



**Human Rights Watch Submission to the Committee on the Elimination of All Forms of
Discrimination (CERD) in Advance of Its Review of South Africa, 111th Session**

October 27, 2023

**Addressing the Legacy of Apartheid on the Right of Older Persons to Live
Independently in South Africa**

1. Introduction

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.”

This submission focuses on redressing the inequalities resulting from the former apartheid era particularly in the enjoyment of economic, social and cultural rights, as raised in the List of Themes, CERD/C/ZAF/Q/9-11, paragraph 9. It focuses on older persons’ right to live independently within the community and examines how efforts by the post-apartheid government to address apartheid’s legacy of racial inequalities in access to care and

support services are failing. Despite promising legislation introduced in 2006 to shift the emphasis away from residential care accessible predominantly only to white older persons during apartheid to community- and home-based care and support services available to all, hundreds of thousands of primarily black African, coloured and Indian/Asian older people still do not have access to the care and support they require and are entitled to.

This submission is based on Human Rights Watch’s research and interviews, including with more than 60 older persons, in Eastern Cape, Gauteng and Western Cape provinces between September 2022 and May 2023. We refer 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.¹ The older persons interviewed were racially diverse: 41 black African, 13 coloured, 3 Indian/Asian, and 6 white. Forty-five were women and 18 were men.

The research report is available at: <https://www.hrw.org/report/2023/06/27/government-failing-me-too/south-africa-compounds-legacy-apartheid-older-persons>

2. Background: Older Persons and The Legacy of Apartheid

In 2022, South Africa had approximately 5.59 million people aged 60 and older, comprising 9.2 percent of the total population.² That means that nearly one in ten of South Africans spent at least half of their life under apartheid. The cumulative impact of racial discrimination when they were younger continues to affect primarily black African, coloured and Indian/Asian older persons decades on.

As a result of apartheid policies of racial segregation, including in education and employment,³ most black African, coloured, and Indian/Asian people who are now over 60 did not have access to decent education and decent work. Many were displaced as children or young people, separated from their families when the apartheid government

¹ 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/P0302/P03022022.pdf> (accessed November 16, 2022), Table 5, p. 19.

² 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.

³ South African History Online, “Apartheid Legislation 1850s to 1970s,” undated, <https://www.sahistory.org.za/article/apartheid-legislation-1850s-1970s> (accessed January 23, 2023).

forcibly removed whole communities using legislation that systematized the segregation of persons on the grounds of race.⁴

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 persons. 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 persons, 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 persons. Denied access to a decent education or decent work for at least half their lives under apartheid, and therefore unable to save for older age, 87 percent of black African, 81 percent of coloured, and 58 percent of Indian/Asian older persons received means-tested social security entitlements in 2020, compared to only 30 percent of white older persons.⁵

Work opportunities are critical to improve the economic situation of those on low incomes. Despite that, in 2020, white older persons were twice as likely to be working than black older persons with 20 percent of white, compared to 11 percent of coloured, 10 percent of black African, and 9 percent of Indian/Asian older persons participating in the labour force.⁶

Themba Magqadaza, an 80-year-old black African man in Dimbaza, who spent nearly 50 years under living under apartheid, epitomizes this legacy. He left school after two years, unable to read or write, then worked in the mines for almost 30 years until violence between Zulu and Xhosa miners forced him to leave without a pension. At 80 years old, his

⁴ Sarah Darby and Yizhu Wang, "History of District Six" (blog), undated, <https://historyofdistrict6.wordpress.com/> (accessed November 27, 2022).

⁵ 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.

⁶ Ibid., Table 4.3.7, p. 70.

only income is the Older Persons Grant, part of which goes every month to pay off the loan sharks he's forced to use in order to survive.⁷

3. Older Persons' Right to Live Independently (art.2.c and art.5.e)

South Africa is obligated under international human rights law to ensure that all older persons have an adequate standard of living, including adequate housing.⁸ This right must be guaranteed without discrimination.⁹ The right to adequate housing encompasses the right of older persons 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.¹⁰ The government has a specific obligation under the Convention on the Rights of Persons with Disabilities to ensure that older persons 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.¹¹

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”¹² and aims to “shift the emphasis from institutional care to community-based care.”¹³ In doing so, the act attempts to address an apartheid legacy; namely, the emphasis on residential facilities to provide care and support predominantly for white older persons.

⁷ “10-Rand Increase Won't Keep Older Persons from Going Hungry,” <https://www.hrw.org/news/2022/11/10/10-rand-increase-wont-keep-older-persons-going-hungry>.

⁸ International Covenant on Economic, Social and Cultural Rights (ICESCR), art. 11, adopted December 16, 1966, G.A. Res. 2200A (XXI), UN Doc. A/6316 (1966), 993 UNTS 3. See also 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. 25.

