

Draft of 13th August 2022

A BILL for an Act

ENTITLED

THE FAMILY ACT, 2022

This Act is drafted in accordance with the provisions of Articles 52 and 39(2) of the Transitional Constitution of the Republic of South Sudan, 2011 (as amended 2015) which mandates all levels of government to promote the welfare of the family and enact the necessary laws for its protection.

PART I— PRELIMINARY

1. Title and Commencement.

This Act may be cited as the “Family Act, 2022” and shall come into force on the date of signature by the President.

2. Application

This Act applies, unless otherwise provided, to all persons domiciled in South Sudan who celebrate a recognised marriage, or institute matrimonial proceedings, in South Sudan.

3. Purpose of Act

The purpose of this Act is to reform and consolidate the law on marriages; to provide for the types of recognised marriages; to provide for marital rights and duties; to provide for separation and divorce and the consequences of separation and divorce including the custody of children, identity to be adopted by children of separated or divorced children; to provide for the division of matrimony property on separation or divorce; and provide for any related matters.

4. Definitions

In this Act, unless the context otherwise requires—

“celebrant” means a person authorised to celebrate marriages by a church, religious body or denomination under this Act;

“Christian marriage” means a marriage of one Christian man and one Christian woman for life to the exclusion of others;

“conjugal rights” means the right which a husband and a wife have to each other’s society, comfort and affection;

“co-ownership of property” means the concurrent ownership, possession and enjoyment of property by a person with his or her spouse;

“court” means a court of competent jurisdiction;

“custom” means a rule which, having been continuously observed for a long time, has attained the force of law among a community or group, being a rule that is certain and not unreasonable or opposed to public policy and, in case of a rule applicable only to a family, has not been discontinued by the family;

“customary marriage” means a marriage celebrated according to the rites, practices and customs of an African community to which one or both of the parties belong;

“domicile” means a permanent home where one has decided to stay and has no intentions of leaving in the near future;

“dowry” means any token of stock, goods, moneys or other property given or promised in relation to marriage;

“family” means a husband and wife, including their children;

“irretrievable breakdown of marriage” means a situation where the petitioner proves to the court that he or she can no longer live together with his or her spouse as husband or wife;

“judicial separation” means the separation of a husband and wife by court decree;

“marriage” means the union between a living man and woman for life or until it is dissolved in the manner accepted by that form of marriage; and which is recognised under the laws of South Sudan;

“marriage gift” means a gift, by whatever name known, in cash or in kind given by either party to a marriage in respect of that marriage;

“marriage register book” means a register book kept under this Act for the purpose of registering marriages;

“marriage officer” means a person appointed by the registrar to assist him or her to perform the duties specified in this Act;

“matrimonial home” means the principal residence or residences of the spouses;

“matrimonial property” has the meaning given to it by section [49](#);

“Minister” means the Minister of Gender, Child and Social Welfare;

“monogamous marriage” means a marriage between a man and a woman neither of whom, during the subsistence of such marriage, shall be at liberty to enter or contract any other valid marriage;

“non-monetary contribution” means the contribution made by a spouse for the maintenance of the family and acquisition of matrimonial property other than by way of money;

“person in authority” means a chief, the executive committee of a local government, a religious leader or other leader in the community;

“polygamous marriage” means a marriage in which a person is married to more than one person;

“registrar” means the registrar of marriages appointed under this Act;

“separate property” means the property which a spouse has acquired individually either before or during the marriage;

“spouse” means a husband or a wife in a marriage;

“widow inheritance” means a custom by which a relative of a deceased husband inherits the widow of the deceased husband as his wife;

“witness” means to be present at, to observe, and to attest to the celebration of a marriage by signing one’s name to or putting one’s mark on a marriage certificate.

PART II – DECLARATION OF MARRIAGE REGISTRATION AREAS AND APPOINTMENT OF REGISTRAR OF MARRIAGES

5. Declaration of marriage registration areas

- (1) The Minister may, by notice in the Gazette, declare any area of South Sudan to be a marriage registration area for the purposes of this Act.
- (2) For the purposes of subsection (1), a marriage registration area may include an area at national, state or local government level.

6. Appointment of registrar of marriages

- (1) There shall be a registrar of marriages who shall be appointed by the Minister.
- (2) The functions of the Registrar are -
 - (a) to perform civil marriages;
 - (b) to register all marriages;
 - (c) to keep and maintain the Register of Marriages;
 - (d) to license places of public worship to be places for the solemnisation of marriages
 - (e) to licence ministers of faith to celebrate marriages;
 - (f) to issue marriage certificates for all registered marriages;
 - (g) to issue certificates of no impediment to persons who intend to marry and who qualify for such a certificate;
 - (h) to determine the rules governing customary marriages; and
 - (i) to determine objections of notices to marry.
- (3) The registrar may appoint marriage officers at national, State or local government level, as may be necessary, to assist the registrar perform the functions specified in subsection.
- (4) For the purposes of registering customary marriages, the registrar shall appoint the following as marriage officers-
 - (a) in the case of a Payam, the Payam Administrator;
 - (b) in the case of a County, the County Commissioner;
 - (c) in the case of a State, the Governor; and
 - (d) at national level, the chairperson of the Ministry of Local Government Board.
- (5) A marriage officer shall be appointed on such terms and conditions as may be determined by the Minister, in consultation with the Ministry responsible for the civil service.

7. Appointment of marriage officers in foreign countries

- (1) The registrar may, in consultation with the Minister responsible for foreign affairs, by notice in the Gazette, appoint a member of the diplomatic staff of

South Sudan in a foreign country to celebrate civil marriages for the purposes of this Act.

- (2) A person appointed under subsection (1) shall keep a record of all marriages celebrated by that person in that country and shall deliver the record to the registrar for the registration of such marriages.

8. Licensing ministers of faith

- (1) A minister of faith who wishes to be appointed as a marriage officer may make an application to the registrar in accordance with Regulations made by the Minister.
- (2) The registrar shall issue a licence to every minister who is appointed as a marriage officer.
- (3) A person appointed as a marriage officer under this section may only officiate at marriages celebrated according to the traditions of the faith in which the minister of faith serves.
- (4) The registrar may cancel a license issued to a person under this section and shall give written reasons for such withdrawal.

9. Registrar to license places of public worship to solemnise marriages

- (1) The registrar may license any place of public worship to be a place for the solemnisation of marriages and may at any time cancel the licence.
- (2) For the avoidance of doubt, the cancellation of a licence of a place of worship shall not affect the validity of any marriage solemnized in the place before the cancellation.
- (3) The registrar shall give notice of the fact of licensing or cancellation of a licence under subsection (1) –
 - (a) in the Gazette;
 - (b) in at least one newspaper circulating in the locality of the place of worship; and
 - (c) to the person in charge of the place of worship concerned.
- (4) All public places of worship which at the commencement of this Act are in operation and solemnise marriages shall be deemed to have been licensed under this Act, and the Registrar shall issue such places licences in terms of this Act.

