

## 'This is how marriage happens sometimes': Women and marriage in South Sudan

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Perhaps more than any other aspect of life in South Sudan, it is marriage that shapes a woman's experiences, her status and her responsibilities. Marriage is one of the central institutions shaping society, binding families and communities, and ensuring continuity of the South Sudanese way of life and culture. To understand all the other facets of women's lives in South Sudan, it is necessary to understand the pivotal role that the institution of marriage plays, the various practices that relate to it and some of the changes it has undergone as a result of the social upheaval created by the war.

South Sudanese society is strongly traditional and deeply patriarchal, and this is clearly evident in the institution of marriage. The roles and positions of both men and women within a marriage are clearly defined and strictly enforced: men are the heads of households, holding positions of authority within their families; women are subservient to their husbands, with their roles focused on the home and the rearing of children. While not equal, this division of roles and responsibilities was intended to ensure a clear allocation of tasks, and to guarantee that all were taken care of, protected and supported. In practice, the system often leaves women extremely vulnerable, with little recourse in cases of abuse or when husbands fail in their duties of support and protection.

As with all aspects of life in South Sudan, the civil wars (1955–1972 and

1983–2005) impacted significantly on the institution of marriage. Rapidly changing circumstances and resulting shifts in gender dynamics affected marriages, and the parts that women and men played within them. While there were some very positive changes for women, arising from the increased independence and responsibilities that they took on during the war, there were also negative developments, such as rising levels of domestic violence, and an increase in early marriages arranged by impoverished families seeking to accrue bride price.

In the current post-conflict period, when so many aspects of life in South Sudan are in transition, and South Sudanese people are being exposed to so many new influences, the institution of marriage, too, is shifting and adapting. This period, in which new policies and structures are being established, provides an opportunity to effect changes in marriage practices that are prejudicial to women, and to allow the legal institution of marriage to reflect the values of the newly independent state.

This chapter seeks to gain an understanding of the lives of married women in South Sudan, exploring the significance and meaning of marriage within South Sudanese culture. It sets out the respective roles and responsibilities of men and women within marriage, and examines the ways in which these were altered by the war. It goes on to describe the marriage process, the ways in which marriage partners are selected, as well as the crucial role and far-reaching effects of practices such as bride price and polygamy. The chapter then discusses early marriage and other circumstances in which some South Sudanese women are forced to marry. Violence within marriage is also explored. Finally, the chapter considers the effects on women of the dissolution of marriages by divorce or death.

The research for this chapter was based on a review of existing literature, as well as reports and publications by various humanitarian and media organisations. Between December 2010 and February 2011, interviews were conducted with a number of women, and in-depth interviews were held with two of these to try to gain a deeper understanding of the institution of marriage, women's views on marriage and the effects of different marriage practices. Given the personal nature of the subject matter, several interviewees preferred not to be named, and a decision was then made to use pseudonyms for all interviewees. For this reason, details about the date and place in which interviews were held have also not been included.

### *The institution of marriage in South Sudan*

In many respects, marriage holds a different place in South Sudanese society to that which it holds in the West. In South Sudan, a marriage is not understood as an arrangement between two individuals and the culmination of a love affair. Rather marriage is a social institution, involving whole families, that ties together separate kinship groups (Beneso, 2004). Power and wealth are often important factors guiding the choice of a prospective partner, with marriage playing a part in helping a family to increase their social status. Thus, the institution of marriage shapes the social relations of entire communities, conferring on marriage a central and critical place in society.

Not surprisingly, this impacts on the ways in which marriages operate. Since marriages are family arrangements, families have a say in who their family members should marry. Once a couple is married, the wider social networks still significantly influence the marriage. For example, extended families often play a role in guiding children's formation, and may provide financial support if needed. As will be shown, extended families certainly have a financial as well as a social stake in ensuring that marriages remain intact. Thus marital disputes are perceived as community problems rather than as private issues (SMLS, 2008). This can have both positive and negative implications for women. While on the one hand, it means that supportive relatives have an interest in assisting couples to resolve their problems, it can also mean that, for the sake of social cohesion, relatives prevent women from seeking to escape serious marital problems, such as domestic violence.

In terms of finances, marriage has significant implications for individuals, families and communities. Perhaps the most important aspect of this is that men have to pay a bride price in order to marry. Bride price is a crucial economic feature of South Sudanese society and, as will become clear throughout the chapter, it has many possible ramifications. Significant sums are paid in bride price, which can be important sources of income for families, and the need to afford bride-price payments gives men an important motivation to accumulate wealth. Furthermore, the acquisition of several wives is seen as important for socio-economic advancement, as many wives can bear many daughters, who in turn can bring in many cattle from bride price when they eventually marry (Beswick, 2001). Rose Akol, one of the women interviewed for this chapter, describes the central relationship

between marriage and wealth as follows: ‘Lives are structured around cows, marriage and children: cows give you marriage, marriage gives you children. Therefore there is a circle.’

