



**MINISTÉRIO DOS NEGÓCIOS ESTRANGEIROS**  
**Direção-Geral de Política Externa**

**United Nations**  
**Open-ended Working Group on Ageing**

**Identification of possible gaps in the  
protection of the human rights of older persons  
and how best to address them**

**Input from Portugal**

Portugal welcomes decision 13/1 adopted by the Open-ended Working Group on Ageing (OEWGA), which requested the Chair of OEWGA to appoint two co-facilitators to facilitate the consideration of the existing international framework of the human rights of older persons and the identification of possible gaps in the protection of the human rights of older persons and how best to address them.

Portugal thanks the Chair of OEWGA for its invitation to serve as one on the co-facilitators, together with Brazil, a role we hope to play in an open, transparent and inclusive manner, taking into due consideration the manifold views of all the Member-States of the United Nations as well as those of observers in the General Assembly, of United Nations funds, programmes and specialized agencies, of national human rights institutions, of civil society and non-governmental organizations, of academia and of the Independent Expert on the enjoyment of all human rights by older persons.

Despite our role as a co-facilitator – which entails impartiality and a consensus-building approach –, we deemed it appropriate to also share our national position on this issue, and hence we decided to respond in our national capacity to this questionnaire.

For the reasons outlined below and in line with the pledge which we recently present at the high-level event for commemoration of the 75<sup>th</sup> anniversary of the Universal Declaration of Human Rights (Geneva, 11-12 December 2023), Portugal believes that there is a need to open intergovernmental negotiations with a view to drafting a consensus-based legally binding international instrument with an aim to protect the human rights of older persons.

Please find below the input from Portugal to this questionnaire. We stand open to discuss the positions contained herein.



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**A. Identification of gaps**

**A.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.**

The starting point of any analysis to potential protection gaps in the international normative framework must be to contextualize the phenomenon under analysis.

Global life expectancy has steadily risen since the Second World War. The WHO estimates that life expectancy has increased by more than 6 years between 2000 and 2019 (from 66,8 years in 2000 to 73,4 years in 2019).

According to data produced by the Population Division of the Department of Economic and Social Affairs of the United Nations Secretariat, the global population aged 65 and over is growing faster than all other age groups and, in 2018, for the first time in history, persons aged 65 or above outnumbered children under five years of age.

The projections from the *World Population Prospects* estimate that, by 2050, one in six people in the world will be over age 65 (16%), up from one in eleven in 2019 (9%). The number of persons aged 80 years or over is projected to triple, from 143 million in 2019 to 426 million in 2050.

While population age structures have changed more in some countries or some regions of the world than in others, the United Nations recognizes that all world regions have experienced substantial increases in life expectancy since 1950. Rapid population ageing is one of the defining trends of today's world, regardless of each State's development status. In fact, by 2050, 80% of the world's older persons are expected to be living in less developed regions and in countries affected by climate change or conflict.

Even though ageing itself does not necessarily and automatically place older persons in situations of vulnerability or marginalization, even though there are no fixed or objective biological or chronological determinants of when a person can be considered old, and even though older persons represent a very diverse and heterogeneous segment of global population, it is becoming increasingly more evident that a number of physical, political, economic and social factors that accompany older age do indeed contribute to manifold challenges which older persons face in the enjoyment of their human rights.

Many of such challenges have been evidenced during the COVID-19 pandemic and are increasingly becoming the object of greater study by academics and greater attention by States and the international community at large, including from the perspective of international human rights law.

There is a growing realization, backed from independent and impartial advice both from Treaty Bodies, Special Procedures mandate-holders and the Office of the High



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Commissioner for Human Rights (OHCHR), that there are protection gaps in the current international normative framework in relation to the human rights of older persons, that those gaps must be identified, in order for them to be addressed through a variety of legal options. States must not shy away from this process, and Portugal is ready and open to engage constructively in intergovernmental consultations in this area.

