



HUMAN RIGHTS AND OLDER PERSONS



south african
human
rights
commission

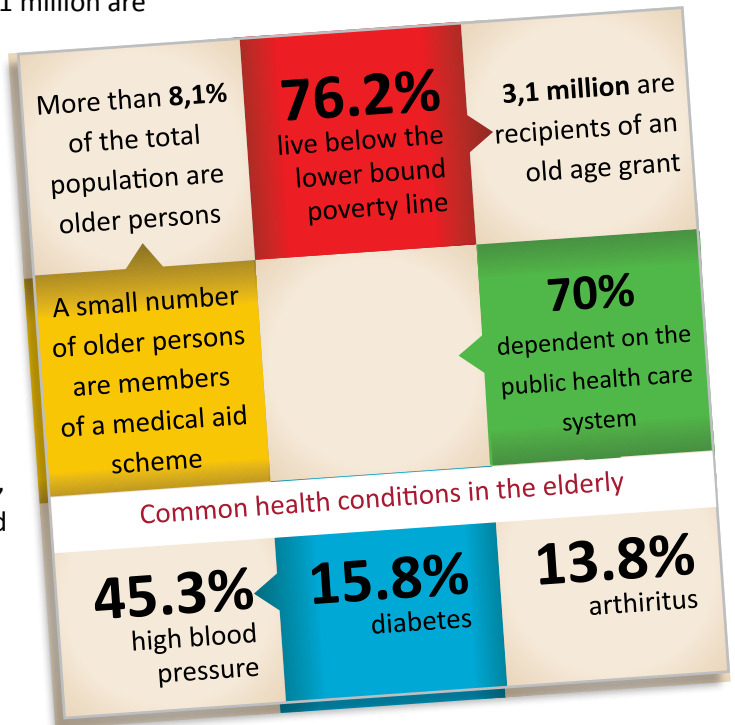


BACKGROUND

The Constitution of the Republic of South Africa, 1996 is the supreme law of the country and it protects the rights of all people in South Africa. Human rights are applicable to all people, by virtue of being human and everyone is born with these rights. Chapter 2 of the Constitution contains the 27 rights that are collectively called the Bill of Rights and are inherent to all human beings, including older persons. The Older Persons Act 13 of 2006 provides that an older person is a person who is 60 years old or older.

In South Africa older persons account for more than 8, 1% (4, 698 000) of the total population. The country's cultural and economic landscape means that many older persons live in nuclear families although this trend is slowly changing as single unit families gain currency. Research reports indicate that the majority of older persons, approximately 76, 2% (3, 626 850) live below the lower bound poverty line and over 3,1 million are

recipients of an old age grant. A small number of older persons are members of a medical aid scheme, leaving more than 70% dependent on the public health care system. Common health conditions in the elderly are high blood pressure at 45, 3%, diabetes at 15, 8% and arthritis at 13, 8%¹.



¹ Statistics South Africa, *Social Profile of Older Persons Report*, 2011-2015.



OLDER PERSONS AND HUMAN RIGHTS

South Africa recognises that older persons are vital members of our society, and protects them in law through the Older Persons Act. The Constitution provides that everyone is equal before the law and has the right to equal protection and benefit of the law. Section 9 provides that no person (including the state and private companies) may unfairly discriminate directly or indirectly against any person on a number of listed grounds including race, gender, religion, social origin, and **age**.

The Older Persons Act gives effect to the rights in the Bill of Rights in respect of older persons and aims to maintain and promote the status, wellbeing, safety and security of older persons. At the regional level, South Africa is party to international laws and agreements that commit the country to respect and protect the rights of older persons².

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² The African Charter of Human and People's Rights. In January 2016 the African Union adopted the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Older Persons in Africa. Indications from government are that South Africa is likely to ratify the Protocol soon as the Protocol is in line with the Older Persons Act.

In 2010 the United Nations established the Open-Ended Working Group on Ageing and the process to develop a Convention dedicated to older persons is underway. This process seeks to build on other documents relating to older persons such as the Vienna International Plan of Action on Ageing, 1982; the UN Principles for Older Persons, 1991; the UN Proclamation on Ageing, 1992; and the Madrid International Plan of Action on Ageing, 2002.

