

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

The Constitution of the Portuguese Republic, approved in 1976 and amended in subsequent revisions, enshrines the principle of equality and non-discrimination in Article 13, described in two points:

1. All citizens have the same social dignity and are equal before the law.
2. No one shall be privileged, advantaged, disadvantaged, deprived of any right or exempted from any duty on the grounds of ancestry, sex, race, language, place of birth, religion, political or ideological convictions, education, economic situation, social status

Point 1 is generic, while point 2 lists and details the various specific conditions that cannot affect or define either privilege or discrimination, some of which were introduced into the constitutional text as society became aware of their importance and social impact. **Although age discrimination/ageism has been increasingly detected in several contexts within our society, it is not explicitly included in the constitutional text.**

Concerted action should be taken to ensure that this issue is taken into account by MPs in the forthcoming constitutional review.

This discrimination, which is sometimes obvious and sometimes more subtle, occurs mainly in everyday practices at various levels of social life and is particularly directed at older people. **As far as we know, there is no legal or legislative framework for these practices.**

b) Violence, neglect and abuse

Violence against older people is still prone to a cloak of silence, as it mainly occurs in a family context or in residential and care settings. It is not easy for the victims to report it, either out of shame, fear of retaliation or abandonment by the aggressor, or just because they do not know where to seek support or have some physical or mental disability.

However, exposure of this serious problem has been increasing, particularly over the last decade. This visibility has resulted in an increasing number of reported cases and complaints to security and judicial authorities (PSP, GNR and the Public Prosecutor's Office) and to the national elderly support lines.

There are two main sources of quantitative data on violence against older people that cover situations occurring in a family environment: security forces (Public Security Police and the National Republican Guard) and APAV, Associação de Apoio à Vítima (Portuguese Association for Victim Support). These two sources conceptually frame the concept of violence against the elderly as subsidiary to that of domestic violence. As a rule, the aggressors are people who maintain a close relationship with the victim.

Violence against the elderly in institutional environment is an issue of more recent concern, and it is particularly serious in the case of dependent elderly people who are isolated from their network of kinship, friends and community. This reality has come even more visible in times of Covid 19 pandemic, either by the incidence of infection and deaths in nursing homes or by knowledge of unacceptable situations in some of them or, still, the greater visibility of a hidden reality of illegal homes.

Accessibility of older victims to national or local victim support network is largely determined by their own condition. Poverty and misery tend to limit their own awareness of aggressions they are victims of as an attack on their rights.

Authorities responsible for public safety – the Public Security Police (PSP), in higher-density urban areas, and the National Republican Guard (GNR), in rural areas - have developed outreach initiatives to older people who are isolated and/or lonely, advising and protecting them from various forms of aggression.

These actions are very important, but they need to be more frequent, more systematic and involve better and more effective means of recording and processing the data collected.

Additionally, people in situations of greater isolation and vulnerability should be provided with telecommunications equipment putting them in touch both with entities providing them regular care and with the authorities responsible for their safety whenever they need it.

c) Long-term care and palliative care

In 2013, the Integrated Continued Care Basic Law (LBC-CI) was approved. This law establishes the principles and objectives of integrated long-term care in Portugal, as well as the state's responsibility for providing it. In 2016, the Portuguese government launched the Long-Term Care Qualification Support Programme, which aims to improve the quality of long-term care services, and in 2018, Decree-Law 133/2018 was approved, which creates a model for the provision of long-term care services.

Around 40,000 people received palliative care in the NHS in 2022, which represents an increase of 10 per cent compared to 2021.

The Portuguese Palliative Care Association (APCP) estimates that some 50,000 Portuguese will need palliative care in Portugal in 2023. This means that approximately 10,000 Portuguese who need palliative care do not have access to it.

The ageing of the Portuguese population is one of the main factors contributing to the increasing need for palliative care.

In 2022, it is estimated that around 100,000 people received long-term care on the SNS, which represents an increase of 15 per cent compared to 2021.

Even so, the data show that there is still a long way to go in long-term care to be able to guarantee the protection of older people's human rights.

d) Autonomy and independence

The Portuguese government promotes or supports various programmes to combat isolation of older people, such as promoting social participation, supporting the development of personal and social skills and raising awareness of the importance of social relationships. Some of them includes a range of measures, such as financial support, home support and psychological support.

