1. Introduction

Numerically, what exactly constitutes an older person, in many instances varies from region to region and in some cases, from country to country. In several cases, the definition of older person is reflective of the age of retirement. At the moment in Africa, there is no African Union benchmark numerical measure to clearly identify or define older persons. However, based on the age of retirement, the definition of older person in Africa will vary and in many instances will range from 50-65 years of age. Nonetheless, the UN has confirmed the cut-off age to be 60 and above years of age to refer to older persons.

From a legal point of view, it is ironic and tragic to ignore the fact that the legal protection of the human rights of older persons who at one stage of their lives were the builders and promoters of the very society and institutions we leave and work is almost non-existent. In fact, several human rights conferences and colloquiums both at the United Nations (UN) and regional levels have consistently ignored the development of the human rights of older persons in general and their socio-economic rights in particular. This has been the case in spite of the constant growing in numbers of older people’s population in the world in general and Africa in particular. Though the UN provides that developed countries hold the current highest population of older persons aged 60 and above in the world, it should however be noted that developing countries, most of which are in Africa, hold the fastest growing older persons population aged 60 and above. In fact, the UN Division for Social Policy and Development in an expert meeting confirmed that the population of the developing countries ‘is ageing rapidly’ and that over the next four decades, ‘the

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\[ 1 \text{ This is the case in Countries like South Africa, and Cameroon.} \]

\[ 2 \text{ World Health Organisation, ‘Definition of an older or elderly person’, available at } \]

\[ 3 \text{ UN Department of Economic and Social Affairs (Population Division), World Population Prospects: The 2006 Revision (2007) 5-9 available at } \]
The high growth and rapidly increasing population of older persons in developing countries and Africa in particular, mirrors the exigency for comprehensive and wide-ranging policy actions geared towards protecting and promoting the human rights of older persons in general and their socio-economic rights in particular. More so, to this ageing constraint, policy actions on ageing in Africa are further intricate by the fast changing environment in which most older persons live. In fact, in Africa, majority of the older persons live in rural areas where in very certain terms, social infrastructure is scanty and in some cases non-existent. Worst, the traditional support system which characterises most African communities and the family institution continue to break down as a result of increasing migration amongst the younger population in search for greener pastures, urbanization, and political insecurity. As a result, older persons have lost much of their traditional social support, and find themselves having to play the role of caregivers in some instances for HIV/AIDS orphans.

It is based on this background and the current rapid growth in older person’s population that ageing has emerged to being a global phenomenon rather than a regional one. Unfortunately, it was only in 2002 that the Second World Assembly on Ageing supported the inclusion of older persons in the human rights international development agenda. Since then, the UN and other regional human rights bodies such as the African Union have gone on to set up expert working groups to ascertain and establish possibilities of adopting a comprehensive legal protection of older

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4 UN Department of Economic and Social Affairs (Social Policy and Development Division) programme on Ageing, Report of the Expert Group Meeting “Rights of Older Persons” (2009) 2

person’s human rights in general and their socio-economic rights in particular. Arguably, this legislative oversight has greatly hindered and slowed down the expansion of, understanding of, and exacerbated the abuse of the human rights of older persons worldwide and in Africa in particular.

As I mentioned elsewhere, it is traditional to think of the protection of the human rights of older persons as the protection of ‘special people’ or perhaps of people with ‘special needs’ but, as the ageing population constantly grows rapidly, the legal protection of their human rights in general and their socio-economic rights in particular, will surely become a major component within mainstream human rights protection. What is more, the emerging quest for a comprehensive approach to the legal protection of older person’s human rights at the global level and Africa in particular, has the potential to drastically transform the way every human being’s lifestyle choices are developed, configured and controlled.⁶

It is important at this point to highlight the fact that the focus of this contribution is to strengthen the legal protection of the socio-economic rights of older persons in Africa. As a result, prior to the introduction, this contribution will first attempt to conceptualise the socio-economic rights of older person’s in Africa, secondly, I will analyse, separately, with the help of statute (international and regional) and specific experiences drawn from various African countries where appropriate, selected older person’s socio-economic rights that are crucial to be protected at the African regional level; such as older person’s right to: non-discrimination, physical and mental health, adequate housing, social security, adequate food, education, and property and inheritance, then, the relevance of promoting and protecting older person’s socio-economic rights in Africa will be examined.

