



Strategic Initiative
for Women in the
Horn of Africa



Artist: Hussein Salim

WOMEN AT THE CENTER

An In-depth Gender Analysis Of The South Sudan
Draft Family Law Bill

Production of this briefing paper titled “Women at the Center: An In-depth Gender Analysis of the South Sudan Draft Family Law Bill,” was supported by the We Cannot Wait (WCW) Project, generously funded by the Ministry of Foreign Affairs of the Netherlands. WCW is a gender equality initiative focused on women’s empowerment and inclusive movement building centred across Uganda, Sudan, South Sudan, Somalia, Somaliland and Ethiopia. Consortium Members consist of the Ethiopian Women Lawyers Association (EWLA), the Uganda Association of Women Lawyers (FIDA Uganda), NAGAAD Network and MUSAWAH, led by the Strategic Initiative for Women in the Horn of Africa (SIHA) Network.

Cover Photo Photographer: Elunia Pitia

Design: Marce Digital

Published May 2026

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Strategic Initiative for Women in the Horn of Africa

P.O. Box 2793 Kampala – Uganda

www.sihanet.org

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ISBN 978-9913-685-32-0



ACKNOWLEDGEMENTS

This briefing paper was prepared by Dr. Michelle Lokot. The paper provides a comprehensive analysis of South Sudan current Family Law Bill, developed in 2022. It highlights both its critical strengths and gaps to be addressed in paving the way towards the holistic protection of women and girls within the family structure.

Sincere gratitude goes to the SIHA Regional Team including Hala Al-Karib, the Regional Director; Faizat Badmus Busari, the Regional Programme Manager; Susan Labwot, the WCW Regional Coordinator and Ramatoulie Jallow, the Regional Research and Advocacy Officer for their contributions and guidance throughout this process.

The Paper should be cited as follows:

The Strategic Initiative for Women in the Horn of Africa (SIHA) Network, “Women at the Center: An In-depth Gender Analysis of the South Sudan Draft Family Law Bill,”

2026.

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EXECUTIVE SUMMARY

Introduction

Since South Sudan became an independent state in 2011, it has experienced intermittent and ongoing periods of conflict, perpetrated by both state and non-state actors. Land disputes have been a pivotal source of conflict (IOM, 2021) and have become increasingly contentious as displaced communities return to land occupied by others. The backdrop of conflict and persistent insecurity has weakened institutional and legal structures, limiting both political will and the ability to implement laws. From 2020 to 2025, several key provisions on justice and accountability, gender-based violence, land tenure rights, and constitution-making have remained unimplemented, contributing to the delay of planned elections in 2024. At present, the country faces the threat of renewed civil war.

Gender inequality in South Sudan endures, shaping gender roles, marriage practices, educational opportunities for girls, women's rights after divorce, inheritance rights, exposure to violence against women and girls (VAWG), and access to justice and equality before the law. Despite ratifying key international and regional instruments, including the landmark Maputo Protocol in 2023, the duality between statutory and customary legal frameworks continues to undermine the operationalisation of gender equality. The legal environment remains dominated by customary law (World Bank, 2025), alongside statutory and religious systems. This highlights the urgent need to address and clarify existing legal gaps.

In 2022, the Government of South Sudan introduced the Family Law Bill, informed by South Sudan's Transitional Constitution, input from civil society actors (including the women's movement), and recommendations from the 2021 Expert Committee on the Elimination of Discrimination against Women established under the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW). However, the consultation process, ongoing since 2022, has been delayed due to poor resourcing, lack of consensus on key issues, escalating conflict, and limited political will. There is a clear need for deeper engagement, particularly from a gender perspective and within the context of broader regional and international legal system and norms. A promising development occurred in 2023 when, under strong pressure from the women's movement, the Government of South Sudan signed the Maputo Protocol. Both CEDAW and the Maputo Protocol provide crucial international and regional standards for family law. This gender analysis seeks to assess how effectively the draft Family Law Bill aligns with the lived realities and needs of women, girls, and communities, as well as with established legal gender equality frameworks at national, regional, and international levels.

Methodology

This gender analysis was conducted using three main components: 1) a desk review of international and regional laws, analysis of the bill and existing critiques of South Sudan's legislation, lessons learned from other contexts, and documentation of women's and girls' lived experiences and aspirations; 2) a feminist legal analysis of the draft bill; and 3) a validation session with members of the women's movement at the regional level.

Analysis of the Bill

The following analysis of strengths and gaps provides a summary of key points and does not include the full details, which are discussed in the main text.

Strengths:

The bill demonstrates several important strengths, including: adopting a broad definition of marriage (Article 10); criminalising demands for the return of marriage gifts or dowry (Art 15; Art 34); affirming women's equal status and capacity under customary law (Art 42(1)); declaring marriages void where consent was obtained under duress (Art 43(1)); granting spouses the rights to use and control matrimonial property (Art 55); recognising 'in-kind' contributions to matrimonial property and affirming that these are not of lesser value than monetary contributions (Art 57(1); Art 83(3); Art 83(4)); and listing cruelty as a legally recognised ground for divorce (Art 75(2)(b)).

Gaps:

The draft bill contains several considerable gaps.

On recognition of marriages, Article 11 imposes a minimum time requirement for cohabitation, which may leave women seeking separation due to violence in the home without adequate protection. Importantly, Articles 32(1) and 32(2) state that where the bill conflicts with the Islamic faith, Islamic law prevails. Considering the broad spectrum of interpretations of Islam law, this risks undermining women's rights in relation to age of marriage, polygamy, inheritance, and guardianship practices. Article 44 on consummation lacks clarity and may cause harm if it leads to unnecessary and invasive medical procedures, such as virginity testing. On age of marriage (Art 12(1)), the use of terms such as 'contract' and 'capacity' creates ambiguity and could result in unintended consequences. The requirement for customary marriage registration (Art 36(1)) may also disadvantage women.

There is an evident need to revise text relating to marital rape in order to clarify dangerously ambiguous language (Art 50). Greater clarity is also needed on the practice of levirate marriage (Art 14), ensuring language does not imply women are property. Provisions on polygamy (Art 47(3)(b)) are unclear and require further detail to address clashes with customary and religious law, as well as to provide a clear process for prevention and response.

The bill uses the terms 'marriage gifts' and 'dowry' inconsistently (Art 15; Art 34), requiring clarification. On matrimonial property, Articles 51 and 57(1) need to specify what qualifies as an 'in-kind' contribution and whether a threshold exists for recognition. Articles 51(d) and 57(2) on 'separate' property related to family or ancestral land require clarification, as does the burden of proof under Article 54(2). Article 54(4d) is problematic as it allows a third party to limit what a spouse can inherit or access after divorce. Articles 55(2) and 59(1) should confirm that written agreements on property transactions can be signed with a thumbprint or an 'X' after a third party explains the contents to illiterate spouses. Clarity is also required on matrimonial property in polygamous marriages (Art 58), the rights of recipients of gifts (Art 60(1)), and the division of property after divorce (Art 83(2)). Finally, Article 17 on inheritance rights needs more detail, particularly on whether daughters can inherit land or whether patrilineal land transfer practices prevail.

The Article 68(2) requirement to prove 'exceptional hardship' in order to bypass the two-year waiting period for divorce is unnecessary and may restrain women from leaving marriages, as it places an unfair burden of proving hardship. Cruelty and all forms of violence should be explicitly listed as grounds for divorce at any stage. Although divorce may be granted on the basis of cruelty (Art 75(2)), the criteria for determining cruelty are unclear. Article 71 on desertion should also specify violence as a 'reasonable excuse' for leaving a marriage. Greater clarity is required on how 'maintenance' is determined in divorce, and safeguards must be put in place to ensure that halting maintenance upon re-marriage does not disadvantage women (Art 87). In addition, Article 75(2) should include a clear statement that adultery is not criminalised, superseding the 2008 Penal Code, while violence should be explicitly listed as a legally recognised ground for divorce under this section.

Several critical issues are also missing from the draft bill and need to be incorporated. These include: child custody following divorce or the death of a parent, and the rights of children born out of wedlock (currently deferred to the Child Act 2008); comprehensive provisions on violence against women (pending the progress of the Anti-GBV Bill); women's position and status within the family; the expectation that women must obey their husbands; formal referral processes between customary and statutory courts; the requirement to disclose HIV status; and recognition of sexual and reproductive health and rights.

Recommendations, barriers, and enablers

Based on this gender analysis,⁴⁷ recommendations are proposed. These are detailed later in this document and address: recognised marriages, minimum age of marriage, marital rape, rights of widows, polygamy, marriage gifts/dowry, matrimonial property/inheritance rights, divorce, desertion, adultery, child rights, gender-based violence, women's position and status in the family, the expectation that women must be obedient, referral processes between customary and statutory courts, disclosure of HIV status, and sexual and reproductive health and rights.

