



November 2023

BAGSO responses to the OEWGA questionnaire

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

Background as outlined by UN

“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.”

Excerpt of the Questionnaire shared by the co-facilitators, namely Brazil and Portugal

About BAGSO

BAGSO, the German National Association of Senior Citizens’ Organisations, represents the interests of older generations in Germany. It stands up for active, healthy and self-determined ageing in social security. BAGSO is an umbrella organisation of more than 120 civil society organisations that are run

by or work for older people. Since 1998 it has ECOSOC special consultative status and since 2016 it participates actively in the Open-Ended Working Group on Ageing.

BAGSO is member of the Global Alliance for the Rights of Older People (GAROP) and as such joins hundreds of non-governmental organisations from all around the world in calling for a UN convention on the rights of older persons.

I. Identification of gaps

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

In Germany, the Basic Law (Grundgesetz, GG) requires all people to be treated equally (Art. 3). However, age is not explicitly listed as a ground of discrimination – just as is the case in core human rights instruments of the United Nations (UN). The inclusion of age as a ground of discrimination would be important to ensure everyone has the opportunity to participate in society and politics, regardless of their age. Arbitrary age limits reinforce biased images of old age that are characterized by deficits. They prevent realistic images of old age and limit older people in their ability to contribute their knowledge and skills to society. The German Basic Law encompasses primarily rights that protect the citizen against the state. They do not apply (with some exceptions) to dealings among private individuals.

The introduction of the General Equal Treatment Act (Allgemeines Gleichbehandlungsgesetz, AGG, 2006), based on EU Directive 2000/78/EC, which is also directed at private companies, was therefore an important step. According to the General Equal Treatment Act, discrimination on the basis of age is generally prohibited in working life as well as in everyday transactions. However, there are far-reaching exceptions for age-related unequal treatment, especially in working life, but also, for example, in credit contracts and insurance transactions. On the labour market, the law still leaves the legislator very wide leeway for making diverging provisions for particular age groups. Regarding access to goods and services, the compromise led to a grave weakness. In insurance contracts, differing premiums may

be charged if there is objective justification for so doing.

However, companies do not have to disclose their figures, so the justification cannot be verified.

The Federal Anti-Discrimination Agency (FADA) therefore demands that the proportionality and requirements for such exceptions to the equal treatment requirement be clarified in the AGG.¹

Currently, the governing parties are looking into an amendment of the AGG. In this context, BAGSO calls on politicians to close gaps in the protection against age discrimination and identifies necessary changes in the AGG. Central demand is the abolition of the limitation of the AGG to so-called mass transactions and the abolition of insurance tariffs according to age groups. BAGSO also identifies a high risk of age discrimination in automated decision-making procedures ("algorithms") and addresses structural disadvantages, e.g. for people without internet access.²

A UN convention would act as an anti-discriminatory tool to challenge prevailing stereotypes about old age, clarify States' obligations to prohibit age discrimination and increase public awareness about discriminatory behaviour.

b) Violence, neglect and abuse

Under the General Equal Treatment Act (Allgemeines Gleichbehandlungsgesetz, AGG, 2006), unjustified unequal treatment based on age is prohibited. However, there is no law specifically protecting older people from violence, abuse and neglect.

According to the Basic Law, every person in Germany has the right to "the free development of his or her personality" and "life and physical integrity" (Art. 2).

Criminal law contains numerous paragraphs designed to protect individuals from attacks on life and limb. However, unlike child and youth protection, there is a lack of comparable regulations for preventive protection against violence, abuse or neglect for older adults. There is no law especially for protecting older people – neither in the German Civil Code (Bürgerliches Gesetzbuch, BGB) nor Criminal Code (Strafgesetzbuch, StGB). For older persons, the general law applies.

Even legal support (guardianship), which should be a protective tool, does not prevent abuse, including financial abuse, because there is no systematic supervision and monitoring of the persons in charge. The judiciary (judicial officers) as supervisor

¹ <https://www.antidiskriminierungsstelle.de/DE/ueber-diskriminierung/diskriminierungsmerkmale/alter/alter-node.html>

² <https://www.bagso.de/publikationen/stellungnahme/bagso-fordert-wirksamen-schutz-gegen-altersdiskriminierung/>

of legal guardianships (§§1896 ff of the German Civil Code) often presumes that the guardian is honest, and intervenes only in cases of concrete suspicion. In addition, the issue of violence is not expressly mentioned in the law on guardianship. A law for the protection of adults that might reduce such risks does not exist.

It is also unclear which authorities and courts are responsible in case of a suspicion of corresponding abuses. Especially in domestic dependency relationships, caused for example by physical, mental or psychological illness, there is a lack of control mechanisms. The investigating authorities (police and state prosecutor) do not dispose – at least not throughout the whole country – of specially trained staff. Moreover, those authorities do not take preventive action as a rule; at best, they step in when violence has already been committed.

The provisions of Social Code Book XI (specifically, care reinforcement laws) will – if at all – only have indirect effects on the avoidance of violence; and then, only in the area of care. The heart of the problem: namely, the conception of nursing care insurance as a “partial-coverage insurance” and the shortcomings in terms of quantity and quality equipment of caregivers will not be resolved thereby.

Even when caregivers in mobile nursing care find signs of abuse on the older persons in their charge, there are neither established channels for reports nor possible interventions. On the contrary, data privacy guidelines tend to hamper efforts to report.

At international level, specific provisions addressing violence against and abuse and neglect of older persons are lacking, as the Independent Expert on the enjoyment of all human rights by older persons points out.³ A dedicated international legally binding instrument would serve as a guide to the State in ensuring older persons are protected from violence, abuse and neglect, similarly to the Convention for the Rights of People with Disabilities (CRPD). Among others, it should entail specific provisions that clarify states’ obligations to protect persons who depend on others for assistance due to disability, need for care, dementia, lack of mental maturity or other reasons, against any form of violence, mistreatment, or neglect regardless of their age. Special provisions must also refer to older persons’ right to support services, access to remedies and redress.

