

## **SPECIAL ISSUE**

*Kenya Gazette Supplement No. 175 (National Assembly Bills No. 50)*

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**REPUBLIC OF KENYA**

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# **KENYA GAZETTE SUPPLEMENT**

**NATIONAL ASSEMBLY BILLS, 2022**

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**NAIROBI, 4th November, 2022**

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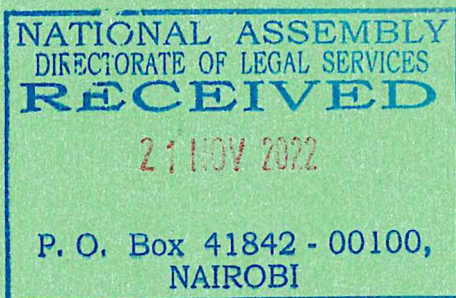
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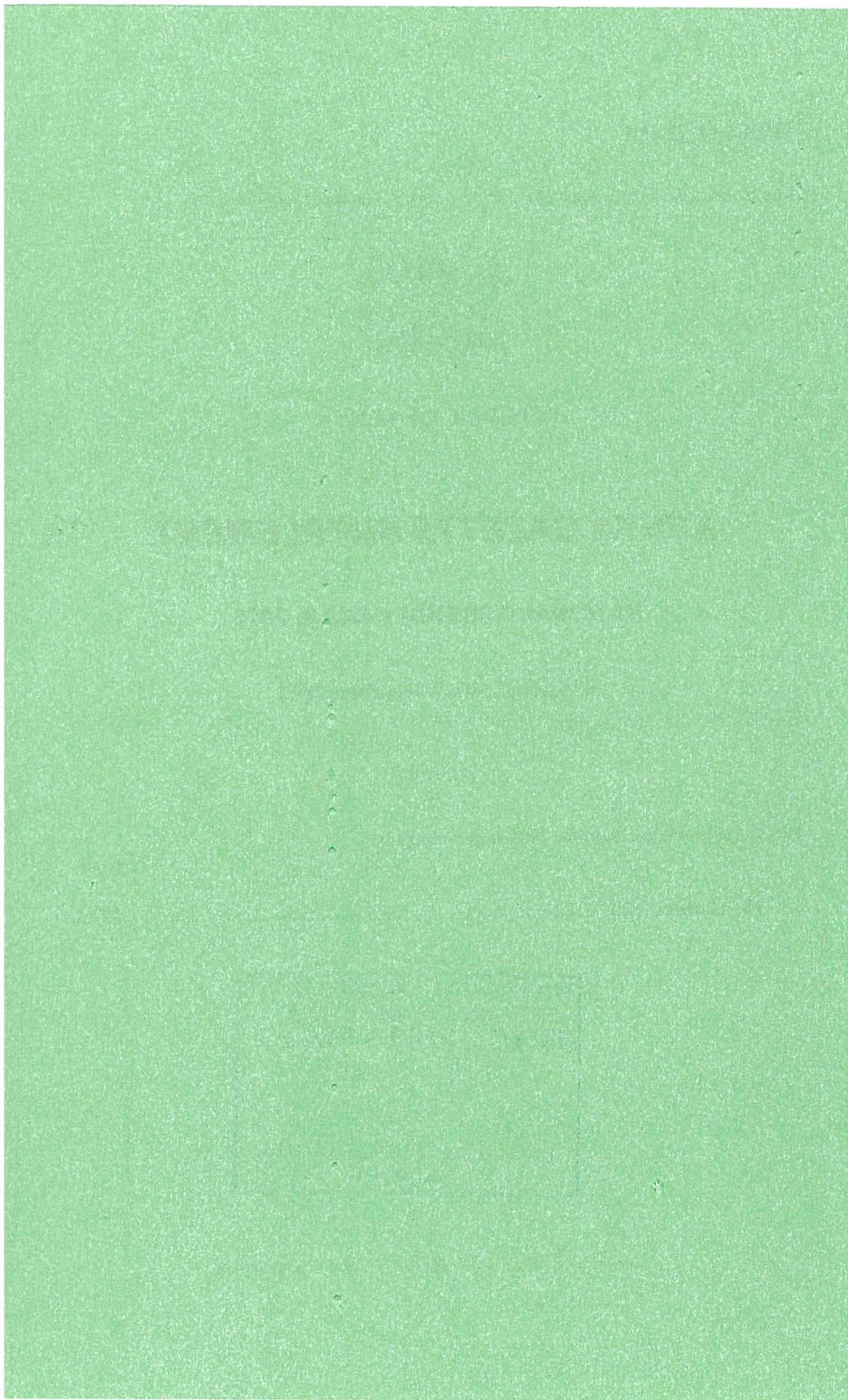
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**THE GERIATRIC BILL, 2022****A Bill for**

**AN ACT of Parliament to give effect to Article 57 of the Constitution; to establish the National Council for the Elderly; to provide for the care of elderly persons; to provide for the empowerment and protection of the elderly and the maintenance of their well-being, safety, and security, and for connected purposes.**

**ENACTED** by the Parliament of Kenya, as follows—

**PART I—PRELIMINARY**

1. This Act may be cited as the Geriatric Act, 2022.

Short title.

2. In this Act, unless the context otherwise requires—

Interpretation.

“abuse” means abuse contemplated under this Act;

“assistive devices” means implements and tools provided to elderly persons to enable them carry on their day-to-day activities;

“basic services” include provision of food, medical care, housing, sanitation, and water;

“Cabinet Secretary” means the Cabinet Secretary responsible for matters relating to elderly persons;

“care” means physical, psychological, social, or material assistance to an elderly person, and includes services aimed at promoting the quality of life and general well-being of the elderly person;

“caregiver” means a person who provides care to the elderly;

“community-based care and support services” means any programme contemplated under section 27;

“Department” means the national Government or county government department responsible for matters relating to elderly persons;

“home for the elderly” means any building or premises maintained and used for the reception, protection, and temporary care of elderly persons in need of care and protection;



“home-based care” means care provided or services rendered at a place where elderly persons reside, excluding at a residential facility, by a care giver in order to ensure that the elderly person is maintain at a maximum level of comfort;

“elderly person” means a person who has attained the age of sixty years;

“elderly person in need of care and protection” means an older person contemplated under this Act;

“person” has the meaning assigned to it under Article 260 of the Constitution.

“police officer” means a police officer as defined under the National Police Service Act;

No. 11A of 2011.

