

## Mandate of the Independent Expert on the enjoyment of all human rights by older persons

### Response to the questionnaire issued by the co-facilitators of the intergovernmental process to consider the existing international framework of the human rights of older persons and identify possible gaps in the protection of the human rights of older persons and how best to address them

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#### About this submission

The Independent Expert on the enjoyment of all human rights by older persons, Claudia Mahler (Austria), was appointed by the UN Human Rights Council as Independent Expert on the enjoyment of all human rights by older persons in May 2020.

The Independent Expert on the enjoyment of all human rights by older persons<sup>1</sup>, Ms. Claudia Mahler, welcomes the establishment of the co-facilitators of the intergovernmental process to consider the existing international framework of the human rights of older persons and identify possible gaps in the protection of the human rights of older persons and how best to address them. She thanks the co-facilitators for the opportunity to take into consideration her views and opinions regarding these important issues, as well as those of Member States, UN entities, civil society organizations, national human rights institutions, academia and older persons.

The Independent Expert would like to share some elements of responses to the below questions.

#### Identification of gaps

1. For each of the topics that have been considered by the Open-ended Working Group since its eighth session, please state possible gaps your Government/organization has identified in the normative framework and practical implementation for the protection of the human rights of older persons. (500 words each)

In most thematic reports and country reports, the current and former mandate holders have voiced their concerns at the lack of specific protection norms at the international level for the human rights of older persons. The findings and conclusions of the mandate have analysed and demonstrated the protection gaps in the current framework, which prevents older persons from fully enjoying their rights and freedoms.

##### **a) Equality and non-discrimination**

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<sup>1</sup> Hereafter “the Independent Expert”.

As examined in the thematic report on ageism and age discrimination (A/HRC/48/53), “[i]nternational human rights law lacks a clear and comprehensive prohibition of age discrimination, but the prohibition of age discrimination on the grounds of “other status” has been interpreted as applying to age.”

Among United Nations human rights conventions, only two treaties contain explicit references to age. The International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families refers to non-discrimination in Article 7, mentioning that States parties agreed to undertake to ensure the rights provided in the Convention without any distinctions, including age. The Convention on the Rights of Persons with Disabilities mentions in Article 8, related to awareness raising, that States parties agreed to undertake the adoption of measures to combat stereotypes, prejudices and harmful practices relating to persons with disabilities, including those based on age.

The lack of a clear prohibition of age discrimination may in part explain why, in international law or national law, differential treatment based on age can be considered as permissible discrimination. This is in stark contrast to existing treaties that obligate States parties to take steps to eliminate racism, sexism and ableism. The term “ageism” itself is rarely used by United Nations human rights treaty bodies, although there have been references to stereotypes based on age, or on age in combination with characteristics, such as sex.<sup>2</sup>

In its General Comment No.6, the Committee on Economic, Social and Cultural Rights concluded that age is a prohibited ground of discrimination under the International Covenant on Economic, Social and Cultural Rights in several contexts. The Independent Expert thinks that this provides that protection against differential treatment based on age can be permissible in international law, unless such treatment is shown to be “objective or reasonable”. The concern is that many existing justifications for differential age-based treatment themselves represent ageist or stereotyped attitudes and assumptions that are accepted as “reasonable” in the community because of widespread ageism.

The International Covenant on Economic, Social and Cultural Rights does not explicitly prohibit discrimination on the basis of age and in practice this appears to set a higher threshold for demonstrating that different treatment based on age is inconsistent with the guarantees of equality and non-discrimination in the Covenant than it is the case for explicitly named prohibited grounds of discrimination.<sup>3</sup>

Despite their non-binding nature, a number of internationally endorsed policies on older persons provide guidance to States on protecting the rights of older persons within the context of the rights proclaimed in the international covenants on human rights and other United Nations human rights treaties. However, neither the Madrid International Plan of Action on Ageing (2002) nor the earlier Vienna International Plan of Action on Ageing address age discrimination generally. The Madrid Plan of Action only refers to age discrimination in the context of work-related discrimination.<sup>4</sup>

Due to the inexistence of a legal prohibition of age-based discrimination in international human rights law, many States have laws, regulations, customs and practices that promote and constitute age discrimination. Among others, such laws refer to mandatory retirement ages and age-discriminatory laws and policies that deny older persons access to education, training, health or other services that are exceptions to the rule of age equality and are based on ageist assumptions.<sup>5</sup>

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<sup>2</sup> A/HRC/48/53, para. 40

<sup>3</sup> A/HRC/48/53, para. 42

<sup>4</sup> A/HRC/48/53, para. 45

<sup>5</sup> A/HRC/48/53, paras. 39-42

## **b) Violence, neglect and abuse**

In the thematic report on violence against, abuse and neglect of older persons (A/HRC/54/26), the Independent Expert concluded that violence against older persons remains overlooked and is not a priority at the national, regional or global levels.<sup>6</sup>

International human rights law provides, to some extent, protection from violence against and abuse and neglect of older persons through existing legal instruments. In the Universal Declaration of Human Rights, it is emphasized that everyone has the right to life, liberty and security of person (art. 3) and that no one is to be subjected to torture or degrading treatment (art. 5). The prevention of torture is specifically addressed in the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (art. 2). The Convention on the Elimination of All Forms of Discrimination against Women is focused on eliminating all forms of discrimination (art. 2), including violence, against women. The Convention on the Rights of Persons with Disabilities provides explicit safeguards for persons with disabilities from ill-treatment (arts. 16 and 17). The non-legally binding United Nations Principles for Older Persons state that older persons should be able to live in dignity and security and be free of exploitation and physical or mental abuse (principle 17).

In the thematic report on violence against, abuse and neglect of older persons (A/HRC/54/26), the Independent Expert analyses that treaty bodies have also adopted general comments relevant to the specific situation of older persons, including regarding to violence and abuse.<sup>7</sup> However, it is important to note that there are no specific provisions addressing violence, abuse and neglect of older persons and the unique risks faced by older persons in vulnerable situations in the current human rights framework.

