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## *Policy Brief*

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### Protection of Rights of Older Persons in South Sudan: Towards Enactment of Legislative Framework

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#### **Summary**

*The proportion of older persons in the world is increasing due to the gradual decline in death rates and rise in life expectancy, catching many governments totally unprepared. In South Sudan, the number of older persons was projected to increase by 1.1% of the total population in 2016 (UNDESA 2016). Even though there has been an upsurge in the population of the older persons, there exists little social and legal protection for them, becoming more vulnerable to abuse and neglect. The constitution recognizes the rights of older persons, however, there is need for adequate laws and policies to protect these rights and ensure their needs and concerns are addressed. This paper recognizes vulnerability of the older persons, highlights basic elderly rights and advocates for special treatment and full realization of their rights. It also draws a number of lessons from other countries such as Kenya, South Africa, India, and Mauritius, offering useful insights for South Sudan. Finally, the paper advocates for a timely formulation of policies and laws for the protection of older persons in South Sudan<sup>1</sup>.*

**Keywords:** Older Persons, Elderly rights, legislative framework, Transitional Constitution of South Sudan, human rights, policies, Population, neglect, abuse and violence.

#### **Introduction**

Population ageing is a present reality and a key challenge that needs a prompt legislative response from governments. The Africa Union Policy Framework and Plan of Action on Ageing has emphasised the urgent need for the Member States to recognise the fundamental rights of the older persons<sup>2</sup> and to commit themselves to abolish all forms of discrimination based on age and to ensure that these rights are protected by

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<sup>1</sup> I thank Dr. Santino Ayuel Longar and Nyagoah Tut for insightful comments on an earlier draft.

<sup>2</sup> It should be noted that there is no agreed definition of an older person. According to United Nations, Department of Economic and Social Affairs, Population Division, (2001) *Older persons are defined as those age 60 and over*. According to African Union, Department of Economic and Social Affairs, Population Division, (2001) *older persons are defined as those age 60 and over*

appropriate legislation.<sup>3</sup> Yet, many countries in Africa, including South Sudan have not taken up such initiatives to cater for the protection of older persons. In South Sudan, majority of older persons live in rural areas where poverty is rife, inadequate family support, and inaccessibility to health services<sup>4</sup>. At the same time, they make significant contribution to the welfare of their families and communities specifically as caregivers of the orphans whose parents died mostly in the conflict.

However, despite their irrefutable contribution, older persons in South Sudan fall outside the realm of social and legal protection. Though the Transitional Constitution of South Sudan recognises their rights, it does not provide adequate protection, leaving them vulnerable to abuse and neglect. Since 2013 when the war broke out in South Sudan, older persons have experienced serious violations of their human rights and no attempts have been made to bring the perpetrators to book. An interview conducted by HelpAge International in 2016 revealed that 83% of the older persons feel insecure due to possible violence and attack on them.<sup>5</sup> It also found out that older persons particularly vulnerable in cholera outbreaks take longer to reach health centres when symptoms arise, suffer severe levels of dehydration and often take longer period to recover posing them to high risk of death<sup>6</sup>.

In the words of Dr. Prafulla Mishra, HelpAge International's East and Central Africa Regional Director, "older people often bear the brunt of conflict and particularly vulnerable in situations of violence and displacement because of their frailty and reduced mobility".

It is against this background that this paper underpins the imperative need for proper authoritative legislation for the greater protection of rights and dignity of older persons.

This study reviews and presents secondary evidence into older persons experiences and laws and policies protecting them. As the objective of this paper is to advocate for the enactment of laws and policies aiming to protect the rights of older persons, an attempt is made to review the experiences from other countries wherein, those responsible for the formation of such laws and policies can borrow from. The research elaborates on rights and needs of older persons stipulated under Transitional Constitution of South Sudan.

### **Demographic Trend of Older Persons in South Sudan**

The world population aged 60 or over is increasing steadily at an unprecedented pace. It is projected that by the year 2050, 2 billion people aged 60 years and above will be living in the world. While the most rapid increase is taking place in the developing world, Africa alone is projected to have between 204 and 210 million older persons by 2050.<sup>7</sup>

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<sup>3</sup> African Union Policy Framework and Plan of Action on Ageing (the African Union Policy Framework), adopted during the 25<sup>th</sup> Ordinary Session of the OAU Labour and Social Affairs Commission in Ouagadougou, Burkina Faso, in April 2002, and subsequently received final approval during the 38<sup>th</sup> Ordinary Session of the Assembly of Heads of State and Government in Durban, South Africa

<sup>4</sup> See Southern Sudan Centre for Census, Statistics and Evaluation, "Statistical Yearbook for Southern Sudan, 2010,"

