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Graves, trees, and spray-paint: land tenure formalisation and five normative repertoires in post-conflict South Sudan

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ABSTRACT

In the aftermath of war, local government in Western Equatoria, South Sudan, set out to formalize urban land to make it more legible, less conflictual, and ready for the state's vision of tomorrow. But the process proved problematic, and it caused and rekindled countless land disputes. Based on qualitative research at courts, county offices, and contested plots, this paper finds that these disputes were at their root about five competing normative repertoires about land distribution: legal, economic, identity, spiritual, and military desert. These repertoires were evidenced with powerful material symbols: old teak and mango trees reminding the elders of who planted them; spray-painted red crosses by the Ministry of Physical Infrastructure for structures that existed in conflict with its Masterplan; and the graves of deceased relatives buried on contested ground. This paper suggests that unless post-conflict land formalisation policies are preceded by a political reckoning with incompatible normative repertoires, they risk contributing to the re-eruption of violent conflict.

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Land at war's end: the Western Equatorian case

When wars end and once-dangerous places become habitable again, people often turn to land as a cornerstone for their new peacetime lives. In this post-conflict moment, demand for land typically increases while the various institutions involved in land administration may be weak (Betge 2019; Unruh and Williams 2013). At war's end, land registries are often outdated, incomplete, and contested. And even where comprehensive registries exist, the legitimacy of past and present legality may be contested. This is especially so in the aftermath of (colonial) occupation, authoritarian rule, and civil war, such as in South Sudan in 2011.

Appreciating the centrality of land in war and peace, many post-conflict governments – often with donor support – embark on ambitious land governance reforms

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(Unruh and Williams 2013). Not seldomly, such efforts cause renewed confusion and contestation (Tchatchoua-Djomo 2018) or even threaten post-conflict stability (van Leeuwen et al. 2016). In South Sudan, too, the ambitious local government of Western Equatoria State (WES) partnered with international donors to formalize land tenure. Their so-called "demarcation"-process aimed to make urban land less conflictual and more controllable for the state. But the demarcation caused and rekindled countless disputes, with both local government officials and traditional authorities listing the policy as a main source of disputes in their communities. The gravest such conflict encountered during this research, occurred in Maridi. That city had been conquered in the 1990s by the Sudanese People's Liberation Army (SPLA) from the Sudanese Armed Forces (SAF). Thereafter, an SPLA-commander had allocated plots of conquered land to SPLA-soldiers – often ethnic Dinka – some of whom continued to live in Maridi for decades since. In 2015, local government officials tried to use the demarcation-policy to dispossess these SPLA-veterans and to return the land to local majority ethnic groups (Braak 2022). Ultimately, this land dispute escalated violently and contributed to the re-eruption of wider conflict in the area.

This paper analyses the demarcation's failure to produce order and clarity. It proposes that the core shortcoming of the process was its cookie-cutter approach to formalizing an extremely varied pre-existing land tenure reality. In the absence of an effective single land governance framework, people in South Sudan had gotten access and rights to housing, land, and property in various ways – through ad-hoc arrangements and competing authorities. Much of the literature on land formalization works with classical dichotomies between state and non-state, customary and statutory, or traditional and modern (Dale and McLaughlin 2000). Yet in the case of South Sudan, these dichotomies are of limited use. Instead, this article proposes that "normative repertoires" provide a more fruitful analytical lens for understanding South Sudan's land use, governance, and disputing.

This article contributes a typology of five normative repertoires which people in post-conflict South Sudan used in claiming land: legal, economic, identity, spiritual, and war-time merit. These repertoires are internally coherent and logical, but mutually incompatible. To illustrate this point, I paraphrase Amartya Sen's thought experiment "the Flute" on competing ideas of justice. Imagine a South Sudanese judge hearing a dispute where five people claim the same plot of land. The first claimant argues the land is his, because he has registered the land in his name and bought the land lease. The second argues the land is hers because she has invested in the foundations of a school building on the plot. The third justifies her claim by arguing that she is indigenous to the area, while the other claimants are from elsewhere. The fourth states that his ancestors were buried on the land, giving him a spiritual connection to it. The fifth claims the land because he was part of the resistance army that liberated the area from the Sudanese oppressors. Whose claim should the judge recognise? Local judges and land administrators in post-conflict South Sudan were facing these quagmires on a weekly basis. The "demarcation" was envisioned to create clarity, but failed in part because it was not preceded by a political reckoning with these divergent normative repertoires.

This article argues that when governments and their international sponsors embark on land governance reform in the aftermath of war, they should analyse whether

concurrent normative repertoires exist and reckon politically with their proponents. A failure to do so can upset the fragile post-conflict peace and even ignite the re-eruption of civil war.

