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Hybrid governance in South Sudan: the negotiated state in practice

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ABSTRACT

This article draws on empirical data collected in Yei River County, South Sudan, to contribute to debates on hybrid governance in Africa. Current literature offers a limited understanding of the practical workings of hybridity, and particularly of whether and under what circumstances hybridity may meet the interests and solve the problems of citizens. This article discusses how subsequent historical attempts at state-building have left a complex and layered governance system and analyses how this system functions on the ground in Yei River County, focusing on the land and justice sectors. The empirical analysis reveals institutional development to be ongoing and to be shaped through continuous negotiations among local stakeholders. Whilst in the land sector, this process produced power imbalances and violence, in the justice sector, unexpected institutional cooperation improved access to justice for local citizens. Important factors in determining these institutional outcomes have been what we have termed the two P's: pragmatism and power.

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Introduction

This article explores how hybrid governance institutions in South Sudan have come about and how they function as they regulate citizens' daily lives. The Comprehensive Peace Agreement (CPA) of 2005 that ended the North-South civil war in Sudan marked the start of a new project of state-building in South Sudan, that was to continue after it became an independent country in 2011. This project, undertaken by the SPLA-led government with strong involvement of various bilateral and multilateral donors, sought to address the grievances that had led to the North-South war. These included pressure on the land rights of rural communities, which the new government addressed by introducing a new land tenure regime. The development of a judicious and independent justice system was considered a crucial element in order to protect these rights (e.g. Baker and Scheye, 2009).¹ In combination with a policy of decentralisation, it was hoped that these measures would promote stability in a country long plagued by violence. Despite

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¹Bruce Baker and Eric Scheye, 'Access to Justice in a Post-conflict State: Donor-Supported Multidimensional Peacekeeping in Southern Sudan', *International Peacekeeping* 16, no. 2 (2009): 171–85.

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heavy investment by donors and NGOs, however, state-building did not succeed in reducing instability and conflict. In 2013 widespread fighting broke out between different factions of the ruling party, and the situation remains highly unstable today. Violence regularly flares up and leads to displacement, disease and persistent poverty.

Reasons for the limited success of state-building have been a reliance on top-down reform and a lack of attention to existing power relations and modes of governance. Indeed, it is by now well established that blueprint-based state-building interventions are met with resistance on the part of local power holders and get bogged down by historically developed, locally entrenched modes of governance. A growing body of literature describes the outcomes produced by these processes. Called *hybridity* or *hybrid governance orders*, they combine elements of newly introduced formal institutions with existing, informal ones (e.g. Boege et al., 2009).² There is considerable discussion about the nature of hybridity, its desirability and whether or not it can be planned. However, a more fundamental yet often overlooked question is how hybrid governance actually works out in practice for ordinary citizens, or 'end users'.³ In particular, it is relevant to know whether, and under what circumstances, hybrid governance benefits them. For example, are hybrid institutions capable of regulating local disputes, thereby contributing to stability? The limited research that has so far been done on this paints a mixed picture, with some studies finding more positive outcomes than others.⁴ Based on extensive field research in Yei River County, our findings lead us to take a middle position, namely that hybridity can be both beneficial and detrimental to citizens, depending on the circumstances. Moreover, our research helps to understand these differing circumstances, adding to existing research by offering explanations for institutional outcomes.

This article addresses the following questions: *How did hybrid institutions come about in South Sudan? To what extent do hybrid institutions meet the needs of citizens and solve local conflicts? How can these outcomes for citizens be explained?* We focus on the land and justice sectors, which as mentioned above, are deemed crucial to state-building and stability in South Sudan. Our findings are based on field research carried out between November 2011 and March 2013. Using ethnographic methods,⁵ data collection took over six months in total, spread over three visits. Sources include government officials,

²Volker Boege, M. Anne Brown and Kevin P. Clements, 'Hybrid Political Orders, not Fragile States', *Peace Review* 21, no 1 (2009): 13–21.

³Robin Luckham and Tom Kirk, 'Understanding Security in the Vernacular in Hybrid Political Contexts: A Critical Survey', *Conflict, Security & Development* 13, no. 3 (2013): 339–59.

⁴Kate Meagher, 'The Strength of Weak States? Non-State Security Forces and Hybrid Governance in Africa', *Development and Change* 43, no. 5 (2012): 1073–1101; Øystein H. Rolandsen, 'Trade, Peace-building and Hybrid Governance in the Sudan-South Sudan Borderlands', *Conflict, Security & Development* 19, no. 1 (2019): 79–97; Nicki Kindersley, 'Rule of Whose Law? The Geography of Authority in Juba, South Sudan', *The Journal of Modern African Studies* 57, no. 1 (2019): 61–83; Marjoke Oosterom, 'Gendered (In) Security in South Sudan: Masculinities and Hybrid Governance in Imatong State', *Peacebuilding* 5, no. 2 (2017): 186–202; Bruce Baker, 'Hybridity in Policing: The Case of Ethiopia', *The Journal of Legal Pluralism and Unofficial Law* 45, no. 3 (2013): 296–313; and Roger Mac Ginty and Richmond Oliver P. 'The Fallacy of Constructing Hybrid Political Orders: A Reappraisal of the Hybrid Turn in Peacebuilding', *International Peacekeeping* 23, no. 2 (2016): 219–39; see the next section for a discussion of this literature.

⁵The methods for gathering the data included Focus Group Discussions (FGDs), workshops, interviews, and participant observations. Two workshops were conducted for this study, the first before the start of the field data collection and the second one after the data collection was completed. In the first workshop, the authors gathered research ideas from key informants, and in the second one, presented preliminary findings of the study for discussion and validation. After the first workshop, the authors organised FGDs, followed by 35 extensive interviews and participant observations in each of the five payams of Yei River County.

representatives of civil society, chiefs, traditional leaders, elders, and ordinary residents. Shortly after the end of our fieldwork, civil war broke out in South Sudan. This has changed matters on the ground, also in Yei, where rebels have taken over much of the governance of the area. However, in many respects their modes of governance represent continuity with previous periods, as is also evidenced by the fact that many local power holders have defected to the rebels.⁶ Nevertheless, the war has caused disruption, renewed displacement and a dire socio-economic situation. Although we have been back to the field several times since then,⁷ and draw on recent literature, our research presented in this article cannot paint a full picture of these developments. Rather, it should be seen as a snapshot of the situation before the outbreak of the civil war. Understanding the workings of hybridity in that period represents a case study in its own right, unveiling some of the mechanisms through which hybrid governance impacts local stability. Nevertheless, we will reflect on the durability of the hybrid arrangements we describe, using the benefit of hindsight and our knowledge on the developments since 2013.

We start our analysis by drawing together relevant literature on state-building and hybridity. Next, to illuminate how the current hybrid institutional setup in South Sudan has come about, we provide a historical overview of state-building and state formation in South Sudan, followed by a discussion of post-CPA state-building, focusing on the land and justice sectors. We then turn to the presentation of our empirical research in Yei River County to examine how the hybrid or negotiated state works out in practice for local citizens. Finally, we connect back to the theory to explain the contribution of our findings to the literature.

Understanding state-building in Africa: hybridity and negotiated state formation

This section explores the literature on hybridity and state formation in a context of state-building in a post-conflict setting in Africa. We consider state-building as a purposeful action to develop the capacity, institutions and legitimacy of the state in relation to an effective political process for negotiating the demands of citizens and societal groups. In recent decades, state-building has been the primary approach of international actors (the UN, other international organisations, bilateral donors, NGOs) to solving the problems of war-torn countries. Essentially following the same blueprint everywhere, such efforts focus on the promotion of Weberian state institutions characterised by a monopoly of legitimate violence, an assertion of effective public authority and legal-rational norms and institutions.⁸

⁶Nicki Kindersley and Øystein H. Rolandsen, 'Civil War on a Shoestring: Rebellion in South Sudan's Equatoria Region', *Civil Wars* 19, no. 3 (2017): 308–24.