In this regard, Portugal welcomes the report of the United Nations High Commissioner for Human Rights on the Normative standards and obligations under international law in relation to the promotion and protection of the human rights of older persons (A/HRC/49/70) as well as the summary of the multi-stakeholder meeting on the human rights of older persons (A/HRC/52/49).

In such report, OHCHR concluded that “the current international framework provides fragmented and inconsistent coverage of the human rights of older persons in law and practice. The protection afforded under the current framework and standards is either significantly deficient or too general to provide adequate and specific guidance to governments, policymakers and advocacy groups about what actions are necessary to ensure the realization of specific human rights for older persons. The absence of a dedicated international human rights framework on older persons hampers the consideration of cross-sectional issues by existing human rights mechanisms.” Portugal agrees with this assessment.

**A.1.a. Equality and non-discrimination**

In our view, the clear lack of designation of age as prohibited grounds of discrimination in international human rights law is, by and large, the most relevant protection gap of the human rights of older persons in the current international normative framework.

As cogently argued in the report on ageism and age discrimination by the Independent Expert (A/HRC/48/53), the current international human rights legal framework lacks specific and comprehensive obligations related to the principles of equality and non-discrimination in old age, including age as a prohibited ground of discrimination.

Indeed, ageism – defined as stereotypes, prejudices and discriminatory actions and practices against older persons based either on their chronological age or the perception that they are ‘old’ – is pervasive and can be manifested either in interpersonal or in structural ways.

In the above-mentioned report, the Independent Expert identifies seven areas around which ageism is often manifested: i) health and long-term care; ii) violence and abuse; iii) employment and retirement; iv) social exclusion; v) financial services; vi) media and hate speech; vii) emergency contexts. Relevant academic literature and lived experience from older persons corroborate the pervasiveness of ageism.

Furthermore, the Committee on the Elimination of Discrimination against Women specifies in its general recommendation no. 27 (2010) the multiple and compounded ways



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in which older women face discrimination on the grounds both of their gender and their age.

At the moment, there is a lack of a clear prohibition of age discrimination in international law to effectively address the pervasiveness of ageism. Only two United Nations human rights treaties (the Convention on the Rights of Persons with Disabilities in its article 8, and the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families in its article 7) contain references to age. Furthermore, Treaty Bodies do not often use the term ‘ageism’.

This stands in stark contrast with the manifold references – both in the ‘hard law’ of the Treaties and the ‘soft law’ produced by Treaty Bodies – to State obligations to combat or eliminate racism, sexism or ableism.

Even in non-binding international documents in the field of ageing, such as the Madrid International Plan of Action on Ageing and the earlier Vienna International Plan of Action on Ageing, fail to address age discrimination in a comprehensive manner.

**A.1.b. Violence, neglect and abuse**

As the Independent Expert argued in her report on violence against and abuse and neglect of older persons (A/HRC/54/26), while international human rights law already provides, to some extent, protection from violence against as well as neglect and abuse of older persons, these provisions are of a general nature and therefore fail to specifically address the targeted ways in which older persons face violence, neglect and abuse.

Indeed, both relevant academic literature and the WHO itself recognize five forms of abuse against older persons: i) physical abuse; ii) psychological or emotional abuse; iii) sexual abuse; iv) financial or material abuse; v) neglect. In her report, the Independent Expert adds a sixth form of abuse: hate speech.

The COVID-19 pandemic shed light on these specific forms of violence, neglect and abuse. For example, due to social distancing measures and movement restrictions, social isolation and loneliness have been shown to be more prevalent among older persons than in other age groups, a trend that predates the pandemic but that was exacerbated by it.

Older persons, especially those in residential care, are often at a greater risk of bodily injuries (including as a result of physical or chemical restraints and recourse to sedative and antipsychotic drugs) and also at a greater risk of experiencing rejection during social activities. They are also at a greater risk of being victims to online and phone fraud, theft, scams, forgery, property misuse and abuse of power of attorney.

