

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



Submitted by
Ageing Nepal
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Ageing Nepal is a national leading organization working for the rights of older people since 2011. It is a non-profit making, non-government organization which has been registered with the government of Nepal and affiliated with Social Welfare Council.

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

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. *(500 words each)*

a) Equality and non-discrimination

The article 18 of Nepal's Constitution provides Right to Equality for all citizens. According to the article, all citizens shall be equal before law and no discrimination shall be made in the applications of general laws on grounds of origin, religion, race, caste tribe, sex, physical condition, condition of health, marital status, pregnancy, economic condition, language or region, ideology or on similar other grounds. Here, age is not considered as a ground for the right to equality directly. However, the article supports making special provision for the protection, empowerment or development of the citizens including older persons. This special provision clearly reflects the charitable understanding of older persons rather than recognizing them as right holders.

All the policies and programmes that directly targeted Right to Equality follow article 18 which is leaving behind older people as a direct right holder to Equality and non-

discrimination. So, we can see the consequences in each aspect of normal ageing. For example- 60 is the mandatory age for retirement in most government jobs, cooperatives and banks hesitant to provide loans after 60, private insurance companies denied to do insurance after 60, no system for retain, retrain and recruit for employees in private companies and so on. These are just some examples of conscious and unconscious bias and discrimination towards older persons in our country.

b) Violence, neglect and abuse

According to data compiled by Ageing Nepal from police reports and news published in national newspapers, every day at least one dead body of older people found due to neglect of family, society or community in Nepal. Similarly, the reported cases of sexual abuse also increasing. The data revealed that most of the perpetrators are family members and relatives which is the major reason that they don't file a case or report against them in fear of revenge and nowhere to go. Consequently, they are compelled to live with the perpetrators enduring the abuses.

According to the Senior Citizens' Act 2006 (amended in 2022), in general, there is no more punishment than up to 5 years of imprisonment and 300 thousands fine for any kind of elder abuse committed by perpetrators. In Nepal, a poor widowed older woman from the so called lower caste is always at high risk of accusation of witchcraft. So many older women are being verbally and psychologically abused which is not considered as a case to file until it becomes physical abuse. For many older people these are part of their normal ageing which deeply impacting them and pushing them for committing suicide.

These all cases clearly show the need for special provision and very strict legislation to fight against ageism.

c) Long-term care and palliative care

The concept of Long term care and palliative care are completely new in Nepal. For the first time, National Health Policy 2019 prioritized palliative care along with preventative and curative care to develop and expand in an integrated manner. Similarly, palliative care is mentioned in the operational definition of 'Health Service' in the Public Health Service Act 2018. But these policy documents do not explicitly target Long-term and Palliative care for older persons.

Majority of older people in Nepal live in a joint family. Traditionally, family is the primary caregiver of older people and still it is practiced in Nepal. But due to the youth migration to other countries for better opportunities, care homes and day care centers are mushrooming especially in large cities like Kathmandu, Pokhara and other urban areas. These care homes are providing services to the older people who need long-term care and palliative care. But this is not affordable for all older people. There is only one

government old age home that was established in 2000 to provide services for the older people. Currently around 200 older people are taking shelter in the old age home.

Most of the older people do not have any proper plan for their later life. Similarly, the government has not proper strategy to provide these services to older people.

d) Social Security and social protection

Article 41 is the only specific article on the Right of Senior Citizens that provides special protection and social security from the state. Their rights to social security have been guaranteed by Social Security Act 2017. The Nepal government started a universal pension scheme to the older people of 70 and above age group in 1996. The eligibility age has been reduced to 68 in 2022. In case of Dalit (so called lower caste), inhabitants of remote districts (Jumla, Humla, Dolpa, Mugu and Kalilot) and single women, they receive the pension at 60 and above. Older people are getting NRs. 4000 (equivalent to USD 30) monthly as old age allowance which is not even sufficient to meet their basic needs. The banking system of distributing old age allowance is also very difficult for older people as they have to walk for hours to reach the bank. Some local governments have been taking initiative to provide the allowance amount to the door steps of older people who are unable to reach the bank. However, most of the older people do not have full control over their allowance amount. They are at high risk of financial abuse and psychological abuse after receiving the money. Large number of older people do not have citizenship certificates which limits them to receive old age allowance and other entitlements.

There is an article on Right to Social Security (43) which has not incorporated the age as a ground for the right though it has clearly mentioned indigent citizens, incapacitated and helpless citizens, helpless single women, citizens with disabilities to name a few. As per the International Labour Organisation report (ILO) on Social Protection, there are more than 70 Social Security Programmes in Nepal. However, only about one third of the population have access to any social protection provisions.

