

## Human Rights Convention for Older Persons

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### **Synonyms**

human rights of older persons, UN, regional intergovernmental organizations, discrimination, human rights standard-setting, ageing

### **Definition(s)**

The term “Human Rights Convention for Older Persons” refers to a legal instrument that purports to guarantee that older persons enjoy the full spectrum of their human rights on the basis of human dignity, equality and non-discrimination. Accordingly, ageing is reassessed through a human rights perspective according to which older persons can enjoy the full set of economic, social, cultural, civil and political rights. As of 2019, no such legal instrument has been drafted at the UN level. Up to this day, this is a human rights process where various actors, including UN organs, and other stakeholders are engaged in a quest for articulating wider protection of rights and entitlements of the marginalized (and often invisible) older population. This is a significant development in the field of human rights law as it is in favour of viewing older persons as rights-holders rather than as beneficiaries and it takes place at a time of demographic shift with the number of older persons rising significantly across the globe.

### **Overview**

The premise of international human rights protection is that human rights are interdependent, indivisible, and universal. In principle, human rights are guaranteed for every single person irrespective of his/her age, color, sex, political or other belief, origin, etc. During the past four decades, there has been an evolution within the international human rights protection system according to which the rights of vulnerable groups such as women, refugees, persons with disabilities, migrants, and children, are protected through specific United Nations (UN) international legal instruments. Older persons have been identified as facing many human rights violations, yet provisions protecting this category of vulnerable persons are up to now found sporadically in human rights instruments.

The past few decades several countries have voiced their concern over the rights of older persons. As a consequence, these states and other stake-holders are seeking to set up an international legal paradigm with a rights-based approach for the comprehensive protection of older persons (HelpAge *et al* 2010). This has been

supported by several soft law instruments that have been adopted at the international level, such as the Vienna International Plan of Action on Ageing (UN 1982), the United Nations Principles for Older Persons (UN General Assembly 1991) and the Madrid International Plan of Action on Ageing (MIPAA) (UN 2002). All instruments above aim at the elimination of age-based discrimination and the promotion of the dignity of older persons by stressing the importance of their independence and autonomy, participation opportunities in the society, and access to health and other care services.

The MIPAA (UN 2002) is a milestone instrument in this field; the UN General Assembly has affirmed that the MIPAA “remains the only international instrument exclusively devoted to older persons, and that measures towards achieving its objectives should be strengthened so as to improve its positive impact on the promotion and protection of the human rights and dignity of older persons” (UN General Assembly 2016b, para. 4). It is noteworthy that the MIPAA(UN 2002), which is not legally binding, and which is not a human right instrument itself, contains several commitments with human rights underpinnings. The particular instrument purports to convey the message that all persons should enjoy their freedoms and human rights as well as the right to development, and they should “be able to age with security and dignity and to continue to participate in their societies as citizens with full rights” (UN General Assembly 2016a, para. 96,).

The value of the MIPAA (UN 2002) is immense as it has set up a review mechanism that indicates the overall progress in this matter; for example, the second review of MIPAA, in 2013, “showed that overall progress in its implementation had continued to be uneven, with several shortfalls, and that gaps between policy and practice, and the mobilization of sufficient human and financial resources had remained major constraints (UN General Assembly 2016a, para. 102).

The third review of the MIPAA acknowledged that there are still “challenges across regions, from the various perspectives of demographic transition, cultural norms, and level of economic development” (UN Economic and Social Council 2017, paragraph 59). Moreover, the same constraints identified in the second review still exist such as the “lack of human and financial resources, lack of political will and lack of data for evidence-based policymaking and, hence, recognition of the need for policy action on ageing” (UN Economic and Social Council 2017, para. 60). Of particular concern is the slow improvement and sustainability of health care and social protection systems as well as income support measures in favor of older persons. In order to significantly advance the rights of the older persons and prepare for an aging population, states need to strengthen their implementation of the MIPAA (UN 2002) in line with the 2030 Agenda for Sustainable Development and its Sustainable Development Goals (UN General Assembly 2015). It should be recalled that the 2030 Agenda and the SDGs place equality and non-discrimination at the heart of the sustainable development model, “leaving no one behind”. Despite these developments, it is felt that

there is a need for more dedicated measures and an *ad hoc* legislative framework within which the challenges faced by older persons could be addressed coherently.

