

Protecting the rights of older people in Africa



Older people play a vital role in African society, but their rights are often ignored within legal systems, national policy and the international community.

Across Africa, millions of families would not survive without the contribution of older people – from caring for orphaned grandchildren to providing much-needed household income. However, older people are often discriminated against within families and services, and this discrimination is often underpinned by the legal systems and government policies of individual countries. Older people's rights are set out in a range of international agreements, but are often ignored.

This briefing is aimed at the European Union (EU) and member states, European non-governmental organisations, and African national governments. It sets out the need for African governments to revise their legislation to protect older people. It recommends how EU governments can support this process. It highlights the important role that older people play in Africa

today, identifies the key areas in which rights abuses take place, and cites positive examples of interventions that have changed the lives of older people and those who depend on them.

The population of Africa is ageing fast. By 2050, the number of people over 60 living in Africa will increase from just under 50 million to nearly 200 million.¹ For many people across Africa, ageing is accompanied by chronic and deepening poverty and the weakening of family and community structures due to migration, conflict, natural disasters and the impact of HIV and AIDS.

Lack of attention to older people and worsening economic circumstances are exacerbating existing serious violations of older people's rights. Older women and men are being discriminated against before the law, and within their families and communities. Few older people have access to the social security, health

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care, education and legal protection that are theirs by right. In addition, they are often denied the right to participate in development activities.

Older women, in particular, are often subject to discriminatory inheritance and property laws, and face greater discrimination in access to services. Due to lack of awareness or negative attitudes, professionals and family and friends can fail to detect abuse of older women and men, often assuming that their problems are caused by 'old age'.

Laws and frameworks protecting older people

Protection of older people under international law

There are a number of legal frameworks protecting the rights of older people in Africa and beyond. These include:

■ The 1948 Universal Declaration of Human Rights

This affirms the right of everyone to equality before the law and full participation as citizens as well as other rights, including the right to social security and an adequate standard of living (Articles 22 and 25).

■ The 1981 African Charter on Human and People's Rights

This protects every African citizen regardless of age. Its optional protocol on the rights of women specifically protects the rights of older women and widows.

■ Other international human rights treaties

The majority of African countries have ratified various additional conventions, such as the 1966 Convention on Economic, Social and Cultural Rights and the 1979 Convention on the Elimination of All Forms of Discrimination Against Women, which protect the rights of older people.

Other international agreements on older people's rights

In addition to international law, African governments have agreed to the 1991 UN Principles for Older Persons, which address the

dignity, self-fulfilment, participation, independence and care of older people and encourage governments to include them in national programmes.

The first recommendation of the African Union's 2002 Policy Framework and Plan of Action on Ageing is that member states recognise and ensure the protection of older people's rights. This policy framework supported the development of the 2002 Madrid International Plan of Action on Ageing, which is a global agreement that promotes the full realisation of all human rights and fundamental freedoms of all older people in all countries. National plans of action on ageing in a number of African countries provide frameworks for developing equitable policies and practices that will protect and fulfil older people's rights.

EU obligations on older people's rights in Africa

The majority of EU countries are also signatories to international human rights treaties and the 1950 European Convention for the Protection of Human Rights and Fundamental Freedoms. As the biggest donor in the world, the EU makes the promotion of human rights central to its relationships with other countries, as stated in the Council of Europe's 2005 European Consensus (Article 13).

The EU-ACP Cotonou Agreement, revised in 2005, defines cooperation between the EU and African, Caribbean and Pacific (ACP) countries on poverty reduction, and states that social cohesion and social welfare are basic human rights, which development cooperation should aim to promote. In addition, Article 25 (on social sector development) cites the need to 'improve the coverage, quality of and access to basic social infrastructure and services and take account of local need and specific demands of the most vulnerable and disadvantaged, thus reducing the inequalities of access to services.'

Similarly, Regulation 806 (adopted by the European Council and the European Parliament on 'promoting gender equality in development cooperation', 2004), states that: 'gender equality of women and men of all ages is important to effective and efficient work against poverty.'

The EU has stated that on achieving the Millennium Development Goals, 'Concrete policy measures to improve equity will serve as aid-allocation criteria to ensure that additional resources are available for countries that show that they are willing and able to address issues of inequality and marginalisation... and promote social cohesion'.²

On the role of social protection in achieving equality for older people, the European Commission states that: 'Social security schemes and social inclusion are key elements to tackle vulnerability and reduce the risk of poverty... including pension schemes and basic social protection benefits.'³

On gender equality, the EU has recognised 'gender equality of women and men of all ages as important to effective and efficient work against poverty', and therefore recommends 'the need to combine the gender mainstreaming strategy with specific measures in favour of women of all ages'.⁴

On cooperation between the EU and the African Union (AU), the recently agreed EU Africa Strategy makes a commitment to human rights and equality, but needs to propose concrete measures to ensure that civil society, including older people's organisations, are involved in monitoring the implementation of these policies.⁵

In summary, a strong body of international law and EU policy exists that governs both EU and African government action to protect older people's rights. Governments must be held to account under these obligations to which they have agreed.

