



HelpAge International 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.”

HelpAge

International

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.

About HelpAge International

HelpAge International coordinates a global network of organisations who promote the right of all older people to lead dignified, healthy and secure lives. The HelpAge Global Network is a unique worldwide alliance of over 170 members across 91 countries. Our vision is a world in which all older people can lead dignified, healthy and secure lives. Our mission is to promote the wellbeing, rights and inclusion of older people so we can all enjoy a future free from poverty, inequality and discrimination.

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.

a) Equality and non-discrimination

According to the World Health Organization (WHO), 1 in 2 people worldwide is ageist against older persons.¹ Ageism is pervasive and widespread in society's institutions and sectors, negatively impacting on older persons' human rights in every area of their lives. In many cases, these human rights violations are exacerbated due to intersections of age with gender, disability, health etc. For example, harmful ageist attitudes and practices are particularly strong against widowed or single older women, older women with disabilities, rural and migrant older women.²

International law requires States to eliminate all forms of discrimination.³ Nevertheless, the obligation to eliminate discrimination on the basis of age is not well-recognised, properly understood or universally accepted, particularly because age is not explicitly listed as a ground of discrimination in the core United Nations (UN) human rights instruments. Age discrimination has not been sufficiently addressed in the work of the UN human rights treaty bodies either. Specific concepts, such as ageism, have not been expressly recognised or elaborated. And whilst some important issues of age discrimination have been explored, this process has been piecemeal, and in certain areas, the language used by treaty bodies reinforces ageist stereotypes.⁴ There is a lack of clear guidance on how States should meet their equality and non-discrimination obligations towards older persons.⁵

This lack of visibility means that States have not enacted laws which prohibit discrimination against older persons in the same way that they have for other grounds of discrimination. It also means that in States which have adopted laws focused explicitly on age discrimination or the rights of older persons, these laws often reflect paternalistic or charitable understandings, focusing on the provision of care or services, rather than on recognising rights. The lack of visibility also means that the specific elements of an effective guarantee of non-discrimination and equal participation for older persons remain uncodified, leaving a gap in interpretation which can create a gap in protection. In particular, an inability to identify, or a reluctance to challenge, ageist stereotypes means that acts of discrimination against older persons have been found to be justified, where

¹ World Health Organization, *Global Report on Ageism*, Geneva, World Health Organization, 2021.

² HelpAge International, *Entitled to the same rights: What older women say about their rights to non-discrimination and equality, and to freedom from violence, abuse and neglect*, London, HelpAge International, 2017, <https://social.un.org/ageing-working-group/documents/eighth/EntitledsameRights-English.pdf>

³ Article 2 International Covenant of Economic, Social and Cultural Rights (ICCPR) and International Covenant of Economic, Social and Cultural Rights (ICESCR).

⁴ Report of the Independent Expert on the enjoyment of all human rights by older persons, UN Doc. A/HRC/48/53, 2021, para. 43.

⁵ HelpAge International, *Advancing Equality for Older Persons*, London, HelpAge International, 2022, <https://www.helpage.org/what-we-do/rights-of-older-people/age-equality/>

such acts arising on any other ground would not be accepted. At the same time, there is a failure to recognise that measures seemingly intended to benefit older persons in fact reflect paternalistic approaches and unconscious bias and are directly discriminatory in their effect.⁶

Age discrimination is not explicitly recognised in regional human rights instruments, except for the Inter-American Convention on Protecting the Human Rights of Older Persons (2015), the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Older Persons in Africa (2016), and the Charter of Fundamental Rights of the European Union (2007). The latter, however, applies to national Governments only when they are implementing EU law. It also does not give rise to direct claims for positive action by EU institutions or member State authorities.⁷ EU Directive 2000/78/EC includes the prohibition of discrimination on the basis of age as well, but applies only to employment and includes several exceptions for differential treatment on the ground of age that do not exist for differential treatment based on any other ground, even in cases of direct discrimination.⁸

A dedicated Convention would clarify States' obligations with regards to older persons' rights. The rights to equality and to non-discrimination on the basis of age would be at the heart of this instrument, which should also establish proactive obligations on States to tackle ageism in all its forms and to identify and remove barriers to equal participation for older persons in all areas of life.⁹

b) Violence, neglect and abuse

Older persons in all their diversity are subjected to different types of financial, physical, sexual, psychological violence and abuse, and neglect.¹⁰ They face a wide range of types of violence, abuse and neglect, perpetrators and settings.¹¹ Older persons often face multiple and intersecting forms of discrimination and/or can be victims of violence, compounded by their gender, age or disability or on other grounds, which affects the enjoyment of their human rights.¹² Abuse of older persons can have serious physical and mental health, financial, and social consequences, including physical injuries, premature mortality, depression, cognitive decline, financial devastation, placement in nursing homes.¹³

⁶ Ibid.

⁷ Explanations Relating to the Charter of Fundamental Rights (2007) *OJ C 303/17*, 35. Subjective 'rights' are to be respected by member States, whereas 'principles' are to be observed. Article 51(1) CFEU. Principles can be implemented by legislative and executive acts when EU or national institutions are implementing Union law. They are only judicially cognizable in the interpretation of such acts and in the ruling on their legality. Article 52(5) CFEU.

⁸ See Article 6 EU Directive 2000/78/EC.

⁹ HelpAge International, *Advancing Equality for Older Persons*, 2022.

¹⁰ HelpAge International, *Entitled to the same rights: What older women say about their rights to non-discrimination and equality, and to freedom from violence, abuse and neglect*, London, HelpAge International, 2017, <https://social.un.org/ageing-working-group/documents/eighth/EntitledsameRights-English.pdf>

¹¹ According to the World Health Organization, rates of abuse of older persons are high in institutions such as nursing homes and long-term care facilities, with 2 in 3 staff reporting that they have committed abuse in the past year. See World Health Organization, *Abuse of Older persons*, 13 June 2022, <https://www.who.int/news-room/fact-sheets/detail/abuse-of-older-people>.

¹² HelpAge International, *Entitled to the same rights*, 2017.

¹³ World Health Organization, *Abuse of Older persons*, 13 June 2022, <https://www.who.int/news-room/fact-sheets/detail/abuse-of-older-people>.

