

SOUTH SUDAN¹

OVERVIEW OF MUSLIM FAMILY LAWS & PRACTICES (Updated as at March 2022)

Family Law Matters	Description				
	Legislative Framework	Case Law and Cases	Policy	Procedure	Practice
<p>Equality of spouses in marriage</p> <p><i>Is there a Constitutional provision on equality and are there exceptions? Are there specific laws that recognise marriage as a partnership of equals i.e. are family laws and/or other laws relating to marriage and the family codified or uncoded? If codified, what are the titles of all the applicable laws? If</i></p>	<p>Article 15(c) of the Transitional Constitution of the Republic of South Sudan 2011², as amended 2015, guarantees the right to found a family. It 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.”</p>		<p>South Sudan acceded to the United Nations Convention on the Elimination of all forms of Discrimination Against Women (CEDAW) on the 30th April 2015 as a commitment towards protecting and promoting the rights of women in South Sudan.</p> <p>Although not ratified, South Sudan assented the Protocol of the</p>	<p>South Sudan does not recognize civil marriage as legal or a marriage entered into between a man and woman joined by court.</p> <p>The types of marriages that are recognized are:⁹</p> <ul style="list-style-type: none"> • Customary marriage where dowry / bride price is paid to the family of the bride and then the two 	<p>According to the UNDP 2020 Human Development Report, South Sudan is ranked at 185 on the UNDP Human Development Index and 0.842 on the UNDP Gender Inequality Index.¹⁰</p> <p>Usually referrals from customary to statutory courts are made inconsistently and without clear regulatory guidelines, with individual chiefs adjudicating in the manner they feel is appropriate. Given the poor state of the statutory courts, customary courts hear the vast majority of up</p>

¹ This country table was prepared by Islamic Development and Relief Agency South Sudan as a collaboration under the Campaign for Justice in Muslim Family Laws

² Laws of South Sudan; <http://www.refworld.org>

⁹ IDRA Key Informant Interview (KII) with a law maker in Juba (October 2021).

¹⁰ UNDP Human Development Report, South Sudan (2020) <http://hdr.undp.org/sites/default/files/Country-Profiles/SSD.pdf>.

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<p><i>codified, do these laws apply to all citizens irrespective of religion? If not, do these laws apply to all Muslims or are there different codified laws for different sects within Islam? If uncoded, or if codified laws do not sufficiently address a particular issue, how is the issue addressed e.g. what Muslim school of law is applicable? Do these laws explicitly state gender-stereotypical roles between husbands and wives e.g. the husband is the head of the household or the wife is the</i></p>	<p>According to South Sudan's legal framework, men and women have the same rights to enter into marriage.</p> <p>Article 15 of the Transitional Constitution as amended in 2015 provides that "every person of marriageable age shall have the right to marry a person of the opposite sex and to start a family according to their respective family laws".</p> <p>Currently, the constitution is the only codified legal framework available on family matters but there also some customary laws recognised by the same constitution, for example the</p>		<p>African Charter on Human and Peoples' Rights on the Rights of Women in Africa (Maputo Protocol)⁵.</p> <p>With all these commitments, however, there is little substantive change in the status of South Sudanese women and girls and Muslim women in particular, who continue to be subjected to various forms of violence and discrimination given the generally weak rule of law, normalization of various forms of violence against women, and lack of</p>	<p>families arrange for the marriage. Marriage certificate for this kind of marriage is issued by the customary court (known as B Court).</p> <ul style="list-style-type: none"> • Church marriage where the parties go to church for the union and the certificate is issued by the Priest or Pastor. This marriage is conducted after fulfilment of customary requirements. • Islamic Marriages, which require payment of the Mahr/sadaq to the 	<p>to 90 per cent of cases. While it is theoretically possible to appeal from the customary to the statutory courts, the widespread absence of local courts prevents many South Sudanese from accessing the formal legal system. In a 2009 workshop held in Bahr el Ghazal, one woman described the challenges women face in accessing courts:</p> <p>"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. Due to issues like the aforementioned, the majority of the women don't know where else</p>

⁵Legal provisions to gender equality & Sexual & Gender based Violence in South Sudan.
<https://www.undp.org/content/dam/southsudan/library/Rule%20of%20Law/Legal%20Provisions%20Relating%20to%20SGBV.pdf>

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<i>primary caregiver?</i>	<p>Dinka and Nuer customary laws that are written but not passed through the parliament.³ Families have a financial incentive to ensure that marriages remain intact even if women and girls face abuse.</p> <p>South Sudan does not follow a specific Muslim school of law but sometimes refer to the one followed in Sudan which says that women have the same rights as men, including a right to marry when all of them are</p>		<p>institutionalization of rights in legal and policy frameworks.⁶</p> <p>In the absence of Kadhi courts and standard laws like a marriage act or family law, Imams and community leaders often do not sufficiently address issues. Women often end up as victims, for when they report a case the ruling is customarily in favour of the man, who is usually the perpetrator.⁷</p>	<p>family of the bride, thereafter the parties go to the mosque for the Agdi Annika (Union). The union is headed by the Imam in the presence of the Wali then the Imam issues the marriage certificate to both parties.</p>	<p>to demand for justice or their rights.¹¹</p> <p>According to the Muslim scholars, the practice for Muslims will not differ from other marriage practices by different denominations. As the minimum requirement the man must have the ability to take care of the wife, and he must have “Islamic Faith and co-values of Islam”.¹²</p>

³ IDRA Key Informant Interview with a law maker in Juba (October 2021).

