

# Identification of possible gaps in the protection of the human rights of older persons and how best to address them

## QUESTIONNAIRE

### **Background**

The Open-ended Working Group on Ageing, in its [decision 13/1](#) adopted at the thirteenth session, requested the co-facilitators to submit proposed intergovernmental negotiated recommendations to be considered at the fourteenth session of the Working Group and to be presented for consideration by the General Assembly, in accordance with resolution [77/190](#), regarding the existing international framework of the human rights of older persons and possible gaps, and options on how best to address them.

The purpose of this questionnaire is meant to facilitate the consideration of the existing international framework of the human rights of older persons and the identification of possible gaps in the protection of the human rights of older persons and how best to address them.

The questionnaire will be sent to all States Members of the United Nations, observers in the General Assembly, A-status National Human Rights Institutions, non-governmental organizations with ECOSOC Status and previously accredited organizations to the Working Group, as well as United Nations Funds, Programmes, Specialized Agencies and other UN Entities.

### **The Questions**

#### [Identification of gaps](#)

1. For each of the topics that have been considered by the Open-ended Working Group since its eighth session, please state possible gaps your Government/organization has identified in the normative framework and practical implementation for the protection of the human rights of older persons. *(500 words each)*

a) Equality and non-discrimination

Human rights and issues of equality are domesticated in South Africa through a number of legislative mechanisms namely:

- The constitution of the country – Chapter 2 is the Bill of Rights which every citizen is entitled to – this is perhaps one of the major gaps which a legally binding instrument could assist with – the reality of refugees. Refugees who would be defined as older people are not protected by the constitution as a South African National would be. Equality includes equal access to resources and structures which promote wellbeing

- The Older persons Act -Act 13/2006 came into effect in 2010 and is aligned to MIPAA. While the legislative framework exists it has become impossible to give effect the rights conferred to older people by solely the internal control and recourse mechanisms. A global instrument ensures that there can be local level lobbying to ensure compliance to an internationally binding instrument

South Africa's past of institutionalized discrimination on the basis of race in the form of apartheid is well documented and legislative frameworks have made an impact to address discrimination in this manner. However, more needs to be done. For example, the social protection system via the social grants has de-racialised the system but has not transformed the system to respond to the specific needs of older people especially those who have been previously disadvantaged. A global instrument could set the standards transformative non discrimination policies and legislation.

b) Violence, neglect and abuse

This aspect is addressed through two main processes in South Africa. One is the general criminal system which is regulated by the Criminal Procedures Act and the other is the response to elder abuse which is addressed by Chapter 5 of the Older Persons Act 13/2006 which came into effect in 2010

Even with these provisions older people are victims of heinous crimes which leads to fatalities in many instances. The increased incidence of reports of older people being victims of crime and violence suggest that there are gaps in the current system.

These gaps relates to the lack of prioritization of cases where older people are involved. This results in older people being overlooked or a slow response rate. While the framework exists nationally to address issues of violence, neglect and abuse, the oversight structures appear to be ineffective in delivering on the intention of these instruments.

An international convention adds another layer of accountability potentially expediting, monitoring and reporting on progress. Such a convention would act as a catalyst for more efficient responses and greater adherence to the intended purposes of existing frameworks contributing to the enhanced protection of older people.

c) Long-term care and palliative care

The provision of long-term care and palliative care in South Africa is emblematic of a fragmented service delivery system. Long-term care primarily falls under the purview of the Department of Social Development, while palliative care seems to be situated within the domain of the Department of Health. Recognized as pivotal issues, these concerns have been explicitly addressed in the National Strategy on Ageing (2022 – 2027). However, there is an imperative need to fortify the coordination between these two vital state departments, with an unwavering focus on the well-being of the elderly in our society.

From a practical standpoint, long-term care is somewhat synonymous with frail care, provided either in residential facilities or through the community-based home care program. Palliative care is akin to the endeavors of the Hospice movement in South Africa. Despite commendable initiatives to underscore their relevance in the care and support of older individuals, the absence of a normative framework relegates these initiatives to the status of incidental programs by service providers.

The articulated intention to support older people is commendable, but the absence of a structured framework results in activities lacking a duty imposed on all stakeholders to formulate and implement a comprehensive response to the escalating demand for long-term care and palliative care. Herein lies the opportunity and necessity for a UN Convention on the Rights of Older People, a legally binding framework that can significantly enhance the conceptualization and delivery of national initiatives.

The relevance of a UN Convention on the Rights of Older People becomes evident when considering its potential to provide member states with an enforceable framework. Such a convention would serve as a guiding document, delineating the rights and entitlements of older individuals and creating a robust foundation for service delivery. By placing obligations on member states, a convention would compel governments to develop and implement strategies that address the intricate needs of the elderly, fostering a cohesive and comprehensive approach.

