

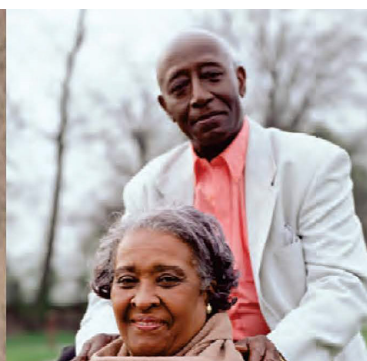


Investigative Hearing Report

The South African Human Rights Commission

*Investigative Hearing into Systemic Complaints
Relating to the Treatment of Older Persons*





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SUMMARY

To date the bulk of the work of the South African Human Rights Commission (Commission) relating to older persons has focused on stakeholder engagements and on informing the public generally about violations brought to its attention, either *via* the press or other means. In addition to dealing with individual complaints regarding the treatment of older persons, the Commission has identified systemic issues of concern that are denying older persons the realisation of constitutionally guaranteed rights. Consequently, this report broadly outlines these issues, and advocates that the Commission uses its powers to convene a hearing with relevant state departments in order to ascertain the progress that has been made in implementing the provisions of the Older Persons Act. However, while it is acknowledged that a multitude of complaints lodged with the Commission will affect older persons either directly or indirectly, such as water and sanitation; efforts should not be exerted in addressing the same, as the Commission has already embarked on a separate process to address these issues. With this in mind, this report focuses on systemic issues that have a direct impact on older persons, specifically in their experience of attempting to access their constitutional rights. Ultimately, the Commission recognises that older persons constitute a vulnerable group with unique and differing needs compared to those of other vulnerable groups, such as women, children or people with disabilities, and that they therefore deserve focused attention in order to address and resolve the rights violations currently being experienced by older persons.



LIST OF ACRONYMS



ACHPR	African Charter of Human and People's Rights
CESR	UN Committee on Economic, Social and Cultural Rights
Commission	South African Human Rights Commission
Constitution	Constitution of the Republic of South Africa, 1996
DA	Democratic Alliance
DoH	Department of Health
DPW	Department of Public Works
DSD	Department of Social Development
DSD (WC)	Department of Social Development (Western Cape)
EPWP	Government Extended Public Works Programme
HRC Act	Human Rights Commission Act, No. 54 of 1994
ICESR	International Covenant of Economic, Social and Cultural Rights
MDG	Millennium Development Goals
MIPAA	Madrid International Plan of Action on Ageing
MOU	Memorandum of Understanding
NGO	Non-governmental organisation
NPO	Non-profit organisation
OP Act	Older Persons Act, No. 13 of 2006
OP Charter	Older Persons Charter
SANC	South African Nursing Council
SAOPF	South African Older Persons Forum
SAPS	South African Police Services
SASSA	South African Social Security Agency
UDHR	Universal Declaration on Human Rights
WC	Western Cape
WEAAD	World Elder Abuse Awareness Day

1. INTRODUCTION

According to Article 2 of the Madrid International Plan of Action on Ageing (MIPAA), the world is experiencing an unprecedented demographic transformation. By 2050, the number of people 60 years and older will increase to almost 2 billion, constituting roughly 21% of the world's population. This increase is expected to be the most rapid in developing countries, where the older population is anticipated to quadruple.

South Africa is no exception to the growing trend of an ageing population that is currently being experienced around the world. According to Nhongo¹, sub-Saharan Africa will likely end up with an age structure similar to those of other ageing nations, due to the combination of high fertility and a decrease in infant mortality, resulting in an increase in life expectancy, despite civil war and HIV/AIDS. However, unlike their 'developed' counterparts, sub-Saharan societies are not well prepared for the challenges that an ageing population present, as the needs of older persons continue to grow. These challenges include economic instability, natural disasters, disease and the deterioration of familial relationships. As a result, older persons regularly suffer from "age discrimination", which is defined by the author as "*the systematic and institutionalized denial of the rights of older people on the basis of their age by individuals, groups, organizations and institutions*"².

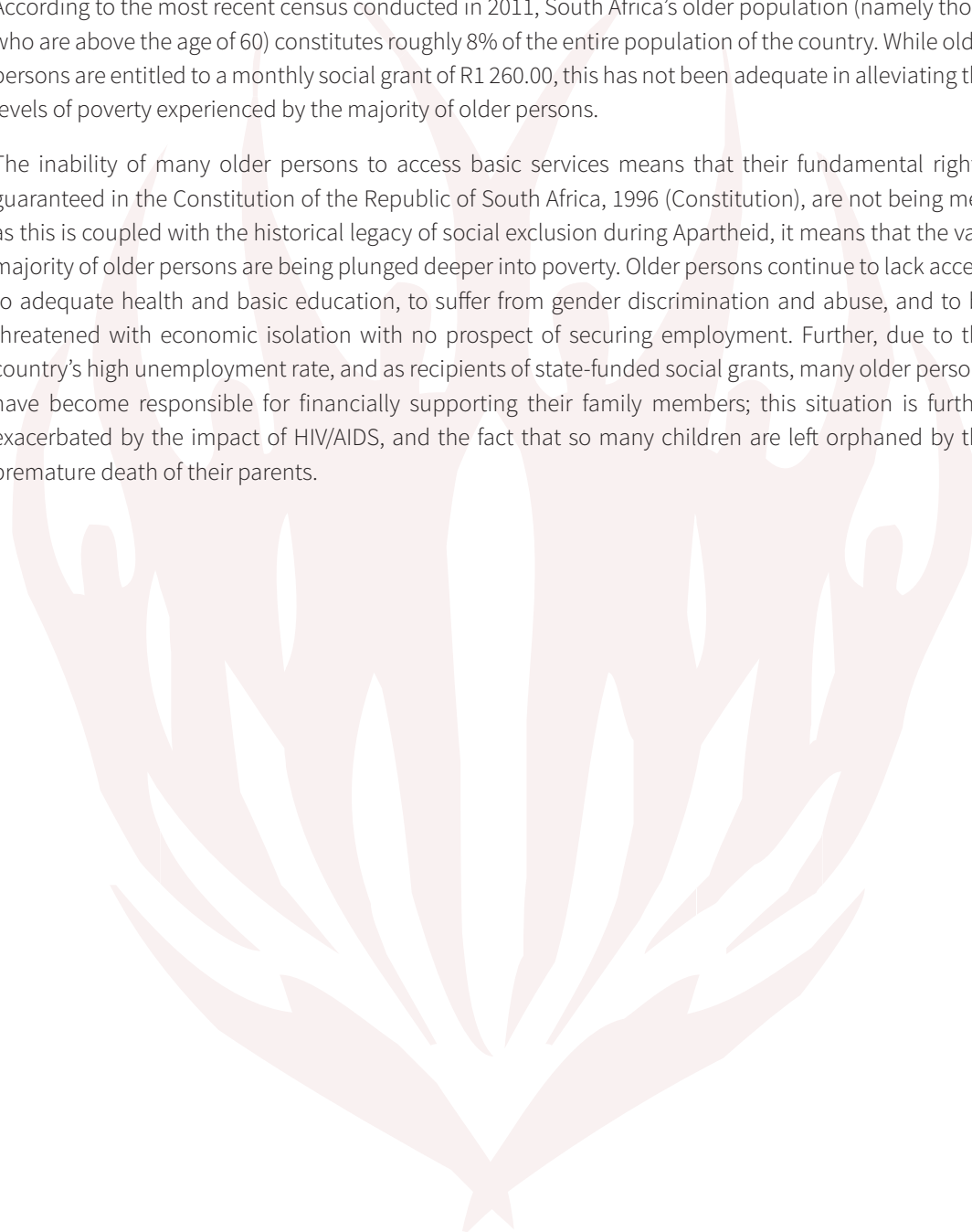
¹ Nhongo, T (2006) "Age Discrimination in Africa", paper presented at International Federation on Ageing Conference (Copenhagen), May/June 2006.

² Ibid, p3.

2. STATEMENT OF THE PROBLEM

According to the most recent census conducted in 2011, South Africa's older population (namely those who are above the age of 60) constitutes roughly 8% of the entire population of the country. While older persons are entitled to a monthly social grant of R1 260.00, this has not been adequate in alleviating the levels of poverty experienced by the majority of older persons.

The inability of many older persons to access basic services means that their fundamental rights, guaranteed in the Constitution of the Republic of South Africa, 1996 (Constitution), are not being met; as this is coupled with the historical legacy of social exclusion during Apartheid, it means that the vast majority of older persons are being plunged deeper into poverty. Older persons continue to lack access to adequate health and basic education, to suffer from gender discrimination and abuse, and to be threatened with economic isolation with no prospect of securing employment. Further, due to the country's high unemployment rate, and as recipients of state-funded social grants, many older persons have become responsible for financially supporting their family members; this situation is further exacerbated by the impact of HIV/AIDS, and the fact that so many children are left orphaned by the premature death of their parents.



3. BACKGROUND TO THE COMPLAINT

In March 2013, the South African Human Rights Commission (Commission) received a complaint from the South African Older Persons Forum (SAOPF) relating to the progress and implementation of a register detailing persons convicted of abusing older persons (or any crime or offence) by the Department of Social Development (DSD), as it is prescribed to do so in terms of Chapter 5 (31) of the Older Persons Act, 13 of 2006 (OP Act). Although the DSD has stated that the register is expected to be implemented in October 2013, this complaint forms part of the wide array of socio-economic issues currently affecting older persons in South Africa. Not least of these has been the scourge of attacks on older persons regularly reported in the media, which have resulted in the continuous violation of their human rights and an assault to their dignity.

Prior to this recent complaint, the Commission's approach to combating human rights abuses relating to older persons has included the following: investigating individual complaints; publishing statements condemning the rights violations experienced by older persons in response to media reports detailing such incidents; attending meetings and conferences with interested stakeholders that focus on issues affecting older persons; and informing the public generally about rights violations concerning older persons. Still, notwithstanding these steps taken by the Commission, older persons regularly continue to have their rights violated.

Prior to the implementation of the OP Act, and while it was still in its draft form, the Commission recognised the need for older persons to participate more actively in the legislative review process. It therefore embarked on a country-wide outreach project, which included public hearings held in conjunction with the DSD, workshops and brainstorming sessions, consolidating the views of more than 300 stakeholders. Presentations from members of the community were also made to Parliament's Portfolio Committee on Social Development. As a result of the Commission's active participation in the process, inadequacies that existed in the OP Bill were identified and rectified prior to the promulgation of the OP Act.

Similarly, the Commission also played a pivotal role in the establishment of the SAOPF, with the purpose of providing older persons with a platform and a united voice when consulting with government on issues affecting older persons. Subsequently, the SAOPF has been instrumental in drafting the OP Charter.

4. MANDATE OF THE COMMISSION

The Commission is an institution established in terms of Section 181 of the Constitution. The Commission and the other institutions created under Chapter 9 of the Constitution are described as “state institutions supporting constitutional democracy”.

