



Kenya National Commission on Human Rights

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BRIEF ON THE KENYA'S ENFORCEMENT OF THE RIGHTS OF OLDER PERSONS

1. The Kenya National Commission on Human Rights (KNCHR) is an independent National Human Rights Institution established by the Kenya National Commission on Human Rights Act 2002. The KNCHR is broadly mandated with the promotion and protection of human rights in Kenya. Further, the KNCHR also plays a watchdog role over the Government in the area of human rights and provides a leadership role in moving the country towards a human rights respecting state.
2. The functions of the KNCHR are stipulated in section 16 of its constitutive act and include investigation (on its own initiative or upon complaints made), creating public awareness on human rights and recommending to parliament effective measures to promote human rights while also ensuring government compliance with international obligations under human rights treaties and conventions. Since its establishment the KNCHR has successfully carried out various investigations and research studies.
3. One of the core functions of the KNCHR as stipulated in section 21 of the KNCHR act is "to submit an annual report to the President and to the National Assembly through the Minister and may at any time submit special reports to the President and to the National Assembly on any matter... and shall include an overall assessment of the Commission of the performance of the Government in the field of human rights during the period under review." Within this context the KNCHR published a special report titled "*Growing Old in Kenya: Making it a Positive Experience (2009)*" whose key focus was the process of growing old and the rights issues along that whole spectrum of life.

THE HUMAN RIGHTS SITUATION OF OLDER PERSONS IN KENYA:

4. The KNCHR wishes to make the following submissions further to your letter dated 24th February 2011. The Government through the Ministry of Gender, Children and Social Development continues to implement various initiatives and programmes aimed at enhancing realization by older persons of their rights. The study by the KNCHR mentioned above highlighted various challenges faced by older persons in Kenya which include :

- i) ***Negative Perceptions and Attitudes from Family and Community Members:*** The study identified that ageing is viewed negatively associating it with sickness, physical incapacitation, and general suffering. Old age is viewed as problem for family members due to the need for care which in itself creates a burden upon the family. In its report the KNCHR advocates for early saving particularly among the youth as a way of ameliorating the inevitable challenges that come with old age.
- ii) ***Neglect and other forms of physical and/or mental abuse:*** Elderly abuse by children, family, community members as well as the society in general is not a rare phenomenon in Kenya. This is notwithstanding the provision by the Principles for Older Persons on the need for “dignity and security and freedom from exploitation and physical or mental abuse.” Older persons in some of the regions have been targeted and subjected to torture and extra judicial executions on allegation of practicing witchcraft. There are also a few reported cases of older women who have been sexually abused, molested and raped; however due to shame and trauma many victims hesitate to report such cases. Further neglect of the older members of society by family members has resulted in them residing in deplorable housing conditions and isolation.
- iii) ***Inability to access credit:*** The report further points out that most credit and investment programs in Kenya have inbuilt discriminatory practices through age-barriers; for example housing mortgages eligibility is for instance are pegged on an applicant’s expected years of active employment. The older a person becomes the less eligible they become in accessing bank financing.

- iv) ***Access to healthcare services and facilities:*** The report found that no special health care programs for older persons to existed. The right to access health care in Kenya particularly by older persons is characterized by obstacles especially those provided by private insurance companies. Several of them have 60 (Sixty) as the maximum age of coverage which clearly discriminatory against older persons. Further, the report identified that programs related to HIV/AIDS hardly focus on older persons who are erroneously adjudged as sexually inactive. It is their care-giving role to HIV/AIDS orphans that is often focused on. Notably however since the KNCHR publication, the Government has adopted the National Policy on Older Persons and Ageing which addresses the role of older persons as care givers and as persons living with HIV/AIDS; the same policy also saw the start of a program for monthly cash transfers to poor older persons aged above 60 years. The older persons are also affected by poor health and nutrition resulting as a result of poverty.

LEGISLATIVE, POLICIES AND PROGRAMMES FOR OLDER PERSONS:

i) Legislation:

5. Kenya is a party to various international and regional instruments that outlaw discriminatory practices on all grounds and which call for protection and equal treatment for all members of the society regardless of race, colour, sex, gender, religion or other status. These include the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights and the African Charter on Human and Peoples Rights.
6. The **Bill of Rights in the Constitution of Kenya** provides in article 19 for the recognition and protection of “human rights and fundamental freedoms in order to preserve the dignity of individuals and communities and to promote social justice and the realization of the potential of all human rights.” Article 27 provides for equality for all which includes “full and equal enjoyment of all rights and fundamental freedoms” for all without discrimination by the State or by individuals either directly or indirectly on any ground including age which in this case includes older members of society.