#### **Universal and regional efforts on the protection of older persons' rights**

Institutional developments within the UN have (chronologically) preceded the call for the creation of the new legal instrument. It is noteworthy that in 2010 the UN General Assembly set up an Open-ended Working Group on Ageing to strengthen the human rights protection of older persons with the mandate of examining the existing international framework of the human rights of older persons, identify possible gaps and to propose the feasibility of further instruments and measures (UN General Assembly 2010). So far, the Working Group (WG) has requested for normative and substantive inputs on particular topics such as equality and non-discrimination; neglect, violence, and abuse; long-term and palliative care; autonomy and independence; social protection and social security including social protection floors; education, training, lifelong learning, and capacity-building.

In 2014, the Human Rights Council created the mandate of the Independent Expert on the enjoyment of all human rights by older persons (UN Human Rights Council 2013). It falls within her mandate to assess the human rights implications of the implementation of the MIPAA (UN 2002) and identify good practices by requesting inputs from the Member States, international and regional organizations, civil society actors including associations of older persons and national human rights institutions. As of 2019, more than 40 states have submitted their inputs.

As there is no universal human rights convention dedicated solely to the protection of the rights of older persons, there is increasing pressure from various actors, i.e., UN experts, some states and civil society actors, to set up a new legal instrument. In 2016 the United Nations Independent Expert on the enjoyment of all human rights by older persons called on the Member States to consider the development of a convention on the rights of older persons (UN General Assembly 2016a, paragraph 125). Despite having various UN human rights instruments, such as the two Covenants, on Economic, Social and Cultural Rights (UN General Assembly 1966a) and on Civil and Political Rights (UN General Assembly 1966b), the Convention on the Elimination of All Forms of Discrimination against Women (UN General Assembly 1979) and the Convention on the Rights of Persons with Disabilities (UN General Assembly 2007), providing implicitly for the protection of older persons, the lack of an *ad hoc* binding instrument is felt to have a negative impact on all aspects of older persons' life. This is further complicated by the fact that older persons are not a homogenous group of persons and that they are often subjected to intersectional discrimination. This point was reaffirmed by the UN CEDAW in its recommendation on Older Women whereby it was acknowledged that “while both men and women experience discrimination as they become older, older women experience ageing differently. The impact of gender inequality throughout their lifespan is exacerbated in old age and is often based on deep-rooted cultural and social norms. The discrimination that older women experience is often a result of unfair resource allocation, maltreatment, neglect and limited access to basic services...

The discrimination experienced by older women is often multidimensional, with the age factor compounding other forms of discrimination based on gender, ethnic origin, disability, poverty levels, sexual orientation and gender identity, migrant status, marital and family status, literacy and other grounds. Older women who are members of minority, ethnic or indigenous groups, internally displaced or stateless often experience a disproportionate degree of discrimination” (UN CEDAW 2010 paragraphs 11, 13).

The existing international legal framework, regardless of its degree of implementation, is criticized for being insufficient to ensure the enjoyment of all human rights comprehensively and effectively by older persons; furthermore, it tends to address the issues of aging from a developmental rather than a human rights approach. In the 2016 report of the WG it was also noted that there is a “need to enable an open discussion leading to the development of an international legally binding instrument on the human rights of older persons adopting a human rights approach and placing them at the center and as specific rights-holders” (UN 2016, p.9). However, this view is not universally shared, or it remains far from convincing for many states. This is perhaps reflected best in the number of states that submit substantive and normative inputs to the Working Group; for example, for the 9<sup>th</sup> Working Session of the Working Group, out of the 193 member states of the UN, only 26 states (and the EU) across the globe submitted substantive inputs and only 13 states submitted normative inputs (UN 2018).

