

# ADEQUACY OF LEGAL AND POLICY MEASURES TAKEN TO REALISE OLDER PERSONS' RIGHT TO HEALTHCARE IN TANZANIA

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## ABSTRACT

Global and regional human rights treaties require state parties, including Tanzania, to take constitutional, legislative, policy and other measures to give effect to the rights guaranteed in the treaties. This article seeks to answer the question of whether Tanzania has taken adequate constitutional, legislative, and policy measures toward realising older persons' right to healthcare. Tanzania's international human rights obligations to realise older persons' right to healthcare stem from international and regional human rights treaties which include the African Charter on Human and Peoples' Rights and the International Covenant on Economic, Social and Cultural Rights. It is observed that, although Tanzania has recognised the need to ensure access to healthcare services by older persons, implementation of such policies remains a challenge as older persons continue to experience many challenges in accessing healthcare services. Moreover, the lack of constitutional protection of older persons' rights and the right to healthcare and the absence of specific legislation on older persons render the legal framework on older persons' right to healthcare extremely inadequate.

**Keywords:** Legal and Policy Measures, Older Persons, Right to Healthcare.

## INTRODUCTION

Core global and regional human rights treaties—most of which are ratified by Tanzania—require State Parties to take constitutional, legislative, policy and other measures with a view to giving effect to the rights in the treaties. This article examines the Tanzanian legal and policy framework on older persons' right to healthcare. The analysis focuses to answer the question of whether Tanzania has taken adequate constitutional, policy, and legislative measures toward realising older persons' right to healthcare. Legal and policy measures are structural indicators in that they represent the commitments made by Tanzania in relation to older persons' right to healthcare. Tanzania's international human rights obligations to realise older persons' right to healthcare stem from international and regional human rights treaties which require it to realise the right to healthcare for everyone including older persons. These treaties include the African Charter on Human and Peoples' Rights and the International Covenant on Economic, Social and Cultural Rights. Moreover, it should be noted that Tanzania recognizes older persons' right to healthcare in its policies indicating that it has the obligation to take special measures to ensure older persons' right to healthcare is realised.

## CONSTITUTIONAL, LEGISLATIVE, AND POLICY MEASURES

This part examines the adequacy of constitutional, legislative and policy measures taken towards the realisation of older persons' right to healthcare. Constitutional, legislative and policy measures fall under the category of structural indicators in the human rights implementation framework. Structural indicators focus on the nature of the national legal framework in relation to older persons' right to healthcare and aim to establish whether such framework incorporates recognised international human rights standards and the institutional mechanisms to protect and promote those standards. An adequate legal framework should also indicate ways of holding the Government and other non-state actors accountable for acts and omissions concerning a particular right. Regarding the policy framework, the aim is to assess whether there are comprehensive policies with clear implementation strategies. Policies are important as they are a means of translating a state's human rights into an implementable action plan that helps to realise a particular right.<sup>i</sup>

### ***Constitutional Protection of Older Persons' Right to Healthcare***

There are different approaches for recognising and domesticating international human rights norms. Constitutional guarantee of justiciable human rights is one important way of recognising and protecting human rights at the domestic level. In most jurisdictions, justiciable rights are provided in form of a constitutional bill of rights. The Constitution of Tanzania is the supreme law of the land. The supremacy is stated in the Constitution as follows:

“...this Constitution shall have the force of law in the whole of the United Republic, and in the event any other law conflicts with the provisions contained in this Constitution, the Constitution shall prevail and that other law, to the extent of the inconsistency with the Constitution, shall be void.”<sup>ii</sup>

The status of the Constitution does not match that of ordinary legislation passed by Parliament. It is therefore a point of reference in all matters regarding the legitimacy of laws, policies and actions by government organs. Because of this special place of the Constitution, it has been argued to be the appropriate place to recognise and guarantee human rights. Unlike ordinary legislation, the procedure for amending or changing the Constitution is not simple. At least two-thirds of all Members of Parliament must vote in support of a motion to amend the Constitution of Tanzania.<sup>iii</sup> Shivji IG argues that:

“Basic rights and duties are normally contained in the Constitution of a country which is the basic law of the land to which all other laws should conform. That part of the Constitution in which these rights and duties are placed is called the Bill of Rights. In most countries this part is entrenched. It means that the parliament cannot change the provisions of this part in any way it desires.”<sup>iv</sup>

The Constitution provides for, *inter alia*, basic rights and duties of the citizens in Part III which contains the Bill of Rights. The right to health is not explicitly covered in the Bill of Rights. However, there are several provisions which are linked to the right to health. By virtue of the Fundamental Objectives and Directive Principles of State Policy (Directive Principles), Tanzania should adhere to the principles of democracy and social justice. The Directive Principles further provide that “the primary responsibility of the Government shall be the welfare of the people”.<sup>v</sup> According to Oxford Advanced Learners' Dictionary, welfare means “somebody's state or condition with respect to whether he or she is healthy, safe, happy, or prospering.” In this way, welfare can be interpreted to include matters of healthcare which is

one of the means to make people healthy, safe and happy. The Directive Principles also require the State and all its agencies to direct their policies and programmes towards ensuring “that the use of national wealth places emphasis on the development of the people and in particular is geared towards the eradication of poverty, ignorance and disease.”<sup>vi</sup> Moreover, the State is required to make appropriate provisions towards realising the right to work, self-education and social welfare in the event of old age, sickness, disability or other cases of incapacity.<sup>vii</sup> Another important aspect is that the Directive Principles require State authority and all its agencies to direct policies and programs in a manner that, among others, preserves and upholds human dignity “in accordance with the spirit of the Universal Declaration of Human Rights.”<sup>viii</sup> The Universal Declaration recognises everyone’s right to “a standard of living adequate for the health and wellbeing of himself and of his family” which include, *inter alia*, medical care.<sup>ix</sup> This means Tanzania has committed itself to ensure its people, including older persons, enjoy the right to healthcare. However, the Directive Principles are not enforceable and therefore, courts are not competent to determine any question relating to compliance with and or implementation of the Principles by the Government.<sup>x</sup>

The Constitution of Tanzania does not contain a justiciable right to healthcare in the Bill of Rights and therefore older persons cannot enforce this right in the court of law by way of a constitutional human rights petition. Moreover, the Bill of Rights does not contain any provision that specifically addresses older persons. There is a need to ensure the right to healthcare and older persons’ rights are constitutionally guaranteed and justiciable. The possibility to achieve this is evidenced by the progress made during the unfinished constitutional review process that was initiated in 2011.

In 2011 Tanzania embarked on a constitutional review process which, in 2014, ended with the adoption of a Proposed Constitution. The next step was a nationwide referendum which, to date, has not been conducted. Although the review process has not been finalised, it remains an important historic constitutional event in the history of Tanzania. There are several progressive provisions in relation to the right to healthcare. Under the Fundamental Objectives and Directive Principles of State Policy (Chapter II), Part II covers Economic, Social and Cultural Objectives. It is provided that the social objective of the Constitution is to ensure peoples’ well-being and build a society that is capable of participating in different development activities.<sup>xi</sup> In implementing this objective, the Government is required to, *inter alia*, ensure

the availability of quality health services to all people including safe reproductive health.<sup>xii</sup> Under the bill of rights (Chapter Five, Part One), one of the employee's rights is health and safety at the workplace.<sup>xiii</sup> Another one is the right to a clean and safe environment. It guarantees every person living in the United Republic, the right to live in a clean, safe and healthy environment.<sup>xiv</sup> Regarding older persons' rights, the Proposed Constitution provides that the Government shall put in place a system which will facilitate the provision of healthcare services to older persons.<sup>xv</sup> On women's rights, the right to get quality healthcare services including safe reproductive health is also guaranteed.<sup>xvi</sup>

Although the fate of the Proposed Constitution remains unclear, it is expected that the progressive provisions on the right to health generally and older persons' right to healthcare, in particular, will inform future constitutional reform and other measures aimed at realising older persons' right to healthcare in Tanzania. As a matter of inspiration, some countries have achieved the goal of constitutionally protecting the right to healthcare and some situations, specific rights of older persons including the right to healthcare. Below is a survey of the said countries.

