Overcoming ruptures: Zande identity, governance, and tradition during cycles of war and displacement in South Sudan and Uganda (2014-2019)
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4 | Grounding conflicts: Land and formalisation in times of post-conflict return in Western Equatoria (2011-2015)[1]

4.1 INTRODUCTION

When I first arrived in Yambio in 2014 it was with a small plane from Juba. For 350 kilometres we flew over forests and plains, interspersed by farmland and rivers, and sparse villages and towns. South Sudan's population density is almost ten times as low as Uganda's, and seen from above land appeared plentiful.[2] Even Western Equatoria State's capital city Yambio looked relatively green from above. Seen from the ground, however, land in the rapidly growing towns was coveted and contested. As the payam administrator of Yambio at the time put it, 'It is very difficult to find empty space around Yambio.'[3] In fact, the competition over land in peaceful Western Equatoria would be at the root of the eventual re-eruption of war.

This chapter analyses why and how the Western Equatoria State government formalized land tenure during the peaceful period (2011-15), and how the process was connected to past and future movements and ruptures. In the aftermath of civil war, the peaceful and prosperous Western Equatorian towns saw an influx of people, 'newcomers' often (see Sections 3.4 and 3.5). Some were conflict-related migrants (returnees, IDP's, refugees), others were drawn by the prospect of town life, and for many these motives were mixed. Many people looked to land as a beacon of stability, and a first building block for peacetime lives. Land became more desired, valuable and contested (see Section 4.2).

To resolve and pre-empt land dispute and as a first step toward a utopian future, Western Equatoria State's government set about formalizing land tenure (see Section 4.3). I follow Tania Li, in analysing both the government intervention (in its own terms), and 'what happens when [it] becomes entangled with the processes [it] would regulate and improve' (Murray Li 2007, 27). Some of the formalisation's shortcomings were predictable and in line with the

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1 Part of this chapter was published earlier in 'Exploring Primary Justice in South Sudan' (2016) by the author.
2 The WorldBank estimated South Sudan's population in 2015 at 10,716,000. On a surface area of around 620,000 km2, that makes 17 people per km2. See: https://data.worldbank. org/country/south-sudan . A similar calculation puts Uganda's population density at 177 per km2. These are rough estimates, as especially in South Sudan demographic statistics are poorly maintained.
3 Interview with payam administrator, Yambio, 16 June 2015.

critical literature on the subject. But beyond failing conventionally and despite the best intentions, in this post-conflict setting the 'demarcation' heightened tension between various groups of IDP's and local land holders with strong ties to local government (see Section 4.4). This further increased the distrust and friction between various ethnic and socio-economic groups. In the town of Maridi, friction over land became politicized and later violent, which contributed to the eruption of a new civil war in 2015 (see Section 4.4.2). The formalisation illustrates well how ostensibly 'technical' governance initiatives in a post-conflict setting can work out profoundly political, and jeopardize the peace.

The end of (civil) war and subsequent return migration are often accompanied with land conflicts and debates about restitution (McCallin 2012; Betge 2019). Frequently, such conflict involves friction between 'local' or 'indigenous' ethnic groups, and 'migrants' or 'foreigners' (Huggins 2010; Mitchell 2014; Benjaminsen et al. 2009). In South Sudan, too, land was one of the root causes of conflict (Pantuliano 2007; Øystein H. Rolandsen 2009), and debates about indigeneity have periodically been politicized and militarized. Various authors argued that improved land governance could help solve current conflicts, and prevent future ones (Marzatico 2014; D. Deng 2014). The Western Equatoria State government followed this reasoning, and implemented various ambitious land governance reforms, most prominently the 'demarcation'.

There is a rich literature on the merits and demerits of land formalisation across the globe. Colonial efforts to formalize and individualise land tenure in Africa, date back to the 19th century (Shipton 2009, 130). More recently, formalisation received new impetus after De Soto's influential '*The Mystery of Capital*' advocated it as a means to stimulate economic growth, improve tenure security for smallholders and alleviate poverty (De Soto 2000; Otto 2009). Many Sub-Sahara African countries have followed the global trend towards formalisation. Control over land often has often played a pivotal role in African conflicts. And so reforming land governance and formalizing titles was high on the agenda of post-conflict governments in Burundi (Betge 2019), Mali and Niger (Benjaminsen et al. 2009), Rwanda (Pritchard 2013), and Uganda (McAuslan 2013).

However, even in otherwise stable societies, 'formalisation' can be a destabilizing and conflictual process, which is costly to perform and to maintain (J. Bruce 2012; Otto and Hoekema 2012; J. W. Bruce and Migot-Adholla 1994). Authors have been especially critical of using a legalistic approach to land as a way to avoid the manifold political and economic dilemmas surrounding the fair distribution of land (Manji 2015; Kennedy 2003), and the production 'legitimate forms of social order' (Lund and Boone 2013). When land disputes are about much more than land alone, a technical 'solution' is likely to fall short. This chapter argues not just that the programme failed, but rather explores why it was adopted in the first place, how it was implemented, and in what ways it 'failed'. It argues that beyond failing con-

ventionally, the implementation of the demarcation contributed to friction and, ultimately, the eruption of civil war.

To explore this thematic, this chapter is structured as follows. First, it analyses land dynamics in post-conflict Western Equatoria. It shows how land tenure – 'the rules that govern access to, rights over, and the authority to allocate land' (Badiey 2013, 57) – was a complicated amalgam of historical state practices, customary tenure arrangements, and ad hoc improvisations. There were countless land disputes. Land had also been central to South Sudan's independence struggle, and to renewed debates about autonomy and autochthony, belonging and identity. Second, this chapter introduces the Ministry of Physical Infrastructure, the ambitious Minister and some of his key staff. The Minister is an interesting example of an ambitious elite returnee, who wanted to bring about utopian change upon his return. This section also details the street-level problems and improvisations by his subordinates. Third, I discuss two larger land disputes in some detail: The first between a church and LRA-displaced people in Yambio, and the second between Dinka SPLA-veterans and the county government in Maridi. I analyse some important similarities and differences between the two cases (See Section 4.4.3). After the 2015 re-eruption of conflict, land governance was heavily affected and I met some of the main characters of this chapter – the Minister and the chairperson of a land dispute committee – again as refugees in Uganda (see Section 4.5). In the conclusion I explore how this case speaks to the rest of this book, and to the literature on formalisation.

4.2   LAND DYNAMICS IN POST-CONFLICT WESTERN EQUATORIA

4.2.1   Land tenure patchwork

Control over land has changed hands often in Western Equatoria, between customary and (colonial) state authorities and armed groups. The various authority structures that arose, consolidated or eroded over the course of the wars, all left their mark on the land tenure systems (Ø.H. Rolandsen 2005). During the colonial-era Zande Scheme a cadastre had been established for the areas around Yambio and Nzara, and some authors reportedly still came across remnants of that system (see Section 3.2) (Reining 1982; Wyld 1949a; Marongwe 2014, 11). But during the decades of war, people had moved around and land transactions had not been uniformly registered. What was left by 2015, was a complicated patchwork of tenure systems that like 'sediments' offered a rich soil on which land claims and disputes would grow (Bierschenk and Olivier de Sardan 2014).

In law and practice, a rough dichotomy existed between rural and urban areas, with the former under customary tenure, and the latter under government control and law. In the ideal type, customary tenure was part of a larger

order where families and especially clans have an important voice in allocating land. Access to land, here, depends on social relations, reputation and labour, rather than 'just' a paper title which could be traded for money. Rural land is abundant, and so when newcomers arrived they were typically directed to the edge of the village to clear their own plot.[4] Elsewhere in Sub-Sahara Africa, too, systems of landholding existed beyond or before the (colonial) state wherein 'Birth right, marriage, clearing, encroachment, clientage, and swaps and other voluntary transfers were the ways to get land, and child-bearing, active farming, and good citizenship were the ways to keep it' (Shipton 2009, 134). In Western Equatoria in 2015, most people told us that rural land has little problems or disputes, because it was plentiful, and because the clans 'know their own boundaries.'[5] Whether this is a romanization is beyond my scope here, but people used this image of a harmonious countryside as a rhetorical contrast for the 'confusion' of the towns.