As in many African countries, civil law and customary law operate concurrently in South Sudan. Civil law is the formal written law of the country, codified in legislation, and drafted by parliament and other state structures. Customary law is the country’s indigenous body of law. It is unwritten, and shifts and evolves to meet changing circumstances (SMLS, 2008). Customary law varies between tribes and clans, and there are over 50 of these in South Sudan, each with their own systems and laws pertaining to marriage. It has been argued that it is ‘impossible to identify a single concrete set of practices relating to marriage and assume that this definition accords with all marriage practices in South Sudan.’ (SMLS, 2008: 52). However, despite the differences, there are also many commonalities. It is some of the more common elements that this chapter attempts to examine.

Civil law in South Sudan guarantees equality to women under Article 20(1) of the 2005 Interim Constitution, which states, ‘Women shall be accorded full and equal dignity of the person with men.’ In contrast, many aspects of customary law are inconsistent with women’s rights and relegate women to a lesser status, particularly in the realm of marriage and the family. Unfortunately, despite the protection afforded to women by civil law, customary law remains the dominant body of law in most parts of the country. This is partly because, as of 2010, there were very few civil law courts and structures around the country, and partly because few citizens have any real knowledge or experience of civil law. The result is that the provisions of customary law continue to flourish, and these tend to discriminate against women.

### *Gender roles within marriage*

Central to an understanding of marriage in South Sudan, is an awareness of the respective roles that men and women play within society. The distinct roles played by men and women are clearly understood by all, and children are socialised into these from birth. Behavioural conventions are strictly enforced and anyone breaking the mould is subject to intense societal pressure.

Women in South Sudan typically marry around the age of 18, while men usually marry between the ages of 20 and 25. Most young men and women live with their parents until they marry. Many married couples stay with their families until they have had two or three children of their own (SMLS, 2008). For most women this means being under the authority of their father and then of their husband, without ever having an opportunity to become independent.

As mentioned, South Sudanese culture is deeply patriarchal. Men are the heads of their households, and hold positions of authority and power within their families. They have final decision-making power in the family on all matters of importance. Women are expected to be subservient to their husbands, and to be obedient to their husband’s male relatives, even if these are young children (Seligman & Seligman, 1932). According to one interviewee, a married woman has the status of a child. She cannot own property or goods, and all of her possessions are considered to belong to her husband. A wife is supposed to show her husband devotion and to respect him (Benesova, 2004). Men typically control food in the household and, since it is believed that men need to eat more to make them strong enough to protect their families, the men usually receive the largest share at mealtimes. In impoverished families, some women never get to eat meat, and seldom receive a fair share of the food that is available (Ward, 2005).

The responsibilities and duties of South Sudanese wives are onerous. Wives tend to work an 18-hour day that revolves mainly around food production, obtaining water and fuel for the household, maintaining the home and caring for their families, including being sexually available to their husbands (Gachago et al., 2003). A wife’s key responsibility is the bearing of children, and since contraception is rarely available, women have little control over when and how many children they conceive. Women are expected to be the primary caregiver for their children (SMLS, 2008).

Husbands are expected to be the providers: a husband is supposed to take care of his wife, build her a house, help her cultivate the fields, provide her with cattle, and care for the livestock (Benesova, 2004). Traditionally, families did not need hard currency, however money is increasingly being used in South Sudan, and it is seen as a man’s responsibility to earn money and bring it home (SMLS, 2008).

There is strong pressure from the community for husbands and wives to

fulfil their duties within marriage. However, the sanctions for not fulfilling one's obligations differ for men and women. Women who fail in their wifely duties face a variety of punishments ranging from being reprimanded to being beaten by their husbands (Benesova, 2004). Men can get away with neglecting their responsibilities far more easily and are seldom censured.

A number of the women interviewed felt that their husbands do not adequately fulfil their roles, and leave women to do the bulk of the work. For example, Mary Nyaluak commented: 'Husbands don't do much. Traditionally he's supposed to cultivate farms and care for animals. In recent years they have lost their roles as men. They sit and talk and drink local brew. Women do the hard work' (Interview). Another interviewee, Nyiel Chol, echoed this view: 'She is in farm, and looks after the house. He eats and sleeps and comes home drunk. Women do most of the work.' Women complained that when their husbands do work, they do not bring all their earnings home, but rather spend money on non-necessities, such as alcohol. Several women indicated that, despite not having enough money to meet their family's basic needs, their husbands would not allow them to seek work outside the home (Ward, 2005).

Many aspects of the traditional South Sudanese way of life began to shift during the war. Among these shifts were changes in the roles that men and women played within marriage. As described in several chapters in this volume, a large number of men left their homes and joined the war effort, or went to seek employment elsewhere, leaving their wives and families behind. South Sudanese wives suddenly found themselves acting as heads of their households, holding positions of independence and responsibility that were new to them. Women started to secure jobs outside of their homes in order to fill the gaps left by men in essential services and to secure money for their families (Tumushabe, 2004). These changes, caused by necessity, gradually began to affect the rigid division of responsibilities between men and women, and husbands and wives.

