



Socio-Economic Rights Project
Community Law Centre
University of the Western Cape

Promoting the socio-economic rights of older persons

Workshop Report

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List of Abbreviations

AIDS	Acquired Immune Deficiency Syndrome
ESCR	Economic, Social and Cultural Rights
HIV	Human Immuno Deficiency Virus
ICESCR	International Covenant on Economic Social and Cultural Rights
ID	Identification Document
MDGs	Millennium Development Goals
MIPAA	Madrid International Plan of Action on Ageing
NGO	Non-Governmental Organisations
OPA	Older Persons Act 13 of 2006
OVC	Orphans and Vulnerable Children
PLWHA	People Living With HIV/AIDS
UN	United Nations

Executive Summary

Representatives from various civil society organisations, academia, research institutions as well as state institutions, government departments and provincial parliament (Western Cape) attended a one-day workshop on 22 February 2011 aimed at highlighting the current state of socio-economic rights of older persons in South Africa. Socio-economic rights play an important role in poverty alleviation, and the challenges faced by older persons in the enjoyment of their rights are often linked to socio-economic rights deprivations.

The workshop followed international and national events and developments, to draw attention to the rights of older persons and importance of tackling poverty amongst this group in the global effort to achieve the Millennium Development Goals (MDGs). At the international level, these included the International Day of Older Persons held on 1 October 2010, which focused on older persons and the MDGs; the World Day of Social Justice on 20 February 2011, and the establishment of working groups at both the United Nations (UN) and African regional level to look into the situation of older persons and frameworks protecting their rights. At the national (South African) level, the promulgation of the long awaited regulations to the Older Persons Act 13 of 2006 (OPA), and several statements made by representatives of the Department of Social Development, emphasised the need for concerted efforts towards addressing the challenges older persons face.

To this end, a number of presentations from civil society groups provided an overview of the problems and challenges experienced by older persons in South Africa. These presentations addressed specific areas of concern including access to decent housing, health care, nutrition and food security as well as financial and social security. In addition, case studies through evidence-based research were presented in order to emphasize the vulnerability of various groups of older persons, for example, in the Eastern Cape, amongst women, the rural poor, primary care givers and the impact of the prevalence of HIV and AIDS on the elderly. The alleviation of poverty amongst older persons is important in the achievement of the MDGs. This link was reinforced through presentations; as well as the need for South Africa to use international human rights instruments in articulating what needs to be done for the elderly. Accordingly, particular emphasis was placed on the need for South Africa to ratify the International Covenant on Economic Social and Cultural Rights (ICESCR) of 1966, which pays particular attention to the socio-economic rights of older persons as well as other rights such as dignity, equality and non-discrimination.

Recommendations were voiced through the presentations and discussions to continue advocating the socio-economic rights of older persons in South Africa, as well as to address their needs and challenges, as they are observed by and voiced to those working amongst this sector of the population.

In particular, the following key points arose from the presentations and discussions:

- The rights of older persons should be strengthened, and government should be held accountable, through the use and enforcement of international human rights standards
- Addressing the prevalence of poverty amongst older persons as well as their needs is directly linked to the achievement of the MDGs and the promotion of their socio-economic rights
- Lack of facilities to older persons, limiting their access to existing social services

- Inadequate implementation of existing legislation and policies, particularly the OPA and the need to expedite the delegation of powers and understand the impact of a sexist definition of older persons in the Act
- Lack of awareness amongst older persons of their rights and entitlements
- Inadequate cooperation between government departments, as well as with service providers and other stakeholders, impacting negatively on the implementation of the OPA and the realisation of the rights of older persons
- The importance of community-based care has become increasingly important in addressing the needs of older persons in South Africa and should continue to be reflected in national legislation and budget
- Lack of understanding of the needs and vulnerabilities of older persons in their role as primary caregivers
- Access to decent health care, sanitation and proper diet are lacking particularly amongst the older persons in rural areas
- Lack of a clear strategy to support older persons affected by HIV and/or caring for households infected and affected by HIV and AIDS
- Lack of sustainable food security programme for older persons
- Very limited funding for organisations providing services to older persons or assisting them, to access services

The following recommendations were provided:

- Strengthen the use of the international human rights framework in order to realise the rights of older persons
- The Department of Social Development to review the definition of older persons in the Act so as to remove the 60/65 differentiation which limits access to services for some older men, expedite the delegation of powers as stipulated in the OPA, and undertake a review of the implementation of the Act.
- Parliament to hold hearings around the challenges older persons face and what needs to happen to ensure effective implementation of the OPA
- The Department of Social Development to commission research on issues relevant to older persons in order to increase the existence of evidence-based research on the subject
- Strengthen the existing network and input of civil society working towards addressing the socio-economic rights of older persons
- Prioritise the needs of older persons especially in the area of health care
- Government and civil society organisations and institutions to raise awareness of the rights and entitlements of older persons
- The need for government to review social grants options for older persons
- Strengthen cooperation between various government departments in meeting the needs of older persons
- The government to improve funding for older persons programmes as well as to organisations providing services to older persons
- The need to look at sustainable food security practices for older persons

1. Introduction

According to Statistics South Africa, older persons (aged 60 and above) represent about 7.6% of South Africa's total population in 2010 (that is 3.9 million of the total population). This figure reflects an increase from mid-2009 estimates, which stood at 3.7 million of the total population. The percentage is expected to increase to 13% by 2015. Women represent the largest number and proportion of older persons in South Africa, with an estimated 61, 6% in 2010, an increase from the 58% estimated in mid-2009. The data is evidence of the large prevalence of older people as a population group in South Africa and the growth of this group over the next few decades.

