

Women's Rights in Jeopardy: The Case of War-Torn South Sudan

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Abstract

This study asserts that women's rights are far from being recognized in South Sudan despite its efforts to include the rights of women in the Transitional Constitution after its attainment of independence from Sudan in 2011. While the article acknowledges the traditional modernization theory and cultural sovereignty theory, it engages international human rights standards as its conceptual framework. Using documentary research methodology involving analysis of primary and secondary sources, the manuscript established that a plural justice system involving incompatible customary and civil law failed to defend women's rights in the country. This was worsened by the country's descent into a civil war a few years after independence. Again, the fact that South Sudan has effectively been without a functioning permanent constitution and is one of the main challenges facing the country did not help the situation either. However, South Sudan still has opportunities to advance the promotion of women's rights if, among other things, the ongoing civil war ends and the guidelines of its Transitional Constitution are to be effectively enshrined in a new constitution of the country with a view of implementing them.

Keywords

South Sudan, human rights and women rights, civil war, civil law, customary law, gender-based violence

Introduction

The independence of South Sudan from Sudan in July 2011 brought a sense of hope for peace and justice to all citizens of the country. Women in South Sudan hoped for acquisition of their rights and empowerment in both public and private spheres. However, this hope quickly disappeared when the country degenerated into conflict (for details, see Johnson, 2014; Pinaud, 2014). This left little chance for meaningfully empowering women through the ratification and implementation of the necessary international human rights instruments that promote the rights of women in line with the Transitional Constitution of South Sudan. Besides, there was no system of accountability designed to redress human rights abuses in the last civil war that took place between north and south. Even before the outbreak of the third civil war, the legacy of the previous wars was apparent in Jonglei state where fighting between armed civilian groups had never ceased (Johnson, 2014). This ruined the long-awaited benefits of personal safety and general security which were expected to be ushered in by the political transition (Jok, 2013a). Consequently, war and violence unequivocally brought about mostly intense effects on the perception and creation of gender relations, with novel, more violent constructions of masculinity in previously present patriarchal relations frequently culminating in more dependency, exploitation, and subservience of girls and women (Jok, 2005). This is so although the Transitional Constitution stipulates that the

country is committed to a legitimate national healing process, including the construction of confidence and trust by means of dialogue (The Transitional Constitution of the Republic of South Sudan, 2011).

This study discusses the experiences of women in South Sudan. These have been worsened by the outbreak of the third civil war which by the end of 2016 had not ended, although a power sharing mechanism (Compromise Peace Agreement) was signed in 2015 between Riek Machar and Salva Kiir, the founding vice president and president of South Sudan, respectively. Their camps have been fighting each other since mid-December 2013 when Machar was sacked from his post as a result of the intensification of political rivalry and tension in the Sudan People's Liberation Movement (SPLM; Johnson, 2014). The article argues that the government of South Sudan was barely successful in transforming the political identity of the country. This is because, among other reasons, the third civil war affected the country's attempts to transform gender inequalities by defending the rights of women among other efforts. Furthermore, the study asserts that customary law which is

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mostly used to deal with gender-based violence (GBV) issues in many rural areas in South Sudan and even urban centers continues to perpetrate gender inequalities. Respect for the rights of women and improvement of their lives were far from being realized, given the lack of a permanent constitution for the country. Importantly, women's rights and their respect are not a merely legal issue. These are related to a system of rampant insecurity and widespread government corruption, and this makes it difficult to uphold law and order in the country. Again, the outbreak of the third civil war signified the growing insecurity and women's rights violations. As a result, there were increasing or widespread instances of domestic violence, rape, sexual assault, forced and early marriages, and this was the scenario before the attainment of independence from the north.

However, South Sudan still has opportunities to further the promotion of women's rights guided by its Transitional Constitution (Part II (16) 1-5, 4) which singles out gender equality as a central aspect to the country's pursuit of its post-conflict reconstruction and nation-building project. As such, the protection of the same laws recognizing the importance of gender equality in a new permanent constitution will be a significant first step toward the observance and respect of women's rights. More so, women's rights can be promoted if the country expands on the programs being pursued by civil society organizations and women organizations promoting women's rights and women empowerment. The authors acknowledge that the South Sudanese women and communities are not helpless victims because they have agency. The existence of women's organizations working to change gender relations and to address GBV is one manifestation of this agency. This is so although the government of South Sudan tried to control civil society groups, sometimes through violence, if not by neglect or by taking over them. Consequently, the study concludes that women's rights in postindependence South Sudan were and remain endangered as long as the Transitional Constitutional guidelines are not implemented, and if the country continues without a permanent constitution and an unending civil war.

Conceptual Framework

This study acknowledges the existence of the cultural sovereignty argument and traditional modernization theory but engages international human rights standards as its conceptual framework. The cultural sovereignty argument asserts that local traditions should be respected and appreciated even when they contradict the international laws and agreements. Basically, cultural sovereignty denotes an acceptance of sovereignty that is created from within tribal societies, and has a cultural significance consistent with those traditions and practices (Edmunds et al., 2013). In this regard, the adoption of cultural sovereignty as a framework for analyzing the aspect of women's rights should not, however, be about a going back to a stagnant practice. The alteration should be

about a precise group, a community, with explicit histories, social, political, and cultural paths that concurrently include primary values and ideas, and rearticulations of these notions in a shifting political and economic setting. This is because cultural sovereignty entails that the customs and values of an ethnic group must guide how political judgments that affect them are made (Tsosie, 2002).

