

# SOCIO-LEGAL JUSTIFICATIONS FOR YOUTH SUFFRAGE IN SOUTH SUDAN

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By  
Tetteng Thaloka Gaduel  
76645

Prepared under the supervision of

Dr Luis Franceschi and Dr. Joy Malala

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## **Declaration**

I, **TETTENG THALOKA GADUEL**, do hereby declare that this research is my original work and that to the best of my knowledge and belief, it has not previously, in its entirety or in part, been submitted to any other university for a degree or diploma. Other works cited or referred to are accordingly acknowledged.

Signed: .....

Date: .....

This dissertation has been submitted for examination with my approval as University Supervisor.

Signed: .....

Dr.Joy Malala

Signed.....

Dr. Luis Franceschi

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**LIST OF ACRONYMS**

SPLM	Sudan People's Liberation Movement
SPLA	Sudan People's liberation Army
UDHR	Universal Declaration of human rights
CRC	Convention for the Rights of the Child
ICCPR	International Conventional for Civil and Political Rights
UK	United Kingdom
CPA	Comprehensive Peace Agreement
UNDP	United Nations Development Programme
HDI	Human Development Index
AUCRW	African Union Charter on the Rights and Welfare of the Child
AYC	African Youth Charter
ACDEG	African Charter on Democracy, Elections, and Governance
UNGA	United Nations General Assembly
UNSC	United Nations Security Council

## **LIST OF STATUTES AND INTERNATIONAL INSTRUMENTS**

1. Transitional Constitution of South Sudan (2011)
2. South Sudan Election Act
3. The Local Government Act, 2009 [South Sudan]
4. Labour Bill, 2011 [South Sudan]
5. The Penal Code Act, 2008 [South Sudan]
6. The People Representation Act (1969) of the UK
7. Canada Elections Act (1970)
  
8. The Constitution (sixty-first Amendment) Act of India (1989)
  
9. African Charter on the Rights and Welfare of the Child (1999)
  
10. The Convention on the Rights of the Child
  
11. Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict
  
12. African Youth Charter
  
13. Universal Declaration of Human Rights
  
14. African Charter on Democracy, Elections, and Governance
  
15. The Constitution of the United States
  
16. The Constitution of the Federative Republic of Brazil
  
17. International Convention on Civil and Political Rights
18. United Nations Charter
  
19. The English Bill of Rights Act
  
20. Rome Statute of the International Criminal Court

21. Convention on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages, 1964.

## **LIST OF CASES**

1. *Dred Scott v. Sandford*, 60 U.S. 393, 1857
2. *Oregon v. Mitchell*, 400 U.S (1970)

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## **EXECUTIVE SUMMARY**

This paper is about Youth Suffrage and discusses minimum voting age in South Sudan. It questions the validity and appropriateness of the prevailing minimum voting age of 18 and proposes a minimum voting age framework of 16 years in line with socio-legal justifications in the country.

The paper presented in six chapters which outlay specific contents. Chapter One is the introduction and formulate the research hypothesis, the research questions, research method, theoretical underpinnings, and contextual background of the research the encompasses a brief history of South Sudan in the context and background analysis of the problem that necessitate the research. Chapter Two reviews the literature that discusses Universal Suffrage and Youth Suffrage. It also reviews the experiences of countries that have had minimum voting age lowered including lessons learnt from those countries. The Chapter also looks into the intellectual arguments presented on the questions of maturity and democratic prudence more in more depth. Chapter three and Four analyse perceptions and international standards respectively on the ages of participations. Chapter Five attempts a framework for minimum voting age in South Sudan.

In conclusion, this paper is a report of an original research on a question of law in an area that has not been explored much in the legal discipline in the African context. It is an attempt to bring academic thinking to bear on legal and policy changes that faces South Sudan in particular but which represents a microcosm of Africa given the demographic and other similar factors at play.

# CHAPTER ONE: INTRODUCTION

## 1.0 Introduction

Beyond the modern state of South Sudan, communities therein have used various mechanisms to make public decisions and for the selection of their political leaders. Those mechanisms were in line with local concepts, beliefs, norms, practices and, as Leonardi points out, are related with theories in contemporary political and legal jurisprudence.<sup>1</sup>

Following the introduction of democratic state institutions in and around independence, elections are now understood within the broader concept of universal suffrage, with minimum voting age being a primary standard. The current minimum voting age of 18 is traceable to the older democracies like the United States and was set based on cultural, economic, and political factors that informed views of maturity (when one attains legal majority) in those democracies, yet it has been adopted in South Sudan with minimal or no justification in the country's socio-cultural context resulting to a mismatch of local reality and otherwise valid precept of suffrage.

Is 18 the appropriate voting age for South Sudan? This question may now be asked against the backdrop of youth bulge phenomena and related challenges generally in Africa but more specifically against the backdrop of interconnected set of salient socio-legal realities including the particularly youthful population in South Sudan.

## 1.1 Research Hypothesis

While some of the characteristic assumptions underlying the principles of representative democracy are valid, others need to be examined in each nation's context. This paper make the case for socio-legal norms and practices among South Sudanese communities to justify a lower minimum voting age. It aims to bring to light that these norms and practices indicate that youths from 16 years are old enough to hold voting rights in the country. The paper examined this hypothesis through review of relevant literature and assessment of available materials on social, cultural, and political anthropology of South Sudanese communities.

## 1. 2 Project Objectives

This work aims to identify what communities in nations and nation sates consider or may consider, in the context of popular governance, to set legal minimum voting age; what conclusions can be made from the experiences and practices of communities in South Sudan; and what that might mean for a legislative framework on voting rights in the multi-ethnic South Sudanese state going forward. This paper therefore

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<sup>1</sup> Leonardi C, *Dealing with Government in South Sudan*, British Institute in East Africa, p.87. Cherry discussed the claim of rights and guarantees; chiefship and the local elites in the 1900 [in the present day South Sudan]. *Her remarkable work reminisces and represents an evidence in a myriad of other unreported or even unrecorded examples of the existence of social concept among the communities of South Sudan.*

employs a double move that tests the validity of its hypothesis and proposes an alternative voting age framework.

### **1.3 Research Questions**

The paper seeks to address the following questions: -

- i. Are there socio-legal justifications for lowering voting age?
- ii. What are the South Sudan Communities' views on maturity?
- iii. What are the legal, social, political, and economic reasons to be considered for a minimum voting age in South Sudan?
- iv. To what extent should the voting age be lowered?

### **1.4 Research Method**

The above objectives necessitated a dual research approach - empirical and conceptual. In these lines the project gathered data from primary and secondary sources. The primary data were collected through interviews with South Sudanese in Kenya and Ethiopia. Those interviewed were 36 South Sudanese across different generations and 2 Kenyan chosen through a purposive sampling method. The respondents were carefully identified because of their special knowledge and comprehensive understanding of their respective communities or expertise on youth topics in Africa. The respondents' age range from 15 to 71, with an average of 30 years. They include ordinary youths, students, professionals and chiefs.

The research was focused on five communities; the Dinka, the Nuer, The Azande, The Taposa, and the Maban. These communities were chosen following a careful survey on the general variance of cultural and socio-economic diversity of South Sudanese and are taken to represent a moderate cross-sectional sample.

The research also analysed relevant literature in the context of law and international law principles. The materials used are mainly from published works with the aims to analyse and critique relevant provisions and discussions or debates around youth suffrage broadly understand and with direct or anecdotal relevance to the minimum voting age questions in the South Sudanese context.



affect them by the cheer application of age limit to hold voting rights. Such does not resonate with demographic realities, local context, and the general evolutionary direction of human society.<sup>3</sup>

This dissertation posits that lowering minimum voting age from 18 to 16 in South Sudan, is a venture, a legal novelty that portends credence and awesome prospects to the future of democracy and nationhood in South Sudan. A framework of youth suffrage that begins at 16 years of age is justifiable in the local reality context. It ensures many youth take direct role in political decision processes and contribute to addressing governance and related challenges prevailing against the backdrop of youth bulge in Africa and more specifically in South Sudan.

The point of departure here is that the conceptual requirement for minimum age to holding voting rights applies universally and validly so. However, its appropriate actualization framework is found and justified on distinctive features of individual societies as informed by their social, economic, and political realities and as such specific. Essentially, the argument is that the current minimum voting age of 18 is a travesty of the South Sudanese cultural mix and that 16 would represent the tapestry in consonance with their social, economic and political realities.

From a theoretical standpoint, this dissertation takes inspiration from the work of Joseph Raz (1996) where he postulated that general theories of law are universal as well as parochial.<sup>4</sup> Raz has demonstrated views that are instrumental in understanding the application of legal concepts to universal as well as particular contexts. For a highlight of the necessity to adhere to the particularity aspect of the nature of law and in regard to minimum voting age, the dissertation draws from Okoth-Ogendo and Gutto's work (1982) which argues that legal cut-off on adulthood and childhood is subjected to communities' ideologies and social relations and therefore, cannot be seen simply as a technical exercise.<sup>5</sup> The duo articulated that uniqueness in societies reflects on legal standards. These works taken together provide a background of jurisprudential underpinning for the framework of age limit in political participation but more importantly highlight the adaptable nature of law to contexts specially when applying itself to address non-standard questions of coordination in society manifesting an underlying realization that universally acclaimed precepts operate well if contextually and locally justified.

