



He Cannot Marry Her

This research considers the role of the legal governance of marriage in conserving and changing social divisions during a period of war, exile and fluid elite politics. Marriage is particularly potent in its influence on identities as it allows state-level politics into the most intimate relationships as well as governing the legitimacy and legality of reproduction. War and exile can remake identities. In times of war politico-military elites may try to instrumentalise identities to build constituencies that remain loyal despite turbulent elite alliances. At the same time, identities are often internalized, constituted through habits that remake visions of divisions and are independent of such instrumentalisation. This research looks at example of how chiefs' courts through marriage

laws and norms mediate and contest ideas of identity in times of war, including the identity of the dead. The research is based on qualitative interviews and observations of Nuer chiefs' courts in South Sudanese refugees in Sudan in 2017 and 2018.

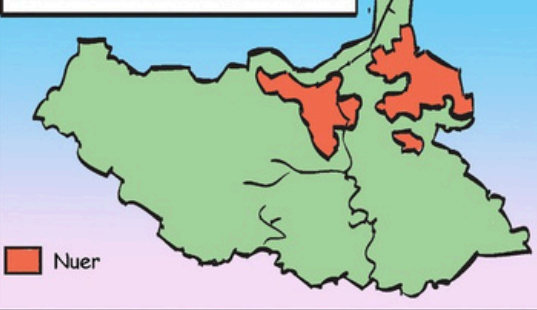
- **Naomi Pendle**



Thomas Dai

Thomas Dai is a cartoonist and muralist from South Sudan. He is an active member of Ana Taban 'We are Tired' a collective of artists and activists trying to transform their country. His anti-war artwork has been regularly featured in the Juba Monitor.

The Nuer region in South Sudan has seen its share of violence in the past few years.



Conflict and violence have become normal in South Sudan, not experienced as something out of the ordinary, but simply as a part of life.



And life goes on. And with it, love, marriage and children.



But marriage, because it is an institution regulated by law, can be used a tool to shape identities, and thus have a long-lasting effect on current and future conflicts.

As a legal institution, marriage can naturalize visions of division.

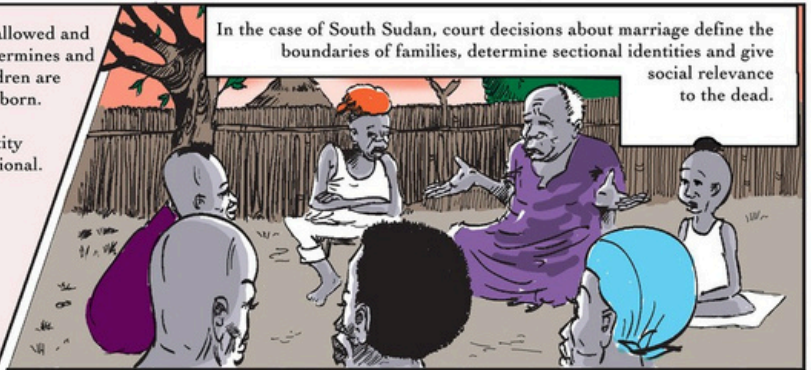


Which marriages are allowed and which are not also determines and legitimizes which children are allow to be (lawfully) born.

The influence on identity becomes inter-generational.



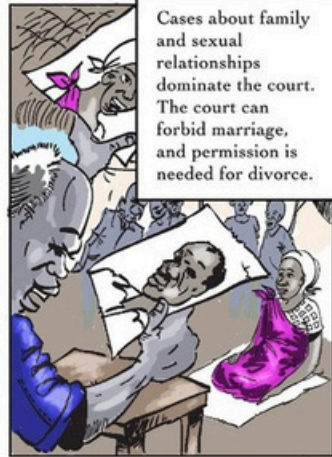
In the case of South Sudan, court decisions about marriage define the boundaries of families, determine sectional identities and give social relevance to the dead.



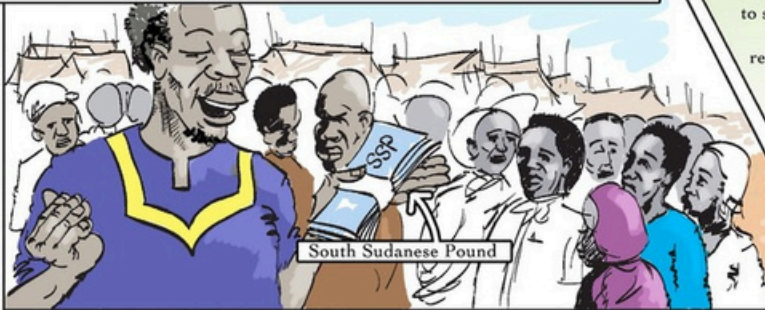
Because of ongoing conflict, many people from the Nuer regions fled from South Sudan to Sudan. Justice in the Nuer regions has long been dispensed by the chiefs' courts. Since the outbreak of violent conflict in 2013, the chief's courts were recreated in places where the Nuer fled.



