



THE REPUBLIC OF SOUTH SUDAN
MINISTRY OF FOREIGN AFFAIRS AND INTERNATIONAL COOPERATION

Office of the Undersecretary

Ref: _____

Date: _____
28 May, 2013

RSS/MFA&IC/GER.EMB/11/05

Embassy of the Republic of Germany,
Juba

Subject: Current Law in force in South Sudan that regulates martial divorcee

Reference is made to your Note Verbale No. 39/2013 GZ: RK 542.00 regarding the status of applicability of the laws of Sudan as enumerated bellow:

1. Sudanese Civil Transition Act, 1984;
2. Sudanese Muslim Family Law, 1991.

It is imperative to note that, all laws of the Republic of the Sudan ceased to apply in the territory of the Republic of South Sudan since 08/07/2011, therefore, the above-mentioned laws have no jurisdiction and not applicable in the Republic of South Sudan.

However, the only continuous laws in the territory of South Sudan are the laws enacted by the semi-autonomous Government of Southern Sudan and the New Sudan Laws of 2003 and 2004 enacted prior to the independence as per Article 200 of the Transitional Constitution of the Republic of South Sudan, 2011 which stipulates: "**All current Laws of Southern Sudan shall remain in force and all current institutions shall continue to perform their functions and duties, unless new actions are taken in accordance with the provisions of this Constitution**".

It is important to clarify that in either Laws of Southern Sudan or the current ones are non-Islamic or Sharia oriented, but common law system influenced. Matters of family law in the Republic of South Sudan are governed mainly by customary laws as stipulated under Article 15 of the Transitional Constitution, 2011 as follows: "**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 women intending to marry'.

Furthermore, as respective family laws govern marriage, it varies from case to case as marriage is carried out in accordance to custom and traditions of each specific community where the bride comes from. Consequently, in case of dissolution or divorce and any other family law related issues of such marital relations the same customary law applies. Customary law system has juridical arrangements and courts where its decisions are applicable before the statutory judicial system.

Though, with limited application in big towns in respect to Muslim minority rights, families enjoy the right of choice in applying Islamic Sharia in matters related to marriage, divorce or custody of children when both parties of the marriage are Muslims through specialized Muslims Status Courts staffed by statutory judges from the Judiciary of South Sudan (JOSS). Nonetheless, no specific law is enacted for this purpose, but rather a practice considering a tradition of direct application of Islamic Law as per its direct original sources.

It is worth mentioning, that the Republic of South Sudan has no unified family law legislated so far, however only customary law is available to govern family matters. The challenge of sharing such laws with your esteemed office is that customary laws are not codified and many at the same time, hence we are unable to share them with you.

Accepts our assurance of highest regards.



Dr Aleu Garang
Legal Advisor

Ministry of Foreign Affairs & International Cooperation



- File.