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**COLLEGE OF LAW AND GOVERNANCE STUDIES
SCHOOL OF LAW**

Master of Laws (LLM) in Constitution and Public Law

**Adequacy of the Legal Framework for the Protection of Human Rights of Elderly
Persons in Ethiopia**

By: Lencho Berhanu

Id No:GSR/5072/13

Advisor: Mizanie Abate (PhD)

**A Research Thesis Submitted in Partial Fulfilment of the Requirements
for the Degree of Master of Law (LLM) in Constitution and Public Law**

September 2024

Addis Ababa, Ethiopia

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I, LENCHO BERHANU KENEA, do hereby declare that this work LL.M thesis on — *Adequacy of the Legal Framework for the Protection of Human Rights of Elderly Persons in Ethiopia* —is my original work and it has not submitted and presented in any other institutions. I also declare that the sources used in the research thesis are duly acknowledged.

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ACRONYMS

AARP	American Association of retired person
ACHPR	African Charter on Human and Peoples' Rights
AUPFPAA	African Union Policy Framework and Plan of Action on Ageing
AU	African Union
CEDAW	Convention on elimination discrimination against women
CERD	Convention on elimination of racial discrimination
CRPD	Convention on the rights of people against
CRC	Convention on the rights of child
DSWP	Developmental Social Welfare Policy
FDRE	Federal Democratic Republic of Ethiopia
GTP	Growth and Transformation Plan
ICCPR	International convention on civil and political rights
ICESCR	International convention on economic social and cultural rights
IPAA	International Plan of Action on Ageing
MIPAA	Madrid International Plan of Action on Ageing
NGO	Non Governmental Organization
NPAOP	National Plan of Action on Older People
NSSP	National Social Security Security Policy
NSPS	National Social Protection Strategy
OEWG	Open-Ended Working Group on Aging
UDHR	Universal Declaration of Human rights
UN	United Nations
UPSNP	Urban Productive Sefty Net Program

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Abstract

The recognition of older persons human rights in international human rights conventions is yet invisible. As of right now, there are no universally recognized standards that can be used as a model for legislating laws on protecting the rights of older persons. The rights of the elders are not particularly protected by legislation in Ethiopia either. The FDRE Constitution protects a number of vulnerable groups, including women and children, but it makes no special mention of the rights of the elderly. Furthermore, the protection of older people's rights has gaps in both normative and practical facets. As a result, older people face a range of challenges, including institutionalized poverty, ageism, food insecurity, social exclusion, abuse, and economical discrimination in Ethiopia.

The objective of the research thesis is to evaluate how effectively Ethiopia's legal system protects the human rights of the older person. The assessment's purpose is to highlight the areas in which the norms fall short and fail to adequately address the issues faced by the elderly. It then identifies remedial steps that may be taken to improve the way the norms are put into practice. In light of this, the thesis makes use of primary and secondary sources of data in addition to doctrinal and qualitative approach.

Following a thorough examination and appraisal, the study concludes that there are gaps in both implementation and norms regarding Ethiopia's current laws protecting the human rights of the older person. Therefore, in order to properly address the requirements of elderly people and the international human rights convention that Ethiopia has accepted, the government should review and adopt national laws.

Key Words: adequacy of laws, elderly people, Ethiopia, human rights, norms

CHAPTER ONE

Introduction

1.1 Background of the study

One of the first obstacles in articulating older person's rights may be defining "older persons" as a distinct population group. At the international or regional levels, there is no clear definition of older persons. However, there are terms used to describe, such as: "older people", "older persons", "the aged", "the elderly", "the third age", "the ageing."¹ However, as noted by General Assembly resolutions 47/5 and 48/98 the committee opted for "older persons" term to be used. There is, however, no single paradigm for older persons, which refer to a multifaceted process driven not only by the passage of time, but also by Chronological, Physiological, and Social elements.

Chronologically, age is basically biological in origin and manifests itself in varying degrees of various functional problems (it refers to age as measured in years). As a result, older persons are defined as beginning at 60 or 65 years and are often set by law. From this perspective, aging impacts a person's standing in society because many obligations and privileges, particularly those linked with employment, are decided by his or her chronological age.² Physiological age is determined by the physical aging process, which, while linked to chronological age, cannot be directly equated with a person's age measured in years. This definition refers to the gradual decline in bone density, muscle tone, and strength that occur with the passage of time.³

Finally, the concept of social age refers to the attitudes and behaviours that are considered appropriate for a given chronological age group.⁴ This view of defining older person is a social and historical construct based on the meaning assigned by the cultural model to biological processes of aging. It is a biologically based social category defined by subjective perceptions of how old a person feels and imputed age, which is how old others believe a person is.⁵ Viewed from this vantage point, old age (aside from its direct relationship to a person's chronological or natural age) is intrinsically determined by the production process,

¹ UN Economic and Social Council, 'General Comment No. 6: The Economic, Social and Cultural Rights of Older Persons' para 4.

² 'Arber, S. and J. Ginn ' Gender & Ageing. A Sociological Approach' (1995) Open University Press, Buckingham. 6

³ *ibid.*

⁴ *ibid.*

⁵ *ibid.*

certain trends in consumption and the pace or pattern of life mandated by each society.⁶ Thus, the definition of elderly may be explained and related to chronological age, functional age, and retirement age.⁷ From this point, we observe that the definitions of older persons continue to change, significantly as life expectancy rises. According to the U.N. definition, older persons are those people whose age is 60 years and over. The definition has gained acceptance in the Ethiopian context as it coincides with its official retirement age.⁸

The concept of old age is a socially constructed phenomenon. Alternatively, in other words, it is not simply a biological process but something that is given particular meaning depending upon its social and historical context.⁹ Due to urbanization, industrial developments, advances in science and technology, and modern ways of life. Thus, the definition of elderly may be explained and related to chronological age, functional age, and retirement age.¹⁰ From this point, we observe that the definitions of old age continue to change, significantly as life expectancy rises. According to the U.N. definition, older persons are those people whose age is 60 years and over. The definition has gained acceptance in the Ethiopian context as it coincides with its official retirement age.¹¹

Aging and the situation of older person is one of the emerging concerns in demography, both globally and regionally. This concern is also being progressively pushed to the top of the development policy agenda due to changing characteristics of the global and regional demographic distribution in terms of age.¹² Various reports and studies verify that the number of older persons in the World is proliferating.¹³ For instance, according to the U.N., the number of people aged sixty and over was 200 million in 1950, 590 million in 2000, and is projected to reach 2.1 billion in 2050. Surprisingly, the overwhelming majority of the World's

⁶ 'Aging: An Anthropology of Old Age.' <<https://dialnet.unirioja.es/servlet/libro?codigo=48560>> accessed 20 July 2022.

⁷ Marthe Fredvang and Simon Biggs, 'The Rights of Older Persons Protection and Gaps under Human Rights Law' (2012).3

⁸ Ministry of Labor and Social Affairs, 'Government of the Federal Democratic Republic of Ethiopia National Plan of Action on Older Persons 1998-2007' (2007).

⁹ Fredvang and Biggs (n 7).

¹⁰ *ibid.*

¹¹ Ministry of Labor and Social Affairs (n 8).

¹² Helpage International, 'Vulnerability of Older People in Ethiopia: The Case of Oromia, Amhara and SNNP Regional States' (2013).6

¹³ Ministry of Labor and Social Affairs (n 8).

aging population resides in less developed regions. In Ethiopia, the proportion of the older person seems to have changed only minimally between 1950 and 2005, from 4.8 % to 4.9 %. However, evidence indicates that the absolute number of older persons in Ethiopia increased four-fold between 1950 and 2005, from 885,000 to 3,653,000. Although Ethiopia is a country with 46 % of the population under the age of fourteen, over five % (3.6 million) of its current population is aged sixty and over. This proportion of older persons is even anticipated to nearly double to nine % by 2050.¹⁴ Alarming, most have no reliable income sources; currently, only 500,000 older adults have any regular public sector pension.¹⁵

Though, Human rights are those rights that all people are entitled to by their virtue of being humans alone.¹⁶ Since these rights are possessed by the mere existence of being a human person, they become operative from birth. Unequivocally, older persons are entitled to the same rights as everyone else. Notwithstanding, older persons have been neglected by human rights law. Thus, throughout the World, a large number of older persons face challenges such as discrimination, poverty, and abuse that severely restrict their human rights and their contribution to society .¹⁷ However, the first international initiative on older persons was adopted in 1982 Vienna International Plan of Action on Ageing (IPAA).¹⁸ The Plan reaffirms the applicability of the principles and objectives of the Universal Declaration of Human Rights, particularly to particular rights of the older person, and acknowledges that the right to freedom, equality, and dignity does not change in old age.¹⁹

Nonetheless, the international community set a milestone in 1991, when the U.N. gave birth to the United Nations Principles for the rights of older persons in General Assembly Resolution No. 46/96.²⁰ The resolution came up with five essential principles: independence, participation, care, self-fulfilment, and dignity, which are expected to be incorporated with

¹⁴ United Nations Department of Economic and Social Affairs, World Population Prospects, the 2012 Revision (United Nations 2012) <https://www.un.org/en/development/desa/publications/world-population-prospects-the-2012-revision.html> accessed 5 August 2022.

¹⁵ Ministry of Labor and Social Affairs (n 8).

¹⁶ Karnataka Women's Information and Resource Centre, Human Rights Education for Beginners,(2005) vol 53.8

¹⁷ Fredvang and Biggs (n 7).

¹⁸ United Nations, First World Assembly on Ageing, Vienna 1982 (United Nations 1982) <https://www.un.org/en/conferences/ageing/vienna1982> accessed 5 August 2022.

¹⁹ Universal Declaration of Human Rights 1948 art 25.

²⁰ UNGA, 'United Nations Principles for Older Persons' resolution 46/91 of 16 December 1991 art 18.

national policy choice and integrated with practical engagements.²¹ Then after, progressive developments have been experienced in the forms of action plans, policies, and recommendations. In particular, two consecutive plans of action; the Vienna and Madrid action International Plans of Action on Ageing (MIPAA)²² and establishment of the United Nations Open-Ended Working Group on Ageing (OEWG)²³ have put their mark on the development of human rights protection of older persons. However, it is submitted that the implementation of the Plan of Action does not systematically consider linkages to the obligations of the State parties under international human rights instruments.²⁴ Furthermore, its impact is evidentially not significant²⁵ because it is not an abiding human rights instrument.

That being the case, one of the interesting regional frameworks is that of Africa under the legal mantle of the African Union (A.U.). In the region, the scope of gerontology of older persons' rights was until recently relatively sparse in the continent.²⁶ Even though, The African Charter on Human and People's Rights was passed unanimously in 1981²⁷ Moreover, became effective in 1986 following its ratification by all members of the A.U. The Charter includes many fundamental human rights relevant and applicable to older persons, such as the right to health, education, and employment. Specific references to older person's rights can be found in only two specific articles in the Charter, Article 18(4) and 29(1) of the ACHPR. The Charter also stated that a human rights commission would be established as part of the procedure to ensure the implementation of the rights prescribed in the Charter.²⁸ In addition to that, in 2002, A.U. (African Union) adopted the African Union Policy Framework and Plan of Action on Ageing. The Plan of Action focuses on the need for improving the quality of life of the older person. The Plan also urges African governments to translate the resolutions

²¹ *ibid.*

²² UNGA, 'Political Declaration and International Plan of Action on Ageing', (2002).

²³ General Assembly United Nations, 'United Nations Open-Ended Working Group on Ageing' (1969) 23

²⁴ United Nations High Commissioner for Human Rights, 'Economic and Social Council Report of the United Nations High Commissioner for Human' (2012).

²⁵ UNGA (n 23).

²⁶ Prof Israel and others, 'The Rights of Older Persons within the African Union Introduction' (2016) 8 *Elderly Law review* 2.

²⁷ African Union 'The African Commission on Human and Peoples' Rights: The Development of Its Non-State Communication Procedures on JSTOR' <<https://www.jstor.org/stable/762765>> accessed 5 August 2022.

²⁸ African Charter on Human and Peoples' Rights 1981 art 30.

adopted at the international level into action by incorporating them into their national program. These initiatives are capitalized by African Commission on Human and Peoples' Rights draft protocol on older persons' rights adopted in May 2014.²⁹ In addition, the Protocol has recognized the plights of older persons and adopted appropriate legislative and institutional mechanisms to tackle these problems. This further strengthened where States Parties are obliged to ensure the principles of independence, dignity, self-fulfillment, participation, and care of older persons are included in their national laws and are legally binding as the basis for ensuring their rights.³⁰

Apart from the aforementioned initiatives, Ethiopia has participated at the regional level in the expert meeting to develop the OAU Policy Framework and Plan of Action on aging in the two sessions held in Addis Ababa and Kampala.³¹ Furthermore, as a member of the African Union, Ethiopia ratified the African Union (A.U.) Protocol on the rights of older people on July 9, 2020, becoming the third country to do so after Lesotho and Benin. The decision is commendable by Ethiopia's government.³²

1.2 Statement of the problem

In Ethiopia, in 2021, the total population of the country was 117,887,226. Among these, about 3.56 percent of Ethiopia's total population were 65 years and older.³³ However, they have been denied access to health care, education, and training. They are ignored by governments and policymakers and excluded from society. This is also noted by a survey of critical challenges that the older persons posed in the World; they are abused and deprived of their fundamental human rights.³⁴

²⁹ FAO and BSF, 'Population Ageing in Malawi: Understanding Challenges, Responding to Opportunities', *Population ageing in Malawi: understanding challenges, responding to opportunities* (2007) 5.

³⁰ PROTOCOL TO THE AFRICAN CHARTER ON HUMAN AND PEOPLES' RIGHTS ON THE RIGHTS OF OLDER PERSONS IN AFRICA 2016 art 3.

³¹ Anteneh Geremew, 'HUMAN RIGHTS OF OLDER PERSONS: A NEED TO ADDRESS VULNERABILITY OF ETHIOPIAN ELDERLY'(2019) 1.

³² HelpAge International 'Ethiopia Ratifies the Africa Union Protocol on the Rights of Older People despite COVID-19 | News and Blogs | HelpAge International' <<https://www.helpage.org/newsroom/latest-news/ethiopia-ratifies-the-africa-union-protocol-on-the-rights-of-older-people-despite-covid19/>> accessed 5 August 2022.

³³ Statista 'Ethiopia Age Structure 2011-2021 | <<https://www.statista.com/statistics/455134/age-structure-in-ethiopia/>> accessed 6 August 2022.

³⁴ Helpage International, 'State of the World's Older People 2002 AUC Library' <<https://library.au.int/state-worlds-older-people-2002-3>> accessed 5 August 2022.