The towns were associated with another kind of tenure and property conceptualization. Here an individual could transact land, and land access depended less on communal life and more on the state. In the words of the paramount chief of Yambio: 'This place belongs to the government. A de-marcated area, a demarcated plot, and a lease has been issued by the govern-ment. That means it is under the government. You are answerable to the government.'[6] Still, Deng estimated that by 2014 less than half the individual land in South Sudan's urban areas was 'formally registered' (D. Deng 2014, 32). Following the CPA (2005) and around independence (2011) urbanisation increased, and land became more in-demand, monetized and contested, which in turn fed speculation and grabbing (Leonardi and Browne 2018, 4). Rural migrants often settled along the fringes of the towns, using the familiar clear-ing-to-claim logic (see Section 4.4.1). Towns would then grow to incorporate the new peri-urban neighbourhoods. Land and people who used to be 'under' customary tenure, slowly became integrated into the urban frontier, and into the realm of the state (Leonardi 2013, 223).

4.2.2   Land disputes

Land became one of the sources of conflict in peace-time Western Equatoria, within and between families, neighbours, communities and administrative units.[7] Sometimes these disputes would escalate and involve the threat of physical or spiritual violence. Now that land was becoming monetized and

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4   Much like an unmarried adult son might clear some land on the edge of his parents' homestead to construct his own tukul.
5   Interview with NBS official, Yambio, 27 January 2015.
6   Interview with paramount chief, Yambio, 8 April 2015.
7   Such as between Nzara and Yambio counties about boundaries

valuable, there were countless stories of selfish individuals who rushed to claim and sell land that other people, too, depended on: chiefs sold communal land,[8] individual members sold family land.[9] Large landholders like churches and teak companies were also frequently involved in land wrangles (Braak 2016), as were GoSS and SPLA officials (Bennett et al. 2010, 88).

These disputes were closely related to cycles of conflict and displacement. Some disputes directly followed the return migration. Informal war-time agreements on land use between relatives or acquaintances, had often not been spelled out on paper. When people returned many years later, the original dealmakers had sometimes passed on and a land dispute arose between their offspring. One of many such instances was recalled to me in Kiryandongo RS in Uganda, during a group discussion with people from Yambio:

> Noah: When people came back from Anyanya 1 [First Sudanese Civil War] there were two befriended families. One didn't have land, the other did. So they gave some land and the family lived there, cultivated there, buried there. But then the offspring started quarrelling over the land, and said: 'that friendship was between our parents, not us.'
> John: When offspring of old people come back on old agreements, it is like instead of relationships being cultivated, they are sacrificed because the land is now so valuable.[10]

This account is illustrative of the heated emotions involved in land disputes. They were about much more than land access or ownership, and frequently changed the way people related to one another.

Land disputes would be brought to the customary and statutory courts, or to a new administrative body set up for this purpose: the Land Dispute Committee of the County Land Authority (CLA) (Braak 2016). My team and I attended hearings at all these forums, studied their records, and followed up with disputants outside (see Annex 3: Methods). We learned that by 2014, everything around land tenure in Yambio was pluriform. The authority over land was disputed between various customary and statutory authorities, which all issued types of 'paper' proof of ownership and boundaries. But these forums would often also accept alternative forms of proof: trees planted by parents, graves of ancestors and visible investments in the land (e.g., structures, crops). There were equally diverse discourses about legitimate land ownership: Some people claimed land because they had bought a lease, others because they had buried ancestors there, others still because they had liberated it during the war, or because they had cleared or developed it. Badiey describes

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8   Interview with 41-year-old 'head youth', Yambio, 2015 and Interview with Director of Survey, Yambio, 27 January 2015.
9   Interview with 28-year-old male disputant, Yambio, 20 February 2015.
10 Group discussion with refugees from Western Equatoria, Kiryandongo RS, 18 February 2017.

these dynamics for Juba well, where land disputes resulted from housing shortages:

> Throughout the town's neighbourhoods as the paths of long-time residents crossed with returning refugees, internally displaced persons (IDPs) and ex-combatants – all of whom articulated claims to land that reflected their distinct experiences of the war, and sought to carve out advantageous positions in the new state, whether through emphasizing citizenship rights, ethnic privilege, elite status, or contributions to the liberation war (Badiey 2013, 58).

In the words of Lund, 'several competing normative orders may be brought to bear to legitimise a specific claim, and several groups and institutions may compete over who has the jurisdiction to settle disputes and set norms by precedent' (Lund 2011, 72). Land governance in Western Equatoria was square-ly positioned at the centre between the political contestation over authority and control, and identity and belonging.

4.2.3   The politics of land and belonging

Three political currents coalesced in the years after independence in 2011, which would shape land claims, disputes and governance. First, there was the post-war rhetoric, supported by the Land Act and international NGOs, that people ought to 'go home'. During the Second Sudanese Civil War (1983-2005), the SPLM/A had mobilised support and fighters, by insisting that land should belong to 'the people' (van Leeuwen, van de Kerkhof, and van Leynseele 2018, 296). In the words of Yambio Paramount Chief Peni, 'You see, the issue of 'land belongs to the people' was a policy developed by the South Sudanese during the war in order to fight the Arabs who were claiming this land.'[11] This credo was incorporated into the Transitional Constitution: 'all land in South Sudan is owned by the people of South Sudan and its usage shall be regulated by the government.'[12] *Which* land, however, belonged to *which* people, and *how* government would regulate it, remained contested and left largely to local improvisations and the Land Policy.[13]

A central question was whether all South Sudanese should have equal rights to land throughout the country, or whether people who could trace local ancestry or (ethnic) origin should be accorded privileges. Across the Equatorias, returnees often clashed with (former) SPLA and 'displaced people (IDPs) from cattle-keeping regions of Southern Sudan, commonly (but not always accurate-ly) labelled as Dinka' (Leonardi 2007b, 217; Justin and Van Leeuwen 2016;

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11   Interview with paramount chief, Yambio, 8 April 2015.
12   Article 170: 1.
13   The Land Policy was presented to government in 2012, but still awaited approval by the National Assembly by the time of this writing.

Newhouse 2017). The Land Act (2009), stipulated that people who lost their land 'after an involuntary displacement as a result of the civil war starting from May 16, 1983' might be entitled to restitution.[14] But often, returnee attempts to reclaim their land were met with resistance from the current occupants who had bought the land with money and/or gotten it through war-time sacrifice (Leonardi 2011). Over time, scholars saw a rise in discourses in which 'ethnicity becomes a problematic shorthand for identifying land rights and determining territorial belonging and boundaries' (Leonardi and Santschi 2016, 10). Others warned that decentralisation, 'while theoretically the best way to govern South Sudan, has in reality often become an instrument to entrench 'tribal' lines over competition for resources' (Schomerus and Allen 2010, 9).

