

The Rights of Older People- African Perspectives

Jody Kollapan

November 2008

1. Executive Summary

Though Africa is a demographically young continent her older inhabitants experience considerable vulnerability resulting in the violations of their human rights both individually and systemically. While African human rights instruments and to some extent national legislation and policies provide a broad framework for the protection of the rights of older persons, the lack of detail and specificity, problems with capacity and implementation and a lack of a clear focus on older persons as bearers of rights means progress on the ground is limited.

Human rights violations range from age discrimination which often has a clear gender dimension, abuse and violence in both domestic and institutional settings which disproportionately affect older women, lack of participation in matters affecting the elderly and a failure to discharge the various social and economic rights to which they are entitled including the right to health care, work, education, social security, food and adequate nutrition. The HIV/AIDS pandemic has also meant that older persons carry a disproportionate burden of family responsibility.

While in traditional African societies older persons were generally supported and cared for by their children or extended family, the changing societal dynamic brought about by among other factors, globalisation, urbanisation and the HIV/AIDS pandemic has impacted negatively on the cohesion of the family and its ability to create a nurturing and enabling environment for the protection of older persons. Under these circumstances there is clearly a need for increased state intervention in support of the elderly based on universal human rights norms and standards. While the African Charter provides a broad normative rights framework, there may be merit in developing a specific treaty that articulates both clear and concise human rights standards for older persons and provides a mechanism for implementation and accountability, both of which are currently lacking.

2. Methodology

This paper is in the form of a literature survey using publicly available primary and secondary sources. In addition telephonic and face to face interviews were conducted.

3. Key Findings

- While the African Charter is said to be uniquely African in its content it lacks the specificity to respond to and address the human rights challenges relative to older persons.
- There is no coherent legislation and policy on the rights of older people in most African states.
- Policy and legislation relevant for the rights of older people does not incorporate all the obligations flowing from the African Charter on Human and Peoples' Rights (African Charter) and other regional human rights instruments.
- Domestic legislation and policies of relevance to the rights of older people should be systematically collected and analysed.
- The rights of older persons should be included in the guidelines on state reporting under the African Charter and in the African Peer Review Mechanism Questionnaire.

- Discussions around the possible development of an international convention on the rights of older persons should closely follow the efforts of the African Commission on Human and Peoples' Rights (African Commission) to develop a regional instrument as well as any other similar regional initiatives should they exist.
- There are no effective redress mechanisms in place to address the situations where the rights of older persons have been violated.
- There appears to be a general lack of knowledge and awareness relating to the rights of older persons and the concept of older persons as rights bearers.

4. Detailed Analysis

4.1 Context

Africa is demographically a young continent. In 2000 only 5.1 % of the population of Africa was 60 years or older.¹ However, this percentage is set to double by the year 2050. At the global level the percentage of the population which is 60 years or older is set to increase from 10% in 2000 to 21.1% in 2050.² Though the number of older persons in Africa will increase significantly over the coming years, Africa is set to remain a young continent from a global perspective. Still, as explored in this paper there are many challenges facing older people on the continent. Traditionally older persons were taken care of by the extended family when no longer able to take part in economic activity. Elders (in particular men) were respected and consulted on issues concerning the community and played an important role in conflict resolution. While these traditional values are still evident they have come under increased strain as a result of factors such as urbanisation, globalisation and not least the HIV/AIDS pandemic.³ The notion that 'we take care of our elders' is still often heard but is increasingly not reflected in reality.

A number of international policy documents have been adopted to strengthen the protection of older persons. The 1982 Vienna International Plan of Action on Ageing and the 1991 United Nations Principles for Older Persons were reinforced in 2002 through the Madrid International Plan of Action on Ageing at the global level, and the African Union Policy Framework and Plan of Action on Ageing at the regional level. Underlying these plans are the five 'areas of concern for older persons' as expressed in the 1991 UN principles: independence, participation, care, self-fulfilment and dignity.

In 2007 the African Commission on Human and Peoples' Rights (African Commission) decided to establish a Focal Point on the Rights of Older Persons in Africa with the view to initially consider developing a declaration to be followed by a treaty dealing with the rights and welfare of older persons in Africa.⁴ The African Commission held a consultative meeting on the rights of older persons in Mauritius at the beginning of October 2008.⁵

4.2 Protection of older persons in the African human rights system

The African Charter on Human and Peoples' Rights⁶ (African Charter) which entered into force in 1986 and which all African Union member states have ratified has two provisions which are of specific relevance for older persons. Article 18(4) provides for 'special measures of protection in keeping with their physical or moral needs' for the aged. Article 29(1) provides that everyone has the duty 'to respect his parents at all times, to maintain them in case of need.' Article 26(c) of the African Youth Charter reiterates this responsibility in stating that '[y]outh shall have the duty to have full respect for parents and elders and assist them anytime'.⁷ The Protocol to the African Charter on the Rights of Women in Africa in article 22(b)

prohibits discrimination based on age.⁸ The Protocol also provides for 'specific measures commensurate with [the] physical, economic and social needs [of elderly women] as well as their access to employment and professional training' and that elderly women shall be guaranteed freedom from violence and the right to be treated with dignity.