In terms of Section 184 (1) of the Constitution, the Commission is specifically mandated to:

- » Promote respect for human rights and a culture of human rights;
- » Promote the protection, development and attainment of human rights; and
- » Monitor and assess the observance of human rights in the Republic.

Section 184(2)(a) of the Constitution empowers the Commission to investigate and report on the observance of human rights in the country. Furthermore, Section 184(2) (c) and (d) affords the Commission the authority to carry out research and to educate the public on human rights related matters.

The Human Rights Commission Act, 54 of 1994 (HRC Act), further supplements the powers of the Commission. In addition to other powers, duties and functions, the HRC Act confers powers on the Commission to carry out studies concerning fundamental rights and to report on such studies.

The Complaint Handling Procedure prescribes how the Commission should carry out its constitutional and statutory mandate. According to Article 21, in resolving a complaint, the Commission is entitled, *inter alia*, to conduct hearings. This may be done if:

- » a complaint cannot be resolved by way of conciliation, negotiation or mediation;
- » a hearing will offer an appropriate solution regarding the complaint;
- » it is in the public interest;
- » the complaint cannot be fairly decided on the basis of documentary evidence or written statements submitted by the parties or any other person having information relevant to the complaint only; or
- » a party requesting a hearing supplies reasonable grounds.

5. OVERVIEW OF THE LEGAL FRAMEWORK RELATING TO OLDER PERSONS

5.1 INTERNATIONAL FRAMEWORKS

5.1.1 Universal Declaration on Human Rights (UDHR) and the International Covenant of Economic, Social and Cultural Rights (ICESR)

According to Chenwi³, international law does not explicitly recognise the rights of older persons. In terms of Article 1 of the UDHR, “*All human beings are born free and equal in dignity and rights*”, while Article 7 of the same declaration states that “*All are equal before the law and are entitled without any discrimination to equal protection of the law.*” As noted by the author, various international treaties provide for rights that apply to all individuals, including older persons. As South Africa is a signatory to the ICESR, which is the primary treaty at an international level that focuses solely on economic, social and cultural rights, the country has a duty to refrain from acts that would otherwise defeat the object and purpose of the ICESR.

Although the ICESR too does not refer explicitly to the rights of older persons, it does guarantee a variety of socio-economic rights to which older people are entitled, including the rights to social security (Article 9), an adequate standard of living, which constitutes food, clothing and shelter (Article 11), health (Article 12) and education (Article 13). These rights, as contained in the ICESR, have been further elaborated upon in the General Comments issued by the UN Committee on Economic, Social and Cultural Rights (CESR). The CESR has recognised older persons as one of the most vulnerable groups that suffer most in the case of forced evictions. With regard to access to health care, the CESR has stated that the essential elements of this right include the availability, accessibility, acceptability and quality of such health care. States are therefore required to ensure that health facilities, medicines and services are within safe physical reach for all sectors of the population, and especially for older persons⁴.

5.1.2 Madrid International Plan of Action on Ageing (MIPAA)

Although not legally binding in international law, the MIPAA⁵ recognises that concerns relating to an ageing population are no longer limited to developed countries only, but are becoming increasingly relevant in developing countries as well. The subsequent demographic transformation resulting there from will have profound consequences for

³ Chenwi, L (2011) “The relevance of the ICESR for older persons in South Africa”, *ESR Review*, 12(1), 9-12.

⁴ Ibid.

⁵ The Madrid International Plan of Action on Ageing was adopted in 2002 at the United Nations Second World Assembly on Ageing at which representatives of South Africa were in attendance.

all aspects of social and communal life. The MIPAA therefore sets out a new agenda that will be suitable for all interested stakeholders with regard to handling issues of ageing in the 21st century. The MIPAA focuses on three priority areas, namely: older persons and development, ensuring health and well-being in old age; and creating enabling and supportive environments for older persons.

In terms of Article 19 of the MIPAA:

“A society for all ages encompasses the goal of providing older persons with the opportunity to continue contributing to society. To work towards this goal, it is necessary to remove whatever excludes or discriminates against them. The social and economic contribution of older persons reaches beyond their economic activities. They often play crucial roles in families and in the community. They make many valuable contributions that are not measured in economic terms: care for family members, productive subsistence work, household maintenance and voluntary activities in the community. Moreover, these roles contribute to the preparation of the future labour force. All these contributions, including those made through unpaid work in all sectors by persons of all ages, particularly women, should be recognized.”

5.1.3 Millennium Development Goals (MDGs)

The MDGs were adopted with the intention of achieving certain global development targets by 2015. These targets include, *inter alia*:

- » the eradication of extreme poverty and hunger;
- » the achievement of universal primary education;
- » the promotion of gender equality;
- » the reduction of child mortality;
- » the improvement in maternal health;
- » the combating of HIV/AIDS, malaria and other diseases; and
- » ensuring environmental sustainability.

As noted by Hamunakwadi⁶, while other vulnerable groups such as women and children have been explicitly recognised in the MDGs, older persons as a group have not. As such, there are no indicators designed to determine the effectiveness of policies or programmes geared specifically at older persons. However, in order to realise the MDGs and to accelerate poverty reduction, specific attention must be focused on the needs of older persons. For example, for primary education to be effective, older persons who care for and who are responsible for a significant amount of orphaned learners; need to be capable of assisting learners after school with homework. More importantly, older persons need to be able to access child support grants to support children in their care.

Although national frameworks do not refer directly to the MDGs, they are referred to in various policy documents. Consequently, it is proposed that older persons should be considered in all aspects of development initiatives aimed to achieve these intended outcomes⁷, if the country is to achieve these goals.

⁶ Hamunakwadi, W (2011) “Including older persons in efforts to achieve the Millennium Development Goals”, ESR Review, 12(1), 12-13.

⁷ Ibid.

5.2 REGIONAL FRAMEWORKS

5.2.1 African Charter of Human and People's Rights (ACHPR)

Article 18(4) of the ACHPR states:

“The aged and the disabled shall also have the right to special measures of protection in keeping with their physical or moral needs.”

Further, the African Commission on Human and People's Rights has established a Working Group on the Rights of Older Persons and People with Disabilities, which has been tasked with formulating measures to address the implementation of older persons' rights.

5.3 NATIONAL FRAMEWORKS

5.3.1 Constitution of the Republic of South Africa, 1996 (Constitution)

While the Constitution itself does not make specific reference to older persons, various sections contained in its Bill of Rights apply directly to older persons too. These include:

- » Section 9(3): The state may not unfairly discriminate directly or indirectly against anyone on the basis of age;
- » Section 10: Everyone has inherent dignity and the right to have their dignity respected and protected;
- » Section 26(1): Everyone has the right to have access to adequate housing;
- » Section 27(1): Everyone has the right to have access to health care services, sufficient food and water, and social security, if they are unable to support themselves and their dependents; and
- » Section 29(1): Everyone has the right to a basic education, including a basic adult education.

5.3.2 Older Persons Act, 13 of 2006 (OP Act)

Although the Constitution does not expressly refer to older persons, the OP Act provides a solid legislative framework in order to give effect to the rights mentioned in the Constitution to which older persons are entitled. It also includes the rights that apply to older persons in terms of international law. Section 11 of the OP Act states, *inter alia*, that in developing community-based programmes with specific focus on older persons, such programmes should be aimed at:

- » Economic empowerment of older persons;
- » Information, education and counselling services, including HIV/AIDS, care for orphans, Alzheimer's, dementia and basic emergency care;
- » Provision of nutritionally balanced meals to needy older persons;
- » Promotion of skills and capacity of older persons to sustain their livelihoods;
- » Professional services, including care and rehabilitation to ensure independent living of older persons;
- » Appropriate services contained in the indigent policy for vulnerable and qualifying older persons; and
- » Integrated community care and development systems for older persons.

Notably, the OP Act explicitly condemns and criminalises all forms of abuse of older persons, requiring mandatory reporting of such abuse, in addition to providing for services and remedies in instances where abuse has occurred⁸. Chapter 5 of the OP Act sets out the procedure to be followed when an allegation of elder abuse has been made; in section 31, it specifically states that the responsible Minister must keep a register of persons convicted of elder abuse. Such persons will be prohibited from operating or being employed at any residential facility, or providing any community-based care and support to older persons.

5.3.3 Older Persons Charter (OP Charter)

The OP Charter was drafted as a result of a joint collaboration between the DSD and the SAOPF. It includes the direct contribution of older persons, acknowledging that South Africa's older segment of its population was most affected by Apartheid. While it places specific emphasis on the rights to equality, respect and freedom for all older persons, it also formulates the rights of older persons living in the community and residential facilities, and provides guidelines as to its implementation.

⁸ Cohen, J (2011) "Older Persons Act – Reflections on the process", ESR Review, 11(1) 14-15.

6. ISSUES AFFECTING OLDER PERSONS

While age discrimination is experienced by older persons in a variety of social contexts, including emergency and disaster situations, or on the basis of their gender, this report will focus on the key areas of interest with which the Commission is most concerned. This decision has been made in view of the Commission's mandate to monitor the observance of human rights in South Africa. As such, issues of pressing concern based on the complaints received and statements issued by the Commission have been identified and set out below.

6.1 ACCESS TO SOCIAL SECURITY

With regard social security, older persons currently receive R1 260.00 in the form of a pension grant to older persons, which is administered by the DSD. However, this grant is not enough to alleviate the levels of poverty experienced by older persons, who are considered to be amongst the chronically poor, and who are often responsible for taking care of themselves in addition to their dependents. Although the social assistance grant is not intended to be the primary source of income for poor households, older persons often have to bear the burden of looking after an entire household. Consequently, older persons are likely to face abuse from financially dependent family members who want their money, or they may have to apportion this income to ensure the survival of the household⁹. Older persons, as a vulnerable group themselves, thus become responsible for other vulnerable members of their communities.

Further, in most parts of Africa, and South Africa is no exception, older persons constitute the poorest of the poor, because they do not have a regular source of income, resulting from economic exclusion during their productive working years. Although redistribution mechanisms, especially relating to land, have been implemented, older persons are not considered to be a priority with regard to such land allocation. Older people are therefore further excluded from attaining the security associated with owning land¹⁰.

6.2 IMPACT OF HIV/AIDS

HIV/AIDS has had a significant impact on older persons, particularly older women, as they have become the primary caregivers responsible for the dependents of their own children who have died from the disease (i.e. they are responsible for looking after their grandchildren). The majority of older persons who find themselves in this position are forced to render care under conditions of extreme deprivation, and are largely unprepared for the situation; many also lack the support, the knowledge, and the resources required for looking after young orphans. Their household income and food security, as well as their ability to secure other necessities, are further diminished when a breadwinner dies because of the disease. Thus, although they may receive a social grant as old age pensioners, the money they receive is not necessarily used to meet their own needs, but usually serves to meet the needs of other members of the household¹¹.

⁹ Mathiso, S (2011) "Realising the rights of older persons in South Africa", *ESR Review*, 12(1), 3-5.

¹⁰ See Note 7 above.

¹¹ Ibid.

