

AGE Platform Europe response to the questionnaire ‘Identification of possible gaps in the protection of the human rights of older persons and how best to address them’

Background

The Open-ended Working Group on Ageing, in its [decision 13/1](#) adopted at the thirteenth session, requested the co-facilitators to submit proposed intergovernmental negotiated recommendations to be considered at the fourteenth session of the Working Group and to be presented for consideration by the General Assembly, in accordance with resolution [77/190](#), regarding the existing international framework of the human rights of older persons and possible gaps, and options on how best to address them.

The purpose of this questionnaire is meant to facilitate the consideration of the existing international framework of the human rights of older persons and the identification of possible gaps in the protection of the human rights of older persons and how best to address them.

The questionnaire will be sent to all States Members of the United Nations, observers in the General Assembly, A-status National Human Rights Institutions, non-governmental organizations with ECOSOC Status and previously accredited organizations to the Working Group, as well as United Nations Funds, Programmes, Specialized Agencies and other UN Entities.

About AGE Platform Europe

AGE Platform Europe is the largest network of non-profit organizations of and for older people. We elevate older people’s voices, bringing their experiences and aspirations to the table to celebrate ageing and fight for equality for all ages.

For more information: www.age-platform.eu

The Questions

Identification of gaps

1. For each of the topics that have been considered by the Open-ended Working Group since its eighth session, please state possible gaps your Government/organization has identified in the normative framework and practical implementation for the protection of the human rights of older persons. *(500 words each)*

- a) Equality and non-discrimination

Ageism is one of the most widespread forms of discrimination across the EU. 42 % of Europeans perceive discrimination due to old age (over 55) as “very” or “fairly” widespread in their country (Eurobarometer, 2015). Ageism prevents us from living to our full potential and

may even affect our health, wellbeing, and life expectancy. For example, due to age limits we may find ourselves excluded from health treatment, insurance, banking products, training and social support, to name just a few. Ageist prejudices also drive other human rights violations, including poverty, neglect and abuse. Unfortunately, laws, policies and practice don't address ageism with the same level of gravity as other forms of prejudice and discrimination. For example, during the pandemic, older people have been widely segregated, cut off from necessary health treatment, subject to hate speech, where the pandemic has been called an opportunity to remove or cull older people and discounted, where the lives and deaths of older persons have not been afforded the same value. Unfortunately, ageism remains rampant beyond the pandemic and we still lack the tools and framework to prevent and address it. In fact, European and national law reflects the same biases that we as society have, justifying various forms of discrimination against older people that would not be acceptable on other grounds or against other groups.

The EU Charter of Fundamental Rights prohibits discrimination on the basis of age (article 21) and includes a specific article on the rights of the elderly under its Equality chapter (article 25), where equality in old age is understood as the right to live in dignity and independence and to participate in all aspects of life. However, EU's secondary legislation only covers prohibition of age discrimination in employment and occupation and to date, it does not extend to other areas of life, despite a proposal for a new directive which has been blocked in negotiations since 2008. Neither does EU law include an equality duty in terms of preventing ageism and age discrimination, making necessary institutional changes, taking positive action and mainstreaming age equality, whereas this is the case for gender discrimination. In EU law, age is the only ground for which direct discrimination is clearly allowed whilst a wide range of exemptions and justifications exist under the EU Employment Directive (see article 6 of directive 2000/78) and the draft horizontal Equal Treatment Directive (see articles 2§6 and 2§7). EU and national law still include age limits and are rarely disaggregated by smaller age groups and other grounds better capture the diversity of older people.

Whereas the EU has adopted strategies to tackle discrimination on other grounds and groups at risk of discrimination (gender, race, LGBTI, disability, Roma, children) it has not adopted any action on age equality. This does not only create hierarchy in the EU framework but also makes it difficult to understand diversity in old age and address intersectional inequalities based on our age but also gender, ethnic origin, disability, socio-economic status, sexual orientation, among others.

b) Violence, neglect and abuse

According to the WHO, abuse in Europe affects approximately 3% of older persons and up to 25% of those older persons with high care needs. The higher support needs, the greater the risk of experiencing abuse and neglect. The interaction between other types of discrimination and ageism increases the risk of suffering abuse and insufficient access to support and protection.

Gaps in legislation and policies are numerous. Unlike for women and children, there is no European Union policy addressing elder abuse. Older persons are not the target of specific protection under the Victims' Rights Directive. Today the vast majority of countries lack a definition of elder abuse in their legislation, which hinders the ability and undermines the willingness of governments to prevent and tackle it. Compared to other forms of violence, relatively few studies focus specifically on elder abuse. The lack of data results in a lack of awareness of the dimension of the phenomenon, which hinders the capacity of victim support, police and legal services to reach out to victims and intervene in cases of abuse. This also means that older persons and their specific needs are not adequately included in existing policies and laws on violence and abuse.

