



49th Session of the Human Rights Council

Plain English version of:

Normative standards and obligations under international law about how to promote and protect older persons' human rights (A/HRC/49/70)

Report of the United Nations High Commissioner for Human Rights

What is the aim of this report?

This report studies the legal norms that promote and protect older persons' human rights globally.

What are the report's conclusions?

- The current international framework provides fragmented and inconsistent coverage of older persons' human rights in law and practice resulting in human rights protection gaps.
- We must move towards developing and adopting a coherent, comprehensive, and integrated human rights framework to ensure older persons enjoy all human rights.
- Older persons' concerns and special requirements need to be better integrated into the work of existing human rights mechanisms.

Who is this report for?

The report is for States and all interested groups so that they:

- are informed and can contribute to all relevant discussions at the national, regional, and international levels, including in the context of the Human Rights Council and the Open-ended Working Group on Ageing.

Note: This is not an official United Nations document.

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I. Introduction

1. The Human Rights Council adopted resolution 48/3 and asked the United Nations High Commissioner for Human Rights to prepare this report. The report studies the legal norms and the obligations of States to promote and protect older persons' human rights.

The Council also asked the Office of the United Nations High Commissioner for Human Rights ("OHCHR") to:

- organize a meeting for States and other interested parties to discuss the report,
- prepare a summary of these discussions; this summary should include recommendations on how to better protect older persons and ensure that specific international human rights law sets rules and standards that ensure older persons can enjoy all their human rights, and
- submit the report to the Human Rights Council by its 51st session.

2. The General Assembly of the United Nations created an Open-ended Working Group on Ageing. This Group met eleven times since 2011. It discusses how older persons' rights are protected and how this can be improved.

In 2013, the Human Rights Council nominated an Independent Expert on all older persons' enjoyment of human rights ("**Independent Expert**"). The Council asked the Independent Expert to also study this issue in detail. Other human rights bodies have also addressed aspects of older persons' human rights in their work.

3. This report builds upon these previous studies and the two analytical studies the OHCHR prepared in 2012¹ and 2021.²

4. In preparing the report, OHCHR also consulted with different relevant stakeholders and received 28 written contributions in response to a request for inputs. These contributions are available on the OHCHR website.³

II. Conclusions and recommendations

5. **We do not recognize or protect older persons' human rights**

Older persons' testimonies, representative organizations' views and international and national experts' assessments have all concluded that existing norms and procedures are missing concerning older persons' human rights because they:

- are spread across in many different global UN Human Rights treaties, standards and recommendations, and
- are narrow in idea and approach which leads to limited effectiveness.

As a result, existing global norms, rules and standards, which largely lack specificity and determination about older person's human rights requirements, are currently unsuitable to remedy the violation of older persons' human rights. Therefore, international human rights mechanisms and procedures, too often, have not addressed if older persons enjoy their human rights, as the rules do not specifically mention older persons' concerns and human rights interests. This, in turn, makes it difficult to apply rules and provide human rights protection to older persons. Consequentially, too often, older persons' human rights are not recognized or protected at the international level due to a lack of specificity. International framework deficiencies have meant that the important mobilizing and supportive role those international standards can play in generating action at the national level has also largely been absent. The result is a more limited legal protection of older persons' human rights compared to other groups.

6. **Our coverage of older persons' human rights is spread across many different legal sources and is inconsistent**

We do not have a specific legal framework that protects older persons' human rights

Despite progress in some regions over the last ten years, the coverage of older persons' rights is found in many different legal sources and is inconsistent. The protection of their rights is lacking or not specific enough to help governments, policymakers and advocacy groups understand what actions they need to take. Not having a dedicated international human rights framework on older persons limits existing human rights mechanisms in how they think about cross-sectional issues. Also, the existing international human rights framework does not sufficiently cover several issues that are important for older persons.

7. **We need to do more to close gaps that affect older persons' human rights**

While those international human rights mechanisms have tried to consider issues affecting older persons as part of their ongoing work, we recognize that more needs to be done to close human rights protection gaps affecting older persons. Existing human rights treaty bodies and mechanisms could:

- better integrate older persons within their existing mandates and activities,
- consider: (a) developing specific norms and standards, and (b) updating guidance on older persons, and
- strengthen collaboration and explore joint approaches in addressing intersectional aspects impacting older persons.

8. **We need to strengthen existing mechanisms**

The COVID-19 pandemic has very much affected older persons. The pandemic made visible the difficulties that older persons encounter and made them worse. Now, we urgently need to take action to strengthen how existing mechanisms work for older persons. However, we now recognize that this will not be enough. Therefore, we need:

- to better implement existing norms and standards, and
- to accelerate the development of a new normative instrument.

9. **We need a specialized treaty for older persons' human rights**

A treaty is an agreement that countries make. Treaties aim to make sure that older persons:

- are treated fairly everywhere,
- have the same chances in life as younger persons, and
- are fully included in society.

We can see that agreements help to protect the rights they guarantee. A new treaty on older persons' rights would include all older persons' rights. A treaty would also address violations.

The success of a treaty depends on: (a) how States implement and apply it, (b) how it influences policies on older persons, and (c) how it helps to measure progress.

A treaty has benefits. It allows:

- stakeholders to come together,
- older persons' rights to be promoted, and
- others to learn about the rights and violations, and to make them aware that the rights and violations intersect.

