

# Birmingham City University

## Submission to the African Commission Working Group on Economic, Social and Cultural Rights on the Draft Study on Right to Health and its Financing in Africa Older Persons

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The Working Group on Economic, Social and Cultural Rights  
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The Gambia.

## **Submission of Input/Comments on the Right to Health and its Financing in Africa Draft Study**

### **Introduction**

1. Further to your Call for Comments dated 28 March 2023 on the above subject matter, we find it a privilege to have an opportunity to make an input into your Draft Study on the Right to Health and its Financing in Africa. Our input relates to African Older Persons' right to health financing. We hope that our humble thoughts, as detailed below, will be considered favourably.

### **About the authors**

2. **Dr Philip E. Oamen** is a Lecturer in Law at the Birmingham City University. He obtained his PhD from the University of Birmingham where he explored the role of international cooperation in the realisation of Economic and Social Rights. His research interests include Older Persons' Rights, Economic and Social Rights, and African Law. Philip has served as an Expert Panellist at an event organised by the African Commission Working Group on Rights of Older Persons and People with Disabilities in collaboration with the University of Pretoria, where he advised representatives of African Governments on strategies towards the ratification and implementation of the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Older Persons in Africa 2016(Older Persons' Protocol). He is a well published researcher in his area of expertise. Philip is a Fellow of the United Kingdom Higher Education Academy.
3. **Dr Eghosa O. Ekhat** is a Senior Lecturer in Law at the University of Derby. His research interests include International Environmental Law, African International Legal History, and Natural Resources Governance. Eghosa has published extensively on his research areas and his academic papers have been cited by a plethora of organisations and international agencies including the United Nations

Refugee Agency and the United Kingdom Parliament's International Trade Committee's inquiry - UK trade approach towards developing countries. He is a Fellow of the United Kingdom Higher Education Academy.

## **Input/Comments regarding Older Persons' Right to Health Financing in Africa**

### **Context**

4. While the authors believe that the Draft Study is comprehensive, data-driven, and solution-laced, they reckon that African Older Persons, unlike other groups, have not been given their deserved attention and traction in the Draft Study. For example, on page 8 of the Draft Study, statistical reports have been given regarding improvement on childhood and maternal health programmes during the era of the Millennium Development Goals, but no data has been given to assess the level of geriatric programmes for the same period under review.
5. The omission to provide right to health statistics as regards African Older Persons (compared to children, youth, and women), may seem harmless on a first look. However, on a second look, it becomes a problem of entrenching a culture of non-generation of data and data disaggregation when it comes to Older Persons and budgetary allocations. The United Nations (UN) recently reported that, across the globe, Older Persons remain 'chronically invisible' in terms of data collection and disaggregation.<sup>1</sup> This chronic invisibility robs this set of people of qualitative allocation of resources that meet their specific needs, in this respect, their physical and mental health needs.
6. The need to specially highlight Older Persons and make geriatric recommendations in the Draft Study becomes more compelling against the backdrop that Older Persons did not only unprecedentedly outnumber children under the age of five in 2018,<sup>2</sup> but reports also indicate that they are currently the fastest growing age group in the world and thus need a special right to health financing.<sup>3</sup> According to the UN reports, Older Persons will outnumber children and youth (ages 5 to 24) globally by 2050.<sup>4</sup> More specifically on Africa, the number of Older Persons will triple in the next three decades,

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<sup>1</sup> <https://www.ohchr.org/en/press-releases/2020/09/older-persons-remain-chronically-invisible-despite-pandemic-spotlight-says> (accessed on 04 April 2023).

<sup>2</sup> UN DESA, 'World Population Prospect 2019 Highlights', available at [World Population Prospects 2019 Highlights \(un.org\)](https://www.un.org/en/development/desa/population/publications/) (accessed on 04 April 2023).

<sup>3</sup> UN, 'Shifting Demographics', available at [Shifting Demographics | United Nations](https://www.un.org/en/development/desa/population/publications/) (accessed on 05 April 2023).

<sup>4</sup> UN DESA (n2).

outpacing any other region in the world.<sup>5</sup> One, therefore, wonders whether the African continent is prepared for this demographic revolution in terms of right to health financing!

7. Another reason to spotlight geriatric considerations in the Draft Study is that Older Persons often fall within the most vulnerable groups when it comes to HIV/AIDS (for example, older women caring for their infected children and grandchildren) and pandemics. It has been reported that Older Persons suffered the gravest effect of the COVID-19 pandemic; the fatality rate among them was/is five times the global average.<sup>6</sup>
8. While it is gladdening that the current Draft Study has referred to the Older Persons' Protocol, the present authors suggest that there is a room to use the Draft Study to further problematise the issues around the unwillingness of the African Governments to ratify the Protocol to make it take effect, thereby providing a tool for legal and social mobilisation for the realisation of the rights to health of Older Persons. Since its adoption in 2016, less than five African Union member-states have ratified the Protocol which requires a minimum of 15 ratifying member-states to come into effect.
9. Owing to the generational wisdom or guidance that Older Persons offer, it is fundamental that the younger generations and the African Union show them intergenerational solidarity. One way to do so is spotlighting them and their peculiar vulnerabilities when it comes to right to health financing in Africa.
10. Many African countries have not taken the provision of geriatric and gerontological training and facilities seriously. For example, it was reported recently that Nigeria, a country that is populated by over 191 million people could only boast of less than 100 geriatricians attending to over four million Nigerian Older Persons.<sup>7</sup>
11. Many African countries do not have national laws and policies that address the special health needs of Older Persons within their

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<sup>5</sup> United States Census Bureau, 'Census Bureau Releases New Report on Aging in Africa', available at [Census Bureau Releases New Report on Aging in Africa](#) (accessed on 04 April 2023).

