

**Joint submission by AGE Platform Europe, Community Legal Centres Australia (National Association of Community Legal Centres), HelpAge International and The Law in the Service of the Elderly**

**Open-ended Working Group on Ageing, 11<sup>th</sup> Working Session, 6-9 April 2020**

**Access to Justice**

**Authors**

This joint submission is authored by Israel (Issi) Doron (University of Haifa), Nena Georgantzi (AGE Platform Europe), Bill Mitchell (Community Legal Centres Australia (National Association of Community Legal Centres, Australia)) and Bridget Sleaf (HelpAge International). Our views do not necessarily reflect the broad and consensual positions of the organisations we represent, which will be submitted separately. A full report will be submitted to the OEWG for posting on its website.

**Question 5: Specific challenges older persons face in accessing justice**

The Office of the High Commissioner for Human Rights' 2013 Compilation of existing international legal instruments, documents and programmes that address the situation of older persons noted limited access to justice applications for older persons including the CRPD's inclusion of age-appropriate accommodations at art.13.<sup>1</sup> The OHCHR's Summary report of the consultation on the promotion and protection of the human rights of older persons noted "Issues were also raised about lack of accommodation of the needs of older persons to ensure access to justice and to information (including difficulties arising from mandatory digitalization), and the lack of measures to promote political participation."<sup>2</sup>

The UN's 2012 the Expert Group Meeting on the Human Rights of Older Persons considered access to justice and noted that "Older persons face a number of obstacles when they access the justice system as litigants, plaintiffs, defendants and jurors." Obstacles identified by the expert group included:

- Older persons not knowing how to find a lawyer or cannot afford one
- low quality legal advice
- Lawyers' lack of familiarity of difficulties older persons face within the justice systems
- Failure of court rooms and proceedings to accommodate accessibility requirements
- Mandatory retirements ages for judges in many legal systems and exclusions of jurors on the basis of age
- Support and accommodation for older persons accused of a crime to defend themselves effectively.
- older prisoners' physical, mental and cognitive health issues and the need for assistive devices
- Appropriate sentencing for older persons

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<sup>1</sup> World Justice Project, Measuring the Justice Gap, A People-centered Assessment of Unmet Justice Needs around the World, 2019, p.18.

<sup>2</sup> A/HRC/24/25

- Re-entry into society for older prisoners, since as they may have no or limited pensions, no family and no or limited access to health care.<sup>3</sup>

Williams (part of the EGM process) suggested barriers included:

- Invisibility of older people
- Failure to recognise that crimes against older people can have a disproportionate impact on their independence, development, and security
- ‘Well intentioned ageism’ means that alternative approaches are adopted that concentrate on welfare
- Lack of appropriate support through the criminal justice process
- Fear of victimisation
- Low self-esteem
- Pre-conceived ideas about older people as witnesses.<sup>4</sup>

The World Justice Report’s Global Insights on Access to Justice noted “*With traditionally marginalized groups – including the poor, youth, women, ethnic minorities, the elderly, and migrants – reporting a greater number of legal problems, access to justice should be viewed as a main driver of inclusive development and growth.*”<sup>5</sup> They are among the most likely to lack legal identity and suffer further exclusion as a result.<sup>6</sup>

The OECD has suggested, “*As people get older, the consolidation of families, arrival of children, home ownership, increased consumption and debt are associated with vulnerability to different legal issues. And, as people enter their later years, increased need for medical treatment and care and diminishing powers of decision-making are associated with vulnerability to yet different legal issues.*”<sup>7</sup> Other research has highlighted that older person’s need specific joined up and creative approaches.<sup>8</sup>

### Older Prisoners and Detainees

Older prisoners have been identified as a special group of older persons within the justice system that need careful consideration<sup>9</sup>. The OHCHR has noted, ‘*Safe conditions of confinement, in particular for those older people in need of special support, demands entirely different considerations, such as extra clothing in the winter, mobility arrangements within facilities and cells, special protection against violence and extortion within prison structure, and age-appropriate educational and vocational opportunities.*’ The OHCHR report also raised the issue of appropriate sentencing and questioned whether the continued incarceration of older persons was a disproportionately severe punishment and

<sup>3</sup> <https://social.un.org/ageing-working-group/documents/egm/SummaryReportEGM.pdf>

<sup>4</sup> <https://social.un.org/ageing-working-group/documents/egm/Session%206-John%20Williams.pdf>

<sup>5</sup> The World Justice Project, Global Insights on Access to Justice, Findings from the World Justice Project general Population Poll in 101 Countries, 2019, p.6.

<sup>6</sup> World Justice Project, Measuring the Justice Gap, A People-centered Assessment of Unmet Justice Needs around the World, 2019, p.18.

<sup>7</sup> OECD, OECD Expert Roundtable Background Notes, Equal Access to Justice, October 2015, p.11.

<sup>8</sup> Duffy, J., Basu, S. and Pearson, K.C. (Duffy, J. *et al.*) (2012), “Older People and Legal Advice: The Need For Joined Up and Creative Approaches,” in 34(1) Journal of Social Welfare and Family Law, pp.31-47.

<sup>9</sup> See for example Council of Europe Recommendation 2 (2014) on the promotion of human rights of older persons, para 51-54

whether it was justified given the purposes of punishment – retribution, incapacitation, deterrence, and rehabilitation.<sup>10</sup>

The 2012 expert group identified the following challenges:

- Older prisoners' physical, mental and cognitive health issues and the need for assistive devices
- Appropriate sentencing for older persons
- Re-entry into society for older prisoners, since as they may have no or limited pensions, no family and no or limited access to health care.<sup>11</sup>

### **Peasants and those in Rural Areas**

The United Nations Declaration on the Rights of Peasants and Other People Working in Rural Areas is a recent declaration of relevance.<sup>12</sup> Older peasants and those living and working in agricultural and rural areas and indigenous people can be particularly vulnerable. The Declaration make specific mention of older persons,<sup>13</sup> and age.<sup>14</sup>

### **Older Indigenous Persons**

Older indigenous persons have been identified as having special needs in the justice system. In Australia, factors recognised have included historic, cultural and trauma-related issues including historical abuses such as stolen wages and institutionalization.<sup>15</sup>

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<sup>10</sup> E/2012/51

<sup>11</sup> <https://social.un.org/ageing-working-group/documents/egm/SummaryReportEGM.pdf>

<sup>12</sup> A/RES/73/165

<sup>13</sup> Art.2(2).

<sup>14</sup> Art.3(1).

<sup>15</sup> See for example Cunneen C and Schwartz M (2009) Civil and family law needs of Indigenous people in New South Wales: The priority areas. *University of New South Wales Law Journal* 32(3): 725-745.