In addition, there is still no globally accepted definition of “elder abuse” or “abuse against older persons”, hindering the protection of older persons in the face of violence and abuse.

The current international human rights framework does not provide the protection necessary for older persons to live free from violence, abuse and neglect in diverse settings and does not consider the multiple grounds of unequal treatment. International human rights law includes the prohibition of discrimination on the grounds of “other status”, which includes age, in various treaties has been agreed upon. The lack of a prohibition of age discrimination could explain why, in international law or national law, differential treatment on the basis of age seems to be considered tolerable. This is in stark contrast to existing treaties that oblige States parties to take steps to eliminate racism, sexism and ableism.

The issues of ageism and age discrimination, which are at the roots of abuse of older persons, must also be addressed in order to ensure a life free from violence, abuse and neglect in old age.<sup>8</sup> A legally protective regime specifically addressing the rights of older persons in international law would help and guide States to effectively prevent all forms of violence in older age and protect the rights of older generations.<sup>9</sup>

## **c) Long-term care and palliative care**

The impact of the COVID-19 pandemic has been horrifying for millions of older persons, especially those in need of long-term care. The World Health Organization estimated that 85% of excess mortality

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<sup>6</sup> A/HRC/54/26, para. 8

<sup>7</sup> A/HRC/54/26, para. 22

<sup>8</sup> A/HRC/54/26, para. 15

<sup>9</sup> A/HRC/54/26, para. 88

during the pandemic were in low and middle-income countries, resulting in around 12.7 million deaths. 83% of these deaths have been among older persons. In the European region, evidence shows that more than 40% of COVID-19 related deaths have been linked to long-term care facilities, with figures being as high as 80% in some high-income countries. Cases of neglect and abuse in institutions and care facilities were also on the rise, as well as the overall increase in age discrimination and ageist attitudes, leading to trauma and stigma.

The COVID-19 pandemic demonstrated that the current legal provisions are not enough to ensure a dignified life of people of all ages.

Indeed, among others, the right to long-term care and support for older persons is not explicitly mentioned in the current existing human rights framework and while some provisions regarding the right to access long-term care and support for older persons may be found in international human rights law, the protection remains highly fragmented.

Access to palliative care is understood as part of the right to health, although not explicitly in the legal framework. Older persons are usually disproportionately impacted by chronic and incurable diseases, and it is essential that they have access with their families to the highest possible standard of health, including quality of life, to ensure an end of life in dignity and without unnecessary suffering. States should ensure the availability and accessibility of palliative care for all older persons in need, particularly those who suffer from a life-threatening or life-limiting illness. In certain countries, palliative care is not officially recognized as a medical speciality and the medicine used in such care is limited, for several reasons, including restrictive drug regulations, failure to implement a properly functioning supply and distribution system, and inadequate health-care system capacity.<sup>10</sup> The right to palliative care should be enshrined in the international legal framework so that older persons can enjoy the remaining years of their lives in dignity and without unnecessary suffering.

The quality of care is also linked to the working conditions and well-being of carers. To ensure that carers provide care that meets the emotional and physical needs of older people with compassion and dignity, and to attract and retain people in the care sector, better training opportunities, including academic qualifications, should be offered. This in turn will also help to portray care work as a profession with good career prospects.<sup>11</sup>

The Independent Expert reiterates the findings of the Update to the 2012 Analytical Outcome Study on the normative standards in international human rights law in relation to older persons by the Office of the High Commissioner for Human Rights in March 2021. As these rights have not been formulated from the perspective of older people's entitlements and needs, they do not provide a coherent framework for the realization of the multi-layered right to long-term care and support. To achieve this goal, a specifically formulated provision is required.<sup>12</sup>

#### **d) Autonomy and independence**

In many societies, older people do not have the opportunity to lead a self-determined life. They are no longer actively included in society, and there is a lack of age-friendly communities and environments and person-centred care models that would promote the autonomy and dignity of older people.

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<sup>10</sup> A/HRC/30/43, paras. 85-87

<sup>11</sup> A/HRC/30/43, para. 124

<sup>12</sup> Update to the 2012 Analytical Outcome Study on the normative standards in international human rights law in relation to older persons Working paper prepared by the Office of the High Commissioner for Human Rights March 2021

The Independent Expert considers the right to autonomy as well as to independence a priority area for older persons. Autonomy is a core principle of the Convention on the Rights of Persons with Disabilities. Even though ageing should not be associated or assimilated to disability, this legal framework could be applied to some extent, to older persons with disabilities and could provide guidance on the scope of the concept of autonomy.<sup>13</sup> The Convention indeed offers some relevant protections for older persons with disabilities, including respect for inherent dignity and individual autonomy, that include the freedom to make one's own choices. It also recognises and guarantees the independence of persons.<sup>14</sup>

The United Nations Principles for Older Persons refer to the principle of independence to describe the importance for older persons to have access to adequate food, water, shelter, clothing and health care, through the provision of income, family and community support and self-help. The former Independent Expert highlighted that the section on self-fulfilment in the Principles also call for older persons to have the opportunity to find remunerated work or have access to education and training to allow them to live independently.<sup>15</sup>

In the international human rights framework, the protection of the older persons' right to autonomy and independence is fragmented and inadequate. This approach is similar in the Madrid International Plan of Action on Ageing, which only emphasizes the access to basic needs, healthcare, and societal participation for older persons to ensure their autonomy. There is no legal provision specifically ensuring older persons of the respect of their preferences, will and best interests for all matters relevant to their lives, including treatment, residence or property. Effective safeguards for ensuring the autonomy of older persons should be developed and implemented to ensure the respect of the rights, wishes and preferences of older persons and to avoid undue interference.<sup>16</sup> Furthermore, there is a range of issues relating to autonomy and independence of older persons that are not adequately articulated in existing normative instruments. These would benefit from inclusion as clear and explicit guarantees in a new normative instrument.<sup>17</sup>