In addition to the elderly-specific rights, the African Charter includes both civil and political and socio-economic rights of relevance to older persons. Of socio-economic rights, the Charter only has explicit provisions on the right to work, health and education. However, the provisions of the Charter have been interpreted widely both in the Commission's case law and in resolutions adopted by the Commission.⁹ In addition, the Charter provides that the Commission 'shall draw inspiration from ... instruments adopted by the United Nations and by African countries'.¹⁰ The Commission can thus make use of for example the UN Principles for Older Persons¹¹ and the AU Policy Framework to interpret the provisions of the Charter. Article 1 of the African Charter obliges member States to the Charter to 'recognize the rights, duties and freedoms enshrined ... and to undertake to adopt legislative and other measures to give effect to them.'

A survey of recent state reports to the African Commission however suggests that state parties to the African Charter do not sufficiently deal with the rights of older persons in their reports, despite the provisions in the Charter.¹² The state report of Benin only mentions that literacy classes have been organised for the elderly.¹³ The state report of Nigeria notes that 'the aged are protected against any exploitation whatsoever and against moral and material neglect' but does not provide any details.¹⁴ The state report of the Democratic Republic of the Congo only makes reference to article 49 of the Constitution which provides for specific protection measures for 'the senior citizen'.¹⁵ The African Commission's Guidelines for National Periodic Reports may partly be blamed for the omission to discuss the implementation of the rights of older persons as they require States to report on what has been done to 'improve the condition' of women, children and the disabled as vulnerable groups while no reference is made in the guidelines to older persons.¹⁶ A significant reason for the few references to the implementation of the rights of older persons may be found in Kenya's state report which notes that there is no 'major problem' with regard to the protection of older persons as 'under traditional African systems children are to take care of their aged parents'.¹⁷ Thus the idea of older persons as bearers of rights is not an idea that has gained sufficient currency in the context of the African human rights system.

4.3 Policy and legislation of African states

The AU Policy Framework calls on states to 'ensure that the specific needs of older people are taken into account' in national development plans.¹⁸ A survey of Poverty Reduction Strategy Papers (PRSPs) adopted by African states confirms that older people are generally recognised as a vulnerable group.¹⁹ Many PRSPs however provide little in terms of policy prescriptions aimed at the protection of older persons. Among those which do, the Mozambique PRSP provides for the establishment of open community centres, financial and physical assistance to unsupported elderly and sensitisation activities with regard to the rights of the elderly.²⁰ The Senegalese PRSP provides for *inter alia* 'a minimum allowance for seniors' without pensions, specialized geriatric services and free access to healthcare services for the elderly.²¹ The Guinean PRSP provides for the '[e]stablishment of mechanisms to disseminate and raise public awareness of laws and conventions protecting women, children, disabled persons and elderly persons'.²²

In Tanzania, the National Strategy for Growth and Reduction of Poverty has set targets that include ensuring that 40% of older persons are covered by effective social protection measures as well as ensuring that access to district courts is improved and enhanced in cases involving older people. In order to facilitate the identification of vulnerable persons and provide them with appropriate supports, the capacity of local authorities is identified as requiring strengthening.²³

By utilising strategies such as strengthening the judicial system, extending coverage of the legal reforms and continued review of succession, inheritance, customary, marriage Acts and laws that address the rights of vulnerable groups such as older persons in Tanzania, the target of ensuring timely justice for all, particularly the poor and vulnerable groups, placed on the development agenda.²⁴

The African Peer Review Mechanism (APRM) is a governance monitoring tool established under the New Partnership for Africa's Development (NEPAD). The process is voluntary and so far six country review reports have been published.²⁵ One of the objectives of the APRM is the promotion and protection of the rights of vulnerable groups. Older persons are identified in the reports as vulnerable but there are few specific policy prescriptions to address the situation in the national programmes of action that accompany the reports. The Rwanda programme of action provides for a social protection policy, with the aged among the stakeholders, by 2005.²⁶ The Algeria programme of action provides for the 'finalization of the bill on the elderly' by 2008.²⁷ The Ghana programme of action provides that the National Policy on the Aged should be published and implemented by 2006.²⁸ This has not happened and it is noteworthy that the process of drafting a national policy in Ghana has been going on since 1997.²⁹

