

GENDER INEQUALITY, AN EXAMINATION OF LAW AND PRACTICE IN SOUTH SUDAN

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DECLARATION

I **JOHN MALITH MABOR** declare that this report on the “Gender Inequality, an examination of Law and practice in South Sudan” is my original work and had never been submitted to any academic institution for any kind of award.

Signature.....*John Malith Mabor*.....Date:.....*19/09/2012*.....

APPROVAL

This is to certify that this research was carried out under my supervision and approved as a student's original work.

Signed this 19th Day September of 2012.



MS. EMMA SSALI

SUPERVISOR

DEDICATION

I dedicate this piece of work to my dear parents, Mr. Akec Jong Tokmac and Mrs. Icol Kulang Mou for their parental and financial support in my academic life, not forgetting my younger brothers, sisters and cousins of great Jong's family.

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It is my pleasure to convey humble gratitude to my supervisor Ms. Emma Ssali for her support in the time of writing this report. I must mention her responsible critics, advice, guidance and ultimate understanding which eventually enabled me to successfully complete my report. I must thank her for unique suggestions that made my work to be a better piece.

I also convey my sincere appreciation to the government of South Sudan for the financial support it has been rendering to students studying abroad regardless of economic challenges the government is facing.

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I do acknowledge the contribution of Mr. Agok Manyiel Dhieu, the former commissioner of Yirol West County and His Excellency Daniel Awet Akot, the former governor of Lakes State and currently the deputy speaker of South Sudan legislative assembly without whom I would not have been released for the studies.

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ABSTRACT

This study “Gender Inequality, an examination of law and practice in South Sudan” was carried out in the three states of South Sudan, that is Lakes State, Central and Eastern Equatorial States with the aim of examining all circumstances which rise to gender inequality by considering loopholes and ineffectiveness of the law to provide maximum protection to women, the study analyzed the various cultures of South Sudan and how they are inconsistent with the legal system of South Sudan as far as equality and protection of women’s rights is concerned and the research reviewed literature for various scholars, international conventions and treaties and as well regional and national legal instruments that guaranteed equal rights to both men and women and those which provide for protection and promotion of women’s rights.

Gender inequality is very common in families of South Sudan in front and behind the rails, despite the legal measures and steps taken and this has brought a concerned putting in mind the facts that women had the same ability with men to equally participate in all aspects of life like men, they are important actors in social development and play important role in poverty eradication, good governance and governmental management, national building among others.

The study recommends law reforms in South Sudan, ratification and accession of international conventions and treaties that guarantee women rights and equality for all

Codification of South Sudan customary laws, transforming the role and concept of bride prizes and marriages, gender sensitive judicial system, clear and strong policies to encourage women participation in public life, policies on property ownership and inheritance, creation Of gender desks in police stations throughout South Sudan, advocacy through media, seminars and states or regional conferences on equality of both men and women and that women deserve to be accorded equal dignity with men and a need for access to justice programmes and legal aid in which women who became victims of violence, discrimination and injustice shall be saved and become the beneficiaries of the program.

LIST OF ABBREVIATIONS

CPA	Comprehensive Peace Agreement
NCP	National Congress Party
SPLM	Sudan People Liberation Movement
RSS	Republic of South Sudan
TCRSS	Transitional Constitution of the Republic of South Sudan
SAS	Small Arms Survey
CEDAW	Convention on Elimination of All Forms of Discrimination Against Women
UNFPA	The United Nations Population Fund
DPK	Democratic Party of Kurdistan
UDHR	Universal Declaration of Human Rights
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant Economic, Social and Cultural Rights
ACHPR	African Charter on Human and People's Rights
UNHLCVAW	United Nations Handbook on Legislation on Violence Against Women

LIST OF CONVENTIONS AND STATUTES

1. The UN Charter – 1945
2. The Universal Declaration of Human Rights – 1948
3. The International Covenant on Civil and Political Rights – 1966
4. The International Covenant on Economic, Social and Cultural Rights – 1966
5. The Convention on Elimination of all Forms of Discrimination Against Women -1979
6. The Vienna Declaration and Programme of Action – 1993
7. The African Charter on Human and People's Right
8. The Protocol on Rights of Women in Africa
9. The Transitional Constitution of the Republic of South Sudan, 2011
10. The Penal Code Act, 2008
11. The Child Act, 2008
12. The Local Government Act, 2009

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succession and inheritance, witchcraft violence, degrading treatment to widows, domestic violence; women killed or raped by their partners and defilement of children under all kinds of circumstances.

Years of war had a devastating effect on the country's justice sector. Much of the limited court infrastructure that existed before the war was destroyed as chronic insecurity prevented development, legal education, and the formation of an effective legal system. As a result, South Sudanese have had limited recourse to the formal justice system. As is the case in many African countries, people rely almost exclusively on traditional courts.

Against this background, the research focused on South Sudan as a model of the broader challenges facing women. Despite certain legislative measures put in place by the Legislative Assemblies of the Government of South Sudan and its state governments, some measures continue unabated for the balance of traditions and culture with women's rights issues. Although South Sudan is more progressive in terms of Constitution and practice than its war-torn neighbours, a lot still needs to be done particularly in the area of harmonization of gender equality laws. Regrettably, in South Sudan respect for the Constitution is superficial and lacks substantive policies that would promote the observance of women's rights, despite the 25% provision for women's participation in government and public service. To this extent, the balance of democratic values and promotion of women's rights issues within the continent lie in women being partners in development rather than unduly suffering under the intense burden of culture, tradition and societal stereotypes.

1.1 BACKGROUND TO THE STUDY

Customary laws of South Sudan's many tribes play a critical role in regulating South Sudanese society. During the civil wars customary law provided an important source of cohesion and order in families and communities. It became a means with which responsibilities were enforced and family support was ensured. Yet the reliance on customary practices has also had negative consequences for women. In many countries customary laws do not provide sufficient protection for women. They are deeply patriarchal, casting men as the undisputed heads of their families, with women playing subservient roles.

While the 2011 Transitional Constitution of the Republic of South Sudan (TCRSS) guarantees human rights and equality for all, there is a conflict with numerous rules of customary law which continue to violate women's rights. As the new state develops its justice sector, drafts new laws, and establishes a functional legal system, it faces the challenging task of reconciling customary law with the guarantees of human rights that are enshrined in the constitution. The UN Handbook on Legislation on Violence Against Women¹ specifically addresses this situation and recommends that "where there are conflicts between customary and/or religious law and the formal justice system, the matter should be resolved with respect for the human rights of the survivor and in accordance with gender equality standards"².

An individual plays a fundamental role in society by imposing his authority and power so as to control and influence the society. Gender as a system of socially defined roles, privileges, attributes and relationships, between men and women reinforces this role of the individual so as to meet the expected social, cultural, political, economic and legal results. Gender would not in itself be an issue because it is a recognizable fact that a person is either a man or woman but it

¹ UNHVAW, 2009
² Recommendation 3.1.5

becomes an issue because the fact of being a man or woman will determine the status accorded to the person's rights and duties³.

The structure of the society itself affects woman and man differently. The division of labor is crucial to the development of any society, beyond the most rudimentary form. Sexual division of labor is the one universal and apparently societal essential type that affects development in all spheres.

The notion of "separate" spheres for men and women plays a fundamental role in propagating the politics of gender inequality. The appropriate sphere for men and women to control and influence each other, are, for men, the realm of public life, while women should be confined to their proper place, the home.

As Ruskin asserted;

"The man in his thought rough in the open world, must encounter all peril and trial, where as the women's power is for rule not for battle and her intellect is not for invention or recreation. But sweet ordering, arrangement and decision"

Women participate in a number of areas of society where their roles in the control of others are very important for instance the traditional domestic sphere of the home, in the community welfare and in the feminine semi-professional and then either no or limited protection and support.

The laws regarding women, lack coherence, consistency and some even conflict and some of them discriminate against women. Probably this is why women's rights continue to be abused

³ UN Declarations, 1993

and her role out looked. Some laws have been silent on sex-based discrimination, thus giving agreement to customary practices which single out women as a particular group of disfavor.

1.2 STATEMENT OF THE PROBLEM

Although Sudan is a party to the United Nations Universal Declaration of Human Rights (UN, UDHR) and despite having ratified and acceded to the Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW), gender inequality still exists between men and women. Women are treated as second class citizens whose roles are diminished and downgraded in all aspects of life and society. Oppression and exploitation of women still continues all of which are not only contrary to the principles of justice and human rights but also undermines development. This study therefore seeks to investigate gender inequality; the role of the current laws and practices that limit women’s participation in the development in South Sudan. The study will also generate recommendations for mitigating gender disparities between men and women in South Sudan.