Key high-level barriers to these recommendations include the lack of political will and leadership regarding the Family Law Bill (IDRA, SIHA & Musawah, 2021), broader inefficiencies and operational challenges within government structures, and the current escalation of conflict. Key high-level enablers include South Sudan's ratification of the Maputo Protocol in 2023, the mobilisation of the women's movement, and the adoption of egalitarian family laws in several Muslim countries. Some recommendations may face opposition due to perceived clashes with Islam and/or Christianity – particularly provisions on minimum age of marriage, polygamy, marital rape, and adultery, – tensions between customary and statutory law, and women's limited knowledge of the Bill's provisions. Nonetheless, drawing on egalitarian and feminist interpretations of religious texts, alongside building consensus with religious leaders, may help overcome these challenges.

Finally, beyond passing the bill, it is crucial to invest in measures that ensure effective implementation. These include training judges, lawyers, customary law decision-makers, and other legal professionals; raising awareness among women about their legal rights and remedies provided under both the bill and within Islam; consensus-building with Muslim leaders and scholars; providing courts with guidance on balancing customary practices with the bill; strengthening birth, marriage, property, and death registration processes; and ongoing support and training to safeguard judicial independence.

INTRODUCTION

Overview: Legal pluralism in South Sudan

South Sudan became an independent state in July 2011 and, since 2013, has faced both intermittent and ongoing periods of conflict and insecurity, perpetrated by state and non-state actors. Conflict has led to displacement, human rights violations, and mass atrocity crimes, the weakening of institutional and legal structures and the undermining of rule of law. Land disputes have been a central feature of both pre- and post-independence conflicts, and land remains a highly contested issue, with implications for food security, economic development, inter-communal relations, marriage, and gender roles (IOM, 2021). The return of displaced populations, combined with the effects of climate change, has increased scarcity of arable land, disproportionately affecting women and girls due in many cases to the lack of identity documents (Almeida & Ubink, 2024; Ministry of Gender, Child and Social Welfare, 2019). At present, the Revitalized Agreement on the Resolution of the Conflict in South Sudan is close to collapse, and the country faces the threat of renewed civil war.

Gender inequality in South Sudan is shaped by pre-colonial patriarchal systems as well as colonialism, which reinforced gender role differentiation and confined women to domestic spaces in line with ‘Victorian’ notions of domesticity (German, 2022; Amadiume, 1987). This historical legacy, combined with cultural, ethnic, and religious values, sustain harmful gender norms, discrimination against women and girls, and practices that restrict their rights. Gender inequality continues to affect marriage practices, women’s status and rights after divorce, access to education, land and inheritance rights, participation in political and economic life, exposure to violence, and access to justice.

The 2011 Transitional Constitution of South Sudan affirms that “women shall be accorded full and equal dignity of the person with men” (Article 16(1)). In 2015, South Sudan ratified CEDAW, which obliges states to eliminate prejudice and harmful practices rooted in notions of the superiority of either sex or stereotypes about women and men. The Government also ratified the African Charter on Human and Peoples’ Rights and the Maputo Protocol in 2023. The African Charter guarantees equal protection before the law (Article 3), respect for ‘the dignity inherent in a human being’ (Article 5), and obliges the State to protect women’s rights and eliminate discrimination (Article 18). Despite this ratification, the African Commission on Human and Peoples’ Rights has urged South Sudan to domesticate several Charter provisions. The Maputo Protocol, a landmark regional commitment on women’s rights, faced delays in ratification due to debates on reproductive health and polygamy (Pur, 2023). It requires States to take ‘corrective and positive action’ to eliminate discrimination both ‘in law and in fact’ (Article 1(d)), and to eradicate harmful cultural and traditional practices (Article 2). The Maputo Protocol affirms equal rights in marriage (including promoting monogamy), sets the minimum age of marriage at 18 (Article 6), and guarantees rights after divorce (Article 7), health and reproductive rights (Article 14), widows’ rights (Article 19), and inheritance rights based on ‘equitable shares’ (Article 20).

In practice, however, a significant gap remains between laws and their implementation, shaped by South Sudan’s plural legal system. Customary law dominates and accounts for approximately 80% of all criminal and civil cases (World Bank, 2025). Customary courts are community-based and designed to address local needs flexibly (Ezer, 2021). Article 15(c)

of the 2011 Transitional Constitution explicitly recognises customary law by affirming: *“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.”* While more accessible to communities, customary courts are dominated by male decision-makers, often leading to patriarchal and discriminatory judgments that exclude the voices and agency of women and girls (Jolaade & Abiola, 2016). Nevertheless, in some cases customary law has been more progressive than statutory law (which was inherited from the British and shaped by British gender norms), for example, the inclusion of elements aimed to protect widows’ rights and enabling Dinka women and women in Eastern Equatoria to access land (IOM, 2021; Ministry of Gender, Child and Social Welfare, 2019). Over time, however, external influences have narrowed these protections (German, 2022). Customary law has also been criticised for failing to adapt to social change in South Sudan (Logo, 2015). Further complexity arises from the fact that South Sudan’s is home to over 60 ethnic groups each with distinct, often unwritten, versions of customary law. This creates confusion in disputes involving multiple ethnic groups. When such cases are referred to statutory courts, existing statutory law often fails to respond adequately to the customs of specific ethnic groups.

Statutory courts in South Sudan are poorly resourced, resulting in inefficiencies and long delays in clearing cases (World Bank, 2025). Courts are absent in many areas, particularly rural regions, creating significant barriers to access. Financial constraints, low literacy levels (especially among women), insecurity, and limited awareness of rights further compound these challenges. Attempts to seek statutory relief are often undermined by statutory courts referring matters back to customary courts. There is also evidence of bribes being paid to transfer cases to statutory courts, as well as ‘court shopping’, where legal plurality enables

applicants to choose a court they believe will rule in their favour (UNDP, 2016). Judicial independence in South Sudan has also been questioned (Darmawan, 2023).

Religious frameworks—Christian, Muslim, and traditional religions—also shape judicial decision-making. South Sudan is majority Christian (61%), followed by indigenous/African religions (33%) and Islam (6%). Both Christian and Islamic texts are open to interpretation by scholars and religious actors, which, on issues of gender equality, has meant such texts can either restrict women’s rights or support equality (Agadjanian, 2025; Al-Absi, 2023; Comstock, 2021; Hidayatullah, 2014). Under certain interpretations of Christianity, ideas of male headship and female submission dominate perceptions of women’s rights, while some interpretations of Islam, emphasize male guardianship over women, limiting women’s autonomy over decisions relating to marriage, property, and mobility (Agadjanian, 2025; IDRA, SIHA & Musawah, 2021). Cultural and gender norms further influence these religious interpretations. Currently, South Sudan has no Islamic courts, meaning decisions on matters governed by Islamic texts are made by Islamic leaders and scholars or through customary courts.

This legal plurality makes the development and implementation of a family law bill particularly complex. It is vital to reconcile inconsistencies between legal frameworks to ensure clarity, guarantee access to rights, and support consistent application of the law. Public awareness of laws and clear messaging about discrepancies are equally important (Daniel, 2024).

In 2022, the Government of South Sudan introduced the Family Law Bill as a comprehensive reform and consolidation of existing marriage laws. The bill’s development was guided by South Sudan’s 2011 Transitional Constitution, civil society actors (including the women’s

movement), and recommendations from the 2021 Expert Committee on the Elimination of Discrimination against Women. Although consultations have been ongoing since 2022, there remains an urgent need for deeper engagement, particularly from a gender perspective and in the context of broader regional and

international legal system and norms. In particular, clarity is required on key gender equality issues, discussed in the sub-sections below, which highlight the importance of an in-depth gender analysis of the draft Family Law Bill.

Marriage:

Article 15(c) of the Constitution requires the “*free and full consent*” of both parties to a marriage. However, the same article affirms that the right to marry and form a family occurs “*according to their respective family laws,*” thereby recognising customary law. In South Sudan, under certain interpretations of Islamic texts, Muslim women cannot decide about marriage without the approval of a male guardian or family member (IDRA, SIHA & Musawah, 2021).

The most recent data on child marriage, from 2010, shows that 52% of women aged 20 to 24 were married before the age of 18 (National Bureau of Statistics South Sudan, 2010). In some ethnic groups, parents come to prearrangements for the future spouses of their children (UNDP, 2016). These and other forms of forced marriage are often accompanied by heavy pressure or coercion from the family, especially for girls who have become pregnant outside marriage (Government of South Sudan, 2017). The Constitution refers to “marriageable age” but does not specify what this is. Enforcing a minimum age requires proof of age, which depends on reliable birth registration systems. Conflict has exacerbated this problem, as many displaced women and girls lack identity documents. The Government’s Strategic National Action Plan to End Child Marriage in South Sudan 2017–2030 emphasises strengthening the policy and legal environment, raising awareness, expanding education, increasing access to sexual and reproductive health services, challenging harmful norms, and informing children of their rights. Islamic laws require maturity for marriage, but in practice this is often interpreted as physical maturity rather than age, meaning girls may be married before the age of 18. Muslim women may also face restrictions, in accessing their right to consent to marriage, where interpretations of Islamic law require approval from a male relative.

