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CAMSD/EXP/4(IV)

THEME: "Strengthening the African Family for Inclusive Development in Africa"

Draft Protocol to the African Charter on Human and Peoples’ Rights on the Rights of Older Persons in Africa
ANNEX 1

DRAFT PROTOCOL TO THE AFRICAN CHARTER ON HUMAN AND PEOPLES’ RIGHTS ON THE RIGHTS OF OLDER PERSONS IN AFRICA

THE STATES PARTIES TO THIS PROTOCOL;

CONSIDERING that Article 66 of the African Charter provides for special protocols or agreements, if necessary, to supplement the provisions of that Charter;

CONSIDERING that the African Charter makes specific provisions for the protection of the rights of Older Persons, under Article 18(4) which stipulates that, “Older Persons and people with disabilities shall also have the right to special measures of protection in keeping with their physical or moral needs”;

NOTING Article 2 of the African Charter which states that, “Every individual shall be entitled to the enjoyment of the rights and freedoms recognized and guaranteed in the present Charter without distinction of any kind such as race, ethnic group, colour, sex, language, religion, political or any other opinion, national and social origin, fortune, birth or other status”;

RECALLING Article 22 of the Protocol to the African Charter on the Rights of Women in Africa which provides for the special protection of elderly women;

CONSIDERING recommendation (1) contained in paragraph 4.1 of the African Union Policy Framework and Plan of Action on Ageing (2002) which states that “Member States recognise the fundamental rights of Older Persons and commit themselves to abolish all forms of discrimination based on age; that they undertake to ensure that the rights of Older Persons are protected by appropriate legislation; including the right to organise themselves in groups and to representation in order to advance their interests”;

CONSIDERING recommendation (1) (a) contained in paragraph 4.1 of the same Policy Framework and Plan of Action which calls for the elaboration and adoption of “an additional Protocol to the African Charter on Human and Peoples’ Rights relating to the rights of Older Persons”;

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CONSIDERING FURTHER paragraph 20 of the Kigali Declaration on Human Rights (2003), which "calls upon States Parties to develop a Protocol on the protection of the rights of the elderly and persons with disabilities";

RECALLING section 2.2.11 of the African Union Social Policy Framework (2009) which calls for the implementation of all the tenets of the AU Policy Framework and Plan of Action on Ageing (2002), other international instruments that deal with the issues of ageing and Older Persons, the 1991 UN Principles for Older Persons, the 1992 UN Proclamation on Ageing, and the 2002 Madrid International Plan of Action on Ageing and which promotes the rights of Older Persons;


TAKING into consideration the virtues of African traditions, values and practices which should inspire and characterize the provision of mutual social and communal care and support; respect for older members of society and the passing of knowledge to younger population groups;

NOTING that the increase in the number and needs of Older Persons in Africa calls for African Governments to institute urgent measures aimed at addressing these needs such as access to regular incomes, equitable distribution of resources, employment opportunities; access to appropriate health services; access to basic social services such as food, water, clothing and shelter; access to good care and support from the family, the state, civil society and private organizations; recognition of their contribution towards the care of persons with AIDS and orphans; respect and recognition of the role and contribution that Older Persons make to society; and a recognition of their special needs in emergency situations;
HAVE AGREED AS FOLLOWS:

Article 1

Definitions

For purposes of this Protocol:

a. “Older Persons” means those persons aged sixty years; and the words “the aged”, “Older Persons”, “Seniors” and “the elderly” shall be construed to have the same meaning as “Older Persons”;


c. “African Commission” means the African Commission on Human and Peoples’ Rights;

d. “AU” means the African Union;

e. “Commission” means the Commission of the African Union;

f. "Assembly" means the Assembly of Heads of State and Government of the African Union;

g. “Constitutive Act” means the Constitutive Act of the African Union;

h. “Member States” The Member States of the African Union;

i. “States Parties” means any Member States of the African Union that has ratified or acceded to this Protocol and deposited the instruments of ratification or accession with the Chairperson of the Commission of the African Union;

j. “Residential care” Residential care means long-term care, including geriatric care, given to Older Persons in a residential setting rather than their home.