The association between territory and 'people', has a long history in South Sudan. Pre-colonial Zande Kingdoms are likely to have been multi-cultural (see Section 2.3), with people being able to move around to avoid or join other groups (see Section 3.2). But in colonial times, boundaries were drawn partly based on the 'tribal' vision of the colonial state: The area around Yambio became part of the 'Zande District' and the authorities sought to enforce 'tribal discipline' which included limiting people's freedom to move (see Sections 2.4 and 3.4). In the 1970s and 1980s, the politics of identity and land featured prominently in debates about federalism, and 'kokora' also in Western Equatoria (D. H. Johnson 2014; Wheeler 2005, 70). A headman in Yambio explained a popular understanding of the 'kokora' policy: 'anyone should go to where he came from ... In 1983 it was started by the government of Sudan. Everyone had to go back their place or state of origin and each tribe in its region should stay only in their place of origin in and of their ancestors and to rule themselves.'[15] In 2015, President Kiir decreed a new decentralisation again entrenching ethnic divides. The decree created for instance Gbudue and Tambura States, after the famous pre-colonial Zande kings (see Section 2.3). After, some people were told to go 'back' to where they came from.[16] In sum, over the last century, the concrete question of individual land tenure in South Sudan, has often been interpreted as part of the larger debates about belonging, community and 'autochtony'.

A second political current, was that across South Sudan but certainly in the Equatorias many people grew disappointed with the central government in Juba. After the euphoria in anticipation of independence, people were now awakening to the much more complicated reality of a divided country rife

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14   Chapter 8 of the Land Act, 'Land Rights Restitution and Compensation.' There were technical as well political complications. For instance, claimants had to submit their request within 3 years from the commencement of the Land Act (by 2012).

15   Interview with headman, Yambio, 2 September 2015.

16   Focus group discussion with non-Zande men from Western Equatoria, Bidibidi, 19 August 2017.

with poverty, conflicts and corruption. When Western Equatoria was threatened by the LRA and Mbororo, the SPLA had been uninvolved – leaving many Western Equatorians feeling that the SPLA and central government had been 'captured' or 'belonged' to 'other people' (de Vries 2015). Often, such disenfranchisement with central government and the ruling elite was translated to 'the Dinka' as a whole (Copeland 2016; HSBA 2016, 2). This sense of alienation and abandonment among Western Equatorians was only aggravated when the South Sudanese Civil War started in late 2013 over what many interpreted as personal difficulties and powerplay between President Salva Kiir and Vice-President Riek Machar (see Section 6.2). These conflicts and disputes made the idea of a threatened (predominantly Zande) homeland more concrete, and land tenure even more political.

These two political currents – the growing distance between 'Juba' and 'Yambio', and the push for people to 'go home' – would have been sufficient to cause friction with IDP's in Western Equatoria. But they coalesced with a third one, which determined the shape of the friction. From the CPA in 2005 South Sudan had been the theatre of grand statebuilding ambitions. Flush with oil and donor money, South Sudanese elites and their international supporters envisioned moonshot transformations of society: To move the capital, industrialize the economy, build highways and airports, etc. This kind of 'starting-from-scratch' utopian planning is quite common in post-independence and post-war contexts, and often ignores history, politics and culture at its peril (Justin 2020; Mac Ginty and Richmond 2013).

Popper characterized 'utopian engineers' as those who use law as a programme, 'eager to reconstruct society in his own image [and] no longer willing to wait, to leave transformation to occur as the piecemeal and eventual result of countless individual decisions' (Allott 1980, 174). In Juba, too, this was a time of utopian urban planning perhaps precisely because the present was so precarious, and people desired to escape it in a big way (Badiey and Doll 2018). This may well be a general human tendency, 'The most wide-ranging and ambitious plans of nation states and their international sponsors are often born in response to the worst of perceived crises' (Shipton 2009, 146). Just after war, this was a time of dreams.

4.3   STATE VISIONS AND STREET-LEVEL IMPROVISATIONS

Why and how did the Western Equatoria State government prioritize land formalisation in this context? States are often said to 'see' in particular ways, and to work towards a more legible, simplified society (Scott 1998). Yet whenever the state *does* anything, it needs bureaucracies and employees to do so (Bierschenk and Olivier de Sardan 2014). And so, an anthropological study of 'the state' necessitates attention for the individuals who represent the state. Especially in a fragile post-war and post-independence state like South Sudan,

bureaucrats are left with discretionary room to choose how to implement often ambitious laws and policies with the limited means available to them.

This section revolves chiefly around three government employees at different levels: The state-level Minister of Physical Infrastructure (after this, 'Minister') who thinks 'big picture' and designed a state-level policy to demarcate land; his Director of the Department of Lands, Survey and Town Planning (after this, 'Director') who was in charge of the day-to-day implementation of the policy; and the chairperson of the Land Dispute Committee of the County Land Authority in Yambio County who had to resolve the countless land disputes that partially resulted from the demarcation. These individuals each had different perspectives, resources and interests, which explain some of the demarcation's shortcomings.

4.3.1 The minister's vision and the formalisation of land

The Minister had returned to South Sudan in 2008. He had spent the preceding decade in Ireland and the UK, where he had earned an LLM and worked as legal counsel. Like many other elite returnees, the Minister returned to South Sudan in the hopeful period between the CPA and Independence, when the atmosphere was heavy with aspirations for (re)building South Sudan and making tangible the fruits of independence. The Minister took office in 2012, and quickly embarked on a modernizing agenda for the State's public infrastructure. He aspired to great things, despite the constraints of the civil war and national austerity measures. He planned to borrow money from Chinese banks to 'electrify' the towns, establish an international airport, and tarmack the roads from Mundri in the east to Tambura in the west.[17] The Minister looked to land formalisation as a first step in getting the towns ready for the future.

The rest of South Sudan was waiting for lacunas left by the Land Act to be addressed by a subsequent Land Policy (Mey et al. 2019). However, in Western Equatoria State, the Minister managed to get a state-level 'Land Administration, Management and Regulations Act' (2013) passed.[18] When I interview him years later, he recalls fondly: 'I treated [the Act] like my child. I got some help from UNDP, and they seconded some staff to the Ministry to help me develop some of those policies.'[19] The act stated *inter alia* that, 'All land in Western Equatoria State shall be surveyed and all information and

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17 Interview with former Western Equatoria State minister of physical infrastructure, Kampala, 21 June 2017.
18 This initiative received some pushback from the national government, which also sought to influence land especially when large-scale investments were concerned. Interview with former MP, Arua, 15 June 2017.
19 Interview with former Western Equatoria State minister of physical infrastructure, Kampala, 21 June 2017.

data established shall be maintained in the Ministry of Physical Infrastructure and Public Utility.'[20] The Ministry's aspirations were now a legal obligation.

Western Equatoria's 'demarcation' would not be a conventional land formalisation exercise. In the international literature and South Sudanese legislation, land formalisation is mostly advocated for its supposed ability to improve tenure security for the poor, bring 'dead capital' to life, and stimulate the economy (see Section 4.1). The Land Act (2009), mirrors this dominant framing, by stating as its purpose in article 3: 'This Act shall regulate land tenure and protect rights in land in Southern Sudan while creating an enabling environment for economic development in the land and natural resources sectors.' However, from the Ministry's point of view the main land problem in Yambio was the 'informal privatization of public land' as the Director of Survey called it. He added: 'Every day we are losing public land!'[21] The Ministry's priority was to preserve state land, so that the state would have room to construct itself. Additionally, they hoped that people would pay leases and fees, so that the Ministry could remain operational in these times of national austerity measures.[22]

Instead of formalizing pre-existing tenure arrangements on the ground into a single system, the 'demarcation' sought to make reality more in line with urban planning. The demarcation hoped to establish a geometric order in the towns. The organic and irregular sizes and shapes of plots, would have to be unified into a rectangular grid. This is reminiscent of land consolidation, more than just formalisation. When I asked the Minister why, he explained:

> It transformed the shape of the area. Of course, it is not like here [in Uganda]. I think the system that we were trying to develop in South Sudan is much more organized than Uganda. You see this plot [gestures to where we are seated] is not equal ... That is something we tried to avoid.[23]

