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**LEGAL ANALYSIS ON THE PROTECTION OF CHILD MARRIAGE
UNDER THE SOUTH SUDAN LEGAL FRAMEWORK**

A Dissertation submitted to the school of law in partial

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Of bachelor degrees with honors in law

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Kigali, September 2024

DECLARATION

I, **BONIKIA SAMAAN HAKIM JEREMIAH**, hereby declare that to the best of my knowledge the work presented in this dissertation entitled “**LEGAL ANALYSIS ON THE PROTECTION AGAINST CHILD MARRIAGE UNDER THE SOUTH SUDAN LEGAL FRAMEWORK** ” is original and it has not been previously submitted elsewhere for any academic qualification. Any supportive materials used in terms of references from other persons’ works are found in the footnotes and in the bibliography.

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APPROVAL

This is to certify that the research presented in this dissertation, titled **LEGAL ANALYSIS ON THE PROTECTION AGAINST CHILD MARRIAGE UNDER THE SOUTH SUDAN LEGAL FRAMEWORK**, submitted as partial fulfilment of the requirements for the Bachelor Degree at Kigali Independent University (ULK), has been conducted by **BONIKIA SAMAN HAKIM JEREMIAH**.

Supervisor names: NDIYAYE U. Innocent

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Date:

DEDICATION

I dedicate this work to:

My family (My Parents, Brothers and Sisters)

My head of Family,

My Supervisor, **NDIYAYE U. Innocent**

The School of Law

The Rwanda Law Reform Commission

All my friends and classmates

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Upon the completion of this final project, I am pleasing the Almighty God for his blessing and grace in my daily life. So, I wish to express my heartfelt gratitude to all those who contributed to its completion. Through this view, I want to recognize the influence of my family members whose words of encouragement from the start of my life and assistance either morally or financially.

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BONIKIA SAMAAAN HAKIM JEREMIAH,

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LIST OF ACRONYMS AND ABBREVIATIONS

ACRWC: African Charter on the Rights and Welfare of Children

ADR: Alternative Dispute Resolutions

Art: Article

CEDAW: Convention on the Elimination of All form of Discrimination Against Women

CRC: Convention on the Rights of Children

FGM: Female Genital Mutilation

GNB: Girls Not Bride

I.e.: in other words

MDGs: Millennium Development Goals

No: Number

P: Page

Para: Paragraph

SRH: Sexual and Reproductive Health

SS: South Sudan

UN: United Nations

UNFPA: United Nations Fund for Populations Activities

UNICEF: United Nations Children’s Fund

USA: United States of America

Vol: Volume

1. GENERAL INTRODUCTION

Child marriage is a catastrophic problem which infringe child rights particular girls, an issue of the child marriage increase at high level in developing countries than developed countries, as the topic stands as the legal effect of child marriage in South Sudan, the study will analyses the cause and effects of child marriage in South Sudan and provide some necessary mechanisms to handle child marriage within state.

Accordingly, this study is composed by background of study, interest of study combining personal, academic and scientific interest, scope of study, by elaborating scope in the domain scope in time and scope in space, the problem statement, research questions, research hypotheses, research objective by analyzing general objective and specific objective, research methodologies basing on research techniques by showing how documentary methods will help on this study, and research methods basing on analytical methods, exegetic methods and historical methods and ate the end the study discuss the subdivision of study.

1.1. Background of the study

Child marriage refers to an act of formal marriage or informal union where both spouse are under the age of 18 or one spouse is below 18 years with an adult person, even if mots countries of the world tries to destroy this harmful practice in this modern era, the child marriage remains widespread with approximately one in five girls married in childhood across the world.¹ Specifically, in South Sudan this practice is at high level where 52% of girls married before the age of 18 years old and 9% married before the age of 15 years old which produce legal, social and economic consequences to those child engaged on early marriage.²

In general child is explained as a person who is under the age of 18,³ which means that the age of majority is 18 years old, it was also recognized by South Sudan where the child act said that, child means a human being under the age of eighteen years.⁴It simply means that the children who engaged in early marriage before reaching to the age of 18 years old there

¹ UNICEF, Child Marriage, Child marriage threatens the lives, wellbeing and future of girls around the world available at <https://www.unicef.org/protection/child-marriage> accessed on 21 June 2024.

² UNICEF supra note 1.

³ Art 1, UN convention on the rights of child of 20th November 1989

⁴ Art 5, Child Act 2008, (*interpretation*), Chapter I, Preliminary provision, Acts Supplement to The Southern Sudan Gazette No. 1 Volume I dated 10th February, 2009. Printed by Ministry Legal Affairs and Constitutional Development, by Order of the Government

union are considered as child marriage which contradicts this principle of age of majority. In South Sudan 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 marry⁵ but due to customary law and other factors some child girls are forced to marry before the age of 18 years old which contradicts this principle.

Regulations and legal framework tackling to the child marriage in South Sudan is complex and contradicts each other. The Transitional Constitution of South Sudan provides the age of majority for 18 years old and provides that every child has to be protected from early marriage,⁶ and the Child Act of 2008 prohibits child marriage and sets 18 years old as the minimum age for marriage, it simply state that every child has the right to be protected from early marriage and that acts of subjecting a child to early marriage or forced marriage shall be considered as a harmful and immoral practice.⁷ However, some issues in South Sudan are regulated by customary law like marriage, divorce and child custody⁸ which often allow for child marriage,⁹ which resulting conflict between statutory and customary legal systems.

1.2. Significance of the study

This study is important from an academic standpoint since it tackles a modern and developing area of law that interacts with child. It adds to the expanding corpus of knowledge on the protection of children from early and forced marriage and the difficulties children have in case they want to escape child marriage. The study findings can influence future research in this area as well as legal education and intellectual discourse as it has revealing the academic relevance of studying child law particularly in South Sudan.

1.2.1. Personal interest

This study focus on the elaborating different legal effects arising from child marriage such as violation of constitutional rights which protect children from early marriage,¹⁰ criminal

⁵ Art 15, The Transitional Constitution of South Sudan, Part two, Bill of rights, Right to found family (2011).

⁶ Art17 (4),The Transitional Constitution of South Sudan supra note 1.

⁷ Art 23 (1), South Sudan Child Act 2008 supra note 1.

⁸ Aleu A J *et al* A Study of Customary Law in Contemporary Southern Sudan, World Vision International, (2004) P 32.

⁹ Juuk B, South Sudanese Dinka Customary Law in Comparison with Australian Family Law: Legal Implications for Dinka Families, Finders University, Vol 34, issue No.2 (2013) p99-105

¹⁰ Art 17, The Transitional Constitution of South Sudan supra note 2.

liability for those who participate in child marriage, they loss educational right which provided by constitution¹¹ and early pregnancy. The study provides detrimental effects of child marriage in South Sudan on spouse themselves, parents, society and country as a whole. Thesis examines the importance declining such child marriage as the way of protecting best interest of child. It recommends abrogating that practice which accepts child marriage and harmonizing child Acts with constitutions and those international conventions on child rights.

1.2.2. Academic interest

This study is important from an academic standpoint since it tackles a modern and developing area of law that interacts with child. It adds to the expanding corpus of knowledge on the protection of children from early and forced marriage and the difficulties children have in case they want to escape child marriage. The study findings can influence future research in this area as well as legal education and intellectual discourse as it has revealing the academic relevance of studying child law particularly in South Sudan.

1.2.3. Scientific interest

This study has scientific interest as it employs a systematic and rigorous approach in analyzing legal frameworks, customary laws, judicial practices or case laws and regional cooperation mechanisms related to the protection of children from early marriage in South Sudan. The findings will contribute to the broader understanding of the challenges and potential solutions in combating child marriage or early marriage which has implications for policy development, law reforms, abrogating customary law which contradicts with constitution, capacity building and international cooperation efforts. According to these personal, academic, and scientific interests, the study on the legal effects of child marriage in South has to contribute in protecting child rights, advancing scholarly discourse, and informing policy and practice in combating child marriage in South Sudan.

1.3. Scope of the study

The study examines child and customary law in South Sudan to address legal challenges of child marriage.

¹¹ Art 29 (1) The Transitional Constitution of South Sudan supra note 3.

It examines existing instruments, judicial practices, and regional cooperation mechanisms. The study will analyze challenges faced by stakeholders, historical evolution, and recent developments, while considering emerging issues and trends.

1.3.1. Scope in the domain

The study is delimited to the domain of civil law, specifically child and family law as issue is addressing the legal challenges of child marriage in South Sudan. It will examine the existing legal instruments, judicial practices, and regional cooperation mechanisms established to combat child marriage, the study will focus on analyzing the legal and practical challenges faced by both stakeholders in combating early marriage in South Sudan.

1.3.2. Scope in the time

This study will focus on the current state of child law and family law in South Sudan and the challenges faced in recent years, accordingly the study take emphasize from 2011 as the year South Sudan got independence until 2024. However, it may also consider the historical evolution of South Sudan efforts to address child marriage and the development of relevant legal frameworks over time. The study may also consider recent developments, trends, and emerging issues related to child marriage in South Sudan.

1.3.3. Scope in the space

The study is delimited to the South Sudan because the topic stands as the legal effect of child marriage in South Sudan. The study focuses on the legal frameworks, challenges, and mechanisms related to the child within the geographical boundaries of South Sudan.

1.4. Problem statement

Child marriage as elaborated above is defined as formal or informal union where both spouse and one of them are under 18years old,¹² this is legal issue which is at high level in South Sudan due to culture traditions, ongoing conflict resulting to insecurity, poverty and gender

¹² Anon “Forced child marriage” <https://www.actionaid.org.uk/our-work/womens-rights/child-marriage> (27/06/2024)

inequality.¹³ Even if South Sudan Transition Constitution provides age of majority¹⁴ and Child Acts of 2008 provide that every child have to be protected from early and forced marriage,¹⁵ the enforcement is weak due to negligent and customary law which provides what is different from statutory laws. This discrepancy between statutory law and customary practices creates a complex legal landscape that fails to adequately protect children, particularly girls from early marriage.¹⁶

Child marriage in South Sudan produces different legal effect like the contradiction between national laws and international human rights conventions.¹⁷ South Sudan has ratified several international conventions, including the Convention on the Rights of the Child (CRC)¹⁸ and the African Charter on the Rights and Welfare of the Child (ACRWC),¹⁹ where country accept the duty of protecting children from harmful practices like early marriage. However, the persistence of child marriage indicates a failure to harmonize domestic laws and practices with these international standards then raising questions about the efficacy of South Sudan's legal system in safeguarding children's rights.

Child marriage result to the denial of educational opportunities for young girls, as mentioned above South Sudan's constitution provides the right to education for all citizens,²⁰ but child brides are often forced to drop out of school which violates their constitutional rights.²¹ The infringement of educational right not only contravenes national law but also produce poverty and dependency, as these girls are less likely to acquire the skills necessary for economic independence,²² which means that the legal system's failure to abolish child marriage has indirectly led to the infringement of other fundamental rights such as the right to education and economic empowerment. Another legal effect is about the violation of consent and the capacity to enter into marital contract in most legal systems including South Sudan, minors

¹³ UNICEF, UNFPA, Child marriage, a mapping of programmes and partners in twelve countries in east and Southern Africa, p 57 available at https://esaro.unfpa.org/sites/default/files/pub-pdf/Child%20marriage%20mapping_final_digital.pdf accessed on 21 June 2024

¹⁴ Art17 (4), The Transitional Constitution of South Sudan supra note 4.

¹⁵ Art 23 (1), South Sudan Child Act 2008 supra note 2.

