

Response by the International Network on the Prevention of Elder Abuse (INPEA)

to the OEWGA questionnaire on:

Identification of possible gaps in the protection

of the human rights of older persons and how best to address them

Part I. 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

Background

At the thirteenth session of The Open-ended Working Group on Ageing, a key decision (13/1) was adopted. This requested that a period of inter-sessional work should be undertaken before the subsequent OEWGA meeting. Further, that co-facilitators should be appointed via the Chair of OEWG to undertake work to develop and submit proposed intergovernmental negotiated recommendations. These could then be considered at the fourteenth session of the Working Group in 2024 and subsequently presented to the General Assembly for consideration. The work to be undertaken was in accordance with resolution 77/190, concerning the existing international framework of the human rights of older persons and possible gaps in provision, together with options about how best to address them. As part of this process, a questionnaire has been developed and circulated by the intersessional working group.

The purpose of the survey is to enable consideration of the existing international framework, the identification of possible gaps in the protection of the human rights of older persons and how best these might be addressed and resolved. The questionnaire has been 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 (for previously accredited organizations to OEWGA), as well as United Nations Funds, Programmes, Specialized Agencies and other UN Entities.

About this response

The International Network for the Prevention of Elder Abuse (INPEA) is an NGO established in 1997 (incorporated from 1999), with Special Consultative status to ECOSOC, and consists of concerned individuals and organisations. INPEA is a global network of organisations and individuals who are concerned about violence, abuse and neglect committed against older people across the globe, and to promote the right of all older people to live their final years free from violence, abuse, neglect and exploitation. The INPEA Network is a unique worldwide alliance concerned about violence, abuse and neglect of older people, wherever it arises across the world. It has national (country) representatives in more than 60 countries and regional representatives in 4 (of 6) world regions.

The prime mission of the organisation is to work towards the elimination and prevention of violence, abuse and neglect of older people worldwide. This specific response to the survey has been prepared by INPEA member and one of the founders of the organisation, Bridget Penhale, and in addition to some broader global information, helpfully provided by other NGOs such as HelpAge, provides information pertinent to the situation in the UK. The focus of the first part of this survey response is restricted to consideration of questions a) to d) of Part I of the questionnaire.

a) Equality and non-discrimination

The World Health Organization (WHO) has established that across the world, 1 in 2 people is ageist against older people.¹ Ageism is widespread and persistent across societal institutions and sectors; it has a negative effect on older persons' rights in all areas. Such rights violations are often exacerbated due to intersections of age with gender, disability, health and so forth. For instance, harmful ageist attitudes and practices are particularly strong against older women (single or widowed), older women with disabilities, rural and migrant older women.² Ageism is an accepted risk factor for and may exacerbate situations of elder abuse.

International law requires States to eliminate all forms of discrimination.³ However, the obligation to eliminate discrimination on the basis of age is not well-recognised, fully understood or even universally accepted, especially since age is not explicitly listed as a ground of discrimination in fundamental United Nations (UN) human rights instruments. Specific concepts, such as ageism, have not been expressly recognised or elaborated in frameworks and treaties. Whilst some important issues of age discrimination have been explored, this process has been disjointed; in some areas, the language used by treaty bodies can reinforce ageist stereotypes.⁴ Explicit guidance on how States should meet their equality and non-discrimination obligations towards older people is lacking.⁵

This lack of visibility means that States have not enacted laws which prohibit discrimination against older persons in the same way that they have for other grounds of discrimination. States which have adopted explicit laws on age discrimination or the rights of older people, often reflect paternalistic or charitable understandings, focusing on the provision of care or services, rather than on recognising rights. Particular elements of an effective guarantee of non-discrimination and equal participation remain unspecified, creating gaps in interpretation and consequently in protection. There has also been a failure to recognise that measures intended to benefit older people may reflect paternalistic approaches and are directly discriminatory in their effect.⁶

Age discrimination is not explicitly recognised in regional human rights instruments, except for the Inter-American Convention on Protecting the Human Rights of Older Persons (2015), the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Older Persons in Africa (2016), and the Charter of Fundamental Rights of the European Union (2007); all of these are geographically limited. The European Charter only applies to national Governments when they are implementing EU law. It does not give rise to direct claims for positive action by EU institutions or member State authorities.⁷ EU Directive 2000/78/EC also includes the prohibition of discrimination on the basis of age; however, this applies only to employment and includes several exceptions for differential treatment on the ground of age that do not exist for others grounds for differential treatment, even in cases of direct discrimination.⁸ In the UK, legislation on age discrimination only applies to employment provisions and there is no provision concerning discrimination in relation to goods and services.