HIV/AIDS is also spreading amongst the older population. The sexual needs of older persons do not form part of mainstream sex education, nor are they considered when information about the disease is disseminated generally, even though so many of them are responsible for the care of orphans whose parents have fallen victim to the disease. Older persons are not included in routine HIV/AIDS screening, counselling or therapeutic protocols in the public health care sector. Education surrounding the disease is largely inaccessible or couched in language to which older persons cannot relate. More disturbing, however, is the sexual abuse suffered by older persons due to their vulnerability, which directly affects their risk of contracting the disease¹².

6.3 ACCESS TO HEALTH CARE

Access to health care for poor South Africans, especially in rural areas, is severely constrained by expensive, inadequate or non-existent transport, shortages of emergency transport, long waiting times at public health care facilities, and the unavailability of vital medication. For older persons, these issues are compounded when they are treated with a lack of respect by health care professionals, which is far too often the case. Further, with regard to frail care facilities, staff lack the necessary skills and capacity to assist older persons, and there is a shortage of equipment required to render proper assistance.

This is primarily due to the decision by the South African Nursing Council to remove gerontology from its curriculum, which effectively indicates that older persons are not only no longer considered to be a priority, but more importantly, that provision is yet to be made to prepare South Africa to deal with the consequences of an ageing population¹³. Furthermore, the health care system has prioritised its resource allocation to address maternal and child health, as well as the health of younger adults. As a result of these and other barriers to accessing adequate health care, older persons find it difficult to attend public clinics or hospitals, and only do so when illness is at an advanced stage and irreversible.

In addition to the lack of access to health care services, many older persons are being abandoned by their family members. Traditionally, particularly in African families, younger family members would be tasked with the responsibility of looking after elderly members; in recent years, however, younger people have become less willing to accept this responsibility. Consequently, older persons are often abandoned at health facilities and left to fend for themselves once they have been discharged¹⁴.

6.4 RESIDENTIAL CARE FACILITIES

An audit of state-funded residential facilities, conducted by the DSD in 2010, in order to identify the services provided and assess their quality, demonstrated that the majority of these residential facilities do not comply with the provisions of the OP Act, and that they in fact require major financial investment. Non-profit organisations (NPOs) who manage these facilities and are dependent on the state for funding, have complained of inadequate funding by the state or a failure on the part of the government to pay subsidies that have already been allocated. Further, there is inadequate monitoring of care facilities, which affects the maintenance of such facilities, and abuse of residents is being overlooked. Furthermore, in conducting inspections *in loco* at various residential facilities as part of its investigation process when handling complaints, the Commission also found that many older persons were unaware of their rights¹⁵.

¹² See Note 9 above.

¹³ Ibid.

¹⁴ See Note 7 above.

¹⁵ See Note 9 above.

6.5 SOCIAL ABUSE

Throughout Africa, older persons are experiencing abuse from members of their communities who should be supporting and protecting them. Older persons are accused of witchcraft, are deprived of food and shelter by relatives, or are victims of sexual abuse¹⁶. As recently as April 2013, the Commission issued a statement condemning the abuse of older persons, and particularly of older women, after a 92-year-old woman was allegedly brutally raped in the North West Province, while in KwaZulu-Natal, an 80-year-old woman was allegedly raped by her grandson. These acts of violence against older persons are in urgent need of attention.



¹⁶ See Note 7 above.

7. ANALYSIS OF FACTORS INHIBITING THE REALISATION OF RIGHTS FOR OLDER PERSONS

Various factors ought to be taken into account when considering why the rights of older persons are not being realised in the South African context, despite the country not only pledging its commitment to realise socio-economic in international and regional legal frameworks, but also implementing national legislation to give effect to those commitments. Yet, despite this strong and comprehensive legal framework, the mere existence of such rights has not led to them being translated into a living reality for the vast majority of South Africans, including older persons.

It has been argued that, because older persons are not specifically mentioned in the international human rights instruments, this may contribute to them being overlooked as a priority in development agendas. This is evident in the approach adopted by the South African government, when it established the Ministry for Women, Children and People with Disabilities, which implicitly excluded older persons, and meant that they were not afforded the status of belonging to a vulnerable group. In addition, although the OP Act was promulgated in 2006, providing a comprehensive framework for advancing the rights of older persons and with its primary objective being to deal effectively with the plight of older persons and improve their lives, budgetary constraints have inhibited the full implementation of the OP Act¹⁷.

Further, regulations with regard to the OP Act were only published in 2010, four years after it was passed in Parliament, and there is still no overarching coordinating mechanism to ensure that all levels of government and other stakeholders in civil society execute their mandates. Although the DSD is viewed as the body responsible for older persons, its sole purpose is not to serve this group alone. Thus, implementation of the OP Act remains slow.¹⁸

Notwithstanding the above, however, it could be argued that the biggest challenge to realising the rights of older persons is the general attitude of society towards older people, as reflected in the way they are treated. Older persons are increasingly being mistreated, neglected and abandoned by family members and state officials who are primarily responsible for protecting them. The contributions that they have made, and that they continue to make, with regard to the development and sustenance of their families and communities go largely unnoticed. Such contributions are particularly important in societies riddled by HIV/AIDS, such as South Africa. In the face of the growing realisation that African societies are rapidly ageing, it can no longer be argued that older persons constitute only a small portion of the population, and those other matters, more urgent to development, need attention instead. In light of the fact that the traditional family set-up, which used to provide primary care to the elderly, has been eroded, it has become incumbent upon the State to take on this responsibility for protecting and realising the rights of older persons in South Africa.

¹⁷ Ibid.

¹⁸ Adkins, J (2011) "Advancing the socio-economic rights of older persons in South Africa – Leaping the implementation barriers of the Older Persons Act", *ESR Review*, 12(1), 16-18.

8. PROCEDURES SURROUNDING THE HEARING

8.1 COMPOSITION OF THE PANEL

The Panel comprised the following persons:

- » Commissioner Malatji, the Commissioner designated to matters relating to Older Persons;
- » Commissioner Mushwana, Chairperson of the Commission; and
- » Mr Syd Eckley, Chairperson of Help Seniors.

8.2 SCOPE OF THE PROCEEDINGS

- » To receive information and to hear evidence from the Respondents and other relevant stakeholders relating to the challenges in realising the rights of older persons in South Africa;
- » To analyse evidence brought before the Panel;
- » To make appropriate findings; and
- » To make recommendations.

8.3 NATURE AND STRUCTURE OF THE PROCEEDINGS

The proceedings were inquisitorial in nature. Representatives of the Respondents were invited to assist the Panel with relevant information, to enable it to arrive at an understanding pertaining to the challenges of protecting and realising the rights of older persons. The Respondents were obliged to make written as well as oral submissions. Subsequent to each presentation made, the Panel then posed a series of questions, either seeking clarity or requesting further information to be submitted. Prior to making submissions, the Respondents were requested to take an oath or affirmation.

8.4 INFORMATION REQUIRED BY THE PANEL

After a thorough analysis of the current *status quo*, each Respondent was requested to provide the Commission with information in accordance with a set framework. Based on the analysis, the Respondents who were identified as the most relevant in addressing the challenges surrounding the rights of older persons included:

- » The Department of Social Development (DSD);
- » The Department of Health (DoH);
- » The Department of Public Works (DPW); and
- » The South African Police Service (SAPS).

After the Respondents had made their presentations, questions seeking clarification were asked, and requests for additional information were made. The information requested is set out below, accompanied by a summary of the information submitted to the Commission.

9. PROCESS FRAMEWORK

The Commission posed a series of questions to the Respondents. Depending on the nature of the service provided, not all of the Respondents were necessarily asked the same questions, although, where more than one Respondent was identified as a duty-bearer in relation to the service provided, the same question was posed to more than one Respondent. The following reflects the answers provided in the form of written and oral submissions. It is not necessarily reflective of the views of the Commission or the Panel appointed in this matter. However, from the outset, it is necessary to note that, while the DPW did provide a written submission prior to the commencement of the Hearing, the said Department did not attend the proceedings.

In addition, the Commission invited relevant stakeholders to make submissions in response to the same questions posed to the Respondents, with a view to gaining further clarity and insight from experienced individuals working within the field of older persons. A summary of their responses to the said questions is provided below.

9.1 SUBMISSIONS FROM RESPONDENTS

9.1.1 Submissions made by the Department of Social Development (DSD)

- i. **What measures have been implemented, specifically by the DSD as the primary body responsible for older persons, in order to prepare for the phenomenon of an ageing population?**

As a result of participating in the MIPAA, three key priorities were identified, namely, Older Persons and Development; advancing health and wellbeing into old age; and ensuring an enabling and supportive environment. These key priority areas were incorporated into the OP Act. The aim of such incorporation was also to ensure collaboration and role clarification of all the relevant role players in delivering services to older persons.

In implementing the OP Act, several awareness programmes, as well as capacity building programmes have been conducted throughout the country. The Act was also translated into all official languages, including Braille. A protocol on the management of elder abuse was developed, and stakeholders in all provinces were capacitated on the management of elder abuse. Community-based care facilities, in the form of senior citizens clubs, service centres and active ageing programmes, have been implemented. However, inter-sectoral collaboration and integration among various relevant sectors has not been realised as expected.

The Social Assistance Act, 13 of 2000, makes provision for the social assistance grant, more commonly referred to as a state pension, for persons older than 60 years of age. As at 31 December 2012, a total number of 2 838 621 older persons were in receipt of the grant.

The DSD further provides funding to the SAOPF, a forum created to ensure the participation of older persons in matters that affect them. Moreover, as a result of a conference organised by the SAOPF, at which 1 500 older persons participated, Older Persons'

Desks will be implemented in all provinces, with the aim of coordinating government departments, municipalities, relevant stakeholders, and older persons themselves. This pronouncement was approved by the Presidential Coordinating Committee in March 2013, with the DSD responsible for the coordination and implementation of this decision.

ii. Are these measures sustainable in realising the rights of older persons as stipulated by the OP Act and guidelines in the OP Charter?

Various challenges have been identified by the DSD in realising the rights of older persons as stipulated in the OP Act and OP Charter. These include the prioritisation of services that specifically target older persons in terms of policy and resources; integration and inter-sectoral collaboration to ensure a holistic approach at all levels; and accessibility of services, particularly in rural areas. The DSD noted that, in order to ensure that older persons' development, social and economic rights are protected and provided for, integrated policies and programmes are key; furthermore, this requires elevating coordinating measures at all levels of government.

iii. With regard to older persons who care for victims of HIV/AIDS, what support mechanisms are currently in place?

With regard to older persons who are responsible for the care of victims of HIV/AIDS, older persons receive both a pension and a foster child grant, if they are the primary caregivers to children below the age of 18; this affects older women in particular. Stipends are also provided to caregivers who form part of the Home Community-Based Care and Support Services Programme, in coordination with the DoH.

iv. What measures do the SAPS and DSD currently have in place in handling complaints of elderly abuse? What progress is being made in implementing the elderly abuse register?