⁶ Legal provisions to gender equality & Sexual & Gender based Violence in South Sudan.

<https://www.undp.org/content/dam/southsudan/library/Rule%20of%20Law/Legal%20Provisions%20Relating%20to%20SGBV.pdf>

⁷ IDRA Key Informant Interview with Muslim religious leaders and law makers from the Islamic University of South Sudan (October 2021)

¹¹ Legal provisions to gender equality & Sexual & Gender based Violence in South Sudan.

<https://www.undp.org/content/dam/southsudan/library/Rule%20of%20Law/Legal%20Provisions%20Relating%20to%20SGBV.pdf>

¹² IDRA Key Informant Interview with Muslim religious leaders and law makers from the Islamic University of South Sudan (October 2021)

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	at the marriageable age of 18 years. ⁴		For example, a recent case involved a Sheikh that abused a teenage girl in Juba. Religious leaders paid bribes to transfer the case from civil court to a customary court (court managed by Muslim religious leaders). This kind of practice is not permitted by the Islamic sharia law but is one of the many ways in which religious leaders take advantage of the absence of law. ⁸		
Minimum and equal age of marriage <i>Is there a minimum age of marriage? Are there</i>	The constitution does not provide ages for marriage, it only states that:	There is a case of a sheikh who raped a 17-year-old girl several times, impregnated and	South Sudan ratified the Convention on the Rights of the Child, and developed a Strategic National Action Plan to	The Constitution states, in Article 15, that "marriages shall be conducted in accordance with	In South Sudan, about 52% of all girls are married before 18 years of age and 9% are pregnant before their 15 th birthday. ¹⁹

⁴ IDRA Key Informant Interview with Muslim religious leaders and law makers from the Islamic University of South Sudan (October 2021)

⁸ IDRA Key Informant Interview with affected women (October 2021)

¹⁹ A campaign against child marriage launched by UNICEF (2020) <https://www.unicef.org/southsudan/press-releases/some-things-are-not-fit-for-children>

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<p><i>exceptions to the minimum age (e.g. min. age at 18, with exceptions to 16)? Is there an absolute minimum age without exceptions? Is there equality in the minimum age of marriage? Is there a minimum age verification process before the marriage is concluded?</i></p>	<p>Article 15: “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.”¹³</p> <p>Article 17(4): “A child is any person under the age of 18 years”.¹⁴</p> <p>The Child Act 2008 defines a child as “any human being below the age of 18”.¹⁵</p>	<p>aborted the foetus and later married her to another man. This case was reported and the law has not held him accountable as the hearing has been postponed several times and the sheikh himself was left to move freely and even lead people in prayers. The perpetrator has strong religious leaders, including some members from the South Sudan Islamic Council</p>	<p>end early marriage in South Sudan (SNAP) 2017–2030.¹⁷</p>	<p>respective family laws.”¹⁸ In the case of South Sudan, customary laws and practices define the family laws of the country.</p>	<p>South Sudan has the seventh highest prevalence rate of child marriage in the world.²⁰ Despite all the legal measures put in place, child forced marriage continues to prevail in South Sudan. For example, Islamic laws emphasize maturity for marriage although in practice girls are married off at the age of 15; these marriages are often based on physical maturity and not the age.²¹</p> <p>South Sudan does not have a system for checking age using technology; it depends on the genetics / body size.²²</p>

¹³ Article 15(c) of the Transitional Constitution of the Republic of South Sudan (2011)

¹⁴ Article 17(4) of the Transitional Constitution of the Republic of South Sudan (2011) as Amended (2015)

¹⁵ The Republic of South Sudan Child Act 2008

¹⁷ A campaign against child marriage launched by UNICEF (2020) <https://www.unicef.org/southsudan/press-releases/some-things-are-not-fit-for-children>

¹⁸ Article 15 of the Transitional Constitution of the Republic of South Sudan (2011)

²⁰ A campaign against child marriage launched by UNICEF (2020) <https://www.unicef.org/southsudan/press-releases/some-things-are-not-fit-for-children>

²¹ IDRA KII with Muslim religious leaders and law makers from the Islamic University of South Sudan (October 2021)

²² IDRA KII with a law maker in Juba (October 2021).

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	<p>The UN standard for the age of majority for marriage is 18 years.</p> <p>South Sudan does not have a minimum age (“marriageable age” is just open for interpretation). There is no law in South Sudan that has clearly defined equality in the minimum age of marriage; the constitution that is the supreme law of the land speaks about marriageable age without a specific number.</p>	<p>(State and National), that are continuously blocking the case from going forward.¹⁶</p>			
<p>Consent to marriage / Forced marriage</p> <p><i>Is a marriage valid without the woman’s consent? Is the practice of forcing women to</i></p>	<p>Article 15 of the Constitution argues that no marriage shall be entered into without the free and full consent of the man and woman intending to marry.</p>	<p>A woman was forced to marry an old man against her will on the day she graduated, since then she has been a</p>			<p>Traditionally, many clans in South Sudan allow young people their choice of spouse. In theory, although a bride needs her family’s approval, young women are free to marry any man who</p>

