

**THE UNITED REPUBLIC OF TANZANIA
LAW REFORM COMMISSION OF TANZANIA**



**REPORT ON THE REVIEW OF THE LEGAL FRAMEWORK ON
ELDERLY SOCIAL CARE IN TANZANIA**

AUGUST, 2017

THE UNITED REPUBLIC OF TANZANIA

LAW REFORM COMMISSION OF TANZANIA

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07 August, 2017

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Hon. Minister,

**Re: REPORT ON THE REVIEW OF THE LEGAL FRAMEWORK ON ELDERLY
SOCIAL CARE IN TANZANIA**

In terms of section 4(2) of the Law Reform Commission of Tanzania Act, Cap. 171 the Commission is charged with the duty, either at its own instance or otherwise, to review any law or branch of the law and propose measures necessary for:-

- i) bringing that law or branch of law into accord with current circumstances of Tanzania;
- ii) eliminating anomalies or other defects in the laws; and;
- iii) the proper codification and simplification of that law or branch of law.

Pursuant to the provisions of section 9 of the Act, the Commission has on its own motion conducted research on the legal framework on elderly social care in Tanzania, to address the big gap between the minority (3%) in formal employment covered under existing social security systems, and the majority

in the informal sector- agriculture, pastoralism fishing, artisanal trade, commerce and trade.

The review outlines the status quo, causes, challenges and recommends for administrative and legislative measures for the Government to consider, adopt and implement in accordance with its priorities and programs.

It is our sincere hope that the facts outlined in this report will inform policy discussions on possible legal measures, social reforms and prompt academic endeavors geared at improving the lot of the increasing number of post retirement citizens in acute need of active social interventions from the Government and non-government organizations. I take this opportunity to thank all stakeholders who took their time to share their opinions, experiences, views and insights with the Commission.

In line with Section 14 (1) of the Act, I have the honour to submit to you the Report on the Review of the Legal Framework on Elderly Social Care in Tanzania.

Casmir S.Kyuki

EXECUTIVE SECRETARY

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PREAMBLE

“The only people who live on the work of others, and who have the right to be dependent upon their fellows, are small children, people who are too old to support themselves, the crippled, and those whom the state at any time cannot provide with opportunities to work for their living.”

Mwl. J.K. Nyerere, The first President of the United Republic of Tanzania

THE COMMISSION

The Law Reform Commission of Tanzania ("the Commission"), is a permanent statutory body established by the Law Reform Commission, Act Cap.171. It has been in operation since 1983. Its functions include taking and keeping under review all the laws of the United Republic of Tanzania with a view to its systematic development and reform. In the exercise of its powers, the Commission may review any law or branch of law and propose measures necessary for bringing that law or branch of law into accord with current circumstances of Tanzania. It may also consider such reforms of any laws or branch of laws of Tanzania as may from time to time be referred to it by the Attorney General, MDAs, Private Institutions and individual persons.

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ACKNOWLEDGEMENT

The Commission wishes to express its sincere appreciation to all stakeholders for their invaluable contribution during the review and preparation of this report.

Among stakeholders consulted were the elderly from both formal and informal sectors, government leaders at the regional and local government levels, social security institutions, non-governmental organizations, religious leaders, the youth and the public at large.

The Commission would also like to convey its sincere thanks to its members of staff, whose dedication and commitment made it possible to finalize this report.

All in all, the Commission bears full responsibility for both the form and content of this Report.

EXECUTIVE SUMMARY

There is a big gap between the expressed goals and aspirations stipulated in article 11 (1) of the Constitution of the United Republic of Tanzania of 1977, Cap. 2 to ensure sustenance for the elderly and existing social security framework that caters for only 3% of the eligible elderly.

“Elderly” is defined as a last stage in the human life cycle - an average lifespan of sixty years and above and limited regenerative abilities. The concept of elderly social care is founded on universal human rights and enshrined in our Constitution. Old age is biologically characterized by ill health, diminishing strength and vitality thereby reducing ability to be self-reliant. Strategic initiatives need to be in place to ensure sustainable and effective social care protection.

Elderly social care focuses on the attainment of eighteen principles which are organized under five key issues: independence, participation, care, self-sufficiency and dignity, which provide a broad framework for action by government and the community at large.

The National Ageing Policy formulated in 2003, stipulates broad guidelines on elderly social care in Tanzania. Though there are various legislations regulating elderly social care, there is no specific legislation to enforce the expressed intentions.

The report is divided into seven chapters. Chapter one contains the introductory part, background, objectives, scope and methodology used in conducting the study.

Chapter two expounds on the concept and developments in the field of elderly social care; its historical developments and analysis of international and regional instruments on elderly social care.

Chapter three covers policy review on elderly social care. The National Ageing Policy, sectoral policies and other development policies

pertaining to elderly social care in Tanzania are analysed in this chapter.

Chapter four analyses the existing legal framework, examination and analysis of laws related to elderly social care in Tanzania.

Chapter five covers experiences from other jurisdictions whereby lessons on best practices are analysed to inform possible adoptions commensurate with our social economic and legal framework.

Chapter six presents research findings and analysis of stakeholders' views and the Commission's observations and recommendations within context.

Chapter seven provides general conclusion and legal and non legal recommendations of the Commission which in our considered view may inform government efforts towards achieving the policy goals.

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3. The National Human Settlement Development Policy, 2000
4. The National Social Security Policy, 2003
5. The National Health Policy, 2007
6. The National Strategy for Growth and Reduction of Poverty I & II, 2010
7. The National Policy on Disability, 2004
8. The HIV/AIDS Policy, 2001
9. The Tanzania Social Action Fund, 1999
10. The Tanzania Five Years Development Plan, 2012
11. The Tanzania Development Vision, 2015
12. The Arusha Declaration on Socialism and Self-Reliance, 1967
13. Tanzania Social Action Fund

Principal Legislation

1. The Constitution of the United Republic of Tanzania, Cap. 2
2. The Public Service Retirement Benefits Act, Cap. 371
3. The Political Service Retirement Benefits Act, Cap. 255
4. The Social Security (Regulatory Authority) Act, Cap. 135
5. The National Social Security Fund Act, Cap. 50
6. The Parastatal Organization Pensions Scheme Act, Cap. 372
7. The National Health Insurance Fund Act, Cap. 395
8. The Provident Fund Government Employees Act, Cap. 51
9. The Community Health Fund Act, Cap. 409
10. The Persons With Disabilities Act, No. 9 of 2010
11. The Local Authorities Pensions Fund Act, Cap. 407
12. The HIV and AIDS [Prevention and Control] Act, No. 28 of 2008

13. The National Defence Act, Cap. 192
14. The Local Government (District Authorities) Act, Cap. 287
15. The Local Government (Urban Authorities) Act, Cap. 288

Subsidiary Legislation

1. The Social Security Regulations, 2009 GN. No. 96 of 2009
2. The National Social Security Fund (General) Regulations, 1998 GN. No. 418 of 1998
3. The Registration of Temporary Employees Order, 1998 GN. No. 421 of 1998
4. The National Social Security Fund (Maternity Benefits) Regulations, 1999 GN. No.284 of 1999
5. The National Social Security Fund (Amendment of 2nd Schedule Order, 2000 GN. No. 286 of 2000
6. The National Social Security Fund Act, 1997 (Date of Commencement) GN. No. 99 of 2002
7. The National Social Security Fund (General Amendments) Regulations, 2005 GN. No.394 of 2003
8. The National Social Security Fund (Health Insurance Benefits) Regulations, 2005 GN. No. 140 of 2005
9. The National Social Security Fund (Delegation of Functions and Duties) Instrument GN. No. 140 of 2005
10. The Parastatal Pension Regulations, 1980 GN. No. 72 of 1980
11. The National Health Insurance Fund Regulations, 2002 GN. No. 491 of 2002
12. The National Health Insurance Fund (Amendment) Regulations, 2009 GN. No.11 of 2009
13. The Parastatal Pension Exemption Order, 1978 GN. No. 131 of 1980
14. The Parastatal Pension (Specified Organization Declaration) Order, 1994 GN. No. 222 of 1995
15. The Parastatal Pension (Exemption of Employers) Order, 1998 GN. No. 621 of 1978

16. The National Health Insurance Fund Regulations, 2002 GN. No. 491 of 2002
17. The Community Health Fund Regulations, 2004 GN. No. 359 of 2004
18. The Community Health Fund (Application to Local Government Authorities) (Declarations) Order, 2007 GN. No. 38 of 2007
19. The Community Health Fund Act, (Date of Commencement) Notice, 2009 GN. No. 313 of 2009
20. Persons with Disabilities Act (Date of Commencement) Notice, 2010 GN. No. 430 of 2010
21. The Defence Forces (Pensions and Gratuities) Regulations, 1966 GN. 1966

Foreign Legislation

1. The Care Act of England and Wales, 2014
2. The Constitution of India, 1946
3. The Older Persons (Maintenance, Care and Protection) Act, (India)
4. The Protection for Elderly Persons Act, 2005 (Mauritius)
5. The Constitution of South Africa, 1996
6. The Older Persons Act, 2006 (South Africa)
7. The Constitution of Kenya, 2010
8. The Social Assistance Act, 2013 (Kenya)
9. The Constitution of Uganda, 1995
10. The Local Government Act, Cap. 243 (Uganda)

ABBREVIATION

AG	-	Attorney General
AIDS	-	Acquired Immune Deficiency Syndrome
Art.	-	Article
AU	-	African Union
CAP	-	Chapter
CBO(s)	-	Community Based Organisation(s)
CHF	-	Community Health Fund
DFID	-	Department for International Development
DGI	-	Director General of Intelligence
ECA	-	Economic Commission for Africa
ECE	-	Economic Commission for Europe
FBO(s)	-	Faith Based Organisation(s)
FYDP	-	Five Years Development Plan
GDP	-	Gross Domestic Product
GEPF	-	Government Employees' Pensions Fund
HIV	-	Human Immune Virus
ibid.	-	ibidem
IGA(s)	-	Income Generating Activity (ies)
IGP	-	Inspector General of Police
LAPF	-	Local Authorities Pensions Fund
LRCT	-	Law Reform Commission of Tanzania
MIPAA	-	Madrid International Plan of Action on Ageing
MKUKUTA	-	Mkakati wa Kukuza Uchumi na Kupunguza Umasikini Tanzania
MoFP	-	Ministry of Finance and Planning
MoHCDGEC	-	Ministry of Health, Community Development, Gender, Elderly and Children
MoLE	-	Ministry of Labour and Employment

MVC	-	Most Vulnerable Children
NAP	-	National Ageing Policy
NGO(s)	-	Non-Governmental Organisation(s)
NHBS	-	National Household Budget Survey
NHIF	-	National health Insurance Fund
No.	-	Number
NSGRP	-	National Strategy for Growth and Reduction of Poverty
NSSF	-	National Social Security Fund
op.cit.	-	opposite cited
PCCB	-	Prevention and Combating of Corruption Bureau
PFFA	-	Policy Frameworks and Plan of Action on
PLHIV	-	People Living with HIV and AIDS
PPF	-	Parastatal Pension Fund
PSPF	-	Public Service Pension Fund
R. E.	-	Revised Edition
SAWATA	-	Saidia Wazee Tanzania
SSRA	-	Social Security Regulatory Authority
TASAF	-	Tanzania Social Action Fund
TB	-	Tuberculosis
UK	-	United Kingdom
UN	-	United Nations
UNICEF	-	United Nations Children's Fund
UNO	-	United Nations Organization
URT	-	United Republic of Tanzania
USD	-	United States Dollar
VG(s)	-	Vulnerable Group(s)
VIPAA	-	Vienna International Plan of Action on Aging
www	-	world wide web

CHAPTER ONE

GENERAL INTRODUCTION

1.0 Introduction

Improved health and social service have led to an increase in life expectancy in the world. However, improved growth in the gross domestic product is not proportional to social and health services available to the growth of the population falling under elderly care. The current legal framework depicts a few social security schemes (predominantly pension) catering only for retirees from the formal sector which is 3% of the salaried workers, so leaving the majority of the Tanzanian elderly in need of social care services uncovered.¹

Social elderly care goes beyond pension schemes. Even then, amidst collapse of the traditional social security structures, extended family or community caring for the elderly, in the wake of the modern economic structures, there is public outcry demanding the review of elderly social care services under an effective legal framework.

1.1 Mandate of Commission

The Law Reform Commission of Tanzania, (LRCT), has the mandate to push forward legal reforms in the country. Section 3 of the Act² establishes LRCT and section 4 mandates it to "...keep under review all the law of the United Republic of Tanzania with a view to its systematic development and reform." This, review concerns the legal framework on elderly social care, with a view to identifying the gaps in the existing legislation and propose measures to gain a more elaborate framework.

¹Regional Workshop on Ageing and Poverty Country Position Paper Ageing and Poverty in Tanzania Vice President's Office United Republic of Tanzania at pg. 3.

http://www.tanzaniagateway.org/docs/Ageing_and_Poverty_in_Tanzania.pdf

² Cap. 171.

1.2 Rationale for Review

Slow or lack of implementation mechanisms for National Ageing Policy 2003, gave birth to a wide public debate on the unacceptable position regarding elderly social care services in the country. The Government continues to reiterate its intentions towards fulfilment of the policy goals. The existing legal framework governing elderly is incomplete, inadequate and or incapable of addressing the far reaching needs and challenges- social, healthy and economic currently facing the elderly. Existing laws are scattered and predominantly focusing on a handful of pension schemes catering for a small fraction of the elderly community deserving care in Tanzania.

The main objective of the study is to collect and analyse empirical data pertinent to the establishment of a legal and regulatory framework conducive to social care for the elderly in the prevailing socio-economic environment, regard being had also to international instruments and best practices. It is intended that the establishment of an appropriate legal and regulatory framework on elderly social care will foster the implementation of policies in fulfilment of the constitutional aspirations to ensure dignity for the elderly and foster their social inclusion thereby reducing poverty and vulnerability. Therefore the purpose of this study is to enhance these efforts.

1.3 Statement of the Problem

Tanzania faces challenges in addressing issues relating to the elderly social care mainly lack of a comprehensive and specific legal framework. The traditional elderly social care system based on the extended family and community structures which used to cater for the elderly are increasingly failing.

Factors contributing to this state of affairs include transformational change from a subsistence peasant economy to a modern formal and individual income economy, amidst widespread poverty and rapid socio-political and economic changes. As a result the traditional economic structures are collapsing without the labour of youth the elderly cannot sustain farming and pastoralism the main economic stay for the majoring of the population.

At the same time, long distances, between the rural and urban centers high cost of leaving in urban centers, prevent direct intercourse between the elderly in the rural areas and their children in urban centers. Consequently, old age vulnerability and poverty are increasingly becoming a common phenomenon in Tanzania.³

The National Ageing Policy (NAP) recognises that the current social and legal system does not provide adequate protection and security to older people as a special group. One of the key objectives of the NAP is to enact a specific law that promotes and protects the welfare of older people.⁴

1.4 Research Methodology

Desk and field researches were applied as methods for collecting data in the preparation of this Report. Through the desk research, researchers were able to access information from books, reports, journals, articles, cases and statutes related to the subject through the libraries.

Field research was conducted in two districts in each region namely; Coast, Arusha, Manyara, Morogoro, Mwanza, Kagera, Mtwara and Lindi regions. The research involved holding discussions with focused groups- the elderly of the formal sector, namely retirees and those of the informal sector farming and pastoralism. Consultative meetings were also

³A Study on the Feasibility of Universal Social Pension- A Study Carried by the Ministry of Labour in Collaboration with the HelpAge International, Available at www.helpage.org – Accessed on 15th August, 2016.