Widespread prevalence of gendered ageism puts older women even more at risk of violence, abuse and neglect.¹⁴ Older women tell us that they face physical, emotional, financial and sexual violence, and neglect, as they are commonly perceived to be alone and powerless. In most cases, older women have no choice but to continue living with the perpetrator(s). They do not receive the necessary help, assistance or even a fair hearing when they complain about issues to the police or village chiefs. Rather, they face barriers to accessing justice, including being dismissed or not having their complaint heard because they are an older woman.¹⁵ A particularly worrying practice in some parts of the world is that of accusations of witchcraft, leading to older persons, particularly women, being subjected to barbaric acts of violence and even lynching.¹⁶

An increase in violence against older persons is seen in specific contexts, such as during armed conflicts, natural disasters and climate change. Research in Malawi, Moldova, and Pakistan and insights from wider evidence also showed that COVID-19 and government measures to prevent its spread were triggering a series of adverse consequences for individuals and communities, creating new – and exacerbating existing – risks for older people in relation to violence, abuse, and neglect.¹⁷

As pointed out in the latest report of the UN Independent Expert on the enjoyment of all human rights by older persons, the current international human rights framework lacks specific provisions addressing violence against and abuse and neglect of older persons.¹⁸ At the national level, legal frameworks that would ensure protection against these human rights violations are weak, insufficient or, at best, fragmented and patchy. Of 133 countries surveyed in 2014, only 59 per cent said they have laws to prevent elder abuse but only 30 per cent said that these were fully enforced.¹⁹

A specific Convention on the rights of older persons would clarify the scope of the right to be free from violence, abuse and neglect in older age, including States' obligations arising from that human right and how it is to be implemented in practice. It would, for example, clarify that the right applies in public and private spheres, and that States have an obligation to take preventive measures as well as to ensure collection and publication of disaggregated data and statistics on all forms of violence, abuse and neglect. It would also clarify that older persons have a right to support services, as well as access to remedies and redress.²⁰

¹⁴ HelpAge International, *Older women's lived experiences of gendered ageism*, HelpAge Briefing March 2023, <https://www.helpage.org/silo/files/older-womens-lived-experiences-of-gendered-ageism.pdf>

¹⁵ Ibid.

¹⁶ HelpAge International, 'Older people in Kenya must be protected from witchcraft accusations', 22 October 2021.

¹⁷ Also see HelpAge International, *Confronting the shadow pandemic: COVID-19 and violence, abuse and neglect of older people*, London, HelpAge International, 2021, <https://www.helpage.org/silo/files/vancovid19violence-abuse-and-neglectbriefing.pdf>

¹⁸ UN Independent Expert on the enjoyment of all human rights by older persons, *Report on violence against and abuse and neglect of older persons*, 2023, paras. 9, 53-55 and 86.

¹⁹ World Health Organization, *Global status report on violence prevention 2014*, Geneva, World Health Organization, 2014, <https://www.who.int/publications/i/item/9789241564793>

²⁰ HelpAge International, *Entitled to the same rights*, 2017.

c) Long-term care and palliative care

When asked about their right to long-term care and support services, many older persons tell us they have no access to the care and support services they may need to live independent lives. The types of care and support services available to older persons vary in some respects across regions but in every region long-term care and support services are limited and unaffordable to everyone except those with high income. Other barriers include lack of accessible information about care and support services, failing eligibility criteria, bureaucracy and having to travel long distances. Many older persons also report having no or limited choice and control over the care and support they received. Family members are the only care and support providers available to most older persons. Without care and support services, loss of income and deterioration in health make older persons depend on others.²¹

Many older persons also have no access to palliative care either to help them die free from pain and unnecessary suffering. Awareness of older persons' rights to long-term care and palliative care is also low among older persons themselves, their family members and others, such as service providers.²²

There is no explicit standard on long-term care in older age in international human rights law, no explicit standard on the right to palliative care, nor a specific right to care and support for independent living in older age.²³ Although Article 19 of the Convention on the Rights of Persons with Disabilities provides the right to independent living, it does not apply to older persons without disabilities. Regional provisions, such as Article 12 of the Inter-American Convention on Protecting the Human Rights of Older Persons (2015) and Articles 10 and 11 of the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Older Persons in Africa (2016) are limited in geographical scope. While Article 23 Revised European Social Charter includes a reference to health care, not all Council of Europe Member States are bound by its provisions.

A UN Convention on the rights of older persons would recognise older persons' right to care and support services for independent living, and that these should be adapted to their individual needs, promote their well-being and maintain their autonomy and independence, without discrimination of any kind. It would clarify that this human right applies in all settings, public and private, and that all forms of care and support services must be person-centred. It would also place at its core older persons' autonomy and participation in all matters related the support services they may need, including the right to supported decision-making. A Convention would clarify States' obligations to ensure high-quality affordable care and support services, as well as ensuring older persons' access to remedies and redress, and information. Finally, a Convention would recognise and protect older persons' right to holistic and accessible palliative care.²⁴

²¹ HelpAge International, *Freedom to decide for ourselves: What older people say about their rights to autonomy and independence, long-term care and palliative care*, London, HelpAge International, 2018, <https://www.helpage.org/silo/files/freedom-to-decide-for-ourselves.pdf>

²² Ibid.

²³ Ibid.

²⁴ Ibid.

d) Autonomy and independence

To be able to fully enjoy their right to autonomy, older persons must be able to make their own choices about all aspects of their lives. They must also have the legal capacity to exercise their decisions. Yet in many cases, older persons are stripped from their legal capacity by guardianship measures, which remove their ability to make decisions about certain aspects of their lives.²⁵

Older persons tell us that they are not able to make their own decisions about their finances, employment, management and disposal of their property, who to vote for, where and with whom to live, access to health services, family life and participation in community, voluntary or social activities. Different people are preventing, or interfering with, older persons' autonomy and independence, including government and local authorities, policy makers, local leaders, service providers and family members. A deterioration in health or income, the loss of a job or retirement, and a change in circumstances, such as going to live with a family member, are events that make older people dependent on others, which means they lose autonomy and independence.²⁶

There are no explicit standards on autonomy and independence in older age in international human rights law. Everyone's right to equal recognition before the law and the right to a family and private life, which are both central to autonomy and independence, are enshrined in international human rights law. Article 12 of the Convention on the Rights of Persons with Disabilities (CRPD), for example, affirms that all persons with disabilities have full legal capacity and that perceived or actual deficits in mental capacity must not be used as justification for denying legal capacity.²⁷ It does not apply to older persons without disabilities, however, and there are no explicit international standards on how these rights apply in older age.

Some regional human rights standards recognise the right to autonomy and independence in older age, but these vary and are either limited in geographical scope (such as Article 30 Inter-American Convention on Protecting the Human Rights of Older Persons) or provide insufficient protection. For example, the right of older people to lead independent lives is recognised in Article 25 of the European Union Charter of Fundamental Rights (2000), but does not give rise to direct claims for positive action by EU institutions or member State authorities.²⁸ Article 23 of the European Social Charter (1996), on the other hand is optional, as Member States can ratify the Charter without accepting the legal obligations of that provision.²⁹ Moreover, the 2014 Council of Europe Recommendation on the Rights of Older Persons explicitly recognizes that their decision-making power can be limited in certain cases³⁰, which conflicts with Article 12 CRPD.