11. Recommendations

We recommend that States and other stakeholders do the following to make sure that older persons enjoy all human rights:

- a) We invite States, with the OHCHR's support, to promote broad consultations for all interested parties at the national level to identify gaps, challenges and promising practices that help to protect older persons' human rights. This is done to contribute to the Open-ended Working Group's work and the United Nations human rights mechanisms, including regular reports to the treaty bodies and the universal periodic review,
- b) Make sure that all stakeholders, including civil society, national human rights institutions, and older persons themselves participate and contribute to the Human Rights Council's and the Open-ended Working Group's work on older persons,
- c) Encourage interested parties to participate in a meeting held under and mandated by Human Rights Council resolution 48/3 and other consultations to develop proposals and recommendations to strengthen legal frameworks at both the national and the international levels to protect older persons' human rights. The Council and other relevant bodies will then consider the proposals and recommendations, and
- d) Invite existing international human rights mechanisms to:
 - review their current practices to better integrate older persons' human rights in their work, and
 - address gaps and explore new issues affecting older persons not currently addressed by the international human rights framework.

III. Background

A. Demography and older persons' human rights

12. The world population is ageing rapidly.⁴ By 2050, there will be 1.5 billion people aged 65 and above. This will constitute almost 17% of the world's population.⁵ Ageing does not necessarily make individuals more vulnerable. However, several physical, political, economic, and social factors that accompany older age contribute to the challenges those older persons face in enjoying their human rights. COVID-19 has shown this.⁶

13. "Older age" or "older persons" are socially constructed concepts, as is the significance of a person being perceived as "old".⁷ There are no fixed, objective biological or chronological determinants of when a person enters "older age". When a person is seen as 'old' depends on the society, its cultural values, and practices.⁸ "Older age" is defined differently for different purposes. Sometimes age limits are used, but not the same age limit is used for everything. Different age limits are used, for instance, to determine when a person can retire or can apply for discounts or other privileges, or for reviewing whether a person is still allowed to drive a car.⁹ What is seen as "old age"¹⁰ has also changed over the years, within and among cultures. Individuals' psychological age (how old they feel) may be different from their chronological age or how others view them. Different groups in society may answer the question of "who is old" differently and, in comparison, with their own age.¹¹

14. Being classified as an "older person" or as having reached "older age" often leads to systematic disadvantage. Discriminatory treatment is often based on ageist stereotypes and paternalistic or negative assumptions about loss of ability, and not being able to adapt or to learn new skills, or even be interested in doing so. These ageist attitudes help to exclude individuals and groups from social and economic activities, e.g., remunerated work once they reach "older age".

B. COVID-19's impact on older persons' human rights

15. COVID-19 highlighted the problems in international and national rules and laws for older persons in dramatic and tragic ways. While COVID-19 seriously affected many groups, existing inequalities and disadvantages have amplified COVID-19's consequences.¹² The impact on older persons' human rights has been devastating.¹³ Greater susceptibility to severe infection and the living conditions of many older persons led to them constituting the overwhelming proportion of lives lost. However, the impact goes well beyond the loss of life and serious illness, and has highlighted the existence of ageist structures, attitudes and practices, and their serious consequences on how older persons enjoy human rights.

16. In May 2020, the Secretary-General described the risks that COVID-19 presented to older persons.¹⁴ These included:

- the significantly higher risk of severe disease and mortality following infection and potential age discrimination in accessing medical care,
- triage and life-saving therapies,
- the deaths of thousands of residents of care homes for the elderly or long-term care facilities because of contracting COVID-19,
- the additional exposure to neglect, mistreatment, or abuse – in family situations and in care homes and institutions – due to lockdowns,
- the reduction in access to non-COVID-related health services, e.g., home-based visits and community care,
- the threats to social networks, an increased risk of social isolation, and risks to mental health, especially for older women living alone during lockdowns and because of social distancing measures,
- an escalation of entrenched ageism, including discrimination against and stigmatization of older persons and the appearance in public discourse and on social media of remarks and hate speech targeted at older persons, as expressions of intergenerational resentment,
- the different level of access to COVID-19-related and other information and access to government and other services, and
- the invisibility of older persons in public data analysis.

17. Many COVID-19 impacts reflect the existing problems in the rules and laws protecting older persons' human rights. The health emergency made visible the many challenges those older persons have been facing for years, e.g.:

- discrimination based on older age,
- the lack of social protection and of access to health services,
- the lack of autonomy and participation in decision-making, and
- the risk of violence, neglect, abuse, and exploitation.

18. 146 Member States and permanent observers supported the Secretary-General's policy brief on older persons. In their statement, they highlighted the gravity and urgency of the situation. They were deeply concerned by the devastating impact of COVID-19 on the lives of older persons, and regarding the escalation of ageism, including age discrimination and the stigmatization of older persons. They also committed to fully promoting and respecting older persons' dignity and rights and to

*“Working to strengthen global and national targeted responses to address the needs and rights of older persons and foster more inclusive, equitable, resilient, and age-friendly societies”.*¹⁵

19. COVID-19 continues to present the international community and national governments with new challenges about how to protect the human rights of all members of their societies, including older persons, as highlighted by the United Nations system¹⁶ and

human rights mechanisms,¹⁷ including the Independent Expert.¹⁸ Strategies to “build back better” have also raised questions about whether planning consistently includes older persons, or whether they are sometimes side-lined.¹⁹

20. COVID-19 has shown that existing normative rules and laws can be improved to achieve effective protection of older persons’ human rights. The United Nations Secretary-General’s policy brief called for:

- building stronger international and national legal frameworks to protect older persons’ human rights, and
- accelerating the Open-ended Working Group on Ageing’s efforts to develop proposals for an international legal instrument.²⁰

The Independent Expert concluded that COVID-19

“Has made visible protection gaps that will need to be addressed beyond the COVID-19 response and recovery stages”²¹

and that

“The lack of a comprehensive and integrated international legal instrument to promote and protect the rights and dignity of older persons continues to have significant practical implications, including for older persons in emergency situations”²²

IV. Ageism, age discrimination and older persons’ human rights

21. To assess if the current international framework adequately responds to the widespread and systematic violations of older persons’ human rights, we must identify the nature and causes of those violations. For this, we need to understand how social constructions of ageing and ageism contribute to those patterns of violation. This is important to understand if the protection the existing international framework, which is dispersed across multiple general and specific treaties:

- reflects a full understanding of the underlying structures and causes of discrimination based on older age, and
- provides a coherent, systematic, and sustained engagement with those issues.