⁷During consultancy assignments in May – October 2015, March 2017–December 2018 and September – December 2019, the first author spent time in Yei River County. Though the research done on each occasion concerned subjects related to the subject matter of this article, he was not able to systematically follow up on the cases studies in the field research presented here.

⁸Christopher Cramer and Jonathan Goodhand, 'Try Again, Fail Again, Fail Better? War, the State, and the 'Post-conflict Challenge in Afghanistan', *Development and Change* 33, no. 5 (2002): 885–909; and Bagayoko et al., 'Hybrid Security Governance in Africa: Rethinking the Foundations of Security, Justice and Legitimate Public Authority', *Conflict, Security & Development* 16, no. 1 (2016): 1–32.

Many analysts have noted however that such ideal-typical notions of democratic state are far removed from African realities, where state authority is often exercised by a variety of different state and non-state actors.⁹ Especially during and after violent conflict, informal institutions are highly relevant in regulating affairs in the absence of functioning formal authorities. These informal actors include traditional authorities, neighbourhood councils, churches, warlords, militias, paramilitaries, businessmen, resource-extracting firms, political parties, peacekeeping forces, private security companies, aid agencies, and criminal networks.¹⁰

Official state-building policies have paid little attention to this political context in which they intervene.¹¹ They have also tended to overlook that state-building in Africa has a long history. For one thing, the legacies of colonial powers have strongly influenced current institutional setups.¹² In a sense, state-building interventions intersect with ongoing processes of state *formation*, or the coming about of particular state institutions in a given setting through a variety of historical developments, some more autonomous and others imposed by outsiders.¹³ Against this background, state-building leads to complex interactions in which a variety of informal actors encounter local and national state officials in different government entities,¹⁴ as well as international organisations and donors promoting their idea of a state. In these interactions, different traditions of governance meet: whereas indigenous traditions often rely on personal connections, kinship or clientelism, modern state-building follows a rational-legal logic. Domestic actors do not simply adopt the new frameworks on offer, but select those elements that fit their political needs.¹⁵

As a result of all this, state-building interventions generate complex outcomes, mixing external and local elements and formal and informal institutions.¹⁶ In the literature, these outcomes have been termed ‘hybridity’ or ‘hybrid political orders’.¹⁷ In hybrid political orders, different authority structures ‘co-exist, overlap, interact, and intertwine’.¹⁸ Often, this means that newly created formal bureaucracies and hierarchies are infused with, and regulated by, older norms and networks.¹⁹

Whereas hybridity was initially seen as an unfortunate and unintended consequence of interventions that met their limits, today it is increasingly considered a desirable

⁹Ursula C. Schroeder, ‘Security Sector Reform and the Emergence of Hybrid Security Governance’, *International Peacekeeping* 21, no. 2 (2014): 214–30.

¹⁰Jean-Francois Bayart, ‘Etat en Afrique: la politique du ventre’, [Paris], *Fayard* (1989); Tobias Hagmann and Didier Péclard, ‘Negotiating Statehood: Dynamics of Power and Domination in Africa’, *Development and change* 41, no. 4 (2010): 539–62; Christian Lund, ‘Twilight Institutions: Public Authority and Local Politics in Africa’, *Development and change* 37, no. 4 (2006): 685–705; and Mahmood Mamdani, *Citizen and Subject: Contemporary Africa and the Legacy of Late Colonialism*, Princeton University Press (2018).

¹¹Robert Egnell and Peter Haldén, eds. *New Agendas in Statebuilding: Hybridity, Contingency and History* (Routledge, 2013).

¹²Crawford Young, *The Postcolonial State in Africa: Fifty Years of Independence, 1960–2010* (University of Wisconsin Press, 2012).

¹³Jean-Paul Azam, ‘Looting and Conflict between Ethnoregional Groups: Lessons for State Formation in Africa’, *Journal of Conflict Resolution* 46, no. 1 (2002): 131–53.

¹⁴Such as the judiciary, customs authorities, the administration, the army and the police.

¹⁵Schroeder, ‘Security Sector’, 9.

¹⁶Roger Mac Ginty, *International Peacebuilding and Local Resistance: Hybrid Forms of Peace* (Springer, 2011).

¹⁷Roger Mac Ginty, ‘Hybrid Peace: The Interaction between Top-Down and Bottom-Up Peace’, *Security Dialogue* 41, no. 4 (2010): 391–412; and Oliver P. Richmond, ‘The Dilemmas of a Hybrid Peace: Negative or Positive?’, *Cooperation and Conflict* 50, no. 1 (2015): 50–68.

¹⁸Boege et al., ‘Hybrid Political Orders’, 2.

¹⁹Bagayoko et al., ‘Hybrid Security’, 8.

outcome; a more authentic alternative to the blueprint imposed by interveners, which reconciles international standards with local realities, taps into local knowledge, and generates legitimacy.²⁰ Increasingly, therefore, state-builders aim to plan for hybridity.²¹ The concept, then, is increasingly used more in a prescriptive than a descriptive way: hybridity by design.²²

Critics of this approach have pointed out that hybridity cannot be planned or designed because of the complexity and entrenched nature of local institutions, grounded as they are in longer historical processes of state formation.²³ Instead, state formation is better understood as a messy and unpredictable process of continuous negotiation by a multitude of local, national and transnational actors who compete over the institutionalisation of power relations.²⁴ This process of ‘negotiated state formation’²⁵ is ongoing and open-ended.²⁶ State formation is not even necessarily a straightforward move towards increasing institutionalisation; it also includes resistance to institutionalisation and the waxing and waning of state authority.²⁷ Moreover, institutionalisation may vary from place to place, and even between sectors.²⁸

A way to understand such processes of institutionalisation and de-institutionalisation is by using Moore’s²⁹ concepts of regularisation and situational adjustment. In a context of state formation, processes of regularisation occur when modes of governance are translated into general rules and customs, making them durable and predictable. Situational adjustment, on the other hand, takes place when people generate indeterminacies by bending, reinterpreting or redefining rules to fit their political need.³⁰ It should be noted that these are fundamentally unequal processes: power and resource differentials severely limit the room for negotiation of weaker actors (ordinary, poor people), and allow stronger actors (elites) to influence outcomes to a much greater extent.³¹

Our case study of hybridity in Yei River County will confirm the centrality of power in determining outcomes. Our findings also underscore the critiques of ‘hybridity by design’, illustrating the importance of history and the emergent and the complex and negotiated nature of hybridity. Beyond that, however, the main contribution of our research is to understand whether, and under what circumstances, hybridity benefits citizens. As such, we address the recently popular idea that hybridity is a desirable

²⁰Mac Ginty, Roger, ‘Hybrid Peace’, 17. The embracing of the concept by international interveners should also be seen in the light of the disappointing results of the blue-print approach to liberal peace- and statebuilding and the recognition that only so much can be achieved by the top-down introduction of new institutions.

²¹Gearoid Millar, ‘Disaggregating Hybridity: Why Hybrid Institutions Do Not Produce Predictable Experiences of Peace’, *Journal of Peace Research* 51, no. 4 (2014): 501–14; and Mac Ginty and Richmond, ‘Fallacy of Constructing’, 4.

²²We are indebted to one of our anonymous reviewers for suggesting this term.

²³Annika Björkdahl, et al., eds. *Peacebuilding and Friction: Global and Local Encounters in Post-conflict Societies*, Routledge (2016).

²⁴Hagmann and Péclard, ‘Negotiating Statehood’, 10.

²⁵Ibid.