¹⁶ Nagar S A, Family law reform in Sudan: A never ending story? CMI BRIEF (2018) P 5.

¹⁷ Hodgkinson K *et al* understanding and addressing child marriage, A scoping study of available academic and programmatic literature for her choice alliance, Research gate (2016), p 10-13.

¹⁸ Anon "South Sudan ratifies Convention on the right of child" <https://www.right-to-education.org/news/south-sudan-ratifies-convention-rights-child> (27/06/2024)

¹⁹ Anon "South Sudan adopts African charter on child rights" <https://sudantribune.com/article51309/> (27/06/2024)

²⁰ Art 29 (1) The Transitional Constitution of South Sudan supra note 5.

²¹ UNICEF, UNFPA supra note 1.

²² UNICEF, UNFPA supra note 2.

are not considered to have the capacity of giving informed consent for marriage.²³ However, the recognition of customary marriages in South Sudan often bypasses these legal protections, effectively sanctioning unions that would be considered void or voidable under formal law. This creates a legal paradox where children are simultaneously protected by statutory law and vulnerable under customary practices, highlighting the need for a more cohesive legal framework that addresses this discrepancy.

Child marriage in South Sudan is a major issue, exposing girls to domestic violence and sexual abuse. The informal nature of these unions makes it difficult for them to seek legal protection, undermining the state's duty to protect all citizens equally.²⁴ Child marriage in South Sudan raises public health concerns, particularly regarding reproductive rights and maternal health. The legal system's failure to prevent child marriage indirectly contributes to poor health outcomes, questioning the state's ability to protect women and girls' health.²⁵

1.5. Research questions

1. To what extent the laws protects against child marriage under the South Sudan legal framework?
2. What are mechanisms that can be instituted to settle the problem of child marriage in South Sudan?

1.6. Research hypotheses

Definitional, hypotheses is the predictions about what research will find and it is a tentative answer to the research questions,²⁶ according to this study.

1. The law does not effectively protect child marriage in South Sudan.
2. Institutional and legal mechanisms can be instituted to ensure effective protection against child marriage.

²³ UNICEF, UNFPA supra note 4.

²⁴ Human Right Watch, This old man can feed us, you will marry him, child and forced marriage in South Sudan, (2013) available at <https://www.hrw.org/report/2013/03/07/old-man-can-feed-us-you-will-marry-him/child-and-forced-marriage-south-sudan> accessed at 21 June 2024

²⁵ Human Right Watch, supra note 1.

²⁶ Tub A, law and literature: A paradigm for non- traditional interdisciplinary lawschool

1.7. Research objectives

This study has objective of analyzing child marriage under the legal framework of South Sudan, by evaluating the negative consequences of child marriage for victims, families, state and future children, after that this study will provide the role of insecurity and conflicts in South Sudan to increase high rate of child marriage, the study reveals on how child marriage violate national and international laws protecting child rights, lastly this study propose necessary mechanisms that would be applied to abolish the culture of child marriage in South Sudan.

1.7.1 General objective

The study examines the legal impact of child marriage in South Sudan, evaluating the effectiveness of existing legal frameworks in protecting children's rights and preventing early marriages it will highlighting the complexities of coexistence. The study evaluates South Sudan's legal frameworks for protecting children's rights and preventing child marriages by focusing on the implementation of national laws and compliance with international conventions. It examines the impact of child marriage on constitutional rights, particularly educational rights, consent capacity, and healthcare access, contributing to broader legal, social, and economic challenges. By linking this objective and research problem, my thesis will explore the role of ongoing conflict and insecurity in South Sudan in fostering child marriage and its legal consequences through examining how insecurity and disunity in political environment affects the enforcement of laws against child marriage and proposing necessary legal reforms needed to strengthen child protection mechanisms in the context of insecurity.

1.7.2. Specific objective

During this research the following the following specific objectives have to be tackled:

1. To analyze extent to which child marriages are protected by laws under South Sudanese legal framework
2. To analyze mechanisms meant to curb the problematic of child marriage in South Sudan.

1.8. Research methodologies

Research methodologies is a methods used in a specific type of inquiry that is conducted in the presence of an issue that needs to be resolved or a question that needs to be addressed, research is always hedged about with uncertainty and risk, research is a part of a wider process that constitutes and renders a subject, amenable to study in a distinctive way. However, it is concerned with seeking solutions to problems or answers to questions.²⁷

1.8.1. Research techniques

During this study the following techniques will be used in the way of collecting information as documentary techniques because it is most important in providing accurate information which is suitable on the legal effects of child marriage in South Sudan.

1.8.1.1. Documentation technique

Documentary technique is a research conducted in the way of using official document or personal document as source of information, through this documentary technique the study will employ documentary review by using different techniques such as empirical methodologies, documentary research, and qualitative data analysis.²⁸ This documentary review will involve analyzing various types of documents related to the child marriage in South Sudan, doctrinal method which is traditionally, the main methodology of legal research will be employed to review literature on the administration of justice, particularly the legislative system. This method focuses on examining what the law is, rather than what it ought to be.²⁹ Primary data for the study will be obtained from legislations or laws, through desk review which means that the researcher will collect and analyze relevant laws, regulations, and policies related to child marriage in South Sudan.

²⁷ Ahmed U J, Documentary research methods: New dimension, Indus journal of Management and social science, vol 4, issu no 1 (2010) p 1-14

²⁸ Makulilo, A.B, Protection of Personal Data in sub-Saharan Africa, PhD Thesis, University of Bremen, Germany, 2012 at p.52.

²⁹ McGrath, J.E. Methodology Matters: Doing Research in the Behavioural and Social Sciences, in Baecker, R. M. et al. (1995). Readings in Human-Computer Interaction: Toward the Year 2000, Morgan Kaufmann Publishers, p. 154, as quoted in Makulilo, A. B., note 124. See also, Singhal, A. K. and Malik, I, Doctrinal and Social Legal Methods: Merits and Demerits, Educational Research Journal, 2012, Vol.2, No.7, pp.252-256, at p. 252

For the legal status analysis under the doctrinal methodology, the study will locate and collect the applicable laws³⁰ and apply them to the specific set of facts related to the child marriage in South Sudan. It will enable revealing the current legal status of child marriage in South Sudan based on the laws in force through the Refworld. For the Problem identification the documentary technique will help the researcher identify gaps or problems in the existing legal frameworks by examining the root causes of the legal effects of child marriage in South Sudan.

1.8.2. Research Methods

During this study the following methods of analytical and exegetic methods will be employed to collect information for the issue of elaborating the research problem of this study in details.

1.8.2.1. Analytical method

The analytical methods of research is defined as the way of breaking down complex information into smaller components to achieve a better understanding of the whole information.³¹ Through the use of an analytical method, this study will examine the legal frameworks currently in place by examining the child rights laws, regulations, customary laws and policies of South Sudan to identify contradictions, strengths and weaknesses in their approaches to dealing with child marriage. Additionally, the study will examine judicial practices by analyzing court decisions, case laws, and judicial interpretations related to child marriage in South Sudan. This will help to reveal the practical challenges faced by the judicial systems and how they have resolved. Finally, the study will evaluate regional cooperation mechanisms and international convention on the protection of early and forced marriage for young people like United Nations Convention on Child Rights as the way of harmonizing those international treaties with child laws of South Sudan.

1.8.2.2. Exegetic method

This exegetic method explained as the critical interpretation and elucidation of the significance and ramifications of written materials, including legal documents, statutes, and regulations.³² The purpose of this study is to interpret the legal provisions of child laws and regulations relating with child in South Sudan by providing clarification on their

³⁰ McGrath, J.E. supra note 1.

³¹ Makulilo, A.B, supra note 1.

³² McGrath, J.E. supra note 2.

applicability, extent, and possible ambiguities. It will investigate the legislative intent and it will be possible to understand the purpose and goals of protecting child rights as the way of combating child marriage in South Sudan by analyzing enacted laws and looking through the legislative background, preparatory studies, and discussions surrounding their passage. This study would thus provide for a more thorough understanding of the legislative frameworks controlling child marriage within South Sudan.

1.8.2.3. Historical methods

Historical methods of research is the way of making research by studying past events, people, and phenomena using primary and secondary sources, this approach includes analyzing documents, artifacts, and other historical records to understand context, causality, and change over time. Historians use techniques like source criticism, comparative analysis, and narrative construction to interpret evidence and draw conclusions about the past.³³ According to this study, historical methods provide crucial context for understanding the development of child marriage laws in South Sudan, by examining colonial-era legislation, customary practices, and post-independence legal reforms and also for comparative historical analysis this study will possess the effectiveness of different legal approaches to combating child marriage by studying how other post-conflict nations in Africa have addressed this issue over time it will reveal best practices and potential pitfalls for South Sudan's legal framework which must be considered by policymakers.

1.9. Subdivision of the study

This study focuses on child law in South Sudan, examining its historical evolution, interests, scope, problem statement, research questions, hypotheses, objectives, methodologies, and framework. Chapter 1 defines key terms and theoretical framework relating with child marriage in South Sudan, Chapter 2 details the research problem, and Chapter 3 outlines mechanisms for law enforcers and legislative bodies to handle the complex legal effects of child marriage. The study concludes with conclusions and recommendations.

³³ Daniels R V, History, in Encyclopedia America, vol 14 (1996) p 60

CHAPTER1. CONCEPTUAL AND THEORITICAL FRAMEWORK

Child marriage remains a catastrophic issue in South Sudan, it is considered as the country with the highest rates of early marriage across the world as it is mentioned above, the approximately 52% of girls in South Sudan are married before the age of 18, with 9% married before reaching 15 years old. Child marriage in South Sudan is rooted in cultural traditions, customary law, poverty and insecurity. As result, child marriage produce early birth, violate right to education and increased economic pressures on families.³⁴

1.1. Definition of key Terms

The following are key terms relating with child marriage

1.1.1. Child

A child is anyone under the age of 18 as it is defined by international instruments such as the United Nations Convention on the Rights of the Child (CRC), the CRC is a pivotal international treaty that sets out a comprehensive framework for the protection and promotion of children's rights, CRC defines a child as "every human being below the age of eighteen years unless under the law applicable to the child, majority is attained earlier."³⁵ ACRWC has inspired by CRC and define child as every human beings below the age of 18 years old,³⁶ South Sudan Child acts define child as every human being bellow the age of 18 years old,³⁷ and the transitional constitution of South Sudan define child as any person below the age of 18 years old.

1.1.2. Marriage

Marriage is a legally and socially recognized union between individuals, characterized by a formal commitment to a lifelong partnership, this institution traditionally involves a public declaration of commitment and the establishment of legal rights and responsibilities between

³⁴ Annie *at al* Forced Marriage' in Conflict Situations: Researching and Prosecuting Old Harms and New Crimes, Canadian Journal of Human Rights (2013) p165-185 available at https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2231676 accessed on 29 June 2024.

³⁵ Art 2, African Charter on rights and welfare of Child, Adopted by the 26th Ordinary Session of the Assembly of Heads of State and Government of the OAU, Addis Ababa, Ethiopia - July 1990 Entered into force on 29 November, 1999.

