

TRANSFORMING LAND GOVERNANCE AND STRENGTHENING THE STATE IN SOUTH SUDAN

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ABSTRACT

This article analyzes how transformations of land governance in the new Republic of South Sudan play into processes of everyday state formation. National land tenure reforms and decentralization policies have increased polarization between local public authorities in and around Yei Town, who vie for legitimacy amongst returning refugees, internally displaced people and migrants arriving in the wake of the civil war. Ambiguously worded national policies and shifts in the composition of the population provide a structure of opportunity that works largely to the advantage of chiefs and at the expense of other, more localized customary authorities. Our analysis shows how chiefly and state power are mutually reinforcing. Evolving notions of community land rights further legitimize the centrality of the state in land governance. Highlighting the institutional competition between state and customary authorities, as well as among customary authorities, our findings emphasize the centrality of the state – however limited its presence may be – in land governance, and nuance political economy analyses that overemphasize the role of ethnicity in land contestation in South Sudan.

IN SUB-SAHARAN AFRICA, LAND CONTINUES to be central to building political authority. Land governance is a major juncture where citizens

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engage with their authorities, and through which state authority is established or consolidated.¹ As a result, struggles over land governing authority – about who is in charge of issues such as attribution, administration and protection of land rights and dispute resolution, and what rules apply – become closely connected to processes of everyday state formation.² This article provides a detailed account of how different local public authorities – chiefs, sub-chiefs, headmen, ritual specialists, local government officials, and representatives of the state – vie for land governing authority in Yei Town and its surroundings in the 2012–2013 period. We observe how state attempts at land tenure reform and ambiguously worded decentralization policies by the Government of South Sudan feed into this contestation and influence (re)ordering of public authority in rural settings. They do so by providing a structure of opportunity that leads to certain local authorities being legitimated at the expense of others.³ Despite a limited institutional presence of the state, such processes effectively lead to increasing state authority in local land governance.

In Yei Town Payam, years of violent conflict and displacement have disrupted land governance by the state and greatly reduced the status of customary authorities,⁴ to the advantage of militarized actors. After the Comprehensive Peace Agreement in 2005, it remains unclear to many local communities which authorities have the legitimacy to govern land. As a result of the war, communities represent an amalgam of different groups. They include people that consider themselves as the pre-war inhabitants of the area as well as ‘newcomers’ such as internally displaced people and migrants from other areas and Sudan People’s Liberation Army (SPLA) soldiers and their families. Each of these groups has their own local leaders and voice their claims to land and settlement rights to different authorities.⁵ Control over local land rights and the ability to accommodate ‘newcomers’ entail key avenues for public authorities to claim local land governing authority. Local land relations have recently been further complicated by

1. Jon D. Unruh, ‘Land tenure and legal pluralism in the peace process’, *Peace & Change* 28, 3 (2003), pp. 352–377; Thomas Sikor and Christian Lund, ‘Access and property: A question of power and authority’, *Development and Change* 40, 1 (2009), pp. 1–22.

2. Sara Berry, ‘Debating the land question in Africa’, *Comparative Studies in Society and History* 44 (2002), pp. 638–668; Sikor and Lund, ‘Access and property’; Christian Lund and Catherine Boone, ‘Introduction: Land politics in Africa – constituting authority over territory, property and persons’, *Africa* 83, 1 (2013), pp. 1–13; Mathijs Van Leeuwen, ‘Localizing land governance, strengthening the state: Decentralization and land tenure security in Uganda’, *Journal of Agrarian Change* 17, 1 (2017), pp. 208–227.

3. See Christian Lund, *Local politics and the dynamics of property in Africa* (Cambridge University Press, New York, 2008).

4. Sara Pantuliano, ‘The land question: Sudan’s peace nemesis’ (HPG Working Paper, Overseas Development Institute, London, 2007), p. 3.

5. Ellen Martin and Nina Sluga, ‘Sanctuary in the city? Urban displacement and vulnerability in Yei, South Sudan’ (HPG Working Paper, Overseas Development Institute, London, 2011).

demands from foreign and Sudanese investors to secure large portions of (communally-held) agricultural land, and state attempts to regulate large-scale land acquisitions.⁶ In the case study below we show how public authorities that promote state interests, including military and higher-level traditional authorities like chiefs, are at an advantage. State institutions and legislation can also count on more support from migrants and displaced people from elsewhere who cannot substantiate their claims to landed property with historical evidence.

We build on the notion of legal plurality in order to unravel the unfolding of land governance dynamics and the constitution of public authority.⁷ Much research inspired by legal or institutional plurality focuses on the agency of local actors to 'forum-shop' and seek out validating authorities, or on how local public authorities legitimize themselves through strategically acknowledging land claims. Such research highlights the skillful strategizing of local actors and public authorities in staking claims to land and its governance, and in reworking reforms imposed from outside.

In contrast, our analysis emphasizes the structural opportunities that favor certain land claims above others and the drastic repercussions land reforms may actually have. Post-conflict migration and changes in the composition of the population open up local property relations and reshuffle the support base of different local public authorities. While the state remains in flux and cannot resolve the many duplications and gaps between the state and local authorities, nor provide a clear vision of what land tenure system to promote, it is nonetheless crucial in dispensing land governing authority.

Second, our focus on local contexts of competition and state-making from below leads us also to challenge some received interpretations of state formation in South Sudan that tend to focus on ethnic identities in local institutional competition,⁸ or interpret land disputes to resonate with antagonism between ethnic Dinka 'newcomers', typically seen as privileged by the Juba government, and original residents of the area.⁹ While such dynamics certainly play a role in institutional rivalry around land in Yei, our case study highlights the important consequences for land

6. Andreas T. Hirblinger, 'Land, political subjectivity and conflict in post-CPA Southern Sudan', *Journal of Eastern African Studies* 9, 4 (2015), pp. 704-722.

7. Franz Von Benda-Beckmann, Keebet von Benda Beckmann, and Melanie G. Wiber (eds) *The changing properties of property* (Berghahn Books, New York and Oxford, 2006); Lund and Boone, 'Introduction: Land politics in Africa'.

8. Adam Branch and Zachariah Cherian Mampilly, 'Winning the war but losing the peace? The dilemma of SPLM/A civil administration and the tasks ahead', *Journal of Modern African Studies* 43, 1 (2005), pp. 1-20.

9. Paul V. De Wit, 'Land property study in Sudan. Interim Report: Scoping of issues and questions to be addressed' (unpublished work, Norwegian Refugee Council, UNHCR and FAO, 2004); Pantuliano, 'The land question'; Martin and Sluga, 'Sanctuary in the city?'; Peter H. Justin and Mathijs van Leeuwen, 'The politics of displacement-related land conflict in Yei River County, South Sudan', *Journal of Modern African Studies* 54, 3 (2016), pp. 419-442.

governance of divisions and competition among authorities *within* ethnic groups. Such findings also complement literature that emphasizes how conflict around land in Africa often connects to processes of ethnic exclusion and contestation about autochthony and citizenship.¹⁰

The case study of Yei Town Payam is based on five months of ethnographic fieldwork by Marlie van de Kerkhof in 2012–2013 as part of a Masters thesis project,¹¹ and a visit to Yei by Mathijs van Leeuwen in November 2012 as part of the ‘Grounding Land Governance’ research programme.¹² Field research included in-depth interviews with representatives from local government, customary authorities, and citizens of Yei Town and the surrounding communities, as well as participation in a number of meetings in which the status of land was negotiated. All names have been anonymized.