Only three African constitutions explicitly prohibit discrimination on the grounds of age.³⁰ However, 25 constitutions make provision for rights of older persons in one form or another.³¹ For example the Constitution of Ethiopia provides in the bill of rights under the heading 'economic, social and cultural rights' that the 'state shall, within available means, allocate resources to provide rehabilitation and assistance to ... the aged ...'.³² The Ugandan Constitution under National Objectives and Directive Principles of State Policy provides that '[t]he state shall make reasonable provision for the welfare and maintenance of the aged'.³³

Only a few countries in Africa have specific legislation dealing with older persons. Mauritius adopted The Protection of Elderly Persons Act in 2005 and South Africa adopted the Older Persons Act in 2006.³⁴ In most countries legislation dealing specifically with older persons is limited to issues dealing with pension funds for civil servants or those in other formal employment.³⁵ National policies or plan of actions on ageing have been adopted in a few African countries.³⁶ Other legislation and policies have an impact on older persons. Ghana's country report on the implementation of the Madrid Plan of Action on Ageing notes the importance of the National Population Policy, the National Social Protection Strategy, the National Disability Policy and the National Health Insurance Scheme.³⁷

4.4 Defining older persons

The AU Policy Framework adopts the definition used by the United Nations which defines an older person as anyone over 60 years old. National policies and legislation tend to follow the national retirement age.³⁸ However, it should be noted that the concept of retirement means little to the majority of Africans who work in the informal sector, often in agriculture, until they are no longer physically able.³⁹

The differentiation between men (65 years) and women (60 years) in the South African Older Persons Act is likely to be amended after section 10 of the Social Assistance Act was amended in 2008 to phase in older person's grants to everyone over 60 years by 2010. This followed legal action which challenged the different retirement ages as constituting unfair discrimination on the grounds of sex and age.⁴⁰ This differentiation would arguably have also violated the equality guarantee provided for in Article 3 of the African Charter.

4.5 Discrimination

The African Charter on Human and Peoples' Rights does not explicitly prohibit discrimination on the grounds of age, but it could be argued that such discrimination would fall under the prohibition of discrimination on the grounds of 'other status'. Such an interpretation is reinforced by the Protocol on the Rights of Women. Measures to improve access to employment for older persons is included in some national development plans, but as noted below the vast number of Africans work in the informal sector.

Linked to discrimination is participation in decision making. To ensure participation of older persons in decision making at the local level the Local Government Act of Uganda provides for 'representation of two older persons, male and female elected by older persons Local Government Councils'.⁴¹

4.6 Human Security

4.6.1 Personal Violence

Linked to discrimination is the incidence of violence against older persons, which affects older women disproportionately. The Protocol on the Rights of Women in Africa provides that elderly women shall be guaranteed freedom from violence and the right to be treated with dignity. Reports from various African countries indicate that older persons, in particular women, accused of witchcraft are beaten, driven from their homes and even killed.⁴² There are also reports from some countries of killings to inherit property.⁴³ Abuse (physical, emotional and sexual), within the family as well as in institutional settings, have also been reported and the ordinary criminal justice processes may not be structured in a way to best respond to such forms of abuse.⁴⁴

Domestic violence acts have been adopted in a few African countries. Persons protected under these laws generally include elderly persons in relation to their children.⁴⁵ Special provisions to address violence against older persons are also included in the South African Older Persons Act and the Mauritian Protection of Elderly Persons Act.

4.6.2 Property and Inheritance

Article 21 of the African Charter provides that 'all peoples shall freely dispose of their wealth and natural resources. This right shall be exercised in the exclusive interest of the people. In no case shall a people be deprived of it.'

Many violations of the rights of older persons in Africa have a clear gender dimension. Customs that provides that only a man can inherit property has been declared unconstitutional in many African countries, but lack of knowledge of such rulings means that the situation in many cases has not changed in practice. Illiteracy is high in many African countries, in particular among elderly women in rural areas.⁴⁶ Adult literacy programs have been instituted in some countries.⁴⁷ Improved gender-equal literacy rates in younger groups mean that the situation is bound to improve over time.