Western Equatoria's peace migrants

This paper focuses on Western Equatoria State, the southwesternmost part of South Sudan. War and conquest have fuelled migration from and to this area for centuries. The local majority ethnic group, Zande or Azande, arrived in the region through conquest and assimilation, and in turn hosted people fleeing slave traders and colonial forces (Gray 1961, 62). After Sudanese independence in 1955, decades of war, refuge, and return left WES even more diverse. The area was liberated relatively early during the Second Sudanese Civil War (1983–2005) by the Sudanese People's Liberation Movement/Army (SPLM/A). This heralded the arrival of rebel combatants, displaced people, and traders. Towards South Sudanese independence in 2011, many southern Sudanese returnees from abroad chose not to go "home" to where they had lived before, but instead to settle in the towns of the peaceful and prosperous three Equatorian states (Justin 2020; Sluga 2011). Apart from these large groups, smaller ones came: government and army officials from all over South Sudan, refugees from the Central African Republic and Democratic Republic of Congo, traders from East Africa and beyond, and international aid workers and United Nations-staff from all over the world. From 2013 the South Sudanese Civil War erupted, causing an estimated "excess mortality" of 400,000 people and the displacement of a third of South Sudan's population within and across its borders (Checchi et al. 2018). Again, some of these displaced people and returnees came to Western Equatoria. These influxes served to make Western Equatoria State's urban land more valuable, marketable, and contested. They also resulted in diverse land tenure arrangements and claims.

Faced with these influxes and the increased friction over land, the Western Equatoria State government planned to make urban land more legible, less conflictual, and ready for its future plans. To do so, it launched the "demarcation," an ambitious policy to formalise and unify the diverse pre-existing "informal" land tenure arrangements. This policy echoed ideas on land formalization that are popular internationally (Manji 2015). Informality of land tenure, the argument goes, inhibits various forms of investment, and thus stunts the development of the land (de Soto 2000). Many African governments have proceeded to survey and title land (Manji 2006; Shipton 2009). Such programmes have been criticized for disregarding customary tenure arrangements (Locher, Steimann, and Raj Upreti 2012; Musembi 2007), for being vulnerable to corruption and nepotism (Manji 2015), and for offering an expensive solution to "solve" tenure insecurity of the poor, who may not even experience this as a problem (Bruce 2012). More generally, there have been serious criticisms of the tendency of development interventions to portray perplexing political dilemmas as technical challenges (Ferguson 1990; Kennedy 2003; Scott 1998).

Based on the Western Equatorian case, this paper adds a different critique particular to post-conflict settings: that land formalization, executed in a post-conflict setting by a state with contested legitimacy and limited capacity, risks contributing

to the re-eruption of conflict – especially when it is not preceded by a political reckoning with incompatible normative repertoires.

Methodology

Methodologically, this paper is based on qualitative research carried out by the author with eight research assistants in Western Equatoria State between September 2014 and April 2015, and then again for shorter periods in 2016–8 both in South Sudan and with South Sudanese refugees in Uganda. Our team initially researched local justice systems and the transformation of disputes. When we learned about the demarcation and the ubiquity of land disputes, those became our focus. In a way, these could be conceived of as "diagnostic events" (Moore 1987), which illustrated underlying changes around land use, governance, and disputing. We attended hearings of customary and state courts, and of the administrative Land Dispute Committee. We also conducted semi-structured interviews with disputants at these forums and at their homes. I also interviewed the relevant Minister, an MP, and the chairperson of the land dispute committee after their flight to Uganda in 2017 and 2018.

The challenges of qualitative research in conflict-affected settings have been discussed in greater detail elsewhere (Cramer et al. 2015; Duffield 2014; Massoud 2016). Western Equatoria west of Maridi was peaceful during our research. But war was always close in space and time. The South Sudanese Civil War had already engulfed other parts of South Sudan since late 2013. Western Equatoria, too, witnessed violent episodes until 2011 and again from 2015. Such conditions are characteristic of other countries too, where civil war appears as a period "of prolonged and heightened uncertainty, punctuated by violent events" (Lubkemann 2008). The dichotomy between war and peace fails to capture the complexities of often highly fragmented violence in such, "no war, no peace"-situations (Mac Ginty 2006). South Sudanese people had become accustomed to living in this uncertain state, as life there had for many decades occurred between and despite of periods of war (Leonardi 2013). When war re-erupted in Western Equatoria in the second half of 2015 (Copeland 2016), our research team limited its work to relatively peaceful periods and to Yambio and Nzara towns. This civil war is not a focus but an essential context for this paper.

Structure

This paper is structured as follows. First, it introduces the demarcation, contextualizing it briefly in the history of land governance in South Sudan. Second, it positions this paper in the broader debate about legal and normative pluralism, also reflecting on some relevant Zande terms about law and justice. Third, paper presents five normative repertoires on land tenure: legal, economic, identity, spiritual, and wartime desert. In conclusion, I argue that the demarcation policy failed to answer the crucial political questions about land tenure which underpin the diverging normative repertoires.

