



HUMAN
RIGHTS
WATCH

“This Government is Failing Me Too”

South Africa Compounds Legacy of Apartheid for Older People



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Map



Locations where Human Rights Watch conducted research.

Summary

The previous government failed me, and now this government is failing me too.

— Bahija J., a 75-year-old woman in Cape Town, September 21, 2022

Bahija J., 75, has been on the waiting list for state-subsidized housing for 40 years. Her rented house in Cape Town is moldy and damp, and her landlord has promised her hot water since 1996. She is afraid of dying alone in the house but does not want to end up in an “old age home.”

Bahija spent nearly half a century of her life under an apartheid regime, whose racial segregation policies denied the majority of today’s black African, coloured, and Indian/Asian older South Africans a decent education, decent work, and the ability to save for older age. Many were displaced as children or young people by the apartheid government’s forced removals to segregate people on the grounds of race. The cumulative impact of this racial discrimination when they were younger continues to affect them decades on.

In part to address this legacy of apartheid, the post-apartheid government adopted the 2004 Social Assistance Act, which provides for the Older Persons Grant, a non-contributory social security entitlement for people aged 60 and over, and the Grant-in-Aid for those requiring full-time care and support at home. The post-apartheid government also adopted the 2006 Older Persons Act, which enshrines the rights of older people. The act guarantees them the right to live in an environment that caters to their changing capacities and emphasizes community- and home-based care and support services. While the Older Persons Act enshrines the rights of all older people, the vast majority of those who are eligible for government-funded care and support services under the act, the Older Persons Grant, and the Grant-in-Aid, are black African, coloured, and Indian/Asian older people.

Nearly 30 years after the end of apartheid, however, current government policies are undermining the intended remedial impact of the Older Persons Act and are, in fact, compounding apartheid’s legacy. Despite the act’s stated aim, many older people who were displaced during apartheid still do not enjoy their right to live independently and

within the community, with hundreds of thousands of older people unable to access the basic care and support services they are entitled to so they can live with dignity in their own homes and communities.

This report documents the experiences of 63 older people across Eastern Cape, Gauteng, and Western Cape provinces. Forty-one were black African, 13 coloured, 3 Indian/Asian, and 6 white. Forty-five were women and 18 were men. Sixty-one received the Older Persons Grant.

Human Rights Watch found that few of the older people interviewed for this report had access to basic care and support services.

Ben Zolile, 75, lives in River Park, Johannesburg, with health that he says goes “up and down.” He used to eat lunch each day at a service center for older people but now cannot make the trip due to bad knees. “No one comes to my house,” he said. “There are no other services that come to my home.”

There are a number of factors that contribute to the unavailability of services, including that the government sets its targets for how many older people should have access to services based on what the government can afford rather than what services older people need. The government has determined that 20 percent of “active vulnerable older persons” and 3 percent of “vulnerable frail older persons” should have access to services. Given what is known about the levels of chronic illness, disability, and dementia among older people, these targets are likely to be extremely low.

Other factors also limit the availability of services, including disparities in provincial plans to increase access to services; insufficient numbers of social workers; and a lack of coordination between government departments responsible for realizing the rights of older people. In addition, although the government contracts with non-profit organizations to deliver community- and home-based care and support services, overly prescriptive rules on the range of services and insufficient funding impede the organizations’ capacity to deliver those services.

The managers of service centers in the Eastern Cape, which are tasked with providing community- and home-based care and support services, told Human Rights Watch that

government funding covered only 40 to 50 percent of their costs. In the Western Cape, one private non-profit service center has to charge older people an annual membership fee and monthly contributions for food to help cover their costs. “The Department of Social Development doesn’t give [us] the full budget,” the center manager said. “Older people must contribute themselves.”

These challenges are exacerbated by the government’s continued over-reliance on family members to provide home-based care and support, even in circumstances where they are unable or unwilling to do so.

For Thembisa Loyila, 70, who lives alone in Mdantsane, Eastern Cape, service delivery depends on whether you have children or not. “The government doesn’t have any responsibility for us,” she said. “As older people, we have to take care of each other. We only have ourselves.”

Older people who receive the Older Persons Grant may also be eligible for a social security entitlement to cover the costs of full-time home-based care and support. The Grant-in-Aid is, however, woefully inadequate as it only provides 20 hours of full-time care and support per month, based on a caregiver receiving the national minimum wage.

Private care and support services are available but unaffordable for all but the very wealthy, exacerbating existing inequalities. Rates for 24-hour live-in care for one month can equal four years’ worth of the Grant-in-Aid.

In addition, Human Rights Watch found, few older people even know the Grant-in-Aid exists. For example, Ben Movenda, a 76-year-old man who uses a wheelchair, had not heard of the Grant-in-Aid. Instead, he has to rely on help from his neighbors to use the communal toilet and enter or leave the shack where he lives in Alexandra, Johannesburg. There are high steps and no ramps, the road surface is uneven, and he does not have the upper body strength to wheel himself. “I’ve got no support,” he said. “I need someone to help me, but who is going to pay for that?” And of those who do know about the Grant-in-Aid, some wrongly think they are not eligible.



Ben Movenda, 76, outside a communal toilet in Alexandra, Johannesburg. The toilet is shared by about 50 people and is not wheelchair accessible. © 2023 Taurai Maduna/Human Rights Watch

The subsequent lack of home-based services negatively impacts older people’s physical well-being and safety and may impede their dignity, autonomy, and independence. Without appropriate care and support, older people may have no option to continue living independently in the community, which can cause profound distress of being institutionalized against their wishes. According to Nosiphiwo Tetana, manager of the Dimbaza Society for the Aged’s service center for older people, “Older people are just literally left on their own.”

Some older people who are left without needed support and services may even be at greater risk of violence and abuse. A government-employed social worker told Human Rights Watch that older people are exposed to various dangers when they are isolated and not getting the home-based care and support they are entitled to:

They’re raped, killed, there’s gender-based violence. When we get a case, we try to do something, for example, remove them to a neighbor’s house or

find someone who can assist.... It can take months to find somewhere, and you only get a bed [in an old age home] when someone [there] dies.

Adequate housing is necessary to live independently and within the community. Yet Human Rights Watch found that housing could be unaffordable, uninhabitable, and/or inaccessible for older people. Some older people have waited decades for state-subsidized housing. Others feel unsafe in their homes. Sylvia Lusiti, 72, is blind and has lived alone in a government-provided house in Dimbaza since 2016. Her house has no fence or burglar bars. “There’s no security,” she said. “At midnight, people knock at the windows, at the doors.”

South Africa’s democratic government has introduced a promising legal framework to protect the rights of older people, including those enshrined in the 1996 constitution, the Social Assistance Act, and the Older Persons Act. The Older Persons Grant is an important pillar of South Africa’s social security system, on which the country spends a relatively large portion of its gross domestic product (GDP) compared to other upper-middle income countries. Despite this promising framework, Human Rights Watch found that the vast majority of eligible older people are unable to access the basic care and support services they are entitled to, and that the South African government has failed to respect, protect, and fulfill older people’s right to live independently and within the community.

South Africa is obligated under international human rights law to ensure that all older people have an adequate standard of living, including adequate housing. This right must be guaranteed without discrimination. The right to adequate housing also encompasses the right of older people to live independently in the community, and access to care and support services has been recognized as essential to the full enjoyment of this right. The government has a specific obligation to ensure that older people with disabilities, including those with limited mobility and those requiring support with daily activities, can live independently in the community and that they have access to community- and home-based support services and adequate housing. South Africa’s national laws, including its constitution, also guarantee these rights for all older people.

To increase access to these services, the Department of Social Development should put in place a system to determine the number of older people who require community- and home-based care and support. It should urgently review the current funding model for

these services and allocate sufficient funding to ensure that those entitled to such services have access. This should include adequate funding to non-profit organizations and public service providers so they can effectively deliver the support older people require.

The government should also review and reassess whether the Grant-in-Aid is sufficient to guarantee older people the resources necessary to access adequate care and support to live independently and within the community, and develop a public plan of action to increase as expeditiously as possible the level of the grant to cover the full costs of such services. The government should also provide accurate, accessible information to older people about the existence of the Grant-in-Aid and its criteria for eligibility.

National and Provincial Departments of Social Development should improve coordination and collaboration between government departments, as well as among the Department of Health, non-profit organizations, and other service providers, to improve implementation of the Older Persons Act and older people's access to services they are entitled to.

Taking these steps is necessary for South Africa to satisfy its obligations under international and national laws and to address the legacy and cumulative impact of apartheid on many older people.



Nosisi Mayamo, 64, at the Dimbaza Society for the Aged's service center in Dimbaza, Eastern Cape. © 2023 Taurai Maduna/Human Rights Watch



Rose Nduneni, 70, at the Dimbaza Society for the Aged's service center in Dimbaza, Eastern Cape.
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Gladys Booi, 69, at the Dimbaza Society for the Aged's service center in Dimbaza, Eastern Cape.
© 2023 Taurai Maduna/Human Rights Watch



Sylvia Lusiti, 72, at the Dimbaza Society for the Aged's service center in Dimbaza, Eastern Cape.
© 2023 Taurai Maduna/Human Rights Watch



Themba Magqadaza, 80, at the Dimbaza Society for the Aged's service center in Dimbaza,
Eastern Cape. © 2023 Taurai Maduna/Human Rights Watch

Recommendations

To the National Department of Social Development

- Fulfill the human rights and statutory obligations of the state to deliver quality care and support services for older people regardless of their ability to pay. To this purpose, the National Department of Social Development should:
 - Urgently develop its capacity to deliver community- and home-based care and support services effectively;
 - Establish and implement a system to determine and make public the number of older people who require community-based care and support services;
 - Establish ongoing monitoring mechanisms to assess accurately the requirements of older persons;
 - Ensure that provincial governments allocate sufficient funds to the delivery of community- and home-based care and support services, based on the number and needs of older people, to cover the full core costs of services envisaged under the Older Persons Act;
 - Ensure that any private providers, including non-profit, non-commercial organizations, involved in the delivery of care services for older people are robustly regulated with clear guidance on ensuring non-discriminatory access and pricing, and that they receive sufficient funding to provide quality services to all without discrimination.
- Develop and implement a strategy to employ and train more social workers with the aim of reaching the numbers required to implement the Older Persons Act.
- Transparently review and assess whether the Grant-in-Aid and/or other social security mechanisms are sufficient to guarantee older people the resources necessary to access adequate care and support so that they can live independently and within the community.
- Publicly demonstrate how the government is using the maximum of its available resources to support the Grant-in-Aid and/or other social security mechanisms for the care and support of older persons, and develop a public plan outlining how the government will as expeditiously as possible increase the level to cover the full

costs to ensure all older people can access adequate care and support to live independently and within the community.

- Provide accurate information to older people and those who provide care and support to them about the Grant-in-Aid and its eligibility criteria.
- Improve coordination and collaboration with other government departments, including the Department of Health; non-profit organizations; and other service providers to ensure more effective implementation of the Older Persons Act.

To the Provincial Departments of Social Development

- Set the budget for community-based care and support services, including home-based services, based on an accurate determination of the number and requirements of older people.
- Apply for sufficient funding, based on the number and requirements of older people, for community-based care and support services from the Provincial Treasury as part of the allocation from the Provincial Equitable Share.
- Regulate any private providers, including non-profit, non-commercial organizations, involved in the delivery of care services for older people, with clear guidance on ensuring non-discriminatory access and pricing, and ensure that they receive sufficient funding to provide quality services to all without discrimination.
- Review and revise overly prescriptive rules attached to funds provided to non-profit service providers that restrict all discretion available to them and curtail their ability to provide services that realize the rights of older people in accordance with the Older Persons Act.
- Pay subsidies owed to non-profit organizations in a timely manner.
- Include an allocation for staff salaries in the subsidy for non-profit organizations, for caregivers, managers, cooks, cleaners, drivers, and others whose work is essential for effective service delivery.
- Ensure that the actual costs incurred by non-profit organizations and their staff to provide services under the act are fully covered and ensure that they do not lose money due to the department's actions or omissions, including by providing back pay if the department is delayed in making payments.
- Improve coordination and collaboration with other government departments, including the Department of Health; non-profit organizations; and other service providers to ensure more effective implementation of the Older Persons Act.

- Actively seek, fund, and build the capacity of new service providers to better respond to older people’s right to community- and home-based care and support services.

To the Provincial Treasuries

- Allocate sufficient funding for community- and home-based care and support services, based on an accurate determination of the number and requirements of older people, as part of the Provincial Equitable Share.

To International Donors

- Support South Africa to generate adequate levels of resources to progressively achieve the realization of older people’s right to live independently and within the community.
- Provide funding for the development of community- and home-based care and support services for older people.

To the African Commission on Human and Peoples’ Rights

- Review and assess South Africa’s efforts to fulfill its obligations towards older people under article 18 of the African Charter on Human and Peoples’ Rights, including with regard to living independently and within the community, including adequate housing, and under article 22 of the Protocol to the African Charter on Human and Peoples’ Rights on the Rights of Women in Africa in its next periodic report.
- Develop a set of guidelines for African states on the realization of the right to live independently and within the community.

Methodology

Human Rights Watch interviewed 63 older people between the ages of 60 and 85 in September and October 2022, and May 2023. We used 60 as the minimum age because the South African Older Persons Act applies to people 60 and older. The age listed for each interviewee is their age at the time of the interview.

In addition, Human Rights Watch interviewed seven non-profit service providers, three volunteer community organizers, one non-profit community caregiver, two family caregivers, and one government social worker. Human Rights Watch also consulted 45 South African researchers, academics, lawyers, non-profit service providers, human rights experts, and members of older people’s organizations and 2 international academics. We complemented our interviews by reviewing national legislation and reports produced by governments, academics, international bodies, and local groups.

All interviews with older people occurred in person in their homes or in community centers in three provinces: Eastern Cape, Gauteng, and Western Cape. Human Rights Watch chose these provinces to ensure that interviewees came from different demographic, economic, and geographic settings.

According to Statistics South Africa, Gauteng and Western Cape have the lowest poverty levels of the nine provinces at 33 and 35 percent respectively; Eastern Cape has the second highest at 71 percent.¹ Eastern Cape had the highest proportion in the country of older people, 11.5 percent in 2022, in its overall population; Gauteng’s population of older people, 8 percent, was below the national average.² Eastern Cape also had a high proportion, 79 percent, of older people in receipt of social grants in 2021; Western Cape had the lowest proportion at 57 percent.³ Gauteng, the country’s economic hub, had the highest number of older people participating in the labor force at 15.5 percent in 2020; Eastern Cape had the lowest at 6 percent.⁴ While the number of interviewees is not

¹ Statistics South Africa, “Poverty,” undated, https://www.statssa.gov.za/?page_id=739&id=1 (accessed March 29, 2023).

² Statistics South Africa, “Marginalised Groups Series Volume VI: The Social Profile of Older Persons, 2017-2021,” 2023, <https://www.statssa.gov.za/publications/03-19-08/03-19-082021.pdf> (accessed May 19, 2023), Table 2.2, p. 9.

³ *Ibid.*, Figure 5.8b, p. 55.

⁴ Statistics South Africa, “Marginalised Groups Indicator Report, 2020,” 2022, <http://www.statssa.gov.za/publications/03-19-05/03-19-052020.pdf> (accessed October 31, 2022), Table 4.3.5, p. 70.

nationally representative, the findings from these three provinces give a strong indication of issues across the country.

In Eastern Cape province, interviews were conducted in the coastal town of East London, the rural village of Gwaba, Mdantsane township, and the town of Dimbaza. In Gauteng province, interviews took place in the Johannesburg suburb of River Park and the township of Alexandra. In Western Cape province, interviews took place in the Cape Town suburbs of Woodstock, Elsie’s River, Grassy Park, and Khayelitsha, a township on the Cape Flats; in Atlantis, an industrial satellite town; and in and around Porterville, a rural town. Human Rights Watch selected these places to ensure a diverse range of geographic settings and experiences since South African society is still predominantly stratified along former apartheid configurations of race.

Older people’s organizations, service centers, and others helped Human Rights Watch identify older people to interview. Criteria for interviewees were that they were aged 60 or over, in line with the definition of an older person in the Older Persons Act; living in the community and not in a residential care facility, often known in South Africa as “old age homes;” and eligible for government-funded home- and community-based care and support services provided for under the Act, should they require them. To be eligible for such services, older people need to be in receipt of the Older Persons Grant. Two older people interviewed did not receive the Older Persons Grant because their income was above the eligibility threshold.

This report refers to the main racial groups recognized by the South African government, which we write as: black African, coloured (a term that refers to Indigenous people and people deemed to be of mixed race in South Africa), Indian/Asian, and white.⁵ The interviewees were racially diverse: 41 black African, 13 coloured, 3 Indian/Asian, and 6 white. Forty-five of the interviewees were women and 18 were men.

⁵ The main racial categories—black African, coloured, Indian/Asian, and white—were the foundation of all apartheid laws and determined who had access and who did not. The categories were hierarchical, with black African at the bottom. They are still used by the South African government; see, for example, their use in Statistics South Africa, “Mid-year population estimates 2022,” July 28, 2022, <https://www.statssa.gov.za/publications/Po302/Po3022022.pdf> (accessed November 16, 2022), Table 5, p. 19.