In South Sudan, these specific paths should delineate the agenda for women's rights more than the earlier practices usually poorly tailored to suit and relate to the needs of contemporary times. They should be more about improving women's conditions, increasing their rights and autonomy but preserving positive cultural practices. Viewed in this light, cultural sovereignty can include the economic, social, and political imports that develop over time from a separate ethnic group. Traditions are a vital resource, but they fail to capture all that is distinct about modern ethnic groups. Communities should be able to emphasize their thinking about suitable economic development, and political processes, in a similar way they should be able to campaign for defending ceremonial spaces or upholding traditional arts (Edmunds et al., 2013).

However, traditional modernization theory argues that developing nations which include South Sudan move along one path to achieve development. To achieve development and be considered developed, they have to accept and adopt the Western or developed societies' path with the package including human rights, cultural rights, and economic arrangements among others. The classical modernization theory propounded by W. Rostow among others views development as an evolving process that goes through five stages: These entail the "traditional society" stage which is mostly agrarian and stagnant. The second one is the "pre-take off" stage characterized by the improved agricultural productivity and infant industrial development. The third one is the "take-off" stage epitomized by a rise of technological expansion and build-up of internal investment bringing both economic development and the growth of transportation and infrastructure. The "drive to maturity" is the fourth stage where the economy flows automatically due to investment and progress as stable components of the economic arrangement, and industry shifts from primary production such as textiles, coal, and iron to secondary industries such as chemicals, electrical equipment, and machine tools. Finally, there is the "age of high mass consumption," when the economy progresses toward mass production of consumer goods and services (Campbell, 2013, pp. 120-121). Notwithstanding the imprecise nature of the terminology in the stage theory, this view of modernization theory emphasizes the fact that traditional values should be supplanted by modern values to enable less developed societies to follow the capitalist development path. The underlying agents in this developmental process are perceived as the rich, developed nations that encourage the modernization of less developed nations to transform themselves

through economic, cultural, and military aid (Inglehart & Baker, 2000).

With political and economic advances seen as closely related, the common political necessities for developing countries exist, and political progress suggests democratization. Linked to this, Andorka (1993) defined modernization as comprising a mixture of five processes, that is,

1. structural changes (industrialisation, urbanisation, etc.); 2. an improvement in living standards; 3. the development of welfare system; 4. the democratisation of the political system; 5. the development of certain civic virtues, values and norms, or the mentality essential to the functioning of a market economy and political democracy. (p. 320)

A neglect of these five elements means a deficiency in modernization. The modernization theory was the dominant development paradigm in the 1940s and 1950s. It was challenged by the Asian Tigers (South Korea, Taiwan, Singapore, and Hong Kong) which skipped some of Rostow's proposed stages or linear path but at the same time achieved development. More so, Rostow's measurement of development through the gross domestic product (GDP) neglects the inequitable ownership and distribution of wealth which affects the rights of women. Consequently, what is not a contested issue is that the inclusion of women's rights in South Sudan will definitely help the country to be considered among modern states in line with modernization theory. This is notwithstanding the fact that many criticisms were raised against the traditional modernization theory regarding women's place in development, and these include but are not limited to its perception of women as just passive beneficiaries (Sarker, 2006). While acknowledging the positions of the two theories (the cultural sovereignty argument and traditional modernization theory), the article is not set to reconcile these views. It builds on the United Nations (UN) and other international laws as the basis for assessing what constitutes GBV in South Sudan.

Following the independence of South Sudan, international and regional agreements that deal with the need to prevent, strengthen, and address GBV and its victims are yet to be ratified and implemented. These embody "the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) and the Protocol to the African Charter on Human and People's Rights on the Rights of Women in Africa." The United Nations Security Council Resolution 1325 and United Nations Security Council Resolution 1996 (2011) which culminated in the setting up of the United Nations Mission in the Republic of South Sudan (UNMISS) all affirmed the importance of gender expertise to ensure the success of women participation in the political sphere and gender mainstreaming in peace negotiations, humanitarian planning, peacekeeping operations, and post-conflict societies and in case of the latter addressing GBV as a weapon of war (Ali, 2011). By gender mainstreaming, we are simply

referring to the recognition of the experiences, rights, and needs of both men and women, boys and girls. Despite being the most important, even the UN has failed to fulfill the gender equality obligation called for by the CEDAW. This is manifest in the lack of a fair percentage of women occupying top posts of the international organization (Beleza, 2013).

Although the CEDAW is a landmark international agreement that confirms the principles of basic human rights globally, it has also been found wanting in promoting the rights of women with disability. This led African governments to adopt the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa designed to overcome this shortcoming (Bubenzer & Lacey, 2013). Nonetheless, CEDAW remains the most important convention to be signed regarding women's rights because it addresses discrimination against women in areas including but not limited to education, employment, marriage and family relations, health care, politics, finance and law. It seeks to lessen violence against women, guarantee women's access to education and health care, and offer legal remedy against any violation of women's human rights (Schopp-Schilling, 2004). In this light, South Sudan's aligning of its laws to these regional and international instruments that serve to promote equal opportunities for boys and girls and men and women will be a good and significant step in ameliorating the position of women. The country made a good decision when it included women's rights in its Transitional Constitution's Section 16. However, it is the lack of implementation of many of the provisions which seek to criminalize GBV which remain a setback toward a sustainable solution in peacebuilding and development. Thus, South Sudan has remained exposed to discrimination and violence against women.

