



United Nations Entity for Gender Equality
and the Empowerment of Women



Women and the Transitional Constitution of the Republic of South Sudan

A GENDER ANALYSIS.

WOMEN AND THE TRANSITIONAL CONSTITUTION OF THE REPUBLIC OF SOUTH SUDAN

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1.0 WOMEN AND THE TRANSITIONAL CONSTITUTION OF THE REPUBLIC OF SOUTH SUDAN

The history of South Sudan has for a long time been characterized by conflict which impacted the people of Sudan negatively and especially the women who carried the brunt of hostilities by losing the fathers, husbands and sons. The women were raped or forcefully married. Some families were wiped out by bombs.

The signing of the Comprehensive Peace Agreement (CPA) in Nairobi, Kenya, on 9th January 2005, brought to an end the painful era of the Sudan People's Liberation Movement/ Army struggle against the Government of the Republic of Sudan. The parties agreed, among other things, to have an Interim Constitution for South Sudan, 2005.

After holding a Referendum to determine whether Southern Sudan would become a separate Nation from Northern Sudan, the Southern Sudanese People voted overwhelmingly for independence from the Northern Sudan.

The Transitional Constitution of the Republic of South Sudan 2011 was promulgated on 9th July 2011 when Sudan attained its independence.

The Government of South Sudan (GOSS) has committed itself to review the Transitional Constitution of South Sudan 2011. To this end, GOSS has indicated that it will undertake grass roots consultation with women's organizations at the state level to inform women about their rights under the Transitional Constitution. GOSS intends to get the feedback from women on their rights under the constitution in order to include their concerns in the next constitutional draft.

GOSS has request the UN WOMEN to assist with getting women to critically articulate gender issues in the draft constitution.

This is a unique opportunity for the women of South Sudan to give their views on the present and the future Constitution for themselves and for posterity. It is an honor and a privilege and this opportunity

should be maximally used in order for the women to have ownership of the Constitution of their new baby, the Republic of South Sudan.

In order for the women of South Sudan to understand gender issues in the Transitional constitution, some of the relevant provisions in the constitution will be discussed. These will be done with reference to **the Protocol to the African Charter on Human and People's Rights on the Rights of Women in Africa, (THE Maputo Protocol), the Convention on the Elimination of All Forms of Discrimination against Women, (CEDAW), the Declaration on the Elimination of Violence against Women and other international Instruments.**

Occasionally questions will be posed and comments made. However, a definition of what a constitution is will be attempted.

A Constitution is a set of principles which form the basis of all laws in the Country. It is the foundation of all other laws and all the laws must agree with it otherwise they will be null and void. That means they will not be laws at all. A constitution is the mother of all laws in a country.

A constitution may be described as a contract between the people and the State or Government. It is also a contract between the people among themselves. It sets out the different offices /organs or arms of Government and how they relate to one another.

Once agreed on, the Constitution can only be amended / changed/ modified by a big majority, usually two-thirds of members of the National Legislative Assembly. Sometimes a referendum is required before what is written in a constitution can be changed. Some parts of the constitution may be changed with a simple majority of members of the legislative assembly.

The President, the Vice-President, Ministers, Members of Parliament, Judges, Governors and all high government officers must swear an Oath to **obey, preserve, and defend the constitution**, in addition to any other relevant oaths.

Since South Sudan is an independent state and is now a member of the United Nations, and has an elaborate Bill of Rights, the Government of South Sudan should move towards ratifying international human rights treaties especially, the Convention on the Elimination of All forms of Discrimination Against Women (CEDAW) , the Maputo Protocol on the Rights of women in Africa, the Declaration on the Elimination of Violence against Women and others.

Some of the recommendations which are made herein cannot all be put in the next Constitution but others should be included in the relevant legislations. The recommendations are made so that women of South Sudan start lobbying for the inclusion of the international instruments in domestic legislations.

Since the purpose of the consultation is to enlighten women on their rights we will begin with the Chapter on Human Rights or The Bill of Rights. (Chapter Two)

Chapter Two

2.0 THE BILL OF RIGHTS¹

The Bills Of Rights are the principles of rights which a person is born with. They are not given by Government or Society. **They are God given.** The Government or Society can only protect, respect and guarantee these rights.

2.1 Article 9 (1-4): The Nature of the Bill of Rights:

- 1) **The Bill of Rights is a covenant among the people of South Sudan and between them and their government at every level and a commitment to respect and promote human rights and fundamental freedoms enshrined in this Constitution; it is the cornerstone of social justice, equality and democracy.**
- 2) **The rights and freedoms of individuals and groups enshrined in this Bill shall be respected, upheld and promoted by all organs and agencies of Government and by all persons.**
- 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.**
- 4) **The Bill of Rights shall be upheld by the Supreme Court and other competent courts and monitored by the Human Rights Commission.**

2.2 Article 10, Sanctity of Rights and Freedoms provides as follows:

Subject to Article 190 (State of Emergency), no derogation from the rights from the rights and freedoms enshrined in this Bill shall be made. The Bill of Rights shall be upheld, protected and applied by the Supreme Court and other competent courts; the Human Rights Commission shall monitor its application in accordance with this Constitution and the law.

2.3 Article 11, the Right to Life and Fundamental Freedoms:-

Article 11 states as follows:-

Every person has a right to life, dignity and integrity of his or person which shall be protected by law; no one shall be arbitrarily deprived of his or her life.

Article 6, of the International Covenant on Civil and Political Rights (ICCPR) states as follows:

1. ***Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrary deprived of his/her life.***

¹ In this document what is written in bold is from the South Sudan Constitution. *What is written in bold italics are provisions of international Covenants, treaties, Declarations International and Regional Protocols and Conventions. What are written in ordinary italics are comments from the author.*

2. *In Countries which have not abolished the death penalty, sentence of death may be imposed only for the most serious crime in accordance with law in force at the time of the commission of the crime and not contrary to the provisions of the present Covenant and the Convention on the Prevention and Punishment of the crime of Genocide. This penalty can only be carried out pursuant to a final judgment rendered by a competent court.*
3. (Not immediately relevant).
4. *Anyone sentenced to death shall have the right to seek pardon or commutation of the sentence. Amnesty, pardon or commutation of the sentence of death may be granted in all cases.*

It is recommended that the above provision in the ICCPR be included in the next constitution as it is more detailed.

Every man, woman and child has a right to live. No one should kill anyone because life is given by God and no one has a right to take another person's life under any circumstances unless allowed under the law and after a fair trial by a court of law. In these circumstances the person sentenced to death must appeal until the highest court confirms the sentence of death. Even then, a person may appeal to the President to forgive him. Life is held to be so precious that all these steps must be taken before a person can be legally killed.

A parent has no right to kill his/her child just because he/she is the father or mother of the child. A husband has no right to kill his wife and the wife has no right to kill the husband for any reason whatsoever

*Some Countries have banned the Death Sentence altogether. Some have retained it for **extremely** serious crimes.*

2.3 Article 12, Personal Liberty:-

Every person has the right to liberty and security of the person; no person shall be subjected to arrest, detention, deprivation or restriction of his or her liberty except for specified reasons and in accordance with the procedures prescribed by law.

Article 9 of the International Covenant on Civil and Political Rights states as follows:

1. ***Everyone has the right to liberty and security of the person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his/her liberty except on such grounds and in accordance with such procedure as are established by law.***
2. ***Anyone who is arrested shall be informed, at the time of arrest, of the reasons for his/her arrest and shall be promptly informed of any charges against him/her.***

3. *Anyone arrested or detained on a criminal charge shall be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or release. It shall not be the general rule that persons awaiting trial shall be detained in custody, but release may be subject to guarantees to appear for trial, at any other stage of the judicial proceedings, and, should occasion arise, for execution of the judgment.*
4. *Anyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings before a court, in order that that court may decide without delay on the lawfulness of his/her detention and order his release if the detention is not lawful.*
5. *Anyone who has been the victim of unlawful arrest or detention shall have an enforceable right to compensation.*

This Article is recommended for inclusion under the relevant future article of the constitution under the above heading.

Article 3 of the Universal Declaration of Human Rights states:

Everyone has the right to life, liberty and security of the person.

Article 3 (c) of the Declaration on the Elimination of Violence against Women states:

Women are entitled to: ***“the right to liberty and security of the person.”***

Men, women and children have a right to be free from being arrested, or having their movements unlawfully restricted except when the law provides for it. In this case there are rules to be followed by the person who restricts another’s movement.

“Security of the person” means not interfering with the body of the person or having restriction on the freedom of a person to move.

For example it would be wrong for a husband or wife to lock his/her spouse in the house because he/she is afraid that other men or women will fall in love with him/her. A parent may, restrict a small child for his/her own safety but not in such a way that the child is physically or psychologically harmed.

2.4 Article 13, Freedom from slavery, Servitude and forced Labour:-

- 1) **Slavery and slave trade in all its forms are prohibited. No person shall be held in slavery or servitude.**
- 2) **No person shall be required to perform forced or compulsory labour except as a penalty upon conviction by a competent court of law.**

Article 3 of the Universal Declaration of Human Rights states:

- ***Everyone has a right to life liberty and security of the person.***

- ***No one shall be held in slavery or servitude; slavery and slave trade shall be prohibited in all their forms.***

Article 8 (1, 2, &3) of the International Covenant on Civil and Political Rights states as follows:

1. No one shall be held in slavery; slavery and slave trade in all their forms shall be prohibited.

2. No one shall be held in servitude.

3a) No one shall be required to perform forced labour;

3b) Paragraph (a) shall not be held to preclude, in countries where imprisonment with hard labour may be imposed as a punishment for a crime, the performance of hard labour in pursuance of a sentence to such punishment by a competent court;

3c) For the purpose of this paragraph the term “forced labour shall not include:

- i. Any work or service, not referred to in sub paragraph (b), normally required of a person who is under detention in consequence of a lawful order of a court or of a person during conditional release from such detention;***
- ii. Any service of a military character and, in countries where conscientious objection is recognized, any national service required by law of conscientious objectors;***
- iii. Any service exacted in cases of emergency or calamity threatening the life or well-being of the community;***
- iv. Any work or service which forms part of normal civil obligations.***

This Article is recommended as more suitable for the next Constitution as it spells out the exceptions which need to be provided for in the Constitution.

