KENYA NATIONAL COMMISSION ON HUMAN RIGHTS

HUMAN RIGHTS REPORT

GROWING OLD IN KENYA: MAKING IT A POSITIVE EXPERIENCE

MAY 2009
Foreword

Growing old in Kenya? How is this a key concern for human rights? What is it about? Aren’t there more pressing issues?

The choice to focus on this issue as the basis for assessment of the state of human rights in Kenya attracted a lot of debate within the National Commission and amongst stakeholders with most of them faulting the choice. Why focus on issues relating to growing old when a majority of Kenyans are under the age of 35? Why not focus on an issue that affects everybody? Hasn’t the public spoken - given the several public statements by younger Kenyans expressing impatience with elder persons; especially those occupying public leadership offices?

These questions helped us firm up and concretize why it was necessary to focus on the question of growing old in Kenya. Growing old as used throughout this Report examines the process of growing old in a developing country such as Kenya. Does the State have meaningful policy and legal frameworks intended to ensure that growing old is not a pauperizing process? Do individuals have access to information that can help them plan their future? What kinds of programs and practices elsewhere ensure that disadvantages that come with old age do not progressively become a source of retrogression of rights enjoyment?

As a National Human Rights Institution (NHRI) our mandate calls upon us to highlight the often forgotten but crucial issues that undermine the enjoyment of human rights if only by way of creating information to generate debate and actions required. The choice of this issue is therefore intended to bring out concretely how poverty, exclusion, failure by government to make the necessary policy provisions and individuals failure to take responsibility on matters relating to growing old intersect to exacerbate, reinforce and recreate a labyrinth of disempowerment not only for certain social groups but along the process of growing old.

We hope that by reading this Report one comes out clearer on a couple of points: that social provisioning which is important in determining the quality of life we lead as a people is central to human rights protection; two, that the process of growing old requires the attention of both state and non-state actors and finally that economic, social and cultural rights deserve as much attention as civil and political rights in public debates and public policy actions if we are to break the cycle through which intergenerational poverty is transmitted.

Wambui Kimathi
Commissioner
Acknowledgements

The National Commission acknowledges the contribution of RUCBIC Ltd (the team of Prof. Enos Njeru, Dr. John Njoka and Dr. Mumbi Machera), who undertook preliminary literature review, preparation of data collection instruments, data analysis and training of research assistants who conducted a survey in all the eight provinces of Kenya. The research assistants were instrumental in collecting data and information that forms a core component of the findings of this study.

The National Commission is grateful to the reference group team that provided technical input and review at various stages of the development of this report. The reference group was drawn from the Ministry of Gender, Children and Social Development, the Retirement Benefits Authority (RBA), the Society for International Development (SID), HelpAge International and HelpAge Kenya.

Lastly, we acknowledge the invaluable input of various Commissioners and staff who conceptualized and developed this report. Special acknowledgement to Commissioner Wambui Kimathi, Commissioner Lawrence Mute, Carole Abong and Christine Njeru who worked tirelessly to prepare this report.

Finally, we are thankful to the GJLOS reform programme, which funded the study and publication of this report.
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## Acronyms

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<tbody>
<tr>
<td>ACHPR</td>
<td>African Charter on Human and Peoples Rights</td>
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<td>AIDS</td>
<td>Acquired Immunodeficiency Syndrome</td>
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<td>AFRAN</td>
<td>African Research on Ageing Network</td>
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<td>ARVs</td>
<td>Anti retroviral drugs</td>
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<td>AU</td>
<td>African Union</td>
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<td>CDF</td>
<td>Constituency Development Fund</td>
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<td>CSO</td>
<td>Civil Society Organization</td>
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<td>GDP</td>
<td>Gross Domestic Product</td>
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<td>GJLOS</td>
<td>Governance, Justice, Law and Order Sector</td>
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<td>HIV</td>
<td>Human Immunodeficiency Virus</td>
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<td>ICCPR</td>
<td>International Covenant on Civil and Political Rights</td>
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<td>ICESCR</td>
<td>International Covenant on Economic, Social and Cultural Rights</td>
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<td>ILO</td>
<td>International Labour Organization</td>
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<td>KAIS</td>
<td>Kenya AIDS Indicator Survey</td>
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<td>KNASP</td>
<td>Kenya National HIV/AIDS Strategic Plan</td>
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<td>KNCHR</td>
<td>Kenya National Commission on Human Rights</td>
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<td>MDGs</td>
<td>Millennium Development Goals</td>
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<td>MIPAA</td>
<td>Madrid International Plan of Action on Ageing</td>
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<td>NACC</td>
<td>National AIDS Control Council</td>
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<td>NGO</td>
<td>Non Governmental Organization</td>
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<td>National Hospital Insurance Fund</td>
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<td>National Human Rights Institution</td>
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<td>Orphans and Vulnerable Children</td>
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<td>RBA</td>
<td>Retirement Benefits Authority</td>
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<td>UDHR</td>
<td>Universal Declaration of Human Rights</td>
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<td>United Nations General Assembly Special Session</td>
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<td>United Nations</td>
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<td>VIPAA</td>
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Executive Summary

This report, “Growing old in Kenya: making it a positive experience” has been prepared by the National Commission in fulfillment of its mandate of providing an overall assessment on the character of and conditions for the exercise of human rights in Kenya.

The thesis of the study which the National Commission undertook so as to prepare this report is that inequality and discrimination pervades the lives of older persons living in Kenya; and that such persons are incredibly vulnerable to economic, social and political vagaries which call human rights interventions. Remedyng the vulnerabilities of older persons is informed by the obviosity that old age is a stage preceded by multiple opportunities of interventions during the process of growing old. Human rights interventions can be had during a variety of stages of an individual’s interactions with society, including educational, employment, social welfare and health among others.

The study’s objectives were:

i. To identify critical legal and policy gaps as a basis for advising the Government on measures and interventions for ensuring that Kenyans are able to grow old in dignity, with rights and without any fears;

ii. To inform policy formulation and implementation in the face of challenges such as changing social contexts and weakened family protection structures, HIV/AIDS, poverty and increasing population ageing;

iii. To inform planning and integration of government programs and policies including targeting of resources in sectors such as education, health, housing, labour, social security and social protection as mechanisms for preparing Kenyans for old age;

iv. To promote awareness and understanding of ageing as a process, and to enable preparation for the same thus enhancing realization of human rights and dignity in old age; and

v. To catalyze implementation of international and regional agreements for older persons, to which Kenya is a state party, to enhance access to the rights therein.

The methodology of the study comprised literature review, field surveys constituted by respondent and key informant interviews, and reference group review meetings.

The key findings of this study are:

a) Kenyans do not appreciate that growing old is a process and that they need to prepare for it both financially and mentally.

b) There is no adequate recognition within government policies and practices of growing old as a process that has to be factored in both planning and resource allocation; and policies in critical sectors such as health, housing, employment and social protection are not old age focused.
c) Kenyans, particularly those who are not in formal employment, are hardly saving for their old age to guarantee their financial security; a consequence of which old age poverty is prevalent in the country.

d) The government is implementing pilot cash transfer programmes targeting vulnerable members of the population, and a cash transfer programme targeting older persons is on the cards. The sustainability of such transfer programmes is a matter of concern to all involved.

e) Older persons are variously discriminated against and their rights are routinely violated through acts such as neglect by their families, discrimination by health providers and killings in some parts of the country on allegation of practicing witchcraft.

The key recommendations of the study were:

1) Preparation for old age and retirement should be integrated in the life of every Kenyan from their childhood. Such preparations should also form an integral part of government policies and programmes across sectors including health, housing and education; and investments in social security, savings, and adoption of healthy life styles.

2) The Ministry of Education, in collaboration with the Ministry of Gender, Children and Social Development and the media, should develop and implement programmes aimed at educating the public on ageing as a process for which Kenyans need to prepare for adequately. 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.

3) The Government, through the Ministry of Planning, should plan for the projected growth of an ageing population to mitigate possible negative consequences which may otherwise overburden sectors such as health services and pensions. Towards this end, the national health policy should be reviewed, entailing a focus shift of health care from curative programmes to care and rehabilitation.

4) The Ministry of Health should review the national health policy to create conditions that would promote good health for all Kenyans throughout their life cycle – from infancy into old age. This should include preventive health care, early diagnosis of terminal conditions, nutrition education and education on the negative effects of some lifestyles so as to contribute to the reduction of old age disabilities and terminal illnesses.
5) HIV/AIDS education and other related programmes should target older persons as caregivers of HIV/AIDS orphans, as infected persons and as persons at risk of infection. The National Aids Control Council should develop and implement HIV/AIDS awareness programmes targeting older persons.

6) Social security should be recognized in the Constitution as a basic right. This will facilitate and provide the basis for implementation of various social protection measures for older persons, including the National Social Protection Policy and Strategy that is currently under development.

7) The Retirement Benefits Authority (RBA), in collaboration with the Ministry of Gender, Children and Social Development and the media should implement a sustained campaign, targeting young people all over Kenya, on the importance of saving and investing for old age. The Government should provide incentives and put in place measures that encourage savings, especially among low income earners and those in the rural areas. To support this, the RBA should urgently finalize the National Pensions Policy.

8) The Ministry of Gender, Children and Social Services and the Ministry of Finance should develop and implement social protection measures for older persons based on the concept of a ‘minimum package’; these should be included in annual budgets and National Development Plans. This minimum package should provide older persons with minimum benefits to meet their essential needs and to achieve an adequate standard of living. Even where contributory pensions are implemented and calculated on the basis of one’s income (for those who were in formal employment), a minimum package should be maintained. In the long term, the government should implement a universal (non-contributory) pension scheme, to alleviate old age poverty by providing a source of income to Kenyans who attain a specifically agreed upon age.

9) The Government should develop and implement programmes, including cash transfers, targeting older persons taking care of HIV/AIDS orphans. The Ministry of Finance, in collaboration with the Ministry of Gender, Children and Social Services, should implement this.

10) The Government should implement poverty reduction programmes specifically targeting the needs of older persons in the form of specially designed credit programmes.

11) The Government, in particular the Provincial Administration and the Police, should adopt measures to enable Kenyans grow old in dignity, in particular,
preventing abuse and ill treatment of the older persons, eliminating discrimination against older persons, protecting older persons from witch hunting, and ensuring that older women have secured access to, and ownership of property.

12) The draft National Policy on Ageing should be urgently finalized and adopted for implementation so that the needs of older persons are addressed in a coordinated and comprehensive manner.