Existing laws in Tanzania that govern widows' inheritance rights continue to not only contradict laws on the right to access to land and rights related to marriage and discriminate against women and girl children but also are discriminatory in that different laws apply to different people. It is argued that disputes over property and inheritance are often the underlying causes of witchcraft allegations and violence against older women. There is no uniform inheritance law that applies equally to all Tanzanians, inheritance being governed by a series of laws that apply to individuals depending on their religion, tribal origin, or whether they live their lives according to customary practices. Under this discriminatory system, individuals from different backgrounds are treated differently and confusion can arise over which system of law should govern the distribution of the deceased's estate.⁴⁸

In South Africa the Constitutional Court, in the matter of *Bhe and Others v Magistrate, Khayelitsha and Others; Shibi v Sithole and Others; SA Human Rights Commission and Another v President of the RSA and Another*⁴⁹, declared the rule of male primogeniture as it applies in African customary law to the inheritance of property to be inconsistent with the Constitution and invalid to the extent that it excludes or hinders women and extra-marital children from inheriting property.

However it must be noted that notwithstanding any progressive judgements, broader policy developments or legislation changing social reality is considerably more difficult as power relations, social structures and the weight and force of customs and tradition often stand as an obstacle to change.

4.6.3 Social Security

Although the African Charter does not have any specific provision dealing with the right to social security, the rights enshrined in Article 5, 6 and 16 which speak to human dignity, security of the person and ones right to enjoy the best attainable state of physical and mental health respectively, may be interpreted collectively to encompass ones right to social security.

The provision of social security is in many contexts central to attempts to lift older persons out of poverty. In South Africa pensions for older persons remain a primary source of income. However bureaucratic and other obstacles often prevent access to social security and these include the effective provision of identity documentation, delays in the processing of applications and corruption within the administration of the social security system.⁵⁰ The provision of social security differs considerably from country to country ranging from universal systems to means tested systems but the reality is that the large majority of African countries simply do not have any system of state provided social security.

Many older women in Mozambique are denied their right to social security by not being able to have access to their rights because they do not have identity documentation which proves their eligibility for entitlements. Lack of data disaggregated by age and sex prevents the formulation of appropriate policies and programmes for older women. Supporting the collection and analysis of such data would improve design and resource allocation of policies and programmes.⁵¹

4.6.4 Armed Conflict

As is the case with social security, the African Charter does not have any specific provision dealing with the issue of armed conflict. However a reading of Articles 2, 5 and 6, which in this case speaks to every individuals right to enjoy the freedoms recognised and guaranteed under the African Charter without distinction of any kind including the right to human dignity and the security of the person respectively would

certainly permit an interpretation that covers persons who are victims of or vulnerable to armed conflict.

Wars and internal conflict have displaced millions on the Continent and older persons have been more affected than any other group. Their inability to flee situations of danger easily has rendered them vulnerable to violence and attacks. They are often at the end of the line when limited resources are distributed; relocation and resettlement are more difficult for older persons, with most programmes targeting the young. Social security systems have not been able to respond effectively leaving a fractured social structure and older persons marginalised.⁵² At the same time older persons have traditionally played an important role in conflict resolution and as noted in the AU policy framework such contributions must be recognised and utilised.⁵³

4.6.7 Food Security

Security is not only about physical violence. Many older persons stay in the countryside while their children move to the cities. Food security is already a serious problem in many African countries and the report of the Inter-governmental Panel on Climate Change suggests that climate change is likely to have a severe impact on the production and availability of food in Africa.⁵⁴ Under these circumstances older persons carry a disproportionate share of the burden in providing for their families and the intervention from the state and international donors is often needed. This can take the form of subsidies to poor farmers or a pension system as discussed below.⁵⁵ It has been argued that improved food security would also lead to less physical violence against older persons, in particular alleged witches.⁵⁶

Article 16 in the African Charter which deals with every individual's right to enjoy the best attainable state of physical and mental health may be interpreted to fall squarely within the issue of food security.

4.6.8 Support

For those who have had the advantage of formal employment, contributory pension benefits are often not sufficient to provide for independent living in old age. The situation is even worse for the vast majority of older persons in Africa who are engaged in agriculture or informal trading and tends to work as long as their health allows after which they become dependent on the good will of others.

As noted above article 29(1) of the African Charter provides that every individual has the duty to maintain parents in case of need. The social structure underlying the duty to support one's parents is still prevalent in many parts of Africa but changes from traditional ways of life and in particular the HIV/AIDS pandemic has changed the underlying societal dynamic. The reduction of the traditional support base, the (extended) family, as a consequence of societal change has been noted in many countries.⁵⁷ At a meeting of the African Gerontological Society in 1999 a Ugandan government official noted that 'the primary responsibility for providing support and care [for the elderly] has shifted from families and the community to institutions.'⁵⁸ However, it is generally recognised that institutionalised care should only be a last resort.⁵⁹ Abuse of older persons in institutionalised care was one of the reasons behind the adoption of the Older Persons Act in South Africa.⁶⁰