“rehabilitation” means the process by which an elderly person is enabled to attain their optimal physical, sensory, intellectual, psychiatric, or social functional levels, and includes measures to restore functions or compensate for the loss or absence of a function, but excludes medical care;

“respite care” means a service offered specifically to an elderly person aimed at the provision of temporary care and relief to the elderly;

“Secretary” means the Principal Secretary for the department responsible for matters relating to elderly persons; and

“service provider” means a person who offers services designed to address the needs of elderly persons.

3. The object and purpose of this Act is to—

- (a) establish the National Council for Elderly Persons;
- (b) provide a legal framework that promotes the rights of the elderly as enshrined under Article 57 of the Constitution;
- (c) promote and protect the dignity, well-being, safety, and security of elderly persons;
- (d) provide a framework for the registration of elderly persons, and the establishment and

Object and  
purpose of the  
Act.



management of residential facilities for the elderly; and

- (e) prohibit the abuse of elderly persons.

4. (1) All persons shall, in the performance of their functions under this Act, be guided by the following principles—

Guiding principles.

- (a) respect, protection, promotion, and fulfilment of the rights of the elderly as enshrined under Article 57 of the Constitution;
- (b) fair and equitable treatment of elderly persons;
- (c) accountability of duty bearers and transparency in the implementation of this Act;
- (d) pursuant to the provisions of Article 27 of the Constitution, ensure the protection of elderly persons from discrimination on any ground including age, health status or disability;
- (e) targeted empowerment of the elderly and those involved in the care and protection of the elderly in order to promote their welfare and protection;
- (f) preservation of the freedom and dignity of elderly persons;
- (g) coordinated public participation in the formulation and implementation of policies related to the care and protection of the elderly;
- (h) establishment of monitoring and evaluation mechanisms to ensure transparency in the management of facilities and care of the elderly.

(2) The general principles set out in this section shall guide—

- (a) the implementation of all legislation relevant to elderly persons; and
- (b) all proceedings, actions and decisions by any state agency in any matter concerning the elderly.

(3) All proceedings, actions or decisions in a matter involving an elderly person, shall—

- (a) respect, promote and fulfil the rights of the elderly person subject to any lawful limitation;



- (b) respect the elderly person's inherent dignity;
- (c) treat the elderly person fairly and equitably; and
- (d) protect the elder person from unfair discrimination as provided under Article 27 of the Constitution.

5. This Act applies to all entities providing services to elderly persons and binds both natural and juristic persons to the applicable extent, taking into account the nature of the right and the nature of any duty imposed by that right.

Application.

## **PART II—ESTABLISHMENT OF THE NATIONAL COUNCIL FOR THE ELDERLY**

6. (1) There is established the National Council for the Elderly.

Establishment of the Council.

(2) The Council shall be a body corporate with perpetual succession, a common seal and shall, in its corporate name be capable of—

- (a) suing and being sued;
- (b) taking, purchasing, or otherwise acquiring, holding, charging, and disposing of movable and immovable property;
- (c) borrowing and lending money; and
- (d) doing or performing all other things or acts necessary for the proper performance of its functions under this Act which may lawfully, be performed by a body corporate.

7. (1) The functions of the Council shall be to—

Functions of the Council.

- (a) advise state and non-state actors on promotion of access to essential services by elderly persons;
- (b) participate in the formulation, review and development of policies and legal framework on elderly persons, including—
  - (i) pension;
  - (ii) social assistance;
  - (iii) access to quality health care services and health insurance;



- (iv) employment, volunteerism, and income security;
- (v) social protection;
- (vi) disasters;
- (vii) care at institutional, family and community level;
- (viii) education, training and information communication and technology; and
- (ix) data on elderly persons.
- (c) regulate the establishment and management of institutions for the elderly;
- (d) issue adjustment orders to institutions offering services to elderly persons;
- (e) work with the relevant agencies to ensure that cases relating to the elderly are resolved expeditiously;
- (f) advise the government on matters relating to elderly persons;
- (g) register on a continuous basis—
  - (i) elderly persons;
  - (ii) organizations involved in the provision of services to the elderly; and
  - (iii) elderly persons who require constant medical attention for purposes of providing subsidized medical services.
- (h) identify facilities that provide medical care to elderly persons who require constant medical attention care;
- (i) provide information and technical assistance to organizations involved in the rehabilitation of elderly persons;
- (j) assess and report on the implementation status of programmes for the elderly;
- (k) work with the national Government and each county government towards the formulation of curricula for educational centres and other training facilities for the elderly;



- (l) assess and report to the Cabinet Secretary on the needs of the elderly and advise on the prioritization of the redress of those needs;
- (m) advise the national Government and the county governments on the provision of suitable and affordable housing for the elderly;
- (n) work with the national Government and the county governments to, promote public awareness and education on the rights of elderly persons;
- (o) facilitate the provision of assistive devices and medical appliances and other necessary equipment to elderly persons;
- (p) facilitate preparation of wills for elderly persons at no cost to the elderly person or on such other terms as the Council may determine;
- (q) conduct research on any matter relating to the needs of elderly persons; and
- (r) establish networks with local and international organizations, including organizations for the elderly as the Council may consider necessary.

(2) The Council shall not levy any fees for providing its services to elderly persons.

8. The Council shall have all powers necessary for the performance of its functions under the Constitution, this Act or any other written law including the power to—

Powers of the Council.

- (a) carry out inquiries;
- (b) conduct accessibility and assessment audits; and
- (c) issue adjustment or compliance orders.

9. (1) The Council shall consist of—

Composition of the Council.

- (a) a Chairperson appointed by the President;
- (b) the Principal Secretary of the Ministry responsible for matters relating to the elderly or a designated representative;



- (c) the Principal Secretary of the Ministry responsible for finance or a designated representative; and
- (d) four other members appointed competitively by the Cabinet Secretary being—
  - (i) two persons nominated by the most representative organizations for elderly persons; and
  - (ii) two elderly persons representing special interests;

(2) In gazetiting appointments under subsection (1), the Cabinet Secretary shall, ensure that—

- (a) no more than two-thirds of the members are of the same gender; and
- (b) members nominated under section 9(1)(b)(i) and (ii) shall represent different categories of elderly persons.

**10.** A person shall be qualified for appointment as the Chairperson of the Council, if the person—

Qualifications of  
Chairperson and  
members of the  
Council.

- (a) is a Kenyan citizen;
- (b) holds a bachelors degree from a university recognized in Kenya;
- (c) possess at least fifteen years' relevant working experience, five of which should have been in senior management, and has qualifications in—
  - (i) public administration;
  - (ii) human rights;
  - (iii) economics;
  - (iv) corporate governance and management; or
  - (v) law;
- (d) meets the requirements of Chapter 6 of the Constitution.