This sector of the population, presents certain challenges to the state in terms of providing financial and social support to this particularly vulnerable group. In addition, older persons also encounter many challenges in accessing the support and social services provided to them through existing legislation and human rights provisions both internationally and nationally. Most of them are therefore income poor, food insecure, discriminated against and lack access to basic social and health care services.

In order to address these challenges, the Socio-Economic Rights Project of the Community Law Centre at the University of the Western Cape, hosted a one-day workshop to provide a platform where the experiences of older persons in South Africa and the challenges they face in accessing socio-economic rights, particularly housing, health care, food and social security and assistance, could be presented and discussed. The focus on socio-economic rights was motivated by the important role these rights play in poverty alleviation. Also, the challenges faced by older persons are often linked to socio-economic rights deprivations.

Representatives from various civil society organisations, academia, research institutions, state institutions and government departments were invited to participate in the workshop, of which the key issues, findings and recommendations are presented below.

This report does not attempt to summarise the workshop proceedings, but seeks to draw together key issues that emerged from the discussion and as well as raise opportunities for promoting the socio-economic rights of older persons. As a result, participants' comments or speakers' presentations are not attributed. However, a list of speakers and the title of presentations made as well as a list of participants is annexed to the report (in alphabetical order).

2. Background and Objectives

Recent international activities have highlighted the socio-economic rights and the prevalence of poverty amongst older persons and the need to ensure social well being for everyone in society. They reflect a momentum towards enhanced protection for older persons.

In particular, the 20th annual celebration of the International Day of Older Persons was observed on 1 October 2010, with the theme of older persons and the achievement of the MDGs. The United Nations (UN) Secretary General in a message delivered on 28 September 2010 to mark this international day recognised that "older persons play an invaluable role in all societies — as leaders, caregivers and volunteers — yet are also vulnerable to discrimination, abuse, neglect and violence". Governments were called upon to enhance support for older persons and address

their needs, through among other things, “granting universal access to social services; increasing the number and worth of pension plans; and creating laws and policies that prevent age and gender discrimination in the workplace.” In working towards the 2017 MDG deadline, governments were urged to “institute the financial, legal and social protections that will lift millions of older persons out of poverty and ensure their rights to dignified, productive and healthy lives”.

The International Day of Social Justice took place on 20 February 2011 dedicated to strengthening efforts towards poverty eradication, promote full employment, gender equality and access to social well being and justice for all. While social justice has different meanings for different people, to an older person, it would mean among other things, ensuring that their socio-economic needs are met, increasing numbers of older persons are able to enjoy active, independent and healthy lives and ensuring their financial security. Social justice is thus essential to unlocking the full productive potential of older persons.

Also, a Working Group on the Rights of Older Persons and Persons with Disabilities in Africa was established in 2009, followed by a UN Working Group on Older Persons in 2010. The Working Group at the African level has been tasked with articulating the rights of older persons and collecting data on older persons in order to ensure proper mainstreaming of their rights; and is currently considering a draft protocol on ageing (ACHPR/Res143(XXXV)09). The UN Working Group is tasked with reviewing the existing international framework on older persons, identifying any gaps in them and how they can be addressed, including establishing the need for additional instruments or measures (A/C.3/65/L.8/Rev.1). It will thus look at whether a convention on the rights of older persons should be adopted.

The UN Commission on Social Development in 2010 also called on governments to promote and protect the rights of older persons and to provide them with economic and social security and health care. Governments were also encouraged to promote the development of networks of national focal points on ageing (E/2010/INF/2/Add.1).

At a national (South African) level, recent remarks and comments made by the Department of Social Development have alluded to a call for stepping up efforts towards strengthening the capacity of older persons to play a more meaningful role in society and to enjoy active ageing, healthy and independent living, by creating an enabling environment for this sector of the population. In order to achieve this, a call for concerted effort from all sectors of society to comprehensively address the needs of older persons has been observed. The department has also reiterated the need for the best possible measures to be in place to protect vulnerable older persons.

The Bill of Rights of the Constitution of South Africa guarantees a range of rights - civil and political and socio-economic rights - to everyone. Older persons are thus entitled to the enjoyment of the rights contained in the Bill of Rights of the Constitution. These include the rights to dignity, equality and non-discrimination, participation, health care services, adequate housing, sufficient food and water and social security, including social assistance. Age is one of the prohibited grounds of discrimination. Also, the preamble to the Constitution requires the government to “improve the quality of life of all citizens and free the potential of each person”. The government is further required to respect, protect, promote and fulfil these rights and to adopt reasonable measures to ensure that the rights of older persons are realised.

Furthermore, legislation on the rights of older persons in South Africa has matured with the adoption of the Older Persons Act 13 in 2006, replacing the previous Aged Persons Act of 1967, with the aim of effectively dealing with the plight of older

persons in the country. The OPA thus provides an additional framework for the realisation of the rights of older persons, including their socio-economic rights and ensuring their dignity. In 2010, the long awaited regulations to the Act were promulgated. However, the objectives of the existing frameworks can only be met if they are effectively implemented.

International, regional and national efforts towards addressing the needs of older persons have emphasised the value of this sector of the population, while also protecting against and addressing the vulnerabilities they face. At the same time, problems persist in the implementation of existing legislation, while older persons face challenges in ensuring their rights and access to social services.

