



## Sudan's Comprehensive Peace Agreement viewed through the eyes of the Women of South Sudan

Amel Aldehaib



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# **SUDAN'S COMPREHENSIVE PEACE AGREEMENT VIEWED THROUGH THE EYES OF THE WOMEN OF SOUTH SUDAN**

*Amel Aldehaib*

*Edited by Orly Stern*

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## Foreword

This paper draws on the author's work as an activist and her extensive interaction with civil society organisations in Sudan, especially in South Sudan. It also draws on MA research conducted at the University for Peace in Costa Rica, titled 'Customary Law and Women's Rights in a changing World: The Case of Southern Sudan'. Her knowledge of the women who survived the devastating civil war – be they women who managed to survive within South Sudan, those displaced in IDP camps in the North, or those who sought refuge outside of Sudan - gave her the lens through which to analyse the contemporary situation.

Born in a territory between North and South Sudan, politically speaking the author is from the North. However, like many Sudanese women, the author feels that being a Sudanese woman is what is important for her. It is as a Sudanese woman that she feels she has the liberty to speak about Sudanese women - regardless of their political and geographic affiliations.

The author recalls walking with a friend from South Sudan, talking about the nature of their friendship. The friend said, 'We are friends because we belong to one tribe ... It is the women tribe, as our identity of being women is equally as important as our identity of being from a specific tribe or being a Northern or a Southern Sudanese. We share the same oppression within our socially constructed categories.'

## Introduction

After decades of a devastating civil war between North and South Sudan, the Comprehensive Peace Agreement (CPA) was signed in 2005 between the government of Sudan and the Sudan People's Liberation Movement (SPLM). The signing of the CPA brought the hope of peace and justice to all the people of South Sudan. Southern Sudanese women, who were both victims and actors during the liberation struggle<sup>1</sup> gained hope for improvements in their lives, both in the public and private spheres.

This paper discusses the experiences of South Sudanese women in this new time of peace. By exploring women's agency and victimisation during the war, the paper argues that the current celebrated liberation and peace, while it has been successful in transforming class identity, has failed to transform gender identity, allowing violations against women to continue unchecked. This paper challenges and questions the concepts of identity and liberation in the current peace from a gendered perspective, and asks what the concepts 'peace', 'identity' and 'liberation' mean for women in contemporary South Sudan. The paper argues that the CPA has failed to play a role in improving the situation for women. It explores the way in which customary law, which is protected by the CPA, continues to perpetuate gender inequality.

### *The lives of women in South Sudan today*

Unfortunately, despite the hopes of change that the CPA brought, narratives of violence against women in South Sudan have increased since the end of the war. While there is a lack of statistics on the prevalence of domestic violence in South Sudan both before and after the war, some studies carried out since 2005 by women's groups and international organisations have shown an increase in domestic violence, marital and non-marital rape, beating of women, and economic deprivation experienced by women since the peace process began. Research carried out by the Women Development Group in Wau, South Sudan, has shown that physical and sexual violence against women has grown more violent during the course of peace due to the prevalence of small arms, men taking on multiple partners and the excessive drinking of alcohol by men (Women Development Group 2007).

In June 2006, the Chairperson of the Parliamentary Committee for Gender, Youth and Sports in South Sudan addressed the United Nations Security Council in a talk entitled, *A Message from the Women from Southern Sudan to the UN Security Council in Relation to UN Security Council Resolution No. 1325*. The Chairperson told the Security Council that women continue to suffer from extreme forms of violence in the aftermath of the war and continue

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<sup>1</sup> When talking about the Sudanese civil war, it is interesting to note that Sudanese people talk about the civil war as both the 'liberation' and the 'war'. It is referred to as a liberation struggle in South Sudan, while it is referred to as a war in North Sudan. In this paper, the terms will be used interchangeably.

to have a low social status. The address warned that social dynamics would be in a state of transformation during the post-conflict period, and that these social changes would be likely to push violence further into the private sphere, rendering women's vulnerability less visible and noticeable.

