

Guiding Questions for the focus areas of the IX Session of the Open-ended

Working Group on Ageing: Autonomy and independence

1. In your country/region, how is the right to autonomy and independence of older persons defined in legal and policy frameworks?

1.1 The South African Legal and Policy Framework does not specifically define autonomy and independence of older persons. There are however provide for services aimed at ensuring that older persons are autonomous and have independence. According to the Older Persons Act (No. 13 of 2006; OPA) these services can include prevention and promotion programmes, which help to keep older persons living independently in their community for as long as possible or home-based care services, which are provided to frailer older persons to allow them to receive maximum care within the community. In this regard, the OPA provides in Section 10 that an older person receiving community care has the right to reside at home as long as possible; pursue opportunities for their full development of his or her potential.¹

1.2 In terms of community based care, it is defined in the OPA as development, care and support services provided within a community, aimed at promoting and maintaining the independent functioning of older persons in a community, and include home-based care for frail older persons within the community.² Additionally, “home-based care” means the provision of health and personal care services rendered by formal and informal care givers in the home in order to promote, restore and maintain a person’s maximum level of comfort, function and health, including care towards a dignified death.³

2. What other rights are essential for the enjoyment of the right to autonomy and independence by older persons, or affected by the non-enjoyment of this right?

2.1 Older persons are entitled to the rights enshrined in the Bill of Rights in the Constitution of the Republic of South Africa (1996). Such rights include (a) Section 9, which prohibits unfair discrimination

¹ Older Persons Act 13 of 2006

² Department of Social Development ‘South African Policy for Older Persons’ (2005)

³ Ibid p.7

on the basis of, inter alia, age, (b) the right to dignity contained in Section 10, and (c) the right to freedom from violence contained in Section 12. The rights enshrined in the Constitution and Bill of Rights supplement the rights that older persons have in terms of the OPA.

2.2 The OPA, which takes a rights-based approach, states that older persons may not be unfairly denied the right to: a) participate in community life in any position appropriate to his or her interests and b) capabilities; c) participate in inter-generational programmes; d) establish and participate in structures and associations for older persons; e) participate in activities that enhance his or her income-generating capacity; f) live in an environment catering for his or her changing capacities; and g) access opportunities that promote his or her optimal level of social, physical, mental and emotional well-being.⁴

2.3 South African Older Persons Charter echoes the rights of all older persons to equality, respect and freedom, as outlined in the Constitution. The Charter also speaks to the rights of older persons living in the community to basic services (shelter, healthcare, water and electricity), social security, as well as affordable and accessible transport, wheelchair access, and the right to receive home-based care. It also encourages the rights of older persons to participate in community life as active citizens.

3. What are the key issues and challenges facing older persons in your country/region regarding autonomy and independence? What studies and data are available?

3.1 In South Africa apartheid was uniquely unjust in the severe dislocation it caused to black, coloured and Indian communities. Families were broken up and older persons were forced to leave areas where they had worked and lived all their lives and move to areas where basic services and support systems were lacking. While there was little or no provision for these older persons, the white elderly had access to a wide range of quality services. The official excuse was that in black communities, older persons “are cared for in the extended family system.”⁵

3.2 In the democratic era, older persons face a number of challenges. In 2015, the Commission launched the Older Persons Investigative Report on the challenges relating to the treatment and abuse of Older

⁴ Older Persons Act 13 of 2006

⁵ Department of Social Development ‘South African Policy for Older Persons’ (2005) p.40

Persons.⁶ The report focuses on systemic issues that have a direct impact on Older Persons, specifically in their experience of attempts to access their constitutional rights. The report found that older persons are increasingly being mistreated, neglected and abandoned by, amongst others, family members and state officials who are primarily responsible for protecting them. The forms of abuse that have been encountered include:

- Access to Social Security: The grant being received by the Elderly is not sufficient to alleviate poverty, because the majority of older persons, most especially the older women are breadwinners. The dependence on older persons not only burdens them, but they also face a high risk of being financially abused by family members who are dependent on them for upkeep and sustenance. Social security is a major arena of government activity aimed at ensuring that vulnerable population groups receive appropriate and effective public support to ensure their financial security and to safeguard their health.
- Access to health Care: one of the biggest problems older persons face in the area of health is the cost and access to health services. This ranges from knowledge regarding prevention and management of common diseases. They also are faced with inadequate emergency transport, long-waiting queues at public health care facilities and lack of medication.
- Residential care facilities: an audit conducted by the Department of Social Development in (2010), indicated that the majority of residential facilities did not comply with the Older Persons Act and required a major financial boost.