The practice of ‘bride price’ remains widespread in South Sudan but has been criticised for positioning daughters as economic commodities (Wild et al., 2018; Huser, 2018; Lacey, 2013). Bride price involves the groom’s family providing high-value items, such as cattle and/or money, to the bride’s family. Sometimes referred to as a ‘dowry’, it reflects entrenched social and cultural norms governing gender roles and economic exchange (SIHA, 2012). Bride price can incentivise families to marry off girls under 18 and, in some contexts, child and early forced marriage is seen as a protectionary measure, with the girl perceived to be safer in such marriages. The value of bride price varies widely between ethnic groups (UNDP, 2016), and rising demands have been linked to cattle raiding (Lokot et al., 2022; Hudson & Matfess, 2017). Islamic marriages also require a mahr/sadaq to be paid to the bride’s family; however, women may be able to negotiate this depending on the interpretation of relevant Islamic law (Musawah, 2022). Divorce may be initiated if the bride price is not paid within the agreed timeframe (Howe et al., 2022).

Polygamy is not prohibited under current South Sudanese law. The right to marry multiple spouses is reserved exclusively for men, who may marry up to four wives in line with Islamic tradition. As is

the case in many interpretations of relevant Islamic law, among some ethnic groups, the number of wives a man may have is restricted according to his economic capacity (UNDP, 2016). While traditional interpretations of Islam permit polygamy, contemporary and feminist readings emphasise the principles of justice and equity among wives, arguing that these principles effectively prohibit the practice (Karimullah, 2024). Momentum is growing to limit or abolish polygamy (Equality Now, 2024a), with reforms successfully implemented in several majority Muslim countries (Moghadam & Roudi-Fahimi, 2005).

Levirate marriage, in which a widow marries her deceased husband's brother, is practised by some ethnic groups in South Sudan and is often referred to as 'widow inheritance'. While sometimes justified as a form of social protection, the practice is rooted in the notion that women require male guardianship. It can occur without a widow's consent and may lead to polygamous unions, as recent research has shown (Howe et al., 2022). The practice is also influenced by the belief that a woman belongs to her husband's family rather than her natal family.

The 2008 Penal Code criminalises adultery, a provision that disproportionately affects women, who are less likely to receive fair treatment in disputes due to patriarchal norms and customs. Men, however, are shielded from the legal and social consequences of adultery because of the acceptance of polygamy under customary law and within societal norms in many contexts.

Divorce and Custody:

In South Sudan, divorce is generally easier for men to obtain (Equality Now, 2024b). Under customary law, divorce often results in the return of the bride price to the husband or his family, although in some ethnic groups the decision depends on who initiated the divorce (UNDP, 2016). Under Islamic law, while multiple forms of divorce are permitted (though discouraged, as in Christianity), women's rights groups report that men sometimes refuse to attend customary courts when women initiate divorce, effectively making it impossible for women to obtain one (IDRA, SIHA & Musawah, 2021). Research with female youth in South Sudan identifies key reasons for divorce, including the husband failing to provide the full bride price, or abusing or neglecting his wife or children (Howe et al., 2022). Other grounds include infertility and adultery by the woman (Howe et al., 2022).

The Child Act affirms that parents retain joint custody after divorce. However, customary practice diverges, with fathers typically retaining custody unless the child is very young. This acts as a barrier to divorce, as women may remain in abusive marriages out of fear of losing their children. Under Sharia law, even when mothers retain custody after divorce, fathers may hold legal authority over issues such as education and travel. Custody becomes even more complex when a mother remarries, particularly under Islamic law.

Land rights:

Article 16(5) of the 2011 Constitution affirms women's '*right to own property and to share in the estates of their deceased husbands, "together with any surviving legal heir of the deceased."* These rights are also recognised under the 2009 Land Act and the 2009 Local Government Act. However, customary law dominates in practice and is rooted in patrilineal inheritance, whereby land is passed

from fathers to sons or other male relatives rather than to women or daughters. The Constitution does not explicitly state whether women can inherit land from their parents. Customary beliefs that land ownership may reduce a girl's marriage prospects, along with the assumption that women do not need to own land because they will marry, reinforce discriminatory practices (LeRoux-Rutledge, 2020; Ministry of Gender, Child and Social Welfare, 2019).

Married and older women typically enjoy greater land security than single women or widows. Internally displaced women face particular challenges in accessing land when their male relatives are deceased (IOM, 2021). The National Land Policy, intended to address these gaps and strengthen land governance and women's land rights, has been under development for years but remains stalled.

Violence against women and girls:

In South Sudan, conflict-related violence against women and girls has escalated in 2025, with impunity, stigma, and barriers to protection and justice contributing to its continuation. Such violence is perpetrated by both state and non-state actors, as documented by SIHA (2025). Violence also occurs within households and is often normalised, with "wife-beating" frequently regarded as a legitimate form of discipline, reflecting women's subordinate status to men. The 2008 Penal Code explicitly excludes marriage from the scope of rape laws, thereby denying recognition of marital rape.

Since 2019, an Anti-GBV Bill has been under development but remains unenacted, leaving significant protection gaps and limiting survivors' access to justice. As a result, South Sudan continues to fall short of its international commitments on preventing and responding to violence against women and girls, including obligations under the Maputo Protocol and CEDAW (Equality Now, 2024c).

Scope of the Family Law Bill

In 2022, the Government of South Sudan introduced the Family Law Bill, a comprehensive reform and consolidation of existing marriage laws. The bill mandates all levels of government to '*promote the welfare of the family and enact the necessary laws for its protection*'. As stated in the Preamble, its purpose 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 and the identity to be adopted by children of separated or divorced parents; to provide for the division of matrimonial property on separation or divorce; and to provide for any related matters.*'

The bill's development was informed by South Sudan's Transitional Constitution, guidance from civil society actors (including the women's movement), and recommendations from the 2021 Expert Committee on the Elimination of Discrimination against Women. Since 2022, a consultation process has been underway, but progress has stalled due to limited resources, lack of consensus on key issues, escalating conflict, and weak political will. There remains an urgent need for deeper engagement, particularly from a gender perspective and within the framework of regional and international legal system and norms.

METHODOLOGY

This gender analysis examines how effectively the proposed provisions of the draft Family Law Bill align with the realities and needs of women, girls, and communities, as well as with existing gender equality frameworks at national, regional, and international levels. The analysis was guided by three key objectives:

- Highlight strengths within the draft bill that advance gender equality, while identifying gaps and barriers requiring further consultation and reform.
- Assess whether the provisions on Islamic marriage align with progressive Islamic principles of equality and the inclusion of women and girls within the family.
- Propose recommendations to ensure the bill reflects national, regional, and international policy norms and practices on gender equality, thereby strengthening its legal and social impact.

This research was carried out using a three-part methodology: a desk review, a feminist legal analysis of the draft bill, and a validation session.

Desk review:

The review encompassed four main types of source materials: national, international, and regional laws; analysis of the draft bill and critiques of South Sudan's legislation; lessons from other contexts; and documentation of women's and girls' lived experiences and aspirations. Particular emphasis was placed on centring the experiences of women and girls in the literature review, as this group was not directly engaged in the analysis beyond the validation session with women's movement actors.

Feminist legal analysis:

A feminist legal analysis of the 2022 draft bill formed a central part of this work. This approach incorporated key feminist considerations, including attention to intersectional power hierarchies, access to justice and rights, recognition of lived experience, acknowledgement of patriarchal structures and practices, and the identification of practical measures to advance women's rights, opportunities, and status.

The feminist legal analysis was guided by the following questions:

- Who is this law for? Who is it against?
- What are the implications for: women, girls, boys and men? How will these legal provisions affect their day-to-day lives? How are these implications different based on rural/urban location, ethnicity/clan, low/high income status, education level?
- Whose rights and agency have been promoted for each specific issue covered in the law: divorce, adultery, custody, inheritance rights, nationality of children, polygamy, age of marriage, forced marriage, role of customary justice mechanisms, violence against women and girls?

- To what extent do the provisions align with existing cultural practices towards women and women's rights under customary law?
- To what extent do the provisions align with women's and girls' stated aspirations and needs?
- To what extent do the provisions on Islamic marriage align with progressive Islamist ideas?
- How do these legal provisions align (or not) with African feminist principles, CEDAW, Maputo Protocol, African Charter and other international legal standards?
- How do these legal provisions align (or not) with religious texts and customs?
- How do these legal provisions expand or narrow gender equality, i.e. women's rights, opportunities and status?
- What are the potentially unintended consequences of these legal provisions?
- What are the recommendations to reform the existing bill from a feminist legal perspective?
- What are the cultural, social, and customary law barriers and enablers to revising the bill?

Alongside these questions, analysis was based on pragmatic decisions about what is realistic to revise in the bill based on the South Sudan context and priorities of women's rights activists, as well as SIHA's own stance on key issues.

Validation session:

An online, one-hour validation session was held with members of the regional women's movement on Thursday, 29 May 2025, to provide feedback on the analysis, recommendations, and advocacy priorities. Approximately 40 participants attended. The session formed part of the regional conference on family law bills. During the discussion, the consultant presented the key analysis and recommendations and invited feedback on core questions: *Does this assessment of strengths and gaps align with your experience? What is missing? Do the recommendations and policy asks resonate with you? What additional advocacy priorities should be considered? Who else should be engaged in these advocacy efforts?* Following the session, six participants provided further written feedback via a Google Form.

