

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

QUESTIONNAIRE

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.

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

Within the international human rights protection system, an explicit prohibition on age discrimination has so far only been anchored in the CRPD (which, however, does not apply to all older people), the UN Migrant Workers Convention (which, however, has not been ratified by Germany) and on a regional level the EU Charter of Fundamental Rights (which guarantees protection via secondary law in particular in the area of employment, but less protection in other fields). The UDHR, the ICSECR, the ICCPR, CEDAW, and on a regional level the European Convention on Human Rights, while not containing an explicit clause prohibiting age discrimination, are fully applicable to older persons.

Nevertheless, the rights of older persons to an adequate standard of living and to social protection is guaranteed by international human rights norms and standards. To name the most prominent:

In addition to the CRPD, the ICESCR and the applicable ILO conventions No. 102 and No. 190 constitute a normative framework to protect the human rights of older persons in the area of social security and a working environment free from violence and harassment.

The UN Committee on economic, social, and cultural rights in its General Comments (Nr. 6 (1995) and Nr. 20 (2009) clearly stated, that older persons are protected by the rights enshrined in the ICESCR.

On the regional level, the European Social Charta (ESC) contains crucial protection for older people regarding their social rights. The whole Charta is applicable for older persons, meaning all aspects that are covered by the Charta protect older persons as well. To ensure the enforcement of those rights, the Charta in its revised form provides a specific provision, Art. 23. Germany ratified this provision in 2021. It states that parties undertake appropriate measures to adopt or encourage the effective exercise of the rights, either directly or in cooperation with organizations.

Gaps in protection against age discrimination could be seen in EU secondary law. The EU equality directives limit protection against age discrimination to the area of employment and occupation (cf. Framework Directive on Employment 2000/78/EC).

Additionally, as a study by the German Federal Anti-Discrimination Agency pointed out, positive and negative stereotypes about older persons are relatively widespread in Germany. The negative images can foster ageist behavior and can be used as justification for age-based discrimination in old age.

b) Violence, neglect and abuse

Older persons are protected from violence, neglect and abuse in by the general treaties. Most specific in this aspect is the CRPD (especially Art. 16). Other treaties can be used, bearing in mind that they lack a specific provision on protection from violence, such as CEDAW (e.g. General Recommendation No. 19 (1992), and ICCPR e.g. Art. 7). Furthermore, ILO Convention Nr. 190 sets standards for the working environment and protection from violence can also be derived from Art. 7 ICECSR.

In addition, on a regional level in Europe the Council of Europe Convention on Action against Violence against Women and Domestic Violence (Istanbul Convention) has no age limit in its scope. Another important European instrument is the European Convention for the Prevention of Torture and Inhuman and Degrading Treatment (CPT). Thus, Germany does not identify a normative gap.

The Working Paper mentions financial exploitation and abuse as an area where international normative protection is missing. However, Germany does not perceive international protection against such practices (which is of course existent under national law) as a specific need for older persons.

c) Long-term care and palliative care

Germany does not see gaps with regard to the underlying international normative framework and its implementation in Germany. The right to long-term care and to palliative care can both be grounded in the right to the enjoyment of the highest attainable standard of health guaranteed in Article 25 UDHR and in Article 12 of the ICESCR. There are also close linkages with the right to social security (Article 9) and the right of everyone to take part in cultural life (Article 15) of the ICESCR. In addition, the rights to long-term care and palliative care overlap with various rights of persons with disabilities constituted in the CRPD, such as the liberty and security of person (Article 14), freedom from exploitation, violence and abuse (Article 16) and the right to living independently and being included in the community (Article 19), among others.

d) Autonomy and independence

A crucial principle of the CRPD, which is pivotal for older persons, many of them having a disability, is enshrined in Art. 3 para 1, respect for inherent dignity, individual autonomy including the freedom to make one's own choices, and independence of persons. Art. 19 b) of the CRPD contains important obligations to achieve autonomy and independence for persons with disabilities.

To ensure the enforcement of the rights enshrined in the ESC, the Charta in its revised form provides a specific provision, Art. 23. These measures shall particularly enable older people to remain full members of society as long as possible, enable an independent lifestyle and guarantee support for older people living in institutions.

Legal autonomy and independence are guaranteed to older persons without discrimination under national and international law, i.e. the ICCPR. Art. 12, 14, 16, 18,19. Germany does not perceive any normative gaps in this respect. The Working Paper acknowledges this but mentions that older persons are subject to "assumptions" about their capacity. Since such assumptions would be in contravention of the legal framework, this should not be constructed as a normative gap.

- e) Protection et sécurité sociales (y compris protection sociale minimale)
General Comment Nr. 19 (2007) of the UN Committee on economic, social, and cultural rights, contains specific Interpretations of the application of Art. 9 for older persons on social security.

Article 9 of the International Covenant on Economic, Social and Cultural Rights sets out the right of everyone to social security, including social insurance. The rights of older persons are specified in greater detail in General Comment No. 19 (2007) on Article 9 of the Covenant, for example. Together with the relevant ILO Conventions, including No. 102 on Social Security Minimum Standards and No. 128 on Invalidity, Old-Age and *Survivors' Benefits* as well as regional human rights treaties, and complemented by ILO Recommendation No. 202, a comprehensive normative framework is provided for the way in which social security systems are to be designed - also for older persons - including a social protection floor.