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<sup>3</sup> On the 9<sup>th</sup> Feb 2011, an Article appearing in the Guardian titled "Why Africa needs to lower its voting age to 16" stated that "With the youngest and fastest growing population in the world, Africa should move to convert the 'youth bulge' from a threat into a development opportunity"< <https://www.theguardian.com/global-development/poverty-matters/2011/feb/09/africa-youth-lower-voting-age-16>>

<sup>4</sup> Raz J. *On The Nature of Law*, Archiv für Rechts- und Sozialphilosophie / Archives for Philosophy of Law and Social Philosophy, Vol. 82, No. 1 (1996), pp. 1-25.

<sup>5</sup> Dr. H.W.O. Okoth-Ogendo and S.B.O. Gutto, *Legal Status of the Child in Kenya's Political Economy*, 13 Colum. Hum. Rts. L. Rev. 495 1981-1982.

## 1.6 BACKGROUND CONTEXT

### 1.6.0 Young Nation with Long History of Conflict

South Sudan regained her independence from the Sudan in 2011,<sup>6</sup> and became a polity with about 12 million people. Her independence followed the result of a referendum (by southern Sudanese) that saw the then Africa's largest country (Sudan) into the Republic of Sudan and the Republic of South Sudan,<sup>7</sup> in keeping with international law principle of self-determination.<sup>8</sup> Following the cession, it became the world's youngest political sovereign with underdeveloped legal system – a situation laden with challenges for law and policy makers evident in the huddles of prospect of harmonizing the different laws and customs from the 64 communities constituting her population into weave a national system, or even more so in the imagine administering a borrowed set of law.

The South Sudanese nation has a long history of persistent conflicts - having only experienced momentary peace. The first (1955-1972) and second (1983-2005) Sudanese Civil wars that ended with the Addis Ababa Agreement and the Comprehensive Peace Agreement (CPA), respectively, were largely fought in its precinct (known then as Southern Sudan). In 2013, a bloody conflict broke out again in the now independent state (now being resolved with efforts from international community).<sup>9</sup> Such crises often play out as full blown political conflicts or feuds between groups, factions or communities (competing for control of resources or other interests) with varying degrees of intensity. This long history of conflict has and continue to affect the civil population with negative impact on law and vice versa.

### 1.6.1 Disrupted Human Development and Weak Institutions and Exclusionary System

The continued conflicts have not only resulted to untold human suffering and unimaginable level of destruction but also weaken institutions and disrupting human development for generations.<sup>10</sup> By way of example, United Nations Development Programme (UNDP) Human Development Index (HDI) reported a low and declining trend in human development in the country.<sup>11</sup> More specifically, literacy level, an essential HDI indicator, is critically low. Only about 31 per cent of South Sudanese can read and write.<sup>12</sup> 73 per cent of the adult population - most of whom grew up with little or no opportunities for formal education during the first and second civil wars - are illiterate.<sup>13</sup> An apt description of the condition in the country is perhaps the one given by the African Union Commission of Inquiry on South Sudan (2015) Report which

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<sup>6</sup> United Nations General Assembly: <http://www.un.org/en/member-states/index.html> <accessed on 29/12/2016>.

<sup>7</sup> Douglas John, A New History for a New Nation: The Search for South Sudan's Usable Past, *Keynote address given at the 9<sup>th</sup> International South Sudan and Sudan Studies Conference Bonn, 23-- 25 July 2012*

<sup>8</sup> Art 2(1), United Nations Charter; Article 1, International Convention on Civil and Political Rights.

<sup>9</sup> Intergovernmental Authority on Development in East Africa: <https://igad.int/index.php/106-news/latest-news/1195-igad-plus-statement-on-the-south-sudan-peace-agreement> <accessed on 29/12/2016>.

<sup>10</sup> United Nations Development Programme, *South Sudan Human Development Report* (2015), p.26

<sup>11</sup> United Nations Development Programme: <http://hdr.undp.org/en/composite/trends> <accessed on 30/12/16>.

<sup>12</sup> World Bank: <http://data.worldbank.org/indicator/SE.ADT.LITR.ZS?locations=SS> <accessed on 29/12/2016>.

<sup>13</sup> UNICEF: <<http://www.unicef.org/southsudan/education.html>> accessed on 3/9/2016.

observed that “dysfunctional institutions are the characteristics definition of the South Sudanese State today.”<sup>14</sup>

With high level of human underdevelopment - which is more pronounced among the older citizens - and with such weak institutions, the country’s capacity to make progress within the current regulatory set up can arguably be said to be limited. Therefore, there is a need to rethink about the law and society and whether it would be beneficial to engage law making based on reality of the South Sudanese society as it is then simply going with law that not in keeping with these realities. This paper holds it that a progressive approach that is informed by the reality to inspire a legal framework would provide an evidence based prospect to turn things around.

The prevailing status of South Sudan is transitional and as mentioned elsewhere in this work, also highly exclusionary – a typical legacy of the ‘Sudanese State’ dating back to the Funj Sultanate, the Anglo-Egyptian condominium, the British colonization, Khartoum regimes, to the Sudan People Liberation Army/Movement (SPLA/M).<sup>1516</sup> This exclusionary tradition can explain in part the predatory tendencies by those exercising powers.<sup>17</sup> But of important to notice here is that the restriction of a significantly high number of youths under 18 years from voting feeds into the exclusionary structures – a system best reformed through the collective energies of old and young weren’t there legal obstacles like age limit.

### **1.6.2 Youths in Socio-Political Organizations of South Sudanese Communities**

The population of South Sudan is largely rural and predominantly kin base,<sup>18</sup> and have diverse yet related socio-political organizations with youth with the youth playing important roles. These organizations function in a continuum of constantly changing political landscape. It can be argued that the principles of these social-political organizations, *a priori*, resonate with central tenet of social contract theory - the concept of distribution of rights within a polity where members of the polity cede some of their rights to a common authority in exchange for protection of the remaining ones but which also understandably include allocating rights within and among the segments of the polity.<sup>19</sup> Members of these communities now make the citizenry in the modern state of South Sudan whose laws are supreme to their local traditions and norms. Whereas it is intuitive that the diversity in these organizations represent a challenge when it comes to understanding the various role of members of the society including the youths and that a uniform national legal system may be desirable in that regard, there is a need to understand how these communities perceived

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<sup>14</sup> AU Commission of Inquiry on South Sudan, *Final Report of the African Union Commission of Inquiry on South Sudan*, 27<sup>th</sup> October 2015, para. 992.

<sup>15</sup> *SPLA/M – the liberation army/movement led by Dr. John Garang in the Southern Sudan but with following across the country.*

<sup>16</sup> *Khartoum National Archive, Minutes of the Governors*, CIVSEC 1/9/30. Also, see Rift Valley Institute Publication (*Sudan and South Sudan Course Book 2014* p.3-4).

<sup>17</sup> Rift Valley Institute, *Sudan & South Sudan Course Book* (2014), p.8.

<sup>18</sup> By ‘kin base’ I mean people related by blood or marriage. It is general knowledge that most rural settlement, and to some degree also urban settlements, are clusters of these kinds of relations living within close vicinity.

<sup>19</sup> Rousseau, Jean-Jacques. *The Basic Political Writings*. (Trans. Donald A. Cress) Hackett Publishing Company (1987).

the role of the youth in order to aid a broader understanding on what their role might be in the state from a legal standpoint. An assessment of these communities therefore is focal assessment integral in the state and nation building.

### **1.6.3 Normative Conception of Youth Below 18 and its implications**

The Transitional Constitution of South Sudan describes a person under 18 years as a child.<sup>20</sup> South Sudan is also a State Party to the Convention on the Rights of the Child as well as the African Charter on the Rights and Welfare of the Child. Both instruments define a child as person below the age of 18.<sup>21</sup> The national and international laws therefore consider all persons under 18 years of age children.

### **1.6.4 Youthful Population, Limited Participatory Capacities, and Disparaged Legal Framework**

By national standards, every person between the age of 15 and 35 is a youth.<sup>22</sup> Statistical data show a high youth population in the country. Currently, 72 per cent of South Sudanese are below the age of 30. 30 per cent of these youth are between 14 and 18. The average age in the country is 16.8 years,<sup>23</sup> which means that a huge segment of the youth population is considered in the children category.

The precariousness of the state is coupled with an intricate web of human underdevelopment. Illiteracy among adults mentioned here as an example. This is as a result of historical factors. In deed deficiencies, such as illiteracy may be argued to be found across all the segments of the population but statistics above reveal that their acuteness is more pronounced among the upper bracket of the citizenry. Their negative implications to public deliberations, was evidenced in a *Constitutional Making Process Debate* (records of which are published by the Rift Valley Institute under the figurative name: ‘My Mother Will Not Come to Juba’) in 2013 in which most of the participants were unable to express themselves because they could not read or write.<sup>24</sup> The young and literate ones could not take part because of age limitation. This resulted in an incurable defect on the outcome of the debate which defeated its very purpose – popular deliberation.