#### **e) Social protection and security (including minimum social protection)**

The important role of social protection is recognized in several international and regional instruments and should be fully implemented and enforced to ensure the enjoyment of all human rights by older persons. The right to social security is crucial to enabling older persons to live in dignity without discrimination. This right is interconnected with the enjoyment of other rights, such as the right to an adequate standard of living, including food, health care and adequate housing.<sup>18</sup> As mentioned in the thematic report on social exclusion, to prevent poverty and social exclusion in old age, States have a duty to adopt social security measures (see A/HRC/14/31, para. 51). International human rights instruments establish the right of everyone to social security, including social insurance.<sup>19</sup>

General provisions on the right to social security and protection are applicable to older persons. indeed, Article 22 of the Universal Declaration of Human Rights, as well as Article 9 of the International

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<sup>13</sup> A/HRC/30/43, para. 19

<sup>14</sup> A/HRC/30/43, para. 20

<sup>15</sup> A/HRC/30/43, paras. 22, 24

<sup>16</sup> A/HRC/30/43, para. 50

<sup>17</sup> Update to the 2012 Analytical Outcome Study on the normative standards in international human rights law in relation to older persons Working paper prepared by the Office of the High Commissioner for Human Rights March 2021

<sup>18</sup> A/HRC/54/26/Add.1, para. 38

<sup>19</sup> A/HRC/39/50, para. 52

Covenant on Economic, Social and Cultural Rights, Article 11 of the Convention on the Elimination of All Forms of Discrimination Against Women and Article 28 of the Convention on the Rights of Persons with Disabilities provides legal protection to guarantee the right to an adequate standard of living and social protection of older persons. Furthermore, the Social Security (Minimum Standards) Convention, 1952 (No 102), the Old-Age, Invalidity and Survivors' Benefits Convention, 1967 (No 128), 203 and its accompanying Recommendation No 131, and the Social Protection Floors Recommendation, 2012 (No 202), are the most relevant ILO Conventions in this context. Beyond ensuring the right to social security, the duty of States to implement social protection systems also flows from the right to an adequate standard of living and a number of related economic and social rights enshrined in several legally binding human rights treaties.<sup>20</sup>

The Madrid International Plan of Action on Ageing recommends, among other things, taking into account the needs and concerns of older persons in decision-making at all levels, including regarding social protection and security.

Adequate social security and protection, including social protection floors, provide a form of income security, as well as access to healthcare for many older persons. In 2018, the former Independent Expert analysed that many States have privileged the establishment of contributory pension systems, which have left the majority of the older population unprotected. Estimates indicate that less than 20 per cent of older persons are covered by pensions and only about 25 per cent of the labour force is currently contributing or accruing pension rights (see A/HRC/14/31, para. 29). Moreover, contributory systems tend to exacerbate gender inequalities. There is a significant coverage gap of older women and in countries with broader protection in contributory systems, older women are more likely to receive a lower pension due to a lower level of contributions.<sup>21</sup> Many non-contributory and contributory pension schemes are also not yet aligned with international human rights standards on the right to social security.<sup>22</sup>

The COVID-19 pandemic further exacerbated the significant gaps in the coverage, comprehensiveness and adequacy of several social protection systems. Older persons not benefiting from social protection benefits are usually more likely to experience poverty, economic insecurity and financial abuse.<sup>23</sup> The Independent Expert also noted that in several occasions, older refugees, older migrants and older internally displaced persons are particularly vulnerable to poverty and economic insecurity as they are not included in the scheme of social protection benefits.<sup>24</sup>

The Independent Expert echoes the findings of the report by the Office of the High Commissioner for Human Rights points out that despite the fact that there are strong existing legal provisions in the current international framework to ensure the right to social protection which applies in principle to older persons, none of these provisions either implicitly (by subjecting persons in active age to old age protection mechanisms) or explicitly (by reference to persons in situation of old age) refer to older persons. No existing provision is currently tailored to the needs of older persons, nor addressing their specific situation and the growing human rights impact of ageing societies on the right to social

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<sup>20</sup> A/HRC/39/50, para. 52

<sup>21</sup> A/HRC/39/50, para. 53

<sup>22</sup> A/HRC/30/43, paras. 53, 102

<sup>23</sup> A/HRC/54/26/Add.1, para. 39; A/HRC/54/26/Add.3, para. 39.

<sup>24</sup> See [2023 Preliminary findings and recommendations of the United Nations Independent Expert on the enjoyment of all human rights by older persons, Dr. Claudia Mahler, at the end of her official visit to the Republic of Moldova](#); A/HRC/54/26/Add.1, para. 68; A/HRC/54/26/Add.3, para. 28

protection and security. It is essential that a new legal provision embraces these new challenges and to provide adequate protection of the right to social protection of older persons.

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

The active participation of older people in society and leading a self-determined life into old age is restricted by the lack of educational programmes and the lack of support for lifelong learning. The specific needs of older persons are not sufficiently taken into account when planning and designing educational programmes. The existing gap between generations and the dependence of older persons on others persists due to a lack of knowledge of information and communication technology. There is a lack of distance learning programmes and digital training for older persons.<sup>25</sup>

The right to education is developed and guaranteed in several human rights treaties, especially Article 13 of the International Covenant on Economic, Social and Cultural rights. However, most of its development and interpretation remain highly focused on the early stages of life, especially directed to children and youth. It is a similar interpretation and thinking which is behind the Article 10 of the Convention of the Elimination of all Forms of Discrimination against Women. Article 24 of the Convention of the Rights of Persons with Disabilities contains a more extensive and detailed statement of the right to education for persons with disabilities which addresses a range of specific situations and barriers, that could be applied to older persons with disabilities.

The Madrid International Plan of Action on Ageing recommends, among other things, taking into account the needs and concerns of older persons in accessing knowledge, education and literacy, numeracy and technological training.

