

Charting the Course: Assessing Malaysia's Preparedness for Implementing Dedicated Legal Safeguards for Older Persons Care

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Abstract

According to the United Nations, Malaysia has transitioned into an ageing society, a status it is projected to reach by 2030. This means that approximately 15 per cent of the population, or 5.8 million individuals, will be classified as older persons. The rapid ageing of Malaysia's population has led to a significant increase in the demand for care services for older individuals, a need that was further exacerbated during the COVID-19 pandemic. The pressing question that arises is whether the existing care delivery systems can effectively meet the escalating needs across all care settings. Moreover, what are the potential risks and repercussions of inadequate care provisions for essential care components? When it comes to legal protections for older persons, it is crucial to assess Malaysia's current status. The authors argue that a comprehensive understanding of existing care practices for older persons, combined with robust legal protections, is a vital first step in addressing the needs and challenges of elder care. This ensures a high standard of care delivery. This article aims to delve into the relevant legal frameworks for the care of older persons and evaluate Malaysia's readiness to implement specific legal safeguards for elder care. The authors strongly advocate for the establishment of a dedicated statute, which is not only important in principle but also in its enforceability and alignment with best practices that prioritize the welfare of older persons and encompass all related care components.

Keywords

Older person, care, dedicated legal safeguards, preparedness

Introduction

When society is faced with news and reports detailing the mistreatment of older individuals, including instances of abuse and neglect, the initial response often tends to favour punitive measures as the primary solution. This typically involves implementing a punishment system for offenders or attributing all responsibility to caregivers. However, it is crucial to shift our perspective and consider the effectiveness of this approach in deterring mistreatment directed at older persons in care settings. Is it feasible to effectively address the cyclical nature of mistreatment towards older

individuals solely through the activation of a guilt-punishment framework for caregivers?

In order to effectively terminate the cycle of mistreatment, it is essential to prioritise preventive measures over immediate punitive actions. This approach necessitates a comprehensive examination of the root causes contributing to the mistreatment of older individuals. The fundamental issue stems from a lack of understanding regarding the preventive mechanisms associated with their care. This comprehensive examination must precede any consideration of punitive measures, which should be considered supplementary to an overarching legal protection framework. Punitive actions must not be incorporated at the initial stage of addressing mistreatment, as doing so may undermine the integrity of familial relationships.

The care of older individuals is a topic of significant importance. This article aims to define older person care, identify appropriate caregivers, and explore the current legal status and protections available to older persons in Malaysia. It also examines the potential impact of a comprehensive legal framework and mechanisms on the delivery and quality of care services for older persons in the country. This article addresses various issues and challenges associated with caring for older individuals in the Malaysian context. The discussion includes an overview of the historical development of the legal framework governing older person care in Malaysia, providing readers with a detailed understanding of the subject. Finally, the article presents recommendations for viable solutions.

Literature Review

Older Persons and Ageing Demographic in Malaysia

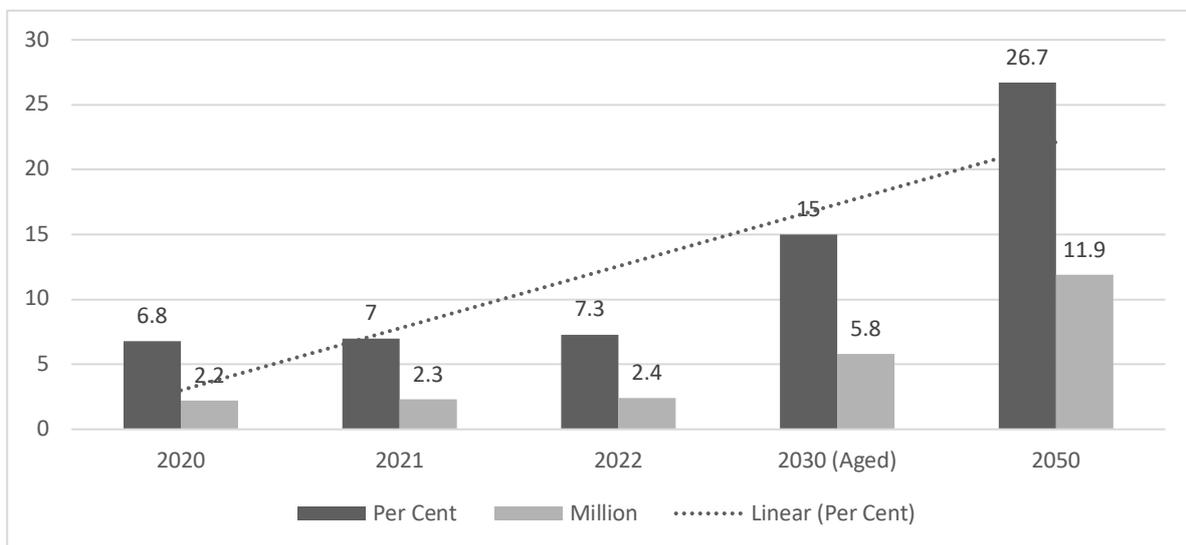
The governance of care for older individuals is of paramount importance, as this demographic is often regarded as vulnerable due to a variety of physical and psychological challenges they may encounter as they age. Vulnerability can arise from factors such as frailty, chronic illness, degenerative diseases, and physical, cognitive, and mental impairments, persisting until the end of life. The circumstances have been exacerbated by the COVID-19 pandemic, highlighting the urgent need for attention to care issues affecting older persons. As healthcare professionals, policymakers, and caregivers, their role in addressing these issues is crucial.

The classification of an older person varies by context. According to the World Health Organization (WHO, 2004), most developing nations delineate an older individual as 65 or older, a definition that aligns with the standard retirement age, making it a practical classification. Conversely, the United Nations (UN) established, during the World Assembly on Aging in Vienna in 1982, that an older person is defined as anyone aged 60 years and above (Ikmal Hisham & Khairil Azmin, 2017). Malaysia has adopted the UN definition, which is enshrined in the Malaysian National Policy for the Elderly, revised in 2011 as the National Policy for Older Persons, and in the National Health Policy for Older Persons established in 2008 by the Ministry of Health (MOH). Additionally, this definition is reflected in national legislation, such as Section 2 of the

Private Aged Healthcare Facilities and Services Act 2018 [Act 802], which defines an "aged person" as any individual who is 60 or older.

