

Briefing paper for the first working session of the Open Ended Working Group on Ageing, April 18–21 2011

Introduction

HelpAge International is a global network active in over 100 countries. The network comprises of eighty affiliated organisations, two hundred partners, and many hundreds of Older Persons Associations. Drawing on the network's experience, this briefing paper provides background information for the first working session of the Open Ended Working Group on Ageing (OEWG).

The OEWG was established by resolution (A/RES/65/182) at the 2010 General Assembly. Its first working session will be held at the UN in New York 18-21 April 2011. The agenda for this first meeting will cover:

- a) Existing international framework on the human rights of older persons.
- b) Existing regional framework or mechanisms on the human rights of older persons.
- c) Existing gaps at the international level and measures to address these.

Contents

2	Executive summary
3	Why do older people's rights require specific attention?
5	What are the critical rights issues that older people face?
19	What are the specific provisions on older people's rights in existing human rights law?
21	How are older people's rights being addressed by the international human rights system?
24	What are the gaps in protection?
25	Do existing international human rights mechanisms adequately protect older people's rights?
26	Measures to address these gaps

Executive summary

Our rights do not change as we grow older. What does change is that older women and men are considered to be inherently less valuable to society. At the same time, as people get older, they face increasing barriers to their participation, become more dependent on others and lose some or all of their personal autonomy. These threats to their dignity can make them more susceptible to neglect, abuse and violation of their rights.

There is already political consensus in the UN Principles on Older Persons (1991) and the Madrid International Plan of Action on Ageing (2002) that ageing requires specific attention. This is more urgent than ever in the context of unprecedented demographic ageing. As populations age the number of people facing age discrimination and denial of their rights will increase.

Age discrimination and ageism are tolerated across the world. Older women and men experience violations of their rights at family, community and institutional levels. This ranges from gross violations in specific contexts such as extreme violence and violations of their right to life as a result of witchcraft accusations, to violations that affect millions of older people across the world such as the denial of their right to social security in old age. Older people face very specific threats to their rights in relation to age discrimination, for example, in access to health care, in employment, in property and inheritance rights, in access to information and education and in humanitarian responses. Older people also face particular forms of violence and abuse. They face particular threats to their rights in care settings and as carers themselves. Demographic ageing is creating new challenges such as protecting the rights of people living with dementia, of older detainees, and the equitable allocation of resources in health care. Older people's rights to access to justice, equality before the law and the rights to housing, privacy and a private life all require greater attention.

There are numerous obligations vis a vis older people implicit in general human rights law but explicit mention of older people is rare. The few specific provisions are confined to a limited range of rights, are most often in interpretative or advisory documents, e.g. general comments, and are not consistent across international or regional instruments.

A review of existing documentation¹ revealed that this has resulted in inconsistent attention to older people's rights by existing human rights accountability mechanisms. It showed lack of attention to equality, age discrimination and multiple forms of discrimination and a focus on a limited range of economic and social rights. Civil and political rights, including those related to violence and abuse, and the impact of ageing on the enjoyment of all rights are rarely addressed.

Existing human rights mechanisms do not, therefore, adequately protect older people's rights. There are significant gaps in protection and general human rights law has failed to adequately capture the discriminatory attitudes and practices that older women and men experience. The failure to explicitly prohibit age as a ground for discrimination in all but one human rights convention has obscured the discriminatory experiences of older people and the dispersal of standards across various instruments has resulted in a lack of clarity and awareness of older people's rights.

There is clearly much work that existing mechanisms can and need to do to better address the impact of ageing on the enjoyment of the rights within their mandates.

However, HelpAge believes that this alone will not be enough and that a single instrument, a new international convention on the rights of older people, is the most appropriate measure to address these gaps and provide the necessary protection of older people's rights, in both law and practice.

¹ We searched documents available since 2000 for all references to *elderly*, *old age*, and *older* www.universalhumanrightsindex.org Visited 2 March 2011. We searched for all references to *elderly*, *old age*, and *older*

Why do older people's rights require specific attention?

Older men and women have the same rights as everyone else. The Universal Declaration of Human Rights states in Article 1 that "all human beings are born free and equal in dignity and rights".

Our rights do not change as we grow older. What does change is that the contribution older people make to society is considered less valuable and less important than when they were younger. Under these circumstances older people can be subject to age discrimination, ageist attitudes and stereotypes. Ageism and age discrimination are widespread across all countries of the world.

Some definitions

Age discrimination is when someone is treated differently, with an unreasonable or disproportionate impact, simply because of their age. It is a violation of older people's rights. Age discrimination can be direct, for example, upper age limits on credit or micro-finance that prohibit older people accessing finance, or indirect, such as not collecting data on HIV infection in women and men over 49. This failure to collect data results in the exclusion of older people from HIV and AIDS prevention programmes, and, therefore, discriminates against them.

Ageism is the stereotyping and prejudice against older people that can lead to age discrimination. At one end of the scale ageism may seem harmless, for example, when older people are patronised on TV, in films and in advertising. However, research by Yale University showed that negative stereotypes of older people in the US had a harmful impact on older people's memory, balance and even how long they lived for². At the other extreme, older people, especially women, can be accused of witchcraft because of age and gender stereotypes and then forced out of their homes or even murdered.

Multiple discrimination: The discrimination that older men and women face is also complex, often based on two or more factors, such as age and gender, ethnic origin, where they live, disability, poverty, sexuality, HIV status or literacy levels. Older women are particularly vulnerable to discrimination based on both age and gender. The impact of gender-based discrimination against girls and younger women is carried into old age and unless addressed continues from one generation to another.

A fundamental principle of human rights is that an enhanced degree of protection is necessary when human dignity is at stake. For many people as they age, increasing physical and mental frailty leads to increasing dependence on others, an inability to participate in the world around them and a decline in personal autonomy. Independence, participation and autonomy are often regarded as critical components to dignity. The process of ageing can therefore threaten older people's dignity. This can result both in a personal loss of dignity and make older people seem less inherently dignified to others and therefore more susceptible to neglect, abuse and denial of their rights.

The adoption by the General Assembly of the UN Principles on Older Persons (1991) and the Madrid International Plan of Action on Ageing (2002) show that there is already a political consensus and agreement that ageing and the context of being older require specific attention.

² www.sciencedaily.com/releases/2009/03/090310155607.htm and www.ageconcern.org.nz/mediawatch/ageism-shortens-older-peoples-lives-per-centE2per-cent80per-cent94-research Visited 9 March 2011

There is now an urgent need to look more deeply at how ageing, both of an individual and of populations as a whole, affects protection and enjoyment of human rights. Very little work is being done in this area despite the fact that the world is ageing at a rate that is unprecedented.

Older people will outnumber children for the first time in history by 2045. Between 2010 and 2050 the number of people aged over 60 world wide is projected to increase by 1 and a quarter billion people. This increase in older people will be greatest and most rapid in developing countries. Asia is projected to have the largest increase in the total number of older people aged over 60 with an increase of over 800 million people. However it is in Africa where the largest proportionate growth in older people will take place, with a 283% increase. In addition, by 2050 almost 70% of the population aged over 80 are estimated to be living in less developed regions.³

As populations age, the numbers of people facing age discrimination and denial of their rights will increase.

"We cannot live like this any more. I have worked 37 years as a teacher in the village, and I'm surviving on a meager pension. The prices are so high that I can hardly manage to pay for utilities, wood and coal but we also need food and other things. We cannot bear this situation any more. The government should do something about pensions, why is it keeping us on the edge, on the edge of poverty and hunger? We are all people and will reach old age one day". Vera, 70, Moldova

³ Population Division of the Department of Economic and Social Affairs of the United Nations Secretariat, *World Population Prospects: The 2008 Revision*, <http://esa.un.org/unpp> Visited 13 May 2010

What are the critical rights issues that older people face?

