

Briefing note | 22 February 2022

Normative input for a possible international standard on the protection of the rights of older people on ‘Access to justice’

Input to the 12th Open-ended Working Group for the purpose of strengthening the protection of the human rights of older persons.

Penal Reform International (PRI) welcomes this initiative and supports a new normative standard on the protection of the rights of older people. PRI recommends that specific provisions and protections are included for older people in conflict with the law (those arrested, defendants, in detention, etc) due to the specific barriers to access to justice experienced by these groups. More information is available in the resources listed in the Annex.

Background

The number of older people in prison is increasing, at least in countries where data is available.¹ The causes of this are sometimes country-specific but largely due to a hardening of sentencing practices, increased use of imprisonment and life imprisonment (especially for less serious, non-violent crimes), and reduced mechanisms for early release. In places of detention, people over 50 are often considered older due to behavioural health risk factors and poor prior access to healthcare. This “accelerated aging” means older people in prison are more likely than age-matched peers in the community to have disabilities, multiple, chronic health conditions, or age-related cognitive impairment such as dementia. The ageing of the prison population therefore has unique and important implications for health and age-related policy and practice across criminal justice systems: at arrest and adjudication, throughout detention, and during community re-entry.

It is important that law enforcement and other officials interacting with older persons in the criminal justice system are trained to identify and respond to their age-related needs. Police officers, lawyers and staff in pre-trial detention centres who are not trained in ageing-related health may struggle to identify common health problems in older persons which can have a detrimental effect on how the criminal justice system responds to an older person. It could lead

¹ Penal Reform International, [Global Prison Trends annual series](#) (2015 – 2021) chapters on older persons.

to arrest for behaviour that is caused by dementia, or harsher treatment for failure to comply with police officers during an arrest, caused by hearing loss. Failure to identify or accommodate sensory or cognitive impairments could also make it difficult to cooperate or communicate with staff in detention facilities or participate in legal proceedings.

International human rights standards

In addition to international standards on the rights of older persons in general,² there is a robust legal framework in place to protect the human rights of people in prison. Most importantly, the UN Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules) set out rules that pertain to all aspects of prison life.³ Underpinned by the principle of non-discrimination, the Rules require prison administrations to take account of people's individual needs, in particular the 'most vulnerable categories in prison settings'⁴ and include protections around access to legal advice and legal aid.⁵ Similar protections are also set out in the UN Rules for the Treatment of Women Prisoners and Non-Custodial Sanctions for Women Offenders (the Bangkok Rules).⁶ The UN Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems⁷ also equally apply to older persons but lack specific age-responsive protections.

Various UN human rights bodies have called for special attention to age-sensitive measures to improve access to justice for older persons, such as reduction or exemption of fees, specialised support from caregivers to help older persons exercise their legal capacity, and adopting a gendered lens to respond to the needs of older women in prison.⁸ The UN Independent Expert on the enjoyment of all human rights by older persons has acknowledged the 'enhanced risk and susceptibility to rights violations' faced by older people in prison⁹ and in 2022 will dedicate her thematic report to the Human Rights Council to the human rights of older persons deprived of their liberty.¹⁰ The UN Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment has acknowledged that those at the bottom of the prison hierarchy, including older persons and persons with disabilities, suffer multiple forms of discrimination.¹¹ The United Nations Office on Drugs and Crime has recognised older persons in prison as a special needs population¹² and the UN High Commissioner for Human Rights has urged that older people in prison be given special consideration, including with regard to access to justice.¹³

² See <http://www.ohchr.org/EN/Issues/OlderPersons/IE/Pages/InternationalStandards.aspx>.

³ United Nations Standard Minimum Rules for the Treatment of Prisoners (UN Nelson Mandela Rules), A/RES/70/175.

⁴ UN Nelson Mandela Rules, Rule 2.1. While the Rules do not explicitly mention older persons among such categories, it is implied given their advanced age, complex health needs and challenges they face in places of detention.

⁵ UN Nelson Mandela Rules, Rules 54, 61, 120.

⁶ United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (the Bangkok Rules), A/RES/65/229, Rules 2, 7, 25, 26.

⁷ United Nations Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems, A/RES/67/187.

⁸ Study on the phenomena of torture, cruel, inhuman or degrading treatment or punishment in the world, including an assessment of conditions of detention, February 5, 2010, A/HRC/13/39/Add.5, para.237; General recommendation No. 27 on older women and protection of their human rights, CEDAW/C/GC/27, 16 December 2010, para. 33.

⁹ Submission of the UN Independent Expert on the enjoyment of all human rights by older persons to the Inter-American Commission, 4 November 2020, para. 19, https://www.corteidh.or.cr/sitios/observaciones/OC-29/14_Exp_Indepen.pdf

¹⁰ <https://www.ohchr.org/EN/Issues/OlderPersons/IE/Pages/report-older-persons-deprived-liberty.aspx>

¹¹ Study on the phenomena of torture, cruel, inhuman or degrading treatment or punishment in the world, including an assessment of conditions of detention, 5 February 2010, A/HRC/13/39/Add.5, para. 231.

¹² Handbook on Prisoners with Special Needs (Criminal Justice Handbook), United Nations, 2009, https://www.unodc.org/pdf/criminal_justice/Handbook_on_Prisoners_with_Special_Needs.pdf, p. 123.

¹³ United Nations Economic and Social Council, Report of the United Nations High Commissioner for Human Rights, UN Doc. E/2012/51, <https://undocs.org/E/2012/51> at paragraph 60.

At the regional level, the Inter-American Court of Human Rights is developing an Advisory Opinion on differentiated approaches to deprivation of liberty, including for older persons, as requested by the Inter-American Commission on Human Rights.¹⁴ The European Court of Human Rights has in its jurisprudence considered the potential human rights impacts of the prolonged detention of older persons in prison, which should be assessed by the particular circumstances of each specific case¹⁵ based on several key factors.¹⁶

Annex: PRI resources on the rights of older persons in detention

- [Older persons in detention – A framework for preventive monitoring](#) (2021)
- [Response for Focus area on “Access to Justice”](#): Input for the United Nations General Assembly Open-ended Working Group for the purpose of strengthening the protection of the human rights of older persons (2019)
- Expert blogs published on [penalreform.org](#):
 - Vicki Prais, [Elderly life-sentenced prisoners: a forgotten and ‘invisible’ group](#) (August 2019)
 - Bridget Sleep, [Old age behind bars: how can prisons adapt to the needs of increasingly elderly populations?](#) (September 2014)
 - Cyrus Ahalt and Brie Williams, [How can criminal justice systems from police to probation address the medical and social care needs of elderly prisoners?](#) (February 2015)
- [Global Prison Trends annual series](#) (2015 – 2021) chapters on older persons.

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¹⁴ Inter-American Commission on Human Rights, *Observations on the Request for Advisory Opinion to the Inter-American Court Of Human Rights: Differentiated Approaches To Persons Deprived Of Liberty*, http://www.oas.org/en/iachr/r/dppl/oc/2019_11_25_obs_eng.pdf.

¹⁵ *Papon v France*, (no 1) Application no 64666/01, 7 June 2001.

¹⁶ See for example *Sawoniuk v UK*, Application no 63716/00, 29 May 2001; *Patsos v Greece*, Application no 10067/11, 25 September 2012; *Mouisel v France*, Application no 67263/01, 2002.