



**Contribution by the South African Government to the
Proposals, Practical Measures, Best Practices and
Lessons Learned that will contribute to Promoting
and Protecting the Rights and Dignity of Older Persons**

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1. INTRODUCTION

- 1.1. In South Africa the growth of the ageing population has followed global trends. South Africa views an increased life expectancy as a key to the country's development. Older persons are contributing longer economically and socially to society. The family structure is increasingly stable and parents live longer and are able to take care of their children. Consequently, the mainstreaming of policies and strategies on older persons has been accorded a high priority by the South African Government, where the specific needs of this demographic group is increasingly factored into government planning and budgetary processes as part of an integrated and inclusive approach to socio-economic policy, planning and service delivery.
- 1.2. The reality of population ageing calls for a concerted effort to deal effectively with the plight of older persons by establishing a framework aimed at the empowerment and protection of older persons and at the promotion and maintenance of their status, rights, well-being, safety and security in society. In this light the South African Government has enacted the Older Persons Act in keeping with South Africa's constitutional provisions and the Bill of Rights. This Act is aimed at safeguarding the rights of older persons to ensure they have an enabling environment which allows them to live in dignity and to be treated with respect regardless of their gender, disability or race.
- 1.3. Recognising the need for a legally-binding platform to enhance the implementation and promote the objectives and commitments outlined in the Madrid International Plan of Action on Ageing (MIPAA), the African Union (AU) has developed the AU Framework and Plan of Action on Ageing and the Draft Protocol to the African Charter on Human and Peoples' Rights on the Rights of Older Persons in Africa.
- 1.4. South Africa reaffirms its strong support for the establishment of a United Nations Convention on the Rights of Older Persons. It is in this regard that South Africa welcomes the initiative from the Chair of the Open-ended Working Group to share best practice and provide the following proposals that will contribute to promoting and protecting the rights and dignity of older persons.

2. PURPOSE

To promote international cooperation to protect and ensure the full enjoyment of all human rights and all fundamental freedoms of all older persons and respect of their inherent dignity.

3. GENERAL PRINCIPLES

All proceedings, actions or decisions in a matter concerning an older person must:

- Respect, protect, promote and fulfil the older person's rights;
- Respect the older person's inherent dignity;
- Treat the older person fairly and equitably; and
- Protect the older person from unfair discrimination on any grounds, including on the grounds of the health status or disability of the older person.

(Source: South African Older Persons Act; Chapter 1, No. 5)

4. PRINCIPLES AND VALUES

- Older persons should have access to primary health care, curative care, social services and other care and support systems in order to maintain their optimal level of physical, mental, spiritual and emotional well-being.
- Services should be provided in an inter-sectoral and collaborative manner.
- Throughout their lives, all persons have a personal responsibility to contribute to their social and financial independence.
- Where independence is unattainable, the family, community and all tiers of government (national, provincial and local) have a shared responsibility to provide the necessary care and support.
- Services should enable older persons to remain independent and self-supporting for as long as possible.
- Older persons should be treated fairly and with respect regardless of gender, racial, cultural or religious backgrounds and services must be non-discriminatory.
- The individuals' right to privacy and confidentiality must be respected.
- The self-determination and the autonomy of older persons must be respected.
- Service providers must have personal and professional integrity when providing services.
- Acknowledgement of the right of older persons to information.
- Commitment to engage in a collaborative multi-sectoral service delivery.

(Source: South African Policy on Older Persons; pg. 17, No. 2.4)

5. SPECIFIC HUMAN RIGHTS ELEMENTS TO BE INCLUDED IN THE CONVENTION

A. Human Rights and Non-Discrimination of Older Persons

The Fundamental Rights of Older Persons

Member States should undertake all the necessary measures to ensure that older people can access all their rights. *(Source: AU Policy Framework and Plan of Action on Ageing-Recommendation)*

Elimination of Discrimination against Older Persons

Article 4

States Parties shall:

- i. Prohibit all forms of discrimination against older persons and modify social and cultural patterns of conduct which marginalise older persons;
- ii. Take corrective and positive action in those areas where discrimination and all forms of stigmatisation against older persons continue to exist in law and in fact;
- iii. Support and enforce local, national, regional, continental and international initiatives directed at eradicating all forms of discrimination against older persons.

(Source: Draft Protocol to the African Charter on Human and Peoples' Rights on the Rights of Older Persons in Africa)

Access to Justice and Equal protection before the law

Article 6

States Parties recognise that older persons are equal before the law, and towards this end, they shall:

- i. Develop and review legislation to ensure that older persons receive equal treatment and protection;
- ii. Ensure the provision of legal assistance to older persons in need in order to defend their rights;
- iii. Ensure that law enforcement organs at all levels are equipped to effectively interpret and enforce policies and legislation to protect the rights of older persons.

