

Guiding questions for defining the normative content of the issues examined at the eleventh session of the General Assembly open-ended working group for the purpose of strengthening the protection of the human rights of older persons.

ACCESS TO JUSTICE Definition

1. What is the definition of the right of older persons to access justice in the national legislation in your country? Or how should such a right be defined, considering existing national, regional and international legal framework?

- In Nigeria, access to justice is defined as the substantive and procedural mechanisms which comprises of fair hearing, accessibility to legal representation and the court within a reasonable time, removal of financial and language barriers to ensure that citizens have the opportunity of seeking redress for the violation of their legal rights.
- Considering existing national, regional and international legal frameworks, access to justice should be defined as the ability of States to provide judicial and non- judicial processes for older persons to enforce their rights. This should include access to free legal representation within the shorted possible time, absence of intimidation, guaranteed fair hearing, and impartiality, removal of all physical and financial barriers, including language barriers in all judicial, non- judicial and administrative processes. The above definition is line with the provisions of;
- **Section 36(1) of the Nigerian Constitution** states that in the determination of his civil rights and obligations, including any question or determination by or against any government or authority, a person shall be entitled to a fair hearing within a reasonable time by a court or other tribunal established by law and constituted in such manner as to secure its independence and impartiality. This Section is contained under Chapter 4 of the 1999 Constitution (as amended). It comprehensive covers issues like fair hearing and the right to have legal representation. However, it is general and not older person specific.
- **Article 7** of the African Charter on Human & Peoples' Rights.

- **Article 14** of the International Covenant on Civil & Political Rights.

2. What are the key normative elements of the right of older persons to access justice on an equal basis with others? Please provide references to existing standards on such elements as below, as well as any additional elements: a) The guarantee of older persons' legal capacity (legal standing and legal agency) on an equal basis with others and not denied on the basis of age;

- Older persons have the right to affirmation of their rights.
- Older persons are entitled under the constitution to represent themselves or have legal representation if they so desire without discrimination.
- Older persons have the right to fair hearing in any matter that concerns them, that is to say, that older persons must have their case heard in any judicial and non- judicial process.
- **Section 36(6) of the Constitution** Every person who is charged with a criminal offence shall be entitled to - (a) be informed promptly in the language that he understands and in detail of the nature of the offence; (b) be given adequate time and facilities for the preparation of his defence; (c) defend himself in person or by legal practitioners of his own choice; (d) examine, in person or by his legal practitioners, the witnesses called by the prosecution before any court or tribunal and obtain the attendance and carry out the examination of witnesses to testify on his behalf before the court or tribunal on the same conditions as those applying to the witnesses called by the prosecution; and (e) have, without payment, the assistance of an interpreter if he cannot understand the language used at the trial of the offence.

3. Elimination of the influence of ageist stereotypes at any stage of judicial or no judicial proceedings, including the award of damages or compensation;

- The State should guarantee that equity and equality should be the guiding factor in all stages of judicial or non- judicial proceedings. Older persons should be able to participate at all stages of proceedings and receive adequate compensation and damages, awarded by the judicial or non- judicial institution.

- According to Section 17 (1) (2) of the 1999 Constitution of the Federal Republic of Nigeria which say: "**That every citizen shall have the equality of right, obligations, and opportunity before the law;**
- Section 42 of the same constitution also says that no Nigerian citizen shall be discriminated against on any grounds.

4. Access to timely legal proceedings, especially in situations of immediacy;

- Older persons should be given priority in the listing and hearing of legal matters. They should also be assigned legal representation timely, if they so desire.
- The constitution of the country guarantees the right to fair hearing and a major component of that right, is the independence and impartiality of the judiciary. The following are mechanisms put in place to ensure the independence and impartiality of the justice system for all.
- Section 35(4) of the Constitution Any person who is arrested or detained shall be brought before a court of law within a reasonable time, which is interpreted to mean 1 to 2 days.
- Administration of Criminal Justice Act 2014 came to being due to the prolonged administrative processes in the legal system. It was passed to regulate and reduce the procedural time within the legal system.
- The National Human Rights Commission is a non- judicial process that is mandated to investigate human rights violations without the prolonged processes of the judicial system.
- The Public Complaint Commission is mandated to receive and intervene in issues of administrative injustice without recourse to procedural bottle necks.

5. Accessibility of courtrooms, legal tribunals and other justice related facilities to all older persons;

- Court rooms should be physically accessible to older persons. States should ensure that they are ramps in all court rooms and older persons are only assigned to ground level court rooms.
- States should also ensure that administrative payment from older persons should be assigned to a designated officer and given priority.

- **Nigeria signed into law the Prohibition Against Persons with Disability Act 2018.** The Act amongst other provisions, mandates all private and public buildings to be accessible to all persons with disabilities.
- **Administration of Criminal Justice Act 2015** This legislation was passed to guarantee that the judicial process is swift and affordable in the dispensation of justice for all.
- The courts in Nigeria are accessible to all persons irrespective of their age, gender, ethnic background or race. These courts are located in every State in Nigeria thereby making it easily accessible to the citizenry.
- The non- judicial processes afforded by the National Human Rights Commission and The Public Complaint Commission are free and accessible to all.

