

## South Sudan

The Republic of South Sudan gained independence from Sudan on 9 July 2011. The fifty-year long war between North and South Sudan left a culture of violence that still continues. Internal inter-ethnic conflicts continue to create insecurity, and displacement of populations disproportionately affecting women and girls (UN Women, 2017; Gender Concerns International, n.d.). War and conflict have caused disruption of community and family structures, presence of arms and vigilantes, prevalent trauma, increased alcohol consumption, weak security institutions and poor law and order (Elia, 2007).

Since the end of 2013, 1.94 million people have been internally displaced and 1.93 million South Sudanese sought refuge in neighbouring countries (OCHA, 2017). The disturbing and conventional post-war society coupled with discriminatory cultural traditions and abject poverty undermines the promotion of equal rights and the ability for women to actively participate in the development of the new nation (Gender Concerns International, n.d.).

Shortly after gaining independence, the government of South Sudan approved a Transitional Constitution (2011) which formally guarantees human rights and equality for all. A permanent constitution was due to be passed by 2015, but work was hampered by administrative delays, budget shortfalls, and the civil war (Freedom House, 2016). Women have been accorded equal status in national laws (Gender Concerns International, n.d.). Despite containing gender equality clauses, the Transitional Constitution also legitimizes customary laws and practices that still prevail over the many ethnic communities of South Sudan. Customary laws and courts perpetuate patriarchal traditions and often reinforce the subordinate status of women. The incompatibility between the Constitution and Customary law remains unaddressed (Article 166-168; OXFAM Canada, 2013: 3, 6).

The national government has also expressed its commitment to achieving gender equality through the creation of the Ministry of Gender, Social Welfare and Religious Affairs, aimed at promoting gender equality and women's empowerment. In practice however, many gender-oriented policies in South Sudan have not been implemented or remain in draft form. Gender Focal Points or departments created by the Ministry of Gender, Child, and Social Welfare in various government institutions are inadequately funded (Edward, 2014). The general political and public attitude and indifference to gender issues, the low prioritization of gender issues, as well as the institutional and organizational weakness of the governance institutions continue to be a challenge (UN Women, 2017).

### 1. Discrimination in the family

In September 2014, South Sudan's National Legislative Assembly ratified the UN Convention on the Elimination of All Forms of Discrimination against Women (CEDAW). Customary law continues to be

widely practiced in South Sudan. Within marriage and family life, gender inequality is particularly pronounced (Amnesty International, 2017:19). Customary laws in South Sudan deny women rights of inheritance and ownership of productive assets, lack of voice and decision making in family and community matters, denial of the right of choice to found a family persist especially in rural settings (Amnesty International, 2017). As a result of patriarchal structures in South Sudan's ethnic communities, it remains unclear how the CEDAW will be applied in courts and other legal systems. Rule of Law practitioners and policymakers have limited knowledge about CEDAW (United Nations Mission in the Republic of South Sudan, 2014).

### **a) Overarching legal framework for marriage**

According to South Sudan's legal framework, men and women have the same rights to enter into marriage. Article 15 of the Transitional Constitution (2011) states that "every person of marriageable age shall have the right to marry a person of the opposite sex and to start a family according to their respective family laws". Forced marriage is prohibited. The Constitution argues that no marriage shall be entered into without the free and full consent of the man and woman intending to marry (Article 15).

The Penal Code (2008) defines the practice of forced marriage as "whoever kidnaps or abducts any woman with intent that she may be compelled to marry any person against her will or in order that she may be forced or seduced to illicit intercourse" (Article 273). Forced marriage is criminalized commits an offence and shall be addressed according to the customs and traditions of the aggrieved party, in lieu of that and upon conviction, shall be sentenced to imprisonment for a term not exceeding ten years or with a fine or with both" (Article 273). There are no legal provisions prohibiting harmful practices against widows.

South Sudan is home to more than 50 ethnic groups, each of which has their own customary laws and traditions. In the absence of statutory family legislation governing marriage, marital disputes, separation, divorce, family life is governed by the customary laws of the various ethnic groups (Human Rights Watch, 2013:39; OXFAM Canada, 2013: 7; Sudan Human Security Baseline Assessment, 2011:4). Despite variations and differences in customary laws, they generally curtail women's rights to divorce, to remarry, to maintain custody of children, and to own and inherit property (OXFAM Canada, 2013: 4). All systems of customary law are inherently patriarchal, relegating women to a lower status in the family and community and perpetuating and enforcing a number of customs and traditions that are harmful to women (Sudan Human Security Baseline Assessment, 2011:4). Customary law also perpetuates practices such as male polygamy, forced and arranged marriages, forced wife inheritance, bride pricing and girl-child compensation (Amnesty International, 2017: 19).