Despite such reports, poverty among older persons is still not a prominent concern in the social, economic, and ethical debates of our times.³⁵ Moreover, the exclusion of older persons from development programs and policy decisions that affect their lives directly accentuates their problems.³⁶ Even in developed nations, older persons are still subject to age discrimination, particularly in employment. For example, few countries have introduced legislation to ban mandatory retirement practices.³⁷

Similarly, older persons are frequently denied their rights as a result of ineffective policies, laws, and services. They are often unaware of their rights, selection processes do not benefit the most vulnerable older persons, older persons lack identification to prove their entitlement, as well as they, cannot afford to pay for services, services are too far away, transportation costs are too high, waiting times are too long, and service providers discriminate against them.³⁸

Nevertheless, the rights of older persons have not yet received the international legal attention they deserve. Many treaties refer to rights that are of particular interest to the older persons, but there is no comprehensive international instrument that adequately addresses the specific protections required for the older person.³⁹ Moreover, the IPAA puts primary responsibility on national governments to put the Plan into action by developing and implementing policies to ensure economic and social protection for older persons, promoting and ensuring their good health, and making services and housing available and accessible.⁴⁰

Even so, Ethiopia is a signatory to these instruments and recognized it in its various legal and policy documents ranging from the Constitution to the growth and transformation plan; the effort to address older person rights has remained minimal.⁴¹ For instance, older persons across Ethiopia agree that some children still care about their parents and grandparents;

³⁵ HelpAge International, 'The Mark of a Noble Society : Human Rights and Older People' 2000

³⁶ HelpAge International, 'Off the Margins : Older People , Human Rights and Poverty Reduction in Africa in the 21st Century' 2003 7.

³⁷ *ibid.*

³⁸ 'HelpAge International (n 34).

³⁹ Diego Rodriguez-pinzón and IN Trodution, 'The International Human Rights Status of Elderly Persons' (2003) 18 American University International Law Review 915.

⁴⁰ *ibid.*

⁴¹ HelpAge International, 'The State of Health and Ageing in Ethiopia : A Survey of Health Needs and Challenges of Service Provisions' 2013 8

however, the family responsibility system has changed completely and even worse. Not only was this Ethiopian social insurance scheme coverage limited to civil servants, police, and military. The rest of the older person who work mainly in the informal sector, such as agriculture, are not covered by formal social security and depend on support from family and society in their old age.⁴²

This has resulted from many factors such as normative and implementation, monitoring, and information gaps.⁴³ It appears this problem is not only the aforementioned one; older persons in Ethiopia are still facing challenges because their rights and obligations contained within the law are not wholly translated into practice. Further, the developmental social welfare policy and National Plan of action on older Persons so as to assist the older persons is uncoordinated, lacks clarity to implement, and is not formed in the manner it ensures immediate realization of older person rights.⁴⁴

Moreover, The Federal democratic republic of Ethiopia (FDRE) constitution under article 41(5) tried to indicate the requirement of assistance to vulnerable groups, including the older persons.⁴⁵ As one can understand from the spirit of the provision, older person's rights are conditioned on the governments' availability of resources. Thus, for the nonfulfillment of these rights, a lack of resources can be taken as a defense by the government. As everyone knows, Ethiopia is one of the developing countries in Africa, in which the State is failed to fulfill and respect fundamental rights; it is not sound to argue that it can fulfill the older person's adequate health care, which is contingent upon the resource of the progressive state realization.

Therefore, for the reasons stated above, the study will assess the existing situation of older person's human rights protection and the adequacy of prevailing legal frameworks for the protection of their rights.

⁴² HelpAge International and Cordaid, 'A Study of Older People ' s Livelihoods in Ethiopia.' 2011 9.

⁴³ Maggie Murphy, 'International Human Rights Law and Older People : Gaps , Fragments and Loopholes Section' (2012) 34.

⁴⁴ Britta Baer and others, 'The Right to Health of Older People' (2016) 56 Gerontologist S 206.

⁴⁵ The Federal Democratic Republic of Ethiopia Constitution, Proclamation No. 1/1995 1995 art 41 (1).

1.3 Research Objectives

1.3.1 General Objectives

The general objective of the research is to assess the adequacy of the Legal Framework for the Protection of Human Rights of Older Persons in Ethiopia.

1.3.1 Specific Objectives

- ✓ To assess rights, older persons are entitled to under the FDRE constitution in light of the international human rights instrument;
- ✓ To review whether there are clear laws for the protection of the human rights of older persons;
- ✓ To examine the extent to which the existing legal framework adequately provides protection for older persons.
- ✓ To assess the enforcement mechanisms of the human rights of older persons and remedies for their violations.

1.4 Research Question

- ✓ What rights are older persons entitled to under the FDRE constitution in light of the international human rights instrument?
- ✓ Are there clear laws and are they known by concerned bodies to protect the human rights of older persons?
- ✓ To what extent the existing legal framework adequately provides protection for those older persons.
- ✓ What are the enforcement mechanisms of the human rights of older persons and the challenges they face while enjoying their rights?

1.5 Significance

The rights of older people are one of the emerging concerns in demography, both globally and regionally. The thesis was undertaken to answer the question of how much of the existing legal framework is adequate to protect elders' human rights. Thus, by identifying the gaps in the legal framework, this research was provide insights for legislative and policymakers to address the aging line with Ethiopia's international obligation arising from the ratification of the international human rights instruments. It was also enrich the knowledge of the law on the legal framework of elder's rights and will also serve as a stepping stone for more academic research on the subject at hand.

1.6 Research Methodology

The research explores the adequacy of the legal framework for the protection of the human rights of Elderly persons in Ethiopia. The study is based on doctrinal Study and qualitative approach. Both primary and secondary sources of data have been used. Global and Regional instruments as well as domestic laws, policies, programs and plans adopted by the Ethiopian government are employed as primary sources. As secondary sources general comments and concluding observations by treaty bodies, literatures written by scholars such as books and journal articles, previously conducted related research papers, magazines, reports, and publications issued by international organizations on the issue of older persons has been used.

1.7 Literature review

Older persons historically have been neglected by human rights law; their rights are becoming part of the public agenda. Thus the issue received prevalent international attention from both legal and non-legal researchers. International and domestic non-government organizations, as well as nation-states, have been pushing for a more robust human rights instrument to protect the rights of older persons.

According to Padmadas and others,⁴⁶ in their journal titled Tracking progress towards the MIPAA in East and Southern Africa: milestones and challenges, they have made significant assessment to the progress and gaps in the implementation of MIPAA in East and Southern Africa (ESA), with a focus on six countries: amongst Ethiopia selected on behalf of eastern Africa. Authors recommend that the existing polices, social protection programmes and legislative reforms aimed at including older persons in the development process should be strengthened, monitored and, where appropriate, modified to address the needs of older persons.⁴⁷ The recommendation was made based on the assessment of MIPAA progress and implementation. However, the authors limit themselves with assessing Sothern and Eastern Africa (Ethiopia) legislation and policies on older people in light of MIPAA progress and implementation since its inception. Moreover, in no case the writer tried to analyses whether the existing legislation adequately addressed human rights of older persons.

⁴⁶ S Padmadas and others, 'Tracking Progress towards the Madrid International Plan of Action on Ageing (MIPAA) in East and Southern Africa: Milestones and Challenges' (2018) 2 International Journal on Ageing in Developing Countries 202.

⁴⁷ *ibid.*

There is also research published on vulnerability of older persons in Ethiopia by Helpage international⁴⁸ they assert that, there is still much respect for older persons, but they are discriminated against and have their rights violated, such as the right to shelter, clean water, and sanitation, as well as the right to education and training. Furthermore, Helpage international argues that despite the government's efforts to cover older persons in Ethiopia's social protection system, there are still significant coverage gaps for older persons in Ethiopia's social protection system.⁴⁹ Finally, they recommend that, to adequately address these coverage gaps, considerable policy and program modifications may be required.⁵⁰ However, the study limited to provide comprehensive information on vulnerabilities and coping mechanisms of older people in Oromia, Amhara and Southern Nations, Nationalities and Peoples' Regional States.

The other non-legal research entitled Elder accounts of Abuse and Neglect in Ethiopia⁵¹ stated older persons in Ethiopia are subjected to abuse and neglect, which is a violation of their human rights. Older were mistreated, denied privacy, beaten, defrauded, and denied their rights to own property, according to the authors of the study.⁵² All of this is a breach of their right, which they can blame on their economic dependence, the perpetrators' abysmal poverty, and a lack of social assistance. As a result, Researchers claim that "there is no specific legal framework in Ethiopia meant to protect the older persons against abuse." In addition, government assistance and dedication are required to recognize and raise the issue of older person's abuse to a national level.⁵³ However, the authors' research is, it is narrow as it only elaborates the types and nature of abuse and neglect experienced by the older persons. Moreover the study limited to elder's experiences without considering to what extent laws and policies are protecting their rights.

⁴⁸ Helpage International, 'Vulnerability of Older People in Ethiopia:The Case of Oromia, Amhara and SNNP Regional States' (n 12).

⁴⁹ *ibid.*

⁵⁰ *ibid.*

⁵¹ Samson Chane and Margaret E Adamek, 'Death Is Better than Misery: Elders' Accounts of Abuse and Neglect in Ethiopia' (2015) 82 *International Journal of Aging and Human Development* 54.

⁵² *ibid.*

⁵³ *ibid.*

According to Anteneh Geremew⁵⁴, old Ethiopian persons are exposed to exploitation and neglect. The author while examining whether sufficient effort have been taken to recognize orders human rights, in ability to exercise their human rights is exacerbated by structural and legal obstacles.⁵⁵ As a result, the author noted that "despite varying levels of national and regional legislation of protection, direct and indirect discrimination in work is ubiquitous in Ethiopia." The author contends in his work that it has been difficult to significantly enhance the lives of the older person's due to a lack of monitoring and evaluation systems and implementation competence.⁵⁶ As a result, extra attention should be paid to the needs and care of the older persons, as well as institutional and strategic human rights-enforcing mechanisms should be adopted.⁵⁷ However, the author limited to overview the situation of Ethiopian aged population. Further, author had not tried to examine or assess the prevailing legal framework.

Though, plenty of studies are conducted in relation to older persons Human rights protection. Hence the aforementioned studies have addressed various issues, but this does not mean that they are free from gaps. Therefore, this thesis aims to fill the gap in the aforementioned literature by assessing the adequacy of the existing legislative framework for regulating the protection of the older person's human rights, which falls outside the scope of the above literature.

1.8 Organization of the study

This study divided into five separate sections; Chapter one is an introductory part providing the background, statement of the problem, research objective, scope and limitation of the research, and the research methodology. Chapter two covers a General overview of Elder's Human rights protection. Chapter three discusses national laws, policies, and strategies regulating Ethiopian elders' human rights protection. The Fourth Chapter assessed the adequacy of prevailing laws, policies, and strategies in regulating elders' Human rights. Finally, the fifth chapter summarizes the main findings of this study.

⁵⁴ Geremew (n 31).

⁵⁵ *ibid.*

⁵⁶ *ibid.*

⁵⁷ *ibid.*

Chapter Two

General overview of Protection of the Human Rights of Older Persons

2.1 Definition of Older Person

One of the first obstacles to articulating older people's rights may be defining "older people" as a distinct population group.⁵⁸ However, as aforementioned a definition of the concept of older persons is often approached from a minimum of 3 different standpoints based on: chronological, physiological and social factors. Chronological age is essentially biological in nature and is manifested in differing degrees of various functional disorders. It refers to age as measured in years. According to this criterion, old age is defined as beginning at 60 or 65 years and is often set by law for older person. Physiological age is determined by the physical ageing process, which, although linked to chronological age, cannot be equated directly with a person's age as measured in years. This definition relates to the loss of functional capacities and the gradual decline in bone density, muscle tone and strength that occur with the passage of time.⁵⁹ Finally, the concept of social age refers to the attitudes and behaviours that are regarded as being appropriate for a given chronological age group.⁶⁰ This view of older persons like that of gender is a social and historical construct based on the meaning which the cultural model assigns to the biological processes of ageing. It relates to a biologically based social category framed by subjective perceptions how old a person feels and imputed age how old others think a person is.⁶¹ Therefore, viewed from this vantage point, older person's (aside from its direct relationship to a person's chronological or natural age) is intrinsically determined by the production process, certain trends in consumption and the pace or pattern of life mandated by each society.⁶² As a result for Human Rights matters, this concept is considered as the determining factor for constructing instruments of protection for older

⁵⁸ OHCHR, 'Analytical Outcome Paper: Normative Standards in International Human Rights Law in Relation to Older Persons' 23.

⁵⁹ Omar Huertas Díaz, 'Legal Panorama on Regulations Regarding the Rights of Older Persons in Colombia' (2016) 21 *Nova et Vetera* 23.

⁶⁰ *ibid.*

⁶¹ Arber, S. and J. Ginn (n 2).

⁶² *Ageing: An Anthropology of Old Age.* (n 6).

persons, since myths about and stereotypes of older persons are socially accepted, due to the fact that old age is known to be a stage full of economic, physical and social limitations.⁶³

The rights of older persons have not been specifically recognized in any concrete instrument of the United Nations Human Rights System like those that exist for the protection of other groups, i.e., women, children or persons with disabilities. Despite this, the international community has shown interest in the human rights of the older persons and has managed to establish international instruments that, although most of them are not binding, serve as a starting point regarding respect for and integration of laws to the extent permitted in each state.⁶⁴ Thus the background, the legislative initiatives on topics of the older persons, has been three initiatives in this sense, which have taken the following form:⁶⁵

1. The original declaration of the rights of old persons was presented by Argentina in 1948. The document proposed the rights to assistance, shelter, food, clothing, physical and mental health, moral health, recreation, work, stability and respect.⁶⁶ The General Assembly decided that the Economic and Social Council would examine the Declaration project. The following year the Economic and Social Council asked the Secretary General to elaborate a brief document on the subject. However, the Human Rights Commission in charge of studying it replied through a memorandum from the Secretary General that there was not enough time between the session of the Economic and Social Council and that of the Commission to prepare the documentation, so they proposed that it be considered again in the following session of the Human Rights Commission in 1949. Nonetheless, there was no major follow-up or progress regarding this early initiative on the part of Argentina.⁶⁷

2. In 1991 the National Federation of Old Age and the Dominican Republic presented the Declaration on the Rights and Responsibilities of the older person, which constituted the basis of the United Nations' principles in favour of the elderly.⁶⁸ Later,

⁶³ Sandra Huenchuan and Luis Rodríguez-piñero, 'Ageing and the Protection of Human Rights: Current Situation and Outlook' (2011) 64.

⁶⁴ Huertas Díaz (n 59).

⁶⁵ UNECE Ministerial Conference on Ageing, 'Society for All Ages - Challenges and Opportunities' (2008).

⁶⁶ Huenchuan and Rodríguez-piñero (n 63).