Article 2

The Fundamental Rights of Older Persons

States Parties shall recognize the rights, duties and freedoms enshrined in this Protocol and shall undertake to adopt legislative or other measures to give effect to them.

Article 3

Principles on Older Persons

States Parties shall ensure that the principles of independence, dignity, self-fulfilment, participation and care of Older Persons are included in their national laws and are legally binding as the basis for ensuring their rights.
Article 4

Elimination of Discrimination Against Older Persons

States Parties shall combat all forms of discrimination against older persons through appropriate legislative, institutional and other measures:

1. Prohibit all forms of discrimination against older persons and modify social and cultural patterns of conduct which marginalise Older Persons;

2. 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;

3. Support and enforce local, national, regional, continental and international initiatives directed at eradicating all forms of discrimination against Older Persons.

Article 5

Policies and Laws for Older Persons

States Parties shall:

1. Involve Older Persons in the development and review of national policies and ensure that they provide for the protection and promotion of their rights;

2. Ensure that national laws reflect policies on ageing and older persons and are effectively implemented.

Article 6

Access to Justice and Equal protection before the law

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

1. Develop and review legislation to ensure that Older Persons receive equal treatment and protection;

2. Ensure the provision of legal assistance to Older Persons in order to defend their rights;

3. 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.

Article 7

Right to Make Decisions

States Parties shall:
1. 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;

2. 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.

**Article 8**

**The Right to Employment**

States Parties shall:

1. Take measures to eliminate discrimination against Older Persons with regard to employment opportunities;

2. Ensure that Older Persons enjoy decent working conditions.

**Article 9**

**Social Protection**

States Parties shall:

1. 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;

2. 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;

3. Ensure that the processes and procedures of accessing the pensions are decentralised, simple and dignified;

4. Take measures to enable individuals to prepare for income security in old age.

**Article 10**

**Protection from Abuse and harmful traditional practices**

States Parties shall:-

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

Article 11

Protection of Older Women

States Parties shall

1. Ensure the protection of the rights of older women to freedom from violence, sexual abuse and discrimination based on gender;

2. 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;

3. Put in place legislation that guarantees protection of Older Women against abuses related to property and land rights;

4. Adopt appropriate legislation to protect the inheritance rights of older women.

Article 12

Care and Support

States Parties shall:

1. 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;

2. 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.

Article 13

Support for the Care of Orphans and Vulnerable Children

States Parties shall:

1. Adopt measures to ensure that Older Persons in need, caring for orphans and vulnerable children are provided with financial, material and other support;

2. 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.
Article 14

Residential Care

States Parties shall:

1. Enact or review legislation that ensures that residential and geriatric care is optional for Older Persons,

2. Ensure that Older Persons in residential care facilities are provided with the best quality of care possible.

Article 15

Protection of Older Persons with Disabilities

States Parties shall:

1. Adopt legislation to protect the rights of Older Persons with disabilities;

2. Ensure that such legislation complies with regional and international standards;

3. Ensure that Older Persons with disabilities have access to specialised care, which responds to their needs within their communities.

Article 16

Protection of Older Persons in Conflict and Disaster Situations

States Parties shall:

1. 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;

2. Ensure that Older Persons receive humane treatment, protection and respect at all times and are not left without needed medical assistance and care.

Article 17

Access to Health Services

States Parties shall:

1. Guarantee the rights of Older Persons in accessing health services that meet their specific needs;
2. Ensure that free health services and medical insurance cover are extended to Older Persons;

3. Ensure the inclusion of geriatrics and gerontology in the training of health care personnel.

**Article 18**

**Access to Education and Life Skills**

*States Parties shall:*

1. Ensure that Older Persons have full access to continuous education and information;

2. Develop policies that ensure the rights of Older Persons to enjoy all aspects of life, including active participation in cultural programs, leisure and sports.

**Article 19**

**Access to Transport**

States Parties shall take measures to ensure that Older Persons have access to adequate and accessible public transport and that they have priority as seated passengers.

**Article 20**

**Access to Credit Facilities**

States Parties shall adopt measures to enable Older Persons to access credit facilities in financial or other relevant institutions.