Within this context, the objectives of the workshop were to:

- Raise awareness of the socio-economic rights of older persons
- Provide a forum for engaging on the challenges older persons face in enjoying their socio-economic rights and how these could be addressed
- Explore opportunities for ensuring that the rights of older persons are promoted and protected
- Provide an opportunity for evaluation of the extent to which the government considers the needs of older persons when working towards meeting the MDGs
- Strengthen networks of experts and practitioners working towards promoting the rights of older persons
- Draw attention to the relevance of the ICESCR for older persons

3. Key Points of Discussion

3.1 Awareness of rights and entitlements

The importance of human rights in providing people with the freedom and ability to make choices about how they wish to live their lives was emphasised. Accordingly, note was taken of the rights in international treaties and policies as well as the Constitution and laws such as the OPA that are applicable to older persons. The government's constitutional obligations include promoting the socio-economic rights of older persons. The obligation to promote entails raising awareness of these rights among beneficiaries and the frameworks and mechanisms for claiming their rights. Educating older persons about their rights is thus a key part of this obligation.

It was however noted that the situation of older persons is compounded by their lack of awareness of their rights and entitlements as well as how to exercise them and report abuse. The lack of awareness of their entitlements is illustrated by the example cited of older persons who work but are afraid to receive payment for fear of losing their social grants. This is because they have not been educated on their right to work and the limits of earnings while on social grants. The need to create awareness of the socio-economic health care and development needs of older persons, as well as promote and support activities geared towards this was identified.

Educating the elderly about their rights and entitlements is a responsibility not just of the government but civil society organisations and institutions. The need for civil

society organisations and institutions to write to government, bringing its attention to instances of rights violations and abuse was also noted.

3.2 Needs and vulnerabilities of older persons as primary caregivers

Many older persons assume the role of care givers, yet there is a lack of understanding of their needs and vulnerabilities. In the Eastern Cape for example, the proportion of older persons that are heads of households is quite high in various municipal areas. The words of an older person cited at the workshop captures this role succinctly: “Caring has become my life story. I worked hard to support my parents, then my children, now my grandchildren and my children again”.

This role places a huge burden on them, considering the limited amount of their pension. They bear the burden of caring for their grandchildren orphaned by HIV and AIDS, or left behind as their parents seek work in the cities. These care givers are not always able to access social grants due to lack of identification documents (ID) or birth certificates, and thus do not have the financial means to support themselves and their families. These caregivers are thus also vulnerable to malnutrition and food insecurity, as they do not have access to sufficient food.

In meeting the needs of older persons, especially primary care givers, a people centred approach is necessary. With regard to the needs of older persons in general, community enumerations were identified as one of the creative ways in which to mobilise people in communities around the needs of the elderly. Community enumeration is a conscious strategy of self-surveying that allows the community to be part of the process of addressing their needs and to take ownership and strengthen unity. Through this, responses can be adopted that are humane, inclusive and participatory.

3.3 Relevance of international human rights standards in strengthening domestic efforts

A key point noted in the workshop was the need to strengthen the rights of older persons through the use and enforcement of international human rights standards, in addition to national standards. Law and policy was seen as relevant as they facilitate enforcement and reinforces accountability.

Currently, there is no international covenant that focuses solely on older persons. Such a covenant would allow for the advocacy of the rights of older persons at an international level, and strengthen enforcement and accountability. Notwithstanding this, other human rights treaties that protect socio-economic rights do apply to older persons. Note was also taken of the international policy documents on older persons and ageing that have been adopted including the Madrid International Plan of Action on Ageing (MIPAA) and the UN Principles on Older Persons. The MIPAA is a blueprint for the direction of national policy and law on issues affecting older persons and ageing, to which South Africa is a signatory (but is not a legally binding document like the International Covenant on Economic, Social and Cultural Rights of 1966 (ICESCR), if ratified).

It was noted that the UN Committee on Discrimination against Women (CEDAW Committee) and the UN Committee on Economic, Social and Cultural Rights (Committee on ESCR), responsible for overseeing the Convention on the Elimination of All Forms of Discrimination against Women of 1979 (CEDAW) and the ICESCR, respectively, have elaborated on the rights of older persons in these treaties. While South Africa has ratified the CEDAW, it is still to ratify the ICESCR despite signing it

over 16 years ago. There is currently a national campaign advocating that the government ratify the ICESCR. The CEDAW's scope is limited to women (General Comment 27 of CEDAW is instructive in relation to older persons) while that of the ICESCR applies to everyone.

The ICESCR is the main treaty on socio-economic rights at the UN level and the Committee on ESCR has articulated the economic, social and cultural rights of older persons in various general comments. General Comment 6 of the Committee is particularly instructive. Ratification of the ICESCR would strengthen government accountability in the promotion and protecting of the socio-economic rights of older persons. In particular, the ICESCR provides further clarity on government's obligations in relation to social security, housing, employment and the equal rights of men and women, amongst others, in the context of older persons. The ICESCR would require the state to address these rights to the maximum of its available resources. Both the ICESCR and its Optional Protocol facilitate international assistance and cooperation for states with severe resource constraints. They also provide additional enforcement mechanisms through the state reporting, complaints and inquiry mechanisms that create a platform to expose abuses that are linked to poverty, abuse, discrimination and neglect. These are challenges faced by a majority of older persons in South Africa.

