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**FIRST SESSION OF THE SPECIALISED TECHNICAL
COMMITTEE ON SOCIAL DEVELOPMENT,
LABOUR AND EMPLOYMENT (STC-SDLE-1)
ADDIS ABABA, ETHIOPIA
20-24 APRIL 2015**

Theme: *“Social Protection for Inclusive Development”*

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

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**FOURTH SESSION OF THE AU CONFERENCE
OF MINISTERS OF SOCIAL DEVELOPMENT (CAMSD4)
ADDIS ABABA, ETHIOPIA
26-30 MAY 2014**

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**

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African Commission on Human & Peoples' Rights		<i>Commission Africaine des Droits de l'Homme & des Peuples</i>
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ANNEX 11

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

¹ The Preamble to the Protocol was revised several times, with the last revision coming at the 52nd Commission of the ACHPR held in Yamoussoukro, Cote D'Ivoire, from 9th to 22nd October 2012. The Validation Workshop held in Addis Ababa, Ethiopia, 9-12 December 2013 and Ministers of Social Development at their 4th session in Addis Ababa, Ethiopia from 26-30 May 2014 further improved the draft. The main issues were as follows:-

(a) It was felt that the preamble was too long and repeated documents that had already been referenced. For example, the African Charter was referred to a few times and so was the Policy Framework and Plan of Action on Ageing. Written submissions that had been received from stakeholders such as HelpAge International had proposed to enlarge the Preamble and include, for instance, multiple forms of discrimination, etc. This, it was felt, would make the preamble very long.

(b) There were two items in the preamble which noted the contribution of governments and NGO's in the ageing field and it was agreed that these should be removed since they were not necessary in the Protocol

(c) It was agreed that the organisation of the Preamble should change to reflect the African context first, referring to African Charters, Policies and Declarations, before referring to the International Instruments.

(d) There was an item listing quite a number of instruments relevant to older persons and it was agreed that this should be condensed so that it does not repeat instruments that had already been referred to.

(e) There was need to insert an item referring to African traditions and values and this was done.

(f) It was agreed that the item referring to issues to be addressed by the Protocol should appear at the end of the preamble in order to set the scene and justify the need for the ensuing articles.

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”;

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;

CONSIDERING ALSO the World Population Plan of Action (1974), the Declaration of Principles of the United Nations Conference on Human Settlements (HABITAT) of 1996 and 1999, the International Labour Organization (ILO) Convention No. 102 of 1952 concerning Minimum Standards of Social Security, Convention No. 128 and Recommendations 131 of 1967 on Invalidity, Old Age and Survivors’ Benefits,

Recommendation No. 162 of 1980 concerning Older Workers, and Convention No. 157 concerning Maintenance of Social Security Rights of 1982;

CONSIDERING the various international declarations, conventions and instruments including but not limited to: Convention on the Elimination of Racial Discrimination (CERD) of 1965; International Covenant on Civil and Political Rights (ICCPR) of 1966; International Covenant on Economic, Social and Cultural Rights (ICESCR) of 1966; The Convention on the Elimination of all Forms of Discrimination against Women (CEDAW) of 1979; United Nations Plan of Action on Ageing of 1982; The Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (CAT) of 1984; UN Declaration on the Right to Development of 1986; United Nations Principles for Older Persons of 1991; United Nations Proclamation on Ageing of 1992; Madrid Plan of Action on Ageing (MIPAA) of 2002;

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

Definitions²

For purposes of this Protocol:

- a. “Older Persons”³ means those persons aged sixty years and above, as defined by the United Nations (1982) and the AU Policy Framework and Plan of Action on

² There were initial suggestions, mostly from CSOs to widen the article on “definitions” to include most words that are included in the protocol, such as “abuse”, “discrimination”, etc. It was felt, however, that this would entail literally defining every word in the Protocol.

³ “Older Persons”: There were extensive debates that the definition should be broadened to include population groups that were below the age of 60 years. An important argument was that the article should indicate a “purpose clause” rather than being definitive. The ACHPR Commissioners debated this at length and concluded that

it was important for a document such as the Protocol to be definitive on the target group. Apart from the fact that it is so defined in the AU Policy Framework and Plan of Action on Ageing (2002) and other UN documents, it was important to guide governments on what population group they were addressing. However, the Ministers of Social Development were of the view that Member States should have the latitude to define older persons beyond the age of sixty and other terms such as “seniors” should be included. The present draft reflects the views of the Ministers of Social Development at their 4th session in Addis Ababa 26-30 May 2014.

