

African Union, African Regional Bodies

Protocol to the African Charter on Human and Peoples' Rights on the Rights of Older Persons in Africa

Legislation as at 31 January 2016

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PDF created on 5 February 2025 at 08:55.

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FRBR URI: /akn/aa-au/act/protocol/2016/rights-of-older-persons-in-africa/eng@2016-01-31

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African Union

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[This is the version of this document at 31 January 2016.]

WE, MEMBER STATES OF THE AFRICAN UNION:

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*";

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 United Nations Principles for Older Persons, the 1992 United Nations 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; United Nations 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 – Definitions

For purposes of this Protocol:

"**African Charter**" means the African Charter on Human and Peoples' Rights;

"**African Commission**" means the African Commission on Human and Peoples' Rights;

"**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;

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

"**AU**" means the African Union;

"**Commission**" means the African Union Commission;

"**Constitutive Act**" means the Constitutive Act of the African Union;

"**Harmful traditional practices**" means traditional beliefs, attitudes and practices which violate the fundamental rights of Older persons such as their right to life, dignity and physical integrity;

"**ICT**" means Information Communication and Technology;

"**Member States**" means the Member States of the African Union;

"**Older Persons**" means those persons aged sixty (60) years and above, as defined by the United Nations (1982) and the AU Policy Framework and Plan of Action on Ageing (2002);

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

"**States Parties**" means Member States of the African Union that have ratified or acceded to this Protocol and deposited the instruments of ratification or accession with the Chairperson of the African Union Commission;

"**The Advisory Council on Ageing**" means a Council established in accordance with the AU Policy Framework and Plan of Action on Ageing (2002);

The words "the aged", "Older Persons", "Seniors", "Senior Citizens" and "the elderly" shall be construed to have the same meaning as "Older Persons".

Article 2 – Obligations of States Parties

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

2. States Parties shall ensure that the 1991 United Nations 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 3 – Elimination of discrimination against Older Persons

States Parties shall:

1. prohibit all forms of discrimination against Older persons and encourage the elimination of social and cultural stereotypes which marginalise Older Persons;
2. take corrective measures in those areas where discrimination and all forms of stigmatisation against Older Persons continue to exist in law and in fact; and
3. support and enforce local, national, regional, continental and international customs, traditions and initiatives directed at eradicating all forms of discrimination against Older Persons.

Article 4 – Access to justice and equal protection before the law

States Parties shall:

1. develop and review existing legislation to ensure that Older Persons receive equal treatment and protection;
2. ensure the provision of legal assistance to Older Persons in order to protect their rights; and
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 5 – 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 any person or entity, 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 legal and social assistance in order to make decisions that are in their best interests and wellbeing; and
3. enact legislation and take other measures that protect the right of Older Persons to express opinions and participate in social and political life.

Article 6 – Protection against discrimination in employment

States Parties shall:

1. take measures to eliminate work place discrimination against Older Persons with regard to access to employment taking into consideration occupational requirements; and
2. ensure appropriate work opportunities for Older persons taking into account to their medical and physical abilities, skills and experience.

Article 7 – Social protection

States Parties shall:

1. develop policies and legislation that ensure that Older persons who 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 who did not have the opportunity to contribute to any social security provisions;
3. ensure that the processes and procedures of accessing pensions are decentralised, simple and dignified;
4. take legislative and other measures to enable individuals to prepare for income security in old age; and
5. take legislative and other measures that facilitate the rights of Older Persons to access services from state service providers.

Article 8 – Protection from abuse and harmful traditional practices

States Parties shall:

1. prohibit and criminalise harmful traditional practices targeted at Older Persons; and
2. take all necessary measures to eliminate harmful traditional practices including witchcraft accusations, which affect the welfare, health, life and dignity of Older Persons, particularly Older women.

Article 9 – Protection of Older Women

States Parties shall:

1. ensure the protection of the rights of Older Women from violence, sexual abuse and discrimination based on gender;
2. put in place legislation and other measures that guarantee protection of Older Women against abuses related to property and land rights; and
3. adopt appropriate legislation to protect the right of inheritance of Older Women.

Article 10 – Care and support

States Parties shall:

1. adopt policies and legislation that provide incentives to family members who provide home care for Older Persons;
2. identify, promote and strengthen traditional support systems to enhance the ability of families and communities to care for Older family members; and
3. ensure the provision of preferential treatment in service delivery for Older Persons.

Article 11 – Residential care

States Parties shall:

1. enact or review existing legislation to ensure that residential care is optional and affordable for Older Persons;
2. ensure that Older Persons in residential care facilities are provided with care that meets the National Minimum Standards provided that such standards comply with regional and international Standards; and
3. ensure that Older Persons in palliative care receive adequate care and pain management medication.

Article 12 – Support for Older Persons taking care of vulnerable children

States Parties shall:

1. adopt measures to ensure that indigent Older Persons who take care of orphans and vulnerable children are provided with financial, material and other support; and
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 13 – Protection of Older Persons with disabilities

States Parties shall:

1. adopt legislation and other measures to protect the rights of Older Persons with disabilities;
2. ensure that such legislation and measures comply with regional and international standards; and
3. ensure that Older Persons with disabilities have access to assistive devices and specialised care, which respond to their needs within their communities.