The demarcation reinforced the duality between government-controlled towns, and traditional authority-controlled rural areas (see Section 4.2.1). My key respondent Charles, then chairperson of the Land Dispute Committee, explains the logic:

> In those areas gazetted for town, it is the government to come up with the way they want the town to look ... So, it means that the surveyors demarcate how the plots will look in the town system, where the roads will pass, electricity poles, water

20   Article 31, Land Administration, Management and Regulations Act (2013)
21   Interview with Director of Survey, Yambio, 7 February 2015.
22   Interview with Director of Survey, Yambio, 27 January 2015.
23   Interview with former Western Equatoria State minister of physical infrastructure, Kampala, 21 June 2017.

system. Outside the boundaries of the city, you can have any shape of land you want ... the city should look in an orderly way.[24]

The Land Act (2009) offered the state wide-ranging powers to turn all undemarcated land (the vast majority) into 'public land' by default.[25] On paper, this severely undermines the role of traditional authorities in land tenure. In practice, chiefs were still in charge of most rural areas.[26] Instead, the friction between customary authority and government is most apparent on the growing urban frontier, which the state sought to match with control.[27] First came the settlers, then the churches, and not much later the surveyors. Areas which had been 'under' chiefs, would through the demarcation be transferred to the authority of the state. As a lawyer explained: 'Initially, the piece of land for the government was very small ... Most parts were under local [traditional] administration. Now the town is expanding and it is swallowing the local boundaries.'[28] The Minister explained some of the friction that this involved:

> When an area is converted from rural to urban, disputes often arise between the government and the original owners who want to keep the land as it is ... People resist changes when they don't understand the benefits. We try to explain before that there will be open spaces, roads, services. We come in; we try to organize it. Of course, in the process people are going to be uprooted.[29]

The urbanisation also benefited chiefs in particular ways, and they continued to play crucial roles in the towns and in land governance.[30] Yet their subservient role to government was clear in towns, and many begrudged their lost role as 'custodians of the land' (see Chapter 5).

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24 Interview with Charles Bangbe, Western Equatorian refugee in Kiryandongo RS, 19 June 2017.
25 'Public land includes ... all land not classified as private or customary under the Constitution and other laws' (Article 10, 2: i).
26 Interview with Charles Bangbe, Western Equatorian refugee in Kiryandongo RS, 4 August 2017.
27 Interview with sectretary of the CLA, Yambio, 29 January 2015.
28 Interview with South Sudan Law Society-lawyer, Yambio, 1 October 2014.
29 Interview with Western Equatoria State minister of physical infrastructure, Yambio, 27 January 2015.
30 The customary rights to land, and the roles of traditional authority in its governance, are regulated in Chapter 5 of the Land Act. The Land Act also reserves roles for chiefs at the lowest levels of land administration, in particular in the County Land Authority (article 45) and Payam Land Councils (article 49).

4.3.2   Street-level problems and improvisations

> 'Disputes over land will never end. People keep increasing but the land stays the same.' - Director of Survey, interview in Yambio, February 2015

The urban planning ambitions of the state were in some instances captured in a 'Masterplan.' In Yambio, for instance, this map had been produced in 2009 by Ashang Engineering Company, a consultancy. An MP recalls: 'They brought the people from Khartoum who demarcated the land using the GPS, their what-what. It was well-demarcated.'[31] TetraTech, an American engineering consultancy brought in by USAID, produced a PDF-map which included various shades differentiating blocks of public from private land. Subsequently, the plan was to demarcate individual plots within those blocks, categorizing private land into first-, second- and third-class plots. Each class had set dimensions, a lifespan and a cost.[32] The plan was that people would subsequently come to the Ministry to get registered on their plots, and to buy a land lease.

At almost every step, the plan ran into problems. Some were predictable from the literature on land formalisation: Mainly that the push to formalize land tenure sparked countless disputes between competing claimants (see Section 4.4). But there was a host of additional problems. The Land Act had left so much unclear that a pilot land inventory in Yambio was forced to rely on colonial legislation from the 1920s (Marongwe 2014). The lack of clarity, in the words of my key respondent Charles in the CLA, 'left a vacuum for people to play.'[33]

Where the plan 'landed' on the ground, new problems arose. The Masterplan was six years old by the time of our research, and had grown increasingly removed from the reality of land occupancy due to the influx of conflict-related migrants (see Sections 3.4 and 4.1). Still, it remained the guiding document for the demarcation process. Confronted with the gap between the plan and local realities, surveyors often sought to make the latter more in line with the former. As an inhabitant of a recently demarcated neighbourhood in Yambio said: 'I may expect the survey to demarcate the area according to the way I bought my plot before, but that is not how the survey works. Because he works according to the Masterplan he has.'[34] The Masterplan was hard to come by: even the High Court at the time had no copy. This made the process less than transparent, and fuelled allegations of corruption and favouritism.

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31 Interview with Balanda political leader, Arua, 15 June 2017.
32 In early 2015, the leases were: 1st class: 45 by 40 meter for 30 years, for 605 SSP; 2nd class: 35 by 30 meter for 20 years, for 455 SSP; 3rd class: 21 by 20 meter for 10 years, for 255 SSP.
33 Interview with Charles Bangbe, Western Equatorian refugee in Kiryandongo RS, 19 June 2017.
34 Focus-group discussion about 'demarcation', Yambio, March 2016.

Many people's plots had been organically shaped, and fitting them into the geometric grid meant altering boundaries. Some people's land now 'fell' on the road or on state land. Legally those people had to be offered cash or in-kind compensation.[35] Often, this did not happen, with the Minister explaining that 'the government doesn't have the resources to compensate everybody. We would need to have a budget for that. We are running on an austerity budget. For the correct implementation of the Act you need resources!'[36] The Ministry had hoped to generate revenue by selling land leases to people whose land had been demarcated. Many people, however, did not buy their lease because of the associated costs. In some instances, surveyors sold on the demarcated land to other willing buyers, leading to predictable land conflicts (Mennen 2012, 14).

The surveyors were generally careful not to step on powerful toes. When a road had to be demarcated, they would avoid the houses of 'big people.' When a plot would be disputed, it was awarded to the richest claimant. Many people accused the surveyors of being corrupt, and the 'big people' of buying them off.[37] The surveyors themselves explained, 'You know as well as I do who owns those beautiful houses. We survey, give the plan to the Ministry, and he will share it with the Council of Ministers. They will disagree with the plan.'[38] The director added, that:

> We try as much as possible to minimize the destruction of houses. You must minimize the cost. So a very well-built house or church will be avoided because it is costly to compensate ... It is easier to compensate a *tukul* [clay hut], than someone with a large building. But now the Government doesn't even compensate a single *tukul*.[39]

To overcome the shortage of land and money, low-level officials invented a 'practical norm' ('the informal, tacit and latent regulations that underpin the actions of public actors and do not conform to the bureaucratic, professional and formal norms') (Bierschenk and Olivier de Sardan 2014, 29). Large land-holders had to surrender part of their land for the compensation of the dispossessed. The Payam administrator of Yambio explained: 'if you have 4 plots, government takes 1, if you have 7, government takes 2, if you have 10, government takes 3.'[40] There was no legal basis for this redistributive practice, and

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35 Land Act and the Land Management, Regulations Act. Interview with two county court judges, Yambio, 25 February 2015.
36 Interview with Western Equatoria State minister of physical infrastructure, Yambio, 27 January 2015.
37 For instance, Interview with engineer in Ministry of Physical Infrastructure, Yambio, 9 February 2015.
38 Interview with Assistant Director of Survey, Yambio, 16 February 2015.
39 Interview with Director of Survey, Yambio, 7 February 2015.
40 Interview with payam administrator, Yambio, 16 June 2015.