The former Independent Expert draw attention to the disadvantages of not having a specific coherent normative framework on the human rights of older persons, generally and in relation to education, training and lifelong learning in the context of the Sustainable Development Goals. Indeed, Goal 4 of the Sustainable Development Goals aims to “[e]nsure inclusive and equitable quality education and promote lifelong learning opportunities for all”, the goal was not accompanied by targets and indicators that can effectively improve opportunities for lifelong learning, with the actions envisaged clearly targeted towards children, youth, women and persons with disabilities.<sup>26</sup>

The former Independent Expert also analysed how access to education, training and lifelong learning is essential for older persons’ autonomy as it will help maintain self-esteem and extend knowledge and adaptability to cultural and social changes, especially regarding advances in information technology.<sup>27</sup>

Although, the lack of explicit reference to older persons towards lifelong learning, training and education in the Sustainable Development Goals and the limited impact of general provisions in existing human rights treaties in addressing the situation of older persons regarding, the current legal framework falls well short of fully ensuring the enjoyment of the right to education in later life.

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<sup>25</sup> A/HRC/30/43, paras. 65, 114

<sup>26</sup> A/HRC/39/50, para. 31

<sup>27</sup> A/HRC/30/43, para. 65

The Independent Expert reiterates the findings of the report by the Office of the High Commissioner for Human Rights that “there is a clear case that a normative instrument could helpfully contain a detailed statement of the right that takes into account the needs and situations of older persons”.<sup>28</sup>

**g) Right to work and access to the labour market**

In the thematic report on social inclusion (A/HRC/39/50), the former Independent Expert analysed that participation in the labour market enhances the self-esteem of older persons, their social inclusion and their financial security. The right of older persons to work includes the right to choose one’s employment, the right to work in decent conditions and the right to be protected from unemployment (Article 23 of the Universal Declaration of Human Rights). States must abstain from the adoption of measures that interfere with the right of older persons to work. They have an obligation to sustain working opportunities for the older population and should also empower older persons to participate in the economic life of their communities by offering training and opportunities for employment and good working conditions. In addition, they should provide unemployment programmes and adequate means of social protection.<sup>29</sup>

As analysed in the thematic report on ageism and age discrimination (A/HRC/48/53), older persons face ageism and age discrimination in access to work. Ageist barriers to employment include mandatory retirement ages, age limits in recruitment, negative stereotypes about the ability of older persons to work, and societal norms, which all hinder the right of older persons to work. A large number of complaints filed to equality bodies in relation to age discrimination tend to come from the employment sector, largely from applicants aged 50 or above who feel they are unable to compete with younger applicants on an equal basis because employers hold their age against them and make ageist assumptions about their ability and potential. Ageism was also noted as a factor limiting the ability of older workers to enjoy equal access to opportunities for training and career advancement, as well as a factor in older persons being subjected to salary reductions and forced early retirement. Some countries that have enacted anti-discrimination legislation based on age continue to have mandatory retirement ages in place.<sup>30</sup>

Indeed, statutory retirement ages restrict older people’s right to work and their access to the labour market. This also has an impact on the working environment and working conditions, which are often not adapted to the needs of older workers. This is reflected, for example, in a lack of flexibility in working arrangements. In addition, older persons lack access to appropriate training and new technologies that hinder vocational rehabilitation. Under existing social security and pension systems, older workers who choose to work beyond the normal retirement age are often penalised.<sup>31</sup> Women tend to be more disadvantaged about formal and informal job opportunities because they have had limited access to education, land and other assets throughout their lives. As a result, older persons may end up doing demeaning and physically demanding work in extremely precarious conditions, or are unable to work and end up being deprived of essential goods and services.<sup>32</sup>

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<sup>28</sup> Update to the 2012 Analytical Outcome Study on the normative standards in international human rights law in relation to older persons Working paper prepared by the Office of the High Commissioner for Human Rights March 2021

<sup>29</sup> A/HRC/39/50, para. 58

<sup>30</sup> A/HRC/48/53, para. 65

<sup>31</sup> A/HRC/30/43, paras. 57, 107

<sup>32</sup> A/HRC/39/50, para. 60



The contribution of older persons is not adequately recognised and encouraged, including but not limited to their role in caring for family members, household management and voluntary and associative activities.<sup>33</sup>

The former Independent Expert's thematic report on social exclusion and its impact on the human rights of older persons (A/HRC/39/50) points out that the Sustainable Development Goals (SDGs) and the New Urban Agenda recognize older persons' rights but lack specific targets for their employment needs. Older persons often face mandatory retirement, age discrimination in hiring, and inadequate pension systems, leading many to accept low-paid and informal jobs. The missing human rights standards for older persons lead to gaps in policy and practice, underlining the need for more inclusive approaches that recognize and support the diverse contributions and needs of older persons in the working environment.

Although there are extensive international human rights and ILO standards on the right to work and to employment, there is a need to ensure that these standards also address emerging challenges and transformations due to ageing populations and that have considerable impacts on the labour market, as well as old age-related policies and legal frameworks. This should be done through the elaboration of a specific provision regarding the right to work for older persons.

#### **h) Access to justice**

Access to justice is a crucial, cross-cutting right that enables rights holders to exercise all their human rights. This principle is included in various international human rights instruments, especially guaranteed in the Universal Declaration of Human Rights (Articles 7, 8, 10 and 11) and International Covenant on Civil and Political Rights (Articles 2 (1) and (3), 14 and 26) but also in Article 13 of the Convention on the Rights of Persons with Disabilities, which is the first instrument to clearly guarantee a right to access to justice. As rights holders, older persons shall be granted equal access and specific support and assistance to claim their rights, as these instruments and others related to access to justice apply equally to them.

