

Access to Justice

HelpAge submission to the 12th session of the Open-Ended Working Group on Ageing

Scope of the right

Question 2. Key normative elements

1. Prohibition of discrimination

Older persons have the right to access to justice on an equal basis with others.

All persons are equal before the law and are entitled to the equal protection of the law without any discrimination on the basis of age or any other ground.¹

2. Legal capacity

Older persons have the right to recognition everywhere as a person before the law.²

Older persons enjoy legal capacity on an equal basis with others in all aspects of life.³

¹ Art. 26 International Covenant on Civil and Political Rights (hereafter 'ICCPR')

² Art. 6 Universal Declaration of Human Rights (hereafter 'UDHR'); art. 16 ICCPR; art. 12(1) Convention on the Rights of Persons with Disabilities (hereafter 'CRPD'); art. 30 Inter-American Convention on Protecting the Human Rights of Older Persons (hereafter 'IAC').

³ Art. 12(2) CRPD.

Older persons have the right to own or inherit property, to control their own financial affairs and to have equal access to bank loans, mortgages and other forms of financial credit.⁴

3. Elimination of the influence of ageist stereotypes

Older persons have a right to be equal and active participants in all aspects of the justice system, as plaintiffs and defendants as well as judges, lawyers, jury members or members of other legal tribunals and institutions.

4. Timely legal proceedings

Older persons have the right to a hearing, with due guarantees and within a reasonable time. Judicial action must be particularly expedited in instances where the health or life of the older person may be at risk.⁵

5. Accessibility

Older persons have the right to access law-enforcement agencies, safe houses, and the judiciary, including courthouses and courtrooms, on an equal basis with others.

Older persons have the right to accessible legal services, legal information, and communication.⁶

6. Access to legal services

Older persons have the right to accessible and affordable legal services, including legal assistance, legal aid, counselling, victim support services, and hotlines.⁷

7. Older prisoners

Older prisoners have the right to physical adaptations, protection against violence and extortion, appropriate educational and vocational opportunities, and support with reintegration into the community.

Older prisoners have the right to access health and support services on an equal basis with others, including physical, mental and cognitive health, dental, hygiene and hospice services, and social services available to the general population.

⁴ Art. 12(5) CRPD.

⁵ Art. 31 IAC.

⁶ Art. 9 CRPD.

⁷ Art. 4(2) Protocol to the African Charter on Human and Peoples' Rights on the Rights of Older Persons (hereafter 'AOP').

8. Right to a fair trial

Older persons are entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law, in the determination of their rights and obligations and of any criminal charge against them.⁸

Every older person charged with a criminal offence has the right to be presumed innocent until proved guilty according to law in a trial at which he has had all the guarantees necessary for their defence.⁹

9. Effective remedy

Older persons have the right to an effective remedy by the competent judicial, administrative or legislative authorities for acts violating their fundamental rights and freedoms, notwithstanding that the violation has been committed by persons acting in an official capacity.¹⁰

Older persons have the right to prompt remedies and redress, which are appropriate, effective and holistic, including rights of appeal, restitution, indemnity, compensation and reparation.

Older persons have the right to access non-judicial dispute settlement mechanisms, including, one-stop community justice centres, paralegal support, community mediators, ombuds procedures or specialist commissioners or inspectors.¹¹

Older persons have the right not to be discriminated against on the basis of their age or any other ground in the award of any damages.

State obligations

Question 3. Necessary mechanisms or measures to ensure the enjoyment and to monitor implementation

1. Prohibition of discrimination

States Parties shall take appropriate measures to:

- (a) ensure that the law prohibits any discrimination against older persons in all areas of life, including in legal and administrative proceedings.

⁸ Art. 10 UDHR; art. 14(1) ICCPR.

⁹ Art. 11(1) UDHR; art. 14(2) ICCPR.

¹⁰ Art. 8 UDHR; Art. 2 (3)(a) and (b) ICCPR.

¹¹ Art. 31 IAC.