22. An extensive body of academic literature has documented the following nature and extent of ageism:²³

Effects of ageism	<ul style="list-style-type: none"> • leads to physical and mental harm • felt by individuals • felt across society²⁴
Forms of ageism	<ul style="list-style-type: none"> • invisible • implicit and explicit • negative and positive • various forms²⁵
Where can ageism be found?	<ul style="list-style-type: none"> • in one's own mind • in small groups • across society • at an institutional and policy level²⁶ • among old people themselves²⁷

23. Ageism is a global phenomenon with negative effects on older persons. It affects how older persons enjoy many human rights. This includes the rights to life, health, an adequate standard of living, work, autonomy and independence, the liberty and security of a person and participation in community life. The *Global Report on Ageism*, jointly issued by the World Health Organization, OHCHR, the Department of Economic and Social Affairs and the United Nations Population Fund in 2021, describes the nature and extent of ageism. It also looks at the impacts of ageism in younger age and older age. This report prioritises adopting stronger legal protection against age discrimination and ageism.²⁸

24. The Independent Expert²⁹ drew attention to the harmful impacts of ageism in older persons' lives in areas, e.g.:

- health and long-term care,
- subjection to violence and abuse,
- employment and retirement,
- social exclusion,
- financial activities,
- in media representations and hate speech, and
- in emergency contexts.³⁰

She said that, by treating older persons in the same way, ageist attitudes and practices did not reflect the diversity of older persons. She emphasized the ways in which ageism

“Compounds other forms of inequalities based on gender, disability and health status, ethnic origin, indigenous identity or migrant status, gender identity and sexual orientation, socioeconomic status, and other grounds.”³¹

25. A striking feature of the international human rights framework is that there is:

- no explicit guarantee against age discrimination, and
- no explicit obligation on States to take active measures to eliminate ageism and its discriminatory consequences.

Despite this gap, States may be obliged to address ageism because ageism amounts to discrimination based on age. Also, some treaties require States to eliminate discrimination based on “other status” which includes age. However, these provisions on age discrimination

are very general and have not been used to address ageism more broadly by the existing human rights treaty mechanisms. Also, the term “ageism” rarely features, other than in reports of both the Independent Expert and the Special Rapporteur on the rights of persons with disabilities.

26. It is important to understand the gaps that affect how older persons enjoy human rights. Beyond the human rights protection gap concerning discrimination based on older age, other significant gaps and limitations exist that affect the effective coverage of older persons’ human rights. These include areas, e.g.:

- legal capacity,
- quality of care,
- long-term care,
- palliative care,
- assistance for victims and survivors of violence and abuse,
- the remedies available for violations of human rights,
- independence and autonomy, and
- the right to an adequate standard of living, especially regarding housing,
- the right to lifelong learning for older persons,
- the impact of technological developments, digital deficits, and access by older persons to information technology,
- the potential role and drawbacks of robots and artificial intelligence in the provision of care and support,
- older persons in emergency situations, and
- the data gaps relating to older persons, especially diverse subgroups of older persons.³²

27. The update to the 2012 analytical outcome study on the normative standards in international human rights law on older persons (“**2021 updated study**”) proposes to elaborate a dedicated new binding instrument. This would significantly improve the protection of older persons’ human rights at the international and national levels.³³

V. How effective are existing international human rights instruments?

A. Nature, extent, and quality of the references to age and older persons in international human rights instruments

28. Older persons are entitled to enjoy all human rights. They can therefore rely upon the general guarantees in human rights treaties.³⁴ Also, some treaties contain an explicit guarantee of the rights to older persons, e.g., the right to social security in older age. At the regional level, adopting the Inter-American Convention on Protecting the Human Rights of Older Persons in 2015, and the Protocol to the African Charter on Human and Peoples’ Rights on the Rights of Older Persons in Africa in 2017, is a significant development, despite only applying to the States within those two regions and the States that have ratified the relevant treaty.

29. However, older persons are otherwise rarely mentioned in United Nations human rights treaties, and there is generally no explicit reference to older age being a form of discrimination.³⁵ The standard list of prohibited grounds of discrimination in United Nations human rights instruments does not explicitly include age. For example, article 2 of the Universal Declaration of Human Rights guarantees to everyone the rights set out in the Declaration without distinction of any kind “*such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status*”. Similar

language appears in the International Covenant on Economic, Social and Cultural Rights and the International Covenant on Civil and Political Rights, and in subsequent area-specific treaties.

30. Discrimination based on age seems to fall within discrimination based on “other status”. Despite that, there is little case law or other practice under the United Nations human rights framework on: (a) the ageing process or the social and legal construction of “older age”, and (b) on the implications of these for the concept of equality and non-discrimination on the ground of (older) age. There is also no substantial consideration of the special features of age discrimination that require a tailored definition of discrimination (an example of a tailored definition would be the provision in the Convention on the Rights of Persons with Disabilities that a denial of reasonable accommodation constitutes a form of discrimination based on disability).