³ <https://www.ohchr.org/en/calls-for-input/2023/report-violence-abuse-and-neglect-older-persons>

c) Long-term care and palliative care

The need for care is defined in Book XI (Long-term care insurance) of the German Social Code (Sozialgesetzbuch, SGB). This makes provisions for financing material, monetary, or combined benefits (§§ 36-38) and everyday support (§§38a-45). Almost three decades after the introduction of long-term care insurance, experts have come to the realisation that the existing system of care and nursing has reached its limits. Despite a number of reforms and attempts, significant problems remain unsolved. Symptoms of an obsolete, outmoded system can be found in all areas: “care at its limits” is the everyday reality, with a high level of dependency on social welfare among those in need of care and a high risk of poverty among family caregivers. At-home care often depends on irregular forms of employment and professional nursing on temporary employees.

In Germany, there is no adequate overall concept for long-term care. Depending on whether the recipients get ambulatory or residential care, varying amenities are available to them. Residential facilities only offer preventive or rehabilitating procedures very rarely, and only a restricted number of benefits that are covered by health insurance. The financing system does not yield any incentive for service providers to offer health-improvement measures, since the higher the level of care, the higher the amount of remuneration for the institution. Recipients of social-security benefits do not have free choice of residential facility. Persons who require assistance but who do not yet fall within one of the statutory classifications for care do not, in principle, have access to benefits.

The subdivisions in health and social services entail a substantial quantity of paperwork for the individuals concerned. The diverse areas of competence, types of benefit, exceptions, and opportunities for flexibility are unknown to many, and the way those interact is unclear. The difficulties begin when making the application; because of its complexity many benefits remain unused.

As long as the long-term care insurance only covers the costs of assisted care up to a legal maximum, the recipients of care will be burdened with the residual costs. For care in the home, the capping of cost coverage can mean that the needs of those dependent on care are not fully met when advantage is not taken of those services subject to co-payment. A large proportion of family carers are also at risk of poverty because they do not receive adequate financial support. Working family members are often forced to reduce their working hours or give up their jobs completely because

employment cannot be reconciled with their nursing activities.

The current statutory structure does not help to reduce the risk of poverty for family caregivers.

The international human rights framework also does not provide for an explicit standard on long term-care, on the right to palliative care, right to care and support for independent living in older age, as pointed out by HelpAge International.⁴ A UN convention on the rights of older persons would clarify States' obligations to ensure high-quality affordable and accessible care and support services for older persons all across the world.

d) Autonomy and independence

In Germany, the right to autonomy and independence of older persons is defined in manifold legal and policy frameworks, e.g. in the Basic Law of Germany (Grundgesetz), in the General Act on Equal Treatment (Allg. Gleichbehandlungsgesetz), in the Charter of Rights for People in Need of Long Term Care and Assistance, the law on guardianship (Betreuungsrecht) and the Charter on Care of critically ill or dying persons in Germany. In Book XI of the Social Code self-determination is an important element. The legal framework is not based on age but on the amount of assistance needed.

Implementation of the legal framework is not happening to the full extent. In many cases older persons are still not being viewed as actors, as legal subjects who represent themselves, but as objects of charity. In this regard primarily older women from all segments of the population, members of minorities, and other particularly vulnerable groups are more likely to be affected by disadvantages. Implementation of the Convention for People with Disabilities (CRPD) by the individual federal states is in its early stages: uneven and disparate specifically with respect to women and girls with disabilities or special needs as well as refugee women, immigrants, and minorities. Inside the health and care system there are numerous barriers to autonomous, independent living:

- The inadequate number of nursing staff and physicians with specialised geriatric training means that access to either ambulatory or residential care is not assured at the statutory level everywhere. This restricts statutory

⁴ https://social.un.org/ageing-working-group/documents/Intersessional%20Events/NGOs/HelpAge_OEWGA%20questionnaire.pdf

freedom of choice with regard to one's practitioner (family or general) and the nursing care service.

- Prevention and rehabilitation as prerequisites for autonomy and independence are financed to only a limited degree by German long-term care insurance due to the way the latter is constructed.
- Depending on whether persons are covered by social security or by private insurance, regulations diverge. Subsidies (co-payments) for visual or hearing aids, for example, vary from one group to the other.

At the municipal and regional levels there is a dearth of independent and qualified information and counselling centres that can advise affected parties about their rights on maintaining or recovering their autonomy and independence, and can provide support in asserting those rights.

Poverty among older persons restricts their financial autonomy. Old-age poverty caused by the gender-specific wage and pension gap primarily affects women.

Housing shortages, rising rents, and gentrification in cities, as well as new regulations on modernisation and renovation measures, all considerably restrict free choice of domicile, financial autonomy, and participation in society. The situation is compounded by the lack of barrier-free housing.

The same is true for obstacles in public areas. Older persons frequently encounter restrictions to their mobility. In transport planning the requirements of older persons are not sufficiently taken into consideration. In many rural areas, the public transportation network is thin. Often buses and trains are not barrier-free. Seating is likewise scarce in public areas.

Another area infringing autonomy and independence is the increasing digitalisation of services, cutting off many older persons from important matters. This is one of the areas that is not yet covered by international human rights law at all. Furthermore, in relation to autonomy and independence in general there are no explicit standards in international human rights law. There are provisions in CRPD, but they do not apply to older persons without disability.⁵ A UN Convention must provide guidance to states on how to guarantee older persons' autonomy and independence in times of increasing digitalisation.

⁵ https://social.un.org/ageing-working-group/documents/Intersessional%20Events/NGOs/HelpAge_OEWGA%20questionnaire.pdf

e) Protection and social security

In Germany, the Social State Principle is enshrined in the Basic Law, Article 20, and thus has the rank of a constitutional principle. The legal basis for social insurance is the Social Code (Sozialgesetzbuch). Social security in Germany includes social insurance (health, accident, pension, unemployment and long-term care insurance), state welfare benefits (e.g. basic provision for old age, housing benefit), employer expenses (e.g. company pension schemes), public service benefits and occupational group-specific security. Social security is largely financed through social security contributions and taxes.