¹⁶ IDRA Legal department, case information file (October 2021)

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<p><i>marry against their will (ijbar) prohibited? Is it mandatory to register a marriage? Is there a standard marriage contract? If so, what are its broad provisions and is there anything particular in the contract that ought to be highlighted on the basis that it advances women's rights or otherwise?</i></p>	<p>The Penal Code (2008) Article 273 defines the practice of forced marriage as "whoever kidnaps or abducts any woman with intent that she may be compelled to marry any person against her will or in order that she may be forced or seduced to illicit intercourse".</p> <p>Article 273 of the Penal Code 2008 criminalize forced marriage and whoever practices commits an offence and shall be addressed according to the customs and traditions of the aggrieved party, in lieu</p>	<p>housewife to a complaining husband with no other choice but to stay for the sake of the children.²³</p>			<p>can produce a suitable dowry according to their customary laws..²⁴</p> <p>With the absence of Islamic family law most Muslim parents in the communities stick to Sudan customary and traditional practices for issues concerning marriage even after the country seperated from Sudan.²⁵</p> <p>In Nyal, located in Panyijiar County of former Unity State, an estimated 71% of girls are married before the age of 18, a significantly higher rate than the national pre-conflict average of 45%. The research also revealed that 10% of girls and women in</p>

²³ IDRA KII with affected women (October 2021)

²⁴ IDRA KII with a law maker in Juba (October 2021).

²⁵ IDRA KII with Muslim religious leaders and law makers from the Islamic University of South Sudan (October 2021)

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	<p>of that and upon conviction, shall be sentenced to imprisonment for a term not exceeding ten years or with a fine or with both”.</p> <p>There are no legal provisions prohibiting harmful practices against widows.</p>				Nyal are married before the age of 15. ²⁶
<p>Women’s capacity to enter into marriage</p> <p><i>Is consent of a guardian (wali) required? Can the woman choose her own wali? Can a woman go before a court or other competent authority to seek permission to marry if her wali refuses</i></p>	<p>Article 15 Constitution as amended in 2015 states: “No marriage shall be entered into without the free and full consent of the man and woman intending to marry.”²⁷</p>				<p>“Despite the supposed freedom that South Sudanese women have to choose who they wish to marry, several common practices prevent women from making their own choices about marriage” .²⁸</p> <p>Customary laws in South Sudan deny women rights of inheritance and ownership of productive</p>

²⁶ Born to married (2019)

<https://www.oxfamamerica.org/explore/research-publications/born-bemarried/#:~:text=Recent%20research%20by%20Oxfam%20has,highest%20rates%20in%20the%20world>

²⁷ Article 17(4) of the Transitional Constitution of the Republic of South Sudan (2011) as Amended (2015)

²⁸ IDRA KII with a paralegal lawyer in Juba (October2021).

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<p><i>to consent to her marriage? Can a woman negotiate her marriage rights prior to marriage and can these rights be changed during marriage? If so, who can change these rights and under what circumstances e.g. mutual consent?</i></p>	<p>If the case is handled by the customary court, then the responsibility of <i>wali</i> is given to the bride's uncles. Marriage in South Sudan is guided by customary laws of the different tribes and cultures.</p> <p>The woman doesn't have the right to negotiate her dowry but if it is an Islamic marriage she is allowed to negotiate <i>mahar</i> (dower).</p>				<p>assets. Lack of voice and decision making in family and community matters and denial of the right of choice to found a family persist especially in rural settings.²⁹ As a result of patriarchal structures in South Sudan's ethnic communities, it remains unclear how the CEDAW will be applied in courts and other legal systems.</p>
<p>Polygamous marriage</p> <p><i>Does the law or marriage contract prohibit polygamy or impose strict conditions</i></p>	<p>A Muslim man can marry up to four wives; there is no legal requirement to seek permission from the existing wife or court.</p>			<p>Male customary chiefs normally ask women to obey their husbands and follow the ways of the community culture; complaints made to</p>	<p>All personal and family matters, including marriage, divorce, inheritance, succession and affiliation, may be governed by the personal laws (including</p>

²⁹ South Sudan: Human Rights In Review Amnesty International (2017) <https://www.refworld.org/docid/5a993866a.html>

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<p><i>on such practice? Is the permission of the court required for a polygamous marriage? If conditions are required, under what conditions is polygamy allowed? Is the permission of an existing wife required for a polygamous marriage? Is it necessary to register a polygamous marriage? Are temporary marriages recognised?</i></p>	<p>South Sudan does not have a Sharia court to regulate the process, this is coupled with the lack of marriage law and Islamic family laws.</p> <p>Article 33 of the Constitution states that “Ethnic and cultural communities shall have the right to freely enjoy and develop their particular cultures. Members of such communities shall have the right to practice their beliefs, use their language, observe their religions and raise their children within the context of their respective cultures and customs in accordance with this constitution and the law”.³⁰</p>			<p>the civil court are often referred back to the customary male chiefs of the given tribe.³¹</p>	<p>Sharia or other religious laws, customs or traditions) of those concerned.³²</p> <p>“The practice of polygamy is prevalent, legal and widely accepted in South Sudan. In particular polygamy is practiced, a South Sudanese man can marry as many women as he can afford to pay bride price / dowry for, so the number of wives often depends on a man’s wealth”.³³</p>