The Constitution of the Republic of Angola of 2010 protects everyone's right to health, and social protection in a broad manner in its Bill of Rights. The Constitution requires the State of Angola to:

“Promote and guarantee the measures needed to ensure the universal right to medical and healthcare, as well as the right to child care and maternity care, care in illness, disability, old age and in situations in which they are unable to work, in accordance with the law.”<sup>xvii</sup>

More specifically, in guaranteeing “the right to medical and healthcare”, the Constitution obligates the State to: “developing and ensuring an operational health service throughout the national territory; regulating the production, distribution, marketing, sale and use of chemical, biological and pharmaceutical products and other means of treatment and diagnosis; and encouraging the development of medical and surgical training and research into medicine and healthcare.”<sup>xviii</sup> the specific rights of older persons, the Constitution protects older persons' right to economic security, housing and a family and community life that respects their personal autonomy and prevents and overcomes isolation or social marginalisation. The Constitution

also requires the State to ensure policies for older persons include economic, social and cultural measures that offer elderly people opportunities for personal fulfilment through active participation in community life.<sup>xix</sup>

The Constitution of the Republic of Kenya of 2010 protects both the right to health and older persons' rights. The Constitution requires the State to take measures to guarantee older persons' rights by ensuring older persons fully participate in the affairs of society, pursue their personal development, live with dignity and respect and are free from abuse, and receive reasonable care and assistance from their family and the State.<sup>xx</sup> With regards to the realisation of social and economic rights, under which the right to health falls, the Constitution contains a progressive provision which requires the State of Kenya to take policy, legislative and other measures to achieve the progressive realisation of social-economic rights which are covered under article 43. The said article guarantees every person's right to the highest attainable standard of health which covers the right to health services including reproductive healthcare. Moreover, the right to emergency medical treatment is also protected for every person.<sup>xxi</sup> The Constitution also protects key rights essential to the realisation of the right to health (underlying determinants of health) namely the right to: accessible and adequate housing; reasonable sanitation; be free from hunger and adequate food; an adequate supply of clean and safe water, and social security.<sup>xxii</sup> On social security, the Constitution further obligates the State to provide appropriate social security to needy persons who cannot support themselves and their dependents.<sup>xxiii</sup>

The Constitution of the Republic of South Africa of 1996 is a transformative tool which aims to, *inter alia*, address the injustices of the Apartheid system in South Africa. Given its importance, a progressive and comprehensive bill of rights which guarantees fundamental rights is included in it. It protects everyone's right to have access to healthcare services (including reproductive healthcare); sufficient food and water; and social security and social assistance particularly for people who are unable to support themselves. Moreover, the Constitution requires everyone to be afforded emergency medical treatment. The Constitution requires the State of South Africa to take reasonable legislative and other measures within its available resources to progressively realise the rights to healthcare, food and social security.<sup>xxiv</sup> The Constitution also provides that everyone has the right to an environment that is not harmful to their health or well-being.<sup>xxv</sup>

The foregoing discussion emphasises the need for constitutional recognition and protection of the right to healthcare for everyone and older persons in particular. Indeed, the experience of other countries and the 2011 constitutional review process in Tanzania show the possibility of making the right to healthcare justiciable in Tanzania. It should also be noted that the Constitutions of Kenya, Angola and South Africa protect not only the right to healthcare (which is one component of the right to health) but also the other component of the right to health namely underlying determinants of health such as water and sanitation, healthy and safe environment and the right to food. This approach is, in our view, relevant in the context of older persons whose health issues demand a holistic approach and not just healthcare services which are usually needed in the event of illness. Even though the Constitution of Tanzania does not contain a justiciable right to healthcare, some legislation protect it as discussed below.