Cases about family and sexual relationships dominate the court. The court can forbid marriage, and permission is needed for divorce.



Court Chiefs have long used cattle as a means of compensating loss and cementing marriage. Since no cattle are available in the refugee camps, money has now also become acceptable. If there is no money, marriage is not allowed.



The courts have a mixed record when it comes to the position of women. They are known to sometimes rule in favor of women, but also reinforce the subservient role of women with their rulings.

**I WANT A DIVORCE!
HE BEATS ME!**



CAN YOU
PAY BACK
THE BRIDE
PRICE?

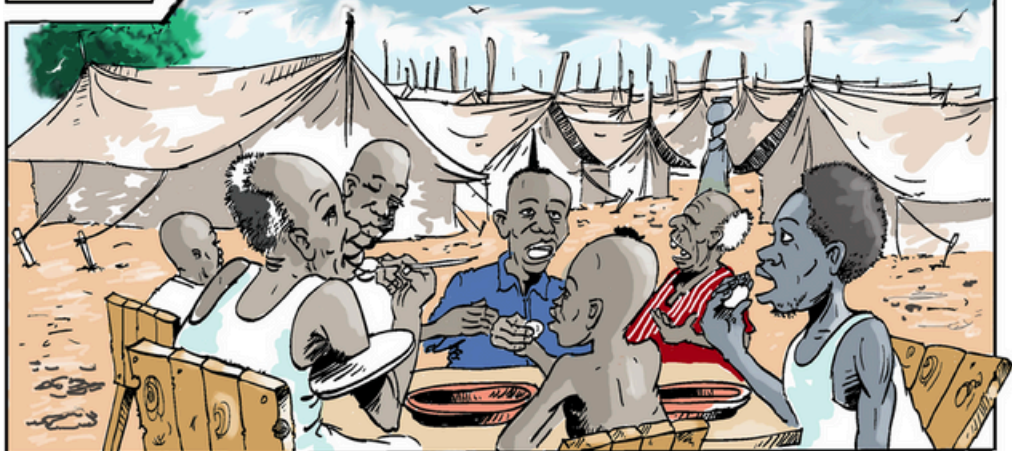
OTHERWISE,
I WILL NOT
ALLOW A
DIVORCE!

**YOU SHOULD NOT BEAT YOUR WIFE.
HOWEVER, IF SHE BEHAVES BADLY ON
SEVERAL OCCASIONS, BEATING HER IS
ACCEPTABLE.**

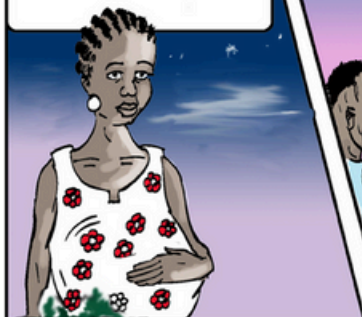


FAMILY

Family is important among the Nuer. In times of war or deprivation, family networks can be essential for survival.



Chief courts play a key role in defining the boundaries of families.



THIS MARRIAGE CANNOT BE. SEVEN GENERATIONS AGO, THEY SHARED A COMMON ANCESTOR. THEY ARE FAMILY!

NOW THAT SHE IS PREGNANT, YOU TWO MUST MARRY!



By this ruling, the court supports a broad definition of family, that extends back at least 7 generations.

THIS MARRIAGE IS PROHIBITED! THE CHILD WILL GO TO THE FATHER.



YOU ARE RIGHT!

SECTIONAL DIVISIONS

Sectional divisions play an important role in South Sudan, defining who supports who, and who fights who in time of conflict.



Through ruling about marriage and procreation, the chief court's have the power to reinforce and naturalize these divisions in the long term.



CASE I



They took the matter to court.

THIS MARRIAGE IS PROHIBITED!

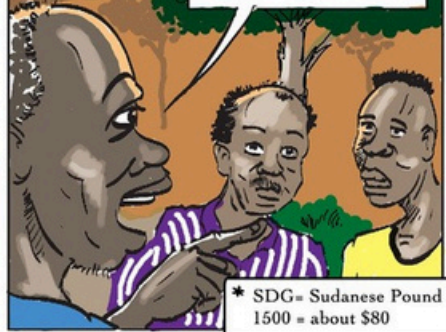
ANY CHILD OF SUCH A MARRIAGE WOULD BE CURSED!