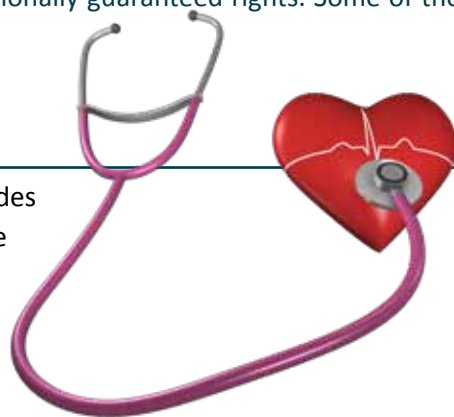
CHALLENGES FACED BY OLDER PERSONS

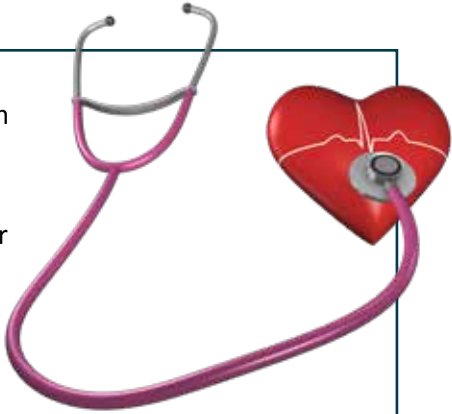
Despite the law protecting older persons, they face a number of challenges as a vulnerable group with unique and differing needs. In 2015, the South African Human Rights Commission (SAHRC/ Commission) in its report titled *Investigative Hearing into Systemic Complaints Relating to the Treatment of Older Persons*, identified systemic issues of concern that deny and deprive older persons the right to enjoy and realise their constitutionally guaranteed rights. Some of these include:

The right to health care

Section 27 of the Constitution provides that everyone has the right to have access to health care services, including reproductive health care. As people get older, they become more vulnerable to several health conditions and as such they may need health care services more frequently than younger people. In the course of its monitoring and investigation work, the Commission has noted that older persons, particularly those who live in rural areas and those who are poor and ill, are most adversely impacted when they try to access health care. These challenges are noted in the inadequate number of available emergency vehicles, cost of transport from rural areas to urban health facilities, long waiting queues at public health facilities and possibility of medicine shortages. These issues are compounded when older persons are treated with a lack of respect by health care professionals.

The treatment of older persons in the primary health care sector is an important factor beyond clinical treatment and there is a need recognised in the *World Health Organisation (WHO) age-friendly Primary Health Care principles* for the education and sensitisation of primary health care providers about specific needs of elderly clients. WHO recommends:



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- a) Attitudes, education and training of health care providers be improved to promote assessment and treatment of conditions that afflict older persons and, to empower them to remain healthy;
 - b) Primary health care management systems be adapted to the needs of older persons; and;
 - c) Efforts to make physical access easier for older persons who have mobility, vision or hearing impairments be undertaken.

In South Africa, many older persons take on the role of primary care givers to children, including where children are orphaned on account of tuberculosis and HIV/ AIDS. However older persons are not routinely included in routine HIV/AIDS screening or counselling in the public health care sector, nor are they made aware of how to manage chronic conditions.

The SAHRC report highlighted concerns around education, sensitisation and training. The SAHRC probe revealed that staff in frail care facilities lack the necessary skills and capacity to assist older persons; there is a shortage of equipment required to render proper assistance and that facilities with older persons were inadequately monitored, rendering older persons vulnerable to abuse as many are unaware of their rights. The key government department responsible for monitoring and ensuring standards in such facilities are maintained has noted that low levels of rights awareness in older persons may have historical roots in South Africa on account of the fact that older persons from poor urban and rural backgrounds lacked the opportunity to attend school or dropped out at an early age³.

³ Department of Social Development : South African Policy on Older Persons, 2005

The right to human dignity

Section 10 of the Constitution provides that everyone has a right to have their dignity respected and protected. The Older Persons Act explicitly criminalises all forms of abuse of older persons. The abuse, ill treatment, violence or neglect of an elderly person strips the person of their dignity. Abuse can take various forms in that it can be physical, sexual, or psychological; degrading or humiliating conduct including insults, ridicule or name calling and economic abuse which includes depriving an older person of economic or financial resources that he/she is entitled to by law, such as an old age grant.

Any person who suspects that an older person has been abused or ill-treated must **immediately report such abuse to the police** who will then take action against the abuser. Such abuse must also be reported to social workers who must assist the older person. **Failure to report abuse of an older person amounts to a crime punishable by law.**

The crime of abuse of an older person is punishable by a fine or imprisonment upon conviction by a court. The Older Persons Act provides that a court may impose both a fine and imprisonment.