³⁶ Art 2, African Charter on rights and welfare of Child, supra note 1, p 9

³⁷ Art 5, Child Act 2008, supra note 4, p 13

the parties involved.³⁸ Historically, marriage is considered as pillar societal structure, influencing social, economic, and legal dynamics within communities, marriage covers a range of legal benefits and obligations, including those related to property rights, inheritance, and family law, the concept of marriage varies widely across different cultures and legal systems, but it generally includes mutual consent, a formal ceremony, and adherence to specific legal procedures.³⁹

1.1.3. Child marriage

Child marriage is defined as any formal or informal union involving individuals under the age of 18.⁴⁰ It affects both boys and girls, involves entering into a marriage before reaching the legal age of adulthood, the child marriage is recognized as a significant violation of human rights, as it often undermines the fundamental rights and freedoms of young individuals.⁴¹ Child marriage composed by a variety of legal and cultural arrangements and may occur under formal legal systems or informal customary practices, child marriage affect the health, education, and economic opportunities of those of spouses particularly girls, who may face early pregnancies, limited educational attainment, and restricted career opportunities, in addition child marriage is associated with increased risks of domestic violence and psychological stress.⁴²

1.1.4. Family

A family is traditionally defined as a group of individuals who are related by kinship, legal bonds, or marriage, encompassing a variety of familial structures and relationships.⁴³

³⁸ Elizabeth S S, Social norms and legal regulation of marriage, Columbia law school, vol 86, (2000) p 1800

³⁹ Barker N, Evolution of marriage and relationship recognition in western jurisdictions, discussion paper, UN women (2018) p 1

⁴⁰ Juuk B, South Sudanese Dinka Customary Law in Comparison with Australian Family Law: Legal Implications for Dinka Families, Flinders University, Vol34, issue No.2, (2013), p 100.

⁴¹ Juuk B, supra note 1, p 105

⁴² Juuk B, supra note 2, p 115

⁴³ Art 2 al 20, Law N°32/2016 governing persons and family of 28/08/2016 (*Definition of terms*) OG n°37 of 12/09/2016

Family includes parents, children, and their descendants, as well as extended family members such as grandparents, aunts, uncles, cousins, and in-laws, the concept of family is deeply rooted in both social and legal contexts, reflecting the diversity of human relationships and the ways in which individuals come together to form supportive networks.⁴⁴

1.1.4. Forced marriage

Forced marriage is a union in which one or both individuals are coerced into matrimony against their will, lacking full and informed consent.⁴⁵ Forced marriage involves significant pressure exerted on the individuals, which can take various forms including physical, emotional, financial, or psychological coercion. It is different from arranged marriages, where both parties have the opportunity to consent freely; forced marriages are characterized by the absence of genuine consent, undermining the autonomy and rights of the individuals involved.⁴⁶

1.1.5. Best interest of child

The principle of the best interest of the child is a fundamental concept in both international and domestic child protection laws, guiding decisions that impact a child's well-being, this principle emphasizes that all actions and decisions concerning a child should prioritize the child's overall welfare and development. It involves a comprehensive consideration of various factors to ensure that the child's rights and needs are met without prejudice, the key factors determine the best interest of child there are care and custody, education, culture and religious identity, health and wellbeing of child and others⁴⁷

1.1.6. Marital rape

Marital rape is defined as a form of sexual assault in which one spouse engages in sexual intercourse with their partner without their consent, here sexual activity is forced upon a spouse against their will, and it can involve a range of coercive or violent behaviors.⁴⁸

⁴⁴ Sharma R, Family and family structure classification's redefined by current times, J family Med prime care, vol 2, issue 4 (2013) p 306-310

⁴⁵ Lyneham S *et al* When saying no is not an option: Forced marriage in Australia and New Zealand, Australian Institute of Criminology, Research report (2012) P V.

⁴⁶ Lyneham S *et al* supra note 1, p v

⁴⁷ Art 2 al 10, Law N°32/2016 of 28/08/2016 supra note 1.

⁴⁸ Lyneham S, supra note 1. P 26

Some legal systems and societies did not recognize marital rape as a criminal offense, significant progress has been made in recent decades to address and rectify this issue, it include physical violence, threats, emotional manipulation, or psychological pressure used to compel sexual acts.⁴⁹

1.1.7. Female genital mutilation

Female genital mutilation refers to any procedure that intentionally changes female genital organs for non-medical reasons, this procedure does not have health benefits for girls, as result, it may lead to severe bleeding, problems urinating and, later, cysts, infections as well as complications in childbirth and increased risk of newborn deaths.⁵⁰

1.1.8. Safe space

Safe space is place where women and girls feel physically and emotionally safe, it is an area where women and girls may enjoy the freedom to express themselves without the fear of judgement or harm, the purpose of a safe space are to provide an area where women and girls can socialize and rebuild social networks; receive social support, acquire contextually relevant skills and receive information on issues relating to women's rights, health care and services.⁵¹

1.1.9. Bride price

Bride price, also known as bride wealth or dowry, refers to a form of payment made by a groom or his family to the family of the bride as part of the marriage arrangement; this practice is prevalent in various cultures and legal systems around the world and involves the transfer of money, property, or other valuables, practice of bride price are applicable in different way for different regions, reflecting the social, cultural, and economic contexts of the societies in which it occurs.⁵²

⁴⁹ Lyneham S, supra note 1. P 26

⁵⁰ World Health Organization fact sheet, (2017) available at <https://www.who.int/news-room/fact-sheets> accessed on 29 June 2024.

⁵¹ Maglietti M, Women and Girls in Safe Space, United Nation Population Fund,(2015) p 4-10 available at <https://www.unfpa.org/sites/default/files/resource-pdf/woman%20space%20E.pdf> accessed on 29 June 2024.

⁵² Makec J W, the Customary Law of the Dinka People of Sudan: In Comparison with Aspects of Western and Islamic Laws, Afroworld Publishing Company (1988) p 80.

1.1.10. Child advocacy

Child advocacy pertains to the measures and endeavors undertaken to safeguard the rights of children, advance their welfare and guarantee that their opinions are acknowledged in legal, social, and political arenas. Child advocates fight to protect children's rights, particularly those of the weaker or less able to speak for themselves.⁵³

1.2. Literature Review

Child rights under South Sudan is well protected in legal framework where state adopted national laws aiming to protect child rights and signed different international convention aiming to protect child rights, However, the enforcement of child right in South Sudan is still challenged by different reasons which produce the effects of child marriage. According to this study, it discusses different legislations adopted to protect child rights basing on international legal instrument, regional legal instrument and national legal instrument. For international level, the study analyses UN Convention on the Rights of Children (CRC), at national level it analyses African Charter on the Rights and Welfare of Child (ACRWC) and at national level the study discusses about South Sudan Child Acts of 2008 and Transitional constitution of South Sudan adopted in 2011.

1.2.1. Generalities of child rights

Since the UNCRC's 1989 adoption, child rights have been a global priority. These rights include life, survival, and development, protection from violence, education, and participation in decisions making. However, implementation remains challenging, especially in developing countries like South Sudan. Child rights prioritize protecting children from harmful practices like child marriage, which disproportionately affects girls,⁵⁴ UNCRC calls for abolishing these practices, ensuring their rights to education, health, and protection from violence.⁵⁵ South Sudan is party to the ACRWC which also provide regional consideration for state parties in the way of protecting child rights.

⁵³ Lalayants, M *et al* Multidisciplinary consultation in child protection: A clinical data-mining evaluation. International Journal of Social Welfare, Vol 20 issue no 2(2011), p 156-166. Available at <https://onlinelibrary.wiley.com/doi/abs/10.1111/j.1468-2397.2010.00741.x> accessed on 29 June 2024.

⁵⁴ Wodon Q et al, Child marriage, economic impacts of child marriage : Global synthesis report, (world bank 2017) UNICEF, (2021) p 17

⁵⁵ Art24 of Convention on the Rights of Children

Legal frameworks are crucial for protecting children's rights and preventing harmful practices like child marriage. However, in South Sudan, despite the UNCRC's minimum marriage age, and ACRWC provide fundamental rights of children to be followed, adopted Child acts of 2008 and transition constitution of South Sudan aiming to protect child rights, the child marriage persists due to poverty, conflict, and weak institutional capacity,⁵⁶ a multi-sectoral approach combining legal reform, community engagement, education, and economic empowerment is needed.

1.2.2. International legal instruments in the protection of child

The child rights are protected at international level and South Sudan ratified different instrument aiming to protect child rights, South Sudan ratified UN charter on the rights of children with purpose of effectively protecting child rights at national level and at international level, this instrument recognize different rights to children like right to education, health and welfare, rights to participate in decision making and freedom from any arbitral violation or vital punishment and others.

1.2.2.1. Conventions on the child's rights

The customary practice of child marriage in South Sudan fundamentally violates the principle of the best interests of the child; this is fundamental principle in the CRC⁵⁷ which means that every action that will affect life of children, the decision must be taken in the consideration of what is good to the children's, as an example for the case of divorce proceedings all judgement to be taken by judges for any issue like custody of children, family property and others, the best interest of children must be primary consideration. The child marriage as a strategy for survival in South Sudan contradict with international human rights standards, specifically, those rights enshrined in UN convention on the child rights, in some regions parents consider early marriage as a means of protecting their daughters from sexual violence or securing economic stability for the family, this practice opposes UN Convention on the Rights of the Child which provide that children are protected from early or child marriage, in the regions affected by insecurity, the leaders lack the resources and their will to intervene in cases of child marriage, viewing it as a private family matter rather than a violation of

⁵⁶ Mejia C V *et al* Challenge for development in current conflict settings, the impacts of conflicts on child marriage and adolescent fertility, UNITED NATIONS, ESCWA,(2019)p17-21.

⁵⁷ Art 3, UN convention on the rights of child supra note 1.

international conventions.⁵⁸ The culture of child marriage in South Sudan is justified under customary law, stands in stark contradiction to international human rights conventions, particularly the UN Convention on the Rights of the Child (CRC), it protect children from harmful social and cultural practice including child marriage as prohibited acts,⁵⁹ in many South Sudanese communities, marriage is seen as a means of preserving cultural identity and ensuring economic stability, rather than as a potential violation of children's rights, this contradiction led to significant challenge in reconciling customary practices with international human rights standards.⁶⁰ CRC provides rights to health for children which is intended to protect them from early marriage because it hinder their well development, it emphasize that, the right of children to the enjoyment of standard of health and standards of life which gives duties to member state to establish appropriate mechanisms to reduce infant and child mortality, this child marriage result to early pregnancy and childbirth, in preserving right to health, these conventions provide a strong basis for challenging child marriage on medical and public health grounds, the right to health not only protects individual children but also frames child marriage as a broader public health issue, potentially influencing policy and societal attitudes.⁶¹

The Transitional constitution of South Sudan recognizes international treaties and conventions and state has obligation to comply at all levels of government with international and regional human rights treaties and conventions ratified by the Republic of South Sudan⁶² in the nature of the bill of rights, all rights and freedoms established in international human rights treaties, covenants and instruments ratified or acceded to by the Republic of South Sudan shall be an integral part of this Bill.⁶³

1.2.3. Regional instruments on the protection of child

African Charter on the Rights and Welfare of the Child (ACRWC), provides that a child is a person who are below the age of 18 years old,⁶⁴ customary laws in South Sudan allow for

⁵⁸ Mejia C V *et al*, supra note 1, p19.

⁵⁹ Art 32, UN convention on the rights of child supra note 2

⁶⁰ Jentoft S & Bavnick M, The journal of legal prularism and unofficial law, vol 51, issue no 3(2019), p 271-29. Available at <https://www.informahealthcare.com/toc/rjlp20/51/3> accessed on 04 July 2024.

⁶¹ African Union Commission, General comments No 5 on state party obligations under the African charter on the rights and wealfare of the child (Article 1)and system strengthening for child protection, ACERWC (2018)P 31-53.

⁶² Art 146, (i) The Transitional Constitution of South Sudan supra note 9, p 50.

