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 on a basis of autochthony (GoSSa 2009: 13–14). Land in all rural areas falls under the category of communal land. With more than 80 per cent of its population living in rural areas,³ a great deal of land in South Sudan is communally owned.

But since the beginning, the focus of land reform has been on strengthening the SSLC, and little attention has been paid to institutions at the subnational levels. Out of the 10 states, for example, only Jonglei and the three states of Equatoria (Eastern, Central, and Western Equatoria) managed to institute state land commissions. However, none of those commissions managed to devolve their duties to the county land authority, then to the *payam* land council, then to the *boma* land administration. In October 2015, President Salva Kiir issued an order to increase the number of the states from 10 to 28,⁴ and on 14 January 2017 the number was raised to 32.⁵ This will imply the abolition of the existing state land commissions and the subsequent formation of 32 new ones, each to be devolved down till the *boma* level.

But alongside processes of state building, South Sudan witnessed increased levels of violent conflicts, covering most parts of the country.

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

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

4 *Sudan Tribune*, South Sudan President Expands States to 28 as Opposition Accuses Him of Deal Violation, 3 October 2015, online: <www.sudantribune.com/spip.php?article56581> (5 October 2015).

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

Small-scale conflicts escalated to wider 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 (De Vries and Justin 2014). In most cases, land is either the immediate cause of or a platform for expressing other grievances (Justin and van Leeuwen 2016). 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 land reform? The conflicts in Yei River County discussed below shed some light on this.

The Conflicts in Yei River County

Changes in Local Land Governance

The conflicts occurred in the two villages of Alero, in Mugwo Payam, and Goja, in Otogo Payam. Before discussing the cases, we give a brief overview of the county. Yei River County was one of the six counties of Central Equatoria State, subdivided into five *payams*: Yei, Mugwo, Otogo, Lasu, and Tore. Central Equatoria State comprised six counties: Terekeka, Juba, Lainya, Kajokeji, Yei, and Morobo. Because of the increase in the number of states in October 2015, the four counties of Yei, Morobo, Lainya, and Kajokeji were merged to become Yei River State, and each of the five *payams* of Yei upgraded to counties. Yei River State was subdivided into a total of thirteen counties.⁶ The counties of Terekeka and Juba were upgraded to states, with Juba renamed Jubek. The fieldwork for this paper was conducted before this increase. Reference to counties and *payams* throughout this paper is therefore made on the basis of the old administrative structure (see Figures 1 and 2).

Yei River County has rather a complex history of local governance, which justifies our choice to conduct our fieldwork here. Interventions into Yei by British colonial rule and later by the SPLA during the North–South civil war resulted in many changes to local governance – changes also reflected in how land is locally perceived or governed today. Demographically, the Kakwa forms the majority ethnic group in the county, so local governance practices are commonly based on Kakwa traditional

6 *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).

practices. In the precolonial period, traditional leadership in Yei was based on a group of stakeholders (*monyé 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.⁷ A *menu* was (and still is) the basic territorial unit owned by a clan, and the *monyé menu* was tasked with land administration within the *menu* on behalf of the landowning clan.⁸ 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, this administration replaced the group of traditional leaders with individual chiefs who became facilitators between the colonial administration and its subjects.⁹ Most of those settlements remained villages throughout the postcolonial period. During the civil war (1983–2004), the SPLA made more changes to traditional leadership and in the villages, by replacing “incapable” chiefs with those who could help achieve its military objectives¹⁰ and by upgrading the villages to counties, *payams*, and *bomas* (Öhm 2014). The impact of those changes on land rights and conflict around land became clear after South Sudan started its land reform programme in 2005.

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.¹¹ Alero is some seven miles southeast of Yei Town, along the main road connecting Yei to Kaya at the Ugandan border (see Figure 2). The county authority responded 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.

7 FGD, land custodians and chiefs, Yei, 5 May 2012, and interviews with community leader, Yei, 16 November 2012, and land custodian, Rwonyi, 31 January 2012.