²⁶De-Sardan, Jean-Pierre Oliver, *Anthropology and Development: Understanding Contemporary Social Change*, Zed books (2005).

²⁷Lund, ‘Twilight Institutions’, 10.

²⁸Jean-François Bayart, Peter Geschiere, and Francis Nyamnjoh, ‘Autochtonie, Démocratie et Citoyenneté en Afrique’, *Critique International* no. 1 (2001): 177–94.

²⁹Sally Falk Moore, eds, *Law as Social Process*, London: Routledge & Kegan Paul (1978).

³⁰Ibid.

³¹Martin Doornbos, ‘Researching African Statehood Dynamics: Negotiability and its Limits’, *Development and Change* 41, no. 4 (2010): 747–69; Caroline Hughes, ‘Friction, Good Governance and the Poor: Cases from Cambodia’, *International Peacekeeping* 20, no. 2 (2013): 144–58; and Bagayoko et al., ‘Hybrid Security’, 8, 19.

outcome, promoting institutional legitimacy and, by extension, peace. This, actually, is far from clear. Little research has so far been done on what hybrid institutions actually bring to local 'end users'.³² For example, Bagayoko and others state that

whilst there are many empirical studies of hybrid security and justice institutions themselves, we know much less about whether these institutions reduce or entrench existing social, economic or gender inequalities; and whether and how they deliver security to vulnerable people on the ground.³³

Studies that do exist give cause for reflection. On the one hand, as hybrid systems often rely on a continuation of local governance traditions, they also tend to reproduce the power hierarchies and patriarchal norms prevalent in traditional institutions. This means that hybridity often reinforces unequal power relations, excluding marginalised and vulnerable groups, as well as women and youth.³⁴ In some cases, hybridity can even lend an air of legitimacy to the entrenchment of informal systems that are coercive and characterised by political capture.³⁵

On the other hand, actors that seem predatory at first sight, on closer inspection may turn out to be more complicated. In order to maintain their hold on power, over time they tend to seek legitimacy. To this end, they make alliances with other leaders and offer services to local citizens. This resonates with bandit-becomes-king processes described in historical studies of state formation³⁶ and is also confirmed by studies of 'rebel governance' during war.³⁷ During recent research in Juba, for example, Kindersley saw that what appeared to be exploitative patrimonial practices were in fact complex negotiations between power holders and constituents about authority and legitimacy.³⁸ The study focused on informal neighbourhood courts, existing in the absence of formal institutions. These courts were embedded in ethnic structures, but in multi-ethnic neighbourhoods they also included members from other ethnic groups. They regulated disputes drawing on multiple legal codes and traditions, relying on ties with military and politicians to enforce decisions. Though often coercive and patriarchal, the neighbourhood courts nonetheless provided a degree of stability and access to justice. Other research, too, suggests that hybridity can in some cases be conducive to local order and access to services. Baker, looking at hybrid policing in Ethiopia, concluded that hybridity could be beneficial when it is managed to create mutually beneficial cooperation between formal and informal actors, for example by referring cases to one another, whilst maintaining formal standards of police practice.³⁹

A final set of research takes a middle position. A study by Rolandsen⁴⁰ in the Sudan-South Sudan border region concluded that hybridity can be conducive to peace,⁴¹ but it can also have the opposite effect. According to Rolandsen, more research is called for to

³²Luckham and Kirk, 'Understanding Security', 3.

³³Bagayoko et al., 'Hybrid Security', 8, 19, 31.

³⁴Kindersley, 'Rule of whose Law?', 4; Baker, 'Hybridity in Policing' 4; Oosterom, 'Gendered (In)Security', 4; and Bagayoko et al., 'Hybrid Security', 8, 19, 31, 33.

³⁵Meagher, 'Strength of Weak States?', 4

³⁶Charles Tilly, and Catherine Besteman, 'War Making and State Making as Organized Crime', *Violence: A reader* (1985): 35–60.

³⁷Kindersley and Rolandsen, 'Civil War', 6.

³⁸Kindersley, 'Rule of Whose Law?', 4, 34.

³⁹Baker, 'Hybridity in Policing', 4, 34.

⁴⁰Rolandsen, 'Trade and Peace-building', 4.

⁴¹In this case, via the facilitation of encounters between members of opposing political groups in marketplaces.

understand what circumstances produce which effect. In more general terms, Mac Ginty & Richmond state that hybridity can have what they call positive and negative pathways: it can produce the emancipation of weak groups, or it can reinforce unequal power structures.⁴² But what determines these pathways? What are the circumstances that lead to more or less beneficial outcomes for citizens? Our case study of hybridity in Yei River County aims to shed light on these questions. First, however, we take a look at history to understand how this hybrid political order came about.

The institutional legacies of colonialism, postcolonial governments and wartime SPLA governance

To make sense of the hybrid forms of governance that developed in the post-CPA period, we start by exploring pre-CPA history to understand how colonialism, post-colonial governments and SPLA governance during the war all contributed to current institutions. Our emphasis is on the development of land governance and justice institutions, as sectors that have proven to be drivers of conflict in South Sudan in the past.⁴³

Legacies of colonial times include the internal borders which now demarcate the newly introduced states, counties and payams.⁴⁴ Often, those borders were created around territories inhabited by communities of the same ethnic groups, but in some cases, around areas inhabited by more than one ethnic group or clans.⁴⁵ Chiefs are another institutional legacy of colonial times in South Sudan. Though chiefs are regularly referred to as ‘customary institutions’, suggesting a precolonial heritage, this institution was introduced by the British colonial authority to facilitate its indirect rule strategy. Postcolonial governments in (South) Sudan inherited it at will, incorporating chiefs into their governance structures in various ways at different times. Sometimes chiefs were considered traditional, customary and outside the formal government structures, while at other times they were made official representatives of the state and ruling parties at the local level.⁴⁶ A third colonial legacy is in the justice sector. The creation of different categories of citizenship formed the basis of the colonial legal system: ‘outsiders’ to the colonies were considered *citizens* and were governed by civil laws, while ‘locals’ were considered *subjects* and were ruled by ‘customary laws’. These ‘customary laws’ were in fact invented by the colonisers.⁴⁷ After independence, various postcolonial governments in Sudan continued with this practice, though with some variation over time. Before the

⁴²Mac Ginty and Richmond, ‘Fallacy of Constructing’, 4, 21.

⁴³Pantulliano, ‘Sara’, *International Engagement in Fragile States: Lessons From Southern Sudan* 135 (London, England: Overseas Development Institute, 2009); Guma Kunda Komey, ‘Land, Governance, Conflict & the Nuba of Sudan’, eds (Boydell and Brewer Limited, 2010); and Peter Hakim Justin and Han van Dijk, ‘Land Reform and Conflict in South Sudan: Evidence from Yei River County’, *Africa Spectrum* 52, no. 2 (2017): 3–28.

⁴⁴Peter Hakim Justin, and Lotje De Vries, ‘Governing Unclear Lines: Local Boundaries as a (Re)source of Conflict in South Sudan’, *Journal of Borderlands Studies* 34, no 1 (2019): 31–46.

⁴⁵In the latter case, the territory or the group inhabiting it is named after the chief appointed by the colonial administrator in charge of the area. In Yei, for example, the two payams of Lasu and Mugwo are named after the first chiefs appointed by the British colonial District Commissioner in Yei. (Interview; Mugwo Payam, 03/02/2013)

⁴⁶In 1970, the government of President Numei abolished the chieftaincy institution, arguing that it was designed to serve colonial interests. After the start of the North-South civil war in 1983, the same government reinstated the chieftaincy institution and made chiefs the focal point for the mobilisation of government-allied militias on its fight against SPLA (Johnson, ‘Sudan People’s’; and Leonardi, ‘Liberation’ or Capture’).