Innovative approaches to encourage autonomy and independence, such as ageing in place or co-housing, are still far from being developed.

e) Protection et sécurité sociales (y compris protection sociale minimale)

The right to Social Security, established in Article 63 of the Constitution of the Portuguese Republic, is materialised through the Social Security system embodied in the successive basic laws that have adjusted it to national and international social and economic developments and the organic-functional structure responsible for its implementation.

In 2015, Council of Ministers Resolution 63/2015 was published, enshrining, for the first time, a Strategy for the Protection of the Elderly, a document of a doctrinal nature, framing rights and of great importance as a reference for institutional practices, which reads: "The Constitution of the Portuguese Republic also affirms, within the framework of economic, social and cultural rights and duties, the rights of the elderly, with Article 72 of the Constitution stating that "older people have the right to be cared for". Article 72 states that "older people have the right to economic security and to housing conditions and family and community life that respect their personal autonomy and prevent and overcome isolation or social marginalisation".

Despite the existence of this legal framework, the means of surveillance are incipient and the protection mechanisms are still fragile or even non-existent at local or state levels.

Many older people keep working because, in many cases, they are faced with very low pensions, which do not provide them with the material conditions, quality and dignity they would expect after a lifetime of work.

Average pensions have also been frozen for more than a decade. Their value has been deteriorating and has not kept pace with the rise in the cost of living. For this reason, in a country like Portugal where wages are still very low, it is urgent to think about work from a life-cycle perspective, which does not consign many older people to poverty.

At the moment, a significant portion of this age group still earns an income from pensions far below the national minimum wage and constitutes a significant part of the Portuguese population that, lives below the poverty line, despite social transfers.

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

Overall, adult education policies in Portugal have suffered from great instability, with periods of increased investment and periods of major disinvestment, not just financially but mainly politically. This has not reinforced an awareness of lifelong learning as a right for the general population. In this context, existing adult education policies have been mainly addressed to

adults of working age, very much linked to the preparation for the labour market, without an approach explicitly addressed to retired people.

A high level of illiteracy still remains within the Portuguese elderly population, although these figures have been gradually decreasing (In the 2011 population census there were 499,236 illiterate people in Portugal, compared with 1 520 474 in 1981).

Compulsory education:

Until 31 December 1966	4 years of schooling
Between 1 January 1967 and 31 December 1980	6 years of schooling
From 1 January 1981	9 years of schooling
Academic Year 2009/2010	12 years of schooling

Education level of people over 65 years (%)		
	1998	2020
No schooling	57,3%	16,9%
1st cycle	32,6%	51,6%
2nd cycle	3%	5,5%
3rd cycle	3%	11,2%
Secondary or pos.secondary education	1,7%	5,7%
Higher education	2,3%	9,1%
Higher education	2,3%	9,1%

The low level of education of a large number of older people is a fact, both in terms of literal as well as functional illiteracy.

There is no systematized information on the older population's interest in lifelong education and training, not even regarding formal education. Data provided by the General Directorate of Education and Science Statistics on Access to Secondary and Higher Education only concerns the population up to the age of 64.

Opportunities do exist for life-long learning , but they are not the result of a structurally planned strategy. They depend essentially on initiatives by specific organizations and/or municipalities.

There is no stable programs. Some adult education policies in Portugal have been characterized by intermittence of the programs due to political choices and guidelines (e.g. new opportunities program). In any case, these programs have been primarily aimed to people at working age. Still,

many people over 65 attended initiatives such as New Opportunities, thus achieving an academic degree.

g) Right to Work and Access to the Labour Market

We are unaware of any laws aimed at guaranteeing the right to work and access to the labour market for older people. However, there are legal frameworks establishing age limitations for the continuity of people in the labour market, namely for civil servants.

Current policies are not enough to incorporate the older population into the productive process.

"The chance to work after retirement and accumulate the old-age pension with income from employment or self-employment is provided for by law (Article 62 of Decree-Law 187/2007).

However, this accumulation is prohibited in specific cases.

As far as the labour market is concerned, European Directive 2000/78/EC has been transposed into the Labour Code, which stipulates a general principle of non-discrimination, including discrimination based on age, for workers and job applicants. However, age discrimination is a poorly recognised phenomenon in Portuguese society, although it is very prevalent in everyday life. Despite the many examples of age discrimination in the workplace, it is not yet perceived as a structural phenomenon and people do not know the mechanisms to stand up for themselves.