A national helpline has been established to handle such complaints, which is subsidized by the DSD in the amount of R660 000 per annum. The DSD is currently managing a manual register for the reporting of cases of elder abuse. However, challenges have been identified in encouraging community members to report such abuse, particularly in the rural areas, due to a lack of education and information. Furthermore, the DSD has been unable to fund the implementation of an elderly abuse register as required by the OP Act, due to a lack of funding. It has, however, set aside funds to do so for the 2013/2014 financial year.

v. Is the funding available to residential care facilities sufficient in order to maintain and provide services to the standard specified in the OP Act? Are the residential care facilities in a condition of the standard required by the OP Act?

The DSD notes that funding for the provision of welfare services has not been increasing in line with service demands or inflation, which has significantly affected the funding of NPOs that are also providing residential care services to older persons. Many of these facilities have been identified as being in a poor condition. The DSD is currently in the midst of litigation due to the provision of insufficient funding. The DSD is currently responsible for the funding of 412 residential facilities and 994 service centres managed by NPOs.

In order to address the challenges experienced at residential care facilities, the DSD is considering the following options: relocating residents to other facilities within the province or closing down facilities altogether; assessing the possibilities of reintegrating older persons with their families; utilising the Provincial Infrastructure Grant to address

minor repairs; and assisting NPOs in sourcing funding from other organisations such as the Lottery.

vi. Any other relevant information

The DSD is in the process of shifting from investing in non-community-based programmes and services, such as catering for additional residential care facilities, and prioritising integrated community-based programmes. This is being done in the hope of addressing historical inequalities; keeping older persons within families and communities for as long as possible; advancing the economic productivity and social development of older persons; and gradually shifting the spending from residential care to community-based care, thus ultimately diminishing the total cost to government for all the services rendered to older persons, and extending these services to a larger number of older persons in the long term.

9.1.2 Further submissions made by the DSD

After hearing the aforementioned submissions, the Panel requested further information in the form of written submissions. Below is a summary of subsequent submissions received from the DSD.

i. Number of old age homes run by government and whether they are capable to cater for older persons

There are only eight (8) government and four hundred and ten (410) NPO-managed facilities for older persons in the country. Although the need is great for admission of older persons to these facilities, the facilities managed by the DSD are capable to cater for older persons. The following is the number of old age homes managed by the DSD.

PROVINCE	NAME OF FACILITIES	STATE MANAGED FACILITIES
Eastern Cape	Silver Crown	1
Free State	Botshabelo Haven Thekolohelong Boiketlong	3
Gauteng	Zanele Mbeki	1
KwaZulu-Natal	Kwabadala	1
Limpopo	Shiluvana	1
Mpumalanga	None	0
Northern Cape	None	0
North West	Sonop	1
Western Cape	None	0
Total		8

ii. Service providers operating without being registered

All service providers who manage facilities that render services to older persons in terms of the OP Act, are obliged to register with the DSD. Section 13 paragraph 18 (1) (a) of the OP Act mandates that every person who provides community-based care and support services may not operate unless the service is registered as such. Service providers are registered conditionally, pending full registration, which includes the following documents: a certificate issued by the DoH, a certificate issued by the Local Government (Municipality), and a certificate from the NPO.

iii. The DSD is accused of not complying with any norms and standards – officials and non-governmental organisations (NGOs) blame it on DSD officials

Although country-wide training was undertaken on the developed norms and standards, the DSD acknowledges that limited funding sometimes makes it difficult for NPOs to comply. The DSD has since reviewed the Policy on Financial Awards to Service Providers, and one of the elements of this policy will attempt to address the issue of funding of organisations once the policy has been fully implemented.

iv. Training and registration of caregivers

The training of caregivers by the DSD is still ongoing. Priority has been given to those caregivers who are already providing the service, such as those in old age homes. Recognition of prior learning is also being considered for the year 2012/2013 in this regard. Furthermore, the department is linking those who were providing such services as volunteers with the Government Extended Public Works Programme (EPWP) to ensure that they benefit from the programme.

The following services were registered according to the norms and standards of the 2012/13 financial year:

1. Residential facilities – 175
2. Community-Based and Support Services – 130

Training on the norms and standards:

1. Training has been undertaken to five provinces, namely, Western Cape, Eastern Cape, KwaZulu-Natal, Free State and Limpopo
2. Number of trained people – 143
3. Number of caregivers – 86

v. Long queues/corruption at payout point; payment system outdated and has not improved beyond 1976; payment system with a bad human rights record

The payment system for social grants has improved significantly over the period, ensuring that the right person is paid, at the right place and time. The recent introduction of the smart card for payment of grants also decreased the long queues at the payout points. It gave various options for pensioners to receive the pension money at selected supermarket and other outlets at any time, when the pension money is available.

It should be noted that, although there are still challenges at the social grant payout points, there have been improvements. The DSD has identified money lenders or so-called 'loan sharks' as well as funeral or burial schemes as two of the challenges facing pensioners. The DSD, through the South African Social Security Agency (SASSA), has come up with a number of measures to overcome these. One of the measures is to allow only one deduction for a funeral cover per beneficiary; through continuous education and awareness drives, pensioners are discouraged from utilising the services of money lenders.

The turnaround time for the processing of social grant applications has improved drastically, and applications are now processed within 21 days. The DSD through SASSA will continue to strive for the improvement of the system to ensure that the human rights of beneficiaries are not violated.

vi. Grants in aid: are these social grants available? People have been discouraged from applying

'Grants in aid' are a type of social grant that is provided if one is living on a social grant but cannot look after oneself. Thus, a pensioner can get an additional grant to pay the person who takes full-time care of them.

For one to qualify, the person must:

1. already receive a disability grant, war veteran's grant or grant for older persons;
2. not be able to look after themselves owing to their physical or mental disability, and therefore need full-time care from someone else; and
3. not be cared for in an institution that receives a subsidy from the government for their care or housing.

An amount of R290 per month is paid out for this grant over and above the old age pension paid. The DSD has advised that it would assist further, if more details could be provided about any individuals experiencing challenges in applying for this type of social grant.

vii. Provincial structures do not exist and those that do exist have no functions

The DSD has for the past two years, in collaboration with the SAOPF, organised a senior citizens' conference, where 1 500 senior citizens from all provinces participate and discuss with the Minister issues that are affecting them. These processes have provided an opportunity for the DSD to develop a good governing structure for matters relating to older persons.

The DSD in conjunction with the Office of Presidency is coordinating the establishment of the Older Persons Desk in all Premiers' Offices in the provinces and in the Office of the Presidency. These structures will flow down to the local level.

The Provinces of KwaZulu-Natal and Limpopo have already established the Older Persons Desks and they have proved to be successful in the coordination of other departments in matters affecting older persons.

viii. Costing of the OP Act

Since there are also other competing needs in the provision of welfare services, the full funding has not been received from National Treasury over the period following the costing that had been done for the implementation of the OP Act. This is due to insufficient funding being allocated to the programme due to other competing priorities.

However, the OP Act has been progressively implemented, and by now, more than 60 per cent of the Act has been fully implemented. The Department developed and has a coherent strategy to achieve the full implementation of the OP Act.

ix. What happened with regard to the discounting of loans, as recommended by the Skweyiya Commission?

The discounting of loans was granted prior to 1994, and it was conducted through the then Department of Local Government, Housing and Works. The loans were granted from the development and housing fund to local authorities, utility companies and welfare organisations at an interest rate of 1% repayable on a biannual basis over 30 years. Loans acquired were utilised for financing of capital costs, including welfare services, service centres, old age homes and welfare facilities.

The objective of the discounting of loans was that disadvantaged and poor communities would benefit from the services provided by these facilities for older persons and that this should promote the process of transformation.

The Skweyiya Commission recommended that those old age homes and welfare facilities should pay back the loan, if those granted loans were not complying with the conditions of said loans.

The DSD has attempted to follow up on the matter because a number of facilities were found not to be complying with the conditions, as indicated above. The DSD has not succeeded in obtaining the files relating to the information of organisations that benefited from this process of the discounted loans, however, as these records were retained by the Department of Housing. The DSD is still pursuing the matter with the Department of Housing.

x. Retirement villages are ripping off older persons and are a law unto themselves

Although retirement villages are governed by the DTI, the DSD is responsible for intervening in instances of complaints and abuse. As these facilities are not administered in terms of the OP Act and are thus not subjected to the annual registration and ongoing monitoring processes that are undertaken at our facilities, it becomes difficult to identify these cases.

The DSD is prepared to work with all other stakeholders, including the Commission, to investigate and address the concerns.

xi. Parity between government managed and NGO facilities

There is a total number of eight (8) old age homes managed by the various provincial DSDs, with the exception of Mpumalanga, the Northern Cape and the Western Cape and four hundred and ten (410) managed by NGOs throughout the country.

It should be acknowledged that, over the years, no proper costing had been undertaken to cost these services. The National DSD has almost finalised the comprehensive costing model for all the welfare programmes, including services to older persons. The funding model has been finalised, is currently in a consultation process, and will be implemented soon. This model will therefore be implemented in all the facilities managed by government and NPOs.

xii. Salaries of staff in the NPOs

The NPO sector has been raising the issue of parity between the salaries of social workers employed in government and those employed in the NPOs. The reason for the lack of parity is that social workers in government and those in the NPOs are employed under different conditions of service and are not governed by the same legislation. However, there are ongoing discussions in the department to find ways of addressing this issue. The DSD reviewed the Policy on Financial Awards to Service Providers, and one of the elements of this policy will attempt to address this matter when fully implemented.

xiii. Zanele Mbeki ratio of caregivers to residents /patients

The Staff Complement of one state facility, viz. the Zanele Mbeki Frail Care and Residential Facility is as follows:

Staff categories	Number of Staff Members
Head of Institution	1
Assistant Director Auxiliary	1
Social Worker Supervisor	1
Social Work	1
Social Auxiliary Workers	5
Professional Nurse	11
Nursing Assistant	60
SAO: HR	1
Administration Clerk	2
Administration Clerk: Procurement	3
Administration Clerk: Finance	2
Administration Clerk: HR	1
Store Assistant	1
Handyman	1
Receptionist	1
Administration Clerk: Transport	1
Driver	2
Food Aid Services Supervisor	1
Food Aid Services	5
Household Aid	15
Laundry Aid Supervisor	1
Laundry Aid	8

It should be noted that the available staff is also responsible for the care of an additional 80 People with Disabilities accommodated by Zanele Mbeki Frail/ Residential Facility.

xiv. Introduction of the costing framework – we have not seen a costing model and consultation with the NGOs

The National Baseline Costing Models have been finalised and approved for implementation. These models will be complemented by the recently developed Funding Models to ensure effective implementation. Consultation on the Funding Models is currently taking place with some NGOs, and these consultations will be rolled out to all stakeholders.

xv. Circular No. 6 no extra funding - NGOs informed to start cutting down in the Gauteng Province

Historically, the NGOs providing welfare services are predominantly located in urban areas and cater mostly for particular race groups, to the exclusion of black communities. Moreover, these facilities are not easily accessible to many of the previously disadvantaged groups, and in many instances, this is so by design.