The demographic of the elderly population in Malaysia is experiencing a rapid increase. According to reliable statistics from the Department of Statistics Malaysia (DOSM, 2023), the proportion of individuals aged 60 and above rose to 7.3 per cent (approximately 2.4 million) in 2022, compared to 7.0 per cent (around 2.3 million) in 2021 and 6.8 per cent (approximately 2.2 million) in 2020. Projections from DOSM suggest that the elderly population is expected to reach 26.7 per cent (approximately 11.9 million) by the year 2050. This trend has significant implications for our society, as recent news reports indicate that within the next two decades, the ratio of elderly individuals in Malaysia will rise to at least three per every 20 Malaysians (David, 2022 May 15).

Figure 1 Proportion and Estimated Projection of the Older Population in Malaysia (2020-2050)



Source: Statistics: The Department of Statistics Malaysia (DOSM), 2023

The statistic above highlights Malaysia's rapid transition into an ageing nation, even by global standards. According to the United Nations (UN) definition, Malaysia has officially become an 'ageing society.' By 2030, the country is projected to evolve into an 'aged society,' with an estimated 15 per cent of the total population—approximately 5.8 million individuals—classified as older. However, Malaysia may reach this status sooner than anticipated, as indicated in the Vital Statistics Malaysia 2021 report published by the Department of Statistics Malaysia (DOSM), which includes critical data on the nation's birth and death statistics. This potential acceleration of the ageing process underscores the urgency of the issue.

As we stand on the brink of becoming an ageing nation, it is imperative that we proactively prioritise comprehensive strategies that cater to the needs of our older population, ensuring their holistic well-being. We must take decisive action by crafting and implementing effective policies that make a difference. This includes investing in specialised healthcare services tailored to their unique requirements, establishing

robust social support networks that foster community connections, and guaranteeing financial security to empower their independence. Moreover, we need to create environments that are friendly and accessible for older adults, promoting active ageing initiatives that encourage participation and engagement in society. Establishing dedicated legislation for older individuals is not merely an option but a necessity. Neighbouring countries, including Indonesia, Thailand, the Philippines, and Vietnam, have enacted specific legislation about the elderly. This development reflects their commitment to addressing the challenges associated with an ageing population, recognising the increasing number of elderly individuals within their respective nations. Such legislation will enable us to develop and implement thorough measures that address the unique challenges faced by our elderly population, ensuring they receive the quality care and respect they deserve.

Overview of Older Person Care in Malaysia

Countries worldwide are grappling with significant challenges in addressing the care needs of their ageing populations. Comparative studies of ageing and governmental responses serve as valuable tools in this context. These studies offer critical insights into the legal solutions adopted by various nations, including Malaysia (Neysmith & Aronson, 2012). It is essential to recognise that the issues and challenges surrounding the care of older individuals are not merely rhetorical; they represent a real and pressing concern that demands the active engagement of policymakers, researchers, and stakeholders in healthcare and social services, whose roles are crucial in finding effective solutions.

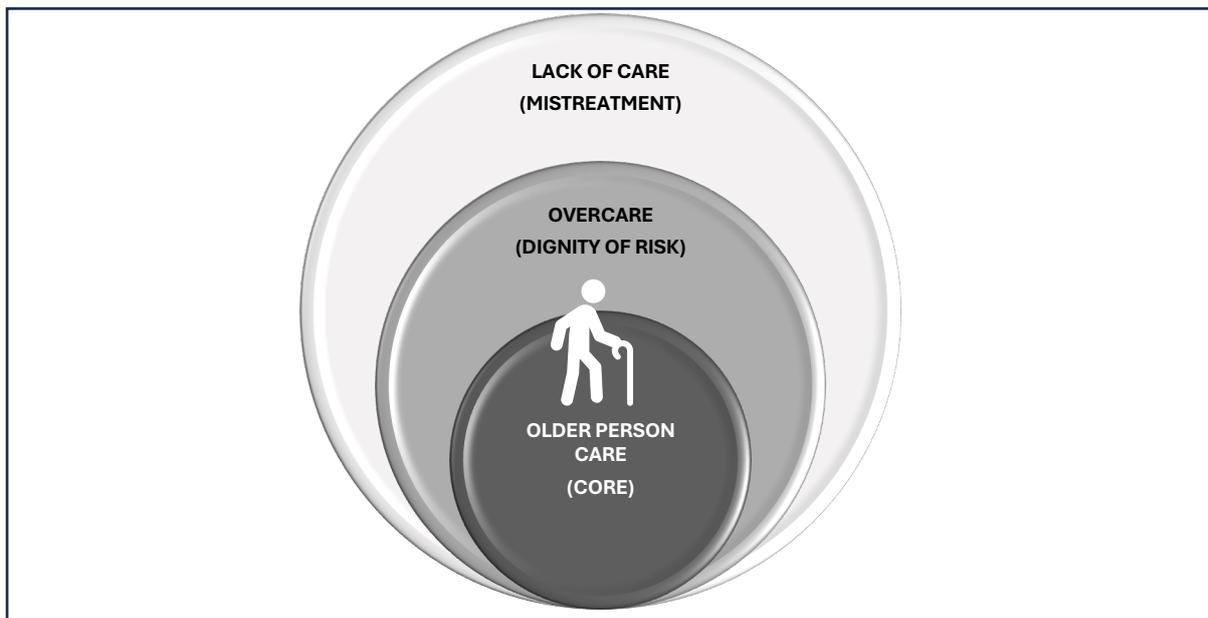
Elderly care, also known as eldercare or aged care, is the provision of specialised support and assistance designed to address the unique and often complex needs of older adults as they navigate the natural ageing process (Dahlan et al., 2024). To fully grasp this concept, it is important to first understand what the term "care" means.

According to the Oxford Dictionary, "care" refers to providing essential support for the health, welfare, maintenance, and protection of individuals or objects, as exemplified by the care extended to older adults. This definition highlights the multifaceted nature of care, which encompasses physical health and emotional and social well-being. Associated concepts include supervision, custody, protection, responsibility, and guardianship. Conversely, neglect and disregard signify actions antithetical to the principles of care. Synonyms for "care" include charge, control, custody, guardianship, guidance, keeping, protection, responsibility, and duty. Furthermore, the Cambridge Dictionary characterizes "care" as safeguarding individuals or entities while attending to their needs. This concept is illustrated through examples such as the standard of care implemented in hospitals and childcare facilities.

The term '*cura*' or care, in the Latin literature of ancient Rome, holds significant historical importance as it encompasses two fundamental yet conflicting interpretations. On the one hand, it signifies 'worries, troubles, or anxieties,' as evidenced by the expression indicating that an individual is 'burdened with cares' (Reich, 1995). Conversely, 'care' also pertains to the provision of welfare, which aligns with a more positive connotation characterised by attentive conscientiousness and devotion (Reich, 1995).