²⁵ Autonomy and care of older persons, Report of the Independent Expert on the enjoyment of all human rights by older persons, Rosa Kornfeld-Matte, 2015, *UN Doc. A/HRC/30/43*.

²⁶ HelpAge International, *Freedom to decide for ourselves*, London, HelpAge International, 2018, <https://www.helpage.org/silo/files/freedom-to-decide-for-ourselves.pdf>.

²⁷ UN Committee on the Rights of Persons with Disabilities, General comment No. 1 (2014) Article 12: Equal recognition before the law, *UN Doc. CRPD/C/GC/1*.

²⁸ Explanations Relating to the Charter of Fundamental Rights (2007) *OJ C 303/17*, 35.

²⁹ The Charter is based on a ratification system, enabling States, under certain conditions, to choose the provisions they are willing to accept as binding international legal obligations. Countries such as Austria, Belgium, Cyprus and Moldova have not accepted Article 23.

³⁰ Council of Europe, Committee of Ministers Recommendation CM/REC(2014)2 to member States on the promotion of human rights of older persons, paras. 12-13.

A UN Convention would protect older persons' right to personal autonomy to make decisions, to determine their life plans and to lead autonomous and independent lives in line with their will and preferences, on an equal basis with others. It would clarify that this right applies to all aspects of life, including older persons' living arrangements. A Convention would also protect older persons' right to equal recognition before the law and their right to have legal capacity at all times, on an equal basis with others. It would clarify that States must provide them with the necessary support they may need to exercise their legal capacity, as well as ensuring their effective access to remedies and redress.³¹

e) Social security and social protection

Older persons are denied their rights to social protection and social security, whether they are women, men, older people with disabilities, or from low income, middle-income or high-income countries. While some older persons on a pension say they can get by, many, whether on a contributory or non-contributory pension, say they are unable to afford basic necessities to survive, such as food, water, clothing, housing, medical care, and care and support. Older persons receiving a pension where the value of the payment is low say they have to rely on others, including their spouses, children or other family members.³²

Older persons enjoy different levels of autonomy and control over how they spend their pension. Some have full control, others have none. Some are subjected to theft, threatening behaviour, intimidation and fraud. Others feel that when the value of their pension is so low, there is nothing meaningful to make decisions about. Older persons on inadequate pensions, or who have no pension at all, are being denied not only their right to social security and social protection but also their rights to health, an adequate standard of living, participation in society, work, autonomy and independence, and education and lifelong learning.³³

The unique barriers older persons face to realising their right to social protection and social security are not adequately covered under international human rights law. These barriers include inadequate levels of entitlements that foster dependency on others; discriminatory age limits on some social security and social protection measures; pension penalties for those who wish to continue working after normal retirement age; inadequate income and support services for persons with disabilities as they age and for those who acquire a disability in older age; disparities in life expectancy between different populations, for example, indigenous and non-indigenous populations; and the exclusion of measures for care and support for independent living from social security and social protection floor schemes.³⁴

The right to social protection and social security (including social protection floors) in older age needs to be clearly set out in a new convention on the rights of older persons. This would build on existing human rights standards and apply them to the particular context of older age. It would clarify States' obligations to ensure older persons' access to social protection and social security that is accessible, available, adequate and acceptable, on an

³¹ HelpAge International, *Freedom to decide for ourselves*, 2018.

³² HelpAge International, *Living not just surviving: What older people say about their rights to social protection and social security, and to education, training, lifelong learning and capacity building*, London, HelpAge International, 2019, <https://www.helpage.org/news/living-not-just-surviving-older-people-are-being-denied-their-right-to-social-protection-and-education/>

³³ Ibid.

³⁴ Ibid.

equal basis with others. It would also protect older persons' autonomy and independence in all related matters, as well as their access to remedies and redress.³⁵

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

For many older persons around the world, the right to education, training, lifelong learning and capacity building is not respected, protected or fulfilled. The exclusion of older persons from learning and educational opportunities is a denial of their rights and prevents them from pursuing the realisation of other human rights, such as the right to work, to fully participate in social, economic, cultural and political life, and to health.

Older persons tell us they did not have an opportunity to learn the skills, knowledge and information they need for different aspects of their lives, from making money to enjoying life more, and want to acquire them. Without the skills, knowledge and information they need, they feel excluded and dependent on others. With them, they feel independent and part of society. Acquiring IT skills is also important to older persons as they want to use smart phones, computers and the internet to withdraw money, pay their bills, book doctors' appointments, shop and bank online, buy tickets for cultural events, and stay in touch with family and friends. Many do not know where they can go to acquire the skills, knowledge and information they need or want in older age, or have never tried to do so. Moreover, negative attitudes and stereotypes encountered and internalised by older persons based on older their age, can prevent them from acquiring new skills, knowledge and information.

Like many other human rights, the right to education has not been specifically applied to the life-course or to education in older age in the international human rights framework. It needs to be applied to the unique context of older age and set out in a new convention on the rights of older people to be able to effectively guarantee older persons' enjoyment of this right on an equal basis with others and to be free from all forms of ageism and age discrimination in its implementation. It would clarify that the effective implementation of this human right entails older persons being able to enjoy accessible, affordable, available, and acceptable education and lifelong learning opportunities, on an equal basis with others.³⁶

g) Right to work and access to the labour market

Older persons looking for work faces age discrimination as well as multiple and intersectional discrimination on other grounds. As part of a consultation with older persons, forty-one percent of participants said they had been refused work because of their older age. Moreover, they were being refused work on the basis of their age in a wide range of occupations and sectors, including in permanent, temporary, part-time and casual or daily jobs, paid and unpaid.³⁷ Being older has a negative impact on the work opportunities available to older people who want or need to continue working. Mandatory retirement ages, negative stereotypes about older people's ability to work, and ageism-driven social norms saying that older people should not work – these all limit the opportunities for older people to work, together with a lack of retraining opportunities and disregard for past

³⁵ Ibid.

³⁶ Ibid.