### **b) Child marriage**

According to the Child Act (2008) "Every female child has a right to be protected from sexual abuse and exploitation and gender-based violence, including rape, incest, early and forced marriage, female circumcision and female genital mutilation" (Article 26.1). Further provisions state that every child has the right to be protected from early marriage, forced circumcision, scarification, tattooing, piercing, tooth removal or any other cultural rite, custom or traditional practice that is likely to

negatively affect the child's life, health, welfare, dignity or physical, emotional, psychological, mental and intellectual development" (Article 23.1).

However, the Transitional Constitution and the Child Act do not specify the minimal legal age for marriage or provide a definition of early marriage (Edward, 2014). In addition, there are unclear and varied definitions of an adult across many ethnic groups. Article 17 of the Transitional Constitution includes the following provisions: "to protect women not to be subjected to negative and harmful cultural practices which affect his or her health, welfare or dignity" (Article 17g) and "to be protected from abduction and trafficking" (Article 17h). Despite the provisions on early marriage in the Transitional Constitution (2011) and the Child Act (2008), there is no strong legal framework to effectively prevent and address early and forced marriage (Human Rights Watch, 2013:50). There are no penalties for anyone engaging in or encouraging early or forced marriage which means that perpetrators are rarely brought to justice (Girls not Brides, 2017).

Early marriage is deeply rooted in South Sudanese customary and religious traditions and patriarchal cultures. In most ethnic communities in South Sudan, girls are considered marriageable as soon as they reach puberty (Human Rights Watch, 2013: 48).

Prolonged conflict, continuing instability, high levels of poverty and illiteracy and gender gaps in education are contributing factors for the widespread practice of early marriage in South Sudan. However, due to the widespread practice of bride price, many families in South Sudan consider early marriage as a means of accessing cattle, money, and other gifts by transferring wealth through the traditional payment of dowries from the family of the groom (Amnesty International, 2017:19; Girls not Brides 2017). Early marriage is therefore seen as a means of escaping poverty. In addition, many South Sudanese communities see early marriage as a way to protect girls from pre-marital sex and unwanted pregnancies outside marriage. Pre-marital sex and unwanted pregnancies outside marriage are not only undermining family honour, but can also reduce the amount of dowry and therefore the family's economic advancement (Girls not Brides, 2017; Human Rights Watch, 2013: 47 and 49).

In early 2017, the Ministry of Gender launched a Taskforce to end early marriage in collaboration with UNFPA. The Taskforce is developing a roadmap to end early marriage; however no information is available (Girls not Brides, 2017). There is a lack of shelters or safe spaces where girls can seek help and protection when at risk of or escaped forced marriage (Human Rights Watch, 2013: 25).

### **c) Household responsibilities**

South Sudan's legal framework does not contain specific articles or provisions regarding the responsibilities and rights in the household. The Child Act (2008) guarantees men and women the same rights to be legal guardians of their children in marriage (Article 40). Article 40.1 states that both parents have parental responsibility for the child and neither the father nor the mother of the child has a superior right or claim against the other in the exercise of such parental responsibility. Where a child's father and mother were not married to each other at the time of the child's birth, but have subsequently married each other, the above applies too. The article does not mention the responsibilities of both parents to children with regard to informal unions. The government of South Sudan has not yet developed family laws or policies that clearly define women's rights within the

household (OXFAM Canada, 2013: 7). The Constitution (2011) guarantees the rights of every citizen to freedom of movement and the liberty to choose his or her residence (Article 27.1).

Gender roles and positions are clearly defined and strictly enforced in South Sudan. Cultural and traditional perceptions relegate women to the private sphere. In the private sphere women are assigned time-consuming household responsibilities (Ali, 2011: 5). Traditionally, women are not only expected to be subservient to their husbands but also to other men in their family. (Human Rights Watch, 2013: 39). Customary practices of the various ethnic communities in South Sudan attach great social and economic importance to dowry payment which is connected to a husband's rights over his wife. Once dowry is paid, women are generally considered the property of her husband and his family (Human Rights Watch, 2013: 48).

#### d) Divorce

There is no explicit mentioning of divorce rights in the Transitional Constitution and other legal provisions. Instead, the family institution is managed by customary and cultural laws and courts and as a result divorce procedures vary among the various ethnic groups in South Sudan. Members of the *Dinka* ethnic group have to appear before a customary court to be granted a divorce. Members of the *Shilluk* ethnic group on the other hand can divorce each other based on an agreement between a husband and wife (Stern, 2011).