### ***Legislative Measures***

Adoption of legislative measures is an important mechanism for realising older persons' right to health at the domestic level. This is indicated in key international human rights instruments. The African Charter on Human and Peoples' Rights requires Tanzania, and other States Parties to it, to give effect to the rights, freedoms and duties in the Charter through, *inter alia*, adoption of legislative measures.<sup>xxvi</sup> Moreover, according to the African Union Policy Framework and Plan of Action on Ageing (2002):

“Member States recognise the fundamental rights of Older Persons and commit themselves to abolish all forms of discrimination based on age; that they undertake to ensure that the rights of Older Persons are protected by appropriate legislation.”<sup>xxvii</sup>

At the African regional level, Tanzania has ratified treaties which obligate it to adopt necessary legislative measures. The African Charter requires States Parties to recognise the rights, duties and freedoms in the Charter through the adoption of legislative and other measures towards realising the rights it guarantees.<sup>xxviii</sup> Moreover, the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Older Persons in Africa provides that the adoption of legislative measures is an important means of giving effect to the rights and freedoms of older persons at the domestic level and that national laws are the basis for protecting older persons' rights.<sup>xxix</sup> At the global level, the ICESCR obligates Tanzania and other States Parties to use all appropriate means, including the adoption of legislative measures, towards achieving

progressively the full realisation of the rights in the Covenant under which the right to health is protected for everyone, including older persons.<sup>xxx</sup>

There is no specific legislation in Tanzania which protects the rights of elderly persons. Since the National Ageing Policy was adopted in 2003, there has been no legislative effort to transform it into a binding legal framework. One of the objectives of the Policy is to legally protect older persons as a special group through the enactment of laws which promote and protect their welfare.<sup>xxxii</sup> The Policy acknowledges the absence of such laws in paragraphs 1.2.7 and 3.11 as follows:

“The current social and legal system does not provide adequate protection and security to older people as a special group. Consequently, they do not receive deserving care and older women are denied their right to own and inherit property.”<sup>xxxii</sup>

“Currently, there is no specific law that is in favour of older people’s rights and development. This being the case the government will enact a law for the same.”<sup>xxxiii</sup>

The Government has, on several occasions, expressed its intention to prepare such a law but it has not yet fulfilled this commitment. There have been calls from different circles requiring the Government to speed up the process of enacting the law. The Tanzania Elders’ Council has persistently emphasised the need for the law to safeguard older persons’ rights.<sup>xxxiv</sup> On the part of civil society, the Legal and Human Rights Centre has called on the Government to enact a specific law for the protection of elderly persons’ rights to complement the plans and intentions in the National Ageing Policy.<sup>xxxv</sup> When marking the International Day of Older Persons in 2020, older persons in Songea District requested the Government to enact legislation on older persons which will help in advocating and protecting their rights and welfare in the country.<sup>xxxvi</sup> The call for the enactment of legislation on older persons has also been made at the international level. In 2016 the Universal Periodic Review of the Human Rights Council called on Tanzania to finalise the enactment of the law for protecting older persons, including women who are accused of witchcraft.<sup>xxxvii</sup> Based on this unimplemented recommendation, in May 2021 civil society organisations in Tanzania noted with concern that Tanzania has not yet enacted a law for protecting older persons. Regarding healthcare, the CSOs observed that, “vulnerable older people in Tanzania still lack appropriate medicine and diagnostic services for early detection and management of geriatric conditions and chronic diseases.”<sup>xxxviii</sup>



During the meeting between the President of the United Republic of Tanzania and older persons from Dar es Salaam Region on 5<sup>th</sup> May 2021, the Minister responsible for health said the Ministry of Health was in the process of reviewing the 2003 National Ageing Policy in order to have a basis for the enactment of specific legislation for protecting older persons' rights. Since the National Ageing Policy was adopted in 2003, several developments relevant to older persons have taken place nationally and internationally. It is therefore expected that the Government will complete the review of the 2003 Policy and thereafter enact legislation to implement the new policy framework. Despite the absence of specific legislation on older persons and the absence of enforceable provisions in the Constitution on the right to healthcare, some laws recognise the right to healthcare for specific categories of people.