The particulars of the convicted abuser will be entered into the National Register of Older Persons which is maintained by the Department of Social Development. The Act prohibits any person whose name appears in the register from operating or being employed at any place that gives such a person access to older persons and prevents them from providing any community-based and support services to older persons.

The right to food, water and social security

Everyone has the right to have access to sufficient food and water. Poverty is a major cause of food insecurity as older persons are largely either unemployed or have retired due to age. Those who receive old age grants may not necessarily be able to purchase food that is appropriate for their health conditions. In addition, older persons who receive old age grants, frequently find that the social support received in this form cannot meet inflation and cost of living escalation. In South Africa many older persons rely on social support to provide basic support to their unemployed children and extended families.

MECHANISMS TO PROTECT THE RIGHTS OF OLDER PERSONS



The State has the primary responsibility for the protection of the rights of older persons. It does so through the legal framework which creates primary responsibilities on key government departments to promote and protect the rights of older persons. Government must take into account the age demographics of its population periodically so that it is able to plan and protect the rights of older persons as ageing is a natural biological process which occurs across humanity. Age related changes can be anticipated and adapted so that older persons can live happy, healthy and active lives. Some of the entities with a responsibility for protection of older persons include:

The Department of Social Development

The Department of Social Development must ensure the provision of social protection to the poor and vulnerable members of our society so they can lead a better life. The department directly runs and manages 8 facilities and provides funding to 412 non-profit partner organisations who in turn run facilities that cater to the needs of older persons across the country.

To qualify for admission at a residential facility the following requirements must be complied with, in that the person must be:

- In need of full-time attendance;
- 60 years or older and destitute;
- A South African;
- Receiving an old age grant or pension fund.



social development

Department:
Social Development
REPUBLIC OF SOUTH AFRICA

Further information on residential facilities can be obtained from the nearest office of the Department of Social Development.

The South African Social Services Agency (SASSA) is a public entity under the Department of Social Development and is established by the Social Assistance Act 13 of 2004 to provide comprehensive social security services to people in need. The most common type of assistance provided is through social grants.



The following type of grants are dispensed to qualifying older persons:

a) Grant for older persons

Older persons can apply for this grant if they meet the following requirements:

- Must be a South African citizen or permanent resident or refugee;
- Must be living in South Africa;
- Must be 60 years or older;
- Meet the requirements of a means test;
- Must not be maintained or cared for in an institution funded by the state;
- Must not receive another social grant for themselves.



b) Care Dependency Grant

Older persons who are primary care givers of children with disabilities can apply for the care dependency grant if they meet the following requirements:

- Must be a parent, primary care giver or foster parent;
- Must be a South African citizen or permanent resident or refugee;
- The child must be under the age of 18 years;
- Must submit a medical assessment report confirming that the child is severely disabled and in need of permanent care or support services;
- The care dependent child/children must not be maintained or in the permanent care of an institution funded by the State.

c) Grant-in-aid

Older persons can apply for a grant-in-aid if they meet the following requirements:

- The applicant must be in receipt of a grant for older persons, disability grant or war veterans grant;
- Requires full-time attendance by another person owing to his /her physical or mental disability; and
- Must not be cared for in an institution that receives a subsidy from the State for the care or housing of such a beneficiary.

Beneficiaries who wish to query anything related to their grants can call SASSA on the national toll free number **0800 60 10 11** or visit any of the SASSA offices located in all 9 provinces.

The Department of Health

The Department of Health must provide free health care services to all older persons who are not part of a private medical aid scheme, both in the community and in residential care facilities. In situations where older persons are residents of a residential care facility and are unable to access a health care establishment, the department must provide such health care directly to the residential care facility. Residential care facilities must also retain certain medication and first aid supplies in terms of prescribed protocols and regulations.



health

Department:
Health
REPUBLIC OF SOUTH AFRICA

The South African Human Rights Commission

The South African Human Rights Commission (SAHRC) is the national human rights institution in South Africa as designated by the Constitution. Its mandate is to promote, protect and monitor the observance of human rights in the Republic. The SAHRC has a Commissioner with a dedicated focus on the area of older persons. In line with its promotional mandate, the SAHRC must educate and raise awareness to promote respect for human rights and a culture of human rights. As part of its mandate, the SAHRC receives and investigates certain complaints regarding violations of the rights of older persons in the country. Complaints to the SAHRC are at no cost to complainants.