The German pension level is well below the average of many industrialised countries.⁶ The pension amount depends on the duration and amount of contributions paid into the state pension insurance fund. Also included are non-contributory child-raising periods, some training periods, wartime captivity and other aspects. The old-age pension is funded from the contributions currently paid by the employees liable for contributions today in the pay-as-you-go system.

Civil servants, in contrast, do not pay any contributions for their pension. Civil servant pensions are based on years of service and the last salary of the relevant pay grade.

In addition, every employee has the right to pay into a company pension scheme that is supported through state subsidies.

The third pillar of old-age pension provision is private old-age provision. The state supports the development of an additional capital-covered old-age provision with allowances, tax advantages and contribution savings.

Anyone who has worked for many years and earned below average should receive a basic pension (Grundrente) in future. The basic pension is not a separate benefit but a top up to an already existing pension. The amount is determined individually. The Basic Pension Act (Grundrentengesetz) will enter into force on 1 January 2021.

All employees, pensioners and other groups are obliged to take out statutory health insurance (Gesetzliche Krankenversicherung). Through statutory health insurance, affected persons receive preventive health services, medicine, bandages, therapeutic products and medical aids (albeit sometimes with substantial private co-payments), home nursing care and household assistance, rehabilitation services, stress testing

⁶ <https://www.oecd.org/germany/PAG2021-DEU.pdf>

and occupational therapy, as well as the payment of cash benefits (e.g. continued payment of wages in the event of employee illness (sick pay)).

The statutory long-term care insurance (Gesetzliche Pflegeversicherung) supports benefits for home and inpatient care. However, only care-related costs are subsidised. The statutory long-term care insurance is not a full cost insurance. The amount of the subsidy depends on the degree of care needed and is represented by care levels. In contrast to health insurance, long-term care insurance was conceived as a so-called “partial performance” insurance. Consequently, dependence on nursing care is increasingly associated with the risk of poverty due to the steadily increasing co-payments and the lack of regular dynamic sampling of the nursing care insurance benefits.

The statutory accident insurance (Gesetzliche Unfallversicherung) aims to protect against occupational accidents and work-related illnesses by means of preventive measures, to limit the impact of occupational accidents and, if necessary, to provide compensation.

In the context of rising price levels, the German government has launched three so-called “relief packages” (Entlastungspakete). Some of the measures introduced through these packages did initially not include older persons as recipients, e.g. the energy flat rate. This was corrected after BAGSO had criticized this failure to include pensioners.⁷

In general, there are barriers for people wanting to access the social security services, given the application forms are highly complex and often assistance is needed.⁸

A UN Convention would help to ensure older persons’ access to social security and protection across the world. In BAGSO’s view it should guarantee solid and sustainable financing of pensions, combating poverty in old age and providing cover in the event of illness and the need for long-term care. The level of pensions must not be allowed to fall any further, while at the same time the social balance between the generations must be guaranteed.

⁷ <https://www.bagso.de/spezial/aktuelles/detailansicht/energiepreispauschale-fehler-korrigiert/>

⁸ <https://social.un.org/ageing-working-group/documents/tenth/Inputs%20NHRIs/German%20Institute%20for%20Human%20Rights%20on%20Social%20Security.pdf>

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

The Charter of Fundamental Rights of the European Union regulates the right to education, including free access to education and equal opportunities through education. The Basic Law (Grundgesetz) of the Federal Republic of Germany does not explicitly formulate the right to education, yet it is implicitly derived from the fundamental rights laid down in the Basic Law. For example, the basic principle of human dignity prohibits any person from being denied access to educational opportunities and the constitutional principle of equal rights stipulates that no person may be discriminated against in the acquisition of education for any reason whatsoever.

However, this has not been applied to education in older age. Age is not a prohibited ground of discrimination in relation to education. While educational offers in all educational areas are available to all people in Germany free of charge or for a fee, older people with physical and/or mental disabilities, low educational attainment, migration background and/or living in rural areas are most likely to be disadvantaged, often face multiple and intersecting discrimination. In addition, there are too few (online) offers tailored to the educational needs of older people.

Continuing training practice at the job varies from company to company. The employer is not obliged to offer continuing vocational training. Paid educational leave (or unpaid educational release or educational periods) is governed by the laws of the Federal States. In some, employees are entitled to five working days of further training per year. They can apply for educational leave for political and vocational training measures that they organise themselves. However, the number of educational offers that are tailored to the needs of older people, especially older employees, is still insufficient.

In a society of increasing longevity, education in old age and a life-course approach to education are of central importance. It is a key to equal participation and makes it possible to master social and individual challenges. Still it is common for measures around education to only look at education until the end of employment, as in the recent National Education Report 2022. BAGSO criticised this disregard for the older generations – especially as the report claims to be a systematic review of the entire education system in Germany. In BAGSO's view, this expresses the fact that education in old age has not yet been recognised and taken seriously as a task relevant to education and social policy in Germany.

At international level, education in older age and lifelong learning are not specifically covered by international human rights law.⁹ A UN Convention on the rights of older persons would contribute to highlighting the importance of education in older age and specifying the diverse life situations and interests of older people. Such a legally binding instrument would clarify that older persons have to be able to enjoy accessible, affordable, available and acceptable education, training, lifelong learning and capacity-building in order to effectively implement the right to education.

g) Right to Work and Access to the Labour Market

In Germany, there is no right to paid work. Access to the labour market is not legally restricted for older people. On the contrary, the General Equal Treatment Act (AGG) protects all people in Germany from discrimination on various grounds, including age, in the area of occupation. A person who is disadvantaged because of their age can assert claims for redress, injunctive relief, damages and compensation for pain and suffering. However, the scope of protection of the AGG does not extend to voluntary work.¹⁰

According to a study by the German Federal Anti-Discrimination Agency, the AGG has contributed to changing the behaviour of companies.¹¹ It shows that in principle, the legal process is accessible to all. However, the lack of knowledge about the AGG and about complaint mechanisms makes it difficult to implement the right to non-discrimination on the basis of age.

