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RIGHTS
WATCH

“This Old Man Can Feed Us, You Will Marry Him”

Child and Forced Marriage in South Sudan



“This Old Man Can Feed Us, You Will Marry Him”

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Printed in the United States of America

ISBN: 1-56432-997-6

Cover design by Rafael Jimenez

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MARCH 2013

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Summary

I did not know him before. I did not love him. I told my family, “I don’t want this man.” My people said, “This old man can feed us, you will marry him.”

—Atong G., 16, forced to marry a 50-year-old man in July 2011

Akech B. loved to study and dreamed of becoming a nurse. But when she was 14, her uncle who was raising her, told her she was too old for school. He forced her to leave school and told her that she had to marry a man whom Akech described as old, gray-haired, and married to another woman with whom he had several children.

Akech begged her uncle to allow her to continue her education. He refused. “Girls are born so that people can eat. All I want is to get my dowry,” he told her. The man paid 75 cows for Akech, which signified that the marriage had taken place. She tried to resist, but her male cousins beat her severely, accused her of dishonoring her family, and forced her to go to the man’s house.

Akech fled and hid with a friend. Her uncle found her and took her to prison, where he told officials that she had run away from her husband and needed to be taught a lesson. They imprisoned her for a night. When her cousins came for her they beat her so badly that she could hardly walk. Then they took her back to her husband.

After that, Akech felt that she had no choice, but to stay.

South Sudanese women face myriad hardships and obstacles in their daily lives, including high levels of poverty, low levels of literacy, pronounced gender gaps in education, and the highest maternal mortality rate in the world—estimated at 2,054 deaths per 100,000 live births.

For women and girls like Akech, these hardships are all too often compounded by a serious human rights violation: child marriage. Close to half (48 percent) of South

Sudanese girls between 15 and 19 are married, according to the 2006 Sudan Household Health Survey. Some are as young as 12 when they are married.

Many South Sudanese communities see child marriage as being in the best interests of girls and their families, and an important way for families to access much-needed assets, such as cattle, money, and other gifts via the traditional practice of transferring wealth through the payment of dowries. It is also viewed as a way to protect girls from pre-marital sex and unwanted pregnancy that undermines family honor and decreases the amount of dowry a family may receive. For some girls, marriage may also be the only way to escape poverty or violence in the home.

Much of the research on child marriage in South Sudan has focused on the physical impact it has on girls' and women's bodies. This report examines this problem, and reinforces studies by experts and women's rights groups in South Sudan that indicate that child marriage has a significant negative impact on women and girl's realization of key human rights, including their rights to health and education, physical integrity and the right to marry only when they are able and willing to give their free consent.

Based on extensive interviews with 87 girls and women in three states between March and October 2012—and with government officials, traditional leaders, health care workers, legal and women's rights experts, teachers, prison officials, and NGO, UN, and donor representatives—this report describes the severe consequences of this practice, and the risks that women and girls face when they resist or try to leave these marriages. It also examines the near total lack of protection for victims of child marriage and the many obstacles they face in attempting to find redress.

South Sudan has taken some steps since it gained autonomy from Sudan in 2005 and independence in 2011, to address women's rights. These include calls by President Salva Kiir Mayardit for women to participate in all spheres of life and the elimination of harmful traditions that limit their progress, and promises by the government and its international development partners to make gender equality a cornerstone of the country's development agenda.

There have been actions to tackle child marriage: provisions in the Transitional Constitution—which entered into force at South Sudan's independence in 2011—

guaranteeing women and girls the right to consent to marriage; penal code provisions criminalizing “kidnapping or abducting a woman to compel her to get married”; and the 2008 Child Act provisions that protect children under 18 from early and forced marriages and guarantee them the right to non-discrimination, health, education, life, survival and development, an opinion, and protection from torture, degrading treatment, and abuse. Many girls and women also benefit from an alternative education system that allows pregnant girls and mothers and individuals who have not had access to formal education or who have dropped out, to continue school.

However, the report finds that these measures alone are not enough, and are often stymied by a range of problems and limitations. These include gaps in existing laws, failure to understand and implement existing policies and legislation, poor coordination among government ministries responsible for protecting children from abuse, and an absence of guidelines about how they should address child marriage cases. Systemic problems in the justice system, such as lack of infrastructure, resources, and well-trained personnel, compound the inability of women and girls to obtain justice for gender-based crimes—including child and forced marriages—or to seek redress against those who have forced them to marry without their consent.

There are also gaps in the Transitional Constitution, Penal Code, and Child Act related to this harmful practice—including no minimum age of marriage—and no systematic or comprehensive programs to address the root causes of child marriage at the community level. The Ministry of Gender, Child and Social Welfare finalized a Gender Policy in 2012 that would go some way to addressing many of these gaps, and proposes developing a National Plan of Action, new laws to tackle sexual and gender based violence, and establishing ‘safe centres’ for trauma counseling of victims. However, it remains largely unimplemented at this writing.

Many girls and women are not aware of their rights under the law to seek help, or do not know where to look for assistance other than their own families or community elders, who often fail them. The absence of statutory family legislation means that most matters relating to marriage, divorce, child custody, maintenance payments and domestic violence are handled by customary courts that frequently discriminate against women and girls. Widespread discriminatory attitudes that see women as second class citizens perpetuate

the practice. Moreover South Sudan does not have sufficient or specialized safe spaces to offer protection to victims of forced marriage and other gender-related abuses.

As a result of these failures and inadequacies, many women and girls continue to struggle with the often devastating and long-lasting consequences of child marriage. Girls who marry young are removed from school, denying them the education needed to provide for themselves and their families. Reproductive health studies show that young women face greater risks in pregnancy and child birth than older women, including life-threatening obstructed labour due to their smaller pelvises and immature bodies—problems accentuated by South Sudan’s limited prenatal and postnatal healthcare services. Because early marriage limits young married girls’ knowledge and skills, resources, social support networks, mobility and autonomy, they often have little power in relation to their husband or his family, including pressing for family planning and contraception.

Today, there are a number of small ongoing initiatives implemented or funded by local and international organizations, donors, and the government that address aspects of child marriage. However, these efforts are sporadic, uncoordinated, and limited in scope.

Fortunately, child marriage is an area where concrete reforms are possible, even considering the current challenges facing the new country. Moreover, it is an area in which reforms are vital because the practice constrains the social, educational, health, security, and economic progress of women and girls, their families, and their communities. As a result, failure to combat child marriage is likely to have serious implications for the future development of South Sudan.

The government of South Sudan should take immediate and long-term steps to protect girls from child and forced marriage and ensure the fulfillment of their human rights. While resource constraints are a major concern, some reforms can be made without a large investment, and these should be implemented quickly. Others that may be costly are crucial components of ensuring that the government meets its obligations to uphold rather than violate girls’ and women’s human rights.

The government, with the support of South Sudan's development partners, should:

- Develop and implement a comprehensive national action plan to prevent and address the consequences of child marriage;
- Develop and implement guidelines on how national and state level government ministries and agencies should address child marriage cases;
- Conduct training for relevant government and law enforcement officials about the legal rights of girls under the Child Act, particularly their right to be protected from child marriage;
- Carry out a nationwide awareness-raising campaign to inform the public about the harms caused by child marriage;
- Work toward comprehensive reform of South Sudan's laws on marriage, separation, divorce, and related matters; and
- Take programmatic and policy measures to ensure that girls and women who seek help from authorities for forced marriages can get it.

Methodology

This report is based on research conducted between March and October 2012 in Western Equatoria State, Central Equatoria State, and Jonglei State. Human Rights Watch researchers interviewed 87 girls and women. Some girls and women were unsure about their age, but most girls and women we interviewed were with girls and women who were married as children, under the age of 18.

Other interviews were conducted with government officials in the Ministry of Justice, Ministry of Gender, Child and Social Welfare, Ministry of Education and Ministry of Health. We also spoke to the Chief Justice and officials from the South Sudan Human Rights Commission; representatives of nongovernmental organizations (NGOs) working on women's rights, United Nations and international donor organizations; women's rights experts and activists, a doctor, a nurse, teachers, traditional leaders and elders including chiefs; and three prison officials.

Individual women interviewees were identified with the assistance of local NGOs providing services to women and most interviews occurred in their private offices. Where women were interviewed in villages, the interviews were conducted in their homes with as much privacy as possible. All participants were informed of the purpose of the interview, its voluntary nature, and the ways the information would be used. Each orally consented to be interviewed. Women were told they could decline to answer questions or end the interview at any time, particularly where they were recounting traumatic personal experiences. Interviews lasted between thirty minutes and one hour. Some interviews were conducted in English but most interviews were conducted in various local languages with the assistance of a female interpreter.

Care was taken to minimize the risk to women who were recounting difficult experiences that could further traumatize them. Interviewees did not receive any material compensation, but were reimbursed the cost of public transport to and from the interview.

Pseudonyms have been used to protect the privacy and security of the women and girls interviewed for the report. In some cases other identifying information about interviewees has also been withheld upon request.

Human Rights Watch also conducted a review of relevant laws, policies, surveys, and reports from the government of South Sudan, the United Nations, academics, NGOs, and other sources. We have conducted an extensive review of literature on child marriage in South Sudan and other countries where there are similar negative consequences on the lives of girls and women.

I. Women's and Girls' Rights in South Sudan, Government Efforts to Protect Them

South Sudan has adopted an impressive array of measures to promote and protect women's and girl's rights since it gained regional autonomy in 2005 following 22 years of civil war, and independence in July 2011, after a referendum on self-determination.¹

These initiatives include establishing institutions and positions to spearhead gender equality and women's empowerment in national development programs and policies, such as a parliamentary gender committee, a presidential adviser on gender and human rights, and the Ministry of Gender, Child and Social Welfare.²

The government has also pledged to make gender equality a cornerstone of the country's development agenda,³ identifying gender equality in the three-year post-independence development plan as one of seven crucial cross-cutting issues.⁴ President Salva Kiir Mayardit has called for women's participation in all spheres of life, and the elimination of harmful traditions that limit their progress.

The 2011 Transitional Constitution recognizes that "[A]ll persons are equal before the law and are entitled to the equal protection of the law without discrimination as to race, ethnic origin, colour, sex, language, religious creed, political opinion, birth, locality or social

¹ The CPA was signed by the Government of Sudan and the Sudan People's Liberation Movement/Army (SPLM/A) in January 2005, bringing an end to the 22-year civil war that started in 1983. It granted regional autonomy to Southern Sudan and provided for the sharing of oil revenues between the parties. It further set a timetable by which Southern Sudan would hold a referendum on its independence.

² The ministry faces significant challenges that have limited its operation. These include inadequate budget, poor understanding and appreciation of the role of the ministry by other government ministries, and lack of technical capacity. For a detailed analysis of these weaknesses see, Ministry of Gender, Child and Social Welfare, "Comprehensive Country Gender Assessment," April 2012, on file with Human Rights Watch (HRW), pp. 148-151.

³ For example see, Joint Donor Team, "Fact-Sheet: Gender Equality," undated, http://www.jdt-juba.org/wp-content/uploads/2012/02/Gender_fact_sheet_update_sep_2011.pdf (accessed October 8, 2012). The Joint Donor Team to the Republic of South Sudan is comprised of the governments of Norway, Denmark, Sweden, United Kingdom, Canada and the Netherlands. Ibid; UK Department for International Development (South Sudan), "Operational Plan: 2011-2015," July 2011, <http://www.dfid.gov.uk/Documents/publications1/op/2011/south-sudan-1.pdf> (accessed October 8, 2012), p. 4; United States Agency for International Development (USAID), "South Sudan Transition Strategy 2011-2013," June 2011, http://pdf.usaid.gov/pdf_docs/PDAGR770.pdf (accessed October 8, 2012), pp. 29, 40, and 48.

⁴ "South Sudan Development Plan 2011-2013: Realising Freedom, Equality, Justice, Peace and Prosperity for All," August 2011, <http://www.jdt-juba.org/wp-content/uploads/2012/02/South-Sudan-Development-Plan-2011-13.pdf> (accessed October 8, 2012), pp. 21 and 87.

status.”⁵ Other provisions call for “all levels of government [to] enact laws to combat harmful customs and traditions which undermine the dignity and status of women;”⁶ and for the recognition of women’s “right to equal pay for equal work and other related benefits with men.”⁷ The constitution also establishes a 25 percent quota for female representation in all national and state executive and legislative organs of government.

These initiatives have helped to produce some encouraging change. For example, women have become more visible in public and political life and hold a number of political offices: 33.5 percent of members of the national legislative assembly are women⁸ and there is a female paramount chief in Eastern Equatoria State.⁹ Women have begun to engage in politics (many voted in the referendum), and civil society groups are gaining strength. A new, albeit fragile, movement to support women’s equality has been growing steadily.

However, despite these encouraging signs, the rights of girls and women in South Sudan remain significantly curtailed. The following sections detail four of the most significant areas in which these limitations are felt: marriage and divorce; education; reproductive, maternal and child health; and physical safety.

Marriage and Divorce

Marriage shapes South Sudanese women’s experiences, status, and security, and is at the center of many violations of their rights.¹⁰ Women are traditionally subservient to their husbands and other men in their family, where gender roles and positions are clearly defined and strictly enforced.¹¹ Women have very few rights in marriage which is governed by the customary laws of ethnic groups in the absence of statutory family legislation governing marriage, separation, divorce, and other aspects of family life.¹²

5 Transitional Constitution, arts. 5(c), 33,126 and167.

6 Ibid., art. 16 (4d).

7 Transitional Constitution, art. 16 (2).

8 See Ministry of Gender, Child and Social Welfare, “Comprehensive Country Gender Assessment,” p. 28.

9 The World Bank, “Review of Interim Constitution of Government of Southern Sudan 2005 From a Gender and Women’s Rights Perspective,” on file with Human Rights Watch, p.4.

10 Orly Stern, “‘This Is How Marriage Happens Sometimes’: Women and Marriage in South Sudan,” Friederike Bubenzer; Orly Stern, Hope, Pain and Patience: The Lives of Women in South Sudan (Johannesburg: Jacana Media, 2011), p. 1.

11 Small Arms Survey, “Sudan Human Security Baseline Assessment: Women’s Security and the Law in South Sudan,” 2012, <http://www.smallarmssurveysudan.org/fileadmin/docs/facts-figures/south-sudan/womens-security/HSBA-women-security-law.pdf> (accessed October 2, 2012), p. 4.

12 Orly Stern, “‘This Is How Marriage Happens Sometimes’: Women and Marriage in South Sudan,” in Friederike Bubenzer and Orly Stern, eds., Hope, Pain and Patience: The Lives of Women in South Sudan, p. 10.

Families reach marriage agreements between themselves and choose marriage partners without the consent or even knowledge of girls. They have an interest in marrying off their girls as early as possible, and to the highest bidder, since dowry, unlike in many other countries, is paid by the groom and his family to the girl's family and can include cattle, money and other gifts.

Dowry also makes divorce and separation more difficult for women. Many women forfeit all their belongings if they separate or divorce.¹³ Under many South Sudanese customary law systems, divorce is not widely accepted and only possible when the dowry is repaid to the husband's family—a requirement that can create tensions, especially since the dowry is often shared amongst the bride's extended family.¹⁴ As a result, families have a financial incentive to ensure that marriages remain intact even if the girl faces abuse, and women who face violence in their marriages, may face pressure to reconcile despite risks to their safety and wellbeing.¹⁵ Alek P., who fled from her husband and his other wife who beat her, said,

My uncles tell me, 'We can't find the cows to pay back your husband so you have to return to him.' My uncles and cousins watch me all the time.... If I go somewhere and they find out, they beat me and threaten to take my mother to prison.¹⁶

A woman who leaves her husband without obtaining a divorce, and any man with whom she subsequently has a relationship, can be accused of adultery¹⁷—an offence under South Sudan's penal code punishable by customary compensation awards, court fines,

13 Small Arms Survey, "Sudan Human Security Baseline Assessment: Women's Security and the Law in South Sudan," p. 6; Human Rights Watch interview with Paleki Matthew, executive director, South Sudan Women's Empowerment Network, Juba, October 31, 2012.

14 NPA, "Gender-based Violence and Protection Concerns in South Sudan," p. 23. The amount of dowry to be returned depends on the number of children a woman has borne during the marriage. The more the children, the less the amount repaid. Stern, "This Is How Marriage Happens Sometimes", Friederike Bubenzer; p. 18.

15 Small Arms Survey, "Sudan Human Security Baseline Assessment: Women's Security and the Law in South Sudan," p. 5.

16 Human Rights Watch interview with Alek P., Bor County, March 15, 2012.

17 To change this situation, a prospective suitor will have to pay the remaining dowry to the woman's husband, a requirement that affects the ability of separated women to remarry. NPA, "Gender-based Violence and Protection Concerns in South Sudan," p. 28.

and/or up to two years' imprisonment.¹⁸ Women are disproportionately affected by adultery charges, even though they can be brought against both men and women.¹⁹

Where divorce does occur, children generally stay with the father and his family.²⁰ Custody decisions are mostly made by customary courts that rule in accordance with their customs, even though they are supposed to be governed by the Child Act and the child's best interests.²¹ Some women opt to stay in abusive marriages rather than lose custody of their children.²²

Limited Access to Education

As a result of decades of civil war, most adults and children in South Sudan have not attended school. The 2008 Child Act and Transitional Constitution (articles 14 and 29) provide for the right to free and compulsory primary education. South Sudan has an Alternative Education System that offers individuals, including pregnant girls and mothers, who have not had access to formal education, the opportunity to go to school.²³ In 2011, close to 70,000 female learners participated in this scheme.²⁴ The Child Act also explicitly states that no girl can be expelled from school due to pregnancy and young mothers must be allowed to continue their education (article 26.3).