At this juncture, it is essential to point out that the Ministry of Gender, Child and Social Welfare (MoGCSW) is the government body at the national level dealing with gender equality and mainstreaming in the country. It is responsible for the enunciation and advancement of government policies and priorities connected to gender equality, child protection, and social well-being. It has identified and engaged gender focal points in targeted line ministries to advance and support approaches to mainstream gender concerns into policies, programs, projects, monitoring and evaluation, and budgetary processes across all sectors and levels of government. At the state level, related directorates in State Ministries of Social Development are accountable for executing gender policies, guiding principles, programs, and projects at the local level and for reporting outcomes back to the MoGCSW. At the county level, gender desks have also been created. Nevertheless, communication and information distribution between county and state bodies was highly limited, and seldom were resources allotted to finance activities at the county level even before the beginning of the current war (Gender and Conflict Note, 2012). An investigation of GBV and women's rights abuses in Central Equatoria established that

gender initiatives were not given priority in the budget distributions because women were perceived as the sphere of international nongovernmental organizations (NGOs; Gender and Conflict Note, 2012).

Furthermore, there is a general lack of awareness of women's rights. This is evident from the stigmatization of victims, pressure exerted by families, and inadequate training of the police and other stakeholders in the justice system, and as a result many GBV cases go unreported (Asylum Research Consultancy, 2013). South Sudan's weak justice systems and plural legal orders comprising the customary and civil justice systems which mainly handle many cases of GBV grappled with protecting women's rights because the customary courts are far from appreciating the character and degree of women's rights. This is the case although the customary courts are still considered largely relevant in the area of dispute resolution in the country. In support of this view, Leonardi (2009) noted that the courts bring together a greatly individualized local legal culture, wherein knowledge of adjudication is hinged upon social expertise. This can even be inherited, with the accepted need for an impersonal, distant, and abstract foundation of fairness and implementation. The customary practices among other things violate international human rights principles and the rights of women and children as articulated in the Interim Constitution of South Sudan (Haki, 2011). This is apparent in the unsatisfactory manner in which the violations of women's rights and international human rights standards are handled. Among other things, the customary courts emphasize reconciliation and community harmony intended to preserve the family unit and community relations at the expense of individual protection and mechanisms designed to redress the violation of women's rights, and as a result women continue to suffer (Gender and Conflict Note, 2012).

In addition, the tribal chiefs who are males largely appreciate the rights of men to the detriment of women's rights because they hold traditional notions on the rights and responsibilities of women in the South Sudanese society. Accordingly, court decisions frequently mirror and sustain profoundly ingrained patriarchal customs that eventually disrespect women (Gender and Conflict Note, 2012). In fact, more than 50 ethnic groups exist in South Sudan, and each has its own customary laws, thus the existence of differences and commonalities including how they relegate women to a lesser status (Aldehaib, 2010). To this end, it is largely some of the commonalities that this article attempts to uncover and show that women's rights in South Sudan are in jeopardy.

Method

The qualitative case study employed the explorative and evaluative research designs in this study. The documentary method was used to collect literature on developments concerning women's rights and their empowerment in post-conflict transition South Sudan. The article is largely based on a

review of existing peer-reviewed and gray literature, reports, and publications generated by different humanitarian and media organizations on the women's experiences in South Sudan. The collected data were reviewed, assessed, and analyzed in an effort to comprehensively unpack the developments, challenges, and prospects regarding the state of women's rights in South Sudan. We consider the data from humanitarian and media organizations to be not only original but up-to-date. Our analysis of these data plus peer-reviewed works and gray literature allowed us to safely conclude that the rights of women in South Sudan are in jeopardy. As new insights, we observe that although the rights of South Sudanese women are in danger, South Sudanese women and communities are not totally helpless victims. They have agency evident in the existence of a number of women's organizations working to change gender relations and to address GBV. The next section explains the women's rights violations in South Sudan.

Violations of Women's Rights in South Sudan

GBV in South Sudan is widespread despite the country's achievement of independence from Sudan. GBV is defined as any harm committed against any person's will on the basis of gender (Sprechmann, Christie, & Walker, 2014). Its impact includes far-reaching human rights violations, serious impediments to economic and social development (Akol, n.d.). GBV was perceived as one of the compromising factors toward the accomplishment of one of the Millennium Development Goals of eradicating poverty (Sprechmann et al., 2014). In South Sudan, GBV disproportionately affects women and girls, and by 2014 it had increased to 37% and 47% for rural and urban females, respectively (United States Department of State, 2014). Among other factors, it has been exacerbated by the country's continued experience of civil wars.

Domestic Violence

Domestic violence among other women's rights violations is widespread in South Sudan. Besides being rooted in culture, traditions, and customs that tolerate the oppression of women, the incessant civil wars in the country significantly affected the marriage institution, in particular increasing domestic violence. According to Stern (2011), marriage is one of the fundamental traditions determining society, creating bonds between families and communities, and guaranteeing stability of the South Sudanese lifestyle and customs. Failure by women to be submissive to their husbands attracts some level of condoned violence. The violence is meted on women by their husbands in most ethnic cultures in South Sudan, and it is accepted by society. It is done on the basis of "bad behavior" or women's failure to fulfill their duties (Small Arms Survey, n.d., p. 4). Besides being acceptable to

men, many women accept it as a normal practice. Supporting this view, a judge from Dilling County noted that when a husband beats his wife it is viewed as an attempt to purify her. Women themselves do not understand it as violence. Again, women from Malual Kon in Aweil East County said that they believe that domestic violence is necessary because women are synonymous with children, and thus require being disciplined (Stern, 2011).

The exchange of bride price between a man's family and the woman's family, the former giving the latter, which generates the notion of treating women in most South Sudanese cultures as universally the husbands' property upon marriage perpetuates domestic violence. It is the bride price which acts as a justification of how the husbands can treat their wives as they please including even beating them when they commit something displeasing to them (Haki, 2011). The myriad ethnic groups in South Sudan practice different kinds of bride price. An average bride price for "ordinary" Dinka or Nuer people would be between 30 and 60 cows. The bride price is usually not less than 30 cows and can be as high as 200 cows. The bride price depends on the region, social status of the families being married, the beauty and level of education of the girl being married (Stern, 2011). The payment of the bride price accords a male complete authority over every aspect of the female, including household issues and life decisions, hence a woman becomes subservient to her husband in all respects (Akol, n.d.). Conversely, men are seldom censured for neglecting their responsibilities (Stern, 2011).