Age discrimination and ageism are tolerated across the world. Older people experience discrimination and violation of their rights at a family, community and institutional level. However, older people are not a homogenous group and should not be treated as such. Older men and women experience ageing and old age differently. People in their 60s may lead very different lives to those in their 80s. This section draws on evidence from a number of different countries and sources to illustrate some of the critical human rights issues that they face. It is not an exhaustive list and addresses the following:

Right	Page
1. Right to life, liberty and security of person	5
2. Rights of older people in care	8
3. Rights of older carers	9
4. Rights of people with dementia	9
5. Right to health	10
6. Right to social security	12
7. Right to decent work	13
8. Rights to property and inheritance	14
9. Right to education	14
10. Right to food	15
11. Right to information	15
12. Right to equality before the law	16
13. Right to access to justice	16
14. Rights of older detainees	17
15. Right to vote	17
16. Rights in humanitarian responses	17

1. Right to life, liberty and security of person

Many older men and women, especially older women, experience violence in their homes, in care settings, as a result of traditional beliefs, or in conflict or post conflict situations. This often remains hidden: older people are reluctant to report incidences of abuse, studies on elder abuse are limited and research on violence against women rarely goes beyond the age of 49. Increasing dependence, isolation and frailty can make older people particularly vulnerable to violence, abuse and neglect. This, as the examples below illustrate, can manifest itself differently in different social, economic, political and cultural contexts but is certainly not limited to any one context or region.

*People burnt my house. They did this because they suspected my wife of being a witch.
Richard, 67, Kenya*

1.1 Elder abuse: Elder abuse is generally defined as physical, emotional, financial or sexual abuse of an older person by someone in a position of trust. It also includes neglect.

Prevalence studies of elder abuse were conducted in the 1990s in Boston, USA⁴, Canada⁵, Britain⁶, and Amsterdam, The Netherlands⁷. Prevalence estimates from these studies (for mistreatment in the past year) ranged from 2.6 per cent to 5.6 per cent.

More recently a 2007 study in the UK found that 2.6 per cent, that is 227,000 people, of people aged 66 and over living in private households reported that they been neglected or abused by a family member, close friend or care worker during the past year. When this was broadened to include incidents involving neighbours and acquaintances, the overall prevalence increased from 2.6 per cent to 4 per cent, i.e. approximately 342,400 older people were subject to some form of mistreatment in their homes⁸.

Recognising the gravity of the situation, the UK Equality and Human Rights Commission recently launched an inquiry into the protection and promotion of human rights of older people in England who require or receive home-based care and support⁹.

A survey of older people living in the community in Ireland looked at some of the demographic characteristics of those who reported mistreatment and abuse. The highest level of mistreatment occurred in people who were divorced or separated, with people who were widowed reporting the second highest risk of mistreatment. The highest levels of mistreatment took place in intergenerational households or complex household structures where the older person shared the house with an adult child and their family or other relatives. People on lower incomes, with lower socio-economic status reported higher levels of mistreatment. Those with lower than average levels of physical health were three times more likely to have been mistreated and those with lower than average levels of mental health, six times more likely¹⁰.

A study across 8 cities in India in 2010 found that 35 per cent of older people interviewed felt neglected. 36 per cent had experienced some type of abuse with figures as high as 79 per cent in Bhopal. Sons and daughters-in-law were the most common perpetrators and 92 per cent of the older people did not register any complaint against the abuser due to the belief that no action would be taken, a sense of shame and fear of further abuse¹¹.

In Mozambique a study found that the most common cases of abuse are physical violence, witchcraft accusations, robbery and land issues. Generally, older women are the most affected with 64 per cent of the cases. Of 150 older headed households interviewed in 2009 in Maputo, 25 per cent reported that they had been abused in one way or the other with some of the households suffering more than one abuse¹².

In a survey of older people in Zambia, 48 per cent said they had been abused three to four times. 19 per cent of those interviewed mentioned physical injury. 79 per cent surveyed mentioned emotional distress and 14 per cent mentioned loss of assets¹³.

In Kyrgyzstan focus group discussions revealed that elder abuse is very prevalent: just over 40 per cent of the focus group participants over 60 had experienced violence at

⁴ Pillemer K, Finkelhor D, "The prevalence of elder abuse: a random sample survey", *Gerontologist* 1988, 28: 51-57.

⁵ Podnieks E, "National survey on abuse of the elderly in Canada", The Ryerson Study. Ryerson Polytechnical Institute. Toronto, 1990.

⁶ Ogg J, Bennett G, "Elder abuse in Britain", *British Medical Journal*, 1992, 305: 998-999.

⁷ Comijs HC et al., "Elder abuse in the community: prevalence and consequences", *Journal of American Geriatrics Society*. 1998, 46: 885-888.

⁸ O' Keeffe et al., *UK Study of Abuse and Neglect of Older People Prevalence Survey Report*, Comic Relief and the Department of Health, June 2007

⁹ <http://www.equalityhumanrights.com/legal-and-policy/inquiries-and-assessments/inquiry-into-home-care-of-older-people/> Visited 07 March 2011

¹⁰ UCD Dublin et al, *Abuse and Neglect of Older People in Ireland, Report on the National Study of Elder Abuse and Neglect, Report Summary*, 2010

¹¹ HelpAge India, *Report on Elder Abuse in India*, 2010

¹² Machafa, S, Collection of evidence of abuse against older people – Methods used by HelpAge International – Mozambique, 2010, unpublished

¹³ HelpAge International Africa Regional Development Centre, *The situation of older people in Zambia: Older people struggling to survive in a poor country*, 2006

home and 100 per cent knew of a close older friend or relative experiencing violence at home¹⁴.

In Tanzania, a survey of 100 older women and men in 2010 found that 13 per cent had experienced some form of abuse during their old age. The most commonly cited form of abuse was emotional abuse. Men were more likely to experience this than women. The only other category of abuse experienced by men was physical violence. All other forms of abuse were solely experienced by older women including 3 per cent experiencing sexual violence, 3 per cent experiencing their house or land being taken away from them by someone they know and 2 per cent experiencing witchcraft accusations¹⁵.

1.2 Abuse and violence in care settings: Abuse of older people is not confined to the home. In a survey in the USA, for example, 36 per cent of nursing-home staff reported having witnessed at least one incident of physical abuse of an elderly patient in the previous year, 10 per cent admitted having committed at least one act of physical abuse themselves, and 40 per cent said that they had psychologically abused patients¹⁶.

The WHO reports that abuse is more likely to occur in institutions where care standards are low, staff are poorly trained or overworked, interactions between staff and residents are difficult, the physical environment is deficient, and where policies operate in the interests of the institution rather than of the residents¹⁷.

1.3 Abuse and violence under guardianship: As people age, some become incapable of managing their personal and financial affairs. Under these circumstances courts can appoint guardians, usually family members or professionals, to protect their personal and financial welfare. "Incapacitated" older people under guardianship are particularly vulnerable to abuse.

For example, the US Government Accountability Office identified hundreds of allegations of physical and financial exploitation by guardians in the District of Columbia between 1990 and 2010. In 20 selected closed cases guardians stole or improperly obtained US\$5.4 million in assets from 158 victims, many of whom were older people. This was often accompanied by physical neglect and abuse. The GAO found that courts failed to adequately screen guardians and appointed individuals with criminal convictions or financial problems to manage high-dollar estates¹⁸. As older people live longer and the numbers living with Alzheimer's and other forms of dementia increases, the numbers living under guardianship and vulnerable to abuse will increase.

1.4 Violence against women: Data on violence against women is generally only collected for ages 18-49: as a result older women remain invisible and excluded from interventions to prevent and provide redress for domestic and intimate partner violence. In Central Asia, however, older women report very high levels of shame in being subjected to violence by their children and daughters-in-law - typically characterised by physical and financial abuse. Focus groups conducted by HelpAge International in Tajikistan and Kyrgyzstan during 2009 reveal painful and private patterns of abuse experienced¹⁹.

1.5 Harmful traditional practices: Violence and abuse against older people occurs as a result of harmful traditional beliefs. Where belief in witchcraft is strong, older women are often targeted with witchcraft accusations and related violence. In Tanzania, for example, police reports from 8 regions between 2004 - February 2009 show that 2,585 older

¹⁴ HelpAge International EIDHR Grant Application Form, *The right to life without violence in old age. Kyrgyzstan*, 2010, unpublished

¹⁵ HelpAge International, Gender analysis of the Tanzanian older people's Rights Survey, 2010, unpublished

¹⁶ WHO Factsheet on elder abuse, 2002

¹⁷ WHO Factsheet on elder abuse, 2002

¹⁸ US States Government Accountability Office, *Cases of financial exploitation, neglect and abuse of seniors*, September 2010, <http://www.gao.gov/Products/GAO-10-1046> Visited 9 March 2011

¹⁹ Focus group discussions conducted by HelpAge International, 2009, unpublished

women were killed as a result of witchcraft accusations. In Mwanza region alone, 698 older women were killed during that period, which is two killings every two-three days²⁰.