Many reasons are given for the increase in violence against women since the war. Participants in a workshop in South Sudan were asked what they thought the reasons for the deterioration of conditions for South Sudanese women were since the war. Participants mentioned multiple reasons, among which were the prevalence of small arms and the excessive drinking of alcohol. The hyper-masculinity created by men's experiences as combatants was also given as a reason.

An important factor that has contributed to the increase in gender violence is that both the formal (civil law) and the informal (customary law) justice systems fail to provide redress for women who are victims of gender violence. This sends a message that it is acceptable behaviour, and fails to act as a deterrent for other perpetrators. A workshop participant from South Sudan explained: 'When your husband abuses you at home, he thinks you are his property and that he bought you by paying dowry to the males of your family. If you complain to the civil court, the judge will mostly refer you back to the customary male chiefs in your tribe. You complain to the male customary chiefs and they will ask you to obey your husband and follow our community culture, which gives men power over women, and if you insist not to, then you have to face and may bear the consequences, which you can't, unless you have a lot of courage, so we choose to suffer in silence, because we are poor and have no right to object. Actually we don't know where to find justice.'

An increase in violence in post-conflict is not something that is confined to South Sudan. This is a pattern that has been seen in post conflict settings across the continent. It is commonly reported that violence against women increases when war-related fighting dies down.

### *The meaning of peace and liberation*

The harsh reality for women in post-conflict South Sudan raises questions about the meaning of peace and liberation. If wars are initiated as a result of social oppression and a means by which to challenge this oppression, are 'peace' and 'liberation' really achieved if women continue to suffer from oppression? What do peace and liberation really mean, and why should women experience them differently to men? Does the political identity of a specific community incorporate a woman's identity as well? How is gender identity transformed during and after liberation? If women are seen as equal citizens by a state, why doesn't the state intervene to protect their rights?

Peace is more than just the absence of war. Peace should encompass a state of wellbeing that includes security for all citizens in both the public and private spheres. Peace theorists have attempted to develop the concept of peace. Galtung (1990) defines 'negative peace' as being characterised by an absence of direct fighting. This does not necessitate a full and lasting end to conflict or a real change in people's lives and social circumstances. 'Positive peace' on the other hand, means a state of social justice, which is present when both structural and cultural violence have been overcome. The 'positive peace' lens will be used for the purpose of this paper.

A gendered analysis of peace and security is fundamental, since women experience both war and peace differently to men. According to the feminist discourse, peace is not just the absence of war. Rather, it involves social justice and a consciousness and transformation around gender identities, masculine and feminine stereotypes, family structures and power relations within the family and community. Real peace in post-conflict times should include the emergence of new gender identities, new gender roles, and new decision-making power structures.

In order to analyse Sudan's transition to peace, we need to begin by examining how gendered identities existed historically, how they were embedded in the liberation struggle, and how they have been changed by the liberation struggle.

## Historical background

Sudan, Africa's largest country, is described by Natale Olwak Akolawin (1973) as a country with extraordinary ethnic and cultural diversity and 'a microcosm of Africa'. Sudan is one of the most diverse countries in Africa, with an estimated population of 39 million people comprised of about 600 ethnic groups speaking about 400 different languages. Its people are generally categorised into two main groups, those of African- and those of Arab-affiliated ethnicities. While Arab-affiliated ethnicities largely adhere to Islam, African-affiliated ethnicities adhere largely to Christianity or indigenous belief systems. Arab-affiliated ethnicities inhabit much of Northern Sudan, while African-affiliated ethnicities inhabit Southern Sudan, and some parts of the North, notably Darfur and the Nuba Mountains.

This diversity has meant that one of the major challenges for Sudan's rulers has been around how to build a united nation despite the population's diversity. Unfortunately, instead of diversity being used as strength with which to build the nation, this diversity has been a source of conflict and tension between the northern and southern parts of the country since independence in 1956. Sudan's leaders have not risen to the challenge of harnessing this diversity.

