



**Submission to the UN Open-ended Working Group on Ageing
for the purpose of strengthening the protection of the human rights of older persons**

November 24, 2023

**Identification of possible gaps in the protection of the human rights of older persons
and how best to address them**

Introduction

This submission draws on Human Rights Watch’s research on the rights of older persons in different countries. It aims to provide illustrative examples of gaps in the normative framework and practical implementation, and not a comprehensive overview. Gaps identified relate to where states:

- discriminate against older persons and deny them their rights on the basis of their older age;
- deny older persons rights that are of particular relevance in older age, for example the right to live independently in the community, with support if needed;
- fail to prohibit practices that violate the rights of older persons, for example the use of chemical restraint;
- fail to recognize the disproportionate impact on the rights of older persons in laws, policies and practice, for example in responses to climate change;
- fail to recognize that older persons are subjected to rights violations alongside the general population, for example in armed conflict.

Identification of gaps

a. Equality and Non-discrimination

Violation of rights

During the Covid-19 pandemic, some governments placed severe restrictions on freedom of movement based on age, forcing older people to remain confined in their homes or face fines or other penalties.¹ In Bosnia and Herzegovina, for example, both entities – the Federation of Bosnia and Herzegovina and Republika Srpska – imposed strict bans on the movement of children and people aged 65 and older and created a punishable offence that only people of certain ages could be charged with. Between March 20 and 30, 2020, police in Republika Srpska entity issued 217 fines to older people for leaving their houses. The average fine was higher than the average monthly pension. Some fines were also issued to children.²

International law permits restrictions on certain rights, and at times, such as during the COVID-19 pandemic, more extensive restrictions may be justified.³ However, they still have to be evidence-based and neither arbitrary nor discriminatory. They also need to be limited in duration, subject to review, and necessary and proportionate to achieve the objective. Applying the restriction and punishable offence to people aged 65 and older was arbitrary and discriminatory, since people of younger ages with certain underlying health conditions were also at higher risk. It was not proportionate since older people subject to such extreme social isolation may have struggled to get food, their pension, health services and medicine, and their health and mental well-being may have been harmed as a result. Bosnia-Herzegovina's Constitutional Court ruled that the restriction was discriminatory in April 2020, including because it was not limited in duration.⁴

¹ Human Rights Watch, "Rights Risks to Older People in COVID-19 Response: Combat Ageism; Ensure Access to Health Care, Services," April 7, 2020, <https://www.hrw.org/news/2020/04/07/rights-risks-older-people-covid-19-response>.

² Human Rights Watch, "Bosnia and Herzegovina's Coronavirus Curbs on Children and Older People Are Ill-Conceived," April 2, 2020, <https://www.hrw.org/news/2020/04/02/bosnia-and-herzegovinas-coronavirus-curbs-children-and-older-people-are-ill>.

³ Human Rights Watch, "Human Rights Dimensions of COVID-19 Response," March 19, 2020, <https://www.hrw.org/news/2020/03/19/human-rights-dimensions-covid-19-response>.

⁴ Radio Free Europe, "Coronavirus In Court: Bosnia's Age-Based Lockdowns Are Ruled Discriminatory," April 24, 2020, <https://www.rferl.org/a/coronavirus-in-court-bosnia-s-age-based-lockdowns-are-ruled-discriminatory/30574453.html> (accessed November 6, 2023).

Gaps in international human rights law

Age is only explicitly named as a prohibited ground for discrimination in one international human rights treaty, that on migrant workers.⁵ There is no explicit guarantee against discriminatory treatment based on ageism, and no explicit obligation on states to eliminate ageism and its discriminatory consequences.⁶

While the Committee on Economic, Social and Cultural Rights has recognized that age falls under “other status” as a prohibited ground,⁷ both the Committee on Economic, Social and Cultural Rights and the Human Rights Committee have stated that exceptions are possible since not all differential treatment is discriminatory if it can be justified as reasonable and objective, proportionate and necessary.⁸ These exceptions can be enshrined in national non-discrimination and equality legislation.⁹ Bosnia and Herzegovina’s Law on Prohibition of Discrimination, for example, allows exceptions from the principle of equal treatment when a maximum age is defined as the most appropriate for termination of employment, and when age is a condition for retirement.¹⁰