⁴⁷Mamdani, ‘Citizen and Subject’, 10; and Justin and Van Dijk, ‘Land Reform’, 43.

formal abolition of the institution of the chiefs in 1970, the justice system in Sudan distinguished between statutory and customary courts.⁴⁸

Concerning land rights, colonial laws provided for private ownership of land in vast areas of Northern Sudan, whereas in Southern Sudan, private ownership of land was limited to the acquisition of residential pieces of land in urban areas.⁴⁹ Per the Land Act of 1972, unregistered lands would be owned by the state. Effectively, this Land Act gave the state the right to claim ownership of land in most rural areas in South Sudan, generating tensions between successive governments in Khartoum and political elites in Southern Sudan and contributing to the North-South civil war that started in 1983.⁵⁰

During the 1983–2005 war, the SPLA effectively governed much of what is now South Sudan. Though it rebelled against the postcolonial Northern government, it built on the combined legacy of colonialism and postcolonial governments. The SPLA upgraded the villages created by the British colonial powers to become part of local government structures, now renamed counties, payams and bomas.⁵¹ As the British colonial authority had demarcated territories along ethnic or clan lines, by making them part of the official government structures, the SPLA wartime government promoted ethnic or identity-based type of governance. The SPLA also adopted the institution of chiefship, refining it by distinguishing between paramount, head and executive chiefs. As had been the case under colonial and postcolonial rules, the chiefs were incorporated into the political and military apparatus.⁵²

Clearly, then, the institutional setup in the post-CPA period is a hybrid political order comprising of legacies of colonialism, postcolonial governments and SPLA wartime governance. The division of the justice system into statutory and traditional realms, the institutionalisation of chiefs and the connection between territory and ethnic or clan identity were to have important consequences for state-building after the CPA.

State-building since the CPA

After the CPA, South Sudan was divided into ten states, and each state into counties. Each county was divided into payams and bomas. Alongside these formal institutions, informal institutions continued to operate, namely traditional and community leaders such as rainmakers, land custodians – Monye Menu –, and traditional healers.⁵³ Land reform has been an important component of post-CPA statebuilding. Decentralised land governance was considered the best replacement to the centralised system of governance that had contributed to the North-South war. To achieve this, the government

⁴⁸Douglas H. Johnson, 'Federalism in the History of South Sudanese Political thought', (2014). In 1983, President Numeiri introduced Islamic or Shari' Laws for Muslim and other laws for South Sudanese who were considered Christians or animists.

⁴⁹Peter Hakim Justin and Mathijs Van Leeuwen, 'The Politics of Displacement-related Land Conflict in Yei River County, South Sudan', *The Journal of Modern African Studies* 54, no. 3 (2016): 419–42; and Van Leeuwen, Mathijs, Marlie Van de Kerkhof, and Yves Van Leynseele, 'Transforming Land Governance and Strengthening the State in South Sudan', *African Affairs* 117, no. 467 (2018): 286–309.

⁵⁰Pantuliano, 'International Engagement', 43.

⁵¹Justin and De Vries, 'Governing Unclear Lines', 44.

⁵²Douglas H. Johnson, 'The Sudan People's Liberation Army and the Problem of Factionalism', (1998): 53–72; and Leonardi, Cherry, 'Liberation' or Capture: Youth in between 'Hakuma', and 'Home' during Civil War and its Aftermath in Southern Sudan', *African Affairs* 106, no. 424 (2007): 391–412.

⁵³Leonardi, 'Liberation' or Capture', 52.

introduced the South Sudan Land Commission (SSLC) as the highest land governing institution in the country, to be devolved to the lower levels of the government.⁵⁴ Chiefs also play roles in land governance, sometimes formally and in some cases informally. As part of the formal institutions, chiefs discuss land issues in their areas with Payam Directors and Boma Administrators.⁵⁵ At the same time, chiefs mediate land conflicts in their areas as they are also considered part of the informal institutions.⁵⁶ In addition, various informal actors play a role in land governance, particularly in rural areas. Of particular relevance to land governance in Yei River County are the Monye Menu, who govern land in rural areas on behalf of landowning communities.⁵⁷

The justice sector in the post-CPA period distinguishes between statutory and traditional systems – a historical legacy as we have seen. The statutory justice sector, with courts at different levels of governance, is based on formal laws, whilst the traditional (or customary) justice system draws on local traditions and customs.⁵⁸ The customary system was intended to ensure access to justice to rural communities lacking formal judicial service. Local customs of justice provision, often entailing an important role for the chief, differ according to the locality and ethnic group. Since most rural communities are mono-ethnic, this was not expected to be problematic.⁵⁹ The presence of statutory courts was limited mainly to urban areas. The laws do not provide for interaction between statutory and traditional courts, meaning that formally, both types of courts cannot refer cases to one another. In practice, however, the two institutions closely coexist at each level of government.⁶⁰ Whether and how this coexistence has led to interaction, and with what consequences for citizens, will be examined in the next section. First, however, we give a brief overview of developments since the start of the civil war, the ensuing changes in local governance, and the implications of these changes on the land and justice sectors.

The war that started in December 2013 led to widespread displacement of civilians, some into the protection of civilians camps manned by the United Nation's Mission in South Sudan and others across national borders.⁶¹ As if this was not disruptive enough, the government increased the number of states and counties between 2015 and 2017, from 10 to 32 states and from 86 to over 400 counties⁶². This led to a strengthening of the ties between ethnic identity and territory more than before, reflected in a change in the social composition of most counties, payams and bomas, with most inhabitants consisting of individuals with similar ethnic or clan backgrounds.⁶³ Moreover, it essentially

⁵⁴Each state obtained a State Land Commission (SLC), which were further decentralised into County Land Authorities (CLA) Payam Land Councils (PLC) and Boma Land Administrations (BLA). SSLC developed the Land Act of 2009 that distinguishes land rights as public, private and community land; respectively owned by the state, private entities and communities (Mennen, 2012, p.12). This is notable, as pre-CPA land laws gave ownership of land in rural areas in South Sudan to the state.

⁵⁵These Directors and Administrators are the heads of PLC and BLA, respectively.

⁵⁶Focus Group Discussion at Yei Crop Training Center, moderated by authors, 31 January 2012.

⁵⁷Community leader in Yei Town, in discussion with authors, 16 November 2012.

⁵⁸Tiernan Mennen, *Customary Law and Land Rights in South Sudan* (Oslo: Norwegian Refugee Council, 2012).

⁵⁹Yei River County's Executive Director, in discussion with authors, 27 November 2012.

⁶⁰Mennen, 'Customary Law', 58.

⁶¹Jairo Munive, 'Resilience in Displacement and the Protection of Civilians in South Sudan', *Journal of Refugee Studies* (2019); Kindersley and Rolandsen, 'Civil War', 6, 37.

⁶²Group Discussion with South Sudanese researchers at University of Juba, moderated by first author, 22 October 2019.

⁶³Before this change, Yei River District consisted of diverse ethnic groups; namely the Kakwa, Pojulu, Kuku, Nyangwara, Kaliko and Adiyu: thereafter, each of these groups is aspiring to have its own counties, payams and bomas. (Interview; University of Juba, 29/10/2011).

meant the abolition of the formal land and justice institutions that had existed under the ten-states' system, with the hope that these would be replaced by new ones. However, the fact that those changes occurred during wartime made it impossible for the government to introduce these new institutions, as vast areas were under the control of insurgent groups. However, as in the pre-CPA period, traditional authorities continued to operate, some in government-controlled areas and others in areas controlled by insurgent groups.⁶⁴ Meanwhile, donors pressured the government in Juba to return to the pre-war ten-states' system as a precondition for funding the implementation of the peace agreement signed in 2018 between the government and the main rebel group, the Sudan People's Liberation Movement/Army in Opposition (SPLM/A-IO). This pressure paid off. In February 2020, President Salva Kiir reduced the number of states to ten.⁶⁵ Still, because of disagreements between the government and the SPLM/A-IO on the appointment of State Governors,⁶⁶ most of the ten states remained without governors, and counties without commissioners throughout most of 2020. Officially then, most parts of South Sudan have lacked formal land and justice institutions since the outbreak of the civil war in 2013.