<sup>6</sup> Philip E. Oamen and Eghosa O. Ekhaton, 'The Impact of COVID-19 on the Socio-Economic Rights of Older Persons in Africa: The Urgency of Operationalising the Protocol on the Right of Older Persons' (2021) 21 *African Human Rights Law Journal* 782-811, citing WHO 'COVID-19 strategy update - 14 April 2020', <https://www.who.int/publications-detail/covid-19-strategy-update---14-april-2020> (accessed 4 April 2023).

<sup>7</sup> Angela Onwuzoo, 'Nigeria has less than 100 geriatricians to over four million old people' (Punch Newspaper, 16 February 2020), available at ['Nigeria has less than 100 geriatricians to over four million old people' - Healthwise \(punchng.com\)](#) (accessed on 04 April 2023).

population.<sup>8</sup> This lack or paucity of domestic legal and institutional framework clearly flies in the face of the African Union's position as captured by relevant instruments. For example, article 18(4) of the African Charter on Human and Peoples' Rights (the African Charter) states that the 'aged and the disabled shall ... have the right to special measures of protection in keeping with their physical or moral needs'.

12. Also, article 15 of the Older Persons' Protocol 2016 radically obligates member-states to guarantee 'the rights of older persons to access health services that meet their specific needs'. The article further requires 'the inclusion of geriatrics and gerontology in the training of health care personnel', while also mandating states to 'take reasonable measures to facilitate access to health services and medical insurance cover for older persons within available resources. Sadly, only a few countries such as Botswana, Lesotho and South Africa have taken some steps to address the specific needs of Older Persons in Africa.<sup>9</sup>

13. To exacerbate the health inequities that African Older Persons suffer, most of them work in the informal sector and so largely cut off from the social health insurance or security scheme that is availability in the formal sector.<sup>10</sup> The informality of many Older Persons' (especially older women's) role, coupled with the insufficient reward that is attached to that informality fuels economic disempowerment, health inequalities and general precarisation among Older Persons.<sup>11</sup>

## Suggestions

14. Further to the foregoing, the authors suggest as follows:

- a. Paragraph 5 of page 2 of the Draft Study (social health insurance) should be tweaked to reflect the fact that the issue with social health insurance is more problematic for Older Persons whose informality of roles at their active age deeply exposes them to health vulnerabilities at old age, with no access to social health insurance.
- b. In paragraph 2 of page 4, old age should specifically be added to gender inequalities, social and educational status as factors that lead to poorer health outcomes.

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<sup>8</sup> Perpetua Lum Tanyi, Pelser André and Peter Mbah, 'Care of the Elderly in Nigeria: Implications for Policy' (2018) 4 *Cogent Social Sciences*, 1555201.

<sup>9</sup> See Oamen and Ekhaton(n6).

<sup>10</sup> Oamen and Ekhaton(n6).

<sup>11</sup> Philip Oamen, 'Feminisation of Ageing and Socioeconomic Rights Realisation: What is the Hope for African Older Women?' (Being a paper presented at the Birmingham City University School of Law Staff Seminar Series on 31 March 2023).

- c. In paragraph 3 of page 8, the last sentence should emphasise that UHC also promotes intergenerational solidarity between younger and older persons.
- d. Paragraph 4 of page 8 should, just as it has done for children and maternal health, provide data on geriatric programmes for the period to which it refers. Where no data is available, the unavailability should be mentioned, to spotlight the problem of chronic data invisibility around African Older Persons' rights to health.
- e. The last sentence in paragraph 1 of page 10 could be tweaked by using the 100 geriatricians to over four million Older Persons in Nigeria, as mentioned above, to exemplify the deficiencies in quality and quantity of health workforces in Africa.
- f. Paragraph 4 of page 13 should be adjusted to problematise how the COVID-19 impacted Older Persons' right to health adversely. Older Persons lost their source of earning to COVID-19 pandemic and the COVID-19 pandemic lockdowns caused isolation and associated physical and mental health challenges for Older Persons.<sup>12</sup> The same point applies to paragraph 3 of page 14 which addresses just adolescents, youth, and women only. Older Persons should be captured as well.
- g. The opening statement in Section 2.4.(Overcoming Inefficiencies in Health Financing in Africa) on page 22 should emphasise that allocative and spending inequities and inefficiencies have varying degrees of impact on differentiated groups. Older Persons are more affected in this regard because of their underlying economic and health vulnerabilities.
- h. The last paragraph on page 22 should spotlight the fact that Older Persons are more affected by inefficient and unequal healthcare distribution because, most of them live in the rural areas after their active lives in the urban areas, thereby being exposed to the identified systemic failings in the rural areas.
- i. The Draft Study should include a recommendation that the African Union member-states should devote a mandatory percentage of their annual healthcare budget to geriatric training and facilities, to address the systemic health inequalities that Older Persons suffer in Africa.
- j. The Draft Study should emphasise the need for African governments to collect and disaggregate data on Older Persons

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<sup>12</sup> Oamen and Ekhaton(no6).

rather than grouping them generally as men or women. Their peculiarities go beyond gender narrative.

- k. The Draft Study should highlight the importance of an immediate ratification and implementation of the Older Persons' Protocol 2016, to make it come into effect, since it cannot take effect without 15 member-states ratifying it.

15. Once again, we are grateful for this opportunity, and we hope that our input will be taken in good faith and considered favourably. We look forward to hearing from you.

Yours faithfully,



Dr Philip Oamen



Dr Eghosa Ekhaton