Controlling the land: past, present, and future

Control over land is a historically recurring focus of power in Western Equatoria State. Histories told by Zande elders are rich with migration and conquest, and indicate that pre-colonial rulers controlled the land and its proceeds. The Anglo-Egyptian colonial government conquered the region from 1905, when it killed Gbudwe, the last sovereign Zande king. In the subsequent five decades, colonial government organized two large-scale resettlement programmes in Western Equatoria, moving several hundred thousand people each time (Reining 1966, 1982; Wyld 1949). Attempts were made both then and under Sudanese (1956–2011) rule to formalize land tenure in Southern Sudan. But the two Sudanese Civil Wars (1955–1972 and 1983–2005) caused mass displacement and return, and during the war years most land transactions were undocumented. Further, the various authority structures that arose and eroded during the wars, each left their mark on the land tenure systems in the areas they controlled (Rolandsen 2005, 2009). What was left by 2014, were outdated land registries, location-specific land tenure arrangements, and competing normative repertoires.

The years around independence in 2011 were characterized by a lot of migration. Some northern Sudanese people moved back north from southern Sudan, but many more southern Sudanese returned south. Those who originated from areas that remained unsafe or underdeveloped in many instances settled in the urban centres of the three Equatorian states (Sluga 2011). And so especially in the urban centres the demand for land increased, and disputes were common: within families, among neighbours, between internally displaced people and host communities, and between cattle keepers and farmers (de Vries 2015; Justin 2020; Justin and van Leeuwen 2016). Due to their multi-faceted nature and the land's increasing monetary value, such disputes were very difficult to resolve and often inherited over generations – giving life to the Zande proverb "*Ngbanga na fungote*" (a case can never get rotten). Some formerly resolved disputes even arose from the dead, when land gained new value and the offspring of a previous owner would try to renegotiate the transaction.

Tension over land has been both a cause and consequence of war in South Sudan (Pantuliano 2007; Rolandsen 2009). Many have argued that improved land governance could help resolve conflicts and stimulate development (Deng 2014, 2019, 2021; Marzatico 2014). Yet land governance in South Sudan has been contentious, often pitting various levels of government against each other (Badiey 2013, 2014). Absent consensus on the legitimacy of the state itself, and on the content of legislation, "plural notions of land-property relations" prevailed (Seidel and Sureau 2015, 614). Against this backdrop, it is unsurprising that Western Equatoria State government's initiative to demarcate land initially enjoyed widespread popularity. As Lund explains based on research in Indonesia, the "legalization of a claim solidifies it as a right that forces competing claims to dissolve" (Lund 2022, 3). In South Sudan, too, people hoped that the demarcation would solidify their land claims over those of others.

The South Sudanese government created the legislative basis for the demarcation of land in the Land Act (2009, 42: c; and 53: 4), the Transitional Constitution (2011, 169), and the state-level Land Administration, Management and Regulations Act (2013). Even though South Sudan's legislation is not based on a national consensus (Seidel

and Sureau 2015), Western Equatoria State's government prioritized the implementation of the Land Act. The Minister of Physical Infrastructure explained: "We try to first establish a legal framework. We want to know and register exactly how big the public, private, and community land is. We want people to pay the fees and get their documents, so that no one plot of land is claimed by two different people." Although the Minister held that this process would benefit the local community by preventing land disputes, he was also clear about the government's interests in revenue generation and in a more controllable society. One of the Ministry's surveyors explained an additional concern, which he dubbed the "informal privatization of public land," adding that, "every day we are losing public land." Local government required sufficient land so that it could establish infrastructure and provide public services.

Western Equatoria's demarcation policy sought not just to formalize pre-existing land tenure arrangements, but rather to transform them. The demarcation process began with the development of a "masterplan." In 2009, the Ministry of Physical Infrastructure had called in the help of an international engineering consultancy to develop a masterplan for Yambio's spatial planning. This PDF-map included various shades differentiating public from private land, and categorizing the latter into first-, second-, and third-class plots. Cities and towns had grown rather organically, as more people moved in and cleared areas on the urban frontier. But the Masterplan contained a geometrical grid, and all plots were to become square-shaped. Surveyors went out to survey and then demarcate land. They spraypainted red crosses on anything that encroached on public land: from houses to tomb stones. In certain neighbourhoods, the surveyors established private land boundaries and registered ownership. Where people claimed large plots of land, the surveyors took parts to compensate others whom they would displace from public land.

When our research began in 2014, the masterplan was five years old and its reflection of reality grew ever more outdated, as thousands more people had settled in Yambio. Still, the masterplan remained the guiding document for the demarcation process, which was still on-going. The Ministry sought to bring reality more in line with the Masterplan rather than vice versa. The Minister of Physical Infrastructure explained plainly: "We come in and we try to organise it. Of course, in the process people are going to be uprooted from where they are." The demarcation promised to recognize people's legitimate land ownership claims, while it threatened to "uproot" other claimants.

The demarcation caused and rekindled countless land disputes. Disputing sometimes began in anxious anticipation of the process, and at other times people tried to ignore the process until the bulldozers arrived. Some people were completely dispossessed, others lost part of their plots, or found themselves at loggerheads with neighbours and relatives. But invariably the push to formalize land brought to light competing land claims, and underlying ideas about normative claim-making and the "properties of property."