The war created avenues for women to assume greater levels of responsibility. Many women contributed to the war effort, largely in support roles, with certain women rising to leadership positions in the independence movement. These opportunities for increased female independence and power began to affect the rigid power dynamics within marital relationships. Interestingly, the war also created some alternatives to life as a wife for

women, an option that had never really existed before. Beswick describes one particular woman in the military who 'acquired the right to remain unmarried, for being in the military differentiated her from other women by making her an honorary male' (Beswick, 2001: 42). The war also removed many of the cultural deterrents and social checks that had previously influenced people's behaviour. In time, sexual mores were affected and behaviour such as adultery increased (Beswick, 2001). All of this affected marital dynamics.

After the end of the war, the effects of these shifts continue to be felt. Some men returning from the frontlines felt disempowered by seeing women occupying the positions they used to hold. This contributed to the development of a 'crisis of masculinity' (Benesova, 2004: 4), which it can be argued may be playing a role in the rising rates of domestic and sexual violence.

### *Life for an unmarried woman*

Remaining single is not regarded as a real option in South Sudan, particularly for women. Unmarried women are scorned, not taken seriously, and are considered lowly by society. Mary Nyaluak laments that unmarried women tend to be called names and are constantly accused of inappropriate behaviour, such as using sexual means to advance in their careers (Interview). Revealing the deeply entrenched prejudices against unmarried women, another interviewee requested that her real name not be used in the chapter, and when asked for a reason, she replied that as an unmarried woman, her opinions and views would not have legitimacy. She felt it would be better that she remained anonymous so that her views would not be received as those of a mere unmarried woman.

This prejudice extends to divorced women as well. Mary Nyaluak is a bright, well-educated young woman who aspires to be involved in politics. At the time of her interview, Mary was in the process of deciding whether to divorce her husband who had been extremely neglectful, abandoning her and their child for a number of years. Although she wants to divorce him, Mary explained that if she is not married, she will not be eligible to hold a position in government. In South Sudanese politics, the husband's family nominates a woman to parliament, and therefore single women cannot be political representatives. For a woman like Mary to fulfil her political

ambitions, she has to remain married. Mary explains, 'I want to be a role model to Sudanese women, but single women can't be role models. Being unmarried with a child is a terrible thing in that culture. I won't be able to be a role model' (Interview).

Given the importance of being married and the stigma that unmarried women face, much value is placed on a woman's marriageability. The actions of unmarried women are strongly influenced by the fear of losing their value as a potential marriage partner, a situation that can have seriously negative consequences. For example, women who are not virgins, even if this is because of rape, are perceived as less desirable. This means that many women do not report rape or seek post-rape assistance, preferring to keep their ordeals a secret. This contributes to a strong culture of silence and shame around rape, and as a sense of impunity for rapists.

Sadly, in South Sudan, the perception exists that educated women are less eligible for marriage. There is a fear that educated women will be less 'traditional' and thus more difficult to control. As a result, some families are reluctant to educate their girls, worrying that education might devalue them and make them less lucrative in terms of bride price (Beswick, 2001).

## *The marriage process*

### *Selecting a partner and negotiating a marriage*

Traditionally, many clans in South Sudan allow young people their choice of spouse. In theory, although a bride needs her family's approval, young women are free to marry any man who can produce a suitable bride price (Seligman & Seligman, 1932). Young men, on the other hand, often had less say in their choice of marriage partner. Requiring cattle for bride price, and generally dependent on their male relatives to provide these cattle, a man would seldom flout the wishes of his relatives, as they could refuse to provide the bride price (Seligman & Seligman, 1932).

Also in theory, marriage cannot take place unless a woman is willing to marry the man, although in practice, women are often placed under considerable social and parental pressure to opt for their preferred candidate (SMLS, 2008). Cases of girls being forced to marry, or being severely beaten to ensure that they give their 'consent', are not unusual. Forced marriages are discussed in more detail below.

With regard to the courting process, generally, a young man will approach a woman he likes and try to garner her interest. Only once he is confident of her interest in him, will he approach her family to ask for her hand (Ward, 2005). One interviewee described the way that this used to work in the rural areas. 'They used to have traditional dances in villages. A man would spot a girl and would approach the girl at the dance. Then he would find out who her family is. The following day he would go to her house. He would tell the family.' When a man indicated to a woman's father his interest in marrying his daughter, 'the girl's father set a date for the coming together of the two families. On that date, the young man has to bring with him a small table, a sheet, serviette, a white handkerchief and a locally made food cover called a "tabag"' (Rashid, n.d.). All of this represents the initial engagement.

