

**International Frameworks and instruments on the human rights of Older Persons and identification of existing gaps at international level.**

**Update on Multilateral Processes- The African Process.**

**Chapter 1**

**From Focal Point to Draft Protocol**

1. My name is Yeung Sik Yuen. I serve as a Commissioner on the African Commission on Human and Peoples Rights, henceforth referred to under either of the two acronyms, the **African Commission or the ACHPR**, since November 2007.
2. In May 2007, during the 41 Ordinary Session of the ACHPR held in Accra, Ghana, the African Commission adopted a resolution [**ACHPR/Res.106(XXXXI) 07**] on the Rights of Older Persons in Africa in order to implement the African Union Policy Framework and Plan of Action on Ageing of 2002 (**AU Policy Framework**).
3. The AU Policy Framework binds state parties to recognize the fundamental rights of older persons and to abolish all forms of discrimination based on age. State parties are also required to ensure that the rights of older persons are protected by appropriate legislation.
4. Recommendation (1)(a), contained in paragraph 6.1 of the same Policy Framework, 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".
5. In November 2007 The African Commission established a Focal Point on the Rights of Older Persons in Africa. I acted as coordinator of the Focal Point with mission to:
  - (a) Promote and protect the Rights of Older Persons in Africa and to that end, to convene an Experts' Meeting made up of Members of the African Commission, Experts from the AU Member States and Civil Society Organisations so as to **draft a Protocol to the African Charter on the Rights of Older Persons in Africa;**
  - (b) Follow up with the African Union Commission (AUC) to secure the resources needed; and
  - (c) **Spearhead the process of drafting the protocol** for submission to the AU Policy Organs for consideration and adoption as soon as possible. (emphasis added)
6. In October 2008, the Focal Point organized a Consultative Meeting on the Rights of Older Persons in Mauritius. The area of the rights of older persons was at that stage still embryonic to the African Commission. Key actors came from organisations like HelpAge International and the African Rehabilitation Institute (ARI) which have worked extensively in the area of the rights of older persons.
7. In May 2009, the ACHPR adopted a resolution which transformed the Focal Point into a Working Group on the Rights of Older Persons and People with Disabilities [WG]. The WG was assigned the following five terms of reference:

- a. To hold comprehensive brainstorming sessions to articulate the rights of older persons and people with disabilities;
  - b. To draft a concept paper for consideration by the ACHPR that would serve as a basis for the adoption of the Draft Protocol on Ageing and People with Disabilities;
  - c. To facilitate and expedite comparative research on the various aspects of human rights of older persons and people with disabilities on the continent , including their socio-economic rights;
  - d. To collect data on older persons and people with disabilities to ensure proper mainstreaming of their rights in the policies and development of member states; and
  - e. To identify good practices to be replicated in member states.
8. In August 2009, an “expert seminar” was held in Accra, Ghana. The theme of the seminar included the rights of people with disabilities in Africa as well as the rights of older persons. At that stage it was still a moot point as to whether the assignment of the Focal Point would not be limited to draft one protocol on older persons while considering age as a specific form of disability or whether there should be 2 distinct draft instruments, one on Older Persons and a second on People with Disabilities. The debate was not free from difficulties considering Recommendation 1 (a) of the AU Policy Framework, the expressed mandate of the Focal Point and the fact that the UN had by that time already elaborated its Convention on the Rights of People with Disabilities and its Optional Protocol in December 2006. The question was even raised as to whether a proposed new African Protocol on People with Disabilities in Africa would not fall outside the terms of reference of the Focal Point cum Working Group and undermine the general application of the brand new UN Convention on People with Disabilities. The WG came up with some interesting proposals for the justification of drafting two distinct African protocols on the ground that in both situations there were African specific concerns which had to be addressed. With hindsight I can state with confidence that the decision reached by the Focal Point was the correct one. The proof is that there are already over 30 African states which have signed the UN Convention on Disabilities so that the Draft African Protocol on the Rights of People with Disabilities which is upcoming can in no way be said to compete with the UN Convention. For Africa it will surely be a beneficial complement to the UN Convention . It will surely again be the same case when one day both the African Protocol on the Rights of Older Persons and the UN Convention on the Rights of Older Persons are applied side by side by African States. Human rights being universal and indiscriminate whatever variations be contained in any international, regional albeit national instrument can only be variations on the same theme which is but the promotion and the protection of human rights.
9. Following the meeting in Accra, Ghana, the WG went through several more milestones with meetings held in Mauritius and in Gambia.
10. The WG started with 5 members but 3 more members joined in mid-course. Towards the end, the WG welcomed 2 senior officials of the Social Affairs Directorate of the African Union Commission (SAD) .

