



MICOP-CBO

Supporting older persons & families

Thika Mangu Rd | Box 96-01028, Gatukuyu.

E-mail: micopageing@gmail.com

TEL: 0724 463 953 0796 911 766

UNIVERSAL PERIODIC REVIEW FACTSHEET SUBMITTED FOR RESPONSE BY KENYA THEME; RIGHTS OF OLDER PERSONS AND AGEING

**SUBMITTED BY; MANGU INTEGRATED COMMUNITY PROJECT
SUPPORTED BY HELPAGE INTERNATIONAL, AFRICA**

(for further information or clarification, kindly contact Michael Kimuhu , MICOP CBO; Thika Mangu Highway, P.O.Box 96- 01028 Thika, Kenya. Tel +254- (0)724 463 953, E-mail: micopageing@gmail.com, and Roseline Kihumba, HelpAge Africa Off Shanzu Road Westlands . P.O Box Nairobi Kenya. Tel +254 725669241, Email: roselinekihumba@helpage.org

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**UNIVERSAL PERIODIC REVIEW FACTSHEET FOR KENYA 3RD CYCLE
THEME: RIGHTS FOR OLDER PERSONS AND AGEING**

KEY WORDS: Older persons, elder abuse, cash transfer, social protection health care, inclusion.

A. EXECUTIVE SUMMARY

The Constitution of Kenya (2010)¹ under the bill of rights Article 43 provides that every person has the right to the highest attainable standard of health, which includes the right to health care services, including reproductive health care; to accessible and adequate housing, and to reasonable standards of sanitation; to be free from hunger, and to have adequate food of acceptable quality; to clean and safe water in adequate quantities; to social security; and to education.

Further, the constitution 2010 provides that the State shall provide appropriate social security to persons who are unable to support themselves and their dependants. The 2010 Constitution obligate the state to address the issues of the vulnerable groups in society and specifically it commits in Article 57 to take measures to ensure the right of older persons to fully participate in the affairs of the society, pursue their personal development, to live in dignity and respect and free from abuse and to receive reasonable care and assistance from their families and state.

The Universal Declaration of Human Rights Article 1 indicates that ‘all human beings are born free and equal in dignity and rights’. However, age discrimination and ageism continue to persist at family, society and institutional levels and is a great barrier to their inclusion in political, social, economic and cultural rights. The rapid expansion of population ageing and people living longer will further exacerbate the human rights situation of older people. The number of older persons in Kenya 60 years and above expected to increase from 2.2 million (4.5% of the population) to 5.5 million (9.6% of the population by 2050. The legal, policy and programmatic environment need urgent modification to cope with older people’s longevity, capacity, and complex vulnerabilities².

Older people in Kenya experience difficulties in accessing basic services such as health and care services, property rights, mobility, justice, and livelihood opportunities. Inadequate data

¹ The Constitution of Kenya.

², Kenya Economic survey 2019

on older people has been a great setback in supporting the inclusion of older people in national and county development frameworks in all spheres of social-cultural, economic and political life. Ensuring equality and inclusion of every member of society regardless of their age, gender and abilities is paramount for prosperity. To this end, this factsheet aims to highlight challenges faced by older persons and recommended actions by the Kenya Government.

B. NORMATIVE AND INSTITUTIONAL FRAMEWORK FOR THE PROMOTION AND PROTECTION OF RIGHTS OF OLDER PEOPLE

Kenya is party to the international and regional human rights instruments covering the protection of human rights of older people; this includes but is not limited to: Convention on the Elimination of Racial Discrimination (CERD) of 1965; International Covenant on Civil and Political Rights (ICCPR) of 1966; International Covenant on Economic, Social and Cultural Rights (ICESCR) of 1966; The Convention on the Elimination of all Forms of Discrimination against Women (CEDAW) of 1979; United Nations Plan of Action on Ageing of 1982; United Nations Principles for Older Persons of 1991; United Nations Proclamation on Ageing of 1992; Madrid Plan of Action on Ageing (MIPAA) of 2002;

Kenya as a State is obliged to uphold the principles of human dignity, equality and non-discrimination for all individuals and groups including those that have over time faced undue discrimination such as older persons, women, and children, persons with disabilities, minorities and indigenous communities, among others. However, Kenya is yet to sign and/or ratify several fundamental human rights instruments which further provide protection mechanisms against violations including the Protocol to the African charter on human and peoples' rights on the rights of older persons in Africa.