Land tenure, legal pluralism, and idioms of law in South Sudan

Land exists beyond human interaction with it, but conceptualizations of property are intersubjective social constructs. Without that construct, title deeds are just

paper. and graves remain human remains covered in concrete. Land tenure ("the rules that govern access to, rights over, and the authority to allocate land" (Badiey 2013, 57)) then, needs to be preceded by an earlier agreement on authority and identity: who may govern whom (Lund 2022; Lund and Boone 2013). This is why land disputes in South Sudan were often about plot ownership and boundaries, but also about what legal philosopher Hart called "the secondary rules" – those rules that govern a system's modes of recognition, change, and adjudication.[1] These rules dictate what is to be regarded as "legal" or more generally "rightful." When disputing land, Western Equatorians often alluded to such underlying debates.

The question which land belongs to whom is complicated in South Sudan in first instance due to the advanced state of "legal pluralism" ("the co-existence of multiple legal systems in a geographically or socially confined space," Merry 1986). Given the history of colonial and Sudanese rule, state laws enjoy limited legitimacy and are often little-known outside the legal profession (Seidel 2018; Seidel and Sureau 2015). And so, studies that focus on the letter of the law only capture a small part of normative life (Diehl, Madol Arol, and Malz 2015). In South Sudan as elsewhere, non-state rulemaking and enforcing authorities remain salient to people's everyday lives and to disputing (Griffiths 1986; von Benda-Beckmann 2002, 1981). Whether one calls these authorities and orders "legal" or "normative" is partly a semantic discussion (Tamanaha 2000).

Since colonial conquest, successive governments have attempted to incorporate and regulate traditional authorities in South Sudan (Leonardi 2013). The Local Government Act (2009), too, incorporates chiefs into the local government structure, and allocates to them judicial roles in civil cases. So, in South Sudan there is not as clear a distinction between the state and the traditional authorities as in some other societies. This is why Leonardi proposes the term "judicial pluralism," which she defines as "a multiplicity of judicial institutions and actors which were seen to apply a unified set of laws, albeit to varying degrees of competence, corruption or capacity" (2013, 200).

In Western Equatoria, too, the notion of a unified set of laws was alive. At a customary court chaired by a chief, one disputant put it clearly, "I decided to go before the law since we are staying in the area of the government which is having laws and regulations to be followed." In these customary courts, a chief appoints panels of judges, often people renowned for their wisdom and/or with customary pedigree. One such judge explained: "We pass verdicts in accordance with the rule that was given to us." To clarify which "rule" he referred to, he showed us an old copy of the Criminal Procedures Code (2003).[2] Yet legally customary courts can only apply customary law and have no jurisdiction over criminal cases. In practice, customary courts often handle some criminal cases, too, and some use statutory law when they have access to it.

Law is best translated in Zande as *ndjiko* (also: rule, decree, commandment), which historically would be connected to an individual authority. It is less clearly connected to rights or legal certainty. Just like English, Zande has a separate terminology for justice. According to Schomerus, ideas of justice are often translated with more relational terms like *ga abore rengo* ("the right of the people") and *ruru manga pai* ("doing the right thing") (Schomerus 2014). In my interviews, Zande elders were quite sympathetic to utilitarianism; judging the morality of a deed by

its consequences.[3] In a similar vein, customary court judges we observed would sometimes adapt their initial ruling if they felt the original sanction would do more harm than good. The administration of justice was rarely seen as the blind application of law or rules, or indeed the blind accordance of rights. Instead, customary courts and the administrative County Land Authority reserved ample discretionary room to consider case specificity and social relationships. And so, during the hearings and in the absence of a clear legal framework, disputants would argue their case effectively by reference to competing normative repertoires.

Five normative repertoires

South Sudan has a complicated and unstable landscape of norms and authorities, defying simple dichotomies between state and non-state, customary and statutory, or traditional and modern. True rings what Bowen wrote about Indonesia: "law, dispute resolution by state authority, is only one element in a complex field of norms, feelings, livelihoods, and power" (Bowen 2003, 253). In such contexts, it is analytically useful to distinguish the normative repertoires (Bowen 2003; Dupret 1999) that actors invoke while disputing land tenure.

I define a normative repertoire as a framework of normative argumentation and meaning which is tied to underlying notions of authority, identity, and property, and often supported by reference to particular material objects. These repertoires appeared in disputing processes, but also in less troublesome and more everyday interactions. I will analyse these normative repertoires using five main components. First, normative claims and presumptions. Some repertoires use more consequentialist moral reasoning while others are more deontological. Often, repertoires relate to different temporalities: some staking moral claims on past arrangements or investments, others on present dependencies or future utility. Second, repertoires use divergent conceptualizations of "land" and "property." Third, repertoires recognize certain material objects as valid evidence of ownership. This relates to what Lund terms, "public representations of recognition" (Lund 2022). So, state-issued title deeds are challenged by references to graves, trees, and spray-painted crosses. Fourth, the repertoires differ in the extent and way they tie property to identity (Lund 2011). Fifth, the repertoires relate differently to authority structures.

