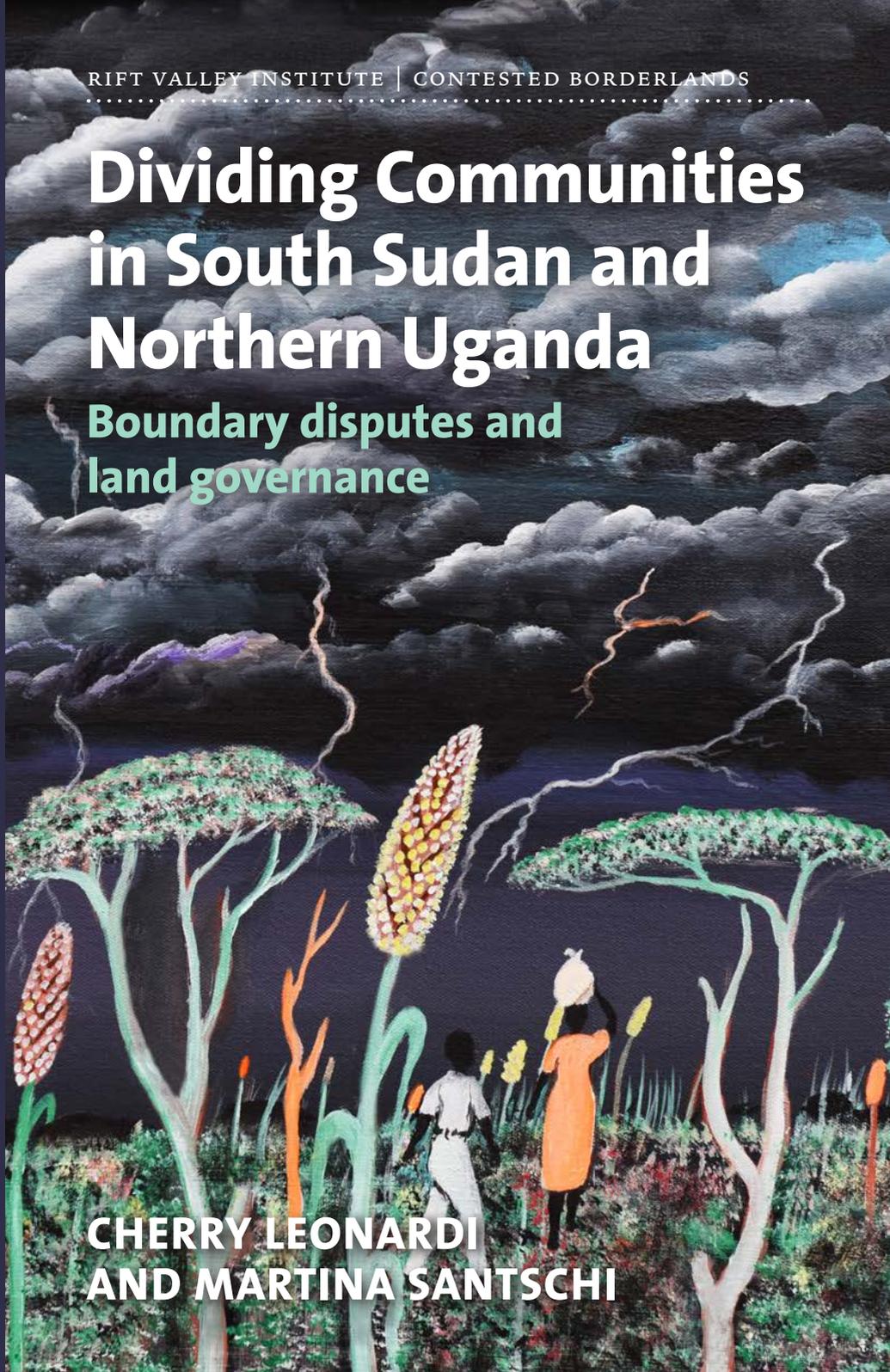


RIFT VALLEY INSTITUTE | CONTESTED BORDERLANDS

Dividing Communities in South Sudan and Northern Uganda

Boundary disputes and
land governance

CHERRY LEONARDI
AND MARTINA SANTSCI



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MAPS

The maps in this report have been produced to illustrate the discussion of contentious boundaries and do not imply endorsement by RVI or the authors. Maps have been compiled from a combination of archival and non-archival sources, listed in the bibliography. The various international boundary lines shown on Map 2 represent temporary agreements or proposals, not official delineations.

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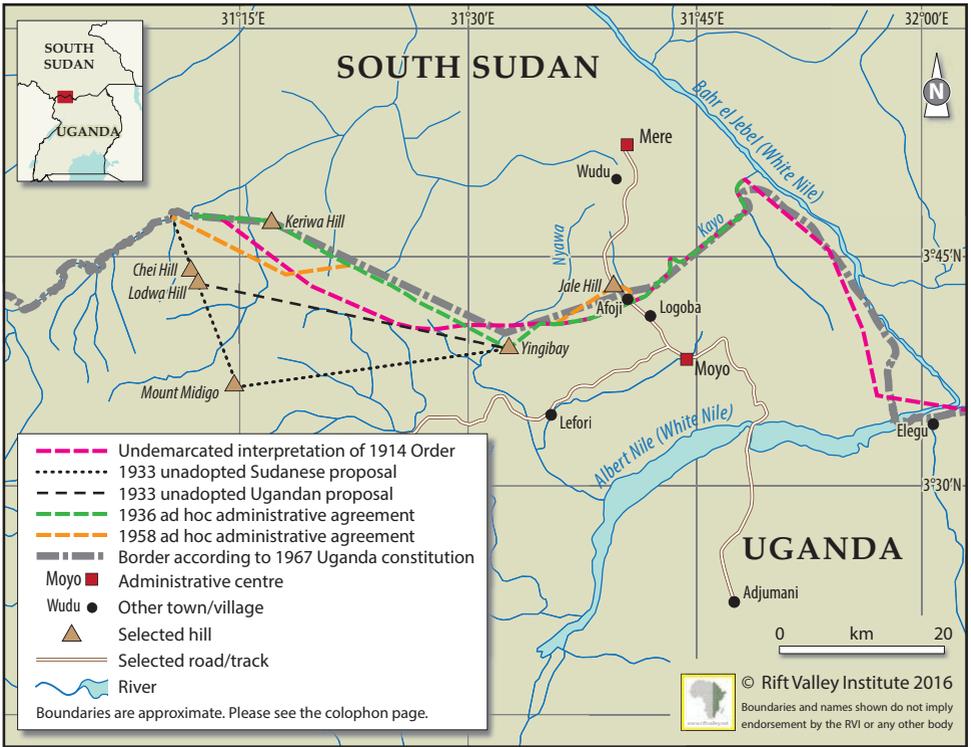


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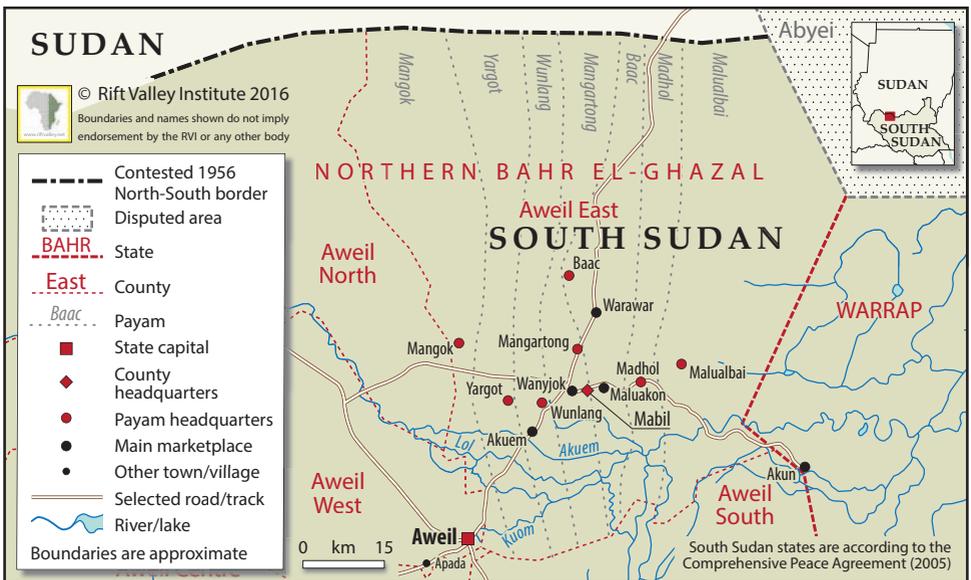
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Summary

Many people in South Sudan and northern Uganda—like others around the world—see boundaries and borders as a potential source of clarity, security and conflict prevention. Political and economic ambitions, along with fears of discrimination or exclusion from land lead to the promotion of more rigid boundaries, both on the ground and between groups of people. The prevalence of such discourse reflects a picture first imagined by colonial officials, in which the peoples of this region live in discrete ethnic territories, organized into patrilineal descent groups and governed by their own decentralized administrations. In such a picture, it might indeed seem that demarcating clear boundaries and borders between various territories would resolve the tensions and conflicts that surround them.

A different picture emerges, however, from a detailed exploration of the intricate histories and present realities of demography, ecology, livelihoods, social relations and land governance in South Sudan and northern Uganda. Historically, there is said to have been popular unease here with the moral and spiritual implications of trying to demarcate fixed boundaries in the soil. Moreover, transhumant pastoralism depends on negotiating access to land controlled by others, rendering the delimitation of clear and fixed borders impractical. Drawing boundaries between clans and tribal sections is also impossible because settlements are widely interspersed with other clans and sections. Although clans and sections are defined in a language of patrilineal kinship, they have always absorbed outsiders into their lineages and co-residential communities. Oral histories reveal the extent of migration and shifting identities. Practices of assimilation and intermarriage have worked to overcome boundaries rather than to create them. After all, being able to cross borders during recurrent wars and violent conflicts has been vital for survival.

There is, however, a paradox. Greater peace in some parts of this region seems to have brought new conflict over land and boundaries

in the past decade. Multiple factors are at work here, including urbanization and uneven population densities driven by processes of return and patterns of service delivery and economic activity. Many people in South Sudan and northern Uganda are well aware of the wider context in Sudan and eastern Africa, where conflict over land and land grabbing are prevalent concerns. In their own countries, anticipated development and commercial exploitation drive perceptions of the changing value of land. The processes of government decentralization, begun in the 1990s, also play a key role in growing conflict over land. Local government officials and politicians may have an interest in promoting the idea of ethnic territorial units to garner popular support and increase their control of land and natural resources. Local land governance institutions—whether state-related, customary or the more common hybrid arrangements—derive revenue and power from both land transactions and disputes over land.

It would be mistaken, however, to see increasing land disputes as simply the result of top-down control and manipulation. In an atmosphere of growing uncertainty and insecurity over land rights, there is also bottom-up demand for greater security and dispute resolution. Many people in South Sudan and northern Uganda are seeking to secure their own land rights through various mechanisms, whether through written documentation, the purchase of leasehold titles or by asserting customary rights to land through historical narratives and genealogical claims. Unsurprisingly, their efforts can easily become attempts at exclusion on the same basis, creating yet more disputes and conflicts over land and boundaries.

Attempts to privatize land rights or assert more exclusionary definitions of customary land rights have been aided by national land reforms, which promote legal clarity and simultaneously impose simplified definitions of customary rights. External interventions in land governance have tended to support legal and policy processes, failing to adequately consider the implementation of statutory approaches on the ground. At the local level, it is evident that national laws and policies are being interpreted with varying degrees of accuracy, as well as being selectively adopted and adapted in combination with customary principles. These

processes both rely on the cooperation of customary authorities and local governments and create competitions between them. This demonstrates a hybrid approach to land governance that is not amenable to being reduced to a legal or statutory form.

There is a danger that the national discourses on land in South Sudan and northern Uganda entail a simplification, and at times a distortion, of the more complex and fine-grained customary definitions of rights. In these discourses, ethnicity becomes problematic shorthand for identifying land rights and determining territorial belonging and boundaries. It is also assumed that those rights can be converted into property rights through processes of registration. The attempt to turn customary land rights into property rights, however, is not a straightforward translation or recording process but entails the denial and misrepresentation of bundles of overlapping rights, claims and obligations, which are then converted into an exclusive right of ownership. Customary land governance must not simply be understood in terms of rights but also in terms of the obligations and reciprocities that have enabled people to access the various kinds of land and natural resources within and between the territories associated with particular lineage groups. Historical knowledge of such customs is a valuable resource for negotiating and perhaps preserving or reviving the generosity and reciprocity that elders often idealize in narrating past practices of land allocations and access.

Lessons can be learned in this regard from current practices, notably the attempts by chiefs' courts in South Sudan and land committees in northern Uganda to negotiate compromise solutions to land disputes in order to avoid breaching family and social relations or displacing people from their land. These local-level institutions have been essential for reconciling the disparate and sometimes contradictory provisions of statutory law with customary land law. Such institutions are reasonably well known and recognized mechanisms for obtaining land and resolving land disputes. The chiefs, landlords, elders and other local authorities, recognized by their district or county governments as legitimate spokespeople, brokers and adjudicators in land cases, serve to protect and negotiate community and individual land rights.

These systems are not without their problems, however. Some of their institutions and individuals are accused of corruption or incompetence. As their work has become more lucrative, they have become the focus for competing claims to authority and ownership of land. They also have unprecedented opportunities to gain power and profit from their positions. Consequently, a particular chief or landlord is not necessarily exercising legitimate or uncontested authority over community land nor may collective section or clan interests be an uppermost priority. This is likewise the case at the level of local government and administration.

Land governance, whatever laws and procedures it uses, tends to be skewed in favour of influential, powerful and wealthy members of local and national society. Changing laws or formulating policies will not in itself overturn this basic fact. Land is increasingly a focus of the tensions and inequalities in the broader political economies of South Sudan and northern Uganda. In this context, the most constructive responses are those that focus on strengthening the options and institutions for dispute resolution and remedying the grievances of those who are poor, vulnerable or marginalized in the local political economy. The solution to most boundary conflicts is likely to be found in the practices of negotiation and mediation that have always characterized customary land governance, in particular the long-standing principles of managing multiple needs and rights in land. In South Sudan and northern Uganda, land and the multi-layered rights, obligations and reciprocities related to its use constitute far more than property that can legally—or illegally—be bought and sold, from one owner to another.

1. Introduction

In October 2015, the President of South Sudan, Salva Kiir, issued a decree increasing the number of states in the country from 10 to 28. This proved to be a highly contentious move, rejected by the opposition forces with which Kiir had recently signed a peace agreement and criticized by the international community, including IGAD, the EU, the UK, Norway and the United States on the grounds that it violated the peace agreement.¹ Meanwhile, tensions and conflicts had already erupted over the proposed state boundaries, with Nuer and Shilluk ethnic groups declaring that their ancestral land was being alienated to Dinka-controlled new states. Fighting also occurred between neighbouring Dinka sections in Warrap State over competing land claims, reportedly related to the proposed new state border.²

Kiir declared his move to be a response to a popular demand, in particular the need ‘to adopt a federal system of governance in the country’ and to devolve power to the people to ‘develop your locality, your home villages through mobilization of local and states resources’.³ The reception and immediate effects of the decree demonstrate the extent to which ethnic identity, communal land rights and territorial administrative units have become entwined. The same logic has driven the sub-division of local government areas into ever smaller and increasingly ethnically defined units in both South Sudan and Uganda since the 1990s. This logic is also reflected in the violent conflict that broke out earlier, in September

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1 *Sudan Tribune*, ‘IGAD says president Salva Kiir violates peace agreement’, 13 October 2015. Accessed 10 January 2016, <http://www.sudantribune.com/spip.php?article56708>.

2 Radio Voice of Hope, ‘New states border dispute leaves dozens dead, several wounded in Tonj’, 12 October 2015. Accessed 24 October 2015, <http://catholicradionetwork.org/?q=node/18968>.

3 *Sudan Tribune*, ‘South Sudan president expands states to 28 as opposition accuses him of deal violation’, 2 October 2015. Accessed 14 October 2015, <http://www.sudantribune.com/spip.php?article56581>; *Sudan Tribune*, ‘South Sudanese cabinet approves creation of 28 states’, 14 October 2015. Accessed 10 January 2016, <http://www.sudantribune.com/spip.php?article56709>.

2014, over the international border between Kajojeji County in South Sudan and Moyo District in Uganda, where the boundaries between clan lands were asserted as evidence of where the border should lie.

State and local government boundaries have become an increasingly important focus of ethnic tension and competing land claims. This can be linked to historical and contemporary processes of decentralization in Southern Sudan and Uganda, which have generated a fraught nexus of political authority, ethnic identity and land control. Decentralization processes have increased the political value of controlling land. At the same time, land has gained new and changing value from processes of urbanization and evolving settlement patterns, new opportunities for or anticipation of commercial land-use and rents, and reports of land grabbing by powerful actors and external investors in this region and beyond. This has contributed to growing fear among ordinary people that they might lose access to the land on which their livelihoods depend. To best understand these increasing disputes over land, it is necessary to recognize that individual access to land is largely inseparable from broader questions of territorial sovereignty, decentralized government, legal pluralism, economic changes, infrastructural development and service delivery.

Just as land was a focus for mobilizing the Sudan People's Liberation Movement/Army (SPLM/A) rebellion against the Sudanese government in the 1980s and 1990s,⁴ there is a real risk that the widespread tensions over land and boundaries in this region, which have been emerging over the past decade, have a similar potential to feed larger-scale wars. There is, however, a critical lack of empirical research on the rapidly changing

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4 Sara Pantuliano, *The land question: Sudan's peace nemesis*, London: Humanitarian Policy Group, Overseas Development Institute, 2007; Øystein Rolandsen, 'Land, Security and Peace Building in the Southern Sudan', PRIO Paper, Oslo: International Peace Research Institute, December 2009; Douglas H. Johnson, 'Decolonising the borders in Sudan: Ethnic territories and national development', in *Empire, development and colonialism: the past in the present*, eds. Mark Duffield and Vernon Hewitt, London: James Currey, 2009.

land tenure systems in South Sudan and northern Uganda.⁵ The nature of and changes in customary land law and governance in this region have rarely been subject to empirical research.⁶ Consequently, customary practices are frequently characterized in simplistic and largely inaccurate terms as ‘communal’ or ‘community’ land tenure, and criticized as a patriarchal property system.⁷ Moreover, customary land governance is often assumed to operate separately from government institutions and statutory law, with little awareness of the overlapping, adaptive and hybrid institutions and laws of land governance that have instead emerged at the local level. Boundary conflicts are likewise simplified—assumed to be a result of ethnic tensions and disputes over tribal territories. In South Sudan ‘tribal clashes over land, water and cattle’ are said to be ‘common’.⁸

This report attempts to redress the lack of empirical research on land governance in South Sudan and northern Uganda, with specific attention to South Sudan.⁹ It is based on 150 qualitative interviews with government officials, chiefs, clan leaders and landlords, NGO employees, church

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5 Naomi Pendle et al., *Local socio-political organization and implications for community-driven development in South Sudan: an analysis of existing literature*, London: London School of Economics, 2013.

6 A notable exception is the discussion of customary land tenure in the mapping tool developed by Human Rights Focus (HURIFO). See: Julian Hopwood and Ronald R. Atkinson, ‘Final Report: Land Conflict Monitoring and Mapping Tool for the Acholi Sub-Region’, Gulu, Uganda: Human Rights Focus and United Nations Peacebuilding Programme in Uganda, 2013.

7 For example, see: ‘South Sudan: country profile’, Oxfam Canada, February 2013. Accessed 1 December 2015, <http://www.oxfam.ca/sites/default/files/imce/country-profile-south-sudan.pdf>; and ‘Country profile: Property rights and resource governance, South Sudan’, USAID, 2013. Accessed 1 December 2015, http://pdf.usaid.gov/pdf_docs/pnaeb888.pdf.

8 Thomson Reuters Foundation, ‘Briefing: South Sudan crisis’, 29 July 2014. Accessed 12 September 2015, <http://www.trust.org/spotlight/South-Sudan-decides/?tab=briefing>.

9 This report is not intended as a representative, comprehensive or conclusive study of land governance in South Sudan and northern Uganda, either in its methodology or scope but instead offers a starting point for further research.

BOX 1. ADMINISTRATIVE STRUCTURES AND GOVERNANCE IN SOUTH SUDAN AND UGANDA

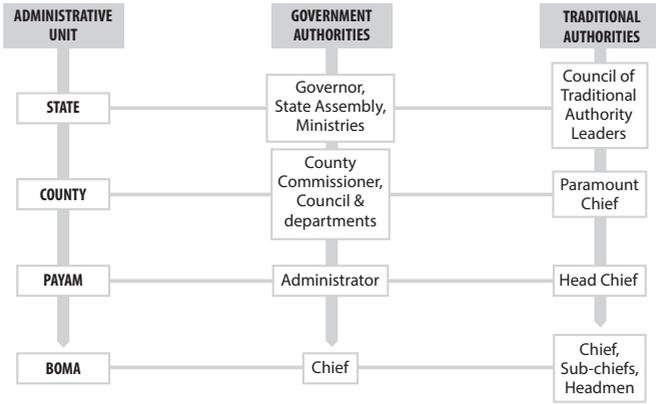
In South Sudan, chiefs are traditional authorities recognized by national law as the primary authority at the lowest level of local government, the *boma* (village). They have courts at the *boma*, *payam*—the second lowest administrative division, below counties—and sometimes county levels. Payams are headed by administrators and the county government is headed by a county commissioner. These local government structures fall under the newly introduced 28—formerly 10—state governments in South Sudan, which are headed by governors.

In Uganda, chiefs are not traditional authorities but civil servants appointed to run sub-counties. Uganda has a five-tier structure of decentralized local government, with local councils (LCs) at village, parish, sub-county, county and district levels. The national government appoints a resident district commissioner (RDC) alongside the elected district council. Originally structures of the movement system under the National Resistance Movement (NRM) government, the LC 3 and LC 5 (sub-county and district council) are now elected through the multi-party system.

leaders and a wide range of men and women of all ages.¹⁰ It also draws on documentary and archival material. The interviews were conducted in two different and geographically distant areas—the Kajokeji–Moyo border area straddling the international border between South Sudan and

10 The majority of these interviews were conducted between 2013 and 2014 on the condition of anonymity. The aim of these interviews was to learn from the expertise of existing land authorities and from the experience and views of different types of respondents in order to better understand the nature of customary land law and the current and past practices of actual land governance in the two case study areas. Some of these interviews were conducted in Dinka, Kuku or Madi and translated into English, which is indicated in relevant references.

South Sudan



Uganda

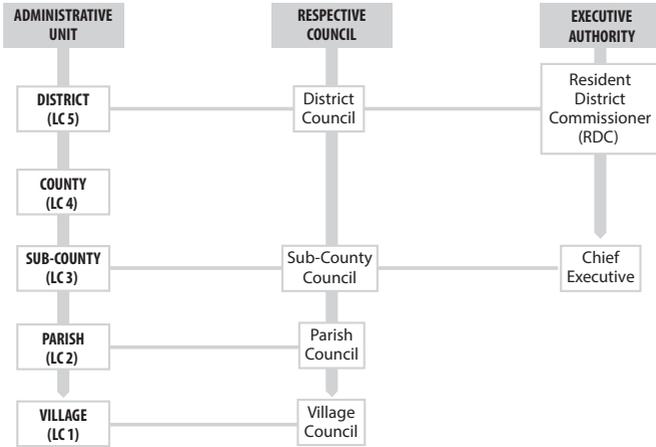


Diagram 1. Administrative structures and governance in South Sudan and Uganda

Uganda and Aweil East in Northern Bahr el-Ghazal, South Sudan. Both areas have remained relatively peaceful in recent years but are witnessing an increase in disputes over land that bear striking commonalities. As such, these two areas provide contrasting contexts for developing a better understanding of and more in-depth insight about land governance.

This report shifts attention away from the national legislation and policy with which much analysis and advocacy in South Sudan and Uganda has been preoccupied to explore instead the everyday initiatives, strategies, laws and mechanisms people have been using to assert or secure their rights to land. It examines the underlying factors that may be driving the proliferation of land and boundary conflicts in this region, with emphasis on their novelty. The report focuses on how local-level government and customary authorities manage land transactions, define land rights and interpret statutory laws, and resolve disputes and conflicts. It also looks at the ways in which ordinary people navigate the challenges, opportunities and threats presented by the changing value of land and evolving local land governance mechanisms.

Kajokeji County (South Sudan) and Moyo District (Uganda)

The borderlands

Kajokeji County in South Sudan and neighbouring Moyo District in Uganda straddle the international border between the two countries. Both areas are very similar in landscape, lifestyles and livelihoods, which are characterized by mixed farming and livestock herding. Geographically, this is an area consisting of high plateaus and hills, with cultivable soil and high rainfall. The significant commonalities shared by Kajokeji County and Moyo District render the cross-border violence that came to a head in September 2014 all the more surprising.

Kajokeji County, South Sudan

Kajokeji County forms one of the southernmost counties of the former Central Equatoria State (CES), on the western bank of the Nile. Although

only a short distance from the CES capital, Juba—also the national capital of South Sudan—poor roads to the north and west make Kajokeji County feel surprisingly remote from the rest of the state. The Kajokeji County administrative headquarters is in Mere. With the nearby market centre of Wudu, both towns form a small but expanding urban centre.

Kajokeji County is largely inhabited by Kuku but also has two distinct ethnic groups: Nyepo from the Bari area, who live in the northern eponymous payam; and Kakwa in the south-western payam of Liwolo, who are said to have migrated from the west. These societies are all organized by patrilineal clans associated with particular small territories, although clan members are also dispersed. Bari, Nyepo, Kakwa and Kuku all speak different dialects of the same language. Many Kajokeji County inhabitants speak Ma'di, too, an entirely different language. Some Kuku clans were originally Ma'di and have retained close relations with their clans to the east and south. Many Kuku families have intermarried with the Ma'di, and reside, trade and interact with the Ma'di of Moyo and Adjumani Districts in Uganda.

Kajokeji County was one of the first Equatorial areas to be captured by the SPLA in 1990 and was cut off from Juba, which was held by the Government of Sudan for the remainder of the civil war. Most of its population took refuge in Uganda during the civil war. A sizeable Kuku population remains there. So much so that the Kuku are listed as an ethnic group in Uganda. Kajokeji County has long been oriented towards Uganda for trade, employment, schooling and even medical care. Since 2005, most refugees have returned to Kajokeji County, although many have kept their children in school in Uganda.

Rural land in Kajokeji County is governed by the lineage structures and spiritual authorities of each clan, headed by a land custodian—commonly referred to as landlord in English. Land disputes that cannot be resolved by clan elders are handled by the hierarchy of chiefs' courts, the highest of which is the county paramount chief's court in Mere. There is also a separate county court with a magistrate, who is a former chief. Private or government land sales or leases in urban and peri-urban areas involve clan landlords, leading chiefs and the county survey office. A county land

committee has also been formed to handle land disputes, which overlaps in personnel and practice with the chiefs' courts.

Moyo District, Uganda

Moyo District is situated in northern Uganda. It is named after its main town, Moyo, which is also the administrative headquarters. Only 12 miles or so of what is now a good *murram* (gravel) road separate the town of Moyo from the towns of Mere and Wudu in Kajokeji County. Moyo drops down very steeply to the Nile on its southern and eastern side, and more gradually to the rolling country of its western border with Yumbe District.

Moyo District is largely inhabited by Ma'di. Like Kuku society, the Ma'di practice mixed agriculture and livestock-rearing, and are organized by patrilineal clans associated with particular small territories, although clan members are also dispersed. Many Ma'di speakers can also speak neighbouring languages, such as Lugbara, Acholi and Kuku.

After 1979, the population was displaced into Sudan—particularly into Kajokeji County—during Uganda's conflicts, until the Sudanese civil war forced a return of the population in the late 1980s, along with Sudanese refugees. Both hosts and refugees in Moyo District faced continuing insecurity from the Lord's Resistance Army (LRA) and other Ugandan rebel groups, along with incursions from the SPLA and the Sudanese army. Since 2006, peace has finally returned to the area after the Sudanese and Ugandan conflicts of preceding decades. Moyo District has seen some benefits from the recovery and development programmes in northern Uganda. Compared to Kajokeji, Moyo has better roads, schools and hospitals, and electricity supplies.

As in Kajokeji, rural land in Moyo is governed primarily by clan land custodians, elders and family heads. A variety of institutions have been involved in handling land disputes and transactions since 1998, including district land boards and tribunals. By 2014, land governance was, in practice, mostly conducted by village, parish or sub-county councils (LC 1–3), including area land committees at the sub-county level.

Aweil East County and Aweil Town (South Sudan)

Aweil East County—which became Aweil East state with the contested introduction of the 28 states in 2015—is situated in north-west South Sudan in the state of Northern Bahr el-Ghazal (NBG), at the opposite end of South Sudan from Kajokeji. It is on the border with Sudan. Aweil East County administrative headquarters are in Mabil. Aweil Town is the state capital of NBG (see Map 3).

Aweil East County is a largely rural cattle-keeping floodplain inhabited by Dinka subsistence agro-pastoralists who engage in both agriculture and transhumant pastoralism, moving cattle between lowland (*toic*), midland (*gog-chel*) and highland (*gok*) areas. The importance of cattle in Dinka society is reflected in the fact that the major socio-political sections are termed *wut*, which is the same word as ‘cattle-camp’, because its members jointly herd their cattle and share grazing and other resources. Since the colonial period, these sections have corresponded with the government-recognized chiefdoms, and more recently also with payams.

During the civil war (1983–2005), Aweil East County was severely affected by attacks from militias aligned with the Government of Sudan. Many people were killed and thousands displaced to present-day Sudan, within South Sudan or to neighbouring countries. From the late 1980s, the rural areas of NBG—including Aweil East County—were more or less controlled by the SPLM/A rebel forces, while Aweil Town remained under the control of the Government of Sudan. Since 2004, particularly around South Sudan’s independence in 2011, large numbers of returnees have come back to settle in Aweil Town and Aweil East County,¹¹ creating rapid population growth in both urban, peri-urban and rural areas.

Land in rural areas of Aweil East County is largely administered and governed by chiefs using customary law. In urban and peri-urban areas, land is administered and governed by several different and partly

11 Southern Sudan Centre for Census, Statistics and Evaluation, ‘Statistical Yearbook for Southern Sudan’, Juba: Southern Sudan Centre for Census, Statistics and Evaluation, 2010. Accessed 14 March 2016, <http://static1.1.sqspcdn.com/static/f/750842/10009929/1293750138733/Statistics+Year+Book+2010+.pdf?token=fGymEGZn0SXyngA9PxCxudJoiuQ%3D>.

competing authorities. In Aweil Town, the municipality and the State Ministry of Physical Infrastructure are key players in land governance. In peri-urban areas of Aweil East County, the county land authority, land commissions, different levels of the judiciary and chiefs and community leaders engage in land governance. Throughout Aweil East County and the whole of NBG, there are land disputes over residential plots, arable land, pasture and administrative boundaries. For example, the expansion of Aweil Town has created tensions between Aweil Municipality and Aweil Centre County over administrative control of new settlements. The boundaries between Aweil Municipality and the neighbouring counties, including Aweil East County, are also a source of contention. These different disputes are debated and addressed peacefully in a variety of formal and informal arenas of dispute resolution.