Elder abuse occurs in all settings and is the reflection of ageist attitudes towards older persons, seen as a burden, as inevitably frail and undeserving of dignified treatment. Only in a minority of cases abuse is intentional, meaning involving a deliberate attempt to cause harm. More often than not, violence and neglect are embedded in culture and care practices, the result of the overburden of care providers – often a consequence of cuts in funding for services and the subsequent understaffing and lack of quality professional services – and the lack of understanding of the needs and preferences of older persons who require care and support. Informal and formal carers are often unaware of the ways they can respect their human rights and dignity when caring and assisting them. Tackling elder abuse entails challenging negative images around ageing, promoting the dignity of older persons and adopting a rights-based approach to care and assistance.

Due to internalized ageism, older people may themselves fail to recognize abuse or be unaware of existing support services. Under-reporting by the victims is also due to low confidence, absence of a confidante, financial, physical or psychological dependence from abuser, and fear of consequences (such as stigma, being forced to leave the risk environment). There is also evidence that social workers are less likely to label a case as abuse and offer help if the victim is older. As a result, a great majority of breaches in which older people are involved are tolerated or suppressed.

c) Long-term care and palliative care

About 1 in 3 older persons in the EU need care and support. Among those with high support needs almost half do not access adequate care. Long-term care is not a right in many EU countries. Social protection for long-term care in the EU is relatively weak (1.7% of GDP on average), which is most often a highly means-tested safety net and not a universal entitlement. When social protection is available, hours of care or services covered are often insufficient. Older persons and their families most often pay out of their pockets or rely on informal care. More than half of older persons who need care services are at risk of poverty, even after receiving public support.

80% of care is provided by unpaid family members or friends. Families find themselves in difficult situations where they need to offer almost all of care, with no or very little support. 70% of

informal carers are women, a gender imbalance that increases with age and has an impact on their rights. Lack of access to formal care and lack of support for informal caregivers puts older persons at a high risk of suffering abuse and violence. There is no sufficient monitoring of the way policy reforms in other seemingly independent fields, such as pensions or support for the unemployed, hinder the access of older persons to quality care services. In some countries these have led to the withdrawal of older persons from care settings and created situations of isolation and inadequate care that put older people at an even higher risk of suffering abuse.

Ageism in care policies and service is intrinsically linked to poor quality, paternalistic practices, neglect and maltreatment, lack of involvement of older people in making decisions about their own care and the scarcity of rehabilitation and prevention as part of care systems and services. Some benefits or services include age limits, which means that older people may lose or not qualify for support for care needs in later life.

There is no binding Europe-wide legislation defining and guaranteeing access to palliative care. According to WHO, older people suffer unnecessarily due to lack of access to palliative care. There is evidence that people over 85 are less likely to access palliative care than younger individuals, and older persons living with dementia are particularly at risk of lacking access¹. Discriminatory treatment is driven by the persistence of misconceptions, both in society and among care professionals, about the holistic meaning of palliative care, which is wrongly associated only with end-of-life situations or to specific illnesses, such as cancer. Older persons with chronic conditions that may ultimately lead to death are therefore particularly affected. Other factors of discrimination include lacking a proper diagnosis². Across Europe, there is unequal integration of palliative care into health and social care policies for older people.

d) Autonomy and independence

There are many formal and informal barriers to older people's autonomy and independence. The persistence of ageism and age discrimination in societies leads to approaches that prioritize protection/safety over autonomy/independence and consider limitations as necessary. Older people are presumed as unable to decide, they are rarely consulted or their wills and preferences are devalued and ignored. Several laws and policies across the EU accept restrictions to autonomy and provide for measures to allow older people to live independently in the community only "for as long as possible", instead of 'on an equal basis with others'. Under regional standards the institutionalisation of older people is permissible and EU funding is used to build new institutions. Many national systems continue to foresee age limits in disability provisions and the EU has not questioned this in law or policy frameworks. These limitations entail a narrower definition of these rights in the context of old age than in disability.

¹ World Health Organization: [Better palliative care for older people](#), 2004

² Lloyd, A. et al.: *Why do older people get less palliative care than younger people?*, European Journal of Palliative Care, 2016

Other age-based restrictions including, inter alia, mandatory retirement ages, age limits in access to credit and insurance, to health prevention and rehabilitation treatment and in training³ limit the exercise of older people's autonomy and independence. Other restrictive practices include the denial of legal capacity, guardianship, lack of informed consent, rudimentary or abusive care practices (i.e. restraining, abusive prescription of drugs, etc). There is very limited data regarding restrictions to legal capacity on the basis of age and EU projects have only focused on disability.⁴ Older persons also lack information about systems of support, which may limit in practice the exercise of their autonomy and independence. Proposed EU legislation on the protection of adults allows for deprivation of legal capacity, lacks clarity in terms of supported decision-making and facilitates the placement in institutions⁵.

There is no Europe-wide legally binding instrument recognizing explicitly to older people the right to legal capacity on an equal basis with others. Where secondary national law refers to autonomy and independence in old age, these are primarily related to health and care law or mental capacity acts. As a result, there is no comprehensive and consistent definition of autonomy and independence for all older persons, regardless of whether they face impairments or chronic illness, in all spheres of life (including, inter alia, financial independence, employment, education, end of life) and without limitations.

e) Social protection and social security (including social protection floors)

Although legislation in EU member states foresees some level of social protection, several gaps exist in practice.