In addition, the government is trying to advance the rights of girls to education and to protect them from abuse and violations of their rights through a number of other initiatives:

- **A curriculum for a “Life Skills Program”**—currently being developed by the Ministry of General Education²⁵—which will include components on human rights, gender and gender-based violence, and reproductive health.²⁶ The program will be

¹⁸ Penal Code, 2008, art. 266. Under this article, adultery is defined as consensual intercourse with the spouse of another person.

¹⁹ Human Rights Watch, *South Sudan - Prison Is Not for Me: Arbitrary Detention in South Sudan*, June 2012, http://www.hrw.org/sites/default/files/reports/southsudano612_forinsert4Upload.pdf (accessed August 10, 2012), p. 55. Also see, NPA, “Gender-based Violence and Protection Concerns in South Sudan,” p. 28.

²⁰ NPA, “Gender-based Violence and Protection Concerns in South Sudan,” p. 25.

²¹ Transitional Constitution, art. 17 (2) and Child Act, 2008, arts. 6 and 8.

²² Stern, “‘This Is How Marriage Happens Sometimes’: Women and Marriage in South Sudan,” *Friederike Bubenzer*, p. 18.

²³ For a comprehensive overview of the alternative education system see Ministry of General Education and Instruction, “Alternative Education Systems Baseline Survey and Evaluation, June 2012, on file with HRW.

²⁴ Education Statistics for the Republic of South Sudan, Ministry of General Education, p.88.

²⁵ This program is being supported by UNICEF and Canada.

²⁶ Human Rights Watch interview with Thelma Majela, Juba, January 17, 2012.

an important opportunity to educate and inform girls about their human rights and child marriage.

- A **“Girls’ Education Strategy,”** also developed by the Ministry of General Education to increase access to education for girls;
- The **General Education Bill**, pending before the legislature, which prohibits sex between students and teachers and provides for dismissing and decertifying any educator who impregnates a student.²⁷ A draft teachers’ code of conduct has not yet been finalized;
- **Encouraging women’s access to higher education** via the Ministry of Higher Education in order to increase the supply of secondary school teachers, and encouraging, via the Ministry of General Education, **more women to become primary school teachers** through the development of an affirmative action policy.²⁸

Despite the efforts described above, and an increase in the enrollment of girls in school since 2009, government statistics for 2011 show that only 39 percent of primary school students and 30 percent of secondary students are female.²⁹

Girls face several barriers to accessing education, and may be withdrawn from school to marry, to help with household chores or care for smaller children, which is viewed as training for their future roles as wives and mothers. Despite lack of accurate statistics, it is also believed that teenage pregnancy and sexual harassment by teachers and the community affects girls’ ability to stay in school.³⁰

²⁷ General Education Bill, art. 16. There have been numerous media reports of sexual relationships between students and teachers. See for example, “Teachers suspended for impregnating school girls,” *Gurtong*, January 11, 2013, <http://www.gurtong.net/ECM/Editorial/tabid/124/ctl/ArticleView/mid/519/articleId/9123/categoryId/4/Teachers-Suspended-For-Impregnating-School-Girls.aspx> (accessed January 20, 2013); “Teacher dismissed over schoolgirl pregnancies in Rumbek,” *Sudan Tribune*, December 3, 2011, <http://www.sudantribune.com/Teachers-dismissed-over-schoolgirl,40897> (accessed January 20, 2013).

²⁸ These programs are supported by USAID.

²⁹ Republic of South Sudan Ministry of General Education, “Education Statistics for the Republic of South Sudan,” 2011, pp. 17, 22.

³⁰ See, Schockland Project Partners with Save the Children as lead coordinator, *A study report on school levies in south sudan: impact on enrolment and retention*, June 2010; and Ministry of Gender, Child and Social Welfare, “Comprehensive Country Gender Assessment,” pp. 115-117.

Reproductive, Maternal, and Child Health

South Sudan has some of the worst health indicators in the world:

- Some 33 percent of children are moderately to severely underweight.³¹
- Only 3.5 percent of women use any form of contraception.³²
- Some 41 percent of women do not receive any antenatal care.³³
- Only 10 percent of women are attended by skilled health personnel during delivery.³⁴
- Just 13.6 percent of births occur in health facilities.³⁵
- About 5,000 girls and women are affected by obstetric fistula each year.³⁶

Maternal mortality is recognized as a key health concern in South Sudan, which has one of the highest maternal mortality ratios (MMR) in the world (around 2,054 deaths per 100,000 live births).³⁷ In 2012, the Ministry of Health completed a health sector development plan that prioritizes maternal and child health, under the slogan, “One maternal death is one too many.”³⁸

The ministry, with significant donor support, has expended a great deal of effort to improve the quality and availability of health services generally. However, many services—including for reproductive and maternal health—remain limited, and often of poor quality or not timely when available due to a dearth of qualified health personnel, equipment, and supplies.

³¹ Ministry of Health, “2006 Sudan Household Health Survey (SHHS),” 2007, on file with HRW, p. xiv.

³² Ibid., p. xviii.

³³ Ibid.

³⁴ Ibid.

³⁵ Ibid.

³⁶ Ibid., p. 135.

³⁷ Ministry of Health, “2006 Sudan Household Health Survey (SHHS),” 2007, on file with HRW, p. xviii. South Sudan’s MMR is higher than that of Chad and Somalia, estimated by WHO and others to have the highest rates in the world. WHO et al., *Trends in Maternal Mortality, 1990-2010*, p. 1.

³⁸ Ministry of Health, “Health Sector Development Plan,” 2012-2016, http://www.google.com/url?sa=t&rct=j&q=república%20de%20sudán%20ministerio%20de%20salud%20C%20E2%80%9Csector%20de%20desarrollo%20plan&source=web&cd=1&ved=oCC8QFjAA&url=http%3A%2F%2Fwww.bsf-south-sudan.org%2Fsites%2Fdefault%2Ffiles%2FHSDP%2520-Final%2520draft%2520January%25202012.doc&ei=ikAZUcaLHczHoAG_k4CYDQ&usq=AFQjCNEltQGNGSqmiid3duX_2PkoosRtPw (accessed February 11, 2013).

According to a Comprehensive Gender Assessment, the ministry “lacks adequate capacity to mainstream gender in the available health plans in order to achieve gender equality in service distribution and utilization.”³⁹

Awareness about the importance of reproductive health care is low, resulting in a high risk of death and disability for pregnant women, especially young women and girls.⁴⁰ The ministry has developed a Sexual and Reproductive Health Strategic Plan, a Reproductive Health Policy, and a Family Planning Policy. All of these identify early and forced marriage as a contributing factor to high maternal mortality rates. The Sexual and Reproductive Health Plan undertakes to respond to the reproductive needs of youth and adolescents through the development of a National Youth and Adolescent Reproductive Health Strategy. The strategy will pay special attention to the needs of adolescents in marriage, and will include advocacy for enacting a law to limit the age of marriage for boys and girls.⁴¹

Violence against Girls and Women

Anecdotal evidence from researchers and organizations working with women suggests that violence against women is pervasive.⁴² Domestic violence is seen as normal by both men and women. Common forms include physical and verbal abuse, sexual violence, early and forced marriage, and economic deprivation.⁴³

Although exacerbated by years of conflict, these forms of abuse are also based on long-standing patriarchal systems, making them even harder to eliminate. Most violence

³⁹ Ministry of Health, “Comprehensive Gender Assessment,” p. 116.

⁴⁰ USAID, “Southern Sudan Maternal and Reproductive Health Rapid Assessment,” 2007, http://pdf.usaid.gov/pdf_docs/PNADN752.pdf (accessed January 2012), p. 5. Another study by UNICEF in Lakes, Upper Nile, and Central Equatoria States found that communities have poor understanding of the consequences of child marriage, especially the impact on the health of the mother and child. UNICEF, “Knowledge, Attitudes and Practices on Child Marriage in Southern Sudan: The Case of Lakes, Upper Nile and Central Equatoria States,” February 2010, on file with HRW, p. 21.

⁴¹ Ministry of Health, “Sexual and Reproductive Health Strategic Plan,” p. 9.

⁴² An increase in violence in post-conflict countries has been noted in other countries. It is commonly reported that violence against women increases when war-related fighting dies down. See, Rachel Jewkes, “Comprehensive Response to Rape needed in Conflict Setting,” 2007, *Lancet*, (369), pp. 2140-41.

⁴³ Small Arms Survey, “Sudan Human Security Baseline Assessment: Women’s Security and the Law in South Sudan,” p.6; Nada Mustafa Ali, “Gender and State Building in South Sudan,” 2011, <http://www.usip.org/files/resources/SR%20298.pdf> (accessed April 15, 2012), p. 9; NPA, “Gender-based Violence and Protection Concerns in South Sudan,” pp. 31-34; Accord, “Initial Support to Develop a Road Map for a South Sudan National Action Plan for the Implementation of United Nations Security Council Resolution 1325,” p. 21; Ministry of Gender, Child and Social Welfare, “Comprehensive Country Gender Assessment,” p. 140.

against women occurs in the home, within the family unit.⁴⁴ But it also happens within communities, and at the hands of militia groups and government security forces. Ongoing internal conflict and insecurity make women particularly vulnerable to such abuses.⁴⁵

There is no specific law on violence against women in South Sudan. The penal code criminalizes assault and rape, but does not criminalize marital rape.⁴⁶

Meanwhile, statutory and customary justice systems fail to provide redress for survivors of violence, whose security and access to justice is often compromised by family and customary courts prioritizing family reconciliation. Some girls and women are forced to marry their rapists, an option that families and communities often prefer as it prevents men from going to jail and supposedly maintains a woman's or girl's dignity within the community, while the dowry compensates her family.⁴⁷

Survivors of violence who seek help via the formal justice system, for example by bringing criminal charges against perpetrators of violence, mostly fail as police and the courts are ill-equipped to respond effectively.⁴⁸ Most survivors also do not have access to services, such as health care, counseling, and safe recovery spaces.⁴⁹

The Police Service, with support from various UN agencies, has developed Special Protection Units (SPUs). These specialized units, which are situated at police stations, are staffed by officers trained to investigate and prosecute cases involving women and children, and to ensure provision of legal aid, protection, medical care, and psychosocial support. The utility of these units has been undermined by a shortage of trained personnel

⁴⁴ NPA, "Gender-based Violence and Protection Concerns in South Sudan," p. 34.

⁴⁵ Nada Mustafa Ali, "Gender and State Building in South Sudan," p. 9.

⁴⁶ Penal Code, arts. 21 and 247. While coerced marital sex is not against the law, the violence accompanying the act may constitute a different crime.

⁴⁷ Small Arms Survey, "Sudan Human Security Baseline Assessment: Women's Security and the Law in South Sudan," p. 6. South Sudanese societies stigmatizes rape survivors. See, D'Awol, Anyieth. 2011. "Sibu ana, sibu ana" ("Leave Me, Leave Me"): Survivors of Sexual Violence in South Sudan.' In Friederike Bubenzer and Orly Stern, eds. *Hope, Pain and Patience: The Lives of Women in South Sudan* (Johannesburg: Jacana Media), p. 54; NPA, "Gender-based Violence and Protection Concerns in South Sudan," p. 41.

⁴⁸ This includes many of the challenges discussed in Chapter IV. on barriers to justice for victims of child marriage, including lack of training for police and other law enforcement officials on women's rights, lack of resources, and weak legal context for addressing violence against women.

⁴⁹ Marcy Hersh, "For South Sudan's Women, the War hasn't Ended," August 5, 2012, <http://www.globalpost.com/dispatches/news/regions/africa/south-sudan-women-violence-assault> (accessed October 8, 2012); D'Awol, Anyieth, "Sibu ana, sibu ana" ("Leave me, Leave Me"): Survivors of Sexual Violence in South Sudan," p. 69.

and by the transfer of trained officers to police stations without SPUs. They currently remain largely ineffective and unavailable outside of major urban centers.⁵⁰

The Ministry of Gender finalized a national Gender Policy in 2012 that prioritizes sexual and gender-based violence. According to the policy, a National Plan of Action will be developed, along with new laws, to eradicate sexual and gender-based violence. The policy also calls for the development and implementation of standard operating procedures for prevention and response to sexual and gender-based violence and the establishment of ‘safe centers’ for the trauma counseling of victims.⁵¹ Concrete progress in these areas has not yet been achieved.

Currently, a small number of UN agencies, international, and national NGOs are trying to respond to violence against women, but resources are scarce.⁵² Some local organizations and government officials say they are trying to address child marriage, although their efforts are limited by lack of a comprehensive action plan. According to one local NGO executive director, “We’ve been talking about the issue of early marriage for a long time, but there hasn’t been any structured or systematic lobbying or advocacy strategy.”⁵³

⁵⁰ Small Arms Survey, “Sudan Human Security Baseline Assessment: Women’s Security and the Law in South Sudan,” p. 3; NPA, “Gender-based Violence and Protection Concerns in South Sudan,” pp. 40-41. The Police Service and UN agencies are hoping to address shortcomings through additional trainings and through the establishment of a National Special Protection Unit coordination office that will oversee and supervise all SPU’s in the country. Human Rights Watch email communication with Gertrude Mbiru, GBV Specialist, UNICEF South Sudan, January 18, 2013. Human Rights Watch interview with Fatuma Ibrahim and Solla Asea, UNICEF, Juba, January 23, 2013.

⁵¹ The Ministry of Gender, Child and Social Welfare, “South Sudan National Gender Policy,” 2012, p. 33.

⁵² Marcy Hersh, “For South Sudan’s Women, the War hasn’t Ended,” August 5, 2012, <http://www.globalpost.com/dispatches/news/regions/africa/south-sudan-women-violence-assault> (accessed October 8, 2012); D’Awol, Anyieth “‘Sibu ana, sibu ana’ (‘leave me, Leave Me’): Survivors of Sexual Violence in South Sudan,” p. 69.

⁵³ Human Rights Watch interview with Lona James Lowilla, executive director, Voices for Change, Juba, September 4, 2012.

II. Factors Contributing to Child Marriage in South Sudan

South Sudan is a “hot spot” for child marriage in Africa.⁵⁴ According to the 2006 Sudan Household Health Survey, close to half (48 percent) of all South Sudanese girls between the ages of 15 and 19 are married.

Research by Human Rights Watch and other organizations show that several factors—accentuated by a lack of strong judicial or policy framework to ensure that existing laws designed to prevent and address early marriage are enforced—contribute to this harmful practice in South Sudan.

Below are perhaps the most significant contributing factors to child marriage: dowry payment; poverty; and tradition and culture, including fear of teenage pregnancy outside marriage.

Dowry

Dowry payment is a key driver of child marriage in South Sudan, where families see their daughters as sources of wealth. A marriage is sealed after a man and his family negotiates and pays a dowry to a woman’s family in the form of cattle, other animals, or, increasingly, money. Human Rights Watch interviewed 47 girls who said they were forced to marry because their families wanted to get dowry. In pastoralist communities, dowry is largely paid in cattle, while agriculturalist communities combine money with cattle or other livestock. Although common in South Sudanese communities, dowry payments vary depending on ethnic group, social status, and family wealth.⁵⁵ According to Ayen C., from Bor County,

My husband paid 75 cows as dowry for me. We never talked or courted before we got married. When I learned about the marriage, I felt very bitter. I told my father, “I don’t want to go to this man.” He said, “I have loved the cattle that this man has, you will marry him.”⁵⁶

⁵⁴ For comparative analysis see, UNICEF, “The State of the World’s Children: Adolescence, An Age of Opportunity,” 2011, www.unicef.org/sowc2011/ (accessed May 15, 2012), p. 34; International Center for Research on Women (ICRW), “Child Marriage around the World,” 2006, <http://www.icrw.org/files/images/Child-Marriage-Fact-Sheet-Around-the-World.pdf> (accessed September 15, 2012).

⁵⁵ Orly Stern, “‘This Is How Marriage Happens Sometimes’: Women and Marriage in South Sudan,” *Friederike Bubenzer*, p. 10.

⁵⁶ Human Rights Watch interview with Ayen C., Bor Country, March 15, 2012.

Customary practices attach great social and economic importance to dowry payment, and a husband's consequent rights over his wife.⁵⁷ It may increase the likelihood of violence against women by reinforcing gender stereotypes that view the woman as the property of her family or husband. Many women, including Agger M., said that they were beaten if they resisted marrying:

The man I loved did not have cows and my uncles rejected him. My husband paid 120 cows.... I refused him but they beat me badly and took me by force to him. The man forced me to have sex with him so I had to stay there.⁵⁸

Poverty

Poor families may view girls as a financial burden, prompting them to marry them off to alleviate that burden. In a context of limited economic resources and opportunities, girls are also seen as economic assets as their marriages provide cattle, other animals, money, and gifts.⁵⁹ Some families believe that giving away their daughters in marriage may give her a chance for a better life and better prospects for the future.

Girls get married when their families cannot meet their basic needs or pay for them to continue schooling. Some of the girls interviewed told us that they got married hoping to escape poverty. Pontinanta J. has nine siblings and neither of her parents is employed. She told Human Rights Watch that she was married in 2006 at the age of 13 because “my father did not want to pay my school fees. Sometimes we had no food at home.”⁶⁰

Tradition and Culture

Child marriage is deeply embedded in South Sudanese traditions and patriarchal cultures. Girls are generally considered ready for marriage as soon as they reach puberty and they may be pressured to marry as soon as they do. Marriage, especially early

⁵⁷ Small Arms Survey, “Sudan Human Security Baseline Assessment: Women’s Security and the Law in South Sudan,” p. 4.

⁵⁸ Human Rights Watch interview with Ageer M., Bor County, March 15, 2012.