Interviews were conducted in English or in isiXhosa, isiZulu, Sepedi, or Sesotho with English interpretation. The researcher informed all interviewees about the purpose and voluntary nature of the interviews and the ways that Human Rights Watch would use the information. We obtained informed consent from all interviewees, gave them the opportunity to decline to answer specific questions or end the interview at any time, and took precautions to avoid re-traumatizing the older people interviewed for this report. Human Rights Watch gave no incentives or compensation to interviewees, although it provided them with snacks and covered transportation costs for those who traveled to community centers to be interviewed. We also provided information to interviewees who were unaware of social security entitlements they may be eligible for.

All interviews were one-on-one, when needed also with an interpreter, and they were generally conducted in private settings. Seven older people consented to being interviewed with others in the room: four interviews took place in the presence of a family member and three in the presence of other older people.

To protect interviewees' privacy, Human Rights Watch has withheld some names. Older people's real names are only used if the interviewee specifically agreed to allow us to use their name and Human Rights Watch deemed that no risk would follow the publication of their name. For those who did not want their name included, we created pseudonyms that are indicated by given names and surname initials that do not reflect their real names. Human Rights Watch has also omitted the names of some service providers at their request.

At the time of the interviews, the South African Rand (R) was worth US\$0.05.

During April and May 2023, Human Rights Watch provided the National Department of Social Development and the Eastern Cape, Gauteng, and Western Cape Provincial Departments of Social Development with a summary of our findings and asked each body to respond to specific questions. The Western Cape department responded on May 23, 2023, and its views are reflected in the report. The other departments had not replied by time of publication. Human Rights Watch also contacted private care and support providers included in the report to check the accuracy of their online data. Human Rights Watch received no response to any of those requests.

I. Background

South Africa's apartheid system, which lasted from 1948 to 1994, has left a legacy for all those who lived through it and those who were born after it. As a result of apartheid policies of racial segregation, including in education and employment,⁶ most black African, coloured, and Indian/Asian people who are now over 60 did not have access to decent education and decent work, which limited their ability to save for older age. Many were displaced as children or young people, separated from their families when the apartheid government forcibly removed whole communities using legislation that systematized the segregation of people on the grounds of race.⁷

Today, extreme levels of inequality in income and wealth and high levels of poverty persist,⁸ corruption is rife,⁹ and violent crime continues to rise.¹⁰ These factors all impact the delivery of services for older people, for which the Department of Social Development is responsible. The percentage of black African, coloured, and Indian/Asian older people on low incomes and therefore in receipt of the Older Persons Grant is significantly higher than for white older people.¹¹ This is a direct legacy of apartheid.

⁶ South African History Online, "Apartheid Legislation 1850s to 1970s," undated, <https://www.sahistory.org.za/article/apartheid-legislation-1850s-1970s> (accessed January 23, 2023).

⁷ Sarah Darby and Yizhu Wang, "History of District Six" (blog), undated, <https://historyofdistrict6.wordpress.com/> (accessed November 27, 2022).

⁸ World Bank, "Inequality in Southern Africa: An Assessment of The Southern Africa Customs Union," 2022, <https://documents1.worldbank.org/curated/en/099125303072236903/pdf/P1649270c02a1f06b0a3ae02e57eadd7a82.pdf> (accessed November 21, 2022), pp. 1, 4, 22.

⁹ South Africa Government, "Special Investigating Unit investigates allegations of corruption and maladministration," July 25, 2022, <https://www.gov.za/speeches/special-investigating-unit-investigates-allegations-corruption-and-maladministration-25-jul> (accessed February 24, 2023).

¹⁰ Statistics South Africa, "Experience of crime in SA increased over the 2020/21 period," August 30, 2022, <https://www.statssa.gov.za/?p=15700> (accessed November 18, 2022).

¹¹ Statistics South Africa, "Marginalised Groups Indicator Report, 2020," <http://www.statssa.gov.za/publications/03-19-05/03-19-052020.pdf>, Table 4.3.3, p. 70.

Demographics of Older People

In 2022, South Africa had approximately 5.59 million people aged 60 and older, comprising 9.2 percent of the total population.¹² That means that nearly one-tenth of South Africans spent at least half of their life under apartheid.

According to government statistics, older women comprise 61 percent of people aged 60 and older.¹³ Black African people are disproportionately underrepresented in the older population: they are 81 percent of the total population but only 62 percent of those aged 60 and older.¹⁴ In 2020, 34 percent of older people were not functionally literate,¹⁵ and 55 percent had chronic illnesses compared to only 10 percent of the overall population.¹⁶ Over half, 58 percent, of those aged 75 and older were living with disabilities in 2016.¹⁷

Economic Situation in South Africa

According to the World Bank, South Africa is the most unequal country in the world.¹⁸ Although racial differences are the biggest contributing factor to income inequality, gender also plays a significant role, with women earning 38 percent less than men.¹⁹

In recent years, South Africa's economy suffered because of the Covid-19 pandemic. South Africa experienced a 6.4 percent real decline in GDP in 2020.²⁰ A 2020 Gallup survey found

¹² Statistics South Africa, "Mid-year population estimates 2022," July 28, 2022, <https://www.statssa.gov.za/publications/P0302/P03022022.pdf> (accessed November 16, 2022), p. vii.

¹³ *Ibid.*, Table 6, p. 21.

¹⁴ *Ibid.*

¹⁵ Statistics South Africa, "Marginalised Groups Indicator Report, 2020," <http://www.statssa.gov.za/publications/03-19-05/03-19-052020.pdf>, Table 4.6.3, p. 80.

¹⁶ *Ibid.*, Table 4.4.5, p. 76.

¹⁷ *Ibid.*, Table 5.1.4, p. 85.

¹⁸ Based on Gini coefficients of 164 countries. World Bank, "Inequality in Southern Africa: An Assessment of The Southern Africa Customs Union," <https://documents1.worldbank.org/curated/en/099125303072236903/pdf/P1649270c02a1f06boa3ae02e57eadd7a82.pdf>, p. 1.

¹⁹ *Ibid.*, pp. 4, 22.

²⁰ Development Finance International, Norwegian Church Aid, and Oxfam, "The Crisis of Extreme Inequality in SADC," May 2022, <https://policy-practice.oxfam.org/resources/the-crisis-of-extreme-inequality-in-sadc-fighting-austerity-and-the-pandemic-621370/> (accessed November 21, 2022), p. 10.

that 55 percent of workers stopped working at least temporarily during the second half of the year,²¹ and by November 2022, the general unemployment rate was 33.9 percent.²²

Furthermore, South Africa, like other countries affected by the global cost-of-living crisis, saw significant price rises, with the annual food inflation rate at 12 percent in September 2022 and the annual bread and cereal inflation rate at 19 percent, a 13-year-high.²³ The cost of a 750 milliliter bottle of cooking oil rose 30 percent from R31 (US\$1.7) in September 2021 to R41 (US\$2.3) in September 2022.²⁴ Despite severe disruptions to electricity supplies, known as “loadshedding,”²⁵ electricity prices also rose, including because the national power provider raised electricity tariffs by just under 10 percent in the fiscal year 2023 (FY23).²⁶ Transportation costs increased by nearly 20 percent year-on-year in September 2022.²⁷ All these increases have particularly strained low, fixed incomes, which the majority of older people live on, with almost 75 percent receiving financial social security entitlements, known as “social grants” in South Africa, that are conditional on a low income.²⁸

South Africa has an extensive social security system funded through general taxation,²⁹ and on which the country spends a relatively large portion of its GDP compared to other upper-middle income countries.³⁰ At the end of 2022, nearly 19 million social grants

²¹ Julie Ray, “COVID-19 Put More Than 1 Billion Out of Work,” post to “Gallup” (blog), May 3, 2021, <https://news.gallup.com/poll/348722/covid-put-billion-work.aspx> (accessed November 22, 2022).

²² Statistics South Africa, “Work and Labour Force,” undated, https://www.statssa.gov.za/?page_id=737&id=1 (accessed November 16, 2022).

²³ Statistics South Africa, “Inflation cools for a second month,” October 19, 2022, <https://www.statssa.gov.za/?p=15826> (accessed November 1, 2022).

²⁴ Ibid.

²⁵ CSIR Energy Centre, “Statistics of Utility-scale Power Generation in South Africa 2022,” February 2023, <https://www.csir.co.za/sites/default/files/Documents/Statistics%20of%20power%20in%20SA%202022-CSIR-%5BFINAL%5D.pdf> (accessed April 11, 2023), p. 4.

²⁶ Enerdata, “South Africa allows Eskom to raise electricity prices by 9.6% in 2022-2023,” February 25, 2022, <https://www.enerdata.net/publications/daily-energy-news/south-africa-allows-eskom-raise-electricity-prices-96-2022-2023.html> (accessed November 1, 2022).

²⁷ Transportation costs increased by 17.9 percent. Statistics South Africa, “Consumer Price Index September 2022,” October 19, 2022, <https://www.statssa.gov.za/publications/Po141/Po141September2022.pdf> (accessed November 1, 2022), p. 3.

²⁸ 72.3 percent of older people receive means-tested social grants. Statistics South Africa, “Marginalised Groups Indicator Report, 2020,” <http://www.statssa.gov.za/publications/03-19-05/03-19-052020.pdf>, Table 4.3.1, p. 69.

²⁹ OECD, “Pensions At A Glance: Country Profiles - South Africa,” undated, <https://www.oecd.org/els/public-pensions/PAG2021-country-profile-South-Africa.pdf> (accessed April 12, 2023), p. 2.

³⁰ World Bank, “South Africa: Social Assistance Programs and Systems Review,” 2021, <https://documents1.worldbank.org/curated/en/238611633430611402/pdf/South-Africa-Social-Assistance-Programs-and-Systems-Review.pdf> (accessed May 18, 2023), p. 44.

reached almost 12 million people every month.³¹ The Older Persons Grant, also known as the Old Age Grant, is a means-tested social security entitlement funded by the National Department of Social Development and administered by the South African Social Security Agency (SASSA).³² The National Department of Social Development's estimated budget for FY23 for all household financial social security entitlements was R253 billion (US\$13 billion), of which the Older Persons Grant was R99 billion (US\$5 billion),³³ with approximately 4 million recipients.³⁴ In October 2022, at the time of Human Rights Watch's interviews with older people, the grant was R1,990 (US\$108) per month for people aged 60 to 74, and R2,010 (US\$109) per month for those 75 and older.³⁵ In February 2023, the National Treasury announced increases of R90 (US\$5) and R10 (US\$0.50) per month in April 2023 and October 2023 respectively.³⁶

Because the majority of older people could not access a decent education or decent work for at least half their lives under apartheid, and therefore faced restrictions to save for older age, 87 percent of black African, 81 percent of coloured, and 58 percent of Indian/Asian older people received means-tested social security entitlements in 2020, compared to only 30 percent of white older people.³⁷

Work opportunities are critical to improve the economic situation of those on low incomes. Despite that, in 2020, only 12 percent of all older people participated in the labor force: 20 percent of white, 11 percent of coloured, 10 percent of black African, and 9 percent of Indian/Asian older people.³⁸ These low figures may be explained by the fact that, despite

³¹ South African Social Security Agency, "Ninth Statistical Report: Social Assistance, Period: December 2022," undated, <https://www.sassa.gov.za/statistical-reports/Documents/December%202022%20%20social%20assistance%20%20report.pdf> (accessed April 11, 2023), p. 4.

³² Department of Social Development, "Annual Report For The Year Ended 31 March 2021," 2021, https://www.gov.za/sites/default/files/gcis_document/202111/dsd-annual-report-2021-final.pdf (accessed November 5, 2022), p. 24.

³³ National Treasury, "2023 Estimates of National Expenditure," 2023, <https://www.treasury.gov.za/documents/national%20budget/2023/ene/FULLENE.pdf> (accessed May 21, 2023), Table 19.3, p. 350.

³⁴ Ibid., Table 19.1, p. 348.

³⁵ South African Social Security Agency, "SASSA Social Grants Increases for 2022," undated, <https://www.sassa.gov.za/newsroom/articles/Pages/sassa-social-grants-increase-for-2022.aspx> (accessed October 31, 2022).

³⁶ National Treasury, "Budget 2023, Budget Speech," February 22, 2023, <https://www.treasury.gov.za/documents/National%20Budget/2023/speech/speech.pdf> (accessed March 15, 2023), p. 16.

³⁷ Statistics South Africa, "Marginalised Groups Indicator Report, 2020," <http://www.statssa.gov.za/publications/03-19-05/03-19-052020.pdf>, Table 4.3.3, p. 70.

³⁸ Ibid., Table 4.3.7, p. 70.

constitutional protections against age discrimination in employment and no mandatory retirement age,³⁹ 60 (or 65 at the latest) is considered the normal retirement age and can be written into employment contracts.⁴⁰ In addition, with youth unemployment at 66.5 percent in June 2022,⁴¹ the government has an Employment Tax Incentive (ETI) which encourages employment of people aged 18 to 29.⁴² In 2020, 52 percent of older people lived in a household without an employed adult.⁴³

Government's Responsibilities to Older People

The duty to provide care and support services for older people lies with the Department of Social Development, whose mission is to “transform society ... through the provision of integrated, comprehensive and sustainable social development services.”⁴⁴ The 2006 Older Persons Act is among the parliamentary acts that constitute the legal framework for the department.⁴⁵

Service delivery is decentralized. At the national level, the Department of Social Development is responsible for reforming laws, developing policies, setting norms and standards, running the Older Persons Active Ageing Campaign, and funding the Older Persons Grant. At time of writing, the department had put out for consultation a draft national strategy on ageing for 2022-2027.⁴⁶

Meanwhile, Provincial Departments of Social Development are responsible for the delivery of community- and home-based care and support services under the Older Persons Act in their province. The national regulations on implementing the Older Persons Act specify

³⁹ Constitution of the Republic of South Africa, 1996, Sections 9, 23.

⁴⁰ CHRO South Africa, “Employees retirement age: What the Labour law says,” June 16, 2021, <https://chro.co.za/articles/employees-retirement-age-what-the-labour-law-says/> (accessed November 8, 2022).

⁴¹ South African Government, “Social Employment offers young people hope and opportunity,” June 13, 2022, <https://www.gov.za/blog/desk-president-116> (accessed November 7, 2022).

⁴² South African Revenue Service, “Employment Tax Incentive (ETI),” February 24, 2022, <https://www.sars.gov.za/types-of-tax/pay-as-you-earn/employment-tax-incentive-eti/> (accessed November 23, 2022).

⁴³ Statistics South Africa, “Marginalised Groups Indicator Report, 2020,” <http://www.statssa.gov.za/publications/03-19-05/03-19-052020.pdf>, Table 4.3.17, p. 73.

⁴⁴ Department of Social Development, “Annual Report for the Year Ended 31 March 2021,” https://www.gov.za/sites/default/files/gcis_document/202111/dsd-annual-report-2021-final.pdf, p. 21.

⁴⁵ *Ibid.*, p. 22.

⁴⁶ Department of Social Development, “National Strategy on Ageing for South Africa 2022-27, Consultation Zero Draft,” February 2022.

three categories of service centers. Category A service centers must provide two primary services, such as lunch and physical activity, and have minimal facility and staff requirements. Category B service centers must provide three or more primary services and have more facility and staff requirements. Finally, Category C service centers must provide six primary care services and as many secondary services as possible and have even greater staff and facility requirements.⁴⁷

Provincial governments set the budget and priorities for social development spending, including for services for older people. Provincial treasuries allocate the budget for the Department of Social Development from the Provincial Equitable Share, a system by which national, provincial, and local governments receive an unconditional equitable share of national revenue to carry out their functions and provide basic services.⁴⁸

Provincial departments use part of this budget to subsidize non-profit organizations to fulfill the government's duties under the Older Persons Act to deliver community- and home-based care and support services.

The Gauteng Department of Social Development plans to shift from this model. In a consultation with non-profit organizations in September 2022, the Gauteng department expressed its aim to reduce the over-reliance on non-profits to deliver services by building state capacity to provide necessary services instead.⁴⁹ According to the department, non-profit organizations cannot respond to the scale of needs and the current partnership model is unsustainable because resources are going to non-profits at the expense of developing state capacity.⁵⁰ The Western Cape Department of Social Development told Human Rights Watch that it has not identified any need to take over services from non-profits, and it does not have the capacity to render more services directly itself.⁵¹

⁴⁷ Southern African Legal Information Institute, "Regulations Regarding Older Persons," April 1, 2010, http://www.saflii.org/za/legis/consol_reg/rrop352/ (accessed November 25, 2022).

⁴⁸ National Treasury, "1988 Medium Term Policy Statement," undated, <http://www.treasury.gov.za/documents/mtbps/1998/5.pdf> (accessed November 10, 2022), p. 58.

⁴⁹ Gauteng Department of Social Development, "Institutional Realignment Project (IRP) 2022-2027, "Changing the way we do things", NPO Consultation session," September 6-7, 2022, <https://cmbinary.gauteng.gov.za/Media?path=socdev/Documents/Documents/Institutional%20Realignment%20Project%20Non%20Profit%20Organisation%20Consultation%2006%20and%2007%20September%202022.pptx&Item=396&Type=Documents&Location=/socdev> (accessed April 1, 2023), Slide 6.

