



## Portfolio Committee on Social Development, Public Hearings on the Older Persons Bill [B68B-2003], 30 August 2005

### *Oral Submission highlighting issues from the written submission of the South African Human Rights Commission*

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#### **Introduction**

The Older Persons Bill is one law that the SAHRC has worked with for some time now. Here was a piece of legislation that in order to give input it could not be done without seeking the advice and insight from the very people who would be the beneficiaries. Older persons are self-autonomous individuals. Participation in all matters concerning the elderly is one of the key Principles from the United Nations Principles for Older Persons.

The Commission hosted a series of **provincial workshops** on the Bill and obtained the input of over 300 role-players across the country. This is the first time that the Commission has consulted so extensively on a piece of legislation. We took special measures to ensure that rural participants could attend our Workshops.

During the first round of workshops in late 2003, Commissioner Manthata and Judith Cohen (Parliamentary Officer) traveled to Duncan Village outside East London, Durban, Polokwane and Cape Town. In the second round of workshops early this year, we traveled to Phahameng township outside Bloemfontein (the Hon. Winkie Direko attended), Upington in the Northern Cape and finally ended our series of workshops in Johannesburg where we hosted one for North West Province, Mpumalanga and Gauteng simultaneously.

In addition to these provincial workshops, we have also hosted a series of small group **brainstorming sessions** in Cape Town with many of the role-players who have made substantive submissions on the Bill. We have also established the **Rights of Older Persons Working Group**. This is essentially an e-mail information service for role-players that provides information on the progress of the Bill and encourages role-players to participate in the parliamentary process.

The older persons sector is organizationally weak. This can be attributed to a lack of resources and funding. There are many dedicated individuals who are

working tirelessly to assist our elderly and provide services that improve their quality of life. However, there is no national structure that can take up broader systemic concerns of older persons and advocate and lobby on their behalf. This lack of coordination and ability to lobby for the rights of older persons was most starkly realized by the Commission in its work on the Older Persons Bill. As the commission traveled throughout the country conducting workshops on the Bill and encouraging older persons to participate in the parliamentary process we were called upon to take up the call to assist the sector to establish an **Older Persons National Forum**.

In response the Commission has set up an **Older Persons Unit** that will assist for a period of one year to create the Forum. Thereafter it is anticipated that external donor funding will be obtained in order to secure the Forums' sustainability. On 18 & 19 August, an **Older Persons Convention** was held in Johannesburg. The purpose was to create a national structure that will represent the diverse needs and interests of the elderly in South Africa.

The Forums status and responsibilities will be advisory to government, consultative, advocacy (which includes legislation, policy and funding); fostering growth of community organizations, promotion of rights of older persons, dissemination of information and awareness raising, encouraging twinning and mentorship to develop capacity. It is also anticipated that the Forum will have regular contact with the Minister of Social Development, Parliament and other relevant stakeholders.

#### **The provincial workshops -**

The purpose of these provincial workshops was twofold. Firstly, our aim was to **empower older persons** with knowledge about the parliamentary process and the Bill with the anticipation that they would themselves draft submissions and send these to Parliament. Secondly, the Commission wished to **obtain the views** of older persons on the Bill in order to inform our own submission but also to ensure that the Commission could carry the voices to parliament of vulnerable and marginalized older persons who may be excluded from the parliamentary process.

Thus we do not and cannot apologize for the length of our submission. It is not the submission of the commission, it is the submission of over 300 role-players and older persons throughout the country. We cannot do it justice in the 20 minutes allocated but will merely highlight a few key issues:

## Key issues

1. The Older Persons Bill deals with situations when systems fail, when older persons are abused or when family cannot or do not care for their older persons. Thus discussions concerning the Bill paint a bleak picture of the situation in which older persons find themselves in across the country.

At the outset, it must be stated that in all our Workshops it was acknowledged that **many things have changed for the better** since the dawning of our democracy. Part B of the Submission deals with this (p9). The **pension equity between race groups** has been of greatest significance. Despite the ongoing reports of problems at pension pay points, there have been considerable improvements, particularly since the Ministerial Committee of Inquiry into the abuse of older persons. We still have much to do. Part C of the submission gives a broad overview of the many challenges that still face our older persons (p12). As can be seen: abuse, the impact of HIV/ AIDS, health care and the lack of accommodation and housing featured prominently.