13) The family plays an important role in supporting and caring for older persons. Even in the wake of the effects of urbanization, economic pressures and changing social values that have considerably weakened family support structures, younger members of the family need to be sensitized on their obligation to take care of and provide for their older members.

14) Older persons should ideally remain in the community and be cared for by their children. However, where older persons must be placed in homes for the old, conditions in those homes should correspond as much as possible to the conditions in their communities. The homes must also provide an environment for the full realization of the rights, dignity, needs and interests of older persons in their care.
1 INTRODUCTION

The Kenya National Commission on Human Rights (‘KNCHR’ or ‘the National Commission’) is an independent public body established in July 2003 under the Kenya National Commission on Human Rights Act, 2002. Section 16 of the KNCHR Act spells out the mandate of the National Commission which broadly covers promotion and protection of human rights. Specifically, Section 21 (1) of the KNCHR Act mandates the National Commission “to submit an annual report to the President and to the National Assembly through the Minister and may at any time submit special reports to the President and to the National Assembly on any matter”. Sub-section (2) further states that “the annual report submitted under sub-section (1) shall include an overall assessment of the Commission of the performance of the Government in the field of human rights during the period under review”. It is within this context that this special report (Growing old in Kenya: Making it a positive experience) is prepared as well as in response to the Commission’s statutory mandate to ensure that the human rights of all Kenyans irrespective of age are protected, promoted and fulfilled through law, policy and practice.

1.1 Background to the study

This is the second State of Human Rights Report of the Kenya National Commission on Human Rights. The first report (2003-2004) was titled “The State of Human Rights Report: Deficits, Critiques and Recommendations”, and carried an assessment of the overall human rights environment as well as the implementation of policies, legislation and programs related to the state obligation to respect, protect, promote, enhance and fulfill human rights during the period under review. The second (thematic/special) report focuses on the theme of “Growing old in Kenya: making it a positive experience”. It should be emphasized that this report is not about the elderly but about the process of growing old which therefore implies that the human rights issues addressed in the report are for the benefit of all Kenyans while the experiences of older persons, who have mostly been treated as an invisible and neglected population, are used to demonstrate the policy, legislative and programmatic deficiencies including discrimination that afflict or are likely to afflict anyone growing old in Kenya. These deficiencies across various rights and the need for action to redress them are what this report addresses.

While there may be divergent views on whether a thematic issue can reflect the “state of human rights” or even an overall assessment by the Commission of the performance of the government as required under Section 21(1) of the KNCHR Act, the National Commission submits that the choice of issue is but an entry point from where a panoramic view of various other aspects of human rights can then be assessed. In the view of the National Commission, an overall assessment of performance of the Government such as was done in the first State of Human Rights Report, is unlikely to be productive by way of depth if done every year given that the expected policy, budgetary, legal, programmatic and other actions are unlikely to yield results that can be measured year by year. For this reason, a thematic (special) report has been selected.

This theme was picked using the following criteria:
• Is it an issue that exposes some deep-seated neglect of a group and which may therefore spotlight the issue and precipitate policy, legal, administrative and other measures towards enhancing realization of human rights of such an affected group?
• Is the issue recognized in the popular consciousness of the human rights discourse in Kenya? If not can focusing on it provide it with traction and attention which might lead to it being understood from a rights perspective for better promotion and protection?
• Does the issue have a possibility of setting new policy and legislative direction?
• Is the issue topical and relevant in the Kenyan context of human rights?
• Would resolution of the issue be of benefit to a big cross-section of Kenyans?

These questions were debated during brainstorming sessions internally and with external stakeholders in relation to a number of human rights issues. The theme of growing old satisfied this criterion more satisfactorily than the other issues hence the choice.

This special report in essence recognizes that the human rights challenges including the social and economic problems that are faced by older persons are not necessarily unique to them—poor young persons, women and men may face similar issues. The National Commission however recognizes that whereas strong lobbies (leading to the development of specific human rights conventions, laws and policies and programmatic interventions) exist for other marginalized and disadvantaged groups such as women, children and persons with disabilities, issues relating to older persons relatively remain at the margins of policy and decision making. The rights of older persons including challenges faced by Kenyans as they grow old remain a neglected issue left to the focus of very few NGOs with hardly any government intervention and support.

One of the most critical tenets of human rights is the protection against all forms of discrimination. Yet the situation that one expects to confront as one grows old in Kenya is characterized by all manner of discrimination with resultant dehumanization. There seems to be a shared understanding and agreement that growing old is a pathway towards deserved oblivion. Consequently the Government hardly addresses in any responsive way the extraordinary protection demands that come with advancing age and hardly do social programmes implemented by NGOs, development partners and aid workers address the same. A palpable neglect and discrimination that leads to exclusion both in terms of public affairs dialogue and resource allocation places older persons in jeopardy; yet older people remain key pillars of support to their families and communities.

This report addresses the question of age discrimination as a key contributor to the neglect and lack of government policy and other measures to enable Kenyans grow old in dignity. Older persons in Kenya are treated as second class citizens without any rights or use to the society—they are in essence treated as a burden to the society. Anyone who is discriminated on any ground cannot be able to enjoy their rights. For this reason, persons discriminated on the basis of their age can no longer effectively access rights to, for example, health, shelter, food, livelihood, protection from abuse, security and dignity.
The National Commission therefore uses the findings of this study to spotlight protection deficits, and to make policy, legislative and programmatic recommendations which, if implemented, would ensure that Kenyans can look into the future with hope and reduced anxiety in the belief that social security safeguards and other visible means of support will be available to enable them grow old in dignity.

1.2 Objectives

The following objectives guided this study:

vi. To identify critical legal and policy gaps as a basis for advising the Government on measures and interventions that need to be undertaken in order to ensure that Kenyans are able to grow old in dignity, with rights and without any fears.

vii. To inform policy formulation and implementation in the face of challenges such as changing social contexts and weakened family protection structures, HIV/AIDS, poverty and increasing population ageing.

viii. To inform planning and integration of government programs and policies including targeting of resources in sectors such as education, health, housing, labour, social security and social protection as mechanisms for preparing Kenyans for old age.

ix. To promote awareness and understanding of ageing as a process, and to enable preparation for the same thus enhancing realization of human rights and dignity in old age.

x. To catalyze implementation of international and regional agreements for older persons, to which Kenya is a state party, to enhance access to the rights therein.

1.3 Growing old: the state of play

1.3.1 Increasing population ageing

This report defines older persons as those aged 60 years and above; this is the UN accepted benchmark for old age. In Kenya, the retirement age has been 55 years, one the lowest in the world. However, on 11th March 2009, the Government extended the retirement age for civil servants to 60 years, bringing it in line with the internationally accepted practice.

Population ageing in Africa currently remains relatively small in comparison with population ageing in other parts of the world. However, the World’s population is projected to significantly increase in the next 40 years to two billion, with the most rapid increase projected to occur in Africa where the population of older persons is currently estimated at 42 million and is projected to grow to 212 million by the year 2050. One of the biggest increases in population ageing in Africa is expected to occur in Kenya where it is projected that by 2050, there will be a 470% increase in the number of older persons who will represent approximately

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1 Population ageing refers to the changing age structure of the population with many more people becoming older.
2 See General Comment 6 on the economic, social and cultural rights of older persons. See also HelpAge International (2002). AU Policy Framework and Plan of Action on Ageing, Nairobi: HelpAge International Africa Regional Development Centre.
10% of the Kenyan population. Currently, the biggest population of older persons in Kenya is found in Nyanza and Rift Valley provinces, and generally, older women are more than older men.

The projected increase in the population of older persons calls for action, both by the government and individually because it is likely to pose a major challenge to individuals, as well as on government spending on social security and health care systems, the few existing pension schemes as well as individual family spending to care for older persons given that most Kenyans are not adequately prepared financially for their old age. Besides this projected increase in the population of older persons, several intervening factors make it necessary that adequate and appropriate interventions are put in place to ensure that the government is prepared to protect and cater for the needs of older persons and at the same time, ensure that younger persons are preparing for growing old so that they avoid the numerous challenges currently faced by older persons. Besides the government preparing Kenyans for old age, this report identifies the need for Kenyans to individually prepare themselves by putting in place mechanisms for their support during their old age.

1.3.2 Kenyans are not saving for old age

A study by the Retirement Benefits Authority (RBA) has demonstrated the extent to which young and working adults are not preparing for their old age in terms of savings and that those in the informal sector have for a long time been excluded from the few available schemes. This study found that over 6.6 million Kenyan adults working today will be in retirement by the year 2020; only 40% of these are saving for retirement. Disaggregated per age group, the RBA study found that:

- Only 400,000 Kenyans are saving for retirement whereas 6 million are not
- Only 22% of adults between 19-30 years are saving for old age
- Only 31% of adults between 31-40 years are saving for old age

This state of affairs could partly be due to the fact that when Kenyans start working, awareness levels of the benefits of early preparation for retirement is very limited and this has implications in terms of their planning for their old age. The situation is worse in the rural areas where awareness on the need for planning and saving for old age is even lower. Hence retirees and older persons with no income or savings continue to place a burden on their families. This translates to a larger burden on the economy in terms of providing for older persons. The implications are that older persons’ poverty is likely to increase if interventions are not made at earlier stages of life.

The RBA findings, above, indicate that either there is generally limited awareness on the need for saving for retirement or that young adults hardly contemplate growing old. Young persons

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seem unaware that the condition in which our older citizens find themselves in today is a reflection of what could very well be their future state. Therefore to avoid the indignities experienced by older Kenyans, there is need for adequate preparation towards growing old in dignity to guard against a situation where many older persons are destitute or become destitute progressively with age.

The Vision 2030\(^5\) has similarly recognized the need for saving to cushion Kenyans from old age poverty. It observes that saving for old age in Kenya remains relatively low at 18\% compared to over 45\% for comparable countries\(^6\). It thus provides that various medium term interventions that will be undertaken (goals for 2012) include:

a) Increase pension contribution from 18\% to 40\%  
b) Restructure the pension schemes to increase savings for the elderly and reduce dependency,  
c) Encourage savings and other investments among economically-active Kenyans to reduce the burden of economic dependency among the under 14 and over 65 age groups  
d) Establish a social protection policy for the most vulnerable members of the society including older persons. The Vision projects implementation of a flagship project on “establishment of a consolidated social protection fund for cash transfers to orphans and vulnerable children (OVCs) and the elderly”\(^7\).