TABLE 1. SECTIONS AND SUB-SECTIONS BY PAYAM IN AWEIL EAST COUNTY, NORTHERN BAHR EL-GHAZAL

<i>Payam</i>	<i>Sections</i>	<i>Sub-sections</i>
Mangok	Dulit	
	Wunding	
Yargot	Akanyjok	
Wunlang	Apuoth	Hou Alueth
		Kuathcuar
Mangartong	Ajuongthi	Pindung
Baac	Wunanei	
	Makuac	
Madhol	Agur Piny	
	Ajuongdit	
Malualbai	Lou	
	Wundeng	

2. Contesting the line: Conflict on the South Sudan–Uganda border

In September 2014, a conflict erupted between South Sudanese and Ugandans in the borderlands of Kajokeji County, South Sudan and Moyo District, Uganda. Several people were killed, a larger number injured and thousands displaced. The violence was reported as a conflict between the Ma'di of Moyo District and the Kuku of Kajokeji County. It was attributed to the long-term failure of government to define and demarcate this stretch of the international border. Government officials and citizens on both sides of the conflict emphasized that the only solution was an international border demarcation committee, which has been established by the two national governments.

Not only has this border not been demarcated, but it has never been legally delineated on a map. The only existing legal definition of this border is a British Order of the Secretary of State for the Colonies issued on 21 April 1914, almost 100 years before the 2014 conflict. Described at the time as a provisional agreement, pending proper mapping and demarcation on the ground by the two colonial governments of Sudan and Uganda, the 1914 Order reflected the British decision to try to map the border onto an ethnic boundary between Kuku and Ma'di speakers, whose languages belong to different families—Nilotic and Sudanic, respectively. Part of the border was supposed to follow 'the southern boundary of the Kuku tribe', even though the then British undersecretary of state noted that such a boundary was 'indefinite'.¹²

Interestingly, in 1912 the governor of Uganda had proposed that a more suitable tribal boundary to follow would have been that between the Bari and Kuku, much further north of the subsequent boundary, on the grounds that the Kuku 'speak a Bari patois, but fraternize with the Madi,

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¹² H. J. Read for the Under-Secretary of State, Colonial Office, letter to the Under-Secretary of State, Foreign Office, 1 April 1914, London, The National Archives, UK (hereafter UKNA), WO 181/236.

with whom they associate themselves for tribal purposes'.¹³ In 1960, the British administrator of the Madi–Moyo District—who had formerly administered Yei District in Southern Sudan—would similarly suggest that the Ma'di had closer relations with their northern neighbours in Sudan than with the centre of Uganda: 'Had the wishes of the people instead of alien politicians drawn the boundary lines she [the district] would seem disposed naturally to look and bind towards the north, or the east, or to both.'¹⁴

Despite the governor's recommendation having ultimately been ignored, it is primarily these close relations between Ma'di and Kuku that have characterized the history of this border since 1914. These close ties have also mitigated the lack of any subsequent formal demarcation of the international boundary. Even at the height of the conflict in 2014, people on both sides were quick to emphasize the long history of peaceful relations and intermarriage between Kuku and Ma'di, and the unprecedented nature of the recent troubles. Despite the common emphasis on border demarcation as the solution, the lack of a clearly demarcated border does not then in itself explain the conflict. This is reinforced by a century without such violent dispute over the unmarked border.

Rather, an explanation for the recent conflict lies in the way in which the border has become the focus for the tensions, pressures and competition over land and natural resources. These tensions have escalated over the past decade not only in these borderlands but in the wider region to which they belong and have politicized administrative and customary land boundaries in new ways. This is an analysis that many of those involved in the dispute also articulate:

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 13 F. J. Jackson, Governor of Uganda, letter to Mr Harcourt, Secretary of State, Colonial Office, Uganda, 14 March 1912, UKNA WO 181/236.

14 W.B.H. Duke, District Commissioner In Charge, Madi, 'Madi District Annual Report 1960', Moyo, 29 January 1961, Makerere University Library Microfilms; also cited in Mark Leopold, 'Crossing the line: 100 years of the north-west Uganda/South Sudan border', *Journal of Eastern African Studies* 3/3 (2009), 464–78 (470).

Basing it on historical background, the Kuku community sees the root cause to the misunderstanding as owing to land ownership rather than the international border. The community is equally aware that issues related to the international border are matters of sovereignty which it has no competence to discuss. It will therefore confine itself to its ancestral lands over which it exercises inalienable customary rights.¹⁵

The history of the Sudan–Uganda border has contributed to the particular way these recent tensions have played out in Kajokeji County and Moyo District in terms of the growing importance and intersection of national and ethnic identities, experiences of wartime cross-border displacement and the uncertainties of a shifting borderline.¹⁶ The use of historical narratives, communal identities and customary authorities to stake ancestral claims to land and assert political control of territory is more widespread, however, reflecting the changing political and economic value of land in the region as a whole.

A century of uncertainty

It is not surprising that there are such widely conflicting claims about the correct border line circulating in recent years. The Sudan–Uganda–Congo borders were adjusted several times before 1914. The claims by some in Kajokeji County that the Sudan border used to extend right up to Lake Albert are historically grounded, though not legally relevant to the current border as defined in 1914.

In the nineteenth century, the Turco–Egyptian government of Sudan extended its frontiers well into what is now northern Uganda, with a

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 15 Kuku Community, ‘Position of the Kuku Community on the disputed land along the common border with neighbouring communities of Moyo and Yumbe Districts’, copied 13 October 2014 at the Lefori sub-county local council 3 office, Lefori, Moyo District, Uganda.

16 Also see: Douglas H. Johnson, *When boundaries become borders*, London: Rift Valley Institute, 2010; and Christopher Vaughan, Mareike Schomerus and Lotje de Vries, eds., *The Borderlands of South Sudan: Authority and Identity in Contemporary and Historical Perspectives*, New York: Palgrave Macmillan USA, 2013.

chain of government posts along the Nile north of Lake Albert. Following the collapse of Turco–Egyptian rule in Sudan, the region became a focus of the growing competition between the European imperial powers in the 1880s and 1890s, resulting in the rather anomalous creation of the Lado Enclave, a large territory west of the Nile and north of Lake Albert that was leased to King Leopold II of Belgium for his lifetime. The Lado Enclave covered much of what would become the West Nile District of Uganda and Central Equatoria State in South Sudan. On King Leopold’s death in 1909, this territory was once again transferred to Sudan, governed since 1899 by the British as the Anglo–Egyptian Condominium of the Sudan. In 1911, a Sudan government station was built at Kajokeji and from here the first British administrator, Captain Stigand—whose house still stands at the county headquarters in Mere—briefly governed the southern part of the Lado Enclave, including the modern-day Moyo District.

This arrangement lasted only a few years. It was rapidly decided that colonial administrative control would be enhanced if both banks of the Nile were controlled by the same government.¹⁷ The territory east of the Nile, from Nimule northwards, previously held by Uganda, was handed to Sudan in exchange for the southern part of the old Lado Enclave, which became the West Nile District of Uganda. It was this exchange that necessitated the boundary agreement of 1914, which was devised by the Sudan–Uganda Boundary Commission in 1913. The commission, led by Captain Kelly, conducted an expedition to map the boundary. Due to time constraints, only around 30 per cent of the boundary was properly mapped—none of it to the west of the Nile. In this area, Kelly relied instead on second-hand information about the rivers in the area.¹⁸ The 1914 Uganda Order therefore specified a line ‘following the thalweg of the Khor Kayu (Aju) upwards to its intersection with the thalweg of the Khor Nyaura (Kigura) thence following the thalweg of the Khor Nyaura

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 17 Viscount H. H. Kitchener, Agent and Consul General, Cairo, letter to the Right Honourable Sir Edward Grey, Foreign Secretary, 27 October 1911, UKNA WO 181/236.

18 Captain H. H. Kelly, extracts from reports on Sudan–Uganda boundary rectification commission and reconnaissance to Boma plateau, in Sudan Intelligence Report 228 (July 1913), UKNA WO 106/6225.

(Kigura) upwards to its source: thence following the southern boundary of the Kuku tribe to the thalweg of the river Kaia'.¹⁹ The latter is now spelled 'Kaya' and forms an uncontested part of the boundary. The first stream is clearly the stream known in Kuku as the Kayo and in Ma'di as the Ayo. The Nyaura has subsequently been assumed to refer to the Nyawa stream—though more than one stream in the region takes that name. In reality, however, the Kayo and Nyawa do not meet.²⁰

As the then Sudan director of surveys explained, 'No reliable map as yet exists of the portion of the boundary lying to the west of the Bahr el Jebel ... and it is suggested that a definite settlement should stand over until a reliable map has been prepared.'²¹ The Sudan government only agreed to 'the publication of the Order in question as a provisional measure, subject to such future amendment as circumstances may require'.²²

Significantly for the recent conflict, the boundary was supposed to be wherever possible a tribal one. The boundary commission was instructed to identify a line that would avoid dividing any tribes and, to the west of the Nile, 'separate the Bari speaking tribes from the Madi and the Lugware'.²³ British colonial officials assumed African society to be neatly divided into ethno-linguistic, social and political entities that they termed 'tribes'. Yet the situation on the ground was often very different. Ethnic groups in northern Uganda and Southern Sudan were not political units, nor were they strictly divided or clearly bounded. The first British administrator in the region, Stigand, was obsessed with categorizing tribal

19 His Majesty's Government, Uganda Order of Secretary of State for the Colonies,

21 April 1914, UKNA WO 181/236.

20 G. H. Blake, introduction to *Imperial Boundary Making: the diary of Captain Kelly and the Sudan-Uganda Boundary Commission of 1913 (Oriental and African Archives)* by H. H. Kelly, xxiv-xxv, Oxford: Oxford University Press, 1997.

21 Major Pearson, Sudan Director of Surveys, cited in Viscount H. H. Kitchener, Agent and Consul General, Cairo, letter to Right Honourable Sir Edward Grey, Foreign Secretary, 8 May 1914, UKNA WO 181/236.

22 Viscount H. H. Kitchener, Agent and Consul General, Cairo, letter to Right Honourable Sir Edward Grey, Foreign Secretary, 8 May 1914, UKNA WO 181/236.

23 Leopold, 'Crossing the Line', 469, citing Collins, 'Sudan-Uganda Boundary', 144.

characteristics and distinctions.²⁴ Nevertheless, his early descriptions of Kajojeji and what would become the Uganda borderlands emphasized the extent of migration and ethnic mixture, particularly around the edges of the district, where Kuku, Kakwa, Ma'di and Lugbara were living in intermingled settlements or close proximity.²⁵

This is supported by oral histories on both sides of the border. Both Ma'di and Kuku are divided into small patrilineal clans, each with their own histories of migration to their present location.²⁶ Some Kuku clans claim to have Ma'di origins and vice versa. Oral histories often focus on the friendly relations established between Bari and Ma'di-speaking migrants, forming the basis of the Kuku ethnic group.²⁷ Despite the British attempt to create a tribal boundary, several clans exist on both sides of the border, their members identifying either as Kuku and South Sudanese or as Ma'di and Ugandan but acknowledging their common, exogamous clan membership. Most people in the borderlands speak both Kuku (Bari) and Ma'di languages fluently and there have long been extensive relations of marriage, migration and trade across the border.

Some of the migrations recalled in oral histories must have been relatively recent when Stigand established his administration in 1911. In particular, he claimed that the Kuku population used to extend further south and west than it did at the time but that the Kuku had been driven eastwards by the Kakwa and Lugbara, and that the Belgians had moved the Limi section of the Kuku north of the Kayo stream, to be nearer their

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24 Leopold, 'Crossing the Line', 469.

25 Chauncey H. Stigand, *Equatoria: the Lado Enclave*, London: Frank Cass Publishers, 1923 (new edition 1968), 75–6.

26 Also see: Tim Allen, 'A flight from refuge: the return of refugees from southern Sudan to northwest Uganda in the late 1980s', in *Search of Cool Ground: War, Flight & Homecoming in Northeast Africa*, ed. Tim Allen, London: James Currey, 1996, 223–24.

27 Interviews with female clan elder and her son, Wudu, Kajojeji County, 17 September 2014; clan elder landlord, Lilye, Kajojeji County, 21 September 2014; and clan elder landlord, Mogiri, Kajojeji County, 23 September 2014. Also see: Tim Allen, 'Social upheaval and the struggle for community: a study of the Ugandan Madi', PhD thesis, University of Manchester, 1993, 72.

station.²⁸ This might explain the present-day claims of some Kuku borderland clans that their ancestral lands extend south of the Kayo stream, which actually represents one of the most clearly defined stretches of the Uganda border in the 1914 agreement. More importantly, Stigand's account reveals the extent of migrations and displacements at that time. The settlement patterns he observed in 1911–1914 represented a situation of considerable flux and exemplified the absence of clear territorial or even clan boundaries between tribes.

By defining part of the border as the southern limit of the Kuku tribe, the 1914 Order laid the basis for Kuku assertions a century later that their ancestral land claims are relevant to the definition of the border. The correspondence around the 1914 Order also made clear that this provision should only be a guide for an anticipated demarcation of the most convenient line, which might entail relocating settlements to create a clear border. Had this demarcation occurred, the 1914 Order might have little relevance at present. Instead, its emphasis on an ethnic definition resurfaced to deadly effect in 2014, placing customary land claims at the centre of the conflict.

Administering an uncertain border

In the absence of a clearly defined or demarcated border, local government officials have repeatedly attempted to agree upon a workable administrative boundary on the ground. In 1931, 'the District Commissioner, Kajo Kaji and the District Commissioner, West Nile, without committing their respective governments, came to a "working arrangement" mutually acceptable to themselves'.²⁹ As the then assistant district commissioner in Yei and Kajokeji, John Winder, later recalled:

Sitwell, the District Commissioner, West Nile District, Uganda
and I decided we ought to carry out a border march and,

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28 Stigand, *Equatoria*, 69–92. Also see interview with two clan elder landlords, Wudu, Kajokeji County, 19 September 2014.

29 B.H. Bourdillon, Governor Uganda, letter to Governor-General of Sudan, 10 July 1933, UKNA FO 141/723/22.

taking our chiefs with us, decide, provisionally, where the boundary was. ... One of our troubles soon became apparent—our maps did not agree. ... Another of our troubles was to find sufficiently obvious points on our boundary. We blazed prominent trees and identified a number of rocky outcrops, and so managed to make the border pretty comprehensible to everyone.³⁰

The district commissioners' agreement became known as the Red Line in subsequent border negotiations between the Sudan and Uganda governments.³¹ It caused intense dispute, however, over its westernmost portion, just before it reached the River Kaya—the area that presently forms the border between Yumbe District of Uganda and Liwolo Payam of Kajokeji County in South Sudan. The people of Liwolo are typically described as Kakwa, although they are also considered to be part of the Kuku tribe because of their inclusion in Kajokeji County.

In 1933, the Sudan government claimed that the Red Line had alienated the ancestral lands and sacred sites of these people by taking the border too far north. With some prescience, the then governor general of Sudan warned that this would only cause problems in the future:

If, as I understand to be the case, the Koisi river was, until about the beginning of the present century, the boundary dividing the Lugbari of Uganda on the south from the two closely interrelated communities commonly referred to by the collective title of 'Kuku', I must confess to grave misgiving as to the advisability of adopting a line of boundary which would award so large a proportion of this uninhabited area to the Lugbari and would deprive the Sudan tribes of the ancestral rain-making sites to which they attach so much importance. In saying this, I refer not only to the claims of the Gneelai but also

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 30 John Winder, 'Fifty Years On: Service in Mongalla Province, A–E Sudan 1930–33' (1979), 22–23, Sudan Archive Durham 541/7/1–32.

31 This western Red Line should not be confused with the contemporaneous Glenday Red Line drawn to represent the northern limit of Turkana grazing in relation to the Sudan–Kenya–Ethiopia boundaries in the Ilemi area.

to those of the Kambala, Mingale, Lowinya, Rorodo, Kunyoro and Loikur sections, and it appears to me that a settlement which omits to take account of these would contain an element of unfairness which could not fail to be a source of constant inconvenience in future years.³²

The Sudan government therefore proposed a line as far south as Mount Midigo in order to include these Kakwa/Kuku lands in Sudan (see Map 2). The Uganda government, however, objected to this. The governor of Uganda was willing to concede territory as far south of the Red Line as Lodwa Hill and Chei Hill (in return for Ma'di fishing rights on the Sudan-controlled Nile) but not as far as Mount Midigo, where he reported that Ugandans had recently settled on the southern slopes. In another foreshadowing of the problems that would emerge many years later, he added 'that the population of the West Nile District is increasing, and that the area now offered to the Sudan has a potential value as a region for future settlement'.³³

The issue remained unresolved. The next proposal from the Uganda government was instead that the Red Line be adopted as the border but that the Kakwa be offered the opportunity to migrate permanently to Uganda and settle with their relatives there.³⁴ In 1936, the governor general of Sudan agreed to accept the Red Line 'subject to detailed examination and exact demarcation by representatives of both Governments'.³⁵ This never took place and the Red Line was never formally recognized as the border or properly mapped, though the two governments had come close to adopting it in the mid-1930s. On the ground, however, it

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 32 H. Macmichael, Civil Secretary, for Governor-General of Sudan, Khartoum, letter to B.H. Bourdillon, Governor of Uganda, 26 October 1933, UKNA FO 141/723/22.

33 B.H. Bourdillon, Governor Uganda, to Governor-General Sudan, 10 July 1933, UKNA FO 141/723/22.

34 B.H. Bourdillon, Governor Uganda, to Governor-General Sudan, 1 May 1935, UKNA CO 822/2534.

35 M. Lloyd for Director of Colonial Surveys to I.S. Wheatley, Colonial Office, 9 April 1956, enclosing notes on 'The Uganda-Sudan and Kenya-Sudan Boundaries', UKNA CO 822/954.

remained the *de facto* border. In particular, Jale Hill on the main road from Moyo to Kajokeji became the site of a border post—no doubt because the hill forms a conspicuous landmark. But Sudan maps continued to show the border running some way south of Jale Hill, rather than through it.

After the Second World War, and with the acceleration of reforms intended to introduce more representative government in the colonies, the colonial government of Uganda began to again request that the border be properly demarcated.³⁶ From 1955, these largely peaceful borderlands would be caught up in larger conflicts, when Southern Sudanese troops stationed at Torit—north of the Uganda border and east of the Nile—mutinied, sparking a violent uprising against northern Sudanese administrators and traders, in particular in the southernmost province, Equatoria. The British and Sudanese authorities used the army to restore control, and following Sudanese independence in January 1956, the southern provinces continued to be governed under emergency measures and tight military security.

In the period between 1956 and 1962, relations between the newly independent state of Sudan and the continuing British colonial government in Uganda were strained by Sudanese suspicions that Uganda was harbouring fugitive mutineers, which the Ugandan administration sought to disprove. The British and Ugandan authorities were keen to resolve the outstanding issue of the border before Ugandan independence, but efforts to establish a boundary commission were hampered by the fact that Uganda's border with Kenya also needed to be delineated. The British government in Kenya was wary of stirring up the unresolved issue of its own borders with Sudan and Ethiopia. Once again, several years of government correspondence over the Sudan–Uganda border failed to produce a resolution.

In 1958, district officials made another administrative agreement, following disputes over the location of the border in relation to the

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 36 J. Hathorn Hall, Governor of Uganda, to Governor-General Sudan, 7 September 1945, UKNA FO 371/46041.

collection of taxes by chiefs.³⁷ The problem of tax collection recurred in 1960, when a Sudan chief tried to collect taxes from Kuku people who had already paid taxes to the Ugandan government. This time the problem reached the level of the acting governor of Uganda, who wrote to the British colonial secretary to highlight lingering border questions:

The course of the Khor Nyaura (Kigura) has not been identified, and this will have to be done by the proposed Boundary Commission. Moreover, considerable difficulty has been experienced over the interpretation of the phrase ‘the southern boundary of the Kuku tribe’, especially as no attempt was made to identify this tribal area boundary for some 15 years after the Order was made in 1914. ... The issue has of course been greatly complicated by the southern movement of the local tribes during the past twenty years ... with the result that the people in the northern part of Madi District as far south as Moyo are a mixture of Madi and Kuku. If the Commission is set up we should argue that the boundary should be the southern limit of the Kuku tribe as it existed in 1914 and should certainly concede no more than the red line which was almost ratified in 1936.³⁸

By this time, then, the two governments appear to have adopted rather more combative positions than their predecessors. While there was a degree of wrangling and partiality towards the claims of their own subjects in the 1930s correspondence, the governments at that time were more prepared to concede territory to one another, not least as both were British colonial administrations. By 1960, however, negotiations took on a harder edge, with the Ugandan side claiming that the Kuku were

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37 Acting Governor Uganda, letter to Iain Macleod, Secretary of State for the Colonies, 20 December 1960, enclosing ‘Notes of a meeting held at Kajo Kaji on November 7th between Sudanese and Uganda representatives to discuss the Sudan/Uganda border’, UKNA CO 822/2818; Interview with customary chief and clan landlords, Lefori, Moyo District, 15 October 2014.

38 Acting Governor Uganda, letter to Iain Macleod, Secretary of State for the Colonies, 12 February 1960, UKNA CO 822/2818.

pushing southwards. Nonetheless, the description of a mixed population above sounds similar to the situation Stigand described before 1914.

A meeting was held at Kajokeji in 1960 to agree a working administrative line. The Sudanese representatives disputed the way in which the two hills of Keriwa in the west, and Jale on the main Moyo–Kajokeji road, had become *de facto* border markers:

[T]he boundaries as shown on the maps of both countries ran south of Jale, while Uganda claimed that the boundary which had been administered for some years was marked on the road by a stone immediately to the east of Jale. The Sudan representatives denied that the stone had any validity.³⁹

The meeting nevertheless resulted in an agreement that ‘an administrative line should be recognised as a purely temporary expedient running from Yingibay to the Jebel Jale’, existing tax arrangements in the borderlands should try to be preserved and new settlements in the disputed areas should be deterred.⁴⁰ Clearly this agreement did not solve the problem. Just one year later, a member of the West Nile District council asked whether the chair was aware ‘that there is dispute in Kerua [Keriwa] because there is no definite boundary lines in the County’, and, if so, ‘what steps are being taken to stop such a confusion?’⁴¹

By late 1962, such disputes were being eclipsed by the first reports of Sudanese rebel activities and refugees crossing the border into the

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39 Acting Governor Uganda, letter to Iain Macleod, Secretary of State for the Colonies, 20 December 1960, enclosing ‘Notes of a meeting held at Kajo Kaji on November 7th between Sudanese and Uganda representatives to discuss the Sudan/Uganda border’, UKNA CO 822/2818.

40 Acting Governor Uganda, letter to Iain Macleod, Secretary of State for the Colonies, 20 December 1960, enclosing ‘Notes of a meeting held at Kajo Kaji on November 7th between Sudanese and Uganda representatives to discuss the Sudan/Uganda border’, UKNA CO 822/2818.

41 West Nile District Council, ‘Minutes of the 7th meeting of the West Nile District Council’, Question No. 2, Councillor B. Moro, West Nile, 17–19 January 1961, Uganda National Archives, Entebbe (hereafter UNA), Northern Province B3 002.

newly independent Uganda.⁴² Meanwhile the Sudan government had reportedly become reluctant to pursue border demarcation in case it led Egypt to raise the issue of the Halaib triangle on the Egypt–Sudan border.⁴³ From this point onward, district-level intelligence reports from Uganda focused on the new pressures and insecurities resulting from the accelerating influx of refugees from both Sudan and Congo. In the midst of the insecurity and displacement of the mid–1960s, the new 1967 constitution of the Ugandan government described its own firm definition of the border, running across Keriwa Hill and Jale Hill, each marked by ‘surface beacons’ (see Map 2).⁴⁴

This delimitation remains the reference point for Ugandan claims up to the present that the border coordinates are clear and that a boundary marker used to exist on top of Jale Hill. There is, however, no evidence that this 1967 definition of the border was ever formally and legally accepted by the Sudan government. It does not appear on Sudan government maps from the 1970s, which continued to follow the line shown since the 1930s.⁴⁵ Instead the Ugandan definition seems to be based on the informal working agreements made by—largely British—administrators on the ground over preceding decades. Reference to the two hills, Keriwa Hill and Jale Hill, as boundary markers represents the adoption of a more northerly line than the Sudan government was willing to accept in 1933 and had continued to contest up to 1960. This is not to say that any alternative legal delimitation of the border exists. Rather it is to emphasize that the Ugandan constitution of 1967 does not provide a legal basis for the border in itself, even though it may represent the line that has been practically constructed and enforced over many decades.

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 42 East Africa Command to Commander in Chief Mideast, 16 November 1962, UKNA FO 371/165693.

43 J.G.S Beith, Foreign Office, to British Embassy, Khartoum, 7 November 1962, UKNA FO 371/173190.

44 Uganda Constitution 1967, Section I, reproduced in Ian Brownlie, *African Boundaries: a legal and diplomatic encyclopaedia*, London: C. Hurst & Co., 1979, 1007.

45 Sudan Government Survey Office, 1:250,000 map series, Sheet 86-A: Arua, Khartoum, 1976, copy held in Sudan Archive, Durham, PF 8/7.

Displacement, migration and cross-border relations

Uncertainties about the border line have been exacerbated by prolonged periods of displacement both into and away from the borderlands over the past century. Historical narratives on both sides of the border, for example, make reference to the extensive resettlement operations and restriction of movement enforced by the colonial governments as part of their campaign to prevent the spread of sleeping sickness, thus creating a wide uninhabited borderland between Moyo and Kajokeji from the 1920s to 1940s.⁴⁶ Since around 2007, the issue of these sleeping sickness displacements has come up repeatedly in debates over the border. Given the extent to which occupation and cultivation have provided vital markers of usufruct land rights, this prolonged period of displacement may have produced considerable uncertainties over land rights in the borderlands. The process of return also may have involved changes to former settlement patterns.

The sense that these forced removals produced such uncertainties and opportunities for encroachment has only been reinforced by the subsequent repeated displacements and returns in more recent decades. The first wave of Sudanese refugees in the 1960s took advantage of their close relations across the border to settle locally. There was clearly considerable sympathy in the border districts of Uganda for their plight and for the cause of the emerging Southern Sudanese rebel groups. It is nonetheless striking that the refugee presence almost immediately began to arouse concerns among local authorities over their effect on cross-border relations and the potential for problems over land.

Already in 1964, the joint district intelligence report recommended the removal of Sudanese refugees from West Nile District. This would not only prevent the Sudanese conflict 'spilling over onto Ugandan soil' but also avoid the possibility of refugees 'claiming in future that they are part of Sudan. The border struggle between Kenya and Somali [*sic*] seems to

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 46 Sudan Government, 'Sleeping Sickness Annual Report 1922–24', National Records Office, Khartoum (hereafter NRO), Mongalla Province 1/6/39; Leopold, 'Crossing the Line', 470; Interview with area land committee chairperson, Moyo Town, 11 October 2014.

have shown that such a claim is not an impossibility.⁴⁷ In the same year, the Ugandan government expressed similar concerns to the Organisation of African Unity's Commission on Refugees about the potential danger to Uganda's relations with neighbouring states posed by the refugee influx (by this time there were 20,650 documented Sudanese refugees in Uganda, including 7,000 in the West Nile and Ma'di districts) and the potential for internal tensions resulting from competition for land between refugees and Ugandans.⁴⁸

In 1966, the Ugandan authorities used the army to attempt to clear Sudanese refugees from the borderlands, at the same time as the Ugandan army was cooperating with the Sudan army against the Southern Sudanese Anyanya rebels.⁴⁹ This is another episode in the border history that is prominent in current narratives in Kajokeji County, where it is bitterly remembered as a time when the Ugandan army forcibly evicted people from the borderlands and seized their cattle and crops. Even some Ugandan respondents in Moyo District criticized the extent of force used to remove the refugees, claiming that the local Ma'di population did not support the operation.⁵⁰

In the midst of this insecurity and displacement, the question of the border seems to have remained a latent source of tension, according to one report from Moyo in May 1966:

It is also rumoured that some refugees of Afoji and Chunyu [Sunyu] have refused to move inward and claimed that those places belong to the Sudan and if the Madi would try to

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47 Joint District Intelligence report as at 15th September 1964, UNA Presidential Office Confidential B41 S.6190/19, West Nile District Intelligence Reports.

48 Ministry of Planning and Community Development, Kampala, 'OAU Commission on refugees 16–21 November 1964: Notes on refugees in Uganda', Gulu District Records Office B533 S.INT.9: Intelligence Refugees.

49 West Nile District Intelligence Committee meetings September–October 1966, UNA Presidential Office Confidential B41 S.6190/19.

50 Interviews with group of chiefs, elders and youth, Keriwa, Kajokeji County, 26 September 2014; and former district government leader, Moyo Town, 10 October 2014. Also see: Kuku Community, 'Position of the Kuku Community on the disputed land'.

interfere with their settlement they are prepared to fight by any means. It is believed that the Anyanya would be willing to assist them in case of any fight.⁵¹

These areas are among the same ones that are currently disputed between Moyo District and Kajojeji County, demonstrating the long history of their contested ownership.

The 1972 peace agreement in Sudan led to the reopening of the border and gradual return of Sudanese refugees. In subsequent years, peace and ‘cordial relations’ were reported between the Ma’di and their Sudanese neighbours, with ‘free movement and contact’ across the border.⁵² President Idi Amin, himself from the Uganda–Sudan borderlands, employed many Sudanese in his military and security forces and administration. His overthrow in 1979 led to reprisals against the people of north-west Uganda, who in turn sought refuge across the Sudanese border. Strikingly, the Ma’di from Moyo District who became self-settled refugees, rather than entering refugee camps in Sudan, mainly settled on the west bank among the Kuku of Kajojeji instead of among the Sudanese Ma’di on the east bank. Some may have even ‘adopted a Kuku identity for a period (repatriation figures indicate that there may have been around 15,000 of these self-settled Madi West Bank refugees)’.⁵³

By around 1986, the Sudan People’s Liberation Army (SPLA) attacks forced a reverse migration once again, with both Ma’di and Kuku returning to Uganda over subsequent years. At this time, there were largely positive relations between Ma’di and Kuku: ‘[W]hen most of the Kuku fled Sudan as refugees at the end of the 1980s, many managed to settle outside of the official settlements among local Ugandan Madi

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51 Madi District Intelligence Report for the period 6th May to 31st May, 1966, private archive of Professor Tim Allen, copy of files held in the Uganda National Archive, Office of the Prime Minister–Madi District Intelligence Committee reports 1960s.