However, in the current human rights framework, there is no specific focus on access to justice for older persons and none of the international human rights instruments and treaty bodies have specifically addressed the barriers this heterogeneous group face in accessing justice. The United Nations Principles for Older Persons asserts the importance of accessing justice from a limited perspective, as to enhance autonomy, protection, and care. Apart from some references in the context of violence and abuse of older women, the Madrid International Plan of Action on Ageing does not provide solid commitment to reinforce and ensure access to justice by older persons.<sup>34</sup>

Whether it is age discrimination, violence and abuse or other important issues affecting older people, there is often no effective redress mechanisms and no assured access to justice, on an equal basis with others, for the older persons concerned. This obligation also involves legal aid and support as well as accessible and age-sensitive legal proceedings. Older persons often face barriers when seeking legal recourse, such as lack of accessibility, affordability and reasonable accommodation, delays in judicial processes, digitalization challenges, cultural norms, gender bias, discrimination and ageism.<sup>35</sup>

In the thematic report on the impact of the coronavirus disease (COVID-19) on the enjoyment of all human rights by older persons (A/75/205), the Independent Expert mentioned that the situation brought

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<sup>33</sup> A/HRC/30/43, para. 108

<sup>34</sup> A/AC.278/2021/CRP.4, para. 7

<sup>35</sup> A/HRC/54/26, paras. 81-82

to the fore the specific justice needs of older persons, such as addressing the rise in violence, maltreatment and abuse. She highlighted that ensuring access to justice requires not only effective remedies, but also enhanced awareness by older persons of their rights and the availability of legal aid. It is also essential that the specific needs of older persons in terms of accessibility be adequately taken into account. Measures in that regard should include preferential treatment of older persons in judicial proceedings, the provision of adequate information in an age-friendly manner and the removal of physical barriers in court buildings. It is also important that members of the judiciary receive training on the rights of older persons.<sup>36</sup>

Older survivors of violence or abuse may face barriers such as lack of accessibility, affordability and reasonable accommodation; language and digitalization may be additional barriers. Ageism and gender-based and intersectional discrimination might hinder them further.<sup>37</sup> Therefore, a new normative standard guaranteeing access to justice as well as reflecting the experiences and specific challenges faced by older persons would strengthen the enjoyment of all human rights of older persons.

#### **i) Contribution of older persons to sustainable development**

The SDGs, adopted by the UN in 2015, represent a significant opportunity for States to advance human rights and contribute to sustainable development. The goals aim to address key global challenges such as poverty, inequality, climate change and environmental degradation. While the SDGs offer a framework for global and national development, it also reveals gaps in the normative framework and practical implementation, particularly concerning the protection of the human rights of older persons. Indeed, none of the 10 targets or 11 indicators specifically mentions older persons, although they mention other groups.<sup>38</sup>

Furthermore, the SDGs may not fully recognize the contributions of older persons in areas like knowledge sharing, community leadership and integrational mentoring. This can lead to underutilization of their potential in sustainable development initiatives. While the SDGs address various aspects of human rights and development, the lack of integrated policies for older persons results in inadequate support for their role in sustainable development, such as their participation in environmental conservation or community resilience programs. Furthermore, the implementation of SDGs overlooks the need for accessibility and inclusivity for older persons at times, which can manifest in physical infrastructure, information dissemination and technology access. Active involvement in sustainable development can be hampered as a result. In terms of the contribution of older persons to development goals, it is important to note that older persons often face age-related discrimination. This discrimination is not always adequately addressed in the SDG framework or national policies, leading to unequal access to resources and participation in decision-making processes. While SDGs generally aim to improve health and well-being, the specific health needs of older persons, such as chronic disease management and appropriate healthcare services, are not always sufficiently addressed. This gap affects their ability to actively participate in and contribute to sustainable development. In addition, the economic roles of older persons, including their participation in the labour market and their role in informal care and volunteer work, are often undervalued. This undervaluation impacts their economic security and limits recognition of their contributions to sustainable economic growth. Last, there is often a lack of comprehensive data and research focusing on the intersection of older persons' rights and

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<sup>36</sup> A/75/205, paras. 69-70

<sup>37</sup> A/HRC/54/26, paras. 108-109

<sup>38</sup> Update to the 2012 Analytical Outcome Study on the normative standards in international human rights law in relation to older persons Working paper prepared by the Office of the High Commissioner for Human Rights March 2021

sustainable development. This gap results in ineffective policies and programs that do not acknowledge and support their contributions.<sup>39</sup>

The Independent Expert further noted that older women are overlooked in development programs, and their contributions to societies through informal and precarious work remain unrecognized and undervalued.<sup>40</sup>

#### **j) Economic security**

The Independent Expert recognized the main barriers impacting the access of older persons to financial tools and services into the following three categories: age limits, digitalization, and poverty or low income. The intersectional vulnerabilities faced by individuals – for example, as older women or older migrants – within their local contexts are vital to consider in constructing equitable solutions.<sup>41</sup>

Generally, economic security comes along with the question of autonomy of older persons. The scope of autonomy includes an economic and financial aspect, understood as self-sufficiency and the ability to generate, and receive income. Furthermore, ensuring the right to work of older persons is crucial for their economic security. This means encouraging older persons to continue working if they choose to, through developing age-friendly workplaces and job options, including voluntary work.<sup>42</sup>

Economic security of older persons is intrinsically linked to the issues of their right to social protection and security and their right to work, as previously discussed. Exclusion from material and financial resources in later life is one of the manifestations of social exclusion, as well as of economic insecurity. Poverty can exacerbate the denial of basic human rights as well as limit choices and opportunities for a tolerable life. In many societies, older persons comprise a disproportionate number of the poor, the persistent poor and the poorest among the poor. Risk factors for old-age poverty include a lack of access to regular income, to work and to health care, declining physical and mental capacities, and dependency within the household. Moreover, as people grow older, they tend to be progressively excluded from the formal and informal work market but are often not or insufficiently protected by social security systems.<sup>43</sup>

The Independent Expert has stressed in different occasions, the impact of multi-dimensional poverty as one of the main barriers to the enjoyment of an adequate standard of living. In recent country visits, she further witnessed first-hand the impact of economic insecurity and to some levels, of poverty on the capacity for older persons to enjoy their human rights, such as their right to food, or to healthcare or even to housing.<sup>44</sup>

The Independent Expert would like to further emphasize about the meaning of economic security in times of climate-induced disasters. In intersectional regard, women are more likely to live in poverty due to gender-based economic disparities, especially when they are widowed, caring for children or part of the informal economic sector. As a result, they often have limited resources to cope with disaster situations. Older LGBTI and gender diverse persons often face social exclusion and a lack of family support that leave them in precarious situations, especially regarding economic and housing security.