³⁷ HelpAge International, *Keeping our dignity: What older people say about their rights to access to justice, and to work and access to the labour market*, London, HelpAge International, 2019, <https://www.helpage.org/resource/keeping-our-dignity/>

experience. Poor working conditions, the limited nature of jobs available to older people, and failure to make accommodations for older people wanting to stay in employment also restrict older people's access to work.³⁸

Decent work is important for older people and impacts on their economic situation. As well as an income, it would give them access to entitlements, such as insurance and pensions. It would enable them to support themselves and their families to lead dignified lives. Decent work would increase their self-esteem, enable them to live autonomous and independent lives, and make them feel accomplished and useful to society. It would allow them time for other interests, reduce their isolation, and give them a sense of purpose and belonging.³⁹

Nevertheless, international human rights law does not adequately address the specific application of the right to work to the context of older age and older people. The International Convention on the Protection of the Rights of all Migrant Workers and Members of Their Families remains the only international human rights convention to explicitly prohibit discrimination on the grounds of age. Again, provisions at the regional level are inconsistent and limited in scope. The exceptions to the prohibition of discrimination on the basis of age in Article 6 of the EU Employment Equality Directive (2000/78/EC) even reinforce the widespread acceptance of age limits and differences in treatment on the basis of age that are not accepted for any other ground.

A UN Convention on the rights of older persons is urgently needed to protect older persons' right to work. It would clarify that older persons have the right to decent work on an equal basis with others and which legal guarantees must be in place at the national level to guarantee their enjoyment of this right. It would clarify the exact scope of State obligations, including taking the necessary measures so that we can all enjoy available and accessible employment opportunities and career advancement in older age, as well as effectively access remedies and redress. A Convention would also include specific provisions protecting the rights of older persons undertaking informal or unremunerated work, such as the right to enjoy fair and safe conditions of work.⁴⁰

h) Access to justice

When asked about their access to justice as part of a consultation with older persons, a substantial majority of participants (71 per cent) said they had had a justice problem in their older age that they wanted to solve. More men than women had had a justice problem they wanted to solve – 78 per cent compared with 67 per cent of women. All of those living in a care home said they had had a justice problem they wanted to solve. Over half of those with a justice problem (53 per cent) said they had not found a solution, and older women were a little less likely than older men to have found a solution – 57 per cent compared with 50 per cent of men. Older persons living in a care home were a little less likely than those in the general population to have found a solution – 59 per cent compared with 53 per cent in the general population. The most common types of justice problems were disputes over land or property (29 per cent), followed by difficulties in accessing public services they were entitled to (19 per cent), problems with money and debt, or as a consumer (14 per cent), family disputes, such as divorce and inheritance (13 per cent),

³⁸ Ibid.

³⁹ Ibid.

⁴⁰ Ibid.

violence and crime (9 per cent), and problems at work, such as being unfairly dismissed (8 per cent).⁴¹

While some participants felt they had been treated with respect, others said their older age itself was a barrier to accessing justice. They reported not being listened to, valued or respected, being treated with disrespect by court officials and even harassed by the police. Legal systems were found not to be age-friendly and unaffordable. Other obstacles included lack of support, lack of accessible information, lengthy court proceedings and fear of retaliation by family members who were the object of a complaint.⁴²

The right to access to justice is guaranteed under international human rights law as part of the right to equal recognition before the law.⁴³ Yet, the right to access to justice has not been specifically applied to the context of older age within the international human rights framework, including the unique barriers faced by older persons relating to ageism and age discrimination, inaccessibility, unaffordability etc. This normative gap inevitably translates into implementation issues and practical barriers in accessing justice faced in older age, as listed above.⁴⁴

Dedicated standards within a UN Convention on the rights of older persons are necessary to ensure that older persons have the right to access to justice without discrimination and on an equal basis with others. It would clarify how the right applies in older age, such as older persons' right to accommodations in all proceedings, and their right to hearing with due guarantees and within a reasonable time. It would also clarify States' obligations to provide older persons with the necessary legal aid and support services, as well as accessible information and access to alternative, non-judicial pathways to justice, among others. Finally, a dedicated binding instrument would also protect the rights of older prisoners, including their access to health services, physical adaptations, freedom from violence and extortion, education and vocational training, integration services, social and other support services.⁴⁵

i) Contribution of older persons to sustainable development

The right to participate in, and contribute to, development is affirmed in the Declaration on the Right to Development. Governments and other duty bearers, however, do not sufficiently consider or value older persons' contributions to sustainable development.⁴⁶ Ageist stereotypes are reflected in the invisibility and lack of an older people's perspective in development policies and practices. In addition, government action fails to take into account the diversity of older persons as a group.⁴⁷

⁴¹ HelpAge International, *Keeping our dignity: What older people say about their rights to access to justice, and to work and access to the labour market*, London, HelpAge International, 2019

⁴² Ibid.

⁴³ Article 6 of the Universal Declaration of Human Rights, Article 16 of the International Covenant on Civil and Political Rights and Articles 5 and 12 of the Convention on the Rights of Persons with Disabilities.

⁴⁴ HelpAge International, *Keeping our dignity*, 2019.

⁴⁵ Ibid.

⁴⁶ UNDP, HelpAge International and AARP (2017), *Ageing, Older Persons, and the 2030 Agenda For Sustainable Development*, New York, UNDP.

⁴⁷ Report of the Independent Expert on the enjoyment of all human rights by older persons (2016), *UN Doc. A/HRC/33/44*, § 119.

Older persons' contribution to development is dependent on the effective enjoyment of their civil, political, economic, social and cultural rights. More than 90 per cent of the SDGs are grounded in human rights standards.⁴⁸ However, older persons still face particular challenges as ageism undermines their status as rights holders.⁴⁹ Many experience intersecting challenges related to discrimination, poverty, displacement, social isolation, violence and abuse, based on their age, gender, sexual orientation, ethnic background, religion, and disability amongst other factors. Older women are overlooked in development programs, and their contributions to societies through informal and precarious work remain unrecognized and undervalued.⁵⁰

A rights-based approach to development is also lacking. The prevailing narrative in development today is that because older persons contribute to society, they "deserve" to be included. This approach denies older persons the dignity and fundamental rights that are inherent to all human beings. Governments and other duty bearers, such as private employers, have an obligation to respect, protect and fulfil older people's rights, regardless of their age and regardless of their contributions to society. The lack of visibility of older people's rights within the international legal framework results in weak legal protections at the national level. Most States do not have comprehensive equality legislation in place to effectively tackle ageism and age discrimination against older people in all areas of life.⁵¹ Non-binding policy documents on ageing and development fall short in the protection of older people's rights.⁵² Even where participation of older people is included in development policies, implementation remains limited and complaints mechanisms non-existent or inaccessible.