Moreover, a legally binding convention would create pathways for resource mobilization, addressing a critical aspect of the challenges in long-term care and palliative care. The enforcement mechanisms embedded in the convention would empower member states to allocate resources efficiently and effectively, ensuring that initiatives aimed at supporting older individuals receive the necessary financial backing. This, in turn, would elevate the status of long-term care and palliative care from incidental programs to integral components of national service provision.

In the South African context, the adoption of a UN Convention on the Rights of Older People could catalyze the strengthening of coordination between the Department of Social Development and the Department of Health. It would provide a unifying framework that aligns with the goals outlined in the National Strategy on Ageing, offering a systematic and legally binding approach to address the fragmentation in service delivery.

In conclusion, the challenges associated with long-term care and palliative care in South Africa necessitate a paradigm shift. The adoption of a UN Convention on the Rights of Older People offers member states an enforceable framework within which to conceptualize and deliver on national initiatives. Beyond its regulatory role, such a convention would create pathways for resource mobilization, transforming the landscape of elderly care by ensuring a comprehensive and coordinated response to the growing needs of older individuals. The time is ripe to embrace a convention that not only articulates intentions but also compels action for the well-being and dignity of our aging population.

The intention to support older people is articulated but the activities lacks a framework which imposes a duty for all roleplayers to formulate and implement a response to the growing need for long term care and palliative care.

d) Autonomy and independence

The Bill of Rights in the Constitution of South Africa plays a pivotal role in safeguarding the autonomy and independence of older people. Sections such as Human Dignity (Section 10) underline the inherent value of every individual, emphasizing the respect owed to older citizens. Equality (Section 9) ensures that older individuals are treated fairly, free from discrimination based on age, and have equal access to opportunities and services.

The Freedom and Security of the Person (Section 12) guarantees protection from arbitrary detention and violence, crucial for upholding the safety and autonomy of older individuals, especially in care settings. Additionally, Healthcare, Food, Water, and Social Security (Section 27) acknowledge the right of older people to access healthcare services and social security, contributing to their overall well-being.

Enforcement of Rights (Section 38) empowers individuals and groups to approach the court when rights are infringed, offering a mechanism to protect the autonomy of older citizens. In essence, the Bill of Rights provides a constitutional framework that reinforces the autonomy and independence of older people, recognizing their dignity, equality, and right to live free from arbitrary interference or discrimination.

Substantial strides have been made in formulating national frameworks to operationalize the tenets of autonomy and independence for older individuals. Nevertheless, the pace of implementation seems sluggish, possibly attributable to competing priorities and constrained resources. The author posits that aging must occupy a prominent position on the development agenda. Introducing a UN Convention on the Rights of Older People would establish a binding obligation on member states, compelling them to accord due priority to these critical concerns. This proposed international framework could effectively elevate the urgency and commitment required to address the unique needs of older populations, fostering a more concerted and accelerated global effort towards ensuring the autonomy and independence of older individuals.

- e) Protection et sécurité sociales (y compris protection sociale minimale)
- f) Education, training, lifelong learning and capacity-building

The South African constitution grants every citizen the right to education, but there exists a notable gap in the emphasis on education and training, primarily directed at the younger population. It is imperative to challenge and rectify ageist practices that act as impediments to lifelong learning. The tools to address this challenge should be available at national, regional, and international levels. Considering the historical context of the apartheid system endured by many older individuals, education, training, lifelong learning, and capacity-building must be examined through the lens of unequal access to learning opportunities. Older people today may find the concept of lifelong learning challenging due to the segregated nature of education during their upbringing.

A UN convention on the rights of older people should recognize the diverse experiences of older individuals and the unique ways in which they learn, internalize, process, and assimilate new information. The convention holds a crucial role in positioning the learning and capacity-building needs of older people on the education agenda for all member states, ensuring a comprehensive approach to addressing the specific challenges faced by older learners.

- g) Right to Work and Access to the Labour Market

The right to work and access the labor market, as articulated in the South African Constitution under Section 23 (Labour Relations), applies to all individuals, including older people. While the constitution does not explicitly mention age as a

protected characteristic in this context, the principles laid out in Section 23 are generally applicable to workers, irrespective of age.

For older people, these rights imply that they have the right to fair labor practices, including protection against unfair discrimination based on age. Discrimination against older workers in hiring, promotion, or access to training opportunities would be inconsistent with the constitutional principles of equality and fair labor practices.