I was threatened several times and I used to receive letters accusing me of being a witch. The letters said: 'You take your last meal today. You won't survive the night. You will be killed because you are a witch. Shiduki, 71, Tanzania

In Kenya it was reported in the media that an average of six people were lynched every month in 2009 in Kisii district alone for allegedly practising witchcraft²¹. An assessment by HelpAge Kenya and HelpAge International found that there was an upsurge in the number of killings of older people accused of witchcraft. They estimated that 42 older people were killed in three districts in 2008 and 23 older people were in three provinces in the first half of 2009.²²

In 2006 in Burkina Faso 90 per cent of residents of 11 refuges had suffered rejection and banishment from their community as a result of witchcraft accusations. The majority of the victims were women (90 per cent), illiterate (97 per cent) belonging to the Mossi tribe (82 per cent) and over 50 years of age (75 per cent). In addition, 70 per cent were married in polygamous homes as first wives²³.

2. Rights of older people in care

Advancing age and the dependency that often accompanies it cannot be grounds for restrictions on human rights, except in exceptional circumstances and then only when proportionate, reviewable, in the best interests of the party concerned and based on transparent legal proceedings.

Debate around older people's care commonly focuses on the cost of long term care but pays insufficient attention to the protection of rights within care settings. In order to recognise and affirm the rights of the most vulnerable older people, a charter of rights and responsibilities of older people in long term care and assistance was recently published by a group of European organisations working on elder abuse²⁴. This highlights the rights to dignity and well-being, self-determination, privacy, high quality care, information and informed consent, participation, freedom of expression and opinion, to palliative care and dignity in dying, and to redress within the context of care.

The right to freedom from torture, inhuman and degrading treatment is also being raised in relation to care settings²⁵. Situations in hospitals or residential care that may involve inhuman or degrading treatment include leaving people in their own faeces or urine for several hours; the use of excessive force and restraint, such as tying someone to a chair to stop them moving or keeping them sedated under medication because of a lack of staff; washing or dressing without regard to dignity; and failure to help with eating when someone is too frail to feed themselves²⁶.

Autonomy and the right to participate in decision making can also be threatened. For example a study of the experiences of older people living in residential and nursing homes in the UK found that older people's voices were practically absent from discussions about their requirements, preferences and priorities and other people were in

²⁰ Data from police reports, February 2009, extracted from the media by the Legal Human Right Centre, Tanzania

²¹ "Groups join war against lynch mobs", *Daily Nation*, Tuesday May 5 2009, page 14

²² HelpAge Kenya and HelpAge International submission to the Kenyan Human Rights Commission, June 26 2009

²³ HelpAge International & the Ministry of Social Action and National Solidarity, *Etude Exclusion Sociale des Personnes Agees au Burkina Faso*, 2006

²⁴ European Charter of the rights and responsibilities of older people in need of long term care and assistance, Daphne, June 2010

²⁵ J Morris, Human rights and healthcare: changing the culture, *Age and Ageing*, July 2010;

²⁶ The British Institute for Human Rights, *Your Human Rights, A guide for older people*, 2006

control of decisions. It found that such third party decision making was not considered acceptable among other groups where there were far more support options available²⁷.

As care services are increasingly contracted out to non-state providers, the responsibilities and accountability of non-state actors and the obligations of states to ensure they do not violate older people's rights needs to be addressed. The Scottish Human Rights Commission has recently published training and awareness raising resources on how to protect older people's rights in care²⁸.

Social care is not always provided in institutional settings and in many cases, older people require home based care which is either provided by family members, private sector agencies or state services, with a mix of public and private funding. There are significant risks to the human rights of those requiring or receiving home based care, but the responsibilities to protect human rights of those providing, commissioning, funding or regulating care and support are often far from clear.

3. Rights of older carers

Older people, particularly older women, are taking on more and more care responsibilities whilst facing inflexible working conditions, default retirement ages that prevent them working altogether, or inadequate pensions and other social security benefits which leave them and those in their care vulnerable to poverty and its related risks.

In countries affected by HIV and AIDS older women often take on most responsibility for caring for grandchildren whose parents have migrated to work or for people living with HIV and AIDS and young children affected by HIV. Older people caring for those affected by HIV and AIDS can face discrimination themselves and often this care is given with little or no support from family or the state. HelpAge found that 88 per cent of older people caring for grandchildren in a recent study in Tanzania were widows. In a similar study in Ethiopia two thirds were widows²⁹.

I was discriminated against when people found out that my eldest son had died of AIDS. People did not want me to join them. I had no social life. Chanfong, 73, Thailand

The combined effects of migration and economic transition have undermined traditional social and family structures where older people find themselves in the role of carers of grandchildren left in their care by migrant parents. HelpAge research in Moldova indicated that 91 per cent of grandparents take full care of the grandchildren when both parents migrate and 36 per cent in cases of one parent is absent³⁰. However, support in the form of remittances from overseas is not consistent and older people mostly rely on their pensions as a means of existence and support for themselves and those in their care.

4. Rights of people with dementia

The rights of people with dementia is another area that requires increased attention³¹. The numbers of people worldwide with dementia is set to increase dramatically over the next 40 years from 35 million in 2010 to an estimated 115 million people by 2050, which is an increase of over 200 per cent. During this period the majority of people with dementia will increasingly be found living within middle income and low income countries

²⁷ Joseph Rowntree Foundation, *Finding out what determines 'a good life' for older people in care homes*, November 2009

²⁸ Scottish Human Rights Commission, *Human Rights and the care of Older People Information Pack*, 2011

²⁹ Susan Erb, *One Size does not fit all*, July 2010, unpublished

³⁰ HelpAge Research Report 2010 "Impact of migration on older people and children from multigenerational households" conducted by CBS AXA

³¹ Charter of Rights for People with Dementia and their Carers in Scotland,

with as many as 70 per cent of dementia sufferers living within less developed regions by 2050³².

Dementia is rarely included in the health policies of less developed regions. In other regions, awareness may be high but understanding is still poor. In the UK, for example, national health and social care systems have not developed to reflect the fact that people with dementia are now a key group using many services. As a result only a third receive a specialist diagnosis, few receive information about their condition or available support after diagnosis, care costs are high, care providers struggle to deliver quality of life in the later stages of dementia, health and social staff routinely report not receiving appropriate training and spending on dementia is low compared to other disease groups³³.

Rights issues pertinent to people living with dementia include those outlined above in relation to care but also include the right to freedom and liberty which may be breached through informal detention in hospital of people who lack the capacity to consent to admission or in delays in discharging people detained under mental health legislation. The right to a fair trial is also pertinent in ensuring independent and impartial tribunals or hearings when individual's rights are decided upon³⁴.

5. Right to health

In a survey across 32 countries, 63 per cent of older people said they found it difficult to access healthcare when they needed it³⁵.

Older people continue to be overlooked and deprioritised in health policies, programmes and resource allocation. Currently the discourse on health care in low and middle income countries remains strongly focussed on maternal and child health, as reflected in the Millennium Development Goals. The priority given to these goals means that health issues across the life course, including those of older age, are absent from debate.

There is also limited attention to non-communicable diseases (NCDs). For example, despite the fact that ageing is a key driver of NCDs and the major incidence of NCDs occurs in older age, key issues related to ageing in this area (eg dementia, osteoporosis and osteo-muscular problems, long term care and falls) are completely absent from the agenda for the forthcoming 2011 UN Summit on NCDs. This only serves to maintain the exclusion and invisibility of older people and ageing from health policies, and thereby contribute to the denial of their right to appropriate health care.

They said they don't do bone scans for the over 80s, because they have nothing to compare it to. Well they never will if they don't start, will they? Dorothy, 88, UK

A number of low and middle income countries have policies of user fee exemptions, health insurance schemes or subsidies for older people in order to facilitate their access to healthcare services. These policies are critical for fulfilling older people's right to health. However, despite the existence of such policies, the cost of accessing healthcare still remains prohibitive for many of the poorest, most marginalised older women and men. Transport costs, requests for "informal fees" and the cost of treatment are major barriers.