A specific UN Convention would clarify States' obligations concerning the rights of older people. Rights to equality and to non-discrimination on the basis of age would be central to a Convention. It would also determine obligations for States to combat all forms of ageism and to both identify and remove barriers to equal participation for older people in all areas of life.⁹

b) Violence, neglect and abuse

The population of older people living in the UK is very diverse and heterogeneous. Older adults may experience the range of different types of violence, abuse and neglect, as delineated in established WHO information. This ranges from financial, physical, sexual, psychological and emotional violence and abuse, and also neglect.¹⁰ As elsewhere across the world, given the wide range of types of violence, abuse and neglect, different potential perpetrators and settings can be involved.¹¹ Older people may experience multiple and intersecting forms of discrimination; this can result in victimisation and/or violence, often exacerbated by age, gender, disability or other forms of discrimination/oppression. Such experiences can affect individual's human rights.¹² Additionally, violence and abuse can have serious consequences for individual's physical and mental health, financial, and social status and security. Effects of abuse can include physical injuries, anxiety and depression, cognitive decline, financial devastation, placement in care settings or even premature death.¹³

Older women are generally at more risk of violence, abuse and neglect due to widespread existence of gendered ageism.¹⁴ Older women experience all types of abuse, often because they are frequently perceived to be alone and helpless. However, in many situations, older women have to continue living with their perpetrator(s). Often, they do not receive the necessary help, assistance or even a fair hearing if they report concerns to the police or others that might be of assistance. Instead, they can find barriers to accessing support, or even justice; this includes being ignored or not having their report(s) taken seriously because they are older.¹⁵ The situation of not being heard, or ignored when disclosing situations of abuse can also affect older men.

In specific contexts violence against older people can increase; this includes natural disasters and climate change and wars. Research and wider evidence established that COVID-19 and government measures to prevent its spread resulted in adverse consequences for individuals and communities, creating new – and exacerbating existing – risks for older people concerning violence, abuse, and particularly neglect.¹⁶

It is clear from the latest report of the UN Independent Expert on enjoyment of all human rights by older persons, that the current international human rights framework lacks specific provisions to address violence, abuse and neglect of older persons.¹⁷ At the national level, legal frameworks that would ensure adequate protection are weak and fragmented; this includes the UK situation. Of 133 countries surveyed by WHO, only 59% reported having laws to prevent elder abuse - only 30 per cent stated these were fully enforced.¹⁸

A specific Convention on the rights of older persons would establish the right to be free from violence, abuse and neglect in older age. This would include States' obligations arising from that right and how it would be operationalised. It would, for example, clarify that the right applies across public and private spheres, and obligations to establish preventive measures as well as to ensure collection and publication of disaggregated data and statistics on all forms of violence, abuse and neglect. It would

also clarify that older persons have a right to support services, as well as access to remedies and redress.¹⁹

c) Long-term care and palliative care

In relation to the right to long-term care and support services, many older people indicate limited access to the care and support services they may need to live independently in the UK. The types of care and support services available to older people can vary across regions but due to many years of austerity measures in the UK, long-term care and support services are limited in every region and may be unaffordable to all but those with high income/savings. There may be a lack of accessible information about care and support services, failing eligibility criteria, and high levels of bureaucratic procedures. There can be limited or no choice and control over the care and support older people have access to and receive. Family members may be the only providers of care and support available. Without adequate care and support services, deterioration in health and limited finances increase dependency.²⁰

Additionally access to palliative care either to help individuals die free from pain and/or unnecessary suffering may be very limited. Awareness of potential rights to long-term care and palliative care may be low amongst older people, their family members and others, including service providers.²¹

No explicit standard on long-term care in older age exists in international human rights law, and there is no specific standard on the right to palliative care, nor to care and support for independent living in later life.²² Although Article 19 of the Convention on the Rights of Persons with Disabilities (CRPD) provides the right to independent living, this does not apply to older people without disabilities. Regional provisions, as found in the Inter-American Convention on Protecting the Human Rights of Older Persons (2015; Article 12) and the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Older Persons in Africa (2016; Articles 10 and 11) are limited in geographical scope. Whilst Article 23 of the Revised European Social Charter includes reference to health care, not all Council of Europe Member States are bound by its provisions; this includes the UK.