The objective of Circular No. 6 was to address the issues of transformation to redistribute the available resources in an equitable manner as per the National Policy on Financial Awards. This was also due to limited funding being available for welfare services and

the fact that no additional funding was received from Treasury; as a result, there was a need to review and reprioritise services across welfare programmes, utilising the limited available resources. This was not only applicable to the Gauteng Province but across the entire country.

It should be noted that, although this has not been implemented, there is a need to proceed in this manner as per the directive of Treasury and as guided by the Policy on Financial Awards.

xvi. Older persons who have been in the country for more than 30 years but who have no IDs

There is a provision to address problems of people without identity documents; such people are advised to visit the offices of SASSA, where their cases will be addressed according to the provisions of SASSA policies and legislation.

xvii. Memorandum of Understanding (MOU) between DSD and DoH on cross-subsidisation

The Minister of Social Development intends to introduce an amendment in Parliament to the OP Act. The amendment of the Act will cover all the gaps identified in all the chapters of the Act. Issues regarding the MOU between the DSD and the DoH on cross-subsidisation will be among the areas that will be strengthened, in order to ensure that they are enforceable.

xviii. Most elder abuse cases are not being investigated – the role of the family and the community

World Elder Abuse Awareness Day (WEAAD) and other related national and international days for older persons are observed annually on the 15th of June by the DSD in partnership with the key stakeholders, to create awareness and ensure that elder abuse cases are reported. The objectives and aims of holding these events are to continue to educate families and communities about the rights of older persons, because instances where families and communities have turned a blind eye to older person abuse, or where they have not known what to do, have been seen. In some instances, moreover, families and communities are not willing to come forward with information on abuse, and have made it difficult for the SAPS to investigate.

The DSD plans to continue to educate communities about the rights of older persons and the reporting of elder abuse cases.

Arrangements have also been made to train the SAPS members and to enforce the current measures that the SAPS and the DSD already have in place with regard to handling complaints of elderly abuse, as clearly spelt out in the OP Act.

xix. National Register of Abuse

A budget for the design, development and implementation of the electronic older persons abuse register has been secured. It is envisaged that the implementation of this register should be in operation nationally and provincially by November 2013.

The DSD will coordinate the implementation and the updating of the register nationally and provincially, and stakeholders will be consulted where necessary. The design of the system will be linked with all the provinces, where the information will be updated on a daily basis, as necessary. The infrastructure is already in place to implement the system in the provinces. Currently the DSD is managing a manual register, where social workers from the respective provinces can report elder abuse.

9.1.3 Submissions made by the Department of Health (DoH)

i. How has the DoH addressed the complaints of older persons in their experiences of accessing health care?

The health of older persons is currently provided for under the Cluster of Non-Communicable Diseases, which is responsible for developing strategies, policies and guidelines to address non-communicable diseases for older persons. However, in acknowledgement of the diverse range of health needs affecting older persons, the needs of older persons have been incorporated into all relevant Clusters within the DoH. It was emphasised that an integrated approach needs to be followed to look after the health needs of older persons. Thus, the DoH also works closely with the DSD, as well as civil society and other stakeholders, in addressing the needs of older persons.

In addition, free comprehensive health care is available at an extensive network of places, close to the homes of older persons. Free health care is also offered in hospitals, and surgeries such as cataract removal are offered at these centres too.

With regard to mental illness, health care is available at various psychiatric centres, although the patient would need to pass certain stringent requirements in order to benefit from these services.

Primary health care has been re-engineered to focus on health care provided at peoples' homes. In terms of chronic disease management, HIV is considered a chronic disease, and care for persons affected by HIV/Aids is provided at primary health care facilities.

The reduction of waiting times at these centres is a central concern. One solution has been to implement appointment systems, but some attention must be paid to teaching older persons to utilise this appointment system. Many older persons do not trust the appointment system, and still elect to wait for long periods to be seen by a medical practitioner.

With reference to repeat prescriptions, a system is being developed to allow patients to collect their medication for three months at a time, as opposed to receiving medication for one month at a time.

The DoH has committed itself to the Government Plan of Action known as "*A Long and Healthy Life for All South Africans*", in order to address several identified challenges, such as: the inability of older persons to access health care services by using public transport when they are ill or frail; the impact of HIV/AIDS as a financial burden and the fact that older persons often neglect their own health in order to care for infected children or orphaned grandchildren, a situation that is worsened if they themselves are infected with the disease; the stigma and neglect from families and communities, should these older persons have mental health conditions, such as Alzheimer's or dementia; and the low levels of literacy, as well as high levels of poverty and disadvantage.

The Plan of Action titled "*Strengthening Health System Effectiveness*", which seeks to improve the quality of health services, entails the re-engineering of primary health care, which makes provision for appropriate care by trained nursing personnel and community health workers. It further creates a platform for promoting health, managing all chronic diseases and preventing the onset of further complications among older persons. It is also hoped that home and community-based services will further provide health related support, including education and public awareness to communities at large, to assist older persons who are unable to live independently.

ii. What measures are currently in place specifically to train nurses and social workers who have older persons as their patients or clients?

Health personnel, including nursing and rehabilitation personnel, community health workers and home-based carers, are receiving in-service training with regard to the health needs of older persons. As part of the re-engineering process, the DoH / DSD also developed an overview of requirements for the orientation and training of community health workers who have been appointed to the ward-based outreach teams.

The DoH noted that one of its concerns is that specialised gerontology training was removed by the South African Nursing Council's (SANC) from its new nursing qualifications, as registered on the National Qualifications Framework. The DoH, in conjunction with various advocacy groups and stakeholders, is in the process of engaging with the SANC to reconsider this decision.

iii. What support mechanisms are currently in place for older persons who care for victims of HIV/AIDS?

Currently, support to older persons who care for victims of HIV/AIDS falls under the auspices of the DSD and is addressed in the OP Act under Chapters 2 and 3. As the custodians of the OP Act, the DSD is in the process of establishing a Community Care Giver Programme for older persons. However, the DoH notes that health care is closely connected to this role and is thus committed to working closely with the DSD on this issue.

iv. Any other relevant information

In complying with its constitutional obligations of providing adequate access to health care, in cases where older persons are unable to access health care at health care facilities, such care is provided to older persons at residential care facilities, and facilitated by the DSD.

9.1.4 Further submissions made by the DoH

Subsequent to hearing the aforementioned submissions, the Panel requested further information in the form of written submissions. Below is a summary of subsequent submissions received from the DoH.

i. In terms of the Skweyiya report, a recommendation was made that the DSD and DoH share the costs of subsidies to older persons in residential facilities. What happened to this recommendation?

The DoH's responsibility towards older persons as defined in the National Health Act, 61 of 2000, is to provide free health care to all indigent individuals, both in the community and in residential care facilities. Where older persons are unable to access health establishments, and where the relevant resources are available, health care is provided directly to the residential care facility. The DoH is funded by National Treasury to provide free health care to indigent older persons. However, according to the Public Finance Management Act, 1 of 1999, two departments cannot be funded to implement a single Act, and therefore it is not possible for both Departments to subsidise older persons in residential care facilities.

ii. Why are there limited medication stock-outs in residential facilities?

The governing or managing body of each facility is responsible for the health care in the facility, which includes medication for routine health services. As such, the DoH cannot provide comment on stock.

iii. It seems as if older persons are mostly examined by nurses instead of doctors at health care facilities. Why?

To utilise scarce resources efficiently and effectively, first line services are provided by nurses who are appropriately trained in primary health care, and patients are only able to access higher levels of care (i.e. to see doctors), if they are referred for more specialised care. This decision in no way reflects discrimination against older persons, and the DoH is in the process of appointing general practitioners to do sessional work at primary health care clinics in order for older persons to access medical doctors, should the need arise.

iv. The DoH released the National Strategy on Elder Abuse in 2000. What capacity building has the DoH done with regard to elder abuse?

The DoH has developed various tools to tackle elder abuse, including the National Guideline on the Prevention, Early Detection, Diagnosis and Intervention of Physical Abuse of Older Persons and Primary Level (1997); the National Strategy on Elder Abuse (2000); and the Elder Abuse Screening Tool. This tool enables health care workers to refer cases of abuse, and it is specifically intended to assist the DSD to record abuse of older persons.

v. Why are there no influenza vaccines available to older persons? Are they not informed that they can and should access this service?

The Influenza Vaccine Campaign is run by the DoH every year, and is targeted at all vulnerable groups, including older persons. The programme is closely monitored to ensure that all groups are effectively protected against influenza.

vi. What action does the DoH take with regard to violations by nursing staff in residential care facilities?

Nursing staff employed in residential facilities are not employed by the DoH and as such, the DoH cannot take disciplinary action against staff that operate unlawfully. These allegations of abuse must be reported to the SANCO, who are tasked with investigating such complaints. Criminal charges can also be brought to the attention of the SAPS. Further, monitoring of these facilities is the responsibility of the DSD, not the DoH. However, the DoH does assist with assessing facilities when requested to do so, but it cannot act against the facility and can only advise the DSD who are the custodians of these facilities.

9.1.5 Submissions made by the Department of Public Works (DPW) (written submission only)

i. Are the residential care facilities in a condition required by the OP Act?

In response to the aforementioned question, the DPW was of the view that it could not provide the requested information because it is not the custodian of the OP Act and thus does not have any particular role or responsibility in relation to the implementation of the OP Act. However, the DPW pledged support to any lead Department responsible for the realisation of the OP Act.

9.1.6 Submissions made by the South African Police Service (SAPS)

i. What are the measures currently in place for handling complaints of elderly abuse?

It was acknowledged by the SAPS that its members are not knowledgeable with regard to the provisions of the OPA, and stated that action in this regard will have to be taken by the SAPS. The mandate of the SAPS is to prevent crime, to protect citizens, to uphold the law

and to honour the Bill of Rights. In particular, the SAPS Act, 68 of 1995, and the relevant Amendment Act of 2008 mandates that the SAPS protect all persons' safety and security and that it safeguards the human rights of all persons including older persons.

The relevant legislation protecting victims of abuse are the OP Act, the Domestic Violence Act, 116 of 1998, the Criminal Procedure Act, 51 of 1977 (as amended) and the National Health Care Act, 61 of 2003. Furthermore, there is in existence a victim empowerment manual, which deals with the dignity of the victim and with the use of referrals. A copy of this victim empowerment manual was provided to the Commission for consideration. Finally, there are various guidelines in place encouraging the SAPS to protect older persons, in particular their rights to equality and privacy.

The responsibilities of the SAPS are laid out in section 9 of the OP Act. The guidelines mentioned above have three priority areas, namely older persons, disabled persons, and unaccompanied foreign minors.

The SAPS has had a consultation with the DSD and DoH on these issues. July 2013 will see the culmination of this consultation process and a release of new guidelines. There has been an increase in public awareness of these issues, and the SAPS has been getting older persons involved in feedback regarding policing, which has been very useful in preventing abuse of older persons. There has also been an intervention with regard to repeat crimes and repeat offenders. Proper investigation into crimes against older persons and referrals has resulted in the prevention of repeat crimes.

