



## **South African Human Rights Commission**

### **Submission on the Call for inputs – Eleventh Session of the UN Open-ended Working Group on Ageing**

**31 October 2019**

#### **1. Introduction:**

The United Nations Working Group on Ageing distributed a call for inputs in October 2019 for the Eleventh Session of the UN Open-ended Working Group on Ageing. The South African Human Rights Commission (SAHRC or Commission) deposits this submission in line with its mandate as the National Human Rights Institution (NHRI) in South Africa that is established to Promote, Protect, and Monitor the observance of Human Rights. The Commission is accredited as an “A” status NHRI by the Global Alliance of National Human Rights Institutions (GANHRI).

The work of the Commission invariably includes the rights of Older Persons. The plight of Older Persons in the country is particularly complex given the history of unfair discrimination and exploitation which impacted drastically on today’s senior citizens. This submission therefore seeks to capture the current situation in the country in relation to the thematic areas identified in the call for inputs. The thematic areas are as follows:

- ❖ Right to work and access to the labour market;
- ❖ Access to justice;

- ❖ Normative framework for the thematic focus areas discussed at the tenth session: Education, training, life-long learning and capacity building and Social protection and social security, including social protection floors.

## **2. Right to work and access to labour market**

As enshrined in Constitution of the Republic of South Africa, older persons may not be unfairly denied the right to participate in activities that enhance his or her income generating capacity, including work. Section ( 9) guarantees that “the state may not unfairly discriminate directly or indirectly against anyone on one or more grounds, including race, gender, pregnancy, marital status, ethnic or social origin, colour, sexual orientation, age (young or old), disability”. This is reinforced by the Older Persons Act 13 of 2006 which aims to alleviate the plight of Senior Citizens in South Africa by establishing a framework for their empowerment and protection. The Act promotes and maintains the rights, status, wellbeing, and safety and security of older persons.

Furthermore, South Africa developed the Older Persons’ charter with specific focus on the demands of older persons from across the country. This recognizes and uphold the right to work and earn an income and participate in decisions about retirement. In 2002 SA’s plan of Action the then Minister of Social Development, Dr Z.S.T. Skweyiya cited that ‘older persons are engaged in informal employment, either as hawkers, child minders and domestic workers. They also volunteer as caregivers for frail older persons and other persons suffering from chronic diseases. However there is little or no recognition for their contribution neither is such effort recognized as work. No financial equivalent is placed on the work that they do’. According to StatsSA (2017: 63) domestic work has been systematically undervalued in South Africa because this type of labour is inevitably performed by the less educated and less skilled sections of the South African population and highlights continued perpetuation of inequality between the sexes. Moreover, there still appears to be a gender divide between males and female older persons accessing the labour market highlighted by a large number of female older persons on vulnerable employment such as domestic work.

In its 2011-2016 report (StatsSA, 2017:58) recorded that Old age grant is the primary source of income for older persons in South Africa. This implies that only a few elderly have managed to secure paid employment in the labour market. In South Africa, over 3,1 million of persons aged 60 years and older received an old-age grant in 2015 compared to 2,6 million in 2011 (StatsSA, 2017: 58). Over the period 2011-2018 in all South African provinces, the not economically active

(NEA) group was the most dominant. In the third quarter of 2011, the NEA alone accounted for 87,8% of the labour market, and for 86,5% in the third quarter of 2016 (StatsSA, 2015:61). The labour force, which comprises the employed and unemployed, accounted for less than 15% of market share of older persons in both terms of reference. This speaks to the fact that the majority of the older population in South Africa have never enjoyed access to employment in the formal sector owing to past discriminatory practices, so the elderly have no secure retirement benefits (Wachipa 2006).

In terms of the redress mechanisms available to older persons the SAHRC investigates alleged violation of human rights relating to the right to work. Alternatively, a person can approach the Commission for Conciliation Mediation and Arbitration (CCMA). The CCMA is responsible for mediating in resolving disputes between the employer and the employee. They can also contact their union if they have membership to one of the union representing workers grievances in the country.