However, despite abundant evidence of specific and targeted forms of violence against older persons based on their perceived or actual age, there is a lack of an intergovernmentally agreed upon and globally accepted definition of abuse against older persons.



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International human rights law, whether by establishing that States have an obligation to respect, protect and fulfil the rights to life and security of the person or by prohibiting torture and other cruel, inhuman or degrading treatment or punishment, does contain a number of general prohibitions of violence and abuse. Yet, human rights treaties do not include specific provisions addressing the unique risks faced by older persons, especially those in vulnerable situations.

**A.1.c. Long-term care and palliative care**

The former Independent Expert devoted one of her reports to autonomy and care (A/HRC/30/43), where the issue of long-term and palliative care is addressed.

Older persons have different patterns of disease presentation than other age groups, they respond to treatments and therapies in different ways. Abundant medical evidence points to an increasing prevalence of chronic and degenerative diseases in older persons. As such, geriatrics constituted itself as an autonomous medical field.

Such differences explain why the United Nations Principles for Older Persons dedicate a specific section to the subject of care. Indeed, due to the specific and unique needs of older persons – namely those of a medical nature but not exclusively –, older persons are often in need of care, whether in a family or an institutionalized setting.

This need of long-term care (but also of palliative care) has a number of human rights implications, namely on the prohibition of violence and abuse but also on the right to an adequate standard of living and the right to health; furthermore, there are questions surrounding the quality of care and its accessibility, social protection and legal capacity, all of which have a robust human rights dimension.

While the International Covenant on Economic, Social and Cultural Rights contains provisions on the rights to social security and to health, which are deeply intertwined with the issue of care, international human rights law fails to specifically address the issues facing older persons in this domain.

And given that especially palliative care raises a number of sensitive human rights questions in relation to the end of life, we see value in clearly spelling out what obligations States have in this context.

**A.1.d. Autonomy and independence**

The report mentioned in the previous sub-section (A/HRC/30/43) also addressed the issue of autonomy.

Autonomy construed as the capacity or freedom to make one's own decisions is a multidimensional issue, not only encompassing matters related to civil and political rights, including legal capacity and equal recognition before the law, but also those related to economic, social and cultural rights.



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Autonomy has been identified by the OEWGA as one of the most important topics in relation to the enjoyment of human rights by older persons because old age often leads to greater assistance needs, greater risk of denial or restriction of legal capacity and greater risk of physical or emotional frailty, with the caveat that such analysis must be careful in distinguishing such measurable trends from perpetuating stereotypes about older persons (suggesting that they are necessarily frail or vulnerable), which can lead to paternalistic attitudes and ultimately to age-based discrimination.

In any case, the exercise of free and informed consent (which is at the heart of autonomy) in relation to older persons is not explicit in international human rights law. Even in non-binding documents such as United Nations Principles for Older Persons, where autonomy is only referred to in reference to care, and the Madrid International Plan of Action on Ageing, where autonomy implicitly appears in reference to older persons' decision-making, this principle is not entirely well developed.

In international human rights law, the principle of autonomy is only explicitly laid out in the Convention on the Rights of Persons with Disabilities, namely in articles 3, 16 and 25, standing indeed as a core principle of this treaty. However, despite there being intersections between disability and old age, ageing should not and cannot be necessarily associated with disability. As such, the typification of 'autonomy' in this Convention can only serve a model or inspiration – rather than a legal basis – with regard to the protection and guarantee of older persons' autonomy.

There are also questions and human rights implications which are not sufficiently covered in international law in related to substitute *vis-à-vis* supported decision-making in cases of limited legal capacity of older persons.

**A.1.e. Economic, social and cultural rights**

In its eighth session, OEWGA also identified a variety of priority topics in this area (social protection and inclusion, economic security, lifelong learning, access to the labour market, access to health services, transport and housing) which are indelibly associated with the enjoyment by older persons of economic, social and cultural rights.