Furthermore, the divergent views of the states as to definition of “age” or “age-based discrimination” (i.e. with regard to the mandatory age of retirement in many countries such as 65 years for men and 60 years for women) and the fact that many of the older persons’ issues have a strong socio-economic nature, thus making them dependent on the maximum available resources of each state, indicate that the international community as a whole is far away from reaching a consensus on the scope of a new human rights convention. More to the point, there is a case against the adoption of another human rights instrument argued by those who believe that the era of human rights standard-setting is over, and now is the time for the implementation of the available provisions, guaranteed by the existing human rights instruments, even in the case of older persons. After all, it is because of the identity of the older persons’ group, a primarily “social group”, that the opponents believe that the older persons’ rights can be better served by relying more on the implementation of soft law instruments rather than a strictly legally binding instrument that may not accrue much support from the states (i.e., only a small number of states may ratify it or due to political disagreement the convention may not eventually have a monitoring mechanism or an individual/interstate complaint procedure such as the rest of the other UN human rights treaties).

### **Regional Approaches: Europe**

Notwithstanding increased calls for a globally binding instrument on human rights of older persons, states in Europe have so far expressed their interest in protecting the

rights of older persons without though committing themselves to the drafting of such a regional human rights treaty. Within the EU legal order, human rights protection was not a priority; hence, there is a piece-meal human rights approach within the EU primary and secondary rules. This has changed the past few decades following the adoption of the Lisbon Treaty and the EU Charter of Fundamental Rights (EU 2007). At the EU political level, older persons were first addressed as a category of vulnerable persons through the 1989 Declaration of the Community Charter of Fundamental Social Rights of Workers (EU 1989). However, this political instrument did not have any legally binding effect. Within the EU legal order, the Treaty of Amsterdam introduced the principle of non-discrimination in the EU primary rules. It is only the EU Charter of Fundamental Rights (EU 2007) that effectively introduces a broad range of human rights into the EU primary rules. Hence, since then, valid fundamental rights are unequivocally applied to every person, regardless of age or other grounds. The EU Charter of Fundamental Rights encompasses a number of rights that are directly applicable to older persons, i.e., Article 21 on non-discrimination provides explicit and clear protection from age discrimination and Article 25 provides that “[t]he Union recognizes and respects the rights of the elderly [older people] to lead a life of dignity and independence and to participate in social and cultural life” while Article 34 allows for a protection social security scheme for older persons (EU 2007). The aim of the EU has been to achieve a paradigm shift with regard to older persons as full right-holder subjects; however, the EU Fundamental Rights Agency has acknowledged itself that overall it “has been a slow process” and that “the EU has not yet succeeded in delivering a comprehensive secondary legal framework ensuring substantive equality for older people” (European Union 2018, p.18). Indeed, the only secondary piece of legislation that includes age as a prohibited ground for the principle of non-discrimination is the Employment Equality Directive (EU 2000), which is limited to employment-related issues.

Within the Council of Europe legal framework, there are few references to the rights of older persons. The legal crown jewel of the Council of Europe, the European Convention on Human Rights (ECHR) (Council of Europe 1950), does not contain a specific provision that protects the rights of older persons and there is no reference to ‘age’ as a prohibited ground of discrimination. However, its enforcement mechanism, the European Court of Human Rights (ECtHR), has already examined several cases which were brought by applicants belonging to the older persons’ group (i.e., more than 60 years old) and who claimed a violation of their rights under the ECHR. Even though the ECHR provisions do not causally relate to older persons as such, they have been claimed to have been violated when states failed to consider and to protect the specific needs of older persons. The ECtHR has examined cases of older people who were denied access to justice; older persons in detention; or older persons’ related issues such as residential or institutional care; home care; assisted suicide and the right to die, as well as social security and pensions. The cases concerned alleged violations of Article 2 (right to life), Article 3 (prohibition of torture), Article 4 (prohibition of slavery), Article 5 (right to liberty), Article 6 (right to fair trial),

Article 8 (right to respect private or family life), Article 10 (freedom of expression), Article 12 (right to marry), Article 14 (prohibition of discrimination), Article 41 (just satisfaction), Article 1 of Protocol 1 (right to property) (Council of Europe 2019). As a consequence, the ECtHR's jurisprudence is increasingly contributing to the interpretation of older persons' rights into the language of the ECHR. The value of this jurisprudence will be much appreciated in the future when a regional (European) or international human rights convention will be adopted.