8 Interview, Lasu community leaders, Yei, 16 November 2012.

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

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

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

Figure 1. The Ten States of South Sudan with Central Equatoria State Highlighted

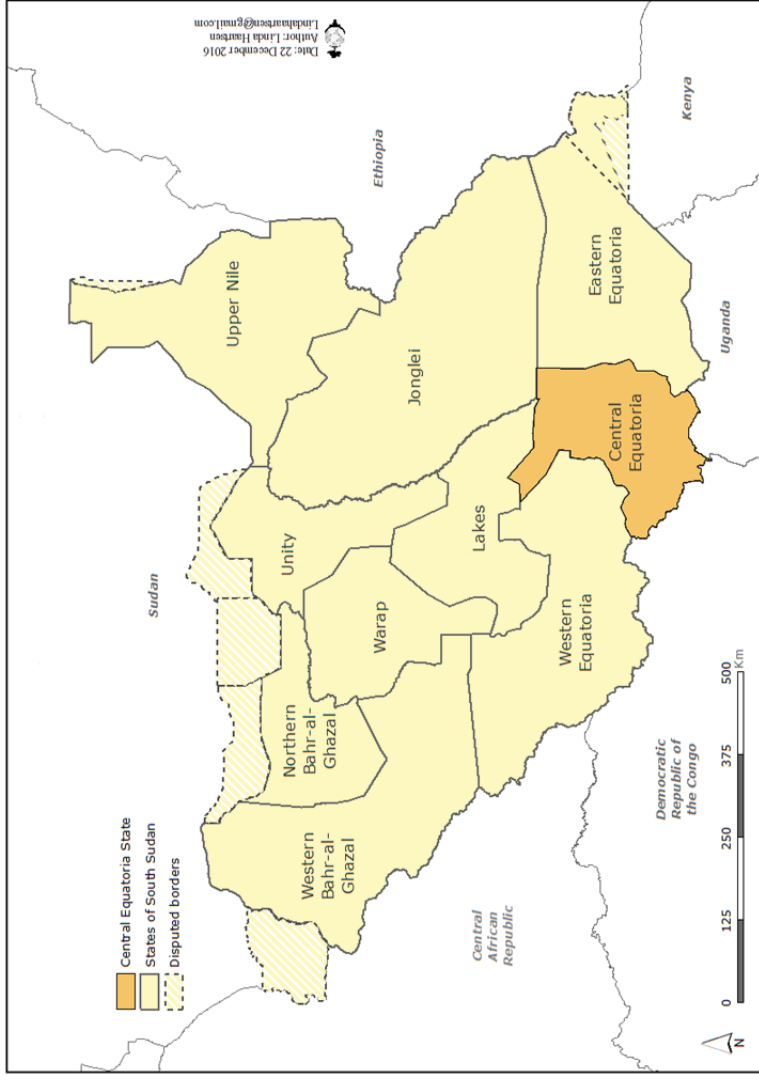
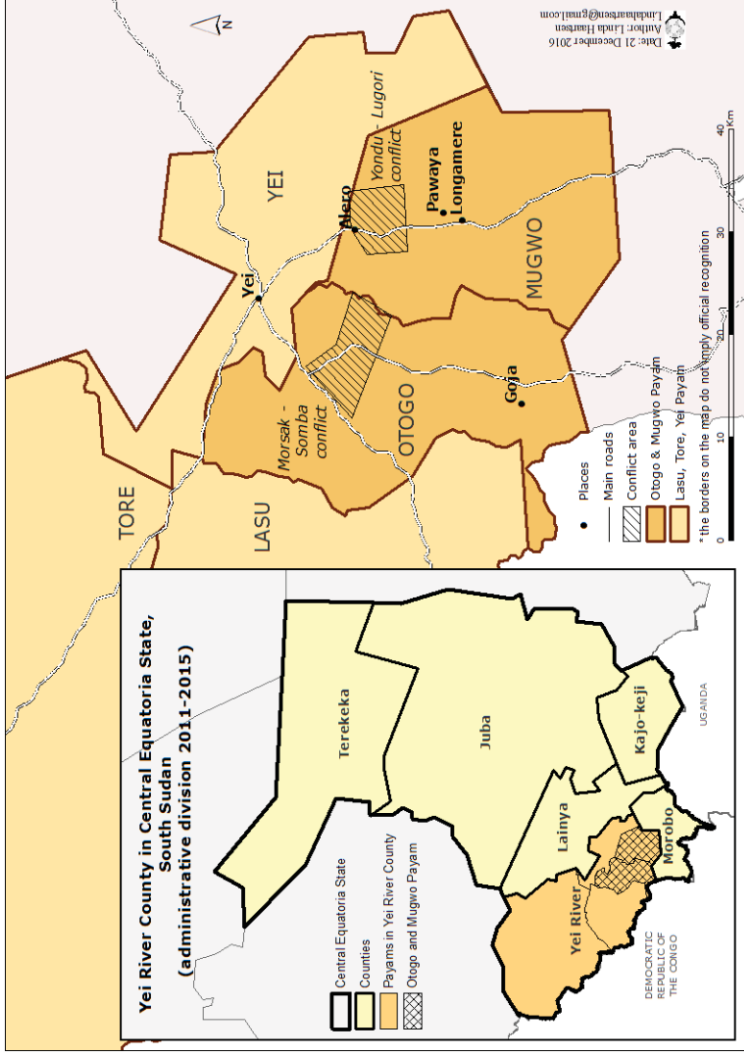