In most of the customary law systems, a divorce is finalised upon the return of the bride price or dowry to a husband's family (Human Rights Watch, 2013: 40; Human Security Baseline Assessment, 2012: 4). Repayment of the dowry can cause logistical problems and friction within families (Human Security Baseline Assessment, 2012: 4). As such, families have a financial incentive to ensure that marriages remain intact even if the girl faces abuse. Women may be pressured to reconcile, even if they face violence and risks to their safety and wellbeing (Human Rights Watch, 2013: 40; Human Security Baseline Assessment, 2012: 4).

In most of South Sudan's ethnic communities, women lose all their belongings if they separate or divorce (Human Rights Watch, 2013). As mentioned above, polygamy is only legal for men. Once a separated woman enters into a new relationship or marriage this may be considered to be adultery. As a result, any children with a new partner will 'belong' to her former husband. This can be a reason for men to avoid becoming involved with separated women, as children born to these unions will not be considered to be of their lineage (Stern, 2011).

The Child Act (2008) guarantees the rights for both parents over their children in case of divorce, separation or nullity (Article 112-114). Where circumstances permit, there shall be joint consultation between parents in bringing up their child. Both parents have the right to contact with the child in case the child is in the custody of one parent (Article 113.1). In case the child is in the care of a legally appointed guardian or foster parent both parents have equal rights to reasonable contact with the child, unless it is not in the best interests of the child (Article 113.2). Article 114 of the Child Act guarantees the right of both divorced and separated parents to apply to a Court for directives.

In practice however, most versions of customary law place children with their fathers in case of separation or divorce as children are considered part of the male lineage. However, young children

are permitted to remain with their mothers until they turn between three and seven years old. The prospect of losing custody acts as a strong disincentive to mothers who are considering a divorce. Given the difficulties in attaining a formal divorce, many couples opt to separate informally, which can also create problems for women (Human Security Baseline Assessment, 2012: 4). Custody decisions are mostly made by customary courts that rule in accordance with their customs, even though they are supposed to be governed by the Child Act and the child's best interests. Some women opt to stay in abusive marriages rather than lose custody of their children (Human Rights Watch, 2013: 40, 41).

### **e) Inheritance**

The Constitution (2011) guarantees the rights of women to share in the estates of their deceased husbands together with any surviving legal heir of the deceased (Article 16.5). The Child Act (2008) guarantees equal rights to succession and inheritance to property and reasonable provision out of the estate of a deceased parent without discrimination (Article 26.b).

In practice, customary law focusses on ensuring property remains within families. In most ethnic communities, women forfeit all their belongings and continue to be owned by the husband's family. For many women the risk of losing everything serves as a disincentive to divorce.

As death does not terminate a marriage, property inheritance remains complex after the death of a spouse according to most versions of customary law. As a result, widows continue to be considered married to her deceased husband. The deceased's property remains within the deceased husband's family and is generally dispersed among his male relatives. Widows are vulnerable to the mercy of her deceased husbands' families for support. Many women have been evicted from their homes and left with nothing (Human Security Baseline Assessment, 2011: 6). South Sudan's ethnic communities widely practice of 'wife inheritance', in which a wife was 'inherited' or remarried to the deceased's closest male relative (Human Security Baseline Assessment, 2011:6).

There is no specific mentioning of the right of women to make a will. The Constitution asserts that women shall have the right to participate equally with men in public life (Article 16.3).

## **2. Restricted Physical integrity**

### **a) Violence against women**

South Sudan ratified the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa in October 2017. South Sudan made several reservations, including on Article 6 discouraging polygamous marriages (article 6) and on reproductive rights, including family planning and abortion (article 14).

There is no overall law addressing violence against women in South Sudan. The Penal Code (2008) includes provisions prohibiting bodily injury; kidnapping, abduction, and other violations of personal liberty (Chapter XX); rape, and other sexual offences including detaining a person for the purpose of engaging in unlawful sexual conduct, female genital mutilation, and deliberate transmission of sexually transmitted diseases and of HIV/AIDS (Chapter XVII). South Sudan's Child Act (2008) guarantees the rights of children to be protected from physical and psychological violence, injury,

abuse or exploitation; from abduction and trafficking; from sexual abuse, exploitation and harassment; and from early and forced marriage (Article 21, 22). The Constitution (2011) states that every person has the inherent right to life, dignity and the integrity of his or her person which shall be protected by law (Article 11). Although the government of South Sudan established a framework that criminalizes certain acts of sexual violence, numerous gaps remain.