2. The conceptualisation of the socio-economic rights of older person’s in Africa

Despite the lack of an explicit legal instrument, the need for a comprehensive human rights protection of older persons in Africa cannot be contested. Generally, human rights as we know it are the rights every human is entitled to primarily because they are human beings, irrespective of their; age, citizenship, nationality, race, ethnicity,

language, gender, sexuality or abilities. On the other hand, socio-economic rights could be defined as those basic entitlements everyone needs to survive, for instance, food and clean water. In many instances, it is only when these inborn rights are respected, promoted, protected and fulfilled that every human being is able to live with dignity and integrity. Based on this, it is therefore no doubt that with the absence of such protection to older persons in Africa, this class of human beings remain as ‘sub-human beings’.

It is perhaps the case that, due to the lack of an inclusive definition of what exactly constitutes the rights of older persons, has further cast doubts on why such human rights should be protected and promoted globally and in Africa in particular. However, embedded yet not exact in traditional human rights instruments such as the Universal Declaration of Human Rights, 1948 (UDHR), the protection and promotion of human rights generally, does not change irrespective of age. In fact, the UDHR states that ‘[a]ll are equal before the law and are entitled without any discrimination to equal protection of the law’. Implying, the protection of human rights cuts across all ages, gender, nationality and sexuality. Also, renowned binding human rights instruments enacted after the UDHR have been consistent in developing this trend of ensuring the total protection of human rights for all. For instance, the International Covenant on Economic, Social and Cultural Rights, 1966 (ICESCR), the International Covenant on Civil and Political Rights, 1966 (ICCPR), and the Convention on the Elimination of all forms of Racial Discrimination, 1966 (CERD). Also, recognised international human rights monitoring bodies such as the UN Committee on the Elimination of All Forms of Discrimination against Women (CEDAW Committee), have adopted a consistent standard explicitly ensuring that the human rights of older women for instance, are respected and promoted. Unfortunately, with the exception of the International Convention on the Protection of

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7 See generally, art 1 of the UDHR, 1948 which provides that; ‘all human beings are born free and equal in dignity and rights’.
8 See generally, arts; 7, 22 and 25 of the UDHR.
9 See generally, arts 9 and 11 of the ICESCR, UN Doc. A/34/46 (1966).
10 See generally, art 25 of the ICCPR, UN Doc. A/6316 (1966).
11 See generally, art 5 of the CERD, UN Doc. A/6014 (1966).
12 See generally, the CEDAW Committee’s General Recommendation No.27, on older women and protection of their human rights UN doc. CEDAW/C/2010/47/ GC.1. (2010).
the Rights of All Migrant Workers and Members of Their Families 1990, (ICPMW),\(^{13}\) which registers ‘age’ as one of the prohibited grounds of discrimination, the African Charter on Human and Peoples’ Rights, 1981 (ACHPR),\(^{14}\) which insist that ‘the aged and the disabled shall also have the right to special measures of protection in keeping with their physical or moral needs’, the Protocol to the African Charter on Human and Peoples’ Rights on the Rights of Women in Africa 2003, (African Women’s Protocol)\(^{15}\) which calls on State parties to ensure that the ‘right of elderly women to freedom from violence, including sexual abuse, discrimination based on age and the right to be treated with dignity’ is protected, and the Additional Protocol to the American Convention on Human Rights in the area of Economic, Social and Cultural Rights, 1988 (Protocol of San Salvador) which provides amongst others that ‘everyone has the right to special protection in old age’, no other binding human rights instrument overtly protects the human rights of older persons.

Fortunately, latest developments both at the African regional level and the UN indicates that, both bodies have set-up committees with the clear intention of assessing the situation of older persons and providing a daft convention that will not only ensure the human rights of older persons, but will go a long way in reinstating their pride. Also, it should be noted that frameworks to ensuring the rights of older persons at the global and African Union (AU) levels, do exist. For example, the Madrid International Plan of Action on Ageing (MIPAA) and the African Union Policy Framework and Plan of Action on Ageing (AUPFPAA)\(^{16}\). However, both the MIPAA and the AUPFPAA, just like the UDHR are not legally binding and therefore only

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\(^{13}\) See generally, art 1 of the ICPMW.

\(^{14}\) See generally, art 18(4) of the ACHPR.

\(^{15}\) See generally article 22 of the African Women’s Protocol.

\(^{16}\) This framework represents the regional response to addressing the many challenges faced by the older person population in Africa. Approved at the 38th Ordinary session of the Assembly of Heads of State and Government in South Africa, 2002, the AUPFPAA provides amongst others that it has been drafted to: ‘guide AU Member States as they design, implement, monitor and evaluate appropriate integrated national policies and programmes to meet the individual and collective needs of older people.’ At the same time, it recognises the resource implications and recommends that ‘The rights and needs of older people should be included in national budgets and governments should advocate for allocation of resources for programmes to address ageing issues from the international donor community.’
imposes a moral obligation on state parties to implement them. At national levels, few countries in Africa have specific legislation dealing with older persons. For instance, Mauritius adopted the Protection of Elderly Persons Act in 2005 (PEPA) and South Africa adopted the Older Persons Act in 2006 (OPA). The OPA for example, provides a solid framework for the promotion and protection of several socio-economic rights of older persons in South Africa, though not exhaustive.

