



**MINISTRY OF PUBLIC SERVICE, GENDER,  
SENIOR CITIZENS AFFAIRS & SPECIAL PROGRAMMES  
STATE DEPARTMENT FOR SOCIAL PROTECTION, SENIOR CITIZENS  
AFFAIRS & SPECIAL PROGRAMS**

**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**

**RIGHT TO WORK AND ACCESS TO THE LABOR MARKET**

**Definition**

1. **How is the right to work and access to the labor market for older persons defined in the national legislation in your country? If such a definition is not available, how should it be defined considering relevant existing national, regional and international legal frameworks?**
  - The Constitution of Kenya (CoK) 2010, prohibits discrimination either directly or indirectly against any person on the basis of race, sex, pregnancy, marital status, health status, ethnic or social origin, colour, age, disability, religion, conscience, belief, culture, dress, language or birth.
  - Article 27 of the CoK provides for equality and freedom from discrimination and particularly, Article 27(1) states that every person is equal before the law and has the right to equal protection and equal benefit of the law. Under Article 27(2) equality includes the full and equal enjoyment of all rights and fundamental freedoms including right to work;
  - Article 41 of the CoK protects the right to fair labor practices, fair remuneration and reasonable working conditions. Labor rights are part of the Bill of Rights by virtue of Article 41 of the Constitution;
  - Section 5 (2) of the Employment Act 2007 prohibits against discrimination in employment and stipulates an employer shall promote equal opportunity in employment and strive to eliminate discrimination in any employment policy and



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practice;

- Older persons to continue to provide their expertise, talents, experience and abilities to their families and community by accessing and creating employment. Refer to the Thematic Area 8 on Employment and Income Security of the National Plan of Action on Implementing of the National Policy on Older Persons and Ageing (2020-2025);

**Scope of the right**

**2. What are the key normative elements of the right to work and access to the labor market for older persons?**

- Article 57 of the CoK obligates the State to take measures to ensure the older persons fully participate in the affairs of society, pursue their personal development; live in dignity and respect and are free from abuse; and receive reasonable care and assistance from their Family and the State;
- Article 167 of the CoK makes provisions on the tenure of office of the Chief Justice and other judges and stipulates a judge shall retire from office on attaining the age of seventy years, but may elect to retire any time after attaining the age of sixty-five years; and if the Chief Justice's term of office expires before the Chief Justice retires, the Chief Justice may continue office as a judge of the Supreme Court;
- Public Service Act 2017 Section 80 (2) where a public officer has attained the mandatory retirement age, Public Service Commission or other appointing authority may engage the public officer for service after retirement upon such terms of contract if the public officer possesses rare knowledge, skills and competencies for the time being required in service; the retired officer is willing to be engage on contract; and the retired public officer's performance shall not in any way be impaired by age.



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**Please provide references to existing standards on elements such as:**

**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 employment.**

- Article 27 of CoK provides for equality and freedom from discrimination and particularly, Article 27(1) states that every person is equal before the law and has the right to equal protection and equal benefit of the law. Under Article 27(2) equality includes the full and equal enjoyment of all rights and fundamental freedoms including right to work;
- State Corporation Act 2012 does not set an age limit for the appointment of Board Members;
- Thematic Area 8 on Employment and Income Security of the National Plan of Action on Older Persons and Ageing (2020-2025)

Intervention 1: Promote post retirement employment opportunities for older persons.

Intervention 2: Provide and encourage a favorable environment that enables older persons to participate actively in the formal and informal sectors of employment.

Intervention 3: Promote measures that ensure equity and fairness in access and control of productive resources.

**b) Elimination of all forms of ageism and age discrimination from the workplace and organizational cultures.**

- The National Volunteerism Policy 2016 recognizes retired older persons as a category of volunteers;
- Thematic Area 8 on Employment and Income Security of the National Plan of Action on Older Persons and Ageing (2020-2025);



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Intervention 1: Promote post retirement employment opportunities for older persons

Intervention 2: Provide and encourage a favorable environment that enables older persons to participate actively in the formal and informal sectors of employment.

**c) Provision of reasonable accommodation to older persons in the workplace.**

- Thematic Area 8 on Employment and Income Security of the National Plan of Action on Older Persons and Ageing (2020-2025);

Intervention 2: Provide and encourage a favorable environment that enables older persons to participate actively in the formal and informal sectors of employment.

Intervention 3: Promote measures that ensure equity and fairness in access and control of productive resources.

