

SUBSTANTIVE INPUTS ON THE TWO FOCUS AREAS OF THE FOURTEENTH SESSION OF THE OPEN-ENDED WORKING GROUP ON AGEING

FOCUS AREA 1: Accessibility, Infrastructure and Habitat (Transport, Housing and Access)

National legal and policy framework

1. What are the national legal provisions and policy frameworks that recognize older persons' rights to accessibility, infrastructure and habitat (transport, housing and access)?

This could include, but is not limited to:

- a) the right of older persons to adequate housing, including land, property and inheritance.**
- b) the right of older persons to access and enjoy, on an equal basis with others, the physical environment, transportation, information and communications (including ICTs), and other facilities and services open or provided to the public, both in urban and in rural areas (e.g. buildings, roads, transportation and other indoor and outdoor facilities, schools, housing, green spaces, medical facilities and workplaces; information, communications and other services, including electronic services and emergency services).**
- c) policies/programmes that enable older persons to live independently and to be included in their communities as they age.**

CONSTITUTIONAL SAFEGUARDS

The principles of National Policy under section 13 of the Constitution of the republic of Malawi call on government to actively promote the welfare of and development of the people of Malawi by progressively adopting and implementing policies and legislation that among others, ensure that older persons are respected and supported through provision of community services and encourage participation in the life of the society. Section 20 of the same Constitution prohibits discrimination of any form and "all persons including the elderly are guaranteed equal and effective protection against discrimination on grounds of race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, disability, property, birth or other status." The prohibition of discrimination entails that older persons have the right to enjoy and access the physical environment, transportation, and information and communication on an equal basis with others." Section 28 of the Malawian constitution further guarantees the right to property and every person including older persons have the right to acquire property either alone or in association with others. The Constitution further makes it clear that no person shall be arbitrarily deprived of property."

POLICY FRAMEWORK

At policy level, Malawi is currently guided by its development blue print commonly referred to as Malawi2063. Malawi2063's vision is that by the year 2063, Malawi shall be transformed into "An Inclusively Wealthy and Self-reliant Nation." The document is very clear on the adoption of the "Leave No-One Behind" principle. It clearly stipulates that "we are mindful that in our quest for inclusive wealth creation, we must not leave behind those segments of the society that are vulnerable and marginalized. These include elderly persons and persons with disabilities, who

may need social protection as part of their human rights.”¹ The document further advocates for the full engagement and participation of marginalized groups including older persons in decision making processes and resource allocation.

In terms of programmes that uplift the lives of older persons, Malawi has been implementing a social cash transfer programme, targeting 10% of the population’s ultra-poor and labour constrained households. Older persons are among those benefitting from the Social Cash Transfer programme.

2. What are the challenges and barriers faced by older persons for the realization of their right to accessibility, infrastructure use and habitat (transport, housing and access) at the national and international levels?

While the constitution provides for various human rights for all people including those associated with accessibility, infrastructure and the use of habitat, the country has no Older Persons’ specific legislation by means of an Act of Parliament to operationalize the constitutional provisions which are generalized. In addition, Malawi in one of the poorest countries in the world and most older persons live in absolute poverty so much so that they have little or no access to property including those associated with transportation and housing. However, it is important to note that Malawi has made positive steps towards the enactment of the Older Persons Bill to be tabled in the current sitting of Parliament .

Data and research

3. What data, statistics and research are available at the national level regarding older persons’ rights to accessibility, infrastructure and habitat (public transport, housing and access)?

The National Statistical Office (NSO) is the official Malawi government central depository of all official statistics produced in Malawi and is responsible for the collection and dissemination of official statistics. It therefore, conducts research/surveys on various aspects including those concerning older persons. The NSO has in its custody, data on the subject matter herein.

The Malawi National Policy for Older Persons defines an older person as anyone aged 60 or more. According to National Statistical Offices (NSO) 2018, Malawi had 891,805 persons aged 60+, projected to grow to 2,873,639 by 2030. The 60+ population constitutes over 4 % of total population and the proportion to grow to 17 percent in 2050. In 2050, 1 in every 6 Malawians will be an older person

Equality and non-discrimination

4. What measures are being taken to eliminate ageism, ageist stereotypes, prejudices and behaviors’ that hinder older persons’ rights to accessibility, infrastructure and habitat (transport, housing and access)?

¹ National Planning Commission, *Malawi2023*, (2020)

Malawi Human Rights Commission (the Commission) in collaboration with Malawi Network of Older Persons' Organizations (MANEPO) and other stakeholders working on the human rights of older persons advocated for the development and enactment of older persons specific legislation to address the challenges faced by older persons which includes addressing issues of equality and non-discrimination. The legislation is yet to be enacted into law but prospects of it being passed by Parliament are high. The Commission and MANEPO further facilitated the drafting of a National Response Plan (NRP) aimed at addressing various issues affecting older persons including equality and non-discrimination.

Remedies and Redress

5. What mechanisms are necessary, or already in place, for older persons to submit complaints and seek redress for denial of their rights to accessibility, infrastructure and habitat (transport, housing and access)?

The Malawi Human Rights Commission receives complaints from any person, class of persons or body on complaint regarding human rights violations. The Commission further has in place a Directorate of Elderly Rights which is responsible for attending to complaints related to violations of elderly rights on different aspects of rights. There is however, need to strengthen the legal system by among others having a stand-alone provision in an Act of Parliament which will guarantee the right for older persons to accessibility, infrastructure and habitat and provide redress mechanism when such rights are violated.