- Contributory pensions are limited to those who contributed via formal employment
- Not everyone can accrue pension rights: informal carers are rarely recognised via pension credits, putting women at a disproportional disadvantage given gender care gaps.
- Inequalities persist due to different retirement ages for men and for women, equalisation being very slow and one country has reintroduced gendered retirement ages,⁶ leading to lower pension entitlements for women.
- Survivors' pensions exist in many member states. However, these are increasingly reduced due to a shift to the 'individualisation of benefits', while they are the only entitlement for many older women who lack entitlements from contributory pensions.

³ Several studies and data are cited in this paper: http://www.age-platform.eu/sites/default/files/AGE_IntergenerationalSolidarity_Position_on_Structural_Ageism2016.pdf

⁴ <http://fra.europa.eu/en/publication/2013/legal-capacity-persons-intellectual-disabilities-and-persons-mental-health-problems>

⁵ <https://www.edf-feph.org/the-proposed-regulation-on-protection-of-vulnerable-adults-must-be-amended/>

⁶ Poland has reduced retirement ages of women from 60 to 65, rewinding a reform that equalised retirement ages for women and men in 2017. See also the European Commission's written reply to Parliamentary question [E-006214/2017](http://www.europarl.europa.eu/doceo/document/E-8-2017-006214-ASW_EN.html) on 14 December 2017: http://www.europarl.europa.eu/doceo/document/E-8-2017-006214-ASW_EN.html

- Take-up of social assistance is an issue, as some provisions are in place to reduce the inheritance.⁷
- Digitalisation can pose an additional barrier, where pension administration is shifted to online services.
- The cost of cares surpasses the average pension in many countries, reducing access for people on low and minimum pensions.
- The levels for minimum pensions are often inadequate and do not allow to live a life in dignity.⁸The gender pension gap in the EU is 37%⁹ and older women, especially the oldest women living alone, have a much higher risk of poverty and social exclusion.
- Pension reforms can put a strain on adequacy in setting replacement rates¹⁰ or reducing indexation mechanisms. The latter lead to a decreasing real value of pensions over time.
- In health care systems, diseases associated with older women are often less well treated and covered by social security (such as post-menopausal, post-reproductive or age-related conditions).
- Discrimination exists where health or disability benefits are reduced or removed as a person with disability reaches a certain age.¹¹
- In some countries, minimum pensions are based on length of residency, indirectly discriminating migrants who entered at a later age.

There should be a universal right to contributory and non contributory social protection sufficient to live a dignifying, autonomous and independent life, and to fully participate in society.

f) Education, training, lifelong learning and capacity-building

On EU level, the Charter of Fundamental Rights and the European Pillar of Social Rights recognise a right to education¹². However, these rights have seldomly operationalised with a life-course

⁷ Reported from France

⁸ Cf. also World Social Protection Report 2017–19: Universal social protection to achieve the Sustainable Development Goals International Labour Office – Geneva: ILO, 2017, page 87; reported from Belgium, Lithuania

⁹ Cf. European Commission, [Pension Adequacy Report 2018. Current and future income adequacy in old age in the EU](#), 2018.

¹⁰ In Greece, pensions have been cut by 14-50% in the context of the recession. In Lithuania, a shift towards a privately funded system is underway, but losses for pensioners from reduced public pensions were not compensated for.

¹¹ AGE Platform Europe, [Position on Structural Ageism](#), 2016, p.5. In Belgium (Flanders), a free programme to access mental health is limited to persons under 65 years of age.

¹² [European Charter of Fundamental Rights of 26/10/2012](#), 2012/C 326/02 Article 14: 1. Everyone has the right to education and to have access to vocational and continuing training. [Interinstitutional Proclamation on the European Pillar of Social Rights of 13/12/2017](#), 2017/C 428/09, Chapter I.1.: Education, training and life-long learning states 'Everyone has the right to quality and inclusive education, training and life-long learning in order to maintain and acquire skills that enable them to participate fully in society and manage successfully transitions in the labour market'.

perspective.¹³The equal treatment framework directive¹⁴ addresses access to employment-related training for older persons, including vocational training and education. However vocational training policies are specifically excluded from the provision¹⁵. While the Erasmus+ programme provides a policy for mobility of learners in secondary and tertiary education, mobility is not funded for learners in adult education, excluding many older learners. Competence frameworks¹⁶ linked to education and training policies (including the recommendation on key competences for life-long learning) on EU level are focusing on skills relevant to the labour market only. Systematic challenges derive from ageism and age stereotypes about the benefits of learning of older persons, the lack of formal frameworks and funding for adult education and the reliance on the volunteer sector. Policy frameworks are developed for formal education (primary till tertiary), but adult education is often non-formal and developed on local level – leading to different standards for access and quality of education in different areas. Adult education is not seen as a priority and thus there is underinvestment¹⁷ or lack of implementation of existing strategies.¹⁸ Age barriers exist in national adult education programmes.¹⁹ Participation in life-long learning, while it is 45% on average for 25-64-year-olds, it is 33% for 55-64 year-olds.²⁰ No data are available beyond 65 years.