At national level, the Ministry of Gender, Child and Social Welfare is mandated to address the Gender Based Violence (GBV) issues. At the State level, the implementation of GBV Prevention, protection and response programmes is carried out by Ministry of Social Development. The Ministry of Interior, Ministry of Health, and Ministry of Justice are all involved in addressing GBV (Republic Of South Sudan Ministry Of Gender, Child And Social Welfare, 2014). The Ministry of Gender finalised a national Gender Policy in 2012 that prioritizes sexual and gender-based violence. According to the policy, a National Plan of Action will be developed, along with new laws, to eradicate sexual and gender-based violence.

However, no visible progress has been documented regarding new laws. The Ministry of Gender also developed Standard Operating Procedures for Prevention and Response to Sexual and Gender-based Violence. The document sets clear systems, roles and responsibilities for all institutions involved in the prevention, protection and response to GBV in South Sudan (Republic Of South Sudan Ministry Of Gender, Child And Social Welfare, 2014; Human Rights Watch, 2013: 46). However, there is no information on how the procedures are being implemented and with what budget.

In order for the police to respond to violence against women, the Government established the Police Special Protection Unit (SPU) at the Directorate of Social Welfare at the national and State level. The SPU provides an enabling environment for the promotion and protection of survivors of violence against women, prosecute perpetrators of violence against women, and increase police responsiveness to community concerns. Ten Special Protection Units and trained 120 police officer across the ten States with existing police stations (The Government of South Sudan, 2014: 25). However, across the country, law enforcement services remain weak and police are under-trained and under-resourced. Aside of the SPUs, police are given little training on how to handle cases of gender-based violence and for the most part, they have little knowledge of women's rights. Most police officers are men, many of whom are older, uneducated former soldiers with conservative views about women's place in society (Human Rights Watch, 2013: 71)

The underlying root cause of gender based violence are the longer-term context of gender dynamics and unequal power relations between men and women within South Sudanese society, which have been aggravated by the civil wars and the endemic levels of sexual violence during these conflicts (Amnesty International, 2017: 18; Republic Of South Sudan Ministry Of Gender, Child And Social Welfare, 2014: 10, 11). Gender based violence (GBV), including rape as a weapon of war, abduction, forced sexual favours, and general violence against women was widespread during the civil wars and remains a serious health and development challenge In post-war South Sudan (Republic Of South Sudan Ministry Of Gender, Child And Social Welfare, 2014:10, 11).

According to Amnesty International, South Sudanese authorities fail to conduct thorough and impartial investigations into crimes of sexual violence or to hold those responsible to account in fair

trials (Amnesty International, 2017: 10). There is a lack of capacity and resources within the criminal justice system, and from a clear absence of political commitment to criminal accountability. As a result, survivors of sexual violence feel unsafe reporting their experiences of sexual violence, especially when the perpetrator is a government official (Amnesty International, 2017: 10).

Gender discrimination, lack of sensitivity and understanding of the nature of sexual crimes all contribute to the way trials are conducted and in the resulting decisions and sentences rendered. The underlying assumption appears to be that victims of sexual violence, predominantly women, are untrustworthy. Such stereotypical attitudes and reasoning are a discriminatory barrier and a burden on victims of sexual violence. Lack of awareness and inadequate response and lack of psycho-social support mechanisms and other protection and medical facilities mean that many victims do not seek protection or redress (Amnesty International, 2017). Both within the family and the wider society sexual violence is met with silence and stigma. This has contributed to women being reluctant to access justice (Republic Of South Sudan Ministry Of Gender, Child And Social Welfare, 2014: 6). As a result of all the above, there are low conviction rates for sexual violence.

#### **b) Domestic violence**

Domestic violence is not addressed or penalized in the Penal Code or other laws. Section 247 of the Penal Code Act specifically excludes coerced marital sex from the definition of rape, regardless of the level of violence that accompanies it. While coerced marital sex is not against the law, the violence accompanying the act may constitute a different crime (Amnesty International, 2017). The Transitional Constitution states that no person shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment (Article 18).

Domestic violence is widespread in South Sudan, with common forms including physical and verbal abuse, sexual violence, early and forced marriage, and economic deprivation (Human Rights Watch, 2013: 44). Domestic and intimate-partner violence is considered largely a private matter, and rarely results in police intervention and criminal justice for survivors. Early and forced marriages, widespread in South Sudan, often involve violence (Amnesty International, 2017:19).