Kenya as a state is party to the African Union Policy Framework and Plan of Action on Ageing (2002)³ which in paragraph 4; 1 states that "*Member States recognize the fundamental rights of Older Persons and commit themselves to abolish all forms of discrimination based on age; that they undertake to ensure that the rights of Older Persons are protected by appropriate legislation; including the right to organise themselves in groups and to representation in order to advance their interests*";

Section 2.2.11 of the African Union Social Policy Framework (2009) calls for the African Union member states to enable implementation of all the tenets of the AU Policy Framework and Plan of Action on Ageing (2002). Kigali Declaration on Human Rights (2003); Paragraph 20, which Kenya as a state is party to; "*calls upon States Parties to develop a Protocol on the protection of the rights of the elderly and persons with disabilities*".

Progress by Government of Kenya in improving the rights of older persons

During the 2nd UPR Cycle, the following recommendations were forwarded to the Government of Kenya and accepted to:

- Continue strengthening social protection programs developed on behalf of its people, especially the population most in need.

- Undertake, policy, legislative, judicial and administrative measures for social protection for vulnerable groups in the country including children, persons with disabilities, youth, women and older people under social security for vulnerable groups Recommendation numbers 142.70, 142.145, 142.150, 142.159, ESCR; REC 28, 30, 36, CRC; 56 g & h, CRPD; 14 B and 50a.⁴
- In the last decade, Kenya has made great steps in improving the legal and policy environment for older persons in the following areas:
 - National Social protection Policy of 2012 finalized.
 - Approved National Ageing and Older Persons' Policy 2019
 - The Health Act 2017 – Article 4 of the Health Act 2017⁵ provides that It is a fundamental duty of the State to observe: respect, protect, promote and fulfill the right to the highest attainable standard of health including reproductive health care and emergency medical treatment by *inter alia* - developing policies, laws and other measures necessary to protect, promote, improve and maintain the health and well-being of every person; ensuring the prioritization and adequate investment in research for health to promote technology and innovation in health care delivery; ensuring the realization of the health related rights and interests of vulnerable groups within society, including women, older members of society, persons with disabilities, children, youth, members of minority or marginalized communities and members of particular ethnic, religious or cultural communities.
 - Care and Protection of Older Members of Society Bill (2018) passed by Parliament and awaits Cabinet approval. This is a Bill for an act of Parliament to give effect to Article 57 of the Constitution; to provide a framework for the care of older members of society; to establish a framework for the empowerment and protection of the elderly and the maintenance of their well-being, safety and security; and for connected purposes.
 - The Government continues to invest in the Sector and a lot was achieved in the MTEF period 2015/16 - 2017/18. Key among them: free primary healthcare, promised health insurance subsidy for the elderly and disabled, universal health coverage to four counties on a pilot basis, i.e. Kisumu, Nyeri, Isiolo & Machakos; Free Maternal Healthcare programme ; cash transfers for orphans and vulnerable children (OVC); transfers to the elderly persons and persons with severe disabilities; The number of beneficiaries under the older persons' cash transfer Program is expected to increase by 5.1 per cent from 792,268 in 2017/18 to 833,000 in 2018/19.
 - Funds allocated to older persons increase by 25.1 per cent from KES 14.5 billion in 2017/18 to KES 18.1 billion in 2018/19. Similarly, direct cash disbursement increased by 47.5 per cent from KES 11.2 billion to KES 16.6 billion during the same period. Cash Transfer ⁶ Program for Older Persons targets persons aged 70 years and above.

Despite these achievements, older persons continue to experience many challenges and there is need for intensified and purposive interventions that are holistic to ensure the political, economic, social and cultural rights of older persons are provided and protected.

C. ISSUES/CHALLENGES AND RECOMENDATIONS

1. Many older persons are faced with prevalent forceful eviction from houses and land

With new infrastructural developments by the National and County Governments, many citizens including older persons and people with disability are being evicted from residences especially in slum areas without adequate notice and alternative housing.

Recommendation: The State should enact Housing Rights legislation and comprehensive legislation for the regulation and prevention of forced evictions and review housing policies to ensure that they address the needs of older persons.