g) Right to Work and Access to the Labour Market

Directive 2000/78/EC prohibits in principle discrimination based on age in employment and training. However, age is the only ground for which direct discrimination is allowed. The directive leaves room for a wide margin of exemptions, notably regarding mandatory retirement ages and vocational training policies. As a result, several discriminatory practices and attitudes continue to be tolerated as ‘objectively justified’, and there are discrepancies in case law across the EU. Even in countries where it is abolished, retirement can be forced in the form of a right of an employer to terminate a contract, age barriers in the exercise of certain

¹³ The Committee on Economic, Social and Cultural Rights, in its General Comment number 6 on the Economic, Social and Cultural Rights of Older Persons briefly defines the right as the right of older persons to benefit from educational programmes and by making the know-how and experience of older persons available to younger generations.

The Council of Europe Recommendation 2014/2 on the promotion of Human Rights of Older People includes access to vocational initial and continuous training in the elements of the principle of non-discrimination in employment. Council of Europe Recommendation R(94)9 on elderly people recognises the importance of information and education for older persons themselves.

¹⁴ [Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation.](#)

¹⁵ Article 6(1)

¹⁶ Currently, there are two European Competence Frameworks: EntreComp for entrepreneurial skills and e-Comp for e-Competences.

¹⁷ Reported from Greece

¹⁸ Reported from Slovenia

¹⁹ As an example, the Slovenian National Programme for Adult Education 2013-2020 only covers persons under 65 years.

²⁰ Eurostat, Participation rate in education and training by age - participation in formal or non-formal activities in the past 12 months, 2016 data for the EU28.

professions, setting different pension ages for men and for women, or by forcing workers to receive unemployment/severance allowance until pension age. The EU Court of Justice (CJEU) has not been resolute in considering cases of mandatory early retirement as unlawful. The Court accepted general arguments, such as existing access to a (pre-)pension scheme or the will to avoid humiliation by health or fitness checks for older employees as a sufficient justification to force workers to retire.

Our [2023 AGE Barometer](#) has shed a light to the following gaps:

- 2/5 of persons aged 55-64 have no work: age equality plans in companies/organisations are needed to better value the potential and experience of older workers.
- The risk of long-term unemployment increases with age: adopting a person-centred approach is crucial.
- Work opportunities are limited beyond pensionable age: the right to work at all ages must be guaranteed and work opportunities should be multiplied.
- Age limits are discriminatory: the capacity to perform a job should be based on an individual's assessment rather than age-based assumptions.
- Ageist practices prevail on the labour market: older workers are not obstacles to young people's employment; intergenerational teams should be valued.
- Older people are not a homogeneous group: an intersectional approach is necessary to tackle multiple forms of discrimination that older people face on the labour market.
- EU Occupational Safety and Health (OSH) strategies must take better account of the ageing dimension in the workplace: involving older workers in OHS strategy designed at the company level is crucial.
- Ageism is one of the causes of poor mental health: 43.1% of 55-64 years old have been exposed to risk factors likely to affect their mental well-being. Adopting good practices for stress prevention and flexible working arrangements is important.
- New technologies raise a clear risk of exclusion: increasing digital literacy opportunities and improving technology accessibility is vital.
- 56.2% - 55-64 years old women have a low employment rate
In comparison, it is 68.7% for 55-64 years old men and 76.5% for 25-54 years old women. Employment policies should adopt a life course approach, to ensure women's right to work through their lives.
- Older women experience sexism at work that accumulates and intersects with ageism in older age: intersectional approaches are essential to address the challenges faced by older women.
- Workplaces can be challenging to older women: providing tailored workplaces and flexible working conditions is essential to support older women at work.

h) Access to justice

A key barrier to accessing justice and remedy is that the law itself can be ageist. For instance, at EU level, the lack of legal prohibition of age discrimination beyond the field of employment entails that in many countries it is impossible to challenge decisions denying older people

insurance or a loan. Additionally, sometimes there are discrepancies in law. For instance, whereas under the UNCRPD institutionalisation is prohibited, international norms merely call for allowing older persons to live at home 'for as long as possible'. Given this caveat, it is more difficult for older persons to access justice in cases of forced placement, coercion or breaches of autonomy.

Free legal aid is available only to those with very low incomes, whereas in reality others are also restricted from accessing courts due to prohibitively high lawyer and trial costs. Additionally, assistance may not be offered for mediation or only cover certain type of disputes. Legal advice is not always tailored to specialised areas of law, such as pensions or care contracts. Long court backlogs create a reluctance to take legal action and impede prompt resolution. This is particularly problematic for people who are seeking justice for denial of social protection benefits as long delays, put them at risk of poverty. Equality bodies and Ombudspersons, despite offering important opportunities for extra-judicial remedies, do not always cover age as a ground of discrimination and may have limited scope to address older people's rights.