Rose Akol is a young unmarried woman from the Shilluk tribe, who lives a relatively modern lifestyle in Juba, the capital of South Sudan. During her interview, Rose noted that her parents are considered 'very liberal'. She explained the way in which the courting and marriage negotiation process works for more urban women like herself. Rose said that she dates men, but that she will only bring a man home if it is serious enough that they are considering marriage. If she is serious about someone, she will first inform her mother about this, and her mother will begin to find out about him – to ascertain whether he is from a good family and who his kin are. When the couple are ready to negotiate marriage, she will inform her aunt that the man is interested in marrying her, and that she loves him in return. Her aunt will then arrange a meeting with her mother at the aunt's house, during which her aunt will inform her mother about the proposed marriage. Her mother then informs her father and uncles, who plan a meeting with the man's family to start negotiations around the bride price.

### *Bride price*

As noted, in most South Sudanese marriages a groom's family pays bride price to the bride's family. 'Cattle are exchanged in order to compensate the bride's family for the loss of a family member. Concurrently, the new bride is expected to "replace the cows" of her husband's family by giving birth to many children' (Burton, 1978: 398). It is the act of paying bride price, rather than a marriage ceremony, that actually renders a couple married. Bride price is payable in instalments, over an extended period, and a marriage is

not considered 'finalised' until the full bride price has been paid (d'Olivier Farran, 1963: 289).

Bride price can be extremely costly, with the amount depending on the social status of the two families involved, and on factors such as a girl's beauty and her level of education (Marial, 2010). Bride price is usually paid in cattle, although sheep, goats, beads, hoe-heads and ornamental spears can be demanded as well (d'Olivier Farran, 1963). Rose Akol commented that bride price has become increasingly expensive, sometimes being set as high as 200 head of cattle (Interview). If several men wish to marry the same girl, Beswick (2001) reports that a form of bidding can take place, with the highest bidder marrying the girl.

To help the groom raise the required bride price, his family and even his friends may contribute cattle. These cattle are then distributed among the bride's family members, thus sealing the bonds between the two extended families and making the marriage a communal arrangement (d'Olivier Farran, 1963). However, as mentioned, giving extended families a stake in marriages can have problematic consequences – such as families encouraging women to ignore marital problems or abuse, thus making the continuation of the marriage more important than ensuring the well being and protection of the wife. There have also been instances in which, in an attempt to afford bride price, men have resorted to cattle rustling. Cattle rustling is an ongoing source of insecurity in South Sudan, and has resulted in countless deaths and ongoing feuds between communities (Marial, 2010).

For sons, age determines the order of marriage – the eldest son is given the first priority when it comes to using the family's cattle for bride price (Burton, 1978). Bride price is a significant motivator for young men to work and earn money, so that they have funds with which to buy cattle. Although any cattle that a young man buys form part of his family's herd, rather than belonging to him individually, the young man does gain the right to assert his opinion about how the cattle should be used, including whether it should be used to pay bride price for himself, his siblings or other male relatives (Burton, 1978).

In theory, bride price symbolises a family's pride in their girls and helps to ensure that a girl's new family values and respects her. However, despite these positive ideals, the practice has a number of negative consequences. For example, some hold the view that women are sold in exchange for bride

price, and that the payment of bride price justifies any treatment that a woman's new family may wish to dole out. A report in the *Sudan Tribune* records instances in which husbands have refused to pay their wives' medical expenses, and in extreme cases have even allowed women to die untreated, arguing that as they have already paid the bride price, the woman's parents should pay her medical costs (Marial, 2010).

In situations of financial pressure, families sometimes marry off their daughters at a young age using the bride price as a way of gaining some financial relief. This can involve pulling girls out of school or acting in other ways that are contrary to girls' best interests. For example, as discussed in Chapter 9 of this volume, during the war, some South Sudanese families in Kakuma Refugee Camp tried to prevent girls from being resettled as refugees in the West, preferring them to remain in the terrible conditions in the camp, rather than risk losing the bride price if they left (DeLuca, 2009).

### *South Sudanese weddings*

Although it is the payment of the final instalment of the bride price that officially renders a couple married, various ceremonies and traditions mark the marriage event. These may take place over a period of days, months or even years.

Wedding ceremonies vary significantly from tribe to tribe. For the Nuer, for example, the most prominent ceremonial element is the ritual cutting of the bride's hair, while among the Dinka the ceremonial handing over of the bride to her husband followed by the slaughtering of an ox is the important feature (d'Olivier Farran, 1963). Mary Nyaluak explained that, in her community, when a man's family has finished paying the bride price, the woman is handed over to her in-laws. Cows are slaughtered at the bride's parents' home where there is singing and dancing prior to her departure. Then women from her father's side of the family escort her to the home of her in-laws (Interview). Those who live a more modern lifestyle in South Sudan's cities often celebrate with both a traditional and a church wedding, although the church ceremony is seen as a mere formality.

During the first week with her husband's family, a bride is known as the 'guest wife' and during this time she is served by her new family members and does not serve others. Gradually she takes on more of the housework, until she is fulfilling her full duties as a wife (Benesova, 2004). Even after

these ceremonies have been completed, marriage is considered to take place in stages, and for some tribes, a marriage is not finalised until the bride has born at least two children. Upon the birth of a third child, the marriage is considered 'tied', and at this point, the wife and the children are accepted as full members of her husband's clan.

