



**Global Justice Center’s suggestions and comments regarding the
integration of gender equality and international law for the Draft
Transitional Constitution of the Republic of South Sudan**

<u>Topic</u>	<u>Constitutional Article</u>	<u>Issues/Comments</u>
gender equality	Preamble - "Committed to establishing a decentralized democratic multi-party system of governance in which power shall be peacefully transferred and to upholding values of human dignity and equal rights and duties of men and women.	The preamble could recognize that past inequality of women and note that the constitution is designed to promote affirmative measures to rectify past discrimination and inequality in political representation. "Recalling our long and heroic struggle [...] Recognizing the past inequity of women and committed to promoting the actual implementation of equal rights for women and men and taking steps to eliminate disadvantages that still exist."
international law	Article 5 - Sources of legislation in South Sudan shall be: (a) this Constitution; (b) customs and traditions of the people; (c) the will of the people; (d) any other relevant source.	Consider adding in "relevant international law and custom" as a source as well. This should include the standards from the Maputo Protocol as Sudan is a signatory to the Protocol. Since Sudan has not ratified the protocol they are not bound by the explicit obligations, but as a signatory, they CANNOT take any actions that undermine the object and purpose of the treaty.
international law	Article 9(3) - All rights and freedoms enshrined in international human rights treaties, covenants and instruments ratified or acceded to by the Republic of South Sudan shall be an integral part of this Bill.	change "integral" to "govern the interpretation of this Bill." This change would give more weight to international standards in defining these rights.

gender equality	Article 14 - 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.	Add second paragraph: "Equality includes the full and equal enjoyment of all rights and freedoms. To promote the achievement of equality, legislative and other measures designed to protect or advance persons, or categories of persons, disadvantaged by unfair discrimination may be taken."
prevention of underage marriages	Article 15 - Every person of marriageable age shall have the right to marry a person of the opposite sex and to found a family according to their respective family laws, and no marriage shall be entered into without the free and full consent of the man and woman intending to marry.	Add " No person shall enter marriage under the age of 18 years."
gender equality	Article 16 (1) - Women shall be accorded full and equal dignity of the person with men.	The language of "full and equal dignity" is potentially confusing and should be changed to something simple and clear guaranteeing gender equality - such as "All women and men shall have equal rights."
gender equality	Article 16 (1)	Consider adding in a definition of discrimination against women modeled on CEDAW article 1 such that Article 16(1) also includes the language that "'discrimination against women' shall mean any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field."
gender equality	Article 16 (2) - "Women shall have the right to equal pay for equal work and other related benefits with men."	

gender equality	Article 16 (3) - "Women has have the right to participate equally in public life."	
gender equality	Article 16 (4) - All levels of government shall: (a) promote participation in public life and their representation in the legislative and executive organs by at least twenty-five percent as an affirmative action to redress imbalances created by history, customs, and traditions."	CEDAW General Recommendation #23 on Article 7 (Political and Public life) suggests that the "number" should ideally be at 30-35%. Change the 25% to 35%.
gender equality	Article 16(4)(b) - "enact laws to combat harmful customs and traditions which undermine the dignity and status of women;"	Use the Maputo Protocol language on this - it's more comprehensive - "enact laws to modify the social and cultural patterns of conduct of women and men through public education, information, education and communication strategies, with a view to achieving the elimination of harmful cultural and traditional practices and all other practices which are based on the idea of the inferiority or the superiority of either of the sexes, or on stereotyped roles for women and men."
gender equality	Article 16(4)(c) - "provide maternity and child care and medical care for pregnant and lactating women."	This could be more inclusive so as to include the medical and health care calibrated against the actual needs of women. "All levels of government shall ensure that government programs are responsive to the specific needs of women, including the provision of maternity and child care and medical care for pregnant and lactating women."
gender equality	Article 16 (5) - "Women shall have the right to own property and share in the estates of their deceased husbands together with any surviving legal heir of the deceased."	

