

Strengthening Older People's Rights: Towards a UN Convention



A resource for promoting dialogue
on creating a new UN Convention
on the Rights of Older Persons

Contents

1	Introduction	3
2	Why is demographic ageing important?	4
3	Putting older people's rights into context	4
4	International human rights law	6
5	Why a convention – what would it do?	7
6	Why a Special Rapporteur – what would he or she do?	9
7	What can you do?	9
8	UN convention bibliography	10

1 | Introduction

Older men and women have the same rights as everyone else: we are all born equal and this does not change as we grow older. Even so, older people's rights are mostly invisible under international law.

Despite the existence of the Universal Declaration of Human Rights,¹ older people are not recognised explicitly under the international human rights laws that legally oblige governments to realise the rights of all people. Only one international human rights convention (The International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families) mandates against age discrimination. Commitments to the rights of older people exist, such as with the Madrid International Plan of Action on Ageing (MIPAA). However, they are not legally binding and therefore only impose a moral obligation on governments to implement them.

A UN Convention on the Rights of Older Persons is necessary to ensure that older women and men can realise their rights. With a new UN convention, and the assistance of a Special Rapporteur, governments can have an explicit legal framework, guidance and support that would enable them to ensure that older people's rights are realised in our increasingly ageing societies.

Demographic change is resulting in unprecedented numbers of older people worldwide. Greater numbers of people will be affected directly by age discrimination and ageism, thereby increasing pressures on governments and society as a whole to respond. Strengthening older people's human rights is the best single response.

While UN conventions are agreed by governments, support cannot be built without the backing and advocacy of older people. Civil society organisations play a key role in making this happen and in holding governments to account for the decisions they make. This is why we need you to be involved.

This publication was produced to strengthen understanding and awareness of the need for a Convention on the Rights of Older Persons. It aims to provide the arguments and tools for engaging stakeholders across the globe in debate about older people's rights and the role of a convention. We actively encourage others to translate this publication into as many languages as possible. A design template is available to help facilitate this. Please contact any of the participating organisations that have made this publication possible for further information.

¹ The Universal Declaration of Human Rights, established in 1948, is now recognised as customary law that is binding on every country in the world. The UN has compiled translations of the Universal Declaration on Human Rights in over 300 languages and dialects: www.ohchr.org/EN/UDHR/Pages/SearchByLang.aspx

2 | Why is demographic ageing important?

Population ageing is one of humanity's greatest triumphs. It is also one of our greatest challenges and places increasing economic and social demands on all countries.

Worldwide, the proportion of people aged 60 years and over is growing and will continue to grow faster than any other age group due to declining fertility and rising longevity.

The number of older people over 60 years is expected to increase from about 600 million in 2000 to over 2 billion in 2050. This increase will be greatest and the most rapid in developing countries, where the number of older people is expected to triple during the next 40 years. By 2050, over 80 per cent of older people worldwide will be living in developing countries. At the same time, the number of 'older old' persons (here defined as 80 years and over) in the developed world will reach unprecedented levels.²

Older people need adequate income support as they age, opportunities to engage in decent employment should they wish to remain active, and access to appropriate health and social services, including long-term care. The higher number of women living into very old age also presents a major challenge for policy-makers.

The lack of policies to address these issues is condemning millions of older people to a life of poverty instead of recognising the active economic and social contributions they can make to their families, communities and society as a whole.

3 | Putting older people's rights into context

What are human rights?

Human rights are the rights people are entitled to simply because they are human beings, irrespective of age, citizenship, nationality, race, ethnicity, language, gender, sexuality or abilities. When these inherent rights are respected, people are able to live with dignity and equality, free from discrimination.

Human rights are universal, widely accepted and central to our understanding of humanity. The concept of human rights has developed over time and has its origins in a wide range of philosophical, moral, religious and political traditions. There is no single historical narrative charting the evolution of rights to the understanding we have of them today. This is what gives them their universal relevance.

What are older people's rights?

The Universal Declaration on Human Rights states in Article 1 that 'all human beings are born free and equal in dignity and rights'. This equality does not change with age: older men and women have the same rights as people younger than themselves.