1.3 OBJECTIVES OF THE STUDY

The study will be guided by the following objectives:

- 1) To examine the causes of gender differences between men and women in South Sudan.
- 2) To analyze the existing norms, cultures, traditions, concepts and beliefs that limit women’s participation in the societal development.
- 3) To determine the extent to which relevant gender laws are applied in enhancing women’s rights in South Sudan.
- 4) To explore and recommend legal gateways for enhancing women’s access to legal justice and subsequently enjoyment of their legal and basic rights.

1.4 RESEARCH QUESTIONS

- 1) What are the causes of gender differences that exist between men and women in South Sudan?
- 2) What norms, cultures, traditions, concepts and beliefs legitimize the discrimination of women in South Sudan?
- 3) To what extent does relevant gender laws apply in enhancing women's rights in South Sudan?
- 4) What recommendations can be proposed to enhance women's justice and enjoyment of their rights in South Sudan?

1.5 SCOPE OF THE STUDY

The study was conducted in South Sudan. Special reference was paid to all aspects regarding women's rights and access to justice.

1.5.1 Content Scope

The study analyzed gender inequality and the application of relevant laws within the framework of women's participation in the development in South Sudan. The study also analyzed norms, cultures, traditions and beliefs that hinder women's participation and active involvement in various practices relevant to their abilities and capabilities.

1.5.2 Time Scope

The study was carried out between December 2011 and June 2012.

1.5.3 Geographical Scope

The study was carried out in Lakes State, Central and Eastern Equatoria State in South Sudan.

1.5.4 Research Methodology

The method used in this research comprised of both primary and secondary data. The data obtained from secondary sources included information from UN Conventions, African Protocols

as well the Republic of South Sudan Laws. The primary data involved getting information from the field by using questionnaires, interviews and observation.

This study used both qualitative and quantitative methods to analyze data on Gender Inequality, law and practice in South Sudan.

1.6 THEORETICAL FRAMEWORK

Gender laws provided the backdrop against which the issues of gender inequality and inadequate protection of the law for women against violence will be assessed. The development of feminist thought explicitly questions women's exclusion and marginalisation which is part of the wider struggle by women to achieve gender equality. Liberal feminism, in particular, advocates equal rights for women and examines why women are treated as "less than", where men provide the gauge against which they are measured.

Consequently, a combined theoretical approach is required. Critical theory further allows for not simply the examination of formal institutions but the placement of law, legal instruments and associated institutional framework into a broader social context of male power and dominance and lack of political will in the assessment of law as an agent of change for women.

1.7 SIGNIFICANCE OF THE STUDY

The study is expected to benefit the following stakeholders;

- i. The study will provide literature on gender related issues in South Sudan to be used by interested parties and stakeholders like NGOs, women groups that are based on gender related issues.
- ii. The findings of the study will contribute relevant knowledge on gender inequality and women's position in the society with a view to facilitate the formulation, intervention and the planning process by interested groups and stakeholders.

- iii. The findings of the study will provide relevant mechanisms that will help establish proper sensitization models which will help in the elimination of all forms of injustice to women in South Sudan.
- iv. The research findings will be used for comparative studies such that we are able to see similarities and differences that exist between different communities in South Sudan.
- v. The study will generate recommendations which can be used by policy makers, planners, NGOs and government officials which will be used to create relevant laws that will enhance women's participation in the society.

CHAPTER TWO

LITERATURE REVIEW

2.0 Introduction

This chapter presents the literature review. It analyzes studies and reports written about the subject matter of women inequality with both a local and international perspective. Comparative studies already done will be presented for comparison purposes.

2.0.1 Gender

This is in accordance with the definition set out in the United Nations' Implementation of the Outcome of the Fourth World Conference on Women,

...gender refers to the socially constructed roles played by women and men that are ascribed to them on the basis of their sex. Gender analysis is done in order to examine similarities and differences in roles and responsibilities between women and men without direct reference to biology, but rather to the behavior patterns expected from women and men and their cultural reinforcement⁴.

These roles are usually specific to a given area and time, that is, since gender roles are contingent on the social and economic context, they can vary according to the specific context and can change over time. In terms of the use of language, the word "sex" is used to refer to physical and biological characteristics of women and men, while gender is used to refer to the explanations for observed differences between women and men based on socially assigned roles⁵.

⁴ Adam Jones, "Does 'Gender' Make the World Go Round? Feminist Critiques of International Relations", *Review of International Studies*, 22:4 (1996), pp. 406-407.

⁵ United Nations, General Assembly [online], "Implementation of the Outcome of the Fourth World Conference on Women: Report of the Secretary General", A/51/322, 03 September 1996.

Socio-cultural constructions of gender are reinforced by both sexes as they tend to deliver what they perceive as expected of them

2.1 Legal foundation of subordination of Women. A Historical overview of gender relations

Various theories have been advanced in support of universal female subordination⁶. This implies that the subordination of women has been perceived to be a natural phenomenon by male dominance. It has been asserted that the present status of women is a far cry from being the direct work of nature, which the status of women has been determined by historical conditions and has varied with history. Collines (1971) argues from a Freudian perspective that women's subordination is fundamentally a result of means of sexual lust. Men, according to Collines have used their size and strength to coerce women. Tier on the other hand asserts that male dominance arises from their sexual bonding⁷.

The women subordinated position cannot be appraised without looking at the reality of the normative value in society. These are often founded in age old institutions and customs and in the overall notion of culture.

Secondly, the social structure in South Sudan and other Arab countries are the location of insubordination and oppression given their communitarian nature and patrilineal outlook⁸. Thirdly there is the problem of dilemma of the status and identity of women as the gender member of the community or society. Women tend to be looked at in terms of daughter, wives, sisters and mothers with defined roles within the patrilineal society and therefore with no appropriate separate identity and status to which rights and dignity are attached to them. This is further reinforced by stereotypes assigned to them; thus in society women are perceived as

⁶ A post-modern method of analysis

⁷ Rosenau, Post-Modernism and the Social Sciences, p. 123.

⁸ Quote from Lona James, Conference on "Gender Equality", Juba, May, 2012

omissive, gentle, kind, weaker sex, faithful, loyal, this has earned for them a lower position, that not only subjects their roles to male control and influence but also oppress and subordinate them in society.

History not only stopped looking at woman as a gender or weaker sex, but accorded her a domain in which she is to reign. Accordingly she is to reign in the home as a minister reigns in the state. Her influence on events is to be exerted primarily in her role as a wife or a mother. This influence usually works by sustaining or inspiring the male to exploit female intellect and influence for his own benefit in society, subsequently leading to woman's subordination

Wheaton summarized the importance of this concern for the female role for control and indeed the stability of society itself. He said.

Women are of a softening influence, they purvey moral values and sentiments of the young; they are the civilizers of children and sometimes of men; it follows...that when women are chaste, unfaithful, unseemly, and vain or frivolous, their ostensibly private behavior is diffused with public implications. Why? Because the basis of male public citizenship would disintegrate if his private would collapse, as the citizen is also necessarily a husband, father, head of the household (Emphasis mine).

The values and conception of status and identities become reflected in our national legislation and in the decision of the courts. Through this, law becomes a tool for domination and impoverishment of women as well as promoting the interest of men. Law stops being seen as a divine and necessary ideology instead it subjugates as an inevitable and natural condition.

2 The parallel legal frameworks

Two bodies of law operate side by side in South Sudan. Statutory law is generated by the state and consists of the constitution, legislation, and precedent created through court judgments. Until a final constitution is drafted, the 2011 transitional Constitution is the highest law of the land and all other laws must be consistent with it. More than 40 laws have been drafted for the new state, among them legislation that has a direct bearing on women's security, such as the Penal Code Act (2008), which sets out various criminal offences, and the Child Act (2008). Operating alongside the statutory system is that of customary law, which consists of numerous unwritten bodies of law that have regulated South Sudan's tribes for centuries.

The laws of both systems are binding. The 2005 Comprehensive Peace Agreement, which marked the end of the war, recognized customary law as valid, stating that:

All personal and family matters including marriage, divorce, inheritance, succession and affiliation may be governed by the personal laws (including Sharia or other religious laws, customs or traditions) of those concerned (GoS and SPLM/A, 2005, ch. 1, para. 6.4).

The Interim Constitution confers legal recognition onto customary law in a number of provisions. The two bodies of law are to operate in parallel, both forming critical parts of South Sudan's burgeoning legal system.

Despite the distinct hierarchy in the system, the courts work together in a confusing and often inconsistent manner. Statutory courts, which form the top tiers of the hierarchy, are supposed to provide an avenue for appeal from customary courts.

presided over by judges with formal legal training, these courts apply predominantly statutory law, but also some customary law, partly in the context of appeals from customary courts. The customary courts represent the bottom tiers of the hierarchy.

Although a subject matter division was envisaged between the different types of courts, attempts at enforcing this have been ineffective.