Article 14 – 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 shall be among those to enjoy access, on a priority basis, to assistance during rescue efforts, settlement, repatriation and other interventions: and
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 15 – Access to health services

States Parties shall:

1. guarantee the rights of Older Persons to access health services that meet their specific needs;
2. take reasonable measures to facilitate access to health services and medical insurance cover for Older Persons within available resources; and
3. ensure the inclusion of geriatrics and gerontology in the training of health care personnel.

Article 16 – Access to education

States Parties shall provide opportunities for Older Persons to have access to education and to acquire ICT skills.

Article 17 – Participation in programmes and recreational activities

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 18 – Accessibility

States Parties shall take measures to ensure that Older Persons have access to infrastructure, including buildings, public transport and are accorded seating priority.

Article 19 – Awareness on ageing and preparation for old age

States Parties shall:

1. adopt measures to encourage the development of awareness raising programmes to educate the younger population groups on ageing and Older Persons to combat negative attitudes against Older Persons; and
2. adopt measures to develop training programmes that prepare Older Persons for the challenges faced in old age, including retirement.

Article 20 – Duties of Older Persons

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

1. mentor and pass on knowledge and experience to the younger generations;
2. foster and facilitate inter-generational dialogue and solidarity within their families and communities; and
3. play a role in mediation and conflict resolution.

Article 21 – 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; and
3. support the Advisory Council on Ageing, as a continental mechanism of the African Union to facilitate the implementation and follow up of the continental policies and plans on ageing.

Article 22 – Implementation

1. States Parties shall ensure the implementation of this Protocol, and shall indicate in their periodic reports submitted to the African Commission in accordance with Article 62 of the African Charter, the legislative and other measures undertaken for the full realisation of the rights recognized in this Protocol.
2. In the implementation of this Protocol, the African Commission shall have the mandate to interpret the provisions of the Protocol in accordance with the African Charter.
3. The African Commission may refer matters of interpretation and enforcement or any dispute arising from the application or implementation of this Protocol to the African Court on Human and Peoples' Rights.
4. Where applicable, the African Court on Human and Peoples' Rights shall have the mandate to hear disputes arising from the application or implementation of this Protocol.

Article 23 – Popularization of the Protocol

States Parties shall take all appropriate measures to ensure the widest possible dissemination of this Protocol in accordance with the relevant provisions and procedures of their respective constitutions.

Article 24 – Safeguard clause

1. No provision in this Protocol shall be interpreted as derogating from the principles and values contained in other relevant instruments for the realisation of the rights of Older Persons in Africa.
2. In the event of a contradiction between two or more provisions of this Protocol, the interpretation which favours the rights of Older Persons and protects their legitimate interests shall prevail.

Article 25 – Signature, ratification and accession

1. This Protocol shall be open to Member States of the Union for signature, ratification or accession.
2. The instrument of ratification or accession to the present Protocol shall be deposited with the Chairperson of the Commission who shall notify all Member States of the dates of the deposit of the instruments of ratification or accession.

Article 26 – Entry into force

1. This Protocol shall enter into force thirty (30) days after the deposit of the fifteenth (15th) instrument of ratification by a Member State.
2. The Chairperson of the Commission shall notify all Members States of the African Union of the entry into force of the present Protocol.
3. For any Member State of the African Union acceding to the present Protocol, the Protocol shall come into force in respect of that State on the date of the deposit of its instrument of accession.

Article 27 – Reservations

1. A State Party may, when, ratifying or acceding to this Protocol, submit in writing a reservation with respect to any of the provisions of this Protocol. Reservation shall not be incompatible with the object and purpose of this Protocol.
2. Unless otherwise provided, a reservation may be withdrawn at any time.
3. The withdrawal of a reservation must be submitted in writing to the Chairperson of the Commission who shall notify other States Parties of the withdrawal accordingly.

Article 28 – Depository

This Protocol shall be deposited with the Chairperson of the African Union Commission, who shall transmit a certified true copy of the Protocol to the Government of each signatory State.

Article 29 – Registration

The Chairperson of the Commission upon the entry into force of this Protocol shall register this Protocol with the United Nations Secretary General in conformity with Article 102 of the Protocol of the United Nations.

Article 30 – Withdrawal

1. At any time after three years from the date of entry into force of this Protocol, a State Party may withdraw by giving written notification to the Depository.

2. Withdrawal shall be effective one year after receipt of notification by the Depository, or on such later date as may be specified in the notification.
3. Withdrawal shall not affect any obligation of the withdrawing State Party prior to the withdrawal.

Article 31 – Amendment and revision

1. Any State Party may submit proposal(s) for the amendment, or revision of this Protocol. Such proposal(s) shall be adopted by the Assembly.
2. Proposals for amendment or revision shall be submitted to the Chairperson of the Commission who shall transmit such proposals to the Assembly at least six months before the meeting at which it shall be considered for adoption.
3. Amendments or revisions shall be adopted by the Assembly by consensus or, failing which, by a two-thirds majority.
4. The amendment or revision shall enter into force in accordance the procedures outlined in Article 26 of this Protocol.

Article 32 – Authentic texts

This Protocol is drawn up in four (4) original texts, in Arabic, English, French and Portuguese languages, all four (4) texts being equally authentic.

IN WITNESS WHEREOF the undersigned, being duly authorized to that effect, has signed this Protocol.

Adopted by the twenty sixth Ordinary Session of the Assembly, held in Addis Ababa, Ethiopia

31 January 2016