



**The role of human rights defenders
in addressing the impact of child marriage on the girl-child's right to education in South
Sudan**

Submitted in partial fulfilment of an LL M in Human Rights and Democratisation in Africa

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23 October 2024

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DEDICATION

To my mother, and my late nephew, Makur Makuach Makur Chuot.

ACKNOWLEDGMENTS

I am indebted to my supervisors, Prof Elvis Fokala and Prof Usang Maria Assim, for their invaluable guidance and moral support, which made this mini-dissertation possible. Their unconditional support, insightful comments, and mentorship gave me the strength to complete this research project.

I am grateful to the Centre for Human Rights for giving me the opportunity to be part of the HRDA fraternity. In this vein, I thank the teaching staff for their relentless efforts in ensuring that no one was left behind. This was commendable. To the ground soldiers, the non-teaching staff of the Centre for Human Rights, your services cannot go unnoticed. Thank you!

I am indebted to my mother for her unconditional support, love and prayers throughout my entire life.

Special gratitude to colleagues, Dr Joseph Geng Akec and Advocate Gabriel Mading Apach for their instrumental role in mentoring and encouraging me to apply for this LLM.

I owe thanks to Mathiang Paul Mayom, Gabriel Mading Apach, Thomas Jada, Awut Makur Marin, Amos Makuei, Dr Barnaba Bak Chol, Gai Mayen Luk, Dr Dhal Marial Kot, Deng Makuak Barech, Hon. Santo Malek Anai, Majok Anyor Makuach, Makuei Chiec, Chuot Makur Chuot, Dr Kimo, Malual Sawat, Anger Marier, and Kuol Fidel for their financial support towards this LLM. I also appreciate Alak Mading, Deng Abraham Akech, Deng Kur Mading, Puot Makuach, Ayor Machiek Akuocpiir, Mangar Makur Chuot, and Joseph Majak Madut for supporting me during my stay in South Africa.

It would be remiss not to mention my HRDA colleagues of the 2024 class, for showing me love and care when I lost my nephew, Makur. I nearly gave up, but they lifted me. You are the true definition of Ubuntu. To the Council of Elders alias Panel of the Wise and Council of Women, thank you for creating memories on the weekends that served as a panacea for HRDA stress.

I also appreciate Debbie Gordon, Prof Usang Maria and the entire staff of Dullah Omar Institute for helping me to settle in Cape Town.

ABSTRACT

Despite legally binding international, regional and domestic legal frameworks on South Sudan that define a child as anyone below 18 years old, child marriage remains prevalent with a rate of 52 per cent. The high rates of child marriage have led to the dropout of 988000 girls from school. The surge in child marriage is attributed to gaps in laws, lack of implementation and cultural practices. The main gap in national laws is that the laws do not define the minimum age of marriage nor criminalise child marriage. Out of ten states and three administrative areas in South Sudan, only Lakes State and Unity State have criminalised and banned child marriage respectively. The gap in the laws is exacerbated by the fact that South Sudan has not ratified the African Charter on the Rights and Welfare of the Child. In addressing the impact of child marriage on the girl-child's right to education, human rights defenders face several challenges. To address child marriage and its impacts on the girl-child's right to education, this mini-dissertation recommends setting the minimum age of marriage at 18 years in the national laws, criminalising child marriage, strengthening the implementation of the existing laws, ratifying the African Charter on the Rights and Welfare of the Child, enacting human rights defenders' specific legislation, reducing the high rates of dropouts, and expanding civic awareness. To attain the main objective, which is the role of human rights defenders in addressing the impact of child marriage on the girl-child in education in South Sudan, this mini-dissertation uses the doctrinal method and participation and evaluation process method.

Chapter One gives an overview of the mini-dissertation and covers the research problem, literature review, research questions, research objectives, research methodology, the significance of the research, research limitations, and Chapters' structure. Chapter Two explores the obligations of South Sudan under the international, regional and domestic legal frameworks in addressing the impact of child marriage on the girl-child's right to education. Chapter Three discusses the perception of South Sudan's communities on child marriage and its impacts on the girl-child's right to education. Chapter Four examines the role of human rights defenders in addressing the impact of child marriage on the girl-child's right to education, the legal framework governing human rights defenders and challenges human rights defenders face. Chapter Five summarises the conclusions and suggests recommendations.

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ABBREVIATIONS AND ACRONYMS

ACRWC	African Charter on the Rights and Welfare of the Child
African Charter	African Charter on Human and Peoples' Rights
African Children's Charter	African Charter on the Rights and Welfare of the Child
African Declaration	African Declaration on the Promotion of the Role of Human Rights Defenders and their Protection in Africa
CEDAW	Convention on the Elimination of all Forms of Discrimination Against Women
CESCR	International Covenant on Economic, Social and Cultural Rights
Constitution	Constitution of the Republic of South Sudan
Court	Supreme Court, High Court or Gender-Based Violence and Juvenile Court
CRC	United Nations Convention on the Rights of the Child
CRPD	Convention on the Rights of Persons with Disabilities
HRDs	Human Rights Defenders
ICCPR	International Covenant on Civil and Political Rights
IDC	Independent Child Commission
Maputo Protocol	Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa
NGO	Non-Governmental Organisation
OHCHR	Office of the High Commissioner for Human Rights
OXFAM	Oxford Committee for Famine Relief
PPE	Participation Evaluation Process
TCSS	The Transitional Constitution of the Republic of South Sudan of 2011 as amended
UDHR	Universal Declaration on Human Rights
UN Declaration	UN Declaration on the Rights and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms
UNICEF	United Nations Children's Fund
USD	United States Dollar

1. INTRODUCTION

1.1 Background

According to the United Nations Children's Emergency Fund (UNICEF)'s 2022 report titled 'Child marriage in Eastern and Southern Africa: A statistical overview and reflections on the ending the practice', South Sudan had one of the highest rates of child marriage in the world.¹ According to the 2024 Human Rights Watch report titled 'World Report: The events of 2023', in 2023, 52 per cent of female children in South Sudan under 18 years were married.² The UNICEF's 2022 report published in 2021 shows that nearly 1.3 million girls currently in South Sudan were married before 18 years old,³ making South Sudan one of the top ten countries in the world with the highest rate of child marriage.⁴ Out of 1.3 million girls who were married before 18 years old, 988, 000 (76 per cent) have dropped out of school.⁵ UNICEF study shows that Unity State which is located in the northern part of South Sudan has the highest rate of child marriage with more than 71 per cent of the girls married before they reached 18 years; followed by Jonglei State located in the Eastern part of South Sudan, Upper Nile State located in North-Eastern part, Lakes State located in North-West and Western Equatoria State situated in the South-West of South Sudan with approximately 51-70 per cent.⁶ Western Bhar El Ghazal State located in the North-West of South Sudan, Northern Bhar El Ghazal and Warrap State situated in the North of South Sudan, and Central Equatoria State located in the South of South Sudan come in third place with approximately 41-50 per cent.⁷ Lastly, Eastern Equatoria located in the Southern part of South Sudan has the lowest prevalence of child marriage of about 31-40 per cent.⁸

¹ UNICEF 'Child marriage in Eastern and Southern Africa: A statistical overview and reflections on the ending the practice' 76 <file:///C:/Users/HP/Downloads/Child-Marriage-in-Eastern-and-Southern-Africa-June-2022-UNICEF-web.pdf> (accessed 17 June 2024).

² Human Rights Watch 'World Report: The events of 2023' 575 <https://www.hrw.org/world-report/2024/country-chapters/south-sudan> (accessed 02 June 2024).

³ UNICEF (n 1) 76.

⁴ UNICEF (n 1) 8

⁵ OXFAM 'Born to be married: Addressing early and forced marriage in Nyal, South Sudan' February 2019, <https://oxfamilibrary.openrepository.com/bitstream/handle/10546/620620/rr-born-to-be-married-efm-south-sudan-180219-en.pdf> (accessed 8 July 2024).

⁶ UNICEF (n 1) 76.

⁷ As above.

⁸ UNICEF (n 1) 76.

South Sudan has not yet ratified the African Charter on the Rights and Welfare of the Child (African Children's Charter).⁹ The importance of ratifying the African Children's Charter is that, among others, it strictly defines a child as someone who is below 18 years old and emphatically prohibits child marriage.¹⁰ On another note, South Sudan has ratified the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (Maputo Protocol)¹¹ and the Convention on the Elimination of all Forms of Discrimination against Women (CEDAW).¹² In a similar vein, South Sudan is a party to the United Nations Convention on the Rights of the Child (CRC) and enacted domestic laws which define a child as anyone below 18 years old.¹³ However, the surge in child marriage continues across the country due to a lack of implementation of laws, treaties, charters and conventions and the practice of customary laws.¹⁴

Like in other sub-Saharan countries, child marriage has been a major challenge for girls more than boys in South Sudan.¹⁵ One of the major gaps in laws is that the Transitional Constitution of the Republic of South Sudan of 2011 as amended (TCSS) does not set the age of marriage but only recognises in general terms the right of every person of marriageable age to marry.¹⁶ The lack of a specific minimum age of marriage gives room for child marriage. The Constitution further exacerbates the matter because it stipulates that marriages should conform to family laws.¹⁷ According to Makec, in some family laws, such as the Dinka customary law, the capacity to marry is not based on age but determined by 'physical changes such as the deepening of the voice and the growth of pubic hair for the boys, and the beginning of puberty for the girls.'¹⁸ Although the Child Act offers protection against harmful practices like early and forced marriages, non-compliance with these laws makes it hard to protect children.¹⁹ Like the

⁹ African Committee of Experts on the Rights and Welfare of the Child database <https://www.acerwc.africa/en/member-states/ratifications> (accessed 17 June 2024).

¹⁰ African Charter on the Rights and Welfare of the Child arts 2 & 21.

¹¹ UN Women Africa 'South Sudan launches the Maputo Protocol for the protection of women's rights' 31 July 2023, <https://africa.unwomen.org/en/stories/news/2023/07/south-sudan-launches-the-maputo-protocol-for-the-protection-of-womens-rights> (accessed 22 July 2024). South Sudan acceded to Maputo Protocol on 24 February 2023.

¹² United Nations Human Rights Office of the High Commissioner <https://indicators.ohchr.org/> (accessed 15 July 2024). South Sudan ratified CEDAW in 2015.

¹³ CRC art 1.

¹⁴ The African Child Policy Forum 'Gender and child rights in Eastern Africa: A survey of laws and policies on child marriage, economic exploitation and inheritance' 23 <https://app.box.com/s/sh7yz46xzetr0ch1rbl7x8p7w0wffi> (accessed 17 June 2024).

¹⁵ S Singh & R Samara 'Early marriage among women in developing countries' (1996) 22 *Guttmacher Institute* 148.

¹⁶ The Transitional Constitution of the Republic of South Sudan, 2011 art 15. It vaguely stipulates that any person of 'marriageable age' has a right to marry another person of 'opposite sex.' This lack of clarity on the marriageable age is a leeway for perpetrators of child marriage.

¹⁷ As above.

¹⁸ JW Makec *Customary law of the Dinka people of Sudan: In comparison with the aspects of Western and Islamic laws* (1998) 63.

¹⁹ Child Act 10 of 2008 sec 23.

Constitution, the Child Act does not provide a minimum age limit for marriage. The Act does not define early marriage, thus leaving the interpretation of early marriage to the mercy of customary laws.²⁰ The resulting consequences of child marriage range, as stated further in the problem statement of this mini-dissertation, from deprivation of the right to access education,²¹ and health, to economic, social, cultural, and political development.²²

While this mini-dissertation primarily focuses on the impact of child marriage on the girl-child's right to education, it delves into the role of human rights defenders (HRDs) in addressing child marriage and its impact on girls' access to education. According to the United Nations Human Rights Office of the High Commissioner (OHCHR), HRDs are people, individuals, professionals, organisations, and institutions whose main role is advocating for the peaceful promotion and protection of human rights.²³ HRDs can play a critical role in ending child marriage in several ways such as through advocacy which aims at enacting and implementing laws that address child marriage.²⁴

However, HRDs in South Sudan face several challenges such as intimidation, harassment, arrest, murder, and enforced disappearance, among others.²⁵ In 2017, two prominent human rights activists, Dong Samuel Luak and Aggrey Ezbon, were kidnapped in Nairobi, Kenya by the National Security Services of South Sudan and flown to Juba, South Sudan with the help of Kenyan authorities.²⁶ According to the 2019 Human Rights Watch report titled 'South Sudan: Investigate apparent 2017 killing of activists', just a few days after Dong Samuel and Aggrey Ezbon were flown to South Sudan, they were persecuted in Luri, a small suburb on the outskirts of Juba, the Capital City of South Sudan.²⁷ The 'civic space for HRDs continues to shrink' in South Sudan, evidenced by the arrest of journalists and activists.²⁸ According to the 2024

²⁰ Child Act 10 of 2008 sec 26(1). This section provides that "Every girl has the right to be protected from sexual abuse, exploitation, and gender-based violence, such as rape, incest, early and forced marriage, female circumcision, and female genital mutilation. 'Early marriage' is not specifically defined in this section.'

²¹ The African Child Policy Forum (n 14) 2.

²² Office of the High Commissioner for Human Rights 'Harmful traditional practices affecting the health of women and children' 8 <https://www.ohchr.org/sites/default/files/Documents/Publications/FactSheet23en.pdf> (accessed 18 June 2024).

²³ United Nations Human Rights Office of the High Commissioner <https://www.ohchr.org/en/special-procedures/sr-human-rights-defenders/about-human-rights-defenders> (accessed 22 July 2024).

²⁴ Declaration on the Promotion of the Role of Human Rights Defenders and their Protection in Africa art 2.

²⁵ M Forst 'World report on the situation of human rights defenders' 96 <https://reliefweb.int/report/world/report-special-rapporteur-situation-human-rights-defenders-ahrc3452> (accessed 20 June 2024).

²⁶ Human Rights Watch 'South Sudan: Investigate apparent 2017 killing of activists' April 2019, <https://www.hrw.org/news/2019/04/30/south-sudan-investigate-apparent-2017-killing-activists> (accessed 31 May 2024).

²⁷ As above.

²⁸ Forst (n 25) 96.

Human Rights Watch report titled 'South Sudan: Events of 2023', there was a state's persistent and organised suppression of the media, human rights advocates, and civil society, involving media censorship, oppressive limitations on civic and political engagement, and ongoing assaults on journalists and human rights defenders.²⁹ Besides the hostile environment for HRDs, their work has been made difficult by cumbersome registration requirements imposed by the NGO Act which includes among other things that, the NGOs should only engage in humanitarian purposes,³⁰ should not be involved in any political or tribal differences,³¹ must prove the financial capacity to implement the programs, mandatory registration, and costly registration fees.³² The NGO Act of 2016 does not protect HRDs because the Act does not permit HRDs to do advocacy.³³ All these factors impede the scope of HRDs' work and make them vulnerable in executing their duties.

1.2 Problem statement

According to UNICEF and Human Rights Watch, 52 per cent of the communities in South Sudan practice child marriage.³⁴

Although a child is clearly defined as anyone below the age of eighteen under domestic laws, and regional and international instruments that South Sudan has ratified, except the CRC that allows exception of obtaining the age of maturity earlier than 18 years, these have not stopped the prevalence of child marriage.³⁵ Some of the causes are attributed to the following main reasons: First, the Constitution does not define marriageable age, and states that marriages should be conducted according to the family laws.³⁶ According to Makec, in the family laws such as for the Dinka, the age of marriage is based exclusively on biological factors such as the first 'puberty cycle' for the girls on the one hand and signs like 'deep voice and growth of hair in the armpits for boys' on the other.³⁷ The communities believe that child marriage protects the girl from breaking her virginity and getting unwanted pregnancies.³⁸ These communities argue that

²⁹ Human Rights Watch (n 26).

³⁰ Non-Governmental Organisations Act of 2016 sec 7.

³¹ Non-Governmental Organisations Act of 2016, sec 12(1)(e).

³² Non-Governmental Organisations Act of 2016, sec 9.

³³ Non-Governmental Organisations Act of 2016, sec 7.

³⁴ Human Rights Watch (n 2) 575; UNICEF (n 1) 76; UNICEF (n 1) 8.

³⁵ CRC art 1; Constitution (n 16) art 17(4); Child Act 10 of 2008 sec 5.

³⁶ Constitution (n 16) art 15.

³⁷ Makec (n 18) 63.

³⁸ Solidarity for African Women's Rights 'South Sudan ratified the Maputo Protocol – now what?' 09 November 2023, <https://www.soawr.org/2023/11/29/south-sudan-ratified-the-maputo-protocol-now-what/> (accessed 02 June 2024).

'child marriage is in the best interest of the girl and brings wealth and honour to the family.'³⁹ Secondly, high levels of illiteracy rates have exacerbated the surge of child marriage.⁴⁰ This is because the communities have less knowledge of the negative repercussions of child marriage on education.⁴¹ Thirdly, the high poverty rate in the country has been a major factor that engineers child marriage.⁴²

Vital to note, that eight states and three administrative areas in the South have not criminalised child marriage, thus making the practice prevalent. It is only Lakes State and Unity State that have outlawed and banned child marriage respectively but the lack of implementation still makes child marriage rampant.⁴³ Although the Penal Code considers sex with a person under eighteen years to be rape, it provides that sex within marriage is not rape whether with or without consent.⁴⁴ By implication, it means that married children are prone to marital rape.⁴⁵ Therefore, the lack of a defined age for marriage in the domestic laws, lack of implementation, and rampant customary practices have all contributed to the prevalence of child marriage in South Sudan. All these factors impact the girl-child's right to education.⁴⁶

According to Human Rights Watch⁴⁷ and UNICEF, child marriage has been one of the factors 2.8 million (70 per cent) children have dropped out of school.⁴⁸ Out of this number, more than 1.3 million girls dropped out of school because of child marriage.⁴⁹ These girls dropped out

³⁹ As above.

⁴⁰ J Mcclary-sills and others 'Child Marriage: A critical barrier to girls' schooling' (2015) 7 *The Review of Faith & International Affairs and Gender Equality in Education* 69.

⁴¹ As above.

⁴² The Sudd Institute 'A strategy for achieving gender equality in South Sudan' 7

<https://www.suddinstitute.org/publications/show/a-strategy-for-achieving-gender-equality-in-south-sudan> (accessed 20 June 2024).

⁴³ Radio Tamazuj 'Unity State bans child and forced marriages' 18 August 2024, <https://www.radiotamazuj.org/en/news/article/unity-state-bans-child-and-forced-marriages> (accessed 25 August 2024); Eye Radio 'Child and forced marriage now a crime in Lakes State' 19 July 2022, <https://www.eyeradio.org/child-and-forced-marriage-now-a-crime-in-lakes-state/> (accessed 15 August 2024).