⁴The National Ageing Policy, 2003 pg. 5.

conducted with local government representatives and other key stakeholders in the districts. A comprehensive list of the stakeholders is annexed to this Report.

Views collected were treated as samples representing wider stakeholder's views on elderly social care. The discussions were geared towards acquiring first-hand experience on; challenges encountered by the elderly; how far have the NAP policy statements been implemented to meet the challenges; and what, in the stakeholder's opinion more needs to be done to provide an efficient and effective elderly social care and protection system.

1.5 Scope of Work

The study analysed existing policies and the legal regime on elderly social care in Tanzania by examining the key national policies and strategies on ageing which are the National Strategy for Growth and Reduction of Poverty (I & II), the National Ageing Policy of 2003, other sector policies and national laws relating to the elderly such as health care and pension schemes.

It also examined the social, economic and cultural environment of the elderly including their needs and challenges. It looked at the social divides between informal and formal sectors and the impact presented by those backgrounds. It identified gaps and challenges in policy, law and practice. Informed by the findings to propose for legal recommendations and administrative initiatives and measures for an appropriate regulatory framework, informed by a comparative study on experience from different jurisdictions was made including a review of international and regional instruments for identification of best practice.

CHAPTER TWO

THE CONCEPT AND DEVELOPMENT OF ELDERLY SOCIAL CARE

2.0 The Concept

Elderliness or old age may be defined from a biological as well as a social standpoint. As a biological concept, elderliness is the last stage in the human life cycle and is associated with an average lifespan of 60 years and above, and limited regenerative abilities.⁵ As a social and cultural concept, elderliness may be associated with wisdom, change of roles and an elevated status following life achievements related to age.⁶ The concept of elderly social care emanates from concerns on the challenges associated with old age. As people grow older, their strength and vitality diminishes while different forms of ill health and their frequency increase thereby reducing their ability to satisfy their basic needs and making vulnerable. They need social care and protection.

The fast growing number of elderly people world-wide is a phenomenon referred to as “population ageing”. It is estimated that by the year 2025, the rate of increase in the number of older people in developing countries is going to be 7 to 8 times higher. In some developing countries, such as Tanzania, an increase of between 200% and 300% is expected over a period of only 35 years with the proportion of the very old also increasing in both the industrialized world and developing regions.⁷

2.1 The Development of Elderly Social Care

Social protection mechanisms based on the extended family and community structures which include the provision of a wide range of care and support for the elderly, carers and other disadvantaged groups have long existed as an informal concept in many countries including Tanzania. However, with the increase in population, especially old people, social

⁵ World Health Organisation; Proposed working definition of an older person in Africa for the MDS Project accessed on 14/12/2016 at <http://www.who.int/healthinfo/survey/ageingdefnolder/en/>

⁶ Ibid.

⁷Ibid.

care (in the developed world) became formalized using policies and laws. Formal social security became a government responsibility provided mainly through non-contributory schemes. This shift is attributed to the demise of the feudal system in the early 19th century, and the rise of industrialization in the mid 19th century. The socio-economic changes that introduced mobility in people making them move further from home in search of work brought a decline in the support provided by the family and community. An urbanized population brought about greater social deprivation. Social care in the modern context now encompasses many areas of need, each with a level of specialist services including elderly care. In the poor developing countries like Tanzania, social care was immediately after independence, financed by donor countries and agencies. However, since the 1990s financial assistances from external donors have dwindled tremendously. Amidst conflicting priorities, struggling for limited resources service for the elderly barely make it among the top ten.

2.2 Basic Principles on Elderly Social Care

The United Nations (UN) has played a major role in fighting for the rights and dignity of the aged both directly and indirectly through unceasing campaigns for human rights. The UN General Assembly first recognized the importance of the issue of ageing in its debate initiated by Argentina in 1948 and came up with a proposal for basic principles for older persons. In 1971, the General Assembly prepared a comprehensive report on elderly issues and suggested a guideline for international and national action. In 1989, the UN *Economic and Social Council* as part of preparatory activities for the commemoration of the tenth anniversary of the adoption of the *Vienna International Plan of Action on Ageing* recommended the adoption of the *Principles for Older Persons*.⁸ In 1991, the UN General Assembly adopted eighteen (18) principles organized

⁸ Available at <http://www.un.org/documents/ga/res/45/a45r106.htm> accessed on 22/5/2015.

under five topical issues. Their purpose was to encourage governments to plan for the social inclusion and empowerment of their senior citizens under each issue:⁹

a) Independence

- i) Older persons should have access to adequate food, water, shelter, clothing and health care through the provision of income, family and community support and self-help.
- ii) Older persons should have the opportunity to work or to have access to other income-generating opportunities.
- iii) Older persons should be able to participate in determining when and at what pace withdrawal from the labour force takes place.
- iv) Older persons should have access to appropriate educational and training programmes.
- v) Older persons should be able to live in environments that are safe and adaptable to personal preferences and changing capacities.
- vi) Older persons should be able to reside at home for as long as possible.

b) Participation

- i) Older persons should remain integrated in society, participate actively in the formulation and implementation of policies that directly affect their well-being and share their knowledge and skills with younger generations.
- ii) Older persons should be able to seek and develop opportunities for service to the community and to serve as volunteers in positions appropriate to their interests and capabilities.
- iii) Older persons should be able to form movements or associations of older persons.

⁹ Available at <http://www.un.org/documents/ga/res/46/a46r091.htm> accessed on 22/5/2015.

c) Care

- i) Older persons should benefit from family and community care and protection in accordance with each society's system of cultural values.
- ii) Older persons should have access to health care to help them to maintain or regain the optimum level of physical, mental and emotional well-being and to prevent or delay the onset of illness.
- iii) Older persons should have access to social and legal services to enhance their autonomy, protection and care.
- iv) Older persons should be able to utilize appropriate levels of institutional care providing protection, rehabilitation and social and mental stimulation in a humane and secure environment.
- i) Older persons should be able to enjoy human rights and fundamental freedoms when residing in any shelter, care or treatment facility, including full respect for their dignity, beliefs, needs and privacy and for the right to make decisions about their care and the quality of their lives.

d) Self-fulfillment

- i) Older persons should be able to pursue opportunities for the full development of their potential.
- ii) Older persons should have access to the educational, cultural, spiritual and recreational resources of society.

e) Dignity

- i) Older persons should be able to live in dignity and security and be free of exploitation and physical or mental abuse.
- ii) Older persons should be treated fairly regardless of age, gender, racial or ethnic background, disability or other status, and be valued independently of their economic contribution."

These 18 basic principles have provided a broad framework for action on ageing. Based on them, UN and other general texts highlight common problems faced by the elderly in both developing and developed countries and evaluate intervention measures taken by UN member governments for best practice.

2.3 Key International and Regional Instruments

2.3.1 International

There are various principles on elderly social care that are set out under various binding and non-binding international instruments. Many of these have been elaborated in subsequent international treaties, economic transfers, regional human rights instruments, national constitutions, and other binding laws thereby promoting elderly social care and protection both expressly or by implication.¹⁰ Member states are obliged to implement these principles through key policies and legal framework, followed by deliberate execution interpreted into action under national strategies and guidelines.

2.3.2 The Universal Declaration of Human Rights

The Universal Declaration of Human Rights (UDHR) is a declaration adopted by the United Nations General Assembly on 10th December 1948. The Declaration arose directly from the experience gained from the Second World War and represents the first global expression of what many people believe to be the rights to which all human beings are inherently entitled. For instance Article 25 (i) states:

Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness,

¹⁰ Available at https://en.wikipedia.org/wiki/Universal_Declaration_of_Human_Rights accessed on 08/11/2016.

*disability, widowhood, old age or other lack of livelihood in circumstances beyond his control.*¹¹

2.3.3 The Madrid International Plan of Action on Ageing

In 2002, the UN General Assembly adopted key documents for elderly social care. A Political Declaration and the Madrid International Plan of Action on Ageing (MIPAA) in a conference constituted of participants from 160 governments, inter-governmental institutions and non-governmental organizations.¹² The MIPAA responds to opportunities and challenges of population ageing and how to deal with the increase of older persons. It addresses a wide range of issues concerning the elderly including “social protection, health, urbanization, labour, education, nutrition, and training of carers, infrastructure, and images of ageing.”¹³ The three priority directions outlined in the plan are:¹⁴

- i) older persons and development;
- ii) advancing health and well - being into old age; and
- iii) ensuring enabling and supportive environments.

Governments were advised to implement the MIPAA by mainstreaming ageing and older people's concerns into national development frameworks and poverty eradication strategies; encourage effective partnership between governments, civil societies and the private sector; and make efforts to promote institutional follow up mechanisms as appropriate.

2.3.4 Regional

In 2002, the UN Assembly gave the regional UN Economic Commission the responsibility of translating the MIPAA into regional action plans reflecting among other things, the demographic, economic and cultural specificities of each region to serve as a basis for implementing the

¹¹ Article 25 of the Universal Declaration of Human Rights, 1948.

¹² This document was adopted at the UN Second World Assembly in Madrid in 2002.

¹³ Madrid international Plan of Action on Ageing MIPAA.

¹⁴ *ibid.*

recommendations. The policy framework sets up goals for states to ensure that old people receive proper health care, participate in family, social and economic activities and receive respect from and recognition of their contributions to the society. However, a noted challenge was a lack of information on the elderly in many African countries. It was demanded that steps be taken to collect data on that demographic group. The policy frameworks also recommended that the AU found an Advisory Council on Ageing to monitor, implement, and follow-up on the recommendations in the plan.¹⁵

The concern on old persons and elderly social care was recognised and taken up in Africa under the auspices of the African Union (AU). Like the UN, the AU made great efforts at introducing and adopting a uniform policy known as the African Union Policy Framework and Plan of Action on Ageing (PFPA). This instrument represents the regional response to the challenge of population ageing. This key policy instrument was formulated to guide AU member states in designing, implementing, monitoring and evaluating appropriate and integrated national policies and strategies to address the needs and social care for older people. Tanzania and other African countries need to translate and transpose these policies into a proper legal and regulatory framework for elderly social care.

In Tanzania, social protection systems are divided into two broad categories: a formal system made up of contributory social security schemes characterized by minimal coverage and reasonable effectiveness; and an informal system covering old age and other disadvantaged groups characterized by a large coverage estimated at about 80%, but with minimal effectiveness.¹⁶

¹⁵Available at <http://www.globalaging.org/agingwatch/events/regionals/eca/index.htm> accessed on 4th August, 2016.

¹⁶ Regional Workshop On Ageing And Poverty Country Position Paper - Ageing and Poverty in Tanzania Vice President's Office United Republic of Tanzania Available at http://www.tanzaniagateway.org/docs/Ageing_and_Poverty_in_Tanzania.pdf p.g 2 accessed on 19/12/2016.

2.3.5 The Formal Social Protection System

The formal social protection system in Tanzania is still in its nascent stage of development. Until very recently, it did not cater for the informal sector. It only catered for a segment of those employed in the formal sector- about 3% leaving out the self-employed and those employed by the other smaller employers. Furthermore, even the amount of pension one receives is very little and does not enable the pensioner to maintain his standard of living.

The nascent formal social protection system in Tanzania has three major types of social security systems. The social insurance or contributory system; the public support system or non-contributory system and the social assistance scheme (non-contributory) scheme.

a) Social Insurance

Social insurance is a contributory scheme that operates as a compensatory or savings mechanism involving a fixed amount of contribution from an individual employer and/or employee, or an individual personal contribution. Money contributions are obtained through deductions of employee's salary and/or contributions from the employer or individual personal contributions. The contributions are invested and the returns on the investment, being positive or negative, are credited to members' accounts. On retirement, a member's account is used to provide retirement benefits payable monthly or annually thereby providing regular income without the need for a member to prove whether or not he has other means of income. One can have other income and still get this pension. The contributory scheme is taxable except where it is the only source of income. The benefits are paid to members who have attained a period of reckonable service or some other conditions set out by the scheme in terms of age, period and level of contributions.

This scheme is found in most of the developed world.¹⁷ It is also used in developing countries like Tanzania, Kenya and Uganda. Tanzania uses this kind of contributory programme in social insurance schemes such as NSSF, PPF, PSPF, GEPF and LAPF. Its basic feature is that they provide lump sum benefits accruing from employer and employee contributions and interest. These schemes usually provide defined payments related to insurance benefits against loss of income resulting from age, temporary and permanent disability, and survivorship.

In addition, some social insurance schemes also provide benefits for sickness, maternity and family.¹⁸ Those who enjoy contributory schemes in Tanzania include public and private sector employees; and other segments with income to contribute to the scheme. However, these schemes only cover about 3% of the salaried workers, leaving the majority unprotected.

b) Public Support

The public support scheme is a non-contributory scheme. Unlike the contributory scheme, beneficiaries of the non-contributory scheme contribute to the economy and society through taxes paid in consumption of goods and services which is later rewarded during old age as a regular pension.¹⁹

The non-contributory scheme is a *means test* payment for the elderly according to their inability to meet basic needs for survival or defending themselves against natural calamities.²⁰ Areas of testing include private social insurance records and other means of income. This pension is taxable except where it is the only source of income.²¹ In developing countries, this kind of scheme is increasingly considered by policy makers

¹⁷ Available at http://en.wikipedia.org/wiki/Defined_contribution_plan - Accessed on 16th August, 2016.

¹⁸ Available at mckinnon@ilo.org, sigg@ilo.org - accessed on 15th August, 2016.

¹⁹ Available at <http://financial-dictionary.thefreedictionary.com/Noncontributory+Pension+Planac> Accessed on 15th August, 2016.

²⁰ The National Social Security Policy, Ministry of Labour, Youth Development and Sports, January, 2003 pg. iii.

²¹ Available at <http://www.welfare.ie/en/page/a-retire-or-an-older-persona> Accessed on 4th, August, 2016.

and observers as a feasible mechanism to address the perceived failure of the contributory scheme to effectively reduce poverty. For instance, Lesotho, Namibia and Botswana are countries that provide non-contributory benefits to their elderly citizens. The funds come from the Government budget through tax collection under the Department of Pensions with the direction of the Commissioner of Pensions within the Ministry of Finance and Development Planning.²² In Lesotho, all people aged 70 years and above are entitled to receive this kind of pension of an amount equivalent to Euros 12.50.²³

In Tanzania, this scheme is enjoyed by specified state and political leaders, personnel of the Defence Forces and persons holding certain public offices including Judges, the Attorney-General, the Chief Secretary, the Director General of Intelligence, the Inspector General of Police, the Controller and Auditor General, the Commissioner General of Prisons and the Director-General of Prevention and Combating of Corruption Bureau.²⁴

c) Social Assistance

Social assistance is also a non-contributory scheme which provides benefits to people affected by social risks and are in need and do not have family support for example in instances of natural catastrophe such as floods, earthquakes, and peasants in case of agriculture support or for homeless persons such as beggars.²⁵

d) Cash Transfer Scheme

The Cash Transfer Scheme involves money payments usually provided by the state directly to the qualified people.²⁶ This scheme is likely to be politically attractive because money is not seen to be lost or misused by

²²Devereux, S.(2001) Social Pensions in Namibia and South Africa , IDS Discussion Paper 379, February 2002, Brighton, IDS Available at <https://www.ids.ac.uk/files/dp379.pdf>. Accessed on 18th August, 2016

²³Ibid.

²⁴Section 20 Cap. 371.

²⁵Mchomvu, Tungaraza and Maghimbi/TANZANIA REPORT).