KEY STRENGTHS AND GAPS OF THE DRAFT BILL

Strengths:

One of the bill's key strengths is Article 10, which sets out the types of marriages that are "recognised." These include religious marriages, civil marriages (not previously recognised), customary marriages, cohabitation, and any marriage announced in the Gazette, a government publication giving notice of new laws. The inclusion of customary marriages and cohabitation is particularly significant, as it enables courts to adjudicate disputes arising from these unions and gives women legal recourse even where their marriage is customary.

Article 15 uses the term 'marriage gifts', which is preferable to 'bride price', as the latter reinforces the notion of women as property. Marriage gifts/dowry are a deeply embedded practice in South Sudan, carrying both social and economic weight (SIHA, 2012). Article 15(1) states that marriage gifts/dowry are not essential for a valid marriage, reducing the financial burdens associated with this expectation. Article 15(2) further strengthens women's rights by criminalising demands for the return of marriage gifts and setting penalties for such actions. This is reinforced by Article 34, which uses the term 'dowry' and prohibits its return, even in the case of divorce. This provision is important because, under customary practice, many women remain in abusive relationships for fear that their families will be forced to repay the dowry if the marriage dissolves.

Article 42(1) on customary marriages is another strength, affirming women's equal status and capacity: "*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.*" This explicitly elevates wom-

en's rights beyond customary norms. Article 42(2) goes further by stating that '*No custom, culture, or tradition shall unfairly prejudice a wife's matrimonial property rights, thereby countering discriminatory practices such as property-grabbing from widows.*' However, its effectiveness will depend on how 'matrimonial property rights' are defined.

Article 43(1)(c) strengthens protections against forced marriage by declaring any marriage void where consent was obtained under duress or fraud. This is particularly important in addressing forced and underage marriages.

Article 55 provides spouses with equal rights to access matrimonial property, including the ability to use, benefit from, enter, and, with mutual agreement, dispose of it. This ensures that women have not only access but also control over property – a critical step forward for women's economic rights.

The bill also recognises both monetary and in-kind contributions to matrimonial property under Article 57(1). Article 83(3) requires consideration of non-financial roles—such as domestic work and household management—when dividing property, while also mandating 'reasonable provision' for spouses and their children in polygamous marriages. Article 83(4) explicitly affirms that monetary contributions do not carry greater value than non-monetary ones. Together, these provisions acknowledge women's often undervalued contributions and protect their rights during property division.

Finally, Article 75(2)(b) recognises 'cruelty' as grounds for divorce. This is important as it covers threats and harmful behaviours that may not meet the threshold of physical violence, though the explicit recognition of violence as grounds for divorce remains necessary and should be added.

RECOGNISED MARRIAGES

Article 10, on recognised marriages, would be better titled “Recognised Marriages and Unions” to explicitly include cohabitation, which is included as a form of marriage covered in the bill. Using the broader term “unions” also provides flexibility for other kinds of informal arrangements that also require protection.

Article 11 defines cohabitation as requiring a minimum of 12 months, which risks excluding women seeking separation and protection from violence in the home before this period has elapsed. A more flexible approach, as adopted in Malawi (Government of Malawi, 2017), would consider a range of factors: length of the relationship (before and after cohabitation), whether the couple share a home, financial interdependence, their reputation in the community as a couple, and whether they care for a child together. This approach avoids arbitrary time limits while ensuring protections for cohabiting women.

Article 12(2) currently states: “No 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”. This wording is problematic as not all marriages involve a celebration, solemnisation, or a formal contract, especially in cases of cohabitation or customary marriage. These terms should be removed, and the focus placed on consent. Adding the word “informed” to “free and full consent” would strengthen alignment with international standards.

Articles 32 and 33 provide the only references to Islamic marriages. Article 32(2) states that ‘any provision of this Act which is inconsistent with Islamic law shall not apply to persons who profess the Islamic faith’. Depending on which interpretation of Islam is used, this provision

risks undermining women’s rights in areas such as of marriage, polygamy, and inheritance. Other countries with minority Muslim populations, such as Uganda, have established special courts to address such conflicts. It remains unclear whether similar arrangements are planned for South Sudan, and this requires clarification.

Article 36(1) requires customary marriages to be registered with a marriage registration officer within three months. This provision is likely to disadvantage women who may not be aware of the requirement, lack financial means, face insecurity, or live far from registration centres. To avoid gaps in protection, the timeframe should be extended to six months, costs should be reduced or removed, flexibility in registration procedures introduced, and customary or religious leaders authorised to register marriages.

Article 37(3) sets out grounds for objecting to a customary marriage. Subsection (b), which refers to “unsound mind,” is vague, open to abuse, and risks reinforcing harmful stereotypes about women’s emotional or mental capacity. It should be replaced with “legal or mental capacity” to align with human rights standards. Subsection (c) allows objections where consent was obtained by force or fraud; here, explicitly adding “duress or financial incentives” would further strengthen protections. Article 37(5) grants registrars authority to determine objections but does not require them to consult the parties involved until the decision is appealed under Article 38. This should be revised to ensure parties are heard before any decision is made.

Article 43 outlines circumstances under which a marriage might be ‘void’. Subsection (d) declares void ‘any marriage contracted in

contravention of any of the provision of this Act or any other laws. This provision is overly broad and could leave parties in underage or polygamous marriages without legal recourse. It should instead be moved to Article 44 and treated as “voidable,” remaining valid until annulled.

Article 44 sets out grounds for voidable marriages, including refusal to consummate within three months, inability to consummate within six months, or concealment of a “material fact.” These provisions are deeply problematic. They assume the primary purpose of marriage is procreation, undermining autonomy and consent, and may dispropor-

tionately affect women unable or unwilling to consummate a marriage due to health issues, violence, or coercion. Terms such as “unreasonable refusal” and “material fact” are vague and open to harmful interpretation, with infertility appearing to be the implied focus. Moreover, the question of consummation risks leading to invasive examinations, including virginity testing, which is unscientific, constitutes sexual assault, and has been deemed a violation of rights by the CEDAW Committee. While the article does provide women an exit from unwanted marriages, it should be revised to explicitly prohibit any medical examination intended to assess virginity.

Recommendations on recognised marriages

1. Amend Article 10 to add ‘unions’ to the list of ‘recognised marriages.’
2. Revise Article 11 so that cohabitation is assessed using multiple factors—such as the length of the relationship before and after cohabitation, financial interdependence, shared residence, reputation in the community as a couple, and whether or not they care for a child together—rather than imposing an arbitrary minimum time period.
3. Clarify and revise Article 32(2) to ensure that the bill’s applicability to people of the Islamic faith does not undermine women’s rights, given the absence of Islamic courts in South Sudan.
4. Amend Article 36(1) to extend the registration deadline for customary marriages to six months, reduce or remove financial barriers, allow more flexible registration processes, and authorise customary and religious leaders to register marriages.
5. Revise Article 37 by: removing the reference in 37(3)(b) to “unsound mind” and replacing it with “legal or mental capacity”; adding duress or financial incentives to the list of circumstances under which consent is invalid (37(3)(c)); and clarifying in 37(5) that the registrar must hear from both parties before reaching a decision.
6. Amend Article 12(2) so that it refers explicitly to “informed consent” rather than “free and full consent” alone.
7. Provide further clarification in Article 16(1) by specifying which customs, traditions, or cultures are being prohibited when they undermine women’s dignity, welfare, or status.
8. Delete Article 16(2), which invalidates marriages, and replace it with a provision guaranteeing women access to justice, compensation, or the option to void the marriage if they so request.
9. Revise Article 44 to clarify what constitutes “unreasonable refusal,” explicitly state that violence is a reasonable justification for refusal, define “material fact,” and prohibit medical examinations intended to assess virginity. Move Article 43(d) into Article 44 so that marriages contracted in contravention of the Act are deemed voidable, rather than void.

AGE OF MARRIAGE

Article 12(1) states: ‘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.’ While setting a minimum age of 18 aligns with the Convention on the Rights of the Child and the Maputo Protocol, the reference to “recognised marriage” creates ambiguity. If someone under 18 marries, their union may fall outside the bill’s scope of protection, since Article 10 limits coverage to recognised marriages. This provision should be revised to state clearly that underage marriages are void, while still guaranteeing underage parties’ access to protections under the bill, including property and custody rights.

The wording also requires clarification. The use of “contract” is problematic, as recognised marriages include cohabitation and customary marriages, which may not involve contracts. Moreover, the reference to “capacity” without specifying “legal capacity” risks creating a loophole by allowing alternative interpretations of capacity. To prevent conflict with customary law, the article should include explicit language such as: “*This provision takes precedence over any custom, culture, or traditional practice occurring in South Sudan*’.” This would mirror provisions already included in the draft bill on matrimonial property rights and ensure supremacy of statutory protections over any and all customary practices that contradict statutory law. Policies are also needed to address the situation of girls and women without legal documents, whose ages are often assessed based on visual interpretations of physical maturity.