A person, man or woman or child should not be taken as a slave or be bought or taken away for good to be treated as a slave in another person’s home. A slave is a person who is owned by another person. A slave has no rights the owner can treat him or her as he or she thinks fit. Holding a person as a slave is a criminal offence both nationally and internationally. A Human being has rights and should not be treated as a slave. Slavery is against the dignity of a human being and is unacceptable at any level.

Person whether a man or woman or child should not be forced to do any work he/she does not want to do unless the court orders it after a free and fair trial under the law when the work is used as a punishment. Giving a child work as a discipline is right for his/her training but the work should not be beyond his/her strength.

2.4 Article 14, Equality before the Law:-

All persons are equal before the law and are entitled to the equal protection of the law without discrimination as to race, ethnic origin, color, sex, language, religious creed, political opinion, birth, locality or social status.

Article 14(1) of the International Covenant on Civil and Political Rights states as follows:

All persons shall be equal before the courts and tribunals. In determination of any criminal charge against him/her or his/her rights and obligations in a suit at law, everyone shall be entitled to a fair and public hearing by a competent independent and impartial tribunal established by law...

Article 7 of the Universal Declaration of Human Rights states:

All are equal before the law and are entitled without any discrimination to equal protection of the law. All are entitled to equal protection against any discrimination in violation of this Declaration and against any incitement to such discrimination.

The Law must not treat people differently because of his/her tribe, or because the person is rich or poor, or the person goes to a different church or is from a different place of origin or belongs to a different political party.

Under the law everybody is equal. It is wrong to treat the rich differently when he or she commits the same offence/ crime as a poor person. In traffic offence all drivers should be treated the same whether a person drives a Mercedes or an old pick up.

There is no law for a woman and another law for a man. If adultery is against the law it should be illegal for both a man and a woman to commit adultery and they should each be punished for the offence equally. If the woman has to be publically flogged/ beaten, so should the man with whom she committed adultery. Public flogging is one of the actions which offends against the dignity of the person and is contrary to Human Rights of personal integrity.

2.5 Article 15, The Right to marry and found a Family:-

Every person of marriageable age shall have the right to marry a person of the opposite sex and 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.

This Article states that those who want to marry should be of marriageable age. What is marriageable age?

In this article the issue of marriage is left to the personal laws of the couple who want to marry. Different Communities have different rules and cultural regulations concerning marriage. Some of these customary rules and regulations may not be consistent with the Constitution.

The Article does not say that couples are entitled to the same rights at marriage, during marriage and at its dissolution

It is in personal law such as the laws of Marriage, Separation, and Divorce and, Inheritance that discrimination against women is most practiced. If equality between men and women is to be a reality it should include equality in the marriage, separation, divorce, nullity and inheritance.

There are tribes /communities which regard a 12yrs old girl as a person of marriageable age. Internationally 18 years of age has been regarded as a marriageable age.

Article 6 of the Protocol to the African Charter on Human and People's Rights on the Rights of Women in Africa states :"-the minimum age for marriage for women shall be 18 years;"

This Protocol also supports marriage of couples being with free and full consent.

Marriage of a girl below the age of 18 yrs affects the health of a girl- child because her body is not yet ready for child bearing and when she gets pregnant she may be delivered by a caesarean section, she may bleed to death or her health may never be the same again and another pregnancy may kill her. There may not be medical facilities to deal with child mothers and usually die or get lifelong health complications.

Marriage below the age of 18 is life threatening for the girl-child when she gets pregnant. There should be legal sanctions against parents or guardians who force children below the age of eighteen to get married.

What do the women of South Sudan think about the age of marriage?

There should be legislation which caters for all marriage regimes and procedures. This way there will be uniformity as to the age of marriage and rights in marriage which are consistent with Human Rights in the Constitution and International laws.

*The Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (henceforth to be referred to as "**The Maputo Protocol**") **Articles 6 and 7 provides as follows:***

Article 6, Marriage:-

States Parties shall ensure that women and men enjoy equal rights and are regarded as equal partners in marriage. They shall enact appropriate national legislative measures to guarantee that;

- **No marriage shall take place without the free and full consent of both parties;**
- **The minimum age of marriage for women shall be 18 years,**

- *Monogamy is encouraged as the preferred form of marriage and that rights of women in marriage and family, including in polygamous marital relationships are promoted and protected;*
- *Every marriage shall be recorded in writing and registered in accordance with national laws, in order to be legally recognized;*
- *The husband and wife shall, by mutual agreement choose their matrimonial regimes and place of residence;*
- *A married woman shall have the right to retain her maiden name, to use it as she pleases, jointly or separately with her husband's name;*
- *A woman shall have the right to retain her nationality or acquire the nationality of her husband;*
- *A woman and man shall have equal rights, with respect to the nationality of their children except where this is contrary to a provision in national legislation or is contrary to national security interests;*
- *A woman and man shall jointly contribute to safeguarding the interests of the family, protecting and educating their children;*
- *During her marriage, a woman shall have the right to acquire her own property and to administer and manage it freely.*

Article 7 states:

State Parties shall enact appropriate legislation to ensure that women and men enjoy the same rights in cases of separation, divorce or annulment of marriage, they shall ensure that:

- *Separation, divorce or annulment of a marriage shall be effected by judicial order;*
- *Women and men shall have the same rights to seek separation, divorce or annulment of a marriage;*
- *In case of separation, divorce or annulment of marriage, men and women shall have reciprocal rights and responsibilities towards their children. In any case, the interests of the children shall be given paramount importance;*
- *In the case of separation, divorce or annulment of marriage, women and men shall have the right to an equitable sharing of the joint property deriving from the marriage.*

Couples who are separated, divorced or have had the marriage annulled have reciprocal rights and responsibilities towards their children. In all circumstances, the children's welfare must take priority.

A woman and man who are separated, divorced or have had their marriage annulled, will have equal an equitable sharing of the property jointly acquired during the marriage.

Some of these provisions like bullets one and two of Article 6 have already been covered by the by Article 15 of the Transitional Constitution of the Republic of South Sudan. The rest are recommended for inclusion either in the new Constitution or in a law on marriage, separation, divorce and annulment.

It is, however, essential for the constitution to provide for equal rights at marriage, during marriage and at its dissolution. This would cover other aspects of all matrimonial rights. It is recommended that following provisions be considered for the rights of married couples:

Article 16 of the Convention on the Elimination of All Forms of Discrimination against Women, states as follows:

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 with men and women:

- a) The same right to enter into marriage;***
- b) The same right freely to choose a spouse and enter into marriage only with their free and full consent;***
- c) The same rights and responsibilities during marriage;***
- 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 spacing of their children and to have access to 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 institution where those 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 occupation;***
- h) The same rights for both spouses in respect of the ownership, acquisition, management, administration, enjoyment and disposition of property, whether free of charge or for a valuable consideration.***

2. The betrothal and 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.

The issue of payment of dowry for wives should also be tackled. It is becoming highly commercialized and will reduce incidences of cattle rustling which results in hostilities between communities. If women are “***accorded full and equal dignity of the person with men***”, then during marriage no dowry should be paid for a woman.

Payment of dowry should be a token of appreciation not a thing to be haggled over .In the end it looks like a purchase. It does not enhance a woman’s self esteem. Both families should exchange gifts if they want.

2.6 The Rights of Women

Article 16 states:

1. Women shall be accorded full and equal dignity of the person with men.
2. Women shall have the right to equal pay for equal work with and other related benefits with men.

*This is based on Article 23 (2) of the **Universal Declaration of Human Rights**.*

3. Women shall have the right to participate equally with men in public life.
4. All levels of government shall:
 - a) Promote women 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;
 - b) Enact laws to combat harmful customs and traditions which undermine the dignity and the status of women;
 - c) Provide maternity and child care and medical care for pregnant and lactating women.

5. Women have the right to have their own property and to share the property of a deceased husband together with any surviving legal heir of the husband.

Will the legal heir include a girl child or is it only male children who inherit from the father?

Will the widow inherit the matrimonial home or will the legal heir?

What about a woman who has no child, what happens to her when the man dies?

*The rights of women Article should have commenced with the definition of **Discrimination** as is stated in CEDAW;*

Article 1 of CEDAW defines Discrimination against women as:

“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 the basis of equality of men and women, of human rights and fundamental freedoms in political, economic, social, cultural, civil or any other field.”