²⁶Each country that uses this scheme has its own criteria for a "qualified person".

the state since it is means tested and therefore not given if not desperately needed. Challenges in administering the scheme include cumbersome process of individual payments. One way to avoid such problems is to provide all money in a lump sum rather than small amounts each month.²⁷

The Ugandan Government with the assistance of the UK's Department for International Development (DFID) and aid organizations such as *HelpAge International* implemented this kind of scheme by formulating a means test programme which provides a monthly stipend of USD 10 payable through state pensions to the country's chronically poor, often times enabling them to buy necessities such as medicine and food.²⁸ Families whose households include an older person receive an additional USD 6.

i) World Universal Pension Scheme

This scheme provides basic pension to the elderly people of a country with no means test for benefits other than citizenship, residence and age. The scheme, implemented by only a few countries, automatically protects all residents in a way that the contributory income related pensions can never do. However, this Report demonstrates that even a developing country can afford this system.²⁹ For instance, the Government of Mauritius which uses this kind of scheme provides to every resident over the age of 60 a flat rate amount as a basic pension.³⁰

Mauritius commenced a *means test* non-contributory scheme in the 1950s and abolished it in 1958. It thereafter adopted the World Universal Pension Scheme. As a consequence, a compulsory contributory scheme was introduced to all workers under the age of 60. The pension was taxable as a source of income so as to re-contribute to the pension

²⁷Available at http://en.wikipedia.org/wiki/Cash_transfers accessed on 5th August, 2016.

²⁸Available at http://en.wikipedia.org/wiki/Cash_transfers accessed on 5th August, 2016.

²⁹Achieving Income Security in the Old Age for All Tanzanians ; A Study into the Feasibility of Universal Social Pension – A study Carried by the Ministry of Labour in Collaboration with the HelpAge International, Available at www.helpage.org Accessed on 15th August, 2016.

³⁰Titmuss and Smith, 1961, pp.89-90 Available at www.un.org/esa/esa03dp32.pdf Accessed on 15th August, 2016.

scheme.³¹ Mauritius hence became a useful lesson to other developing countries of the world.³²

Way back in the 1990s, the Republic of South Africa adopted the World Universal Pension Scheme. The scheme is funded through general taxation and pays fairly generous rate of USD 3 a day. It is means tested on other income of the individual beneficiary and spouse if married, but not to the earning household member.

ii) The Comprehensive Social Security Assistance Scheme

The Comprehensive Social Security Assistance Scheme (CSSA) provides cash assistance to bring the income of needy households up to a prescribed level to enable them meet basic livelihood needs. Payments can be broadly classified into four types, namely:

a. The Social Security Allowance (SSA) Scheme

This scheme comprises of old age allowance and disability allowance.

b. Medical Social Services

Medical social workers provide patients and their families with individual and group counselling, financial aid, housing assistance or referral to other community resources to facilitate their treatment, rehabilitation and re-integration into society.

c. Services for the Elderly

A wide range of community care and support services, including district elderly community centres, neighbourhood elderly centres, social centres for the elderly, day care centres/units for the elderly, enhanced home and community care services, integrated home care services, home help service and support teams for the elderly, are provided to enable elderly persons to stay in the familiar community for as long as possible.³³

³¹Titmuss and Smith, 1961, pp.89-90 Available at www.un.org/esa/esa03dp32.pdf. Accessed on 15th August, 2016.

³²Ibid.

³³Available at http://www.gov.hk/en/about/abouthk/factsheets/docs/social_welfare.pdf. Accessed on 15th August, 2016.

d. *Benefits of Elderly Social Care*

Social care is given to the elderly to ensure that they receive quality care and support with the dignity and respect they deserve to alleviate the array of challenges they face as a result of being old.

Briefly, the elderly social care has the following benefits:

- i. Elimination of discrimination, harassment and victimization of the elderly;
- ii. Promotion of equality of opportunity for the elderly under both formal and informal sector;
- iii. Protection of the elderly at risk from harm;
- iv. Fostering good relations between all groups that need social care;
- v. Prevention of the elderly from losing their independence;
- vi. Creation of measures for the most vulnerable and those with the most complex and long term needs;
- vii. Enhance quality of life for people who need special care and support by:
 - a. Identification of the elderly who need special care and attention;
 - b. Creation and supporting care centres for the elderly;
 - c. Enhancement of public private partnership in addressing elderly social care.

2.4 The Informal Social Protection System

Historically in Tanzania like in most other developing nations, social security was provided by the family and community. A family was a close knit unit which catered for the needs of all its members. The community which was almost synonymous with the family, assisted where the family appeared to be overburdened. The young and able members of the family and community had the responsibility of providing food, shelter,

clothing and protection. This group ensured that the needs of the elderly were met in a manner commensurate with the resources and economic status of the family and community. The elderly were child carers, mediators, advisors, and custodians of customs and traditions.³⁴

It is still often assumed that in Tanzania, the elderly are cared for and protected by their families and recognised and respected by the younger generation; The reality is that the long time tradition of family and community care for the elderly has been undermined by modernization in the form of industrialisation, elitist education, rural urban immigration; and poverty where children who are supposed to look after their elderly parents and relatives thus fail to do so. The traditional extended African family has faltered to the extent of breaking down. The vacuum that has created by this breakdown of the traditional family support system has neither been sufficiently filled by the individual.

2.5 Government Initiatives

Tanzania recognizes and acknowledges that older people face a number of challenges which include lack of or inadequate source of income, poor or non-existent health care services, and non-participation in decisions affecting national development.³⁵ The Government further recognizes that despite these challenges, older people are a new power for national development and therefore every effort needs to be taken to ensure that they are recognized and provided with equal opportunities to participate in development activities.

In May 2010, it was found out that, there exists in Tanzania, an enormous gap in the area of old age income security as only 6.5 percent of the workforce is covered by formal social security.³⁶ With the informal sector

³⁴UTAFITI (New Series) Special Issue, Vol.4, 1998-2001:179-206. Social Insecurity of the Elderly People in Tanzania Today: A theoretical Framework by J. Abunuwasi L. Mwami.

³⁵Preamble of the National Ageing Policy, 2003.

³⁶ Achieving income security in old age for all Tanzanians: A study into the feasibility of a universal social pension pg. 7.

growing within the Tanzania economy, this gap is set to widen.³⁷ Worse still, the current formal social security schemes financed by the state as well as the non-governmental non-contributory income security systems are saddled with constraints. These gaps call for action. Government needs to lay down plans for effective implementation actions in the areas highlighted under the basic principles for older persons. Benchmarking the Tanzanian elderly care situation against a review of current thinking and global trends highlights the fact that most of the elderly in Tanzania lack adequate social care and support rendering them poor and vulnerable.

Older people engaged in the informal sector, including agriculture are the most vulnerable in this regard. In order to reverse the trend, the NAP advocates the inclusion of the informal sector in the National Social Security Fund. Local government authorities and non-governmental organisations are directed to encourage older people in the informal sector to save in community banks and primary cooperatives. Ideally, this has to be done before the retirement age is reached, at times within the life cycle when people are very productive. However, as we will learn from the field research, the traditional labour pool has been destabilised by modernisation and education systems. Increasing the elderly are the only active producers and supporters of the younger generation. Productions is basically for subsistence only.

Efforts to redress the piteous situation have been taken through the formulation of policies and mainstreaming such policies into sector initiatives. As a follow-up on the MIPAA and PFPA, a regional workshop on ageing and poverty was held to address the integration of ageing into national poverty strategies. The following issues were identified to be of concern to the elderly in Tanzania in light of the MIPAA guidelines, and if solved, would elevate their plight:³⁸

³⁷ Ibid.

³⁸ Ageing and Poverty in Tanzania, Regional Workshop on Ageing and Poverty, Country Position Paper, Pg. 9 and 10.

- a) Majority of the elderly especially in rural areas cannot afford to pay for health services.
- b) Care for the elderly should be provided within families as there are no plans for institutionalizing old age care.
- c) To achieve participation as a right, the elderly will be enabled to participate in formulating policies and strategies for national development.
- d) Older people engaged in the informal sector should be included in the existing social security schemes.
- e) Older people, in view of societal change, should have access to education so as to face challenges emanating from changing technology.
- f) Older women concerns- the Government in collaboration with other stakeholders will work to educate people in order to eliminate old traditions that do not favour women and also protect and defend older women suspected of witchcraft practices.
- g) The Government is committed to assist and cooperate fully with NGOs in helping older people.

CHAPTER THREE

POLICY REVIEW ON ELDERLY SOCIAL CARE

3.0 Introduction

As early as independence in 1961, poverty, ignorance and disease were observed to pose great obstacles to national development. Many strategic actions were introduced to eradicate or reduce their negative impact including programmes in education,³⁹ health,⁴⁰ water supply, roads and transportation and appropriate technologies in agriculture. These programmes and other initiatives seeking to mitigate the afflictions caused by poverty, ignorance and disease slowly evolved thereby developing policies on elderly social care as the elderly are the most afflicted section of the society.

3.1 Policy Development on Elderly Social Care in Tanzania (1961-2016)

Historically, social protection system anchored in community organization that ensured provision of basic social and economic services and improving the welfare of the society has been the traditional functions of local government. Pre- colonial and colonial native authorities were responsible for the provision of care and support services to vulnerable groups including the elderly.

At independence, the local government continued to provide support services as in accordance with the Local Government Ordinance⁴¹. This spirit was carried by the Local Government (District Authorities) Act⁴² and Local Government (Urban Authorities) Act.⁴³ The two laws impose to local government authorities permissible responsibilities of providing care, support services and maintenance of the well-being of vulnerable populations within their areas of jurisdictions.

³⁹ Adult education and primary education for all.

⁴⁰ Immunization, maternal health care.

⁴¹ Cap 555 of 1955.

⁴² Cap. 287.

⁴³ Cap. 288.

However, the increases of elderly population, conflicting priorities and scarce resources have limited the provision of care and support services to elderly at a minimal priority. The mere fact that local government are responsible for the social economic development and well-being of its inhabitants and the National Ageing Policy tasked the local government to take care of the elderly, ⁴⁴ it would be better for the law to specifically task the local government to provide social care for the elderly.

Generally, there have been various national development policies that among other things address elderly social care as highlighted below:

3.1.1 The National Vision of Independence 1961

Tanzania's Vision of Independence, sought to achieve the basic human right goal of national independence and fully liberate Tanzania of all external and internal enemies. At independence in 1961, three internal enemies were quickly identified: poverty, ignorance and disease.⁴⁵ They were declared enemies of development and war was declared on them. Since then, eradication of the three is an underlying purpose in all national policies.

3.1.2 The Arusha Declaration 1967

The Arusha Declaration articulated a philosophy of socialism and self-reliance for socio-economic liberation as a long-term national goal for Tanzanians. The Arusha Declaration stipulated among other things that;

*...the only people who live on the work of others, and who have the right to be dependent upon their fellows, are small children, **people who are too old to support themselves**, the crippled, and those whom the state at any time cannot provide with opportunities to work for their living.⁴⁶*

⁴⁴ National Ageing Policy, Pg. 17.

⁴⁵ Maendeleo Dialogue Democracy in Tanzania Issue No. VI, January, 2010 - Accessed on 19th January at www.kas.de/wf/doc/kas.

⁴⁶ The Arusha Declaration, 1967, pg. 3.

In the implementation of the above policy statement, the Government included elderly social services as a new area of focus in the department of social welfare in early 1970s.⁴⁷

3.1.3 The Tanzania Development Vision, 2025

In 1999 Tanzania formulated Tanzania Development Vision, 2025 which among others aimed at achieving a high quality standard of living for its people. Strategies for the attainment of this vision include the specific goals for the elderly which are the access to quality primary health care, food self-sufficiency and security.⁴⁸

The Tanzania Five Years Development Plan launched in June, 2012 is a policy framework document which supports the implementation of the Development Vision 2025. A component in the implementation of the Five Year Development Plan (2012-2017) includes the improvement of social welfare services by the Government, through the Ministry responsible for social welfare by constructing and rehabilitating homes for the elderly at all levels.⁴⁹

Other key policy framework documents are the National Strategy for Growth and Reduction of Poverty I & II developed to help achieve economic growth and reduce poverty. One of its key aims was to improve the standard of living and social welfare of the people of Tanzania. The NSGRP was a vehicle for realizing Tanzania's Development Vision 2025, the Millennium Development Goals (MDGs) and the aspirations of the ruling Party's Election Manifesto.

NSGRP I & II were built around three main clusters of strategies which supported and built on each other: *The Economic Growth and the*

⁴⁷Idara ya Ustawi wa Jamii – Taarifa ya Mafanikio Yaliyopatikana Miaka Hamsini liliyopita (1961 – 2011) na Mitazamo ya Miaka Hamsini Iijayo (2011 – 2016) pg. 5.

⁴⁸Ibid pg. 12.

⁴⁹FYDP, 2012 Strategic Interventions and Key Indicators for Macro-economic Performance, Intervention 12 Social Welfare, pg. 160.

Reduction of Income Poverty, Improved Quality of Life and Social Well Being were built on the foundation of *Good Governance and Accountability*. Thus, the three clusters ensured that development initiatives were efficient, effective and harmonised and that everyone benefited from the wealth that was created. However, specific issues on the elderly can be traced under Cluster two which deals with activities that promote *Improved Quality of Life and Social Well-being*.

3.1.4 National Ageing Policy, 2003

This is the key policy focusing on elderly social care in Tanzania. The elderly are categorized in special groups of retirees, peasants, herdsman and fishermen living in rural and urban areas. It also makes statements on young people who need to prepare themselves for responsible old age.⁵⁰ Its formulation is a follow-up on the MIPAA initiatives. The policy reflects many of the MIPAA and AU PFFA recommendations and takes into account the basic international principles of older people's rights. ***Independence, participation, care, self- fulfilment and dignity***.⁵¹ It has accommodated the needs of the elderly for a fulfilling life in the 21st century.

a) Objectives of the Policy

It has both general and specific objectives:⁵² the general objective is to ensure that older people are recognized, provided with basic services and accorded the opportunity to fully participate in the daily life of the community.

The specific objectives seek: to recognize older people as a resource; to create a conducive environment for the provision of basic services to older people; to allocate resources for older people's income generation activities and their welfare; to empower families achieve sustained

⁵⁰ National Ageing Policy pg.7.

⁵¹ Ibid pg. 9.

⁵² Ibid.

support to older people; to initiate and sustain programmes that provide older people with the opportunity to participate in economic development initiatives; to prepare strategies and programmes geared towards elimination of negative attitudes and age discrimination; to enact laws that promote and protect the welfare of older people; to ensure that older people receive basic health services; and to initiate programmes that will provide an opportunity for older people to sustain good customs and traditions for the youth in the society.

b) Policy Statements

Like other national policies, the National Ageing Policy expresses Government intention and direction towards achieving the goals of independence; participation; care; self-fulfilment; and dignity in elderly social care by the policy statements. It is these statements which can be translated into law to form a legal framework for their realisation:⁵³

i) Health Services

The policy highlights that frequent and prolonged diseases are common in many older people which calls for free and specialised access health care. In line with this statement, the Government in collaboration with other stakeholders will ensure that 60 years is determined as the standard age of the elderly and the upper limit of the cost sharing policy. The Government will also ensure that special training for handling older people by health personnel is conducted and that there is established a mechanism for awareness creation of the HIV/AIDS pandemic, care of its victims and a follow up on older people's health.

ii) Care of Older People

The policy states that the family remains the basic institution of care and support for older people. The Government intends to mobilise and sensitise families and society to care and support older people in their

⁵³National Ageing Policy pg.9-16.

respective communities. The policy further states that local government authorities and voluntary agencies will continue to provide institutional care to those who have no one to care for them.

iii) Older Peoples' Loan Fund

The policy urges that in order to curb poverty in older people, the government in collaboration with other stakeholders will establish a revolving loan fund.

iv) Participation of Older People

The policy realises that older people are an important resource that needs to be tapped for development of the nation. The policy further states that as citizens, older people have the right to participate fully in the determination of individual issues as well as those of the nation. To fulfil this, the Government will put in place a mechanism to ensure older people participate in the planning and implementation of development programmes at various government levels. Furthermore, the policy highlights that the existing organizations and groups catering for older people's welfare will be given recognition and formation of such new organizations and groups will be encouraged.

v) Income Generation

The policy states that older people are among the poorest in the society and the majority of them, besides being skilled, knowledgeable and experienced, go into retirement ill-prepared. The policy further highlights that in dealing with the situation, sensitization and mobilization of income generating activities by older people individually or in groups are required. In addition to this, local government authorities and other voluntary agencies will assist these groups or even individuals in income generating activities.

vi) Social Security

The National Ageing Policy, 2003 recognizes the shortcomings of the National Social Security Policy, 2003 where the existing social security schemes accommodate older people who were formerly employed in the formal sector while leaving out those in the informal sector.