We will now return to the period between the CPA and the outbreak of the civil war. As the following paragraphs will demonstrate, hybrid interactions in this period yielded unpredictable outcomes, some contributing to conflict and violence, but others conducive to finding local solutions that provide a certain level of peaceful coexistence.

Hybrid governance in practice: local governance and land conflict in Yei River County

In unstable and violent contexts such as South Sudan, of particular significance to local citizens is whether institutions can contribute to the peaceful regulation of conflicts. For local citizens, this matters more than their statutory standing.⁶⁷ In this section, we analyse the workings of hybrid land and judiciary institutions in Yei River County before the outbreak of war in 2013, with a particular focus on their capacity to regulate disputes and prevent them from escalating into violence. Decentralisation in the post-CPA period established formal institutions at each of the three levels of government – at least, on paper.⁶⁸ However, these were not all in place during the period of the data collection. At the time, the county had one magistrate court in county headquarters, but not in any of its five payams. Though the customary justice sector was better organised and well-equipped than the statutory, with most courts having chiefs, the county lacked a paramount chief to oversee the work of head and executive chiefs in payams and

⁶⁴Rachel Ibreck, *South Sudans Injustice System: Law and Activism on the Frontline* (Zed Books, 2019).

⁶⁵Africa News, accessed through <https://www.africanews.com/2020/02/15/south-sudan-s-president-agrees-to-have-10-states/>, on 15 February 2021.

⁶⁶New Africa Daily, accessed through <https://newafricadaily.com/index.php/south-sudans-unity-government-delays-appointment-governors>, on 15 February 2021.

⁶⁷Kindersley, 'Rule of whose Law?' 4, 34, 38.

⁶⁸Per these arrangements, Yei River County would have six magistrate courts, one in the county presided by a first-grade judge and one in each of its five payams, presided by a second-grade judge. In the land sector, the county would have a County Land Authority, five Payam Land Councils and 17 Boma Land Administrations. On the customary side, the county headquarters in Yei Town would have a paramount chief, each of the five payams a head chief, and the 17 bomas an executive chief for each.

bomas.⁶⁹ In the land sector, a County Land Authority was established at the county's headquarters in Yei, but there were no Payam Land Councils and Boma Land Administrations in the five payams and the seventeen Bomas.⁷⁰ How did this incomplete system function at local level?

Land governance and conflict

After the start of the CPA in 2005, the land sector in Yei River County became a major source of contestation, conflict and violence. This was a dramatic change compared to the pre-CPA period. While landownership and governance were centralised by the state before the start of the civil war in 1983, land governance in rural areas in Yei was not severely affected by those policies. This was partly because the presence of the state (institutions) was limited to Yei Town and partly because of the popularity of the traditional ways of land governance among local communities. The limited presence of 'outsiders' in the county also made land tenure less problematic. Land allocation in Yei Town was regulated by the district authority and in the villages by traditional leaders under the custodianship of Monye Menu.⁷¹ During the North-South civil war, however, major changes occurred, including changes in land governing institutions and the forceful occupation of lands by internally displaced persons (IDPs), and most of the land conflicts witnessed in Yei the post-CPA period were the manifestation of those changes.

First, after the decentralisation of land governance, most chiefs in Yei who inherited their authority from their ancestors, as has been the practice since the colonial period, were replaced by SPLA appointees, and these new chiefs were given authority over land. In many areas, this resulted in contentious relations between old and new chiefs, as well as between the new chiefs and the Monye Menu. On the statutory side, Payam Directors and Boma Administrators were given the authority to head Payam Land Councils and Boma Land Administrations, which triggered a new dynamic of contestation involving chiefs, traditional land custodians and the statutory staff of payams and bomas.⁷² As the new land law, officially, gives ownership of land in rural areas to communities, local people also became involved in those conflicts, often in support of Monye Menu, chiefs or local government officials claiming to protect their land rights. In the two payams of Mugwo and Otego, for example, Monye Menu and traditional leaders who inherited their authorities from their forefathers, challenged the authority of SPLA-appointed chiefs after the CPA. Contestations around this led to violence between the Lugori and Yondu clans in Mugwo payam, and between the Somba and Morsak clans in Otego Payam.⁷³

Secondly, the forceful occupation of lands of local communities in Yei by IDPs in the pre-CPA period and the protracted settlement of these displaced after the CPA were major conflict drivers in the county after the start of the CPA. This land occupation led to conflicts between IDPs supported by soldiers and returning landowners who had fled the

⁶⁹Observations in Yei County, by authors, November 2011 – March 2013.

⁷⁰Observations in Yei County, by authors, November 2011 – March 2013.

⁷¹Director of Lasu Payam, interview by first author, 20 May 2012.

⁷²Yei County's Administrator, interview by authors, 3 March 2012.

⁷³Justin and Van Dijk, 'Land Reform', 43, 47.

war before the CPA. Often, returnees attempted to reclaim their land occupied by IDPs or soldiers on the basis of pre-war norms of land acquisition, arguing that those pieces of land had been allocated to them by the ‘legal authority’ – the government of Sudan. However, many IDPs and soldiers resisted those claims by referring to the post-CPA land laws that seemed to favour those occupying land.⁷⁴ Drawing on their (mis)interpretation of these laws, some soldiers and IDPs even demanded ‘buckets of blood’ from land claimants as a condition for them to return lands they occupy⁷⁵; a demand locally interpreted as a threat to kill returnees attempting to reclaim their grabbed lands.⁷⁶ Some attempted to consolidate their claims on lands they occupied by arguing that ‘we liberated this town and the lands we are settling’.⁷⁷ IDP chiefs, supported by soldiers, used forceful means to legitimise their claims on the ownership of lands. As most lands occupied by IDPs and soldiers were allocated to them by chiefs of IDP communities, with local chiefs having lost substantial powers to regulate land,⁷⁸ the tensions between IDPs and returnees also caused tensions between ‘local’ chiefs and chiefs of IDP communities.⁷⁹ This limited their chances to interact as customary institutions. In Giru village, we observed how contested claims on land between IDPs and returnees led to violence after soldiers got involved in defending the IDPs, escalating to the extent that it threatened the relative peacefulness Yei County was enjoying at the time. The direct involvement of soldiers in land grabs and the support they gave IDPs to resist eviction by returning landowners caused locals to speculate that the state was directly involved in land grabs.⁸⁰

All in all, then, a combination of changes in governance structures resulting from land reform and the forceful occupation of lands by IDPs account for most of the conflicts we observed in Yei in the period between the CPA and the civil war. After the start of the civil war in 2013 and its spread to Yei and the surrounding areas in 2016, a great deal of the population fled Yei town to hide in the bushes, crossed international borders or join insurgent groups.⁸¹ This displacement follows a pattern that occurred in 1990. The ultimate outcome of that pattern of displacement was a massive movement of (mainly Dinka) IDPs into Yei, leading to changes in land governance that facilitated land occupation by the IDPs, and producing land conflicts as a result, as we have seen. The ongoing civil war seems to have temporarily halted land conflicts, but it remains to be seen how this will transpire once this war ends.

Conflict resolution mechanisms in the justice sector

In contrast to the contentious relationship between institutions in the land sector, in the justice sector, formal and informal institutions interacted in relatively peaceful ways. Because of the limited presence of statutory courts in the county, both the magistrate and

⁷⁴Justin and Van Leeuwen, ‘The politics of Displacement’, 49.