The SAHRC engages directly with members of the public, including older persons, to raise awareness of rights through outreach interventions, publication of educational material and disseminating information to enable the affected group to assert and enforce their rights. The SAHRC has developed this information sheet for the general public to provide basic information on older persons.

In its 2016 policy brief on ***Upholding and Implementing the Older Persons Act***, the South African Human Rights Commission called on the Department to take steps to ensure that all funded and non-funded residential facilities for older persons are registered and monitored. The SAHRC issued the directives after having noted that numerous residential care facilities are unregistered and are accommodating older persons in environments that are detrimental to their health, dignity, and well-being.



Complaints to the SAHRC may be lodged at any of its provincial offices where the alleged violation of a fundamental right took place. A complaint can be lodged in person, by telephone, in writing or by completing the online complaint form.

Where the SAHRC is unable to deal with a complaint, it will explain why and recommend alternative forms of recourse. If after preliminary investigation, the SAHRC is of the opinion that there is substance in any complaint, it will in so far as it is able to do so, assist the complainant and other persons adversely affected to secure redress.

The SAHRC can also refer matters to other competent bodies like the Public Protector, Commission for Gender Equality and Commission for Conciliation Mediation and Arbitration for investigation; or to the Equality Court for adjudication on matters of unfair discrimination.

The SAHRC works with a number of non-governmental, faith or community based organisations to advance the rights of older persons. Examples of such organisations include, but are not limited to, Help Age International, the member organisations of the South African Older Persons Forum, Age in Action, Black Sash, Lawyers for Human Rights, Legal Resources Centre and law clinics at universities. Any older person who feels that any of their rights have been violated can visit their offices.



NOTES

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PROVINCIAL OFFICES

Eastern Cape

Address: 3-33 Phillip Frame Road, Waverly Park, Phase 4B, Chiselhurst, East London

Tel: 043 722 7828/21/25 | Fax: 043 722 7830

Provincial Manager

Mr Abongile Sipondo

Contact: Yolokazi Mvovo

E-mail: ymvovo@sahrc.org.za

Gauteng Office

2nd Floor, Braampark Forum 3, 33 Hoofd Street, Braamfontein

Tel: 011 877 3750 | Fax 011 403 0668

Provincial Manager

Mr Buang Jones

Contact: Nthabiseng Kwaza

E-mail: nvkwaza@sahrc.org.za

Free State

18 Keller Street, Bloemfontein

Tel: 051 447 1130 | Fax: 051 447 1128

Provincial Manager

Mr Thabang Kheswa

Contact: Alinah Khompeli

E-mail: akhompeli@sahrc.org.za

KwaZulu-Natal

First Floor, 136 Margaret Mncadi, Durban

Tel: 031 304 7323/4/5 | Fax: 031 304 7323

Provincial Manager

Mr Lloyd Lotz

Contact: Kathleen Boyce

E-mail: kboyce@sahrc.org.za

Limpopo

29A Biccard Street, Polokwane

Tel: 015 291 3500 | Fax: 015 291 3505

Provincial Manager

Mr Victor Mavhidula

Contact: Mahlatse Ngobeni

E-mail: mngobeni@sahrc.org.za

Mpumalanga

First Floor, Allied Building, 34 Brown Street, Nelspruit

Tel: 013 752 8292 | Fax: 013 752 6890

Provincial Manager

Mr Eric Mokonyama

Contact: Carol Ngwenyama

E-mail: cngwenyama@sahrc.org.za

Northern Cape

45 Mark and Scot Road, Ancorley Building, Upington

Tel: 054 332 3993/4 | Fax: 054 332 7750

Provincial Manager

Ms Chantelle Williams

Contact: Zukiswa Louw

E-mail: zlouw@sahrc.org.za

North West

25 Heystek Street, Rustenburg

Tel: 014 592 0694 | Fax: 014 594 1069

Acting Provincial Manager

Mr Osmond Mngomezulu

Contact: Poppy Mochadibane

E-mail: pmochadibane@sahrc.org.za

Western Cape

7th Floor ABSA building, 132 Adderley Street, Cape Town

Tel: 021 426 2277 | Fax: 021 426 2875

Provincial Manager

Contact: Shafeeqah Salie

E-mail: ssalie@sahrc.org.za

How to contact the SAHRC:

Forum 3, Braampark, Braamfontein, Johannesburg

Tel: 011 877 3600

Website: www.sahrc.org.za

E-mail: info@sahrc.org.za / complaints@sahrc.org.za

Twitter: @SAHRCommission

Facebook: SA Human Rights Commission

