****

**KENYA NATIONAL COMMISSION ON HUMAN RIGHTS**

**Submission on violence, abuse and neglect of older persons**

**Presented to**

**The Office of the United Nations High Commissioner for Human Rights**

**28 February 2023**

Kenya National Commission on Human Rights 1st Floor, CVS Plaza, Lenana Road

P.O. Box 74359-00200

NAIROBI, KENYA

Tel: 254-20-2717908 /2717256/2712664

Fax: 254-20-2716160

Website: [www.knchr.org](http://www.knchr.org)

Email: haki@knchr.org

1. **INTRODUCTION**
2. The Kenya National Commission on Human Rights (“KNCHR” or “Commission”) is an independent National Human Rights Institution established under Article 59 of the Constitution of Kenya, 2010 with a broad mandate to promote a culture of respect for human rights in the Republic of Kenya. The operations of the Commission are guided by the United Nations Paris Principles on the establishment and functioning of Independent National Human Rights Institutions commonly referred to as the Paris Principles and is accredited as an ‘A’ status institution for its compliance with the Paris Principles by the Global Alliance of National Human Rights Institutions (GANHRI). The Commission also enjoys Affiliate Status before the African Commission on Human and Peoples’ Rights.
3. The Commission submits this information pursuant to its constitutional mandate to promote a culture of respect for human rights in Kenya.
4. **INFORMATION ON VIOLENCE, ABUSE AND NEGLECT OF OLDER PERSONS**
5. **Legal, policy and institutional frameworks:** is there a non-discrimination law that prohibits discrimination based on age? Is there a legislation on violence against persons and/or domestic violence that includes violence, abuse and/or neglect of older persons? Does the law establish a specialised independent body receiving complaints of discrimination based on age? Is there a national plan, policy or strategy to address violence against older persons that is overseen by a national mechanism to monitor and implement it? Please provide detailed information and relevant documents, if applicable.

Kenya does not have an explicit anti-discrimination law. However, Article 27 of the **Constitution of Kenya, 2010**, which is the Supreme law of the land, enshrines the right of every person to equality and freedom from discrimination. Article 27 (4) and (5) of the Constitution expressly prohibit the State and any person from directly or indirectly discriminating against any person on any ground including age.[[1]](#footnote-1) Additionally, Article 57 (c) of the Constitution enshrines the right of older persons to live in dignity and respect and be free from abuse.[[2]](#footnote-2)

Kenya’s **Protection Against Domestic Violence Act, 2015**, does not explicitly mention “older persons” as a target group of violence, abuse and neglect. It does however identify grandfathers and grandmothers as family members that could be victims of domestic violence.[[3]](#footnote-3) In addition, age is one of the grounds on which a person could be considered a “vulnerable victim” under the **Victim Protection Act, 2014**.[[4]](#footnote-4) A vulnerable victim under the Act is entitled to “receive special consideration from the criminal justice agencies and victim support service providers in matters related to victim protection and welfare services” and to “be provided by the Director with programs designed to ensure their enjoyment of the benefits provided for victims under the Act”.[[5]](#footnote-5) Lastly, Article 29 (c) of the **Constitution of Kenya** recognizes the right to freedom and security of person, including the right of every person to not be subjected to any form of violence from either public or private sources.[[6]](#footnote-6)

The **National Gender and Equality Commission Act, 2011,** established the **National Gender and Equality Commission,** whose functions include, among others, receiving complaints relating to issues of equality and freedom from discrimination of special interest groups such as marginalized groups and persons with disability.[[7]](#footnote-7) Additionally, the **Kenya National Commission on Human Rights Act, 2011,** established the **Kenya National Commission on Human Rights** to, among others, receive and investigate complaints about alleged abuses of human rights, including the rights of older persons.[[8]](#footnote-8)

The **National Policy on Older Persons and Ageing, 2009[[9]](#footnote-9)** seeks to, among others, protect older persons from abuse. The policy was reviewed and aligned with the Constitution in January 2014. The **State Department for Social Protection and Senior Citizen Affairs** under the **Ministry of Labour and Social Protection** is responsible for coordinating the implementation of the policy.[[10]](#footnote-10)

1. **Manifestations of violence:** what forms of violence, abuse and neglect are older persons facing? In which settings does it happen? Please provide detailed information.