The Independent Expert on the enjoyment of all human rights by older persons has expressed concern that “many existing justifications for differential age-based treatment themselves represent ageist or stereotyped attitudes and assumptions that are accepted

⁵ International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (Migrant Workers Convention), adopted December 18, 1990, G.A. Res. 45/158, annex, 45 U.N. GAOR Supp. (No. 49A) at 262, U.N. Doc. A/45/49 (1990), entered into force July 1, 2003, art. 7.

⁶ United Nations High Commissioner for Human Rights, “Normative standards and obligations under international law in relation to the promotion and protection of the human rights of older persons,” A/HRC/49/70, January 28, 2022, para 17, <https://undocs.org/Home/Mobile?FinalSymbol=A%2FHRC%2F49%2F70&Language=E&DeviceType=Desktop&LangRequested=False> (accessed October 13, 2023).

⁷ UN Committee on Economic, Social and Cultural Rights (CESCR), “General Comment No. 20: Non-discrimination in economic, social and cultural rights (art. 2, para. 2, of the International Covenant on Economic, Social and Cultural Rights),” E/C.12/GC/20, July 2, 2009, <https://www.refworld.org/docid/4a60961f2.html>, para.29.

⁸ *Ibid.*, para 13; UN Human Rights Committee, “General Comment No. 18: Non-discrimination,” 1989, <https://www.refworld.org/docid/453883fa8.html>, para. 13.

⁹ United Nations Office of the High Commissioner, “Update to the 2012 Analytical Outcome Study on the normative standards in international human rights law in relation to older persons; Working Paper,” March 2021, <https://social.un.org/ageing-working-group/documents/eleventh/OHCHR%20HROP%20working%20paper%2022%20Mar%202021.pdf> (accessed October 16, 2023), para.111.

¹⁰ Law on the Prohibition of Discrimination, Official Gazette of BiH No 59/09, 2009 https://www.osce.org/files/Law%20on%20Prohibition%20of%20Discrimination_o.pdf (accessed October 16, 2023), art. 5 (d).

as “reasonable” in the community because of widespread ageism.”¹¹ Justifying differential treatment on the basis of discriminatory ageist stereotypes would amount to a violation of older persons’ right to non-discrimination and equality.

Potential impact of explicit guarantee in international human rights law

An explicit guarantee of non-discrimination on the basis of older age in international human rights law that does not allow for exceptions based on ageist stereotypes and assumptions would guide states on how to uphold their human rights obligations to ensure older persons enjoy their right to non-discrimination and equality on an equal basis with others, including during pandemics and other public emergencies.

b. Violence, Neglect and Abuse

Violation of rights

Human Rights Watch has documented the widespread use of chemical restraint in aged care facilities in Australia.¹² Chemical restraint is the use of medications to control the behavior of aged care residents without consent or a therapeutic purpose and is a form of violence and abuse against older people and may amount to torture or ill treatment. In addition to the physical, social, and emotional harm for older people restrained with these drugs, the use of these drugs in older people with dementia is also associated with an increased risk of death.¹³

Australia’s existing legal and regulatory framework is inadequate to protect older people in aged care facilities from chemical restraint; it explicitly allows it. Despite regulations first introduced in 2019 to minimize the use of restrictive practices,¹⁴ Human Rights Watch’s

¹¹ United National Human Rights Council, “Report of the Independent Expert on the enjoyment of all human rights by older persons, Claudia Mahler,” A/HRC/48/53, August 4, 2021, <https://www.ohchr.org/en/documents/thematic-reports/ahrc4853-report-ageism-and-age-discrimination>, para. 41.

¹² Human Rights Watch, “*Fading Away*” *How Aged Care Facilities in Australia Chemically Restrain Older People with Dementia*, (New York: Human Rights Watch, 2019), <https://www.hrw.org/report/2019/10/15/fading-away/how-aged-care-facilities-australia-chemically-restrain-older-people#:~:text=Human%20Rights%20Watch%20documented%20several,staying%20awake%20during%20the%20day>.