### *Polygamy*

The practice of polygamy is prevalent, legal and widely accepted in South Sudan. In particular, polygyny is practiced – whereby a man can have more than one wife. A South Sudanese man can marry as many women as he can afford to pay bride price for, so the number of wives often depends on a man's wealth.

Where a man has several wives, each of them often has their own house, kitchen and fields, making each wife effectively a self-sufficient economic sub-unit (Beswick, 2001). The husband is supposed to support each of these homes, providing financially and ensuring that there is shelter and sufficient cattle and land for food production. However, some men take on several wives even when they are not in a position to adequately support them, leaving some or all of their wives poor and struggling to provide for their children.

Something seldom documented is how difficult life can be for a woman in a polygynous union. Apart from problems around support and maintenance, polygynous marriages can be extremely difficult and unsatisfying for women in more personal ways. Men with several wives often do not regularly see and 'satisfy' their wives. Generally a woman who is one of three wives would sleep with her husband no more than ten nights a month while a woman who is one of six wives might get no more than five nights a month with her husband, although this is subject to variation. Writing in the 1970s, E.E. Evans-Pritchard speculated that this led to an increase in adultery in South Sudan (Evans-Pritchard, 1970). One interviewee conveyed how difficult living in a polygamous marriage can be, saying, 'It is hell to see your husband with another woman'.

Another negative effect of polygyny is the spread of sexually transmitted infections, including HIV. If one member of a polygamous family network contracts HIV, the rest of the family network is put at risk. Concurrent sexual partnerships have been an important driving factor in the HIV pandemic

across the African continent and this often takes place in the context of polygyny.

With modernisation, some people mainly in upper classes have moved away from polygyny. In particular, educated women have become less likely to accept polygyny, refusing to allow their husbands to take on additional wives (Beswick, 2001: 49). Some interviewees argued that modernisation would probably have ended the incidence of polygyny had it not been for the war. Mary Nyaluak explained that the war halted the modernisation process in some ways because, when people were attacked and the war began to pose a direct threat to their way of life, communities sought to cling to their traditional values and practices, including that of polygyny. During the war years it was seen as practical for women to be aligned to men for protection, and this at the very time when a great number of men were absent or had been killed. Polygamous marriage became an appealing practical option for some. A perception also existed that more men than women were being killed by war, and that men should take several wives to ensure that all women had husbands (Interview, Mary Nyaluak).

### *Forced marriages*

Despite the supposed freedom that South Sudanese women have, to choose who they wish to marry, several common practices prevent women from making their own choices about marriage.

### *Early marriage*

Early marriage happens often in South Sudan, with girls as young as 12 years old being married off. As mentioned, families sometimes give their young daughters over for marriage to benefit from the bride price their daughters can fetch. Young girls are frequently married off to much older men, who are more able to afford a higher bride price (Ward, 2005). Once married, girls have to reside with their husbands, take on the domestic duties of a wife and give up their lives as young girls.

Perhaps the most harmful consequence of girls marrying at a very young age is that they are deprived of education. Once married, girls are usually taken out of school. As Rebecca Hamilton (2011) notes, 'Weighing the choice between the costs of keeping a daughter in school versus the benefits

of marrying her off, families in impoverished rural communities usually choose the latter. And, as is the case worldwide, early marriage correlates strongly with early school dropout.’ Early marriages also tend to stand in the way of girls receiving an education, as perceptions exist that it is unwise to spend money on school fees for girls who will shortly belong to, and work for the benefit of, another family.

Early marriages can also play a part in fuelling domestic violence as young girls are less likely to know how to manage a household or relate to a husband, particularly if the man is much older (Ward, 2005). Early marriages also tend to increase the chances of birth complications, as young girls’ bodies may not be mature enough to carry and deliver a child. Difficulties with weaning children also occur more frequently, as young brides are less likely to be educated and therefore may be unaware of the importance of breastfeeding and good hygiene around their newborns.

Unsurprisingly, many young girls are highly resistant to marriage. The South Sudanese media is rife with reports of girls running away or committing suicide to avoid forced marriages. For example, in October 2010, a 17-year-old schoolgirl in Wulu County killed herself with a shot to the head after being forced by her family to marry. The girl’s family were called in for questioning by the county commissioner but were soon released, and no further investigations were made – a sad indication of society’s acceptance of these kinds of occurrences (Manyang, 2010).

Early marriage was very prevalent during the war, for a number of reasons. The dire economic conditions put families in a position where they desperately required early bride price (Ward, 2005). Many people expected the war to last for a long time, and anticipated that most men would eventually go to war and that few would return. Girls were therefore married off as early as possible so that, even if their husbands went to war and did not return, the bride’s family would have secured the bride price and ensured that their daughter would be provided for by her husband’s family. Finally, girls were frequently abducted from refugee camps and either forcibly married or sexually violated. In both cases bride price would be forfeited, and girls were therefore married off early in an attempt to prevent families from potential loss of income (Fitzgerald, 2002).