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<sup>39</sup> See [https://www.institut-fuer-menschenrechte.de/fileadmin/Redaktion/Publikationen/aktuell/aktuell\\_3\\_2015\\_Sustainable\\_Development\\_Goal\\_s.pdf](https://www.institut-fuer-menschenrechte.de/fileadmin/Redaktion/Publikationen/aktuell/aktuell_3_2015_Sustainable_Development_Goal_s.pdf).

<sup>40</sup> A/76/157, para. 14

<sup>41</sup> A/HRC/48/53, para. 68

<sup>42</sup> A/HRC/30/43, para. 57

<sup>43</sup> A/HRC/39/50, para. 20

<sup>44</sup> See A/HRC/54/26/Add.1, A/HRC/54/26/Add.2, A/HRC/54/26/Add.3

Older women and older LGBTI persons are therefore at an even greater economic disadvantage. Generally, economic security is a key determining factor of older persons adaptive capacity to climate change and related disaster. Climate mitigation and adaptation policies therefore should consider the economic security of older persons.<sup>45</sup>

#### **k) Right to health and access to health services**

Health is indispensable for the exercise by older persons of many other rights and for them to live a life in dignity. According to the Committee on Economic Social and Cultural Rights, general comment No. 14 (2000) on the right to the highest attainable standard of health, the right to health includes “preventive, curative and rehabilitative health treatment... maintaining the functionality and autonomy of older persons... attention and care for chronically and terminally ill persons, sparing them avoidable pain and enabling them to die with dignity”. It further encompasses a spectrum of care that spans primary to palliative care. Its realization also involves the underlying determinants of health, such as access to water and sanitation, clean air, food and housing.<sup>46</sup> General provisions in international human rights law guaranteeing the right to health also apply to older persons.

In the thematic report on ageism and age discrimination (A/HRC/48/53), the Independent Expert demonstrated that ageism in health care has considerable impacts on older persons’ enjoyment of human rights. It leads to a higher incidence of earlier death, poorer physical and mental health, and slower recovery from disability in older age. In addition to the negative effects on older persons’ health and well-being, ageism also has a very high economic cost.<sup>47</sup>

The Independent Expert would like to recall the findings of the thematic study on the realization of the right to health of older persons by the former Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health (A/HRC/18/37). This study revealed that while the right to health is a fundamental human right recognized for all, including older persons, there are gaps in its application. Indeed, international instruments lack specific provisions for older persons. The right to health is a question of both freedoms, like autonomy in health decisions, and entitlements, such as access to age-appropriate healthcare. However, older persons often face challenges such as rationing of medical care, limited access due to physical and financial barriers, and age discrimination. He further stresses that while general comments and non-binding instruments advocate for older persons’ rights, the lack of a specific universal human rights instrument for older persons leads to a gap in fully realizing their right to health.<sup>48</sup>

Older persons are still frequently seen as passive recipients of care rather than active users, highlighting a gap in the shift from care provided for people to care provided with people. Additionally, while there is an understanding that older persons should receive health education and information on available services, guidance on nutrition, and knowledge about various diseases, the practical implementation of these aspects is often lacking. This gap affects their ability to engage in self-care and actively manage their own health.<sup>49</sup>

Access to health services for older persons is hindered by inadequate quality control in care setting, with long waits and insufficient attention to their specific needs. There’s a scarcity of health-care professionals trained in geriatrics and gerontology, leading to subpar care. Additionally, the

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<sup>45</sup> A/78/226, paras. 6, 32, 39

<sup>46</sup> A/HRC/39/50, para. 61

<sup>47</sup> A/HRC/48/53, para. 59

<sup>48</sup> A/HRC/18/37, para. 20-22

<sup>49</sup> A/HRC/30/43, paras. 68-69

fragmentation of care and poor coordination across various care levels further complicates their access to services. Equitable access is a challenge, necessitating improvements in availability, accessibility, and quality of care facilities, especially in diverse geographical areas. The well-being of care workers, often undertrained and overstressed, also directly impacts the quality of care provided to older persons.<sup>50</sup>

The COVID-19-pandemic highlighted the existing structures of inequality and disadvantages experienced by older persons, especially regarding to the enjoyment of their human rights. The Independent Expert pointed out the specific challenges faced by older persons in the 2021 thematic report.<sup>51</sup> The access to medical treatments and care was lacking due to resource limitations and health system weaknesses, particularly in developing countries. Triage approaches in hospitals, often influenced by age, led to prioritization issues amounting to human rights violations of older persons, especially their right to equality and non-discrimination, right to life, right to health and the principle of protection in times of crisis.<sup>52</sup>

Further, in the thematic report A/HRC/36/48 on the impact of automation on the human rights of older persons, the former Independent Expert states that health robots and technologies can promote healthy lifestyles, enable early interventions, and offer mental health benefits. However, it is crucial that they complement, not replace, conventional care and ensure equitable access. At the same time, the right to health is connected to other rights like housing and food. This indicates the need for a comprehensive approach.

In light of the recent and ongoing challenges faced by older persons, a new set of norms acknowledging their impacts on the right to health of older persons and providing avenues to address them would considerably strengthen the protection of older persons' human rights.

### **1) Social inclusion**

The realization of the right to an adequate standard of living is essential to ensure the social inclusion of older persons. It is generally considered to be indispensable to the fulfilment of all other rights and encompasses all the basic subsistence rights, such as adequate food and nutrition, clothing, housing and the necessary conditions of care when required.<sup>53</sup>

The Independent Expert stated in the thematic report on ageism and age discrimination that one of the barriers to ensuring the social inclusion of older persons is the lack of understanding of their contributions and untapped potential, and that lack of understanding is deeply rooted in ageist stereotypes and prejudices. Unlike, for example, sexism, racism and other forms of discrimination, ageism is socially accepted, usually unchallenged and pervasive in policy owing to its implicit and subconscious nature.<sup>54</sup>

The social exclusion of older persons is a complex process that involves the lack or denial of resources, rights, goods and services as people age, and the inability to participate in societal relationships and activities, available to the majority of people across the varied and multiple domains of society. There is no agreed definition. It affects both the quality of life of older persons and the equity and cohesion of

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<sup>50</sup> A/HRC/30/43, paras. 79-80