Land, institutional competition and state formation

A growing body of literature analyzes how land governance and its reform may provide a key arena in which relationships between state and non-state actors evolve, and state formation actually takes place.¹³ Land governance is an important doorway for both state and non-state local public authorities to expand their power and authority at the local level. It is through dealing with land attribution and dispute resolution that local public authorities may establish or consolidate their power, (re)gain legitimacy, and generate local people’s confidence and trust.

Legal anthropology provides valuable entry points for exploring how new land governing authorities and regulations introduced by the state come to co-exist and compete with already existing authorities and related norms, rules, and conventions.¹⁴ Programmes aimed at reforming land rights and governance typically do not lead to formalization of land tenure arrangements and replacement of traditional institutions by statist ones. Rather, such interventions tend to nurture institutional multiplicity and

10. Mahmood Mamdani, *Citizen and subject: Contemporary Africa and the legacy of late colonialism* (Princeton University Press, Princeton, 1996); Bambi Ceuppens and Peter Geschiere, ‘Autochthony: Local or global? New modes in the struggle over citizenship and belonging in Africa and Europe’, *Annual Review of Anthropology* 34, 1 (2005), pp. 385–407.

11. Marlie van de Kerkhof, *Reconfiguring land governance in Yei, South Sudan; Contesting land governing authority* (Department of Human Geography, Planning and International Development Studies, University of Amsterdam, unpublished MA-thesis, 2014).

12. See <<http://www.nwo.nl/onderzoek-en-resultaten/onderzoeksprojecten/i/82/5982.html>> (10 January 2018).

13. Berry, ‘Debating the land question in Africa’; Unruh, ‘Land tenure and legal pluralism’; Sikor and Lund ‘Access and property’; Lund and Boone, ‘Introduction: Land politics in Africa’; Van Leeuwen, ‘Localizing land governance’.

14. Ben Cousins, ‘Legislating negotiability: Tenure reform in post-apartheid South Africa’, in Kristine Juul and Christian Lund (eds), *Negotiating property in Africa* (Heinemann, Portsmouth, New Hampshire, 2002), pp. 67–106; Sikor and Lund, ‘Access and property’.

competition over what regulations should apply, and which regulating bodies are authorized to take charge under what circumstances.¹⁵ In such settings of institutional multiplicity, local actors creatively rework and blend aspects of ‘modern’ and ‘traditional’ normative orders to substantiate their land claims, and strategically ‘forum-shop’ for validating authorities.¹⁶ Likewise, public authorities gain legitimacy and authority by tactically acknowledging claims to land and applying regulatory frameworks in resolving disputes.¹⁷ Such institutional competition is particularly severe in conflict-affected settings like South Sudan, as conflict-related displacement tends to distort the capacities, authority and legitimacy of land governing institutions and the rules applied. For instance, public authorities may lose legitimacy due to their affiliation with one of the warring parties, while internally displaced people without historical land rights may favor ‘new rules of the game’.¹⁸

This ‘bottom-up’ focus on institutional competition and the reordering of land-related authority is particularly relevant for understanding local processes of state formation.¹⁹ Recent scholarship on state formation considers it as a historical, context-specific and ongoing process of evolving relationships between diverse actors ‘doing’ and ‘imagining’ the state.²⁰ From such an understanding, the state is not a unitary ‘thing’ or structure, but ‘a significantly unbounded terrain of powers and techniques, an ensemble of discourses, rules and practices [...]’,²¹ which is reproduced in local encounters at the everyday level, by state and non-state actors alike.²² Central in this dynamic process is the negotiation and competition

15. See Franz Von Benda-Beckmann, ‘Riding or killing the centaur? Reflections on the identities of legal anthropology’, *International Journal of Law in Context*, 4 (2008), pp. 85–110.

16. Sara Berry, ‘Tomatoes, land and hearsay: Property and history in Asante in the time of Structural Adjustment’, *World Development* 25, 8 (1997), pp. 1225–1241; Von Benda-Beckmann et al., *The changing properties of property*; Lund, *Local politics and the dynamics of property*.

17. Von Benda-Beckmann, ‘Riding or killing the centaur?’; Jean-Pierre Olivier de Sardan, *Researching the practical norms of real governance in Africa* (Overseas Development Institute, London, 2008).

18. See Unruh, ‘Land tenure and legal pluralism’.

19. See also Naseem Badiy, ‘The strategic instrumentalization of land tenure in ‘state building’: The case of Juba, South Sudan’, *Africa* 83, 1 (2013), pp. 57–77.

20. Timothy Mitchell, ‘Society, economy and the state effect’, in George Steinmetz (ed.), *State/culture: State-formation after the cultural turn* (Cornell University Press, Ithaca, NY and London, 1999), pp. 76–97; Thomas Blom Hansen and Finn Stepputat (eds), *States of imagination: Ethnographic explorations of the postcolonial state* (Duke University Press, Durham, NC, 2001); Aradhana Sharma and Akhil Gupta, ‘Introduction: Rethinking theories of the state in an age of globalization’, in Aradhana Sharma and Akhil Gupta (eds), *The anthropology of the state: A reader* (Blackwells Malden, MA, 2006), pp. 1–42.

21. Wendy Brown, *States of injury: Power and freedom in late modernity* (Princeton, Princeton University Press, 1995), p. 174.

22. Yves van Leynseele, ‘“Seeing like a land reform agency”: Cultural politics and the contestation of community farming at Makhoba’, in Paul Hebinck and Ben Cousins (eds), *In the shadow of policy: Everyday practices in South African land and agrarian reform* (Wits University Press, Johannesburg, 2013), pp. 77–90.

between a multiplicity of both state and non-state actors that try to institutionalize and legitimize certain forms of coercion, power and authority.²³

The creation, expansion and penetration into society of the so-called 'state', as well as the bottom-up responses to this, are a core concern of this literature and of our research. Yet, state formation is not only about the development of an administrative hierarchy or the enforcement of regulation. It also entails the changing symbolic presence of the state, and the propagation of a particular 'idea of state'²⁴ that is communicated along with state expansion. Such imaginations of the state involve how citizens perceive themselves in relation to their authorities, including citizens' trust in and expectations of the authorities. They comprise ideas about 'citizenship', such as about which people legitimately reside within a state, and 'statehood', such as what citizens consider as authorities' legitimate reach of power and how they understand state sovereignty.²⁵ Writing on post-secession South Sudan, Andreas Hirblinger notes how the state and other actors involved in developing land reform policies have been instrumental in propagating a universal version of citizenship that aims to subvert more ethnic and traditionalist political subjectivities.²⁶ State formation thus involves the development of certain 'governmentalities', conventions and practices of state governance, and produces a particular subjectivity that may endorse or delegitimize local claims to authority. Regarding land claims, in the case of Yei, we will see how the notion of 'community' becomes a vehicle through which people make themselves visible to the state.²⁷

Furthermore, even public authorities and actors that consider themselves explicitly non-state may thus be central to state formation by their promotion of statutory regulations, by conforming to state-like ways of governance, or promoting the notion of statehood; while state authorities may resort to notions of 'community rights to land' to strengthen their authority. Moreover, in practice, there may be a lot more historical continuities and dialectics between so-called 'state' and 'non-state' or 'customary' authorities than such labels suggest.²⁸ Such institutional continuity is never fixed, and these categories are constantly reworked

23. See Tobias Hagmann and Didier Péclard, 'Negotiating statehood: Dynamics of power and domination in Africa', *Development and Change* 41, 4 (2010), pp. 539–562; Martin Doornbos, 'Researching African statehood dynamics: Negotiability and its limits', *Development and Change* 41, 4 (2010), pp. 747–769.

