



**EQUAL OPPORTUNITY, AGE-BASED
DISCRIMINATION AND THE RIGHTS OF ELDERLY
PERSONS IN UGANDA**



J. Oloka-Onyango

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CONTENTS

SUMMARY OF THE REPORT	i
I. WHY ARE WE NEGLECTING THE RIGHTS OF OLDER PERSONS?	1
II. ADDRESSING AGE-BASED DISCRIMINATION	4
<i>Towards a Progressive Conceptual Framework</i>	4
<i>Ageing and Human Rights in Developed Economies</i>	7
<i>Surveying the African Context</i>	9
III. AGING AND OLDER PERSONS RIGHTS IN UGANDA	12
<i>The Legal and Policy Framework</i>	12
<i>Social Protection as a New Model of Empowerment for Older Persons: Imposing Assistance?</i>	15
IV. DESIGNING A NEW RIGHTS PARADIGM FOR OLDER PERSONS	19
<i>Protection, Participation and Image</i>	19
<i>Gender and Ageing</i>	22
<i>Assessing Institutional and non-state mechanisms</i>	23
V. CONCLUDING REMARKS	28
VI. SELECT REFERENCES	30

SUMMARY OF THE WORKING PAPER

Average life expectancy for Ugandans is currently estimated at 50 years for both men and women. Nonetheless, with developed healthcare systems and social conditions, there are telling indicators that a significant number of Ugandans live and will continue to live well beyond this age. By 2002, older persons constituted 4.6% of the total population. Whereas older persons are recognized among the category of marginalized groups in Uganda, they continue to receive minimal attention in comparison to others such as women, children, people with disabilities and the youth.

Advocacy of the rights of older persons in Uganda is lackluster. Most support offered to them is largely paternalistic. Social security also remains elusive, given that the majority of them do not actually qualify for such schemes having been mainly employed in the informal sector. For these reasons, older persons are regarded as unproductive and helpless and yet recent studies reveal that they are a major resource on history, traditional knowledge, health and culture. Older persons have also played an important role as the mediators of conflicts and disputes. Most importantly, older persons have been crucial in addressing the HIV/AIDS pandemic, protecting orphans and caring for those infected and affected.

This study critically analyzes and assesses the issue of aged-based discrimination in Uganda against the backdrop of the struggle for equal opportunities of older persons. Its main objective is to ensure a more comprehensive approach to achieving full respect for the human rights of all persons regardless of age. Cognizant of recent steps by government to recognize the rights of older persons—specifically the formulation of the draft National Policy for Older persons and the establishment of the Equal Opportunities Commission—the paper argues for a new paradigm in which the rights of older persons should be considered.

Despite the crucial place of older persons in the economy and in society at large, they remain discriminated against at almost all levels. This aspect of age-based discrimination has not spared the different programs and initiatives designed to help them. Older persons do not own most of the initiatives designed to protect them, and there appear to be few efforts in the direction of changing the status quo.

Some hope lies in the enactment of the Equal Opportunities Commission Act in 2007. Putting in mind the fact that the Act in the main establishes the Equal Opportunities Commission (EOC) to deal with issues of the vulnerable generally, there is a need for considerable effort to influence the agenda of the Commission in ensuring that it fully recognizes and champions the rights of older persons. The Commission should create sufficient space to enable older person's full control and autonomy over the manner in which their rights and

interests are to be given attention.

The paper makes several recommendations in order to improve the situation of older persons including:

- a) The draft National policy provides a solid foundation for the rights of older persons and is a laudable step in the right direction. In particular, the policy underlines the obligations of the government of Uganda to older people in the country and may be used as a basis to demand for their rights particularly where the state is reluctant or unwilling to protect them;
- b) Issues of participation, protection and the positive image of older persons have to be taken into consideration for all interventions directed at their situation to succeed. To that end, older persons should be afforded a greater and more active role;
- c) As is the case with other vulnerable groups, the government should strongly consider forming a National Council for Older Persons and creating provision for their representation in Parliament. This will lead to better streamlining and advocacy of the rights of older persons and also enhance their levels of participation in the process of national development and governance;
- d) Non-governmental organizations (NGOs) need to strategically advocate for the rights of older persons and to mobilize to influence the agenda of the newly formed Equal Opportunities Commission towards the rights of older persons;
- e) Particular attention should be paid to provisions in the law barring the Commission from investigating any matter that involves behavior considered immoral, socially harmful or unacceptable by the majority of the cultural and social communities in Uganda. This limitation adversely affects the investigation of matters concerning age-based discrimination, given that older persons are often accused of ‘immoral’ practices such as witchcraft;
- f) There is a dire need for the overall reform of the pension sector run by both the National Social Security Fund (NSSF) and the Public Service. Comprehensive reform of this sector should be undertaken and provision made for a Retirement Benefits Authority responsible for the regulation of pension issues in both the private and the public sectors. In this way, investment schemes will be better managed and pensioner’s life savings will not be invested in dubious schemes, as is currently the case;
- g) There is a need for the periodic review and scrutiny of parliamentary bills in order to ensure that the rights of older person are given the required

attention and respect in the law making process. This is especially important where there is no parliamentary representation for older persons and calls for concerted and comprehensive advocacy on the part of NGOs committed to the rights of older persons;

- h) Mainstream human rights organisations should be encouraged to redefine their agendas in order to comprehensively incorporate the rights of older persons within their activities. At the same time, those groups that explicitly deal with the rights of older persons should strive to involve mainstream human rights organisations in their activities such as the International Day for Older Persons, which falls on October 1st of every year;
- i) The state should support the development and study of the subjects of Gerontology and Geriatrics in our institutions of higher learning and also by committing increased resources and funds to gerontological research and to the study of both macroscopic and microscopic interventions in this area, and
- j) A free medical scheme for older persons should be put in place in order to address the most serious health challenges faced by them. The scheme should cover both consultation and drugs.

At the age of 90 years, Phoebe Auma's hands are rough and her hand shake is weak. Her memory is poor and she is partially blind. She cannot stand by herself and walks with the support of a walking stick and a caretaker. She is hard of hearing and one has to shout to be heard. Auma is probably the oldest person in Acero sub-county in Lira where she lives. She is a mother of 12 children, 34 grandchildren and 200 great-grandchildren.¹

I. WHY ARE WE NEGLECTING THE RIGHTS OF OLDER PERSONS?

Although life-expectancy in Uganda stands at an average of less than 50 years for both sexes,² a significant percentage of the population live well beyond this time. This is the group of the aged or the elderly, otherwise known as older persons.³ However, prospects for the situation of this group of persons receiving serious attention are quite slim. This is because, unlike women and the youth, they do not represent a significant vocal (or vital) political constituency. Most are in the evening of their lives; the vast majority (having been peasants or employed in the informal sector) do not qualify for social security. Finally, the groups advocating for their rights are few and far between. Moreover, those groups addressing the issues of older persons largely tend to adopt a welfarist approach to the issue, rather than strategies which centre the issue of human rights at the core of their activities.

All in all, there are serious questions of human rights that are implicated in any significant discussion of the situation of older persons. For the more vulnerable groups among the older persons—particularly older women, older persons with disabilities and older people caught up in humanitarian emergencies, such as armed conflict, internal displacement or natural disasters—the situation is even worse.⁴ These constitute the most marginal within the group of the marginalized. The passage of the Equal Opportunities Commission Act (EOCA) into law in 2007 has raised hopes that serious attention will henceforth be given to the rights of marginalized groups including to the rights of older persons.⁵ Comprehensive treatment of the situation of these groups is necessary via a mechanism of enforcement that will buttress the constitutional provisions and specific legislation

¹ 'The Burden of Living a Full Life in Uganda,' *New Vision*, March 14, 2007.

² See the statistics in the 2007 Human Development Report. Life expectancy at birth for females in 2005 stood at 50.2, while that for males was 49.1. Accessed at: http://hdrstats.undp.org/countries/data_sheets/cty_ds_UGA.html

³ There is some conceptual confusion about who older persons exactly are. According to the Human Rights Education Association, there are three categories of Older persons, namely the elderly (individuals 65 years or older); older persons and the Oldest Old (individuals above 80 years of age). See Human Rights Education Association, accessed at: http://www.hrea.org/index.php?base_id=162. The United Nations defines 'older persons' as those elderly 60 years and above, while the World Health Organization, defines 'older women' as those 50 and older. WHO also speaks of 'ageing women' in order to emphasize that ageing is a process that "... occurs at very different rates among various individuals and groups." See WHO, 2007 at 2.

⁴ See WHO, 2008.

