

Social Inclusion

14th Session of the UN Open-ended Working Group on Ageing

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Answers of the German Institute for Human Rights to the guiding questions for the normative framework of the 14th session of the Open-ended Working Group on Ageing:

Social Inclusion

Definition

1. How are the key human rights related to older persons' social inclusion defined in the national and local legislation in your country? If definitions are not available, how should such rights be defined considering relevant existing national, regional and international legal frameworks?

As a contracting party to the CRPD, Germany is obliged to give older persons with disabilities access to health services (Art. 25.b), social protection and poverty reduction programs (Art. 28.2.b), and to put in place age-appropriate measures related to access to justice and prevention of abuse. Furthermore, Germany is required to ensure the equal right of women to social security in old age (Art. 11.1.e CEDAW). The Charter of Fundamental Rights of the European Union prohibiting age-based discrimination and articulating a right to social security in old age is equally applicable.

The government is committed to the Madrid International Plan of Action on Ageing (MIPAA) and has developed a National Action Plan to implement its goals which includes the funding of projects aimed at promoting the independence and social participation of older persons.¹ A country report on the implementation of MIPAA was published 2022.² Under the General Equal Treatment Act, discrimination based on age is prohibited in working life and everyday transactions.³

Germany is obliged to implement human rights by ratifying various human rights treaties, including the human rights principle of inclusion, which is closely linked to the prohibition of discrimination.⁴ Inclusion is

¹ Bundesministerium für Familie, Senioren, Frauen und Jugend (BMFSFJ) (2007): „Nationaler Aktionsplan zur Umsetzung des Zweiten UN-Weltaltentplans, Madrid 2002 und der UNECE-Regionalen Implementierungsstrategie, Berlin, 2002“, Berlin: KIWI GmbH, <https://www.bmfsfj.de/resource/blob/77520/576fb21ee93c9aa20ab6367540da9d01/nationaler-aktionsplan-data.pdf>.

² BMFSFJ (2022): „Nationaler Bericht der Bundesrepublik Deutschland“, Berlin: <https://unece.org/statistics/documents/2022/01/reports/mipaa20-report-germany>.

³ Federal Anti-Discrimination Agency: „Age“, Berlin: <https://www.antidiskriminierungsstelle.de/EN/about-discrimination/grounds-for-discrimination/age/age-node.html>.

⁴ Deutsches Institut für Menschenrechte (2023): Soziale Inklusion älterer Menschen, Hintergrundpapier, Berlin: S. 6; https://www.institut-fuer-menschenrechte.de/fileadmin/Redaktion/PDF/Rechte_Aelterer/DIMR_OEWGA_Hintergrundpapier_Soziale_Inklusion_Aelterer.pdf.

also closely linked to self-determination, the fundamental concept of human rights, and is a prerequisite for participation.⁵

There is no explicit mention of older persons in relation to social inclusion or a clear definition of participation for them in national and local German legislation. However, they are implicitly included in various laws.⁶

The Convention on the Rights of Persons with Disabilities can be seen as a model with regard to definitions of the key human rights related to older persons' social inclusion.⁷

From the UN CRPD, which Germany has ratified and transposed into national law, social inclusion is the process and at the same time the goal of improving the participation and involvement in social life of persons with disabilities.⁸ Specifically, Article 9 of the UN CRPD deals with accessibility and transport with regard to persons with disabilities, including older persons with disabilities. Accessibility and transport are two normative elements that can promote inclusion.⁹

Scope of the right

2. Please provide references to existing national legal standards relating to older persons social inclusion on normative elements such as:

a) the right of older persons to take part in cultural life;

Article 25 of the European Charter of Fundamental Rights, which Germany has ratified and transposed into national law, enshrines explicitly the right of older persons to participate in social and cultural life.

The CRPD enshrines the right to participation as a cross-cutting issue, as well as the right to participate in political and cultural life. The CRPD explicitly takes older persons with disabilities only in two articles into account.

The right to participate in public affairs, voting rights and the right of equal access to public service are enshrined in Article 25 of the CCPR, which Germany has ratified and transposed into national law. However, this article does not explicitly mention older persons.

Article 7 of the CEDAW, which Germany has ratified and transposed into national law, enshrines the elimination of all forms of discrimination against women. Older women are not explicitly mentioned.

b) older persons' inclusion in the digital sphere;

In legal terms, Article 15 of the International Covenant on Economic, Social and Cultural Rights, which Germany has ratified and transposed into national law, refers to social inclusion. This article does not explicitly mention older persons.