31. The Committee on Economic, Social and Cultural Rights, considering whether age was a prohibited ground of discrimination under article 2 (2) of the International Covenant on Economic, Social and Cultural Rights despite the lack of an explicit reference to age, commented

*“Rather than being seen as an intentional exclusion, this omission is probably best explained by the fact that, when these instruments were adopted, the problem of demographic ageing was not as evident or as pressing as it is now.”*³⁶

32. Yet, ageism is not a new phenomenon. The term was first used when the International Covenants on Human Rights were adopted, and the phenomenon existed long before it was explicitly named. The drafters of the International Covenant on Economic, Social and Cultural Rights and other treaties not considering age or ageism may be why the conceptual framework underpinning the treaty is shaped in that way, and which rights were selected for inclusion in the Covenant and their formulation.

33. One might think that not including age discrimination in the International Covenant on Economic, Social and Cultural Rights may send the message that it is not as important as the listed forms of discrimination. This may lead to age discrimination not receiving as much scrutiny as other forms.³⁷ Indeed, international, and national human rights systems have not adequately responded to ageism and age discrimination compared to their response to racism, sexism, ableism, and children’s rights, where specific treaty provisions exist.

34. In particular, not having a rigorous international framework can be seen at the national level, where age discrimination and ageist attitudes are a widespread and ingrained part of most societies. Also, existing practices are often assumed to be “objective and reasonable” and thus, not impermissible differential treatment, despite embodying ageist assumptions.³⁸ When a treaty obliges a state party to prohibit discrimination on specific grounds, discrimination on those grounds is more likely to be explicitly included in national laws and to be implemented in practice. Conversely, an unlisted ground may be overlooked and given lesser priority.

35. The issue of intersectional or multiple discrimination based on older age and other statuses is also important. United Nations treaty bodies have referred to many grounds of possible intersectional discrimination in their general comments and concluding observations. Yet, the human rights treaty body case law does not discuss a coherent and experience-based conceptual framework on older persons’ rights from the intersectionality perspective. With no norms or standards about older persons’ situations, existing human rights mechanisms have a limited ability to recognize the complex intersectional and multiple discrimination issues concerning older age and other grounds.³⁹

36. The Independent Expert’s 2021 report highlighted that the international framework has not recognized or provided protection against age discrimination:

“The current legal framework does not have the means and capacity to systematically close existing gaps in the protection of the human rights of older persons. The existing international and regional frameworks lack specific and comprehensive obligations in relation to the right to equality and non-discrimination in old age, including age as a prohibited ground of discrimination. Ageism is largely invisible in treaty provisions and interpretations by monitoring treaty bodies. To address this gap in international and

*regional human rights law, age as a ground of discrimination must be explicitly recognized, including in a comprehensive binding legal instrument on the human rights of older persons.*⁴⁰

B. Evolving practice of how international human rights mechanisms address older persons' human rights

United Nations human rights treaty bodies

37. The human rights treaty bodies have engaged with certain aspects of older persons' human rights or of discrimination based on older age, with most of that engagement varying between Committees and within individual Committees over time. Some important general statements have been made, but overall, the nature, level and intensity of this engagement do not provide a comprehensive, coherent, and sustained engagement with older persons' human rights.⁴¹ For example, while the Committee on the Elimination of Discrimination against Women and the Committee on Economic, Social and Cultural Rights have issued general comments on the rights of older persons (see also below)

“References to older people, including older persons with disabilities, in the concluding observations of human rights bodies and universal periodic review recommendations are scarce”⁴²

and

“Procedures for monitoring human rights treaties generally ignore older persons”⁴³

Also, these dispersed and individual references fall short of sustained engagement, and even when treaty bodies address these issues, there is generally a lack of sustained follow-up based on a coherent and integrated framework of older persons' rights.

38. The Open-ended Working Group on Ageing being established in 2011 elevated the prominence of older persons' human rights on the United Nations agenda, and many States have urged existing human rights mechanisms to engage more extensively with these issues. Using the Universal Human Rights Index database, the 2021 updated study reviewed the extent to which older persons' rights had been explicitly included in different treaty bodies' work. However, the engagement of human rights mechanisms over that period has not significantly increased, either before COVID-19 or subsequently. Searches of the OHCHR Universal Human Rights Index database of all treaty bodies concluding observations from 2010 to 2019 found 270 relevant hits for 2010–2014, and 249 for 2015–2019.⁴⁴

39. The Committee on Economic, Social and Cultural Rights and the Committee on the Elimination of Discrimination against Women have engaged most substantively and consistently with older persons' human rights. In 1996, the Committee on Economic, Social and Cultural Rights adopted its general comment No. 6 (1995) on the economic, social, and cultural rights of older persons⁴⁵ and touched on issues relevant to older persons in later general comments. The Committee on the Elimination of Discrimination against Women adopted its general recommendation No. 27 (2010) on the human rights of older women and has also addressed the situation of older women in some of its later general recommendations.