⁹ ICESCR, art. 2(2) Committee on Economic, Social and Cultural Rights' General Comment No. 20 on Non-discrimination in economic, social and cultural rights (art.2 (2)), E/C.12/GC/20, July 2, 2009. See also 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.

¹⁰ 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://www.right-docs.org/doc/a-hrc-39-50/> (accessed October 27, 2023), paras. 66 and 67.

¹¹ 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.

¹² Older Persons Act, Section 7 (e).

¹³ *Ibid.*, Section 2 (c).

Under apartheid, social services were segregated by race, with far better services available to white people.¹⁴ Although white people comprised an estimated 16 percent of the population in South Africa in 1980,¹⁵ 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.¹⁶ 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.¹⁷ 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.

Nearly 30 years after the end of apartheid, current government policies and practice are undermining the intended remedial impact of the Older Persons Act and are, in fact, compounding apartheid's legacy. Human Rights Watch's research found that many black African, coloured, and Indian/Asian older persons who were displaced during apartheid still do not enjoy their right to live independently and within the community, with hundreds of thousands of older persons 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.¹⁸

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

¹⁴ Aziza Seedat, "Crippling A Nation: Health in Apartheid South Africa," London: International Defence and Aid Fund for Southern Africa, April 1984, p. 78.

¹⁵ 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.

¹⁶ 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.

¹⁷ Daily News, Durban, September 20, 1982, cited in Aziza Seedat, "Crippling A Nation: Health in Apartheid South Africa," p. 78.

¹⁸ Human Rights Watch, "*This Government is Failing Me Too: South Africa Compounds Legacy of Apartheid for Older Persons* (New York: Human Rights Watch, 2023), <https://www.hrw.org/report/2023/06/27/government-failing-me-too/south-africa-compounds-legacy-apartheid-older-persons>.

There are a number of factors that contribute to the unavailability of services:

3.1. Government Targets Not Based on Scale of Need

The Department of Social Development, who is responsible for care and support services for older persons, does not have data on how many older persons require care and support services. It sets its targets based on what it can afford, rather than on what services older persons need. However, given that half of all older persons have disabilities¹⁹ and more than half have chronic illnesses,²⁰ its targets of 20 per cent of “active vulnerable older persons” and 3 per cent of “vulnerable frail older persons” accessing care and support services²¹ are extremely low. Furthermore, the government is not even meeting these low own targets. In 2021, a mere three per cent of the then 3.7 million older persons receiving the Older Persons Grant had access to any care and support services.²²

3.2. Disparities in Provincial Plans to Increase Access to Services

Provincial governments are responsible for providing support services to older persons entitled to them. While some provincial governments have acknowledged the need to increase older persons’ access to services, provincial plans are inconsistent, with some decreases in budgets despite growing need. Even planned increases would only cover a small proportion of those believed to be entitled to services. For example, between 2020 and 2023, the Western Cape’s budget for these services decreased by eight per cent,²³ and Gauteng’s by seven per cent.²⁴ After protests from non-profit organizations, the Gauteng

¹⁹ 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.

²⁰ Ibid., Table 4.4.5, p. 76.

²¹ Department of Social Development, “Community Based Care and Support Services Model, Older Persons,” undated, pp. 6, 31-32.

²² Department of Social Development, “Older Persons Services in South Africa,” Presentation to the COPSAN Meeting, Slide 10; National Treasury, “2022 Estimates of National Expenditure,” <http://www.treasury.gov.za/documents/national%20budget/2022/ene/FullENE.pdf>, p. 340.

²³ 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%2023.pdf> (accessed April 19, 2023), Table 9.2, p. 311.

²⁴ 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.

Premier promised to reverse this budget decrease²⁵ which would have cut services to 4000 older persons.²⁶ In contrast, the Eastern Cape’s budget rose by 16 per cent from 2020 to 2023,²⁷ but over those 3 years, only 392 additional older persons got services.²⁸

3.3. Insufficient Funding to Non-Profit Organizations that Deliver Basic Services

The government of South Africa contracts with non-profit organizations to provide the services due to older persons under the Older Persons Act and pays them a subsidy to this end. The majority of older persons who are eligible for the services provided by non-profit organizations are black African, Indian/Asian and coloured older persons, since these services are only available to those who receive the Older Persons Grant, the majority of whom are black African, Indian/Asian and coloured older persons.²⁹

Service center managers in Eastern Cape told Human Rights Watch that this subsidy covered only 40 to 50 percent of their costs. In Western Cape, service center managers said that the subsidies did not cover the core costs of services older persons were entitled to so service centers either had to reduce costs by reducing services, charge older persons an annual membership fee or increase funding from other non-government sources. In Gauteng, one service center manager told Human Rights Watch that the subsidy only covers about 70 percent of their costs.³⁰

3.4. Overly Prescriptive Rules on Non-Profit Service Provision

Several of the persons interviewed by Human Rights Watch who had access to community-based service centers in Western Cape, Eastern Cape, and Gauteng provinces said that

²⁵ 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).

