



**Ministry of Gender, Labour and Social Development**

**Submissions for the 11<sup>th</sup> session of the UN Open-Ended Working Group on Ageing**

**OCTOBER, 2019**

## **Introduction**

Ministry of Gender Labour and Social Development is a Government Ministry with a responsibility to empower communities in diverse areas. The Ministry promotes cultural growth, skills development and labour productivity while promoting gender equality, labour administration, social protection and transformation of communities.

The Ministry came into being by a constitutional requirement of the 1995 Constitution, Chapters 4 and 16 which mandates government to: “empower communities to harness their potential through skills development, Labour productivity and cultural growth.” The constitution advocates for protection and promotion of fundamental rights of the poor and other vulnerable groups as well as institutions of traditional or cultural leaders.

It is comprised of the Social Development Sector (SDS) that promotes issues of social protection, gender equality, equity, human rights, culture, decent work conditions and empowerment for different groups such as women, children, the unemployed youth, internally displaced persons, the older persons and persons with disabilities.

The Ministry of Gender, Labour and Social Development (MGLSD) is the lead agency for this sector and is charged with the development and implementation of the Social Development Investment Plan (SDIP) with the mandate to empower communities to harness their potential through cultural growth, skills development and Labour productivity for sustainable and gender responsive development.

### **Mandate:**

The sector mandate is to:

- Mobilize and empower communities to harness their potential while protecting the rights of vulnerable groups
- The sector promotes issues of labour productivity and employment, social protection, gender equality, equity, human rights, culture and empowerment
- The sector aims to achieve a better standard of living, equity and social cohesion.

## **Vision**

The sector vision is `` A better standard of living, equity and social cohesion’’

## **Mission**

The mission of the sector is `` promotion of gender equality, social protection and transformation of communities’’

## **Goal**

`` promote employment and productivity, positive cultural values, rights of vulnerable groups and gender responsive development’’

## **Objectives**

The sector objectives are as follows;

- Promote labour productivity and decent employment
- Enhance effective participation of communities in the development process
- Enhance resilience and productive capacity of the vulnerable persons for inclusive growth
- Empower youth to harness their potential and increase self-employment, productivity and competitiveness
- Promote rights, gender equality and equity and women empowerment in the development process
- Strengthen the performance of the social Development Sector institutions
- Redress imbalances and promote equal opportunity for all

## **Demographic trends of older persons in Uganda**

According to the 1991 Uganda Population and Housing Census, the population of older persons was 686,260(4.1%) of the total population of 16,671,705. This population increased to 1,101,039(4.6%) as per the Uganda Population and Housing Census results of 2002. The National

Housing and Population Census 2014 put the population of older persons at 1.28m people. This population increase has profound consequences at individual, community and national level.

### **Access to justice by older persons in Uganda**

The concept of access to justice refers to a process which enables people to claim and obtain justice remedies through formal or informal institutions of justice, and in conformity with human rights standards. It also relates to ‘the mere contact or right to entry to use the justice system by citizens.’ In essence therefore access to justice entails an examination of how individuals, groups and communities realize de facto justice from the enforcement of substantive law as well as the quality of justice meted out on them by the justice delivery system. In a comprehensive or holistic manner, access to justice includes elements entailing contact, entry and use of justice delivery system.

Access to justice is further described as a fundamental right, as well as a key means to defend other rights. For older persons justice to be real, it has to be available, affordable and accessible to all older persons.

Therefore, availability and accessibility of institutions (whether formal or informal) both in terms of facilities and human resource is crucial to empower the people to realize and protect their human rights as enshrined in the Constitution of Uganda and other international covenants such as the Universal Declaration of Human Rights (1948), the Convention on Civil and Political Rights (1966) to which Uganda is signatory.

