



**MINISTRY LABOUR AND SOCIAL PROTECTION
STATE DEPARTMENT FOR SOCIAL PROTECTION
DEPARTMENT OF SOCIAL DEVELOPMENT**

GUIDING QUESTIONS FOR FOCUS AREA: ACCESS TO JUSTICE

National legal framework

1. How is the access to justice by older persons guaranteed under the national legal and policy framework? What judicial and non-judicial mechanisms are in place for all older persons to complain and seek redress for denial of their rights?

a) How is the access to justice by older persons guaranteed under the national legal and policy framework?

- The Constitution Article 57 ordains the state to take measures to ensure the rights of older persons.
- The Draft Care and Protection of Older Members of Society Bill, 2018
- Kenya National Commission on Human Rights (KNHRC) submits annual reports on promotion and protection of human rights.
- The National Gender and Equality Commission (NGEC) spearheads efforts to reduce gender inequalities and discrimination under NGEC Act 2011.
- The National Policy on Older Persons and Ageing puts in place measures to ensure that the rights of Older Persons are protected and promoted.

b) What judicial and non-judicial mechanisms are in place for all older persons to complain and seek redress for denial of their rights?

- The Commission on Administrative Justice (CAJ) investigate complaints of abuse of power, unfair treatment and injustice.
- Office of the Judiciary Ombudsman investigates any allegations of misconduct of judicial officers/ staff, and addresses complaints from any litigants.
- The National Legal Aid and Awareness Programme under the Office of the Attorney General addresses issues pertaining to legal aid and access to justice.

Availability

2. What steps have been taken to ensure the availability of judicial and non-judicial mechanisms for older persons in urban, rural and remote areas in your country? Are there alternative dispute settlement mechanisms available?

a) What steps have been taken to ensure the availability of judicial and non-judicial mechanisms for older persons in urban, rural and remote areas in your country?

- The State shall ensure access to justice for all and Parliament enact legislation to give effect to the rights (*Article 47 of the Constitution*)



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- Alternative Dispute Resolution Mechanisms (ADR) (*Article 159 of the Constitution*)
- Mediation (*Article 159 of the Constitution*)
- Application of pauper briefs and pro bono services (*Article 50, 50(2), 50(2) (h) of the Constitution and the Civil Procedure Act Orders 33 and 44*)
- The National Council of Elders provide a platform for affiliate councils to interact, negotiate and resolve conflicts and offer alternative dispute resolution.
- Sub County Social Development Officers, Sub County Administrators, Lay Volunteers Counsellors and Religious organizations address conflicts.

Accessibility

3. What steps have been taken to ensure that all justice systems (judicial and non-judicial) are secure, affordable and physically accessible for older persons and adapted to their needs?

- The Constitution obligates the government to guarantee access to justice by ensuring the cost of justice does not impede access.
- The National Legal Aid and Awareness Programme facilitates access to justice for those who cannot afford legal representation.
- Court Users' Committees (CUCs) resolve court-level problems and offer avenues for Alternative Dispute Resolution.
- The Judicial Service Commission has the Directorate of Public Affairs and Communications dedicated to providing public information.
- Courts hold Open Days hold informal meetings with the public to answer questions about the judiciary and its work.

4. What are the existing provisions to guarantee legal assistance for older persons?

- The Constitution Article 57 on their rights and Article 159 on ADR
- Section 8 of the National Gender and Equality Commission Act 2011
- Section 16 of the Kenya National Commission on Human Rights Act, 2002
- Administrative Justice Act, 2011
- Draft Care and Protection of Older Members of Society Bill, 2018

5. What are specific challenges encountered by older persons in accessing justice and remedy in your country?

Challenges

- Ignorance towards accessing their rights to justice.
- Overcrowded Courts hampers effective access to justice by the older persons.



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- Lack of adequate pro bono services.
- Physical accessibility in some courts.
- Some judicial proceedings can be long some even talking years.
- Cash bails and bonds may be too costly.

Remedies

- Institute special courts for the aged.
- Create awareness through forums and community meetings on older persons' rights and right to justice.
- Encouraging ADR and mediation as mechanisms for managing conflicts.
- Encouraging the government to waiver taxes on law firms offering pro bono services. This will act as an incentive for more law firms to take up pro bono services.

6. What good practices are available in terms of ensuring equal and effective access to justice and remedy for older persons?

- The Kenyan traditional values and norms gave priority to the aged. There is need to enhance these traditional values and norms through awareness.
- NGEN and non-governmental agencies educate the general public and the older persons on their rights through public forums, press conferences and rights forums.

Equality and non-discrimination

7. What are the provisions adopted to ensure effective access to justice for older persons on an equal basis with others, including age-appropriate procedures in all administrative and legal proceedings?

- Chapter 4 of the Constitution outlines provisions on the Bill of Rights and fundamental freedoms.
- The Constitution Article 57 and Article 159 on ADR
- NGEN spearheads efforts to reduce gender inequalities and discrimination.
- Section 16 of the Kenya National Commission on Human Rights Act, 2002
- Administrative Justice Act, 2011

8. Please specify existing public policies and awareness-raising and capacity building programmes established for all justice system personnel to address the negative impacts of ageism and age discrimination in justice system.

- National Policy on Older Persons and Ageing puts in place measures to ensure that the rights of Older Persons are protected, promoted and fulfilled.
- Draft National Policy on Family Promotion and Protection promotes the family unit as the natural and fundamental unit of society and basis of social order.



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- Judiciary Transformation Framework promotes efficiency and transparency within the judiciary.
- Legal Aid Programme facilitates access to justice for those who cannot afford legal representation.

Accountability

9. How do you ensure justice systems function in accordance with the principles of independence and impartiality? Please specify if there is any oversight mechanism in place to address any discrimination against older persons committed by justice system professionals.

a) How do you ensure justice systems function in accordance with the principles of independence and impartiality?

- Ensuring financial independence of the judiciary through sufficient budget allocation.
- Continuous trainings and exchange programs.
- Hire more magistrates and judges.

b) Please specify if there is any oversight mechanism in place to address any discrimination against older persons committed by justice system professionals.

- CAJ investigates complaints of abuse of power, unfair treatment, injustice, oppressive, unfair official conduct.
- Office of the Judiciary Ombudsman investigates any allegations of misconduct of judicial officers/ staff and addresses complaints from litigants.
- KNHRC submits annual reports on the overall performance of the Government in the promotion and protection of human rights.
- NGEK spearheads efforts to reduce gender inequalities and discrimination.