According to reports, customary law allows some violence in the home and permits a man to 'discipline' his wife (Human Security Baseline Assessment, 2012: 7). Women have the right to appeal to customary courts if the violence exceeds a reasonable level. A likely outcome of the court would be for the women to remain with her abusive husband, with little protection from further harm. In reality however, domestic violence is rarely reported (Amnesty International, 2017: 19; Human Security Baseline Assessment, 2012: 4, 5). Divorce is only granted if the domestic violence is severe or regular, or if the violence can be seen as evidence that a man has disowned his wife. However, this approach has reportedly created an incentive for men to beat their wives repeatedly in order to force a divorce. Reportedly, customary courts take violence that targets non-family members more seriously (Human Security Baseline Assessment, 2012: 4, 5). In reality however, domestic violence is rarely reported.

### c) Rape

The Penal Code (2008) defines rape as sexual intercourse or carnal intercourse with another person, against his or her will or without his or her consent, commits the offence of rape. Consent given by a man or woman below the age of 18 years is not deemed to be consent (Article 247.2). The law does not provide for increased penalties for aggravated forms of rape and sexual violence. The definition of rape in the Penal Code (2008) excludes marital rape, stating that "sexual intercourse by a married couple is not rape" (Article 247.3). The Child Act (2008) states that every female child has a right to be protected from sexual abuse and exploitation and gender-based violence, including rape and incest (Article 26.1). There are no increased penalties for aggravated forms of rape and sexual violence. Despite these provisions, the United Nations Children's Fund (UNICEF) reported that between December 2013 and December 2016, 1,130 children were sexually assaulted (UNICEF, 2016).

Research by the United Nations Population Fund (UNFPA), UNMISS, and the UN Secretary-General on Conflict-Related Sexual Violence found that rape is widespread and indicate that the frequency of sexual violence may be increasing as the conflict persists. Reports also indicated that there is an increase in the number of cases of gender-based violence perpetrated by men in uniform. Cases of abduction for the purpose of sexual slavery more than doubled (Amnesty International, 2017: 9). Aggravated acts of rape have been reported, including mutilation of victims with knives or raping them with objects such as sticks, killed victims outright, or leaving them bleeding or unconscious. (Amnesty International, 2017: 9). Amnesty International argues that such extreme acts of sexual violence are part of a strategy to terrorize, degrade, shame and humiliate both the victims and their ethnic or political group. Women in Protection of Civilians (PoC) Camps, but also individuals based on their ethnicity or their perceived political allegiance and affiliation are targeted both by government and opposition forces (Amnesty International, 2017: 10).

Violent crimes against women, such as rape, are often settled outside the courts. Women have limited access to legal means to seek justice, and legal prosecutions against perpetrators are rare or when perpetrators are convicted the punishments are generally mild. Although customary courts are not supposed to hear serious criminal matters such as rape, in practice they frequently try rape cases (Amnesty International, 2017). Payments from the perpetrator or his family or arrangements to have the perpetrator marry the victim are ways in which customary courts may handle rape cases (Amnesty International, 2017). Families and communities often prefer forced marriage for rape victims for reasons that as it stops men from going to jail and there is this idea that it maintains a woman's or girl's dignity within the community. At the same time, the dowry operates as a form of compensation for the rape survivor's family (Human Rights Watch, 2013: 45). As a result rape is considered a crime with impunity (Amnesty International, 2017).

### d) Sexual harassment

The Penal Code (2008) identifies that "whoever uses his or her position of authority or advantage to (a) offer a benefit in exchange for sexual favours; (b) intimidate another person or threaten retaliation if such person refuses to engage in any type of sexual relations; (c) engage in any unwanted physical contact of a sexual nature with respect to another person, including, but not limited to inappropriate touching, commits the offence of sexual harassment" (Article 395.1).



However act 2 of this Article 395 adds that whether a particular act constitutes sexual harassment is a matter of fact, which depends on the character and nature of the parties. Anyone who intentionally engages in sexual harassment can be imprisoned for up to three years (Article 396).

#### **e) Female genital mutilation**

The Penal Code Act (2008) criminalises anyone who makes or causes female genital mutilation or cutting (FGM/C) and can be imprisoned for up to 10 years (Article 259). The Child Act (2008) ensures that harmful cultural and social practices are abolished (Article 36.2.o), but does not specifically address female genital mutilation. Survivors of FGM/C cannot seek legal redress or compensation under the law. There is no national action plan or strategy to combat FGM/C.