In addition to the national framework on older persons, the international framework is crucial in strengthening domestic efforts. The ICESCR is of particular importance in relation to strengthening the socio-economic rights of older persons, and its ratification is a basic requirement for the promotion and protection of the rights of older persons as well as the poor. It was emphasised that the government thus needs to use international human rights instruments and standards to assist at the national level in articulating what needs to be done for older persons.

3.4 Poverty, the Millennium Development Goals and older persons

A strong link exists between alleviating poverty, what the MDGs seek to achieve, and the realisation of socio-economic rights of older persons. Addressing the prevalence of poverty amongst older persons as well as their needs was thus seen as directly linked to the achievement of the MDGs and the promotion of their socio-economic rights. This is especially relevant to South Africa as it has a relatively large number of older people, and this sector of the population is growing. In addition, an increased proportion of elderly poor is found in South Africa's rural areas where income levels are also generally lower. This together with the effects of urban migration and the prevalence of HIV and AIDS have resulted in many older persons becoming the primary care giver in the household, having to care for orphans or grandchildren while their parents seek work in the cities. Thus, although the MDGs do not make specific reference to older persons, these factors highlight the need to address poverty amongst the ageing population specifically, in order to address the goals generally.

Older persons play a vital role in the achievement of the MDGs due to the developmental role they play in society as care givers. Education and health deprivation among older adults slows down progress towards the MDGs. With their increasing contribution to the care economy, the health care of older persons needs to be improved. Thus, addressing the living conditions and needs of older persons is crucial to effectively and fundamentally reducing poverty and accelerating progress towards the MDGs.

3.5 Implementation of the Older Persons Act

Inadequate implementation of existing legislation and policies, particularly the Older Persons Act and the need to expedite the delegation of powers and understand the impact of a sexist definition of older persons in the Act was emphasised.

The Older Persons Act serves to provide a framework for the protection of the rights of older persons, including the socio-economic rights. It seeks to address some of the inadequacies found in the previous Aged Persons Act and makes provision for the right for older persons to access care and services. However, it was noted that the Act has not been adequately implemented, and the regulations to the Act were only finalised in April 2010. Funding towards the implementation of the Act has not been used, with funds even being returned to Treasury from the Provinces. In fact, the readiness of provinces to implement the OPA was identified as central to the effective implementation of the Act.

Notwithstanding the foregoing, it was noted that if the OPA and regulations are to be effectively implemented, funding for older persons programmes needs to be substantially increased. This is based on the fact that approximately R100 is spent a year per vulnerable older person – clearly inadequate. This estimate is derived from the following figures: social pensioners are close to 2.4 million, the 2009/2010 budget for older persons was R700 million, R460 million of the budget went to residential facilities (for approximately 30,000 residents), and the balance of R240 million for other services. The rights and needs that the OPA seeks to protect and address, respectively, cannot therefore be successfully realised.

Moreover, the delay in the delegation of powers as stipulated in section 32 of the OPA was identified as of particular concern. This would facilitate the implementation of the Act. Hence, it was pointed out that without the delegation of powers being formally executed, no progress of any kind can be made in relation to implementation of the OPA. This is thus a huge concern that the government needs to attend to as a matter of priority.

One of the greatest challenges identified during discussions related to the definition of older persons in the OPA. Older persons are defined as those 60 years or older for females, and 65 years or older for males. Thus despite the equalisation of old age pension at 60 years, the 60/65 differentiation is still retained in the OPA. The consequence is that older males between the ages of 60 and 65 are not able to make use of the services and programmes under the Act. Also, despite their vulnerability to abuse, they do not have access to services guarding against this until they are 65 years of age. The need for this definition to be revised was thus emphasised so as to eliminate the discrimination it entrenches in relation to access to services for a majority of older men.

3.6 Community based-care for older persons

The importance of community-based care in addressing the socio-economic rights of older persons was constantly reinforced during discussions, including the need for it to be continuously reflected in national legislation and budget. As opposed to the previous Act of 1967 that focused on residential care, the OPA includes greater focus on the use of community-based care. Community-based care now includes economic empowerment, skills development, the provision of balanced meals, hygienic and personal care to older persons. It was emphasised that these crucial elements of community-based care would give effect to the rights of older persons to have access to health care services, sufficient food and water, which are guaranteed in the

Constitution and the ICESCR as well as the rights to work and to an adequate standard of living.

However, it was noted that there are no health care teams to provide comprehensive home-based care. Access to community health care was thus identified as a need amongst older persons that are ill, especially those in rural areas. In particular, there were concerns that the older sick people would need to receive regular medical visits and check-ups by mobile clinics or nurses if there were incapacitated.

There is also a critical shortage of social workers exacerbating the situation. As a result, increased and urgent support, planning and funding is needed towards the realisation of the increasing demand for community-based care for older persons.

3.7 Cooperation between government departments and other stakeholders

One of the issues identified that limit the implementation of existing policies and programmes and consequently the realisation of the socio-economic rights of older persons is the lack of sufficient cooperation between the relevant government departments, as well as with service providers and other stakeholders. Existing constitutional jurisprudence emphasises that government departments should function together in the provision of socio-economic goods and services. This is at both the vertical and horizontal levels. For example, in the provision of housing for special needs groups, the Department of Human Settlements need to collaborate with the Department of Social Development. People who are affected by poverty and are further disadvantaged because they are old or infirm, fall under the special needs group.