1.3.3 Lack of comprehensive government policy to address issues of old age and which would prepare Kenyans for growing old

One of the key mechanisms through which the government can prepare Kenyans for old age is through appropriate policy interventions. At the moment, the Government lacks a comprehensive policy on ageing implying that it is most likely unprepared to deal with the looming ageing crisis in Kenya. Where the Government has attempted any interventions dealing with the projected population ageing, these have neither been properly targeted nor effectively coordinated due to lack of policy direction.

At the regional level, the African Union has recognized the challenges faced by older persons hence the need for a regional mechanism for the protection of the rights and dignity of older persons. In its Policy Framework and Plan of Action on Ageing, the AU observes the need for Governments, NGOs, private sector and the society in general to be prepared to deal with a future situation in which the number of older people is forecasted to grow at a very rapid rate. The AU programme of Action estimates that the number of older persons will have reached 2 billion by 2050, and in Africa where the most rapid increase will take place, there will be about 212 million older persons. This indicates the need to ensure that this section of the population will be well catered for through clear and targeted policies and programmes.

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\(^6\) Ibid, p.114.  
\(^7\) Ibid, p.115.
The UN General Assembly proclamation on ageing similarly recommends that appropriate national policies and programmes for the elderly should be considered as part of a government’s overall development strategy\(^8\). In line with this proclamation, the National Commission has identified the challenges faced by older persons as one of the key human rights issues that need immediate policy and programmatic intervention to ensure that older persons are not treated as second class citizens with lesser rights as compared to other Kenyans\(^9\).

1.3.4 The impact of HIV/AIDS

In recent years, older persons have gradually been burdened with the role of being primary care givers to their families. They look after and support children and young unemployed adults while their parents go to work outside of the home and/or in towns. This role has grown more so due to the HIV/AIDS pandemic where older persons take over as primary care givers and go back to work in order to earn incomes through which to support persons living with HIV/AIDS and/or remain guardians of HIV/AIDS orphans. The increasing role of older persons in the survival and sustainability of families cannot therefore be ignored. For instance, 60% of HIV/AIDS orphans in Kenya and in other countries such as Namibia, Zimbabwe and South Africa live with their grandparents hence compounding the already grave poverty situation of the elderly\(^10\). Older persons are therefore in a word the last bastion of social support for their families.

1.3.5 Lack of formal social protection

Whereas in developed countries formal social support systems exist for those identified as older persons, in developing countries such as Kenya, this group especially if one is an elderly poor person, remains actively involved in fending for themselves and their extended families until one is too feeble to. Not to have visible and assured social support and protection for older persons amounts to neglect especially when such support is planned and provided for those in other age categories.\(^11\) The lack of consideration for the special needs that come with

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\(^9\) Commendably, the government has put in place policies, programmes and institutions to address the rights of other vulnerable groups including women (Women’s Fund started in 2007), children (various especially since the passage of the Children’s Act in 2002) and the youth (Youth Enterprise Fund established in 2005).


\(^11\) Recently for example, a women’s fund and a youth fund worth Ksh.1 billion were established to facilitate young peoples entrepreneurship, and bursaries for needy school-going children has been a social security feature for a long time. At the same time, the Government through the Ministry of Gender, Children and Social Development is currently implementing a pilot cash transfer system to families and households taking care of orphans and vulnerable children.
old age amounts to discrimination which this study expects to demonstrate for purposes of ensuring that corrective action is taken to protect the rights and dignity of older persons.

1.4 Methodology

This study employed a combination of literature review, field work survey using both respondent and key informant interviews, and reference group review meetings.

1.4.1 Literature review

Literature review was conducted with a focus on the concept of growing old, regional and international human rights instruments and mechanisms relating to older persons, government policies and programmes for older persons as well as a comparative analysis on the practices in other countries. The results of the literature review were analyzed vis-à-vis findings of the survey, to arrive at key findings and recommendations of this study. Broadly, from the literature review, it emerges that very little has been done in relation to analyzing growing old as a process, with the focus of much of the literature being on the end product of that process, that is, old age.

1.4.2 Survey

A survey was conducted in homes for older persons and within communities to gauge understanding of growing old as a process, the attitudes and fears associated with growing old as well as preparations undertaken towards growing old. The survey also sought to understand the challenges faced by older persons and recommendations from the public on what ought to be done to ensure that Kenyans grow old in dignity and with rights. As part of the survey, the following were specifically undertaken:

1.4.2.1 Semi-structured interviews

A total of 692 semi-structured interviews were conducted to gather data from older persons in the homes and institutions for the elderly as well as from persons of various age groups within the community. The interviews were conducted in all the eight provinces of the country. Information was gathered in relation to, among others, characteristics and socio-economic and cultural images of old age, mechanisms in place for protection during old age, fears associated with growing old as well as general awareness of the rights and needs of older persons.

In this regard, and based on the indicators developed after the desk review, a semi-structured questionnaire was developed for administration in each province.

The following broad issues were the main focus of the interviews:

i) Perceptions towards growing old
ii) Perceptions on the role of the government vis-à-vis older persons
iii) Perceptions on the role of non state actors vis-à-vis older persons
iv) Attitudes towards growing old, and older persons generally
v) Fears associated with growing old
vi) Preparations for old age
vii) Growing old and social security
viii) Growing old and social support systems

1.4.2.2 Key informant interviews

Key informants, including the management of the homes for the elderly, relevant GoK line ministries at the provincial and district levels, local/district level programme staff of NGOs working with older persons and self-help groups for the elderly such as retired persons, and local and other opinion leaders were interviewed, using a key informant interview guide.

The focus of the key informant interviews was on the human rights issues and challenges faced by older persons in the context of the overall human rights situation in the country, policy and legal responsiveness to the identified human rights issues of older persons and Kenyans in general, and recommendations for redressing the challenges where they exist.

1.4.2.3 Direct observation

Direct observations were used as an additional technique to note visible aspects or indicators of human rights respect and/or abuse as reported in the interviews. Such observations included the conditions in which older persons lived within the community, the state of the facilities provided by the homes for the elderly, and the expressed needs of the elderly and the adjacent communities. An observation guide in the form of a check list was developed for this purpose.

1.4.3 Data analysis

Once collected, the data from the field survey was appropriately analyzed. First, quantitative data was coded (for open-ended questions) and entered onto a database, using the Statistical Package for Social Science (SPSS version 12) software. This data was then organized, reduced, presented and interpreted using appropriate tools and summary statistics.

Secondly, qualitative data was reduced, organized and interpreted on the basis of themes generated from the literature review and the data. Qualitative techniques of data analysis, that is, successive approximation, trends analysis, illustrative method and cultural analysis, among others, were employed so as to systematize the process of data interpretation and overall presentation.

Both quantitative and qualitative data was collated with the secondary data and used to prepare this report.

1.4.4 Sampling
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Sampling procedures involved selection of a proportionate number of homes for the old in each province, depending on the total homes available. The coverage of all the provinces ensured that the final output had a national outlook. In provinces with less than three homes, a total census of the homes was carried out. Sampling was however undertaken for those provinces with more than three homes.

In each of the selected homes, 10 elderly persons were selected using a table of random numbers applied on a numbered list of persons in the home. In order to enhance triangulation and data validity, an extra number of interviews (20) were carried out in the communities around the selected homes, using a random route. This helped augment the data from older persons themselves and capture issues of growing old from the general population, including the youth, adults and older persons outside the homes for the old. The total sub-sample from outside the homes was 480.

The homes for the aged were purposively (in some cases) and randomly (in others) sampled for the study. The total sample size was 692 respondents.

1.4.5 Reference group review

A reference group\textsuperscript{12} of members drawn from the government and civil society was set up to periodically review, critique and advise the processes undertaken towards preparing for and drafting this report. Meetings of the reference group were held and the outputs of these meetings used to inform and revise among others, the literature review report, data collection instruments as well as this special report in general.

1.5 Growing old: an overview

Growing old is a process rather than an outcome. Therefore unlike reference to the elderly/old persons which implies some final stage in life, growing old connotes the process of moving through life towards this stage. For this reason, ‘growing old’ does not refer to old persons \textit{per se} but to the process of moving from the life stage of youth to adult to elderly. Examining this process therefore entails looking at public provisions (policy, legislative, programmatic and/or budgetary) that are put in place to ensure that when one reaches the age group referred to as the elderly, that person is able to continue with his/her life in dignity thereby escaping the destitute and deplorable situation that many older persons find themselves in today. Some of the provisions include social protection by the Government, reforms in health care, employment, housing, education, social security sectors and individual savings/retirement schemes which would ensure that growing old in dignity is a concern both of public policy and the individual. ‘Growing old’ therefore is about preparations for old age.

Our literature review reveals a dearth of focus on growing old. Policies and programmes that target older people’s failure to acknowledge that growing old is a process. Such policies and

\textsuperscript{12} Members of the reference group were drawn from the Ministry of Gender, Children and Social Development, Retirement Benefits Authority, Society for International Development, HelpAge International and HelpAge Kenya.
programs are therefore ill-equipped to address preparations for growing old especially by younger persons who today continue to lead their lives as if they are insulated from ageing.

The way in which individuals prepare for their old age varies between countries and communities. Persons in developed countries are arguably more prepared for their old age than those in developing countries – the nature of such preparations are both individual and by the government. In developed countries the younger generation is being encouraged not to depend wholly on social security and pensions but to plan for other kinds of income to cushion them in old age. On the other hand, high levels of poverty in developing countries including Kenya diminish available resources for the provision of basic financial assistance to older persons. Preparations for old age may also be dependent on the social status of the individual. In Kenya, poverty is one of the key challenges in preparations for old age.

The Sessional Paper No.1 of 2000 on National Population Policy for Sustainable Development observes that older persons, whose population is rapidly growing, present a potential problem regarding their care; this is in light of the break down of family support structures and the lack of social security measures. The Sessional Paper recommends formulation of long-term policies and programmes towards preparing people for old age – by ensuring that there would be provision of social security measures and other forms of socio-economic support to Kenyans in their old age.

A survey conducted by this study also reveals the extent to which young persons are not preparing for old age. This is corroborated by a study conducted by the Retirement Benefits Authority which found that young and working Kenyans are hardly saving for retirement, implying a future social security crisis as it relates to older persons. The KNCHR survey similarly reveals a situation where many of the older persons in Kenya today did not think about their old age hence did not prepare for it. For this reason, given the lack of government support to older persons coupled by the various challenges posed by poverty and HIV/AIDS, many older persons today find themselves in a situation of dire poverty, indignity and squalor. Many are hardly able to access housing, healthcare and food, some of the core basic rights. Women are even more gravely affected given that the majority of older persons in Kenya are women, many of whom live in the rural areas. Therefore even in situations where we acknowledge the projected increase in the number of older persons in the coming few decades and the attendant challenges that such an increase would pose, we ought to note that the challenge will not as much be about the increased burden of caring for older persons as much as on the preparations that young populations today will have made towards their old age. This report therefore is not only targeted at policy makers and older persons today, but at young Kenyans who are the older persons of tomorrow and who need to be consciously aware of a future that must be built now.