Referrals from customary to statutory courts are made inconsistently and without clear regulatory guidelines, with individual chiefs adjudicating in the manner they feel is appropriate. Given the poor state of the statutory courts, customary courts hear the vast majority up to 90 per cent of cases. While it is theoretically possible to appeal from the customary to the statutory courts, the widespread absence of statutory courts prevents many South Sudanese from accessing the formal legal system. In a 2009 workshop held in Bahr el Ghazal, one woman described the challenges women face in accessing courts:

‘If you complain to the civil court, the judge will mostly refer you back to the customary male chiefs in your tribe. You complain to the male customary chiefs and they will ask you to obey your husband and follow our community culture [...]. Actually we don’t know where to find justice (Aldehaib, 2010).

Chiefs who preside over customary courts are generally older men with deeply ingrained patriarchal views, which are reflected in their decisions. Research shows that chiefs are more easily swayed by men’s interests and points of view and that their judgments are often biased in favour of men (UNFPA and DPK, 2008). As in many African countries, customary courts are often held out in the open, for example under a large tree, and community members are free to observe the proceedings. Normally many more men than women attend the courts, which can

make them intimidating for a woman. Chiefs also take crowd support and opinion into consideration. A largely male crowd can thus influence matters in favour of male litigants. The local chiefs courts in South Sudan is mainly comprised of male and no female members.

As customary law is unwritten, **chiefs seldom refer** to written sources for guidance on punishment, although some do have copies of the penal code, to which they refer. A recent study compares customary court cases in four regions of South Sudan, revealing significant variation in decisions and sentences. Court decisions varied between rural and urban areas, between different tribes and populations, and depending on the attitude and education level of the individual chiefs (UNFPA and DPK, 2008). Such variations preclude any sense of confidence in the law, meaning that women cannot look to the courts for guaranteed or consistent protection.

Across the country, law enforcement services are weak and police are undertrained and under-resourced. In particular, police are given little training on how to handle cases of gender-based violence and for the most part, they have little knowledge of the concept of women's rights. Women in focus groups explained that police often refuse to deal with women who report domestic abuse, claiming that this area falls outside of their jurisdiction and sending them home to address the issue within their families. Women complain that police meet reports of sexual violence with indifference or counter-accusations (D'Awol, 2011). Police officers are perceived to be incompetent or corrupt and are known to set suspects free in exchange for small bribes (Small Arms Survey, 2010). In some cases, police have reportedly arrested rape victims for adultery or incarcerated them for their own 'protection' until a perpetrator was caught.

Police insensitivity can be a significant barrier for women who are seeking protection.

The newly developed Special Protection Units seek to address this shortfall. Situated at police stations, these specialized units are staffed by police who are specially trained to assist women and children offering legal aid, protection, medical care, and psychosocial support. The development of these units has been slowed by a lack of trained personnel, however, and they remain largely unavailable outside of major urban centres.

2.3 Customary law and women

Customary law is said to be the legal expression of the practices, customs, and beliefs of the people. Chief Justice Ambrose Thiik explained that customary law ‘embodies much of what we have fought for these past 20 years. It is self-evident that customary law will underpin our society, its legal institutions, and laws in the future.’ Customary law took on great importance during the war, as family units and formal structures were disrupted, with people relying more heavily on customary practices to regulate their lives.

South Sudan is home to more than 50 tribes, indeed 64, each of which has its own customary laws and traditions. While these bodies of law are characterized by significant variations, they also have many commonalities, particularly with respect to family issues such as marriage, divorce, custody, and inheritance which have a strong impact on women’s security. All of the systems of customary law are inherently patriarchal, relegating women to a lower status in the family and community and perpetuating and enforcing a number of customs and traditions that are harmful to women. Proponents of the law maintain that the role and status of women must be seen in the context of a culture whose upmost value is family cohesion; from this standpoint, women and men’s positions are equally critical to the family unit’s survival, with the woman’s subservient position fulfilling an important social role.

In Eastern equatorial State it is a customary practice to compensate a girl child to the family whom their person is killed by the family of the girl, they argue that if the murderer had no cows his sister or the daughter to his relative can be paid as a blood compensation to the people of the deceased.

2.4 Domestic violence

Levels of domestic violence are extremely high in South Sudan (Small Arms Survey, 2010; Stern, 2011). Customary law allows a certain level of violence in the home and permits a man to 'discipline' his wife. Although cases are rarely reported, women may appeal to customary courts if the violence exceeds a reasonable level. That level varies greatly depending on the location, the court, and the individual chief. Domestic violence is often condoned by a court if a wife is found to be 'behaving badly' or not fulfilling her duties, such as by failing to cook for her husband, insulting him, or drinking. Many of the women who take their husbands to court for excessive abuse may end up themselves sentenced by the courts; wives are sometimes punished more harshly than their offending husbands, for example by receiving a larger number of lashings.

As noted above, customary courts aim to preserve marriages. Rather than granting a divorce in a domestic violence case, a court may order a man to compensate his wife for harm inflicted, such as by paying her hospital bills. Alternatively, he may have to pay a fine of a certain number of cows or in extreme cases serve several months in prison. In deciding whether to grant a divorce, courts place an emphasis on whether the man wishes to remain in the marriage. A court is likely to order a woman to remain with her husband if he does not wish to be divorced and apologizes to his wife, promising to desist from further excessive beating. Among the Bari and other tribes, such promises take the form of a symbolic licking of a traditional spear in court. A guiding belief holds that if the promise is not made truthfully, the spear will harm the person.

Courts only grant divorces to couples if the domestic violence reaches a certain level of gravity or regularity, or if the violence can be seen as evidence that a man has disowned his wife. This position has occasionally provided an incentive for men to beat their wives repeatedly in order to force a divorce. If a divorce is not granted, a woman is almost always compelled to return to her abusive husband, with little done to protect her from further harm. As a result, women are often afraid to report domestic violence, fearing that their husbands will only become more irate. Notably, a man only has the right to use violence against his wife or his daughter. Courts take violence that targets non-family members more seriously.

2.5 Ownership of property and inheritance laws

Women's capacity to own property is among the main factors affecting their security.

In a severely underdeveloped country such as South Sudan, which has little in the way of social security and assistance, an abandoned woman who is left without a home or property may become completely destitute. The Interim Constitution expressly states that women have the right to own property and to share in the estates of their deceased husbands. Customary law differs on this point, however, focusing instead on ensuring that property remains within families. Although property is owned by a family, it is held by the man, as the head of the household an arrangement that is often confused with that of 'ownership'. According to the customary laws of many tribes, women cannot own property in their own capacity, nor may they keep their own income.

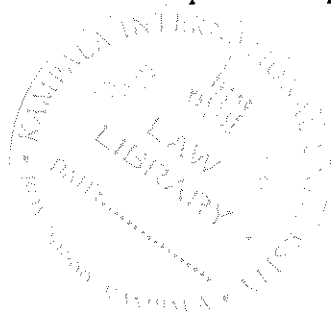
On leaving a family through divorce, a woman forfeits all of her belongings, which continue to be owned by the husband's family. The threat of being left with nothing can thus serve as an enormous disincentive to divorce. Property also becomes an issue after the death of a spouse. According to most versions of customary law, death does not terminate a marriage. A widow is

therefore still considered married to her deceased husband. The deceased's property remains within his family, dispersed among his male relatives. Widows thus find themselves dependant on their deceased husbands' families for support. It is not uncommon for them to be evicted from their homes and left with nothing. This became a serious problem during the war, when a large number of men were killed, leaving widows behind them. One of the ways in which South Sudanese society dealt with this problem was with the practice of 'wife inheritance', in which a wife was 'inherited' or remarried to the deceased's closest male relative. This practice, which dates from well before the outbreak of civil war, had its origins as a means to guarantee support for widows.

2.6 Sexual violence

While the law in South Sudan prohibits sexual violence, most sexual violence cases do not make it to the courts. Women are often made to marry their rapists, an option preferred by some as it prevents men from going to jail and avoids the stigma attached to women who are known to have been raped.

If a sexual violence case is taken to court, the chances of conviction are low, largely due to factors including the poor investigative capacity of the police, the evidentiary challenges associated with sexual violence, and court biases. Officially, customary courts are not supposed to hear serious criminal matters such as rape; they are expected to refer these cases on to the statutory court system. In practice, however, customary courts frequently do try rape cases. If perpetrators are convicted, punishments are often mild. A rapist might be sentenced to a short prison term sometimes around three months or might be forced to pay compensation to a woman's family if she is unmarried or to her husband if she is married. To a great extent, those who rape get away with the crime, perpetuating a perception those men can rape with impunity.



Notably, section 247 of the Penal Code Act specifically excludes coerced marital sex from the definition of rape, regardless of the level of violence that accompanies it.

However while coerced marital sex is thus not against the law, the violence accompanying the act may constitute a different crime.

2.6.1 Forced Marriage

In South Sudan there are cultures which totally neglect the rights of women with in Dinka community and other tribes who keep cattle there are elements of force marriage, a girl shall be force to accept a person she doesn't want if the person had paid cows .