Article 3 & 4 of the Maputo Protocol on the Rights of Women in Africa provides as follows:

- ***Every woman shall have the right to dignity inherent in a human being and to the recognition and protection of her human and legal rights;***
- ***Every woman shall have the right to respect as a person and to the free development of her personality;***

- *States Parties shall adopt and implement appropriate measures to prohibit any exploitation or degradation of women;*
- *States Parties shall adopt and implement appropriate measures to ensure the protection of every woman's rights to respect for her dignity and protection of women from all forms of violence, particularly sexual and verbal violence.*

Article 4, the Rights to Life, Integrity and Security of the Person (WOMEN)

- 1. Every woman shall be entitled to respect for her life and the integrity and security of her person. All forms of exploitation, cruel, inhuman or degrading punishment and treatment shall be prohibited.*
- 2. State Parties shall take appropriate and effective measures to:*
 - a) enact and enforce laws to prohibit all forms of violence against women including unwanted or forced sex whether the violence takes place in private or public;*
 - b) adopt such other legislative, administrative, social and economic measures as may be necessary to ensure the prevention, punishment and eradication of all forms of violence against women;*
 - c) identify the causes and consequences of violence against women and take appropriate measures to prevent and eliminate such violence;*
 - d) actively promote peace education through curricula and social communication in order to eradicate elements in traditional and cultural beliefs, practices and stereotypes which legitimize and exacerbate the persistence and tolerance of violence against women.*
 - e) Punish the perpetrators of violence against women and implement programmes for the rehabilitation of women victims;*
 - f) Establish mechanisms and accessible services for effective information, rehabilitation and reparation for victims of violence against women.*
 - g) Prevent and condemn trafficking in women, prosecute the perpetrators of such trafficking and protect those women most at risk;*
 - *Prohibit all medical or scientific experiments on women without their informed consent;*
 - *Provide adequate budgetary and other resources for the implementation and monitoring of actions aimed at preventing and eradicating violence against women;*
 - *Ensure that, in those countries where the death penalty still exists, not to carry out death sentences on pregnant or nursing women.*
 - *Ensure that women and men enjoy equal rights in terms of access to refugee status, determination procedures and that of women refugees are accorded the full protection and benefits guaranteed under international refugee law, including their own identity and other documents.*

It is recommended that these two articles of the Maputo Protocol, and other relevant provisions, be included in the article on the rights of women in the next constitution

2.7 Art. 17. The Rights of the Child:-

Every child has the right:

- a) to life, survival and development;**
- b) to a name and nationality;**
- c) to know and be cared for by his or her parents or legal guardian;**
- d) not to be subjected to exploitative practices or abuse not to be required to serve in the army nor permitted to perform work which may be hazardous or harmful to his or her health or well-being;**
- e) to be free from any form of discrimination;**
- f) to be free from corporal punishment and cruel and inhuman treatment by any person including parents, school administrators, and other institution.**
- g) not to be subjected to negative; and harmful cultural practices which affect his or her health, welfare and dignity; and**
- h) to be protected from abduction and trafficking.**
- h) to be protected from abduction and trafficking.**

(2) In all actions concerning children undertaken by public and private welfare institutions, courts of law, administrative authorities or legislative bodies, the paramount consideration shall be the best interest of the child.

3) All levels of government shall accord special protection to orphans and other vulnerable children, child adoption shall be regulated by law.

4) For the purposes of this Constitution, a child is any person under the age of eighteen years.

*The above provisions are based on Article 7 and 8 of **the UN Covenant on the Rights of the Child 1989**. The Convention adds that a child must not be separated from his or her parents against their will except when the court has determined, after hearing the case, that there is neglect of a child or it is in the child's best interest to be removed from the parents.*

It often happens that when parents are separating the man takes the children away from the wife. He may even forbid the wife from visiting the children. This kind of action is not in the best interest of the child. A child under the age of seven years is supposed to stay with the mother unless she is a bad mother who neglects and mistreats her child. However this is to be decided by the court not the man.

When parents are separated, each of them is entitled to contribute to the welfare of the child by providing food, clothing, shelter and emotional support. If a child is young and is with the mother who has no income, the father is legally bound to support his child by providing all of the above.

A parent who forbids the other parent access to a child must be taken to court by the other spouse so that the court orders the parent with the child to let the other parent visit or take the child for some time. It is in the best interest of the child to relate to both parents. It is necessary for the child emotional development.

Parents should not make a child suffer emotionally because of their failure to live together. A child is not a party to their problems and should not be used as an instrument to torture the other parent.

Article 10 (3) of the International Covenant on Economic, Social and Cultural Rights states as follows:

Special measures of protection and assistance should be taken on behalf of all children and young persons without any discrimination for reasons of parentage or other considerations. Children and young persons should be protected from economic and social exploitation. Their employment in work harmful to their morals or health or dangerous to life or likely to hamper their normal development should be punishable by law. States should also state age limits below which the paid employment of child labour should be prohibited and punished by law.

The above provision has been taken into consideration by Article 17 (1) (d) of the present Constitution of the Republic of South Sudan.

2.8 Article 18, Freedom from torture.

Article 18 provides: No person shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.

This article is based on Article 5 of the Universal Declaration of Human Rights and Article, 7, of the International Covenant on Civil and Political Rights.

Torture is defined by Article 1 of the Convention against Torture and other Cruel, Inhuman, or Degrading Treatment or Punishment as:

“Any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him/her or a third person information or a confession, punishing him/her for an act he/she or a third person has committed or is suspected of having committed, or intimidating or coercing him/her or a third person or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity...”

Article 2(2) of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment states:

No exceptional circumstances whatsoever, whether a state of war or threat of war, internal political instability or any other public emergency, may be invoked as a justification of torture.

*This definition is meant for political or activities related to public order but torture is inflicted in private by ordinary people in homes. It involves Psychological torture of a parent who is prevented from accessing his/her child or when a spouse mistreats a child to hurt the other spouse. The crux of the matter is that it is severe pain **deliberately** inflicted on another.*

Violence against women amount to torture

Article 1 and 2 of the Declaration on the Elimination of Violence against Women (DEVAW) respectively states as follows:

1). The term “ violence against women” means any act of gender based violence that results in, or is likely to result in, physical, sexual or psychological harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or private.

2). Violence against women shall be understood to encompass, but not limited to, the following:

- a) Physical, sexual and psychological violence occurring in the family, including battering, sexual abuse of female children in the household, dowry-related violence, marital rape, female genital mutilation and other traditional practices harmful to women, non-spousal violence and violence related to exploitation;***
- b) Physical, sexual and psychological violence occurring within the general community, including rape, sexual abuse, sexual harassment and intimidation at work, in educational institution and elsewhere, trafficking in women and forced prostitution;***
- c) Physical, sexual and psychological violence perpetrated or condoned by the state, wherever it occurs.***

No person should, deliberately, be made to suffer in a way that is beyond his/her physical or mental or emotional strength. Any action or words done or said to another which humiliates or reduces the self respect of that person in his/her own eyes and in the eyes of others is cruel and degrading. Torture can be physical, emotional, mental or spiritual. It affects the physical or mental health of the victim.

It is necessary to make all persons aware that torture is not confined to the Physical but includes all hurts deliberately inflicted to wound the victim mentally or emotionally.

It is recommended that violence against women be specifically prohibited by the Constitution.

2.9 Article 19, Fair Trial:-

- 1. An accused person is presumed to be innocent until his or her guilt is proved according to the law.**

2. Any person who is arrested shall be informed, at the time of the arrest, of the reason for his or her arrest and shall be promptly informed of any charges against him or her.
3. In all civil and criminal proceeding, every person shall be entitled to a fair and public hearing by a competent court of law in accordance with procedures prescribed by law.
4. A person arrested by police as part of investigation, may be held in detention, for a period not exceeding *24 hours* and if not released on bond to be produced in court. The court has authority to either remand the accused in prison or to release him or her on bail.
5. No person shall be charged with any act or omission which did not constitute an offence at the time of its commission.
6. Every accused shall be entitled to be tried in his or her presence in any criminal court without undue delay; the law shall regulate the trial in absentia.
7. Any accused person has the right to defend himself or herself in person or through a lawyer of his or her choice or to have legal aid assigned to him or her by government where he or she cannot afford to defend him or her in any serious offence.

Articles 9, 14 and 15 of the International Covenant on Civil and Political Rights (ICCPR) provide as hereunder:

1. Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law.

2. Anyone who is arrested shall be informed, at the time of arrest, of the reasons for his arrest and shall be promptly informed of any charges against him.

3. Anyone arrested or detained on a criminal charge shall be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release. It shall not be the general rule that persons awaiting trial shall be detained in custody, but release may be subject to guarantees to appear for trial, at any other stage of the judicial proceedings, and, should occasion arise, for execution of the judgment.

4. Anyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings before a court, in order that that court may decide without delay on the lawfulness of his detention and order his release if the detention is not lawful.

5. Anyone who has been the victim of unlawful arrest or detention shall have an enforceable right to compensation

Article 14 of ICCPR:

1. All persons shall be equal before the courts and tribunals. In the determination of any criminal charge against him, or of his rights and obligations in a suit at law, everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law. The press and the public may be excluded from all or part of a trial for reasons of morals, public order or national security in a democratic society, or when the interest of the private lives of the parties so requires, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice; but any judgment rendered in a criminal case or in a suit at law shall be made public except where the interest of juvenile persons otherwise requires or the proceedings concern matrimonial disputes or the guardianship of children.

2. Everyone charged with a criminal offence shall have the right to be presumed innocent until proved guilty according to law.

3. In the determination of any criminal charge against him or her, everyone shall be entitled to the following minimum guarantees, in full equality:

(a) To be informed promptly and in detail in a language which he understands of the nature and cause of the charge against him or her;

(b) To have adequate time and facilities for the preparation of his or her defense and to communicate with counsel of his own or her own choosing;

(c) To be tried without undue delay;

(d) To be tried in his/her presence, and to defend himself/herself in person or through legal assistance of his/her own choosing; to be informed, if he/she does not have legal assistance, of this right; and to have legal assistance assigned to him/her, in any case where the interests of justice so require, and without payment by him/her in any such case if he/she does not have sufficient means to pay for it;

(e) To examine, or have examined, the witnesses against him/her and to obtain the attendance and examination of witnesses on his/her behalf under the same conditions as witnesses against him/her;

(f) To have the free assistance of an interpreter if he/she cannot understand or speak the language used in court;

(g) Not to be compelled to testify against himself/herself or to confess guilt.