24. Philip Abrams, 'Notes on the difficulty of studying the state', *Journal of Historical Sociology* 1, 1 (1977/1988), pp. 58–89.

25. See Hansen and Stepputat (eds), *States of imagination*; Lars Buur, 'Reordering society: Vigilantism and expressions of sovereignty in Port Elizabeth's townships', *Development and Change* 37, 4 (2006), pp. 735–757.

26. Hirblinger, 'Land, political subjectivity and conflict'.

27. Cf. Dereck Fay and Deborah James (eds), *The rights and wrongs of land restitution: Restoring what was ours* (Routledge-Cavendish, London and New York, 2009).

28. See Christian Lund, 'Twilight institutions: Public authority and local politics in Africa', *Development and Change* 37, 4 (2006), pp. 685–705.

‘from within’. In Yei Town Payam, we observe a *variety* of so-called ‘customary’ authorities, who do not only compete with the state, but also with each other, and who each represent different blends between custom and state.²⁹ This blending may help explain how the state can be central to reordering land relations even in settings where it barely has an institutional presence.

While strongly indebted to literature on institutional multiplicity and negotiated authority, a key tenet of our article is that we should not assume that the outcomes of institutional competition and local struggles for authority entirely depend on the strategic agency of local actors and public authorities. Instead, the ability to successfully stake land claims and obtain state legitimation greatly depends upon pre-existent geographies of power and rural political economies.³⁰ Christian Lund reminds us that the consolidation of a particular public authority hinges on both its internal organization and on opportunities that arise through changes in the context.³¹ In the case of Yei, important contextual changes are recent land reforms and ambiguously worded decentralization policies that lead chiefs and other public authorities to orient their attention to regional towns like Yei, hoping to gain from opportunities brought by new aid flows and positions in new government bodies.³² At the same time, post-conflict migration and resettlement continue to open up land relations, providing public authorities new opportunities to disburse settlement rights and expand their jurisdiction over people.³³ In the competition over land governing authority, certain local level authorities are better positioned to take advantage of these opportunities. Moreover, the reordering of land governing authority was accompanied by a redefinition of ‘community’ land rights, which led to a reimagining of the centrality of the state in land governance. As such, the case underscores that the analysis of negotiated authority needs to be complemented by insights from political economy.

Competing claims on land and land governing authority in Yei Town Payam

Yei Town Payam is located in what, at the time of our fieldwork, was Central Equatoria State, one of the ten states of South Sudan,³⁴ bordering

29. See also Cherry Leonardi, *Dealing with government in South Sudan: Histories of chiefship, community and state* (James Currey, Suffolk and Rochester, 2013)

30. See Berry, ‘Tomatoes, land and hearsay’; Catharine Boone, ‘Property and constitutional order: Land tenure reform and the future of the African state’, *African Affairs* 106, 425 (2007), pp. 557–586; Olivier de Sardan, *Researching the practical norms of real governance*.

31. Lund, *Local politics and the dynamics of property*, p. 18.

32. See Leonardi, ‘Dealing with government in South Sudan’.

33. See Lund and Boone, ‘Introduction: Land politics in Africa’.

34. In October 2015, the number of states was increased to 28, as a result of which Yei River County, in which Yei Town Payam is located, became part of Yei River State.

northern Uganda and north eastern DR Congo. Though the name suggests it is urban, Yei Town Payam comprises six Bomas ('villages'), including the urban Yei Town Boma and the five (semi) rural Bomas surrounding it. The town was the SPLA headquarters from 1997 to the signing of the Comprehensive Peace Agreement (CPA) in 2005. During the civil war, inhabitants of Yei Town were forcefully relocated and their residences and land were occupied by the military, civilians displaced from other war-affected areas, and migrants. Since the CPA, the return of the original residents led to numerous land disputes.³⁵ Many disputes were among the returnees, who were mainly ethnic Kakwa. Some of these disputes gained an ethnic dimension, notably when they involved SPLA soldiers, many of whom were Dinka and originated from other parts of southern Sudan. Even if many of the soldiers, displaced people, and migrants were actually not Dinka, their occupation of land in the town was often understood in terms of a Dinka political agenda to acquire land in the region. This ethnic dimension gave these land conflicts an inflammable nature. In one particular case, a dispute about land ownership between a returnee and an army commander resulted in a town-wide ethnic mobilization and the burning of numerous houses.³⁶

The contestation over land and its governance extended also to the rural areas surrounding the town, where displacement had left the pre-war boundaries between plots and communities in disarray, resulting in disagreement about which clan held land and governing authority. Such conflicts were complicated by the legacies of colonial resettlement programmes: some of the resettled communities continued to claim a role in governing their former ancestral lands, even if these were now occupied by others. This became notably problematic with the arrival of outside investors that wanted to acquire land for agricultural development projects in the area. In Otego Payam, for instance, a land dispute ensued when an investor agreed on a land lease with the previous occupants, while the actual residents were not consulted or remunerated for the deal.³⁷ The arrival of displaced people and migrants from elsewhere, the expansion of the town, and the increasing monetary value of land further intensified contestations over land governing authority. Local authorities were not equipped to deal with these land disputes. The civil war had not only reshuffled land occupation and ownership, but had also resulted in confusion and disagreement about who was in charge of land and the rules to be applied. The resulting contestations over

35. De Wit, 'Land property study in South Sudan'; Pantuliano, 'The land question'.

36. See Justin and Van Leeuwen, 'The politics of displacement-related land conflict'.

37. Peter H. Justin and Han van Dijk, 'Politics of land reform and conflict in rural South Sudan: The case of Yei River County' (presentation at the conference 'Justice in Sudan and South Sudan: Historical legacies and contemporary challenges', Durham University, 15–16 December 2014). See also the video-documentary 'Governance off the ground', https://www.youtube.com/watch?v=mkG_g3h_5Og.

land governing authority took place against a backdrop of the erosion of pre-war local institutions, a collapse of the state judiciary system, and a strong military presence. To properly appreciate the evolving institutional competition, we will now discuss the historical development of public authority in Yei.