⁵⁹ The study by NPA and others in 2010 and 2011 found that bride wealth has become an economic undertaking for many families, and that it had gone up 64 percent compared with 1983, and 44 percent compared with the end of the war in 2005. NPA, “Gender-based Concerns and Protection in South Sudan,” p. 21.

⁶⁰ Human Rights Watch interview with Pontinanta J., Yambio County, March 7, 2012.

marriage, is considered the best option for girls. Those who delay marrying may be scorned by the community and labeled as “expired” goods.⁶¹

Twenty four-year-old Poni W. was completing her first year of university when Human Rights Watch interviewed her. She is unmarried, and has no children. She told us,

In our village, people have negative attitudes if you are mature and unmarried. People will pester you to get married. When I go home they all ask when I will get married. The boys also abuse you, saying you are expired.⁶²

One significant factor contributing to child marriage is the widespread perception amongst many South Sudanese that teenage pregnancy undermines family honor. Early marriage is viewed as a way to protect girls from pre-marital sex and unwanted pregnancy, which is seen as undermining family honor—potentially reducing the amount of dowry and the family’s economic advancement. A woman interviewed by Human Rights Watch told us,

If you decide to delay your daughter’s marriage, she may get pregnant. The man may not pay many cows. That is why we marry them early. There is a big fear of girls getting pregnant out of wedlock.⁶³

Akuot M. was 15 when she married a 30-year-old man in 2010 and said her father forced her into marriage because

He feared that the *boda boda* men [motorcycle taxi drivers] would impregnate me and reject me. He said I had already reached puberty and was too big to be in school. He said I needed to bring dowry.⁶⁴

When unmarried girls get pregnant, or even if they are suspected of being sexually active, they may be forced to marry the man involved. Poni W. told Human Rights Watch, “In our village, once you get pregnant at home they chase you to go to the boy’s home. They don’t

⁶¹ Orly Stern, “This Is How Marriage Happens Sometimes’: Women and Marriage in South Sudan,” *Friederike Bubenzer*, p. 7.

⁶² Human Rights Watch interview with Poni W. Juba Country, March 20, 2012.

⁶³ Human Rights Watch interview with Yar B., Bor County, March 15, 2012.

⁶⁴ Human Rights Watch interview with Akuot M., Bor County, March 15, 2012.

allow you to stay at home.” Poni told us that her brothers forced her 17-year-old sister to marry the man who impregnated her, although she did not want to and hoped to finish secondary school.⁶⁵

Keji L., 29, wept as she told Human Rights Watch that her uncle forced her to marry her boyfriend when she was 14, convinced that she was sleeping with him after she visited him at his home:

When I returned home my uncle started beating me saying that I have chosen to visit boys so it means I want to get married.... He beat me so badly using a big stick for about an hour ... asking me, “Where is the man you are sleeping with?” Some pieces of the wood got into my face and upper arm near the shoulder and I had to go to hospital [shows scars]. He beat me till we reached the boy’s home, and he left me there.... I feel a lot of pain when I remember this because I was not interested in getting married. He messed my education⁶⁶.

She said her sister was also forced to marry under similar circumstances:

She went to disco and my uncle said she had spent the night with a boy. He told her to go to him. He carried her to the man’s home.⁶⁷

Lack of a Strong Legal and Policy Framework

South Sudan also lacks a strong legal and policy framework, and there is poor enforcement of existing laws to effectively prevent and address early and forced marriages (see Section IV).

⁶⁵ Human Rights Watch interview with Poni W., Juba Country, March 20, 2012.

⁶⁶ Human Rights Watch interview with Keji L., Juba Country, March 20, 2012.

⁶⁷ Human Rights Watch interview with Keji L., Juba Country, March 20, 2012.

III. Impact of Child Marriage on Women and Girls

Child marriage violates a range of human rights recognized under international law. These include: the right to bodily integrity and to be free from violence—as girls may experience verbal, physical, and psychological violence at the hands of spouses and their families and their own families; the right to education—which child marriage interrupts or ends; the right to decide when and who to marry; and the right to health.

Violence

A World Health Organization multi-country study on women's health and domestic violence found that younger women, particularly those aged 15–19, and those with lower levels of education faced a higher risk of physical or sexual violence at the hands of a partner in almost all the countries studied, than older and more educated women.⁶⁸ Research suggests that spousal age difference is also a risk factor- associated with violence and abuse, including marital rape.⁶⁹

Child marriage creates an environment that increases young brides' vulnerability to physical, sexual, psychological, and economic abuse. Because early marriage limits young married girls' knowledge and skills, resources, social support networks, mobility and autonomy, they often have little power in relation to their husband or his family.

In addition, the large age gap between child brides and their spouses makes them less able to negotiate when and how sex takes place in a marriage, including safer sex and family planning.⁷⁰ In South Sudan, a married girl or woman often leaves her maternal home to live with her husband and his family. Power and authority in the home is customarily

⁶⁸ WHO, "Multi-country Study on Women's Health and Domestic Violence against Women: Initial Results on Prevalence, Health Outcomes and Women's Responses: Summary Report," 2005, http://www.who.int/gender/violence/who_multicountry_study/summary_report/summary_report_English2.pdf (accessed February 15, 2012), p. 8. The multi-country study found that in all the countries studies, except Japan and Ethiopia, girls in this age bracket were more vulnerable to physical and sexual abuse by a partner, non-partner, or both, than older women.

⁶⁹ Robert Jensen and Rebecca Thornton, "Early Female Marriage in the Developing World," *Gender and Development*, July 2003, vol. 11, no. 2, pp. 9-19.

⁷⁰ IPPF, "Ending Child Marriage," p. 11; Robert Jensen and Rebecca Thornton, "Early Female Marriage in the Developing World," pp. 9-19.

held by men and older women, and this can place young married girls at greater risk of abuse and violence.⁷¹

Violence to Force Girls to Marry

As this report shows, girls who try to resist early and forced marriages may suffer brutal consequences at the hands of their families. In cases documented by Human Rights Watch, girls were physically assaulted and verbally abused. In some cases, they were held captive and even murdered by their families.

Agnet N. married in 2003 at the age of 15. She told Human Rights Watch that she was in school in year five and wanted to finish her education, but her uncles beat her and her mother to force her to marry a 75-year-old man:

This man went to my uncles and paid a dowry of 80 cows. I resisted the marriage. They threatened me. They said, “If you want your siblings to be taken care of, you will marry this man.” I said he is too old for me. They said, “You will marry this old man whether you like it or not because he has given us something to eat.” They beat me so badly. They also beat my mother because she was against the marriage.

Families also coerce girls into marriage. Anyier D., 18, told Human Rights Watch that her family forced her to marry a 40-year-old man when she was 14. She said,

I wanted to say no, but they cursed me. They really cursed me saying, “If you refuse to get married to this man you will never find happiness in your life for you will never have a home and you will be barren.”⁷²

Eleven girls told us that their families restricted their movements after they became engaged. Atong G., 18, was engaged in July 2011 against her will. She was living with her

⁷¹ ICRW, “Too Young to Wed: Education & Action Toward Ending Child,” 2005, <http://www.icrw.org/files/publications/Too-Young-to-Wed-Education-and-Action-Toward-Ending-Child-Marriage.pdf> (accessed June 12, 2012), p. 11. See also, Robert Jensen and Rebecca Thornton, “Early Female Marriage in the Developing World,” *Gender and Development*, pp. 9-19.

⁷² Human Rights Watch interview with Anyier D., Bor County, March 15, 2012.

parents because her husband-to-be has not completed paying the dowry of 70 cows asked for by her family. She told Human Rights Watch,

I am now confined at home. My family does not allow me to leave home because they think I will get another man.... I don't even go to the market anymore or see my friends.⁷³

Girls Murdered for Resisting Forced Marriages

Girls who refuse to accept or stay in forced marriages, or who elope because they want to marry someone not chosen or approved of by their families, are often at risk of violence and in extreme cases, may be killed by their families or husbands. Although this aspect of gender-based violence is not well documented, local women's rights activists and media reports indicate that there may be many cases of murder that go unreported, especially amongst pastoralist communities that pay dowry in cows.⁷⁴

Local women's rights organizations pointed out to Human Rights Watch that society is generally tolerant of such violence because the girl is seen as having gone against her family's wishes and societal norms.⁷⁵ As a result, perpetrators are rarely held to account, perpetuating a culture of violence against women in the country.

Samuel Dem, senior inspector in the Directorate of Alternative Education, told Human Rights Watch about a girl who was killed for refusing to marry a wealthy old man:

The girl was 17 years old and studying in Rumbek East County in Lakes State.
The father decided to give her in marriage to an old man who had ... 200

⁷³ Human Rights Watch interview with Atong G., Bor County, March 15, 2012.

⁷⁴ For some media reports on such cases, see "South Sudan's Human Rights Commission Condemns Forced Marriages," *Sudan Tribune*, March 8, 2011, <http://www.sudantribune.com/South-Sudan-s-human-rights,38222> (accessed January 31, 2012); Manyang Mayom, "Lakes State: Girl Killed in Forced Marriage Dispute," *Sudan Tribune*, February 11, 2011, <http://www.sudantribune.com/Lakes-state-Girl-killed-in-forced,38046> (accessed January 31, 2012); Paan Luel Wël, "International Women's Day: Promotion of our Women Rights vs. Preservation of Our Cultural Heritage," *Sudan News Agency*, March 15, 2011, <http://www.southsudannewsagency.com/opinion/articles/international-womens-day-promotion-of-our-women-rights-vs-preservation-of-our-cultural-heritage> (accessed January 31, 2012).

⁷⁵ Human Rights Watch interviews with local women's rights organizations New Sudan Women's Federation and Skills for South Sudan, Juba, April 2012; Statement by High Commissioner for Human Rights Navi Pillay, May 11, 2012, <http://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=12148&LangID=E> (accessed February 12, 2013).

cows. The old man had never spoken with the girl. In our area, people don't even inform the girl [if they want to marry her]. So the old man went and asked her family. Her family went to the cattle camp and saw the 200 cows. In the evening, they told the girl, "We want to hand you over to this man." The girl refused. She said, "I don't know this man. I have never spoken to him, and he is not my age." Then some young people took the girl to a nearby forest. They tied her to a tree and beat her up until she died. There are so many other stories.⁷⁶

Suicide

Girls who do not wish to marry or who want to escape forced marriages may also be at risk of suicide. Dem told Human Rights Watch that he is aware of cases of girls who have killed themselves "because they are forced to marry someone that they don't love." He said, "I am from Lakes State, and I know of so many such cases. There are also many cases like this in Warrap and Jonglei."⁷⁷

Girls who are forced into marriage suffer great emotional pain. Agata N. told us about her sister's tribulations after she was forced to marry a boy who had made her pregnant:

My sister is having problems because she is married to a man she doesn't love and the man doesn't love her. She got pregnant and was chased to that boy. He doesn't support her. The child doesn't even look healthy. They don't talk. Sometimes he doesn't sleep at home. He doesn't show concern when the child is sick. My sister says she might kill herself.⁷⁸

Violence in Marriage

The majority of girls and women interviewed by Human Rights Watch said that they were abused by their husbands after the marriage. They told us that they were beaten and

⁷⁶ Human Rights Watch interview with Samuel Dem, senior inspector, directorate of alternative education, Ministry of General Education and Instruction, Juba, September 9, 2012. Lakes State is inhabited mainly by the Dinka ethnic group, a pastoralist community who value cattle a lot. Dowry for the Dinka is paid mainly in cattle.

⁷⁷ Human Rights Watch interview with Samuel Dem, senior inspector, directorate of alternative education, Ministry of General Education and Instruction, Juba, September 9, 2012.

⁷⁸ Human Rights Watch interview with Agata N., Juba County, March 19, 2012.

verbally abused for not being good at house chores, for not conceiving, for asking for financial support, or questioning their husband's fidelity. Eight told us that their husbands kept them from contacting their family or friends, going to the market, or looking for a job. Other girls complained that their husbands constantly accused them of being unfaithful, slept at the homes of other women, or brought other women home.

Kolong K., 30, married at the age of 16. She told Human Rights Watch that she faced many problems in her marriage because she was young and did not know how to run a home:

I did not know anything about marriage when I got married. The man [husband] used to fight me all the time because I was unable to do the house chores. Sometimes he would fight me if I went to visit my lady friends. I liked to play football with other girls. I would go to play and be late to make food and he would beat me. We still fight. It has never stopped.⁷⁹

Aguet told us that her husband also physically abuses her. "My husband beats me because he says I am not working for him well," she said.⁸⁰

Married girls may also suffer abuse by elder co-wives and other relatives. Alek P. guesses she is 16. She told Human Rights Watch that her uncles forced her to marry a 45-year-old man who already had a wife. She said,

The first wife is strong in the house. She saw me as an enemy and she did not accept me. She was harassing me all the time and even beat me, so I left.⁸¹

Christina G., 13, said she got married to escape from her alcoholic and violent parents. She now faces violence from her husband and father-in-law:

My husband is a casual worker but he does not support us. He is not at home a lot of times and does not tell me where he goes. If he comes home and does not find food, he quarrels and beats me. I tell him I don't have

⁷⁹ Human Rights Watch interview with Kolong K., Rokon County, March 22, 2012.

⁸⁰ Human Rights Watch interview with Aguet N., Bor County, March 15, 2012.

⁸¹ Human Rights Watch interview with Alek P., Bor County, March 15, 2012.

money to buy food and he asks why I cannot go to the bush like other women to collect greens and cook them. But I don't know what greens to get. Sometimes I even sleep hungry. I cry a lot and I regret why I got married.

I live with my husband's family. My father-in-law also quarrels [with] me about lack of food in the house and says his son married a lazy woman. I sell firewood to make money. Sometimes I get two or five pounds in a day and sometimes I don't sell. At home I had problems, and here I have more problems. I will persevere in the marriage as I have nowhere to go.⁸²

Some of the girls and women interviewed said that their husbands did not allow them to leave home, or to visit friends. Gloria C., pointing to a scar on her right hand below the elbow, told us,

My husband told me not to go to the market, visit friends or my relatives. If I did, he would quarrel [with] me and beat me. One time he was beating me and the wood broke and got into my hand.⁸³

Marital rape is common in South Sudan, although, as earlier noted, it is not recognized in law. Seven of the girls whom Human Rights Watch interviewed said their husbands had forced them to have sex. Ageer M. told us her husband raped her, aided by his brothers:

I had refused to have sex with him, but he forced me. My brothers-in-law used to lock me up in the house during the day so that I don't go anywhere, and so that I can have sex with him.⁸⁴

Margaret B. told Human Rights Watch that her husband physically, emotionally, and sexually abused her. She said,

I had fibroids and was in a lot of pain. Sex was painful. If I told my husband I had pain, he would get out shouting that he was going to look

⁸² Human Rights Watch interview with Christina G., Yambio County, March 8, 2012.

⁸³ Human Rights Watch interview with Gloria C., Yambio County, March 7, 2012.

⁸⁴ Human Rights Watch interview with Ageer M., Bor County, March 15, 2012.

for sex elsewhere because I had refused him. Sometimes he would have sex with me anyway.⁸⁵

Leaving Violent Marriages

Victims of early and forced marriages may be unable to leave abusive marriages because of economic pressures, lack of family support, and other social circumstances, worsening their vulnerability. Ayen C., 21, told Human Rights Watch that she married at 14:

My in-laws were abusing me saying, “We have given out our cows for you and you are not producing.” My husband was also complaining that he had wasted his cows on me and I could not give him children. He talked with bitterness, always complained, and sometimes was verbally abusive. I was very sad, very stressed. I had nowhere to go. I could not go to my father because it is him who had forced me to get married. I decided to stay even if it meant dying in the home. Even if he had been beating me, I would have stayed because in our culture people stay in marriages with problems.⁸⁶

Penina W. spoke about her abusive marriage and her difficulty getting help:

After a few months of getting married, he became very different. He did not allow me to go out to the market or to visit my friends and relatives. If he saw me talking to my friends, he got upset and quarreled or beat me. I could not talk to friends whom I knew before marrying him, and this was making me very sad. Life was very difficult for me. I told my uncle about these problems and he said since I am married I should take care of my problems. I went to the headman and the headman told me to go back to my husband and sort out our problems.⁸⁷

⁸⁵ Human Rights Watch interview with Margaret B., Yambio County, March 7, 2012.

⁸⁶ Human Rights Watch interview with Ayen C., Bor County, March 15, 2012.

⁸⁷ Human Rights Watch interview with Penina W., Yambio County, March 7, 2012.

Limited Literacy, Access to Education

My father refused me to go to school. He said it is a waste of money to educate a girl. He said marriage will bring me respect in the community. Now I have grown up and I know that this is not true. I cannot get work to support my children and I see girls who have some education can get jobs.
—Mary K., Yambio County, March 7, 2012

The 2008 Child Act and Transitional Constitution (articles 14 and 29) provide for the right to free and compulsory primary education for all citizens without discrimination, including on the basis of gender, among other grounds.⁸⁸ It states that no child shall be subjected to exploitative practices or abuse, harmful to his or her education, health or wellbeing.⁸⁹

Child marriage frequently interrupts girls' education or deprives them of it altogether. Most of the girls and women interviewed—43 out of 61— who had attended school, left after three to five years of primary education. Mary K., from Yambio County, said,

My father refused me to go to school. He said it is a waste of money to educate a girl. He said marriage will bring me respect in the community. Now I have grown up and I know that this is not true. I cannot get work to support my children and I see girls who have some education can get jobs.⁹⁰

The Ministry of Education told Human Rights Watch that they do not collect data on the number of girls who drop out of school to get married or due to pregnancy.⁹¹ However, the director general for education in Western Equatoria State said that despite the lack of statistics, “from what we see in schools, drop-out rates due to marriage and pregnancy are very high.”⁹² A head teacher at a school in Bor County, Jonglei State, told us,

Parents sometimes don't allow girls to attend school. There are very many girls dropping out because of marriage. Dropout rates are very high once

⁸⁸ Transitional Constitution, art. 29 (1).