In the majority cases of domestic violence, wife or girlfriend beating as a punishment for cheating and murder of a spouse were common, and in most cases, men were the major culprits and women the victims. However, a mere 5% of the cases was found involving women perpetrating GBV against men in the form of attempted murder, murder, and cutting of sexual organs (Haki, 2011). Women were also discriminated in cases of adultery and they were imprisoned for between 8 and 12 months on incidental evidence while men's adultery claims from a woman were rarely upheld (Ali, 2011). In fact, South Sudanese men are socially condoned to practice adultery, and this is shielded by the practice of polygamy which is not the case with women (Stern, 2011). This is notwithstanding the Penal Code's (2008, Chapter XIX, 266) outlawing of male adultery. Consequently, bride price constitutes a fundamental social and economic aspect of the South Sudanese society, and is laden with various possible ramifications, including the abuse of women and acting as an incentive for early marriage discussed below.

The bride price payment, notwithstanding the negative consequences that have been attributed to the practice, theoretically possesses some positive meanings for the families and the community involved. The bride price represents the pride a family has in its girls, and aids in ensuring that the new family the girl joins respects and values her (Stern, 2011). However, many studies in Africa have established a correlation between bride price payment and domestic

violence among other negative implications on women (Ansell, 2001). A plausible example is Kaye, Mirembe, Ekstrom, Kyomuhendo, and Johansson (2005) who argued that bride price payment was the dominant factor contributing to domestic violence in Wakiso District of Uganda. It gave the impression that bride price denotes the buying of a woman into the man's household, which in turn diminishes her decision-making role in the household. Moreover, bride price payment restricted women's independence and extended imbalanced gender power relations, in particular concerning health-seeking behavior. The same scenario was established through an exploratory study in Bundibugyo District of Uganda (Muthegheki, Crispus, & Abrahams, 2012). As elsewhere in sub-Saharan Africa, the acceptance of the disciplinary beatings on women and the lack of any serious consequences for abusive men allow domestic violence to thrive beyond the "reasonable" level in South Sudan because of bride price payment.

Furthermore, even before the outbreak of the third civil war, the legacy of previous civil wars plus the lack of a system of accountability designed to redress human rights abuses immensely contributed to domestic violence. The pervasiveness of small arms, excessive drinking of alcohol by men, the hypermasculinity caused by men's war experiences as combatants, and importantly the failure by both civil law and customary law to redress women victims of GBV rendered domestic violence against women prevalent (Specht, 2013). The rise in domestic violence was attributed to men's disappointment and disempowerment in the wake of a violent conflict. The conflict led many men to force themselves on their wives not for essentially having sex but with the intention to "service them well" (Stern, 2011). Many women participated as combatants and others as administrators in the Sudan People's Liberation Army (SPLA) depending on their levels of education, while some had become heads of their households acting as breadwinners and caretakers (Aldehaib, 2010).

In light of the above, the change in power relationships within the household and violence against women as a result of women having assumed more powerful roles, including within families, during the war exposes some agency on the part of South Sudanese women and communities. However, Weber's (2011) writing on Eritrea and South Sudan revealed that it is not intrinsic peacefulness that keeps women out of the sphere of legitimated violence but the selective build-up of the masculine fighter approved by society. As a result, women find it hard to participate in war and achieve full fighter status. The lack of such an inherent link between fighter status and access to power during the war is also evident in post-conflict state building, wherein women continue to be highly excluded because of their inability to gain full fighter status. However, men and women are not only perpetrators and victims, respectively, but it can also be vice versa. But those women who break the feminine stereotype of life giving and caring to invade into the male domain of life

taking are perceived as incorrect, unusual, or divergent (Weber, 2011).

Rape and Sexual Assault

Women in South Sudan have and are still experiencing widespread sexual violence. Rape and sexual assault similar to most cases of women's rights violations in South Sudan have increased and worsened because of the civil war. D'Awol (2011) noted that women rape survivors after the second civil war faced insurmountable challenges because they were left without support due to the inadequate responses by the country's twin legal systems. In the current conflict, all parties to the conflict have been implicated for committing acts of sexual violence against women of various ethnic groups. Resultantly, 24,500 South Sudanese women and girls are reportedly at risk of sexual violence (Global Protection Cluster, n.d.). In South Unity state, all armed groups including Dinka militias, regular SPLA soldiers, Bul Nuer troops and Sudanese rebels, especially Justice and Equality Movement, perpetrated abuses which include rape on women (International Crisis Group, 2015). Even before the outbreak of the third civil war, government soldiers reportedly committed human rights violations in Pibor County during a civilian disarmament campaign. Medical reports in Pibor County from Médecins Sans Frontières (MSF) clinics reported that they treated 17 cases of rape and eight cases of attempted rape by government soldiers between mid-March and August 2012 (Asylum Research Consultancy, 2013).