Additional subsections are required to cover: reporting mechanisms for underage marriage; orders preventing proposed underage marriages; prohibition of the practice of parents

prearranging marriages, sometimes referred to as “booking” children for marriage; processes for voiding underage marriages; provision of free legal services for children; the need for systematic registration of marriages, births, and deaths; sexual and reproductive health rights and access to services for underage spouses; the right for girls to remain in school during and after marriage, pregnancy, or childbirth; protection against abuse, neglect, and harmful practices within marriage, including gender-based violence; and access to matrimonial property rights for underage spouses in the event of divorce or death.

Article 12(3) establishes punishments for violating minimum age provisions but does not specify who should be held accountable. This ambiguity risks harmful outcomes, such as punishing children rather than adults, as seen in other contexts. Over-reliance on punitive measures can also lead to negative consequences, including social sanctions against married children and the continuation of child marriage practices underground, without parallel investment in gender norm change and adolescent services (UNICEF, 2020). Revised provisions should establish differentiated levels of penalties based on the severity of the case, including the age gap between parties. They should also safeguard children by ensuring the best interests of the child are prioritised, prohibiting punishment of children, guaranteeing free legal aid, and protecting consensual relationships between adolescents from criminalisation.

Recommendations on minimum age of marriage

10. Revise and simplify Article 12(1) to state: “Any person under the age of 18 shall not marry, and any underage marriage is void.” Ensure that underage parties still have recourse under the bill, including property and custody rights. Clarify the relationship between this provision and customary law by adding: “This provision takes precedence over any custom, culture, or traditional practice. If one or more parties to a recognised marriage are under 18, they may still have recourse under this bill.”
11. Add subsections to Article 12 covering: reporting mechanisms for underage marriages; orders preventing proposed underage marriages; prohibitions on the ‘booking’ children for marriage; voiding procedures for underage marriages; free legal services for children; systematic registration of marriages, births, and deaths; sexual and reproductive health rights and access to services for underage spouses; the right of girls to continue schooling during marriage, pregnancy, and after childbirth; protections against abuse, neglect, and harmful practices within marriage, including gender-based violence; and matrimonial property rights for underage spouses in cases of divorce or death.
12. Revise Article 12(3) on punishments for violating age of marriage provisions by establishing differentiated penalties that reflect the role of the offender, the severity of the case, and the age gap between parties, while ensuring that the best interests of the child are prioritised, children are not punished, and free legal aid is available. Consensual adolescent relationships should not be criminalised.

MARITAL RAPE

Article 50 addresses conjugal rights, with Article 50(3) noting that sex without a spouse’s consent creates criminal and civil liability. However, the term “marital rape” is not used. Instead, the bill refers to punishment under the Penal Code, which explicitly excludes marital rape: Section 247(3) states, “Sexual intercourse by a married couple is not rape, within the meaning of this section.” This inconsistency leaves a significant legal gap and undermines protections for women.

This provision of the bill therefore requires substantial revision. It should explicitly use the term “marital rape” and provide a clear definition rooted in the principle of consent, covering all forms of penetration. The provisions should establish clear punishments, avoid evidentiary requirements that are unfair or overly burdensome, and prioritise survivors’ rights to compensation and reparations.

LEVIRATE MARRIAGE

Article 14 prohibits “widow inheritance,” but this section should instead be framed as “levirate marriage.” In Section 4, widow inheritance is defined as *‘a custom by which a relative of a deceased husband inherits the widow of the deceased husband as his wife’*. Referring to the practice as “widow inheritance” reinforces the notion of women as property that can be transferred. A feminist perspective underscores that language is critical, and the term “levirate marriage” better captures the issue without perpetuating harmful stereotypes.

Article 14(3) permits marriage to a relative’s widow where both parties give free and full consent. To safeguard women, this article should specify that levirate marriage cannot occur if the man is already married, thereby preventing the practice from resulting in polygamy. Stronger safeguards

are also needed to ensure courts are satisfied that consent is genuine, particularly given the deeply embedded nature of the practice and documented evidence of numerous cases of coercion (Ministry of Gender, Child and Social Welfare, 2019). While prohibiting levirate marriage outright is challenging due to its role as a perceived social safety net, strengthening social and economic support for widows could reduce reliance on this practice in the long run (Howe et al., 2022). Additional provisions should cover procedures for reporting cases, orders to prevent proposed levirate marriages, processes for voiding such marriages, provision of free legal services to widows, protection against abuse and harmful practices, and clarification of matrimonial property rights within levirate marriages after divorce or death.

Recommendations on rights of widows:

13. Remove the term “widow inheritance” from the bill, including the “definitions” section (Section 4) and instead use “levirate marriage” (Article 14).
14. Revise Article 14(3) on the right to levirate marriage, to provide that such a marriage may proceed only with the free and informed consent from both parties, include the express prohibition of levirate marriage where the prospective spouse is already married, to prevent this form of marriage resulting in a polygamous union, and add further text requiring the court to be satisfied that consent exists.
15. Add further sub-sections to Article 14 on levirate marriage stipulating procedures for reporting cases; prevention of proposed levirate marriages where consent is not established; and processes for voiding such marriages, as well as ensuring the provision of free legal services for widows; protection from abuse, neglect, and harmful practices – including gender-based violence – and protection of the wife’s matrimonial property rights after divorce or death.

POLYGAMY

Article 47(3)(b), situated within the section on objections to marriage, appears to prohibit polygamy but does not explicitly use the term. The bill should directly reference “polygamy” and clearly discourage it, in line with the Maputo Protocol. Declaring it categorically unlawful may, however, provoke resistance and could leave women in existing polygamous marriages without legal protection. As such, polygamy requires its own dedicated section rather than being confined to provisions on objections, which depend on individuals raising challenges.

A separate section should also address the conflicts between polygamy, customary law, and religious practices. It should include: a clear prohibition on marrying under multiple systems (e.g., customary and statutory law simultaneously); the right of a woman to stipulate in writing or orally that her husband may not take additional wives; the right to be informed and give consent before a husband takes another wife; the right of a subsequent wife to be informed that her husband-to-be is already married; the right to seek divorce in response to proposed or existing polygamy; processes to establish the validity of marriages; procedures for reporting and preventing polygamous marriages; provisions for voiding such marriages; access to free legal services; and mechanisms for dispute resolution for women within polygamous unions, including guarantees of justice in relation to inheritance, matrimonial property, divorce, and child custody.

Article 93 criminalises marriage to a person who is already married, but it is unclear whether this refers to polygamy, bigamy, or both. As drafted, it risks punishing the unmarried party who enters

the union, while the culpable party—the individual engaged in multiple marriages—escapes responsibility. This provision should be revised to ensure accountability lies with the person entering into two marriages, not the woman who may unknowingly or unwillingly become part of a polygamous union.

Recommendations on polygamy

16. Create a dedicated section on polygamy that explicitly discourages the practice and states: *“this provision takes precedence over any custom, culture, religious, or traditional practice”*.
17. Add subsections specifying: prohibition of multiple concurrent marriages under different systems; a woman’s right to stipulate that her husband may not take other wives; requirements for spousal consent before a husband marries again; the right of subsequent wives to be informed; women’s right to divorce in cases of polygamy; procedures for reporting, preventing, and voiding polygamous marriages; access to free legal services for women in polygamous marriages; dispute resolution within existing polygamous marriages, including access to inheritance, matrimonial property, divorce, and child custody for wives in polygamous unions.
18. Amend Article 93 to clarify whether it applies to polygamy, bigamy, or both, and ensure penalties target the individual engaging in multiple marriages rather than the person they marry.

MARRIAGE GIFTS/DOWRY AND ‘MARRIAGE CULTURES’

Article 15 establishes that marriage gifts are not required for “any marriage” and makes it an offence to demand their return. However, this provision conflicts with Article 34, which addresses dowry under customary law. Article 34 states: *“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,”* and sets a maximum of 30 cows or an equivalent cash sum. These two provisions should be unified into a single, coherent framework applicable to all marriages. Clear definitions are also needed to distinguish between a ‘marriage gift’ and a ‘dowry,’ along with clarification of what constitutes a ‘token amount.’

There is a fundamental tension here regarding whether marriage gifts or dowries should be seen as symbolic or transactional. In practice, the transactional approach is widespread in South Sudan, often leading to harmful consequences, such as, women remaining in abusive marriages to avoid their families having to return the dowry, wives being forced to adopt restrictive gender roles within the mar-

riage. While prohibiting the practice outright may be unrealistic given its cultural entrenchment, setting a maximum limit (such as thirty cows) and prohibiting repayment of dowry are important steps forward. To strengthen this section, the bill should explicitly state that dowry confers no obligations onto wives and has no bearing on their behaviour, divorce, custody, or the division of property after divorce or death.