Hence, though the Department of Social Development is the lead department in terms of meeting the needs of older persons, when it comes to health care or housing or land for instance, the need for cooperation with the Departments of Health or Human Settlements becomes crucial. Reference was made for example to the lack of cooperation between departments. In Nelson Mandela Bay for example, municipalities have indicated that older persons are a provincial competence. This was in relation to a request for infrastructure for older persons to run clubs. Yet, this is an issue that the municipality needs to work with provincial government in making such infrastructure available. In relation to health care, the Department of Health used to subsidise old age homes with basic medication, but this is no longer the case. The Department of Health also does not see it as its function or role to subsidise nursing personnel for older persons, despite the fact that frail care falls within both the social development and health sectors.

Furthermore, the discussions also stressed the importance of strengthening partnership between NGOs and government, in which the government assists NGOs to support older caregivers. This is crucial because at present, most of the services for older persons that are to be provided by the government are being provided by NGOs.

Linked to the above is thus the need to improve funding provided to NGOs. This is because limited funding for older persons programmes and for organisations providing services to older persons or assisting them to access services, impacts on the level of enjoyment of rights. Lack of adequate funding limits the ability of civil society organisations in playing a role in ensuring that the socio-economic rights of older persons in the Constitution are translated into concrete benefits.

3.8 Access to social security and assistance

A number of challenges were listed during presentations and discussions that impact on the ability of older persons to access existing social services. This related particularly to the lack of facilities that would promote access to existing social services for older persons.

The challenges include transportation problems in getting to Home Affairs offices to obtain IDs or to the South African Social Security Agency (SASSA) offices for their social grants. This is especially because the public transport system is not suitable for the old and infirm, and in some rural areas they are limited or non-existent. Older persons also do not receive social grants for children they care for or old age pension due to lack of ID documentation or birth certificates, inefficient staff at SASSA offices, and communication and office hours not conducive to addressing the logistical challenges these older persons face in obtaining necessary paperwork to access social grants. They are required to stand on queues for very long periods. The example of an older woman who sat in an office all morning only to be informed in the afternoon that the official went for lunch and will not be returning illustrates how older persons are treated without respect for their dignity.

Linked to the difficulties in accessing social grants by older persons are the payment options available. Payments are currently done either through electronic transfers into bank accounts or cash/manual payments at designated pay points. Due to the lack of infrastructure for bank payments in rural areas, the second option is often used. However, older persons face numerous challenges at pay points including long queues, cash shortages, slow service, no shelter or toilets at pay points, and crime. There is therefore the need to review the current payment options so as to devise an effective and user-friendly system that guards against the numerous challenges experienced with the current system. This would be in line with the government's obligation to ensure that social pensions are accessible – that is, within safe physical reach and reasonably convenient locations.

As a result of the above problems, existing socio-economic rights to social security and assistance provided through the Constitution and national legislation as well as international standards cannot be effectively enjoyed by this vulnerable sector of society.

3.9 Food security for older persons

Older persons are particularly vulnerable to malnutrition and illness, particularly in the rural areas as several presentations suggested. This is due to lack of access to health facilities as well as the result of poverty, which limits the type of food to which older persons have access. In particular, older persons in rural areas for example in the North West Province were found to eat few fresh fruits, vegetables and dairy products, impacting on their ability to eat a balanced diet.

Rising food prices further exacerbate the vulnerability of older persons to food insecurity. Examples were cited of NGOs that assist older persons by providing them with food. However, because some older persons are breadwinners in their families, incidences have been noted where older persons take half of their portion of food home in order to feed other family members.

The need to look at sustainable food security practices for the older persons who are care givers was emphasised. Linked to this was the need for the government to

ensure that older persons, who are caregivers, have access to grants to support food cultivation for their households.

3.10 Access to quality health care

Access to quality health care is particularly important for older persons as they carry the burden of communicable and non-communicable diseases as well as injuries. However, basic health services to older persons were found to be lacking, especially in rural areas. Older persons have thus had to migrate from rural to urban areas in order to access a health care facility, especially where no mobile clinics exist. However, where mobile clinics exist, it was noted that time limitations make it impossible for some older persons to get treatment, as the clinics close at 14h00 and are not there on a daily basis in some areas. Moreover, at the primary care level, there are no dedicated services for older persons, resulting in health care services that are not safe, timely, effective, efficient, equitable and people-centred. The example of an older person who was given expired medication at a health facility was cited. It was also noted that very few older persons are referred to high levels of care.

This is further compounded by the fact that geriatric medicine in South Africa remains severely understaffed, with very little training being provided nationally towards the medical needs of the elderly. There are fewer than 10 registered geriatricians for the 3.9 million older persons in South Africa. This is highly inadequate. The fact that geriatric care was not a priority in institutional planning and training curricula was an issue of concern to the participants. Emphasis was thus placed on the need for government and policy makers to promote appropriate education and training of health professionals in gerontology and geriatrics.

Dementia is also not a health care priority, with insufficient services to cater adequately for people with dementia and their carers. There is therefore the need to provide health, social care and other services to these persons, and also understand and respect their rights.

In addition, it was emphasised that older persons remain particularly vulnerable to contracting HIV and AIDS especially as relatively few resources are made available to educate this sector of the population on the virus. As a result, older persons are a group in which the prevalence of HIV and AIDS could continue to rise over time, especially as their risk of infection and the spread of HIV among this group goes undetected due to their exclusion from counselling, testing and treatment. Older persons are in fact generally marginalised in preventive health care. Moreover, the government does not provide any support for older persons affected by HIV and AIDS. This also has further implications on households where these older persons are expected to take the role of primary caregiver to orphans or grandchildren.