Protection under national law

Human rights become more meaningful when they are enshrined in domestic legislation and translated into policies, with resources allocated to the delivery of services associated with them.

Countries that have ratified international human rights treaties are obliged to ensure their national legislation is compatible with provisions in that treaty. However, some countries have legislation that continues to discriminate against older people, or allows customary law to prevail even if this discriminates against older women in terms of inheritance or property rights.

Cases of rights violations against older people rarely go to court, either because law enforcement agencies are unwilling to prosecute, due to negative attitudes to older people, or because older people are afraid to press charges. Older people themselves may not be aware of their rights, or may not know how to claim what is theirs by right.

Now is the time for African governments to ensure that legislation is revised to protect, rather than discriminate against, older people and that judicial systems enforce and realise their rights.

Key issues

Identity and access to entitlements

A major barrier for older people in realising their rights is their lack of identity documentation. Older people are often eligible for a range of entitlements, including free health care, old age or vulnerability allowances and support with education-related costs for those in their care. However, without proof of age and identity they are unable to prove their eligibility, and are therefore denied access to them. Women are particularly affected.

In 2006, HelpAge International carried out a survey of eight communities in Tete Province, Mozambique, which showed that older women were only half

Helping people obtain documents

Most older black South Africans have no birth certificate, so they have to rely on their identity papers for proof of age. However, these are often inaccurate, so the person has to obtain new papers before they can proceed with their pension application.

In 2005, the Muthande Society for the Aged (MUSA), a community-based organisation working in Durban townships, launched a campaign called Get Your Documents to encourage people to obtain and care for key documents, such as identity papers and children's birth certificates. Paralegals held family-member training sessions that emphasised the need to locate and care for documents. These messages were reinforced through home visits and through MUSA's adult literacy programme, which has also been a key means of educating older people about eligibility requirements and how to fill in application forms.

The paralegals are trained to help the older people complete forms. They also ensure that all the documentation is in order and then refer the older person to a government social worker, who reviews the application and submits it to a government department.



Older people in Kwazulu-Natal, South Africa, attend literacy classes to learn how to fill out forms in order to access services such as health care.

as likely to have identification documents as older men.⁶ In half of the communities surveyed, more than 90 per cent of older women had no identity documents. In one community, not one had proof of her age. Reasons for not having documents include the cost of obtaining documentation, as well as cultural and gender-related factors.

When many of today's older women were born it was not considered important to register baby girls, since it was unlikely that they would be going to school. Similarly, most older women had traditional marriages that were not registered, and were unable to administer property (which usually passed through the male line) until the 2004 Family Law was passed.

The right to health

For many older people in Africa, physical health is the single most important asset, as it enables them to work. Despite this, accessing health care is often a struggle for older people, for reasons including:

- the concentration of hospitals or clinics in urban areas, far from where most older people live
- the cost of transport
- inability to afford fees for services or drugs
- lack of information about services and entitlements
- shortage of supplies
- poor management of health services
- lack of medical personnel trained in older people's health care
- negative attitudes of medical staff.

Realising the right to health care in Tanzania

A group of older people in Arusha, Tanzania, have successfully lobbied the local government to ensure free health care for all older people, supported by HelpAge International's partner in Arusha, the Arusha Retired People's Association (CHAWAMA). Members of CHAWAMA and local leaders at village and ward levels were trained to act as project facilitators. They were given information on Tanzanian policies and trained in leadership skills, lobbying and advocacy skills, and evidence gathering. These facilitators then formed older people's committees, which took part in the monitoring process.

As a result of the project and the involvement of older people in the monitoring process, the local government in the Mosquito River ward has granted free health treatment to all vulnerable older people, funded by the Community Health Fund.

Criteria for vulnerability include disability, severe health problems, and living alone. The welfare committee in each hamlet makes a recommendation for free health treatment to their ward's executive secretary, who then issues a letter to the older person, granting them free access to local health services. Once it is received, the letter is valid for life.

The project has also given older people a sense of respect, and many have said that they now feel that their concerns are being listened to.



HelpAge International supports older people in Arusha, Tanzania, to develop the skills to lobby local policymakers. As a result of the efforts of one group, all vulnerable older people in the region have now gained free health treatment.

If older people are to live in dignity, then free and appropriate health care needs to be made available to them.

Older people in Tanzania say that medical staff in health centres often treat them disrespectfully. One older person was told by hospital staff: 'Go home. You are not ill, just old.'