⁶³ Art 9, (3) The Transitional Constitution of South Sudan supra note 10, p 4.

⁶⁴ Art 2, African Charter on rights and welfare of Child, supra note 2.

marriage before the age of majority, the child marriage under customary law violates these international conventions which protect child rights and produce the complex interplay between traditional practices and international human rights standards in South Sudan's legal landscape.⁶⁵ The right to education was the major principle of both ACRWC⁶⁶ but it has violated by customary practice when they perform child marriage in South Sudan, every child has right to education and state parties are obliged to establish measures aiming to regulate attendance at schools and reduce dropout rates, but the child marriage results in being removed from schools which directly denied their right to education, due to customary norms, in South Sudan education for girls is considered as second priority compared to their role as wife, this led to early marriage take precedent to education which violate international convention and increase poverty and gender inequality.⁶⁷

The customary practice of child marriage in South Sudan fundamentally violates the principle of the best interests of the child; this is fundamental principle enshrined in the ACRWC⁶⁸ it means that all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities, or legislative bodies, the best interests of the child shall be a primary consideration, but the decision of child marriage in South Sudan are taken according to economy, culture and relationship between families instead of considering what is best for the children, this opposition between customary practices and the principle of the best interests of the child produce challenge in harmonizing South Sudan's legal pluralism with its international human rights obligations.⁶⁹

The non-discrimination provisions in both conventions provide another layer of protection against child marriage. ACRWC prohibit discrimination on any grounds,⁷⁰ including sex and gender, this is linked with child marriage which directly affects girls rights, these non-discrimination clauses provide a basis for challenging practices that differentially impact girls, including early marriage, in the promotion of equality and non-discrimination, these

⁶⁵ Dr Leitch A R *et al* A study of customary law in contemporary Southern Sudan, World vision international, annexes D, (2004) p 62.

⁶⁶ Art 11, African Charter on the Rights and Welfare of Children, *supra* note 3

⁶⁷ Amiri A, The child marriage in Africa: The effects of on girls education: A Review, University of the people, (2023) available at https://www.researchgate.net/publication/367310509_THE_CHILD_MARRIAGE_IN_AFRICA_The_Effects_on_Girls_Education_A_REVIEW accessed on 04 July 2024.

⁶⁸ Art 19, African Charter on rights and welfare of Child, *supra* note 4. P17.

⁶⁹ Jama, G. Do our children have rights? Children's rights in the unrecognised state of Somaliland. [Doctoral Thesis, Maastricht University]. Maastricht University (2024) P 44. available at <https://cris.maastrichtuniversity.nl/ws/portalfiles/portal/192297503/c8263.pdf> accessed on 04 July 2024.

⁷⁰ Art 3, African Charter on the Rights and Welfare of Children

conventions require states to address the gender-based aspects of child marriage, potentially leading to more comprehensive and equitable child protection policies.⁷¹

1.2.4. National legal instruments on the protection of child

National laws like Transitional constitution of South Sudan adopted in 2011 and Child acts of 2008 have covered all rights of children both girls and boys in equal foots, as the way of protecting child rights, also South Sudan became party to different international conventions aiming to protect child rights line UN convention of child rights, African charter o the rights and welfare of children. Every child are protected from harmful practice which can destroy their development like early marriage,⁷² it means that children has right to life, survival and development. It simply means that when child are engage in early marriage their right to development are totally infringed as result standard of life became affected.

This early marriage sometime happened as forced marriage through abduction and trafficking which is prohibited by transitional constitution,⁷³ it guarantees that every child has the right not to be subjected to negative and harmful cultural practices which affect his or her health, welfare or dignity. This means that those harmful traditional practices are settled, when the child marriage applied to them it negatively impacts a child's welfare and dignity. In South Sudan all levels of government shall promote women participation in public life and their representation in the legislative and executive organs by at least twenty-five per cent as an affirmative action to redress imbalances created by history, customs, and traditions.⁷⁴ Even if it does not directly address child marriage, it promotes women's empowerment and education, which are crucial factors in combating early marriage.

All individuals are entitled to equal protection under the law without discrimination based on race, ethnicity, color, sex, language, religion, political opinion, birth, locality, or social status.⁷⁵ The Child Act of 2008 of South Sudan is enacted with the purpose of protecting and promoting the rights of children within state, It was adopted before South Sudan's independence and it still in force to day, it clarify child as any human being below the age of

⁷¹ Nkwain S & Mohamed F, Gender equality and international law in Africa: The role of regional economic communities, African Union, Equality now, UNDP, p 5-8.

⁷² Art 17 (d) The Transitional Constitution of South Sudan, supra note 2. P5.

⁷³ Art 17 (h) The Transitional Constitution of South Sudan, supra note 3. P5.

⁷⁴ Art 16, The Transitional Constitution of South Sudan, supra note 4. P5.

⁷⁵ Art 14, The Transitional Constitution of South Sudan, supra note 5. P5.

age of 18,⁷⁶ which means that those who are below that age it is not possible for them to make marriage, every child in South Sudan must be protected from early marriage⁷⁷ and forcibly child marriage shall be punished by the law, it simply means that the child marriage is prohibited under South Sudan Child Act. Every female child are protected from sexual abuse, exploitation and gender based violence where early marriage is included as prohibited acts,⁷⁸ this emphasize that when child are forced to early marriage it may be considered as torture as some of them are mentally affected, the harmful acts and culture practice which may harm his or her wellbeing, dignity, normal growth and development is also prohibited⁷⁹ it means that this Article has to be applied in the case of nullifying child marriage performed due to culture reasons.

Every child has right to free and compulsory primary education which means that every acts which can hinder them to attend schools are prohibited⁸⁰ like early marriage which disrupt them to complete their education, there are different child protection mechanisms adhered with duties to protect child right, the child welfare committees has established at different administrative sector and it fights for child marriage in various communities, and in the responsibilities of parents and guardians there role was to protect children from neglect, discrimination, violence and abuse,⁸¹ it means that there are not allowed to take part in early marriage due to any factor like financial factor or others.

This analysis demonstrates that the Child Act of 2008 of South Sudan and Transitional constitution of South Sudan of 2011 provides a necessary legal framework for protecting children's rights, including specific provisions against child marriage, however, it's important to understand that implementation and enforcement remain significant challenged by different factors such as limited resources, lack of awareness, political insecurity and cultural practices.

⁷⁶ Art 5, South Sudan Child Act 2008 supra note 3.p12.

⁷⁷ Art 23 (1), South Sudan Child Act 2008 supra note 4.p21.

⁷⁸ Art 26 (1), South Sudan Child Act 2008 supra note 5.p24.

⁷⁹ Art 22, South Sudan Child Act 2008 supra note 6.p20.

⁸⁰ Art 14, South Sudan Child Act 2008 supra note 7.p18.

⁸¹ Art 36 (2), South Sudan Child Act 2008 supra note 8.p28.

CHAPTER2: PROBLEMATICS OF PROTECTION OF CHILD MARRIAGE IN SOUTH SUDAN

Child marriage in South Sudan is a practice which is protected by custom and culture and its applicability is considered as violation of national and international laws as it infringes the rights of children specifically girls. As an example due to child marriage the girls rights to education is infringed, right to welfare, rights to freedom and consent is infringed.

2.1. EXISTENCE OF LEGAL FRAMEWORK IN SOUTH SUDAN

South Sudan's Transitional Constitution of 2011 which acknowledges customary law as a source of legislation⁸² has led to inconsistent application of child marriage laws with customary courts often prioritizing traditional practices over statutory protections. The child marriage is a practice resulting from culture and customary norms in South Sudan, it produces different legal challenges for victims when they engage in seeking recourse as fighting for their rights. Specifically, due to this child marriage determined by customary law as its legal effects it contradicts with statutory laws, international convention protecting child rights and other instruments designed to preserve best interest of children.

The practice of Child marriage in South Sudan has produced contradiction between customary and national law which protects the children from early marriage, this practice introduce complexities in the country. The life of daughters and women in South Sudan are still challenged by culture and customary law which allow child marriage and ignores them as result of gender based violence.⁸³ The child marriage is still practiced in many communities of South Sudan and conflicts with South Sudan's statutory laws specifically the Child Act of 2008 and Transitional Constitution of South Sudan, which sets the protection from early marriage. The contradiction highlights the difficulties in integrating traditional practices with contemporary legal standards in a post-conflict society.

2.2. MAJOR REASONS OF CHILD MARRIAGE IN SOUTH SUDAN

There is different literature explaining the numbers of reasons that influence the girls to be married young, those factors are different according to the areas and culture of that community, it is clearly seen that child marriage is caused by interplay of social norms,

⁸² Art 5, The Transitional Constitution of South Sudan, supra note 1. P3.

⁸³ Oxfam Research Reports, supra note 1. P 5-10.

economics, structures and familial motivations.⁸⁴ It is difficult to discuss which of these factors has the biggest influence on the prevalence of child marriage, many scholars suggest that unequal gender norms are the catastrophic reason for the existence and persistence of child marriage; these norms place a higher value on males than females and dictate the correct way a girl should behave and live.⁸⁵ Other scholars agreed that, the economic reasons are actually key and that child marriage wouldn't occur if families were economically secure. There is clearly interplay between these two factors as even if economic reasons are the primary cause of child marriage, gendered norms still dictates that it is normally girls who are married as children and not their male counterparts.⁸⁶

2.2.1. Inconsistent application of child marriage laws

The inconsistent application of child marriage laws in South Sudan has created a legal vacuum that perpetuates the practice, while the Transitional Constitution of 2011 and the Child Act of 2008 set the age of majority at 18; customary laws often contradict these statutory provisions.⁸⁷ This legal pluralism, coupled with weak enforcement mechanisms, allows child marriages to continue unchecked in many communities, the discrepancy between statutory and customary laws creates confusion among local authorities and communities, leading to selective enforcement and, in many cases, outright disregard for national legislation prohibiting child marriage.⁸⁸ The inconsistent application of laws, exacerbated by a unified judicial system and inadequate training, leads to local courts applying customary laws for child marriage, resulting in patchwork enforcement and increasing child marriage prevalence in regions with sway over statutory laws.⁸⁹

2.2.2. Institutional weaknesses

South Sudan's governance structures, particularly the judiciary and law enforcement agencies, are weakened due to prolonged conflict, leading to inadequate implementation of child protection laws.

⁸⁴ Hodgkinson K *et al* *supra* note 2, p 18.

⁸⁵ Hodgkinson K *et al* *supra* note 3, p 18.

⁸⁶ Hodgkinson K *et al* *supra* note 4, p 18.