Despite this legal protection through AGG, collective agreements, work agreements and employment contracts generally envisage retirement upon reaching statutory retirement age. The courts do not yet consider this to be discrimination against older persons, even in case pension income from the statutory pension scheme is below the level of social assistance benefits, forcing older people to make use of such supplementary income options. For certain professions (e.g. pilots, midwives) there are statutory age limits. However, these are increasingly being called into question by the judiciary.

⁹ https://social.un.org/ageing-working-group/documents/Intersessional%20Events/NGOs/HelpAge_OEWGA%20questionnaire.pdf

¹⁰ <https://www.antidiskriminierungsstelle.de/DE/ueber-diskriminierung/diskriminierungsmerkmale/alter/alter-node.html>

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https://www.antidiskriminierungsstelle.de/SharedDocs/downloads/DE/publikationen/Expertisen/Studie_Schutz_vor_Diskr_im_Arbeitsleben.pdf?__blob=publicationFile&v=3

There is an entitlement to support in the event of unemployment. However, older people continue to receive proportionally little support for (re-)employment and their chances of (re-)employment in formal work are lower compared to younger people¹². Municipal employment agencies and existing online support platforms help jobseekers of employable age to find suitable jobs and provide information on employment opportunities, but this only applies to jobseekers who have not reached retirement age.

A further increase in the retirement age will cause problems especially for people with little education, in manual occupations or for persons with health impairments. In the event of reduced earning capacity, early retirement has so far only been possible with substantial pension cuts. People who retire from working life before reaching the standard retirement age for health reasons, for example, still have to accept considerable deductions from their pension. This effect is at risk of worsening, especially in the low-wage sector.

These deficiencies and limitations represent an important concern to society. A UN Convention would increase the visibility of older persons and their right to decent work on an equal basis. It would improve states' accountability and contribute to shifting negative perceptions of older people. A Convention would also contribute to improving the evidence base to inform policy and programmes around the right to work and access to the labour market.

h) Access to justice

The general legal framework that governs all age groups also includes older persons. This legal framework is based on the fundamental rights laid down in the German Basic Law, which also guarantees legal redress (Article 19 (4) of the Basic Law). Legally and procedurally, older persons have the same access to legal redress as younger generations. The right to effective legal protection also includes the right to be heard, according to which the administrative and the legal system are obliged to fully investigate matters both in fact and in law and to base their decisions on applicable laws and regulations. In the realm of administrative, civil and criminal law, rights to damages and reparations are legally standardised and enforceable.

In the non-judicial area, there are complaints bodies for the different subject areas, especially in the field of healthcare and long-term care. Consumer protection

¹² https://duepublico2.uni-due.de/servlets/MCRFileNodeServlet/duepublico_derivate_00072458/auem_2020-02.pdf

associations focusing on different areas advise and represent those affected in the enforcement of their rights. Older persons with cognitive impairments, e.g. due to dementia, usually have an authorised person (proxy) or a legal guardian appointed by a court to support and represent the person concerned. In practice, there are numerous problems that are currently the subject of a legal reform project. BAGSO has commented on these in detail.

Despite these legal provisions, in practice, older persons are structurally disadvantaged due to the often long duration of proceedings before authorities and courts. Especially for persons in need of care and their relatives, the long duration of proceedings is an obstacle to asserting legitimate claims. For residents of care facilities, this is compounded by the fact that a legal dispute with the operator of such a care facility burdens the care relationship.

Lengthy proceedings in many areas of law in Germany have a deterrent effect. A further obstacle is the legal lingo used by the authorities and courts, which is usually incomprehensible to older people and not citizen-friendly. In addition, the codes of procedure are very formal and usually not adapted to the “speed” of older persons (e.g. deadlines for the presentation of facts or periods for filing appeals). In the area of inpatient care for older persons, a legal dispute also puts a strain on the relationship over a long period of time.

A UN Convention would refocus existing human rights obligations by States, considering the particular challenges faced by older persons. It would specify and substantiate the right to equal recognition before the law guaranteed under international human rights law from the perspective of older people and against the background of their specific living conditions, which should be systematically taken into account in human rights protection.

i) Contribution of Older Persons to Sustainable Development

There are no specific provisions for older people, despite their diverse contributions (e.g. in the labour market, through voluntary and unpaid care activities or at the political level). In many areas, contributions of older people are indispensable and activities would not function without older volunteers. However, there are no specific regulations on the framework conditions of volunteering for older people. Moreover, many districts, cities and municipalities have neither the structural nor the financial prerequisites to meet the growing challenges of a contemporary municipal policy for

older people. Framework conditions are needed for the development of such structures and binding regulations on responsibility and funding.

Only for the right to participate in public affairs there are specific regulations for older people: the so-called senior citizens' participation laws (Seniorenmitwirkungsgesetze) in several federal states¹³, which ensure the participation of senior citizens' councils or representations as advisory bodies.¹⁴

With regard to political participation, for people of any age, there are citizens' councils (Bürgerräte). In these, participants are first drawn by lot, before groups are formed in a way to represent general characteristic of the population. Participants are reimbursed for the costs that incur, including for the care of children or relatives in need of care.¹⁵

There are maximum age limits for holding public office and mandates.¹⁶ According to BAGSO they are arbitrary and unreasonable, regardless of whether they are professional or voluntary. Voters should decide who can hold office and for how long.¹⁷

There is a lack of knowledge about the possibilities, especially among population groups that are not or only with difficulty reached by usual ways of communication. Special challenges exist for people with migration background, low income, low educational opportunities, with physical or mental disabilities (keyword: intersectional discrimination and accessibility). The contributions of older people are not sufficiently valued. Negative images of old age still exist, which were further reinforced during the pandemic. Given increasing digitalisation, analogue access is falling away in many areas. This also affects participation.