Ageing(2002), or as defined by individual States Parties; and the words “the aged”, “Older Persons”, “Seniors”, “Senior Citizens” and “the elderly” shall be construed to have the same meaning as “Older Persons”);

- b. “Ageing” means the process of getting old from birth to death and in this Protocol, it shall also refer to issues concerned with Older Persons;
- c. “African Charter” means the African Charter on Human and Peoples' Rights;
- d. “African Commission” means the African Commission on Human and Peoples' Rights;
- e. “AU” means the African Union;
- f. “ Commission” means the Commission of the African Union;
- g. “Assembly” means the Assembly of Heads of State and Government of the African Union;
- h. “Constitutive Act” means the Constitutive Act of the African Union;
- i. “Member States” The Member States of the African Union;
- j. “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;
- k. “The Advisory Council on Ageing”⁴ means an organ of the African Union Commission established in accordance with the AU Policy Framework and Plan of Action on Ageing (2002)
- l. “Residential care”⁵ 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 Persons⁷

States Parties shall ensure that the 1991 UN 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 Persons⁸

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

1. Prohibit all forms of discrimination against older persons and encourage the modification of 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.

⁴ Definition included at the request of the Ministers of Social Development

⁵ “Residential Care”. The Commissioners asked that the term be defined because the meaning differed a bit when translated into French. Initially a suggestion was made to define the term giving examples of residential care, such as Old People’s Homes. However, the text currently in the Protocol was finally agreed.

⁶ This article was added into the Protocol during the first review by the ACHPR Commissioners to refer to the role of Member States in protecting the rights of Older Persons and create legislation. It was amended and refined a few times thereafter. The initial wording was; “Take urgent policy, legislative and administrative measures to guarantee

that the fundamental rights of Older Persons are protected”. The Ministers of Social Development inserted the term “institutional” in the present draft.

⁷ The article referring to the principles on Older Persons as outlined in the UN Declaration of 1991 was a two part article in the first draft. It was agreed that it should stand on its own as it lay emphasis to the rights of Older Persons.

⁸ The Article elicited quite a number of comments from Commissioners and Stakeholders. Suggested formulations were much longer, with six sub items but loaded

with language which the Commissioners felt was contentious. One example for instance was as follows; “Prohibit all forms of discrimination against older persons and guarantee to older persons equal and effective legal protections against discrimination on all grounds, including older age, race, sex, disability, religion, political opinion, language, national ethnic or indigenous origin, sexual orientation, socio-economic position, or any other constitution or status”. Apart from the fact that such a formulation is quite long, the Commissioners felt that it contained language that would be contentious in the African setting.

There was also a suggestion to include a paragraph that referred to “identifying and eradicating social, traditional and cultural patterns of behaviour which marginalise and discriminate against older persons”. The problem with this was the possibility of asking Member States to eradicate practices that perhaps just needed to be modified. The argument was made, for instance that the practice of inheritance is now dangerous in the face of HIV/AIDS. However, inheritance does not only entail sexual relationships.

Article 5

Access to Justice and Equal protection before the law⁹

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 trained to effectively interpret and enforce policies and legislation to protect the rights of Older Persons.

Article 6

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 7

⁹ At the Validation Workshop held in Addis Ababa, Ethiopia, 9-13 December 2013, item 1 of the article was amended and expanded “...meet their needs”, to “...provide for the full protection and promotion of their human rights.”. However, at the 4th session of the Conference of Ministers of Social Development in Addis Ababa from 26-30 May 2014, the Ministers amended the title of the Article from “Policies and Laws for Older Persons” to “Access to Justice and Equal protection before the law” and merged part of Article 6 to 5. The present draft reflect the changes made by the Ministers.

¹⁰ The article attracted quite same debate. Initially the title was, “Access to Justice and Equal Protection before the Law”, but was changed to the current title “Right to Make Decisions” by the Ministers of Social Development. Initially there was only one item under this article but it was felt that a second item dealing with older persons in situations of incapacity be introduced. This is now item 2 of the article. The present draft reflects the recommendations of the Ministers.