¹³ US Drug and Food Administration, “Information for Healthcare Professionals: Conventional Antipsychotics,” June 16, 2008, <https://wayback.archive-it.org/7993/20171102213617/https://www.fda.gov/Drugs/DrugSafety/PostmarketDrugSafetyInformationforPatientsandProviders/ucm124830.htm>

¹⁴ Australian Government, Aged Care Quality and Safety Commission, “Minimising the Use of Restrictive Practices,” undated, <https://www.agedcarequality.gov.au/minimising-restrictive-practices>.

review of non-compliance reports for aged care facilities across Australia from July 1, 2020, to June 30, 2021, found use of chemical restraints in more than 150 aged care facilities.¹⁵ Some aged care facilities which did not meet compliance standards failed to regularly monitor the use of drugs that are administered for chemical restraint and failed to provide individual care plans with ways to manage behavior without the use of chemical restraints.

Susan Ryan said of her 78-year-old father, Ray, when he was being chemically restrained in an Australian aged care facility in 2013, “At that stage he couldn’t walk, only shuffle, he was very, very depressed, just crying all the time. And he couldn’t swallow... He would say, “My mind is a hell to me.” He wouldn’t be engaged in a conversation... All his symptoms are side effects of the antipsychotics, and they disappeared after he went off [them].”¹⁶

In 2021, the Australian Government introduced new laws which included that restrictive practices must only be used as a “last resort” in aged care and alternatives must have first been considered and attempted.¹⁷ The legislation did not ban chemical restraint and only seeks to minimize its use.

Australia is developing a new Aged Care Act. An initial list of rights that it would protect include a right to “freedom from inappropriate restrictive practices.”¹⁸ However, it is unclear in the current wording which practices are considered “inappropriate.” Policies that fall short of a prohibition on the use of chemical restraints without consent to modify behavior fail to protect older people’s rights.

Gaps in international human rights law

Australia is party to several international conventions that prohibit torture and other cruel, inhuman or degrading treatment or punishment, including the International Covenant on Civil and Political Rights (ICCPR), the Convention against Torture and Other Cruel, Inhuman

¹⁵ “Australia: Chemical Restraint Persists in Aged Care: One Year After Royal Commission Report, Older People Still Not Protected,” Human Rights Watch news release, March 20, 2022, <https://www.hrw.org/news/2022/03/30/australia-chemical-restraint-persists-aged-care>.

¹⁶ Human Rights Watch, “*Fading Away*.”

¹⁷ Australian Government, “Aged Care and Other Legislation Amendment (Royal Commission Response No. 1) Bill 2021,” <https://www.legislation.gov.au/Details/C2021B00068> (accessed November 13, 2023).

¹⁸ Australian Government, “The new Aged Care Act: The foundations – Consultation paper,” September 28, 2023, <https://www.health.gov.au/resources/publications/the-new-aged-care-act-the-foundations-consultation-paper?language=en> (accessed October 13, 2023).

or Degrading Treatment or Punishment (CAT), and the Convention on the Rights of People with Disabilities (CRPD).¹⁹

No international human rights treaty addresses the prohibition of violence, abuse and neglect explicitly with respect to older persons, including where it reaches the threshold of torture and other cruel, inhuman or degrading treatment or punishment. In 2013, Juan Mendez, then the UN special rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, stated that “medical treatments of an intrusive and irreversible nature, when lacking a therapeutic purpose, may constitute torture or ill-treatment when enforced or administered without the free and informed consent of the person concerned.”²⁰

Potential impact of explicit guarantee in international human rights law

An explicit guarantee in international human rights law on older persons’ right to live free from violence, abuse and neglect would provide specific and clear guidance to states, including that all use of chemical restraints without consent should be prohibited.

c. Long-term care and palliative care: The right to live independently within the community

Violation of rights

Human Rights Watch’s research in South Africa found that many older persons 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.²¹