- (5) Licences shall be issued after payment of the fee prescribed by the Minister, in consultation with the Minister responsible for finance.

PART III – GENERAL PROVISIONS APPLICABLE TO MARRIAGES IN SOUTH SUDAN

10. Recognised marriages

- (1) Subject to subsection (2), the recognised marriages under this Act are –
- (a) religious marriages;
 - (b) civil marriages;
 - (c) customary marriages;
 - (d) **cohabitation; or**
 - (e) any marriage the Minister by recognise by Notice in the Gazette.
- (2) A marriage conducted in accordance with the laws of another country where one or both of the parties is subject to the laws of that country shall be recognised in South Sudan as a valid marriage.
- (3) For the avoidance of doubt, all marriages recognised under this section have the same legal status.
- (4) Without prejudice to any procedure prescribed for marriages under this Act, any institutions or practices which traditionally facilitate marriage which are not inconsistent with this Act or any written law shall continue to be recognised.

11. Cohabitation marriage

Any couple that lives together in a long-term relationship that resembles a marriage for a period of 12 months shall be taken to be married and the provisions of this Act shall apply to such couple.

12. Minimum age and consent for marriage

- (1) A person shall not have the capacity to contract any recognised marriage in South Sudan unless he or she has attained eighteen years of age.
- (2) No marriage recognised marriage shall be celebrated, solemnised or contracted in South Sudan without the free and full consent of the man and woman intending to marry.

- (3) Any person who contravenes subsections (1) or (2) commits an offence and is liable, on conviction, to imprisonment of not less than two years or a fine of US Dollars eight hundred equivalent in South Sudan Pounds and not exceeding five years imprisonment or a fine of US Dollars two thousand equivalent in Pounds.

13. Prohibited degrees of relationship

A person shall not be a party to any marriage where the parties are within the prohibited degrees of relationship, whether natural, legal, or by clan as set out in the Schedule to this Act.

14. Prohibition of widow inheritance

(1) Widow inheritance is prohibited.

(2) A man shall not marry a widow through the custom or practice of widow inheritance.

(3) Without prejudice to subsection (2), a man may marry his relative's widow where both the man and the widow, with their free and full consent, adopt any form of marriage provided for under this Act.

(4) A person who contravenes this section commits an offence and is liable, on conviction, to imprisonment of not less than two years or a fine of US Dollars eight hundred equivalent in South Sudan Pounds and not exceeding five years imprisonment or a fine of US Dollars two thousand equivalent in Pounds.

15. Marriage gifts not an essential requirement for marriage

(1) Marriage gifts are not an essential requirement for any marriage under this Act.

(2) Where a marriage gift has been given by a party to a marriage under this Act, it is an offence to demand the return of the marriage gift.

(3) A person convicted of the offence under subsection (2) shall be sentenced to imprisonment for a term not exceeding one year or with fine or with both.

16. Prohibition of marriage cultures against dignity of women

(1) Any marriage custom, tradition or culture which is against the dignity, welfare or interest of women or which undermines their status is prohibited.

- (2) A marriage which contravenes subsection (1) shall not be recognised as a valid marriage in terms of this Act.

17. Right of women to own property and share in deceased husband's estate

In accordance with article 16(5) of the Transitional Constitution of the Republic of South Sudan, 2011 (as amended 2015), all levels of Government shall, in implementing this Act and any other legislation related to family, ensure that women enjoy the right to own property and share in the estates of their deceased husbands together with any surviving legal heir of the deceased, whether the woman has a child or not.

PART IV – REQUIREMENTS, PRELIMINARIES AND SOLEMNISATION OF CIVIL MARRIAGES

Requirements of a valid Civil Marriage

18. Notice in civil marriage

- (1) Where a civil marriage is intended to be contracted, one of the parties to the intended marriage shall sign and give to the registrar or marriage officer of the area in which the marriage is intended to take place.
- (2) Where the party who gives notice is unable to write or to understand the **English language**, it shall be sufficient if he or she places his or her mark on the notice in the presence of a literate person who shall attest the prescribed notice.
- (3) Upon receipt of a notice under this section, the registrar or marriage officer shall cause the notice to be entered in a book to be called the "civil marriages' notice book".
- (4) The registrar or marriage officer shall also cause a copy of the notice to be published by affixing it on a public notice board at his or her office for twenty-one consecutive days after the day on which the notice was entered in the civil marriages' notice book.
- (5) The civil marriages' notice book shall be open for inspection by the public during office hours on payment of the prescribed fee.

19. Issuance of marriage licence in civil marriage

- (1) The registrar or marriage officer shall, at any time after the expiration of twenty-one days and before the expiration of three months after the date of

the notice and upon payment of the prescribed fee by the parties, issue a licence in the prescribed form.

- (2) A marriage officer shall not issue a marriage licence under this section unless –
- (a) one of the parties has been resident within the marriage area in which the civil marriage is intended to take place for at least fifteen days preceding the issue of the licence;
 - (b) each of the parties to the intended marriage has, by declaration, proved to the satisfaction of the marriage officer that he or she is not in contravention of the essential requirements as to age, prohibited degrees, consent and status; and
 - (c) any objection, if any, has been removed.
- (3) Any declaration under this section may be made before the marriage officer or any person in authority.
- (4) The marriage officer or the person in authority before whom a declaration is made shall explain to the person making the declaration the prohibited degrees of relationship specified in Schedule and the penalties for false information.

20. Marriage to take place within three months after issue of licence

- (1) A civil marriage under this Act may be contracted or solemnised at any time within three months after the issue of the licence, except that a marriage under this Act may take place after the prescribed three months where the registrar or marriage officer is satisfied with the reasons for the delay, and upon payment by the parties of the prescribed fee.
- (2) The period of delay shall not exceed three months from the date of expiry of the three months prescribed in subsection (1).
- (3) Where the marriage does not take place within the period allowed under subsection (2) the licence and all proceedings consequent on it shall be void, and fresh notice under [section 16](#) shall be given before the parties can lawfully marry.

21. Solemnisation of civil marriage

- (1) After the registrar or marriage officer has issued a marriage licence, a civil marriage may be solemnised in the office of the marriage officer to whom the notice of marriage was given.
- (2) A civil marriage shall be performed before a marriage officer –
 - (a) in his or her office;
 - (b) in the presence of at least two witnesses; and
 - (c) between the hours of nine o'clock in the morning and five o'clock in the afternoon.
- (3) A marriage officer shall, after perusing the marriage licence, require the parties to the intended marriage to make the following declaration –

“I solemnly declare that I do not know of any lawful impediment why I, AB, may not enter into marriage with CD.”

Each of the parties shall then say to each other –

“I call upon all persons here present to witness that I, AB take you, CD, to be my lawful wife/husband so long as both of us shall live.”