Article 16(1) states: “Any marriage custom, tradition or culture which is against the dignity, welfare or interest of women or which undermines their status is prohibited.” While positive in intent, it is vague. Greater specificity is needed so that judges and women seeking redress understand which practices are prohibited. Article 16(2) is particularly problematic, as it invalidates marriages that contravene Article 16(1). This risks excluding women in such marriages from legal protections otherwise available under the bill. Instead, it should be replaced with a provision granting women access to justice, compensation, or the option to void the marriage at their request.

Recommendations on marriage gifts/dowry:

19. Unify Article 15 on marriage gifts and Article 34 on dowry under customary law into a single provision and provide clear definitions of what constitutes a marriage gift versus dowry.
20. Clarify the meaning and value of a “token” amount under Article 15 to prevent ambiguity and misuse.
21. Add further subsections to Articles 15(34) explicitly stating that a gift or dowry does not impose obligations on women, does not prevent divorce, does not affect custody or property division upon divorce or death, and does not restrict a woman’s right to initiate divorce, even under customary law.

MATRIMONIAL PROPERTY

Article 51 lists what qualifies as “matrimonial property,” determining what may be accessed after divorce or the death of a spouse. The provision should be expanded to include “and assets” to ensure coverage of property beyond land, such as vehicles, machinery, equipment, livestock, and agricultural products. Using “assets” avoids confusion created by the narrower terms “immovable” or “movable” under Article 51(c).

Articles 51(d) and 57(1) recognise that contributions to property may be monetary or in-kind, which is essential given women’s limited access to land under patrilineal systems. However, Article 57(1) should explicitly define in-kind contributions to include domestic work, childcare, contributions to school fees, or support for a partner’s career, reflecting approaches used in other contexts, such as Uganda and Kenya (Lubaale, 2025; Ager & Nyahoro, 2023). This is crucial, because, without clarification, women’s contributions risk being undervalued or rendered invisible. Similarly, Article 82(2) suggests that contributions to property must meet a threshold to qualify as matrimonial, creating ambiguity that could disadvantage women. This issue also arises in Article 83(3). By contrast, Article 83(4) correctly affirms that non-monetary contributions are not of lesser value than financial ones. All such internal inconsistencies must be reconciled in order to facilitate effective implementation of the objectives of the draft bill.

However, Article 51(d) exempts family land from becoming matrimonial property, even when contributions are made. Article 57(2) similarly excludes ancestral land. While these provisions reflect customary norms, they contradict commitments under CEDAW and the Maputo Protocol, which affirm women’s equal inheritance rights. South Sudan’s unresolved National Land Policy is central to addressing these issues. With insecure tenure, land disputes, displacement, and food insecurity already pressing concerns, excluding family and ancestral land risks further perpetuating inequality.

Article 53(4) permits oral agreements about property, but Article 53(5) requires affidavits and witnesses, which may undermine women’s claims. Written agreements pose additional challenges for women with limited literacy, especially in rural areas. The bill should be revised to allow women to validate agreements with a thumbprint or “X” after the contents have been explained by an independent third party. This safeguard should apply consistently across Articles 53, 55, and 59.

Article 54 defines separate property. Article 54(2) appears to require proof that property is matrimonial, while Article 54(5) suggests the burden lies in proving it is separate, creating inconsistency. The provision should be clarified to ensure the default presumption is joint ownership, with the burden on the party

claiming property is separate. Article 54(4d) is particularly discriminatory, allowing third parties to prevent a spouse from accessing inherited income or property through conditions in a will. This undermines spousal rights and should be removed from the bill.

Article 55(2) allows disposal of matrimonial property by mutual agreement between spouses. This, along with Article 59(1), should be revised to allow illiterate spouses to sign with a thumbprint or “X” after explanation by an independent third party. Article 59(1) should also define what constitutes a “transaction” and be cross-referenced with Article 55(2) for consistency.

Article 58 on polygamous marriages is vague, addressing only property acquired before a second marriage. Article 58(b) states that subsequent wives may share only in the husband’s portion of matrimonial property;’ but it does not clarify how property is to be divided among co-wives or how customary law applies. This ambiguity risks disadvantaging women in polygamous unions and requires explicit clarification.

INHERITANCE RIGHTS

Article 17 states: ‘all levels of Government shall... 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’.

This While this mirrors the Constitution, the language is vague and requires further elaboration. The phrase “together with any surviving legal heir” raises important questions: How is an heir established? How is property to be shared between heirs and the widow? Does this extend to daughters, or do patrilineal practices of land transfer prevail? Without clarity, customary practices risk overriding women’s rights.

Recommendations on matrimonial property and inheritance rights

22. Expand Article 17 to clarify how heirs are defined, how inheritance is shared, and explicitly state that daughters may inherit land.
23. Clarify the relationship between customary law and women’s access to family and ancestral land, pending broader policy reform (Art 51; Art 57(2)).
24. Amend Articles 53(4–6) to remove reliance on oral agreements and the affidavit/witness requirement. Instead, allow non-literate individuals to validate written agreements with a thumbprint or “X,” provided the contents are explained by an independent third party.

Article 60(1) states that when one spouse gifts property to the other, there is a ‘rebuttable presumption’ that the recipient owns it. The rationale for making this presumption rebuttable is unclear and appears to disadvantage recipients, often women. This provision should be clarified to protect women’s ownership of gifted property.

Finally, Articles 83(1) and (2) use the term “jointly acquired property” instead of “matrimonial property,” creating inconsistency with other sections of the bill. Article 83(2) further states that property should be divided equally but not less than one third unless one spouse proves otherwise. This burden of proof risks disadvantaging women, who often face systemic discrimination in property claims. Article 83 should instead affirm that matrimonial property is divided equally, cross-referencing Article 57(1) to ensure in-kind contributions are properly recognised.

25. Resolve the inconsistency between Articles 54(2) and 54(5) to ensure the presumption of matrimonial property applies, and the burden lies on proving property is “separate.”
26. Remove Article 54(4)(d), which allows third parties to prevent a spouse from accessing gifted property.
27. Amend Article 55(2) to permit agreements on property disposal to be signed with a thumbprint or “X” after independent explanation.
28. Revise Article 57(1) to include a list of in-kind contributions, such as domestic work, childcare, contributions to school fees, and support for a partner’s education or career.
29. Clarify Article 82(2) to remove any implication that contributions must meet a threshold before qualifying as matrimonial property.
30. Revise Article 58 to specify how wives in polygamous marriages share matrimonial property and how these provisions interact with customary law.
31. .Amend Article 59(1) so transactions may be signed with a thumbprint or “X” after explanation, clarify what constitutes a “transaction,” and align this section with Article 55(2).
32. Clarify Article 60(1) by explaining why gifts are presumed to belong to the recipient but subject to rebuttal, ensuring that this explanation avoids disadvantaging women.

DIVORCE, DESERTION AND ADULTERY

Article 68(1) establishes a two-year waiting period from the date of marriage before a divorce petition may be filed, similar to provisions in other sub-Saharan African countries. Article 68(2) allows an exception if “exceptional hardship” is proven, but this standard is vague, onerous for women to demonstrate, and may not be interpreted consistently by courts. It should be replaced with a clear exception where cruelty or any form of violence occurs.

Article 71 on desertion requires clarification of what constitutes a “reasonable excuse” under 71(2). Without clear definition, women fleeing abusive marriages may lose property rights. This section should also be retitled “Desertion,” as the current title “Protection Orders” is misleading, usually referring to orders against violence.

Article 75(2) sets out grounds for irretrievable breakdown of marriage. While adultery is listed as a ground for divorce, it is not criminalised in the bill. However, under South Sudan’s 2008 Penal Code, adultery remains a criminal offence. A clear statement is needed to ensure that adultery is not criminalised, with the bill superseding the Penal Code. Furthermore, violence must be explicitly listed as a ground for divorce, covering physical, sexual, emotional, and economic violence. Specific acts such as marital rape, violence against a child, proposed polygamy, and proposed underage marriage should also be recognised as grounds. Articles 75(2)(e) and 75(2)(f), which separately list “incestuous adultery” and “incestuous defilement,” should be consolidated into the single term “incest.” The bill should also clarify how cruelty will be determined as grounds for divorce.

Article 87 provides that maintenance payments from a former spouse cease upon remarriage. This provision requires revision, as it may disproportionately disadvantage women who face systemic economic barriers and remain the primary caregivers of children. The court should consider

women's financial circumstances before terminating maintenance, even after remarriage. More comprehensive guidance is also needed on how maintenance orders are determined, including consideration of women's domestic work, caregiving responsibilities, and economic position.