2. Ageism and Discrimination against Older Persons

Ageism and age discrimination is widely tolerated resulting to negative perception and attitudes towards old age and older people and is rarely challenged. In some parts of the country, older people are accused of witchcraft because of age and gender stereotypes are common feature. Many older people have been forced out of their homes or even murdered. Ageism results to discrimination, neglect, abuse and violence on older people as well their exclusion in policies, programmes and services.

Ageism and age discrimination remains visible in families, society and institutions denying older person full and effective participation in society and decision making process. Older people continue to be harassed, intimidated, and their rights violated. Many cases involving older people take unnecessarily too long before conclusion with many older persons having to die before they get justice. This is because of stereotype and negative attitude and lack of efficient legal, policy and practice guidelines to protect the rights of older people.

As a result, older women and men experience violations of their rights at family, community and institutional levels. Older people experience multiple discrimination because of accumulated inequalities across their life and intersectionality of age with disability, ethnic origin, where they live, literacy levels, gender and poverty among other aspects experienced throughout their lives can lead to high levels of poverty, discrimination, abuse and marginalization in old age. Age is a barrier to accessing services including employment forcing older people to retire at the age of 60 despite them being capable to holding full employment or providing them with reskilling programmes. Older women are affected the most as they live longer than older men.

Recommendation: The Kenya Government should take measures to prohibit all forms of discrimination against older persons. The Kenya Government urgently review existing legislation in order to ensure that older persons receive equal treatment and protection; ensure the provision of legal assistance to older persons in order to protect their rights; and ensure that law enforcement organs at all levels are trained to effectively interpret and enforce policies and legislation to protect the rights of older persons.

3. Right to the highest attainable standard of health, which includes the right to health care services, including reproductive health care;

Despite having well defined National Health Policies, there has not been a breakthrough in improving the health of many segments of Kenya's population. Affordability and physical accessibility remain major hindrances to quality healthcare. Kenya health delivery system lacks

geriatrics and gerontology health programs - the specific health components for older people's health issues.

Recommendation: Government of Kenya to institute a distinct structure for older people in Kenya that will spearhead and performance and data collection indicators that have to be delivered to respond to the needs of older people and support the development of core competence among all sectors.

4. Social Protection:

Although Kenya Government has put in place the cash transfer provision for older persons, many eligible older persons have not been included in the programme. Employees are reaching retirement age without knowledge and skills and even preparedness to face the challenges of this life transition thus increasing the population in need of social assistance.

Recommendations: The Government of Kenya should adopt measures to encourage the development of awareness raising programmes to educate the younger population groups on ageing and Older Persons to combat negative attitudes against Older Persons; and develop training programmes that prepare Older Persons for the challenges faced in old age, including retirement.

5. Access to mobility;

Lack of adequate, accessible and affordable transport creates a real barrier to older women and men to access basic social services. Older persons face challenges when trying to get access to services in cities and urban areas. There are inadequate non motorized pathways, vehicle drivers do not obey pedestrian crossing rules, most buildings do not have age friendly accesses, and public transport service vehicles are not people with disability or age friendly.

Recommendation; Kenya Government should take measures to ensure that Older Persons have access to infrastructure, including buildings, public transport without harassment and are accorded seating priority and ensure public transport is an attractive alternative for older people, while considering all the elements of the public transport

6. Lack of adequate education and skills among older persons:

Acquiring IT skills is important to older people. They want to use smart phones, computers and the internet to withdraw money, pay their bills, book doctors' appointments, do shopping and bank online, and stay in touch with family and friends. Older people need more IT skills to be able to keep abreast with the world and to communicate digitally with public authorities.

Recommendation; The Government of Kenya should provide opportunities for older persons to have access to education by putting in place infrastructures, personnel and finances for adult education and training in Information and Technology skills.

Some of the National legal instruments violated:

- National Hospital Insurance Fund (NHIF) Act No. 9 of 1998
- Social Assistance Act No. 24 of 2013.
- Persons with Disabilities (PWD), Act 2003.
- Retirement Benefit Act of 1997

- The Health Act 2017
- The National Policy on older persons and Ageing 2014
- National Social Protection Policy 2012.