### **National legal, institutional and policy frame work on older person’s access to justice in Uganda**

The 1995 Constitution of Uganda .The 1995 Constitution of Uganda has far reaching provisions contained in the Bill of Rights that guarantee fundamental rights and freedoms for Ugandans. When these rights are breached, the Constitution provides that for civil and criminal processes, a person shall be entitled to a fair, speedy and public hearing before an independent and impartial court or tribunal established by law. These are important due process guarantees that anchor the procedural and substantive aspects of access to justice. In respect of persons including older persons charged with an offence that carries a sentence of death or imprisonment for life, the provision of legal aid in the form of free representation is framed as an entitlement at the expense of the State. Thus the Constitution limits legal aid services for indigent persons to the realm of criminal law. However, Government of Uganda and JLOS have extended the provision of legal aid to civil rights, in the form of the Justice Centres. The Legal Aid Bill is a fundamental document that embraces a paradigmatic shift towards rights based approaches to justice for the poor, vulnerable and marginalized such as older persons. It is primarily made in furtherance of the

objective of providing accessible, affordable, sustainable, credible and accountable legal aid services to indigent persons. But the bill has been in parliament since 2012 without being passed and in June 2019 Deputy Speaker of parliament sent it back for a certificate of financial implication. The timely passing of the Legal Aid Bill into law will help to consolidate gains made towards realizing access to justice for vulnerable groups

The Constitution of 1995 under Article 32 provides that the state will take affirmative action in favour of groups marginalized on the basis of gender, age, disability or any other reason created by history, tradition or custom for the purpose of redressing imbalances which exist against them.

The National objectives and Directive Principles of State Policy of the Constitution of the Republic of Uganda provide that the State shall make reasonable provision for the welfare and maintenance of the aged

The National Council for older persons Act 2013(under review).In 2013, the National Council for older persons Act came into force ushering in the National and Lower Councils for older persons in Uganda. The National Council is a body corporate through which issues and needs of older persons can be channeled for redress. It is fully constituted with an office in Kampala to coordinate the issues of older persons

The National Development Plan II. Uganda is currently implementing its Second National Development Plan, 2015/16 - 2019/20. The Second NDP (NDP II) is the ultimate planning framework for all sectors in Uganda, and offers overarching principles and priorities for achieving development in the country. JLOS is identified as an enabling sector. Enabling sectors are understood to refer to those sectors that ‘provide a conducive environment and framework for efficient performance of all sectors of the economy’. The focus of JLOS as noted in the NDP is on the poor and the marginalized groups. To that end, JLOS has been undertaking reforms around removing barriers to access to justice, such as case backlog, physical distance, technical barriers, poverty, and lack of access by women and marginalized groups. Objective 3 of the NDP II focuses on Enhancing access to “Justice for All”, particularly for the poor and marginalized including older persons. The strategies focus physical access and availability of JLOS institutions and functions largely on construction and renovations of physical premises as well as equipping offices and courts in prioritizing hard to reach areas and post conflict areas. Another strategy is the

development of enabling policy and a framework for provision of legal aid countrywide and the development, implementation and integration of innovative pilots and low cost model of legal aid including paralegal advisory services, juvenile justice and use of paralegal services.

JLOS Strategic Investment Plan SIP III JLOS institutions are currently implementing the third strategic investment plan (SIP III) under the sector wide approach. There is no legal framework in which access to justice is being pursued, but under JLOS SIP III, a law on Access to Justice Act is envisaged. JLOS since SIP I in 2000 has focused on how to improve the efficiency, effectiveness, fairness, outreach and scope of the institutions involved in administering justice and ensuring that it reaches those most in need, the poor and vulnerable. From SIP I to SIP III, several challenges to the attainment of sector goals have been registered in various reports and joint reviews with partners.

Another important strategy of SIP III is to focus on the use of alternative conflict resolution mechanisms (ADR) in the areas of criminal, commercial, land and family justice) with emphasis on conflict affected areas of Northern Uganda. The incidence of conflict in Northern Uganda as well as its gravity and duration resulted in severe vulnerability on older persons, requiring heightened vigilance and sustained measures to redress some of the extremities that have occurred in the region, aggravating vulnerability, poverty and marginalization. The provision of much needed services in the area is essential in ensuring access to justice for persons seeking to assert their rights in the political, economic and socio-cultural sphere.