The Policy states that the Government will rectify this by establishing a mechanism which ensures that social security institutions extend their services to include the informal sector. The policy further highlights that, local government authorities and voluntary agencies will sensitize older people who are in the informal sector to save through primary cooperative societies, the Savings and Credit Cooperative Societies (SACCOS) or Village Community Banks (VICOBA). In the recent past, initiatives have been accomplished through the amendment of 2012⁵⁴ whereby social security funds have allowed people from informal sector to join in. This opportunity however, can only be utilized by adults in the informal sector who are capable of making contributions. Presently, it will not cover the elderly and is equally not useful to the adults in the informal sector that cannot join the schemes because of lack of surplus money income.

vii) Basic Needs

The policy stipulates that the majority of the elderly live in destitution because of low income. To address this situation, local government authorities in collaboration with voluntary agencies will conduct a basic needs assessment for the provision of direct assistance to the needy elderly. Additionally, families and the community will be mobilized to participate in income generating activities to assist the elderly.

⁵⁴ Social Security Laws (Amendments) Act, 2012.

viii) Education

The policy stipulates that advancements in science and technology have brought changes in both human attitude and behaviour. It is therefore, equally important for the community to preserve its culture and the elderly to live abreast with time to enable them cope with current society demands. In order to meet these challenges, older people will be sensitized on their rights and responsibilities in the family and community. Furthermore, a mechanism will be established of training programmes for adult education and on relevant income generating activities. This will also include setting up a mechanism to inculcate young people into good customs and traditions.

ix) Older Women and Incompatible Traditions

The policy recognises bad customs against women in the community such as denial of property rights need to be addressed by the Government in collaboration with stakeholders. This can be done through sensitization of the public on challenges resulting from such practices. The Policy further states that the Government in cooperation with local government authorities and voluntary agencies will identify and protect elderly women from abuse including on misconceived beliefs connecting them to the practice of witchcraft rendering them vulnerable to assault and murder.

x) Older Women with Disabilities

The policy urges that in order to improve the living conditions of older women with disabilities, a mechanism will be set in place to identify and provide their basic needs and involve them in income generating activities in their respective communities.

xi) Specific Law on Older People

The policy admits that there is no specific law governing older people's rights and their development. It further states that the Government will enact a specific law for older people.

xii) Preparation of the Youth for Responsible Old Age

The policy states that ageing is a cross-cutting issue. In this case the Government in collaboration with stakeholders will sensitize the society on the preparation of the youth for a responsible old age. The policy states that there will be established capacity building programmes that includes ageing in the civics syllabus and the sensitization of the society and youth on old age related problems.

xiii) Older Peoples' Organisations (care NGOs)

The policy articulates that the registration of voluntary agencies which render services to older people is done by a non-sector ministry having no mandate to monitor their activities. The policy acknowledges that the Government, in response to this, will empower a sector ministry to supervise and coordinate services of these agencies and deal with their registration and licensing.

xiv) Older Peoples' Councils

In ensuring that older people participate in decision making of their affairs and those of the community, Older People's Councils will be established at village/mtaa, ward, district, region and national levels as their advice and decisions are important for national development.

xv) Voluntary Agencies' Participation

The policy recognises that the Government values contribution of voluntary agencies in providing services to older people and will continue to collaborate with these agencies for the betterment of the lives of older people. According to the policy, the above key policy statements will be implemented by various stakeholders since ageing is a cross cutting issue. The implementers are the central government, local government authorities, voluntary agencies, villages and families.

3.1.5 Sectoral Policies

Besides the national development policies and the key policy on elderly social care, there are several sectoral policies related to elderly social care as discussed below:

3.1.5.1 The National Food and Nutrition Policy, 1992

The objectives of the Policy are to prepare a viable system for coordinating, balancing and guiding food and nutrition activities which are being undertaken by various sectors, to provide guidelines and techniques to combat food and nutrition problems in the country and to enable each sector to play its role, to rectify the state of food availability and formulate proper strategies and techniques to ensure the availability and utilization of food in accordance with nutritional requirements and to involve all sectors which deal with issues pertaining to food and nutrition in realizing and strengthening the methods of improving the nutritional situation.⁵⁵

Other objectives of the Policy are to incorporate food and nutrition considerations in development plans and to allocate available resources towards solving the problems of food and nutrition at all levels, to use nutrition as one of the indicators in assessing social development achievements of economic and health improvement projects and to formulate and develop research which will facilitate solving of food and nutrition problems.⁵⁶

The Policy emphasizes that in order to ensure food security in the country, societies must have good traditions and customs and a sound economic base to ensure food availability.

⁵⁵ The National Food and Nutrition Policy, pg.13.

⁵⁶ The National Food and Nutrition Policy, pg.13-14.

The policy recognizes five special groups which need more attention than others on food and nutrition. One of those special groups is the Elderly people. The policy further states that the Elderly people very often suffer from malnutrition problems due to loss of appetite as well as inability to obtain their essential necessities such as sufficient food. Therefore, in order to deal with the problem of malnutrition among the elderly, the Policy insists to take the following into consideration

- (i) Strengthen and protect good traditions and customs which emphasize care for the elderly; and
- (ii) Establish specific supportive systems for taking care of elderly particularly those lacking family support.

The policy assigns roles to various governmental sectors in order to implement the policy. The Ministry responsible for Health among others is assigned to plan and provide health and nutrition education in the Country, focusing on special groups such as children, pregnant and lactating women, elderly people, sick people and groups living in institutions such as prisons, hospitals, schools and colleges. The Ministry is also accountable to encourage care for special groups in the country.

3.1.5.2 The National Human Settlement Development Policy, 2000

One of the objectives of the National Human Settlement Development Policy, 2000 is to ensure that serviced land is available for shelter and human settlements development in general in all sections of the community including women, youth, the elderly, disabled and disadvantaged.⁵⁷

The Policy further guarantees to facilitate implementation of rural intergraded programmes that enhance rural economic activities. The

⁵⁷ The National Human Settlement Development Policy 2000, para 3.2 pg.21.

programme aimed at assisting rural families to construct and improve their houses⁵⁸.

The Policy also seeks to ensure that the vulnerable groups including the elderly are assisted by the Government in constructing houses through setting a borrowing mechanism that will enable them to access housing loans and mortgage facilities.⁵⁹

3.1.5.3 The National Social Security Policy, 2003

The general objective of the National Social Security Policy, 2003 is to ensure that every citizen is protected against economic and social distress resulting from substantial loss in income due to various contingencies. It also specifically seeks to ensure that the elderly are recognized, provided with basic social services and accorded the opportunity to fully participate in the daily life of the community by integrating them into the national poverty strategies. The policy is expected to achieve the following outcomes:⁶⁰

- i) widen the scope and coverage of social security services to all citizens;⁶¹
- ii) harmonize the country's social security schemes in order to eliminate fragmentation;
- iii) rationalize contribution rates and benefit structures;
- iv) reduce poverty through improved quality and quantity of benefits offered; and
- v) institute a mechanism for good governance and sustainability of social security institution.

3.1.5.4 The National Health Policy, 2007

In 2007, the Ministry responsible for health reviewed the health policy where the elderly are recognized as a vulnerable group and the

⁵⁸ Ibid para pg. 43.

⁵⁹ Ibid para 4.2.1.2 (v) pg.38.

⁶⁰ The National Social Security Policy 2003 pg. 4.

⁶¹ The National Social Security Policy 2003 Policy statements at pg. 14.

Government is obliged to give exemptions on their medical services.⁶² Although this policy statement is implemented through the cost sharing policy in most health care facilities in Tanzania, the biggest challenges are poor administrative structures and procedures, unavailability of proper medical services and medication and bureaucratic hindrances.

Through the National Ageing Policy 2003, the Government committed itself to improve the health status of the elderly by revising the Cost Sharing Policy and adjusting the criteria for the determination of 60 years as old age, conducting special training for handling the elderly by health personnel, establishing a mechanism for monitoring elderly people's health, creating awareness in HIV and AIDS pandemic in the elderly, and sensitizing them and the public at large, on old age health related problems.⁶³

The Government, through the NSGRP I 2005, also planned to provide health care facilities within 5 km of every household and have 100% of eligible elderly people provided with free health care and attended by specialized medical personnel by 2010.⁶⁴ This has not been achieved. It has been noted that by 2007, only 15% of the elderly had been able to access free health services. NSGRP II which, targets to, *inter alia*, increasing access to quality public services by removing access barriers for vulnerable groups⁶⁵ and providing elderly people with identity cards to allow them access basic social services.⁶⁶

3.1.5.5 The HIV/AIDS Policy, 2001

This policy aims to provide a framework for leadership and coordination of the national multi-sectoral responses to the HIV/AIDS pandemic. This includes among others, protecting and supporting different vulnerable

⁶² For Example: The Policy directs the Government to provide free medical care to people aged 60 and above who cannot afford to pay and encourage cost sharing.

⁶³The National Health Policy, 2007 Par 3.1 at pg. 9.

⁶⁴Cluster Iii Goal 2 operational Target 5.4 and 5.5.

⁶⁵MKUKUTA II cluster strategy D.4.

⁶⁶National Strategy for Growth and Reduction of Poverty (MKUKUTA) 2005 Cluster Strategy D.2.

groups including the elderly. It emphasises on the provision of counselling and other social support services for PLHIVs and their families, and upon death, their survivors who include the elderly.

3.1.5.6 National Policy on Disability, 2004

The National Policy on Disability, 2004 was formulated in order to recognize and improve service delivery for disabled persons, including elderly persons with disabilities.⁶⁷ This policy seeks to ensure that people with disability have an equal right to receive basic needs from the society⁶⁸ and seeks to provide a framework and guidelines for integration of population variables in the development process. The elderly are among the special groups identified by the policy that need special programmes to facilitate their full participation in socio-economic development.

The policy therefore directs that, the Government through local government authorities in collaboration with non-government organizations shall provide institutional care to eligible people with disabilities.⁶⁹ The policy states further that, severe disabling conditions require all round care, especially disabled elderly as they put a lot of strain on relatives.

3.1.5.7 Tanzania Social Action Fund (TASAF)

Tanzania Social Action Fund (TASAF) was initiated in 2000 by the Government as one of its initiatives on poverty reduction anchored to poverty reduction strategies developed over time. The main focus of the First Phase of TASAF (2000-2005) aimed at the reduction of poverty by improving the social and economic services in key sectors of education, health, economic infrastructure and water with emphasis on protection of vulnerable groups both in rural and urban areas.

⁶⁷ National Policy on Disability, pg. 11.

⁶⁸ National Policy on Disability .

⁶⁹ National Policy on Disability pg.18.

The Second Phase of TASAF (2005-2013) built on MDGs and NSGRP to assist meeting the targets by 2010 for MKUKUTA and 2015 for MDGs. The focus of the second phase was on: addressing lack or shortage of social services, income poverty in rural and urban areas and capacity enhancement of beneficiaries and institutions supporting targeted communities and households.

The Third Phase of TASAF 2013 -2018 aimed at consolidating impressive achievement of TASAFII using community-driven development approach to facilitate implementation of public works, income generating activities for poor and vulnerable groups. TASAF-III objectives will be achieved through the implementation of among others, the establishment of a National Safety Net incorporating transfers linked to participation in public works and adherence to conditionalities.

3.1.5.8 National Economic Empowerment Policy, 2004

The National Economic Empowerment Policy is intended to address all economic empowerment needs of the individual citizens of Tanzania and local companies in which Tanzania citizens hold not less than fifty percent of the shares. The policy takes on board farmers, livestock keepers, fishermen, employees, traders as well as other groups of individuals in various economic activities. The policy puts in place the general guidelines for the formulation of strategies to be used by respective sectors depending on the prevailing circumstances. In this respect, each sector is enjoined to come up with concrete implementation strategies.⁷⁰

3.2. Analysis of Elderly Social Care Policies

Generally, policies need to be transposed into legislation in order to facilitate the implementation and enforcement of intended objectives and goals. The National Ageing Policy, 2003 incorporated a wide range of government commitments which are designed to take care of the

⁷⁰ The National Economic Empowerment Policy, 2004 at pg.3.

elderly and if implemented, would improve the provision of their basic needs and services. This would consequently, contribute to poverty reduction.

However, to date, there is no legal framework for the implementation of the policy, except on social security care. The Government admitted this fact and made a commitment through the National Ageing Policy of its intention to rectify the *lacuna* by enacting a law to that effect.⁷¹ There is a similar commitment in the National Social Security Policy to create legal framework to extend coverage to the informal sector.⁷²

The Government is yet to establish the promised legal framework. At the same time, the Social Security Laws (Amendment) Act, 2013, opened doors for people in the informal sector to join social security schemes by making contributions. However, the majority among the elderly in the informal sector cannot afford to make any contributions. The opportunity can only be utilized by a few, leaving out a greater number of the elderly.

3.2.1 Lack of Coordination of Policy Implementation

Apart from the National Ageing Policy, there are also other sectoral policies implemented under different Ministries, namely, the HIV and AIDS Policy, 2001; the National Social Security Policy, 2003; the National Policy on Disability, 2004 and the National Health Policy, 2007 that in one way or another address issues related to elderly social care. However, there is lack of an appropriate national mechanism for co-ordinating and monitoring implementation of the policies.

According to the National Ageing Policy, the central government took upon itself the mandate to supervise and coordinate social care services provided by stakeholders to the elderly. However, this can hardly be achieved when the ministry responsible for social welfare has no legal

⁷¹The National Ageing Policy, pg. 9.

⁷²Ibid pg. 14.

mandate to do so. Worse still, other ministries, involved in elderly social care issues have no legal obligation to report the implementation status to the Ministry responsible for social welfare or, indeed, to any such other office. As a result, it has become difficult to monitor and evaluate implementation of the various policy statements concerning elderly social care.

3.2.2 Challenges in Securing Health Services by the Elderly

The National Ageing Policy acknowledges the challenges faced by the elderly. These include cumbersome procedures, need for proof of identity, accessibility, limited health services, shortage of, and expensive medicines and lack of medical staff experienced in handling elderly sick persons.⁷³

3.2.3 Limited Coverage of Social Security

The reforms made under the National Social Security laws intended to accommodate the informal sector including those in agricultural, mining, fishing and small businesses. However, the majority of the elderly persons in the informal sector in Tanzania cannot access the social security services due to many factors including inability to contribute, awareness and proximity to offices of social security schemes. This fact has impacted on the enjoyment of the elderly right to health and to adequate standard of living. Some of the existing state-financed and non-governmental non-contributory income security schemes for the elderly are extremely few and are saddled with a range of constraints relating to scalability. In the advent of mobile money transfer deposit and payment systems, this service could have attained. However, the elderly are not acquainted with the operation of services-mobile phones are to this group mostly for telephony services. Probably creating the head for manned services for such at community centres.