Preceding the colonial administration, the area of Yei town was occupied by different clans, mainly of ethnic Kakwa descent, residing in territorial units, the *Menu*. These *Menu* were governed by a series of different traditional leaders, each having their particular role such as rainmaker, custodian, or traditional healer.³⁸ The Belgian and British colonial administration resettled several clans from their ancestral areas. As part of indirect rule, they also established chieftainships by appointing loyal individuals to collect taxes and recruit labor for the colonial administration and to dispense justice locally.³⁹ Appointed chiefs sometimes assumed land governing roles from their traditional counterparts. Chieftainship was made inheritable to male children within the chiefly family in contrast to the earlier custom of passing it on within the clan.⁴⁰

This system of chiefs survived decolonization and was integrated into the administrative set-up of the Republic of Sudan. By the time the SPLM/A was established and the second civil war started in 1983, local institutions created by the British remained largely unaltered.⁴¹ When violence spread over Equatoria in the 1980s, many chiefs and government representatives fled. It remains unclear whether the SPLM/A provided any type of administration in this period, with some arguing there was no substantial administration, while others pointed out that some form of local government continued to operate in which local chiefs played various roles.⁴² Both the Sudan Armed Forces and the SPLA relied on chiefs for recruiting new conscripts and providing food for combatants, and started to appoint their own chiefs.⁴³ After a 1991-split in the movement and growing concerns about local legitimacy in the areas it controlled, SPLM/A established a system of civilian administration. It was organized according to administrative units of Counties, Payams and the lowest-tier

38. Ibid.

39. Markus Virgil Hoehne, *Traditional authorities and local government in Southern Sudan* (Max Planck Institute for Social Anthropology, Halle/Saale, 2008); Cherry Leonardi, 'Points of order? Local government meetings as negotiation tables in South Sudanese history', *Journal of Eastern African Studies* 9, 4 (2015), pp. 650–668.

40. Justin and Van Dijk, 'Politics of land reform and conflict'.

41. Øystein H. Rolandsen, *Guerrilla government: Political changes in the Southern Sudan during the 1990s* (Nordiska Afrikainstitutet, Uppsala, 2005).

42. Ibid.; Douglas Hamilton Johnson, *The root causes of Sudan's civil war* (James Currey, Oxford, 2003).

43. Douglas Hamilton Johnson, 'The Sudan People's Liberation Army and the problem of factionalism', in Christopher Clapham (ed.), *African guerrillas* (James Currey, Oxford, 1998), pp. 53–72; Cherry Leonardi, 'Violence, sacrifice and chiefship in Central Equatoria, Southern Sudan', *Africa* 77, 4 (2007), pp. 535–558.

Bomas, which were headed by chiefs answerable to the local army commanders.⁴⁴ These newly established structures duly competed with the existing structures of the military and the relief wing of the movement, the SRRA.⁴⁵ The interim government of South Sudan established after the 2005 Comprehensive Peace Agreement sought to make all politico-administrative units accountable to national government by formally acknowledging the chiefs and incorporating them into local government structures. In practice, local government did not change much after the CPA.⁴⁶

Many SPLA commanders and militia leaders also continued to occupy positions in the local state bureaucracy in the post-secession period. Moreover, as the military was not yet demobilized, soldiers could afford themselves privileges in line with *de facto* military rule. In Yei town, soldiers often assumed that – as the liberators of the South – they naturally held the right to be in charge of land and its governance, pointing out they ‘fought for the land’, they ‘lost blood’, ‘lost [their] brothers’, or ‘lost limbs’.⁴⁷ Soldiers would argue that only the state could trump their claims to land, often complementing this view with the expression: ‘The government is in charge and we are the government’.⁴⁸ They enjoyed a continued status of being above the rule of law. Civilians interviewed recounted numerous stories about land occupation, abuse, rape, and killings by soldiers. The Kakwa returnees especially feared soldiers. In contrast, people that had fled or migrated from elsewhere during the war had settled amongst the soldiers and enjoyed their protection through kinship, marriage or ties of friendship, often treating higher ranking army officers as sovereigns and attributing them land governing authority.⁴⁹

From 2011, this situation started changing as the post-secession government, with support from foreign donors, retook key governance functions, unrolled reform programmes and expanded its reach to urban and rural communities. Even though the confusion over local land governing authority persisted and competition between state and non-state public authorities was rife, people in Yei increasingly encountered the state when seeking land documents from government offices; during surveyors’ demarcation visits; when being taxed for road construction; observing the construction of buildings for the Boma administration; having to wait in

44. Nadarajah Shanmugaratnam, *Post-war development and the land question in South Sudan*. Paper presented at Afrasian Centre for Peace and Development, International Symposium on Resources under Stress, 23–24 February, Kyoto, Japan.

45. Rolandsen, *Guerrilla government*.

46. Lotje De Vries, *Facing frontiers: Everyday practice of state-building in South Sudan*, PhD Thesis (Wageningen University, Wageningen, unpublished PhD dissertation, 2012).

47. Interviews, SPLA soldiers, 18 November, 2 December 2012. See also Cherry Leonardi, ‘Paying “buckets of blood” for the land: Moral debates over economy, war and state in Southern Sudan’, *Journal of Modern African Studies* 49, 2 (2011), pp. 215–240.

48. Interview, SPLA soldier, 30 November 2012.

49. See also Justin and Van Leeuwen, ‘The politics of displacement-related land conflict’.

the Payam Director's office; and learning about new government land policies through NGO workshops and the radio. Such everyday encounters effectively 'reproduce[d] the myth of the state by literally implanting it in people's lives'.⁵⁰

Land policies and the acknowledgement of customary tenure

The national level policies introduced after the 2005 CPA were not conducive to settling contestations over local land tenure and governance. Policy discourses gave mixed messages regarding the roles of the new decentralized public authorities in land governance and the definition of community rights. In its land and decentralization policies, the government needed to accommodate contrasting, yet equally urgent, policy challenges. Notably, how to accommodate land claims from returning displaced people, whilst guaranteeing the land rights of recent settlers? How to enhance economic development and agricultural productivity, whilst regulating large-scale land acquisitions? Effectively, land reform may be seen as a core strategy of the Government of South Sudan for establishing state legitimacy, by countering tenure insecurity and addressing some critical land-related grievances that evolved under its despised predecessor, the Khartoum government.⁵¹ Yet, these objectives were hard to reconcile with the government's efforts to provide foreign investors with land for large-scale agricultural developments.

Policies proved especially ambiguous in terms of clarifying customary tenure rights. Customary law and practice that governed much of the land in current South Sudan were never officially acknowledged in state legislation prior to the CPA.⁵² In recognition of this legislative deficit in the 'old Sudan', the SPLM used the notion 'Land Belongs to the People' to mobilize popular support, and the customary ideal of land as a 'social right' granted 'irrespective of wealth and social status' later made its way into land policy.⁵³ The CPA underscored the need to recognize customary authority and regulations in resolving land disputes, in demarcating land and in negotiating land deals with foreign investors.⁵⁴ Later policies, however, tended to restrict the power of customary authorities. For

50. Thomas Blom Hansen and Finn Stepputat, 'Introduction: States of Imagination', in Hansen and Stepputat (eds), *States of imagination*, pp. 1–38, p. 21.

51. Hirlinger, 'Land, political subjectivity and conflict'; Justin and Van Dijk, 'Politics of land reform and conflict'.

52. Shanmugaratnam, 'Post-war development and the land question'.

53. David K. Deng and Anuradha Mittal, *Understanding land investment deals in Africa: Country report South Sudan* (The Oakland Institute, Oakland, 2013), p. 14.