⁸⁷ Ajak M *et al*, the clash of legal systems: Addressing child marriage in South Sudan, *journal of legal pluralism and unofficial law* 223, vol 19 (2021) p 97

⁸⁸ United Nations Human Rights Council, situation of Human Rights in South Sudan, UN, Doc A/HRC/49/78 (2022) P 88

⁸⁹ Akech L, Judicial enforcement of child rights in post-conflicts South Sudan, *international journal of law, policy and the family* 112, vol 37 (2023) p 47

This institutional vacuum allows harmful practices to persist, increasing the prevalence of child marriages in remote areas.⁹⁰ The weak local government structures in South Sudan exacerbate child marriage issues due to limited resources and training, the absence of robust birth and marriage registration systems makes it difficult to enforce laws and verify ages, leading to an increase in child marriages.⁹¹

2.2.3. Culture and customary norms

South Sudan's child marriage persists due to deeply ingrained cultural practices and customary norms, these beliefs often override national laws, leading to a challenging environment for implementing child marriage laws, resulting in increased prevalence.⁹² The bride price system in South Sudanese cultures exacerbates child marriage by viewing daughters as economic assets during economic hardships. This commodification often overrides age and consent considerations. Traditional conflict resolution mechanisms prioritize family honor over individual rights, creating barriers to effective legal protections.⁹³

2.2.4. Contradiction between customary law and statutory laws

The legal pluralism in South Sudan, characterized by a contradiction between customary law and statutory laws, significantly contributes to the prevalence of child marriage, as customary laws often permit marriage at younger ages, complicating enforcement efforts against child marriage,⁹⁴ the contradiction between customary and statutory laws is pronounced in rural areas, where traditional authorities hold more power than formal legal institutions. This lack of a clear hierarchy allows local leaders to favor customary practices, undermining national legislation's protective intent.⁹⁵

⁹⁰ UNICEF, Strengthening child protection system in South Sudan: challenges and opportunities, UNICEF South Sudan, (2021) p 29

⁹¹ Jok M, the role of traditional Authorities in addressing child marriage: challenges and opportunities in South Sudan in K Cheesemen and LWaldorf (eds), traditional justice and rights in Africa, Cambridge University press, (2021) p 18

⁹² Grabska N, Marrying in South Sudan: Struggles for gender equality and family life in a conflicts affected context, journal of family issue, vol 57, issue no 21` (2019) p 35

⁹³ Akech L, bride price and the perpetuation of child marriage in South Sudan, African journal of international and comparative law 185, vol 31 (2023) p 17

⁹⁴ Leonardi C, Pragmatic traditions: the legal system in South Sudan and its relevance for child protection, law and history 604, vol 37, (2019) p 47

⁹⁵ Deng D, customary law in the cross fire: the case of child marriage in South Sudan, African journal of international and comparative law 124, vol 28 (2020) p 73

2.3. OTHER AUXILIARY CAUSES OF CHILD MARRIAGE IN SOUTH SUDAN

Apart from legal reasons that contribute to the increase of child marriage in South Sudan there are other many auxiliary reasons that contribute to the high level of child marriage in different regions of South Sudan, here the analysis based on economic reasons, political reasons and social reasons.

2.3.1. Economic reasons

Economic reasons are biggest reason identified in the literature for the increase of child marriage; this explanation is prevalent in both organizational and academic literature in South Sudan and other regions, it is often deeply connected with norms and gender hierarchies. The economic reasons behind child marriage are categorized into two parts; either parent choose to marry their child young as they feel this is the primary way of securing their daughter's future, or parents see their girl child as a financial burden that they can relieve themselves of, and profit by marrying her young, the economic reasons that result in child marriage may be classified into income poverty, economic dependency, the dowry or bride price and land and property rights.⁹⁶

The economic Poverty is a paramount factor which contributes to the child marriage in South Sudan where many families uses marriage as tool to eradicate economic hardship by reducing the number of dependents in the household, expecting to get a bride price and some girls are sold for marriage. According to this financial motivation which increases child marriage is South Sudan it also infringes girls rights like rights to wealth, right to education and free consent for marriage. This economic motivation often overrides concerns about the girl's well-being or education, it seems that different family in South Sudan used child marriage as a means of securing financial security, particularly in times of economic hardship.⁹⁷

The economic dependency of girls, in South Sudan the role of women is traditionally based on domestic work and reproduction which hinder their economic independent and depend on their family or her husband.

⁹⁶ Hodgkinson K *et al* *supra* note 5, p 19.

⁹⁷ Ensor, M. O, Displaced Girlhood: Gendered Dimensions of Coping and Social Change among Conflict-Affected South Sudanese Youth. *Refuge: Canada's Journal on Refugees*, Vol 30, issue no 1, (2014). p15–24.

The child marriage took the economic burden of girls to her new family because always their families believe that their daughter will marry and will have employment of domestic work when she marries, it means that there is not a perceived need to wait for the daughter to be married and no need to invest in her education.⁹⁸

The bride price is payment in cash or in kind made on the girl's family by her future husband's family. Even if it was abrogated in the laws of some country like in Rwanda, it was still legalized in others like in South Sudan. In these states young girls are considered as valuable properties, which mean that family has to receive a higher bride price when they marry their daughter at young age as it provides economic profit for parents.⁹⁹

2.3.2. Political reasons

The unlimited conflict and political insecurity in South Sudan have expanded the practice of child marriage. Some parents consider early marriage as the way of protecting their girls from sexual violence in the time of insecurity and others forced their daughter to be married with older person because they know that they are in insecurity where the enforcement of law can't be achieved.¹⁰⁰

The weak enforcement of existing laws against child marriage contributes to its persistence. Even if statutory laws protect children from early marriage and forced marriage customary laws often take precedence, where there is limited implementation of national legislation. There are many challenges in enforcing child marriage laws in South Sudan due to the prevalence of customary legal systems and limited state capacity.¹⁰¹

2.3.3. Social reasons

Religious factor is considered as other reasons which contribute to the child marriage in South Sudan. According to the religion parents and elders consider marrying their children as religious obligation, it found in religious law, customs and religious leaders which dictate the age at which girls should marry, under Islamic law, they recognize that, a girl is ready to wed

⁹⁸ Hodgkinson K *et al* supra note 6, p 19.

⁹⁹ Hodgkinson K *et al* supra note 7, p 20.

¹⁰⁰ Oxfam Research Reports, Born to be married: addressing child, early and forced marriage in Nyal, South Sudan (2019) P8-11.

¹⁰¹ Scott J *et al* Governing child marriage in South Sudan: interplay between customary law and National laws. Columbia Human rights law review, vol 45, (2013) p1-47.

when she hits puberty, generally undefined in terms of age and often meaning age of menarche. These religious laws and local customs give parents not only the impetus, but sometimes the right, to marry their daughters below the minimum age prescribed by national law.¹⁰²

Traditions culture and customary norms contribute a big role in the increase of child marriage in different areas of South Sudan, those early marriage is seen as a way to preserve family honor, ensure a girl's virginity before marriage, and maintain social connections between families or clans, those cultural practices and customary norms prevail over national laws prohibiting child marriage due to gender based violence.¹⁰³

Limited access to education particularly for girls contributes to the high rate of child marriage. In the case girls have not attending the school; they are more likely to be attracted marriage, it means that, the lack of educational chances for girls in South Sudan not only increase unskilled generation in future but also increases their dependence while there are early married.¹⁰⁴

Discrimination based on gender violence contributes more to the rise of child marriage in south Sudan. Here the value of girls are to produce birth, making sex and domestic labor which is totally primitive, then as result, it encourage early marriage as they consider them to be used for only those services. Actually, gender norms norms contribute to the normalization of child marriage in South Sudanese society.¹⁰⁵

2.4. NEGATIVE IMPACTS OF CHILD MARRIAGE IN SOUTH SUDAN

The child marriage produces effects for both an individual, family and a national with in socio-economic aspects. Some documents discuss both of these levels, whereas academic research articles tend to focus on one or the other, it was found that when discussing child marriage, community members took looking at the immediate impact to girls, their families

¹⁰² Hassan W, Equality Now, Protecting the Girl Child: Using the Law to End Child, Early, Forced Marriage and Related Human Rights, (2014) p 7.

¹⁰³ Hodgkinson K *et al* *supra* note 8, p 21.

¹⁰⁴ Stem O, This is how marriage happens sometimes': Women and marriage in South Sudan, Chapter 1, p2-7.

¹⁰⁵ Munthal A C, Forced marriage in conflict situations: Researching and prosecuting old harms and new crimes, Canadian journal of human rights. Vol 7, issue no 1, (2018) p1-36.

and future children in their growth and development.¹⁰⁶ In briefly, this study tackles to the effects of child marriage into what is defined as denying girls their childhood and the effect on a girl's sexual and reproductive health. These elements have effects at both the individual and national level and the following are different impact of child marriage in South Sudan.

2.4.1. Early birth

Child marriage led to early birth, this is because it automatically led to early pregnancy and child birth for girls as it is not easy for them to negotiate with their husband to delay birth, many girls are pressured to have birth soon after their marriage because if she delay, husband may have new wife, it simply means that having first birth for girls is the way of meeting with criteria of new family and gain respect for both family and community, early pregnancy in girls, often due to lack of knowledge about sex and reproduction, is a significant issue in developing countries, where pregnancy and childbirth are the main cause of death for 15-19 year olds.¹⁰⁷

2.4.2. Family planning and contraceptive use

The family planning and contraceptive use, as it is elaborated above, when young girls are married it is difficult for them to putt of pregnancy and negotiate for contraceptive use due to fact that they are pressured to have first birth soon after marriage. And also they odnt know the best option for contraceptive available for them. Then after were much more able to negotiate and often their views were most adhered to and a wife's opinion was rejected, she would often act against her husband's will without his knowledge, by using or not using contraception, or by terminating a pregnancy, but their ability to make such decisions against the husbands will in is at low level.¹⁰⁸

¹⁰⁶ UNFPA, Adolescent, youth and the transformation of the future, The power of 18 Billion, (2014) p 3-11. Available at https://www.unfpa.org/sites/default/files/pub-pdf/EN-SWOP14-Report_FINAL-web.pdf accessed on 01 July 2024.

¹⁰⁷ UNFPA, supra note 1, p 9.

¹⁰⁸ Hassan W, supra note 1, p 15.

2.4.3. Violence

Violence, some parents argue that, they marry their girls young to protect them from sexual violence and harassment.¹⁰⁹ Caregivers' concerns regarding their daughters' safety explains, at least in part, the rise of child marriage rates in humanitarian crises, the reality is often found to be otherwise, not only is child marriage increasingly understood as a form of gender-based violence in itself, it also often results in domestic and gender-based violence.¹¹⁰ Indeed, girls who marry as children are consistently likely to experience more violence, both verbal and physical, from their husbands than girls who marry later. The violence experienced by child brides doesn't only come from their husbands, as in-laws can also be abusive to girls, especially when the girl does not live up to expectations, girls who are married as children meet with challenges of harassment relating to sexual violence and rape, and significantly more so than those married older. In some areas child brides described their sexual initiation as forced and child brides often continue to have non-consensual sex throughout their marriage. It means that the likelihood of experiencing intimate partner violence also increases with a larger age gap between girls and their husbands.¹¹¹

2.4.4. Easy transmissions of diseases

The child marriage led to the easy transmission of diseases like HIV or STIs, marriage is sometimes considered as a safe space where sexual intercourse carries a lower risk of the transmission of sexually transmitted disease, like HIV, but when it comes to the early marriage and forced marriage, this assumption has been countered and marriage shown to be an unsafe space, some researchers revealing that rates of HIV are 50% higher amongst child brides compared to unmarried, sexually active girls. There are many reasons as to why this is the case.¹¹² Firstly, the younger a girl marries, the wider the age gap between her and her spouse, and so a girl's husband is likely to be older and have had more sexual partners. Secondly, married girls are more likely to engage in sex more frequently and usually not use a condom.

¹⁰⁹ UNFPA, *supra* note 2, p 26.

¹¹⁰ Burton, J. Ghost marriage and the cattle trade among the Atuot of the Southern Sudan. *Journal of the International African Institute*, Vol 48, issue no 4, (1978) p 398–405.

¹¹¹ Burton, J, *supra* note 1, p 388.

¹¹² Benjamin J A, Gender Assessment, USAID/South Sudan, (2010), P5-8. Available at https://pdf.usaid.gov/pdf_docs/PNADT679.pdf accessed at 02 July 2024.