**Violence and abuse related to accusations of witchcraft:** Older persons in certain regions of Kenya are vulnerable to torture and killings resulting from accusations of witchcraft. Witch burning, killings, and physical attacks against the accused are rife in regions such as Kisii in Western Kenya and Kilifi County in Coastal Kenya.[[11]](#footnote-11) Access to land and resources is the key motivating factor behind these killings. Perpetrators of these violations are often young relatives who are unemployed and lacking resources that could empower them. They therefore resort to accusing older persons who own land of witchcraft, and possess these lands once they have killed or displaced their victims.[[12]](#footnote-12) These violations increase during periods of drought and famine.[[13]](#footnote-13) During such periods, relatives resort to dispossessing the elderly of their land in order to sell it and access sources of income. Lastly, mental illnesses that affect the elderly such as dementia are widely misunderstood and attributed to witchcraft in local communities.[[14]](#footnote-14)

**Neglect resulting from rural-urban migration of young people:** Majority of older persons in Kenya reside in rural areas. Migration of their younger children to urban areas for job opportunities has, in majority of cases, resulted in their loss of core support systems and subsequent abuse and neglect.[[15]](#footnote-15)

1. **Intersectionality:** how does violence, abuse and neglect affect specific groups of older persons (e.g. older women, older LGBTI persons, older persons belonging to ethnic and indigenous groups, older refugees and internally displaced persons, older persons with disabilities, etc.) Please provide detailed information.

**Older women:** Although old men are victims of witchcraft accusations and the resultant killings, old women, particularly the poor and widowed in the Kisii region of Kenya are the prime victims of this violation. As mentioned under question 2 above, land scarcity and access to resources are the main motivating factors behind accusations of witchcraft and violence towards old women. These accusations are rooted in the patriarchal belief that girls and women should not inherit or own land and other property. Shockingly, accusers are often relatives from the families of the widows’ deceased husbands. These relatives resort to killing their victims and possessing their land.[[16]](#footnote-16)

**Older persons with disabilities:** Mental illnesses that affect the elderly such as dementia and Alzheimer’s are widely misunderstood in local communities in Kenya. Older people who suffer from these illnesses are susceptible to accusations of witchcraft and the resultant violence.[[17]](#footnote-17)

1. **Data:** are data available at national and local level about violence, abuse and neglect of older persons? Are national surveys about violence including experiences of older persons? If available, please provide figures and data.

There are no data available at the national level on violence, abuse and neglect of older persons. The 2022 Kenya Demographic and Health Survey’s section on violence reports the experiences of those aged 15 to 49 years. At the local level, data on violence, abuse and neglect of older persons has been generated by grassroots human rights organizations and Non-Governmental Organizations. Help Age International has reported that about six people face violence every month on suspicion of being witches in Kisii, Kenya.[[18]](#footnote-18) The true national incidence or prevalence of violence against older persons in Kenya is unknown primarily because of the hidden nature of the problem and its tendency to be committed in the privacy of the older person’s home. Victims are also unwilling to report abuse for fear of disbelief, loss of independence, being institutionalized, losing social support and being subjected to future retaliation by the perpetrator(s).

1. **Access to justice:** how does the State fulfil its obligations to ensure older persons’ access to justice, and to obtain remedies and reparations, when their human rights have been violated as a result of violence, abuse and neglect?

Courts have convicted and sentenced perpetrators for human rights violations related to accusations of witchcraft and ritual attacks. Litigation for the four elderly victims of lynching in Kisii County, Kenya in October 2021 is currently ongoing. Between 17 and 19 May 2022, nine people, including a minor, appeared before the High Court in Kisii for their alleged involvement in the murders of four elderly women in Nyagonyi village, Marani, Kisii County.

The State facilitates access to justice for older persons through the following means:

**Alternative Dispute Resolution mechanisms:** The Constitution of Kenya recognizes alternative forms of dispute resolution including reconciliation, mediation, arbitration and traditional dispute resolution mechanisms.[[19]](#footnote-19) Court-annexed Mediation is a form of alternative dispute resolution employed by Courts in Kenya, which is useful in cases of violence, abuse and neglect of older persons. Alternative Dispute Resolution mechanisms are readily available in rural areas where majority of older persons live. These mechanisms serve as the first point of contact for older persons seeking access to justice. The Kenya National Commission on Human Rights has consistently built the capacity of traditional justice system actors to ensure there is proper dispensation of justice. The Commission has worked closely with elders from traditional justice systems from Meru, Luo, Turkana, Kwale, Maasai, Kamba, Tharaka and Samburu communities to ensure a human rights-based approach is mainstreamed in their operations. In some areas such as the Coast, the traditional justice system actors have been incorporated into respective court users committees thereby increasing their acceptance amongst the formal justice mechanisms.