According to Article 15 (1) a-b ICESCR, the States Parties to the present Covenant recognize the right of everyone to participate in cultural life; to share in the benefits of scientific progress and its application and to enjoy the protection of the moral and material interests accruing to him as author of scientific, literary or artistic works. Article 15 (2) enshrines that the steps to be taken by States Parties for the full

⁵ Deutsches Institut für Menschenrechte (2023), a.a.O., S. 2.

⁶ Dr. Claudia Mahler (2023): "Menschenrechtliche Aspekte sozialer Inklusion Älterer", Berlin: Deutsches Institut für Menschenrechte, S. 4, https://www.institut-fuer-menschenrechte.de/fileadmin/Redaktion/PDF/Rechte_Aelterer/Praesentation_Mahler_Menschenrechtliche_Aspekte_Sozialer_Inklusion.pdf.

⁷ Deutsches Institut für Menschenrechte (2023), a.a.O., S. 6.

⁸ Deutsches Institut für Menschenrechte (2023), a.a.O., S. 2.

⁹ Deutsches Institut für Menschenrechte (2023), a.a.O., S. 4.

realization of this right shall include such measures as are necessary for the preservation, development and diffusion of science and culture. This article does not explicitly mention older persons.

c) ensuring that older persons can live independently and be included in the community;

Article 9 of the UN CRPD enshrines the requirements for accessibility for older persons with disabilities. Article 19 of CRPD guarantees every older person with disabilities to live independently and be included in the community. In addition, the signatory states are obliged to guarantee the right to participate in political and public life (Art. 29 UN CRPD) and the right to participate in cultural life, recreation, leisure and sport (Art.30 UN CRPD).

The Madrid International Plan of Action on Ageing (2002) enshrines the provision of information and access to facilitate the participation of older persons in mutual self-help, intergenerational community groups and opportunities for realizing their full potential.

d) ensuring the social inclusion of older persons living in institutions;

Article 1 of the Universal Declaration of Human Rights states that all human beings are born equal in dignity. Human dignity cannot be earned, it is not tied to a concept of performance and is completely independent of a person's individual performance – regardless of their need for support or other barriers.¹⁰

Article 25 of the European Charter of Fundamental Rights explicitly enshrines the right of older persons to participate in social and cultural life.

The General Comment No. 5 of the CRPD Committee refers to Article 19 of the CRPD and the right of older persons with disabilities to live independently and be included in the community.¹¹ As well as the Guidelines on Deinstitutionalisation of the CRPD Committee, which enshrine the right of older persons with disabilities to decide for themselves where and with whom they want to live. The states parties are required to establish outpatient care structures and gradually abolish institutions.^{12,13}

e) older persons' inclusion in intergenerational policies and programmes;

The Madrid International Plan of Action on Ageing (2002) explicitly enshrines the encouragement and support of the contribution of older persons to families, communities and the economy and the provision of opportunities, programmes and support to encourage older persons to participate or continue to participate in cultural, economic, political, social life and lifelong learning. As well as the assurance of information and access to facilitate the participation of older persons in intergenerational community groups.

¹⁰ Deutsches Institut für Menschenrechte (2023), a.a.O., S. 7.

¹¹ Committee on the Rights of Persons with Disabilities (2017): "General comment No.5 on Article 19 – the right to live independently and be included in the community": Office of the High Commissioner for Human Rights <https://www.ohchr.org/en/documents/general-comments-and-recommendations/general-comment-no5-article-19-right-live>.

¹² Committee on the Rights of Persons with Disabilities (2022): "CRPD/C/5: Guidelines on deinstitutionalization, including in emergencies (2022)": Office of the High Commissioner for Human Rights, <https://www.ohchr.org/en/documents/legal-standards-and-guidelines/crpd5-guidelines-deinstitutionalization-including>.

¹³ Further information on this topic can be found here: Deutsches Institut für Menschenrechte (2018): „Unabhängige Lebensführung und Inklusion in die Gemeinschaft“: DIMR, <https://www.institut-fuer-menschenrechte.de/publikationen/detail/unabhaengige-lebensfuehrung-und-inklusion-in-die-gemeinschaft>; Deutsches Institut für Menschenrechte (2023): „Leitlinien zur Deinstitutionalisierung“: DIMR, <https://www.institut-fuer-menschenrechte.de/publikationen/detail/leitlinien-zur-deinstitutionalisierung>.

f) Access to prompt remedies and redress when older persons' rights related to social inclusion are violated.