The HIV and AIDS (Prevention and Control) Act<sup>xxxix</sup> was enacted to provide for, *inter alia*, prevention, treatment, care, support and control of HIV and AIDS. The Act contains important provisions on the right to health in the context of HIV and AIDS. All persons living with HIV and AIDS have the right to the highest attainable standard of physical and mental health and the right to treatment of opportunistic diseases.<sup>xl</sup> It is clear that this provision domesticates international human rights treaties but in relation to persons living with HIV and AIDS. Moreover, under the Act, the Government is, through available resources, responsible for ensuring every person living with HIV and AIDS is accorded basic health services.<sup>xli</sup> The Act also requires owners and managers in charge of public or private healthcare facilities or medical insurance schemes to facilitate access to healthcare services by persons living with HIV and AIDS without any form of discrimination based on their status. Furthermore, under the Act, the Ministry responsible for health is required to ensure the availability of antiretroviral drugs (ARVs) and other healthcare services and medicines to persons living with HIV and AIDS and those exposed to the risk of infection.<sup>xlii</sup> Although the Act does not mention older persons, it protects everyone living with HIV and AIDS including older persons.

The Persons with Disabilities Act is another legislation which contains progressive provisions on the right to healthcare for all persons with disabilities. The Act provides that “every person with a disability shall have the right to enjoy the attainable standard of healthcare services without any discrimination.”<sup>xliii</sup> The Act further requires all public and private healthcare facilities to ensure they provide persons with disabilities with the same level and standard of health and rehabilitation services as provided to other people, ensure the availability of basic

facilities essential for health and rehabilitation services needed by persons with disabilities, and ensure health and rehabilitation personnel are trained and educated on disability issues.<sup>xliv</sup> Moreover, the Minister responsible for health is required to ensure the provision of health and rehabilitation services to persons with disabilities, and the availability of a sufficient number of health and rehabilitation professionals needed to meet the health and rehabilitation needs of persons with disabilities. Besides, under the Act persons with disabilities have the right to effective medical care and measures which prevent the occurrence of impairment, and to receive appropriate information on health matters in accessible forms.<sup>xlv</sup> The Act protects the right to healthcare for older persons with disabilities.

The HIV and AIDS (Prevention and Control) Act and the Persons with Disabilities Act contain progressive provisions on the right to healthcare services for persons living with HIV and AIDS and persons with disabilities respectively. At the basic level, the Acts apply to all persons in the two categories including older persons. Nevertheless, specific legislation for older persons is needed to specifically recognise and protect all the rights of older persons including the right to healthcare.

### ***Policy Measures***

Policy measures are essential for the realisation of the right to healthcare. Tanzania is required by various international human rights instruments to adopt policy measures in the specific area of older persons' right to health. The Recommendation on Older Persons' Rights adopted by the Pan-African Parliament in 2018<sup>xlvi</sup> advises the Member States of the African Union to protect older persons' right to healthcare in comprehensive policies. The Recommendation provides:

“The AU Member States to design and implement comprehensive healthcare policies for older persons, including sexual and reproductive healthcare, and facilitate access to health services and medical insurance cover, within available resources.”<sup>xlvii</sup>

Tanzania's public policies are two-fold, macro policies and micro/sectorial policies. The former is broad cross-sectoral socio-economic plans while the former focus on specific sectors or areas. The Tanzania Development Vision 2025 (Vision 2025) envisions Tanzania's socio-economic development by 2025. The Vision covers five broad targets namely: (i) high-quality livelihood, (ii) peace, stability and unity, (iii) good governance, (iv) a well-educated and

learning society, and (v) a competitive economy capable of producing sustainable growth and shared benefits. The Vision outlines specific goals to be realised for attaining each of the aforementioned targets. With regards to high-quality livelihood, the goals include access to primary healthcare for all, access to quality reproductive health services for all individuals of appropriate ages, universal access to safe water, and life expectancy comparable to the level attained by typical middle-income countries. The Vision, therefore, requires all persons, including older persons, to access healthcare services.