⁸⁹ Ibid., art. 17 (1d).

⁹⁰ Human Rights Watch interview with Mary K., Yambio County, March 7, 2012.

⁹¹ Human Rights Watch interview with Michael Jalom, director general for education in WES, Yambio County, March 12, 2012.

⁹² Ibid.

they reach teenage years, especially between ages 15 and 17. I have not seen many that drop out to stay at home. Most drop out to get married.⁹³

Out of the 61 girls interviewed who had been in school, 39 told us that they had dropped out to get married. Fourteen had dropped out due to pregnancy.

According to Alfred Lodiong, deputy director of the Directorate of Gender Equity and Social Change, part of the Ministry of General Education, Juba,

Parents sell their girls. They don't value education; they value cows. The question is how to make them understand that education is more valuable than cows.⁹⁴

Some parents keep girls out of school, especially after they have reached puberty, for fear that schooling may expose them to risks of premarital sex and pregnancy that would decrease their chances of getting married or fetching a high dowry upon marriage. One woman told us, "Sometimes a girl becomes big in school and boys start noticing her. Bad things can happen, so it is better she gets married."⁹⁵

There are also fears that education makes girls "strong headed" or less traditional so that they do not make "good" wives. A member of a group of elders that we interviewed about their views on girls' education, told us,

Education is not good. It brings much freedom to the woman, and she will not listen to you. You can even lose a woman you have married with so many cows because of education.⁹⁶

Human Rights Watch interviewed 15 girls who were married and in school attending alternative education programs. However, the majority of girls we spoke to had dropped

⁹³ Human Rights Watch interview with Jacob Malual, head teacher at Mamer Primary School in Kohlnyang, Bor County, March 14, 2012.

⁹⁴ Human Rights Watch interview with Alfred Lodiong, deputy director, Directorate of Gender Equity and Social Change, Ministry of General Education, Juba, September 10, 2012.

⁹⁵ Human Rights Watch interview with Rebecca Deng, community member, during an FGD with women in Bor County, March 14, 2012.

⁹⁶ Human Rights Watch interview with Chief Mandit Ber during a FGD with chiefs and elders, Bor County, March 14, 2012.

out of school and said it was difficult to continue school after marriage or becoming pregnant. Some of the reasons given by girls were lack of money to pay school fees, lack of child care and unavailability of adult classes, or the need to do chores. Others said that their husbands would not allow them to continue school after marriage alleging that they were unfaithful if they insisted on going to school.

Atong G. told us, “I was going to school in class five. I stopped school after getting engaged because my husband said other men will see me.”⁹⁷

Those girls and women who had not returned to school after marriage said they regretted not being able to complete their education. Akur L., 19, was married at the age of 13 in 2003 and dropped out of school. She told Human Rights Watch,

My uncles forced me to marry a man who was old enough to be my grandfather. I was going to school and in class six. I liked school. If I was given a chance to finish school, I would not be having these problems, working as a waitress and having separated from my husband.

Akur said she wanted to return to school but there was no school for adult learners in her area of Jonglei state.⁹⁸

Anyier D., 18, told Human Rights Watch that her uncles forced her to leave school in 2008 to marry an old man she did not know. She was 14, and in class one. She said,

I would wish to return to school even if I have children. People think that I am happy but I am not because I don’t have an education. I don’t have something of my own and I am only cleaning offices. If I had gone to secondary school, I would get a good job.⁹⁹

The girls and women interviewed by Human Rights Watch who had returned to school following pregnancy or marriage enjoyed learning and appreciated the benefits that would

⁹⁷ Human Rights Watch interview with Atong G., Bor County, March 15, 2012.

⁹⁸ Human Rights Watch interview with Akur L., Bor County, March 15, 2012.

⁹⁹ Human Rights Watch interview with Anyier D., Bor County, March 15, 2012.

come with having an education. Penina W., 21, told Human Rights Watch why she decided to return to school:

I stayed with my husband for four years but because I did not conceive, he became distant and abusive. The fifth year he chased me away. I got another boyfriend who is the father to my young boy. But he has refused to marry me or take care of the child. I stay with my younger sister and my child. My sister finished senior three and got a job. So I decided to return to school so that I can also get education and get a job.¹⁰⁰

Penina completed primary school and passed her final examination. She plans to go to secondary school, although she said she did not have the school fees or someone to look after her baby while she goes to school. She is cultivating food crops that she sells and uses the money to buy food and save for her school fees.

Denial of the Right to Full and Free Consent to Marriage

If someone comes in the right way and asks for the hand of the girl in marriage, we can give out the girl. The problem is when she decides on her own to get married to someone who is not chosen by the family.

—Chief Akech Malek, Bor County, March 14, 2012

The Transitional Constitution gives women the right to consent to marriage, but this legal provision is largely symbolic.¹⁰¹ As testimonies in this report show, girls are commonly forced by their families to marry.

Generally, child marriage involves the imposition of a life-long partner on children. Child marriage is also considered forced marriage since children are not legally capable of giving free, full, and informed consent to marriage.¹⁰²

¹⁰⁰ Human Rights Watch interview with Penina W., Yambio County, March 7, 2012.

¹⁰¹ Transitional Constitution, art. 15.

¹⁰² UNICEF Innocenti Digest, “Early Marriage: Child Spouses,” No. 7, March 2001, <http://www.unicef-irc.org/publications/pdf/digest7e.pdf> (accessed April 20, 2012), p. 4.

In terms of international law, older children have the right to participate in decisions about whom and when they marry as soon as they have the maturity to understand the implications of their decisions.¹⁰³

But no matter what their age, children's traditionally low status in many African societies and well-entrenched cultural beliefs undermine their ability to oppose the wishes or opinion of a parent, guardian, or elder. Some families in South Sudan coerce or force girls into marriage and use violence, threats of death or being cursed, or the need to protect family honor and family well-being.

Almost all the girls we interviewed, including those aged 17-18, told Human Rights Watch that they had been forced into marriage; and that no one had asked for their views on whether they wanted to get married or to the chosen person.

Furthermore, many of the girls we interviewed told us that no one had explained to them the responsibilities that come with marriage, including issues around sexual relations, childbirth and childcare, and other family obligations.

Rosa B. married before she had reached puberty. She told Human Rights Watch,

I did not know what is involved in marriage. I had been hearing other women talking about having sex between men and women when they are married. I was scared of having sex for the first time. I was not ready for it.

Rosa said when she asked her elder sister about what to expect in marriage, she advised her, "to provide whatever my husband says, and to respect and obey him and his relatives because he had paid dowry for me."¹⁰⁴

¹⁰³ Article 12 of the Convention on the Right of the Child notes that States parties shall assure a child who is capable of forming his or her views the right to freely express those views in accordance with the age and maturity of the child. CRC, art. 12. However, there are challenges in determining the age a child should be before he or she can 'consent' fully and freely to marriage and sexual relations, and with full understanding of the implications of such a union, including the risks of underage marriage. See, UNICEF Innocenti Digest, "Early Marriage: Child Spouses," No. 7, March 2001, <http://www.unicef-irc.org/publications/pdf/digest7e.pdf> (accessed April 20, 2012), pp. 9-11 for a discussion on the difficulty of determining full and free consent to marriage for different categories of children under the age of 18.

¹⁰⁴ Human Rights Watch interview with Rosa B., Yambio County, March 9, 2012.

Penina W., 21, married at 14 and is separated from her husband. She said,

I did not know anything about what it means to be married. I got married because I was hoping that the man will support me because I was suffering at home.¹⁰⁵

Health Consequences

Early marriage contributes to violations of the right to health.¹⁰⁶ It puts girls at greater risk of dying or ill-health as a result of early pregnancy and childbirth.¹⁰⁷ Their children also face higher mortality rates.¹⁰⁸ These increased risks are not only related to age, but also to girls' low levels of education, low social and economic status, and lack of access to health related information and services.¹⁰⁹ Household responsibilities and other factors that may cause stress and anxiety may further aggravate the negative outcomes of pregnancy.¹¹⁰

When they are physically more mature, girls have a better chance of surviving pregnancy and are able to better care for their children.¹¹¹ Studies have also shown that girls who continue

¹⁰⁵ Human Rights Watch interview with Penina W., Yambio County, March 7, 2012.

¹⁰⁶ According to the World Health organization, reproductive health and rights, "... implies that people are able to have a responsible, satisfying and safe sex life and that they have the capability to reproduce and the freedom to decide if, when and how often to do so. Implicit in this are the right of men and women to be informed of and to have access to safe, effective, affordable and acceptable methods of fertility regulation of their choice, and the right of access to appropriate health care services that will enable women to go safely through pregnancy and childbirth and provide couples with the best chance of having a healthy infant." WHO, "Reproductive Health," undated, http://www.who.int/topics/reproductive_health/en/ (accessed October 20, 2012).

¹⁰⁷ Poor health remains a significant problem in developing countries. It was estimated that 287 000 maternal deaths occurred worldwide in 2010. WHO et al., Trends in Maternal Mortality, 1990-2010," p. 1.

¹⁰⁸ Young mothers are less likely to get prenatal care and often do not have enough information about proper nutrition while pregnant to nurture themselves and babies. Babies born to young mothers run a 30 percent increased risk of dying during their first year of life. Babies may have a low birth weight as a consequence of their mother's poor nutritional status while pregnant, and babies with low birth weight are 5 to 30 times more likely to die than babies of normal weight. See Population Action International, "How Family Planning Protects the Health of Women and Children," May 1, 2006, http://www.populationaction.org/Publications/Fact_Sheets/FS2/How_Family_Planning_Protects_the_Health_of_Women_and_Children.pdf (accessed March 12, 2012), pp. 1-2; Nawal M. Nour. "Health Consequences of Child Marriage in Africa," November 2006, http://wwwnc.cdc.gov/eid/article/12/11/06-0510_article.htm.

¹⁰⁹ WHO and UNFPA, "Married Adolescents: No Place of Safety," 2007, http://whqlibdoc.who.int/publications/2006/9241593776_eng.pdf (accessed October 2, 2012), p.22.

¹¹⁰ Save the Children, "State of the World's Mothers: Children Having Children, 2004" May 2004, http://www.ungei.org/resources/files/SaveTheChildren_SOWM_2004_final.pdf (accessed October 10, 2012) p. 14.

¹¹¹ The organization Save the Children has found that higher levels of education also contribute to an increased use of contraception and reduced rate of infant mortality. Save the Children, "Women on the Front Lines of Healthcare: State of the World's Mothers, 2010," <http://www.savethechildren.org/atf/cf/%7B9def2ebe-10ae-432c-9bdo-df91d2eba74a%7D/SOWM-2010-Women-on-the-Front-Lines-of-Health-Care.pdf> (accessed April 11, 2012), p. 32.

their education, especially until completing secondary school, are more likely to invest in their own children's education, enabling future generations to become economically independent and positive contributors to society.¹¹² On the other hand, children of young and illiterate mothers tend to face their same cycle of childhood deprivation and abuse.¹¹³

Obstetric Fistula

Early marriage is a major risk factor for fistula development—a devastating childbirth injury that leaves its victims with urine and/or fecal incontinence that causes infection, pain, and bad smell, and triggers stigma and the breakdown of marriages, loss of employment, and challenges in family and community life.

The risk of obstetric fistula is heightened by young married girls' poor socio-economic status, and lack of education and access to appropriate reproductive and maternal health care. However, studies show that physical immaturity is the key risk for girls under 15¹¹⁴ because their pelvises are not fully developed and thus susceptible to obstructed labor—the main cause of fistula.¹¹⁵

About 5,000 girls and women in South Sudan suffer from fistula each year.¹¹⁶ A doctor at Juba teaching hospital told Human Rights Watch that although the hospital lacks accurate fistula statistics, they see many cases of teenagers with obstructed labor, not only from Juba but other states in the country.¹¹⁷ “I see many girls who come here with obstructed labor. You know their bodies are still young,” a midwife at a government hospital in WES told us.¹¹⁸

¹¹² UNICEF, *The State of the World's Children*, p. 64; UNICEF Innocenti Digest, “Early Marriage: Child Spouses,” No. 7, March 2001, <http://www.unicef-irc.org/publications/pdf/digest7e.pdf> (accessed April 20, 2012), p. 16.

¹¹³ UNICEF Innocenti Digest, “Early Marriage: Child Spouses,” No. 7, March 2001, <http://www.unicef-irc.org/publications/pdf/digest7e.pdf> (accessed April 20, 2012), p. 16.

¹¹⁴ *Ibid.* p. 12.

¹¹⁵ The term obstructed labor indicates a failure to progress due to mechanical problems such as a mismatch between the size of the presenting part of the fetus and the mother's pelvis. Some mal-presentations such as a brow presentation or a shoulder presentation will also cause obstruction. Pathological enlargement of the fetal head and ineffective uterine contractions may also obstruct labor. These different causes of difficult labor may co-exist. J. P. Neilson et al., “Obstructed Labour: Reducing Maternal Death and Disability during Pregnancy,” *British Medical Bulletin*, vol. 67 (2003), pp. 191-204; Nawal Nour, “An Introduction to Maternal Mortality,” *Journal of Obstetrics and Gynecology*, vol. 1, no. 2 (2008), pp. 77-81; and WHO, “Obstetric Fistula: Guiding Principles for Clinical Management and Programme Development,” 2006, http://www.endfistula.org/webdav/site/endifistula/shared/documents/publications/who_obstetric_fistula.pdf (accessed September 15, 2012), p.3.

¹¹⁶ *Ibid.*

¹¹⁷ Human Rights Watch interview with Dr. Mergani Abdalla Mohamed, Juba Teaching Hospital, March 17, 2012.

¹¹⁸ Human Rights Watch interview with a senior midwife at Yambio state hospital, Yambio County, March 8, 2012.

Victoria J. married in 2009 at 14, and became pregnant shortly thereafter. She said,

I started labor in the morning on a Friday.... The nurse kept checking and saying I will deliver safely. On Monday she said I was weak. The doctor decided to operate on me. At operation they found the baby was dead. The doctor said the baby had died due to the long labor. After that I found out that urine was coming out all the time.¹¹⁹

Limited Access to Contraception

A midwife at a government hospital told Human Rights Watch that it was difficult to offer family planning services to women because many husbands want their wives to continue having children. She told us,

It is very difficult to offer family planning services to women. Sometimes husbands come and complain that their wives are not giving birth because we are giving them family planning. Even some of my colleagues don't want to do it because of this intimidation.¹²⁰

Margaret B. told Human Rights Watch that her husband forced her to stop using contraception although she was not ready to have another child:

After the third child I used an injectable contraception. My husband allowed me to take it two times then he refused saying that he wanted another child. I was not ready. I had just had surgery to remove fibroids. But he is my husband and I had to obey him. So I stopped the injection and that is when I got pregnant with my fourth child. I had many problems with the pregnancy.¹²¹

Limited Access to Health-Related Information, Inability to Make Healthcare Decisions

Many of the girls we interviewed lacked accurate reproductive health knowledge. We spoke to some girls who displayed a lack of basic knowledge about sexuality and contraception, while others said they did not have this knowledge before getting married.

¹¹⁹ Human Rights Watch interview with Victoria J., Yambio County, March 8, 2012.

¹²⁰ Human Rights Watch interview with a senior midwife at Yambio state hospital, Yambio County, March 8, 2012.

¹²¹ Human Rights Watch interview with Jane F., Yambio County, March 8, 2012.

Girls told us they did not discuss sex with their parents, and those that had been to school said they did not receive sex education. Gloria C. said she got pregnant at 14 or 15. “I didn’t know that I would get pregnant by having sex,” she said. “I was just playing sex.”¹²²

A nurse in Western Equatoria State commented about this issue in her community:

Girls here are very sexually active. They say they are “playing” sex (South Sudanese common expression for sexual intercourse). But they have very little information about pregnancy and contraception.¹²³

Human Rights Watch interviewed 10 girls who told us that they became pregnant after their first sexual encounter. All believed that they would not get pregnant because it was their first time. All of them said they did not have information on family planning and contraception. Other girls who were married also told us they did not have this information.

Young married girls also have limited ability to make decisions about their health and that of their children. They are relatively powerless in their families, and often lack the autonomy, information, and economic means to access contraception and other reproductive health care. Violence and discrimination in the home may also limit their uptake of reproductive and sexual health services, even in cases of emergency.

Rosa B., 20, thinks she married at the age of 12. She told Human Rights Watch that she gave birth to her first child at home because, “My husband refused me to go to the hospital. He told me there is an old woman who helps other women and I will use her.”¹²⁴ Rosa said that after delivery, her right leg was paralyzed and she could not walk well for two months. She told us that her husband sought traditional treatment for her although she kept asking him to take her to the hospital.

Christina G. is also not sure of her date of birth but says her mother told her she is 13. She told Human Rights Watch that they live near a hospital, but when she went into labor,

¹²² Human Rights Watch interview with Gloria C., Yambio County, March 7, 2012.

¹²³ Human Rights Watch interview with a senior midwife at Yambio state hospital, Yambio County, March 8, 2012.

¹²⁴ Human Rights Watch interview with Rosa B., Yambio County, March 9, 2012.

My husband refused me to go to hospital. I labored at home for three days with a traditional birth attendant before he agreed to take me to hospital. The doctor said my body was too young. He operated on me to remove the baby.¹²⁵

Mental Health Consequences

Child marriage deprives girls of their childhood and adolescence, a time necessary to develop not only physically, but emotionally and psychologically. It burdens them with adult responsibilities for which they are unprepared, including those related to marriage and childbearing. The practice curtails girls' freedom and denies them the chance to develop their intellect and independent identities.¹²⁶

Early marriage can have profound psychological health consequences for girls, particularly younger girls, and these consequences may impact women throughout their lives. Early marriage inflicts great emotional stress on girls who are forced to move from their parents' home to that of their husband and in-laws, who are strangers to them. They are obliged to have sexual relations, although many might not be fully developed physically and emotionally.