52 Madi District Annual Reports 1968–74, Makerere University Library, Kampala, Africana section: G.EAU/M (058) 1.

53 Allen, ‘Social upheaval’, 216.

families in the mountains or in Moyo and Adjumani towns.⁵⁴ One Kuku respondent emphasizes the close cross-border relations at the time:

People always crossed back and forth across the border. In 1987, we ran with some Ma'dis who had come earlier to our side. At that time, we were not hearing something about a border. I am from Litoba and people came from there to the market on our side and those from here went up to Moyo market. There was no checkpoint, just a few soldiers.⁵⁵

The experience of Sudanese refugees in Uganda both underscored the value of cross-border relations of kinship and friendship, and began to strain those relations. Several respondents in Kajojeji County claim that the Ma'di of Moyo District had been less welcoming of the Sudanese refugees than the Ma'di of neighbouring Adjumani District, an impression that seems to have emerged from attempts in the late 1990s to move refugees into particular camps: 'The Madi of Moyo town tried to chase us but the Madi of Adjumani said we have land. Refugees are welcome. Some understand the refugees and some don't.'⁵⁶ This was a period of considerable hardship and insecurity, with refugees and returnees vulnerable to rebel groups in northern Uganda (for example, the West Nile Bank Front and the Lord's Resistance Army [LRA]), as well as to the SPLA who forcibly recruited in the refugee camps.

There are hints that the border itself was becoming a renewed focus of concern by the late 1990s, as the Sudan People's Liberation Movement/Army (SPLM/A) consolidated its administration of Kajojeji and neighbouring areas. An example is the disputed area at Keriwa Hill, where 'the local people [Sudanese] believe that these areas have been encroached upon' by the Ugandans, according to a researcher in the early 2000s:

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54 Allen, 'Social upheaval', 55.

55 Interview with male and female youth leaders, Wudu, Kajojeji County, 28 September 2014.

56 Interview with elder from Kajojeji, Juba, 31 July 2013.

The situation has been alarmed by the fact that Uganda local government authority has extended services—schools, health clinics and roads—to these areas which are believed to be beyond or outside its international borders. Furthermore, it is believed that the government of Uganda has even gone further to encourage the local Sudanese people to pay tax known in Uganda as ‘*Machoro*’. ... [I]n an interview with some Sudanese officials, the researcher was informed about the previous meetings which took place in 1997 between the Sudanese and Ugandans authorities. These meetings were meant to look back into Sudan–Uganda border issues, including the alleged Uganda expansion. Nothing materialised from the discussions and all these sensitive issues were left pending. The failure is attributed to the fact that these meetings were locally initiated.⁵⁷

The extension of Ugandan administration, taxation and service provision to the border areas was interpreted by many respondents in 2014 as a deliberate strategy to extend the border northwards. It has remained a complaint by people in Liwolo Payam of Kajokeji County, who claimed that part of their territory and people had become the sub-county of Keriwa in Uganda’s Yumbe District:

The Uganda government brought services, so people considered Uganda as the only government which helps them but people in that sub-county are on their own land, not Ugandan land. They did not go there as refugees. But the Uganda government created positions for them as LCs [local council chairs] and village chiefs. That is the Uganda administration. Up to now, people here still consider those people as brothers. They still go there for family things. The only difference is the

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57 Malual Ayom Dor, ‘Conflict and Cooperation between Uganda and Sudan: the impact of transnational ethnicity, 1962–2002’, MA dissertation, Makerere University, 2003, 92–93. The author was an SPLA officer at the time.

administration. Some people here are registered as South Sudanese, others as Ugandans to get services.⁵⁸

On the Ugandan side, however, respondents in Moyo District assert that Sudanese refugees had once again settled in the borderlands before 2005 and then began to lay claim to Ugandan territory, which is also seen as a deliberate ploy: ‘When somebody of theirs dies, they put concrete [graves] and they also plant mangoes. This is their trick.’⁵⁹ Graves and fruit trees are commonly understood markers of long-term land rights. The question of the status of those displaced during the second Sudanese civil war has thus become a focus of dispute. Were they internally displaced within Sudanese territory or refugees on Ugandan soil?

In 2011, a Ugandan report suggested that several individual and sometimes fatal conflicts between Southern Sudanese and Ugandans over land ownership in areas claimed by Lefori sub-county in Moyo District had occurred between 1989 and 1997.⁶⁰ While there may have been smouldering tensions over land ownership and sovereignty in the borderlands during the 1990s, it was only after the Sudanese Comprehensive Peace Agreement in 2005 and subsequent departure of the LRA from northern Uganda that the dispute became more serious, as displaced populations returned to both Kajokeji County and Moyo District. The border areas became a new focus of cultivation and settlement. Respondents on both sides of the border emphasized the relative fertility of these lands, which had previously been largely uninhabited hunting grounds.⁶¹ Around 2005,

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58 Interview with group of chiefs, elders and youth, Keriwa, Kajokeji County, 26 September 2014.

59 Interview with male and female sub-county government officials, Lefori, Moyo District, 13 October 2014.

60 Moyo District Internal Security Officer, ‘Sub: The Boarder Land Dispute Between Moyo District (Madi Community) and South Sudan (Kuku Community)’, Moyo, 31 August 2011, copied on 13 October 2014 at the Lefori sub-county local council 3 office, Lefori, Moyo District.

61 Interviews with county agriculture department official, Mere, Kajokeji County, 18 September 2014; local councillor, Logoba, Moyo District, 14 October 2014; and customary chief and clan landlords, Lefori, Moyo District, 15 October 2014.

the enforcement of a forest reserve in the Metu area of Moyo District displaced many people, some of whom resettled in the borderlands. Local investors—often government officials—on both sides of the border also began to invest in commercial agriculture in the borderlands.⁶²

With increasing settlement and cultivation in the borderlands, particular ventures became triggers for dispute and conflict because they appeared to represent assertions of sovereignty by rival state authorities. In 2007, under the Ugandan North West Smallholders Agricultural Development Project, the Uganda National Roads Authority attempted to construct a new road through the borderlands between Afoji and Lefori, with the reported aim of connecting cultivation sites to main roads and the market in Lefori. In 2008, road construction was halted by the Kajokeji County authorities on the grounds that it was entering Sudanese territory. In 2009, the construction of a mast by Ugandan telecommunication firm MTN at Jale Hill was also stopped by the Kajokeji County commissioner.

At this point, the crisis led to a meeting between President Yoweri Museveni of Uganda and President Salva Kiir of the semi-autonomous Southern Sudan. Both leaders urged local reconciliation and resolved that no major economic activities should occur in the contested borderlands until official demarcation was undertaken. Incidents of SPLA soldiers and police evicting or detaining Ugandans cultivating in these areas continued to be reported by the Ugandan authorities. In 2011, tractors belonging to a group of Kajokeji-based Kuku commercial farmers, including prominent politicians and government officials, were confiscated by the Moyo authorities after being used to clear and plough a large area for maize cultivation in one of the contested areas of A'baya. This led to another high-level meeting between representatives of the two governments just after South Sudan's independence in July 2011. The meeting called for the two governments to 'expedite the demarcation', while emphasizing

62 Interviews with male and female sub-county government officials, Lefori, Moyo District, 13 October 2014; local councillor, Logoba, Moyo District, 14 October 2014; local government officer, Moyo Town, 13 October 2014; headman, Umbuku, Kajokeji County, 27 September 2014; and chief, Kangapo 2 Payam, Kajokeji County, 26 September 2014.

that '[w]e are the same people, same blood, and can not [sic] afford to spill the blood of our brothers & sisters.'⁶³

In September 2014, however, blood would be spilled. The chair of the district local council (LC 5) in Moyo accompanied Ugandan national census officials to the disputed area of Sunyu to try to conduct the census there. Detained by local police and security forces, they were marched on foot to the Kajokeji county headquarters in Mere, a distance of several miles. The councillors and officials were released the following day and returned to Moyo claiming to have been physically abused and held in poor conditions. The district local council had meanwhile begun organizing a demonstration in Moyo in protest at their leader's mistreatment. Organizers of the event claimed it was primarily intended to attract the attention of the Ugandan government but Kuku inhabitants of Moyo District interpreted the march as a threat against them.

Led by members of parliament and local councillors, demonstrators marched to the border post at Afoji. The situation deteriorated into threats and attacks on South Sudanese houses and shops, amid rumours that South Sudanese were being evicted from the district. This was the result of a district council resolution that foreigners should leave Moyo or be registered.⁶⁴ An estimated 8,000 to 10,000 Kuku fled into Kajokeji County⁶⁵ and cross-border attacks were launched by fighters armed with bows and arrows, spears and machetes. Several people were killed and many more injured. Thousands of Ma'di living in Moyo District also took temporary refuge across the Nile in Adjumani District in Uganda. On 20

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63 Government of the Republic of South Sudan and Government of the Republic of Uganda, 'Joint Communiqué', border land dispute involving the citizens of Kajokeji County of Central Equatoria State, Republic of South Sudan and Moyo District of the Republic of Uganda, in the meeting held on 21–23 July 2011 in Kajokeji County, Central Equatoria State, Republic of South Sudan, copied at Moyo District records office on 10 October 2014.

64 Interview with district councillor, Moyo District, 14 October 2014.

65 Office of the United Nations High Commissioner for Human Rights, 'Report on the human rights situation in South Sudan', report of the United Nations High Commissioner for Human Rights, 9 March 2015. Accessed 4 June 2015, http://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session28/Documents/A_HRC_28_49_en.doc.

September 2014, Ugandan and South Sudanese government delegations met in Moyo and agreed to form joint army border patrols. They also resolved that the border issue ‘be addressed internationally urgently by the Uganda–South Sudan joint border verification and demarcation team’.⁶⁶ As of February 2016, the joint border committee had reportedly begun holding consultative meetings with border communities, prior to planned verification and demarcation by 2017.⁶⁷

Making and debating boundaries

The September 2014 conflict marked a culmination of processes set in motion a century earlier, when the British colonial authorities sought to establish a tribal boundary between the Ma’di and Kuku as the inter-colonial boundary between Sudan and Uganda, thus dividing people whose migrations and interrelations tended to belie any clear tribal boundary. A member of one of the clans that straddle the current border explains how the British establishment of the border at Jale Hill divided the clan of Moipe: ‘They divided us into Uganda and Sudan. We became Ma’di or Kuku.’⁶⁸ This process was reinforced by the previous sleeping sickness campaign. Clan members on the Sudan side were taken far to the north, while those on the Ugandan side were moved further south. These divisions were again entrenched during the first Sudanese civil war, when people were moved away from the border. Although clan members increasingly came to identify as either Kuku and Sudanese or as Ma’di and Ugandan, they nevertheless maintained close relations across the border, relying on each other during war and displacement,

66 Moyo District and Kajojeji County governments, ‘Resolutions of the Moyo District–Kajojeji County Joint Meeting on the Uganda–South Sudan Common Border Areas Security, held in Multipurpose Training Centre Hall, Moyo District on 20 September 2014’, copied at Kajojeji County office on 25 September 2014.

67 Miraya FM, ‘South Sudan – Uganda demarcation committee consults with border communities’, 9 Feb 2016. Accessed 31 May 2016, <http://radio-miraya.org/national/south-sudan-uganda-demarcation-committee-consults-with-border-communities/>; Catholic Radio Network Evening News Service, ‘South Sudan–Uganda border demarcation takes place in 2017’, 11 February 2016 (transcript in authors’ files).

68 Interview with local councillor, Logoba, Moyo District, 14 October 2014.

and continuing to come together for rituals and to maintain the exogamy that indicates common clan membership. The tragic consequence of the post-2005 tensions and the conflict in 2014 is that the respondent quoted above now fears to visit his clanspeople and relatives in Kajokeji, lest he be identified by other Kuku as a Ma'di.⁶⁹

The same man emphasized the importance of the positive relations and communication that he claimed had been maintained by local-level Ugandan and SPLA authorities across the border before 2005, arguing that the only solution to the border problem was for lower-level (parish or sub-county) authorities to cooperate in handling disputes and avoid escalation to district or county levels. Unlike many others, he did not see border demarcation as the solution per se but rather emphasized the need to revert to the historic experience of peaceful relations and cooperation by local authorities in the borderland.⁷⁰ Implicit in his recommendation for local-level solutions is the criticism made by many other respondents of district and county-level politicians, who were accused of exacerbating the conflict for their own political ends and economic gains.

The 2014 conflict has done much to unite the people of each district and county in opposition to their neighbours across the border, to the benefit and enhanced popularity of local government leaders. There are, however, important counter narratives on both sides that are suppressed and silenced by the dominant narratives of conflict and competition. These counter narratives emphasize common interests in preserving peace in the borderlands. In July 2015, a respondent in Juba told of a local-level initiative to negotiate such a peace along one stretch of the border, involving acceptance by a Kuku clan that their lands were divided by the border but could be looked after by their nephews on the other side.⁷¹ In 2014, one clan leader on the Ugandan side of this stretch of the border had similarly acknowledged that Kuku clan lands extended south of the current border, a claim that was contradicted by other Ugandan

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69 Interview with local councillor, Logoba, Moyo District, 14 October 2014.

70 Interview with local councillor, Logoba, Moyo District, 14 October 2014.

71 Interview with state government employee from Kajokeji, Juba, 25 July 2015.

clan leaders. Indeed, some Ugandans were prepared to acknowledge the possibility of Kuku clan land ownership extending into Uganda but argued that this ‘does not affect the boundary. If clan land was cut in two by the boundary, those on each side belong to each country’.⁷²

The same argument was even made by a South Sudanese government official in 2015, who advocated accepting the existing boundary line, even if it cut through Kuku ancestral lands, in order to avoid the conflict that might ensue from an alternative demarcation.⁷³ In essence, such views represent an important overturning of the original colonial principle that the border should be a strictly tribal one. The first principle that needs to be agreed upon, in this view, is that Ma’di can be South Sudanese and that Kuku can be Ugandan.

A related proposition is that the first step in resolving the conflict is to acknowledge ancestral clan land claims, distinct from the question of the border. Some argue that if these land claims are recognized and respected on both sides of the border, then there would be no conflict over the border itself, regardless of its location. Ugandans wishing to access land on Kuku clan territories in Uganda should simply approach the clan leaders following customary conventions and be granted land to use for cultivation or other purposes. This may well have been the practice followed since the 1940s, in the vague borderland zone, when people were more concerned with obtaining the blessings of the clan land authorities to ensure the fertility of their fields than with the arbitrary and often irrelevant line of the international boundary.

In the past decade, however, land rights in general have become more politicized and contested, with the international border now a focus of conflict. It seems unlikely that enough Ugandans will be willing to risk recognizing Kuku clan land ownership in Uganda. The reverse is also the case, especially since South Sudanese claims regarding the international

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72 Interviews with customary chief and clan landlords, Lefori, Moyo District, 15 October 2014; and local government officer, Moyo Town, 13 October 2014.

73 Interviews with state government official, Juba, 23 July 2015; and CBO staff from Kajokeji, Juba, 22 July 2015.

border have tended to emphasize colonial references to the southern boundary of the Kuku tribe, ensuring that ancestral land claims are inseparable from the issue of the border. There are increasing concerns and fears, also beyond the borderlands, that the recognition of clan land claims can become entangled in political assertions of territorial sovereignty, which may in turn prove exclusive and exclusionary, leading to the denial of land rights on the basis of nationality, ethnicity or clan.

Two key points of contention in continuing debates over the international border exemplify the broader issues of land governance and boundary disputes examined in the remainder of this report:

1. The relationship between customary land boundaries and administrative boundaries

One MP from Kajojeji County admits that the Kuku arguments for the relevance of their ancestral clan boundaries to the definition of the international border ‘will come round to haunt us internally’, as similar questions over the congruence of clan and administrative boundaries have provoked disputes and conflicts over boma, payam and county boundaries within Kajojeji and South Sudan more broadly.⁷⁴ On both sides of the international border, local government authorities have harnessed customary laws and institutions of land governance to exert greater control over land and territory. In the process, they have given greater prominence and power to clan leaders and customary authorities, as well as greater political salience to their versions of historical boundaries.

2. The land rights of maternal nephews and clan affiliates who do not have patrilineal descent

Some of the contestation over land rights in the international borderlands centres on claims that land was allocated by clans to their daughters, sisters or nephews (sisters’ sons) from the other side of the border. Their occupation of this land has ultimately shifted the border because

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74 Interview with MP from Kajojeji, Wudu, 24 September 2014.

they retained their own national and clan identity and now claim that the land they were allocated belongs to them and hence to their national territory.⁷⁵ Such relations between maternal uncles and nephews have provided vital networks of support, particularly during periods of war and displacement. These relations bind the borderland communities together and can be, and have been, harnessed as a resource for peace. In recent years, such relations have also come under increasing strain due to unprecedented competition for and disputes over land, leading to widespread debate about the meaning and strength of land rights acquired by maternal relatives and other non-clan members. While some Kuku may argue that the international boundary is unimportant if their Ugandan nephews are managing their clan lands on the other side, others may see this as an erosion and betrayal of the clan's territorial integrity and land rights.

These two issues have become so contentious in the borderlands, and more widely in both South Sudan and Uganda, for a number of reasons. These include growing population densities in particular areas, policies of decentralization and increased opportunities—or perceptions of opportunities—for commercial exploitation of land and natural resources. Many South Sudanese are convinced that ‘the Ugandan government is claiming part of [South] Sudan to get resources’.⁷⁶ The activities that have tended to spark off conflict in the borderlands have not been small-scale subsistence agriculture or even cattle grazing but those that appear to represent commercial exploitation and the assertion of state sovereignty: ‘If Uganda hadn’t built the road, no one would complain.’⁷⁷ This tendency is replicated within South Sudan and northern Uganda in other disputes over land and boundaries.

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75 Interview with MP from Kajokeji, Juba, 7 September 2014.

76 Interviews with elder from Kajokeji, Juba, 31 July 2013; and leading Kuku community elder, Juba, 3 August 2013.

77 Interview with MP and former senior county official in Kajokeji, Juba, 5 August 2013.

3. The politics of territory and identity: Disputes over international and internal boundaries

The conflict over the international boundary between Kajokeji County and Moyo District is far from exceptional, even as the long-term enforcement and experiences of that boundary have had distinctive effects on the identities and relations in these borderlands. In fact, the conflict could be seen as a triangular set of boundary disputes between Moyo District and Yumbe District in Uganda and Kajokeji County in South Sudan. It is more obviously driven by local leaders and decentralized government institutions than by the two national governments. Respondents in the western part of Moyo District seem to be just as concerned about their boundary dispute with Yumbe District as they are about the international border. Lugbara and Aringa from Yumbe District, along with Kuku from Kajokeji County, are all seen as foreigners in Moyo District. This is not to downplay the significance of national identities, which have become more important than ever in the recent conflicts. Rather, it is to suggest that there are significant commonalities between such international border disputes and the proliferating disputes over internal boundaries in both South Sudan and northern Uganda.

Since the 1990s, the effects of decentralization policies and the fragmentation of decentralized local government units have begun to fulfil the old colonial vision of tribes as administrative, political and territorial units. Decentralization has driven the increasingly popular ideas that ethnic and administrative boundaries should be contiguous and that control over territory gives people access to government positions, funds and services. In both countries, decentralization has been accompanied by the fragmentation and multiplication of administrative units, such as districts and counties, as political leaders demand that their own ethnic or sub-ethnic communal division should have an independent local government and be in control of its own resources.

As territory has gained new political value, so too have the boundaries between these administrative units become increasingly contested.⁷⁸ This is where the ethnicized politics of decentralization intersect with broader perceptions of changing land value and the potential for commercial exploitation of natural resources. Many boundary conflicts are understood locally in one or two ways. First, they are seen as a result of politicians and government officials attempting to expand existing administrative sub-units in order to fulfil the demographic criteria to become a new independent unit. Second, they are seen to be a result of struggles for control over potentially lucrative natural resources or development opportunities. Conflicts over boundaries tend to erupt at specific sites along roads and where there is some visible sign of development or resource exploitation.

The tensions of decentralization

It is possible to see some of the roots of contemporary boundary disputes in the policies of colonial administration in Sudan and Uganda in the first half of the twentieth century. The British administrators of the Anglo–Egyptian Condominium of the Sudan and the Uganda Protectorate assumed that African society was structured into distinct tribes and sought to harness this tribal organization to their own rule. District officials soon reported difficulties in achieving this goal on the ground, however, where most tribes proved to be fragmented, overlapping, intermingled and lacking centralized or hierarchical leadership. As the district commissioner of Bor District in Southern Sudan complained in 1938, it was difficult to identify clear authority structures beyond extended family groups:

I have searched in vain in the writings on N.A. [Native Administration] for some help and guidance with a people

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78 Johnson, *When boundaries*; Mareike Schomerus and Tim Allen, *Southern Sudan at Odds with Itself: Dynamics of conflict and predicaments of peace*, London: Development Studies Institute, London School of Economics, 2010; and Rolandsen, 'Land, Security and Peace Building'.

like this. All the theory tacitly assumes a background of social organisation with a hierarchy of chiefs who are chiefs and not just family headmen, and who issue orders and carry them out over units far wider than the family group.⁷⁹

There were forms of authority that did extend much more widely, such as the spiritual authority of Dinka and Nuer prophets or the rain chiefs of Equatoria but the colonial authorities were generally reluctant to employ such religious leadership in the Native Administration, doubting the loyalty of such leaders or their administrative efficiency. Instead they appointed as chiefs men seen to possess the loyalty and background necessary for their new role as tax collectors, executors of government orders and enforcers of colonial law and order.⁸⁰

Chiefs were not appointed as the heads of tribes nor were they necessarily even the heads of sub-tribal sections or clans. The colonial governments envisaged instead a territorial administrative system in which these smaller clans and sections with their own headmen would be amalgamated under the territorial jurisdiction of a chief. Yet British administrators also believed that patrilineal kinship was the glue that held African society together and that they could construct tribes as hierarchical administrative entities by using smaller lineage groups as ‘the bricks’.⁸¹

The result was a continual tension between territoriality and blood descent as the organizing principles of colonial administration. Clans and lineages might define themselves in terms of kinship but their members were often scattered across wide territories and even across different tribes. Territories were inhabited by people of different clans, sub-tribal sections and sometimes even tribes. Communities commonly assimilated

79 B. V. Marwood, District Commissioner Bor, to Governor, Upper Nile, 9 May 1938, NRO Bahr el-Ghazal Province 1/5/28.

80 Cherry Leonardi, *Dealing with Government in South Sudan: histories of chiefship, community and state*, Woodbridge: James Currey, 2013.

81 M. Parr, Governor Equatoria, to Civil Secretary, 7 April 1938, NRO Equatoria Province 2/2/8. Also see: Catherine Boone, *Property and Political Order in Africa: Land Rights and the Structure of Politics*, Cambridge: Cambridge University Press, 2014, 35.

outsiders, with kinship or marital ties often linking together different ethnic groups rather than dividing them.⁸² The colonial authorities found it impossible to map territorial units onto descent-based groups and instead tried to enforce chiefs' jurisdiction over all the inhabitants of the territorial chiefdom, regardless of clan or ethnicity.⁸³ Consequently, they continually faced challenges from people who argued—often in genealogical terms—that they did not belong under a particular chief and should join a different chiefdom or be recognized as an independent section with their own chief. This is a politics of territory and identity with continued resonance in contemporary reality.

The challenge of delimiting territorial administrative units is exacerbated by the nature of indigenous boundaries and landholding. In Kajokeji County and Moyo District, for example, land is parcelled out among the various clans and sub-divided into family holdings. Some of the boundaries between these clan territories, fields and homesteads take a visibly linear form, such as by following streams or field drainage channels—the word for 'drainage channels' and 'boundaries' is the same in Kuku, *lokokoritan*. The clan authorities responsible for the land are said to point out boundaries when they allocate land to people. Yet respondents also emphasize that it is spiritually and culturally offensive to draw boundaries on the ground or to construct fences. 'The owner doesn't make any cross line, no straight line. He just says you have up to that tree.'⁸⁴ Boundaries are therefore often indistinct or non-linear, with perhaps only particular clear points such as hills or prominent trees claimed, and sometimes disputed, as boundary markers. In other words, boundaries form a kind of patchwork pattern—even if the boundaries between the patches are vague or contested.

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82 Douglas Johnson, 'Tribal Boundaries and Border Wars: Nuer–Dinka relations in the Sobat and Zaraf Valleys, c. 1860–1976', *Journal of African History* 23 (1982), 183–203 (183–84).

83 B. V. Marwood, Governor Equatoria, to District Commissioner Juba, 29 March 1947, South Sudan National Archive, Juba, Equatoria Province 66.D.8.

84 Interview with MP from Kajokeji, Juba, 7 September 2014.

In Aweil East County, in contrast, the territories associated with the various sections of the Dinka Abiem or with smaller lineage groups often take an interspersed rather than patchwork form. Dinka concepts of territorial boundaries are based on points in the landscape, which do not necessarily join up in a linear way.⁸⁵ Section and clan territories are often discontinuous and form fragmented patterns: ‘The border is interchanging. Some Makuach Athian [section] villages are in Wunanei and some Wunanei villages are in Makuach Athian. So it is nothing that you can say this is Makuach and this is Wunanei.’⁸⁶ In the past, some boundaries between sections also took the form of uninhabited zones,⁸⁷ as one chief explains, ‘You have certain points where people know, this belongs to Makuach Athian and this belongs to Apuoth. Then when someone comes in the middle of a forest and wants to make a new place you will discuss where it belongs to because the border in between is not really known.’⁸⁸ Boundaries are therefore constantly negotiated and made anew. Each time individuals from two different sections disagree over the boundary of a field and the chiefs are called to settle the dispute and divide the land, a new part of the inter-sectional boundary is negotiated and defined.

In some areas, including Kajokeji County and Moyo District, the picture is further complicated by previous colonial resettlement initiatives such as the sleeping sickness campaign or the drive to make people live closer to roads in order to be more accessible to the government. In Yei District of colonial Sudan, for example, people were moved onto the main roads, and even came to refer to their communities in terms of

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85 Zoe Cormack, ‘Borders are galaxies: Interpreting contestations over local administrative boundaries in South Sudan’, *Africa* 86/3 (2016; forthcoming); Martina Santschi ‘Encountering and “capturing” *hakuma*: Negotiating statehood and authority in Northern Bahr el-Ghazal State, South Sudan’, PhD thesis, University of Bern, Switzerland, 2013.

86 Interview with CBO Staff, Wanyjok, Aweil East County, 13 August 2014.

87 Interviews with community leader, Warawar, Aweil East County, 14 August 2014; and chief, Mabil, Aweil East County, 26 August 2014.

88 Interview with chief, Mabil, Aweil East County, 26 August 2014.

the mileposts on the roads, such as Mile 6. Nonetheless clans retained an important spiritual relationship with the original territories from whence they were moved and their land authorities continued to go back to perform rituals for the health and fertility of the land, even after other clans had moved into those territories.⁸⁹

The colonial authorities were little aware of these indigenous authorities and systems of landholding. The first British administrator of Kajojeji was one of the few to draw attention to what he called a ‘chief of the land and water’:

Although he is supposed to own all the land, by doing so he does not interfere with other people’s rights. He would be applied to in the case of deciding on any movement of the people. ... The ‘father of the land’s’ power is seldom noticed or heard of, and so little does he interfere, that one might remain for long in ignorance of his presence, and the ‘chief of the people’ would alone appear in administrative cases. However, the latter consults the ‘land chief’ on all important points and sometimes even takes to him cases he is unable to decide himself.⁹⁰

Another British official emphasized that this father-owner-chief of the land (*monyē kak* in Bari; *monyē kujöŋ* in Kuku; *vudipi* in Ma’di) was ‘not the clan “head” in such matters as rendering labour to chief or government or the collection of tax’, which is partly why the government was little aware or interested in such figures.⁹¹ Land disputes rarely entered the colonial records, suggesting either that land disputes were indeed rare or that they were handled at the local level without reaching the

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89 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), 215–40.

90 Stigand, *Equatoria*, 34.

91 Leonard Fielding Nalder, ed., *A Tribal Survey of Mongalla Province*, Oxford: Oxford University Press, 1937, 125.

formal chiefs' courts or escalating into conflicts. The obvious exception to this was the recurrent conflict over grazing land in cattle-keeping areas of Southern Sudan such as Aweil East County, which the government sought to suppress or resolve, including by marking boundary points between different sections' territories.

The early Condominium government also sought to prevent such conflicts by enforcing province boundaries as tribal boundaries. Just as it tried to make the Sudan–Uganda border correspond to ethnic boundaries, so it forcibly resettled Nuer and Dinka to try to ensure that they were separated by the boundary between Upper Nile Province and Mongalla—later Equatoria—Province, which ran to the north of the town of Bor at the time. In 1919, the inspector of Bor declared that it was impossible to define a tribal boundary between the Nuer and Dinka, noting that, 'The tendency of the Nuers and Dinkas is to fuse with one another. This has always occurred in the past in the intervals of fighting. To support the idea of a tribal boundary is merely to strive to keep open a sore which could otherwise tend, with proper treatment, to heal itself.'⁹² It would be some time before the policy of tribal separation was gradually abandoned by colonial authorities. More broadly, they came to recognize instead that bringing conflicting communities under the same administration was a more effective means of managing conflicts than attempting to divide them along provincial lines.⁹³

In fact, the colonial districts encompassed multiple ethnic groups and sub-ethnic sections. Increasingly, the governments sought to instil ideals of local citizenship and civic participation through local government councils that brought together chiefs and other leaders from these various communities. The extent to which politically active Southern Sudanese came to identify with their territorially defined district and province is apparent in the enduring prominence of the old colonial provinces of Equatoria, Bahr el-Ghazal and Upper Nile in South Sudanese politics,

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 92 Stevenson Hamilton to Governor of Mongalla Province, 14 September 1918, Malakal Archives SCR 14.A, cited in Johnson, 'Tribal boundaries', 197.

93 Johnson, 'Tribal boundaries' and Johnson, *When boundaries*, 21.

as well as in the July 2014 proposal from the Sudan People's Liberation Movement-in-Opposition (SPLM-IO) to reinstate the 21 former colonial districts in a new federal system.⁹⁴

The colonial system of local government councils was largely retained by postcolonial governments, as were the centralizing tendencies of the colonial states, leaving local governments with little autonomy and few resources. Campaigns to redress this through federalism were unsuccessful in both Sudan and Uganda, contributing to grievances in regions marginalized from and by the central governments. These grievances in turn fed the rebellions in the 1980s by Yoweri Museveni's National Resistance Movement/Army (NRM/A) against Milton Obote's government in Uganda and by John Garang's Sudan People's Liberation Movement/Army (SPLM/A) in Sudan.

In Uganda, the NRM/A was quick to establish its own local political and administrative structures in the form of resistance councils (RCs) at the village level, even before the National Resistance Army (NRA) had secured military victory in 1986. Subsequently the 1987 Resistance Councils and Committees Statute set up a five-tier structure of RCs, with RC 1 representing the village, RC 2 the parish, RC 3 the sub-county, RC 4 the county and RC 5 the district. Greater financial decentralization to the district RC 5s was implemented in 1992–1993 and the 1995 constitution renamed RCs as local councils (LCs), which were to be directly elected at all five levels.