⁷³Ms Teresa Minja of Tanzania Social Protection Network. The Right to Health; in conversation with the Elderly People, 2nd August, 2011 Presented to the Second Working Session of open ended Working Group on Ageing.

3.2.4 Enactment of Specific Legislation on Elderly Social Care

In both the National Ageing Policy and the National Social Security Policy, there are commitments towards enacting a specific legislation on elderly social care. However, these policy statements have not been implemented.

3.2.5 Free and Accessible Health Services

The National Health Policy ensures provision of free and accessible health services to the elderly. However, in practice many elderly are still denied free health services and health facilities are not found within 5 km of every household.⁷⁴

The Government planned to provide health care facilities within 5km of every household and have 100% of eligible elderly people provided with free health care and attended by specialized medical personnel by 2010.⁷⁵ At the same time, NSGRP II, targeted, among others to increase access to quality public services by removing access barriers for vulnerable groups⁷⁶ and provide the elderly with identity cards to allow them access basic social services.⁷⁷ To date, most of the elderly have not been provided with identity cards to facilitate access to such services.

3.2.6 Differences in Benefits Granted under the Social Security Schemes

The National Social Security Policy took into consideration fragmentation of the social security system with respect to different legislation and designs of the schemes; lack of minimum standards to guide social security operations and inadequate number and quality of benefits of most schemes. The issue to be addressed here is the establishment of a minimum number of benefits indexed to current levels of contributor's earnings. The situation has been rectified through enactment of the Social

⁷⁴ The National Strategy for Growth and Reduction of Poverty (MKUKUTA I), 2005.

⁷⁵ Cluster iii Goals 2, Operational Target 5.4 and 5.5 respectively.

⁷⁶ National Strategy for Growth and Reduction of Poverty (MKUKUTA) 2005, Cluster Strategy D.2.

⁷⁷ Ibid.

Security Regulatory Authority, 2008,⁷⁸ the Social Security Schemes (Pension Benefits Harmonization) Rules of 2014 and the Social Security Schemes Inter-operability Guidelines of 2014.

3.2.7 Portability of Social Security Benefits

There is no proper coordination and communication when an employee shifts from one scheme to another. The Government has recognized that gap and, in the National Social Security Policy statement it seeks to put in place a legal mechanism for portability of benefits.

Most of the social security laws have not implemented portability requirement except for the law establishing the National Health Insurance Fund.⁷⁹ The situation has recently been rectified through the enactment of the Social Security Regulatory Authority Act, 2008,⁸⁰ and promulgation of the Social Security Schemes (Pension Benefits Harmonization) Rules of 2014 and the Social Security Schemes Inter-operability Guidelines of 2014.

3.2.8 Reciprocal Agreements for Transfer of Social Security Benefits

The Government expressed concern in the National Social Security Policy by putting in place a legal framework for the transfer of benefits across different countries to wade-off fears for members losing their rights or opportunity to qualify for better benefits.⁸¹ This policy statement however, has not been implemented as there is no initiative that has taken on the matter.

3.2.9 Sensitization and Adult Education

The National Ageing Policy statement made a commitment that the elderly will be sensitized on their rights and responsibilities in the family and community. In Tanzania, adult education is no longer conducted. Sensitization is conducted through voluntary agencies and the media. Moreover while at independence ignorance was premised on illiteracy-

⁷⁸ Act No. 8 of 2008.

⁷⁹ Section 3, National Health Insurance Fund Act, 2002.

⁸⁰ Act No. 8 of 2008.

⁸¹ National Social Security Policy pg. 17.

efforts being but on educating people to read and write, the current and emerging illiteracy relates to failure to use or operate digitalized handsets- the new means of access to finance and other services. The elderly are highly marginalized.

3.2.10 Elderly Women and Incompatible Traditions

The policy statement given in the National Ageing Policy covers women who are being killed on suspicion of conducting witchcraft, and those denied the right to property and inheritance. The Government has committed to collaborate with stakeholders to sensitize the public in addressing the challenges resulting from repugnant traditions.

In addition to that, the Government is committed to collaborate with local government authorities and voluntary agencies to identify and protect older women suspected of witchcraft. There is a need to conduct a review of the implementation strategy with a view to evaluate the success, failure and underlying causes.

3.2.11 Preparation of Youth for a Responsible Old Age

The National Ageing Policy states that the Government in collaboration with stakeholders will sensitize the society and the youth in particular on the stages and challenges of old age. They will educate and establish capacity building programmes for preparation of the youth for responsible age and ageing by including the programme in the education Curriculum – Civics.

However, this statement focuses on the youth of 15 –35 years. Preparation for responsible old age should consider also adults of and between 36 – 60 years. So far, such sensitization is done through the Department of Youth Development within the Ministry responsible for youth but there is no information about other stakeholders. The challenge calls for more and wider sustainable efforts at all levels.

The National Ageing Policy statement pointed out that the government will set up a mechanism whereby registration, supervision and coordination of elderly service providers will be done by the sector Ministry. However, the registration is still managed by the Ministry responsible for home affairs instead of the Ministry responsible for social welfare. Moreover, as observed above the issue concerned go beyond mere placement of the registration function.

3.9.12 Older People's Councils

The Government is committed under the National Ageing Policy to establish Older Peoples' Councils. The information available is that these councils are yet to be established at village/mtaa, ward, district, region and national levels.⁸²

3.9.13 Elderly Statistics

The National Ageing Policy spelt out services that need to be provided to the elderly but is silent about elderly statistics. These services can only be planned and offered efficiently and effectively if there are clear statistics and proper assessment of elderly basic needs.

⁸² National Ageing Policy Para 3.14 pg. 16.

CHAPTER FOUR

LEGAL FRAMEWORK ON ELDERLY SOCIAL CARE

4.0 Introduction

The National Ageing Policy and National Social Security Policy emphasize the need to create a specific legal framework to govern elderly social care in both the formal and informal sectors. However, these policy statements are yet to be translated into law. Absence of a specific legal framework impedes access to services otherwise said to be put in place by Government to cater for this age group.

An appropriate and specific legal framework on elderly social care would enhance actual access and enable the elderly to realise the fundamental rights to independence, participation, care, self-fulfilment, dignity and protection thereby ensuring the empowerment and social inclusion as a fulfilment and realisation of the national duty to care for the elderly as enshrined in the Constitution .

4.1 Analysis of Laws

The issue of older people is generally addressed in scattered and uncoordinated statutes, but in particular under different social security laws covering both formal and informal sectors. The purpose of this analysis is to find out whether these laws adequately cover elderly social care in line with the policy statements.

4.1.1 The Constitution of the United Republic of Tanzania, 1977

The Constitution of the United Republic of Tanzania recognizes that Tanzania is a state which adheres to the principle of democracy and social justice⁸³ as part of its fundamental objectives and directive principles of State Policy. The objectives, underpinned by the desire to

⁸³Constitution of the United Republic of Tanzania, 1977 at Art. 8(1) as amended by Act No. 15 of 1984 Art. 6.

create a socialist society specifically refers to elements of social security and states that;

*The state authority shall make appropriate provisions for the realisation of a person's right to work, to self-education and social welfare at times of **old age**, sickness or disability and in other cases of incapacity...⁸⁴[**Emphasis added**].*

However, according to the Constitution, the objective and principle stated above are not enforceable in any court of law. It remains only as a social ideal. The Constitution provides as follows;

The provisions of this Part of this Chapter are not enforceable by any court. No court shall be competent to determine the question whether or not any action or omission by any person or any court, or any law or judgment complies with the provisions of this Chapter.⁸⁵

In Tanzania, therefore, social security rights are recognized as fundamental rights in the Constitution. However, they cannot be enforced as a matter of right. Under the constitutional review undertaken in 2014/15 elderly issues are provided for under Article 58 of the Proposed Constitution. The article simply translated in English language provides that:

The state shall provide and put in place arrangements to ensure provision to the elderly of the following rights:

- a) to participate in the community social and development activities.*
- b) self actualization, progress and employment to the best of his/her ability,*
- c) to provide with adequate health care services,*

⁸⁴Article. 11 (1) Constitution of the United Republic of Tanzania, 1977.

⁸⁵Ibid Article 7(2).

- d) *to protect against exploitation, abuse Including torture and death,*
- e) *to provide for infrastructure and better enabling environment for the elderly to move freely to any destination by public transport of their choice and to use/access facilities at affordable cost, and*
- f) *to get all basic needs from the family, community and when necessary from the state authority.*

Under the proposed Constitution, the duty for taking care, including protection of the elderly is left to the family and the community in line with the National Ageing Policy.

Tanzania has no specific law on elderly social care except the laws establishing the various social security schemes which originally accommodated only members from the formal sector and recently started accommodating those from the informal sector.

4.1.2 The Public Service Retirement Benefits Act, Cap. 371

The main objective of the Act is to establish the Public Service Pension Scheme, to provide for contributions and payment of pensions, gratuities and other benefits in respect of the service of officers in the Government.⁸⁶ It applies to all employees of the Government and executive agencies.

Based on the 2012 amendment⁸⁷ the Act has widened the scope to include informal and self-employed persons. The Act provides for the following benefits; pensions on voluntary retirement upon attaining 55 years or compulsory retirement at 60 years the beneficiary receives pension until death.⁸⁸ Other benefits include; death gratuity, survivors sickness invalidity, funeral and withdrawals because of marriage,

⁸⁶ Cap. 371.

⁸⁷ The Social Security Laws(Amendments), Act No.5 of 2012.

⁸⁸ Section 9, 16 & 17 of the Public Service Retirement Benefits Act Cap. 371.

maternity or emigration or unemployment.⁸⁹ The Act covers the elderly in both formal and informal sectors hence it is in line with the National Ageing Policy 2003.

4.1.3 The Political Service Retirement Benefits Act, Cap. 255

This Act provides for the granting of benefits and services to leaders upon cessation of service in a political office charged out of the Consolidated Fund.⁹⁰ The Act covers the following political leaders; former Presidents; former Vice-Presidents; former Prime Ministers; former Ministers and Deputy Ministers; former Speakers; former Deputy Speakers; former Members of Parliament; former Regional Commissioners and former District Commissioners⁹¹

The law covers each of the above political leaders who have completed the term of service or terminated services by way of cessation, abolition, invalidity and death while in office according to the Constitution or any other law.⁹² Benefits that are covered under this law are of five categories; pensions, gratuities, survivorship, winding up allowances and other allowances.⁹³ The payment of benefits under this law is a right to a holder of the office according to the Constitution.⁹⁴ All these leaders are paid these benefits upon cessation of services in political offices without regard to age.

4.1.4 The Social Security (Regulatory Authority) Act, No. 8 of 2008

The Act regulates the social security sector. It exercises supervisory and regulatory functions over all managers, custodians of the funds, securities, financial instruments and documents of title of the assets of a scheme and

⁸⁹ Section 10 – 15 of the Public Service Retirement Benefits Act, Cap. 371.

⁹⁰ Section 8 of the Political Service Retirement Benefits Act, Cap. 255.

⁹¹ Section 9 -23 of the Political Service Retirement Benefits Act, Cap. 255.

⁹² Ibid Section 5 (1) (a).

⁹³ Ibid Part III to Part VI.

⁹⁴ Ibid Section 6 (1).

social security schemes.⁹⁵ It monitors and reviews the performances of the social security sector, initiates and coordinates reforms.

The law requires any person who intends to establish or continue to operate a scheme or act as a manager or custodian shall not operate or act as such unless such person is registered under this Act.⁹⁶ The law requires the scheme established under it, to make sure that it protects the rights and interest of its members and the public.⁹⁷

It further provides that the Authority may set contribution rates payable to the scheme by the members and the minimum benefits enjoyed by beneficiaries after the scheme has undertaken an actuarial valuation.⁹⁸

Furthermore, the Act governs and standardizes operation of the social security sector as provided under the National Social Security Policy.

4.1.5 The National Social Security Fund Act, Cap. 50

The main objective of the Act is to establish the National Social Security Fund and provide for its constitution, administration and other matters related to the Fund. It covers persons employed in formal and informal sectors and self-employed persons.⁹⁹ Benefits provided under this scheme are; retirement pension for permanent disability,¹⁰⁰ invalidity and pension for permanent disability,¹⁰¹ survivors' pension, funeral grants, maternity, employment injury, and health insurance.¹⁰²

According to the Act, retirement pension is payable to an insured person who has attained pensionable age or a person who has contributed to the Fund for not less than 180 months or 15 years.¹⁰³ For this matter the Act

⁹⁵ Section 6(1) of the Social Security (Regulatory Authority) Act No. 8 of 2008.

⁹⁶Section 14 of the National Social Security Fund Act.

⁹⁷ Ibid Section 15(1) (a) (iii) .

⁹⁸Section 25 (1) (2)of the National Social Security Fund Act.

⁹⁹Section 43 of the Social Security Laws (Amendments) Act, No.5 of 2012.

¹⁰⁰ Op Cit Section 23-27.

¹⁰¹ Ibid Section 28-32.

¹⁰² Ibid Section 33-41.

¹⁰³ Ibid Section 23.

cuts across all ages. The law does not reflect policy issue and statement on partial withdrawal of benefits as stated under the National Social Security Policy.¹⁰⁴

4.1.6 The Parastatal Organization Pensions Scheme Act, Cap.372

This Act establishes the Parastatal Pension Fund. This is the first contributory pension fund in the country operating under a defined benefit system established in 1978.¹⁰⁵ The law originally covered only employees in parastatal organization employed on permanent and pensionable terms. It now applies to persons employed in the formal or informal sector and self-employed persons within Mainland Tanzania and does not apply to persons who have been registered or insured under any other written laws.¹⁰⁶

Furthermore, the Act provides retirement pension for persons who have attained compulsory retirement age of 60 years and this is compatible with the objective of the National Ageing Policy.

Each type of benefit is granted to a member upon such member ceasing employment and other qualifying conditions related to each benefit. General qualifying conditions are retirement age, period of contribution and reasons for ceasing employment. Other benefits include; old age to a member who attained 55 years for voluntary retirement respectively,¹⁰⁷ gratuity, survivors, death and Withdrawal¹⁰⁸ where a member ceases to be employed in circumstances in which he is not eligible for any pension, gratuity or any other benefit under the provisions of this Act.

¹⁰⁴ The policy under pg. 18 provide that legal mechanisms shall be developed to allow for withdrawal of part of the accumulated benefits, while the balance shall remain for long-term benefits on premature termination of their employment.

¹⁰⁵ Act No.14 of 1978 as amended by Act No.25 of 2001.

¹⁰⁶ Section 79 (2) of Social Security Laws (Amendments) Act No.6 of 2012.

¹⁰⁷ Section 26 of the Parastatal Organization Pensions Scheme Act, Cap.372.

¹⁰⁸ Ibid Section 39,40 & 44.

The law does not reflect policy issue and statement on partial withdrawal of benefits as stated under the National Social Security Policy.¹⁰⁹

4.1.7 The National Health Insurance Fund Act, Cap. 395

This Act puts in place the National Health Insurance Fund which only offers health insurance. The scheme is compulsory for all public servants. It also allowed other members of the public to join the Fund by contributing to the Fund.¹¹⁰ The Fund's benefit package covers registration, consultation fees, outpatient services, medicines, diagnostic tests, inpatient services, surgical services, physiotherapy and optical services.¹¹¹

The amendment made in 2012 enhanced the package by extending retirees' benefits package for principal member and spouse for the rest of their lives.

