

COMMENTARY

Leaving no one behind: Older African women's rights to sexual and reproductive health

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Ibrahim B. Abubakar

Department of Family Medicine, Ahmadu Bello University Teaching Hospital, Zaria, Kaduna State, Nigeria

***For Correspondence:** Email: *drimbanaru@gmail.com*

Abstract

Despite growing agreement on the importance of sexual and reproductive health and rights at all stages of human development, the link between ageing and the sexual and reproductive rights of older African women has been an overlooked topic of research and policy formulation. This commentary takes a multidisciplinary approach to highlighting older African women's sexual and reproductive health and rights, identifying extant legislative frameworks, shortcomings, and strategies to improve their implementation. An examination of the legislative frameworks in place demonstrates that they are insufficient for the full implementation of these rights. As a result, a deliberate effort is required to correct historical wrongs and preserve older women's sexual and reproductive health and rights. (*Afr J Reprod Health* 2022; 26 [12s]: 21-26).

Keywords: Older women, African women, SRHR, legislative frameworks

Résumé

Malgré un accord croissant sur l'importance de la santé et des droits sexuels et reproductifs à tous les stades du développement humain, le lien entre le vieillissement et les droits sexuels et reproductifs des femmes africaines âgées a été un sujet négligé de la recherche et de la formulation des politiques. Ce commentaire adopte une approche multidisciplinaire pour mettre en évidence la santé et les droits sexuels et reproductifs des femmes africaines âgées, en identifiant les cadres législatifs existants, les lacunes et les stratégies pour améliorer leur mise en œuvre. L'examen des cadres législatifs en place montre qu'ils sont insuffisants pour la pleine mise en œuvre de ces droits. En conséquence, un effort délibéré est nécessaire pour corriger les torts historiques et préserver la santé et les droits sexuels et reproductifs des femmes âgées. (*Afr J Reprod Health* 2022; 26[12s]: 21-26).

Mots-clés: Femmes âgées, femmes africaines, SDRS, cadres législatifs

Introduction

Available evidence indicates that the African population, as elsewhere around the world, is ageing¹. Ageing comes with a significant decline in physical and mental health that requires deliberate action to guarantee the highest attainable standard of health². Recognising the need for affirmative action, there are global initiatives aimed at promoting the health and wellbeing of older women, but they are mostly targeted towards physical health and non-communicable diseases, leaving sexual and reproductive health largely in the background³. The lived experiences of older African women in sexual and reproductive health and rights (SRHR) are complicated attributable to a perceived misconception that older people are "asexual". Even so, within the research community,

SRHR of older African women has been less studied⁴.

Despite the establishment of the lifecycle approach to health, which elucidates providing healthcare services including SRHR across an individual's life course, there remain unmet SRHR needs across ages and genders⁵. A more disaggregated look at the unmet needs reveals that older women above the age of 60 have had less attention due to unfounded assumptions about ageing and sexuality as well as gender-based discrimination⁴. The gendered discourse on SRHR largely focuses on women of the reproductive age group, with less focus on older women. The exclusion of older women heightens their vulnerability to harmful practices, sexual violence, and a conspicuous absence within human rights protection discourse⁶⁻⁷.

Recognising the urgency of promoting SRHR with ageing in perspective, stakeholders converged at the international conference on human rights in Noordwijk, the Netherlands, tagged "ICPD Beyond 2014 International Conference on Human Rights" and identified older people as one of the key marginalised groups in the provision of SRHR⁸. The conference reiterated the SRHR of older persons as critical to achieving the milestones identified by relevant international instruments, such as the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)⁹. The conference emphasised age as a potential determinant of inequality. Thus, participants at the conference called for deliberate and concerted efforts by governments to ensure the realisation of the SRHR of older people.

This commentary therefore agrees with the aforementioned international conference on human rights and seeks to single older African women, with the intention to put them on the human rights discourse radar with respect to SRHR. Thus, this paper aims to examine the SRHR of older African women, analysing legal frameworks, their applications, and the lived experiences of the unmet needs of older people given the inadequacies of legal frameworks. The paper will highlight the inalienable rights of older African women to the highest attainable standards of health, including SRHR, comprehensive sexuality education, autonomy and bodily integrity, and freedom from violence within the African human rights agenda.