⁴⁴ Penal Code Act 9 of 2008 sec 247(2)(3). Section 247(2) states that 'consent given by any person below eighteen years is not consent and therefore any sex with that person is rape within the meaning of section 247(1).' Further, in section 247(3), it states that sex between married couples is not rape, implying that sex with a married minor is not rape whether with or without her consent.

⁴⁵ As above.

⁴⁶ Human Rights Watch 'Ending child marriage in Africa: Opening the door for girls' education, health, and freedom from violence' 9 December 2015, <https://www.hrw.org/news/2015/12/09/ending-child-marriage-africa> (accessed 2 June 2024).

⁴⁷ Human Rights Watch 'This old man can feed us, you will marry him: Child and forced marriage in South Sudan' 7 March 2023,

<https://www.hrw.org/report/2013/03/07/old-man-can-feed-us-you-will-marry-him/child-and-forced-marriage-south-sudan> (accessed 31 May 2024).

⁴⁸ UNICEF 'Education: Creating solid foundations for the future through quality education'

<https://www.unicef.org/southsudan/what-we-do/education> (accessed 31 May 2024)

⁴⁹ As above.

because they were either pregnant or confined to house chores, thus limiting them from attending or returning to, school.⁵⁰

Child marriage does not only deny the girl-child the right of access to education as envisaged in the CRC⁵¹ but denies the child the aims of education as highlighted in Article 29 of the CRC.⁵² The girl child is denied the opportunity to fully develop physically and mentally, and maximise their skills and talents.⁵³ This undermines the core purpose of education.⁵⁴ Furthermore, child marriage impedes the child's ability to develop respect for human rights, the environment, parents, cultural identity, societal values; and most importantly, to become a responsible member of society.⁵⁵ In this light, the girl is deprived of the right to quality education as provided for by the CRC.⁵⁶

1.3 Main research question

What is the role of human rights defenders in addressing the impact of child marriage on the girl-child's right to education in South Sudan?

1.3.1 Sub questions

1. What is the perception of the communities of Bhar El Ghazal, Upper Nile and Greater Equatoria about child marriage and its impacts on the girl-child's right to education in South Sudan?
2. What measures have HRDs taken under the existing legal framework in addressing child marriage and its impacts on girl's right to education?
3. Why does child marriage have more impact on the girl-child's right to education than other rights?
4. What are the best international practices South Sudan can embrace to address the impact of child marriage on the girl-child's right to education in South Sudan?

⁵⁰ United States Institute of Peace 'Gender and state building in South Sudan' 10
<https://www.usip.org/publications/2011/12/gender-and-statebuilding-south-sudan> (accessed 20 June 2024).

⁵¹ CRC art 28.

⁵² CRC art 28.

⁵³ CRC Committee General Comment 1 (2001) of the Committee on the Rights of the Child, paras 1,2,3, & 4
<https://www.ohchr.org/en/resources/educators/human-rights-education-training/general-comment-no-1-aims-education-article-29-2001> (accessed 1 July 2024).

⁵⁴ CRC art 29.

⁵⁵ CRC Committee General Comment (n 53) paras 1, 2, 3, & 4.

⁵⁶ CRC art 28.

1.4 Main objective

This study seeks to investigate the role of human rights defenders in addressing the impact of child marriage on the girl-child's right to education in South Sudan.

1.4.1 Other objectives

1. To describe the perception of the communities of Bhar El Ghazal, Upper Nile and Greater Equatoria about child marriage and its impacts on the girl-child's right to education in South Sudan.
2. To examine the measures HRDs have taken under the existing legal framework in addressing child marriage and its impacts on girl's right to education.
3. To investigate why child marriage has more impact on the girl-child's right to education than other rights.
4. To identify the best international practices South Sudan has embraced to address the impact of child marriage on the girl-child's right to education in South Sudan.

1.5 Literature review

Many scholars and human rights institutions have contributed to the discourse of child marriage and its impacts on the girl-child's right to education in South Sudan. All the reports and articles from these scholars and institutions have in one way or another linked the consequences of child marriage to the girl's right to education. However, the role of human rights defenders in addressing the impact of child marriage and its impacts on the girl-child's right to education is very limited. This research seeks to critique these academic discourses and add new thoughts in addressing child marriage with its negative impact on the girl-child's right to education. Against this background, the themes below provide insight into child marriage and its consequences on the girls' right to education.

1.5.1 Conceptual framework

In examining the link between International Law and Child Marriage, Mbaku defines child marriage as a marriage that involves one or both partners who are below 18 years old.⁵⁷ He supports his definition of child marriage with UNICEF's definition.⁵⁸ In this article, Mbaku

⁵⁷ JM Mbaku 'International law and child marriage in Africa' (2020) 7 *Journal of International and Comparative Law* 103.

⁵⁸ UNICEF 'Child marriage Child marriage threatens the lives, well-being and futures of girls around the world' July 2023, <https://www.unicef.org/protection/child-marriage> (accessed 11 July 2024).

provides an intersectionality between forced marriage and child marriage.⁵⁹ He asserts that child marriage encompasses elements of forced marriage.⁶⁰ Mbaku, therefore, defines forced marriage as any marriage entered without the free and full consent of the parties.⁶¹ He concludes that child marriage is a form of violence and is a serious violation of human rights which has implications for the right to education and as a result, children are forced to drop out of school.⁶²

This article's significance to this research is that it recommends states to ratify the ACRWC and specify the age limit in their constitution.⁶³ He further suggests that states should domesticate international human rights law and adopt legislation that criminalises child marriage.⁶⁴ Mbaku's recommendations are vital to this research since South Sudan has yet to ratify ACRWC and has no laws that prohibit child marriage nor define age limits for marriage.

The gap in Mbaku's article is that it does not specifically talk about the role of HRDs in addressing child marriage and the impacts of child marriage on the rights of girls to education. It is this gap that this research seeks to bridge.

Makec in his book, titled 'Dinka customary law in comparative aspects with the West and Islamic religion' describes marriage as a relationship between one man and his successor on the one hand and a woman on the other to produce children.⁶⁵ The book highlights the concept of marriage according to the Dinka customs.⁶⁶ Makec critically underscores the customary understanding of marriage and looks into aspects such as the capacity to marry, which he ideally premises on biological factors rather than age.⁶⁷ In this sense, it can be understood that the Dinka Customs do not consider child marriage as negative with all its impacts on the girl-child's rights such as the right to education.

The gap in Makec's book is that it failed to recognise the human rights approach to child marriage and its consequences on girls' child education. Makech makes no mention of the role

⁵⁹ Mbaku (n 57) 103.

⁶⁰ Mbaku (n 57) 104.

⁶¹ As above.

⁶² Mbaku (n 57) 239.

⁶³ Mbaku (n 57) 243.

⁶⁴ As above.

⁶⁵ Makec (n 18) 56.

⁶⁶ Makec (n 18) 54-67.

⁶⁷ Makec (n 18) 54-67.

of HRDs in addressing child marriage and its impact on girl's right to education. Makeec justifies that the marriageable age for girls according to the Dinka is determined by first period or puberty cycle. This is inconsistent with the international practice of using age to determine maturity. These gaps are what this research seeks to address. Therefore, in examining the extent of child marriage, this research considers age to determine whether the girl was married before she reached 18 years.

1.5.2 Prevalence of child marriage

According to the UNICEF report of 2023 titled 'Child marriage in Eastern and Southern Africa: A statistical overview and reflections on the ending the practice', the rate of child marriage is at 52 per cent in South Sudan.⁶⁸ This report highlights the main two factors that make child marriage prevalent. First, it links the prevalence to the desire for financial benefits.⁶⁹ This aspect underscores poverty as the driving factor. Second, the article stresses how cultural practices contribute to the surge of child marriage in South Sudan.⁷⁰ It then reveals how child marriage affects the access of girl-child to education and calls on the stakeholders to eliminate this harmful practice so that the girls can complete their education to fully develop their skills and potentials.⁷¹ The significance of this report is that it links the impacts of child marriage with the right of girl-child to education.

The main gap is that it does not emphasise the role of HRDs in curbing child marriage. Additionally, it does not discuss in depth the prevalence of child marriage with its negative consequences, especially among the three regions of South Sudan, namely Bhar El Ghazal, Upper Nile and Equatoria. Therefore, this research uses the three regions as the case scenarios to address the gap in UNICEF's report.

In studying the trends in child marriage, Siddiqi and Greene analyse the literature between 2000-2019. They observe that child marriage is more prevalent in Sub-Saharan countries than in the rest of the world.⁷² The article commences with an abstract of a reminder of the Sustainable Development Goals Agenda, 2030 with a particular focus on ending child, early and forced marriage which has affected more than 650 million girls and women worldwide.⁷³ The

⁶⁸ UNICEF (n 1) 76.

⁶⁹ As above.

⁷⁰ As above.

⁷¹ As above.

⁷² M Siddiqi & ME Greene 'Mapping the field of child marriage: Evidence, gaps, and future directions from a large-scale systematic scoping review' (2022) 70 *Journal of Adolescent Health* 13

⁷³ Siddiqi & Greene (n 72) 10.

article then underscores that child marriage is expanding greatly on an uneven scale across different countries in the world.⁷⁴ The study emphasises that child marriage is a global and national priority and makes three recommendations.⁷⁵ First, it proposes that research should be aimed at an evidence-based approach to prevent child marriage.⁷⁶ Secondly, it recommends that an effective approach to overcoming language barriers in the context of child marriage is to share research findings in local languages in addition to English.⁷⁷ This can help ensure that crucial information reaches a wider and more diverse audience, ultimately fostering greater understanding and support for addressing the issue. Thirdly, the article recommends that more research should be conducted in countries like South Sudan where child marriage is high.⁷⁸ The paper then concludes that child marriage remains prevalent across the globe and affects millions of girls and women.⁷⁹

The gap in this article is that it does not focus specifically on the prevalence of child marriage among the communities in South Sudan and how it affects the girl's right to education. Furthermore, the article is silent on the role of HRDs in ending child marriage with its negative consequences in South Sudan. It is these gaps that this research seeks to investigate and bridge.

1.5.3 Causes of child marriage

According to the OXFAM's 2019 report, one of the causes of child marriage in South Sudan is cultural barriers.⁸⁰ The report highlights the prevalence of child marriage in South Sudan and links it to the consequences it has on the girl's right to education.⁸¹ The report further links the lack of access to education as one of the primary causes of child marriage.⁸² Further, the report underscores the importance of education to the girl-child in South Sudan to help them develop their abilities and be able to make decisions on matters that affect their lives including child and forced marriage.⁸³

⁷⁴ Siddiqi & Greene (n 72) 14.

⁷⁵ Siddiqi & Greene (n 72) 15.

⁷⁶ As above.

⁷⁷ As above.

⁷⁸ Siddiqi & Greene (n 72) 15.

⁷⁹ As above.

⁸⁰ OXFAM (n 5) 8.

⁸¹ OXFAM (n 5) 10.

⁸² As above

⁸³ OXFAM (n 5) 37.

The report concludes that child marriage has led to the dropout of approximately 76% of female children from school because they were overwhelmed by household chores.⁸⁴ The report recommends among other things the need to implement the National Action Plan to end child marriage, harmonise laws and policies and ensure their enforcement to protect girls from child marriage and dropping out of school.⁸⁵ The paper strongly recommends civic space for civil society organisations like HRDs to advocate for laws and policies aimed at ending child marriage.⁸⁶

Although the report discusses child marriage and its impact on education, it focuses more on Nyal, a county in Jonglei State in South Sudan. It neglects the other nine states and administrative areas in South Sudan. The report speaks to the heart of this mini-dissertation, which addresses the impacts of child marriage on the girl-child's right to education.

Ellsberg, Murphy, Blackwell, Reddy, Hollowel, Hess, Macrae, and Contreras-Urbina argue that cultural practices such as payment of bride-price contribute to the surge in child marriage in South Sudan.⁸⁷ They categorise child marriage and its impacts on the right to education as a form of domestic violence against women.⁸⁸ The paper generally discusses other forms of gender-based violence such as cultural norms and practices related to wife inheritance and polygamy practices.⁸⁹

The relevance of this article is that it highlights the misconceptions of the communities in South Sudan that girls will get spoilt if they are allowed to study and consequently, they will not bring a lot of cows.⁹⁰ However, the article fails to link the nexus of the role of HRDs and the impact of child marriage on girl's right to education. Against this backdrop, this research aims to address these gaps.

1.5.4 Consequences of child marriage on girl-child's right to education

Hove and Ndwana examined female rights in South Sudan. They discuss customary practices including child marriage that violate female rights in South Sudan including the right to

⁸⁴ As above.

⁸⁵ As above.

⁸⁶ As above.

⁸⁷ M Ellsberg and Others 'If you are born a girl in This Crisis, you Are born a problem: Patterns and drivers of violence against women and girls in conflict-affected South Sudan' (2021) 27 *Violence Against Women* 3038.

⁸⁸ Ellsberg and Others (n 87) 3030.

⁸⁹ Ellsberg and Others (n 87) 3041.

⁹⁰ Ellsberg and Others (n 87) 3038.

education.⁹¹ They emphasise these violations occur because 90 per cent of girls only have access to customary courts which are dominated by male chiefs who are patriarchal and favours male counterparts.⁹²

The article does not address in detail the impacts of child marriage on the right to education. By addressing this gap, this research seeks to investigate how child marriage has affected girl's right to education in all ten states and administrative areas of South Sudan.

The significance of this article to this research is that it stresses the role of HRDs in promoting girl's rights to education.⁹³ This research adds to this literature the role of HRDs not only in promoting girls' rights to education but engaging in litigation, advocating for the enactment of laws that prohibit child marriage, and encouraging awareness of the impacts of child marriage on girls' right to education.⁹⁴

As defined in section 1.1 above, HRDs are individuals or groups of people or organisations who promote and protect the rights of others peacefully. Therefore, HRDs as will be discussed further in Chapter Four, include individuals, Civil Society Organisations Non-Governmental Organisations, religious leaders, academics, UN Agencies, International Organisations, law enforcement agencies, institutions of learning, judges, government officials and institutions.

1.6 Significance of this research

Although many scholars have written about child marriage, the significance of this research is that it focuses on the impact of child marriage on the girl-child's right to education. Further, it underscores the role of human rights defenders in addressing the impact of child marriage on the girl-child's right to education. It also contributes to the academic discourse of ending child marriage in South Sudan. This research underscores the importance of education in shaping the future of the girl-child.

⁹¹ M Hove & E Ndawana 'Women's rights in jeopardy: The case of war-torn South Sudan' (2017) 10 *Sage Open* 7.

⁹² As above.

⁹³ Hove & Ndawana (n 91) 9.

⁹⁴ Hove & Ndawana (n 91) 7.

1.7 Research methodology

The research method adopted in this mini-dissertation to attain the research objectives and respond to the research questions is doctrinal legal research. Doctrinal legal research entails examining primary and secondary legal rules and principles, interpreting and analysing them to find gaps in the law and propose solutions. It is important in this research because it helps to understand the gap in legal rules and principles governing child marriage and girl's right to education in South Sudan, the practical challenges in implementing these rules and policies, and propose solutions. Both primary and secondary sources are examined and analysed. Primary sources include a detailed analysis of cases and legal frameworks (treaties, conventions, statutes, legislations, and rules) at the domestic, regional, and international levels. The provisions of the law governing child marriage and intersectionality with the right to education are comprehensively examined and analysed to identify the gaps in the law. Judicial precedents are crucial as they unleash the extent of enforcement of the right to be protected from child marriage and its impacts on girls' right to education.

Further, secondary sources such as books, journal articles, online articles, encyclopaedias, command papers and law Commission reports, websites and blogs, and news articles are thoroughly examined to find the gap in law and policies governing child marriage and its consequences on girls' access to education.

Lastly, this research uses the participation evaluation process (PPE) to evaluate the advocacy role of HRDs in South Sudan in addressing the impact of child marriage on the right to education.⁹⁵ Participation process evaluation is a method which engages stakeholders in the implementation of the advocacy objective.⁹⁶ The PPE method uses techniques like research, setting agendas, and civic awareness to achieve an advocacy strategy.⁹⁷ In light of this, this research method evaluates the extent to which HRDs have researched, engaged the stakeholders, and enlightened the communities of South Sudan about the negative repercussions of child marriage on the girl-child's right to education.

⁹⁵ BV Oort and Others 'Understanding the what, how, and why in advocacy: Assessing the applicability of participatory process evaluation methodology in an advocacy context' (2023) 29 *Sage Pub* 510.

⁹⁶ As above.

⁹⁷ As above.

1.8 Chapters' structure

This research is divided into five chapters. This introduction is eventually Chapter One. It delves into the background of the study, problem statement, research questions and objectives, literature review, research methodology, the significance of the research, chapters' structure and limitations.

Chapter Two critically examines the legal framework governing child marriage and its impacts on the girl-child's right to education.

Chapter Three assesses the case scenarios of perceptions of communities towards child marriage in the three regions namely, Bhar El Ghazal, Upper Nile, and Equatoria. It then discusses the impacts of child marriage on the girl's right to education and how lack of education affects other rights of the girl-child.

Chapter Four examines the roles of human rights defenders in addressing the consequences of child marriage on the girl-child's right to education and the challenges HRDs face. It examines the legal framework and discusses the challenges faced by the HRDs.

Chapter Five summarises the conclusion and suggests recommendations.

1.9 Limitations of the Study

This research delves into the topic of the role of human rights defenders in addressing the impact of child marriage on the girl-child's right to education, with a particular focus on South Sudan. The judiciary of South Sudan does not have a digital depository for cases, and this limits the use of judicial precedents from South Sudan. The review examines the literature (articles and reports) released between 2000 and 2024. To compensate for the sparse literature on the role of HRDs in addressing child marriage and its consequences on girls' access to education in South Sudan, literature from other jurisdictions is consulted to bridge any gaps. Nonetheless, considering the research's timeframe, it is not feasible to cover every aspect of the impact of child marriage on the girl-child's rights in South Sudan. Because of this, the focus is on the role of HRDs in addressing the impact of child marriage on the girl-child's right to education, and to some extent how lack of education, impairs the girl's right to health, non-discrimination, participation, life, human dignity survival and development. It does not focus on the impacts of

child marriage on the girl-child's right to freedom of expression, assembly, vote and be voted, and right to environment.

The next chapter examines the legal framework by looking at the obligations of South Sudan in addressing the impact of child marriage on the girl's right to education.