The doctors didn't care because I was old and poor. They wanted money. They kicked me out. I returned home. Anwarra, 75, Bangladesh

³² Sources: Alzheimers Disease International. World Alzheimer's Report. 2009. Downloaded on 25th May 2010 from <http://www.alz.co.uk/research/files/WorldAlzheimerReport.pdf> (see pg 38 of report)

³³ Dementia Action Alliance, *National Dementia Declaration for England*, 2011

³⁴ Alzheimer Scotland, *Examples of human rights in health and social care*, <http://www.dementiarights.org/examples-of-human-rights-in-health-and-social-care/> Visited 28 February 2011

³⁵ HelpAge International, *Insights on Ageing: a survey report*, 2010

In Mozambique, for example, older people are exempted by law from paying for medication at health centres. Despite this, project research from 2008 showed that 86 per cent of older people in 15 communities in Gaza province had to pay a consultation fee and 85 per cent had to pay for their medication when they visited a health centre. Volunteers and nurses at these health centres knew that older people were entitled to free health care but said they could do nothing about this without procedural guidelines from the Ministry of Health³⁶.

Lack of official identification documents is also a major barrier. For example, older people in Tanzania often do not benefit from the Community Health Fund (CHF), a government health matching fund designed to provide increased quality health services. This is partly because they are unable to contribute to the CHF but also because they are not aware of their entitlements. In addition, the process of accessing such protection is complicated by a means testing process which requires birth certificates and related evidence for older people, the majority of whom have never obtained these documents³⁷.

The age range covered by schemes can be too limited. Ghana, for example, exempts older people from payments into the co-funded health insurance scheme. However, it only covers those over the age of 70, which means that a significant number of the older people are excluded³⁸.

Lack of medical staff trained in age related illnesses and basic gerontology is a common barrier to appropriate healthcare for older people. In Kyrgyzstan, lack of specialists is one of the problems diabetes patients and doctors face in dealing with this issue³⁹. Similarly a study of five Asian countries revealed that there was no geriatric expertise available in either rural or tsunami-affected locations in India or in Cambodia and Vietnam⁴⁰.

Ageism and age discrimination occur at all levels: from household decision making about scarce resources to ageist attitudes of health professionals towards older people.

Older women and men frequently report that they are refused treatment or treated with disrespect on account of their age. A study in Tanzania revealed that 40 per cent of older people said the tone of language used by medical staff was mocking⁴¹. In Zambia older people reported that some health staff were unwelcoming and disrespectful, shouting and throwing medicines at older patients. They also reported that they were told by health staff that they had lived their time and should not use up the medicine that the young can use⁴².

In Kyrgyzstan older people say that ambulance services ask for the patient's age and routinely discriminate against people over 50, not sending an ambulance for anyone who they think is too old: "We have to tell a lie when calling an ambulance" said a member of an older people's group in Bishkek⁴³.

Women live longer than men but also generally live more years in ill health from the age of 60 onwards than men⁴⁴. Health care is too expensive for many poor older women to access. Sexual and reproductive rights of post-menopausal women are rarely considered

³⁶ HelpAge International, *Interim Narrative Report (Year 1)*, ONG –PVD/2007/134-482, 2009, unpublished

³⁷ HelpAge International, Access to Health Rights and Entitlements funding proposal submitted to Cordaid, unpublished, 2008

³⁸ HelpAge International, *Forgotten workforce: Older people and their right to decent work*, 2010, page 29

³⁹ Diabetes Association of Kyrgyzstan, *Research on access and quality of services for diabetes patients*, Bishkek, 2008

⁴⁰ Asia-Pacific HelpAge International Network, *Primary Healthcare for Older People – A Participatory Study in 5 Asian Countries* (Cambodia, India, Indonesia, Singapore, Vietnam), 2007

⁴¹ HelpAge International, *Findings from the three year Older Citizen's Monitoring Project, set up to monitor older people's access to health services*, 13th May 2005

⁴² HelpAge International Africa Regional Development Centre, *The situation of older people in Zambia: Older people struggling to survive in a poor country*, 2006

⁴³ HelpAge International, *Programme framework for older people and non-communicable diseases (NCDs)*, Workshop Report, June 2009

⁴⁴ WHO. Estimated healthy life expectancy (HALE) at birth and age 60, by sex, WHO Member States, 2002. Source: Annex Table 4, World Health Report 2004.

<http://www.who.int/healthinfo/statistics/gbdwhr2004hale.xls>. (6 August 2010)

in reproductive health programmes. According to one doctor working in rural health centres in Nowsherea, Pakistan, 80 per cent of the older women she sees need treatment for illnesses that are either directly or indirectly related to post-menopause: arthritis, osteoporosis, or uterus lapses and vaginal bleeding due to difficult and multiple childbirths⁴⁵.

6. Right to social security

Older people are particularly affected by chronic poverty⁴⁶. Without appropriate social protection and other measures to protect older people's rights, a lifetime of poverty is exacerbated in old age. Older people's poverty is a global issue and not confined to developing countries: on average 13.3 per cent of people over 65 in OECD countries are poor compared with 10.6 per cent of the general population⁴⁷.

Older people's vulnerability to income poverty is closely linked to the denial of their right to social security. It is estimated that less than 20 per cent of older people are covered by pensions which suggests that as many as 607 million people aged 60 and above lack income security⁴⁸. Women are far less likely than men to have been able to contribute to formal pension schemes due to working in the informal sector, receiving lower pay for equal work or working in unpaid care work. In Burkina Faso, for example, only 1.7 per cent of women compared to 4.8 per cent of men were entitled to a contributory pension in 2009⁴⁹.

For many who do receive a pension, contributory or non-contributory, the level is so low that it does not enable them to enjoy an adequate standard of living and other rights that often require an income, such as access to healthcare and the rights to housing, food, water and sanitation. In India, Moldova and Thailand, for example, non-contributory pensions represent just 5 per cent of average earnings⁵⁰. In Tajikistan the average pension in February 2010 was only 91 somoni, which was approximately 90 per cent of the extreme poverty line. In February 2010 a sack of flour, which is not enough for a family for one month, costs 120-130 somoni (US\$27 - 29) at the local market⁵¹.

We are afraid of winter because everything is expensive here. It is hard to survive. We can use the electricity for only 4-5 hours a day. Our pension is quite low. Life is getting harder every year. We eat mainly potatoes grown in the yard, and bread with jam. We really hope everything will be OK. Asker, 66, Kyrgyzstan

Without adequate income, older women and men are unable to afford basic necessities. A survey in 2010 of 1,265 older people across 32 countries found that 76 per cent of older people in rural areas and 67 per cent in urban areas said their income cannot pay for basic services such as water, electricity, healthcare, enough food and decent housing⁵².

In regions affected by migration, increasing numbers of people are facing an old age without income security. For example, according to the Kyrgyzstan's State Committee for Migration and Employment, approximately 10 per cent of the population works overseas, often in Russia and Kazakhstan. Lack of bilateral agreements prevents the portability of social insurance such as the old age pension and health insurance, even if the individual has been a "regular" migrant and has contributed to the system in Russia or Kazakhstan. However, the ILO estimates that 80 per cent of migrants in Russia are "irregular",

⁴⁵ *Why is the world ignoring women's health?*, January 26 2011, <http://www.helpage.org/blogs/?bid=231>

⁴⁶ Chronic Poverty Research Centre, *The Chronic Poverty Report 2008-9*, page 6

⁴⁷ OECD Income Distribution Database, cited in *Current status of the social situation, well-being, participation in development and rights of older people*, draft, UNDESA and OHCHR, August 2010

⁴⁸ HelpAge International, *Social transfers: a critical strategy to meet the MDGs*, August 2010

⁴⁹ Government of Burkina Faso, *Sixth periodic report of States parties*, CEDAW/C/BFA/6, October 2009

⁵⁰ HelpAge International, *Social pensions database*, forthcoming

⁵¹ HelpAge International submission to UPR of Tajikistan, March 2010

⁵² HelpAge International, *Insights on Ageing: a survey report*, 2010

namely without protection or records, and so the vast majority will not have paid into any contributory social security schemes⁵³.