dispossession without compensation was not allowed by law.[41] The Minister explained that this redistribution scheme was agreed upon between surveyors and local chiefs.[42] They defended it by saying that land in town was scarce, that they needed land to compensate the dispossessed, and that anyway large landholders often did not make full use of their whole land or could not afford land titles for all individual plots.[43]

The demarcation also stumbled over the dead. Many people in South Sudan buried their relatives close to home as the cemeteries were remote, often full, and believed by some to be crowded with the hostile spirits of strangers.[44] When 'the demarcation' dispossessed people and their dead, they were particularly aggrieved and often refused to move. Although the Ministry had demarcated new cemeteries for the dead, those places remained occupied by the living, so there was no immediate solution to this problem.[45] Further, because some county bureaucrats were reluctant to move graves, some disputants even buried relatives on disputed land to bolster their claim to it. One man who had buried his brother on his plot explained:

> A grave at home is good, because it gives the ownership of the plot to the relative of the deceased. You might go to another country for many years, but still the plot is yours because the grave is there as evidence.[46]

These practices reflect a wider phenomenon, which Fontein described as the use of graves as a way of 'materializing autochthony for the purpose of claiming land' (Fontein 2011). In Western Equatoria, graves were advanced – and often accepted – as powerful markers of ownership and belonging.

To the frustration of many, the projects for which the state claimed land often stalled. The envisioned roads rarely moved beyond the planning stage. The Assistant Director admitted this but complained: 'We have no fuel! So we cannot afford to build 20 meter roads. It is because of the austerity measures. The excavator is broken. The machines use a lot of fuel.'[47]

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41   The 'Expropriation of Land'-chapter in the Land Administration, Management and Regulations Act, states that the government may expropriate land 'for set up of public facilities … subject to compensation and consent of the communities in accordance with laws and regulations.' Vague as this is, it suggests nobody will be expropriated without consent or compensation, and not for any other purpose than 'public facilities'.
42   Interview with former Western Equatoria State minister of physical infrastructure, Kampala, 21 June 2017.
43   Interview with former MP in Western Equatoria, Arua, 15 June 2017.
44   Interview with 98-year-old Zande man, Yambio, 5 March 2015.
45   Interview with Director of Survey, Yambio, 27 January 2015.
46   Interview with 42-year-old farmer, Nzara 11 March 2015.
47   Interview with Assistant Director of Survey, Yambio, 16 February 2015.

4.4   Subsequent disputes

Land formalisation was promoted in South Sudan in part for its promise to resolve and prevent land disputes. Yet the most destructive consequence of the 'demarcation' in Western Equatoria was that it sparked dozens of land disputes, especially in the towns (Braak 2016). Although any formalisation process is accompanied by land disputes between competing claimants over ownership and boundaries, in Western Equatoria several disputes involved larger group identities and were inextricably connected to the history of war and displacement (see Chapters 2 and 3). To be clear: The state bureaucrats who designed and implemented the demarcation did not intend for these consequences to occur. However, they focused narrowly on technical matters (masterplans, grids, land leases and plot boundaries), overlooking the more fundamental unresolved political question of fair land distribution, and specifically the rights of 'newcomers' from elsewhere and/or other ethnic groups. To whom did the land belong? This section will analyse two land disputes: one with LRA-displaced people in Yambio, another with SPLA-veterans in Maridi. Then it compares the two cases, and sketches how they have subsequently interfaced with renewed civil war from 2015.

4.4.1   Land dispute 1: A church vs LRA-displaced peoples

This land dispute took place in Yambio, between a landholding church and a group of LRA-displaced people in the Vocational Training Centre (VTC) Area, on the southern outskirts of Yambio, just beyond Timbiro.[48] Farmers used to cultivate the area. In 1987, local government in consultation with traditional authorities gave the land to a church whose leader planned to establish a vocational training centre there.[49] The centre was established, but only on a small portion of the land. Over the years, people settled informally on the rest. A clergyman recalled how in 2005, 'The church realized that most of its land had been occupied. [Then] they tried to reclaim it but the people refused to move away.'[50] In 2005, the county government struck a compromise: the size of the church's land would be decreased from 700 by 400 meter, to 600 by 400. 'But those people who were on the main church land still refused to move away.'[51]

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48   ?The exact denomination has been anonymized. Similar dynamics took place with other large landholders and groups of people.

49   Interview with county commissioner at his house, Yambio, 27 January 2015.

50   Interview with 46-year-old clergyman, Yambio, 19 February 2015.

51   Ibid 50.

Figure 3: Satellite photo of Yambio, Gangura, and Nabiapai. Source: Google Earth, March 2020.

The dispute was still lingering when the influx of conflict-related migrants made matters more complicated. First came the returnees. And then from 2008-9, thousands of LRA-displaced people came from the border areas around Gangura and Nabiapai, south of Yambio (see Section 3.4).[52] Francis was one of them. He recalled how back then, the area was 'bushy' and few people lived there.[53] Some LRA-displaced people admitted they 'just settled' when they found the land unused, others claim they were invited to stay here by the son of the late church leader.[54] In either case, the newcomers were often aware that this was 'land of the church', but they had not been asked for money and they presumed they could stay because they ran from war. Still, because it was church land certain rules had to be respected: 'No fighting, stealing and drinking of alcohol … [Otherwise you] will be chased from the area.'[55] Over the years, people came and went to the VTC Area. Some sold off the land they had cleared. Robert, for instance, bought some land and a *tukul* from an LRA-

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52   The Western Equatorian towns Ezo, Tambura and Maridi similarly received an influx of LRA-displaced people from the border areas and country side.

53   Not his real name. Interview with 32-year-old resident in VTC-area, Yambio, 19 February 2015.

54   Interview with 35-year-old farmer in Timbiro-area, Yambio, July 2015.

55   Interview with 35-year-old farmer in Timbiro-area, Yambio, July 2015.

displaced person who lived there before him, under the authority of a local sub-chief.[56] Others rented houses out, also to Congolese migrants.

Trouble resumed in 2014 when the demarcation came. The church paid government surveyors to demarcate the area and register people. Residents were asked to pay for the demarcation of their plots, and given a receipt. Francis was there during the registration, but he had not been sure why any of this was happening: 'Later we heard our names over the radio, saying that we should evacuate the area.' With some other residents, Francis went to meet the headman of the area, who in turn encouraged them to appoint a committee to speak with the church. Robert, a member of the committee, recalls how the church told them that 'Those who paid for the receipts actually paid for an application form, to apply to have land in the VTC area.' The church now wanted residents to buy plots at 10,000 SSP or leave. By way of comparison, a first-class government-issued plot was sold at 605 SSP. The residents were shocked by the asking price, and petitioned for the church to lower it, or offer them alternative land to stay on.[57]

Some residents disputed the church's claim to the land, arguing that it had no legal documents to prove its ownership, or that the documents were not based on proper procedures. The church insisted that the LRA-displaced people should return to their 'home areas' because the LRA-threat had subsided. In their view, the IDP's mostly 'refused' to go back because they preferred city life, something which the IDP's do not deny.[58] One clergyman insisted that VTC-residents had bribed government officials with plots of land in the area, to get them on their side.[59]

The residents appointed a new delegation – now including the headman and a state MP – to meet the County Commissioner. He refused to handle the dispute, and instead referred it to Governor Bakosoro, the highest administrative official in the state. Eventually the Governor decided that the land belonged both to the people and to the church, and that they should divide it. 'This forced the church leader to avoid the conflict,' Father Paul explains. 'He said 'those people are my Christians and I have to protect them. I cannot have conflict with my own people!'' A new team of surveyors came in, demarcating the church land at 400 by 350 meters. This was roughly half of what the church had originally claimed.