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

Large number of today's older people are illiterate in Nepal due to social taboos on girls' education, limited academic institutions and unawareness about the importance of education when they were child or young. Some of them got the opportunity to enroll in informal education when they were young. But the majority, particularly older women are illiterate. There is no platform for getting education and training to older people at old age. Consequently, they have less access to information and services which are entitled for them, less mobility in urban areas and are compelled to struggle even for normal living at old age.

Article 31 of the constitution provides Right relating to education. Similarly, Nepal has many policies and programmes related to implementation of above rights enshrined in the constitution which include: (a) Non Formal Education Policy (2007) (b) Functional adult education program (UNESCO, 2006) (c) The literacy/non-formal education policy framework (UNESCO, 2006) (d) Community School Support Project (2003–2008), 5) Education for All Programs (2004–2009) (e) Family Literacy Program 2013 (f) School Sector Development Plan, SSDP (2016/17-2022/23). But It is worth noting that none of the above policies and programmes specifically mentions or has provision for education, training, life-long learning and capacity building of older people of 60+ age.

Lack of specific policies to access quality education and lifelong learning opportunities; the mindset that (a) older people cannot and need not learn new thing, (b) older people are unproductive, (c) old age is only for taking rest and engaging in religious activities and the unawareness about the importance of education among development workers and government officials are the major challenging that are preventing them from getting education, acquiring knowledge and training in Nepal. Some organizations like Ageing Nepal have been running the classes for 60 and above age groups and advocating and campaigning for the right. But these efforts are not enough to ensure the right to education and life-long learning opportunities for older people.

f) Right to Work and Access to the Labour Market

In Nepal, more than 85% of older people live in rural areas and they are dependent on agriculture for their livelihood. Older women are engaged in unpaid care and household chores. But their contribution has not been recognized neither by their family members nor by the state.

According to Nepal's Right to Employment act 2018, (1) Every citizen shall have the right to employment. (2) For the purposes of sub-section (1), every citizen shall have the right to practice appropriate labor subject to this Act or the prevailing law. Similarly, according to the Constitution of Nepal, article 34, Right to Labour (1) Every labourer shall have the right to practice appropriate labour. (2) Every labourer shall have the right to appropriate remuneration, facilities and contributory social security. (3) Every labourer shall have the right to form and join trade unions and to engage in collective bargaining, in accordance with law.

However, the term “every citizen and every labourer” does not apply for older people because there is a mandatory retirement age after 60 in most of the government jobs and there is no system of retrain, retain and recruit older people in private companies. In the Right to Employment Act 2018 of Nepal, unemployed citizen means a citizen of the age group from eighteen to fifty nine years who is not involved in employment for at least one hundred days in one fiscal year or who is not involved in self-employment

generating such minimum income as prescribed. Each right related to employment is targeted to the people of the so called active age group, 18-59. The older people who are healthy, capable and willing to continue their work shall have the opportunity to earn a living by doing income generating activities which they freely choose or accept. There must be technical and vocational guidance and training programmes to achieve the full realization of this right to older persons.

g) Access to justice

Article number 20 of Nepal's Constitution provides Right relating to Justice. Access to justice should be defined as "All citizens without any discrimination on the basis of age, ethnicity, gender and geographical location should have ability to seek and obtain a remedy through formal or informal institutions of justice for complaints in compliance with human rights standards" so that the inclusive principle would not leave older people. Not only this, there is a big gap to realize access to justice for older persons that need to be addressed promptly.

h) Contribution of Older Persons to Sustainable Development

Older persons are not only the target group of Sustainable development, they are also contributors and change makers. It is almost impossible to achieve the development goals without the active participation of ever increasing older persons particularly in the developing countries like Nepal where youth migration is high.

There is nothing regarding the participation of older persons in any development works including sustainable development in the constitution of Nepal. However, some points are included about the public participation by promoting and mobilizing the creativity of local communities of different socio-economic backgrounds. Mobilization of knowledge, skills and experience of older persons has been also mentioned in Senior Citizens Act 2006 (amended in 2022). Similarly, Senior Citizens Regulation 2008 mentioned, "To operate and cause to be operated is a necessary function for the purpose of utilization of the knowledge, skill, capacity and experience of the senior citizens by obtaining cooperation also of the national and international organizations subject to the prevailing law. But there is a lack of implementation mechanism. Due to the lack of awareness, older persons are taken for charity recipients and dependent members of society. They are considered as mentally and physically unable to take any initiatives. Consequently, they are often excluded from development plans and programmes. Lack of opportunity is one of the major challenges for older persons. Majority of older people in Nepal are illiterate. Illiteracy and their inability to use technology are obstacles for their participation in this modern society. In Nepal, very limited research has been conducted regarding several issues of older persons.