54. 'Comprehensive Peace Agreement between the Government of the Republic of Sudan and the Sudan People's Liberation Movement/Sudan People's Liberation Army'. Nairobi, Kenya, 9 January 2005, p. 49.

instance, the 2009 Interim Constitution emphasized that state-recognized local or customary authorities would be made accountable to newly formed higher-level councils.⁵⁵

Moreover, the detailed design of the institutional set-up for land governance was not elaborated in the CPA and would have to wait until the establishment of a Southern Sudan Land Commission. Decentralization policies, notably the 2009 Local Government Act, provided for the establishment of Local Government Councils at three administrative levels (County, Payam, and Boma level) in which local customary authorities would be integrated.⁵⁶ However, procedures for setting up County Land Authorities and Payam Land Councils – which were essential for effective decentralization of land registration, local dispute resolution and decision-taking on land acquisition by (foreign) investors – were not in place by early 2012, and few of these councils were actually established.

While state legislation paid lip-service to the acknowledgement of customary authorities, the decentralization process in Yei Town Payam demonstrated the discretionary powers exercised by government in recognizing and formalizing customary authorities. Whereas chiefdoms had existed in Yei at Boma level before the war, the Act explicitly stipulated that chiefdoms still need to be established.⁵⁷ Government officials thus proceeded to appoint a new Head Chief for the Payam Court and six executive chiefs for Boma Courts, and incorporated sub-chiefs into sub-Bomas. Many chiefs selected were from the SPLA ranks and replaced existing chiefs.

Decentralization and the authorization of chiefs

Chiefs, more so than other customary authorities, had always held intermediary positions, historically playing a central role in both local government structures and networks of kinship and patronage, while their precise responsibilities depended both on their capacities to successfully claim legitimacy ‘downward’ as community representatives and ‘upward’ as extensions of higher-level governing authorities. Decentralization may be seen as a new phase in emboldening the chiefs. Government officials in Yei in 2012 portrayed chiefs as the ‘leaders of the Boma’ and ‘the last tier of [decentralized] government’. While their new roles as Boma administrators largely corresponded with their pre-war administrative functions, decentralization led to strengthening their position in land governance.

55. ‘The Interim Constitution of Southern Sudan, 2009’, pp. 10, 15, 63. See also ‘The Transitional Constitution of the Republic of South Sudan, 2011’, Juba, Government of South Sudan.

56. ‘The Laws of Southern Sudan, the Local Government Act, 2009’, p. 9.

57. *Ibid.*, p. 57.

They now identified and reported relevant land issues to Payam authorities, solved land disputes, and acted as intermediaries between land-seeking investors and rural communities. Payam administrators dealing with land disputes asked chiefs to accompany them on their field inspections. Government officials also requested chiefs' support in land-related functions such as dispute resolution and formalization of administrative boundaries. For example, a 2012 local government initiative to demarcate the Payam boundaries, which was supported by the German governmental development agency (GIZ), relied on chiefs to assist the surveyors in identifying the original borders, witness the demarcation process on behalf of the community, and sign the land leases as community representatives.

Government also granted authority to chiefs by giving them a seat at the table as community representatives at meetings between government, NGOs and investors. Chiefs acted as agents or gatekeepers in local community development in ways that increased their local status and authority. They had considerable leverage to make demands on donors through their recent authority to grant 'community' approval for land leases in terms of the new Land Act.

State legislation aimed at curtailing chiefly power in land governance often proved to be ineffective in practice. For instance, Payam and County officials pointed out to us that nominally chiefs should never operate alone in the identification and allocation of plots to third parties. According to the 2009 Land Act, allocation of plots exceeding 250 acres required approval of the relevant state Ministry and of local government (Payam and County representatives).⁵⁸ Yet, in many land deals, chiefs stepped forward as interlocutors for their communities or would be the signatories of land deals with investors and government on behalf of the community.

At the same time, chiefs who historically owed much of their land governing authority to their positions in the local administration and recognition by state-like authorities, continued to rely on their networks of kinship and local patronage to gain legitimacy. In line with popular local notions of chiefs as legitimate 'customary' authorities, they would present themselves as absolute *Boma* authorities. In so doing, they invoked the past in which the state was 'absent' and explained that they 'have always been in control' or 'were in control even before the government showed up'.⁵⁹ Chiefs linked *Boma* chiefly authority to being a strong natural leader or patron: possessing the ability 'to use a hard voice', 'to really talk

58. Since a Ministry of Land had not been set up yet, land deals were often referred to the Ministry of Agriculture and Forestry.

59. Interview, Chief Banda, 16 October 2012; interview, Chief Chimwemwe, 30 October 2012; interview, Chief Mangaka, 12 November 2012; interview, Head Chief, 2 October 2012; stakeholders workshop Yei town, 19 December 2012.

in front of people',⁶⁰ or to their skills as warriors and power to decide over death in past times. Additionally, chiefs could now claim to be the lowest tier in decentralized government, and stated that they were 'appointed by the government' or 'elected' as *Boma* authorities. According to the chiefs, this included authority over land: 'we control the people and people stay on the land, which is why we are in charge of the land as well'.⁶¹

Other traditional authorities could not readily claim legitimacy with reference to decentralization. One such position was that of the *monyé menu*, usually translated as 'custodian' of the land. The local authority of the *monyé menu* had, in fact, already eroded significantly prior to decentralization. In some clans, different sons of a deceased *monyé menu* disputed who had inherited their father's powers, and operated next to each other. Some *monyé menu* had even been appointed or elected as headman, sub-chief or chief, adding to the confusion about the division of roles.

The *monyé menu* we spoke to, however, claimed that land was *their* customary responsibility and that they and not chiefs should be in charge of it. As custodians they protected the land and 'secured life' through performing rituals to bring good weather and blessing the seeds.⁶² Against the background of conflict-induced and post-conflict migration and resettlement, they also served as the first 'stop' for people seeking access to land. *Monyé menu* underscored their claim to authority over land by referring to the customary rule stating that all hunters should give one front leg of their catch to the *monyé menu* in acknowledgement of his position.⁶³ According to *monyé menu* interviewed, traditionally chiefs had been jurisdictional heads 'deciding over death', judging over good and bad conduct of their subjects. The current recognition of chiefly authority over land administration, they argued, resulted from confused notions of power and jurisdiction. Two types of jurisdictions that were previously separated, the 'jurisdiction over persons' and 'the functional jurisdictions' over land,⁶⁴ had become blurred and wrongly combined in the person of the chief. Some believed this mixing up was a deliberate government strategy to gain control over the *Bomas* through appeasing the chiefs. To illustrate the error of this, the *monyé menu* narrated stories about chiefs' involvement in selling land without communities knowing, or pointed out that their deliberate ignoring might upset the ancestors. *Monyé menu* also

60. Interview, Chief Stephen, 9 September 2012; interview, Chief Mangaka, 12 November 2012; interview, Head Chief, 2 October 2012; stakeholders workshop, Yei town, 19 December 2012; interview, Chief Banda, 16 October 2012.