22. Marriage certificate in a civil marriage

- (1) Immediately after a civil marriage has taken place, the officiating marriage officer shall fill in quintuplicate the prescribed marriage certificate and enter in the counterfoil, the serial number of the marriage, the names of the parties and the names of the witnesses.
- (2) The marriage certificate shall be signed in quintuplicate by the officiating the marriage officer, the parties and the witnesses to the marriage and the marriage officer shall give one copy to the parties to the marriage, retain one copy and forward one copy to the Registrar.

Civil Marriages involving non-South Sudan citizens

23. Non-South Sudan citizens celebrating civil marriages under this Act in foreign countries

- (1) A person who is not a South Sudan citizen may celebrate a marriage under this Part in a foreign country if the marriage is celebrated in the presence of the Registrar or a person authorised by the Registrar for that purpose in any South Sudan embassy, high commission or consulate.

- (2) A marriage celebrated in a foreign country otherwise than in accordance with subsection (1) is valid if—
- (a) it was contracted in accordance with the law of that country and is consistent with the laws of South Sudan;
 - (b) at the time of the marriage the parties had the capacity to marry under the law of that country and is consistent with the laws of South Sudan;
 - (c) either of the parties is at the time of the marriage domiciled in South Sudan, both parties had capacity to marry under this Act; and
 - (d) if the Registrar is satisfied that the parties have obtained a certificate of no impediment if the law of that country requires the parties to an intended marriage to obtain such a certificate.

24. Civil marriages by South Sudan citizens in foreign countries

- (1) A South Sudan citizen may celebrate a civil marriage in a South Sudan embassy, high commission or consulate in a foreign country if—
- (a) it is celebrated in accordance with the law of that foreign country; or
 - (b) both parties have the capacity to marry under the law of that foreign country.
- (2) Despite subsection (1), a civil marriage celebrated in a South Sudan embassy, high commission or consulate in a foreign country is valid in South Sudan if the parties were capable of celebrating the marriage in South Sudan.

25. Recognition of foreign marriages as civil marriages in South Sudan

A civil marriage contracted in a foreign country shall be recognised as a valid marriage in South Sudan where the marriage—

- (a) is contracted in accordance with the law of that country;
- (b) is consistent with the provisions of this Act; and
- (c) the parties have the capacity to marry under this Act.

26. Appointment of diplomatic staff as celebrants of marriage

- (1) The Minister may appoint by notice in the Gazette a member of the diplomatic staff of South Sudan in a foreign country to which this Part applies to celebrate marriages under this Act in respect of that country.
- (2) The Registrar shall maintain a register of all marriages conducted in foreign countries.

PART V – REQUIREMENTS, PRELIMINARIES AND SOLEMNIZATION OF CHRISTIAN MARRIAGE

Requirements of Christian marriage

27. Publication of banns

- (1) Parties to a Christian marriage shall fill in and sign the prescribed form before the celebrant of a licensed place of worship where the banns are to be published, to the effect that they are not in contravention of the essential requirements to a marriage.
- (2) The banns referred to in subsection (1) shall be published –
 - (a) where the persons to be married reside in the same marriage district, in the licensed place of worship of that marriage district; or
 - (b) where the persons to be married reside in different marriage districts, in the marriage district where the two parties intend to celebrate the marriage.
- (3) The banns shall be published once every seven days for a period of twenty-one days, on days of worship.
- (4) Where banns are published in one marriage district and the Christian marriage is to be solemnized in another marriage district, a celebrant shall not solemnize the marriage unless he or she has received a certificate from the marriage district where the banns were published, that the banns were duly published in that marriage district.

28. Marriage to take place within three months after publication of banns

- (1) A Christian marriage under this Act may be contracted or solemnized at any time within three months after publication of the banns, except that a marriage under this Act may take place after the prescribed three months where the celebrant is satisfied with the reasons for the delay, and upon payment by the parties of the prescribed fee.
- (2) The period of delay shall not exceed six months.

Solemnization of Christian Marriage

29. Solemnisation of a Christian marriage

A Christian marriage shall be solemnized –

- (a) in a licensed place of worship;
- (b) in accordance with the observed customs, rites and practices of the Church, body or denomination to which the place of worship belongs;
- (c) by a recognized celebrant of the church, religious denomination or body

- to which either one or both parties to the marriage belong;
- (d) in the presence of at least two witnesses;
- (e) after the hour of eight o'clock in the morning and before six o'clock in the afternoon; and
- (f) with open doors.

30. When Christian marriage may not be solemnized

A celebrant shall not solemnise a Christian marriage if he or she knows of any lawful impediment to the marriage.

31. Registration of Christian marriage

- (1) Immediately after a Christian marriage has taken place, the officiating celebrant shall fill in quintuplicate a marriage certificate in the prescribed form and shall enter in the counterfoil, the number of the certificate, the date of the marriage, the names of the parties and the names of the witnesses.
- (2) The marriage certificate referred to in subsection (1) shall be signed in quintuplicate by the officiating celebrant, by the parties and the witnesses to the marriage and the officiating celebrant shall give one copy to the parties to the marriage, retain one copy and forward two copies to the marriage officer who shall forward one of the copies to the Registrar.

PART VI – SOLEMNIZATION OF ISLAMIC MARRIAGE

32. Application of Part

- (1) This Part applies to persons who profess the Islamic faith.
- (2) Any provision of this Act which is inconsistent with Islamic law and practices shall not apply to persons who profess the Islamic faith.

33. Officiation of Islamic marriages

- (1) A marriage under this Part shall be officiated by a kadhi, sheikh or imam as may be authorised by the Registrar and celebrated in accordance with Islamic law.
- (2) Where a Kadhi, sheikh, Mukhi or imam authorised by the Registrar celebrates a marriage, the Kadhi, sheikh, Mukhi or imam shall –
 - (a) record the details of the marriage in the prescribed form;
 - (b) issue the parties to the marriage with a certificate of marriage; and
 - (c) deliver the record and certificate to the Registrar for the registration of the marriage.

- (3) Where the Registrar receives a record and certificate of a marriage celebrated under this Part and the Registrar is satisfied that the provisions of this Act have been complied with, the Registrar shall register the marriage.

PART VII – REQUIREMENTS AND PRELIMINARIES OF CUSTOMARY MARRIAGES

Preliminaries of Customary marriage

34. Preliminaries to customary marriage to accord with custom

- (1) The procedures preceding the celebration of customary marriage shall be in accordance with the rites and customs of an African or other community to which one or both of the parties belong.
- (2) Where the payment of dowry is required to prove a marriage under customary law, the payment of a token amount of dowry shall be sufficient to prove a customary marriage, and in any case dowry shall not exceed 30 cows or the monetary equivalent,
- (3) Dowry is not refundable on the breakdown of the marriage including in relation to potential divorce.

Celebration of Customary marriage

35. Place of solemnisation

Subject to the provisions of the Constitution and this Act, a customary marriage may be celebrated in any part of South Sudan.