Characterizing these normative repertoires presents an attempt to simplify an elusive reality that is not as neat, static, or predictable. People did not explicitly invoke these repertoires and often their normative claims touched on several repertoires. These five repertoires are an attempt to disentangle normative pluralism while moving beyond the moot dichotomies – state/non-state, statutory/customary, and formal/informal – that dominate the literature. The aim here is not to evaluate the moral worth of these normative repertoires but rather to propose their social existence and salience. Their use and effects in different settings deserve further study.

Normative repertoire 1: legal

The legal normative repertoire makes the moral claim that land should belong to the legal person who has the *right* to it in a positive legal sense, and that the state

has the legitimate authority to regulate such rights. In this repertoire, neither the identity of private claimants nor the anticipated utility they would derive from the land should matter. All of that is at best secondary to the primary question of legality. This resonates with the Zande concept *ndjiko* (rules, law) rather than with the more relational *ruru manga pai* (doing right). In legal philosophical terms, this repertoire is close to legal positivism.

Land is seen here mostly as property that can be subdivided in smaller units with clear boundaries. For every plot of land an owner should be identifiable.[4] Claims are supported primarily with "paper" (e.g., title deeds), and references to legislation, court rulings, and cadastres. The legal repertoire embodies a commodified form of property, where land can be owned and transacted fully. Critically, the conditions of legal ownership were themselves subject to change and confusion, as the Land Act (2009) no longer recognised private freehold ownership but only temporary leases of maximum 30 years. In terms of temporality this repertoire generally favours past agreements over considerations of present or future utility, except where expropriations occur for public purposes. The legal repertoire challenges the connection between *use* of land and the *right* to it, which has a more prominent place in many customary law systems.[5]

The legal normative repertoire also challenges the link made in all other repertoires between property and identity. It argues that sub-national identities should not be considered in determining the legal validity of land claims. Effectively, this works in favour of national, rather than ethnic or regional notions of belonging or citizenship. This ostensibly neutral outlook can render the legal repertoire a "weapon of the weak" (Scott 1985; Eckert et al. 2012). In Western Equatorian courts, women sometimes claimed their right to land based on statutory laws in the face of customary notions that favoured men owning land (Braak 2016).

This repertoire is used widely in the state judiciary and administration, where proceedings are held either in Juba-Arabic or English. Importantly, chiefs acting in vernacular languages also use the legal normative repertoire, acting as they do in the twilight zone between state and non-state (Leonardi 2013). Some chiefs also refer to statutory legislation, register land ownership, and produce documents like title deeds. The legal normative repertoire figured prominently in the demarcation process – with its envisioned goal of updating the land registry and creating legal rights and title deeds. But it was also used by critics of the demarcation, such as by a county court judge who stressed dispossessed people's right to monetary or in-kind compensation.

Normative repertoire 2: economic

The economic repertoire prioritises utility and claims that the right to land should be contingent on a right holder's usage of the land. This notion is quite common in customary tenure systems. The economic repertoire has three temporal varieties which sometimes collide. The first is based on past investments in the land, arguing for instance that a person can claim land when he has invested labour and assets in the land by "clearing it" (i.e., removed the vegetation), building something, or planting crops. This variety is especially common on Western Equatoria's urban

frontiers and is similar to Locke's (1689) theory of property – which holds that a property right can be created by exerting labour upon a natural resource such as land. Interestingly, we found cases where disputants would invest in uncertain land precisely to solidify their claim to it in the material language of the economic repertoire. This reveals the fallacy of one of De Soto's assumptions: that people would not invest in land when they are not certain about their ownership rights. The second temporal variety focuses rather on the economic benefits that a person is currently deriving from the land. We might here also include consideration of the access the land gives to public services and trade opportunities. The third temporal variety is based on the utility that a person anticipates to derive from the land in the future. This can range from crops planted on the land but not yet harvested, to larger-scale investments such as public services or companies. The second and third temporal varieties are decidedly utilitarian. As such, this repertoire opens the door for perpetual debates about the validity of an actor's rights to land – based on the realized utility. In Western Equatoria there were instances where large landholders (i.e., the state, the church, teak companies) did not make full use of the land in line with prior agreements or commitments, after which people would settle on the unused parts of the land (Braak 2022).