While every aspect of ensuring that older person’s human rights in Africa is promoted and protected is crucial, it is beyond the scope of this paper to consider them all in detail. Instead, I evaluate selected socio-economic rights, identified above, that are deep-seated to the development and protection of older persons in Africa. As already stated above, this paper highlights key socio-economic rights and its subsequent interpretation that are relevant in strengthening and advancing the socio-economic rights protection of older person’s in Africa.

3. The socio-economic rights of older person’s in Africa

The process of ageing is a natural reality with its own challenges, largely beyond human control. Nonetheless, it is also subject to the beliefs by which each society makes sense of what exactly constitutes old age. With the socio-economic development of several countries in Africa rapidly changing, many older persons who in several instances are technologically challenged face constant difficulties in communicating and are often isolate. In such circumstances, even their basic needs & rights are not addressed. Social marginalization, isolation and even negligence of older persons in many instances constitute gross violations of their human rights in general and their socio-economic rights in particular.

Unfortunately, in Africa older persons are often not aware of their human rights, talk-less of their socio-economics rights; this is due to the high dominance of illiteracy and poverty amongst older persons. Arguably, due to these challenges and

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18 The Older Persons Act 13 of 2006.
older person’s physical as well as psychological vulnerability, their call for help remains unheard and as a result, very little, if any, cases relating to the violation of the socio-economic rights of older persons have been reported in Africa. In fact, the ever-growing numbers of misery calls from older persons in most communities in Africa, clearly indicates disturbing conditions of the human rights of older persons in general and their socio-economic rights in particular.

As a matter of fact, the social and economic situation of older people in Africa is declining. In many instances, this decline is a direct result of the constant effects of modernisation including egoism, urbanisation, poverty and migration, combined with the corresponding trends of the effects of HIV/AIDS; have almost completely wiped-out deep-rooted African traditional structures of ‘intergenerational’ family and community support especially as many younger people living with HIV/AIDS have become completely reliant on their parents for care rather than supporting them in older age. These factors have combined to undermine not only older people’s financial security but also traditional levels of respect and value within many African societies. Many older persons, particularly women, suffer from stigmatisation, abuse and violence. A comprehensive legal framework such as a protocol which ensures the socio-economic rights of older persons in Africa for instance, is needed. It is almost certain that the introduction of such instrument could reignite a sense of family responsibility in society and strengthen traditional community forms of support. In the paragraphs that follow, I will attempt to analyse, comprehensively, identified socio-economic rights that are crucial to the development and wellbeing of older persons in Africa.

**a. Older person’s right to non-discrimination**

Generally, non-discrimination stands out as one of the most emphasised, promoted and protected aspect in human rights law. This aspect cuts-across every human being irrespective of their age and has, extensively been documented and legislated in most human rights binding and non-binding instruments both at the global, regional and national levels. Discrimination, as commonly known, includes any omission, distinction, constraint or partiality based on any ground such as race, colour, sex, language, religion, political, age or other opinion, national or social origin, property, birth or other status, and which has the purpose or effect of
weakening the recognition, enjoyment or exercise by all persons, on the same balance, of all rights and freedoms.\textsuperscript{20}

The right to freedom from discrimination and equality before the law, protected by articles 2 and 3 of the ACHPR, compels member states similarly to the obligations of the ICCPR, to act against discrimination by public and private agencies from all fronts.\textsuperscript{21} The reality in Africa is, older persons face issues relating to discrimination on several fronts almost on a daily bases. Discrimination of older persons often cuts-cross and abuses several rights owed to older persons. For instance, older persons in Africa are discriminated when it comes to employment, health, decision making, property inheritance, and housing. Even though the ACHPR does not explicitly prohibit discrimination on the grounds of age, it could be argued that such discrimination would likely be considered under the prohibited grounds of ‘other status’. Such elucidation is supported and reinforced by the provisions of the African Women’s Protocol.\textsuperscript{22}

Relating to issues of decision making, be it at government or family level, the participation of older persons in such processes is almost non-existent. With the exception of countries like Uganda, who have taken a step further in ensuring the participation of older persons at local government level\textsuperscript{23} through the enactment of the its Local Government Act,\textsuperscript{24} it is almost practically certain that the same cannot be said of most African countries. However, it should be noted that the importance of