4. In the case of juvenile persons, the procedures will take account of their age and the desirability of promoting their rehabilitation.

5. Everyone convicted of a crime shall have the right to his/her conviction and sentence being reviewed by a higher tribunal according to law.

6. When a person has by a final decision been convicted of a criminal offence and when subsequently his/her conviction has been reversed or he/she has been pardoned on the ground that a new or newly discovered fact shows conclusively that there has been a miscarriage of justice, the person who has

suffered punishment as a result of such conviction shall be compensated according to law, unless it is proved that the non-disclosure of the unknown fact in time is wholly or partly attributable to him/her.

7. No one shall be liable to be tried or punished again for an offence for which he /she has already been finally convicted or acquitted in accordance with the law and penal procedure of each country.

Article 15

1. No one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence, under national or international law, at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time when the criminal offence was committed. If, subsequent to the commission of the offence, provision is made by law for the imposition of the lighter penalty, the offender shall benefit thereby.

2. Nothing in this article shall prejudice the trial and punishment of any person for any act or omission which, at the time when it was committed, was criminal according to the general principles of law recognized by the community of nations.

Every person convicted of an offence is entitled to appeal to a higher Court or tribunal if he or she is dissatisfied with the verdict.

No one should be forced to confess to a crime he/she has been charged with unless he/she wants to confess.

Due to cultural constraint some women may be afraid to pronounce some words loudly in public. Usually when a woman is raped the fear of public ridicule makes her not report the rape and this create a culture of impunity for rapists.

Most people, especially women, are usually intimidated by the court atmosphere. Where a woman is involved in a case where she is raped or sexually humiliated she could request the court to have the case heard in private.

The Judiciary and the Police need to be sensitized on women's sensitivities about reporting and prosecuting sexual offences.

2.10 Article 20, Right to Litigation:

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.

Article 8 of the UN Universal Declaration of Human Rights formed the basis of the above article. UDHR states:

Everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him/her by the constitution or -by law.

When a wrong has been done to a person, no matter by whom, the person should not be discouraged by anybody whomsoever, from taking the matter to court and having justice done to him or her. Sometimes people settle matters in private but if a person is not satisfied by the settlement in private, he/she can still go to a court of law to get the case settled to his/her satisfaction. If the person is still not satisfied he/she can take the matter on appeal to a higher court until the Supreme Court which is the highest and the last court in South Sudan.

In case of domestic violence relatives of the husband usually persuade the wife not to have the husband prosecuted for grievous assault on her or any other offence committed against her. Most women who have experienced domestic violence usually end up withdrawing such cases against husbands or male relatives. This trend should be discouraged as it encourages impunity for husbands.

Article 21, Restriction on Death Penalty

- 1) No death sentence shall be imposed, save as punishment for extremely serious offences in accordance with the law.**
- 2) No death penalty shall be imposed on a person under the age of eighteen or a person who has attained the age of seventy.**
- 3) No death penalty shall be executed upon a pregnant or lactating woman, after two years of lactation.**

*Article 6 (2) of **the International Covenant on Civil and Political Rights,(ICCPR)** states that in countries which have not abolished the death sentence, the penalty of death must be carried out after a final judgment passed by a competent court.*

*Paragraphs 2 and 3 of Article 21 cited above are based on Article 4 and 5 of the **ICCPR**.*

Human life is so precious that the law requires a person who is sentenced to death to exhaust all the opportunities for appeal up to the highest court. Even when a person's conviction has been confirmed by the highest Court in the land, he/she can appeal to the President to exercise his/her prerogative or privilege of mercy to pardon him or her.

2.11 Article 22, Privacy:

The privacy of all persons shall be inviolable; no person shall be subjected to interference with his/her private life, family, home or correspondence, save in accordance with the law.

*Articles 12 of UDHR, and 17 (1) of ICCPR, formed the basis for the above article. The latter adds that: **No one shall be subjected to unlawful attacks on his/her honor and reputation and that everyone has a right to protection of the law against such interference or attacks.***

The privacy of all persons is something which is regarded as sacred, or holy, the importance of which cannot be measured. Consequently, no person should have his or her private life interfered with. This privacy includes one's; home, family life, letters, and telephone conversations. The only exception is when the law allows it. Even then there are strict regulations regarding this interference and it should be strictly done for security reasons.

Even married couples should not open each other's letters or check their telephones for numbers and messages without the other spouse's permission.

In an African family there is a degree of an unacceptable interfere in the lives and family affairs of their relatives. This is not right according to the Constitution. Unless a person brings her or his problems to a family gathering the family has no right to interfere with the couple. Some families have broken up because of parental or relatives interference. Relatives also come into the home without the slightest notice. This is also disruptive of, and intrusion into, other people's family life.

How does this provision impact on the South Sudanese cultures?

Is it acceptable or not?

Does it only relate to the Government and the individual citizen and not to families and members of the clan?

2.12 Article 23, Religious Rights:

The following religious rights are guaranteed, (in summary)

- a) the right to worship or assemble in connection with any religion or belief and to establish and maintain places for these purposes;**
- b) the right to establish and maintain appropriate faith-based, charitable or humanitarian institutions;**
- c) the right to acquire, possess and own moveable property;**
- d) the right to write, issue and disseminate religious publications;**
- e) the right to teach religion or belief in suitable places;**
- f) the right to solicit and receive voluntary financial and other contributions;**
- g) the right to train, appoint, elect or designate by succession appropriate religious leaders;**
- h) the right to observe days of rest, holidays and ceremonies according to the precepts of religious belief;**
- i) the right to communicate with individuals and communities in matters of religion at national and international levels.**

Article 18 of the ICCPR provides as follows:

- 1. Everyone shall have the right to freedom of thought, conscience and religion. The right shall include freedom to have to adopt a religion or belief of his/her choice, and freedom, either individually or in community with others and in public or private, to manifest his/her religion or belief in worship, observance, practice and teaching.**
- 2. No one shall be subject to coercion which would impair his/her freedom to have or to adopt a religion or belief of his/her choice.**
- 3. Freedom to manifest one's religion or beliefs may be subject to such limitations as are prescribed by law and are necessary to protect public safety, order, health or morals or the fundamental rights and freedoms of others.**
- 4. States parties to this Covenant to undertake to respect the right and the freedom of parents and legal guardians to ensure the religious and moral education of their children in conformity with their own convictions.**

The rights in the ICCPR are more of individual right whereas the one in Article 23 seems to deal mainly with religious institutions.

It is recommended that the rights to practice Religion as provided in the International Covenant on Civil and Political Rights(ICCPR) be adopted in the permanent Constitution in addition to the rights contained in Article 23 of the Transitional Constitution of South Sudan.

Although at some public levels the freedom of conscience is observed, at the private level some spouses have to change their faith for that of the other spouse as a condition of marriage. Religious differences should not cause disharmony in the family.

2.13 Article 24, Freedom of Expression and Media:

- 1) Every citizen shall have the right to the freedom of expression, reception and dissemination of information, publication and access to the press without prejudice to public order, safety or morals as prescribed by law.**
- 2) All levels of government shall guarantee the freedom of the press and other media as shall be regulated by law in a democratic society.**
- 3) All media shall abide by professional ethics.**

Article 19 of the ICCPR formed the basis from which article 24 in the present constitution. ICCPR provides as follows:

- 1. Everyone shall have the right to hold opinions without interference.**

2. Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or print, in the form of art or through any other media of his/her choice.

3. The exercise of the rights provided in paragraph (2) carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary;

a) For respect of the rights or reputations of others;

b) For the protection of national security or public order or health or morals.

At the same time government must not suppress honest communication about matters that the citizens should be informed. A balance has to be maintained between what the people should know about the government and those whom they have entrusted with power and matters which may endanger national security.

It is recommended that the women of South Sudan recommend the more detailed version in the ICCPR to the National Constitutional Review Commission.

2.14: Article, 25: Freedom of Assembly and Association;

- 1) The right to peaceful assembly is recognized and guaranteed; every person shall have the right to freedom of association with others, including the right to form or join political parties, associations and trade or professional unions for the protection of his or her interests.**
- 2) Formation and registration of political parties, associations and trade unions shall be regulated by law as is necessary in a democratic society**
- 3) No association shall function as a political party at a National or state level unless it has :**
 - a) its membership open to any South Sudanese irrespective of religion, gender, ethnic origin or place origin;**
 - b) a programme that does not contradict the provisions of this constitution;**
 - c) a democratically elected leadership and institutions; and**
 - d) disclosed and transparent sources of funding.**

Article 20, of the Universal Declaration of Human Rights (UDHR), states as follows:-

Everyone has the right to freedom of assembly, and association.

No one shall be compelled to belong to an association.

Article 21, of International Covenant on Civil and Political Rights (ICCPR) provides as follows:

The right to peaceful assembly shall be recognized. No restrictions may be placed on the exercise of this right other than those imposed in conformity with the law and which are necessary in a

democratic society in the interests of national security or public safety, public order, the protection of public health or morals or the protection of the rights and freedoms of others.

Article 22 (1&2) of the above (ICCPR)

- 1) Everyone shall have the right to freedom of association with others, including the right to form and join trade unions for the protection of his/her interest.***
- 2) No restrictions may be placed on the exercise of this right other than those which are prescribed by law and which are necessary in a democratic society in the interest of the national security or public safety, public order, the protection of public health or morals or the protection of the rights and freedom of others. This article shall not prevent the imposition of lawful restrictions on members of the armed forces and of the police in the exercise of this right.***

In so far as women are concerned, they have a right to join political organizations of their choice. No one is supposed to tell them which political parties to join. Husbands and wives can join different political parties and live in harmony. However, the realities on the ground are very different as men often order their wives to vote for candidates of their choice.