Legal frameworks for the realisation of older African women's sexual and reproductive health and rights

African Union Laws

A. African Charter on human and peoples' rights (Banjul Charter)

The Banjul Charter has been dubbed a comprehensive and progressive tool for holding states to account and for claiming contextual African human rights¹⁰. It is seen as a veritable tool, providing a foundation for the protection of peoples' rights individually and collectively. Whereas the Banjul Charter provides for the rights to life, dignity, health, and non-discrimination, which are all relevant to the SRHR of older women, the Charter neither specifically references the

SRHR of older women nor does it single out older women as a vulnerable rights-bearer group. Implicitly, the Charter in Article 18(3)¹¹, albeit without emphasis on age, alluded to the right of every woman to be free from all forms of discrimination. More age-related is Article 18(4)¹², which speaks to older people but only alludes to protecting their physical and moral needs. On the right to health as articulated in Article 16 of the Banjul Charter, reference was largely made to physical and mental health without due consideration for sexual health and the safe sexual needs of older people. Wherein Article 16(1) states that "Every individual shall have the right to enjoy the best attainable state of physical and mental health"¹³.

The Banjul Charter in Article 30 established a monitoring body, the African Commission on Human and Peoples' Rights (African Commission)¹⁴. Since its inception, the African Commission has made several recommendations giving non-legally binding direction to state parties¹⁵. One such example was in recognition of the criticism of the Banjul Charter in addressing the SRHR of older women. Through the "Principles and Guidelines on the Implementation of Economic, Social, and Cultural Rights in the African Charter"¹⁶, the African Commission provided direction for the interpretation of Article 16 affirmative to older women. The guideline charges state parties to promote SRHR for women based on a life cycle approach to health without prejudice to age, as well as to combat intersectional discrimination in access to SRHR, such as age and marital status. The guideline recognises older women as a vulnerable group and charges state parties with the responsibility of educating women on age-related health conditions, including menopause, and protecting women's rights against harmful practices that might increase their predisposition to sexually transmitted infections, including Human Immunodeficiency Virus/Acquired Immunodeficiency Syndrome (HIV/AIDS)¹⁶.

B. Protocol to the African Charter on human and peoples' rights on the rights of women in Africa (Maputo Protocol)

The Maputo Protocol came into being pursuant to Article 66 of the Banjul Charter¹⁷, which provides for supplementary special protocols and agreements

within the framework of the Charter. The Protocol became enforceable in November 25, 2005¹⁸, and was a welcome development in Africa, seen as a turning point for the SRHR of older women. The Protocol emphatically addresses the SRHR issues of older women, which were hitherto missing from the Banjul Charter. Recognising older women as a vulnerable group, the Protocol advances their rights to protection against sexual violence and reproductive infections such as HIV/AIDS, amongst others. The Maputo Protocol provides for all women the rights to dignity, freedom from violence, access to justice and equality before the law, and health, including SRHR, which are all relevant to their realisation of SRHR.

Articles 2, 14 and 22 of the Maputo protocol speak to matters of concern to older women's SRHR. By means of appropriate legislation and institutional measures, Article 2 tasked states with ensuring the elimination of all forms of discrimination against women¹⁹. In so doing, the state parties are to take all necessary measures to end practices that have a negative impact on the health and wellbeing of all women. This provision implicitly encourages gender-sensitive policies, directing state parties to establish accountability frameworks to ensure the reporting of cases of sexual violence in order to reduce future occurrences. In addressing SRHR, Article 14 of the Maputo Protocol charges state parties with guaranteeing the rights of women to health, including SRHR²⁰. Article 14 requests state parties to make possible for women the right to protection from sexually transmitted infections, including HIV/AIDS, in accordance with global best practices. As previously stated, the language articulated in Article 14 prongs on women's reproductive rights is skewed more towards women of reproductive age than older women²⁰.

In the first General Comment to any of its legal instruments, the African Commission reflected on Article 14 of the Maputo Protocol. Specifically, under 14(1) (d) and (e), the African Commission highlights the right to a safe sexual life in knowing one's status and that of a partner, as well as protection from HIV/AIDS as it applies to older women²¹. Recognising various sources of discrimination, such as those tied to age, the General Comment gives a comprehensive direction to state parties on the domestication of the Protocol with the desired political will to identify specific

needs of different groups, such as older women in the context of SRHR²¹.

