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LEGISLATIVE REFORMS AND THE PROTECTION OF OLDER PERSONS IN MALAWI BACKGROUND

The International Day of Older Persons is observed on 1 October each year.¹ Older persons in Malawi comprise 2.7% of the total population.² A respected and venerable segment of the population, they also face human rights challenges such as discrimination, violence, neglect, and verbal abuse. In a society of equals, older persons should be able to live in dignity and security and be free of exploitation and physical or mental abuse. The absence of a binding legislative instrument and protective mechanisms that provide recognition to the human rights of older persons and their protection, continue to expose their vulnerabilities. The absence of a legal framework to protect older persons is due, in part to the fact that the abuse and neglect of older persons have been slow to gain recognition as a problem. Consequently, older persons face several

challenges without redress and are increasingly being subjected to accusations of witchcraft and consequent mob justice, mental torture, and general neglect or ostracisation. Such abuse reflects gender bias against women who are more likely to be accused of witchcraft due to traditional superstitious stereotypes which often associate such practices with older women,³ less economically empowered and highly marginalised in a patriarchal society.

Consequently, UNDP is working with key national partners to develop a national legislation to safeguard the rights and welfare of the elderly population in Malawi. In this regard, UNDP has supported the Ministry of Gender, Children, Disability and Social Welfare regarding the development of the Older Persons Bill by providing financial and technical support for legislative drafting, public consultative meetings and lobbying of members of parliament to ensure consensus regarding the enactment of the Bill.

THE PLIGHT OF OLDER PERSONS IN MALAWI

¹ On December 14, 1990, the United Nations General Assembly voted to establish October 1 as the International Day of Older People.

² Older persons are those aged 60 years and over. See UNHCR Emergency Handbook; Protocol to the African Charter on Human and Peoples' Rights on the Rights of Older Persons in Africa.

³ According to a survey conducted by Afrobarometer, the elderly, especially women, are at greatest risk of being victims of witchcraft

allegations - Afrobarometer, 14 April 2022. See also, Benjamin Radford, "Malice in Malawi: A Case Study in Modern Witchcraft Accusations", CFI Centre for Inquiry, March 13, 2023. Available at [Malice in Malawi: A Case Study in Modern Witchcraft Accusations | Center for Inquiry](#) (Accessed 19 September 2023); "Endless Torment for Older Persons", The Daily Times, 22 February 2023.

Like several African societies, respect for older persons is of historical and normative importance in Malawi. However, persons who age in poverty, tend to be vulnerable to societal pressures and are increasingly being subjected to abuse.

Disruptive cultural, social and economic change and endemic poverty are often identified as factors that contribute to the abuse of vulnerable family members including older persons in Africa. This may take the form of intra-family abuse, resulting from the economic pressure of providing care for older persons who do not have a source of income.⁴ However, in Malawi, violence against older persons principally arises from stereotypes and adverse assumptions.⁵ Such stereotypes include mythical and superstitious assumptions of older persons being involved in witchcraft or rituals. Accusations of witchcraft often arise from unexplained circumstances such as the sudden death of a person or crop failure. Traditional doctors play a role in hunting witches and instigate violence against persons identified as such. This results in community reprisals, violence and death of such persons. In 2022, 15 elderly women were killed and 88 harassed for various reasons, largely on accusations of witchcraft—a rise from 13 killed and 58 harassed in 2021.⁶ From January to June 2023, the Malawi Network of Elderly People Organizations (MANEPO) registered 48 cases of abuse of the elderly.⁷ While these numbers may appear low, the rise in recorded incidents between 2021 and 2022

represent a 68% increase. The mid-year records of 2023 also reflect an increase in violence and legislative and institutional reforms are necessary. As noted previously, there are higher numbers of elderly women being subjected to abuse and harassment than men. In February 2023 the Malawi Law Society and MANEPO jointly issued a statement condemning the continued reports of discrimination, torture, abuse, and neglect of older persons, and demanded respect for their human dignity.⁸

The vulnerability of older persons has been exposed through crisis and natural disasters in Malawi. For instance, the recent Cyclone Freddy natural disaster that occurred in March 2023 laid bare the existing deficiencies in the framework for the protection of older persons. According to MANEPO,⁹ over 1000 older persons were affected and had their houses and sources of livelihood destroyed. The interventions provided by the relief response of the government and development partners were inadequate to support older persons.¹⁰

CURRENT LEGAL AND POLICY CONTEXT

International legal framework

The absence of a globally binding legal instrument that protects the rights of older persons demonstrates a slow progress in mainstreaming their rights. However, it must be noted that the United Nations Principles for Older Persons adopted on the 16 December 1991 provides a

⁴ Mark Gorman, “The Growing Problem of Violence against Older Persons in Africa”, 9(2) *Southern African Journal of Gerontology* (2000) 33.