\textsuperscript{20} See generally, Human Rights Committee’s General Comment No. 18: Non-discrimination UN doc 10/11/89, para 7.
\textsuperscript{21} See generally, Human Rights Committee’s General Comment No. 31: The nature of the general legal obligation imposed on states parties to the covenant, CCPR/C/21/Rev.1/Add.13, para 6.
\textsuperscript{22} See generally, ICESCR General Comment (GC) No. 6: the economic, social and cultural rights of older persons, paras: 10-12 and 20-21. See also, ICESCR GC No. 20 para. 29. Which provides that, age is a potential ground of discrimination in several contexts.
\textsuperscript{23} H Baryayebwa, Ugandan report on the review and appraisal of the implementation of the MIPAA, 3. See also, J. Oloka-Onyango, ‘Equal Opportunity, Age-Based Discrimination and the Rights of Elderly Persons In Uganda’, (2008) for a more comprehensive overview of the progress and challenges faced by Uganda in ensuring the rights of older persons in Uganda.
\textsuperscript{24} See generally, sec, 10(f) and 23(6) of the Ugandan Local Government Act CAP 243, which provides for ‘representation of two older persons, male and female elected by older persons Government Council’ to be present and participate in every local government decision making process.
such representation of older persons, speaks volumes and will definitely go a long way in ensuring that the plight of older persons are heard and address comprehensively and timely.

b. Older person’s right to physical and mental health

It is common knowledge that today, most scholars, legal minds and health practitioners would agree to the effect that health in not a one-dimensional experience. The accepted definition of health put forth by the World Health Organisation, embraces physical, mental and social aspects of health.\(^{25}\) It follows therefore that being healthy, does not in anyway depict the physical fitness of a person. Thus, mental strength or being sound in mind is very crucial as is social wellness. In fact, the UN Committee on Economic, Social and Cultural Rights (ICESCR Committee) affirms that the right health goes beyond the right to be healthy or to timely and appropriate health care. As a matter of fact, the ICESCR has enlightened that the right to health also extends to;

...the underlying determinants of health, such as access to safe and potable water and adequate sanitation, an adequate supply of safe food, nutrition and housing, healthy occupational and environmental conditions, and access to health-related education and information including on sexual and reproductive health. A further important aspect is the participation of the population in all health related decision-making at the community, national and international levels.\(^{26}\)

Old age as already mentioned above, is a natural and almost certain stage in life for every human being. For several older persons in Africa, physical and mental health is the ‘single most important asset in their possession as, it enables them to work’.\(^{27}\)

Biologically, an older person’s body anatomy is very delicate and has different health priorities as compared to that of a younger person. As a human being gets older, especially women, coupled with the consequences of her body-related conditions such as post-reproduction, their body anatomy becomes severe and deteriorates if they are prohibited or cannot access health services due to age or health. However, in most cases where an older person’s health is said to be cared

\(^{25}\) See generally, the Preamble to the Constitution of the World Health Organization as adopted by the International Health Conference, New York, 19-22 June, 1946.

\(^{26}\) See generally, ICESCR Committee’s GC No. 14 on the right to the highest attainable standard of health (200) para 11.


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for in Africa, underlying determinants identified by the ICESCR Committee above, to the full and satisfactory enjoyment of an older person’s right to health, such as their right to self-determination and informed consent is almost non-existent. This is the case inspite of existing legislation such as the African Women’s Protocol which lays specific emphases on the importance of informed consent during health related examinations in all instances for example. This is worsened by the fact that information central to older person’s health in Africa, is rarely provided in a form that is acceptable, accessible and appropriate to them.

The physical and mental health situation of older person’s in Africa sincerely requires special attention. This is true because with the increasing prevalence of the HIV/AIDS pandemic in the continent, and with older person’s especially older women in rural areas providing the majority of care for adults and children affected by HIV/AIDS, they, arguably, could be regarded as vulnerable to the infection of HIV. Notwithstanding, it is worth mentioning that in some countries in Africa, older persons receive free health care, examples of such are South Africa and Tanzania. In South Africa for instance, the national department of health recently redesigned the health care system to underline a primary care approach aimed at extending access to affordable health care to a previously excluded sector of the population (older persons). Statistically, the department manages a three-tiered health care system, under which 90% of clients are served at primary care clinics, 8% treated at secondary level community hospitals and only 2% referred to tertiary levels of care. In fact, South Africa has gone further in ensuring the health of its older population by including geriatrics in their medical training and has opened specialised geriatric units to train specialised medical practitioners. While this is a very laudable and recommendable initiative, it is not without blemish. In fact, these units face immense challenges in attracting medical practitioners to specialise in geriatric. As a result, nationally, ‘only eight registered geriatricians are available to serve a population of 3.8 million older people’ in South Africa.