The need for a clear strategy to support older persons affected by HIV and/or caring for households infected and affected by HIV and AIDS is needed. Such a strategy should, among other things, ensure that older persons have access to HIV management and prevention and to safe drinking water and sanitation so as to facilitate their care-giving role.

3.11 Access to adequate housing for older persons

It was noted that in line with general Comment 6 of the Committee on ESCR, housing for older persons should be seen as more than mere shelter. In addition to the physical, it has psychological and social significance, which should be taken into account when providing older persons with access to housing. This right is

guaranteed to older persons in the Constitution. However, a related concern was that there is insufficient and inadequate safe housing for people with dementia, with old aged homes having long waiting lists.

What is more, the Department of Human Settlements does not have a specific programme for the provision of housing to the aged. The national and Western Cape provincial departments are yet to adopt a policy on special needs housing. Older persons who are ill fall under special needs groups and should therefore be entitled to housing that takes into consideration their special needs. Consequently, NGOs have been playing a key role in providing housing to older persons.

The example of the Western Cape Province was cited, which illustrates the inadequacy of housing for social pensioners. In the province, there are over 200 000 social pensioners with only 14 000 state subsidised housing opportunities, most of which go to assisted living and frail care facilities. There is thus a serious accommodation crisis for social pensioners, which needs to be addressed.

3.12 The plight of older women

Within the broader vulnerable group of older persons, older women are more vulnerable as they are seen as weak and defenceless. General Comment 6 of the Committee on ESCR and General Recommendation 27 of the CEDAW require governments to pay particular attention to the rights of older women. A huge burden is also placed on older women, as they are mostly the ones that assume the role of primary caregivers. It was thus stated that older women should be seen as a resource and significant asset, especially due to their care-giving role.

The Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa of 2003 (which South Africa has ratified) was also noted, due to its elaboration of the rights of older women. South Africa has an obligation under the Protocol to protect elderly women through measures that target their needs as well as their access to employment; ensure that they are treated with dignity and are free from violence and age discrimination. The rights of widows are also emphasised in the Protocol – they have to be protected from humiliation or degrading treatment and are entitled to inherit and to equitable share of the deceased husband's property, including the right to continue residing in the family home.

However, research findings that were presented showed that older women and widows are seen as weak and defenceless. They have been victims of financial exploitation by their children, particularly in rural areas but also in urban areas.

4. Challenges Identified

Several challenges that older persons face that limit their access to and enjoyment of their socio-economic rights were identified, including the limitations in existing international and national frameworks. These included the following:

- The lack of a comprehensive protection of the rights of older persons in international human rights law and the general approach adopted by some treaties in relation to the rights of older persons, creating a protection gap. This has resulted in a call for a specific convention on the rights of older persons.
- Notwithstanding the above challenge, a number of human rights treaties are relevant to older persons, but are not used or enforced adequately at the national

level. The ICESCR, which South Africa has not ratified, was cited as an example of a valuable treaty in relation to the socio-economic rights of older persons. Linked to this is the limited accountability on the part of government in relation to meeting the specific needs of older persons.

- The prevalence of poverty amongst older persons impacts on their ability to enjoy their socio-economic rights. Linked to this is the fact that older persons are often ignored when implementing programmes towards meeting the MDGs due to its non-reference to them. Addressing this poverty through the MDGs thus becomes challenging but vital, as older persons have an important role to play in their realisation.
- Lack of facilities such as transportation and health care facilities to older persons, thus limiting their access to existing social and health care services.
- Inadequate implementation of existing legislation and policies, particularly the OPA, the delay in the delegation of powers under the Act and its retention of a sexist definition of older persons, which further entrenches inequality amongst older persons in accessing programmes and services provided under the Act.
- Lack of awareness amongst older persons of their rights and entitlements, and how to exercise them as well as the various mechanisms through which they can, for instance, report abuse.
- Inadequate cooperation between government departments, as well as with service providers and other stakeholders, impacting negatively on the implementation of the OPA and the realisation of the rights of older persons.
- Lack of health care teams to provide comprehensive home-based care and a critical shortage of social workers. Hence, the need for community-based care to be strengthened and continuously reflected in national legislation and budget, as it has become increasingly important in addressing the needs of older persons in South Africa.
- Lack of understanding of the needs and vulnerabilities of older persons in their role as primary caregivers. Linked to this is the lack of a clear strategy to support older persons affected by HIV and/or caring for households infected and affected by HIV and AIDS.
- Lack of or in some instances limited access to decent health care, sanitation and proper diet particularly amongst the older persons in rural areas.
- Lack of sustainable food security programme for older persons.
- Very limited funding for organisations providing services to older persons or assisting them, to access services.
- Lack of adequate housing (limited housing opportunities) for older persons. Linked to this is the lack of a special needs housing policy at the national level as well as in many provinces such as the Western Cape Province, which would cater for the needs of older persons and facilitate their access to suitable and adequate housing. Also the need for municipalities and the Department of Human Settlements to meet their obligations in relation to providing access to housing to this vulnerable group.