Protection Against Discrimination in Employment¹¹

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.

¹ Debate on this article centred around formulation of the items in the article and the initial title of the article. On item1 for instance, it had been suggested to expand the item by adding: “including recruitment, hiring and employment, continuance of employment, career advancement and training, retirement policies, and safe and healthy work conditions”. The Commissioners felt that this would make the item unnecessarily long while not really adding value since the import of the item had been covered in the formulation of the item.

On item 2, it had been suggested to formulate it as, “ensure that Older Persons enjoy decent working conditions, foster their employability, provide flexible pathways to retirement and are not stopped from working on the basis of age.” It was felt; however, that enjoyment by older persons of decent working conditions provided a summary of the item.

The initial tile of the Article “The Right to Employment” generated considerable debate at the Conference of Ministers of Social Development. Apart from the mismatch between the title and the provisions of the article, and the legal difficulties of implementation, there was the feeling that at a time of high youth unemployment it will be difficult to guarantee the right to employment for older persons. The Ministers of Social Development amended the title of the article to the present formulation – “Protection against Discrimination in Employment”.

Article 8

Social Protection¹²

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 9

Protection from Abuse and harmful traditional practices¹³

States Parties shall:-

1. Enact legislation shall enact legislation which makes it an offence for family members, the community, institutions or other persons to violate the rights of Older Persons and make false accusations based on stereotypes and harmful traditional practices against them.

¹² The first draft of the Protocol had the following as an article on social protection: "States Parties shall develop policies and legislation that guarantee income to older people through social protection mechanisms including social pensions to ensure that they enjoy adequate basic security like food, water clothing and shelter."

It evolved into an article of two items as follows;

"Develop policies and legislation that guarantee income to Older Persons through social protection mechanisms, to ensure that they enjoy adequate basic security."

And

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

However, subsequent discussions resulted in four items which are contained in the current draft. This was designed to cover the whole spectrum of social protection provision (contributory schemes, universal pensions, access to services and preparation for older age) without being too lengthy.

Article 10

Protection of Older Women

States Parties shall

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

¹³ This article attracted significant debate from the Working Group, Commissioners, Ministers of Social Development and Stakeholders. It started as an article with only one item; “States Parties shall amend and or enact legislation which makes it an offence for family members, the community or other persons to abuse older persons, including accusing them of practicing witchcraft and other occult practices.” This, it was felt, was not adequately covering the issue of abuse that older people faced. CSO’s for instance, submitted 7 items detailing the types of abuse faced by older people in general, older women, the types of punishment to be meted on the perpetrators and mechanisms of educating the public against such abuses. The Commissioners felt, however, that the two items currently contained in the article adequately covered the issue. Some of the items being suggested were contained in other articles such as the one on elimination of discrimination and the one on older women. The present draft reflects the changes proposed by the Ministers of Social Development.

¹⁴ The article was inserted during the ACHPR Commission held in Banjul in April, 2012. Prior to this, it had been presumed that all the articles in the Protocol related to both men and women. In some cases, articles provided wording which emphasised the issues faced by older women. The Commissioners felt, however, that it was important to have an article only addressing women. The Working Group did receive many written submissions on this but felt that the provisions of the article should not duplicate what is contained in the Maputo Protocol. Consequently, two articles which had been put in article 9 regarding protection from abuse and harmful cultural practices were shifted to this article. At the Conference of Ministers of Social Development, one delegation expressed concern about the inclusion of “witchcraft” arguing about the difficulty of giving it legal effect and interpretation in national jurisdictions.

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 11

Care and Support¹⁵

States Parties shall:

1. Adopt policies and legislation that provide incentives to all stakeholders including family members, 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;
3. Ensure the provision of preferential treatment in service delivery for older persons.

Article 12

Residential Care 16

States Parties shall:

1. Enact or review legislation that ensures that residential care is optional for Older Persons,
4. Ensure that Older Persons in residential care facilities are provided with care that meets the National Minimum Standards

¹⁵ This is one of the few articles that did not change from the first draft. However, the Working Group received written submissions from CSOs with 10 items which were either amplifying the items already stated in the article, bringing in items already covered in other articles (such as access to social protection) or bringing in language which the Commissioners felt would be contentious and not implementable in the African setting. Two examples are provided below:-

- i. There was an item calling on Member States to ensure that older persons who are dying receive palliative care and provide them with a choice to terminate their lives. The Commissioners felt that unless there was a clear understanding of what this really entailed, it would be difficult for States Parties to implement this in Africa. The feeling was that this would equate to

Euthanasia, a concept that has not yet found wide acceptance in the continent.