2. LEGAL FRAMEWORK: AN APPRAISAL OF THE OBLIGATIONS OF SOUTH SUDAN IN ADDRESSING THE IMPACT OF CHILD MARRIAGE ON GIRL-CHILD'S RIGHT TO EDUCATION

2.1 Introduction

This chapter explores the legal framework at the international, regional and domestic levels. It examines the obligations of South Sudan under these legal regimes by assessing the intersectionality of child marriage and the right of the girl child to education. As discussed in the previous chapter and further discussed in this chapter, South Sudan has ratified the: CRC; CEDAW; International Covenant on Economic, Social and Cultural Rights (CESCR) and its Optional Protocol; Convention on the Rights of Persons with Disabilities (CRPD); African Charter on Human and Peoples' Rights (African Charter); and Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (Maputo Protocol). These legal regimes are crucial in assessing the measures taken by South Sudan to address the negative consequences of child marriage on girls' right to education. These frameworks are important because they are legally binding on South Sudan and offer thematic and holistic protection to the girl-child from child marriage and its negative implications on the girls' right to education. The choice for these legal frameworks was guided by their relevance to the protection of the girl-child from child marriage and its impacts on the girl-child's right to education. Below is an appraisal of the legal frameworks.

2.2 International legal framework/United Nations treaties

This section examines South Sudan's obligations under the international legal framework (UN treaty system).

2.2.1 Convention on the rights of the child

South Sudan became a State party to the CRC in 2015,⁹⁸ four years after gaining independence on 9 July 2011.⁹⁹ Notably, South Sudan acceded to the CRC without reservations.¹⁰⁰ It is the

⁹⁸ United Nations 'UN lauds South Sudan as country ratifies landmark child rights treaty' 4 May 2015 <https://news.un.org/en/story/2015/05/497732> (accessed 16 July 2024).

⁹⁹ The New York Times 'After Years of Struggle, South Sudan Becomes a New Nation' 9 July 2011, <https://www.nytimes.com/2011/07/10/world/africa/10sudan.html> (accessed 17 August 2024).

¹⁰⁰ Committee on the Rights of the Child: Initial report of South Sudan submitted under article 44 of the Convention, para 7 <https://mgcsw.gov.ss/wp-content/uploads/2021/04/CRC-Initial-Report-Final-5.pdf> (accessed 11 August 2024).

first thematic international legal regime for the protection of the rights of the child. It provides a holistic approach that is child-centred and child-friendly. As a result, it imposes several obligations on South Sudan as discussed below.

Article 2 of the CRC calls on the State parties to eliminate discrimination based on sex, race, religion, gender, or status.¹⁰¹ In line with this principle, South Sudan is obliged to eradicate girl-child marriage because it denies girls the right to education. Further, the State party is mandated to respect and protect children's rights under the Convention.¹⁰²

In addition, CRC requires the State parties to consider the 'best interest of the child' in all actions and decisions affecting the child.¹⁰³ The obligation extends to both private and public spheres, judicial and administrative decisions.¹⁰⁴ Child marriage which is one of the main factors why 1.3 million girls have dropped out of school in South Sudan is not in the best interest of the child.¹⁰⁵ The best interest of the child entails giving the child an opportunity to participate in the decision-making of the affairs that affect them.¹⁰⁶

Also, Article 4 obliges the State parties to take 'legislative, administrative and any other measures' to implement the provisions of the Convention.¹⁰⁷ This means that South Sudan has to combat child marriage and ensure it does not affect the girls' right to education.¹⁰⁸

Furthermore, South Sudan is obliged to ensure the rights of the girl-child to survival and development are respected.¹⁰⁹ Child marriage denies the girl-child an opportunity to complete education resulting in the missing of necessary skills and talents to secure a job for an adequate standard of living. These breaches Articles 28 and 29 of the CRC which obliges the State parties to ensure the right to education is realised and is of quality to meet the education's objectives.¹¹⁰

¹⁰¹ CRC art 2.

¹⁰² CRC art 2.

¹⁰³ CRC art 3.

¹⁰⁴ As above.

¹⁰⁵ UNICEF (n 1) 8.

¹⁰⁶ CRC art 12

¹⁰⁷ CRC art 12.

¹⁰⁸ CRC art 28.

¹⁰⁹ CRC art 6.

¹¹⁰ CRC arts 28 & 29.

More importantly, which is the main focus of this study, South Sudan is obliged to educate girls at all levels and ensure regular attendance at schools.¹¹¹ The education should be free and compulsory at the primary level.¹¹² According to article 29 of the CRC, education should allow the child to develop his or her skills, talents, abilities, respect for human rights, cultural values and national values of the country a child originates from or lives in.¹¹³ Education should also teach children tolerance, respect for the natural environment and be responsible citizens in society.¹¹⁴

All these aims of education cannot be achieved if a girl-child drops out of school because of marriage. This confirms that the practice of child marriage is a gender based constraint that prevents and inhibits the girl child's access to education and other opportunities and therefore needs to be eradicated if the wellbeing and development of the girl child is to upheld.

2.2.2 Convention on the elimination of all forms of discrimination against women (CEDAW)

South Sudan became a State party to CEDAW in 2015, four years after attaining independence from the Sudan government.¹¹⁵ The ratification of CEDAW came as a result of the commitment to address gender inequality against females.¹¹⁶ In the hope of protecting girls and women, South Sudan ratified CEDAW without reservation.¹¹⁷ It is understood that South Sudan ratified CEDAW and the CRC just only four years after independence to address gender inequality and injustices perpetrated against children and women. However, due to a lack of implementation and practice of customary laws, CEDAW and the CRC have not eliminated child marriage and guaranteed the right to education.

CEDAW affirms the principle of non-discrimination against women and girls and calls on the State parties to take measures to combat discrimination.¹¹⁸ More importantly, CEDAW obliges State parties to ensure that parents consider the interest of the child in parental

¹¹¹ CRC art 28(a)(b)(c)(d).

¹¹² CRC art 28(a).

¹¹³ CRC art 29(a)(b)(c).

¹¹⁴ CRC art 29(d)(e).

¹¹⁵ United Nations Human Rights Office of the High Commissioner <https://indicators.ohchr.org/> (accessed 15 July 2024).

¹¹⁶ United Nations Mission in South Sudan 'South Sudan ratifies CEDAW convention' 5 September 2014, <https://unmiss.unmissions.org/south-sudan-ratifies-cedaw-convention> (accessed 17 August 2024).

¹¹⁷ Committee on the Elimination of Discrimination against Women Concluding observations on the initial report of South Sudan, para 11 <https://digitallibrary.un.org/record/3951741?v=pdf> (accessed 11 August 2024).

¹¹⁸ CEDAW art 2(a)(b).

responsibilities.¹¹⁹ This provision underscores that child marriage is not in the interest of the child as it affects the right to education. However, Article 5(b) of CEDAW does not talk about the ‘best interest of the child’ but only the interest of the child.¹²⁰ The lack of emphasis on parental responsibilities could result in decisions that are not in the ‘best interest of the child.’

Article 10 of CEDAW obliges South Sudan to remove barriers in education such as discrimination and female drop-out from schools.¹²¹ In line with this, South Sudan must reduce the number of female dropouts and provide alternative programmes to those who have left school ‘prematurely’ due to factors like child marriage.¹²² By ensuring the girl-child stays in school, child marriage is indirectly eliminated and thus the possibility of girls dropping out of school is minimised. In addition, Article 16 of CEDAW strongly provides that child marriage has no legal effect and commits South Sudan to take measures to provide a minimum age of marriage.¹²³ In situations where the partners have reached the marriageable age, it should be free and consensual.

2.2.3 International covenant on economic, social, and cultural rights (CESCR)

South Sudan ratified CESCR in 2019 without reservations.¹²⁴ CESCR buttresses the principles of non-discrimination as provided in the CRC and CEDAW.¹²⁵ South Sudan as a State party is required to implement socio-economic rights, for the aims of this study, the right to education, within available resources.¹²⁶ Lack of resources cannot be an excuse for not implementing the right to education. The State party needs to demonstrate commitment and the will to provide education for the children with the few resources available.

Article 13(1) affirms the aims of education as provided in the CRC, and Article 13(2) echoes that education at primary school should be free and compulsory.¹²⁷ As discussed above under CRC

¹¹⁹ CEDAW art 5(b).

¹²⁰ As above.

¹²¹ CEDAW art 10(f).

¹²² As above.

¹²³ CEDAW art 16(2).

¹²⁴ Reliefweb ‘UNMISS welcomes ratification of international human rights covenants in South Sudan’ 7 June 2019, <https://reliefweb.int/report/south-sudan/unmiss-welcomes-ratification-international-human-rights-covenants-south-sudan> (accessed 11 August 2024).

¹²⁵ CESCR art 1(2).

¹²⁶ CESCR art 2(1).

¹²⁷ CESCR art 13(1)(2).

in section 2.2.1, CESCR also obligates the government to put in place measures to remove challenges like child marriage that prevent the girl-child from realising the right.¹²⁸

2.2.4 Convention on the rights of persons with disabilities (CRPD)

South Sudan ratified the CRPD without reservations in February 2024, a good benchmark for realising the right to education for children (girls) with disabilities.¹²⁹

Article 24 imposes on South Sudan the duty to provide education to all children including those with disabilities without discrimination.¹³⁰ This Article reiterates the right to education for all children in South Sudan. Crucially, CRPD directs the State parties to provide reasonable accommodation to children with disabilities.¹³¹ Reasonable accommodation means that children with disabilities have to be put on the same level as children without disabilities when accessing education.¹³² Obstacles like child marriage that inhibit children with disabilities from accessing education need to be removed.¹³³ This can be remedied by tackling stereotypes that aim at discriminating against children with disabilities who are pregnant or have delivered while in school.

Furthermore, Article 23(1)(a) obliges State parties to allow marriage for only those who have reached marriageable age.¹³⁴ As a result, children with disabilities who have not reached 18 years should not marry. Thus, South Sudan is obligated to protect children from child marriage and its impact on the girl-child with disabilities' right to education. However, the prevalence of child marriage in South Sudan violates this obligation.¹³⁵

2.3 Regional legal framework: African human rights system

This section explores the regional treaties under the African human rights system. It examines the obligations of South Sudan to protect the girls from child marriage and its consequences on

¹²⁸ CESCR art 2(1).

¹²⁹ United Nations Treaty Collection

https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-15&chapter=4&clang=en (accessed 15 August 2024).

¹³⁰ CRPD art 24(1).

¹³¹ CRPD art 24(2)(c).

¹³² CRPD art 2.

¹³³ As above.

¹³⁴ CRPD art 23(1)(a).

¹³⁵ UNICEF (n 1) 8.

the girls' right to education. This section is important because it examines the intersectionality of child marriage and the right to education in the African context.

2.3.1 African Charter on Human and Peoples' Rights

South Sudan ratified the African Charter in October 2013 without any reservation.¹³⁶ Article 1 of the African Charter imposes obligations on South Sudan to take 'legislative and other measures' to give effect to the provisions of the Charter.¹³⁷ Article 2 affirms the principle of non-discrimination which South Sudan is bound to uphold.¹³⁸ In this view, South Sudan is obliged to take measures to combat practices such as child marriage which discriminates girl-child in accessing education. These discriminatory practices limit the opportunity of young girls to complete their studies.

Article 17(1) guarantees the right to education which South Sudan is duty-bound to fulfil.¹³⁹ Child marriage denies the enjoyment of the right to education.¹⁴⁰ Therefore, it is essential that South Sudan combat child marriage and ensure that those who are married are allowed to complete their education. To give effect to this, policies should lay out how victims of child marriage will be able to stay in school and complete their studies.

2.3.2 Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (Maputo Protocol)

Sudan ratified the Maputo Protocol in June 2023 with reservations.¹⁴¹ The reservations are on provisions which: set the minimum age of marriage at 18 years;¹⁴² prefer monogamy to polygamy;¹⁴³ recognise sexual and reproductive health rights such as safe abortion, control of fertility and use of contraceptives;¹⁴⁴ and acknowledge the freedom to decide when to have children, the number and spacing of children.¹⁴⁵

¹³⁶ African Commission on Human and Peoples' Rights 'African Charter on Human and Peoples' Rights' <https://achpr.au.int/en/charter/african-charter-human-and-peoples-rights> (accessed 12 August 2024); African Commission on Human and Peoples' Rights 'State Parties to the African Charter' <https://achpr.au.int/en/states> (accessed 12 August 2024).

¹³⁷ African Charter art 1.

¹³⁸ African Charter art 2.

¹³⁹ African Charter art 17(1).

¹⁴⁰ African Charter art 17(1).

¹⁴¹ Human Rights Watch (n 2).

¹⁴² Maputo Protocol art 6(b).

¹⁴³ Maputo Protocol art 6(c).

¹⁴⁴ Maputo Protocol art (2)(c).

¹⁴⁵ Maputo Protocol art 14(1)(b).

Article 2(1)(b) stipulates that State parties should eliminate discriminatory and harmful practices that affect the general well-being of girls.¹⁴⁶ In the wording of the Maputo Protocol, women are construed to include girls and any person of female gender.¹⁴⁷ This article is supplemented by Article 5(b), which calls for the elimination of harmful practices backed up by appropriate sanctions.¹⁴⁸ South Sudan in this context has to enact laws that criminalise detrimental practices like child marriage. Criminalising child marriage will reduce the impacts it has on the girls' right to education.

Article 5(c) introduces another important obligation which requires South Sudan to provide judicial support to victims of harmful practices.¹⁴⁹ More importantly, Article 6(b) obliges South Sudan to set the minimum age of marriage at 18 years.¹⁵⁰ In so doing, it will mitigate the possibility of girls getting married before completing at least general education.

Article 12 provides for the right to education which is human rights-centric,¹⁵¹ free from discrimination,¹⁵² sexual harassment,¹⁵³ and gender stereotypes which subjugate girls to inferior status to men.¹⁵⁴ Crucially, Article 12 directs State parties to take positive actions to ensure girls are enrolled in school and do not drop out.¹⁵⁵ If a female child drops out of school before completing their studies, the State party should make plans available to guarantee that they resume and complete their education.¹⁵⁶ Article 25 recognises the right to remedy and in case of violation of the rights of girls,¹⁵⁷ South Sudan has to provide remedies in the competent courts of law and other administrative mechanisms.¹⁵⁸ In light of the above, it is the duty of South Sudan to protect girls from child marriage and guarantee their access to education.

2.4 Domestic legal frameworks

This section deals with the laws enacted by South Sudan as part of the obligation to take legislative measures in implementing the CRC. Some of the legislation came into force when

¹⁴⁶ Maputo Protocol art 2(1)(b).

¹⁴⁷ Maputo Protocol art 1(k).

¹⁴⁸ Maputo Protocol art 5(b).

¹⁴⁹ Maputo Protocol art 5(c).

¹⁵⁰ Maputo Protocol art 6(b).

¹⁵¹ Maputo Protocol art 12(1)(e).

¹⁵² Maputo Protocol art 12(1)(a)(b).

¹⁵³ Maputo Protocol art 12(1)(c).

¹⁵⁴ Maputo Protocol art 12(1)(b).

¹⁵⁵ Maputo Protocol art 12(2)(c).

¹⁵⁶ Maputo Protocol art 12(2)(c).

¹⁵⁷ Maputo Protocol art 25(1).

¹⁵⁸ Maputo Protocol art 25(2).

South Sudan had not yet gained independence from Sudan. The rest of the legislations were enacted after South Sudan gained independence in 2011.

2.4.1 Transitional Constitution of the Republic of South Sudan of 2011 as amended (TCSS)

The Constitution was enacted in 2011.¹⁵⁹ Article 9 of the Constitution incorporates international human rights treaties ratified by South Sudan into the Bill of Rights.¹⁶⁰ In this vein, the human treaties ratified or acceded to by South Sudan are integral parts of the Constitution and have the same binding force as domestic laws. The Constitution gives the Supreme Court and other courts jurisdiction to enforce the Bill of Rights.¹⁶¹

Article 15 of the Constitution recognises the right of all persons of marriageable age to marry in line with the customary laws.¹⁶² As discussed in Chapter One, although this provision provides free and informed consent to enter marriage, it does not set the minimum age of marriage at 18 years as required by the Maputo Protocol. This normally leads to child marriage which affects the right to education.

Article 17 of the Constitution, which is the lengthiest provision in the Bill of Rights, recognises the rights of the child to life,¹⁶³ survival,¹⁶⁴ development,¹⁶⁵ and freedom from discrimination and harmful practices.¹⁶⁶ More importantly, this provision defines a child as anyone under the age of 18 years.¹⁶⁷ In all actions concerning the decisions of the child, the best interest of the child will prevail.¹⁶⁸ So, this provision is a benchmark obligation of South Sudan to eliminate child marriage which impairs the right of girls to education. Child marriage is not in the best interest of the child because it affects the child's right to 'education, survival and development.' However, some communities like the Dinka strongly believe that child marriage is in the best interest of

¹⁵⁹ Ministry of Justice and Constitutional Affairs: Laws of the Republic of South Sudan <https://mojca.gov.ss/wp-content/uploads/2023/03/Transitional-Constitution-of-the-Republic-of-South-Sudan-2011.pdf> (accessed 12 August 2024).

¹⁶⁰ Constitution (n 16) art 9(3).

¹⁶¹ Constitution (n 16) art 9(4).

¹⁶² Constitution (n 16) art 15.

¹⁶³ Constitution (n 16) art 17(1).

¹⁶⁴ As above.

¹⁶⁵ As above.

¹⁶⁶ Constitution (n 16) art 17(e)(f).

¹⁶⁷ Constitution (n 16) art 17(4).

¹⁶⁸ Constitution (n 16) art 17(2).

the child.¹⁶⁹ These customary beliefs have led to high rates of child marriage, and consequently dropping out of girls from schools.

Article 29 of the Constitution guarantees the right to education for all the citizens including the children.¹⁷⁰ It emphasises that education at the primary level should be free and compulsory. Child marriage violates the right to free and compulsory education as the study shows in chapter one that 76 per cent of 1.3 million girls have dropped out because of child marriage. For education to be free and compulsory, all barriers like child marriage should be eliminated.

2.4.2 General Education Act 30 of 2012

The General Education Act was enacted in 2012, a year after South Sudan attained its independence.¹⁷¹ Sections 6 and 7 of the Act affirm the right of access to education which should be free and compulsory at the primary level,¹⁷² echoes the aims of education which include respect for human rights,¹⁷³ respect for the natural environment,¹⁷⁴ development and growth of the child through skills and talents,¹⁷⁵ tolerance of other cultures, religious beliefs and opinions.¹⁷⁶

The Education Act is premised on non-discrimination and the best interest of the child.¹⁷⁷

Education Act makes it incumbent on the government through the County Education Department and the community leaders to investigate the circumstances which cause the child to drop out of school.¹⁷⁸ The County authorities need to ensure that the child returns to school.¹⁷⁹ On this premise, children who drop out of school because of child marriage have a right to resume and complete their education.