(2) A person shall be qualified for appointment as a member of the Council, if the person—

- (a) is a Kenyan citizen;



- (b) holds at least a diploma from an institution recognized in Kenya in any of the following fields—
  - (i) social studies and development;
  - (ii) public administration;
  - (iii) human rights;
  - (iv) law;
  - (v) economics;
  - (vi) corporate governance and management;
  - (vii) gerontology; or
  - (viii) geriatrics.
- (c) has knowledge and at least seven years' experience, three of which should have been on matters relating to elderly persons; and
- (d) meets the requirements of Chapter six of the Constitution.

(3) A person shall be disqualified from appointment as a chairperson or member of the Council, if such person—

- (a) has been removed from office for contravening the provisions of the Constitution or any other law;
- (b) is an official of a governing body of a political party;
- (c) is a Member of Parliament or county assembly;
- (d) is an undischarged bankrupt; or
- (e) is working under the public service.

11. The Chairperson or a member of the Council may be removed from office by the Cabinet Secretary by notice in writing on the following grounds—

Removal from office.

- (a) absence from three consecutive meetings of the Council without the written permission of the Chairperson or in absence of the Chairperson, the Vice Chairperson;
- (b) incapacitation by prolonged physical or mental illness as to be unable to discharge the duties of the office;



- (c) being an undischarged bankrupt;
- (d) conviction for a criminal offence for which the penalty imposed is imprisonment for a term of six months or more; or
- (e) gross misconduct.

12.(1) The Council shall appoint a Chief Executive Officer through an open, transparent, and competitive recruitment process.

Chief Executive  
Officer of the  
Council.

(2) A person shall be qualified for appointment as the Chief Executive Officer of the Council, if the person—

- (a) is a Kenyan citizen;
- (b) holds at least a degree from a university recognized in Kenya in the following fields—
  - (i) law;
  - (ii) economics;
  - (iii) social studies;
  - (iv) Gerontology;
  - (v) geriatrics; or
  - (vi) corporate management;
- (c) has at least fifteen years' relevant experience five of which should have been at senior management level in a public or private institution; and
- (d) meets the requirements of Chapter six of the Constitution.

(3) The Chief Executive Officer shall hold office for a term of four years and may be eligible for re-appointment for one further term of four years.

(4) The Chief Executive Officer shall be the Secretary and the Accounting Officer of the Council.

13.(1) The Council may remove the Chief Executive Officer from office on the following grounds—

Removal of the  
Chief Executive  
Officer.

- (a) inability to perform the functions of the office arising out of physical or mental infirmity;
- (b) gross misconduct;



- (c) conviction for a criminal offence and sentenced to imprisonment for a term of six months or more without the option of a fine;
- (d) incompetence or negligence of duty;
- (e) violation of the Constitution and any other written law; and
- (f) any other grounds specified in the instrument of appointment.

(2) Before removing the Chief Executive Officer from office under subsection (1), the Council shall give the Chief Executive officer—

- (a) a sufficient notice in writing of the allegations made; and
- (b) an opportunity to present a defence against the allegations.

14. (1) The Council may recruit such staff as may be necessary for the proper discharge of its functions under this Act.

Staff of the Council.

(2) The staff recruited under subsection (1) shall serve on such terms and conditions as the Council, in consultation with the Salaries and Remuneration commission may determine.

(3) The Government may, upon request by the Council second to the Council such number of public officers as may be necessary for the proper performance of the functions of the Council.

(4) A public officer seconded to the Council, shall, during the period of secondment, be considered an officer of the Council, and shall be subject only to the direction of the Council.

15. The headquarters of the Council shall be in Kenya, at a place designated by the Cabinet Secretary and published in the *Gazette*.

Headquarters.

16. (1) The conduct and regulation of the business of the Council shall be as provided in the First Schedule.

Conduct of business of the Council.

(2) Except as provided in the First Schedule, the Council may regulate its own procedure and the procedure



of the conduct of the business of any Committee constituted under this Act.

17. The Chief Executive Officer of the Council shall be paid such remuneration as may be determined by the Council in accordance with the guidelines set by the Salaries and Remuneration Commission.

Remuneration of the Chief Executive Officer of the Council.

18. (1) The Chairperson and members of the Council shall hold office for a term of three years and may be eligible for reappointment for a further and final term of three years.

Tenure of office.

(2) A member of the Council may resign from office at any time upon giving a written notice to the appointing authority.

19. A matter or thing or an act done by a member of the Board or an officer, employee or agent of the Council shall not, if the matter or thing is done bona fide for executing the functions, powers, or duties of the Council, render the members of the Board, officer, employee or agent or any person acting on lawful directions of the Council personally liable to any action, claim or demand whatsoever.

Protection from personal liability.

20. This Act shall not relieve the Council of the liability to pay compensation or damages to any person for any injury to that person, that person's property or any of that person's interests caused by the exercise of any power conferred by this Act or by the failure, whether wholly or partially, of any works.

Liability of the Council for damages.

21. (1) The Council may, by resolution, either generally or in a particular case, delegate to any committee of the Council or to any member, staff, self-regulated organization or agent of the Council, the exercise of any of the powers or the performance of any of its functions or duties.

Delegation of powers or functions to committees or agents.

(2) Every such committee, staff, self-regulated organisation, or agent shall be appointed by the Council in writing, setting out the scope of the delegation and any other matter which the Council may consider necessary to set out.

(3) The Council may, revoke a delegation under this section at any time.



(4) A delegation conferred under this section shall not prevent the Council from performing the delegated function.

(5) In this section, a self-regulated organisation means an organisation whose objects involves regulation of the operations of its members or the users of its services and includes, organisations that may be recognised as such by the Council.

**22.** (1) The Council may conduct an inquiry or a sectoral study— Power to hold inquiry.

(a) where it considers necessary or desirable for the purpose of carrying out its functions; and

(b) upon receipt of a written request from the Cabinet Secretary requiring it to conduct an inquiry or a sectoral study into a specific matter.

(2) A direction by the Cabinet Secretary under subsection (1) (ii) shall specify a period within which the Council shall submit its report to the Cabinet Secretary.

(3) The Council may conduct an inquiry into any matter affecting the elderly upon receipt of a written request from a regulatory body.