In Southern Sudan, by the late 1990s the SPLM, too, was instituting liberation councils in its newly named local administrative hierarchy of boma, payam and county. The SPLM decentralization agenda was part of the broader political vision for a New Sudan aimed at overturning the centralization and concentration of political power and state resources

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94 *South Sudan News Agency*, 'SPLM-in Opposition Proposes 21 New States, Ramciel to be the National Capital', 16 July 2014. Accessed 14 February 2016, <http://www.southsudannewsagency.com/news/top-stories/splm-in-opposition-proposes-twenty-one-new-states>. Led by Riek Machar, the SPLM-IO is a military and political opposition movement that split from the SPLM/A during the civil war, which started in December 2013.

in Khartoum. The 1994 Chukudum National Convention had formally committed the SPLM to decentralization, as reiterated in its 1998 Vision.⁹⁵ The SPLM also increasingly acknowledged chiefs as traditional authorities. A conference of traditional leaders organized by the SPLM leadership in 2004 produced the Kamuto Declaration, which affirmed respect for ‘cultures’ and for the ‘role and responsibilities of Traditional Leaders and Chiefs in all aspects, particularly as regards the tenure and ownership of land and other resources belonging to their respective communities’.⁹⁶ SPLM acknowledgement of traditional authority culminated in the recognition of chiefs as the sole executive and judicial authorities at the boma level in the Government of Southern Sudan’s Local Government Act of 2009.

In both Uganda and South Sudan, the institution of new local government systems has been accompanied by the sub-division of administrative units at all levels—from districts and counties to parishes and chiefdoms. Even in the 1990s, disputes over administrative units were already erupting in the SPLM/A-held areas of Southern Sudan. For example, Mundri and Maridi were placed under a single SPLA Independent Area Command in 1992 but persistent agitation from Mundri led to its separation as a county after the 1994 Chukudum convention.⁹⁷ Such disputes would increase as counties, payams and bomas became the focus for what limited services and relief were available and as the revenue from market and NGO taxes and customs, and any other perquisites of administrative

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95 SPLM Secretariat, ‘Vision and Programme of the Sudan People’s Liberation Movement (SPLM)’, Yei and New Cush, New Sudan, March 1998. Accessed 5 April 2016, <http://www.splmtoday.com/index.php/vision-aamp-programme-splm-34>.

96 ‘Kamuto Declaration’, recommendations and resolutions from The Conference on Traditional Leaders and Chiefs of New Sudan, Kamuto, Kapoeta County, 29 June–10 July 2004. Accessed 1 August 2012, http://www.houseofnationalities.org/kamuto_declaration.asp.

97 Helge Rohn, Peter Adwok Nyaba and George Maker Benjamin, ‘Report of the study on local administrative structures in Maridi, Mundri and Yei Counties–West Bank Equatoria, South Sudan’, Nairobi: Aktion Afrika Hilfe, 1997, 10.

officers, became further sources of competition.⁹⁸ People increasingly believed that they needed their own boma or payam in order to receive services and resources from government or agencies.

The number of districts in Uganda also increased from 34 in 1990 to 112 in 2013. ‘While a variety of explanations have been given as to the extreme nature of district creation in Uganda, perhaps the most plausible is that new districts have been a source of electoral patronage for Museveni. The large number of local jobs that are created with the addition of each new district have [*sic*] led voters to respond positively to district creation over the years.’⁹⁹ These districts have been demanded mainly on an ethnic basis and their creation has ‘reduced what were once ethnically heterogeneous districts to ones largely populated by only one or two major ethnic groups’, often sparking conflict in the process.¹⁰⁰

Colonial administrators sought but mostly failed—and increasingly admitted the futility of trying—to make tribal boundaries the basis for administrative boundaries. Yet in the twenty-first century, such goals have been revived as politicians attempt to establish ethnic constituencies and many different people seek to assert their rights to resources and government positions by claiming to speak as members or representatives of ethnic and sub-ethnic communities. The more that these communal identities are associated with territorial administrative units, the more this raises fears of exclusion among other inhabitants of these units. These other inhabitants either assert their own communal independence and seek administrative separation or face a potential sense of insecurity in terms of their rights to access land and resources within the territorial jurisdiction of another ethnic or sub-ethnic group. In practice,

98 Herbert Herzog, ‘Report: mission on governance to Western Equatoria, Southern Sudan’, Liebefeld, Switzerland: Herzog Consult, 1998, 17, 23.

99 Elliott D. Green, ‘Decentralisation and conflict in Uganda’, *Conflict, Security & Development*, 8/4 (2008), 427–50 (442). Also see Julian Hopwood, ‘Elephants abroad and in the room: explicit and implicit security, justice and protection issues on the Uganda/Sudan border’, London: London School of Economics, Justice and Security Research Programme Paper 22, 2015, 6.

100 Green, ‘Decentralisation and conflict’, 444.

territorial and co-residential communities remain heterogeneous—often increasingly so in contexts of urbanization, long-term displacement and relocation. The progressive flare up of underlying tensions and insecurities over land rights and territorial belonging occurs at moments or sites where rights, resources and jurisdictions are contested, such as at disputed boundaries.

Disputed internal boundaries

There are numerous disputes over administrative boundaries in Aweil East County in north-west South Sudan and, to the south, in Kajokeji County and Moyo District in the South Sudan–Uganda borderlands. These disputes include: The county boundaries between Aweil East, Aweil Centre and Aweil Municipality; the county boundaries of Kajokeji and its payam boundaries between Nyepo and Lire and between Liwolo and Kangapo 2; and the Moyo–Yumbe district boundary and the Moyo–Metu sub-county boundary.

These boundaries are contested in a discourse of ethnic or clan-based claims to territory, leading to inter-communal tensions and in one case even violent conflict. They tend to focus on particular sites where lucrative resources are at stake, particularly newly urbanized areas where there is potential income from land sales or leases, taxes, customs and market dues. Respondents in these areas blame local political and administrative elites for trying to extend their boundaries to encompass more resources, land and people in order to increase their own income, expand their political constituencies and strengthen their claims for promotion, advocating for example that a payam become a county. Even if such political strategies are to blame, it is easy for the fears, insecurities or ambitions of ordinary people to become entangled in these boundary disputes because of the increasing association between ethnicity, territorial administration and land rights.

In Kajokeji County, the most serious internal boundary dispute is the conflict between Nyepo Payam and Lire Payam over the location of their border on the main road to Juba. As is often the case, the disputed area is said to have been largely uninhabited in the past or at least during

the 1983–2005 war. Nyepo respondents claim that the area belonged to a Nyepo clan of Kansuk Boma and that the Kuku of Lire Payam had only recently started to settle and farm there. They had even built a small church. The conflict is said to have been sparked off in 2013 when a Kuku women farmers' association erected a sign on or near the church on which was written in Kuku *mörö taling* (fighting quietly). This was taken as a direct provocation by some Nyepo and a subsequent meeting led to a violent confrontation, with Nyepo youth burning down the church. Kuku respondents indicate that the sign was simply a reference to the fact that women have to fight quietly for their rights and advancement, not a reference to fighting for land. They claim that the Nyepo had been pushing to gain recognition as an independent tribe, which they achieved in 2010, and consequently to have their own county: 'So they said Nyepo Payam needs to be bigger. It needs to be big enough to be a county.'¹⁰¹ Another Kuku respondent explains:

Current problems like conflict between payams are caused by the politicians. For example, the issue of land between Lire and Nyepo. Up to now this problem is not solved. The Nyepo have a small area so they want to grab more land so that their place becomes a county. They confused people and it almost led to conflict. People were beaten.¹⁰²

Others blame politicians on both sides: 'The politicians of the two payams fuelled the whole thing, to please the community so that they get votes.'¹⁰³ The dispute has calmed down but was still unresolved in 2014, despite the state parliament having summoned the former Kajojeji County commissioner to report on the problem. The people of Lire Payam were refusing to meet to resolve the issue until the Nyepo youth responsible for the violence and burning down the church were arrested, a demand the Nyepo refused. Since the conflict has simmered down,

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101 Interview with elder from Kajojeji, Juba, 31 July 2013.

102 Interview with church leader, Mere, Kajojeji County, 13 September 2014.

103 Interview with Kuku community youth leader, Juba, 30 July 2013.

there seems to be a tacit strategy by the local authorities to leave it pending, rather than risk reopening it.

In Aweil East County, it might be expected that disputes over grazing territories would be the main source of conflict, as is often the case in such cattle-keeping areas. Instead there were striking commonalities between Aweil East County, and Kajokeji County and Moyo District in terms of the increasing disputes over administrative boundaries in arable and urban areas. One dispute between the counties of Aweil East and Aweil Centre did concern a grazing area containing an important dry-season water source. Yet respondents in Aweil East County emphasize that grazing access was not the focus of the problem. Rather, they anticipated commercial farming in the contested area and feared that any taxes and revenue from this would be seized by Aweil Centre County, which was already collecting revenue from fishing licenses in the area. The dispute centres on administrative jurisdiction and the associated revenue collection opportunities.

This dispute also has ethnic dimensions, with Aweil East County claiming that the disputed land belongs to Dinka Abiem sections and that those claiming it for Aweil Centre County are settlers from the Luo ethnic group. The latter are associated with the county government of Aweil Centre. In the past, the boundaries between such ethnic groups were porous and settlements interspersed. The disputed area, however, is said to lie in the central part of Aweil East County, not on its border. The fear now is that the inhabitants of such an area can place themselves under a different administration—in effect annexing the territory they inhabit to the neighbouring county. Since 2012, the dispute has been exacerbated and further complicated because maps were drawn showing the contested area to lie within the boundaries of the new Aweil Municipality, rather than in either Aweil Centre County or Aweil East County.¹⁰⁴

Boundary disputes are thus not simply or necessarily about rights to land for cultivation, grazing or settlement, although they can be sparked

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 104 Interviews with chief, Mabil, Aweil East County, 27 August 2014; and elder, Wanyjok, Aweil East County, 28 August 2014.

by individual quarrels over land and they frequently focus on communal land claims. The real issue at stake is more often one of competing administrative jurisdictions. As local government units have become closely associated with particular ethnic and sub-ethnic groups, the members of those groups who live in neighbouring administrations are seen as a potential means of expanding the boundaries of the unit with which they are ethnically identified. According to many respondents, people of other ethnic or sub-ethnic groups are welcome to remain or settle in any county or payam, provided they recognize its administration and do not try to establish their own administration or to annex the land they occupy to a neighbouring administration. Such concerns are heightened by the tactics of rival administrations, which sometimes each appoint their own chiefs or create competing administrative structures in disputed areas. This is the case in the contested areas of the South Sudan–Uganda border and in peri-urban areas of Aweil Town, which are claimed by both the Aweil Municipality and the county authorities in Aweil Centre.

Internal boundary disputes reflect a variety of factors, including political rivalries over decentralized administration, as well as growing perceptions of the commercial value of land and natural resources. Above all, they expose a long-standing underlying tension between recurrent government visions of a neat administrative chequerboard of ethnic territories and the much messier realities of social and residential community, in which sections, tribes and clans have never been stable or lived in clearly bounded territorial units. Of course there are important relationships between people and land, and between identity and territory. These relationships, however, are complex and multi-layered, changing and not easily organized into administrative units. Ethnicity is not simply territorial and territorial communities are not mono-ethnic. The problem is that the policies and practices of decentralization recurrently, and increasingly, assume the opposite.

Disputed international boundaries

Competition over lucrative resources and administrative jurisdiction can be magnified when the disputed boundary is an international border,

particularly when the border itself is a source of revenue or when there are higher-level political tensions between national governments. Even in these cases, however, disputes frequently come to focus on local communal land claims and rights, with nationality adding an extra layer of complexity to the contested relationship between identity, territory and administrative jurisdiction, as in the Kajokeji–Moyo international boundary dispute. Moreover, this tendency is by no means unique, as a range of other international boundary disputes between South Sudan and Uganda and South Sudan and Sudan demonstrate.

The border between South Sudan and Uganda, for example, is also a site of dispute to the east of the Nile. The colonial governments did not attempt to make tribal boundaries the basis for the border immediately east of the Nile. Instead, the 1914 definition cuts through the Ma'di and the Acholi ethnic groups. Tensions have arisen in two particular sites on this border.¹⁰⁵ One site is the village of Ngomoromo, on the border between Magwi County in the former Eastern Equatoria State in South Sudan and Lamwo District in Uganda. Land in Ngomoromo is claimed by one South Sudanese Acholi clan and two Ugandan Acholi clans. As in the Kajokeji–Moyo dispute, this intercommunal conflict has taken on international dimensions, with Ugandans alleging South Sudanese military incursions and relocation of the border post, while South Sudanese accuse Uganda of having shifted the border northwards. The recent history of cross-border military movements by both government and rebel armies during the Sudanese and Ugandan civil wars has contributed to tensions and insecurities in the borderlands.¹⁰⁶ There are further parallels with the Kajokeji–Moyo dispute in the way in which competing historical narratives are told by the rival clans to support their claims to what was formerly an uninhabited hunting ground in the borderlands but which has now been settled by returnees.

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 105 The details of these cases are taken from Hopwood, 'Elephants abroad'.

106 Mareike Schomerus, *Perilous Border: Sudanese communities affected by conflict on the Sudan–Uganda border*, London: Conciliation Resources, 2008.

In another contested area east of the Nile, it is not the location of the international border that is disputed as in the Kajokeji–Moyo dispute, as much as the revenues to be gained from it. The main highway and thriving trade route between Uganda and South Sudan runs through the border post of Elegu, where the construction of a trading centre in 2013 has fuelled a suddenly lucrative market in land sales and leases. In addition to lying on the north-south international border, Elegu is also located on the east-west boundary between Adjumani District, associated with the Ma'di, and Amuru District, associated with the Acholi. The district administrations are reported to have aligned themselves with two rival Ma'di clans claiming ancestral ownership of the land in Elegu. To further complicate the situation, one of these clans, Ma'di Oyapele, is located mainly in South Sudan but claims that its ancestral lands stretch into what is now Uganda. Some Oyapele clan members are exercising authority over land across the border in Elegu, selling and renting it to traders. This has provoked antagonism from the rival Ma'di Ofodro clan, which accuses them of being South Sudanese.

Once again, the international border has added a new layer of complexity to the relationship between communal identity and territorial land claims in an area where cross-border relations and movements make it impossible in any case to establish clear-cut national citizenship of individuals.¹⁰⁷ In the absence of definitive individual nationalities, ethnic and clan identities are increasingly invoked as shorthand for defining nationality, whether to support or deny land claims. As in other cases, the dispute is exacerbated by neighbouring district administrations competing for control of a newly lucrative source of revenue and manipulating communal tensions to gain popular support.

The role and position of national governments in these localized border disputes is often difficult to discern or define. Borderland peoples often interpret alleged encroachments into their territory as an indication of national government schemes to extend national boundaries and seize the resources of neighbouring states. At the same time, however,

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 107 Hopwood, 'Elephants abroad', 13.

respondents on both sides of the Kajokeji–Moyo dispute complain that their own respective central government is failing to support them effectively because each is more concerned with maintaining the diplomatic and military alliance between South Sudan and Uganda. These local perceptions encapsulate the tensions surrounding the new South Sudanese state borders with its neighbours. There are other potentially serious disputes, for example over the Gambela region on its border with Ethiopia and the Ilemi Triangle on its border with Kenya. So far, the South Sudanese government has prioritized the maintenance of good relations with Ethiopia, Kenya and Uganda over the resolution of outstanding border issues. This can increase tensions and alienate borderland peoples from the central government, leading them to resort to the organization of armed local defence forces, as in Kajokeji County in 2014.¹⁰⁸ On the other hand, it can enable the maintenance and negotiation of peaceful cross-border relations by local-level authorities.

Central and state-level government officials in South Sudan frequently justify the deferral of internal and international boundary dispute resolution on the grounds that the first priority is to resolve the new international border with Sudan. In the former north-south borders of Sudan, higher-level manipulation and instigation of local conflicts has been much more visible, both before and after the 2005 Comprehensive Peace Agreement (CPA):

Differences over the shared use of land along the border, which might once have been resolved relatively easily between communities ... are now complicated by national economic development policies that place a high priority on the exploitation of oil reserves and the expansion of mechanized agricultural schemes. Conflicts at the national level feed into competition at the local level and are exacerbated by the promise of state support to address local grievances and the use of state resources to mobilize local forces. ... The idiom of the

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108 Also see: Schomerus, *Perilous Border*, 9–10.

rights of local people ... can be a screen behind which the battle over the control of oil or other resources is fought.¹⁰⁹

Aweil East County borders one of the contested areas of the Sudan–South Sudan boundary, between the states of Northern Bahr el-Ghazal and Southern Darfur. Here, too, the colonial government sought to map the province boundary onto an assumed tribal boundary between the Dinka Malual of Bahr el-Ghazal, including the Abiem of Aweil East County, and the Rizeigat of Darfur—both cattle-keeping peoples who depend on seasonal grazing migrations. Rizeigat from Darfur and Misseriya from Kordofan—known collectively as Baggara—move into Northern Bahr el-Ghazal for grazing during the dry season.¹¹⁰ The attempt by the British governors of the provinces of Darfur and Bahr el-Ghazal to agree this boundary in 1924 ran into all the challenges of present-day boundary resolution. ‘The governors attempted to solicit accounts of the boundary’s history from local elites. But, as was so often the case, they were trying to find a stable historical precedent when in fact the boundary’s history was characterized by fluidity, contest, and almost certainly overlapping patterns of access to grazing.’¹¹¹

The governors eventually fixed the boundary 14 miles south of the Kiir River—or Bahr el-Arab—an agreement named after the two governors and known as the Munro–Wheatley Line. The agreement was the focus for ‘persistent [Dinka] Malual resentment’ on the basis that it denied them access to the Kiir River and the grazing territories south of it, to which they claimed primary land rights.¹¹² Local-level agreements enabled shared grazing arrangements in the disputed territory but these were disrupted by the 1955–1972 and 1983–2005 civil wars, and

109 Johnson, *When boundaries*, 10.

110 Sara Pantuliano, et al., ‘Put out to pasture: War, oil and the decline of Misseriyya Humr pastoralism in Sudan’, London: Humanitarian Policy Group, Overseas Development Institute, 2009.

111 Christopher Vaughan, ‘The Rizeigat–Malual borderland during the Condominium: the limits of legibility’, in *The borderlands of South Sudan*, eds. Christopher Vaughan, Mareike Schomerus and Lotje de Vries, New York: Palgrave Macmillan, 2013, 135.

112 Vaughan, ‘Rizeigat–Malual’, 136.

by increasing pressures on grazing land to the north, leading Baggara herders to migrate south of the river for longer periods.¹¹³ During the 1983–2005 civil war, the Khartoum government armed Baggara militias to raid Northern Bahr el-Ghazal.

In early 2008, fighting broke out between SPLA soldiers and Baggara herders. In consideration of this fighting, respondents of Aweil East County assume that the Government of Sudan and some sections of Misseriya and Rizeigat herders aimed to expel Dinka Malual and Dinka Abiem from the northern areas of Northern Bahr el-Ghazal. ‘They want to occupy land by force because they have force. They say that this land doesn’t belong to us.’¹¹⁴ Respondents fear the Government of Sudan wants to push Dinka Malual out of their land not only to control the pasture but also the oil fields that are believed to lie under the territory.¹¹⁵

Subsequent Malual–Rizeigat and Malual–Misseriya peace meetings reaffirmed Baggara seasonal grazing rights within and across the disputed 14 mile territory.¹¹⁶ The border is not only crossed by people for transhumant activities but also has a long history of movement of traders and other people in search for employment or refuge. Due to Northern Bahr el-Ghazal’s proximity to Sudan and the long distance to eastern Africa, the import of goods from Sudan is important to Northern Bahr el-Ghazal.¹¹⁷ After completing a peace agreement between Dinka Malual and Misseriya–Rizeigat in 2000, peace markets, including the peace

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113 For example, see: Douglas H. Johnson, *The Root Causes of Sudan’s Civil Wars: Peace or Truce*, London: James Currey, 2012; Abdalbasit Saeed, ‘Challenges Facing Sudan after Referendum Day 2011. Persistent and Emerging Conflict in the North–South Borderline States’, Sudan Report, Bergen, Norway: Chr. Michelsen Institute (CMI), 2010; and UNICEF, ‘Analysis of Nine Conflicts in Sudan’, Khartoum: UNICEF, May 2003.

114 Santschi, ‘Encountering and “capturing” *hakuma*’, 141.

115 Santschi, ‘Encountering and “capturing” *hakuma*’, 141.

116 For example, see: Johnson, *When boundaries*; Martina Santschi, ‘Report: Dinka Malual–Misseriya Peace Conference 11–14 November 2008, Aweil, Southern Sudan’, Bern: swisspeace, 2008.

117 Interview with community member, Mangartong, Aweil East County, 15 August 2014.

market in Warawar, were opened.¹¹⁸ Especially during times of crisis, Dinka Malual move to South Darfur to engage in sharecropping,¹¹⁹ while inhabitants from Darfur and Kordofan work in the transportation sector, catering and other fields in Northern Bahr el-Ghazal. Nevertheless, the borders between Sudan and South Sudan have repeatedly been closed during and since the interim period (2005–2011).¹²⁰

As with other disputed areas along this Sudan–South Sudan border, debates over the boundary location have been intensely politicized by the history of war and government strategies but they also exemplify broader questions of land rights. The borderlands are part of a zone of long-distance transhumance, in which seasonal grazing rights are crucial. The nature of those rights has been intensely contested—sometimes violently—and periodically renegotiated. The colonial government sought to define tribal territories in Sudan, in which a particular ethnic group exercised dominant or primary land rights. It also recognized secondary rights to access land on a seasonal basis, whether by agreement with the holders of dominant rights or in an area of shared secondary rights. The negotiation of such agreements—rather than enforcement of exclusive dominant rights—has been crucial to the maintenance of peaceful relations: ‘The “dominant” and “secondary” rights paradigm is an important distinction in communal land ownership, access, and use in Sudan and adjoining countries.’¹²¹

Even this paradigm, with its important recognition of multiple forms of land right, can risk imposing a simpler distinction than is necessarily evident on the ground. It can also obscure the politics behind

118 Peter Adwok Nyaba, ‘Report on the Trade Consultancy Conducted in Northern Bahr el-Ghazal’, London: Save the Children UK, 2002.

119 UNICEF, ‘Analysis of Nine Conflict Areas in Sudan’, 42.

120 Interview with returnee, Mangartong, Aweil East County, 15 August 2014. At the end of January 2016, the Sudanese government announced it would open the borders for free movement, including trade. It had restricted movement across the border for five years. See: *Sudan Tribune*, ‘South Sudan applauds opening of border with Sudan’, 28 January 2016. Accessed 15 February 2016, <http://www.sudantribune.com/spip.php?articles57838>.

121 Johnson, *When boundaries*, 24.

the categorization of land rights. The capacity to assert dominant or primary land rights, or to transform secondary rights into primary rights, or to label rival land claims as secondary rights, often depends on the relative power, status and influence of particular groups and individuals. The very attempt to distinguish primary and secondary rights is often highly contested, especially if the distinction is linked to the drawing of boundary lines—whether internal or international.

Many respondents, along with wider discussion of boundary disputes, see the solution to such contests and indeterminacy in the historical evidence of colonial boundaries, particularly in map form. Yet this faith in historic boundary maps and the increasing contemporary demands for boundary demarcation are driven by a changing conception of what boundaries are—a hardening and rigidifying of distinctions between peoples and the attempt to represent these territorially in what are often unprecedented ways.¹²² The demarcation of boundaries is promoted at the national and the international level. The CPA, the Local Government Act of South Sudan and the African Union (AU) Border Programme call for the demarcation of international and internal boundaries. According to the CPA the border between Sudan and Southern Sudan was to be demarcated within six months after the signing of the peace agreement in 2005.¹²³ The Local Government Act calls for the demarcation of local level boundaries as key criteria for the establishment and warranting of local government councils. In an attempt to prevent conflicts over international borders in Africa, the AU—then the Organization of African Unity—stipulated in a resolution in 1964 that colonial borders ought to be respected by African states.¹²⁴ In 2011, the assembly of the AU agreed

122 Also see: Øystein Rolandsen, 'Too much water under the bridge: internationalization of the Sudan–South Sudan border and local demands for its regulation', in *The Borderlands of South Sudan: Authority and Identity in Contemporary and Historical Perspectives*, eds. Christopher Vaughan, Mareike Schomerus and Lotje de Vries, New York: Palgrave Macmillan USA, 2013.

123 International Crisis Group, 'Sudan: Defining the North-South Border', Juba/Khartoum/Nairobi/Brussels: Africa Briefing N°75, 2 September 2010.

124 Okumu Wafula, 'Resources and border disputes in Eastern Africa', *Journal of Eastern African Studies* 4:2 (2010), 279–297.

that international boundaries of African states should be demarcated by 2017 with the help of boundary commissions. At the same time the AU promotes cross-border cooperation.¹²⁵ The Uganda–South Sudan Joint Permanent Commission aims at settling border disputes between Uganda and South Sudan such as the contested border between Kajojeji and Moyo,¹²⁶ while the Joint Border Commission of the Republic of South Sudan and the Republic of Sudan attempts to facilitate the demarcation of contested sections of the border between Sudan and South Sudan including the border between Northern Bahr el-Ghazal and South Darfur.¹²⁷

Despite the emphasis of the AU Border Programme on transforming perceptions of boundaries from ‘barriers’ to ‘bridges’,¹²⁸ many people on the ground see demarcation as a means to secure land rights and political control of territory, and to exclude others. Similarly, there are increasing efforts to establish and distinguish more starkly between primary and secondary rights or to deny the latter altogether. In reality, the location of a boundary or the assertion of primary rights are all subject to debate and contending narratives, rather than being a discernible clear-cut objective fact. The danger is that more powerful individuals and groups can now assert their versions of historic boundaries and rights, which some do in increasingly exclusionary ways.

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Disputes and conflicts over territorial control are not new in South Sudan or northern Uganda. Oral histories tell of violent processes of territorial conquest in which prior inhabitants were driven out or subordinated. In

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125 Commission of the African Union, Department of Peace and Security, *Delimitation and Demarcation of Boundaries in Africa: General Issues and Case Studies*, Addis Ababa: African Union Commission, 2014.

126 Ministry of Foreign Affairs, *Uganda and South Sudan move towards resolving border conflict*, Kampala: Government of the Republic of Uganda, 27 August 2014.

127 *Sudan Tribune*, ‘Sudan, S. Sudan agree on technical details of border demarcation’, 20 March 2015. Accessed 30 May 2016, <http://www.sudantribune.com/spip.php?article54347>.

128 Commission of the African Union, *Delimitation and Demarcation of Boundaries in Africa*, 11.

Aweil East County, respondents recall times when conflicts over grazing rights were far more prevalent than they are at present. This is a change that is often attributed to the authoritarian governance of the area by recent SPLM and state administrations. This only makes it more striking that recent conflicts here have focused not on grazing areas but on sites of commercial value and government administration. In these different and distant places—Aweil East County in north-west South Sudan, on the border with Sudan, and Kajokeji County–Moyo District in the far south, on the borderlands between South Sudan and Uganda—there are strong commonalities in the focus, causes and discourses of boundary disputes. In particular, these disputes demonstrate the increasing political value of territory and the resulting politicization of communal land rights. Tensions over land rights thus result from a two-way process as top-down political manipulation intersects with bottom-up ambitions and fears of exclusion from rights to land and other resources.

In this context, demarcating clear territorial boundaries and distinctions between primary and secondary rights might seem like a solution to disputes and uncertainties. This assumes that such boundaries and distinctions already exist, or that they did in the past. From this perspective, the challenge is simply to find evidence for them. It is, however, obvious that boundaries between people and the distinctions between different land rights are far from clear-cut or objective. Harder boundaries and more rigid distinctions are emerging as competition for land increases and people seek to assert more exclusive and exclusionary definitions of territorial belonging, administrative sovereignty and communal land rights—not because they have always existed.

4. Land belongs to the people? Hybrid land governance

Processes of decentralization and the tribalization of administration and politics have contributed to growing tensions over communal land rights. This has also been a two-way dynamic. As land has gained new kinds of value in some areas, land governance consequently has become increasingly significant in generating the revenues over which local governments are struggling, particularly in and around the towns.

Recent legal and policy initiatives in South Sudan and Uganda have given unprecedented recognition to customary land tenure in a conscious effort to reverse the previous disregard of colonial and postcolonial governments for unregistered land rights. Yet paradoxically, by instituting systems of legal pluralism both governments have placed customary land governance under greater state control than ever before. The result is that customary land authorities have been drawn into local government arenas as state actors seek to harness their authority and legitimacy in new hybrid land governance institutions for controlling land transactions and resolving disputes over land.

These statutory changes and the hybrid forms of land governance that they condition raise crucial questions about the compatibility of state and customary laws and institutions. The rhetoric and practice of legal pluralism, however, disguise the tensions and changes inherent in transforming customary land rights and authorities into laws and institutions of the state.

Colonial land laws and governance

The current hybridity of land law has its origins in British colonial policies in Sudan and Uganda. These policies were largely focused on the central, commercially productive regions around the state capitals of Khartoum and Kampala. This contributed to regional inequalities, which are seen to have underpinned many of the region's postcolonial conflicts.

In northern riverain Sudan, the registration of private land titles that had begun under Turco–Egyptian rule in the nineteenth century accelerated in the early colonial period. From the 1920s, a system of tenant farming was also introduced on Sudan’s Gezira cotton growing scheme. In Uganda, the British government made an agreement with the rulers of the Buganda Kingdom that gave landed estates to the chiefly elite, turning the peasants on this land into rent-paying tenants. In these economic heartlands of Sudan and Uganda demand increased for agricultural labour on commercial farms, plantations and agricultural schemes.

In other regions, including Southern Sudan and northern Uganda, the colonial governments were wary of this kind of commercialization, seeking to promote a much more limited extent of cash-crop production and to avoid disrupting the social structures they believed were vital to stability and security. Communal customary land rights were recognized by these governments and there was no attempt to introduce land registration outside small urban areas. Customary rights were recognized as usufruct rights rather than full ownership, with the land title instead vested in the government, which retained the right to appropriate unregistered land for its own purposes. In Sudan, the Land Settlement Ordinance of 1905 and the Land Settlement and Registration Ordinance of 1925 both state that ‘waste, forest, and unoccupied land shall be deemed to be the property of the government, until the contrary is proved’.¹²⁹ In Uganda, the colonial Crown Land Ordinance of 1903 in effect made those exercising customary land rights into tenants on (British) Crown lands.