40. The full impact of Committee on Economic, Social and Cultural Rights general comment No. 6 (1995) outside the treaty reporting process is difficult to assess. However, the comment provides an important frame of reference for those working to give effect to the International Covenant on Economic, Social and Cultural Rights. The comment's content also reflects the thinking of its time and contains several references that are now dated when addressing human rights in older age.⁴⁶ Also, how the Committee on Economic, Social and Cultural Rights considered these issues in the reporting procedure is mixed.⁴⁷ For the specific issues and rights examined, the Committee on Economic, Social and Cultural Rights has devoted little attention to long-term care and support, which is not explicitly guaranteed by any human rights treaty but reflects elements of rights, e.g. the rights to health, to social security, and to an adequate standard of living and to live independently.⁴⁸ The Committee referred briefly to palliative care in three general comments. However, in each case, it was a general reference in the context of ensuring the availability of “*preventive, curative and*

palliative care services” to all.⁴⁹ Concluding observations have made some references to the right to palliative care, but no detailed discussion of the right’s nature and extent has occurred.

41. The Committee on the Elimination of Discrimination against Women consistently addresses the human rights of older women in its concluding observations and general recommendations. The Committee also regularly engages in a life course analysis, underlining the impact of discrimination against girls and women in earlier stages of their lives on their well-being in older age. In addition to its 2010 general recommendation dealing with the situation of older women, the Committee discussed older women’s position in several other general recommendations and adopted a general recommendation on the economic consequences of marriage, which has impacts on many older women.⁵⁰ Nonetheless, in some areas, older women are not specifically included in general references or are among many possible forms of intersectional discrimination.

42. Apart from the Committee on Economic, Social and Cultural Rights and the Committee on the Elimination of Discrimination against Women, other treaty bodies do not engage with these issues in a systematic and sustained manner. The Committee on the Rights of Persons with Disabilities has included references to older persons in its general comments, and at least one reference to older persons in one third of its concluding observations.⁵¹

43. The Committee against Torture has made limited references to older persons in its concluding observations,⁵² and has not focused on older prisoners, who are an increasing cohort of those in detention. Although recognizing that care homes fall within its mandate, the Committee has devoted little attention to them beyond including the impact of COVID-19 on residents of care homes in recent lists of issues.⁵³ Similarly, the Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, in country visits, has given little priority to older persons despite accepting that its mandate covers care homes, and urging that national preventive mechanisms have supervisory jurisdiction over them.⁵⁴

44. Other treaty bodies have also had limited explicit engagement with older persons. In fact, the following committees make few explicit references to older persons:

- the Human Rights Committee,
- the Committee on the Elimination of Racial Discrimination,⁵⁵
- the Committee on Enforced Disappearances and the Committee on the Rights of the Child, and
- the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families;⁵⁶ this, despite the International Convention on the Protection of the Rights of All Migrant Workers and Their Families being the only core human rights treaty to list age discrimination as prohibited.

Special procedures of the Human Rights Council

45. Since 2014, the Independent Expert’s mandate has brought focus to the issue of older persons’ rights. Other mandates have given some explicit substantive consideration of older persons’ rights, particularly the mandates on the rights of persons with disabilities, extreme poverty, the right to health,⁵⁷ violence against women, and discrimination against women and girls. However, most engagements by area-specific special procedures have tended to be ad hoc and, while helpful, are often not sustained or sufficiently based on a coherent and holistic approach to older persons’ human rights.⁵⁸ There is significant scope to discuss older persons’ rights more, including the rights to education,⁵⁹ housing⁶⁰ or food, which relevant area-specific mandates have not adequately addressed. Special procedures could consult more systematically with older persons and their organizations during their country visits.

VI. Limitations, deficiencies and gaps of selected human rights norms and obligations

46. The Open-ended Working Group on Ageing has examined a series of topics, including rights and related issues:

- the right to equality and non-discrimination,
- the right to autonomy and independence,
- the right to be free from violence, exploitation, abuse, and neglect,
- the right to health, including the right to access palliative care,
- the right to an adequate standard of living,
- the right to work and to access the labour market,
- the right to social protection and social security, including social protection floors, care, and support; and the right to care and support, and
- the right to education, training, lifelong learning, and capacity-building.⁶¹

Some of these rights are explicitly guaranteed in existing human rights treaties, e.g., social security and education, while others are not, e.g., long-term care and support and palliative care. In some cases, the normative scope of the existing rights may be interpreted to cover matters that particularly concern older persons. However, interpreting and applying those rights have often not provided adequate protection.

47. Even where treaty bodies engage with issues covered by explicit guarantees, there remain conceptual limitations in the underlying rights frameworks. One example is *the right to social security*, which includes old-age social support, a topic extensively developed through the International Labour Organization's specialized conventions. However, ageist assumptions and stereotypes influence the underlying discussions about designing sustainable systems to ensure social protection, e.g., when calculating dependency ratios, the assumption is that the "working population cohort" is all engaged in work and that the older population is not.⁶² A case exists for updating these existing protections to reflect the transformations taking place: (a) in the workplace, and (b) in old age-related policies and legal frameworks.

48. Another deficient conceptual framework may have caused older persons to become invisible concerning *the right to education*.⁶³ Older persons have the right to access lifelong learning, vocational training, and capacity-building, for instrumental reasons (e.g., updating or acquiring new skills for employment) and for personal development. However, systematic exclusion or ageist attitudes often deny older persons from doing so. The framework underpinning the guarantee of the right to education in article 13 of the International Covenant on Economic, Social and Cultural Rights and other treaties was developed assuming people receive basic education in primary school, with the goal of secondary education and further education as appropriate. This was to prepare people for employment, after which, they would work for a period before retiring from the workforce, with most people living only a few years in retirement.