Sudan recently emerged from a decades-long civil war/ liberation struggle between its northern and southern regions, in which the South fought for its independence from the North. Soon after independence in 1956, a civil war erupted which continued until the signing of the Addis Ababa Peace Agreement in 1972. War erupted once again in 1983. Finally, in 2005, the war came to an end with the signing of the Comprehensive Peace Agreement between the Sudan People's Liberation Movement (SPLA) and the government of Sudan in which the South was made into a semi-autonomous region.

The cause of the Sudanese conflict is complex. Johnson explains: 'Religion, local perceptions of race, and social status, economic exploitation, and colonial and post-colonial interventions are all elements in Sudan's civil war, but none, by itself, fully explains it.' (2003: 1-2). Francis Deng describes the conflict between the North and South as a 'conflict of identities in which law has been viewed as an integral part of the conflicting identities'. Southerners claim to have been oppressed by Northerners who enforced their culture as 'the national identity that determines the distribution of power, wealth, services and development opportunities' (Deng 2005: 10).

While the South of Sudan is currently said to be in a post-conflict situation, an active North/North conflict, which began in 2003, continues to take place in Darfur (politically Darfur is considered part of North Sudan). Though the conflict in Darfur has significant bearings on the rest of the country, this paper will focus on the North/South conflict and will not address the war in Darfur.

## The history of female leadership in South Sudan

Historically, women have held some leadership positions in South Sudan. These leadership roles have included positions as religious leaders, clan leaders and political leaders. Unfortunately, the patriarchal dominance has been so overwhelming that it has not allowed for recalling this history of women's leadership.

Just before the beginning of foreign rule in Sudan in 1821, women within the Nilotic society occupied a limited space of power. In her article *Women, War and Leadership in Southern Sudan (1700-1994)*, Stephanie Beswick explains that during the period before foreign rule, South Sudanese society had never objected to women in religious leadership. At that time, two female leaders, Abudok from the Shiluk kingdom, and Man-Lang from the Nuer kingdom, held positions of religious power. They ruled their kingdoms with considerable success. Unfortunately, their rules were ended by waves of agitation by men, who were opposed to female leadership. As a result of this opposition against women occupying leadership roles,



the influence of women in the political and economic sphere was diminished. Men then became accepted as the prerogative leaders. This development had effects in the political, religious and public spheres.

There were however, other examples of female leadership through the ages. During the Turco-Egyptian and Mahdist colonial period between 1821 and 1898, in an attempt to resist the barbaric policy of executing tax-defaulting chiefs who could not deliver to their wards, Dinka communities started appointing women to replace male chiefs, believing that colonial administrators would be less likely to execute female chiefs (Beswick 2000). Therefore, when a chief died, his wife would acquire his political position and maintain it. During this time, many powerful female leaders emerged throughout South Sudan and occupied both political and military positions in their communities.

The Anglo-Egyptians (1898–1956) who took over power from Mahdists, were supportive of women leaders because of the notion that women were less likely to resist colonial power (Beswick 2000). Unfortunately, they ultimately reinforced the patriarchal order by responding to men's objection to these women leaders. They reduced women's leadership roles in order to satisfy the desires of men for greater power.

By the time independence arrived in 1956, female political and religious power had been curtailed (Beswick 2000). In the post-independence era, war erupted between North and South Sudan. With the introduction of modern warfare, a new leadership avenue was opened for women, especially in the military.

Between 1972 and 1983, South Sudan enjoyed relative peace following the Addis Ababa Peace Agreement. The agreement provided for equal citizenship rights, including women's political rights. Beswick explains: "These changes in politics and economics or "production" gave way, for the first time, to a restructuring of marriage systems and a decline in the observance of large kinship networks among the new white collar strata. Arranged marriages declined as personal choices among young men and women increased' (2001: 43). This relatively peaceful time was characterised by the emergence of modern political leadership among South Sudanese women, who entered politics in considerable numbers. However, this time they did not enter through inheritance, but rather through democratic processes. Twenty-five female government officials were elected democratically to the South Sudanese parliament. Women's positions in clan politics also took a turn, as two elder Azande women took power over their clans in 1976–78.