Ageism is also embedded in legal proceedings and care contexts restricting older people's abilities to exercise their rights. For instance, AGE members brought to our attention cases where older persons have been forcefully institutionalised, yet care professionals, the civil judge and family members do not allow them to complain or take legal action against decisions taken on their behalf.

Physical barriers impact the ability to access courts due to lack of accessible buildings, transportation, waiting/seating areas and information, but also because court proceedings are not adapted to older people's needs and abilities and do not provide reasonable accommodation. For instance, they do not take into account the 'best time' for older persons to testify and they do not offer alternative care for people with caregiving duties so that they are free to take part in proceedings. The digitalisation of legal proceedings create unique disadvantages for some older people. The duty for reasonable accommodation, the possibility for remote testimony, the training of legal staff on communicating with people with declining cognitive capacities, etc are unfortunately largely missing.

Due to ageism a great majority of breaches in which older people are involved are tolerated or suppressed. Lack of legal literacy, information and awareness of rights also impedes access to justice.. There is an urgent need to improve information about the law and how to exercise rights.

i) Contribution of Older Persons to Sustainable Development

Older people participate and contribute to development in all areas of life: economically through employment, as entrepreneurs, and consumers as well as with unpaid informal care provision; socially by volunteering (formally and informally) and engaging in associations and the life of their communities and, politically by taking part in elections, engaging in political

parties and social movements. The role older people play as investors into the community is often forgotten.

Volunteering keeps older people connected to their local community as well as aiding the sustainable development of their area or country. Mainly local and regional frameworks support volunteering, but volunteering organisations are calling for national frameworks to support them with capacity-building and training, as well as funding. Without these, volunteering may not be accessible for more vulnerable groups of older persons, such as older persons with low incomes, older migrants, older persons with disabilities, etc.

There is a general lack of support by member states for international representation and dialogue relating to older persons. AGE members highlighted the need for organisations of/for older persons to be included in conversations regarding global issues, not just those concerning older persons. Older persons or a representative should be included in official delegations at key international meetings. Currently, no EU Member State, nor the EU itself, includes older persons' representatives in their delegations to the United Nations Open-Ended Working Group on Ageing. Challenges in the representation of older persons' councils also exist for groups such as nursing home or care facility residents, Roma and other vulnerable groups who are typically underrepresented, if at all.

The right to participate in society is not easily enforceable in practice, due to the lack of explicit provisions and the fact that it is often seen as an issue of social policy, rather than an issue of rights. The lack of a legal framework at EU level covering age discrimination in access to goods and services is an important barrier to accessing justice in case of denial of older people's right to participate in sustainable development. Older people count among the groups that are least aware of their rights under the EU Charter of Fundamental Rights and the available redress mechanisms²¹. They are also the least likely to complain in case of violation of their human rights. Under-reporting is related to the fact that older victims are less likely to know their rights and how to file a complaint and because ageism is also internalized.

j) Economic security

In 2019 18.5% (16.1 million) of older persons in the EU27 were at risk of poverty²². In the period of February-March 2021, Eurofound reported that over almost 40% of households consisting of those aged 50+ found themselves considerably worse off than they were 3 months ago²³. A survey by Finance Watch reported that 59% of respondents in EU member states felt their

²¹ [Special Eurobarometer 487b](#), 2019

²² In 2008 there were 16.7 million people aged 65 and above at risk of poverty and social exclusion, this figure decreased to 14.9 million in 2010 but in 2019 this figure was 16.1 million. The population has grown from 75.7 million in 2008 to 90.5 million in 2019.

public pension scheme was not sufficient to live a dignified life²⁴. This figure rose to 78% for eastern states. In the EU, women aged 65-79 earn on average 37.2% less than their male counterparts.

Both contributory and non-contributory schemes exist in many EU states though there is a noted lack of adequacy, specifically inequalities for women, for people in need of care and those belonging to ethnic or migrant groups.

Pension indexation mechanisms exist in most member States, but these are often inadequate to keep track with the rise of living costs. This means that even adequate pensions at the time of retirement slowly erode over time and become inadequate later during retirement. Mandatory retirement deters older people from continuing to work and it is not possible to continue working to supplement the relatively low pension income.

The right to economic security should include comprehensive protections to ensure that everyone, without discrimination of any kind is able to live dignified, autonomous and independent lives, and to fully participate in society with an adequate standard of living. This includes equal access to the labour market, guarantee of adequate minimum wages, adequate pensions providing for income security, adequate social protection in the events of sickness, disability, unemployment, and care need, access to housing, clothing, food and water, a life free from poverty and social exclusion, and support services for autonomous and independent living. Social protection benefits should reflect the contributions made throughout the lifetime, including unpaid contributions such as care provided to relatives. Benefits should continually evolve in line with living costs to maintain at least the same real value over time. Access to benefits should be designed in an accessible way, with clear information and both digital and non-digital access. Similarly, the accessibility of banking and payments as essential services that are necessary for enjoying economic security should be protected.

k) Right to Health and Access to Health Services

Ageism sometimes to the under-diagnosis of diseases, as symptoms can be discarded as purportedly being part of the 'natural' ageing process. Age limits to access certain treatments continue to persist.²⁵ Sometimes, there is discrimination based on health status. For instance, palliative care in Poland is accessible only for persons within a certain list of diseases, rather than based on actual need – older persons with intellectual disabilities have therefore no access to palliative care. Similarly, in some Member States, there are different systems for older and younger persons with disabilities, leading to different services, funding and options.