⁵ It is nevertheless important to point out that the EOCA took a considerable length of time to come into force. Indeed, it was not until the amendment to the Constitution in 2005 that the provision became mandatory. See Art.32.4, 1995 Constitution. Furthermore, the policy on equal opportunities makes scant reference to the situation of older persons (SeeMGL&SD, 2006). Finally, although an Act is now in place, the Commission is yet to be constituted. For further details on the law, see the Equal Opportunities Commission Act, 2007 (hereafter 'EOCA').

designed to address their plight.⁶

At the same time, it is important not to relegate the older persons to a category of helplessness. It is incorrect to imagine that older persons are incapable of fending for themselves, articulating their rights and contributing in a positive fashion to national socio-economic and political development. In other words, we need to avoid adopting a paternalistic approach. Hence, older persons should not be treated as if they are without agency and entirely dependent on younger relatives and wards for assistance and mobility. Despite increasing frailty and ill health, most older persons are quite capable of adapting to the situation they are confronted with and of dealing with the many adversities of life that they face. Furthermore, they are abundant sources of history, of health and of culture. With respect to the storage, application and transmission of traditional knowledge—an important source of information for medicine, conflict resolution and traditional justice mechanisms—older persons are a great but neglected resource.

Given the HIV/AIDS pandemic and the fact that it has in the main targeted the youth and the middle-aged, older persons have played a significant role in ensuring the protection of so-called AIDS orphans. They have done this through providing basic care to the sick, in guaranteeing that the needs of the children are catered for, and in providing a traditional familial context within which those both infected and affected by the pandemic can live proper and fulfilling lives.⁷ Indeed, older persons have been described as the ‘unsung heroes’ of the HIV/AIDS pandemic in South Africa—the country with the highest rates of infection in the world.⁸ Finally, it is incumbent on every youthful person to realize that they will eventually also age. Thus, while recognizing the serious problems that older persons face, it is important to ensure a comprehensive and empowering approach to the solution of those problems. As much as possible, solutions designed to address the situation of older persons should give them full control and autonomy over the manner in which their rights and interests are given attention.

Against the above background, this study provides a critical assessment of the issue of age discrimination in Uganda, alongside the backdrop of the struggle for equal opportunities and to ensure full respect for the human rights for all persons. While Uganda has paid considerable attention to the situation of marginalized groups, including women, youth, children and persons with disabilities, there is still a gap in addressing the plight of older persons. While each of these groups has a national state-funded

⁶ The definition of ‘marginalized persons’ is open-ended, but includes, “...groups marginalized on the basis of gender, age, disability or any other reason created by history, tradition or custom, for the purpose of redressing imbalances which exist against them.” See Art.32.1, 1995 Constitution of the Republic of Uganda. Interestingly, while the definition of “equal opportunities” includes reference to ‘age,’ in the immediately preceding definition of “discrimination,” the term is completely excluded. See Section 1, EOCA. Whether or not the omission was deliberate or honest, it may have significant implications for the conceptual framework within which the issue of older persons has been conceptualized.

⁷ See Patrick Mathangani, ‘The Elderly Groaning Under the Burden of AIDS,’ *East African Standard*, December 28, 2004; accessed at: www.globalaging.org/health/world/2005/burden.htm

⁸ Report in *afrol news*, December 1, 2007, accessed at: <http://www.afrol.com/articles/14902>.

and supported council to oversee and ensure that they are adequately protected, older persons are the only group that does not.⁹ Indeed, it is only of recent that government has considered the issue of older persons to be of such importance as to merit the design of a policy framework appropriate for them.¹⁰

Given that the Equal Opportunities Commission is soon to come into existence, the general objective of this working paper is to provide a critical rights-based analysis of the situation of older persons, commencing with a broad examination of the policy and legal framework that is relevant to this issue. In the first instance, the study is concerned with exploring the main government policy documents in a bid to give a sense of the general policy framework within which the rights of older persons in Uganda are currently situated. Then it surfaces the key rights-related questions presently faced by older persons in contemporary Uganda, with a particular focus on the vulnerable groups among them. In so doing, the study critiques the largely welfarist approach of the state and non-governmental actors who are involved in the protection of the rights of this category of individuals. Finally, the paper provides an alternative framework—rooted in a rights based approach—that sketches out an improved and restructured context for addressing the situation of older persons.

In order to achieve the above goals, the paper is divided into 5 parts. Following this introduction, Part II of the study provides a critical discussion of the conceptual framework within which the issue of older persons should be placed. In the same section of the study, I consider how the issue of aging has been handled in both industrialized and comparable African contexts, in order to provide a comparative backdrop for a more detailed consideration of the case of Uganda.

Part III of the paper looks at the concrete situation in Uganda, beginning with an historical background which explains the evolution of the policy discourse on the topic under discussion. It then moves on to consider the manner in which existing policy frameworks—ranging from the Poverty Eradication Action Plan (PEAP), the Millennium Development Goals (MDGs) to the Social Development Sector Strategic Plan (SDIP)—address the situation of older persons in general. This part of the study ends with a review of the draft policy paper on older persons designed by the Ministry of Gender, Labour and Social Development (MGL&SD) which has been under consideration for a considerable period of time. In addition, this part takes up the question of Social Protection for older persons.

Part IV of the study explores a new paradigm in which the rights of older persons should be considered with a particular focus on the rights to protection; participation and (positive) image. It also examines the question of gender and aging and concludes with an assessment of the institutional and non-state mechanisms that are handling the situation of older persons in Uganda. Several conclusions and recommendations close the study in Part V.

⁹ Interview with Justus Kizza Wamala, CEO, the Uganda Reach the Aged Association; August 21, 2008.

¹⁰ See MGL&SD, 2007.

II. ADDRESSING AGE-BASED DISCRIMINATION

2.1 *Towards a Progressive Conceptual Framework*

Despite the changing demographic and social conditions taking place around the world, and specifically in Uganda, the rights of older persons have been given scant attention. Those changing conditions include the fact that improvements in health care and nutrition have led to lower rates of death worldwide, increasing the percentage of older persons as a portion of the overall populations of most countries.¹¹ In Uganda, the numbers of older persons have doubled from a figure of 686,260 in 1991, to nearly 1,200,000 in the 2005/2006 household survey.¹² Thus, while older persons constitute a minority, they nevertheless form a significant percentage of the demographic profile in Uganda. Furthermore, the total number of older persons as well as the percentile proportion of the group *vis á vis* the overall total is also rising. According to one study, Africa “... is expected to experience one of the world’s largest increases in this age group: current projections suggest that by 2025 older person population will be 4.4 times as great as it is now.”¹³ This implies a great need for serious policy and other forms of intervention designed to address the myriad issues that will arise with respect to this category of individuals. Indeed, this is particularly important when linked to issues of development because of the connection between the situation of older persons, and the poverty profile in the country.¹⁴

Secondly, and specific to the case of Uganda, the breakdown in the mechanisms of the extended family—mainly on account of the HIV/AIDS crisis, rural dislocation and the pressures of contemporary economic demands—have led to older persons being abandoned by their children and grandchildren, and left to their own devices. Indeed, in many instances and largely because of the problem of ‘AIDS-orphans,’ older persons are increasingly being forced to take care of their grandchildren, rather than the reverse as was hitherto the case.¹⁵ It is therefore clear that while a new kind of African family is emerging, the mechanisms in place for ensuring that this structure is fully accommodated within existing socio-economic and other frameworks of organization are still lacking.

Against the preceding background, the key issue then becomes, *what kind of conceptual framework should the rights of older persons be placed in?* From the outset, two contending visions present themselves. One is based on a market, or *laissez faire* orientation in

¹¹ See HREA, 2008 at 1. Also see ‘European Union Ageing Fast,’ Agencies report in the *New Vision*, August 18, 2008.

¹² See MGL&SD, 2007 at 1. The Uganda Bureau of Statistics National Household Survey of 2005/2006 puts the figure at 1,196,439, of whom 885,000 (or 74%) are economically active, but strain to make ends meet, while 230,000 (26%) have no visible income.

¹³ Joe Hampson, “Threats to Health and Well-being in Africa,” accessed at: www.islamset.com/heal/news/aged/joe_hampson.html

¹⁴ See Najjemba, at 1.

¹⁵ According to one estimate, close to one out of five children in Uganda live with the elderly. See Kakwani & Subbarao, 2005 at 33.

which pride of place is given to non-state actors and market forces to lay out the context for the realization of economic, social and cultural rights in general. Under this framework—derived from a long lineage retraceable to the structural adjustment programs and the Washington Consensus of the 1980s and 1990s, followed by the fixation with the policies of privatization and liberalization in the present time—an emphasis is placed on individual agency, with a minimal role for public actors. State intervention is frowned upon as misplaced and arcane. Economic, social and cultural rights are regarded as ‘benefits’ and not entitlements. Social groups—including older persons—are left largely to their own devices.

A second vision takes economic, social and cultural rights as enforceable entitlements and emphasizes state obligations as both binding and actionable. In other words, it becomes necessary to ensure that all categories of persons—especially the most vulnerable such as the older persons—are protected against discrimination and abuse; that they have equal access to social services and facilities, and that they live their lives in dignity and security. The globalization of the market and the impact of neo-liberal economic policies, coupled with the demise of the welfare model, make a human rights based approach to the issue of aging imperative.¹⁶

The Human Rights Education Association (HREA) argues that because there is a prevalent belief that older persons are “...worthless in today’s fast-paced, globalized and increasingly industrialized world,” there is an increased urgency to address the rights and roles of these persons in the world.¹⁷ In particular we need to ask ourselves a number of questions: to what extent are the needs and concerns of older persons integrated into the state’s overall economic and social programs? What mechanisms of measurement are in place to ensure that the various economic, social and cultural rights—the rights to health, to adequate shelter and the right to food—are being progressively realized for older persons? Have we put in place appropriate measures to ensure that older persons are not discriminated against, that they live in dignity and respect and that they are not subjected to abuse and marginalization? Finally, in the event that there is a manifest failure to ensure that the rights of older persons are fully respected do we have in place systems in order to ensure that there is appropriate accountability?