Varieties of the economic normative repertoire are common among all layers of Western Equatorian society. As such, it does not so much depend on ideas of citizenship, ethnicity, or gender. The future utility-variety was used by governments, churches, and businesses to claim land. The relation between the economic normative repertoire and the demarcation process is somewhat complicated. Although economic growth is envisioned to result from the demarcation, this is mostly indirect – through the creation of an effective property regime. The demarcation was not designed to directly allocate land to those who have made past investments, those who are dependent on it, or those who will bring the largest utility to it. In practice, though, the surveyors who implemented the demarcation did take economics into account. When a road had to be demarcated, they would avoid the houses of "big people." When a plot would be disputed, it was often awarded to the richest claimant. Many people accused the surveyors of being corrupt, and the "big people" of buying them off. But one surveyor 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." He 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." For obvious reasons, such practical norms led to allegations of corruption and nepotism.

Normative repertoire 3: identity

The third normative repertoire emphasises the links between identity and property. It argues that justice should not be blind, but ought to take personal status and

group membership into account. It advances the normative claim that some land belongs to certain people – often ethnically defined. There are countless versions of this normative repertoire around diverse identity markers, such as most commonly family, ethnicity, gender, or nationality. Land here is seen as part of the group's territory or property. Particularly land claims rooted in (sub)ethnicity and family were historically common, because transacting land "away" to outsiders was argued to dilute the strength of the group. It is this logic that was used in Western Equatoria, as in much of the African continent, to prevent women from owning or inheriting land (as is their constitutional right) – because they could marry "outsiders" whose children would inherit the property of the woman, too. But things are changing. For one, there has been a steady individualization of customary and family properties. And two, we interviewed various women who successfully claimed their right to land both in customary and statutory courts (Braak 2016).

Self-determination over land, laws, and culture was at the heart of the liberation war against the north (Deng, 2011), and so it is perhaps unsurprising that identity-based normative repertoires have gained such currency after independence. One of the best-known clauses in the Transitional Constitution (2011) is that "land is owned by the people" (article 169) – with various groups disputing who "the people" are and which land they should be entitled to. Should any South Sudanese citizen be able to live, work, and bury anywhere in South Sudan? Or should land rather belong to the people that can claim ancestry in an area? In Western Equatoria this has in recent years pitted some "Equatorians"[6] against especially some Dinka. With the former defining citizenship locally or ethnically – "Those plots are for the children of Maridi" – and the latter stressing national citizenship, with one Dinka respondent in Maridi arguing that: "South Sudan generally is our country, and the county is for us all South Sudanese." This debate turned toxic and violent in several instances, and it has arguably been among the root causes for the resumption of violence in the Equatorias from 2015. As the civil war rages on, ethnic identities have become increasingly politicized and entrenched.[7] All this suggests that the "identity" normative repertoire may be on the rise.

Evidence used to make identity-based claims include oral life histories and testimonies by neighbours or traditional authorities. At other times, people invoke trees as material markers of ancestry, ownership, and boundaries. Trees are planted for their fruit, timber, and shade, but also for their signalling value: they stand as maturing witnesses to the land claims of the planter and their offspring. Elders and chiefs involved in resolving land disputes often accept a tree as a significant marker if it is clear who planted it.

Traditional authorities are often thought to be the custodians of ethnically confined customary land tenure systems, but in the cases I observed, they were not always as sympathetic to purely identity-based claims to land. In Western Equatoria, members of minority ethnic groups and other nationalities were sometimes able to defend their claim to land in customary courts. In Yambio's B Court, for instance, we came across the case of a Congolese woman against a local headman. This woman had settled in Yambio in 2007 on land which she bought from this headman. In 2012, she went to the Central African Republic for business. When she returned nine months later, she found that the headman had given her plot back to the

original owners, who themselves had returned from exile. She summoned the headman and these original owners to the B Court, which ruled that she had to be compensated for the land, her house, and the court fees. The Congolese woman was pleasantly surprised that she had won the case: "It was done beyond my expectation because before I was warned [that] since I am a foreigner in this country, maybe these people will not give my right."

Normative repertoire 4: spiritual

The spiritual normative repertoire is related to the previous one, but focuses on the spiritual qualities of the land and the people buried thereon. It argues that the land is spiritually meaningful to the claimant, and sometimes also that it could be harmful to others. The material markers of this kind of claim are commonly the graves of deceased relatives. In 2015, most plots in Yambio counted at least one but often several graves and town burials remained the norm. At times, these graves or burials became instrumentalized. In one case in Yambio, a man buried his nephew on a plot of land right after the High Court had ruled it was not his (Braak 2016). Elsewhere too, a respondent admitted that one of the reasons he buried his brother on his plot, was that "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." Burying on contested land became one way to obstruct an anticipated dispossession. These anecdotes bring to mind Fontein's description of the burial of a chief in Zimbabwe as a way of "materializing autochthony for the purpose of claiming land" (Fontein 2011).

Although graves performed a function as "geographical markers" or "evidence of ownership" (Evers 2005 in Fontein 2011), the home burials in Western Equatoria were not just instrumental to property claims but also rooted in spiritual beliefs. The cemeteries were remote, often full, and believed by some to be crowded with the hostile spirits of strangers. In the words of one elder: "The Azande value the dead body more than a human being, that is why they could not separate the dead body from them." Having the grave close-by guaranteed that the family would not forget the deceased, that they would take care of the grave, and would worship the dead appropriately. Some respondents said they would sometimes sleep near the grave, or consult their ancestors early in the morning. When a small child died, there was an especially compelling reason for keeping the grave close: the belief common among Zande, Dinka, and other South Sudanese groups that a deceased child had to be buried next to the house of the mother because otherwise she would not be able to conceive again. In short, the case for burying relatives close to home – and then staying on that land – was strong.