The JLOS strategy on strengthening the capacity of local council courts to ease access to justice is critical to the older persons, poor, vulnerable and marginalized accessing justice at the most basic unit, the community level. This has the potential to ease case disposal and make justice physically accessible. However, concerns have persisted since the outset of the establishment of these courts over their fairness and capacity to administer justice effectively, and this is a gap that must be plugged in the lifetime of SIP III. SIP III also focuses on minimising technicalities that hamper access to justice.

In particular, the emphasis on developing a comprehensive information dissemination strategy, simplifying laws and translating into local languages and strengthening community policing programmes is critical to empowering rights holders particularly the older persons, poor and

vulnerable who tend to be functionally illiterate. The focus on sexual and Gender, Based Violence (SGBV) and building the capacity of JLOS institutions and stakeholders to address and fast track cases of Sexual Gender Based Violence (SGBV) is essential to protect the rights of older persons suffering from multiple forms.

The establishment of the Justice Centres of Uganda is a remarkable and significant development in the realization of access to justice for hitherto unreached older persons groups. Justice Centres are JLOS initiatives geared at promoting the rights of vulnerable communities

The provision of quality human rights based legal aid, legal rights awareness, community outreach, empowerment and advocacy. Services offered to only the most indigent persons include Legal Advice, Legal representation, Alternative Dispute Resolution (ADR), Counseling, Legal Awareness, Referrals and a Toll free phone line.

Uganda ratified the Convention on the Rights of Persons with Disabilities on 25 September 2008 and its optional protocol, both without reservations. This Convention contains several far reaching provisions on the rights of PWDs including older persons with disabilities. Uganda also observes the Standard Rules on the Equalization of Opportunities for Persons with Disabilities including older persons with disabilities which call for recognition of the overall importance of accessibility in the process of equalization of opportunities in society. Section 25 of the Persons with Disabilities Act 2006 ( now under review) prohibits JLOS actors from accessing justice services, including by refusing to provide the service to the person or by making it impossible or unreasonably difficult for the person to use the service. The Act in section 26 and 27 obligates the JLOS law enforcement agents to provide physical accessibility and auxiliary aid or services to enable a person with a disability to use the service. The Evidence Act Cap 6 has made accommodations for people with hearing disabilities allowing them to give evidence in sign language or writing, but this is limited to people with hearing disabilities and does not cover other types of disabilities such as sight.

Pauper Suits under the Civil Procedure Rules Order 33 of the Civil Procedure Rules, made under the Civil Procedure Act, Cap. 65, provides for Pauper Suits. It states that “Subject to the following provisions of this Order, any suit may be instituted by a pauper. For the purposes of this Order a person is a “pauper” when he or she is not possessed of sufficient means to enable him or her to pay the fee prescribed by law for the plaint in the suit.” Whereas this is a very useful provision for

enhancing access to justice, the conditions for paupers suits are so stringent that few people would be able to file such suits without legal assistance. For instance, the pleadings must be set out as prescribed under the Rules, and the application must be properly signed. The application must be presented in person, and the court requires evidence of the applicant's paupersim. Nonetheless these provisions are useful for LASPs filing civil claims on behalf of the poor, vulnerable and marginalized.

There are a number of other Acts that have a bearing on access to justice. These are mainly the Acts that create jurisdiction of Courts and other bodies to hear disputes and dispense justice. They include the Judicature Act, Cap. 12, the Magistrates' Courts Act, Cap 16 and the Local Council Courts Act of 2006.

It should also be noted that their customary courts and tribunals dispensing justice that are currently not regulated by any law. The Bataka Courts in Kagadi are a local initiative to improve access to justice but they too are not regulated. The Qadi Courts are mentioned in Article 129 (1) (d) of the 1995 Constitution of Uganda but an Act to define their powers and procedure has never been passed. The manner in which jurisdiction over various causes is defined and exercised is a crucial element on access to justice.

The Justice and Constitutional Affairs minister, Major General Kahinda Otafiire, signed a statutory instrument of 2017 expanding magisterial areas across the Country from about 150 chief and grade one operating magisterial areas to over 316 magisterial areas. No doubt this is a step in the right direction in increasing access to justice for all including older persons.