In light of growing concerns around the above and other related questions, a number of international organizations and institutions have pushed for charters and declarations that comprehensively cover the rights of older persons.¹⁸ The 1991 saw the adoption of the United Nations Principles for Older Persons.¹⁹ This instrument outlines five main principles which it urges governments to incorporate into their national programs with respect to the situation of older persons. These are independence, participation, care, self-fulfillment and dignity. Another important instrument is ILO Convention

¹⁶ Townsend, 2006 at 162.

¹⁷ HREA, 2008.

¹⁸ See, for example the Charter of the Rights and Freedoms of the Elderly and Dependent Person, accessed at: <http://www.chu-montpellier.fr/gb/ch-age.html>

¹⁹ General Assembly Resolution 46/91.

102 of June 2001, which sets out the minimum standards of social security benefits for old age.²⁰

The most important however, international document is the *Madrid International Plan of Action on Ageing* (MIPAA), adopted by the United Nations in 2002.²¹ The Madrid Plan comprises of two parts, i.e. a non-binding document (Political Declaration) and the Plan of Action. In combination, the two components of the MIPAA both celebrate the rise in life expectancy, and caution against the implications this development has in terms of the demographic challenges presented, particularly in developing countries. It lays out a fairly comprehensive arena of action on the part of states, extending from health, to work, to inter-generational solidarity. The Plan gives particular attention to issues of gender, social and economic disadvantage, and situations of emergency. It argues for the extension of the right to development to older persons halving old-age poverty by 2025, and ending age-based discrimination. The MIPAA is a progressive and comprehensive framework within which the rights of older persons can be properly situated.

Taken together, the above referenced international instruments—together with the traditional civil and political and economic, social and cultural rights covenants—provide a firm conceptual framework within which the rights of older persons can be grounded. These two basic instruments are reinforced by General Comment No.6 of the Committee on Economic, Social and Cultural Rights. However, the situation in the domestic context is most important. In other words, to what extent have the principles in the MIPAA and Convention 102 been translated into the local context?²² What policy frameworks, legislative enactments, and institutional mechanisms have been created in order to give expression to the broad objectives of these international instruments?

Drawing from the concerns outlined above, it is clear that not enough attention has been paid to the rights of older persons in Uganda, with particular respect to the human rights-related dimensions of the matter. Central to the conceptualization of this study is the rights-based approach, which seeks to foreground the issue of human rights in the analysis of the key areas of concern, i.e. protection, participation and image.²³ Doing so also requires that we acknowledge that the problems encountered by older persons are as deep as the form of discrimination against women and other marginalized social groups. In other words, we need to confront the issue of *institutionalized ageism* as the central problem affecting the realization of the rights of this category of individuals. The justification for the study also lies in providing a different perspective—distinct from both the statist and the welfarist ones that are dominant—to a subject that is gaining in relevance with each passing day.

²⁰ See also, 'Ugandan Elderly Are Not Well Cared For,' *New Vision*, November 8, 2007.

²¹ Accessed at: http://www.un.org/esa/socdev/ageing/madrid_intplan. UN Doc. A/CONF.197/9.

²² It should be noted that Uganda has not yet ratified this Convention.

²³ HREA, at 2.

Before considering the case of Uganda in more detail, it would be helpful to briefly examine the situation elsewhere around the world for a comparison. The comparison will provide a useful backdrop to the more detailed examination of the situation in Uganda, and will look at the situation in both developed (industrialized countries) and at those on the African continent.

2.2 *Ageing and Human Rights in Developed Economies*

The issue of aging has been of considerable concern in other societies—particularly developed ones—for a long time.²⁴ Unsurprisingly, the vast majority of articles in the journal *Aging & Society*—the most prominent periodical on the subject—have been devoted to issues of the developed world.²⁵ Increasingly, later issues have carried pieces on more diverse countries, including Brazil, Singapore, China and India. The major focus of study in the fairly abundant literature on older persons in these contexts has been health, social security (especially pensions, and similar schemes) and institutional protection (old person's homes and welfare). These concerns have come about mainly because of the rapid changes introduced by industrialization, improving livelihoods and the demographic shifts in population profiles. In countries like Japan and Italy, there have been negative rates of population growth, coupled with aging populations, all of which have led to serious questions regarding productivity, social security support and the provision of the necessary services entailed by these processes.

Some of the studies reviewed for this paper adopt an apocalyptic posture on the issue of aging. For example, Peter Peterson has predicted dire results from the "...graying of the developed world's population," arguing that,

Unlike with global warming, there can be little doubt over whether or when global aging will manifest itself. And unlike other challenges, even the struggle to preserve and strengthen unsteady new democracies, the costs of global aging will be far beyond the means of even the world's wealthiest nations—unless retirement benefit systems are radically reformed. Failure to do so, to prepare early and boldly enough, will spark economic crises that will dwarf the recent meltdowns in Asia and Russia.²⁶

Peterson's Malthusian take on the aging 'explosion' is not shared across the board, although quite clearly there are serious implications for many developed countries, such as Japan, Italy and Denmark which are experiencing a growth in the population of older persons. Correspondingly, the population of youth in these countries is generally reducing on account of population control policies, improved health services and a decrease in the retirement age. All of these developments have placed a significant strain on social security frameworks.

²⁴ Hennessy, 1995.

²⁵ The journal has been published in the United Kingdom by Cambridge University Press since 1980.

²⁶ Peterson, 1999.

Against this background, the rights perspective has only of recent found its way into the discussion about aging in developed countries. This has, amongst others, followed an outcry about the state of nursing homes which house a considerable percentage of older persons. In the United States, for instance, Congress pushed through a Nursing Home Quality Reform Act in 1988, which expanded the authority of the Department of Health & Human Services and of states to discipline nursing homes. This law makes it clear that such homes should not be equated to a loss of autonomy. It also contains a patient's bill of rights which provides for the rights to privacy and the ability to voice grievances and to have them promptly addressed, as well as guaranteeing a right to freedom from physical and mental abuse.²⁷ These concerns reflect on the fact that a significant percentage of older people in the United States are housed in nursing homes.

In the United Kingdom, it was not until 2007 that a body was established which for the first time will be "...responsible for promoting age equality and tackling age discrimination and ageist attitudes..."²⁸ In general, this reflects the rather slow progress made in the UK towards pursuing rights-based approaches to issues, reflected in part by the Parliamentary system, the absence of a written constitution and (until 1998), an enforceable bill of rights.

The above examples provide some indication of the need for broad and comprehensive strategies to address the protection and promotion of the rights of older persons in our own context. Thus, for example, while the idea of nursing and old age homes for older persons has not received wide-spread acceptance or use in Uganda, there is no doubt, given the demographic trends which we are witnessing, that the need to draw from the experience of developed countries cannot be gainsaid.

First, of course, is the need to actively discourage the institutionalization of older persons, given that the almost uniform experience around the world has been largely negative. But second is the need to recognize that where such institutionalization does occur, keen attention should be paid to making sure that the rights of older persons are fully secured. This is not to say that such institutions do not already exist in Uganda.²⁹ Rather they are few, primarily private and with only a handful of inmates. Needless to say, it is important to ensure that standards of non-abuse and personal safety and security are put in place in order to ensure that human rights questions are given adequate attention before the situation reaches crisis point. Policy makers and activists need to be asking themselves a number of questions: who run the homes for older persons? What mechanisms are in place to ensure that they do not degenerate into sites of abuse and further dispossession? How involved are the community—local government, welfare institutions and social activists—in their operation?

²⁷ See 'Rights for the Elderly, Long Overdue,' (editorial) *New York Times*, January 19, 1988, accessed at: <http://query.nytimes.com/gst/fullpage.html>

²⁸ See *Help the Aged*, 2008, at 2.

²⁹ The best known are the Mapeera Bakateyamba Home in Nalukolongo (western Kampala), and St. Pauls in Mbarara.

The potential for an institutional mechanism such as the recently-established Equal Opportunities Commission (EOC) to focus on the issue of the older persons cannot be over-emphasized. While the British experience is also still in its formative stages with little to offer, the United States Equal Opportunities Commission has very well-developed standards and systems for addressing the situation of minority and vulnerable groups, particularly with respect to employment, education and other social services. Special attention has been given to the situation of older persons. Given that the Ugandan EOC is still at an earlier stage of development, with its commissioners and personnel yet to be appointed, there is considerable room for the design of appropriate mechanisms to address the situation of older persons within the specific context of Uganda. It is especially important to ensure that the EOC is fully sensitized from the outset on the concerns and interests of older persons. In other words, issues relating to older persons should not be regarded as marginal to the goal of ensuring equal opportunity for all.