61. Interview, Chief Mangaka, 12 November 2012; Stakeholders workshop, Yei town, 19 December 2012.

62. Interview, landlord, 2 November 2012.

63. Interview, *Monyé menu*, 18 November 2012; focus group discussion with several *monyé menu*, 31 December 2012.

64. Lund and Boone, 'Introduction: Land politics in Africa', p. 4.

claimed to be more accessible to rural residents, and argued that chiefs spent most of their time in town where they tried to establish good relations with the government and development agencies to promote their own political careers.

Chiefs, on the other hand, stressed that the *monyé menu* were deceiving the people and had no authority over land whatsoever.⁶⁵ They claimed that the *monyé menu* had been merely responsible for the animals on the land under their charge.⁶⁶ In the most favorable representations they depicted them as temporary caretakers over the land, in the absence of chiefs. Chiefs described the ritualized gift-giving from the past as evidence of their lower status, considering that, traditionally, the chiefs would receive the major part of the catch. They considered it an illegal practice that some *monyé menu* continued to collect fees for use of land for cultivation.

In addition, authority over land was also claimed by the *monyé kuro*, or land-owning clan-elders, who were assumed to be the descendants of a mythical ancestor, after whose sons the current *Bomas* were named. Elderly people explained that, in the past, when those landowners went away for hunting for longer periods they would appoint a *monyé menu* to guard the land. Yet, in these matters they would always have to consult other customary authorities like rainmakers. *Monyé kuro* interviewed opposed the assertions of *monyé menu* to have absolute authority over land, pointing out that although their role might have been to oversee the land in the absence of the owner, land allocation had always remained their own responsibility.⁶⁷ Like *monyé menu*, they disputed the authority over land of the chiefs, whom they considered to be in charge of juridical matters⁶⁸ and whom should not have a role in selling or allocating land.⁶⁹

Both *monyé menu* and *monyé kuro* were not taken seriously by government representatives or were even explicitly opposed by them. State officials explained that over time *monyé kuro* had conceded land governing authority to the *monyé menu* and chiefs. Some pointed out how the *monyé kuro* had lost local legitimacy by attributing large plots of land in irresponsible ways and harming local people, and argued that their power should effectively be broken. Other officials simply argued that land administration was part of the duties of government administration, and even if *monyé menu* sometimes played a role in blessing land, to their minds the chiefs were in charge of land at Boma level.

65. Interview, Head Chief, 2 October 2012; Focus group discussion, interview, Chief, 1 November 2012.

66. Focus group discussion and interview, Chief, 1 November 2012.

67. Interview, *Monyé kuro*, 15 December 2012.

68. Interview, *Monyé kuro*, 11 October 2012.

69. Interview, *Monyé kuro*, 16 October 2012.

The above examples of competition for land governing authority, however open-ended, show how decentralization reorganized local land relations in the absence of clear policies on customary tenure and land allocation roles. Decentralization worked in favor of chiefly factions that successfully positioned themselves as intermediaries between government and community and could claim authority at different levels by marrying local authority over land with the authority to 'govern community'. State policies privileged chiefs by attributing them an important role in the administration of the *Boma* and the *Payam*, granting them land governing authority. However, these practices turned other, more localized customary authorities subordinate to the chiefs in the new administrative hierarchy. The claims of *monyé menu* and *monyé kuro* to land governing authority stood little chance in the prevailing legal-political context.

Authorities' legitimacy among local residents

Changes in the composition of the local population affected the legitimization of these authorities among local residents and polarized the customary leadership roles along the same lines as the state decentralization initiatives. The combined effects of wartime displacement, voluntary migration and wider urbanization resulted in Yei's population becoming an amalgam of people, including the Kakwa and other ethnic communities that considered themselves the original residents of the area as well as displaced people, migrants, and (former) SPLA soldiers and their families from elsewhere. During the war there had been considerable flexibility regarding the accommodation of displaced people and soldiers. In the post-secession period, however, the arrival of new people became increasingly contentious. Conflicts over land control and ownership were exacerbated as a result of the growing monetary value of local land, as well as the growing realization that recent arrivals might settle on a permanent basis.⁷⁰

Kakwa residents and migrants/displaced people had different perceptions of the ideal division of roles among customary authorities, as well as between customary authorities and the state. Especially in rural areas, Kakwa emphasized that diverse customary authorities – *monyé kuro*, *monyé menu*, rainmakers, and chiefs – were interdependent and each had their own responsibilities in land governance. Most Kakwa we spoke to considered that for everyday disputes about family land or questions about boundaries, people should approach the *monyé menu*, or that *monyé menu*, *monyé kuro* and chiefs should work together when dealing with such land issues. These local, customary authorities were considered crucial for their

70. Justin and Van Leeuwen, 'The politics of displacement-related land conflict'.

spiritual powers of blessing or cursing land and people and for advice on land affairs. Most Kakwa considered chiefs first and foremost as local administrators, who mainly represented the community and defended the interests of the community as a whole. People residing in rural *Bomas* close to town tended to attribute more responsibilities to the chiefs for land allocation, demarcation and registration. Yet, they rarely considered chiefs as having the sole authority over land. The distribution of roles was, for example, evident in land allocation, where chiefs were seen as responsible for assessing the background of a person asking for land, while the *mony menu* and *mony kuro* would do the actual attribution of plots after the chiefly approval. Kakwa residents were often quite negative about the chiefs. They experienced the headmen and *mony menu* as being more approachable, and recounted how many chiefs from the rural communities were largely absent and preoccupied with attending meetings in Yei town with government and donor agencies, hoping to access the political and material resources that came with allegiance to the state and its decentralization project.⁷¹ Chiefs' legitimacy was also called into question in the numerous accounts of their trading community land without involving their community or the other customary authorities.

In contrast, migrants and displaced people from elsewhere tended to refer to 'the government' as having the authority over land. This group often attributed everyday land governance of family and communal lands to a state official, the *Payam* Director. Migrants and displaced people would typically explain that 'modern systems of land administration are now in place' in ways that rendered traditional leaders as 'unnecessary' and 'something of the past'.⁷² Migrants and displaced people generally acknowledged chiefs' land governing authority on the basis of their role as *Boma* administrators in the new decentralized government structures and not on the basis of their customary roles. They also emphasized the important administrative roles of Executive Chiefs, since 'they are part of the government' and since 'they manage the people'.⁷³ Yet, it should be noted that many of these 'newcomers' had acquired land rights through alternative (non-traditional) channels and did not consider chiefs or government administrators to be in charge of land governance whatsoever. Many of them had acquired land rights through personal relationships with self-appointed headmen, (former) sub-chiefs, or army commanders. In case of local land disputes, these 'newcomers' would return to those affiliates. Wealthier and well-connected migrants and displaced people with business

71. See Leonardi, *Dealing with government in South Sudan*.

72. Focus group discussion with youth, Yei Town Boma, 12 October 2012; Focus group discussion, Jansuk Boma, 29 October 2012; Focus group discussion with youth, Ronyi Boma, 1 November 2012.

73. Focus group discussions, 5 and 8 October 2012; Interview, 1 November 2012.

credentials or holding positions in the military tended to directly approach the *Payam* Director or Commissioner if they experience a land problem.