**Construction of Courts in new areas:** Construction of Courts in new areas, particularly the rural and marginalized ones where older persons in Kenya live serves to reduce the distance travelled by litigants thus ensuring access to justice. The refurbishment of court buildings also serves to enhance court space, conditions of court rooms and offices, and accessibility by older persons. During the 2020/2021 Financial Year, 7 High Court buildings and 4 Magistrates’ Court buildings were constructed and renovated across different regions of Kenya.[[20]](#footnote-20)

**Provision of legal aid and creation of legal awareness:** The Legal Aid Act, 2016 established the National Legal Aid Service to, among others, establish and administer a national legal aid scheme that is affordable, accessible, sustainable, credible and accountable; take appropriate measures to promote legal literacy and legal awareness among the public and in particular, educate vulnerable sections of the society on their rights and duties under the Constitution and other laws; and administer and manage the legal aid fund.[[21]](#footnote-21) The National Legal Aid Service provides legal aid to vulnerable members of the society including older persons. The legal aid provided includes legal advice and legal representation. The Service also promotes legal awareness to vulnerable groups through radio talk shows, public barazas and other outreach programs such as mobile legal aid clinics.[[22]](#footnote-22)

**Cash transfers for older persons:** Article 48 of the Constitution of Kenya, 2010 obligates the State to ensure access to justice for all persons. Where any fee is required for the administration of justice, the State must ensure that it is reasonable and does not impede access to justice. The **Older Persons Cash transfer program** was initiated in 2007 by the Government of Kenya to provide regular and predictable cash transfer to poor and vulnerable older persons aged 65 and above in identified households. Eligible households receive KES 2000 (approx. 16 dollars) every two months.[[23]](#footnote-23) This cash transfer assists poor and vulnerable older victims where a court fee is required for their administration of justice.

1. **Access to information:** How do you raise awareness about violence against older persons in the public? How does information about access to essential services (e.g. healthcare, legal assistance, social services, access to shelters) is made accessible and available for older persons?

**Raising awareness about violence against older persons**

The KNCHR through its Public Education and Training Division has come up with public awareness and sensitization programs which aim at creating or increasing human rights consciousness, interest and understanding by the public. These include legal aid and human rights awareness clinics, public debates, sensitization forums and press releases in the media. The Commission takes part in the commemoration of the International Day of Older Persons on 1st October every year, which aims at increasing awareness and championing the rights of older persons and celebrate their success and sensitization on the rights of older persons. From the Press Release: Commemoration of the International Day of Older Persons (IDOP) 1st October 2022, the Commission brought to light the increasing rise in human rights violations including targeted attacks against elderly persons on allegations of practicing witchcraft. The KNCHR developed social media messages to enhance public awareness on the rights of older persons.

The Commission is alive to ongoing harmful practices in Kilifi and Kisii counties, where older persons have been the target of attacks and killings on allegations of practicing witchcraft. Whereas a safe house for older persons is operational in Kilifi County, there is a need to enhance public awareness on the rights of older persons. In creating awareness, the Youth should be urged to immediately stop attacking the senior citizens. The religious leaders and other organizations and Kenyans of good will are called upon to protect the Older Persons.[[24]](#footnote-24)

The Commission identifies old age as a process rather than an outcome with this, one can prepare themselves from childhood until old age, this knowledge however is not common to the public. In order to create awareness KNCHR gives recommendations to the government that; Ministry of Education, in collaboration with the Ministry of Gender labour and Social Development and the media, should develop and implement programs aimed at educating the public on ageing as a process for which Kenyans need to adequately prepare from early stages of life. Such public education would also contribute to the elimination of negative stereotypes associated with old age as well as physical and mental abuse of older persons including the killing of older persons on allegations of witchcraft.[[25]](#footnote-25)

**Information access to essential services for older persons**

During the commemoration of the International Day for Older Persons, information on the available essential services is relayed to the older person.

