

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

AS WE AGE, OUR RIGHTS DON'T

HUMAN RIGHTS DO NOT END AT 60

VENUE:

DATE:

PRESENTER: MS C.M.LEGODU

PRESENTATION OUTLINE

- Purpose of the presentation
- Structure of the AU
- Objectives of the AU
- Why the Protocol
- Overview of the Protocol
- Background of the Protocol
- Objectives of the Protocol
- Consultation process
- Motivation for SA's ratification of the AU Protocol on the Rights of Older Persons
- Proposed amendments (Older Persons Amendment Bill 2022)
- Recommendations

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PURPOSE OF THE PRESENTATION

- To outline the structure and objectives of AU
- Background of the AU Protocol
- Outline the objectives
- Proposed Recommendations
- Roles and Responsibilities
- Way Forward

STRUCTURE OF THE AU

- AU established on the 25th May 1963-Organisation of African Unity(OAU)
- 2002 changed to African Union(AU)
- Consists of 5 regions namely:
 - ✓ Central region -9 countries
 - ✓ Eastern Region -14 countries
 - ✓ Northern Region-7 countries
 - ✓ Southern African Development Communities (SADC) 10 countries(which includes South Africa)
 - ✓ Western Region-15 countries
- Number of older persons in Africa estimated at 64.4 million

OBJECTIVES OF AU

- To create solidarity between African countries and Africans
- To defend the integrity and the independence of its member states
- To encourage and support economic development and political stability through cooperation of member states
- To develop, approve and facilitate implementation of policies and legislative frameworks in Africa

WHY THE PROTOCOL?

- Historically, the human rights of older persons as a unique, separate, social group, have received little attention in the international discourse on human rights.
- This reality has begun to change in the last decade following a series of discussions, articles, and activities by various key sector structures and contributors within the older person's sector.
- On 25th to 26th November 2019, the Women's Rights Unit, participated in the Africa Regional High –level Conference on the Human Rights of Older Persons in Africa, which was organized by the Stakeholder Group on Ageing in Africa (SGA) held in Abuja, Nigeria.
- The key goal was to engage the ECOWAS Parliament and to build consensus among the parliamentarians and member states on the need to ratify the OPs Protocol for standardized protection of the rights of OPs through a regional and international legally binding instrument.
- The Protocol is a transformative legal instrument providing norms and standards in ensuring respect and protection of the rights of older persons in Africa.
- It is the strategic framework for delivering on Africa's goal for inclusive and sustainable development. Its adoption would ensure that older persons are treated with dignity and respect and as equal members of society.

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WHY THE PROTOCOL?

- The SA Constitution (Act 108 of 1996) serves as the foundation for the transformation agenda of the new democracy to protect the human rights of older persons and to terminate all the forms of racial discrimination and inequality that had been instituted against them during the apartheid era.
- Note that the NDSD has developed a very progressive legislative framework Older Persons Act No 13 of 2006, currently being amended through the Older Persons Amendment Bill 2022
- Noting the critical areas of the Protocol and their relevance to SA, the relevant articles of the Protocol have been considered for inclusion in the Older Persons Amendment Bill 2022

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OVERVIEW OF THE PROTOCOL

- There is an increase in the number and needs of Older Persons in Africa.
- This 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.
- The Protocol must be incorporated into the country's policies and legislative frameworks, hence the need for ALL countries to ensure the signing, ratification and domestication thereof.
- SA has considered the AU Protocol in the recent Amendment of the Older Persons Act No 13 of 2006

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BACKGROUND OF THE PROTOCOL

- The process of developing the Protocol started in 2012
- The Protocol is based on the three priorities of the Madrid International Plan of Action on Ageing, as well as the African Union Policy Framework on Ageing.
- The three pillars of the Madrid International Plan of Action on Ageing are: older persons and development, advancing health and well-being into old age, and ensuring an enabling and supportive environment
- Consultations and inputs consolidated in 2014/15
- In 2016 the Protocol was finalized and adopted by commissioner of the African Union as the **PROTOCOL ON CHARTER ON HUMAN AND PEOPLE'S RIGHTS ON RIGHTS OF OLDER PERSONS IN AFRICA**
- Some countries have signed and ratified the AU Protocol, BUT SA HAS NOT YET SIGNED NOR RATIFIED

OBJECTIVES OF THE PROTOCOL

- To Maintain and Protect the rights of older persons in Africa
- To Combat all forms of elder abuse
- To emphasize the shift from residential care facilities and promote the community-based care and support services
- To eliminate all forms of discrimination against older persons
- To provide opportunities and afford older persons the rights to participate in issues that affect them
- To enforce that all key stake holders are capacitated in all policies and legislative frameworks regulating services to older persons.

CONSULTATION PROCESS

- The Protocol was consulted with the Office of the State Law Adviser to check compliance or any contradictions with any country laws
- The AU Protocol was found to be compliant and not in contradiction with any pieces of legislation in the country
- It was also consulted with the Office of the Chief State Law Adviser, International Law in DIRCO
- A few concerns were raised by the DIRCO State Law Adviser:
 - ✓ A distinction may have to be made between nationals and non-nationals with matters such as social protection (including pensions), access free services such as health, education etc.
 - ✓ South Africa will have to consider whether it wants to record any other reservations when ratifying the Protocol.
- The process of ratifying the AU Protocol is also part of DIRCO's response (Attached is the document)
- The older persons sector including beneficiaries was consulted at various levels.