Tanzania formulated its National Human Rights Action Plan for the first time in 2013. Its implementation was envisaged to span four years from 2013 – 2017. To date, this Plan has not been replaced. However, it contains substantial information on key national human rights matters including institutional mandates and the national framework for the protection and promotion of human rights. Arguably, it is the most authoritative Government document on national human rights matters. The Plan contains the Government's commitment to protect and promote human rights and was developed in response to the recommendation of the 1993 Vienna Declaration and Programme of Action which urged all states to develop national action plans to promote and protect human rights. The main goal of the Plan is to strengthen the respect, protection, fulfilment and promotion of human rights in Tanzania in line with the Constitution of Tanzania, the Constitution of Zanzibar and international human rights treaties ratified by Tanzania.<sup>xlviii</sup> Chapter Three of the Plan deals with the rights of special groups, which include older persons. Challenges facing older persons are identified and a plan for improving their human rights situation is stated.

According to the Plan, older persons face different challenges in enjoying their rights because they are not a homogenous group. Many of them struggle with homelessness, violence and murder, lack of adequate care (especially healthcare) and desertion while others lead active and successful lives. To address these challenges, the Plan aims to: raise public awareness against harmful traditional beliefs and enhance respect for the elderly; institute a universal pension scheme for all elderly; and comply with principles of social equity and social protection of pensioners.<sup>xlix</sup> Specific commitments in the area of health are as follows:

- (i) Conduct an assessment of the elderly population to identify needs in providing health and social support, including the desirability of establishing designated homes and care centres for the elderly.

- (ii) Train health and social welfare practitioners to address the health and social needs of the elderly.
- (iii) Consider the unique needs of the elderly in identifying and procuring essential medicines, and ensure that these needs are incorporated into the supply chain.
- (iv) Develop disability and packages with equipment such as eyeglasses and walking sticks.
- (v) Provide free of charge access to appropriate healthcare, including medicines for chronic diseases and disability.
- (vi) Where appropriate and feasible, develop mobile clinics to extend health services to older people living in remote locations.

The above specific activities fall under the broader government objective of ensuring the “provision of adequate health and social care to senior citizens.”<sup>1</sup>

In 2003 the Government developed and adopted the National Ageing Policy and became the second country in Africa after Mauritius to develop a policy on older persons. The Policy identifies seven broad challenges facing older people in the country namely; (i) disintegration of traditional life; (ii) inadequate care; (iii) poverty; (iv) diseases; (v) harmful and unfair traditions against older women; (vi) disability; and (vii) inadequate legal protection. In response to these challenges the Policy—which designates older persons as a special group—is purposed to: ensure older persons’ role in national development is recognised, direct the allocation of necessary recourses in order to improve service delivery to older persons, make room for older persons to participate in decision making on matters affecting them and the nation, ensure older persons get opportunities to participate in income-generating activities, and legally protect older persons. The Policy remains a guideline for the Government and cannot be enforced. For the meaningful impact of the Policy, the Government must enact legislation to put its good intentions in a binding legal framework. However, the review of this policy is long overdue and the Government is expected to review it before the enactment of legislation.

According to the National Health Policy, elderly persons have remained disadvantaged in the previous health policies probably because in terms of numbers they were not so visible. There are specific challenges facing older persons as a group. First is the lack of personnel who are trained specifically to understand the health problems of the elderly. Secondly, their health problems are age specific and so deserve care guided by specific inputs and facilities. Thirdly,

they have no income to pay for healthcare.<sup>li</sup> According to the Policy, many elderly people fail to access important quality health services including timely availability of health services. Health facilities do not have adequate expertise and lack human resource capacity in geriatric healthcare services which may lead to wrong patient management. Furthermore, elderly people are not involved in every stage of provision of knowledge on free medical treatments in health facilities. In addition, geriatric care has not improved especially for non-communicable diseases including cancer treatment. Likewise, there are limited functioning financing arrangements for the elderly. The Government commits itself to improving the quality of healthcare services for the elderly through: (i) enhancing promotion programs for healthy ageing for older adults; (ii) ensuring adequate expertise and human resource capacities in elderly/geriatric healthcare services; (iii) involving elderly people in every stage of provision of knowledge and information on free medical treatments in health facilities; (iv) improving geriatric care, especially for non-communicable diseases especially cancer treatment; and (v) ensuring adequate functioning financing arrangements for the elderly is in place.<sup>lii</sup>