⁷⁵Cherry Leonardi, ‘Paying “Buckets of Blood” for the Land: Moral Debates over Economy, War and State in Southern Sudan’, *The Journal of Modern African Studies* 49, no. 2 (2011): 215–40.

⁷⁶Yei River County’s Executive Director, in discussion with authors, 27 November 2012.

⁷⁷Group Discussion with chiefs at Yei Crop Training Centre, moderated by first author, 31 January 2012.

⁷⁸Head Chief of Yei B Court, interview by first author, 3 March 2012.

⁷⁹Chairman of Kakwa Community Association in Yei, interview by authors, 16 November 2012.

⁸⁰Yei County’s Administrator, interview by authors, 3 March 2012.

⁸¹Kindersley and Rolandsen, ‘Civil War’, 6, 37, 61.

chief's courts in the county were confronted by a heavy caseload to the extent that they could not handle disputes. They both needed each other to relieve this pressure. The only statutory court in Yei Town covered for the five payams that lacked statutory courts at a time when it was overwhelmed with cases from within the town. To add to the challenge, this court was expected to address land disputes in the town. This added heavily to its caseload, as most conflicts within the town revolved around land.⁸²

On the traditional side, the lack of a paramount chief in the county was problematic, as payam chiefs were supposed to refer cases they could not resolve, such as those involving litigants from different payams, to a C court headed by a paramount chief. In addition, the limited interactions between local chiefs and chiefs of communities of IDPs, discussed above, presented problems. Chiefs were unable to resolve disputes and enforce sentences when conflicts involved disputants from both local communities and communities of the displaced.⁸³ Following the Giru conflict mentioned in the previous section, for example, a group of IDPs who had their properties destroyed by an individual from the local community opened a case at the B court in Yei Town – headed by a local chief – against the perpetrator. However, the chief refused to address this case simply because it was opened by IDPs against a local.⁸⁴

However, as the challenges facing the justice sector in addressing the needs of the people of the county increased, unexpected levels of interactions emerged; initially between the statutory and the traditional courts, and later among the traditional courts, between courts led by chiefs from various communities. The interactions between the statutory and the traditional sectors started between the statutory court and the Yei Town Payam (B) court led by the head chief. Through those interactions, local arrangements emerged between the presiding judge of the statutory court and the chief of the B court whereby the statutory court started to refer 'light' criminal and civil cases that could be interpreted through customary norms to the B court to be resolved by the head chief. For instance, the statutory court could refer a case involving elopement of a girl, which is considered a criminal case by the relevant statutory laws, to the B court to be addressed by the chief as a marriage case the way such cases are handled by chiefs in rural areas. A community leader in Yei explained that

girl's elopement is one of the many traditional ways of getting married in Yei; the fact that the government [statutory court] has started referring these cases back to us [chiefs' courts] means it has started respecting our cultures, which is the right thing to do.⁸⁵

In response, this head chief started to refer 'complex' customary cases to the statutory court to be resolved by the judge, such as disputes involving disputants from different payams that would otherwise be resolved by a paramount chief.⁸⁶ After what was seen by others as a positive outcome of the referral mechanisms between statutory and traditional courts, more courts followed suit. Chiefs' courts in the surrounding payams started to refer cases to the statutory court in Yei Town as they lacked any in their areas. This helped to fill the gap left by the lack of a paramount chief (C Court) in the town, as head

⁸²Head Chief of Yei B Court, interview by first author, 3 March 2012.

⁸³Observations in Yei County, by authors, November 2011 – March 2013.

⁸⁴Justin and Van Leeuwen, 'The Politics of Displacement', 49, 74.

⁸⁵Chairman of Kakwa Community Association in Yei, interview by first author, 7 March 2013.

⁸⁶Judge of Yei Magistrate Court, in discussion with first author, 13 December 2012.

chiefs could refer cases designated to the paramount chief to the statutory court. In return, the statutory court also started to refer cases to courts in the payams and Bomas around Yei Town.⁸⁷

Within Yei Town, these arrangements resulted in the development of an unexpected working relationship between local chiefs and chiefs of IDP communities, and later between the latter and the county authority. This happened despite the fact that local chiefs and the county authority initially perceived chiefs of IDP communities and their courts as illegal and illegitimate, because they fell outside the county – payam – boma structure and their chiefs did not pay taxes.⁸⁸ The mistrust between the chiefs also trickled down to local people whereby members of each community became reluctant in taking cases to courts presided by chiefs that were not from their ethnic group or community.⁸⁹ Most IDPs, having been treated as outsiders and accused of land grabbing, chose not to take their cases to local chiefs because they expected to be treated unfairly. Conversely, local people did not take cases to courts presided by IDP chiefs, saying, ‘most of those chiefs judge their cases based on the Dinka cultures’.⁹⁰ This perception of the courts, IDPs and their chiefs was to have some influence on their relationship with the other justice providers and law enforcement agents such as the police and prison officers, who were often reluctant to enforce sentences passed by the chiefs of IDP courts.⁹¹

However, after witnessing the successful working relationship between the statutory and chiefs’ courts, chiefs from both communities established working relations to resolve cases. This was started by the head chief of the B court in Yei Town who reached out to chiefs of IDP courts by inviting them to Yei to attend court sessions involving litigants from their communities. During such sessions, the invited chiefs were given chances to give their opinions on the case before and after the presiding chief passed a verdict. This became the practice in several courts in Yei. A next step was that some chiefs decided to form joint court sessions at the B court in Yei Town attended by chiefs from various communities. This was interpreted by the people involved as creating an opportunity for chiefs to understand the cultures of other communities in the multi-cultural setting of Yei Town.⁹² Moreover, local chiefs began to assist IDP chiefs in administering justice and in enforcing sentences on verdicts passed by the chiefs. As part of the joint court sessions’ arrangements, the chief of the B court started to allow chiefs of the IDP community to resolve cases specific to their communities in the court’s building. The IDP chiefs were also allowed to call on the court’s police to maintain order. This was a crucial addition to the administration of justice as most courts run by IDP chiefs operated in the open under trees, and their sessions were regularly disrupted by rains during rainy periods.⁹³

The increase in the level of interactions between the statutory and chiefs’ courts and among local and IDP chiefs also led to a gradual improvement of the relationship between courts of IDP communities on the one hand, and county authorities and law enforcement agents, such as the police and prison officers, on the other. The enforcement of verdicts improved when law enforcement agents started to attend to and enforce cases

⁸⁷ Court Clerk of Yei B Court, interview by first author, 9 May 2012.

⁸⁸ Chairman of Kakwa Community Association in Yei, interview by authors, 16 November 2012.

⁸⁹ Chairman of Kakwa Community Association in Yei, interview by authors, 9 May 2012.

⁹⁰ Chairman of Kakwa Community Association in Yei, interview by authors, 9 May 2012.

⁹¹ Manager of Yei County Commissioner’s Office, interview by first author, 12 December 2012.

⁹² Court Clerk of Yei B Court, interview by first author, 9 May 2012.