Since the end of the war, steps have been taken to put an end to the practice of early marriage. Legislation passed in South Sudan now sets the

marriageable age at 18 years, and states that all females have the right to be protected against early and forced marriage (Hamilton, 2011). However, despite this, early marriage remains common.

### *Other forced marriages*

A woman who is raped, and is thus no longer a virgin, is considered ‘spoiled’ and unlikely to find a husband. As a result, when unmarried South Sudanese women are raped, the families of the victim and the perpetrator often enter into negotiations, and the rape victim is often forced to marry the rapist. In fact, men sometimes rape so that a woman will be forced to marry them, knowing that, once a woman is no longer a virgin, her family will no longer be able to demand as high a bride price. Mary Nyaluak explains:

A man spots a girl coming from the river. A group of men then capture her [and the first man] has sex with her against her will. As soon as they have had sex, then they are considered to be husband and wife. He then sends a message to the family saying ‘don’t search for the girl, she is now my wife’. She will then be returned to the family with cows, and will then be considered to be married. (Interview)

There are also other circumstances in which women are compelled to marry. If someone commits an offence, an unmarried female in their family can be compelled to marry a member of the aggrieved family, to facilitate reconciliation between the families. Wife inheritance, discussed in greater detail below, is another practice in which women are compelled to marry.

Some measures have been taken to tackle the practice of forced marriages. For example, Lakes State parliament passed a provisional Act prohibiting forced marriages. Unfortunately, this law is reportedly not recognised by communities, and has thus had little effect (Manyang, 2010).

### *Violence in marriages*

As head of the household, it is seen as acceptable for a South Sudanese husband to ‘discipline’ his wife and children (SMLS, 2008). For a man to beat his wife is seen as quite normal in South Sudan, and it is considered by many men to be entirely appropriate (Ward, 2005). A county judge in

Dilling County explained that if a husband beats his wife ‘he is trying to refine her; women don’t experience it as violence’ (quoted in Ward, 2005: 47). Many women buy in to this too – women from Malual Kon in Aweil East County explained that they believe domestic violence is justified because ‘women are like children, they need to be disciplined’ (quoted in Ward, 2005: 33). However, domestic violence often goes much further than what are perceived as minor ‘disciplinary’ beatings, but few studies have been done on the prevalence rates of domestic violence in South Sudan. The little research that does exist suggests that violence is widespread and frequent.

Several factors fuel domestic violence in South Sudan. Clearly, the social acceptability of domestic violence, and the lack of consequences for men who abuse, allows it to prevail, as does the low status of women in society. Alcohol abuse is another significant factor (Ward, 2005). The difficulty of obtaining a divorce, discussed below, also means that women are compelled to remain in violent situations, allowing domestic violence to thrive (Ward, 2005).

The war may also have played a part in fuelling domestic violence. High rates of domestic violence are attributed to disempowerment, ‘war trauma’ and frustration among men (Gachago, et al., 2003: 8). As indicated, many men returned from the front to find that their wives had taken over the jobs and the roles that men traditionally held. Their resultant frustration and disempowerment is said to have contributed to the rising rates of domestic and sexual violence. For example, in one study ‘many men admitted forcing themselves on their wives not because they really felt like having sex, but in order to “service them well” so that their manhood, already pinched on economic grounds, does not face the same state on the sexual front’ (Jok, 1999: 438–439).

There is little recourse for women in violent relationships. The law does not protect women from domestic violence, although the government of South Sudan has pledged itself to passing legislation and enforcing specific laws around this (Garang, 2011). The almost defunct state of police and judicial systems means that any protective laws are hardly enforced, and women receive little assistance and protection from state structures. Customary law and customary courts, too, offer little protection. Although women have the right to appeal to a customary court if her husband’s abuse is beyond what is considered ‘reasonable’, at most her husband might be fined a goat or cow as punishment by the customary court, in the hope that

this will deter him from further violence (Ward, 2005). According to one interviewee, men sanctioned in this way are usually allowed to return home with the woman and little is done to protect her from further violence. Many women are therefore afraid of reporting their cases, as doing so might further enrage their husbands, who might beat them further, deprive them of food or punish them in other ways (Ward, 2005).

Not only do the legal structures fail to prevent domestic violence, family members and neighbours will do little to stop violence either, claiming that it is a domestic issue and that they cannot intervene. Yet, as one interviewee noted, if a wife runs away from a violent home, she will have no place to run to. If she goes to her family, they will talk her into returning to her husband, as family reconciliation and the continuation of the marriage is seen as the main priority. In cases of particularly extreme domestic violence, families might try to talk to a husband, appealing him to temper his violence.