Figure 2. The Six Counties of Central Equatoria State (Inset) and the Research Area in Yei River County



Oral histories suggest this area was traditionally owned by a clan called the Permasu, who gave part of their land to the Lugori 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, the colonial administration moved the 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 the Yondu are settled also belongs to the Permasu clan, implying the Lugori were also in charge. However, the Yondu came to claim legitimacy over this piece of land, as it was allocated to them by the British administrator. Over time, the two clans developed good relationships, and on the basis of marriage, some families from the Yondu moved to the Lugori side of the land. While in their new settlement, the Permasu clan continued to refer to this area as its ancestral land.¹²

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).¹³ 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.¹⁴

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 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.¹⁵ 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.

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

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

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

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

The police forces 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 could not address the land aspect, as it concerned land in a rural area. This is because the Land Act and the Local Government Act limit the authority of the county to land listed in the government's registry within urban areas. For the same reason, the county authority could not resolve this conflict, but proposed the formation of a committee to consider the causes of the conflict and suggest solutions. The committee, headed by the county's executive director, was comprised of chiefs from the three *bomas* of Payawa, Longamere, and Yari, and land custodians (*mose menua*¹⁶) from Permasu and Bori. However, members of the committee disagreed on how to resolve this conflict.

The county's executive director and the *mose menua* suggested the signpost 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 rejected this suggestion. But they did agree to the removal of the signpost as of part of the solution. Yondu representatives argued the proposal was biased against them because the committee was headed by the county's executive director, who was at odds with their headman. This is because their headman was on the SPLA side of the war, while the executive director was with the government, and the bias was framed as a continuation of wartime grievances.¹⁷ The Lugori, on the other hand, claimed the objection by the chiefs was biased because the chiefs came from the same mother clan as the Yondu (Payawa), and have been aspiring for a long time to have control over all of Mugwo. The committee could not impose its proposal, leaving this conflict unresolved.

The Conflict in Otego Payam

The second conflict was in Goja Boma in Otego Payam, between the Somba and Morsak clans. 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 a period of 10 years in Goja.¹⁸ The chief of Goja and the sub-chief of Morsak challenged the deal as illegal, because they were not involved as the

16 Plural of *monyé menuu*.

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

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

legitimate authority in the area.¹⁹ Thus, the chief and sub-chief mobilised their communities to stop implementation of the project for which the lease was signed.²⁰ 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.

Like in Alero, this conflict was over land in a rural area, making it not possible for the county authority and the magistrate court to intervene directly. The intervention by the magistrate court in the conflict in Alero came about because violence was involved in that conflicts there, which was not the case in Goja. Ultimately, the county commissioner proposed a committee to consider causes of this conflict and suggest solutions. The committee was comprised of elders from the two aforementioned clans (Somba and Morsak) as well as from among the Logo and a neighbouring clan, the Mongo. Attempts to resolve this conflict lasted for three months, two months longer than 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 “founding father” of the Somba had 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 area. Over time, the two clans developed good relations, and the Logo gave that founding father an honorary clan name: Somba, meaning friendship.²¹ Later, most Logo families migrated to settle some six miles down the Yei–Maridi road, going towards today’s Western Equatoria state. Most Somba families moved voluntarily to settle in Kegulu, some seven miles down the Yei–DRC road. But all along, the Logo and Somba clans continued to refer to Goja as their ancestral area.