7. More specifically on the rights of older members, and for the first time in the Constitution of Kenya, the bill of rights contains an article that specifically provides for the protection of the rights of the older members of society. Article 57 provides:

“The State shall take measures to ensure the rights of older persons –

(a) to fully participate in the affairs of society;

(b) to pursue their personal development;

(c) to live in dignity and respect and be free from abuse; and

(d) to receive reasonable care and assistance from their family and the State.”

ii) Policies:

8. In addition to the Constitution, the **National Policy on Older Persons and Ageing**. In this Policy, Kenya accepts the definition of older persons as 60 years of age in conformity with the United Nations and the African Union definition. The Policy is aimed at facilitating mainstreaming the issues of older members of society. The Policy addresses the concerns and challenges highlighted above among others including *active participation of older persons in society and development; access to information, education and training; older persons and HIV/AIDS; housing and living conditions of older persons; neglect, abuse and violence; social security and protection.*

9. The Government also has a **draft National Social Protection Policy** which is aimed at mitigating the adverse effects of poverty in Kenya through putting in place a comprehensive policy framework and well coordinated programmes designed to promote the well-being of those living in extreme poverty and vulnerability many of whom include the older persons in society. The policy is yet to be adopted by Cabinet.

iii) Programmes:

10. The Government has put in place various initiatives which although some are not solely geared to the rights of older persons, by their mere existence, they in one way or another also benefit the older persons in society. These include:

I) *National Health Insurance Fund (NHIF):* This is hospital insurance where employees in the formal sector compulsorily contribute to, based on salary scale, while those in the informal

sector can make also make voluntary contributions. It enable the contributor to access medical treatment on admission and older persons can continue contributing to the scheme even after retirement from active service.

- II) *National Social Security Fund (NSSF)*: This provides social security to workers in both the formal and informal sector based upon their contributions and interest accrued. The NSSF operates a provident fund scheme that covers workers in both sectors and is aimed at encouraging a saving culture. Older persons can access their contribution on retirement at the age of 60.
- III) *Pension Schemes*: These are governed by the Pensions Act of Kenya 2004 where persons in formal employment are enabled to receive their pension benefits on retirement. Such schemes assist older persons in their old age once they cease formal employment. It however is applicable only to persons in formal employment; hence other members in the informal sector have been forced to rely on support from family.
- IV) *Cash Transfer*: In 2009 the Government initiated a pilot cash transfer project targeting the very poor older persons in society. This process however is to be regulated by the National Social Protection Policy which, as mentioned elsewhere, awaits Government adoption and hence the project is yet to be fully rolled out throughout the whole country.
- V) *Adult Education*: Adult Education in Kenya is governed by the Board of Adult Education established under the Board of Adult Education Act of Kenya (cap 223). The Board is tasked with among others the formulation of courses and syllabuses for adult and continuous education as well as identification and assessment of the need for new developments in adult education. This initiative allows for older members in society to access continuous education. Further, the Universal Free Primary education which started in 2003 also allows for entry of older persons into regular primary school education.

DATA COLLECTION, UPDATE AND ANALYSIS:

11. The Statistics Act of Kenya 2006 provides that the Kenya National Bureau of Statistics (KNBS) “shall collect any statistical information estimates or returns” on matters such as on Population and may

conduct population and housing Census and surveys at national or local level. The recent 2009 Census indicates that older persons in Kenya comprise over 1.4 million persons. The KNBS is the body that collects, updates and analyzes data which is disaggregated into various grounds including age, disability and gender among other grounds.

Conclusions

12. The government has taken some few steps towards greater protection and fulfillment of older peoples rights. The new constitutional framework is expected to provide greater impetus to programs specifically designed to address issues of older persons. Commendably also, a few private insurance companies widened health coverage to incorporate persons older than 60 years. In developing guidance for implantation of the Bill of Rights, the National Commission on Human Rights plans to point out at areas where systemic discrimination may stand in the way of fulfillment of human rights for older persons.

Kenya National Commission on Human Rights (KNCHR)

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ACCESS TO JUSTICE AND JUDICIAL REMEDIES FOR VIOLATIONS OF THE RIGHTS OF OLDER PERSONS

13. Older persons whose rights have been violated can access the local courts to seek justice, however for many of the older persons, poverty and thus lack of finances to cater for their legal fees makes it difficult for them to access local courts. As a result the latter group of older persons either seeks redress from the local administration which includes local chiefs and village elders, or alternatively decides not to lodge any complaint.

14. Older persons can also access the Minister of Gender, Children and Social Development which is the key government ministry mandated with addressing the plight of older persons in society including ensuring government initiatives as outlined above are fully implemented. In addition the Kenya National Commission on Human Rights which is mandated with the promotion and protection of human rights is another institution that Older Persons can access to seek remedies for violations. The KNCHR conducts investigations for any complaints lodged by members of the public without discrimination on age or other ground and seeks to provide redress through available institutional mechanisms such as engaging alternative dispute resolution. Other Non-Governmental Organizations for which the older persons can seek redress in cases of violations include the Help-Age Kenya and Help-Age International whose mandate solely lies on advocating for the right of older persons in the Society.

CONCLUSION

15. In conclusion therefore, the KNCHR acknowledges the various initiatives being undertaken by the Government which are geared towards the promotion and protection of the rights of older persons including recognition of older persons in the Constitution. Nevertheless the KNCHR notes that there is need to expedite implementation of some of the initiatives including the adoption of the National Policy on Social Protection and rolling out the cash-transfer project to ensure that the vulnerable older persons in society are protected from further vulnerability.