The armed forces and the police must not be seen to be covertly supporting or belonging to any political parties as they must be free to serve the public impartially. They hold public offices where people who belong to different political persuasions have to be served professionally. The army should not be involved in politics because they are supposed to defend the country against external aggression not defend politicians against their opponents.

2.15 Article 26, the Right to Participation and Voting:

- 1) Every citizen shall have the right to take part in any level of government directly or through freely chosen representative, and shall have the right to nominate him or herself for a public post or office in accordance with this constitution and the law.***
- 2) Every citizen shall have the right to vote or be elected in accordance with this constitution and the law.***

Article 21 (1&2) of the Universal Declaration of Human Rights echoes the above provisions but adds in sub- paragraphs (3) as follows:-

- 3) The will of the people shall be the basis of the authority of government; this will be expressed in periodic and genuine elections which shall be by universal equal suffrage and shall be held by secret vote or by equivalent free voting procedures.***

Article 9 of the Maputo Protocol on the Rights of Women in Africa states as follows:

1. ***State Parties shall take specific positive action to promote participative governance and equal participation of women in the political life of their countries through affirmative action, enabling national legislation and other measures that ensure that:***

- a) ***Women participate without any discrimination in all elections;***
- b) ***Women are represented equally at all levels with men in all electoral processes; and***
- c) ***Women are equal partners with men at all levels of development and implementation of State policies and development programmes.***

The Transitional Constitution of South Sudan has provided for affirmative action in having 25% in Parliament but more needs to be done to encourage women to contest with men in the ordinary constituencies. The percentage should be increased to 30% or more as affirmative action. 25% is a bit on the lower side to begin with. The Maputo Protocol states that there should be equal representation at all levels.

It is recommended that, in the next Constitution, there should be an appreciable increase in the percentage for affirmative action from 25% -35% or more.

It is recommended that women's organizations sensitize fellow women on the necessity of them supporting their fellow women. More women need to offer themselves as candidates in the ordinary constituencies so as to get people used to appreciate the seriousness with which women take their responsibilities as equal citizens in the Republic of South Sudan.

Though it is said that there might be more women than men in the population, women have not so far used their numbers to vote for fellow women.

Article 27, Freedom of Movement and Residence:

- 1) **Every citizen shall have the right to freedom of movement and the liberty to choose his/her residence except for reasons of public health and safety as shall be regulated by law.**
- 2) **Every citizen shall have the right to leave and or return to South Sudan.**

Article 12,(1&2) of the International Covenant on Civil and Political Rights is similar to the above provisions of the South Sudan Transitional Constitution. However, the ICCPR adds two more provisions, (3&4) as follows:

- 3) ***the above mentioned rights shall not be subject to any restrictions except those which are provided by law, are necessary to protect national security, public order, health or morals or the rights and freedoms of others, and are consistent with other rights and freedoms of others, and are consistent with the other rights recognized in the present Covenant.***
- 4) ***No one shall be arbitrarily deprived of the right to enter his own country.***

Article 13, of the Universal Declaration of Human Rights on the freedom of movement and residence also contains the principles already stated in the Transitional Constitution of South Sudan.

This freedom of movement may be enjoyed by some women dependent on the domestic arrangement with the husbands. Generally speaking women's movement may be restricted by their husbands according to their customs. Women usually don't choose places of residence. Unattached females may enjoy freedom of movements more than their attached sisters.

This right, whereas it is not a problem for women legally, is not actually enjoyed by women socially. It is a right which, at a personal level will depend on the acceptability of the fact that women are equal to men in all respect. It will take time for this right to be enjoyed to a full extent by women. Its value is that it is in the Constitution and can be claimed and enforced when necessary.

2.16 Article 28, the right to Own Property:

- 1) Every person shall have the right to acquire or own property as regulated by law.**
- 2) No private property may be expropriated save by law in the public interest and in consideration for prompt and fair compensation. No private property shall be confiscated save by an order of a court of law.**

The right to own property, though applicable to all people, is to a great extent not enjoyed by a majority of women in South Sudan or indeed anywhere in the world. Most of women enjoy property vicariously through men as fathers, brothers, husbands and sons. Women are regarded as property because of payment by the men of dowry. Women lack the resources to acquire immovable property such as land.

Widows are often deprived of their property on the death of their husbands unless they have grown up sons who can defend them. The culture of women ending up without any property on being divorced does not help women to own and retain property.

In most of the communities in South Sudan, women do not inherit property from their fathers or husbands. Women also do not have sufficient funds to purchase property like land, or any other valuable property. Women in South Sudan generally do not have access to credit from the Banks because they lack viable securities demanded by the Banks.

It is recommended that the customary laws which exclude women from inheriting land and other properties from their fathers and spouses be prohibited if the concept of equality between the sexes is to be realized.

This will take time but the discussions should begin now.

2.17 Article 29, the Right to Education:

- 1) Education is a right for every citizen and all levels of government shall provide access to education without discrimination as to religion, race, and ethnicity, health status including HIV/AIDS, gender or disability.**

- 2) All levels of government shall promote education at all levels and shall ensure free and compulsory education at primary level; they shall also provide free illiteracy eradication programmes.

Article 26, of the Universal Declaration of Human Rights states as follows:

- 1) *Everyone has the right to education. Education shall be free, at least in the elementary and fundamental stages. Elementary education shall be compulsory. Technical and professional education shall be made generally available and higher education shall be equally accessible to all on the basis of merit.*
- 2) *Education shall be directed to the full development of the human personality and to the strengthening of respect for human rights and fundamental freedoms. It shall promote understanding, tolerance, and friendship among all nations, racial or religious groups, and shall further the activities of the United Nations for the maintenance of peace.*
- 3) *Parents have a prior right to choose the kind of education that shall be given to their children.*

Article 28 of The Convention on the Rights of the Child states the following, with regard to the right to education:

- 1) *States Parties recognize the right of the child to education and with a view to achieving this progressively and on the basis of equal opportunity, they shall, in particular:*
 - a) *Make the primary education compulsory and available free to all;*
 - b) *Encourage the development of different forms of secondary education, including general and vocational education, make them all available and accessible to every child and take appropriate measures such as the introduction of free education and offering financial assistance in case of needs.*
 - c) *Make higher education accessible to all on the basis of capacity by every appropriate means;*
 - d) *Make educational and vocational information and guidance available and accessible to all children;*
 - e) *Take measures to encourage regular attendance at schools and the reduction of drop-out rates.*
- 2) *States Parties shall take all appropriate measures to ensure that school discipline is administered in a manner consistent with the child's human dignity and in conformity with the present Covenant.*

- 3) States Parties shall promote and encourage international co-operation in matters relating to education , in particular with a view to contributing to the elimination of ignorance and illiteracy throughout the world and facilitating access to scientific and technical knowledge and modern teaching methods. In this regard, particular account shall be taken of the needs of developing countries.**

Article 29 of the above Convention further states the education of the child shall be directed to:

- a) The development of the child's personality, talents and mental and physical abilities to their fullest potential;**
- b) The development of respect for human rights and fundamental freedoms, and the principles enshrined in the Charter of the United Nations,;**
- c) The development of respect for the child's parents, his/her own cultural identity, language and values, for the national values of the country in which the child is living; the country from which he/she may originate, and for civilizations different from his or her own;**
- d) The preparation of a child for responsible life in a free society, in the spirit of understanding, peace, tolerance, equality of the sexes, and friendship among all peoples, ethnic, national and religious groups and persons of indigenous origin;**
- e) The development of respect for the natural environment.**

Article 12 of the Maputo Protocol on the Rights of Women in Africa, with regard to the Right to Education and Training, states as follows:

1) The States shall take measures to;

- a) eliminate all forms of discrimination against women and guarantee equal opportunity and access in all sphere of education and training;**

b) Eliminate all stereotypes in books, syllabuses and the media that perpetuate such discrimination;

- protect women, especially the girl-child from all forms of abuse, including sexual harassment in schools and other educational institutions and provide for sanctions against the perpetrators of such practices;**
- Provide access to counseling and rehabilitation services to women who suffer abuses and sexual harassment;**

- ***Integrate gender sensitization and human right education at all levels of education curricula including teacher training.***

2) States shall take specific positive action to:

- a) promote literacy among women;***
- b) promote education and training for women at all levels and in all disciplines, particularly in the fields of science and technology.***
- c) promote the enrollment and retention of girls in schools and other training institutions and the organizations of programmes for women who leave schools prematurely.***

It is recommended that some of the provisions which have been given above should be included in the provision on children's rights and the rights of women as well as in the under the provision on educations as appropriate.

The rights to education and particularly for the girl-child is crucial in South Sudan where the percentage of illiteracy is stated to be above 80%

It is recommended that the parents lobby government to have, as an affirmative action making the education of the girl-child to be free at secondary level. This will also contribute to girls getting married at an older age not below 18 years.

There should be a policy for child mothers to go back to school after giving birth and no stigma should be attached to this.

2.18 Article 30: Rights of Persons with Special Needs and the Elderly:

- 1. All levels of government shall guarantee to persons with 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.**
- 2. The elderly and persons with special needs shall have the right to respect of their dignity. They shall be provided with the necessary care and medical services as shall be regulated by law.**

This article provides for persons with special needs. This term is vague and should be clearly stated as a provision for persons living with disabilities whether physical or mental. Paragraph (1) should be expanded to take into account the range of needs of persons with disabilities.

*With regard to Women with disabilities **Article 23 of the Maputo Protocol** makes it incumbent on Member States to:*

- *ensure the protection of women with disabilities and take specific measures commensurate with their physical, economical and social needs to facilitate their access to employment, professional and vocational training as well as their participation in decision making;*
- *ensure the right of women with disabilities to freedom from violence, including sexual abuse, discrimination based on disability and the right to be treated with dignity.*

The Convention on the Rights of Persons with Disabilities, states as follows in Article 1:-

Persons with disabilities include those who have long- term physical, mental, intellectual or sensory impairments which in interaction with various barriers may hinder their full and effective participation in society on an equal basis with others.