The International Covenant on Economic, Social and Cultural Rights includes a number of provisions on the right to work (article 6), the right to just and favourable conditions of work (article 7), the right to social security (article 9), the right to an adequate standard of living which includes the right to food and the right to housing (article 11), the right to the enjoyment of the highest attainable standard of physical and mental health (article 12), the right to education (article 13) and cultural rights (article 15). Many of such rights are also included in other United Nations human rights treaties.

By definition, the Covenant covers all persons, which naturally includes older persons, but it remains a fact that older persons face specific and unique challenges to the enjoyment of their economic, social and cultural rights, including due to age-based discrimination in policy or practice.



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For example, the Independent Expert argues, in her report on older persons and the right to adequate housing (A/77/239), that older persons face a greater risk of forced eviction (sometimes resulting in homelessness), due to the fact that older tenants may not be able to pay their rent if it is increased or their pension is not sufficient to cover the rent, and also that older persons represent a significant proportion of persons living in informal settlements more prone to earthquakes, droughts and floods.

Similar examples of such specific challenges faced by older persons could also be doubtless found in relation to the rights to work (e.g., increased difficulties faced by older persons in maintaining themselves, re-joining or accessing the labour market), to education (e.g., lack of policies and programmes ensuring lifelong learning), to social security (e.g., deficiencies or inadequacies in pension systems), to an adequate standard of living (e.g., prevalence of pensioner poverty), and others.

While protections gaps may not be necessarily at play here, due to the comprehensibility of the International Covenant on Economic, Social and Cultural Rights, the specificity of challenges faced by older persons are not adequately contemplated in existing international human rights instruments.

**A.1.f. Other issues**

There are a number of other issues – namely those related to participation of older persons in public and political life, access to justice by older persons, the broad concept of accessibility, the right to information, the challenges posed by the manifold digital divides, the contribution of older persons to sustainable and inclusive development, intersectionality, data collection and preventative approaches in dealing with human rights violations and abuses – which are either absent, only implicitly covered or covered in terms of general provisions in the current international normative human rights framework.

These issues are also deserving to be discussed in order to identify more precisely possible international protection gaps with regard to the enjoyment of all human rights by older persons in all their diversity.



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**B. Options on how best to address the gaps**

**B.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.**

The lack of a clear designation of age as prohibited grounds of discrimination in international human rights law and the general lack of visibility of the issue of the enjoyment of human rights by older persons in the context of international human rights mechanisms has made it so that this topic tends not to be included in monitoring or reporting exercises to Treaty Bodies and in the context of the Universal Periodic Review mechanism.

However, as a regional level or at an international level other than in multilateral human rights fora, Portugal has actively participated and engaged on issues related to ageing, namely in initiatives promoted by the UN Economic Commission for Europe (UNECE), the International Labour Organization (ILO), the International Social Security Association (ISSA), the European Union (EU) and Organisation for Economic Co-operation and Development (OECD).

With regard to the Regional Implementation Strategy of the Madrid International Action Plan on Ageing (MIPAA/RIS) developed by UNECE, Portugal has been an active member of the Standing Working Group on Ageing (SWGGA) and has periodically presented its MIPAA/RIS reports. Portugal has also been a member of the SWGGA Bureau for several mandates and, in 2017, we organised the 4<sup>th</sup> UNECE Ministerial Conference on Ageing, entitled '*A Sustainable Society for All Ages: Realising the Potential of Living Longer*', where the Lisbon Ministerial Declaration was adopted. Portugal chaired the SWGGA between 2017 and 2023, during which time SWGGA confirmed its status as a permanent group and the Guidelines on Ageing were prepared and adopted by UNECE.

At EU level, Portugal has been participating in several conferences and working groups on demographic trends, pensions and ageing, sharing experiences and good practices. These include the Working Group on Ageing of the Social Protection Committee and the Economic Policy Committee responsible for drawing up the Ageing Report.