**Legislative framework**

**Access to Information Act 2016**, Part II, Section 4 provides that every citizen has the right of access to information held by—(a) the State; and(b)another person and where that information is required for the exercise or protection of any right or fundamental freedom with respect to this:

The MINISTRY OF LABOUR, STATE DEPARTMENT OF SOCIAL PROTECTION, PENSIONS AND SENIOR CITIZENS AFFAIRS is mandated to coordinate, mainstream and implement Older Persons concerns it also has the mandate to ensure information about the available services for older persons is made accessible and available.[[26]](#footnote-26)

1. **Please provide examples of good practices for preventing, monitoring and addressing violence and abuse against older persons.**

There are no specific practices for older person that have been put in place, but the Government of Kenya has ensured there is inclusivity of the older person in the legislative frameworks and policies in ensuring protection of older persons. The KNCHR continues to support the quest for justice by families of older persons whose lives have been lost in the hands of criminal gangs accusing them of engaging in witchcraft.

A number of rescue centers have been set up to protect, offer psychosocial support and rehabilitate victims of accusations of witchcraft. These include the Mekatilili Menza Cultural Resource and Rescue Center, Kaya Godoma Rescue Center and Mrima wa Ndege village in Kilifi County, Kenya.[[27]](#footnote-27) In terms of psychosocial support the rescue centers have received food donations from well-wishers, county governments, legal fraternity and different organizations. Organizations such as the Kenya Red Cross society have donated tents to shelter the afflicted men and women.

The Kisii County Government also inaugurated a taskforce to establish the circumstances under which poor and elderly persons are victimized and accused of witchcraft.[[28]](#footnote-28) The taskforce had one month to identify the extent of the problem in the county and come up with mitigation measures, which will be shared with the national Government for necessary action.[[29]](#footnote-29)

**1. Legislative framework.**

**1.1 The Constitution of Kenya, 2010**

Chapter 4 and Article 57 of the Constitution of Kenya (2010) and Bill of Rights. The Constitution recognizes the rights of older persons, including rights to social security, non-discrimination and education, and obligates the State to take measures to ensure older persons’ participation, personal development, dignity, respect, and protection from abuse; and together with the family, government has the obligation to provide care and reasonable assistance to older persons.

**2. Policy frameworks**

**2.1The National Policy on Older Persons and Ageing**

 The goal of the Policy is to provide an environment that recognizes, empowers and facilitates older persons to participate in society and enjoy their rights and freedoms and live in dignity.

 **3. Programs**

 **3.1 Social Protection program**

 The specific social protection programs implemented by the Government include social assistance, which comes in form of cash transfers that target Older Persons, persons with severe disabilities and orphans and vulnerable children. Other forms of assistance include financial assistance in form of grants, food subsidies, and bursaries.

**3.2 Adult Education**

This program is meant to provide Older Persons with functional literacy to enable them to participate actively in national development. This also gives the older persons knowledge on how to access information that is crucial to them and to learn about their rights.[[30]](#footnote-30)

**3.3 KNCHR programs**

The Commission has put in place the human rights clinics and public forums on human rights awareness and complaint handling outreach forums. These clinics target the common underprivileged citizens who can also be the older persons in remote neighbourhoods and villages who are often likely to be left out by the conventional programs of the Commission.[[31]](#footnote-31)

KNCHR through its redress programme is supporting families of deceased elderly persons whose relatives were killed on allegations of practising witchcraft.