(Source: Draft Protocol to the African Charter on Human and Peoples' Rights on the Rights of Older Persons in Africa)

Right to Make Decisions

Article 7

States Parties shall:

- i. Ensure that appropriate legislation exists that recognises the rights of older persons to make decisions regarding their own well-being without undue interference from family and affiliated groups, and that older persons have the right to appoint a party of their choice to carry out their wishes and instructions;
- ii. Ensure that, in the event of incapacity, older persons shall be provided with such support as legal aid and accompaniment by social and legal personnel in order to make decisions that are in their best interest and wellbeing.

(Source: Draft Protocol to the African Charter on Human and Peoples' Rights on the Rights of Older Persons in Africa)

B. Older Persons and Development

The Right to Employment

Article 8

States Parties shall:

- i. Take measures to eliminate unfair discrimination against older persons with regard to employment opportunities;
- ii. Ensure that older persons enjoy decent working conditions.

(Source: Draft Protocol to the African Charter on Human and Peoples' Rights on the Rights of Older Persons in Africa)

Member States undertake to eliminate the discrimination against older people in accessing employment and training opportunities and retaining their jobs. *(Source: AU Policy Framework and Plan of Action on Ageing-Recommendation)*

Access to Education and Life Skills

Article 18

States Parties shall:

- i. Ensure that older persons have full access to continuous education and information;
- ii. Develop policies that ensure the rights of older persons to enjoy all aspects of life, including active participation in cultural programs, leisure and sports.

(Source: Draft Protocol to the African Charter on Human and Peoples' Rights on the Rights of Older Persons in Africa)

Member States undertake to develop and strengthen strategies that encourage older peoples' participation as educators and trainers. *(Source: AU Policy Framework and Plan of Action on Ageing-Recommendation)*

Member States undertake to increase understanding and awareness of ageing issues through education and training. *(Source: AU Policy Framework and Plan of Action on Ageing-Recommendation)*

C. Advancing Health and Well-Being into Old Age

Access to Health Services

Article 17

States Parties shall:

- i. Ensure that free health services and medical insurance cover are extended to older persons;
- ii. Ensure the inclusion of geriatrics and gerontology in the training of health care personnel.

(Source: Draft Protocol to the African Charter on Human and Peoples' Rights on the Rights of Older Persons in Africa)

To ensure security of older persons in terms of access to quality healthcare social services and income security, providing opportunities for older persons and putting in place and/or strengthening national social protection schemes for older persons; *(Source: African Common Position on Human Rights of Older Persons in Africa, 1d)*

To ensure coverage for older people in HIV and AIDS prevention care and treatment programmes and support them in their role as caregivers; *(Source: African Common Position on Human Rights of Older Persons in Africa, 1e)*

Member States undertake to protect the rights and needs of older people affected by HIV/AIDS and other epidemics. *(Source: AU Policy Framework and Plan of Action on Ageing-Recommendation)*

Member States undertake to ensure that older people's rights to appropriate health care are legally constituted and guaranteed. *(Source: AU Policy Framework and Plan of Action on Ageing-Recommendation)*

Member States undertake to guarantee the delivery of health services that meet the specific needs of older people. *(Source: AU Policy Framework and Plan of Action on Ageing-Recommendation)*

D. Ensuring Enabling and Supportive Environments

Care and Support

Article 12

States Parties shall:

- i. Adopt policies and legislation that provide incentives to all stakeholders including adult children, to support older persons in their communities, ensuring that they remain at home for as long as possible;
- ii. Identify, promote and strengthen traditional support systems, including medical home based care, to enhance the ability of families and communities to care for older family members.

(Source: Draft Protocol to the African Charter on Human and Peoples' Rights on the Rights of Older Persons in Africa)

Residential Care

Article 14

States Parties shall:

- i. Enact or review legislation that ensures that residential and geriatric care is optional for older persons,
- ii. Ensure that older persons in residential care facilities are provided with the best quality of care possible.

(Source: Draft Protocol to the African Charter on Human and Peoples' Rights on the Rights of Older Persons in Africa)

Older Persons Receiving Community-Based Care and Support Services

An older person receiving community-based care and support services has the right to:

- (a) Reside at home as long as possible;
- (b) Pursue opportunities for the full development of his or her potential; and
- (c) Benefit from family and community care and protection in accordance with society's system of cultural values.

(Source: South African Older Persons Act, 2006)

Social Protection

Article 9

States Parties shall:

- i. Develop policies and legislation that ensure that older persons that retire from their employment are provided with adequate pensions and other forms of social security;
- ii. Ensure that universal social protection mechanisms exist to provide income security for those older persons that did not have the opportunity to contribute to any social security provisions;
- iii. Ensure that the processes and procedures of accessing the pensions are decentralised, simple and dignified;
- iv. Take measures to enable individuals to prepare for income security in old age.