With reference to dementia and Alzheimer's, it was pointed out that these were linked in some popular consciousness to witchcraft. Such misunderstandings need to be challenged, and the DoH was asked to intervene and raise public awareness.

With regard to the issue of substance abuse, it was noted that older persons who were abusing substances were extremely vulnerable. The SAPS needs to develop guidelines to deal with these issues, and asked the Commission to forward any recommendations to the SAPS for this purpose. A national instruction could then be released to support older persons.

The SAPS is also concerned about the safety of dwellings used by older persons, and recommends that relevant safety features need to be in place. Furthermore, increased neighbour awareness is needed; particularly helpful in this regard are neighbours who can be companions to older persons.

Subsequent to hearing the aforementioned submissions, the Panel requested further information in the form of written submissions. Below is a summary of subsequent submissions received from the SAPS.

ii. Is there a separate record of crime statistics affecting older persons?

The Crime Administration Unit of the SAPS does not have specific statistics for older persons. This is because statistics are kept for all persons and are not divided according to age. Requests for such statistics need to be made to the SAPS Head Office, which compiles them manually from each province. This process takes at least three months and specific information is required in order to acquire the relevant statistics.

9.2 SUBMISSIONS FROM STAKEHOLDERS

9.2.1 Submissions made by the Democratic Alliance (DA)

From 8 to 11 April 2013, the DA's Shadow Minister for Social Development, Mr Mike Waters, MP, visited residential care facilities (formally old age homes) in the Northern Cape, North West Province and the Free State. According to Mr Waters, the DSD has no allocated budget for the repair and maintenance of these facilities, despite the desperate state of numerous homes across the country.

Mr Waters' findings include understaffing at residential facilities and a lack of qualified medical personnel to attend to the needs of older persons, and the inability of residential facilities to cover the expenses associated with running these homes due to a lack of funding. Residential facilities currently receive a monthly grant of R1 750.00 per resident from the DSD, and residents receive their monthly pension of R1 000.00; nonetheless, facilities are additionally in need of maintenance support, for example, transport facilities, wheelchairs, furniture and painting. Some facilities are also not entirely safe and could potentially be fire hazards. Homes also lack required facilities; for example, a sick bay, fridges to store medicines or an incinerator to dispose of medical waste. In some cases, facilities are lacking for mentally challenged residents, including those with Alzheimer's. In addition, these residents are not being visited by social workers, and some buildings used as residential facilities were not built to accommodate those in need of frail care, which has thus led to accessibility problems.

Further, only 5 of the 58 homes assessed did not have any 'high risk' issues. A facility is deemed 'high risk' if the building and its occupants are endangered by non-compliance with occupational health and safety regulations or any other regulation governing a specific issue.

The DSD Western Cape (WC) subsidises 126 residential facilities and 220 service centres that are responsible for caring for, supporting and protecting older persons. The OP Act specifies that not more than 2% of the population should live within a residential care facility. As a result, the DSD (WC) has expanded services within community-based service centres, as well as independent and assisted living facilities, as an alternative to residential facilities in order to accommodate the ageing population that cannot afford to live in these facilities.

Various activities have been implemented at service centres to educate older persons about their rights and to promote active ageing. The DoH (WC) has various home-based care programmes that include the care of older persons at home and service centres, to assist in relieving older persons from standing in long queues at clinics. Further, the DSD (WC) has engaged with social workers and has provided various training sessions on the OP Act. A Health Service Provider is also to be appointed to measure health related norms and standards at all 126 residential facilities.

The DSD (WC) is being assisted by local non-profit organisations in monitoring the complaints registers at residential facilities. However, it also needs to strengthen its engagement with the SAPS, following the procedures of the Domestic Violence Act, 116 of 1998. The national DSD has not yet implemented an electronic abuse register to monitor elderly abuse, but the DSD (WC) has implemented a manual register. Lastly, subsidies to residential care facilities are reviewed every year.

9.2.2 Submissions made by the South African Older Persons Forum (SAOPF)

Definitions used in the OP Act present challenges. According to the OP Act, a 'residential facility' is a building or other structure used primarily to provide accommodation and a 24-hour service to older persons. While the definition also applies to frail care, it would not cover independent living or assisted living. Although these two categories are covered in the regulations, the inclusion of the words '24-hour service' has resulted in a grey area, as there are currently residential facilities that only provide accommodation without any services, which thus cannot be regulated under the OP Act. This grey area may result in unscrupulous providers exploiting the gap and entering into lessor-lessee agreements with older persons without having to register or comply with regulations.

The costs associated with frail care are extremely high and funded exclusively by the DSD. The DSD subsidises residential facilities for sub-economic older people on a *per capita* basis. These subsidies are largely inadequate and vary from province to province, and there is no formula for calculating the subsidies to ensure equality throughout the country. Furthermore, there is no subsidy specifically for the salaries of nursing staff. Due to the financial burden this places on old age homes and related facilities, some have stopped admitting sub-economic older persons who are unable to afford living in these homes. Payments are also paid retrospectively in some cases (i.e. after the expenses have been incurred), which adversely affects service delivery. Furthermore, the ministries responsible for frail care, namely the DoH and the DSD, are not working together in all of the provinces, thus weakening effective monitoring and evaluation.

Safety and security at residential care facilities have become a major concern. In recent years, older persons have died in fires, which mostly occurred at night when there are minimal staff on site. Further, security measures to protect older persons, such as burglar bars, make it difficult for them to be evacuated quickly from the home when there is a fire, and they prevent community members from assisting in case of an emergency. Further, residential care facilities do not have the funds to comply with the regulations of the National Building Regulations and Building Standards Act (103 of 1977) and the Occupational Health and Safety Act (85 of 1993), such as installing smoke detectors or fire blankets.

The mental health of older persons is often overlooked, and diseases such as dementia go undiagnosed and untreated. Memory problems are considered a normal part of ageing and are not seen as an indicator for further in-depth assessment. Moreover, staff at state hospitals or community health clinics is not effectively trained to identify indicators of mental illness in older persons. Furthermore, residential care facilities do not possess the necessary resources to care effectively for older persons with mental health issues.

It is often assumed that older persons are not sexually active and are thus not at risk of contracting HIV/AIDS. Statistics regarding this issue are unreliable, and many older persons living with the disease do not receive treatment, simply because they do not know their status. The system for HIV/AIDS testing is also inaccessible to older persons. Further, there is a lack of information specifically targeting older persons, resulting in risky sexual behaviour.

According to the submission by the SAOPF, South Africa only has eight registered geriatricians available to serve a population of 3.8 million older people. Further, geriatrics has been removed from the nursing curriculum, and older persons complain that they

receive negative treatment from staff at hospitals and clinics. As a result, older persons are further excluded from the health system.

This submission highlights issues of safety and security of older persons, particularly because these issues do not appear to be a targeted priority for the SAPS. It is alleged that the abuse and exploitation of older persons is largely under-reported and that it is escalating. Further, older persons, as recipients of social grants, are also subject to financial abuse. Older persons are victimised and accused of witchcraft, particularly when they are suffering from mental health illnesses. In addition, the media focus is often directed only at abuse occurring in residential facilities, but older persons are primarily affected by abuse in their own homes and communities.

As a right that is stipulated in the Bill of Rights, the provision of social security should not be viewed by the state as charity or relief. As such, both state and non-state actors responsible for delivering grants must be held accountable for poor and ineffective service in relation to the payment of social grants.

In 2008, the SAOPF conducted a survey amongst old-age grant recipients and established the following: some pay points lack water, toilets, seating, shelter and fences; older persons are subjected to long queues, which can last up to eight hours; pensioners have to travel long distances to pay-points, which is costly; at some pay points, medical assistance is not available for those who may fall ill while queuing; faulty machines and incorrect payments are common; in some areas, grant payments are made through local stores and grant recipients are forced to buy their goods; abusive behaviour by staff at pay points is common; and in many areas, hawkers and loan sharks harass and exploit beneficiaries.

The 'means test' that is used to establish whether older persons qualify for the grant disadvantages many older persons who may not qualify in terms of the test but who are needy nonetheless. In addition, administering the test is expensive and impractical.

One of the main objectives of the social security system in South Africa is to reduce poverty. However, the current payment methods used are ineffective and require urgent attention and reform.

9.2.3 Submissions made by Age in Action

Emphasis was placed on an integrated approach when trying to address concerns facing older persons. With regard to service delivery to older persons nationally, it was noted that there is no uniformity in services, in particular with regard to the treatment of abuse or the reporting of abuse. It was submitted that the SAPS members had not been well trained to handle older persons, and specifically cases of abuse.

With regard to community-based care, the training manual for caregivers is not ready, and neither is the national register for abuse against older persons. Centres providing care to older persons are not adequately funded and there are reports of a lack of respect given to older persons at these centres. Specifically considering residential care, the funding for these centres is not uniform. In addition, the training of caregivers who are responsible for older persons suffering from dementia is not adequate, and the number of social workers dealing with older persons remains far too low. This is largely as a result of limited funding for older persons. The case load on existing personnel dealing with older persons is too large, which is a major concern.

In respect of pension funds, specifically with regard to board and lodging, pension funds do not adequately calculate money set aside for board and lodging for older persons, nor is it available at all for this purpose. In addition, with regard to housing schemes focussed on older persons, the living conditions in these housing schemes are appalling. This should be a major concern to local government.

With specific reference to older persons without documentation, namely asylum seekers and refugees who have been in the country for a long time (some for as long as 30 years), the Department of Home Affairs did not respond to the needs of this important interest group.

Finally, concern was voiced over the slow implementation of the OP Act.

9.2.4 Submissions made by Operation Compassion

The DSD in Gauteng had prepared a circular in 2012 that had given the impression that there was little funding available for older persons. Furthermore, in 2005, the DSD had mentioned a costing framework for older persons, which has not yet been viewed by stakeholders. With reference to the availability of funding for older persons, the Panel's attention was drawn to the fact that 1% of funding for older persons was for utilities. Therefore, out of a budget of R600 000, R6 000 was set aside for utilities.

Regarding frail persons, emphasis was placed on the fact that there exist national minimum standards that have to be met for various areas of frail care and assisted living, but there was no costing model for these areas. Furthermore, nursing sisters and medical caregivers fall into different categories, further complicating the situation.

Services to community centres are split into three different areas, namely basic, intermediate and tertiary services. The budget for these services had increased from R200 to R250, but it was questioned how such a small increase could possibly cover services like drivers and managers of community centres.

The formulation of the budget was questioned. The budget is only prepared for the immediate year, and no thought is given to the needs of older persons in two or three years' time. Therefore, the budget is skewed, inflation is not taken into account, and there is no increase in funding for frail care. The budget for these services remains at R 1 523, which is the same amount as was in place in 2007.

With reference to the norms in place for caregivers, general caregivers and medical caregivers, these are all different categories of services, and yet they are not separately funded. In Gauteng, for example, there are 136 caregivers for 80 residences.