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

1. Constitution of Kenya, 2010, available at <http://kenyalaw.org/lex/actview.xql?actid=Const2010>, Article 27 [↑](#footnote-ref-1)
2. Ibid. Article 57 (c) [↑](#footnote-ref-2)
3. Protection Against Domestic Violence Act, 2015, available at <http://www.kenyalaw.org:8181/exist/kenyalex/actview.xql?actid=No.%202%20of%202015>, Section 5 (2) [↑](#footnote-ref-3)
4. Victim Protection Act, 2014, available at <http://www.kenyalaw.org:8181/exist/kenyalex/actview.xql?actid=No.%2017%20of%202014>, Section 17 (1) [↑](#footnote-ref-4)
5. Victim Protection Act, Section 17 (5) [↑](#footnote-ref-5)
6. Constitution of Kenya, 2010, available at <http://kenyalaw.org/lex/actview.xql?actid=Const2010>, Article 59 (c) [↑](#footnote-ref-6)
7. National Gender and Equality Commission Act, 2011, available at <https://www.ilo.org/dyn/natlex/docs/ELECTRONIC/89319/115496/F749616565/KEN89319%202012.pdf>, Section 8 (c) and (f) [↑](#footnote-ref-7)
8. Kenya National Commission on Human Rights Act, 2011, available at <https://www.knchr.org/Portals/0/Articles/KenyaNationalCommissiononHumanRights_Act_No14of2011.pdf?ver=2016-08-01-132051-907>, Section 8 (d) [↑](#footnote-ref-8)
9. Available at <https://www.partners-popdev.org/ageing/docs/National_Policy_on_Older_Persons_and_Ageing_Kenya.pdf> [↑](#footnote-ref-9)
10. National Policy on Older Persons and Ageing, 2009, p. 20 [↑](#footnote-ref-10)
11. See <https://www.citizen.digital/news/four-people-killed-on-suspicion-of-witchcraft-in-kisii-n285287> and <https://www.standardmedia.co.ke/health/coast/article/2001460557/concern-over-rise-in-killings-of-elderly-in-kilifi-over-witchcraft-claims> [↑](#footnote-ref-11)
12. See <https://www.researchgate.net/publication/329070523_HOW_YOUNG_KENYANS_ARE_MURDERING_ELDERLY_RELATIVES_CLAIMING_THEY_ARE_WITCHES_BUT_IT_IS_BECAUSE_OF_WEALTH> [↑](#footnote-ref-12)
13. See <https://qz.com/945296/young-kenyans-are-murdering-elderly-relatives-they-claim-are-witches-but-it-really-has-nothing-to-do-with-magical-beliefs> [↑](#footnote-ref-13)
14. See <https://www.helpage.org/newsroom/latest-news/older-people-must-be-protected-from-witchcraft-accusations/> [↑](#footnote-ref-14)
15. National Gender and Equality Commission, “Whipping Wisdom: Rapid Assessment on Violence against Older Persons in Kenya,” (2014), available at <https://www.ngeckenya.org/Downloads/Assessment-on-violence-against-older-persons-in-Kenya.pdf> p. 18 [↑](#footnote-ref-15)
16. HelpAge International, “Old people must be protected from witchcraft accusations,” (22nd October 2021), available at <https://www.helpage.org/newsroom/latest-news/older-people-must-be-protected-from-witchcraft-accusations/>. [↑](#footnote-ref-16)
17. See <https://www.helpage.org/newsroom/latest-news/older-people-must-be-protected-from-witchcraft-accusations/> [↑](#footnote-ref-17)
18. See <https://www.helpage.org/newsroom/latest-news/older-people-must-be-protected-from-witchcraft-accusations/> [↑](#footnote-ref-18)
19. Constitution of Kenya, 2010, Article 159 (2) (c) [↑](#footnote-ref-19)
20. The Judiciary of Kenya, “State of the Judiciary and Administration of Justice: Annual Report,” accessible at Page 96 [↑](#footnote-ref-20)
21. Legal Aid Act, 2016, available at http://kenyalaw.org:8181/exist/kenyalex/actview.xql?actid=No.%206%20of%202016 , Section 7 (1) [↑](#footnote-ref-21)
22. See <http://nlas.go.ke/home/> [↑](#footnote-ref-22)
23. See <https://www.socialprotection.or.ke/social-protection-components/social-assistance/national-safety-net-program/older-persons-cash-transfer-opct> [↑](#footnote-ref-23)
24. See <https://www.knchr.org/Articles/ArtMID/2432/ArticleID/1147/Press-Release-Commemoration-of-the-International-Day-of-Older-Persons-IDOP> [↑](#footnote-ref-24)
25. See <http://www.knchr.org/Portals/0/StateOfHumanRightsReports/2nd%20SHRR%20-%20Growing%20Old.pdf?ver=2013-02-20-235041-237> [↑](#footnote-ref-25)
26. See <https://social.un.org/ageing-working-group/documents/ninth/Inputs%20Member%20States/Kenya_LTC.pdf> [↑](#footnote-ref-26)
27. See <https://www.dw.com/en/kenyas-shelter-for-suspected-witches/av-59202970> and <https://www.the-star.co.ke/news/big-read/2021-05-29-agony-of-kilifi-elders-murdered-for-witchcraft-in-land-grab/> [↑](#footnote-ref-27)
28. See <https://www.kisii.go.ke/index.php/item/2149-ongwae-appoints-a-taskforce-to-investigate-lynching-of-suspected-witches> [↑](#footnote-ref-28)
29. See <https://www.citizen.digital/news/governor-ongwae-appoints-taskforce-to-probe-witchcraft-crisis-in-kisii-n285753> [↑](#footnote-ref-29)
30. See <https://www.partners-popdev.org/ageing/docs/National_Policy_on_Older_Persons_and_Ageing_Kenya.pdf> [↑](#footnote-ref-30)
31. See Public Awareness Programmes ([www.knchr.org](http://www.knchr.org)) [↑](#footnote-ref-31)