The changing opportunity structures in relation to land governing authority were particularly visible in the way the notion of ‘community land’ was disputed between the ‘newcomers’ and Kakwa residents. Legislation failed to clarify who was actually entitled to attribute so-called community land to newcomers. While the Land Act put public and private land under the control of the chiefs at *Boma* level, and the *Payam* Land Council at *Payam* level, the ownership of community land was not elaborated upon in legislation.⁷⁴ Government representatives and recent migrants and internally displaced people tended to claim that the government of South Sudan was in charge of the community’s land, on behalf of its people. To them, the chiefs were a mere extension of the government in the communities. Theirs was a lower administrative function, and the large-scale attribution of land clearly fell beyond their responsibility and was rather the role of higher level government administrators, like the *Payam* Director, the Commissioner or even the national government.

In contrast, Kakwa people and their chiefs argued that large-scale land acquisition should be brokered in consultation with and be approved by the ‘original community’: those people that had historically resided in the area and should thus be considered owners of the land. To support this argument, they often paraphrased a statement from the 2009 Land Act that ‘all land in Southern Sudan is owned by the people of Southern Sudan’,⁷⁵ and argued that chiefs – in their capacity as state officials – should act on behalf of the community. They often stressed the need to involve other customary authorities, for their knowledge and blessings. Confronted by the notion of ‘community’ as propagated by the government and the migrants and displaced, residents came to realize that if they wanted to have a say in the governance of their lands they had to be recognized by the government as a community.

Among the Kakwa residents a new category of community intermediaries or representatives emerged, who in negotiations with the state and investors presented themselves as organized *Boma* communities and passage points for external actors seeking land. To this aim, they established so-called Community Land Committees at *Boma* and *Payam* level, drafted resolutions asking for official recognition of their land as ‘community land’, and for the resettlement of displaced people currently residing on ‘their’ community lands. They directed these claims to the *Payam* Director and sought legitimacy for them by organizing meetings within

74. The Land Act of 2009 recognizes community land as one category of land ownership, and considers that: ‘community land as land owned by the community and regulated by the community chief/leader/king according to the customary law of the community’.

75. ‘The laws of Southern Sudan, the Land Act, 2009’, p. 12.

the *Boma* and in town. People in rural communities we visited appreciated the construction of *Boma* offices, as this showed that the government took them seriously as a community. Similar practices happened among displaced people, migrants and soldiers. They started to organize themselves along ethnic lines, and appointed their own headmen and chiefs, in a bid to become communities eligible for their own decentralized government structures, including local autonomy over land governance. This shows how decentralization, besides creating space for reclaiming land governing authority, stimulated institutionalization.

Strengthening the state through transformed land governance

The increase in migrants and displaced people and related shifts in local land relations together with the institutional competition accompanying decentralization resulted in an increasing presence of the state of the Republic of South Sudan in the every-day life of its citizens. Some interviewees reasoned that the further incorporation of the chiefs in the state administration simultaneously reinforced chiefly traditional authority and a strengthening of the modern state, which could now be seen to deliver development assistance, despite lacking capacity for service delivery. Others referred to the further incorporation of chiefs in local government structures as attempts by the state to make chiefs cooperative, to co-opt communities, and so expand the reach and legitimacy of the state. In this, they even observed an actual weakening of chiefly authority to the advantage of state power in the allocation of land, as higher government officials mainly dealt with outside investors, without even consulting the chiefs.

Decentralization further reproduced state power through the establishment of a bureaucratic hierarchy of executive chiefs, sub-chiefs and headmen. While traditionally Yei had only one chief, now there were six executive chiefs and numerous sub-chiefs. Considering that an increase of inhabitants in a locality might result in the creation of an administrative unit, some headman and sub-chiefs reportedly encouraged settlement in their areas, with the aim of getting a promotion. The reforms also redefined the scope of local authority: while *monyé menu* and *monyé kuro* legitimized their local authority with reference to their roles in land governance, the state's decentralized land governance structure was built around administrators with a larger portfolio of roles and responsibilities. Effectively, chiefs came to govern both territory and its people.

Moreover, the accountability of the chiefs changed. Interviewees observed how chiefs increasingly resided in Yei town, the center of the County, where all negotiations with government, investors and NGOs took place. Whereas authority previously depended on establishing good relations with local land holders, current chiefs instead focused on acquiring a seat at the

decision-making table and building relations with government and entrepreneurs interested in land investments. Decentralization thus provoked an up-scaling of customary authority, with chiefs gaining roles both as legitimate land governing authorities and as community representatives and intermediaries with the state and stakeholders from outside the community. Yet, customary authorities like the *monyé menu* continued to rely on building authority mostly in localized settings where competition with chiefs was also increasing.

It is important to point out that the state typically did not obtain a physical presence within the villages, nor did the state execute all land governing tasks *per se*. Nonetheless, increasingly the state defined who was in charge of local land administration. A project that started as decentralizing land governance and acknowledging customary authority in fact resulted in state consolidation. While chiefs had maintained their customary positions, they were also acknowledged in the decentralized state at the expense of other forms of customary authority. Decentralization thus created a new 'structure of opportunity' in which chiefs were best positioned to benefit and assume places in the state administration.⁷⁶ This was based on their past functions as well as on their ongoing practices of directing their focus away from the rural areas to the towns where they could be effective 'forum shoppers' and be 'forum-shopped' by state and non-state actors.

But state formation in Yei was not just about the re-organization of an administrative hierarchy and the introduction of state legislation. It also involved a changing symbolic presence of the state, propagating new notions of state responsibilities and citizenship.⁷⁷ Local residents increasingly perceived land governance as a domain of state authority,⁷⁸ rather than a shared responsibility between customary and state institutions, with chiefs being regarded as state representatives. This view of the state as key authorizer in land governance was expressed in the increasing appreciation of formal community land registration, also among the Kakwa population. Though many residents continued to acknowledge the customary role of chiefs in land governance, they considered state recognition as an important source of chiefly authority. Even public authorities and local actors on the ground who did not seem to benefit directly from decentralization directed their attention to the state. They did so by adopting and trying to rework the flexible and malleable notion of community. In institutional competition, it had become important to be 'visible', with both 'newcomers' and 'original people' attempting to produce

76. Cf. Lund, *Local politics and the dynamics of property*.

77. Cf. Hirblinger, 'Land, political subjectivity and conflict'.

78. See also Leonardi, 'Paying "buckets of blood" for the land'.

'legitimate communities' that could be recognized within the decentralization framework and be granted land governing authority.

These imaginations of the state as a key actor in land governance were heterogeneous. Just as the state manifested itself differently in different localities, so were citizens' perception of and interactions with the state. These imaginations of the state at the local level were contested. As illustrated above, the division between those promoting and those resisting the expansion of state authority in land governance coincided with the divide between migrants/displaced people and returnees. Migrants and displaced people were more favorable of a central role of the state in land governance, and they conjured images of the state as protector of equal rights in line with the constitutional principles of land as a 'social right' and the state as modern agent of change.⁷⁹ They favored arrangements in which the state governed land on behalf of community. Critically, the attribution of responsibilities for large-scale land allocation of community land to higher-level state authorities enabled them to re-open negotiations of local land relations.

