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Older People Access to Justice in Tanzania

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In Tanzania legal systems there is no specific policy framework for access to justice by older persons notwithstanding existence of the national Ageing policy of 2003. NAP is silent on older persons' right to access to justice.

The constitution of the United Republic of Tanzania of Tanzania with its revisions is the mother of law in the country. It stands supreme to all other laws of the country. As it was stressed in the case of Chumchua son of Marwa vs Officer in charge of the Msoma Prison by *Mwalusanya J.* (as then he was)

The constitution does not provide specifically for the right of older persons to access justice but it provides for all people to access justice before courts of law without any discrimination as to age or any aspect.

Article 13 (1) of the Constitution provides that all persons are equal before the law and all are entitled without any discrimination, to protection and equality before the law.

Steps taken to ensure availability of Judicial and non – judicial mechanisms for older persons in Tanzania

Several steps have been taken by the Government of Tanzania to ensure that expediency and smooth access to justice for example in Land Matters. The government has established Land Tribunals from the normal court systems giving elders a room to make mediations at Ward Tribunal and District and Land and Housing Tribunals established under the courts (Land Disputes} Act 2002.

Through the Government Notice No 174 published on 27/06/2003. As an example under this new law land Matters are entertained at first instance by the Ward Tribunals which normally does the mediation or negotiation (reconciliation) through the elders (Older Persons) . This has provided a room for the elders to help to settle disputes pertaining to land by negotiations. This practice involves older persons in the resolving cases which is good indication for inclusion in decision making process.

Legal Aid provision has been mostly by non-State actors a good example is the Legal and Human Right Center, an national human right organization which provide legal aid to the poor

and the marginalized through its legal aid clinic in Dar es Salaam and Arusha. The Legal and Human Right Center as well organize mobile legal aid clinics in different rural areas of the country for the aim of reaching as many people as possible . Through the legal aid older persons have an opportunity of getting assistance in their civil and criminal matters.

Despite all these steps which have been taken by the government so far still the older persons have not real enjoyed their right to access justice through the judicial institutions namely the courts of law because of the mobility problems due to their physical functionality and cost of transport to the legal aid centers courts for the majority living in far remote areas. To address this problem the Judiciary has from this year 2019 Mobile Court using special vehicles equipped with all facilities required for court proceedings. This step will help indigents and older persons be able to access justice in court within their reach.

Existing provisions in terms of ensuring equal and effective access to justice and remedy for older persons:

Here is where Article 13 (1) of the constitution of the United Republic of Tanzania comes to play a very important stand, that the supreme law provides equality for all persons before the law without any discrimination to justice and protection.

In that case to give certain privilege to certain class on the basis of their age group may be viewed as discrimination. Excluding people to access to justice on the basis of their age amounts to discrimination. Likewise under the Basic Rights and Duties Enforcement Act 2007 an the Regulation, any person whose rights has been infringed or likely to be infringed has the right to seek remedy to the High Court.

Article 13(3) of the constitution of the United Republic of Tanzania provides that the civic rights, duties and interests of every person and community shall be protected and determined by court of law or other state agencies established by or under the law. There is no specific provision for older persons.

Some of the specific challenges encountered by older persons in accessing justices and remedy in Tanzania are; costs of filing are case and hiring of an advocate and having no choice if the if he or she is given legal assistance.

According to Lymo P.K. 2015 in his thesis ‘ Elderly Persons and Justice face such challenges poor financial resources i.e, funds for paying fees(court fees) and other charges . Most of them cannot afford to pay or hire Advocates to provide them with legal assistance.

In the case of Elisha Matiro (1997) unreported, the accused was facing a criminal case for the murder of his relative. When he was asked to hire an advocate, he chose an advocate of his own rather than the one who was assigned to him by the High Court under the Criminal Assistance Scheme. He was compelled to accept the legal services of an advocate who was not of his choice due to lack of sufficient funds to hire an Advocate.

Another challenge is the ability to stand confidently and present his case . Many older persons lack the confidence and the ability to express themselves. Nyella .P.2019 in his works entitled “ The need to transform the Judiciary “. He opines the need for establishing a speed Elder’s courts as a special group in the community. However I think this suggestion for special courts older persons could also add other challenges like exclusion and discrimination. The best option would be to strengthen the existing judicial systems to provide legal assistance for older persons. The recent establishment of the Mobile Courts should provide enough information to the public that such services exist in the country, that indigents and older persons can access justice.

There are areas of **best practice** for older people accessing justice in Judicial and non Judicial Mechanisms to seek remedy:

- The recent Mobile Courts it is inclusive for all people to seek remedy within their communities.
- The Legal Aid support services to indigent and older persons
- The Ward Tribunals in which older persons are part of the mediations on land conflicts

Provisions to ensure effective access to justice for older persons on equal basis with others; are as provided in the Constitution of the United Republic of Tanzania (1997), Article 13 (1) it provides a right for every citizen of the United Republic of Tanzania to access justice in courts of law on equal basis with others without discrimination.

The National Ageing Policy in Tanzania of 2003 provides a clear guidelines for older people to access to justice and other human rights on equal basis with others without any sorts of discrimination based on age.

The principle of independent and impartiality of the Judiciary in enshrined in the constitution.

In the case of Akonaay VAG(1995) the Constitution was held to the supreme law of the country, all other laws in the country shall be declared null and void.

Older persons are not treated differently because of their age, decisions of the courts have no impartiality to all without due to ones social or economic statues in the community.

Affirmation

1. State Parties shall ensure that older persons have the right to Access to justice on equal basis with others, to justice entities and related emergencies and support services , without discrimination, for example when they are victims of crime

should be given a choice of the Advocate based on their preferences to represent them in court of law.

2. States Parties shall ensure that older persons have Access to Non-Judicial pathways to justice, such as the one stop community justice centre paralegal of their right to in whatever setting they live.

3. State Parties shall ensure older persons have access to timely proceedings and Remedies and equal opportunities to seek redress in courts of law.

4. States Parties shall ensure existing Judicial and non – Judicial proceeding are accessible by older persons without discriminations based on age.