



KENYA NATIONAL COMMISSION ON HUMAN RIGHTS SUBMISSION

14th session of the Open-ended Working Group on Ageing

Normative content related to right to health and access to health services

- 1. How is the human right of older persons to the highest attainable standard of physical and mental health defined in the national and local legislation in your country? If definitions are not available, how should such rights be defined considering relevant existing national, regional and international legal frameworks?**

Legal and policy provisions in Kenya including **Article 43 of the Constitution** emphasize every person's right to the highest attainable physical and mental health. There is no stand-alone provision on the right to health of older persons. National and local legislation should incorporate¹:

- **Non-discrimination**
 - **Accessibility** - both physically and financially to older persons. Relevant information should also be shared.
 - **Comprehensiveness** - to cover physical/mental health and geriatrics.
 - **Availability** - responsive to the needs of older persons, including preventive care, diagnosis, treatment, rehabilitation, palliative care, and long-term care services.
 - **Quality** - mechanisms for monitoring and ensuring quality of care.
- 2. The human right to health encompasses both access to health care and attention to the material and other conditions, which are necessary for its full enjoyment. What provisions have been made to ensure that older persons enjoy access, on an equal basis with others, to social protection, adequate water and sanitation, adequate housing and to health education?**

Article 21 (2) of the **Constitution of Kenya** obligates the State to take legislative, policy and other measures, including the setting of standards, to achieve the progressive realization of the rights guaranteed in the Constitution. **Article 21(3)** further obligates all State organs and all public officers to address the needs of vulnerable groups within society, including older members of society. These include the health needs of older persons as well as all other rights

¹ Additionally consider General Comment No. 14 of the Committee on Economic Social and Cultural Rights

required to fulfill these needs. **Article 27 (4) and (5)** expressly prohibit direct and indirect discrimination on any ground including age.

Additionally, Articles **46 (1) and (3)** of the **Constitution** stipulate the right of all consumers, (including older persons) to goods and services of reasonable quality; to the information necessary for them to gain full benefit from goods and services; to the protection of their health, safety, and economic interests; and to compensation for loss or injury arising from defects in goods or services.

Section 4 (c) of the **Health Act, 2017** enshrines the duty of the State to observe, respect, protect, promote and fulfill the right to the highest attainable standard of health including reproductive healthcare and emergency medical treatment by among others ensuring the realization of the health related rights and interests of vulnerable groups within society, including older members of society.

Social Protection Policy 2023 provides for social protection

The Social Health Insurance Act, 2023 seeks to fulfill every person's right to the highest attainable standard of health care. Seeks to ensure the full spectrum of essential quality health services from health promotion to prevention, treatment, rehabilitation, and palliative care without suffering financial hardship. It recognizes that elderly persons are vulnerable persons and need special care, support or protection.

Inua Jamii (uplift the community) Older Persons Cash Transfer Program: vulnerable older persons regularly receive cash transfers to help improve their living standards and meet their basic needs, including access to healthcare.

National Social Security Fund provides retirement benefits to employees in the formal sector.

Water and sanitation: several water projects, including the drilling of boreholes, construction of water pans and establishment of water distribution systems have been implemented in rural areas where majority of older persons live. Accessible sanitation facilities with features like handrails and ramps have been constructed across several rural areas. Awareness campaigns targeted at older persons and their caregivers to emphasize the importance of hygiene and sanitation practices.

Health education: recruitment of community health promoters trained to provide community health services to defined households within a community. ²

² Among others, they sensitize the community on the importance of healthy lifestyles and of quality health services; provide appropriate health advice to an assigned household in a language that the members of the household understand, including advice on: appropriate sanitation and hygiene techniques including household water treatment, good nutrition, the prevention, transmission and management of communicable diseases; and the prevention and management of non-communicable diseases.

3. Please provide references to existing standards on elements including but not limited to:

a) Prohibition of all forms of discrimination against older persons on the basis of age, alone or combined with other grounds, in all matters related to health.

Constitution of Kenya: Article 43 (2) prohibits the denial of emergency medical treatment to any person. Article 27 (4) and (5) prohibit the direct and indirect discrimination by the State or any person against any other person on any ground, including age. All persons, including older persons are therefore entitled to enjoy the right to health under the Constitution.

b) Provision of promotive, preventive, curative, rehabilitative and palliative health facilities, goods and services, as well as health care and support, including on aspects such as quality of care, long-term and palliative care and support.

Health Act, 2017

Section 4 enshrines the state duty to ensure the provision of a health service package at all levels of the healthcare system, which shall include services addressing promotion, prevention, curative, palliative and rehabilitation, as well as physical and financial access to healthcare.

Section 5 (1) stipulates the right of every person to the highest attainable standard of health to include progressive access for provision of promotive, preventive, curative, palliative and rehabilitative services.

Section 12 (2) (a) obligates all healthcare providers, whether in the public or private sector, to provide healthcare, conscientiously and to the best of their knowledge within their scope of practice and ability, to every person entrusted to their care or seeking their support.

The Social Health Insurance Act, 2023

Acknowledge the plight of Older Persons and provides for enhanced care and protection

c) Availability, accessibility, acceptability and quality of health facilities, goods and services as well as health care and support, including aspects such as quality of care, long-term and palliative care and support

Health Act, 2017

Section 4 (above)

Primary Health Care Act, 2023

Section 11 (2) (i) of the Act obligates community health promoters to provide support to the assigned household on quality family-based care and support for a patient. Furthermore, Section 16 (e) of the Act obligates each County Government, in the management of primary health care services, to put in place mechanisms to facilitate access to timely primary health

care services including community and family-based care and support for patients within the respective county.

d) Exercise of older persons' legal capacity on an equal basis with others, including the ability to make an informed consent, decisions and choices about their treatment and care.

Under Section 8 and 9 of the Health Act, healthcare providers are obligated to obtain consent before carrying out any medical intervention on a person, unless that person is unable to give informed consent and such consent is authorized by the next of kin, law or court order, in case of an emergency situation, among others. Before obtaining consent, healthcare providers are obligated to provide to a patient in a language that they understand and in a manner that takes into account their level of literacy, information on their health status, the procedures and treatment options available and their benefits and risks, and their right to refuse the recommended treatment options.³

4. What are the measures that should be undertaken by the State to respect, protect and fulfil the human right of older persons to the highest attainable standard of physical and mental health, regarding the normative elements as provided above?

- Legal and policy development/reform:
- Research and Data Collection/Disaggregation to ensure evidence based interventions
- International Cooperation and Collaboration.

5. What special measures and specific considerations should be considered in developing the normative content on older persons' right to health?

- Participation of older persons.
- Intersectional issues (disability)
- Geriatric needs of older persons

³ Health Act, 2017, available at <http://kenyalaw.org:8181/exist/rest/db/kenyalex/Kenya/Legislation/English/Acts%20and%20Regulations/H/Health%20Act%20-%20No.%2021%20of%202017/docs/HealthAct21of2017.pdf>