¹⁶⁹ Solidarity for African women's Rights 'South Sudan ratified the Maputo Protocol – now what?' 09 November 2023, <https://www.soawr.org/2023/11/29/south-sudan-ratified-the-maputo-protocol-now-what/> (accessed 11 August 2024).

¹⁷⁰ Constitution (n 16) art 29.

¹⁷¹ UNESCO database

https://planipolis.iiep.unesco.org/sites/default/files/ressources/general_education_act_2012.pdf (accessed 12 August 2024).

¹⁷² General Education Act 30 of 2012 sec 6(a).

¹⁷³ General Education Act 30 of 2012 sec 6(d).

¹⁷⁴ General Education Act 30 of 2012 sec 6(k).

¹⁷⁵ General Education Act 30 of 2012 secs 6(l) & 7(d).

¹⁷⁶ General Education Act 30 of 2012 secs 6(b) & 7(d).

¹⁷⁷ General Education Act 30 of 2012 sec 6(a).

¹⁷⁸ General Education Act 30 of 2012 secs 18(3)(4).

¹⁷⁹ As above.

More importantly, pregnant learners have a right to remain in school and resume their studies in case they temporarily leave school due to pregnancy or delivery.¹⁸⁰ Moreover, section 35 of the Education Act obligates the government to remove harmful practices like child marriage which impedes girls' right to education.¹⁸¹ These are important aspects of addressing the impacts of child marriage on the girls' right to education.

2.4.3 Higher Education Act of 2012

It was enacted in 2012.¹⁸² Sections 36 and 37 of the Higher Education Act aim at providing knowledge, and developing talents and skills,¹⁸³ that should be linked to the socioeconomic needs of society.¹⁸⁴ Child marriage limits the girl-child from the benefits of Higher Education. The government must enable every child to complete higher education.

2.4.4 Child Act of 2008

It was enacted in 2008 when South Sudan was still an autonomous region, previously referred to as Southern Sudan.¹⁸⁵ The Child Act is a thematic law that offers broader protection to children in South Sudan. It is premised on the four core principles of the right of the child namely: the best interest of the child;¹⁸⁶ life, survival and development;¹⁸⁷ participation;¹⁸⁸ and non-discrimination.¹⁸⁹ So, it can be argued that child marriage with its negative effects on the right to education violates these four principles. The Child Act re-affirms the right of the child to free and compulsory primary education.¹⁹⁰ In a similar vein, the Act prohibits child marriage and other harmful practices that may impair the intellectual development of the girl, which includes education.¹⁹¹ Child marriage in the wording of the Child Act is a harmful practice.

¹⁸⁰ General Education Act 30 of 2012 sec 30(8).

¹⁸¹ General Education Act 30 of 2012 sec 35.

¹⁸² Ministry of Justice and Constitutional Affairs: Laws of the Republic of South Sudan <https://mojca.gov.ss/wp-content/uploads/2023/03/Higher-Education-Act-2012.pdf> (accessed 12 August 2012).

¹⁸³ Higher Education Act of 2012 Sec 36(1)(2).

¹⁸⁴ Higher Education Act of 2012 sec 37 (b).

¹⁸⁵ Ministry of Justice and Constitutional Affairs: Laws of the Republic of South Sudan <https://mojca.gov.ss/wp-content/uploads/2023/03/Child-Act-10-of-2008.pdf> (accessed 12 August 2024).

¹⁸⁶ Child Act 10 of 2008 sec 6.

¹⁸⁷ Child Act 10 of 2008 sec 12.

¹⁸⁸ Child Act 10 of 2008 sec 17.

¹⁸⁹ Child Act 10 of 2008 sec 9.

¹⁹⁰ Child Act 10 of 2008 sec 14(1).

¹⁹¹ Child Act 10 of 2008 sec 23(1).

Specifically, section 26 protects the female child from forced marriage,¹⁹² and expulsion from school due to pregnancy,¹⁹³ and reiterates the four core principles of the rights of a child as discussed above.¹⁹⁴ As part of administrative measures, the National General Education Policy of 2017-2027 re-affirms that pregnant girls have to continue with their studies and be re-admitted if they decide to join school after delivery.¹⁹⁵

Although section 30 penalises any violations of the rights of the child for imprisonment for seven years,¹⁹⁶ it is too vague and, does not specifically criminalise child marriage and its impacts on the right to education. Further, the Act obliges the government to abolish child marriage,¹⁹⁷ provide remedies to the children whose rights have been infringed,¹⁹⁸ and commit the government institutions like the education sector, police and the judiciary to reflect the government's obligations to uphold the rights of the child.¹⁹⁹

As part of institutional arrangement, the Act establishes a Juvenile Court to enforce the Child Act and other relevant laws governing the child's rights. However, there is only one Juvenile Court, located in Juba, the capital city of South Sudan, which was established in 2020.²⁰⁰ Although it has addressed a few cases penalising child marriage,²⁰¹ the practice of customary practices shields the perpetrators of child marriage from the Court as they prefer customary courts, arguing that the Constitution recognises customary laws and practices.²⁰²

Furthermore, the Act establishes an Independent Child Commission (IDC) to oversee the implementation of children's rights under domestic laws and the CRC.²⁰³ The IDC serves as an institutional oversight in ensuring South Sudan complies with its obligations under international

¹⁹² Child Act 10 of 2008 sec 26(1).

¹⁹³ Child Act 10 of 2008 sec 26(3).

¹⁹⁴ Child Act 10 of 2008 sec 26(2).

¹⁹⁵ The National General Education Policy of 2017-2027, 11

https://planipolis.iiep.unesco.org/sites/default/files/ressources/south_sudan_the_national_general_education_policy_2017_2027_eng.pdf (accessed 19 July 2024).

¹⁹⁶ Child Act 10 of 2008 sec 30.

¹⁹⁷ Child Act 10 of 2008 sec36(2)(o).

¹⁹⁸ Child Act 10 of 2008 sec 36(2)(u).

¹⁹⁹ Child Act 10 of 2008 sec 36(3).

²⁰⁰ Eye Radio 'Govt, partners to extend GBV court beyond Juba' 27 April 2022, <https://www.eyeradio.org/govt-partners-to-extend-gbv-court-beyond-juba/> (accessed 18 July 2024).

²⁰¹ Eye Radio 'Juvenile Court jails young man for defiling teenage girl' 22 September 2022, <https://www.eyeradio.org/juvenile-court-jails-young-man-for-defiling-teen-girl/> (accessed 18 July 2024); Eye Radio 'Court convicts man nearly 2 years after impregnating underage' 6 February 2024, <https://www.eyeradio.org/court-convicts-man-nearly-2-years-after-impregnating-underage/> (accessed 18 July 2024).

²⁰² Constitution (n 16) art 15.

²⁰³ Child Act 10 of 2008 sec 193(2)(a-h).

human rights treaties and domestic law, particularly, the right to education and freedom from child marriage.

From the preceding discussions, the Child Act is the benchmark for the protection of girl-child from the negative effects of child marriage on the right to education. If it is implemented in letter and spirit, the right to education for the girl-child can be guaranteed.

2.4.5 Penal Code Act of 2008

The Act was enacted in 2008.²⁰⁴ Section 247 of the Penal Code considers sexual intercourse with a child to be rape whether with or without consent.²⁰⁵ However, this provision provides an exception, which stipulates that rape between married partners is not rape within the law.²⁰⁶ This means that the perpetrators of child marriage are shielded from criminal liability. However, the Juvenile Court has purposely interpreted section 247(3) to amount to rape as long as the partner is a child regardless of whether there is a valid marriage.²⁰⁷ This significantly addresses the impacts of child marriage on the right to education because many people fear being prosecuted if they marry underage girls. However, most of the cases that go to the customary courts apply customary law which interprets section 247(3) not to be rape within marriage. Most communities do not have access to the Juvenile Court since there is only one in the Capital City.²⁰⁸ The penal code does not directly criminalise child marriage like other harmful practices such as female genital mutilation.²⁰⁹ This gap in law makes it hard to prosecute the perpetrators of child marriage.

Although the Penal Code does not bar child marriage, it penalises forced marriage by abduction with up to ten years in prison.²¹⁰ However, the law provides exceptions for forced marriage by abduction to be addressed by the customs of the victims yet most customs such as for the Dinka would allow marriage in such situations.²¹¹ This gap in law shields the perpetrators from facing justice.

²⁰⁴ Ministry of Justice and Constitutional Affairs: Laws of the Republic of South Sudan <https://mojca.gov.ss/wp-content/uploads/2023/03/Penal-Code-Act-9-of-2008.pdf> (accessed 12 August 2024).

²⁰⁵ Penal Code Act 9 of 2008 sec 247(2).

²⁰⁶ Penal Code Act 9 of 2008 sec 247(3).

²⁰⁷ Eye Radio 'Juvenile Court jails young man for defiling teenage girl' 22 September 2022, <https://www.eyeradio.org/juvenile-court-jails-young-man-for-defiling-teen-girl/> (accessed 19 July 2024)

²⁰⁸ Eye Radio 'Govt, partners to extend GBV court beyond Juba' 27 April 2022, <https://www.eyeradio.org/govt-partners-to-extend-gbv-court-beyond-juba/> (accessed 19 July 2024).

²⁰⁹ Penal Code Act 9 of 2008 sec 259.

²¹⁰ Penal Code Act 9 of 2008 sec 273.

²¹¹ As above.

2.4.6 Customary Laws and Public Order Act of 2022

Although it is not a national legislation, it is the first state legislation in South Sudan to criminalise child marriage as an offence.²¹² It was enacted in 2022 when President Kiir appointed Rin Tueny, a military general, as the governor of Lakes State.²¹³ It only has jurisdiction in Lakes State because it is a state legislation. Section 39 penalises child and forced marriages and imposes a sentence of 2 years in prison with a fine of 10000 South Sudanese Pounds.²¹⁴ Further, the perpetrator faces a death sentence if the forced or child marriage results in the death of the child.²¹⁵ These attempts by the Lakes State government are meant to end child marriage in the state. Despite these great efforts to stamp child marriage in Lakes State, child marriage continues to be rampant due to a lack of implementation and resistance from the communities in Lakes State.²¹⁶

2.5 Other relevant international, regional and domestic guidelines

This section seeks to provide the interpretation of the right to education under these guidelines. It is important to note that the guidelines do not constitute legally binding obligations on South Sudan but only provide a more elaborate interpretation of the right to education. In addition, the guidelines highlight how harmful practices and discrimination compromise the quality of education. The guidelines include General Comments and Policies.

2.5.1 Committee on the Rights of the Child General Comment 1 of 2001: Article 29 (1): The aims of education

Committee on the Rights of the Child General Comment 1 explains Article 29 of the CRC. It stresses the aims of education by underlining that the education offered by the State party be quality and holistic.²¹⁷ For education to be holistic, it should be accessible to every child in South Sudan regardless of gender, race, religion and nationality. This notion entails the elimination of discriminatory practices that impede girls from enjoying the right to education. Barriers which limits the children from developing their skills and talents need to be removed. The General Comment emphasises that while the right to education is important, it needs to be quality in the

²¹² Eye Radio 'Child and forced marriage now a crime in Lakes State' 19 July 2022, <https://www.eyeradio.org/child-and-forced-marriage-now-a-crime-in-lakes-state/> (accessed 15 August 2024).

²¹³ As above.

²¹⁴ Customary Laws and Public Order Act of 2022 sec 39 (1).

²¹⁵ Customary Laws and Public Order Act of 2022 sec 39(2).

²¹⁶ Eye Radio 'Lakes, Jonglei lead South Sudan in child marriage-survey' 23 March 2023, <https://www.eyeradio.org/lakes-jonglei-lead-south-sudan-in-child-marriage-survey/> (accessed 15 August 2024).

²¹⁷ Committee on the Rights of the Child General Comment 1 of 2001: Article 29 (1): The aims of education, para 1 <https://www.refworld.org/legal/general/crc/2001/en/39221> (accessed 16 July 2024).

sense that the curriculum is up to date to enable the children to be problem solvers, human rights advocates, financially independent and contribute positively to society.²¹⁸

2.5.2 Committee on Economic, Social, and Cultural Rights General Comment 13: The Right to Education (Art 13)

This General Comment interprets the right to education under Article 13 of the CESCR. To achieve the right to education, the Committee on the Economic, Social and Cultural Rights General Comment 13 underscores that education must be accessible, premised on the core pillars of accessibility: physical, financial, and non-discrimination.²¹⁹ This means that customary practices like child marriage which discriminate and deprive girls' right to education be removed.²²⁰

Other elements of the right to receive education include: First, education should adapt to all needs of society including the right of girls to return to school during pregnancy and after birth.²²¹ Secondly, education should be acceptable in the sense that the structure and content of education, encompassing both syllabi and instructional approaches, must align with the needs and preferences of students and, when applicable, their guardians.²²² This entails that educational materials and methods are 'relevant, culturally sensitive, and uphold high standards of quality, thereby garnering acceptance and engagement from learners and, where appropriate, their families'. Lastly, education should be available to all children across the country.²²³ Therefore, to achieve the right to education in line with General Comment 13, South Sudan has to take measures which do not make access to education difficult.²²⁴

2.5.3 Africa's Agenda for Children 2040: Fostering an Africa Fit for Children

Aspiration 6 elaborates on the importance of quality education as provided in Article 11 of the African Children's Charter.²²⁵ The policy stresses that for education to be of good quality, it

²¹⁸ As above.

²¹⁹ Committee on Economic, Social, and Cultural Rights General Comment 13: The Right to Education (Art 13) <https://www.refworld.org/legal/general/cescr/1999/en/37937> (accessed 16 July 2024).

²²⁰ As above.

²²¹ CESCR Committee(n 211) para 6.

²²² As above.

²²³ As above.

²²⁴ As above.

²²⁵ Africa's Agenda for children 2040: Fostering an Africa fit for children, 13 https://au.int/sites/default/files/newsevents/agendas/africas_agenda_for_children-english.pdf (accessed 16 August 2024).

should be relevant to the labour market so that children can get jobs after completing their studies rather than remain unemployed.²²⁶ Further, the policy reiterates that quality education cannot be achieved if discrimination exists in the education system.²²⁷ Even though South Sudan is not a party to the African Children's Charter, it can benefit from the policy once it ratifies it.

2.5.4 African Union Policy: Linking Agenda 2063 and the SDGs

AU policy's interpretation of the right to education is that education should not discriminate.²²⁸ Discriminatory practices such as child marriage are not consistent with the vision of not leaving anyone out in education.²²⁹ Child marriage does not meet this vision as it forces girls to drop out of school in South Sudan. For every child to access education in South Sudan in line with the policy, it needs to take swift measures to ensure girls' regular attendance in school.

SDG 4, target 4.1 stresses the need for girls to complete free, equitable and quality primary school and secondary school education that is relevant and effective.²³⁰ The high rates of girl-child dropouts and their irregular attendance are inconsistent with SDG 4. Child marriage leads to the dropout of girls from school and interferes with their regular attendance. As a result, the girl-child will not attain quality education because of not having completed primary and secondary education or irregular attendance in school.

2.5.6 The National General Education Policy of 2017-2027

The policy explains the right to education and is anchored on accessibility.²³¹ On this basis, the policy elaborates that equal access to education can be realised by tackling harmful practices such as child marriage and endeavour regular attendance of girls in school even when they

²²⁶ As above.

²²⁷ As above.

²²⁸ African Union Policy: Linking Agenda 2063 and the SDGs <https://au.int/agenda2063/sdgs> (accessed 17 July 2024).

²²⁹ As above.

²³⁰ United Nations, Department of Economic and Social Affairs: Sustainable Development 'Ensure inclusive and equitable quality education and promote lifelong learning opportunities for all' https://sdgs.un.org/goals/goal4#targets_and_indicators (accessed 5 November 2024).

²³¹ The General Education Strategic Plan of 2017-2022 https://planipolis.iiep.unesco.org/sites/default/files/ressources/south_sudan_general_education_strategic_plan_2017-2022.pdf (accessed 19 July 2024).

become pregnant.²³² For education to be comprehensive, the policy demonstrates that South Sudan needs to meet Goal 4 of the SDGs Agenda 2030.²³³

2.6 Conclusion

South Sudan has obligations under international, regional and domestic legal frameworks to combat child marriage and ensure that it does not affect the girls' right to education. The right of the girl child to be protected from harmful practices is a primary duty of the government of South Sudan. The right to education should be accessible to all without discrimination. This means that South Sudan should take appropriate legislative, administrative and other measures to end child marriage and its consequences on the right to education. In implementing these legal frameworks, South Sudan has adopted regional and international policies on the one hand and enacted policy frameworks at the domestic level on the other. The policy frameworks supplement the legal frameworks and reiterate the duty of South Sudan to protect female children from harmful practices like child marriage and take steps to guarantee the right of the girls to education even if they become pregnant.

The next Chapter examines the perception and the impacts of child marriage on the girl-child's right to education.

²³² As above.

²³³ As above.

3. THE PERCEPTION AND THE IMPACT OF CHILD MARRIAGE ON THE GIRL-CHILD'S RIGHT TO EDUCATION

3.1 Introduction

This chapter seeks to investigate the perceptions of South Sudan's communities on child marriage in: the Bhar El Ghazel region comprising Lakes State, Warrap State, Northern Bhar El Ghazel State, Western Bhar El Ghazel State and Abyei Administrative Area; the Upper Nile region consisting of Jonglei State, Upper Nile State, Unity State, Pibor and Ruweng Administrative Areas; and the Equatoria region made up of Central Equatoria State, Western Equatoria State, and Eastern Equatoria State. Therefore, this chapter further attempts to analyse the concept of child marriage and its impacts on the girl-child's right to education.

3.2 The perception of South Sudan's communities on child marriage

The communities in South Sudan comprise 64 tribes who live in the Bhar El Ghazel, Upper Nile and Equatoria regions.²³⁴ Although these communities have different cultures,²³⁵ their perception of child marriage is similar. Therefore, this section elaborates on the perception of South Sudan's communities on child marriage and its impacts on the girl-child's right to education.