⁵⁰ Ibid., Slide 7.

⁵¹ Email message from Monique Mortlock-Malgas, spokesperson to MEC Sharna Fernandez, Western Cape Department of Social Development, to Human Rights Watch, May 23, 2023.

Older people who receive the Older Persons Grant and require support with their day-to-day activities are eligible for the Grant-in-Aid, a monthly social grant of R500 (US\$27) to pay someone for full-time care and support at home.⁵² Older people who require some, or part-time, support are not eligible. The Grant-in-Aid is only available to eligible people who receive two other social security entitlements, the Disability Grant and the War Veterans Grant.⁵³ As with the Older Persons Grant, it is also funded by the National Department of Social Development and administered by the South African Social Security Agency. The National Department of Social Development's estimated budget for FY23 for the Grant-in-Aid was R2.1 billion (US\$1 million),⁵⁴ with approximately 370,000 recipients.⁵⁵ In September 2022, at the time of Human Rights Watch's first interviews with older people, the grant was R480 (US\$26).⁵⁶ In February 2023, the National Treasury announced increases of R20 (US\$1) and R10 (US\$0.50) per month in April 2023 and October 2023 respectively.⁵⁷

The Department of Social Development also employs social workers. However, according to the Minister for Social Development, as of March 2022, there was a shortage of 52,000 social workers across the country, including an additional 3,000 necessary⁵⁸ to implement the Older Persons Act.⁵⁹ The lack of social workers, according to the minister, was due to budget constraints.⁶⁰

All state bodies providing services for older people are supposed to be engaged in executing the Older Persons Act in an integrated way,⁶¹ but their efforts can be

⁵² South Africa Government, "Grant in aid," undated, <https://www.gov.za/services/social-benefits/grant-aid> (accessed April 1, 2023).

⁵³ Ibid.

⁵⁴ National Treasury, "2023 Estimates of National Expenditure," <https://www.treasury.gov.za/documents/national%20budget/2023/ene/FullENE.pdf>, Table 19.3, p. 350.

⁵⁵ Ibid., Table 19.1, p. 348.

⁵⁶ South African Social Security Agency, "SASSA Social Grants Increases for 2022," <https://www.sassa.gov.za/newsroom/articles/Pages/sassa-social-grants-increase-for-2022.aspx>.

⁵⁷ South African Social Security Agency, "SASSA Grant Increases for 2023 & 2024," undated, <https://www.sassagrants.co.za/sassa-grant-increases-for-2023/> (accessed April 1, 2023).

⁵⁸ Human Rights Watch was unable to confirm the number of social workers required to implement the Older Persons Act.

⁵⁹ Democratic Alliance, "South Africa faces shocking shortage of thousands of social workers," March 31, 2022, <https://www.da.org.za/2022/03/south-africa-faces-shocking-shortage-of-thousands-of-social-workers> (accessed November 17, 2022).

⁶⁰ Parliamentary Monitoring Group, "Question NW2319 to the Minister of Social Development," August 16, 2022, <https://pmg.org.za/committee-question/19718/> (accessed May 16, 2023).

⁶¹ Older Persons Act, No. 13 of 2006, Section 3 (1).

uncoordinated. A 2018 survey of service centers for older people subsidized by the Eastern Cape Department for Social Development found that only 1 out of 25 service centers surveyed were affiliated with the provincial health department.⁶² Amendments to the act tabled in 2022, but not yet adopted at time of writing, attempt to address this current lack of coordination between the Department of Social Development and others involved in its implementation.⁶³ To improve coordination, the Western Cape Department of Social Development established an Older Persons Reference Group that meets quarterly and is comprised of various departments, including the Department of Health, and non-profit organizations. It also funds the Western Cape Older Persons Forum, which advocates for the rights of older people.⁶⁴

The Department of Health is responsible for community-based health services, but these have focused on South Africa's disease burden priorities and have not included social care and support for older people.⁶⁵ At time of writing, the Department of Health was developing a strategy on ageing and health for 2022-2027, the initial draft of which included collaborations with the Department of Social Development on community- and home-based care and services.⁶⁶

Corruption

Although not the main focus of this report, the loss of funding due to corruption has impacted the ability of both government and non-profit organizations to deliver services effectively. The Department of Public Service and Administration is responsible for establishing anti-corruption norms and standards.⁶⁷

⁶² Ntsikelelo Pefile, Bomkazi Fodo, and Seyi Amosun, "Exploration of Service Centres for Older Persons in the Eastern Cape Province, South Africa," *South African Journal of Physiotherapy* 78 (1), January 2022, <https://sajp.co.za/index.php/sajp/article/view/1567/2828> (accessed November 23, 2022).

⁶³ Department of Social Development, "Older Persons Amendment Bill 2022", *Government Gazette*, March 11, 2022, https://www.gov.za/sites/default/files/gcis_document/202203/46032gon1872.pdf (accessed November 13, 2022), pp. 49-50.

⁶⁴ Email message from Monique Mortlock-Malgas, May 23, 2023.

⁶⁵ South Africa Department of Health, "Policy Framework and Strategy for Ward Based Primary Healthcare Outreach Teams 2018/19 – 2023/24," April 4, 2018, https://www.health.gov.za/wp-content/uploads/2020/11/policy-wbphcot-4-april-2018_final-copy.pdf (accessed November 17, 2022), p. 17.

⁶⁶ Department of Health, "National Department of Health strategy on Ageing and Health 2022-2027, Zero Draft," undated, p. 23.

⁶⁷ Public Service Act, No. 103 of 1994, Section 3 (1) (h).

There have been several inquiries into corruption in South Africa, including the Judicial Commission of Inquiry into Allegations of State Capture, also known as the Zondo Commission.⁶⁸ In June 2022, the commission estimated that about R57 billion (US\$3 billion) spent by the state had been “tainted” by state capture, namely the redirection of state resources for personal or corporate gain, during former President Jacob Zuma’s tenure in 2009-2018.⁶⁹ In September 2022, the Special Investigating Unit said it had evidence that former National Lotteries Commission board members and senior executives had corruptly taken approximately R526 million (US\$28.5 million) in lottery funds and that they were investigating a further R906 million (US\$50 million).⁷⁰ The National Lotteries Commission is a funder for non-profit organizations, including those that deliver services to older people.⁷¹

Furthermore, corruption related to the South African Social Security Agency grants is of particular concern for older people. Between 2012 and 2022, 1,174 people, including 761 officials, were investigated for unduly benefiting from the social grant system, at an estimated loss of R537 million (US\$29 million).⁷²

While the impact that corruption has had on the availability of services and support for older people remains unclear, the findings of these investigations give reason for concern that government resources for older people are being lost to corruption.

⁶⁸ President of the Republic of South Africa, “Proclamation No. 3 of 2018,” *Government Gazette*, January 25, 2018, https://www.statecapture.org.za/uploads/Terms_Of_Reference.pdf (accessed November 18, 2022).

⁶⁹ Public Affairs Research Institute, “The Zondo Commission: A bite-sized summary,” September 2022, <https://47zhcvtioul2ftip9rxo9fj9-wpengine.netdna-ssl.com/wp-content/uploads/2022/09/PARI-Summary-The-Zondo-Commission-A-bite-sized-summary-v360.pdf> (accessed November 18, 2022), p. 6.

⁷⁰ Parliament of the Republic of South Africa, “Media Statement: Trade, Industry and Competition Committee Hears SIU Interim Investigation Into National Lotteries Commission Now Amounts to Millions,” September 27, 2022, <https://www.parliament.gov.za/press-releases/media-statement-trade-industry-and-competition-committee-hears-siu-interim-investigation-national-lotteries-commission-now-amounts-millions> (accessed November 18, 2022).

⁷¹ National Lotteries Commission, “What Organisations Are Funded,” undated, <https://www.nlcsa.org.za/what-organisations-are-funded/> (accessed November 18, 2022).

⁷² National Assembly, “Question For Written Reply Number 3149,” October 13, 2022, https://www.parliament.gov.za/storage/app/media/Docs/exe_rq_na/404a83eb-6ee3-402a-bb28-7c4dd74574d6.pdf (accessed March 15, 2023).

Crime

There is no national data on the prevalence of violence, abuse, and neglect of older people in South Africa.⁷³ However, rates were high in one small localized 2014 study on elder abuse,⁷⁴ with 64 percent of older men and 60 percent of older women reporting abuse in Mafikeng, North West province.⁷⁵ A 2021-2022 survey found that older people were more likely than the general population to be affected by consumer fraud, robbery, and personal theft.⁷⁶ According to a 2019-2020 survey, households headed by older people were as likely as other households to be the victim of household crimes, such as housebreaking and burglary.⁷⁷ A further 2019 study found that homicides of those 60 and older mainly occurred in a house, during the week and daytime, while homicides of younger people tended to happen in public spaces, during the weekend and at night.⁷⁸ Thus, older people isolated in their communities without access to care and support services may be at greater risk of crime.

These findings remain pertinent as crime rates, including sexual and gender-based violence,⁷⁹ continue to rise.⁸⁰

⁷³ Roxanne Jacobs, Marguerite Schneider, and Nicolas Farina, “Justice for Older People in South Africa,” post to “LTC Covid” (blog), June 15, 2021, <https://ltccovid.org/2021/06/15/justice-for-older-people-in-south-africa/> (accessed January 24, 2023).

⁷⁴ According to the World Health Organization, elder abuse includes “physical, sexual, psychological and emotional abuse; financial and material abuse; abandonment; neglect; and serious loss of dignity and respect.” World Health Organization, “Abuse of older people,” June 13, 2022, <https://www.who.int/news-room/fact-sheets/detail/abuse-of-older-people> (accessed January 24, 2023).

⁷⁵ Paul Bigala and Natal Ayiga, “Prevalence and predictors of elder abuse in Mafikeng Local Municipality in South Africa,” *African Population Studies* 28 (1), April 2014, <https://doi.org/10.11564/28-1-500> (accessed April 11, 2023).

⁷⁶ Governance, Public Safety and Justice Survey 2020-2021 cited in Statistics South Africa, “Marginalised Groups Series Volume VI: The Social Profile of Older Persons, 2017-2021,” <https://www.statssa.gov.za/publications/03-19-08/03-19-082021.pdf>, Figure 7.4, p. 67.

⁷⁷ Governance, Public Safety and Justice Survey 2019-2020 cited in Statistics South Africa, “Marginalised Groups Series IV: The Social Profile of Older Persons, 2015-2019,” 2021, <http://www.statssa.gov.za/publications/03-19-08/03-19-082019.pdf> (accessed April 11, 2023), p. 84.

⁷⁸ L. Swart, S. Buthelezi, and M. Seedat, “The Incidence and Characteristics of Homicides in Elderly Compared with Non-elderly Age Groups in Johannesburg, South Africa,” *South African Medical Journal* 109 (6), June 2019, http://www.scielo.org.za/scielo.php?script=sci_arttext&pid=S0256-95742019000600016 (accessed December 14, 2022).

⁷⁹ Human Rights Watch, “South Africa: Broken Promises to Aid Gender-Based Violence Survivors,” November 24, 2021, <https://www.hrw.org/news/2021/11/24/south-africa-broken-promises-aid-gender-based-violence-survivors>; Human Rights Watch, “Submission to the Committee on the Elimination of Discrimination Against Women Review of South Africa- 80th Session,” September 29, 2021, <https://www.hrw.org/news/2021/09/29/submission-committee-elimination-discrimination-against-women-review-south-africa>.

⁸⁰ Statistics South Africa, “Experience of crime in SA increased over the 2020/21 period,” August 30, 2022, <https://www.statssa.gov.za/?p=15700> (accessed November 18, 2022).

II. The Right to Live Independently and Within the Community

There are always new problems with the lack of 24-hour assistance. There's no structure, no programs. Older people are just literally left on their own.

— Nosiphiwo Tetana, service center manager in Eastern Cape, September 28, 2022⁸¹

The Older Persons Act of 2006 enshrines the right of all older people to “live in an environment catering for his or her changing capacities”⁸² and aims to “shift the emphasis from institutional care to community-based care.”⁸³ In doing so, the act attempts to address an apartheid legacy; namely, the emphasis on residential facilities to provide care and support for older people.

Under apartheid, social services were segregated by race, with far better services available to white people.⁸⁴ Although white people comprised an estimated 16 percent of the population in South Africa in 1980,⁸⁵ a year later there were 426 old age homes for white older people, 15 for black African older people, and 2 for Indian/Asian older people.⁸⁶ In 1982, 11 percent of white people aged 65 or older were reported to be living in state-run, state-subsidized, or private residential care facilities, which was reported to be the highest percentage of older people living in residential facilities in the world at the time.⁸⁷ A small number of white older people, therefore, had access to a comparatively large number of facilities, while black African, coloured, and Indian/Asian older people had access to virtually none.

⁸¹ Human Rights Watch interview with Nosiphiwo Tetana, service center manager, Dimbaza, September 28, 2022.

⁸² Older Persons Act, Section 7 (e).

⁸³ *Ibid.*, Section 2 (c).

⁸⁴ Aziza Seedat, “Crippling A Nation: Health in Apartheid South Africa,” London: International Defence and Aid Fund for Southern Africa, April 1984, p. 78.

⁸⁵ South African Institute of Race Relations, “Survey of Race Relations in South Africa 1982,” cited in The Africa Fund, “South Africa Fact Sheet,” March 1984, <https://africanactivist.msu.edu/recordFiles/210-849-30351/al.sff.document.af000036.pdf> (accessed May 17, 2023), p. 1.

⁸⁶ South African Institute of Race Relations, “Survey of Race Relations in South Africa 1982,” p. 551, cited in Aziza Seedat, “Crippling A Nation: Health in Apartheid South Africa,” p. 77.

⁸⁷ Daily News, Durban, September 20, 1982, cited in Aziza Seedat, “Crippling A Nation: Health in Apartheid South Africa,” p. 78.

In 2021, 27,623 older people, or 0.5 percent of the total population of older people, were living in the 417 residential facilities registered with the Department of Social Development.⁸⁸ Human Rights Watch has not been able to verify the number of unregistered facilities.

As noted above, the South African government established the Older Persons Act to provide a range of community- and home-based care and support services for those whose income falls below a certain level. Community-based care and support services under the act can include economic empowerment, recreational, and intergenerational activities; informational, educational, and counselling services, including on “HIV and AIDS, care for orphans, Alzheimer’s, dementia and basic emergency care;” spiritual, cultural, medical, civic, and social services; nutritious meals; skills-building for livelihoods; professional care and rehabilitation to ensure independent living; and integrated community care.⁸⁹

For those grant recipients who are identified as “frail older people,”⁹⁰ the Older Persons Act also provides for home-based care and support services which are “a comprehensive range of integrated services,” professional or lay, that include hygiene and physical care; rehabilitation programs to support mobility, including assisted devices; respite care; informational, educational, and counselling services on ageing to family and community members; and free health care.⁹¹

Unavailability of Community-Based Care and Support Services

Although the goal of the Older Persons Act was intended to increase the provision of community-based care for older people, Human Rights Watch found that there are insufficient care and support services to realize the rights of older people in South Africa.

⁸⁸ Department of Social Development, “Older Persons Services in South Africa,” Presentation to the COPSAN Meeting, March 25, 2021, Slide 11; Statistics South Africa, “Mid-year population estimates, 2021,” July 19, 2021, <https://www.statssa.gov.za/publications/Po302/Po3022021.pdf> (accessed April 12, 2023), Table 6, p. 19.

⁸⁹ Older Persons Act, Section 11 (2).

⁹⁰ A “frail older person” is defined in the Older Persons Act as “an older person in need of 24-hour care due to a physical or mental condition which renders him or her incapable of caring for himself or herself.” Older Persons Act, Section 1.

⁹¹ Older Persons Act, Section 11 (3).

In large part, this is due to the government's failure to set service provision targets based on an accurate assessment of the number of older people eligible for such services. Instead, the government sets targets based on the cost of services and the government's budget, which inevitably means that these targets do not reflect the real numbers of eligible older people. Furthermore, although there is recognition that service levels are too low, there continues to be a lack of harmonization across provincial plans to increase access. Finally, the government allocates insufficient funding to non-profit organizations that are primarily responsible for providing community- and home-based services. Non-profit service providers are further constrained by the amount of their government-funded subsidy and other government restrictions.

Service Provision Targets Not Based on Scale of Needs

Exact data on how many older people in South Africa currently require care and support services is unavailable. In 2015, the World Health Organization estimated that 38 percent of those aged 65 to 74 in the country and 49 percent of those aged 75 and older required assistance with at least one activity of daily living: eating, bathing, dressing, getting in and out of bed, and/or using the toilet.⁹²

In 2016, 35 percent of people aged 65 to 74 had disabilities, rising to 58 percent among people over 75 years.⁹³ In 2020, 56 percent of older people had one or more chronic illnesses.⁹⁴ There is no nationally representative data on dementia.⁹⁵ Alzheimer's Disease International estimated a dementia prevalence rate in sub-Saharan Africa in 2015 ranging from 1 percent among older people aged 60 to 64 to 26 percent for those aged 90 and older.⁹⁶ A 2017 study of isiXhosa speakers in a low income rural region in South Africa

⁹² World Health Organization, "World Report on Ageing and Health," 2015, <https://apps.who.int/iris/handle/10665/186463> (accessed November 17, 2022), p. 68.