⁶⁷ *ibid.*

⁶⁸ *ibid.*

in 1999 the Dominican Republic presented a project of Declaration of Interdependence before the Social Development Commission, in which it called for promotion of and respect for the links existing among different peoples on the international scale as well as those uniting individuals and groups on the micro-social scale.⁶⁹

3. Finally, the American Association of Retired Persons (AARP) of the United States presented a proposal for a society for all ages⁷⁰ for consideration by the United Nations in 1999, the International Year of the Elderly. It was hoped that this initiative would follow the same process as the proposal promoted by the International Federation of Old Age.

2.2 The Justification for Human Rights Protection of Older Persons as a Separate Group

In recent years, there has been a growing interest in and debate about whether an international agreement on the rights of older people is necessary. The debate on this topic is far from unanimous or straightforward.⁷¹

2.2.1 An argument for Older person Human Rights Protection

Obviously, there are many international instruments that recognize specific rights of all persons including all core international human rights instrument and are clearly applicable to older persons as citizens of signatory states. Without scepticism, it is fair to speak out that all existing international and regional human rights law do not sufficiently protect older persons rights under general protection they provide.⁷² Accordingly, regional human rights laws also do not protect older persons rights systematically or comprehensively, excluding Africa;⁷³ and do not legally oblige governments to realize the rights of all people. Besides, age is not listed explicitly as a reason why someone should not be discriminated against. As a result,

⁶⁹ *ibid.*

⁷⁰ UNECE Ministerial Conference on Ageing (n 65).

⁷¹ Israel Doron, 'Elder Law: Current Issues and Future Frontiers' (2006) 3 *European Journal of Ageing* 60.

⁷² Abdul Malek and Muhammad Abdur Razzak, 'Rights of the Elderly : An Emerging Human Rights Discourse' (2017) 59 *International Journal of Law and Management* 284.

⁷³ Sandra Huenchuan and Luis Rodríguez-piñero (n 63) 10

age discrimination is often overlooked.⁷⁴ Thus, it is rightly claimed that in reality, the rights of older persons are still often ignored and sometimes totally denied, specifically in terms of chronic poverty, violence and abuse, inadequate access to appropriate quality care, disrespect for dignity and autonomy, lack of educational and recreational opportunities, little or no access to the law and exclusion from social and political participation.⁷⁵

Optimistically, there is, however, an exceptional reference regarding to the older person rights that is the ICRMW⁷⁶ which prohibits discrimination on the basis of age. Additionally, the CEDAW⁷⁷ provides for the equal right of women to social security including in old age. However, it can be argued that insufficient attention has been paid to the specific vulnerability of older women.⁷⁸ Moreover, the CRPD,⁷⁹ require States to provide services to prevent and minimize further disabilities among older persons, and to ensure older person with disabilities have access to retirement benefits and programmes. However, to poignantly argue that the rights protected in these treaties are contingent on the older person in question being a migrant or part of a migrant's family, a woman or a person with a disability.⁸⁰ Not only this, if one critically examines the foundational human rights instruments, he can see clearly that none of them explicitly prohibits discrimination on the basis of age, robustly dispels negative attitude toward them and harnesses no attempts to fill multiples "gaps" in the prevalent human rights instruments.⁸¹ Moreover, human rights standards that protect older person's rights are presently scattered throughout the various international and regional conventions. This dispersal means that older people's rights remain invisible, and it is unclear exactly what older person's rights are.⁸² Predictably, the direct and immediate fall-out of

⁷⁴ HelpAge International 'Human Rights Policy' <<https://www.helpage.org/what-we-do/rights/rights/>> accessed 18 July 2022.

⁷⁵ The Global Alliance 'FAQ – Strengthening Older Peoples' Rights Worldwide – The Global Alliance' <<https://rightsofolderpeople.org/faq-strengthening-older-persons-rights-worldwide/>> accessed 18 July 2022.

⁷⁶ International Convention on Migrant Workers 2005 5.

⁷⁷ Convention on the Elimination of All Forms of Discrimination Against Women 2009 68.

⁷⁸ HelpAge International 'Human Rights Day: Why We Need a Convention on the Rights of Older People | HelpAge International' <<https://www.helpage.org/blogs/bridget-sleap-24/human-rights-day-why-we-need-a-convention-on-the-rights-of-older-people-383/>> accessed 20 July 2022.

⁷⁹ Convention on the Rights of Persons with Disabilities 2017 art 8.

⁸⁰ Malek and Razzak (n 72).

⁸¹ *ibid.*

⁸² HelpAge International (n 78).

these new human rights instruments would help change attitudes toward older adults and increase their visibility at both national and international level. It will also clarify government responsibilities toward older women and men, improve accountability and provide a legal framework for policy and decision-making.⁸³

To deal with all the legal provisions that affect the older persons, particularly with regard to their unique age-related needs and problems, a new field of "Laws for the older persons" should be established. The problem is straightforward and clear-cut because a specialty in this area would ideally include all of the law pertaining to the older persons.⁸⁴ Further, they argue that the possible results of new legal binding mechanism for the end may be manifold. As an instance Better protection of older person's rights will allow societies to better capitalize on the potential older person represent. It is arguably claimed that there is clear evidence, for example, that when older persons have social security, it reduces poverty rates, restores older their dignity, reduces child labour and increases enrolment in schools.⁸⁵ In addition, it would bring clarity to both the nature of older persons' rights and the responsibilities necessary to protect them. Particularly, it can codify the rights of older persons in one single document taking the same seriously on priority basis. While guiding policy making, it may help governments allocate resources more fairly; promote age sensitive programmes; and guide the private sector in how it can protect older person's rights⁸⁶ create societies and environments for all ages, where older persons are able to contribute, prosper and enjoy their rights.⁸⁷ Pressingly, the new convention may act as an anti-discriminatory tool to challenge prevailing stereotypes about older person; encourage structural changes and shifts in perception of ageing; and guide policy change. Through clarifying responsibilities, it would provide clarity on what older person's rights are and the minimum standards and actions necessary to protect them; complement and raise the profile of MIPAA and the UN Principles for Older Persons; strengthen the implementation of existing international law by making the rights of older people more explicit.⁸⁸ Moreover, it would improve accountability providing a

⁸³ *ibid.*

⁸⁴ Malek and Razzak (n 72).

⁸⁵ HelpAge International '8 Reasons to Care about Older People's Rights | HelpAge International' <<https://www.helpage.org/blogs/caroline-graham-17/8-reasons-to-care-about-older-peoples-rights-784/>> accessed 19 July 2022.

⁸⁶B Sleep, 'Strengthening Older People ' s Rights : Towards a UN Convention' (2010) 34

⁸⁷ HelpAge International (n 85).

⁸⁸ Malek and Razzak (n 72).

system of redress for the violation of the rights of older people. If so, it is submitted that it would optimally contribute to the generation of a political will for positive change through establishing legally effective international standards to progressively realize older person's rights; and sternly serve as a tool of both empowerment and protection by framing elderly issues as "an integral part of the broader international human rights agenda".⁸⁹

2.2.2 Arguments Against Elder's Human Rights Protection

Those who oppose the international convention for the rights of older persons anchor their position in two arguments: One from past experience, international conventions do not make a real difference and sometimes even make things worse and second specifically in the field of older persons' rights, there is no need for an international convention in light of the wealth of existing international documents.

Past experience shows that international conventions for human rights create superficial legal rights rather than true social change. Commonly, on the international arena for countries with the worse human rights record to be the first to sign international human rights conventions. This allows them to argue that they respect human rights, although in fact continue to infringe these rights on the ground. Past experience also showed that the international and political process of establishing the convention ignores authentic voices of the population it intends to protect.⁹⁰ For example, the lack of emphasis on women's participation in CEDAW implementation resulted in superficial equality as no "true" equality could be achieved without consulting the targeted group.⁹¹ International human rights conventions also sometimes blind to multiculturalism they ignore specific traditions and sets of beliefs and may ignore long-established unique social norms. As an instance, the imposition of Western values, via the CEDAW, has eroded that local traditions better suited to protect women in traditional societies. This was the case in Fiji concerning the response to rape.⁹² Moreover, hence, drafting choices can prove fatal to any human right treaty, and the international

⁸⁹ Fredvang and Biggs (n 7).

⁹⁰ Israel Issi Doron, 'The Debate Around the Need for an International Convention on the Rights of Older Persons' (2017) 5 586.

⁹¹ Jo Lynn Southard, 'Protection of Women's Human Rights under the Convention on the Elimination of All Forms of Discrimination against Women' (1996) 8 Pace International Law Review.

⁹² Deborah M Weissman, 'The Human Rights Dilemma: Rethinking the Humanitarian Project' (2003) 35 Columbia Human Rights Law Review.

political process has proved to be crucial in this field. For example, great criticism has been directed at the decision by CEDAW's drafter's to ignore honour killings due to political pressure, focusing only on domestic violence. This choice could potentially be disastrous as it both legitimizes such acts, allowing member states (which ratified the treaty) to ignore them.⁹³ Past experience also shows that there is an "implementation gap" that is exhibited in an actual failure to enforce international conventions. Accountability systems to monitor human rights compliance are weak and overburdened especially at the international level, with no accompanying effective sanctions attached to them, which can be dangerous. For example, the CRC wished to create standards for children's rights, enhancing their international status. Research on CRC's effectiveness, concerning for example Ugandan child soldiers, proved that the failure to enforce it against warring parties legitimized child soldier recruitment.⁹⁴ If violations of international rules go unpunished as is the case with CRC this sends a message that the illegal actions are permissible and that international conventions are worthless.

In addition to that Opposers argue that unlike the case for women, children, or people with disabilities, older persons already have a strong "soft law" solution under international instruments, which makes the establishment of yet another international document redundant.⁹⁵ Starting from the Vienna International Plan of Action on Ageing, moving to the United Nations Principles for Older Persons and Proclamation on Aging, through the Madrid Plan of Action on Ageing and its implementation documents and reports, there is almost no sphere of social interest concerning the older population that is not covered by very detailed existing international documents.⁹⁶ Specifically, it should be taken into account that the focus of the 2002 Madrid Assembly shifted the existing policy framework regarding the rights of older persons considerably. It promoted the view of ageing from the perspective of both developing and developed countries. An intergenerational policy approach that pays attention

⁹³ Christina A Madek, 'Killing Dishonor: Effective Eradication of Honor Killing' (2005) 29 *Suffolk Transnational Law Review*.

⁹⁴ Nsongurua J Udombana, 'War Is Not Child's Play - International Law and the Prohibition of Children's Involvement in Armed Conflicts' (2006) 20 *Temple International & Comparative Law Journal*.

⁹⁵ Israel Doron and others eds, 'The Rights of Older Persons' [2007] *The Association for the Planning and Development of Services for the Aged in Israel*

⁹⁶ Doron (n 90).

to all age groups with the objective of creating a society for all ages and a shift from developing policies for older persons toward the inclusion of older persons in the policymaking process were major outcomes of the Madrid Assembly.⁹⁷ If indeed the Madrid Plan of Action is taken seriously and implemented properly, there will be no need for any new international convention. However, if the Madrid Plan of Action is not taken seriously, there is no real reason why another international document will be treated any differently.⁹⁸

Moreover, conceptually speaking, soft law although not binding on the formal level has been proven to play an important role in the making of customary international law.⁹⁹ Through its specificity, soft international law can act as an extremely useful guide for policy matters.

Therefore, the opponents of the convention argue, specifically in the field of rights of older persons, that there is no real need for yet another international convention. The real need is to implement existing international plans, utilize existing human rights conventions, and respect resolutions and declarations, such as the UN Principles for Older Persons. The action, power, and force should focus on implementing the Madrid Plan of Action on Aging and not to lose focus on the political struggles for yet another diluted political compromise in the framework of a binding international rights convention. Alternatively, if existing declarations are difficult to implement on the international level, governments can still translate these instruments to nationally tailored plans to promote anti-ageist policies. Such an effort does not have to be an internationally driven as each government can adopt the recommended guidelines and act accordingly. The fear in this context is that governments would “wait” for the international community to formulate a specifically targeted international comprehensive instrument, whereas there is a variety of readymade programs to utilize to make the lives of the elderly much more worthwhile.

2.3 Human Rights of Older Persons in International Human Rights Instruments

When considering the rights of any group of persons, one inevitably encounters international human rights instruments. Several international systems recognize and protect human rights:

⁹⁷ *ibid.*

⁹⁸ *ibid.*

⁹⁹ AE Boyle, ‘Some Reflections on the Relationship of Treaties and Soft Law’ (1999) 48 *International & Comparative Law Quarterly* 901.

the United Nations system, the European system, the Inter-American system, and the African system. Each system has its own unique set of human rights treaties and supervisory mechanisms.

2.3.1 Global human rights instruments

Human rights have been encoded in a multitude of instruments at the international level, but a natural starting point for investigation is the three general texts: the UDHR 1948, 1966 ICCPR and 1966 ICESCR.¹⁰⁰ Non-discrimination is a core tenet that underpins the whole human rights canon. The UDHR states, "Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or another opinion, national or social origin, property, birth or another status."¹⁰¹ ICCPR and ICESCR contain similar provisions.¹⁰² Moreover, non-discrimination has informed the very creation of some fundamental human rights texts, most obviously the 1966 CERD and the 1979 CEDAW. However, despite its ubiquity, the norm of non-discrimination rarely specifies age as a prohibited ground for discrimination.¹⁰³

UDHR states that everyone has the right to work, to free choice of employment, to just and favourable conditions of work, and to protection against unemployment. Article 23(3) brings in another key precept of human rights, that of dignity, stating everyone who works has the right to just and favourable remuneration, ensuring for himself and his family an existence worthy of human dignity.¹⁰⁴ The provisions of ICESCR amplify these commitments; it delineates, for example, steps that states should take to realise the right to work, including technical and vocational training,¹⁰⁵ while the other provision emphasises the need for safe and healthy working conditions and for rest, leisure, and the reasonable limitation of working hours.¹⁰⁶ ICESCR General Comment 6 again considers the application of these rights for older person. It recognizes that older person often encounters problems finding and keeping

¹⁰⁰ Lindsay Judge, 'The Rights of Older People : International Law , Human Rights Mechanisms and the Case for New Normative Standards' (2008) 3.

¹⁰¹ UDHR (n 19) art 25.

¹⁰² The International Covenant on Civil and Political Rights 1966 art 16

¹⁰³ International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families Adopted 1990 art 56.

¹⁰⁴ UDHR (n 19) art 25.

¹⁰⁵ International Covenant on Economic, Social, and Cultural Rights 1967 art 12.

¹⁰⁶ *ibid.*

jobs and "stresses the need for measures to prevent discrimination on the grounds of age in employment and occupation."¹⁰⁷ It also emphasises the special importance of safe conditions for older people and the need to harness their skills and experience effectively.