They will also have little access to educational and media sources for information about HIV and in South Sudan there are polygamous relationships which may increase the transmissions of disease from ne wife to another.¹¹³

Child marriage in South Sudan has been increased due to culture and customary law which allow child marriage in south Sudan. As it is mentioned above this child marriage was a result of different factors including gender based violence, culture and ongoing conflicts in country, weak enforcement of existing laws, lack of education and poverty. This child marriage produce some negative impacts within spouse specifically girls where it undermines their rights like rights to education and rights to free consent in marriage, introduce them to early birth, increased mortality rate and gender based violence.

2.5. IMPACTS OF ONGOING INSECURITY TO CHILD MARRIAGE IN SOUTH SUDAN

South Sudan have got independence from Sudan in 2011, but this new state is still in conflict based on ethnic group led by leaders who was also big master of fighting for the independence before 2011. Those leaders take position and fight each other by political reasons. Citizens are suffering from that ongoing insecurity, which led to loss of lives, destruction of properties and instability in political structure.¹¹⁴

South Sudan had gained independence from Sudan in 9th July 2011 after the decades of civil war. In 2021 country celebrate 10th anniversary of its born like Africa's 54th independent state and young country in the world. The conflict between Sudan and south Sudan was longest civil war which fought between 1955 to 2005 with interlude of peace between 1972 and 1983. There conflicts has roots in the historical injustice and discrimination committed against those people what is now citizens of South Sudan within a Sudanese nation forcibly defined as Arab and Islamic. Researchers have presented resistance and opposition to North Sudanese other as instrumental to the emergence of a unified, collective sense of self among a culturally, linguistically and religiously.¹¹⁵

¹¹³ Benjamin J A, supra note 1, p 8-10.

¹¹⁴ Waal A, Nation and Nationalism, the ambiguities of self-determination: IGAD and the secession of South Sudan, Willey, vol 27, issue no 1, (2021) p 80-95.

¹¹⁵ Benitrovato D *et al*, Nation and Nationalism, Reptured imaginings amind emerging nationhood: The unsettled narrative of unity in resistance in South Sudanese History textbooks, Whilley, vol 29, issue no 3, (2023) p 1041-1056.

In this era of arduous road to nationhood, in the city Juba the internal conflict accelerated in new civil war in 2013 as South Sudanese various ethnic group and communities starts to take their position within new state and spread in the other parts of country. The leaders in this ongoing conflicts are former rebel group and dominant political party, Sudan People's from Liberation Army led by Dinka President Salva kiir Mayardit and liberation army in opposition known as Nuer people led by Vice president Riek Machar. The 15 December 2013 marked as the era of widespread of insecurity and ongoing conflict in South Sudan characterized by violence against civilians, displacement of people and severe humanitarian crises.¹¹⁶

2.5.1. Weakened enforcement of law

Ongoing conflict and insecurity in South Sudan has affected the country's legal and governance structures and creating an environment which result into child marriage, the breakdown of rule of law has affected implementation of national legislation designed to protect children specifically girls from early marriage, the decline of legal institution in war time affected vulnerable persons and their children with high risks of exploitation and abuse like forced marriage, it is clearly seen that the lack of functioning legal systems, traditional practices infringe children's rights and child marriage occurs.¹¹⁷ Specifically, ongoing conflict hinders the enforcement of the Child Act of 2008, which explicitly prohibits marriage early marriage. The inability to enforce this law has left children to early marriage, which produces different effects for them physically, emotionally and socially.

Ongoing conflict and insecurity led to mass displacement of people from one place to another, which hinder the enforcement of laws against child marriage, the forced displacement often leads to the disintegration of traditional community structures that might have previously served as safeguards against practices like child marriage, this erosion of social fabric, coupled with the weakened state apparatus, has created a perfect storm for the proliferation of child marriage, the formal legal systems are often absent or ineffective, customary practices tend to fill the void, sometimes to the detriment of children's rights.¹¹⁸ The internal displacement has affected millions, stretching the government's capacity to enforce laws in makeshift camps and settlements.

¹¹⁶ Benitrovato D, supra note 1, p 809

¹¹⁷ Benitrovato D, supra note 2, p 800

¹¹⁸ Yakovenko M, the ideal security sector reform approach: how does South Sudan compare?

The resulting legal vacuum has allowed child marriage to persist and even increase in some areas, as families grapple with the harsh realities of displacement and economic instability.¹¹⁹

The ongoing conflict produced ineffective judicial system in South Sudan, it hinder the ability to prosecute cases relating to the early marriage effectively, it is revealed that many courts in conflict-affected areas are either non-functional or operating at severely reduced capacity.¹²⁰ Even in areas where courts remain operational, they are often overloaded by the many cases and lack the necessary resources to address complex issues such as child marriage, the breakdown of judicial mechanisms not only challenge the prosecution of child marriage cases but also increase the culture of impunity, potentially emboldening perpetrators and further normalizing the practice.¹²¹ This systemic failure in the legal system represents a significant barrier to the enforcement of laws against child marriage and undermines South Sudan's commitments under both national and international law.

The education system has been weakened by ongoing conflict and insecurity which increase the rate of child marriage in the country, the impossible application and enforcement of laws protecting child rights are also result of insecurity, the disrupted education leaves children especially girls to early marriage, the inability to enforce compulsory education laws it indirectly contributes to the persistence of child marriage.¹²² This principle designed to keep children in school and thereby reduce their vulnerability to early marriage, then it has challenged by conflict in the state, most of schools in many parts of the country have been destroyed or closed, and even where they remain open insecurity often prevents children from attending.¹²³ This educational vacuum not only deprives children of a crucial protective factor against early marriage but also undermines the state's ability to monitor and intervene in potential child marriage cases through the school system. As effects it left gap in the enforcement of both education and child protection laws

¹¹⁹ UNDP, Final report, joint gender security needs assessment and gender analysis of the security sector in the ten state of South Sudan and the administrative areas, BODHI, (2022), p 24-27.

¹²⁰ Doe S, Annual report, support to access to justice, security and human rights strengthening programe in South Sudan , UNDP, (2022), p 63.

¹²¹ Doe S, supra note 1, P 63.

¹²² The education deficit, failure to protect and fulfill the rights to education through global development agenda, <https://www.hrw.org/report/2016/06/10/education-deficit/failures-protect-and-fulfill-right-education-through-global> accessed on 02/July 2024.

¹²³ World vision advocacy, why more schools :less child marriage, <https://www.worldvisionadvocacy.org/2020/10/07/why-more-school-less-child-marriage/> accessed on 04 July 2024.

2.5.2. Violation of constitutional rights

The ongoing conflicts and insecurity in South Sudan have been violate constitutional rights which is provided by Transitional constitution of South Sudan and specifically right to education, right to health and right to consent marriage.

2.5.2.1. Right to education

The transitional constitution of 2011, provide that right to education is for all citizens and mandates that all levels of government provide access to education without discrimination,¹²⁴ but ongoing conflict led to increase in the destruction of educational infrastructure, displacement of populations, and a climate of fear that prevents many children, especially girls, from attending school, some schools of South Sudan in conflict affected areas have been closed or destroyed, as result in infringing children constitutional right to education, the destruction of education system has direct impacts in the increased rates of child marriage and girls out of school are more likely to be viewed as ready for marriage by their families and communities, despite legal prohibitions because those laws establishing compulsory primary education and measures to keep girls in school have been unable to be enforced in many regions,¹²⁵ the systematic failure to uphold the right to education not only violates the constitution but also perpetuates a cycle of poverty and gender inequality, further entrenching the practice of child marriage in conflict-affected areas of South Sudan.¹²⁶

2.5.2.2. Right to health

Insecurity and ongoing conflicts in South Sudan have violate the constitutional right to health, specifically for girls subjected to child marriage, every citizen of South Sudan have right to health care and medical services,¹²⁷ However, ongoing conflict and insecurity hinder the exercise of those right, the health facilities in conflict-affected areas are non-functional or operating at severely reduced capacity, effectively denying millions of South Sudanese, including child brides, access to essential health services.

¹²⁴ Art 29 (1) The Transitional Constitution of South Sudan supra note 6, P 9.

¹²⁵ Ammar A, 19 million children in South Sudan out of school as conflict rangeon, Academic year starts with all schools closed due to impacts of the war, risking a generational catastropheUNICEF, save the children (2023), available at <https://www.unicef.org/sudan/press-releases/19-million-children-sudan-out-school-conflict-rages-unicef-save-children> accessed on 04 July 2024.

¹²⁶ Ammar A, supra note 1.

¹²⁷ Art 31, The Transitional Constitution of South Sudan, supra note 7, p 9.

This situation is particularly dire for young girls forced into early marriage, as they face increased risks of complications during pregnancy and childbirth, as well as higher rates of maternal mortality, the child health services have been affected in some regions due to insecurity and resource constraints.¹²⁸

2.5.2.3. Rights to consent marriage

The early marriage in South Sudan contradict with constitutional right to consent in marriage¹²⁹ specifically for young daughter forced into early marriage, the endless conflicts and insecurity led to infringement of such right where in conflict affected areas marriages involving girls bellow 18 years old are performed without their consent, the unable governance structure and weak judicial system led to gap where traditional practices which violate children's rights led to such forced marriage.¹³⁰

The insecurity that began in December 2013 has produced different effects to the citizens of South Sudan at all levels, as it destruct properties, many people died and other become refugees in neighboring countries, this chapter specifically analyse the legal impacts of child marriage ion South Sudan as it tackles on how this early marriage as customary norms contradicts with national laws like Transitional constitution and Child acts of 2008. It reveals on how the practice of child marriage violate child right of health, free consent to form marriage and right to education, before the end this chapter analyses international convention which protect children from any infringement of their right specifically UN convention on the righhts of children and African charter on the rights and welfare of children, it tackles on different measures designed by those convention to protect children from early marriage and reveals on how those practice of child marriage in South Sudan contradict with those principle of international convention protecting child rights. Lastly, ongoing insecurity and conflict in South Sudan was a key reason for the high rate of child marriage as it is instrument used to undermine children's rights.

¹²⁸ United Nations Human Rights, Access to health for survivors of conflict –related sexual violence in South Sudan, UNMISS, (2022) p 7-10.

¹²⁹ Art 15, The Transitional Constitution of South Sudan, supra note 8, p 5.

¹³⁰ Howe k *et al* early marriage in conflict and displacement, <https://fic.tufts.edu/research-item/child-marriage-in-humanitarian-settings/> accessed on 04 July 2024.

CHAPTER3. LEGAL AND INSTITUTIONAL MECHANISMS TO SETTLE CHILD MARRIAGE IN SOUTH SUDAN

The child marriage in South Sudan is catastrophic issue which produces legal consequences within state and affect individuals specifically girls and their future children, it affects society in increasing the level of illiteracy people due to school dropout caused by early marriage, in legal perspective this early marriage contradicts with statutory laws and international convention designed to protect child rights as it is mentioned in previous chapter, then below there is different legal and institutional mechanisms that must be adopted by government of South Sudan as the way of eradicating the culture of child marriage within state.

3.1. Harmonization of statutory laws and customary laws

The contradiction between customary laws and statutory laws of South Sudan is one of major challenge which hinders the effective combating child marriage in South Sudan because all issues relating with marriage and family are governed by customary law.¹³¹ It simply means that when it comes to the issue relating with marriage and family customary law take precedent than statutory laws which is contradiction and gap in legal framework of South Sudan which hinder the effective protection of child rights specifically daughters.¹³²

Harmonization of statutory and customary laws in South Sudan is an important solution which would fight those issue of child marriage as customary practice, it would be done through reconciling those conflicting principles of formal state laws and traditional customary practices, which is particularly challenging in the context of South Sudan's complex legal pluralism,¹³³ as it has been elaborated before, customary law prevail than statutory laws for the issues relating with marriage and family in South Sudan then there must be legal reform which aim to eliminate the culture of child marriage and customary practice which contradict with statutory law become abrogated.