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28 Fokala-Mukumu (n 6 above) 7. Also, see art 14(1)(e) of the African Women's Protocol.
30 For example, South Africa has opened such training for specialised medical practitioners at the University of Cape Town’s Medical school.
31 Zimba Kalula, (n 29 above) 23.
Generally, health interventions primarily focusing on older persons include free cataract operations.\(^{32}\) However, in some African countries, for example Uganda, there are limitations in determining what sort of procedures the government or state will cover and most of the time, drugs are not provided for free.\(^{33}\) One very severe health related problem in Africa is the location of health facilities. In many African countries, and especially in rural areas, health facilities are located far away from where the vast majority of older persons live. A glaring example here is the situation in the Guneku and Sang villages in the northwest of Cameroon where the nearest health facility is situated more than five kilometres away from the villages.\(^{34}\) Based on this and several other scenarios, it is indeed uncertain whether existing practice in most African countries do comply with the injunction in article 16 of the ACHPR which provides that ‘every individual shall enjoy the best attainable state of physical and mental health’.

c. Older person’s right to adequate Housing

Generally, the right to adequate housing is recognized as one of the most important of all basic human rights in a number of international and regional human rights instruments and treaties.\(^{35}\) It should however be noted that no international or regional human rights instrument or treaty overtly recognises, specifically the rights of older persons to adequate housing. Notwithstanding, UN committees such as the ICESCR Committee, vested with the powers of interpreting the rights and obligations embedded in the ICESCR, has consistently expanded the scope of its provision on

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\(^{33}\) Baryayebwa, (n 23 above). See also Tanzania National Ageing Policy, 11-16.

\(^{34}\) The author hails from the northwest of Cameroon and thus, has first hand information.

the right to adequate housing to include and recognise older persons as one of the most vulnerable groups that suffer irrationally from the practice of forced evictions.\(^{36}\)

The reality is, in Africa the residential care facilities for older persons are in dreadful need of attention, this is simply because older persons in Africa, are clearly not enjoying their right to adequate housing. With the exception of South Africa which has not only codified the right to adequate housing for all in its Constitution,\(^{37}\) but has also enacted a separate legislation providing and protecting for same for its older population,\(^{38}\) the interest in ensuring and promoting older person’s right to adequate housing in Africa, is illusive. Unfortunately, in instances where older person’s right to adequate housing is said to have been ensured and fulfilled, the CEDAW Committee highlights that in many instances, inadequate attention is often given to the requirements necessary for adequate housing, which include ‘accessible housing arrangements and mobility aids’.\(^{39}\) In a similar situation, the Constitutional Court of South Africa in the *Grootboom case* interpreted the right to have access to adequate housing as follows:

Housing entails more than bricks and mortar. It requires available land, appropriate services such as the provision of water and the removal of sewage and the financing of all these, including the building of the house itself. For a person to have access to adequate housing all of these conditions need to be met: there must be land, there must be services, and there must be a dwelling. The right of access to adequate housing also suggests that it is not only the State that is responsible for the provision of houses, but that other agents within society, including individuals themselves, must be enabled by legislative and other measures to provide housing.\(^{40}\)

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\(^{36}\) See generally, ICESCR Committee’s GC 7 on the right to adequate housing in the context of forced evictions, UN doc. E/1998/22, annex IV, para 10.

\(^{37}\) See generally, sec 26(1) of the South African Constitution (act 108, 1996) provides that everyone shall have the right of ‘access to adequate housing’. Several legal scholars in South Africa and beyond, have interpreted ‘accessibility’ as meaning that the ‘State must create conducive conditions for all its citizens, irrespective of their economic status, to access affordable housing’. Also, sec 26(3) prohibits evictions of persons from their homes and the demolition of their homes without a court order. At the African regional level, see also art 16 of the African Women’s Protocol which protects and promotes women’s rights to adequate housing.

\(^{38}\) See generally, chpt 4 of the OPA Act No. 13.2006.

\(^{39}\) CEDAW Committee’s General Recommendation No.27 (n 12 above) para 23.