³⁰ Article 33 of the Transitional Constitution of the Republic of South Sudan (2011)

³¹ Aldehaib, Amel. 2010. Sudan’s Comprehensive Peace Agreement Viewed through the Eyes of Women of South Sudan

³² Women’s security and the law in South Sudan: https://reliefweb.int/sites/reliefweb.int/files/resources/Full_Report_3562.pdf

³³ Women’s security and the law in South Sudan: https://reliefweb.int/sites/reliefweb.int/files/resources/Full_Report_3562.pdf

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<p>Violence against women in the family</p> <p><i>Are there laws and practices that define what constitute domestic violence such as battery, female circumcision, marital rape and other forms of sexual assault, mental and other forms of violence that affects a women's mental health, which are perpetuated by traditional attitudes? Is there specific legislation that recognises domestic violence as a crime? Are there support services for women who are the victims of</i></p>	<p>Section 247 (3) of the Penal Code 2008 states that "Sexual intercourse by a married couple is not rape, within the meaning of this section".³⁴</p> <p>Section 274 Penal Code "Whoever, kidnaps or abducts any person in order that such person may be subjected or may be so disposed of as to be put in danger of being subjected to grievous hurt or to the unnatural lust of any person, or knowing it to be likely that such person will be so subjected or disposed of, commits an offence, and upon conviction, shall be sentenced to imprisonment</p>		<p>The Ministry of Gender finalised a national Gender Policy in 2021 that prioritizes sexual and gender-based violence that is currently stagnant in the Ministry of justice and a revised National Action Plan 2015 - 2020 has been reviewed with objectives to protect women and girls, including those with disabilities, against any form of sexual and gender-based violence (SGBV) and respect human rights, human</p>	<p>There is little visible progress documented regarding new laws. Although the Ministry of Gender developed Standard Operating Procedures for Prevention and Response to Sexual and Gender-based Violence with the document setting clear systems, roles and responsibilities for all institutions involved in the prevention, protection and response to GBV in South Sudan, very little has been done in</p>	<p>There is no overall law addressing violence against women in South Sudan. The Penal Code (2008) includes provisions prohibiting bodily injury; kidnapping, abduction, and other violations of personal liberty. Rape, and other sexual offences including detaining a person for the purpose of engaging in unlawful sexual conduct, female genital mutilation, and deliberate transmission of sexually transmitted diseases and of HIV/AIDS.³⁷</p> <p>UNFPA, UNICEF, UNDP, UNWOMEN and INGOS and NGOs are providing services in different parts of the country,</p>

³⁴ Section 247 (3) South Sudan Penal Code 2008

³⁷ The Penal Code (2008) very little has been done due to little or no clear budget allocation.

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<i>aggression or abuses?</i>	<p>for a term not exceeding ten years or a fine or with both.”</p> <p>Chapter XVII of South Sudan’s Child Act (2008)³⁵ guarantees the rights of children to be protected from physical and psychological violence, injury, abuse or exploitation; from abduction and trafficking; from sexual abuse, exploitation and harassment; and from early and forced marriage.</p> <p>The Constitution of RSS 2011 as amended in Article 11, states that every person has the inherent right to life, dignity and the integrity of his or her person which shall be protected by law.</p>		<p>dignity and equality to eradicate sexual and gender-based violence.³⁶</p>	<p>the prevention and response to GBV.</p> <p>The Ministry of Gender, Child and Social Welfare is mandated to address the Gender Based Violence (GBV) issues. At the State level, the implementation of GBV Prevention, protection and response programmes is carried out by the Ministry of Social Development. The Ministry of Interior, Ministry of Health, and Ministry of Justice are all involved in addressing GBV.</p>	<p>although such services are not enough compared to the level of gender based violence in South Sudan. For example, “UNICEF and response partners reached a total of 79,832 people (21,975 girls; 18,021 boys; 26,779 women; 13,057 men) with GBV prevention (including awareness raising and social norms transformation), response services including individualized case management, psychosocial support, skills building courses, access to women and girls friendly services, risk mitigation information and referrals for other specialized services”.³⁸</p> <p>According to the Ministry of Gender Child and Social Welfare and the UNFPA, cases of violence against women have significantly</p>

³⁵ The Republic of South Sudan Child Act (2008)

³⁶ IDRA KII with Ministry of Gender, Child and Social Welfare (October 2021)

³⁸ A campaign against child marriage launched by UNICEF (2020) <https://www.unicef.org/southsudan/press-releases/some-things-are-not-fit-for-children>

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					<p>increased in South Sudan during the coronavirus pandemic. Statistics show that 97% of the reported GBV incident survivors were female while 3% were male.³⁹</p> <p>Women and girls continue to be disproportionately affected, as indicated by the UNFPA report for GBV incidents. Physical assault accounts for 39%, followed by psychological/emotional abuse (21%), sexual violence (21%), rape cases at 17% and sexual assault cases at 4%.⁴⁰</p>
<p>Family Planning (OPTIONAL)</p> <p><i>Do women require the consent of the husband to practise family planning, including</i></p>	<p>Article 31 of the Constitution, as amended 2015, states that all levels of the government shall promote public health, establish, rehabilitate and develop basic medical and</p>				<p>In practice, women are not allowed to use family planning, as they are expected to have many children to enlarge the husband's clan and as a sign of respect. Many children are also used as a payback for the dowry that was</p>