⁹³ Court Clerk of Yei B Court, interview by first author, 9 May 2012.

judged by IDP chiefs. IDP chiefs were also given access to the public prison for their imprisoned litigants to serve their sentences.⁹⁴

Most crucially from the perspective of ‘end users’, cooperation between the different types of courts led to improved litigants’ perceptions of fairness of those courts. Observing court cases in the B court in Yei, we witnessed a gradual increase in the number of non-Kakwa litigants bridging cases to this court, which is headed by a Kakwa Chief. Notably, IDPs with Dinka background were among the newcomers. This is significant as tensions between local Kakwa communities and Dinka IDPs had been a major source of tension in the area. Most of the citizens involved in these cases which we spoke to, including some who lost cases, said that they were convinced by the rulings.⁹⁵ It also improved access to justice in Yei River County, in two ways. First, the reduced caseload of the courts meant that citizens could now expect their cases to be dealt with within a reasonable time period. Second, because their perceptions of fairness had increased, they had fewer qualms in taking cases to court. At the level of the chiefs’ courts, the presence of chiefs of IDP communities in courts presided by local chiefs led to a certain level of assurance that the perspectives and norms of IDP communities would be included in the judicial process. As a result, some IDPs started to take cases to courts presided by the local chiefs. In turn, some local communities started taking their grievances to courts presided by chiefs of IDP communities.⁹⁶ Some of the cases resolved by the chiefs of IDP communities in the B court, mentioned earlier, involved litigants from communities with different ethnic backgrounds, including Kakwa.

In spite of these positive developments in the justice sector, the land factor continued to be a contentious issue. Most chiefs of the IDP communities preferred not to attend court sessions on land involving their communities. Furthermore, since 2013 the ongoing civil war has affected the justice sector. Like in the pre-CPA period,⁹⁷ the SPLA commander in Yei became in charge of the area, including its justice system. This commander has a direct influence on the justice system, sometimes by deciding which cases should be resolved by which level of court.⁹⁸ This controlled approach to administering justice worked against the free interactions between the statutory and chiefs’ courts that emerged before the war. The fact that insurgent groups controlled surrounding payams in Yei presented an additional challenge, as chiefs in Yei Town and the magistrate court cannot officially communicate with these payams anymore. In contrast, the chiefs in rebel-controlled areas around Yei related to rebel commanders in more ‘friendly’ ways, supporting them through the mobilisation of resources and fighters. Perhaps influenced by these relations, most rebel commanders exerted minimum control on the chiefs in running their daily affairs, including in the administration of justice.⁹⁹ In this regard, the war around Yei seems to have impacted negatively on access to justice in Yei Town and had less of an effect on justice in the rural areas controlled by rebels.

⁹⁴Court Clerk of Yei B Court, interview by first author, 9 May 2012.

⁹⁵Observations in Yei County, by authors, November 2011 – March 2013.

⁹⁶Head Chief of Yei B Court, interview by first author, 9 May 2012; Chairman of the Kakwa Community Association, in discussion with authors 16 November 2012; and Group Discussion with chiefs at Yei Crop Training Centre, moderated by first author, 31 January 2012.

⁹⁷Johnson, ‘The Sudan People’s’, 52; Leonardi, ‘Liberation ‘or Capture’, 52, 53.

⁹⁸Group Discussion at University of Juba, moderated by first author, 22 October 2019.

⁹⁹Group Discussion at University of Juba, moderated by first author, 22 October 2019.

Discussion: hybridity in practice

What do our findings contribute to ongoing debates regarding hybrid governance orders? In this section, we first briefly touch on the notion of ‘hybridity by design’, contrasting it with our findings. Second, we discuss whether and how hybridity benefits or harms local citizens. Finally, we explain these outcomes by identifying factors influencing the form hybridity takes.

Hybridity by design?

Despite the increasing acceptance of the hybridity concept by theorists and practitioners of peace- and state-building, there is still a tendency to prescriptively formulate peace and state-building projects, planning the interactions that are expected to occur among the various stakeholders and their intended outcomes. In the case of South Sudan, the government and its external supporters designed the institutions introduced in the post-CPA period to dictate the interactions that would occur at the various levels of the government among state and societal actors to ultimately produce the results this intervention intended to achieve. However, our research shows that hybridity cannot be designed. The institutional interactions we observed in Yei River County were unexpected and different from what state-builders had intended. In the land sector, actors that were formally considered illegal and illegitimate – the courts of IDP chiefs – ended up imposing their will on everyone else involved. In the justice sector, courts that were supposed to function separately ended up cooperating in delivering justice – including the ‘illegal’ IDP courts. These developments were context-specific. For example, the contentious relationship between local communities and IDPs on the land question, an issue that is relatively specific to Yei River County, strongly influenced developments in both the land and justice sectors.

Our research thus supports the idea of ‘negotiated state formation’ as a messy, unpredictable and open-ended process of continuous negotiation by a multitude of local, national and transnational actors who compete over the institutionalisation of power relations.¹⁰⁰ Developments since 2013 have also shown the hybrid arrangements we studied during our fieldwork to be temporary in nature¹⁰¹; the outbreak of civil war and an attempt by government to reorganise the structure of government combined to produce a breakdown of formal governance institutions. As a result, informal institutions became even more important. Our analysis confirms that institutionalisation and state authority wax and wane¹⁰² and vary between sectors.¹⁰³ Hybrid governance, then, is unpredictable and ever-changing. Nevertheless, as we will see below, it is possible to identify factors that influence the (temporary) outcome of negotiated state formation. First, however, we look at whether and when hybrid institutions benefit local citizens.

¹⁰⁰Hagmann and Péclard, ‘Negotiating statehood’, 10, 24, 25; De-Sardan, ‘*Anthropology and development*’, 26; Lund, ‘*Twilight Institutions*’, 10, 27, 98; and Björkdahl et al., ‘*Peacebuilding and Friction*’, 24.

¹⁰¹De-Sardan, ‘*Anthropology and development*’, 26, 100.

¹⁰²Lund, ‘*Twilight Institutions*’, 10, 27, 100.

¹⁰³Bayart, Geschiere, and Nyamnjoh, ‘*Autochtonie et Démocratie*’, 28.

What's in it for citizens?

Earlier, we saw how the limited literature that so far exists regarding the impact of hybridity on 'end users' paints a mixed picture. On the one hand, by relying on existing informal power hierarchies and patriarchal norms, hybridity often reinforces unequal power relations, excluding marginalised and vulnerable groups.¹⁰⁴ On the other hand, even if hybrid institutions are coercive and patriarchal, they are nonetheless preferable to having no institutions at all. They can even provide a degree of stability and access to justice.¹⁰⁵ Moreover, over time coercive authorities may change their behaviour as they seek legitimacy.¹⁰⁶ Our case study confirms the middle position taken by Rolandsen¹⁰⁷ and Mac Ginty & Richmond,¹⁰⁸ who state that hybridity can be both beneficial and detrimental to local citizens, depending on the circumstances. Like them, we find that outcomes of hybrid arrangements are context-specific. They can contribute to conflict, tensions and human suffering but can also produce workable solutions to local problems. While interactions in the land sector between local communities and IDPs – supported by soldiers – led to more marginalisation and suffering of local people, this was not the case in the justice sector.

As was the case with hybrid policing in Ethiopia,¹⁰⁹ the justice sector in Yei River County witnessed formal-informal cooperation which benefitted local communities as well as communities of IDPs. The increasing level of cooperation between the statutory and local courts led to the emergence of conflict resolution mechanisms that could address grievances in the town as well as in rural areas. The working cooperation between the statutory and customary courts and among local chiefs and chiefs of IDP communities in Yei gave citizens a better hope of seeing their cases resolved within a reasonable time period. For IDP communities, access to the regular justice system was gained when the working cooperation between the local chiefs and the chiefs representing IDPs community led to a gradual acknowledgement of the latter by the county authority.

However, the civil war that started in 2013, and severely affected Yei River County from 2016 onwards, has shown the fragility and temporary nature of hybrid governance arrangements. As the violence has once again led to large-scale population movements, it is likely to sow the seeds for additional land conflicts after the war ends. In the justice sector, the war appears to have reduced access to justice in government-controlled Yei town, whilst rebels have allowed traditional justice provision to continue in rural areas. However, the rebels' limited control over the chiefs comes at the cost of massive recruitment of youth from the villages into the rebel forces.