²⁶ 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), p. 240.

²⁷ 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.

²⁸ *Ibid.*, Table 15, p. 237.

²⁹ 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.

³⁰ Human Rights Watch, “*This Government is Failing Me Too: South Africa Compounds Legacy of Apartheid for Older Persons*, pp. 35 – 37.

available activities were limited to daily meals, knitting and other crafts, massages from caregivers, and exercise and sports.³¹

Overly prescriptive requirements regarding how the subsidy is spent can further limit the types of community-based care and support that service centers can provide. 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.³² These allocations do not reflect the range of services envisaged under the Older Persons Act,³³ the actual requirements of those being served by the centers, nor staff salaries.

3.5. Over-reliance on family members

The Older Persons Act guarantees older persons 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.”³⁴ However, an over-reliance on family care excludes older persons 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.

Family caregivers, often younger women, are also affected by the lack of care and support services for older persons.³⁵ Globally, women are more likely to provide care and support for family members with chronic illnesses, including for older persons.³⁶ In South Africa, they may also have to take on responsibility for other family members the older person can 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.³⁷

³¹ Human Rights Watch, “*This Government is Failing Me Too: South Africa Compounds Legacy of Apartheid for Older Persons*,” p. 39.

³² Letter from M. Macheba, Head of Department, Eastern Cape Department of Social Development, to Chairperson of the Dimbaza Society for the Aged, May 4, 2022.

³³ Older Persons Act, Section 11 (2) (g), (j).

³⁴ Older Persons Act, Section 10 (c).

³⁵ 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.

³⁶ Nidhi Sharma, Subho Chakrabarti, and Sandeep Grover, “Gender differences in caregiving among family - caregivers of persons 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).

³⁷ Elena Moore, “Family care for older persons in South Africa: heterogeneity of the carer’s experience,” <https://doi.org/10.1332/239788221X16740630896657>, p. 281.

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.³⁸ The lack of social workers, according to the Minister, is due to budget constraints.³⁹

3.6. Inadequate Grant-in-Aid

The majority of older persons whose monthly income falls under a certain threshold and so are eligible to receive the Older Persons Grant are black African, Indian/Asian and coloured people. 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.⁴⁰

In April 2023 the grant was R500 (US\$27).⁴¹ 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.⁴² And there are additional costs associated with support that the Grant-in-Aid does not cover.

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 R8,000 (US\$435) per month for a live-in caregiver,⁴³ equivalent to 16 months' worth of the Grant-in-Aid. Another, CareChamp, charged R24,999 (US\$1,360) per month for a live-in caregiver,⁴⁴ equivalent to four years' worth of the Grant-in-Aid.

³⁸ 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).

³⁹ 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).

⁴⁰ South Africa Government, "Grant in aid," <https://www.gov.za/services/social-benefits/grant-aid>.

⁴¹ South African Social Security Agency, "SASSA Grant Increases for 2023 & 2024," <https://www.sassagrants.co.za/sassa-grant-increases-for-2023/>.

⁴² 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).

⁴³ SA Nanny, "Elderly Care," undated, <https://www.sananny.co.za/elderly-care/> (accessed March 29, 2023).

⁴⁴ CareChamp, "Our Competitive Rates," undated, <https://www.carechamp.co.za/our-competitive-rates> (accessed March 29, 2023).

In addition, Human Rights Watch learned that few older persons we interviewed, who could be eligible for the Grant-in-Aid, were aware of its existence.

4. Key Recommendations

Given the impact of apartheid on black African, Indian/Asian and coloured people aged 60 and older in South Africa today, we make the following recommendations:

To the National Department of Social Development

- Establish and implement a system to determine and make public the number of older persons who require community-based care and support services;
- 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 persons, to cover the full core costs of services envisaged under the Older Persons Act;
- 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 persons 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 persons can access adequate care and support to live independently and within the community.
- Provide accurate information to older persons and those who provide care and support to them about the Grant-in-Aid and its eligibility criteria.

To the Provincial Departments of Social Development

- Apply for sufficient funding, based on the number and requirements of older persons, for community-based care and support services from the Provincial Treasury as part of the allocation from the Provincial Equitable Share.
- 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 persons in accordance with the Older Persons Act.

- 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.

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 persons, as part of the Provincial Equitable Share.