### **PART III—RIGHTS AND OBLIGATIONS OF THE FAMILY AND THE STATE IN CARING FOR ELDERLY PERSONS**

**23.** (1) The elderly persons shall be cared for mainly by their families. Obligations of the family of elderly persons.

(2) Where an elderly person requires medical, the family shall—

(a) facilitate the medical expenses of an elderly person suffering from illnesses; and

(b) ensure that the elderly person receives nursing care.

(3) The family shall ensure that the elderly persons is housed under suitable accommodation.

(4) The family of the elderly persons shall not seize the property of an elderly person including houses owned or any income generated from property owned by an elderly person.



(6) The elderly persons have a right to marry, remarry, and divorce under any law without interference from the family.

(7) The family of the elderly persons shall facilitate the to reside with their spouses unless there are compelling circumstances to warrant separation.

**24.** (1) The Cabinet Secretary shall prescribe the age of an elderly person and any other criteria to be used in identifying an elderly person who may be eligible to receive social assistance from the state.

Obligations of the State.

(2) An elderly person who is a beneficiary of life annuity or pension from the state shall not be eligible to receive social under subsection (1).

**25.** The Cabinet Secretary may in consultation with the Council, the Public Service Commission, independent commissions, state agencies and the Salaries and Remuneration Commission publish regulations for the voluntary post-retirement employment of elderly persons in the following critical service areas—

Employment of elderly persons on scaled hours basis.

- (a) national security;
- (b) health;
- (c) education; and
- (d) any other service area as may be determined by the Cabinet Secretary.

**26.** An elderly person has the right to enjoy the rights under the Constitution, and shall not be unfairly denied the right to—

Rights of elderly persons.

- (a) participate in community life in a position appropriate to their interests and capabilities;
- (b) participate in inter-generational programmes;
- (c) establish and participate in matters of associations of elderly persons;
- (d) participate in activities that enhance their capacity to generate income;
- (e) access opportunities that promote their optimal level of social, physical, mental, and emotional well-being;



- (f) participate fully in the affairs of the society;
- (g) pursue their personal development;
- (h) manage their own property;
- (i) live in dignity and respect and be free from abuse; and
- (j) receive reasonable care and assistance from their family and the State.

**27.** An elderly person has the right to—

Right to family and community care.

- (a) reside at their ordinary residence for as long as is possible; and
- (b) benefit from the care and protection of the family and community in accordance with the society's system of cultural values.

**28.** (1) An elderly person has right to legal capacity and the right to be facilitated to access that right.

Right to legal capacity.

(2) An elderly person shall not be denied the right to legal capacity on the basis of an express or implied disqualification on the grounds of age only.

**29.** (1) An elderly person shall be entitled to equal protection of the law.

Right to equality and non-discrimination.

(2) An affirmative action measure seeking to achieve equality of elderly persons shall not constitute discrimination.

(3) The national Government and the county governments shall ensure that an elderly person in need of care—

- (a) is treated fairly;
- (b) lives in a dignified and secure environment; and
- (c) is free from exploitation and physical or mental abuse.

**30.** (1) An elderly person has the right to be issued with a passport, national identity card, certificate of birth or any other document of registration or identification irrespective of their age.

Right to documents of registration.

(2) Where a birth certificate is not issued, the elderly person shall have recourse to any alternative document



identification document, including a national identity card or any other recognized identification document.

**31.** (1) An elderly person has the right to the privacy of their family, home or correspondence or other type of communication.

Right to privacy.

(2) Every public and private institution shall protect the privacy of the personal, health and rehabilitation information of an elderly person.

**32.** (1) An elderly person has a right to protection and safety, including a situation of armed conflict, humanitarian emergency or natural disaster.

Right to protection and safety in situations of risk and humanitarian emergencies.

(2) Public or private institutions shall —

(a) maintain an inventory of all elderly persons; and

(b) submit the inventory quarterly to the national Government or each county government or other agencies responsible for disaster management.

(4) The national Government and the county governments shall be responsible for emergency management and shall take measures to ensure the inclusion of the elderly in every scheme, program, and disaster management system during emergency situations.

**33.** (1) The national government and each county government shall ensure that elderly persons have access to educational, cultural, spiritual, and recreational resources.

Right to education.

(2) The Cabinet Secretary responsible for education shall establish programmes and structures for the education and training of elderly persons.

**34.** (1) The Council in collaboration with the national Government and the county governments shall facilitate the development and programmes to actualize the healthcare needs of elderly persons.

Right to health.

(2) The national Government and county governments shall take measures to ensure that every elderly person is provided with a subsidised comprehensive post-retirement medical cover.

(3) Public health institutions shall not charge any fees for issuance of medical assessment reports to elderly persons.



(4) An elderly person shall not be compelled to undergo any medical or other form of testing as a precondition for continued enjoyment of provision of health cover or insurance cover.

(5) The national Government and each county government shall promote continuous free annual medical check-up for elder persons.

(6) The national Government and each county government shall implement a special medical programme for elderly persons, including programmes on—

- (a) access to geriatric care and services;
- (b) inpatient and outpatient care;
- (c) access to nursing units established in all counties;
- (d) geriatric friendly hospital materials for use by elderly persons visiting hospitals and priority in accessing services; and
- (e) community based public health programmes relevant to elderly persons;

**35.** (1) A person shall not, on the ground of old age only be denied—

- (a) admission into a premise to which members of the public are ordinarily admitted; or
- (b) the provision of a service or amenity to which members of the public are entitled.

Right to admission into public and private premises, and public transport.

(2) The proprietor of a premise referred to under subsection (1) (a) shall not, on the ground of a person's age only, reserve the right of admission to the premises against an elderly person.

**36.** (1) An elderly person has the right to participate in sports, recreation, leisure, and cultural activities including national and international sports events.

Right to sports, recreation, leisure, and culture.

(2) Public and private institutions shall ensure that their sporting, recreation, leisure and cultural facilities and activities are sensitive to the needs of elderly persons.

(3) An elderly person is entitled to the use, free of charge, of recreational or sports facilities owned or operated by the national Government and the county



governments during social, sporting, or recreational activities.

(4) The national Government and each county government shall provide elderly persons with a suitable environment for sports, recreation, and leisure, including training support and medical personnel.

37. (1) The law enforcement agencies shall take the age of an elderly person into account during arrest, detention, trial, or other form of lawful confinement.

Right of access to justice.

(2) A suit involving an elderly persons shall be disposed of expeditiously having due regard to their age and health condition.

38. (1) The national Government and each county government shall to the extent of their constitutional mandate, promote the care, maintenance, and protection of elderly persons in Kenya.