In the absence of employment or other forms of income, human rights law recognises the responsibility of the State to provide adequate pensions and other forms of social protection. UDHR states that "Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family," which includes the right to security in the event of "unemployment, sickness, disability, widowhood, old age."¹⁰⁸ ICESCR echoes this, asserting "the right of everyone to social security, including social insurance."¹⁰⁹ This rather terse Article has been unpacked in General Comment 6 and more comprehensively in the recent General Comment 19 to produce a number of clearer obligations on states vis-à-vis older persons.¹¹⁰ For example, General Comment 19 isolates key elements of the normative content of the right to social security, namely availability, the types of risks that protection should cover, including old age, adequacy of any provision, and accessibility of any scheme.¹¹¹ It also highlights that social protection programs must "pay full respect to the principle of human dignity" and that states must take into account the special needs of women, part-time and casual workers, homeworkers, and those active in the informal economy.¹¹² It is clear from the General Comments that Article 9 envisages non-contributory schemes for those who fall outside the ambit of contributory pensions as well as a system of compulsory old-age insurance. States are also expected to establish a flexible retirement age that takes account of the occupation and working abilities of older people.¹¹³ Additionally, they are also encouraged to guarantee survivors' and orphans' benefits. General Comment 19 also identifies some immediately compelling obligations on states: they are expected to ensure that existing programs are non-discriminatory and promote gender equality;¹¹⁴ to develop a plan of action for more comprehensive coverage, which includes soliciting international assistance if

¹⁰⁷ General Comment No. 5: Persons with Disabilities 1995 22.

¹⁰⁸ UDHR (n 19) art 25

¹⁰⁹ ICESCR (n 105) art 9

¹¹⁰ International Labour Conference 'CONCEENING INVALIDITY, OLD-AGE AND STJBVIVOKS BENEFITS' 1967.77

¹¹¹ General Comment No 19: The right to Social Security 2008 7.

¹¹² *ibid.*

¹¹³ *ibid.*

¹¹⁴ *ibid.*

required, and monitoring the impact of programmes to ensure they deliver on their objectives.¹¹⁵

Health is clearly a critical priority for older persons and is an area that human rights law has considered in some depth. UDHR asserts that the right to a standard of living adequate for health and well-being includes food, medical care, and necessary social services, and further, Article 25(2) singles out motherhood and childhood as especially vulnerable points in the life cycle entitled to special care and assistance.¹¹⁶ ICESCR goes further in recognizing the right of everyone to the highest attainable standard of physical and mental health. It goes on to highlight particular priorities states should consider, including the prevention, treatment, and control of epidemic, endemic, occupational and other diseases and the creation of conditions that would assure all medical service and medical attention in the event of sickness.¹¹⁷

Housing is an issue that human rights law has dealt with less thoroughly than many others, with both UDHR and ICESCR making a brief reference to shelter as an integral part of the right to an adequate standard of living.¹¹⁸ Nevertheless, where one lives, and the care and support one receives in that environment are vital concerns for many older people the World over, a fact that is acknowledged in General Comment 6, which emphasizes that housing "must be viewed as more than mere shelter" as it clearly contains a psychological and social dimension.¹¹⁹ Perhaps the more valuable contribution made by General Comment 6 with respect to housing and care for older people is through its consideration of Article 10 of the ICESCR which commits states to accord "the widest possible protection and assistance ...to the family, which is the natural and fundamental group unit society".¹²⁰ While the further provisions of this Article again stress children and mothers as figures of special concern, General Comment 6 also points to the need to support families in responding to the needs of older relatives. Specifically, it stresses the need for measures targeted at low-income families

¹¹⁵ *ibid.*

¹¹⁶ UDHR (n 19) art 25

¹¹⁷ ICESCR (n 104) art 12

¹¹⁸ *Ibid*

¹¹⁹ United Nations High Commissioner for Human Rights (n 24).

¹²⁰ *ibid.*

caring for older people as well as single people or elderly couples who wish to remain in their homes.¹²¹

The Human Rights Committee, which interprets the application of ICCPR, has gone one step further by intimating that setting age limits for elective office would be unreasonably discriminatory.¹²² Moreover, Article 15 of ICESCR recognizes the right of everyone to take part in cultural life. All governed by the norm of non-discrimination, these rights should comprise a package that ensures the participation of older people in civic and national affairs. Finally, ICCPR encodes another key right that has relevance for older people in their engagement with the State, that of recognition as a person before the law (Article 16).¹²³ However, older people often struggle to assert their legal identity through a lack of papers or documentation, especially in developing countries. Consequently, they are unable to access services to which they are entitled - indeed, one of the objections some governments have raised to state pension provision is that a lack of birth records opens up such schemes to the possibility of widespread fraud - as well as participate fully in political processes.

The Human Rights of Elderly Persons under the African Human Rights System

2.3.1.1 African Charter on Human and Peoples' Rights

The African Charter on Human and Peoples' Rights (African Charter), which entered into force in 1986 and has been ratified, contains two sections that are particularly relevant to older persons. The African Charter considers the protection of the older persons alongside the protection of the family and of women.¹²⁴ Accordingly older persons are entitled to "particular measures of protection in compliance with their bodily or moral needs. As well as similar charter in different provisions obliges everyone to honour his parents at all times and to support them in times of need.¹²⁵ Another African human rights instrument so called The African Youth Charter's reiterates this responsibility, stating that "youth shall have the duty to have full respect for parents and elders and support them whenever they are in need.¹²⁶

¹²¹ *ibid.*

¹²² General Comment No. 25: 'The Right to Participate in Public Affairs, Voting Rights and the Right of Equal Access to Public Service 1996 art (25) 10.

¹²³ ICCPR (n 102) art 16.

¹²⁴ *Ibid* art 18

¹²⁵ African Charter on Human and Peoples Rights (n 28) art 18

¹²⁶ African Youth Charter 2006 art 26(c).

Importantly another issue that strengthen the provisions is that States Parties to the African Charter must implement the rights protected therein immediately upon ratification.¹²⁷ Other instruments with similar references include the Protocol to the African Charter on the Rights of Women in Africa,¹²⁸ the Kigali Declaration on Human Rights,¹²⁹ the African Union Policy Framework and Plan of Action on Ageing¹³⁰, and the African Union Social Policy Framework.¹³¹ The scope of the rights protected by this provision is not immediately clear because there are very few instances in which the African Commission on Human Rights ("African Commission"), the supervisory body empowered to monitor compliance with the African Charter, has made references to the rights of the older persons.¹³² Furthermore, the Charter states that the Commission "must draw inspiration from... instruments enacted by the UN and African countries."¹³³ The Commission can thus apply the UN Principles for Older Persons¹¹ and the AU Policy Framework to interpret the Charter's provisions.¹³⁴

2.3.1.2 Protocol to the African Charter on Human and Peoples Rights of Older Person

The latest development in this regional system of protection is the Protocol to the African Charter on Human and People's Rights on the Rights of Older Persons in Africa, which was adopted in 2016.¹³⁵ This Protocol is a milestone instrument that is enriched by African values and which reflects the challenges that older persons face today in Africa, despite their assumed reverence and respect, they enjoy within the African societies. At the same time, many of the provisions of the Protocol are stipulated around the socioeconomic realities

¹²⁷ Chidi Anselm Odinkalu, 'Analysis of Paralysis or Paralysis by Analysis? Implementing Economic, Social, and Cultural Rights under the African Charter on Human and Peoples' Rights on JSTOR' (2001) 23 Human Rights Quarterly 327.

¹²⁸ The Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa 2003 147.

¹²⁹ Kigali Declaration (2003).

¹³⁰ First Session of the Au Conference of Ministers in Charge of Social Development Windhoek , Namibia 2008 (SOCIAL POLICY FRAMEWORK FOR AFRICA).

¹³¹ *ibid.*

¹³² Rodriguez-pinzón and Ction (n 39).

¹³³ African Charter on Human and Peoples Rights (n 28)

¹³⁴ Jody Kollapan, 'The Rights of Older People- African Perspectives'.(1999) 54

¹³⁵ PROTOCOL TO THE AFRICAN CHARTER ON HUMAN AND PEOPLES ' RIGHTS ON THE RIGHTS OF OLDER PERSONS (n 30) art 3.

which hinder the rights of older persons.¹³⁶ The Protocol provides for the elimination of discrimination against older persons, access to employment without discrimination, social protection, health-care services, and education and infrastructure for older persons.¹³⁷ There are specific provisions for the protection of older women from gender-based violence and sexual abuse.¹³⁸ The Protocol much alike the Inter-American Convention includes various definitions such as the “older persons” meaning those persons aged 60 years and above and “aging” meaning “the process of getting old from birth to death.”¹³⁹ Discrimination is not being defined in the Protocol, but there is a definition of “harmful traditional practices” being the “traditional beliefs, attitudes and practices which violate the fundamental rights of older persons such as their right to life, dignity and physical integrity.”¹⁴⁰ The Protocol sets out obligations for the states to provide for the protection of older persons with disabilities and persons who are in situations of risk, including natural calamities, and conflict situations. It is noteworthy that the Protocol seeks to eliminate harmful social and cultural practices, such as witchcraft accusations,¹⁴¹ which have a negative impact on the welfare, health, life, and dignity of older women. Furthermore, state parties to the Protocol have to provide financial and any other form of support to older persons who take care of orphans and vulnerable children.¹⁴² The Protocol contains some progressive provisions, such as the duties of older persons to “mentor and pass on knowledge and experience to the younger generations and to foster and facilitate intergenerational dialogue and solidarity within their families and communities”¹⁴³ Article 20) and state parties’ obligations to adopt measures on awareness-raising programs to educate the younger population groups and older persons on aging, Article 19).¹⁴⁴ The overall enforcement of the Protocol is supervised by the African Commission; accordingly, states have to submit regular reports as to the measures taken with

¹³⁶ Kalliopi Chainoglou, ‘Human Rights Convention for Older Persons’ [2019] Encyclopedia of Gerontology and Population Aging 1.

¹³⁷ PROTOCOL TO THE AFRICAN CHARTER ON HUMAN AND PEOPLES ’ RIGHTS ON THE RIGHTS OF OLDER PERSONS.(n 30)

¹³⁸ *ibid.*

¹³⁹ *ibid.*

¹⁴⁰ *ibid.*

¹⁴¹ *ibid.*

¹⁴² *ibid.*

¹⁴³ *ibid.*

¹⁴⁴ *ibid.*

regard to its implementation. The African Commission can refer issues of interpretation or implementation to the African Court on Human and Peoples' Rights which is the only body that has the authority to hear disputes arising from the application or implementation of this Protocol.¹⁴⁵ The protocol has now come into effect and can be cited as one of the most comprehensive human rights instruments for enhancing the rights of older persons on the continent.

Further Protocol to the African Charter on human and peoples' rights on the rights of women in Africa (Maputo Protocol) The Maputo Protocol came into being pursuant to Article 66 of the Banjul Charter,¹⁴⁶ which provides for supplementary special protocols and agreements within the framework of the Charter. The Protocol emphatically addresses the sexual and reproductive health and rights (SRHR) issues of older women, which were hitherto missing from the Banjul Charter.¹⁴⁷ The Maputo Protocol provides for all women the rights to dignity, freedom from violence, access to justice and equality before the law, and health, including SRHR, which are all relevant to their realisation of SRHR. Recognising older women as a vulnerable group, the Protocol advances their rights to protection against sexual violence and reproductive infections such as HIV/AIDS, amongst others. Accordingly, Article 22 of the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (Maputo Protocol) is on Special Protection of Elderly Women, stating that "[t]he States Parties undertake to: a) provide protection to elderly women and take specific measures commensurate with their physical, economic and social needs as well as their access to employment and professional training; b) ensure the right of elderly women to freedom from violence, including sexual abuse, discrimination based on age and the right to be treated with dignity."

¹⁴⁵ *ibid.*

¹⁴⁶ African Charter on Human and Peoples' Rights (n 28)

¹⁴⁷ Ibrahim B. Abubakar, Leaving no one behind: Older African women's rights to sexual and reproductive health, (2022) *Afr J Reprod Health* 26

Chapter Three

Human Rights of Older Persons in the Ethiopian Legal and Policy Framework

Introduction

National human rights instruments are important as it is the direct tool to ensure the protection and promotion of the human rights of older persons. Ethiopia has taken measures with a view to promote and protect the rights, freedoms, and duties enshrined in the African Charter on Human and Peoples Rights. Fuelled by Madrid plan of action and African union plan, the Ethiopian government has adopted laws and strategies to respond to the needs of older persons.¹⁴⁸

3.1. FDRE Constitution

In contrast to the earlier regime's constitution, the FDRE Constitution dedicates one third of its section to human rights provisions. Not only this, it includes a significant number of rights that were absent from the prior constitution.¹⁴⁹ In addition to that the FDRE constitution also recognized the whole generation of rights in a single document.¹⁵⁰ Particularly from article 15 up to article 38, civil and political rights (traditionally referred to as first generation rights) are outlined.¹⁵¹ The FDRE Constitution provides that international agreements ratified by Ethiopia are an integral part of the law of the land.¹⁵² Not only that, the Constitution notes that the third chapter, which is a human rights chapter, must be interpreted in a manner conforming to the principles of the UDHR, international covenants on human rights, and international instruments adopted by Ethiopia.¹⁵³

¹⁴⁸ Helpage International, 'Vulnerability of Older People in Ethiopia: The Case of Oromia, Amhara and SNNP Regional States' (n 12).

¹⁴⁹ AK Abebe, 'Human Rights under the Ethiopian Constitution: A Descriptive Overview' (2011) 5 Mizan Law Review.

¹⁵⁰ *ibid.*

¹⁵¹ *ibid.*

¹⁵² FDRE Constitution (n 45)

¹⁵³ *Ibid*

In the FDRE constitution, the only Provision that uses the term older persons is article 41 (5).¹⁵⁴ Article 41 (5) state that the State shall, within available means, allocate resources to provide rehabilitation and assistance to the physically and mentally disabled, the aged, and to children who are left without parents or guard.¹⁵⁵ Accordingly, the objective of this provision is to provide rehabilitation and assistance. Therefore, the state obligation at this juncture is to protect such individuals from the ill effects and limitations of disability and to provide them with minimal assistance.¹⁵⁶ In practice, this translates into paternalistic decision making, politics, programs, and services, including, for instance, institutional living, segregated education, and sheltered workshops.¹⁵⁷

Further, FDRE Constitution provides that all persons are equal before the law and are entitled without any discrimination to the equal protection of the law.¹⁵⁸ The provision reads as: All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall guarantee to all persons equal and effective protection without discrimination on grounds of race, nation, nationality, or other social origin, colour, sex, language, religion, political or other opinion, property, birth or other status.¹⁵⁹ This means that all persons are equal before the law and are entitled without any discrimination to the equal protection of the law.¹⁶⁰ Although the Constitution's provision does not mention specifically discrimination on basis of age, the phrasing by race, nationality, ..., or other status'' is inclusive of older persons. Though most constitutions directly or implicitly provide for social and economic rights, the content of those constitutional provisions is declaratory than guaranteeing them as consumable commodities.¹⁶¹ Similarly,

¹⁵⁴ *ibid.*

¹⁵⁵ FDRE Constitution (n 45) art 25

¹⁵⁶ Lisa Waddington, Mark Priestley and Betül Yalcin, 'Equality of Opportunity in Employment? Disability Rights and Active Labour Market Policies' [2016] Routledge Handbook of Disability Law and Human Rights 72.