- Lack of health care services to address the cognitive, mental and psychological health of older persons. Linked to this is the lack of training of medical professionals to deal with the health needs of older persons and the removal geriatric as part of training in nursing colleges' curriculum.
- Difficulties in accessing pension grants, including administrative hurdles and the conditions (at points of collection) under which the Department of Social Development administers these grants to the elderly especially in rural areas.

5. Recommendations Made

Based on the challenges identified, a number of recommendations were made. These include the following:

- Strengthen the use of the international human rights framework in order to realise the rights of older persons
- The Department of Social Development to review the definition of older persons in the act so as to remove the 60/65 differentiation which limits access to services for some older men, expedite the delegation of powers as stipulated in the OPA, and undertake a review of the implementation of the Act.
- Parliament to hold hearings around the challenges older persons face and what needs to happen to ensure effective implementation of the OPA
- The Department of Social Development to commission research on issues relevant to older persons in order to increase the existence of evidence-based research on the subject
- Strengthen the existing network and input of civil society working towards addressing the socio-economic rights of older persons
- Prioritise the needs of older persons especially in the area of health care
- Government and civil society organisations and institutions to raise awareness of the rights and entitlements of older persons
- The need for government to review social grants options for older persons
- Strengthen cooperation between various government departments in meeting the needs of older persons
- The government to improve funding for older persons programmes as well as to organisations providing services to older persons
- The need to look at sustainable food security practices for older persons

6. Opportunities for promoting the socio-economic rights of older persons

A number of opportunities were identified that could be pursued in relation to promoting the socio-economic rights of older persons. The key opportunities are outlined below.

- **Strengthen the use of the international human rights framework in order to promote accountability, enforcement and realisation of the rights of older persons**

The ratification of the ICESCR would provide civil society with added impetus to hold the state accountable to addressing the rights of older persons at a national level. It would also provide accountability towards the achievement of the MDGs, which includes the prevalence of poverty amongst older persons. Furthermore, the ICESCR provides specific comment on the rights of older persons and would thus strengthen state accountability towards mobilising resources to realise the basic rights of this population. There is currently a civil society campaign advocating for the ratification of the ICESCR as well as its Optional Protocol.

- **Review of the implementation of the Older Persons Act**

Review of the implementation of the OPA is crucial in ensuring that the Act is making an impact in improving the lives of older persons. Civil society organisations should form a network to advocate for the rights of older persons in South Africa by campaigning for a review of the challenges currently experienced in the implementation of the OPA. This review should include extensive consultations with NGOs and civil society who are currently working with older persons.

- **Engaging with parliament on the plight of older persons**

Parliament also has a role to play in the process of reviewing the implementation of the Act, especially as it is the legislative arm of government. Its role also extends to ensuring that government actions are in line with international and national commitments towards older persons. There is therefore an opportunity in parliament to promote the rights of older persons.

Engagement with parliament could be pursued through requesting the relevant portfolio committees to hold public hearings or a meeting during which they can hear the views of older persons, their needs and the difficulties they face in accessing their socio-economic rights. The Community Law Centre could play a role in facilitating engagements with Parliament.

- **Advocate for the Department of Social Development to commission research on issues relevant to older persons in order to increase the existence of evidence-based research on the subject**

In order to address the needs and challenges of older persons, greater support is needed nationally to commission and fund research and case studies on older persons in South Africa. This evidence-based approach will ensure that areas of concern of particular importance to the elderly are adequately addressed.

- **Strengthen the existing network and input of civil society working towards addressing the socio-economic rights of older persons**

NGOs and civil society groups who are currently working with older persons in South Africa should strengthen networks amongst themselves in order to collaborate, learn from shared experiences and serve as a greater advocacy mechanism especially to parliamentary bodies. These networks would also ensure that civil society organisations in South Africa speak with one voice when engaging with current processes relating to the rights of older persons.

7. Conclusion

This one-day workshop hopes to inspire greater participation and activity amongst civil society in South Africa regarding the realisation of the socio-economic rights of older persons. It is further hoped that these voices will add momentum and awareness amongst international, regional and national efforts to highlight the challenges and problems faced by older persons in claiming their basic human rights including dignity and respect. Actions directed towards households, communities, regional and country levels will assist also in providing greater opportunity for the voices of older persons to be heard and presented at parliamentary level. It is these voices that will ultimately tell the true stories of the plight of the elderly, particularly those who have been disadvantaged, are victims of poverty and dependent on the state for financial and social support for survival.

Annex I

Presenters and Presentation Titles

- Annamarie Kruger, AUTheR, North West University
Nutritional and health status of the elderly in the context of caring for children
- Christelle Cornelius, Ikamva Labantu
The socio-economic needs of older persons in relation to social and food security
- Elsette Strachan, NOBUNTU People Centred Development
Person centred social and health care assessments as part of care planning for older persons
- Gavin Weir, Neighbourhood Old Age Homes and Zoe Paul, Abbeyfield South Africa
The response by two NGOs to the housing needs of social pensioners
- George Petros, Institute of Ageing in Africa, University of Cape Town
A policy framework to support older persons affected by HIV/AIDS in South Africa
- Jill Adkins, Age Rights International
Law and policy impacting the socio-economic rights of older persons in South Africa: An international, regional and national overview
- Judith Cohen, South African Human Rights Commission
The Older Persons Act: Reflections on the process
- Karen Borochowitz, Dementia SA
Dementia: the stigma and challenges
- Lilian Chenwi, Community Law Centre, University of the Western Cape
The International Covenant on Economic, Social and Cultural Rights and older persons
- Monde Makiwane, Human Sciences Research Council
The socio-economic context of older persons in South Africa: The Eastern Cape example
- Paul Whelan, Western Cape Department of Human Settlements
Relevant housing laws and policies: Implementation and challenges
- Roedolf Kay, South African Older Person's Forum
The status of older persons in relation to the implementation of policies and legislation; and challenges surrounding social security as it applies to older persons
- Sebastiana Kalula, Institute of Ageing in Africa, University of Cape Town
Quality of health care for older persons in South Africa
- Unita van Vuuren, Western Cape Department of Health
Health laws and policies relating to older persons: Implementation and challenges
- Watson Hamunakwadi, Global Call to Action against Poverty/National Welfare Forum
(with written contributions from Phelisa Nkomo, Blank Sash)
The Millennium Development Goals and older persons
- Yvette Abrahams, Commission on Gender Equality
Older Women and their socio-economic rights