However, older people of Nepal still continue to work in the informal sector even at the age of 60, 70 and 80 for their livelihood. According to the Nepal Ageing Survey Report (2016), overall 19% older persons were affiliated to one or more of the local social organisations including political parties. Their engagement in different sectors directly and indirectly contribute to achieving SDGs. But their contribution and efforts has not been recognized by the state and there is not any mechanism to motivate, encourage and strengthen their capacity to continue their work.

i) Economic security

In Nepal, 15.1% of the total population is below the poverty line and 28% of the population in rural areas was experiencing multidimensional poverty[1]. More than 85% older people live in rural areas. So, it can be clearly assumed that a large number of older people are below the poverty line. Majority of older people residing in rural areas are compelled to continue farming for their livelihood even in their 80's and 90's because of youth migration. Similarly, we can see the increasing numbers of homeless older people living street life and begging for food in urban areas.

There are not any specific policies and programmes to address economic insecurity and poverty in old age. The Constitution has guaranteed special protection and social security from the state as Fundamental Human Rights of Nepal. The fifteenth national plan (Fiscal Year 2019/20 – 2023/24) aimed to ensure senior citizen's participation in policy making and access to resources to utilize their knowledge, skills, and experience and to increase the social security services for the safety and comfort of the senior citizens. But very limited programmes have been formulated for effective implementation of those policies and provisions.

j) Right to Health and Access to Health Services

Nepal has made remarkable progress by formulating and implementing policies and programmes to ensure the Right to Health for all. The constitution of Nepal has made provision for equal access to health service for all citizens and provides senior citizens the right to special protection and social security from the state. National Health Policy also reflected the equitable and inclusive health system. Nepal government has prepared Geriatric Health Service Strategy from 2021-2020 to enable senior citizens to lead active and quality lives on the basis of optimum health protection and effective health service delivery. Free Health Insurance for older persons that covers up to 1 hundred thousand treatment expenses per year. Similarly, some allocated government hospitals provide discounts and free treatments for some specific health problems: like, 50% discount to older people of 60-65 age group, 75% discount to older people of 70-79 age group, free service to 80 and above age group. The older people get free treatment to all the services available in the hospital after 85 years. Similarly, the Nepal government has provided some incentives to poor and vulnerable older persons for

their better health like: free treatment to the 75 and above older persons who are suffering from heart and kidney disease; provides treatment expenses up to Rupees one hundred thousand to the 70 and above older persons who are suffering from 5 disease i.e., Kidney disease, Cancer, Alzheimer's disease, Parkinson and Heart; provides Nrs. 2000 to 5000 health expenses to vulnerable, poor and marginalized older persons and so on. Government is providing 98 types of medicine free of cost to all the citizens. Besides this, Nepal government has promulgated some guidelines to implement the formulated policy on senior citizens like: Geriatric Care Center Implementation Guideline, 2020; Standard treatment protocol (STP) for basic health services (BHS) package. But these guidelines do not specifically ensure that every older person has access to affordable and good quality health care and services in older age without discrimination.

Consequently, a large number of older people do not have access to quality health services and large numbers are suffering even for primary health services. Mental health of older people has not been adequately addressed in such health legislation.

Ageing Nepal with support from HelpAge International conducted consultations on Barriers and Possible Solutions to Access Right to Health for Older Persons in a district of each three geographical regions of Nepal i.e., Tarai, Hill and Mountain. According to the consultation followings are the major barriers or challenges[2]: (a) Majority of older people are unaware about their services they are entitled for, (b) older people from mountain and hilly region shared the inconveniences to receive old age allowance through bank as they have to walk hours or many days, (c) lack of health care providers, medicines and equipment's in health post and hospitals, (d) due the youth migration, there is no one to accompany with them in hospital, (e) long process of getting free health services mentioned in Free Health Insurance Programme or other, (f) they rarely get opportunity to participate in meetings while planning health infrastructure like: health post in their local community and (g) misbehave by youths and health workers in hospitals and health post. This barriers must be mitigate for the successful implementation of existing policies.

k) Social Inclusion

There are no specific legal provisions, policy frameworks in Nepal that explicitly focus on older persons who are marginalized on the grounds of their sex, disability, race, ethnicity, origin, religion, economic or other status. The constitution of Nepal has provided senior citizens the right to special protection and social security from the state particularly for the helpless. This has also been mentioned in the Senior Citizen Act. According to the act, the homeless senior citizens will be protected by the local government. Similarly, there is also prohibition on engaging in begging. According to the provision, no person shall cause a senior citizen to rely on begging and no person shall

make a senior citizen as hermit (Sanyashi), monk or fakir against his or her will. Similarly, there is concession on public vehicles for all senior citizens and discounts for poor older people while receiving health services in government hospitals. The government also provides free legal aid to the senior citizens to ensure the right to justice. These are some legal provisions for marginalized older persons but such provisions are not very effectively implemented. The retirement age of government civil service is 60, for academic institutions and the Judiciary system is 63 years of age. If the person is engaged in a private organization then, the retirement age depends on the organization's rule and there is no retirement age for the people involved in informal sectors. Similarly, there is no age limit for a person to join an academic institution as a student. So, there is a lack of proper and consistent framework or strategy that adequately contributes to ensures the social inclusion of older people.