During the colonial period, 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 was replacing many chiefs. With the changes to local governance brought by the Land Act and the Local Government Act, the chief of Goja (from Morsak) came to be in charge of land administrations in this area. For that reason, he and the sub-chiefs of Morsak argued that this gave them the legitimacy to negotiate the land lease with the investor. The Somba, on the

19 Interview, Goja Boma, 14 November, 2012.

20 Interview, Baraba’s family, Yei, 28 March 2013.

21 Interview, Kakwa Community Association, Yei, 17 November 2012.

other hand, consolidated their legitimacy to negotiate the lease on the basis of 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 reducing 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. The lease proposal also suggested, however, that the payment at the signing of the lease be given to the Somba.

But both Morsak and Somba chiefs and elders objected to this proposal. The Morsak saw this ruling as violating their legal rights as the authority in the area and their 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.²² While the mediations on the case were ongoing, the Morsak mobilised their people to settle around the land, obstructing the work of the investor. This forced the investor to abandon the project.²³ Just like in Alero, the committee could not impose their solution, leaving this conflict unresolved.²⁴

Understanding Land Reform in South Sudan

As our case has 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, the reform programme has tended to take a top-down approach based on the Weberian model of the state. This has resulted in a policy gap between land laws and realities in rural areas. 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?

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

23 Interview, Baraba’s family, Yei, 28 March 2013.

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

State Building and Land Reform

What becomes clear from our case is that the legacy of the North–South civil war (1983–2004) continues to influence state building in South Sudan. This is reflected in the focus by the South Sudanese authority and its partners on enhancing institutions of the central government, partly to maintain historical injustices. This served to strengthen the South Sudan Land Commission and to largely undermine lower-level institutions, particularly those categorised as “customary.” Surprisingly little attention has been paid by the state authority to state land commissions and county land authorities, even though these fall under the category of “state institutions.” It seems as though the little amount of attention 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 land policies and context-specific policies at the level of the individual states, provision of technical advice to relevant government institutions, and arbitration of land conflicts 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 a 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.²⁵ 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, groups land in rural areas into the categories “community land,” owned by rural communities on basis of autochthony, and “public land,” owned by the state. But the incorporation of rural areas into the local government and the upgrading of chiefs to positions as government officials who oversee land in rural areas brought about some problems regarding land rights. Chiefs being in charge has raised the question of whether communities still have control over their land. In addition, by suggesting that land in rural areas is owned by local communities on the basis of autochthony, the Land Act has strengthened the link between identity and land ownership. This has resulted in challenging the authority of some chiefs known to have been appointed

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

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 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 are "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 the Yondu were to succeed in asserting their control over this area, their headman would oversee land 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.

Contests around traditional leadership in relation to land control commonly occur in rural areas, but some cases do occur in urban centres. Within Yei Town, 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 on the basis of 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" (Justin and van Leeuwen 2016). 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 rebellions against the government in Juba.

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 surfaces clearly is that the SPLM-led government is increasingly interfering with the land rights of rural communities – perhaps in an even more detrimental way than its predecessor, the government of Sudan. Following the footsteps of its predecessor, the SPLM government has tended to develop policies that make it easy for it 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 community or “unowned” land to public land (GoSSa 2009: 13). What is problematic is that conditions for the conversion of community land to public land remain totally unclear. But the notion of “unowned land” raises suspicions, as “all land in South Sudan is owned, in one way or another” (Deng 2011: 1). Also, within this reframing, the change from “community” to “the people of South Sudan” has contributed to tensions between communities, resulting in speculations that the state deliberately reworded the text in order to give other communities legal backing to claim land ownership outside their ancestral areas – specifically, the Dinka in Equatoria.²⁶ 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 (GoSSa 2009: 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), between Dinka and Madi in Nimule (Schomerus and Allen 2010), and even across the border into the DRC between Dinka and Congolese authorities (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 legiti-

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

misation 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 2011: 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 civil war. In South Sudan today we see history repeating itself. The presidential order to increase the number of the states to 28 resulted in tensions, at the political level between the government and opposition forces allied to Riek Macher, leader of the Sudan People’s Liberation Movement/Army in Opposition (SPLM/A-IO²⁷), 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 10 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. To the contrary, what we see is increased levels of violence and civil wars around land resulting from the current land laws.