Postcolonial politics of land

The implications of colonial land policies only became fully apparent in postcolonial Uganda and Sudan. Uganda’s Public Land Act of 1962 made Crown lands into public land, effectively retaining the colonial treatment of Ugandans living under customary land tenure as ‘tenants-at-will of the

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129 Land Settlement Ordinance § 7(ii); Land Settlement and Registration Ordinance § 16(c), cited in David K. Deng, “‘Land belongs to the community’: Demystifying the “global land grab” in Southern Sudan’. LDPI Working Paper 4. Cape Town, South Africa: Land Deals Politics Initiative, 2011, 8.

state'.¹³⁰ Government policies designed to promote large-scale farming culminated in the Land Reform Decree passed by President Idi Amin's government in 1975, which vested all land in the state as government or public land to be administered by the Public Lands Commission, abolished customary land tenure and replaced freehold titles—where they existed—with government leases.¹³¹

In Sudan, similar measures became highly contentious. President Gaafar Nimeiri's ambitious agricultural development policies necessitated the appropriation of large areas of unregistered land for irrigated and mechanized schemes. The 1970 Unregistered Land Act essentially reaffirmed the colonial law that all unregistered land belonged to the government. Although the colonial government had simultaneously recognized customary land rights and the principle of compensation, the 1970 Act repealed the 1925 provisions allowing for compensation and for claimants to subsequently prove ownership of unregistered land and strengthened the assertion of government ownership over such land, regardless if it was occupied.¹³²

The effects of this legislation were most apparent in the peripheries of present-day Sudan. Large areas in southern Kordofan and southern Darfur were leased out for mechanized farming schemes, displacing thousands of people who had been living on and from that land.¹³³ The resulting grievances are seen to have been crucial in galvanizing political and military opposition to the government in the 1980s and 1990s, so that

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130 Patrick McAuslan, *Land Law Reform in Eastern Africa: Traditional or Transformative?*, Abingdon: Routledge, 2013, 26.

131 McAuslan, *Land Law Reform*, 27–8.

132 Gaim Kibreab, *State intervention and the environment in Sudan, 1889–1989: The Demise of Communal Resource Management*, Vol. 18, Lewiston, New York: Edwin Mellen Press, 2002; and Guma Kunda Komey, *Land, governance, conflict and the Nuba of Sudan*, London: James Currey, 2010.

133 Paul V. De Wit, 'Land and property study in Sudan, interim report, scoping of issues and questions to be addressed', Norwegian Refugee Council, UNHCR and FAO, 2004; Sibrino Barnaba Ferojalla and Kennedy Crispo Galla, 'Scoping Paper' (Section A), in *Land tenure issues in Southern Sudan: Key findings and recommendations for Southern Sudan land policy*, Washington, DC: USAID, 2010, 3.

the rebellion in the south by the Sudan People's Liberation Army (SPLA) gained support in northern areas such as the Nuba Mountains, Darfur, Southern Blue Nile and eastern Sudan.¹³⁴

The effects of the 1970 land legislation were always limited in Southern Sudan. In some towns, land had been gazetted and then allocated by the government since the colonial period, but most rural areas of Southern Sudan continued to be governed by customary law.¹³⁵ The SPLA nevertheless claimed to be fighting to protect the land and its resources from northern government appropriation, a threat made more real by the discovery of oil under southern soil in the late 1970s, and by the subsequent displacement of communities living in the Unity State oilfields in the 1990s.

The principle that land belongs to the people was increasingly championed not only by the Sudan People's Liberation Movement/Army (SPLM/A) in Sudan but also by the government of President Yoweri Museveni's National Resistance Movement (NRM), which seized power in Uganda in 1986. Uganda's new constitution in 1995 changed the emphasis from state ownership of land to ownership by the people of Uganda and recognized customary land tenure alongside freehold, leasehold and the *mailo* (freehold land tenure) system prevailing in the Buganda Kingdom. It also provided for the devolution of land governance to the district level in the form of district land boards and tribunals for resolving land disputes.¹³⁶

The SPLM/A ensured that land issues were prominent in the discussions leading to the Comprehensive Peace Agreement (CPA) in 2005.¹³⁷

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 134 For example, see Johnson, *Root Causes*; Johnson, 'Decolonising the borders'; Liz Alden Wiley, 'Making peace impossible? Failure to honour the land obligations of the Comprehensive Peace Agreement in Central Sudan', Resource paper, Bergen: Chr. Michelsen Institute, 2010; Komey, *Land, governance, conflict*.

135 De Wit, 'Land and property study', 10; Akechak Jok et al., 'A study of customary law in contemporary Southern Sudan'. Juba: World Vision International and the South Sudan Secretariat of Legal and Constitutional Affairs, 2004.

136 McAuslan, *Land Law Reform*, 83–5.

137 Deng, 'Land belongs to the community', 11.

As a consequence, the Agreement on Wealth Sharing (chapter III of the CPA) stated that new land policies and laws should be developed ‘that respond better to the realities of the different populations’.¹³⁸ The CPA, however, did not specifically recognize customary or community land ownership:

[T]here is a common misconception among Southern Sudanese that the principle ‘land belongs to the community’ was enshrined in the CPA and the interim constitutions. Though the texts strongly favor community participation in land issues and the right of communities to share in the wealth created from land investments, they do not explicitly provide for community land ownership.¹³⁹

The CPA and the Interim Constitution of Southern Sudan further stipulated that management of land and natural resources should be decentralized—although without defining the appropriate levels and their jurisdictions—and that two independent land commissions were to be introduced at the national—Sudan—and Southern Sudan levels.¹⁴⁰ Although the CPA land provisions were weak, they nonetheless allowed for legal and political change in government treatment of majority land rights, which ‘specifically included potential for redress for the land abuses which contributed so significantly to the North–South civil war’.¹⁴¹ In 2006, the new Government of Southern Sudan Ministry of Legal Affairs and Constitutional Development excluded Sudan’s 1970

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138 Cited in Paul V. De Wit, ‘Land Policy Development in Post Conflict Sudan: Dealing with Delicate Balances in a Fluid Environment’. Paper Presented at the World Bank Conference on New Challenges for Land Policy and Administration. Session: Land administration in post disaster and conflict environments, Washington, DC, 14–15 February, 2008, 6.

139 Deng, ‘Land belongs to the community’, 12.

140 Lomoro Robert Bullen, ‘Jurisdiction of GOSS, state, county, and customary authorities over land administration, planning, and allocation: Juba County, Central Equatoria State’ (Section B), in *Land tenure issues in Southern Sudan: Key findings and recommendations for Southern Sudan land policy*, Washington, DC: USAID, 2010, B–v.

141 Alden Wiley, *Making peace impossible?*, 1.

Unregistered Land Act from being applied ‘pending the enactment of a Southern Sudan land law’.¹⁴²

The politics of land in South(ern) Sudan since 2005

While the Government of Southern—now South—Sudan appears to promote customary land rights in its policies and legislation, it is also accused of ignoring those rights in numerous cases of land grabbing by powerful actors. Land became an increasing focus of dispute and conflict during the interim period (2005–2011) as a result of population return and urbanization. In particular, there were tensions in the Equatorial states, where people displaced from other areas of Southern Sudan had moved during the war. Returnees often found their former plots of land inhabited by soldiers or displaced civilians, prompting accusations of land grabbing.

There were virulent debates, with some asserting territorial rights of national citizenship and claiming the right to settle anywhere in Southern Sudan. Some declared that their part in the liberation struggle had earned them the right to land in the liberated area. Others seized upon the SPLM slogan ‘land belongs to the community’ to argue that land rights were defined by autochthony or antecedent first-coming.¹⁴³ In national political arenas and media this was often expressed in ethnic terms or in the broader regional categories of Equatorians and Nilotics. Tensions were further exacerbated by government and military actors’

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 142 David K. Deng, ‘Land belongs to the community: Demystifying the “global land grab” in Southern Sudan’, LDPI Working Paper 4, Cape Town, South Africa: Land Deals Politics Initiative, 2011, 6.

143 On tensions over land elsewhere or more generally in South Sudan, see: Rolandsen, ‘Land, Security and Peace Building’; Frode Sundnes and N. Shanmugaratnam, ‘Socio-economic revival and emerging issues relating to land and customary institutions in Yirol, Southern Sudan’, in *Between War and Peace in Sudan and Sri Lanka: deprivation and livelihood revival*, ed. N. Shanmugaratnam, London: James Currey, 2008, 59–76.

appropriation of land and reports of large-scale land deals with external investors.¹⁴⁴

The limited efficacy or clarity of national legislation is interpreted by some South Sudanese citizens as an indication of the lack of political will on the part of the South Sudanese government to reform a situation of uncertainty that government and military elites may be exploiting. The South(ern) Sudan Land Commission was established in 2006 to mediate claims, arbitrate and make recommendations to government institutions ‘concerning land reform policies and recognition of customary rights or customary land law’ and to ‘advise different levels of government on how to co-ordinate policies’.¹⁴⁵ In practice, the land commission has been engaged in drafting the Land Act and related land policy rather than in addressing serious land disputes. In 2009, the most significant pieces of legislation relating to land were passed: The Land Act, the Local Government Act and the Investment Promotion Act. The Land Act recognizes and distinguishes between public, community and private land. Community land includes land registered in the name of a community or a community representative or land used, managed and held by a ‘specific community as community forests, cultivation, grazing areas, shrines and any other purposes recognized by law’.¹⁴⁶ The definition of the term ‘community’ is vague, however, with ‘communities identified on the basis of ethnicity, residence or interest’.¹⁴⁷

While declaring its protection of community land rights and the grazing rights of pastoralists, the 2009 Land Act nevertheless provides the South Sudanese government with the legal basis to appropriate land:

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 144 For example, see: *Reuters*, ‘U.S. investor leads Southern Sudan land lease deal’, 12 January 2009. Accessed 23 February 2016, <http://uk.reuters.com/article/jarch-sudan-idUKN1233921220090112>.

145 Government of Southern Sudan, ‘The Interim Constitution of Southern Sudan’, Juba: Government of Southern Sudan, 2005, 73.

146 Government of Southern Sudan, ‘The Land Act 2009’, Juba: Government of Southern Sudan, 2009, 17.

147 Government of Southern Sudan, ‘The Land Act’, 17; also see: Rolandsen, ‘Land, Security and Peace Building’, 21–22.

‘The government has the ability to expropriate land for use as long as investment activity “reflect[s] an important interest for the community” and “contribute[s] economically and socially to the development of the local community”’.¹⁴⁸ The communities affected by land expropriation in relation to investment have to be consulted and a social, economic and environmental impact assessment should be conducted. Nevertheless, a shift of approach can be observed in SPLM and government attitudes to communal land:

In the wake of the successful peace talks, the SPLM vested an almost exclusive right of ownership in land to ‘the people and communities’ of Southern Sudan. The position of the GoSS [Government of South Sudan] is now more subtle; it proposes the state takes a much stronger direct interest as a landowner and manager.¹⁴⁹

When the Republic of South Sudan gained independence on 9 July 2011, this stronger interest in government control of land was apparent in the new Transitional Constitution of South Sudan, which explicitly stated that ‘all land in South Sudan is owned by the people of South Sudan and its usage shall be regulated by the government in accordance with the provisions of this Constitution and the law’.¹⁵⁰

The 2009 Land Act provides that state laws should further specify the structure, functions and organization of land governance institutions at the state, county and payam level. Yet state land laws have not been passed and enacted in most states. To try to address the remaining questions and uncertainties of the Land Act, the South Sudan Land Commission subsequently drafted a land policy, which was submitted to

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148 Land Act S.63, cited in Tiernan Mennen, ‘Customary law and land rights in South Sudan’, Oslo: Norwegian Refugee Council, March 2012, 15; Deng, ‘Land belongs to the community’; and Forojalla and Galla, ‘Scoping Paper’.

149 De Wit, ‘Land Policy Development’, 11.

150 Government of Republic of South Sudan, ‘The Transitional Constitution of the Republic of South Sudan’, 42.

the Ministry of Legal Affairs and Constitutional Development in 2011.¹⁵¹ It was adopted by the South Sudan Council of Ministries in February 2013 and was then sent to the National Legislative Assembly to be reviewed.¹⁵² As of 2015, it was still awaiting a second reading and had not yet been adopted and implemented.¹⁵³ This is largely explained by the civil war in South Sudan that started in late 2013, which has contributed to delays in government processes. A broader lack of government will to address land issues may also be at work.

The 2011 land policy claims to be based on an extensive popular consultation exercise in all ten states, which revealed people's concerns about tenure insecurity. It also proclaims a vision of providing secure land rights for all South Sudanese. The policy states, 'Secure property rights are essential to the region's economic reconstruction and political and social development.'¹⁵⁴ It also defines land as a 'social right', calling for informal squatters to be 'granted permanent land rights', and enshrines customary land rights in the sense that 'communities, not government, should be the primary parties that enter into agreements with investors'.¹⁵⁵ It further states that communities should engage with investors 'through their county and payam land institutions',¹⁵⁶ thus preserving a central role for government institutions.

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151 Mennen, 'Customary law', 15.

152 'Council of Ministers passes South Sudan land policy', USAID, 25 February 2013. Accessed 17 August 2015, <http://usaidlandtenure.net/commentary/2013/02/council-of-ministers-passes-south-sudan-land-policy>.

153 Ajo Noel Julious, 'Land ownership and conflict of laws in South Sudan', *Sudan Tribune*, 1 August 2015. Accessed 20 October 2015, <http://www.sudantribune.com/spip.php?article55887>; and Francesca Marzatico, 'A roadmap for the implementation of the South Sudan land policy: A step towards the land reform?', Juba: Ministry of Agriculture, Forestry and Cooperation Development, 2015.

154 Southern Sudan Land Commission, 'Draft Land Policy 2011', Juba: Government of Southern Sudan, 2011, 4.

155 Mennen, 'Customary law', 16; Southern Sudan Land Commission, 'Draft Land Policy 2011', iv, 20, 7.

156 Southern Sudan Land Commission, 'Draft Land Policy 2011', 22.

While the land policy affirms the role of the government in securing land rights for all citizens, it provides little detail as to the mechanisms, structures or laws to achieve this. Intended only as the basis for further legislative processes and the production of guidelines and regulations, the land policy calls for the creation of a Community Land Act to govern customary land tenure, a property mortgage law, multiple other pieces of legislation and the revision of existing laws. Recognizing the ‘unclear and overlapping lines of authority’ in relation to land governance, it makes only the general recommendation that the government shall ‘clarify the roles and jurisdiction of various national state and local level institutions over the administration and management of land’.¹⁵⁷ Although the policy contains important core principles, it does little to clarify the practicalities of land administration.

The politics of land reform in Uganda since 1995

In Uganda, the 1998 Land Act was celebrated in some quarters as the first full legal recognition of customary land tenure. Yet here, too, there are tensions and popular suspicions regarding government land policies and intentions. The recognition given to customary land tenure has been driven by a policy of encouraging land privatization and an increasing emphasis on land as a resource for (national) development.¹⁵⁸

The 1995 constitution provides for customary land to be converted into freehold and registered to individual owners. The 1998 Land Act also provides for customary land rights to be converted into freehold.¹⁵⁹ ‘Recently, this principle has been spelled out even more clearly in the

157 Southern Sudan Land Commission, ‘Draft Land Policy 2011’, 26.

158 Ambreena Manji, *The Politics of Land Reform in Africa: From Communal Tenure to Free Markets*, London: Zed Books, 2006; Julian Hopwood, ‘Women’s land claims in the Acholi region of northern Uganda: What can be learned from what is contested’, *International Journal on Minority and Group Rights* 22 (2015), 387–409 (388); Judy Adoko and Simon Levine, ‘A Land Market for Poverty Eradication? A case study of the impact of Uganda’s Land Acts on policy hopes for development and poverty eradication’, Kampala: Land and Equity Movement in Uganda, 2005; McAuslan, *Land Law Reform*, 229–239.

159 Simon Coldham, ‘Land reform and customary rights: The case of Uganda’, *Journal of African Law* 44:1 (2000), 65–77.

Draft National Land Policy of 2011, which states that “public policy regards freehold as the property regime of the future”.¹⁶⁰ The national land policy, which was finally gazetted in 2013, is seen as the culmination of a national process of enquiry and discussion on land governance going back to the late 1980s. It emphasizes ‘legal recognition of the dual operation of both customary system and statutory system in land rights administration, land dispute resolution and land management by empowering customary authorities to perform their functions’.¹⁶¹ At the same time, though, the national land policy emphasizes the central importance of land for national development and hence strengthens the state’s role in administering land to promote its more effective use.¹⁶² The policy is focused on land use as much as on land rights, with an overall goal of ‘optimal use and management of land resources for a prosperous and industrialized economy’.¹⁶³ It explicitly declares the ‘need to re-focus the discourse on land from over-emphasis on property rights per se, to its essential resource value in development’.¹⁶⁴

While Uganda’s legislation over the past 20 years has given unprecedented recognition to customary land rights, its overall direction is to promote national development and more efficient exploitation of the land and its resources. The discovery of oil reserves furthers the assertion of the state’s role in managing natural resources: ‘While article 237 of the 1995 constitution gives all the land to the people of Uganda, all minerals still belong to the government, meaning, therefore, that citizens

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160 Rasmus H. Pedersen, et al., ‘Land Tenure and Economic Activities in Uganda: A Literature Review’, DIIS Working Paper 13, Copenhagen: Danish Institute for International Studies, 2012, 12.

161 Naome Kabanda, ‘Uganda’s National Land Policy: Background, highlights and next steps’, Focus on Land in Africa, no date. Accessed August 2015, <http://www.focusonland.com/fola/en/resources/ugandas-national-land-policy-background-key-highlights-and-next-steps/>.

162 Pedersen et al., ‘Land Tenure’, 30.

163 Ministry of Lands, Housing and Urban Development, ‘The Uganda National Land Policy’, Kampala: Government of the Republic of Uganda, February 2013, 8.

164 Ministry of Lands, Housing and Urban Development, ‘The Uganda National Land Policy’, 5.

have surface land rights only.¹⁶⁵ In 2014, President Museveni reportedly reminded Ugandans of this provision during a conference on mineral wealth in Kampala:

President Museveni has said the government will change the law to allow intending investors in the mining industry to access private land that contains minerals without negotiating with the land owners. ... He said Cabinet would push for the amendment of the Mining Act 2001 so that investors negotiate directly with the government for access to the land where they intend to carry out mineral extraction. ‘The people who have to give you consent are the people who own the minerals, and that is the government’, said President Museveni. Currently, investors seeking to do mining business have to obtain consent of the private owners of the land where mineral deposits exist. ‘The mistake has been to make the investors deal with the landowners, they should deal with the government; and then the government will deal with the landowners. You just tell those villagers to get out. You cannot stop the State from accessing its assets...’¹⁶⁶

Such statements have generated growing suspicion among many people in northern Uganda that the government will appropriate their land for resource exploitation or commercial agriculture. This threat is seemingly epitomized by the government decision to lease land in Amuru District for the Amuru Sugar Project, a joint venture of the Madhvani Group and Government of Uganda, which has met with sustained opposition in Amuru.¹⁶⁷ Some respondents in Moyo District suspect that the Ugandan

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165 Environment Department, ‘Moyo District State of Environment Report’, Moyo District: Moyo District Local Government, 2004, 41.

166 Nelson Wesonga, ‘Owners will lose rights over mineral-rich land—Museveni’, *Daily Monitor*, 2 October 2014.

167 Giuliano Martiniello, ‘Accumulation by dispossession, agrarian change and resistance in Northern Uganda’, MISR Working Paper No. 12, Kampala: Makerere Institute of Social Research, 2013; Hopwood and Atkinson, ‘Final Report’, 19–20.

government deliberately makes the process of registration costly and difficult in order to limit people's land rights:

People have no papers for their land. They only know it is inherited. But if you have no paper and the government wants to do development, they will not compensate you as much as somebody with papers. There was a government circular to register land but then the government kept quiet. There will come a time when the government will come and see dormant land that is yours but not being used. They will say how do you prove that this is yours? Then they cannot compensate you for land, soil but only for trees, houses on it. But if you have a paper, then you have authority over the land.¹⁶⁸

The solution to the threat of land grabbing is much debated within and beyond Uganda. Some, such as the Uganda Land Alliance, advocate the registration of individualized freehold land titles, while others, such as the Land and Equity Movement in Uganda, argue for more formal recognition and protection of customary land tenure systems.¹⁶⁹ On the ground meanwhile, people are variously pursuing one or both of these avenues—seeking to formalize or semi-formalize individual land rights or to assert customary authority and communal rights to land. The institutions to which they turn for dispute resolution or land governance encompass similarly hybrid principles and strategies in their operations.

Hybrid local land governance

The 2009 Land Act of South Sudan and the 1998 Land Act of Uganda both recognize customary land rights alongside private land tenure, institutionalizing a plural legal system of land governance. The implementation and enforcement of both laws have been largely delegated to local government authorities, where the uncertainties and contradictions of land law have had to be worked out. The legislation has been interpreted and

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168 Interview with area land committee chair, Moyo District, 15 October 2014.

169 Martiniello, 'Accumulation by dispossession', 5.

implemented in ways that have strengthened the authority both of local governments and customary leaders with whom these governments have allied, while also producing internal tensions and rivalries among these authorities.

South Sudan

South Sudan's 2009 Land Act and Local Government Act provide for land governance institutions at state, county and payam levels. State-level government institutions are responsible for regulating, managing and coordinating land administration and land use, as well as developing laws and policies, boundary demarcation, surveys and registration.¹⁷⁰ County land authorities are expected to engage in diverse activities, including the holding and allocation of public land, facilitating registration, supporting land surveys and advising traditional authorities and communities on land tenure and rights.¹⁷¹ The existing legislation also provides for different institutions responsible for settling land disputes. They include the land commission, different levels of the judiciary (including county courts), arbitration committees, county land authorities, payam land councils, chiefs' courts, in addition to elders and other authorities who engage in customary justice.¹⁷²

In practice, local land governance systems have been constructed largely through semi-formal arrangements between local governments and customary authorities, as this youth leader in Kajokeji County explains:

The [2009] Land Act of South Sudan specifies three types of land: public, private and community land owned by traditional leaders. Most areas are still owned by community leaders, landlords. People and the government come [to get land] through landlords and then you pay some money to own that

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 170 Government of Southern Sudan, 'The Land Act 2009', 25/43.

171 Government of Southern Sudan, 'The Land Act 2009', 26/46; Government of Southern Sudan, The Local Government Act (2009).

172 Government of Southern Sudan, 'The Land Act 2009', 42ff/91-99.

land. Within town, the government gets land and then they demarcate and survey it. Most areas in Kajokeji were not demarcated, only a small area for the government in Mere. So now the government comes to the landlords, because land belongs to the people.¹⁷³

In Kajokeji County, the primary customary land authorities recognized by the county government are the clan land custodians, or landlords, with the county-level paramount chief's court as the primary institution for settling land cases. A county land committee was formed under the previous county commissioner. In 2014, it was headed by the county-level paramount chief, to whom most people referred as the primary authority in settling land disputes, though whether this was in his court or through the committee was less clear. Cases and appeals can also be brought to the county court, headed by a former chief, or ultimately to the state-level high court. At the time, this was Juba, the state capital of Central Equatoria State, to which Kajokeji County belonged until 2015. In practice, however, land disputes are settled largely in the local chiefs' courts or at the family or clan level.

In Aweil East County—now Aweil East state—the close proximity of the former Northern Bahr el-Ghazal state capital, Aweil Town, ensured that a variety of institutions were settling rural land disputes there in 2014. The court complex in Aweil Town comprises a high court and a town court that issue title deeds and settle disputes over both surveyed and un-surveyed lands. In Aweil East County, the county court is headed by a trained judge but it primarily uses customary law to settle rural land disputes.¹⁷⁴ There is also a town bench court in Mabil, the headquarters of Aweil East County, that hears land disputes and referral cases from chiefs from across the county, along with a county paramount chiefs' court made up of the seven paramount (sectional) chiefs of Aweil

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173 Interview with male youth leader, Wudu, Kajokeji County, 28 September 2014.

174 Interviews with county local government staff member, Wanyjok, Aweil East County, 14 August 2014; and county staff, Mabil, Aweil East County, 13 August 2014.

East County.¹⁷⁵ Paramount chiefs are also members of the county land committee. At times, the chiefs are asked to form a temporary committee to settle larger land disputes about arable land that often involve different sections and payams.¹⁷⁶

In South Sudan, up to now chiefs have remained the principal institution of local government at the boma, or village, level and their courts are the main judicial institutions at boma, payam and sometimes even county levels. They have long played a role in resolving disputes over land. They are not, however, the clan land custodians, as respondents in Kajokeji County emphasize:

Chiefs are there to administer people, not land.¹⁷⁷

Chiefs deal with people and landlords deal with land. Since creation, they [landlords] have a special responsibility for the land.¹⁷⁸

Chiefdoms in Kajokeji County encompass multiple clan territories. In Aweil East County, chiefdoms correspond with the main Dinka sections (see Table 1). Even here, however, chiefs have not played a major role in allocating land and pasture to community members, as individuals mainly access land through their families and clans or by clearing new land. Where chiefs have played a role in relation to land, this has consisted of resolving disputes and conflicts or in mediating negotiations with government or other organizations concerning allocations of land for particular purposes; for example, government buildings, infrastructure development or forest reserves. Since 2005, chiefs have become

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 175 Interviews with local government staff, Mabil, Aweil East County, 13 August 2014; county local government staff member, Wanyjok, Aweil East, 14 August 2014; several community leaders, Returnee Area, Aweil East County, 14 August 2014 (Dinka); group of chief court members, Mabil, Aweil East County, 19 August 2014; chief court members, Wanyjok, Aweil East County, 21 August 2014; and chief, Mabil, Aweil East County, 26 August 2014.

176 Interview with public official, Mabil, Aweil East County, 26 August 2014.

177 Interview with chief from Kajokeji, Juba, 2 August 2013.

178 Interview with elder from Kajokeji, Juba, 31 July 2013.

more prominent in distributing land, particularly around the towns. It is important to recognize that this is a relatively new role for them and in some cases has generated considerable opposition and contestation, especially from clan leaders and landlords. At the same time, chiefs' roles in resolving disputes and conflicts over land have become increasingly important.

Uganda

In Uganda, customary chiefs are called 'cultural leaders' and do not play a formal role in local government. The term 'chief' is more commonly used to refer to the civil servants appointed to run sub-counties, who are not traditional authorities. In Moyo District, the primary customary land authorities recognized by the district and sub-county governments are the clan land custodians. In addition, local councils (LCs) play a more significant role in land governance and dispute resolution, particularly at the village, parish and sub-county levels (LC 1–3). The 1998 Land Act outlines the process whereby an individual, family or community can apply for a certificate of customary ownership through a parish land committee and the district land board. The land committee is required to record the rights of other persons to occupy or use the land and to 'safeguard the interests and rights in the land ... of women, absent persons, minors and persons with or under a disability'.¹⁷⁹ The 1998 Land Act provides for land disputes to be resolved by district and sub-county land tribunals. Yet the costs and massive logistics of the new land governance mechanisms have stalled implementation.

Further legislation followed the 1998 Land Act to clarify or amend its provisions. The Land (Amendment) Act 2004 abolished the parish land committees in favour of the sub-county level 'where the *recorder*, that is the one registering rights and updating registers of customary certificates, is located'. In 2007, the district land tribunals were abolished, creating a vacuum in land dispute resolution, which is reported to have been filled

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 179 Government of the Republic of Uganda, 'Land Act 1998', Kampala: Government of the Republic of Uganda, 1998, Article 5(1)(g).

by multiple institutions and actors.¹⁸⁰ According to the Ugandan national land policy drafted in 2011 and gazetted in 2013, this gap is supposed to be redressed by reinstating district land tribunals. In 2013, the authority of parish council courts (LC 2s) to adjudicate land disputes was withdrawn because LC 1 and LC 2 elections had not been held since 2002.¹⁸¹ In practice, the various laws and policies have had a limited effect and have caused considerable confusion at the local level, leading to gaps between policy and practice. In Moyo District, it is clear that LC 1, LC 2 and LC 3 councillors and officers often continue to handle land disputes, with an emphasis on mediation and customary principles, combined with semi-formal recording.¹⁸² Area land committees (ALCs) have been formed at the sub-county level, as one sub-county administrative chief explains:

The sub-county uses the [1998] Land Act, which categorizes land as customary, leasehold, freehold or mailo. There are area land committees at the parish level and sub-county level. The LCs nominate able persons to the committees. One man and one woman from each parish. ... They are trained by the district land officer. Their major role is solving land disputes and they measure land for leases and sign the form for approval.

We also have an LC 2 court in each parish, with nine members, to handle land cases, plus the LC 3 court with five members here for appeals. The courts are supervised by the magistrates. Their members are independent from the LC. ... Sale of land involves the LC 1. He must sign and agree the size of the land. The written document is kept by the owner, the buyer and the LC. ... When people have cases they pay a fee to the [area land]

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180 Government of the Republic of Uganda, 'Land Act 1998', 19, 25–6; Government of the Republic of Uganda, 'Land (Amendment) Act 2004', Kampala: Government of the Republic of Uganda, 2004, Section 27.

181 Hopwood, 'Women's land claims', 395–96.

182 Hopwood, 'Elephants abroad', 7–8.

committee. The committee is not permanent. It just meets when there are cases.¹⁸³

An ALC chairperson explains that his ALC had only just started: ‘The training and swearing in takes time. The council executive committee nominates members and they are approved by the council. Then they are trained by the district land office and sworn in by the chief magistrate.’¹⁸⁴

The district council (LC 5) chairperson and others emphasize the recently enhanced role of clan landlords in local land governance. The chairperson of another ALC, formed in 2007, stresses that ALC members had to be over fifty years old and have close working relationships with landlords and other elders: ‘We are not quick to solve such disputes. It needs the elders to tell the history of that land—where the boundaries were, how to solve it.’¹⁸⁵ He also claims that the former district land tribunals had been dissolved in 2007 because:

They always created a winner and a loser, which is not a good way when it comes to land, and they were being bribed. Later they created the LC 3 court, so if the ALC fail to resolve, the case is sent there. Usually the LC 3 court follows the judgment of the ALC. Now they even dissolved the LC 3 court. The ALC don’t resolve like a court but act as mediators between the two parties ... because it may be two brothers rivalling. If you say one is right and the other is wrong, you may find later that one is killed.¹⁸⁶

Moyo District demonstrates the dynamic nature of land governance, with new mechanisms and institutions evolving and replacing defunct or ineffective ones. The emphasis of the ALCs on mediation rather than

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183 Interview with sub-county official for Moyo, Moyo Town, 10 October 2014. Also indicated by interview with area land committee chairperson, Moyo Town, 11 October 2014.

184 Interview with ALC chairperson, Lefori, Moyo District, 13 October 2014.

185 Interview with area land committee chairperson, Moyo District, 15 October 2014.

186 Interview with area land committee chairperson, Moyo District, 15 October 2014.

adjudication also reveals the importance of reconciliation as a central goal of customary dispute resolution, especially in terms of land. This supports the findings of other studies that suggest local-level and customary solutions to land disputes are more realistic and effective than centralized legal and judicial instruments.¹⁸⁷

Rural versus urban practices

In both South Sudan and Uganda, rural land is still largely managed and allocated by family, clan or section and lineage authorities. Many people live and farm on land that has been passed down from their father or grandfather, often through their own mother. The governance of such land is largely a family affair, unless or until more serious disputes arise. Yet even the acquisition of rural land is beginning to take on more hybrid or semi-formal aspects, particularly when it is acquired for commercial purposes or by wealthy individuals. The customary practice of giving food, beer or livestock to the clan land custodian in gratitude for usufruct rights granted is being converted into money in such cases.¹⁸⁸ A former senior county official in Kajojeji County, for example, had drawn up his own document declaring that the clan from which he purchased land could not reclaim the land—in other words a *de facto* property title, which he intended to have formalized by a lawyer.¹⁸⁹

Land transactions and governance are most obviously hybridized in urban and peri-urban areas. The once very small towns of South Sudan and northern Uganda have expanded significantly in the past decade. The concept of urban commercial and residential plots as private leasehold property that can be bought and sold, surveyed and registered, is spreading from the old town centres to peri-urban areas and even to rural

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 187 See, for example, Hopwood and Atkinson, 'Final Report'; Hopwood, 'Women's land claims'; and Cherry Leonardi et al., 'Local Justice in Southern Sudan', Washington, DC: United States Institute of Peace, 2010.