The resultant mix of the population is as such in a reversed capability state with effective participation in public discourses at jeopardy. Majority are children in the eye of the law. The upper segment of the citizenry is constituted of mainly unsuspecting, uninformed, and easily manipulated groups as a result of historical factors. These are embedded in demographic structure: older people are few and a large portion of them are illiterate for instance. This is a situation no doubt requires a pragmatic legal response. laws are meant to serve the

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<sup>20</sup> Article 17(4), *Transitional Constitution of South Sudan*, (2011).

<sup>21</sup> Article 2, African Charter on the Rights and Welfare of the Child (1999); Article 1 of the Convention on the Rights of the Child recognises national standards for the age of majority.

<sup>22</sup> Definition of term, African Youth Charter. *South Sudan as signed and ratified the Charter*.

<sup>23</sup> National Bureau of Statistics, *Website*<[www.ssnbs.org](http://www.ssnbs.org)> accessed on 2<sup>nd</sup> March 2016.

<sup>24</sup> *My Mother Will Not Come to Juba: South Sudanese debate the constitution*, Published by the Rift Valley Institute with contributions from: with contributions from Akolde Ma'an Tier, Ambrose Riiny Thiik, David Deng and others, 2013. Available on <http://riftvalley.net/publication/my-mother-will-not-come-juba#.WGRErlwkhY>. The public event held at the University of Juba was conducted in English (the national official language). Majority to could not take part in active discussion because they were unable to speak or write their points.

society not to preserve, not to hold it hostage. In regards to governance, its legitimacy must lie in whether it facilitates an effective participation not to inhibit it.

Laws in South Sudan inhibit rather than facilitate participation. The Transitional Constitution provides that all citizens have the rights to vote.<sup>25</sup> As mentioned elsewhere in this essay, it describes a person under 18 years as a child.<sup>26</sup> Children under the country's electoral statute do not have voting rights.<sup>27</sup> South Sudan is also a State Party to the Universal Declaration of Human Rights, which only provides for adult universal suffrage.<sup>28</sup> Given the huge youth population under 18 years and other limiting factors on the adult population, the normative framework of minimum age of 18 serves no practically useful purpose whatever. It provides a restrictive structure that put an incapable minority (the adults) at monopoly of public decisions creating an absurd situation.

In light with the superlatively young population and older folks possessing limited participatory capacities, are there socio-legal justifications to lower minimum voting age in South Sudan? This question may no doubt generate objections but this essay is a result of a research for plausible answers.

### **1.7 Youth Bulge in Africa: Endemic Challenges**

The youthful population and the deep challenges that come with it in South Sudan are not isolated incidences. Rather, they constitute a jigsaw within a bigger puzzle of youth bulge and related problems in Africa. A whopping 60 per cent of the population of Africa is 24 years or younger.<sup>29</sup> This young population on the continent is projected to trend on the rise beyond 2060. Some of the noticeable challenges related to exploding youth population include migration problems and violent extremism. A great deal of these challenges is linked to youth frustrations with governance in their respective countries that often play out through anger leading to youth joining extremist campaign or despair leading to emigration.<sup>30</sup> But these would be addressed moderately or through dialogue if the youth are involved in decisions that affect them.

One of the more direct way to participate is voting. A need for a popular participatory framework in governance that would bring on board people below the age limits in the statute books in most of the African countries' is reflected widely in the African Union's blue print for socio-economic transformation – The African Vision 2063 - as crucial in societal building. This is even more vivid in the Union's Democracy and Election Charter, which states that:

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<sup>25</sup> Article 26(2), *Transitional Constitution of South Sudan*, (2011).

<sup>26</sup> Article 17(4), *Transitional Constitution of South Sudan*, (2011).

<sup>27</sup> Section 33(b), *South Sudan Election Act*, (Act No. 39 2012). It sets the minimum voting age as 18.

<sup>28</sup> Article 21(3), *Universal Declaration of Human Rights*, 1948.

<sup>29</sup> United Nations Department of Economics and Social Affairs (Population Division), *Youth population trends and sustainable development*, (2015), No.2015/1.

<sup>30</sup> Mercy Corp, *Youth and Consequences: unemployment, injustice, and violence*, 2014.

in order to advance political, economic, and social governance, State Parties shall foster popular participation and regular reforms on their legal and justice systems.<sup>31</sup>

The need for solutions to these kinds of youth related issues cannot be emphasised enough. A sound legal framework can be instrumental in achieving them. This project aims to help explore possible justifications for such framework.

A voting right for youth links to democracy on the continent. Elections have been considered - with regards to Africa - by academics as effective method to promote democratic development: Staffan Lindberg on this holds the view that regularly held elections promote development of democracy in Africa.<sup>32</sup> Lindberg is not alone. His point is complemented and buttressed by Nic Cheeseman who asserts that improving quality in addition to holding frequent elections also contribute to the development of democracy on the continent.<sup>33</sup> Although these assertions can be objectionable in all manner of ways and as such debatable, they broadly make practical sense in the context of popular and effective participation in a democratic society. This project contents that an electoral law system that brings in perspective local realities could consolidate democracy far more effectively. It states that a lower minimum voting age would come with democratic dividends. These taken together bring to the fore the centrality of popular and effective participation to building a nationhood that uphold rule of law and democratic governance through youth contribution. And because youth form the majority, their participation should be imperative to realizing democratic goal.

### **1.8 Particular and Universal Contributions of this work**

Normative restriction of youths below the age of 18 from taking active part in public decision making processes is one count in a web of astonishingly complex system of exclusion in South Sudan. This is also commonplace in Africa. That youth make up a major segment of the continent's population most of who are excluded from participating in governance is an open secret that often gets inadequately explained away as children or under aged.

The participation by these populations in economic, social, and political (rather than voting) spheres may provide justifications for allocating them voting rights. These aspects are universal in that they are found across the continent. Their application may be specific to particular communities and countries. This project address a minimum voting age framework that is justified by socio-legal practices and norms in the context of South Sudan with possible universal implications. The study was specifically on the case of South Sudan but its findings apply, by analogy, to understand the broader continental youth phenomena with particular regards to socio-legal concerns and the rights to vote. With necessary variation, that may apply, it represents

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<sup>31</sup> Article 27 (1 read with 2), AFRICAN CHARTER ON DEMOCRACY, ELECTIONS AND GOVERNANCE

<sup>32</sup> Steffan L. Lindberg, *Democracy and Election in Africa*, [John Hopkin University Press], 2006.

<sup>33</sup> Nic Cheeseman, *Democracy in Africa: Success, Failure, and the Struggles for Political Reform*, [Cambridge University Press], 2015.

a prognosis of youth participation in governance as has been conceived as a matter of age dichotomy by advancing that voting rights is justified by a blend of factors applicable to local reality contexts among a population capable of prudently discharging the duties that comes with those rights. Its recommendations are expected to spur further research and inform policy approaches in that regard.



# CHAPTER TWO: LITERATURE

## 2. 0 Introduction

This chapter assesses the rationales behind suffrage in general and youth suffrage more particularly by analysing arguments around minimum voting age. It revisits the experiences of three nations, Brazil, Australia, and United States of America, where various ages have been considered for national minimum voting ages taking into account factors at context. The chapter also discusses political maturity and democratic prudence as terms often associated with justifying allocation of voting rights in academic discourses. It advances the case that socio-cultural reality mix in South Sudanese is not reflected in the 18-minimum voting age in the country's statute books and favours analogous approaches as those reached by the three nations in the determination of minimum voting age in South Sudan.

## 2.1 The Universal Suffrage

Voting rights is fraught with exclusions that were historically based on ownership property, gender, and racial discriminations with the age limit a recurrent although a shifting phenomenon. The discussions on the questions around the age limit for in the allocation of voting rights as old has the liberal democracy. The former United States of America president and constitutionalist, John Adams, is on record on this discussion when he was asked on his resolve on the question of minimum voting age among other excluding factors in a correspondent in the following excerpt:

It is certain in Theory, that the only moral Foundation of Government is the Consent of the People. But to what an Extent Shall We carry this Principle? Shall We Say, that every Individual of the Community, old and young, male and female, as well as rich and poor, must consent, expressly to every Act of Legislation? No, you will Say. This is impossible. How then does the Right arise in the Majority to govern the Minority, against their Will? Whence arises the Right of the Men to govern Women, without their Consent? Whence the Right of the old to bind the Young, without theirs.<sup>34</sup>

Adam answered the question alongside other questions he himself raised in the above paragraph in the negative portraying tolerance if not acceptance of exclusions based on ownership to property, gender and age. He wrote:

There will be no End of it. New Claims will arise. Women will demand a Vote. Lads from 12 to 21 will think their Rights not enough attended to, and every Man, who has not a Farthing, will demand an equal Voice with any other in all Acts of State. It tends to confound and destroy all Distinctions, and prostrate all Ranks, to one common Level.<sup>35</sup>

The exclusionary attitudes in the area of voting rights were not the preserves of only political thinkers like Adams. They also had judicial backing. This is seen in the *Dred Scott Case* (1857) where the United States Supreme Court ruled that descendants of slaves imported from Africa, known then as the Negroes, were not

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<sup>34</sup> John Adam's letter to James Sullivan dated 26 May 1776, available on at <http://pubs.uchicago.edu/founders/documents/v1ch13st.html> accessed on 9.4.17.