Thus, our research in Yei River County has demonstrated that hybrid governance arrangements can produce both negative and positive outcomes for local 'end users'. This leaves us with the question how these different outcomes can be explained. Existing research so far sheds little light on this question. Rolandsen,¹¹⁰ for example, explicitly

¹⁰⁴Baker, 'Hybridity in Policing', 4, 34, 39; Oosterom, 'Gendered (In) Security' 4, 34; Bagayoko et al., 'Hybrid Security', 8, 19, 31, 33, 34; and Meagher, 'Strength of Weak States?', 4, 35.

¹⁰⁵Kindersley, 'Rule of whose law?', 4, 34, 38, 67; and Baker, 'Hybridity in Policing' 4, 34, 39, 104.

¹⁰⁶Kindersley and Rolandsen, 'Civil War', 6, 37, 61, 81.

¹⁰⁷Rolandsen, 'Trade and Peace-building', 4, 40.

¹⁰⁸Mac Ginty and Richmond, 'Fallacy of Constructing', 4, 21, 42.

¹⁰⁹Baker, 'Hybridity in Policing', 4, 34, 39, 104, 105.

¹¹⁰Rolandsen, 'Trade and Peace-building', 4, 40, 107.

calls for research to be carried out on the circumstances leading hybridity to be beneficial or detrimental to citizens. We turn to this question now.

Explaining institutional outcomes: the two P's

Why did negotiated state formation produce violent contention in the land sector, while leading to cooperation and increased institutional effectiveness in the justice sector? In other words, what determines whether hybridity yields positive results for ordinary people? Two P-words appear to have been of particular importance: power and pragmatism. Before explaining this further, we first return to two concepts that were discussed in the literature review, namely regularisation and situational adjustment. These concepts describe how negotiated state formation involves processes of producing rules and institutional constellations to make governance relations durable and predictable (regularisation), but also how the indeterminacies of hybrid governance are exploited to reinterpret relationships according to the interests of those able to wield power (situational adjustment).¹¹¹ In Yei, we saw both processes at work. Regularisation occurred in the justice sector when statutory and traditional courts, which were formally supposed to operate separately, began to work together in order to deal with the heavy caseload and the shortage of local courts. Pragmatism dictated these developments: cooperation was the only way to meet local demands for justice in view of practical constraints. In contrast, situational adjustment occurred in the land sector where IDP chiefs legitimised claims of their communities on lands they occupied through threats of physical violence.

Hence, aside from pragmatism, power relations play a strong role in determining the functioning of 'negotiated' institutions. By power, we do not mean an actor's formal position in the hierarchy, but his actual power, which is based on informal networks and the ability to use force. For example, though the judge of the statutory court formally has more power than the traditional courts, the limited presence of the statutory courts in the payams forced this judge to negotiate with traditional chiefs. As in any hybrid system, it is necessary to look beyond formal hierarchies and to uncover the actual power relations at play, as with the IDP chiefs whose formal authority was questioned, but who were able to wield power as their community is armed and politically well-connected. The support the IDPs got from soldiers in relation to land control gave their chiefs the power to challenge the authority of local chiefs and the county, both of which were formally supposed to have more authority on land and local governance than the IDP chiefs. In the process of institutional negotiation, the IDP chiefs were able to bend the rules in their favour, imposing situational adjustment to the detriment of non-IDP communities, which lost their land. Power (in the form of weapons and connections to the ruling party) thus enables actors to influence the trajectory of negotiated state formation more than others.¹¹²

The relationship between power and state formation is not straightforward, however. Our case demonstrates that power relations in a negotiated state are dynamic and can change according to the circumstances. In the justice sector, after the local chiefs reached

¹¹¹ Moore, 'Law as Social', 29, 30.

¹¹² Doornbos, 'Researching African', 31; Hughes, 'Friction and Good Governance', 31; and Bagayoko et al., 'Hybrid Security', 8, 19, 31, 33, 34, 104.

a deal with chiefs of the displaced communities, a new power dynamic emerged whereby chiefs of the IDPs started to engage with local chiefs on an equal level, though this was limited to cases not related to land disputes. As a result of this change, the county authority also started to cooperate with the IDP chiefs, which also changed the power dynamic between chiefs of the IDP communities and the local government. What led to this changed power dynamic was the other P: pragmatism. Cooperating was the only way to meet the practical need to deliver core governance functions. In line with Kindersley's findings in Juba,¹¹³ in Yei the question which institution was formally responsible turned out to be less relevant than the question who was best able to deliver under the given circumstances.

However, the fact that both the statutory courts and the local chiefs became willing to cooperate with the IDP chiefs also meant that their 'illegitimate' practices, such as the forceful allocation of lands to their communities, were legitimised. Because the chiefs of the displaced communities were backed by the hard power of the soldiers among their ranks, they were able to manipulate the laws in place to serve their interests. Eventually however, they were also interested in reducing conflict and gaining legitimacy beyond their own communities by cooperating with the other courts. This dynamic reminds us of the historical literature on state formation and the rebel governance literature, which describe how those forcefully imposing authority with time act more benignly in order to gain public legitimacy.¹¹⁴

That actors in negotiated state formation compete not only for power but also for legitimacy, is also evidenced in the fact that in spite of their reliance on informal sources of power, they refer to legal norms to validate their actions. For example, because courts led by the chiefs of the IDP communities did not fall under the county – payam – boma structure of governance and because their chiefs did not pay taxes to the county authority, the local chiefs and the county authority called them illegal and illegitimate. In contrast, IDP chiefs and soldiers attempted to consolidate their claims on lands they occupied based on the allocation of those land to them by chiefs appointed by SPLM/A during the wartime or post-CPA laws, which they argued were the legitimate authorities and laws. Formal institutions – laws – are not irrelevant to negotiated state formation; rather, they are applied creatively and in different ways depending on context, power and interests.

Conclusions

This article drew on an analysis of data collected from Yei River County in South Sudan and the literature to contribute to debates on hybridity and governance in Africa. Responding to gaps in existing literature, it focused on the following questions: *How did hybrid institutions come about in South Sudan? To what extent do hybrid institutions meet the needs of citizens and solve local conflicts? How can these outcomes for citizens be explained?*

This article started by unpacking hybridity, showing how in South Sudan it combines legacies of colonialism, postcolonial government and wartime rebel governance. The

¹¹³Kindersley, 'Rule of whose law?', 4, 34, 38, 67, 105.

¹¹⁴Kindersley and Rolandsen, 'Civil War', 6, 37, 61, 81, 106.

resulting institutional landscape is characterised by the presence of a multiplicity of actors and institutions that influence each other through negotiations. In line with theory on the *negotiated state*, these institutional negotiations are ongoing and continue to shape state institutions at the local level. Indeed, the hybrid arrangements we studied during our fieldwork have already changed considerably as a result of the current civil war. These interactions occur unpredictably, limiting the feasibility of design-based approaches to state-building and even to hybridity.

In contrast with the prescriptive approach, this article has descriptively shown how institutional developments in hybrid governance orders vary substantially according to the context. Institutional outcomes were influenced in particular by two P's: *pragmatism* (who is best able to deliver needed services?) and *power* (who has the power to steer institutional developments in his desired direction?). Whereas pragmatism triggers the need for actors' interaction (or lack thereof), power dictates the direction such interaction will follow. With regards to power, it is not the formal position of an actor that matters, but informal sources of power such as armed supporters and political connections.

The interplay between pragmatism and power produced both *regularisation* and *situational adjustment*, with varying outcomes for ordinary citizens. In this case, the negotiated state produced an unexpected but successful working relationship among institutions in the justice sector, improving access to justice for citizens. In contrast, in the land sector, one group was able to enforce a situational adjustment that promoted its interests over those of others. Thus, via the processes of regularisation and situational adjustment, the two P's determine whether or not hybrid institutions benefit citizens.

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