- ii. There was an item; “The right of older persons to respect and support for family and personal relationships including for persons of different sexual orientations and gender identities”. While this particular formulation was submitted at the tail end of the drafting process, the first submission of this nature had been made in October, 2011. Firstly, both the WG and ACHPR Commissioners felt that it was not possible for the Protocol to legislate on how individual older persons should behave. Secondly, the subject of “sexual orientations” is one that has not yet received wide acceptance across the African Continent.

Article 13

Support for Older Persons Taking Care of Vulnerable Children¹⁷

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

Protection of Older Persons with Disabilities¹⁸

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;

¹⁶ The article did not change much from the first draft made by the consultant. While it only had one item, that item was broken into two and then refined to the present formulation. The title of the article was “Institutional Care” but this was changed to the present formulation as it was felt that the use of the word “institution” was not correctly describing the situation. A few submissions were received on the article, notably one that called on State Parties to, “ensure that older persons are able to choose their place of residence, without discrimination”. This was felt to be placing an impossible onus on

the States Parties and families who would not have the control of such choices or the places so chosen. The question was, “If an older person chose to live in the bush, should the State or family members allow it?”

¹⁷ This article was originally drafted as 3 separate articles but the Working Group collapsed the 3 into one as “Support for the Care of Orphans and Vulnerable Children” and there was not much debate on the provisions of the article. However, the Ministers of Social Development were of the view that the title did not properly capture the intents of the article and amended it to: “Support for Older Persons Taking Care of Vulnerable Children”.

¹⁸ With a lot of technical presence in the Working Group, this item did not receive much debate and did not change much from the first draft. The other factor to note is that the Working Group is developing a Protocol on the Rights of Persons with Disabilities and was careful not to duplicate articles in the two Protocols.

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

Article 15

Protection of Older Persons in Conflict and Disaster Situations¹⁹

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.

¹⁹ The first draft of the article had one item. This has not changed but got refined as the drafting progressed. The insertion of the second item was requested by ACHPR Commissioners to take care of the provisions of the International Humanitarian Law. The Working Group did receive written submissions on this but these were programmatic in nature, detailing procedures to be undertaken during emergencies.

Article 16

Access to Health Services²⁰

States Parties shall:

1. Guarantee the rights of Older Persons in accessing health services that meet their specific needs;
 2. Ensure that free access health services and medical insurance cover are extended to Older Persons who require it;
 3. Ensure the inclusion of geriatrics and gerontology in the training of health care personnel.
-

20 The article received some comments during the drafting stage which shaped the final draft. The initial draft had 3 articles but these were brought into one article. Written submissions were received on the article but they were mostly programmatic, detailing what should happen in ensuring that older persons access health care. An example is given below:-

“....Guarantee the rights of Older Parsons in accessing health services that meet their specific needs, by providing age – sensitive primary health care that is accessibly located, including in rural areas, by trained health workers in geriatric medicine, by ensuring the availability of pharmaceuticals to treat chronic and non – communicable diseases including dementia, by ensuring Older Persons’ access to HIV and AIDS related prevention, treatment, care and support services and by providing Older Persons with long term-term care that allows for independent living and palliative care which spares avoidable pain and enable Older Persons to die in dignity.”

Note here the descriptions on provision of health care but also the repetition of articles already covered or to be covered elsewhere in the Protocol. For example, the issue of palliative care has been discussed a few times in relation to preceding articles.

Article 17

Access to Education and Information²¹

States Parties shall Ensure that Older Persons have full access to continuous adult education information and ICTs;

²¹ The initial draft had two separate articles but these were brought into 1 and the wording refined with the title: “Access to Education and Life Skills”. The Ministers of Social Development changed the title to “Access to Education and Information”.

Article 18

Participation in Programmes and Recreational Activities²²

States Parties shall develop policies that ensure the rights of Older Persons to enjoy all aspects of life, including active participation in socio – economic development, cultural programmes, leisure and sports.