2.7 Tensions between customary law and human rights

The Interim Constitution which is now transformed into the Transitional Constitution of the Republic of South Sudan states: ‘All persons are equal before the law and are entitled to the equal protection of the law’ (GoSS, 2005, s. 18). It adds that ‘[w]omen shall be accorded full and equal dignity of the person with men’ (s. 20(1)). Yet the Interim Constitution also grants legal recognition to customary law. The potential conflict between these provisions is addressed in the constitution, which clearly states that authorities may apply customary law ‘subject to this Constitution and the law’ (s.174 (3)). Legally, this means that customary law is binding and applicable to the extent that it does not conflict with the rights in the constitution. Rules of customary law that violate constitutional rights are therefore unconstitutional and at least in theory may no longer be applied.

In determining how this problem should be addressed and what role customary law should play in the future, it is important to consider how the people of South Sudan perceive the law and its corresponding court system. At a political level, customary law has been continuously bolstered. Politicians have repeatedly emphasized that it will form an important basis for the nation’s legal

system. The Sudan People's Liberation Army's statutory reform of 2003, in which the legal basis for the state was established, also accords it great legitimacy. The statutory courts, too, have affirmed customary law, with South Sudanese jurisprudence continuously incorporating customary practices in its rulings. Moreover, the vast majority of residents of South Sudan support it.

2.8 International Law, gender equality and human rights

Law is a social phenomenon. It has grown into an essential principle of social organization in Western civilizations as a result of the historicity of those societies.²⁰⁰ Law functions as the formal machinery for creating and maintaining social order, as seen in the Western world and is often perceived as an instrument to effect change. The plight of women with respect to their fundamental rights is almost universal in nature and therefore it is hardly surprising that there are calls for the issue to be addressed at the international level. This "top-down" approach has many supporters as it is commonly felt that the near global phenomenon of gender inequality can only be resolved by a common approach implemented across state borders. Important, therefore, is an assessment of the effectiveness of international law⁹ as an instrument to effect change in the context of women's rights.

An examination of the relationship between international law and gender will provide the basis for the argument that international law on many occasions fails to contemplate a gender perspective and, even when this is done, the effectiveness of the legal regime is called into question. This aside, issues of sovereignty would suggest that exclusive reliance on international law to effect change is perhaps ill-advised and would explain why women's issues in particular are not universally or fully implemented with alacrity, or even at all¹⁰. This part, therefore,

I. Shearer, *Starke's International Law* (London: Butterworths, 1994), p. 3.

¹⁰ See Malcolm Shaw, *International Law* (Cambridge: Cambridge University Press, 1997), p. 1.

analyze the development of international law, expose its male nature and discuss the manner in which the international rights discourse has developed in this regard fundamentally privileging men. The chapter goes on to examine the ‘reinvention’ of international law in an attempt to carve a place for women’s rights as a real issue at this level.

Legal initiatives designed specifically for the promotion of gender equality and protection for women against domestic violence at the level of the United Nations are assessed and so too are a couple of non-gender specific conventions with the potential to enhance women’s rights¹¹.

An examination of the feminist work in international relations towards the end of the chapter further points to the heavily gendered nature of international relations, and consequently, international law.

2.8.1 Reinventing International Law: Women’s Rights as Human Rights in the International Community

A child of the inherently patriarchal and andocentric structures of both international law and international relations, international human rights law is inevitably a profoundly gendered discourse privileging men. It has been accused of belonging to “the masculine world of rights, masquerading as “human”” as it completely ignores concepts of gender.

Due to the fact that Enlightenment man is both the creator and subject of international law and human rights discourse, issues dealing with human rights abuses of women have been largely ignored or seen to be a natural part of the status quo. The fact that political entities at both the national and international levels are dominated by men “means that issues traditionally of concern to men are seen as general human concerns; “women’s concerns,” by contrast, are regarded as a distinct and limited category”.²⁹⁰ White, western property-owning men, those

¹¹ Shaw, International Law, p. 23.

responsible for creating human rights discourse, were more concerned with protecting against violations of their civil and political rights in the public sphere and as a result these concerns are privileged in human rights discourse. As noted by Charlesworth¹², “rights are defined by the criterion of what men fear will happen to them¹³”. Violations in the private sphere - the home - were not an issue “because they were the masters of that territory”. Power relations and the very political nature of the family unit went ignored for precisely this reason¹⁴.

Women’s rights are human rights’, a phrase that gained increasing currency since the early 1990s, should be tautological and transhistorical, but unfortunately, this is not the case.

According to Charlesworth, this should be but a “distracting redundancy¹⁵”. Unfortunately, abuses against women have become almost naturalised. As Kerr puts it, “So pervasive and systemic are the human rights abuses against women that they are regarded as part of the natural order”. For Bell, “the ambiguity of the phrase captures the essence of the feminist claim: an assertion for inclusion in the project of human rights and a radical redefinition of what that project entails”. Bunch thinks that because the dominant image of the political actor on the world stage is male that the problem for women is visibility, or lack thereof¹⁶. In an earlier article, she takes a more gynocentric approach and uses as a starting point the fact that women do have inalienable human rights and sees the crux of the matter as understanding “why they were excluded before and how to gain wider implementation of these rights now”

¹² Charlesworth, “What are “Women’s International Human Rights”?”, p. 71.

¹³ Charlotte Bunch, “Transforming Human Rights from a Feminist Perspective”, in Julie Peters and Andrea Wolper (eds), *Women’s Rights, Human Rights: International Feminist Perspectives* (London: Routledge, 1995), p. 13.

¹⁴ See Coomaraswamy, *Reinventing International Law*, p. 8.

¹⁵ Joanna Kerr, “The Context and the Goal”, in Joanna Kerr (ed), *Ours By Right: Women’s Right as Human Rights* (London: Zed Books, 1993), p. 3.

¹⁶ Bunch, “Transforming Human Rights from a Feminist Perspective”, p. 12.

2.8.2 State responsibility and CEDAW

This is not to say that states cannot be held responsible for the actions of private individuals.

Indeed, there are ways by which to infer culpability on the state for violations against women by private actors. With the adoption and ratification of the Convention on the Elimination of All Forms of Discrimination against Women (“CEDAW”)¹⁷, despite the myriad reservations and notwithstanding its soft law nature, according to article 2, states parties have a positive duty towards women

To adopt appropriate legislative and other measures, including sanctions where appropriate, prohibiting all discrimination against women; and

*To take all appropriate measures, including legislation, to modify or abolish existing laws, regulations, customs and practices which constitute discrimination against women...*¹⁸

Threading the articles of the convention together is the call for the introduction and enforcement of legislation designed to protect and promote the social (as well as economic, political and cultural) advancement of women. Such articles, however, are of absolutely no legal force until the convention is incorporated into the domestic laws of states parties.

Where a state refuses, actively or passively, to introduce legislative measures to give effect to the convention and prevent abuses against women, it may be said that it gives its tacit approval of such abuse. In the case of countries following the dualist theory of international law, there is even greater onus on the state to act and incorporate international law principles into domestic law. Failure to do so constitutes refusal on the part of the state to honor its commitments. While a

¹⁷ Adopted by the United Nations General Assembly on 18 December 1979 and entered into force on 3 September 1981.

¹⁸ United Nations, “Convention on the Elimination of All Forms of Discrimination Against Women”, in Brownlie, Basic Documents on Human Rights, p. 171.

state is not directly responsible for the abuses of private actors, the state may be accused of a lack of due diligence with regard to the awareness of human rights violations as well as its failure to address the situation through sanctions and/or compensation and through denying women equal protection before the law. Women's human rights advocates hold that it is in condoning the acts of these private actors that the state may be held accountable. It may even be said that "such actors are not really private because they could not function without the approval of the state"¹⁹.

Concerning the abuses against women, "a state may be considered to have facilitated an international wrong or to be complicit in its commission when the wrong is of a pervasive or persistent character". State complicity in the commission of such abuses generally takes the form of a state's failure to act. Romany makes the point that a state's

Failure to arrest, prosecute, and imprison perpetrators of violence against women can be interpreted as acquiescence in (or ratification of) the private actor's conduct. State failure to prevent crimes against women can also be viewed as a conspiracy between the private actor and the state law enforcement agencies, thus rendering the state complicit.

2.8.3 Cultural / Religious Relativism and Women's Rights

The women's analytical framework, as mentioned above, the division of society into two different spheres, where one sphere is completely unregulated by law, creates greater difficulties for women living in societies ostensibly defined by cultural and religious practices. "No social group has suffered greater violation of its human rights in the name of culture than women," observes one Indian writer.

¹⁹ See Elizabeth Friedman, "Women's Human Rights: The Emergence of a Movement", in Julie Peters and Andrea Wolper (eds), *Women's Rights, Human Rights: International Feminist Perspectives* (London: Routledge, 1995), pp. 20-21.