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56 Interview with 36-year-old resident in VTC-area, Yambio, 9 February 2015.
57 One resident mentioned 605 SSP, the same amount as a private lease bought from government. By 2015, only three households had started paying the 10,000 SSP
58 Many IDP's acknowledged that while they feared insecurity in Gangura, they were also drawn to Yambio for its school and health facilities, and 'have discovered that life in town is better than in the village.' Interview with 38-year-old resident in VTC-area, Yambio, March 2015.
59 Interview with 46-year-old clergyman, Yambio, 19 February 2015.

The compromise solution was accepted reluctantly by the church, but rejected by some of the residents. They insisted on compensation, and used strong language:

> We won't listen to the church, only to the government! But if the government acts unfairly, we will disobey them ... If they want us to evacuate the land they should come and shoot us all dead. And if any newcomer brings concrete building materials, we will attack them because they want to spoil our decision.[60]

The start of civil war in Western Equatoria from 2015, interrupted efforts to resolve this land dispute as well as our ability to research its development. Later, we learned that all involved authorities had put the VTC dispute on a back burner for over a year.[61] But in 2017, the dispute was heating up again. Robert, one of the area inhabitants was still there and listed among his reasons for 'not running away' from the war that, 'My land is for my children and I cannot leave it just like that for someone to come and grab it when I am out of the country.'[62] The precarity of his land claim was one of the factors persuading him against running from war.

Also in 2017, church officials told us that they planned to form a committee to mediate with government and 'the community,' on an elaborate vision for the area. One clergyman explained that, 'The church has very many plans on that land: [We want to] open institutions like a nursery school, vocational school, primary school and theological school to train pastors.' When we asked when the programme would start, he responded 'Our vision is for more than 100 years to come.'[63] Even before the civil war had ended, people with a degree of power nurtured utopian visions of the future. Again, individual land claimants would have to move for these plans to be realized. The church did reserve part of its land for 'communities to occupy', but also proclaimed that,

> [We will] choose the type of people whom we want to stay on our land. We shall also set rules and regulations to guide their stay in the area. [No] polygamous, witchdoctors or witchcraft practitioners, people brewing alcohol, fighting and insulting one another, prostitutes, womanizers and other unruly characters.[64]

On the ground, Robert had not heard of this vision. He said that the church had been 'silent' about the land, although there had been rumours that the

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60 Interview with 38-year-old resident in VTC-area, Yambio, March 2015. Similar sentiments were echoed by another resident: 'If they keep demanding so much, it is better to go back to where I came from, even though they kill there.' Interview with 32-year-old resident in Timbiro-area, Yambio, March 2015.
61 Interview with female social worker, Yambio, 12 April 2017.
62 Interview with 38-year-old teacher in VTC-area, Yambio, 11 April 2017.
63 Interview with 42-year-old clergyman, Yambio, 24 April 2017.
64 Interview with 52-year-old secretary of church, Yambio, 24 April 2017.

church was bringing a lawyer from Kenya to take the case to court.[65] But the VTC-residents said they were unafraid because of their powerful allies. In the words of the Area chairperson, 'The government is behind us.'[66]

Ethnicity was never mentioned in this dispute, perhaps because most people in this area – including the IDP's and even the Congolese – were Zande. Further, the IDP's also attended the same church that claimed their land. Further, among them were powerful members of local government. One can only speculate how differently the land dispute would have evolved had the occupants formed a more easily distinguishable 'out-group'. In that regard, the next case may offer some cues.

4.4.2   Land dispute 2: Politicized demarcation, ethnicity, and conflict in Maridi

This land dispute took place in Maridi, between county government officials and Dinka SPLA-veterans.[67] The SPLA captured Maridi from the Sudanese Armed Forces in 1991. Wounded SPLA-soldiers were treated here in a clinic, and a commandant told the injured and disabled that they could stay in the central market area. Over the years, more soldiers and their associates came to the area, and land changed hands various times. One plot, for instance, was bought in 1992 from a veteran by a businessman. Upon his death, the land was inherited by his brother who in 2009 paid 185 SSP to the executive director of Maridi county government for a land lease.[68] Other veterans bought land from local traditional authorities, often to the dismay of some members of the local ethnic majority groups like the Zande.[69] Many land disputes in this area ensued when pre-war occupants returned.

Maridi County announced in a letter on 30 October 2012 plans to demarcate and redistribute plots in the central market area.[70] Occupants were promised they would receive restitution. The veterans were obliging at first, but often discovered after the process that they had been dispossessed. One Dinka pastor's plot had been given to the county's executive director, who was also in the land dispute committee.[71] One veteran narrates his view:

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65   Robert was skeptical: 'Maybe, they don't have enough money to go and hire a lawyer in such an expensive country. Or perhaps the lawyer is not interested in coming into terroriz-ing insecurity.'
66   Interview with chairperson VTC Area, Yambio, 18 April 2017.
67   The SPLA was multi-ethnic, but included prominently ethnic Dinka.
68   Interview with Dinka SPLA-veteran, Maridi, 21 April 2015.
69   In Yambio, a Zande respondent complained that, 'Even our chiefs they have sold land to the Dinka tribe.' Interview with 36-year-old Zande man, April 2015.
70   Interview with Dinka trader/ex-soldier, Maridi, 21 April 2015.
71   Interview with Dinka pastor, Maridi, April 2015.

> They decided to divide the plots among themselves in the [county] office there
> ... At night we found them just trying to start building on the very plots they said
> it will be given to us ... When we started to chase those people from there, the
> commissioner called us to the office. One of the members in the county said: 'Those
> plots are for our children of Maridi not for Dinkas.' ... If the commissioner fails
> to solve this issue rapidly, death is going to occur between me and the com-
> missioner and his brother.[72]

This is where the dispute became explicitly about more than just plots of land.
Now it was about belonging as well. The bureaucrats were mostly Moru and
Zande, ethnic groups who claim autochthony in the area, whereas the veterans
were mostly ethnic Dinka. The former claimed the land based on autochthony,
the latter claimed it based on their wartime sacrifices (Leonardi 2011) and the
money they paid. The returnees pointed to the trees their parents had planted
on the land or to the graves of their ancestors, and the veterans to the graves
of their comrades who had died fighting for South Sudanese freedom.[73]

Although the dispute started over land, it escalated because everyone
involved saw it as part of much larger friction between ethnic groups and,
in particular, their political leaders. The Maridi county commissioner:

> There are many ethnic groups here in Maridi: 32 tribes, but we are living well
> without any problem ... In Maridi county the only problems are land disputes. The
> Dinka are grabbing most of the land saying that they are the ones who fought for
> it, and they took it through blood. Because of this, the security here in Maridi is
> under threat always by them.[74]

The commissioner's words reflect the sentiments of many Equatorians, who
felt threatened and excluded by the central government, SPLA, and – by ex-
tension – 'the Dinka' (see Sections 2.6, 4.2.3, and 6,2). Some locals even specu-
lated about a government conspiracy, involving Dinka cattle keepers '[pushing]
the local Moru people off their land in Western Equatoria State' (de Vries 2015).
Sensing these hostile sentiments, and the ties between identity, land and
belonging, some Dinka community leaders were quick to dispel rumours about
worsening relations with other ethnic groups:

> We the Dinka community in Maridi we know that we are citizen of Maridi. We
> are living very well in peace without problems with other community ... I don't
> have a judge here except the judge of Maridi and I don't have any other commis-

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72 Interview with Dinka trader/ex-soldier, Maridi, 21 April 2015. Another Dinka, teacher by
profession, gave us a similar account of local state ethnic exclusivism: 'One of the surveyors
said no Dinka will have a place here in Maridi.' Interview with Dinka teacher, Maridi, April
2015.
73 Interview with Dinka teacher, Maridi, April 2015.
74 Interview with county commissioner, Maridi, 16 April 2015.

sioner but the commissioner of Maridi. What brings problems among us here is politicians who are trying to bring conflict and hatred among us.[75]

This chief emphasized that Dinka, too, were 'citizens of Maridi' and subjects to Maridi's state authorities, and not an outsider group. In doing so, he sought to counteract the negative framing of Dinka as people who came by force (or 'through blood'), do not respect local authorities, and are backed by the central government and the SPLA.