This move is welcome especially for previously disadvantaged areas that we, as an organization working to support the vulnerable and marginalized, have for so long advocated – that courts should be established in order to bring services to the most vulnerable and poor persons.

The Workers Compensation Act, (Cap. 225) provides for compensation to workers for injuries suffered and scheduled diseases incurred in the course of their employment. It commits employers to provide compensation to workers in case of injuries at work or to and from work's.



The Domestic Violence Act (2010) provides for the definition of domestic violence, domestic relationship and the basis for legal protection of victims or those threatened with domestic violence; Employment Act No. 6 (2006), which provides for rights of workers and employers' obligations, including the duty to give maternity and paternity leave, prohibits any kind of work that is dangerous or hazardous to a child's health;

The Occupational Safety and Health Act No. 9 (2006) which regulates the safety and health of workers at the workplace and requires employers including older persons to put in place measures to ensure safety of workers and provision of protective gear to avoid injuries or occupational disease

The Uganda Vision 2040 underscores the importance of social protection to address risks and vulnerabilities including the ones encountered by older persons. Government recognizes the need to provide assistance to people who are vulnerable either by age, social class, location, disability, gender, disaster or who do not earn any income. The Vision envisages a social protection system that includes a universal pension for older persons, public works schemes for vulnerable unemployed persons and social assistance to vulnerable children, persons with disabilities and the destitute. The Vision also identifies universal health insurance as one of the key strategies for alleviating the high cost on health care by households and enhancing access to affordable health services for all.

The National Policy for Older Persons (2009) provides for equal treatment, social inclusion and provision of livelihood support for older persons. It identifies provision of direct income support and social insurance as key social protection instruments for addressing the needs of older persons.

The Uganda Gender Policy (2007) promotes gender equality and women's empowerment in all spheres and provides guidance for engendering social protection interventions.

The National Policy for Disaster Preparedness and Management (2010) emphasizes the critical importance of restoring and maintaining the quality and overall welfare and development of human beings in their environment. It advocates for an approach to disaster response that focuses on reducing risk of loss of life, property and livelihoods;

The National HIV/AIDS Policy (2011) provides a broader framework for delivering HIV/AIDS related services in Uganda to all the people including the older persons.

The National Health Policy (2010), aims to provide a good standard of health for all people in Uganda in order to promote healthy and productive lives including older persons.

The National Food and Nutrition Policy (2003), aims to promote the nutritional status of all the people of Uganda through multi-sectoral and coordinated interventions that focus on food security, improved nutrition and increased incomes.

The Ministry of Justice and Constitutional Affairs is the overseer of Uganda to ensure as a country upholds the rule of law, good governance and due process for all citizens and residents including older persons in the country. This Ministry is to provide legal advice and legal services to Government, its allied institutions and to the general public and to support the machinery that provides the legal framework for good governance. The Ministry has a long term mission to promote and facilitate efficient and effective machinery capable of providing laws for good governance and delivery of legal advice all bodies related to Government and the public.

The mandate of Uganda Police Force as provided in the Constitution of the Republic of Uganda, and Uganda Police Force Act Cap 303, is protection of life and property, prevention and detection of crime, keeping law and order, and maintenance of overall Security and Public Safety in Uganda. It has a mission of securing life and property in a committed and professional manner in partnership with the Public, in order to promote development. The police investigate crimes mooted to people in Uganda including those on older persons.

The Directorate of Public Prosecution is provided for under Article 120 (1) of the Constitution of Uganda. The functions of the DPP are provided under A.120 (3) and include directing the police to investigate any information of a criminal nature, to institute criminal proceedings against any person or authority in any court other than a court martial, to take over and continue any criminal proceedings instituted by any person or authority and to discontinue at any stage before judgment any criminal proceedings on anybody including older persons.

In order to bring prosecution services closer to the people, 16 Regional Offices have been opened up. Each is headed by an officer at the level of A/DPP. These are located in Jinja, Lira, Soroti,

Mbale, Kabale, Mbarara, Fort Portal, Kampala, Gulu, Arua, Masaka, Masindi, Mubende, Mukono, Mpigi and Nakawa.