In the first semester of 2021, during its Presidency of the EU Council, Portugal presented a draft text of Council Conclusions on Mainstreaming Ageing in Public Policies, which was discussed and approved by all Member States.

During the EU Council Presidency, we also organised the Porto Social Summit to strengthen commitments to implementing the European Pillar of Social Rights. The summit resulted in the signing of the Porto Social Commitment, the first-ever tripartite commitment at EU level, and the Porto Declaration, the first-ever declaration by European Heads of State and Government exclusively dedicated to social issues. Both





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documents emphasise the importance of addressing the rights and needs of persons in vulnerable situations, including older persons.

**B.2. Have those engagement resulted in positive impact in strengthening the protection of the human rights of older persons?**

The engagement with regional human rights mechanisms and other international and regional organizations outlined in the sub-section above have indeed resulted in positive steps at a national level to protect the human rights of older persons.

To contextualize, it is important to state that age is listed as a prohibited ground for discrimination in the Charter of Fundamental Rights of the European Union (article 21) and in the Treaty on the Functioning of the European Union (article 19). Although age is not explicitly listed as a ground for discrimination in the European Convention on Human Rights or in the revised European Social Charter, the European Court of Human Rights has held that age falls within the category of other status under those provisions. So, despite protection gaps at an international level, there is a legal basis under regional human rights law applicable to Portugal creating State obligations in this domain.

At a national level, since 2015, three consecutive Portuguese Governments defined the demographic transition which results from an ageing society as one of four strategic challenges which public policy must face.

This strategic challenge is intrinsically linked to one of the priorities of the current Government, which is to ensure active and dignified ageing. This priority cannot be divorced from the protection of the human rights of older persons as well as from the efforts to combat age-based discrimination and violence.

From a strategic point of view, this priority can be construed through measures in five areas: i) adapting social security to the challenges of ageing; ii) promoting active and committed citizenship by older persons; iii) ensuring quality of life in old age; iv) promoting autonomy and independent living for older persons; v) providing greater support to informal carers.

Indeed, there has been a constant improvement of measures specifically aimed at older persons, which have been in continuous implementation for several years, namely with regard to home support, social centres, day centres, night centres, family care, residential structures, holiday and leisure centres.

There has also been a priority to protect – and increase, whenever possible – the amount of retirement pensions (both of a contributory and a non-contributory nature) and of the disability pension. The priority has also been to increase the Solidarity Supplement for Older Persons and of the Social Benefit Supplement for Inclusion and ensure the convergence of their reference values with the value established for the poverty threshold, in addition to increasing the Social Support Index. The most recent example of this is provided in the State Budget for 2024.



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The investments in this domain planned and underway are part of the main national strategic documents, namely the Government's Programme, the Strategy Portugal 2030 and the Recovery and Resilience Plan (RRP).

The RRP foresees the implementation of the New Generation of Social Facilities and Responses and financial interventions at different levels, in line with the national strategic framework for social inclusion, poverty reduction, active and healthy ageing and the inclusion of persons with disabilities. Through such financial interventions, 755 new places in integration communities and collaborative housing have already been created.

New requirements were also implemented for Residential Structures for Older Persons, to promote quality and personalisation of care, while simplifying procedures. Another series of important investments underway are those relating to the reinforcement of the National Network for Integrated Continued Care and the National Network for Palliative Care.

Regarding the inclusion of persons with disabilities and bearing in mind that many older persons are also persons with disabilities, the integration of the Independent Living Support Model (with its focus on autonomy) into the social protection system was adopted after several pilot projects, and around 3.000 persons will be covered in this context. Funding was also increased for programmes to strengthen and extend physical accessibility (360° Accessibility Programme) and financial accessibility for persons with disabilities (Platform + Access Programme).