¹⁹ International Covenant on Civil and Political Rights, adopted December 16, 1996, G.A. Res. 2200A (XXI), 21 U.N. GAOR Supp. (No. 16) at 52, U.N. Doc A/6316 (1966), art. 7; Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, adopted December 10, 1984, G.A. Res. 39/46, Annex 39, U.N. GAOR Supp. (No. 51) at 197, U.N. Doc. A/810 at 71 (1948), art. 37; Convention on the Rights of Persons with Disabilities (CRPD), adopted December 13, 2006, G.A. Res. 61/106, Annex I, U.N. GAOR, 61st Sess., Supp. (No. 49) at 65, U.N. Doc. A/61/49 (2006), art. 15.

²⁰ UN Human Rights Council, Report of the special rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Juan E. Méndez, A/HRC/22/53, February 1, 2013, http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session22/A.HRC.22.53_English.pdf, para. 32.

²¹ 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>.

Despite promising laws to shift the emphasis away from institutional to community-based care and support services,²² this situation is partly due to the government's failure to allocate adequate resources to ensure such services for all older persons entitled to them, including by not covering the full core costs of such services provided by non-profit organizations contracted to deliver statutory services on the department's behalf, as well as imposing restrictions on how funding can be spent.

Furthermore, home-based care and support services may be unavailable or unaffordable, and older people in South Africa do not always know about the financial assistance provided by the Grant-in-Aid for those who require full time support. The monthly Grant-in-Aid itself is insufficient to pay someone to provide the 24-hour assistance it is there to cover.

Human Rights Watch's research in the United States showed the harms of institutionalization on older people during the Covid-19 pandemic, including extreme weight loss, dehydration, untreated bedsores, inadequate hygiene, mental and physical decline, and inappropriate use of psychotropic medications among nursing home residents. Staffing shortages and the absence of family visitors, many of whom nursing homes rely on to help staff with essential tasks, may have contributed to possible neglect and decline.²³

Gaps in international human rights law

The right of all older persons to live independently and within the community is fragmented across different international human rights standards. All older persons have the right to an adequate standard of living, including adequate housing.²⁴ 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

²² Older Persons Act, Section 2 (c).

²³ Human Rights Watch, "US: Concerns of Neglect in Nursing Homes; Pandemic Exposes Need for Improvements in Staffing, Oversight, Accountability," (New York: Human Rights Watch, 2021), <https://www.hrw.org/news/2021/03/25/us-concerns-neglect-nursing-homes>.

²⁴ 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.

the full enjoyment of this right.²⁵ The Committee on the Rights of Persons with Disabilities has emphasized that people with disabilities, including older persons with disabilities, should be able to “exercise choice and control over their lives and make all decisions concerning their lives.”²⁶ This right applies to all older persons.

Potential impact of explicit guarantee in international human rights law

The consolidation of these rights protections in one provision in international human rights law on the right of older persons to live independently within the community would provide clear and specific guidance to states on their obligations towards all older persons. It would ensure systematic reporting on and monitoring of this right under one treaty. It would also bring clarity to older persons themselves on what their rights are in regard to community- and home-based care and support.

h. Access To Justice

Violation of rights

Human Rights Watch has documented how the current prison system in Japan does not cater for the needs of the increasing number of older women in prison.²⁷ In 2021, 20 percent of women admitted to prison were 65 years old or older, nearly a four-fold percentage increase from 5.5 percent in 2003, and 1.9 percent in 1998.²⁸ In 2021, the vast majority, 88 percent, were charged with theft, mostly petty theft, such as shoplifting.²⁹ A Ministry of Justice survey found that while “insecurity about their financial future” was the most common motive for shoplifting among both older men and women, a higher

²⁵ 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://documents-dds-ny.un.org/doc/UNDOC/GEN/G18/210/00/PDF/G1821000.pdf>, paras. 66 and 67.

²⁶ UN Committee on the Rights of Persons with Disabilities, General Comment 5, (2017) on living independently and being included in the community, CRPD/C/GC/5, October 27, 2017, para. 16 (a).