Access to justice is enshrined in Article 13 of the European Convention on Human Rights (ECHR) and in Article 2(3) of the International Covenant on Civil and Political Rights (ICCPR), which Germany both ratified and transposed into national law. Both articles do not explicitly refer to older persons. These articles refer to legal protection in the event of human rights violations such as the violation of older persons' rights related to social inclusion, but do not only concern judicial legal protection, but also include independent state bodies, such as parliamentary control bodies and committees of enquiry, as well as extrajudicial arbitration boards and supervisory bodies such as data protection officers. Procedural guarantees are also part of the scope of protection. Article 6 ECHR and Article 14 of the UN Covenant on Civil and Political Rights regulate the procedural guarantees in civil and criminal matters before courts for example in case of a violation of older persons' rights.

State obligations

3. What are the measures that should be undertaken by the State to respect, protect and fulfil relevant human rights to ensure the social inclusion of older persons?

- States should advocate for a binding international convention on the rights of older persons that defines the right to an adequate standard of living for older persons.
- States must guarantee the right of older persons to an adequate standard of living (Article 11 CESCR).
- States must ensure non-discriminatory access to information, food, clothing, and housing.
- States must enact discrimination laws in which age is listed as a ground for discrimination.
- States must ensure the dismantling of discriminatory structures and barriers.
- States must create the necessary framework conditions to enable older persons to exercise their right to adequate living conditions.
- States must ensure the realization of accessibility and the right to an adequate standard of living.
- States must ensure the implementation of measures to actively promote inclusion.
- States must provide a legal framework, complaints bodies and judicial mechanisms to ensure that older persons can fully exercise their right to an adequate standard of living and fully enjoy their rights.
- States must ensure access to human rights-based care and housing facilities for older persons.
- States must ensure that older people receive sufficient information about the economic benefits to which they are entitled.
- States must guarantee mobility and access to information so that older persons can participate in social and cultural life.
- State programmes and laws must be in line with existing human rights obligations.
- States must promote the explicit reference to older persons and their rights in relation to social inclusion in legislation.

The realisation of the social inclusion of older persons requires the state to promote the dismantling of discriminatory structures and barriers that promote exclusion, scarcity of resources and lack of opportunities, as well as the implementation of measures to actively promote inclusion. The social inclusion of older persons depends on the realisation of various human rights.¹⁴ These include, for example, the realisation of accessibility and the right to an adequate standard of living. This is essential for the social inclusion of older persons and the realisation of their human rights. In this context, it is essential to advocate for and promote a Convention on the Rights of Older Persons in order to set clear

¹⁴ Deutsches Institut für Menschenrechte (2023), a.a.O., S. 2.

and uniform standards and create a good basis for appropriate measures that significantly support the respect, protection and fulfilment of the relevant human rights in connection with the social inclusion of older persons.¹⁵ Government programmes and laws must be in line with existing human rights obligations to ensure a human rights-based approach. All human beings are born “equal in dignity” (Article 1 of the Universal Declaration of Human Rights).¹⁶ Germany has a general equal treatment law, but protection against age discrimination still needs to be expanded.¹⁷

Special consideration

4. What special measures and specific considerations should be considered to respect, protect and fulfil relevant human rights to ensure the social inclusion of older persons?

When it comes to the social inclusion of older persons, it is important that the state takes ageism into account. Ageism is one of the main barriers for older persons to exercise their human rights and also one of the reasons for the lack of social inclusion of older persons. Ageism can reinforce discrimination based on other characteristics; for example, intersectional discrimination can put older women, older persons with disabilities, etc. at a greater disadvantage.^{18,19} An important step against ageism is for the state to take measures to raise awareness so that active action can be taken against age discrimination, which is more often legitimised and dismissed than other forms of discrimination.²⁰

The more marginalisation and discrimination factors are added to the age factor, the greater the poverty and lack of education, for example. It is important that the state takes these issues into account when it comes to the social inclusion of older persons.²¹

One example of this is the consideration of the normative element of digitalisation and the social inclusion of older persons. There is a digital gap in Germany. A study in 2020 found that there is a gender-specific discrepancy between the use of digital services with increasing age. During an expert discussion for the OEWGA, it was emphasised that intersectionality is the core problem here.²²

When it comes to fulfilling, respecting and protecting the human rights of older persons in the context of social inclusion and thus reducing ageism and intersectional discrimination, an international legal binding instrument on the rights of older persons can provide protection against human rights violations by explicitly considering age- and disability-friendly accessibility to services, buildings, transport, information and communication.²³

Implementation

5. What are the best practices and main challenges faced by your country in the adoption and implementation of relevant human rights to ensure the social inclusion of older persons?