In case of complaints, the Federal Anti-Discrimination Agency (ADS) is a contact point for lodging complaints in various areas of participation (e.g. working life, health and care or in education). Independent complaints and advice centres exist for the field of

¹³ Berlin, Hamburg, Mecklenburg-Western Pomerania and Thuringia

¹⁴ <https://www.bundestag.de/resource/blob/806880/a5130c89b9d64655cafdc9ac985930dc/WD-9-064-20-pdf-data.pdf>

¹⁵ <https://www.buergerrat.de/>

¹⁶ <https://www.bundestag.de/resource/blob/412584/e289e9406daf18acd60ca473df164727/WD-3-127-15-pdf-data.pdf>

¹⁷ https://www.bagso.de/fileadmin/user_upload/bagso/06_Veroeffentlichungen/2021/BAGSO-Positionspapier_Mitentscheiden_und_Mitgestalten.pdf

care or for the participation of people with disabilities, but not specifically for the concerns of older people.

As AGE Platform Europe, a European network of senior citizens' organisations of which BAGSO is a member, points out: "The right to participate in society is not easily enforceable in practice, due to the lack of explicit provisions and the fact that it is often seen as an issue of social policy, rather than an issue of rights. The lack of a legal framework at EU level covering age discrimination in access to goods and services is an important barrier to accessing justice in case of denial of older people's right to participate in sustainable development."

In relation to older people's contributions, a Convention would increase the visibility of older persons in societies and serve as a means to increasing recognition of their contributions and their rights. It would help to combat ageist stereotypes, including internalised ageism.

j) Economic security

To ensure an adequate standard of living, there are state assistance benefits in Germany for persons who are unable to support themselves either through their own means/efforts or the help of a third party. These are entitled to benefits to secure their livelihood, either based on Social Code II (basic security in old age) or XII (e.g. reduction in earning capacity).

People with low educational background, with disabilities, with migration background, single women as well as people who have been affected by long-term unemployment are at particular risk. Risk factors include diverse employment biographies combined with contribution gaps (due to childcare and care activities), precarious employment and low wages, unemployment and increasingly fixed-term employment contracts - all this in combination with related health disadvantages. People in need of care and their relatives are additionally vulnerable due to the burden of care (also due to increasing out-of-pocket contributions for health and care expenses).

In accessing state benefits the following challenges arise: a complex benefits system, making it difficult for non-experts to understand what benefits they are entitled to, under what circumstances, and how to claim them. In addition, people are reluctant to claim benefits (also due to fear or shame of having their assets checked, of being stigmatised, of relatives being held jointly liable or of the state gaining insight into and control over finances). In many cases, access to and acquisition of information is

only possible via the Internet, so that older people who do not have access are excluded from it.

Poverty in old age leads to fewer opportunities for social participation and many ways of shaping one's life (cultural offerings, social participation, mobility, clothing, etc.) remain out of reach. Stigmatisation is also to be expected. Digital participation opportunities, including educational opportunities, are limited by a lack of or difficult access to the Internet. This can lead to an increase in poverty, as information on welfare state benefits and counselling services remain inaccessible.

SGB XII §71 regulates the benefits of assistance for older people, including benefits for the procurement and maintenance of a dwelling that meets the needs of the older person, counselling/support in all aspects of care and counselling/support in all matters relating to the use of services suitable for older people. However, the practical implementation of these services provided for in the law is patchy and testifies to great disparities.

Despite this multitude of supportive services, there are many people who live below an adequate standard of living. This is also explained by the fact that many people do not take advantage of the benefits despite being entitled to them.

A UN Convention would provide the much needed guidance on how to substantiate the universal human rights from the perspective of older people and against the background of their specific living conditions.

k) Right to Health and Access to Health Services

A comprehensive national legal and policy framework provides everybody – regardless of age – with the entitlement to medical care, including benefits for outpatient and inpatient medical care, health promotion and prevention, hospice and palliative care, and pharmaceutical care. This system is intended to ensure that in most cases older people receive appropriate care and are treated with respect and dignity.

While it is an obligation to have health insurance (as well as long-term care insurance) and almost everybody is insured, the Federal Office of Statistics estimated that 61.000 people were not covered by health insurance in 2020.¹⁸ This does not include unregistered immigrants and homeless people. Hence, the actual number of

¹⁸ https://www.destatis.de/DE/Themen/Gesellschaft-Umwelt/Gesundheit/Gesundheitszustand-Relevantes-Verhalten/Publikationen/Downloads-Gesundheitszustand/krankenversicherung-mikrozensus-2130110199004.pdf?__blob=publicationFile

people is likely much higher. For those not covered by health insurance, it becomes very difficult to join an insurance as the accumulated premium for the period without insurance coverage still needs to be paid.

Already before the COVID-19 crisis, health promotion and prevention services were inadequate and far from being available to all older people across the country. During the pandemic, many projects were scaled back or discontinued altogether – despite increased health risks. This also affected preventive medical check-ups as older people made less or no use of them – in part out of fear of infection.

Disadvantages for older people in treatment occur again and again – even if these are unintentional and not deliberate on the part of the perpetrators. Data from the German Ageing Survey shows that older people in Germany are disadvantaged or feel disadvantaged in the health care system.

Challenges faced by older people such as unequal access and discrimination based on age, as well as intersecting discrimination, are of particular concern to BAGSO. The Federal Anti-Discrimination Agency (2021) found a risk of discrimination for all grounds, including older age, concerning the access and use of health-care services.¹⁹ Reasons for an increased risk of discrimination in older age are e.g. negative images of age (ageism), rationing due to age, the flat rate accounting method in the health-care system, institutional or structural guidelines or requirements and due to the increasing digitalisation. Older people in rural and structurally weak regions face additional challenges in accessing health care. The offer of health services in these regions is often reduced as they do not attract health-care professionals.