It is clear that most African states do not have the capacity to adequately take care of all their older persons. The Rwanda EDPRS for example provides that social assistance is needed for the '*unsupported* elderly'.⁶¹ Many African states focus on efforts to rebuilding family support.⁶² For example Ghana aims to provide 'multifaceted support to build family capacity to provide for and care for its members

according to their particular needs as girls, boys, women, men and the elderly taking into account peculiar social norms and practices'.⁶³

The AU Policy Framework calls on states to '[e]nact legislation requiring adult children to provide support for their parents'.⁶⁴ This is in line with the African human rights instruments cited above. The Algerian Constitution provides for a duty of children to help and assist their parents.⁶⁵ The Older Persons Act of South Africa makes 'economic abuse' of the elderly an offence. It could be argued that one of the categories of economic abuse namely 'the unreasonable deprivation of economic and financial resources which the older person requires out of necessity' in a 'relationship where there is an expectation of trust',⁶⁶ could be read to imply a duty to provide for parents. The Protection of Elderly Persons Act, 2005, of Mauritius similarly provides that '[a]ny person who wilfully fails to provide an elderly person under his care with adequate food, medical attention, shelter and clothing shall commit an offence'.⁶⁷ It is questionable whether criminalisation is the best way to bring about change in particular in countries with already overburdened criminal justice systems.

Some countries focus on support to all elderly. The Declaration of Population Policy of Benin includes a provision on 'comfortable social security allocation' for the elderly.⁶⁸ However, few African states can afford this and only Botswana, Lesotho and Mauritius have implemented universal non-contributory social pensions, while Namibia and South Africa has means tested non-contributory social pensions.⁶⁹ In many countries there is no state support and only those who have been employed in the formal sector and contributed to a pension fund will receive a pension. The Tanzania national ageing policy calls on local authorities and NGOs to sensitise people in the informal sector on the importance to save for old age.⁷⁰ Some countries have or plan programs providing for income generating projects, cash transfers or other support to destitute elderly.⁷¹ Issues to consider with regard to cash transfer systems include accessibility, security and corruption.⁷²

4.6.9 The impact of the HIV/AIDS pandemic

Caring for children takes up a lot of time for the elderly, in particular women. What is new in the context of the HIV/AIDS pandemic is that the elderly must now take care of both their sick children and their grandchildren and often at the same time must secure resources to sustain both themselves and their dependants. In sub-Saharan Africa about 13 million children have lost one or both parents to Aids while in Namibia, South Africa, Botswana, Malawi, Tanzania and Zimbabwe up to 60% or orphaned children live in a grand-parent headed household with little support from the State let alone the impact it has on their health (physical and emotional) of the older caregiver.⁷³ The effect of the HIV/AIDS pandemic on the elderly has been extensively documented, but is not sufficiently reflected in African HIV and AIDS policies.⁷⁴ On the contrary the requirement in Article 18 of the Charter that 'the aged shall have the right to special measures of protection' may ring hollow to many older persons and frankly may for now be difficult to be translated into reality.

4.6.10 Health Care

Despite legalisation guaranteeing older women's access to free basic health care, many women are unable to realise this right. As stated above older women provide the majority of care for adults and young children affected by HIV and AIDS and are themselves vulnerable to infection.

In Mozambique, including targets for older women carers in their National Plan for HIV, including older women's health needs in strategies for medical care or community health projects, and collecting HIV and AIDS surveillance data

disaggregated by age and sex for those over 49 years old, are concrete measures that would improve realisation of their right to health care.⁷⁵

Difficulties in accessing the free health care to which vulnerable older people are entitled in Tanzania is an issue for both older women and men, in terms of proving they are “vulnerable”, having the identification necessary to prove their eligibility and travelling long distances to health posts, although high levels of illiteracy can further disadvantage women.⁷⁶

Older persons receive free health care in some African countries.⁷⁷ Some countries have included geriatrics in their medical training and opened specialised geriatric units.⁷⁸ Health interventions primarily focusing on older persons include free cataract operations.⁷⁹ However, in most countries there are limitations to what sort of procedures will be covered by the state and drugs are most of the time not provided for free.⁸⁰ Another problem is that health facilities may be located far away in particular in the rural areas, where the vast majority of older persons live. It is certainly questionable whether existing practice complies with the injunction in Article 16 of the African Charter that ‘every individual shall enjoy the best attainable state of physical and mental health’.

5. Conclusion

While human rights have become an important medium through which we can advocate and advance the idea of a more just and caring society, the reality is that in the complexity of things human rights norms and standards cannot in themselves always change social reality. What they do however is to provide a universal framework for the type of standards we wish to achieve, serve as a basis by which public opinion can be mobilised and hopefully contribute to changing the consciousness of society and ultimately become the common basis by which States agree to hold each other accountable to commonly agreed norms and standards.