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

Two seats are reserved and a 50% concession is provided to the older people of 60 and above age in the public vehicles. The government has planned to build a public park in each ward of the municipality and they are implementing it effectively. Local government is responsible to rehabilitate the orphan and helpless older people in local organisation and ensure their basic needs. In this way, our government is coming up with good policies and programmes for better life for older people. But this effort of the government is not adequate. Similarly, there are many challenges even in implementation of these policies like: we have heard of the bad experience of older people while asking for discounts in public vehicles. Not only this the infrastructure in hospitals, transport, road to name a few are not older persons friendly and they are compelled to adjust whatever is made available.

Particularly, in the situation of humanitarian crisis, older people are most often left behind. In October, 2 districts of Far-western Nepal were hit by an earthquake. Many people, including older people, are living in temporary shelters and in the open sky this winter. As per the media, many older people and infants are dying due to the cold. Though they are getting relief materials like: food, clothes but those materials are not age friendly. This is just an example of inaccessibility during a humanitarian crisis.

m) Autonomy and independence

Very few older people are able to make choices for their own lives. They have no control over their property, retirement, decision of selecting health services for long-term, palliative and end of life care, seeking opportunity for training and enrolling in school at later life and so on. The older people are fully dependent on the decisions of their family members. None of the national policies explicitly address the issues of autonomy and independence at old age.

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

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

Older people are hardly provided opportunities to participate in any matter of their public as well as private life. Illiteracy, inability to use technology, physical disability are often taken as the causes for their exclusion. In reality, ageism is the major challenge that lags them behind in participation and decision making processes. Stakeholders, government and even family members hardly consult with them while making decisions and formulating policy and programmes for them. As a result, those decisions do not explicitly improve the life of older persons.

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)

Ageing Nepal's engagement:

- a. Advocacy and campaign to promote international and regional human rights mechanisms in collaboration with local, national and international organisation
- b. Submit statement or inputs in international platform
- c. Influence or pressurize government for their active participation in international event specifically with regard to older persons
- d. Support international organization to generate national evidences for the need of human rights mechanism

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

Yes, our engagement resulted in a positive impact in strengthening the protection of the human rights of older persons.

- a. More people are aware about the need of human rights mechanism for older people
- b. Our government submitted a statement and participated in the Open Ended Working Group on Ageing. They also supported calling for a UN Convention for the Rights of Older Persons.
- c. Numbers of National and Local organisations have started collaborating with Ageing Nepal to promote human rights mechanisms for older persons.

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

Undoubtedly, we can see the progresses made to strengthen the protection of older persons through different national and international treaties and mechanism like: MIPAA, SDGs-leaving no one behind, Inter-American Convention on Protecting the Human Rights

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

of Older Persons and the African Protocol and national initiatives taken by some countries. But we can clearly analyze those mechanisms and initiations have not sufficiently addresses, bind and target to protect and promote the rights of older people all over the world. Particularly, developing countries have financial and technical (unawareness, ageism, youth migration, data) constraints to adopt the international mechanism and implement national policies. We have always been experiencing some gaps for the implementation of existing mechanisms. In this situation, the UN Convention for the Rights of Older Persons is the only way out to ensure the rights of older people equally and substantially. It will bind the member states legally and create solidarity and accountability at least to meet the minimum standard and action necessary to protect the rights of older people.

We can note how steadily and rapidly progress has been made on issues of women, disabled, and migrant workers to name a few before and after their convention. So, the UN Convention cannot be replaceable by any treaties and acts. The UN Convention for the Rights of Older Persons needs to be ratified urgently for today's and future older people.

4. *If applicable, what is your assessment on the protection of the human rights of older persons according to regional and international instruments? (500 words)*

The existing regional and international instruments have not adequately addressed and ensure the human rights of all older persons. Consequently, there are less policies and programmes at the national level, most of them support charity based approaches and older people are an invisible and ignored group of society. For example, In Nepal there are many active and very influential organizations that are working for women's rights but when it comes to the women of 60 and above age group, their issues are not considered as issues of women. If any injustice happens with women or girls then, the whole country stands against it but older people have no other option besides hiding their suffering given by their own family members and relatives in fear of losing their basic needs. So, how can other instruments ensure the rights of older people?

The UN Convention is the only dedicated instrument for older persons that can explicitly addresses all issues of older people in right based approach.

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