Article 6 of the above Convention states:

State Parties recognize that women and girls with disabilities are subject to multiple discrimination, and in this regard shall take measures to ensure the full and equal enjoyment by them of all human rights and fundamental freedoms.

Article 7 of the same Convention makes the same provisions as above for children with disabilities and adds that in all actions concerning them, the best interest of the child shall be of primary consideration.

States are to adopt with immediate effect appropriate measures to:-

- a) raise awareness throughout society, including at the family level, regarding persons with disabilities, and to foster respect for the rights and dignity of persons with disabilities;*
- b) combat stereotypes, prejudices and harmful practices relating to persons with disabilities, including those on sex and age, in all areas of life;*
- c) promote awareness of the capabilities and contributions of persons with disabilities.*

Article 9- Accessibility:

State Parties shall take appropriate measures to ensure that persons with disabilities are able to live independently and participate fully in all aspects of life on an equal basis with others, to the physical environment, to transportation, to information and communications technologies and systems and to other facilities and services open or provided to the public in urban and rural areas.

States will have to develop policies eliminating obstacles to buildings, roads, transportations and other services including schools, housing, medical facilities and workplaces to enable persons with disabilities to live a fully functional life.

The International Convention on the Protection and Promotion of the Rights and Dignity of Persons with Disabilities Article 18 (2& 2) state as follows:

- 1. State Parties shall recognize the rights of persons with disabilities to liberty of movement, freedom to choose their residence and to a nationality, on an equal basis with others, including ensuring that persons with disabilities:***

a) have the right to acquire and change a nationality and are not deprived of their nationality arbitrary or on the basis of disability;

b) are not deprived, on the basis of disability, of their ability to obtain, possess and utilize documentation of their nationality or other documentation of identification, or to utilize relevant processes such as immigration proceedings, that may be needed to facilitate exercise of the right to liberty of movement;

c) are free to leave any country, including their own; and

d) are not deprived, arbitrary or on the basis of disability, of the right to enter their own country.

- 2. Children with disability shall be registered immediately after birth and shall have the right from birth to a name, the right to acquire a nationality and, as far as possible, the right to know and be cared for by their parents.***

Article 22 of the Maputo Protocol on the Rights of women in Africa provides for Special Protection of Elderly Women as follows:

State Parties undertake to:

- provide protection to elderly women and take special measures commensurate with their physical, economic and social needs as well as their access to employment and professional training;***
- ensure the rights of elderly women to freedom from violence, including sexual abuse, discrimination based on age and the right to be treated with dignity.***

The Maputo Protocol also provides for the special protection of women in distress.

It is recommended that there be Legislation concerning persons with disabilities and the elderly giving more details on their rights and providing for them in a special way. The creation of awareness about the rights of people with disabilities and the elderly, who are, in most cases dependent on others, is of paramount importance in the society

2.19 Article 31 Public Health Care:

All levels of government shall promote public health, establish, rehabilitate and develop basic medical and diagnostic institution and provide free health care and emergency services for all citizens.

This provision will benefit women when the health services are taken nearer to them. Sometimes pregnant women have to walk great distances to access pre-natal services. Consequently the majority of women do not use these facilities because of the distances they have to walk and the money required if they have to travel by vehicles. This contributes to high maternal mortality rate.

It is recommended that women lobby for mobile clinics to be able to access health services.

Article 14 of the Maputo Protocol provides with regard to women's health and Reproductive Rights as follows:

1. State Parties shall ensure that the health of women, including sexual and reproductive health is respected and promoted. This includes:

- ***the right to control their fertility;***
- ***the right to decide whether to have children, the number of children and the spacing of children;***
- ***the right to choose any method of contraception;***
- ***the right to self protection and to be protected against sexually transmitted infections, including HIV/AIDS.***
- ***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;***

2. States shall take all appropriate measures to:

a) provide adequate, affordable and accessible health services, including information, services for women especially those in rural areas;

b) establish and strengthen existing pre-natal health and nutritional services for women during pregnancy and while they are breast feeding;

c) protect the reproductive rights of women by authorizing 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.

The Maputo Protocol provisions should be included in the next constitution, with necessary modifications without, however, diluting the essence of the provisions.

2.20 Article 32, The Right of Access to Information.

Every citizen has the right of access to official information and records, including electronic records in possession of any level of government or any organ or agency thereof, except where the release of such information is likely to prejudice public security or the right to privacy of any other person.

Article 19(2&3) of the International Covenant on Civil and Political Rights (ICCPR) states:

- 2. Every one shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or print, in the form of art, or through any other media of his choice***
- 3. The exercise of the rights provided for in paragraph 2 if this article carries with it special duties and responsibilities. It may therefore be subjected to certain restrictions, but these shall only be such as are provided by law and are necessary:***

a) for respect of the rights or reputations of others;

b) for the protection of national security or public order or of public health or morals.

It is recommended that Article 19, (2 & 3) be adopted in addition to Article 32 of the Transitional Constitution of South Sudan in the permanent Constitution.

2.21. Article 33, Rights of Ethnic and Cultural Communities:

Ethnic and cultural communities shall have the right to freely enjoy and develop their particular cultures. Members of such communities shall have the right to practice their beliefs, use their languages, observe their religions and raise their children within the context of their respective cultures and customs in accordance with this Constitution and the law.

Article 17 of the Maputo Protocol provides as follows:

- 1. Women shall have the right to live in a positive cultural context and to participate at all levels in the determination of cultural policies.***
- 2. State Parties shall take all appropriate measures to enhance the participation of women in the formulation of cultural policies at all levels.***

It is recommended that all cultural leaders be sensitized on the provisions of the Constitution and the principles of equality of men and women therein contained.

It is in cultural practices that women and children's rights are compromised. Traditional chiefs/ leaders have enormous influence within their communities and the rights of women within their communities can be safeguarded when they are brought on board.

2.22 Article 34: The Right to Housing states as follows:

- 1) Every citizen has the right to have access to decent housing;
- 2) The State shall formulate policies and take reasonable measures , within its available resources to achieve the progressive realization of these rights;
- 3) No one shall be evicted from his or her lawfully acquired home or have his or her homes demolished save in accordance with the law.

The right to shelter or a home is a fundamental right. A person must have a place to live and to call home.

Article 16 of the Maputo Protocol on the right of Adequate Housing states:

Women shall have the right to equal access to housing and to acceptable living conditions in a healthy environment. To ensure this right, State Parties shall grant to women, whatever their marital status, access to adequate housing.

How can a woman, whose husband leaves her for another woman, be protected when he comes back to evict her from the matrimonial home where she had lived all her married life?

3.0 PART THREE: FUNDAMENTAL OBJECTIVES AND GUIDING PRINCIPLES ARTICLES

An article 35-44 of part three of the Transitional Constitution contains provisions on, “**Fundamental Objectives and Guiding Principles**”. In many Constitutions, these principles are usually at the beginning of the Constitution since they guide the interpretation of the entire Constitution including the Bill of Rights. These provisions include:

1. Article 35, Guiding Objectives and Principles.
2. Article 36, Political Objectives.
3. Article 37, Economic Objectives.
4. Article 38, Education, Science, Art and Culture.
5. Article 39, Family.
6. Article 40, Children, Youth and Sports.

7. Article 41, Environment
8. Article 42 Defence of the Republic of South Sudan.
9. Article 43, Foreign Policy.
10. Article 44, Saving.

Article 44 is a disclaimer on Articles 35-43 to this effect:

Article 44 provides as follows:

Unless this Constitution otherwise provides or a duly enacted law guarantees, the rights and liberties described and the provisions contained in this Chapter are not by themselves enforceable in a court of law; however, the principles expressed herein are basic and the State shall be guided by them, especially in making policies and laws.

*In other words it provides that the government cannot be held accountable for not fulfilling the contents of these articles. Articles, 35 (2), 36(2), 37(1) and 2), 39, 41 are set out below. **In the next constitution all the Articles, in Part three, should be housed within the Bill of Rights.***

Article 35 (2) states that this Constitution should be interpreted and applied to:

advance the *individual* dignity and particular needs of the people through:-

- a) dedicating public resources and focusing attention on providing employment;
- b) improving the lives of the people by building roads, schools, airports, community institutions hospitals, clean water, food security, electric power and telecommunication in all parts of the country.

3.1 Political Objectives

Article 36 (2) that all levels of government shall:

- a) promote peace and security and stable political environment for development;
- b) initiate a comprehensive process of national reconciliation and healing among the people;
- c) promote a culture of peace among the people; and
- d) mobilize energies and resources for reconstruction and development.

3. The security and welfare of the people of South Sudan will be the primary duty of all levels of government.

4. The composition of government will take into account ethnic, regional and social diversity to promote national unity and command loyalty.

This provision did not mention gender as a factor to be taken into consideration in the composition of government.

5. All public offices will be held in trust for the people and all persons in position of leadership and responsibility will be answerable to the people in their work.