2 HUMAN RIGHTS AND GROWING OLD: A GENERAL PERSPECTIVE

2.1 Introduction

Growing old is universally recognized as an inevitable phase of an individual’s life. In his poetic analysis of growing old, Matthew Arnold queries what to grow old entails:

“What is it to grow old? Is it to lose the glory of the form, the lustre of the eye? Is it for beauty to forego her wreath….Is it to feel our strength - not our bloom only, but our strength decay? Is it to feel each limb, grow stiffer, every function less exact, every nerve more weakly strung?”16

Arnold responds to the above questions in the affirmative, but also agrees that to grow old entails more. Accordingly, whether like Arnold we answer the above questions in the affirmative or in the negative, it does not alter the fact that growing old is part and parcel of an individual’s life.

This report reiterates the fact that every human being is entitled to basic human rights irrespective of age, race, sex, social status, gender among other criteria. Older persons are therefore entitled to basic human rights accorded to all individuals; however by virtue of their status as older persons, they are in need of some special protection mechanisms that may not be accorded to persons of other age groups. This is recognized in various regional and international human rights instruments that are specific to older persons, while drawing the same on universally recognized human rights.

Regional and international human rights conventions broadly call for states to promote universal respect for and observance of human rights and fundamental freedoms for all without distinction of any kind; and to put in place mechanisms for the enforcement of the rights therein. Kenya has ratified these instruments including the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR) that outlaw discrimination on all grounds and call for the protection and equal treatment of all regardless of race, color, sex, gender, religion or other status17. However, even though these instruments do not explicitly refer to age as one of the grounds upon which discrimination is prohibited, the General Comment 6 on the economic, social and cultural rights of older persons, paragraph 12 interprets ‘other status’ to include age. The General Comment no 6 further, in paragraph 10 observes in reference to the ICESCR that even though that instrument does not implicitly recognize older persons, it still applies to them by virtue of it applying fully to all members of the society – these include the right to physical and mental health, adequate standard of living, food and social security.

The African Charter on Human and Peoples Rights is more specific to older persons in Article 21(1), which states that “Every individual shall have duties towards his family and society, the State and other legally recognized communities and the international community”. More specifically, Article 29(1) of the Charter states that “the individual shall also have the duty to

17 See, for example, the Preambles and Article 2 of the UDHR, Article 2(2) of the ICESCR, Article 2(1) of the ICCPR and Article 2 of the ACHPR.
preserve the harmonious development of the family and to work for the cohesion and respect of the family; to respect his parents at all times and to maintain them in case of need”. The provisions of the African Charter on the duties of the individual, unlike other international human rights instruments, clearly call for the revitalization of traditional family protection structures towards protection and care of older members of the society.

The findings of this study reveal that the rights of older persons in Kenya as in many parts of the world are routinely violated through various actions and omissions including neglect, abuse and general discrimination. Many older persons lack food, cannot access health care and live in deplorable housing conditions without any source of income or livelihood. The value and contribution of older persons is scarcely recognized and they are seen as a burden to the community. This goes on despite Kenya being a signatory to various international and regional declarations and plans of action calling for the protection and advancement of the rights of older persons with the corresponding duty to implement the recommendations therein. The Government having the key responsibility for policy formulation is responsible for reviewing existing laws and policies to among other things; ensure their conformity with international standards to which it is party to. In 2003 in response to the AU Policy Framework and Plan of Action on Ageing, the Government commenced drafting the National Policy on Older Persons and Ageing, which is however still a draft. The finalization and approval of this policy document is crucial towards laying the framework and ensuring that older persons in Kenya are able to access and enjoy their basic human rights like every other Kenyan, and will be afforded protection and redress where such rights are violated. It will also lead the Government to draw up and implement specific plans and programmes towards preparing Kenyans for their old age.

The National Commission re-affirms the core duty of both the society and the state to ensure realization of the fundamental rights of older persons including protection from neglect, abuse and discrimination as well as their well being through access to health care and adequate standards of living. Such protection for older persons can only be realized when adequate policy, budgetary and other measures are developed and implemented from the early stages of life.

2.2 Instruments specific to older persons

There are a few instruments that are more specific to the rights of older persons including mechanisms not only for their protection in old age, but also for ensuring that adequate measures are put in place to ensure that people grow old in dignity. However, these instruments (adopted in the form of agreements, declarations and plans of action) have no binding supervisory arrangements. In the view of the National Commission, whereas these agreements and plans of action mainly provide guidance to states on the measures that can be taken towards addressing the rights of older persons, they are still of great relevance to this study. The instruments include the 1982 Vienna International Plan of Action on Ageing, the 2002

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18 These instruments include the 1982 Vienna Plan of Action on Ageing, the 1991 United Nations Principles for Older Persons, the 1992 UN Proclamation on Ageing, the 2002 Madrid International Plan on Ageing and the 2003 AU Policy Framework and Plan of Action on Ageing.
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Madrid International Plan of Action on Ageing and the AU Policy Framework and Plan of Action on Ageing. Kenya is a signatory to all these instruments.

The terminology used to describe older persons varies – the UN and the AU define older persons as those aged 60 years and above, and the European Union defines older persons as those aged 65 years and above. In Kenya like in many African countries, the official retirement age until March 2009 was 55 years, which implied that older persons were those aged 55 years and above. Nhongo notes the difficulty in verifying one’s age particularly in the rural areas “where information regarding births is unknown and people’s physical features are used to determine their age. The colour of their hair, failing eye sights and diseases such as arthritis are some of the features used to define someone as being old.”

Below are some of the regional and international instruments relating to older persons, to which Kenya is signatory.

2.2.1 Vienna International Plan of Action on Ageing (VIPAA)

The 1982 Vienna International Plan of Action on Ageing was the first international instrument adopted to guide policy formulation and programmatic interventions on ageing and was formulated within the context of the rights contained in the International Bill of Rights. It aims to strengthen the capacities of governments and civil society to deal effectively with ageing populations and to address the rights and needs of older persons. The VIPAA, in reiterating the interrelation of all aspects of ageing, includes 62 recommendations for action addressing research, data collection and analysis, training and education as well as the following sectoral areas in relation to older persons:

- Health and nutrition
- Protection of elderly consumers
- Housing and environment
- Family protection
- Social welfare
- Income security and employment
- Education

2.2.2 United Nations Principles for older Persons (1991)

Nine years after the adoption of the Vienna International Plan of Action on Ageing, the United Nations General Assembly adopted the United Nations Principles for Older Persons in 1991. It elaborates 18 Principles relating to the status of older persons, which can broadly be categorized as the following:-

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Independence - provides for access to essential amenities thereby empowering the individual. It notes that older persons should have access to among other amenities food, water, shelter clothing, and healthcare, appropriate education and safe environments.

Participation - advocates for the integration of the older persons into society in order that they can “participate actively in the formulation and implementation of policies that directly affect their well-being and share their knowledge and skills with younger generations.”

Care - provides for access by the older persons to health care, social services, and benefit from family and community care and protection in accordance with each society’s system of cultural values.

Self-fulfillment - and dignity provide that older persons should be able to take advantage of opportunities that fully develop their potential as well as enable older persons live in dignity and be equally treated irrespective of age or other distinguishing factors

Dignity – that older persons should be able to live in dignity and security, free from all forms of exploitation, physical or mental abuse.

These principles were adopted taking into consideration the standards contained in the Vienna International Plan of Action on Ageing and further encouraged all states to incorporate them into their programmes at a national level. They in essence require states to reaffirm their determination to the promotion of fundamental human rights and realization of the dignity and worth of all people.

Subsequent to the adoption of the UN principles for older persons and on the occasion of marking the 10th anniversary of the Vienna International Plan of Action, the UN adopted the Proclamation on Ageing in which it urged the international community to ensure the implementation of the Vienna Plan and dissemination of the UN Principles. The proclamation urges “the support of national initiatives on ageing” through provision of support for families offering care to older persons (cash transfers), and promoting recognition and support of older persons whose contributions to the society and the economy are unrecognized. It also calls on policy makers to focus attention and resources on “tangible opportunities rather than on desirable but unobtainable goals.”

It was through this Proclamation that the UN General Assembly declared 1999 the international year for older persons.

2.2.3 Madrid International Plan of Action on Ageing (MIPAA)

The MIPAA was adopted in 2002 during the 2nd World Assembly on Ageing to replace the VIPAA. It revised the provisions in the Vienna Plan with the aim of establishing a long-term protection strategy for the ageing population and to respond to the opportunities and challenges of population ageing in the twenty-first century.

23 Ibid.
MIPAA aims to ensure that people everywhere can age with security and dignity, and continue to participate in their societies as citizens with full rights. It focuses on key issues of non-discrimination and the protection and promotion of the dignity of older persons including their fundamental rights and freedoms. It also calls for the reduction of poverty of older persons by half by 2015 in line with the MDGs. MIPAA reiterates that “persons as they age, should enjoy a life of fulfillment, health, security and active participation in the economic, social, cultural and political life of their societies, including the determination to enhance the recognition of the dignity of older persons and to eliminate all forms of neglect, abuse and violence".

The plan focuses on three key areas of concern as follows

a) Older persons and development – though the realization of the basic human rights and fundamental freedoms and dignity.

b) Advancing health and well-being into old age – through for example access to health care and care for vulnerable older persons including those with HIV/AIDS.

c) Ensuring enabling and supportive environments – through, for example adequate housing and protection from neglect, abuse and violence.

2.2.4 African Union Policy Framework and Plan of Action on Ageing (AU Policy)

The AU Policy Framework (adopted in March 2002) was developed in recognition of the rapidly increasing population ageing in Africa and the need to put in place policy measures to respond to it. It requires member countries to formulate national policies on ageing and to improve the lives of older persons. The policy framework focuses on advancing the rights of older person, promoting issues of ageing and developing interventions to address needs of older persons in Africa.

The Policy Framework recognizes that older persons are particularly disadvantaged due to lack of social security measures, the HIV/AIDS pandemic, poverty and rapid urbanization leading to the breakup of family protection structures. These necessitate the need to come up with a specific policy framework to address the unique challenges of older persons in Africa.