49. By focusing on the right to education during the early stages of life, and prioritising primary and secondary education, this has influenced how States have implemented this right, despite recent developments to develop older persons' educational opportunities.⁶⁴ Yet many things have changed since the "three-stage life" framework was developed that article 13 reflects.⁶⁵ Above all, the significant increases in human longevity, many more people continuing in paid work beyond "standard retirement age", and engagement in many other activities of social and economic value pose challenges to a right-to-education approach that favours earlier stages of life.

50. Both the Committee on Economic, Social and Cultural Rights⁶⁶ and the Committee on the Elimination of Discrimination against Women⁶⁷ refer to the importance of older persons' right to education. However, despite these statements, from 2012 to 2020, the Committee on Economic, Social and Cultural Rights' concluding observations make little reference to older

persons' lifelong learning, (re)training, education, or capacity-building. The Committee on the Elimination of Discrimination against Women's practice has been better. Over a dozen out of 211 sets of concluding observations refer to older women and education from 2012 to 2020. However, most of these references mention older women as a category of women that attention needed to be given. Frequently, these references were combined with references to several areas, only one of which was education. There were almost no references with a substantial focus only on older women and their right to education, training, and lifelong learning.

51. States and others have called upon businesses to pay greater attention to and act on their responsibilities concerning older persons' rights.⁶⁸ Repeatedly, the Independent Expert has reminded businesses to both: (a) follow the Guiding Principles on Business and Human Rights, and (b) avoid discrimination against older persons, and States of their obligations to regulate private businesses to prevent discrimination against older persons.⁶⁹ At the same time, no explicit reference to age discrimination or older persons in the Guiding Principles may have contributed to human rights mechanisms and other United Nations entities in the field of business and human rights paying little attention to this issue in their work.

52. Also, it should be noted that, over the last decade, challenges to human rights in some key areas that are relevant to older persons have required greater attention. The Independent Expert has highlighted several such issues,⁷⁰ which include:

- (a) data gaps and deficiencies,⁷¹
- (b) robotics and artificial intelligence and implications for older persons,⁷²
- (c) refugees, asylum seekers and internally displaced persons,
- (d) disaster and emergency situations,
- (e) digitalization and human rights,⁷³
- (f) social inclusion,⁷⁴ and
- (g) developing age-friendly societies.

53. Overall, older persons and their concerns remain relatively invisible in the core human rights treaties and practices. Existing human rights instruments do not explicitly address new issues. There is a lack of a coherent, systematic, and sustained engagement with older persons' human rights and with discrimination based on older age. According to the former Independent Expert⁷⁵ and as echoed by the current mandate holder,⁷⁶

“The 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, and*
- (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.”⁷⁷*

VII. Towards strengthening the protection of human rights of older persons

A. How a specialized human rights of older persons treaty instrument would improve how older persons enjoy human rights

54. The critical question about how to strengthen and address the human rights of older persons enjoyment and protection gaps in the current international human rights framework is to discuss, if a new specific and dedicated normative instrument would make a unique and significant contribution, including by addressing several of the above-identified challenges and shortcomings. Asking this question does not diminish the importance of encouraging existing mechanisms to engage more consistently with older persons' human rights. Instead, the question reflects the current progress made under specialized human rights conventions to protecting older persons' human rights.

55. For instance, specific treaties on racial discrimination, discrimination against women, torture, the rights of children, the rights of persons with disabilities, and migrant workers, are the principal examples of how effective a specialized approach is. At the regional level, treaties relating to violence against women, the rights of persons with disabilities and the rights of older persons have also been adopted and have driven legal and policy reform at the national level.

56.

- Firstly, specialized treaties perform a representative function making the specific human rights of older persons issues of concern visible. Specialized treaties recognize that a particular group or specific rights and violations are sufficiently important to require a dedicated instrument. Creating a specialized treaty indicates that the international community “*takes their suffering seriously*”.⁷⁸
- Secondly, these treaties promote the group's visibility that benefits from the treaty – an important matter, given the invisibility of older persons, ageism, and age discrimination.
- Thirdly, specific treaties bring parties together, providing a focus for advocacy and solidarity, and creating a focused framework for legislative and policy development concrete solution pathways for governments and others that is tailored to the specific human rights involved.
- Fourthly, these treaties allow a cross-over with existing frameworks and help other mechanisms to become more aware of and sensitive to intersectional issues, increasing their ability to apply the latest thinking on these issues within their own treaty framework.

57. A recent striking example of a specialized treaty's impact is the Convention on the Rights of Persons with Disabilities. The process leading to the Convention being adopted brought together advocates, civil society, governments, and others around disability issues. Since its adoption, the Convention has provided a critical framework against which many accepted laws and practices have been examined, and subsequently amended or repealed, to make sure disabled persons' rights are respected. These include laws relating to, i.e., guardianship, mobility and accessibility, independent living arrangements, employment, voting and other political participation rights, communication rights and education.