Marital rape is reportedly also common in South Sudan. However, coerced sex within a marriage, no matter how violent, is not considered rape, and is therefore not prohibited by the law. Section 247 of the 2008 Penal Code Act clearly states that, ‘Sexual intercourse by a married couple is not rape, within the meaning of this section’. In her interview, Mary Nyaluak explained that men in South Sudanese marriages unilaterally decide when to have sex, and will proceed to do so, whether or not the woman concurs. She also said that if a South Sudanese woman alleged that she was being ‘raped’ within her marriage, people would accuse her of ‘being naive’ or of ‘using modern words’ that are not applicable to their culture.

### *Divorce*

Although divorce is technically possible in South Sudan, it is highly discouraged and extremely rare. Given that extended kinship ties are created by marriage, divorce means not just the separation of a couple, but the dissolution of bonds between extended kin – a very drastic state of affairs. Families and tribal elders will seek to deal with marital problems without resorting to divorce. As mentioned earlier, this can have both positive and negative consequences for the married couple.

If separating becomes their only option, either partner may seek divorce. Divorce procedures vary: Dinka couples have to appear before a customary

court, while Shilluk couples can get divorced by agreement alone, and without a court process. Under customary law, the return of the bride price to the husband and his family finalises the divorce (Farran, 1963). The amount of bride price to be returned depends on the number of children the woman has borne during a marriage, the more children, the lower the amount returned (SMLS, 2008). The requirement that bride price be returned is one of the factors that makes it so difficult to get divorced. Often the bride-price cattle have already been distributed among a woman's relatives, and they will try any means to convince her to remain in the marriage so that they won't have to relinquish part of their wealth (SMLS, 2008: 55).

Where a divorce takes place, children remain with the father or his family, as they are considered part of his lineage (Seligman & Seligman, 1932). Extremely young children are allowed to remain with their mother after a divorce, until they are between three and seven years old (SMLS, 2008: 54). The fact that women lose their children provides another significant disincentive to them getting divorced.

Given the difficulty of obtaining a divorce, couples sometimes separate without formally getting divorced. However, in a situation like this, the woman is usually far worse off. The man can remarry, as polygamy is legal for men. The woman, on the other hand cannot remarry, and if she becomes involved with other men, she will be accused of being an adulterer. Any man that she sees can be fined for adultery, and if she has children with a new partner, the children will 'belong' to her former husband. In fact, a man who has paid bride price for a woman is considered the father of all her children, regardless of who their biological father is. A biological father who does not pay bride price is given no status in relation to any children who may be born (Seligman & Seligman, 1932). In order to change this situation and marry the woman, a prospective suitor will need to pay off the original husband. This creates a significant disincentive to men considering becoming involved with a separated woman, and means that the woman may be alone for the rest of her life.

Mary Nyaluak's story clearly illustrates some of the problems described above. Her husband moved to the US when she was pregnant with their first child. Although they were not officially married at the time of his departure, a marriage was subsequently negotiated between their families, and his family paid bride price to Mary's father, legally cementing their marriage.

Her husband was not expected to remain in America for very long, but Mary was repeatedly disappointed, as he time and again made promises of returning and then failed to come back. He barely kept contact with her and their relationship began to sour. After his first year away, he provided no maintenance for her or their child who was born shortly after his departure. After a number of years, with almost no word from him, Mary began to move on with her life, and in time began to see other men. On receiving this news in America, Mary's husband began sending abusive emails accusing her of being an adulterer and a prostitute. Mary badly wanted to move on with her life – there were even other men who were interested in marrying her – but because he had paid bride price for her, so many years before, she was held hostage.

Finally, Mary decided to go to court to end this situation. In January 2010, Mary opened a court case in South Sudan to try to end the marriage, in which she alleged that she is married by name only, and that there is no support, communication or real relationship between her and her husband. She emailed her husband informing him that the first hearing was on 7 January 2010. A week later, he wrote to inform her that she should stop the court case as he was returning home to resume their marriage. He returned a month later, and they saw each other for the first time in six years and he met his daughter for the first time. Mary is now expected to enter into a marital relationship with a man she now hardly knows, and who had treated her so badly for so long. At the time of the interview, Mary was trying to decide whether she could manage this, or whether to divorce him, an option that society was pressuring her to reject (Interview).

Adultery is a criminal offence and is taken very seriously in South Sudan. In the past, punishments for adultery were brutal – men convicted of adultery could face mutilation, having their ears, upper lips, hands or even genitals cut off. An offender could buy indemnity from punishment by paying a woman, or 20 spears to the husband of the woman he was in an adulterous relationship with. Women were not mutilated, but they were severely beaten, 'flogged' or cut with knives for committing adultery (Seligman & Seligman, 1932).

Over the years, punishment for adultery has become less harsh. Today, Section 266 of the Penal Code Act, sets out the criminal offence and the punishment for adultery as follows:

Whoever, has consensual sexual intercourse with a man or woman who is and whom he or she has reason to believe to be the spouse of another person, commits the offence of adultery, and shall be addressed in accordance with the customs and traditions of the aggrieved party and in lieu of that and upon conviction, shall be sentenced to imprisonment for a term not exceeding two years or with a fine or with both.