#### **f) Abortion**

Abortion is illegal in South Sudan, with the exception of preserving a woman's life (Penal Code, 2008: Article 216-220; Women on Waves, 2017). The Penal Code (2008) criminalises anyone who voluntarily causes or attempts to cause a pregnant woman to miscarry up to three years imprisonment. If a pregnant woman voluntarily participates in causing the miscarriage she can be imprisoned for up to seven years. However, if the offence is committed by an unmarried pregnant woman in order to avoid shame the prison term reduces to up to 3 years (Article 216.1).

The use of contraceptives is extremely low in South Sudan. A 2016 report conducted by the World Health Organisation estimates that only 1% of South Sudanese use contraceptive methods (World Health Organization, 2016: 7).

### **3. Restricted Access to productive and financial resources**

#### **a) Secure access to land and assets**

South Sudan has not ratified ILO Convention 169. The Land Act (2009), which regulates land ownership in South Sudan, ensures equal rights to acquire or own land (Article 5.b). Article 13.1 of the act further states that the right to land shall not be denied by the Government of Southern Sudan, State Government or community on the basis of sex, ethnicity or religion. According to the Land Act, women have equal rights to men to access to land for housing, cultivation, pasture, grazing, or fishing (Article 14.2). Women also have equal access to land for investment purposes under this Act (Article 13.3). The Land Act states that women shall have the right to own and inherit land together with any heirs of the deceased. Joint land titling in case of informal unions is not taken into account in the Constitution and Land Act.

In reality, women's land rights are highly insecure (The IS academy and the Royal Tropical Institute KIT, 2013: 5). In customary law, women's right to access and use land is connected to their husbands and male family members (OXFAM Canada, 2013: 7). The National Gender Policy (2012) states that the Land Act (2009) does not adequately address issues of land rights for women (National Gender Policy, 2012: 20, 21).

Women's right to own property and inherit their husbands' estates are guaranteed by the Transitional Constitution (2011: Article 16.5). The Constitution also states that every person shall have the right to acquire or own property as regulated by law (Article 28.1).

In practice, the right to land and property is limited by patriarchal customary laws (OXFAM Canada, 2013: 1). Customary property laws do not recognize and protect women's property rights. (OXFAM Canada, 2013: 7). Customary laws dictate that women cannot own property in their own capacity or keep their own income (Human Security Baseline Assessment 2011, p.6). Despite being owned by a family, property it is held by the man, as the head of the household (Human Security Baseline Assessment 2011, p.6). South Sudan's government has stated that dispossession of widows, daughters, and divorced women is common (OXFAM Canada, 2013: 7). Widowed women face barriers when trying to claim inherited leasehold rights from the government (USAID, 2010), leaving abandoned women destitute (Human Security Baseline Assessment, 2012: 6).

South Sudan has inherited land governance issues scarred by a long civil war. Implementation of land legislation is reportedly largely absent. In general, institutions developed to deal with land rights often lack clear mandates, regulatory frameworks, necessary levels of funding, and the human capacity for their own establishment and effective operation (The IS academy and the Royal Tropical Institute KIT, 2013: 7). This environment puts women at a further disadvantage.

#### **b) Secure access to formal financial resources**

Men and women are afforded equal rights to open a bank account or obtain credit at formal financial institutions (International Bank for Reconstruction and Development/The World Bank, 2015). Married women do not require permission from their husbands to open an account (International Bank for Reconstruction and Development/The World Bank, 2015). Approximately 1% of households in South Sudan have a bank account (OXFAM Canada, 2013: 5).

According to the National Bureau of Statistics (2010), 51% of the population of South Sudan live below the poverty line and women make up 51.6% of the poor. The South Sudan Development Plan (SSDP) (2011-2013) acknowledges the high prevalence of female households which make up a big number of rural and urban poor (National Gender Policy, 2012: 20, 21).

#### **c) Workplace rights**

South Sudan has ratified ILO Convention 111. South Sudan has not ratified ILO Conventions 100, 156, 183 and 189. The Transitional Constitution mandates non-discrimination on the basis of sex in employment (Article 16.1). The Transitional Constitution recognizes women's right to equal pay for equal work (Article 16.2).

The Labour Bill (2011) prohibits women from entering dangerous works or works that required a lot of physical efforts harm with health-damaging like heavy carrying works and the works performed under the ground or water as well as that exposure to toxic substances or cold or heat that exceeded reasonable limits, for women tolerance (Article 21). Women are not allowed to work between 10 p.m. and 6 a.m. with the exception of employing women in administrative, professional, technical or other acts of social and health works (Article 22.1). Women do not require permission from their husbands or legal guardian to choose and occupation or register a business. As such a woman's

marriage generally has no impact on her choice of occupation or profession (CEDAW, 2010: para. 583).