36. Registration of customary marriage

- (1) After the celebration of a customary marriage, the parties to the marriage shall, within three months after the marriage, register the marriage with the marriage registration officer of the area in which the marriage was celebrated.
- (2) The marriage registration officer shall, if satisfied that the marriage meets the requirements of this Act, register the marriage in the customary marriage registration book and issue a marriage certificate to the parties.
- (3) The marriage officer shall file one copy of the marriage certificate and forward the other copy to the registrar.

- (4) The parties to the marriage shall, at the time of registration of a customary marriage, pay the prescribed fee for the marriage certificate issued by the marriage registration officer.

Objections to Customary Marriage

37. Objection to a customary marriage

- (1) A person who knows of any reasonable ground why a customary marriage should not take place may make an objection against the marriage to the marriage officer or registrar, in writing or orally, stating the ground of his or her objection.
- (2) Where a person who knows of any reasonable ground why a customary marriage should not take place resides outside South Sudan, he or she may send his or her objection, signed in accordance with the law of his or her country of residence and duly authenticated by a Notary Public, counsel, or another person authorised by the law of that country in that behalf, to the marriage officer or registrar, whichever would be best placed to ensure receipt of the objection.
- (3) A person may make an objection where –
- (a) the parties are within the prohibited degrees of relationship, whether natural or legal or by marriage;
 - (b) either party is of unsound mind at the time of the marriage;
 - (c) the consent of either party to the intended marriage was obtained by force or fraud;
 - (d) the intended marriage is in contravention of this Act or any other law.
- (4) A person may make an objection to a customary marriage at any time before the celebration of the marriage.
- (5) Upon receipt of an objection notice, the registrar shall consider the objection and make a decision to either permit the marriage to proceed or not.
- (6) A party aggrieved by the decision of the registrar shall may apply to court.
- (7) The court to which an appeal is referred under this section, shall summon the parties to the intended marriage, and the person who placed the objection shall show cause why the celebrant should not proceed to solemnize the marriage.

38. Procedure on making appeal in objection proceedings

- (1) The court, on making its decision, shall forward the court order in the prescribed form to the marriage officer stating whether the objection has been dismissed or sustained.
- (2) The marriage officer will then forward the court order to the relevant parties.
- (3) On receiving a court order dismissing the objection mentioned in subsection (1), the registrar shall file the order and may without further delay, proceed to register the marriage;
- (4) Where the court issues to the marriage officer an order sustaining the objection, the marriage shall not be registered.
- (5) The court may, where it considers that an objection was made on insufficient grounds, direct the person who made the objection to pay such compensation or costs to a party to the marriage as it may deem fit.
- (6) The decision of a court in objection proceedings may be appealed against either on a point of law or fact or both law and fact.
- (7) The hearing of an objection by the court and also the hearing of an appeal, if any, shall each be completed within fifteen days after filing the objection or the commencement of the appeal as the case may be.

Conversion of Customary Marriages

39. Conversion of marriage

Parties to a customary marriage may convert that marriage to a monogamous marriage under this Act, but only if the husband at the time of conversion has only one wife.

40. Conversions to comply with preliminaries of a civil marriage

- (1) Parties intending to convert their marriages shall comply with the provisions relating to preliminaries for a civil marriage under this Act.
- (2) The Minister shall make regulations to enable the conversion of customary marriages to civil marriages.
- (3) Where the conversion takes place in the registrar's office, each of the parties

may, instead of saying to each other the words prescribed in section 21(4), the parties may say –

“I call upon all persons here present to witness that whereas I, AB has been married to you CD; under (specify type of marriage), I now solemnly, knowingly and willfully renounce the (specify type of marriage) and agree to continue and to take you as my wife (husband) in a monogamous marriage as long as we both shall live.”

41. Marriage certificate on conversion of marriage

- (1) Immediately after a conversion has taken place, the officiating marriage officer, shall fill, in quintuplicate a marriage certificate in the prescribed form and enter in the counterfoil the number, the date on which the marriage took place, the names of the parties and the names of the witnesses.
- (2) The marriage officer or the celebrant shall retain one copy of the marriage certificate, give one copy to the parties to the marriage and –
 - (a) in the case of the marriage officer forward one copy to the registrar; and
 - (b) in the case of the celebrant, forward two copies to the marriage officer who shall retain one copy and forward the other copy to the registrar.

42. Equal status and capacity of spouses

- (1) A wife in a customary marriage is equal with her husband and enjoys full status and capacity including the capacity to acquire assets and to dispose of them, to enter into contracts and to litigate, in addition to any rights and powers that she might have at customary law.
- (2) No custom, culture or tradition shall unfairly prejudice the matrimonial property rights of a wife in a customary marriage.

PART VIII – VOID AND VOIDABLE MARRIAGES

43. Void marriages

- (1) A marriage under this Act is void where –
 - (a) the parties are within the prohibited degrees of relationship whether natural or legal or by marriage;
 - (b) either party was of unsound mind at the time of the marriage;
 - (c) the free and full consent of either party to the marriage was obtained by duress or fraud;
 - (d) the marriage was contracted in contravention of any of the provisions of this Act or any other law.

- (2) The aggrieved party may petition the court for a declaration that his or her marriage to the other party is null and void.

44. Voidable marriages

- (1) A marriage is voidable where one of the parties to the marriage –
- (a) unreasonably refuses to consummate the marriage for a period of three months from the time of the marriage;
 - (b) is unable to consummate the marriage within six months; or
 - (c) conceals a material fact.
- (2) The aggrieved party may, at his or her option, apply to a competent court on any of the grounds above to nullify the marriage.

45. Voidable marriage valid until annulled

A voidable marriage is for all purposes a valid marriage until it is annulled by a decree of a competent court at the instance of the innocent party

PART IX – OBJECTIONS TO MARRIAGE

46. Application of this Part

This Part applies, with the necessary modifications, to all marriages celebrated under this Act.

47. Objection marriage

- (1) A person who knows of any reasonable ground why a marriage should not take place may enter an objection against the issue of the marriage licence by a marriage officer, by writing, at any time before the issue of the licence, the word “forbidden” opposite the entry of the notice in the respective marriage notice book and stating the reason why he or she claims to forbid the issue of the marriage licence.
- (2) Where a person who knows of any reasonable ground why a marriage should not take place resides outside South Sudan, he or she may send his or her objection, signed in accordance with the law of his or her country of residence and duly authenticated by a Notary Public, counsel, or another person authorised by the law of that country for the purpose to the marriage officer concerned or the Registrar, whichever would be best placed to ensure receipt of the objection.
- (3) A person may make an objection to a marriage where –