**Article 21**

**Awareness on Ageing and Older Persons and preparation for old age**

*States Parties shall*

1. 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;

2. Adopt measures to develop training programmes that prepare Older Persons for the challenges faced in old age, including retirement.

**Article 22**

**Duties of Older Persons**
Older Persons have responsibilities towards their families, their communities, the wider society, the state and the international community. In this regard they shall:

1. Mentor and pass on their knowledge to the younger generations towards good practices;

2. Foster and strengthen inter generational dialogue and solidarity within their families and communities.

Please note (iii) has now been deleted

**Article 23**

**Coordination and Data Collection**

**States Parties shall:-**

1. Ensure the systematic collection and analysis of national data on Older Persons;

2. Develop a national mechanism on ageing with responsibility to assess, monitor, evaluate and coordinate the integration and implementation of Older Persons’ rights in national policies, strategies and legislation;

3. Support the Advisory Council on Ageing, as a continental mechanism of the African Union Commission, to facilitate the implementation and follow up of the continental policies and plans on ageing.

**Article 24**

**Implementation and Monitoring**

States Parties shall ensure the implementation of this Protocol, and shall indicate in their periodic reports submitted to the African Commission on Human and People’s Rights in accordance with Article 62 of the African Charter, the legislative and other measures undertaken for the full realisation of the rights recognized in the Protocol.

**Article 25**

**Final Clauses**

**Cautionary Clauses**

1. None of the provisions of the present Protocol shall affect more favourable provisions for the realisation of the rights of Older Persons contained in the national legislation of States Parties or in any other regional, continental or international conventions, treaties or agreements applicable in these States Parties.
2. In the event of a contradiction between two or more provisions of this Protocol, the interpretation that shall prevail is that which favours the rights of Older Persons and legitimate interests of Human and Peoples’ Rights.

**Article 26**

**Interpretation and Settlement of Disputes**

The African Court on Human and Peoples’ Rights shall be seized with any matters of interpretation or any dispute arising between States Parties from the application or implementation of this Protocol.

**Article 27**

**Signature, Ratification and Accession**

1. This Protocol shall be open for signature, ratification and accession by all Member States, in accordance with their respective constitutional procedures.

2. The instruments of ratification or accession shall be deposited with the Chairperson of the African Union Commission.

**Article 28**

**Entry into Force**

1. This Protocol shall enter into force thirty (30) days after the deposit of the instruments of ratification by fifteen (15) Member States.

2. For each Member State that accedes to this Protocol after its entry into force, the Protocol shall become effective on the date the State deposits its instrument of accession with the Chairperson of the Commission.

3. The Chairperson of the Commission shall notify all Member States of the entry into force of this Protocol.

**Article 29**

**Amendment and Revision**

1. Any State Party may submit proposals for amendment or revision to this Protocol.

2. Proposals for amendment or revision shall be submitted, in writing, to the Chairperson of the Commission who shall transmit the same to the States Parties within thirty (30) days of receipt thereof.

3. The Assembly upon advice of the Executive Council shall examine these proposals within a period of one (1) year following notification of States Parties, in accordance with the provisions of paragraph 2 of this article.
4. The amendment or revision shall be adopted by the Assembly by a consensus, failing which, by a two-thirds majority of States Parties.

5. The amendment or revisions shall into force for each State Party, which has accepted them, thirty (30) days after the Chairperson of the Commission of the African Union has received the instrument of acceptance.

Article 30

Depository

This Protocol, drawn up in four (4) original texts in the Arabic, English, French and Portuguese languages, all four (4) texts being equally authentic, shall be deposited with the Chairperson of the Commission who shall transmit certified copies thereof to each signatory State and notify them of the dates of the deposit of the instruments of ratification or accession.

Article 31

Registration of the Protocol

This Protocol shall, after due ratification, be registered with the Secretariat of the United Nations through the Commission of the African Union in conformity with Article 120 of the Charter of the United Nations.

Article 32

Reservations

State Parties shall not make or enter reservations to this Protocol that is incompatible with the object and purpose of this Protocol.

Adopted by the ........ Ordinary Session of the Assembly of the Assembly, Held in ........, ......

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