³⁹ Prevalence and correlates of violence against conflict affected (2020) <https://journals.plos.org/plosone/article?id=10.1371/journal.pone.0237965>

⁴⁰ Prevalence and correlates of violence against conflict affected (2020) <https://journals.plos.org/plosone/article?id=10.1371/journal.pone.0237965>

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<i>abortions and sterilization in the law, procedure or practice?</i>	diagnostic institutions and provide free primary health care and emergency services for all citizens.				<p>paid to the woman's family. There is also a wide misconception that modern family planning methods have negative effect to the woman leading to infertility, prostitution among others. If a woman must use modern family planning methods for any reason then she is expected to request her husband's consent.</p> <p>Abortion is prohibited except for cases in which the baby puts the mother's life at risk; this risk must be confirmed by more than one qualified and trusted doctors. ⁴¹</p> <p>South Sudan does not have sharia laws in place. In practice Muslim communities do not allow the use of modern family planning methods right from the start of the marriage. When there is a condition that necessitates its</p>

⁴¹ VOA (2019) *South Sudan Promoting Adult Literacy to Maintain Peace* [Accessed 20th April 2021]
Social norms and family planning in South Sudan: <https://www.kit.nl/publication/social-norms-and-family-planning-decisions-in-south-sudan/>

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					use, the woman requires permission from her husband. ⁴²
<p>Divorce</p> <p><i>Is there an equal right to divorce? Can the husband divorce at will and without grounds? What are the main forms of divorce? Can all forms of divorce be sought only through the courts? Are the grounds for divorce the same for the husband and wife? Is unilateral divorce prohibited? If unilateral divorce is not prohibited, what is the procedure e.g. are</i></p>	<p>Article 14 of the Transitional Constitution 2011, as amended 2015, states that: “All persons are equal before the law and 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 status”.</p> <p>Section 110 of the Local Government Act 2009 guarantees that “Women shall be accorded full and equal dignity of the person with men”.</p>	<p>A woman was divorced without consultation by her husband, who is an imam, and was not given anything from their marital property. When she reported the case to the civil court she was referred back to the customary court.⁴³</p>		<p>Divorce is handled by the customary laws of the couples but the statutory court recognises the equality between men and women.⁴⁴</p> <p>If separation becomes their only option, either partner may seek divorce, or elders from both families will seek to agree with marital problems without resorting to divorce. In case of failure to resolve the problem at the family level, then</p>	<p>Although divorce is technically possible in South Sudan, it is highly discouraged and extremely rare. Given that extended kinship ties are created by marriage, divorce means not just the separation of a couple, but the dissolution of bonds between extended kin – a very drastic state of affairs. Families and tribal elders will seek to deal with marital problems without resorting to divorce. This can have both positive and negative consequences for the married couple.⁴⁶</p>

⁴² IDRA KII with Muslim religious leaders and law makers from the Islamic University of South Sudan (October 2021)

⁴³ IDRA KII with affected woman (October 2021)

⁴⁴ IDRA KII with paralegal lawyer in Juba (October 2021).

⁴⁶ Forced marriage overseas - South Sudan

<https://preventforcedmarriage.org/forced-marriage-overseas-south-sudan/#:~:text=Women%20and%20girls%20in%20South.and%20divorce%20in%20South%20Sudan.&text=Divorce%20is%20generally%20easier%20for,the%20father%20and%20his%20family.>

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<p>witnesses required or does the spouse need to go to court? Is the right to divorce delegated to the wife? If so, is it by law or through the marriage contract? Is it mandatory to register a divorce? Are the procedures for divorce by women and men different?</p>				<p>Imams are requested to intervene and advise the couple on whether to divorce or not as this can have both positive and negative consequences for the future of the children.⁴⁵</p>	<p>Divorce often leaves Muslim women vulnerable. For this reason, most women choose to remain in abusive marriages instead of going through the painful process that usually ends up in favour of the husband.⁴⁷</p> <p>Adultery is a criminal offence and is taken very seriously in South Sudan. In the past, punishments for adultery were brutal – men convicted of adultery could face mutilation, having their ears, upper lips, hands or even genitals cut off. An offender could buy indemnity from punishment by paying a woman, or 20 spears to the husband of the woman he was in an adulterous relationship with. Women were not mutilated, but they were severely beaten,</p>

⁴⁵ Forced marriage Overseas - South Sudan

<https://preventforcedmarriage.org/forced-marriage-overseas-south-sudan/#:~:text=Women%20and%20girls%20in%20South.and%20divorce%20in%20South%20Sudan.&text=Divorce%20is%20generally%20easier%20for,the%20father%20and%20his%20family.>

Women's security and the law in South Sudan: https://reliefweb.int/sites/reliefweb.int/files/resources/Full_Report_3562.pdf.