2.3 *Surveying the African Context*

Despite a generally positive perception of the old in Africa, and a long-standing tradition of older persons enjoying both prestige and respect, there is a discernible growth of different kinds of attitudes emerging around the continent. The Committee on Population conducted a 2006 study on aging in the continent.³⁰ This Committee decried the fact that older persons are no longer viewed in the traditional positive light. The study of the Committee offers several recommendations on future areas for further research on the topic.³¹ In parts of both Zambia and Tanzania, older persons have been ostracized and even condemned as ‘witches.’³² Moreover, two distinct household types seem to be emerging at considerable speed on the African landscape, i.e. the (single, usually female) older persons living with children, and older-headed households. To crown it all, the policy and legal framework relating to older persons around the continent is quite mixed. Countries like Ghana and Kenya do not have a solid framework for addressing the problems of older persons.

There is a good deal of useful statistical information on adult health and aging in Africa, which is regarded as one of the most important issues facing this category of individuals.³³ While noting that the absolute numbers of older persons in Africa will increase dramatically by the year 2020, a majority of these will be women.³⁴ This means that there is a need for policy makers not only to take on board the issue of gender—which has over the last several years become a major focus of reform and planning—but also to take into account the question of age. In this respect, a particular issue of concern around Africa is the fact that older women invariably take care of those

³⁰ See Cohen & Menken, 2006.

³¹ Id.

³² Potipher Tembo, ‘Suspected Witches Find Refuge in Kaleni Hills,’ *The Times of Zambia*, July 7, 2005, accessed at: www.globalaging.org/olderrights/world/2005/witches.htm

³³ See WHO at: <http://www.who.int/healthinfo/survey/ageing/en/print.html>

³⁴ Udvardy & Cattel, 2005.

who are ill with HIV/AIDS and then of their orphaned children. This places them at a serious risk of infection, stigmatization for doing so, and abuse. Health workers are also notorious for their negative attitudes to older persons.³⁵ Ultimately, this implies a problem in terms of the involvement of older women in program planning and in the training of healthcare workers. In response to this issue, Zimbabwe has incorporated older women in midwifery, combining traditional and modern medicine.³⁶

However, it is not only with respect to healthcare that older persons have a role to play. Many older persons remain active in farming, business and trade, while also performing basic domestic chores. Furthermore, older people have played a notable role as mediators of conflicts and disputes at various levels. This idea has been projected to the continental level with the formation of the Eminent Persons Panel by the African Union. Retired prominent African public personalities have often been called upon to act as mediators in a variety of the armed conflicts that have wracked the continent.

Obviously, the issue of aging is implicated in the many discussions on pension and social security reform.³⁷ An emerging issue of concern is the question of universal pensions and cash transfers. Like Uganda, most countries in Africa have large rural populations, and small sectors of formal employment. This means that the majority of the population is not covered by any kind of retirement scheme and is consequently left to its own devices. In some countries around the continent, universal pensions have been introduced even where the levels of development are lower than the situation in Uganda.

Of all African countries, South Africa has perhaps the most developed framework for addressing the rights of older persons. South Africa recognizes that the past discriminatory practices of apartheid largely excluded the majority black population from formal employment (and thus social security and pension entitlements). To deal with this, a non-contributory old age grant is paid to assist vulnerable older persons who have no or little income. Thus, over 2,000,000 individuals receive a monthly grant of SA Rand 820 (equivalent of US\$135).³⁸ While the amount is not very significant, it is recognized as forming part of the constitutional right of access to social assistance.

The rights of older persons in South Africa have been fortified by the passage of legislation. Strongly influenced by the Madrid Political Declaration and Plan of Action, the South African Parliament adopted the Older Persons Bill in late 2006. The Act aims, inter alia, to maintain and protect the status, well-being, safety and security of older

³⁵ HelpAge, 2001

³⁶ Joe Hampson, 'Threats to Health and Well-Being in Africa,' accessed at: www.islamset.com/healnews/aged/brights-of-aged

³⁷ See, for example, Rutaagi, 2008.

³⁸ Wachipa, 2006, at 7.

persons, and to ensure the recognition of their rights.³⁹ Given that institutional care was of some prominence in South Africa, the Act also seeks to shift the emphasis to community-based care, and to ensure that an older person remains in his or her home within the community for as long as is possible. Despite that shift, one chapter of the law deals with what are described as ‘residential facilities’ prescribing the specific rights of older persons within such institutions, their establishment and operation, as well as providing for mechanisms of monitoring them. Taken as a whole, the Act is an important example of a serious attempt to address the situation of aging in contemporary Africa.

³⁹ See Older Persons Act, No.13 of 2006 (Republic of South Africa, Government Gazette, Vol.497, 2 November, 2006 No.29346).

III. AGING AND OLDER PERSONS RIGHTS IN UGANDA

Before 1995, it was very difficult to find any reference to the situation of older persons, whether in policy documents or within the constitutional and legal framework in existence from independence onwards. That omission is explicable by reference to several factors. In the first instance, the systems of family, clan and community oversight were sufficiently strong to ensure appropriate oversight and care for older persons. Secondly, Gerontology—the study of the social, psychological and biological aspects of ageing—was not a major field of study or intellectual concern. Indeed, it is still a highly underdeveloped field in Uganda, despite the emergence of the discipline in a serious manner in other parts of the world.⁴⁰ Finally, given the wide-scale social and political upheavals that plagued the country during the formative years of independence, the situation of older persons was not regarded as an issue requiring serious attention.

What the above meant was that older persons (unlike women, youthful persons and children) not only lacked a significant presence and profile within the wider scheme of the country's population demographics, they also did not have a solid grounding in intellectual life and discourse in the country. Consequently, it is not of much surprise that neither the policy nor the legal framework in Uganda adequately addressed the issue of age-based discrimination and the rights of older persons. The possible exception to this general posture is the issue of social security, about which some commentary will be made subsequently.⁴¹

3.1 The Legal and Policy Framework

Against the above background, the question is: what is the legal and policy framework within which the rights of older persons are situated and how effective is that framework in promoting and protecting their rights? Generally speaking, the legal and policy framework relating to the situation of older persons in Uganda can be described as mixed. The 1995 Constitution makes some attempt at addressing the issue of older persons through paragraph VII of the National Objectives and Directive Principles of State Policy (NODPSP), which explicitly states, “The State shall make reasonable provision for the welfare and maintenance of older persons.” Article 32—which refers to the issue of affirmative action in favour of marginalized groups—includes the term ‘age’ among those groups to which special attention should be paid.

Article 180(2)(c) of the Constitution stipulates that the affirmative action principles in favour of marginalized groups in Article 32, shall be applied to the system of local government. Consequently, section 10 of the Local Governments Act provides for the participation of older persons in decision making processes at all levels.⁴² The

⁴⁰ See Wikipedia, <http://en.wikipedia.org/wiki/Gerontology>

⁴¹ Social Security is being dealt with as a separate focus of study under this project. The current study considers only the twin issues of Social Protection and Universal Pension in so far as these have particular relevance to the situation of older persons.

⁴² Cap. 243, 2000 Laws of Uganda.

National Resistance Movement (NRM) government has also been more proactive than its predecessors in giving the issue of the rights of older persons a more prominent profile, commencing with a sub-Cabinet position for older persons, as well as the establishment of a department within the Ministry of Gender. Uganda also played host to the first conference of regional experts of the-then Organization for African Unity (OAU) to draw up an action plan and regional policy on aging.⁴³

Some attention to the issue of older persons can be found in the PEAP, with their inclusion among the vulnerable groups likely to be poor and requiring special attention in terms of poverty eradication interventions.⁴⁴ The PEAP also takes note of the greater burden imposed on older persons on account of the HIV/AIDS pandemic.⁴⁵ Older persons are identified as a potential target group for social protection, while also underscoring their role in economic growth.⁴⁶ Needless to say, older persons are generally grouped with other so-called vulnerable groups, without a specific focus on their distinct positioning and on their special needs.

Under the main sectoral program instrument—the (SDIP)⁴⁷—older persons are considered among that category of individuals who lack security and are more susceptible to risk and/or are exploited with no means of support.⁴⁸ The SDIP also points out that households headed by older persons are more likely to be poor, and consequently, the interventions in the sector need to take special note of this situation.⁴⁹ The more recent Peace, Recovery and Development Plan for Northern Uganda (PRDP), outlines the special needs of older persons in terms of being given assistance to move to new locations.⁵⁰ They are also targeted in the livelihood support programme, which is a central platform of the recovery process in the post-conflict situation.⁵¹

The absence of significant attention to the situation of older persons is reflected in the most recent progress report on Uganda's performance on the MDGs. Since their adoption in 2002, the MDGs have become an important policy framework within which the government's social interventions are situated. For example, the section concerned with the eradication of extreme poverty and hunger does not draw attention to the specific plight of older persons.⁵² The section on promoting gender equality and women empowerment specifically refers to the 'burden of care' which is disproportionately borne by women, but fails to note the role of older persons (both women and men) in providing that care.⁵³

⁴³ Elizabeth Kameo, 'Museveni Hails Senior Citizens,' *New Vision*, November 29, 2000 at 6.

⁴⁴ GoU, PEAP at 20 and 29.

⁴⁵ *Ibid.*, at 151.