The Informal Carer Statute was extended nationwide with the publication of Regulatory Decree no. 1/2022, which introduced several improvements to the statute's legal regime. As part of the implementation of the Decent Work Agenda, working conditions for informal carers were also improved in order to allow them to devote more time to the person they care for, namely via the possibility of teleworking, flexible working hours or part-time work and with the creation of leave for non-mainstream informal carers.

With direct relevance to the realisation of the rights of older persons, we note the adoption of the Active and Healthy Ageing Action Plan 2023-2026, which in addition to concrete measures to respond to current needs, focuses on prevention and action aimed at improving the quality of life in the coming decades. The Plan is based on 6 pillars of action: i) health and well-being; ii) autonomy and independent living; iii) development and lifelong learning; iv) healthy working life throughout the life cycle; v) income and the ageing economy; and vi) social participation.

In 2021, a National Observatory on Ageing was created, a partnership between public and private entities from different sectors of society, to promote scientific knowledge by collecting, analysing and making available statistical indicators that allow the population to be monitored throughout the life cycle and throughout the country.



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In 2023, the Active Ageing Skills Centre was created, a partnership between public and private entities to promote professional training and the recognition, validation and certification of skills in the field of care for older persons, for formal and informal carers.

Part of the social strategic framework mentioned and also very relevant to the rights of older persons is the approval and implementation of the National Strategy for the Inclusion of Persons with Disabilities 2021-2025, the National Health Plan 2030 (which includes the strategic objective of promoting longevity and active and healthy ageing) and the Strategy and Action Plan to Combat Poverty (which includes specific measures aimed at older persons, many of which have already been implemented or are underway, such as improving older persons' incomes, improving care services and creating vocational training centres).

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

Portugal maintains a principled position of support to intergovernmental processes which aim at a codification and progressive development of international law. This is the broad context for our support to opening negotiations on a legally binding instrument to protect the human rights of older persons or to protect human rights in the context of old age (these two different options could be considered in the context of such negotiations).

Indeed, the fact that there already exist legally binding instruments for other age groups, such as children (CRC), and which address other types of prohibited discrimination such as sexism (CEDAW) or racism (CERD), the fact that there are protection gaps in the current international normative framework (as seen in section A above) and the fact that there are specific and targeted forms of discrimination associated with old age, especially in a time of ageing societies and which have been exposed by the COVID-19 pandemic, constitute a strong rationale for opening negotiations on a new legally binding instrument.

Even though many existing international human rights treaties, and namely the two Covenants, cover all persons, regardless of their characteristics, international human rights law can and should be strengthened to address particular situations of vulnerability.

A new legally binding instrument could raise visibility and confer due importance to the enjoyment of human rights by older persons, an issue which is often neglected at the level of the United Nations. Furthermore, it could create a new Treaty Body, thereby reinforcing the monitoring side of States' obligations and leading to more reporting and more data collection.

This does not entail, however, that States should not focus on the implementation of existing commitments, especially those related to the United Nations Principles for Older Persons as well as the Madrid International Plan of Action on Ageing as well as those conventions and protocols of a regional scope.

Portugal arrived at this position in the summer of 2022, after a general consultation within our National Human Rights Committee, an interministerial coordination body which



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gathers representatives from 23 government areas (and three permanent observers: Parliament, Public Prosecutor's Office and Ombudsperson), and which serves as our national mechanism for implementation, reporting and follow-up.

The need for such a legally binding instrument has also been the recommendation of the current and the former Independent Experts, of the informal Group of Friends of Human Rights of Older Persons (to which Portugal belongs), the OHCHR in report A/HRC/49/70 and in the most recent Declaration adopted at the International Conference on Human Rights of Older Persons.

Yet, we believe the drafting of such an instrument must be as consensual as possible, taking into account diverging views on protection gaps, and include the full, meaningful and effective participation of older persons in all their diversity, their representative organizations, other civil society organizations, academia and national human rights institutions.