The African Union has been active in developing a framework for the protection of older persons in Africa. In addition to the AU Policy Framework and Plan of Action on Ageing referred to throughout this paper, a Social Policy Framework for Africa was adopted by the AU on 31 October 2008. The Focal Point on the Rights of Older Persons of the African Commission is in the process of developing a regional instrument for the protection of older persons. Conceptually these remain impressive commitments.

At the domestic level the situation is different. Most African countries have still a long way to go to develop specific policies and legislation dealing with the rights of older persons. While the African Charter provides a broad framework, it is a lack of specificity in the area of older person’s rights which means widely mixed and differing practice across the Continent. Research in the area would be helped if there was a systematic collection of national laws and policies affecting older persons in African countries. Such research should also focus on measures established to ensure implementation of policies.

The lack of an effective response to the various violations of rights of older persons constitutes a violation of the African Charter on Human and Peoples’ Rights. It is therefore imperative that the rights of older persons take on a more important role in monitoring compliance with the African Charter and other human rights treaties. NGOs active in the field of the rights of older persons should be encouraged to submit shadow reports to monitoring bodies and make use of the complaints

procedure under the African Charter. It may well be that an African Declaration, followed by a treaty would provide the necessary specificity and serve as a vehicle through which there can be a greater mobilisation of opinion and resources to effectively address the legitimate rights demands of older persons.

References

- ¹ United Nations *World population ageing 1950-2050* (2002) 56.
- ² United Nations *World population ageing 1950-2050* (2002) 48.
- ³ See eg 'Support for the elderly in Malawi declining because of HIV/AIDS, poverty, government report says', 12 November 2008, http://www.kaisernetwork.org/daily_reports/rep_index.cfm?DR_ID=55499 (accessed 13 November 2008); AS Ajala 'The changing perception of ageing in Yoruba culture and its implications on the health of the elderly' (2006) 8(3) *Anthropologist* 181-188.
- ⁴ African Commission on Human and Peoples' Rights, Report on Focal Point on the Rights of Older Persons in Africa, Commissioner YKJ Yeung Sik Yuen, <http://www.achpr.org/english/Commissioner%27s%20Activity/43rd%20OS/Special%20Rapporteurs/rights%20of%20the%20older%20persons.pdf> (accessed 13 November 2008).
- ⁵ http://www.gov.mu/portal/site/Mainhomepage/menuitem.a42b24128104d9845dabddd154508a0c/?content_id=e6051afea0dbc110VgnVCM1000000a04a8c0RCRD (accessed 13 November 2008).
- ⁶ Adopted June 27, 1981, OAU Doc. CAB/LEG/67/3 rev. 5, 21 I.L.M. 58 (1982), *entered into force* Oct. 21, 1986
- ⁷ The African Youth Charter was adopted by the AU Assembly in July 2006 and had by August 2008 received 7 ratifications of the 15 required to enter into force.
- ⁸ The Protocol entered into force in November 2005 and had by September 2008 been ratified by 25 of the 53 AU member states.
- ⁹ See eg *Social and Economic Rights Action Centre (SERAC) and Another v Nigeria* (2001) AHRLR 60 (ACHPR 2001) and Pretoria Declaration on Economic, Social and Cultural Rights in Africa, reprinted in C Heyns & M Killander *Compendium of key human rights documents of the African Union* (2007) 315-322.
- ¹⁰ Art 60.
- ¹¹ <http://www2.ohchr.org/english/law/pdf/olderpersons.pdf>
- ¹² Madagascar's 2008 state report only deals with the disabled under art 18(4) and does not include a section on duties. The state reports discussed here are available on the web site of the African Commission, <http://www.achpr.org>
- ¹³ 16.
- ¹⁴ Nigeria's third periodic country report: 2005-2008, September 2008, 82.
- ¹⁵ Para 200.
- ¹⁶ 'Guidelines for National Periodic Reports under the African Charter' reprinted in Heyns & Killander, n 8 above, 169.
- ¹⁷ Report on the African Charter on Human and Peoples' Rights, June 2006, para 164.
- ¹⁸ Para 4.3(b).
- ¹⁹ See eg Benin, Growth Strategy for Poverty Reduction, April 2007, para 167; Burundi Poverty Reduction Strategy Paper, September 2006, para 444; Cameroon Poverty Reduction Strategy Paper, April 2003, para 493; Cape Verde Growth and Poverty Reduction Strategy Paper, September 2004, para 142; Ghana Growth and Poverty Reduction Strategy (GPRS II), November 2005, 41; Guinea Poverty Reduction Strategy Paper PRSP-2 (2007-2010), August 2007, para 194; Guinea-Bissau National Poverty Reduction Strategy Paper, September 2006, para 91; Liberia Poverty Reduction Strategy, 2008, para 47; Malawi Growth and Development Strategy, February 2007, 43; Mauritania Poverty Reduction Strategy Paper, October 2006, para 453; Rwanda Economic Development and Poverty Reduction Strategy, September 2007, 13. PRSPs are available at <http://www.imf.org/external/NP/prsp/prsp.asp> (accessed 10 November 2008).
- ²⁰ Mozambique Action Plan for the Reduction of Absolute Poverty 2006-2009, May 2006, para 470.
- ²¹ Senegal Poverty Reduction Strategy Paper II, September 2006, para 263. See also pp 77-78.
- ²² Guinea PRSP, n 17 above, para 517.