Furthermore, other binding instruments, such as the European Social Charter (Council of Europe 1961) and the European Social Charter (revised) (Council of Europe 1966), have a reference to older persons' rights; for example, Article 23 of the revised Charter (Council of Europe 1966) provides that "every elderly person has the right to social protection." The European Committee of Social Rights is the judicial body overseeing the implementation of both European Social Charters' provisions and in 2017 it noted that in many European states the social security benefits in respect of old age were below the poverty line (Council of Europe 2017c). Several instruments have been adopted by the Council of Europe aiming at the equal treatment of older persons and the guaranteeing of their autonomy, social protection and care, and the protection from violence and abuse. These instruments deal with various aspects of the rights of older persons and they are either Resolutions or Recommendations on: the provision of palliative care in Europe (Council of Europe 2018); the human rights of older persons and their comprehensive care (Council of Europe 2017a); the human rights of older persons and their comprehensive care (Council of Europe 2017b); combating discrimination against older persons on the labour market (Council of Europe 2013); decent pensions for all (Council of Europe 2012); promoting active ageing – capitalizing on older people's working potential (Council of Europe 2011a); reducing the risk of vulnerability of elderly migrants and improving their welfare (Council of Europe 2011b); decent pensions for women (Council of Europe 2010); ageing and disability in the 21st century: sustainable frameworks to enable greater quality of life in an inclusive society (Council of Europe 2009); the situation of elderly persons in Europe (Council of Europe 2007); the rights of elderly (Council of Europe 2003a); and the challenges of social policy in Europe's ageing societies (Council of Europe 2003 b).

### **Regional Approaches: America**

The Organisation of American States is the first regional international organization adopting a comprehensive legal instrument dedicated holistically to the older persons' issues. This instrument, the Inter-American Convention of Protecting the Human Rights of Older Persons (OAS 2015), draws principles from already existing non-binding instruments including *inter alia* the Regional Strategy for the Implementation in Latin America and the Caribbean of the MIPAA (UN ECLAC 2003), the Brasilia Declaration (UN ECLAC 2007), the Plan of Action on the Health of Older Persons, including Active and Healthy Aging (Pan American Health Organization 2009),

the Declaration of Commitment of Port of Spain (OAS 2009), and the San José Charter on the Rights of Older Persons in Latin America and the Caribbean (UN ECLAC 2012). The Inter-American Convention entered into force in 2017, and as of 2019 only Argentina, Bolivia, Chile, Costa Rica, Ecuador, El Salvador, and Uruguay have ratified it. Despite this handicap, the entry into force of this significant legal instrument strengthens the case for a new international UN convention on the rights of older people.

The Inter-American Convention (OAS 2015) sets out an extensive list of general principles, i.e., Promotion and defense of the human rights of older persons; dignity and autonomy of older persons; equality and non-discrimination, etc. Moreover, in Articles 5 through 31, the Convention provides for specific rights of older persons. It is interesting to note that the Inter-American Convention sets out an obligation for the families of the older persons to assist them with their “active, full, and productive integration into society” (OAS 1205, Article 8). Furthermore, it contains a number of useful definitions such as “older person”, i.e., any person being 60 or over, and “age discrimination in an old age”, i.e. “any distinction, exclusion, or restriction based on age, the purpose or effect of which is to annul or restrict recognition, enjoyment, or exercise, on an equal basis, of human rights and fundamental freedoms in the political, cultural, economic, social, or any other sphere of public and private life” (OAS 2015, Article 2).

The Inter-American Convention introduces two monitoring mechanisms: (1) the Conference of States Parties and (2) a Committee of Experts. The latter echoes the modus operandi of the UN treaty-based human rights committees; it is composed of individual experts who will monitor and review States Parties’ implementation of the Convention through a periodic reporting process. Furthermore, the Inter-American Convention establishes an individual petition process according to which “Any person or group of persons or nongovernmental entity legally recognized in one or more member states of the Organization of American States may submit to the Inter-American Commission on Human Rights petitions containing reports or complaints of violations of the provisions contained in this Convention by a State Party” (OAS 2015, Article 36). It is noteworthy that unlike the equivalent complaints procedure of the UN human rights conventions or the European system, the Inter-American Convention (OAS 2015) does not provide for interstate complaints.