¹⁵⁷ 'Disability Discrimination Law: A Global Comparative Approach' [2014] Disability Rights in Europe: From Theory to Practice.

¹⁵⁸ FDRE Constitution (n 45) art 25.

¹⁵⁹ *ibid.*

¹⁶⁰ Dawit Oticho, 'THE PLACE OF THE RIGHTS OF PERSONS WITH DISABILITIES UNDER THE 1995 FDRE CONSTITUTION (2019). 23

¹⁶¹ Marcin Wujczyk And Alexandre Egorov (ed), 'The Right to Social Security in the Constitutions of the World: Broadening the Moral and Legal Space for Social Justice' (2016) vol 1: Europe

the economic and social rights provisions under the FDRE Constitution are vaguely formulated, making it difficult to translate into reality. As regards older persons, the State's obliged to care for and rehabilitate the mentally and physically handicapped, without excluding older persons as provided in the Constitution.¹⁶² Rather, this tends to perceive disability as an individual problem or object of charity.¹⁶³

3.1.1 Public Servants' Pension Proclamation No. 1267/2022

The need to strengthen the public servants' pension system and reinforce the law in this area in Ethiopia is intended to ensure the complete progressive extension of social security protection to all.¹⁶⁴ In order to achieve social justice and alleviate old age related poverty, proclamation No. 714/2011 was re-enacted.¹⁶⁵ The Proclamation introduces a diverse range of benefits, including retirement benefits,¹⁶⁶ invalidity pension,¹⁶⁷ incapacity pension,¹⁶⁸ survivor's pension, gratuity, and refundable pension contribution.¹⁶⁹ However, in 2013, only 1% of the population was covered by the contributory scheme, and households in the informal sector and those self-employed depended on their own coping mechanisms. Although the Proclamation terminates the payment of survivors' benefits to widows or widowers if such beneficiaries are less than the age of 45 and 50 and are re-married, respectively,¹⁷⁰ the benefit will not be discontinued in case the disabled widow or widower is less than the age of 45/50 and re-married.¹⁷¹ The pension scheme provides coverage for retirees, survivors, and incapacity and employment injury payment benefits. The beneficiary survivors could include children under 18, widows, or dependent parents of the main breadwinner. The pension scheme also has the arrangement to continue giving the survivors or direct dependents of retired government employees after the death of the regular pensioners. Surviving widows and widowers are also entitled to pension payments as long as

¹⁶² Oticho (n 160).

¹⁶³ Ibid

¹⁶⁴ Proclamation No. 714/2011 Public Servants' Pension Proclamation 2011 art 41.

¹⁶⁵ *ibid.*

¹⁶⁶ *ibid.*

¹⁶⁷ *ibid.*

¹⁶⁸ *ibid.*

¹⁶⁹ *ibid.*

¹⁷⁰ *ibid.*

¹⁷¹ *ibid.*

they have not re-married, and surviving children continue to receive payments until they reach the age of 18.

The invalidity, old age, incapacity, and survivor pensions introduced by the Proclamation echo the risks and contingencies identified by the ILO and to which social security protection needs to be extended.¹⁷²

In Ethiopia, however, due to their particular Vulnerability to poverty and unemployment associated with disability, the retirement, invalidity, and incapacity benefits introduced by the Proclamation could not adequately reach older person. This calls for the introduction of social assistance benefits as part of expanding social security coverage to older person who could not thus be protected by the pension scheme.¹⁷³

3.1.2 Private Organization Employees' Pension, Proclamation No. 1268

Unlike the public servants' pension laws, the law governing private organization employees' pension schemes is a recent phenomenon in Ethiopia. The need to extend pension schemes to private organization employees and reduce poverty originated from the adoption of this Proclamation.¹⁷⁴

The coming into effect of this Proclamation is a significant move to be able to address a large number of people and gives protection to older persons who have been enrolled in private organizations. But still, the self-employed and the unemployed sections of society are not covered in the pension schemes. This makes a number of self-employed and unemployed older persons vulnerable to financial problems in old age. The Proclamation also extends pension coverage to employees of private organizations upon attaining retirement age or prior to that when he/she has completed ten years of service and retires or when he/she completed 20 and 25 years of service and resigned by voluntary resignation or for any other causes other than those provided for in this Proclamation shall receive retirement pension for life beginning with five years prior to retirement age.¹⁷⁵ This indicates the employees of private

¹⁷² 'Convention C102 - Social Security (Minimum Standards) Convention, 1952 (No. 102)' Article 19 <https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C102> accessed 6 August 2022.

¹⁷³ Oticho (n 160).

¹⁷⁴ Private Organization Employees Pension Proclamation No. 715/2011 2011 Article 39 (1).

¹⁷⁵ *ibid.*

organizations who, due to disability or upon attaining retirement resign from their service are entitled to be covered by a pension scheme. Akin to the conditions discussed under the public servants' pension proclamation, the invalidity and incapacity benefits are available to persons who sustain disability or disability-related health problems or disabling injury lose or receive reduced income, respectively.¹⁷⁶

Moreover, the Proclamation guarantees the payment of survivor benefits to his survivors in case an employee of a private organization dies while receiving retirement, invalidity, or incapacity benefits or while in service before or upon completing at least ten years of service or due to employment injury.¹⁷⁷ Accordingly, it enunciates widows, widowers, children under the age of eighteen, and dependent parents as beneficiaries of survivor pensions. Particularly as to the survivor pension paid to dependent parents, the Proclamation enunciates that the survivor's pension will exceptionally be provided to parents who were wholly or mainly supported by the deceased preceding his death.¹⁷⁸

Though, Old age pensions have a major impact on the well-being of the older persons. The current pension plans in Ethiopia provide protection to those who have enrolled in public and private organizations. However, a significant portion of the unemployed and self-employed population are not included in these plans, which means that many older persons who work in the informal sector are not eligible for old age pensions and may face financial difficulties in their later years.

3.1.3 Ten Year Development Plan Policy (2021-2030)

The policy, with the main goal of promoting the economic and social development of the country, gives emphasis to older person under its Gender and Social Inclusion. It focusses on empowering various sections of the society and enabling them to benefit from economic development through skills development, capacity building and equitable participation. Its main strategic direction is protecting the rights of and creating opportunities for participation of older person so that they contribute fully to the development process as well as to political, economic, and social activities.¹⁷⁹ The policy lays down that programs for older members of

¹⁷⁶ Proclamation No. 714/2011 Public Servants' Pension Proclamation.(n 164)

¹⁷⁷ Private Organization Employees Pension Proclamation (n 174)

¹⁷⁸ *ibid.*

¹⁷⁹ Ministry of Finance and Economic Development (MoFED), 2010, Growth and Transformation Plan, Ethiopia

society should respect their dignity, freedom, and independence and their established relationships and association with society. The thrust of such programs should be towards providing care and support from immediate social formations and neighborhood communities rather than via formalized institutions. Creating and developing societal and communal awareness activities should be reinforced along these lines. The government has supported and encouraged the many charities and associations established to aid and care for the older persons.¹⁸⁰

3.1.4 The Developmental Social Welfare Policy (DSWP)

DSWP was promulgated in 1996 by replacing the 1994 National Social Policy. The DSWP took the first step in the country's social welfare to deal with children, youth, women, older person, and disabled people and the inherent social problems that are challenging them. The policy has the objective to maintain developmental, preventive, and rehabilitative welfare services.¹⁸¹As one of the social welfare concerns of the country, the DSWP mentions the needs of older persons. It acknowledges the great role played by older persons in sharing their knowledge and lived experiences. Their social roles in counseling and mediating conflicts are also given recognition.¹⁸² The policy stresses that strengthening the family is a basic system for ensuring the security and welfare of older person. It encourages the promotion of appropriate social security and assistance for older person that do not have any material and Psychological support in their communities.

The policy seeks the enactment and enforcement of social security programs to guarantee the well-being of older person. After stating the various problems (physical, psychological, financial, and socio-cultural), older persons face in this fast-changing World,¹⁸³ it suggests what should be done to tackle the problems. The policy recommends the creation of follow-up mechanisms to ensure that services aimed at ensuring the security and well-being of older persons are inclusive. The policy also encourages and supports non-governmental organizations, voluntary associations, and community action groups to establish services to assist and support older persons. Community participation, partnership and coordination,

¹⁸⁰ Ibid

¹⁸¹ MOLSA, 'The Developmental Social Welfare Policy', (1996)

¹⁸² Ibid

¹⁸³ Helpage International, 'The State of Health and Ageing in Ethiopia: A Survey of Health Needs and Challenges of Service Provisions, Addis Ababa, Ethiopia' 38

research, and capacity building are the strategies that are identified in order to accelerate the implementation of the DSWP 1996.¹⁸⁴

The social development and welfare policy, which gives special attention to the care and welfare of this section of society, is in the course of implementation as part of the National Action Plan, and an operational manual is being prepared for this purpose.

3.1.5 The National social protection policy of Ethiopia

Following the issuance of the DSWP, the government developed the National Plan of action on older people, 2005/6-2014/15 (1998-2007 Ethiopian Calendar). The document states the rationale for the enactment of the Plan of action, listing down the various social, economic, and demographic factors that generated or aggravated the problems of older persons. In relation to the proper implementation of relevant policies, it states that the efforts have remained uncoordinated, and hence, establishing national and regional focal bodies is imperative.¹⁸⁵

Hence, For the progressive realization of social and economic rights noted in article 41 of the constitution, Ethiopia adopted National Social Protection Policy.¹⁸⁶ The policy document ‘focuses at reducing poverty, social and economic risk of citizens, vulnerability, and exclusion by taking measures through formal and informal mechanisms to ascertain accessible and equitable growth to all.’¹⁸⁷ It gives special attention to ‘segments of the society vulnerable to different social and economic problems, especially, children, women, persons with disabilities, elderly, labour constrained unable to make earnings, and the unemployed who are living under difficult circumstances.’¹⁸⁸ The policy consists of five focus areas namely Promoting productive safety net, promoting and improving employment and livelihood, promoting social insurance, increasing equitable access to basic social services, and providing legal protection and support to those vulnerable to abuse and violence.¹⁸⁹ In the policy, appropriate attention is provided to older people who need care and support because they are among the vulnerable groups. Access to essential social services, legal protection

¹⁸⁴ Ibid

¹⁸⁵ Helpage International (n 183) 39

¹⁸⁶ Developed by Ministry of Labour and Social Affairs (MoLSA) in 2014 by replacing the 1996 Developmental Social welfare Policy (DSWP).

¹⁸⁷ Ministry of Labor Affairs (MoLSA), ‘National social protection policy of Ethiopia’ (November 2014) 22.

¹⁸⁸ Ibid, 23.

¹⁸⁹ Ibid, 24.

and assistance, and older individuals were cited as three of the five focal areas listed in the strategy paper. In order to address and prevent violence, exclusion, discrimination, and abuse against older people, the policy document calls for the establishment of a social safety net program to assist those individuals who lack basic social services. It also guarantees that older person can access basic social services.

CHAPTER-FOUR

Assessment of the Adequacy of the Normative Framework on the Right Rights of Older Persons in Ethiopia

Introduction

The recognition of older people's human rights in international human rights treaties remains invisible. There are at present no international, universally applicable standards that may be used to guide the development of laws to protect such rights. Lack of an adequate number of ratifications prevented the recently adopted Protocol on the Rights of Older Persons in Africa from coming into effect, despite its comprehensive framework that prohibits all forms of discrimination against older people and recognition of other fundamental rights. As a result, the current international legal system is fragmented and insufficient to meet specific protection gaps for older persons to exercise their fundamental rights.¹⁹⁰ Even some of the existing rights of older people are scattered over other international human rights instruments intended for everyone, including some groups that are vulnerable.

Ethiopia additionally endorsed these instruments to protect the rights of the elderly for various periods of time. To that purpose, it has enacted legislation to fully implement the pledges. Nonetheless, Ethiopia's legislative frameworks for the protection of older people are inadequate, failing to completely address the challenges that older people face. By extension, it is possible to argue that there is a significant normative and implementation gap.

Moreover, older people encounter a wide range of challenges such as, age-based discrimination, poverty, systematic socioeconomic discrimination, food insecurity, social exclusion, neglect, and abuse. These challenges are some of the most serious challenges that older people encounter, endangering their well-being and limiting their ability to exercise their rights.¹⁹¹

¹⁹⁰ OHCHR 'OHCHR and Older Persons' (*OHCHR*) <<https://www.ohchr.org/en/older-persons>> accessed 1 May 2024.

¹⁹¹ Geremew (n 31) 5.

In this light, the fourth chapter of the thesis examined the adequacy of existing Ethiopian normative frameworks for guaranteeing and protecting the rights of older people.

As a result, the chapter analyzed the adequacy of Ethiopian legal frameworks in protecting the rights of older people. Under this major topic, three fundamental rights were assessed: the adequacy of laws in providing the right to access to justice, the adequacy of Ethiopian laws in addressing older people's health rights, and Ethiopia's social security law and policy effectiveness in ensuring the entitlement to social security rights for the elderly.

4.1. Ethiopian Legal Frameworks in Protecting the Rights of Older Person: Analysis of Its Adequacy

States undertake to put into place domestic measures such as establishing institutions, enacting legislation and amending laws to be made it compatible with the treaty obligations through ratification and accession to international human rights treaties.¹⁹² In doing so, ratifying states express their commitments for the realization of the treaty obligations. Consequentially, ratifying state must ensure that all substantive and procedural provisions of the treaties are followed domestically. Furthermore, they must ensure that the post-ratification actions are adequate enough to meet the commitments under the ratified convention.

Since the adoption of the United Nations Charter in 1945, international human rights treaties have been developed progressively. Provisions governing the rights of elderly people follow a similar pattern of gradual development and are found in a wide range of human rights treaties. Nonetheless, there is no specific international human rights institution dedicated to protecting the rights of elderly people except the International Convention on the Protection of the Rights of All Migrant Workers and Their Families which forbids age discrimination.¹⁹³

In Ethiopia too, no separate legal instrument has been adopted to explicitly protect the rights of the elderly. Although the FDRE Constitution protects a wide range of vulnerable groups, including women and children, it does not specifically address the rights of elderly people. Failure to include and reduce coverage for older people in normative settings has a potential

¹⁹² OHCHR 'International Human Rights Law' (*OHCHR*) <<https://www.ohchr.org/en/instruments-and-mechanisms/international-human-rights-law>> accessed 22 April 2024.