In addition, South Africa needs more old age homes in the townships. Also, there exists discrimination in the way the budget is calculated for old age homes, as the budget is different, depending on the geographical area in which the old age home is situated. This issue requires serious reflection, since old age homes are closing down even though the need for them has not diminished but in fact increased.

9.2.5 Submissions made by Help Seniors

Recently, South Africa has had the benefit of good legislation, but the main issue remains that of implementation. More specifically put, the implementation of the legislation is not uniform. Furthermore, there are thousands of NGOs who are working for the good of older persons, but without adequate reward for their efforts. In South Africa, it is sad to

realise that older persons are treated without dignity, and reference was made to the lack of consultation connected with important decisions and forced removals from facilities.

Older persons in South Africa have to wait in long queues, they are subject to exploitation and they have to contend with errors in administration. From this perspective, South Africa has not moved far beyond the situation faced by older persons in this country since 1976. Some of the obstacles currently faced by older persons that prevent them from enjoying their constitutionally guaranteed rights are fear of intimidation, lack of legal advice and lack of financial means.

An additional Hearing was held on 20 November 2013, calling upon the Department of Justice and Constitutional Development and the Department of Trade and Industry to furnish the Commission with any information pertaining to the promotion and protection of the rights of older persons.

9.2.6. Submission by the Department of Justice and Constitutional Development

i. What measures the Department has in place to ensure that Older Persons have easier access to the Justice System?

In response the Department stated that it is one of the Departments responsible for the implementation of the Older Persons Act, 13 of 2006. The Department emphasised that the implementation of the Older Persons Act especially chapter 5 of the Older Persons Act must be read in conjunction with the Domestic Violence Act in order to realise more effective outcomes against the abuse of older persons in our country.

The Department further reiterated that the promulgation of the Superior Courts Act no 13, 2013, has introduced a number of changes in the governance and administration of all Courts in South Africa. The Department stated that section 8(2) of the Act establishes the Chief Justice as the Head of the Judiciary responsible for the establishment and monitoring of norms and standards for the exercise of judicial functions in all courts.

Further, the role of the Chief Justice includes giving advice to Judicial Officers regarding matters affecting accessibility, effectiveness, efficiency of the Courts. The implementation of section 27 to 30 of the Older Persons Act has been placed under the Office of the Chief Justice. The Department stated that in its response that it would focus on the provision of administrative Court Support Services offered to abused older persons.

Specialised Unit on the Promotion of the Rights of Vulnerable Groups

The Department has established a specialised unit at the National Office to develop initiatives for inter-departmental implementation of pieces of legislation that protect and promote the rights of vulnerable groups. Its mandate focuses on interventions against gender – based violence perpetrated against women, children, older persons and persons with disabilities. Further the additional responsibility of the Unit is to monitor the Departmental implementation of the older persons as far as administrative court services are concerned.

Public Education and Awareness Programmes

Public education is an effective tool approach to intervene against any form of gender-based violence, including the abuse of older persons. In response to the escalating violence against older persons, the Department conducts public education campaigns

aimed at preventing abuse. In 2012, the Department partnered with the Department of Social Development to promote the rights of older persons.

Public awareness campaigns were held in townships like Ga-Rankuwa, North West in commemoration of the international day. The participating non-governmental organisations were Ikageng Self-Help Association, Itireleng Trust and A re itereleng. The campaign was mainly on the Older Persons Act, the Domestic Violence Act and the Convention on the Rights of Persons with Disabilities.

Further, on January 2013, the Department held another public education event in Welkom, which focused on the rights of victims in terms of the Older Persons Act, Domestic Violence Act, 116 of 1998 and the Criminal Law (Sexual Offences and Related Matters Amendment Act), 32 of 2007.

In the execution of its public education programmes, the Department has endeavoured to develop information banners on the Older Persons Act for distribution to lower courts, to develop an information booklet on the Older Persons 2006, an 18 font size information booklet on Domestic Violence for Older Persons and partially blind court users and a brailled Domestic Violence information booklet for the Blind Victims.

Door to Door Campaign

In Mpumalanga, the Department conducted a door to door campaign on HIV in partnership with stakeholders and local NGO's. Households headed by older persons were amongst the targeted. The Department distributed promo-educational material, information brochures for older persons.

Safety Planning Programmes

The Department, in partnership with the National Prosecuting Authority and the House of Traditional Leaders, co-developed a booklet titled "My safety Plan against Domestic Violence Booklet". The Booklet provides guidelines on how older persons can plan their escape from a violent attack. Safety Plan Whistles are also in the process of being distributed to the elderly to raise an alarm during any violent attack against them.

Ramps in courts

The Department is providing ramps in certain areas of the court building to ensure easy access to service points. The aim is to make all courts accessible to older persons and people with disabilities.

Cash Flow Management

In every court there is a Case Flow Management System that is overseen by the Judiciary. The intended goal is to ensure that cases involving older persons, children and people with disabilities are given preference in courts.

Collection of Statistics in cases of abuse of Older Persons

Since 2010 the Department has been collecting statistics on cases of abuse of older persons in terms of the older Persons Act. However, the Act has certain flaws that make it virtually difficult for the Department to implement and conduct training on the Act. The Regulations of the Older Persons Act do not prescribe any guidance on how the Department should implement sections 28 and 31 of the Act. Section 31(1) requires

the Minister of Social Development to keep a register of persons convicted of the abuse of older persons, but the Act is silent about the role of the Department of Justice and Constitutional Development, despite the fact that the Department of Justice and Social Development is the custodian of the data required in terms of the provision.

The Department stated that there is a serious gap in the Act that has hindered the implementation of the Act by the courts. Thus, without any prescribed procedure, it is difficult to ensure that the data collected is submitted to the Department of Social Development. The Department however also stated that it is now in the process of requesting Department of Social Development to address this anomaly by requesting it to amend certain provisions of the Act

ii. Whether the measures are sustainable in realising the rights of older persons as stipulated by the Older Persons Act?

The Department stated that since 2011/2012, it has allocated a dedicated budget for the Implementation of the Older Persons Act each year. The budget is managed by the Chief Directorate: Promotion of the Rights of Vulnerable Groups and it assists in the realisation of sustainable interventions.

iii. Does the Department collaborate or partner with other government Departments such as the Department of Social Development to ensure the mainstreaming of issues of older Persons?

The Department has partnered with the Department of Social Development and Non-governmental Organisations such as Ikageng Self- Help Association, Itireleng Trust and A re ltereleng mainly to promote and protect the rights of older persons.

iv. Does the Department liaise with the Department of Social Development to rationalise the Sexual Offenders Registers, Regulations attached to them and their implementation?

The Department stated that the implementation of the National Register for sex offenders (maintained by the Department of Justice and Constitutional Development) and the Child Protection Register has been met with challenges, which resulted in the Department exploring the feasibility of merging the two registers. In 2012, a mini-study was conducted to ascertain whether the alignment of both Register would be a possible to address the implementation challenges referred to above.

In March 2013, the Department took a step further to set up a Task Team with representatives from the Department of Social Development to look into the issue of Registers. A number of working sessions have been held between the two Departments and the deliberations on this matter are still in progress.

v. With the recent reintroduction of 22 Sexual Offences Courts, the measures the Department has put in place to manage, treat and care for rape victims/ survivors?

In 2012, the Minister of Justice and Constitutional Development established the Ministerial Advisory Task Team on the Adjudication of Sexual Offences Matters (MATTSO). In the upgrading of the twenty two (22) courts, the following victim- support services are provided;

Dedicated Court room with two-way CCTV. The Department has set up courtrooms with a two-way Closed Circuit Television (CCTV) and upgraded sound equipment. The CCTV has been upgraded from one-way view to ensure that child, older persons; people with disabilities are able to identify the accused from a private testifying room. The private testifying room is provided to allow vulnerable groups such as mentally disabled persons, children, and older persons to testify separately from the court room through a closed circuit television. This provides an informal setting and it enables the witness to provide evidence at ease in an environment that is not known by the accused.

Intermediary Services. The Department provides intermediary services to child victims, mentally disabled persons and older persons as required by 170 A of the Criminal Procedure Act, 51 of 1977. Additional Intermediaries are appointed yearly and placed in Regional Courts that deal with sexual offences matters. The Department has in addition drafted a Government Notice to amend the Notice on the Determination of Persons who are Competent to Provide Intermediary Services. The Notice is currently being circulated to all relevant stakeholders for comments and recommendations. The purpose of the amendment is to widen the scope of categories of persons who can be appointed as intermediaries.

Private Waiting Areas for Adults and Children witnesses. The Department provides Separate Private waiting areas for adults and children; the main purpose of the waiting room is to provide a safe, calm and nurturing environment to victims of sexual offences. The rooms have information screens and educational material aimed at equipping victims with information relating to the services offered in court.

Court Preparation Services for Victims. The National Prosecuting Authority has hired Court Preparation Officers based at certain Sexual Offences Courts. The Ke bona Lesedi Court programme assists the witnesses to know about their role, responsibilities and expectations as well as the roles and responsibilities of court personnel during court proceedings.

Further, the Department has standardised signage in Sexual Offences Courts to assist the witnesses and victims in allocating relevant court buildings. The Department has also developed a Trauma Debriefing Programme (TDP) for the intermediaries, court interpreters, stenographers, prosecutors and court preparation officers. The programme will include psychological education and debriefing, emotional impact session and building resilience.

Submission by the Department of Trade and Industry

From the onset, the Department indicated that the Estate Agency Affairs Board that specifically dealt with Retirement villages had been transferred to the Department of Human Settlement on 17 May 2012. The Department further indicated that it was the custodian of the Housing Development Schemes for Retired Persons Act and that the Act was in need of a review and amendment.

However since 1988, there has been a call to review the shortcomings of the legislation to better cater or protect the rights of older persons. There seems to be no clear guidelines provided by the Act, to the extent that there is a concern on how the Department deals with complaints that are lodged with the Department.

vi. What steps the Department of Trade and Industry has undertaken to ensure that a proper Legislative Framework is in place to protect the interests of older persons?

The Department stated in its response that in executing its mandate, it promotes the constitutionally entrenched rights and responsibilities. The Department incorporates this obligation in various statutes such as section 8 of the Consumer Protection Act, 68 of 2008, which prohibits discriminatory marketing practice on the basis of age. Further section 9(1) (d) (ii) of the same legislation states that it is not unfair discrimination to offer goods or services to persons over the age of 60 years at a discounted price.

The Department is also the custodian of the Housing Development Schemes for Retired Persons Act, 65 of 1988 (HDSRP). The HDSRP regulates the alienation of certain interests in Housing Development Schemes for retired persons. The HDSRP focuses on protecting the older persons during the commercial transaction of acquiring an interest in the housing scheme for retired persons.

vii. The criteria used by the Department to accredit Developers and service operators of retirement villages?

The HDSRP does not provide for the accreditation of Developers and Service Operators of retirement villages but does empower the Minister to make necessary regulations including a develop regulations prescribing information that must be disclosed by the Developer to a Purchaser.

viii. Whether most of the residential care facilities or retirement villages adhere to the standards required by the HDSRP Act?