⁴⁶ *Id.*, at 177.

⁴⁷ ROU 2003.

⁴⁸ *Id.*, at v.

⁴⁹ *Id.*, at 4-5.

⁵⁰ GoU, PRDP, at 64.

⁵¹ *Id.*, at 129-131.

⁵² UNDP, Millennium Development Goals: Uganda's Progress Report, 2007, at 11-14.

⁵³ *Id.*, at 30-31.

In a nutshell, while progress is generally being noted on the steps being made towards the achievement of the MDGs, older persons do not feature prominently in the advances which have been touted. A similar absence of data on older persons can be discerned from the most recent Human Development Report—the most important indicator of progress made with respect to social and economic welfare.⁵⁴

However, the most important document which provides an indication of the state perspective on the issue of older persons is the (draft) National Policy for Older Persons.⁵⁵ Sub-titled “Ageing with Security and Dignity,” the draft is designed to ensure that for the first time the rights of older persons find a place within the overall policy framework of the government. While there are obviously many issues which affect the situation of older persons, the draft national policy has prioritized the questions of poverty, social security, food security and nutrition, and health.

The draft policy provides a useful critique of the limitations of existing policy in particular relation to social security, healthcare, gender inequality, conflicts and emergencies, and shelter, to mention a handful of the areas of attention. Overall, the policy promises to provide a framework for:

- (i) Enhancing the recognition of the roles, contributions and potentials of older persons in the development process;
- (ii) Strengthening the informal and formal community based support systems and actions for older persons dignity;
- (iii) Promoting actions that encourage older persons to pass knowledge to the younger generation;
- (iv) Guiding, coordinating and harmonizing interventions for older persons by stakeholders; and
- (v) Promoting research on issues of older persons.⁵⁶

Among the guiding principles of the draft Policy are the promotion of the Rights Based Approach (RBA), Participation and Respect for Older Persons.⁵⁷ In terms of analysis, scale and strategy, the draft policy is a fairly comprehensive and well-conceptualized document. It prioritizes the issue of economic empowerment (particularly through Savings SACCOs and market participation), the strengthening of formal and community support institutions and enhancing access to social services.⁵⁸

Although as at the time of writing this study the draft had not yet been adopted by Cabinet,⁵⁹ all in all, it represents an important first step taken in the direction of ensuring

⁵⁴ See UNDP, 2007/2008, accessed at: http://hdrstats.undp.org/countries/data_sheets/cty_ds_UGA.html

⁵⁵ MGL&SD, 2007 at 1-2.

⁵⁶ MGLSD, 2007 at 8.

⁵⁷ Id., at 9.

⁵⁸ Id., at 10-13.

⁵⁹ Interview with Mr. Herbert Baryayebwa, Commissioner, Disability & Older persons.

that the issue of the rights of older persons is given higher priority within the policy framework of the government. In other words, it ensures that the issue of the rights of older persons is mainstreamed both in the structures of conception as well as in the plans of action of the state.

At the same time, there are a number of limitations which are immediately apparent in the draft. In the first instance, it reflects a general bias towards economic, social and cultural rights, in contrast to civil and political rights. The concentration on this category of rights is certainly welcome given the general tendency not to regard such rights as enforceable. Furthermore, there is no doubt that for older persons, economic, social and cultural rights are particularly important. At the same time, it is important to point out that there are serious concerns relating to older persons' civil and political rights that also need to be surfaced within a policy framework. In other words, there is a need for a holistic approach which emphasizes the interconnectedness of both categories of rights. Otherwise, the solutions arrived at will be lop-sided.

Secondly, the draft states that it will promote "... rights based programming by seeking to realize the rights of older persons who are often vulnerable."⁶⁰ However, the RBA is still a concept that has not been fully internalized within the various organs and institutions of the state.⁶¹ Moreover, as is already clear from the preceding analysis, the issues affecting older persons are multi-sectoral—extending from the health sector, to education, to those government departments concerned with infrastructure and physical services. This leaves the question begging of what actually needs to be done in order to improve the RBA across all public sectors in order to effectively address the plight of older persons.

To be successful, the policy on older persons needs to be situated within a context which addresses the more fundamental issues of human rights protection, while also focusing on the question of institutionalized ageism. One way in which the government has begun to directly implement its overall new thinking on the issue of the rights of older persons is through the framework of social protection, an issue that is taken up in the following section of the study.

3.2 Social Protection as a New Model of Empowerment for Older Persons: Imposing Assistance?

Recent global attention has been drawn to the issue of designing appropriate frameworks for ensuring that issues of poverty and marginalization are effectively addressed by both national governments as well as by international agencies, alongside the development arms of industrialized countries, such as the Department for International Development (DFID) of the British government. Former British Premier Tony Blair's Commission for Africa,⁶² as well as many of the discussions in G-8 circles, drew attention to the

⁶⁰ MGLSD, 2007 at 9.

⁶¹ See Oloka-Onyango, 2006.

⁶² See, "Our Common Interest," accessed at: www.commissionforafrica.org

issue of improving aid and addressing the persistent poverty and disempowerment that afflicts the marginal populations in underdeveloped countries. Article 4 of the Additional Protocol to the European Social Charter provides that States Parties must ensure the effective exercise of the right of older persons to social protection.⁶³

Social protection describes all initiatives—whether public or private—that provide income or consumption transfers to the poor, protect the vulnerable against livelihood risks, and enhance the social status and rights of the excluded and the marginalized. Consequently, the focus is not only on older persons, although for the purposes of this study, there is no doubt about the importance of social protection to this group of people.⁶⁴ A wide panoply of measures is necessitated in order to ensure that social protection becomes institutionalized, ranging from legislation on economic, social and cultural rights, to minimum wage laws, to improving the regime of worker's rights.

Most prominent among the measures of social protection adopted in Africa has been the issue of cash transfers.⁶⁵ African governments and regional institutions (like the African Union—AU) have pointed to the importance of social protection for their older and younger vulnerable citizens and the potential role of cash transfers within an integrated social protection framework.⁶⁶ General experience has shown that there is no doubt that regular cash transfers offer some potential to address the plight of older persons. The most well-known of the schemes on the African continent is that funded by the German GTZ in Kalomo, Zambia, but schemes also exist in Namibia, Lesotho and Mozambique.

In the case of Uganda, recent studies have begun to review the feasibility of a cash transfer scheme for older persons.⁶⁷ A cash transfer scheme is being piloted in the Ministry of Gender in 6 districts.⁶⁸ One study has already concluded that a "... non-contributory pension would effectively reduce poverty among the elder population..."⁶⁹ According to the Cabinet memorandum of the Minister on the issue, the lack of cash among the chronically poor categories of the population prevents mitigation of the drivers of chronic poverty:⁷⁰

⁶³ <http://conventions.coe.int/treaty/ed/Treaties/Html/128.htm>

⁶⁴ Sebates-Wheeler & Devereux, 200

⁶⁵ See: Nanak Kakwani & Kalanidhi Subbarao, *Aging and Poverty in Africa and the Role of Social Pensions*; The World Bank/Africa Human Development (March 2005).

⁶⁶ Sylvia Beales, 'Views from Africa on Social Protection,' July 2005, accessed at: www.globalaging.org/olderrights/world/2005/views.htm

⁶⁷ MoGLSD, 2007;

⁶⁸ Baryayebwa, at 7.

⁶⁹ Uganda Cash Transfer Pilot Scheme: The Non-contributory old age pension (unpublished paper on file with the author).

⁷⁰ Minister of Gender, Labour & Social Development, 'Implementing a Cash Transfer Programme for Uganda.' [Cabinet Memorandum].

A household that has no cash will neither be able to pay for transport fare to a health facility, nor buy scholastic materials for their children in school. Social cash transfers therefore provide the alternative intervention for such households to enhance their access to education, health care and other social services.⁷¹

Despite what may be regarded as the laudable motives behind the moves towards social protection (and in particular concerning the cash transfer scheme), a number of questions arise with respect to their long-run sustainability, and also about the extent to which they fundamentally address the rights-based issues that we are concerned with in this study. The first is of course the method of intervention. While social protection as a concept is fairly wide, the main focus of the proposed interventions is cash transfers. This leads to the second question, the issue of financing. This must be coupled with the question of targeting, and the differences in the manner in which social protection is defined (particularly by donors). Some focus on extreme vulnerability while others state the need should be the centring of people in development. Finally, as with any scheme involving money disbursements and discretionary targeting of groups and individuals in society, there are also serious dangers of graft and corruption.

Ultimately, there is a danger that these measures could in fact undermine the very element that they are supposed to promote, i.e. the autonomy and empowerment of older persons. This is the case for several reasons. The first is that the source of the funding is largely external (DFID being the most prominent actor in this regard) and in this respect the proposed scheme resembles the MDG-village idea developed by Columbia University professor Jeffrey Sachs.⁷² Indeed, the current model of cash transfers have been equated to ‘globalized charity’ perpetuating aid dependency, in the absence of an obvious exit strategy. In other words, absent external support, what is the potential for such schemes to be sustainable?