<sup>35</sup> Ibid.

citizens and therefore could not hold voting rights in the United States.<sup>36</sup> Following this ruling two questions would arise: whether the descendants of slaves were considered non-citizens because they were being citizens of the places their ancestors were imported from or by being descendants of slaves. These questions are now unlikely to generate any substantive discussions because slavery is abolished (or at least abolished in name in most if not all parts of the world) and non-citizenship by virtue of being citizen of another country or because of other status like statelessness or refugee remain recognizable grounds for exclusion from holding voting rights. In principle, exclusion based on property, gender or racial discriminations have now ceased with the introduction of universal suffrage,<sup>37</sup> except exclusion based on age limit which has been described as an artificial barrier to citizenship in many countries,<sup>38</sup> and for which there are various arguments for and against. The main argument for universal suffrage is that all people, of full age, are fundamentally equal so that they are allocated equal rights to participate in the government of their nations.<sup>39</sup> This has generally shifted discussions and debates to lowering minimum voting age.

## 2.2 The youth suffrage

Since universal suffrage, minimum voting age has been subject of discussions and debates in a number of countries at the wake of the call for broadening participation in governance. This has been called *youth suffrage debates* and have been largely confined to the contexts in the countries they occur.

The central themes of youth suffrage relate to trigger factors that are more specific than general to the countries they have taken place. This chapter reviews the youth suffrage debates from the experiences of Brazil, Australia, and the United States of America. It is perhaps important to state upfront that Brazil and Australia lowered the minimum aged from 18 to 16 while the United States lowered it from 21 to 18. This paper concerns itself to the main issues that seized those nations at the material times and how those issues shaped academic and policy debates.

## 2.3 Youth Suffrage in the United States

The suffragists or advocates of lower voting age in the United States, the Brazil, and the Australia argued across three main theses; that if government regulations affect the youth directly then youth should be given the rights to balance up those effects; lowering voting age ensures more political participation; and that youth participation in governance is essential to the need for evolution of democracy.<sup>40</sup> All these arguments

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<sup>36</sup> *Dred Scott v. Sandford*, 60 U.S. 393, 1857

<sup>37</sup> The 26<sup>th</sup> amendment of the United States became the last equalising factor in the United States that gave all men and women of 18 years and above voting rights.

<sup>38</sup> Earl F, *The Child as Citizen*, The Annals of the American Academy of Political and Social Science, (2011) vol 63.

<sup>39</sup> Cohen C, *Democracy*, (New York: Free Press, 1971), p. 249.

<sup>40</sup> Allister I, *The Politics of Lowering the Voting Age in Australia: Evaluating the Evidence*,

[http://www.aec.gov.au/about\\_aec/research/caber/3b.htm](http://www.aec.gov.au/about_aec/research/caber/3b.htm) <accessed on 26.1.17>.

have been subject rebuttal attempts by sceptics who hold the view that people below the voting age are immature and therefore should not be hold voting rights.

To begin with the suffragists' proposition that effects of government regulation on youth to be balanced up with the voting rights allocation to the youth, the paper assesses the case of the United States. The debate came up and dominated in the 1960s and 1970s when youths from the age of 18 were drafted into the United States Army and were sent to fight in the Vietnam War.<sup>41</sup> This drafting of the 18 to 21 (21 was the minimum voting age in the United States) became the trigger factor the youth suffrage debate. Icons in this debate include the then United States president, President Eisenhower, who is noted for his congressional address statement that:

For years, our citizens between the ages of 18 and 21 have, in time of peril, been summoned to fight for America. They should participate in the political process that produces this fateful summons. I urge Congress to propose to the States a constitutional amendment permitting citizens to vote when they reach the age of 18.<sup>42</sup>

The President's address kick-started the debate which was advanced under the slogan, "old enough to fight, old enough to vote", by its advocates. However, this did not pass without criticism and resistance by those who think the voting age should not be lowered. Emmanuel Celler for instance argued that those below 21 were not mature and that the then 21 age was time tested age and represented age old wisdom. Whereas Celler's argument is well crafted, it is not essentially strong given that it is built on the experience which can also be attained by the younger. Today, 18-year-old have as much experience has 21 had in the days of the debates.

As Schrag observed, it is important that the minimum age for voting be as close as possible to the minimum age for assuming the other rights and responsibilities for citizenship,<sup>43</sup> and in a rejoinder, it may be said that the minimum voting age should too be closer to the age of assuming those responsibilities as as they are understood in a particular national context as long as those responsibilities are not ominously detrimental to humanity. To illustrate, it can be said that family and economic responsibilities are citizenship responsibilities since the family is the basic social and political unit in a nation and a nation's sovereignty supported by aspects such as economy. It may be sound to consider aligning citizenship duties with economic responsibilities in a nation (hypothetical) which lowered employment age to 16 because of eminent collapse of economy resulting from a dire shortage of labour supply. But it would be unsound to think that marriage in all context represent assumption of citizenship duties because this would legitimize reprehensible instances like child marriage. Schrag's point is valid and essentially stronger than Celler's , this work endorses it only to the extent not injurious to humanity.

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<sup>41</sup> Amsden, B. Democratic Prudence and the Youth Suffrage Debate, *Annals for American*

<sup>42</sup> President Eisenhower, *State of the Union Address, 1954*, <http://www.pbs.org/wgbh/americanexperience/features/primary-resources/eisenhower-state54/> <accessed on 26.1.17>.

<sup>43</sup> Schrag F. *The Child's Status in the Democratic State*, (1975).

Celler's point on the need for experience in exercising voting rights is also linked to political participation which also support the suffragist argument which is founded on the idea that lowering the voting age brings more people to the democratic space because it essentially means that younger people will inculcate a political culture much earlier in their lives and raise voter turnout in the long run.

### **Youth Suffrage in Brazil**

Under the constitutional, 16 and 17 year olds and people above the age 70 have optional voting rights while everyone else in between have compulsory rights to vote.<sup>44</sup>The country lowered the minimum voting age from 18 to 16 in 1988 as a response to her population which was increasingly becoming youthful.

Brazil has 60 million people under the age of 18. These statistics point to the reasons why Brazil approved a constitutional framework to attain their rights.<sup>45</sup>

The Brazilian youth bulge happened against the backdrop of related social challenges such as crimes. Upsurge in rimes was linked to youth frustrations especially their lack of involvement in decision process that affect them. The Brazil diagnosed its youth related problem by looking inside itself and grant the youth voting rights so that frustrations that were violently vent could now be express politically through votes.

### **Youth Suffrage in Australia**

Australia lowered minimum voting age from 18 to 16 in 2002. to vote in national election in election in South Sudan has its unique challenges regarding its demographic structure. There is a huge youth population and small adult population with limited capacities. It however has a rich background of culture of youth involvement to borrow from. These involvements are in the three main aspects of society: social, cultural and political practices.

### **The United States of America**

United States lowered minimum voting age from 21 to 18 in 1972 following and ensuing debate that fitted suffragist against anti-suffragist. This debate took place at intellectual advocacy and policy levels. The former among academics and the latter largely within the United States Congress.

The debate was triggered by the drafting of college age youth, mainly 18 and 19-year-olds (who were considered then immature to hold voting rights then) into the United Stated Army and go fight in the Vietnam War. The proponents of the debate were arguing on the basis that the teenagers should have the right to elect members of the government that coerce them to go and fight.

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<sup>44</sup> Article 14, Constitution of the federative republic of brazil.

<sup>45</sup> Rizzini I, *The Historical Roots of Public Policies on Children in Brazil (Editora Cortez 2008, 2nd edition)*.

## 2.4 Lessons from the, Brazil, Australia, and United States minimum age Debates

In Brazil, the ultimate consideration to lower the age is the huge population of young people below the then voting age. In Australia, the consideration was the development of the democracy where the expectation was that younger people inject a new discourse to the democratic process. And in the United States, we learn that actual participation of young people in public life in the same capacity as adult was the ultimate talking point.

We now learn that when allocating citizenship rights such as political rights, the populations that hold stakes in the polity are considered as in the case of Brazil. The second consideration is the development of the governance system itself so that what all the capable participants bring on board is paramount. This is because governance is an indispensable tool of coordination. Societies which adopt democracy can learn from the Australian to reflect on what the various capable segments of their population can bring on board to make democracy work for them. And finally, the United States case anecdotally but importantly drive home the point that society directly relate allocating voting rights with other participation in public life.

Intellectual debates around youth suffrage have also centred on two main terms – political maturity and democratic prudence. These terms are

## 2.5 Political Maturity

Few discussions around lowering minimum voting age can pass without the test of political maturity. Fewer, if at all, should claim authenticity without withering this test. It was evidently central debating points by academics and lawmakers

According to Rehfeld's, *Political Maturity* is "that bundle of cognitive, emotional, communicative, and agency capability that justifies a claim to citizenship rights within any democratic society."<sup>46</sup> In other words it is the capacity without which citizenship rights - like the voting rights - cannot justifiably be granted. Following this postulation, questions as natural as infant's smile emerge: first, what is the age of political maturity, second, does political maturity guarantee rational decisions? To assess these questions, answers provided by developmental psychology literature are instructive.