⁴⁷ IDRA KII with Muslim religious leaders and law makers from the Islamic University of South Sudan (October 2021)

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					<p>'flogged' or cut with knives for committing adultery.⁴⁸</p> <p>In most of the customary law systems, a divorce is finalised upon the return of the bride price or dowry to a husband's family. Repayment of the dowry can cause logistical problems and friction within families.⁴⁹ As such, families have a financial incentive to ensure that marriages remain intact even if the girl faces abuse. Women may be pressured to reconcile, even if they face violence and risks to their safety and wellbeing.⁵⁰</p> <p>In most of South Sudan's ethnic communities, women lose all their belongings if they separate or divorce.⁵¹</p>

⁴⁸ IDRA KII with paralegal lawyer in Juba (October 2021).

⁴⁹ Human Rights Watch, (2013) <https://www.hrw.org>.

⁵⁰ Human Security Baseline Assessment, (2012) <https://issat.dcaf.ch>.

⁵¹ Human Rights Watch, (2013) <https://www.hrw.org>.

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	Legislative Framework	Case Law and Cases	Policy	Procedure	Practice
					<p>Polygamy is only legal for men. Once a separated woman enters into a new relationship or marriage this may be considered to be adultery. As a result, any children with a new partner will 'belong' to her former husband. This can be a reason for men to avoid becoming involved with separated women, as children born to these unions will not be considered to be of their lineage.⁵²</p>
<p>Women's financial rights after divorce</p> <p>Matrimonial property <i>Is there a legal concept of matrimonial assets? Is there equal division of marital property during marriage and at its dissolution? Is the woman's role as wife</i></p>	<p>Section 110(4b) of the Local Government Act 2009 states: "Enact legislations to combat harmful customs and traditions which undermine the dignity and status of women".</p> <p>There is no explicit mention of divorce rights in the Transitional Constitution and</p>			<p>The family institution is managed by customary and cultural laws and courts and as a result divorce procedures vary among the various ethnic groups in South Sudan. Members of the Dinka ethnic group have to appear before</p>	<p>According to the National Bureau of Statistics (2010), 51% of the population of South Sudan live below the poverty line and women make up 51.6% of the poor. The South Sudan Development Plan (SSDP) (2011-2013) acknowledges the high prevalence of female households which make up a big number of rural and urban poor (National</p>

⁵² South Sudan women and the law in South Sudan: https://reliefweb.int/sites/reliefweb.int/files/resources/Full_Report_3562.pdf.

Family Law Matters	Description				
	Legislative Framework	Case Law and Cases	Policy	Procedure	Practice
<p><i>and mother recognised as contribution to acquisition of assets?</i></p> <p>Maintenance <i>What spousal maintenance are available to the wife after a divorce? Is she entitled to maintenance during the waiting period after the divorce (iddah)? Is she entitled to a 'gift' upon divorce (muta'a)?</i></p>	<p>other legal provisions. Instead, the family institution is managed by customary and cultural laws and courts and as a result divorce procedures vary among the various ethnic groups in South Sudan.</p> <p>There are no provisions in laws on maintenance after divorce. In some communities this kind of practice is regarded as culturally immoral.</p>			<p>a customary court to be granted a divorce. Members of the Shilluk ethnic group on the other hand can divorce each other based on an agreement between a husband and wife.⁵³</p>	<p>Gender Policy, 2012: 20, 21). The government of South Sudan has not yet developed family laws or policies that clearly define women's rights within the household.⁵⁴</p> <p>In practice when a woman is divorce she will not be given property she is instead viewed as property for the family that married her.⁵⁵</p>
<p>Custody of Children</p> <p><i>Do parents have equal rights over the custody of their children? If no,</i></p>	<p>Articles 112-114 of the Child Act (2008)⁵⁶ guarantee the rights for both parents over their children in case of</p>				<p>Despite the provisions in the Child Act, in practice most versions of customary law place children with their fathers in case of separation</p>

⁵³ IDRA KII with paralegal lawyer in Juba (October 2021)

⁵⁴ OECD Development Centre (2019) social institutions and gender index <https://www.genderindex.org/wp-content/uploads/files/datasheets/2019/SS.pdf>

⁵⁵ IDRA KII with a paralegal lawyer in Juba (October 2021).

⁵⁶ The Republic of South Sudan Child Act (2008).

Family Law Matters	Description				
	Legislative Framework	Case Law and Cases	Policy	Procedure	Practice
<p><i>who has priority rights over the child? Is custody decided based on the best interest of the child? Do mothers automatically lose custody upon remarriage or if she is deemed disobedient or when the child reaches a designated age when custody goes to father?</i></p>	<p>divorce, separation or nullity. Where circumstances permit, there shall be joint consultation between parents in bringing up their child.</p> <p>Article 113(1) states that both parents have the right to have contact with the child in case the child is in the custody of one parent.</p> <p>Article 113(2): In case the child is in the care of a legally appointed guardian or foster parent, both parents have equal rights to reasonable contact with the child, unless it is not in the best interests of the child.</p> <p>Article 114 of the Child Act guarantees the right of both divorced and separated</p>				<p>or divorce as children are considered part of the male lineage. However, young children are permitted to remain with their mothers until they turn between three and seven years old. The prospect of losing custody acts as a strong disincentive to mothers who are considering a divorce. Given the difficulties in attaining a formal divorce, many couples opt to separate informally, which can also create problems for women.⁵⁷</p> <p>Custody decisions are mostly made by customary courts that rule in accordance with the customs. Although customary courts are supposed to be governed by the Child Act and the child's best interests this is not often the case in practice. This forces women to make the decision to stay in abusive</p>

⁵⁷ Human Security Baseline Assessment (2012), <https://issat.dcaf.ch>.