This calls into question the very basis on which the Social Protection schemes in Africa have been designed. In the first instance, have the intended beneficiaries been actively involved in the design and implementation of the scheme, or are they viewed merely as passive recipients of the largess of the donor or the government. If there has been consultation and involvement, what shape has it assumed: who was consulted and how was the process executed?

In order to be comprehensive, social protection needs to go well beyond safety nets and emergency relief and address ‘social risk’ and ‘social exclusion.’ This entails a much more comprehensive package of social reform than has hitherto been pursued in Uganda to date. Invariably, this means a departure from the dominant *laissez faire* approach which emphasizes the place of foreign investment and international capital, and minimizes

⁷¹ Id., at 2.

⁷² UNDP has established model MDG villages in which an effort is made to provide assistance for the improvement of health, education and shelter, with significant transformations taking place. Questions nevertheless remain how sustainable such efforts in the absence of external funding.

the role of creating supportive infrastructural frameworks in which economic, social and cultural rights can be comprehensively realized.

Take for example, the issue of worker's rights, with particular attention to the question of the minimum wage. The current government has generally been hostile to the rights and interests of workers, whether in formal employment or not.⁷³ The minimum wage has remained stagnant since 1984. Employees are under-paid, badly treated and have very weak bargaining power. There is consequently a need for more awareness campaigns, legislative change to protect the rights of workers, those involved in informal employment and other minorities. Finally, there is a need for the integration of such social protection into a wider package of interventions.

The Social Protection model also has a number of precedents specific to the Ugandan experience, not all of which have been positive. The first is the *Entandikwa* ('Kick-start') scheme, which has since been replaced by the *Bonna Bagaggawale* ('Prosperity-for-All') program that is ostensibly at the heart of the President's continuing country wide tours. Both were political programs in inception and execution. Indeed, on a recent tour of the East, President Museveni has himself stated that the population at large thought that *Entandikwa* was a political reward, and consequently rates of repayment were very low. Despite assertions to the contrary, *Bonna Bagaggawale* appears to be suffering from similar problems.⁷⁴

⁷³ See Barya, 2007.

⁷⁴ See Chris Ocowun, 'SACCO Saboteurs Warned,' *New Vision*, August 25, 2008, at 5.

IV. DESIGNING A NEW RIGHTS PARADIGM FOR OLDER PERSONS

The preceding analysis allows us to delve deeper into an examination of the human rights issues that affect older persons. Central to such an exploration is the idea—enshrined in the UN Principles for Older Persons—that there is a need for fair, non-discriminatory treatment coupled with full respect for the dignity, beliefs, needs and the privacy of older persons. It also underscores the fact that older persons have the right to make decisions about their own care and about the quality of their lives. In the course of this research, it was evident that even though Uganda has largely avoided the institutionalization of old people—preferring to ensure that they live in their own homes—there are still numerous problems of a human rights nature that they are confronted with. The analysis which follows groups the rights issues under three heads, *viz.*, Protection, Participation and Image.

4.1. Protection, Participation and Image

It is quite possible to take the whole range of human rights—civil and political and economic, social and cultural—and assess these in relation to the situation of older persons. Not only is that not feasible within a research paper of this kind, but it would also be unwieldy and unwarranted. In reviewing the key human rights issues of concern to Uganda's older population, this research applied the protection, participation and image conceptualization referred to earlier. Grouped together they traverse all categories of rights—economic, social and cultural, as well as rights of a civil and political nature.

Protection refers to securing the physical, psychological and emotional safety of older persons with regard to their unique vulnerability to abuse and ill treatment. Aside from the issue of social security, the major concern of older persons in Uganda with respect to protection has been with issues of health (specifically HIV/AIDS), poverty, and nutritional status. Older persons in general suffer from impaired mobility caused by chiropractic problems of the bones (legs, back and upper limbs). They are also afflicted by hypertension, cancer, cataracts, diabetes, dementia, parkinsonism and other motor- and mental-related ailments. Inadequate and poor feeding is also a problem. Kikafunda and Lukwago examined the link between nutritional status and functional ability among individuals aged between 60 and 90 years and concluded that it is important to ensure that nutritional standards are upheld.⁷⁵

Flowing from the above, there are also questions relating to the treatment of older persons. Despite the claim that older persons are held in high esteem by the general public, there have been reported instances of their harassment, torture and even of their extra-judicial execution. A recent *New Vision* article details how the older people of Kavumba village in Wakiso district have been the subject of a systematic process of

⁷⁵ See Kikafunda & Lukwago.

⁷⁶ Joshua Kato, 'In Kavumba Village, the Old Have Become an Endangered Species,' *New Vision*, August 27, 2008 at 28.

elimination.⁷⁶ In public institutions such as hospitals and health centres, older persons are also subject to abuse, mistreatment and neglect. These practices range from the absence of attention to diseases which affect them, to the failure to adequately train healthcare personnel about the needs and sensitivities of older persons.

While psychiatric services in Uganda are generally rudimentary, they are even more so for older persons. The list of essential drugs does not include any which are necessary for the treatment of the ailments of the aged. To crown it all, no exemptions are made for older persons with respect to the payment for medical services or for the procurement of the drugs they need to address their ailments. The latter are particularly expensive in the Ugandan context. Moreover, while drugs for the aged may be available in urban centres, the same cannot be said to be the case in the rural health centres.

It is also apparent that older persons are not a uniform or homogenous category by any definition. There are older persons with disabilities, widowed older men and women looking after orphans; there are urban house renting older persons; older persons in remote rural areas, and older persons who live alone.⁷⁷ This implies that the protection needs of each of these categories are different, and that the strategies to address their plight need to be multifarious. For example, one of the issues raised in the research was the question of access to physical infrastructures for older persons, whether we are speaking about roads and buildings, or we are concerned with toilets or latrines and bathing facilities.

Standing a close second to the issue of healthcare are questions related to income and poverty levels. Najjumba-Mulindwa conducted an extensive study on the perceptions, experiences and policy issues that influence chronic poverty among older persons.⁷⁸ Several policy reports also address the issue, either in relation to Uganda's response to international platforms such as the MIPAA,⁷⁹ or in exemplifying the government's policy position on the issue.⁸⁰ In general, the older persons usually do not benefit from programs like *Entandikwa*, and the issue is whether *Bonna Bagaggawale* will be of benefit to them. The problem is compounded by the resistance of financial institutions to lend money to older persons. For example, the housing mortgage bodies generally place a cap of 65 years of age on access to their facilities.

Both from the perspective of the individual, as well as with respect to the family and the community at large, the issue of health care looms prominently in Older persons views about their well-being and protection. A number of questions arise as a consequence: to what extent has the government met its obligations in order to ensure that older persons are able to enjoy the highest attainable standard of health? How has the state addressed the numerous issues of protection—ranging from the abuse of older persons, to the lack of a firm institutional mechanism that addresses their rights—that arise in

⁷⁷ Mugambe at 1-2.

⁷⁸ Najjumba-Mulindwa, n.d.

⁷⁹ See Republic of Uganda, n.d.

⁸⁰ Mukasa & Masiga, 2003.

a discussion of the issue. What have communities themselves done in order to ensure the creation of an environment which is friendly to the needs of older persons?

Participation refers to the need to establish a greater and more active role for older persons in society. In its most broad categorization, participation refers in the first instance to voice, and to the ability to be able to articulate the needs and concerns which are most pressing. Voice is a central issue in ensuring that economic and social rights are realized. Without effective voice—as exemplified by the struggles of other marginalized groups such as women and persons with disabilities—the plight of the older persons will not receive similar attention. However, there are clear limitations on the extent to which older people are heard (or not) in contemporary Ugandan society.

There is no national council(s) for older persons, in contrast to those which exist for the youth, women, people with disabilities and for children. The provision for the representation of older persons at the local council level has been plagued by problems to the extent that in the last election many of these seats were not filled. Of all the groups and associations of civil society that operate in Uganda, those of older persons receive the least support. Very little use is made of older persons such as retirees, with pressure coming from below by youthful persons eager to fill the positions.

Image refers to the need to define a more positive, less degrading and discriminatory idea of who older persons are and what they are capable of doing. The draft national policy for older persons lays out the rationale for addressing this issue, recognizing “... that as people reach old age, they should enjoy dignified life and active participation in economic, social, cultural and political life in their communities.”⁸¹ The policy reiterates government’s determination to enhance the recognition of the contribution of older persons and to eliminate all forms of neglect, abuse and violence.

On the question of image, there is still a long way to go. For example, there is a prevailing assumption that the right to education for older people is a luxury. Moses Ali’s quest for a law degree when he was already in his late 60s was a puzzle to many: ‘he has enough money,’ or ‘why is he wasting his time?’ or ‘what will he use the degree for?’ were among the many commentaries one heard. For Ali, the quest was related to any number of ambitions that a younger person would have; he simply had always wanted to be a lawyer. The *New Vision* recently reported about how a 57 year old painter who had rejoined primary school was the subjected of teasing.⁸²

There are also many assumptions about older person’s sexuality. In some respects, older persons are considered to be ‘beyond’ sexual activity. Existing programs on HIV/AIDS largely target adolescents, the youth and the middle-aged, ignoring the fact that many older people remain sexually active while at the same time they are not necessarily well-informed about the dangers of unprotected sex. Without a doubt, there is a need

⁸¹ See Forward to MGI&SD, 2007, at i.