The services are provided to beneficiaries through the Fund's accredited health facilities which include Government, Faith Based Organizations (FBOs) and private health facilities that are located throughout the country.

4.1.8 The Provident Fund (Government Employees) Act, Cap. 51

This Act sets up the Government Employees Provident Fund (GEPF) to provide benefits for Government employees who are not eligible for pension. These include; employees working under contracts or under operational service for central government, independent Government departments, executive agencies, and such other employees categorized as non-pensionable.

The Fund pays its members retirement benefits and death gratuity in lump sum money which includes interest accruing to members' accounts on a six months basis. The benefits provided for under the GEPF scheme

¹⁰⁹ The policy under pg. 18 provide that legal mechanisms shall be developed to allow for withdrawal of part of the accumulated benefits, while the balance shall remain for long-term benefits on premature termination of their employment.

¹¹⁰ Section 30 of the Social Security Laws (Amendment) Act, No. 5 of 2012.

¹¹¹ Section 16 & 18 of the National Health Insurance Act Fund Act, No. 8 of 1999.

includes; pension,¹¹² gratuity¹¹³ death gratuity, survivorship¹¹⁴ and withdrawal¹¹⁵ if required for payment of passage, funeral expenses, hospital and other expenses incurred towards the illness of the depositor or members of his family. According to the Act, retirement pension is payable to a member who reaches a voluntary retirement age of 55 years or compulsory age of 60 years.

4.1.9 The Community Health Fund Act, Cap.409

This Act establishes the Community Health Fund (CHF). The CHF was introduced in Tanzania as part of the Government endeavour to make health care affordable and available to the rural population and the informal sector. The scheme started in 1996 with Igunga as a pilot district, and was later expanded to other districts with the expectation of covering the whole country.¹¹⁶

The scheme was identified as a possible mechanism for granting access to basic health care services to the population in the rural areas and the informal sector in the country. As such, its primary aim was not to raise additional funds but to improve access to health care for the poor and vulnerable groups.

The CHF is a form of pre-payment scheme based on the concept of risk sharing whereby members pay a small contribution on a regular basis to offset the risk of needing to pay a much larger amount in health care user fees if they fall sick.¹¹⁷

The Fund was established as an alternative to the free-for-service schemes. The objectives of the CHF are;

¹¹² Section 16 (1) (c) (iv) of Cap.51.

¹¹³ Ibid Section 16(c) (i), (ii) (iii), (v) and (vi).

¹¹⁴ Ibid Section 16 (a) & 21.

¹¹⁵ Ibid Section 13 and 14.

¹¹⁶ Community Health Funds in Tanzania: A Literature Review, Gemini Mtei and Jo-Ann Mulligan 1 Based at the Ifakara Health Institute, Dar es Salaam, Tanzania. January 2007 at pg. 1.

¹¹⁷ Community Health Funds in Tanzania: A Literature Review, Gemini Mtei and Jo-Ann Mulligan 1 Based at the Ifakara Health Institute, Dar es Salaam, Tanzania. January 2007 pg. 2 & 3.

- a) to mobilize financial resources from the community for provision of health care services to its members;
- b) to provide quality and affordable health care services through sustainable financial mechanism; and
- c) to improve health care services management in the communities through decentralization by empowering the communities in making decisions and by contributing on matters affecting their health. ¹¹⁸

It is a voluntary scheme set up to assist those in the informal sector, mainly in the villages, to access health facilities by making a token contribution of between TZS. 5,000/= and TZS. 10,000/= annually. The conditions for full access to the matching grants put up by the Government include having proper membership records, by-laws and functioning of CHF institutional arrangements.

CHF covers all members of the society who are out of the formal set up hence the older people are able to join. CHF was established to fill the gap of the NHIF that is for Government employees and other private health funds for different private undertakings of which a peasant, herdsman or fisherman cannot join.

4.1.10 The Local Authorities Pensions Fund Act, No. 9 of 2006

This Act establishes the Local Authorities Pensions Fund and provides for its management and administration, the manner of collection of contributions and payments of benefits.¹¹⁹ The Act covers employees of the Local Government Authorities, Local Government Loans Board, and the Fund, any organization under the ownership of the local government authority and any institution or self-employed person who elects to join the Fund.¹²⁰

¹¹⁸Community Health Funds in Tanzania: A Literature Review, Gemini Mtei and Jo-Ann Mulligan 1 Based at the Ifakara Health Institute, Dar es Salaam, Tanzania. January 2007 pg.3.

¹¹⁹The Local Authorities Pensions Fund Act, No. 9 of 2006.

¹²⁰ Section 2 (1) of the Local Authorities Pensions Fund Act, No. 9 of 2006& Section 3A of Act No 5 of 2012.

Under this Fund an insured person contributes 15% of the monthly salary to the Fund to be deducted from his or her personal salary and the employer is required to contribute 15% of the monthly salary of the insured person or such amount as the Minister may, by order in the *Gazette*, determine.¹²¹ The employee is required to retire voluntarily at the age of 55 years and compulsory at 60 years. Other benefits include; survivorship, invalidity withdrawal in respect of marriage maternity, sickness, funeral grant, education and death gratuity.¹²²

4.1.11 The Person with Disabilities Act, No. 9 of 2010

This Act makes provisions for health care, social support, accessibility, rehabilitation, education and vocational training, communication, employment or work protection and promotion of basic rights for persons with disabilities.¹²³

The National Policy on Disabilities stipulates that “old age is associated with physical, mental and other challenges which lead to disabilities”. Ageing is highly linked with long term physical and mental disabilities, and a number of long term chronic conditions which increase personal care needs. The law covers disabled persons including elderly people who are mentally disabled.

4.1.12 The Local Government (District Authorities) Act, Cap. 287

The Act provides for establishment, composition and management of the district authorities. It also provides for functions and responsibilities and empowers district authorities among others, to promote the social welfare and economic wellbeing of all persons within their areas of jurisdiction.¹²⁴

In terms of social services, the Act tasks district authorities to erect and maintain houses for occupation by such persons as the authority shall

¹²¹ Section 19 of the Local Authorities Pensions Fund Act, No. 9 of 2006.

¹²² Ibid Section 26 - 28 of the Local Authorities Pensions Fund Act, No. 9 of 2006.

¹²³ Act No.9/2010.

¹²⁴ Section 111 of the Local Government (District Authorities) Act, Cap. 287

determine¹²⁵ and make advances upon such conditions as shall be thought fit for the purpose of enabling the inhabitants of the area to build or buy dwelling houses.¹²⁶ The authorities are also obliged to build, equip and maintain asylums for the aged, destitute or the infirm or orphans.¹²⁷

Though the Act has elucidated services related to the elderly social care, the responsibilities are listed under permissive functions and thus fall under discretionary functions.

4.1.13 The Local Government (Urban Authorities) Act, Cap. 288

The Act provides for establishment, composition and management of the urban authorities. It also provides for functions and responsibilities and empowers urban authorities among others, to promote the social welfare and economic wellbeing of all persons within their areas of jurisdiction.¹²⁸

In terms of social services, the Act tasks of urban authorities to erect and maintain houses for occupation by such persons as the authority shall determine¹²⁹ and make advances upon such conditions as shall be thought fit for the purpose of enabling the inhabitants of the area to build or buy dwelling houses.¹³⁰ The authorities are also obliged to build, equip and maintain asylums for the aged, destitute or the infirm or orphans.¹³¹

Though the Act has elucidated services related to the elderly social care, the responsibilities are listed under permissive functions and thus fall under discretionary functions.

4.1.14 The HIV and AIDS [Prevention and Control] Act, Act No.28/2008

The impact of HIV and AIDS upon the health and well-being of older persons in Africa is untold. The impact includes; bereavement, loosing

¹²⁵ Para 12 of the Schedule of the Act of the Local Government (District Authorities) Act, Cap. 287.

¹²⁶ Para 13 of the Schedule of the Act of the Local Government (District Authorities) Act, Cap. 287.

¹²⁷ Para 44 of the Schedule of the Act of the Local Government (District Authorities) Act, Cap. 287.

¹²⁸ Section 54 (1) (b) of the Local Government (Urban Authorities) Act, Cap. 288

¹²⁹ Para 12 of the Schedule of the Act of the Local Government (Urban Authorities) Act, Cap. 288.

¹³⁰ Para 13 of the Schedule of the Act of the Local Government (Urban Authorities) Act, Cap. 288.

¹³¹ Para 44 of the Schedule of the Act of the Local Government (Urban Authorities) Act, Cap. 288.

possible source of external financial support, and reduced income, coupled with responsibilities of caring for orphaned grandchildren.

In Tanzania according to UNICEF estimations, about 40 percent of orphans are cared for by the elderly; most of them lost their parents due to HIV and AIDS. In order to prevent and control the spread of HIV and AIDS, the government enacted the HIV and AIDS (Prevention and Control) Act.¹³² Elderly, both the affected and the infected, face common challenges including; biasness in providing medical services to elderly PLHIVs due to wrong assumptions about elderly sexual virility, including the belief that HIV only affects younger people; possibility of the accidental risk of being infected with the disease; lack of information on HIV and AIDS to the elderly; and over-burdened socio-economic risks and weakening of traditional safety nets.¹³³

However, there is no specific provision to address the challenges facing the elderly. The current provisions in the Act cover all persons who are affected and infected by the epidemic without specifically and directly mentioning the elderly.¹³⁴

4.1.15 The National Defense Act, Cap. 192

The Act provides for National Defense and for the maintenance of government and discipline in the Armed Forces. Service in the Force is of two kinds; permanent for officers and non – permanent for other ranks. A member of the Force qualifies for pension after attaining 20 years of continuous reckonable service, notwithstanding the determining age of 60 years as provided in the National Ageing Policy.

A member of the Force can still serve the force until he retires according to his rank or after attaining 36 years of service. The following are other

¹³² Act No. 28 of 2008.

¹³³ Ibid.

¹³⁴ Section 33 of the HIV and AIDS [Prevention and Control] Act, Act No.28/2008.

benefits accruing from the service of these employees; service gratuity, death gratuity, and survivors.¹³⁵

These benefits are charged out of the Consolidated Fund on the recommendation of the Defence Forces Pension Board to the minister responsible for finance. The challenge of this law is that, a member may opt to retire at the earliest age before reaching 60 years hence cannot suit in the National Ageing Policy objectives until he reaches 60 years.

4.2 Observation from the Analysis

This chapter has analysed various laws to identify gaps and inconsistency that need legal reforms. This analysis has been done in line with various policies. The idea is to find out to what extent policy objectives on elderly social care have been accommodated under the laws. The observation identified the following gaps and shortcomings;

- a) As to date since the formulation of the National Ageing Policy in 2003 there has been no specific law on elderly social care in the country.
- b) The existing sectoral laws do not adequately cover elderly social care for all old persons leading to imbalance in accessing their needs and rights.
- c) The laws analysed above, covers persons in the formal setup and for group of members who either have contributed to a scheme or qualifies due to being covered under a certain circumstances by the law leaving out those elders who are not members of the schemes.
- d) The local government laws impose discretionary duty to take care and provide support to elderly as such, provision of elderly social care is considered as an additional function.

¹³⁵Regulation 19 (1) & 20(1) of the Defence Forces (Pensions and Gratuities) Regulations of 1966.

CHAPTER FIVE

EXPERIENCE FROM OTHER JURISDICTIONS

5.0. Introduction

A comparative study of legal frameworks governing elderly social care on other jurisdictions has been carried out in order to explore some best practices experienced in foreign jurisdictions. The study focused on the experiences of selected countries both similar and different from Tanzania. The assumption being that Tanzania can learn from the successes and failures of the individual countries by looking at the underlying legal instruments, policies and strategies prepared by the different regional bodies entrusted with planning for social welfare of the elderly. The countries involved are; England, Wales, Kenya, South Africa, India, Mauritius and Uganda. The overall aim is to look at different experiences and explore their suitability and adaptability to the Tanzanian context.

5.1. England and Wales

In 2010, the legal framework of England and Wales that governed elderly social care was complex and fragmented. England and Wales had many different laws regarding care and support which made it difficult to know what care and support was available to the community.

In its final report on legal framework for adult social care, the Law Reform Commission of England and Wales came up with statutory principles, recommending the introduction of a single overarching principle that Adult social care must promote or contribute to the well-being of the individual.¹³⁶ This would provide a positive statement about the nature and purpose of adult social care around which all the other elements of the statute must be organized. This would be supported by a list of outcomes to which the well-being principle would be directed.

¹³⁶ See The Law Commission (LAW COM No 326) Report on Adult Social care Para 2.5, pg.23.

In 2014 England and Wales enacted the Care Act. This specific legislation was the most significant piece of legislation on elderly social care. It repealed and replaced other laws on elderly social care. The Act begins by defining the primary responsibility of local authorities as the promoters of individual wellbeing.¹³⁷

A key part of the Act focuses on preventing or delaying the need for support of the elderly. This means investing in preventive services and fully utilizing any existing community resources, facilities and assets to prevent people's needs escalating unnecessarily.¹³⁸ The Act aims at putting people at the centre of their care and support by maximizing their involvement. The Act establishes a national minimum threshold at which people will be eligible for support.

Tanzania can draw lessons from England and Wales by enacting a specific law on elderly social care. Unlike England and Wales where the elderly social care is based on an individual, the law should set benchmarks specifically providing responsibilities and duties to the community through the local government and other carers by setting national minimum threshold at which the elderly would be eligible for support.

5.2. The Republic of Kenya

5.2.1 The Constitution of Kenya, 2010

Elderly social care and other social community care in Kenya are well-recognized rights under the Kenyan Constitution. This is reflected under the following articles:

43. 1) *Every person has the right—*
- a) *to the highest attainable standard of health, which*

¹³⁷Section 2 of the Law Commission (LAW COM No 326) Report on Adult Social care of England.

¹³⁸The Care Act.

includes the right to healthcare services, including reproductive healthcare;

- b) to accessible and adequate housing, and to reasonable standards of sanitation;*
- c) to be free from hunger, and to have adequate food of acceptable quality;*
- d) to clean and safe water in adequate quantities;*
- e) to social security; and*
- f) to education.*

2) A person shall not be denied emergency medical treatment.

3) The State shall provide appropriate social security to persons who are unable to support themselves and their dependants."

57. The State shall take measures to ensure the rights of older persons—

- a) to fully participate in the affairs of society;*
- b) to pursue their personal development;*
- c) to live in dignity and respect and be free from abuse; and*
- d) to receive reasonable care and assistance from their family and the State.*

5.2.2 The Social Assistance Act, 2013

Kenya enacted the Social Assistance Act, 2013 which implements Article 43 of the Constitution. The main objective of the Act is to establish the National Social Assistance Authority, provide for the rendering of social assistance to persons in need and for connected purposes.

Section 17 of Act categorizes persons in need which include; poor elderly persons, widows and widowers, unemployed persons, persons disabled by acute chronic illnesses, orphans and vulnerable children, and any other

persons as may from time to time be determined by the minister. Among the key functions of the National Social Assistance Authority include to;

- a) identify and provide social assistance to persons in need of social assistance;
- b) maintain and promote the status, well-being, rights, safety and security of persons in need of social assistance;
- c) coordinate and harmonize social assistance programmes; and
- d) inspire and promote the spirit of protecting persons in need of social assistance.

The Act further provides for types of social assistance and eligibility for social assistance.¹³⁹

The Act also establishes the National Social Assistance Fund which is used to provide among others, assistance to persons in need of social assistance.

