

REPUBLIC OF KENYA



**MINISTRY LABOUR AND SOCIAL PROTECTION
STATE DEPARTMENT OF SOCIAL PROTECTION, PENSIONS AND SENIOR CITIZENS
AFFAIRS
DEPARTMENT OF SOCIAL DEVELOPMENT**

FOCUS AREA OF THE IX SESSION OF THE OPEN-ENDED WORKING GROUP ON AGEING

Autonomy and Independence

1. In your country/ region, how is the right to autonomy and independence of older persons defined in legal and policy frameworks?

Constitution provides:

Article 57 – Older members of society

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

Kenya has no specific statutory document for older person and the Constitution of Kenya (2010) Article 57 provides guidance as it specifically address issues of Older Persons. The National Policy of Older Persons and Ageing (2014) is designed according to the Constitution of Kenya (2014). However, the Country has a draft Members of Society Bill (2017) that is yet to be finalized.

2. What other rights are essential for the enjoyment of the right to autonomy and independence by older persons, or affected by the non-enjoyment of this right.

The Constitution of Kenya (2010), Chapter 4 - Bill of rights is inclusive of everyone including older person and specifically provides the following provisions:

- Article 27 (4) explicitly forbids discrimination on age
- Article 57, the state shall take measures to ensure the rights of older persons is adhered to
- Article 43 (3) economic and social rights
- Article 28 on right to dignity
- Article 40 on property rights.

Constitution of Kenya, 2010

Under Article 57, the Constitution obligates the State to take measures to ensure Older Persons' participation, personal development, dignity, respect and protection from abuse; and together with the family, the obligation to provide care and reasonable assistance to Older Persons. The Constitution of Kenya provides explicit rights, entitlements and privileges for Older Persons with specific obligations to the state and family. Article 10 (2) (b) underlines the states obligation to protect Older Persons together with other marginalized groups; whereas Article 21 (3) obligates State organs and public officers to address the needs of Older Persons and other vulnerable groups. Article 27 (4) promotes and safeguards equality and non-discrimination of Older Persons based on age, whereas Article 43 (3) obligates the state to provide appropriate social security to needy Older Persons.

International and regional legal documents spelling the rights of older persons

- Universal Convention of Human Rights - 1948
- African Charter of Human and People's Rights
- International Covenant on Civil and Political Rights (ICCPR) - 1966
- International Covenant on Economic, Social and Cultural Rights (ICESCR) – 1966
- UN Declaration on the Right to Development – 1986
- The Convention on the Elimination of Racial Discrimination (CERD) – 1965
- The Convention on the Elimination of all forms of Discrimination against Women (CEDAW) – 1979
- UN Standards Rules on Equalization on Opportunities for Persons with Disabilities – 1992
- UN Convention on the Rights of Persons With Disabilities – 2006
- UN Plan of Action on Ageing – 1982
- UN Principles for Older Persons – 1991
- UN Proclamation on Ageing – 1992
- UN Plan of Action on Ageing - 2002
- AU Policy Framework on Ageing – 2002

All these rights have been included in the National Policy of Older Person and Ageing (2014) and draft Older Members Bill (2016)

3. What are the key issues and challenges facing older persons in your country/region regarding autonomy and independence? What studies and data are available?

- The key issues and challenges group:
 - Elder abuse (emotional and physical) and neglect
 - Poverty (Lack of income)
 - Ageism

- Access to universal health care does which not cover all older persons
 - Poor living conditions
 - Insecurity
 - Property dis-inheritance, land dispute and land scarcity
 - Denial the right re-marry in the event that the spouse has died
 - Decision on sale and buying property or access to financial services
- National Gender and Equity Commission has undertaken a research on Status of equality and inclusion in Kenya (2016), cash transfer plight of older members of the society in Kenya, and Whipping Wisdom : Rapid Assessment on Violence against older persons in Kenya (2014)
- 4. What steps have been taken to ensure older persons' enjoyment of their right to autonomy and independence?**
- The Constitution of Kenya (2010), the National Social Protection Policy (2011) and *implementation of the Inua Jamii program*), draft Senior members of Society bill (2016) and the National Policy of Older Persons and Ageing (2014) frameworks, (Not yet passed) have clearly made provisions to promote the rights to autonomy and independence.
 - The establishment of the State Department of Social Protection to exclusively implement issues of older persons.
 - The establishment of National Gender and equality commission to promote and monitor equality and non-discrimination issues of the older persons.
- 5. What mechanism are necessary, or already in place, for older persons to seek redress for the denial of autonomy and independence?**

The Government has the following in place:

- Awareness creation and empowerment of older people and policy makers on issues and rights of older people: Government observes the UN designated days – World Elderly Abuse Awareness Day (WEAAD), International Day (IDOP) for older persons and International day of the family. Government and non-state actors have enhanced capacity building of older people, non state and state actors on issues and rights of older people.
- Institutional Frameworks: constitutionally established institutions to undertake the issues of older persons –
 - Ministry of Labour, State Department of Social Protection, Pensions and Senior Citizens Affairs which coordinates the development and implementation of the policy and programs of older person.
 - National Gender and Equity commission and Kenya Commission for Human Rights are constitutionally established institutions to ensure equality, non discrimination and human rights of

all citizens. These institutions provide advisory to stakeholders on issues and concerns around protection and promotion of the rights of older persons.

- Huge national budgets allocated for the Social protection program, the Older Persons Cash Transfer program and a universal social pension (National health Insurance Fund) in place (on going program).
- Ministry of Education - established adult education programme to enhance literacy among older people
- Ministry of Health – established health and ageing unit to support in ensuring inclusion of older people in Health and Care system.
- Retirement and benefit authority regulates retirement benefits

- **Others -**
- Hunger Safety Net Programme – Government programme to provide cash to food insecure communities. Complain and grievance mechanism within the Older Persons Cash Transfer Program.
- Community policing programmes that protect wider community
- Non government organizations have established paralegal and older people associations.

6. What are the responsibilities of other, non-State, actors in respecting and protecting the right to autonomy and independence of older persons?

- Both the non- state and state actors are building the capacity of older citizens and stakeholders on the rights and concerns of older person. Increasingly, policy and programmatic actions are sensitive to older people. Further, a few enlightened older people have increased their confidence and demand for their rights.
- Increased advocacy by non state actors for improved policy environment and mainstreaming older people in national development programs.
- Increased programmes on older people by both non state actors and government.