<sup>51</sup> A/HRC/48/53

<sup>52</sup> See [Amicus Curie Brief presented by the Special Rapporteur on the rights of persons with disabilities, Gerard Quinn, and the Independent Expert on the enjoyment of all human rights by older persons, Claudia Mahler, in the case T-8.424.592 on triage protocols during the COVID-19 Pandemic](#)

<sup>53</sup> A/HRC/39/50, para. 45

<sup>54</sup> A/HRC/48/53, paras. 66-67

an ageing society as a whole, with significant implications for the enjoyment by older persons of their human rights.<sup>55</sup>

The thematic report of the former Independent Expert on social exclusion (A/HRC/39/50) makes clear that there is a lack of a comprehensive and integrated international legal instrument to promote and protect the rights and dignity of older persons has significant practical implications, given that: (a) existing regulations do not cohere, let alone conceptualize regulatory principles to guide public action and the policies of Governments; (b) general human rights standards do not consider the recognition of third-generation specific rights in favour of older persons; (c) it is difficult to clarify the obligations of States with respect to older persons; (d) procedures for monitoring human rights treaties generally ignore older persons; (e) current instruments do not make the issues of ageing visible enough, which precludes the education of the population and with it, the effective integration of older persons.<sup>56</sup>

The principle of social inclusion for older persons shall be articulated to ensure the enjoyment of all human rights in later life. Such principle should be at the core of a legally binding set of norms agreed upon to strengthen the human rights of older persons at the international level.

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

Accessibility of older persons, including to infrastructure and habitat is strongly interrelated to the right to independent living in the community, right to adequate standard of living, and right to adequate housing. The promotion of age-friendly environments is a strategy to ensure that neighbourhoods respond to the needs of older persons and preferences without leading to their isolation or invisibility.<sup>57</sup>

The right to accessibility is ensured under Article 9 of the Convention of the Rights of Persons with Disabilities, which therefore applies to older persons with disabilities. Accessibility is also one of the seven criteria elaborated by the Committee on Economic, Social and Cultural Rights in its general comment No. 4 (1991) on the right to adequate housing.<sup>58</sup>

As examined in the thematic report on the right to adequate housing and older persons (A/77/239), the right to adequate housing, as a part of the right to an adequate standard of living, is well established in international human rights law, including the Universal Declaration of Human Rights and the International Covenant on Economic, Social and Cultural Rights. Various other international conventions underline this right, applying it universally. But it does not contain explicit age-based distinctions. This inclusivity implies that the right to adequate housing should be guaranteed to all, including older persons, without discrimination. However, while the general principle of non-discrimination covers older persons, specific challenges related to their housing needs are often not explicitly addressed. The Inter-American Convention on Protecting the Human Rights of Older Persons is one of the few legal instruments providing a guarantee for the right of older persons adequate housing, emphasizing the need for safe, healthy, and accessible environments tailored to their needs and preferences.<sup>59</sup>

Research shows that older persons frequently face higher risks of housing rights violations. This gap between legal recognition and practical implementation points out the need for more explicit policies

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<sup>55</sup> A/HRC/39/50, para. 78

<sup>56</sup> A/HRC/39/50, para. 88

<sup>57</sup> A/HRC/39/50, para. 75

<sup>58</sup> A/77/239, para. 12

<sup>59</sup> A/77/239, paras. 7-10

and actions focusing on the housing challenges of older persons, ensuring their inclusion and participation in the society.<sup>60</sup>

While the Sustainable Development Goals mention older persons in the context of sustainable urban environments, there is a lack of specific focus on their housing needs. This highlights the need for specific efforts to address older persons' housing requirements within the context of sustainable urban development.<sup>61</sup>

The Independent Expert points out that the development of a new provision would ensure the right to accessibility, along with the right to adequate housing for older persons, would contribute to the protection of the enjoyment of all human rights by older persons.

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

The right to participate in political and public life is enshrined and established under international human rights law. Its realization is important in empowering individuals and groups, including older persons, and is essential to eliminate marginalization and discrimination. The right to participate is interlinked to other human rights such as the rights to peaceful assembly and association, freedom of opinion and expression and the rights to education and to information which are also guaranteed by several existing human rights treaties, also applicable to older persons.

In accordance with the United Nations Principles for Older Persons, participation is to be understood as ensuring that older persons are actively involved in formulating and implementing policies that affect their well-being, sharing their knowledge and skills with younger generations, and being able to form movements and associations.<sup>62</sup> The Committee on Economic, Social and Cultural Rights underlined the importance of the participation of the population in all health-related decision-making.<sup>63</sup>

The Madrid International Plan of Action on Ageing recommends, among other things, taking into account the needs and concerns of older persons in decision-making at all levels, including their participation in the labour market and in voluntary activities, access to knowledge, education and literacy, numeracy and technological training, and to social protection and security.<sup>64</sup>

However, older persons are often not recognized as right holders and equal partners and therefore, their participation in political and public life, as well as in decision-making processes is often hindered. Their right to participate is also often related to their legal capacity, which is addressed under Article 12 of the Convention of the Rights of Persons with Disabilities on “Equal recognition before the law”. Older people have legal capacity at all times and are recognised before the law on an equal basis with others and they should have the right to participate in, and challenge, any decisions that interfere with the exercise of their legal capacity.

As the former Independent Expert states in the thematic report on social exclusion (A/HRC/30/43), age cannot be a justification for any exclusion from decision-making processes and active citizenship. This includes the right to vote and be elected, necessitating accessible facilities and materials, even in care settings, and providing transport to polling stations and public meetings. Despite these provisions, the involvement of older persons, particularly those aged 80 and above, in the electoral system is declining

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<sup>60</sup> A/77/239, paras. 33, 49

<sup>61</sup> A/77/239, para. 18

<sup>62</sup> A/HRC/30/43, para. 23

<sup>63</sup> General comment No. 14, para. 11

<sup>64</sup> A/HRC/30/43, para. 25

due to discriminatory practices. These lead to social exclusion and political marginalization.<sup>65</sup> Consequently, the participation of older persons should be guaranteed and strengthened through the development of legally binding normative elements at the international level.