The AU policy framework, like the African Charter on Human and Peoples Rights, recognizes that the family set up is very important in providing care and support for older persons. It recommends to member states to enact legal provisions that promote and strengthen this role of the family and the community in the care of older persons.

The Kenya draft national policy on older persons and ageing is mainly a reflection of the provisions of the AU Policy Framework and Plan of Action on Ageing.

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25 Article 5 of the Madrid International Plan of Action, Ibid.
3 GROWING OLD IN KENYA – review of the local context

3.1 Background issues

The Vision 2030, Kenya’s long-term development blue print, is now under implementation, with medium term goals set for achievement by 2012. Under its priorities on human resource it acknowledges the need for a broad and effective social security system while also ‘harnessing retired high cadre talent’ recognizing that ‘retirees are capable of making a contribution to our development.’26 These are important statements in that they, albeit only implicitly, make a connection to the notion of intersectionality of rights – in this case that an effective social security system, human resource development, and the contributions of older Kenyans share an important relationship critical to our development as a country. The Vision 2030 further points to the importance of saving for old age27. The proposed actions point to the direction government will be taking in expressing greater care for Kenyans than has hitherto been the case.

Examining how Kenyans can enjoy their human rights into their old age, one needs to re-emphasize that whereas ageing is an inevitable biological process, it is also a social process that is impacted by how well an individual is endowed socially and economically and therefore the ability to access and enjoy rights such as access to health, food, shelter among others. This means therefore that the ageing process will be experienced differently depending on ones social status. A well off person or one who enjoys adequate social protection throughout their lives will most likely fare much better into their 70s as opposed to a poor person who lives in a state of want all through their lives. Consequently most poor Kenyans live in fear of ageing even as they desire long lives. While this may seem obvious, public policy has not always taken this into consideration; policy makers have not considered the contextual differences that make ageing a daunting process for some more than others. At the same time, government policies tend to suffer from ageism – a tendency to view and design society on the basis that everyone is young and able.

The important question to address is – what kinds of programmes should the Government put in place to make ageing a positive rather than painful experience for all Kenyans? For the foundational human rights principle of non-discrimination to be realized, the government must be able to secure a strong foundation on issues that determine what kind of future every Kenyan ends up experiencing.

3.2 An examination of some specific rights

3.2.1 General attitude towards growing old

From the data collected for this study, 97% of the respondents were aware of old persons in their communities. However, a difference was noted between the number of people who were aware of old persons in their community and those who were aware of retired persons in their

27 Op cit, 5.
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community; this could be due to perceptions regarding the concept of growing old and retiring. Almost half of the respondents thought retirement meant old age.

Depending on the individual’s background, old age was perceived differently and associated with different issues and circumstances. A majority of respondents (69%) thought positively of ageing. A few of these felt that old age is “just a stage in life with similar challenges as other stages” and hence requiring attention like any other stage. Those who thought of ageing negatively associated it with issues such as sickness, physical incapacitation, abuse, loneliness and general suffering. Ageing was seen as a problem for members of that person’s family; 65.7% of respondents reported that old age is a burden to those caring for older persons. Figure 1, below indicates the perceptions, per province, towards growing old.

Figure 1

![Perceptions on Growing Old](image)

Respondents cutting across all levels of education expressed fear of ageing, except those from North Eastern province which had fewer people who feared growing old. Notable is that North Eastern province is one of the regions in Kenya where cultural erosion has been minimal hence the traditional safety nets for caring for older persons still remain.

77.2% of the respondents reflect on their lives in old age as compared to 22.8% who do not. Out of the data collected, those who reflected about their lives in old age mostly had positive perceptions of the same. 49.3% of the respondents who have reflected on their lives in old age actually look forward to growing old while 25.7% are afraid of old age.

97.5% of the respondents felt that young people should prepare for their financial security in old age. Those who did not were mostly respondents with a low level of education. From the data collected the higher the level of education of an individual the higher the chances that they would prepare for old age.
3.2.2 Forms of financial security in old age

Older persons are some of the poorest in Kenya with no means of income and support. Many older people today did not save for their old age, hence the poverty situation that they find themselves in. As figure 2 below illustrates, there are different ways in which people prepared for old age and among these include savings in a bank or in a cooperative society, pension scheme, investing in a business, buying a farm or plot and building or buying a home.

Respondents who did not prepare financially for old age gave various reasons including the lack of economic/financial capacity to save for old age, social factors as well as religious and political factors.

Some of the reasons that are linked to the financial capacity of the individual to save for the future include low income, unemployment or loss of income, inability to access credit facilities and property disputes. Some of the social factors include divorce resulting to financial instability, lifestyle and ignorance. Thus while some people failed to invest in old age by choice, others were largely affected by socio-cultural, economic and political factors and related contexts.

These attitudes have shaped not only how individuals view and prepare for the ageing process, but also how public policy and non state actors have treated the issues of growing old. The AU Policy framework, like the Vision 2030 recommends the need for people to understand the need to cater for their old age through savings and pensions in both formal and informal sectors.
3.2.3 Access to credit

Most credit and investment programs in Kenya have inbuilt discriminatory practices through age-barriers. For example, the older one is, the less one is likely to get a housing mortgage or any other loan for that matter or even an insurance based investment. This is because housing mortgages for instance, are often calculated on the basis of one’s retirement age, among other criteria. This implies that a 50 year old Kenyan would hardly be able to own property or commence a business should they seek the same, for example, through a loan.

3.2.4 Social Security and social protection

This refers to a variety of public-spending programs designed to provide income and services to individuals in the event of retirement, sickness, unemployment, or disability; these are generally designed for basic poverty alleviation for the most vulnerable members of the society. They are founded on the notion that governments need to express their duty of care in ways that protect the dignity of the most vulnerable in society. The right to social security has not been formally defined in international human rights instruments. The General Comment No. 19 on the Right to Social Security however, indicates that it covers the right to access benefits through a system of social security in order to secure adequate income security, access to health care and family support.

In order to govern pensions in Kenya, the study was informed that the RBA is currently involved in the process of developing a National Pensions Policy, which shall be read in conjunction with the National Policy on Older Persons and Ageing. Similarly, the Ministry of Gender, Children and Social Development is in the process of developing a National Social Protection Policy and Strategy; which targets older persons for pensions and cash transfers. Once completed and implementation commenced, it is expected that these policy documents shall guide the government in making provisions for the protection and financial support of Kenyans in old age.

While traditionally the society had mechanisms for protecting the vulnerable such as orphans, widows, persons with disabilities and older persons, changing life arrangements especially forced on by urbanization have resulted in the marginalization of such persons hence exacerbating their poverty and vulnerability. Increasingly more people in these groups face abandonment by both social and public systems. If, as Vision 2030 avers, Kenya’s main potential lies in its people, then a lot more should be done to make good this statement.

The main public social security systems are run by the National Social Security Fund (NSSF), and the National Hospital Insurance Fund (NHIF) and are employment-centered. In a country where most people are self employed and/or unemployed, it is a pity that all these systems are largely skewed in favour of those formally employed, though the NHIF has in the last few years made provisions for membership for self-employed Kenyans who even then it requires that they earn not less than Ksh 1,000/= ($12) and make contributions of Ksh.160 a month, a

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requirement that might leave out millions of other unemployed Kenyans. On the part of the NSSF its benefits relate to retirement. Such funds are accessible only after reaching age 55 or upon death.

3.2.5 Social protection

3.2.5.1 Universal/ non-contributory pension scheme

A universal pension scheme is a non-contributory pension that covers all older persons of a specific determined age regardless of whether they were in paid formal employment or not. Such a pension scheme would provide some income (through direct cash transfers) to all older persons hence helping to alleviate old-age poverty. Kenya does not have a universal pension scheme, unlike some Southern Africa governments that have introduced the universal pension scheme which targets many of the poorer older persons. The current pension system, a contributory one and largely covering those in formal employment, is quite limited to only about 3% of the population. With the projected increase in the population of older persons, it is important that the Government puts in place early mechanisms and interventions for the support and care of this segment of the population. Current reliance on welfare and some form of family support will hardly be sustainable hence placing older persons at risk of having no support in future.

The government of South Africa for instance, implements a non-contributory pension scheme to older men over 65 years and older women over 60 years of age; each pensioner receives about R600 (aprx. Ksh 5,000) per month. Given the role that many pensioners play in terms of care giving to HIV/AIDS orphans, such non-contributory pension have the cumulative effect of improving livelihoods for the orphans. Pensions also play a key role in increasing dignity and access to basic rights for older persons including access to decent shelter and health care. Other benefits of the pension scheme include the ability of older persons to invest and access credit and provide a safety net in situations such as crop failure, famine and drought.

3.2.5.2 Cash transfers

Kenya does not have a social protection scheme that directly targets older persons in the form of cash transfers. This in contrast to the governments of Tanzania and Malawi that are implementing a pilot cash transfer system aimed at reducing old age poverty and vulnerability.

A pilot cash transfer project run by the Ministry of Gender, and targeting orphans and vulnerable children was commenced in 2008, with heavy donor funding. Similarly, in early 2009, a cash transfer project in the name of ‘Hunger and Safety Net programme’ is currently being implemented in the poorest districts of Kenya, the same having

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already been rolled out in Wajir district. The study was informed that a similar cash transfer system targeting the old, orphans and persons with disabilities is planned; the National Social Protection Policy and Strategy that is under development by the Ministry of Gender would regulate the programme.

Kenya needs to incorporate lessons learnt from other similar countries like Malawi and Tanzania with more or less similar GDP in order to design a similar project for vulnerable older Kenyans. An evaluation of the Tanzanian KwaWazee pilot cash transfer project in the Kagera region jointly undertaken by HelpAge International and others revealed that the cash transfers showed significant positive impacts in terms of improved nutrition, access to health and reduced poverty; its sustainability however remained a challenge and it ran the risk of creating dependency in the absence of clear government commitment through policy and concrete budgetary provisions for the same. Specifically, the evaluation found that

- Investment in social protection and cash transfers in particular are an effective way of targeting the most marginalized and the poorest,
- Social pensions have direct benefits across families and communities, thus tackling poverty,
- Universal non-contributory pensions help to deliver development outcomes across generations,
- Social pensions are an important response to HIV/AIDS and an effective strategy of providing support to older carers and reaching vulnerable children\(^{31}\).

This study argues that for a cash transfer system to older persons to be successful, government commitment ought to be demonstrated through clear policy, which would guide planning and budgetary allocation for the same. Reliance on donor funding for a cash transfer system should however be minimized.