Quite commendably, Article 22, in a ground-breaking manner, specifically singles out older women as a vulnerable group and charges state parties with providing protection to elderly women and taking specific measures in keeping with their physical, economic, and social needs²². Furthermore, to ensure the dignity of elderly women and their protection from violence, including sexual abuse and discrimination on the basis of age, the reference to sexual violence in Article 22 is an important milestone, recognising that older women could be victims of sexual violence. Thus, this Article provides ground for framing redress for sexual violence meted against older women and implicitly promotes their safe sexual needs.

C. Protocol to the African Charter on human and peoples' rights on the rights of older persons in Africa (Older Persons' Protocol)

Recognising the ageing population and the peculiar needs of older people, the African Union in 2016 adopted the Older Persons' Protocol²³. Six years since its adoption, the protocol has failed to come into force, because the minimum requirement of fifteen ratifications by parties to the Charter has yet to be met²⁴. Human rights organisations have maintained a call on state parties to urgently ratify the Older Persons' Protocol in light of the urgency of protecting the rights of senior citizens, as barely five state parties have so far ratified the Protocol²⁴. Nonetheless, given the numerous calls for its ratification as an in-stock instrument, an analysis of its extant provisions will add to the renewed call for its ratification, and further avail an all-encompassing legal framework within the African Union system.

Worthy of note, the Older Persons' Protocol in its preamble recounted Article 22 of the Maputo Protocol, seeking special protection for elderly women, thus breaking a wider breadth of possible interpretation of the provisions of the Older Persons' Protocol mindful of the progressive stance of the Maputo Protocol on the rights of older women, including their SRHR. The Older Persons' Protocol in Article 15 encourages states to guarantee older people's rights to health tailored to

their specificities, as well as to provide elderly people with medical insurance and to promote the study of gerontology and geriatrics in health personnel training²⁵. These provisions stand to mitigate the contemporary prejudices in our social system that reduce older women as individuals who make no significant contribution to society and whose needs and rights, including sexual and reproductive rights, are insignificant.

For the right to protection against discrimination, Article 3 of the Older Persons' Protocol charges states to "prohibit all forms of discrimination against Older persons and encourage the elimination of social and cultural stereotypes which marginalise Older persons²⁶." Implicitly, this section provides that states must eliminate discrimination against the enjoyment of sexual rights by older women based on their ages or gender. Even so, it provides grounds for the recognition of inherent stereotypes against older women in relation to their sexual agency and the need to inhibit such marginalisation, allowing for the realisation of the sexual rights of older African women. Articles 8 and 9 speak to the protection of older African women. In specific terms, both recognise older women as vulnerable groups and charge state parties with ensuring that necessary measures are in place to protect them from harmful traditional practices and to ensure their protection from violence, sexual abuse, and gender discrimination²⁷.

African regional economic communities laws

The African Union (AU) released a continental framework in 2006, tagged "Sexual and Reproductive Health and Rights Continental Policy Framework"²⁸. The policy framework envisages strengthening Regional Economic Communities (RECs) within the AU system to promote SRHR. The AU recognises eight RECs, originally intended as economic-driving collaborations, but policies like this SRHR framework have long placed the RECs as human rights-promoting blocs²⁹. The continental policy framework could only be seen to have implicitly alluded to protecting the SRHR of older African women by adopting a mantra of reproductive rights that recognises that older women have distinct sexual and reproductive issues that are the subject of neglect.

Only a few RECs have gone ahead to develop instruments that expressly promote SRHR of older women or by implicit interpretations of policy language. Through its policy initiative on SRHR, "Sexual and Reproductive Health and Rights Strategic Policy Framework," the Intergovernmental Authority on Development (IGAD), an AU REC representing countries in the Horn of Africa, Nile Valley, and African Great Lakes, highlighted directions contextual to SRHR of older women³⁰. Highlighted issues include conditions such as menopause, sexual dysfunction, and HIV/AIDS prevention and treatment access for older people as a vulnerable group. Notably, like other SRHR instruments, there is an obvious skew towards women of reproductive age group in the language and content of the IGAD's framework.