In the meantime, in October 2011 the WG participated in the 8<sup>th</sup> Biennial Conference organized by the Network of African National Human Rights Institutions (NANHRI) on the theme *Advancing*

*the rights of older persons and persons with disabilities*". A colleague Commissioner also participated in the previous meeting of this Open Ended Working Group which was held in Geneva

The draft Protocol on Older Persons went through the perusal of the Commissioners of the ACHPR in private session on no less than 3 occasions until It was adopted by the ACHPR in Yamoussoukro, Cote d'Ivoire, in October 2012. The draft Protocol was then immediately sent, according to the procedures of the African Union (AU), to the legal counsel of the African Union Commission (AUC) in Addis Ababa for eventual onward transmission to the Meeting of Heads of State and Government for approval.

## **Chapter 2.**

### **Guiding Principles behind the Draft Protocol on the Rights of Older Persons in Africa.**

The draft African Protocol on the Rights of older Persons has taken as its source inspiration the AU Policy Framework and Plan of Action on Ageing (2002) and the declarations and standards set in international and regional instruments mentioned in that same Policy Framework. Issues, recommendations and proposed actions raised in the AU Policy Framework as well as those raised in some other African instruments have been taken on board. Among African instruments which have served as guidelines, the following can be named:

- (i) The African Charter on Human and Peoples' Rights , more particularly Articles 2, 18(4) and 66;
- (ii) The Protocol to the African Charter on the Rights of Women in Africa, more particularly Article 22;
- (iii) The Kigali Declaration on Human Rights (2003), more particularly its paragraph 20;
- (iv) The African Union Social Policy Framework (2009), more particularly section 2.2.11

It is also to be observed that the AU Policy Framework itself mentions as its groundwork for developing its plan of action on ageing three key UN Instruments for protecting the rights of older persons, namely the:

- UN Plan of Action on Ageing - 1982
- UN Principles for Older Persons – 1991
- UN Proclamation on Ageing -1992

### **Chapter 3.**

#### **Draft Protocol to the African Charter on Human and People's Rights on the Rights of Older Persons in Africa**

African specific situations which have been raised in the AU Policy Framework have been reflected in the draft protocol.

While there has been no compromise on spelling out the human rights of older persons in Africa and the mechanisms that will ensure compliance with those rights, the African Protocol has adopted a holistic approach and focused on a practical text which it is felt will be workable in a cost effective manner.

The WG was guided by the principle that although human rights are interdependent and indivisible, yet certain socio-economic realities dictate that those rights can only be achieved progressively according to availability of State resources. At the same time emphasis is placed on measures which must, as a principle, be embraced by one and all, albeit these would necessitate some sustained efforts from the states.

The draft Protocol was adopted in October 2012 in Yamoussoukro, Cote d'Ivoire. It was sent, according to procedure, to the legal counsel of the AUC for vetting and presentation to the Heads of State and Government for approval. We are now awaiting this process and it would accordingly not be appropriate that the text be communicated outside the AUC without authorization from the AUC and which is beyond the remit of the former Chairperson of the Working Group on the Rights of Older Persons in Africa.

I feel habilitated however to state in broad lines what are the main provisions of the draft Protocol.

A preliminary observation: **practically the whole Protocol sets down the obligations and duties of states parties in promoting and protecting rights of OPs.**

#### **The Draft Protocol on the Rights of Older Persons in Africa**

##### **Preamble**

Art.66 African Charter provides for special protocols to be made, if necessary, to supplement the provisions of the Charter.

Art 18(4) of the African Charter provides that *"Older persons and people with disabilities shall also have the right to special measures of protection"*

Article 2 - Rights of the individual to enjoy rights and freedoms 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**.

## **Art.2. The Fundamental Rights of OPs.**

State parties (SPs) to recognize rights, duties and freedoms set out in Protocol and undertake to make them effective.

## **Art.3. Principles on OPs.**

SPs to ensure 4 principles on OPs **included in national laws**: independence, dignity, self-fulfillment, participation and care of OPs.

## **Art.4. Elimination of Discrimination Against OPs**

SPs to prohibit all forms of discrimination, stigmatization and marginalizing of OPs.