- (a) the parties are within the prohibited degrees of relationship, whether natural or legal or by marriage;
 - (b) either party, at the time of marriage, has a living spouse and the marriage with the living spouse is still subsisting;
 - (c) the free and full consent of either party to the intended marriage was obtained by force or fraud;
 - (d) the intended marriage is in contravention of any provision of this Act or any other law.
- (4) A person may make an objection to a marriage at any time before the celebration of the marriage.
 - (5) Where an objection is made in accordance with this section, the marriage officer, or registrar shall refer the matter to a competent court.
 - (6) The court to which an objection is referred under subsection (5), shall summon the parties to the intended marriage, and the person who placed the objection shall show cause why the marriage officer should not issue the marriage licence

48. Procedure on making decision in objection proceedings

- (1) The court shall, on making its decision, forward the relevant court order in the prescribed form to the marriage officer, stating whether the objection has been dismissed or sustained.
- (2) On receiving a court order dismissing the objection mentioned in subsection (1), the marriage officer shall file the order and shall cancel the word "Forbidden" in the respective Marriage Notice Book and permit the marriage to be solemnised.
- (3) Where the court issues to the marriage officer an order sustaining the objection, the marriage shall not be solemnised.
- (4) The court may, if it considers that an objection was made on insufficient grounds, direct the person who made the objection to pay such compensation or costs to a party to the marriage as it may deem fit.

49. Appeals from court's decision in objection proceedings

- (1) The decision of a court in objection proceedings may be appealed against either on a point of law or fact, or both law and fact.

- (2) The hearing of an objection by the court and the hearing of an appeal, if any, shall each be completed within fifteen days after filing of the objection or the commencement of the appeal as the case may be.

PART X – MATRIMONIAL RIGHTS AND OBLIGATIONS

50. Conjugal rights

- (1) Spouses shall have conjugal rights in marriage.
- (2) Notwithstanding subsection (1), a spouse may deny the other spouse the right to sexual intercourse, based on free and full consent of each spouse, on any grounds which may include –
- (a) poor health;
 - (b) surgery that affects the capacity to engage in sexual intercourse;
 - (c) childbirth; or
 - (d) reasonable fear that engaging in sexual intercourse is likely to cause physical or psychological injury or harm.
- (3) Where a spouse has sex with the other spouse against that spouse's consent in contravention of subsection (2), the act shall create both criminal and civil liability, and –
- (a) in the case of a criminal offence, it shall be punishable in accordance with the Penal Code Act; and
 - (b) in the case of a civil wrong it shall give rise to civil remedies such as a restriction order, judicial separation, suspension of conjugal rights and compensation.

Matrimonial Property Rights

51. Types of matrimonial property

Matrimonial property includes –

- (a) the matrimonial home;
- (b) household property in the matrimonial home;
- (c) any other property either immovable or movable acquired before or during the subsistence of a marriage, deemed to be matrimonial property by express agreement;
- (d) property which was separate property but which a spouse has made a contribution towards, except where the property relates to the sale of family land; and
- (e) seed money provided by a spouse for the establishment of a business.

52. Matrimonial property to be owned in common

Any matrimonial property shall be owned in common by the spouses.

53. Property agreement

- (1) Two persons in contemplation of a marriage may make an agreement with respect to the ownership of—
 - (a) separate property of each spouse;
 - (b) property acquired during the marriage; or
 - (c) distribution of property acquired during the marriage.
- (2) The agreement may include the settlement of any differences that may arise regarding property owned by either, or both spouses.
- (3) An agreement may define the share of the property or any part of the property to which each spouse is entitled on separation, dissolution of marriage.

Form of agreement

- (4) An agreement may be oral or in writing.
- (5) Each party to an oral agreement shall have a witness and where an oral agreement is used in court, it shall be confirmed by affidavit.
- (6) A written agreement shall be signed by both parties and witnessed by two persons chosen by the parties and may be made by the court as an order of the court.
- (7) Where the agreement is made as an order of court, it may be amended or terminated only by an order of court on application by the parties and witnessed by two persons chosen by the parties.
- (8) Where it is envisaged that a third party shall be affected by the amendment or termination, the application shall be on notice to the third party.

54. Capacity to acquire separate property

- (1) A spouse in any form of marriage recognized under this Act shall have the capacity to acquire his or her own separate property during the subsistence of the marriage.
- (2) Separate property shall not be taken into account for the purpose of the

distribution of matrimonial property under this Act, unless there is an agreement to the contrary.

- (3) Subsection (2) does not apply where the spouse proves that he or she made a contribution to the acquisition or maintenance of the separate property.
- (4) Separate property includes –
 - (a) independently acquired property and the proceeds and profits from the that property;
 - (b) property acquired before marriage or property acquired by bequest, devise, inheritance or gift from a person other than the spouse;
 - (c) property that was acquired by gift or inheritance from a third party after the date of the marriage;
 - (d) income from property referred to in paragraph (c) where the giver or testator has expressly stated that it is to be excluded from the spouse's matrimonial property;
 - (e) damages for personal injuries, nervous shock, mental distress or loss of guidance, care and companionship, or the part of a settlement that represents those damages;
 - (f) proceeds or right to proceeds of an insurance policy payable on the death of the insured person;
 - (g) property which the spouses by agreement regard as separate property;
 - (h) trust property, except where the trust is a sham where the Court may set it aside in the best interest of the vulnerable spouse; and
 - (i) any other property that a spouse can prove is separate property.
- (5) The onus of proving that property is separate property is on the person who makes the claim.

55. Equal access

- (1) Spouses shall have equal access to matrimonial property.
- (2) Equal access includes the right to the use, to benefit from and to enter the property and where there is an agreement between spouses, the disposal of the property.

56. Property acquired and liability incurred before marriage

- (1) The interest of any person in any immovable or movable property acquired before the marriage shall not be affected by the marriage except by express or implied agreement as construed through conduct.

- (2) Liability incurred by a spouse before marriage relating to property shall after the marriage remain the liability of the spouse who incurred it, except that if the property becomes matrimonial property, the liability may be shared by the spouses, unless they agree otherwise.

57. Contribution to property acquired before and during the marriage

- (1) Where a spouse acquires property before or during the marriage and the property does not fall within matrimonial property, but his or her spouse makes a contribution towards the improvement of that property, be it monetary or in kind, the spouse without the interest shall acquire a beneficial interest equivalent to the contribution she or he made.

- (2) The property referred to in subsection (1), excludes ancestral property.

58. Matrimonial property in polygamous marriage

Where a husband has more than one wife in a polygamous marriage, ownership in common of property between the husband and each particular wife shall be determined as follows –

- (a) matrimonial property acquired by the husband and the first wife shall be owned in common by the husband and the first wife in respect of the matrimonial property acquired before the husband married the second wife; and
- (b) the subsequent wives shall take interest only in the husband's share of the matrimonial property.

59. Transactions related to matrimonial property

- (1) A transaction shall not be entered into in respect of any matrimonial property except with the prior written consent of the other spouse.

- (2) Consent referred to in subsection (1) shall not be unreasonably withheld.