The outbreak of the third civil war led to an increase in the cases of rape and sexual assault against women and girls. The UNMISS (2015) noted that since the beginning of the conflict, conflict-related sexual violence against women and girls was rampant especially in Unity and Upper Nile, including the use of children as soldiers by both conflicting sides. Heinous human rights violations took place in war-affected areas. Initially, the war was confined to the Greater Upper Nile region, comprising Unity, Upper Nile, and Jonglei states. The violence and insecurity later spread to other states which include Central and Western Equatoria in the second half of 2015. The human rights violations committed include mass killings, sexual violence, kidnappings, displacements, pillaging, livestock looting and setting houses on fire (UNMISS Human Rights Division, 2015). In the same vein, Muscati (2015) revealed that women and girls in Unity State abducted by militia fighters were raped before being kidnapped as "wives," while others were compelled to work as cooks for the fighters and carriers and minders of looted goods while in captivity. Only a few places in conflict-affected areas remained safe because the warring parties deliberately attacked conventional safe havens such as UN bases, places of worship, and hospitals (Human Rights Watch, 2014b).

The acceptance of rape and sexual assault as part of life by the victims served to bolster its extensiveness. A study on refugee camps in Maban County-Doro, Yusuf Batil,

Gendrassa, and Kaya vindicates this notion. There existed an unavoidable, reflective, profoundly entrenched and adopted personal acceptance by the affected groups. The primary victims were women and girls who were subjected to sexual violence in refugee camps, including those in villages especially in Blue Nile prior to their displacement (US Department of State, 2015). More so, there were cases of survival sex by women and girls who faced growing rates of domestic violence and unwanted pregnancies inside UNMISS Protection of Civilians (POC) camps (Protection Trends, 2015). Many women and even girls reportedly engaged in transactional sex to access food or water for themselves and their families (Sprechmann et al., 2014).

While much of South Sudan's women and girls constituted most of the victims of violence, they also participated in multiple roles during the conflict. Besides taking care of the family, treating the hurt soldiers, and preparing food for them, some women were genuine fighters together with their male counterparts. In the SPLM, the Opposition (SPLM/IO) and other rebels, several women hold senior administrative and hierarchy positions, while in other cases women allegedly stirred their husbands and male relatives to mete out vengeance and various acts of violence (Cabrera-Balleza, Chodhury, Gronberg & Moser, 2014). This doubtlessly reinforces the idea that women in South Sudan are not solely victims.

Furthermore, the third civil war registered high occurrences of sexual gender-based violence (SGBV). There was widespread marginalization, violence, and discrimination against women in South Sudan with rape and rampant sexual assault used as a weapon of war in war-torn areas such as Rubkona town in Unity State (Cabrera-Balleza et al., 2014). In Pibor, the situation was worsened by the relentless interethnic conflict, armed conflict between the SPLA and the ethnic Murle insurgents from the South Sudan Democratic Movement/Army since December 2012 (Human Rights Watch, 2013b) to the outbreak of the current war in the area in late February 2016 (United Nations Office for the Coordination of Humanitarian Affairs [OCHA]; South Sudan Humanitarian Bulletin, 2016). Survivors said that rape became common for women in South Sudan's third civil war as they were subjected to gang rape and dreadful sexual violence (Muscati, 2015). For example, in Unity State, eight Dinka men raped one woman while another woman was raped by four Dinka men who attacked her on her way to collect money from Juba town (Human Rights Watch, 2014a). Sexual violence on women and girls went beyond humiliation, dominance, and a tool of instilling fear and forcible relocation or dispersal of civilians (Gomes, Leandro, & Dias, 2013). It extended to general abuse of women and girls. In many conflict-torn areas that included Bentiu, Unity State, 23% of households surveyed revealed that at least one person in a household was sexually assaulted in the previous 5 years, and concluded that 2015 was the worst year (Deng & Willems, 2016). Many victims of SGBV did nothing, while a few who sought redress got some better outcomes despite the restrictions in accessing

justice services discussed below. Collectively, the rampant insecurity in South Sudan during the third civil war, among other factors, made efforts to uphold law and order problematic with adverse consequences on women's rights.

Forced Marriages and Early (Child) Marriages

Like domestic violence, early marriages were exacerbated by the outbreak of the third civil war. Early marriages are arranged by poor families in an effort to accumulate bride price, and this practice increased during civil wars in South Sudan (Stern, 2011). This observation was supported by the OCHA South Sudan Humanitarian Bulletin (2016) which asserted that despite subjective and little accessible data, evidence show that child marriage became greater than before December 2013. It was employed as a survival strategy by families suffering from a 2-year conflict and growing economic challenges (OCHA South Sudan Humanitarian Bulletin, 2016). Parents were compelled to marry off their daughters at an early age in a drive to benefit from bride price, reduce the number of mouths they would feed, and as a strategy of shielding their daughters in the current conflict milieu (Cabrera-Balleza et al., 2014). However, Human Rights Watch (2013a) noted that most South Sudanese societies see early marriages as in the best interest of the girls and their families because among other things, early marriage is also perceived as a means to shield girls from premarital sex and unnecessary pregnancy that weakens family honor and diminishes the amount of dowry a family may possibly obtain. Thus, child marriage is common, although South Sudan has a Child Act (2008) that stipulates that there should be no marriage for girls below 18 years. As a consequence, the girls and women's international rights such as economic, educational, health, and security advancement are threatened.

Moreover, widespread early marriages negatively affect other aspects of life engendering and sustaining different forms of GBV. Human Rights Watch (2013a) revealed that widespread child marriages were worsening the country's pronounced gender gaps in school enrollment, contributing to soaring maternal mortality rates and violating the right of girls to be free from violence and to willingly consent marriage. Parents were also encouraged to give their daughters in marriage because more than 51% of the population in South Sudan live below the poverty datum line. Therefore, the monetary value of one cow (approximately 1,500 South Sudan Pounds [SSP], but this figure was affected by high inflation being experienced in the country where 1 US\$ = more than 20 SSP, depending on the days) influences them to sell their young girls into early marriages (Asylum Research Consultancy, 2013). Among other things, the huge numbers of cattle and sums of money that are paid in bride price are enough incentives for families to marry their daughters early.