A survey carried out by older people themselves monitoring older people's experiences during hospital visits found that 40 per cent said the tone of language used by medical staff was mocking. The majority (94 per cent) were charged for the consultation and 30 per cent were unaware of how to apply for free health care. Over a third had to wait between four and six hours to see a doctor, and almost half had to pay for their own fare to get to the hospital.⁷

The right to social security

Income security is one of the major concerns of older people. Older women, in particular, play a major role in caring for young children whose parents have been affected by HIV and AIDS, and have little income or assets to support them. Nevertheless, most Africans are still denied their right to social security and security in old age. The majority of poor older people – especially women – have worked all their lives in the informal sector, with no access to contributory pensions or other forms of formal social security.

Too few African countries have any form of non-contributory or 'social' pension, despite the fact that evidence from those that do – such as South Africa, Lesotho and Botswana – shows that this is a practical and affordable way of tackling poverty, as well as of reducing the devastating impact of HIV and AIDS. This is particularly important in countries such as South Africa, Botswana and Tanzania, where between 50 and 60 per cent of children orphaned by the epidemic live with their grandparents, who face additional financial costs due to their role as carers.⁸

Income from social pensions also

Supporting four generations on one pension

Maria Papela, 75, helps to support four generations of her family using her pension. She lives in Durban, South Africa, with her daughter Margaret, who is in her late 40s, teenage grandson Timothy, and three other young grandchildren left behind by Margaret's other two daughters, who both died from AIDS-related illnesses. Maria owns the house they live in and four rooms at the back of the house, which she rents out for extra income.

Maria's pension gives the family a chance of escaping the cycle of poverty that traps many families affected by HIV and AIDS. It means Maria and her family can access food, shelter, education and health care.

The future for the younger generation is already looking brighter. Thanks to the opportunity to access education, Maria's grandson Timothy has become a talented violinist, and is now training with an orchestra at the state theatre.



John Cobb/HelpAge International

Older people often use their pensions to fund health services and education for their families. Providing social pensions to older people is a practical and affordable way to tackle poverty.



Inheritance law in Tanzania often discriminates against widows. HelpAge International supports older women to become aware of their rights and develop the confidence to defend them.

Challenging unfair inheritance practice

There is no uniform inheritance law that applies equally to all Tanzanians. This is because inheritance is governed by a series of laws¹⁰ that apply to individuals depending on their religion, ethnic origin, or whether they live their lives according to customary practices. Under this discriminatory system, individuals from different backgrounds are treated differently, and confusion can arise over which system of law should govern the distribution of the estate of the deceased.

Provisions for inheritance vary under each system. Under customary law, the widow cannot inherit the house and land, under Islamic law there is provision for minimal inheritance, while under the Indian Succession Act 1865 the widow can inherit 50 per cent. This situation not only violates women's right to equality under the constitution and international law, but also fails to address the fact that Tanzania is an increasingly mixed and multi-cultural society. Inter-marriages between different ethnic groups and religions are more common and, with increased migration and urbanisation, the importance of the clan system is diminishing. Attempts to apply different laws based on these factors is difficult, complicated, and creates confusion.

Laws and court decisions relating to widowhood have been criticised for favouring customary law. In urban areas, many widows have access to legal information and advice, but this does not always translate into use of services.

HelpAge International and the Women's Legal Aid Centre have carried out a review of legal information and advice for widows and widowers in four regions of Tanzania, and are training older people as advisors about inheritance rights. As a result, many older women are increasingly aware of their rights and have gained the confidence and courage to contest for leadership in the community, to become administrators of their deceased husbands' estates, and to encourage their peers to also fight for their rights. A significant number of widows have managed to regain property that had been seized illegitimately.

helps older people and their families to realise their other rights, such as health and education.

Property and inheritance rights

Women in Africa – especially older women – are marginalised because of their lack of knowledge about widows' inheritance rights. Being unable to own property also weakens women's economic base. Without a sound economic base, widows face perpetual poverty and dependence on relatives.

Widowhood profoundly changes the status of women across Africa and undermines their security. Customary laws exist that deny widows the right to inherit common assets (for example, a house or land), and in some communities widows can be inherited by their deceased husband's brother, and must abide by these laws or risk being ostracised and left without income and assets at a time of trauma and bereavement.

For older widows, discrimination compounds the effects of a lifetime of poverty and gender discrimination. This can result in extreme impoverishment and isolation, both for the widows themselves and for any dependants they care for. Their situation is worsened by a lack of knowledge of their legal rights, of how to access appropriate information and of where to seek impartial advice and guidance. In a sample survey carried out in 2006 by HelpAge International in three districts in Tanzania (Kwimba, Kahama and Shinyanga Rural), only 8 per cent of older women were aware of their rights under the law compared with 39 per cent of older men.⁹

The resulting impoverishment that being disinherited can have affects older women's ability to access the health services that are theirs by right. They cannot afford to pay for transport to health posts, nor can they pay for any services or prescription charges.