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<sup>65</sup> A/HRC/30/43, paras. 63-64



## Options on how best to address the gaps

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

In conformity with the Human Rights Council Resolution 24/40, the Independent Expert is tasked to “Engaging in dialogue and to consult with States and other relevant stakeholders, including United Nations agencies, funds and programmes, regional human rights mechanisms, national human rights institutions, older persons, civil society organizations and academic institutions”, among other tasks.

Since its establishment in 2013, the mandate of the Independent Expert on the enjoyment of all human rights by older persons has been regularly engaging in a spirit of cooperation with key international and regional human rights stakeholders, including human rights mechanisms. The Independent Expert reports to the Human Rights Council and to the General Assembly once per year. The mandate holder also works in close coordination, while avoiding unnecessary duplication, with the Open-ended Working Group on Ageing, including by participating in its annual session. In addition, the Independent Expert regularly interacts with other special procedures and subsidiary organs of the Human Rights Council, relevant United Nations bodies and the treaty bodies, as well as Member States, civil society organizations, academia, and older persons.

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

Since becoming operational in 2014, the mandate of the Independent Expert has made full use of the diverse tools provided to special procedures’ mandates, including country visits, communications and thematic reports.

Therefore, the mandate of the Independent Expert has addressed a number of issues falling within the scope of its mandate, through the submission of [14 thematic reports](#) to the Human Rights Council and the General Assembly, including on autonomy and care of older persons, on robots, automatization and human rights, on social exclusion, on human rights of older persons in emergency situations, on data gap, on the impact of the coronavirus disease on the rights of older persons, on ageism and age discrimination, on the rights of older women, on older persons deprived of liberty, on older persons and the right to adequate housing, on violence against, and abuse and neglect of older persons and the human rights of older persons in the context of climate change-induced disasters.

The mandate of the Independent Expert also under took [17 country visits](#) since 2013, to Slovenia (2014), Austria (2015), Mauritius (2015), Costa Rica (2016), Singapore (2016), Namibia (2017), Georgia (2018), Montenegro (2018), Uruguay (2018), Mozambique (2019), China (2019), New Zealand (2020), Finland (2021), Nigeria (2022), Bangladesh (2022), Dominican Republic (2023) and Republic of Moldova (2023).

To date, the Independent Expert has sent jointly 82 communications to Member States and other non-state actors.

The Independent Expert further contributes to strengthen the protection of the human rights of older persons in participating in a number of international conferences and processes to raise awareness and educate about the rights of older persons. The Independent Expert also contributes to add its expert voice to human rights conversations on ageing and older persons in issuing public statements, on specific situations and at the occasion of the International Day of Older Persons and the World Elder Abuse Awareness Day, as well as submitting amicus briefs on issues related to older persons' enjoyment of human rights.

Through these mandated activities, the mandate has been able to support States as well as other key stakeholders, in their efforts to strengthen the human rights of older persons as well as to ensure for a better mainstreaming of their human rights at national, regional and international levels. The mandate has engaged on many occasions with other special procedures and subsidiary organs of the Human Rights Council, relevant United Nations bodies and the treaty bodies, and these collaborations has been positive in some instances, to ensure a better integration of old age as a ground for discrimination. The Independent Expert would like to acknowledge that such contributions would not have been possible without the close cooperation of key stakeholders.

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

Despite the existence of positive changes since its establishment, the mandate of the Independent Expert remains the only human rights entity specifically focusing on the human rights of older persons within the entire United Nations system, with limited staff and budget resources.

In ensuring adequate human capacity and fair distribution of budget resources, the mandate of the Independent Expert would receive better and effective support to perform its mandated activities and reinforce its actions towards the strengthening of the human rights protection of older persons.

Furthermore, to strengthen the protection of older persons and their human rights, the mandate of the Independent Expert has consistently provided analysis of the current normative framework and its application in its activities. Throughout its work, the mandate has identified several gaps in the current existing normative human rights framework at international level, as reflected above, and it has provided solutions on how to best address them.

The Independent Expert is of the opinion that the best option to address these existing gaps is through the adoption of a comprehensive international legally binding instrument dedicated to the promotion and protection of the human rights of older persons.

### 4. If applicable, what is your assessment on the protection of the human rights of older persons according to regional and international instruments? (500 words)

The human rights of older persons are, naturally, included within the fundamental principles laid out by the Universal Declaration of Human Rights and by international human rights treaties. However, as with the human rights of children, women, persons with disabilities, indigenous peoples and many other groups, it is noted that the existence of dedicated instruments outlining the specific rights of certain groups. Such treaties then become of invaluable assistance in focusing the world's attention and action on addressing the rights and challenges of groups further at risk, such as older persons.

The adoption of the Madrid International Plan of Action on Ageing (MIPAA) in 2002 was an aspirational move in accelerating progress towards more equality in old age around the globe. However, it is not a human rights instrument, and it has shown its limitations, along with the current human rights framework, to protect the human rights of older persons especially in the face of recent global challenges. MIPAA is not legally binding and only imposes moral and ethical obligations on Member States to implement its commitments.

The establishment of a new legally binding instrument would provide specific and appropriate legal safeguards at the international level for the rights of older persons, including their rights to health, social protection, to be free from violence, to work, to participate in decision making processes, to adequate standard of living, including adequate housing and to food, among others. A legally binding instrument would also provide appropriate and tailored guidance and support to Member States and relevant stakeholders to effectively tackle age-based discrimination and ageism. The adoption of a comprehensive legally binding instrument would finally considerably assist the Independent Expert in the realization of her mandate.

In several instances, the Independent Expert has demonstrated that the absence of a comprehensive international legally binding instrument dedicated to the promotion and protection of the human rights of older persons as well as a specifically dedicated treaty body on these issues, have continued to hinder the enjoyment of political, civil, economic, social and cultural rights of older persons worldwide. Older people experiencing multiple and intersectional forms of discrimination also suffer from restricted attention, especially when it comes to their old age, and they are often the ones the most left behind.

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