188 Interview with university lecturer from Kajojeji, Juba, 6 August 2013 And 14 September 2014.

189 Interview with politician and former county official, Leikor, Kajojeji County, 23 September 2014.

market centres. These processes are multiplying the hybrid and legally plural practices of land governance, with the involvement of customary land authorities, local government officials, local courts and official or semi-official land survey practices.

These various authorities both cooperate and compete to control the increasingly lucrative land market in and around urban, peri-urban and rural market centres. The privatization and registration of land rights—whether formal or informal—gives the impression of providing greater tenure security to those with the money to purchase such rights. This security is frequently undermined, however, by the vagaries and malpractices of urban land governance and the limited capacity of any local authorities to enforce land rights against powerful interests.

Aweil Town in north-west South Sudan is by far the largest town compared to any in Aweil East County, Kajokeji County or Moyo District. It is also the principal site of formal land survey practices. As the state capital of Northern Bahr el-Ghazal until 2015, it has seen the unique involvement of state-level government in the surveying and governance of town lands. The State Ministry of Physical Infrastructure engages in surveys, land allocation, registering, town planning and dispute resolution in newly developed areas of the town.¹⁹⁰ In 2012, Aweil Town Council was granted the local government status of a municipality (equivalent to a county) under a mayor. The municipality authorities are mainly responsible for land governance and registration in old parts of the town that were demarcated in or since the colonial period, including the main market.¹⁹¹ Aweil Municipality and the State Ministry of Physical Infrastructure are engaged in a long-running contest over the authority

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 190 Interviews with state official, Aweil Town, 8 August 2014; state government staff, Aweil Town, 8 August 2014; state official, Aweil Town, 11 August 2014; state government staff, Aweil Town, 11 August 2014; local government staff, Mabil, Aweil East County, 13 August 2014; state government staff, Aweil Town, 18 August 2014; and local government staff, Aweil Town, 24 August 2014.

191 Interviews with state official, Aweil Town, 8 August 2014; county staff, Aweil Town, 8 August 2014; state official, Aweil Town, 11 August 2014; state government staff, Aweil Town, 11 August 2014; local government staff, Mabil, Aweil East County, 13 August 2014; and local government staff, Aweil Town, 24 August 2014.

to control surveys and registration, particularly in newly demarcated areas such as Maper Akot Arou.¹⁹² The state ministry has established precedence in surveying and allocating plots in such areas, and hence in controlling the lucrative fees paid by individuals when they apply for residential or commercial land.

In some cases, the state ministry allocates land based on a lottery. Successful applicants receive a plot number and the land lease from the ministry and the title deed from the town court.¹⁹³ The fees for first class plots (the largest plots) are the most expensive. One respondent had paid SSP 1,720 (about USD 380) for a first-class commercial plot in 2014.¹⁹⁴ Most people apply for third-class residential plots that are less costly at, for example, SSP 400 (just under USD 90).¹⁹⁵ The application process is slow: 'When one applies and pays it can take years until one gets a piece of land.'¹⁹⁶ In general, applying for newly surveyed land is still less expensive than buying surveyed land privately from a landowner but in 2014, the latter option was the only means of acquiring plots because all the newly surveyed land had already been allocated.¹⁹⁷ Private land purchases are also registered by the State Ministry of Physical Infrastructure.¹⁹⁸

In Aweil East County, some market towns such as Wanyjok and Warawar have been surveyed and allocated by the county land and survey

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192 Interview with local government staff, Aweil Town, 24 august 2014.

193 Interviews with state official, Aweil Town, 8 August 2014; state official, Aweil Town, 11 August 2014; state government staff, Aweil Town, 11 August 2014; state government staff, Aweil Town, 11 August 2014; landowner, Maper Akot Arou, Aweil Town, 22 August 2014 (Dinka); and local government staff, Aweil Town, 24 august 2014.

194 In August 2014 when the interview was conducted, the exchange rate of SSP to USD was 0.222. See: <http://www.oanda.com/currency/converter/>.

195 Interviews with state government staff, Aweil Town, 11 August 2014; NGO staff, Aweil Town, 9 August 2014; and state official, Aweil Town, 11 August 2014.

196 Interview with landowner, Maper Akot Arou, Aweil Town, 22 August 2014 (Dinka).

197 Interview with NGO staff, Aweil Town, 9 August 2014.

198 Interviews with state government staff, Aweil Town, 11 August 2014; and landowner, Maper Akot Arou, Aweil Town, 22 August 2014 (Dinka).

department, a branch of the State Ministry of Physical Infrastructure.¹⁹⁹ Its director is automatically a member of the county land authority—headed by the county commissioner and including other county officials—and the county land committee—made up of several chiefs, women, elders and youth—which acts as an intermediary between the government and the community in relation to land surveys and settles land disputes.²⁰⁰ In un-surveyed peri-urban residential areas, hybrid or plural arrangements exist for acquiring land. Some individuals who buy land in such areas close to Aweil Town and Wanyjok try to safeguard their land ownership through documents from chiefs or other authorities.²⁰¹ One respondent who bought an unsurveyed plot in Maluakon explains, ‘I processed a document from the market committee. There was an agreement document which we signed among ourselves. That document included our neighbours and relatives.’²⁰²

The same respondent also underlines the importance of having witnesses and signed documents:

It is not like in Wanyjok [which is surveyed]. You can agree.
But if you do not want another problem, you get a document. ...
They [market committee] are aware of it. When he has another
problem with me I can show that many people know about
it. ...

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199 Interviews with state official, Aweil Town, 8 August 2014; state official, Aweil Town, 11 August 2014; state government staff, Aweil Town, 11 August 2014; state government staff, Aweil Town, 11 August 2014; county staff, Mabil, Aweil East County, 13 August 2014; county staff, Mabil, Aweil East County, 13 August 2014; and group of chief court members, Mabil, Aweil East County, 19 August 2014.

200 Interviews with state government staff, Aweil Town, 11 August 2014; county staff, Mabil, Aweil East County, 13 August 2014; county staff, Mabil, Aweil East County, 13 August 2014; CBO staff, Wanyjok, Aweil East County, 13 August 2014; two community members, Wanyjok, Aweil East County, 19 August 2014; chief court members, Wanyjok, Aweil East County, 21 August 2014; public official, , Mabil, Aweil East County, 26 August 2014; SPLM official, Aweil East County, 28 August 2014; and chief, Awulic, Aweil East County, 28 August 2014.

201 Interview with group of chiefs, Maper Akot Arou, Aweil Town, 23 August 2014.

202 Interview with landowner, Wanyjok, Aweil East County, 27 August 2014.

When you get a land now from somebody you need a paper because things are changing. People have now a different habit. Somebody may give you a land and next time they may deny that they gave it to you.²⁰³

The transfer of unsurveyed land in peri-urban contexts is becoming more formalized. In this sense, the practices related to the transfer of surveyed and unsurveyed areas in peri-urban and urban areas have become more similar. The South Sudanese government land policy that was drafted in 2011 allows for this hybridity, declaring that, ‘Peri-urban areas may be administered under community, public or private tenure, subject to principles of good land administration and planning and the comparative capacities of alternative tenure systems to administer land rights in given areas efficiently.’²⁰⁴

In Kajokeji County, a similarly hybrid form of land governance is apparent in and around the towns of Mere, the county headquarters, and the nearby market town of Wudu, where those seeking to obtain plots for residential or commercial purposes are supposed to go first to the relevant clan landlord and then bring a surveyor from the county government to demarcate the plot and make sure it is not in the way of any planned roads. Survey practices and plot registrations have largely been locally managed and not necessarily conducted by fully qualified surveyors.²⁰⁵ One local political leader was critical of the county chief for selling plots on land belonging to other clans in and around Mere.²⁰⁶ Such accusations and tensions are far more common in relation to the activities of chiefs in the cities of Juba and Yei, as well as other places.

In general, the Kajokeji County authorities, chiefs and clan land custodians appear to have established more harmonious working relations than elsewhere in South Sudan. There are nevertheless considerable

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203 Interview with landowner, Wanyjok, Aweil East County, 27 August 2014.

204 South Sudan Land Commission, ‘Draft Land Policy 2011’, 12.

205 Interview with MP and surveyor from Kajokeji, Juba, 24 July 2015.

206 Interview with politician and former county official, Leikor, Kajokeji County, 23 September 2014.

tensions under the surface between these various authorities as they compete for control of increasingly lucrative land transactions. Some people also complained of disputes between multiple landlords, with some landlords behaving as if they are individual landowners:

Greedy custodians are already dishing out land for money. ... The Lilye area [between the towns of Wudu and Mere] was distributed by the custodians. There is competition between the custodians there. In the past, it seemed to be one family of custodians but now the land is monetized and the custodians are selling it like landowners.²⁰⁷

In Moyo District in Uganda, the 1998 Land Act gave freehold rights to tenants who had rented plots from the town council for at least 12 years:

The Land Act says if someone has stayed on the land for 12 years before 1995 without disputes that land becomes his. Even the government has to buy land now. Even roads. The government compensates for the trees, houses.²⁰⁸

Urban land in Moyo Town is managed by the town council, district land board, area land committees and LC 1 councillors. The edges of the Moyo Town Council area are blurred and expanding, with formerly customary land turned into plots, often without formal title deeds. Many people have complained that the official process of registering plots with the Uganda Land Commission is simply too costly and laborious, involving repeated trips to Kampala, which is around 450 km away, and considerable fees:

Now the government is always talking of the need to register land but I want the government to read this: Is there a cheaper way of registering land? Now you have to go to the area land committee, the district and then to Kampala and back, and

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207 Interview with university professor from Kajokeji, Juba, 6 August 2013.

208 Interview with sub-county official for Moyo, Moyo Town, 10 October 2014.

then to Kampala again. People cannot manage. It needs the government to create a better system.²⁰⁹

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It is striking that—often competing—local government authorities seek to strengthen and legitimize their control of land governance by recognizing and cooperating with customary authorities, such as chiefs and clan land custodians, or landlords. This reflects the important wider state recognition of customary land rights in both South Sudan and Uganda. As a result, those individuals recognized as customary leaders and landlords may help negotiate and protect some customary land rights and compensate for their loss when land is alienated and privatized. At the same time, they are also frequently suspected of personally profiting from the sale or lease of land in urban and market areas, and of exercising an unprecedented individualized power over land. The historic role of chiefs, clan leaders and land custodians in land governance did not extend to managing the kind of monetized transactions in land that now occur nor did their role sanction them as a kind of corporate landowner. Therefore, government recognition of customary authorities can be seen as an attempt to legitimize what are in reality novel practices of land governance.

Both the South Sudanese and Ugandan governments have expressed a largely unprecedented commitment to customary land rights at a time when, paradoxically, those rights appear to be more than ever under threat. The precise nature of customary land rights and authorities is, however, often obscured in the generalized defence or criticism of these systems. In particular, there is a tendency at national and international levels to assume that customary land rights are simply held communally and are antithetical to individual land ownership. In some cases, this has given unparalleled opportunities for power and profit to the individual chiefs and clan landlords who claim control over community land by

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 209 Interview with customary chief and clan landlords, Lefori, Moyo District, 15 October 2014. Also see: Pedersen, et al., 'Land tenure', 23.

deploying their own historical narratives and definitions of customary law. Yet the laws and principles that are emerging from this hybrid land governance are the product of change, debate, political strategy and legal pluralism in contexts of new and previously unheard-of land value, competition and dispute.

5. From inclusion to exclusion? Changing and debating customary land rights

The effects of urbanization in South Sudan and the thrust of Ugandan government policies have been to promote processes of privatization and commoditization of land tenure, albeit frequently through hybrid and semi-formal mechanisms. The simultaneous recognition by both states of customary land rights disguises the extent of transformation and tension inherent in turning those rights into exclusive property ownership. This is why so many disputes and resentments have arisen over land transactions in towns and smaller market and administrative centres. Disguising these tensions also carries a real risk of creating new latent conflict that may surface in future.

Even outside urban areas, perceptions and definitions of land rights have been changing and are increasingly debated and contested. The idea of more exclusive land rights has spread to areas where customary land tenure regimes formerly recognized multiple, often overlapping rights of land use, access and control. Some people are attempting to draw harder distinctions between primary or dominant rights and secondary rights—in some cases to deny the latter altogether. These distinctions are asserted on the basis of genealogical arguments about patrilineal descent, producing more exclusionary definitions of community and communal land rights than was previously the case.

The changing value of land

Changing land values are the product of multiple factors, including political struggles for control of local government administrations, processes of return, urbanization and new patterns of population density, and new opportunities for—or anticipation of—resource extraction and commercial agriculture. A widespread refrain among respondents is that people

have only recently realized the value of land—that is, the commercial or monetary value of land.

Clearly land has always had productive value and been a vital resource for the peoples of this region. It could be inherited and allocated to individual family members. It could also be controlled by lineage or clan authorities. It was not, however, a measure of wealth per se. It was common for land to be abandoned temporarily or permanently due to migration or shifting cultivation practices. Respondents and the historical record both suggest that wealth was instead measured in cattle and other livestock or in people themselves. In contexts of plentiful land, it was the accumulation of wives, children and dependent or client followers that made the senior men of a lineage or clan wealthy, influential and militarily strong.

For this reason, migrant newcomers and maternal or distant relatives were generally welcomed to settle on land already controlled by prior settlers. The Kuku of Kajokeji County have an expression for the way in which newcomers were given pieces of land to shelter an existing clan ‘from the cold’ or to act like a ‘fence’, settling around the dominant clan to protect them from attack, *mukö kindya ngutu lika*. Similarly in Dinka areas, such as Aweil East County, the lineages claiming descent from the first ancestors to come to a particular territory are known as the *koc wut cielic* (the people in the centre of the cattle-camp), who often occupy the more secure and flood-proof locations in the middle of a cattle-camp.²¹⁰ They include lineages of the Dinka spiritual authorities known as *bany biith* (spearmasters), members of which frequently wield political authority through chiefly office or government positions. Other individuals and groups are said to have later joined these first-comers and established consanguine ties through marrying the daughters of first-comers. Consequently, the first-comers are also referred to as the maternal uncles (*naar wut*) of the section by the descendants of these later

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 210 Godfry Lienhardt, *Divinity and experience: The religion of the Dinka*, Oxford: Clarendon Press, 2003, 9.

incomers.²¹¹ It is these first-comer lineages ‘who are said to have the land’ of the section, not in the sense of landownership but rather in terms of authority and responsibility over territory and people.²¹²

In this sense, land has always also had a political value—by controlling access to and allocation of land suitable for cultivation or pastoralism, a powerful group could also exercise authority over people and gain strength in numbers. At the same time, there was no reason to establish exclusive rights over the land. Indeed, even a dominant lineage or clan needed to negotiate and maintain access to land beyond its own immediate territory, for grazing, hunting and fishing or to reach particular resources such as water or salt. No one had an interest in trying to assert exclusive property rights over land.

This is now changing, at least in some contexts, as land acquires a new monetary or commercial value. Alongside this, changing land values have given rise to increasing disputes over land. In particular, people are beginning to question the land rights of those said not to be members of the first-comer clan or lineage. There are multiple reasons for this. Sometimes particular individuals or groups are trying to monopolize the revenue from land transactions, particularly in areas where land is becoming a focus of investment, development or privatization. Sometimes interpersonal or intercommunal rifts become focused on land disputes, though this probably always happened to some extent. Oral histories frequently tell narratives of family disputes leading to splits and migrations. At present, however, underlying many land disputes and debates is a growing sense of fear and insecurity that land may be in diminishing supply as a result of actual or potential land alienations and population growth.

Since the 1990s, and in particular during the past decade, many people in Aweil East County, Kajojeji County and Moyo District have returned

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 211 Interviews A14, NGO staff, Aweil Town, 11 August 2014; A34, elder, Wanyjok, Aweil East County, 19 August 2014 (Dinka); and A73, elder, Wanyjok, Aweil East County, 28 August 2014.

212 Lienhardt, *Divinity and experience*, 9.

from internal or external displacement during the conflicts in Southern Sudan and northern Uganda. The process of return has been largely peaceful but it has produced new land disputes when returnees have arrived to find their original homes or fields occupied by other people.²¹³ In Kajojeji County and Moyo District, the period of returns is also associated with an unprecedented population increase, generating pressure on land, as these respondents indicate.

Returnees want to come back to their ancestral land. But families have increased and this causes disputes over land.²¹⁴

Land is now not enough. In the past, the population was little and people did not cultivate as much. Now people [have] realized land is not enough because people have [re]produced a lot, had more wives. Yet the land cannot increase. That's why there is dispute. Also there is a lot of development going on now which [has] reduced land. Roads, school, health centre.²¹⁵

When people came back from exile, they came in larger numbers. Ma'di used to be few. So that's why people are claiming land now. Children [the younger generations] started evicting people who were given land by their father.²¹⁶

All population and census figures in the region are problematic but they clearly confirm an increase. In 1952, the total population of the Madi sub-district, which then included Adjumani, was estimated from chiefs' records at around 38,000.²¹⁷ By 2010, the population of Moyo

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213 Schomerus, *Perilous Border*, 19.

214 Interview with state official from Kajojeji, Juba, 7 September 2014. Also indicated by interview with MP from Kajojeji, Juba, 7 September 2014.

215 Interview with area land committee chairperson, Moyo Town, 11 October 2014.

216 Interview with area land committee chairperson, Moyo District, 15 October 2014.

217 Madi Sub-District Annual Report 1952, Makerere University Library, Africana section, G. EAU/M (058) 1.

District alone was estimated at 354,300.²¹⁸ Kajojeji County has seen a similar increase on colonial figures, reaching an estimated 196,000 by 2010.²¹⁹ Many respondents express concern that the increasing population density is causing damage to soil fertility because people had less land on which to practice crop rotation and fallow periods, and because of increased deforestation.²²⁰

It is not simply the overall population increase that causes disputes. Settlement patterns also play a role. People increasingly want to live close to roads, markets and services, such as schools and medical facilities. The experience of life in refugee camps and cities has made returnees especially keen to maintain access to services and business opportunities, leading to increasing demographic pressures in and around market centres. A group of male returnees living close to Wanyjok in Aweil East County note, 'We have been living in a town before. That is why we like to live here because this is close to the town.'²²¹ A female returnee who moved back to the village explains that most other returnees do not know how to make a living in the village or how to farm because they lived in

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 218 Directorate of Water Development, Ministry of Water & Environment, 'Moyo', Kampala: Government of the Republic of Uganda, 2010, 1.

219 United Nations Mission in Sudan, 'Central Equatoria State: Kajojeji County'. Accessed 1 June 2015, <http://unmis.unmissions.org/Default.aspx?tabid=4616>.

220 Interviews with county councillor, Wudu, Kajojeji County, 14 September 2014; chief, Saregoro, Kajojeji County, 15 September 2014; county agriculture department official, Wudu, Kajojeji County, 18 September 2014; county agriculture department official, Mere, Kajojeji County, 18 September 2014; church minister, Wudu, Kajojeji County, 20 September 2014; chiefs from Liwolo Payam, Wudu, Kajojeji County, 25 September 2014; elder, Wanyjok, Aweil East County, 19 August 2014 (Dinka); and chief court members, Mangartong, Aweil East County, 20 August 2014. Also see: Environment Department, 'Moyo District', 7, 16, 20, 30; Pedersen, et al., 'Land tenure', 34.

221 Interview with community leader during a group interview, returnee area, Aweil East County, 14 August 2014 (Dinka). Also indicated by interviews with NGO staff, Aweil Town, 16 August 2014; trader, Mangartong, Aweil East County, 20 August 2014; chief, Mangartong, Aweil East County, 20 August 2014; group of male returnees, Wanyjok, Aweil East County, 21 August 2014; and landowner, Maper Akot Arou, Aweil Town, 22 August 2014 (Dinka).

urban contexts in Sudan.²²² Increasing urbanization and market activity is also driving more commercial agricultural production, as well as demand for construction materials, firewood and charcoal. All of these factors contribute to increasing competition for land and natural resources, albeit in geographically uneven ways.

In addition to raising specific land governance issues in towns and peri-urban areas, the rapid urbanization of recent years has had a more general effect in spreading the idea that land can have a monetary and market value. It has also heightened fears and concerns about land grabbing. Many people from Kajokeji County and some from Aweil East County (and Northern Bahr el-Ghazal more generally) have lived in Juba and witnessed or heard about the problems over land in the capital city, as one respondent elaborates:

Land is now proved as a resource. Before we only used land to survive but it is proved now as a resource. Now with the influence of money, even our own sons want to displace those who were settled by our ancestors, saying you are not part of our clan. And there is the development aspect. People come with a big scheme and don't go in the right way to the [customary] landlord. They just make an agreement with some few. And in Juba there is the problem of land grabbing. People use guns. They believe that because we liberated the land we have authority to take land.²²³

Many more affluent individuals buy plots for investment in urban and peri-urban areas because the value of commercial and residential plots increases greatly after land surveys. An NGO employee working in Aweil Town was convinced that buying land there was a good investment. He also owns a number of plots in different towns in South Sudan.

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 222 Interview with returnee, Mangartong, Aweil East County, 15 August 2014. Also indicated by interview with community member, returnee area, Aweil East County, 14 August 2014.

223 Interview with retired teacher and local elder, Mere, Kajokeji County, 13 September 2014.

In the years immediately after the 2005 Comprehensive Peace Agreement (CPA), it was not difficult to acquire land in town. It is, however, becoming more and more difficult and expensive to buy plots.²²⁴ Individuals who invested in residential plots in towns and surrounding areas early on were able to profit from the soaring values of urban land, even before the devaluation of the South Sudanese Pound.

In the broader economic context, however, most people in South Sudan and northern Uganda have scant means of earning a monetary income. What little they or their relatives can earn is needed for purchasing important commodities such as foodstuffs, soap and medicine. The great majority of people are not in a position to purchase land, making customary access to land even more essential for their livelihoods. The multiple factors underpinning that changing value of land, however, render this more complex, as growing disputes over primary and secondary land rights indicate.

Who owns the land? Debating dominant land rights

Recent statutory legislation and wider discourse have deployed a language of communal land ownership and customary landlords. Even if this is intended to give equal respect and legal status to customary land rights, it has the effect of distorting the customary principles underlying those rights, in which ownership is largely an alien concept. This has led to considerable debate and dispute over what constitutes land ownership and who has the right or authority to speak on behalf of a landowning community, which is itself a novel conception.

One prevalent definition of the landowning community is based on patrilineal descent from the first-comer ancestors who established primary rights to a particular territory by first clearing the bush, settling, cultivating or herding on the land. Sometimes these primary rights were instead obtained through conquest and driving out previous inhabitants. In Aweil East County, each section of the Dinka Abiem claims first-comer rights to particular lowland grazing areas (*toic*). Each section

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 224 Interview with NGO staff, Aweil Town, 9 August 2014.

and sub-section has its own cattle-camp locations (*wutic*) within their territory, where they tether their cattle during the night. These primary grazing rights, however, are not generally exercised in an exclusive way and other sections may move into these areas to share grazing, exercising secondary rights based on friendly relations, marital ties or long-standing agreements. Herders move with their cattle to other sections' territories when their own pasture becomes limited, as this respondent explains:

Grazing of the pasture is still divided in the lowland. Ajuongthi, Apuoth and Makuach [sections] all have their own *toic*. He [a member of Makuach] can go to Ajuongthi when there is no pasture on his side because Makuach and Ajuongthi share the pasture at the *toic*.²²⁵

While pasture is jointly used by members of sections and sub-sections, arable land and housing plots are generally accessed by individual households through clan and lineage membership. In Aweil East County, sub-clans and lineages are usually associated with specific smaller settlements and areas of arable land that are scattered within the territory of the section.²²⁶

In Kajokeji County and Moyo District, first-comer land rights are claimed by patrilineal clans and by a particular lineage within each clan, which claims descent from the first settler. A senior male elder is identified as the custodian of the clan land, or landlord. Even the colonial government in Sudan became vaguely aware of the chief, father or owner of the land (as they variously translated the Bari term '*monyē kak*') and compared this figure to those known as earth priests in other regions. As the latter term perhaps better conveys, the authority of the *monyē kak* is based on their special spiritual relationship with the land. This also endows them with political power because their capacity to curse and bless is a powerful sanction, giving them an important role in decisions and disputes over land: 'If someone does something bad to the landlord

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225 Interview with senior chief, Wanyjok, Aweil East County, 26 August 2014 (Dinka).

226 Interview with two teachers, Mangartong, Aweil East County, 15 August 2014.

he can utter word of curse and that person will die.’²²⁷ The role of clan land custodians does not involve estate owning or leasing land in the contemporary sense implied by the English word ‘landlord’. As the first British colonial administrator of Kajojeji emphasizes in describing the chief of the land, ‘Although he is supposed to own all the land, by doing so he does not interfere with other people’s rights.’²²⁸

Recently, however, landlords of Kuku and Ma’di clans have begun to assert greater authority in land transactions. This has proved controversial because it risks treating clans as collective property-owning entities, overriding the complexity of the relationships between individual and collective land rights. Customary land rights across South Sudan and northern Uganda are layered or nested. Clans and sections retain an underlying authority over the land in their territory, especially if there is any question of it being alienated. At the same time, usufruct rights to the land on which people live and farm have often been inherited over one or more generations.

In Kajojeji County and Moyo District, for example, individual men tend to inherit the land cultivated by their own mother, which they can then in turn allocate to their own wife or wives. If a woman has several sons, some might need to access other land but this is largely allocated within the wider land held by the extended family or obtained from maternal relatives or friendly neighbours, rather than necessarily involving the clan authorities. A senior local government official in Moyo District emphasizes the individualization of land rights among Kuku and Ma’di: ‘Sale of land depends on the individual who has authority over land because his father, grandfather left it to him.’²²⁹

In Aweil East County, the maintenance of communal authority over land among the Dinka is stronger, while the exercise of usufruct rights by individual members of a lineage or section is said to be more flexible. In rural areas of Aweil East County, community members who wish

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227 Interview with chief, Saregoro, Kajojeji County, 15 September 2014.

228 Stigand, *Equatoria*, 34.

229 Interview with sub-county official for Moyo, Moyo Town, 10 October 2014.

to build a new house or cultivate a new field have the right to freely access ancestral land: ‘You are from there and are entitled to own land there.’²³⁰ In practice, community members often acquire uncultivated and uninhabited land next to relatives’ houses and fields or other areas associated with their extended family and lineage. Elders direct them to available plots. The right to use land is therefore inherited within families and lineages, as this respondent asserts: ‘That land is the land of my grandfather. I can stay there.’²³¹ It is common for individuals who want to establish their homesteads in rural areas to just build a house next to their father and mother’s homestead, in effect extending the area of the father.²³² It is mainly the last born son who remains on his parents’ plot.²³³ Consequently, smaller settlements in rural contexts are often inhabited by close relatives.

Individuals may also clear land in more distant uninhabited and uncultivated areas of their sections, even if these areas are not necessarily associated with their clan.²³⁴ They can do so without asking permission:

I found a good place. ... I did not ask anybody. Because this land is for Apuoth [section] and I am from Apuoth. You only ask when you go to a certain place and somebody might have been living there before you. Then this is the person who has the right to ask you. But for a place which has never been

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230 Interview with two chiefs, Wanyjok, Aweil East County, 13 August 2014 (Dinka).

231 Interview with landowner, Wanyjok, Aweil East County, 27 August 2014.

232 Interviews with NGO staff, Aweil Town, 9 August 2014; and NGO staff, Aweil Town, 11 August 2014.

233 Interviews with three women, Mangartong, Aweil East County, 20 August 2014 (Dinka); former chief, Wanyjok, Aweil East County, 27 August 2014; and elder, Wanyjok, Aweil East County, 28 August 2014.

234 Interviews with state government staff, Aweil Town, 11 August 2014; elder, Wanyjok, Aweil East County, 19 August 2014 (Dinka); landowner, Wanyjok, Aweil East County, 19 August 2014; landowner, Mangartong, Aweil East County, 20 August 2014; chief, Mangartong, Aweil East County, 20 August 2014; senior chief, Mabil, Aweil East County, 21 August 2014; group of chiefs, Maper Akot Arou, Aweil Town, 23 August 2014; former chief, Wanyjok, Aweil East County, 27 August 2014; elder, Wanyjok, Aweil East County, 28 August 2014; and SPLM official, Aweil East County, 28 August 2014.

inhabited before and you belong to this place, you do not need to ask somebody.²³⁵

Clearing forest land allows for a long-term exercise of land tenure that can be passed down to offspring: ‘Once you clear the land it belongs to you. ... You can transmit this right of the land to your offspring.’²³⁶ Over time, a new settlement emerges as relatives move next to the new homestead and sons build their own homesteads adjacent to the homestead of the individual who cleared the land.²³⁷

Similarly in Kajojeji County, individuals might clear new land for cultivation in more distant uninhabited or previously uncultivated areas (*lowu*), where they only erect temporary shelters for use during the cultivation season; in some cases, these temporary fields might become permanent settlements if people relocate to them.²³⁸ Such individual or familial tenure rights do not mean, however, that the land is a property or commodity that could be alienated without wider consultation: ‘You can sell a cow but not a plot.’²³⁹

Newcomers and nephews

The recent assertion of greater authority over land rights by Kuku and Ma’di clan landlords points to another area of contention: The relationship

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235 Interview with landowner, Wanyjok, Aweil East County, 19 August 2014. Also indicated by interview with elder, Wanyjok, Aweil East County, 19 August 2014 (Dinka).

236 Interview with state government staff, Aweil Town, 11 August 2014. Also indicated by interview with two chiefs, Wanyjok, Aweil East County, 13 August 2014 (Dinka); CBO staff, Wanyjok, Aweil East County, 13 August 2014; elder, Wanyjok, Aweil East County, 19 August 2014 (Dinka); landowner, Wanyjok, Aweil East County, 19 August 2014; and former chief, Wanyjok, Aweil East County, 27 August 2014.

237 Interviews with two teachers, Mangartong, Aweil East County, 15 August 2014; and landowner, Wanyjok, Aweil East County, 19 August 2014.

238 Interview with former district government leader, Moyo Town, 10 October 2014.

239 Interview with elder, Wanyjok, Aweil East County, 19 August 2014 (Dinka). Also indicated by interviews with two chiefs, Wanyjok, Aweil East County, 13 August 2014 (Dinka); community member, Mangartong, Aweil East County, 15 August 2014; local government official, Wanyjok, Aweil East County, 19 August 2014; and landowner, Wanyjok, Aweil East County, 27 August 2014.

between first-comers and later-comers, and their respective land rights. This is not only an issue in the shared borderlands between South Sudan and northern Uganda but is also an increasing source of dispute in northern South Sudan. In some cases the claim to be the first-comer clan is itself contested by other clans with competing historical narratives of arrival and precedence in an area.²⁴⁰ Even where a particular clan is widely recognized to be descended from the first-comer ancestor and respected for its consequent spiritual relationship with the land, there are disputes and debates over the rights of other clans or immigrants. Some of these contests concern long-term clan histories of the original processes of settlement and acquisition of land rights. Such histories often recount a friendship established between the first settler and another individual who came later to the area and was given land by the first-comer.