There are general policy measures promoted by the Institute of Employment and Professional Training which are not specific for older people. We are not aware of any specific measures for people working beyond retirement age. These workers are covered by the same general laws applicable to everyone else, namely in the case of liberal professionals (doctors, lawyers, or others) who are self-employed after their retirement. In public service, people can extend their working life until the age of 70 (mandatory age in 2022 - 66 years and 7 months, reduced to 66 years and 4 months in 2023).

According to the website of the Portuguese Government, "After retiring, you can also continue to work. And you don't have to contribute to Social Security (<https://eportugal.gov.pt/cidadaos/entrar-na-reforma>) However, the high numbers of long-term unemployed over 50 and of early retirements, may be relevant indicators on the relationship between age and labour market opportunities, namely for less qualified workers.

In Portugal, many older people continue to work without having their work recognised: either because they are being paid for their work but cannot formally assume these payments, or for the risk of being penalised on their retirement pensions, or because they are effectively assuming unpaid fundamental tasks for their families or communities, as is the case of the thousands of people who take care of their grandchildren on a daily basis or of those who are informal carers of relatives in a situation of dependency. Nearly 1.4 million people in Portugal are informal caregivers. The Informal Carer's Status was created in 2019, but it has practically no impact for

most caregivers, many of them retired and, for this reason, automatically excluded from access to informal caregiver status.

h) Access to justice

There are no special rights for older people in access to justice in Portugal, although there are some specificities with regard to support services and the fulfilment of prison sentences.

The existence of a specialised section in the national ombudsman's office for general complaints from older people is a good experience although it is a body with no decision-making powers, whose recommendations to the government may or may not be followed up, so it may not be very effective in guaranteeing older people's right to justice.

In August 2015, Council of Ministers Resolution 63/2015 was published, enshrining a Strategy for the Protection of the Elderly, for the first time. It is doctrinal document that provides a fra

On 10 February 2019 (Law no. 49/2018), the " Legal Regime of the Adult Accompanied Person" (Regime do Maior Acompanhado) came into force, replacing the previous Regime of Interdiction and Disqualification, established by Portuguese legislation since the Civil Code of 1966.

The Interdiction and Disqualification Regime was applied in all cases where people were unable to manage their own lives, i.e. were unable to look after themselves and their assets. mework for rights and of great importance as a reference for institutional practices..

The difference is significant, especially in terms of respect for the dignity a person deserves. Under the new regime, the powers of the carer are defined according to the needs of those being cared for and by decision of the court. There is no longer a rigid, pre-fixed decision which, in a situation of incapacity, turned the citizen into an "interdict" and subject to a guardian.

i) Contribution of Older Persons to Sustainable Development

We are not aware of any legal provisions, in the Portuguese political framework, that specifically recognize the right of older people to participate and contribute to "sustainable development", particularly those related to the mentioned human rights. In Portugal, support to civil society organizations representing older people – public or other - is scarce. These organizations are a few in number and are not often called upon to collaborate in current pressing debates, such as those underlying sustainable development.

Nevertheless, older people play a relevant role in their communities taking on, in many cases, several tasks and responsibilities which are aligned with SDG priorities, such as promotion of economic activities and involvement in environmental activities, fostering reflection on the quality of life of older people in their municipalities. In addition, the number of older people

involved in volunteer activities in various areas and those who assume fundamental tasks for their families and/or communities, such as supporting their grandchildren or other dependent people is also very expressive.

One of the main challenges concerns the failure to include in the design of the SDGs, explicitly and systematically, the demands of demographic ageing, the rights of older people and the concrete circumstances that this stage of the life cycle brings to the lives of individuals, their families and communities and society at large.

Furthermore, older people placed in situations of greater vulnerability (physical, economic, social or others) are at a disadvantage when contributing to the design and development of sustainable development, if conditions that make participation and involvement easier are not assured, such as, for example, physical and/or digital accessibility.

In general terms, we consider that older people are not called upon in a consistent and consequent manner to make their contributions in this field, in spite of their life experience and the knowledge they hold in various domains (from agriculture to the reusing materials, to reflecting on the sustainability of social protection systems, among many others).

j) Economic security

Older people living in poverty face major challenges in accessing fundamental rights such as the right to health, as they are often unable to afford medicines or adequate nutrition.