FOCUS AREA 2: Participation in public life and decision-making processes.

National and local legal and policy framework

1. What are the national and local legal provisions and policy frameworks in your country that guarantee

a) right to equality and prohibition of all forms of discrimination against older persons on the basis of age, alone or combined with other grounds, in the context of participation in public life and in decision-making processes; b) elimination of all forms of ageism and age discrimination from laws, frameworks, programs, policies, strategies and practices regarding participation in public life and in decision-making processes; c) right to freedom of expression, including freedom to seek, receive and impart information; d) right of peaceful assembly; e) right to freedom of association; f) right to take part in the government of one's country, directly or through freely chosen representatives; g) active, free and meaningful participation of older persons and their representative organizations in all matters related to participation in public life and in decision-making processes; h) access to prompt remedies and redress when older persons' above mentioned rights are violated.

The principles of National Policy under section 13 of the Constitution of the republic of Malawi call on government to actively promote the welfare of and development of the people of Malawi by progressively adopting and implementing policies and legislation that among others, ensure

that older persons are respected and supported through provision of community services and encourage participation in the life of the society. Section 20 of the same Constitution prohibits discrimination of any form and “all persons including the elderly are guaranteed equal and effective protection against discrimination on grounds of race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, disability, property, birth or other status.” The right to freedom of expression is guaranteed under section 35 of the Constitution while the right to access information is guaranteed under section 37 of the Constitution. The Constitution further provides the right to assembly under section 38 of the Constitution and the right to freedom of association under section 32 of the constitution. Political rights which include right to take part in government including freely choose representative, participate actively in decision making are guaranteed under section 40 of the Malawian Constitution.

At policy level, Malawi is currently guided by its development blue print commonly referred to as Malawi2063. Malawi2063’s vision is that by the year 2063, Malawi shall be transformed into “An Inclusively Wealthy and Self-reliant Nation.” The document is very clear on the “Leave No-One Behind” principle. It clearly stipulates that “we are mindful that in our quest for inclusive wealth creation, we must not leave behind those segments of the society that are vulnerable and marginalized. These include elderly persons and persons with disabilities, who may need social protection as part of their human rights.”² The document further advocates for the full engagement and participation of marginalized groups including older persons in decision making processes and resource allocation.

2. What steps have been taken to ensure participation in public life and in decision-making processes without discrimination?

Malawi Human Rights Commission (the Commission) in collaboration with other stakeholders working on the human rights of older persons advocated for the development and enactment of older persons specific legislation to address the challenges faced by older persons which includes addressing issues of equality and non-discrimination. The bill which is yet to be enacted into law, has provision to support participation and inclusion of older persons in public life.

Data and research

3. What data and research are available regarding older persons’ participation in public life and in decision-making processes? Please indicate how national or sub-national data is disaggregated by sex, age and inequality dimensions, and what indicators are used to monitor older persons’ participation in public life and in decision-making processes.

Equality and non-discrimination

4. What are the challenges and barriers that older persons face regarding participation in public life and in decision-making processes, including the impact of intersectional

² National Planning Commission, *Malawi2023*, (2020)

discrimination and inequality based on age, gender, disability, race, ethnicity, migratory status and other grounds?

Older persons in Malawi experience human rights violations that are perpetrated by their own family and communities which hinder full enjoyment and realisation of their human rights. Notably, the older persons in Malawi have been subjected to unfounded allegations of practicing witchcraft. Witchcraft accusation has consequently resulted in subjecting older citizens to mob-justice including but not limited beaten or stoned to death, property destruction, chased away from their villages, land dispossession and discrimination and social exclusion. These challenges have worsened levels of discrimination such that older persons live in fear and cannot participate in public society because the society has labelled them as witch craft champions and therefore a danger to future generation. These accusations have increased the vulnerability of senior citizens who lack the capacity to protect and defend themselves because of their old age. Malawi has one major camp in Dzaleka, Dowa and clearly there are other refugees that came long time ago and face challenges of their welfare. Currently, the Law Commission is in the process of reviewing the 1989 Refugee Act to make it more human rights sensitive to include marginalized groups including Older Persons.

Accountability

5. What judicial and non-judicial mechanisms are in place for older persons to complain and seek redress when their right to participate in public life and in decision-making processes is violated?

The legal and policy frameworks in Malawi apply to all persons regardless of age. Malawi has numerous laws that protect the rights to participation in public life and in decision-making processes. Section 44 of the Constitution of the Republic of Malawi provides that no restriction or limitation may be placed on the exercise of any rights and freedoms provided for in the Constitution unless the restriction or limitation: a) is prescribed by a law; b) is reasonable; c) is recognized by international human rights standards; and d) necessary in an open and democratic society. It is important to note that the Judicial system is also open to process all cases that are before them though there has been some delay in concluding cases of older persons.

Additionally, the Malawi government has put in place constitutional bodies that receive and work on investigating and providing remedial actions to complains lodged by older persons in this regard. Such bodied include the Malawi Human Rights Commission, the Ombudsman, the Anti-Corruption Bureau, the Legal Aid Bureau and the Malawi Police Service.

In terms of advocacy, organizations like UNFPA and CSO (MANEPO) are also key in seeking redress on behalf of Older Persons on the various issues that affect older persons.