2. **The 60/65 age differential debate.** (p27) The age differential was not supported by any of the role-players we consulted with. We need however, to confine the argument to the impact of this distinction within the context of the Older Persons Bill. The Constitutional Court will deal with old age grants in the Social Assistance Act. The Older Persons Bill is different. The arguments that are used by the State to justify the age differential for pension cannot be used in the Older Persons Bill. **Each time the term older person is used, discrimination occurs.** In each instance the State will have to justify it.

We cannot sit back in confidence that people will not have access to courts to argue these matters and that it will take years to achieve an outcome. We now have Equality courts throughout this country and should the Older Persons Bill include the age differential it could potentially lead to a plethora of Equality Court cases. Every action in terms of the Bill could be challenged as discriminatory. We thus propose that the age differential be done away with and that 60 years be used in the definition of an older person.

3. **Chapter 1 Programmes.** (p34 – 46) The greatest concern of participants at the Workshops was how would these Programmes be implemented. Many thought that the chapter was a wish list, an election manifesto. Older persons dearly want these programmes but more importantly they want the assurances that they will be made a reality. This is why the Forum will be important, as it will play a useful and important role in ensuring that these programmes are in fact actioned upon. Also, the Department needs to give assurances that **institutional structures** will be created to

facilitate the necessary interactions in order that the programmes will be implemented.

The submission sets out clearly for those Members who are interested those programmes which reflect the **Madrid Internal Plan of Action** on Ageing. The Programmes were generally accepted.

Additional programmes reflecting the needs and concerns of older persons were suggested. These included: **the Forum** (p43) being inserted as a Programme in order that the commitment by the Minister and the Department is given a basis in law. The Forum is not a South African concept. Forums exist throughout the world and many receive funding from government.

A Programme to deal with the **impact of HIV/AIDS on older persons** (44) is needed. The scourge of HIV/AIDS and its impact on older persons in our country was startlingly apparent. In East London, the workshop was attended by a large number of grandmothers from the surrounding township. The impact of HIV/AIDS dominated all discussions on the Bill.

Clearly more needs to be done to support and assist our elderly. They are the backbones of many communities, caring for those who are dying and taking on the responsibility of the children who are left orphaned. Older persons need support. They need practical support in the form of ensuring that all possible avenues of social assistance are made available to them speedily, efficiently and in a caring manner. They need education and training on how to care for those who are infected with AIDS. They need emotional support on how to deal with the devastating impact of the disease but also how to bring up their grandchildren and deal with the generation gap, which is increasing, at a rapid rate. Older persons need the support in order to be empowered to take on these burdens. Most importantly they want to be acknowledged and not to feel that they are being taken for granted. The Bill needs to provide for a programme to address these issues.

4. Older persons live with us in our communities. Very few live in old age homes, in fact only 1% of our elderly live in old age homes. Yet the Bill reflects a **preoccupation with facilities**. This will be one of the greatest challenges that this committee will face. We need to ensure that a more community-orientated approach is infused into the Bill. Throughout the country, the Bill was consistently criticized as being focused on old age homes and not reflecting sufficient attention being given to community forms of care.

This is a valid criticism in that:

- Facilities are mentioned first throughout the Bill and then other forms of care
- there are far more clauses dealing with facilities than there are clauses dealing with community care.
- Also, the Bills structure is reflective of the structure in the 1967 Aged Persons Act – the Bill therefore creates a perception that there is a preoccupation with facilities.

One way of addressing this perception would be to **reorganize the Bill**. (see p 49 re Chap 2 of the Bill & p61 re Chap 3 of the Bill) The Bill must reflect a **developmental approach** towards ageing in which the older person remains in the independent and in the community for as long as possible. This must be reflected in the **structuring of the Bill** in order that the provisions relating to non-residential care should be dealt with first and thereafter residential care as a last resort option after all other forms of care have been exhausted are reflected.