Obligations of the national government with respect to the rights of elderly persons.

(2) In ensuring that the national Government and the county governments fulfil their obligations under subsection (1), the Council shall—

- (a) adopt a national strategy to promote the realisation of the rights of the elderly as set out under Article 57 of the Constitution.
- (b) collaborate with the county governments in the development of infrastructure for the care, rehabilitation, and provision of basic services to the elderly;
- (c) facilitate access to social, financial, legal, and other services by elderly persons;
- (d) conduct public sensitization programmes and promote access to information on the care and management of elderly person; and
- (e) maintain a data base on elderly persons, their health status and social needs in order to put in place, adequate mechanisms for the provision of services to meet such needs.

(3) In performing its functions under subsection (1), the Council shall —



- (a) collaborate with the relevant public entities in—
  - (i) establishing mechanisms to promote the realization of the rights of elderly persons as provided under Article 57 of the Constitution; and
  - (ii) establishing mechanisms that ensure that elderly persons have access to community and family-based care support systems;
- (b) collaborate with national Government and each county government and relevant private entities in the provision of social and financial services to elderly persons;
- (c) promote periodic research, data collection, analysis and the sharing and dissemination of information on the welfare of elderly persons in the Republic;
- (d) collaborate with the national Government and the county governments in—
  - (i) promoting access to the highest attainable standards of health by elderly persons; and
  - (ii) promoting the expansion and strengthening of community and family-based care and support systems for elderly persons;
- (e) perform such other functions as may be necessary for the implementation of this Act.

(3) The Council may, for purposes of subsection (2), conduct inquiries, including public inquiries, into any matter relating to the welfare, care, and protection of elderly persons.

#### **PART IV—COMMUNITY-BASED CARE FOR ELDERLY PERSONS**

**39.** An elderly person receiving community-based care and support services has, in addition to the rights contemplated under this Act, the right to—

- (a) reside at the family home;
- (b) pursue opportunities for the full development of their potential; and

Rights of elderly persons receiving community-based care and support services.



- (c) benefit from family and community care and protection in accordance with the society's system of cultural values.

40. (1) The Cabinet Secretary may, in collaboration with any relevant Cabinet Secretary or the relevant Executive Committee Member in a county—

Community-based programmes for elderly persons.

- (a) develop community-based programmes on prevention of abuse and promotion of protection of elderly persons;
- (b) determine how a person who runs a programme contemplated under paragraph (a) may be supported, either financially or through other support mechanisms.

(2) The programmes contemplated under subsection (1) are programmes whose objective is to—

- (a) promote the economic empowerment of elderly persons;
- (b) establish recreational opportunities for elderly persons;
- (c) provide information on education and counselling services, HIV and AIDS, care for orphans, age related medical conditions like Alzheimer's, dementia, and basic emergency care;
- (d) promote the spiritual, cultural, medical, and social interest of elderly persons;
- (e) provide nutritionally balanced meals and safe water to needy elderly persons;
- (f) promote the skills and capacity of elderly persons to sustain their livelihoods;
- (g) provide professional services, including care and rehabilitation to ensure the independent living of elderly persons;
- (h) protect the rights of elderly persons with disabilities;
- (i) protect the rights of elderly women to freedom from violence, sexual abuse and discrimination based on gender, and abuses in relation to property and land rights;



- (j) eliminate discrimination against elderly persons with regard to employment opportunities and ensure that elderly persons work under decent working conditions;
- (k) ensure provision of appropriate services contained in the indigent policy for vulnerable and qualifying elderly persons;
- (l) utilise and manage existing facilities for elderly persons as multi-purpose community centres; and
- (m) integrate community care and development systems for elderly persons.

(3) Home-based care programmes for frail elderly persons within the community may include—

- (a) provision of hygienic and physical care for elderly persons;
- (b) provision of professional and lay support for the care of elderly persons within the home;
- (c) rehabilitation programmes that include provision of assistive devices;
- (d) protection of the rights of elderly women to freedom from violence, sexual abuse and discrimination based on gender, and abuses in relation to property and land rights;
- (e) protection of the rights of elderly persons with disabilities;
- (f) provision of respite care;
- (g) provision of information, education and counselling for family members, caregivers, and the community on age related life conditions; and
- (h) provision of free health care to vulnerable elderly persons and to other elderly persons as may be determined by the Cabinet Secretary.

**41.** (1) Any person who wishes to provide community-based care and support services shall apply to the Council for the registration of the service in the prescribed form.

Registration of community-based care and support services.

(2) The Cabinet Secretary shall prescribe regulations for the registration and deregistration of community-based care and support services, including—



- (a) application for registration;
- (b) approval of registration;
- (c) temporary registration;
- (d) suspension of registration;
- (e) termination of registration; and
- (f) any matter contemplated under subsection (4).

(3) The registration issued under this section shall not transferable to another person.

(4) Where the provider of community-based care and support services intends to terminate the provision of such services, the provider shall —

- (a) notify the Council of the intended termination and the impact of the termination to the beneficiaries of the service;
- (b) inform the affected beneficiaries of the intended termination of the service; and
- (c) take all reasonable steps to ensure that the beneficiaries the service are not adversely affected and, where appropriate, refer the beneficiaries to an alternative service provider.

(5) Any person who provides home-based care and support services shall ensure that caregivers receive the prescribed training.

(6) Social workers and health care providers contemplated under subsection (1) shall be registered with the appropriate statutory body.

(7) The Council shall maintain a register of all caregivers providing home-based care and shall prescribe a code of conduct for such caregivers

(8) Subsection (7) shall not apply to social workers and health care providers referred to under subsection (2).

(9) A person who contravenes the provisions of this section commits an offence.

**42.** (1) A person who operates an unregistered community-based care and support service commits an offence.

Community-based care and support services to be registered.



43. The Council shall monitor and evaluate community-based care and support services.

Monitoring and evaluation of community-based care and support services.  
Access to justice.

44. (1) The national Government and each county government shall ensure access to justice for elderly persons, including use of age-appropriate exceptions for the elderly, in order to facilitate their involvement in all legal proceedings, by—

- (a) providing appropriate training for persons working in the field of administration of justice, including the police and the correctional officers;
- (b) providing special consideration for elderly persons on arrest, detention, trial, or confinement;
- (c) establishing mechanisms for the expeditious disposal of cases involving elderly persons;
- (d) offering free legal services for elderly persons with respect to—
  - (i) the violation of the rights of elderly persons or the deprivation of their property;
  - (ii) violence against elderly persons; and
  - (iii) such other matters as may be prescribed in regulations made by the Cabinet Secretary in consultation with the Attorney-General and relevant stakeholders.