The governance structure in Sudan today is a highly masculine system. Women are for the most part absent from decision-making and political power, despite the fact that the Comprehensive Peace Agreement created a quota of 25% for women representation in the governance system. There is no state-led plan of action in place to effect and support women representation, especially at community level. Socio-cultural barriers have also prevented women representatives from using their positions to implement the long-awaited political, social and economic rights of ordinary Sudanese women.

The customary law system too remains male-dominated. To date, there is no concrete action from the state to facilitate women's representation in customary leadership. Recent advocacy efforts (2008–2009) by the Women Development Group and Oxfam Canada's PACE<sup>2</sup> Programme have supported female chiefs. The state of Bahr El-Ghazal currently has three acting female chiefs.

## Gender identity embedded in the liberation struggle

The liberation struggle had economic, social and political effects on Sudanese women. It affected gender identities, gender roles and relations within households, the community and at the political level.

All South Sudanese women, including those who spent the war time within South Sudan,

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2 Partnership for Cross-Sectoral Engagement (PACE).

those who were displaced and those who sought refuge outside of Sudan, were all in some way affected by the war. Those who remained in South Sudan were subjected to physical, sexual and psychological torture during the war. Unfortunately, many were not able to communicate their suffering due to cultural barriers or because they doubted that they would receive any practical support.

During the conflict, women became increasingly independent. Because of the circumstances, they took on roles that were different to the traditional roles of women in Sudan, including the role of head of household. 'Conflict in Sudan greatly affected the family institution, leading to changes in the family structures and the emergence of roles which were not in existence in the past. Women have become breadwinners and care-takers...' (LoWilla 2006).

Women displaced in the North of Sudan often found themselves solely responsible for their families who had fled with them to the North. With few means to earn income, many found themselves with no alternative ways to maintain their families, other than to brew alcohol or engage in other activities considered illegal in the North. This exposed them to harassment or imprisonment. Mahmoud El Zain, along with Suliman, points out that '96 per cent of the women imprisoned between December 1993 and November 1994 were from Southern and Western Sudan' (2007: 299).

Women participated in different ways in the liberation struggle. During the war, the SPLA promoted and encouraged the participation of women as combatants and as such, large numbers of women joined. The first to join the SPLA were students from the University of Juba. They were followed by others from both urban and rural areas around South Sudan, with different capacities and education levels. Women occupied different ranks in the military forces, some holding positions as officers, while others acted as fighters or administrators.

Changing masculinities associated with militarisation during the civil war also had an impact on gender identity and violence against women. Men in armed groups were socialised to be hyper-masculine. The behavioural codes in the military system justified the use of violence as a means of protection and of achieving security and acquiring resources. Unfortunately, such heightened masculine behaviour also resulted in increased violence against women.

Therefore, whether they were actors in the liberation struggle, or victims to the conflict, women's gender roles and identities changed. These changing gender roles faced new challenges after liberation. Changes in social relations meant that husbands were often not able to play their traditional roles as breadwinners and heads of their families. This often made men insecure. 'This insecurity turned into anger and frustration and addiction to alcohol drinking which they in turn meted out as all forms of abuse including beatings, rape and defilement on the helpless female household members' (Isis-WICCE 2007).

Jok argues that 'the efforts of rebel armies, fighting against the northern government of Sudan, to forge a women's role in the liberation struggle. The effort has focused on the women's reproductive roles as their contribution. This "nationalisation" of the womb has nearly licensed young violent men to assume rights over women's sexuality - often leading to rape. Coupled with traditional cultural notions of sexuality, this wartime experience has reinforced men's domination over women' (1999: 428).

## Sudan's legal systems

As in many African countries, the major feature of Sudanese law is plurality, allowing formal and informal legal systems to exist in parallel with one another. This legal plurality reflects the distinction between what is public and what is private. 'In Sudan, a person's civil status (*ahwal madaniyya*) denotes an individual's rights and obligations in the public sphere, and these are regulated by civil law (*qawanin al-ahwal al-madanyia*). A person's relationship within the family or the private sphere is regulated by customary laws that govern his or her

personal status (*ahwal shakhsiyya*)' (Tønnessen 2007: 2). Customary law is made up of many informal laws that are based on religious, ethnic and tribal practices (Parmar 2007).