3.2.1 Factors determining the readiness of the girl to be married

In South Sudan, the minimum age of marriage is not set in the laws.²³⁶ As a result, the communities have unlimited discretion to decide at what age girls should be married off.²³⁷ To many communities, the marriageable age for girls is determined by biological factors like the first period.²³⁸ These communities believe that when a girl has her first period, which usually begins between the ages of 12 and 15 years,²³⁹ she is ready for marriage.²⁴⁰ Such beliefs

²³⁴ Laba Africa Expeditions 'Tribes in South Sudan' <https://labafrica.com/tribes-in-south-sudan/> (accessed 28 August 2024).

²³⁵ As above.

²³⁶ Child Act 10 of 2008, Ministry of Justice and Constitutional Affairs 'The Laws of South Sudan' <https://mojca.gov.ss/wp-content/uploads/2023/03/Child-Act-10-of-2008.pdf> (accessed 2 September 2024); Constitution (n 16) art 15;

²³⁷ Makec (n 18) 63.

²³⁸ As above.

²³⁹ U.S. Department of Health and Human Services, Office on Women's Health <https://www.womenshealth.gov/menstrual-cycle/your-menstrual-cycle> (accessed 2 September 2024).

²⁴⁰ As above.

consequently result in child marriage. For instance, Annette (14 years), Aguet (15 years), Marry (14 years), Hellen (16 years), Akech (14 years), and Atong (16 years) were all married before 18 years.²⁴¹ This indicates that South Sudanese girls are ready for marriage when they have their first menstruation.

3.2.2 Best interest of the child and the family

The communities strongly believe that child marriage is in the best interest of the child and the family.²⁴² They stress that if you educate a girl, she will get spoiled and therefore will not bring enough dowry.²⁴³ Further, it is believed that when a girl stays long without getting married, she will lose her virginity and the potential suitors will not pay enough bride wealth which is usually in cattle, some goats, goods, and to some extent money.²⁴⁴ Child marriage is therefore seen as a factor to minimise pre-marital sex and a way of garnering enough cattle or bride price for the family.²⁴⁵ In the story of Akech, she was forced by her uncle to marry an old man for cows.²⁴⁶ Another heartbreaking story is that of Hellen.²⁴⁷ Hellen was 16 years old when she married a fifty-year-old man because her parents cited that they could not afford her school fees.²⁴⁸ Mary was married off at a young age by her father because he believed that would bring him respect.²⁴⁹ Mary's father thinks that it is a waste of money to educate girls.²⁵⁰

3.2.3 Consent to marry

Consent to marry in the context of South Sudanese communities is not given by the girl.²⁵¹ The consent is usually given by the girls' parents, brothers, uncles, and relatives.²⁵² This is corroborated by the stories of Annette, Hellen, and Mary who were forcibly married off without their consent.²⁵³ The decision of who the girl should marry is decided in a family meeting

²⁴¹ Human Rights Watch 'Child and forced marriage in South Sudan, https://www.hrw.org/sites/default/files/reports/southSudan0313_forinsertWebVersion_0.pdf (accessed 6 August 2024).

²⁴² Solidarity for African Women's Rights 'South Sudan ratified the Maputo Protocol – now what?' 09 November 2023, <https://www.soawr.org/2023/11/29/south-sudan-ratified-the-maputo-protocol-now-what/> (accessed 3 August 2024).

²⁴³ Ellsberg (n 87) 3038.

²⁴⁴ M Lokot and Others 'The demand side of child marriage: Expanding gender norms to marriage drivers facing boys and men in South Sudan' (2022) 4 *Journal of Humanitarian Affairs* 27.

²⁴⁵ OXFAM (n 5 above) 12.

²⁴⁶ Human Rights Watch (n 244).

²⁴⁷ As above.

²⁴⁸ As above.

²⁴⁹ As above.

²⁵⁰ As above.

²⁵¹ Makec (n 18) 63.

²⁵² Ellsberg (n 87) 3040.

²⁵³ Human Rights Watch (n 244).

presided over by the eldest male family member.²⁵⁴ The consent is given by the head of the family, who is often the girl's father or by any other senior male relative.²⁵⁵ Thus, the opinion of the girl is not asked during the marriage.

3.2.4 Alleviation from poverty

As discussed in Chapter One, poverty is one of the main causes of child marriage in South Sudan.²⁵⁶ The communities perceive child marriage as a source of wealth, alleviating the family from poverty.²⁵⁷ Dowry or bride price is paid in cattle, goats, money, or a combination.²⁵⁸ Dowry is seen as a solution to poverty and, brings honour to the girl's family.²⁵⁹ The story of Akech is a testimony that girls are born to lift their families out of poverty.²⁶⁰ Akech's uncle forced her to marry a man much older than her for 75 cows.²⁶¹ When Akech attempted to refuse to marry the old man, her uncle remarked 'Girls are born so that people can eat. All I want is to get my dowry.'²⁶²

3.2.5 Perception of HRDs

Notably, this section briefly discusses the perception of HRDs on the impact of child marriage on the girls' right to education. Their definition, roles, challenges, and legal framework are discussed at length in Chapter Four. Therefore, HRDs are individuals or groups of people or institutions, including but not limited to school children, intellectuals, religious leaders, government officials, traditional leaders and organisations, whose duty is to protect and promote human rights in a peaceful manner.²⁶³

²⁵⁴ Makec (n 18) 63.

²⁵⁵ As above.

²⁵⁶ K Howe and Others 'Perspective on early marriage: The voices of female youth in Iraqi Kurdistan and South Sudan who married under age 18' 4 <https://reliefweb.int/report/iraq/perspectives-early-marriage-voices-female-youth-iraqi-kurdistan-and-south-sudan-who-married-under-age-18> (accessed 2 Septe2024); OXFAM' (n 5).

²⁵⁷ Ellsberg (n 87) 3043; Howe and Others (n 258) 4.

²⁵⁸ Ellsberg (n 87) 3038.

²⁵⁹ Human Rights Watch 'Child marriage in South Sudan'

https://www.hrw.org/reports/southsudan_SumRecsForUpload.pdf#:~:text=Many%20South%20Sudanese%20communities%20see%20child%20marriage%20as,of%20transferring%20wealth%20through%20the%20payment%20of%20dowries (accessed 31 August 2024).

²⁶⁰ As above.

²⁶¹ As above.

²⁶² As above.

²⁶³ OHCHR 'Special Rapporteur on the situation of human rights defenders' <https://www.ohchr.org/en/special-procedures/sr-human-rights-defenders> (accessed 12 August 2024).

They view child marriage through a human rights lens and argue that child marriage is a grave violation of human rights which negatively affects girls' right to education.²⁶⁴ This is attested by the children's advocacy on UNICEF's websites calling for an end to child marriage and prioritising girl-child education.²⁶⁵ In 2022, the Lakes State government outlawed child and forced marriages.²⁶⁶ Unity State government in August 2024 banned child marriage after a twenty-year-old girl was beaten to death by her father when she refused to marry the man her father proposed.²⁶⁷ Religious leaders, and organisations like UNICEF,²⁶⁸ Human Rights Watch,²⁶⁹ and UNDP,²⁷⁰ have also taken a lead in the promotion and protection of girls' rights to education and freedom from child marriage. Some of these organisations have given refuge to young girls who escaped from their parents because of attempts to force them to marry without their consent.²⁷¹ The organisations have conducted workshops, trainings, and published reports to promote the rights of girl-child.²⁷² In protecting and promoting girl-child's right to education, these organisations use advocacy through their reports or awareness programs, strategic litigation, and petitions.²⁷³

HRDs' work is curtailed by several challenges, among them are lack of legal protection, cultural practices, illiterate population, and lack of civic space but a few to mention.²⁷⁴ These challenges are elaborated in Chapter Four.

The next step discusses the impacts of child marriage on the girl's right to education.

²⁶⁴ Al Jazeera 'South Sudan: The deadly consequences of child marriage' 16 February 2016 <https://www.aljazeera.com/features/2016/2/16/south-sudan-the-deadly-consequences-of-child-marriage> (accessed 10 August 2024).

²⁶⁵ UNICEF (n 1).

²⁶⁶ Eye Radio 'Child and forced marriage now a crime in Lakes State' 19 July 2022, <https://www.eyeradio.org/child-and-forced-marriage-now-a-crime-in-lakes-state/> (accessed 15 August 2024).

²⁶⁷ Radio Tamazuj 'Unity State bans child and forced marriages' 18 August 2024, <https://www.radiotamazuj.org/en/news/article/unity-state-bans-child-and-forced-marriages> (accessed 25 August 2024).

²⁶⁸ UNICEF (n 1).

²⁶⁹ Human Rights Watch (n 262).

²⁷⁰ UNDP 'Support to Access to Justice, Security and Human Rights Strengthening Programme in South Sudan' https://www.undp.org/sites/g/files/zskgke326/files/2024-03/dld599_undp_ss_-_ar_support_to_access_web_0.pdf (accessed 31 August 2024).

²⁷¹ Human Rights Watch (n 262).

²⁷² Human Rights Watch (n 262); UNDP (n 273); UNICEF (n 1).

²⁷³ As above.

²⁷⁴ Forst (n 25) 96.

3.3 Impact of child marriage on the girl-child's right to education

3.3.1 Introduction

The right to education is a fundamental right upon which other rights can be realised.²⁷⁵ Access to quality education equips children with basic skills and talents to address their challenges.²⁷⁶ In line with its international, regional and domestic obligations under the CRC,²⁷⁷ African Charter,²⁷⁸ Maputo Protocol,²⁷⁹ the Constitution,²⁸⁰ and the Child Act,²⁸¹ South Sudan is obliged to provide education to all children. Despite the measures taken by South Sudan to provide education to all girls, cultural barriers have been one of the major obstacles to girls' right to education.²⁸²

Child marriage has been an impediment to the girl-child's right to education in South Sudan.²⁸³ This is due to a gap in the laws, lack of implementation and the misconception of the communities that child marriage is in the best interest of the child and a source of wealth and honour for the family.²⁸⁴

As discussed at the outset of this chapter, the communities falsely believe that educated girls get spoilt and lose the values of the community. This blatant ideology has led to the prevalence of child marriage which consequently affects girls' right to education. Although child marriage is prevalent in South Sudan and has hampered the girl's right to education, there are situations where married young girls have had access to education.²⁸⁵ According to the Human Rights Watch Report of 2013, titled 'Child and forced marriage in South Sudan', few married girls continued with studies even when they were pregnant.²⁸⁶ In Central Equatoria State, Juba Day was one of the secondary schools in the country that offered education to married girls who

²⁷⁵ UNESCO 'The right to education' <https://www.unesco.org/en/right-education> (accessed 5 August 2024); CESCR General Comment 13 of Committee on Economic, Social and Cultural Rights (1999) on the Right to Education, para 1 https://www.right-to-education.org/sites/right-to-education.org/files/resource-attachments/CESCR_General_Comment_13_en.pdf (accessed 5 August 2024).

²⁷⁶ As above.

²⁷⁷ CRC art 28.

²⁷⁸ African Charter art 17(1).

²⁷⁹ Maputo Protocol art 12.

²⁸⁰ Constitution (n 16) art 29.

²⁸¹ Child Act 10 of 2008 sec 14.

²⁸² OXFAM (n 5) 8.

²⁸³ Ellsberg (n 87) 3039.

²⁸⁴ As above; Solidarity for African Women's Rights 'South Sudan ratified the Maputo Protocol – now what?' 09 November 2023, <https://www.soawr.org/2023/11/29/south-sudan-ratified-the-maputo-protocol-now-what/> (accessed 3 August 2024).

²⁸⁵ Human Rights Watch (n 262).

²⁸⁶ Human Rights Watch (n 244).

were pregnant through evening sessions because the policy of the school did not allow pregnant girls to study through day programs.²⁸⁷ According to this report, 15 married girls were attending alternative learning program education, and unfortunately, the majority of them dropped out after becoming pregnant citing a lack of school fees, spaces for childcare, and classes for adults.²⁸⁸ Some of them dropped out because of family responsibilities, or their husbands refused them to continue with their studies because they would not be faithful.²⁸⁹

Therefore, the next step of this chapter demonstrates how child marriage impairs girls' right to education.

3.3.2 The impacts of child marriage on the girl-child's right to education

To begin with, child marriage impedes the child from fully developing their personality, talents, skills, and mental and physical abilities.²⁹⁰ These should be the aims of education, unfortunately, married girls in South Sudan are denied these aims of education. Consequently, this negatively impacts girls' lifelong earnings and financial independence.²⁹¹

Furthermore, child marriage has led to the dropout of girls from school as discussed in Chapter One.²⁹² As a result, the girl-child in South Sudan is denied the benefit of access to education because their husbands confine them to domestic chores. The dropout occurs in three scenarios: Firstly, when the marriage is about to be done or is concluded, the parents would force the girl to leave school and be handed over to the husband.²⁹³ Akech, one of the victims of child marriage was forced to leave school at the age of 14 to marry an old man.²⁹⁴ In another incident, Adut, who was in Primary 7 at the time, was forced into marriage by her parents at 13 years old.²⁹⁵ Immediately upon marriage, many husbands stop their wives from attending school for fear that their wives would have intimacy with fellow students.²⁹⁶ Secondly, it is when the girl reaches the menstruation stage, varying from ten to fourteen years, that the parents stop

²⁸⁷ As above.

²⁸⁸ As above.

²⁸⁹ As above.

²⁹⁰ CRC art 29(1)(a); Committee on the Rights of the Child General Comment 1 (2001), Article 29 (1): The aims of education, para 1 <https://www.refworld.org/legal/general/crc/2001/en/39221> (accessed 8 August 2024).

²⁹¹ M Arthur and Others 'Child marriage laws around the world: Minimum marriage age, legal exceptions, and gender disparities' (2017) 39 *Journal of Women, Politics & Policy* 54.

²⁹² Human Rights Watch (n 244).

²⁹³ As above.

²⁹⁴ As above.

²⁹⁵ As above.

²⁹⁶ As above.

sending them to school on the pretext of protecting girls from premarital sex.²⁹⁷ Thirdly, it occurs when the husband sends her to school but later changes his mind to end her studies, citing infidelity and financial difficulties.²⁹⁸ All the above interferes with the girl's right to free and compulsory primary education.²⁹⁹

Moreover, child marriage has led to the girls' irregular attendance in schools.³⁰⁰ The irregular attendance in school denies the girl-child the opportunity to receive quality education.³⁰¹ According to the Human Rights Watch of 2013, titled 'Child and forced marriage in South Sudan', many married girls could not attend classes or continue with their studies when they become pregnant, or in some instances when they are overwhelmed by family responsibilities.³⁰² As a result, their regular attendance in school is compromised. This contributes to the illiteracy rates among the girls in South Sudan.

In addition, child marriage denies married girls in South Sudan human rights education.³⁰³ For instance, Mary K., who hails from Yambio, grew up knowing that child marriage brings respect to the girls in society, a fallacy inculcated in her by her father.³⁰⁴ The culture of human rights is taught to children in schools, however, a girl who has been forced to drop out or do not attend school regularly is denied this opportunity and could potentially subject their children to the same vicious cycle of child marriage.

Besides the impacts of child marriage on the girls' right to education in South Sudan, child marriage denies the girl-child the aims of education under Article 29 of the CRC as discussed in the problem statement in section 2 of Chapter One.

The preceding section illustrated the primary impacts of child marriage on the girls' right to education. The next section seeks to explain how lack of education, which is caused by child marriage, affects the girl's right to health, survival and development, and perpetuates discrimination. Therefore, these are secondary impacts of child marriage on the girls' right to

²⁹⁷ As above.

²⁹⁸ As above.

²⁹⁹ CRC art 28.

³⁰⁰ Human Rights Watch (n 244).

³⁰¹ Committee on the Rights of the Child General Comment 1 of 2001: Article 29 (1): The aims of education, para 1 <https://www.refworld.org/legal/general/crc/2001/en/39221> (accessed 31 August 2024).

³⁰² Human Rights Watch (n 244).

³⁰³ As above.

³⁰⁴ As above.

education. This section aims to look at the intersectionality of the right to education and the right to health, non-discrimination, and survival and development.

Child marriage denies the girl the right to education, and consequently, deprives the girl of comprehensive knowledge of sexual and reproductive health rights.³⁰⁵ Due to a lack of sexual education, these girls are deprived of access to contraceptives and information on sexual health, the decision to do family planning, safe sex and safe abortion.³⁰⁶ Consequently, the lack of comprehensive knowledge on sexual education has led to health crises for young girls evidenced by high mortality rates and fistula.³⁰⁷ In South Sudan, 5000 young girls are affected by fistula every year as a result of limited knowledge of sexual and reproductive health rights.³⁰⁸ Further, the lack of sexual and reproductive education, for instance, misconceptions about menstruation causes stigma and discrimination against girls in schools.³⁰⁹

Furthermore, lack of education deprives the girl-child of the right to survival and development.³¹⁰ As discussed in Chapter Two, section 2.5.3 under the title 'Africa's Agenda for Children 2040: Fostering an Africa Fit for Children', education should be relevant to meet the demands of the labour market. Consequently, illiterate girls lack the necessary skills and talents, and therefore cannot meet the demand of the labour market. Lack of education denies girls the right to development in terms of the aims of education as discussed in the problem statement in Chapter One.

3.6 Conclusion

In South Sudan, the prevalence of child marriage is triggered by customary beliefs and practices. Many communities believe that child marriage is in the best interest of the child, brings wealth in terms of bride price, and is a source of honour to the family. The stereotypes and gender inequality have also contributed to the surge in child marriage. The HRDs argue that child marriage is a violation of a girl's right to education, and therefore is a deviation by South Sudan from its obligations under the human rights instruments.

³⁰⁵ Committee on Economic, Social and Cultural Rights General Comment 22 (2016) on the right to sexual and reproductive health (article 12 of the International Covenant on Economic, Social and Cultural Rights) <https://digitallibrary.un.org/record/832961?v=pdf#files> (accessed 2 September 2024).

³⁰⁶ As above.

³⁰⁷ As above.

³⁰⁸ As above.

³⁰⁹ UNICEF 'Fast facts: Nine things you didn't know about menstruation' 25 May 2018, <https://www.unicef.org/press-releases/fast-facts-nine-things-you-didnt-know-about-menstruation> (accessed 2 September 2024).

³¹⁰ CRC art 6.

Consequently, child marriage has denied the girl-child the right to education evidenced by the high rates of dropout, and irregular attendance in schools caused by family responsibilities which hinder them from receiving quality education. These violate the right to education and the development of the child as stipulated in Articles 28 and 29 of the CRC.

Lack of sexual education, especially on sexual and reproductive health right affects the girl's health. This is due to a lack of information and access to contraceptives, family planning and safe abortion. Consequently, this has led to a high mortality rate and infection by fistula. Further, lack of education perpetuates discrimination against the girls. Lastly, lack of education curtails the development of girls in terms of skills and talents, and as a result, limits them from achieving the adequate standards of living.