(2) The Chief Justice shall make rules providing for the exemption, of elderly persons, from the payment of fees in relation to certain matters.

#### **PART V—PROHIBITION OF ABUSE OF ELDERLY PERSONS**

45. (1) A person shall not subject an elderly person to any form of physical or mental abuse.

Prohibition of abuse of an elderly person.

(2) Any conduct occurring within a relationship in which there is an expectation of trust and which causes harm or distress or is likely to cause harm or distress to an elderly person constitutes abuse under subsection (1).

(3) For the purposes of subsection (1) and (2), “abuse” includes—



- (a) physical abuse which includes any act or threat of physical violence towards an elderly person;
- (b) any conduct that violates the sexual integrity of an elderly person;
- (c) psychological abuse including any pattern of degrading or humiliating conduct towards an elderly person, including—
  - (i) insults, ridicule or name calling;
  - (ii) threats of emotional pain; and
  - (iii) repeated invasion of elderly persons privacy, liberty, integrity, or security;
- (d) economic abuse including—
  - (i) the deprivation of economic or financial resources; or

the disposal of household effects or other property belonging to the an elderly person without the consent of the elderly persons.

(4) A person who contravenes the provisions of this section commits an offence and shall be liable, upon conviction, to imprisonment for a term not exceeding five years or to a fine not exceeding one million shillings or to both.

46. (1) A medical practitioner, social worker or any other person who examines, attends to, or deals with an elderly person and who suspects that an elderly person has been abused shall notify the Council and the Director of Medical Services of such abuse or injury.

Notification of  
abuse of an  
elderly person.

(2) The Director of Medical Services shall investigate the alleged abuse Upon receipt of a notification under subsection (1).

(3) Where the Director establishes that the elderly person has been subjected to any form of abuse, the Director shall inform the Inspector General of Police who shall initiate appropriate action.

(3) Upon receipt of a notification under subsection (1), the Director of Medical Services in consultation with the Council may, in addition to the action initiated by the Inspector General of Police—



- (a) relocate the victim from their current place of residence or care and place them in a hospital, a home for the elderly or such other place as the Director may consider necessary; and
- (b) where necessary, make arrangements for the elderly person to receive medical treatment.

(4) A person shall not be liable for any action or claim for damages in respect of any notification given in good faith under subsection (1).

(5) A person who fails to comply with subsection (1) commits an offence and shall be liable, on conviction, to imprisonment for a term not exceeding two years or to a fine not exceeding five hundred thousand shillings or to both.

**47.** (1) The Council shall maintain a register of notifications received under section 46(1).

Register of notifications on abuse of an elderly person.

(2) The Register maintained by the Council under subsection (1) shall contain—

- (a) the identification details of the victim;
- (b) the identification details of the alleged offender;
- (c) the date the notification was made;
- (d) a description of the circumstances relating to each notification;
- (e) the action taken by the relevant authorities; and
- (f) such other information as the Council may consider necessary.

(2) A person who is found guilty of having abused an elderly person and whose name appears in the register maintained under subsection (1) shall not—

- (a) operate or be employed in a home for elderly persons; or
- (b) provide community-based care and support services to an elderly person.

#### **PART IV—FINANCIAL PROVISIONS**

**48.** The funds of the Council shall consist of—

Funds of the Council.



- (a) such monies, as may, from time to time, be appropriated by the Parliament;
- (b) interest from bank deposits;
- (c) such monies, revenue or assets as may accrue to or vest in the Council in the exercise of its powers or the performance of its functions; and
- (d) any grants, gifts, donations, or other endowments given to the Council.

**49.** (1) The Council shall cause to be kept all proper books and records of accounts of the income, expenditure, assets, and the liabilities of the Council and shall prepare an annual statement of accounts in conformity with the international accounting standards.

Annual Accounts and Audit.

(2) The annual accounts of the Council shall be prepared, audited, and reported upon in accordance with the provisions of Articles 226 and 229 of the Constitution and the Public Finance Management Act.

(3) The provisions of the Public Finance Management Act and the Public Audit Act shall apply to this Act.

No. 8 of 2012.

(4) The Council shall within three months after the receipt of the audit report, submit an annual report to the Cabinet Secretary and the Auditor General covering the activities and the operations of the Council for the year to which the report relates.<sup>12216</sup>

No. 34 of 2015.

(5) The annual report shall be published and publicized in such other manner as the Council may determine.

**50.** (1) The financial year of the Council shall be the period of twelve months ending on the thirtieth of June in each year.

Financial year and Annual Report.

**51.** The Chairperson and members of the Council shall be paid such allowances as may be determined by the Cabinet Secretary in consultation with the Salaries and Remuneration Commission.

Allowances of Council Members.

## MISCELLANEOUS PROVISIONS

**52.** In any matter concerning an elderly person —

Determination of a matter concerning an elderly person.

- (a) an approach which is conducive to conciliation, mediation and problem solving shall be preferred;



- (b) a confrontational approach shall be avoided; and
- (c) delays shall be avoided as far as possible.

**53.** (1) The common seal of the Council shall be kept in the custody of the Chief Executive Officer or such other person as the Council may direct, and shall not be affixed on any document except upon the authorization of the Chief Executive Officer.

Common seal.

(2) The Common seal of the Council, when affixed to a document and duly authenticated, shall be judicially and officially noticed, and unless the contrary is proved, any order or authorization by the Council under this section shall be presumed to have been duly given.

(3) The affixing of the common seal of the Council shall be authenticated by the signature of the Chairperson of the Council or the Chief Executive Officer.

Provided that the Council shall, in the absence of either the Chairperson or the Chief Executive Officer, nominate one of their number, by resolution, to authenticate the seal of the Council on behalf of either the Chairperson or the Chief Executive Officer.

**54.** A person who is convicted of an offence under this Act for which no penalty is provided shall be liable to a fine not exceeding one million shillings, or to imprisonment for a term not exceeding two years, or to both.

General penalty.

**55.** (1) The Cabinet Secretary may, in consultation with the Council, make regulations generally for the better carrying into effect of the provisions of this Act.

Regulations.

(2) Notwithstanding the generality of subsection (1), the Cabinet Secretary may make regulations prescribing the—

- (a) minimum standards for registration;
- (b) minimum standards for the care and safety of elderly persons;
- (c) criteria and assessment procedures for the admission of a person into a home;
- (d) minimum standards for the establishment and management of a home;



- (e) conditions subject to which such registration certificates may be granted or renewed and the fees payable in respect of the grant or renewal of such certificates; or
- (f) qualifications required to be held by persons managing or employed in a home for elderly person .