To ensure older people's right to health and access to health care across the world BAGSO is calling for a UN Convention on the Rights of Older Persons. Such a comprehensive legally binding instrument would make politicians and the public aware of age discrimination also in the field of health. Moreover, a Convention would empower older persons to assert their rights in the field of health care.

I) Social Inclusion

Regarding older people with disabilities, according to art. 1 of the Social Code Book IX, "People with disabilities or people threatened by disabilities receive benefits [...] in order to promote their self-determination and their full, effective and equal

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https://www.antidiskriminierungsstelle.de/SharedDocs/downloads/DE/publikationen/Expertisen/diskrimisierungen/diskriminierung_gesundheitswesen.pdf?__blob=publicationFile&v=5

participation in life in society, to avoid disadvantages or to counteract them". Benefits also include assistive devices (§ 84 SGB IX) that compensate for limitations, for example barrier-free computers. However, with the introduction of this law, also called the Federal Participation Act, older people with disabilities do no longer have the entitlement to "assistance to participate in the life of the community" as previously provided through Social Code Book XII.²⁰ While the benefits under the Social Code Book IX and long-term care are of equal importance, only those who were entitled to integration assistance before retirement benefit from the improved income and asset rules of integration assistance.²¹

The Social Code Book IX, art. 76 says "social participation benefits shall be provided to enable or facilitate equal participation in life in the community, [...]." The law further says that these benefits should enable people to lead an as independent and responsible life as possible in their own living space and in their social space. These can be, for example, services for housing, for assistance, to promote understanding or for mobility.

However, as mentioned before, the law applies only to persons who are substantially limited in their ability to participate in society due to a mental, psychological, physical or sensory impairment. I.e. someone who, at retirement age, is no longer able to manage household chores and shopping on their own due to the onset of dementia or more severe physical impairment, is referred to long-term care insurance benefits (Social Book XI). The door to social participation benefits (SGB IX) is usually closed to them, as the Social Welfare Association, *vdk*, points out.²² The current measures do not take into account that older persons who acquired their disability late in life and after a long working life also have the right to a self-determined life and social participation.

There is a specific section on older persons in the National Action Plan to implement the UN Convention on the Rights of Persons with Disabilities. However, as pointed out by the German Institute for Human Rights, this does not make up for a systematic consideration of older persons with disabilities.²³

²⁰ Internal communication with *Selbstbestimmt Leben Nordhessen e.V.*

²¹ <https://www.sovd-he.de/medien/sozial-infos/meldung/bundesteilhabegesetz>

²² <https://www.bar-frankfurt.de/service/reha-info-und-newsletter/reha-info-2022/reha-info-052022/soziale-teilhabe-aelterer-menschen.html>

²³ https://www.institut-fuer-menschenrechte.de/fileadmin/Redaktion/Publikationen/Information/Information_Die_Rechte_aelterer_Menschen_mit_Behinderungen.pdf

In areas where no formal age limits exist, as in the field of education, older people are systematically left out. While almost all federal states have enacted adult education laws, the total share of the budget for adult education in the general education budget of the federal states currently amounts to less than one percent on average.²⁴ Mostly, this budget is spent on education offers around the labour market. Other educational offers are less frequent, not adapted to post-working life needs and often do not reach older persons.

A UN Convention on the rights of older persons would empower older persons in asserting their human rights. Further, it would raise the awareness of the right to participation of older people among the public and decision-makers and thus, support the efforts to creating a society for all ages, as envisaged by the Madrid International Plan of Action on Ageing.

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

The environment is a major determinant of health and as such influencing well-being. The Convention for the Rights of Persons with Disabilities (CRPD) provides the right to accessibility. It does not specifically refer to older persons or the intersection between age and disability.

Limited accessibility, poor infrastructure and the lack of safe, inclusive and accessible habitat is a major concern for older persons in Germany. The parallel report of the German Institute for Human Rights to the UN Committee on the Rights of Persons with Disabilities states, “universal design and the accessibility of products and services have continued to rely primarily on the market itself taking responsibility and/or placing itself under obligation, even though that has so far proved ineffective”.²⁵ It further concludes that accessible housing is lacking.

As representative organisation of senior citizens’ organisations, we are also concerned about the accessibility of public spaces and services, transport and information, including in the digital sphere.

A UN Convention on the rights of older persons would complement provisions of the Convention on the Rights of Persons with Disabilities, which does not apply for all

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https://www.bagso.de/fileadmin/user_upload/bagso/06_Veroeffentlichungen/2022/BAGSO_Position_Papier_Education_in_older_age.pdf

²⁵ https://www.institut-fuer-menschenrechte.de/fileadmin/Redaktion/Publikationen/Parallelbericht/DIMR_Parallel_Report_to_the_UN_Committee_on_the_Rights_of_Persons_with_Disabilities_2023.pdf

older people. It can be an important contribution to increasing the visibility of older persons and raising awareness about ageing.

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

As mentioned under i) Contribution of older persons to sustainable development, the right to participate in public affairs and decision-making processes is regulated by a law specifically for older people: the so-called senior citizens' participation laws (Seniorenmitwirkungsgesetze) in several federal states²⁶, which ensure the participation of senior citizens' councils or representations as advisory bodies.²⁷ They provide support for draft laws and resolutions and other political initiatives, or contribute their expertise to committees relevant to federal, state and municipal policy. Nationwide, there are 1,300 municipal senior citizens' councils, but no uniform binding regulations for their functioning.

With regard to political participation, for people of any age, there are citizens' councils (Bürgerräte). In these, participants are first drawn by lot, before groups are formed in a way to represent general characteristic of the population. Participants are reimbursed for the costs that incur, including for the care of children or relatives in need of care.²⁸

According to the Basic Law (article 33 (2)) "Every German shall be equally eligible for any public office according to his aptitude, qualifications and professional achievements"²⁹. Nonetheless, there are age limits in administrative regulations. According to the Federal Career Ordinance (article 36(2)), people can only apply for selection procedures for career advancement if they have not yet reached the age of 58.³⁰

There are no specific provisions for older people, despite their diverse contributions (e.g. in the labour market, through voluntary and unpaid care activities or at the political level).