²⁴ [finance-watch-report-a-wrinkle-in-the-process.pdf](#)

²⁵ Age limits for cancer screenings exist in the Netherlands, Sweden, Portugal, Poland and France

Digitalisation creates a barrier for older persons who are digitally excluded, reducing their access to services, particularly since the roll-out of telemedicine services during the COVID-19 pandemic.²⁶

Health status itself is a source of discrimination: for instance, you have to undergo medical check-ups for getting a mortgage loan past a certain age.

Across the EU mandatory public health insurances cover most persons fairly well, as long as they are employees. To access parts of the health system, it is sometimes necessary to take out private insurance to have access to quality care, although insurance is more expensive to older persons.²⁷

Affordability is an issue for some groups²⁸ especially where the public health system creates long waiting times, so that patients need to rely on expensive private care. Access to medicines can be expensive as well and not covered sufficiently by insurance²⁹. Affordability is a great issue regarding long-term care in many Member States.³⁰ There are not comprehensive policies for prevention, with the notable exception of vaccination against COVID-19 and influenza.

. Medical trials, which are used to assess the usefulness and risk of a certain treatment, still do not necessarily integrate persons above a certain age, although there is a higher proportion of older persons undergoing medical treatment.³¹

Across the EU, there are staff shortages and people who are active in the health sector are overburdened. Geriatrics is not widely integrated into training of generalists and geriatric specialists are lacking. Training curricula for long term care professionals might lack elements on the prevention of abuse and neglect, as well as the rights of persons in need for care. Finally, there is not enough training and support to informal carers across the EU.

It is not uncommon to force older persons to undergo a certain treatment, particularly persons with cognitive or intellectual disabilities.

I) Social Inclusion

²⁶ German member BAGSO reports that health and long-term care are the areas where older persons experience most problems to have 'offline access'

²⁷ This applies for example to hospital insurance in Belgium, or dental insurance in many Member States

²⁸ See Question 6

²⁹ Mentioned for Portugal and Poland. In Poland, there is an interesting exemption of payments for some medicines for persons over 75, however, this only concerns some common drugs used to treat diseases that are more common among older persons.

³⁰ For example, In Belgium, the average private sector pension is 1,200€, and residential care costs between 1,800€ and 2,000€

³¹ See for example [WHO World Report on Ageing and Health](#) (2015), p. 114: 'Specifically, more research is needed that looks at how commonly prescribed medications affect people with multimorbidity, which is a departure from the typical default assumption that the optimal treatment of some- one with more than one health issue is to add together different interventions (158). And out- comes need to be considered not only in terms of disease markers but also in terms of intrinsic capacity. Improved postmarketing surveillance can help fill this gap until new approaches to clinical trials that are more relevant to older age have been developed.'

Due to ageism and age discrimination, older persons face structural barriers devaluating their positive contributions to society and limiting their right to equally participate. Marginalised groups face additional and cumulative forms of discrimination, that are multiple and intersectional. Digital exclusion, which is relatively more common to older persons than other age groups, negatively impacts social inclusion.

The right to participate in society is not easily enforceable in practice due to the lack of explicit provisions and that it is often seen as an issue of social policy, rather than an issue of human rights. This right is often guaranteed 'as far as possible' and not 'on an equal basis with others', which makes it even harder for individuals to claim their rights.

The lack of a legal framework at EU level covering age discrimination is an important barrier to accessing justice in case of denial of older people's right to participate in society. Older people count among the groups that are the least aware of their rights under the EU Charter of Fundamental Rights and the available redress mechanisms³². They are also the least likely to complain in case of violation of their human rights. Under-reporting is related to the fact that older victims are less likely to know their rights and how to file a complaint. Measures aiming to address systemic ageism and dedicated budget are needed, as well as support for individuals and representative organisations to increase rights awareness, legal literacy and access redress.

Article 6 of the EU Employment Framework Directive allows for the possibility to justify direct age discrimination, as long as there is a legitimate aim. This Directive allows for a wide range of practices that restrict the rights of older people to enter and/or remain in the labour market (such as mandatory retirement ages, not extending working conditions beyond a certain age, age limits in recruitment etc) and these same exemptions open the door for even broader translation into national laws. EU jurisprudence accepts and reinforces these limits³³.