Research shows political maturity is attained much earlier in life. Children as young as 8 are mature politically. But evidence in developmental psychology tend to dissociate rationality of political decision from maturity. For instance, Emler et al assert that variations in adult moral reasoning are a function of political position rather than development status.<sup>47</sup> These raise two points of objections. First it would be absurd to suggest that 8-year-old can vote. Secondly, a thought, any thought that adults -who are presumably

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<sup>46</sup> Rehfeld A, THE CHILD AS DEMOCRATIC CITIZEN,

<sup>47</sup> Emler, Nicholas; Renwick, Stanley; Malone, Bernadette, "

*The relationship between moral reasoning and political orientation,*" Journal of Personality and Social Psychology, Vol 45(5), Nov 1983, 1073-1080

politically mature - are all politically rational is not coherent with some realities like party influence and situations occasioned by states like insanity. The earlier attainment of political maturity shows that it is already present by 16 years of age. This is a fair observation, or is it not? However, it does not guarantee rationality of decisions as pointed out by Emler and company. If the rationality of political decision is not determined by growth even among adults as Emler found, then political maturity does not shed sufficient light as to whether or not to grant 16-year-olds voting rights.

This dissertation presupposes political maturity among the 16-year-old and argues that socio-legal factors are the determinants for granting them voting rights. Therefore, the term will not be discussed extensively. Rather it will be treated as a preliminary matter

## **2.6 Democratic Prudence and voting rights**

Having considered political maturity inadequate *per se* to justify granting voting rights, democratic prudence may be a more nudging and lucid consideration. Amsden, writing in the context of the 1942 – 1971 United States' youth suffrage debate, defined democratic prudence as the mode of political judgement located in the complex interactions of a heterogeneous collectivity, and further stated that it is the normative assumptions by which judgment is legitimized.<sup>48</sup> Amsden's may be persuasive. After all voting rights, cannot be reasonably given if they would not advance the cause of the democratic community in which they would be exercised. That is if it would not add value to the democratic cause. However, since this legitimacy is normatively assumed it is important to assess how societies reach this conclusion.

International normative standards are a sufficient starting point to assess the normative assumption of democratic prudence. They come in two categories – those that afford voting rights to adults and those that insinuate them for youth. First, the Universal Declaration of Human Rights (UDHR) states that democratic rights are accessible to all but through universal suffrage.<sup>49</sup> UDHR is corroborated by the International Convention for Civil and Political Right (ICCPR), which states that all adults have a right to take part in the governance of their countries by virtue of universal suffrage.<sup>50</sup> Both instruments provide for democratic access for adults with the belief that their decisions will be exercised in accordance with the general goals and objectives. In deed voting rights are a preserve of adults in many countries as McAllister observed.<sup>51</sup> In

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<sup>48</sup> Amsden B, Democratic Prudence and the Youth Suffrage Debate, Academic OneFile (2011)

<sup>49</sup> Article 21, Universal Declaration of Human Rights.

<sup>50</sup> Article 25, International Convention on Civil and Political Rights.

<sup>51</sup> McAllister I, *The Politics of Lowering the Voting Age in Australia: Evaluating the Evidence*, Australian Electoral Commission, (2012).

the case of the youth suffrage, what the vote brings on to the democratic cause is what Amsden described as prudence.

Secondly, the Convention on the Rights of the Child provides that 18 years is the age of majority, which is the voting age in many countries, unless State Law states otherwise.<sup>52</sup> The African Union Charter on the Rights and the Welfare of the Child (AUCRWC) is categorical. It states that all persons below the age of 18 are children.<sup>53</sup> Two things are worthy noting here; firstly, the CRC provision implies that states would have some reasons to recognise age limits other than 18 depending on their reality sets. In other words, it envisions the fact that societies have salient features that are and should be taken into account to determine the age of majority and for the purpose of this work taken to mean minimum voting age. Secondly, that African Union has also adopted a youth charter, the African Youth Charter (AYC), which defines a youth as a young people between the age of 15 and 35, and states that it is the role of the youth to partake in full citizenship duties including voting, decision making and governance.<sup>54</sup> The categorical provision of the AUCRWC and the more inclusive provision of the AYC are contradictory. To reconcile the contradiction, one needs to look at the African Charter on Democracy, Elections and Governance (ACDEG) which has the object to promote the establishment of the necessary conditions to foster citizen participation.<sup>55</sup> This objective is in agreement with the AYC provision and rightly so.

From the foregoing, the following conclusions can be made: that democratic prudence is a reasonable explanation to claim lowering minimum voting age leaving the point; that international legal framework particularly the Convention on the Rights of the Child and the African Youth Charter provide a flexible framework for their member States. For the CRC focuses on four main areas: the wellbeing, protection from discrimination, neglect, and abuse, neglect. These four “cardinal principles,” are seen to advance the participation of children in society.<sup>56</sup>

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<sup>52</sup> Article 1, Convention on the Right of the Child.

<sup>53</sup> Article 2, African Charter on the Rights and Welfare of the Child, 1999.

<sup>54</sup> Definition read together with article 26(d), African Youth Charter, 2006.

<sup>55</sup> Article, 3(1), African Charter on Democracy, Election and Governance, 2007.

<sup>56</sup> Earls F, The Child's Status as Citizen.



# **CHAPTER THREE: SOUTH SUDANESE PERCEPTIONS IN RELATION TO YOUTH SUFFRAGE**

## **3.0 Introduction**

As seen in the previous chapter, discussions on lowering minimum voting ages in Brazil, Australia, and the United States of America centred around youth population, democratic dividends, and youth participation in other public spheres in the society. Moreover, the chapter reviews political maturity and democratic prudence often linked by scholars to granting voting rights. This chapter looks at the South Sudanese perceptions on youth and how those perceptions can inform an understanding on minimum voting age. The chapter also compares and analysis South Sudanese understanding of the maturity of youth vis-à-vis international standard ages of participations.

## **3.1 Overview of socio-economic and cultural organizations of South Sudanese**

The five chosen communities have diverse yet related socio-economic and cultural organizations forming a cross-sectional representation of South Sudanese (see appendix for an intuitive map-out). The narrative details of this organization are beyond the scope of this paper. It suffices to mention that the Dinka have traditional chiefdoms, the Azande have a Kingdom, the Maban have an administrative chiefdom, the Taposa have a chiefdom, and the Nuer are acephalous. These organizations are not fixed, their standards evolve and change with time and context.

## **3.2 South Sudanese Perceptions**

South Sudan has 64 different ethnic groups who, beyond the modern South Sudan State, lived in communities regulated and governed by their own norms. These communities now constitute the majority if not all of the citizenry in South Sudan. Their understanding of citizenship rights such as the right to vote based on intricate web of cultural backgrounds and experiences. The findings of this dissertation indicate four major perceptions regarding the way South Sudanese view maturity and assesses how these perceptions might inform an understanding of allocation of voting rights in South Sudan. These perceptions are imbedded socio-cultural practices and experiences and play out more evidently in the context of cultural evolution and change and the roles youth play in the contemporary socio-political environment.

## **3.3 Culture and tradition as a foundation of National Law**

Cultural norms and traditional leaderships are recognised by law in of South Sudan. The Local Government Act Stipulates that customs and traditions form part of the governing laws and establishes the House of Chiefs and Kings to oversee these institutions and leadership infrastructure.<sup>57</sup> The recognition of the traditions as part and parcel of the state laws may fall within Mamdani's theory of Decentralised Despotism

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<sup>57</sup> Section 1 and 9(d), Local Government Act of South Sudan, 2009.

or something therelike,<sup>58</sup> if used as a mean to compartmentalise society. This work however does not concern itself with any political ill will. Rather it sees this as a recognition of the culture and tradition as foundation of law and institutions. This view is widely validated by all the 34 South Sudanese interviewed. They demonstrated a high level of awareness of their respective cultures and expressed that their customs should be reflected in the national law. There is an academic voice in support to this view too. Lochul who discussed the role of the child after the age of 5 among the Toposa wrote:

Boys of 15-18 years are grown and experienced enough to look after the cows in the far away camps... [they] learn not only that art of war, but also moral rules governing their community as well as politics of the tribe. ... that initiation as far as the Toposa tribe is concerned is not a mere act of passing from one social status to another. Rather it emphasizes the importance of citizenship in which an individual is endowed with certain powers and responsibilities both for his family and the whole society,<sup>59</sup>

South Sudanese communities understand maturity from a physical and cultural perspectives. They generally consider puberty as the starting point for maturity for both boys and girls – more so for girls. For boys, they consider some rites of passage such as initiations (which is done with noticeable variation but also remarkable similarities from community to community). The point here is that as long as the girls and the boys are physically mature, they are considered adults or expected to perform activities in the same capacity as adults. These are perceived through their economic, political, and social participation in the society.