58. A treaty's impact depends on how it is implemented and applied at the domestic level, and in how it shapes policy frameworks and indicators to measure progress. For example, the Sustainable Development Goals highlight disability, gender, and children's issues in its goals, targets, and indicators, while age, especially older age, has few references. The former Independent Expert noted that the Sustainable Development Goals generally, and concerning the area of education specifically, lacked a specific focus on exclusion in older age and discrimination against older persons. She concluded that, compared with other groups, e.g., children and persons with disabilities, this lack of focus “*is certainly a reflection of the lack of a dedicated legal instrument for older persons*”.⁷⁹

B. How to take full advantage of the potential of existing human rights mechanisms

59. The varied practices by existing human rights mechanisms highlighted in the previous section imply that there is significant scope to strengthen their engagement on older persons' human rights, e.g.:

- Existing mechanisms could do more to implement and apply existing binding norms, non-binding norms, and policy documents despite their lack of specificity regarding older persons' human rights concerns and requisites. Existing mechanisms could increase their engagement with human rights in older age and of older persons of the different age-groups, e.g.:
 - treaty bodies could:
 - (a) include more specific questions in the lists of issues provided to States parties prior to reporting or in response to reports, and
 - (b) ensure that concluding observations regularly address these matters,
 - States parties could include more information on older persons in their reports, and
 - Civil society organizations could ensure that they bring the issues to the attention of treaty bodies.⁸⁰
- Treaty bodies could update existing general comments or develop new ones.
- Special procedures could:
 - pay greater attention to the impact of ageism and age discrimination, and
 - consult with older persons and organizations representing them in their country and specific areas.

60. Existing mechanisms could take many steps to close the human rights protection gap faced by older persons; however, it is important to recognize their limitations, e.g.:

- current mechanisms face practical limitations in how they advance older persons' human rights, including how they manage their mandates, workloads, expectations, and expertise,
- treaty bodies face competing substantive provisions of their governing treaty and the concerns States parties and civil society raise before them,
- the limited time available to explore additional issues in dialogues with States parties under-reporting procedures,
- the limitation on documents length and the number of issues that can be put to States parties in writing and orally,
- the non-binding status of general comments or recommendations, and
- Committee members' limited expertise in the field of ageing, ageism and age-discrimination and issues of concern pertaining to the human rights of older persons.

61. It must be acknowledged that, despite the attention given to the human rights of older persons issues over the last decade, there has not been a large increase in engagement. Only relying on the potential of existing mechanisms to fill in the gap concerning persons' human rights is likely, at best, to result in small changes rather than the needed change in approach to fully address older persons' human rights in a sustained and comprehensive way.

Endnotes

- ¹ Office of the United Nations High Commissioner for Human Rights (OHCHR), “Normative standards in international human rights law in relation to older persons”, analytical outcome paper (2012 analytical study), available at <https://social.un.org/ageing-working-group/documents/OHCHRAAnalyticalOutcomePaperonOldePersonsAugust2012.doc>.
- ² OHCHR, 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 OHCHR (2021 updated study), March 2021, available at <https://social.un.org/ageing-working-group/documents/eleventh/OHCHR%20HROP%20working%20paper%2022%20Mar%202021.pdf>.
- ³ See https://www.ohchr.org/EN/Issues/OlderPersons/Pages/submissions-res-48_3.aspx.
- ⁴ See *Shaping the Trends of Our Time*, report of the United Nations Economist Network for the seventy-fifth anniversary of the United Nations.
- ⁵ United Nations, *World Population Ageing 2019: Highlights*, p. 5.
- ⁶ See [A/75/205](#); and the Secretary-General’s policy brief on the impact of COVID-19 on older persons.
- ⁷ [A/HRC/48/53](#), paras. 31–37.
- ⁸ Gerard Quinn and Israel Doron, *Against Ageism and Towards Active Social Citizenship for Older Persons: The Current Use and Future Potential of the European Social Charter* (Council of Europe, 2021), pp. 15–17.
- ⁹ *Ibid.*, p. 16.
- ¹⁰ In its resolution 50/141, the General Assembly decided that the term “older persons” should be substituted for the term “the elderly”, in conformity with the United Nations Principles for Older Persons.
- ¹¹ Gerard Quinn and Israel Doron, *Against Ageism and Towards Active Social Citizenship for Older Persons: The Current Use and Future Potential of the European Social Charter*, p. 16.
- ¹² See [E/CN.5/2021/4](#).
- ¹³ United Nations, “COVID-19 and human rights: we are all in this together”, April 2020.
- ¹⁴ United Nations, “Policy brief: the impact of COVID-19 on older persons”, May 2020.
- ¹⁵ Available at http://www.un.org/development/desa/ageing/wp-content/uploads/sites/24/2020/05/ENG_final_-with-countries.pdf.
- ¹⁶ See “UN response to COVID-19”, at <https://www.un.org/en/coronavirus/UN-response>; and United Nations Programme on Ageing (Department of Economic and Social Affairs), “COVID-19 pandemic and older persons: relevant UN system resources on COVID-19 and older Persons”, at <https://www.un.org/development/desa/ageing/covid19.html>.
- ¹⁷ COVID-19 and human rights treaty bodies, available at <https://www.ohchr.org/EN/HRBodies/Pages/COVID-19-and-TreatyBodies.aspx>; and “Compilation of statements by human rights treaty bodies in the context of COVID-19”, September 2020, available at www.ohchr.org/Documents/HRBodies/TB/COVID19/External_TB_statements_COVID19.pdf.
- ¹⁸ See [A/75/205](#).
- ¹⁹ [A/HRC/48/53](#), para. 18.
- ²⁰ [A/75/218](#), para. 58.
- ²¹ [A/75/205](#), para. 29.
- ²² [A/75/205](#), para. 78.
- ²³ See, for example, Todd D. Nelson, “Ageism: prejudice against our feared future self”, *Journal of Social Issues*, vol. 61, issue 2 (2005), pp. 201–221; and Liat Ayalon and Clemens Tesch-Römer (eds.), *Contemporary Perspectives on Ageism* (Springer, 2018).
- ²⁴ Kerry Sargent-Cox, “Ageism: we are our own worst enemy”, *International Psychogeriatrics*, vol. 29, issue 1 (2017), pp. 1–2.
- ²⁵ Lindsey A. Cary et al., “The ambivalent ageism scale: developing and validating a scale to measure benevolent and hostile ageism”, *The Gerontologist*, vol. 57, No. 2 (2017), pp. 27–36.
- ²⁶ Israel Doron and Nena Georgantzi (eds.), *Ageing, Ageism, and the Law: European Perspectives on the Rights of Older Persons* (2018).
- ²⁷ E-S. Chang et al., “Global reach of ageism on older persons’ health: a systematic review”, *PLoS One* (15 January 2020), doi: 10.1371/journal.pone.0220857.
- ²⁸ World Health Organization (WHO), *Global Report on Ageism* (2021), p. 104.
- ²⁹ See [A/HRC/48/53](#), paras. 21–31 and 58.
- ³⁰ [A/HRC/48/53](#), paras. 51–72.
- ³¹ [A/HRC/48/53](#), para. 51.
- ³² [A/75/205](#), para. 78.
- ³³ 2021 updated study, para. 57.
- ³⁴ This report focuses on United Nations human rights treaties. The coverage of older persons’ human rights under regional human rights treaties and other instruments is considered in the 2021 updated study, paras. 59–65.
- ³⁵ With the exception of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, art. 1 (1).
- ³⁶ See the Committee’s general comment No. 6 (1995), para. 11.
- ³⁷ [A/HRC/48/53](#), para. 38.
- ³⁸ [A/HRC/48/53](#), para. 41.
- ³⁹ 2012 analytical study, p. 12.
- ⁴⁰ [A/HRC/48/53](#), para. 95.