²⁷ Human Rights Watch, “*They Don’t Treat Us Like Human Beings*”: Abuse of Imprisoned Women in Japan, New York, November 14, 2003, <https://www.hrw.org/report/2023/11/14/they-dont-treat-us-human-beings/abuse-imprisoned-women-japan>.

²⁸ Corrections Bureau, Justice Ministry, “Graph 2-4-2-5,” <https://hakusy01.moj.go.jp/jp/69/nfm/excel/2-4-2-5.xlsx> (accessed January 26, 2023).

²⁹ Corrections Bureau, Justice Ministry, “Graph 4-8-2-3,” <https://hakusy01.moj.go.jp/jp/69/nfm/images/full/h4-8-2-3.jpg> (accessed January 26, 2023).

proportion of women stole things because of their isolation and a sense of age discrimination.³⁰

Human Rights Watch found that cellmates bullying older women is a serious concern, and guards are sometimes abusive towards older women. Older women in prison in Japan lack access to adequate health care, and often have to deal with chronic pain or illnesses without appropriate medical treatment or advice. Older women are also particularly at risk at the time of release and receive little or no assistance.³¹

Gaps in international human rights law

No international human rights treaty addresses the right of access to justice, including in detention settings, explicitly with respect to older persons.

The UN Committee on Economic, Social and Cultural Rights has advised that “health facilities, goods and services must be within safe physical reach for all sections of the population, especially vulnerable or marginalized groups” among which “older persons” is an included category of persons.”³²

The UN Office on Drugs and Crime (UNODC) advised that “Taking account of the fact that most older prisoners can be better cared for in the community, within the framework of suitable non-custodial sanctions and measures, the age of offenders, their mental and physical health, prospects of receiving adequate care in prison should be take into account by sentencing authorities, to ensure that the sentence does not comprise a disproportionately harsh punishment.”³³

The UN Independent Expert on enjoyment of all human rights by older persons, Claudia Mahler, has advised that states should consider the necessity and proportionality of

³⁰ Correction Bureau, Justice Ministry, “2008 Version White Paper on Crime,” 2008, http://hakusyo1.moj.go.jp/jp/55/nfm/n_55_2_7_3_2_2.html (accessed November 22, 2019).

³¹ They Don’t Treat Us Like Human Beings”: Abuse of Imprisoned Women in Japan, op. cit..

³² UN Committee on Economic, Social and Cultural Rights, General Comment No. 14, The right to the highest attainable standard of health, U.N. Doc. E/C.12/2000/4 (2000), para. 12(b). <https://www.ohchr.org/Documents/HRBodies/CRC/Discussions/2011/DGD2011ReportAndRecommendations.pdf>

³³ UN Office on Drugs and Crime, “Handbook on Prisoners with special needs,” 2009, p. 124, https://www.unodc.org/pdf/criminal_justice/Handbook_on_Prisoners_with_Special_Needs.pdf.

detaining older persons with complex health conditions and in need of palliative care, and examine the possibility of non-custodial alternatives at all stages of detention.³⁴

Potential impact of explicit guarantee in international human rights law

A specific provision on the right of older persons to access to justice, including in detention settings, would make explicit the obligation on states to ensure that prison regimes accommodate the needs of older prisoners, including necessary physical adaptations, protection against violence and extortion, appropriate educational and vocational opportunities, and support with reintegration into the community. In addition, it would help reinforce that older prisoners should have equal access to services, including physical, mental and cognitive health, dental, hygiene and palliative care services, and social and other support services available to the general population.

Other rights

Rights in Situations of Risk and Emergencies

Although not covered by the work of the Open-ended Working Group to date, our research has identified gaps in the normative framework and practical implementation of older persons' rights in armed conflict and climate change-related emergencies.

- **Armed Conflict**

Violation of rights

Human Rights Watch research from 2013 to 2021 in 15 countries found that older persons can experience the same abuses during armed conflict and other large-scale violence as younger people and in some circumstances face heightened risk related to their older age.³⁵ Government armed forces and non-state armed groups have unlawfully attacked and killed older civilians and subjected them to summary executions, arbitrary arrest and detention, torture and other ill-treatment, rape, abduction and kidnapping, and the destruction of their homes and other property. Older civilians have been killed and injured by small arms, heavy weapons, explosive weapons with wide area effects and chemical and other banned weapons.