Recommendations on matrimonial property and inheritance rights

33. Expand Article 17 to clarify how heirs are defined, how inheritance is shared, and explicitly state that daughters may inherit land.
34. Clarify the relationship between customary law and women's access to family and ancestral land, pending broader policy reform (Art 51; Art 57(2)).
35. Amend Articles 53(4–6) to remove reliance on oral agreements and the affidavit/witness requirement. Instead, allow non-literate individuals to validate written agreements with a thumbprint or “X,” provided the contents are explained by an independent third party.
36. Resolve the inconsistency between Articles 54(2) and 54(5) to ensure the presumption of matrimonial property applies, and the burden lies on proving property is “separate.”
37. Remove Article 54(4)(d), which allows third parties to prevent a spouse from accessing gifted property.
38. Amend Article 55(2) to permit agreements on property disposal to be signed with a thumbprint or “X” after independent explanation.
39. Revise Article 57(1) to include a list of in-kind contributions, such as domestic work, childcare, contributions to school fees, and support for a partner's education or career.
40. Clarify Article 82(2) to remove any implication that contributions must meet a threshold before qualifying as matrimonial property.
41. Revise Article 58 to specify how wives in polygamous marriages share matrimonial property and how these provisions interact with customary law.
42. Amend Article 59(1) so transactions may be signed with a thumbprint or “X” after explanation, clarify what constitutes a “transaction,” and align this section with Article 55(2).
43. Clarify Article 60(1) by explaining why gifts are presumed to belong to the recipient but subject to rebuttal, ensuring that this explanation avoids disadvantaging women.

MISSING CONTENT

Child rights

The draft bill currently does not adequately address child custody after divorce or death, instead deferring to the 2008 Child Act in Article 86. While the Child Act affirms joint custody in cases of divorce, in practice customary law often restricts mothers' custody rights, allowing them custody only when children are very young, after which fathers assume custody. This discriminatory practice deters women from leaving abusive marriages. Custody also becomes more complex when a mother remarries. The draft bill should therefore directly address these gaps by affirming joint custody (except in cases involving physical or sexual abuse), regardless of the child's age or a parent's remarriage. It should also establish a clear process for determining exceptions to joint custody.

Although the Child Act affirms that the “best interest of the child” is the guiding principle, it does not provide detailed criteria. The draft bill should supplement this by setting out clear guidance for courts when making custody decisions.

Section 42(2) of the Child Act provides that ‘if a father is deceased, custody rests with the mother, either alone, with her relatives, or with the deceased father’s relatives or a guardian appointed by the father.’ The same applies if a mother is deceased. The draft bill should reaffirm this provision while emphasising equal treatment for girl and boy children, to avoid discriminatory practices where boy children are treated as belonging to the father’s clan or ethnic group, thereby undermining mothers’ custody rights.

The Child Act also highlights the rights of children born out of wedlock. The draft bill should reaffirm these protections and explicitly guarantee equal inheritance rights, parental responsibilities, the right to birth registration, and recognition as the child of both parents.

Finally, the bill should state explicitly that all provisions on child custody and child rights supersede any custom, culture, or traditional practice.

Violence against women and girls

The draft bill does not adequately address violence against women and girls, including physical, sexual, emotional, and economic forms of abuse. Specific provisions are needed to establish protection orders and social protection measures for survivors of violence and their children within the family context. The extent of coverage on violence will depend on the long-delayed Anti-GBV Bill, in progress since 2019 but not yet enacted. The family law bill should therefore clarify timeframes for the Anti-GBV Bill and fill any remaining gaps, ensuring comprehensive protections for survivors.

Women’s position and status in the family

In line with the principles of equality enshrined in the Constitution, CEDAW, and the Maputo Protocol, the bill should include a provision explicitly addressing women’s position and status in the family. A recommended clause could state: “A husband and wife share joint responsibility for the care and protection of the family.” This would challenge entrenched assumptions of men as the “heads of households” and traditional biblical interpretations reinforcing male authority. It would also recognise unpaid care-work, promote egalitarian gender roles, and affirm shared responsibility for caregiving. Such a provision aligns with international and regional commitments and would help shift discriminatory norms within households.

Expectation of Obedience

It is further recommended that the bill make clear that religious beliefs about a wife’s obligation to “obey” her husband do not create legal obligations. While egalitarian interpretations of religious texts promote partnership and mutual respect, traditional readings of biblical texts (e.g., Ephesians 5) and Qur’anic verses (e.g., Surat al-Nisa 4:34) have been used to justify hierarchies within marriage that privilege men. These interpretations can perpetuate harm and even violence. To counter this, the bill should include a provision such as: “any religious expectation that a wife obey her husband does not translate to legal obligations.” This would align with Article 6 of the Maputo Protocol, which affirms that men and women are equal partners in marriage.

Referral processes between courts

The draft bill does not provide guidance on how referrals between customary and statutory courts will be managed. Clear provisions are needed to prevent bribery, court shopping, and informal or inappropriate referrals, and to guarantee a right of appeal from customary courts to statutory courts. Establishing transparent referral procedures would strengthen judicial accountability and promote equal access to justice.

HIV status

The bill currently does not require disclosure of HIV-positive status to a partner. While South Sudan's HIV prevalence remains low (under 2%), including such a provision would protect partners from transmission, align with international human rights standards, and uphold Article 14(1)(d) of the Maputo Protocol. This provision should also include safeguards against stigma and discrimination.

Sexual and reproductive health and rights

The draft bill lacks provisions addressing women's sexual and reproductive health and rights (SRHR). It should affirm women's right to access SRHR services, decide freely and responsibly on the number and spacing of children, and access information about family planning. This is particularly critical in South Sudan, which has one of the world's highest maternal mortality rates, driven in large part by limited access to skilled medical care during pregnancy and childbirth, early and adolescent pregnancy, and insufficient birth spacing. Including these provisions would align with Article 14 of the Maputo Protocol, which affirms the right to control fertility, make reproductive choices, and access affordable services.

The bill should also include a specific provision on access to safe medical abortion under limited circumstances. In line with Article 14(2)(c) of the Maputo Protocol, abortion should be permitted in cases of sexual assault, rape, or incest, and where continuing *'the pregnancy endangers the mental or physical health of the mother, or the life of the mother or foetus.'* Although abortion was a contentious issue during South Sudan's ratification of the Maputo Protocol, the draft bill should explicitly acknowledge and provide for these rights.

Recommendations for issues that are not included in the draft bill:

44. Add provisions on child custody after divorce or death, affirming joint custody regardless of the child's age or a parent's remarriage, with a clear process for exceptions, guidance on applying the "best interests of the child," and explicit precedence over any custom, culture, or traditional practice.
45. Include provisions safeguarding the rights of children born out of wedlock, guaranteeing equal inheritance rights, parental responsibilities, birth registration, and recognition as the child of both parents.
46. Incorporate provisions for desertion or 'protection orders' and social protection measures for survivors of domestic violence and their children, while clarifying how these align with or complement the Anti-GBV Bill (depending on its enactment).

47. Add a provision stating: “A husband and wife share joint responsibility for the care and protection of the family.”
48. Add a provision stating: “A wife is not legally obliged to obey her husband.”
49. Establish a clear referral process between customary and statutory courts, guaranteeing the right of appeal to statutory courts, and explicitly prohibiting informal referrals, including those enabled by bribery and court shopping.
50. Include a provision granting the right to be informed of a potential or current partner’s HIV status, with penalties for non-disclosure, while safeguarding against stigma and discrimination.
51. Include a provision affirming women’s right to access sexual and reproductive health services, decide freely on the number and spacing of children, access family planning information, and obtain a medical abortion where the health of the woman or foetus is at risk, or in cases of sexual assault, rape, or incest.

RECOMMENDATIONS FOR REVISING THE BILL

Recognised marriages

1. Add “and unions” to the list of recognised marriages (Art 10).
2. Revise the cohabitation requirement to consider multiple factors—such as the length of the relationship before and after cohabitation, financial interdependence, shared home, community reputation, and care of children—rather than a minimum time period (Art 11).
3. Clarify and revise the applicability of the bill to people of the Islamic faith (Art 32(2)).
4. Extend the registration period for customary marriages to six months, reduce financial barriers, provide greater flexibility in registration processes, and allow customary and religious leaders to register marriages (Art 36(1)).
5. Amend Article 37 by: removing the reference to “unsound mind” in 37(3); replacing it with “legal or mental capacity”; adding duress and financial incentives as grounds for invalid consent (37(3)(c)); and requiring registrars to hear both parties before making a decision (37(5)).
6. Revise Article 12(2) to refer to “informed consent.”
7. Clarify Article 16(1) by specifying which customs, traditions, or cultures are prohibited.
8. Delete Article 16(2) and replace it with a provision guaranteeing women access to justice, compensation, or the option to void the marriage if requested.
9. Revise Article 44 by clarifying “unreasonable refusal,” recognising violence as reasonable grounds for refusal, defining “material fact,” and prohibiting virginity testing. Move Article 43(d) into Article 44, making contravening marriages voidable rather than void.

Minimum age of marriage

10. Simplify Article 12(1) to: “Any person under the age of 18 shall not marry, and any underage marriage is void,” while ensuring underage spouses retain recourse under the bill. Add: “This provision takes precedence over any custom, culture, or traditional practice. If one or more parties to a recognised marriage are under 18, they may still have recourse under this bill.”
11. Add subsections on reporting underage marriage, issuing prevention orders, prohibiting “booking” of spouses, voiding underage marriages, providing free legal services for children, registering marriages/births/deaths, safeguarding SRHR, ensuring girls remain in school during/after marriage and pregnancy, protecting children from harmful practices, and recognising matrimonial property rights for underage couples.
12. Revise punishments for underage marriage to provide tiered penalties reflecting severity, roles, and age gaps, ensuring children are not punished and consensual adolescent relationships are not criminalised.