3) The Regulations made under subsection (2) may prescribe different standards and other requirements—

- (a) for services of different types or descriptions rendered in relation to elderly person; and
- (b) in respect of different kinds of registrations.

(4) For the purposes of Article 94(6) of the Constitution—

- (a) the authority of the Cabinet Secretary and the County Executive Committee Member to make regulations shall be limited to bringing into effect the provisions of this Act and the fulfilment of the objectives specified under subsection (1); and
- (b) the principles and standards set out under the Interpretation and General Provisions Act and the Statutory Instruments Act, 2013 in relation to subsidiary legislation shall apply to Regulations made under this Act.

Cap. 2.

No. 23 of 2013.

## **PART VII - TRANSITIONAL PROVISIONS**

**56.** (1) Subject to subsections (2), (3) and (6), every home which, immediately before the commencement of this Act, was registered as a home for elderly person's shall be deemed to be registered as an elderly person's home under this Act, and shall continue to be so licensed for the unexpired period of registration subject to such conditions of registration as may be imposed under this Act.

Existing homes.

(2) Despite subsection (1), a County Executive Committee Member may give a written notice to the registered owner of a home registered under subsection (1), requiring the manager to apply for registration under this Act within three months of the date of that notice, and—

- (a) where the manager fails to apply for registration within the specified period, the home shall, at the



end of that period cease to be registered under subsection (1); or

- (b) where the manager applies for registration within the specified period, the centre shall continue to be a registered home under subsection (1) pending determination of the application.

(3) Despite subsection (1), if subsection (4) applies, the county executive committee member may, by written notice to the manager who operates a home for the elderly that is deemed to be registered under subsection (1), declare that the home is no longer registered under subsection (1) and the notice shall have effect accordingly.

(4) The County Executive Committee Member may issue a notice under subsection (3), only if the County Executive Committee Member is satisfied that the manager or the home—

- (a) has failed to comply with the requirements of registration Act; or
- (b) has failed to comply with any other condition for registration.

(5) The County Executive Committee Member may, notwithstanding that the home concerned does not meet the requirements for registration Act, issue a transitional certificate to the manager operating the home in such manner as the County Executive Committee Member may prescribe and subject to such conditions as may be imposed.

(6) The County Executive Committee Member may suspend or withdraw a certificate where a person operating a home for the elderly fails to comply with conditions specified in the certificate issued under subsection (5).

(7) A notice issued under subsection (3) or subsection (6) shall set out the reasons for the action taken.

(8) Subsections (1) to (6) shall not limit any powers to cancel or suspend the registration of a home for the elderly in the manner prescribed by the County Executive Committee Member.



## FIRST SCHEDULE

### PROVISIONS RELATING TO THE CONDUCT OF BUSINESS AND AFFAIRS OF THE BOARD

1. The members of the Board, other than *ex officio* members, shall be appointed in such a manner that the respective expiry dates of their terms of office fall at different times.

Appointment.

2. (1) The Board shall meet at least four times in every financial year and not more than four months shall elapse between the date of one meeting and the date of the next meeting.

Meetings.

(2) Notwithstanding the provisions of subparagraph (1), the chairperson may, and upon requisition in writing by at least five members shall, convene a special meeting of the Board at any time for the transaction of the business of the Board.

3. At the first meeting of the Board, the members shall elect a vice-chairperson, from among the members appointed under this Act.

Vice-chairperson.

4. A member of the Board, other than an *ex officio* member, may—

Vacation of office.

- (a) at any time resign from office by notice in writing, in the case of the Chairperson, to the President, and in the case of any other member, to the Cabinet Secretary;
- (b) be removed from office by the President, or Cabinet Secretary, if the member—
  - (i) has been absent from three consecutive meetings of the Board without the permission of the Board;
  - (ii) is adjudged bankrupt or enters a composition scheme or arrangement with his or her creditors;
  - (iii) is convicted of an offence involving dishonesty or fraud;
  - (iv) is convicted of a criminal offence and sentenced to imprisonment for a term exceeding six months or to a fine exceeding ten thousand shillings;



- (v) is incapacitated by prolonged physical or mental illness;
- (vi) is found to have acted in a manner inconsistent with the aim and objectives of this Act;
- (vii) fails to comply with the provisions of this Act relating to disclosure; or
- (viii) is otherwise unable or unfit to discharge his or her functions as member of the Board.

5. Other than in the case of a special meeting or unless three quarters of members agree, every member of the Board shall be given at least fourteen days written notice of every meeting of the Board.

Notice of meeting.

6. The quorum for the conduct of business of the Board shall be half of the members, and unless a unanimous decision is reached, decisions shall be by a majority vote of the members present, and in the case of an equality of votes, the Chairperson or the person presiding shall have a casting vote.

Quorum.

7. The Chairperson shall preside at every meeting of the Board at which the Chairperson present, in the absence of the Chairperson, the Vice-Chairperson shall preside and in the absence of the Vice-Chairperson, the members present shall elect one of their members to preside at that meeting, and with respect to that meeting the person elected shall have all the powers of the Chairperson.

Chairperson to preside.

8. (1) If a member has a direct or indirect interest in any matter under consideration by the Board, and is present at the meeting of the Board at which the matter is the subject of consideration, the member shall, at the meeting and as soon as practicable after the commencement, disclose that fact and shall be excluded from voting at the meeting at which the matter is being considered.

Disclosure of interest.

(2) A disclosure of interest made under this section shall be recorded in the minutes of the meeting at which it is made.

9. Subject to the provisions of this Schedule, the Board may regulate its own procedure.

Board may regulate own procedure.



**SECOND SCHEDULE****PROCEDURE FOR DEALING WITH OFFENCES  
AGAINST ELDERLY PERSONS**

1. (1) A police officer, social development officer, national Government, or county government administrator, to whom a report contemplated under this Act has been made or who is satisfied that it will be in the best interests of the elderly person if the alleged offender is removed from the home or place where the elderly person resides, shall issue a written notice which—

Written notice to  
alleged offender.

- (a) specifies the full name, residential address, occupation, and status of the alleged offender;
- (b) requires the alleged offender to leave the home or place where the elderly person resides and refrain from entering the home or place or having contact with the elderly person until proceedings relating to the alleged offence are determined; and
- (c) contains a certification by the police that the original of such written notice has been served to the alleged offender and that the contents of the certificate have been made known to the alleged offender.