The demarcation policy was decidedly hostile to spiritual claims to land and to the practice of burying on residential land. It sought to render land tenure more universal, impersonal, and legible – disconnecting it from the complicated tangles of history and identities. The Masterplan therefore included provisions for the establishment of three cemeteries in the city, and people were ordered to bury their relatives there. But that did not happen. The areas demarcated to become cemeteries

quickly fell to "informal privatization," and the order to bury on the cemeteries was not enforced. "People may use graves to claim their land, but the truth is that government takes too long to act upon the demarcation," one headman in Yambio complained. "People continue to die and are buried in residential plots. As a result, these graves cause tensions between people and with the government when later the demarcation comes and imposes a lot of changes."

Normative repertoire 5: wartime merit, sacrifice, and suffering

The last normative repertoire focuses on wartime merit, sacrifice, and suffering. It constructs a moral connection between personal histories of war and property claims. There are two basic varieties. The first is based on a narrative of victimhood at the hands of armed groups, and it seeks to prove that a person has been dispossessed in the war and/or is not safe elsewhere. Versions of this repertoire are common in the region, and sometimes interact with post-conflict land restitution policies (Tchatchoua-Djomo et al. 2020). In Western Equatoria State, this repertoire was used by people fleeing the countryside to the safety of the towns, which was often in response to incursions by the Lord's Resistance Army. It was also invoked by Dinka pastoralists who migrated into Western Equatoria in 2015, as their habitual grazing pastures in Lakes State had become unsafe (de Vries 2015).

The second variety rather focuses on wartime merit and sacrifice. This typically stresses how a person has suffered "in the bush" and sometimes how they contributed to conquering the area "from the Arabs" (the Sudanese Armed Forces). During the Second Sudanese Civil War, commanders of the Sudan People's Liberation Army (SPLA) would award land to soldiers in liberated areas. This had happened in the market area of Maridi in the late 1990s, and several former combatants were still living there in 2015. Sometimes people also claim they "bought the land with their blood" (Leonardi 2011). As the county commissioner of Maridi explained: "The Dinka are grabbing most of the land saying that they are the ones who fought for it, and they took it through blood."

This repertoire is similar to the "right of conquest" notion in international law, except that here the areas concerned were often deemed to be illegitimately occupied by "the Arabs," and so the war was framed as one of liberation rather than of conquest. Further, the veterans using this repertoire tended to stress the extent to which they suffered – through blood, hunger, losing comrades, etc – rather than their military efficacy. Importantly, this normative repertoire is invoked also in other realms than land tenure: such as when chiefs insist that they were promised a more prominent position in return for their supply of recruits, supplies, and intelligence to the SPLA, or when returnees claiming political positions are dismissed with the rhetoric question, "where were you when we were suffering?"

There are two reasons why the wartime-repertoires were not accommodated in the demarcation process. First, like the identity-repertoire, it insists on a connection between an individual's life narrative and his or her claim to property, which at least in principle is something the demarcation did not recognize. Second and more political, the demarcation was carried out by local officials working in "soft" domains like local government and public infrastructure. Whereas the judiciary, police,

intelligence services, and army counted many people from outside the region, the "softer" government spheres were dominated by members of local majority ethnic groups. When tension increased between various ethnic groups over the course of the South Sudanese Civil War (2013 – present), there were instances of such local officials trying to use the demarcation to dispossess ethnic Dinka whose land claims were based on the wartime-repertoire.

Demarcating conflicts

These normative repertoires are my creation, but officials in local government and courts in Western Equatoria were all too aware of the existence of pluriform ideas about the fair distribution of land. Recalling the opening vignette of an imaginary judge and five land claimants, disputes were so difficult to resolve because claimants worked with competing normative repertoires. This is where the great promise and appeal of the demarcation lay: that it would bring clarity and uniformity to land governance.

Western Equatorian proponents of the demarcation acknowledged that the process caused and rekindled land disputes but saw this as a necessary transitional stage. They would say that there were fewer land disputes in the town centres which had been demarcated early and clearly, or in the countryside where no such efforts had been made. They argued that land formalization processes inevitably bring into the open incompatible land claims, but that once those would have been resolved a new situation of order and clarity would prevail.

But local government's large ambitions in this exceptionally complicated context were not matched by a clear policy framework or with the necessary human and financial resources. The demarcation's implementation was fitful and piecemeal. It was plagued by confusing legislation and regulations, fuel shortages, budget cuts, spells of insecurity, and ad hoc compromises. Often after the surveyors had spray painted red crosses on graves, trees, and buildings on public land, occupants would not hear from the state for years. Still, the policy often disrupted prior informal arrangements, rekindled dormant disputes, and resulted in people's dispossession. In Yambio, the demarcation was widely criticized for lacking transparency, with even local judges complaining that they had no copy of the Masterplan.