Culture, for women, includes on a broader level, the denial of civil, political, social, economic, sexual and reproductive rights; on a more specific level, it may include female genital mutilation, sati, the inability to obtain a divorce, lack of choice in marriage, the imposition of a dress code, discrimination in inheritance and property laws, among myriad other issues²⁰. Women in countries regulated by religious legal systems, where religion, and by necessary implication culture, becomes enshrined into law and legalizes patriarchal norms, face the greatest difficulty in abolishing discriminatory practices either through their own agency or with external help. In such instances demands for equality based on sex “is met with resistance on the grounds that such demands amount to interference with the right to freedom of religion”²¹.

Cries of cultural imperialism by non-western countries have allowed many states parties to CEDAW to enter significant reservations on ratification, accession or succession despite the fact that these reservations have the effect of nullifying the objective of the convention and are contrary to article 28(2) which states that “[a] reservation incompatible with the object and purpose of the present Convention shall not be permitted”,²² which is also in keeping with Article 19(c) of the Vienna Convention on the Law of Treaties that says, “A State may...formulate a reservation unless: (c) in cases not falling under sub-paragraphs (a)²³ and (b)²⁴, the reservation is incompatible with the object and purpose of the treaty”. According to the United Nations Division for the Advancement of Women website, there are 180 states parties as

²⁰ Vickram Seth, *A Suitable Boy* (London: Phoenix, 1994), p. 285.

²¹ Indira Jaising, “Violence against Women: The Indian Perspective”, in Julie Peters and Andrea Wolper (eds), *Women’s Rights, Human Rights: International Feminist Perspectives* (London: Routledge, 1995), p. 52.

²² United Nations, “CEDAW” in Brownlie, *Basic Documents on Human Rights*, p. 181.

²³ Where the reservation is prohibited by the treaty.

²⁴ Where the treaty provides that only specified reservations, which do not include the reservation in question, may be made.

of 18 March 2005.²⁵ CEDAW, not surprisingly, is known as having the highest number of reservations of any other human rights convention ever formulated²⁶ despite the fact that it is in apparent violation of specific articles within CEDAW itself and the Vienna Convention on the Law of Treaties, which governs treaty making. The soft law approach taken in this convention allows for “consensus” (in its loosest possible meaning) where it would have otherwise been impossible despite the obvious absurdity the many reservations have resulted in and the fact that the status quo of women worldwide remains largely unchanged.

2.8.4 Women’s Rights and the United Nations

The fight by women for equality has taken on a largely legal character²⁷ as it is recognized that legal reform, combined with the necessary changes to the education system (to deal with deeply entrenched patriarchal attitudes), has the ability to provide one of the greatest catalysts for societal change. This fight has to be examined at the international level so as to determine the effectiveness of the “top-down” approach in remedying the repression of women’s rights, a problem that has existed throughout much of human history. It should be noted that the term “legal” is used loosely as the non-binding aspect of declarations, conventions²⁸ and platforms for action (despite States’ ostensible intention to be bound), as well individual legal systems, make domestic application and enforcement rather difficult.²⁹ While protocols tend to be of greater force, they too suffer from similar problems.

²⁵ See United Nations,

²⁶ Bell, “Women’s rights as Human Rights”, pp. 147-148 and Coomaraswamy, *Reinventing International Law*, p. 3. Some 60 countries entered reservations that range from specific provisions to broad reservations of the convention.

²⁷ UN Treaty Series, Vol. 96, No. 1342, p. 271.

²⁸ UN Treaty Series, Vol. 193, No. 2613, p. 135.

²⁹ UN Treaty Series, Vol. 309, No. 4468, p. 65.

2.9 Convention on the Elimination of All Forms of Discrimination Against Women

2.9.1 Declaration on the Elimination of Discrimination against Women

While the UN made moves towards establishing a fair amount of legislative and institutional support for the promotion of women's equal rights, the organization recognized that women were still largely unprotected by these changes and discrimination continued unabated. In light of this, the General Assembly requested the drafting of a Declaration on the Elimination of Discrimination against Women ("DEDAW") and this was unanimously approved by the General Assembly on 07 November 1967. It consisted of eleven Articles which declare that discrimination against women is unjust and incompatible with the welfare of the family and society and called on States to implement new laws to end discrimination against women so that women would be afforded full protection under the law.³⁰ As a declaration, it meant that this was but a statement of intent, moral and political, and was therefore of even less contractual force than treaties which have also proved problematic in terms of enforcement at the national level.

2.9.2 Convention on the Elimination of Discrimination against Women

The above mentioned UN Conventions provided a very scattered approach to dealing with the issue of women's human rights; a comprehensive approach was required and there was need to prepare a single, comprehensive and internationally binding legal instrument to eliminate discrimination against women.³¹ As a means of "preparing a binding treaty that would give normative force to the provisions of the Declaration",³² the Commission on the Status of

Women ("CSW") requested the Secretary-General to call upon UN member states to communicate their ideas on such a proposal. This instrument was to be prepared without prejudice to any future recommendations that might be made by the United Nations or its

³⁰ See United Nations, *The United Nations and the Advancement of Women*, p. 79.

³¹ See UN, Division for the Advancement of Women

³² UN DAW,

specialized agencies with respect to the preparation of legal instruments to eliminate discrimination in specific fields.

These initiatives led to the adoption by the General Assembly of the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), which was subsequently dubbed an international bill of rights for women. Article one of the convention defined discrimination against women as women, of human rights and fundamental freedoms on the political, economic, social, cultural, civil or any other field³³.

2.9.3 The Vienna Declaration

The World Conference on Human Rights produced the Vienna Declaration and Programme of Action.³⁴ Section II.A.3 deals specifically with the equal status and human rights of women, emphasizing the importance of synchronizing the de jure and de facto human rights of women. The Declaration highlighted the inalienability and universality of women’s human rights; the importance of gender mainstreaming;³⁵ and the elimination of violence and discrimination against women.³⁶ One author believes that Vienna represented the commencement of the narrowing of the universalist-cultural relativist gulf which plagues the promotion of women’s human rights and the beginning of the ability of the international community to achieve practical commitments and enforceable standards for the protection of women’s rights. This may be so in light of the steps taken (on paper) at the Conference towards institutional and legal capacity building with a view to rendering the legal human rights regime of women effective. Nevertheless, documents produced as a result of the conference are of no legal effect and it is left to governments to decide whether to act on the suggestions made.

³³ Article 1 of CEDAW.
³⁴ United Nations, “Vienna Declaration and Programme of Action”, A/CONF.157/24, 13 October 1993.
³⁵ UN, “Vienna Declaration”, paragraph 37.
³⁶ UN, “Vienna Declaration”, paragraphs 38 and 39.

CHAPTER THREE

METHODOLOGY

3.0 Introduction

This chapter dealt with the research methodology. It included the research design, study population, sample and research instruments and data analysis procedures. The study was conducted in South Sudan. This section therefore puts the layout of the approach and methods necessary in data collection. It focused on a number of issues which included the study design, sample size, data collection methods, data processing, analysis.

3.1 Research Design

The study is cross-sectional in nature employing both quantitative and qualitative approaches in data analysis. A cross-section of respondents i.e. **women groups**, NGOs, clan heads, government officials, legal experts and police took part in this study. It was hoped that the design would make it possible to gather all the necessary information for this study.

3.2 Study population

The study population comprised of women groups, NGOs, clan heads, and government officials at all levels. These provided the necessary data for the successful execution of this study.

3.2 Area of Study

The study was conducted in South Sudan. Respondents were randomly and purposively selected respectively in the study area. A consideration was made for both rural and urban women to highlight the differences in the status of both groups.

3.3 Sampling Size

The sample size comprised of 230 respondents chosen from the study area in the three states of South Sudan. 120 community groups of women were selected using government commissioners,

20 police officers, 30 NGO staff, 30 leaders and 30 government officials in various states of South Sudan. Respondents were randomly and purposively selected respectively.

3.4 Sources of data

Both primary and secondary data sources were used. The primary sources comprised of the core of the data on which the study was based. The data was collected by use of questionnaires, interviews and observation. Similarly, the secondary sources provided additional information where necessary on information collected. Secondary data was collected from sources such as text books, journals and other publications.

3.5 Research instruments and data collection methods

Several instruments were used among which include questionnaires, interviews, observation are employed.

3.5.1 Questionnaires

The questionnaire was designed to be simple and easily understood by the respondents to cover the overall objectives of the study. The questionnaires had closed and open-ended questions that were personally administered by the researcher to the various respondents. These were administered to NGOs working in the area of crime prevention, policy makers and unemployed youths.

3.5.2 Interviews

These were conducted with women groups, police officers, local leaders and government officials. This was deemed to be the best tool for generating the necessary data for this study.

3.5.3 Observation

This was applied where necessary. Some of the features of this inequality were observed.

3.6 Review of documents

The study applied both primary and secondary data. The researcher reviewed several documents related to the study to gather necessary data, collect it and document it whether processed or not.

These included text books, journals, publications, newspapers, websites etc.