### **Economic Perceptions**

South Sudan's labour law provides for employment of children from the age of 12.<sup>60</sup> There is neither records to indicate what moved the law makers to set such young an age nor is there decision in that regards and therefore safe assumptions could be made that state believes 12-year-olds are mature and society recognises that notion. Invariably, 12-year-old can now generate recognised incomes and pay tax to the government. Taxation without representation is widely considered as one of the primary cause agitation for citizenship rights or even the rights to revolve as was the case for the American Revolution.<sup>61</sup> Whereas this paper does not suggest that 12 to 18-year-old in South Sudan should stage a revolution for being taxed but not allowed to vote like American did base, it points out that economic maturity and by extension economic participation in the country should be assessed within the broader paradigm of participation keeping in mind maturity and the rights and responsibilities that come with it.

Among the communities in traditional setting, economic participation is influenced by different factors such as the birth order, economic status within the family, the age and physical ability, and so on. A young South Sudanese student described himself as mature based on his economic engagement and said:

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<sup>58</sup> Mamdani, M. *Citizen and Subject*, 1996 Princeton University Press.

<sup>59</sup> Teko Allan Lochul, *Toposa Traditional Ritual and Cermonial Rites* [dissertation manuscript not yet published].

<sup>60</sup> Section 23 (4), Labour Act, 2011, South Sudan.

<sup>61</sup> The English Bill of Rights Act, gave Englishmen the rights to vote in order to pay tax. The people of the colonies then saw that English Crown was taxing them but no similar rights. This trigger the revolt in the colonies, thus American revolution.

When I was 12 years I took care of my father's shop without any supervision. I knew I had family duty. My father knew it. My mother knew it. I was mature. There was nothing else I was incapable of doing. I was a man.<sup>62</sup>

The economic activities which South Sudanese perceive maturity through though vary and may overlap with other activities from community to community, the way in which they understand participation in them places youth at the same level with adults.

The state labour law and community perceptions are evidences that South Sudanese expressly or tacitly take 12-year-olds and above mature for the purposes of economic participation. this is seen in the legislation itself and perhaps the reluctance by the say society to challenge the legislation in the court but also the readiness by communities to involve 12-year-old (younger in some case) to take major part in economic activities in the same capacity as adults. Given the tender age of 12 and the need to consider and priorities child welfare, this is certainly reprehensible. However, it provokes a compelling reason to assess the involvement of those older than 12 and are 18 or younger within the broader paradigm of citizenship rights and responsibilities.

### **Political Perceptions**

For the most part, politics in South Sudan is understood in two ways: military and decisions. Youth are involved in both. They are more involved militarily than in the decisions for two main reasons - first is the long history of conflict in the country that tends to absorb most people to directly participate in military activities and youth are no exception and second cultural evolution. The former has been outlaid elsewhere in this paper and need not be belaboured save for a mention that statistics show 12, 000 children are being used by armed forced and groups as child soldiers.<sup>63</sup> Whereas the recruitment and conscription of underage into violent political activities or acquiescence is despicable from human rights perspective, it is important to note that its prevalence represents a discourse in the South Sudanese political landscape perceives children as part of military politics.

From the communities, decision is generally an area of the older people. The youth may be inaugurated into the political life and in the past, this was after they reached the age which would be considered adult age today. However, changes in the modern world have caused most of these cultures to adopt to the new demands. For instance, the initiations into adulthood has reduced from about the age of 20 to 10 among the Nuer and the Dinka for simple reason that follow the introduction of modern weapons like gun that have amplified threats in the communities. In order to fence off these threats the communities need to inaugurate as money warriors as possible thus reducing the age of initiations. Once someone is initiated they are considered adults and therefore become part of the defence systems of the communities.

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<sup>62</sup> Majak Makoi interviewed in Nairobi Kenya (Sept.2016).

<sup>63</sup> "Children Affected by Conflict." *MCT Graphics Service*, 2014. *Global Issues in Context*, elibraryusa.state.gov/primo?url=http://link.galegroup.com/apps/doc/CT3294261419/GIC?u=wash89460&xid=0d9d419c. Accessed 24 Jan. 2017.

## **Social Perceptions**

The South Sudanese state has left social life widely unregulated from the centre. Rather it has left its regulations quite substantially if not all to the communities. This brings about a plethora of norms to look at. This paper looks at marriage among the Nuer, Maban, Azande, Dinka, and the Toposa. Although there is a general perception that those who get married or are married are ready to enter a social responsibility, this is non-restrictive in that it follows from different other factors; the physical maturity of both boys and girls, birth order, family economic status and many other factors determine the assumption of these responsibilities. The challenge here is that there are no common standards for social participation even within one community, especially in the larger communities like the Dinka which has many other sub-groups.<sup>64</sup>

### **3.4 Perceptions Regarding the Bases for lowering Voting Age**

Voting has been as a process of decision making in South Sudan for as long as the South Sudanese communities have existed.<sup>65</sup> What has not been so common is the age limit as a fixed standard criterion. In the Traditional sense age as a limiting factor for participation is not particularly articulated. Across communities, even those that are closely related like the Nuer and the Dinka, it is not a common standard. The inconsistencies with age limits were apparent looking at respondents from one community, the Nuer. Chief Peter Nyuong Danhier said:

During our time when elections would be conducted, families would queue with men as head of those families followed by their wife, children and their dogs. Every living thing in a family especially dogs would be counted as voters. Now there is a law [the national law] introducing age limit. These are very different times.<sup>66</sup>

This view is contrasted with another from a 15-year-old girl who was stopped in participating in a Nuer community organization election in Nairobi in June 2016 because she was looking too young to be 15. The election officials allowed 15-year olds and above to vote on physical assessment.

Education is perceived as an enabling tool to be used as a basis for voting rights not only in the context of South Sudan but in Africa broadly. Obonyo contends that youths below the age of majority educated and know what they do and as such should be given the rights to vote.<sup>67</sup> Building on this point is Chol Duot who asserted that there is a lot of abilities acquired by young people today as a result of education and there

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<sup>64</sup> Santandrea, S. *Ethnography of the Bahr el Ghazal*, 1981

<sup>65</sup> Nyagoah Tut explain this by referring to the casting of lots in favour or against a proposal as a way to obtain a democratic decision by majority.

<sup>66</sup> Paramount Chief, Chief Peter Nyuong Danhier Galuak speaking on the minimum voting age as a requirement for participating in election process. Interview: June 2016, Kakuma Kenya.

<sup>67</sup> Obonyo raphael, *Conversation about the youth in Kenya*, (2015) p.34. Also, speaking on an interview with me, asserts he believes 14 year-olds were educated enough to know the kind of choices they can make.

would be no absolute reason for anyone to think 16 year olds are immature and cannot exercise voting rights responsibly if given the chance.<sup>68</sup> But perhaps this is more brazen in the words of Zizi who appeared to be of the thinking that education is the supreme qualification to hold voting rights. He said:

Young people do not make decisions. Yet they are the majority. How could minority decide for the majority? Based on what? People who are 70 years and older, what do they know of the modern life?<sup>69</sup>

But Zizi also appear to moderate his statement above by saying that young people can discharge responsibilities the same way as adults and that the only difference is that older folks take time to do things because they want to relate it to their experiences.

These mixed perceptions may be reasons for critics of this work to think that 18 minimum voting age is good a framework. I would still disagree not only because reasonable minds can disagree but also because it would be lazy to think that when there seem to be a confusion, a quick fix should be applied even when that fix does not reflex the local realities.

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<sup>68</sup> Chol Duot responding. Nairobi (September 2016)

<sup>69</sup> Richard Zizi, explaining how education has made young people more capable then older guys. Interview in Nairobi (October 2016).



# CHAPTER FOUR: INTERNATIONAL STANDARDS

## 4.0 Introduction

The international standards regarding the age of participations discussed here are those that are provided for in the international law instruments at global or regional levels as general guides. They do not necessarily include those that are in the instruments for which South Sudan is a State Party. They are the minimum ages at which individuals are expected to participate in political, economic, and social life in the society at the same or similar capacity as adult do.

## 4.1 Global Standards

The Universal Declaration of Human rights (UDHR) perhaps provides the first guide, at the international level, for a framework on the age of age of participations in governance. It provides in its Articles 1 and 21 that:

All human beings are born free and equal in dignity and rights<sup>70</sup>.... Everyone has the right to take part in the government of his country, directly or through freely chosen representatives. The will of the people shall be the basis of the authority of government; this will shall be expressed in periodic and genuine elections which shall be by universal and equal suffrage and shall be held by secret vote or by equivalent free voting procedures.<sup>71</sup>

Whereas Article 1 expresses that all people are inherently free and in regards to their access to rights, Article 21 restricts the democratic rights access to those who attained the age majority. In effect, the standard criteria provided by the UDHR are unspecified given that it does not categorise the age by which universal suffrage is to be operationalized.

The International Convention on Civil and Political Rights (ICCPR) prohibits all forms of discrimination from accessing civil and political rights including those based on birth.<sup>72</sup> However, it also states that:

Every citizen shall have the right and the opportunity, without any of the distinctions and without unreasonable restrictions to take part in the conduct of public affairs, directly or through freely chosen representatives; to vote and to be elected at genuine periodic elections which shall be by universal and equal suffrage.<sup>73</sup>

UDHR and the ICCPR therefore recognise universal suffrage as the basis for political participation, *albeit*, their wide endorsement of equal access rights.