In addition, there are thousands of older people whose housing lacks minimum living conditions. Portugal is one of the European countries with the highest levels of energetic poverty.

Average old-age, disability and survival Social Security pensions in Portugal are below the poverty line. In 2021, 1.6 million Social Security pensioners received an old-age or invalidity pension lower than the national minimum wage. Considering the total pensions paid out by Social Security, it turns out that 72% of old-age pensioners and 87% of disability pensioners lived on less than €665.

Despite the existence of some legal frameworks aimed at safeguarding the rights of older people, such as housing, the dependency complement or the social benefit for inclusion in situations of extreme poverty, the reality is that a large part of older people in Portugal face real difficulties to have decent and comfortable daily life, by standards of social welfare.

k) Right to Health and Access to Health Services

The right to health is guaranteed by the constitution but, in practice, there are many gaps in access to the highest quality care. Although a large amount of legislation has been produced over

the last few years, The National Health Service (NHS) lacks appropriate services and sufficient number of trained health professionals and caregivers to meet the needs of older people in terms of accessibility, equity and proximity health surveillance. The private sector presents unaffordable cost for most retirement pensions in Portugal.

We still do not have a geriatric care system, which should be part of an NHS able to protect and respond to the needs of the older population, thus adapting to the current demands of a healthy ageing .

We recognize that some efforts have been made to ensure that every older person has access to affordable and good quality health care and services, but older age discrimination does exist.

The NHS is currently facing major difficulties caused by the inability to adapt to a new demographic framework, failing to respond to patients and to retain health professionals who leave the system, in large numbers, to the private sector or abroad.

Missing:

More qualified/specialised human resources in primary care

A well-developed network of integrated care

I) Social Inclusion

The social inclusion of the elderly is sometimes confused with benefits and material factors. More than that, to be included is to feel involved and understood in their living conditions as a person who is part of something, both singularly and collectively.

Senior citizens policy should encompass economic, social and cultural measures aimed at providing older people with opportunities for personal fulfillment through active participation in community life.

Although there are various social responses, in our opinion, they are more assistance-based than inclusive.

These social responses aim to ensure the prevention and repair of situations of need and dependency, guaranteeing special protection for the most vulnerable groups, namely the older people in a situation of dependency or economic or social need, and can be developed by the state, local authorities and private non-profit institutions. Among the responses to this situation is support from family, friends and the surrounding community, day care centers, nursing homes, senior universities, cultural and recreational associations, parish councils, institutions linked to senior and accessible tourism, NGOs, among others.

There is a need for truly inclusive and non-ghettoised responses, in which older people are more than passive receivers of services, no matter how well-intentioned.

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

Article 72 of the Constitution of the Portuguese Republic states that "Older people have the right to economic security and housing conditions and family and community life that respect their personal autonomy and avoid and overcome isolation or social marginalisation". Furthermore, article 65 of the Constitution provides for the right to housing and urban planning, without distinguishing between specific population groups. Guaranteeing the constitutional right to housing is essentially attributed to the State, recognising the role of the Municipalities in a model of cooperation. Decree-Law no. 55/2020 of 12 August reinforces the role of Municipalities, that have the responsibility 'to develop programmes to promote housing comfort for older people, namely in articulation with public entities, social solidarity institutions or with the management structures of thematic programmes'.

In 2006 and in 2012 there were changes in the law of rents, unprotecting everyone and especially older people who had open-ended contracts that could not be changed, according to the previous law. In 2012 there was a transition process taking place in only 1 month, without the guarantee of adequate information for the older people, the main beneficiaries of these contracts. Recently the change in this specific point was considered unconstitutional by the Constitutional Court in decision no. 393/2020, concluding that we are facing a "disproportionate restriction of the right to housing". Constitutional issues of protection in old age and trust were also raised.

In 2019 legislative changes occurred, resuming the legislative wording that did not allow the transition of contracts for high rents and fixed-term contracts for people over 65 years. This situation only applies to people that have been living in the same house for more than 15 years without an updated contract, or to those with a new regime contract, but living in the same house for 20 years and being 65 years old at the date of the new contract. So citizens over 65 years of age currently have differentiated regimes of lease protection. These regimes are reflected in article 36, no. 10 after the amendments of Law no. 13/2019.