2. (1) The Board shall meet at least four times in every financial year and not more than four months shall elapse between the date of one meeting and the date of the next meeting.

Meetings.

(2) Notwithstanding the provisions of subparagraph (1), the chairperson may, and upon requisition in writing by at least five members shall, convene a special meeting of the Board at any time for the transaction of the business of the Board.

(3) The police officer shall forthwith forward a duplicate original of the written notice to the clerk of the magistrates' court concerned.

(4) The production to the magistrates' court of the duplicate original referred to in subsection (2) is prima facie proof of the issue of the original thereof to the alleged offender and that such original was handed to the offender.



(5) A magistrates' court before which an alleged offender to whom a written notice in terms of subsection (1) has been issued, appears, may summarily inquire into the circumstances which gave rise to the issuing of the notice.

(6) After consideration of the circumstances that gave rise to the issuance of the written notice and hearing the alleged offender, the magistrates' court may—

- (a) issue an order prohibiting the alleged offender from entering the home or place where the elderly person resides or from having any contact with the elderly person or both, for such period as the court considers fit;
- (b) order that the alleged offender may enter the home or the place where the member of society resides or have contact with the member of society upon such conditions as would ensure that the best interests of the member of society are served;
- (c) order that the alleged offender will be responsible for the maintenance of the elderly person's family during the period contemplated in paragraph (a); or
- (d) make such other order as the court may consider necessary.

(6) A person is guilty of an offence, if the person—

- (a) has been served with a written notice contemplated in subsection (1) and the person—
  - (i) fails to leave the home or place where the elderly person resides; or
  - (ii) has contact with the elderly person in contravention of the notice;
- (b) contravenes the court order issued under subsection (5).

3. (1) Where a social worker or a health care provider submits a written report under oath to a prosecutor, the prosecutor may seek issuance of a summon informing the alleged offender of the allegations and requiring the alleged offender to appear in Court, at a time and place specified in the summon.

Procedure for  
arraigning an  
alleged offender  
in Court.



(2) A public prosecutor shall only seek issuance of a summon upon receipt of a report of the alleged abuse against an elderly person from the social worker.

(3) Where the notice issued under subsection (1) contains sufficient grounds for the magistrate to suspect that a social worker or health care provider may be denied access to the place where the alleged victim resides, the magistrate, may, upon the application by public prosecutor issue a warrant authorising the social worker or health care provider to enter such premises.

(4) A magistrate may in a warrant issued in terms of subsection (3) authorise the social worker or health care provider to take a police officer with him or her for the purposes of an investigation referred to in the said subsection.

(5) The Criminal Procedure Code shall apply with the necessary modification, in relation to the form and manner of service of summons in criminal cases in lower courts, the time to provided for a person summoned to appear, and the manner in which person who have been summoned to appear may be dealt with if they fail to appear or to remain in attendance, as required.

(6) A person is guilty of an offence, if that person —

- (i) obstructs or hinders a social worker or a health care provider in the performance of their duty; or
- (ii) fails to provide to a social worker or a health care provider any information relating to the alleged abuse of elderly person.

4.(1) Subject to this section, a magistrate before whom any person is brought shall enquire into the allegations contained in the summons.

Enquiry into of an elderly person.

(2) The public prosecutor or any other person designated by the magistrate for the purpose shall appear at the enquiry and may call witnesses and cross-examine any other witnesses giving evidence at the enquiry.

(3) The person against whom the allegations in question were made may give evidence and the person's legal representative, may cross-examine a witness called in terms of subsection (2) and may call witnesses and shall be



given the opportunity to advance reasons why an order should not be issued under subsection (10).

(4) Subject to anything to the contrary contained in this Act, the law relating to criminal trials in magistrates' courts applies with the necessary modification in respect of written summons the calling and examination of witnesses for the purposes of or at the enquiry, the taking of evidence and the production of documents and other articles thereat.

(5) The magistrate holding the enquiry may determine whether or not the proceedings shall be conducted in an open court room or behind closed doors.

(6) The Criminal Procedure Code in so far as it relates to the conduct of a criminal trial in the absence of an accused, applies with the necessary changes in respect of an enquiry held in terms of this section.

(7) The Magistrates' Courts Act applies with the necessary changes in respect of any proceedings in connection with an enquiry held in terms of this section.

(8) A magistrate holding an inquiry under this schedule enquiry may direct a medical health officer, a psychiatrist, or a clinical psychologist to examine the elderly person concerned and to furnish the magistrate with a report on the findings of such examination.

(9) The contents of a report submitted or furnished in terms of subsection (8) shall be disclosed to the person against whom the allegations were made, and if he or she so desires, he or she or his or her legal representative shall be given an opportunity to cross-examine the person who made the report, in relation to any matter arising out of the report, and to disprove any allegation made therein.

(10) If, after consideration of the evidence and of any report submitted or furnished in terms of subsection (8), it appears to the magistrate that any allegation in the summons is correct, the magistrate may—

- (a) authorise the person concerned to accommodate or care for the elderly person concerned under such conditions as the magistrate may impose; or
- (b) prohibit that person from accommodating or caring for any elderly person for such period, but



not exceeding 10 years, as may be determined by the magistrate.

(10) Any person who contravenes or fails to comply with any condition imposed in terms of subsection (10) (a) or who contravenes or fails to comply with subsection (10) (b) is guilty of an offence.



## **MEMORANDUM OF OBJECTS AND REASONS**

### **Statements of the Objects and Reasons for the Bill**

The principal object of this Bill is to give effect to Article 57 of the Constitution by establishing a legal framework for the treatment of elderly persons.

The Bill seeks to improve the living conditions of elderly persons by providing for their rights to human dignity, safety and security, education, health and equality and non-discrimination.

### **Statement on the delegation of legislative powers and limitation of fundamental rights and freedoms**

This Bill delegates legislative powers to the Cabinet Secretary but it does not limit fundamental rights and freedoms.

### **Statement of how the Bill concerns county governments**

The Bill concerns county governments in terms of Article 109 (4) of the Constitution, as it contains provisions that affect the functions and powers of the county governments as set out in the Fourth Schedule to the Constitution.

### **Statement as to whether the Bill is a money Bill within the meaning of Article 114 of the Constitution**

The enactment of this Bill shall occasion additional expenditure of public funds.

Dated the 26th October, 2022.

**GATHONI WAMUCHOMBA,**  
*Member of Parliament.*