Marital rape:

13. Explicitly use the term “marital rape,” defining it based on consent and covering all forms of penetration. Specify punishments, prohibit burdensome evidentiary standards, and guarantee compensation and reparations (Art 50(3)).

Rights of widows

14. Replace the term “widow inheritance” in Section 4 and Article 14 with “levirate marriage.”
15. Amend Article 14(3) to prohibit levirate marriage if the man is already married, and require courts to establish genuine consent.
16. Add subsections on reporting, prevention orders, voiding processes, free legal services for widows, protections against abuse and harmful practices, and property rights for widows in levirate marriages after divorce or death.

Polygamy

17. Create a dedicated section on polygamy, stating it is discouraged, and add: “This provision takes precedence over any custom, culture, religious, or traditional practice.”
18. Add subsections affirming prohibition on multiple marriages across systems; women’s right to stipulate monogamy; requirement for spousal consent before subsequent marriages; requirement to inform subsequent wives; women’s right to divorce due to polygamy; procedures for validation, reporting, and voiding; access to free legal services; and protections for property, custody, and inheritance in polygamous marriages.
19. Clarify whether Article 93 refers to polygamy, bigamy, or both, and revise to ensure punishment targets the spouse engaged in multiple marriages rather than the second party.

Marriage gifts/dowry:

20. Unify Articles 15 and 34, and clarify the distinction between marriage gifts and dowry.
21. Define the value of a “token” amount (Art 15).
22. Add subsections affirming that gifts/dowry do not impose behavioural obligations on women, do not prevent divorce, do not affect custody or property division, and do not restrict women from initiating divorce under customary law.

Matrimonial property and inheritance rights

23. Expand Article 17 to clarify how heirs are defined, how property is divided, and whether daughters can inherit.
24. Clarify the relationship between customary law and women’s access to family/ancestral land (Art 51; Art 57(2)).
25. Revise Articles 53(4–6) to eliminate oral agreements and affidavit requirements, instead allowing thumbprints or “X” signatures validated by an independent third party.
26. Resolve inconsistencies between Articles 54(2) and 54(5) to ensure the presumption of matrimonial property applies, with the burden of proof for separate property placed on the claimant.
27. Remove Article 54(4)(d), which allows third parties to prevent spousal access to gifted property.
28. Revise Article 55(2) to allow illiterate spouses to use thumbprints or “X” signatures with independent explanation.

29. Amend Article 57(1) to include a list of in-kind contributions such as domestic work, childcare, school fees, and supporting a partner's education or career.
30. Clarify Article 82(2) to avoid implying thresholds for contributions.
31. Revise Article 58 to clarify property rights in polygamous unions and interactions with customary law.
32. Amend Article 59(1) to define "transaction" and align procedures with Article 55(2), including thumbprint/X options.
33. Clarify Article 60(1) to explain why gifts carry a rebuttable presumption.

Divorce, desertion, and adultery:

34. Revise Article 68 to replace "exceptional hardship" with exceptions for cruelty and all forms of violence.
35. Clarify Article 71(2) by defining "reasonable excuse" to include fleeing violence, and retitle the section "Desertion."
36. Add a provision in Article 75 affirming adultery is not criminalised, superseding the Penal Code.
37. Revise Article 75(2) to list violence—including marital rape, child abuse, proposed polygamy, and underage marriage—as grounds for divorce, consolidate subsections (e) and (f) into "incest," and clarify cruelty standards.
38. Amend Article 83 to consistently use "matrimonial property" and simplify Article 83(2) to state: "The distribution of matrimonial property shall be in equal shares." Cross-reference in-kind contributions.
39. Revise Article 87 to prevent automatic termination of maintenance upon remarriage, requiring courts to consider women's financial status, caregiving responsibilities, and access to resources.
40. Issues not included in the draft bill: provisions after divorce or death, affirming joint custody regardless of the child's age or parental remarriage, with a clear process for exceptions and precedence over custom or tradition.
41. Include protections for children born out of wedlock, including equal inheritance rights, parental responsibilities, birth registration, and recognition by both parents.
42. Add provisions for protection orders and social protections for survivors of domestic violence, coordinated with the Anti-GBV Bill.
43. Add a clause affirming: "A husband and wife share joint responsibility for the care and protection of the family."
44. Add a clause affirming: "A wife is not legally obliged to obey her husband."
45. Establish clear referral procedures between customary and statutory courts, guaranteeing rights of appeal and preventing bribery or court shopping.
46. Add provisions requiring disclosure of HIV-positive status to partners, with penalties for non-disclosure.

47. Include provisions affirming women's right to SRHR, including access to services, family planning, decision-making on number and spacing of children, and safe abortion where health or life is at risk, or in cases of rape, incest, or sexual assault.

Barriers and enablers to recommendations

Several high-level barriers and enablers to the recommendations are discussed below:

- » Lack of political will and leadership remains the central barrier to advancing recommendations. Slow consultations, delays in finalising the bill, and the absence of a clear timeframe suggest the draft bill is not a government priority (IDRA, SIHA & Musawah, 2021).
- » Structural challenges such as inefficiencies and under-resourced ministries also hinder progress. The stalling of the National Land Policy and Anti-GBV Bill indicates systemic problems in law development. These same challenges will affect the bill's eventual implementation, which requires substantial investment in communication, awareness, and training.
- » Escalating conflict in early 2025 is another major barrier, with resources diverted to crisis management. Internal tensions and spillover from the war in Sudan (International Crisis Group, 2025) heighten instability and risk delaying the bill further.
- » Ratification of the Maputo Protocol in 2023 provides a strong regional framework for advocacy, enabling women's rights groups to demand alignment of national laws with regional commitments.
- » Mobilisation of the women's movement is a powerful enabler, with coalitions and consensus-building essential for maintaining momentum.
- » Egalitarian laws in Muslim-majority countries (e.g., Tunisia, Turkey) demonstrate precedent for reconciling women's rights with Islamic principles (Moghadam & Roudi-Fahimi, 2005). These examples strengthen advocacy for egalitarian interpretations of Islam in South Sudan.

Specific recommendations also give rise to their own barriers and enablers.

- » The recommendation to revise and clarify the minimum age of marriage, and provide more detail on how prevention and response should occur, may be seen as clashing with the Islamic faith. Islamic texts do not state a specific age, with physical maturity often used as the benchmark. There is no consensus among Muslim scholars about a minimum age of marriage, with some arguing that the Prophet did not marry Aisha at age 6, but when she was over 19. Increasing emphasis on justice, equity, consent, and the best interests of the child in Islamic scholarship and feminist analysis of Islamic texts (Al-Absi, 2023; Comstock, 2021; Hidayatullah, 2014) may support enforcing a minimum age.
- » The recommendation to revise and clarify the law on polygamy will face the strongest barrier from traditional interpretations of Islamic texts that allow it. However, contemporary and feminist interpretations centred on justice and equity argue that polygamy should not occur (Karimullah, 2024). Countries with both minority and majority Muslim populations, such as

Turkey and Tunisia, have banned polygamy, showing that this practice can be challenged. With religious leaders' support, South Sudan could also take this step.

- » The recommendation to explicitly prohibit marital rape may face resistance from Islamic and Christian perspectives where sex is seen as a husband's right. Yet Islamic scholars highlight *hadith* that condemn marital rape and violence, and the Qur'an's emphasis on kindness, justice, and mercy (Pertek, 2022). Christian scholars also stress texts on mutual consent and the command to love one's neighbour, including one's spouse (LeRoux, 2022).
- » The recommendation to state that adultery is not criminalised aligns with the Maputo Protocol, which provides a strong basis for reform. Passing this provision will require political will, as it challenges the 2008 Penal Code. Highlighting the double standard of punishing adultery but not polygamy—disproportionately affecting women—strengthens the case. It is also important to underline that women face systemic barriers in court, where male-dominated, patriarchal decision-making undermines fair hearings.

Other recommendations

It is also important to highlight that further key actions will be required to ensure effective implementation of the bill once it becomes law. These include:

- » Training for judges, lawyers, customary law decision-makers, and other legal professionals on the bill.
- » Awareness-raising within communities about rights and legal remedies under the bill.
- » Targeted awareness among Muslim communities of women's rights under Islam (Al-Absi, 2023).
- » Strengthening Muslim women's and customary judges' understanding of women's rights in Islam and Sharia law.
- » Facilitating dialogue among Muslim leaders and scholars to build consensus on family law interpretations (Al-Absi, 2023).
- » Developing clear guidance for courts on balancing customary practices with the legal obligations of the bill.
- » Improving registration systems for births, marriages, property, and deaths, including removing fees and reducing bureaucracy (Equality Now, 2024a; Almeida & Ubink, 2024).
- » Providing ongoing support and training to enhance judicial independence and reduce executive interference (Darmawan, 2023).

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