Throughout its history, Sudanese law has been changed and modified by those in power. These changes have mainly served the interest of those in power. Such changes in the law were some of the major causes of the war between the North and South. The National Islamic Front took power through a military coup on 30 June 1989 and started a process of expanding the application of Sharia law across the country. This resulted in great tensions with other cultures and religions.

The process of enforcing Sharia law throughout the country had significant political consequences for customary law. 'With the post-independence tendency toward Islamisation, formalised by the promulgation of the 1983 September Laws and further advanced by the Islamist regime that seized power in 1989, Customary Law became even more relegated to an inferior status in the system' (Deng 2005: 14)

## Customary law and women's rights in South Sudan

Although there are problems relating to gender justice in both Sharia law and customary law, this paper focuses its discussion on customary law.

In South Sudan there are more than fifty tribes, each of which has their own customary law system. Despite the many differences between these systems, there are also many commonalities. One commonality is that they all affect women in similar ways. Several aspects of customary law are inconsistent with women's rights. 'The majority of southern Sudanese Customary Law systems show plainly a conflict between international human rights laws and rights granted to women and children in Customary Law' (Jok et al 2004: 6).

The common features of different systems of customary law in South Sudan are around family law, which concerns itself with marriage, divorce, custody of children and inheritance. Customary law therefore determines a women's personal security at home as well as her access to resources. Unfortunately, customary law perpetuates harmful customs and traditions in the realm of the family, which relegate women to a lesser status. Customs perpetuated by customary law include forced and arranged marriages, forced wife inheritance and bride price (Tønnessen 2007: 7). Customary law therefore perpetuates unjust gender relations that serve the social, psychological and economic interests of men, by bringing women into a position of subordination and inequality in the family and the community.

## What does the Comprehensive Peace Agreement offer South Sudanese women?

Women were not included as actors during the negotiation process for the Comprehensive Peace Agreement. There were only two women involved in this process from the SPLA side, but they were made to act as observers and only nominally as negotiators. Women's concerns were also not properly incorporated into the discussions that led to the final agreement.

It seems that the roles that women played during the liberation struggle did not qualify them to participate in the CPA negotiation process in a significant way. Instead, during the negotiations, women were treated as passive victims of war. And yet even their needs as victims of war were not properly addressed.

What kind of feelings of injustice this would bring to women who played active roles during the liberation struggle? One female former combatant said during an interview:

I decided to join SPLA because I shared its sentiments and objectives although I am a professional teacher. It really moved me and I felt the oppression of the government of

Juba and I put it in my heart that the liberation of Sudan is not only for men because we also have to participate. I did fight as a Southern Sudanese and as a woman to fight for my own freedom, women and my relatives so that they are secure and not to be oppressed any more. (AN Isis-WICCE 2007)

The CPA is a highly political and gender blind agreement, which was exclusively negotiated between the two main parties to the conflict, the SPLM and the National Congress Party. The negotiation process excluded other political parties and civil society organisations, including women's organisations. Its focus was primarily on negative peace, or stopping war. Concepts such as 'injustice', 'inequality' and 'marginalisation' dominate the CPA. These are presented as the main categories of analysis to peace.

Unfortunately, the CPA is gender blind. Gender inequality was never considered to be a factor in security or in the sharing of power and wealth as gender identity was not considered as a category of analysis. The CPA does not address structural injustice in an inclusive manner. The narrow understanding of democracy is based on masculine norms and is not inclusive of women. As such, it excludes half of the population from its pursuit of justice.

One of the major changes that was agreed upon in the CPA, was related to the legal system that would govern people's affairs. It was agreed that while North Sudan would continue to apply Islamic law, South Sudan would apply a secular democratic law (including customary law and sharia law in some places).

Following from the CPA, the new Interim Constitution of South Sudan was enacted in 2005. Interestingly the Interim Constitution says that a source of law in South Sudan shall be custom and tradition and therefore customary law is regarded as one of the recognised bodies of law, similar to Sharia in the North.