¹⁹³ 'Strengthening-Older-Peoples-Rights-towards-a-Un-Convention-2010' 3 <<https://primarysources.brillonline.com/browse/human-rights-documents-online/strengthening-older-peoples-rights-towards-a-un-convention-2010;hrdhrd99970023>> accessed 29 April 2024.

to influence and change decisions about resources, priorities, and the value placed on various aspects of older lives.

Most indeed, the act goes against article 1 of the Universal Declaration of Human Rights which states that all human beings are born free and equal in dignity and rights, and this right does not end as a person ages; it continues with them.¹⁹⁴

The 1995 FDRE Constitution provides that international agreements ratified by Ethiopia are an integral part of the law of the land.¹⁹⁵ Not only that, the Constitution notes that the third chapter, which is a human rights chapter, must be interpreted in a manner conforming to the principles of the UDHR, international covenants on human rights, and international instruments adopted by Ethiopia or commonly known by the name Bill of rights.¹⁹⁶

Ethiopia has ratified several key international human rights agreements, such as the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) and the Convention on the Rights of Persons with Disabilities (CRPD), which both encompass protections against age-based discrimination for older individuals in Articles 11, 14, 25 sub (b), and 28(2)(b). Nevertheless, the human rights instruments only offer limited protection for the rights of elderly individuals, mainly focusing on women and those with disabilities.

Ethiopia has officially approved a Protocol on the Rights of Older Persons in Africa that specifically forbids all types of discrimination against older individuals and acknowledges other essential human rights. The Protocol can be cited as an ambitious step taken by the African Union to enhance the protection of the human rights of older persons across the continent. Ethiopia, having ratified the Protocol, awaited its implementation for an extended period. Now, however, it has officially and clearly entered into force. To this end, the government of Ethiopia should craft subsidiary laws that turns the provisions in the Protocol into practice, and subsequently, make it part and parcel of domestic laws and policies.

¹⁹⁴ UDHR(n 19) art 1.

¹⁹⁵FDRE Constitution (n 45)

¹⁹⁶ *ibid.*

4.1 The Right to Access to Justice

Access to justice is a fundamental aspect of the rule of law.¹⁹⁷ It is a fundamental right in and of itself, as well as a necessary condition for the protection and advancement of all other human rights. Access to justice includes the right to a fair trial, including equal access to and equality before the courts, as well as the ability to seek and achieve reasonable and timely remedies for abuses of rights.¹⁹⁸ Similarly, the International Covenant on Civil and Political Rights recognizes these principles and rights in its articles 2 (1) and (3), 14 and 26. The Covenant, as interpreted by the Human Rights Committee, provides several due processes guarantees for the conduct of judicial proceedings to ensure the right to a fair trial that apply to any judicial body with any legal competence.¹⁹⁹

Furthermore, the Human Rights Committee has determined that States parties are required under the Covenant to guarantee that individuals have accessible and effective remedies to assert their rights, which should be appropriately adapted so as to take into account the specific requirements of different populations. The International Covenant on Economic, Social, and Cultural Rights states that everyone has the right to effective remedies, whether judicial or administrative. The Committee on Economic, Social, and Cultural Rights contended that administrative remedies should be "accessible, affordable, timely, and effective".²⁰⁰

Article 37 of the FDRE Constitution stipulates the right to access to justice as follows: "Everyone has the right to bring a justiciable matter to, and to obtain a decision or judgement by, a court of law or any other competent body with judicial power"²⁰¹ The provision admits the right of Ethiopians to bring their cases before courts of law and any other organs, including administrative organs with judicial power. The provisions limited the cases that could be brought before the courts and administrative organs to only justiciable matters. Ethiopia has also ratified the Bill of Rights and openly acknowledged the right to access justice. In which, according to the hierarchical structure of Ethiopian law, all of them become

¹⁹⁷ Declaration of the high-level meeting of the General Assembly on the rule of law at the national and international levels paras 14 and 16.

¹⁹⁸ Substantive inputs on the focus area "Access to justice" Working document submitted by the Office of the High Commissioner for Human Rights 2021 paras 14 and 16.

¹⁹⁹ *ibid* 14.

²⁰⁰ Committee on Economic, Social and Cultural Rights, 'Substantive Issues Arising in the Implementation of the International Covenant on Economic, Social and Cultural Rights' para 9.

²⁰¹ FDRE Constitution (n 45) art 37.

the law of the land.²⁰² In addition, the fundamental freedoms guaranteed by Chapter 3 of the Constitution must be interpreted in accordance with the tenets of the Universal Declaration of Human Rights, the International Covenants on Human Rights, and other international agreements ratified by Ethiopia.²⁰³

As part of realizing the right to access justice ratified by the Ethiopian government and rights adopted by domestic organs, the FDRE Constitution has established two tiers of courts at the federal and regional levels. As per the provision of the constitution, Article 78 "...The House of Peoples' Representatives may, by two-thirds majority vote, establish nationwide, or in some parts of the country only, the Federal High Court and First-Instance Courts it deems necessary".²⁰⁴ On the same provision it depicts the establishment of courts by regional states. It reads as follows: "States shall establish State Supreme, High and First Instance Courts".²⁰⁵ On the same provision, the constitution depicts the establishment and presence of institutions that could have quasi-judicial power like that of regular courts.²⁰⁶

The Federal Courts Proclamation No.1234/2021 has also referred the right to access to justice defined in the FDRE constitution under the preamble of the proclamation.²⁰⁷ On the same foot, the proclamation clearly stipulated the right to access to justice under the preambular part. "It is necessary to establish a system in which Federal Courts play an inimitable role in enforcing the rules of law and, protection of human and democratic rights".²⁰⁸ The proclamation has briefly described the role of the right to access to justice than the FDRE constitution in its role in executing and implementing human rights whenever it is violated.

The proclamation has addressed the right to access justice accorded to all citizens whenever both municipal and international laws are violated by individuals, states, and non-state actors. To this end, the federal courts, including the first, high, and supreme courts, entertain cases of constitutional law, federal laws, and international laws ratified by Ethiopia, including international human rights conventions ratified by Ethiopia, and that has been accorded the right to access to justice conspicuously.²⁰⁹ Moreover, the proclamation has expressed its

²⁰² *ibid* 9(4).

²⁰³ *ibid* 13(2).

²⁰⁴ *ibid* 78(2).

²⁰⁵ *ibid* 78(3).

²⁰⁶ *ibid* 78(4).

²⁰⁷ Federal Courts Proclamation 1234-2013. 2021 para 2.

²⁰⁸ *ibid* 3.

²⁰⁹ *ibid* 3(1)(a).

regard for the right to access justice by imposing an obligation on federal courts to interpret provisions, including the right to access justice, following international human rights ratified by Ethiopia.²¹⁰

The right to access to justice also acts as a mechanism for guaranteeing other intrinsic rights by allowing all to file complaints and seek redress from official or informal justice institutions in accordance with human rights norms. The right to access justice is also accorded to all vulnerable people without any difference. By extension, the elderly are endowed with the right to access justice before courts and other organs with judicial organs. To fully implement this right, there has to be independent legislation that addresses the rights of elders, in particular. As it helps to put all the available resources comprehensively towards them, nevertheless, as per the studies of the Ethiopian Human Rights Commission (EHRC) conducted on the gaps identified in the protection of older people's human rights, the lack of legislation that particularly addresses the right to access justice for older people hinders the full enjoyment of the rights.²¹¹ Thus, for the full enjoyment of older person rights, there has to be a separate legislation that addresses the factual challenges of older persons in Ethiopia. This helps to respond to the challenges of older people and fulfil the commitments Ethiopia entered into in the international human rights conventions.

Furthermore, senility is a basis for the Ethiopian law's limitation on an older person's legal capacity. In connection with this, the primary gap found is that the 1960 Civil Code merely describes senility in general terms without clearly defining it, nor does it give the characteristics of senility. As a result, this gap severely restricts older people's ability to legally exercise their rights by providing a wider interpretation mandate.²¹² The study determined that there is a normative gap in addressing the right to justice for the elderly.

In addition, according to the OCHA study, some of the most significant hurdles to accessing justice for older persons are lack of knowledge and awareness, physical access, reasonable accommodation, affordability, and cultural norms, and ageism.²¹³ All the mentioned hurdles can possibly limit the right to access justice for all, but it is highly challenging for an older

²¹⁰ *ibid* art 3(2).

²¹¹ EHRC, 'Responses to the OEWGA Questionnaire: Gaps Identified in the Protection of the Human Rights of Older Persons and How Best to Address Them.' (2023) 2

²¹² *Ibid*

²¹³ Working document submitted by the Office of the High Commissioner for Human Rights 'Substantive inputs on the focus area Access to justice' .2021 4

person. Let's examine each of these issues separately to determine how they directly affect the right to access justice or function as instruments to carry out the right from the outset.

First, a lack of knowledge and awareness is a significant barrier to older people's right to access justice. Lack of knowledge and awareness is to mean that workers in the justice system, such as judges, public prosecutors, legal officials, and police officers, are unaware of older people's right to access justice fully. The elderly are also unaware of the methods for pursuing and executing their rights and have difficulties conveying their grievances and concerns to the appropriate organs, including lawyers, in a straightforward way. The challenge stemmed from the government's negligence in promoting the human rights of older people. In other languages, there is a lack of training and education provided to justice system professionals and elderly people with regard to what is provided from the government side.

As a result, the researcher suggested that Ethiopia's government should incorporate the right to access justice in its national justice strategy, as well as issue proclamations and directives to carry out the rights of older people. In addition, offering training for judicial system staff on older people's rights and international human rights treaties, as well as building free legal aid clinics to train elderly people.

Second, reasonable accommodation of court proceedings presents a problem in safeguarding older people's access to justice in Ethiopia. When an elderly person brings a case against their children, a family, or a caretaker, the impact becomes a reality. Courts should consider the best time for older individuals to testify, and they should not provide alternative care for people who have caregiving responsibilities so that they can participate in proceedings. The right to justice for older people is being violated as a result of societal standards and unreasonable accommodations in court proceedings, despite the fact that the AU's Protocol on Older Persons calls for and advocates for age-friendly legislation that recognizes older people's potential talents. As part of this commitment, the Ethiopian government should enact a new law that considers older people's circumstances in all elements of access to justice and guarantees that procedures are age-friendly or appropriate for older people.

In a similar vein, the normative gap is also available for older people who join correctional centers as a punishment. This is to mean that older criminals at the correction center must be kept in a separate center from other groups of criminals in the correction center. This is due to an older person's physical and psychological status, which calls for exceptional treatment. In

addition, there must be a method for releasing or home-arresting elderly criminals after attaining a certain age or when they are at that stage. This would help them reintegrate into society and dissuade them from committing new crimes. These two; segregation of older person and releasing of old age criminals are the two normative gap that reveals the Ethiopian criminal law inadequacy in ensuring the right of older person.

Besides, articles 84, 557, and 565 of Ethiopia's criminal Code accorded measures that exacerbate and alleviate the penalties for illegal acts committed against a person who requires special protection owing to his or her age. The inclusion of age as a basis for aggravating and extenuating penalties in Ethiopia's criminal code demonstrated the understanding that the elderly require protection as a distinct group of people, as well as the dynamism of understanding the principle of non-discrimination among the country's lawmakers.

4.1.2. The Right to Health

The FDRE Constitution recognizes fundamental freedoms and rights, such as the right to health and access to medical treatment, in Articles 41(5) and 90 (1) consequentially. It says that the state will, to the extent that it is able; set aside funds for elderly citizens' aid and rehabilitation. It also aims to give all Ethiopians access to public health, clean water, housing, food, and social security.²¹⁴ In addition, ICESCR, under Article 12, mentioned that states parties to the Covenant recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.²¹⁵ For the full realization of the right, state parties must provide all means to ensure this right through establishing medical centers, training medical professionals, and providing prevention training and awareness creation programs for all.

All people have the equal right to health care, regardless of their individual variances. But because of their advanced age, older people's health issues are more serious than those of other vulnerable populations. Therefore, it is more important than ever to work toward the elderly's right to health. Elderly people's right to health must now be respected, safeguarded, and realized with the help of all available resources. Moreover, certain actions are required to assure the protection of senior citizens' health-related rights. These include the freedom of

²¹⁴ Ibid (n 203) art. 90(1)

²¹⁵ ICESCR (n 105) art 12.

movement, knowledge, privacy, and an acceptable standard of living, as well as personal integrity.

The National Plan of Action on Older People (2006–2015), the Five-Year Strategic Framework for the Prevention and Control of Non-communicable Diseases (2012), and its Action Plan (2012) are some of the most pertinent policy documents that, if put into practice as intended, could significantly lessen the obstacles older people faced in exercising their right-to-health. Nevertheless, researcher disclosed that there is a lack of implementation in older-related programs and policies, and some of the policies' implementation periods have ended.²¹⁶ Currently, the council of ministers has issued a draft health policy document, which will be expected to include holistic solutions to all health-related problems in Ethiopia, including those affecting elders.

The National Social Security Policy²¹⁷ has given special attention to the most vulnerable sections of society, especially the elderly, but only those who lack care and support are covered. The strategy really benefits those who are not receiving assistance; it ignores the reality that assistance for the aged must be provided to both those who require care and those who do not.

Instead of an institutional approach to ensure older adults' well-being, as per Adamek, the Ethiopian government has taken a minimalist residual approach, addressing only the most severe needs of vulnerable older adults.²¹⁸ This strategy cannot solve the issues that older people face at the grassroots level, and it only provides brief pain alleviation. Nevertheless, the availability of care for all is a guarantee; in fact, the policy takes cognizance of the country's resources, which are limited and only available to a few, let alone those in acute need.

Furthermore, the current health policy includes provisions that address everyone's right to health through various means in a broad sense, and it did not adequately consider the rights of the elderly. This disdain resulted, among other things, in a scarcity of health practitioners

²¹⁶ Working document submitted by the Office of the High Commissioner for Human Rights (n 213) 10

²¹⁷ The National Social Protection Policy is nationwide sectorial document developed by the Government of Ethiopia in 2012 as a complete framework leading to coordinated actions to protect citizens from economic and social deprivation

²¹⁸ Margaret E Adamek, Messay Gebremariam Kotecho and Abraham Zelalem Teshome, 'Promoting the Well-Being of Older People in Ethiopia: Lost Opportunities Due to the Poverty of Policy' (2024) 8 *Innovation in Aging* 120, 3.

who specialize in the treatment of age-related health issues. A recent study of aging researchers in Sub-Saharan Africa discovered that a lack of geriatric specialists and training is a significant impediment to meeting the social and health needs of the elderly.²¹⁹ In order to bridge the normative gap, Ethiopia's government ought to initiate a separate policy that addresses the rights to health of the aged.