Women are granted eight weeks of full paid maternity leave (Labour Bill, 2011: Article 47.1). There is no paternity or paternal leave. A woman may not be dismissed during the period of pregnancy or during the delivery leave (Labour Bill, 2011: Article 47.2). The Constitution (2011) states that the government is responsible for the provision of maternity and child care and medical care for pregnant and lactating women (Article 16.4.c).

In addition to the legal framework, South Sudan has adopted national strategies and programmes to empower women economically such as the National Gender Policy, Agriculture Strategy, National Cooperative Strategy and South Sudan Development Plan (Republic of South Sudan, 2014: 18). These strategies and programmes are implemented by the Ministry of Agriculture, Cooperative and Rural Development, Ministry of Gender (Republic of South Sudan, 2014: 18).

In general, unemployment rates in South Sudan are very high, with only 12% of women and 11% of men of the population formally employed (OXFAM Canada, 2013; Republic of South Sudan, 2014: 18). Despite the legal framework, women earn lower wages than their male counterparts at all levels of income (OXFAM Canada, 2013: 1). Women's involvement in the private sector is very limited, rather women engage in the underdeveloped and uncoordinated informal sector and in subsistence agriculture (National Gender Policy, 2012: 20, 21).

Women's economic freedom is affected by decades of conflict and continuous instability, which contributed to high levels of illiteracy, inadequate resources, poor infrastructure and rampant insecurity (Republic of South Sudan, 2014: 18). Women have unequal access to economic and productive assets such as land, skills and capacity. In addition, traditional and customary practices accord different capacities, roles and division of labour to women and men hinder full participation of women in economic empowerment initiatives (Republic of South Sudan, 2014: 18; National Gender Policy, 2012: 20, 21).

During the war, with men away for lengthy periods of time, women assumed new responsibilities as heads of families. However, once the war came to an end and the country gained independence, the majority of South Sudanese communities reverted back to traditional reproductive, household and community care chores (National Gender Policy, 2012: 20, 21). In the years since the peace agreement, the burden of earning a living is increasingly falling on the women again, with young men finding it difficult to find means of livelihoods in urban areas, (National Gender Policy, 2012: 20, 21).

### *More*

As a result of decades of civil war, most adults and children in South Sudan have not attended school. The 2008 Child Act and Transitional Constitution (Article 14 and 29) provide for the right to free and compulsory primary education. The Child Act states that no girl can be expelled from school due to pregnancy and young mothers must be allowed to continue their education (Article 26.3).

Despite the legal framework, government statistics for 2011 show that only 39% of primary school students and 30% of secondary students are female (Human Rights Watch, 2013: 41, 42).

## 4. Restricted Civil liberties

### a) Citizenship rights

Citizenship rights are covered by the Transitional Constitution (2011), the Nationality Act (2011) and the Nationality Regulations (2011), adopted after secession from Sudan (Citizenship Rights in Africa Initiative, 2012). Under the legal framework, women, whether unmarried or married, have equal rights to men when it comes to acquiring and retaining nationality, or passing on citizenship to foreign husbands or children born to such husbands (Transitional Constitution, 2011: Article 45; Nationality Act, 2011: Article 8, 13; Abdulbari, 2016: 83-86). The Nationality Act also recognises the dual nationality principle (Article 8, 13).

Under the Passports and Immigration Act (2011) women, whether unmarried or married, have equal rights to men to obtain identity cards and passports for themselves and their children. Under the Transitional Constitution (2011) the right of every citizen to freedom of movement and the liberty to choose his or her residence is recognized, alongside the right to leave and or return to South Sudan (Article 27). Due to prolonged conflict, South Sudan is only now putting in place advanced and proper registers for its citizens. IDP's and returnees alike may be applying for nationality and identification documents for the first time. As a result, women may face difficulties in acquiring documents (Abdulbari, 2016: 91).

In 2013, South Sudan launched plans for compulsory civil registration at childbirth in collaboration with the United Nations Children's Fund (UNICEF) and other partners. The compulsory civil registration process will record live births, deaths, foetal deaths, marriages, divorces, as well as annulments, judicial separations, adoptions, legitimation and recognitions. According to UNICEF, only 35% of births are currently registered in South Sudan, with many children reportedly born outside health facilities where there is no provision for formal registration (UNICEF, 2013).

### b) Voting

The Transitional Constitution (2011) provides women and men with equal rights to vote and be voted (Article 26.2). President Salva Kiir and members of parliament were elected in April 2010, one year before the country gained independence from Sudan. Elections have never been held in South Sudan as an independent country. 2015 elections were postponed due to civil war in 2013 and continuing conflict. The presidential and parliamentary term have been extended until 9 July 2018.