- (3) Notwithstanding subsection (1), the court may on application, dispense with the consent of a spouse if it is satisfied that –

- (a) the spouse is of unsound mind;
 - (b) consent is unreasonably withheld;
 - (c) the whereabouts of the spouse are unknown for a period of two years;
- or
- (d) any other sufficient reason as court may consider fit.

- (4) Subject to subsection (2), where a spouse enters into a transaction that relates to the matrimonial home without the consent of the other spouse, that

transaction may be set aside by the court on application by the other spouse.

- (5) Where the court does not set aside a transaction, the spouse whose interest is defeated is entitled to claim out of the proceeds of the transaction, the value of that spouse's share in the matrimonial property.
- (6) When a transfer of the matrimonial property is ordered by the court and a spouse ordered to make the transfer or conveyance is either unable or unwilling to do so, the court may order the registrar of the court to execute the appropriate transfer or conveyance on behalf of that spouse.
- (7) The court may, by order, restrain a spouse or a third party from permitting the disposition of matrimonial property and the court may rescind a disposition of the property made with the intention of defeating the financial provision of a spouse, except to a purchaser for value in good faith.
- (8) The court may make an order to preserve or maintain matrimonial property while a case relating to the property is pending before the court.

60. Marriage gifts and debts incurred during marriage

- (1) Where a spouse gives property to the other spouse during the subsistence of a marriage, there is a rebuttable presumption that the property belongs to the receiving spouse.
- (2) Where during the subsistence of a marriage, a debt is incurred for the necessities of life for the immediate family –
 - (a) with the consent of the other spouse, the debt shall become a family liability to be borne by both spouses equally; or
 - (b) without the consent of the other spouse, the debt shall be borne by the spouse who incurred the debt, unless agreed otherwise by the spouses.
- (3) Where, during the subsistence of a marriage, any property is acquired in the names of the spouses jointly jointly, there shall be a rebuttable presumption that the beneficial interests of the spouses are equal.

61. Rented property

Where the parties to a marriage live in rented premises, then, on application by either party, the court may order the premises to be assigned to one of the parties on dissolution of the marriage even though that party is not a party to the tenancy agreement and the court shall take into consideration the best interest of any children of the marriage.

PART IX – BREAKDOWN OF MARRIAGE

62. Court's jurisdiction in matrimonial causes

- (1) A **magistrates'** court shall have jurisdiction in all matters under this Part.
- (2) A **local council court** shall have jurisdiction where there is a matrimonial cause arising out of a customary marriage.

63. High Court to have original jurisdiction in foreign marriages

The **High Court** shall have original jurisdiction in all matrimonial causes arising from marriages contracted under foreign laws.

64. Matrimonial causes proceedings to be in open

Court proceedings in a matrimonial cause shall be in open court except that where the court considers that the parties to any proceeding or their children if any, may be unduly prejudiced, the court may hold the proceedings in camera.

65. Separation

Separation of parties is by judicial separation, where a party petitions court applying for suspension of marriage obligations on such grounds as would constitute a breakdown of marriage.

66. Effect of separation

A decree of judicial separation shall relieve the parties of the duty to stay together, except that the duty to maintain shall continue unless otherwise provided under the decree of separation.

67. Power of court to set aside or vary decree of judicial separation

- (1) A court shall set aside a decree of separation on the application of either or both spouses if the spouses have consented to the setting aside of the decree.
- (2) A court may vary the terms of the decree of separation on the application of both spouses or either spouse where there has been any material change in the circumstances of either or both the spouses.
- (3) A court may rescind a decree of separation on the application of either spouse where the court is satisfied that the decree was obtained as a result of misrepresentation or mistake of fact.

68. No petition for divorce during first two years of marriage

- (1) Subject to subsection (2), a spouse shall not petition for divorce before the

expiry of two years from the date of the marriage.

- (2) A spouse may apply to the relevant court for leave to bring a petition for divorce before the expiration of the two years specified in subsection (1) where the spouse can prove that he or she is suffering exceptional hardship in the marriage.

69. No division of matrimonial property on separation

- (1) Upon separation of the spouses, matrimonial property shall not be divided between the parties but a court may order that the spouses share any income that may accrue from the matrimonial property.
- (2) Any property that may individually be acquired by either spouse during the period of separation shall remain the property of the spouse who acquired it.

70. Petition to reverse decree of judicial separation

- (1) A husband or wife upon the application of whose wife or husband a decree of judicial separation has been pronounced, may at any time present a petition praying for the reversal of the decree on the ground that it was obtained in his or her absence and that where desertion was the ground of the decree there was reasonable excuse for the desertion alleged.
- (2) The court may, on being satisfied of the truth of the allegations of the petition, reverse the decree accordingly.

71. Protection orders

- (1) A spouse in whose property the other spouse has acquired an interest by virtue of the marriage may, if deserted by him or her, apply by petition to the court for an order to protect any property which she or he may have obtained or may obtain after the desertion, against him or her and his or her creditors and any person claiming under him or her.
- (2) The court may, if satisfied that the desertion was without reasonable excuse and that the spouse is maintaining him or herself make that order.
- (3) The order shall state the time on which the desertion commenced and shall, as regards all persons dealing with the spouse in reliance on the order, be conclusive as to that time.
- (4) While the order is in force, the spouse is and shall be taken to have been from the date of the desertion, in the like position in all respects with regard to the

property and contracts and suing and being sued, as he or she would be if he or she had obtained a decree of judicial separation under this Act.

- (5) The spouse, or any other creditor or person claiming under him or her may apply to the court for the discharge or variation of the order, and the court may, if the desertion has ceased, or for any other cause it considers fit, discharge or vary the order accordingly.
- (6) Where the spouse or any creditor or person claiming under him or her, seizes or continues to hold any property of the other spouse after notice of any such order, the other spouse may by action recover the property, and also a sum equal to double its value.

72. Effect of reversal, discharge or variation of judicial separation or protection order

- (1) The reversal, discharge or variation of a decree of judicial separation, or a protection order shall not affect any right or remedy which a person would otherwise have had in respect of any contract or act of the spouse entered into or done between the date of the decree or order and the date of the reversal, discharge or variation of the decree or order.
- (2) Any person who, in relying on a decree or order –
 - (a) makes any payment to; or
 - (b) permits any transfer or act to be made or done by the spouse and notwithstanding that the decree or order may have been reversed, discharged or varied or the separation of the spouses may have ceased, or at some time since the making of the decree or order has been discontinued,may be protected and indemnified as if at the time of the payment, transfer or act, the decree or order were valid and still subsisting without variation, and the separation had not ceased or been discontinued, unless at the time of the payment, transfer or other act, that person had notice of the reversal, discharge or variation of the decree or order or the cessation or discontinuance of the separation.

73. Irretrievable breakdown of marriage to be sole ground for divorce

- (1) A petition for divorce may be brought by either party to a marriage under this Act.
- (2) The petition for divorce shall be on the sole ground that the marriage has irretrievably broken down.