\(^{40}\) *Government of the Republic of South Africa and Others v Grootboom and Others*, 2000 (11) BCLR 1169, para 41. This point is further developed by the ICESCR Committee, which provides the
Regrettably, in Africa, the existing practice and understanding of what constitute older person’s rights to adequate housing is lacking substantially.

d. Older persons rights social security

According to the UN Independent Expert on the question of human rights and extreme poverty (UN Independent Expert), social protection in the context of social security is defined as involving a wide-range of policy frameworks designed to pay particular attention to the ‘risks and vulnerabilities of individuals and groups, irrespective of whether they can or cannot work’. In fact, the realisation of the right to social security is crucial to ensuring that people in general and older persons in particular, live a dignified life. Social security benefits include contributory and non-contributory pension schemes, as well as other forms of benefits. The UN Independent Expert recognised and identified, in the context of social protection for older persons, a number of critical issues that are essential for a social pension scheme for older persons to comply with basic human rights requirements and law. These include: recognising ‘the right to social security’, including the ‘right to non-contributory pensions’, and ensuring, but not limited to the following:

…equitable access to social security and paying special attention to vulnerable and disadvantaged groups; physical and cultural accessibility; transparency and access to information; accountability; wide and informed participation; adequacy of benefits; access to health care; and gender equality.

The right to work for example is arguably the only socio-economic right on which an age limitation has been imposed in several countries. In most cases, age limitations in Africa, relating to work discriminates against older persons in general and older women in particular. In fact, in Cameroon for instance, the age limit for work of men now stands at 65 years of age while women can only work till 60 years of age. According to the CEDAW Committee, gender based discrimination in employment throughout a woman’s life has a ‘cumulative impact in old age’.

following conditions in its GC No. 4, para 8, as being necessary for a meaningful enjoyment of the right to housing; namely: Legal security of tenure, Affordability, Availability of services, materials, facilities and infrastructure, Habitability, Accessibility, Location, and Cultural adequacy.


42 Same as above.

43 CEDAW Committee’s General Recommendation No. 27 (n 12 above) para 20.
instance, it condemns older women to disproportionately lower access to pension benefits, or none in some cases.\textsuperscript{44} However, it should be noted that the concept of retirement, from a general perspective, means little or nothing to most of Africa’s population since most of its population are self-employed, and work in the informal sector, often in agriculture, until they are physically unable to doing so.\textsuperscript{45}

This limitation fortunately does not dismiss or limit discussions or debates on ensuring gender equality when relation to retirement age, pay or pension benefits. The sad news though is, in Africa, most government have developed and continue to practice contributory pension schemes.\textsuperscript{46} Even though accepted African human rights instruments such as the ACHPR and the African Women’s Protocol have called on member states to provide protection to older persons and to take specific measures proportionate with their ‘physical, economic, social and moral needs’ as well as their ‘access to employment and professional training’,\textsuperscript{47} the current situation of older persons in Africa is very far from being related to such conditions.

Relating to pension, the right to pension is undoubtedly a right that matures only at old age or retirement age. This right, probably because it is designed to benefit only older persons, has left severe damaging effects to several other related human rights of older person’s such as their rights to live a dignified life. For example, the understanding of who qualifies for, or gets pension in most African countries strictly revolves around that particular older person’s previous employment history (contributory pension scheme). This, in many instances is at the detriment of the majority of older persons who have spent their lives working in informal sectors (e.g. agriculture). Despite some exceptions, such as South Africa, most African States’ over-reliance on contributory pension schemes, has often led to situations where non-contributory pension schemes, if any, face severe lack of an adequate legislative foundation. As a result, in several African countries, such non-contributory pension schemes are ‘implemented through weak institutional and legal arrangements such as presidential decrees or simple operational manuals’.\textsuperscript{48}

\textsuperscript{44} Same as above.
\textsuperscript{46} This is for instance the case in Nigeria, Lesotho and the Central African Republic.
\textsuperscript{47} See generally, arts: 18(4) of the ACHPR and 22(a) of the African Women’s Protocol.
\textsuperscript{48} Sepúlveda Carmona (n 41 above) para 54.
e. Older person’s right to adequate food

The ICESCR Committee has reiterated that the interpretation and understanding of what exactly constitutes the right to adequate food should not be interpreted in a narrow sense that limits it to a minimum or large package of proteins, calories and other specific nutrients.\(^\text{49}\) According to the ICESCR Committee, a much more comprehensive interpretation that enables the right to adequate food to be understood as including physical, economic and social access to adequate food at all times, or to means for the procurement of ‘food of sufficient quantity and quality, free from adverse substances and culturally acceptable’,\(^\text{50}\) is vital for one to completely enjoy the right to adequate food.\(^\text{51}\) In terms of physical access, it is the obligation of member states in relation to older persons to ensure that adequate food is accessible and affordable to them at all times.