-
- 23 National Strategy for Growth and Reduction of Poverty (NSGRP), Vice President's Office, June 2005, page 48
http://www.tz.undp.org/docs/MKUKUTA_20FINAL-June.pdf
- 24 Ibid, page 52 - 53
- 25 Ghana, Rwanda, Kenya, Algeria, South Africa and Benin. Country review reports available at <http://www.nepad.org/aprm>.
- 26 Rwanda report 203.
- 27 Algeria report 365.
- 28 Ghana report 172.
- 29 Ghana country report on the implementation of the Madrid International Plan of Action on Ageing (MIPAA), August 2007, 7.
- 30 C Heyns & W Kaguongo 'Constitutional human rights law in Africa' (2006) 22 *South African Journal on Human Rights* 673-717 684.
- 31 Heyns & Kaguongo, n 26 above, 685-686.
- 32 Art 41.
- 33 Art VII.
- 34 Draft regulations to the Act were published in November 2007, but no date of commencement of the Act had been announced at the time of writing (November 2008). The Act replaces the 1967 Aged Persons Act.
- 35 See eg the Social Security Act of Ghana, the Pensions Reform Act of Nigeria and the Pensions Act of Kenya.
- 36 Eg Tanzania (National ageing policy, Ministry of Labour, Youth Development and Sports, September 2003) and Mali (*Plan d'action nationale pour la promotion des personnes âgées 2006-2010*, see *Etat de mise en œuvre du plan d'action nationale pour la promotion des personnes âgées 2006-2010*, Decembre 2007, http://www.un.org/esa/socdev/ageing/documents/review_map/Mali.pdf (accessed 7 November 2008). Other countries have drafted national policies but they have not yet been adopted.
- 37 Ghana country report, n 25 above, 5-7.
- 38 60 years is the threshold in the Mauritian Protection of Elderly Persons Act (16 of 2005) and the Tanzanian National Ageing Policy (2003).
- 39 M Ferreira 'Ageing policies in Africa' in United Nations *Regional dimensions of the ageing situation* (2008) 71.
- 40 *Christian Roberts and Others v Minister for Social Development and Others*, case no 32838/05 (TPD). For a commentary see S Heleba 'Towards equalizing the age for accessing pensions' *ESR Review* vol 8 no 4 14-18.
- 41 Uganda report on the review and appraisal of the implementation of the Madrid International Plan of Action on Ageing 3. See also Tanzania ageing policy, n 32 above, 11, 16.
- 42 See eg CEDAW concluding comments: Zambia , A/57/38 (SUPP) para 238; Tanzania ageing policy, n 32 above, 5. See also CEDAW concluding comments: Mozambique, 38th session, 14 May-1 June 2007, para 42. See also E Miguel 'Poverty and witch killing' (2005) 72 *Review of Economic Studies* 1153-1172.
- 43 DS Dandi 'Tanzania' in M Ferreira *et al Agein in changing societies: Africa preparing for the next millennium* (1999) 208.
- 44 Report of the ministerial committee on abuse, neglect and ill-treatment of older persons, volume 1, main report, 26 February 2001, 4.
- 45 See eg Namibia, Combating of Domestic Violence Act 4 of 2003, s 3(1)(e); Malawi, Protection against (Prevention of) Domestic Violence Act 5 of 2006; Ghana, Domestic Violence Act (2007), see Report of the Special Rapporteur on violence against women, its causes and consequences, Yakin Ertürk, Mission to Ghana, A/HRC/7/6/Add.3, 21 February 2008, paras 74-79.
- 46 CEDAW concluding comments Malawi, CEDAW/C/MWI/CO/5, 2006, para 27; CEDAW concluding comments: Tunisia, A/57/38(SUPP). para 203.