There is an urgent need for a new comprehensive legally binding instrument at the international level that protects older persons' right to contribute to sustainable development and that includes obligations for Member States to ensure older persons are not excluded from sustainable development processes and that they have access to redress.⁵³ Furthermore, participation in the implementation, monitoring and reporting mechanisms established by a Convention, would provide a way for older persons to hold their governments to account.

j) Economic security

A significant number of older persons around the world continue to live in poverty. Recent demographic profiles in the Middle East, for example, show that 17% of older women and 18% of older men in Egypt live in poverty. In Palestine, nearly 27% of live in poverty, with significantly higher deprivation in the Gaza strip, 47%. Within the Lebanese population

⁴⁸ Danish Institute for Human Rights, Human Rights Data Explorer: <https://sdgdata.humanrights.dk>

⁴⁹ Resolution 48/3 on Human Rights of Older Persons, adopted by the Human Rights Council on 7 October 2021, *UN Doc. A/HRC/RES/48/3*. UNDP, HelpAge International and AARP, *Ageing, Older Persons, and The 2030 Agenda For Sustainable Development*, New York, UNDP, 2017.

⁵⁰ Report on "The human rights of older women: the intersection between ageing and gender" by the UN Independent Expert on the enjoyment of all human rights by older persons, *UN Doc. A/76/157*; Age International, *Older women: the hidden workforce Access to economic justice*, London, Age International, 2021.

⁵¹ HelpAge International, *Advancing Equality for Older People*, London, HelpAge International, 2022.

⁵² Report of the Independent Expert on the enjoyment of all human rights by older persons (2016), *UN Doc. A/HRC/33/44*, § 119.

⁵³ HelpAge International, *Ageing and the SDG's: Key messages to ensure age-inclusive policies*, London, HelpAge International, 2020.

15.4% of older women and 13% of older men live on less than half of the average national income. The poverty rate among non-Lebanese older women and men is significantly higher, 33.7% and 35.8% respectively.⁵⁴

Older persons also face ageism and age discrimination in accessing financial services, loans and property. Age limits on bank loans and other financial services, as well as lack of capital and access to information limit their financial autonomy and prevent them from starting or expanding their own businesses.⁵⁵ Older persons also report not being able to make their own decisions in different areas of their lives including finance, and management and disposal of their property. Older women, and especially widows, are affected by harmful beliefs that women should not inherit nor own land and other property.⁵⁶ In 55 countries, customary, traditional or religious laws provide daughters and/or widows with a lower share of inheritance than sons and/or widowers. Out of 258 million widows, worldwide, 38 million live in extreme poverty.⁵⁷

While there is no “right to economic security” as such in international human rights law, older persons’ economic security is impacted by their access to and enjoyment of a wide range of human rights in older age, including their right to equality and non-discrimination; access to work; social security and social protection; education, training and lifelong learning; and health care (see the responses to the other questions). A comprehensive binding human rights treaty is needed to ensure that older persons can effectively enjoy the full range of fundamental rights and freedoms.

k) Right to health and access to health services

The right to health and access to health services is critical in older age as we may be at greater risk of reduced functional ability. Yet for millions of older persons this right is not respected, protected or fulfilled. Older persons experience a lack of access to health services. Even where services are available, older persons tell us they are often limited and unable to meet their health and care needs. Poverty and the costs involved in accessing services also present some of the greatest barriers older persons face to enjoying their right to health. With limited access to health insurance and high out-of-pocket costs, many have no choice but to forgo seeking healthcare or face impossible choices between health and other basic needs. In addition, ageism and age discrimination also lead to violations of their right to access quality health and care services. Older persons report that their health issues are often dismissed as ‘old age’ and that they are treated like a burden, or worse, subjected to violence, abuse and neglect.⁵⁸

Other barriers faced by older persons include the lack of physically accessible health services; mixed or poor quality of health services; the absence of a well-paid, well trained and well-resourced healthcare workforce that is able to respond to older persons’ needs;

⁵⁴ www.helpage.org/what-we-do/rights-of-older-people/rights-of-older-people-in-the-middle-east/

⁵⁵ HelpAge International, *Freedom to decide for ourselves: What older people say about their rights to autonomy and independence, long-term care and palliative care*, 2018, London, HelpAge International.

⁵⁶ HelpAge International, “Older people in Kenya must be protected from witchcraft accusations”, 22 October 2021.

⁵⁷ ECD (2019), *Social Institutions and Gender Index, SIGI 2019 Global Report*; oomba Foundation (2015), *The Global Widows Report 2015: A Global Overview of Deprivation Faced by Widows and Their Children*, London, Delhi and New York, Standard: Information.

⁵⁸ HelpAge International, *Healthy ageing for us all: What older people say about their right to health*, 2023, London, HelpAge International, <https://www.helpage.org/resource/healthy-ageing-for-us-all/>

and the lack of support from community members and health professionals to support older persons' participation and autonomy in all decisions related to their health care. This last failure is compounded by their exclusion in data systems.⁵⁹

Article 12 of the International Covenant on Economic, Social and Cultural Rights (ICESCR) protects everyone's right to enjoy the highest attainable standard of physical and mental health. The right to health of certain groups and the prohibition of discrimination against them in terms of access to health care is also addressed in category-specific UN treaties⁶⁰, but not for older persons. This invisibility of older persons in the human rights framework, and the lack of a comprehensive binding instrument leads to systemic failures in protecting older people's right to health *at all levels*. The lack of an explicit provision protecting older persons' right to equality and non-discrimination in international human rights law also impedes older people's access to health services. The COVID-19 pandemic has highlighted this in the most brutal ways. Access to health and health services are reflected to some extent at regional level⁶¹ but these are limited in geographical scope and/or are do not cover the full continuum of health promotion, prevention, treatment, specialist care, rehabilitation, long-term care and support, and palliative and end-of-life care, with access to related medicines, vaccines and assistive products.⁶²

A dedicated instrument in the form of a convention is urgently needed to establish critical and clearly defined norms and obligations, and ensure the rights of older persons are applied in law and in practice. For older persons' right to health and care services, a Convention would include comprehensive human rights provisions that fully and effectively protect every aspect of that right in older age, including that older persons have the right to the highest attainable standard of physical and mental health, on an equal basis with others and without discrimination on the basis of age or any other status, and that they have the right to access goods, facilities and services that meet their physical, mental, cognitive and psychosocial health and care needs. It would also clarify that older persons have the right to make their own decisions and have their voices heard in all matters relating to their health and care.⁶³

I) Social inclusion

Social inclusion is about creating an inclusive society that leaves no one behind. It is about optimising older persons' opportunities to have meaningful relationships and roles in society and being able to fully participate in all aspects of society.⁶⁴ Social inclusion in older age is therefore intrinsically linked and dependent on the enjoyment of the full spectrum of human rights, including the right to social security, healthcare, education, equality and non-discrimination etc. (see responses above). In practice, however, many older persons

⁵⁹ Ibid.