Additionally, the right of workers to form and join trade unions, participate in their activities, and engage in collective bargaining is relevant for older workers. Older individuals may choose to join or form unions to advocate for their specific needs and rights in the workplace, especially concerning issues like retirement benefits, working conditions, and age-appropriate training opportunities.

The constitution's emphasis on fair labor practices provides a foundation for addressing ageism and promoting inclusivity in the workforce. While the specific challenges faced by older workers may not be explicitly outlined, the overarching principles of equality and protection against unfair discrimination contribute to creating a more inclusive and age-diverse labor market.

In the context of South Africa, despite constitutional principles affirming the right to work and access the labor market, there are specific challenges and gaps that impact older individuals:

1. **Age Discrimination:** South Africa faces challenges related to subtle or systemic age discrimination in the workplace. Older individuals may encounter barriers in hiring processes, limited opportunities for career advancement, and reduced access to training and skill development.
2. **Retirement Age Policies:** While the constitution doesn't explicitly specify a retirement age, employment contracts and other legislation may contribute to varying practices across industries. This can result in premature or involuntary retirement for some older workers, limiting their ability to continue contributing to the workforce.
3. **Adaptation to Changing Workforce Dynamics:** The constitution may not explicitly address the changing nature of work, such as the gig economy and remote work. Older workers may face difficulties adapting to these shifts, and there might be a lack of provisions ensuring fair treatment in evolving work environments.
4. **Social Perception and Stereotypes:** South Africa, like many societies, may harbor stereotypes and biases against older workers. These perceptions can affect employment opportunities and how older individuals are treated in the labor market, even if not explicitly addressed in the constitution.
5. **Training and Lifelong Learning:** While the constitution emphasizes education, it may not explicitly address the specific training and lifelong learning needs of older individuals in the workforce. Continued skill

development is crucial for older workers to remain competitive, and policies should reflect this reality.

Addressing these gaps in South Africa requires the development and enforcement of comprehensive labor laws and policies that explicitly recognize and protect the rights of older workers. Additionally, public awareness campaigns can challenge age-related stereotypes and promote a more inclusive and age-diverse workforce, aligning with the constitutional principles of equality and dignity for all citizens.

A further gap in the South African context relates to the rurality of work and the lack of recognition of the informal market. The definition of work need to be extended beyond the norm of the formal definition.

A UN Convention on the Rights of Older People holds significant potential in addressing and rectifying disparities related to the rights of older people in South Africa. The convention can serve as a pivotal instrument by introducing measures to combat age-based discrimination in the workplace, advocating for equal employment opportunities and ongoing training for older workers. Additionally, it can establish guidelines for fair and transparent retirement age policies, encouraging flexibility and discouraging premature retirement. Recognizing the evolving nature of work, the convention can recommend strategies to help older individuals adapt to changing work environments, including those associated with the gig economy and remote work. Furthermore, it can foster public awareness campaigns to challenge age-related stereotypes, promoting a more inclusive work culture that values contributions from all age groups. Emphasizing social and economic inclusion, the convention can prompt member states, including South Africa, to develop comprehensive policies addressing the unique needs of older workers. Crucially, the convention can institute monitoring and reporting mechanisms at the national level, ensuring regular assessments and interventions to bridge gaps in protecting the rights of older people in the workforce. In essence, a UN Convention on the Rights of Older People can act as a catalyst for legal and policy reforms, actively promoting the rights of older individuals and contributing to a more equitable and inclusive society.

#### h) Access to justice

Access to Justice is enable through the country's Constitution and the stipulations of the Older Persons Act, which specifically address the safeguarding of older individuals and the legal recourse available through the Department of Justice.

The challenge lies in the sluggish execution of the act's provisions and the deficiencies in accountability structures within South Africa. To illustrate the impact of these gaps, it has been 13 years since the enactment of the Older Person's Act, which criminalizes elder abuse. Despite numerous reports of elder abuse during this period, not a single perpetrator has been prosecuted under the legal provisions of the OPA13/2006. Introducing a legally binding convention would help establish clear pathways for implementation by explicitly delineating global agreements and supporting member states in achieving success.

i) Contribution of Older Persons to Sustainable Development

The significance of older people in South Africa cannot be overstated in the context of sustainable development. In the nation, the dual role of older individuals as caregivers to younger generations, coupled with the essential role of the old age grant as a household income source facilitating participation in economic activities, must not be ignored. While older people are pivotal contributors to sustainable development, there is a notable oversight regarding the full extent of their impact and reach. A recent publication by the Caregiving Project in South Africa aptly captures the narrative of caregiving and its profound impact.