3.7 Data processing and Analysis

Quantitative data was edited in the field on a daily basis by the researcher to ensure completeness. Data collected was coded to acquire quality, consistent and accurate results. Data was then entered into the computer and presented into frequency counts and tallies.

CHAPTER FOUR

DATA ANALYSIS, INTERPRETATION AND PRESENTATION

4.0 INTRODUCTION

This chapter presents findings and describes how the collected data was presented, analyzed, and interpreted. The study directly provided relevant coverage of Gender Inequality in South Sudan. The study is obtained from research carried out on 230 sampled respondents. The data was sampled from the field, computed, analyzed and interpreted in accordance with the stipulated methods.

4.1 DEMOGRAPHIC DATA

4.1.1 AGE OF THE RESPONDENTS

Table 1

Table showing the demographical representation of the respondents

AGE	FREQUENCY	PERCENTAGE
15-20	30	13.04
21-33	80	34.79
Above 33	120	52.17
TOTAL	230	100

Source: Primary data

Table 1, shows the ages of the respondents and provides a platform for varied comparisons of the age ranges of those interviewed. The distribution is according to the age, age 33 and above, 120(52.17%), 21-33, 80(34.79%) and 15-20 30(13.04%) which indicate a fair distribution of age among the respondents in the study.

4.1.3 MARITAL STATUS OF THE RESPONDENTS

MARITAL STATUS	FREQUENCY	PERCENTAGE
Married	140	60.08
Other	90	39.92
Total	230	100

Source: Primary Data

The study also analyzed the family setup and it showed that it comprised of both married and unmarried respondents. The total number of married respondents was 60.08% while the unmarried (other) respondents were 39.92%.

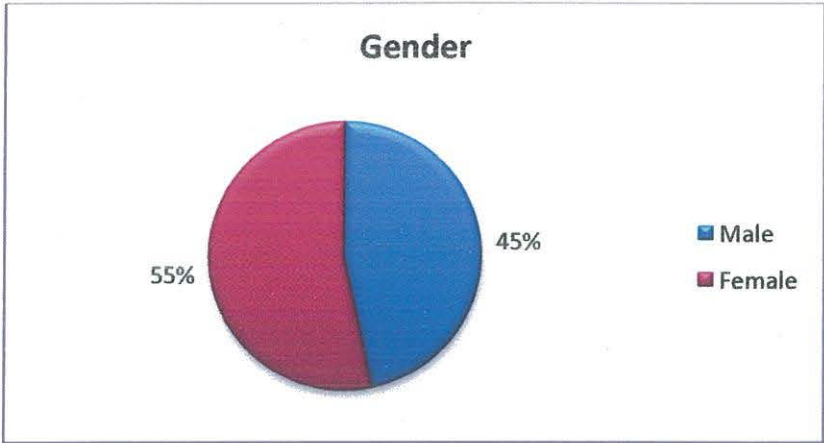
4.1.4 GENDER OF THE RESPONDENTS

RESPONDENTS	Sample size (n) =230
Male	100
Female	130

Source: Primary data

From table 4.14, the number of respondents interviewed varied to a greater extend. In this context, the study was sensitive to gender and had a balanced respondents with 130 (55%) female and 100 (45%) male actively participating in the study. The main target in the study was women and the ideal concept was to encourage them to participate in providing information regarding their experience regarding gender equality.

Figure 1: Gender of the respondents



Source: Primary data

Hence for the data to be authentic, the purposive process pursued a stratified selection of the respondents and making it to be 100% unbiased. There were no considerations for the level of education since the overall trend was to obtain a much perfect data that contains near 100% realities. While the approach featured mainly female respondents, it was alternatively attractive in demonstrating the overall composition of the vast households and how they contribute to the study. Their wide experience was ranged between 65%-78% and their data contained an integral level of reference. The study sought to find out the relevance of male dominance in the household activities and possibly on the decision making approaches.

4.2 Analysis of International laws and women rights

An examination of the international legal framework which is ascribed to promote the rights of women and equal dignity with men does not play its role effectively. This raises the question of the efficacy of using the “top-down” approach to resolving the issue of women’s rights. Given that the international community is really a society of individual states, it is useful at this point to focus on the attitude of the individual state to women’s rights. The domestic legal and

institutional response of South Sudan with respect to the promotion of women's rights forms the basis of the discussions. This chapter establishes the legal background of South Sudan and discusses how the country's colonial legacy is relevant to understanding the manner in which particular kinds of elitism and male privilege have become an inherent aspect of its legal system with continuing consequences for the promotion of gender equality using this legislative medium.

4.2.1 Gender and household Violence

According to the research carried out, 67% of the respondents believe that household violence is rampant in cases where there is extreme poverty. First, incorporating gender into assessments of the needs and vulnerabilities of the urban poor will inform a better understanding of the causes of insecurity and violence, both at the household and broader levels. Men, both young and old, are vulnerable to being drawn into violence and frustrated at not being able to find employment and fulfill their role as the main breadwinner. At the household level, the consequences of poverty and daily struggles for survival are manifested through a breakdown in family structures, widespread drinking and domestic violence. At the community level, an emerging gang culture is testament to the social, political and economic marginalization of young people, and young men in particular. At the institutional level, large numbers of soldiers live in Juba town, many of whom are only irregularly paid, and many civil servants are being laid off.

4.2.1.1 Gender, Law and Customary Law

The international law for example UN conventions and other treaties as well the South Sudan laws both uphold the rights of women such as non discrimination on the basis of sex, equality of both men and women in dignity and rights, the rights to found a family and the right to own property. However the study suggests that the customary laws play a big role in contradicting both the international, regional and the national laws like the laws of South Sudan. Article 15 of

the Transitional Constitution of South Sudan states that, *“Every person of marriageable age shall have the right to marry a person of the opposite sex and to found a family according to their respective family laws, and no marriage shall be entered into without the free and full consent of the man and woman intending to marry”*. The study further showed despite the provision in Article 15, there is still evidence of forced marriage in many instances in many communities in South Sudan. This therefore means the law is less protective to women’s rights in the society.

Further evidence from the communities in South Sudan including Lotuko community show that women do not have a right to own property despite the fact that the transitional constitution under Article 16 (5), states that, *“Women shall have the right to own property and share in the estates of their deceased husbands together with any surviving legal heir of the deceased”*.

The research also established that the customary law in Eastern Equatoria State is inconsistent with the Transitional Constitution of South Sudan in that a girl is considered as an item and is used as a mechanism for compensation for any loss as a result of killings either accidental or intentional murder cases. This custom only underlies compensation by using the girl child but the boy child. This hence explains the level of inequality being carried out in some communities in South Sudan. However, the law provides in Article 14 that, *“All persons are equal before the law and are entitled to the equal protection of the law without discrimination as to race, ethnic origin, colour, sex, language, religious creed, political opinion, birth, locality or social status”*.

4.2.2 Low empowerment tendencies and law practices

The research statistics carried out also indicate that gender factors are considerably based on limited empowerment. 45% of the respondents agree that women’s needs are not practically put into consideration when defining various family roles. A further 34% of the respondents explain

that law practices are always violated, either knowingly or unknowingly when carrying out various family activities, hence rendering women vulnerable.

The tendency to approach gender as a cause of violence, rather than as one dynamic of violence, has resulted in programmers that risk exacerbating tensions, for example by prioritizing livelihoods support for women over men, whilst failing to address the dynamics of violence against women, for instance within the family. At the broader level, current approaches to gender also fail to recognize the levels of disenfranchisement and exclusion felt by many, not just by women but also by young men in particular. Incorporating a gender perspective into needs and conflict analysis can therefore also help inform more strategic peace building programmers that recognize the diversity of people's needs and vulnerabilities.

4.2.3 Gender concepts within humanitarian and development programming

Most aid actors feature the empowerment of women and gender equality in their mission statements, and efforts to strengthen humanitarian coordination have also included attempts to adopt a more cohesive or 'mainstreamed' approach to gender issues.¹ Gender is usually defined as 'the socially constructed differences, as opposed to the biological ones, between women and men; this means differences that have been learned, are changeable over time, have wide variations both within and between cultures'.

Within humanitarian action, most respondents (67%) argued that introducing the concept of gender into assistance can help agencies avoid reinforcing negative patterns of power and vulnerability. A gender oriented analysis can therefore help strengthen needs assessments by taking into account different gender identities, roles and responsibilities, and how they shape social power relations. It can also help to understand and address protection risks and threats, and understand the impact of aid interventions. For many agencies, approaches to empowerment and

gender equality within humanitarian programmers remain grounded within a development policy framework. There is a strong emphasis on the rights and empowerment of women, on equal access to resources and on the need to draw on everyone's capacities in the cause of development.

4.2.4 Gender identities

The coming together in Juba of diverse population groups with different life experiences has meant, in the words of one woman, that there is now greater 'social freedom' and acceptance of differences in traditions and cultural norms, and greater opportunities for learning from each other.