⁶⁰ See Article 12 CEDAW; Article 5(e)(iv) CERD; Articles 3(3), 23 and 24 CRC; Articles 28, 43(1)(e), 45(1)(c) and 70 CRMW; Article 25 CRPD.

⁶¹ See, for example, articles 6, 11, 12, and 19 Inter-American Convention on Protecting the Human Rights of Older Persons; articles 11 and 15 Protocol to the African Charter on Human and Peoples' Rights on the Rights of Older Persons in Africa.

⁶² HelpAge International, *Healthy ageing for us all*, 2023.

⁶³ Ibid.

⁶⁴ J. Warburton et al., 'Social inclusion in an ageing world: introduction to the special issue', *Ageing & Society*, vol. 33, 2013, p.3.

face significant barriers that limit their ability to participate, to have equal access to resources and services, and to have their voices heard.⁶⁵

One of the factors that impacts on older persons' inclusion are their social relations and connections. When asked about this area of their lives, many older persons considered themselves to have 'good' (high quality) social connections, yet they find that their relationships with people younger than them can be challenging due to ageist behaviours and attitudes. They also found that lack of income and financial resources due to unemployment or retirement had negatively affected their social relations.⁶⁶ Older persons enjoy participating in all kinds of social and leisure activities as well (volunteering, dance classes, sports, recreational outings etc.). It has a positive impact on their physical and mental health, and helps them feel included in society. When asked about availability, however, they reported that social and leisure activities in their communities are limited and for many unaffordable.⁶⁷

"Leaving no one behind" also means leaving no one offline. Digital inclusion has proven to be a fundamental aspect of social inclusion.⁶⁸ Many older persons are able and willing to learn digital skills. Their digital inclusion can encourage their inclusion in community life and help make new connections and friendships with people of different ages in different spaces. As well as gaining access to online services, learning digital skills can increase older people's access to employment, and continue their personal development.⁶⁹ In practice, however, older persons often do not have access to digital devices or the internet and mainly rely on younger family members for support.⁷⁰ Digital exclusion in older age can have multiple causes, such as limited access to digital devices and the internet, and limited digital literacy skills.⁷¹ Stereotypes and prejudice about older people's ability and willingness to use digital technologies are also widespread.⁷²

A "human right to social inclusion" does not exist in international law. While there are particularly relevant rights in the existing human rights framework, such as the right to social security and protection; the right to participate in cultural life, recreation, and leisure; the right to participate in public life etc., these rights protect a specific aspect of social inclusion. Social inclusion as a concept is much broader and refers to the process of "improving the terms of participation in society, particularly for people who are disadvantaged, through enhancing opportunities, access to resources, voice and respect for rights".⁷³

Although there is no right to social inclusion as such in international human rights law, they are all interrelated. Achieving social inclusion therefore depends on achieving the full

⁶⁵ HelpAge International, *Including us: What older people say about the barriers they face to social inclusion*, London, HelpAge International, 2023, <https://www.helpage.org/resource/including-us-report/>

⁶⁶ Ibid.

⁶⁷ Ibid.

⁶⁸ UNDESA, Policy brief 92: Leveraging digital technologies for social inclusion, 2021.

⁶⁹ HelpAge International, *Moldova hack your age! Creating digital and social connections between younger and older people*, London, 2022.

⁷⁰ HelpAge International, *Including us*, 2023.

⁷¹ Castilla, D et al., 'Teaching digital literacy skills to the elderly using a social network with linear navigation: Case study in a rural area', *Journal of Human Computer Studies*, 118, 2018, pp.24–37.

⁷² United Nations Economic Commission for Europe (UNECE), Policy brief 26: Ageing in the digital era, 2021.

⁷³ United Nations Department of Economic and Social Affairs, *Leaving no one behind: the imperative of inclusive development*. Report on the world social situation 2016, 2016.

range of human rights.⁷⁴ Dismantling structural inequality and ageism, for example, are important prerequisites for social inclusion of older people. A UN convention would foster key aspects of older people's social inclusion by clarifying how fundamental rights and freedoms apply to them and the specific obligations States have to respect, protect and fulfil our rights in older age. A comprehensive legal instrument can therefore act as a catalyst for the integration of a rights-based approach to ageing in the development and implementation of global and national policies on development and social inclusion.⁷⁵

m) Accessibility, infrastructure and habitat

Accessibility is an important condition to build barrier-free, inclusive societies where older persons in all their diversity can live independently and participate fully in all aspects of life.⁷⁶ In practice, however, limited accessibility of their environments severely limits older persons' inclusion. For example, older persons report that long distances from the parking lot and waiting in long queues prevent them from going out on their own, while others mentioned the lack of seating areas in public places, inaccessible sidewalks and roads in poor condition as a barrier. Many older persons depend on public transport to get around, but this often remains inaccessible, unaffordable or unavailable (limited service). Older persons report barriers such as high steps, little time to find a seat, lack of accessibility for wheelchair users etc. as barriers preventing them from using public transport.⁷⁷

Older persons are even more at risk of being left behind due to limited accessibility of assistance, services, and information in situations of conflict and humanitarian crisis. For example, in a recent survey of older persons in Ukraine, 22 per cent of persons over 70 reported low mobility and the lack of accessibility to reach services as the primary obstacle to access medicines and assistive products. Of all older persons who reported obstacles to accessing medical care, more than 20 per cent of those over 70 reported mobility difficulties and lack of accessibility as barriers for them to reach a doctor. Lack of air raid shelters or accessible shelter was also cited by 20 per cent of the survey participants as a concern. In addition, lack of distribution of information about assistance via multiple mediums and in a variety of accessible formats poses a particular challenge for older persons.⁷⁸

Article 9 of the UN Convention on the Rights of Persons with Disabilities (CRPD) provides the right to accessibility, including to the physical environment (including housing), transportation, information and communication, and public facilities and services. Nevertheless, the Convention does not single out the challenges faced by older persons at the intersection between age and disability.⁷⁹ Existing regional provisions, such as Article

⁷⁴ Taket, A., 'Social Inclusion and human rights' in Liamputtong, P (ed), *Handbook of social inclusion*, Springer, 2022.

⁷⁵ HelpAge International, *Including us*, 2023.

⁷⁶ Rights of older persons with disabilities, Report of the Special Rapporteur on the rights of persons with disabilities, 2019, UN Doc. A/74/186, para. 55.