Therefore, the next chapter discusses the legal framework governing HRDs, the concept of HRDs, the roles of HRDs in addressing the impacts of child marriage on the girl-child's right to education, and the challenges faced by the HRDs.

4. THE ROLE OF HUMAN RIGHTS DEFENDERS IN ADDRESSING THE IMPACT OF CHILD MARRIAGE ON THE GIRL-CHILD'S RIGHT TO EDUCATION IN SOUTH SUDAN

4.1 Introduction

This chapter explores the legal framework which regulates the activities of HRDs at the international, regional, and domestic levels. It further seeks to examine the role of HRDs in curbing child marriage with its negative repercussions on the rights of girls to education. Lastly, the chapter underscores the challenges HRDs face when performing their duties, particularly the protection of girls from child marriage and its impacts on education. The Chapter is concluded with a brief conclusion.

The legal challenge to HRDs in South Sudan is that no thematic legally binding instrument which empowers and protects them. There are only two thematic declarations: the UN Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms (the UN Declaration); and the Declaration on the Promotion of the Role of Human Rights Defenders and their Protection in Africa (the African Declaration) which lays a foundation for the role of HRDs. In South Sudan, no law specifically protects HRDs. However, HRDs can enjoy rights under all binding legal regimes in South Sudan as individuals.

According to the OHCHR as discussed in Chapter One, HRDs are individuals, groups of individuals or institutions whose primary role is to protect and promote human rights peacefully.³¹¹ HRDs do not engage in activities that tend to change the government unconstitutionally.³¹² Changing the government through unconstitutional means is treason under the Constitution and the Penal Code Act of 2009.³¹³

The African Declaration's definition of HRDs is more elaborate, and it defines HRDs as 'any person who, whether alone or in collaboration with others, acts or strives to promote, protect

³¹¹ OHCHR 'Special Rapporteur on the situation of human rights defenders' <https://www.ohchr.org/en/special-procedures/sr-human-rights-defenders> (accessed 12 August 2024).

³¹² As above.

³¹³ Constitution (n 16 above) art 4(2); Penal Code Act 9 of 2008 sec 64(2). Article 4(2) of the Constitution stipulates that any person who overthrows the constitutional government commits treason. Section 64(2) of the Penal Code states that any person who usurps the power of the president or government by force commits treason.

human rights and fundamental freedoms, at the local, national, regional and international levels.³¹⁴

In the face of the definition offered above, it can be said that the HRDs in South Sudan include individuals, civil society organisations, UNICEF, Save the Children, Human Rights Watch, OHCHR, World Vision, UNFPA, Girls Not Bride, judges, law enforcement agencies, government officials, among others.³¹⁵ The next step discusses the legal framework.

4.2. International legal framework

This section assesses the provisions under the international legal framework relevant to protecting HRDs in South Sudan.

4.2.1 International Covenant on Civil and Political Rights (ICCPR)

South Sudan ratified ICCPR in 2019 without reservations.³¹⁶ Article 19 guarantees the right to express one's views freely without interference.³¹⁷ As such, South Sudan is obliged to give HRDs space to express their concerns about child marriage and its impacts on the girls' right to education. In addition, everyone is entitled to receive information, which includes information on child marriage and its impacts on education.³¹⁸ Further, Article 9 protects everyone, including the HRDs, from unlawful arrests.³¹⁹ Any person arrested should be informed of the reasons for arrest and brought before a judge within a reasonable time.³²⁰ This has not been the case in South Sudan as National Security Services have arrested and continue to arrest HRDs without arrest warrants and detained and continue to detain them incommunicado without access to lawyers or their families.³²¹

³¹⁴ Declaration on the Promotion of the Role of Human Rights Defenders and their Protection in Africa art 1.

³¹⁵ OHCHR (n 310).

³¹⁶ United Nations Mission in South Sudan 'UNMISS welcomes ratification of international human rights covenants in South Sudan' 7 June 2019, <https://unmiss.unmissions.org/unmiss-welcomes-ratification-international-human-rights-covenants-south-sudan> (accessed 22 August 2024).

³¹⁷ ICCPR art 19(1).

³¹⁸ ICCPR art 19(2).

³¹⁹ ICCPR art (1).

³²⁰ ICCPR art 9(2)(3).

³²¹ Human Rights Council: Commission on Human Rights in South Sudan 'Entrenched repression: systematic curtailment of the democratic and civic space in South Sudan,' 45-46 (https://www.ohchr.org/sites/default/files/documents/hrbodies/hrcouncil/cohrsouthsudan/A_HRC_54_CRP.6_0.pdf (accessed 20 August 2024)).

4.2.2 UN Convention on the Rights of the Child

Article 12 of the Convention entitles children to express their views on matters that affect them such as child marriage with its negative consequences on education.³²² This provision is crucial in protecting children's HRDs who are at the forefront of fighting child marriage. Children HRDs have been able to express their views on UNICEF websites and other platforms.³²³ This has created a sense of awareness among the children and the public about the impacts of child marriage on the right to education.

Equally important, Article 13 of the CRC guarantees freedom of expression, receive and impart information.³²⁴ This is pertinent to HRDs activities which enlighten children (girls) about their rights. The information that the children will receive from HRDs will enable them to have better understanding of their rights and speak out against discriminatory practices such as child marriage and its impact on their right to education.

4.2.3 UN Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms (the UN Declaration)

Although it is not binding on the states, it provides guidelines on the role of HRDs across the globe. Article 1 recognises everyone's right to protect and promote human rights.³²⁵ Article 2 reinforces other legally binding human rights instruments by stressing the responsibility of the government to protect, respect, fulfil and promote human rights.³²⁶ Article 6 expounds on the right to freedom of expression and information as provided under Article 19 of the ICCPR.³²⁷ The UN Declaration emphasises the importance of promoting and protecting human rights as a group and individually. The shortfall of the Declaration is that it does not impose legally binding obligations on South Sudan.

³²² CRC art 12.

³²³ UNICEF (n 1).

³²⁴ CRC art 13.

³²⁵ UN Declaration art 1.

³²⁶ UN Declaration art 2.

³²⁷ UN Declaration art 6.

4.2.4 Universal Declaration of Human Rights (UDHR)

Notably, the UDHR is a non-binding instrument. It is the first to conceptualise human rights in a single document expanding the notion of human rights in the UN Charter. Despite not being legally binding, UDHR protects HRDs. Article 19 protects free speech and views which entails receiving and imparting information without interference.³²⁸ As such, HRDs in South Sudan are also entitled to express their views freely. The government should guarantee the freedom of expression to enable HRDs to tackle child marriage and its negative implications on the right to education.

Article 20 recognises the right of everyone to join an association and peaceful assembly. Ideally, HRDs can gather and protest to articulate the impacts of child marriage.³²⁹ On 16 October 2019, more than twenty religious leaders gathered in Juba, South Sudan, to denounce child marriage due to its negative impacts on girl's education.³³⁰ The religious leaders went back to their communities to help end child marriage in South Sudan.³³¹ Despite the protests against child marriage by religious leaders, the practice is still prevalent in South Sudan.³³² The religious leaders have conducted workshops and awareness programs to educate communities and parents on the promotion and protection of girl-child's rights, especially child marriage and its impacts on the girl-child's right to education.³³³ They achieve these through advocacy, which is the main strategy at their disposal. There is no evidence to suggest that the religious leaders have used other strategies such as strategic litigation and petitions.

4.3 Regional legal framework

This is part of the legal regimes which govern the roles of HRDs in the African context. The section examines legally binding and non-legally binding (soft laws) instruments.

³²⁸ UDHR art 19.

³²⁹ UDHR art 20.

³³⁰ UNICEF 'Religious leaders stand with girls in South Sudan' 16 October 2024, <https://www.unicef.org/southsudan/stories/religious-leaders-stand-with-girls> (accessed 16 September 2024).

³³¹ As above.

³³² Human Rights Watch (n 2) 575.

³³³ UNICEF (n 332).

4.3.1 African Charter on Human and Peoples' Rights

Article 9 gives everyone the right to express their opinions and spread the information to the public within the law.³³⁴ This provision entitles the HRDs to express their views on child marriage freely. However, Article 9(2) states that opinion expression and dissemination must be within the law.³³⁵ The phrase 'within the law' might be used by State parties to enact vague and disproportionate laws that restrict free speech. It is important to note that South Sudan has not yet enacted a law that prohibits free speech.

4.3.2 African Charter on the Rights and Welfare of the Child (African Children's Charter).

It is the only thematic regional legal framework that focuses on the child's rights. As discussed in Chapter 1.1, South Sudan has not ratified the African Children's Charter and therefore, it is not binding on South Sudan. However, the essence of discussing it in this Chapter is to emphasise its importance as the only regional legal regime focusing only on children and the protection it offers to children HRDs should South Sudan ratify it.

Article 7 guarantees the right of children to freedom of expression.³³⁶ This provision is crucial because it enables children HRDs to advocate for the end of child marriage in South Sudan. Article 8 entitles children HRDs to the freedom of assembly which serves as a tool to protest to the authorities regarding the risk child marriage poses to girls' education.³³⁷

4.3.3 Declaration on the Promotion of the Role of Human Rights Defenders and their Protection in Africa

It is a non-binding legal instrument and the first thematic soft law on HRDs. It provides a holistic framework for the role and protection of HRDs in Africa. Article 2 empowers HRDs to protect and promote human rights and other fundamental freedoms at all levels.³³⁸ To realise the protection and promotion of human rights, HRDs are eligible to assemble, join any association or non-governmental organisations, receive funds, express their views, disseminate information, be free from intimidation and harassment, move freely, submit complaints to the concerned authorities, and have an effective remedy in case of violations.³³⁹

³³⁴ African Charter art 9.

³³⁵ African Charter art 9(2).

³³⁶ African Children's Charter art 7.

³³⁷ African Children's Charter art 8.

³³⁸ African Declaration art 2.

³³⁹ African Declaration art 3.

Article 4 stresses the duty of states to create a conducive environment for HRDs to perform their duties peacefully. Considering the preceding, for HRDs to address child marriage and its impacts on education, South Sudan needs to refrain from restricting the liberty of HRDs which is evidenced by the arrest of journalists and activists by the security apparatus.³⁴⁰

4.4 Domestic legal framework

This section deals with the provisions of national legislation that impose obligations on the government to protect HRDs when performing their duties.

4.4.1 Transitional Constitution of the Republic of South Sudan, 2011 as amended (TCSS)

Article 12 reiterates the obligation of South Sudan not to deprive any person of their liberty and security.³⁴¹ This signifies that HRDs should not be unlawfully arrested or detained, as this impedes their advocacy to end child marriage and its negative consequences on education. Any arrest of HRDs should conform to the due process of the fair trial such as informing them of their arrests and charges brought against them, taking them to a court as soon as possible, releasing them on bail or bond within 24 hours, and giving them access to lawyers.³⁴²

Article 24 recognises everyone's right, including HRDs, to freedom of expression, to receive, to distribute, to access, and to publish information without compromising public safety, order, and morals as provided by law.³⁴³ Article 25 guarantees the right to assembly which reinforces Article 24.³⁴⁴ These Articles are vital for HRDs' advocacy.

4.5 The roles of human HRDs in addressing the impact of child marriage on the girls' right to education

HRDs in South Sudan have the following roles in addressing child marriage and its impact on the rights of young girls to education.

4.5.1 Promotion of human rights

To begin with, HRDs in South Sudan have been at the forefront of promoting the right of girls to education by combating harmful practices such as child marriage which impedes the enjoyment

³⁴⁰ African Declaration art 4.

³⁴¹ Constitution (n 14) art 12.

³⁴² Constitution (n 16) art 19.

³⁴³ Constitution (n 16) art 24.

³⁴⁴ Constitution (n 16) art 25.

of the right to education.³⁴⁵ Young girls and boys, through programs funded by UNICEF, have aired their opinions on ending child marriage.³⁴⁶ Moreover, organisations like OXFAM,³⁴⁷ Human Rights Watch,³⁴⁸ and UNICEF,³⁴⁹ have initiated projects which educate the communities about the negative consequences of child marriage on the girls' right to education. Civic education is now changing the communities' attitudes, and they now perceive education as an important tool for their daughters to improve their lives and contribute to society.³⁵⁰

4.5.2 Protection of human rights

HRDs play a critical role in protecting girls from child marriage and its impacts on the right to education.³⁵¹ They have influenced the government stakeholders to ratify international treaties that offer broader protection to women and girls.³⁵² For instance, a women's group spearheaded the campaign to sign the Maputo Protocol until the government conceded and signed the treaty in 2023.³⁵³ Individuals Otwari Dominic Oromo petitioned the government's relevant institutions to end child marriage.³⁵⁴ Others took centre stage in the fight against child marriage by litigating cases in court on behalf of the victims of child marriage to hold the perpetrators accountable.³⁵⁵ For example, in 2022, the Gender-Based-Violence and Juvenile Court sentenced John Balasso Micheal to seven years in prison for impregnating a 16-year-old girl even though the girl consented to the relationship.³⁵⁶ The Gender-Based Violence and Juvenile Court in South Sudan has tried more than 100 rape cases, thus acting as a limelight for the protection of girls from child marriage because the Court strictly applies international human rights law and the

³⁴⁵ Human Rights Watch (n 243).

³⁴⁶ UNICEF (n 1).

³⁴⁷ OXFAM (n 5).

³⁴⁸ Human Rights Watch (n 243).

³⁴⁹ UNICEF 'Hundreds of children and young people join World Children's Day Run to end child marriage' 24 November 2023 <https://www.unicef.org/southsudan/press-releases/hundreds-children-and-young-people-join-world-childrens-day-run-end-child-marriage> (accessed 13 August 2024).

³⁵⁰ UNICEF 'Child marriage: a threat to the lives and future of girls in South Sudan' 13 June 2024, <https://www.unicef.org/southsudan/lets-change-picture> (accessed 13 August 2024).

³⁵¹ UNICEF (n 1).

³⁵² UN Women Africa 'South Sudan launches the Maputo Protocol for the protection of women's rights' <https://africa.unwomen.org/en/stories/news/2023/07/south-sudan-launches-the-maputo-protocol-for-the-protection-of-womens-rights> (accessed 13 August 2024).

³⁵³ Solidarity for African Women's Rights 'South Sudan ratified Maputo Protocol-Now what?' <https://www.soawr.org/2023/11/29/south-sudan-ratified-the-maputo-protocol-now-what/> (accessed 13 August 2024).

³⁵⁴ Change.Org 'End Child marriage in South Sudan' 17 December 2021, <https://www.change.org/p/minister-of-gender-south-sudan-end-child-marriage-in-south-sudan> (accessed 13 August 2024).

³⁵⁵ Global Citizen 'South Sudan Court Annuls Child Marriage of 16-Year-Old in Landmark Case' 10 July 2019, <https://www.globalcitizen.org/en/content/south-sudan-rules-against-child-marriage/> (accessed 13 July 2024).

³⁵⁶ Eye Radio 'Juvenile court jails young man for defiling teenage girl' 27 September 2022, <https://www.eyeradio.org/juvenile-court-jails-young-man-for-defiling-teen-girl/> (accessed 17 September 2022).

Child Act, all of which do not consider customary practices which allow child marriage.³⁵⁷ The challenge is that the judiciary does not have a digital depository for cases.³⁵⁸ The Judiciary still uses the traditional way of keeping only physical files.³⁵⁹

4.5.3 Dissemination of data

In addition, HRDs have relentlessly collected and disseminated information on child marriage and its negative implications on the right to education.³⁶⁰ This is corroborated by the studies conducted by UNICEF and OXFAM which depicted the prevalence of child marriage at 52 per cent³⁶¹ and the rate of girls dropping out from school at 76 per cent respectively.³⁶² Their reports inform the public and stakeholders both at the domestic and international levels on the effects of child marriage on the right to education.

4.5.4 Accountability

Furthermore, HRDs have advocated for accountability and an end of impunity for perpetrators of child marriage.³⁶³ These efforts have resulted in the establishment of the Gender-Based Violence and Juvenile Court in South Sudan in 2020 to deal with violations of the rights of the child.³⁶⁴ The Court has convicted over 100 men of sexual-related offences and child marriage.³⁶⁵ The establishment of the Gender-Based-Violence and Juvenile Court has offered a glimpse of hope of justice for the girl-child from the perpetrators of child marriage. The court strictly applies international human rights law and the provisions of the Child Act.

³⁵⁷ Eye Radio 'Government jailed over 100 men for sex crimes since its establishment' 13 July 2022, <https://www.eyeradio.org/gbv-court-jailed-over-100-men-for-sex-crimes-since-establishment/> (accessed 13 August 2024).

³⁵⁸ Eye Radio 'Legal officer advocates for digital case management of GBV files' 12 December 2023, <https://www.eyeradio.org/legal-officer-advocates-for-digital-case-management-of-gbv-files> (accessed 17 September 2024).

³⁵⁹ As above.

³⁶⁰ OXFAM (n 5).

³⁶¹ UNICEF (n 1).

³⁶² OXFAM (n 5).

³⁶³ UNFPA 'Call for action to end gender-based violence and impunity for GBV perpetrators in South Sudan' 24 June 2020, <https://southsudan.unfpa.org/en/news/call-action-end-gender-based-violence-and-impunity-gbv-perpetrators-south-sudan> (accessed 13 August 2024).

³⁶⁴ UNDP 'South Sudan's Gender-Based Violence Court Inaugurated During #16DaysOfActivism'

3 December 2020, <https://www.undp.org/south-sudan/press-releases/south-sudans-gender-based-violence-court-inaugurated-during-16daysofactivism> (accessed 13 August 2024).

³⁶⁵ Eye Radio (n 354).

4.5.5 Implementation of the legal frameworks

The HRDs have pushed for the implementation of human treaties such as the CRC, Maputo Protocol, African Charter, Transitional Constitution and the Child Act.³⁶⁶ The Human Rights Watch have engineered awareness programs that called on the government to protect, respect, promote and fulfil the child's rights.³⁶⁷

4.5.6 Human rights education

Lastly, HRDs have facilitated human rights education in schools, universities and other learning institutions, as well as workshops and trainings for different groups in the community, including judges, lawyers, police officers, and soldiers.³⁶⁸ The essence of human rights education is to teach the human rights treaties and legislation and reiterate the importance of respect for girl's rights and the negative consequences of child marriage on the right to education.

4.6 Challenges facing HRDs in South Sudan

This section discusses the challenges HRDs face in South Sudan while executing their duties. These range from lack of legal protection, illiteracy, unlawful arrests, insecurity, language barrier, cultural norms and practices, limited civic space, poor infrastructure, and enforced disappearances, among others. Against this backdrop, HRDs in South Sudan face the following challenges.