³⁴ Ibid., para. 88 (f).

³⁵ Human Rights Watch, *No One is Spared: Abuses Against Older People in Armed Conflict* (New York: Human Rights Watch, 2022), <https://www.hrw.org/report/2022/02/23/no-one-spared/abuses-against-older-people-armed-conflict>.

Human Rights Watch documented that during hostilities, older persons have chosen not to flee their homes when fighting neared. They thought they would not be attacked, or wanted to protect their family’s property, or had suffered physically or emotionally from fleeing earlier attacks. In many other instances, older persons have been unable to flee because of limited mobility, disability, or because families could not assist their flight. In 2017, Rohingya who fled Myanmar security force atrocities in Rakhine State described security forces pushing older people who could not flee back into burning houses. “I saw them push my husband’s uncle into the fire. I saw them push him back into the burning house,” Hasina Begum said. “He is weak, maybe 80 years [old].... I think they wanted everyone to leave and those that could not leave they put into the fire.”³⁶

While older persons are protected by international humanitarian law and international human rights law during armed conflict, in practice their needs and protections are often disregarded by the parties to the conflict. Between 1998 and 2021, the UN Secretary-General’s Protection of Civilian reports paid little attention to older people with five brief mentions³⁷ and only one UN Security Council resolution, on Sudan in 2007, condemned violent attacks on older civilians.³⁸ The Secretary-General’s 2019 report on older people in emergency crises, including those due to armed conflict, addressed barriers to humanitarian assistance but not abuses during conflict itself.³⁹

Gaps in international human rights law

There is no specific provision in international human rights law protecting the rights of older persons in situations of risk and humanitarian emergencies as there is for persons with disabilities in Article 11 of the Convention on the Rights of Persons with Disabilities which obligates states to take “all necessary measures to ensure the protection and safety

³⁶ Ibid.

³⁷ See UN Secretary General reports on protection of civilians in armed conflict, https://www.securitycouncilreport.org/un_documents_type/secretary-generals-reports/?ctype=Protection%20of%20Civilians&cbtype=protection-of-civilians (accessed October 18, 2023).

³⁸ UN Security Council, “Resolution 1755 (2007),” S/RES/1755 (2007), April 30, 2007, [https://undocs.org/Home/Mobile?FinalSymbol=S%2FRES%2F1755\(2007\)&Language=E&DeviceType=Desktop&LangRequested=False](https://undocs.org/Home/Mobile?FinalSymbol=S%2FRES%2F1755(2007)&Language=E&DeviceType=Desktop&LangRequested=False) (accessed October 18, 2023).

³⁹ UN General Assembly, “Follow-up to the International Year of Older Persons: Second World Assembly on Ageing Report of the Secretary-General,” A/74/170, July 15, 2019, <https://undocs.org/Home/Mobile?FinalSymbol=A%2F74%2F170&Language=E&DeviceType=Desktop&LangRequested=False> (accessed October 18, 2023).

of persons with disabilities.”⁴⁰ This applies to older people with disabilities but not to all older persons.

Potential impact of explicit guarantee in international human rights law

A specific provision on older persons’ rights in situations of risk and humanitarian emergencies in international human rights law would obligate states to pay extra attention to, and positively accommodate, the difference of older age, including how it intersects with other characteristics, in established norms on protection in armed conflict.⁴¹

- **Climate change-related crises**

Violation of rights

Between June 25 and July 1, 2021, the Canadian province of British Columbia experienced a heat dome, a high-pressure weather system that traps heat, with record-high temperatures across the province reaching up to 49.6°C. The British Columbia Coroners Service identified 569 heat-related deaths from June 20 to July 29, 445 of which occurred during the heat dome. Of those who died, 79 percent were 65 years of age or older. Older persons are at particular risk of heat-related illness and death. Some are more likely to have health conditions or use medication that can affect the body’s ability to respond to heat.⁴²

At the time, British Columbia’s draft Climate Preparedness and Adaptation Strategy did not mention heat-related impacts on older persons.⁴³ In addition, although extreme high temperatures were not unprecedented or unforeseeable, British Columbia did not have a heat action plan, and lack of access to cooling and targeted support for at-risk populations contributed to unnecessary suffering and possibly deaths. British Columbia Emergency Health Services did not activate their emergency operations center to coordinate their

⁴⁰ 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. 11.