Descendants of the later-comer may claim that this represented a permanent gift of land, made in recognition of friendship, intermarriage, military assistance or some other contribution that their ancestor made to the emerging community. Some later-comers are said to have brought a particular valuable skill, such as control over rain, or paid a bull in exchange for the land. At present, however, opinions differ as to whether this constituted a permanent land transaction or was simply a gift to recognize and thank the clan land authority for granting usufruct access. This respondent explains:

There was no paying for land in the past. Only that, for example, there is a stream here that never dries up, even in the dry season, so people bring their cattle there to drink. They used to bring these small hoes, *lumöñöt*, to offer so that their cattle can take water. It was given to the landlord but it was not that they were buying the land.²⁴¹

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240 Interview with customary chief and clan landlords, Lefori, Moyo District, 15 October 2014.

241 Interview with clan elder landlord, Mondikolok, Kajojeji County, 13 September 2014.

A Kuku chief likewise emphasizes that a newcomer might offer a he-goat, small calf or bull to the landlord: ‘This is part of the relationship between them but it is not for paying [for] the soil.’²⁴² One clan leader in Kajojeji County explains that land transactions were primarily a means of incorporating new people into the clan:

If anyone wants a piece of land, we don’t just sell to him. We don’t demand for payment. It’s up to that person to give what they like. They make a traditional dish of cowpeas and *kwete* [local beer] to give to the landlord. Such a person who stays becomes like a brother. Giving that food and drink is like a commitment to staying in that clan and becoming part of it. If that person has a friend who comes and finds him there, he cannot just give that friend land, even out of his own land. He has to ask the landlord. That is friendship—we become like brothers—that is how many people have come to be here.²⁴³

Similarly, Dinka respondents in Aweil East County stress that when individuals move to land that does not belong to their section, they have to be welcomed by friends and accepted by the host section authorities, demonstrating the centrality of social relations to the acquisition of land rights: ‘You need people who welcome you. When you do not know anybody you will not get a place. ... If I know him, I can give him part of my place.’²⁴⁴ Communities also want to be assured that newcomers are not troublemakers: ‘You must live with somebody whom you know to

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242 Interview with chief, Mere, Kajojeji County, 16 September 2014.

243 Interview with clan landlord, Leikor, Kajojeji County, 21 September 2014.

244 Interview with community member, Mangartong, Aweil East County, 15 August 2014. Also indicated by interviews with county local government staff member, Wanyjok, Aweil East, 14 August 2014; state government staff, Aweil Town, 8 August 2014; returnee, Aweil Town, 9 August 2014; NGO staff, Aweil Town, 9 August 2014; two chiefs, Wanyjok, Aweil East County, 13 August 2014 (Dinka); two teachers, Mangartong, Aweil East County, 15 August 2014; returnee, Mangartong, Aweil East County, 15 August 2014; elder, Wanyjok, Aweil East County, 19 August 2014 (Dinka); restaurant owner, Wanyjok, Aweil East County, 19 August 2014; landowner, Wanyjok, Aweil East County, 19 August 2014; chief, Wanyjok, Aweil East County, 26 August 2014; and SPLM official, Aweil East County, 28 August 2014.

make sure that he does not cause insecurity to you and you do not cause a problem to him. When there is a problem coming from outside you will be able to face it.’²⁴⁵ The children of these individuals can inherit the land but their original section cannot claim that land; in other words, they become part of the new section.²⁴⁶ It in this way that land has been a means for sections, clans and lineages to expand and absorb new members.

A profound shift has been occurring, however, from a context in which land was relatively abundant and people were the most important resource to a context in which land itself is increasingly perceived to hold real or potential monetary and productive value, and in some cases even to constitute a form of property. As a result of this shift, progressively heated debates are occurring over the nature of land agreements made in previous generations:

Previously if you need land, you go to the owner and organize white stuff [beer] and food to host the landlord. Then the landlord decides on a piece of land and you go there to be shown it. After offering the meal, you assume that you have already bought the land but the drink and food are not payment. We don’t sell land. If the same person later needs land for his children, he goes to the landlord in the same way.

Now people consider that they have bought the land with that food which was paid in their parents’ or grandparents’ time and they want to sell the land as if it is their own. This makes the landlord very angry.²⁴⁷

A further source of debate concerns the nature of land rights acquired through maternal relations, whether in the distant or more recent past. This has also been a means of enlarging a lineage or clan, by absorbing maternal nephews. In Aweil East County, Dinka who move to their

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245 Interview with landowner, Wanyjok, Aweil East County, 19 August 2014.

246 Interview with chief, Wanyjok, Aweil East County, 26 August 2014.

247 Interview with clan elder landlord, Mondikolok, Kajojeji County, 13 September 2014.

maternal uncles' areas become members of the latter's section and their sons can inherit their land there.²⁴⁸

Pajou [my clan] have joined Ajuonghti [section] as children of their daughters. We also own that land. We are members through the mother's side. ... That means that I am accepted, I am part of them, I can share. We are part of Ajuonghti. We have the same rights in everything in Ajuonghti. That is why we also have [chiefly and administrative] positions.²⁴⁹

In Kajokeji County and Moyo District, it is also common practice for families and clans to give land to their daughters or sisters in cases of divorce or where their husbands lacked access to land for some reason. Adult men might also seek assistance from maternal uncles to get land if they lack good relations with their own paternal relatives or if there is not enough land on that side, as this respondent explains:

My mother was from a landowning family, so when she married, my grandfather gave some land to her and her husband. ... Nowadays the uncles might try to claim it back or say that it means you must belong to them. But I inherited it from my mother and I am now cultivating 20 acres there.²⁵⁰

While such origins may have been overlooked or may have become increasingly irrelevant over generations, they can resurface in disputes and competition over land or in local politics. In this sense, rights in the clan or section and its land are subtly differentiated according to whether membership was gained patrilineally or matrilineally and how long ago this took place. One respondent from Aweil East County explains that if

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 248 Interviews with state government staff, Aweil Town, 8 August 2014; two chiefs, Wanyjok, Aweil East County, 13 August 2014 (Dinka); two teachers, Mangartong, Aweil East County, 15 August 2014; elder, Wanyjok, Aweil East County, 19 August 2014 (Dinka); chief, Wanyjok, Aweil East County, 26 August 2014; and elder, Wanyjok, Aweil East County, 28 August 2014.

249 Interview with elder, Wanyjok, Aweil East County, 19 August 2014 (Dinka).

250 Interview with state official from Kajokeji, Juba, 7 September 2014.

someone goes to their mother's place and then becomes 'involve[d] in politics and run[s] for an MP, then some people will be jealous and will send you back to the place where you are from. If you are a normal and humble person and you do not involve yourself in their political affairs then it will not be a problem.'²⁵¹

Increasingly, however, the land rights of nephews—people said to have originally acquired their land from their mother's brothers, their maternal uncles—are being called into question, sometimes after several generations:

In the past, these disputes were not there but now numbers have increased and some want to cultivate big areas. My sister got married somewhere [else] and then returns with the children and we allocate land to them. Later these children want to sell the land and that brings friction. They were given land to use, not to sell. They have their own land in their father's area.²⁵²

Many respondents assert that people have now realized or learned the (monetary) value of land and consequently have begun to question the gifts of land made by their grandparents and ancestors to their daughters and nephews or to friends and newcomers from outside the patrilineage:

People have come back from East Africa where they learned the value of land. So they say their grandparents were ignorant of the land values when they gave it out to other people. In Kuku, they could give land to a stranger who comes because of misunderstanding or persecution in his own place. They accept him and give him land. They say he is to be there at the corner to keep the cold off them. Or land was also given to in-laws ... and then also to those who come only to cultivate. They say it is like shaving hair. It will grow back. ... [But] younger

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251 Interview with county local government staff member, Wanyjok, Aweil East, 14 August 2014.

252 Interview with customary chief and elders, Moyo Town, 11 October 2014 . Also see: Hopwood, 'Women's land claims', 402–5.

people who grew [up] outside don't understand why their grandparents gave land to outsiders. And it is also the fault of the elders for not explaining it properly to them.²⁵³

Trees, tractors and graves: Staking land claims

The assertion of historic first-comer precedence and patrilineal descent is not the only discourse in which to claim land rights. There is also a potentially competing basis for land tenure—that of usage, investment or development of the land and longevity of occupation. Regardless of the original means of acquiring land, many would argue that they or their forebears' long-term exercise of usufruct rights constitute as equally valid a basis for permanent land tenure as any genealogical argument for precedence in land rights. A common form of evidence cited in support of such assertions is the burial of relatives on the land and the long-term growth of trees planted by the claimant or their father or grandfather: 'What indicates ownership are mango trees, lemon trees, teak trees—this shows that that man is owner of the land.'²⁵⁴

Such principles are recognized to some extent by the hybrid local land authorities. In Kajojeji County, the owners of urban land in Mere—the county headquarters—for example, are forbidden from burying relatives on their plots because the land has to remain transferable.²⁵⁵ A local elder explains the significance of family graves in establishing land rights:

We say if somebody has lived for over 50 years in a place and their dead have been buried there they should not now be evicted. That is not there in our constitution, in our law. They

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253 Interview with politician and former county official, Leikor, Kajojeji County, 23 September 2014.

254 Interview with retired local government officer and clan elder, Wudu, Kajojeji County, 16 September 2014.

255 Interview with county government employee, Mere, Kajojeji County, 18 September 2014.

will say, ‘Will we take our bones?’ This is a curse. So we settle such cases through discussion and we don’t allow it.²⁵⁶

One headwoman in Kajokeji County outlined the compromise reached by local authorities in the case of her own family:

Our parents were given land by the landlord to be a fence. At that time, they give you a piece of land to be like a defence for them. They don’t sell land. During the war, we ran and now people realized the value of land. So the landlords didn’t want my family to come back. We had to search instead for our grandfather’s original place. But we are all young and the parents died without telling us where our former area was, so now we have no land. The government leaders came in and talked to the landlords that we should not be chased because we have stayed there long. ... The chiefs were involved in resolving it, and the landlords with their committee. We were allowed to stay but we were not allowed to build a permanent house. So we can’t build a concrete house there.²⁵⁷

As this indicates, the local authorities, including the county chief, appear to have negotiated specific rules and principles for handling such cases. On the one hand, they support the increasing differentiation between primary and secondary land rights, as reflected in the order for the family above not to construct permanent buildings on land to which they had only secondary rights. On the other, the local authorities also attempt to use longevity as a determinant of land rights: ‘We tell people that if someone has stayed on the land for over 50 years, you cannot now chase him from that land. They have even buried their people on it.’²⁵⁸

In general, the approach of the chiefs and other authorities in Kajokeji County is to try to reach a compromise in such disputes, often by dividing

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256 Interview with retired teacher and local elder; and church leader, Mere, Kajokeji County, 13 September 2014.

257 Interview with headwoman, Mere, Kajokeji County, 18 September 2014.

258 Interview with chief, Mere, Kajokeji County, 16 September 2014.

the land between uncles and nephews.²⁵⁹ Similarly in Aweil East County, chiefs settle some conflicts by dividing contested fields between the parties. Chiefs also verify claims by checking for evidence of long-term rights, such as field boundary markers, graves, walls or mango trees.²⁶⁰ When individuals claim fallow fields or abandoned homesteads, the individuals who cleared the field and constructed a house may bring a claim even after having left the location for decades.²⁶¹ Usufruct rights therefore endure even during the absence of the respective land claimants. Others would argue, however, that land rights have to be maintained by using and developing the land, a principle that is invoked in particular in Kajojeji County to justify the oft-criticized allocation of urban plot titles to more than one purchaser. As the county paramount chief explains:

Now things are changing. Now there is money. People want to sell land. There are so many challenges. If a plot is given to one person ... then another comes and says it is their plot. We advise them, ‘Someone can acquire a plot and have paper only but they are doing nothing with it. So if another one comes with money, we say to the first one, we are giving this plot to

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259 Interviews with chief, Mere, Kajojeji County, 16 September 2014; and county chiefs’ court members, Mere, Kajojeji County, 17 September 2014.

260 Interviews with state official, Aweil Town, 8 August 2014; state government staff, Aweil Town, 8 August 2014; county staff, Mabil, Aweil East County, 13 August 2014; two chiefs, Wanyjok, Aweil East County, 13 August 2014 (Dinka); community member, area inhabited by returnees, Aweil East County, 14 August 2014; community leader, Warawar, Aweil East County, 14 August 2014; community member, Mangartong, Aweil East County, 15 August 2014; landowner, Wanyjok, Aweil East County, 19 August 2014; chief, Mangartong, Aweil East County, 20 August 2014; senior chief, Mabil, Aweil East County, 21 August 2014; chief, Mabil, Aweil East County, 26 August 2014; and former chief, Wanyjok, Aweil East County, 27 August 2014.

261 Interviews with CBO staff, Wanyjok, Aweil East County, 13 August 2014; CBO staff, Wanyjok, Aweil East County, 14 August 2014; chief, Mangartong, Aweil East County, 20 August 2014; chief court members, Wanyjok, Aweil East County, 21 August 2014; chief, Mabil, Aweil East County, 26 August 2014; and chief, Wanyjok, Aweil East County, 26 August 2014.

this one who can develop it and we will find another one for you.’²⁶²

People who use all their resources in purchasing a plot of land therefore face problems if they fail to start building on it within a year or two of obtaining the land.

Yet the converse of this principle is that developing the land can also be a major spark for disputes. The more virulent and serious disputes over claims to land usually come up when there is some form of development, construction or other commercial or government activity on a piece of land. One dispute in Kajojeji County between nephews and uncles erupted when the nephew brought a tractor to plough land that had been originally given to his father by his maternal grandfather, whose own descendants are now trying to reclaim the land. The use of tractors is often a trigger for land disputes because it stimulates the perception that the land is a source of value and income, and because it is a particularly visible demonstration of using investment and development to stake a claim to land in a way that might exclude other users.

Similarly, the land dispute files in the Moyo District and Lefori sub-county record offices were full of claims and complaints over the sites of government buildings, market centres and so on. This respondent reinforces the point:

In the village setting where I stay, there is not much problem or issue over land, unless people find minerals or forestry resources, like gold, which is marketable. Then there may be conflicts over who owns the land. ... Things are changing now. Development was not there [before] and people didn't care about land. Now if a place is identified to be developed into a

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²⁶² Interview with chief, Mere, Kajojeji County, 16 September 2014. There is a long history to such rules. The Condominium government's 1899 town land ordinances required owners of urban plots to construct a building on them within two years of registration. Steven Serels, 'Political landscaping: land registration, the definition of ownership and the evolution of colonial objectives in the Anglo-Egyptian Sudan, 1899-1924' *African Economic History* 35 (2007), 61-62.

small town or centre, people come up saying it is their land. They want to sell it.²⁶³

Increasing investment in commercial agricultural production is also a cause of dispute not only in Aweil East County but throughout the entire former state of Northern Bahr el-Ghazal. Individuals and farmer groups rent arable land to invest in agricultural production. At times, international NGOs also organize community members and support them to cultivate and sell agricultural products. Individual farmers and groups of farmers can approach the chiefs of the respective areas to arrange to rent land but such arrangements frequently lead to disputes, particularly if the original occupants of the land were absent and not consulted.²⁶⁴

In Moyo District, the land rights of non-clan members are seen to have been strengthened by the 1998 Land Act of Uganda. Its provisions for the greater security of rent-paying tenants on freehold and mailo land have been misinterpreted to apply to customary land and are believed to transform ‘bona fide occupants’ of land into landowners.²⁶⁵ Unsurprisingly, this has caused controversy and opposition from clan leaders and members:

The government said in the [1998] Land Act that if you had been there for 12 years, the land belongs to you. If it is less than 12 years, the owner can evict but he must compensate for any building or other development on it. That brought many disputes. Somebody who settled but the land is not his, now it becomes his land. We in the north think the government is doing this because they don’t have enough land, so they want to grab our land. We know very well that the land may have

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263 Interview with county councillor, Wudu, Kajojeji County, 20 September 2014.

264 Interviews with two state officials, Aweil Town, 11 August 2014; county local government staff member, Wanyjok, Aweil East, 14 August 2014; two teachers, Mangartong, Aweil East County, 15 August 2014; NGO staff, Aweil Town, 16 August 2014; local government official, Wanyjok, Aweil East County, 19 August 2014; and chief court members, Mangartong, Aweil East County, 20 August 2014.

265 See also Hopwood and Atkinson, ‘Final Report’, 12.

been given to someone by our father or grandfather but it is not his. They are squatters.²⁶⁶

Use of the terms ‘bona fide occupants’ and ‘squatters’ has been adopted from other very different contexts of land governance in southern Uganda and beyond. It is, however, now being applied to debates over the relationship of different land rights in local customary law, including in northern Uganda. The interpretations of the 1998 Land Act have generated particular concern by appearing to recognize the land rights of non-clan members:

What we are not happy about is the government Act which says that if someone has stayed for 12 years, that place becomes theirs. Only this president has done this. Museveni is giving away the land of the people. How can someone take your land that you were born in? Your parents and grandparents were born there! Our problem is that we don’t keep records but I know eight generations. Those who came from outside the clan and now claim land. They are the ones now selling the land.²⁶⁷

Clan leaders and landlords have therefore been seeking to assert their authority over land, often by promoting recourse to rituals and cursing to evoke fears of spiritual sanctions against those who wrongfully claim or sell land: ‘The landlord can get a ram and the seller brings a ram and they slaughter to see who is the real owner, and the land will eat you up [i.e. bring harm to the wrongful claimant].’²⁶⁸ ‘It is taboo to claim other people’s land or fight over it. It can bring a curse.’²⁶⁹ Landlords try to insist that their permission must be sought before anyone can sell the land they occupy or use by inherited usufruct rights:

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266 Interview with area land committee chairperson, Moyo District, 15 October 2014.

267 Interview with clan elder, Moyo Town, 14 September 2014. Also indicated by interview with customary chief, landlords and elders, Moyo Town, 11 October 2014.

268 Interview with clan landlord, Moyo Town, 11 October 2014.

269 Interview with MP from Kajokeji, Juba, 7 September 2014.

Here land is communal and the landlord is in charge and the chief oversees it. Land is apportioned. So if you are desperate and need money for school fees or hospital, you can go to [the] landlord to request permission to sell land. The elders assess and if it is genuine they will accept and inform the chief. But if you want to sell just to booze in town, they will not allow!²⁷⁰

Why asking who owns the land may be the wrong question

The spiritual consequences of transgressing land laws and moral codes have been, and often remain, an important sanction and means of enforcing systems of rights and obligations. These consequences have served both to construct and maintain the authority of senior lineage or clan elders and to enable ordinary people to access the land they need for cultivation, settlement, grazing and exploitation of natural resources. These systems have been structured around obligations as much as rights: The obligation of men to provide land for their wives and children; the obligation of maternal uncles to support their nephews; the obligation of a deceased man's relatives to provide for his widow(s) and children; the obligation of hunters or farmers to give a portion of their hunt or harvest to the primary land authorities; the reciprocal obligation of sections to share their grazing and water resources with other sections, and so on.

The failure to meet such obligations may not only cause rifts and fights but might also bring dishonour, shame or even harmful spiritual consequences upon individuals, families and communities. Funerals are often an occasion for senior relatives to debate the cause of death and identify past transgressions that might have brought illness or misfortune upon the deceased. Such internal governance has been as or more important in regulating and enforcing land rights as the more formal institutions for dispute resolution, such as chiefs' courts.

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 270 Interview with clan landlord, Moyo Town, 11 October 2014.

Customary land claims and obligations are subject to negotiation and interpretation, as well as to the influence of more powerful members of families and communities.²⁷¹ This is reflected in any differentiation of primary and secondary rights. Those who can assert primary land rights and uphold these through spiritual sanctions are also likely to wield political authority in the community, and vice versa, whereby those with political authority are more likely to be able to assert a dominant version of history that privileges their ancestors as first-comers.

These historical narratives and the customary land tenure systems that they support are therefore continually in flux. They shift according to political and social change within communities and the changing wider context of resource governance, settlement and migration patterns, economic opportunities and state governments. This is particularly apparent in the past decade but it has always been the case. Customary legal and tenure systems should not be imagined as pristine, unchanging codes but as the continual reflection of changing and evolving circumstances.

In reality, there are multiple rights vested in any one piece of land, with subtle or disputed gradations of customary recognition according to their longevity or the social standing and strength of the occupants or users. The result is that if a particular field or homestead is pointed out in order to ask ‘who owns this land?’ the answer will be various people. Most immediately, an individual woman is likely to be exercising usufruct rights to live on and cultivate that land with her children. She would have been granted that right by her husband when she married or when they moved to that site. He, in turn, might have been granted his rights to the land by his father, brother or other male relative and often because the land was previously used and occupied by his own mother.

Alternatively, he might have obtained rights to the land from his mother’s father or brother—perhaps because his own father had died or was not providing for the family. He might also have negotiated with friends, neighbours or clan or section land authorities to use a piece of

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 271 See also Hopwood, ‘Women’s land claims’.

land on a temporary basis. In such cases, those who granted him this usufruct right could in theory demand the land back, though this is unlikely to happen unless they ran out of land for their own needs or there was some breach of relations with the occupants. If any dispute developed over the land and its boundaries or if the occupants all died or newcomers wanted to settle on it, then the underlying rights of the first-comer clan or section and its senior family might be invoked to exercise authority over the piece of land.

Asking to whom a particular grazing or forest area belongs likewise yields an answer that involves many different people—from the clan or section claiming primary rights to graze, hunt or otherwise exploit the land to members of other communities recognized as having secondary rights to access the land and resources. The transhumant, seasonal or occasional use of land for grazing and watering livestock or for hunting, fishing, gathering or logging raises a particularly complex set of questions over rights and therefore often exemplifies the extent of negotiation—and sometimes conflict—over secondary land rights.²⁷² The whole system of grazing and natural resource exploitation relies upon there *not* being exclusive rights of ownership over pasture, water, forests and wild resources. Instead, this system depends on the continual negotiation, recognition and legitimization of multiple layers of land rights. In other words, land rights and conflict prevention rely not on securing exclusive property rights but on the effective functioning of mechanisms for the negotiation and recognition of multiple layers of rights, and for dispute resolution.

Land, power and exclusion

It is clear that the local land governance mechanisms and laws operating in Aweil East County, Kajokeji County and Moyo District are working to resolve many disputes, particularly within families and clans. They also uphold some of the principles of customary land rights and obligations,

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²⁷² Douglas H. Johnson, 'Why Abyei matters: the breaking point of Sudan's Comprehensive Peace Agreement?', *African Affairs* 107/426 (2008), 1–19.

as well as partially integrate national policies into their procedures. Given the growing pressures and conflicts over land, local governments and customary leaders play an important role in mediating and mitigating tensions and disputes. At the same time, the combination of this growing pressure and the enhanced recognition given to customary landlords and chiefs by local governments does seem to be favouring the primary land rights of patrilineal descent groups at the expense of the maternal kin and migrants who had also been able to acquire usufruct land rights in the past.

Many of these local authorities, at least in some contexts, have a vested interest in emphasizing the primacy of patrilineal clan or lineage descent, seniority and hereditary spiritual and political authority in land governance. Others, or in other contexts, have an interest in asserting the primacy of state control over land or promoting privatization and commercial exploitation of land. These competing interests contribute to some of the uncertainties and contingencies of local land governance. On the one hand, this often makes it confusing and difficult for ordinary people to navigate their land rights. On the other, the struggles and compromises between competing interests perhaps result in a more balanced overall outcome, which lies somewhere between one extreme of patrilineal and patriarchal exclusivity and the other extreme of comprehensive privatization of land rights. Importantly, however, this also leaves room for exploitation by the more powerful and influential at the potential expense of poorer, marginalized and less well-connected people.

The political contingencies of land rights

The political contingencies of land rights are particularly apparent in the case of displaced populations and returnees in South Sudan. In some contexts, people displaced during the 1983–2005 civil war who have resettled in parts of the Equatoria region in the south are seen to be better connected to high-level military and government powers than the patrilineal clan authorities of the host communities. In such cases, the settlers may be able to assert land rights on the basis of national

citizenship rights or their part in the liberation struggle. In general, military and government positions are seen to trump even the most authoritative local land governance structures.

This also appears to be the case in northern South Sudan. In Aweil East County, for example, a member of the Sudan People's Liberation Army (SPLA) arrived in a village before harvest time and told a relative to move from his garden. According to established practices, individuals who are asked to leave a garden can wait until after the harvest to avoid losing their crops, along with their land. As this respondent recounts:

But they [leaders] could not do anything because of his status as an army member. ... The complainer does not follow the law. He can shoot you. It is his personality. ... They tried to talk. But he came with all his things and put them there with his bodyguard. [Laughing]. They feared him. They could not do anything. The bodyguard is still there. The other person is now resettled. ... Liberators [i.e. SPLA soldiers] can reside anywhere. Nobody can ask them questions.²⁷³

In other cases, less well-connected migrants may find themselves vulnerable to exclusion and discrimination. In Moyo District, a former district land board chairman emphasizes that the first question to ask in any dispute over land is 'what tribe are you?' An LC 1 chairwoman similarly explains:

The Uganda Land Commission owns the land and mandated town councils to rule the land, until the 1995 constitution said that land belongs to the people. Now even somebody who is not a landowner or even a Ma'di claims that it is their land. But if you are a different tribe, you are a squatter. This village has Lugbara and Kuku, as well as Ma'di, and they are very problematic. They don't understand. Some of their grandparents came during colonialism and my grandfather gave

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 273 Interview with a trader, Wanyjok, Aweil East County, 19 August 2014. Also indicated by interview with community member, Mangartong, Aweil East County, 15 August 2014.

them small land but they extended, digging. Then the town council allocated plots and some had many.²⁷⁴

In Aweil Town, too, those who originate from other states have the perception that they face specific challenges to get a plot through an official application: 'I believe that I cannot successfully apply but have to buy a plot. It is a bit more difficult to get land without connections.'²⁷⁵ In areas where migrants had previously been welcomed to help expand and grow small populations, such as in Lefori sub-county in Moyo District, landlords and other authorities have declared new, more restrictive policies for allocating land to newcomers:

The need for land has increased and many people come asking for land. We don't sell land. But from now on my policy is changing. If someone wants agricultural land, he will have to sign a paper to use the land for five years and then renew. Because we learned a lesson. Some have stayed on land and now they or their children claim that they own the land. But there may not be enough land for our own children soon.²⁷⁶

The local government in Moyo District reported an increase in the practice of denying the secondary rights that have been so crucial in customary land systems:

Now even if there is a good grazing area, the landlord may refuse to let animals there. ... There are people without land but the customary leaders will not let them farm, so that's why you still see bush areas. The indigenous all have land. Those who don't are those from outside.²⁷⁷

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274 Interview with village council chair, Moyo Town, 12 October 2014.

275 Interview with NGO staff, Aweil Town, 9 August 2014.

276 Interview with customary chief and clan landlords, Lefori, Moyo District, 15 October 2014.

277 Interview with area land committee chairperson, Moyo District, 15 October 2014.

Returnees in Aweil East County and Aweil Town have faced particular challenges to obtain secure land rights, despite having the same ethnic origins as the wider population. Since 2010, thousands of returnees from Sudan have arrived in Northern Bahr el-Ghazal.²⁷⁸ Many returnees were brought by government authorities to transit settlements in Aweil East County and Apada, which is close to Aweil Town. The Government of Southern Sudan and later the Government of the Republic of South Sudan saw this as a temporary solution and expected them to return to their home villages. Yet many of the returnees were born in Sudan and had little desire or capacity to move to a rural life. Instead they have remained in the transit settlements on a long-term basis. Even though plots have been provided by the government, land rights in these transit settlements are insecure. The land is not demarcated, surveyed or registered. Returnees can use the land but do not have a title deed and therefore believe that they cannot sell their plot.²⁷⁹

In Apada and Aweil East County, returnees have been challenged and even evicted by people claiming to be the original landowners—that is, to have primary rights to the land.²⁸⁰ Returnees have complained that such cases have not been heard fairly by the chiefs' courts: 'When cases of host communities go to the *alama thiith* [executive chief], the chief supports the host community and not the returnee. As a consequence, things can happen, such as the fact that somebody is sent away without

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278 For example, see: World Health Organization, 'Southern Sudan: Health Cluster preparedness for returnees to Northern Bahr-el-Ghazal', January 2011. Accessed 6 April 2016, http://www.who.int/hac/crises/sdn/highlights/2_january2011/en/; Abraham Agoth, 'Trains Carrying Over 2,000 Returnees Arrive In NBGS', Gurtong Trust–Peace and Media Project, 19 March 2012. Accessed 6 April 2016, <http://www.gurtong.net/ECM/Editorial/tabid/124/ctl/ArticleView/mid/519/articleId/6651/Trains-Carrying-Over-2000-Returnees-Arrive-In-NBGS.aspx>; Abraham Agoth, 'South Sudanese Returnees Arrive In Aweil', Gurtong Trust–Peace and Media Project, 13 November 2013. Accessed 6 April 2016, <http://www.gurtong.net/ECM/Editorial/tabid/124/ctl/ArticleView/mid/519/articleId/13747/categoryId/9/South-Sudanese-Returnees-Arrive-In-Aweil.aspx>.

279 Interview with local government staff, Aweil Town, 23 August 2014.

280 Interviews with returnee, Aweil Town, 9 August 2014; CBO staff, Wanyjok, Aweil East County, 13 August 2014; community member, returnee area, Aweil East County, 14 August 2014; and NGO staff, Aweil Town, 16 August 2014.

receiving compensation.²⁸¹ In Apada and other returnee settlements, returnees only have residential plots and not enough land for cultivation. In theory, they can rent arable land beyond the settlement but in practice most returnees cannot afford the rental costs.²⁸² They also cannot easily access land for cultivation on a customary usufruct basis because they have remained in the transit settlements under their own authorities rather than integrating into the sectional chiefdoms and lineages that govern the surrounding rural land.

Women and land rights

Other urban dwellers can experience a similar combination of monetary poverty and insecure land rights.²⁸³ This can likewise be a problem for some widowed, divorced and unmarried women. In principle, women are entitled to usufruct land rights, secured by their father and family before marriage, and by their husband and his family during marriage and widowhood. Rights over a particular piece of land are seen to be inherited exclusively by men, since women leave their own lineages and clans when they marry. In order to maintain the integrity of family and clan territories, an important principle is that women do not take their father's land away from the family and clan upon marriage. This respondent elaborates:

The issue of women and land came up since 2005. Before women were not allowed to have a plot because women are not permanent and are not living in a particular community

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281 Interview with NGO staff, Aweil Town, 16 August 2014.