As it has been shown, the Government has expressed its commitment in various policies to ensure older persons' access to healthcare services and stay healthy. However, translation of these intentions into binding obligations has not been achieved a gap that has led to poor implementation of the policies. This is manifested by the challenges that older persons continue to face in accessing health services. Besides, there are key Government policies such as the Strategic and Action Plan for the Prevention and Control of Non-Communicable Diseases in Tanzania 2016 – 2020 which do not contain any specific provisions on older persons even though they are arguably the most affected group by non-communicable diseases (NCDs).

The legislative framework on older persons is also inadequate as there is no specific legislation to protect older persons' rights generally and the right to health in particular. Regarding policies, the National Ageing Policy of 2003 is outdated and needs to be revised to accommodate the needs of older persons and provide a relevant foundation for protecting older persons' rights.

The right to health is not legally protected by the Constitution of Tanzania. This is despite the fact that Tanzania has signed and ratified global and regional human rights treaties (ICESCR and the African Charter) which obligate it to domesticate and realise the right to health for

everyone, including older persons. However, Tanzania has made several commitments in its policies to ensure access to healthcare by all older persons. The policies firmly recognise older persons as a vulnerable group and their basic right to healthcare services. The right to healthcare is also inadequately recognised and protected by legislation. Overall, it is argued that the legal and policy framework on older persons' right to healthcare in Tanzania is seriously inadequate.

## CONCLUSION

This article has examined constitutional, legislative, and policy taken by Tanzania to realise older persons' right to healthcare in Tanzania. Neither does the Constitution guarantee the right to healthcare as a justiciable right nor does it protect the rights of older persons as a vulnerable group. Besides, Tanzania has not enacted specific legislation on older persons despite its commitment to do so in the National Ageing Policy of 2003 and calls from different stakeholders including political parties, CSOs, older persons' associations and international human rights monitoring bodies. The absence of specific legislation on older persons means there is no concrete framework which obligates the Government to act and hold accountable those who fail to live up to their obligations in ensuring older persons access healthcare services.

On policy measures, there are various Government policies which recognise older persons as a vulnerable group and the need to ensure their welfare including access to healthcare services. The main ones are the National Ageing Policy of 2003 and the National Health Policy of 2007. The Government has therefore expressed firm commitment through policies to ensure older persons have access to healthcare services. Despite the commitment, older persons continue to face several challenges in accessing healthcare services. These include lack of geriatricians and other healthcare workers trained to handle older persons' healthcare issues, limited access to essential medicines, ageism, limited physical access to hospitals particularly in rural areas where most older persons live, delays in accessing services, lack of palliative facilities, and inadequate facilities for older persons with physical disabilities. There is a need to ensure the policy framework on older persons' rights is improved. Moreover, the legal framework on older persons' rights should be strengthened through constitutional protection of older persons' rights and the right to healthcare and the enactment of specific legislation on older persons.