The Regional Offices will supervise all the DPP stations that fall under their regions in every aspect except those that require the personal input of the Director such as signing withdrawal forms. The Prosecution Case Management Information System was acquired and its implementation currently being rolled out. This is a fully automated system that will track the movement and status of all case files within the Office. This is intended to expedite the movement of information as well as make it easier to track file movement and the decisions on each case file. It is expected that this will speed up the delivery of justice including access to justice by the older persons.

The challenges to access to justice by the older persons include new local council courts that were not oriented on issues of older persons. The older persons fall within the poor people and thus cannot afford court fees and litigation fees.

### **Right to work and access to the labour market in the context of older persons**

The labour market for older persons in Uganda is struggling with low skills and low productivity jobs, but important steps are taken to improve the workers daily life. However, weak compliance with labour market regulations has had a deteriorating effect on upholding international standards on the older person's workers. Almost nine out of ten older persons workers operate in the informal economy, which is on a sluggishly declining trend, and most informal older persons workers lack awareness of rights inscribed in labour legislation

The constitution under article 40 on Economic rights provides that Parliament shall enact laws:

- 1(a) to provide for the right of persons to work under satisfactory, safe and healthy conditions;
- (b) to ensure equal payment for equal work without discrimination; and
- (c) to ensure that every worker is accorded rest and reasonable working hours and periods of holidays with pay, as well as remuneration for public holidays.

(2) Every person in Uganda has the right to practise his or her profession and to carry on any lawful occupation, trade or business.

(3) Every worker has a right—

(a) to form or join a trade union of his or her choice for the promotion and protection of his or her economic and social interests;

(b) to collective bargaining and representation; and

(c) to withdraw his or her labour according to law. The provisions apply to older persons engaged in employment.

The Employment Act, 2006 consolidates the laws governing individual employment relationships and outlaws discrimination of workers on many grounds including age.

Consequently, some skilled personnel are provided with contractual employment in the public service when they are 60 years and above.

The Social Development Sector plan 2015/2016-2019/2020 under the theme “Empowering communities particularly the vulnerable and marginalized groups for wealth creation and inclusive development” contributes to the attainment of the second National Development Plan goals aggregated under the theme “Strengthening Uganda’s Competitiveness for Sustainable Wealth Creation, Employment and Inclusive Growth. This applies to the older persons as well.

The National Policy on HIV/AIDS and the World of Work (2007) and Plan of Action (2010), the National Policy on Disability, the National Equal Opportunities Policy (2006), the Community Mobilization Strategy (2006), National Industrial Policy (2008), National Population Policy (2010) National Oil and Gas Policy of Uganda (2008) and the Agriculture Investment Policy (2010) provide for the engagement of older persons on matters of worker.

The Industrial Court in Uganda is operating after years of non-functioning and provides a mechanism for peaceful settlement of labour disputes, even though the low capacity of the court results in a back-log of cases.

The employment share of older persons in the agricultural sector is declining slowly but continues to dominate the workforce, while the share rests low in the industry sector that is not employing many unskilled older persons except professionals.

Gender inequalities among older persons in the labour market are present in Uganda on a wide range of aspects such as legal status, access to land, employment and career development. This situation echoes deep gender earning gaps along with attitudes, beliefs and practices that deliberately discriminate or exclude older women.

In consequence of limited access to contributory mechanism in the social security systems, the social protection coverage of older persons workers is low. National Social Security Fund is a contributory scheme mainly for the formal sector but it is under review to provide a comprehensive range of social security to even individuals that can register their businesses. The high informality in employment has shadowed the social protection possibilities.

The development of trade unions in Uganda goes back to the early 1930s. Since then, trade unions have evolved from the old style of unionism of 'craft unions' to more industrial and general workers unions. National Organization of Trade Unions (NOTU) and the Central Organization of Free Trade Unions (COFTU) represent close to 1 million members in 2018 with a trade union density at 6.0% of the total employment. The trade unions advocate for the rights of the workers in general including older persons.