⁷⁷ HelpAge International, *Including us*, 2023. Also see HelpAge International, *Ageing and the city: making urban spaces work for older people*, London, HelpAge International, 2016, <https://www.helpage.org/silo/files/ageing-and-the-city-making-urban-spaces-work-for-older-people.pdf>

⁷⁸ HelpAge International, "I've lost the life I knew": Older people's experiences of the Ukraine war and their inclusion in the humanitarian response", London, HelpAge International, 2023, <https://www.helpage.org/silo/files/ive-lost-the-life-i-knewolder-peoples-experiences-of-the-ukraine-warreport.pdf>

⁷⁹ Rights of older persons with disabilities, Report of the Special Rapporteur on the rights of persons with disabilities, 2019, UN Doc. A/74/186, para. 12.

26 (Right to accessibility and personal mobility) of the Inter-American Convention on Protecting the Human Rights of Older Persons are limited in geographical scope, while others, such as Article 18 of the Protocol to the African Charter on Human and People's Rights on the Rights of Older Persons in Africa offers less protection than the CRPD as it applies only to infrastructure (buildings and public transport) and accorded seating priority. In the EU, the 2019 Accessibility Act⁸⁰ requires the accessibility of certain products and services, but shows significant gaps as it does not include health care services, education, transport, housing and household appliances. In addition, Member States can decide themselves what the requirements are for accessibility of the built environment related to services covered by the Act.⁸¹

A dedicated convention on the rights of older persons is needed to protect older persons' right to accessibility on an equal basis with others. It would clarify States' obligations to, for example, take appropriate measures to ensure older person' access to the physical environment, transportation, information and communications, and to other public facilities in services both in urban and in rural areas. Like the CRPD, it would also clarify that the right to accessibility means that denial of reasonable accommodation is a form of discrimination, and clearly recognise that it applies to older persons with disabilities as well.

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

Meaningful participation of older persons and their representative organisations in policy making is essential to strengthen older persons' voice and agency in decisions that affect them and to fulfil the 2030 Agenda's pledge of leaving no-one behind. In practice, however, older persons are often not consulted or included in decision-making processes and policy development. Barriers include social isolation, digital exclusion and gender roles, ageism, culture, beliefs, habits, and the lack of concrete opportunities to participate.⁸² Other barriers include a lack of political will, or lacking financial or human resources or instruments for implementing participatory approaches.⁸³

The lack of participation of older persons in decision-making processes was made painfully clear during the COVID-19 pandemic when Governments made top-down decisions with far reaching consequences on older persons' lives, but without including or even consulting them in the process. Interviews with older persons and service providers in Pakistan, for example, suggested that older persons were not involved in decision-making processes, nor represented in implementation bodies involved in the pandemic response. Interviewees reported that older persons' concerns and perspectives were not fully integrated in COVID-19 response efforts at the national, provincial and district levels, nor were there specific policies or measures explicitly targeted at older persons. In Russia, an older persons' organisation reported that the government was not considering older persons' voices in response planning. In Ghana and Liberia it was reported that older persons were excluded from decision-making processes on the design and implementation

⁸⁰ Directive 2019/882 of the European Parliament and of the Council of 17 April 2019 on the accessibility requirements for products and services.

⁸¹ Age Platform Europe, "The European Accessibility Act published in EU Official Journal", 4 July 2019.

⁸² Pinto, J.M, Neri, A.L., "Trajectories of social participation in old age: A systematic literature review", *Rev. Bras. Geriatr. Gerontol.* 20, 2017, 259–272.

⁸³ UNECE, Meaningful participation of older persons and civil society in policymaking, Guidance Note, 2021, <https://unece.org/sites/default/files/2021-09/UNECE%20meaningful%20participation%20guidance%20note.pdf>

of public health responses. Uganda, before the pandemic, older persons had been a part of local council structures and had a voice in local decision-making. However, they have been left out of district and national COVID-19 taskforces.⁸⁴

While the right to participate in public life is protected in international human rights law (Article 25 of the International Covenant on Civil and Political Rights; Article 29 Convention on the Rights of Persons with Disabilities) no specific provisions exist for older persons. There are some relevant provisions at the regional level (see Article 27 Inter-American Convention on Protecting the Human Rights of Older Persons), but these are limited in geographical scope.

There is an urgent need for a comprehensive international legally binding instrument that protects the right of older persons to participate in public life and in decision-making processes. A convention would include positive obligations for Member States to tackle all forms of ageism and age discrimination in decision-making processes. Moreover, participation in the implementation, monitoring and reporting mechanisms established by a Convention, including at the national level, would provide a way for older persons to hold their governments to account and the recommendations from these mechanisms would feed into policymaking and reform processes.⁸⁵

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.

HelpAge International and its Network Members have submitted reports and statements to a wide range of human rights mechanisms, including:

- the Committee on the Elimination of Discrimination against Women;
- the Committee on Economic, Social and Cultural Rights;
- the Office of the High Commissioner for Human Rights;
- the Human Rights Council; the UN Independent Expert on the enjoyment of all human rights by older persons; and
- the Universal Periodic Review.

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

While HelpAge's engagement with UN treaty bodies' periodic reviews of Member State reports has often resulted in a reference to older persons in the Concluding Observations/Recommendations, the adoption of meaningful and comprehensive recommendations by treaty bodies on the rights of older persons has remained very limited. For example, in 2014 HelpAge International submitted a report on the rights of older women to the 58th Session of the Committee on the Elimination of Discrimination Against Women in relation to the Combined seventh and eighth periodic reports of Peru

⁸⁴ HelpAge International, *Bearing the brunt: The impact of COVID-19 on older people in low- and middle-income countries – insights from 2020*, London, HelpAge International, 2021.

⁸⁵ UNECE, *Meaningful participation of older persons*, 2021.

(CEDAW/C/PER/7-8). In its Concluding Observations, however, the Committee only refers to older women as part of a longer list of disadvantaged groups of older women (CEDAW/C/PER/CO/7-8, para. 39). Such generic references cannot bring about any meaningful progress in the implementation of older persons' rights at national and local level.

Even though most international human rights treaties apply to older persons, in practice the lack of comprehensive human rights provisions, including the exact scope of Member States' obligations, makes it challenging for civil society organisations to prepare their reports to UN treaty bodies and other monitoring mechanisms. Highlighting human rights violations within the framework of existing human rights treaties that are not specifically targeted at older persons requires civil society to interpret normative provisions with limited or no interpretive guidance.

The lack of a comprehensive binding instrument on older persons' rights also increases the risk of treaty body members lacking the necessary capacity or specialised knowledge of essential concepts such as ageism, and of the specific human rights violations experienced in older age. It also increases the risk of Committee members overlooking or not giving sufficient weight to the rights of older persons throughout their review process and in their final recommendations or decisions.