## ENDNOTES

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- <sup>i</sup> UNITED NATIONS, (2012), *Human Rights Indicators: A Guide to Measurement and Implementation*, New York and Geneva, p. 34.
- <sup>ii</sup> Article 64(5) of the Constitution.
- <sup>iii</sup> Article 98.
- <sup>iv</sup> SHIVJI, Issa, *et al* (2004), *Constitutional and Legal System of Tanzania*, Dar es Salaam: Mkuki na Nyota Publishers, p. 92.
- <sup>v</sup> Article 8 (1) (b).
- <sup>vi</sup> Article 9 (i).
- <sup>vii</sup> Article 11 (1).
- <sup>viii</sup> Article 9(f).
- <sup>ix</sup> Article 25(1).
- <sup>x</sup> Article 7 (2).
- <sup>xi</sup> Article 14 (1).
- <sup>xii</sup> Article 14 (2) (f).
- <sup>xiii</sup> Article 44 (1) (e).
- <sup>xiv</sup> Article 48 (1).
- <sup>xv</sup> Article 55 (c).
- <sup>xvi</sup> Article 46(1)(g).
- <sup>xvii</sup> Article 77 (1), Constitution of the Republic of Angola, 2010.
- <sup>xviii</sup> Article 77 (2), Constitution of the Republic of Angola, 2010.
- <sup>xix</sup> Article 82.
- <sup>xx</sup> Article 57, The Constitution of Kenya, Revised Edition 2010.
- <sup>xxi</sup> Article 43 (2), Constitution of the Republic of Kenya, 2010.
- <sup>xxii</sup> Article 43, Constitution of the Republic of Kenya, 2010.
- <sup>xxiii</sup> Article 43 (3), Constitution of the Republic of Kenya, 2010.
- <sup>xxiv</sup> Article 27 of the Constitution of the Republic of South Africa Act, No. 108 of 1996.
- <sup>xxv</sup> Article 24, Constitution of the Republic of South Africa.
- <sup>xxvi</sup> Article 1.
- <sup>xxvii</sup> Recommendation 1.
- <sup>xxviii</sup> Article 1.
- <sup>xxix</sup> Article 2 of the Protocol.
- <sup>xxx</sup> Article 2(1) of the CESC.
- <sup>xxxi</sup> United Republic of Tanzania 'National Ageing Policy' 6-7.
- <sup>xxxii</sup> National Ageing Policy, p. 5.
- <sup>xxxiii</sup> National Ageing Policy, p. 15.
- <sup>xxxiv</sup> See for example 'Wazee wataka utungwaji wa sheria kuharakishwa' *Mwananchi* 12 December 2017 <http://www.mwananchi.co.tz/habari/Serikali-yatakiwa-kuharakisha-utungaji-sheria-ya-wazee/1597578-4224778-4egrrv/index.html> - accessed on 4 June 2018.
- <sup>xxxv</sup> Legal and Human Rights Centre & Zanzibar Legal Services Centre, Tanzania Human Rights Report 2018, p. 159.
- <sup>xxxvi</sup> CLAVERY, Jacquelen, Songea District Council, 'Wazee waadhimisha siku yao kwa kuiomba serikali kutunga sheria ya wazee' 2<sup>nd</sup> October, 2020. <http://www.songeacdc.go.tz/new/wazee-waadhimisha-siku-yao-kwakiomba-serikali-kutunga-sheria-ya-wazee> - accessed on 24 January 2021.
- <sup>xxxvii</sup> UPR Recommendations (Nos. 134.15 and 134.36):
- <sup>xxxviii</sup> Legal and Human Rights Centre, Tanzania Human Rights Defenders Coalition & Save the Children (2021), Tanzania Civil Society Report on The Status of the Implementation of the 133 UPR Recommendations of March 2016 which were Accepted by The United Republic of Tanzania (CSOs' Joint Submission to the 39 UPR Working Group Review of the United Republic of Tanzania, March 2021). [https://www.humanrights.or.tz/assets/images/upload/files/FINAL\\_CSOs\\_UPR\\_Report\\_Tanzania.pdf](https://www.humanrights.or.tz/assets/images/upload/files/FINAL_CSOs_UPR_Report_Tanzania.pdf) - accessed on 13 May 2021.
- <sup>xxxix</sup> No. 28 of 2008.
- <sup>xl</sup> Section 33(1) of the Act.
- <sup>xli</sup> Section 19(1) of the Act.

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xlii Section 24 of the Act.

xliii Section 26(1) of the Act.

xliv Section 26(2) & (3).

xlv Section 26(4), (5) & (6) of the Act.

xlvi PAP.4/PLN/RECOM/2/MAY.18.

xlvii Recommendation No. 6.

xlviii United Republic of Tanzania National Human Rights Action Plan 2013 – 2017, p. ix.

xlix Action Plan, p. 45.

<sup>1</sup> National Human Rights Action Plan, pp. 129 – 131.

<sup>ii</sup> National Health Policy, 2007, part 2.16 on “Geriatric Services”.

<sup>iii</sup> National Health Policy, 2007, part 5.16.