When our researchers conducted interviews in April 2015, the relations in Maridi between the SPLA veterans and the county government were already tense. But in the following months, things got worse. Other groups of armed Dinka cattle keepers were displaced by conflict from their usual grazing grounds in Lakes and Jonglei States, and migrated into the area around Maridi and Mundri.[76] When their cattle damaged crops, this resulted in small-scale violent incidents with local armed civilians and Arrow Boys. Local authorities sought to send the cattle keepers away, but to no avail (Tamazuj 2015). De Vries writes that, 'With the increase in violence, local resentment and resistance towards the Dinka more generally also began to mount' (de Vries 2015, 7). The lines were drawn, the positions stiffened. In early May 2015, clashes broke out in Mundri and a month later in Maridi (Radio Tamazuj 2015c; 2015b). In both instances, relatively small-scale incidents escalated into a larger-scale conflict involving the SPLA and local non-state armed groups such as the Arrow Boys and even the SPLA-IO.

4.4.3 A discussion

These two land disputes have important similarities. The land dispute prominently involves interpretations of land allocations that were made decades ago by various authorities. In the VTC-area, the church leader was permitted to use the land for the purpose of constructing a training centre. In Maridi, the SPLA-veterans were permitted by their commander to settle here. In neither case is there proof of communities being consulted, or of a 'formal' paper document of any sort being produced at the outset. What is more, the legitimacy of the authorities which held sway at the time (the Khartoum-controlled government in Yambio, and the SPLA-commander in Maridi) is not uncontested. After the 'rupture' of war and independence, should those deals still be honoured today? So, the legality of those initial land allocations is part of these disputes.

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75 Interview with Dinka chief, Maridi, 17 April 2015.
76 In other years, cattle keepers would migrate into these areas during the dry season, too. But now they came for different reasons, and were more numerous.

Both disputes are tied to the history of ruptures and movements – and how those have or ought to have interfaced with the legality of tenure arrangements. In both cases, large landholders (the church and local government, respectively) were pitted against a group of conflict-related migrants (respectively LRA-displaced people, and SPLA veterans and Dinka IDP's). In both cases the large landholder questions the grounds that these migrants claim land on (the persisting threat of LRA-violence in the border area with Congo, and the 'we liberated this land'-logic). The conflict-influenced urbanisation of the 2000s had contributed in both areas to rising land prices and land wrangles. The VTC area was no longer 'bushy' and neither was Maridi deserted.

People took their dispute to a variety of forums, in part due to institutional multiplicity or 'legal pluralism.' Crucially, in neither case did a party yet take the case to a statutory court. Rather, disputants involved powerful administrative officials such as the county commissioner and the governor. Yet even when the governor ruled on the VTC-dispute, he was not obeyed uniformly. This illustrates how in land disputes in Western Equatoria there was always another route to try. Very often disputes 'defeated' attempts at resolution and kept lingering for years (Braak 2016). As the Zande proverb says: '*Ngbanga na fungote*' (a [legal] case can never get rotten).

The demarcation in both cases rekindled pre-existing friction over land. While it promised to bring clarity and simplicity, it instead ushered in a new chapter of the disputes it was intended to solve. Crucially, in both disputes many of the affected people indicated they would have accepted compensation in cash or in kind. But having realized that the demarcation often dispossessed people without any form of compensation, people resisted with all the force they could muster. People often cited the perceived corruption and nepotism of land governance bureaucrats as another reason for resisting the demarcation.[77]

A crucial difference between the two cases, is their violent escalation. The VTC-dispute simmered for years and, despite coarse words, never escalated violently. Ethnicity was never mentioned, as most of those involved were Zande. They were members of the same ethnic group, went to the same churches, and shared family networks. In Maridi on the other hand, the land disputes boiled over and contributed to the resumption of civil war (see Chapter 6). This illustrates how small land disputes can escalate rapidly when they are interpreted as part of a larger story. In Maridi, two main stories coalesced as the South Sudanese Civil War had started in 2013. First, the growing tension between the Equatorias and the national government was increasing local resentment towards Dinka (Copeland 2016; HSBA 2016). Second, the 'go home'-discourse that in the Equatorias pitted 'autochthonous' returnees against often Dinka veterans and IDP's who settled in the region during the

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77 John during a group discussion with refugees from Western Equatoria, Kiryandongo RS, 18 February 2018.

wars (Justin and Van Leeuwen 2016). The SPLA-veterans alleged that Maridi county officials used the demarcation to dispossess Dinka and to return the land to 'the children of Maridi.' On paper the scheme had appeared as a technical and a-political exercise to get the towns ready for the future, to attract investments, to improve tenure security and fight poverty. But when it landed in Maridi, local officials used it as a tool for political purposes.

4.5   LAND GOVERNANCE UNDER FIRE

When war erupted in Yambio over the course of 2015 (see Chapter 6), land governance was immediately affected. Governor Bakosoro was sacked and replaced by Governor Zamoi who quickly proceeded to 'reshuffle' his cabinet.[78] The Minister of Physical Infrastructure lost his job, and resumed work with his law firm in Juba.[79] His ambitious plans for Western Equatoria were not realized. When I spoke to him in 2017 in Kampala, he was bitter:

> By now Mundri, Maridi, Yambio and Tambura would have been tarmacked if it was not for the politics of our own people in Juba. They felt that if this project was to continue, we would get the credit. It is just local politics! So they sabotaged the project.[80]

In Yambio, some county-level bureaucrats continued resolving land disputes even as the war escalated. Charles Bangbe, whose portrait is featured in this book, was the chairperson of the Land Dispute Committee of the County Land Authority (CLA) in Yambio.[81] On the night of 19 May 2016, he was shot at home by a gunman with a 'veiled face like a ninja.'[82] Charles fled, and a week later applied for asylum in Uganda. When we met in 2017 at his house in Kiryandongo refugee settlement, he showed me photos: of his house, of a blood-splattered floor, of him in the hospital. The attack on his life was widely seen as a repercussion for his work on land. He narrated:

> Before the attack there was a dispute between an army commander and a civilian over a piece of land in Timbiro ... The civilian had the land title, a certificate. And he was born there, because it was his father's plot. He had lived there for 27 years. The army commander said he wanted that land because he fought for it. On 17

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78   Zamoi started as a governor in late August 2015, and reshuffled his cabinet in October.
79   Later, he took up politics again and then became part of the national constitutional amendment committee.
80   Interview with former Western Equatoria State minister of physical infrastructure, Kampala, 21 June 2017.
81   Real name. I have discussed this with him. He prefers to be named fully. His name and this incident have also featured elsewhere (Ibreck 2019; Sudan Tribune 2016).
82   Interview with Charles Bangbe, Western Equatorian refugee in Kiryandongo RS, 13 May 2017.

> May, after making an investigation with witnesses, I ruled that the county can give the commander another plot of land. But the army commander didn't want that. He left complaining. On 18 May the commander reported to the [county] commissioner, saying that the CLA gave his land away. The County Commissioner called me and I told him I would come to him with the papers.