Even if this is done, it will still not cure the Bill of its preoccupation with facilities. Whilst the Bill has expanded the **definition of facility** (p23) to include community based care and support services, when the definition is tracked through the Bill, it leads to illogical results (see discussion on Clause 8 – Residents Committees p53, Clause 9 – Admission to facilities p54, Clause 10 p56 etc. ...).

Institutional or residential care needs to be separated out from community care. If need be, clauses must be repeated in order that they are applicable to community care. A failure to do this, will result in paying mere lip service to community care. The Bill will fail to address the needs of 97% of our elderly. In particular we will fail our older persons in rural areas.

5. **Clause 6 (Minister to be notified of provision of certain services)** needs a lot of consideration (p52). It is very limiting in that it is through this clause that only those identified can register and then become eligible for subsidies.

The definition of **luncheon clubs** was not well received (p25). The current definition does not reflect the reality on the ground.

Clause 6 does not provide for support to family members who care for the elderly. Whilst family should care for older persons, in situations where they cannot, support ought to be given. It is the preferable option for the older persons. It is in keeping with the developmental approach to ageing; and, it is a far cheaper option than these older persons becoming the responsibility of the State in a residential facility.

6. Older persons are the targets of **abuse**. It is mind-boggling how uncaring, unscrupulous and cruel some individuals can be. Many, many stories were relayed to us in the Workshops of what happens on a daily basis to our older persons (p59 – 60). As a vulnerable group older persons need protection.

The **definition of abuse** (p20) needs to be redrafted. It fails to incorporate the key element of abuse namely that **abuse occurs within any relationship where there is an expectation of trust**.

The definition of abuse is **too broad** when it refers to Chapter 2 of the constitution. How will this be implemented practically? This definition needs to be changed.

7. However, the greatest challenge will be in the **implementation** of the provisions in the Bill. **Clauses 14 & 15 (Procedure for bringing person who accommodates or cares for older person before a magistrate and Enquiry into accommodation or care of older person)** have been on our statute books since 1967. We did not meet a single person around the country who could tell us about these procedures being used. Thus they look good on paper yet they are not being used. Before, we place them again in legislation; the Committee is called upon to inquire with relevant responsible bodies about the functioning of these provisions. It needs to be determined why they are not used and what will be done to ensure that they are. In particular, how will these provisions be implemented in the rural areas?
8. **Mandatory reporting (clause 16)** (p66 – 70) was also controversial. There are many arguments that can be made for and against mandatory reporting. The NCOP has extended the mandatory reporting to all citizens.

In general mandatory reporting was supported by participants at the Workshops as the “right thing to do”, it is morally correct and individuals in society must take responsibility for detecting and reporting crime and abuse. The questions that are posed are however, how will this clause be implemented? Will there be sufficient education and awareness amongst the officials who will receive these reports? Do we have enough officials to follow up on all the potential reports that may be received?

9. The **register (Clause 17)** (p70) also needs considerable attention. The commission does not support registers. They are feel good legislation, that is costly, creates a false sense of security and international studies indicate that they contribute little to protection. However, if we are going to have a register, then more attention must be given to it in the legislation.

This committee has just dealt with the Children’s Bill and the inclusion of a register in that piece of legislation. A cursory glance at the Older Persons

Bill will indicate that just from the shortness of the section that it is not adequate. It does not deal with whose names will appear, currently only those who are convicted of abuse in terms of the Bill, not persons who are convicted of other crimes such as assault, rape etc. .... will appear on register. The current Bill does not deal with how people's names will get on the register, how long the names will stay on the register etc. ....

### **Conclusion**

Finally, legislation is not everything. It will not solve all our problems. It merely provides a framework, a commitment from government and obligations that certain things will happen. The greatest concern of older persons is that this law has taken so long to pass and their needs are so great and immediate. They want to know how will this beautiful sounding piece of legislation be translated into reality and how will they benefit from it still in their lifetimes. This will be the greatest challenge for all of us!

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