<sup>5</sup> HelpAge International "Voices of older persons in emergencies May 2016" available at <http://www.helpage.org/what-we-do/emergencies/humanitarian-response/south-sudan-displacement/> (accessed 18.11.2017)

<sup>6</sup> Ibid

<sup>7</sup> See Africa Union Framework and Plan of Action on Ageing 2002

According to the 5<sup>th</sup> Sudan Population and Housing Census, 2008, the number of older persons in South Sudan makes up 4% of the total population.<sup>8</sup> This proportion was estimated to have increased to 5.1% of the total population in 2016 (UNDESA 2016). This trend indicates that the population of older persons in South Sudan is steadily growing at an increasing rate per year. Such an upsurge has profound effects both on economic development as well as on individual and family levels which cannot be ignored. Both Madrid International Plan of Action on Ageing and the Africa Union Policy Framework and Plan of Action on Ageing have challenged the African governments to exercise more prudence in developing response systems to population ageing now than making piecemeal and inevitably costly adjustments later.

### **Rights of the Older Persons**

Human rights are those rights which all people are entitled to by their virtue of being humans alone.<sup>9</sup> Since these rights are possessed by the mere existence of being a human person, they become operative from the birth. Therefore, human rights are inherent in all the individuals irrespective of their age, creed, gender, religion, and nationality. These rights are essential for the individuals as they are in consonant with their freedom and dignity, and are conducive to physical, moral, social and spiritual welfare.<sup>10</sup> Older men and women are therefore entitled to the same rights as everyone else. These rights are set out in the Universal Declaration of Human Rights (UDHR 1948) and they include cultural, economic, social and political rights.

Article 1 of the Universal Declaration of Human Rights, 1948 states: “all human beings are born free and equal in dignity and rights hence, right to freedom, equality and dignity is not affected or change by the reason of old age.”

Under South Sudanese laws, older persons in South Sudan enjoy the rights stipulated in Article 30 of the Transitional Constitution of South Sudan, which includes the right to:

- a) full and effective participation in all spheres of life in public, political, cultural, economic and development activities
- b) equal access to opportunities for all levels of education including tertiary education, vocational training and adult education.
- c) equal access to employment opportunities including equal opportunities and equal remuneration for work of equal value, safe and healthy working conditions, protection from harassment and redress of grievances
- d) accessible, available, affordable, appropriate and quality physical, mental and cognitive health services.
- e) access to basic necessities and amenities including water and sanitation, nutrition and affordable food, clothing and housing and;
- f) live in dignity and security and to be free of exploitation and physical or mental abuse

To protect and advance these rights, legislative and other measures need to be formulated which shall impose duty on the family and government to cater for the needs and concerns of the older persons.

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<sup>8</sup> supra note 2 p. 10

<sup>9</sup> H.O. Agarwal, Human Rights 2(2016)

<sup>10</sup> Ibid

## **Protection of Rights of Older Persons: Legal Origins and Evolution**

The question of ageing was first debated at the United Nations in 1948, at the initiative of Argentina. The issue was again raised by Malta in 1969. In 1971, the General Assembly asked the Secretary General to prepare a comprehensive report on the elderly and to suggest guidelines for the national and international action. In 1978, the Assembly decided to hold a World Conference on the ageing. This was held in Vienna from July in 1982 wherein an International Plan of Action on Ageing was adopted (General Assembly Resolution 37/51). The overall goal of the Plan was to strengthen the ability of the individual countries to deal effectively with their own ageing populations. The Assembly in the subsequent years called on the governments to continue to implement its principles and recommendations.

In 1990, the General Assembly designated October 1 as the International Day for the Elderly, later rechristened as the International Day for Older Persons<sup>11</sup>. In 1991, the General Assembly adopted the “United Nations Principles for Older Persons” (General Assembly Resolution 46/91<sup>12</sup>). The resolution adopted 18 principles relating to Independence, participation, care, self-fulfillment and dignity. On October 15 and 16 1992, the Assembly convened special International Conference to mark the tenth anniversary of the 1982 International Plan of Action on ageing and in November the same year, the Assembly adopted proclamation on Ageing where it declared 1999 as the International Year of Older Persons. Since then, the Day has been celebrated on 1 October every year<sup>13</sup>.