The delicate balance between these conflicting definitions underscores a significant risk: Without adequate care, older individuals may face mistreatment. Furthermore, when acts of caring become excessive, they can undermine an older person's dignity, as shown in Figure 2. It is crucial to recognise that failing to provide appropriate care can lead to serious consequences—such as the inadvertent abuse of older adults, which often takes the form of misguided positive actions, or neglect (through damaging inaction). We must prioritise understanding and addressing these risks to ensure the well-being and respect of our elderly population.

Figure 2 Older Person Care Risk-Possibility Flow



Rates of abuse against older individuals have surged during the COVID-19 pandemic (Filipska et al., 2021). Often referred to as mistreatment, maltreatment, granny-battering, or granny-bashing, elder abuse encompasses a wide range of forms, more than just physical violence (Burston, 1975). It includes psychological abuse, sexual abuse, neglect, and financial exploitation (Yuen, 2017). There is a consensus that abuse toward older adults can either be an act of commission or omission, with the latter typically categorized as neglect. This abuse may be intentional or unintentional and can manifest in various forms, including physical harm or psychological distress, which may involve emotional or verbal aggression, as well as financial or other material maltreatment (Krug et al., 2002).

Excessive caregiving may inadvertently contradict the principle known as the "dignity of risk" (Mukherjee, 2002). It is essential to afford older individuals the autonomy to select their preferred living arrangements or care settings. The concept of dignity implies that individuals deserve the opportunity to engage in reasonable risk-taking, and when this autonomy is restricted, it can impede personal development, diminish self-esteem, and negatively affect overall quality of life (Rosen, 2012). However, it is important to remember that reasonable risk-taking can also enhance

quality of life. For example, permitting older adults to enjoy activities may present certain risks. Nevertheless, the protective measures commonly implemented in assisted living facilities can restrict their freedoms and undermine their sense of self-worth. Care is supposed to balance with the preferences of the older persons as older persons have their own autonomy.

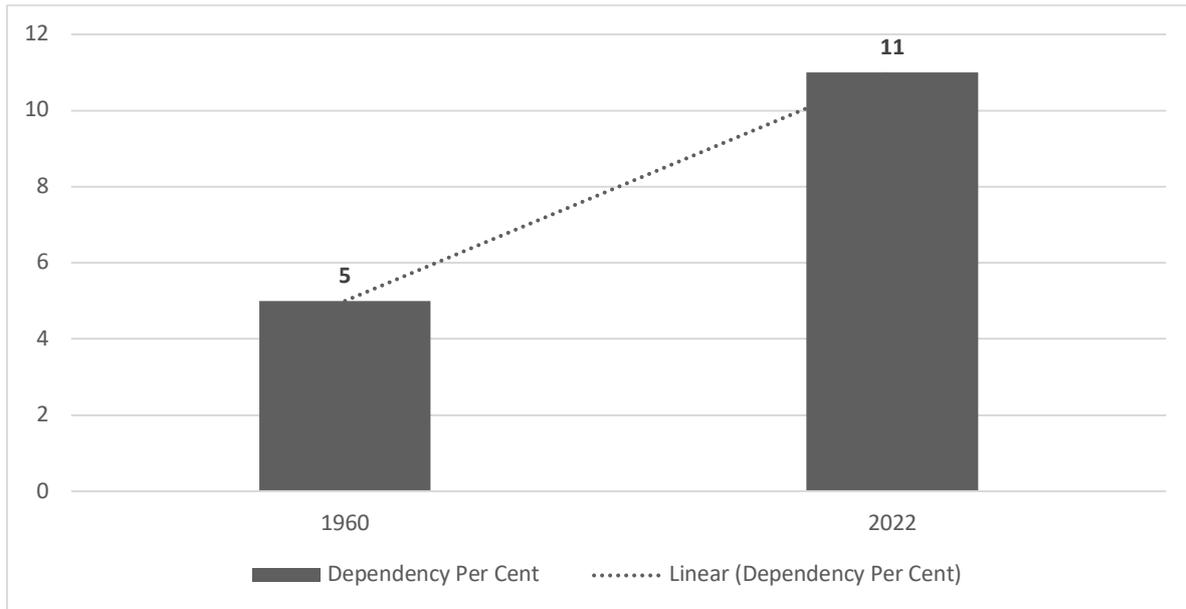
Caring for older individuals is a nuanced and adaptable concept; hence, it is impossible to pinpoint a rigid definition of complete care and protection. Recognising that there is no one-size-fits-all solution in care delivery is crucial. However, once a minimum standard of care is established, we can confidently assert that it is adequate and high-quality. As healthcare professionals, caregivers, and policymakers, our role in aligning care with the principles outlined in the United Nations Principles for Older Persons (UNPOP) is crucial. These principles highlight five essential themes: independence, participation, care, self-fulfilment, and dignity. By embracing these principles, we can elevate the standard of care and truly honour the worth of our elderly population. The 74th Plenary Meeting of the United Nations General Assembly embraced the principles through Resolution 46/91 on December 16, 1991. This pivotal resolution, as recognised by the esteemed Commission for Social Development of the United Nations, highlights the urgent need for the care and protection of older persons. Governments must take action by weaving these principles into their national policies, thereby ensuring robust legal protections for one of society's most vulnerable groups.

Older Person Care Components

Caring for older individuals decisively goes beyond merely addressing economic and social factors. It is imperative to consider all caregiving dimensions, including two essential components, thoroughly. The first component involves the recipients themselves—the older persons. The second component comprises the enablers, including the state, the private sector, and family caregivers (Wong et al., 2021). Both components play a vital role in the landscape of elderly care in Malaysia. However, the significance of care providers within the second component is frequently underestimated, and this neglect can lead to significant challenges in ensuring high-quality care for older individuals.

Research shows that one major factor causing difficulties in the relationship between caregivers and care recipients is the increasing dependence on the latter. This dependency can lead to elevated stress levels for caregivers (Tough et al., 2022; Wang et al., 2020). In Malaysia, the old-age dependency ratio has become an important issue, increasing from 5 per cent in 1960 to 11 per cent in 2022, according to World Bank data. As a result, elderly care has emerged as a key concern in the country (Muthusamy & Sethumadhavan, 2023). The Malaysian government is addressing this issue by focusing on the significance of caregiving, mainly through initiatives to develop and strengthen the "care" or "silver economy" sector (Faiqah, 2023).

Figure 3 Old-age Dependency Ratio in Malaysia



Source: The World Bank, 2022

Older Person Care Settings

The care provided to older individuals can be broadly categorised into two main types: informal care settings and formal care settings. These two categories often complement each other in various everyday situations, depending on the specific care needs. In informal care settings, caregivers typically include spouses, children, family members, neighbours, and volunteers (Khadijah, 2021). Volunteers play a crucial role as social workers, offering daily assistance and support for older adults within the community. They are also active in older adult activity centres, residential care facilities, and daycare centres.