In line with international human rights standards, the practice of forced marriage and early marriage undermines the girls' survival, development prospects, and participation in education because they are denied the opportunity to gain basic primary

school knowledge. Besides standing on the way of girls attaining an education, early marriages play a role in fueling domestic violence because the young girls are likely to be less knowledgeable about how to take care of a household or relate to a husband (Stern, 2011). This is worsened by South Sudan's very high illiteracy rate which stands at 90% among women (Kameir, n.d.). To augment this viewpoint, Human Rights Watch (2013a) stated that 48% (nearly half) of South Sudanese girls between 15 and 19 years old and others as young as 12 are married. In Jonglei, Unity, and Upper Nile, the most affected states in the country had 1,188 schools closed since December 2013, while more than 90 of the schools were occupied by either internally displaced persons or the fighting factions (South Sudan Education Cluster, 2014). Nearly 400,000 were out of school in the war-affected areas (Graham, n.d.).

In addition, about 54% of schools (36 instead of 66 before the 2013-2016 conflict) were functional in Mayom County. Of the 1,785 villages evaluated, merely 19% had an education facility and, where education amenities existed, 90% were basic primary schools and only 6% were secondary schools and 4% offered adult literacy classes. The schools had a dearth of educational materials, textbooks, furniture, classrooms, and latrines, and schooling at 14 of the functioning schools was taking place under trees (OCHA South Sudan Humanitarian Bulletin, 2016). Consequently, due to continued instability, there was a worsening, instead of an alleviation, of the problems independent South Sudan was experiencing, including low literacy rates and early marriages.

Early marriages in South Sudan have also served to extend other GBV-linked challenges. South Sudan is among other countries with the highest maternal mortality rates in the world (Kameir, n.d.). Early marriages are also inclined to increase the likelihood of birth complications as the bodies of young girls are immature to carry and deliver a child (Mugo, Zwi, Botfield, & Steiner, 2015). The young girls also frequently face challenges in weaning children because of their lack of education, and thus they lack knowledge about the significance of breastfeeding and high-quality cleanliness on their newborns (Stern, 2011). However, South Sudan's high mortality rates should be understood in the context of the country's failure to fulfill its health care needs. Constant insecurity and population displacement further weakened the scope of development. This is worsened by broken infrastructure, low attention to health services, inadequate government capacity and weak human resource base (Mugo et al., 2015). As a result, this signifies that women's rights are in jeopardy.

The Inadequacy of Customary and Statutory Law and Women's Rights in South Sudan

There is little remedy for women facing domestic violence, rape and sexual assault. With the state of police and judicial systems being almost defunct, any defensive laws are barely enforced, and women get modest help and security from state structures. Thus, protection is left to customary law and

customary courts, which too provide little security. As a result, up to 90% of the cases in South Sudan are heard by customary courts (Small Arms Survey, n.d.). In 2013, about 80% of the cases were heard before the customary courts (United States Department of State, 2014). About 90% of women in the country had customary courts as their only avenue of justice (Strategic Initiative for Women in the Horn of Africa [SIHA] Network, 2011). During that time, the desire to have their customary courts resolve disputes was complicated by a number of barriers. These include the incursion of returning refugees, introduction of a cash economy, prevalence of weapons, illegal militias, widespread consumption of alcohol and fragile security organs which to a greater degree have persisted (Haki, 2011).

Wife beating dominated in the domestic violence cases heard by customary courts, although it was not effectively handled. In Juba, wife beating dominated in the cases heard by customary courts. Customary courts, for example, in Mundri tolerated wife beating or spousal abuse because punishment for men hardly went beyond reprimanding and a small fine even where the wife was severely beaten while pregnant. In many cases of wife beating, women were punished for wrongdoing and disrespect instead of the men for abuse (Haki, 2011). Depending on the intensity of the case, customary courts ordered a man to compensate his spouse for the harm inflicted by paying hospital bills or a certain number of cows as fine, or by serving some months in prison in extreme cases (Small Arms Survey, n.d.). In this regard, customary law's inclination toward negotiated and restorative settlements instead of punitive action culminates in many domestic violence cases going unpunished and encouraging high chances of reoccurrence of the domestic violence offenses. This has devastating effects on women because they continue to suffer from various abuses. Statutory court system has few civil law courts and structures across the country coupled with few citizens with genuine familiarity and understanding of civil law (Stern, 2011). Given the inability of both civil law and customary law to redress women victims of GBV, this only aggravates the problem by sending the wrong message that the behavior is acceptable because the law fails to act as a deterrent measure to would-be perpetrators of GBV.

Furthermore, it was observed that the work of the customary courts and statutory courts was confusing and inconsistent hierarchically as the latter were supposed to provide avenues for appeal from customary courts in theory which is not the case in practice. Many of the cases which were taken to the civil court by the affected women were referred to the customary chiefs (who are mainly males from their ethnic group) by the judge. However, complaining to the customary chiefs saw the chiefs ordering the affected woman to obey her husband in line with the culture of the community (Small Arms Survey, n.d.). In most of the cases, the police refused to deal with domestic abuse issues reported by women, arguing that it does not fall under their jurisdiction and sent them home to resolve their differences with their families.