6. Access to legal services, including legal assistance, legal aid, counselling and hotlines, on an equal basis with others;

- States should ensure that older persons have unfettered access to legal services, which can be facilitated through prompt legal assistance, free legal aid for indigent older persons, counselling and access to toll free line where legal advice and counselling can be provided.
- **Legal Aid Council Act 2011** established the Legal Aid Council of Nigeria to grant legal aid, advice and access to justice, which shall be provided by the Council in 3 broad areas, namely, Criminal Defence Service, Advice and Assistance in Civil matters including legal representation in court and Community Legal Services at no cost for indigent Nigerians.
- **National Human Rights Commission** is mandated to promote, protect and enforce the human rights of all Nigerians, irrespective of age. The Commission provides these services in all the states of the Federation, through receiving complaints in person, mails or via toll free telephone calls. The Commission has investigating powers and provides counselling and mediating service free to all citizens.
- The Courts are created by law with the powers to uphold and enforce human rights violations. Thus, Section 46 of the Constitution of the Federal Republic of Nigeria 1999 provides for redress in courts and legal

aid. Subsection (1) thereof provides that any person (including older persons) who alleges that any of the provisions of this Chapter has been, is being or likely to be contravened in any State in relation to him may apply to a High Court in that State for redress.

- **Section 46 (4) of the Constitution** mandates the National Assembly to make provision for the rendering of financial assistance to any indigent citizen of Nigeria where their rights under the Constitution has been infringed or with a view to enabling him to engage the services of a legal practitioner to prosecute their claim and for ensuring that allegations of infringement of such rights are substantial and the requirement or need for financial or legal aid is real.
- **The Nigerian Bar Association** is a body of professional lawyers comprising of lawyers working for the government and in private practice. It encourages its members to provide Pro Bono services for indigent Nigerians, who are mostly older persons. Lawyers aspiring to become Senior Advocates of Nigeria are required to engage in Pro Bono service before being considered for the elevation.

7. Access to alternative, non-judicial pathways to justice, including, but not limited to, one-stop community justice centres, paralegal support, ombuds procedures or specialist commissioners;

- Nigeria has some non- judicial pathways that are not older person specific. Though there is need for older persons to be mainstreamed into these existing structures to guarantee that they access timely and free judicial services.
- Public Complaints Commission or the ombudsman is the institution established by the Federal Government to entertain from citizens, complaints of injustice, corruption, unfair treatment and abuse of office by public officers. The commission is to investigate such cases and to recommend steps towards discipline or correction of the situation.
- **The Pension Reform Act 2014 (as amended)** established the National Pension Commission as a body to regulate, supervise and ensure the effective administration of pension matters in Nigeria.
- **Pension Transitional Arrangement Directorate (PTAD).** The Federal Government of Nigeria established PTAD to be responsible for the

pension administration of the Defined Benefit Scheme (DBS). PTAD was established to address the numerous pensioners' complaints that bother on issues such as non-payment of monthly pension, short payment of pension and gratuity, removal of name on pension payment voucher, non-payment of harmonized pension arrears, irregular payment of federal pensions and non-receipt of pension after retirement.

- National Human Rights Commission, is mandated to receive complaint from citizens where their civil, political, economic, social and cultural rights as contained in national, regional and international human rights treaties have been violated.
- Citizen's Rights Department of the Federal Ministry of Justice also receives complaints from citizens on the violation of their civil rights.
- Legal Aid Council of Nigeria is also set up to receive complaints from indigent citizens in civil and criminal matters free.

8. Access to reasonable accommodation in all legal and administrative proceedings at any stage to facilitate older persons' effective role as direct or indirect participants in justice proceedings;

States should ensure that provisions are made within enabling laws to provide to ensure the provision of accommodation for older persons when participating in judicial processes.

Section 251 and 252 of the Administration of Criminal Justice Act provides that, Where a person attends court as a state witness, the witness shall be entitled to payment of such reasonable expenses as may be prescribed and Where a person attends court as a witness to give evidence for the defence, the court may in its discretion on application, order payment by the Registrar to such witness of court such sums of money, as it may deem reasonable and sufficient to compensate the witness for the expenses he reasonably incurred in attending the court.

9. Adequate and appropriate training to all those working in the administration of justice and law enforcement, including the judiciary, police and prison staff, on the rights of older persons;

- It is advisable that adequate training and training the trainer should be organised for all stakeholders in the administration of justice on the

rights of older persons. This to enable them fully grasps the concept for full operationalization.

- **The Administration of Criminal Justice Act (ACJA) provides** that In order to help to ensure effective access to justice for persons with disabilities, States Parties shall promote appropriate training for those working in the field of administration of justice, including police and prison staff and should ensure that States Parties shall ensure that persons with disabilities, are placed on an equal basis with others:
- **Civil Society Organisations, such as CLEEN Foundation** have put in considerable effort to ensure that the police, judicial, prison and administrative officers comprehend ACJA fully.