Article 19

Access to Infrastructure²³

States Parties shall take measures to ensure that Older Persons have access to infrastructure, including buildings, public transport and are accorded 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 preparation for old age²⁵

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

²¹ The initial draft had two separate articles but these were brought into 1 and the wording refined with the title: “Access to Education and Life Skills”. The Ministers of Social Development changed the title to “Access to Education and Information”.

²² This article is an addition by the 4th session of the Conference of Ministers of Social Development in Addis Ababa 26-30 June 2014.

²³ The original title of this article is “Access to Transport”. The Ministers of Social Development changed the title to “Access to Infrastructure” and further improved the article.

²⁴ Divergent views were expressed on the need value addition of this article. It is retained due to the importance of financial inclusiveness for older persons

Article 22

Duties of Older Persons²⁶

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

2. 1Mentor and pass on their knowledge to the younger generations towards good practices; Foster and strengthen inter-generational dialogue and solidarity within their families and communities;
3. Play a role in mediation and conflict resolution.

²⁵ The title of the article changed from, “Awareness on Ageing”, to the current formulation which incorporates the aspect of preparation for retirement.

²⁶ This article was not in the initial draft of the Protocol but it was inserted in subsequent drafts. The members of the Working Group argued that this article had to be in the Protocol since it was the only one that referred to the duties and responsibilities that older persons have to their families and society at large. The article had 3 items but the third was removed since it was felt that it was adequately covered in the item on African traditions in the preamble. It read, “....preserve and strengthen African cultural values in relation to other members of the society, in the spirit of tolerance, dialogue and consultation and to contribute to the moral wellbeing of society.” However, the Ministers of Social Development added a new third item on “mediation and conflict resolution”.

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.

²⁷ The first draft of the Protocol had the following text:-

“State parties shall develop a national mechanism or coordinating structure or body for Aging whose responsibility will be to collect data, put strategies, coordinate and monitor the integration of Older Person’s rights in national plans.”

This formulation was largely maintained in the subsequent drafts, albeit with minor amendments. The discussion took currency when the African Union Commission

suggested an additional Article during the WG meeting of October, 2011. The initial submission had two options but during the meeting, the following was selected:-
States Parties shall;

- i. States Parties shall establish and make operational An African Advisory Council on Ageing in accordance with AU decision EX.CL/625(XVIII).
- ii. The Advisory Council on Ageing shall oversee the review and appraisal of the implementation of the Policy Framework and Plans of Action on Ageing as well as promoting the ratification and domestication of charters, conventions and protocols on ageing and prepare and submit progress reports to the relevant AU Organs;

This article was discussed in a subsequent meeting of the Working Group in Mauritius in 2012 and it was submitted to the ACHPR Commission. The Commissioners argued that it was not normal for a Protocol to regulate the establishment of an organ. As such, they recommended that the article be amended or removed.

A member of the WG requested the Commissioners for a reconsideration, basing his arguments on the provisions of the AU Policy Framework and Plan of Action on Ageing (2002) and in the decision of the 2nd session of Ministers of Social Development in Khartoum (2010). The Commissioners did not feel that this was the right place for the Council and needed more justification regarding why it had to be in this Protocol. It was finally agreed that it remains in italics pending receipt by Commissioners of the two documents referred to by the member and any other justification available.

In subsequent discussions, it was agreed to merge this article into the one on Coordination, and then craft language that took care of the issue of the “organ”. The following text was added as one of the items of the Article:-

“Support a continental mechanism, through the African Union Commission, to monitor and support the implementation and follow up of the continental policies and plans on ageing.”

This is the text that was approved by the ACHPR Commission, sitting in Yamoussoukro, Cote d'Ivoire, in October, 2012. The current text in the Protocol which is now item 3 of the Article was agreed during the Validation Meeting organised by the African Union Commission in Addis Ababa, in December, 2013. The Ministers of Social Development endorsed the present text and requested that the term “Advisory Council” be included in the list of definitions in Article 1.

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

Cautionary Clauses²⁸

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 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.

²⁸ Initially this was referred to as "Final Clauses". However, the Ministers of Social Development expressed preference for the term "Cautionary Clauses".

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
.....,**