In regards to children - a population widely falling outside the purview of the universal suffrage the Convention on the Rights of the Child (CRC) is the international rights instrument which primarily is dedicated. It states that a child means every human being below the age of eighteen years unless under the

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<sup>70</sup> Article 1, Universal Declaration of Human Rights, 1948.

<sup>71</sup> Ibid, Art 21.

<sup>72</sup> Article 2, International Convention on Civil and Political Rights, 1966

<sup>73</sup> Ibid, Article 25,

law applicable to the child, majority is attained earlier.<sup>74</sup> This means that the CRC provide a rather indefinite framework for legal majority at its onset so that State Parties have, under this provision, the flexible space to determine the age.

## **4.2 The Standards in Africa**

The African Union is rather categorical when it comes to the distinction between childhood and adulthood. The Charter on the Rights and Welfare of the Child defines a child as any human being who is below the age of 18.<sup>75</sup> The African Human right framework regarding Children has welfare approach that is aimed at ensuring that socio-economic rights are attained and guaranteed and therefore employs a paternal tone. Whether or not its aspirations are implemented is beyond the scope and purpose of this work. The central focus for the case of Africa is the African Union as well as common practices in the individual African countries.

### **Legal Standard**

International legal standards are multiple. This dissertation limits itself to the minimum age of criminal liability. There is no common age for criminal responsibility from the international law perspective. The Convention on the Rights of the Child is silent on the age for which children can be held criminally liable.

The African Union does not also provide a common age under which children may be considered to have the capacity to commit crimes. However, a survey of the African Penal Laws shows that the age range from 7 to 16.<sup>76</sup> The most common ages are 12 and 13. Eight African countries have in their penal statutes 7 as the age for criminal responsibility and only four countries on the continent as the age for criminal liability. This reveal that the all people above the age of 16 in Africa are criminally liable for their actions.

### **Political standards**

A State is an entity with population, territory, and government controlling the territory, as its characteristic definition.<sup>77</sup> Most states, arguably, control their territories through the use of security forces such as the army. A military participation is as such a political participation in the State. This dissertation assesses the minimum age for which people may legally enlist into the military of a country as a form of political participation. The Convention on the Rights focuses on the welfare of children as vulnerable group and seclude children from direct political engagement. The Rome Statute prohibits enlisting children below the age of 15 into army and categorises it as an instant of war crime.<sup>78</sup> Optional Protocol

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<sup>74</sup> Article 1, Convention on the Rights of the Child, 1990.

<sup>75</sup> Article 2, African Charter on the Rights and Welfare of the Child, 1999.

<sup>76</sup> <https://www.crin.org/en/home/ages/Africa> <accessed on 26/1/17>.

<sup>77</sup> Nnoli, O, *Introduction to Politics*, (1992), Chapter 2.

<sup>78</sup> Article 8(vii), Statute of the International Criminal Court, 2002.

## Social Standards

The social aspect under consideration here is the age of consent for marriage. The Universal Declaration of Human Rights provides the rights to marriage by men and women of full age.<sup>79</sup> It does not however specify or define what it means by full age. The United Nations General Assembly (UNGA) adopted the Convention on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages which came to force in 1964. Article 2 of this convention states that State parties shall take legislative actions to specify a minimum age for marriage,<sup>80</sup> leaving the age of consent to marriage to be determined by the respective States.

## Economic Standards

The International Labour Organization prompted by the need to stem Child Labour adopted a convention on the minimum age for employment. The Minimum Age Convention, 1973 (No.138) which came into force in 1976 was ratified by South Sudan in 2012 and applies *mutatis mutandis*. It states following:

Each Member which ratifies this Convention shall specify, in a declaration appended to its ratification, a minimum age for admission to employment or work within its territory and on means of transport registered in its territory...Member whose economy and educational facilities are insufficiently developed may, after consultation with the organisations of employers and workers concerned, where such exist, initially specify a minimum age of 14 years.<sup>81</sup>

In effect, 14 is the minimum working age and as such the standards requirements for implementing fair labour practices across the globe for both men and women.

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<sup>79</sup> Article 16, Universal Declaration of the Human Rights, 1948.

<sup>80</sup> Article 2, Convention on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages, 1964.

<sup>81</sup> Minimum voting age Convention.



# CHAPTER FIVE: RECONCILING THE VARIOUS ARGUMENTS AND ARGUING A FRAMEWORK FOR MINIMUM VOTING AGE IN SOUTH SUDAN

## 5. 0 General observations

Three arguments have been raised in the debates concerning lowering voting age based activities young people get involved in and which are regulated by government as in the case of the United States debating lowering minimum voting age from the point that the teenagers (18 to 21) then were participating in military activities. The second arguments follow from the first, which is the maturity of the youths for which voting rights is given. The final argument is based on the need to increase participation in government. These arguments are rebutted using one main argument which basically objects to the capacity of the youths to effectively discharge their civic duties that come with the rights to vote.

Considering the international standards and the South Sudanese communities' customs on the one hand and these arguments on the other there is a need for a contextual analysis that brings into view, a third aspect which is about the operation of law in universal and local arena.

First political maturity as a consideration to grant voting rights underpins the concept of age limit not as a principle requirement of universal suffrage but as an entry point qualification to participation in public life. This is in agreement with Raz's point when discussing the universal and parochial nature of legal philosophy. Raz states as follows:

The universality of the theses of general theory of law is a result of the fact that they claim to be necessary truth and there is nothing that they can claim... a claim to necessity is in the nature of the enterprise<sup>82</sup>

Raz's point casts the die in two ways: first participation requires age limit because it would be absurd to think that one-month-old kid can vote in an election anywhere in the world. Secondly, the variance in age limits by jurisdictional context is an innovative way to apply the concept as long as political maturity is attained. In general terms, South Sudanese perceptions are just but manifestations of the different ways political maturity are perceived and as such applied to suit various contexts.

Second that granting minimum voting age is justifiably dependent on the socio-political realities that face a given political sovereign uniquely. And Raz provides a further instruction by opining that to understand the law is to understand the ideal which the law should live up to. And in this case the law should live up to facilitating participation in government. This paved the way for a framework of participation that reflects the ideals of the South Sudanese

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<sup>82</sup> Raz, J. On the Nature of Law (1996)

## 5. 1 Figure 1: Various Ages of Participation: International Standards and South Sudanese Perceptions

Standards by jurisdiction Aspects Of participation	International Standards		South Sudanese Practices	
	Global	Africa	National	Communities
Legal Participation • Age of Criminal Responsibility	Varies from countries	16	12	Ranges from 12-16
Political participation • Military age	15	18	18*	Ranges from 9-15
Economic Participation • Contract(employment)	14	18	14	Ranges from 8 -14
Social Participation • Marriage age	specified by state parties	Non-specific	12	From puberty

## 5. 2 A Framework for minimum voting age of 16 in South Sudan

Reconciling international standards and the South Sudanese perceptions and norms makes it clear that pegging voting rights with 18-year minimum remains a vulnerable argument if not defective. In deed the 18 years only helps in understanding that participation requires age limit. This makes it a universal thesis of legal theory and as such an interest area of academics in the legal discipline.

As an indirect way of revisiting the research question, what are the justifications for 18 as minimum voting age? In the United where 18 was adopted, the debate to lower the minimum voting age was centred on the issue of military recruitment of 18, and 19 year olds. There is today a widespread enlisting of child soldiers in South Sudan. The same call for lowering voting age in the United can be made in South Sudan not as a way to endorse children recruitment into violent activities but as a way to marry reality with legal innovation to provide youth with mechanism to engage in decisions that affect them. As Fass pointed, with many hazards and ever new instruments of death ... children should have every possible tool in their own defence<sup>83</sup>

From the foregoing, a minimum voting age framework of 16 years would be appropriate in South Sudan based on a blend of the following factors: demographic reality, local tradition, and the international standard ages for participation. First as pointed out elsewhere in this essay, South Sudan as a mean age of 16. A

<sup>83</sup> Fass, S. Child Abduction in America (Oxford University Press 1997),

framework of 16 would therefore would bring closer the concept of democracy as the government by majority.

On the point of tradition, we have seen that communities in South Sudan perceive the age for participation in public life much earlier. But Schrag also observed that:

As the notion of maturity is so value laden and elusive, it is important that an age be set which does not diverge too much from the range reflected in the prevailing beliefs of the population. If the age is set too low, many are going to feel less obligated to accede to the decisions of the electorate. If a too high age is set, younger people who feel they ought to have had a voice will likewise feel more justified in disregarding or violating the decisions of those set-in authority by the electorate.<sup>84</sup>

It is therefore believed that 16 is the best framework that encompasses and accommodate the different communities approaches to maturity without taking it too far down the scale.

On the basis of international standard ages. It is important to state that uniqueness of the South Sudanese realities may be and are bases for this framework as Okoth-ogendo and Gutto that legal cut-off point on adulthood and childhood is subject to communities ideologies and social relations,<sup>85</sup> but it is my contention that no country or community live in splendid singleness and therefore looking at the South Sudan in the broader African context is a Fairview. In Africa, all the ages for participations in public life, from economic, legal to social, safe for voting is below 16 in practice. This would bring the voting age at par with other engagements.