The rights of older people are embedded yet not specific in international human rights conventions on economic, social, civil, cultural and political rights. Examples include the right to equal protection before the law, the right to own property, the right to education, the right to work and the right to participate in government.

Some rights may have more relevance in older age than at other times in life, e.g. the right to social security in the form of a pension. Sometimes a right that may have been respected when someone is young may not be well protected in older age, e.g. the right to access appropriate health and social care services.

² Source: Population Division of the Department of Economic and Social Affairs of the United Nations Secretariat, *World Population Prospects: the 2008 Revision*: <http://esa.un.org/unpp>

Why is it important to promote and protect the rights of older people?

Human rights change people's lives. Protecting older people's rights will help to enable them to lead dignified, secure lives, as equal members of society.

Discrimination against any group in society is unacceptable. With rapid population ageing, the prevalence of age discrimination escalates and so does the imperative to address the fundamental causes of discrimination. Treating older people with respect and on an equal basis with younger people creates the conditions that enable all people in society to participate in and contribute to their own development. It is important to remember that today's younger adults are tomorrow's older people.

What is the connection between ageism, age discrimination and older people's rights?

Ageism is the stereotyping of, prejudice against, or discrimination against a person because of their age. Age discrimination is when someone is treated differently because of their age. Ageism and age discrimination can result in violations of older men's and women's rights. They continue to be tolerated at all levels of society: by individuals and institutions; through local, provincial and national policies; as well as in the business sector.

It is important to remember that older people are not a homogenous group. Older men and women age differently and the discrimination that they experience is often multi-dimensional, based not only on age but on other factors, such as gender, ethnic origin, where they live, disability, poverty, sexuality or literacy levels.

How are older people's rights violated?

The rights of older people are violated in a number of different ways, including:

Older people's right to freedom from discrimination

Older men and women are often denied access

to services, jobs or treated without respect because of their age and other factors such as gender or disability.

Older people's right to freedom from violence

Older men and women are often subjected to abuse including verbal, sexual, psychological and financial abuse.

Older people's right to social security

Many older people do not have financial protection such as pensions and other forms of social security. Lack of a secure minimum income can make older people and their families fall into poverty.

Older people's right to health

Older people may not receive appropriate health and social care because of their age. Treatment can be denied and older people can receive poor or insufficient service.

Older people's right to work

Sometimes older people are deemed 'unemployable' because of their age – this is a violation of a person's rights in the workplace, everyone has the right to free choice of employment. Furthermore, older people may also be forced to stop working because of mandatory retirement ages.

Older people's right to property and inheritance rights

In many parts of the world, inheritance laws, both statutory and customary, deny women of all ages the right to own or inherit property when their husband is deceased. Family members often force widows off their land or seize their property which is a violation of their right to equality of ownership, management and the disposition of property.

4 | International human rights law

What is international human rights law?

International human rights law provides a system that codifies human rights and makes them enforceable. It is primarily concerned with the relationship between the state and the individual. International human rights law is made up of a number of treaties, usually called conventions or covenants. These are known as 'hard' laws because when a UN Member State ratifies a treaty, the treaty becomes legally binding on that member state. This means that the member state has to revise its own laws in line with the treaty and introduce policies and programmes to implement the different parts of the treaty. A member state is in violation of the treaty if it fails to bring its laws in line with the treaty, or if the articles in the treaty are contravened in anyway.

Each treaty has a monitoring system, usually in the form of a committee of independent experts called a 'treaty body'. States that have ratified a treaty report regularly to this committee on its progress in implementing the said provisions. The committee examines these reports and makes recommendations on how the member state can better implement the treaty. Most of the committees can also examine and investigate individual complaints of rights violations.

There is also a body of 'soft' law guiding the treatment of older women and men, including the UN Principles for Older Persons (1991) and the Madrid International Plan of Action on Ageing (MIPAA 2002). Although human rights underpin the recommendations in these soft laws, they are not legally binding. States are under a moral rather than a legal obligation to follow their recommendations. UN Member States reporting on MIPAA in 2007 showed inconsistent government commitment to the implementation and review, and inconsistent inclusion of older women and men in this process.³

³ HelpAge International, *Out of the Shadows*, HelpAge International, February 2008.

Is protection under existing international and regional law enough?