⁹³ Statistics South Africa, "Marginalised Groups Indicator Report, 2020," <http://www.statssa.gov.za/publications/03-19-05/03-19-052020.pdf>, Table 5.1.4, p. 85.

⁹⁴ Ibid., Table 4.4.5, p. 76.

⁹⁵ Roxanne Jacobs, Marguerite Schneider, Nicolas Farina, Petra du Toit, and Sara Evans-Lacko, "Stigma and its implications for dementia in South Africa: a multi-stakeholder exploratory study," *Ageing & Society*, June 2022, <https://doi.org/10.1017/S0144686X2200040X> (accessed November 23, 2022).

⁹⁶ Alzheimer's Disease International, "World Alzheimer Report 2015, The Global Impact of Dementia," August 2015, <https://www.alzint.org/u/WorldAlzheimerReport2015.pdf> (accessed May 17, 2023), Table 2.6, p. 20.

found higher than expected levels for those aged 60 to 64, at 6 percent, rising to 20 percent for those aged 85 and older.⁹⁷

The Department of Social Development’s target for community-based care and support services “due to affordability” is limited to 20 percent of “active vulnerable older persons,” defined as retired older people who can function independently, are still mobile and self-sufficient, and can perform daily tasks with ease, and 3 percent of “vulnerable frail older persons,” defined as older people whose “physical or mental condition renders them in need of 24-hour continuous care.”⁹⁸ Although there is no exact figure of how many older people require care and support services, it is believed to be significantly higher than the government’s current targets, given what is known about who requires assistance with activities of daily living and the levels of chronic illness, disability, and dementia among older people. While the South African Older Persons Forum told Human Rights Watch that the Department of Social Development considered the funding model that sets these targets to be outdated,⁹⁹ at time of writing the department had not responded to our request for information on how it set these targets.

Moreover, the department has not even met its already too low targets. In 2021, the Department of Social Development reported 1,713 registered community-based care and support providers that deliver services to 97,923 older people, 90 percent of which are subsidized by the government.¹⁰⁰ While there is no data on who requires care and support services, that figure is less than 3 percent of the 3.7 million older people who were receiving the Older Persons Grant at that time.¹⁰¹

⁹⁷ Celeste de Jager, William Msemburi, Katy Pepper, and Marc Combrinck, “Dementia prevalence in a rural region of South Africa: a cross-sectional community study,” *Journal of Alzheimer’s Disease* 60, 2017, <https://pdfs.semanticscholar.org/d59b/f43dbce21bfc2cdoe804bd26df30dofd6c4a.pdf> (accessed November 23, 2022).

⁹⁸ Department of Social Development, “Community Based Care and Support Services Model, Older Persons,” undated, pp. 6, 31-32.

⁹⁹ Email message from Roedolf Kay, Coordinator of the South African Older Persons Forum, to author, May 27, 2023.

¹⁰⁰ Department of Social Development, “Older Persons Services in South Africa,” Presentation to the COPSAN Meeting, Slide 10.

¹⁰¹ National Treasury, “2022 Estimates of National Expenditure,” <http://www.treasury.gov.za/documents/national%20budget/2022/ene/FullENE.pdf>, p. 340.

The Western Cape Department of Social Development estimates that, based on poverty levels and other social issues, 60 percent of older people in the province require access to community-based services from one or more of the departments of social development, health, or human settlements.¹⁰²

Sylvia Lusiti, 71, who is blind and visits a service center in Dimbaza, Eastern Cape, is aware that government funding is insufficient for the services that older people are entitled to. “The government says that it’s too much on their shoulders to care for us,” she said. “It’s the money that talks. Food needs money, broken taps and toilets need money. People have different mindsets, they have dementia. There are a lot of things that require money.”¹⁰³

Lack of community-based services can affect older people’s mental well-being. Marhafungana Silwanyana, 75, said there were no services for older people, social workers, or community caregivers where he lives in Mdantsane, a township in Eastern Cape. He expressed feeling isolated and despondent at home all day:

We have nothing to do, just sitting in the house. Sometimes, I wish to go and see people, but I’m always not feeling well. The days are long and boring. It’s really quite bad. I didn’t think my life would be like this.¹⁰⁴

As a result of the lack of adequate budget allocations, hundreds of thousands of older people are not able to access the basic care and support services they are entitled to so they can live in dignity and are denied their fundamental right to live independently within the community.

Disparities in Provincial Plans to Increase Access to Services

As noted earlier, provincial governments are responsible for providing support services to older people entitled to them. Some provincial governments have acknowledged the need to increase older people’s access to services. However, provincial plans are inconsistent,

¹⁰² Email message from Monique Mortlock-Malgas, May 23, 2023.

¹⁰³ Human Rights Watch interview with Sylvia Lusiti, Dimbaza, September 29, 2022.

¹⁰⁴ Human Rights Watch interview with Marhafungana Silwanyana, Mdantsane, October 1, 2022.

resulting in older people in some provinces having greater access to services and support than in others.

Themba Magqadaza, 80, felt older people were treated differently based on where they lived. “Being an elder in the Eastern Cape feels like I’m part of another country, not South Africa, as there is so much that other provinces are doing for older people but not here,” he said. “For example, they supplement with food parcels. We don’t get that privilege here.”¹⁰⁵

Furthermore, even the largest planned increases would only cover a small proportion of those believed to be entitled to services.

The government has an obligation to progressively realize access to care and support services for older people and to move as expeditiously and effectively as possible toward meeting this obligation. At all times, the government should fulfill its obligations without discrimination. The government is required to take the necessary steps to achieve full enjoyment of the rights contained in the International Covenant on Economic, Social and Cultural Rights (ICESCR) “to the maximum of its available resources,” which still exists even in times of severe economic constraints. When the number of older people receiving support, or the funding for those support services, is projected to decline in the face of growing need, such retrogressive measures may violate South Africa’s international human rights obligations.

The Gauteng Department of Social Development has recognized that increases in life expectancy necessitate more services for older people.¹⁰⁶ In the fiscal year 2020 (FY20), when 51 percent of older people in Gauteng had chronic illnesses (or 618,000 people),¹⁰⁷ the number of older people accessing community-based care and support services was only 17,436, and projected to rise by 41 percent to 24,617 in FY23.¹⁰⁸ However, the annual budget for services for older people decreased by 7 percent, from R350 million (US\$19

¹⁰⁵ Human Rights Watch interview with Themba Magqadaza, Dimbaza, September 29, 2023.

¹⁰⁶ Gauteng Department of Social Development, “Strategic Plan 2020-2025,” 2020, <https://www.gauteng.gov.za/Publications/TagPublications?tag=Strategic%20Plan%202020-2025> (accessed November 9, 2022), p. 30.

¹⁰⁷ Statistics South Africa, “Marginalised Groups Indicator Report, 2020,” <http://www.statssa.gov.za/publications/03-19-05/03-19-052020.pdf>, Table 4.4.5, p. 76

¹⁰⁸ Gauteng Department of Social Development, “2022-2023 Annual Performance Plan,” 2022, <https://www.gpl.gov.za/wp-content/uploads/2022/05/GDSD-2022-23-APP.pdf> (accessed November 9, 2022), p. 134.

million) in FY20¹⁰⁹ to R326 (US\$18 million) in FY23,¹¹⁰ and the Gauteng Department of Social Development failed to meet its projected increase, with the number of older people accessing services only rising to 19,675.¹¹¹ What is more, the budget cuts would result in nearly 4,000 fewer older people accessing care and support services in FY23 than in the fiscal year 2022 (FY22).¹¹²

In April 2023, non-profit organizations protested against FY23 budget cuts across different sectors.¹¹³ The following month, the Gauteng premier announced that the budget cuts would be reversed, and non-profits paid the same as in FY22.¹¹⁴ At time of writing, a number of service centers for older people had not signed their FY23 Service Level Agreement with the department.¹¹⁵

The Eastern Cape Department of Social Development committed to increasing the number of older people accessing community-based care and support services by 34.5 percent from 14,872 in FY20 to 20,003 in FY23.¹¹⁶ In 2020, 62.5 percent of older people in Eastern Cape had chronic illnesses (or 435,000 people).¹¹⁷ However, despite the department's commitment to increase access to services by 34.5 percent, it only increased its annual budget for such services by 16 percent from R186.6 million (US\$10 million) in FY20 to R216

¹⁰⁹ Ibid., p. 142.

¹¹⁰ Gauteng Provincial Government, "Gauteng Province Estimates of Provincial Revenue and Expenditure 2023," March 9, 2023, <https://www.gauteng.gov.za/Departments/DepartmentPublicationDetails/%7Bef48525d-21b5-41d8-ae91-4a4778a9acef%7D?departmentId=CPM-001013> (accessed April 19, 2023), Table 6.8, p. 239.

¹¹¹ Ibid., p. 240.

¹¹² Ibid.

¹¹³ Takudzwa Pongweni and Will Clark, "What about the children, the disabled, the mentally ill? NPOs blast Gauteng's reconfigured social welfare budget," *Daily Maverick*, April 13, 2023, <https://www.dailymaverick.co.za/article/2023-04-13-npos-blast-gautengs-reconfigured-social-welfare-budget/> (accessed May 27, 2023).

¹¹⁴ Phathu Luvhengo, "Gauteng NGOs will be paid by May 15, budget cuts to be reversed: Lesufi," *TimesLIVE*, May 4, 2023, <https://www.timeslive.co.za/news/south-africa/2023-05-04-gauteng-ngos-will-be-paid-by-may-15-budget-cuts-to-be-reversed-lesufi/> (accessed May 27, 2023).

¹¹⁵ Human Rights Watch interview with Kidi Mofube, service center manager and Chairperson, Johannesburg Older Persons Forum, Johannesburg, May 22, 2023.

¹¹⁶ Eastern Cape Department of Social Development, "Annual Performance Plan 2020/21 – 2023/24," 2021, [http://www.ecdsd.gov.za/knowledgehub/Annual%20Performance%20Plan/2021-22%20TO%202023-24%20ANNUAL%20PERFORMANCE%20PLAN%20\(1\).pdf](http://www.ecdsd.gov.za/knowledgehub/Annual%20Performance%20Plan/2021-22%20TO%202023-24%20ANNUAL%20PERFORMANCE%20PLAN%20(1).pdf) (accessed November 9, 2022), p. 73.

¹¹⁷ Statistics South Africa, "Marginalised Groups Indicator Report, 2020," <http://www.statssa.gov.za/publications/03-19-05/03-19-052020.pdf>, Table 4.4.5, p. 76.

million (US\$12 million) in FY23,¹¹⁸ and the number of older people accessing services only rose by 392 (less than 3 percent) to 15,264.¹¹⁹

The Western Cape Department of Social Development recognized in 2020 that the growth in numbers of people older than 85 has implications for frail care and support services and emphasized community-based and alternative models to residential care.¹²⁰ At that time, 55 percent of people 60 and older in the Western Cape had chronic illnesses (or 390,000 people).¹²¹ Despite this, the number of subsidies for older people receiving community- and home-based care and support services was projected to decline by more than 15 percent over three years, from 16,396 in FY20 to 13,887 in FY23.¹²² Meanwhile, the annual budget for services for older people declined by 8 percent over this period, from R268.4 million (US\$14.5 million) in FY20 to R246 million (US\$13.5 million) in FY23.¹²³

Reductions in subsidies to non-profit organizations have resulted in several service centers for older people closing down, mainly in rural areas.¹²⁴ The department told Human Rights Watch that its budget for community-based care and support services depended on how much it had left once it had met its contractual obligations to residential, and assisted and independent living facilities. In FY23 this was R196 million (US\$10 million) and R5 million (US\$254,000) respectively, leaving R34 million (US\$1.7 million) for community-based care and support services. The department recognized that this amount was not adequate to provide for the care and support older people required, but its

¹¹⁸ Eastern Cape Provincial Treasury, “Estimates of Provincial Revenue and Expenditure 2023/24,” undated, <https://www.ectreasury.gov.za/modules/content/files/Documents/Annual%20Reports/Eastern%20Cape%20Provincial%20Department%20Annual%20Reports/2023/Treasury%20Estimates%202023.pdf> (accessed April 19, 2023), Table 13, p. 236.

¹¹⁹ *Ibid.*, Table 15, p. 237.

¹²⁰ Western Cape Government Department of Social Development, “Strategic Plan for 2020-2025,” 2020, https://www.westerncape.gov.za/sites/www.westerncape.gov.za/files/dsd_strategic_plan_2020_-_2025.pdf (accessed November 9, 2022), pp. 7, 28.

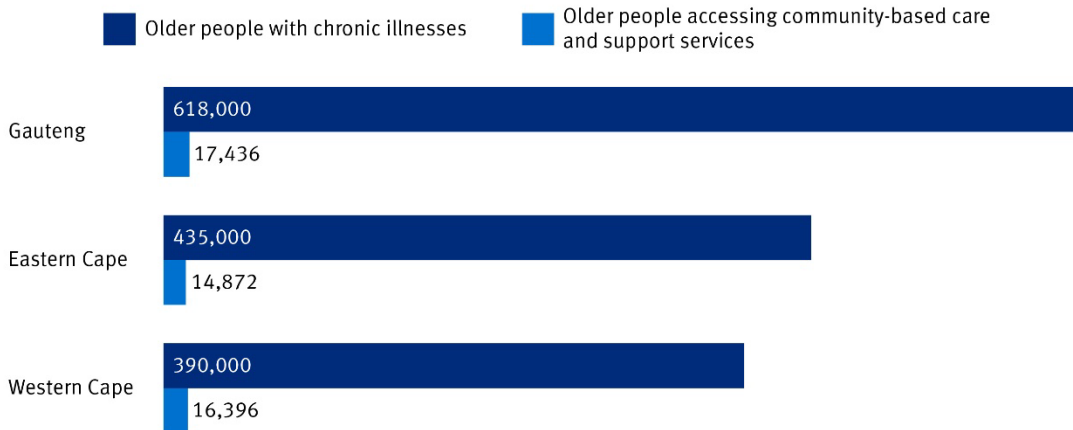
¹²¹ Statistics South Africa, “Marginalised Groups Indicator Report, 2020,” <http://www.statssa.gov.za/publications/03-19-05/03-19-052020.pdf>, Table 4.4.5, p. 76.

¹²² Western Cape Government Department of Social Development, “Annual Performance Plan for 2022/2023,” 2022, https://www.westerncape.gov.za/sites/www.westerncape.gov.za/files/dsd_annual_performance_plan_2022.23.pdf (accessed November 9, 2022), p. 34.

¹²³ Western Cape Provincial Treasury, “Western Cape Province Estimates of Provincial Revenue and Expenditure 2023/24,” March 14, 2023, <https://www.westerncape.gov.za/provincial-treasury/files/atoms/files/Western%20Cape%20Estimates%20of%20Provincial%20Revenue%20and%20Expenditure%202023.pdf> (accessed April 19, 2023), Table 9.2, p. 311.

¹²⁴ Parliamentary Monitoring Group, “Western Cape Appropriation Bill: Social Development, Meeting Summary,” March 17, 2023, <https://pmg.org.za/committee-meeting/36594/> (accessed May 27, 2023).

Need and Access to Community-Based Care Data from 2020



Source: Statistics South Africa, "Marginalised Groups Indicator Report, 2020," Table 4.4.5, p. 76, Eastern Cape Department of Social Development, "Annual Performance Plan 2020/21 – 2023/24, Gauteng Department of Social Development, "2022-2023 Annual Performance Plan" and Western Cape Government Department of Social Development, "Annual Performance Plan for 2022/2023".

repeated attempts to secure more funding through the Medium Term Expenditure Framework, the process which facilitates budget planning, had been unsuccessful.¹²⁵

Insufficient Funding to Non-Profit Organizations that Deliver Basic Services

The government of South Africa contracts with non-profit institutions to provide the services due to older people under the Older Persons Act. However, in 2010, the Free State High Court held that Department of Social Development's subsidies paid to applicants providing statutory services to older people were substantially inadequate to meet older people's needs.¹²⁶ Subsequent judgments in the same case found that when a provincial Department of Social Development enters into agreements with non-profit organizations to provide constitutionally and statutorily mandated services on its behalf, the department

¹²⁵ Email message from Monique Mortlock-Malgas, May 23, 2023.

¹²⁶ *National Association of Welfare Organisations and Non-Government Organisations, N.G. Social Services Free State, and Free State Care In Action v. Member of the Executive Council for Social Development, Free State Head of the Department of Social Development, and Free State National Minister of Social Development*, Free State High Court, Case No.: 1719/2010, Judgement, August 5, 2010, <http://www.saflii.org/za/cases/ZAFSHC/2010/73.pdf> (accessed November 10, 2022), paras. 35, 47.

must fund the full core costs of services except where non-profits are able to raise funds from elsewhere.¹²⁷

The National Planning Commission acknowledged in 2012 that government funding to non-profit organizations had steadily declined since 1994, reducing the range and quality of services while the need for those services has risen.¹²⁸ Retrogressions in the availability of basic services are a violation of human rights.