Women's greater economic role was pointed out by both men and women as a positive development, and an example of the attitudinal change in Sudanese society as a result of urbanization and people's experiences during displacement. Since Juba became the capital of South Sudan, women are playing a much more visible role in politics, and international actors have actively promoted the participation of women in government. Some women who previously were very active within the SPLM/A or civil society groups hold ministerial posts, and campaign and work within the town.

For the majority of women, however, these trends do not mean that attitudes towards gender roles and behaviors have made a clear break with tradition, or led to a better quality of life. Rates of divorce and family separation are on the rise, and the traditional family unit is fragmenting. Men without an occupation and skills find it difficult to cope with the demands of town life, particularly as they cannot fulfill the responsibilities associated with being the head of the family. One man described the extent of this change when he said that 'men are even doing domestic work while women collect firewood'. For some the idea of taking on work traditionally

associated with women, such as plaiting hair and carrying water, was very difficult to accept. One respondent noted that he would only do such work if he was sure he would not be recognized. Another said that it was 'shameful' for men to carry goods on their heads, as women do. As another respondent explained, the impact has been that men feel they are losing their right to make decisions because they do not earn an income, and in turn therefore have no value.

4.2.5 Committee on the Elimination of Discrimination Against Women

The United Nations Committee on the Elimination of Discrimination against Women ("the

Committee") according to respondents provide relevant support programmers that are based on established monitoring concepts. Also in support of various articles, 45% of the respondents indicated that observing discriminatory vices would enable women to fully participate in their societal activities. Article 17 establishes the Committee and its main tasks, as stated in Article 18, is to meet annually (Article 20) to report on the legislative, judicial, administrative or other measures which States Parties have adopted and to indicate the factors and difficulties affecting the degree of States Parties' ability to fulfill their obligations under the convention. This single annual meeting proved inadequate and Article 20 was amended in 1995 where the duration of the meeting of the Committee would be determined by States Parties to CEDAW, subject to the approval of the General Assembly. In addition to communications received from States Parties, the Committee may also request information from other UN agencies and NGOs to assist its members in assessing government reports. While NGOs are accorded no formal involvement in the Committee's work, either as part of the Committee's procedures and practices or through CEDAW, the involvement of NGOs cannot be overstated as they have the ability to get information at the ground level to which other groups may not have access.

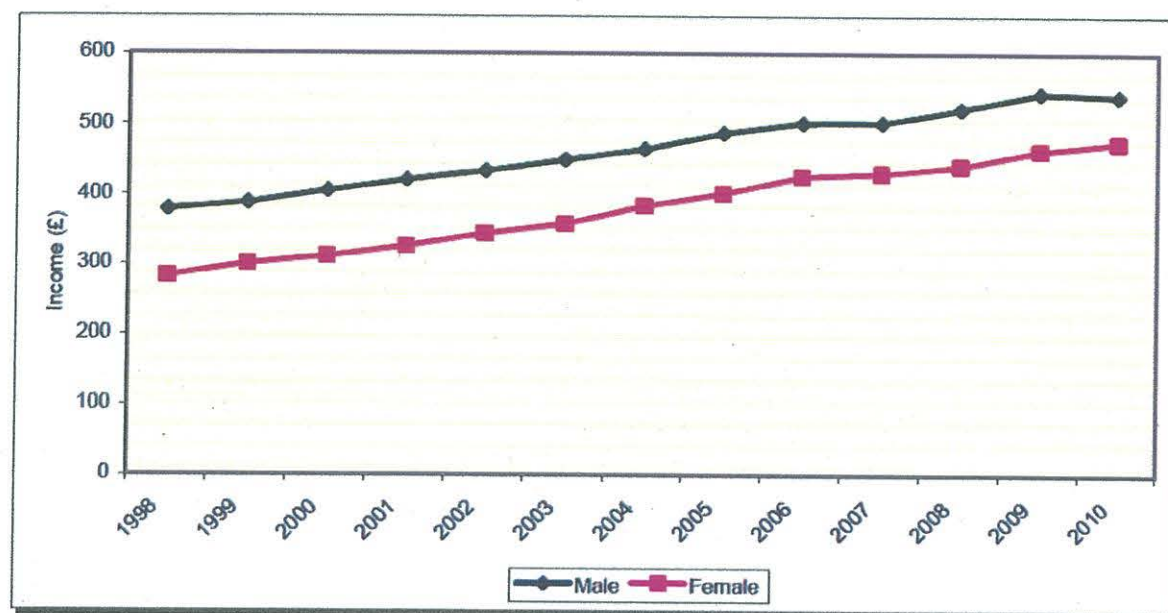
4.2.6 Gender Mainstreaming and the United Nations

Many respondents interviewed provided holistic information regarding gender mainstreaming and the role of the UN. Attention has been given to promoting women's issues over the years, albeit in a piecemeal and largely ineffective fashion. In light of this, 47% of the respondents indicated that the UN mandates gender mainstreaming as the main global strategy for promoting gender equality. In each of the critical areas of concern studied in South Sudan, it stated the need for the promotion of "an active and visible policy of mainstreaming a gender perspective into all policies and programmes" which takes into account the effects of such policy on women and men.

Gender mainstreaming according to the respondents is meant to incorporate a gender perspective into all activities at all levels with a view to ensuring that gender equality is placed at the centre of policy decisions, medium-term plans, programme budgets and institutional structures and processes, instead of having separate structures for dealing with women's issues. Initial efforts to achieve gender equality by the UN focused on separate targeted activities for women in South Sudan, but it was later admitted that this approach did not tackle the structural constraints to gender equality and that an integrative approach would be better suited. Yet, the project carried out in 2008 in West Equatoria State provided relevant study options regarding women's role in women-specific policies and programmes, but are complementary strategies, as affirmative action is still required for women's empowerment.

Such targeted interventions amounted to 23% of the study synthesis and are necessary where there are "glaring instances of persistent discrimination of women and inequality between women and men"

Table 4: Women's gross weakly earnings in South Sudan



Source: Annual Survey, 2012

4.2.7 Violence and Crime

The number of females and males recorded by police as victims of domestic violence has remained relatively stable over the last 7 years.

4.2.7.1 Fear of crime

In 2009/10, a higher proportion of females (38%) than males (29%) expressed a medium to high effect of the fear of crime on their quality of life.

4.2.7.2 Violent attack on Women

Between 1997 and 2009/10, the proportion of male victims of violent crime including common assault, wounding, and mugging, fell from 7% to 3%.

The rate of violent crime on females was approximately 2% in both 1997 and 2009/10.

4.2.7.3 Decision Making Roles

In 1997, one in 10 people in the South Sudan Senior Civil Service were female and 9 out of 10 were male. In 2010 the figures were 31% female and 69% male. That is, the percentage gap has reduced steadily from 81% in 1997 to 38% in 2010.

The change in composition of the South Sudan senior civil service is also reflected at the promotions, traditionally the recruitment ground for much of the senior civil service. At this level, a gender gap of 66% has been reduced by two thirds to 22% in 2010, with females comprising 39% of this grade in 2010 compared to 17% in 1997.

These changes have taken place against a backdrop of a fairly static overall compositional gender picture of the non-industrial South Sudan Civil Service. In 1997, 53% of the non-industrial South Sudan civil service was females compared to 54% in 2010.

4.2.7.4 Political life, public appointments and the Judiciary

Women continue to be underrepresented in relation to elected political office, appointments to public bodies and in the Judiciary. The composition of Lay Magistrates, by contrast, indicates that some 53% are female.

The proportion of persons of working age without a qualification in South Sudan decreased from 37% in 1992 to 21% in 2009, and has decreased more for females than males. In 1992 Females of working age had a slightly higher proportion (39%) without qualifications than males (36%), and this position has gradually reversed to a slightly lower proportion of females without qualifications (19%) than males (23%) in 2009.

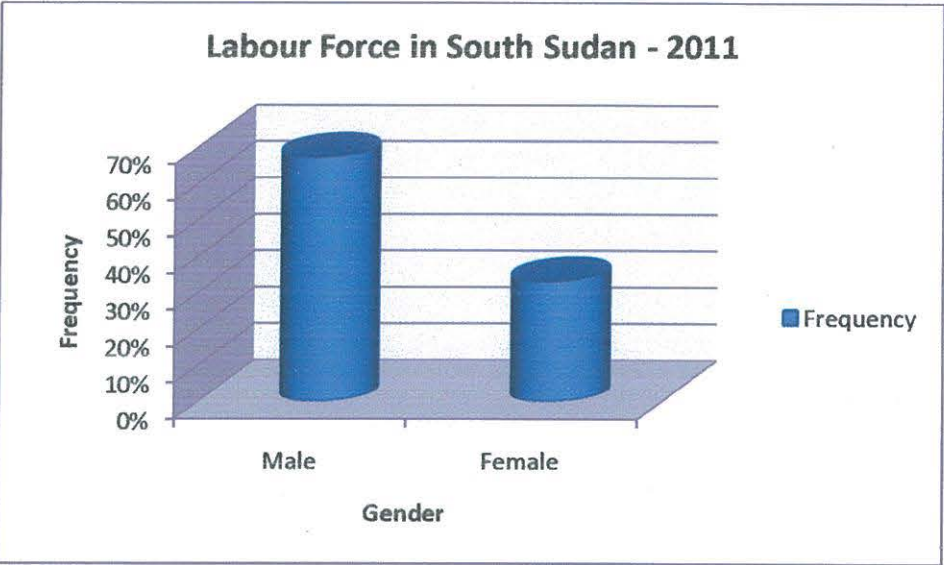
The proportion of school leavers not achieving 5 or more high school grades has gradually decreased from 50.5% in 1992/93, to 28.1% in 2009/10. Males have consistently achieved less

than females over this period, with 34.6% of males in 2009/10 not achieving this level of qualifications compared to 21.7% of females.