3.3 Older persons are also disproportionately affected by poverty. Although 40% of South African older persons are classified as 'poor' according to the 2011 Census, the proportion of older persons classified as 'poor' is somewhat lower in urban provinces such as the Western Cape compared to more rural provinces, such as Limpopo.⁷

3.4 The impact of HIV/AIDS has added strain to already dire circumstances of older persons in the rural areas. Older persons are forced into using their meagre resources to care for their ailing family

⁶ See: <https://www.sahrc.org.za/home/21/files/SAHRC%20Investigative%20hearing%20report.pdf>

⁷ Western Cape Department of Social Development 'An Evaluation of Service Centres for Older Persons in the Western Cape' (2015). See: https://www.westerncape.gov.za/sites/www.westerncape.gov.za/files/evaluation_of_service_centres_for_older_persons_final_report_branded_cover.pdf

members affected by the disease. The burden of caring for and educating orphans has major financial, physical and psychological impact on the quality of life of older persons.⁸

4. What steps have been taken to ensure older persons' enjoyment of their right to autonomy and independence?

4.1 Services such as service centres are a key component in the field of care for older persons who are living independently in their own homes and communities. However, there are no standards or norms guiding the activities of service centres in South African legislation or policy. In the absence of accreditation guidelines for centres in South Africa, it is not impossible that centres may be offering services that have little or no relevance to the needs of older persons in the community.⁹

4.2 The new government in 1994 acknowledged the impact on older persons of the lack of services in rural areas and the severe shortage of affordable accommodation and services in urban areas. Appropriate, adaptable and affordable housing for older persons is the cornerstone of any dispensation for older persons¹⁰ The White Paper commits the then Department of Welfare (renamed Social Development) to cooperate with the Department of Housing to address this as a priority. South African housing policy is based on Section 26 of the Constitution, which states that everyone has the right of access to adequate housing. The government is required to take reasonable steps towards the progressive realisation of this right. The Housing White Paper (1994) recognises the need for "special needs" housing, including that required by older persons.¹¹

4.3 The following steps were taken by the Department of Housing to assist older persons. a) The Housing Subsidy Scheme provides subsidies to people who cannot otherwise afford to build or buy a house. Recipients of the Old Age Grant are eligible for the subsidy as are disabled persons. Older persons who are disabled may also apply for an additional amount to pay for adaptations to their property to accommodate their disability.¹²

⁸ Department of Social Development 'South African Policy for Older Persons' (2005) p. 36

⁹ Western Cape Department of Social Development 'An Evaluation of Service Centres for Older Persons in the Western Cape' (2015) p.27

¹⁰ Department of Social Development 'Social Welfare White Paper' (1997).

¹¹ Department of Social Development 'South African Policy for Older Persons' (2005) p.41

¹² Ibid

5. What mechanisms are necessary, or already in place, for older persons to seek redress for the denial of autonomy and independence?

5.1 Chapter 9 of the Constitution establishes state institutions to support democracy in South Africa. Section 184 establishes the South African Human Rights Commission (SAHRC) in order to monitor, protect, and promote the observance of human rights in the country. The SAHRC and other Chapter 9 Institutions including the Commission for Gender Equality are established in order to provide for redress where there has been a denial of human rights.

6. What are the responsibilities of other, non-State, actors in respecting and protecting the right to autonomy and independence of older persons?

6.1 Section 25 of the OPA provides that any person who observes that an older person needs care and protection should report such conclusions to the Director General of the Department of Social Development or a social worker.

6.2 Additionally, any organization, actor, or person providing community based services, or running a residential facility, must register the said service in line with Section 13, Section 18, and Section 35 of the OPA respectively. In doing so, such services must adhere to the rights, conditions, and norms determined in the OPA.

6.3 Where independence is unattainable, the family, community and all tiers of government (national, provincial and local) have a shared responsibility to provide the necessary care and support.