Supporting older women's rights in Ghana

HelpAge Ghana has documented cases of abuse and taken test cases to court. It has called on the government to criminalise people who accuse people of witchcraft, which often results in older women being physically abused.

One example was Maame 'N', a 90-year-old woman living in Kumasi, who has dementia and tends to wander from her home. One night, she wandered into a neighbouring compound. She was subjected to abuse for several hours and accused of witchcraft, before a young man dragged her to the local police station.

'We saw her around 10pm, sitting by the wall in our house and we mocked her and refused to give her food. Our sister prevented her from going out until 5pm,' said a witness from the house where Maame 'N' was abused.

The police took her into custody to protect her from the angry crowd that had gathered as a result of the accusation, but they did not take any statements or arrest the accuser. In the meantime, a local radio station announced that a witch had been caught red-handed. This caused a larger mob to gather outside the police station, demanding to see this 'witch'.

Fortunately, someone in the crowd recognised Maame 'N'. They told the police who she was and explained that she had a mental illness.

HelpAge Ghana discussed the case with the police, the woman's family and the accuser. However, nobody was prosecuted for subjecting Maame 'N' to such humiliation and abuse.

HelpAge Ghana later held a press conference to condemn those involved in the incident, and countered accusations of older women as witches by explaining about poor mental health.



Simon de Trey-White/HelpAge International

Many older people in Africa experience abuse and discrimination but are unaware of their rights. HelpAge International trains older people to raise awareness of rights and provide their peers with the information and support they need.

Violence and abuse

Throughout Africa, older people face hardship because of society's negative attitudes towards them. Many are abandoned and neglected by their families, and in extreme cases are subjected to rape and physical abuse. However, older people rarely report these abuses because of fear, and ignorance of their rights.

Older women – especially widows – tend to experience more abuse than older men. Some are accused of witchcraft. Poverty, discriminatory inheritance practices and the low status of women in the community are often the underlying causes of such allegations. Exact statistics are hard to come by, and many of the allegations and subsequent violence go unreported.

In Tanzania, it has been estimated that as many as 1,000 people each year lose their lives to violence related to accusations of witchcraft.¹¹ The majority of these are women over the age of 50.¹² *This Day* newspaper reported that between 2003 and 2006 there had been 2,700 killings in the Mwanza and Shinyanga regions – 92 per cent of which were of older women.¹³

What the EU and governments should do

Recommendations for EU action

1. The EU's commitment to combating discrimination based on age, race, ethnicity, disability, religion, gender and sexual orientation must be a guiding principle of its development policies and programmes for older people.

2. The EU should consistently mainstream the needs of older people into its policies and programmes, as enshrined in the Madrid International Plan of Action on Ageing (MIPAA), and thereby fully implement the principle of policy coherence as stated in the Treaty of Lisbon as follows: 'The Union shall take account of the objectives of development cooperation in the policies that it implements which are likely to affect developing countries.'¹⁴

By doing this, the EU and its member states can highlight the vital contribution of older people to their families and communities.

3. The EU must ensure that its commitments on development cooperation that are inclusive of older people are translated into programmatic responses that are given clear budget allocations.

Recommendations for European government action

In order to realise the rights of older people, national governments should:

1. Work alongside civil society organisations to carry out an 'age audit' of their policies, programmes and agreements on development cooperation, in order to monitor progress on the integration of ageing into policies.

2. Support African governments to carry out the actions listed below.

Recommendations for African government action

1. Make identity documentation free of charge to all older people and hold registration and awareness-raising events to ensure they are aware of their entitlements.

2. Provide accessible and affordable health care for older people, including training health personnel in older people's health and older carers' needs in HIV and AIDS responses.

3. Guarantee adequate social protection and income in old age, through providing non-contributory (social) pensions for all older people.

4. Revise any legislation that discriminates against older people, including inheritance and property laws, to ensure that they comply with the protection of older people's rights under international law.

5. Introduce concrete measures that challenge and address any intimidation, isolation, abuse and violence against older people. This may include training law enforcement agencies and the judiciary, providing services to support abused older people, including violence against older people in domestic violence legislation, and creating a culture that will not tolerate abuse of older people.

6. Include and consult older people in emergency aid and rehabilitation planning following disasters and humanitarian crises.

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HelpAge International has a vision of a world in which all older people fulfil their potential to lead dignified, healthy and secure lives. HelpAge International is a global network striving for the rights of disadvantaged older people to economic and physical security; healthcare and social services; and support in their caregiving role across the generations.

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