

## UNODC's inputs on the human rights of older persons to the General Assembly Open-ended Working Group on Ageing

*The United Nations Office on Drugs and Crime is pleased to submit to the attention of the Chair of the Bureau of the General Assembly Open-Ended Working Group on Ageing, Her Excellency María del Carmen Squeff, its inputs on the right to access to justice of older persons, to inform the twelfth Session of the Working Group for the purpose of strengthening the protection of the rights of older persons.*

**Guiding questions for defining the normative content of the issues examined at the eleventh session of the General Assembly open-ended working group for the purpose of strengthening the protection of the human rights of older persons.**

### **4) Access to justice**

#### Definition

1. *What is the definition of the right of older persons to access to justice in the national legislation in your country? Or how should such a right be defined, considering existing national, regional and international legal framework?*
- UNODC's efforts in supporting Member States in ensuring access to justice focus on promoting police reform, legal aid, restorative justice, and justice for victims of crime, while addressing cross-cutting issues. Our approach is based on an understanding that all those affected by crime must be able to seek redress, with a focus on groups with specific rights and needs, including older persons.

#### Scope of the right

2. *What are the key normative elements of the right of older persons to access justice on an equal basis with others? Please provide references to existing standards on such elements as below, as well as any additional elements.*
- e) *Access to legal services, including legal assistance, legal aid, counselling and hotlines, on an equal basis with others.*
- The important role of legal aid was recognized by the [United Nations Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems](#), adopted by the General Assembly in 2012, that made it an obligation for Member States to put in place accessible, effective, sustainable and credible legal aid systems, with specialized services for groups. Legal aid includes “legal advice, assistance and representation [...] that is provided at no cost for those without sufficient means or when the interests of justice so require”, as well as legal education, access to legal information.
  - The instrument contains direct reference to the rights of older persons. For example, Principle 6 on Non-discrimination affirms that “States should ensure the provision of legal aid to all persons **regardless of age**, race, colour, gender, [...].” Furthermore, Principle 10 on Equity in access to legal aid, affirms that “Special measures should

be taken to ensure meaningful access to legal aid for women, children and groups with special needs, including, but not limited to, the **elderly**, [...]. Such measures should address the special needs of those groups, including gender-sensitive **and age-appropriate measures.**”

- The updated Model Strategies and Practical Measures on the Elimination of Violence against Women in the Field of Crime Prevention and Criminal Justice ([A/RES/68/228](#), annex) recognizes the importance of adopting a systematic, comprehensive, coordinated, multi-sectoral and sustained approach to fighting violence against women, while acknowledging that some special groups of women are particularly vulnerable to violence, including because they are elderly, and, as such, require special attention, intervention and protection in the development of crime prevention and criminal justice responses to violence against women.

#### State obligations

3. *What mechanisms or measures are necessary to ensure the enjoyment and to monitor implementation of the right of older persons to access justice, including States obligations to respect, promote, protect, and fulfill the right?*
- States should continue to implement the aforementioned UN Principles and Guidelines and do regular assessments to verify that older people have knowledge of their right, are aware of how to access services, and ultimately can and do access legal aid services in a meaningful way.
  - While UNODC technical tools and manuals do not include a focus on the specific forms of violence against older women, they stress the importance of ensuring that the needs of women in vulnerable conditions are addressed, including those of elderly women and that additional training is needed to deal with vulnerable groups such as LGBTI, children, people with disabilities, and older persons.

#### Special considerations

4. *What special considerations or specific issues should be included in the right of older persons to access justice, including procedural and age-appropriate accommodations as well as responsibilities of non-State actors?*
- Legal aid, particularly in criminal justice processes where it is provided to potential offenders or victims of crime who often lack resources to pay for legal support, is largely delivered by civil society organizations, lawyers who provide pro bono services, and paralegals whose work is largely unregulated, but who, in turn, often have no chance to get accredited, or receive advance training. To a smaller extent, for certain cases, also legal aid clinics at universities provide support.
  - States should ensure that all these actors are consulted in the development stages of a policy, during assessments of needs and resources, and considered important implementing partners for achieving the goals of policies and strategies.

## Implementation

5. *What are the best practices and main challenges faced by your country in the adoption and implementation of the normative framework on the right to access justice for older persons?*
- A main challenge is the general lack of funding to offer legal aid services that match the needs of the population at large, and particularly the needs of specific groups in society who require further assistance or tailored measures, such as older persons. In comparison to other groups with specific needs, the elderly also seem to not be a group whose needs are seen as urgent as for other groups who in many situations can also be vulnerable, such as children.
  - One good practice example highlighted in the UNODC [Handbook on Effective Prosecution Responses to Violence against Women and Girls](#) relates to guidelines on the exercise of prosecutorial discretion (in jurisdictions which have the public interest test) in British Columbia (Canada). These, called the Crown Counsel Charge Assessment Guidelines, include consideration of factors such as that the victim was a vulnerable person, including children, **elders**, spouses and common law partners.<sup>1</sup>
  - Another good practice would be to include older persons as a specific group in national or local assessments of needs and resources, and involve them and organizations or associations that represent them as a group into the design of policies and the implementation of measures.

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<sup>1</sup> p. 79