

Guiding questions for the twelfth session of the General Assembly open-ended working group for the purpose of strengthening the protection of the human rights of older persons

Focus area 1: Contribution of older persons to sustainable development

The Scope:

Older persons have the right to contribute to sustainable development. The right to participate in, and contribute to, development is affirmed in the Declaration on the Right to Development. Article 25 of the International Covenant on Civil and Political Rights recognizes the right to participate in public affairs. Effective and meaningful participation enables the advancement of all human rights. On the other hand, when older persons are denied the ability or opportunity to contribute, or when their contribution is unrecognized or devalued, their dignity is denied. Understanding the contribution of older persons to sustainable development as a right enables States to identify steps that can be taken to uphold their dignity.

Substantive guiding questions:

National Legal and Policy Framework

1. What are the legal provisions, policy frameworks in your country that recognize older persons' right to participate in and contribute to sustainable development? This could include, but is not limited to:
 - a) ensuring that relevant human rights (in particular the right to freedom of opinion and expression, the right of access to information, and the rights to freedom of peaceful assembly and of association) are protected and implemented;
 - b) protecting and enhancing civic space and collaboration with civil society that represents the voices of older persons in sustainable development;
 - c) good practices to ensure older persons' participation in, and contribution to sustainable development.

Kenya has made progressive steps towards acknowledging the role older persons play in sustainable development by anchoring their rights in national policies and legislations. Further, Article 2(6) of the Constitution provides that any treaty or convention ratified by Kenya shall form part of the law of Kenya. Article 21(3) obligates State organs and all public officers 'to address the needs of vulnerable groups within society, including older members of society'. Article 28 clearly stipulates that every person has inherent dignity and the right to have that dignity respected. Article 57 specifically places a duty upon the State to 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'.

Article 260 of the Constitution of Kenya defines the term "older member of society" as, 'a person who has attained the age of sixty years'.

Other enabling frameworks for the older persons in Kenya include;

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- a. *National Policy on older Persons and Ageing, 2014 - Provides a comprehensive framework to address unique challenges that older persons in Kenya face.*
- b. *National Social Protection Policy, 2011 - Ensures that all Kenyans live in dignity and exploit their human capabilities for their own social and economic development.*
- c. *Social Assistance Act, 2013 – Gives effect to Article 43(1) (e) of the Constitution on the right to social security and provides for the rendering of social assistance to elderly persons who have been neglected or abandoned without any ascertainable means of support.*
- d. *Kenya's Vision 2030 which aims to provide a "high quality of life for all its citizens by the year 2030...". In effect this includes older persons.*

2. What are the challenges faced by older persons for the realization of their right to contribute to sustainable development at national and international levels?

Older persons are a category of society, the majority of whom are solely dependent on the State and the family for their wellbeing.¹ This makes them vulnerable and prone to poverty, especially in developing countries. Poverty is a multidimensional and complex phenomenon. It covers a range of aspects such as income, education, health, quality of environment, social and political participation.²

3. What data, statistics and research are available regarding older persons' contribution to sustainable development?

Kenya has scarce information on contributions made by older persons towards sustainable development. However, a 2009 report by Kenya Institute for Public Policy Research and Analysis (KIPARRA) highlights some of the contributions to include; caring of the sick family members impacted by pandemics such like HIV/ Aids, intergenerational transfer of knowledge and making contribution towards the National Hospital Insurance Fund (NHIF) even upon retirement from active employment.³

Equality and non-discrimination

4. What measures are being taken to eliminate ageism, ageist stereotypes, prejudices and behaviors that devalue older persons' contribution to sustainable development?

The state has undertaken numerous measures anchored in constitution, legislations, policies. For instance, Article 57 specifically places a duty upon the State to 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'.

¹ M Kindiki & C Wambu 'Challenges of Kenya's vision 20130 and the jubilee manifesto: the case of old people cash transfer pension scheme in Nakuru County' (2015) 3 International Journal of Social Science Studies 176.

² L Grut, J Olenja & B Ingstad 'Disability and barriers in Kenya' in A Eide & b Ingstad (eds) *Disability and poverty a global challenge (2011)* 153.