The importance of ensuring the right to food amongst older persons in Africa is self-evident and in many instances cannot be contested. Without food, there is no human life.\(^\text{52}\) Similar to the importance that is attached to a child for instance to have access to adequate food in order to develop properly, at old age, the need for the right to adequate food to be protected and promoted is paramount as it will assist immensely in keeping the physical and mental wellbeing of an older person intact. In fact, appropriate physical and mental sustainability, is critical to realising an older person’s complete importance as a human being and of course a functional citizen.

However, despite the mammoth importance that has been ascribed to the right to adequate food for all, and the impact that several international, regional and national legal frameworks have exerted through legislation in ensuring the right to adequate food, underlying determinants such as poverty and ill-health amongst older persons in Africa has made this basic human right almost non-existent.

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\(^\text{49}\) See generally, ICESCR Committee’s GC No. 12 on the right to adequate food, UN doc. E/C.12/1999/5, para 6.


\(^\text{51}\) Same as above.

\(^\text{52}\) D Mzikenge-Chirwa, Child poverty and Children’s rights of access to food and basic nutrition in South Africa; A contextual, jurisprudential and policy analysis (2009) 1.
f. Older person’s right to education

Arguably, the right to education can be seen as the key that opens and facilitates the full enjoyment of other human rights. However, many poor older people in general and older women, especially those with disabilities and those living in rural areas, have been denied their right to education and have received little or no formal or informal education. The barring of younger women from the enjoyment of their right to education in typical African communities for instance, has exacerbated illiteracy and innumeracy among older women, severely restricting their employment and use of a range of social services such as hospitals.

At the African regional level, the right to education is provided for by the ACHPR,53 African Women’s Protocol54 and the African Charter on the rights and Welfare of the Child (African Children’s Protocol)55 According to Veriava, the importance of entrenching the rights to education is based on certain premises.56 First, as already mentioned above, ‘it is a precondition for the exercise and understanding of other rights’, it follows therefore that, for any older person to completely enjoy his or her civil and political rights for instance the right to vote, socio-economics rights for instance to the right health, the particular older person most have benefited from some kind of education. Secondly, through education, individuals can learn values such as tolerance and respect for human rights.57 Therefore, ensuring the human rights of older persons in Africa will extremely assist them in keeping up-to-date with fundamental information that is crucial to their development. It could also, possibly be justified that, ensuring the right to education of older persons, is giving them tools to access their human rights independently.

g. Older person’s right to property and inheritance

Before, in almost every community in Africa, issues of owning property and inheritance were strictly a male affair. However, recent developments in the content of equal rights to owing and inheriting property have clarified its gray areas and

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53 See generally, art 17 of the ACHPR.
54 See generally, art 12 of the African Women’s Protocol.
55 See generally, art 11 of the CRC.
57 Same as above.
provided a base which the courts have exploited and consequently interpreted provisions of African human rights instruments such the ACHPR\textsuperscript{58} and the African Women’s Protocol\textsuperscript{59} and declared such customary practices as unconstitutional\textsuperscript{60} in many African countries. But, the lack of knowledge of such rulings and its implications points to the reality that the situation in many cases has not changed in practice. Notwithstanding, with the current trend of changes already taking place in rural communities through the creation of adult education (for both older men and older women) and many young girls going to school now, indicates that in just a matter of time, the situation could change.

In South Africa for example, the Constitutional Court, in \textit{Bhe’s case}\textsuperscript{61} and \textit{Shibi’s case}\textsuperscript{62} developed a consistent standard for interpreting and implementing the law on issues of property and inheritance and declared the rule of male primogeniture as it applies in African customary law to the inheritance of property to be ‘inconsistent with the South African Constitution and invalid to the extent that it excludes or hinders women and extra-marital children from inheriting property’. However it must be noted that notwithstanding such progressive judgements in local Africa courts towards ensuring that at old age, especially older women have some property which stands as a security for their wellbeing, inclusive policy developments changing deep-seated African social realities is ‘considerably more difficult as power relations, social structures and the weight and force of customs and tradition often stand as an obstacle to change’.\textsuperscript{63}

4. The relevance of promoting and protecting the socio-economic of older person’s in Africa.

Recognising and promoting the human rights of older person’s in Africa in general and their socio-economics rights in particular, as an independent set of rights, is