There must be co-operation between formal and informal justice to combat child marriage effectively, in different communities of South Sudan specifically in country side, customary

¹³¹ Gordon R W, Some Realism About Customary Law-the West African Experience, Wisconsin Law Review. (1969)p 128-152.

¹³² Mohamed Fadlalla, "Customary Laws in Southern Sudan: Customary Law of Dinka and Nuer," New York: iUniverse (2009). P 12.

¹³³ Menen T, Study on the harmonization of customary laws and the National legal system in South Sudan, UNDP South Sudan (2016) P 38.

courts settle dispute relating with marriage in traditional way, and then they have to apply statutory laws as the way of providing quality justice which is fair in protecting child marriage. as we all know here in South Sudan, we have legal dualism which derive its source in colonial history and it hinder the effective combating early marriage, then the harmonization of laws must settle culture beliefs of child marriage through legal reform, community engagement, and economic interventions to address the root causes of child marriage.¹³⁴

In the process of harmonization, there must be establishment of clear minimum age of marriage for both girls and boys which must be provided in statutory laws and customary laws, it will help to eliminate this loophole found in customary law which allows child marriage, the quality harmonization must engage community education to absorb culture norms,¹³⁵ the customary practice of early marriage prefer family alliances and bride wealth over the individual rights of young girls, underscoring the complexity of aligning these practices with statutory protections against child marriage,¹³⁶ then the harmonizing Customary Law and Statutory Law in South Sudan must settle these perceived benefits of child marriage to gain community support and engage with these deep-seated cultural practices rather than simply imposing top-down legal reforms and also the involving traditional leaders in the process of setting and enforcing a minimum age for marriage could increase the legitimacy and effectiveness of combating child marriage.¹³⁷

The economic and social factor that contribute to the increase of child marriage must be abrogated, as an example dowry is still exist in the law of South Sudan and it is obligatory to be paid by family of husband, this is considered also as loophole and it must be abrogated, in the legal reforms dowry has to be removed and marriage contract only rely on the consent of parties.¹³⁸ In addition, the effective harmonization must contain economic empowerment mechanisms and educational training for girls, it is also important for girls to take part in decision making like in legal and social reforms because in the harmonization of laws

¹³⁴ Menen T, Supra note 1, P 38.

¹³⁵“Anon”Summary of laws on minimum age of marriage in Africa, <http://webcache.googleusercontent.com/search?q=cache:U0a2P8DeidQJ:www.africanchildin>

¹³⁶ Odela V, importance of min-age marriage legislation, ACPF, available at <https://www.girlsnotbrides.org/documents/1196/ACPF-Importance-of-min-age-of-marriage-legislation-May-2013.pdf> accessed on 08 July 2024.

¹³⁷The republic of Uganda, National strategy to end child marriage, and teenage pregnancy, 2022/2023-2026/2027, a society free of child marriage and teenage pregnancy, UNICEF,(2022) P 12.

¹³⁸ Svanemyr J *et al* The contribution of laws to change child marriage in Africa, Inter-Parliamentarian Union, (2013) P 12.

legislator must consider the idea of affected group to protect others, in briefly, there must be integrating economic incentives into harmonization efforts like financial support to the families which cannot afford school fees for their daughters, the harmonization effort will increase access to education in reducing child marriage by providing access to girls in rural areas, the legal reforms should be accompanied by community-based programs that promote gender equality and challenge harmful traditional practices of early marriage.¹³⁹

The harmonization of statutory and customary laws must be seen as part of a broader process of legal pluralism and constitutional development in South Sudan. This involves creating a legal framework that recognizes and respects the role of customary law while ensuring its compliance with constitutional principles and international human rights standards, the quality successful harmonization requires well understanding of the cultural significance of customary practices while progressively aligning them with human rights norm, the harmonization efforts should be seen as part of a broader strategy for strengthening the rule of law and promoting human rights in the country.¹⁴⁰

3.1.1. Strengthening enforcement mechanisms

Harmonization efforts must also focus on strengthening the enforcement mechanisms for laws prohibiting child marriage;¹⁴¹ it will include ensuring that both statutory and customary legal authorities have the capacity and willingness to implement these laws consistently, through the role of traditional leaders play in fostering justice and resolving disputes in many communities, the including these leaders in the harmonization process is essential for effective implementation of anti-child marriage laws and also traditional authorities often enjoy greater legitimacy than formal state institutions in many areas of South Sudan it means that the harmonization strategies should leverage the influence of these customary leaders to promote compliance with laws against child marriage,¹⁴² it is difficult to enforce statutory laws in areas where state presence is weak, recommending the development of mobile courts

¹³⁹ United States, Global strategy to empower adolescent girls, available at <https://2009-2017.state.gov/documents/organization/254904.pdf> accessed on 08 July 2024.

¹⁴⁰ Pimentel D, Legal pluralism in post-colonial Africa: linking statutory and customary adjudication in Mozambique, Yale Human Rights & Development L.J. vol 14, (2011) p 95.

¹⁴¹ UNFPA, Global marriage and the law: technical note for the global programme to end marriage, UNICEF (2020) available at <https://www.unicef.org/media/86311/file/Child-marriage-the-law-2020.pdf> accessed on 08 July 2024.

¹⁴² HAQ Centre for Child Rights, Strengthening existing system for preventing child marriage, establish and implement laws and policies, theory of change case studies, Girls not bride, center for child rights available at <https://www.girlsnotbrides.org/documents/234/Case-Study-Laws-Policies-HAQ.pdf> accessed on 08 July 2024.

and community paralegal programs to bridge the gap between formal and informal justice systems, this will help in enforcing harmonized laws against child marriage, the use of alternative dispute resolution mechanisms, such as mediation, to resolve conflicts between statutory and customary law in cases of child marriage will lead to culturally sensitive approach to law enforcement while still upholding the principles of child protection.¹⁴³

3.2. Aligning national laws to international legal instrument

South Sudan can strengthen its legal framework against child marriage by aligning its laws with international conventions like the Convention on the Rights of the Child, the African Charter on the Rights and Welfare of the Child, and the Convention on the Elimination of All Forms of Discrimination against Women. This would require clear laws setting the minimum marriage age and harmonizing customary laws.¹⁴⁴

South Sudan's alignment with international legal instruments can improve its accountability and access to international support in combating child marriage, this aligns with UN treaty bodies and regional mechanisms, enabling access to technical assistance, capacity-building programs, and financial resources. It also strengthens South Sudan's position in regional and global efforts, raising awareness about child marriage harms and improving its international reputation, potentially attracting more development partners and resources.¹⁴⁵

3.2.1. Regularly submit reports to international treaty body

3.3. Protecting child rights in conflict situation

The low level of resources and knowledge for the law enforcers within their agencies is another element which hinders the effective combating of child rights in South Sudan, then there must be capacity building through increasing government subsidize to judicial organs and decentralizing court of laws in most communities of South Sudan as the way of elaborating child marriage in those areas which is affected by ongoing conflict and insecurity. And also due to the war some courts and other government institutions have been destroyed which hinders some citizens to get access to justice, then the government should try to reconstruct those infrastructure as the way of making easy access to justice specifically for those affected areas.

¹⁴³ UNFPA supra note 1.

¹⁴⁴ United Nations Fund, child marriage: latest trends and future prospects, UNICEF (2018) p 54

¹⁴⁵ Geng J et al, towards a comprehensive approach to child protection: lesson from South Sudan legal reforms, international journal of children's rights 89, vol 11 (2023) p 75

Ongoing insecurity in South Sudan produce different impacts on the child marriage, it led to the high increase of poverty in many families and decide to settle those financial issues through child marriage as the way of minimizing household expenditures, it led to displacement of people where many families has separated with their members and introduce girls to early marriage, the legal and social infrastructure has been destroyed which hinder the effective protection of child marriage. The child marriage was covered by customary practices, then educational institution may be used to delay marriage but it has also destroyed and many girls are out of schools with high risk of early marriage, the government has to increase opportunities for girls to back on the school by establishing penalties for those who take part in the dropping out of girls.¹⁴⁶

3.3.1. Capacity building for law enforcement agencies

The legal framework applied for child marriage in South Sudan is conflict each other interplay specifically statutory law, customary practices, and international human rights standards. South Sudan Transitional Constitution of 2011 provide consent in formation of marriage contract¹⁴⁷ and explicitly prohibit early marriage by not specifying minimum age for marriage, the child act of 2008 provide a minimum age as 18 years old¹⁴⁸ which means that any union performed by spouse who are under the age of 18 is considered as child marriage. However, the applicability of this legislation is affected by weak enforcement mechanisms, as an example in rural areas where traditional institution holds precedence than formal legal institutions. The rule of law has been destroyed by endless insecurity and conflict in South Sudan which create vacuum place where those laws designed to protect child marriage are in lockdown and customary law which allow child marriage are more profitable by criminals which create contradiction and challenge the enforcement of laws.¹⁴⁹

¹⁴⁶ Kidman R, Child marriage and intimate partner violence: a comparative study of 34 countries, Oxford University press, Vol 46, issue no 2 (2017) P 662-675.

¹⁴⁷ Art 15, The Transitional Constitution of South Sudan, supra note 8, p 5.

¹⁴⁸ Art 5, South Sudan Child Act 2008 supra note 9.p12.

¹⁴⁹ Bubenzer F & Lacey E, opportunities for gender justice and reconciliation in South Sudan, Policy brief, the institute for justice and reconciliation (2013) p 5-7.

Capacity building for law enforcement agencies is an important issue in combating child marriage specifically for the most areas of South Sudan affected by insecurity.¹⁵⁰

Here there must be the increase of ability for police, judges, prosecutors, and other legal professionals to effectively protect children's rights and combat child marriage, it must be done through unlimited training programs to cover international human rights standards, national laws on child protection, and the specific challenges posed by conflict situations, the gender sensitivity training will be conducted to ensure that law enforcement officials can handle cases involving girl children with appropriate care and understanding, cancelers must intervene through Child-friendly interview techniques to avoid re-traumatizing young victims and to gather accurate information for legal proceedings,¹⁵¹ capacity building efforts will tackle on institutional strengthening to serve as centers of expertise, developing standardized protocols for handling child marriage cases and building relationships with communities to encourage reporting.¹⁵²

In the way of eliminating child marriage in South Sudan effectively, there must be law enforcement capacity building, the training programs must go beyond legal and procedural aspects to include in-depth understanding of the social, economic, and cultural factors that contribute to child marriage, this includes educating law enforcement officers and other stockholders on the long-term consequences of child marriage for individuals and society at large, this collaborative knowledge is an important , the law enforcement agencies need to work effectively with a wide range of stakeholders, including traditional leaders, religious authorities, schools, healthcare providers, and local NGOs.¹⁵³ It will enable to settle the root causes of child marriage and create a more supportive environment for law enforcement interventions, the capacity building efforts basing on training on data collection and analysis, enabling law enforcement agencies to track trends, identify high-risk areas, and allocate resources more effectively.¹⁵⁴

¹⁵⁰ UNICEF SUDAN, Sudan child protection, Global thematic report January-December 2018, UNICEF (2019) p 26 Available at <https://open.unicef.org/sites/transparency/files/2020-06/Sudan-TP5-2018.pdf> accessed on 09 July 2024.