While the non-contributory pension scheme/cash transfers largely depend on political will in terms of budgetary allocation, research reveals that in many countries, the same costs less than 2% of the GDP – see for example Mauritius that spends 1.6% of its GDP on non-contributory pensions, Lesotho (1.4% of total GDP), South Africa (1.4% of total GDP) and Namibia (0.8% of total GDP)\(^{32}\). However, political will is still significant in realizing non-contributory pensions in Kenya. This was already demonstrated when Parliament rejected a Ministry of Health proposal in 2003 to introduce the National Social Health Insurance Fund which would benefit Kenyans of all walks, whether rich or poor. On the other hand, political will and commitment made possible implementation of Universal Free Primary Education as well as rolling out of devolved funds such as the Constituency Development Funds (CDF) with the commensurate budgetary provisions.


### 3.2.6 The right to health

The right to health including access to health care is a basic right of everyone irrespective of age or economic status\(^{33}\). This right cannot however be fully realized where there are obstacles regarding access, or where despite provisions of the same, it is done in a manner that discriminates against certain categories including, older persons.

The National Commission reiterates that the health condition of older persons is a reflection of their health at a younger age, including lifestyle. The physical and mental health of Kenyans therefore ought to go beyond the cure of diseases to encompass life long health care from the very early stages of life. The Commission observes that maintaining health into old age requires investments during the entire lifespan, through adoption of healthy lifestyles and nutrition, elimination of harmful practices, regular checks, prevention of terminal diseases and rehabilitation and care.

From the survey conducted, most respondents indicated that older persons are likely to be without medicine and health care. A total of 549 or 78.9% (279 male and 270 female) agreed as compared to 19.7% who disagreed. And a study by HelpAge International found that there is widespread elder abuse within the health sector\(^{34}\). This it noted, is with regards to the high costs of health care (following introduction of cost sharing in public hospitals), negative attitudes, ignorance and/or mistreatment by health care workers, and abandonment in hospitals by their families. In essence therefore, older people are denied access to essential health care and rehabilitation services.

Our health programmes/systems are largely curative with a focus on the cure of diseases. However, the World Health Organization has defined health to be not simply the absence of disease but the state of physical, mental and spiritual well being. The bias in curative health care implies that our health programmes have very limited focus on preventive and rehabilitation care, yet these largely contribute to the physical and mental well being of older persons.

As far as we could establish, no special health care programs exist for older persons. The kinds of health needs that older persons have are not provided for any differently; there are no special or subsidized health fees for older persons, assistive devices or special wards in public hospitals. Our health policies and programmes are therefore not conscious of age.

The study learnt of a positive development in which the National Health Insurance Fund (NHIF) has introduced a health insurance system that allows for coverage for persons of all ages; older persons contribute a lower rate of Ksh. 180 per month. This insurance provides 100% coverage in all government and mission hospitals for inpatient care (it excludes outpatient care). However on the other hand, the study found that most private health providers either do not insure persons older than 64 years and where they do; they charge higher premiums for such persons notwithstanding their health conditions. One of the leading health

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providers has this as one of its exclusions; ‘accommodation in convalescent or old age homes or similar institutions catering for the aged’. However and quite commendably, the study found an insurer that has set up a Life Span Health Insurance Policy which contains the Post-Retirement Medical Benefit, the Post-Retirement Health Care Fund and the Retirees Health Care Plan that is designed to cater for the health care needs of employees after they leave employment upon attainment of retirement age. These are however limited to older persons who were in formal employment before retirement.

The challenge for the Government therefore is to ensure improvement in the healthcare facilities and services, and also implement provisions outlined in the Vision 2030, which provide for “public education programmes to encourage Kenyans to change their lifestyles in ways that will improve the health status of individuals.”

3.2.7 The right to adequate housing

The Universal Declaration of Human Rights (UDHR) affirms the right to an adequate standard of living including housing. This right has also been reaffirmed in other international instruments including the International Covenant on Economic, Social and Cultural Rights (ICESCR), the Istanbul Declaration and Habitat Agenda of 1996 and the Declaration on Cities and Other Human Settlements in the New Millennium of 2001. However, the ICESCR in Article 11(1) recognizes the right to housing generally, without being specific to older persons. And at the regional level, the African Charter on Human and Peoples Rights is silent on the right to housing. This however does not imply that the right to housing for older persons is a less important subject matter.

General Comment number 4(6) of the ICESRC elaborates that the right to adequate housing applies to everyone. This is irrespective of age, economic status, group or other affiliation status. Further to this, the General Comment observes that since the right to housing is derived from the right to an adequate standard of living as per article 11(1) of the Covenant, it means that the realization of the right to adequate housing is integrally linked to the realization of other human rights as expressed by the principle of interdependence, indivisibility and interrelatedness of all human rights. Hence for instance, access to adequate housing enables one to live and grow old in dignity and security.

In September 2006, the Government of Kenya submitted the initial state report under the ICESCR, which was considered in November 2008 in which it indicates measures undertaken towards implementation of the Covenant. In this report and specifically with reference to Article 11 of the Covenant, the Government identifies four vulnerable and disadvantaged groups narrowly as women, children, persons with disabilities and the poor; older persons are however not identified as part of this vulnerable group that is in need of special measures to

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guarantee and protect their right to adequate housing. This gap has been recognized in the General Comment 6 on the economic, social and cultural rights of older persons to the effect that a great majority of state reports on the ICESCR continue to make little or no reference to measures undertaken to improve the socio-economic rights of older persons. Given this lack of prioritization of older persons as regards housing, it is not unexpected that specific government responses to housing challenges such as during situations of evictions remain ignorant of the special needs of older persons who require special attention and protection.

In Kenya and drawing from the literature review and survey conducted by the National Commission, there is an obvious gap between the standards set in Article 11(1) and its General Comment and the situation on the ground as it relates to the right to adequate housing for older persons. General Comment number 4 further clarifies that the right to housing does not merely refer to a situation of having a roof over one’s head, but to the right to live in security, peace and dignity. The following situations depict violation of the right to adequate housing for older persons in Kenya.

- Homelessness including street dwellers
  A cursory glance at street dwellers in many urban centers reveals a number of older persons in their midst. This can be attributed partly to lack of social security in old age so that older persons are reduced to beggars, and to the breakdown of the traditional family support structures so that the primary focus of the family is now on the nuclear and not extended family. And given the focus on the nuclear family, many young adults have abrogated their role of caring for their parents as required under the African Charter on Human and Peoples Rights.

- Deplorable shelters due to neglect by the extended family
  Majority of older persons live in the rural areas. This is particularly important with regards to rural-urban migration of adults and consequently affects family care and support for older persons. Elsewhere, within the rural areas, older persons are neglected and often find themselves victims of poor housing structures and amenities which expose them to health and other hazards. This neglect is particularly typified in the deplorable housing for older persons observed by the survey team and as seen in the pictures below.

37 This is in contrast to the National Housing Policy which defines vulnerable groups as the poor, women, children in difficult circumstances, the handicapped, the elderly and displaced persons.
Figure 3

A small boy in front of their house where he stays with his grandfather. His mother is mentally ill and was staying with his father in Kakoo in the same house. The elderly grandfather is the breadwinner.
• Inadequate homes for older persons
Homes for the old (both private and public) that provide care and support to older persons are generally few in Kenya and where they exist, they are very poorly resourced and many depend on funding from non governmental, religious and other self help organizations. The study found that the Catholic Church for instance supports many homes for the old around the country\textsuperscript{38}. Since these homes provide basic needs to many older persons given the

\textsuperscript{38} Support from the Catholic Church is not only limited to homes for the old but extends to support for the old within their communities through the provisions of among others, housing, food and health care.
breakdown of family support structures, it would be imperative that the Government contributes substantially towards their establishment and upkeep. This is however yet to be realized with Government funding remaining quite minimal. The private sector also needs to come in to fill this gap in government funding by contributing substantially to the homes and other institutions providing care and support to the old in Kenya.

The AU Policy and Programme of Action in recommendation 4.6 on housing and living environments observes that many older people are denied access to decent shelter as a result of socio-economic changes and belief systems; a situation which is worse for women especially widows. It calls for, among other measures, the need for governments to review and update housing policies in order to ensure that they reflect the needs of older people both in rural and urban areas. It further recommends to member states to ensure that older persons have access to safe, durable and affordable shelter. The Kenya draft National Policy on Older Persons and Ageing (September 2006) incorporates the recommendation of the AU Programme of Action.

Given the projected increase in the number of older persons in the next few years, it is imperative upon the government to formulate policies and programmes to ensure protection of the quality of life of this growing age group, including adequate housing.

3.2.8 Protection from neglect and all types of physical and/or mental abuse

*Older persons should be able to live in dignity and security and be free of exploitation and physical or mental abuse.*

United Nations Principles for Older Persons

Elder abuse is not a rare phenomenon in Kenya. In fact, it is a worldwide acknowledged problem. Elders are abused daily by their children, families, communities and society in general. Besides the abuse, older persons are subjected to neglect more so in the context of the weakening of family support structures where they are left to fend for themselves even where they are weak and do not have a source of income.

Many older persons, in particular those in low-income urban areas and in the rural areas are quite neglected, without decent shelter, food, clothing and access to medical care. In many cases older people are left in the rural areas to fend for themselves while the younger generation moves to the city to look for ‘better living’ and opportunities.

The following typify the kind of abuse that older persons in Kenya experience.

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3.2.8.1 Physical abuse, including sexual abuse

From the survey conducted for this study, physical abuse of older persons was reported highest in Eastern Province by 6.6% respondents as compared to North Eastern, which was reported by 1.1% of the total respondents. Abuse of older women was reported in the entire country with 44.9% of the respondents acknowledging that older women are physically and sexually abused. More women respondents (23.8%) agreed that there is abuse of older women as compared to 21.1% of the men.

Majority of the respondents (69.5%) agreed that the rights of older persons are not usually respected as compared to 27.7% of those who disagreed. This compares well with the finding to the effect that the government, as the key duty bearer, has not done enough to prepare its citizens for old age. Less than 50% of the respondents felt that the government is playing a significant role in enhancing the rights of older persons.

In terms of sexual abuse, there have been few reported cases of older women who have been sexually abused, molested and raped, but this is not to say that such cases are rare. This may be due to the trauma and ‘shame’ that accompanies a rape ordeal such that many older women would hesitate to come forward and report such cases. Similarly, being that in some instances, those who rape them are their immediate family members who support them, they may fear that reporting such cases would lead to the withdrawal of that support and care.