In Malaysia, the essence of caregiving is intricately woven into the fabric of the family structure, establishing it not only as a primary but as the most vital source of support for individuals in need. Within 'informal care,' the family emerges as the central caregiver, shouldering the critical responsibility of nurturing and supporting its members (Jayasooria et al., 1992). This deeply ingrained culture of 'family security' and caregiving, prevalent in Malaysia and across many Southeast Asian nations, unequivocally underscores the family's role as the foremost caregiver and custodian of care responsibilities, particularly for the elderly (Tan et al., 2020). It is crucial to recognise and strengthen this familial approach to caregiving, as it is essential for fostering a compassionate and resilient society that prioritizes the well-being of all its members (Loo & Folk, 2013).

In addition to informal care settings, formal institutional care options for older individuals are vital in enhancing their quality of life. The government, through the Department of Social Welfare (DOSW), offers essential welfare institutional care with facilities such as Homes for Chronically Ill (*Rumah Ehsan*) and Homes for Older Persons (*Rumah Seri Kenangan*) (Center, 2001). Moreover, private care centers provide additional support, expanding the spectrum of available services. By ensuring that these diverse care settings are sufficiently funded and easily accessible, we can create a more

comprehensive and effective support system for older persons, ultimately enriching their experiences and well-being.

Older Person Care Issues and Challenges

As a rapidly developing country, Malaysia is undergoing industrialisation and urbanisation, thus witnessing the emergence of new social challenges, notably concerning health and welfare, both in urban centres and rural areas (Ismail, 1992). One of the glaring and prominent social challenges due to the development of industrialisation and urbanisation in Malaysia is an increase in the ageing population that significantly impacts the population and demographic shift (Elsawahli et al., 2016). Equally important is the shortage of care services for older persons, including social and healthcare accessibility (He & Tang, 2021). Further, the increase in poverty and income inequality, shortage of affordable and older person-friendly housing, infrastructure, and environmental degradation and sustainability in town planning that is inclusive for older persons, too, becomes a new era of challenges (Fikri 14 April, 2023). All those examples are possible costs of development in Malaysia that indeed have a social, economic and political holistic impact on citizens of all ages.

Furthermore, when it comes to caring for older persons, the social challenges that arise from urbanisation and modernisation can have serious consequences. Family caregivers may find themselves unable to continue providing care due to factors such as limited time due to work commitments, the absence of other family members due to migration, financial constraints resulting from unemployment, a lack of caregiving skills, emotional distress, or other reasons. In that case, they should consider seeking assistance in a formal care setting, rather than ignoring the problem as the 'elephant in the room'-an issue that is so obvious and significant that it cannot be ignored. In these situations, informal caregivers should seek intervention from formal or institutional care, which can be used as a means of support. However, it is essential to obtain the older person's consent before arranging for a type of care, as they have the right to make decisions about their preferred living arrangement and own care, as long as they are mentally capable.

Many older individuals find themselves living alone, often without the support of a spouse, family, or relatives to care for them in times of need (Yahaya et al., 2010). This can be a challenging and lonely experience. In such cases, when no one is available to offer care, social care services step in to provide essential support (Peplau et al., 1982). These services are vital in ensuring the safety and well-being of older adults, reminding us of the importance of compassion and community in their lives. We must continue to support these services to help our older population feel cared for and valued.

Furthermore, there are inherent issues and challenges in ensuring the provision of adequate care for older persons in both informal settings, such as family care, and formal institutions, such as care centres and nursing homes. In an informal setting, care for an older person is often seen as an internal family issue that is taboo to discuss. Even the family caregiver is really in dire need of support, as they are unable to care for their older family members. Conversely, institutional or formal care settings face a range of issues, including administration, shortage of service and skilled staff. The latter

is particularly crucial, as it underscores the importance of professional care in elder care, along with facilities and infrastructure, funding, monitoring, and compliance.

Both care settings are dealing with a similar issue: mistreatment during the caring activity. This mistreatment, which includes abuse and neglect, is a stark problem that needs urgent attention. According to the World Health Organisation (WHO, 2018), in 2018, approximately 1 in 6 older persons experienced some form of abuse in family or community settings. The rates of abuse are also on the rise in nursing homes and long-term care facilities, with 2 in 3 staff members admitting to having committed abuse (WHO, 2018). International data on older person abuse indicate a global prevalence ranging from 1% to 44.6% (Sooryanarayana & Hairi, 2013) and from 2.2% to 66% in Asia (Yan et al., 2015). WHO further stated that psychological abuse was the most common form (11.6%), followed by financial, neglect, physical and sexual abuse at 6.8%, 4.2%, 2.6% and 0.9%, respectively (Yon et al., 2016). Shockingly, regional older person abuse estimation suggests that Asia predominated at 20.2%, despite the greater emphasis on filial piety in Asian cultures. This highlights the need for culturally sensitive interventions (Sooryanarayana et al., 2017).

Understanding the nature of care is crucial for preventing the mistreatment of older adults in various caregiving contexts. In instances where mistreatment does occur, it is imperative to identify appropriate avenues for older individuals to seek assistance. The existing issues and challenges within care environments demand not just attention, but immediate attention, as older adults cannot afford delays in support. They require high-quality care to ensure their overall well-being and quality of life. This pressing situation raises several critical questions: Who bears the responsibility for caring for older individuals? Is there a legal obligation to provide such care? Additionally, what is the current status of legal frameworks and protective measures designed to enhance the quality of care and ensure its accessibility to older adults in Malaysia?

Selected Existing Older Person Care-Related Legal Framework in Malaysia

The Ministry of Women, Family, and Community Development (MWFCD) in Malaysia currently oversees the care of older individuals. The Federal Minister and the Department of Social Welfare previously managed this function. Concurrently, the Ministry of Health (MOH) in Malaysia addresses the health and medical care needs of older persons. The legal framework governing institutional or formal care settings for older individuals is primarily established by two statutes: the Care Centre Act (CCA) 1993 [Act 506] and the Private Aged Healthcare Facilities and Services Act (PAHFAS) 2018 [Act 802]. Both of these laws, known for their effectiveness, remain in force as of this writing. It is essential to understand the Federal Constitution of Malaysia, which serves as the supreme law of the land, as it provides the legal framework for elder care legislation. This is articulated in Article 4(1), as evidenced in the legal precedent set by *Ah Thian v Government of Malaysia* [1976] 1 MLRA 410.