Nearly a decade later, the National Department of Social Development recognized that provincial governments had not increased subsidies in line with inflation, sometimes even reducing them.¹²⁹ They noted that spending on social services was unequal across provinces and called on Provincial Treasuries to increase their budget allocation to provincial Departments of Social Development. The National Department of Social Development also committed to progressively fund the reasonable core costs of services, including staff wages, by setting and monitoring minimum service funding standards for subsidies paid to non-profit organizations.¹³⁰ While Human Rights Watch received information that the Department of Social Development has compiled a costing report on the Older Persons Act, as amended,¹³¹ at time of writing, the department had not responded to Human Rights Watch's request for information on whether it had set minimum service funding standards or how it monitors provincial departments' delivery of services.

A number of provincial governments have taken steps to increase their budgetary allocations for older persons. In 2022, the Eastern Cape Department of Social Development increased its subsidy to community-based service centers from R200 [US\$11]

¹²⁷ Hlanganisa Institute for Development South Africa, "What Is Rightfully Due? Costing The Operations of Domestic Violence Shelters," 2018, https://za.boell.org/sites/default/files/whatisrightlydue-costingdvshelters_fullreport.pdf (accessed January 12, 2022), p. 29.

¹²⁸ National Planning Commission, "National Development Plan 2030: Our Future - Make It Work," 2012, https://www.gov.za/sites/default/files/gcis_document/201409/ndp-2030-our-future-make-it-workr.pdf (accessed November 26, 2022), p. 377; Open Repository Base on International Strategic Studies, "National Development Plan 2030: Our future - Make It Work," September 1, 2012, <https://espas.secure.europarl.europa.eu/orbis/document/national-development-plan-2030-our-future-make-it-work> (accessed November 26, 2022).

¹²⁹ National Department of Social Development, "Department of Social Development Sector Funding Policy," 2020, p. 4.

¹³⁰ *Ibid.*, pp. 35-36.

¹³¹ Email message from Roedolf Kay, May 27, 2023.

to R250 [US\$13.50] per older person per month. However, the new amount would still appear to be far too low. Nosisi Mayamo, 64, feels betrayed by the government. She said:

What hurts me the most is [that] I vote every time without fail. I always vote, but when the time comes to help us, they give [the Dimbaza Society for the Aged's service center] R250 for me: my transport, food, and activities. In reality, it would last me two days. How can they expect [the center] to feed me for 31 days?¹³²

Despite apparent recognition that the subsidy was too low, the increased rate still fails to meet current costs. Service center managers in Eastern Cape who spoke with Human Rights Watch said that this subsidy covered only 40 to 50 percent of their costs.¹³³ Nomalinge Mlindi, chair of the Imbumba Association for the Aged, said: “We’re struggling how to use the money as it’s too little for a service center.”¹³⁴ Nosiphiwo Tetana, manager of the Dimbaza Society for the Aged’s service center, said non-profit organizations hire out their service center premises for funerals and parties to generate funds, and apply for food donations from grocery stores. In an attempt to fully cover costs, the Dimbaza Society for the Aged has applied for National Lottery funding every year but has not received any since 2019.¹³⁵ In September 2022, the Special Investigating Unit had evidence of and was investigating a total of approximately R1,432 million (US\$79 million) corruptly taken lottery funds.¹³⁶ According to Nosiphiwo Tetana, “the National Lottery funds are depleted.”¹³⁷

¹³² Human Rights Watch interview with Nosisi Mayamo, Dimbaza, September 29, 2022.

¹³³ Human Rights Watch interviews with Nomalinge Mlindi and Melumzi Sauka, Dimbaza, September 28, 2022.

¹³⁴ Human Rights Watch interviews with Nomalinge Mlindi, September 28, 2022.

¹³⁵ Human Rights Watch interview with Nosiphiwo Tetana, September 28, 2022.

¹³⁶ Parliament of the Republic of South Africa, “Media Statement: Trade, Industry and Competition Committee Hears SIU Interim Investigation Into National Lotteries Commission Now Amounts to Millions,” <https://www.parliament.gov.za/press-releases/media-statement-trade-industry-and-competition-committee-hears-siu-interim-investigation-national-lotteries-commission-now-amounts-millions>.

¹³⁷ Human Rights Watch interview with Nosiphiwo Tetana, September 28, 2022.



Nosiphiwo Tetana, manager of the Dimbaza Society for the Aged's service center in Dimbaza, Eastern Cape, inside its main hall. © 2023 Taurai Maduna/Human Rights Watch



Employees of the Dimbaza Society for the Aged prepare lunch at its service center in Dimbaza, Eastern Cape. © 2023 Taurai Maduna/Human Rights Watch

The Western Cape Department of Social Development in 2022 subsidized Category A service centers at R118 (US\$6.50) per older person per month, Category B at R186 (US\$10) per older person per month, and Category C at R197 (US\$10.50) per older person per month.¹³⁸ Human Rights Watch learned from service center managers in the Western Cape that these amounts do not cover the core costs of services older people are entitled to. As a result, service centers either have to reduce costs by reducing services or increase funding from other non-government sources.¹³⁹ One service center described having to charge older people an annual membership fee of R20 (US\$1) plus R50 (US\$2.50) per month for food to help cover their costs. “The Department of Social Development doesn’t give [us] the full budget. Older people must contribute themselves,” the center manager said.¹⁴⁰

Similarly, in Gauteng in 2022, the Department of Social Development subsidized one service center in Soweto, Johannesburg, at R332 (US\$17.50) per older person per month. Although this increases by 6 percent each year, Kidi Mofube, the service center manager, told Human Rights Watch that this only covers about 70 percent of their costs.¹⁴¹

As a result of the government’s failure to allocate sufficient funding to non-profit service providers, these institutions are unable to provide the care and support services the government has contracted with them to deliver. In other words, the government is neither providing the necessary level of services itself nor allocating sufficient funds to ensure that others can do so. As such it is not meeting its obligations to provide care and support so older people can live with dignity in their communities as guaranteed under the Older Persons Act.

Overly Prescriptive Rules on Non-Profit Service Provision

Every year, service centers apply for funding by submitting a business plan to the Department of Social Development stating how many older people are registered members at their centers. Subsequently, the centers enter into a service-level agreement with the

¹³⁸ Human Rights Watch email correspondence with non-profit organization, Western Cape, November 24, 2022.

¹³⁹ Human Rights Watch interviews with two service center managers, Western Cape, May 19, 2022, and September 23, 2022.

¹⁴⁰ Human Rights Watch interview with service center manager, Western Cape, September 29, 2022.

¹⁴¹ Email message from Kidi Mofube to author, December 21, 2022.

Department of Social Development that funds services for the number of older people the department can afford, which may be fewer than registered at the beginning of the year.¹⁴²

Inevitably, however, the number of people requiring care and support at a specific center fluctuates during the year, and service centers are often left with inadequate funding for the number of older people applying. The requirement to specify the exact number of beneficiaries of services instead of striking a balance between the need for robust regulation of private service providers and flexibility for service providers, puts a significant strain on both service centers and older people. In May 2023, Tetana said there were 15 older people on their waiting list and more who had made informal inquiries about joining the center.¹⁴³ “Every week, every month [older people] come and apply, and we have to turn them away as we can’t overload the budget,” Nosiphiwo Tetana, Manager of Dimbaza Society for the Aged’s service center, said.¹⁴⁴

Budgetary concerns mean less access for older people like Rose Nduneni, 70, who wants to join Dimbaza Society for the Aged’s service center but was told the center was full. “They say they have a budget, they can’t afford any new members,” she said. “I have been trying to become a member since 2021.”¹⁴⁵

The level of the subsidy, as well as overly prescriptive requirements regarding its allocation, can further limit the types of community-based care and support that service centers can provide. Departments of Social Development may have overly prescriptive rules that restrict how a service center spends the subsidy regardless of the particular requirements of the older people in its community. The Eastern Cape Department of Social Development, for example, prescribes how the R250 subsidy should be spent for FY23: 42 percent on food, 5 percent on personal health care, 13 percent on sports equipment and clothing, and 40 percent on administration.¹⁴⁶

¹⁴² Letter from M. Machedemba, Head of Department, Eastern Cape Department of Social Development, to the Chairperson, Dimbaza Society for the Aged, May 4, 2022; Human Rights Watch interview with Melumzi Sauka, Dimbaza, May 25, 2023.

¹⁴³ Human Rights Watch interview with Nosiphiwo Tetana, Dimbaza, May 25, 2023.

¹⁴⁴ Human Rights Watch interview with Nosiphiwo Tetana, September 28, 2022.

¹⁴⁵ Human Rights Watch interview with Rose Nduneni, Dimbaza, September 28, 2022.

¹⁴⁶ Letter from M. Machedemba, Head of Department, Eastern Cape Department of Social Development, to Chairperson of the Dimbaza Society for the Aged, May 4, 2022.



Melumzi Sauka, deputy chair of the Imbumba Association for the Aged, outside the Dimbaza Society for the Aged's service center in Dimbaza, Eastern Cape. To cover costs, the society has applied for National Lottery funding every year since 2019, without success. © 2023 Taurai Maduna/Human Rights Watch

Several of the people interviewed by Human Rights Watch who had access to community-based service centers in Western Cape, Eastern Cape, and Gauteng provinces said that available activities were limited to daily meals, knitting and other crafts, massages from caregivers, and exercise and sports.¹⁴⁷

These allocations do not reflect the range of services envisaged under the Older Persons Act, which also covers services such as professional care, rehabilitation, integrated community care, and development systems to ensure independent living of older people.¹⁴⁸ It also does not reflect the actual requirements of those being served by the center. As Nosiphiwo Tetana said: “At the provincial level, they don’t appreciate the

¹⁴⁷ Human Rights Watch interviews with seven older people, Atlantis, Porterville, Dimbaza, and Johannesburg, September 23, 26, and 29, and October 6-7, 2022.

¹⁴⁸ Older Persons Act, Section 11 (2) (g), (j).

uniqueness of this institution. They want us to fit into a template, a standardized way, not customized. The funding does not speak to the needs of this center.”¹⁴⁹

Melumzi Sauka, deputy chair of the Imbumba Association for the Aged, said prescribed subsidy budget lines failed to cover staff costs. “It seems to me that [the Department of Social Development] doesn’t recognize the fact that there are employees that care for older people,” he said. “They tell managers to play around with the money [so] you have to pay [employees] from nutrition, from care [budget lines].”¹⁵⁰

In addition, delays in payment of the subsidies can leave caregivers and other employees without payment. To avoid this, a couple of service center managers said that they had to increase membership fees, reduce the amount they pay employees, lend the center money, or pay out of their own pocket when the Department of Social Development is late paying the subsidies. Some centers, they said, are forced to close down.¹⁵¹

Over-Reliance on Family Care Providers

The Older Persons Act guarantees older people receiving community-based care and support services the right to “benefit from family and community care and protection in accordance with society’s system of cultural values.”¹⁵² However, an over-reliance on family care excludes older people who do not have children or other family members who can provide support at home or who are unable, or choose not, to live with them.

Thembisa Loyila, 70, who lives alone in Mdantsane, Eastern Cape, said, “For older people, service delivery depends on if you have children or not. The government doesn’t have any responsibility for us. As older people, we have to take care of each other. We only have ourselves.”¹⁵³ Theresa Lee, 60, has children but had to move into a shared community-house for older people in Cape Town. “You can’t live with kids these days,” she said.

¹⁴⁹ Human Rights Watch interview with Nosiphiwo Tetana, September 28, 2022.

¹⁵⁰ Human Rights Watch interview with Melumzi Sauka, September 28, 2022.

¹⁵¹ Human Rights Watch interviews with service center managers, Kidi Mofube, May 22, 2023, and Melumzi Sauka, May 25, 2023.

¹⁵² Older Persons Act, Section 10 (c).

¹⁵³ Human Rights Watch interview with Thembisa Loyila, Mdantsane, October 1, 2022.

“Children are not there for their parents. You’ve given your all for them. They say they have their family first.”¹⁵⁴

Moreover, some older people do not want to ask their family for support. Elizabeth, 79, lives in a farm laborer’s house in Western Cape. She is diabetic, has high blood pressure, and “a dizziness in her head that never goes away.” Her niece visits her once a week to do the washing, cleaning, and cooking. Even though she does not expect payment, Elizabeth normally gives her something. “I don’t like to be dependent on other people,” she said. “I’d rather not ask for anything.”¹⁵⁵

An over-reliance on family support also affects older people whose family caregiver goes out to work during the day.

Nozala Ndozana, 84, lives with her youngest daughter, Pamela Nokuthembela Ndozana, 47, in Gwaba village, 36 kilometers outside of East London. Pamela washes her mother and cooks her breakfast before leaving for work in East London. Due to her working hours and the time it takes to get to and from work on public transport, Pamela has to leave Nozala alone for up to 12 hours each day. Pamela constantly worries about her mother when she is at work. “Even though I make her food, she may not think to eat it, and go without food all day,” she said. Sometimes Nozala wanders away from their house. If the neighbors see her, they will assist her, but there is no one to be with her all day. Pamela is also worried about her mother’s safety at home in a community where everyone knows she is alone all day. “It is easy for an intruder to [come into the house and] maybe rape her.”¹⁵⁶

Family caregivers, often younger women, are also affected by the lack of care and support services for older people.¹⁵⁷ Globally, women are more likely to provide care and support for family members with chronic illnesses, including for older people.¹⁵⁸ In South Africa, they may also have to take on responsibility for other family members the older person can

¹⁵⁴ Human Rights Watch interview with Theresa Lee, Cape Town, September 19, 2022.

¹⁵⁵ Human Rights Watch interview with Elizabeth, Porterville, September 26, 2022.

¹⁵⁶ Human Rights Watch interview with Pamela Nokuthembela Ndozana, Gwaba, May 26, 2023.

¹⁵⁷ Elena Moore, “Family care for older persons in South Africa: heterogeneity of the carer’s experience,” *International Journal of Care and Caring* 7 (2), 2023, <https://doi.org/10.1332/239788221X16740630896657> (accessed May 28, 2023), p. 281.

¹⁵⁸ Nidhi Sharma, Subho Chakrabarti, and Sandeep Grover, “Gender differences in caregiving among family - caregivers of people with mental illnesses,” *World Journal of Psychiatry* 6 (1), March 22, 2016, <https://doi.org/10.5498/wjp.v6.i1.7> (accessed May 31, 2023).

no longer support. In addition, low marriage rates among younger black African women mean that many do not have a spouse to share the responsibilities and financial costs with.¹⁵⁹

Pamela, Nozala’s daughter, does not have a personal life and cannot afford to socialize, financially and because she does not want to leave her mother alone any later at night. Her employment opportunities are also limited. “If I was offered a full-time job in a different province,” she said, “I couldn’t go. I couldn’t take the opportunity.”¹⁶⁰



Pamela Nokuthembela Ndozana embraces her mother, Nozala Ndozana, 84, in their home in Gwaba village, Eastern Cape. © 2023 Taurai Maduna/Human Rights Watch

¹⁵⁹ Elena Moore, “Family care for older persons in South Africa: heterogeneity of the carer’s experience,” <https://doi.org/10.1332/239788221X16740630896657>, p. 281.

¹⁶⁰ Human Rights Watch interview with Pamela Nokuthembela Ndozana, May 26, 2023.

Challenges Related to Home-Based Services

Home-based services are essential for many older people to continue living in their homes, and the Older Persons Act specifically provides for these. However, many of those interviewed by Human Rights Watch reported that these services are often unavailable or unaffordable, which undermines older people's right to live independently and deeply affects their well-being and safety.

Unavailability of Home-Based Services

Some older people Human Rights Watch interviewed in Western Cape,¹⁶¹ Eastern Cape,¹⁶² and Gauteng¹⁶³ said that no one came to check on or visit them or other older people at home in their communities.

Ben Zolile, 75, lives in River Park, Johannesburg. His health is “up and down,” and on the morning of the interview, his “head was spinning from the blood pressure.” He said:

I used to go to a place called Hope as they used to feed older people there and [give us food] to take home, but now my knees can't carry me there. No one comes to my house. There are no other services that come to my home.¹⁶⁴

Several factors contribute to the lack of home-based care and support services, including lack of coordination between government departments; inadequate government funding and subsidies, which affects staffing; and inadequate numbers of social workers.

There is often a lack of clarity as to who is responsible for providing in-home care in a particular area. In one case, a service center manager did not know if their center was allowed to provide home-based care and support services to older people who could not come to their center because another non-profit organization was already providing

¹⁶¹ Human Rights Watch interviews with three older people, Atlantis and Porterville, September 23 and 26, 2022.

¹⁶² Human Rights Watch interviews with four older people, Dimbaza, East London, and Mdantsane, September 30, 2022, and October 1, 2022.

¹⁶³ Human Rights Watch interviews with 11 older people, Johannesburg, October 6-7, 2022.