A UN Convention on the rights of older persons would recognise older persons' right to care and support services for independent living, that these should be adapted to individual needs, promote well-being and maintain autonomy and independence, without any discrimination. It would establish that this right applies across all settings (public and private), and that all care and support services must be person-centred. It would foreground the central importance of older peoples' autonomy and participation in all matters related to the support services they may need, including the right to supported decision-making. A Convention would clarify the obligations of States to ensure high-quality affordable care and support services, access to remedies and redress, and information for older people. A Convention would also recognise and protect rights for older people to palliative care that is holistic and accessible.²³

Further, in conjunction with a right to freedom from violence, it could ensure that long term care and support services and settings are safe for older people to live in and use and would protect individuals from harm if/as necessary.

d) Autonomy and Independence

In order to fully enjoy the right to autonomy, older people must be able to make their own choices about all aspects of their lives. Additionally, they must have the legal capacity to exercise decisions. However, older persons can be stripped of their legal capacity by guardianship measures, which remove the ability to make decisions about certain features of lives.²⁴

Older persons have reported that they are not able to make their own decisions about aspects such as their finances, management and disposal of property, employment, who to vote for, where and with whom to live, access to health services, family life and participation in community, voluntary or social activities. Different people may prevent, or interfere with, older peoples' autonomy and independence, including government and local authorities, policy makers, local leaders, service providers and family members. A deterioration in health or income, the loss of work or onset of retirement, and/or a change in circumstances, like going to live with a family member, are occurrences that can make older people dependent on others, resulting in loss of autonomy and independence.²⁵

There are no explicit standards on autonomy and independence in older age in international human rights law. Everyone's right to equal recognition before the law and the right to a family and private life, which are both central to autonomy and independence, are enshrined in international human rights law. For example, Article 12 of the Convention on the Rights of Persons with Disabilities (CRPD) affirms that all persons with disabilities have full legal capacity and that perceived or actual deficits in mental capacity must not be used as justification for denying legal capacity.²⁶ However, this does not apply to older persons without disabilities and there are no explicit international standards on how these rights apply in older age.

Some regional human rights standards recognise the right to autonomy and independence in older age, but these differ and are either limited in geographical scope (such as Article 30, Inter-American Convention on Protecting the Human Rights of Older Persons) or provide insufficient protection. For instance, the right of older people to lead independent lives is recognised in Article 25 of the European Union Charter of Fundamental Rights (2000), but does not give rise to direct claims for positive action by EU institutions or member State authorities.²⁷ Conversely, Article 23 of the European Social Charter (1996) is optional, as Member States can ratify the Charter without accepting the legal obligations of that provision.²⁸ Additionally, the Council of Europe Recommendation on the Rights of Older Persons (2014) explicitly recognises that decision-making power can be limited in certain cases²⁹; this conflicts with Article 12, CRPD. Further, the Mental Capacity Act 2005 in England and Wales and applicable to older people who lack decision-making capacity is based on 'best interests' not supported decision-making.

A UN Convention would protect older persons' right to personal autonomy to make decisions, determine life plans and lead autonomous and independent lives, on an equal basis with others and in line with their will and preferences. It would establish that this right applies to all aspects of life, including living arrangements. A Convention would also protect the right to equal recognition before the law and the right to always have full legal capacity, on an equal basis with others. It would clarify that States must provide older people with the necessary support required to exercise their legal capacity, as well as ensuring effective access to remedies and redress.³⁰

Part II. 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.

INPEA and some network members have submitted reports and statements to a wide range of human rights mechanisms, including:

- the Committee on the Elimination of Discrimination against Women, including the Committee on the Status of Women
- the Office of the High Commissioner for Human Rights
- the Human Rights Council, including in response to calls for submissions made by the UN Independent Expert on the enjoyment of all human rights by older persons.

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

While INPEA's engagement with international human rights mechanisms has resulted in a reference to older persons during proceedings or in the Concluding Observations and/or Recommendations, the adoption of significant and comprehensive recommendations on the rights of older persons has remained limited.

Even although the majority of international human rights treaties apply to older persons, in practice it is challenging for civil society organisations to submit meaningful contributions to UN treaty bodies or other monitoring mechanisms. This is due to the lack of comprehensive human rights provisions in relation to older people, including the exact scope of Member States' obligations.