Federal Constitution of Malaysia

Matters requiring interpretation should refer to the supreme law, the Federal Constitution (FC), before considering any other legislation. Nevertheless, the Federal Constitution does not explicitly contain the terms "care" or "older person." Based on that, can we claim that the right to care for older persons is generally protected under the Malaysian Federal Constitution (FC)? Interpretation of the Constitution is essential. The mandate of the Constitution and the impulse to do justice will constantly strive to give effect and life to the words of the Constitution by incorporating broader and more liberal norms, mostly from international human rights conventions, into the Constitution. This enlightens us about the global legal standards that influence constitutional interpretation (Zulazhar, 2011).

Article 5 of the FC states that *"No person shall be deprived of his life or personal liberty save as in accordance with the law"*, while Article 8 of the FC states that *"All persons are equal before the law and entitled to equal protection of the law"*. This means that older persons, like other citizens, enjoy the protection of the right to life and personal liberty and the right to equality (Tan Tek Seng v Suruhanjaya Perkhidmatan Pendidikan & Another [1996] 1 MLJ 261; Lee Kwan Woh v. Public Prosecutor [2009] 5 CLJ 631). Furthermore, Article 8(2) prohibits discrimination based on religion, race, descent, place of birth, or gender, ensuring that all individuals are treated fairly and equally under the law.

The 'welfare' Act plays a crucial role in governing the care for older persons in Malaysia. In line with the provision of the Federal Constitution, welfare with the term social welfare generally falls under the List III - Concurrent List of the Ninth Schedule that mentions 'Social welfare; social services subject to Lists I and II; protection of women, children and young persons' (Department of Social Welfare, Malaysia, 2024). The Concurrent List outlines matters of common concern, as mentioned above, including welfare and public health, which are also included in the Concurrent List (Hamzah & Bulan, 2003).

When it comes to social welfare and protection, older persons find themselves in a unique situation. They can argue that their right to care and protection is on par with that of other individuals and vulnerable citizens in Malaysia. However, the law is not specific to older persons, but rather scattered (Mohd Mydin & Othman, 2020). This lack of a dedicated law for older persons is a significant gap in the legal framework. The current provision is a general application and protection. The socio-economic capability of a country is at risk, and it requires better attention from the government to ensure the public, especially vulnerable groups, do not fall through the safety net (Abdul Samad, 2019). Additionally, the care for older persons should be recognised as a fundamental individual right, not just a welfare act. It is crucial that we secure its place in our Federal Constitution or related Acts, providing it with the formal acknowledgment it deserves.

The Care Centre Act (CCA) 1993 [Act 506]

The Department of Social Welfare, under the Ministry of Women, Family, and Community Development (MWFCDD) in Malaysia, operates within a robust legal framework. It is responsible for overseeing formal care or institutional welfare facilities for older persons via the Care Centre Act (CCA) 1993 [Act 506]. The CCA outlines the responsibilities and authority of the Federal Minister regarding this matter, along with the relevant agencies mentioned in the Schedule of the Ministers of the Federal Government (No. 3) Order 2021, by the Ministerial Functions Act 1969 [Act 2]. The CCA is the existing law regulating care centres in Malaysia. Section 2 of the CCA established the power of registration, control, and inspection of the care centres in Malaysia. It authorised an “authorised officer” who is a social welfare officer or an officer appointed by the Minister.

Section 2 of the CCA defines 'care' as including protection, supervision, rehabilitation, and training for a 'resident', which means a person under the age of sixty (60) years who has received care as a resident at a residential care centre. The exact phrase 'below the age of sixty' refers to the amendments gazetted vide the Care Centres (Amendment) Act 2018 [Act A1564]. On 28 March 2018, the Private Aged Healthcare Facilities and Services Act 2018 ('PAHFAS') and the Care Centres (Amendment) Act 2018 (CCAd) received royal assent and are awaiting enforcement, to be appointed by the Minister of Health. These amendments were made to prevent overlap between the CCA and the Private Aged Healthcare Facilities and Services Bill, which was tabled in 2017.

With the amendments, only care centres providing care to those below 60 are covered by the CCA once the Private Aged Healthcare Facilities and Services Bill comes into effect. In virtue of the Private Aged Healthcare Facilities and Services 2018 [Act 802] too, registered care centres under the Care Centres Act 1993 [Act 506], which provide care to more than three aged persons, will have to apply for approval and license from the Director General of Health ("DG"). It is crucial for these care centres to ensure compliance with these new requirements.

The CCA's lack of specificity on elder care and the non-enforcement of Act 802 [Private Aged Healthcare Facilities and Services Act 2018] could potentially leave older persons without adequate legal protection. This highlights the need for a more comprehensive legal framework that specifically addresses the needs and challenges of older persons.

Within the framework of the CCA, a significant provision, found in Section 11B, states that individuals sixty years of age or older may be welcomed into registered care centres. This guideline not only reflects a commitment to inclusivity but also ensures that the needs and well-being of the elderly are thoughtfully integrated into the care landscape, fostering a nurturing environment that provides a sense of security and reassurance. This environment is tailored to support the unique challenges faced by the older population.

Furthermore, Section 4 of the CCA underscores the vital importance of mandatory Registration, as care centres are strictly prohibited from operating (Section 5 of the Care Centres Act 1993 [Act 506]). In addition, according to section 5(2), failure to register “*shall be guilty of an offence and shall, on conviction, be liable to a fine not exceeding ten thousand ringgit or to imprisonment for a term not exceeding two years or to both ...*”. Registration is not just a formality, but a crucial tool that provides the authorities with monitoring tools to ensure that all care centres adhere to the prescribed

rules and guidelines. Therefore, making it an offence for those who fail to register is not just commendable, but necessary for the safety and well-being of all involved.

The Director General wields significant authority in the registration process, with the power to refuse any care centre that fails to meet the legal requirements outlined in Section 6 of the Care Centres Act 1993 (Act 506). Section 7 of the Act further underscores the importance of these requirements, specifying conditions that must be met for a care centre to be registered. These conditions include limitations on resident admissions, ensuring that the employer at the care centre is a suitable and qualified individual, and confirming that the services for the care, control, custody, and treatment of residents are adequately provided.

In the case of *Yahya Mohamed & Anor v. Noormah Dato' Abd Rauf & Anor* ([2014] 1 LNS 805), the application to register the care centre was refused twice by the Welfare Department as the applicants had failed to fulfil the condition to be imposed before registration under section 7 of the CCA. However, even after the Notice of Seal was issued, the applicants continued to operate the care centre, which remained unregistered. This ongoing operation of the care centre despite the notices from the Authorities by the law underscores the urgency of the situation and the need for immediate action.