As discussed, young married girls may suffer social isolation and restricted freedom of movement. They may have few options to socialize and participate in public life, and experience feelings of worthlessness, depression, and suicidal thoughts.¹²⁷ They are expected to take on household chores and care for children and families while themselves children. They are denied access to education, and often lack support when faced with marital problems.

Many of the girls and women interviewed said they were unhappy in their marriages and regretted having been married early. Many broke down crying during the interviews when they recalled the suffering they had endured in the forced marriages, and their lost opportunities for happiness and personal development.

¹²⁵ Human Rights Watch interview with Christina G., Yambio County, March 8, 2012.

¹²⁶ UNICEF Innocenti Digest, "Early Marriage: Child Spouses," No. 7, March 2001, <http://www.unicef-irc.org/publications/pdf/digest7e.pdf> (accessed April 20, 2012), p. 12. As mentioned earlier in the report, girls in South Sudan are considered ready for marriage when they reach puberty. A significant number of girls interviewed by Human Rights Watch were married before the age of 15. The CRC covers everyone up to age 18 and regards childhood as a process of development – one that does not end with a definitive physical maturity marker.

¹²⁷ Population Council, "Understanding Sex Without consent Among Young People: A Neglected Priority," Brief no. 7, July 2007, http://www.popcouncil.org/pdfs/TABriefs/PGY_Brief07_NonconsensualSex.pdf (accessed September 12, 2012), p. 3.

IV. No Protection, No Justice for Child Marriage Victims

Girls and women in South Sudan have few rights in their homes and in marriage, and face many risks when they resist or try to leave forced marriages.

Many of the girls interviewed by Human Rights Watch said they had tried to reason with their families when faced with imminent marriage to someone they did not wish to marry. When these efforts failed—and they did in most cases—many had no choice but to get married. Some women and girls try at great personal risk to avoid forced and early marriages. Some seek help from their families, traditional authorities or elders. Others flee to religious leaders or human rights organizations, or look for assistance from government officials and the police. Even if they manage to flee, they face many hurdles to getting protection and accessing justice, and rarely get the help they need.

There are many weaknesses in the administration of justice in South Sudan, such as lack of infrastructure, resources, adequate laws, and well-trained personnel.¹²⁸ Generally, these weaknesses affect women's ability to obtain justice for gender-based crimes, including forced marriages. Statutory courts are often inaccessible; they are far away and women lack legal counsel to help them navigate the system, or the necessary protection to lodge complaints. As early and forced marriages are accepted in many South Sudan traditions and cultures, customary courts offer limited hope for escape. With both statutory and customary courts staffed almost entirely by men, women encounter discrimination when seeking justice in either forum.

¹²⁸ See Human Rights Watch, "Prison Is Not for Me."

Rachel B.'s Story: Failed by the Government and Forced into Marriage

Fifteen-year-old Rachel B. loved to study.¹²⁹ When Human Rights Watch interviewed her in March 2012 she was attending school. But she told us her dream of getting a good education began to fade in 2011 when her parents decided to marry her to a man who was about 40 years old and already had a wife and children:

My family and the man's family got together and agreed on the dowry of 26,000 pounds [about \$7,429], which was paid in December 2011. Afterwards, my mother and father came to me and said, "Today you are going to your house [getting married]."

I told them I didn't want to get married because I wanted to study. They insisted I had to marry him because he had paid dowry. They forcefully took me to his house in New Site.¹³⁰

I spent three days there. I was crying all the time. On the third day I escaped and returned home. My father called my mother and said I should stay at home until he returned home to settle the matter. I told them that I would kill myself if I had to go [with the man her parents wanted her to marry].

Rachel took the advice of one of her friends and sought help from the Human Rights Commission (HRC). The HRC sent her to a center for vulnerable children managed by the Central Equatoria State Ministry of Social Development where she stayed for two weeks. She was then told to return home to her family. In March 2012, when Human Rights Watch first interviewed her, she was living at home, under constant threat, and desperate to continue her education. She told us:

I don't feel safe at home. Every day [my family] are fighting me, and I believe that they can kill me. I am always thinking about how unsafe I am, even when I am at school. I cannot concentrate in class because of these fears. I also fear that the man can kidnap me on my way to school, rape me, or he can beat me or kill me. I want the government to help me, to send me somewhere where I can be safe and study. If there was a shelter where I would be safe, I would go there.

¹²⁹ Human Rights Watch met Rachel through the South Sudan Human Rights Commission who had tried unsuccessfully to help her leave the forced marriage.

¹³⁰ An area outside Juba and the location of South Sudan's military headquarters, where many soldiers reside.

Her family continued with their plan to have her married. Rachel told Human Rights Watch about the marriage when we interviewed her again:

In April [2012], my uncle's son came to our home and said that he wanted me to go to my husband. He beat me and told me that he would kill me if I refused to get married to the man. He said the family had used the money my husband gave and were not in a position to repay, so I had to marry him. He took me to my uncle's home. There, my uncle beat me, tied my ankles and wrists with metal wire, and locked me inside a room. They took my phone and people at the home watched me constantly. I was not allowed to go to school.

Rachel escaped and again sought help from the HRC who placed her at a center for girls, where she remained for two weeks. In mid-April, Rachel's family went to the offices of the HRC, armed, and demanded that Rachel be released to them. They eventually took her away.

The HRC referred Rachel's case to the Ministry of Justice where prosecutors said they were pursuing her case, though no charges have ever been brought against her family members, nor any arrests made. After her second attempt to escape, Rachel made a statement to the police, which included testimony about the abuse she had suffered.

Despite the involvement of multiple government agencies in Rachel's case, none were able to protect her and her whereabouts at time of writing were unknown to Human Rights Watch. Officials from the HRC and the government told Human Rights Watch that they believe Rachel is married and living with her husband.

Impunity for Sexual and Gender-Based Crimes

There is critical lack of implementation of women's human rights among the police and judiciary in South Sudan, which makes bringing perpetrators to justice very difficult and encourages impunity for these crimes.¹³¹ Police insensitivity can be a significant barrier for women who are seeking protection. The newly developed Special Protection Units (SPUs) seek to address this shortfall, but as mentioned, are plagued by a lack of trained personnel and are not available in all police stations.

¹³¹ NPA, "Gender-based Violence and Protection Concerns in South Sudan, pp. 39-40; Ministry of Gender, Child and Social Welfare, "Comprehensive Country Gender Assessment," pp. 9 and 28.

Across the country, law enforcement services are weak and police are under-trained and under-resourced.¹³² In particular, aside of the SPUs, police are given little training on how to handle cases of gender-based violence and for the most part, they have little knowledge of women's rights.

Most police officers are men, many of whom are older, uneducated former soldiers with conservative views about women's place in society. Reports by local and international organizations indicate police often refuse to assist women who report domestic abuse, claiming that this falls outside of their jurisdiction and sending them home to address the issue within their families.¹³³

A recent study by the Ministry of Gender, Child, and Social Welfare noted the lack of urgency by the police and government prosecutors—key institutions responsible for addressing gender-based crimes in terms of protection, investigation, prosecution and enforcement—in dealing with cases of gender-based violence. It stated,

Both institutions are ... mostly unaware of the magnitude and manifestations of gender based crimes.... The result has been de-prioritization of SGBV offences like rape and concentration on cases like murder, which the public attorney thought [were] more important. Thus, few gender-related cases reach [the] court or are prosecuted. For example, those who kill girls ... engaging in commercial sex go scot free. A man who beat his sister to death for refusing to marry an elderly man was released the same day without any charges.¹³⁴

Lack of Shelters

South Sudan has no shelters designed to assist survivors of gender-based violence (GBV). As Rachel's case demonstrates, lack of shelters or safe spaces where girls can seek protection and help when at risk of forced marriage, or when they run away from them is a

¹³² Human Rights Watch, *"Prison Is Not for Me,"* pp. 23-25.

¹³³ Small Arms Survey, "Sudan Human Security Baseline Assessment: Women's Security and the Law in South Sudan," p. 3; D'Awol, Anyieth, "Sibu ana, sibu ana" ("Leave Me, Leave Me"): Survivors of Sexual Violence in South Sudan,' pp. 53-77; NPA, "Gender-based Violence and Protection Concerns in South Sudan, pp. 39-41; Ministry of Gender, Child and Social Welfare, "Comprehensive Country Gender Assessment," pp. 65-66.

¹³⁴ Ministry of Gender, Child and Social Welfare, "Comprehensive Country Gender Assessment," p. 69.

key barrier to effectively responding to forced marriages and domestic violence generally. Girls who resist forced marriages may face physical, verbal, and psychological violence from their families or husbands and are not safe at home.

A center run by an NGO, Confident Children out of Conflict, has occasionally accommodated victims of forced marriage. Another small center, known as Toto-Chan, run by the Central Equatoria State Ministry of Gender and Social Welfare has also housed such girls, including Rachel. A ministry official however noted that “it is not our mandate to keep such girls. We are not a safe house.”¹³⁵ The Juba Orphanage has also served as a temporary refuge in at least three cases of which Human Rights Watch is aware. The supervisor emphasized however that the center is in fact intended to provide long-term accommodation for orphans.¹³⁶

Donors and some government officials have expressed concerns about how shelters can respond to GBV cases. While some support their establishment, others fear that women there can more easily be targeted by their husbands and families. For example, Konga said the following about lack of shelters:

We would like the government to look into establishing a center where cases such as Rachel’s can be referred. Right now, girls who are being forced into marriage have nowhere to go. So they can’t report because even if they do so there is no way of protecting them. Mostly they go to the police and don’t get the services they need. So they go home and get married. Girls need support when they run. Sometimes they come with only one dress and need sanitary pads. Some children are really traumatized by the beatings and need time to heal. If there is a place where people can report GBV cases, many more will come if they are assured of confidentiality and security.¹³⁷

Human Rights Watch asked the head of the women and juvenile justice department in the national Ministry of Justice about protection for girls who bring complaints against their own families in cases of forced marriage. He commented,

¹³⁵ Human Rights Watch interview with Emily Konga, senior inspector for gender in the Ministry of Gender and Social Development, CES, Juba County, March 20, 2012.

¹³⁶ Ibid.

¹³⁷ Ibid.

There is no solution in such cases. In case a child goes to the prosecuting attorney and opens a case against her own family or guardians, where is she going to stay? This is something the Ministry of Justice, UNICEF, and the Ministry of Social Welfare need to deliberate on.¹³⁸

Lack of Coordination amongst Relevant Government Ministries and Agencies

Another problem in protecting victims of forced marriage and enabling them to access justice is lack of coordination between relevant government ministries. There are no guidelines on how the authorities should handle these cases, and ministries respond to cases in an ad hoc manner, often without offering any real solutions to the girls who go to them for protection. In the end, their inefficiency helps perpetuate child marriages and related abuses against girls.

In the absence of a coordinated and procedural response to cases of forced marriage—and the lack of a clear delegation of responsibilities to specific police or health authorities—the ad hoc efforts of government ministries have thus proved inadequate due to the failure to develop a comprehensive strategy detailing specific and targeted action.

For example, Rachel's case was handled by the national ministries of Gender, Child and Social Welfare, Justice, and that of Gender and Social Development in Central Equatoria State. Lack of coordination between them, including ineffective coordination with the Human Rights Commission, meant that Rachel did not get help from any of them. This gap also undermines accountability as the roles of each ministry are not clear.

For example, the director of child protection at the Central Equatoria State Ministry of Gender and Social Development blamed the Ministry of Justice for Rachel's forced marriage:

Rachel was a child who suffered so much from the threat of marriage. She wanted to go to school, but this dream was taken from her. We tried to solve this case, but we couldn't. The Ministry of Justice should have stopped Rachel from being forced to marry that man, but they didn't. Instead, they returned her back to her family. They should review their laws

¹³⁸ Human Rights Watch interview with Angelo Sebit, head of women and juvenile justice department, Ministry of Justice, Juba, September 6, 2012.

and cooperate with the Ministry of Social Development in order to solve such issues.¹³⁹

The SSHRC also felt that the Ministry of Justice had failed to take effective steps to protect Rachel from violence and the marriage.

Poor Monitoring of Cases

Government institutions do not adequately monitor the outcome of cases that they handle. Officers, particularly social workers, in the state Ministries of Social Welfare, should ensure that they have sufficient contact information to follow up on and visit girls whose cases they have handled. Where courts do issue restraining orders or order that a marriage should not take place, police should monitor compliance with the court order.

Currently, although government institutions may claim to have resolved cases, they cannot be certain without adequate follow up with the girls on whether they were later married. For example, the Central Equatoria State Ministry of Gender and Social Welfare told Human Rights Watch that they had intervened in a few cases of forced marriage, although they were unaware of what happened to the girls once they returned to their families:

I have seen three cases of forced marriage. In one case, a school girl was being forced to marry. We kept her somewhere for a week then she was given back to her family who said they would not force her to marry. Up till now I don't know what has happened to her. Her name was Jane, and she was 15 years old and Dinka. There was another 16-year-old Dinka girl called Mary. She was taken back to her family. The family convinced us that they would wait. We don't know where she is now. We have solved these cases peacefully by talking to the parents, but we don't actually know what has happened to these girls.

Gaps in the Law and Conflicts between Laws

South Sudan's national laws have important protections for girls and women.¹⁴⁰ However, South Sudan needs legislation that sets the minimum age of marriage at 18 and protects

¹³⁹ Human Rights Watch interview with Martin Mogga, director of child protection, CES Ministry of Gender and Social Development, Juba, September 4, 2012.

¹⁴⁰ For protections in the Transitional Constitution and the Penal Code, see Chapter I, p. 10.

women's right to choose their own spouse and to enter into marriage with their full and free consent. South Sudan should also take necessary legislative and other measures to ensure that anyone who intentionally forces an adult or a child to enter into a marriage is appropriately penalized, and that marriages concluded under force may be voidable, annulled, or dissolved without undue burden placed on the victim.

The Child Act defines a child as anyone under 18 and states that, "every child has the right to be protected from early marriage."¹⁴¹ The Child Act includes the rights of children to non-discrimination, birth registration, health, education, life, survival and development, an opinion, protection from torture and degrading treatment, and to protection from abuse.¹⁴² Article 22 states that, "Government shall take concrete measures to protect children from all forms of abuse and to ensure that any child who becomes the victim of abuse ... shall be accorded appropriate treatment and rehabilitation."¹⁴³ Article 22 provides that those convicted of abusing a child can be sentenced to 14 years, and article 30 provides that anyone convicted of violating the rights of a child as guaranteed by the Child Act can be convicted and sentenced to up to seven years.

While these articles can be read together to prohibit child marriage and sanction those who force their children to marry, there is a need for clearer and more direct legislation, or at least for the judiciary to clarify how these provisions should be applied through judicial opinions or circulars.

The 2011 Transitional Constitution of the Republic of South Sudan does not set a minimum age of marriage. Instead, it ambiguously states that, "Every person of marriageable age shall have the right to marry a person of the opposite sex and to found a family according to their respective family laws, and no marriage shall be entered into without the free and full consent of the man and woman intending to marry."¹⁴⁴ The Penal Code does not criminalize those who procure a child marriage, but does contain a provision criminalizing "kidnapping or abducting a woman to compel her into marriage."

¹⁴¹ Child Act, art. 23.

¹⁴² Ibid., arts. 6, 9, 11, 12, 13, 14, 15, 17, 21, 22 and 23.

¹⁴³ The abuses mentioned include "all forms of physical or mental violence, injury, abuse, negligent treatment, maltreatment or exploitation ... sexual abuse, exploitation and harassment including, but not limited to rape...." Ibid., art. 36 (3 a and c).

¹⁴⁴ Transitional Constitution, art. 15.

How the current definition of rape applies to sexual intercourse in the context of child marriage is also unclear. Under the Penal Code, 18 is the age of consent to sex. The same article excludes “sexual intercourse by a married couple” from the definition of rape.

These gaps in the law perpetuate discrimination and inequality between men and women in the right to marry and found a family.

Customary Law Challenges

One key source of confusion in South Sudan is how to reconcile the Transitional Constitution’s recognition of customary law as a source of law when confronted with customary practices that are discriminatory, harmful, or otherwise violate the human rights also affirmed by the constitution.

It is, however, clear in the constitution that all laws, whether customary or statutory, are subject to the Bill of Rights.¹⁴⁵ The Child Act provides further support for the non-application of harmful customary practices, such as child marriage, through a provision providing that customary and traditional laws shall be applied “except where those laws are contrary to the best interests of the child.”¹⁴⁶ Unfortunately, neither courts nor the government have provided any guidance as to what constitutes the best interests of the child, for the purposes of the Child Act.

Under the Code of Civil Procedure Act, customary law is the source of law for marriage, divorce, child custody and other family- related issues.¹⁴⁷ The Code of Civil Procedure also includes a caveat that such customs should not be applied if they are “contrary to justice, equity or good conscience.”

¹⁴⁵ Article 10 provides that, except in a state of emergency, “no derogation from the rights and freedoms enshrined in this Bill shall be made. The Bill of Rights shall be upheld, protected, and applied by the Supreme Court and other competent courts.” Article 167(3) states that “courts shall apply customary law subject to this Constitution and the law”.

¹⁴⁶ Child Act, art. 4(4).