Tanzania can draw lessons from Kenya by adopting rights on elderly social care as provided under the above articles of the Constitution and imposing the duty and functions on Local Authorities by amending Cap. 287 and 288 of the laws. The law may also establish a National Social Assistance Fund in line with the National Ageing Policy of Tanzania to supplement Local Government budget for payment of old age pensions.

5.3. The Republic of South Africa

5.3.1 The Constitution of the Republic of South Africa, 1996

In South Africa elderly social care is reflected under the Constitution of 1996 as well as the legislation as indicated under Article 27:

- 1) *Everyone has the right to have access to -*
 - a) *health care services, including reproductive health care;*
 - b) *sufficient food and water; and*

¹³⁹Section 18 and 19 of the Social Assistance Act, 2013.

- c) *social security, including, if they are unable to support themselves and their dependents, appropriate social assistance.*
- 2) *The state must take reasonable legislative and other measures, within its available resources, to achieve the progressive realization of each of these rights.*
- 3) *No one may be refused emergency medical treatment.*

5.3.2 Older Persons Act, 2006

Elderly social care in South Africa is governed by the Older Persons Act, 2006 which provides for the protection and welfare of certain aged and disabled persons; care of their interests, establishment and registration of certain institutions, accommodation and care of such persons in such institutions, payment of old age pensions and certain allowances to or in respect of certain aged persons, and for matters incidental thereto.

The main objectives of the Act are:

- a) maintain and promote the status, well-being, safety and security of older persons;
- b) recognize the skills and wisdom of older persons;
- c) promote participation of older persons in community activities to promote them as people.

Section 5 of the Act enshrines general principles as part of best interest of the elderly as indicated below. The general principles set out in this section guide:

- a) the implementation of all legislation applicable to older persons, including this Act; and
- b) all proceedings, actions and decisions by any organ of state in any matter concerning an older person or older persons in general.

All proceedings, actions or decisions in a matter concerning an older person must:

- a) respect, protect, promote and fulfil the older person's rights, the best interests of the older person and the rights and principles set out in this Act, subject to any lawful limitation;
- b) respect the older person's inherent dignity;
- c) treat the older person fairly and equitably; and
- d) protect the older person from unfair discrimination on any ground, including on the grounds of the health status or disability of the older person.

In any matter concerning an older person:

- a) an approach which is conducive to conciliation and problem-solving should be followed and a confrontational approach should be avoided; and
- b) a delay in any action or decision to be taken must be avoided as far as possible.

Tanzania can draw lessons from South Africa by considering the rights and the institutional framework on elderly social care as provided for under the Constitution and the respective legislation. In establishing a legal framework, Tanzania may consider adopting the general principles for elderly social care as enumerated above under the duties and functions of the local government laws.¹⁴⁰

5.4. Republic of India

In India elderly rights are well-recognized under the Constitution and the Older Persons (Maintenance, Care and Protection), Act.

5.4.1 The Constitution of India, 1946

The relevant provision under the Constitution of India is article 41. This article enjoins upon the state to make effective provisions for public assistance, within the limits of its economic capacity and development, in

¹⁴⁰ The Local Government (District Authorities) Act, Cap. 287 and the Local Government (Urban Authorities) Act, Cap.288.

cases of unemployment, old-age, sickness and disablement and in other cases of undeserved want.¹⁴¹

5.4.2 The Older Persons (Maintenance, Care and Protection), Act, 2005

The purpose of the Act is to provide for an effective mechanism for senior citizens to claim need-based maintenance from their children including foster children, adopted children, step-children, grand-children and also from such relatives to whom they have provided financial support. It also makes provision for maintenance to be provided or steps to be taken by the government for the benefit of such senior citizens, who do not have children, grandchildren or relatives from whom they can claim maintenance. In addition to that the Act provides a proper mechanism for protection and care of senior citizens on the part of the government.

The obligation of children to take care of elderly parents including foster parents under Article 41 of the Indian Constitution can be considered under the legal framework on elderly social care in Tanzania. However, in Tanzania enforcement as a public right/duty owed on the part of the weal government authorities may be more effective as opposed to a personal right in a civil court.

5.5. Republic of Mauritius

5.5.1 Protection for Elderly Persons Act, 2005

In Mauritius elder abuse was common until the promulgation of the Protection for Elderly Persons Act, 2005. The main objective of the Act is to set up a legal and administrative framework to ensure that adequate protection and assistance are made available to the elderly. The Act provides for a legal and administrative framework for greater protection and assistance to persons who have attained the age of 60.

The Act put in place a protection of elderly network to ensure that adequate protection is provided to elderly persons against ill-treatment

¹⁴¹Constitution of India of 1946.

be it physical, verbal, emotional harassment and financial prejudice. Furthermore, it makes provisions for a Monitoring Committee comprising of representatives of various stakeholders and an elderly watch network and the elderly persons. The key function of the Committee includes:

- i) supervise the operations of the Unit and of every Elderly Watch Committee and give to its officers such directions of a general character as it may deem necessary.
- ii) provide adequate resources and facilities for the proper operation of the Unit and of every Elderly Watch Committee.¹⁴²

The Act also provides for the Elderly Protection Unit which comprise of such public officers as may be designated by the Permanent Secretary of the responsible Ministry. The key functions of the Unit include;

- a) organizing public awareness and sensitization campaigns on the rights of elderly persons and the need to provide them with assistance and protection;
- b) receiving complaints from elderly persons who are in need of protection or assistance and take such measures as may be necessary;
- c) applying to Court for a protection order where it deems it necessary in circumstances where there is a real danger to, or threat on, the life of an elderly person;
- d) assisting in arranging for the admission of an elderly person to a residential care home, where required;¹⁴³
- e) More importantly, the Act provides for enforcement mechanism by introducing Elderly Persons' Protection Order to be issued by court.¹⁴⁴

Tanzania can also draw lessons from Mauritius by considering the legal and administrative framework including elderly rights as summarized

¹⁴²Section 4 of the Protection for Elderly Persons Act, 2005.

¹⁴³ Section 6 of the Protection for Elderly Persons Act, 2005.

¹⁴⁴ Ibid Sections 9 and 11 Protection for Elderly Persons Act, 2005.

above under the law on elderly social care. However, by considering demographic distribution of the population of the elderly and the level of socio- economic development, Mauritius model may not suit Tanzania.

Republic of Uganda

Elderly social care in Uganda is addressed under both the Constitution and the Local Governments Act.¹⁴⁵ To promote and protect the rights of older persons, the Government of Uganda has come up with proper legal framework.

5.6.1 The Constitution of the Republic of Uganda of 1995

The Constitution of Uganda recognizes the rights of older persons and provides the basis for the enactment of laws to address their rights and needs.¹⁴⁶ The Constitution provides that “the State shall make reasonable provision for the welfare and maintenance of the aged”.¹⁴⁷ Article 32 of the Constitution stipulates that;

Notwithstanding anything in this Constitution the state shall take affirmative action in favour of groups marginalized on the basis of gender, age, disability or any other reason created by history, tradition or custom, for the purpose of redressing imbalances which exist against them.

5.6.2 The Local Governments Act, Cap 243

Under The Local Governments Act, the programmes for older person's social care are decentralised. For effective participation of older persons in decision making processes on matters that affect their lives, older persons are represented at various levels of local government from village to district level. For instance sections 10 (f) and 23 (6) provide for

¹⁴⁵ Cap. 243.

¹⁴⁶H.Buberwa, Uganda Report on the Review of appraisal of the Implementation of Madrid International Plan of Action for Ageing.

¹⁴⁷Part VII of the Constitution of the Republic of Uganda of 1995.

representation of two older persons, male and female, elected by Older Persons Local Government Councils.¹⁴⁸

Tanzania can draw lessons from Uganda by considering the legal and administrative framework that decentralizes the programmes of older persons at the local government level. This should include effective representation of the elderly to ensure effective participation in decision making processes on matters that affect their lives. The proposed legal framework on elderly social care for Tanzania may also establish the legal framework of Older Persons Local Government Councils.

¹⁴⁸The Local Governments Cap. 243.

CHAPTER SIX

RESEARCH FINDINGS AND ANALYSIS

6.0 Introduction

This chapter presents the views and opinions of the stakeholders on matters related to elderly social care in Tanzania. It also provides the Commission's observations and recommendations on the identified challenges and possible resolution mechanisms.

The Commission after having conducted a field research in eight regions observed that the elderly face challenges related to basic and other needs as follows:

6.1 Basic Needs

6.1.1 Housing

Shelter is among the basic needs for the elderly. In the traditional social security care system, an elderly whose shelter was damaged or destroyed would get assistance from his or her family and clan. At the time the simple huts or mud and wattle houses were built with free locally available building materials, obtainable through pooled labour, with limited monetary intervention. With the advent of modern houses, the use of monetized materials such as cement, arrogated iron sheets, and in urban areas sand and labour, limit labour-based community assistance. Many elderly persons live in dilapidated buildings.

The National Ageing Policy does not mention anything about shelter for the elderly. However, the National Food and Nutrition Policy and the National Human Settlement Development Policy have provided for the need of having a mechanism that facilitates the construction of affordable houses to the vulnerable groups including the elderly.

Stakeholders' Views

Stakeholders were of the view that the Government should require local government authorities and voluntary agencies to develop a mechanism

to provide direct assistance to shelter the elderly who are in need of housing.

Commission's Observation

The Commission noted that the National Ageing Policy does not mention anything about shelter for the elderly. However, the National Food and Nutrition Policy and the National Human Settlement Development Policy have provided for the need of having a mechanism that facilitates the construction of affordable houses to the vulnerable groups including the elderly.

Commission's Recommendation

Commission recommends that:

- i. The Government through local government authorities be empowered to enable them discharge the functions of providing care and social services to the elderly including housing.*
- ii. The Government should through local government authorities establish more elderly home and provide facilities that will cater for the elderly who have no children or relatives to take for their care.*

6.1.2 Food

Food security is another basic need for good health and survival of human kind. However, the majority of the elderly don't have access to adequate food let alone nutritious food. Inadequate food intake and poor diet predisposes the elderly to malnutrition and ill – health. This being a basic need it was of importance to be expressly provided under the National Ageing Policy. However, *the National Food and Nutrition Policy of 1992 emphasizes on the need of recognizing the elderly as among of the special group which need more attention on food and nutrition due to*

the fact that elderly people suffers from malnutrition problem due to loss of appetite as well as in ability to obtain essential necessities such as sufficient food.

Stakeholders' Views

Stakeholders stated that access to adequate food is a problem to the elderly, especially in rural areas. This is mainly because of their low income and diminished capacity as age increases, to engage in income generating activities.

Commission's Observation

The Commission observes that food security to the elderly is of paramount importance for their health and survival. This aspect has not been underscored in the National Ageing Policy. However, the National Food and Nutrition Policy of 1992 emphasizes on the need of recognizing the elderly as among of the special group which need more attention on food and nutrition. Furthermore, the Policy recognize that elderly people suffers from malnutrition problem due to loss of appetite as well as in ability to obtain essential necessities such as sufficient food. In order to solve this problem the Policy emphasis among other things to establish supportive system for taking care of elderly particularly those lacking family support.

Commission's Recommendations

The Commission recommends that the Government need to:

- i) Strengthen and protect good tradition and customs which oblige families to take care for the elderly,*
- ii) Establish specific supportive systems for taking care of elderly particularly those lacking family support.*
- iii) CBOs and NGOs be encouraged to consider assisting the needy elderly by proving food where necessary.*

6.1.3 Clothing

Clothing is a basic need to humankind. The elderly are the most hit by inadequate clothing because of low income. Adequate clothing for the elderly has not been focused in the National Ageing Policy and there are no measures undertaken to ensure access for adequate clothing for the needy elderly.

Stakeholder's Views

Stakeholders pointed out that the elderly lack enough income to cater for adequate and suitable clothing.

Commission's Observation

The Commission observed that lack of adequate and suitable clothing has a bearing on the low income and decline of support from their families. The Commissions further observed that the National Ageing Policy did not focus on the aspect of adequate and suitable clothing for the needy elderly.

Commission's Recommendation

The Commission recommends that:

- i) The Government need to encourage the practice of the family and community based care for the needy elderly.*
- ii) CBOs and NGOs be encouraged to consider assisting the needy elderly by proving adequate and suitable clothing for the elderly where necessary.*

6.2 Other Needs and Challenges Facing the Elderly

6.2.1 Health Services

The Government is aware that prolonged diseases are common feature among the elderly due to poor life styles and poor nutrition during childhood; work load, and for women, frequent pregnancies.¹⁴⁹

¹⁴⁹ Para 1.2.4 of the National Ageing Policy, pg.5

The Government further recognizes that, health services are not easily accessible to the majority of the elderly besides they are expensive and there is shortage of qualified medical practitioner for treating the elderly. Though elderly from both formal and informal sector face similar challenges, the elderly in the formal sector are now days covered by the National Health Insurance Scheme after retirement.

Stakeholders' Views

Stakeholders pointed that most of the elderly in the informal sector are not covered under health insurance scheme, and that those covered, are under the CHF system which has limited coverage. There is no law imposing duty on the health facilities to ensure access to free health care by the elderly despite of Government directive.

Commission's Observation

Access to affordable health service is one of the essential needs of the elderly due to prolonged diseases and ill health associated with old age thus calling for interventions. The National Ageing Policy propagates for free provision of health services. However, there is no legal back up to enforce the policy directive.

Commission's Recommendation

The Commission recommends that:

- i) The local government authorities duty to provide social welfare services under the Local Government (District Authorities) Act, Cap. 287 and the Local Government (Urban Authorities) Act, 288 need to be reconfigured to create the necessary environment for effective delivery of health care for the elderly.*
- ii) The law should impose statutory duty to health facilities to ensure access to free health services by the elderly.*

6.2.2 Universal Social Pension Scheme

Stakeholders' Views

Stakeholders considering the plight of the elderly who are not under any pension scheme and have no other means of earning. They proposed that the Government should adopt a universal social pension scheme in order to help the elderly financially as the majority in this group do not have the strength to engage in farming, pastoralism or other business activities.

Commission's Observation

Retirement pension is payable to an insured person who has attained pensionable age and has contributed to the scheme for the prescribed period.

The findings in the study into feasibility of a universal social pension conducted by the Ministry responsible for Employment in collaboration with the Help Age International Dar Es Salaam in May, 2010 concluded that the universal pension is feasible for Tanzania.

Furthermore, the Commission noted that the Uganda cash transfer scheme which involves money payment provided by the state to the qualifying people is closely similar to Tanzania Social Action Fund (TASAF). Under TASAF THIRD PHASE (2013-2018) the focus is to facilitate implementation of public works, income generating activities for the poor and vulnerable groups the large section of which has been identified to be the elderly.

Commission's Recommendation

- i. The Proposed law should include provision establishing a Universal Pension Scheme.*

- ii. *The law should provide means testing for eligibility akin to TASAF.*

6.2.3 Respect and Dignity for the Elderly

Respect and dignity to the elderly is widely recognized under customs and traditional life within the community; it plays a vital role in cementing good behavior.¹⁵⁰ However, globalization and urbanization have eroded the traditional life that obligate youth to respect the elderly, as a result, youths do not respect the elderly, instead youths, and often times despise the elderly.

Stakeholders' Views

Stakeholders pointed that the Government and the community need to play great role of ensuring respect and dignity by youth towards the elderly is restored. Stakeholders further pointed that education on the youth to respect the elderly should be integrated in curriculum in primary and secondary schools as part of civic education.

Commission's Observation

The Commission is of the view that lack of respect for elders by youths is a serious flaw in ethics of a society and may lead into disintegration of the fabric of the society with its serious ramifications. This calls for efforts designed for behavioural change. Youths have to be taught about good cultures and traditions which encompass the importance of according respect to the older generation.