Unfortunately, neither the CPA nor the Interim Constitution grant women genuine equal rights even though the Constitution is supposedly based on human rights principles. In fact, the constitution contains a significant conflict of interests: While on the one hand it grants equal rights to men and women in the Bill of Rights (Article 32[1]), it also legitimises the rights of people to their culture through customary laws. While customary law is a fundamental component of South Sudanese cultural identity, the institutionalisation of customary law in its current highly patriarchal state legitimises the continued perpetuation of the violation of women's rights.

Thus, women in post-conflict South Sudan are trapped between two incompatible legal institutions with little power to assert their own rights. Unfortunately, the result is that 'formal rights become nothing more than "empty shells" and unfulfilled promises' (Romany 1993: 104). In spite of the fact that the new Constitution is based on human rights principles, some parts of customary law continue to perpetuate gender inequality and human rights violations.

Now that the CPA has given the South Sudanese people the right to reform their own legal system in accordance with the peoples' aspirations and cultural identity, South Sudanese women have found themselves excluded and without the equality and liberation that the war and the negotiated peace was supposed to bring. On the contrary, their security, especially in the private sphere, has become further at risk in the aftermath of the war.

This conflict between cultural rights and women's rights, both of which are protected in the Constitution, lies at the heart of the contemporary debate on universalism versus cultural relativism in the human rights discourse. Proponents of universalism regard fundamental human rights as applicable across the board, while proponents of cultural relativism argue that human rights are not universal and that they should be interpreted within the respective cultural, political and social contexts.

A country with a similar issue is South Africa, whose constitution protects both the right to culture and the right to equality for women. The situation is simplified in the South African Constitution by a clause that reads: 'The right to culture may not be exercised in a manner that is inconsistent with other provisions in the Bill of Rights.' The South African Constitutional

Court has used this to strike down tenets of customary law that breach the equality rights of women. South African Sibongile Ndashe (2005) argues that this rights-based discourse remains the most convincing means for advancing women's rights within customary law settings.

Martin Chanock (1989) argues that using African cultural assertions to protect customary law is romanticising customary law in the name of culture. Certain types of assertions about customary law in Africa were falsehoods created to further western dominance. Chanock further argues that the reintegration of the history of African family law in the human rights discourse will remove this false traditionalism. In his most recent book, *Identity, Diversity and Constitutionalism in Africa*, Francis Deng (2008) writes that 'ultimately it is possible to see cultural relativism not as a force intent on excusing human rights violations or unravelling the conventional notion that human rights are universal, but rather as a source of strength by which universalism can actually find greater legitimacy, local reinforcement and enrichment. It is through frank debates about cultural relativism that we can explore the sources of genuine conflicts between the local and the universal' (Deng 2008: 146).

However, what remains important is not the legal text, but rather how accessible these legal rights are for specific individuals or groups, who may lack the power to access these rights. Ndashe explains that 'rights in abstract, without the institutional framework that support these rights, like judicial institutions, will lead to less protection and may ultimately disadvantage women rather than protect them' (2005: 39).

The prominent religious and political Sudanese reformist Mahmoud Mohamed Taha (1909–1985) posted a challenge in his 1979 book, *Promoting the Sharia of Personal Act Law*, noting the need to reconcile individual freedom with the community requirements for inclusive social justice. Taha saw that while community social justice was a means, individual freedom was the ultimate end.

## Conclusion

Customary law is an important feature in the new peace for the South Sudanese people, as it entrenches their cultural identity, strengthening the social fabric and contributing to the peaceful co-existence of families and communities. However, the institutionalisation of customary law in its current highly patriarchal shape fails to transform gender identity to accord with the celebrated peace and liberation. South Sudanese women who were part of the liberation struggle have found themselves without the expected gains of equality and liberation, especially in the private sphere. Conditions for women in this time of peace, are often more difficult than they were at times of war, raising the question as to whether the women of South Sudan really gained liberation from the liberation struggle.

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