Ethiopia also has a national palliative care guideline²²⁰ developed by the Federal Ministry of Health in 2016, and thus palliative care is explicitly recognized in the country's health care policy and health sector transformation plan as a fifth pillar, alongside primary health promotion, prevention, curative, and rehabilitation. In palliative care regarding older persons, major gaps were identified, as per the studies of EHRC. This was the lack of formal long-term care systems: Ethiopia does not have a formal system of long-term care for older people who need assistance with daily activities or have chronic health conditions. There are few residential facilities or home-based care services for elders, and most of them are run by non-governmental organizations or religious organizations with limited resources and capacity.²²¹ Hence, in accordance with Article 41(5) of the FDRE Constitution and various international human rights agreements, the government must create extended care centres across the nation in partnership with NGOs.

The lack of a plan for aging is a significant reason why the elderly are denied their rights, and social and health problems for older people will persist without a comprehensive aging plan at a national level. If the aging policy is in effect, it can create an opportunity for institutional actions to tackle issues elderly individuals encounter and establish the government's responsibility to support its aging population. This can change perceptions of aging and show that older individuals merit respect, care, and help.²²² Therefore, enacting aging policy has to be an urgent task of the government than ever to ensure the human rights of older person in Ethiopia. Indeed, the Ethiopian government should develop an aging policy to address the requirements of the elderly. Unless relevant policies are devised and executed, older people in

²¹⁹ *ibid.*

²²⁰ Palliative care is an approach that improves the quality of life of patients and their families facing the problem associated with life-threatening illness, through the prevention and relief of suffering by means of early identification and impeccable assessment and treatment of pain and other problems, physical, psychosocial and spiritual.

²²² Margaret E Adamek, Messay Gebremariam Kotecho and Abraham Zelalem Teshome (n 218) 5

Ethiopia will continue to be marginalized and viewed as a drain on the country's economic resources.

4.1.3. The Right to Social Security

The right to social security is a foundation in ensuring human dignity for all people when they experience conditions that prevent them from fully realizing their human rights.²²³ Age is a very important factor in the right to social security, and old age is widely regarded as one of the primary "contingencies" or "branches" of social security in international law.²²⁴ The ICESCR has recognized that old age is one of the contingencies to be covered by social security²²⁵, and held that "the International Covenant on Economic, Social, and Cultural Rights does not contain any explicit reference to the rights of older persons, although article 9, which provides for "the right of everyone to social security, including social insurance," implicitly recognizes the right to old-age benefits."²²⁶ The CESCR has also clarified that the right to social security encompasses both contributory, insurance-type schemes and non-contributory, tax-funded schemes (sometimes referred to as "social assistance").²²⁷

The right to social security, in particular, includes the right to access and maintain benefits without discrimination in order to protect against: a lack of work-related income due to sickness, disability, maternity, employment injury, unemployment, old age, or the death of a family member; unaffordable health care; and insufficient family support, particularly for children and adult dependents.²²⁸

As part of its pledge, the Ethiopian government has launched a number of efforts to ensure that older people have access to social security. The programs aim to address the economic insecurity of the elderly while also ensuring the right to a decent quality of living as outlined in international human rights agreements and the FDRE Constitution. Under this background, the National Social Security Policy ((NSSP) is an outgrowth of the effort launched in 2014.

²²³ OHCHR 'About the Right to Social Security and Human Rights' <<https://www.ohchr.org/en/social-security/about-right-social-security-and-human-rights>> accessed 30 April 2024.

²²⁴ 'Convention C102 - Social Security (Minimum Standards) Convention, 1952 (No. 102)' pt 5 <https://normlex.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::p12100_instrument_id:312247> accessed 30 April 2024.

²²⁵ 'General Comment No. 19: The Right to Social Security (Art. 9 of the Covenant)' para 15.

²²⁶ 'General Comment No. 6: The Economic, Social and Cultural Rights of Older Persons para 10.

²²⁷ *ibid* 30.

²²⁸ About the Right to Social Security and Human Rights (n 223).

The NSSP identifies a number of social protection actions and prioritizes them based on broad societal categories.²²⁹

In the same talking, the National Social Protection Strategy (NSPS), the elderly population who are 65 and above are covered as a part of vulnerable groups. Despite addressability concerns and a concentration on the acute issues of the elderly, the strategy has brought the elderly's demands to the attention of the national government. The strategy attempts to offer an acceptable level of living for the elderly who receive no care or support. Besides, the National Plan of Action for Older Persons (NPAOP), enacted in 2006 for 10 years, was expressly designed to meet the rights and needs of older people. Even while the policy has a significant impact on safeguarding older people's rights, it is insufficient to handle the current challenges that older people face, necessitating a complete, pragmatic, and certain policy. The latest version of the policy suggests broadening Ethiopia's pension system to include a universal pension for individuals aged 70 and older, regardless of their contributions.²³⁰

Furthermore, the Urban and Rural Safety Net Programs are not expressly created for older people, but they benefit from the package as part of a vulnerable population. The Rural Productive Safety Net Program was established in 2005, but the Urban Productive Safety Net Program (UPSNP) began only in 2016.

In this regard, Ethiopia has some legislative and legal frameworks in place to ensure respect for elderly people's economic, social, and cultural rights, while there is currently no statutory noncontributory social security system.²³¹ On top of that, the SNSP has developed urban and rural Safety-Net programs, as well as national pension plans for both public and private sector employees.

In terms of social security in the form of pension, Ethiopia has two pension schemes: the Public Servants Pension Scheme and the Private Sector Organizations Employees' Pension Scheme. The goal of both programs is to support former employees once they retire, with the payment withdrawn and made by the employer while they are active employees of either a government or a commercial entity. According to Ethiopian labor and public servant proclamations, the retirement age for public and private employees is 60, and military

²²⁹ HelpAge International, 'Coverage of Older People in Ethiopia's Social Protection System.' 2022 4.

²³⁰ Tsegaye Y, 'Strategies to Strengthen the Social Protection System to Enhance the Human Rights of Older Person in Ethiopia' 2024

²³¹ EHRC, 'Ethiopian Human Rights Commission on Economic Security' 2022 2.

members retire at 55, with a minimum service requirement of ten years.²³² The extension of the retirement age is a remarkable constructive effort by the government to address the economic issues that older people would face, and it can be seen positively.

In the study conducted in 2019, the minimum monthly pension is 744 Birr (USD 25.03), while the highest monthly pension is 70% of the insured's average monthly basic pay. In 2020, the minimum monthly pension was increased to 1,250 birr (USD 35.8).²³³ In the same note, only around 15 per cent of Ethiopia's older people currently receive any kind of social protection. Based on the numbers of older people covered by the public and private sectors contributory old age pensions and the PSNP, 634,330 older Ethiopians were covered by social protection programmed in 2018. Although this number has been increasing gradually over the years, the vast majority of older people in Ethiopia an estimated 86% - are not covered by any social protection intervention.²³⁴

In sum, approximately 7.3% of the population over the mandatory retirement age of 60 presently receives benefits from the national pension system. The underlying reasons for the low coverage of older people by Ethiopia's social protection system are a combination of low levels of overall coverage by the existing social protection programs, including the use of strict location-specific quotas, an exclusive reliance on contributory pensions linked to formal employment, and the lack of a dedicated social protection program aimed at ensuring income security for older people outside the small formal economy.

To address the inadequacies and broaden the scheme's coverage, the government ought to study other payment options, such as investing for financial sustainability and including the informal sector, such as self-employed individuals and immigrants, into the pension system. Most importantly, it should allow contributors to choose on how the pension is spent. In practice, this will necessitate training and raising awareness among the elderly and their family members. In a comparable vein it advocates for the targeted intervention of law enforcement, trade unions, and pension funds. In sum, as inflation rises, it is more important than ever to incorporate older people into the social security protection system.

²³² HelpAge International (n 21) 5.

²³³ *ibid* 7.

²³⁴ *ibid*.

CHAPTER FIVE

CONCLUSION AND RECOMMENDATIONS

The four preceding chapters of the thesis discussed and assessed the adequacy of the legal framework for the protection of human rights for elderly persons in Ethiopia. Chapter five of the thesis concluded and recommended the findings obtained under each section of the thesis. The first section of chapter four came to a conclusion. The second section of the chapter has made a recommendation. A recommendation was made with the objective of rectifying the legal and policy lacunae within the Legal Frameworks for the Protection of Human Rights of Older Persons in Ethiopia.

5.1. Conclusion

The paper assessed and appraised the adequacy of legal frameworks for the protection of human rights of elderly persons in Ethiopia. Ethiopia, as a domestic initiative and ratification and accession to international human rights instruments, has undertaken a formidable number of measures to ensure the rights of older persons. The rights of older persons under the Bill of Rights and the UN Charter are part and parcel of Ethiopian laws. Subsequently, action plans and general comments were provided for the protection of older people's human rights.

The EU, OAS, and AU were also at the forefront of inculcating the rights of older persons in their parent human rights conventions. However, internationally and nationally, there is a lack of independent, universal, and comprehensive human rights instruments adopted for the protection of older persons. But, UDHR, ICCPR, ICESCR, CEDAW, and CERD inculcated the rights of older persons overtly. The absence has been paving the way for the older person's discrimination and inequality.

Under this background, the thesis was conducted with the objective of assessing the adequacy of the legal frameworks in protecting the human rights of older people in Ethiopia and to point out rectifying options. The study finds out that in Ethiopia, the legal frameworks are inadequate in terms of providing protection to older people.

The challenges in safeguarding the rights of older people stem from articulating the meaning of older people's rights in the legal instruments. As a result, older people's rights have not been adequately articulated under international human rights laws, although other vulnerable

groups, such as women, children, and people with disabilities, have received separate and comprehensive instruments. Subsequent measures to protect the human rights of elderly people demonstrate that pillar instruments have been adopted, though they are not binding.

In Ethiopia, the rights of older persons have been included in the domestic legal frameworks, including the 1995 FDRE Constitution under Articles 41(5), 25, 90(1), and 89(2). In addition to these basic provisions, subsequent proclamations, such as public and private employees' pension laws, policies, and directives, were adopted to protect the human rights of older persons in Ethiopia. But the legal frameworks, including the Constitution, were vague, did not address the rights of older persons directly, and could not fully address the commitments the Ethiopian government made to accord protection to the older persons.

The thesis has also assessed the adequacy of Ethiopian legal frameworks in properly addressing the rights of older persons from the touchstones of the right to access justice, the right to social provisions, and the right to health. These three rights are selected based on their relevancy for elder person among the bundle of other human rights accorded.

Older people encounter a number of challenges in exercising their right to access justice. The pillar one is absence of legislation that particularly addresses the right to access justice for older people hinders the full enjoyment of the rights. Furthermore, some of the most significant hurdles to accessing justice for older people are lack of knowledge and awareness, physical access, reasonable accommodation, affordability, cultural norms, and ageism. Besides, Ethiopia's criminal code pays due attention to the rights of older persons, but it's failed to consider older persons post-courtroom or after they join correction centres.

Ethiopia's health policy fails to address the right to health of elderly people in compared to people with impairments. In actuality, the policy includes provisions that address everyone's right to health in broad terms, but it fails to appropriately examine the elderly's rights. Furthermore, the Ethiopian government has embraced a minimal residual approach, addressing just the most pressing needs of vulnerable elderly people.

In terms of social security rights of older person, currently no formal non-contributory social security system in Ethiopia that addresses elderly people's claim to social security. Furthermore, the national social security system has poor coverage due to the application of strict location-specific quotas, an exclusive dependence on contribution pensions tied to formal employment, and the absence of a dedicated social protection program.

5.2 Recommendations

In view of the inadequacy of Ethiopia's legal frameworks in protecting and ensuring the human rights of older persons, the following recommendations should be implemented in order to entrench older person's rights, fill the legal and implementation gaps, and pinpoint rectifying solutions.

1. Legal and Policy reform:

- 1.1. The government of Ethiopia should adopt a national policy on the rights of older people: The adoption would provide solutions to normative and implementation gap and endow a comprehensive mandate to the federal and regional government structures to ensure the rights of older people holistically.
- 1.2. Ethiopia's draft criminal procedure should include a procedure and provision that is age-friendly or appropriate for older people.
- 1.3. The government should adopt a pension law that covers the informal sector, such as self-employed individuals and immigrants.
- 1.4. The government should adopt a pension system that allows pension contributors to invest and has other payment options.
- 1.5. Ethiopian justice policy should allow older persons to segregate from other offenders if that suits their physical and mental setup, and there must be a home arrest or frequent visits for older persons while they are in correction centres, unlike other adult criminals.

2. Institutional Reform and Resource Allocation:

- 2.1. Establishing free legal aid centres at court premises and public prosecutor offices with the assistance of NGOs and law schools.
- 2.2. The government of Ethiopia should establish old care centre facilities in regions.
- 2.3. Providing funds for old care centre facilities established by private individuals.
- 2.4. NGOs and civil society organizations in Ethiopia must lobby for and follow the implementation of the human rights of older people.
- 2.5. Establishing or re-establishing a government structure that addresses the rights of older people with sufficient resources at the federal and regional levels.
- 2.6. The government of Ethiopia should build statics of older persons and develop surveys.

3. Education and Training

3.1. Providing training for judicial organs and justice system machineries on older people's rights and international human rights treaties.