-
- 47 Tanzania policy on ageing, n 32 above, 13.
- 48 NGO THEMATIC SHADOW REPORT ON OLDER WOMEN'S RIGHTS IN TANZANIA. Submitted to the 41stth session of the Committee on the Elimination of All Forms of Discrimination Against Women (CEDAW). In relation to Tanzania's *Combined fourth, fifth and sixth periodic report of States parties*, 16 April 2007 (CEDAW/C/TZA/6). Prepared by HelpAge International Tanzania. April 2008.
- 49 *Bhe and Others v Magistrate, Khayelitsha and Others; Shibi v Sithole and Others; SA Human Rights Commission and Another v President of the RSA and Another* 2005 (1) BCLR 1 (CC).
- 50 Personal discussion with Commissioner Tom Manthata of the South African Human Rights Commission, whose specific portfolio concerns the rights of older persons.
- 51 NGO THEMATIC SHADOW REPORT ON OLDER WOMEN'S RIGHTS IN MOZAMBIQUE Submitted to the 38th session of the Committee on the Elimination of All Forms of Discrimination Against Women (CEDAW). In relation to Mozambique's *Combined initial and second periodic report of States parties*, 14 November 2005 (CEDAW/C/Moz/1-2). Prepared by HelpAge International Mozambique, April 2007.
- 52 J Kollapen 'The Impact on Elders of Developments in South Africa Viewed in an African Context: Bridging the Divide Between North and South' *International Federation on Aging* Vol. 5 No. 1(2008) 11.
- 53 Para 4.10(c).
- 54 <http://www.ipcc.ch/ipccreports/assessments-reports.htm>
- 55 On food security challenges see eg ActionAid *Failing the rural poor – Aid, agriculture and the Millennium Development Goals*, September 2008.
- 56 Miguel, n 40 above, 1170.
- 57 See eg R Mbaiasra 'Tchad' in Ferreira, n 41 above, 204, T da Silva 'Mozambique' in Ferreira, n 41 above, 204, Dandi, n 41 above, 206-207, SM Kisombo 'Uganda' in Ferreira, n 41 above, 217-219.
- 58 Kisombo, n 46 above 218.
- 59 AU Policy Framework para 4.8(b), Tanzania policy on ageing, n 32 above, 10.
- 60 Report of the ministerial committee on abuse, neglect and ill-treatment of older persons op cit.
- 61 Para 4.224.
- 62 See eg Tanzania policy on ageing, n 32 above, 11.
- 63 GPRS II, n 17 above, 54.
- 64 Para 4.1(h).
- 65 Art 65.
- 66 S 30.
- 67 S 11(2)(b).
- 68 Benin PRSP, n 17 above, 54.
- 69 United Nations, Department of Economic and Social Affairs *World Economic and Social Survey 2007 – Development in an ageing world* 163-164.
- 70 Tanzania policy on ageing, n 32 above, 12.
- 71 Tanzania policy on ageing, n 32 above, 13, Malawi PRSP, n 17 above, 28.
- 72 See eg ministerial committee on abuse, n 49 above, 6.
- 73 HelpAge International. (2005). *An ageing world*. London. HelpAge International. Retrieved May 2, 2006: <http://www.helpage.org/Aboutus/Anageingworld-1>
- 74 Interview with Patrick Eba, Centre for Study of AIDS, University of Pretoria, 29 October 2008. On the impact of the AIDS pandemic on older people see eg D Fouad 'Role of elderly people in the era of HIV/AIDS in Africa',

<http://www.globalaging.org/armedconflict/countryreports/general/old%20hiv.pdf> (accessed 15 November 2008).

- 75 NGO THEMATIC SHADOW REPORT ON OLDER WOMEN'S RIGHTS IN MOZAMBIQUE op cit.
- 76 NGO THEMATIC SHADOW REPORT ON OLDER WOMEN'S RIGHTS IN TANZANIA op cit 47.
- 77 Tanzania policy on ageing, n 32 above, 10.
- 78 Mali *Etat de mise en œuvre*, n 32 above, 3-4.
- 79 Mali *Etat de mise en œuvre*, n 32 above, 3-4.
- 80 C Amofo 'Ghana' in Ferreira, n 41 above, 198; da Silva, n 41 above, 205, M Mendy 'The Gambia', Ferreira, n 41 above, 211. See also Ghana GPRS II, n 17 above 125. Sometimes it is not clear what interventions the state is planning, for example the Cameroonian PRSP lists health intervention for the elderly in its implementation matrix, but in the concrete action points health concerns of older persons are not addressed, Cameroon PRSP, n 17 above, 153, 195, 198.