¹⁴⁷ Code of Civil Procedure Act states in article six, “Where a suit or other proceeding in a Civil Court raises a question regarding succession, inheritance, legacies, gifts, marriage, divorce, or family relations, the rule for decision of such question shall be: (a) any custom applicable to the parties concerned; provided that, it is not contrary to justice, equity or good conscience and has not been by this, or any other enactment, altered or abolished or has not been declared void by the decision of a competent Court; or, (b) the Sharia Law in cases where the parties are Muslims except so far as it has been modified by such custom as is above referred to.”

While the provisions of the Transitional Constitution, the Child Act and the Code of Civil Procedure offer solutions for how conflicts between customary laws and human rights should be resolved, there are no published court decisions articulating this line of reasoning or offering guidance in interpretation of customary laws consistent with the Transitional Constitution. The Supreme Court has not issued any judicial circulars offering clarification to courts on how to use the provisions of the Transitional Constitution.

A government official commented on the challenges posed by customary law in addressing child marriage, noting,

There is a law, but ... early marriage is a traditional act. If you try to stop it, people will accuse you of wanting to change their culture. Judges are having a hard time passing sentences for early marriage. The Child Act cannot be implemented completely because of tradition.¹⁴⁸

Customary courts are familiar and accessible, and are therefore used by the vast majority of the population including women and girls. They serve as the primary institutional recourse for communities in matters of marriage. But the chiefs who preside over customary courts are usually older men, and their decisions frequently reflect deeply ingrained patriarchal views. They generally do not enforce the same definition of a child as the Child Act. Normally, girls are considered ready for marriage as soon as they reach puberty—at around 12—rather than 18.¹⁴⁹

Customary courts generally favor restorative and consensual solutions over punitive ones. Under customary law, for example, homicide, adultery, theft, and injury may be resolved through awards of compensation, often in the form of cows or other livestock, from the perpetrator to the injured party.¹⁵⁰

¹⁴⁸ Human Rights Watch interview with Martin Mogga, director of child protection, CES Ministry of Gender and Social Development, Juba, September 4, 2012.

¹⁴⁹ South Sudan Human Rights Commission, “2011 Annual Report,” p.32; Child Act, art. 4(4), pp. 2-10.; United Nations Population Fund and DPK Consulting, “Adapting Restorative Justice Principles to Reform Customary Courts in Dealing with Gender-based Violence in Southern Sudan,” May 2008, <http://www.docstoc.com/docs/61181823/ADAPTING-RESTORATIVE-JUSTICE-PRI> (accessed February 11, 2013).

¹⁵⁰ Currently, both statutory and customary courts impose sentences of terms of imprisonment together with customary compensation awards. Human Rights Watch, *Prison is not for Me*, p. 65.

While these are accepted ways of settling disputes within communities, the failure of customary courts to address the criminal elements of certain gender-based crimes leaves victims without an adequate remedy. In Rachel's case, the Ministry of Justice agreed to release her to her family, despite the violence that she faced, because the family said they would settle the issue as a family matter.

While South Sudan is struggling with how to harmonize its plural justice system,¹⁵¹ these legal inconsistencies add to a culture of impunity for violations of women's rights including through child marriage.

Punishment for Adultery and Offences not Defined in Law

Another gap in the law in South Sudan relates to "offences" that do not exist in the Penal Code or in any written form. These include "elopement," "pregnancy," or "playing sex."¹⁵² Girls and women may also be arrested or imprisoned for attempting to marry without the consent of their families, for refusing to marry the man chosen for them, or for running away after dowry has been paid. Human Rights Watch has also documented cases of women being imprisoned because they requested a divorce.¹⁵³ As noted in Section I, women and men, adults and minors, are also imprisoned for adultery.

These gaps in the legal system create opportunities for families and husbands to intimidate women, and to coerce them into forced marriages or into continuing in marriages that they did not want, with husbands who may be abusive. They may also be used to intimidate and to discourage those who try to assist girls to escape forced marriages, and generally women who try to escape violent marriages. A human rights

¹⁵¹ Human Rights Watch, *Prison is not for Me*, p. 47.

¹⁵² The term "elopement" is not in the Penal Code. Chiefs and judges, however, sometimes rely on provisions against kidnapping or abduction as a legal basis for imposing prison sentences. Some elopements may involve a man taking a woman and having sexual intercourse with her in order to compel her and her family to consent to marriage, or to lower the required dowry. Criminal punishment may be an appropriate sanction for such acts. However, some "elopements" end in prison sentences, despite two parties consenting. See Human Rights Watch, *Prison is not for Me*, pp. 47 and 51-56, for more analysis of the imprisonment of individuals for marital and sexual related offences that do not exist in law. A number of other studies have documented instances of girls and women being imprisoned for marital and sex related crimes in South Sudan. See for example United States Institute for Peace Studies (USIP) and Rift Valley Institute (RVI), "Local Justice in Southern Sudan," 2010, <http://www.usip.org/files/resources/PW66%20-%20Local%20Justice%20in%20Southern%20Sudan.pdf> (accessed May 26, 2012), p. 60; Haki, "Combating Gender Based Violence in the Customary Courts of South Sudan," 2011, http://www.lepnet.org/sites/default/files/upload/og_files/Combating-GBV-in-South-Sudan_Haki.pdf (accessed May 23, 2012), p. 3; World Vision International and the Southern Sudan Secretariat of Legal and Constitutional Affairs, "A Study of Customary law in Contemporary Southern Sudan," pp. 5 and 60; NPA, "Gender-Based Violence and Protection Concerns in South Sudan," p. 23.

¹⁵³ Human Rights Watch, *Prison is not for Me*, p. 54.

investigator at the Human Rights Commission who had tried to help Rachel told us that her family threatened to take him to court, claiming that he wanted to marry her, but dowry had been paid by another man.¹⁵⁴

Birth and Marriage Registrations

Birth and marriage registrations are important in combating child marriage because they assist in providing documentation of the age of the spouses at the time of marriage, and can help with government monitoring of underage marriages.

According to article 11 of the Child Act, birth registration is the right of every child in South Sudan, and the government is required to put in place a birth registration law throughout the country. However, only 5 percent of births in South Sudan are registered.¹⁵⁵ As a result of decades of war and the attendant lack of education, people often lack records showing a child's age, making it difficult to take age into account before a marriage.

Neither the Child Act nor the Transitional Constitution provide for the need for marriage registration. There is currently no statute outlining the legal requirements for marriage.

Lack of Awareness about Rights and Information on Where to Seek Help

Generally, women in South Sudan are not knowledgeable of their rights under South Sudanese laws.¹⁵⁶ Ayen C., 21, told Human Rights Watch that she married at 14 and suffered abuse from her husband and in-laws, but chose to stay in the abusive marriage:

My in-laws were abusing me saying they had wasted their cows on me and I was not giving birth. My husband also talked to me with bitterness, always complained, and sometimes was verbally abusive. I was very sad; very stressed. I had nowhere to go. I could not go to my father because it is him

¹⁵⁴ Human Rights Watch email correspondence with [details withheld], April 20, 2012.

¹⁵⁵ Ministry of Health et al., "SSHHS," p. 163.

¹⁵⁶ Helen Animashaun, "On the Nation's Birthday, South Sudan's Women Must Stand Up for Their Rights," September 2012, http://www.huffingtonpost.co.uk/helen-animashaun/south-sudan-birthday_b_1657820.html (accessed November 4, 2012); Mark Tran, "Can South Sudan under Salva Kiir become a better place to be a woman?," July 2012, <http://www.guardian.co.uk/global-development/2012/jul/10/south-sudan-salva-kiir-woman> (accessed October 31, 2012); Gabriel Mayom, "South Sudan: Women Challenged To Understand Their Constitutional Rights," August 2012, <http://www.oyetimes.com/news/africa/27375-women-challenged-to-understand-their-constitutional-rights> (accessed October 25, 2012).

who had forced me to get married. I decided to stay even if it meant dying in the home. Even if he had been beating me, I would have stayed because in our culture people stay in marriages with problems.¹⁵⁷

Article 36 of the Child Act requires that all levels of government “should provide effective remedies to redress violations of the rights in this Act, including through access to child friendly, independent complaints procedures and competent Courts.” However, the girls with whom Human Rights Watch spoke did not know where to seek help when faced with a forced marriage or once they had entered one. Many of the girls we interviewed told us that their only option was to go to their families or community elders.

When Human Rights Watch asked a head teacher if any girls had sought help from him for forced marriage, he told us,

No girls have reported to me that they are being forced into marriage. Of course there are many cases, but these are considered family affairs and the girls are not allowed to talk about them to outsiders. Girls don’t report these cases because they have no power in their families, and fear retribution if they challenge their decisions. Even girls who want to refuse forced marriages don’t know where to report these cases.¹⁵⁸

Because of this lack of information many girls and women do not report forced marriage cases to the authorities.

Lack of Family and Community Support

Many of the victims of early and forced marriages that we interviewed also suffered from prolonged domestic violence, but felt unable to leave the marriage because of economic pressures, lack of family support and other social circumstances, worsening their vulnerability.

¹⁵⁷ Human Rights Watch interview with Ayen C., Bor County, March 15, 2012.

¹⁵⁸ Human Rights Watch interview with Jacob Malual, head teacher at Mamer Primary School in Kohlnyang, Bor County, March 14, 2012.

None of the girls we interviewed said that their families had listened to them when they tried to resist marriage. Instead, as discussed in previous sections, many were brutally beaten, threatened with curses, taken to the police, or their movements restricted to coerce them into marriage.

Some girls run to their families or went to traditional authorities for assistance because their husbands were abusing them, only to be returned to their abusive husbands.

V. International Legal Obligations Regarding Child Marriage

There is an evolving consensus in international law that 18 should be the minimum age for marriage. According to the Committee on the Rights of the Child, the minimum age for marriage should be 18, regardless of the wishes of the parents.

The government of South Sudan has obligations under international and regional human rights law to protect the rights of girls and women. These include the rights to health, to equality and non-discrimination, to information, to free and full consent to marriage, to choose one's spouse, to education, to be free from physical, mental, and sexual violence, to an effective remedy when any of these rights are violated, and to be protected from slavery, trafficking and sale. The inadequate fulfillment and protection of these rights is both a cause and consequence of child marriage in South Sudan.

South Sudan has not ratified any major international or regional human rights treaties, despite the president promising to do so in his 2011 independence-day speech.¹⁵⁹ However, international law favors the automatic continuation of human rights obligations from predecessor to successor states.¹⁶⁰

As a result, South Sudan inherited a duty to respect, protect, and fulfill rights guaranteed under: the International Covenant on Civil and Political Rights (ICCPR), including its Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography, the Convention on the Rights of the Child (CRC), the International Covenant on Economic, Social and Cultural Rights (ICESCR), the Convention on the Rights of Persons with

¹⁵⁹ President Salva Kiir independence-day speech, July 9, 2011, <http://www.gurtong.net/ECM/Editorial/tabid/124/ctl/ArticleView/mid/519/articleId/5440/President-Kiirs-Independence-Speech-In-Full.aspx> (accessed February 19, 2012). Since independence, South Sudan has ratified the Geneva Conventions, the Refugee Convention, the Mine Ban Treaty, and seven conventions of the International Labour Organization (ILO).

¹⁶⁰ The 1978 Vienna Convention on Succession of States in Respect of Treaties, representative of the current status of international law, provides for the continuity of obligations in respect of all treaties that were binding on a predecessor state. Vienna Convention on Succession of States in Respect of Treaties, adopted August 22, 1978, 1946 U.N.T.S. 3, entered into force November 6 1996, art. 35. The UN Commission on Human Rights and UN Treaty bodies have also underlined the continuing nature of human rights treaty obligations on successor states. UN Commission on Human Rights, "Succession of States in respect of international human rights treaties," Resolutions 1993/223, 1994/16 and 1995/18; UN Human Rights Committee, General Comment 26, Continuity of obligations (Sixty-first session, 1997), Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies, U.N. Doc. CCPR/C/21/Rev.1/Add.8/Rev.1 (1997), p. 173.

Disabilities (CRPD), the Supplementary Convention on Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery, and the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children (Palermo Protocol), the African Charter on Human and Peoples' Rights (African Charter), the African Charter on the Rights and Welfare of the Child (ACRWC);¹⁶¹ and a responsibility not to take any actions that would undermine the object and purpose of the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (the Maputo Protocol) that Sudan has signed but not ratified.¹⁶²

Right to Equality and Non-Discrimination

South Sudan has obligations under the ICCPR, the ICESCR, and the CRC to ensure women's rights to equality and non-discrimination. The ICCPR calls for "the equal right of men and women to the enjoyment of all civil and political rights set forth in the ... Covenant," including the right to birth registration, to free and full consent to marriage, to equality of rights and responsibilities of spouses during marriage and at its dissolution, to life, to liberty and security of the person, and to freedom of expression.

The ICESCR makes similar provisions in article three.¹⁶³ The CRC in article 2 recognizes the right of children to be free from discrimination, including on the grounds of sex and age.¹⁶⁴

The ACRWC states in article 21 that, "Child marriage and the betrothal of girls and boys shall be prohibited." Prohibitions on child marriage and non-discrimination are also included in the Maputo Protocol and the African Charter.¹⁶⁵

¹⁶¹ International Covenant on Civil and Political Rights (ICCPR), adopted December 16, 1966, G.A.Res. 2200A (XXI), 21 U.N. GAOR Supp. (No. 16) at 52, U.N. Doc. A/6316 (1966), 999 U.N.T.S.171, entered into force March 23, 1976, ratified by Sudan on March 18, 1986; Convention on the Rights of the Child (CRC), adopted November 20, 1989, G.A. Res. 44/25, annex, 44 U.N. GAOR Supp. (No. 49) at 167, U.N. Doc. A/44/49 (1989), entered into force September 2, 1990, ratified by Sudan on August 3, 1990; International Covenant on Economic, Social and Cultural Rights (ICESCR), adopted December 16, 1966, G.A. Res. 2200A (XXI), 21 U.N. GAOR Supp. (No. 16) at 49, U.N. Doc. A/6316 (1966), 993 U.N.T.S. 3, entered into force January 3, 1976, ratified by Sudan on March 18, 1986; Convention on the Rights of Persons with Disabilities (CRPD), adopted December 13, 2006, G.A. Res. 61/106, Annex I, U.N. GAOR, 61st Sess., Supp. (No. 49) at 65, U.N. Doc. A/61/49 (2006), entered into force May 3, 2008, ratified by Sudan on April 24, 2009; African [Banjul] Charter on Human and Peoples' Rights, adopted June 27, 1981, OAU Doc.CAB/LEG/67/3 rev. 5, 21 I.L.M. 58 (1982), entered into force October 21, 1986, ratified by Sudan on February 18, 1986; African Charter on the Rights and Welfare of the Child (ACRWC), OAU Doc. CAB/LEG/24.9/49 (1990), November 29, 1999, ratified by Sudan July 30, 2005.

¹⁶² See Vienna Convention on the Law of Treaties 1969, United Nations, Treaty Series, vol. 1155, p. 331, entered into force on January 27, 1980, art. 18. Protocol to the African Charter on Human and Peoples' Rights on The Rights of Women in Africa (the Maputo Protocol), adopted July 11, 2003, entered into force November 2005, signed by Sudan June 30, 2008.

¹⁶³ ICCPR, art. 3.

¹⁶⁴ CRC, art. 2.

Child marriage is considered a form of gender-based discrimination because the practice disproportionately affects girls, and negatively impacts the realization of girls' and women's many other human rights. The impact of these violations is felt by women throughout their lives, and extends to their families and societies.

The South Sudanese government has an obligation to effectively address child marriage and the human rights abuses that result from child marriages, which subject women and girls to unequal and discriminatory treatment. Failure to do so constitutes a violation of the state's obligation to guarantee women equal protection of the law.

Right to Free and Full Consent to Marriage, and to Choose a Spouse

South Sudan must ensure that those entering marriage do so with their full and free consent. The right to marriage based on "full and free consent" of the spouses is recognized in the Universal Declaration of Human Rights, the ICCPR and the ICESCR.¹⁶⁶ The Convention on the Consent to Marriage further specifies that each spouse must give his or her consent "in person ... as prescribed by law."¹⁶⁷ The Maputo Protocol specifies in article 16 that, "no marriage shall take place without the free and full consent of both parties."

Consent cannot be "free and full" when one of the parties involved is not sufficiently mature to make an informed decision about a life partner. To exercise full, free and informed consent, a woman needs to have the capacity to understand the meaning and responsibility of marriage; access to full information about her future spouse; knowledge of the institution of marriage; and her right to exercise a choice as to whether or not to marry, who to marry, and when to marry.¹⁶⁸

¹⁶⁵ The Maputo Protocol in article six calls for States to develop laws that establish 18 as the minimum age of marriage; while article 18 of the African Charter requires in article 18 that, "States eliminate every discrimination against women and also ensure the protection of the rights of the woman and the child as stipulated in international declarations and conventions."

¹⁶⁶ Universal Declaration on Human Rights (UDHR), adopted December 10, 1948, G.A. Res. 217A(III), U.N. Doc. A/810 at 71 (1948), art. 16, ICCPR, art. 23, and ICESCR, art. 10 (1).

¹⁶⁷ CEDAW, art.16, and Convention on Consent to Marriage, art. 2.

¹⁶⁸ General Comment no. 16 of the Committee on Economic, Social and Cultural Rights, which oversees implementation of the ICESCR, sets out States parties obligations to "ensure that men and women have an equal right to choose if, whom, and when to marry."

The Right of Children to Express Their Views Freely

Child marriage is incompatible with international human rights laws, even if children do “consent” to the marriage. This does not mean however that South Sudan should not respect the right of children to express their views. The right of children to express their views is set out in article 12 of the CRC which stipulates that they have this right in all matters affecting them, according to their age and maturity.¹⁶⁹ The 2009 CRC committee’s General Comment no. 12 on the right of the child to be heard affirms this right in any judicial or administrative proceeding affecting his or her well-being.¹⁷⁰ In its comment, the committee goes on to set out States Parties’ obligations to establish reporting mechanisms such as telephone help lines and support mechanisms to assist children to express their views. This includes access to physicians and to teachers who can offer a safe space for children to express their views or to seek help in any matter related to their well-being.¹⁷¹

Therefore, South Sudan should take policy and programmatic measures to ensure children’s right to be heard in matters concerning marriage.