One of the critical gaps lies in the conceptualization of older people as agents of change. The prevailing narrative predominantly positions them as consumers of services rather than recognizing their integral role as contributors. It is imperative to shift this narrative on a global platform, elevating the reputation and status of older people and institutionalizing their contributions within the sustainable development space.

Furthermore, it is crucial to acknowledge the valuable contribution of older people in mitigating environmental disasters and serving as response agents. Their wisdom, ideas, and willingness to be part of solutions must be harnessed.

In Africa, regional instruments through the African Union play a significant role, and the ratification of these instruments becomes crucial in advancing the cause of older people in the context of sustainable development.

j) Economic security

Research conducted in South Africa reveals a stark reality: only 6% of the population can afford to retire. The majority of older people in South Africa rely

on the Old Age Grant provided by the Department of Social Development. This grant system plays a pivotal role in poverty alleviation, ensuring that older individuals have the financial means to actively participate in the economy. However, the economic security of older people is compromised by challenges such as a high youth unemployment rate, an uncertain political climate, and a prevalence of social ills.

In many cases, the Old Age Grant is not only the primary but the sole source of income in households ranging from two to 12 people. Despite being intended for the use of the older person, the grant is often utilized to meet the needs of the entire household.

The historical impact of the apartheid system is evident in the limited opportunities for the majority of the South African population to access decent work, resulting in minimal to no savings for many older individuals.

A binding global instrument is urgently needed to guide member states in crafting and implementing appropriate frameworks that ensure economic security for older people. This instrument should acknowledge the diversity in economic conditions across different countries and regions, providing a comprehensive approach to address the unique challenges faced by older populations worldwide.

k) Right to Health and Access to Health Services

The starting point for discussions on the right to health and access to health services should revolve around the compelling evidence that aging often accelerates the need for healthcare services due to physiological changes. In South Africa, health services are accessible to older individuals with limited income through the public health system. However, the critical concern lies in the quality of the available services.

The challenges within the public health system are diverse and encompass ageist practices that lead to exclusion and marginalization of older people. Additionally, there is a lack of provision for resources and issues related to fragmented service delivery. The lack of attention in people wiling with dementia is also noted with concern.

South Africa, like many nations, is witnessing an upward trend in the percentage of older people, constituting 9.2% of the total population in 2022, with 5.6 million older persons. The current care system heavily relies on families taking on the primary caregiver role. However, there are significant gaps in this approach, emphasizing the urgent need for an enabling environment that supports families in fulfilling their caregiving roles.

The incorporation of international, regional, and national norms is crucial in fostering an enabling environment for older people, ensuring their access to quality healthcare. This approach aligns with the overarching goal of promoting the concept of aging in the right place, where individuals can receive appropriate care and support.

It must also be noted that the Common Africa position on long term care is a crucial regional instrument but the slow show of support does limit the impact this instrument could make

l) Social Inclusion

The Eden Alternative, as a care philosophy, acknowledges that a significant portion of suffering among older people stems from loneliness, helplessness, and boredom. To address this, the solution lies in the creation and support of human habitats where older individuals can actively engage with their environment and the people around them, thereby contributing to their overall well-being. Social inclusion emerges as a powerful antidote to alleviate suffering.

In the African context, the philosophy of Ubuntu, encapsulated in the belief "I am because we are," recognizes that the well-being of older people is intricately connected to the well-being of others. Fostering collective benefits through social inclusion ensures that older individuals are never marginalized, made to feel less important, or forgotten. However, the principles of social inclusion must transcend generational storytelling and be institutionalized within the frameworks defining our care environments.

As people live longer, the importance of social networks cannot be overstated. While the UN principles on participation, care, and independence are relevant, their implementation faces challenges without a clear legal mandate. Addressing this mandate gap is crucial to deliver on these principles.

Additionally, alternative forms of social inclusion through the digital space need articulation in a global instrument for countries to domesticate as appropriate.

Efforts should be intensified to create a society for all ages, with the UN Convention on the Rights of Older People representing a crucial step towards ensuring the social inclusion of older individuals.

m) Accessibility, infrastructure and habitat (transport, housing and access)<sup>1</sup>

Over 25 years have passed since the second Congress on Ageing and the adoption of the International Plan of Action on Ageing (MIPAA), marking a significant milestone. In South Africa, this paved the way for the SA Plan of Action on Ageing, which subsequently informed the enactment of the Older Persons Act 13 of 2006. While these achievements are noteworthy, it is crucial to recognize the escalating needs that persist.