The UN Independent Expert on the enjoyment of all human rights by older persons as well as members of several UN treaty bodies themselves have raised concerns about their lack of capacity to address in-depth the challenges faced by older persons. References to older persons in concluding observations of human rights bodies and universal periodic review recommendations remain particularly scarce.⁸⁶ As pointed out by a Vice-Chair of the Committee on Economic, Social and Cultural Rights, in addition to creating its own UN treaty monitoring mechanism, a dedicated instrument on the human rights of older persons would "focus the Committee's attention on the rights of older persons in a more systematic and sustained way".⁸⁷ The same is true at the regional level. As highlighted by the President of the European Committee of Social Rights,⁸⁸ for example, regional instruments cannot fill the gap in the international framework. Regional monitoring bodies also look at international practice to guide their work, so the lack of best practice and lack of a Convention impacts the Committee's work at regional level as well. Specific provisions on older persons' rights would result in greater attention for their rights and require Committee members to upscale their understanding of older persons' rights. A new UN Convention would thus enable and empower existing treaty bodies and other stakeholders to deal with ageism and its complexities.

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

There is a need for improved engagement with the topic of older persons' rights at the international level and better implementation of existing norms and standards. Even with the best of intentions, however, it is unlikely that this alone will result in more than

⁸⁶ Rights of older persons with disabilities, Report of the Special Rapporteur on the rights of persons with disabilities, 2019, UN Doc. A/74/186, para. 10.

⁸⁷ OHCHR, Summary of the multi-stakeholder meeting on the human rights of older persons, 2023, UN Doc. A/HRC/52/49.

⁸⁸ Virtual intersessional OEWGA briefing by the Independent Expert on the enjoyment of all human rights by older persons, and Human Rights Treaty Bodies, 12 July 2023.

incremental improvements in human rights protection for older persons.⁸⁹ As discussed in the responses above, existing human rights instruments fail to clarify how human rights apply in older age and monitoring bodies lack the expertise and capacity to effectively tackle human rights violations faced by older persons. And while there are relevant international policy frameworks, such as the 2002 Madrid International Plan of Action on Ageing (MIPAA), these do not offer the necessary protection of the rights of older persons around the world.

First, MIPAA is a policy framework that provides recommendations, not legally binding norms, so that compliance and implementation is dependent on the goodwill of Member States. Second, it does not comprehensively cover the rights of older persons and, for example, lacks a focus on access to justice, legal capacity and forced placement. Moreover, contrary to international human rights treaties that create monitoring bodies and individual complaint mechanisms, MIPAA does not create any meaningful accountability mechanisms. Finally, even though MIPAA is aligned with existing human rights frameworks, it cannot be considered a human rights instrument. There is little reference to specific individual rights as such or to any legal obligations that States have as duty bearers. Policy alone fails to protect older persons' rights. The fourth global review and appraisal (E/CN.5/2023/6) demonstrated that "while there has been progress [...], the persistence of the same challenges over the 20 years of the implementation of the Plan constitutes a failure of 'business as usual'." An international policy framework, such as MIPAA, is particularly useful to guide States when there is already the political will to take action. If not, implementation will always remain weak and inadequate. As noted by several Governments in their regional review process, "the development of an international legal instrument on the human rights of older persons [...] would complement and reinforce the Plan and would be key to promoting and protecting the rights and dignity of older persons, including in any successor policy frameworks on ageing."⁹⁰

That is why only one option would provide the urgently needed comprehensive protection of older persons' rights: a dedicated binding UN convention. Systemic change requires the adoption of a new legal instrument at the international level. Ageism is widespread in societies and negatively impacts on older persons' rights in every area of their lives. To move away from charitable and social welfare models towards a human rights-based approach, a transformative shift in understanding is needed.⁹¹

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

In principle, existing human rights treaties also apply to older persons regardless of their age. However, the lack of consideration of the impact of ageism and age discrimination in the implementation and interpretation of existing human rights norms and standards as well as the particular human rights challenges faced in older age leads to ineffective international legal guarantees. The reality is that there is no international legal instrument

⁸⁹ HelpAge International, *Advancing equality for older people*, London, HelpAge International, 2022, https://www.helpage.org/resource/age-equality-report_pub/. Also see Normative standards and obligations under international law in relation to the promotion and protection of the human rights of older persons, Report of the United Nations High Commissioner for Human Rights, 2022, UN Doc. A/HRC/49/70.

⁹⁰ Fourth review and appraisal of the Madrid International Plan of Action on Ageing, 2002, Report of the Secretary-General, 2023, UN Doc. E/CN.5/2023/6.

⁹¹ HelpAge International, *Advancing equality for older people*, 2022.

that currently provides a comprehensive human rights framework to protect the rights of older persons. As discussed in the responses to the questions above regarding the different topics of the Open-Ended Working Group on Ageing (OEWGA), not a single existing international human rights treaty covers the full spectrum of rights in older age, nor do they include a clear and comprehensive provision on the elimination of all forms of ageism and age discrimination, which is one of the root causes of human rights violations in older age and therefore essential for older persons to enjoy their fundamental rights and freedoms in all areas of their lives. Provisions at the regional level are also limited in geographical scope or fail to provide the necessary legal guarantees.

We must conclude that the lack of an international human rights framework in relation to older persons has curtailed the development of a human rights-based approach and discourse on ageing, and therefore a medical approach and the economic impact of demographic changes continues to define the ageing discourse, including among Member States.⁹²

A dedicated international human rights instrument would facilitate the urgently needed shift towards a human rights-centred approach. Similar transformative shifts have been witnessed in relation to other groups that experience discrimination and human rights violations, where dedicated international instruments have been established. A new convention would clarify States' legal obligations towards older persons in all areas of life; improve understanding of equality concepts such as ageism, elder abuse and age discrimination; and offer increased impetus for legal reform at the national level.⁹³

As has been consistently demonstrated in hundreds of reports submitted to the OEWGA by civil society, academia and UN bodies and experts for over a decade, the only effective way to facilitate the shift towards a human rights-based approach to ageing and older persons, and to ensure the effective protection of the full spectrum of human rights in older age, is the drafting and adoption a new UN Convention on the Rights of Older Persons.

⁹² Rights of older persons with disabilities, Report of the Special Rapporteur on the rights of persons with disabilities, 2019, UN Doc. A/74/186, para. 10.

⁹³ HelpAge International, *Advancing equality for older people*, 2022.

For more information

Please contact Tanja Venisnik, Global Rights Policy Adviser at HelpAge International: tanja.venisnik@helpage.org

Or visit our website at [www.helpage.org/ what-we-do/rights-of-older-people/](http://www.helpage.org/what-we-do/rights-of-older-people/)

HelpAge International
PO Box 78840
London, SE1 7RL
United Kingdom
Tel +44 20 7278 7778

info@helpage.org
www.helpage.org

 @HelpAge  HelpAge International