74. Contents of a petition for separation or divorce

A petition for separation or divorce shall contain the following particulars –

- (a) form of marriage;
- (b) the names of the parties;
- (c) the ages of the parties;
- (d) the names, age and sex of the children, if any, of the marriage;
- (e) particulars of the facts giving the court jurisdiction;
- (f) particulars of any previous efforts to resolve the dispute, and that there is no hope of reconciliation;
- (g) a statement of the evidence to be relied on to establish the irretrievable breakdown of the marriage;
- (h) the terms of any related agreement made between the parties;
- (i) the orders being prayed for; and
- (j) a verification sworn by the petitioner before a Commissioner for Oaths that what is stated in the petition is correct.

75. Evidence of breakdown of marriage

- (1) The court shall, in deciding whether or not a marriage has irretrievably broken down, have regard to all relevant facts regarding the conduct and circumstances of the parties and in particular, may refuse to grant a decree where a petition is founded exclusively on the petitioner's wrong doing.
- (2) Without prejudice to subsection (1), a court may, without limiting the right of the court to accept other facts, accept any one or more of the following facts as evidence of the irretrievable breakdown of marriage –
 - (a) the respondent's adultery and the fact that because of it, the petitioner finds it intolerable to live with the respondent;
 - (b) cruelty, whether mental or physical on the part of the respondent affecting the health of the petitioner;
 - (c) the respondent's desertion of the petitioner for a continuous period of at least two years immediately preceding the presentation of the petition without any justifiable cause;
 - (d) a change of religion by the respondent where both parties followed the same faith at the time of the marriage and where the petitioner cannot tolerate the change of religion;
 - (e) incestuous adultery; and
 - (f) incestuous defilement.

76. Separation not a bar to divorce

A spouse shall not be prevented from presenting a petition for divorce, or a court

from granting a decree of divorce by reason only that the petitioner has previously on similar facts or substantially the same facts as those proved in support of the petition, been granted a decree of judicial separation.

77. Where court is not satisfied with evidence

The court shall not be bound to pronounce the decree if it is not satisfied with the evidence adduced that the marriage has irretrievably broken down.

78. Grant of decree nisi and decree absolute

- (1) Where court is satisfied, on the basis of the evidence before the court that the marriage has irretrievably broken down, it shall grant in open court, a decree nisi for the dissolution of the marriage.
- (2) A decree nisi for dissolution may not be made absolute until after the expiration of six months from the date of the decree.

79. Cross-petitions

Where a petition has been filed for divorce or separation and the respondent also has grounds for divorce or separation against the petitioner, the respondent shall have a right to file a cross petition.

80. Party's right of appeal

A party that is not satisfied with the decision of court may appeal against the decision.

81. Competence of husbands and wives as witnesses in civil proceedings

In all matrimonial proceedings, the husband or wife of any party to the suit, shall be a competent and compellable witness.

82. Court's powers to divide matrimonial property

- (1) Where a decree absolute has been granted terminating a marriage, the court may proceed to divide any matrimonial property between the parties to the dissolved marriage, subject to any ante or post nuptial agreements the parties may have made relating to division of property.
- (2) Where contribution has been made to property that does not amount to matrimonial property by one spouse, that spouse shall be compensated by the other spouse or property owner.
- (3) The court may, instead of dividing the matrimonial property between the parties, require one party to compensate the other party for the value of that

party's interest in the matrimonial property.

83. Distribution of property

- (1) Where a marriage is in the process of being dissolved, the court that determines the property rights of the spouses may make an order to equitably distribute property jointly acquired during the marriage without regard to the reasons for the breakdown of the marriage.
- (2) The distribution of the property shall be in equal shares but shall not be less than one third of the value of the jointly acquired property unless a spouse can prove that the other spouse should be given less than half.
- (3) The court shall take into consideration the circumstances of each case when distributing the property and shall take into consideration—
 - (a) the length of marriage;
 - (b) the contribution of each spouse to the acquisition, maintenance or improvement of the property including the contribution of a spouse towards the upkeep or maintenance of the property in cash or kind;
 - (c) domestic work and management of the home;
 - (d) the contribution of the immediate family or any contribution to the maintenance of the matrimonial home or which facilitates the acquisition of the property or matrimonial home by a spouse;
 - (e) the economic circumstances of each spouse at the time of the distribution of the property, including the desirability to award the matrimonial home to a particular spouse or the right of a spouse who has custody of a child to live in the matrimonial home for a reasonable period of time;
 - (f) the need to make reasonable provision for other spouses and their children as regards matrimonial property where the marriage is polygamous;
 - (g) whether there is an agreement related to the ownership and distribution of the property in the best interest of the vulnerable spouse;
 - (h) financial misconduct or the wasting of assets; and
 - (i) any other fact which, in the opinion of the court, requires consideration.
- (4) For the purposes of this section, a monetary contribution shall not be presumed to be of greater value than a non-monetary contribution.

84. Property settlement

- (1) In a proceeding related to property, the court may make an order to alter the interest of either spouse in the property including an order –
 - (a) for a settlement of property in substitution for an interest in the property; and
 - (b) requiring either or both spouses to make, for the benefit of either or both spouses, settlement or transfer of property determined by the court.
- (2) The court shall not make an order under subsection (1), unless it is satisfied that it is just and equitable to do so.
- (3) Where the court makes an order under subsection (1), it shall have regard to –
 - (a) the effect of the proposed order on the earning capacity of either spouse; and
 - (b) any other order that has been made under this Act in respect of a spouse.

85. Court to set aside order

- (1) Where the court is satisfied on an application made by a person affected by an order, that the order was obtained by fraud, duress, the giving of false evidence or the suppression of evidence, the court may set aside the order and make another order.
- (2) The court shall have regard to the protection of the interest of a purchaser in good faith for value without notice in exercising its power under subsection (1).

86. Orders relating to children on separation or divorce

The court shall be guided by the provisions of the Child Act, 2008 when making orders relating to maintenance and custody of children on separation and divorce.

87. Maintenance to cease on re-marriage

The right of a party to receive maintenance from his or her former spouse shall cease immediately on the re-marriage of that party.

88. Power of court to vary maintenance order

The court may, from time to time, vary or rescind any subsisting order for maintenance on the application of the party in whose favor or against whom the order was made on being satisfied that the order was based on any misrepresentation or mistake of fact or where there has been any material change in the circumstances of the parties.

89. Remarriage of parties

When the time limit for appealing against a decree of dissolution or nullity of marriage has expired and no appeal has been presented or when, in the result of any such appeal, a marriage is declared to be dissolved or annulled, the parties to the marriage may marry again as if the prior marriage had been dissolved by death.