Family Law Matters	Description				
	Legislative Framework	Case Law and Cases	Policy	Procedure	Practice
	<p>parents to apply to a Court for directives.</p> <p>Once a separated woman enters into a new relationship or marriage this may be considered to be adultery. As a result, any children with a new partner will 'belong' to her former husband.</p>				<p>marriages rather than lose custody of their children.⁵⁸</p> <p>Polygamy is only legal for men. Once a separated woman enters into a new relationship or marriage this may be considered to be adultery. As a result, any children with a new partner will 'belong' to her former husband. This can be a reason for men to avoid becoming involved with separated women, as children born to these unions will not be considered to be of their lineage.⁵⁹</p>
<p>Guardianship of Children</p> <p><i>Is there an equal right to guardianship? If not, who has priority rights over the guardianship</i></p>	<p>Chapter VI of the Child Act (2008) covers issues related to Guardianship. Article 61 states: "Without prejudice to the provisions of section 60, a guardian may be appointed in respect of the</p>				<p>Most versions of customary law place the guardianship of children with their fathers in case of separation or divorce as children are considered part of the male lineage. However, young children are permitted to remain with their</p>

⁵⁸ Human Rights Watch, (2013) <https://www.hrw.org>.

⁵⁹ South Sudan women and the law in South Sudan: https://reliefweb.int/sites/reliefweb.int/files/resources/Full_Report_3562.pdf.

Family Law Matters	Description				
	Legislative Framework	Case Law and Cases	Policy	Procedure	Practice
<i>of the child? Is guardianship decided based on the best interest of the child?</i>	<p>person, or the estate of a child or both”.</p> <p>Republic of South Sudan Constitution 2011 as amended 2015, Article 17 (C) states that every child has a right to know and to be cared for by his or her parents or legal guardian.</p>				<p>mothers until they turn seven years of age then they are given to their father. .</p>
<p>Inheritance</p> <p><i>Are men and women in the same degree of relationship to a deceased entitled to equal shares in the estate and to equal rank in the order of succession?</i></p>	<p>Article 16.5 of the interim Constitution 2011 as amended (2015) guarantees the rights of women to share in the estates of their deceased husbands together with any surviving legal heir of the deceased.</p> <p>Article 26.b of the Child Act (2008) guarantees equal rights to succession and inheritance to property and</p>				<p>In practice, customary law focuses on ensuring property remains within families. In most ethnic communities, women forfeit all their belongings and continue to be owned by the husband’s family. For many women the risk of losing everything serves as a disincentive to divorce.⁶⁰</p> <p>As death does not terminate a marriage, property inheritance remains complex after the death</p>

⁶⁰ IDRA KII with a paralegal lawyer in Juba (October2021).

Family Law Matters	Description				
	Legislative Framework	Case Law and Cases	Policy	Procedure	Practice
	reasonable provision out of the estate of a deceased parent without discrimination.				<p>of a spouse according to most versions of customary law. As a result, widows continue to be considered married to their deceased husband. The deceased's property remains within the deceased husband's family and is generally dispersed among his male relatives. Widows are vulnerable to the mercy of their deceased husbands' families for support. Many women have been evicted from their homes and left with nothing.⁶¹</p> <p>South Sudan's ethnic communities widely practice 'wife inheritance', in which a wife was 'inherited' or remarried to the deceased's closest male relative.⁶²</p>
Nationality	Article 45 ("Citizenship and Rights" of the Transitional				In reality it is very difficult for women to even pass on

⁶¹ Human security baseline assessment (2011) <https://issat.dcaf.ch>.

⁶² Human Security Baseline Assessment, (2011) <https://issat.dcaf.ch>.

Family Law Matters	Description				
	Legislative Framework	Case Law and Cases	Policy	Procedure	Practice
<i>Does a wife have the right to confer citizenship on foreign born husbands and children? Can the nationality of the adult woman be arbitrarily removed because of marriage or dissolution of marriage or because her husband or father changes his nationality?</i>	<p>Constitution of 2011⁶³ provides:</p> <ol style="list-style-type: none"> 1. Every person born to a South Sudanese mother or father shall have an inalienable right to enjoy South Sudanese citizenship and nationality. 2. Citizenship is the basis of equal rights and duties for all South Sudanese. 				<p>nationality to their children, siblings and foreign husbands due to the cultural norms, when a woman goes to register nationality you're asked to bring a man with you as women cannot witness nationality.⁶⁴</p> <p>In some communities in South Sudan, when a woman is married to someone in another community she is denied a leadership position in her community of birth</p>

⁶³ Article 45 of the Transitional Constitution of the Republic of South Sudan (2011)

⁶⁴ IDRA KII with affected woman (October 2021)

Family Law Matters	Description				
	Legislative Framework	Case Law and Cases	Policy	Procedure	Practice
	3. Every citizen shall enjoy all the rights guaranteed by this Constitution. 4. The law shall regulate citizenship and naturalization; no naturalized citizen shall be deprived of his or her acquired citizenship except in accordance with the law. 5. A South Sudanese national may acquire the nationality of another				as she's seen as a foreigner after marriage. ⁶⁵