**d) Affirmative action programs to promote the hiring of older persons.**

- Thematic Area 8 on Employment and Income Security of the National Plan of Action on Older Persons and Ageing (2020-2025);

Intervention 3: Promote measures that ensure equity and fairness in access and control of productive resources.

**e) Access to career development, technical and vocational guidance programs, placements services and vocational and skills development.**

- Thematic Area 7 on Long Life Education of the National Plan of Action on Older Persons and Ageing (2020-2025);



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Intervention 1: Promote review and/or strengthen functional literacy programs to be responsive to the needs of older persons.

Intervention 2: Provide older persons with opportunities to access vocational ICT training to meet their needs and adopt the changing environments.

**f) Access to flexible or gradual retirement schemes and flexible working practices for older workers.**

- Thematic Area 7 on Long Life Education of the National Plan of Action on Older Persons and Ageing (2020-2025);

Intervention 1: Promote review and/or strengthen functional literacy programs to be responsive to the needs of older persons.

**g) Promotion of older persons' self-employment and entrepreneurship.**

- Thematic Area 9 on Social Security of the National Plan of Action on Older Persons and Ageing (2020-2025);

Intervention 3: Promote a culture of savings and investments amongst older persons

**h) Favorable, fair, and safe working conditions when undertaking formal, informal or unremunerated work.**

- Thematic Area 8 on Employment and Income Security of the National Plan of Action on Older Persons and Ageing (2020-2025);

Intervention 3: Promote measures that ensure equity and fairness in access and control of productive resources.



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**i) Access to prompt remedies and redress when older persons' right to work and access to the labor market is denied.**

- Thematic Area 9 on Social Assistance of the National Plan of Action on Older Persons and Ageing (2020-2025);

Intervention 1: Promote the upscaling of the social assistance programme to cover all vulnerable older persons.

**State obligations**

**3. What are the measures that should be undertaken by the State to respect, protect and fulfil the right to work and access to the labor market for older persons, regarding the normative elements as provided above?**

- The State should work hand in hand with all civil societies and other stakeholders willing to promote Bills which respect, protect and promote right to work and access to the labor market for the older persons;
- The State should invest in programmes and interventions that tackle ageism through research, awareness creation and advocacy;
- The State should give prominence to fight ageism with similar vigor that is accorded to other special interest groups (women, youth, children and persons with disabilities).

**Special considerations**

**4. What special measures and specific considerations should be considered in developing the normative content of the right of older persons to work and access to labor market, such as protection and regularization of older workers in informal sector, equal**



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**remuneration for work of equal value particularly for older women as well as recognition of unpaid work often carried out by older women?**

- Provide opportunities to all older persons irrespective of gender who are ready or want to work;
- Ensure equality of opportunity throughout life with respect to continuing education, training, vocational and placement services;
- Develop affirmative action programmes that promote entrepreneurship amongst older persons.

**5. How should the responsibilities of non-State parties such as private sector be defined in the context of the right to work and access the labor market for older persons?**

- Implementation – employment of older persons;
- Resource mobilization and financial support- to support Small Medium Enterprises (SMEs) owned by older persons;
- Research and Policy development including proposing Bills like what Ukongwe Bora Welfare Society has done with The Maintenance and Welfare of Parents and Senior Citizens Bill 2020;
- Lobbying and advocacy;
- Promoting skills development among older persons should be promoted;
- Developing innovations and initiate best practices on promoting the right to work and labor market for older persons;



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**Implementation**

- 6. 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 work and access to the labor market for older persons?**

**Best Practices**

- The Public Service Commission of Kenya allows older persons who have retired back to service if they possess rare skills, knowledge and competencies on a contractual basis. These opportunities are however very few;
- Older Persons who have retired are allowed to still engage with the government and private sector as individual contractors or consultants;
- Universities allow academic staff past the retirement age of 60 to continue lecturing as they mentor young professionals in their field of expertise.

**Challenges**

- Ageism is a major challenge faced by older persons who are discriminated on the basis of their age when seeking opportunities for formal/informal employment;
- Prejudices in society with respect to older persons willing to engage in the labor market whether in the formal or informal sector. Specifically, the negative attitude and perception that older persons should exit the job market for young people to get work employment in the formal sector;
- Kenya to date does not have an Act of Parliament that specifically addresses the issues affecting older persons including one that exclusively addresses their right to work and access to the labor market.