<p>Right to litigation</p>	<p>Article 20 - The right to litigation shall be guaranteed for all persons; no person shall be denied the right to resort to courts of law to redress grievances whether against government or any individual or organization.</p>	<p>Consider adding the following language "Anyone listed in this section has the right to approach a competent court, alleging that a right in the Bill of Rights has been infringed or threatened, and the court may grant appropriate relief, including a declaration of rights. The persons who may approach a court are - (a) anyone acting in their own interest; (b) anyone acting on behalf of another person who cannot act in their own name; (c) anyone acting as a member of, or in the interest of, a group or class of persons; (d) anyone acting in the public interest; and e. an association acting in the interest of its members."</p>
<p>Public Health Care</p>	<p>Article 31 - "All levels of government shall promote public health, establish, rehabilitate and develop basic medical and diagnostic institutions and provide free primary health care and emergency services for all citizens."</p>	<p>Consider integrating Article 14 of the Maputo protocol on the right to health into this provision, which reads: "1. States Parties shall ensure that the right to health of women, including sexual and reproductive health is respected and promoted. This includes: a) the right to control their fertility; b) the right to decide whether to have children, the number of children and the spacing of children; c) the right to choose any method of contraception; d) the right to self-protection and to be protected against sexually transmitted infections, including HIV/AIDS; e) the right to be informed on one's health status and on the health status of one's partner, particularly if affected with sexually transmitted infections, including HIV/AIDS, in accordance with internationally recognized standards and best practices; g) the right to have family planning education. 2. States Parties shall take all appropriate measures to: provide adequate, affordable and accessible health services, including information, education and communication programmes to women especially those in rural areas; b) establish and strengthen existing pre -natal, delivery and post-natal health and nutritional services for women during pregnancy and while they are breast-feeding; c) protect the reproductive rights of women by authorizing medical abortion in cases of sexual assault, rape, incest, and where the continued pregnancy endangers the mental and physical health of the mother or the life of the mother or the foetus.</p>

<p>Family</p>	<p>Article 39 (1) & (2) - Family is the natural and fundamental unit of society and shall be protected by law. All levels of government shall promote the welfare of the family and enact the necessary laws for its protection."</p>	<p>The safeguarding of "family" as the basis for society as a constitutional principle could be subject to abuse in formulating other laws affecting women, e.g. sexual and reproductive rights, right to education for young girls, social status, employment and labor, etc. Article 16 CEDAW:</p> <p>1. States Parties shall take all appropriate measures to eliminate discrimination against women in all matters relating to marriage and family relations and in particular shall ensure, on a basis of equality of men and women:</p> <ul style="list-style-type: none"> a. the same right to enter into marriage; b. the same right freely to choose a spouse and to enter into marriage only with their free and full consent; c. the same rights and responsibilities during marriage and at its dissolution; d. the same rights and responsibilities as parents, irrespective of their marital status, in matters relating to their children; in all cases the interests of the children shall be paramount; e. the same rights to decide freely and responsibly on the number and spacing of their children and to have access to the information, education and means to enable them to exercise these rights; f. the same rights and responsibilities with regard to guardianship, wardship, trusteeship and adoption of children, or similar institutions where these concepts exist in national legislation; in all cases the interests of the children shall be paramount; g. the same personal rights as husband and wife, including the right to choose a family name, a profession and an occupation; h. the same rights for both spouses in respect of the ownership, acquisition, management,
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		<p>administration, enjoyment and disposition of property, whether free of charge or for a valuable consideration.</p> <p>2. The betrothal and the marriage of a child shall have no legal effect, and all necessary action, including legislation, shall be taken to specify a minimum age for marriage and to make the registration of marriages in an official registry compulsory.</p>
Defence of the Republic of South Sudan	Article 42 (2) - "The State shall, by law, provide for the care of the combatants, the wounded heroes and heroines, the families of martyrs and those missing in action."	This clause should be amended to add in the phrase "in accordance with the Geneva Conventions and other applicable international humanitarian law."
Establishment and Composition of the Council of Ministers	Article 109 (3) - "The President shall ensure that at least twenty-five percent of members of the Council of Ministers are women."	CEDAW General Recommendation #23 on Article 7 (Political and Public life) suggests that the "number" should ideally be at 30-35%. Change the 25% to 35%.
Appointment of Jusitces and Judges	Article 134	Include a quota of 35 % for ensuring gender parity on the court.