A legally binding instrument would help to challenge prevailing stereotypes about old age, combat age discrimination and guarantee that older persons can fully participate

²⁶ Berlin, Hamburg, Mecklenburg-Western Pomerania and Thuringia

²⁷ <https://www.bundestag.de/resource/blob/806880/a5130c89b9d64655cafdc9ac985930dc/WD-9-064-20-pdf-data.pdf>

²⁸ <https://www.buergerrat.de/>

²⁹ <https://www.btg-bestellservice.de/pdf/80201000.pdf>

³⁰ <https://www.ilo.org/dyn/natlex/docs/ELECTRONIC/108242/133679/F-1627156463/BLV.pdf>

in public life and decision-making processes. It would also help to raise public awareness about older persons' rights and their contributions to public life.

In conclusion

Many aspects of the rights of older people are affected, so that individual measures can improve specific areas, but cannot solve the problems as a whole. A UN Convention on the rights of older persons would codify the rights of older persons in one single document and as such provide guidance to states, civil society and individuals.

II. Options on how best to address the gaps

- 1. Please state how your Government/organization has engaged with international and regional human rights mechanisms (for example: universal periodic review (UPR) treaty bodies, special procedures, regional mechanisms), specifically with regard to older persons. (500 words)**

As NGO with special consultative status, BAGSO has delivered or co-sponsored statements to the Human Rights Council (HRC), participated in informal negotiations on relevant resolutions during the 54th Session of the HRC and submitted written inputs to the reports of the UN Independent Expert on the enjoyment of all human rights by older persons. We have also contributed to the work of the Office of the High Commissioner for Human Rights, namely the Multistakeholder Meeting held in September 2022, and been active participants in the UN Open-Ended Working Group on Ageing.

BAGSO reached out to German civil society organisations to include reference to older persons in their shadow reports to the Committee on the Elimination of Discrimination against Women (CEDAW).

As an umbrella organisation, BAGSO continuously liaises with its member organisations to raise awareness about the relevance of international human rights mechanisms. This also includes activities to increase knowledge about these mechanisms and about how to engage with them as civil society organisation. The Federal Ministry for Family Affairs, Senior Citizens, Women and Youth funds this work of BAGSO's Secretariat for International Policy on Ageing, responsible for this engagement at national and international level.

However, civil society engagement in these mechanisms is challenging. Among older people's organisations, there is little knowledge about and awareness of international human rights mechanisms and limited capacity and resources. Among organisations that actively engage in international human rights mechanisms, the challenge is a lack of awareness and knowledge on older persons' rights and in general, about topics related to ageing.

When it comes to the engagement of the German Government in these mechanisms, we observe increasing commitment to refer to older persons' human rights in national reporting. One example: the addendum of the 2023 report to the 4th cycle of the Universal Periodic Review includes a newly added chapter on the rights of older people.³¹ At the same time, we note with concern that this depends largely on the commitment of individuals. As far as we know, there is no policy or procedure to ensure that the Government systematically addresses the human rights of older persons in its engagement with the above-mentioned mechanisms.

While we welcome additional reference to older persons in the reporting of the German Government to international human rights mechanisms, we are concerned that this reference is noted by a small community and is not reaching, yet alone including, those most concerned – older persons themselves and their representative organisations.

A dedicated convention on the human rights of older persons would contribute to generating clarity and guidance for the engagement in international human rights mechanisms among older persons, their representative organisations and those responsible for older persons within the Governments. It would also require governments to collect data, develop indicators and other supporting instruments to underpin the monitoring process. This in turn would contribute to better reporting to international human rights mechanisms in relation to the human rights of older persons and provide civil society with evidence to monitor implementation at national level.

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

A direct assessment of the impact is difficult to undertake. What we can affirm, however, that it has helped to contribute the voice of older persons from Germany to

³¹ <https://www.ohchr.org/en/hr-bodies/upr/de-index>

international debates around the human rights of older persons. So far, concrete outcomes at international level are lacking.

Following the substantive discussion of the topic of violence, neglect and abuse at the OEWG-A meeting in 2017, BAGSO stepped up its efforts with the relevant ministries to highlight the lack of protection for older people, especially in private and institutional care contexts. In fact, some improvements for those in need of care and carers were achieved in the years that followed. However, ad hoc changes to policies and services to make them more 'age-friendly' or 'rights-based' are not enough. In Germany, there is still no clear legal framework for the right to a life free from violence and abuse, as there is for children and women, for example.

While we recognise that most international human rights treaties apply to older people, the lack of comprehensive human rights provisions for older persons limit the engagement of older people's organisations in international human rights mechanisms. Stronger engagement requires a better understanding of how older persons' rights are reflected in international human rights treaties. Given the lack of systematisation of the human rights of older persons, it is challenging to raise capacity on this topic among civil society. Therefore, if the rights of older persons were codified in one single international instrument, this would facilitate the engagement of older persons' organisations in international mechanisms.

Other instruments, like the Convention for the Rights of People with Disabilities (CRPD) and the Convention on the Elimination of all forms of Discrimination Against Women (CEDAW), have proven to serve as advocacy and policy tool at national level. Civil society organisations have come together as alliances to coordinate their assessment of the implementation of these instruments in Germany. However, as pointed out by the German Government in its response to this questionnaire, during the last reporting period no specific questions on the implementation of CRPD for older persons were asked and no concluding observations made.³² The absence of a dedicated instrument on the human rights of older persons hinders advocacy and policy, both at national and international levels.