⁴¹ See UN Human Rights Council, Report of the Special Rapporteur on the rights of persons with disabilities, Gerard Quinn, A/76/146, July 19, 2021, <https://undocs.org/en/a/76/146>, para. 23.

⁴² Human Rights Watch, “Canada: Disastrous Impact of Extreme Heat: Failure to Protect Older People, People with Disabilities in British Columbia,” October 5, 2021, <https://www.hrw.org/news/2021/10/05/canada-disastrous-impact-extreme-heat>.

⁴³ govTogetherBC, “ClimateReady: Climate Preparedness and Adaptation Strategy (2019-2021),” June 2021, <https://engage.gov.bc.ca/govtogetherbc/engagement/climateready-2019-2021/#summary> (accessed October 13, 2023).

response until after the heat dome began to subside.⁴⁴ One person told Human Rights Watch that her 88-year-old aunt who used a wheelchair died on June 28, 2021, as a result of the heat dome and had been unable to get through to 911.

British Columbia is currently developing a disaster and climate risk and resilience assessment, a disaster risk reduction plan, and is in the process of modernizing the Emergency Management Legislation to align with the Sendai Framework for Disaster Risk Reduction, which aims to ensure full and meaningful participation of older persons, persons with disabilities, migrants, Indigenous Peoples and local communities.

Gaps in international human rights law

There is no specific provision in international human rights law protecting the rights of older persons in situations of risk and humanitarian emergencies.

Potential impact of explicit guarantee in international human rights law

A specific provision on older persons' rights in situations of risk and humanitarian emergencies in international human rights law would obligate states to pay extra attention to, and positively accommodate, the difference of older age, including how it intersects with other characteristics, in its climate change preparedness, adaptation and response plans and implementation.⁴⁵

Options on how best to address the gaps

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

Older persons face particular threats to their dignity and enjoyment of their rights. The scale of potential violations is considerable – we are all living longer and violations of our rights on the basis of our older age could affect us all. However, protection of the rights of

⁴⁴ CTV News, “BCEHS struggles to explain alert level and morale issues after deadly heat wave,” July 3, 2012, <https://bc.ctvnews.ca/bcehs-struggles-to-explain-alert-level-and-morale-issues-after-deadly-heat-wave-1.5495233> (accessed October 13, 2023).

⁴⁵ See UN Human Rights Council, Report of the Special Rapporteur on the rights of persons with disabilities, Gerard Quinn, A/76/146, July 19, 2021, <https://undocs.org/en/a/76/146> (accessed January 2, 2022), para. 23.

older persons is fragmented and sometimes missing under existing international human rights law.

Better Implementation of Existing Mechanisms

In 2021, the Office of the High Commissioner for Human Rights concluded that:

“A reliance on the potential of existing mechanisms to make up the current shortfall in relation to older persons’ human rights assumes that those bodies are in a position to do this in a way that will make a substantial difference. Yet, it has not been demonstrated that existing mechanisms are able to make this shift.”⁴⁶

While important to further understanding of existing standards, attempts to articulate how rights apply to older persons and in older age to date in general comments and recommendations by UN treaty bodies have been few in number, limited in scope and dispersed across different mechanisms.⁴⁷ General comments inherently progress international norms in a piecemeal fashion with respect to different treaties at different times, and as such cannot provide an accessible, comprehensive and systemic framework.