⁵ Malawi Government Study Report “Realizing Income security in old age: A study into the feasibility of a universal old age pension in Malawi” 2016.

⁶ Nation Newspaper June 2023.

⁷ MANEPO, Progress Report 2023.

⁸ “MLS, MANEPO demand respect for human dignity and right to life of older persons”, Africa Press, 23 February 2023. Available at <https://www.africa-press.net/malawi/all-news/mls-manepo-demand-respect-for-human-dignity-and-right-to-life-of-older-persons> (Accessed on 21 September 2023).

⁹ MANEPO, Progress Report 2023.

¹⁰ MANEPO, Progress Report 2023.

non-binding normative framework for the protection of older persons. The Principles provide that older persons should have access to adequate food, water, shelter, clothing and health care through the provision of income, family & community support and self-help.¹¹ In addition, older persons are entitled to access other income-generating opportunities,¹² be able to live in environments that are safe and adaptable to personal preferences and changing capacities,¹³ be able to reside at home for as long as possible,¹⁴ remain integrated in society,¹⁵ and have access to health care to help them maintain optimum levels of physical and mental well-being and delay the onset of illness.¹⁶ The Principles are soft law and do not create binding legal obligations.

The UN Open-ended Working Group on Ageing, established in 2011, has been mandated to address the gaps in the current legal framework and to develop proposals for a possible convention on the rights of older persons. Such a convention will aim to ensure that older persons are recognized as specific rights-holders, who should enjoy their human rights on an equal basis without discrimination, and participate fully in social, economic, cultural, and political life.

At the regional level, the African Charter on Human and Peoples' Rights of 1981 provides both individual and collective rights, and lays emphasis on family values. In this regard, the Charter recognises the right of the aged and the disabled to special measures of protection in furtherance of their physical or moral needs.¹⁷ Further, the

Charter creates and recognises duties of individuals towards their family, society and the State.¹⁸ In particular, the Charter places a positive duty on persons to respect their parents at all times and to maintain them in time of need.¹⁹ This is in line with African traditional values. In addition, the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Older Persons in Africa of 2016, provides for the protection of older persons and calls on States Parties to adopt legislative and other measures to give effect to its provisions.

The domestic scene

Like the international legal regime, the Malawi legal landscape does not accord rights to older persons. There is no legislation that addresses the welfare or protects the rights of older persons. However, Malawi has in place a National Policy on Older Persons (2016). The policy aims to promote and protect all human rights and fundamental freedoms that are essential for the creation of an inclusive society for all ages wherein older persons participate fully, without discrimination and on the basis of equality. The policy also aims to safeguard the rights of older persons, improve their well-being, foster their participation, and harness their knowledge and skills in national development endeavours affecting their lives.

THE PROPOSED LAW

The Older Persons Bill reflects the diversity of older persons and their situations and addresses the intersectionality of age with other grounds of discrimination, such as gender, disability, ethnicity,

¹¹ Para I.1 United Nations Principles for Older Persons.

¹² Para I.2 United Nations Principles for Older Persons.

¹³ Para I.5 United Nations Principles for Older Persons.

¹⁴ Para I.6 United Nations Principles for Older Persons.

¹⁵ Para II.6 United Nations Principles for Older Persons.

¹⁶ Para III.11 United Nations Principles for Older Persons.

¹⁷ Article 18(4) African Charter on Human and Peoples' Rights.

¹⁸ Article 27(1) African Charter on Human and Peoples' Rights.

¹⁹ Article 29(1) African Charter on Human and Peoples' Rights.

health status, and socio-economic status. Among other things, the Bill proposes an enabling and supportive legal framework to enhance the status, well-being, safety and security, of older persons which promotes and protects their rights. It adopts provisions to ensure accountability and remedies for violations of these provisions. Specifically, the Bill protects older persons in five key measures.

First, the Bill provides for the protection of the human rights of older persons in a manner tailored to meet their peculiar needs and well-being. In this vein, the Bill recognises the right of older persons to participate in community life, and inter-generational programs and activities that enhance their income-generating capacity. It spells out their right to establish and participate in structures and associations for older persons, the right to live in an environment that caters for their changing capacities and their right to access opportunities that promote optimal levels of social, mental and emotion well-being.²⁰ The Bill incorporates an anti-discriminatory clause that prohibits the exclusion of older persons to an adequate standard of living which includes access to basic necessities such as food, water, clothing and housing.²¹ With respect to health care, the Bill considers the vulnerability of older persons and their susceptibility to disease, as well as the tendency of service providers to deprioritise older persons with respect to health insurance. Consequently, the Bill obliges the government to provide appropriate health care services for older persons, including services designed to minimise or prevent both communicable and non-

communicable diseases.²² In addition, the Bill prohibits discrimination against older persons in the provision of medical or health insurance and life insurance.²³