The Obligation to Enforce a Consistent Definition of a Child, a Minimum Age for Marriage, and Birth and Marriage Registration

To protect children from the harmful practice of early and forced marriages, the government of South Sudan has an obligation to enforce a consistent definition of a child and a minimum age of marriage in all judicial and customary laws and practices. It also has a duty to ensure that all births and marriages are registered by a competent authority.

The CRC committee has repeatedly addressed the need for countries to establish a definition of a child in all domestic legislation that is consistent with the provisions of the CRC. It has also taken a clear position on 18 as the minimum age for marriage, regardless of parental consent.¹⁷² At the Africa regional level, the African Charter on the Rights and Welfare of the Child explicitly requires states to take effective action, including legislation,

¹⁶⁹ CRC, art. 12.

¹⁷⁰ Committee on the Rights of the Child, General Comment No. 12, The Right of the Child to Be Heard, U.N. Doc.CRC/C/GC/12(2009), para. 2.

¹⁷¹ Ibid.

¹⁷² For example see, UN Committee on the Rights of the Child, General Comment No. 4, Adolescent Health and Development in the Context of the Convention on the Rights of the Child, (Thirty-third session, 2003), para. 20. There is an evolving consensus in international law that 18 should be the minimum age for marriage.

to specify the minimum age of marriage as 18 years.¹⁷³ The Maputo Protocol also specifies that states are to “enact appropriate national legislative measures to guarantee that the minimum age of marriage for women shall be 18 years.”¹⁷⁴

The CRC defines a child as anyone below the age of 18 years.¹⁷⁵ South Sudan should amend the Child Act to reflect this standard. Because South Sudan recognizes customary law as integral to its legal system, it needs to ensure that both judicial and customary legal processes adopt and enforce the same definition of a child and a minimum age for marriage.

South Sudan should also pass legislation requiring the registration of marriage. The Convention on Consent to Marriage, Minimum Age for Marriage, and Registration of Marriages states that all marriages should be registered by a competent authority.¹⁷⁶ The Maputo Protocol also calls on governments to ensure that all marriages are recorded in writing and registered in accordance with national laws.¹⁷⁷ The CRC committee has also addressed the obligation of governments to make the registration of all births and marriages compulsory and to put in place measures to enforce implementation.

Right to Health

By virtue of its inherited international human rights obligations, South Sudan is required to fulfill the right to health on a nondiscriminatory basis. This right is enshrined in numerous international human rights instruments, including the Universal Declaration of Human Rights, the ICESCR, the African Charter, the Maputo Protocol, and the CRC. The ICESCR specifies that everyone has a right “to the enjoyment of the highest attainable standard of physical and mental health,” and requires that it be implemented without discrimination on the basis of sex, age, or other prohibited grounds.¹⁷⁸ Article 24 of the CRC recognizes children’s rights to health and to access health services, and notably the right to be protected from traditional practices prejudicial to the health of the child.¹⁷⁹

¹⁷³ ACRWC, art.21 (2).

¹⁷⁴ Maputo Protocol, art.6 (a).

¹⁷⁵ CRC, art. 1. In the context of the Convention on the Rights of the Child, “a child means every human being below the age of 18 years unless, under the law applicable to the child, majority is attained earlier.”

¹⁷⁶ Convention on Consent to Marriage, art. 3.

¹⁷⁷ Maputo Protocol, art. 16 (d).

¹⁷⁸ ICESCR, art. 12.

¹⁷⁹ CRC, art. 24; CESCR. Also see General Comment No. 14, para. 22.

The African Charter recognizes that every individual has “the right to receive information” and “the right to education.”¹⁸⁰ The Maputo Protocol specifically includes “the right to have family planning education” and further obligates governments to “provide adequate, affordable and accessible health services, including information, education and communication programs to women especially those in rural areas.”¹⁸¹

Several treaties and authoritative interpretations specifically note that reducing maternal mortality rates and improving maternal health services should be considered priorities in the progressive realization of the right to health. The ICSECR provides that the full realization of the right to health requires States Parties to take steps to reduce rates of still-births and infant mortality. The committee that monitors the ICESCR has noted “a need to develop and implement a comprehensive national strategy for promoting women's right to health throughout their life span,” noting,

A major goal [of a national strategy] should be reducing women's health risks, particularly lowering rates of maternal mortality and protecting women from domestic violence. The realization of women's right to health requires the removal of all barriers interfering with access to health services, education and information, including in the area of sexual and reproductive health. It is also important to undertake preventive, promotive and remedial action to shield women from the impact of harmful traditional cultural practices and norms that deny them their full reproductive rights.¹⁸²

Underage marriage has serious health consequences for girls and contributes to South Sudan's extremely high maternal and infant mortality rates. The government of South Sudan should take steps to reduce its high rates of child marriage, and to improve girls' and women's access to reproductive health care and information to ensure that it fulfills its right to health obligations.

¹⁸² UN Committee on Economic, Social and Cultural Rights (CESCR), “Substantive Issues Arising in the Implementation of the International Covenant on Economic, Social and Cultural Rights,” General Comment No. 14, The Right to the Highest Attainable Standard of Health, E/C.12/2000/4 (2000), para. 14. para. 21.

Right to Education

The ICESCR and the CRC guarantee to everyone the right to free and compulsory education.¹⁸³ The right to equal opportunity in education is stipulated in the CRC, the African Charter, the Maputo Protocol, and the African Charter on the Rights and Welfare of the Child.¹⁸⁴

In its general recommendation on the aims of education, the CRC committee explains the purpose of education to develop a child's "personality, talent, mental and physical abilities to full potential" and to prepare a child to assume life's responsibilities.¹⁸⁵ It remarks that an education provides children with life skills such as critical thinking, the ability to make well-balanced decisions, to develop a healthy lifestyle and good social relationships; and empowers them by developing their self-esteem and confidence.¹⁸⁶

Early and forced marriages are a major contributor to South Sudan's extremely low rates of school enrollment—particularly at the secondary level—among girls and literacy among women. It is also a major cause of school drop-out for girls. By failing to curb child marriages, South Sudan is failing in its obligation to ensure access to education for boys and girls on an equal basis.

The Right to be Free from Physical, Mental, and Sexual Violence

Under international and regional law, the government of South Sudan has an obligation to prevent, investigate, prosecute, and punish violence against girls and women.¹⁸⁷ The responsibility is grounded in the rights of non-discrimination and equality, security of person, health, and freedom from torture provided in treaties whose human rights obligations South Sudan inherited from Sudan following independence.

The CRC requires that states parties protect children from physical, mental, and sexual abuse or exploitation through legislation and other social and educational measures. The

¹⁸³ ICESCR, art. 13.

¹⁸⁴ CRC, art. 29, African Charter, art. 17, Maputo Protocol, art. 12, ACRWC, art. 11.

¹⁸⁵ Committee on the Rights of the Child, General Comment No. 1, The Aims of Education (Article 29(1)), (Twenty-sixth session, 2001), Compilation of General Comments and General recommendations Adopted by Human Rights Treaty Bodies, UN Doc. HRI/gen/1/rev.7, p.294, para. 1 (a).

¹⁸⁶ *Ibid.*, para. 2.

¹⁸⁷ ICCPR, HRC, General Comment 31, Nature of the general legal obligation on states parties to the Covenant (hereinafter "General Comment 31"), para. 9, U.N. Doc. CCPR/C/21/Rev.1/Add.13 (2004); UN Committee Against Torture (CAT), General Comment No. 2: Implementation of Article 2 by States Parties, 24 January 2008.CAT/C/GC/2.

obligation to protect children from violence includes protection from parents or other caregivers.¹⁸⁸ Article 34 of the CRC clearly delineates the obligation of states to protect children from sexual exploitation and abuse.¹⁸⁹

The Maputo Protocol calls on States to adopt legislative, administrative, social and economic measures as may be necessary to identify the causes and consequences, and ensure the prevention, punishment, and eradication of all forms of violence against women, including sexual violence whether it occurs in private or public.¹⁹⁰ It specifically requires that States take measures to protect women who are at risk of being subjected to harmful practices or all other forms of violence, abuse and intolerance, and to establish mechanisms and accessible services for effective information, rehabilitation and reparation for victims of violence against women.¹⁹¹

As this report shows, girls who are subjected to child marriage may experience violence from their spouses, in-laws, and other family members. This includes physical, verbal, sexual, and psychological abuse. Girls and women don't always report violence to the authorities due to a number of cultural and legal barriers noted earlier. Nonetheless, some women do report abuse, including forced marriages, but they rarely get help.

South Sudan's obligation to prevent, investigate, prosecute, and punish violence against girls and women includes ensuring that state actors, such as the police, the judiciary and customary courts take all reasonable steps to provide everyone within its territory with effective protection against such violence by private parties.¹⁹² Included in this obligation is the State's duty to effectively investigate whenever such violence occurs, which international human rights tribunal case law says involves an investigation capable of leading to the identification and punishment of those responsible.¹⁹³ In a case involving sexual assault one human rights court has noted,

¹⁸⁸ CRC, art. 19.

¹⁸⁹ Ibid., art. 34.

¹⁹⁰ Maputo Protocol, arts. 4 (2 and b) and 3 (4).

¹⁹¹ Maputo Protocol, arts. 5 (d) and 4 (2f).

¹⁹² Regarding responsibility as to private acts, see ICCPR, HRC, General Comment 31, Nature of the general legal obligation on states parties to the Covenant, para. 9, U.N. Doc. CCPR/C/21/Rev.1/Add.13 (2004); UN Committee Against Torture (CAT), General Comment No. 2: Implementation of Article 2 by States Parties, 24 January 2008. CAT/C/GC/2. Regarding the responsibility of states extending to all within their jurisdiction, see ICCPR, art. 2(1).

¹⁹³ See amongst others, the European Court of Human Rights' decisions in *Kaya v. Turkey*, judgment of 19 February 1998, Reports of Judgments and Decisions 1998-I, p. 324; *Jordan v. the United Kingdom*, no. 24746/94, judgment of May 4, 2001;

The Court finds further that rape is for its victim an offence of manifestly debasing character and thus emphasizes the State's procedural obligation arising in this context.... The effective official investigation should be capable of leading to the identification and punishment of those responsible.... The minimum standards as to effectiveness defined by the Court's case-law also include the requirements that the investigation must be independent, impartial and subject to public scrutiny, and that the competent authorities must act with exemplary diligence and promptness.¹⁹⁴

Police and customary courts inaction in the face of violence against women creates an atmosphere of impunity facilitating further violence, and dissuades women from seeking help. Their failure to act exposes girls and women to further violence, especially once the perpetrator knows the survivor has reported the attack, as some cases in this report show.

Finucane v. the United Kingdom, no. 29178/95, judgment of July 1 2003; *Isayeva v. Russia*, 57950/00, judgment of July 27, 2004; *Adali v. Turkey*, 38187/97, judgment March 31, 2005.

¹⁹⁴ *Maslova and Nalbandov v Russia* Application No. 839/02, judgment of January 24, 2008, para 91. See also cases cited by the court in this finding: *S.W. v. the United Kingdom*, judgment of November 22, 1995, Series A no. 335-B; *C.R. v. the United Kingdom*, judgment of November 22, 1995, Series A no. 335-C; and *M.C. v. Bulgaria*, no. 39272/98, § 153, ECHR 2003-XII. *Assenov and Others v. Turkey*, judgment of October 28, 1998, Reports 1998-VIII, p. 3290, § 102, and *Labita v. Italy* [GC], no. 26772/95, § 131, ECHR 2000-IV.

VI. Good Practices in Ending Child Marriage

A Global Perspective

Data published by the United Nations Population Fund (UNFPA) in October 2012 indicates that for the period 2000-2011, an estimated 34 percent of women aged 20 to 24 years in developing regions were married or in union before their eighteenth birthday. In 2010 this equaled nearly 67 million women. About 12 percent of them were married before age 15.¹⁹⁵

The report says that in 41 countries, 27 of them in sub-Saharan Africa (SSA), 30 percent or more of women aged 20 to 24 were married or in union when they were still children.¹⁹⁶ It notes that there has been little change in rates of global child marriage though some countries have made notable progress,¹⁹⁷ and that 142 million girls worldwide will be married in the next decade (during the period 2011-2020) if current trends continue.¹⁹⁸ Statistics on child marriage reveal that South Asia, at 46 percent, and SSA at 37 percent, have the highest prevalence of child marriage. In the two regions, two out of five girls marry or enter into union before the age of 18.¹⁹⁹ In SSA, the practice is most common in West and Central Africa where 41 percent of 20-24-year-olds were married before they reached 18. The rate for East and Central Africa is also high at 34 percent.²⁰⁰

Generally, child marriage mostly affects women who live in rural areas, come from poor households, and have less schooling.²⁰¹

¹⁹⁵ United Nations Population Fund (UNFPA), "Marrying too Young: End Child Marriage," 2012, <http://www.unfpa.org/webdav/site/global/shared/documents/publications/2012/MarryingTooYoung.pdf> (accessed October 18, 2012), p. 22.

¹⁹⁶ Ibid., p. 23.

¹⁹⁷ Sub-Saharan Africa countries that have made notable progress in reducing child marriage levels include Benin, Cameroon, Congo, Ethiopia, Lesotho, Liberia, Rwanda, Sierra Leone, Togo, Uganda, United Republic of Tanzania, and Zimbabwe. Ibid., p. 24.

¹⁹⁸ UNFPA, "Marrying too Young: End Child Marriage," p. 44.

¹⁹⁹ Ibid., p. 26.

²⁰⁰ Ibid., p. 26.

²⁰¹ The UNFPA report shows that girls living in rural areas of the developing world tend to marry at twice the rate of their urban counterparts (44 percent and 22 percent, respectively). Girls with a primary education are twice as likely to marry as those with a secondary or higher education. However, those with no education are three times more likely. The rate of child marriage among the poorest 20 percent is 54 percent compared to 16 among the richest 20. Ibid., pp. 34 – 35. Also see United Nations Children's Fund (UNICEF), "Early Marriage, A Harmful Traditional Practice, A Statistical Exploration," 2005, http://www.unicef.org/publications/files/Early_Marriage_12.lo.pdf (accessed February 20, 2012), pp. 3-4; International Planned Parenthood Federation (IPPF), "Ending Child Marriage: A Guide for Global Policy Action," first published in September 2006, current edition published in November 2007, http://www.unfpa.org/upload/lib_pub_file/662_filename_endchildmarriage.pdf (accessed

International Response to Child Marriage

There is growing global momentum and support by NGOs, international agencies, governments, and high-level global leaders to address the problem of child marriage. This is in recognition of the impact of child marriage on girl's and women's human rights, and on development efforts. Recent major efforts include:

- In 2011, The Elders—an independent group of eminent global leaders brought together by Nelson Mandela that works for peace and human rights—initiated “Girls Not Brides: The Global Partnership to End Child Marriage.” Girls Not Brides brings together organisations that work to tackle child marriage at the grassroots, national, and global levels around the world.²⁰²
- The introduction in 2012 by the UN of the first International Day of the Girl, which had child marriage as its theme.
- Focus by the special rapporteur on contemporary forms of slavery in her recent report on forced marriages.²⁰³
- The International Protecting Girls by Preventing Child Marriage Act (S.414), passed by the US Senate in May 2012. The legislation recognizes child marriage as a human rights violation, establishes a strategy to prevent it and promote the empowerment of girls, integrates the issue of preventing child marriage into existing US development programs, and requires that relevant agencies collect and make available data on the rates of child marriage and its impact on meeting key development goals.²⁰⁴ The bill is currently before the House Committee on Foreign Relations.²⁰⁵

January 28, 2012), p. 10; Center for Global Investment, “Girls Count: A Global Investment and Action Agenda,” 2008, http://www.coalitionforadolescentgirls.org/wp-content/uploads/2012/03/Girls_Count_2009.pdf (accessed May 15, 2012), pp. 42-43.

²⁰² The three current strategic objectives for this global partnership include: increased awareness of the harmful impact of child marriage at the local, national and international levels; expanded policy, financial and other support to end child marriage and to support married girls; and strengthened learning and coordination between organisations working to end child marriage. See, <http://girlsnotbrides.org/>. As of February 2013, the coalition had around 223 member organizations in over 43 countries across Africa, Europe, South Asia and the US, with three emerging national chapters in Ethiopia, Tanzania and the US. Girls Not Brides Newsletter, on file with HRW.

²⁰³ The report recommends that the Human Rights Council develop a more comprehensive approach to the issue of servile marriage and that States enact legislation to prevent the practice, provide support to victims, and launch campaigns to raise awareness of its negative impact. Human Rights Council, Report of the Special Rapporteur on Contemporary Forms of Slavery, including its Causes and Consequences, A/HRC/21/41, July 10, 2012, http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session21/A-HRC-21-41_en.pdf (accessed October 2, 2012).

²⁰⁴ See, <http://www.govtrack.us/congress/bills/112/s414>; <http://blog.iwhc.org/2012/07/rep-betty-mccollum-d-mn-and-rep-aaron-schock-r-il-introduce-child-marriage-legislation-in-u-s-house-of-representatives/> (accessed July 20, 2012).

²⁰⁵ See, <http://thomas.loc.gov/cgi-bin/bdquery/z?d112:s.414>.

Innovative programs, policies, and strategies to tackle child marriage have been developed in other countries. These programs are implemented and supported by a combination of local and international NGOs, national governments, bilateral donors, UN entities, international financial institutions, and foundations.