As with most other aspects of South Sudanese life, men and women are treated differently around the issue of adultery. E.E. Evans-Pritchard, who wrote in the late 1960s, noted that it was socially acceptable for South Sudanese men to have affairs, but not for women to do so (1969). Ward, writing more recently, makes the point that despite the law making it illegal for men to commit adultery, a woman cannot really open an adultery case against her husband, as in a country where polygyny is the norm, men are not really capable of adultery (Ward, 2005). In contrast, a woman accused of adultery will be held in prison for 24 hours while an investigation is carried out. If she is found to have committed adultery, she may be sentenced to a few months in prison with the option of paying a fine instead. In practice, women tend to not have an income, and can seldom afford to pay fines, so they are likely to serve a prison sentence (Ward, 2005).

### *Widowhood*

Given the great number of men who died in the war, hundreds of thousands of women were widowed. Sadly, many of the traditional protections and safeguards for widows were not sustainable during the war, leaving many women in difficult positions.

One issue that created significant problems was that of inheritance. In South Sudan, women do not have the right to own anything (Ward, 2005). On the deaths of their husbands, women therefore cannot inherit their husband's property. Included in 'his property' is anything the woman herself has earned that forms part of his estate. Widows therefore find that their financial well being is left to the discretion of their deceased husband's family. In this context, widows often get evicted from their homes. For the large numbers of war widows, problems around property have been significant sources of concern.

For many South Sudanese tribes, death does not break the marriage contract – only the return of bride price that can break the contract between man and wife (Seligman & Seligman, 1932). Thus if a woman bears any children after her husband's death, regardless of their biological father, the children are said to be the deceased's children; they will carry on his lineage, and they are said to carry his spirit and will be taught to worship him as an ancestor.

There are several consequences for women that flow from this. One example is *wife inheritance*. When a man dies, his widow is 'inherited' by the deceased's brother or another close male relative of the deceased (Seligman & Seligman, 1932). The widow is still considered to be *married* to the deceased, and his brother or relative takes over the role her husband played, supporting her, having intercourse with her, and fulfilling his duty to provide her with children. Any children born are considered children of the deceased. As death does not dissolve a marriage, a widow is not considered 'free' or unmarried, and is therefore unable to remarry. Without wife inheritance, the widow could be left without a husband or male protection and support for the rest of her life. The practice is thus intended to maintain the marriage bonds between the extended families of the couple, and to provide a social safety net for widows by ensuring that they can rely on their in-laws for continuing protection and support (Beswick, 2001; SMLS, 2008).

In many ways, however, the practice proves unfair to women, who are given no say as to whether they wish to be 'inherited'. A widow may have to relocate and join a new family as one of many wives – and is often not a welcome addition to the new family. The chosen brother or relative might not have the financial means to support an additional wife, adding financial strain. In addition to this, a wife who is inherited can bring HIV (this is an increasing problem as men die of AIDS) or acquire it from the new sexual network.

Interestingly, the practice of wife inheritance decreased during the war. Although countless women were widowed, it seems that more nuclear-type families started to develop, and a greater number of first wives refused to allow their husbands to take additional wives, including inherited ones. As a result, many abandoned the practice of wife inheritance, leaving their relatives' widows unassisted. In one study, widows reported feeling abandoned and suffering as a result of the fact that they had not been

‘inherited’ (Beswick, 2001). This illustrates the complexity of these practices, which while harmful in some ways, can also serve important social purposes. These complexities must be taken into consideration in the drafting of new laws and policies.

Another interesting practice is that of *ghost marriages*. In a ghost marriage, a woman marries a deceased man. As per an ordinary marriage, bride price is exchanged between the family of the deceased and the family of the bride. Ghost marriages take place in the name of men who have died without having had a son to carry on their name and lineage. Sons in South Sudanese families marry in age order, so without ghost marriage, the death of an older son before he married could potentially delay the marriages of the younger sons indefinitely. To prevent this, a ghost marriage is arranged, and cattle that would have been allocated for the deceased’s marriage are used to pay for a ghost marriage. Children born of ghost marriages are known as ‘children of the ghost’.

## Conclusion

Marriage is a central feature of South Sudanese life, binding together kinship groups and wider communities, and forming the basis for much of the regulation of society. The status of a woman and almost all aspects of her life are influenced by marriage, making this the paramount institution in determining a woman’s well being.

In the transitional period since the ending of the war, new laws and policies are being drafted to regulate the newly formed state, and to set it on a course of equality and increasing respect for human rights. It is hoped that as part of these developments, policies will be created that will make women more equal within marriage and allow women to play more active roles in society, outside of the confines of marriage. While South Sudanese cultural practices have enormous value and must form the basis of the newly independent state, those aspects that are harmful to women should be modified to align with the principles on which the new state is based. It is with the rules of marriage that some of the biggest challenges relating to this will arise, and where, if successful, the biggest improvements to women’s lives will be seen.

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