- ⁴¹ 2021 updated study, para. 66.
- ⁴² [A/74/186](#), para. 10.
- ⁴³ [A/HRC/27/46](#), para. 31 (d); and [A/HRC/39/50](#), para. 88.
- ⁴⁴ 2021 updated study, para. 72.
- ⁴⁵ See paras. 20 and 35–42. The Committee’s general comment No. 13 (1999) on the right to education refers back to the same Committee’s general comment No. 6 (1995), and, furthermore, contains, in para. 24, a further brief substantive reference to older persons.
- ⁴⁶ A.E. Georgantzi, “Developing a new framework for human rights in older age: exploration, interpretation and application”, PhD dissertation, National University of Ireland Galway, April 2020, pp. 206–208.
- ⁴⁷ The 2021 updated study noted that a search of the Universal Human Rights Index database for Committee on Economic, Social and Cultural Rights concluding observations over the past 20 years relating to “older persons” returned about 85 separate results, though a number of the references to issues such as social security may apply substantively to older persons even if they are not mentioned explicitly (see para. 75).
- ⁴⁸ 2021 updated study, paras. 133–136.
- ⁴⁹ *Ibid.*, para. 144.
- ⁵⁰ General recommendation No. 29 (2013).
- ⁵¹ 2021 updated study, paras. 85–86.
- ⁵² *Ibid.*, paras. 78–83.
- ⁵³ *Ibid.*, para. 82.
- ⁵⁴ *Ibid.*, para. 83.
- ⁵⁵ *Ibid.*, para. 84.
- ⁵⁶ *Ibid.*, para. 87.
- ⁵⁷ See, for example, [A/74/186](#), [A/HRC/14/31](#) and [A/HRC/18/37](#).
- ⁵⁸ 2021 updated study, paras. 90–99 and 177.
- ⁵⁹ *Ibid.*, para. 177.
- ⁶⁰ *Ibid.*, para. 90.
- ⁶¹ *Ibid.*, paras. 100–182.
- ⁶² United Nations, *World Population Ageing 2019: Highlights*, p. 13.
- ⁶³ 2021 updated study, paras. 162–182.
- ⁶⁴ Substantive inputs on the focus area “Education, training, lifelong learning and capacity-building”, working document submitted by the Department of Economic and Social Affairs, available at https://social.un.org/ageing-working-group/documents/tenth/A_AC.278_2019_CRP.2.pdf ([A/AC.278/2019/CRP.2](#)), para. 38.
- ⁶⁵ Lynda Gratton and Andrew Scott, *The 100-Year Life: Living and Working in an Age of Longevity* (Bloomsbury, 2016).
- ⁶⁶ General comment No. 6 (1995), paras. 35–42; and general comment No. 13 (1999), para. 24.
- ⁶⁷ General recommendation No. 27 (2010), para. 19.
- ⁶⁸ 2021 updated study, paras. 195–196.
- ⁶⁹ See, for example, [A/HRC/30/43/Add.1](#), para. 77; [A/HRC/30/43/Add.3](#), para. 128; [A/HRC/33/44/Add.1](#); and [A/HRC/39/50/Add.2](#), para. 118.
- ⁷⁰ 2021 updated study, sect. VII.
- ⁷¹ [A/75/205](#), paras. 60–66.
- ⁷² See [A/HRC/36/48](#).
- ⁷³ [A/75/205](#), paras. 54–56.
- ⁷⁴ See [A/HRC/39/50](#).
- ⁷⁵ [A/HRC/39/50](#), para. 88; and [A/HRC/48/53](#), para. 95.
- ⁷⁶ [A/75/205](#), para. 78.
- ⁷⁷ [A/HRC/39/50](#), para. 88.
- ⁷⁸ Upendra Baxi, *The Future of Human Rights* (Oxford, 2008), p. 49.
- ⁷⁹ [A/HRC/39/50](#), para. 35.
- ⁸⁰ [A/HRC/48/53](#), paras. 93–94.