The implementation of the WHO “Age-friendly Cities” programme in certain German cities is a best practice example. The aim of the programme is to make cities age-friendly, accessible, and inclusive. The promotion of inclusion and participation of older persons, among others, are central elements of the

¹⁵ Deutsches Institut für Menschenrechte (2024): „Rechte älterer Menschen – Recht auf Gesundheit – Soziale Inklusion – Debriefing“, Berlin: DIMR, <https://www.institut-fuer-menschenrechte.de/publikationen/detail/rechte-aelterer-menschen-1>.

¹⁶ Deutsches Institut für Menschenrechte (2023), a.a.O., S. 7.

¹⁷ Deutsches Institut für Menschenrechte (2024), a.a.O., S. 24.

¹⁸ Mahler (2023), a.a.O., S.6

¹⁹ Deutsches Institut für Menschenrechte (2024), a.a.O., S. 22.

²⁰ Deutsches Institut für Menschenrechte (2024), a.a.O., S. 25.

²¹ Deutsches Institut für Menschenrechte (2024), a.a.O., S. 27.

²² Deutsches Institut für Menschenrechte (2024), a.a.O., S. 27.

²³ Mahler (2023), a.a.O., S. 5.

programme.²⁴ In Germany, Radevormwald, Münster and Stuttgart are already part of the programme.^{25,26}

Other best practice examples are different strategies and projects related to ageing such as the National Dementia Strategy, projects on the topic of digitalization (e.g. “Digitaler Engel”²⁷ and the “DigitalPakt Alter”²⁸) and life-long learning (for example the service point “Education and Learning in Old Age”²⁹ with its Homepage “wissensdurstig.de”³⁰) to enable older persons to participate in an increasingly digitalized society, programs on housing through which age-appropriate conversion of housing or the availability of social services shall be strengthened, guidelines for companies on the benefits of employing older persons and the program “Strengthening the Participation of Older People – Ways out of Loneliness and Social Isolation in Old Age” funded by the EU.³¹

In addition to ageism and intersectional discrimination (which comes into play, for example, when considering the digital gap), the urban-rural discrepancy in relation to the social inclusion of older persons is a challenge in Germany. The rural population has to contend with difficult conditions, such as inadequate public transport and a lack of information about participation opportunities. Even if information on participation opportunities for older persons is available, the question is to what extent these participation opportunities are actually accessible and usable for these persons.³²

An international legal binding instrument would help to tackle these problems and promote the social inclusion of older persons. In contrast to persons with disabilities, there is currently a lack of older persons with a common awareness in Germany for the advancement of an older person's rights convention. This has contributed significantly to the development process of the CRPD.³³

²⁴ Deutsches Institut für Menschenrechte (2023), a.a.O., S. 6.

²⁵ Zukunftswerkstatt Kommunen (2022): „WHO Global Network for Age-friendly Cities and Communities“: ZWK, S.3 https://www.zukunftswerkstatt-kommunen.de/fileadmin/user_upload/Werkzeuge/Werkzeug_WHO_Age_Friendly_City.pdf.

²⁶ World Health Organization: “Age-friendly world”: WHO, https://extranet.who.int/agefriendlyworld/search-network/?_sft_countries=germany.

²⁷ Digitaler Engel: „Über das Projekt“: <https://www.digitaler-engel.org/>.

²⁸ Digital Pakt Alter: <https://www.digitalpakt-alter.de/>.

²⁹ Bundesarbeitsgemeinschaft der Seniorenorganisationen: „Bildung und Lernen im Alter“: BAGSO, <https://www.bagso.de/projekte/servicestelle-bildung-und-lernen-im-alter/>.

³⁰ Wissensdurstig.de: „Die Website der Servicestelle „Bildung und Lernen im Alter““: BAGSO, <https://www.wissensdurstig.de/>.

³¹ <https://www.bmfsfj.de/bmfsfj/themen/aeltere-menschen>.

³² Deutsches Institut für Menschenrechte (2024), a.a.O., S. 21.

³³ Deutsches Institut für Menschenrechte (2024), a.a.O., S. 24.