3.2 Article 37(1) and (2) Economic Objectives:-

1. The economic developments shall be:

- a) eradication of poverty;**
- b) attainment of the Millennium Development Goals;**
- c) guaranteeing the equitable distribution of wealth;**
- d) redressing imbalances of income; and**
- e) achieving decent standard of life for the people of South Sudan.**

*Eradication of poverty, guaranteeing **equitable** distribution of income, redressing imbalances of income and a achieving decent standard of life for the people of Sudan are imperatives which Government should prioritize on. They should not be left as guiding principles which leaves their fulfillment to Government discretion.*

Every Government should be committed to the attainment of the Millennium Development Goals as their attainment would greatly contribute to development for all the people of South Sudan. The Millennium Development goals are;

- 1. Eradicate extreme poverty and hunger.**
- 2. Achieve universal primary education.**
- 3. Promote gender equality and empowerment of women.**
- 4. Reduce child mortality.**
- 5. Improve maternal health**
- 6. Combat HIV/AIDS, malaria, and other diseases.**
- 7. Ensure environmental sustainability.**
- 8. Develop a global partnership for development.**

All the above would be for the benefit of women if the government was to commit to ensuring that they are achieved.

Article 37(2)

- a) develop and regulate the economy in order to achieve prosperity and create a self reliant economy and encourage free market and prohibition of monopoly;
- b) protect and ensure sustainable management and utilization of natural resources...;
- c) facilitate the development of indigenous entrepreneurs to establish a viable private sector;
- d) encourage private initiative and self reliance...;
- e) promote agriculture, industrial and technological development by adoption of appropriate policies and legislation for attracting foreign and local investments..; and
- f) take necessary measures to bring about balanced, integrated and equitable development of different areas and expedite rural development....

3.3 The family:

Article 39 states:

1. The family is the natural and fundamental unit of society and shall be protected by law.
2. All levels of government shall promote the welfare of the family and enact the necessary laws for its protection.
3. It is the right and duty of parents to care for and bring up their children.
4. Children shall not be separated from their parents or persons legally entitled to care for them against the will of such parents or persons, except in accordance with the law.

It is strongly suggested that this Article be placed in the Chapter on: the Bill of Rights in the next constitution.

Article 23 of the International Covenant on Civil and Political Rights states as follows:

1. *The family is the natural and fundamental group unit of society and is entitled to protection by society and the state;*
2. *The right of men and women of marriageable age to marry and to found a family shall be recognized.*
3. *No marriage shall be entered into without the free and full consent of the intending spouses.*
4. *State Parties to the present Covenant shall take appropriate steps to ensure equality of rights and responsibilities of spouses as to marriage, during marriage and at its dissolution. In the case of dissolution, provisions shall be made for the necessary protection of any children.*

Article 10 of the International Covenant on Economic, Social and Cultural Rights (ICESCR) states as follows, with regard to the FAMILY:

States to the present Covenant recognize that:

- 1. The widest possible protection and assistance should be accorded to the family, which is the natural and fundamental group unit of society, particularly for its establishment and while it is responsible for the care and education of dependent children. Marriage must be entered into with the free consent of the intending spouses.***
- 2. Special protection should be accorded to mothers during a reasonable period before and after childbirth, during such period working mothers should be accorded paid leave or leave with adequate social security benefit.***

The family is of such vital importance to society that this provision is recommended for transfer to the Bill of Rights in the next Constitution. Protection of the Family and rights of family members cannot be taken as a matter of discretion on the part of government as it is central to the human condition.

3.4 Article 41, The environment.

Article 41 states the following:-

- (1) Every person or community shall have the right to a clean and healthy environment.**
- (2) Every person shall have the obligation to protect the environment for the benefit of present and future generations.**
- (3) Every person shall have the right to have the environment protected for the benefit of present and future generations, through appropriate legislative action and other measures that:-**
 - a) prevent pollution and ecological degradation;**
 - b) promote conservation; and**
 - c) secure ecological sustainable development and use of natural resources while promoting rational economic and social development so as to protect genetic stability and bio-diversity.**

Article 18, of the Maputo Protocol on the Right to a Healthy and Sustainable Environment states as follows:

- 1. Women shall have a right to live in a healthy and sustainable environment.***
- 2. States Parties shall take all appropriate measures to:***

a) ensure greater participation of women in the planning, management and preservation of the environment and sustainable use of natural resources at all levels;

- Promote research and investment in new and renewable energy sources and appropriate technologies, including information technologies and facilitate women's access to, and participation in their control;***
- Protect and enable the development of women's indigenous knowledge systems;***

3. regulate the management, processing, and disposal of domestic waste;

- Ensure that proper standards are followed for the storage, transportation and disposal of toxic waste.***

Environmental protection should be an imperative as it affects the very life of the people. It should be the duty of Government to protect and preserve the environment. The condition of the environment affects the life of all living things and is therefore a Human Rights issue.

It is recommended that this Article be housed in the Chapter on the Bill of Rights.

3.5 Article 45, Citizenship and Nationality:

- 1) Every person born to a South Sudanese mother or father shall have an inalienable right to enjoy South Sudanese citizenship and nationality.**
- 2) Citizenship is the basis of equal rights and duties for all South Sudanese.**
- 3) Every citizen shall enjoy the rights guaranteed by this Constitution.**
- 4) The law shall regulate citizenship and naturalization; no naturalized citizen shall be deprived of his or her acquired citizenship except in accordance with the law.**
- 5) A South Sudanese national may acquire the nationality of another country as shall be prescribed by law.**
- 6) A non-South Sudanese may acquire the nationality of South Sudan by naturalization as shall be prescribed by law.**

A woman who is Sudanese citizen can pass on her citizenship to her child and if she is married to a man who is not a citizen of South Sudan, he can apply to become a citizen by naturalization.

This also applies to a non-Sudanese woman who marries a Sudanese man. A Sudanese National may also acquire the nationality of another country in addition to that of South Sudan. He/she will be allowed to keep both nationalities.

Article 6 (g) & (h) of the Maputo Protocol states:

A woman shall have the right to retain her nationality or acquire the nationality of her husband.

A woman and man shall have equal rights with respect to the nationality of their children except where this is contrary to a provision in national legislation or is contrary to national security.

Article 9 (1 & 2) of the Convention on the Elimination of All Forms of Discrimination against Women state:

- 1. State Parties shall grant women equal rights with men to acquire, change or retain their nationality. They shall ensure in particular that neither marriage to an alien nor change of nationality by the husband during marriage shall automatically change the nationality of the wife, render her stateless or force upon her the nationality of her husband.***
- 2. State Parties shall grant women equal rights with men with respect to the nationality of their children.***

Article 18 of the International Convention on the Protection and Promotion of the Rights and Dignity of Persons with Disabilities. (ICPPRDPD) states that persons with disability shall have the same rights as other people to acquire, or change their nationality; that they have the same rights of freedom of movement as others. The same rights apply to children with disabilities.

3.6 Composition of Legislative Assembly

Article 56, (2) (c) of the Transitional Constitution of Republic of South Sudan states:

2) Notwithstanding the provision of Article 1, during the transitional period the National Assembly shall consist of:

c) Such additional number of members appointed by the President not exceeding sixty-six.

It is recommended that the sixty six additional members will have at least 25% women.

Women should also pose the question of whether these sixty six members are only from the President's Political Party or they are across party lines

3.7 Composition of Council State

Article 58 (2) (b) of the Constitution states:

Notwithstanding the provisions of Article 1, during the transitional period, the Council of States shall consist of:

b) thirty (30) members appointed by the President.

Twenty five percent of the thirty members of the Council of States to be appointed by the President should be women.

Women in the legislature must vie for positions of chairpersons of Committees in the Legislature.

3.8 Establishment and Composition of the Council of Ministers

Article 108(3), provides that the President shall ensure that at least twenty five percent of the members of the Council of Ministers are women.

3.9 Judicial Power

Article 122 (6) states:-

“There shall be a substantial representation of women in the Judiciary having regard to competence, integrity, credibility and impartiality.”

Does “substantial representation” mean more or less of the minimum 25%? This is vague and can be subject to the whims of the appointing Authority to deem that the words do not amount to 25% or that they exceed 25%. If it is interpreted to mean less than 25% does it mean that there are no qualified women lawyers with the qualities enumerated above?

Article 125 states:-

“The Supreme Court shall be the highest court and shall consist of the Chief Justice, a Deputy Chief Justice and not less than nine other Judges”

It needs to be stated clearly the minimum number of women who will be in the Supreme Court. The same should apply to other courts.

*The Law Review Commission established under **Article 137** must also have 25% of women.*

3.10 The Civil Service

Article 138 establishes the Civil Service.

Article 139 (1) (d) states that the Civil Service by, among others, the following values and principles:

d) Services shall be provided to all persons impartially, fairly, equitably, and without basis or discrimination on the basis of religion, ethnicity, region, gender, health status or physical disability.

This article is very good but it should have included age as a basis for non discrimination. Sometimes the very old are denied services because of their age.

139(i) provides:-

Civil Service shall be broadly representative of the people of South Sudan, with employment and personnel management practices based on ability, objectivity, fair competition for jobs and the need to redress any imbalances of the past to achieve broad representation through affirmative action

The affirmative action referred to here should have included women and others. Put this way it eclipses the women and subordinates their rights to the affirmative action mentioned.

Article 11 (2) of CEDAW states:

In order to prevent discrimination against women on the grounds of marriage or maternity and ensure their effective right to work, State Parties shall take appropriate measures:

- a) To prohibit, subject to the imposition of sanctions, dismissal on the ground of pregnancy or of maternity leave and discrimination in the dismissal on the basis of marital status;***
- b) To introduce maternity leave with pay or with comparable social benefits without loss of former employment, seniority or social allowances;***
- c) To encourage the provision of the necessary supporting social services to parents to combine family obligations with work responsibility and participation in public life, in particular through promoting the establishment and development of a network of child-care facilities;***
- d) To provide special protection to women during pregnancy in types of work proved to be harmful to them.***

If the provisions of Article 139 are combined with the CEDAW provisions above the women will employed in the Civil Service will benefit and South Sudan will consequently benefit as a country.