The proclamation calls for international cooperation to promote life-long, health, income generation, and new forms of productive ageing. It urges the national initiative to view older persons as contributor to their societies and not as burden. The world’s response to problem of ageing did not stop there. In 2002, the Second World Assembly on Ageing was held in Madrid in which Political Declaration and Madrid International Plan of Action on Ageing were adopted<sup>14</sup>. The aim was to specifically design international policy on ageing for the 21<sup>st</sup> century. The conference, through its recommendations, called on the government to prioritize older persons, advancing health and well-being into old age, and ensuring enabling and supportive environment. Since then, the General Assembly has passed a series of resolutions on follow-up and road map for the implementation of the Madrid Plan of Action.

At the regional level, the effort to address the challenges of population ageing in Africa started at the 1999 Session of the Organisation of African Unity, now African Union and the Labour and Social Affairs Commission that was held in Windhoek, Namibia. In 2002, Africa Policy Framework and Plan of Action on Ageing were drafted with support from HelpAge International and Africa Development Centre. The policy received the final seal of approval during the 38<sup>th</sup> Ordinary Session of the Assembly of the heads of State and Government in Durban, South Africa, in July 2002. The policy calls for the member states to develop national policies on ageing to improve the lives of the continent’s older people.

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<sup>11</sup> Ibid P.159

<sup>12</sup> Israel Doron and Kate Mewhinney (eds.) “The Rights of Older Persons” Collection of International Documents, available at [www.eshelnet.org.il](http://www.eshelnet.org.il) (accessed 10. 12. 2017)

<sup>13</sup> See supra note 8

<sup>14</sup> General Assembly resolution 57/167 dated, December 18, 2002

Apart from age specific instruments, there are various instruments which enshrine the rights of older persons. They conclude:

- a) Universal Declaration of Human Rights 1948
- b) African Charter of Human and People's Rights 1981
- c) International Covenant on Civil and Political Rights 1996
- d) International Covenant on Economic, Social and Cultural Rights 1996
- e) UN Declaration on the Right to Development 1986
- f) Convention on the Elimination of Racial Discrimination 1965
- g) Convention on the Elimination of all forms of Discrimination against Women 1979
- h) Convention against Torture and Cruel, Inhuman or Degrading Treatment or Punishment 1984
- i) Convention on the Rights of the Child 1989
- j) International Labour Organisation Conventions (various)
- k) UN Standard Rules on Equalisation of Opportunities for Persons with Disabilities 1996

### **Constitutional Protection**

The Transitional Constitution of South Sudan recognises the rights of older persons in a broad sense. *Art. 30 of the Constitution states: (1) all levels of government shall guarantee to persons with disabilities or special needs participation in society and the enjoyment of rights and freedoms set out in this Constitution, especially access to public utilities, suitable education and employment and (2) the elderly and persons with disabilities or special needs shall have the right to the respect of their dignity. They shall be provided with the necessary care and medical services as shall be regulated by law.*

However, these provisions are included in Part 3 of the Constitution that focuses on fundamental objectives and guiding principles. Fundamental objectives and guiding principles do not bear legal consequences in case of state failure to guarantee them. Clause 2 of Art. 30 above provides for the basis of enactment of an enabling legislation. The purported law needs to be enacted immediately to help preserve the dignity, welfare, and maintenance of the older persons.

### **The Pensions Fund Act, 2012**

The Act provides for the establishment of independent pensions fund to serve as management trustee and to collect contributions, invest assets, and calculate pensions payments.<sup>15</sup> It obligates the government to arrange for an actuarial valuation of past and future services in accordance with the relevant pension scheme.<sup>16</sup>

### **Comparative Analysis of Laws and Policies Relating to the Protection of Rights of Older Persons in Select Countries**

This section compares and analyses the experiences from a select number of countries, with the hope that it may provide an impetus for South Sudan to formulate its own laws and policies to safeguard the interests and rights of older persons. The chosen countries have laws and policies that are appropriate for South Sudan's context.

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<sup>15</sup> Sect. 3 of the Pensions Fund Act, 2012

<sup>16</sup> Sect. 26 and 27 *ibid*

In Kenya, the constitution expressly provides for the rights, entitlements and privileges of older persons, with specific obligations on state and the family. Art.10 (2)(b) stresses the state obligation to protect the older persons along with other marginalised groups, whereas Art.21(3) obligates state organs and public officers to address the needs of older persons and other vulnerable groups. Art. 27(4) promotes, and safeguards equality and non-discrimination based on age, whereas Art. 34(3) provides for an appropriate social security protection for the older persons.

The Constitution of Kenya guarantees participation and active engagement of older persons in society, political and cultural life, as provided in Article 57.<sup>17</sup> A similar provision is contained in the Transitional Constitution of South Sudan under Article 30.