In contrast, Kakwa disapproved of increasing state control, and several conspiracy theories circulated. Whilst many Kakwa considered that the rural Bomas were still the domain of their own people, they had the feeling that Yei town represented the state, filled up with newcomers and government officials who did not represent their interests. Government conceptualizations among the Kakwa population sometimes leaned towards the idea of an omnipresent, external and abstract state detached from its daily existence. 'The state is everywhere', or 'they are planning an underground thing against us' were some of the expressions encountered that exemplify such a notion of the state.⁸⁰ People who still had vivid memories of the war against North Sudan interpreted their current encounters with the state in terms of their past experiences and compared the South Sudanese state to 'the Arabs', meaning people from north Sudan, particularly the Khartoum government. They would say: 'They [government] are just like the Arabs. They are planning to take our land from us!'⁸¹ Other people equated the state with 'Dinkas', the ethnic group that was strongly represented in the SPLM/A and among the migrants and displaced in Yei, rendering the state less abstract and attributing it with an antagonist face.

The fact that the numbers of migrants and displaced people had steadily increased during and since the war was a contextual factor with large consequences for which claims to land governing authority garnered the

79. Deng and Mittal, *Understanding land investment deals in Africa*.

80. Interview, 12 November 2012.

81. Focus group discussion, Ronyi Boma, 1 November 2012.

most support locally. However, the shifts in actual authority were highly contested and remained a critical issue in the problematic relationships between old and new residents in post-secession Yei. Efforts by local residents to present themselves as a coherent and socially-bounded (ethnic) community illustrated how claims to land continued to follow a proven strategy of 'accumulation in people' and gaining chiefly authority by building a loyal and numerous following. Disagreement about land governance showed an unsurprising distinction between those claiming historical rights and groups of newcomers claiming wider citizenship rights in accordance with recent, more inclusive notions of 'community'.⁸² These landed struggles, however, intensified in response to ambiguous state policies that opened up new categories of community ownership and forums for community-level land governance and local government.

Conclusion

This article explored how transformations of land governance in South Sudan feed into processes of local state formation, and effectively enhance state authority. In the post-secession period, local legitimacy of the state remains in flux, not in the least because of efforts by armed actors connected to or affiliated with the state in imposing their own order. Legal ambiguity about the responsibilities of diverse customary and statutory authorities, erosion of pre-war land governance practices, decentralization, and the arrival of members from different ethnic communities in Yei fueled local competition among various state and non-state authorities, who all claim responsibilities in governing land. Post-conflict migration and changes in the composition of the population opened up local property relations and polarized differences between groups of people seeking new land rights and those claiming historical rights. State-related notions of citizenship and tenure arrangements could count on more support from recent arrivals seeking land rights, and received support from chiefs who sought to wrestle control over local land from local diviners and lower-level traditional leaders.

The strengthening of the state at the local level resulted largely from structures of opportunity provided by the state in the form of new land policies and decentralization. Owing to their involvement in local land governance arrangements and presence in towns, chiefs were in the best position to claim key positions in land governing boards and acquire roles as community representatives in deals with land investors. State extension simultaneously resulted from the introduction of ambiguously worded

82. Compare with Mamdani, *Citizen and subject*, and Ceuppens and Geschiere, 'Autochthony'.

'community rights', that provided local groups with new possibilities for staking claims through redefining 'community'. The combined effect shows how chiefly power and state power were mutually reinforcing, and how both expanded their authority through control over communal land at the expense of other, more localized customary authorities.

This analysis confirms earlier analyses that point to the significance of the local renegotiation of land governance responsibility to efforts of the state to (re-)gain sovereignty.⁸³ Importantly, even though the state was unable to realize a physical presence in local communities, the *idea* of the state was reproduced in various instances of negotiation and reclamation, although in heterogeneous and unclear ways. The reordering of land governing authority was accompanied by a reopening of land access and a redefinition of the notion of 'community'. This effectively furthered state authority in land governance, though it is too early to establish to what extent the state's expansion in land governance as we encountered it in Yei sustained during the latest phase of instability since December 2013.

Two points stand out in relation to existing literature on land governance: institutional competition and state formation. First, employing a legal pluralist perspective, other authors have underscored the importance of strategic agency in settings of institutional competition, pointing out how conflict parties manage to bend the rules to their advantage or how local public authorities skillfully generate local legitimacy through their land governance practices.⁸⁴ Such strategic agency played an important role in institutional competition in Yei as well. Moreover, a legal-anthropological approach proved valuable to uncover the heterogeneity and perpetual renegotiation of customary/state institutional blends. Yet, the case also makes clear that local competition should be situated in relation to larger political developments and power struggles. The exercise of 'political power to impose one interpretation at the expense of others'⁸⁵ was clearly related to the structural opportunities provided in the legal-political context as well as the underlying political economy determinants.

Second, we caution against a tendency in the literature to attribute land conflicts in conflict-affected settings to enduring ethno-political divides. Various authors interpret contested state formation in South Sudan as tied up with historical grievances and contemporary resistance of Equatorians against domination by the Dinka ethnic community,⁸⁶ or highlight how local land disputes have got tied up with larger conflicts

83. See Hirblinger, 'Land, political subjectivity and conflict'; Justin and Van Dijk, 'The politics of land reform and conflict'.

84. Berry, 'Tomatoes, land and hearsay'; Von Benda-Beckmann et al., *The changing properties of property*; Lund, *Local politics and the dynamics of property*.

85. Lund and Boone, 'Introduction: Land politics in Africa', pp. 2–3.

86. Branch and Mampilly, 'Winning the war but losing the peace?'

about citizenship, ethnicity and belonging.⁸⁷ While such dynamics are important, our analysis emphasizes the competition around land governance among local public authorities *within* ethnic communities, and how this contributes to a contested intrusion of the state in local land governance.⁸⁸ Likewise, we should not assume that the structural predispositions of statist reform programmes or changes in settlement patterns towards particular land tenure arrangements are particular to conflict-affected settings.⁸⁹ Instead, such structural opportunities might also play a role in societies less affected by conflict, but where tenure relations are contested: think of state programmes aiming at the recognition of customary tenure that enable certain customary arrangements more than others,⁹⁰ or rural–urban migration that puts a strain on the legitimacy of existing tenure arrangements.

As such, we argue for an approach to studying the negotiation of land governing authority that takes into account the various entry points offered by the state and the evolving geo-political context, but that also recognizes the co-existence, interconnections and competition between multiple local authorities within local communities. This is powerfully illustrated by processes of local state formation in the new Republic of South Sudan, where national land tenure reforms and decentralization policies and shifts in the composition of the population increased polarization between various local public authorities in and around Yei Town.

87. De Wit, 'Land property study in Sudan'; Pantuliano, 'The land question'; Martin and Sluga, *Sanctuary in the city?*; Justin and Van Leeuwen, 'The politics of displacement-related land conflict'.

88. See also Leonardi, 'Paying "buckets of blood" for the land'.

89. See Unruh, 'Land tenure and legal pluralism'.

90. Mathijs Van Leeuwen, 'Renegotiating customary tenure reform; Land governance reform and tenure security in Uganda', *Land Use Policy* 39 (2014), pp. 292–300.