Still this elusive Masterplan continued to serve as the near-mystical justification that surveyors used to dispossess some and recognize the land claims of others. One man explained this confusing situation: "I may expect the survey to come and demarcate the area according to the way I bought my plot before the demarcation … [but] the surveyor works according to the Masterplan he has." People who lost their land in the demarcation frequently alleged that the surveyors and land administrators were corrupt and nepotistic, and that they discriminated against poor people and newcomers. Others complained that they had not received their rightful compensation. When asked, the Minister acknowledged people's right to compensation under the Land Act but added that "government doesn't have the resources to compensate people. You need to budget for that sort of thing."

So far, the failures of the demarcation are familiar to critical scholars of land formalisation elsewhere. Yet in this post-conflict context, the policy was not just ineffectual

but harmful. It failed to analyse the pre-existing normative repertoires and respond to them politically. This was especially apparent in Maridi, where the demarcation pitted ethnic Dinka SPLA-veterans against local government officials of local majority ethnic groups. At the time, one Dinka SPLA-veteran speaking about the demarcation and his dispossession said: "We have three main areas here in Maridi, even our graves are here of those who fought for this land and liberated it from the hands of the Arabs. This is what will bring fire one day when the time comes." Three months later, violence indeed escalated. The demarcation was not the only cause of the re-eruption of civil war in Western Equatoria, but it certainly had not aided the peace (Braak 2022). In the South Sudanese context with its contested state legitimacy, friction between levels of government, and complicated patchwork of conflict-related migration, such micro-level land disputes fuelled the escalation of violence.

War in turn also disrupted the demarcation. In 2016–18, I interviewed South Sudanese government officials and chiefs who had been involved in the demarcation, and who were now living as refugees in Uganda. The Minister who had pioneered the demarcation in Western Equatoria was sombre: "I think the system has almost collapsed. [Demarcation] did not really become a government priority. There is no government work taking place. People are not going to offices." A chief agreed, saying: "That was the process. Then the war came." After a brief pause, he added somewhat hopefully: "But the map is there in the ministry." Indeed, by 2020 even as violent conflict continued to plague parts of South Sudan, the demarcation had resumed in Western Equatoria despite the troubling lessons of the past.

Conclusion

This paper has made one main analytical contribution and one policy-oriented one. For scholars of post-conflict land formalization in legally pluralistic societies, this paper has tried to demonstrate that complex normative claim-making over housing, land, and property may be fruitfully analysed using the concept of "normative repertoires." In the present case, I categorised five normative repertoires that recurred in land disputes: legal, economic, identity, spiritual, and wartime desert. These repertoires help to understand how people perceived, used, governed, and disputed land.

This article urges governments and their international partners that in the aftermath of civil war they should not embark on land governance reform before: i) analysing whether concurrent normative repertoires on land exist, and if so: ii) reckoning politically with their proponents. A failure to do so may risk upsetting the fragile post-civil war peace, and the re-eruption of conflict.

Geographical information: N 4 33′54″ E 28 22′30″

Notes

1 Hart made a distinction between primary and secondary legal rules. Primary rules "impose duties and 'concern physical movement or changes' and secondary rules 'confer powers' and lead to the creation of variation of duties or obligations" (Hart, 1961). These secondary rules are the rules of the system, and govern its modes of change, adjudication, and recognition. Hart explains that legal rules can be internally accepted either

because they are just, or because people accept the authority of the legal system that produced and enforces the rules. For legal rules to be accepted as valid internally, Hart contends, they must be in line with an agreed-upon 'ultimate rule of recognition' that stems from convention among officials.

2 Note that the Local Government Act (2009) stipulates that customary courts have no jurisdiction over criminal cases.

3 As opposed to most famously Kant's deontology, where the morality of an act is inherent, and certain acts are always wrong; the categorical imperative.

4 Typically, an individual, but South Sudan's Land Act also offers room for the registration of community land in the name of a community. This process is complicated. In Western Equatoria State I did not come across registered community land.

5 An exception to this general rule is the recognition in the Land Act article 82 of "adverse possession" for people who have unlawfully occupied a piece of urban land for 30 years without interruption from 16 May 1983.

6 This term – 'Equatorians' – has gained currency in recent years as an umbrella term for those people who trace their origin in the former three Equatorian states and is used especially in opposition to the ethnic groups Nuer and Dinka.

7 In 2015, President Salva Kiir issued a decentralization decree (Establishment Order Number 36/2015 for the Creation of 28 States) which brought state boundaries more in line with supposed ethnic divides, indicatively naming the state around Yambio 'Gbudwe State' after the last Zande King. That decree was reversed in February 2020, a move widely seen as a major step towards peace.

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