The case presented underscores some important areas for improvement within the Care Centre Act (CCA). While the CCA serves as the primary legislation to ensure that minimum standards of care and services are maintained in NGO-run and private elderly care homes in Malaysia, there is an opportunity to enhance its effectiveness further (5th ASEAN & Japan High-Level Officials Meeting on Caring Societies: Collaboration of Social Welfare and Health Services, and Development of Human Resources and Community, 27-30 August 2007). The increase in reported abuse cases in care centres and nursing homes highlights the need for such improvements (Masod & Abdul Mutalib, 2019). In response, the Minister of the Ministry of Women, Family and Community Development (MWFCD) has initiated a review of guidelines aimed at strengthening the approval process for operating care centres. This includes refining the criteria for identifying qualified and suitable persons responsible for the care (Bernama, July 17, 2021). By addressing these points, we can work toward ensuring a safer and more supportive environment for those in care.

The Private Aged Healthcare Facilities and Services Act (PAHFAS) 2018 [Act 802]

Existing legislation, with the Ministry of Health (MOH) at its helm, plays a pivotal role in regulating healthcare services for older persons. The MOH, as per the Private Aged Healthcare Facilities and Services Act 2018 [Act 802], is entrusted with the responsibility of carrying out its functions and exercising its powers. This Act meticulously outlines the standards and regulations that private healthcare facilities for older persons must adhere to, ensuring a high level of care. Moreover, the Schedule of the Ministers of the Federal Government (No. 3) Order 2021, as per the Ministerial Functions Act 1969 [Act 2], suggests a structured allocation of responsibilities within the government for the oversight and management of aged healthcare services. This legal framework, under the leadership of the MOH, aims to ensure the quality and

accessibility of healthcare services for older persons across various private healthcare facilities, with a transparent and clear delineation of roles and responsibilities among relevant government entities, ensuring accountability.

During the pandemic, the way COVID-19 is being handled has revealed the widespread presence of ageism (UN, 2021). Both older and younger individuals have been subjected to stereotypes in public discussions and on social platforms. In some cases, age has been unfairly used as the primary criterion for deciding who gets access to medical treatment, life-saving interventions, and enforced isolation. The Ministry of Health (MOH) has been at the forefront of combating this ageism, ensuring that all individuals, regardless of age, have equal access to healthcare and are not unfairly isolated. This is the first-drafted Act explicitly focusing on older person care centres or aged care. Based on the drafting, the Act aims to provide a more holistic regulatory environment for older person care in Malaysia and ensure that all private healthcare centres and services are licensed and regulated.

This transformative Act is poised to create a substantial shift in how care is administered to the elderly in Malaysia. Upon its enactment, the crucial responsibilities of monitoring and regulating private aged care centres will transition from the Ministry of Women, Family, and Community Development (MWFCD) to the Ministry of Health (MOH). This change heralds a new era, as the MOH will be equipped with a team of highly trained and skilled care workers, whose commitment is unwavering, dedicated to ensuring the well-being and dignity of older adults. Currently, the oversight of these private care facilities has rested with the MWFCD; however, with this new legislation, a more focused and health-oriented approach will be firmly established to enhance the quality of care available to Malaysia's ageing population.

Under the Private Aged Healthcare Facilities and Services Act (PAHFAS) 2018, any person providing private aged healthcare facilities and services to four or more aged persons will require an operating licence from the Director General of the Ministry of Health (MOH). This operating licence is a crucial requirement, as it ensures the quality and safety of the services provided. Within the purview of Section 2 of the Private Aged Healthcare Facilities and Services Act 2018 [Act 802], an aged person is defined as any person who is sixty (60) years of age or older. It is important to note that the Act applies to daycare facilities, not just residential ones (such as nursing homes).

A license can be revoked for reasonable grounds. The licensee must, amongst others, ensure that healthcare professionals employed or engaged by the licensee are suitably and legally qualified; caregivers are trained and competent; a healthcare professional carries out an assessment of the care recipient; arrangements are made for a healthcare professional to be available at the premises; annual report on the private aged healthcare facilities and services is submitted to the MOH; and a person in charge manages the private aged healthcare facilities and services. In summary, the strict implementation of the Act will foster a more structured environment for aged care once it comes into force. However, the question of when the Private Aged Healthcare Facilities and Services Act 2018 [Act 802] will be in force is of utmost importance and needs to be addressed promptly.

In summary, the CCA and the Private Aged Healthcare Facilities and Services Act 2018 were drafted to regulate institutional settings. The Ministry of Women, Family

and Community Development (MWFC), under the leadership of Minister Datuk Seri Nancy Shukri, is taking steps to regulate the care industry in Malaysia. The Ministry's initial focus is on regulating care services, starting with childcare. The proliferation of unlicensed care centres has raised concerns about the quality and standard of training of caregivers, as well as safety and ethics.

Issues in the existing legal framework

An often overlooked issue is the absence of specific legislation governing the informal care setting for older persons in Malaysia. This lack of statutory filial obligations for children or informal caregivers to deliver care in informal settings creates a significant regulatory gap. Consequently, it becomes challenging to control compliance with the standard of care issues regarding the care of older persons in informal settings, which are the most preferred living arrangements for older persons in Malaysia (Hoe et al., 2018).

Despite the presence of various laws, such as the National Policy for Older Persons (DWEN), they were not specifically designed to address the needs of older persons. Instead, they were drafted to fulfil the specific objectives of the statutes and regulations concerned. To truly meet the needs of older persons, it is essential to focus on the implementation, evaluation, and research needed to create a comprehensive framework (Howell, 2003).

The legal protections that apply to the general population also extend to older individuals. For example, the Domestic Violence Act 1994 [Act 521] provides safeguards for older adults who are victims of domestic violence. Conversely, specific laws like the Child Act 2001 [Act 611] are designed exclusively for specific demographic groups. It is crucial to advocate for targeted legal protections for older individuals, particularly in the context of their care, where issues of neglect are often inadequately addressed. This situation underscores the urgent need for a specialised legal framework that effectively supports older adults. In cases of neglect, authorities often face challenges in prosecuting offenders due to a lack of standing. Furthermore, when family members have the ability to care for older individuals but choose not to, it raises the question: Should the government intervene to ensure their welfare? Is the solution to this dilemma as straightforward as it seems?