282 Interviews with returnee, Aweil Town, 9 August 2014; CBO staff, Wanyjok, Aweil East County, 13 August 2014; community member, area inhabited by returnees, Aweil East County, 14 August 2014; several community leaders, returnee area, Aweil East County, 14 August 2014 (Dinka); community member, returnee area, Aweil East County, 14 August 2014; NGO staff, Aweil Town, 16 August 2014; and elder, Wanyjok, Aweil East County, 19 August 2014 (Dinka).

283 Also see: Timm Sureau, 'New forms of exclusion in Torit: contestation over urban land', in *Forging two nations: insights on Sudan and South Sudan*, 143–159, ed. Elke Grawert, Addis Ababa: Organisation for Social Science Research in Eastern and Southern Africa, 2014.

for long. Daughters only stay temporarily with their parents. A wife may not stay always. There may be a divorce. Before there was a saying '*Tik acin akeu*'—a wife has no boundaries. The positive aspect of this is that women can mediate in conflicts, can cross territorial boundaries and ownership.²⁸⁴

An equally important principle has also always been recognized: Women have usufruct rights to land because they are the primary cultivators and providers for their children. It is vital to understand that the lack of property rights over land for women does not obviate their recognized right to access land; and that no one, including men, exercises exclusive property rights over land, in any case.²⁸⁵ Each married woman living in a rural area has a homestead and a garden where she can cultivate, and where she has the right to remain with her children if she is widowed.²⁸⁶ Her sons later inherit that land and other property. The resources of the deceased husband should allow his wife and her children 'to continue to live a good life'.²⁸⁷

There are, however, grey areas that can increase women's vulnerability in some situations. The right of widows to remain on their land is predicated to some extent on having sons to inherit that land; widows without children or with only daughters can find themselves in a more insecure position, as these young men and women in Kajokeji indicate:

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284 Interview with NGO staff, Aweil Town, 16 August 2014.

285 Also see: Hopwood and Atkinson, 'Final Report', 13–14; Hopwood, 'Women's land claims', 389.

286 Interviews with NGO staff, Aweil Town, 9 August 2014; state government staff, Aweil Town, 11 August 2014; returnee, Mangartong, Aweil East County, 15 August 2014; elder, Wanyjok, Aweil East County, 19 August 2014 (Dinka); restaurant owner, Wanyjok, Aweil East County, 19 August 2014; chief court members, Mangartong, Aweil East County, 20 August 2014; three women, Mangartong, Aweil East County, 20 August 2014 (Dinka); tea room owner, Mangartong, Aweil East County, 20 August 2014; two state government staff, Aweil Town, 24 August 2014; and widow, Maluakon, Aweil East County, 27 August 2014.

287 Interview with three women, Mangartong, Aweil East County, 20 August 2014 (Dinka).

My sister was recently widowed. Her husband was staying on his [maternal] uncle's land, so after he died the uncles chased her [away]. She tried to go to her husband's own area but his father had two wives, so they didn't want her there either.

It's difficult if you only have girls [daughters] because boys inherit the land. There can also be conflicts if someone married two wives. And problems can come if you stayed in your uncles' place for long and then you are chased [off the land]. If the man is not there, it can be difficult for the woman.²⁸⁸

One young widow in Kajojeji described her own struggles to remain on her husband's land with her daughters—despite having the support of her father-in-law—because the land had become subject to a contest between rival claimants to be the clan landlord of the area.²⁸⁹ Widows can be among the most vulnerable when their land rights are threatened. If they lack support from relatives and in-laws or the financial means to go to higher authorities, widows may be unable to effectively claim their rights. Much depends on their individual status and relations, as one young man from Kajojeji County explains:

Traditionally people treat you according to your behaviour. If you are well behaved, you are OK but if you are badly behaved you can be ignored and that is the worst thing for us. Widows who speak well earn a lot of rights in the clan [of their husband]. But no automatic rights are given to them. It depends on their behaviour.²⁹⁰

The situation of women who leave, or are left by, their husband is even more uncertain. In rural areas of Aweil East County, divorced women also do not have any rights to claim land of their former husbands. It is assumed that divorced women will marry again and can access land

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288 Interview with young male research assistant in discussion with male and female youth leaders, Wudu, Kajojeji County, 28 September 2014.

289 Interview with female youth leader, Wudu, Kajojeji County, 28 September 2014.

290 Interview with CBO staff from Kajojeji, Juba, 22 July 2015.

through their new husbands or that they will return to their parents.²⁹¹ Asked what happens with unmarried or divorced women, one respondent notes, ‘That woman will roam around everywhere and will move to town where women who are without husbands stay.’²⁹²

In Kajojeji County, respondents suggested that fathers or brothers would give land to a daughter or sister who needed it but emphasized that her children would not be entitled to inherit that land. In Moyo District, respondents put greater emphasis on women’s right to access land from their father’s family in case of divorce or widowhood but added a similar proviso about the lack of inheritance rights for their children. This respondent elaborates:

If I have four sons and two daughters, the brothers have to keep some of my land for their sisters. In case she has problem there [where she married], the brothers should give her land. If I have all daughters and they marry somewhere, if I die they can come back to claim the land. Women have land at their father’s, not at their husband’s. ... If my daughter is married to another clan and comes back with her children, she can be given land. But the children cannot have land there because their land is at their father’s. The land is only for my daughter.²⁹³

Some women respondents do not see access to land as a major problem, however. A female district councillor in Moyo District says, ‘Women come to my office for other problems like child neglect but not for land issues. Women are not so worried about land so long as they can get some to use.’²⁹⁴ Similarly, a state government employee working on gender issues explains, ‘Women face problems in Northern Bahr el-Ghazal. Land

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291 Interviews with three women, Mangartong, Aweil East County, 20 August 2014 (Dinka); and two state government staff, Aweil Town, 24 August 2014.

292 Interview with woman in a tea room with two friends, Mangartong, Aweil East County, 20 August 2014 (Dinka).

293 Interview with area land committee chairperson, Moyo District, 15 October 2014.

294 Interview with district councillor, Moyo District, 14 October 2014.

is not the main problem. It is rather violence, education, power-sharing and so on.²⁹⁵

Women are also investing in urban plots. In Aweil East County, for example, a number of women are the owners of commercial plots, shops, restaurants and farms.²⁹⁶ Asked about the importance of owning surveyed plots, a female landowner notes, 'I can make them as my home. If I have the resources for building, I can make a concrete building and rent it to organizations. ... That can bring income, which I can use for other things and also to create other activities that can let the community have benefits.'²⁹⁷ Another female respondent from Kajojeji County explains, 'I have my own plot in Mere, a residential one. I paid SSP 600 (about USD 130) for it, between the landlord, housing and surveyor. I have all the documents. It was done legally. And I have land where I am married at Kenyiba. That is mine. No one can cultivate there.'²⁹⁸

However, the hybrid local land governance mechanisms can be inherently discriminatory even in the case of private land purchases. Women in Kajojeji County, for example, explain that it is difficult for a woman to get plots of land registered in her own name without her husband's formal consent or if she is unmarried.²⁹⁹ There are ways around this obstacle, however, as this female respondent says:

I own a plot in Mere. You go to the traditional landlord and get a receipt and then you go to the [county] department of physical infrastructure and then a copy is sent to the judiciary

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295 Interviews with two state government staff, Aweil Town, 24 August 2014.

296 Interviews with county staff, Mabil, Aweil East County, 13 August 2014; CBO staff, Wanyjok, Aweil East County, 13 August 2014; community member, Mangartong, Aweil East County, 15 August 2014; NGO staff, Aweil Town, 16 August 2014; and restaurant owner, Wanyjok, Aweil East County, 19 August 2014.

297 Interview with widow, Wanyjok, Aweil East County, 26 August 2014 (Dinka). Also indicated by interview with local government staff, Mabil, Aweil East County, 27 August 2014.

298 Interview with county government employee, Mere, Kajojeji County, 18 September 2014.

299 Interview with county government employee, Mere, Kajojeji County, 18 September 2014.

and to the payam. Some landlords here will not give to women on their own but some will give. You just need to come with a witness. I also got a plot in Leikor through the landlords, in the traditional way, not through the government.³⁰⁰

Some husbands in Northern Bahr el-Ghazal also refuse to register surveyed plots under the name of their wives.³⁰¹

Women without independent income are particularly reliant on appealing to social obligation rather than asserting their rights to land, as this LC 1 chairwoman in Moyo District asserts: ‘Women can get land if they have money. ... If you have no money, you go on knees to your uncles, your mother’s brothers and they will sympathize with you.’³⁰² As this statement underscores, social and kinship relations and obligations continue to structure access to land in practice, together with access to financial resources.

While gender can be a factor in determining the strength of land rights, it must be understood alongside these other, often more significant factors. Access to land depends first and foremost on social relations. Conversely, those who lack strong kinship and social relations are the most vulnerable in South Sudanese and northern Ugandan society, including in terms of their capacity to access land.³⁰³ In this sense, customary land systems have been a powerful force for cohesion, friendliness and mutuality among clan members, relatives, neighbours and in-laws, and for the integration and assimilation of maternal kin and non-kin into patrilineal descent groups. Amicable relations are not guaranteed, however. Competition for land can strain those relations.

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300 Interview with male and female youth leaders, Wudu, Kajokeji County, 28 September 2014.

301 Interview with local government staff, Mabil, Aweil East County, 27 August 2014.

302 Interview with village council chair, Moyo Town, 12 October 2014.

303 Simon Harragin and Chol Changath Chol, ‘The Southern Sudan vulnerability study’, Nairobi: Save the Children Fund (UK), South Sudan Programme, 1998.

The contradictions of surveying land

Surveying and leasing land provides new opportunities for both men and women to acquire land as their own property on a leasehold basis. Some businesswomen and female wage earners are seizing the opportunity to acquire and register their own land in and around the towns. While land may be a new source of property rights for women, only those with money can readily access this land. As in other places, land registration may remedy gender discrimination for the wealthy but at the expense of denying access to land for the poorer majority of both men and women.³⁰⁴

During the past few years, state government officials in Northern Bahr el-Ghazal have promoted surveys in new urban areas, arguing that they enable greater security of tenure and the provision of more government services and infrastructure. In reality, however, many people find themselves evicted from land they had previously occupied to make way for plot demarcation and road construction, without receiving the promised compensation or resettlement. As one respondent explains in reference to the newly surveyed town quarter of Maper Akot Arou in Aweil Town, 'People who were living here before and have no money did not get land. The land was given to people with money.'³⁰⁵ In Aweil Town, surveyed plots are costly: 'Only people who work for NGOs or those who have good government posts can afford to buy land.'³⁰⁶ Individuals who are not able to pay the fees are evicted from their plots as a result of the survey and have to try to get free land in unsurveyed areas.³⁰⁷ Others stay

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 304 For example, see: Birgit Englert and Elizabeth Daley, eds., *Women's land rights and privatisation in Eastern Africa*, London: James Currey, 2008; Robert Home and Hilary Lim *Demystifying the mystery of capital: land tenure and poverty in Africa and the Caribbean*, London: GlassHouse Press, 2004.

305 Interview with landowner, Maper Akot Arou, Aweil Town, 22 August 2014 (Dinka). Also indicated by interviews with NGO staff, Aweil Town, 11 August 2014; group of chief court members, Mabil, Aweil East County, 19 August 2014; tea room owner, Mangartong, Aweil East County, 20 August 2014; group of chiefs, Maper Akot Arou, Aweil Town, 23 August 2014; and chief, Wanyjok, Aweil East County, 26 August 2014.

306 Interview with NGO staff, Aweil Town, 11 August 2014.

307 Interview with group of chiefs, Maper Akot Arou, Aweil Town, 23 August 2014.

with relatives or colleagues who have land. Many families living in Aweil Town host relatives and friends.

In Moyo District, land has already been sold to a greater extent than in South Sudan, often out of poverty or necessity. Individual families or even individual family members are said to have sold land because they needed money for some reason: ‘Sometimes people sell land to pay school fees or buy a *boda-boda* [motorbike] or something. So individuals can acquire land from clan members. One family can decide to sell their land.’³⁰⁸ There are growing concerns about the effect of these land sales: ‘There are many land disputes because the population increased and people are selling farmland. They want to get money. People around the town here have sold all their own land because they are poor.’³⁰⁹ This conclusion is supported by wider studies of land sales in Uganda, which report that the majority were ‘distress sales from economic hardship’.³¹⁰

There is, then, a real danger that ordinary people who cannot afford to purchase land may themselves invest in asserting membership in their community in order to secure their own land rights. An obvious way to do this is to affirm their patrilineal credentials, while simultaneously questioning the identity, descent and rights of other people living on community land. Where the idiom of kinship was once used to absorb outsiders into lineages and territorial communities, it is now being used to differentiate and exclude them

What is evident is that it is not possible to promote a single version of land rights as the solution to insecurity or inequality. In one context, it might be clear that strengthening patrilineal clan rights would be a means of protecting poor and vulnerable clan members from losing land to powerful outsiders seeking to alienate land for profit. In another context, strengthening patrilineal clan rights might enable the exclusion and eviction from their land of poor and vulnerable people labelled as outsiders. Registering private land titles might give those who can afford

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308 Interview with senior district government official, Moyo Town, 10 October 2014.

309 Interview with area land committee chairperson, Moyo District, 15 October 2014.

310 Adoko and Levine, ‘A Land Market’, 17; Hopwood, ‘Women’s land claims’, 406.

to pay for them greater security of land rights. Even a land title, however, is unlikely to fully protect someone from the risk of land alienation by more powerful actors. Approaching land rights as a purely legal or statutory question thus ignores the broader political economy to which land increasingly belongs and which determines security of land tenure more than any legal apparatus. It also risks perpetuating disputes and conflicts over land. The complexity of land rights and access to land in both South Sudan and northern Uganda strongly suggest that any singular approach will be inadequate, as is reflected in the general tendency to hybrid forms of land governance and dispute resolution.

6. Conclusion

Since the research for this report was completed in 2014, the decision to create 28 new states out of South Sudan's former 10 states has led to new tensions and conflicts over boundaries and land claims in some areas, such as Malakal. The civil war in South Sudan, which began in December 2013, and the worsening economic crisis have also fuelled new displacements and migrations. This may present challenges for land governance in relation to hosting the displaced or in terms of future returns.

These features of the recent crisis in South Sudan are by no means unprecedented. The challenges of displacement and return are recurring issues in the recent history of South Sudan and northern Uganda. New tensions over administrative boundaries and communal land claims were already emerging across the region before 2014. Indeed a widespread demand for new administrative subdivisions was cited by the South Sudanese president to justify the creation of 28 states. It is important, then, to situate these new or latent conflicts over territorial boundaries not only in the context of the recent civil war and political divisions in South Sudan but in the broader recent historical context of changing land values and governance in the region. The fact that tensions over land claims and boundaries are just as—or more—prevalent in northern Uganda indicates the wider changes underlying these new concerns, which transcend international boundaries. New perceptions of the value of land have emerged from the combined effects of urbanization, increasing population densities, commercial agriculture, external investments, exploitation of natural resources, infrastructure and service development, and changing livelihood strategies. Land has simultaneously gained new value as administrative and political territory, which political elites seek to control through decentralized government structures.

The wide reach of these effects and changing perceptions is apparent from a comparison of the different areas on which this report focuses. Aweil East County is located hundreds of miles to the north of the South

Sudan–Uganda borderlands where Kajokeji County and Moyo District are situated. Inhabited predominantly by Dinka Abiem, Aweil East County is associated with the wider cattle-keeping societies of northern and central South Sudan, and in the past it experienced some of the conflicts over grazing territories common among these societies. Kajokeji County and Moyo District are characterized instead by a greater emphasis on cultivation, a contrast which is often highlighted in contemporary South Sudanese political discourse as a distinction between Nilotic pastoralists and Equatorial farmers. This contrast is an over-simplified one, however. Livestock have also been crucial for livelihoods in Kajokeji and Moyo, so that customary land rights there have included shared or secondary rights to access territory for grazing, hunting and fishing, as in Aweil East County. Similarly, cultivation is also important for the cattle-keepers of Aweil East County, where rights to land for farming and permanent settlements are held by lineages and extended families in much the same way as in Kajokeji County and Moyo District. It is striking that land disputes in Aweil East County are largely focused not on grazing territories but on arable land and urban or peri-urban areas. The perception that such land has real or potential commercial value thus seems to be the predominant driving factor behind land disputes in all three areas.

There are also considerable similarities in the practices of land governance across these different areas, despite their contrasting customary landholding structures and the different national laws and policies of South Sudan and Uganda. In all of these areas, there is uncertainty, confusion and sometimes misunderstanding about these national laws and policies. This results from the limited capacity or political will on the part of central government to disseminate or enforce land laws, as well as from the vagueness of those laws. On the one hand, this uncertainty provides opportunities for corruption and abuses by powerful actors, whether these are national or local elites and whether they are seeking to appropriate land for their own interests or to control the lucrative processes of local land governance. On the other hand, uncertainty has left considerable room for local, hybrid forms of land governance to

emerge, which both represent and enable compromises between different models of land rights and governance.

The formal processes of registering land titles provided for by national legislation—particularly in Uganda—are simply too costly and protracted to be an option for most people in these areas. These processes also represent a fundamental change in the nature of land rights, from the multiple, overlapping sets of claims and obligations that have prevailed in these areas, to the more exclusive concept of property rights inherent in land titling. What is instead emerging in practice is a mixture or spectrum of these different models of land rights. Particularly in urban and peri-urban areas, land rights are increasingly being privatized, individualized and partially commodified through formal or semi-formal practices of surveying, purchase and registration. These practices are controlled by various arrangements between local government officials and customary authorities. In rural areas, land rights are still largely claimed on the basis of kinship, marriage and social relations, and governed by lineage, clan and section authorities. Even here, however, the changing value of land is leading to increasing dispute among and between families and neighbours, and to increasingly stark distinctions being asserted between dominant and secondary land rights, and between insiders and outsiders.

It is primarily the local governance structures of chiefs' courts in South Sudan and local councils or their courts in northern Uganda—as well as specific land governance institutions formed largely by the same personnel—that are negotiating solutions to these disputes. Such solutions often take the form of compromises between different kinds of land claim. They also prioritize the maintenance or restoration of social and familial relations.

Contemporary land governance in practice therefore cannot be divided into distinct customary laws and statutory laws but entails an evolving and largely flexible negotiation of different kinds of land claims and the different legal and moral discourses that disputants draw upon to stake these claims. The uncertainties of the legal and institutional land regimes in South Sudan and Uganda leave room for corruption and control by more powerful actors and institutions. At the same time, they also leave

room for the negotiation of compromises that continue to recognize multiple rights and obligations. This not only secures people's access to land but has held together territorial communities, enabled them to absorb relatives and outsiders, and maintain peaceful relations with neighbouring communities. In the latest contexts of economic hardship, insecurity and conflict, this capacity is more important than ever. It is, however, crucial to recognize the unprecedented strain on such principles presented by the increasing trends towards exclusionary definitions of land rights and community belonging, which have been encouraged by local, national and international political discourse in recent years. This strain reached breaking-point in the 2014 conflict between Kajojeji County and Moyo District over the international boundary, revealing the broader potential for violent conflict over land and territorial boundaries even in areas where land pressure may seem relatively insignificant. Land disputes and conflicts are not simply a factor of population increase and demographic pressure but of the multiple other factors explored in this report.

A number of key insights and observations emerge from the empirical evidence and archival materials that inform this report.

International and internal boundary conflicts have similar causes

In 2014, violence erupted in the South Sudan–Uganda border region between Kajojeji County and Moyo District. One root cause was the original colonial attempt to make the border correspond to a tribal boundary. This misunderstood the nature of boundaries, identities and social relations in the area, leading to a century of uncertainty over the precise location of this international boundary. It has, however, only recently become a source of conflict. This indicates that there are new factors influencing conflict dynamics over land rights and administrative boundaries. Similar factors have also caused disputes and conflicts over many other boundaries, both internal and international, in South Sudan and northern Uganda.

Decentralization increases the political value of land, contributing to boundary disputes

Territory is becoming the focus of political and ethnic competition. The increasingly prevalent boundary conflicts in and between South Sudan and northern Uganda do not reflect ancient tribal conflicts. Rather, these conflicts are a product of new factors: government decentralization combined with the unprecedented value of land and natural resources. Control over territory provides access to both local and higher government revenues and a political constituency. Internal and international boundaries have become more politicized and contested, as neighbouring local administrations seek to maximize their territorial and resource control. Paradoxically, however, the mitigation of boundary conflicts also lies in the systems of decentralized local government that have been implemented in both countries since the 1990s.

The value of land is changing and competition for land is increasing

Land has always had productive, moral, social and spiritual value. New forms of value ascribed to land have been emerging since the 1990s, whereby land has acquired a real or potential commercial and monetary value. These new forms of value are the result of overlapping processes of population return and urbanization, new population densities, development, investment, resource exploitation and land grabbing. These processes complement and reinforce the conflict dynamics linked to government decentralization processes. Competition for and disputes over land now tend to focus on cultivable land, urban and peri-urban plots, and new development sites. This marks a significant shift. Historically, contests over land were more often about grazing lands in cattle-keeping areas.

Service delivery and settlement patterns shape demand for and conflict over land

It is often assumed that relatively low population densities in South Sudan and northern Uganda mean land remains plentiful and under-used. This is complicated, however, by the realities of varying population

densities on the ground. Settlement patterns and service provision, along with population growth, have increased the demand for land. People want and need to live close to boreholes, medical services, schools, government and other employment opportunities, markets and perhaps even police posts or army garrisons for security. These concentrations of people create growing pressures for what then become increasingly limited land resources. In turn, this conditions disputes and conflicts over land.

Customary land rights are plural, layered and changing

To ask who owns the land can yield a multiplicity of answers. It becomes clear this is not, then, the most constructive way to understand land rights in South Sudan and northern Uganda. Customary land rights are more complex and nuanced than can be encapsulated in notions of either communal ownership or exclusive property rights. In customary law, no one exercises exclusive or alienable property rights over land. Any piece of land is simultaneously subject to multiple layers of rights—individual and collective; permanent, temporary, seasonal or usufruct; patrilineal and matrilineal; historical and contemporary. The relationships of these multiple rights have always been subject to negotiation and mediation. Increasingly, these multiple rights are contested, debated and, at times, conflicted. Moreover, customary land rights are not static but dynamic and changing.

National land reforms simultaneously recognize, simplify and subordinate customary land rights

The legal rhetoric of community land ownership is an important recognition of customary land rights. At the same time, statutory law simplifies and distorts the nature of customary land rights. In general, it ignores the complex relationships of multiple communal and individual land rights. In Uganda in particular, statutory law ultimately promotes the conversion of customary rights into more exclusive property rights through processes of land title registration. Land reform has, in effect, sought to bring customary tenure regimes under greater state control. Some

of the legislation itself—or the failure to fully implement it—has also underscored the continuing capacity of state institutions and actors to appropriate and control land for the purposes of resource extraction, commercial enterprise or development.

Customary authority over community land is changing and contested

Recent policy and practice have given new or enhanced opportunities for power and profit to those recognized as customary land authorities, even as customary land rights have been increasingly threatened and undermined. Patriarchal and gerontocratic customary authorities are seeking to reassert their position after decades of war, displacement and socio-economic change. It is important to be aware that the community is not simply the chiefs or clan leaders who may have become the primary brokers in land transactions.

Definitions of community land rights are becoming more exclusionary

There is a growing sense of the insecurity of land rights, particularly in urban and more densely populated areas. In this context, ordinary people seeking to secure their land rights must either assert their own membership in patrilineal kinship groups or find the means to purchase and register private land titles. Pursuing the former route may contribute to more exclusionary definitions of land rights, denying claims to grazing, water and other resources and undermining vital reciprocal relations between different communities. Pursuing the latter is impossible for the vast majority of people in South Sudan and northern Uganda, which creates additional dynamics of exclusion.

Both women and men are vulnerable to changes in land rights

The denial of women's property rights, including to land, in customary legal systems is a frequent focus of attention. Like those of women, however, men's land rights are equally dependent on their social, kinship and marital relations. Contrary to received wisdom, the most vulnerable are not all women. Rather, the most vulnerable are those women and men who lack strong social and kinship ties and support, and at the same

time lack the financial resources to purchase land. As definitions of land rights change to be more exclusionary in ethnic and kinship terms, there is a new and greater risk that such individuals or families may be denied secure access to land for settlement and cultivation.

7. Policy considerations

The specific geographic areas in South Sudan and northern Uganda that form the basis of this report have not previously featured prominently in studies of land issues—perhaps because they have remained relatively peaceful. Over the past decade, however, tensions over land and boundaries in these areas have been steadily increasing to become more widespread. There is a real risk that this has the potential to feed larger-scale conflicts, just as land was a focus for mobilizing the Sudan People’s Liberation Movement/Army (SPLM/A) rebellion against the Sudanese government in the 1980s and 1990s. This report redresses a critical lack of empirical evidence about the practices of land governance at the local level. It also closely examines the dynamics of conflict surrounding access to and disputes over land and the various mechanisms used to resolve these disputes. The policy considerations presented below reflect concrete realities on the ground, as these have been conveyed by the 150 respondents who were interviewed for this report.

Legislation alone will not secure land rights for the poor and vulnerable

Most of the activity of governments, civil society advocacy and international support focuses on producing laws and policies aiming to clarify and secure land rights. In general, these efforts have suffered from a lack of clarity in the legislation itself, conflicting goals among legislators and lack of effective dissemination, capacity or commitment to executing laws and policies by national governments. A purely legal approach to land rights can neglect the constraints of the broader political economy, in which the ability to obtain secure land rights in some contexts depends on status, power and wealth. The attempt to recognize customary land rights in national legislation has been an important step but this has also entailed a simplification and distortion of the complex ways in which land claims and obligations have been negotiated in customary regimes, and continue to be negotiated in practice by hybrid local land governance mechanisms.

Customary land rights do not equate to exclusive ownership of property

The legal language of land rights does not capture the complexity of customary land tenure and governance practices, which are based on multiple, overlapping claims to land. Access to land has been—and often continues to be—governed by social, moral and spiritual sanctions and obligations more than by the legal recognition of land rights. On the one hand, it is important to endow customary land rights with a legal status in order to try to safeguard them against land appropriation. On the other, there is a danger that the language of legal rights distorts the nature of customary land tenure and contributes to more exclusive and individualized definitions of property rights and ownership.

Privatizing land rights is unlikely to help the poor and vulnerable to gain secure land tenure

A relatively new market in land has emerged, from which landowners, brokers and regulatory authorities have been deriving considerable profit over the past decade or so. The privatization and commodification of land appears to offer more secure tenure for those with the monetary income to purchase titles. At the same time, this security can be undermined by the illegal actions of powerful actors or the incompetence and corruption of land governance institutions—whether state or customary, or a mix of both. The privatization and commodification of land is also likely to deprive poorer, less privileged people of land that they would have formerly accessed through customary systems of land rights and usage. The vast majority of people in this region are unable to purchase land, making customary access to land even more essential for their livelihoods. Privatization threatens to undermine this by enabling the wealthier to purchase land from which the poor may be excluded.

Lines are limited as a conflict prevention mechanism

One approach to resolving boundary conflicts is to formally demarcate administrative boundaries. This process itself, however, also generates conflict. This is due to the increasing political and economic stakes in controlling land and because linear boundaries do not exist in many

of the places where people now want to create them. Although there is considerable historical documentation on the Kajokeji–Moyo international boundary between South Sudan and northern Uganda, this does not provide any clear solutions to the location of the borderline. There is even less historical evidence for most other currently disputed boundaries. Not only have these boundaries recently been created but previous attempts to demarcate them are vague, inaccurate or unmapped. Moreover, in ecological and economic contexts where migration and shared or overlapping land rights are vital for people’s livelihoods, boundary demarcation creates the potential for new means of exclusion. Demarcating boundaries is therefore not simply a technical exercise of legally determining and surveying lines, but entails wrestling with the very basis upon which those lines are to be defined—whose claims to land and territory are to be accepted, and on what forms of evidence and what definitions of community. Any process of demarcation requires very sensitive handling of these questions to avoid provoking conflict, as well as substantial support for negotiating local arrangements for cross-border relations, movement, land rights and access to shared resources.

Glossary of acronyms, words and phrases

ALC	Area Land Committee (Uganda)
AU	African Union
<i>boma</i>	village; lowest local government administrative unit (South Sudan)
CBO	community-based organization
CES	Central Equatoria State
CPA	Comprehensive Peace Agreement
<i>gog-chel</i>	(<i>Dinka</i>) midland
<i>gok</i>	(<i>Dinka</i>) highland
LC 1–5	local council; five-tiered system of local government (Uganda)
LRA	Lord’s Resistance Army
<i>mailo</i>	system of freehold land tenure in Uganda, introduced as part of the 1900 Buganda Agreement, granting ownership in perpetuity to landlords and protected rights to tax-paying tenants; also an area of land (originally measured in square miles) allotted under this system.
<i>monyé kak</i>	(<i>Bari</i>) landlord or land custodian
NBG	Northern Bahr el-Ghazal State
NGO	non-governmental organization
NRM/A	National Resistance Movement/Army
NRO	National Records Office, Khartoum, Sudan
<i>payam</i>	second lowest administrative division, below counties (South Sudan)
RC	resistance council; precursor to local councils (Uganda)
SPLM/A	Sudan People’s Liberation Movement/Army
SPLM-IO	Sudan People’s Liberation Movement-in Opposition
<i>toic</i>	(<i>Dinka</i>) seasonally flooded lowland grazing areas

UKNA

The National Archives, Kew, London, UK

UNA

Uganda National Archives, Entebbe, Uganda

wut

(*Dinka*) major social political section; cattle camp

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‘A very compelling and timely intervention in the study of land conflicts in sub-Saharan Africa. It demonstrates the different ways in which the changing value of land and systems of land governance have influenced and shaped land conflicts in South Sudan and northern Uganda. Stretching back to colonial history and moving forward to the twenty first century, the report answers complicated questions about land conflicts in both countries. By going beyond the narratives of legality, ethnicity and boundary demarcations, the authors unpack not only the local and national social processes shaping land conflicts, but also ways in which multiple land rights are negotiated, contested and debated.’

—Pamela Khanakwa, Makerere University, Kampala

‘This report is enriched by a comparative analysis that provides not only robust findings but also practical implications for land governance. It is timely and may contribute to the current debate about decentralization and federalism.’

**—Luka Biang Deng, University of Juba,
PRIO and Carr Center for Human Rights Policy**

In September 2014, a conflict erupted between South Sudanese and Ugandans in the borderlands of Kajokeji County, South Sudan and Moyo District, Uganda. Several people were killed, many more injured and thousands displaced. In *Dividing Communities in South Sudan and Northern Uganda*, the authors argue that the boundary dispute is not simply the result of a failure of governments to demarcate this stretch of the international border, but needs to be understood in the context of changing land values, patterns of decentralisation and local hybrid systems of land governance. Based on historical and empirical research, it examines how these factors are fuelling land-grabbing, distorting longer-term patterns of land tenure and promoting exclusionary land rights. By shifting attention away from the national legislation and policy, this report explores the underlying factors that may be driving the proliferation of land and boundary conflicts in the region.



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