The HDSRP does not require the Department to compile a statistical report on this, but is confident that all retirement villages have applied and have been granted exemption and comply with HDSRP.

ix. Does the Department collaborate or partner with other government Departments such as the Department of Social Development to ensure the mainstreaming of issues of older persons?

The Department primarily focuses on protecting older persons in commercial transactions.

x. What channels are in place to enable older persons to lodge complaints, if their rights have been violated?

The conduct criminalised by the HDSRP can be reported to the SAPS and discriminatory practices can be referred to the Equality Court. Thus, issues affecting older persons cut across government departments and that it might not be feasible for one Department to have all the necessary measures in place to deal with issues affecting older persons. What seems evidence from the above is the fact that the department does not have the infrastructure and the capacity to deal with the matters concerning the HDSRP.

Recommendations

After careful analysis of both written and oral submissions made by various stakeholders during the hearing, the Commission makes the following recommendations:

11. Legislative Reform

- 1.1 That the National DSD must propose to Parliament the amendment of the definition of residential facilities as stated in the Act within 12 months from date of receipt of this Report. The definition currently reads 'residential facility means a building or other structure used primarily for the purpose

of providing accommodation and of providing a 24-hour service to older persons'. It is recommended that the definition should read 'residential facility means a building or other structure used primarily for the purpose of providing accommodation and/or of providing a 24-hour service to older persons'. This will ensure that facilities providing only accommodation or only 24-hour service are referred to as residential facilities.

- 1.2 That the Department of Trade and Industry must, within 1 month of date of receipt of this Report, appoint a task team to investigate a new dispensation and legislation policy framework of housing of older persons that would provide protection of older persons, accreditation system code of practice and the appointment of Retirement of Housing Commissioner.

12. Budgetary Allocations and Funding Arrangements

- 2.1 That the National DSD must, within 6 months of date of receipt of this Report, provide a circular to ensure uniformity in funding of services to older persons in all provinces. This circular should prioritize issues of safety, staffing, nutrition, medicals.
- 2.2 That the National DSD must ensure that in the next budget cycle special ring-fenced funding allocation is allocated to residential facilities to ensure that they comply with health and safety standards in the Older Persons Act and National Building and Occupational Health and Safety Regulations.
- 2.3 That the National DSD must ensure that, in the next national budget cycle, the funding allocated for the implementation of the Act is ring-fenced for this purpose, and consideration be given to a 10% inflation increase on key line budget items.
- 2.4 That the DOH must, within 6 months from date of receipt of this Report, undertake a costing survey covering critical pharmaceutical and medical supplies for the care of older persons, including but not limited to, oxygen supply, food supplements, incontinence products to all older persons.
- 2.5 That DOH must, within 8 months from date of receipt of this Report, consider a strategy for the supervision of care for frail older persons in communities.

13. Capacity Building

- 3.1 That the National DSD must develop a comprehensive database of all caregivers in communities, within 8 months of receipt of this Report, and provide intensive training for community caregivers in caring for older persons in their homes within 12 months thereafter.
- 3.2 That SAPs must within 8 months of date of receipt of this Report, undertake training of police officers on enforcement of the provisions of the Older Persons Act, and in particular on how the provisions of the Older Persons Act are linked to those of the Domestic Violence Act.
- 3.3 That DOH must ensure that within 8 months of date of receipt of this Report, all officials in the public and private health care sector are properly equipped/trained in the Older Persons Act and the care of older persons. Care of the aged should be included in the curricula for all medical and nursing students.

14. Sector Regulation and Inter-Departmental Co-ordination

- 4.1 That DSD and DOH must, within 12 months of the date of receipt of this Report, devise mechanisms and measures to enhance the co-operation and co-ordination between the two Departments in order to ensure that standards and norms pertaining to care services as outlined in the Older Person's Act are uniformly applied, taking into consideration the financial and cultural circumstances of older persons, including that age is not regarded as an illness and that Caregivers be more widely utilized in care services.
- 4.2 That the Minister of Social Development must ensure that, within 12 months of date of receipt of this Report, all organs of state work together to ensure implementation of the OP's Act; in particular it is recommended that inter-sectorial collaboration among the various government departments such as the DSD, DOH and DOJCD be fostered in order to realise the rights of older persons. This inter-governmental collaboration should be directed at improving information sharing, compliance, service delivery and effective monitoring and evaluation within the different provinces.

15. Public Participation and Community Awareness

- 5.1 That the SASSA must, within 3 months of receipt of this Report, embark on an extensive public awareness campaign in the media providing the public with information on available services and the availability of grants-in-aid to older persons.
- 5.2 That the DOH must ensure that, within 6 months of date of receipt of this Report, HIV/AIDS programmes targeted at older persons are introduced to enable screening and counselling for those infected with the HIV/AIDS virus. Educational material accessible in all the (11) eleven languages should be printed to spread awareness about the disease amongst the older population.
- 5.3 That the DOH must provide copies of all material on the identification, prevention and early detection of abuse of older persons to community centres, within 3 months of date of receipt of this Report.
- 5.4 That the DTI, in considering an application for exemptions in Article 10 of Act 65 of 1988, must consult with the local community including local authority before granting such exemption. This consultative process must be included in the applicable regulatory framework.

16. Service Delivery Enhancement

- 6.1 That the SASSA must introduce specific measures to ensure safety and protection of older persons at pay points and specifically against exploitation by micro-lenders within 6 months of date of receipt of this Report.
- 6.2 That SASSA must introduce urgent measures to stop the illegal practice of withholding older person's ID documents as sureties for micro-loans should be instituted no later than 3 months from date of receipt of this Report.
- 6.3 That National DSD must ensure that all funded residential care facilities are registered by end of 2015 and the new ones are registered by the end of 2016.

- 6.4 That the Department of Home Affairs must develop a strategy and a set of procedural guidelines to expeditiously address the applications of older persons who do not have identity documents by the end of 2015.
- 6.5 That the Department of Health must establish, within 12 months of date of receipt of this Report, an integrated medical care system including mental illness, primary health care, untimely discharge from hospital and the proper understanding of medical staff in private and public health sector relating to Older Persons Act be implemented.
- 6.6 That Department of Health must establish, within 12 months of date of receipt of this Report, measures to ensure uniformity in service provision and practice in cases of the regression of an older person's mental illness based on the nursing care plan and the IDP. It is recommended that such residents be moved from frail care centers into state psychiatric facilities to stabilize their condition before transferring to a frail care center. The Psychiatric hospital/ clinic must provide psychiatric staff to supervise the ongoing treatment of psychiatric residents in the frail care facility.
- 6.7 That the DTI should adopt special procedures, within 3 months of date of receipt of this Report, to protect the interest and rights of older persons in the handling of consumer complaints lodged by older persons before the Consumer Protection Tribunal.

17. Regulation

- 7.1 That all private/non subsidized care services as defined in the Act should be registered by 2016.
- 7.2 All community based support services, whether state funded or not, are registered by 2017.

18. Enforcement

- 8.1 That Nursing Council must amend disciplinary procedures, within 3 months of date of receipt of this Report, to take into account of the rights and interests of the older person victim. In particular, the right of the older person to participate in the investigation hearing, be represented and be advised of the outcome of the proceedings should be included in the procedures.
- 8.2 That the DOJ must ensure that the Sexual offences register, with specific reference to older persons and the National register of abuse of older persons are linked within 3 months of date of receipt of this Report in order to bring all offenders into the accountability net.

19. Reporting Obligations

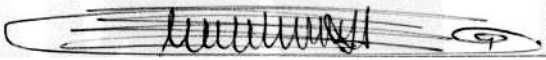
- 9.1 That the DOJ must submit a progress report to the Commission on the functioning of the specialized unit on the promotion of rights of vulnerable groups with specific reference to older persons within 6 months of date of receipt of this Report.
- 9.2 That the National DSD must submit a report to the Commission within 3 months of date of receipt of this Report indicating to what extent they have ensured that all nursing and social work staff regardless of whether they are state, private or NGO staff are being financed in terms of the Bargaining Council.

- 9.3 That the National SAPS must submit a Report to the Commission, within 3 months of date of this Report, on how many police officers have been trained on the National Instructions of 2014 in the last 5 years.
- 9.4 That the SA Nursing Council must submit a Report to the Commission, within 6 months from date of receipt of this Report, on options to reinstate Gerontology as a core competency in curriculum of Advanced Nursing Practice.
- 9.5 That the DOJ must provide the Commission with a Report within 6 months of date of receipt of this Report on the current status of accessibility of Courts to Older Persons, and time-bound measures and plans that are in place to ensure equality of access of persons with disabilities to justice.
- 9.6 That the DOJ must submit a progress report to the Commission on public awareness programmes and training of law enforcement agents and court officials on the Older Person's Act within 6 months of date of receipt of this Report.
- 9.7 That the DOH must submit a status report to the Commission, within 3 months from date of receipt of this Report, on the appointment of sessional doctors to provide medical services to retirement care facilities.
- 9.8 That the SAOPF must furnish the Commission with a copy of the Research Report on the abuse of older persons within 3 months of date of receipt of this Report.
- 9.9 That the SAPS must generate and furnish to the Commission a station by station report, within 6 months of date of receipt of this Report, on the number of older persons abuse cases per annum since 2010 to 2014 according to the following format:
- a) number of cases reported;
 - b) number of cases investigated;
 - c) the outcomes of cases investigated; and
 - d) including the reasons why cases were not finalized.
- 9.10 That the DTI and Department of Housing provides a Report to the Commission, within 3 months of date of receipt of this Report, with respect to the execution of its statutory responsibilities with respect to the Housing Development Schemes for Retired Persons Act 65 of 1988, (HDSRP) and the steps they have undertaken to protect the right to housing of older persons.
- 9.11 That SALGA must provide a full Report to the Commission on the state of local government housing for older persons which includes compliance with the Older Persons Act within 3 months from date of receipt of this Report.
- 9.12 That National DSD must provide a report to the Commission, within 3 months of date of receipt of this Report, on the implementation of the Indigent Policy; which should include the steps taken to make the Policy accessible and applied to indigent persons uniformly.
- 20. That SALGA must provide a report to the Commission, within 3 months of date of receipt of this Report, on the extent to which rebates for older persons in respect to local authority taxes are applied uniformly.**

THUS SIGNED AND ISSUED BY THE SOUTH AFRICAN HUMAN RIGHTS COMMISSION AT
BRAAMPARK SAHRC HEAD OFFICE ON THE 22ND DAY OF MAY, 2015.



COMMISSIONER B. MALATJI (CHAIRPERSON)



COMMISSIONER M.L. MUSHWANA (PANEL MEMBER)



MR SYD ECKLEY (PANEL MEMBER)



south african
**human
rights**
commission



www.sahrc.org.za

info@sahrc.org.za

FORUM 3 BRAAMPARK OFFICES,
33 HOOFD STREET, BRAAMFONTEIN, 2017
T: +27 11 877 3600