## **Art.5. Policies and laws for OPs**

SPs to involve OPs to develop and review policies to meet their needs and ensure implementation.

## **Art.6. Access to Justice and Equal Protection before the law**

SPs recognition of principle of equality of OPs before the law. Ensure OPs effectively receive equal treatment and protection + legal assistance.

Ensure law enforcement organs at all levels are equipped to **effectively interpret policies and legislation** to protect rights of OPs.

[ Vide-Judge Ashton 12 June 2008 C/No. 86 of 2007 sitting Preston County Court in Re H (a bankrupt)- Fylde Borough Council. Contempt for failure to attend public hearing after bankruptcy order. Wheel chair, doubly incontinent, Huntington disease, shuts himself off from the world in his home and refusing support from social services. Debt of 1,800 UKP for "meals on wheels" one hot meal and a sandwich per day for 2 years. Bankruptcy order made earlier in absentia. Could have possibly claimed disability benefits; house owner; house was to be seized and H found on street. Bankruptcy order discharged.]

## **Art.7. Right to make Decisions**

SPs to ensure rights of OPs to make decisions regarding their own well-being w/o undue interference be protected by law. In case of incapacity, OPs to be provided with social and legal support in order that OPs make decisions in their best interest.

### **Art.8. Right to Employment**

SPs to take measures to eliminate unfair discrimination against OPs with regard to employment opportunities + ensure that OPs enjoy decent working conditions.

### **Art.9. Social Protection**

The draft protocol requires the states parties to develop policies and legislation that ensure that OPs, upon retirement are provided with adequate pensions and other forms of social security.

It calls upon states parties to ensure that universal social protection mechanisms exist to provide income security for OPs who did not have the opportunity to contribute to any social security provisions.

It also call upon SPS to ensure that the processes and procedures of accessing pension benefits are decentralized, simple and dignified.

The issue of social protection often raises difficult incidental questions of affordability, specially from so called Least Developed States (LEDS). But interesting studies carried out by HelpAge International in 2008- *vide Issue 31* of its issue “**Ageing in Africa**” have demonstrated that social protection does not cost that much (<1% in Brazil and 1.4% of GDP in South Africa) and that issue of costs has little significance when compared with the immense benefits of social protection. Social protection measures carried out by States to respond to the needs of older persons can range from subsidized basic commodities and services which are accorded generally, universal non-contributory old age pensions, non-contributory widows’ and disability pensions, free health care, subsidized or free public transport, etc. In fact, social protection measures can empower older persons with a fair degree of economic independence so that they can live with dignity.

I would wish to make a side statement here on the inhumane conditions persisting in the prisons of certain African states which are brought to light in country periodical reports or during promotional missions carried out by Commissioners. It is not uncommon that only one meal per day is provided to inmates on the ground that the specific countries are poor. This is the more inhumane when it is beyond the possibility of an inmate to amend that condition while it is easily within the reach of all states to comply with the most basic right of the individual- the right to food.

Quite apart from the issue of affordability of social protection of OPs, there are also issues of effective distribution of social benefits so that social protection may be provided only on paper. The ineffective organization of civil status data renders distribution of benefits based on age a real difficulty if not an impossibility. Also, a system cannot be effective where the distribution is bureaucratic and over-centralized and collection of benefits entail days of personal displacement of OPS from the villages to

town. In this day and age, when bills are being settled by electronic phone, safe alternatives to effect payment can surely be devised.

#### **Art.10. Protection from Abuse and harmful traditional Practices**

SPs to legislate so that abuse of OPs becomes an offence and protect OPs from false accusations based on stereotypes and harmful traditional practices.

#### **Art.11. Protection of Older Women;**

Same protection as under art.10, but gender based. SPs to protect rights of older women to freedom from violence, sexual abuse, discrimination based on gender. More specifically, the elimination of harmful social and cultural practices, including witchcraft accusations; legislate to guarantee older women against abuses related to property and land rights and protection of inheritance rights.

Vidotage, levirat

Elle a mange un enfant

#### **Art.12. Care and Support**

Recommendation 1 (h) of the AU Policy Framework calls upon states parties to enact legislation requiring adult children to provide support for their parents. This is already the case in states with a Civil Law historical influence where there is a reciprocal legal duty between ascendants and descendants to support each other within the limits of one party establishing its needs and the other being shown the capacity to provide. Article 12 of the Protocol calls for SPs to adopt policies and legislation that provide incentives to all stakeholders including adult children, to support OPs in their communities, while ensuring that they remain at home for as long as possible.