Bibliography

1. Books

- Egorov MWAA, The Right to Social Security in the Constitutions of the World: Broadening the Moral and Legal Space for Social Justice., (vol 1: Europe 2016)

- The Rights of Older Persons Collection of International Documents (Israel Doron and others eds, (The Association for the Planning and Development of Services for the Aged in Israel 2007)
- Waddington L, Priestley M and Yalcin B, 'Equality of Opportunity in Employment? Disability Rights and Active Labour Market Policies' (Routledge Handbook of Disability Law and Human Rights 2016)

2. International Instruments, General Comments and Regional Instruments;

- 'Kigali Declaration (2003)
- African Charter on Human and Peoples' Rights (1981)
- African Youth Charter (2006)
- CESCR General Comment No. 6: The Economic, Social and Cultural Rights of Older Persons (2001)
- Convention C102 - Social Security (Minimum Standards) Convention, (1952)
- UNGA Convention on the Elimination of All Forms of Discrimination against Women (2009)(United Nation General Assembly)
- Convention on the Rights of Persons with Disabilities (2017)
- General Comment No 19: The right to Social Security Article (2008)
- General Comment No. 25: Article 25 The Right to Participate in Public Affairs, Voting Rights and the Right of Equal Access to Public Service (1996)
- General Comment No. 5: Persons with Disabilities (1995)
- International Convention on Migrant Workers and its Committee (2005)
- International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families Adopted (1990)
- International Covenant on Economic, Social, and Cultural Rights (1967)
- International Labour Conference CONCERNING INVALIDITY, OLD-AGE AND STJBVIVOKS' BENEFITS (1967)
- PROTOCOL TO THE AFRICAN CHARTER ON HUMAN AND PEOPLES ' RIGHTS ON THE RIGHTS OF OLDER PERSONS (2016)
- The International Covenant on Civil and Political Rights (ICCPR) (2016)
- The Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa. Adopted by the 2nd Ordinary Session of the Assembly of the Union (2003)

- United Nations GA, ‘Political Declaration and Madrid International Plan of Action on Ageing’, Second World Assembly on Ageing, Madrid (2002)
- United Nations Principles for Older Persons resolution 46/91 of 16 December 1991 (General Assembly)
- Universal Declaration of Human Rights (1948)
- Declaration of the high-level meeting of the General Assembly on the rule of law at the national and international levels (2012)

3. National Laws and Strategies

- Private Organization Employees Pension Proclamation No. 715/2011 (2011)
- Proclamation No. 714/2011 Public Servants’ Pension Proclamation (2011)
- The Federal Democratic Republic of Ethiopia Constitution, Proclamation No. 1/1995 (1995)
- Federal Court Establishment Proclamation No. 1234/21 (2021)
- Ministry of Social and Labour Affairs M of L and S, ‘Government of the Federal Democratic Republic of Ethiopia National Plan of Action on Older Persons (1998-2007) EC.’ (2007)

4. Article Journal

- ‘The State of Health and Ageing in Ethiopia: A Survey of Health Needs and Challenges of Service Provisions’ (2013)
- ‘Vulnerability of Older People in Ethiopia: The Case of Oromia, Amhara and SNNP Regional States’ (2013)
- Abebe A, ‘Human Rights under the Ethiopian Constitution: A Descriptive Overview’ (2011) 5 Mizan Law Review
- Alan S Gutterman, ‘Older Persons’ Rights to Social Security and Economic Justice (2023)
- Baer B and others, ‘The Right to Health of Older People’ [2016] The Gerontologist Review 56
- Boyle AE, ‘Some Reflections on the Relationship of Treaties and Soft Law’ (1999) 48 International & Comparative Law Quarterly 901
- Chane S and Adamek ME, ‘Death Is Better than Misery: Elders’ Accounts of Abuse and Neglect in Ethiopia’ (2015) 82 International Journal of Aging and Human Development

- Disability Discrimination Law : A Global Comparative Approach' [2014] Disability Rights in Europe : From Theory to Practice
- Doron I, 'Elder Law: Current Issues and Future Frontiers' (2006) 3 European Journal of Ageing
- Doron II, 'The Debate Around the Need for an International Convention on the Rights of Older Persons' The Gerontologist Review' [2017] 5
- Fredvang M and Biggs S, 'The Rights of Older Persons Protection and Gaps under Human Rights Law' (2012)
- Geremew A, 'HUMAN RIGHTS OF OLDER PERSONS : A NEED TO ADDRESS VULNERABILITY OF ETHIOPIAN ELDERLY' (2019)
- HelpAge International and Cordaid, 'A Study of Older People ' s Livelihoods in Ethiopia.' [2011] HelpAge International
- HelpAge International, 'The Mark of a Noble Society: Human Rights and Older People' (2000)
- Huenchuan S and Rodríguez-piñero L, 'Ageing and the Protection of Human Rights : Current Situation and Outlook' (2011)
- Huertas Díaz O, 'Legal Panorama on Regulations Regarding the Rights of Older Persons in Colombia' (2016) 21 Nova et Vetera 23
- Israel P and others, 'The Rights of Older Persons within the African Union Introduction' (2016)
- Judge L, 'The Rights of Older People: International Law , Human Rights Mechanisms and the Case for New Normative Standards' (2008)
- Karnataka Women's Information and Resource Centre, Human Rights Education for Beginners, vol 53 (2005)
- Kidist Negash, 'Extending Support Through CMAM to Oler People in Ethiopia (2018)
- Kollapan J, 'The Rights of Older People- African Perspectives'(2008)
- Madek CA, 'Killing Dishonor: Effective Eradication of Honor Killing' Suffolk Transnational Law Review (2005)
- Malek A and Razzak MA, 'Rights of the Elderly : An Emerging Human Rights Discourse' International Journal of Law and Management (2017) 59

- Margaret E Adamek, Messay Gebremariam Kotecho and Abraham Zelalem Teshome, 'Promoting the Well-Being of Older People in Ethiopia: Lost Opportunities Due to the Poverty of Policy' (2024)
- Marthe Fredvang and Simon Biggs, 'The Rights of Older Persons: Protection and Gaps under Human Rights Law'; UDHR 1948.
- Murphy M, 'International Human Rights Law and Older People : Gaps , Fragments and Loopholes Section' (Bethany Brown and Bridget Sleaf ed, 2012)
- Odinkalu CA, 'Analysis of Paralysis or Paralysis by Analysis? Implementing Economic, Social, and Cultural Rights under the African Charter on Human and Peoples' Rights on JSTOR' (2001) 23 Human Rights Quarterly 327 <<https://www.jstor.org/stable/4489337>> accessed 31 July 2022
- Office of the High Commissioner for Human Rights, 'Analytical Outcome Paper: Normative Standards in International Human Rights Law in Relation to Older Persons' (2012)
- Oticho D, 'COLLEGE OF LAW AND GOVERNANCE School of Law THE PLACE OF THE RIGHTS OF PERSONS WITH DISABILITIES UNDER THE 1995 FDRE CONSTITUTION By: - DAWIT OTICHO ORO' (2019)
- P Udhayakmar and Dr P Ilango, 'HUMAN RIGHTS FOR THE WELLBEING OF OLDER PERSONS'; Anteneh Geremew, 'HUMAN RIGHTS OF OLDER PERSONS: A NEED TO ADDRESS VULNERABILITY OF ETHIOPIAN ELDERLY'; ICESCR 1976;
- Padmadas S and others, 'Tracking Progress towards the Madrid International Plan of Action on Ageing (MIPAA) in East and Southern Africa: Milestones and Challenges' International Journal on Ageing in Developing Countries (2018)
- Rodriguez-pinzón D and Ction INT, 'The International Human Rights Status of Elderly Persons' American University International Law Review (2003)
- Sleaf B, 'Strengthening Older People ' s Rights : Towards a UN Convention' [2010]
- Southard JL, 'Protection of Women's Human Rights under the Convention on the Elimination of All Forms of Discrimination against Women' International Law Review (1996) 8 Pace
- Udombana NJ, 'War Is Not Child's Play - International Law and the Prohibition of Children's Involvement in Armed Conflicts' Temple International & Comparative Law Journal (2006) 20

<<https://heinonline.org/HOL/Page?handle=hein.journals/tclj20&id=59&div=&collection=>> accessed 18 July 2022

- Weissman DM, ‘The Human Rights Dilemma: Rethinking the Humanitarian Project’ Columbia Human Rights Law Review (2003) 35 <<https://heinonline.org/HOL/Page?handle=hein.journals/colhr35&id=267&div=&collection=>> accessed 18 July 2022

5. Internet Sources

- ‘About the Right to Social Security and Human Rights’ (OHCHR) <<https://www.ohchr.org/en/social-security/about-right-social-security-and-human-rights>> accessed 30 April 2024
- Diego Rodriguez-Pinzã, ‘The International Human Rights Status of Elderly Persons’; ‘The Rights of Older People: One of The Most Neglected Areas in Advancing Human Rights in Africa – The African Centre for Democracy and Human Rights Studies’ <<https://www.acdhrs.org/2018/07/rights-older-people/>> accessed 18 April 2024;
- ‘Access to Justice | Rule of Law Education Centre’ <<https://www.ruleoflaw.org.au/crime/criminal-trial-processes/access-to-justice/>> accessed 29 April 2024
- ‘Ageing and the Workplace: Challenges and Opportunities in Social Protection’ (Social Protection and Human Rights) <<https://socialprotection-humanrights.org/expertcom/ageing-and-the-workplace-challenges-and-opportunities-in-social-protection/>> accessed 30 April 2024;
- ‘Aging, Social Protection and Human Rights: Preventing Financial Abuse of Older People’ (Social Protection and Human Rights) <<https://socialprotection-humanrights.org/expertcom/aging-social-protection-human-rights-preventing-financial-abuse-older-people/>> accessed 30 April 2024;
- Yeabsira Tsegaye, ‘Policy Brief: Strategies to Strengthen the Social Protection System to Enhance the Human Rights of Older Persons in Ethiopia’ (Ethiopian Human Rights Commission - EHRC, 19 August 2024) <<https://ehrc.org/policy-brief-strategies-to-strengthen-the-social-protection-system-to-enhance-the-human-rights-of-older-persons-in-ethiopia/>> accessed 20 August 2024;
- WIPO Lex, ‘Constitution of the Federal Democratic Republic of Ethiopia’; ‘Convention C102 - Social Security (Minimum Standards) Convention, 1952

(No. 102)’

https://normlex.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::p12100_instrument_id:312247> accessed 30 April 2024;

- ‘The African Commission on Human and Peoples’ Rights: The Development of Its Non-State Communication Procedures on JSTOR’ <https://www.jstor.org/stable/762765>> accessed 5 August 2022
- ‘Arber, S. and J. Ginn (1995) Connecting Gender & Ageing. A Sociological Approach. Open University Press, Buckingham. - References - Scientific Research Publishing’ [https://www.scirp.org/\(S\(czeh2tfqw2orz553k1w0r45\)\)/reference/referencespapers.aspx?referenceid=899350](https://www.scirp.org/(S(czeh2tfqw2orz553k1w0r45))/reference/referencespapers.aspx?referenceid=899350)> accessed 19 July 2022
- ‘FAQ – Strengthening Older Peoples’ Rights Worldwide – The Global Alliance’ <https://rightsofolderpeople.org/faq-strengthening-older-persons-rights-worldwide/>> accessed 18 July 2022
- ‘First World Assembly on Ageing, Vienna 1982 | United Nations’ <https://www.un.org/en/conferences/ageing/vienna1982>> accessed 5 August 2022
- ‘Rights Policy | Human Rights | HelpAge International’ <https://www.helpage.org/what-we-do/rights/rights/>> accessed 18 July 2022
- ‘Aging: An Anthropology of Old Age.’ <https://dialnet.unirioja.es/servlet/libro?codigo=48560>> accessed 20 July 2022
- ‘Ethiopia - Age Structure 2011-2021 | Statista’ <https://www.statista.com/statistics/455134/age-structure-in-ethiopia/>> accessed 6 August 2022
- ‘Ethiopia Ratifies the Africa Union Protocol on the Rights of Older People despite COVID-19 | News and Blogs | HelpAge International’ <https://www.helpage.org/newsroom/latest-news/ethiopia-ratifies-the-africa-union-protocol-on-the-rights-of-older-people-despite-covid19/>> accessed 5 August 2022
- ‘Helpage International, State of the World’s Older People 2002 | AUC Library’ <https://library.au.int/state-worlds-older-people-2002-3>> accessed 5 August 2022
- ‘Human Rights Day: Why We Need a Convention on the Rights of Older People | HelpAge International’ <https://www.helpage.org/blogs/bridget-sleap-24/human-rights-day-why-we-need-a-convention-on-the-rights-of-older-people-383/>>

accessed 20 July 2022

- ‘International Human Rights Law’ (OHCHR) <<https://www.ohchr.org/en/instruments-and-mechanisms/international-human-rights-law>> accessed 22 April 2024;
- ‘OHCHR and Older Persons’ (OHCHR) <<https://www.ohchr.org/en/older-persons>> accessed 1 May 2024;
- ‘Older People’s Lives at Risk: Addressing the Crisis in Ethiopia- Policy Brief, January 2023 - Ethiopia | ReliefWeb’ (19 January 2023) <<https://reliefweb.int/report/ethiopia/older-peoples-lives-risk-addressing-crisis-ethiopia-policy-brief-january-2023>> accessed 18 April 2024;
- Reasons to Care about Older People’s Rights | HelpAge International’ <<https://www.helpage.org/blogs/caroline-graham-17/8-reasons-to-care-about-older-peoples-rights-784/>> accessed 19 July 2022
- World Population Prospects, the 2012 Revision | Latest Major Publications - United Nations Department of Economic and Social Affairs’ <<https://www.un.org/en/development/desa/publications/world-population-prospects-the-2012-revision.html>> accessed 5 August 2022
- The Right to Social Security (Art. 9 of the Covenant)’ (Refworld) <<https://www.refworld.org/legal/general/cescr/2008/en/41968>> accessed 30 April 2024;
- Staff Reporter, ‘Retirement Age Increased for Educators’ (Capital Newspaper, 1 April 2019) <<https://www.capitalethiopia.com/2019/04/01/retirement-age-increased-for-educators/>> accessed 28 April 2024;
- ‘Securing a Dignified Old Age for All’ (Social Protection and Human Rights) <<https://socialprotection-humanrights.org/expertcom/securing-a-dignified-old-age-for-all/>> accessed 30 April 2024;
- ‘Strengthening-Older-Peoples-Rights-towards-a-Un-Convention-2010’ <<https://primarysources.brillonline.com/browse/human-rights-documents-online/strengthening-older-peoples-rights-towards-a-un-convention-2010;hrdhrd99970023>> accessed 29 April 2024;
- ‘Strengthening-Older-Peoples-Rights-towards-a-Un-Convention-2010’ <<https://primarysources.brillonline.com/browse/human-rights-documents->

[online/strengthening-older-peoples-rights-towards-a-un-convention-2010;hrdhrd99970023](https://www.unhcr.org/refugees/online/strengthening-older-peoples-rights-towards-a-un-convention-2010;hrdhrd99970023)> accessed 1 May 2024;

6. Other sources

- BSF F and, 'POPULATION AGEING IN MALAWI: UNDERSTANDING CHALLENGES, Responding to Opportunities:Proceedings of the Meeting Held in Lilongwe, Malawi (2007)
- Chainoglou K, 'Human Rights Convention for Older Persons' (2019) Encyclopedia of Gerontology and Population Aging
- Committe on Economic ,Social and Cultural Rights, 'Substantive Issues Arising in the Implemantation of the International Covenanat on Economic, Social and Cultural Rights(2008)
- EHRC, 'Responses to the OEWGA Questionnaire: Gaps Identified in the Protection of the Human Rights of Older Persons and How Best to Address Them.(2023)
- First Session of the Au Conference of Ministers in Charge of Social Development Windhoek , Namibia 2008 (SOCIAL POLICY FRAMEWORK FOR AFRICA
- Helpage International, 'Off the Margins : Older People , Human Rights and Poverty Reduction in Africa in the 21st Century'
- Substantive inputs on the focus area "Access to justice" Working document submitted by the Office of the High Commissioner for Human Rights (2021)
- United Nations High Commissioner for Human Rights, 'Economic and Social Council Report of the United Nations High Commissioner for Human' (2012)
- United Nations Open-Ended Working Group on Ageing', vol 23 (1969)