



**HURISA**

**Human Rights Institute of South Africa**

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Braamfontein, South Africa 2017

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**UPR Info : Pre- Session 41 UPR**

**29-31 August 2022**

**Presentation: Vulnerable Groups (elderly persons, persons with disability, LGBTIQ+ and sex workers)**

### **Previous Recommendations**

*139.89 Enhance the prevention, investigation, and prosecution of violent crimes against individuals belonging to vulnerable groups (United Kingdom of Great Britain and Northern Ireland);*

*Source of position: A/HRC/36/16/Add.1*

*139.97 Engage non-governmental organizations on the lesbian, gay, bisexual, transgender and intersex task team and update and implement the national lesbian, gay, bisexual, transgender, and intersex strategy (United States of America); Source of position: A/HRC/36/16/Add.1*

*139.141 Continue to ensure effective access to social protection for vulnerable groups (Madagascar);*

*Source of position: A/HRC/36/16/Add.1*

*139.145 Continue its endeavours on development and poverty alleviation throughout the community, notably for vulnerable groups, such as women and children (Islamic Republic of Iran);*

*Source of position: A/HRC/36/16/Add.1*

### **Background**

The 3<sup>rd</sup> Cycle of the UPR process noted that vulnerable groups continue to exist at the periphery of society with little protection from the government, law, and justice system. Most experience challenges in accessing basic services.

Whilst South Africa progressive Constitution and a legislative framework promotes and protects the rights of vulnerable groups in society, gaps still exist when it comes to the protection of the rights of sexual minorities, elderly persons, sex workers, persons with disability among others.

### **LGBTQA+ Persons**

The situation for LGBTIQ+ people has been deteriorating as campaigners and individuals live and operate in a hostile environment characterised by hate speech, death threats and killings. Statistics show that [44% of the queer community reportedly experience](#) verbal, physical and/or sexual discrimination in their everyday lives due to their sexual orientation, and sensitive issues are often remarkably under-reported. A survey of more than 2,000 LGBTQ people by Out found that within a

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two-year period, 39% had been verbally insulted, 20% had been threatened with harm, 17% “chased or followed,” and nearly 10% physically attacked, and about half of all black respondents knew people who had been murdered because of their sexual orientation.

### **Older Persons**

Older persons continue to be subjected to negative societal ageism perceptions that paint them as a burden with little to contribute to the society or the economy. Their safety is also limited particularly for women in rural areas who stay alone. Cases of elderly women being raped in rural areas in Eastern Cape, Free State and KwaZulu Natal Provinces are rampant<sup>1</sup>. This is despite the Older Persons 2006 Act, a legal framework adopted to maintain and promote the status, wellbeing, safety and security of older persons. The Act encourages societal care to ensure older persons remain in their homes within the community, in safe environments.

But in practice this remain a pipedream as older persons are unsafe in communities. They face heinous crimes such as murder, rape, insults, robbery, stigma for being associated with witchcraft, burdened as caregivers of their grandchildren, children with disabilities, ill family members and so on.

Elderly women live in fear of being victimised for murder by their own sons (serving as police), relatives and or by unknown persons where the justice system has shown inconsistency in sentencing accused persons found guilty of serious crimes. Application of the Older Person Act, remain invisibility, even at level of the judiciary.

With regard to rape, murder, robbery and witchcraft, a serial killer was reported targeting elderly women, of between 70years and 90+years unabatedly at old age homes since he was out on bail in 2015. Although justice was finally dispensed with appropriate conviction and sentence, in 2022, the traumatic impact of the brutal murder of vulnerable persons supposed to be cared for by the community could have been prevented by bail denied for the suspect.

South African Human Rights Commission (SAHRC/ Commission)<sup>2</sup>, identified barriers that deprive older persons from enjoying their constitutionally guaranteed rights. Some of these include: The right to health care, despite safeguarded in the Constitution<sup>3</sup>. The Commission noted that older persons, particularly those living in rural areas, who are indigent and ill, are most adversely impacted when they try to access health care services. There’s often shortage of emergency vehicles, costly transportation from rural areas to urban health facilities, long waiting queues at public health facilities and possible lack of medicine. These atrocities are aggravated by a lack disrespect of older persons by health care professionals.

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<sup>1</sup> <https://www.sanews.gov.za/south-africa/elderly-woman-raped-men-posing-sandf>. See also <https://journals.sagepub.com/doi/abs/10.1177/0025802416683610> and <https://www.myjoyonline.com/91-year-old-woman-and-roommate-75-raped-in-south-africa/>

<sup>2</sup> 2015 report titled Investigative Hearing into Systemic Complaints Relating to the Treatment of Older Persons

<sup>3</sup> Section 27 of the Constitution which accord individuals right to have access to health care services

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## **Sex Workers**

Sex work continues to be a criminal act which makes it hard for sex workers to access essential services leading to a disproportionate increase in sexual related infections especially HIV. GBV is also rampant in this demographic as sex workers are not able to report cases of GBV without further exposing themselves to victimisation from the police.

## **Persons with Disabilities**

While the South Africa government has made commendable strides in creating an enabling environment for people living with disabilities through legislative and policy framework, implementation remains a challenge which in turn deny the affected citizens full enjoyment of their rights. The situation is even more dire for persons with disability living in rural areas, those with mental health challenges and children. It is estimated that close to 600 000 children with disabilities are on waiting lists to be placed in a school or institution, whilst many of those in school to attend special schools far away from their homes and schools for persons with disability continue to lack adequate support staff.

## **Recommendations**

### **LGBTIQ**

- Guarantee the safety and protection of all LGBTQI+ members in the country as enshrined in the constitution.
- Fast track the passing into law of the Hate Speech and Hate Crimes Bill.
- Invest in gender sensitisation workshops to foster harmony and understanding of the LGBTQI+ community.
- Ensure an enabling environment for LGBTQI+ rights organisations and human rights defenders to operate.

### **Older Persons**

- Implement SAHRC 2015 report recommendations, which include awareness raising, sensitisation of responsible government departments, officials, including the judiciary on the Older Persons Act for effective monitoring and protection of older persons in private and public spheres
- Improve skills and capacity of personnel in frail care facilities so that proper assistance is rendered to older persons.<sup>4</sup>

### **Sex workers**

- Enact a policy or legislation to protect sex workers.
- Decriminalise sex work.
- Put measures in place to ensure that sexual and reproductive health services are easily accessible to sex workers.

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<sup>4</sup> This is aligned with the World Health Organisation recommendation of (a) *education and training of health care providers to change their negative attitudes for promoting assessment and treatment of conditions that afflict older persons and, to empower them to remain healthy;* b) *Primary health care management systems be adapted to the needs of older persons;* and; c) *Efforts to make physical access easier for older persons who have mobility, vision or hearing impairments be undertaken.*

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### **Persons with a Disability**

- Develop a single piece of legislation to specify, coordinate and govern services for children with disabilities and developmental delays.

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