Internal migration in Kyrgyzstan can be up to 5 times that of external migration⁵⁴. As most migrants work in the informal sector, they do not contribute to any social security system. The current lack of any non-contributory old-age pension, coupled with an official unemployment rate of 11 per cent, means that the number of vulnerable people reaching retirement age with no access to social security in the Kyrgyz Republic is increasing rapidly. On the basis of these official statistics for unemployment, informal labour and migration figures, in the next 10-15 years up to 1 million Kyrgyz citizens could be without a complete official labour record, and will therefore be without any pension or health insurance⁵⁵.

7. Right to decent work

Age discrimination in employment directly impacts on older people's income poverty. Millions of older women and men are denied their right to decent work, a right which is now widely acknowledged as being essential for sustainable development and poverty eradication⁵⁶. 70 per cent of men and nearly 40 per cent of women over 60 in least developed countries continue to work⁵⁷ but many face significant challenges including insecure work, low wages, difficulty accessing capital and credit, unpaid and unrecognised work and exclusion from skills development programmes.

In Peru, for example, older people are frequently prevented from even applying for jobs, regardless of their skills and qualifications. In interviews in 2008, older people said that job advertisements in newspapers often specify that applicants must not be older than 35⁵⁸.

Because of my injury I can't work in construction any more and nobody else will employ me because they say I am too old to be of any use. Genaro, 74, market trader, Peru

In Bangladesh, older people often work in conditions that are far from decent, in jobs that are irregular, seasonal, poorly paid or unpaid altogether. Older women often face an additional layer of discrimination, being paid less than older men for doing the same type of work⁵⁹.

In the UK, despite policy makers putting a high priority on extending working life because of population ageing, little attention has been paid to creating the conditions to enable people to work beyond retirement age. A 2010 survey of older workers found that key barriers to working include lack of flexibility and choice and negative stereotypical attitudes (real or perceived) by employers to older workers⁶⁰. In other research, older workers, in particular older men, found it harder than any other age group to get back into work after being made redundant in the recent recession⁶¹.

⁵³ International Labour Organisation *Research on Labour Migration and Productive Utilization of Human Resources*, International Labour Organisation, Bishkek, 2008

⁵⁴ HelpAge International/American University of Central Asia, *Who cares? Impact of migration on older carers in Kyrgyzstan*

⁵⁵ HelpAge International, *Constant Crisis, Perceptions of Vulnerability and social protection in the Kyrgyz Republic*, HelpAge International, July 2009

⁵⁶ HelpAge International, *Forgotten workforce: older people and their right to decent work*, 2010, p. 4

⁵⁷ UNDESA, *Population Ageing and Development Chart*, UNDESA, 2009, <http://www.un.org/esa/population/publications/ageing/ageing2009.htm>

⁵⁸ HelpAge International, *Working for life: making decent work a reality for older people*, May 2009

⁵⁹ HelpAge International, *Working for life: making decent work a reality for older people*, May 2009

⁶⁰ Equality and Human Rights Commission, *Working Better: The over 50's, the new work generation*, January 2010

⁶¹ 50+ men face premature end to working lives, <http://www.ageconcern.org.uk/AgeConcern/50-men-work-end-021209.asp>, cited in Equality and Human Rights Commission, *Working Better: The over 50's, the new work generation*, January 2010

8. Rights to property and inheritance

Housing is a critical issue for older people and cuts across a number of rights. In many parts of the world inheritance laws, both statutory and customary, deny women of all ages the right to own or inherit property when their husband dies. Family members often force widows off their land or seize their property.

For example, in Tanzania, a complex system of laws govern inheritance rights. Different laws apply to people from different backgrounds. Under customary law a widow cannot inherit the house, assets or land; under Islamic law there is provision for minimal inheritance; under statutory law she can inherit 50 per cent. Disputes over property ownership and inheritance are often the underlying causes of witchcraft allegations and violence against older women.

Denial of inheritance and property rights is a major cause of disputes in Tanzania, particularly for older women. Older people brought 19,800 cases to paralegal advisers between 2004 and 2008 in 12 districts across Tanzania. Nearly half were cases on disputes over inheritance and land rights. 77 per cent of these were brought by older women⁶².

Older people can also be vulnerable to property and land grabbing unrelated to widowhood. In focus group discussions in 2010, older people in Bishkek, Kyrgyzstan, reported many examples of older people's houses being taken away by relatives or children. Many cases were when older people were evicted from their houses to public "older people's houses" (institutions) or were evicted to a smaller room⁶³.

I was so worried when my neighbour started building a house on my land. I tried to talk to him and ask him why he was disrupting my peace but he scolded me and said that I had no land to talk about. I did not want to even bother reporting my neighbour to officials because I knew I would lose the case since he is richer than me. Barnabas, 76, Uganda

9. Right to education

Data from UNESCO shows that literacy rates of people over 65 in 13 countries where HelpAge works are lower than those of the overall adult population. In some countries less than 25 per cent of the older population is literate, for example in Mozambique with an older population literacy rate of 19 per cent compared with 48 per cent of the total population. In many countries older women have even lower literacy rates, lower than that of older men: the literacy rate for women 65+ in Nepal is 4 per cent compared to men 65+ at 27 per cent, 5 per cent compared to 33 per cent in Mozambique and 7 per cent compared to 33 per cent in Bangladesh⁶⁴. This inability to read and write influences the enjoyment of other rights, and isolates and marginalizes vast numbers of older people.

Improving literacy rates can have an immediate impact on enjoyment of rights. In Cambodia, following six months of literacy classes (Feb-July 2010), 84 per cent of older people reported that they now had better access to healthcare, with 74 per cent stating that it helped them to acquire the correct healthcare ID card. 80 per cent also stated that they were now more able to read labels on medicine bottles⁶⁵.

⁶² HelpAge International, *Final evaluation report of the older women inheritance rights project*, May 2008, unpublished

⁶³ HelpAge International, Focus group discussion in Bishkek, 25 June 2010, unpublished

⁶⁴ For over 65 rates, UNESCO. UIS (Institute for statistics) Ageing Population (65+) Literacy Rates and Illiterate Population by Country and Territory and for total population, UNESCO. UIS. Build Your Own Table. Adult Literacy Rates (total, male and female). Downloaded from <http://stats.uis.unesco.org/unesco/TableViewer/tableView.aspx>

⁶⁵ Data collected by HelpAge International Sponsor A Grandparent programme. Unpublished, Sept 2010

10. Right to food

Older people face difficulties in accessing appropriate food for a number of reasons, including reduced mobility, poor access to land, declining capacity to farm and insufficient income. In the USA, for example, a 2008 study found that 1 in 9 older Americans, that is approximately 5 million people, were at risk of hunger⁶⁶.

In Addis Ababa nearly 90 per cent of homeless older people and 66 per cent of older people living at home do not have enough food⁶⁷. Coping strategies for lack of food among older people in field research in Ethiopia included skipping meals, sleeping to avoid feeling hungry and begging, which was the most common coping strategy for older people living alone, unable to work and lacking additional family support⁶⁸.

When I was working, I could care for my family. Nowadays, there are more times that we don't eat than when we do. Kasahun, 70, Ethiopia

Women are often the main providers of food in the household and this does not stop in old age. In fact, as older women take on additional caring roles, this is increasing. However, older women face particular food insecurity when they are widowed. Research in Bihar, India, found that for older female widows, who do not control access to agricultural land⁶⁹, who receive measurably lower daily rates for hired labour⁷⁰, and who are more limited in their ability to access both formal and informal loans to cover basic living costs, the loss of a spouse reduced their economic security and increased their inability to meet basic food needs⁷¹.

Rises in global food prices particularly affect poor older people. In households where food is short, older people are often given, or themselves take, a smaller portion to other family members. In Sri Lanka, when the price of milk powder almost tripled in February 2009, older people went without so that children in their care did not⁷². In Kyrgyzstan, food and fuel prices rose steeply after the violence in 2010. The cost of a food basket of 12 staples items rose to 2,381 som (US\$51) while the pension for most Kyrgyz pensioners was just 1,500 som (US\$32) or less⁷³.

Other factors affecting older people's right to food include inheritance laws and practices. As the need for farmland intensifies, older people, particularly older widows, can become the victims of land-grabbing by other family members. In addition, widows are legally often denied the right to inherit land.

11. Right to information

Information is often not available in a form that is appropriate or accessible to older people. This can severely limit older people's enjoyment of their rights and ability to access the services to which they are entitled.