[Options on how best to address the gaps](#)

1. Please state how your Government/organization has engaged with international and regional human rights mechanisms (for example: universal periodic review (UPR) treaty bodies, special procedures, regional mechanisms), specifically with regard to older persons. (500 words)

AGE Platform Europe has contributed to the work of the UN Independent Expert on the rights of older persons, the UN Special Rapporteur on the rights of persons with disabilities, the UN Special Rapporteur on Extreme Poverty and the UN Committee on the rights of persons with disabilities, submitting reports and participating in meetings and consultations of these

³² [Special Eurobarometer 487b](#), 2019

³³ The right to work in old age (2021): https://www.age-platform.eu/sites/default/files/The_right_to_work_in_old_age-AGE_Platform_Europe_June2021.pdf

bodies. We have also contributed to the work of the Office of the High Commissioner for Human Rights and the Human Rights Council and active participants in the UN Open-Ended Working Group on Ageing.

AGE also regularly contributes to EU human rights initiatives, participating in consultations and legislative processes highlighting specific challenges on the equal enjoyment of human rights by older persons and calling for further attention to existing barriers, including for marginalized groups and those facing multiple/intersectional discrimination to be included in EU's equality/human rights strategies and action plans. We have also engaged extensively with the EU agency for fundamental rights. Our advocacy has led to the first Fundamental Rights Agency (FRA) report on a rights-based approach to ageing in 2018 and the first project undertaken by FRA focusing on older people's access to digital public services.

2. Have those engagements resulted in positive impact in strengthening the protection of the human rights of older persons? Please elaborate. *(500 words)*

Age is the only discrimination ground for which the European Commission has not yet adopted a dedicated strategy or action plan, making it thus very hard to address inequalities in old age and also intersectional challenges for issues covered by existing strategies/action plans. The proposed directive that would cover age discrimination beyond the field of employment is still not adopted and the employment framework directive includes a wide range of justifications and biases that limit the equal enjoyment of the right to work in old age.

The EU has ratified and become party to the UN Convention on the Rights of persons with disabilities. Yet, so far the EU has not paid particular attention to the rights of older persons with disabilities. The CRPD Committee has called on EU's attention to the risk of violence and abuse of older persons in institutional settings, but there is no specific action taken to address this issue. In fact, there is some evidence that EU funds are used to create new institutions for older persons. The EU Disability Strategy adopted to comply with EU's commitments under the CRPD in principle applies also to older person with disabilities, but in practice there is a discrepancy between policies for people with disabilities that focus on equality, autonomy and inclusion and policies on ageing that plan for independent living and social inclusion 'for as long as possible'. In their 2023 report to the Committee, the EU did not report on the specific situation of older persons with disabilities under art. 5, neither on investigations about deaths in residential care homes during COVID-19 (art.11), nor about equal levels of support for older persons with disabilities (art.28) despite being included in the Committee's list of issues. This clearly demonstrates that the EU does not feel compelled to report on older people to the same extent as other groups explicitly covered by the convention (i.e. women and children with disabilities).

Among the special procedures, only the UN Special Rapporteurs on the rights of persons with disabilities and the one on Extreme Poverty paid particular attention to older persons living in the EU. In addition, while the EU has participated in different sessions of the OEWG, they have

gradually been engaging less, failing to respond to calls for contributions and not ensuring high level participation in the meetings. This is happening despite several EU commitments to protect and promote the rights of older people at all times. Also, the EU has not formally engaged with civil society on the preparation of the OEWG sessions and has not had a substantive discussion on EU's position at the OEWG since well before the pandemic.

Overall, to date older people remain largely invisible in EU's engagement with international and regional human rights bodies/instruments/initiatives.

3. What other options can be considered to strengthen the protection of older persons?
Please elaborate. (500 words)

A binding UN convention on the rights of older persons is the best way to address the limitations, deficiencies and gaps in the international human rights framework to the benefit of all older persons around the world.

First, it can challenge all those attitudes, practices and structures that - intentionally or not - attribute less value to the dignity of individuals because of their (perceived) old age. This can be achieved by consistently promoting a human rights-based framing that gives salience to the equality, dignity and inclusion of older persons. Ageism would be recognised and treated as grave a violation of human rights as racism, sexism or ableism. Age-based measures in any future pandemic would face the same scrutiny as measures based on other prohibited grounds for discrimination such as gender, disability and race. Medical triage or segregation on the basis of age would not be morally or legally acceptable. A convention reaffirming equal rights in old age, would also make it considerably difficult to disregard or trivialize the discrimination and abuses experienced by older people.

A convention would not create new rights; instead, it would define in concrete terms the policy changes, the kinds of support and enabling conditions that are necessary so that universal rights can be equally enjoyed in old age. For example, a convention, would impose the same level of scrutiny for quality of care and prevention of elder abuse in community and residential settings alike. It would create greater accountability for human rights violations against older persons making sure that rights in old age are understood and ensured in equal ways by all states.

Moreover, a convention can empower older persons as rights holders to claim their rights and be fully involved in public affairs. Finally, a new convention would rectify the systemic neglect of older people in the existing human rights guarantees and ensure a sustained focus. A dedicated legally binding convention would allow the systematic consideration of cross-sectional issues by existing human rights mechanisms. In this way, it can help better mainstream older people's issues within the existing human rights mechanisms and to better address intersecting forms of inequalities.