However, Charles was shot before he could discuss the matter with the Commissioner. When I spoke to him in Uganda, I asked him if he knew what had happened to the CLA after the attempt on his life. Charles told me frankly: 'After they shot me, my colleagues feared for their lives.' One surveyor in Yambio confirmed how since the shooting of Charles things had come to a standstill: 'If he was to still be in power, I think the whole Yambio town could [have] completed the demarcation by now.'[83] The new chairperson of the CLA (also an executive chief) sketched how land disputes more broadly were affected by war and insecurity since 2015:

> Land issues have been affected so seriously because the CLA office was paralyzed for quite some time. But land disputes have not risen so much because people are not stable in their places. All these [disputes] rise when the surveyors are demarcating the areas ... Most of the cabinet were dissolved who had much experience on land and the new ones have little experience in the field, so things are not going on well.[84]

From this account, it is apparent that conflict has impacted land governance in numerous ways. The CLA was paralyzed after Charles was shot; the cabinet reshuffle disrupted leadership; and although land disputes are few because people are 'not stable', they are likely to resume again once comparative peace returns and – especially – if efforts are made again to demarcate the land. The appeal of the formalisation of land does not seem to have faded; people still desire to have clarity, and to prevent land conflicts. And yet this clarity remains elusive as people (land occupants, bureaucrats, IDPs, etc) have again been forced to move. The demarcation was intended to override all pre-existing tenure arrangements, but its partial and contested implementation means that instead it represents a new part of the complicated patchwork of Western Equatoria's tenure situation.

4.6   A CONCLUSION

This chapter analysed why and how Western Equatoria's state government formalized land tenure during the intermediate peace (2011-15), in a context of contested land claims and disputes due largely to South Sudan's history

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83   Interview with surveyor, Yambio, 6 April 2017.
84   Interview with chairperson CLA, executive chief, Yambio, 5 April 2017.

of ruptures and movements (see Chapters 2 and 3). Western Equatoria had seen an influx of both regular and conflict-related migrants (e.g., returnees, veterans, IDP's, Congolese and Central African refugees). All these people grasped for land as a cornerstone for more stable peacetime lives. A long and complicated history of land governance had resulted in 'sedimented' and contested tenure arrangements, especially in the towns and on the urban frontier. The conflict-induced urbanisation, resulted in a lot of confusion, manipulation and disputes (see Sections 4.2.1 and 4.1.2). This was only further exacerbated by the rising political tension between the WES government in Yambio and the national government in Juba (see Section 4.2.3).

Land formalisation ('demarcation') enjoyed widespread support in Western Equatoria, due to the rising number of peacetime land disputes, and the utopian sense of possibility surrounding independence (see Section 4.3.1). It was also influenced by a small number of elite returnees, like the Minister in this chapter, who returned from the UK, US or Australia after having obtained degrees and professional experience there. Not unlike Hernando De Soto who upon his return to Peru became a champion of transformative economic reform (Otto 2009), these elite returnees combined the perspectives of 'insiders' and 'outsiders'. Arguments for formalisation in Western Equatoria largely mirrored those of the academic literature on the subject: it would help to resolve and prevent land disputes, attract investments and spur development. For the Minister and his staff, however, the demarcation was part of a larger vision of state formation. In the spirit of post-war reconstruction, the Minister found that the state needed more land to develop itself. And by controlling urban land, the Ministry hoped to counter 'informal privatization' and generate revenue.

Informed by these ambitions, the plan from the outset was not merely to formalize pre-existing tenure arrangements but to make reality more legible and in line with the urban masterplans. It sought to overwrite the sedimented tenure situation with its messy complexity, with an apolitical and development-oriented grid. These priorities led to a top-down approach: Plots had to be straight, roads had to be wide, people buried in the cemetery. The thinking was that if people lived more orderly, the state would be better able to deliver services: Tarmac roads, fire brigades, an electricity grid and international airport. The demarcation did not just 'formalize' prior arrangements, but usually overrode them. In this sense, the program was more akin to land consolidation than mere formalisation. The demarcation would also shift authority over land on the urban frontier from families, clans and traditional authorities, to local government.

In all Western Equatorian towns 'the demarcation' was accompanied by a host of problems. Mainly, it rekindled and caused countless disputes over land boundaries and ownership. Sometimes, the anticipation of demarcation, rising land prices, and exclusive ownership was enough to sour relations between tenants, neighbours and families. This illustrates how government

programs even before they are executed, often have real-world consequences (Murray Li 2007, 28). The 'sedimented' tenure systems, and the diversity of normative frameworks around land, rendered a single 'just' outcome untenable. This confirms that land governance has technical elements, but is at its heart about political questions about the fair distribution of scarce resources, and the scope and legitimacy of various authority structures (including the government and traditional authorities) (J. Ferguson 1990; Scott 1998; Sikor and Lund 2009). Overcoming these differences and the persisting normative pluralism, would require either a holistic political agreement, or coercion. Both were achieved piecemeal in Western Equatoria: There was some agreement and some coercion.

The large ambitions of the state were not matched with a clear policy framework, or with the necessary human and financial resources. There was insufficient land and money to compensate the dispossessed (as required by law), no fuel for the wheel loader, and the institutions envisioned in the Land Act often did not exist on the ground. This meant that street-level bureaucrats improvised practical norms (Bierschenk and Olivier de Sardan 2014). Some county officials sought harmonious, compromise solutions whereas others practiced corruption, nepotism and ethnic favouritism. The demarcation aimed for simplicity and a single tenure system, but instead added another layer of 'tenure sediment' and perpetuated confusion, complexity and conflict.

Some of these formalisation problems mirror those in the academic literature on other, more stable societies. But the Western Equatorian case has a few influential particularities: the utopian momentum around independence; the scope of conflict-related migration, and the varied calls for people now to 'go home'; the politicization of land; (the threat of) violence; and the fraught relations between the Western Equatoria's state government and the national government. This context meant that beyond failing 'conventionally' (in line with literature on formalisation elsewhere) and despite good intentions, the ostensibly technical 'land formalisation' policy contributed to heightened tension between local government and conflict-related migrants. In the case of Maridi, the local implementation of the demarcation pitted different ethnic groups against one another, contributing to the local outbreak of violence and, ultimately, the spread of civil war to Western Equatoria.

Put bluntly, the demarcation was putting the cart before the horse. It was an ambitious programmed launched without the commensurate underlying land governance infrastructure ('the rules, processes and structures through which decisions are made about access to land and its use, the manner in which those decisions are implemented and enforced, and the way in which competing interests in land are managed' (FAO 2021). In the case of Western Equatoria, these 'rules, processes and structures' were pluriform, contested and politicized. In the absence of political consensus about the fair distribution of land, competing claimants would dispute anything (e.g. the legality of issued titles, the legitimacy of the various authorities involved) using a variety of

normative repertoires ('My father was buried here', 'I bought the lease', 'I liberated the land', 'I've made investments in the land'). Such competing interests and repertoires were managed relatively successfully by the CLA in 2014-5, when it concerned small-scale disputes between people who would or could not mobilize violence (Braak 2016). The VTC-dispute did not involve a clear ethnic component or a group of readily identifiable 'outsiders', and so despite tough language it muddled along rather than escalate.

However, in the absence of a political resolution, strong state capacity, and the monopoly on violence, other land disputes were simply beyond the power of the CLA or the courts to resolve, or escalated violently. Charles Bangbe's shooting is a case in point. Worse still, county authorities in Maridi used the ostensibly technical and apolitical demarcation to try and dispossess Dinka IDPs and veterans, allegedly to make room for 'the children of Maridi'. It is in this way that land and its governance were deliberately linked to identity and belonging, and autochthony was promoted as a shorthand for belonging and rights to land. Like the colonial government before it, the South Sudanese central and local governments were increasingly establishing 'administrative units on the basis of ethnic majorities. This contributes to the exclusion of those who are locally perceived as 'outsiders' or minority groups' (Justin and De Vries 2019, 40). In this way, land disputes and governance also contributed to the hardening of ethnic identities and divisions.