In South Africa, for example, fewer older women and men received information about HIV and AIDS than younger age groups. In 2008, only 62 per cent of people over 50 had any information, compared with 90 per cent of 15-24 year-olds. As a result, older people know less about HIV and AIDS, making it harder for them to protect themselves or educate those in their care⁷⁴.

⁶⁶ The Causes, Consequences, and Future of Senior Hunger in America: Meals on Wheels Association of America Foundation: Washington DC, 2008, <http://www.mowaa.org/page.aspx?pid=654> Visited 07 March 2011

⁶⁷ HelpAge International, "Urban poverty in Ethiopia", *Ageing and Development*, issue 28, August 2010

⁶⁸ Erb, S, Food Insecurity: Notes from 2010 Livelihoods Research, Feb 2011, unpublished

⁶⁹ Only 25 per cent of female FGD respondents in the study observed that they owned agricultural land.

⁷⁰ Women were cited as earning 15-30 rupees per day for manual labour versus 25-50 rupees per day for men.

⁷¹ Cordaid & HelpAge International, *A study of older people's livelihoods in Ethiopia*, March 2011

⁷² HelpAge Sri Lanka, Annual report for Support a Grandparent programme, 2009 unpublished.

⁷³ Information bulletin of Social-Democratic Party of Kyrgyzstan (SDPK) "Kyrgyzstan-2010" dated September 15, 2010

⁷⁴ Human Sciences Research Council, *South African national HIV prevalence, incidence, behaviour and communication survey 2008*, 2009

A study in Ethiopia showed that 36 per cent of all older people surveyed do not know about the free government health service for poor people⁷⁵.

In Moldova, in a survey of 500 grandparents caring for grandchildren, fewer than one in ten had information about state provisions such as childcare services and free medical insurance⁷⁶.

12. Right to equality before the law

As outlined above, the number of older people living under guardianship is likely to rise. Guardianship is designed to protect at-risk individuals but it also removes some of their rights, making them less equal before the law, and, as illustrated above, puts them in a potentially abusive relationships. As such it must be viewed as a last resort after less restrictive alternatives have been exhausted or abused. Greater attention needs to be paid to understanding and protecting the rights of those under guardianship. Areas to consider include the need for strong procedural due process in appointment of guardians, a functional determination of capacity, use of the least restrictive alternative in determining whether a guardian is required and in shaping the guardianship order, effective court oversight and monitoring, minimum standards of practice for guardians and adequate staffing and funding for public guardianship programmes⁷⁷.

Lack of identification papers to prove who they are and ensure their equality before the law also prevents older people from realising all their rights equally: civil, political, economic, social and cultural. Getting the right papers can be bureaucratic and expensive.

Re-applying for these documents was very difficult, because I was born in Gagauz [now an autonomous part of Moldova]. So to get these papers back I have to go to many state bodies. Valentina, 60, Moldova

A 2005 survey of nearly 4,000 older people in eight communities in Mozambique found that 42 per cent had no identification cards, which they needed to claim free healthcare⁷⁸. Older women were twice as likely as older men to lack identification cards. In Bolivia, census data revealed that one in six older people had no valid documents to prove their right to claim the non contributory pension. As in Mozambique, more older women than older men lacked documents⁷⁹.

13. Right to access to justice

Older men and women face a number of barriers in accessing justice. Poverty, illiteracy, lack of information on where to seek impartial advice and guidance on their rights, and speaking indigenous languages can all prevent older people accessing justice.

In a survey carried out in three districts in Tanzania (Kwimba, Kahama and Shinyanga Rural), only 8 per cent of older women and 39 per cent of older men were aware of their rights under the law⁸⁰. For those who do get to court, procedures can be difficult to follow.

⁷⁵ HelpAge International, "The living condition and vulnerability of poor urban older people in Addis Ababa: assessment report 2010", *Ageing and Development*, August 2010,

⁷⁶ HelpAge International, *Grandparents and grandchildren: impact of migration in Moldova, HAI/UNICEF project: findings and recommendations*, February 2008

⁷⁷ American Bar Association, Commission on Law and Ageing, Standing Committee on Legal and Indigent Defendants Commission on Mental and Physical Disability Law Section on Real Property, Trust and Estate Law Recommendation, Report to the House of Delegates, 2009

⁷⁸ HelpAge International, *Baseline report, community tracking and monitoring in Mozambique*, HelpAge International and International HIV/AIDS Alliance, 2006

⁷⁹ HelpAge International, *Bolivia: Características socioeconómicas de la población Adulta Mayor, Encuesta de hogares MECOVI, 2001*, HelpAge International and Bolivian National Institute of Statistics, La Paz, 2002

⁸⁰ HelpAge International, *Protecting the rights of older people in Africa*, 2008

My case went to the high court but I had no idea what they were saying because they spoke in English. In the end my case was closed and I came away empty handed.
Francis, older man, Kenya

In Bolivia, Legal Advice Centres (Centros de Orientacion Socio Legal) were set up to provide free advice on older people's rights, help them to access legal entitlements and benefits, such as pensions, and offer support to older people who have been abused. An analysis of the cases show that illiterate indigenous rural older people, especially older women, find it particularly hard to access justice: 59 per cent of cases were from people who come from rural areas and 24 per cent of clients had an indigenous language as their mother tongue, 66 per cent of whom were women⁸¹.

14. Rights of older detainees

With ageing prison populations the rights of older detainees is an area that requires increased attention.

In the UK people aged over 60 are the fastest growing age group in prisons. This has led to a developing awareness among prison staff and prisoners of the difficulties faced by older people and a greater understanding that the current response is often inadequate, and prisons ill-equipped, to meet their needs. Older prisoners face isolation and discrimination because their specialist health, social and resettlement needs are not being met⁸².

15. Right to vote

Although older populations typically turn out in greater numbers to vote than other age groups, legal restrictions and practical barriers can deny older people their fundamental right to vote. Under some jurisdictions, for example, the USA federal election law, people categorized as having mental or cognitive impairments are excluded from voting. Definitions of incapacity can be too rigid and fail to take into account specific functional abilities such as deciding who to vote for. The growing numbers of older people, including those living with Alzheimer's and other age-related dementia's demands that consideration be paid to the fact that people with the fundamental right to vote and with the threshold ability to vote are being unjustifiably disenfranchised. In addition, the protection of vulnerable older people, for example those in care settings or using absentee balloting, from fraudulent exercise of their franchise must be guaranteed⁸³.

16. Rights in humanitarian responses

Older people's rights apply both in times of peace and conflict and in humanitarian responses. The fundamental principle of impartiality – that humanitarian assistance is provided according to need – requires that humanitarian actors undertake an analysis of all vulnerable groups in an affected population and provide levels of assistance in accordance to that analysis.

The number of older people in IDP and refugee camps can be very high. For example in Gulu District of Northern Uganda, 65 per cent of those remaining in camps in 2009 were over the age of 60⁸⁴.

After our last son was killed, we had to leave. Now we are here I cannot do anything. This is not our home. Now, we rely on help from community organisations. Sometimes the church priest shares some food with us...when there is food we eat. Carmen, in her 70's, Colombia

⁸¹ HelpAge International, *End of Second Year Report*, Continuous International Grants Programme, HelpAge International, December 2006, unpublished.

⁸² Prison Reform Trust, *Doing time: older people in prison*, <http://www.prisonreformtrust.org.uk/ProjectsResearch/Olderpeopleinprison> Visited 9 March 2011

⁸³ Sabatino & Hurme, "Who Has the Capacity to Vote?" *Vol 19, No. 1 2009/EXPERIENCE*, pages 23 - 29

⁸⁴ HelpAge International, *A study of humanitarian financing for older people*, November 2010

Despite such high numbers, older people are frequently left out of needs assessments and consequently their needs and capacities are not addressed in responses. In a review of 1,912 humanitarian projects for 12 humanitarian crises since 2007, only 18 (0.94 per cent) included activities that targeted older people. In financial terms this equated to just 0.2 per cent of total resources raised for these 12 crises⁸⁵. Similarly in the aftermath of the Asian tsunami, less than one per cent of funds provided by three major donors in India, Sri Lanka and Indonesia was explicitly directed at older people⁸⁶.