⁸² Nicholas Kajoba, ‘57-year-old painter goes back to school,’ *New Vision*, August 19, 2008.

to alter these perceptions of the needs and interests of older people. Issues such as menopause, impotence and other issues that may affect older people are still not given much attention. Finally, one of the most serious image issues concerning the older people is ensuring that they remain active and engaged. The issue of gender further complicates the situation.

4.2. Gender and Ageing

Udvardy and Cattell argue that there is little knowledge about the informal and formal roles of older women in contemporary African society.⁸³ Needless to say, such knowledge is crucial in order to comprehend issues such as power and personhood, and their impact on the extent to which the rights of older women are secured. There is no doubt that there are significant issues that arise with respect to the question of gender and ageing.⁸⁴ In this respect, it is important to focus on both the issue of men and women and on their social and economic relationships as they grow older. Ageing men have health concerns based on gender. The WHO has for example, pointed out that the gender-related concept of ‘masculinity’ can exacerbate men’s risk-taking and health problems and could also limit men’s access to health care.⁸⁵

The National Policy points out the truism that age affects women and men differently. However, aging “... impacts more on older women than men due to the different roles.”⁸⁶ Cultural practices on property inheritance and ownership affect the livelihoods of older women more adversely than older men.⁸⁷ As a basic matter, the general household and community division of labour between the two genders leads to a distinct manner in which their livelihoods are invested. One study has pointed out that women,

*... spend most of their income on household necessities and education of grandchildren; 9 percent are caring for sick young adults living in the household; 22 percent are staying with grandchildren whose own parents are either dead, or away in the cities on a long-term basis; 20 percent take care of children six years or younger, and 46 percent take care of children between the ages of six and 18.*⁸⁸

The above quotation presupposes that older women actually earn a livelihood. Most of them don’t. To the extent that they do, it is an extremely precarious one. In the first instance, the majority of formal employees are men. Leaving aside the well-known problems in terms of timely payments, existing pension schemes—the NSSF and the Public Service—are heavily gendered. In other words, employment-based social security not only focuses on a very small percentage of the total population, but it also effectively excludes the majority of women from its ambit.

⁸³ Udvardy & Cattell, 1992.

⁸⁴ See Aboderin, 2006.

⁸⁵ WHO, 2001.

⁸⁶ MGL&SD, 2007, at 3.

⁸⁷ Baryayebwa interview.

⁸⁸ See, Report in *afrol news*, December 1, 2007, accessed at: <http://www.afrol.com/articles/14902>

There is an additional issue that arises for older women. While it may be true that women predominate in the informal sector, this does not necessarily imply that they have more control over their resources. It is also clear that a good majority of women are engaged in unpaid labour, catering to the household and the community, without monetary reward or even recognition. Again, women also predominate in the subsistence sector, but the benefits of their labour are often siphoned off by the men. What this means is that when aging sets in, despite having engaged in several income-generating activities while still young, when they age, the problems set in:

Older women generally suffer most from chronic poverty and lack of resources. They are often in need of care themselves, but face, sometimes unaided, the costs and emotional stress of nursing terminally ill relatives, paying for burials and the financial and practical difficulties of bringing up orphans—including payment of school fees.⁸⁹

What the above means is that there is very little systematic focus on the situation of older women. This situation is compounded by the lack of attention to the issue by mainstream women's rights groups as well as by women representatives in parliament and other state bodies, not to mention within the workplace and within institutions representing organized labour.

A final point on the issue of gender and aging needs to be made with respect to the situation of older persons in conditions of displacement, specifically the recent experience of the people of Northern Uganda. A great deal of attention has focused on the question of Gender and Sexual Based Violence, and on its impact particularly on young girls and middle-aged women. Unfortunately, older women and men are left out of much of the analysis. And yet, they face numerous problems in terms of accessing land, dealing with discriminatory customary practices and facing threats and pressures from male relatives. Special attention thus needs to be focused on the situation of older women in the post-displacement context.

4.3. *Assessing the Institutional and non-state mechanisms for Older Persons*

Having surveyed both the legal and policy framework and the most important general concerns facing older persons, it is necessary to turn to an examination of the main actors and their role in influencing and implementing that framework. Who are they and how successful have they been? Secondly, to what extent do these actors adopt a RBA in their interventions and how much do they specifically focus on the issues affecting vulnerable categories among older people, particularly women, persons with disabilities and those in emergency and humanitarian situations such as internal displacement?

A. *State Mechanisms*

The central state body concerned with social welfare matters in general is the MGL&SD.

⁸⁹ Fouad, at 13.

A Department of Disability and Elderly Persons was established in 1998, and it reports to the Minister of State in charge of Disability and the Elderly. The Department has been the main driving force behind the various government interventions on behalf of older persons, and particularly in the formulation of policy and attempting to mainstream attention to the issue throughout the various state mechanisms. The main approach of the Department is to bring on board the key stakeholders within government, including actors from the ministries of Education, Public Service, Health and Finance as the most prominent sectors in which issues affecting the situation of older persons are located.⁹⁰ A twelve person cross-ministerial working group raised awareness of how issues of aging impact in every sector of policy.⁹¹

Aside from policy formation and liaison with other government bodies, the Department has attempted to address the lack of awareness and the overall apathy towards the rights of older persons. A number of departmental staff have been trained in the discipline of Gerontology at the University of Malta.⁹² The Nsamizi Institute of Social Development has recently introduced a six week certificate training course in the area, targeting government institutions and NGOs involved in implementing programs for older persons in Uganda.⁹³ However, not a single university in the whole country offers the course, or even aspects of it, despite efforts being directed towards this goal.⁹⁴ Efforts to persuade the Medical School at Makerere University to teach Geriatrics have so far not proven very successful. Obviously, in order for health professionals to be able to effectively address the needs of older persons, they require a minimum level of training on those diseases which affect older persons most, and also on the whole process of ageing and its implications for health.

There is nevertheless a need to look beyond central state structures and to consider the situation at the grassroots level. Under the system of local government that has been in operation in Uganda for the past several years, many services of relevance to older persons—such as healthcare, education and access to water—have been decentralized. Local councils thus play a significant role in ensuring access to these services, a central concern within the human rights paradigm. The question is whether these bodies are appropriately equipped with the tools and the knowledge in order to ensure that they are effectively addressing the situation of older persons, taking into account issues of non-discrimination, equality and effective participation. As has been pointed out with respect to the issue of neglected diseases, vehicles for community participation (particularly Village Health Teams) can play a vital role in acting as key institutions in improving community interventions in general, and specifically in relation to the situation of older persons.⁹⁵

⁹⁰ Baryayebwa interview.

⁹¹ Heslop, 2005, at 9.

⁹² Baryayebwa, at 7.

⁹³ Id.

⁹⁴ Baryayebwa interview.

⁹⁵ See Hunt, *op.cit.*, at 13.

B. Non-governmental Actors

There are a number of non-governmental actors who focus on the situation of older persons, ranging from secular to religiously-backed institutions. The most prominent of them is the Uganda Reach the Aged Association (URTAA), established in 1991 and currently affiliated to the largest international non-governmental group concerned with older persons, HelpAge International.⁹⁶ Its mission is to work and advocate for the improved quality of life and the preservation of the dignity of older persons in Uganda. URTAA has five main themes under which its work is organized, namely capacity building (including training and education); livelihood support (particularly for income-generating activities); health and care; HIV/AIDS and Advocacy. The organization has affiliates in 53 districts, mainly outside the northern conflict zone, but plans are underway for beginning work in the Acholi sub-region of the country.⁹⁷

Other NGOs include The Aged Family Uganda (TAFU), Matunda ya Wazei and Reach One, Touch One Ministries (ROTOM). TAFU began work as a community based organization in 1999, transforming into a non-governmental organization two years later.⁹⁸ It presently operates in the five districts of Kampala, Wakiso, Luwero, Masaka and Mukono, and is a founding member of a National Network of Older Persons Organizations in Uganda (NNOPU).⁹⁹ TAFU operates a hospital home care service and it recruits and trains nursing aides in older person care.¹⁰⁰ It also oversees a number of income generating projects for the support of older women (including poultry, goat and cattle rearing, piggeries and mushroom growing). The organization also recently undertook a case study of the situation of older persons, which it used as the basis for a one day meeting of six groups to build consensus on future priorities for action in response to the survey findings.¹⁰¹

Taken together, it is quite clear that non-governmental work on the situation of older persons has brought some attention to bear on the issue. However, it lacks the same vigor that is applied to human rights violations such as torture, illegal detention or the violation on the right to free speech. One hardly hears of campaigns or demonstrations on the rights of older persons; public interest litigation (albeit undeveloped with respect to human rights in general) is not adopted as a strategy for the assertion of the rights of retirees or pensioners, and very little public knowledge exists about the situation of older persons.¹⁰² Very few people even know that October 1 of every year is the International Day for Older Persons. In a nutshell, the rights of older persons remain marginal, contested and lacking in resources.

⁹⁶ Interview with Justus Kizza Wamala on August 21, 2008.