CASE II

YOU HAVE RAPED MY DAUGHTER!



YOU WILL BE IMPRISONED FOR ONE WEEK. AND YOU WILL HAVE TO PAY 1500 SDG* EACH TO THE FATHER AS AN APOLOGY.



* SDG = Sudanese Pound
1500 = about \$80

THE GIRL IS NOT VISIBLY HURT; IT WOULD BE BEST TO PREVENT THIS CASE TO BECOME PUBLIC, LEST IT SHAME THE GIRL.



In a similar rape case, the same court has issued a sentence a hundred times more severe.

YOU ARE HEREBY SENTENCED TO TWO YEARS IN PRISON AND A PAYMENT OF 10,000 SDG!



The only difference: in the first case, both the accused and the accuser were from the Dok community.



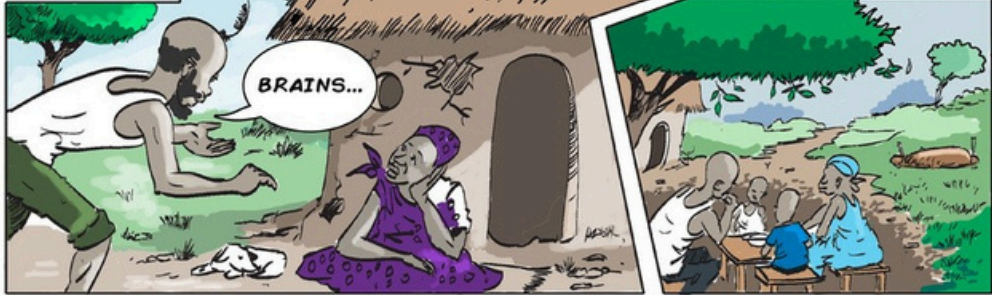
The court's main objective here seems to have been keeping this case profile low, and thus maintaining reputation of the section.

IDENTITY OF THE DEAD

Among the Nuer, the dead can marry and have children.

And, no, not like zombies.

Marriage can continue after the husband has died. Children are fathered by a male relative of the dead. They take the dead man's name and are considered to be his legal children.



Since 2013, the conflict in the Western Nuer has taken the lives of many young men. They often die before they are married.



YOU MIGHT DIE, BUT YOUR NAME WILL LIVE ON! YOU WILL HAVE CHILDREN TO CARRY YOUR NAME INTO THE FUTURE!

Politicians have used the social continuity of the dead to mobilize fighters.



The courts often uphold posthumous marriages and favor the dead over the living.



CASE 1

MY MAN DOES NOT TAKE CARE OF ME. I AM LEFT ALL ALONE. I WANT TO LEAVE HIM.



MY HOUSEHOLD HAS NO SURVIVING MEN.

I DEMAND THAT THIS MARRIAGE WILL BE UPHELD!



YOU MUST TAKE CARE OF THIS WOMAN. THAT IS YOUR RESPONSIBILITY.

LOOK AFTER HER AS IF SHE WAS YOUR WIFE. BUT THE MARRIAGE IS LEGAL AND DIVORCE IS NOT ALLOWED.



CASE II

MY HUSBAND WAS KILLED. WHAT SHOULD I DO?

GO LIVE WITH YOUR BROTHER-IN-LAW IN KHARTOUM. HE WILL TAKE ON THE DUTIES OF BEING YOUR HUSBAND.



In Khartoum, she is turned away.

GO AWAY! IF I TAKE YOU IN, MY WIFE WILL LEAVE ME!



The brother-in-law found out and took the matter to court.

THE MARRIAGE TO MY BROTHER WAS NEVER ENDED; THEREFORE, ALL THESE 4 CHILDREN ARE MINE!



I RETURNED TO WHITE NILE, MARRIED ANOTHER MAN AND HAD TWO MORE CHILDREN.



He failed to pay the bridal price in full, but appealed the case. The chiefs of the main court decided that all four children should go to him.



TWO CHILDREN ARE YOURS, THE OTHER TWO NOT.

THE OTHER TWO WILL ALSO BE YOURS IF YOU PAY THE REMAINDER OF THE BRIDAL PRICE WITHIN ONE MONTH. YOUR BROTHER DID NOT PAY IN FULL BEFORE HE DIED.



The social and legal power of the dead becomes especially important in times of war. It reduces the consequences of death.

For those who fight, death becomes more palatable because their social relations will be upheld if they die.

The greatest power of chiefs' courts when they rule about sex and marriage is the long-term effects their decisions have. In White Nile, they have chosen to uphold identities that entrench families and sections.



But these court ruling also change identities. By dictating which marriages are legal, and thus what children will be born, they ingrain the sectional divisions of today into the next.