Discrimination in resource allocation is not the only issue. In emergencies, older people's rights, such as to food or health, are often unmet because they are not prioritized by humanitarian agencies. Research in 2009 in Buhimba Camp, a camp for internally displaced people in the Democratic Republic of Congo, revealed that older people do not have an equal right to health care in the camp compared to other age groups as they are considered to be no longer productive or active⁸⁷.

In Northern Uganda, older people unable to return to their villages of origin felt health staff in camps were often insensitive to their needs. They were told frequently by staff that they are wasting the doctor's time and that they are not sick, just old⁸⁸.

⁸⁵ HelpAge International, *A study of humanitarian financing for older people*, November 2010

⁸⁶ Wells J, *Protecting and assisting older people in emergencies*, ODI Network Paper 53, 2005

⁸⁷ HelpAge International Case study Buhimba Camp, April 2009, unpublished

⁸⁸ Erb, S , *The Protection of Older People in Northern Uganda: Needs, Contributions and Barriers to Return*, June 2008

What are the specific provisions on older people's rights in existing human rights law?

There are numerous obligations vis a vis older people which are implicit in general human rights law but explicit attention to older people is rare. Specific provisions, when they do occur, are confined to a limited range of rights and are not consistent across either international or regional instruments.

International Human Rights Framework	Article	Provision
Universal Declaration of Human Rights (1948)	25	The right of everyone to security in old age
Convention on the Elimination of All Forms of Discrimination Against Women (1979)	11.1.e	The equal right of women to social security, including in old age
International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (1990)	1.1 and 7	Prohibits discrimination based on age
Convention on the Rights of Persons with Disabilities (2008)	13.1	Recognises the need for age-appropriate accommodations to ensure disabled people's access to justice
	16.2	Age-sensitive measures to prevent abuse
	16.4	Age-sensitive recovery and rehabilitation
	23.1.b	Age-appropriate information on reproductive health
	25b	Provide services to minimise and prevent further disabilities among older people
	28.2.b	Ensure older people with disabilities' access to social protection and poverty reduction
Regional Human Rights Framework		
American Convention on Human Rights (1969)	4.5	Prohibits capital punishment for people under 18 or over 70 years of age
Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights "Protocol San Salvador" (1988)	9.1	The right to social security in old age
	17	Special protection (facilities, food and medical care for those that cannot provide for themselves, work programmes, establishing social organisations) in old age
African Charter on Human and Peoples' Rights (1981)	18.4	Provides older people with the right to special measures of protection in keeping with their physical or moral needs
Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (2003)	22b	Provides for special protection for older women (Article 22a) and their right to freedom from violence and abuse
Arab Charter on Human Rights (1997)	38	Provides for outstanding care and special protection for the aged.
Charter of Fundamental Rights of the European Union (2000)	21.1	Prohibits discrimination based on age
	25	Respects the rights of older people to lead a life of dignity and independence and to participate in social and cultural life
	34.1	Respects entitlement to social security in old age

General Comments and Recommendations

A number of treaty body general comments and recommendations have expanded on how standards within conventions apply to older people.

Treaty Body	General Comment or Recommendation	Provision
Human Rights Committee	No. 25, 1996	Recognises that age limits on standing for elective office would be unreasonable (paragraph 4)
Committee on Economic, Social and Cultural Rights	No. 6, 1995	Entire General Comment on the economic, social and cultural rights of older people.
	No. 7, 1997	Older people listed as a group vulnerable to forced evictions (10).
	No. 12, 1999	Lists discrimination based on age, inter alia, in access to food as a violation on the Covenant (18).
	No. 13, 1999	Emphasises fundamental education is a right of all age groups (24).
	No. 14, 2000	Reaffirms importance of an integrated approach to older people's health (25).
	No. 15, 2002	Lists older people, inter alia, as a group facing difficulties accessing water (16 h).
	No. 16, 2005	Recognises that women can experience discrimination based on the intersection of their sex with, inter alia, age (5).
	No. 18, 2006	Recognises the need to prevent discrimination on grounds of age in employment and occupation (16).
	No. 19, 2007	Addresses social security in old age.
	No. 20, 2009	Age is listed as a prohibited grounds for discrimination in certain contexts, in particular employment, access to training and unequal access to pensions (29).
	No. 21, 2009	States that States parties need to pay particular attention to the promotion and protection of the cultural rights of older people (16.b & 28), paying particular attention to principles 7 and 16 of UN Principles of Older Persons (29).
Committee on the Elimination of Discrimination Against Women	No. 24, 1999	Urges that special attention be paid to health needs of older women (6) and disabilities associated with ageing (24).
	No. 25, 2004	Recognises States parties may need to take special temporary measures to elimination multiple discrimination women suffer on the grounds of, inter alia, age (4.1).
	No. 27, 2010	Entire General Recommendation on the protection of older women's rights.
	No. 28, 2010	Recognises older women, inter alia, as particularly vulnerable to discrimination (31).
Committee Against Torture	No. 2, 2008	States parties should prohibit and redress torture in institutions that, inter alia, engage in care of older people (15).

How are older people's rights being addressed by the international human rights system?

When HelpAge International and its partners have submitted shadow reports to treaty bodies on older women's and men's rights in specific countries as part of the reporting process, we have found the response of committee members to be extremely positive and that they have taken our information into account in their review⁸⁹. We have also worked collaboratively with the CEDAW Committee on General Recommendation No 27 on older women's rights and with the Independent Expert on human rights and extreme poverty on her work on non-contributory pensions.

However, in order to look beyond this limited number of cases at the extent to which attention is being paid to older people's rights, in March 2011 HelpAge reviewed documents from treaty bodies and special procedures since 2000 that were available on the Universal Human Rights Index⁹⁰. We searched for references to *older* or *elderly people/women* and to *old age*.

We recognise that this is a limited review but its findings are indicative.

a. Treaty bodies

There has been inconsistent attention to older people's rights across the treaty bodies.

The Committee on Elimination of Discrimination Against Women has paid the most attention to the impact of ageing on the enjoyment of women's rights, referring to older women 295 times. The Committee on Economic, Social and Cultural Rights made 75 references. However The Committee Against Torture made only five, the Human Rights Committee only four, the Committee on the Elimination of Racial Discrimination two and none by the Committee on Migrant Workers, the Committee on Enforced Disappearances and the Committee on the Rights of the Child.

Despite the fact that the database may not be complete, what these numbers show is a highly inconsistent approach to ageing and its impact on older people's rights.

b. Impact of General Comments

Many of the General Comments list older people, or older women specifically, as just one of list of vulnerable groups and do not address the specific impact of ageing on the enjoyment of the particular right in question on older people.

Both the Committee on the Elimination of Discrimination Against Women and the Committee on Economic, Social and Cultural Rights have general comments on how their convention applies to older people. General Recommendation No. 27 on older women's rights was only adopted in October 2010 and so it is too early to assess its impact.

General Comment No. 6 on older people's economic, social and cultural rights was adopted in 1995 and references to older people have been made in 10 subsequent General Comments (see above).

Since 2000, the Committee on Economic, Social and Cultural Rights has reviewed 124 States parties' reports⁹¹ but according to the review of documents available for that period have only made 75 references to older people's rights, the majority being on social security (22), an adequate standard of living (19), and health (15). Other issues

⁸⁹ Since 2007, submissions on older women and men's rights have been made to CEDAW on Mozambique, Tanzania, Bolivia, Uganda and Burkina Faso, to CESCR on Moldova. We have also submitted information to the Universal Periodic Review system but with less success on Bolivia, Burkina Faso and Kenya. We have submissions in for the forthcoming UPR reviews of Moldova, Tajikistan, Uganda and Tanzania.

⁹⁰ www.universalhumanrightsindex.org Visited 2 March 2011. We searched for all references to *elderly*, *old age*, and *older*.

⁹¹ <http://www2.ohchr.org/english/bodies/cescr/sessions.htm> Visited 07 March 2011

covered in general comments such as age discrimination in access to food are barely recognised with only 2 references or to adequate housing with only 1 mention.

c. Special Procedures

This inconsistent attention is also reflected in the inclusion of older people in the available documents of the special procedures of the Human Rights Council⁹².