The government promoted the participation and engagement of women as voters, candidates, decision makers to determine the outcome of elections and the referendum through the Electoral Support programme of 2010 and the Referendum Support programme of 2011 (Republic of South Sudan, 2014: 21). In reality, despite the wish of many women to exercise their right to vote within the 2011 referendum, many were unaware of their rights, and unable to effectively and actively participate in the referendum (Gender Concerns International, n.d.).

### **c) Political voice**

The Transitional Constitution (2011) guarantees equality of men and women (Article 14) and sets out a 25% Affirmative Action quota for women in legislative and executive bodies (Article 16.4.a). The article reads: “All levels of government shall promote women participation in public life and their representation in the legislative and executive organs by at least twenty-five per cent as an affirmative action to redress imbalances created by history, customs, and traditions”. The government also put in place policies and mechanisms to increase the political voice of women.

At the national and State level legislative assemblies established key gender mechanism like specialized committees, Women Caucus and election of female speakers (Republic of South Sudan, 2014: 20). Under the leadership of the Ministry of Gender, the government initiated a Women Transformative Leadership Programme for over 30 women leaders, including Presidential advisors, Cabinet Ministers, State Ministers, Parliamentarians, State Governors, Parliamentary Speakers (Republic of South Sudan, 2014: 20).

On the ground however, cultural norms marginalize women from participation in any level of political activity or decision-making, especially in rural areas (Gender Concerns International, n.d.). High level of illiteracy, low education and lower social status of women further contribute to women’s in influence in public decision making (Republic of South Sudan, 2014: 19, 20). Women remain underrepresented in political and leadership positions, particularly in the local levels of government (Amnesty International, 2017: 19; Republic of South Sudan, 2014: 19, 20). Disparities of women’s participation also exist in the Executive, the Judiciary and in local government structures (National Gender Policy, 2012: 15, 16). Women struggle with the lack of adequate resources for political campaigns in their attempt to stand and compete for political leadership (Republic of South Sudan, 2014: 19, 20).

Women’s organizations and movements are slow to develop, with the existence of only a handful of women’s organizations (Gender Concerns International, n.d.). The women’s organizations that do exist have been focusing their efforts on increasing women’s participation in political processes among the promotion of gender-sensitive legislation and policies (OXFAM Canada, 2013: 2). Since independence many qualified women returned to the country and can play an important role in the political, economic and cultural development (Gender Concerns International, n.d.).

### **d) Access to justice**

Women, whether unmarried or married, have the same right to sue and be sued as men. The Transitional Constitution of South Sudan (2011) guarantees that all persons are equal before the law and are entitled to the equal protection of the law without discrimination as to race, ethnic origin, colour, sex, language, religious creed, political opinion, birth, locality or social status (Article 14). The Constitution guarantees equal rights to men and women in relation to a fair trial, including information about reason for arrest and charges made, entitlement to be tried in presence and right to defend oneself in person or through a lawyer (Article 19). In all civil and criminal proceedings, every person shall be entitled to a fair and public hearing by a competent court of law in accordance with procedures prescribed by law (Article 19.3).

Statutory law, consisting of the constitution, legislation, and precedent created through court judgements, and customary law, consisting of numerous unwritten bodies of law that have regulated South Sudan's ethnic group for centuries operate side by side in South Sudan. The laws of both systems are binding (Sudan Human Security Baseline Assessment, 2011: 2). The statutory rule of law is largely inexistent (Gender Concerns International, n.d.) and as a result customary courts hear the vast majority of cases (Sudan Human Security Baseline Assessment, 2011: 2). Customary courts often deal with issues that affect women, especially in the rural areas. Customary courts are generally dominated by patriarchal beliefs and practices (National Gender Policy, 2012: 15, 16) and tend to discriminate women and the minorities (Gender Concerns International, n.d.; OXFAM Canada, 2013: 4).

While it is theoretically possible to appeal from the customary to the statutory courts, the widespread absence of local courts prevents many South Sudanese from accessing the formal legal system (Sudan Human Security Baseline Assessment, 2011: 2). Women in South Sudan face further obstacles in accessing the justice system due to a general lack of financial resources to file legal claims (Edward, 2014). In addition, there is limited protection for victims /survivors and witnesses, fear of reprisals, lack of legal aid and limited psycho-social support and information on reporting system (Republic Of South Sudan Ministry Of Gender, Child And Social Welfare, 2014: 6).

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