(Source: Draft Protocol to the African Charter on Human and Peoples' Rights on the Rights of Older Persons in Africa)

Member States undertake to ensure that the rights and needs of older people are comprehensively addressed in poverty reduction strategies. *(Source: AU Policy Framework and Plan of Action on Ageing-Recommendation)*

Member States undertake to ensure that older people have access to adequate food and nutrition. *(Source: AU Policy Framework and Plan of Action on Ageing - Recommendation)*

Support for the Care of Orphans and Vulnerable Children

Article 13

States Parties shall:

- i. Adopt measures to ensure that older persons in need, caring for orphans and vulnerable children are provided with financial, material and other support;
- ii. Ensure that when children are left in the care of older persons, any social or other benefits designed for the children, are remitted to the older persons.

(Source: Draft Protocol to the African Charter on Human and Peoples' Rights on the Rights of Older Persons in Africa)

Member States undertake to develop and strengthen strategies that empower older people to contribute to their families. *(Source: AU Policy Framework and Plan of Action on Ageing-Recommendation)*

Protection of Older Persons in Conflict and Disaster Situations

Article 16

States Parties shall:

- i. Ensure that, in situations of risk, including natural calamities, conflict situations, during civil strife or wars, older persons enjoy access, on a priority basis, to assistance during rescue efforts, settlement, repatriation and other interventions;

- ii. Ensure that older persons receive humane treatment, protection and respect at all times and are not left without needed medical assistance and care.

(Source: Draft Protocol to the African Charter on Human and Peoples' Rights on the Rights of Older Persons in Africa)

Member States undertake to ensure that assistance reaches older people in situations of conflict. *(Source: AU Policy Framework and Plan of Action on Ageing - Recommendation)*

Awareness on Ageing and Older Persons and preparation for old age

Article 21

States Parties shall:

- i. Adopt measures to encourage the development of awareness raising programmes targeting younger population groups on ageing and older persons, especially to combat negative attitudes against older persons;
- ii. Adopt measures to develop training programmes that prepare Older Persons for the challenges faced in old age, including retirement.

(Source: Draft Protocol to the African Charter on Human and Peoples' Rights on the Rights of Older Persons in Africa)

To put in place and fully promote sensitisation programmes at national level to motivate a change of mind set and societal attitudes towards ageing and older persons in order protect the human rights of older persons and develop a new rights-based culture of ageing; from welfare recipients to active, contributing members of society; *(African Common Position on Human Rights of Older Persons in Africa, 1c)*

Member States undertake to ensure that older people have access to safe, durable and affordable shelter. *(AU Policy Framework and Plan of Action on Ageing - Recommendation)*

Member States undertake to ensure that public infrastructure accommodates the needs of older people. *(AU Policy Framework and Plan of Action on Ageing - Recommendation)*

E. Abuse, III-Treatment and Neglect of Older Person

Protection from Abuse and harmful traditional practices

Article 10

States Parties shall:

- i. Enact legislation which makes it an offence for family members, the community, institutions or other persons to abuse older persons;
- ii. Enact legislation that protects older persons from false accusations based on stereotypes and harmful traditional practices.

(Source: Draft Protocol to the African Charter on Human and Peoples' Rights on the Rights of Older Persons in Africa)

Protection of Older Women

Article 11

States Parties shall

- i. Ensure the protection of the rights of older women to freedom from violence, sexual abuse and discrimination based on gender;
- ii. Take all necessary measures to eliminate harmful social and cultural practices, including witchcraft accusations, which affect the welfare, health, life and dignity of older women;
- iii. Put in place legislation that guarantees protection of older women against abuses related to property and land rights;
- iv. Adopt appropriate legislation to protect the inheritance rights of older women.

(Source: Draft Protocol to the African Charter on Human and Peoples' Rights on the Rights of Older Persons in Africa)

Protection of Older Persons with Disabilities

Article 15

States Parties shall:

- i. Adopt legislation to protect the rights of older persons with disabilities;
- ii. Ensure that such legislation complies with regional and international standards;
- iii. Ensure that older persons with disabilities have access to specialised care, which responds to their needs within their communities.

(Source: Draft Protocol to the African Charter on Human and Peoples' Rights on the Rights of Older Persons in Africa)

SOURCES:

- SA Policy on Older Persons (2005)
- South African Older Persons Act (2006)
- AU Policy Framework and Plan of Action on Ageing (2002)
- African Common Position on Human Rights of Older Persons in Africa (2012)
- Draft Protocol to the African Charter on Human and Peoples' Rights on the Rights of Older Persons in Africa (2014)