Other RECs with SRHR policies recognising by implication the specific needs of older women include the "Southern African Development Community Protocol on Gender and Development" and the "East African Community Gender and Community Development Framework". The Southern African Development Community (SADC) Protocol on Gender and Development is a legally binding gender affirmation statute and it clearly directs states under the Charter to promulgate policies and programmes aimed at addressing the sexual and reproductive health of women and men, amongst others³¹. It seeks to protect all women against discrimination and gender-based and sexual violence and provides equal access to information and services related to SRHR, including prevention and treatment of HIV/AIDS.

While celebrated as a robust gender affirmation instrument, the SADC gender and development protocol failed to explicitly mention older women as a vulnerable group requiring preferential treatment to ensure their sexual rights. Similarly, the East African Community (EAC) Gender and Community Development Framework³², while explicit on SRHR promotion and protection, including HIV/AIDS prevention and care, and protection against all forms of violence, largely resonates with the narrative of emphasis on women of reproductive age, conspicuously ignoring older women and their specific sexual right's needs.

Missing links in addressing the sexual and reproductive health of older women within the African human rights system

It is quite commendable that the African human rights system has put in place measures aimed at promoting the rights of older women to sexual and reproductive health. However, there are still major gaps, particularly in relation to sexual rights. Whereas the intent of sexual rights is to protect against abuses and violence as well as to promote the realisation of safe sexuality, the framing of provisions of the African human rights instruments are mostly premised on protection against sexual abuse³³. It is acceptable that extant laws explicitly protect older women against abuses and sexual violence. However, arguably, it is equally important for the system to bridge the gap by recognising that older women have other rights beyond just violence and disease prevention. Even so, as discussed in the preceding paragraphs, the available legal frameworks skew more in favour of reproductive rights, leaving women outside the childbearing age group in the background.

Like other instruments outside of the SRHR fold, implementation is a major missing link, with states as duty bearers failing to link older women as right holders to their inherent rights³⁴. The legal frameworks available allude to promoting older people's rights within the available recourses. However, it is argued that socio-cultural and discriminatory issues are not a matter of financial resources but rather of political prioritisation and societal goodwill. Opposing views see political prioritisation amid financial resource limitation as mere symbolic goodwill³⁵. Regardless of the opposing views, I hold that implementation of older women's sexual and reproductive health rights are a result of a witting and unwitting lack of political will.

In terms of monitoring state parties' compliance with the protection and promotion of the sexual rights of older women, the African Commission plays a crucial role in monitoring the implementation of the Banjul Charter and the Maputo Protocol. However, given that many states have yet to comply with their reporting obligations under Article 62 of the Banjul Charter and Article 26 of the Maputo Protocol without repercussions, the capacity of the African Commission for

enforcement and getting states to comply with the provisions of the Banjul Charter and the Maputo Protocol has been questioned. Even still, among those that have complied, due of the overwhelming focus on women in their reproductive age rather than older women, the sexual rights of older women have not been sufficiently addressed in state party reports, with many states lacking data and statistics on sexual assault against older women. This gap might be attributed to the noticeable lack of older women's rights in the vast corpus of research and the existing prejudices around older women and sexuality.

Conclusion and recommendations

Upon recognising the deficit in the African human rights system for the protection and promotion of older women's sexual and reproductive rights, it is critical that the African Commission and state parties take tangible actions to address the highly relevant needs and vulnerabilities of older women. In order for African countries to progress toward achieving the SRHR of older women in accordance with human rights, state actors must take the lead by proclaiming the rights of the aged. State actors can use effective laws to take necessary steps to combat ageism and other types of discrimination against the elderly women that impede them from receiving healthcare services and living in good sexual and reproductive health. Some pertinent recommendations include strengthening the capacity of the African Commission in its oversight function over states' implementation of treaties; affirmative policies by state parties in domesticating instruments; and ensuring not only protection but promotion of SRHR of older women. Other areas of importance include involving stakeholders to raise awareness and strengthen research and technical capacities on ageing and women's SRHR needs; social safety nets that ensure not only quality but also affordability of healthcare; strengthening the human rights promotion capacities of RECs and encouraging peer review mechanisms to allow for accountability and learning on implementing older women's SRHR among regional blocs; and, lastly, strategic litigation to allow regional and national courts to proffer progressive interpretation of socio-economic rights as it relates to the sexual and reproductive health rights of older women.

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