10. Accommodation of the needs of older prisoners, including necessary physical adaptations, protection against violence and extortion, appropriate educational and vocational opportunities, and support with reintegration into the community;

States should provide for the full adoption of correctional centres to older persons' needs thereby promoting an age friendly environment to guarantee equality and inclusion.

- **Section 14 of the Correctional Service Act** provides for opportunities for education, training, vocational training, as well as training in modern farming techniques and animal husbandry for inmates to facilitate their reform and rehabilitation for the future.

11. Equal access of older prisoners to services, including physical, mental and cognitive health, dental, hygiene and hospice services, and social and other support services available to the general population;

Bearing in mind that the older persons also constitute the population in the correctional service, health care should include geriatric assessment and treatment for ailment that are common in the older population.

- **Nigerian Correctional Service Act 2019.** The Act provides clear rules setting out obligations of the Nigerian Correctional Service and the rights of inmates.



- **Section 23(1) of the Act** provides that the service shall put in place health care services for the promotion and protection of physical and mental health, prevention and treatment of diseases.

12. Access to prompt remedies and redress when older persons' right to access justice is denied.

- **Legal Aid Council Act 2011** established the Legal Aid Council of Nigeria to grant legal aid, advice and access to justice, which shall be provided by the Council in 3 broad areas, namely, Criminal Defence Service, Advice and Assistance in Civil matters including legal representation in court and Community Legal Services at no cost for indigent Nigerians.
- **National Human Rights Commission** is mandated to promote, protect and enforce the human rights of all Nigerians, irrespective of age. The Commission provides these services in all the states of the Federation, through receiving complaints in person, mails or via toll free telephone calls. The Commission has investigating powers and provides counselling and mediating service free to all citizens.
- **Nigerian Bar Association** is a professional body of legal practitioners, who advocate for the upholding of the rights of citizens.
- **International Federation of Women Lawyers** is a professional body of female lawyers, who advocate and defend the rights of women in Nigeria.

State obligations 1. What mechanisms or measures are necessary to ensure the enjoyment and to monitor implementation of the right of older persons to access justice, including State obligations to respect, promote, protect, and fulfil the right?

- The Administration of Criminal Justice Act is an enactment that has proved that law is truly dynamic as the Act has taken care of most of the ills and lacunae that have for long plagued the criminal justice system in Nigeria. There is need for state government to take a cue from Lagos State to domesticate ACJA in order for there to be some form of uniformity in the criminal justice system.



- Though ACJA is exhaustive in addressing the various processes and procedures of the criminal justice system, it is silent on older persons and their particular needs within the criminal justice system.

Special considerations 2. What special considerations or specific issues should be included in the right of older persons to access justice, including procedural and age-appropriate accommodations as well as responsibilities of non-State actors?

The language of the court could be quite overwhelming for non-lawyers in general and other persons in particular. States should advocate for more abridged judicial processes for older persons and limiting number of adjourned days.

- Scaling up paralegals especially in rural areas as an important measure towards enhancing access to justice for older persons;
- Advocacy for older persons' specific court days and mobile courts for older persons.
- Advocacy for accelerated hearing of the cases, where older persons are involved either as accused persons, witnesses or plaintiffs.

Implementation 3. What are the best practices and main challenges faced by your country in the adoption and implementation of the normative framework on the right to access justice for older persons? Best practices

a) The National Senior Citizens Centre Act, 2017 and the establishment of the National Senior Citizens Centre to implement the provisions of the Act, The National Centre is mandated to identify and cater for the needs of senior citizens and cater for them. The Centre is also to, initiate, develop and facilitate their access to health care, psychosocial counselling, social, economic and recreational opportunities, to enhance senior citizens' living standards and their rights to inclusion, dignity, security, wellbeing, participation and happiness.

b) National Policy on Ageing 2020. The policy was ratified at the Federal Executive Council meeting which was presided over by the President. The objective of the policy is to have a society where senior citizens are guaranteed security, independence, participation, comprehensive care, self-fulfilment and



dignity. It covers intersecting spectrum of issues and opportunities for older women and men in urban and rural settings, older persons living with disabilities, older migrants, internally displaced older persons, Poor older persons and older persons that are full of vigour contributing to the progress of families, communities and the larger society.

c) National Strategy and Action Plan on Ageing 2022-2032.

d) Advocacy and Strategic partnership structured by the National Senior Citizens for the creation of ageing desks across key Ministries, Department and Agencies like the National Human Rights Commission, Legal Aid Council of Nigeria, National Orientation Agency and the Federal Ministry of Women Affairs, which could ease accessibility of older persons to judicial, administrative and non-judicial processes.

Challenges

- Ageism
- Inability by vulnerable older persons to pay the statutory judicial fees/fines
- Dependency on perpetrators/ abusers
- Ignorance towards accessing their rights to justice
- Overcrowded Courts hamper effective access to justice by the older persons
- Lengthy and prolonged judicial proceedings. Some taking years especially cases on succession
- Complicated legal processes and procedures that could confuse older persons.