Older people's rights are protected in a general sense under existing international human rights law. The Universal Declaration of Human Rights applies to people of all ages. Both the International Covenant on Civil and Political Rights (ICCPR 1966) and the International Covenant on Economic, Social and Cultural Rights (ICESCR 1966) apply to every person regardless of their age.

However, this general protection is not enough. Apart from one exception (on migrant workers and their families), international human rights conventions do not recognise specifically that age discrimination should not be allowed. Regional human rights laws also do not protect older people's rights systematically or comprehensively.

This lack of provision in human rights law is known as a 'normative gap'. There are a number of normative gaps where aspects of the lives of older people are not addressed adequately by existing human rights law, for example: international standards on rights within community-based and long-term care settings for both the caregiver and the person receiving care; legal planning for older age; and the abolition of mandatory retirement ages. Legal capacity and equality before the law for older women and men under guardianship also require urgent attention.

In addition, standards that protect older people's rights are scattered throughout various international and regional conventions. Bringing the relevant provisions together in one text, as was successfully done for the rights of women, children and disabled people, would bring clarity to both the nature of older people's rights and the responsibilities necessary to protect them.

Is existing international law being used to protect older people's rights?

In practice, the rights of older men and women are not being adequately addressed or protected through the existing human rights system. This

is known as an ‘implementation gap’. Treaty bodies monitoring human rights commitments rarely ask questions about the rights of older people and UN Member States rarely include older people in their reports to the treaty bodies. Older people also remain invisible in the new Universal Periodic Review system, where every UN Member State reports to the Human Rights Council on its human rights record.

The continued existence of age discrimination and ageism in national laws, policies and practice is a sign that governments have failed to adequately incorporate older people’s rights into their laws, budgets, programmes and training for service delivery staff.

What political support is there for older people’s rights?

Political support is growing for new human rights mechanisms at the regional level. Latin American States are actively working towards developing a regional convention on the rights of older people. The African Commission is drafting a new protocol on the rights of older people to the African Charter on Human and Peoples’ Rights. The creation of a new human rights body under the 2008 Association of South East Asian Nations (ASEAN) Charter may provide an opportunity for considering older people’s rights in South East Asia.

There is growing debate about older women’s and men’s rights within the UN system. The Committee that monitors the implementation of CEDAW (the Convention on the Elimination of all forms of Discrimination Against Women) has established a working group to draft a new general recommendation on older women’s rights. This will provide guidance to member states on how they can better protect older women’s rights and encourage more systematic reporting. The Advisory Committee to the Human Rights Council has taken up the rights of older people as a priority issue and in 2010 will present practical recommendations on how to better protect them. The Secretary General is preparing a report on the rights of older people for the 65th UN General Assembly in 2010.

5 | Why a convention – what would it do?

Why do we need a Convention on the Rights of Older Persons?

We need a UN Convention on the Rights of Older Persons because:

Ageism and age discrimination are unacceptable

As the world experiences rapid population ageing, the pressures that result in age discrimination are likely to intensify; so does the imperative to address such discrimination.

Human rights change people’s lives

Protecting older people’s rights will help older people to lead dignified, secure lives, as equal members of society. Exercising these rights enables older people to be treated with respect on an equal basis with younger people.

Existing international and regional human rights laws do not sufficiently protect older people’s rights

The Universal Declaration of Human Rights and the international rights conventions apply to all persons regardless of age. However, age is not listed explicitly as a reason why someone should not be discriminated against. There are a number of regional conventions that protect the rights of older people, but not systematically or comprehensively.

Human rights and development go hand in hand

Respecting people’s rights results in better development where respect, dignity and having a say are recognised alongside material security as important to people’s well-being. Increased protection of the rights of older men and women creates the conditions which enable them to participate in and contribute to their own development, as well as that of those around them. In so doing, respecting and protecting all people’s rights results in more inclusive, equitable and sustainable societies.

Human rights provide standards for service delivery

The private and voluntary sectors are increasingly recognising the impact they have on the ability of people to realise their human rights. Many health and financial services are provided by businesses and NGOs. Although a convention would only be legally binding on ratifying States, the private and voluntary sectors also need standards for the provision of services that respect older people's rights.

What would a convention do?