MOTIVATION FOR THE RATIFICATION OF THE AU PROTOCOL ON THE RIGHTS OF OLDER PERSONS

- The Protocol will strengthen the protection of the rights of older persons in line with the Older Persons Act, 2006 including the Constitution of the Republic
- It will strengthen the intersectoral collaboration by defining roles and responsibilities of stakeholders
- It will facilitate the mainstreaming of ageing issues across government departments, private sector, NPOs etc.
- Development of Policies that promote active ageing: decision making, contribution to policy and programme development, review, monitoring and evaluation etc.
- Promote integrated efforts in policy and programme development, implementation, monitoring and evaluation etc.

MOTIVATION FOR SA FOR THE RATIFICATION OF THE AU PROTOCOL ON THE RIGHTS OF OLDER PERSONS cont.

- Among others, the following issues which are priorities of the country in terms of the Older Persons Act, 2006 are included in the AU Protocol:
 - ✓ Protection of Older Women in terms of the NSP-GBV
 - ✓ Elimination of discrimination against older persons
 - ✓ Access to Justice and equal protection before the laws
 - ✓ Social Protection
 - ✓ Protection from abuse and harmful traditional practices
 - ✓ Care and support etc.

5. Proposed amendments Cont...

Chapter	Section	Previous	Impact	New Proposals	Envisaged Impact
Chapter 1	Section 5:General Principles	General principles did not include cultural and traditional practices affecting older persons	Older persons rights and dignity were infringed through cultural and traditional practices	New Section was inserted to include necessary measures to eliminate harmful traditional practices including witchcraft accusations, which affect the welfare, health, life and dignity of older person (Article 8: Protocol to the African Charter on Human and People's' Rights on the Rights of Older Persons in Africa).	Older persons rights and dignity will be protected and is in accordance with the AU Protocol.

5. Proposed amendments Cont...

Chapter	Section	Previous	Impact	New Proposals	Envisaged Impact
Chapter 2	Section 7: Rights of older persons	The section focused on the rights of older persons	No responsibilities were outlined for older persons yet older persons have a wealth of knowledge and wisdom which can be utilised and are regarded as pillars of families.	Insertion of Section 7A on responsibilities of older persons (Article 20:Protocol to the African Charter on Human and People's' Rights on the Rights of Older Persons in Africa).	Older persons will take responsibility towards other younger generations, in families and communities by using their wisdom and knowledge as pillars of families.

5. Proposed amendments Cont...

Chapter	Section	Previous	Impact	New Proposals	Envisaged Impact
Chapter 2	Section 7 :Rights of older persons	The section focused on the rights of older persons but there were some gaps	Certain rights of older persons were infringed.	Insertion of Section 7B on the protection of the older persons' rights to property, inheritance and physical abuse (Article 9: Protocol to the African Charter on Human and People's' Rights on the Rights of Older Persons in Africa).	Older persons' rights to property and inheritance will be protected and will be protected against physical abuse.
Chapter 3	Section 11(2) (c)	Gaps were identified in the programmes	Older persons were not capacitated on non communicable chronic diseases	Section 11(2) (c) was revised to include information on non communicable chronic diseases	Older persons will receive comprehensive information on matters affecting them

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5. Proposed amendments Cont...

Chapter	Section	Previous	Impact	New Proposals	Envisaged Impact
Chapter 5	Section 25 :Older persons in need of care and protection	There were no provisions of services to older person with disability and chronic illness.	No specific services were outlined for older persons with disability and chronic illness.	Insertion of Section 25(B) to include services to older person with disability and chronic illness (Article 13: Protocol to the African Charter on Human and People's' Rights on the Rights of Older Persons in Africa).	Older persons with disability and chronic illness will receive appropriate services and be protected
Chapter 5	Section 26:Notification of abuse of older persons	There was no timeframe in terms of investigation of elder abuse cases	Case of elder abuse were left unattended and there was no accountability on practitioners	Section 26 was revised to include social workers, police officials and managers in investigating elder abuse cases and a timeframe of 48 hours to investigate reported elder abuse cases.	There will be accountability and penalties for practitioners and older persons cases will not fall within cracks

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Chapter 5	Section 26:Notification of abuse of older persons	There was no timeframe in terms of investigation of elder abuse cases	Case of elder abuse were left unattended and there was no accountability on practitioners	Section 26 was revised to include social workers, police officials and managers in investigating elder abuse cases and a timeframe of 48 hours to investigate reported elder abuse cases.	There will be accountability and penalties for practitioners and older persons cases will not fall within cracks

RECOMMENDATIONS

- It should be noted that the SA Constitution has laid a firm foundation for the transformation agenda of the new democracy to protect the human rights of older persons and to terminate all the forms of racial discrimination and inequality that had been instituted against them during the apartheid era.
- Note that the NDSD has developed a very progressive legislative framework Older Persons Act No 13 of 2006, currently being Amended through the Older Persons Amendment Bill 2022
- Request the Minister to present the Protocol to Cabinet to approve for signing and ratification so that implementation can be enforced
- Facilitate that each Department develops the following:
 - ✓ costed implementation plan aligned to the Protocol with time frames
 - ✓ a standard monitoring and reporting template
- DPME supported by the NDSD facilitates the monitoring and evaluation across various levels of implementation processes.

60 PLUS MATTERS

I THANK YOU