Second, the Bill establishes a protection mechanism for older persons who are exposed to neglect or harm. In this regard, the Bill accords legal recognition to older persons who need care and protection, and establishes procedural mechanisms for their protection. This is especially important due to the significant number of older persons who suffer neglect and abandonment mainly in rural areas. Older persons in need of care and protection include those whose income are being taken away from them against their will, those unlawfully expelled from their place of residence, those abandoned without any means of subsistence, those who work or beg on the streets for a living, those addicted to drugs or intoxicating substances, or those exposed to physical or mental harm.²⁴ The Bill provides that any person may report the neglect or need for protection to a social welfare officer or the Director of Elderly Affairs (Director).²⁵ Resulting protection measures include the removal of the older person concerned to a shelter or hospital in the event that he or she has suffered injury. The social worker or Director may also report the matter to the police for investigation and appropriate action. Protective measures also include removal of the older person from the place where they reside, issuance of a notice requiring the alleged perpetrator to vacate the premises where the older person resides, a directive preventing the perpetrator from entering such premises or having any contact with the older

²⁰ Section 6(1) Older Persons Bill 2023.

²¹ Section 6(2) Older Persons Bill 2023.

²² Section 6(4) Older Persons Bill 2023.

²³ Section 6(5) Older Persons Bill 2023.

²⁴ Section 18(5) Older Persons Bill 2023.

²⁵ Section 18(2) Older Persons Bill 2023.

person, a summons directed to the perpetrator to appear before a magistrates court for a permanent restraining order.²⁶ As a deterrence, the Bill criminalises the physical or other abuse of an older person, and upon conviction, the perpetrator is liable to a fine of 15 million Kwacha and seven years imprisonment.²⁷

Third, the Bill regulates community-based and home-based care to guarantee the professional care of older persons and ensure the safety of their living environment and well-being. In this regard, community-based programmes are required to ensure that older persons receive maximum care within the community while underscoring the importance of promoting their need to live independently.²⁸ Moreover, home-based care programmes which apply to the frail should ensure that their services are hygienic, are of professional quality, installed with assisted devices and provide information to family members.²⁹ The Bill subjects the operation of community-based care and residential facilities to registration, licensing, inspection, training and a code of conduct for care givers.³⁰

Fourth, the Bill provides for financial support to older persons through the payment of monthly grants (older person's grants) in every traditional authority area to ensure that they do not have to travel over long distances to collect these grants. In this regard, the National Assembly is required to make budgetary allocation in respect of the grants.³¹

Fifth, the Bill provides for an oversight mechanism.³² In this regard, the Bill provides for the establishment of a National Steering Committee on Older Persons to oversee its implementation. By establishing an oversight body, the Bill endeavours to ensure compliance, enforcement, coordination, transparency, and accountability in matters related to the rights of older persons.

CONCLUSIONS AND RECOMMENDATIONS

Conclusions

According to MANEPO, violence against older persons is on the rise. The Older Persons Bill seeks to address societal prejudices and stereotypes against older persons by protecting them in all aspects of life. It also provides for offenses and penalties to ensure that persons who violate the rights of older persons are held accountable. The Bill represents a significant step aimed at reducing inequalities and abuses against older persons and adopts a rights-based approach which should enable older persons to fully participate in society, enhance their well-being and guarantee their self-worth. The Bill also has linkages with the wider development agenda since the duty to provide for the well-being of older persons, implies the general and socio-economic upliftment of the communities in which they live. Having regard to the positive national obligations created regarding the well-being of older persons, the Bill introduces significant budgetary implications for government which is integral to its meaningful implementation.

²⁶ Section 20(1) Older Persons Bill 2023.

²⁷ Section 23(5) Older Persons Bill 2023.

²⁸ Section 26(1) Older Persons Bill 2023.

²⁹ Section 26(3) Older Persons Bill 2023.

³⁰ Sections 27-30 Older Persons Bill 2023.

³¹ Sections 10-13 of the Older Persons Bill 2023.

³² Sections 49-63 Older Persons Bill 2023.

Recommendations

- (a) The Ministry of Gender, Development Partners, civil society, and other stakeholders to engage in continued advocacy for the enactment of the Bill.
- The National Legislature and other relevant stakeholders to facilitate and support the enactment of the Bill.
 - The Government, civil society, and traditional leaders to raise national and community awareness regarding the plight of older persons and mainstream older persons in the activities of communities.
 - The government and civil society in collaboration with development partners to:
 - ✓ Work with older persons to instill a sense of self-confidence in them, such as educational and adult literacy programmes or paralegal training and mediation to enable them to advocate for their constituency.
 - ✓ Work with chief forums and traditional leaders to address the issue of witch-hunting through the introduction of codes of conduct that confine the work of traditional healers to curative medicines rather than hunting witches.
 - ✓ Develop and implement projects targeting the protection of the rights and well-being of older persons in selected remote areas.
 - The government and development partners make concerted and collaborative

efforts to fund the implementation of the Bill when enacted.

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