Land Reform and Conflict

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

27 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 Riak Macher in December 2013 (also see De Vries and Justin 2014).

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. In relation to 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 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 Mugwo and Otego, the county authority could not intervene directly in resolving the two conflicts because both were reported as land conflicts. It proposed the formation of committees that ultimately could not resolve the conflicts because they did not have the mandate to enforce judgements. 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 Otego 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 this. 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 deliberately escalating conflicts to a violent level in order to involve higher authorities. In Giru Village near Yei Town, for example, the magistrate court declined to attend to a land dispute between two families because it was in a village. But later, the court got involved after this conflict escalated to open violence involving various communities, threatening the stability of Yei Town (Justin and van Leeuwen 2016: 431). This was similarly the case in what came to be framed as “ethnic conflict” between Bari and Mundari in Mangalla (Justin 2015).

Yet another challenge is figuring out which laws are relevant to apply. While chiefs are trained by government officials, including by judges, on conflict resolution based on government laws, they are expected to judge cases in traditional courts based on customs (GoSSb 2009: 48). What is challenging is that government laws are mainly based on punishing offenders, whereas the customary laws tend to emphasise mediation and reparation. These dilemmas are increasingly leading chiefs to blend the two philosophies, often producing judgements 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. On the basis of customs, the Morsak have the right to use the land, but give the Somba *kewatat*, or 25 per cent of the lease value, in this specific case.²⁸ But this is only relevant if the land lease can be accepted as secondary land use entitled for use by “outsiders.” Also on the basis of customs, the committee should have criticised the land lease, as “Kakwa customs do not allow land sales.”²⁹ Though the committee declared the Somba the legitimate party to sign the lease, the Morsak blocked the whole project and no law could evict them. This resulted in forcing the investor to withdraw the project. In Alero, government laws would support the proposal that the Yondu families leave. However, traditional 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 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 conflict that involves chiefs – particularly when such conflicts are reported as land-related, which was the case in Otogo and Mugwo. Even if conflicts between chiefs are reported as such, it will still be difficult to address this, as the existing laws give chiefs immunity from prosecution (GoSS b 2009: 52).

Conclusion

Drawing on cases in two rural settings in Yei River County, this paper elaborated 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 have strengthened the link be-

28 “*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 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).

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

tween 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 violence to escalate into wider conflicts, whether intentionally or unintentionally. This, to some extent, explains the rapid emergence of “ethnic conflicts” in South Sudan since the start of the interim period.

The paper has also shed new light on the debates on statehood and 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 paper 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 are not necessarily the immediate triggers of such conflicts. The conflicts in Mugwo and Otogo clearly demonstrated this conflation.

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Landreform und Konflikt im Südsudan: Erkenntnisse aus Yei River County

Zusammenfassung: Nach der Unabhängigkeit des Südsudan im Jahr 2011 wurde die Landreform zu einem wesentlichen Aspekt der Staatsbildung, teils um historisches Unrecht auszugleichen, teils aber auch, um künftige Konflikte um Land zu verhindern. Im Verlauf der Zeit wurde jedoch Land zum Ausgangspunkt für Konflikte, auch zwischen Gemeinden, in denen es keine Geschichte „ethnischer Konflikte“ gab. Anhand zweier Fallstudien ländlicher Gebiete im Yei River County im Südsudan zeigen die Autoren, dass diese Konflikte vor allem aus Widersprüchen im bestehenden Rechtsrahmen für Land und Boden entstehen. Die Widersprüche selbst führen sie auf den Top-down-Ansatz der Staatsbildung zurück, der den gesellschaftlichen und ländlichen Wandel – ein Ergebnis von Kolonialismus und Bürgerkriegen – vielfach außer Acht lässt.

Schlagwörter: Südsudan, Nationen- und Staatenbildung, Agrarreform, Bodenrecht, Sozialer Konflikt, Sozialer Wandel, Geschichte