Commission's Recommendation

The Commission recommends for an enactment of a specific law that promote plans for social inclusion and empowerment of the elderly under basic-principles that provide a broad framework for action on ageing, namely:

¹⁵⁰ Para 1.2.1 of the National Ageing Policy, Pg. 3

- i) *Independence;*
- ii) *Participation;*
- iii) *Care;*
- iv) *Self-fulfilment; and*
- v) *Dignity.*

6.2.4 Obligation of the Youth to Take Care of the Elderly

Urbanization and movement of youth people from rural to urban areas has left the elderly living in the rural lonely and unprotected.¹⁵¹ Most of the youth knowing or unknowingly have neglected their responsibility of taking care of their elderly parents; mainly due to moral decay and lack of legal system that compels the youth to take care of their elderly parents.

Stakeholders' Views

Stakeholders stated that there is a need for the community specifically the local government authority to ensure the youth undertake the obligation of taking care of their elderly parents.

Stakeholders pointed on the need for the Government to enact a law that obligate the youth to take care of their elderly parents in a similar manner parents are required by law to take care of their children.

The fight against ignorance takes out the youth and their supplementary labour from the community to schools. For formal education, learning gaps in the traditional social or economic succession system. This finds expression in complaints about the youth abandoning their duties/respect to the elderly. Due to these socio-economic changes the older people have assumed an increased role in caring for children almost – 100% in the context of children having to attend school most of the productive hours, urbanization rural to urban migration, the effect HIV and AIDS.

¹⁵¹ Para 1.2.2 of the National Ageing Policy, pg.4.

Commission's Observation

The Commission concurs with the stakeholders' views on the importance of establishing a legal framework that will provide for the responsibility for the children including foster children, adopted children, step children, grand-children and also such other relatives to take care of their elderly.

Commission's Recommendation

The Commission recommends that the proposed legal framework for elderly people should include the provision to oblige the children including foster children, adopted children, step children, grand-children and also such other relatives.

6.2.5 Elderly Care Centres

There is no specific law that regulates the elderly care centres while the National Ageing Policy, is silent on the issue of elderly care centres. However, the National Human Settlement Policy provides for the provision of settlement to the vulnerable groups including the elderly specifically those who are unable to care for themselves.

Stakeholders' Views

Stakeholders are generally not in favour of elderly care centres and that the centres should only cater for the elderly who have no relatives to take care for them.

As pointed out, isolation, loneliness, lack of close care and lack of essential amenities, utilities and adequate health facilities in the elderly care centres, render them to be limited to a few as a recourse of last resort.

Commission's Observation

The Commission concurs with stakeholder's views that majority of the elderly are not willing to live in elderly care centres due to lack of independence and inadequate social services. Most of the elderly were

not in support of such an arrangement, preferring being supported by their families.

Commission's Recommendation

Commission recommends that:

- i) the Government in collaboration with voluntary agencies need to sensitize communities about the duty to take care for the elderly which includes provision of housing. (Local Government to take charge through by-law relevant to each local authority)*

- i) the Government needs to establish more elderly homes and equip them with necessary services that will cater for the elderly who have no one to take care of them.*

6.2.6 Preparation for an Elderly Life

In order to prepare youths to a responsible old age, the National Ageing Policy outlined the Government's intention, to collaborate with stakeholders to sensitize the society and the youth, in particular about various stages of growth and old age related problems.

Stakeholders' Views

Stakeholders pointed out that sensitization of young generation into responsible old age is done through youth programs by NGOs and the Department of Youth Development.

Further that the Government to initiate programmes that impact knowledge to adult young generation about adulthood and preparation required for happy elderly life.

Commission's Observation

Preparation of the youth for elderly life has encountered various challenges including globalization which affect ethics, perceptions and attitudes. Some parents do not have enough time to be close to their

children to inculcate in them the responsibility to prepare for elderly life. This may be due to various reasons including engagement in economic activities.

Commission's Recommendation

The Commission needs to revisit existing education system and come out with an integrated educational system which inculcates into the youth the necessary preparation for life in old age.

6.2.7 Participation of the Elderly in Disputes Settlement

The elderly have been greatly involved in resolution of disputes in amicable manner. Matters in which the elderly are increasingly involved revolve around land, family, children and animal husbandry. In the courts of law, the elderly have been and are still been used as assessors to provide opinions on matters of fact.

Stakeholders' Views

Stakeholders were of the view that the law should be enacted to institutionalise the role of the elderly in various activities in Tanzania.

Commission's Observation

The Commission observed that the National Ageing Policy has set a policy framework that allows the elderly to participate in decision making for national development including dispute settlement.

Commission's Recommendations

The proposed law should include provisions for matters related to participation of the elderly in disputes settlement.

6.2.8 Councils for the elderly

The Government recognizes the importance of involving the elderly in decision making for the development of the nation.

In order to ensure participation of the elderly in decision making, the Government committed to establish Councils for the elderly at village, mtaa, ward, district, region and national levels. These Councils are yet to be established.

Stakeholders' Views

Stakeholders pointed out the importance of Councils for the Elderly and elucidated the best examples by which Presidents of all phases involved the elderly in Dar es Salaam and Dodoma when making decisions of great importance to the nation. Stakeholders were of the view that the practice should not only be emulated by the Presidents but should be institutionalized by law.

Commission's Observation

The Government recognizes the importance of involving the elderly in decision making for the development of the nation. In order to ensure the inclusion of elderly people's voice in such decisions, the government committed itself in the National Ageing Policy Statement to establish older people's councils at village, mtaa, ward, district, region and national levels.¹⁵² Information available is that these councils are yet to be established. However, in our view the role of the councils should be dedicated to improving the lives of the elderly by connecting them with resources and information.

Commission's Recommendation

The Commission recommends that the proposed law should provide for establishment of Older Peoples' Councils.

6.2.9 Community Support to the Elderly

It has been elucidated earlier in this Report that the traditional social system in which families and communities used to care for the elderly has broken down because of social and economic changes. Increasingly,

¹⁵² National Ageing Policy, 2003, para 3.14 at pg. 16

the elderly have been left without social security care thereby forced to become economically active on their own initiatives. This situation has led many elderly vulnerable to absolute poverty.

Whereas parents are not only morally but legally bound to take care of their children, the opposite is not the case. When the children grow up and become adults there is neither policy directive nor legal obligation that imposes a duty to the youth to reciprocate by taking care of their elderly parents.

Stakeholders' Views

Since ageing is a cross cutting issue, caring for the elderly should involve central Government, local government authorities, families/villages and voluntary agencies. The law should impose obligation to each of the above stakeholders in supporting the elderly.

Penal sanction should be imposed against adults who deliberately or, by sheer neglect omit to take care of their elderly parents and that local government authorities can easily check and monitor youthful adults who do not take care of their elderly parents.

Commission's Observation

The community has always been part of the backbone of social protection mechanism for the elderly in traditional life in Tanzania. As social care and security became formalised the participation of the community in providing protection to the elderly declined. In response to this, the National Ageing Policy has emphasized the importance of communities in care and support to the elderly.

Commission's Recommendation

The Commission recommends that the government and voluntary agencies need to carry out awareness campaigns to sensitize the society on its responsibility to support elderly social care, and avail opportunity to

the elderly to participate in income generating activities to raise family income.

6.2.10 Enhancing Economic Status of the Elderly

Besides skill, knowledge and experience, the elderly are among the poorest group of people in the society. The situation is worsened by the fact that most of them have no definitive retirement stage and those who went into retirement (formal sector) are ill prepared.

In order to rectify the situation, the Government committed through the National Ageing Policy that:

- i) The elderly, individually or in groups, will be sensitised and mobilized into establishing income generating activities; and
- ii) The local government and voluntary agencies incorporate the elderly groups in income generating activities.

Stakeholders' Views

Stakeholders pointed out that given opportunity, the elderly are the source for dissemination of wisdom, skill, endurance, patience and patriotism. Stakeholders' were of the view that involving the elderly in community works and other activities would provide opportunity for the elderly to socialise while earning incomes to support their lives. Example can be drawn from the elderly soldiers in the reserve list when deployed for social, economic and political purposes.

Commission's Observation

The Commission recognises the importance of enhancing economic status of the elderly through participation in income generating activities.

Commission's Recommendation

The Commission recommends for the proposed law to put obligation on the local government to incorporate the elderly in income generating

activities including formation of economic groups such as SACCOS and VICOBA.

6.2.11 Tax Exemption

The source of income generating for the elderly differs in the sense that those who were in the formal sector have reliable source of income in form of the monthly pension while the informal sector do not. Unreliable source of income greatly affect livelihood of the elderly. Despite unreliable source of income, the elderly are compelled to pay property tax, land rent, income tax, social contributions, and user charges for utilities and medical services.

Stakeholders' Views

Stakeholders pointed out that the law need to exempt the elderly from the burden of paying tax, fees, social contributions and user charges for utilities.

Stakeholders emphatically urged the Government, and particularly, the local government authorities to scrap charges and fees for social and medical services offered to the elderly. The law should set age limit to ensure that implementation is monitored by social welfare officers.

Commission's Observation

The Commission noted that owing to labour force migration from rural to urban, the economy that was supporting elderly is no longer available. The Commission is also aware that the elderly who have no reliable source of income are exempted from payment of property tax for residential houses. Given their meagre resources, the Commission agrees that the elderly who have no reliable sources of income should be exempted from paying all taxes and contributions.

Commission's Recommendation

The Commission recommends that:

- i. *The Government should consider establishing a mechanism for ensuring that the elderly who have no reliable source of income are exempted from paying taxes, charges and contributions.*
- ii. *The Government should put in place arrangement that will ensure in all services delivery points including public transport; elderly are given priority or special seats.*

6.2.12 Legal Framework on Elderly Social Care

The National Ageing Policy and National Social Security Policy emphasizes on the need to create a specific legal framework to govern elderly social care in both the formal and informal sectors.

Under the policy statements, the Government resolved to enact a law¹⁵³ in order to put a uniform legal framework that cut across the same age groups in a bid rid off imbalance in accessing needs and rights by the elderly in both formal and informal sectors.

Stakeholders' Views

Stakeholders pointed and hailed measures by the Government to open up existing social care schemes to every Tanzanian irrespective whether from informal or formal sector. Despite of the good intention, there is a need for the Government to sensitise and, where necessary, make it a statutory requirement by every adult citizen who works for gain to become a member of any such scheme.

Commission's Observation

The Commission observes that there are various statutes that touch on elderly social care in Tanzania. However, those statutes do not adequately cover elderly social care for all old persons thereby leading to imbalance in accessing basic and other needs by the elderly.

¹⁵³ Paragraph 3.11 of the National Ageing Policy, 2003 pg. 15.

Commission's Recommendation

The Government should enact a single statute for elderly social care which will consolidate the existing scattered provisions on elderly social care and translate the National Ageing Policy Statement into a proper legal and regulatory framework for elderly social care.

CHAPTER SEVEN

CONCLUSION AND RECOMMENDATIONS

7.0 Conclusion

Analysis of stakeholders' views has enabled the Commission to identify gaps and inconsistencies that need legal reforms in order to adequately address challenges faced by the elderly. The analysis has been done in line with a look at various international and regional instruments, and experiences from other jurisdictions. A study has also been done of national policies, strategies and on existing legal framework on social care.

It has been revealed that the Government has to a fairly great extent embarked on and undertaken various measures to address this section of the Tanzanian population which lives under the poverty line mostly in the rural and in the periphery. Despite these measures, there is still more to be done. The National Strategy for Growth and Reduction of Poverty, the Tanzania Social Action Plan, the National Empowerment Policy, the Social Security Policy, National Disabilities Policy and the National Ageing Policy were and are still meant to address the challenges facing the Tanzania citizen.

7.1 Recommendations

7.1.1 Legal Recommendations

7.1.1.1 Universal Social Pension Scheme

- i. *The Proposed law should include provision establishing a Universal Pension Scheme.*
- ii. *The Proposed law should provide means testing for eligibility akin to TASAF.*

7.1.1.2 Respect and Dignity for the Elderly

The Commission recommends for an enactment of a specific law that promote plans for social inclusion and empowerment of the elderly under basic-principles that provide a broad framework for action on ageing, namely:

- vi) Independence;*
- vii) Participation;*
- viii) Care;*
- ix) Self-fulfilment; and*
- x) Dignity.*

7.1.1.3 Obligation of the Youth to Take Care of the Elderly

The Commission recommends that the proposed legal framework for elderly people should include the provision to oblige the children including foster children, adopted children, step children, grand-children and also such other relatives to take care of their elderly.

7.1.1.4 Participation of the Elderly in Disputes Settlement

The proposed law should include provisions for matters related to participation of the elderly in disputes settlement.

7.1.1.5 Councils for the elderly

The proposed law should provide for establishment of Older Peoples' Councils.

7.1.1.6 Community Support to the Elderly

The government and voluntary agencies need to carry out awareness campaigns to sensitize the society on its responsibility to support elderly social care, and avail opportunity to the elderly to participate in income generating activities to raise family income.

7.1.1.7 Enhancing Economic Status of the Elderly

The proposed law should to put obligation to the local government to incorporate the elderly in income generating activities including formation of economic groups such as SACCOS and VICOBA.

7.1.1.8 Tax Exemption

The Commission recommends that:

- i. The Government should consider establishing a mechanism for ensuring that the elderly who have no reliable source of income are exempted from paying taxes, charges and contributions.*
- ii. The Government should put in place arrangement that will ensure in all services delivery points including public transport; elderly are given priority or special seats.*

7.1.1.9 Legal Framework on Elderly Social Care

The Government should enact a single statute for elderly social care which will consolidate the existing scattered provisions on elderly social care and translate the National Ageing Policy Statement into a proper legal and regulatory framework for elderly social care.

7.1.2 Non Legal Recommendations

7.1.2.1 Housing

Commission recommends that:

- i. The Government through local government authorities be empowered to enable them discharge the functions of providing care and social services to the elderly including housing.*
- ii. The Government should through local government authorities should establish more elderly home and provide facilities that will cater for the elderly who have no children or relatives to take for their care.*

7.1.2.2 Food

The Commission recommends that the Government need to:

- i) Strengthen and protect good tradition and customs which oblige families to take care for the elderly,*
- ii) Establish specific supportive systems for taking care of elderly particularly those lacking family support.*
- iii) CBOs and NGOs be encouraged to consider assisting the needy elderly by proving food where necessary.*

7.1.2.3 Clothing

The Commission recommends that:

- i) The Government need to encourage the practice of the family and community based care for the needy elderly.*
- ii) CBOs and NGOs be encouraged to consider assisting the needy elderly by proving adequate and suitable clothing for the elderly where necessary.*

7.1.2.4 Health Services

The Commission recommends that:

- i) The Local Government authorities duty to provide social welfare services under the Local Government (District Authorities) Act, Cap. 287 and the Local Government (Urban Authorities) Act, 288 need to be reconfigured to create the necessary environment for effective delivery of health care for the elderly.*
- ii) The law should impose statutory duty to health facilities to ensure access to free health services by the elderly.*

7.1.2.5 Elderly Care Centres

Commission recommends that:

- i. The Government in collaboration with voluntary agencies need to sensitize communities about the duty to take care for the elderly*

which includes provision of housing. (Local Government to take charge through by –law relevant to each local authority).

- ii) The Government needs to establish more elderly homes and equip them with necessary services that will cater for the elderly who have no one to take care of them.*

7.1.2.6 Preparation for an Elderly Life

The Government need to revisit existing system of education and come out with an integrated educational system which inculcates into the youth the necessary preparation for life in the old age.

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