\textsuperscript{58} See generally, art 21 of the ACHPR
\textsuperscript{59} See generally, art 21 of the African Women’s Protocol.
\textsuperscript{60} See for example the Nigeria case of Mojekwu v Iwuchukwu 2004 (4) Nigeria SC 1. In that case, the Supreme Court (SC) held that the Lii-Ekpe custom which openly prohibited women from inheriting property is repugnant to natural justice, equity and good conscience and went on to grant the widow (respondent) the right to inherit her late husband’s property.
\textsuperscript{61} Bhe and Others v Magistrate, Khayelitsha and Others 2004 (1) SA 580 (CC),
\textsuperscript{62} Shibi v Sithole and others and Others 2004 CCT 50/03, CCT 69/03,
\textsuperscript{63} Kollapen, (n 32 above) 6.
imperative because it allows for the proper development of its content and the specific obligations that state parties might have to ensure the full enjoyment and realisation of such rights. As elaborated above, it is clear from the content of accepted African human rights instruments such the ACHPR, the African Women’s Protocol and the provisions of the African Children’s Protocol, that certain principal older person’s rights have already been protected. The problem is, these rights are incorporated into existing laws, and pay little or no attention to the existing realities that older persons face in the continent.

Currently, the contribution made by older persons in caring for HIV/AIDS infected young people is terrific and should not be ignored. In fact, this contribution by older persons especially older women to care for orphaned grandchildren and children in general benefits to a very large extend the ‘socio-economic development as well as the human reconstruction of society, restoring an identity, transmitting higher values and life skills’.

In other to maintain such contribution, specific challenges such as the health of older person’s needs to be promoted and protected.

More so, regarding older person’s rights to adequate food, studies have prove that the specific requirement for older person’s rights to adequate food transcends beyond the recognised critical aspect such as physical and economic accessibility. In fact, while the need for massive caloric intake diminishes in old age, the UN Economic Commission for Africa insists that;

\[\text{...the requirements for fluids, protein, most vitamins and minerals stay the same or even increase. A balanced diet with plenty of fluids, a high proportion of fibres, vegetables and fresh fruit, good dentition or well fitting dentures, regular meals, and medical supervision for those who take medication are important factors in preventing malnutrition in older people.}\]

Also, the rapid rate at which technology has developed in recent years, has greatly affected and created a divide been the younger and the older generations in Africa. In most cases, as is clearly the case with mobile phones, older persons are often excluded and affected by digital divide, making them ‘digital homeless’. Older persons are the first victims of a development framework adapted primarily to

\[64\text{ Statement to the 62rd Session of the UN Commission on Human Rights, Geneva, (2006) 2.}\]

\[65\text{ Same as above}\]

younger generations and productivity imperatives. To curb these challenges, there is a need for a very strong legislative framework that will not only require older persons concerns to be considered during the developments of such technologies but will also insist on simplified operational information of such devises to be provided to older persons especially those in rural areas.

In addition, several other existing older people’s specific circumstances remain unaddressed and undeveloped. Examples of such circumstances are, but not limited to; ‘older disabled persons, older migrants, older working poor, older refugees or displaced persons, older victims of conflict, war or disasters, older prisoners, older tortured and abused persons’. In all, with the African continent fast urbanising, issues such as the right to development must cautiously take into consideration ‘old age and the generation-specificities of development over the life span until the end of life’.

5. Conclusion

The analysis of selected older person’s socio-economic rights provided above allows one to make numerous concluding observations about the human rights situation of older persons in Africa. While there has been some progressive debate on the issue, a great deal remains to be done, especially in the areas of physical and mental health, food and social security that I have portrayed in this contribution. The issues and causes underlying the disadvantages of older persons remain undefined. Consequently, in many instances, the resolutions arrived in addressing older person’s human rights, lack a comprehensive basic knowledge in the living conditions of older persons in Africa.

All is not all doom and gloomy in Africa though. With the recent creation of an expert group on the rights of older person’s and the AUPFPAA, It is evident that such attempts could be seen as a flicker of hope for the adoption of an African human rights instrument or a mechanism that would protect the socio-economic rights of older person’s in Africa, as the objectives of such expert group and policy framework, adds value and encourages a regional debate on the protection of the rights of older person’s. Based on previous strides taken by the AU, in promoting and protection

67 See (n 63 above).
68 See generally, n 64 above.
basic human rights of specific vulnerable groups of human beings; such as women and their right to sexual and reproductive health, that are not explicitly protected by UN Conventions, it is attempting to belief that in no distant time from now, the AU will draft a comprehensive legal framework to protect older persons in Africa.

In the mean time, it should be noted that the lack of an effective response to the various violations of rights of older persons amounts to a violation of the ACHPR and its existing Protocols by extension. NGO’s and other international human rights organisation based in Africa, should all revise their work approaches to accommodate older persons and in return be encouraged to submit shadow reports to monitoring bodies and make use of the complaints procedure under the ACHPR.