Article 28 of the UNCRPD recognizes the right of persons with disabilities to an adequate standard of living and social protection as well as equal access to retirement benefits and programmes (see question 1 letter e).

On a regional level, aspects of social security are covered by the European Code of Social Security especially Part V, old age benefit.

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

Article 13 of the ICESCR guarantees the right of everyone to education. This was affirmed by General Comment Nr. 13. Education includes life-long learning and capacity building since the parties to ICESCR recognize that education aims at the full development of the human personality and the sense of its dignity as well as to enable all persons to participate effectively in a free society. Germany is of the opinion, that these goals can only be achieved, if education, learning and capacity building continue throughout the life course. To encourage older persons involvement in life-long learning activities, the Federal Government supports programs such as the service unit "Education in old age" (www.wissensdurstig.de) and runs specific programs with partners to enhance older persons access to the digital world and digital skills (Digital pact for old age).

Article 27 of the UNCRPD recognizes the right of persons with disabilities to work, on an equal basis with others, and an accessible labour market. If necessary, reasonable accommodation has to be provided at the workplace (letters f and g).

- g) Right to Work and Access to the Labour Market

Article 6 and Article 7 of the International Covenant on Economic, Social and Cultural Rights and a comprehensive acquis that is made up of the ILO instruments protect older persons when they enter the labour market, during employment and also when they retire from working life.

h) Access to justice

Germany would like to refer to its contribution to the 11th session of the OEWSGA. The German Government does not see any gaps in the normative framework that deny access to justice to older persons.

i) Contribution of Older Persons to Sustainable Development

As the OHCHR's working document submitted to the 13th session of the OEWSGA points out, the underlying conceptual bases and the enablement of older persons' right to participate in and contribute to sustainable development lie in the existing human rights, such as equality and nondiscrimination; personal liberty; freedom of expression, information, communication and access to information; to gather and associate; to active participation in the community and to public initiative; to work including in a voluntary capacity; health; and social security. Since these are all dealt with in other items, we do not see a normative gap here.

j) Economic security

The right to economic security is closely linked to the right to an adequate standard of living enshrined in Art. 25 of the UDHR. Rights spelled out in the ICESCR, such as the right to social security and the right to participate in the labor market are important contributors to social security. The full implementation of the ICESCR thus is pivotal also to guarantee economic security in old age.

k) Right to Health and Access to Health Services

The right to Health and Access to Health services is grounded in the right to the enjoyment of the highest attainable standard of health guaranteed in Article 25 of the Universal Declaration of Human Rights and Article 12 of the International Covenant on Economic, Social and Cultural Rights (ICESCR). The Covenant unequivocally states that the States Parties are obliged to ensure that everyone has the right to the enjoyment of the highest attainable standard of physical and mental health. The competent UN Committee on Economic, Social and Cultural Rights interprets the Covenant to the effect that it covers both the right to domestic care and the right to health care of older persons, including palliative care (... care for chronically and terminally ill persons ...). Article 25 of the UNCRPD recognizes the right of persons with disabilities to the "highest attainable standard of health without discrimination" and obliges the States Parties to

take appropriate measures to ensure access to “health services that are gender-sensitive”, including “health-related rehabilitation”.

l) Social Inclusion

Pursuant to Article 1 of the UNCRPD, the purpose of the Convention is the participation of persons with disabilities in society on an equal basis with others. Central standards on this social inclusion and thus the full participation in all areas of life are set out in greater detail in the following articles, for example: Article 9 (“Accessibility”), Article 19 (“Living independently and being included in the community”), Article 20 (“Personal mobility”), Article 23 (“Respect for home and the family”), Article 27 (“Work and employment”), Article 28 (“Adequate standard of living and social protection”), Article 29 (“Participation in political and public life”) and Article 30 (“Participation in cultural life, recreation, leisure and sport”) (letter n).

m) Accessibility, infrastructure and habitat (transport, housing and access)¹

Article 11 of the ICESCR enshrines the right to adequate housing. Accessibility (Art. 9 CRPD) is a core principle of the CRPD and so is personal mobility (Art. 20 CRPD), and so is the right to choose one’s residence freely (Art. 19 CRPD).

n) Participation in the public life and in decision-making processes²

Article 25 of the ICCPR has no age limit and thus guarantees the right to participate in public life and decision-making processes. This is specified and affirmed by Art. 29 of the CRPD for persons with disabilities.

[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)

Regarding the “Right to Health and Access to Health Services” as well as the “right to long-term care and palliative care”, Germany is actively involved in relevant WHO and UN processes, meetings, forums, actions. Germany submits regular reports to the Committee

¹ To be discussed at the 14th Open-Ended Working Group on Ageing

² To be discussed at the 14th Open-Ended Working Group on Ageing

on Economic, Social and Cultural Rights as well as CEDAW, CRPD and takes part in the UPR.