The proportion of pupils leaving school with no formal qualifications decreased from 4.9% in 1992/93 to 1.7% in 2009/10. Higher proportions of males than females have consistently left school without any qualifications, although the gap has narrowed in recent years, with 2.0% of males and 1.3% of females leaving without qualifications in 2009/10.

4.2.7. 5 Women in Labour Workforce

Figure 1: Women in labour force in South Sudan, 2011



Source: Primary data

There is a trend towards women’s reduced economic activity in South Sudan. The gap between women and men in paid employment, however, remains wide in many parts of the world (Hedman et al, 1996). Figure 1 shows that the female share of the labour force globally has slowed by 2011 in South Sudan. Comparatively, in East Asia and the Pacific women have over 40 percent share, rivaling women’s share in industrial countries.

Gender inequalities in the labour market can also be seen in terms of earnings differences.

Evidence shows that women are paid less than men for equivalent work. Women's earnings range from a low of around 50 % to around 85 % of men's earnings. In some countries the ratio has fallen, in others it has risen, in some there is no consistent rise or fall.

4.2.7.6 Inequalities within households

Inequalities in negotiating and decision-making potential and access to resources have been documented within households in South Sudan. This has prompted questions about both research and policy which is based on the assumption that households function as units where each member benefits equally. The investigation of differences and inequalities at the household level is relevant to an understanding of a range of key issues, including the ability of women and men to respond to economic incentives, the design of effective strategies for HIV/AIDS prevention, and appropriate and equitable social security policies.

CHAPTER FIVE

SUMMARY OF THE FINDINGS, DISCUSSIONS AND RECOMMENDATIONS

5.0 Introduction

While gender equality is an important goal in itself an issue of human rights and social justice steps toward greater equality can also contribute to the achievement of other social and economic objectives. It is important to be able to illustrate for economists that gender equality is relevant to issues of economic growth and efficiency. Similarly, it is important to convince demographers that gender perspectives can strengthen their analyses and provide new insights about demographic processes, and to demonstrate to statisticians the inadequacy of data that are not sex-disaggregated and respond to critical information needs related to gender equality.

5.1 Summary

It is often difficult to see the relevance of the gender mainstreaming strategy in programmers dealing with technical or scientific subjects such as international trade, exchange rates or climate change. The first step required is to understand the impact of the initiative on people (producers, consumers, workers, parents, people living within a specific geographic location, etc.).

Where the focus is primarily technical or technological, people will not be not adequately considered – and where people are not considered, it is very difficult to include a gender perspective. For example, discussions about climate change tend to focus on emissions, industry standards and compliance, monitoring and scientific projections. Yet, proposed climate change programmers do involve people – as consumers, as advocates, as representatives of industry - and it is important to understand the gender dimensions of these processes and the policies and programmers put in place to address them.

5.2 Recommendations

5.2.1 South Sudan's Domestic Gender Policy: The Legislative Response

An examination of the international legal and institutional response to the promotion of women's rights illustrated the relative lack of effectiveness of the response. Given that the international community is really a society of individual states, it is important to focus on the attitude of South Sudan to women's rights. The domestic legal and institutional response of South Sudan with respect to the promotion of women's rights forms the basis of the discussions.

At the domestic level, the legislature is enshrined in Parliament which is responsible for making such laws as it determines necessary for the peace, order and good governance of the land; the executive has an administrative role in controlling the affairs of the nation; and, the judiciary is necessary for dispensing justice fairly in the hierarchy of Courts.³⁷ South Sudan emerged from the colonial past with a system of governance that throughout its post-colonial history has been dominated by the male elite.

5.2.2.1 Law Reforms in South Sudan

Returning to the Constitution, it is not surprising that it is the supreme law of the land. Article 4 of the Constitution states, "This Constitution is the supreme law of South Sudan and any other law that is inconsistent with this Constitution is void to the extent of that inconsistency". It is from this supreme law that laws dealing with the establishment, composition and functions of Parliament are derived.

The current constitutional dispensation does not provide adequate provisions for defining gender-based inequalities. There is need for a review of the current constitution within which elaborate laws are enacted to help ensure that women's rights are respected.

³⁷ Commonwealth Law Review, p. 34

5.2.2.2 Ratification of the International Conventions and treaties

The government of South Sudan needs to ratify the international conventions that are relevant to women's rights. These conventions include the UN Charter, Universal Declaration of Human Rights (UDHR), and International Covenant on Economic, Social and Cultural Rights (ICESCR), International Covenant Civil and Political Rights (ICCPR), Convention on Elimination on All forms of discrimination (CEDAW), African Charter on Human and People's Rights (ACHPR) and Protocol on Rights of Women in Africa.

The ratification of these conventions and treaties will be instrumental in ensuring that the rights of women in South Sudan are respected in accordance with the international law. By ratifying these conventions, the government of South Sudan will be demonstrating its commitment to upholding these rights as enshrined in the UN conventions.

5.2.2.3 Codification of South Sudan Customary Laws

There is also a need for codification of South Sudan customary laws by collecting and writing them down in accordance with the constitution. This is because the constitution of South Sudan recognizes the customary laws of different communities of South Sudan as part of the legal in the country.

Further, the codification will help in identifying those norms, cultures and practices which are inconsistent with women's rights which are provided in both the International Conventions and the South Sudan supreme law.

5.2.2.4 Transforming the Role of bride Prize in marriages

There is need to transform the role played by the bride prize in the communities to ensure that people view its role as a form of appreciation and not as a buying a woman. This calls for appropriate changes in the customary marriage laws in order to reflect the rights and dignity of women. Additionally, since the International conventions states that human beings are equal

before law then by transforming the marriage bride prize customary laws, the women's rights are hence put into consideration.

Since there is no prize for human beings, the government must create policies and proper mechanisms which will discourage the use of excessive bride prize as a way of oppressing or otherwise violating the rights of women in the end in South Sudan.

5.2.2.5 Gender-Sensitive Judicial System

The government must put in place policies and mechanisms that are gender sensitive. These policies must be in line with the various conventions and treaties that provide women with equal rights and dignity with men. The judiciary of South Sudan should be at the forefront in developing and implementing policies and judicial mechanisms that are objectively safeguard the rights of women in the country.

5.2.2.6 Women's Participation in Public Life

Women's participation is a key to development and hence the government of South Sudan must implement the policy of affirmative action of the 25% participation of women in the government's public service.

Additionally, women should be given the opportunity to speak themselves out on the basis of their rights of expression, assembly and association as rightly enshrined in the constitution of South Sudan. These policies will also allow women to realize their potentials, capabilities and abilities.

5.2.2.7 Property ownership and Women's Inheritance

There is a need to develop policies and mechanisms which will allow women to own property and be able to carry out their financial activities without any interference. Further, these policies

should allow women to make their own decisions regarding aspects of inheritance in the eventuality of the husband's death.

5.2.2.8 Creation of Gender Desks

There is a need for the creation of gender desk in all the police stations throughout South Sudan.

This will help in receiving gender-based complaints which occur due to family conflicts and violence against women. In-house training of law enforcement agencies need to be conducted to equip them with relevant knowledge regarding women rights.

5.2.2.9 Advocacy

There is also a need for advocacy through media, seminars and regional conferences which are aimed educating the general public and other concerned bodies. This is to develop awareness on issues that relate to gender and women's rights issues.

5.2.2.10 Access to justice and legal aid programmes

There is a need for the government, nongovernmental organizations and the concerned civil society organizations to develop legal aid and access to justice programmes which will help the women and other vulnerable groups to access justice and their fundamental rights and freedoms in South Sudan

5.3 Conclusion

Gender inequality in South is still prevalent as evidenced by the research carried out. However, various international laws as well as the Transitional Constitution of South Sudan provides for gender equality and women rights. The existence of customary laws which is founded on various norms, cultures and political challenges in the country has made it to be difficult to implement the laws that support women equality.

Though women's rights has been affected by the various customary laws, women have benefited from the policy that has effectively allocated them additional 25% besides their normal participation in the remaining 75% allocations available for both men and women in public life.

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