⁶⁵ IDRA KII with affected woman (October 2021)

INTERNATIONAL SUBMISSION FOR THE UN UNIVERSAL PERIODIC REVIEW – 40TH SESSION OF THE UPR WORKING GROUP, JANUARY – FEBRUARY 2022 <file:///C:/Users/DELL/Desktop/Reports%20for%20Reference/Human%20Rights%20Violations%20Research.pdf>

Child marriage is a negative coping mechanism for million of girls

<https://mg.co.za/opinion/2021-09-28-child-marriage-is-a-negative-coping-mechanism-for-millions-of-girls/>

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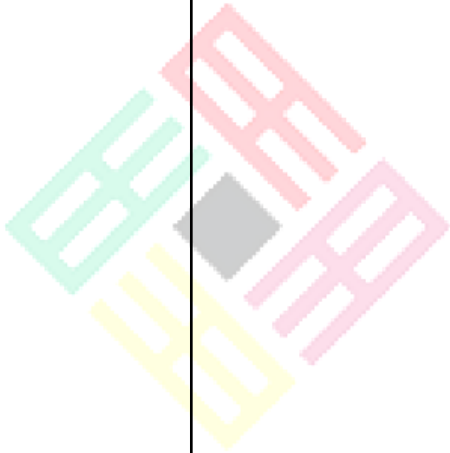
SAHIH BUKHARI 3475 and SAHIH MUSLIM 1688

Family Law Matters	Description				
	Legislative Framework	Case Law and Cases	Policy	Procedure	Practice
	<p>country as shall be prescribed by law.</p> <p>6. A non-South Sudanese may acquire the nationality of South Sudan by naturalization as shall be prescribed by law.</p> <p>The Nationality Act 2011 provides details of acquiring nationality. Article 8 provides:</p> <p>(3) A person born after the commencement of this Act, shall be a South Sudanese National by birth if his or her father or mother was a South Sudanese National by birth or naturalization at the time of the birth of such a person.</p> <p>(4) A person who is or was first found in South Sudan as a deserted infant of unknown Parents shall, until the</p>				

Family Law Matters	Description				
	Legislative Framework	Case Law and Cases	Policy	Procedure	Practice
	<p>contrary is proved, be deemed to be a South Sudanese National by birth.</p> <p>Article 13(1) of the Nationality Act 2011 provides: (1) An alien married to a South Sudanese National may acquire a nationality by naturalization, upon the approval of the Minister on an application submitted in accordance with the procedures set forth in the regulations, if such an alien is a lawful wife or husband of a South Sudanese National and has been living with her husband or his wife in South Sudan for a continuous period of not less than five years before the date of his or her application.</p>				

ACCESS TO JUSTICE

SYSTEM	PROCEDURES & TIMELINES	CHALLENGES FOR WOMEN	GOOD PRACTICES IN COURT SYSTEM
<p><i>How do Muslim family law (i.e. marriage and family related) cases get administered in your country? (E.g. Do you have a Quazi/Kadhi court system, family courts or civil courts?) How many courthouses/court rooms around the country administer Muslim family law cases? How many Muslim family law-related judges? Are there women working within the court system as judges/marriage registrars e.t.c?</i></p> <p>In South Sudan, family and marriage issues are mainly handled under customary laws through families or customary courts. There is no special court room to administer Muslim family law cases in South Sudan; most of such cases are handled by families and are often in line with the customary laws of the couple involved. In cases where the family fails to resolve disputes within marriage, the case is reported to the police. However, the</p>	<p><i>Briefly describe procedures for filing a divorce or any other family law related cases.</i></p> <p>There are no written procedures for filing a divorce. The complainant fills the complainant form and submits to the statutory court and the judge issues a summons for the perpetrator, if the perpetrator comes to court a normal case procedure is followed and if he/she refuses to come an arrest warrant is issued to pursue him/her. And if he comes and the case becomes tense, the judge then refers the case back to the family to be handled by the customary laws.</p>	<p><i>What are some key challenges that Muslim women face in accessing justice on family law matters? (E.g. lack of accessibility, bad procedures, delayed processes, gender insensitive judges, etc?)</i></p> <p>Muslim women face challenges while seeking justice on family matters. The absence of a codified national family law and Muslim family law in particular leaves most women vulnerable to cultural and customary practices/approach. Child custody is a particular challenge as many customs in South Sudan consider a child to belong to the father. Access to and payment for lawyers is a challenge; the majority of women have limited knowledge of civil court procedures.</p>	<p><i>Are there any good practices, procedures or policies that you would like to share pertaining to how courts in your country deal with family law cases? (E.g. prioritising certain types of cases, timely delivery of decisions, clear procedure, etc)</i></p>

<p>police sometimes are not in position to resolve the matter and instead refer the case to the statutory court. At the statutory court the case is often referred back to the customary courts which are solely managed by men and usually resolve issues in favor of men.</p> <p>There are no specific Muslim family law judges within the courts.</p> <p>Lawyers represent clients mostly in the statutory courts which are mostly accessible by educated and “medium to high class” women.</p> <p>A woman who seeks divorce will go through various challenging procedures, yet most of the time the final judgement is in favour of the man.</p>			
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