### **Regional Approaches: Africa**

The African system of protection of human rights has a couple of legal instruments that protect the rights of older persons. In Article 18(4) of the Banjul Charter, it is provided that “older Persons and people with disabilities shall also have the right to special measures of protection in keeping with their physical or moral needs” (AU 1981). Other instruments with similar references include the Protocol to the African Charter on the Rights of Women in Africa (AU 2003a, Article 22); the Kigali Declaration on Human Rights (AU 2003b, paragraph 20); the African Union Policy Framework and Plan of Action on Ageing (AU 2002); and the African Union Social

Policy Framework (AU 2008, section 2.2.11). The latest development in this regional system of protection is the Protocol to the African Charter on Human and People's Rights on the Rights of Older Persons in Africa, which was adopted in 2016 (AU 2016). This Protocol (AU 2016) is a milestone instrument that is enriched by African values and which reflects the challenges that older persons face today in Africa, despite their assumed reverence and respect, they enjoy within the African societies. At the same time, many of the provisions of the Protocol (AU 2016) are stipulated around the socio-economic realities which hinder the rights of older persons.

The Protocol (AU 2016) provides for the elimination of discrimination against older persons, access to employment without discrimination; social protection; health care services; education and infrastructure for older persons. There are specific provisions for the protection of older women from gender-based violence and sexual abuse. The Protocol (AU 2016) much alike the Inter-American Convention (OAS 2015) includes various definition such as the "older persons" meaning those persons aged sixty (60) years and above, and "aging" meaning "the process of getting old from birth to death." Discrimination is not being defined in the Protocol, but there is a definition of "Harmful traditional practices" being the "traditional beliefs, attitudes and practices which violate the fundamental rights of older persons such as their right to life, dignity and physical integrity." The Protocol (AU 2016) sets out obligations for the states to provide for the protection of older persons with disabilities and persons who are in situations of risk, including natural calamities, and conflict situations. It is noteworthy that the Protocol seeks to eliminate harmful social and cultural practices, such as witchcraft accusations, which have a negative impact on the welfare, health, life, and dignity of older women.

Furthermore, state Parties to the Protocol have to provide financial and any other form of support to older persons who take care of orphans and vulnerable children. The Protocol (AU 2016) contains some progressive provisions, such as the duties of older persons to "mentor and pass on knowledge and experience to the younger generations and to foster and facilitate inter-generational dialogue and solidarity within their families and communities" (AU 2016, Article 20) and states parties' obligations to adopt measures on awareness raising programs to educate the younger population groups and older persons on ageing (AU 2016, Article 19). The overall enforcement of the Protocol is supervised by the African Commission; accordingly, States have to submit regular reports as to the measures taken with regard to its implementation. The African Commission can refer issues of interpretation or implementation to the African Court of on Human and Peoples' Rights which is the only body that has the authority to hear disputes arising from the application or implementation of this Protocol.

This legal instrument is a positive development to the older persons' human rights framework that is being created at the regional level; yet, the challenge here is how to accelerate its ratification. As of 2019, only a small number of states (Benin, Comoros, Ghana, Sierra Leone, and Zambia) have signed but not yet ratified the Protocol (AU 2016). At the African level, if more States expedite the ratification of the Protocol on the rights of older people, this would signal their support for the call for a UN Convention on the Rights of Older People.

### **Future Directions of Research**

Research on the human rights of older persons will continue to flourish in the future. This is related to the fact that the international community and all relevant stakeholders are engaged in a process of identifying all the normative elements that should guarantee that older persons live autonomous, independent and dignified lives. Currently we are going through a gestation period where various inputs submitted from a wide range of actors, whether governments, academia or civil society actors, are contributing to this paradigm shift of viewing older persons as rights-holders themselves. This gestation period will be much influenced by the 2030 Agenda for Sustainable Development and its Sustainable Development Goals (UN General Assembly 2015). For example, the 2018 report by the UN Independent Expert outlines that even though “there is no specific focus on exclusion in older age or the neglect and discrimination of older persons” in the 2030 Agenda, yet “the Sustainable Development Goals certainly represent an important opportunity to integrate the rights of older persons into the global development agenda”, (UN General Assembly 2018, paragraphs 35, 37). Issues such as age-responsive approaches to urban development, or researching on how social exclusion of older persons is a complex process that involves the lack or denial of resources, rights, goods and services as people age represent future directions of research.