### **3. Access to justice for older persons in South Africa**

Access to the justice has been a significant issue in post-apartheid South Africa. The Constitution guarantees a host of rights as part of an effort to design a post-apartheid social system based on equality. Section 34 of the Constitution provides that 'everyone has a right to have any dispute that can be resolved by the application of the law decided in a public hearing before the Court, where appropriate another independent tribunal or forum'.

The Courts play a critical role in protecting and interpreting these Constitutional rights. However, in spite of South Africa's emphasis on equality, it has not escaped the common problem of difficulties in accessing the Courts. The Promotion of Equality and Prevention of Unfair Discrimination (PEPUDA) Act 4 of 2000 provides for the establishment of Equality Courts. Should Older Persons experience unfair discrimination against on any of the grounds listed in the Constitution and PEPUDA can approach these Courts found in almost every magistrate's Court in the country. However, the utilization of these Courts has been low due to a lack of awareness about the Equality Courts. Moreover, the lack of awareness of Older Persons Rights compound these challenges as older persons may also face procedural challenges.

Equally important the Domestic Violence Act 116 of 1998 has been promulgated to protect any persons against the vast forms of violence. Victims of domestic violence are among the most vulnerable members of society. This includes older persons. This Act affords the victims of domestic violence maximum protection from domestic violence that the law can provide and to

introduce relevant measures which seek to ensure that the relevant organs of state give full effect to this Act, and thereby to convey that the state is committed to the elimination of the scourge of domestic violence. In ensuring access to justice for older persons, the Older Persons Act firmly condemns and criminalizes all forms of abuse of older persons. The South African Police Service (SAPS) therefore plays an important role in ensuring that rights of all are protected. According to South African Police Act 68 of 1995, the state needs “to provide throughout the national territory to ensure the safety and security of all persons throughout the national territory”. However, there remain significant challenges in the completion of the cases brought forth by Older Persons.

Notwithstanding the above, Poverty poses a significant barrier to accessing justice. A considerable number of older persons especially in rural areas are living in poverty. The principal barrier posed by poverty is the inability to meet the costs of representation. Even worse, for black households (who are mostly poorer than the average) the barrier to access to Court is even higher (Nyeti, 2013)

In terms of institutions that can offer redress, South Africa has the following organizations to attend to the complaints of every persons whose rights may have been violated:

- ❖ The SAHRC
- ❖ The Commission on Gender Equality
- ❖ Independent Complaints Directorate
- ❖ Metropolitan police offices
- ❖ The office of the Public Protector
- ❖ Health Professionals Council of South Africa

#### **4. Normative frameworks discussed on the tenth session: Education, training, life-long learning and capacity building**

The right to education is grounded in international human rights law and other international treaties. The Universal Declaration of Human Rights recognizes that everyone has the right to education that shall be directed to the full development of the human person. The International Covenant on Economic, Social and Cultural Rights (ICESCR) devotes two articles to the right to education, articles 13 and 14. South Africa has signed and ratified these two treaties and many other that promote and guarantee the right to education for everyone.

The South African government has passed the Adult basic education and Training Act 52 of 2000 to regulate adult basic education and to provide for the registration of private adult learning centres; to provide for quality assurance and quality promotion in adult basic education and

training; to provide for transitional arrangements; and to provide for matters connected therewith training.

Education rights are contained in Section 29 of the Constitution. Section 29 (1) enshrines and protect the right to basic education and further education for everyone. The word 'everyone' is inclusive of older persons. Normatively, the section provides that the state has to make further education progressively available and accessible. Accessibility means that the state should move towards removing barriers, including discrimination to further education.

The right to education imposes an obligation on the state to put in place and maintain the education system, with educational programmes in all its forms and at all levels. The state has to take steps to ensure that there are functioning educational institutions with education programmes and educators throughout its territory. The state has to build schools, employ educators and set curricula. Institutions and programmes should be accessible, that is, barriers to these institutions and programmes must be removed, for example, the removal of discrimination due to affordability, age or physical disability. The education system should have the object of making education available, accessible, acceptable and adaptable. These elements apply to both basic and further education. Availability means that functioning educational institutions and programmes have to be available in sufficient quantity within the jurisdiction of the State.