Annex II

List of workshop participants

- Annamarie Kruger, Director of Research Unit, Africa Unit for Transdisciplinary Health Research, North West University
- Anne van Niekerk, Fundraising and Marketing Coordinator, NOAH
- Anthea ven der Berg, Senior Researcher, South African Human Rights Commission [Workshop Session Facilitator]
- Bridget J van der Merwe, Director, Cape Town Association for the Physically Disabled
- Christelle Cornelius, Seniors Development Manager, Ikamva Labantu
- Danielle van der Spuy, Occupational Therapist, G.H Stark and Rehoboth Age Exchange Centres
- Delion Spolo, Trainee Manager, Cape Peninsula Organisation for the Aged
- Elsette Strachan, Social Impact Practitioner, NOBUNTU Academy of Social Care
- Elvis Fokala Mukumu, Independent Human Rights Researcher [Workshop Session Facilitator]
- Ethne Davey, Chairperson, Amanz' abantu
- Femada Shamam, Divisional Manager: Social Services, The Association for the Aged [Workshop Session Facilitator]
- Gavin Weir, NOAH Housing Coordinator/Convenor of the Sector Task Team for Older Persons (Western Cape), Neighbourhood Old Age Homes
- George Petros, Researcher, Institute of Ageing in Africa, University of Cape Town
- Hayley Herman, Programme Officer, Emerging Powers in Africa Initiative, Fahamu [Workshop Scribe]
- Jill Adkins, Attorney/Consultant, Age Rights International
- Judith Cohen, South African Human Rights Commission
- Karen Borochowitz, Executive Director, Dementia SA
- Laura Schultz, Fundraiser, Neighbourhood Old Age Homes
- Leonard Macakathi, Education Officer, Commission on Gender Equality
- Leonie Aggenbach, Project Leader: Older Persons, ACVV National Council [Workshop Session Facilitator]
- Lilian Chenwi, Coordinator and Senior Researcher: Socio-Economic Rights Project, Community Law Centre, University of the Western Cape

- Lungani Mondleki, Law Student, Students for Law and Social Justice, University of the Western Cape
- Mncedisi Mpunzi, Trainee Manager, Cape Peninsula Organisation for the Aged
- Monde Makiwane, Senior Research Specialist, Human and Social Development Research Programme
- Mongameli Peter, Programmes Director, Port Elizabeth Association for the Aged and Community Development
- Monica Ferreira, President, International Longevity Centre- South Africa/Professor, University of Cape Town, Institute of Ageing in Africa, University of Cape Town
- Noleen Barnes, Social Auxillary Worker, G.H Stak and Rehoboth Age Exchange Centres
- Nonceba Mkangeli, Urban Poor Project Coordinator, Abbeyfield South Africa
- Paul Whelan, Department of Human Settlements (Western Cape)
- Phelisa Nkomo, Advocacy Programme Manager, Black Sash (written contribution to presentation)
- Raees Ismail, Chairperson, YEF
- Renchia du Plessis, Administrator: Socio-Economic Rights Projects, Community Law Centre, University of the Western Cape
- Roedolf Kay, National Coordinator, South African Older Person's Forum
- Sanaa Peterson, Media Liaison Officer, Provincial Parliament (Western Cape)
- Sebastiana Zimba Kalula, Senior specialist: Geriatric Medicine/ Deputy President and Director of ILCSA, Institute of Ageing in Africa, University of Cape Town
- Shireen van Reenen, Social Worker, Age-in-Action (South African Council for the Aged)
- Shirinda Siphiwe Tinyiko, Project Manager, Hlanganani Malamulele Society for the Aged
- Taryn Feinberg, Project Director, G.H Stark and Rehoboth Age Exchange Centres
- Tumelo Kgosimeme, Researcher: Parliamentary Programme, Community Law Centre, University of the Western Cape [Workshop Session Facilitator]
- Unita van Vuuren, Deputy Director: Chronic Disease Management, Geriatric Care, Disabilities, prevention of Blindness Programmes, Department of Health (Western Cape)
- Valencia Nkonkie, Coordinator, Western Cape Older Person's Forum
- Watson Hamunakwadi, Coordinator: GCAP-SA, Global Call to Action against Poverty South Africa/National Welfare, Social Services and Development Forum
- Yolisa Mzamane, Trainee Manager, Cape Peninsula Organisation for the Aged
- Yvette Abrahams, Lead Commissioner: Gender and Poverty, Commission on Gender Equality
- Zoe Paul, Abbeyfield South Africa