The Kenya draft National Policy on Ageing recognizes that neglect, abuse and violence against older persons has become a common occurrence in Kenya mainly taking the form of physical, sexual, psychological, emotional, material and financial abuse and may be intentional or unintentional\(^\text{41}\). The draft policy proposes measures to redress the situation including through revitalization of extended family and community based systems to support older persons, strengthening and support of traditional care systems to enhance the ability of families to support older family members and sensitization across all levels of the society on the rights of older persons including the need for their protection and care. Besides the draft policy document, no other official document acknowledges the systemic abuse of older persons’ rights in Kenya, including a provision for their protection.

Reflecting on the proposals in the draft Policy, the National Commission recognizes the important role that the family plays in supporting and caring for older persons. Even in the wake of the effects of urbanization, economic pressures and changing social values that have considerably weakened family support structures, younger members of the family need to be sensitized on their obligation to care and provide for their older members.

In addressing older persons’ abuse, the government of Kenya may borrow from the South African Government which in responding to media reports in March 2000 alleging widespread elder abuse in residential institutions, pension queues and in the community,

established an independent committee to investigate and inquire into these allegations. This Committee found evidence of widespread cruelty against older persons and neglect and ill-treatment by their families. The Committee further found that in some provinces old people, women in particular, are labeled as witches and killed or driven from their homes and unable to find refuge. And within the homes, the frail older persons have no one who oversees them or protects them from neglect and abuse. Hence for many older persons, old age is a time of fear, depression and anxiety. To reduce the anxiety and fears of Kenyans associated with old age, the Government should acknowledge and put in place requisite measures to prevent elder abuse.

Makone in *Faces of Age* while acknowledging the widespread nature of elder abuse observes that the same may sometimes not be noticed due to a number of factors including:

- Elder abuse, like all other forms of abuse, is a hidden problem that is more often than not committed in private.
- Fear of losing support from a perpetrator of abuse or of retaliatory attacks may deter an older person from reporting the abuse.
- Older persons who have been abused often feel ashamed of the abuse hence tend to hide it thus not reporting the abuse.
- Most often, older persons do not know where to nor to whom to report an abuse.
- Older persons mental impairment and ill-health may interfere with the identification and substantiation of abuse, leading to questions regarding credibility of allegations made.

### 3.2.8.2 Torture and extrajudicial execution of older persons on allegations of witchcraft

Older men and women at the Coast and larger Kisii region have been targeted and subjected to torture and extra judicial executions on allegation of practicing witchcraft. The sole criterion that has been used to identify them as witches and accused of various calamities ranging from deaths, diseases, misfortune to famine and floods has solely been on the features that define one as an older person. Therefore, for instance, persons with grey hair, red eyes, wrinkled skin, who are frail or senile, are blamed for all the calamities affecting the community.

If one is an older person in Kisii for instance, one is highly at risk of being branded a witch and subsequently killed and his/her property destroyed. Many older persons in this region of Kenya have been stoned or burnt to death and their homes completely destroyed after being accused of witchcraft. The killing of 11 elderly persons in May 2008 accused of witchcraft in Kisii raised a lot of reaction on the need for protection of older persons and their right to life. The Police reported that the 8 women and 3 men killed were aged between 80 and 96 years old. And in Magarini in Coast province,
older persons have been put on alert following a wave of killings of grey haired older persons\(^4\). Among the fourteen older persons killed in Magarini on allegations of witchcraft in January 2009 included an Assistant Chief in the area. There have been many more cases of elderly people suspected of witchcraft killed or ostracized in this area of Kenya. And in South Africa, many older persons mainly older women have been excommunicated from their villages after being identified as witches. In Tanzanian, between 1998 and 2001, HelpAge International reported that 17,220 women were abused as a result of witchcraft allegations in which 10\% were killed. Across the nine project districts in Tanzania where HelpAge International works, there were 444 "witch" killings between 1999 and 2004. Of these, all except nine were older women\(^5\).

The Kenya draft National Policy on Ageing does not isolate issues of witchcraft as some of the serious threats to the personal security and well being of older Kenyans hence meriting specific interventions. This draft policy should be comprehensive enough to specifically address issues of witchcraft as they relate to the protection of older persons.

Nhongo observes that colonial governments including in Kenya, after realizing the complex nature of belief in witchcraft, enacted laws to control rather than remove the belief in witchcraft\(^6\). Hence for in stance in Kenya, we find the Witchcraft Act (Cap 67). He observes that the existence of such laws has not served to remove the belief in and associated ostracization, assault and killing of alleged witches. Nhongo’s thesis is typified further in for example, the Tanzanian National Ageing Policy which states that “the Government in collaboration with Local Government Authorities and voluntary agencies will identify and protect older women suspected of witchcraft”\(^7\). This policy may be interpreted to imply that it would not be wrong to accuse older persons of witchcraft, the Government would only come in to protect them after they have been put at risk by being labeled ‘witches’. It would therefore be important that policy relating to older persons propose measures for the protection of older persons through criminalization of witch-hunting.

Kenyans should not forget that the condition of our older persons today is clearly a reflection of our future. If not addressed, we too run the risk of, for example, being burned alive on allegations of witchcraft merely because of our physical outlook. Older persons are therefore in need of better protection from vigilante groups that mainly conduct the witch hunts and killings. Urgent measures need to be undertaken by the provincial administration and NGOs to both protect older persons and educate the residents on the rights of older persons and their need of protection from abuse and ill-treatment.

\(^4\) The Daily Nation, February 7, 2009 pp 1 – 2. “They live in fear of witch-hunt killers: Alarm as seven are lynched by a gang of youths targeting elderly people over alleged witchcraft”.


3.2.9 Ageing and HIV/AIDS

The impact of HIV/AIDS in Kenya has been immense. This led the Government to officially declare HIV/AIDS a national disaster in 1999 and to establish the National Aids Control Council (NACC). However, as observed in the AU Policy Framework and Plan of Action on Ageing, very little has been done in terms of analyzing the specific impact of HIV/AIDS on older persons. This is similarly reflected in the Kenya National HIV/AIDS Strategic Plan (KNASP) 2005/6 – 2009/10\(^\text{48}\) which does not include any provision on older persons either as people living with HIV/AIDS or as care givers to HIV/AIDS orphans.

The draft National Policy on Older Persons and Ageing has however included the issue of ageing as it relates to HIV/AIDS. The draft policy addresses older persons both as care givers and as persons living with HIV/Aids with strategies and proposals for action\(^\text{49}\). What Kenya needs are laws, policies and strategies that reflect the needs of older persons either as persons living with HIV/AIDS or as care givers for both infected persons and HIV/AIDS orphans.

3.2.9.1 Older persons living with HIV/AIDS

As already reflected in this report, policies and programmes on HIV/AIDS do not take into account older persons as people living HIV/AIDS even though studies show that older persons are increasingly at risk of HIV/AIDS infection. According to a 2008 United Nations General Assembly Special Session on HIV and AIDS country report, there is an increasing proportion of those who are infected with HIV/AIDS that fall outside the adult age span of 15-49 years, which is the international standard for measuring the burden of HIV infection. The report further states that of 1.1 million HIV positive people, 18% are either children or older adults. An increasing number of men and women over 50 are not only surviving HIV infection but are becoming infected\(^\text{50}\).

A similar finding was made by the Kenya AIDS indicator survey (KAIS) of 2007. The KAIS report, which for the first time tested women aged 50-64 years and men aged 55 – 64 years found that the HIV/AIDS prevalence among Kenyans aged 50 years and above is greater than among the youngest Kenyans\(^\text{51}\).

The stigma surrounding the sexuality of older persons – that they are not supposed to be sexually active – has led to this gap in policy and programmatic intervention. To the contrary however, many older people are sexually active and especially with regard to polygamy where it is quite common for older men to marry young women and still have families with them. It is therefore crucial to dissolve this stigma to facilitate older

\(^\text{48}\) The Kenya National HIV/AIDS Strategic Plan provides the action framework for the development of various strategies, plans and budgets in relation to HIV/AIDS.


people to discuss sex issues with their health providers and families to prevent the spread of HIV/AIDS as well as with regards to those taking care of persons infected with HIV/AIDS. Research has shown that people living with HIV/AIDS may be at greater risk of certain illnesses associated with old age and may even contract these illnesses sooner due to a weakened immune system. It is therefore important that older persons are involved in awareness programmes on HIV/AIDS for prevention purposes including on the importance of ARVs and their proper use for those who may be infected. HIV/AIDS education should not only target the youth given that older persons can also become infected with HIV/AIDS.

3.2.9.2 Older persons as caregivers for HIV/AIDS orphans

In recent years, the role of older persons has gradually been changing to that of primary care givers of their families. This is more so in the context of the HIV/AIDS pandemic where older persons take over as primary care givers and go back to work in order to earn incomes through which to support persons living with HIV/AIDS and remain guardians of the HIV/AIDS orphans. This role is however scarcely recognized in government policies and programmes. In Africa and Kenya in particular, it is often the case that children orphaned by HIV/AIDS more often than not end up in the care of their grandparents, many of who do not have a source of income amidst declining family support structures and lacking social protection. The situation in other African countries is similar to that of Kenya. It is reported that 60% of AIDS orphans live with their grandparents hence compounding the already grave poverty situation of the elderly. Tanzania has however taken a positive lead in East Africa in implementing the recommendations of the AU Policy and Plan of Action on Ageing and the Madrid International Plan of Action on Ageing (MIPAA). The Tanzanian policy puts a burden upon the government to ensure that there is an established mechanism for awareness creation for older people in HIV/AIDS pandemic and care of its victims.

The following cases typify the burden of caring for HIV/AIDS orphans that has been placed on older persons in Kenya.

“When my daughters fell sick, they came here with their children and when they died, I was left to fend for them. Now I have 4 young boys to take care of. I am the only one left to fend for them, yet I have no work and am also not in good health... Many of the children from this place leave to work in the towns and they do not help their parents. Many old people in this place are then forced to look for work in order to sustain themselves and their grandchildren” Interview with Mary N who is 78 years old.

“My daughter Margaret W died of AIDS in 2005 and left behind two children whom I currently look after. The younger child, a girl of 6 years in also infected.

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with HIV/AIDS. I am forced to look for casual work in order to support them.”
Interview with Muthoni K who is 71 years old.

Currently, it is estimated that there are 2.4 million orphans in Kenya. Half are orphans caused by the AIDS pandemic estimated at a figure of 1,149,000\textsuperscript{54}. This means that the number of caregivers increases and in our case, the most vulnerable to this situation are the older people.

