

## HelpAge International written statement to the 11<sup>th</sup> Open-ended Working Group on Ageing for the purpose of strengthening the protection of the human rights of older persons, 29th March – 1st April 2021

### Item 6. Follow-up to resolution 75/152: High-level Panel on COVID-19 and Older Persons 30<sup>th</sup> March 2021

#### Public health responses to COVID-19 have reaffirmed the inadequate protection against discrimination on the basis of older age in both national and international law.

Throughout the pandemic governments have used older age to restrict the rights of older people including their rights to non-discrimination, freedom of movement, care and support, work, housing, life and equal access to healthcare and other services.

The age criteria in these restrictions appear to be arbitrary, ranging from, for example, over the age of 58 in Kenya<sup>1</sup>, over 60 in the Philippines<sup>2</sup>, over 63 in Moldova<sup>3</sup>, over 65 in Switzerland<sup>4</sup>, over 67 in the North Macedonia Republic<sup>5</sup>, over 70 in Serbia<sup>6</sup>, over 75 in the Bahamas<sup>7</sup> and over 80 in Chile<sup>8</sup>. The majority have imposed a restriction on all movement, while some have restricted specific activities including work<sup>9</sup>, religious worship<sup>10</sup>, use of

<sup>1</sup> Kemri, *Health and Socio-Economic Impacts of Physical Distancing for COVID-19 in Africa*, May 2020

<sup>2</sup> GMA News Online (2020), *CHR urges relaxation of community quarantine rules on elderly*, News article, 27 April 2020, <https://www.gmanetwork.com/news/news/nation/735791/urges-relaxation-of-community-quarantine-rules-on-elderly/story/> (22 January 2021)

<sup>3</sup> Extraordinary National Commission for Public Health(2020), *Decision no. 35 of 27 November 27 2000*, 27 November 2020 [https://msmps.gov.md/wp-content/uploads/2020/11/hotarirea\\_cnesp\\_nr.35\\_27.11.2020.pdf](https://msmps.gov.md/wp-content/uploads/2020/11/hotarirea_cnesp_nr.35_27.11.2020.pdf) (22 January 2021)

<sup>4</sup> Miller, J., Reuters (2020), *Swiss coronavirus cases surge, canton orders seniors to stay home*, News article, 21 March 2020, <https://www.reuters.com/article/us-health-coronavirus-swiss/swiss-coronavirus-cases-surge-canton-orders-seniors-to-stay-home-idUKKBN2180MI?edition-redirect=uk> (22 January 2021)

<sup>5</sup> WHO, 2020, *COVID-19 Health System Response Monitor, North Macedonia*, [https://www.covid19healthsystem.org/countries/northmacedonia/livinghit.aspx?Section=1.5\\_per\\_cent20Testing&Type=Chapter](https://www.covid19healthsystem.org/countries/northmacedonia/livinghit.aspx?Section=1.5_per_cent20Testing&Type=Chapter) (24 November 2020)

<sup>6</sup> Vasovic, A., Reuters (2020), *Serbia imposes night curfew, orders elderly indoors*, News article, 17 March 2020, <https://www.reuters.com/article/us-health-coronavirus-serbia/serbia-imposes-night-curfew-orders-elderly-indoors-idUSKBN2143XR> (22 January 2021)

<sup>7</sup> Government of Bahamas (2020), *Prime Minister announces three new cases of COVID-19 and plans to extend state of emergency for eight days*, 29 March 2020, [Prime Minister announces three new cases of COVID-19 and plans to extend state of emergency for eight days - Government - News \(bahamas.gov.bs\)](https://www.bahamas.gov.bs/news/prime-minister-announces-three-new-cases-of-covid-19-and-plans-to-extend-state-of-emergency-for-eight-days) (22 January 2021)

<sup>8</sup> L&E Global (2020), *Chile: COVID-19 Sanitary Governmental Measures*, Web article, 7 May 2020, <https://knowledge.leglobal.org/corona/country/chile/chile-covid-19-sanitary-governmental-measures/> (22 January 2021)

<sup>9</sup> For example in Kenya, Kemri, *Health and Socio-Economic Impacts of Physical Distancing for COVID-19 in Africa*, May 2020; and El Salvador, Charles, J., Miami Herald (2020), *COVID-19 is hitting Caribbean and Latin American economies hard. Can they survive?*, 27 March 2021, <https://www.miamiherald.com/news/nation-world/world/americas/haiti/article241525961.html> (22 January 2021)

<sup>10</sup> Hashim, A, Aljazeera (2020) *Pakistan records highest number of coronavirus deaths in a day*, News article, 21 April 2021, <https://www.aljazeera.com/news/2020/04/pakistan-records-highest-number-coronavirus-deaths-day-200421082118654.html> (22 January 2021)

public transport<sup>11</sup>, shopping and going to restaurants<sup>12</sup>. They have been introduced in low-, middle- and high-income countries. Some have been mandatory<sup>13</sup>, while others have been advisory<sup>14</sup>. Despite being introduced for public health reasons, they have resulted in older people's rights being denied in a way that others' have not and as such they are discriminatory and do not comply with international human rights law.