Combat ageism and age discrimination

A convention would:

- ✓ help to reduce age discrimination and ageism;
- ✓ oblige ratifying states to adopt non-discriminatory laws;
- ✓ draw attention to the multiple discriminations that older people experience;
- ✓ provide the basis for advocacy, public awareness and education on the rights of older people;
- ✓ strengthen societies' responses to the challenges of demographic change and improve intergenerational solidarity.

Change people's lives

A convention would:

- ✓ help older people live lives of dignity;
- ✓ change the view of older people from recipients of charity to individuals with knowledge, power and experience. Increased respect for older people will improve relationships between different generations and make societies more cohesive.

Clarify responsibilities

A convention would:

- ✓ provide the necessary, legally binding protection of older people's rights under international law;
- ✓ provide clarity on what older people's rights are and the minimum standards and actions necessary to protect them;

- ✓ make visible the responsibilities of States and other actors towards older people;
- ✓ complement and raise the profile of MIPAA and the UN Principles for Older Persons;
- ✓ strengthen the implementation of existing international law by making the rights of older people more explicit.

Improve accountability

A convention would:

- ✓ provide a reporting and accountability mechanism for States' actions towards older people;
- ✓ provide a system of redress for the violation of the rights of older people;
- ✓ encourage ongoing dialogue among UN Member States, civil society organisations, NGOs, the private sector and older people themselves, through the monitoring of its implementation.

Guide policy-making

A convention would:

- ✓ provide a framework to guide policy decision-making;
- ✓ encourage the collection of age-disaggregated data to inform policy decisions;
- ✓ promote age-sensitive programmes;
- ✓ help governments allocate resources more fairly;
- ✓ encourage greater development aid for programmes benefiting older people ;
- ✓ lead to the training of healthcare personnel, employees, the judiciary and others involved in older people's issues;
- ✓ guide the private sector in how it can protect older people's rights.

6 | Why a Special Rapporteur – what would he or she do?

A Special Rapporteur is an expert designated by the UN who examines and reports on either thematic or geographical human rights issues to the Human Rights Council. Existing Special Rapporteurs rarely address the rights of older people in their work.

A Special Rapporteur on the rights of older people could advise and support UN Member States on the better implementation of MIPAA and eventually a new convention. He or she could give visibility to the rights of older people by examining and reporting on the nature and extent of violations of older people's rights and making recommendations on how to better protect them. He or she would also be able to encourage existing rapporteurs to address older people's rights within their own specific areas of concern.

7 | What can you do?

A UN Convention on the Rights of Older Persons cannot be achieved without broad public support in many countries. Non-governmental organisations in every country have an essential role in this process. Here are some general suggestions of what NGOs can do to promote a convention in their own countries.

Begin by obtaining the commitment of your organisation's leadership to work towards the realisation of a convention.

Translate key United Nations and other documents, including this publication, into local languages.

Gather evidence of discrimination, abuse, neglect, or violence against older people to support the need for a Convention in your country.

Identify and utilise national and local academic and civic resources, particularly for population and socio-economic data regarding the country's older population. The UN Population Division provides country and regional demographic profiles at: <http://esa.un.org/unpp/index.asp>. Other socio-economic data can be accessed from the Population Division's homepage at: www.un.org/esa/population/unpop.htm

Develop and implement a strategy to build public support for a convention:

Reach out to other social groups (youth, religious, unions, women, people with a disability, etc.) to recognise social interdependence and foster social solidarity.

Educate your membership, other NGOs, media, and all levels of government on the need for a convention.

Find and use a simple slogan or tag that encourages the public to support your campaign for a convention.

Form coalitions with other supporting groups.

Create a network for information sharing among organisations and with the public.

Publicise a convention via the internet, YouTube, blogs, interviews, letters to newspaper editors and other media.

Identify opponents' reasons for opposing a convention and **develop** rebuttals.

Identify key focal points in government for older people and other policy-making allies for older people's rights.

Call, write and meet with legislators and administrative officials to advocate for a convention.

Share developments in your country with other organisations both within and outside your country.

8 | UN convention bibliography

The following documents are an essential reading list for anyone interested in the development of a new UN Convention on the Rights of Older People.