#### **Art.13. Support for the Care of Orphans and Vulnerable Children.**

SPs are called upon to ensure that OPs caring for orphans and vulnerable children and who are themselves in need be provided with financial, material and other support. Any social or other benefits designed for the children are to be remitted to the OPs

#### **Art.14. Residential Care**

As indicated under article 12 of the draft Protocol, the African value and ideal that the place of OPs is at home has been preserved in the Draft Protocol.

Provisions have however been made here for SPs to ensure that the best residential and geriatric care be optional for OPs.

**Art.15. Protection of OPs with Disabilities**

SPs to ensure that OPs with disabilities have access to specialized care.

**Art.16. Protection of Older Persons in Conflict and Disaster Situations**

OPs to have access on a priority basis to assistance during above situations.

**ART.17. Access to Health Service**

Health service to meet specific needs of OPs. Health care personnel to receive training in geriatrics and gerontology. Free health service and medical insurance cover to be extended to OPs.

**Art.18. Access to education and Life Skills**

SPs to ensure that OPs have access to continuous education and information. And that OPs participate in cultural programs, leisure and sports.

**Art.19. Access to Transport**

Access to adequate and affordable public transport with priority as seated passengers.

**Art.20. Access to credit Facilities**

SPs to adopt measures to enable OPs to access credit facilities

**Art.21. Awareness on ageing and Older persons and preparation for old age**

**ART.22. Duties of OPs**



OPs have responsibilities towards families, their communities, the wider society, the state and the international community

**Art.23. Coordination and Data Collection.**

**Art.24. Implementation and Monitoring**

**Art.25. Interpretation**

**Art.26. Signature, Ratification and Accession**

**Art.27 Entry into Force**

**Art.28. Amendment and Revision**

**Art.29. Status of the Present Protocol**

**Chapter 4**

**CAMSD 3 of November 2012**

In November 2012, at the 3<sup>rd</sup> Session of the **African Union Conference of Ministers of Social Development [CAMSD 3]** which was held in Addis Ababa , Ethiopia from 26 to 30 November, a *Draft Africa's Common Position on Human Rights of Older persons in Africa* was submitted. In that Draft

Africa's Common Position, the coming into being of the "AU Draft Protocol to the African Charter on Human and Peoples' rights on the Rights of Older Persons" was duly acknowledged.

In Recommendation I.(a) addressed to the AU Member States, CAMSD called for the establishment of an *"all inclusive and accountable institutional leadership that ensures coordination and integration of ageing issues into national development instruments and to create space for national debate on priorities, strategic investments, social protection and legal measures."*

The recommended institutional leader is subsumed in CAMSD's Recommendation II.(c) calling upon the African Union Commission and the Regional Economic Communities to *"facilitate the functioning of the AU Advisory Council on Ageing"*.

This is in line with a provision in the Draft Protocol wherein the States Parties are called upon *"to 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"*. It will be up to the supreme deciding body of the African Union Commission to decide on the identity and format of the continental mechanism which will spearhead the overall policies and plans on ageing for Africa. But the continued role of the ACHPR to monitor and ensure the implementation of the African Charter and other incidental instruments, including eventually the African Protocol on the Rights of Older Persons, is ensured under article 62 of the African Charter which makes provision for periodic reports on due implementation and observance of all human rights by states parties to the African Commission.

In Recommendation I.(j) addressed to the AU Member States again, the CAMSD called for the advocacy and support of *"the elaboration of a UN Convention on the Human Rights of Older Persons which would strengthen and reinforce the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Older Persons in Africa and to continue promoting the Madrid International Plan of Action on Ageing (MIPAA)."*

## **Chapter 5**

### **What is to be done after the adoption of the Protocol.**

It is planned that, if and when the draft Protocol is adopted, follow up action will have to be undertaken on a wide scale in the 54 African States member of the AU to explain the immense human rights benefits of the Protocol for the African continent. One of the mottos of the Commission is precisely that one cannot exercise one's rights if one does not know what these are. Not only will the Protocol be beneficial to its senior citizens but it will also have a beneficial trickling down effect on the family, the government and even for civil society as a whole, including the economic sector.

GOOD LUCK TO THE DRAFT PROTOCOL ON THE RIGHTS OF OLDER PERSONS IN AFRICA

GOOD LUCK TO THE UNITED NATION'S OPEN ENDED WORKING GROUP ON THE RIGHTS OF OLDER PERSONS