¹⁶⁴ Human Rights Watch interview with Ben Zolile, Johannesburg, October 6, 2022.

community-based healthcare services under the Department of Health in the area.¹⁶⁵ This lack of coordination between government departments impedes the delivery of home-based care and support services as provided for under the Older Persons Act.¹⁶⁶

The government does not provide adequate funding for the service center staff who are necessary for home-based care and prescribed in the regulations governing implementation of the Older Persons Act, including home-based caregivers, social workers, service center managers, administrators, cooks, and drivers.¹⁶⁷ Melumzi Sauka, deputy chair of the Imbumba Association for the Aged, said that because he cannot pay for a cook, one of his caregivers has to do the cooking, reducing the time for caregiving.¹⁶⁸

The Western Cape Department of Social Development told Human Rights Watch that service centers have to pay employees out of the subsidy from the department and that the department did not have sufficient resources to pay for salaried positions.¹⁶⁹

Nosisi Mayamo, 64, was deeply concerned about the lack of adequate staff in the service center she attends and called for an increase in caregivers:

One caregiver is responsible for all of us here [at the service center] and has to go to homes; bring food, incontinence pants; wash, change the linen, and put those incontinence pants on them; and on the same day, come back [to the center] and continue with the program at the center. This is too much. On top of that, they don't get paid. That gives me sleepless nights.¹⁷⁰

A lack of state-funded drivers also impacts home-based services. One caregiver employed by a non-profit organization said: “We don't have as wide a reach as we'd like as we don't have enough transport. We'd like to reach more people than we do currently.”¹⁷¹

¹⁶⁵ Human Rights Watch interview with a service center manager who requested anonymity, September 23, 2022.

¹⁶⁶ Older Persons Act, Section 11 (3).

¹⁶⁷ Southern African Legal Information Institute, “Regulations Regarding Older Persons,” April 1, 2010, http://www.saflii.org/za/legis/consol_reg/rrop352/ (accessed May 27, 2023) Annexure B, Part 1, 1.3.13.

¹⁶⁸ Human Rights Watch interview with Melumzi Sauka, September 28, 2022.

¹⁶⁹ Email message from Monique Mortlock-Malgas, May 23, 2023.

¹⁷⁰ Human Rights Watch interview with Nosisi Mayamo, September 29, 2022.

¹⁷¹ Human Rights Watch interview with a caregiver who requested anonymity, September 29, 2022.

South Africa is plagued by a shortage of social workers, which has a negative impact on the availability of home-based care and support services. Although the Older Persons Act recognizes the role of social workers, in March 2022, the Minister for Social Development said 3,000 more social workers were needed to implement the Act.¹⁷² The lack of social workers, according to the Minister, is due to budget constraints.¹⁷³ One social worker employed by the Department of Social Development said that the department typically either gives social workers an internship or a three-to-six month contract as the department does not have the funds to employ social workers for longer periods.

As noted above, the Department of Social Development does not provide funding for drivers, so anyone delivering in-home care typically has to take public transportation or drive themselves. This lack of transport can also affect service delivery. They said:

We have two vehicles, so you only have access to a vehicle once or twice a month. You try to prioritize an issue: child abuse and rape can get a vehicle. If there is a high-risk case with an older person, we may get priority. Sometimes there is no vehicle to go to some areas.¹⁷⁴

Gladys Booi, 69, felt social workers had little interest in older people. “Social workers say they come [to our homes] once a month, [but] sometimes they don’t and even [when they do come], once is not enough. They don’t come as they don’t want to know.”¹⁷⁵

Unaffordable Home-Based Services

In an attempt to get the services they require, some older people pay for home-based support themselves even when they are eligible for government services. Dinah Valentine, 61, had a stroke when she was 57 and had to stop working as a museum assistant in Porterville, Western Cape. Since then, she has paid a family friend R200 [US\$11] per month

¹⁷² Democratic Alliance, “South Africa faces shocking shortage of thousands of social workers,” March 31, 2022, <https://www.da.org.za/2022/03/south-africa-faces-shocking-shortage-of-thousands-of-social-workers> (accessed November 17, 2022).

¹⁷³ Parliamentary Monitoring Group, “Question NW2319 to the Minister of Social Development,” August 16, 2022, <https://pmg.org.za/committee-question/19718/> (accessed May 16, 2023).

¹⁷⁴ Human Rights Watch interview with a social worker who requested anonymity, September 29, 2022.

¹⁷⁵ Human Rights Watch interview with Gladys Booi, Dimbaza, September 29, 2022.

to wash her clothes and bedding and cook for her twice a week. “If I have something nice, I give it to her: fruit, sugar, meat, potatoes,” she said. “R200 is very little.”¹⁷⁶

Inadequate Grant-in-Aid

People over 60 whose monthly income falls under a certain threshold are eligible to receive the Older Persons Grant. In addition, those eligible for the Older Persons Grant and who require support with their day-to-day activities are eligible for the Grant-in-Aid, a monthly social grant to pay someone for full-time support at home.¹⁷⁷ In 2022, 283,771 older people, war veterans, and people with disabilities, who may also apply, received the grant.¹⁷⁸ This number was estimated to rise to 370,000 in 2023.¹⁷⁹

In September 2022, the grant was R480 (US\$26) per month,¹⁸⁰ and it increased to R500 (US\$27) in April 2023.¹⁸¹ This is a paltry amount: based on the 2023 national minimum wage of R25.42 per hour (US\$1.32), R500 provides only 20 hours, less than one day of full-time care and support per month.¹⁸² And there are additional costs associated with support that the Grant-in-Aid does not cover. For example, a pack of 14 large, adult, own brand (or store brand) incontinence pants from a drugstore chain cost R205 (US\$11) in May 2023.¹⁸³ Thus, the cost of three incontinence pants per day for a month is R1,362 (US\$71), nearly three times the entire Grant-in-Aid monthly allocation.

¹⁷⁶ Human Rights Watch interview with Dinah Valentine, Porterville, September 26, 2022.

¹⁷⁷ South Africa Government, “Grant in aid,” <https://www.gov.za/services/social-benefits/grant-aid>.

¹⁷⁸ South African Social Security Agency, “Annual Report 2021/22,” 2022, <https://www.sassa.gov.za/annual%20reports/Documents/SASSA%20ANNUAL%20REPORT%202021-2022.pdf> (accessed April 12, 2023), Table 1, p. 4.

¹⁷⁹ National Treasury, “2023 Estimates of National Expenditure,” <https://www.treasury.gov.za/documents/national%20budget/2023/ene/FULLENE.pdf>, Table 19.1, p. 348.

¹⁸⁰ South African Social Security Agency, “SASSA Social Grants Increases for 2022,” <https://www.sassa.gov.za/newsroom/articles/Pages/sassa-social-grants-increase-for-2022.aspx>.

¹⁸¹ South African Social Security Agency, “SASSA Grant Increases for 2023 & 2024,” <https://www.sassagrants.co.za/sassa-grant-increases-for-2023/>.

¹⁸² Department of Employment and Labour, “National Minimum Wage Act No. 9 of 2018,” *Government Gazette*, February 21, 2023, https://www.gov.za/sites/default/files/gcis_document/202302/48094gon3069.pdf (accessed May 18, 2023).

¹⁸³ Clicks, “Clicks Incontinence, Adult Pants Large 14 Pants,” undated, https://clicks.co.za/clicks-incontinence_adult-pants-large-14-pants/p/200497 (accessed May 18, 2023).



Florence Limekaya, 79, in her one-room home at the Helen Joseph Women's Hostel in Alexandra, Johannesburg. She has lived in this apartheid-era hostel since 1980. © 2023 Taurai Maduna/Human Rights Watch

Privately provided home-based care and support services are available, but the costs are prohibitive and not affordable for all, exacerbating already existing inequalities. Rates can vary significantly. As illustrative examples of the costs of private services, in March 2023, one provider that published its rates on the internet, SA Nanny, charged R325 (US\$17.50) for a nine-hour day shift and R8,000 (US\$435) per month for a live-in caregiver,¹⁸⁴ equivalent to 16 months' worth of the Grant-in-Aid. Another, CareChamp, started its rates at R552 (US\$30) for an eight-hour day shift and charged R24,999 (US\$1,360) per month for a live-in caregiver,¹⁸⁵ equivalent to four years' worth of the Grant-in-Aid.

Florence Limekaya, 79, has lived for over 40 years in Helen Joseph Women's Hostel, one of three single-sex hostels built by the apartheid government in 1971 and 1972 in Alexandra,

¹⁸⁴ SA Nanny, "Elderly Care," undated, <https://www.sananny.co.za/elderly-care/> (accessed March 29, 2023).

¹⁸⁵ CareChamp, "Our Competitive Rates," undated, <https://www.carechamp.co.za/our-competitive-rates> (accessed March 29, 2023).

Johannesburg, to control the movement of black migrant workers.¹⁸⁶ She has arthritis, which limits her mobility, but only recently heard about the Grant-in-Aid when the South Africa Social Security Agency distributed information pamphlets at the hostel. Limekaya successfully applied for the grant, which she uses to pay children who live in the hostel to go to the shops or fetch water for her. The grant is not enough to pay for more support. If she requires more support, her plan is to knock on her neighbor's wall. "The only problem," she said, "is that because the door is locked, there is no way in if I can't stand up [to unlock the door]."¹⁸⁷

Sylvia Lusiti, 72, is blind and lives alone. She gets the Grant-in-Aid, but it is not enough to pay someone to assist her for the whole month. Instead, she uses the money to pay someone to wash her clothes or to make repairs to her home.¹⁸⁸

Human Rights Watch learned that few older people we interviewed, who could be eligible for the Grant-in-Aid, are aware of its existence. Ben Movenda, 76, uses a wheelchair and relies on help from his neighbors to use the communal toilet or enter or leave the shack¹⁸⁹ where he lives in Alexandra, Johannesburg. There are high steps and no ramps, the road surface is uneven, and he does not have the upper body strength to wheel himself. "I've got no support. I know nobody," he said. "I need someone to help me, but who is going to pay for that?" He had not heard of the Grant-in-Aid until we interviewed him.¹⁹⁰

Nozala Ndozana, 84, lives with her youngest daughter, Pamela Nokuthembela Ndozana, 47, who works in East London, 36 kilometers away from the village where they live. "If I could afford it," Pamela said, "I would pay a caregiver to step in when I go to work." The Older Persons Grant her mother gets is not enough to cover those costs and the family had not heard of the Grant-in-Aid. Pamela said they would apply for the grant. "But," she said, "I don't think I can find someone who can look after her for R500 a month."¹⁹¹

¹⁸⁶ Mashadi Kekana, "Apartheid's grim hostels still home to generations of women," *Mail & Guardian*, January 5, 2018, <https://mg.co.za/article/2018-01-05-00-apartheids-grim-hostels-still-home-to-generations-of-women/> (accessed May 27, 2023).

¹⁸⁷ Human Rights Watch interview with Florence Limekaya, Johannesburg, May 22, 2023.

¹⁸⁸ Human Rights Watch interview with Sylvia Lusiti, September 29, 2022.

¹⁸⁹ A "shack" is a self-built, informal structure often made out of corrugated iron sheets on a wooden frame.

¹⁹⁰ Human Rights Watch interview with Ben Movenda, Johannesburg, October 6, 2022.

¹⁹¹ Human Rights Watch interview with Pamela Nokuthembala Ndozana, May 26, 2023.



Ben Movenda, 76, a wheelchair user, outside his home in Alexandra, Johannesburg. His one-room shack has high steps to the door and no ramp, so neighbors must carry him in and out. © 2023 Taurai Maduna/Human Rights Watch

Others had not applied for the Grant-in-Aid because they had incorrect information about the eligibility criteria. Esther M., 64, shares a bedroom with her 87-year-old mother in her daughter’s house in Cape Town. Esther said her daughter struggles to look after her and her mother, who sits in the house or backyard all day and cannot walk to the shops by herself. Because Esther heard that people who get the Older Persons Grant are ineligible for the Grant-in-Aid, she did not apply for the latter for her mother.¹⁹² In fact, in order to qualify for the Grant-in-Aid, one must be on a Disability, War Veteran’s, or Older Persons Grant.¹⁹³

Impact of Lack of Home-Based Services

The absence of home-based services has a negative impact on the ability of older people to live independently and can cause them significant distress. Some older people told

¹⁹² Human Rights Watch interview with Esther M., Cape Town, September 19, 2022.

¹⁹³ South Africa Government, “Grant in aid,” <https://www.gov.za/services/social-benefits/grant-aid>.

Human Rights Watch that they did not wish to go into or were scared of dying in an old age home, and felt the conditions were bad in the old age homes they knew about.¹⁹⁴

Boyce Msutu, 80, is a retired teacher who moved from a night shelter into a shared community house for older people managed by a non-profit organization in Cape Town, Western Cape. Care and support services are not available in the shared house. “When you are not able to care for yourself,” he said, “they take you to another place. I’d be very worried. I want to die here.”

According to the manager of a service center in Khayelitsha, in Western Cape province, because there are no home-based services in the township and families cannot afford the additional costs of a state-subsidized old age home, older people end up in unregistered old age homes that do not receive subsidies and are sub-standard in quality.¹⁹⁵



Nosphiwo Tetana speaks to members of the Dimbaza Society for the Aged’s service center in Dimbaza, Eastern Cape. © 2023 Taurai Maduna/Human Rights Watch

¹⁹⁴ Human Rights Watch interviews with 11 older people, Cape Town, Atlantis, Porterville, Mdantsane, and Johannesburg, September 19-21, 23, and 30, 2022, and October 6, 2022.

¹⁹⁵ Human Rights Watch interview with a service center manager who requested anonymity, September 21, 2022.

The lack of home-based care and support can prevent older people’s participation in their communities and daily life. Nosiphiwo Tetana, manager of the Dimbaza Society for the Aged’s service center, said they provide caregivers to fill this gap. “Some older people can’t do everyday things like going to visit someone, going to the clinic, keeping up with their medication, collecting their Older Persons Grant, and paying their life insurance or burial policies.”

The lack of home-based services can also affect older people’s physical well-being and safety. One community-based caregiver employed by a non-profit organization in Eastern Cape said: “There are lots of older people who need support in the community who are not being served by us. We meet with community members and ask them to help them, to check in [on the older person] every now and then. Their health suffers the most.”¹⁹⁶

According to a government-employed social worker, older people are exposed to various dangers when they are isolated and not getting the home-based care and support they are entitled to:

They’re raped, killed, there’s gender-based violence. When we get a case, we try to do something, for example, remove them to a neighbor’s house or find someone who can assist.... It can take months to find somewhere, and you only get a bed [in an old age home] when someone [there] dies.¹⁹⁷

A large number of the older people interviewed by Human Rights Watch said they felt unsafe in their homes or were scared of crime, abuse, or drug use.¹⁹⁸

One community-based caregiver said grandchildren were the biggest source of abuse of older people, some of whom were drug users. Staying one step ahead and keeping older people’s medication safe was one of the caregiver’s responsibilities. They said:

¹⁹⁶ Human Rights Watch interview with a caregiver who requested anonymity, September 29, 2022.

¹⁹⁷ Human Rights Watch interview with a social worker who requested anonymity, September 29, 2022.

¹⁹⁸ Human Rights Watch interviews with 23 older people, Cape Town, Porterville, Dimbaza, Gwaba, Mdantsane, and Johannesburg, September 19-21, 26, and 28-30, 2022, and October 1, and 6-7, 2022.

The grandchildren smoke it, they've found new ways. They take anything that is a pill. They don't smoke it exclusively but mix it with whatever herbs they have to make their drugs stronger.¹⁹⁹

Lack of Education Led to Low-Paying Jobs and No Savings for Older Age

Apartheid has had life-long consequences. Many older people Human Rights Watch spoke to had worked in the informal sector and in low-paid and insecure jobs, including as factory workers,²⁰⁰ domestic workers,²⁰¹ cleaners,²⁰² farm laborers,²⁰³ or in construction.²⁰⁴ As such, they were often left without access to workplace pensions or the ability to save for older age.

Those unable to save for older age are significantly more likely to require the support services guaranteed by the Older Persons Act and more likely to suffer from inadequate government funding for those services.

Themba Maggadaza, an 80-year-old black African man from Dimbaza, left school after two years, before learning to read or write. He worked in the mines for almost 30 years until ethnic violence between Zulu and Xhosa miners forced him to leave in the late 1980s without a pension. With the Older Persons Grant as his only income, he relies on a daily meal from a community service center to prevent him falling into greater debt than he already is with loansharks.²⁰⁵

Hilda Sesing, an 82-year-old black African woman, never went to school. She moved from Mahikeng (previously Mafikeng) to live in Helen Joseph Women's Hostel,

¹⁹⁹ Human Rights Watch interview with a caregiver who requested anonymity, September 29, 2022.

²⁰⁰ Human Rights Watch interviews with seven older people, Atlantis, Dimbaza, and Johannesburg, September 23 and 28, 2022, and October 6-7, 2022.

²⁰¹ Human Rights Watch interviews with six older people, Khayelitsha, Dimbaza, and Johannesburg, September 21 and 29, 2022, and October 6-7, 2022.

²⁰² Human Rights Watch interviews with five older people, Khayelitsha, Porterville, Mdantsane, and Johannesburg, September 21 and 26, 2022, and October 1, and 6-7, 2022.

