



COUNTRY PROFILE

The Constitution of the Republic of South Sudan guarantees every person the right to marry a person of the opposite sex and to found a family according to their respective family laws, provided that no marriage shall be entered into without the free and full consent of the man and woman intending to marry.<sup>262</sup> The Constitution also provides for women's rights, including full and equal dignity of the person with men, the right to own property and the right to share in the estates of their deceased husbands.<sup>263</sup> The Constitution establishes the State's obligation to enact laws to combat harmful customs and traditions which undermine the dignity and status of women.<sup>264</sup>

Treaty	Date of ratification	Reservations/Declarations
CEDAW	30 April 2015	None
African Charter	23 October 2013	None
Maputo Protocol	24 February 2023	-

MAIN TRENDS ON FAMILY LAW

South Sudan has not yet adopted a statutory framework for governing family law, though the development of a national family law is in progress and a Steering Committee has been established for this purpose.<sup>265</sup> The Constitution obliges courts to apply customary law subject to the provisions of the Constitution and the law.<sup>266</sup> As a result, customary law governs personal and family law. This is cause for significant concern, as will be elaborated upon below.

South Sudan has however adopted legislation to combat violence against women and certain harmful practices. The Penal Code prohibits rape, female genital mutilation, and forced marriage.<sup>267</sup> In addition, the Child's Act prohibits early marriage,<sup>268</sup> though no specific minimum age for marriage is provided in the Act or the Constitution. The Constitution states that every person of marriageable age has the right to marry according to their respective family laws - which has serious implications on child marriage since certain community customs define the end of childhood as the attainment of puberty.<sup>269</sup> However, in a widely publicised case, a court annulled the marriage of a 16-year-old girl.<sup>270</sup> There is thus potential for positive change in this area, though the law must be clarified by the Legislature and steps must be taken to implement the law and change mindsets. Currently, forced marriage remains prevalent and South Sudan has the seventh highest prevalence of child marriage in the world.<sup>271</sup>

262 Section 15 of the Constitution of the Republic of South Sudan 2011, amended 2013. Available at <https://faolex.fao.org/docs/pdf/ssd127441.pdf> (accessed 17 April 2024)

263 Section 16 of the Constitution of the Republic of South Sudan 2011, amended 2013

264 Ibid

265 United Nations Development Fund "Steering a Path to Family Law in South Sudan". Available at: <https://www.undp.org/south-sudan/steering-path-family-law-south-sudan> (accessed 17 April 2024)

266 Section 167(3) of the Constitution of the Republic of South Sudan 2011, amended 2013

267 Section 247, 259 and 273 of the Penal Code 2008. Available at <https://www.wipo.int/wipolex/en/text/250684> (accessed 17 April 2024)

268 Section 23 of the Child Act 2008. Available at <https://www.refworld.org/legal/legislation/natlegbod/2008/en/66904> (accessed 17 April 2024)

269 South Sudan, State Party Report to the Committee on the Rights of the Child, para 46

270 See <https://www.reuters.com/article/us-southsudan-women-court-idUSKCN1U42CK>

271 <https://www.reuters.com/article/us-southsudan-women-court-idUSKCN1U42CK>

## KEY GAPS AND CONTESTATIONS

- (i) **Legal pluralism:** Due to the lack of statutory law and the Constitution's recognition of South Sudan's plural legal system, family law is governed by the custom of the large number of ethnic groups in South Sudan.<sup>272</sup> This leads to a number of problems:
- ▶ There is no minimum age for marriage under customary law.
  - ▶ Polygamy is legal for men.<sup>273</sup>
  - ▶ Divorce is generally easier for men to obtain.<sup>274</sup>
  - ▶ Women are often deprived of an equitable share in property upon divorce or deprived of inheritance upon the death of their husbands.<sup>275</sup>
  - ▶ While the Child Act grants equal rights of custody to parents,<sup>276</sup> custom and tradition generally place children with their fathers, unless they are of tender age.<sup>277</sup> The strong likelihood of losing property and custody of children, as well as the rule that divorce requires repayment of the bride price, prevent many women from leaving unhappy and even abusive marriages.<sup>278</sup>
- (ii) **Harmful traditional practices:** A number of harmful traditional practices persist in custom, including polygamy, forced marriages, child marriage, and wife inheritance.<sup>279</sup>

## RECOMMENDATIONS

### Legal reforms:

- ▶ A minimum marriage age of 18 without exception must be adopted.
- ▶ Legislation must be enacted to regulate marriage, divorce, matrimonial property rights, and inheritance. This legislation must be effectively implemented and must give effect to women's rights under the Constitution.