(b) guarantee to all persons equal and effective protection against discrimination on grounds of as age or any other status.¹²

(c) ensure that reasonable accommodation is provided at all stages of legal and administrative proceedings.¹³

States Parties shall ensure effective access to justice for older persons on an equal basis with others, including through the provision of procedural and age-appropriate accommodations, in order to facilitate their effective role as direct and indirect participants, including as witnesses, in all legal proceedings, including at investigative and other preliminary stages.¹⁴

State Parties shall ensure due diligence and preferential treatment for older persons in processing, settlement of, and enforcement of decisions in administrative and legal proceedings.¹⁵

2. Legal capacity

States Parties shall take appropriate measures to provide older persons access to the support they may require in exercising their legal capacity.¹⁶

States Parties shall ensure that all measures that relate to the exercise of legal capacity provide for appropriate and effective safeguards to prevent abuse in accordance with international human rights law. Such safeguards shall ensure that measures relating to the exercise of legal capacity respect the rights, will and preferences of the person, are free of conflict of interest and undue influence, are proportional and tailored to the person's circumstances, apply for the shortest time possible and are subject to regular review by a competent, independent and impartial authority or judicial body. The safeguards shall be proportional to the degree to which such measures affect the person's rights and interests.¹⁷

States Parties shall ensure the equal right of older persons to own or inherit property, to control their own financial affairs and to have equal access to bank loans, mortgages and

¹² Art. 26 ICCPR.

¹³ Art. 5(3) CRPD.

¹⁴ Art. 13 CRPD.

¹⁵ Art. 31 IAC.

¹⁶ Art. 12(3) CRPD.

¹⁷ Art. 12(4) CRPD; art. 30 IAC.

other forms of financial credit, and shall ensure that older persons are not arbitrarily deprived of their property.¹⁸

3. Elimination of the influence of ageist stereotypes

States Parties shall adopt appropriate and adequate measures to:

- raise awareness in society about ageism and ageist stereotypes and how they affect older persons;
- ensure that no stage of judicial or non-judicial proceedings is influenced by ageist stereotypes.

4. Timely legal proceedings

States parties shall ensure the right of older persons to a hearing with due guarantees and within a reasonable time.¹⁹

5. Accessibility

States parties shall adopt appropriate and adequate measures to ensure that:

- (a) law-enforcement agencies, safe houses and the judiciary, including courthouses and courtrooms, are physically accessible.
- (b) legal support services, victim support services, information and communication provided by all justice and emergency agencies and entities are maintained, funded, affordable and available to all older people in whatever setting they live.²⁰
- (c) that information and public education programmes about their legal rights and access to justice is made available to older people in appropriate and accessible formats.

6. Access to legal services

States parties shall ensure the provision of accessible and affordable legal services for older persons, including legal assistance, legal aid, counselling and hotlines.²¹

¹⁸ Art. 12(5) CRPD.

¹⁹ Art. 31 IAC.

²⁰ Art. 9 CRPD.

²¹ Art. 4(2) AOP.

7. Alternative, non-judicial pathways to justice

States parties shall develop and strengthen public policies and programs to promote alternative dispute settlement mechanisms, including, one-stop community justice centres, paralegal support, community mediators, ombuds procedures or specialist commissioners or inspectors.²²

8. Older prisoners

States parties shall adopt appropriate and adequate measures to:

- (a) accommodate the needs of older prisoners, including necessary physical adaptations, protection against violence and extortion, appropriate educational and vocational opportunities, and support with reintegration into the community.
- (b) provide older prisoners access to services, including physical, mental and cognitive health, dental, hygiene and hospice services, and social and other support services available to the general population.

9. Procedural accommodations

States Parties shall take appropriate measures to ensure effective access to justice for older persons on an equal basis with others, including through the provision of procedural and age-appropriate accommodations, in order to facilitate their effective role as direct and indirect participants, including as witnesses, in all legal proceedings, including at investigative and other preliminary stages.²³

10. Adequate training

States parties shall take appropriate measures to ensure adequate and appropriate training in protection of the rights of older persons for those working in the field of administration of justice, including police and prison staff in order to help ensure effective access to justice for older persons.²⁴

11. Effective remedy

States parties shall take appropriate measures to ensure:

²² Art. 31 IAC.

²³ Art. 13(1) CRPD; art. 31 IAC.

²⁴ Art. 13(2) CRPD; art. 30 IAC.

- (a) older persons have access to prompt remedies and redress, which are appropriate, effective and holistic, including rights of appeal, restitution, indemnity, compensation and reparation;
- (b) older persons have access to non-judicial dispute resolution mechanisms, such as ombuds procedures, specialist inspectors or commissioners, community mediators, paralegal support and complaints and grievance mechanisms;
- (c) the prohibition of discriminated against older persons on the basis of their age or any other ground in the award of any damage.