²⁰³ Human Rights Watch interviews with two older people, Porterville, September 26, 2022.

²⁰⁴ Human Rights Watch interviews with four older people, Cape Town and Johannesburg, September 22, 2022, and October 6-7, 2022.

²⁰⁵ Human Rights Watch interview with Themba Maggadaza, September 29, 2022.

Alexandra, Johannesburg. For many years, she cleaned and ironed for a white family. She still lives in the hostel. “Nobody from the government,” she said, “comes to the hostel to check on older people.”²⁰⁶

When the apartheid government forcibly removed Rose Nduneni, a 70-year-old black African woman, to Dimbaza in 1969, there were no schools. The authorities started building the lower and middle schools in mid-1969, but there was no secondary school. When she finished primary school, she became a nanny; her brothers went to work in the mines. The Dimbaza Society for the Aged’s service center was unable to accept her as a member due to lack of funds.²⁰⁷

Inadequate Housing

Affordable, accessible, safe, and habitable housing is essential for older people if they are to live independently and fully participate within the community.²⁰⁸ In 2021, 70 percent of the total population owned their homes, 19 percent rented, and 12 percent occupied their homes rent-free.²⁰⁹ Fifteen percent of those in metropolitan areas lived in informal dwellings.²¹⁰

Although the Department of Human Settlements delivered 3.4 million housing units between 1994 and February 2022,²¹¹ in 2021, the national housing backlog was estimated at 2.7 million homes.²¹² Several older people said they have been waitlisted for state-

²⁰⁶ Human Rights Watch interview with Hilda Sesing, Johannesburg, October 7, 2022.

²⁰⁷ Human Rights Watch interview with Rose Nduneni, September 28, 2022.

²⁰⁸ Committee on the Rights of Persons with Disabilities, “General Comment No.5 (2017) on living Independently and being included in the community,” CRPD/C/GC/5, October 27, 2017, <https://www.ohchr.org/en/documents/general-comments-and-recommendations/general-comment-no5-article-19-right-live> (accessed April 12, 2023), para. 34.

²⁰⁹ Statistics South Africa, “General Household Survey 2021,” June 23, 2022, <https://www.statssa.gov.za/publications/Po318/Po3182021.pdf> (accessed April 12, 2023), p. 30, Figure 8.3.

²¹⁰ *Ibid.*, p. 30, Figure 8.2.

²¹¹ Department of Human Settlements, “Annual Performance Plan 2022-2023,” undated, https://static.pmg.org.za/DEPARTMENT_OF_HUMAN_SETTLEMENTS_ANNUAL_PERFORMANCE_PLAN_2022-2023.pdf (accessed January 25, 2023), p. 2.

²¹² Department of Human Settlements, “2020-2021 Human Settlements Annual Report,” 2022, https://www.gov.za/sites/default/files/gcis_document/202110/department-human-settlements-annual-report-2020-2021.pdf (accessed January 11, 2023), p. 36.

subsidized housing for many years.²¹³ Elizabeth Kekana, 78, applied in Soweto in 1979 but had to move into rented accommodation in Alexandra 20 years later as she was still waiting to receive a house.²¹⁴ Ben Movenda, 76, has lived in a shack in Alexandra since 1982 for similar reasons. He put his name down for state-subsidized housing in 1986.²¹⁵ Florence Limekaya, 79, hoped to move out of the women’s hostel in Alexandra where she has lived since 1980 and spend her older age enjoying life in her own house. She applied for state-subsidized housing in 2004. “I never thought,” she said, “that I would stay in the hostel until this age.”²¹⁶

Bahija J., 75, rents a house in Cape Town and has been on the waiting list for 40 years:

The previous government failed me, and now this government is failing me too. I haven’t been to check at the Civic Centre for more than two years. Everything stays the same.²¹⁷

Nazeem Rakip, 60, has been living with his wife in one room in a disused hospital in Woodstock, Cape Town, for more than four years. The hospital, now known as Cissie Gool House, is one of two disused public buildings that have been occupied by Reclaim the City, a social movement campaigning for affordable housing in Cape Town’s city center. Nazeem originally applied for state-subsidized housing in 1984. He bought a house in 2000, losing his eligibility, but reapplied for state-subsidized housing when he lost his house after an accident at work. “I’ve now been on the list for 10 years. I wrote to the city; they told me I just need to wait.”²¹⁸

Unaffordable Housing

Those who live on the Older Persons Grant may be unable to afford adequate housing. The Social Housing Act stipulates that rental for social housing should not exceed one third of a household’s monthly income, recognizing the need for affordable housing for people on

²¹³ Human Rights Watch interviews with four older people, Cape Town and Johannesburg, September 21-22, 2022, and October 7, 2022.

²¹⁴ Human Rights Watch interview with Elizabeth Kekana, Johannesburg, October 7, 2022.

²¹⁵ Human Rights Watch interview with Ben Movenda, October 7, 2022.

²¹⁶ Human Rights Watch interview with Florence Limekaya, May 22, 2023.

²¹⁷ Human Rights Watch interview with Bahija J., Cape Town, September 21, 2022.

²¹⁸ Human Rights Watch interview with Nazeem Rakip, Cape Town, September 22, 2022.

low incomes.²¹⁹ Older people living on the Older Persons Grant fall within that low-income category. However, many of those interviewed by Human Rights Watch said they were unable to find any housing that was that low in price, and if they could, it was often of poor quality or far from city centers. This is due to a number of factors.

The abolition of rental controls on privately rented accommodation in 1999²²⁰ and gentrification in places like Woodstock, Cape Town, have increased rents so much that some older people can no longer afford to stay in their hometowns.²²¹ Previously, only one third of Nazeem Rakip’s income went toward rent. “We could live with this,” he said. He now lives with his wife in one room in a disused public hospital in Woodstock, pushed out of the private rental market by rising rents. “We want accommodation within the city, not 50, 70 kilometers on the outskirts.”²²²

In September 2022, Ntombuana Mbelu, 82, rented a room in a shared house in East London, Eastern Cape, for R1,600 (US\$87) per month (80 percent of her Older Persons Grant). There was running cold water and a communal toilet shared by everyone in the house. However, the house had lacked electricity for nine months because the landlord had not paid the electricity bill. Furthermore, Ntombuana’s room was damp, her ceiling leaked, and she used buckets to catch the drips when it rained. The backyard where she hung the laundry was strewn with rubbish and rubble.²²³

For others, the only affordable accommodation is in small outbuildings, known as “backrooms,” that people have built in their backyards.²²⁴ Vusindaba Walaza, 81, lives on his own in a small backroom in his landlord’s backyard in River Park, Johannesburg, that costs R800 (US\$43) per month (40 percent of his Older Persons Grant). The eight backrooms in the backyard share one communal toilet.²²⁵

²¹⁹ Social Housing Regulations, January 26, 2012, Section 23 (2).

²²⁰ Rental Housing Act, No. 50 of 1999, Section 18.

²²¹ Raymond Joseph, “The gentrification of Woodstock: from rundown suburb to hipster heaven,” *The Guardian*, August 12, 2014, <https://www.theguardian.com/cities/2014/aug/12/gentrification-woodstock-cape-town-suburb-hipster-heaven> (accessed November 3, 2022).

²²² Human Rights Watch interview with Nazeem Rakip, September 22, 2022.

²²³ Human Rights Watch interview with Ntombuana Mbelu, East London, September 30, 2022.

²²⁴ A “backroom” is a room in someone’s backyard, usually not connected to the main house, and rented out to tenants.

²²⁵ Human Rights Watch interview with Vusindaba Walaza, Johannesburg, October 6, 2022.

Lack of Social Housing Options

Older people on low-to-middle incomes who cannot afford rental housing on the open market may qualify for social rental housing subsidized by the Department of Human Settlements.²²⁶ Under the Social Housing Act, social housing institutions must provide this on an affordable basis²²⁷ and give special priority to older people and people with disabilities.²²⁸ Article 9 of the Constitution prohibits both direct and indirect discrimination on the basis of age.²²⁹ The Social Housing Regulations prescribe that monthly rentals for social housing must be based on the operating costs of the rental unit and cannot exceed one third of the household's monthly income.²³⁰ Therefore, if the monthly rental exceeds R666 (US\$35), one third of the value of the Older Persons Grant, an older person living solely on the grant will not qualify because their monthly income is too low.

Physically Inaccessible Housing

Physically inaccessible housing limits the ability of older people with disabilities or reduced mobility to live independently within the community and reinforces their marginalization and social exclusion.²³¹ Ben Movenda, 76, is a wheelchair user whose wife uses crutches. Since 1986, they have lived in a one-room shack in Alexandra with high steps to the door and no ramp, requiring him to rely on neighbors to carry him inside and outside his home. The communal toilet, which is shared by about 50 people, is also inaccessible for his wheelchair. On top of this, Movenda does not feel safe in his shack due to the prospect of it being destroyed. "A lot of people are staying in the shacks, and when they are burned, they have nowhere to sleep," he said. "It happens a lot."²³²

²²⁶ National Treasury, "Vote 33, Human Settlements: 2022 Estimates of National Expenditure," undated, <https://www.treasury.gov.za/documents/national%20budget/2022/ene/Vote%2033%20Human%20Settlements.pdf> (accessed December 13, 2022), p. 628.

²²⁷ Social Housing Act, No. 16 of 2008, Section 1.

²²⁸ *Ibid.*, Section 2 (1) (a).

²²⁹ Constitution of the Republic of South Africa, Section 9.

²³⁰ Social Housing Regulations, Section 23 (2).

²³¹ United Nations General Assembly, "Older persons and the right to adequate housing. Report of the Independent Expert on the enjoyment of all human rights by older persons, Claudia Mahler," A/77/239, July 19, 2022, <https://www.ohchr.org/en/documents/thematic-reports/a77239-older-persons-and-right-adequate-housing-note-secretary-general> (accessed November 3, 2022), para. 46.

²³² Human Rights Watch interview with Ben Movenda, October 7, 2022.

Lack of Physical Security

Physical security and safe housing are essential for older people if they are to live independently and fully participate within the community. Security or burglar bars are a common feature on house doors and windows in South Africa. Not having effective burglar bars can make older people feel unsafe, especially given the high crime rates.

Sylvia Lusiti, 72, is blind and has lived alone in a government house since 2016. Her house has no fence or burglar bars. “There’s no security,” she said. “At midnight, people knock at the windows, at the doors.”²³³ Lesedi N., 79, cannot afford repairs to her roof, which drips when it rains; her water pump, which leaks; or burglar door, which is broken. She also cannot lock the door and said she “sleeps with God” in the absence of protection.²³⁴

Uninhabitable Living Conditions

Habitable housing is also essential for older people if they are to live independently and fully participate within the community. However, older people are often unable to afford the necessary repairs to make their houses habitable and to protect against the cold, damp, heat, rain, wind, and other threats to health.²³⁵ Vuyiswa Vena, 75, lives on her own in Khayelitsha and is trying to save money to fix her roof, which she temporarily covered with her neighbors’ tarpaulin. Repair rates range from R1,500 (US\$82) for labor plus the cost of materials to R7,800 (US\$424) in total, equivalent to just under four months of her Older Persons Grant.²³⁶

Others, like Bahija J., 75, are at the mercy of their landlords. Bahija pays R2,000 (US\$109) per month for a two-bedroom house in Woodstock in disrepair and without hot water. Her landlord has promised her hot water since 1996 when she moved in. “The house is in disarray, moldy, stuffy, leaking,” she said. “The landlord knows all about it. There is a housing tribunal, [but] I feel it’s on the landlord’s side. I went to try to make the landlord do repairs, but there’s nothing till now.”²³⁷

²³³ Human Rights Watch interview with Sylvia Lusiti, September 29, 2022.

²³⁴ Human Rights Watch interview with Lesedi N., October 7, 2022.

²³⁵ Human Rights Watch interviews with eight older people, Cape Town, Khayelitsha, Dimbaza, and Johannesburg, September 21 and 28, 2022, and October 6-7, 2022.

²³⁶ Human Rights Watch interview with Vuyiswa Vena, Cape Town, September 21, 2022.

²³⁷ Human Rights Watch interview with Bahija, J., September 21, 2022.

The living conditions for older people in government housing can also be inadequate. Gladys Booi, 69, has a leaky government-built house in Dimbaza. Even after she replastered it, her wardrobe is crumbling because of all the water. “It’s a free house, but it’s destroying what I have,” she said. “I’m not sure where the dignity is for older people if they have to live like this.”²³⁸

Hilda Sesing, 82, has her own room in Helen Joseph Women’s Hostel, in Alexandra, Johannesburg, but the bathrooms lack water and the gas stoves in the communal kitchen do not work because they were vandalized. She gets up at 4 a.m. every day to get water from an outside tap to wash and cook on an electric stove in her room before the scheduled electricity stoppages, also known as loadshedding, begin.²³⁹

Older People’s Recommendations to the Government

The older people interviewed by Human Rights Watch expressed different priorities. Some called on the government to support more social activities in their communities.²⁴⁰ Some said the government should provide more old age homes, especially for older people being abused or without children, given the absence of home-based care.²⁴¹ Others prioritized home-based care, wanting the government to employ and train more home-based caregivers,²⁴² provide assistance for older people around the house,²⁴³ and send social workers to visit older people at home to check on their well-being.²⁴⁴

Older people also told Human Rights Watch the government should provide more affordable housing for older people,²⁴⁵ improve their living conditions,²⁴⁶ and build more

²³⁸ Human Rights Watch interview with Gladys Booi, September 29, 2022.

²³⁹ Human Rights Watch interview with Hilda Sesing, Johannesburg, October 7, 2022.

²⁴⁰ Human Rights Watch interviews with three older people, Cape Town, East London, and Johannesburg, September 19 and 30, 2022, and October 6, 2022.

²⁴¹ Human Rights Watch interviews with six older people, Khayelitsha, Atlantis, Dimbaza, and East London, September 21, 23, and 29-30, 2022, and October 6, 2022. Human Rights Watch does not endorse the building of more old age homes.

²⁴² Human Rights Watch interviews with two older people, Cape Town and Dimbaza, September 20 and 29, 2022.

²⁴³ Human Rights Watch interviews with three older people, Cape Town, Gwaba, and Johannesburg, September 30, 2022, and October 7, 2022.

²⁴⁴ Human Rights Watch interviews with six older people, Cape Town, Porterville, East London, and Johannesburg, September 21, 26, and 30, 2022, and October 6-7, 2022.

²⁴⁵ Human Rights Watch interview with Matthew Bowers, Atlantis, September 23, 2022.

²⁴⁶ Human Rights Watch interview with Henry Motang, Johannesburg, October 7, 2022.

houses on empty land.²⁴⁷ Gawabulla, 75, who lives in the operating theatre of a disused public hospital in Cape Town, said: “The government should have concentrated on building houses, and not just for older people.”²⁴⁸

²⁴⁷ Human Rights Watch interview with Tony Hecksl, Cape Town, September 22, 2022.

²⁴⁸ Human Rights Watch interview with Gawabulla, September 22, 2022.

III. South Africa's Legal Obligations

South Africa's Older Persons Act, adopted in 2006 in part to address the legacy of apartheid, enshrines the rights of older people to live in an environment that caters to their changing capacities and emphasizes community- and home-based care and support services. The Social Assistance Act provides an Older Persons Grant for those whose income falls below a certain level, and a Grant-in-Aid for those who require full-time home-based care. Despite this promising framework, however, Human Rights Watch's research found that the vast majority of eligible older people are unable to access the basic care and support services they require, and that the South African government has failed to respect, protect, and fulfill older people's right to live independently and within the community.

This failure is partly due to the Department of Social Development's lack of adequate resources to ensure community- and home-based care and support services for all older people entitled to them; its failure to cover the full core costs of services provided by non-profit organizations contracted to deliver statutory services on the department's behalf; and its imposition of restrictions on how funding can be spent, all of which negatively impact its human rights obligations to ensure access to community- and home-based care and support services.

Challenges also stem from disparities in provincial government plans to increase access to services, provincial governments' failure to request sufficient funding from the national government to provide services based on an accurate assessment of the number and requirements of older people, insufficient numbers of social workers, and a lack of coordination between the health and social development departments.

Furthermore, home-based care and support services may be unavailable or unaffordable, and older people do not always know about the financial assistance provided by the Grant-in-Aid, all of which affects older people's physical and mental well-being. The Grant-in-Aid itself is insufficient to pay someone to provide the 24-hour assistance it is there to cover. As a result, many older people do not have access to the care and support services they are entitled to so they can live with dignity in their own homes and communities.

Relevant International Human Rights Standards

The Right to Live Independently and Within the Community

International human rights instruments contain numerous provisions that are relevant to the rights of older people.