“Our movements have been restricted. It seems like we're caged. It's like we're imprisoned. Even though we are able and healthy, someone questions us if they see us outside the house.”

74-year-old man, former teacher and overseas worker living with his spouse, child and grandchild in an urban area, The Philippines<sup>15</sup>

Age discrimination, the denial of older people's rights and systemic ageism have often gone unrecognised in the pandemic. Age-based restrictions on COVID-19 related health care have been put on health insurance policies.<sup>16</sup> Some older people have reported being turned away from health facilities because they are older and age has been included as the basis for deciding who has access to scarce medical resources in COVID-19 triage protocols.<sup>17</sup>

“There were only three ventilators in the hospital and they were in great demand. Five minutes later, my grandfather died. I reported this to the staff and one of them told me that they had to give the ventilator to a younger man who had been admitted as it is their policy to prioritise younger patients.”

Souzi (named changed to protect identity), Democratic Republic of Congo<sup>18</sup>

### **A convention on the rights of older persons would have made a practical difference.**

The UN Secretary General has suggested that the lack of an international legal instrument, alongside inadequate national protection of rights, resulted in the inadequate responses to the pandemic.

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<sup>11</sup> Subingsubring, K., Inquirer Mobile (2020), LRT, MRT ban for elderly, moms-to-be under GCQ, Web article, 7 May 2020, <http://inqm.news/ycin> (22 January 2021)

<sup>12</sup> Jackson, J., 2020, UN Chief: Discrimination of older people during pandemic must stop (Web article), 2 May 2020, Sierra Leone Times, <https://www.sierraleonetimes.com/news/264911308/un-chief-discrimination-of-older-people-during-pandemic-must-stop>, 2 May 2020, (24 November 2020)

<sup>13</sup> See for example, Moldova, Extraordinary National Commission for Public Health(2020), *Decision no. 35 of 27 November 27 2000*, 27 November 2020 [https://msmps.gov.md/wp-content/uploads/2020/11/hotarirea\\_cnesp\\_nr.35\\_27.11.2020.pdf](https://msmps.gov.md/wp-content/uploads/2020/11/hotarirea_cnesp_nr.35_27.11.2020.pdf) (22 January 2021); and Tunisia, Hadzic, J., 2020, Egypt and Tunisia prepare for co-existence with coronavirus (Web article), 1 May 2020, VoiceIslam.RU, <https://goloslama.com/news.php?id=38510> (24 November 2020)

<sup>14</sup> See for example, Sweden, Henley, J, The Guardian (2020), *Swedish PM warned over 'Russian roulette-style' Covid-19 strategy*, News article, 23 March 2020, <https://www.theguardian.com/world/2020/mar/23/swedish-pm-warned-russian-roulette-covid-19-strategy-herd-immunity> (22 January 2021); and Thailand, Khaliq, R. (2020), *Thailand declares emergency to combat COVID-19 spread*, 25 March 2020 <https://www.aa.com.tr/en/asia-pacific/thailand-declares-emergency-to-combat-covid-19-spread/1779178> (22 January 2021)

<sup>15</sup> HelpAge International (2021), *Unequal treatment, What older people say about their rights during the COVID-19 pandemic, Country profile The Philippines*, 2021

<sup>16</sup> For example in Ukraine: Newsmir, 2020, *Coronavirus insurance: what to know and where the catch is* (Web article), 15 April 2020, Newsmir, <https://newsmir.info/2053364> (24 November 2020)

<sup>17</sup> For example Switzerland, Sabine Michalowski, *The Use of Age as a Triage Criterion*, <http://repository.essex.ac.uk/28027/1/013.pdf>; South Africa Erasmus, M., *Age discrimination in critical care triage in South Africa: The law and the allocation of scarce health resources in the COVID-19 pandemic | Erasmus | South African Medical Journal (sami.org.za)*, SAMJ, May 2020

<sup>18</sup> HelpAge International (2020), *Abuse and neglect of older people intensified by COVID-19*, Web article, 15 June 2020, <https://www.helpage.org/newsroom/latest-news/neglect-and-abuse-of-older-people-around-the-world-intensified-by-covid19/> (22 January 2021)

Having an explicit prohibition of age discrimination in a convention on the rights of older people would mean that age is included as an explicit ground upon which public health emergency responses cannot discriminate and age discrimination would be treated as seriously as other forms of discrimination in national legislation.

Having a positive equality duty in a convention to assess the impact of laws, policies and decisions on older persons before they are introduced would prevent age discrimination before it happens, for example in age-based lockdown measures, triage protocols and in access to vaccines.

Having positive duties to raise awareness of and eliminate ageist stereotypes and prejudices in a convention would mean that ageist hate speech would face similar sanctions as other forms of hate speech and the justifications upon which age discrimination is deemed lawful would be tested to ensure they are not based on ageist assumptions.

Seventy-five per cent of Member States (146 out of 193) have committed to promoting and respecting the rights of older persons and endorsed the UN Secretary General's policy brief. They must respond to his call to 'build stronger legal frameworks at both national and international levels to protect the human rights of older persons, including by accelerating the efforts of the General Assembly's working group to develop proposals for an international legal instrument to promote and protect the rights and dignity of older persons.'

Drafting a convention must start now.

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