While the number of government-run older person care centres is currently inadequate, there is a significant potential for improvement. Older people who are temporarily ill, in need of assistance, and can afford the service are increasingly turning to private-sector nursing homes. However, the current situation is far from ideal. A significant number of nursing homes in Malaysia are located in unsuitable settings, marked by poorly designed facilities, subpar conditions, inadequate ventilation, unclean environments, and personnel with insufficient training, as well as high rates (Cho & Salleh, 1992). Numerous authentic scenarios of mistreatment have been reported in mainstream news outlets, with many more cases remaining undocumented. This ongoing mistreatment has a significant adverse effect on the quality of care provided to older individuals in Malaysia. Consequently, it is essential to explore practical strategies for breaking the cycle of mistreatment that persists in both informal and formal care settings for the elderly.

Proposed Recommendations

A specific statute for older persons with an enforceable approach in Malaysia

In Malaysia, from a legal perspective on older person care, it has been observed that the country has no specific or dedicated statute for older persons (Fatimah Zainal, 2023), unlike our neighbouring countries such as Singapore, the Philippines, Thailand, Vietnam, Myanmar, and Indonesia. As ageing is a global issue, it is imperative to compare the practices at the international level for benchmarking and best practices, a task that cannot be delayed.

For a brief comparison, in Singapore, there are three specific statutes for older persons. The first is the Maintenance of Parents' Act 1995, a punitive measure designed as a safety net for parents who cannot afford to maintain themselves, allowing them to claim a maintenance award from their offspring. This Act, with its punitive nature, serves as a stark reminder of the serious consequences for neglecting parental responsibilities. The second is the Vulnerable Adults Act 2018, a protective measure that, as its name suggests, safeguards adults from abuse, neglect, or self-neglect. It is important to note that this protective Act is not exclusive to older persons; it also covers 18-year-old adults. Lastly, the Retirement and Re-Employment Act (Chapter 274A) encourages older persons who have retired to be re-employed, offering an incentive. Notably, this Act secures older persons' right to work and includes a punitive element to deter employers from terminating workers due to age discrimination.

In the Philippines, laws exist to support older citizens, including the Expanded Senior Citizens Act of 2010. This law focuses on providing various privileges to senior citizens and requires mandatory registration for those benefits. Notably, it includes strict penalties, including fines and imprisonment, for anyone who misuses these privileges. Additionally, in 2019, the Anti-Elder Abuse Act was enacted to address and punish abuses against the elderly.

In Myanmar, the Elderly People Law 2016 (No. 44) was passed to protect the rights of older persons, for instance, the right to receive maintenance from children, including step and adopted children. The provision is punitive to ensure rights for older persons. Indonesia, too, has a specific statute for older persons. The Old Age Welfare Law of 1998 (Law No. 13/1998) is punitive to punish should older persons' rights be neglected.

Thailand's Federal Constitution of 2007 secures older persons financially, as it provides welfare and assistance provisions for those who are unable to sustain their daily lives. Thailand also has the Elderly Act 2003 to advocate for the rights of older persons. Interestingly, this Act gives tax exemptions for carers who care for their parents, without imposing punitive care duties. Vietnam, on the other hand, has the Law on the Elderly 2009, which is notably fair and just, as it is silent about the punishment for non-compliance.

As such, Malaysia should learn from neighbouring practices to have specific statutes and care for its older persons. Among the impacts of lacuna in specific statutes for older persons, older person care has not been considered a legal duty in Malaysia until now, due to the non-existent legal framework underlying this duty. Being an

inherited culture of Asians, children care for their older parents through the theory and concept of filial piety. The responsibility is, however, limited to a moral duty based on our culture and teachings to respect the older persons' filial piety. Still, the duty needs to be legalised and safeguarded.

In this sense, as no one is an island, law functions as a form of governmental social control (Black, 2010). Therefore, it is essential to establish law-making institutions to maintain societal order (Chiam in Cho & Salleh, 1992). The phrase "No man is an island," from John Donne's 1624 prose work *Devotions upon Emergent Occasions*, illustrates the idea that humans are inherently social beings. We require contact and interaction with others; when isolated, we tend to perform poorly. Community is vital for our well-being.

Consequently, laws and the legal system significantly impact individuals' everyday lives, from the way we conduct business to the way we interact with our communities, making it important for these systems to be accessible to society. Specific statutes that address the needs of older individuals play a crucial role in fostering age-friendly communities and environments that prioritise their well-being and inclusion. These laws can catalyse various initiatives aimed at improving accessibility and the quality of life for older adults. Furthermore, enforceable statutes that cater to the needs of older persons serve as powerful tools to support and promote age-friendly policies and practices, ultimately leading to healthier and more vibrant communities for people of all ages.

The importance of an enforceable statute

Even after they have been gazetted, laws may experience delays in their execution. A delay in execution means a delay in enforcement, which can take a significant toll on the subject matter protected by the statute. Worst, if the subject matter falls under the vulnerable group of persons, where time for the enforcement of the gazetted statute is material as equal to legal protection. It is crucial to remember that the impact of a statute is only felt when it is legally binding and can be enforced by authorities. The statute that is passed by a legislative body must be followed within a particular territory of jurisdiction. If an enforceable act or legislation is violated, it can result in legally binding consequences such as fines, penalties, or other punishments. These laws apply to persons, corporations, and other organisations in the jurisdiction where they are enacted.

Several variables that may lead to delays in enforcement include administrative delays due to administrative and legal challenges, political and bureaucratic obstacles, technical challenges, and resource constraints. In the case of Malaysia, there is a list of acts that are still in force, amongst others, such as the Access to Biological Resources and Benefit Sharing Act 2017 and the Private Aged Healthcare Facilities and Services Act 2018. It is therefore urgent to overcome these challenges and ensure the enforceability of the proposed dedicated statute for older persons in Malaysia.

Moreover, the Malaysian legal position in adopting soft international law should be thoroughly examined to understand the enforceability of the international instruments at the domestic level. This is particularly important in the case of *Mohd Ezam bin Mohd Noor v Ketua Polis Negara & Other Appeals* ([2002] 4 CLJ 309), where the Malaysian Government's action is crucial. The same can be said for the case of

Merdeka University Berhad v. Government of Malaysia ([1981] 1 CLJ 175; [1981] CLJ (Rep) 191). Addressing these challenges often requires coordination among government agencies, stakeholders, and possibly legislative amendments or reforms to streamline processes and allocate resources effectively.

Proposed to insert a clear definition of “older person care”

When deliberating and discussing any topic, a definition is the first aspect to be considered within the framework of discussion. Defining the topic's essential terms and concepts can ensure clarity and precision in the discussion, preventing any misinterpretations (Strauss, 1991). An older person's care perspective, with consistent, clear, and precise definitions, will also prevent any unintentional mistreatment (Stevenson, 2008) by a caregiver. This type of prevention can be vital to breaking the chain of mistreatment of older person care in all care settings, whether formal or informal. It is a call to action for all of us, as professionals and caregivers, to be aware, advocate, and engage in public discourse (Isham et al., 2020), and commit to the ethical practices in elder care.