Highlighting human rights violations within the framework of existing human rights treaties that are not specifically targeted at older persons requires civil society to interpret normative provisions with either limited or no existing interpretive guidance.

Due to the lack of a comprehensive binding instrument on older people's rights there is a heightened risk that treaty body members do not have the necessary capacity or specialised knowledge of essential concepts such as ageism, and of the specific human rights violations experienced in older age. There is also increased risk that Committee members either overlook or do not give sufficient weight to the rights of older people throughout their specific review processes or in their final recommendations or decisions.

The UN Independent Expert on the enjoyment of all human rights by older persons in addition to members of a number of UN treaty bodies have raised concerns about their lack of capacity to adequately address the challenges faced by older people. There appears to be a paucity of references to older people in concluding observations of human rights bodies and universal periodic review recommendations.³¹ The Vice-Chair of the Committee on Economic, Social and Cultural Rights has pointed out that in addition to creating its own UN treaty monitoring mechanism, a dedicated instrument on the human rights of older people would "focus the Committee's attention on the rights of older persons in a more systematic and sustained way".³² The same is true at the regional level. For example, the President of the European Committee of Social Rights has emphasised that regional instruments alone cannot fill the gap in the international framework³³.

Regional monitoring bodies also look at international practice to guide their work, so the absence of information about best practices, together with the lack of a specific Convention

has a significant effect on the Committee's work at regional level as well. Specific provisions relating to older persons' rights would result in greater attention on their rights and require Committee members to increase their understanding of older persons' rights. A new UN Convention would enable and empower existing treaty bodies and other stakeholders to deal with ageism and its complexities.

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

There is a need for improved engagement with the topic of older persons' rights at the international level, together with better implementation of existing norms and standards. Nonetheless, despite best intentions, it is unlikely that this alone would result in more than incremental or minimal improvements in human rights protection for older persons.³⁴

As indicated in the brief responses above, existing human rights instruments fail to make clear how human rights apply in older age and monitoring bodies lack the expertise and capacity to effectively tackle human rights violations faced by older persons. Whilst there are existing relevant international policy frameworks, such as the 2002 Madrid International Plan of Action on Ageing (MIPAA), these do not offer the necessary protection of the rights of older persons which is required around the world.

It is important to remember that MIPAA is a policy framework that provides recommendations, not legally binding norms or standards. Compliance with and implementation of the Plan is therefore dependent on the goodwill of Member States. Additionally, MIPAA does not comprehensively cover the rights of older persons, and, for example, there is a lack of focus in the Plan on access to justice, legal capacity or forced placement(s). Furthermore,

MIPAA does not include or establish any mechanisms for meaningful accountability. Finally, even although MIPAA is aligned with existing human rights frameworks, it cannot be considered a human rights instrument.

There is little reference in the Plan to specific individual rights for older persons or to any legal obligations for States as duty bearers. Policy frameworks alone fail to protect older persons' rights. The fourth global review and appraisal of MIPAA (E/CN.5/2023/6) demonstrated that: "while there has been progress [...], the persistence of the same challenges over the 20 years of the implementation of the Plan constitutes a failure of 'business as usual'."

An international policy framework, such as MIPAA, is particularly useful to guide States when there is already the political will to respond to a specific issue. If not, implementation of such frameworks will always remain weak and insufficient. As noted by several Governments in their regional MIPAA review process: "the development of an international legal instrument on the human rights of older persons [...] would complement and reinforce the Plan and would be key to promoting and protecting the rights and dignity of older persons, including in any successor policy frameworks on ageing."³⁵

This leads us to conclude that only one option would provide the urgently needed comprehensive protection of older persons' rights: this is a dedicated binding UN convention. The demonstrated need for systemic change necessitates the adoption of a new legal instrument at the international level. It is apparent that ageism is pervasive within societies and has negative impacts on older persons' rights in all areas. To move from charitable and social welfare models to a rights-based approach, we require a transformative

shift in understanding.³⁶ In our view this can only be provided by a specific UN convention on the human rights of older persons.

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)

In principle, existing human rights treaties apply to all people, irrespective of their age. Nevertheless, the lack of consideration of the impact of ageism and age discrimination in the implementation and interpretation of existing human rights norms and standards, in addition to the particular human rights challenges faced in older age, leads to ineffective international legal guarantees for older people.