Special procedure's mandate	Number of references
Internally displaced people	22
Extrajudicial, summary and arbitrary executions	8
Violence against women	7
Adequate housing	6
Racial discrimination	4
Democratic People's Republic of Korea	4
Indigenous people	3
Sudan	3
Torture & other cruel, inhuman and degrading treatment	2
Myanmar	2
Human rights and extreme poverty	2

There are notable exceptions such as the work on social security in old age by the Independent Expert on the question of human rights and extreme poverty. In addition we look forward to the forthcoming report on older people's right to health by the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.

d. Range of rights addressed

Our review showed that older people's economic and social rights are much more likely to be addressed than their civil and political rights. Of the total of 444 references, only 39 (or 9 per cent) referred to civil and political rights.

Not all economic and social rights were dealt with consistently, with some getting far more attention than others. Rights such as an adequate standard of living, health and social security received considerably more attention than rights to housing and food.

Economic and social rights	No. of references
Adequate standard of living	63
Health	60
Social security	40
Education	29
Work	26
Housing	8
Food	3

⁹² "Special procedures" is the general name given to the mechanisms established by the Human Rights Council to address either specific country situations or thematic issues in all parts of the world.

e. Attention to equality and discrimination

There were 14 references (3 per cent of the total) related to equality and discrimination.

f. Attention to multiple discrimination

Apart from the work by the Committee on the Elimination of Discrimination Against Women on discrimination based on gender and age, there were only 5 references by other mechanisms to discrimination against older women. There were two references to racial discrimination in old age.

g. Quality of attention

44 per cent of the references were to older women or older people as part of a longer list of vulnerable groups. Whilst greater recognition of older women and men's vulnerability to specific rights violations is welcomed, adding them to a longer list of vulnerable groups is limited in terms of extending understanding of the underlying causes of the violations they experience and action needed to address these.

h. Potential impact: recommendations for action

Of the total number of references, only 40 per cent were specific recommendations for government action, the others being concerns raised, issues noted or requests for information. Failure to provide specific recommendations reduces the likelihood of follow up action by the State party or member state concerned.

What are the gaps in protection?

a. Failure to capture discriminatory attitudes and practices under general human rights provisions

As outlined in Section B, older women and men face particular discriminatory attitudes and practices in their day to day lives. It is evident, however, from the review in Section D that these particular discriminatory practices and attitudes are not being adequately addressed or protected in the monitoring of the general human rights provisions.

What limited attention there is, is inconsistent, focused on a narrow range of economic and social rights and fails to take into account the impact of ageing on the enjoyment of all rights.

There is very little attention to the rights of older people with diminished capacity, including issues around legal capacity and guardianship. This is a growing issue with the rise of people living with dementia. The unique phenomenon of elder abuse is barely recognised, nor is gender and age-based violence against older women.

Despite the Committee against Torture's General Comment No. 2, 2008, paragraph 15 which specifically clarifies that State parties should prohibit, prevent and redress torture and ill-treatment including, inter alia, in institutions that engage in care for the elderly, we see very little attention to the abuse and ill-treatment that takes place in care settings. Limiting this to institutions is also inadequate since the majority of older people are cared for in their own or other people's homes. As the human rights community has begun to better address obligations to prevent and provide redress for domestic violence perpetrated in the private sphere, so too must greater attention be paid to abuse of older people at homes and in private care settings.

Linked to long term care are the issues of freedom of movement, and the rights to housing, privacy, a private and family life. These have yet to be addressed in this context by human rights mechanisms.

Other issues that are not being addressed include issues around informed consent to medication and over-medication; access to appropriate healthcare related to non-communicable diseases; mandatory retirement ages; access to justice; conditions for older detainees; the right to social care and the right to die with dignity.

b. Prohibition of age discrimination

Only one international human rights convention (on migrant workers⁹³) explicitly recognises age as prohibited grounds for discrimination. Both the Human Rights Committee and the Committee on Economic, Social and Cultural Rights have held that age is a prohibited ground for discrimination in several contexts⁹⁴. However, this has not resulted in adequate protection against age discrimination in national legislation, or in the reporting and accountability mechanisms of the international human rights system.

c. Multiple discrimination

The discrimination that older people experience is often multi-dimensional, based on their age and other factors such as gender, poverty levels, literacy, where they live, ethnic origin, health status or sexual orientation. Existing mechanisms fail to provide protection against this multiple discrimination, with the exception of the increasing work by the Committee on the Elimination of Discrimination Against Women on age and gender-related discrimination.

⁹³ International Convention on the Protection of All Migrant Workers and Members of Their Families (1990)

⁹⁴ OHCHR, Human rights of older persons: International human rights principles and standards, Background paper, May 2010, page 6-7

Do existing international human rights mechanisms adequately protect older people's rights?

No. A review of the types of rights violations that older people experience and the extent to which these are presently being addressed shows that the existing international human rights mechanisms fail to adequately protect older people's rights.

a. Failure to prohibit age as a ground for discrimination

The failure to explicitly recognise age as a ground for discrimination and the reliance on the catch-all category of "and other status" has obscured the discriminatory experiences of older people because states and other actors have not been sufficiently alerted to their presence.

b. Dispersal of standards and lack of clarity

Standards protecting older people's rights are scattered throughout various international human rights conventions and are usually only explicitly articulated in interpretive or advisory documents. This has resulted in a lack of clarity and awareness about what older people's rights are by older people themselves as rights holders, by the communities in which they live and by the duty bearers with responsibility to protect those rights.

c. Inadequate attention by special procedures and by treaty bodies in reporting processes

Treaty bodies have failed to systematically address the rights of older people and the impact of ageing on the enjoyment of rights in States parties monitoring processes. What attention has been given has been sporadic, inconsistent and infrequent. Attention to older women and men in general comments has yet to result in systematic and consistent attention to their rights. Special procedures have also not adequately addressed the impact of ageing on their respective mandates.

d. Limited attention to a narrow range of rights

What attention there has been by treaty bodies and special procedures has tended to focus on a narrow range of rights, usually economic and social, most commonly an adequate standard of living, limited access to health care and social security.

e. Failure to consider the impact of ageing on enjoyment of civil and political rights

Very little consideration has been given to older people's civil and political rights. These rights include the right to life and freedom from violence and elder abuse; the prohibition of torture, inhuman and degrading treatment in care and other settings; abuses of the right to privacy, a private and family life; rights in the context of diminishing or fluctuating capacity; property and housing rights; the rights of people with dementia and the right to die with dignity.

f. Failure to fully examine the specific context of violations of older people's rights

What attention there has been has often been limited to listing older people as a vulnerable group or limited to noting concern rather than giving recommendations for government action. As such, in depth examination of the specific circumstances of violations of older people's rights and how to address this are still absent.

Measures to address these gaps

There is clearly much work that existing mechanisms can and need to do to better understand and take into account the impact that ageing, both of an individual and of populations as a whole, has on the enjoyment of the rights within their mandates.

However, given the particular vulnerability to discrimination and rights violations associated with ageing, the gaps in protection and the constraints outlined above, HelpAge believes that this alone will not be enough to provide the necessary protection of older people's rights, in both law and practice.

We believe that a single instrument, a new international convention on the rights of older people, is necessary to:

- Provide a definitive, universal position that age discrimination is morally and legally unacceptable.
- Provide legally binding protection with accompanying accountability mechanisms.
- Provide clarity for duty bearers and rights holders on what their rights and responsibilities are.
- Bring together existing rights standards that are currently dispersed throughout various other instruments and interpretive documents.
- Redress the present imbalanced focus on older people's economic and social rights by bringing all indivisible rights into one instrument.
- Put age discrimination and older people's rights more centrally onto governments', donors' and NGOs' agendas.
- Draw attention to, deepen understanding of and provide redress for the complex, multiple forms of discrimination that older women and men experience.
- Provide a framework to guide policy responses to demographic ageing based on rights, equity and social justice.
- Provide a powerful advocacy and education tool for older people and those that represent them for claiming their rights.
- Encourage a paradigm shift from older people being considered recipients of welfare to rights holders with responsibilities.

We also support the establishment of a new special rapporteur to give visibility to the rights of older people by examining and reporting on the nature and extent of violations and making recommendations on how to better protect them. She or he would also be able to encourage existing special procedures to better address older people's rights within their own specific mandates.

For further information, contact:

Bridget Sleep

Senior Rights Policy Adviser

HelpAge International

207-221 Pentonville Road

London N1 9UZ

UK

Tel: +44 (20) 7148 7631

Fax: +44 (20) 7713 7993

Email: bsleep@helpage.org

www.helpage.org