A UN Declaration

Another option is a new UN declaration on the rights of older persons. A declaration would be a measure of international solidarity and consensus, but would not be legally binding on states, have no reporting and monitoring system, and therefore provide no additional obligation or little incentive for implementation beyond the current “soft law” documents devoted to ageing and older persons, such as the UN Principles for Older Persons and the Madrid International Plan of Action on Ageing.

⁴⁶ UN Office for the High Commissioner for Human Rights, “Update to the 2012 Analytical Outcome Study on the normative standards in international human rights law in relation to older persons,” March 2021, <https://social.un.org/ageing-working-group/documents/eleveth/OHCHR%20HROP%20working%20paper%2022%20Mar%202021.pdf> (accessed October 19, 2023), para 208.

⁴⁷ For example, UN Committee on Economic, Social and Cultural Rights (CESCR), “General Comment No. 6: The Economic, Social and Cultural Rights of Older Persons,” E/1996/22, December 8, 1995, <https://www.refworld.org/docid/4538838f11.html> (October 13, 2023); UN Committee on the Elimination of Discrimination Against Women (CEDAW), “General Recommendation No.27: Older Women and Protection of their Human Rights,” CEDAW/C/GC/27, December 16, 2010, <https://www.refworld.org/docid/4ed3528b2.html> (accessed October 13, 2023).

An Optional Protocol

A further option is an optional protocol to an existing international human rights treaty. However, rights relevant in older age are spread across the full range of international human rights treaties, with the exception of the Convention on the Rights of the Child. Optional protocols could be required to each of these treaties. The development of so many optional protocols would be time consuming, take place at a varying pace, be drafted by different bodies, and further entrench the fragmentation of rights protection that already exists.

A Legally Binding Instrument

A new international legally binding treaty on the rights of older persons would provide the consolidated, comprehensive and accessible framework necessary to address the current fragmentation of protection across the international human rights system.

A treaty would have a unique and significant impact on the protection of the rights of older persons by

- increasing the understanding of how rights apply in the particular context of older age and to older persons;
- having a catalyzing effect on the adoption of national legislation to comply with its standards;
- ensuring reporting on, and monitoring of, states' implementation of its provisions;
- providing a framework, symbolically and substantively, for a world free from ageism and age discrimination.

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)

The 2022 report of the UN High Commissioner for Human Rights, “Normative standards and obligations under international law in relation to the promotion and protection of the human rights of older persons,” concludes that,

“The testimony of older persons, views of their representative organizations and assessments by international and national experts have all concluded that fragmentation of existing 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. The deficiencies in the international framework mean that the important catalysing and supportive role that international standards can play in generating action at the national level has also largely been absent. The result is more limited legal protection of the human rights of older persons compared to other groups.”⁴⁸

Human Rights Watch has documented this absence of a catalyzing effect when:

- a) States discriminate against older persons and deny them their rights on the basis of their older age, as in the example of restrictions of movement on the basis of age in Bosnia and Herzegovina during the Covid-19 pandemic;
- b) States deny older persons rights that are of particular relevance in older age, as in the example of older persons’ lack of access to community- and home-based care and support services in South Africa;
- c) States fail to prohibit practices that violate the rights of older persons, as in the example of the failure of Australia to prohibit all use of chemical restraint without consent of older persons.
- d) States fail to recognize the disproportionate impact on the rights of older persons in laws, policies and practice, as in the example of the exclusion of older persons from British Columbia’s draft Climate Preparedness and Adaptation Strategy;
- e) States and others, including UN bodies, fail to recognize that older persons are subjected to rights violations alongside the general population, as in the example of the invisibility of older persons in the reporting and monitoring of abuses against civilians in armed conflict.

A new international legally binding treaty on the rights of older persons would provide the framework necessary to address these gaps.

⁴⁸ United Nations High Commissioner for Human Rights, “Normative standards and obligations under international law in relation to the promotion and protection of the human rights of older persons,” A/HRC/49/70, January 28, 2022, para 54, <https://undocs.org/Home/Mobile?FinalSymbol=A%2FHRC%2F49%2F70&Language=E&DeviceType=Desktop&LangRequeste d=False> (accessed October 13, 2023).