Figure 5

\textsuperscript{54} The National AIDS Control Council and the National AIDS and STI Control Programme (June 2007). 
3.2.10 Gender dimensions of ageing

“Ageing is a woman’s world. The single most important demographic fact about ageing is that the ageing society is a female society.”\(^{55}\) This scenario is similar in Kenya where life expectancy of women is higher than that for men hence majority of older persons in Kenya are women. The United States Census Bureau forecast that the number of older women world wide aged 60 years and over is expected to more than double by 2025 to 645 million. Three quarters of these women will be living in the developing world where every one in seven persons will be an older woman\(^{56}\).

The expected significant increase in the number of older women as compared to men implies that the challenges faced by older women needs to be a core focus of governments. This is more so in developing countries like Kenya where majority of older women are widowed, disinherited and in dire poverty yet they remain primary care givers in particular due to the impact of HIV/AIDS pandemic which impacts on older women more than older men due to their traditional role as care givers.

In the Kenyan context, older women, many of whom live in the rural areas continue to bear the responsibility of taking care of their families, a role which entails hard labour such as fetching water and wood fuel and tilling the land. Many older women continue to perform these chores until they are too feeble to move. Such hard labour affects their health, and given the lack of health insurance, social protection compounded with poverty, older women are unable to access necessary basic health care. As previously mentioned, many older women are likely to be widowed and in many cases disinherited\(^{57}\). Widowhood impacts differently on older men as compared to older women. Many widowed older men re-marry, often relatively younger women whereas widowed older women remain single and continue to support themselves and their families. The AU Policy Framework observes this and points out that older women’s lack of property rights means that widowhood or dissolution of marriage brings with it loss of home and property leading to poverty. Elsewhere, older men without a family are more vulnerable than older women who tend to have more domestic skills. These imply that older men often have different specific needs as compared to older women.

Women in Kenya are hardly property owners and all wealth and other resources accumulated in the course of their active life remains in the name of their husbands and sons. In preparing for growing old therefore, the Government and society in general need to put in place mechanisms which will ensure that women have secured access to property. Women’s inheritance rights need to be strengthened through legislation so that women are able to own and inherit property whether married or unmarried. Such property and other resources


especially land will contribute to ensuring that older women have access to housing and economic means to earn an adequate standard of living in their old age thereby ageing in dignity. This also ensures security of older women in old age.
4 CONCLUSIONS AND RECOMMENDATIONS FOR ACTION

The Kenya National Commission on Human Rights reiterates that older persons have rights like all other Kenyans. They should therefore be protected from abuse, neglect and other human rights violations. At the same time, the government should implement policies and programmes that would enhance realization of the rights of older persons through special programmes that recognize older persons as a vulnerable group. Broadly, the gains in the Wako and Bomas draft Constitutions around issues of older persons should be retained in the new Constitution given the constitutional review process that is about to commence.

The National Commission conducted this study through literature review, field survey, meetings with key informants and observations to determine

- Understanding of growing old as a process, for which one needs to prepare
- The extent to which Kenyans are prepared for old age
- The extent of Government interventions in preparing Kenyans for old age
- The fears associated with growing old
- The extent of protection or violation of the rights of older persons
- Recommendations on how old age can be made a better experience for all Kenyans

From the above, the study found that:–

Many Kenyans do not understand growing old as a process. For this reason, they live their lives ignorant of the fact that one day they shall become old, a life stage for which they need to prepare both financially and mentally. This ignorance is not only on the part of Kenyans, but the government as well. Hardly do government policies and practices recognize growing old as a process that has to be factored in both planning and resource allocation. For this reason, policies in critical sectors such as health, housing, employment and social protection are not old age focused. The health sector for instance, remains primarily focused on curative treatment which does not address the comprehensive health needs of older persons in the form of prevention, rehabilitation and treatment of terminal illnesses. Similarly, health programmes and education do not address the need to incorporate healthy lifestyles and prevention of diseases as a measure towards ensuring good health in old age. This gap points not only to the lack of awareness of growing old as a process, but to the discrimination against older persons in terms of policy priorities and actions.

Of significance to this study is the finding that Kenyans are hardly saving for their old age: a finding which paints a gloomy picture for our future older persons in terms of financial security. This is more so for Kenyans who are not in formal employment who then would not be part of a pension scheme. Lack of financial security is one of the main factors leading to old age poverty that we witness in Kenya today. Many older persons in Kenya living in situations of dire poverty and squalor would have had better standards of living had they adequately prepared for their old age through savings and other investments.
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The government is currently implementing some pilot cash transfer programmes targeting vulnerable members of the population (a cash transfer programme targeting older persons is currently planned but not yet implemented). An evaluation of these would provide better insights over questions of sustainability given that they are heavily donor funded, and in a context where the government, through the Ministry of Finance, recently admitted that it is cash trapped and unable to meet some of its financial obligations.

On the question of understanding the rights of older persons and their need for protection and care, the study found that older persons are variously discriminated against and their rights routinely violated through various acts such as neglect by their families, discrimination by health providers and killings in some parts of the country on allegation of practicing witchcraft. The fact that this practice is widespread in these parts of Kenya point to the ineffectiveness of government and provincial administration response and action both in terms of punishing and educating the offenders on the need for protection and care of older persons (who in essence represent our future).

The National Commission reaffirms the core duty of both the society and the state to ensure realization of the fundamental rights of older persons including protection from neglect, abuse and discrimination as well as their well being through access to health care, adequate standards of living among other basic human rights. Such protection for older persons can only be realized when adequate policy, budgetary and programmatic measures are developed and implemented from the early stages of life.

In light of the above and other findings of the study, the National Commission recommends the following:-

1.1 Ageing is a life long process. Preparation for old age and retirement should therefore not be undertaken as a last minute effort but should be integrated in one’s life from childhood and adulthood onwards. Such preparations should also form an integral part of government policies and programmes across various sectors including health, social security, housing, education. Of key focus to this study are investments in social security, savings, and adoption of healthy life styles.

1.2 An understanding of ageing as a process should be inculcated in Kenyans from childhood through to adulthood and into old age. In this regard, the Ministry of Education, in collaboration with the Ministry of Gender, Children and Social Development and the media, should develop and implement programmes 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.

1.3 The Government, through the Ministry of Planning, needs to consciously plan for the projected growth of population ageing in order to mitigate possible negative consequences: this rapid growth is likely to place a huge burden on, for example, health
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services and pensions. This will therefore necessitate the need to review the national health policy (to be led by the Ministry of Health) and programmes to ensure that they met the specific needs of older persons. Good health for older persons is much more than the absence of disease; implication being that the physical and mental health of older persons goes beyond the cure of diseases. The review should therefore entail a shift in the focus of health care from overwhelming focus on curative programmes to care and rehabilitation.

1.4 The Ministry of Health should review the national health policy so that it creates conditions that would promote good health for all Kenyans throughout their life cycle – from infancy into old age. This should include, in line with the Vienna International Programme of Action on Ageing (VIPAA), preventive health care, early diagnosis of terminal conditions, nutrition education and education on the negative effects of some lifestyles so as to contribute to the reduction of old age disabilities and terminal illnesses.

1.5 HIV/AIDS education and other related programmes should target older persons, as caregivers for HIV/AIDS orphans, as infected persons and as persons at risk of infection. Special attention should be paid to older women who are the majority of caregivers to HIV/AIDS orphans as well as care of infected persons who live in the home. The National Aids Control Council should develop and implement the HIV/AIDS awareness programmes targeting older persons.

1.6 In line with ILO recommendations and in view with the Constitutional review process that is about to commence, social security should be recognized in the Constitution as a basic right. This will facilitate and provide the basis for implementation of various social protection measures for older persons, including the National Social Protection Policy and Strategy that is currently under development.

1.7 The projected rapid growth of population ageing is likely to place a burden on pensions. In light of this, the Retirement Benefits Authority in collaboration with the Ministry of Gender, Children and Social Development and the media should continue implementing a sustained campaign, targeting young people all over Kenya, on the importance of saving and investing for old age. The Government similarly needs to provide incentives and put in place measures that encourage savings, especially among low income earners and those in the rural areas. To support this, the RBA should urgently finalize the National Pensions Policy.

1.8 The Ministry of Gender, Children and Social Development and Ministry of Finance should develop and implement social protection measures for older persons taking into account available resources and based on the concept of a ‘minimum package’; these should be included in annual budgets and National Development Plans. This minimum package should be able to provide older persons with minimum benefits to meet their essential needs and to achieve an adequate standard of living. Therefore even where contributory pensions are implemented and calculated on the basis of one’s income (for those who were in formal employment), a minimum package should be maintained. In
the long term, the government should implement a universal (non-contributory) pension scheme, to alleviate old age poverty by providing a source of income to Kenyans who attain a specifically agreed upon age.

1.9 The Government should develop and implement programmes, including cash transfers, targeting older persons taking care of HIV/AIDS orphans. The Ministry of Finance, in collaboration with the Ministry of Gender, Children and Social Development, should implement this as a matter of urgency.

1.10 In order to reduce old age poverty, the Government should implement poverty reduction programmes specifically targeting the needs of older persons in the form of specially designed credit programmes.

1.11 The study found that many Kenyans have fears and anxieties about growing old. To reduce such fears and anxieties, the Government, in particular the Provincial Administration and the Police should adopt measures to enable Kenyans grow old in dignity, in particular, measures that would prevent elder abuse and ill treatment, eliminate discrimination against older persons, protect older persons from witch hunting among other serious threats to their personal security, and would ensure that older women have secured access to, and ownership of property.

1.12 The draft National Policy on Ageing should be urgently finalized and adopted for implementation so that the needs of older persons are addressed in a coordinated manner. Reflecting on the proposals in the draft Policy, the National Commission recognizes the important role that the family plays in supporting and caring for older persons. Even in the wake of the effects of urbanization, economic pressures and changing social values that have considerably weakened family support structures, younger members of the family need to be sensitized on their obligation to take care of and provide for their older members.

1.13 Older persons should ideally remain in the community and be cared for by their children in line with the African Charter for Human and Peoples Rights. However, drawing from recommendation 34 of VIPAA, the National Commission recommends that where older persons must be placed in homes for the old, efforts must be made to ensure that conditions in those homes correspond as much as possible to the conditions in their communities. The homes must also provide conditions for the full realization of the rights, dignity, needs and interests of older persons in their care.
5 REFERENCES


