



Southern Africa Expert Meeting on Older Persons
30 May 2018

**HelpAge
International**

global network

Introduction

“It is trite that the inception of the constitutional era in South Africa has engendered a new dispensation founded on justiciable human rights. In this new dispensation the right to dignity is the basic foundation of all other rights. Where someone is deprived of their dignity, their personhood is inexorably diminished. Thus it is necessary to be particularly sensitive to the needs of the disempowered, the marginalized and the excluded in our society”.

Shannon Hoctor; University of KwaZulu-Natal, Pietermaritzburg.

Protecting older persons – new developments in the law.

What is ageism?

Is the prejudice or discrimination on the grounds of a person's age

Age discrimination is the systematic and institutionalised denial of the rights of older people on the basis of their age by individuals, groups, organisations and institutions.

What is ageism?

- Older people's rights as human beings are neither recognised nor valued. As such, older people suffer abuse, assaults and murders at the hands of those from whom they should expect support and protection.
- They are accused of all forms of witchcraft, from causing deaths, HIV/AIDS, traffic accidents, too much or too little rainfall.
- They are denied the opportunities for employment and access to property. They are disinherited of or killed for their land and property and are not given adequate legal protection.
- There are no policies or legal frameworks that can protect the rights of older people in the majority of African countries.

Understanding ageing

- **Ageing is universal:** It is common to every population around the globe.
- **Ageing is normal:** “Growing up” is spoken of with respect, “growing old” with fear. This fear develops from stereotyped picture of ageing as a loss of faculties, beauty, energy and memory.
- **Ageing is variable:** Each individual ages in a unique way. But is responsibility of everyone to treat older people in a dignify and respectful way.

What makes older persons vulnerable to abuse

- Older person's vulnerability is a combination of three factors:
 - Health status.
 - Cognitive ability.
 - Social support.

What makes older people vulnerable to abuse

- **Health status.** Older people are “vulnerable decision-makers” in a rapidly changing environment because of limited physical mobility and difficulties when searching for information. Physical changes in old age reduce the ability to conduct activities of daily living and maintain independence.
- **Cognitive ability.** Older people often experience decreased information processing and problem-solving skills due to declining memory capacity, reasoning/evaluation skills, and cognitive flexibility. This leads to poor decision-making and judgment ability among older adults
- **Social network.** Older people tend to be more vulnerable because they are less socially integrated and more likely to be under stress. “Social isolation” commonly occurs among older people as a consequence of poor health, retirement, and loss of a spouse and friends.

Types of abuse of older people

- **Physical abuse,**
e.g. Threatened with violence, pushed, beaten, stabbed, etc.
- **Sexual abuse,**
• e.g. Raped, indecent assaulted, verbal abuse with sexual slurs, etc.
- **Emotional and Psychological abuse,**
• e.g. Insulted, ridiculed, called names, repeat threats to cause emotional and physical pain, repeated invasion of privacy, liberty, integrity and security, etc.
- **Economic abuse,**
• e.g. Money taken, house or any possession without consent.

Promoting the rights of older persons

- HelpAge International and the Department of Justice and Constitutional Development of South Africa, signed an MOU in October 2015. The purpose of this understanding was to bring into focus the need for age friendly services within the judicial system.
- Within the MOU the areas of collaboration include strengthening the implementation of legislation to protect the rights of older persons, increasing their access to justice, contribute to the harmonisation of policies, support training and material design for court room personnel as well as information material for older persons.

National Dialogue of Older Persons

- On 20 October 2017, the Department of Justice and Constitutional Development (DoJ&CD) hosted its first National Dialogue of Older Persons. The primary objective of the National Dialogue was to give the delegates a platform to deliberate on and find possible solutions to the current barriers and challenges that prevent older persons from participating on an equal basis with others when engaging with the courts and the broader justice system.

Challenges and difficulties for older persons in court

- Older persons are afraid of the Justice system e.g. courts. Given SA's background, many saw the courts as places of punishment, fear.
- Court processes are unknown to older persons – fear of the unknown.
- Older persons have the right to be heard in camera – not always granted.
- Bad attitude of staff at the Courts, not conducive for older persons to use the Justice system.
- Not all courts are equipped for disabled persons.
- Bail for perpetrators – older persons are afraid of the perpetrators being let out on bail as this often leads to secondary trauma/abuse.
- Length of time it takes for a charge to be processed and reach the courts – too long.
- Death not recognized as a symptom of elder abuse e.g. an older person dying as a result of severe neglect.
- Statistics on elder abuse going through the Justice system.
- Not always about changing an entire system – might be as simple as delivering the same service differently in a more appropriate manner for older persons.