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

There is a general need to integrate ageing issues and strengthen older persons' human rights at international level, as evidenced by various documents of UN bodies,

³² https://social.un.org/ageing-working-group/responses_govts.shtml, see page 7

most recently by the fourth global review and appraisal of the Madrid International Plan of Action on Ageing (MIPAA)³³. We acknowledge the discussion about different options on how to strengthen the protection of older persons at the United Nations.

At the same time, we note various options with great concern:

A) Implementation of existing policy frameworks, in particular MIPAA

We recognise the efforts undertaken at international and regional level to better protect the human rights of older persons, among others through the implementation of international policy frameworks, in particular, the Madrid International Plan of Action on Ageing (MIPAA) and its Regional Implementation Strategy (RIS) for the UN Economic Commission for Europe. We also understand that emerging issues need to be taken into account during the further implementation of MIPAA, as stated in the recent fourth review and appraisal process.

We understand that as an international policy framework, MIPAA has led to significant progress in the living conditions of older persons.³⁴ However, we are deeply concerned about stating the updating of MIPAA as a response to better protect the human rights of older persons, as such policy frameworks serve solely as recommendations and do not provide for any meaningful accountability mechanism. They are not legally binding and therefore fail to protect the human rights of older people.

B) Implementation of existing norms and standards

The implementation of existing norms and standards is another option raised by some Member States. We doubt that existing monitoring bodies have the capacity and expertise to ensure that older persons' human rights are protected, respected and fulfilled. The implementation of existing norms would also mean a continuation of the fragmentation of the human rights of older persons. It would not provide comprehensive coverage and not lead to stronger monitoring mechanisms.

C) Optional protocols to existing instruments

³³ E/CN.5/2023/6, Report of the Secretary-General to the sixty-first session of the Commission for Social Development,
<https://undocs.org/Home/Mobile?FinalSymbol=E%2FCN.5%2F2023%2F6&Language=E&DeviceType=Desktop&LangRequested=False>

³⁴ Ibid.

Some Governments might also suggest optional protocols to existing instruments as a possible way to address existing gaps, deficiencies and limitations in international human rights law. We do not support this option. It would not provide the same visibility to older persons' human rights as a dedicated, international legally binding instrument, i.e. a UN convention. An optional protocol is not automatically binding on states that have ratified the original instrument. As representative organisation of older persons, we are highly concerned about the signal such an "optional" instrument could give to societies across the globe. Protecting, respecting and fulfilling the human rights of older persons should not be "optional".

D) A UN Convention on the rights of older persons

In our view, the only option to address the limitations, deficiencies and gaps in the international human rights framework would therefore be a dedicated international legally binding instrument, i.e. a UN convention. It would be benefiting older persons all around the world and be an important contribution to challenging prevailing stereotypes about old age, raise public awareness about older persons' human rights and initiate a systemic change away from a welfare-based to a human rights-based approach centred around equality, dignity and inclusion of older persons. It would be a means to prohibit discrimination based on age and would, as AGE Platform Europe points out in its response to this questionnaire, "make it considerably difficult to disregard or trivialize the discrimination and abuses experienced by older people."

As expressed by BAGSO in its 2020 statement, "a Convention would not need to establish special rights for certain groups of people. It would instead specify and substantiate the universal human rights from the perspective of older people and against the background of their specific living conditions, which should be systematically taken into account in human rights protection"³⁵. As such, it would contribute to state accountability of human rights violations against older persons, empower older persons as rights holders and contribute to a societal change, in the same way other dedicated human rights treaties, such as CRPD.

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https://www.bagso.de/fileadmin/user_upload/bagso/06_Veroeffentlichungen/2020/20200401_Konvention_der_UN_fuer_die_Rechte_aelterer_Menschen_engl.pdf

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)

As mentioned above, human rights apply equally to all human beings, regardless of their age. However, comprehensive analyses, including those undertaken by the Office of the High Commissioner for Human Rights (OHCHR) in 2012³⁶ and 2021³⁷ as well as the analysis undertaken by HelpAge International in response to this questionnaire, show that “not a single existing international human rights treaty covers the full spectrum of rights in older age”³⁸. HelpAge further concludes: “provisions at the regional level are also limited in geographical scope or fail to provide the necessary legal guarantees”³⁹.

A UN convention on the rights of older persons is the best way to address limitations, deficiencies and gaps in the international human rights framework. This would empower older persons in asserting their human rights. It would raise the awareness of the right to participation of older people among the public and decision-makers and thus, support the efforts to creating a society for all ages, as envisaged by the Madrid International Plan of Action on Ageing.

As noted by BAGSO before, better implementation of existing human rights instruments is needed, but even in countries like Germany, there are areas where the protection of older people is not yet sufficiently guaranteed by law. There is ageism and age discrimination, for instance, in working and professional life, which is not prevented by the existing legal regulations. In the same way that other dedicated instruments, like CRPD, served as guide for reforms in policy and legislation, a new UN Convention on the rights of older persons would also provide the necessary legal framework for important changes in German policy and legislation. For instance, it could lead to the inclusion of “age” as a ground of discrimination in article 3 of the German Basic Law.

As senior citizens’ organisation committed to creating framework conditions that enable a good and dignified life in old age in Germany, in Europe and worldwide, we see ourselves in the responsibility to promote the human rights of older persons

³⁶ <https://social.un.org/ageing-working-group/documents/OHCHRAAnalyticalOutcomePaperonOldePersonsAugust2012.doc>

³⁷ <https://www.ohchr.org/sites/default/files/2022-01/OHCHR-HROP-working-paper-22-Mar-2021.pdf>

³⁸ https://social.un.org/ageing-working-group/documents/Intersessional%20Events/NGOs/HelpAge_OEWGA%20questionnaire.pdf

³⁹ Ibid.

beyond our national borders. We understand that a UN Convention would provide an important basis for the differentiation of fundamental rights in national legislation worldwide. As has been repeatedly demonstrated in reports submitted to the OEWG-A by civil society, academy, UN bodies and experts: The drafting and adoption of a new UN Convention on the rights of older persons is the only effective way to ensure we can age with rights.



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