To realize the rights of older persons contemplated in Art. 57, the Kenyan Government has mandated the Ministry of Labour, Social security and Services to plan and implement related programmes and promptly address issues of older person<sup>18</sup>. Existing legislation, policies and programmes that protect the rights of older persons in Kenya include:

- The National Policy on Older Persons and Ageing, 2009
- Sessional Paper No 2 of 2009 on National Policy for Older Persons and Ageing, 2009
- Draft National Policy on Social Protection, 2010

However, despite the strides Kenya has taken, the legislative enactment that guarantees legal protection of older persons remains absent. The Senior Citizens Care and Protection Bill, 2014, which is meant to give effect to Article 57, is not operative.

Under the South African Laws, *Older Persons Act 13 of 2006* requires that all organs of the state must implement its provisions. The act underlines that services rendered to older persons be integrated, coordinated, and uniform.<sup>19</sup> Chapter Two of the Act lays down the norms and standards with which any person providing services to the older persons must comply.

Section 25 permits any person in a professional capacity or anyone who is of the opinion that an older person is in need of care to report to Director General and Social Worker. Similarly, section 26 mandates any person who suspects older person has been abused to notify the Director General or Police officer, with a failure constituting an offence.<sup>20</sup> Furthermore, under Section 30(1), it is an offence to abuse an older person. Section 33 describes categories of penalties for those who are found guilty of offence against older persons.

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<sup>17</sup> Article 57 of the Constitution of Kenya: “State shall take measures to ensure the rights of older persons are recognised and to:

- (a) To fully participate in the affairs of society;
- (b) To pursue their personal development;
- (c) To live in dignity and respect and be free from abuse;
- (d) To receive reasonable care and assistance from their families and state”

<sup>18</sup> See Kenya National Policy on Older Persons and Ageing (2009) available at [www.partners-popdev.org/ageing/docs](http://www.partners-popdev.org/ageing/docs) (10. 12. 2017)

<sup>19</sup> Sect. 2 of the Older Persons Act NO.13 of 2006

<sup>20</sup> Ibid sect. 26(3)

In Mauritius, *The Protection of Elderly Persons Act 2005* provides for “Elderly Persons’ Protection Order<sup>21</sup>” which may be issued by the court when there is a reasonable cause to believe that an elderly person has suffered from an act of abuse. The Order restrains the respondent from engaging in any conduct which may constitute an act of abuse. Section 11 describes different types of offences that constitute an act of abuse against older persons. These offences include mistreatment of older persons, whether physical or verbal, mental or emotional. The conviction of these offences carries a fine not exceeding 50,000 rupees and imprisonment for a term not exceeding 2 years.

In India, *The Maintenance and Welfare of Parents and Senior Citizens Act, 2007*, entitles any poor senior citizen, including a parent, to apply for maintenance from their children, or relatives in case of childless senior citizens.<sup>22</sup> According to Section 5(1), if the senior citizen is incapable to apply, any other person or voluntary organisation authorised by that senior citizen can apply on their behalf or the Tribunal may take cognizance *suo motu*.

Under Section 9 (1) if the children or relatives neglect or refuse maintenance of senior citizens, the Tribunal may order such children or relatives to make monthly allowance for maintenance of senior citizen. The Act obligates state governments to ensure specific measures for the protection of life and property of senior.<sup>23</sup> According to Section 24 of the Act, it is an offence to expose or abandon senior citizens<sup>24</sup>.

## Conclusion

This paper has shown that there is a lack of adequate legislations and policies for the protection of older persons in South Sudan. The existing legislations do not sufficiently protect the older people’s rights and needs. The Pensions Fund Act, 2012 only protects the rights of the employed elders who constitute smaller proportion in the population of older persons in South Sudan. There is an urgent need to enact a law to give effect to Article 30 of the Constitution for the greater protection of the ageing South Sudanese.

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<sup>21</sup> See Sect.9 (1) of the Protection of Elderly Persons Act 2005

<sup>22</sup> Sect. 4(1) of The Maintenance and Welfare of Parents and Senior Citizens Act, 2007

<sup>23</sup> Ibid Sect. 21

<sup>24</sup> Ibid Section 24 “Whoever, having the care or protection of senior citizen leaves, such senior citizen in any place with the intention of wholly abandoning such senior citizen, shall be punishable with imprisonment of either description for a term which may extend to three months or fine which may extend to five thousand rupees or with both”



6. UN, General Assembly resolution 57/167 dated, December 18, 2002.
  7. South Sudan Pensions Fund Act, 2012.
  8. Constitution of Kenya, 2010.
  9. Kenya National Policy on Older Persons and Ageing (2009) available at [www.partners-popdev.org/ageing/docs](http://www.partners-popdev.org/ageing/docs) (10. 12. 2017)
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### **About Sudd Institute**

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### **Author's Biography**

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