The national qualification framework of the South African Qualification Authority defines Adult basic education refers to education targeted at adults who lack basic education. The White Paper on Education defines basic education as a flexible concept to be defined so as to meet the learning needs appropriate to age and experience of the learner, and should also provide access to nationally recognized qualifications. To this end, basic education should provide learners with minimum learning tools.

It is important to note that older persons face multiples challenges with regard to the enjoyment of quality education, training, lifelong learning and capacity building. Ageing intersects with other factors and vulnerability such as illness, ageing and poverty. Older persons face many physical barriers due to location, transportation and accessibility and often lack the skills for online lifelong learning opportunities. Ageist stereotypes also impact on the right to education for older persons. However, the Human Scientific Research Council reports that there is a need for the municipalities to provide transportation to learning centres so that beneficiaries of adult learning are not incapacitated by transportation.

Older persons have a variety of literacy needs, depending on their personal circumstances and contexts. For the urban and rural poor, these needs include form filling in order to acquire identity documents and to access government services such as Old Age and Disability grants; basic numeracy for the purposes of shopping; household budgeting; income generating activities and managing a pension; and assisting children with homework, since older persons are often also primary care-givers. There is a need for customized, context-sensitive literacy programmes that address these requirements (Department of Social Development, 2005)

Lifelong learning entails continuous learning throughout life in both formal and informal environments. It is essential for effective personal and social development and contributes to economic and social well-being. As a consequence of the pace of technological development and change, it becomes increasingly difficult for older persons to keep up with new information, communications and other technologies.

Their full participation in all dimensions of social, economic and political life thus becomes impossible. In order to combat the marginalization and dependence that is a consequence, attention should be given to the provision of lifelong learning programmes that target older persons in particular (Department of Social Development, 2005)

South Africa's legislative framework remain subtle in relation to position of older persons pertaining to this right. It is generic and does not specifically have any general clause that specifically speaks to older persons right to education and training, lifelong learning.

## **5. Normative frameworks discussed on the tenth session: Social protection and social security including protection floors**

South Africa has a Constitutional provision that recognizes the right to social security. Section 27 (C) provides that everyone has the right to access to social security, including if they are unable to support themselves. The State has a further obligation to take reasonable legislative and other measures, within its available resources to achieve the progressive realization of this right. This section provides that, every child has the right to basic nutrition, basic health care services and social services.

The social pension system represents the core component of the South African social safety net (Burns et al. 2005). A non-contributory old age grant assists vulnerable older persons who have little or no income. The Social Assistance Act, No. 13 of 2004, and the Social Assistance Amendment Act, No. 6 of 2008, regulate old age pensions in South Africa. The South African

government has made significant progress in the implementation of social security frameworks. Social pensions for the elderly are key instruments in alleviating poverty among older persons in South Africa.

The White Paper for Social Welfare asserts that social security covers a wide variety of public and private measures that provide cash or in kind benefits or both. The provision of these measures takes place, first, in the event of an individual's earning power permanently ceasing, being interrupted, never developing or being exercised only at unacceptable cost and such person being unable to avoid poverty. The White Paper further defines social security as policies which ensure that all people have adequate economic and social protection during unemployment, ill health, maternity, child-rearing, widowhood, disability and old age, by means of contributory and noncontributory schemes for providing for their basic needs.

In terms of the White Paper, the social security system in South Africa is based on four fundamental and inter-related elements, namely; private savings, social insurance, social assistance and social relief. Private savings means that people voluntarily save for unexpected contingencies such as disability, retirement and chronic diseases. Social insurance is the joint contribution made by the employers and employees to pension or provident funds. Government may also contribute to social insurance covering accidents at work. Social assistance is the non-contributory and means-tested benefit provided by the State to people with disabilities, elderly people and children. Social relief is the short-term measure to tide people over a particular individual or community crisis, it is non-contributory and it is means-tested. The SAHRC has however noted that Older person have raised issues with the inequality of the means test and its impact on persons from poorer backgrounds.

## **Conclusion**

The legislative framework for the protection and promotion of the rights of older persons in South Africa is particularly well structured. Despite this, there remain significant challenges in translating these rights into the practical empowerment of older person through employment, access to justice, and social security. In terms of the African population group, poverty remains a hindrance to accessing income, and living a life of equal dignity. As such, equal access to these rights remains an area for increased intervention and development.

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