The sixth periodic reporting process was concluded in 2018 with the constructive dialogue and the Concluding Observations adopted in this context ([E/C.12/DEU/CO/6: Concluding observations on the sixth periodic report of Germany | OHCHR](#)). Germany is currently going through the seventh cycle of the periodic reporting process. The report was submitted to the OHCHR in early November 2023. The 7th periodic report explicitly deals with different areas of life that concern older persons, such as measures against loneliness, Digital pact for older people, geriatric care and pension insurance.

The 9th CEDAW Report of Germany and the dialogue with the CEDAW Committee, which was completed in May 2023, addressed in one small aspect the issues of older women.

In accordance with Article 35 of the UNCRPD, the Federal Republic of Germany submitted its periodic report for the second time in 2019 for the combined second and third periodic reporting process. The corresponding constructive dialogue took place at the end of August 2023 and the resulting Concluding Observations were submitted by the UN Committee on the Rights of Persons with Disabilities (Committee).

During the constructive dialogue no specific questions were asked on the implementation of the CRPD for older persons. The same is true for the concluding observations.

Regarding the European Social Charter (ESC) and the European Code of Social Security (ECSS), the Federal Republic of Germany fulfils extensive reporting duties. The ESC reporting is due every year and divides the provisions of the Charter in four different sections, so that every section is covered in a four-year rhythm. Regarding the ECSS, reporting is also due every year in form of a general report. Detailed reports are required every four years. Since 2021, consolidated reports have been made, covering ILO conventions that are content wise identical.

While Germany as a party to CAT, CCPR, CED und CERD we note, that the treaty bodies to these conventions do not address the implementation of the obligations for older persons.

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

In its Concluding Observations of 2018, the UN Committee on Economic, Social and Cultural Rights requested Germany, among other things, to supply information on the implementation of the recommendations on care for older persons (Recommendation

No. 49) in an interim report due in 2020. The Federal Government met the request and sent the UN Committee an overview of the legislative changes that had been made in the meantime. The UN Committee concluded that sufficient progress had been made to implement its recommendations. Furthermore, the UN Committee called upon the Federal Government to ratify the 2008 Optional Protocol to the International Covenant on Economic, Social and Cultural Rights. The Optional Protocol was ratified in May 2023 and entered into force for the Federal Republic of Germany on 20 July 2023. This means that not only the national courts but now also individual persons or groups of persons have the right, after the exhaustion of all domestic remedies, to turn to the UN Committee with a complaint if they feel that their rights resulting from the Covenant have been violated.

In its Concluding Observations on the first UNCRPD periodic reporting process (2011-2015), the Committee found fault with some issues relating to the implementation of the UNCRPD. In the following, the Federal Republic of Germany took above all legislative measures. Positive reactions from civil society emphasise in particular that the strongly criticised exclusions of persons with disabilities from the right to vote have been abolished and that, due to the Federal Participation Act, benefits for persons with disabilities are offered in a person-centred way and take stronger account of what people want. Regarding the Committee's criticism of the legal instrument of guardianship, namely "to eliminate all forms of substituted decision-making and replace it with a system of supported decision-making", the reform of guardianship law that entered into force on 1 January 2023 largely implemented this recommendation.

Because of Germany's federal structure, the federal states play an important role since they provide the framework conditions for local measures. A very positive feature is that meanwhile, every federal state has an action plan to implement the UNCRPD that outlines how the Convention is to be implemented also in the federal states. This is a big step towards disability mainstreaming.

The Federal Government will also discuss the Concluding Observations that the Committee submitted after the constructive dialogue on the combined second and third periodic reporting process in September 2023 in consultation with all relevant stakeholders and civil society. The results will feed into future legislation, measures and programmes.

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

Older persons fall within the scope of all existing human rights treaties (with the exception of the CRC). The norms of those treaties set a strong general standard. They are fully applicable, although dispersed over various instruments.

- a) The existing Treaty Bodies could be asked to develop focused reporting procedures with regard to rights of older persons. This could take the form of regular specific state reports on this topic within the mandate of the relevant Treaty Body. While this might be possible or even desirable from the viewpoint of the focus group and professionals, the Treaty Bodies will realistically not be able to deal with additional tasks.
 - b) Update the “International Plan of Action on Ageing”. MIPAA has just celebrated its 20th anniversary. Reporting rates are going up in all world regions. A third International Plan of Action on Ageing could not only update the political commitments made in MIPAA, but be dedicated to ensure the full enjoyment of all human rights for older persons by giving guidance to what these rights are and where they are found.
 - c) The mentioning of age as a ground of discrimination in Optional Protocols to those Treaties that do so far not explicitly address discrimination on the ground of age, could give better guidance to treaty bodies and parties to the Treaties.
 - d) As to a new Convention on the Rights of Older Persons, we conclude that there are no normative gaps, we see no added normative value in a convention.
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)

Not applicable for Germany, since there is no regional legally binding instrument exclusively dedicated to the rights of older persons.

All inputs will be posted online.

Submissions to be sent to Stefano Guerra stefano.guerra@mne.pt and Pedro Paranhos pedro.paranhos@itamaraty.gov.br with copy to ageing@un.org