4.6.1 Lack of legal protection

Of all the challenges HRDs face, lack of legal protection is the biggest obstacle. At the international and regional levels, there are no legally binding treaties that protect HRDs from oppressive regimes like South Sudan.³⁶⁹ Although these non-binding laws are a benchmark for protecting HRDs, they do not offer adequate protection. Moreover, the work of the HRDs is hampered by the NGOs Act which confines the work of the NGOs to the humanitarian sector.³⁷⁰

³⁶⁶ Human Rights Watch 'South Sudan: End Widespread Child Marriage' 7 March 2013, <https://www.hrw.org/news/2013/03/07/south-sudan-end-widespread-child-marriage> (accessed 13 August 2023).

³⁶⁷ As above.

³⁶⁸ UNDP 'Support to Access to Justice, Security and Human Rights Strengthening Programme in South Sudan' https://www.undp.org/sites/g/files/zskgke326/files/2024-03/dld599_undp_ss_-_ar_support_to_access_web_0.pdf (accessed 13 August 2024).

³⁶⁹ Declaration on the Promotion of the Role of Human Rights Defenders and their Protection in Africa <https://achpr.au.int/en/documents/2024-01-25/declaration-promotion-role-human-rights-defenders-nd-their-pro> (accessed 19 August 2024); OHCHR 'Declaration on human rights defenders' <https://www.ohchr.org/en/special-procedures/sr-human-rights-defenders/declaration-human-rights-defenders> (accessed 19 August 2024).

³⁷⁰ Non-Governmental Organisations Act of 2016 sec 7.

Consequently, these limit NGOs and other international organisations from advocating for good governance and the rule of law, and which deviation from would lead to shut down and arrest of the NGO and the staff respectively. Besides, as will be explained below in this section, despite the right to freedom of expression and association being provided by law,³⁷¹ civic space continues to ‘shrink’.³⁷²

4.6.2 Limited civic space

Although HRDs are entitled to freely express their views and assemble like other citizens and institutions in South Sudan, journalists and activists have faced enforced disappearances, arbitrary arrests, oppression, intimidation and to some extent murder.³⁷³ Even if these HRDs are not arrested for advocating for the end of child marriage, and the right to education, their arrests, oppression, intimidation and murder indirectly hamper the advocacy efforts to address child marriage and the right to education.³⁷⁴ For example, when an activist who is an HRD on corruption, child marriage and education is killed or arrested for speaking against the government for corruption and poor governance, this will put to a stop the advocacy on child marriage and the right to education as well.³⁷⁵ Due to limited civic space, HRDs have minimised advocating on sensitive issues such as corruption and bad governance but put more emphasis on child marriage and its negative implications on girls’ education.³⁷⁶ This is attested by reports published by UNICEF, OXFAM, and other individual HRDs.³⁷⁷

4.6.3 Cultural norms and practices

As discussed in Chapters One and Three, cultural norms is one of the leading reasons for the prevalence of child marriage which hamper the girl’s right to education.³⁷⁸ The legal efforts and advocacy to end child marriage in South Sudan have been unsuccessful due to resistance by communities who firmly believe that child marriage is in the best interest of the child, is a source of wealth, brings respect and honour to the family, and educating girls is ‘a waste of

³⁷¹ Constitution (n 16) arts 24 & 25.

³⁷² Human Rights Watch ‘South Sudan (n 2).

³⁷³ Forst (n 25) 96.

³⁷⁴ Human Rights Council: Commission on Human Rights in South Sudan ‘Entrenched repression: systematic curtailment of the democratic and civic space in South Sudan,’ 45-46
(https://www.ohchr.org/sites/default/files/documents/hrbodies/hrcouncil/cohrsouthsudan/A_HRC_54_CRP.6_0.pdf
(accessed 20 August 2024).

³⁷⁵ Human Rights Watch ‘South Sudan (n 26).

³⁷⁶ OXFAM (n 5); UNICEF (n 1).

³⁷⁷ OXFAM (n 5); UNICEF (n 1).

³⁷⁸ Ellsberg (n 87) 3038.

resources'.³⁷⁹ Such beliefs have thwarted the efforts of the HRDs to address the impact of child marriage on the right to education.³⁸⁰

4.6.4 Registration requirements

While the UN and its agencies, the International Committee of the Red Cross, the International Federation of the Red Cross, Red Crescent Societies, and the South Sudan Red Cross are exempted from the registration requirements by the NGO Act of 2016, other international organisations go through the hectic requirements.³⁸¹ In 2017, the government increased the registration fees for international NGOs from 600 United States Dollars(USD) to 3500 USD and for local NGOs from 450 USD to 500 USD.³⁸² These hefty charges cannot be afforded by some international and local organisations that are already struggling with funding from the collapsing economy. Thus, high cost of registration will deny the registration of NGOs which are also HRDs. In addition, several documentation requirements such as source of funding, copy of the country-of-origin agreement with South Sudan, and certificate of registration in the country of origin discourage international NGOs from establishing their presence in South Sudan.³⁸³

4.6.5 Insecurity

South Sudan has been grappling with insecurity since 2013 when the first post-independence war broke out.³⁸⁴ Some parts of the country are inaccessible due to the civil war, and this curtails HRDs from doing advocacy in rural areas.³⁸⁵

4.6.6 Language barrier

South Sudan is an ethnically diverse country with approximately 64 tribes which speak different local languages.³⁸⁶ Most reports of HRDs on child marriage and its impacts on education are

³⁷⁹ Lokot and Others (n 245) 27.

³⁸⁰ OXFAM (n 5); UNICEF (n 1).

³⁸¹ Non-Government Organizations Act of 2016 sec 11.

³⁸² Voice of America 'Crisis-hit South Sudan hikes fees to register Aid Agencies' 3 May 2017, <https://www.voanews.com/a/crisis-hit-south-sudan-hikes-fees-register-aid-agencies/3836581.html> (accessed 19 August 2024).

³⁸³ Non-Government Organizations Act of 2016 sec 9(1)(b).

³⁸⁴ Centre for Preventive Action 'Instability in South Sudan' 11 July 2024, <https://www.cfr.org/global-conflict-tracker/conflict/civil-war-south-sudan> (accessed 2 October 2024).

³⁸⁵ Human Rights Watch 'Surge in attacks on aid workers in South Sudan: Authorities should improve protection, investigate attacks' 4 March 2022, <https://www.hrw.org/news/2022/03/04/surge-attacks-aid-workers-south-sudan#:~:text=At%20least%20130%20humanitarian%20workers%2C%20mostly%20South%20Sudanese%2C,on%20duty%20since%20war%20broke%20out%20in%202013> (accessed 19 August 2024).

³⁸⁶ Laba Africa Expeditions 'Tribes in South Sudan' <https://labafrica.com/tribes-in-south-sudan/> (accessed 28 August 2024).

published in English which is understood by a small number of the literates.³⁸⁷ As a result, only a small section of the country, 27 per cent, reads and understands the reports, thus making the reports less impactful.³⁸⁸

4.7 Conclusion

HRDs in South Sudan have played a crucial role in combatting child marriage and its impacts on the girls' right to education. The advocacy efforts by the HRDs are changing the attitudes of the communities toward child marriage as attested by children and religious leaders stepping forward and denouncing child marriage. Even though HRDs in South Sudan do not have a specific legal framework which protects them, they can enjoy legal protection under the existing legal regimes as individuals. However, their work has been curtailed by several factors such as insecurity, lack of civic space, lack of a particular legal framework, and cultural norms and practices, among others. With these challenges, especially the lack of a specific law that protects HRDs, and the power of National Security Services to arrest without an arrest warrant, HRDs will be at risk of arrests, harassment, intimidation and even death in the worst scenario, thus undermining their efforts to address the impacts of child marriage on the right to education.

The next Chapter summarises the conclusions and discusses the recommendations.

³⁸⁷ OXFAM (n 5); UNICEF (n 1).

³⁸⁸ Reliefweb 'Education needs assessment' <https://reliefweb.int/report/south-sudan/south-sudan-national-education-assessment-report-2021> (accessed 19 August 2024).

5. CONCLUSION AND RECOMMENDATIONS

This section is two-fold: The first part summarises the conclusions of all the four chapters. These conclusions highlight the gaps in the laws, the underlying factors leading to the high rates of child marriage in South Sudan and its detriments on the girls' right to education, the role of HRDs in addressing the impacts of child marriage on the right to education and the challenges HRDs face. The second part underscores the recommendations that will assist the authorities and policymakers in addressing the adverse effects of child marriage on the girls' right to education.

5.1 Conclusion

The primary objective of this research is to investigate the role of human rights defenders in addressing the impact of child marriage on the girl-child's right to education in South Sudan. To attain this objective, this research posed the question 'What is the role of human rights defenders in addressing the impact of child marriage on the girl-child's right to education in South Sudan?'

This research discovered that child marriage remains prevalent in South Sudan at 52 per cent,³⁸⁹ making South Sudan 7th among the countries with the highest rates of child marriage in the world.³⁹⁰ This is attributed to several factors, including legal gaps, customs, inadequate policies and lack of implementation as discussed below.

This mini-dissertation revealed that many communities in South Sudan support child marriage.³⁹¹ Gender inequality and customary practices have engineered the practice of child marriage as communities like Dinka perceive girls as a source of wealth, a means of extending lineage by producing children, family caretakers, a burden to the family, a way of seeking connection to powerful figures, and inferior to boys.³⁹² These communities firmly believe that child marriage is in the best interest of the child because it prevents early pregnancy, pre-marital sex, and girls losing their value due to exposure through education. However, although most of the communities embrace child marriage, there has been a change of narrative through the

³⁸⁹ Human Rights Watch (n 2).

³⁹⁰ OXFAM (n 5); UNICEF (n 1) 76.

³⁹¹ Solidarity for African Women's Rights 'South Sudan ratified the Maputo Protocol – now what?' 09 November 2023, <https://www.soawr.org/2023/11/29/south-sudan-ratified-the-maputo-protocol-now-what/> (accessed 13 September 2024).

³⁹² OXFAM (n 5).

advocacy of HRDs like UNICEF, OXFAM, Human Rights Watch, World Vision, UNDP, young girls and boys, elites, religious leaders, local organisations and academics.

This research showed that child marriage is a grave violation of human rights, and it is not consistent with the obligations of South Sudan under international and regional human rights instruments. Consequently, child marriage has negatively affected the girls' right to education evidenced by the dropout of 988000 girls from school. This is inconsistent with the obligations of South Sudan under the CRC, especially Articles 28 and 29. Child marriage is also inconsistent with the obligations of South Sudan under the Maputo Protocol, CRPD, African Charter, CEDAW, and CESC.

The research disclosed lack of education which is caused by child marriage also negatively affects girls' right to health evidenced by birth mortality, fistula, and deprivation of sexual and reproductive health rights such as access to contraceptives, family planning and information about safe sex. Further, the research exposed that lack of education perpetuates discrimination against girls, violates girls' right to life and impairs their intellectual growth and development.

The research further revealed glaring gaps in the laws. Although South Sudan has ratified international and regional instruments that prohibit child marriage, the domestic laws do not prohibit it. The Constitution does not set the minimum age for marriage and refers the marriages to be conducted according to family laws.³⁹³

It was also revealed that although the Child Act protects children from harmful practices such as early marriage, it does not set a marriageable age. In an attempt to end child marriage, the research discovered that the courts, especially the newly established Gender-Based Violence and Juvenile Court, have taken a strict approach to child marriage by penalising any marriage with girls under 18 years. However, the lack of access to the statutory courts has forced the victims of child marriage to resort to customary courts which embrace child marriage.

The research showed that only Lakes State and Unity have outlawed and banned child marriage respectively but that did not stop child marriage. Despite the laws that define a child as a person under 18 years old, the lack of implementation by the government has led to a surge in child marriage, with many perpetrators escaping punishment.

³⁹³ Constitution (n 16) art 15.

It was also discovered that South Sudan has not ratified the African Charter on the Rights and Welfare of the Child, a vital legal framework that strictly defines a child as a person under the age of 18 years.³⁹⁴ African Charter on the Rights and Welfare of the Child also prohibits child marriage and betrothal.³⁹⁵

The research demonstrated that HRDs have played a crucial role, especially through advocacy, in addressing child marriage and its impacts on the right to education.³⁹⁶ The advocacy efforts have led to a change of attitude among some state governments that child marriage is not in the best interest of the child.³⁹⁷ However, HRDs face challenges such as intimidation, harassment, customary practices, language barriers, illiteracy, insecurity, oppressive government, and lack of legal protection.³⁹⁸ These challenges have made it difficult for HRDs to address child marriage and its negative consequences on the girls' right to education.

5.2 Recommendations

5.2.1 Ratify the African Charter on the Rights and Welfare of the Child

The African Children's Charter is a vital regional treaty for the protection of children. It is a children-specific legislation in Africa. This research recommends that South Sudan ratify the treaty for two main reasons: First, it strictly defines a child as any person below the age of 18 years. This definition fills the vacuum created by the CRC which gives the State parties discretion of defining majority to be attained earlier than 18 years. Secondly, the African Children's Charter prohibits 'child marriage and betrothal,' which is vital in addressing child marriage. In addition to barring child marriage, the treaty obliges the State parties to enact specific legislation to set the minimum age of marriage at 18 and make registration of marriages

³⁹⁴ African Committee of Experts on the Rights and Welfare of the Child database <https://www.acerwc.africa/en/member-states/ratifications> (accessed 13 September 2024).

³⁹⁵ African Children's Charter art 21(2).

³⁹⁶ Human Rights Watch (n 243); OXFAM (n 5); UNICEF (n 1).

³⁹⁷ Eye Radio 'Child and forced marriage now a crime in Lakes State' 19 July 2022, <https://www.eyeradio.org/child-and-forced-marriage-now-a-crime-in-lakes-state/> (accessed 13 September 2024); Human Rights Watch 'Child marriage in South Sudan' https://www.hrw.org/reports/southsudan_SumRecsForUpload.pdf#:~:text=Many%20South%20Sudanese%20communities%20see%20child%20marriage%20as,of%20transferring%20wealth%20through%20the%20payment%20of%20dowries (accessed 13 September 2024). Radio Tamazuj 'Unity State bans child and forced marriages' 18 August 2024, <https://www.radiotamazuj.org/en/news/article/unity-state-bans-child-and-forced-marriages> (accessed September 2024).

³⁹⁸ Forst (n 25) 96; Human Rights Watch (n 26).

compulsory. This addresses the gap in law in the Constitution as discussed in Chapter One of this research.

5.2.2 Criminalise child marriage

The underlying factor leading to high rates of child marriage in South Sudan is the lack of legislation that criminalises the practice. The perpetrators have always taken refuge in the customary laws which do not penalise child marriage. This stems from the gap in the Constitution that refers to marriages to be done in line with the family laws, yet these family laws do not penalise child marriage. It is important to note that out of ten states and three administrative areas, only Lakes State has outlawed child and forced marriages. The second state to follow the steps of Lakes State although it did not outlaw child marriage is Unity State which banned the practice in August 2024. These are states' laws and directives which apply to these states. Therefore, South Sudan should enact national legislation which criminalises child marriage. These will deter the perpetrators as they will face justice.

5.2.3 Set minimum age of marriage in the Constitution

The complex part of international law is that it requires domestication of a treaty to become effective especially if the country is a dualist like South Sudan. Even if South Sudan ratifies the African Children's Charter that sets the minimum age of marriage at 18 years, the domestic courts would be reluctant to apply those provisions. This is why this research recommends that South Sudan set the minimum age of marriage at 18 years old. This will address the gap created by Article 15 of the Constitution which says that "every person of marriageable age' has a right to marry a person of the opposite sex.

5.2.4 Enact human rights defenders-specific legislation

As discussed in Chapter Four, no thematic law protects the HRDs in South Sudan. This has made HRDs prone to state repression, intimidation, arrest, enforced disappearance, and sometimes murder, thereby restricting civic space. South Sudan should follow in the footsteps of Burkina Faso, Ivory Coast, and DRC, which have enacted HRD-specific laws at the domestic level. The law will guarantee legal protection of HRDs, and this will strengthen their advocacy efforts in addressing the impacts of child marriage on girl child's right to education.

5.2.4 Reduce the dropout rates

South Sudan should reduce the number of girls dropping out of school and take all the required measures to ensure regular school attendance. Ideally, the government should implement the National Education Policy of 2017-2027 which allows pregnant girls to continue with their studies during pregnancy and after giving birth. The learning environment should be conducive in order to allow pregnant and lactating mothers to study without discrimination and stereotypes.

Moreover, education should be free and compulsory at the primary level. In addition, impregnating a schoolgirl child should be criminalised as this will deter the perpetrators. The government policies should align with Article 28 of the CRC by ensuring that education is accessible to girls regardless of their status. Accessibility should be premised on the principles of non-discrimination, physical accessibility and financial accessibility. To achieve this, uniform fees, development fees and school fees should be removed in public schools, and more schools should be constructed.

5.2.5 Civic awareness

The communities in South Sudan are deeply rooted in cultural norms and practices which instigate child marriage which consequently affects the girl-child's right to education. These cultural norms and practices are exacerbated by the high rates of illiteracy. As such, this requires a country-wide engagement with the local community. To achieve this, the HRDs should translate the reports on the negative implications of child marriage on the right to education into local languages. Besides, these reports should be recorded in local languages and be played on the radio for easy understanding by the communities. This will address the challenge of illiteracy among the civil populace which impedes them from accessing the reports of HRDs published in English.

5.2.6 Strengthen implementation

As discussed in Chapter One, lack of implementation is one of the major reasons for the surge in the rates of child marriage in South Sudan. To tackle this harmful practice with its negative repercussions, the government should implement CEDAW, CRC, CESC, CRPD, the Constitution and the Child Act that guarantee children's right to education and freedom from harmful practices. The Gender-Based Violence and Juvenile Court should be strengthened to

hold perpetrators to account. Notably, to achieve the implementation of these laws, the Juvenile Court should be opened in all ten states and administrative areas in South Sudan to minimise the lack of access to the statutory courts.

The next section lists the bibliography which is the last part of this mini-dissertation.

Bibliography

Treaties

1. African Charter on the Rights and Welfare of the Child.
2. Convention on the Elimination of All Forms of Discrimination against Women.
3. Convention on the Rights of Persons with Disabilities.
4. Declaration on the Promotion of the Role of Human Rights Defenders and their Protection in Africa
5. Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms.
6. International Covenant on Civil and Political Rights
7. International Covenant on Economic, Social and Cultural Rights
8. Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa.
9. UN Convention on the Rights of the Child.
10. UN Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms

Domestic legislation

11. Child Act, 2008.
12. Customary Laws and Public Order Act, 2022
13. General Education Act, 2012.
14. Higher Education Act, 2012
15. NGO Act, 2016.
16. Penal Code Act, 2008.
17. Transitional Constitution of the Republic of South Sudan, 2011.