Sexual violence is received by the police with indifference or counteraccusations. In some cases where reports are made, no investigations follow on allegations of rape and sexual violence (Asylum Research Consultancy, 2013). Unfortunately, the Penal Code's Section 247 excludes coerced marital sex as rape despite the violence accompanied with it. The situation is exacerbated by a high illiteracy rate of 70% among the police officers, thus officers have little knowledge concerning civil liberties, human rights, rights of women and children (Jok, 2013b). In fact, police in South Sudan are viewed with mixed feelings ranging from being weak and undertrained, to underresourced to handle cases of GBV and having little knowledge of women's rights. Writing in 2013 using field data collected in Juba, Kuajok, Bentiu, Torit, and Jonglei states, Jok (2013b) noted that the South Sudan National Police Service was mainly criticized for incompetence. This was exposed by the police's drunkenness while at work, entangling in corruption and being either illiterate or merely literate in Arabic language. Again, traditional, cultural, and social structures were more influential and they overrode the professional conduct of most police personnel (Jok, 2013b). As such, personal moral lenses rather than legal constitutional lenses were usually used by the police to hastily judge cases involving women, thus jeopardizing their rights. Consequently, women victims of sexual assault or domestic abuse lacked hope and noted that the police could not aid them to bring the perpetrators of violence to book (Kircher, 2013). This discouraged most women from approaching the police for help with serious consequences on their rights.

SGBV survivors including rape victims in a similar way to domestic violence face several barriers to access facilities or instruments for remedy. Besides prevalent cultural attitudes, humiliation and distress frequently thwarting survivors from reporting SGBV or looking for medical care when needed, those seeking treatment mostly lack access to or understanding of the medical services accessible to them. Essentially, misapprehensions concerning the use of Police Investigation Form 8 (which is a police and medical form utilized in circumstances of GBV) additionally dampen reporting SGBV and prevent survivors from gaining access to medical resources. In addition, high costs related to medical care create another noteworthy barrier. With few trained social workers in South Sudan, prospects for psychosocial services are scant (Gender and Conflict Note, 2012).

Survivors of SGBV have been repeatedly exposed to extra trauma and abuse. The police have been on record for frequently arresting SGBV survivors. Besides, the medical officers were accused of perpetrating the same cultural biases as the police because they willingly concluded that the assault was attempted rape and this hardly supported a woman in court (Jok, 2013a). As a result, customary instruments of mediation that the SGBV survivors were left to use in Juba and its environs widely conflict with the formal mechanisms. Again, in dealing with the challenge of GBV

NGOs met a variety of problems. These ranged from bad social and cultural customs that promote GBV; aloofness because of humiliation and stigma which prevents reporting to feeble law enforcement organs which do not accord GBV issues the seriousness they deserve and the inability to deal with perpetrators (Gatimu, 2015). To further compound women's rights violations in South Sudan, the ill-conceived but culturally revered belief that reporting cases of sexual violence and rape bring shame to the woman and her family influenced most women from both rural and urban areas not to report abuses in quest for justice (Stern, 2011). Undoubtedly, this further validates our assertion that women's rights remain in jeopardy in South Sudan.

Opportunities for Alleviating the Women's Rights Violations

Other NGOs may learn from the work of MSF the only NGO agency currently operating in war-torn areas. The obligations of both UNMISS and its precursor, the UN Mission in Sudan, were extensive and vague with extremely ambitious POC objectives. As a result, both suffered from the military component's lack of the skills, capacity, and readiness to practically protect civilians. Underresourcing, inadequate troops, feeble transport and logistics incapacity and conflicting responsibilities posed operational challenges to both missions (Fenton & Loughna, 2013). The failure of the UNMISS was largely due to the fact that it began as a peacetime operation only to redefine its objectives and mode of operation later (Rolandsen, Glomnes, Manoeli, & Nicolaisen, 2015). However, this did not solve its problems of being outnumbered and ill-equipped, and thus imperiled its future and that of such UN-backed foreign operations. Accordingly, more NGOs and the government should be encouraged to seriously consider the expansion of education on human rights (regardless of the conflict or its ending) in other parts of South Sudan to alleviate the plight of women and girls.

In addition, women organizations in South Sudan play a significant role in an effort to address the challenges concerning women's human rights and their violations. Some of the women organizations which exist in South Sudan include but are not limited to the South Sudan Women's Empowerment Network (SSWEN; established in the diaspora in the United States in 2005 and from 2008 it created a number of chapters across South Sudan including in Warrap, Western Bahr El Gazal, and Central Equatoria), Diar for Rehabilitation and Development Association (DRDA; based in South Sudan Lake States and has an office in Rumbek), Strategic Initiative for Women in the Horn of Africa (SIHA) Network. Added to these are New Sudan Women Federation (NSWF; centered in Juba, it operates in Yambio, Bor in upper Nile State), EVE Organisation for Women Development (headquartered in Juba and it works in South Sudan's five states, namely the three Equatorial states, Jonglei state, and Western Bahr el

Ghazel state), and Women's Training and Promotion (WOTAP; found in Western Bahr El-Ghazal State's Wau area). These organizations provide service in wide-ranging needs of women comprising HIV/AIDS education, community organization, dissemination of information, and preventive interventions. More so, they take part in adult literacy, democracy building, promotion of women's socioeconomic, political, and human rights, peacebuilding, building women's capacity for economic participation and small business enterprise trainings.

In addition, SSWEN, Partnership Against Violence and Exploitation (PAVE), and Girl Not Bride are committed to fight against child marriage practices in areas that include Yambio, Maridi, and Juba where these groups and their programs have been very fruitful in getting girls to school. In this regard, the organizations and their programs need to extend their work to other areas, including Bor, upper Nile region, and Lake State where most families primarily perceive dowries as a source of income (Ajok, 2016). Besides, SIHA Network (2013) noted that there are a number of constraints on the activism work of women organizations in South Sudan, specifically in Juba and Wau. These include low capacity relating to funding and technical knowledge. As a result, this limits outreach to rural areas, ethnic conflict, and lack of intergenerational dialogue between younger women and older women generation of activists. This instead generates competition where cooperation and complementarity are expected, poor communication, and relations between women's organizations and grassroots women. Furthermore, there develops competition between the women's movement and women political leaders; and high illiteracy levels among women in rural areas, and this limits women's rights advocacy to only sharing basic concepts of rights (SIHA Network, 2013). It is apparent that women organizations and programs exist in South Sudan dealing with violations of women's rights but face several problems and do not cover the whole country, hence the need for overcoming the challenges and expanding geographical areas of operation, respectively.