Older persons in court

- While some older persons are, in principle able to utilize the law to enforce their rights, certain systemic barriers detract from the equality provided for in law. These include inadequate assistive devices for older court users with disabilities, physical and communication barriers, inadequate access to information, inadequate/ lack of directional signage accessible to older persons, and the lack of specialized training to establish age-sensitive court officials.

Code of principles to care and service older people

- Attention to older persons in court demands courtesy, willingness to help, enthusiasm, empathy, punctuality. Individuals that come in need to court should be treated as the most important person and the reason of our work.
- The court service demand sensitive and high quality treatment when in contact with the older person.

Improvement of service in court with older people

- Personalized dialogue and careful attention to quality processes.
- The improvement in response times
- Understand the basic needs of older persons in court:
 - Need to be understood: understanding the older persons needs.
 - Need to be welcomed: not receiving the older person as strange.
 - Need for comfort: people need harmony and physical comfort (place to wait, sanitary neat, clean and tidy offices, etc.) and psychological (security and trust)

Protection Order

What is a Protection Order?

- A protection order is a legal document that is intended to stop the abuser from committing any act of domestic abuse against an older person.

Rights of older persons

- The right to equal protection and benefit of law.
- No one may unfairly treat an older person because of his or her age.
- The right to be treated with dignity and respect
- The right to be free from all forms of violence and abuse.

How to apply for a Protection Order

HOW TO APPLY FOR A PROTECTION ORDER

As an older persons, you have rights, you are not alone...!!!

The Older Persons Act, 2006 (Act No 13 of 2006) defines an older person as any woman of 60 years of age or older and any man 65 years of age or older. An older person has the right to apply for protection order to prevent and to avoid any type of abuse and risk to their security, dignity and life.

WHAT YOU MUST DO WHEN ABUSED AND IN NEED FOR PROTECTION

1. Report immediately to the nearest Police Station or go straight to the nearest Magistrate Court where you live.

- Bring along any evidence you may have to prove any act of abuse, violence and harassment against you.
- You may ask a family member or a friend to accompany you.

REMEMBER: The officers and other staff are there to help you. You are not alone...!!!

2. You need to fill out a Form. Don't be afraid to ask for help to do it

-In the Police Station:

- The police will write down everything you tell them as your declaration.
- You will have to complete the Form 2 Application for Protection Order.
- After assessment, the police officer will refer you to the Magistrate Court.

-In the Magistrate Court:

- Every Magistrate Court is also a domestic violence court.
- You need to fill in the Form 2 Application for a Protection Order if you did not do it yet at the police.

REMEMBER: A social worker and other staff can also assist you if you need help.

3. You will get an Interim (temporary) Protection Order

- The clerk will write an interim protection order in your favour.
- The purpose of this Interim Protection Order is to provide immediate protection to you.
- The clerk will tell you when you will need to return to court and will give you a Case Number.
- The Magistrate will then inform the abuser in a letter that you (the abused) are protected by law and he or she will have to come to court to declare.

REMEMBER: Do not forget to get a Case Number. This number will be used to keep you informed of what is happening in your matter.

4. Delivering the Interim Protection Order

- The clerk will keep the original application and the interim protection order for your file.
- The clerk will give you three copies: one copy for you and two copies must be given to the police.
- The police will then give the abuser a copy of your Interim Protection Order and will tell him or her when to come to court to declare.
- The police have to give the Interim Protection Order in person and inform the Magistrate Court.

REMEMBER: Always give your contact details to the police: Address and telephone number even if you moved so they can deliver a copy of the Interim Protection Order.

What should happen after you have reported the abuse to the police?

Once the police receive the report, the officers will go to your place of residence and tell the abuser to leave the home or to stop entering the premises and to have any contact with you until the problem is solved by the Magistrate Court.

The clerk will give you a date when to come back to court. On that date, the Magistrate will consider your declaration and all the issues related and will listen to the abuser's statement. The Magistrate will make a decision and may confirm the Protection Order.

The Magistrate may also grant a Maintenance Order against the abuser where she or he deems it necessary.



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