Many programs to end child marriage are not well documented or evaluated. There are, however, evaluations available for programs in India, Bangladesh, Egypt, Ethiopia, Afghanistan, Indonesia, Kenya, Malawi, Nepal, Senegal, and Yemen. A review of the available programmatic evaluations and analysis suggest that successful efforts reach across sectors and integrate a range of approaches that address the root causes of child marriage, and simultaneously promote girls' human rights. Five approaches seem essential in these efforts:²⁰⁶

Empowering girls with information, skills, and support networks: These programs aim to empower girls at risk of child marriage through life skills, vocational and livelihoods training, safe spaces for girls to discuss their futures, the provision of information about their options, and the development of support networks. Such interventions can help equip girls with knowledge and skills in areas relevant to their lives, including sexual and reproductive health, nutrition, and their rights under the law. Girls are empowered when and if they are able to learn skills that help them to develop a livelihood, help them to better communicate, to negotiate and advocate for themselves both in the short and long term, and to make decisions that directly affect their lives.

Improving girls' access to quality formal education: Girls' education, especially at the secondary level, is strongly associated with delayed marriage. Education is a right in itself, and being in school confers numerous protections and benefits for girls. Educational opportunities offer girls positive alternatives to child marriage that are generally acceptable to the family and community. From a cultural standpoint, being in school can support the perception that girls are still children and not of marriageable age. Schooling

²⁰⁶ Malhotra, A., et al., 2011, "Solutions to End Child Marriage: What the Evidence shows," 2011, <http://www.icrw.org/publications/solutions-end-child-marriage> (accessed March 15, 2012), pp. 10-20; UNFPA, "Marrying too Young: end Child Marriage,," 2012, <http://www.unfpa.org/webdav/site/global/shared/documents/publications/2012/MarryingTooYoung.pdf> (accessed October 5, 2012); UNICEF, The State of the World's Children 2011, http://www.unicef.org/sowc2011/pdfs/SOWC-2011-Main-Report_EN_02092011.pdf, (accessed January 16, 2012). p.33.

helps a girl develop social networks and acquire skills and information, which contribute to her ability to communicate, negotiate for her best interests, and participate in decisions that affect her life.

Educating and mobilizing parents and community members to change harmful social norms: Families and community elders usually make the decision for a girl to marry early. Sanctions for failing to meet social expectations for marriage are also administered by the family and broader community. Programs in this category educate parents and mobilize communities to try and change social norms and forge a more supportive, less punitive environment for girls and families who are willing and ready to change the custom of early marriage. Enlisting parents and community members helps to mitigate possible unintended consequences of girls' participation in programs, and also reinforces a program's messages and activities.

Enhancing the economic situation of girls and their families: Poverty and lack of viable income-generating options for girls and their families contribute to the high rate of child marriages. This approach aims to provide immediate and long-term economic opportunities for families to enable them to postpone the marriage of their daughters, and to keep them in school through secondary levels. Incentives may include loans, scholarships, subsidies, and conditional cash transfers. Increasing employment opportunities for girls through microfinance schemes or vocational training can generate viable alternatives to child marriage, especially for girls unable to continue their formal schooling. Improving girls' economic standing can also give them a higher status in their families and on this basis, greater control over their lives. For families themselves, direct cash transfers and income-generating activities for their daughters can help to alleviate economic and social pressures that lead to early marriage.

Fostering an enabling legal and policy framework: Legislation and appropriate enforcement measures are fundamental for defending the human rights of girls at risk of child marriage. Essential components include: ensuring that domestic legislation—in line with international human rights standards—upholds the age of 18 as the minimum legal age of marriage for both males and females; promoting birth and marriage registration; and challenging harmful customs, traditions, and practices that do not comply with human rights standards—such as tolerance for gender-based violence—through national and sub-national laws and social programs.

VII. Recommendations

To the President of South Sudan

- Declare zero tolerance for child marriage, and publicly and forcefully condemn acts of violence against girls and women who resist child marriages.
- Publicly support a national action plan to end child marriage.
- Publicly support efforts to address the issue of dowry and its negative impact on the rights of girls and women in South Sudan.
- Call for initiatives to encourage ethnic communities to regulate dowry through consultation with all stakeholders, including women and girls.
- Call on the national legislature to decriminalize all consensual adult sex.

To The Ministry of Gender, Child, and Social Welfare

On a National Action Plan to End Child Marriage

- Develop and implement a national action plan to prevent and end child marriage in accordance with international good practices. Ensure there is broad public participation in the development of the plan by relevant government ministries and bodies, including the Ministry of Justice, Ministry of Interior, Ministry of Health, Ministry of General Education and Instruction, and the Judiciary. The South Sudan Human Rights Commission, legislative bodies, NGOs, and UN and donor agencies should also participate in the development of the action plan.
- Work with the National Legislative Assembly to ensure that appropriate funding is allocated in the annual national budget to implement the national action plan to end child marriage once it is developed.

On Improving Coordination, Investigation, and Response to Child Marriage Cases

- Develop and implement guidelines on how national and state level government ministries should address child marriage cases. The guidelines should include the following information:
 - Relevant government ministries, departments, and agencies and their responsibilities;
 - Officials responsible for handling cases;
 - Available remedies;

- Referral procedures within government structures.

Relevant government ministries and agencies, including the Ministry of Justice, the Ministry of Interior, the judiciary, and the SSHRC and NGOs should also participate in developing these guidelines.

- Develop simple procedures (in the form of a poster or similar communication tools), and establish mechanisms (such as help lines) for girls, families, or concerned individuals to report child marriage cases and seek help. The guidelines should explain the reporting procedures, authorities responsible for handling the cases, available remedies and protection measures, and appeal procedures. Inform the public about these guidelines.
- Issue regulations on the Child Act, specifying the mandate of each government ministry or agency particularly regarding the protection of children from child marriage.
- Conduct training for relevant government officials about the legal rights of girls under the Child Act, particularly their right to be protected from child marriage.

On Protection of Girls Seeking Help from Forced Marriage and Domestic Violence

- Support and advocate for establishing safe spaces, such as shelters, for girls threatened by early and forced marriages or other forms of domestic violence. Once established, work with the Ministries of Justice and Interior to ensure that these shelters are protected from attacks by families and spouses, and support outreach programs that advise women and girls about the existence of shelters, and how they can be accessed.
- Develop and implement measures to protect girls who seek help from forced marriages, including those who bring charges against their families for forced marriage. Do this together with relevant government ministries and agencies, including the Ministry of Justice, the Ministry of Interior, and the judiciary. NGOs should also participate. Create public awareness about the availability of these protection measures.

On Increasing Awareness about Child Marriage in Communities

- Carry out a nationwide awareness-raising campaign to inform the public about child marriage. Involve girls and women, relevant government ministries, traditional and religious leaders, and NGOs in the campaign. Include information on:

- Harms that the practice causes and the benefits of delayed marriage and childbearing;
- Information about protection measures, legal remedies, medical and psycho-social care available to girls and women, and consequences for perpetrators;
- Encourage girls and the public to report child marriage cases.

To The Ministry of Justice

Work toward comprehensive reform of South Sudan's laws on marriage, separation, divorce, and related matters, in collaboration with relevant government ministries and agencies, the National Legislative Assembly, experts, and NGOs and civil society groups working on women's rights. In particular:

On Lack of Comprehensive Family Legislation

- Enact legislation that:
 - Clearly sets the minimum age for marriage at 18 years of age for both spouses;
 - Clearly establishes the requirement for full and free consent of both partners to a marriage;
 - Prohibits forced marriage and related harmful practices including bride kidnapping, girl-child compensation, marriage as dispute settlement or debt payment, polygamy, and wife inheritance;
 - Sets clear penalties and punishment for acts of violence against girls and women carried out as intimidation or retribution for refusal to marry; and provides for adequate legal, medical, and psycho-social services to victims of these attacks;
 - Grants the same legal status to parties in customary marriages as those in civil marriages;
 - Sets clear criteria for child custody and maintenance, and fully affirms women's rights to child custody upon separation and divorce;
 - Grants women and men equal rights to apply for divorce and to a fair determination;
 - Fully affirms the concept of marital property and allows for its division on an equal basis between spouses at the time of dissolution of marriage, recognizing financial and non-financial contributions made by women;

- Ensures that girls and women who are forcibly married shall have the right to press criminal charges, seek a divorce, and seek alimony;
- Sets clear penalties for anyone who intentionally forces an adult or a child to enter into a marriage;
- Ensures that girls married prior to the enactment of the new legislation have the option of terminating their marriage, and protects their rights to property, child custody, and maintenance.
- Ensures that children born to mothers under 18 shall have the same rights as children born in a legally recognized marriage;
- Makes marriage registration compulsory.
- Once the new family law is in place, together with the Ministry of Gender, Child and Social Welfare, conduct public education campaigns about the provisions of the law, aiming at raising awareness in both urban and rural areas.

On Addressing Gaps in Current Laws Governing Marriage and Related Matters

- Revise the Penal Code so that: individuals are not imprisoned for adultery; and so that it recognizes marital rape as a criminal offense, clearly stating that no marriage or other relationship shall constitute a defense to a charge of sexual assault under the legislation. Clearly define the practice of “elopement”—considered a crime in customary courts— to ensure criminalization when it involves non-consent or force, and decriminalization when it involves the consent of both parties.
- Together with the Ministry of Gender, Child, and Social Welfare, inform girls and women about their rights to seek child maintenance from fathers of their children as per the Child Act.

On Strengthening South Sudan’s Human Rights Framework to Protect Women

- Together with the relevant government ministries and the National Legislative Assembly, take the necessary steps to ensure the prompt ratification, without reservations, of the Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW) and its Optional Protocol; the Protocol to the African Charter on the Rights of Women in Africa (Maputo Protocol); the African Charter on the Rights and Welfare of the Child (ACRWC); and the Convention on the Rights and Welfare of the Child (CRC). Use these treaties as guidance in drafting the new constitution and other laws to promote women’s rights.

To the Judiciary

- Issue judicial circulars that:
 - Instruct both statutory and customary judges that proceedings on child marriage adopt the definition of a child as anyone under the age of 18 as per the provisions of the 2008 Child Act;
 - More broadly define, and clarify, how provisions on the “best interests of the child” as per the Child Act should be applied in practice; and clearly stipulate that the “best interests of the child” be the guiding principles in all judicial and customary court proceedings on child marriages;
 - Clarify the provision in the Civil Procedure Act that customs governing family issues that are “contrary to justice, equity or good conscience” should not be applied.
- Raise awareness amongst judicial and customary court officials of these provisions.

To the Ministry of Justice and Ministry of Interior

- Improve training for lawyers, public prosecutors, judges, and the police on gender-based violence, including child marriages. Include information on forms of gender based violence, contributing factors and risks, legal protections under South Sudanese and applicable international law, and consequences for perpetrators.
- Provide regular and up-to-date trainings to law enforcement officers on the requirements of the family law once it is enacted.
- Ensure that judges, traditional authorities, and other relevant authorities report cases of child marriages.
- The Ministry of Interior should consider increasing the number of officers belonging to the Special Protection Units (SPUs) at police stations, with particular attention to increasing the number of female officers, as well as expanding the coverage of the SPUs to all police stations in South Sudan.

To the Ministry of General Education and Instruction

On Improving Girls’ Access to Formal and Non-formal Education

- Together with the Ministry of Gender, Child, and Social Welfare, continue efforts to raise public awareness on the importance of education for girls.

- Develop retention strategies to ensure that girls who enroll in school are able to remain in school, such as incentives for families to keep girls in school and to subsidize the costs of uniforms and textbooks.
- Expand efforts to provide continuing formal education and vocational training opportunities for married girls and women. In particular, expand access to alternative education programs in all states, and inform the public about their existence.
- Together with the Ministry of Gender, Child, and Social Welfare, develop and implement child care support programs to enable girls who have children to attend school.
- Improve data collection on the number of girls who drop out of school due to pregnancy or to get married.

On School-Based Human Rights Education, including Comprehensive Sexuality Education

- Integrate human rights education focusing on children's rights into the school curriculum and include child marriage among topics discussed. Ensure that teachers are trained in its contents and allocate time to teach it.
- Make comprehensive sexuality education part of the school curriculum, and ensure that teachers are trained in its contents and allocate time to teach it. Work with the Ministry of Health to reach out-of-school adolescents.

To the Ministry of Health

- Improve access to reproductive health services and information for all girls and women, including access to emergency obstetric care and family planning.
- Provide tailored health information to young mothers about proper nutrition and care for their health and the health of their babies.
- Raise awareness among health workers and the public on the importance of registering all births, including home deliveries.

To the South Sudan Human Rights Commission

- Increase monitoring of child marriage cases. Investigate and publish reports on child marriages and gaps in protection and access to justice for victims.
- Work with NGOs and civil society organizations to:

- Support the development of a national action plan to end child marriage, and once developed, design programs to aid its implementation.
- Raise public awareness about the dangers of child marriages, including through holding dialogue with communities and traditional leaders about the harms of child marriage.
- Assist girls in seeking legal remedies for forced marriage and abuse, obtaining maintenance, and in continuing their education.
- Support the development of a comprehensive family law, and once it is passed, advocate for its implementation.

To NGOs and Civil Society Organizations

- Support the development of a national action plan to end child marriage, and once developed, design programs to aid its implementation.
- Raise public awareness about the dangers of child marriages, including through holding dialogue with communities and traditional leaders about the harms of child marriage.
- Assist girls in seeking legal remedies for forced marriage and abuse, obtaining maintenance, and in continuing their education.
- Support the development of a comprehensive family law, and once it is passed, advocate for its implementation.

To United Nations Agencies (especially UN Women, UNFPA and UNICEF), and International Donors (especially USAID, DFID, the EU, and the Joint Donor Team)

- Make the development and implementation of a national action plan to end child marriage, a comprehensive family law, and reforms of other laws that govern marriage and related matters key issues in political engagement with the South Sudanese government.
- Fund programs to implement the national action plan once it is developed.
- Support the government of South Sudan, NGOs and civil society organizations to raise public awareness about the dangers of child marriage.
- Support the establishment of shelters for survivors and gender-based violence, including programs to provide protection for girls who seek help from child or forced marriages.

- Ensure that donor support for justice sector reform pays specific attention to addressing discrimination against women in law and in practice.
- Design and implement programs that will empower girls and women—as well as families—economically, since girls’ vulnerability to child marriages and abuse stems from lack of economic opportunities for them and their families.
- Fund programs that seek to address barriers to girls’ education, such as subsidies for school-related costs.
- Encourage and support provision of systematic, comprehensive sexuality education for in- and out-of-school adolescents.
- Expand support to improve access to reproductive health services and information for all girls and women, including access to emergency obstetric care and family planning.
- Support awareness campaigns on the imperative to register births and marriages.
- Develop a coordinated mechanism for different countries to take steps to protect, including by accepting for relocation, a small number of girls who cannot safely remain in South Sudan due to the threat of forced marriage.

Acknowledgements

This report was written by Agnes Odhiambo, Africa researcher in the Women's Rights Division. The report is based on research conducted by Agnes Odhiambo and Women's Rights Consultant Elizabeth Ashamu Deng. The report was edited by Liesl Gertholtz, director of the Women's Rights Division; Jehanne Henry, senior researcher with the Africa Division; Diederik Lohman, senior researcher with the Health and Human Rights Division; Juliane Kippenberg, senior researcher with the Children's Rights Division; Aisling Reidy, senior legal advisor; and Danielle Haas, senior program editor at Human Rights Watch.

All images were taken by Brent Stirton, photojournalist reporting for Human Rights Watch. Multimedia conception and coordination was provided by Veronica Matushaj, creative director; Anna Lopriore, creative manager; and senior associates Ivy Shen and Jenny Catherall.

Report production and editorial assistance was provided by Matthew Rullo, coordinator of the Women's Rights Division; Grace Choi, publications director; Kathy Mills, publications specialist; and Fitzroy Hepkins, administrative manager.

Human Rights Watch would like to express our deep appreciation to all of the individuals who agreed to be interviewed for this report, as well as the local women's rights activists and NGO representatives who helped to facilitate our research in South Sudan. We also greatly acknowledge the generous donors who support the work of the Women's Rights Division at Human Rights Watch.

“This Old Man Can Feed Us, You Will Marry Him”

Child and Forced Marriage in South Sudan

Almost half of South Sudanese girls between ages 15 and 19 are married, some as young as age 12. An egregious violation of women and girls’ human rights, child marriage in South Sudan exacerbates the country’s high levels of poverty, low levels of literacy, pronounced gender gaps in education, and soaring rates of maternal mortality—currently among the highest in the world.

Many families in South Sudan see child marriage as a means of accessing cattle, money, and other gifts by transferring wealth through the traditional payment of dowries. Based on in-depth interviews with 87 girls and women in three South Sudanese states, *“This Old Man Can Feed Us, You Will Marry Him”* examines how the practice of child marriage negatively shapes the experiences, status, and security of South Sudanese women and girls; violates their right to health, education, physical integrity, and to marry with free consent; and limits their progress and capacity to participate in all spheres of life.

Failure by the government, assisted by its development partners, to combat child marriage could have serious implications for South Sudan’s future development. The report recommends strong measures to ensure protection for victims of child marriage and their access to effective support services, the development and implementation of guidelines for a coordinated government response, and comprehensive reform of South Sudanese marriage laws so that gender equality is a cornerstone of the country’s development agenda.



A young, unmarried girl stands amid a herd of cattle outside Bor, the capital of Jonglei State. Cattle carry significant social, economic, and cultural importance for South Sudan's pastoralist ethnic groups, which use cows for the payment of dowry—a key driver of child marriage. Bor, Jonglei State, February 2013.

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