Where possible, individual website addresses have been given for the resources listed below. All documents listed here can be accessed at: www.ageconcern.org.uk/ageconcern/un-convention-older-rights-july09.asp

All international human rights instruments can be found on the website of the Office of the High Commissioner for Human Rights at: www.ohchr.org/EN/ProfessionalInterest/Pages/InternationalLaw.aspx

Official documents and UN processes

The Universal Declaration of Human Rights is available in more than 300 languages and dialects at: www.ohchr.org/EN/UDHR/Pages/Introduction.aspx

Brasilia Declaration, 'Second Regional Intergovernmental Conference on Ageing in Latin America and the Caribbean: towards a society for all ages and rights-based social protection', ECLAC UN, Brasilia, Brazil, 4–6 December 2007: www.eclac.org/celade/brasilia2007 (English version available on website).

Regional conference that included a commitment to promoting the drafting of a convention on the rights of older people within the framework of the UN.

Brasilia Declaration ECLAC Follow-up Meeting, Rio de Janeiro, Brazil, 16–17 September 2008.

Summary report by Global Action on Ageing of meeting to follow up on commitments made in Brasilia in December 2007.

Brasilia Declaration ECLAC Second Follow-up Meeting, Buenos Aires, Argentina, 21–22 May 2009: www.globalaging.org/agingwatch/events/regionals/eclac/rioreport2008.htm

Summary report by ECLAC of second meeting to follow up on Brasilia Declaration commitments.

Report of the Expert Group Meeting: ‘Rights of Older Persons’, UN Department of Economic and Social Affairs, Division for Social Policy and Development, Programme on Ageing, Bonn, Germany, 5–7 May 2009: www.un.org/esa/socdev/ageing/documents/egm/bonn09/report.pdf

Meeting convened in preparation for the report of the UN Secretary-General to the 64th session of the General Assembly.

Follow-up to the Second World Assembly on Ageing: Report of the Secretary General, UN General Assembly, 64th Session, A/64/127, 6 July 2009: www.globalaging.org/agingwatch/GA/SGreport64.pdf
Main focus of the report is the promotion and protection of human rights as they pertain to older people in the context of the implementation of international legal and policy instruments, as well as national action. Includes recommendation for a new UN Convention on the Rights of Older Persons.

The Toronto Declaration on the Global Prevention of Elder Abuse, WHO/INPEA, 2002: www.who.int/ageing/projects/elder_abuse/alc_toronto_declaration_en.pdf
This declaration is a call for action aimed at the prevention of elder abuse.

Analysis of current international law

The Rights of Older People: International Law, Human Rights Mechanisms and the Case for New Normative Standards, Lindsay Judge, International Symposium on the Rights of Older People, London, January 2009.

International Longevity Center Advocacy Paper for a Convention on the Rights of Older Persons, prepared by the law firm Schulte Roth & Zabel LLP for the International Longevity Center, New York, June 2009.

‘What difference would a new convention make to the lives of older people?’ Dr Israel Doron, PhD and Mr Itai Apter, LL.M., International Symposium on the Rights of Older People, London, January 2009.

Draft UN Declaration on the Rights of Older Persons, prepared by the Allard K. Lowenstein International Human Rights Clinic, Yale Law School, with the International Longevity Center, 3 June 2008.

Summary of laws and rights in different countries

Summary of International Laws: Vietnam, Brazil, United States, prepared by the law firm Schulte Roth & Zabel LLP for the International Longevity Center, June 2009.

Summary of International Laws: China, India, European Union, Spain, Portugal, South Africa, prepared by the law firm Schulte Roth & Zabel LLP for the International Longevity Center, June 2009.

A Report on the Rights of Older People in Latin America, Luz Barreto, International Symposium on the Rights of Older People, London, January 2009.

The Rights of Older People – African perspectives, Jody Kollapan, International Symposium on the Rights of Older People, London, January 2009.

The Human Rights of Older People in the United States and Canada, Tom Osborne and Dan Furlong, International Symposium on the Rights of Older People, London, January 2009.

The Rights of Older People in Asia, Niti Saxena, International Symposium on the Rights of Older People, London, January 2009.

The Protection of the Human Rights of Older Persons in Europe: a legal perspective, Geraldine Van Bueren, International Symposium on the Rights of Older People, London, January 2009.

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