The critical matter of access to housing remains entangled in political rhetoric, posing substantial challenges in advancing Clause 95, which acknowledges the intrinsic link between housing access and good health. Challenges surrounding the housing debate include the ambiguity in existing instruments. Although the country's Constitution grants the right to access appropriate housing, this does not

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<sup>1</sup> To be discussed at the 14<sup>th</sup> Open-Ended Working Group on Ageing

equate to providing a house to every older person. Unfortunately, political parties have exploited this issue for campaigning since the advent of democracy, leading many older individuals to hold onto the belief that the government should provide them with a house.

An effective remedy to navigate this politically nuanced issue would be a clear international mandate that elucidates the expectations and responsibilities of the relevant stakeholders.

Given the increasing number of older people, coupled with limited land resources, especially in rapidly urbanizing areas and evolving societal structures, alternative forms of housing beyond the ownership model must be actively encouraged. This shift in perspective and approach is essential to address the complex housing challenges faced by older individuals in South Africa.

n) Participation in the public life and in decision-making processes<sup>2</sup>

The elevation of the voice of older people at the national level is a commendable achievement facilitated by the establishment of the Human Rights Commission in South Africa. Enshrined in the Constitution, Chapter 9 institutions, such as the Human Rights Commission, play a crucial role in safeguarding our democracy. The HRC, notably, took a pivotal step by establishing the Older Persons Forum, representing older individuals from all nine provinces in the country. The SAOPF tagline of “Nothing for us, without us” reflects the intention of inclusion. However, realizing the full impact of these instruments faces several challenges. The first challenge is the absence of capacity-building initiatives available to older people, hindering their ability and confidence to participate fully. The second gap lies in resource constraints, and the third is the lack of integration between traditional systems of engagement and the Western narrative on participation.

Managing the expectations of both older people and society at large poses an additional challenge. Some older individuals are hesitant to engage in public life and decision-making due to internalized narratives that portray them as needy recipients to be served by the younger generation. This narrative of dependence and benevolence can demotivate older people, limiting their willingness to embrace the possibilities of public participation and decision-making. Notably, the Family Caregiving Project in Cape Town has uncovered evidence suggesting varying levels of decision-making occurring practically, especially in rural areas. The UN Convention on the Rights of Older People holds the potential to provide instruments for engagement and elevate the status of older people when such engagements occur. Its implementation could bridge the existing gaps and contribute to a more inclusive and participatory environment for older individuals in South Africa.

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<sup>2</sup> To be discussed at the 14<sup>th</sup> Open-Ended Working Group on Ageing

### Options on how best to address the gaps

1. Please state how your Government/organization has engaged with international and regional human rights mechanisms (for example: universal periodic review (UPR) treaty bodies, special procedures, regional mechanisms), specifically with regard to older persons. *(500 words)*

Tafta, a non-profit civil society organization, has been dedicated to providing care and support to older people since its establishment in 1958. With a rich history and a broad footprint, the organization has earned credibility in addressing aging issues. Tafta actively participates in both regional and international human rights mechanisms, demonstrating its commitment to advocacy and collaboration.

At the regional level, Tafta engages through various platforms such as the African Union, the Stakeholders Group on Ageing in Africa, and the Pass it on Network. Internationally, the organization is a member of the Global Alliance for the Rights of Older People (GAROP) and holds accreditation with the Open-ended Working Group on Ageing (OEWG). These affiliations allow Tafta to contribute to global discussions and advocate for the rights and well-being of older individuals.

On a national level, Tafta collaborates with the National Department of Social Development during reviews and consultations. The organization has submitted proposals to the OEWG and continues its engagement with the National Department on legislative changes, ensuring that the concerns and perspectives of older people are represented in policy development.

South Africa, through the Human Rights Commission, actively participates in addressing human rights issues. The Commission, with its authority and credibility, has made several submissions during periodic reviews. However, there is an acknowledgment of the potential for further engagement in both regional and international human rights mechanisms. By fostering these connections, Tafta aims to contribute to the broader discourse on aging issues, advocate for policy changes, and enhance the protection of the rights of older individuals at both national and international levels.

2. Have those engagement resulted in positive impact in strengthening the protection of the human rights of older persons? Please elaborate. *(500 words)*
3. What other options can be considered to strengthen the protection of older persons? Please elaborate. *(500 words)*

4. *If applicable*, what is your assessment on the protection of the human rights of older persons according to regional and international instruments? (500 words)

### **The Deadline**

Deadline to send responses to the questionnaire is 24 November 2023.

All inputs will be posted online.

Submissions to be sent to Stefano Guerra [stefano.guerra@mne.pt](mailto:stefano.guerra@mne.pt) and Pedro Paranhos [pedro.paranhos@itamaraty.gov.br](mailto:pedro.paranhos@itamaraty.gov.br) with copy to [ageing@un.org](mailto:ageing@un.org)