Books

18. Makech, JW *Customary law of the Dinka People of Sudan: In comparison with the aspects of Western and Islamic laws* (1998)

Journal articles

19. Arthur, M and Others 'Child marriage laws around the world: Minimum marriage age, legal exceptions, and gender disparities (2018) 39 *Journal of Women, Politics & Policy* 51.
20. Ellsberg, M et al 'If you are born a girl in This Crisis, you Are born a problem: Patterns and drivers of violence against women and girls in conflict-affected South Sudan' (2021) 27 *Violence Against Women* 3030.
21. Gaffney-Rhys, R 'International law as an instrument to combat child marriage' (2015) 15 Issue 3 *The International Journal of Human Rights* 359.
22. Hove, M & Ndawana, E 'Women's rights in jeopardy: The case of war-torn South Sudan' (2017) 10 *Sage Open* 1.
23. Hudson, VM & Matfess, H 'In plain sight: The neglected linkage between bride price and violent conflict' (2017) 42 Issue 1 *International Security* 7.
24. Lokot, M and Others 'The demand side of child marriage: Expanding gender norms to marriage drivers facing boys and men in South Sudan' (2022) 4 *Journal of Humanitarian Affairs* 27.
25. Madut, K 'Determinants of child marriage and construction of gender roles in South Sudan' (2020) *Journal of Black Studies* 1.
26. Maswikwa, B 'Minimum marriage age laws and the prevalence of child marriage and adolescent birth: Evidence from Sub-Saharan Africa' 2015 41 *Guttmacher Institute* 58.
27. Mbaku, JM 'International law and child marriage in Africa' (2020) 7 *Journal of International and Comparative Law* 103.
28. McCleary-sills, J and Others 'Child Marriage: A Critical Barrier to Girls' Schooling' (2015) 7 *The Review of Faith & International Affairs and Gender Equality in Education* 69.
29. Mugo, N 'Maternal and child health in South Sudan: Priorities for the post-2015 agenda' (2015) 10 *Sage Open* 1.
30. Saddiqi, M & Greene, ME 'Mapping the field of child marriage: Evidence, gaps, and future directions from a large-scale systematic scoping review' (2022) 70 *Journal of Adolescent Health* 9.
31. Singh, S & Samara, R 'Early marriage among women in developing countries' (1996) 22 *Guttmacher Institute* 14

Internet sources

32. Action Aid UK 'Forced child marriage' 27 April 2023, <https://www.actionaid.org.uk/our-work/womens-rights/child-marriage> (accessed 3 June 2024).
33. African Commission on Human and Peoples' Rights 'African Charter on Human and Peoples' Rights' <https://achpr.au.int/en/charter/african-charter-human-and-peoples-rights> (accessed 12 August 2024).
34. African Commission on Human and Peoples' Rights 'State Parties to the African Charter' <https://achpr.au.int/en/states> (accessed 12 August 2024).
35. African Committee of Experts on the Rights and Welfare of the Child database <https://www.acerwc.africa/en/member-states/ratifications> (accessed 17 June 2024).
36. Airbel Impact Lab 'What drives child marriage and what works to address child marriage in humanitarian contexts: An evidence review' https://childprotectionpractitioners.org/wp-content/uploads/2022/11/Child-Marriage_-Evidence-Review_.pdf (accessed 20 June 2024).
37. Al Jazeera 'South Sudan: The deadly consequences of child marriage' 16 February 2016 <https://www.aljazeera.com/features/2016/2/16/south-sudan-the-deadly-consequences-of-child-marriage> (accessed 10 August 2024).
38. Ali, NM 'Gender and state building in South Sudan' 10 <https://www.usip.org/publications/2011/12/gender-and-statebuilding-south-sudan> (accessed 20 June 2024).
39. Anti-Slavery International 'Out of the shadows: child marriage and slavery' 23 <https://www.antislavery.org/reports/out-of-the-shadows-child-marriage-and-slavery/> (accessed 20 June 2024).
40. Centre for Preventive Action 'Instability in South Sudan' 11 July 2024, <https://www.cfr.org/global-conflict-tracker/conflict/civil-war-south-sudan> (accessed 2 October 2024).
41. Change.Org 'End Child marriage in South Sudan' 17 December 2021, <https://www.change.org/p/minister-of-gender-south-sudan-end-child-marriage-in-south-sudan> (accessed 13 August 2024).
42. Declaration on the Promotion of the Role of Human Rights Defenders and their Protection in Africa database <https://achpr.au.int/en/documents/2024-01-25/declaration-promotion-role-human-rights-defenders-nd-their-pro> (accessed 19 August 2024).

43. Edward, JK 'A Strategy for Achieving Gender Equality in South Sudan' 7 <https://www.suddinstitute.org/publications/show/a-strategy-for-achieving-gender-equality-in-south-sudan> (accessed 20 June 2024).
44. Eye Radio 'Child and forced marriage now a crime in Lakes State' 19 July 2022, <https://www.eyeradio.org/child-and-forced-marriage-now-a-crime-in-lakes-state/> (accessed 15 August 2024).
45. Eye Radio 'Court convicts man nearly 2 years after impregnating underage' 6 February 2024, <https://www.eyeradio.org/court-convicts-man-nearly-2-years-after-impregnating-underage/> (accessed 18 July 2024).
46. Eye Radio 'Government jailed over 100 men for sex crimes since its establishment' 13 July 2022, <https://www.eyeradio.org/gbv-court-jailed-over-100-men-for-sex-crimes-since-establishment/n> (accessed 13 August 2024).
47. Eye Radio 'Govt, partners to extend GBV court beyond Juba' 27 April 2022, <https://www.eyeradio.org/govt-partners-to-extend-gbv-court-beyond-juba/> (accessed 18 July 2024).
48. Eye Radio 'Juvenile Court jails young man for defiling teenage girl' 22 September 2022, <https://www.eyeradio.org/juvenile-court-jails-young-man-for-defiling-teen-girl/> (accessed 18 July 2024);
49. Eye Radio 'Lakes, Jonglei lead South Sudan in child marriage-survey' 23 March 2023, <https://www.eyeradio.org/lakes-jonglei-lead-south-sudan-in-child-marriage-survey/> (accessed 15 August 2024).
50. Eye Radio 'Legal officer advocates for digital case management of GBV files' 12 December 2023, <https://www.eyeradio.org/legal-officer-advocates-for-digital-case-management-of-gbv-fileslegal-officer-advocates-for-digital-management-of-gbv-case-files/> (accessed 17 September 2024).
51. Forst, M 'World report on the situation of human rights defenders' 96 <https://reliefweb.int/report/world/report-special-rapporteur-situation-human-rights-defenders-ahrc3452> (accessed 20 June 2024).
52. Girl Education in South Sudan 'A step towards disability-inclusive education' 14 June 2022, <https://girlseducationsouthsudan.org/a-step-towards-disability-inclusive-education/> (accessed 1 October 2024).

53. Global Citizen 'South Sudan Court Annuls Child Marriage of 16-Year-Old in Landmark Case' 10 July 2019, <https://www.globalcitizen.org/en/content/south-sudan-rules-against-child-marriage/> (accessed 13 July 2024).
54. Howe, K and others 'Perspectives on early marriage: the voices of female youth in Iraqi Kurdistan and South Sudan who married under age 18' https://fic.tufts.edu/wp-content/uploads/persectivesonearlymarriage_4.28.22.pdf (accessed 3 June 2024).
https://planipolis.iiep.unesco.org/sites/default/files/ressources/general_education_act_2012.pdf (accessed 12 August 2024).
55. Human Rights Council 'Preventing and eliminating child, early and forced marriage: Report of the Office of the United Nations High Commissioner for Human Rights' 7 <https://www.ohchr.org/en/report-early-and-forced-marriage-child-humanitarian-settings> (accessed 20 June 2024).
56. Human Rights Council: Commission on Human Rights in South Sudan 'Entrenched repression: systematic curtailment of the democratic and civic space in South Sudan,' 45-46
(https://www.ohchr.org/sites/default/files/documents/hrbodies/hrcouncil/cohrsouthsudan/A_HRC_54_CRP.6_0.pdf (accessed 20 August 2024).
57. Human Rights Watch 'Child and forced marriage in South Sudan,' https://www.hrw.org/sites/default/files/reports/southSudan0313_forinsertWebVersion_0.pdf (accessed 6 August 2024).
58. Human Rights Watch 'Child marriage in South Sudan' https://www.hrw.org/reports/southsudan_SumRecsForUpload.pdf#:~:text=Many%20South%20Sudanese%20communities%20see%20child%20marriage%20as,of%20transferring%20wealth%20through%20the%20payment%20of%20dowries (accessed 31 August 2024).
59. Human Rights Watch 'Ending child marriage in Africa: Opening the door for girls' education, health, and freedom from violence' 9 December 2015, <https://www.hrw.org/news/2015/12/09/ending-child-marriage-africa> (accessed 2 June 2024).
60. Human Rights Watch 'South Sudan: End Widespread Child Marriage' 7 March 2013, <https://www.hrw.org/news/2013/03/07/south-sudan-end-widespread-child-marriage> (accessed 13 August 2023).

61. Human Rights Watch 'South Sudan: Investigate apparent 2017 killing of activists' April 2019, <https://www.hrw.org/news/2019/04/30/south-sudan-investigate-apparent-2017-killing-activists> (accessed 31 May 2024).
62. Human Rights Watch 'South Sudan: The events of 2023' <https://www.hrw.org/world-report/2024/country-chapters/south-sudan> (accessed 02 June 2024).
63. Human Rights Watch 'Surge in attacks on aid workers in South Sudan: Authorities should improve protection, investigate attacks' 4 March 2022, <https://www.hrw.org/news/2022/03/04/surge-attacks-aid-workers-south-sudan#:~:text=At%20least%20130%20humanitarian%20workers%2C%20mostly%20South%20Sudanese%2C,on%20duty%20since%20war%20broke%20out%20in%202013> (accessed 19 August 2024).
64. Laba Africa Expeditions 'Tribes in South Sudan' <https://labafrica.com/tribes-in-south-sudan/> (accessed 28 August 2024).
65. Ministry of General Education 'Education Needs Assessment South Sudan' 2021, <https://reliefweb.int/report/south-sudan/south-sudan-national-education-assessment-report-2021> (accessed 17 August 2024).
66. Ministry of Justice and Constitutional Affairs: Laws of the Republic of South Sudan <https://mojca.gov.ss/wp-content/uploads/2023/03/Transitional-Constitution-of-the-Republic-of-South-Sudan-2011.pdf> (accessed 12 August 2024).
67. Nabobbi, C 'South Sudan ratified the Maputo Protocol – now what?' 09 November 2023, <https://www.soawr.org/2023/11/29/south-sudan-ratified-the-maputo-protocol-now-what/>
68. Office of the High Commissioner for Human Rights 'Harmful traditional practices affecting the health of women and children' 8 <https://www.ohchr.org/sites/default/files/Documents/Publications/FactSheet23en.pdf> (accessed 18 June 2024).
69. OHCHR 'Declaration on human rights defenders' <https://www.ohchr.org/en/special-procedures/sr-human-rights-defenders/declaration-human-rights-defenders> (accessed 19 August 2024).
70. OHCHR 'Special Rapporteur on the situation of human rights defenders' <https://www.ohchr.org/en/special-procedures/sr-human-rights-defenders> (accessed 12 August 2024).
71. OXFAM 'Born to married: Addressing forced and early marriage in Nyal, South Sudan' <https://oxfamilibrary.openrepository.com/bitstream/handle/10546/620620/rr-born-to-be-married-efm-south-sudan-180219-en.pdf> (accessed 15 August 2024).

72. Plan International Australia 'Just married, just a child: Plan International Australia child marriage in the Indo-Pacific Region' 5 <https://opus.lib.uts.edu.au/handle/10453/36760> (accessed 20 June 2024).
73. Radio Tamazuj 'Unity State bans child and forced marriages' 18 August 2024, <https://www.radiotamazuj.org/en/news/article/unity-state-bans-child-and-forced-marriages> (accessed 25 August 2024).
74. Reliefweb 'Education needs assessment' <https://reliefweb.int/report/south-sudan/south-sudan-national-education-assessment-report-2021> (accessed 19 August 2024).
75. Reliefweb 'UNMISS welcomes ratification of international human rights covenants in South Sudan' 7 June 2019, <https://reliefweb.int/report/south-sudan/unmiss-welcomes-ratification-international-human-rights-covenants-south-sudan> (accessed 11 August 2024).
76. Solidarity for African Women's Rights 'South Sudan ratified the Maputo Protocol – now what?' 09 November 2023, <https://www.soawr.org/2023/11/29/south-sudan-ratified-the-maputo-protocol-now-what/> (accessed 3 August 2024).
77. The African Child Policy Forum 'Gender and child rights in Eastern Africa: A survey of laws and policies on child marriage, economic exploitation and inheritance' 23 <https://app.box.com/s/sh7yz46xzetrc0ch1rbli7x8p7w0wffj> (accessed 17 June 2024).
78. The New York Times 'After Years of Struggle, South Sudan Becomes a New Nation' 9 July 2011, <https://www.nytimes.com/2011/07/10/world/africa/10sudan.html> (accessed 17 August 2024).
79. U.S. Department of Health and Human Services, Office on Women's Health <https://www.womenshealth.gov/menstrual-cycle/your-menstrual-cycle> (accessed 2 September 2024).
80. UN Women Africa 'South Sudan launches the Maputo Protocol for the protection of women's rights' <https://africa.unwomen.org/en/stories/news/2023/07/south-sudan-launches-the-maputo-protocol-for-the-protection-of-womens-rights> (accessed 13 August 2024).
81. UNDP 'South Sudan's Gender-Based-Gender Violence Court Inaugurated During #16DaysOfActivism' 3 December 2020, <https://www.undp.org/south-sudan/press-releases/south-sudans-gender-based-violence-court-inaugurated-during-16daysofactivism> (accessed 13 August 2024).

82. UNDP 'Support to Access to Justice, Security and Human Rights Strengthening Programme in South Sudan' https://www.undp.org/sites/g/files/zskgke326/files/2024-03/dld599_undp_ss_-_ar_support_to_access_web_0.pdf (accessed 31 August 2024).
83. UNESCO 'The right to education' <https://www.unesco.org/en/right-education> (accessed 5 August 2024)
84. UNESCO database
85. UNFPA 'Call for action to end gender-based violence and impunity for GBV perpetrators in South Sudan' 24 June 2020, <https://southsudan.unfpa.org/en/news/call-action-end-gender-based-violence-and-impunity-gbv-perpetrators-south-sudan> (accessed 13 August 2024).
86. UNICEF 'Child marriage in Eastern and Southern Africa: A statistical overview and reflections on the ending the practice' 8 <file:///C:/Users/HP/Downloads/Child-Marriage-in-Eastern-and-Southern-Africa-June-2022-UNICEF-web.pdf> (accessed 17 June 2024)
87. UNICEF 'Child marriage: a threat to the lives and future of girls in South Sudan' 13 June 2024, <https://www.unicef.org/southsudan/lets-change-picture> (accessed 13 August 2024)
88. UNICEF 'Education: Creating solid foundations for the future through quality education' <https://www.unicef.org/southsudan/what-we-do/education> (accessed 31 May 2024).
89. UNICEF 'Fast facts: Nine things you didn't know about menstruation' 25 May 2018, <https://www.unicef.org/press-releases/fast-facts-nine-things-you-didnt-know-about-menstruation> (2 September 2024).
90. UNICEF 'Hundreds of children and young people join World Children's Day Run to end child marriage' 24 November 2023 <https://www.unicef.org/southsudan/press-releases/hundreds-children-and-young-people-join-world-childrens-day-run-end-child-marriage> (accessed 13 August 2024).
91. UNICEF 'Religious leaders stand with girls in South Sudan' 16 October 2024, <https://www.unicef.org/southsudan/stories/religious-leaders-stand-with-girls> (accessed 16 September 2024).
92. United Nations 'UN lauds South Sudan as country ratifies landmark child rights treaty' 4 May 2015 <https://news.un.org/en/story/2015/05/497732> (accessed 16 July 2024).
93. United Nations Human Rights, Office of the High Commissioner <https://indicators.ohchr.org/> (accessed 15 July 2024).
94. United Nations Mission in South Sudan 'South Sudan ratifies CEDAW convention' 5 September 2014, <https://unmiss.unmissions.org/south-sudan-ratifies-cedaw-convention> (accessed 17 August 2024).

95. United Nations Mission in South Sudan 'UNMISS welcomes ratification of international human rights covenants in South Sudan' 7 June 2019, <https://unmiss.unmissions.org/unmiss-welcomes-ratification-international-human-rights-covenants-south-sudan> (accessed 22 August 2024).
96. United Nations Treaty Collection https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-15&chapter=4&clang=en (accessed 15 August 2024).
97. United Nations, Department of Economic and Social Affairs: Sustainable Development 'Ensure inclusive and equitable quality education and promote lifelong learning opportunities for all' https://sdgs.un.org/goals/goal4#targets_and_indicators (accessed 5 November 2024).
98. Voice of America 'Crisis-hit South Sudan hikes fees to register Aid Agencies' 3 May 2017, <https://www.voanews.com/a/crisis-hit-south-sudan-hikes-fees-register-aid-agencies/3836581.html> (accessed 19 August 2024).

Other sources

99. Africa's Agenda for Children 2040: Fostering an Africa Fit for Children.
100. African Union Policy: Linking Agenda 2063 and the SDGs.
101. Bennet, KL 'The effectiveness of approach: addressing the value of rights-based interventions to protect human rights defenders in oppressive environments' PhD thesis, London Metropolitan University, 2017.
102. CEDAW, Committee on the Elimination of Discrimination against Women Concluding observations on the initial report of South Sudan.
103. Committee on Economic, Social and Cultural Rights General Comment 22 (2016) on the right to sexual and reproductive health (article 12 of the International Covenant on Economic, Social and Cultural Rights) .
104. Committee on Economic, Social, and Cultural Rights General Comment 13: The Right to Education (Art 13).
105. Committee on the Rights of the Child General Comment 1 of 2001: Article 29 (1): The aims of education.
106. Ministry of General Education and Instruction Policy of 2017-2022

107. The General Education Strategic Plan of 2017-2022