*The Civil Service Commission established under **Article 140** should have at least 25% women.*

*The employees of the Justice Chamber should also at least have 25% women, **Article 141***

3.11 Independent Commissions

Article 142, establishes the **Independent Commissions** and paragraph (3) provides that the National Government will ensure that each of these institutions and commissions will have, at least, twenty five percent, (25%) women.

The Independent Commissions are-

- *Anti Corruption Commission;*
- *Human Rights Commission;*
- *Public Grievances Chambers;*

- *Relief and Rehabilitation Commission;*
- *Demobilization, Disarmament and Re-Integration Commission; and*
- *HIV/AIDS Commission.*

3.12 The National Armed Forces Command Council.

Article 154(2). This Article provides for the establishment of **the National Armed Forces Command Council.**

The functions of the Council will be prescribed by a law which has not yet been passed by the National Legislative Assembly.

When the law is eventually passed concerning the National Armed Forces Council, it is recommended that women will be included as members of the National Armed Forces Council.

Women should also be recruited into the armed forces in greater number than is currently the case. The principle of the minimum of 25% should be applied to the armed forces. Regulations regarding female soldiers, police women and women prison officers should take into consideration their unique responsibilities in child bearing.

There should be facilities for female soldiers nurse and care for their children. In this respect the following provisions of CEDAW should apply in the case of the Army, Police and Prisons:

Article 11 (1) of CEDAW states as follows:

State Parties shall take all appropriate measures to eliminate discrimination against women in the field of employment in order to ensure, on the basis of equality of men and women, the same rights, in particular:

- a) The right to work as an inalienable right of all human beings;**
- b) The right to the same employment opportunities, including the application of the same criteria for selection in matters of employment.**
- c) The right to free choice of profession and employment, the right to promotion, job security and all benefits and conditions of service and the right to receive vocational training and retraining, including apprenticeships, advanced vocational and recurrent training.**
- d) The right to equal remuneration, including benefits, and equal treatment in all respect of work of equal value, as well as equality of treatment in evaluation of the quality of work.**

- e) *The right to social security, particularly in cases or retirement, unemployment, sickness, invalidity and old age and incapacity to work, as well as the right to paid leave;*
- f) *The right to protection of health and to safety in working conditions, including the safeguarding of the function of reproduction.*

3.13 National Security Council and Committees

Article 161 on the National Security Council and Committees provides as follows:

- 1) There shall be established at the national level a National Security Council, the composition and functions of which shall be determined by law.
- 2) The National Security Council shall define the national security strategy based on the analysis of all threats to security of South Sudan.
- 3) There shall be established at the state and county levels security committees, their composition and functions of which shall be prescribed by law.

At least twenty five percent (25%) of women should be members of these Councils and Committees as provided by this Constitution.

3.14 State Organs

Article 163, (7)

This Article and paragraph provides:

“In fulfillment of the principle of affirmative action, women shall be allocated at least twenty five percent of the seats and positions in each legislative and executive organ of each state, without prejudice to their right to compete for the remaining seats and positions in such organs.”

This provision is very good and women as much as possible should take opportunities to contest the remaining seats and positions to boost their numbers. There is need to convince women voters to vote for capable women in the general elections.

3.15 Local Government

Article 166, (6) (h): Local Government state, among other things, as follows:

The objects of local government shall be to ensure gender mainstreaming in local government.

This Article describes the objects of local government. Paragraph (h) states that one of the objectives of local government **“shall be to ensure gender mainstreaming.”** This means including the issues of gender in all that local government does. Gender should be part and parcel of all the local government activities.

3.16 Functions and duties of councils for traditional authority leaders

Article 168 (2) states:-

“Legislation at the National and state levels shall provide for the establishment, composition, functions and duties of councils for traditional Authority leaders.”

The office of a traditional leader in an Africa society is always, except in rare cases, occupied by a male. The South Sudanese women could lobby to be included in the councils for traditional leaders and for women to be made traditional leaders. If the position is hereditary, a daughter could be installed as chief/ traditional leader. If the position is elective women could also offer themselves to be elected.

3.17 National Wealth

Article 169(6) states:

National wealth and other resources shall be allocated in a manner that will enable each level of government to discharge its legal and constitutional responsibilities and duties and ensure that the quality of life and dignity of all the people are promoted without discrimination on grounds of gender, religion, political affiliation, ethnicity, language or locality.

Although this is a good provision, as far as what it states is concerned, government cannot be held accountable for not fulfilling it as it is discretionary and included only as a guiding principle.

It is recommended that this be one of the provisions which should be transferred to the Bill of Rights so that it becomes a commitment for which the government can be held politically and legally accountable. A fair and equitable allocation of wealth and other resources are human rights and justice issues.

The government should work out a transparent method of having the national wealth declared and accounted for. The methodology of ensuring gender conscious budgeting and how women have benefitted from the budget allocations should be worked out and resultant benefits published. Women and government should then dialogue on how the wealth and other resources should be used more effectively for the benefit of women and men.

The rights of women to customary and communal land should be spelt out and it should be consistent with women’s rights guaranteed in the Constitution.

A widow’s rights to continue to live and till the land belonging to her departed spouse should be guaranteed by the constitution and laws to be passed.

The issue of land has been put in the constitution as a guiding principle. This is not recommended. Ownership of land is a vital issue which has many ramifications. It should be dealt with extensively in the permanent constitution and land law.

Women's poverty stems mainly from the fact that they neither own land nor own the produce which accrues from it. Women should be able to inherit land from their fathers and husbands.

3.18 Petroleum and Gas Development and Management

Article 173, Petroleum and Gas Development and Management should be a substantive constitutional provision not a Guiding principle. It states:

- 1. Ownership of petroleum and gas shall be vested in the people of South Sudan and shall be developed and managed by the National Government on behalf of and for the benefit of the people.**
- 2. Petroleum and gas development and management shall be guided by the following principles:**
 - a) Safeguarding National interests;**
 - b) Creating lasting benefits for society;**
 - c) Promoting efficient and sustainable resource management;**
 - d) Using oil revenues to develop other sectors of the economy, especially agriculture;**
 - e) Ensuring transparency and accountability;**
 - f) Promoting fair competition to increase productivity and efficiency in the petroleum and gas sector;**
 - g) Promoting balanced and equitable development;**
 - h) Creating a secure and healthy investment environment;**
 - i) Protecting the environment and bio-diversity;**
 - j) Building capacity of South Sudanese within the petroleum and gas sector;**
 - k) Establishing oil infrastructure within South Sudan, such as pipelines, refineries, storage, processing and transport facilities;**
 - l) ... (Not relevant for this purpose)....**
 - m) Safeguarding interests of the future generations;**
 - n) Ensuring accountability for violations of human rights and degradation to the environment caused by petroleum and gas-related operations; and**
 - o) Ensuring restoration of land and resources affected by development and management.**

All these are very noble objectives but they are just guiding principles only.

Article 174 states that Petroleum and Gas Council shall be established.

When established, the council, like any other institution, should have at least 25% of women as members.

Article 175 establishes the Ministry in charge of Petroleum and Gas.

Among the functions of the Ministry shall be, in paragraph (e):

To develop the necessary technical cadres for the petroleum and gas sector;

It is recommended that when developing the necessary technical cadres for petroleum and gas sector at least 25% of the Cadres will be women.

Article 176, National Petroleum and Gas Corporation:

There shall be established a national petroleum and gas corporation which shall participate in the upstream, midstream and downstream activities of the petroleum and gas sector on behalf of government. Its structure, management, and functions shall be determined by law.

When the law creating the structure, management, and function of this Corporation is legislated, the minimum 25% for women is recommended to be specifically provided for in the law at all levels of its structures.

3.19 Fiscal and Financial Institutions

Article 181, Fiscal and Financial Allocation and Monitoring Commission provides:

- 1. All revenue collected for or by the National Government shall be pooled in National Revenue Fund administered by the Ministry of Finance.**

This is a very important Commission which should have at least 25% of women to ensure transparency and fairness in allocation of funds collected at the level of National Government to the states and local governments.

3.20 Banking Institutions

Article 182 establishes the Bank of South Sudan.

Paragraph 9 of the above Article states:

There shall be established a Board of Directors for the Bank of South Sudan appointed by the President. It shall consist of nine members as follows:

- a) The Governor of the Bank of South Sudan, Chairperson;**

b) Two deputies of the Governor, members; and

c) Six non-executives, highly qualified, competent and experienced South Sudanese who are not employees of the Bank, members.

It is recommended that at least one of the Deputy Governors of the Bank of Sudan should be a woman and at least two of the six non-executive members be women.

3.21 National Bureau of Statistics

Article 193 establishes the National Bureau of Statistics with a Board Directors and the Director-General appointed by the President.

It is recommended here that membership of this Bureau consists of 25% of women.

3.22 National Constitutional Review Commission

Article 202, (2) provides that the National Constitutional Review Commission:-

“Shall be established with due regard for gender, political, social, and regional diversity of South Sudan....”

This is good and women must seize this opportunity to include the international and regional human rights instruments concerning women into the new constitution. It might be a long time before the Constitution is revised again and women should not wait.

In the new constitution women should lobby to increase the participation of women at all levels to at least 30- 35%.

Participation of women, in all sectors of Social, economic, political and cultural activities, is not a privilege but a right to which they, as human beings, are entitled.

4.0 CONCLUSION AND RECOMMENDATIONS

In conclusion, if the Constitution has to stand the test of time. The equality of men and women has to become a reality in the life of all South Sudanese people. Cultural perception of women may take some time to change but the constitution and other laws should emphasize this equality not only in words but in action. Sanctions must be attached to people who act contrary to the Constitution and the Law.

The women have to be vigilant in defense of their equality with men. Men and women must cooperate to ensure that women's rights are protected because women's rights **are Human Rights. There are no differences of rights between human beings.**