It is evident that there is currently no international legal instrument that provides a comprehensive human rights framework to protect the rights of older persons. As seen in the responses above regarding some of the different topics of the Open-Ended Working Group on Ageing (OEWGA), no single existing international human rights treaty covers the full spectrum of rights in older age, nor do they include clear and comprehensive provision concerning the elimination of all forms of ageism and age discrimination. This is one of the root causes of human rights violations in older age and such elimination is thus essential in order for older persons to enjoy their fundamental rights and freedoms across all areas of their lives. Furthermore, existing provisions at the regional level are also limited in geographical scope or fail to provide the necessary legal guarantees.

The absence of an international human rights framework in relation to older persons leads to the conclusion that the development of a human rights-based approach and discourse on ageing has been constrained. Consequently, the ageing discourse continues to be dominated by both the medical model and increased concern about the economic impact of demographic changes, including among and within Member States.³⁷

A dedicated international human rights instrument would expedite the urgently needed shift to a human rights-centred approach. When dedicated international instruments have been established, similar transformative shifts have been seen regarding other groups that experience discrimination and human rights violations. A new convention on human rights of older persons would clarify States' legal obligations towards older persons across all areas of life, develop and increase understanding of equality concepts such as ageism, abuse of older people and age discrimination and offer increased impetus for much needed legal reform at the national level across the world.³⁸

The myriad of reports submitted over the past decade to the OEWGA process by civil society, academia and UN bodies and experts have clearly and consistently established that there is only one effective way to enable and expediate the necessary shift towards a human rights-based approach to ageing and older persons, and thereby to guarantee the effective and comprehensive protection of the complete continuum of human rights in older age. This can only be achieved via the drafting and adoption a new UN Convention on the Rights of Older Persons.

References

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- ³ Article 2 International Covenant of Economic, Social and Cultural Rights (ICCPR) and International Covenant of Economic, Social and Cultural Rights (ICESCR).
- ⁴ Report of the Independent Expert on the enjoyment of all human rights by older persons, UN Doc. A/HRC/48/53, 2021, para. 43.
- ⁵ HelpAge International, *Advancing Equality for Older Persons*, London, HelpAge International, 2022, <https://www.helpage.org/what-we-do/rights-of-older-people/age-equality/>
- ⁶ Ibid.
- ⁷ Explanations Relating to the Charter of Fundamental Rights (2007) OJ C 303/17, 35. Subjective ‘rights’ are to be respected by member States, whereas ‘principles’ are to be observed. Article 51(1) CFEU. Principles can be implemented by legislative and executive acts when EU or national institutions are implementing Union law. They are only judicially cognizable in the interpretation of such acts and in the ruling on their legality. Article 52(5) CFEU.
- ⁸ See Article 6 EU Directive 2000/78/EC.
- ⁹ HelpAge International, *Advancing Equality for Older Persons*, 2022.
- ¹⁰ HelpAge International, *Entitled to the same rights: What older women say about their rights to non-discrimination and equality, and to freedom from violence, abuse and neglect*, London, HelpAge International, 2017, <https://social.un.org/ageing-working-group/documents/eighth/EntitledsameRights-English.pdf>
- ¹¹ According to the World Health Organization, rates of abuse of older persons are high in institutions such as nursing homes and long-term care facilities, with 2 in 3 staff reporting that they have committed abuse in the past year. See World Health Organization, *Abuse of Older persons*, 13 June 2022, <https://www.who.int/news-room/fact-sheets/detail/abuse-of-older-people>.
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²¹ Ibid.

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²³ Ibid.

24 UN Independent Expert on the enjoyment of all human rights by older persons, *Autonomy and care of older persons: Report of the Independent Expert*, Rosa Kornfeld-Matte, 2015, UN Doc. A/HRC/30/43.

25 HelpAge International, *Freedom to decide for ourselves*, London, HelpAge International, 2018, <https://www.helpage.org/silo/files/freedom-to-decide-for-ourselves.pdf>.

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27 Explanations Relating to the Charter of Fundamental Rights (2007) OJ C 303/17, 35.

28 The Charter is based on a ratification system, enabling States, under certain conditions, to choose the provisions they are willing to accept as binding international legal obligations. Countries such as Austria, Belgium, Cyprus and Moldova have not accepted Article 23.

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Report prepared by Bridget Penhale, UK on behalf of:

INPEA

The International Network for the Prevention of Elder Abuse