The Universal Declaration of Human Rights (UDHR) recognizes the “inherent dignity” of all people and sets out the rights that are necessary for a life with dignity. Article 22 states that everyone has the right to social security and to the realization of “the economic, social and cultural rights indispensable for his dignity and the development of his personality.”²⁴⁹ Furthermore, article 25 states that everyone has the right to an adequate standard of living “and the right to security in the event of... old age.”²⁵⁰

The right to social security; to an adequate standard of living, including adequate food, clothing, and housing; and to the highest attainable standard of physical and mental health, are also guaranteed in the International Covenant on Economic, Social and Cultural Rights (ICESCR), the fundamental international treaty governing socioeconomic rights.²⁵¹

States have an obligation to ensure the right to an adequate standard of living, including housing, without discrimination.²⁵² The UN Committee on Economic, Social and Cultural Rights—the body of independent experts established to monitor the implementation by states of the ICESCR—has made clear that these rights apply to “everyone.”²⁵³ Furthermore, as the UN independent expert on the enjoyment of all human rights by older persons

²⁴⁹ Universal Declaration of Human Rights (UDHR), adopted December 10, 1948, G.A. Res. 217A(III), UN Doc. A/810 at 71 (1948), Preamble and art. 22.

²⁵⁰ *Ibid.*, art. 25.

²⁵¹ International Covenant on Economic, Social and Cultural Rights (ICESCR), adopted December 16, 1966, G.A. Res. 2200A (XXI), 21 U.N. GAOR Supp. (No. 16) at 49, UN Doc. A/6316 (1966), 993 U.N.T.S. 3, entered into force January 3, 1976, ratified by South Africa January 12, 2015.

²⁵² United Nations General Assembly, “Older persons and the right to adequate housing. Report of the Independent Expert on the enjoyment of all human rights by older persons, Claudia Mahler,” <https://www.ohchr.org/en/documents/thematic-reports/a77239-older-persons-and-right-adequate-housing-note-secretary-general>, para. 7.

²⁵³ ICESCR, art. 11(1). See also Committee on Economic, Social and Cultural Rights (CESCR), “General Comment No. 6: The Economic, Social and Cultural Rights of Older Persons,” E/1996/22, December 8, 1995, <https://www.refworld.org/docid/4538838f11.html> (accessed June 7, 2023), para. 10.

(hereinafter “independent expert”) has stated, “the human rights to an adequate standard of living and to adequate housing apply regardless of age.”²⁵⁴

While the ICESCR recognizes that the full realization of the rights contained in the covenant may need to be achieved progressively, a state party has an obligation to take steps to “the maximum of its available resources” to achieve those rights.²⁵⁵ The CESCR has stressed that “even in times of severe resource constraints the vulnerable members of society can and indeed must be protected by the adoption of relatively low-cost targeted programmes.”²⁵⁶

The right to housing has been defined by the CESCR as “the right to live somewhere in security, peace and dignity.”²⁵⁷ That right also encompasses the right of older people to live independently in the community, which “derives from the right to an adequate standard of living and is interdependent with other rights.”²⁵⁸ The independent expert has stated: “Older persons have an equal right with others to decide where to live and with whom, and not to be forced into a particular living arrangement. This right includes having the necessary means and support enabling them to make decisions and live their lives in accordance with their wills and preferences.”²⁵⁹

The CESCR has identified several factors that must be considered in determining the adequacy of housing, including accessibility and affordability.²⁶⁰ The CESCR noted that

²⁵⁴ United Nations General Assembly, “Older persons and the right to adequate housing. Report of the Independent Expert on the enjoyment of all human rights by older persons, Claudia Mahler,” <https://www.ohchr.org/en/documents/thematic-reports/a77239-older-persons-and-right-adequate-housing-note-secretary-general>, para. 9.

²⁵⁵ ICESCR, art. 2(1).

²⁵⁶ CESCR, “General Comment No. 3: The Nature of States Parties’ Obligations (Art. 2, Para. 1, of the Covenant), E/1991/23, December 14, 1990, <https://www.refworld.org/docid/4538838e10.html> (accessed June 7, 2023), para. 12.

²⁵⁷ CESCR, “General Comment No. 4: The Right to Adequate Housing (Art. 11 (1) of the Covenant),” E/1992/23, December 13, 1991, <https://www.refworld.org/docid/47a7079a1.html> (accessed June 7, 2023), para. 7.

²⁵⁸ United Nations Human Rights Council, “Report of the Independent Expert on the enjoyment of all human rights by older persons,” A/HRC/39/50, July 10, 2018, <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G18/210/00/PDF/G1821000.pdf>, para. 66.

²⁵⁹ *Ibid.*, para. 67.

²⁶⁰ CESCR, “General Comment No. 4: The Right to Adequate Housing (Art. 11 (1) of the Covenant),” <https://www.refworld.org/docid/47a7079a1.html>, para. 8 (c) and (e). The CESCR identified seven such factors: the legal security of tenure, availability of services, materials, facilities, and infrastructure, affordability, habitability, accessibility, location, and cultural adequacy.

disadvantaged groups, “such as the elderly”, “must be accorded full and sustainable access to adequate housing resources.”²⁶¹

The independent expert concluded that states should improve the affordability of housing for older people, including by eliminating discrimination on the basis of age and other grounds in all housing-related laws, policies, and practices; providing housing adapted to the needs and rights of older people; and providing a range of care and support services that promote their dignity, autonomy, and independence and enable them to remain in their home.²⁶² The UN special rapporteur on adequate housing has also recognized physical security and a safe environment as elements of the right to adequate housing.²⁶³

Older persons with disabilities have the right to live independently in the community under article 19 of the Convention on the Rights of People with Disabilities (CRPD), which South Africa ratified in 2017.²⁶⁴ The Committee on the Rights of Persons with Disabilities—the body of independent experts that monitors compliance with the CRPD—has stated that article 19 includes having access to safe, adequate, and affordable housing and that “access to housing means having the option to live in the community on an equal basis with others.”²⁶⁵

With regard to the right to live independently in the community, the Committee on the Rights of Persons with Disabilities has noted the prohibition of discriminatory practices such as the exclusion of individuals or groups from the provision of certain services, stating that “States parties should prohibit and prevent third parties from imposing practical or procedural barriers to living independently and being included in the community, for example by ensuring that services provided are in line with living

²⁶¹ *Ibid.*, para. 8 (e).

²⁶² United Nations General Assembly, “Older persons and the right to adequate housing. Report of the Independent Expert on the enjoyment of all human rights by older persons, Claudia Mahler,” <https://www.ohchr.org/en/documents/thematic-reports/a77239-older-persons-and-right-adequate-housing-note-secretary-general>, paras. 93, 101, 105, 110-111.

²⁶³ United Nations Human Rights Council, “Report of the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context, Miloon Kothari,” A/HRC/7/16, February 13, 2008, <https://digitallibrary.un.org/record/619933> (accessed December 13, 2022), paras. 4-5.

²⁶⁴ Convention on the Rights of Persons with Disabilities (CRPD), adopted December 13, 2006, G.A. Res. 61/106, Annex I, UN GAOR, 61st Sess., Supp. (No. 49) at 65, UN Doc. A/61/49 (2006), entered into force May 3, 2008, art. 19, ratified by South Africa November 30, 2017,

²⁶⁵ Committee on the Rights of Persons with Disabilities, “General Comment No.5 (2017) on living Independently and being included in the community,” <https://www.ohchr.org/en/documents/general-comments-and-recommendations/general-comment-no5-article-19-right-live>, para. 34.

independently in the community and that persons with disabilities are not denied the possibility to rent or are not disadvantaged in the housing market.”²⁶⁶

States that have ratified the CPRD are under an immediate obligation to repeal or reform policies, laws, and practices that prevent people with disabilities from securing affordable and accessible housing.²⁶⁷

The independent expert, observing that “older persons, especially those with disabilities, are often denied the right to live independently and to be included in the community,” has cautioned against forcibly placing older persons in institutions.²⁶⁸ The Committee on the Rights of Persons with Disabilities has emphasized that people with disabilities, including older persons with disabilities, should be able to “exercise choice and control over their lives and make all decisions concerning their lives.”²⁶⁹ This right should apply to all older persons.

Support Services

Both the CESCR and the Committee on the Rights of Persons with Disabilities have stressed that access to care and support services is essential to the full enjoyment of the right to live independently in the community.

The CESCR has also stressed that “insofar as respect for the rights of older persons requires special measures to be taken, States parties are required by the Covenant to do so to the maximum of their available resources.”²⁷⁰ With regard to persons with disabilities, the CESCR has stated that the right to an adequate standard of living in relation to article 11 of the ICESCR also includes the need to ensure that “support services,

²⁶⁶ Ibid., para 53.

²⁶⁷ Ibid., para. 46.

²⁶⁸ United Nations General Assembly, “Older persons and the right to adequate housing. Report of the Independent Expert on the enjoyment of all human rights by older persons, Claudia Mahler,” <https://www.ohchr.org/en/documents/thematic-reports/a77239-older-persons-and-right-adequate-housing-note-secretary-general>, para. 33.

²⁶⁹ Committee on the Rights of Persons with Disabilities, “General Comment No.5 (2017) on living Independently and being included in the community,” <https://www.ohchr.org/en/documents/general-comments-and-recommendations/general-comment-no5-article-19-right-live>, para. 16 (a).

²⁷⁰ CESCR, “General Comment No. 6: The Economic, Social and Cultural Rights of Older Persons,” <https://www.refworld.org/docid/4538838f11.html>, para. 10.

including assistive devices’ are available ‘for persons with disabilities, to assist them to increase their level of independence in their daily living and to exercise their rights’.”²⁷¹

With regard to the exercise of autonomy and independence in relation to adequate housing, the independent expert has noted that some of the primary barriers for older persons include “the lack of adapted and diversified housing options, the lack or limited availability of care” and “social and/or support services at home and in the community.”²⁷² The independent expert observed that support services include “the provision of help or assistance to someone who requires it to carry out daily activities and participate in society. Such services are often not available or not affordable for older persons, especially those with disabilities.”²⁷³

Under article 19 (b) of the CRPD, states have an obligation to ensure that “persons with disabilities have access to a range of in-home, residential and other community support services, including personal assistance necessary to support living and inclusion in the community, and to prevent isolation or segregation from the community.”²⁷⁴ These supports should be available to anyone with a disability on an equal basis, meaning the support should be provided without consideration of the level of support the person requires.²⁷⁵

The Committee on the Rights of Persons with Disabilities has specifically addressed the over-reliance of some governments on support and care being provided solely by families. The committee has emphasized that persons with disabilities “must have the same degree of choice and control over their lives as other members of the community,”²⁷⁶ and has noted that “often, persons with disabilities cannot exercise choice because there is a lack

²⁷¹ CESCR, “General Comment No. 5: Persons with Disabilities,” E/1995/22, December 9, 1994, <https://www.refworld.org/docid/4538838fo.html>, (accessed June 7, 2023), para. 33.

²⁷² United Nations General Assembly, “Older persons and the right to adequate housing. Report of the Independent Expert on the enjoyment of all human rights by older persons, Claudia Mahler,” <https://www.ohchr.org/en/documents/thematic-reports/a77239-older-persons-and-right-adequate-housing-note-secretary-general>, para. 31.

²⁷³ *Ibid.*, para. 32.

²⁷⁴ CRPD, art. 19 (b).

²⁷⁵ Committee on the Rights of Persons with Disabilities, “General Comment No.5 (2017) on living Independently and being included in the community,” <https://www.ohchr.org/en/documents/general-comments-and-recommendations/general-comment-no5-article-19-right-live>, paras. 20-21. Paragraph 20 provides: “Neither the full or partial deprivation of any ‘degree’ of legal capacity nor the level of support required may be invoked to deny or limit the right to independence and independent living in the community to persons with disabilities.”

²⁷⁶ *Ibid.*, para. 22.

of options to choose from. This is the case, for instance, where informal support by the family is the only option, where support is unavailable outside of institutions, where housing is inaccessible, or support is not provided in the community.”²⁷⁷ Furthermore, the committee has stressed that every state party must ensure a standardized minimum support level sufficient to allow the exercise of the right to live independently and be included in the community, which includes, among other things, development of a “concrete action plan for independent living for persons with disabilities within the community, taking steps toward facilitating formal supports for independent living within the community so that informal support by, for example, families is not the only option.”²⁷⁸

The Committee on the Rights of Persons with Disabilities has also underscored that “individualized support services must be considered a right rather than a form of medical, social or charity care. For persons with disabilities, access to a range of individualized support services is a precondition for independent living within the community.”²⁷⁹

The independent expert has observed that the right of older persons to live independently includes “having the necessary means and support enabling them to make decisions and live their lives in accordance with their wills and preferences.”²⁸⁰

Relevant Regional and National Legal Standards

The African Charter on Human and Peoples’ Rights, which South Africa ratified in 1996, provides that older people have the right to “special measures of protection in keeping with their physical or moral needs.”²⁸¹ Similarly, the Protocol to the African Charter on Human and People’s Rights on the Rights of Women in Africa (the Maputo Protocol), which South Africa ratified in 2004, guarantees “special protection” to older women, including in relation to their “physical, economic and social needs.”²⁸²

²⁷⁷ *Ibid.*, para. 25.

²⁷⁸ *Ibid.*, para. 38 (c).

²⁷⁹ *Ibid.*, para. 28.

²⁸⁰ United Nations Human Rights Council, “Report of the Independent Expert on the enjoyment of all human rights by older persons,” <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G18/210/00/PDF/G1821000.pdf>, para. 67.

²⁸¹ African [Banjul] Charter on Human and Peoples’ Rights, adopted June 27, 1981, OAU Doc. CAB/LEG/67/3 rev. 5, 21 I.L.M. 58 (1982), entered into force October 21, 1986, ratified by South Africa July 9, 1996, art. 18.

²⁸² Protocol to the African Charter on Human and Peoples’ Rights on the Rights of Women in Africa, adopted by the 2nd Ordinary Session of the Assembly of the Union, Maputo, CAB/LEG/66.6 (Sept. 13, 2000); reprinted in 1 Afr. Hum. Rts. L.J. 40, entered into force Nov. 25, 2005, ratified by South Africa December 17, 2004, art. 22.

The South African Constitution guarantees older people’s rights to sufficient food and water and adequate housing.²⁸³ It also guarantees non-discrimination on the basis of age and disability.²⁸⁴ Section 27 of the constitution recognizes the right to social security, including the right to “appropriate social assistance.” In 2020, the Eastern Cape High Court found that home-based care and support services for older people are the type of social assistance envisaged by section 27 of the constitution and “not only assist the beneficiaries to survive but also to survive with dignity, in the exercise of their right to dignity.”²⁸⁵

The South African Older Persons Act, signed into law in 2006, provides for the right of all people 60 years of age and older to live in an environment that caters to their changing capacities.²⁸⁶ The act “shift[s] the emphasis from institutional care to community-based care in order to ensure that an older person remains in his or her home within the community for as long as possible.”²⁸⁷ The CRPD does not limit the provision of support services in the community with the qualifier “for as long as possible.”²⁸⁸ As of November 2022, the South African Department of Social Development had tabled amendments to the Older Persons Act, including provisions for inter-governmental coordination of its implementation and support for older persons with disabilities and chronic illnesses.²⁸⁹

Under the Social Housing Act, the government and social housing institutions must give special priority to older people for social housing.²⁹⁰

²⁸³ Constitution of the Republic of South Africa, Sections 26, 27 (1) (b).

²⁸⁴ *Ibid.*, Section 9 (3).

²⁸⁵ *Imbumba Association for the Aged v. Member of the Executive Council for Social Development, Eastern Cape, Head of the Department of Social Development*, Eastern Cape High Court, Case No.: 1789/2020, Judgement, October 1, 2020, <http://www.saflii.org/za/cases/ZAECGHC/2020/112.html> (accessed November 26, 2022), para. 30.

²⁸⁶ Older Persons Act, Section 7 (e), (f).

²⁸⁷ *Ibid.*, Section 2 (c).

²⁸⁸ CRPD, art. 19.

²⁸⁹ Department of Social Development, “Older Persons Amendment Bill 2022,” *Government Gazette*, https://www.gov.za/sites/default/files/gcis_document/202203/46032gon1872.pdf.

²⁹⁰ Social Housing Act, Section 2 (1) (a).

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“This Government is Failing Me Too”

South Africa Compounds Legacy of Apartheid for Older People

Older people in South Africa spent at least half their lives under an apartheid regime, whose racial segregation policies denied most of them a good education, decent jobs, and the ability to save for older age. Nearly 30 years after apartheid’s end, the cumulative impact of this racial discrimination continues to affect them. Despite a promising legal framework, government policies have compounded apartheid’s legacy, leaving hundreds of thousands of older people unable to access the care and support services they are entitled to so they can live a dignified life.

“*This Government is Failing Me Too*” documents the South African government’s failure to effectively implement the Older Persons Act, a post-apartheid law that provides for community- and home-based care and support services for older people. Based on interviews with older people, caregivers, social workers, service providers, lawyers and academics, the report details the key challenges to executing the act: insufficient government resources for services, restrictions on what services certain non-profit organizations can provide, an insufficient number of social workers, and an inadequate social security entitlement for older people who require home-based support.

Human Rights Watch urges South Africa to implement the Older Persons Act fully by allocating sufficient resources for community- and home-based care and support services to older people entitled to them. The government should also ensure that social security entitlements are enough for older people to live independently and with dignity in their homes and communities.



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Nozala Ndozana, 84, in front of her home in Gwaba village, Eastern Cape, where she spends more than 12 hours a day alone when her daughter goes to work.

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