Offences and Penalties

90. Jactitation of marriage

- (1) A person who falsely claims or asserts that he or she is married to a particular person commits an offence known as jactitation of marriage and is liable on conviction to a fine or imprisonment not exceeding one year or both.
- (2) In a suit for jactitation of marriage, the respondent may as a defence, prove that—
 - (a) a marriage recognized under this Act exists or formerly existed between the petitioner and the respondent; or
 - (b) the petitioner has expressly or by conduct authorized the respondent to make the representations that he or she is married to him or her.
- (3) Where the court is satisfied that the offence of jactitation of marriage was committed, it shall make an order for an injunction against the respondent restraining him or her from making further representations.
- (4) In addition to the remedy under sub section (3), the court may award any other remedy in consideration of the consequences of the offence, as it may consider fit.

91. Bigamy

- (1) A person who commits bigamy is liable to a fine or imprisonment not exceeding five years or both.
- (2) In this section “bigamy” means the act of marrying another person during the existence of a subsisting monogamous marriage.

92. Making false statements

A person, who, for purposes of doing anything required to be done under this Act, makes any statement whether oral or written which is false in a material particular—

- (a) knowing that it is false; or
- (b) without having taken reasonable care to find out whether the statement is true or false,
commits an offence and is liable, on conviction, to a fine not exceeding..... or imprisonment not exceeding one year.

93. Marriage with person previously married

Any person who being unmarried, undergoes a ceremony of marriage with a person whom he or she knows to be married to another person, commits an offence and is liable on conviction to a fine or imprisonment not exceeding five years or both.

94. Making false declarations, etc. for marriage

- (1) A person who, in any declaration, certificate, licence, document or statement required by law to be made or issued for the purposes of a marriage, declares, enters, certifies or states any material matter which is false, without having taken reasonable means to ascertain the truth or falsity of that matter, commits an offence.
- (2) A person who contravenes subsection (1), is liable on conviction to a fine or imprisonment not exceeding five years or both.

95. False pretence of impediment to marriage

Any person who prevents a marriage by doing any of the following acts –

- (a) by claiming that his or her consent to it is required by law;
- (b) by claiming that any person whose consent is required does not consent;
or
- (c) by claiming that there is any legal impediment to the performing of the marriage and where he or she does so knowing that the pretence is false or without having reason to believe that it is true by true,
commits an offence and is liable on conviction to a fine or imprisonment not exceeding two years or both.

96. Unlawfully performing marriage ceremony

Any person who performs or witnesses as a marriage officer a ceremony of marriage, knowing that he or she is not duly qualified to do so or that any matter required by law for the validity of the marriage has not happened or been performed, so that the marriage is void or unlawful on any ground, commits an offence and is liable on conviction to a fine or imprisonment for not exceeding five years or both.

97. Willful neglect of duty to fill or transmit certificate of marriage

Any person who, being under a duty to fill out the certificate of marriage celebrated by him or her or its counterfoil, or to transmit the certificate to the registrar, willfully fails to perform that duty, commits an offence and is liable on conviction to a fine or imprisonment not exceeding one year, or both.

98. Personation in marriage

Any person who personates any other person in a marriage or marries under a false name or description with intent to deceive the other party to the marriage, commits an offence and is liable on conviction to a fine not exceeding one hundred and twenty currency points or imprisonment for a term not exceeding five years or both.

99. Fictitious marriage

Any person who undergoes a ceremony of marriage or any ceremony which he or she represents to be a ceremony of marriage, knowing that the marriage is void on any ground and that the other person believes it to be valid, commits an offence and shall on conviction be liable to imprisonment of not less than seven years with or without a fine of US Dollars two thousand eight hundred equivalent in South Sudan Pounds and not exceeding fourteen years imprisonment with a fine of US Dollars five thousand six hundred and fifty equivalent in Pounds.

PART X—GENERAL

100. Correction of errors

The Registrar may correct any clerical error in a register, return or certificate.

101. Quarterly returns

Within ten days before the last day of every quarter, each marriage officer shall forward to the Registrar, a copy of all entries made in the respective marriage Register Books.

102. Expenses to be defrayed from public funds

The Minister may defray out of monies provided by Assembly all proper expenses connected with the transmission or delivery of the marriage registers or which may otherwise become necessary to be incurred in giving effect to this Act.

103. Regulations

(1) The Minister may, by statutory instrument, make regulations for the better

carrying into effect of the provisions of this Act.

- (2) The Minister may, by regulations made under this section with the approval of Cabinet grant recognition to the solemnization of marriages and institution of matrimonial causes, including petitions for separation or divorce by any religious denomination other than those provided for in this Act.
- (3) Without prejudice to the general effect of subsection (1), regulations made under this section may provide for –
 - (a) forms to be used under this Act;
 - (b) matters for which fees shall be paid;
 - (c) fees to be paid to the registrars for the several matters to which they apply;
 - (d) registers and records to be maintained under this Act and for their inspection;
 - (e) making of returns under this Act;
 - (f) penalties in respect of any contravention of the regulations or two years imprisonment or both;
 - (g) any other matter conducive or incidental to the implementation of this Act.
- (4) The fees collected under the regulations made under this section shall be paid into the Consolidated Fund.

104. Rules of court practice and procedure

The Chief Justice may, in consultation with the Ministers of responsible for justice and this Act, make rules regulating court practice or procedure under this Act.

105. Transition and savings

- (1) Any marriage subsisting immediately before the commencement of this Act shall be considered a valid marriage for the purposes of this Act where the marriage is a type recognised under this Act and the marriage conforms to the provisions of this Act.
- (2) A marriage referred to in subsection (1) is not invalid merely because the marriage was at any one time before the commencement of this Act contrary to this Act.
- (3) Parties to a marriage subsisting immediately before the commencement of this Act may apply to the Registrar or marriage officer for a certificate under

this Act without the need to go through the preliminaries of such marriage under this Act.

- (4) Parties under subsection (3) shall provide the registrar or marriage officer with sufficient proof to the satisfaction of the registrar or marriage officer to show that the marriage subsisted immediately before the commencement of this Act.
- (5) Any marriage subsisting immediately before the commencement of this Act which does not conform the provisions which falls under the recognised subsisting marriage which under any written or customary law hitherto in force constituted a valid marriage immediately before the coming to force of this Act is valid for the purposes of this Act.
- (6) Proceedings in respect of any marriage instituted immediately before commencement of this Act shall be, so far as practicable, continued under the provisions of this Act.

SCHEDULE

ss.17, 39, 60, 82(d) and 97(1)(e)

Prohibited Degrees of Relationship

mother	•	father
mother's daughter	•	father's son
daughter	•	son
father's mother	•	father's father
mother's mother	•	mother's father
son's daughter	•	son's son daughter's daughter
daughter's son	•	brother
sister	•	husband's father
wife's mother	•	husband's son
father's sister	•	father's brother
mother's sister	•	mother's brother
brother's daughter	•	brother's son
sister's daughter	•	sister's son
father's brother's daughter	•	father's brother's son mother's sister's daughter
mother's sister's son	•	son's wife daughter's husband
son's wife	•	mother's husband
father's wife	•	

The relationships prescribed in this Schedule apply whether they occur naturally or legally, or by marriage.