### **Summary**

While the dialogue on the many thematic areas of older persons’ rights continues between the various stakeholders across the international community, there are recent normative developments in the field. In 2018, an international-experts’ conference produced the Vienna Declaration on Human Rights of Older Persons, whereby the use and implementation of technologies were placed within the rubric of older persons’ rights and fundamental freedoms (Austrian Federal Ministry of Labour, Social Affairs, Health and Consumer Protection 2018). For example, the Declaration calls for a human rights-based and participatory approach in the research, design, and implementation of technologies and for the new technologies providers to take into consideration the privacy issues and misuse of older persons’ data. The discussion for the eventual adoption of a UN Convention on the rights of older persons as well as the developments at regional level, is indicating at least that states and various stakeholders are engaged in a dialogue on securing intergenerational solidarity, advancing health and well-being into old age and enabling supportive environments in the context of promoting human rights of older persons. Currently, sub-groups within the group of older persons are also drawing the attention of governments and civil society, such as patients with Alzheimer’s or Dementia and their families (UN Independent Expert 2015). For example, public awareness is steadily increasing towards eliminating inequalities against such sub-groups of older persons which often display other additional characteristics such as being in groups of different ages, gender, sexual orientation (LGBTIQ), and ability or ethnicity. Hence, it is observed that with regard to some sub-groups, i.e., patients with Alzheimer’s Disease or Dementia and their families, societies, and governments tend to become more proactive rather than reactive in addressing their situational needs or protecting their dignity. However, this cannot be said for the totality of the older persons’ group. The

lack of homogeneity of this vulnerable group and the fact that it can be subjected due to its nature to intersectional discrimination may be a deterrent for states when it comes to adopting a single legal instrument on older persons. Some of the states believe that nationally-tailored plans are far more effective than international legal frameworks (Doron and Apter 2010). For some of these states, it may seem that too much political effort will be invested on a binding international right convention that may end up to be a weak legal instrument, especially if no agreement is reached while drafting key definitions due to the “ageist traps” (i.e., needs-based *vis-à-vis* rights-based approach) (Doron and Apter 2010).

Moreover, it is a challenge to retain or advance the interest of the states in a holistic human rights approach and move beyond general policy approaches; this has been evident both by the progressive implementation of the MIPAA (UN 2002) over the years and by the fact that at regional level states have not rushed to ratify and implement the regional legally binding instruments on the protection of older persons (i.e., the Inter-American Convention (OAS 2015) or the African Protocol (AU 2016). However, at the same time, one cannot ignore the fact that non-state stakeholders are feverishly committed to the drafting of an UN-based international convention on older persons. One lesson learned from UN human rights system is that the very dynamic nature of human rights has brought into life new normative standards for many minority groups that were not previously “visible” in human and legal societies, such as children, women, or persons with disabilities. Even if a UN-based legal convention on older persons does not end up to be perfect (for many of the reasons that were discussed above), it is still nonetheless a recognition on behalf of the international community of the visibility of the older persons as a minority group that should enjoy all human rights, whether civil, political, economic, cultural or social, on an equal footing and without discrimination in societies.

#### **Cross-References**

Active aging and Active Ageing Index

Aging policy ideas

Global Aging Watch Index

International Day of Older Persons

International Year of Older Persons

Laws for older adults

Madrid International Plan of Action on Ageing

Open-Ended Working Group on Ageing

Sustainable Development Goals and population aging

Vienna International Plan of Action on Ageing

World Assembly on Ageing

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Μορφοποιήθηκε: Αγγλικά (Ηνωμένων Πολιτειών)

Αλλαγή κωδικού πεδίου

Μορφοποιήθηκε: Αγγλικά (Ηνωμένων Πολιτειών)

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**Σελίδα 14: [3] Μορφοποιήθηκε**      **Κωνσταντίνος Ζωντανός**      **20/11/2019 9:01:00 πμ**

Αγγλικά (Ηνωμένων Πολιτειών)

**Σελίδα 14: [4] Αλλαγή**      **Unknown**

Αλλαγή κωδικού πεδίου

**Σελίδα 14: [4] Αλλαγή**      **Unknown**

Αλλαγή κωδικού πεδίου