The upshot is that 16 is the age of participation as justified by socio-legal practices and norms in South Sudan with the same conclusion possibly reachable in many other African countries.

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<sup>84</sup> Schrag, F. *The Child's Status in the Democratic State* (1975).

<sup>85</sup> Okoth-Ogendo and Gutto, *Legal Status of the Child in Kenya's Political Economy*.



# **CHAPTER SIX: CONCLUSION AND RECOMMENDATIONS**

## **6.0 Conclusions**

In the context of modern statehood, universal suffrage is the more dominant way of public decision making. This applies a model that see majority make decisions and select leaders who then implement those decisions or at least oversee their implementations. In the contrary, among the communities in South Sudan, decisions were traditionally made by seniors - often people of status in the society and implemented by the youth through actions. With the modern state of South Sudan, this represents a kind of inverted decision process where all who can vote make decisions on the general socio-economic direction with leaders (senior folks) implementing or something there like.

The prevailing minimum voting age of 18 in South Sudan is driven from the universal suffrage conception which is a universally valid thesis of law but which evidently mismatches the socio-legal realities therein and therefore a travesty that disregards the parochial nature of law as postulated by Joseph Raz and others discussed elsewhere in this paper. This paper has established that a mechanical application of legal concepts may be in disconnect with the nature of law. This finding however does not diminish the significance of borrowing international standard norms when relevantly applicable.

Lowering minimum voting age is a valid way to respond to the demand of specific contexts. This answers the first research question in the affirmative. The context in South Sudan demands a relook of the minimum voting age demographic structure and socio-cultural realities providing salient features that are better address with a different minimum voting age framework. These realities answer the second research question also in the affirmative. And finally, 16 years as the median age in the South Sudan would be a minimum voting age appropriate and balanced enough to bring on board a young but mature segment of South Sudanese population to bear on democratic discourse. It is also in keeping with scientific evidence as developmental psychology for instance indicates that maturity – an important attribute for allocating rights such as voting rights - is attained much earlier in life. Scientific evidences and socio-legal indicators taken together justifies a framework age of 16 which should serve as the minimum voting age reasonably applicable in South Sudan. This framework represents the tapestry in consonance with the South Sudanese reality mix. It is the framework that accommodates local cultural aspects and broadly reflects international standard age of participation.

## **6.1 Policy Recommendations**

Coming to the above conclusion is one thing but whether the framework suggested is practical or intellectually viable is another. Being an academic, it attempts to address challenges facing democratic discourse in the South Sudanese State from human right but pragmatic perspective. It is therefore of essence that:

- further research (especially empirical research) on the communities' practices and norms that inform their understanding of law be done in depth and scope. This would establish a granularity in understanding these socio-cultural units. The South Sudanese Communities are several and diverse. This research focused on only 5 out of the 64-ethnic group. Its findings are therefore limited to that extent.
- The framework suggested in this paper inform constitutional and other legal debates and discussions around youth involvement in democratic participations. These will bring more deliberations into the subject and certainly open it up for more divergent views.
- This bases for further research and inform policy approaches on youth participation more broadly in Africa. General population trends show that African population is youthful. However, this is not followed by corresponding youth participation in governance. A safe assumption can be made here that South Sudan is a microcosm for the case of African nations or at least the majority of the African Nations.



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## Appendices

### INTERVIEWEES<sup>86</sup>

No	Name	Gender	Age	Nationality	Community	Perceived age of participation	
						community	national
1	Susan Awal Gol	F	24	South Sudanese	Dinka	10	16
2	Priscilla Nyagoah Tut	F	28	South Sudanese	Nuer	12	16
3	Ring Makat Ring	M	29	South Sudanese	Dinka	11	15
4	Stephen Bol Yar	M	32	South Sudanese	Nuer	12	15
5	Dak Both	M	30	South Sudanese	Nuer	12	21
6	Deborah Awut Mayom	F	25	South Sudanese	Dinka	12	18
7	Zacharia Wiye Naba	M	39	South Sudanese	Maban	13	14
8	Daniel Chol Mading	M	28	South Sudanese	Dinka	14	14
9	Celestino Deng Matjak	M	32	South Sudanese	Dinka	At puberty	23
10	Chol Duot	M	26	South Sudanese	Dinka	14	16
10	Karbino Awad	M	31	South Sudanese	Maban	12	16
11	Peter Gatkuoth Thot	M	43	South Sudanese	Nuer	25	25
12	Priscilla Amati Maker	F	23	South Sudanese	Dinka	14	14
13	Ayuel Taupiny	M	34	South Sudanese	Dinka	13	16

<sup>86</sup> Interviews conducted in Kenya and Ethiopia.

14	Tabitha Nyamal	F	15	South Sudanese	Nuer	13	14
15	Livia Oliver	F	25	South Sudanese	Azande	12	13
16	Richard Zizi	M	43	South Sudanese	Azande	12	15
17	William Deng Gatjiek	M	40	Ethiopian	Nuer	12	14
18	Joseph Aniruno	M	25	South Sudanese	Azande	12	15
19	Gatmai Buom Ruot	M	26	South Sudanese	Nuer	13	13
20	Stephen Lowesio	M	29	South Sudanese	Taposa	At puberty, but capacity	16
21	Iko Lokoi	M	51	South Sudanese	Taposa	10	14
22	Simon Lomechuk	M	37	South Sudanese	Taposa	11	14
23	Aliandro Lotok	M	30	South Sudanese	Lopid	14	15
24	Majok Makur	M	27	South Sudanese	Dinka	12	15
25	Chap Kawai	M	28	South Sudanese	Nuer	13	14
26	Lornita Roman	F	27	South Sudanese	Bari	12	15
27	Achol Mayen Deng	F	26	South Sudanese	Dinka	13	15
28	Brown Biliny	M	41	South Sudanese	Nuer	15	15
29	Machak molpiny	M	31	South Sudanese	Nuer	12	14
30	Nyakume kek	F	27	South Sudanese	Nuer	11	17
31	Shirleen	F	28	Kenyan		15	

	Wangechi						
32	Chep Azuma	M	30	South Sudanese	Dinka	12	13
33	Makoi Majak	M	28	South Sudanese	Dinka	13	13
34	Cier Maroudit	M	30	South Sudanese	Dinka	14	14
35	Chuot Makur	M	25	South Sudanese	Dinka	14	15
36	Deng Tach	M	32	South Sudanese	Dinka	14	14
37	Chief Peter Nyuong Danhier Galuak	M	71	South Sudan	Nuer	At puberty	15
38	Raphael Obonyo	M		Kenyan		At 12 youth take responsibility At 14 they make decisions	

## **SOUTH SUDANESE COMMUNITIES<sup>87</sup>**

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<sup>87</sup> Demographics of South Sudan's 64 Ethnic Communities. [www.gurtong.net/People/The Peopleand Demographics of South Sudan/tabid/71/Default.aspx](http://www.gurtong.net/People/The%20Peopleand%20Demographics%20of%20South%20Sudan/tabid/71/Default.aspx) <accessed on 25/1/17>.

Note: The communities in blue colour were the focus of this research.

<u>Acholi</u>	<u>Imatong</u>	<u>Moro</u>	<u>Kodo</u>
<u>Adio</u> (Makaraka)	<u>Indri</u>	<u>Mundari</u>	
<u>Aja</u>	<u>Jiye</u>	<u>Mundu</u>	
<u>Anyuak</u> (Anyuaa)	<u>Jur</u> (Beli & Modo)	<u>Murle</u>	
<u>Atuot</u> (Reel)	<u>Jurchol</u> (Luo)	<u>Ndogo</u>	
<u>Avukaya</u>	<u>Kakwa</u>	<u>Ngulngule</u>	
<u>Azande</u>	<u>Kara</u>	<u>Nuer</u> (Naath)	
<u>Bai</u>	<u>Keliku</u>	<u>Nyangatom</u>	
<u>Baka</u>	<u>Kuku</u>	<u>Nyangwara</u>	
<u>Balanda-Boor</u>	<u>Lango</u>	<u>Pari</u>	
<u>Balanda-Bviri</u>	<u>Larim</u> (Boya)Logir	<u>Pojullo</u>	
<u>Banda</u>	<u>Lokoya</u>	<u>Sere</u>	
<u>Bari</u>	<u>Lopit</u>	<u>Shatt</u>	
<u>Binga</u>	<u>Lotuka</u> (Otuho)	<u>Shilluk</u> (chollo)	
<u>Bongo</u>	<u>Lugbwara</u>	<u>Suri</u> (kachipo)	
<u>Didinga</u>	<u>Lulubo</u>	<u>Tenet</u>	
<u>Dinka</u> (Jieng)	<u>Maban</u>	<u>Tid</u>	
<u>Dongotona</u>	<u>Madi</u>	<u>Toposa</u>	
<u>Feroghe</u>	<u>Mananger</u>	<u>Uduk</u>	
<u>Gollo</u>	<u>Mangayat</u>	<u>Woro</u>	
<u>Ifoto</u>	<u>Moro</u>	<u>Yulu</u>	