South Sudan's Transitional Constitution and the Penal Code have some protection of the rights of women, although these have been violated repeatedly. Therefore, stakeholders should be encouraged to take a strong interest in upholding the rights of women enunciated in the legal framework of the country. More so, comprehensive and uniform national laws addressing the rights of women need to be clearly written and enforced in a permanent constitution for the country. In fact, rights in abstract lacking the organizational structure that back these rights like legal institutions culminate in limited protection and may eventually endanger women instead of securing them (Aldehaib, 2010). The situation was worsened by the country's justice system's lack of capacity to deal with the crimes in the country, and this was coupled with the lack of political will from the government (Human Rights Watch, 2014b). To ameliorate the situation, it is

critical for the international community to help capacitate the country's justice system ranging from the courts to the law enforcement agencies.

The discrepancies between customary and statutory law should also be overcome by learning from what other countries in Africa did. Kenya, for instance, outlawed any customary law that discriminates against women, or violates the international or national norms (Bubenzer & Lacey, 2013). A clear demarcation of where customary law starts and ends and is overridden by the national constitution is needed. This may assist immensely in getting rid of the inconsistencies and contradictions in customary law and civil law. This will help bring justice to women if such a provision is religiously and impartially implemented. Despite having a good constitution in East Africa with a liberal bill of rights among other things, Kenya is facing implementation challenges eroding all that the constitution stands for (Mbondenyei, Asaala, Kabau, & Waris, 2015). Intrinsically, educating the chiefs and other stakeholders on women's rights, the country's bill of rights, and how to address better violence against women and outlawing all the practices that discriminate against women need to be prioritized if South Sudan acquires a permanent constitution.

South Sudan should also learn from the growing level of participation of women in politics in other countries in Africa such as Rwanda and South Africa. Nevertheless, there is a debate over whether the increased participation of women in politics results in pro-women policies and practices, especially in neo-patrimonial and authoritarian regimes. Burnet's (2008) work on Rwanda demonstrates a paradox that in the short term while women's political participation increased, their ability to influence policy making decreased. However, this is not underestimating that an improvement in the number of females in government has the capability of laying the foundation for women participation in a legitimate democracy (Burnet, 2008). In addition, Tripp (2015) using Uganda, Liberia, and Angola demonstrated that post-conflict countries have substantial rates of women's political representation in parliaments and government in comparison with countries that have not experienced major conflict. A combination of the upsurge in women's movements, adjustments in international women's rights standards, and most prominently, to gender interruptions that happen during war explains how and why these configurations developed. Consequently, South Sudanese women should build on their previous achievements such as assuming gender roles beyond the traditional gender norms during wartime (Stone, 2011) and the peacebuilding role they played through mobilizing support for the country's fruitful January 2011 referendum (Ali, 2011).

In light of the above, women's opportunities to work in more powerful positions, including within families, during the war doubtlessly reveals some agency on the part of South Sudanese women and communities which they may capitalize. This is not an attempt to ignore the works that point out

that women's wartime contributions (mindful that the term *combatant* covers many different realities) rarely ever equate with postwar equality (Weber, 2011). Besides, Pinaud (2013) revealed that the significant role women played during the second civil war in South Sudan was fast fading as state-sponsored history was taking shape purposefully extolling and simultaneously eliding some voices, particularly of women ex-combatants. However, it is an attempt to emphasize that the roles women assumed in the absence of men during conflicts at times may validate their capability to be able to sustainably break the traditional ideological barriers which prevent them to join any job formerly regarded as men's domain.

Furthermore, the 25% affirmative action measure for women at legislative and executive levels was a good step toward the empowerment of women into positions of authority in South Sudan. However, as Pinaud (2014) observed, a lot of corruption has marred the allocation of the 25% positions to women. The affirmative action measures were used by the military elite to employ their female spouses and those of the lower stratum members to occupy crucial posts in the security sector and government (Pinaud, 2014). As a result, the 33% of women in the country's parliament while on face value can be seen as a good step (Ali, 2011), the affirmative action criteria should be implemented devoid of corruption and extend to all levels to promote genuine equal participation and representation between men and women.

Conclusion

By the end of 2016, GBV was widespread in South Sudan. Domestic violence, forced marriage and early marriage, and rape among other violations of women's rights were being rampantly perpetrated in the country. Postindependence transition, peacebuilding, and reconstruction cannot take place when customary law and civil law are in contradiction, thus both failing to safeguard women's rights. This apparently calls for the South Sudanese government to clearly articulate women's rights by bridging the gap between customary law and civil law. Education and training for both men and women can be used as a vehicle for removing the barriers toward the protection of women's rights, gendered participation, and equitable representation in the decision-making processes. Accordingly, for a lasting gendered postindependence reconstruction and peacebuilding to be a success story, the country (provided the civil war is quickly ended) can use education which is the nerve center of peace and sustainable socioeconomic development guided by a new permanent constitution. In addition, an expansion of the role played by women organizations in South Sudan in an effort to address the challenges to women's human rights and alleviating the challenges the organizations and programs are currently facing will also go a long way in improving the current state of women's rights.

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