### Policy and awareness raising:

South Sudan must adopt comprehensive policy and awareness campaigns to combat harmful traditional practices, including female genital mutilation, wife inheritance, child marriage, and forced marriage.

<sup>272</sup> OECD Development Centre "Social Institutions and Gender Index" (2019). Available at: <https://www.genderindex.org/wp-content/uploads/files/data-sheets/2019/SS.pdf>

<sup>273</sup> Id

<sup>274</sup> Id

<sup>275</sup> <https://wbl.worldbank.org/content/dam/documents/wbl/2024/snapshots/South-sudan.pdf> (accessed 17 April 2024)

<sup>276</sup> Sections 112-114 of the Child Act 2008

<sup>277</sup> OECD Development Centre "Social Institutions and Gender Index" (2019). Available at: <https://www.genderindex.org/wp-content/uploads/files/data-sheets/2019/SS.pdf>

<sup>278</sup> Id

<sup>279</sup> Id



# AJAK'S\* STORY

## Case study collected with the support of Survivors Network in South Sudan

"My name is Ajak\*. I reside in a village in Juba, South Sudan. I have three children: my firstborn is ten, my second-born is five, and my youngest is two. I am an entrepreneur, and to put food on our table, I sell charcoal, groundnut paste, and local delicacies like Mandazi (cake) by the roadside.

My life's journey has led me through hardships many may never comprehend. Fifteen years ago, I embarked on a marital journey filled with hope and dreams. Little did I know that misunderstanding, cultural norms, and the complexities of family dynamics would shape my destiny. I was compelled to divorce my husband due to his failure to tend to the family's basic needs, including food, school fees, and clothing, aggravated by his polygamous behaviour and his attempts to bring additional wives into our lives.

My duties also became overwhelming, including paying school fees and feeding our three children. When our families attempted to mediate and discuss our family affairs, the situation became complicated, with no clear resolution in sight. The cultural norms that once bound us now posed barriers, making it difficult to seek a divorce. I left my marital home with my children to stay with my mother. As efforts to divorce through traditional means were futile, I went to court and filed for divorce.

Unfortunately, the divorce process has taken a toll on me, both morally and socially. In our culture, children are expected to remain with their mothers after divorce until they are grown, and any unpaid dowry must be settled before finalising the agreement. However, the reality has been different.

My ex-husband sought to claim our children, but they are still in need of their mother's care. The attempt to forcefully take them from me to frustrate me led me to seek justice through family members and community leaders. However, these efforts were unsuccessful, so I filed the matter in court to seek justice. Unfortunately, the hearing has been delayed for over two years now. In South Sudan, a lack of influential political connections and money to pay off people and navigate the system often results in prolonged legal battles.

*Family law in South Sudan is currently in transition as part of broader democratic reforms (between 2019 and 2024). There is no national legislation governing marriage, divorce, matrimonial property rights, and inheritance, so couples in South Sudan have the right to decide which marital property regime will be in effect during their marriage. This determination affects whether the property is owned individually or jointly. However, women's rights in areas such as choosing a spouse, obtaining a divorce, protecting themselves from domestic violence, securing custody of their children, and inheriting marital property remain restricted and dependent on traditional customs of justice.*

The legal system is mostly corrupt. The prolonged delays and additional fees of 300,000 SSP (equivalent to USD. 2,303) in the name of legal fees demanded during the legal process have frustrated me. This has affected me emotionally and created an impossible financial burden, which impedes my ability to fulfil the court's requirements. The divorce process is still ongoing, but I wonder if I will ever get justice as I do not have the money to pay people to navigate the system.

I sought counselling from a Catholic Nun who provided a semblance of solace. I attended weekly meetings with women's groups that shared similar experiences and provided advice, which has become a source of strength.

I advise others facing similar challenges to be strong, stay connected to their community, and attend workshops on children's and women's rights to gain more experience. As for me, I am ready to amplify the voice of the voiceless to bring attention to the struggles of women and their children facing similar situations. In sharing my story, I hope we can pave the way for a better tomorrow where women access equal justice as their male counterparts. It has been particularly difficult for me (financially and emotionally since the case has taken so long). No woman should suffer like this."

*I was compelled to divorce my husband due to his failure to tend to the family's basic needs*

\* Not her real name