This is the real added-value of UN conventions: through binding commitments and constant monitoring they help Member States and other actors to innovate, to drive consistent -albeit gradual and slow - societal change. Dedicated thematic treaties (such as CRC, CRPD, CEDAW) add substantially and in unique ways to the realization of the rights that they guarantee. A new convention on the human rights of older persons is likely to have a similar significant and unique effect that is impossible to achieve through incremental policy changes and legislative improvements.

4. *If applicable*, what is your assessment on the protection of the human rights of older persons according to regional and international instruments? (500 words)

Human rights apply equally to all human beings, regardless of age. But in reality, human rights violations against older people are not always treated with the same level of scrutiny, gravity or urgency as violations against women, children or persons with disabilities, all of whom are covered by specific UN Conventions.

Several studies have provided ample evidence that the existing human rights instruments have fallen far short in their protection of the human rights and fundamental freedoms guaranteed to older persons. This does not mean that there is not room for better implementation of the existing treaties. But the application of the existing framework can – at best – only make incremental improvements. At worst, we risk being dragged back into an outdated philosophy of discrimination, exclusion and abuse, when financial, time or other types of constraints prevail.

The current human rights system is not adequately equipped to challenge ageist practices and discriminatory patterns entrenched in laws, policies and institutional structures. Compared to other grounds of discrimination, human rights standards allow a much wider margin of discretion to accept discrimination, restrictions and segregation on the basis of old age. For instance, human rights mechanisms still accept age limits in laws that deny us the opportunity to equally contribute within society when we are older.

International human rights law perpetuates biases and prejudice on the basis of older age. It talks about the ‘problem of ageing’ and depicts older people as ‘frail’ and ‘dependent’. Existing norms use extensively the term ‘elderly’ and are overly focused on needs as opposed to older people’s potential. They refer to the enjoyment of human rights ‘for as long as possible’ as opposed to ‘on an equal basis with others’.

Hence, existing standards validate and reinforce the very biases that we aim to overcome. They lack a conceptual understanding of old age based on the reality of living longer, healthier and happier lives. But when we rely on these outdated concepts as the entry point for the protection of our human rights in old age, we fail to see what is possible in our ageing world, how we can and should fundamentally change our societies so that everyone – not just us, the

older people of today- can live full and fulfilled lives, how we can all – no matter our age - contribute into shaping a better future for all generations.

Overall, the current international framework has failed to extend to older persons the same human rights safeguards that everyone else in society has. Existing human rights norms and procedures and their conceptual and operational limitations have resulted in an overall failure to provide adequate recognition and protection of the human rights of older persons at the international level and more limited legal protection compared to other groups.

AGE Platform Europe wishes to express gratitude to the *NGO Confederation of Swedish Speaking Retired in Finland*, whose input (see below) has been taken into account in our contribution.

For more information

Nena Georgantzi, Human Rights Manager, nenageorgantzi@age-platform.eu

Answer by Confederation of Swedish Speaking Retired in Finland (SPF)

*The respondent is the **Confederation of Swedish Speaking Retired in Finland (SPF)**, a national confederation in Finland, representing 20.000 older persons in 70 local associations (www.spfpension.fi).*

Identification of gaps

Our estimate is that the normative framework has in recent years, step by step - however not sufficiently, been improved. This concerns national legislation and probably also regional (Nordic, EU) and international (UN) frameworks.

The main gaps are in the practical implementation - and monitoring of legislation/frameworks. This failure has a core, negative impact upon life of older persons - and it must be remedied.

*The weak practical implementation and monitoring are above all based upon **existing ATTITUDES** in society and economy - broadly among politicians and active citizens, individuals and associations of civil society.*

Ageist practices prevail in all sectors of society and economy - and remain as a negative context of the every-day life of older persons at "grass-root level". For instance in the labour market, older persons meet higher thresholds than younger one in employment; and work opportunities are limited beyond

pensionable age; digitalization in working- and private-, every-day life, for instance as regards health care, payment, shopping, travel, ticket reservations, family/housing, tourism, accessibility to public and private services (taxation authorities, banks, insurance etc) do not address/take into account the needs of older persons (and hands-caps). Older persons, therefore feel themselves treated generally as "second-class" citizens - and there is an imminent risk for an enlarging exclusion. The capacity, knowledge and experience which older persons would be happy to offer as add-value to society is not sufficiently recognized.

Options on how best to address the gaps

Achievement of age-equality in society and economy is a must - "society is for ALL!"

A legally binding, credible UN Convention on the rights of older persons should be achieved without delay (in addition to existing instruments). It would have a core impact upon attitudes in society, as well as spur/demand member states to strengthen legal frameworks. This would be unconditionally needed by society as a whole.

Your question 3 ("What other options can be considered to strengthen...?"): The "Ombudsman for Older People" was installed 2022 in Finland. The Ombudsman (Dr. Päivi Topo) is the official voice of older people in Finland, the office acts at governmental/national level - but independently. This initiative could be included as a recommendation in the new Convention.

SPF contact person : Filip Hamro-Drotz