In 2019 the Housing Framework Law (Law no. 83/2019 of 3 September) was approved in Portugal. In point c) of number 3 of article 8 it specifies that housing policy integrates special protection measures aimed at "older people, to ensure adequate housing adapted to their health and mobility conditions, with respect for their personal autonomy, preventing isolation or social marginalisation".

Other programmes were also implemented such as the Right to Durable Housing created by Decree-Law n.1/2020, particularly directed to older people. However, people must have financial capacity to advance with several down payments, which leaves out a large part of the older population that could benefit from this programme.

Considering the phenomenon of real estate speculation that has been taking place, some municipalities are beginning to recognise that the right to housing may be at risk, particularly for the most vulnerable groups. Despite this, the measures taken so far have clearly been insufficient to guarantee the right to housing for older people and generalised access to goods and services. Portugal remains facing a structural problem of a lack of public transport, with particular impact on those living outside the metropolitan areas of Oporto and Lisbon.

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

n) **Participation in the public life and in decision-making processes**²

In the essence of the Rule of Law, the right to participation is guarantee to all citizens in Portugal, but with weaknesses, if it comes to think about it more broadly.

There are a few judicial and/or non-judicial mechanisms for older persons to complain and seek redress for the denial of this right, including the right to participate in discussions on older people rights and concerns, but they are not very effective (ex: OP's line at the ombudsman's office, helpline for OP victims of abuse and violence at the Victim Support Association, Municipal Commissions for the Protection of OP).

APRe! has been playing an active role as a social actor specifically committed to the rights of older citizens in Portugal, taking part in several social and political interventions and actions, whether in hearings with political actors or through active participation in the media. Despite this, we feel that our demands are often not recognised and that we are not always consulted on issues that are of interest to older and retired people. In this sense, it is important to point out that organisations that are not made up of older people and do not even consult them on a wide range of issues are often consulted as organisations that represent older people, even though they are not representative of older people. (We may need to redefine or better define the concept of representative organisations of LDCs).

In addition, mobilising older people to participate in the public space is difficult, given the structural barriers to participation that continue to exist in the country, despite the fact that we have been living in a democracy for 50 years. Factors such as the structural poverty that affects many older people in Portugal, the lack of information and accessibility to public spaces/contexts for participation, and mainly the absence of public policies that promote participation, which could overcome the factors mentioned above, are some of the factors that directly affect the possibilities for older people to participate in Portugal.

[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)*

APRe! is a civic association for the defence of the rights of older persons, retirees and pensioners.

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

It regularly takes a stance on a wide range of issues affecting the life of older persons at national, European and global level.

The Association is a full member of AGE Platform Europe, an UN OEWSG accredited NGO and NGO in consultative status at UN ECOSOC.

APRe! is very active in meeting the requests of these bodies, always contributing to the extent that its members are available and able to respond. It has contributed to a number of significant documents such as the European Commission Green Paper on Ageing, the Annual Barometers of the AGE Platform Europe, exploring several topics on the defence of the rights of older people, and written contributions by accredited NGOs to the OEWSGA annual sessions, on his own behalf and as a member of AGE Platform Europe. It also participated in drafting the declaration of the Joint Forum of Civil Society and research forum preceding the inter-ministerial conference to review MIPAA in 2022.

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

This involvement has had an impact on our ability to be heard, to present our proposals raising awareness among politicians and the media and to influence policies on ageing and longevity, both at national and European level.

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

APRe! defends the need for legal instruments to prevent and avoid the violation of older people's rights. That's the reason why it has supported a UN convention on the rights of older people from the beginning and has called on the Portuguese government to join the group of supporting member states.

APRe! advocates the existence of a government department specialised in ageing/longevity, involving various ministerial areas, so that these issues can be addressed strategically. In fact, this was provided for in the Strategy for Active and Healthy Ageing 2017-2025 has not been approved by parliament so far, and much less implemented. So, although the level of political awareness may have increased, there is still no consistent plan to deal with such an urgent issue in an ageing society like ours, where ageism is growing every day.

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 our country, there is neither a policy nor a strategy for longevity, although there are laws and individual measures that may solve some specific problems. This fragmentation creates many

gaps, accentuates inequalities and, in practice, is unsuccessful in actually defending the rights of older people.

APRe!
Associação de Aposentados
Pensionistas e Reformados

The Deadline

Deadline to send responses to the questionnaire is 24 November 2023.

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