³ Sessional Paper No. 2 of 20009 National Policy on older persons and aging

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Moreover, Article 2 (6) of the Constitution provides that any treaty or convention ratified by Kenya shall form part of the law of Kenya. Consequently, international and regional instruments such as the African Charter on Human and People's Rights as well as the Protocol to the African Charter on Human and People's Rights on the Rights of Women in Africa (Maputo Protocol) apply to Kenya. More specifically, Article 18 (4) of the African Charter on Human and People's Rights provides that 'Older persons and people with disabilities shall have the right to special measures of protection in keeping with their physical or moral needs.' Additionally, Article 22 of the Maputo Protocol provides for special protection of elderly women.

Remedies and Redress

5. What mechanisms are necessary, or already in place, for older persons to lodge complaints and seek redress for denial of their right to participate in and contribute to sustainable development?

There are several avenues in which older persons can lodge their complaints and seek redress for denial of their rights to participate and contribute to sustainable development. These include;

- a. Kenya National Commission on Human Rights (KNCHR)*
- b. National Gender and Equality Commission (NGEC)*
- c. The State Department of Labour and Social Protection and;*
- d. Judiciary*
- e. National Government Administration Offices*
- f. Through elected representatives especially political leaders*

Focus area 2: Economic security

National legal and policy framework

1. What are the legal provisions and policy frameworks in your country that guarantees the minimum essential level of the enjoyment of economic, social and cultural rights, in particular the right to an adequate standard of living?

Economic, social and cultural rights, in particular the right to an adequate standard of living is anchored in Article 43 on the Constitution and the state is required to make progressive steps. towards fulfillment of these rights. ⁴

2. How is poverty defined in the national policy framework?

At the moment there is no clear definition of what constitute poverty in Kenya. However, Kenya has a Poverty Eradication Authority Bill that defines poverty as "the inadequacy of income and deprivation of basic needs".

3. What are challenges faced by older persons living in poverty, including the impact of intersectional discrimination and inequality based on age, gender and other grounds?

*Health care related complications as they can ill-afford the cost of seeking medical services
Constraints in accessing justice*

⁴ Available at: <http://kenyalaw.org/kl/index.php?id=398>

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4. What data, statistics and research are available regarding older persons living in poverty?

The Kenya National Bureau of Statistics (KNBS) assesses poverty levels in its National Housing and Population Census every 10 years. In 2020, KNBS conducted a comprehensive detailed research on the level of poverty in Kenya.⁵

Progressive realization and the use of maximum available resources

5. What steps have been taken to address economic insecurity and poverty in older age and to ensure the right to an adequate standard of living for older persons?

There are Constitutional and legislative safeguards that obligates the state to put in place measures to ensure a life of dignity for older persons. Through these frameworks the state has been able to establish and operationalize institutions that work towards ensuring economic for older persons including the National Social Security Fund (NSSF), National Hospital Insurance Fund (NHIF), State Department of Labour and Social Protection. Additionally, Kenya has in place Consolidated Cash Fund which seeks to protect older members of society through provision of cash transfers.⁶

6. What is the impact of macroeconomic policies on economic insecurity and poverty among older persons and vice versa? What policy options are available and/or implemented in order to expand fiscal space and maximize available resources to ensure economic security and the right to an adequate standard of living for older persons?

Refer to question 5, focus area 2.

7. What good practices are available in terms of ensuring older persons' economic security, including through a life-course approach?

Refer to question 5, focus area 2.

Equality and non-discrimination

8. What measures are being taken to eliminate ageism and discrimination based on age that prevent older persons to access economic and other productive resources, including financial services, land, adequate housing and the right to inheritance?

Refer question 4, focus area 1.

Remedies and redress

⁵ Available at: <https://www.knbs.or.ke/comprehensive-poverty-report/>

⁶ Kenya Vision 2030 p36 <<https://vision2030.go.ke>>

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8. What mechanisms are necessary, or already in place, for older persons to lodge complaints and seek redress for denial of their economic security and enjoyment of the right to an adequate standard of living?
 - a) *Kenya National Commission on Human Rights (KNCHR)*
 - b) *National Gender and Equality Commission (NGEC)*
 - c) *The State Department of Labour and Social Protection and;*
 - d) *Judiciary*
 - e) *National Government Administration Offices*
 - f) *Through elected representatives especially political leaders*