In legal and regulatory contexts, precise definitions in the specific statute are vital to ensure compliance with related laws and regulations. A clear definition in one subject matter is crucial to avoid legal ambiguities and ensure that all parties understand their rights and obligations. In providing care to older persons, they must first be empowered to become independent, thereby preserving their dignity and preventing overcare, which refers to excessive or unnecessary care that can compromise their dignity, in the care they receive (Froggatt, 2005). Only after an older person is clearly in need of care and protection should support and intervention from a care provider be initiated.

In the Malaysian context, Section 2 of the CCA defines "care" as encompassing protection, supervision, rehabilitation, and training of residents. This definition pertains specifically to formal care settings. However, what about informal care? Mistreatment is notably prevalent in the informal care of older individuals, underscoring the urgent need for a legal definition. Establishing clear definitions of abuse and neglect is equally important. These definitions are not just words on paper, but powerful tools that can help prevent both intentional and unintentional mistreatment in care delivery, thereby ensuring the well-being of older individuals.

Moreover, these definitions can function as powerful advocacy and awareness tools, championing the rights of older persons, particularly their right to receive care, an area that is currently under-addressed in Malaysia due to the absence of a dedicated statute addressing older persons' care. In the midst of the COVID-19 pandemic, it becomes even more crucial to establish a clear understanding of care for older individuals within legal statutes. A precise definition in legal documents can ensure adherence to the standards of quality care services and delivery in Malaysia. This clarity will also help ensure that care providers fulfil their duty to care. Ultimately, a consistent and meaningful definition of older persons' care concepts is not just a necessity but a beacon of hope for future collaborations, research, law, policy-making, and a comprehensive understanding of the topic.

Proposed supporting clauses for caregivers

According to the Political Declaration and the Madrid International Plan of Action on Ageing (MIPAA) 2002, Priority Direction III(C), Issue 2 - Care and support for caregivers, the role of family caregivers is addressed. It is stated that without adequate assistance, the caregiver can be overburdened in exercising their duty, supported by Objectives 1 and 2 of this Direction as well (Nur Faizira et al., 2019). This underscores the urgent need for support to avoid caregiver overburden, as it is crucial for the well-being of both the caregiver and the older person. As Goodin (1986) states, *"...if one party is in a position of particular vulnerability to or dependency on another, the other has strong responsibilities to protect the dependent party"*.

However, excessive dependency can lead to caregiver stress, which in turn can result in mistreatment in the care setting. It is crucial to recognise the importance of emotional support for caregivers, who are often unfairly blamed for inadequate care in older persons' care settings. This support is vital, as the demands of caregiving can be overwhelming (UNFPA, 2012).

There is a global effort to support caregivers, with various initiatives in different countries. For example, Australia, New Zealand, and the United Kingdom have established national policies for caregivers. Hungary has a caregiver training programme, while Finland, Sweden, and Japan have enacted laws to support caregivers. Some nations have prioritised assisting caregivers in balancing paid employment and caring responsibilities. Carer allowances have been adopted in Canada, the Russian Federation, the Slovak Republic, Turkey, and the United Kingdom. Tax incentives for caregivers have been implemented in Thailand and Canada (UNFPA, 2012).

In conclusion, caregivers act as essential bridges, connecting individuals to the myriad of resources provided by the government under the umbrella of social security (Nur Faizira et al., 2019). Despite their crucial role, these dedicated individuals often find themselves forgotten, relegated to the shadows as "unsung heroes" and "neglected patients." Their selfless efforts, often at the expense of their own well-being, go largely unrecognised, even as they tirelessly support those in need, embodying both strength and vulnerability in a world that frequently overlooks their sacrifices.

Conclusion

In conclusion, this article outlines a clear and necessary roadmap for Malaysia to enhance legal protections for older persons. It is imperative that we ensure they receive the care they deserve while living with dignity, autonomy, safety, and respect. To effectively assess the need for dedicated legal safeguards for the care of older persons in Malaysia, it is essential to understand the current practices and compare them with those in other countries. Understanding the Malaysian context and the existing care framework is crucial for developing a comprehensive care service tailored to our multicultural values and culture. The mechanism should involve various fields and ministries, be accessible, and enforceable in practice to ensure best practices for older persons in Malaysia. It has been identified that there is a gap in the specific legal

framework for older persons in the country. To address this, the authors propose the establishment of a dedicated legal framework focused on the rights and care of older persons in Malaysia. Implementing this framework could serve as a preventive measure against both intentional and unintentional mistreatment in all care settings for older persons. A significant challenge lies in understanding the nature of care itself, and it is vital to strengthen the legal mechanisms and protections surrounding it. Role of policy makers, legal professionals, government officials, and stakeholders involved in elder care is crucial in this advocacy. If we focus more on remedying the consequences of inadequate care rather than preventing issues from arising, we risk entering a cycle of merely "damage control." Do we want our future selves to face such a situation? Are we ready to establish a dedicated legal framework to ensure the proper care of older persons in Malaysia?

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International Instruments

- The United Nations Principles for Older Persons (UNPOP) 1991
- The Vienna International Plan of Action on Aging (VIPAA) 1982
- The Madrid International Plan of Action on Ageing (MIPAA) 2002

Malaysia

- The Federal Constitution (FC)
- The Care Centre Act 1993 [Act 506]
- The Child Act 2001 [Act 611]
- The Domestic Violence Act 1994 [Act 521]
- The Private Aged Healthcare Facilities and Services Act 2018 [Act 802]
- The Ministerial Functions Act 1969 [Act 2]
- The National Policy for the Elderly 1995 (revised by the National Policy for Older Persons 2011)
- The National Health Policy for Older Persons 2008
- The National Social Policy 2003
- The National Social Welfare Policy

Singapore

- The Constitution of the Republic of Singapore
- The Retirement and Re-Employment Act 1993
- The Maintenance of Parents' Act 1995
- The Vulnerable Adults Act 2018

The Philippines

- The Expanded Senior Citizens Act 2010
- The Anti-Elder Abuse Act 2019

Myanmar

- The Elderly People Law 2016 (No. 44)
- The Old Age Welfare Law of 1998 (Law No. 13/1998)

Thailand

- Federal Constitution 2007 of Thailand
- The Elderly Act 2003

Indonesia

- The Old Age Welfare Law of 1998 (Law No. 13/1998)

Vietnam

- The Law on Elderly 2009

Lee Kwan Woh v. Public Prosecutor [2009] 5 CLJ 631.

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