¹⁵¹ Doe S, & Edroma E, Support access to justice, security and human rights strengthening program in South Sudan, UNDP (2022) p58.

¹⁵² Doe S, & Edroma E, supra note 1, p 9.

¹⁵³ ICRW & UNICEF, Sudan country brief, UNICEF regional study on child marriage in the Middle East and North Africa, UNICEF Middle East and North Africa Regional Office,(2017) P5-15.

¹⁵⁴ ICRW & UNICEF, supra note 1, p 9.

In addressing child marriage there must be strengthening law enforcement agencies integrated with a holistic, multi-sectoral strategy in South Sudan , it would be done through educational interventions, such as programs to keep girls in school and provide accelerated learning opportunities for those who have dropped out, economic empowerment initiatives for families can address poverty-driven motivations for child marriage, there must be government subsidies and livelihood support programs, the community awareness campaigns is an important to alter social norms and should engage men and boys as allies in the fight against child marriage, religious and traditional leaders must be involved as key influencers who can help reinterpret harmful customs and promote child rights,¹⁵⁵ moreover, the law enforcement agencies should be trained to understand their role within this broader ecosystem of interventions, learning to coordinate with other sectors and leverage community resources and psychosocial support should be integrated into law enforcement training to address the trauma experienced by both victims of child marriage and the officers working in high-stress conflict environments, the capacity building should include a focus on building resilient systems that can continue to function and adapt in the face of ongoing instability, ensuring sustained protection for vulnerable children.¹⁵⁶

3.4. Institutional reforms

In the previous paragraphs, it was Cleary explained the weak and dormant institution in South Sudan as the result of ongoing conflict and insecurity led to the increase of child marriage in the state, at the first stage there must be resurrection of peace and security within country as the best way of enabling legal institution to function effectively, after that by combating with the issue of child marriage which is diseases caused by customary practice, government of South Sudan must make institution reform by basing on establishing special child protection units in judicial system. It will enable to eliminate child marriage through employing experts who are trained to preserve child rights, capacity building by increasing resources within units, and help to mobilize communities in the impacts of child marriage for both individuals and state.

¹⁵⁵ Jain K & Kurz K, New insights on preventing child marriage, a global analysis of factors and programs, United States Agency for International Development., (2007)p41-45.

¹⁵⁶ Jain K & Kurz K, supra note 1, p 43.

3.4.1. Establishing specialized child protection units

The establishment of specialized child protection units as an institutional reform measure produce an important step in eliminating early marriage in South Sudan,¹⁵⁷ the well establishment of units will help for coordinating efforts to protect children's rights and combat early marriage, in this institution, there must be dedicated structures such as the police force, judiciary, and social services, the government of South Sudan must support its capacity to address the complex issues surrounding child marriage, it will develop expertise in handling cases involving minors, ensuring that child victims receive appropriate care and support throughout the legal process.¹⁵⁸

According to the endless insecurity and ongoing conflict in South Sudan, the specialized child protection units will be entrusted to mitigate the increased vulnerability of children to early marriage, it will operate effectively even in unstable environments, maintaining a focus on child protection and introduce stability in country as the best interest for child, the training for personnel in conflict-sensitive approaches and equipping them with the skills to navigate complex political and social landscapes,¹⁵⁹ units continue to function and provide necessary support in areas where government control is limited, this unit can act as a bridge between formal state structures and community-based protection mechanisms, enabling to ensure that child protection efforts are culturally appropriate and locally accepted while still adhering to international standards.¹⁶⁰

The positive impacts of establishing specialized child protection units in South Sudan is more as units can contribute to more effective enforcement of existing laws against child marriage,¹⁶¹ like Child Act of 2008 which provide the protection of children from early marriage, the units will ensure that cases of child marriage are properly identified, investigated, and prosecuted.¹⁶²

¹⁵⁷ African Union, 5 year starategic plan of AU to end child marriage, fourth ordinary session of the specilised technical committee on social development, labour and employment, Addis Abeba, Ethipopia (2022) p 14-21.

¹⁵⁸ African Union, supra note 1 p 28.

¹⁵⁹ Buchanan E, No simple solution, women, displacement and durable solution in South Sudan, OXFAM,(2019)P15-30.

¹⁶⁰ Buchanan E, supra note 1, p 20.

¹⁶¹ Svanemyir J *et alsupra* note 1, p 15.

¹⁶² Svanemyir J *et alsupra* note 2, p 13.

It will help to overcome the challenges resulted from legal pluralism in South Sudan, where customary laws often conflict with statutory protections against child marriage.¹⁶³

The changes in institution by establishing specialized child protection units in South Sudan will increase the capacity for prevention and early intervention in cases of child marriage, it has to develop and implement comprehensive screening protocols to identify children at risk of early marriage, allowing for proactive interventions before marriages occur,¹⁶⁴ establishing clear referral pathways and inter-agency coordination mechanisms, the units can ensure that at-risk children and their families receive timely support services, including counseling, education, and economic assistance.¹⁶⁵

The specialized child protection unit must collaborate with other institution within South Sudan to eradicate child marriage,¹⁶⁶ it will elaborate effective child-centered approaches to protection and service delivery, these units inspire and inform reforms in other sectors of government and civil society, it will help in data collection and analysis, contributing to a more comprehensive understanding of the patterns and drivers of child marriage in South Sudan.¹⁶⁷ Lastly, the establishment of specialized child protection units can enhance South Sudan's compliance with international human rights standards and commitments related to child protection, the creation of dedicated structures to address child marriage and other forms of child abuse, South Sudan can demonstrate its commitment to implementing the UN Convention on the Rights of the Child, ACRWC and other relevant international treaties, units serve as focal points for international cooperation and knowledge exchange, facilitating the adoption of global best practices in child protection while adapting them to the specific context of South Sudan. Moreover, the establishments of specialized units strengthen South Sudan's position in seeking international support and resources for child protection efforts,

¹⁶³ Bubenzer F & Lacey E, *supra* note 1, p 6.

¹⁶⁴ Tamalu J *et al* Child marriage and hunger crisis, understand the scale of child marriage in South Sudan 2020-2021, World Vision (2021)p8-11.

¹⁶⁵ Rowley E & Babirye J, CANADA, A girl no more: The changing norms of child marriage in conflict, women refugee commission, (2016) p 13-23.

¹⁶⁶ Government of South Sudan, Juba, Ministry of gender, social welfare and religious affairs, The initial report to the African committee on the rights and welfare of child (2019)p 20-29

¹⁶⁷ Government of South Sudan, Juba, Ministry of gender, social welfare and religious affairs, *supra* note 1, p 25.

potentially attracting funding and technical assistance from donor countries and international organizations committed to ending child marriage globally.¹⁶⁸

4.4.2. Establishment of specialized court dealing with child issues

To address this detrimental practice in South Sudan, the creation of specialist courts or judicial units devoted to child-related cases, including child marriage, can be a crucial institutional instrument. In addition to providing support services to victims and their families, these specialist courts may detect, investigate, and prosecute child marriage instances in a way that is more efficient, kid-friendly, and streamlined.¹⁶⁹

Circumstance, the prevailing judicial system in South Sudan encounters noteworthy obstacles in tackling child marriage, such as the prevalence of customary law over formal legislation, feeble measures for enforcing the law, and restricted ability of law enforcement organizations, many occurrences have gone unreported or addressed because the ordinary court system lacks the specific understanding and processes necessary to handle child marriage cases, extenuating circumstances, Child marriage has increased as a result of families turning to this practice as a coping mechanism due to the ongoing conflict and instability in South Sudan, which has further aggravated children's vulnerabilities,¹⁷⁰ the devastation of social and legal infrastructure in conflict-affected communities has also made it more difficult for victims of child marriage to access the court system.¹⁷¹ Reaction, these issues can be addressed by the creation of courts or judicial units with a focus on child protection. These specialized units would have the necessary expertise, resources, and procedures to effectively identify, investigate, and prosecute cases of child marriage, while also providing comprehensive support services to victims and their families¹⁷²

Conclusively, child marriage is catastrophic issue in South Sudan which infringe child marriage due to its gravity, and it contradict with national laws and international laws, but it can be handled totally due to the will of government with help of communities and judicial

¹⁶⁸ Republic of South Sudan, Child rights coalition, the child rights civil society coalition, universal periodic Review of the republic of South Sudan civil society organizations' submission to human rights council of the United Nations (2021) P3-5

¹⁶⁹ Deng D K, Challenges of accountability: An assessment of dispute resolution process in Rural South Sudan (2013) p 34

¹⁷⁰ Hague Cordaid, Girls not bride, child marriage in humanitarian crisis, available at <https://www.girlsnotbrides.org/learning-resources/resource-centre/child-marriage-in-humanitarian-crises/> at accessed on 08 September 2024

¹⁷¹ Loiza E & Wong S, Marrying too young: End child marriage , New York: UNFPA (2012) p 27

¹⁷² UNICEF, ending child marriage: Progress and prospects, New York: UNICEF (2016) p 19

organs. In briefly, in the way of eradicating child marriage in South Sudan, this study propose the harmonization of customary laws and statutory laws and international convention protecting child rights, strengthening enforcement mechanisms, protecting child rights in conflict situation, capacity building for law enforcement agencies and establishment of specialized child protection unit.

4. GENERAL CONCLUSION

This study is composed by chapter three, general introduction is composed by elaborating the background of child marriage in South Sudan, the problem statement, research questions, research methodology, interest of study and research objective, after that there is chapter one which comprise the theoretical framework of child marriage by elaborating definition of key terms, like child, early marriage, child advocacy and female genital mutilation; the cause of child marriage by differentiating economic cause, social cause and political causes, chapter one is ended by the negative impacts of child marriage

Chapter two is composed by elaborating the problem of this study in details by elaborating on how child marriage as customary practice contradict with statutory laws like child Acts of 2008 and Transitional constitution of South Sudan as the legal consequences of child marriage in South Sudan, it indicate on how the conflicts and ongoing insecurity in South Sudan contribute to the high rate of child marriage within state, the last chapter is three which the key stone of this study, where we tried to discuss on how child marriage must be destroyed in South Sudan as the way of abolishing contradiction found between statutory laws and customary practice. This chapter based on how harmonization of statutory laws and customary laws will eradicate child marriage, the institutional reforms of establishment specialized child protection units with full capacity in terms of knowledge and financially through government support will enable to eradicate these culture of child marriage in South Sudan.

4.1. RECOMMENDATION

The study recommends firstly employing these solutions proposed in chapter three as the way of eradicating child marriage in South Sudan, the criminalization of forced marriage with high penalties as it look like child defilement, they must take an example to Rwandan legal framework where they criminalize child marriage in penal code by providing that child defilement is commission of insertion of a sexual organ into the sexual organ, anus or mouth of the child; insertion of any organ of the human body into a sexual organ or anus of a child; performing any other act on the body of a child for the purpose of bodily pleasure.

This crime is punishable at high level in Rwanda and South Sudan must take example to Rwandan jurisdiction, then the practice of child marriage considered as crime of child defilement, and author punished seriously. As it is mentioned in Transition constitution for 18years as the age of majority, also family law and transition constitution must clearly provide the age of marriage at least 23 years old must be minimum age for contract of marriage, then those which is performed before this age become nullified by court. In addition, this study recommends the following according to the mentioned reasons that contribute to the high rate of child marriage, promote education and economic opportunities for girls, and employ behavior change communication and community mobilization techniques to change social norms of age at marriage, to ensure that programs are where child marriage is most prevalent.

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