⁹⁷ Id.

⁹⁸ Interview with Prisca Kabuga, personal assistant/secretary TAFU.

⁹⁹ See TAFU Report, 2005/2006.

¹⁰⁰ Kabuga interview.

¹⁰¹ See Nyanzi, *op.cit.*, at 1.

¹⁰² Perhaps exceptions have been the cases brought by John Matovu; one against the NSSF and another against the Government of Uganda regarding retired personnel of the Uganda Army.

But the problem is not simply that those groups that specifically address the situation of older people are poorly equipped to do so. None of the mainstream human rights organizations—whether those dealing with general issues or those who look at specific questions such as the rights of women—address the plight of older people in any consistent fashion. A review of the annual reports of organizations such as Foundation for Human Rights Initiative (FHRI), FIDA-U or the Uganda Law Society (ULS) reflect scant attention to this category of individuals. To the extent that they do, they lump them together with the other ‘vulnerable groups’ who are the subject of concern. What this means is that even for those who are supposedly at the vanguard of ensuring that human rights are fully observed by the state, there is a discriminatory approach to the rights of older persons.

Ultimately, action in relation to improving the human rights of a particular category of people is also dependent on the amount of knowledge that exists with respect to that group. The present investigation found that there is a general dearth of research on the issue of aging in Uganda, in comparison to work on any other category of vulnerable group. Furthermore, most of the literature focuses on the question of poverty and aging, and even then it does not adopt a rights-based framework of analysis to the issue.¹⁰³ As already pointed out with respect to the discipline of Gerontology, there is a need for much more concerted research on the human rights issues affecting aging. That research must be undertaken by non-governmental human rights, academic and research institutions.

C. The Role of Parliament and other Constitutional Bodies

It is important to note that the principle of representation for all vulnerable groups/minorities has become firmly enshrined within Uganda’s body politic. Thus, special representation exists for women, the youth, and for workers, as well as for people with disabilities. Each of these groups also has special state representation either through national councils or through elected representation at local government levels. Of the groups recognized as vulnerable in Parliament, it is only older persons who do not have special representation, although they are represented in local councils.¹⁰⁴ What does this mean?

In the first instance, while there are indeed older persons represented in the House, they are there on their individual merit. In other words, their primary alliances are to their parties and to their individual constituents, whether geographical or otherwise. Secondly, given that so much of the business of parliament is organized around caucusing, there is no Older Persons’ caucus. As such, there is no institutionalized and corporately organized approach to issues that affect older persons. As a consequence, institutionalized ageism remains intact. Thus, for example, in the recent outcry over the dubious transactions

¹⁰³ See, for example, Mugambe, 2006.

¹⁰⁴ See Najjemba, *op.cit.*, at 23. Note is nevertheless made of the fact that there are still deficiencies in the manner in which local council representation is actually effected.

at the National Social Security Fund (NSSF), no direct strategic linkage has been made with the plight of older persons. Needless to say, NSSF pensioners—whose rights are trampled on as a matter of routine—are one of the most important members of the older community.

The absence of an organized force representing the interests of older persons in Parliament obviously has many other implications. First of all, parliamentary bills are not systematically scrutinized in order to establish whether they address age-discrimination. In other words, there is no ‘ageism-audit,’ as is done with respect to issues of sexism, disability or discrimination against the youth and children. Secondly, there is no process of strategic planning which would methodically highlight the concerns of older persons, whether within the budgeting process or in committee work or in respect of strategically ensuring that these issues are given more attention. Finally, there is no doubt that political representation has greatly raised the profile and image of those marginalized groups that have been able to secure it. As already argued, since older persons need to be active participants in the development process, and they face a particular problem around the issue of image, improving their representation in Parliament would be a positive step towards addressing this matter. The issue of representation was recently reignited following the celebration of Elderly Persons Day on October 1, 2008, and the submission of a report to the Parliamentary Committee on Equal Opportunities.¹⁰⁵ The general response of the Public at large has nevertheless not been positive.

Concerted attention to the situation of older persons is absent from the major activities of the main constitutional body designated with the oversight and implementation of human rights in the country—the Uganda Human Rights Commission (UHRC). None of its annual reports has thematically taken up the issue and there is no programmatic or strategic indication that there will be any serious effort to address the rights of older persons specifically. Instead, the issue of older persons is lumped together with that of other ‘vulnerable’ groups. The result is that the focus of the Commission is much more on the others, as opposed to being on older persons. All in all, the institutions of the state are yet to internalize the struggle against institutionalized ageism in any serious fashion. This means not only that the EOC becomes all the more important in terms of strategic thinking on how to ensure that the rights of older persons are given full attention, but also that the various other public agencies concerned with the enforcement of human rights are duly sensitized on the issue.

¹⁰⁵ Parliament urges Government to Institute Policy on the Elderly; accessed at: http://www.parliament.go.ug/index.php?option=com_content&task=view&id=278&ttmid=65. See also, Fred Muzaale, ‘Museveni Wants “Ageing” Taught in Schools’ *The Daily Monitor*, October 3, 2008 accessed at: <http://@//africa.com/stories/200810030186.html>

V. CONCLUDING REMARKS

The analysis above allows us to make several concluding observations about the human rights situation with respect to older persons. While there has been some progress on the issue, a great deal remains to be done, especially in the areas of Participation, Protection and Image that we have outlined in this study. The issues and causes underlying the disadvantages of older persons remain ill-defined. Consequently, the solutions which are arrived at lack comprehensive grounding in the livelihood conditions of older persons.

Thus, a principle point of action is with respect to the adoption of the draft national policy. There is no doubt that the policy will provide a more solid foundation on which the rights of older persons can be based. This would establish the basis for more concerted and directed action on the part of the state in meeting its human rights obligations with respect to this category of persons. Following from this, would be the enactment of specific legislation—following the South African model—which would ensure a firm basis on which the protection of the rights and autonomy of older persons is secured. The government should give more serious attention to the formation of a national council for older persons, as well as to the issue of representation in Parliament. This would go some distance in addressing the issue of effective participation on the part of older persons.

Non-governmental actors also need to begin strategically thinking about targeting the up-coming EOC and making sure that the issue of age-based discrimination is firmly placed on the agenda of the Commission. Attention should also be drawn to the proscription in the law against the Commission investigating, “... any matter involving behaviour which is considered to be—(i) immoral and socially harmful, or (ii) unacceptable, by the majority of the cultural and social communities in Uganda.” As we have pointed out, such limitations may have an adverse impact on the investigation of matters concerning age-based discrimination, particularly where older persons are accused of practices such as witchcraft.

There is a general and crying need for the overall reform of the Pensions sector—both that run by the NSSF as well as the Public Service system. In the process of reforming the social security sector—an issue which has recently been comprehensively addressed by the Minister of Finance¹⁰⁶—serious consideration should be given to the establishment of a Retirement Benefits Authority to regulate both the public and the private elements of the sector, and to ensure that pensioner’s life-long savings are not committed to questionable schemes, e.g. the new NSSF Twin Towers, and the dubious purchase of a Cabinet Minister’s land at Temangalo at inflated prices. This authority would ensure that investment schemes are managed by professionals; that there is sufficient oversight and accountability (of a non-political nature); that administrative costs are kept to the

¹⁰⁶ Suruma, 2007.

necessary minimum, and that management is entrusted to autonomous trustees and not political appointees. Serious consideration should be given to ratification of Convention 102, in order to provide a legal foundation for social policy in the country.

Even in the absence of parliamentary representation, there is no doubt that the legislative process is a fundamentally important site for the struggle to ensure that the human rights of older persons are given full respect and attention. This entails periodic and comprehensive review of parliamentary bills in order to consider and ensure that issues of non-discrimination on the basis of age are covered. Such action—which necessarily entails more engagement by the non-governmental community concerned with the situation of older persons—needs to be accompanied by more comprehensive advocacy on the part of organizations that have specifically taken up the brief of advocacy on the rights of older persons.

There is also a need to improve the linkages with mainstream human rights organizations in a bid to compel them to take up the issue in a more comprehensive fashion. Mainstream human rights and women's rights organizations should begin to incorporate analyses and activities relevant to the situation of older persons into all their activities. Likewise, groups specifically working on older persons should make sure that mainstream human rights organizations get involved in activities such as the International Day for older persons which is celebrated on October 1 of every year.

Turning to the area of protection and image, there are actions which are both proactive and those which are remedial. Among the former, it is necessary for the state to give appropriate attention to, and support initiatives in the field of Gerontology and devote more resources to the application of gerontological research and study to both macroscopic (government policy and planning) and microscopic (e.g. health, shelter and institutional) mechanisms. Geriatric care needs to be mainstreamed into the teaching of Medical School subjects. Finally, in this respect, there is a need to introduce a free medical scheme for older people of 65 years and older, covering both consultation and drugs. While the financial outlay may not be significant, there is no doubt that such an initiative would have a serious impact on the livelihoods of older persons. Ultimately, it would also send a positive message to all Ugandans; older persons are a great resource; they have made an important contribution to socioeconomic development in the country, and we all have an obligation to ensure that they live out the remaining period of their lives in dignity and respect.

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