

Why it's time for a convention on the rights of older people



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The world is ageing, age discrimination is rife and existing human rights mechanisms do not protect the rights of older people.

HelpAge International believes the time has come for an international convention on the rights of older people. This would provide a clear conceptual, legal and accountability framework to assist governments, the private sector, NGOs and others to make decisions that positively address population ageing, eliminate age discrimination and better protect older women and men's rights.

We also call for the appointment of a UN special rapporteur on the rights of older people to act as a focal point for older people's rights.

This paper shows how older people's rights are being violated. It explains why existing rights mechanisms are failing older people and why a convention and special rapporteur are necessary.

What are older people's rights?

Older men and women have the same rights as everyone else. Human rights are the rights people are entitled to simply because they are human beings, irrespective of their age, citizenship, nationality, race, ethnicity, language, gender, sexuality, HIV status or abilities. These rights are set out in the Universal Declaration of Human Rights (UDHR 1948) and other subsequent international human rights conventions which elaborate different types of rights, such as economic, social and political rights, and the rights of different groups, such as women or disabled people.

The Universal Declaration of Human Rights states in Article 1 that "all human beings are born free and equal in dignity and rights". The right to freedom, equality and dignity does not change in old age.

How are older people's rights being violated?

Age discrimination and ageism are tolerated across the world. Age discrimination is when someone is treated differently, simply because of their age. It is a violation of older people's rights. Age discrimination can be direct, for example, refusing someone work because they are "too old", or indirect, such as not collecting data on HIV infection in women and men over 49. This failure to collect data results in the exclusion of older people from HIV and AIDS prevention programmes, and, therefore, discriminates against them. Laws prohibiting age discrimination exist in some countries, but they are often limited to employment and do not cover other areas such as healthcare, long-term social care or provision of other goods and services.

Ageism is the stereotyping and prejudice against older people that can lead to age discrimination. At one end of the scale ageism may seem harmless, for example, when older people are patronised on TV, in films and in advertising. However, research by Yale University showed that negative stereotypes of older people in the US had a harmful impact on older people's memory, balance and even how long they lived for.¹ At the other extreme, older people, especially women, can be accused of witchcraft and then forced out of their homes or even murdered.

Older people are not a homogenous group and should not be treated as such. Older men and women experience ageing and old age differently. People in their 60s may lead very different lives to those in their 80s. The discrimination that older men and women face is also complex, often based on age plus other factors, such as gender, ethnic origin, where they live, disability, poverty, sexuality, HIV status or literacy levels.

Older people's rights are routinely violated in a number of different ways. Below are just some examples:

Right to freedom from violence, UDHR Article 3

Many older men and women, especially older women, experience violence in their homes, in care settings, as a result of traditional beliefs, or in conflict or post-conflict situations.

- Research from Kyrgyzstan shows that many older women are physically abused, either by their own children and daughters-in-law at home, or in institutional settings such as care homes by staff and male residents.²
- Kenya has seen an upsurge in the number of brutal killings of older people, mostly women, accused of witchcraft. An estimated 42 older people were killed in three districts in 2008 and 23 older people were killed in three provinces in the first half of 2009 alone.³



Antonio Olmos/HelpAge International

The right to freedom, equality and dignity does not change in old age.

Right to equality before the law, UDHR Article 6

Lack of identification papers to prove who they are and ensure their equality before the law is one of the main barriers that prevents older people from realising all their rights – civil, political, economic, social and cultural.

- A 2005 survey of nearly 4,000 older people in eight communities in Mozambique found that 42 per cent had no identification cards, which they needed to claim free healthcare.⁴ Older women were twice as likely as older men to lack identification cards.
- In Bolivia, census data revealed that one in six older people had no valid documents to prove their right to claim the non-contributory pension. As in Mozambique, more older women than older men lacked documents.⁵

Right to property, UDHR Article 17

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 dies. Family members often force widows off their land or seize their property.

- In Tanzania, a complex system of laws govern inheritance rights. Different laws apply to people from different backgrounds. Under customary law a widow cannot inherit the house, assets or land; under Islamic law there is provision for minimal inheritance; under statutory law she can inherit 50 per cent. Disputes over property ownership and inheritance are often the underlying causes of witchcraft allegations and violence against older women.⁶
- Denial of inheritance and property rights is a major cause of disputes in Tanzania, particularly for older women. Older people brought 19,800 cases to paralegal advisers between 2004 and 2008 in 12 districts across Tanzania. Nearly half were cases on disputes over inheritance and land rights. 77 per cent of these were brought by older women.⁷

Right to information, UDHR Article 19

Information is often not available in a form that is suitable and accessible to older people.

- In Moldova, in a survey of 500 grandparents caring for grandchildren, fewer than one in ten had information about state provisions such as childcare services and free medical insurance.⁸
- In South Africa, fewer older women and men received information about HIV and AIDS than younger age groups. In 2008, only 62 per cent of people over 50 had any information, compared with 90 per cent of 15-24 year-olds. As a result, older people know less about HIV and AIDS, making it harder for them to protect themselves or educate those in their care.⁹

Right to social security, UDHR Article 22

Millions of older people have no social assistance or pension, private or state provided, contributory or non-contributory.

- In Zambia, only 4 per cent of older people in three communities surveyed in 2006 received a pension. Nearly three-quarters of pension recipients were men. Only 7 per cent of older people in the survey received other social welfare assistance in kind (for example, food and blankets), of whom three-quarters were women. Even then, the support was irregular and insufficient.¹⁰

Right to work, UDHR Article 23

Sometimes older people cannot get a job because they are considered too old. They may be forced to take low-paid jobs that are unsafe or demeaning because employers assume they cannot do any other work.

- In Peru, older people are frequently prevented from even applying for jobs, regardless of their skills and qualifications. In interviews in 2008, older people said that job advertisements in newspapers often specify that applicants must not be older than 35.¹¹
- In Bangladesh, older people often work in conditions that are far from decent, in jobs that are irregular, seasonal, poorly paid or unpaid altogether. Older women often face an additional layer of discrimination, being paid less than older men for doing the same type of work.¹²

Right to health, UDHR Article 25

Sometimes health services are unaffordable or unavailable to older people, or healthcare workers refuse to treat them because they are old. Primary healthcare services rarely include specific services for older people.

- In Mozambique, older people are exempted by law from paying for consultations and medication at health centres. Despite this, project research from 2008 showed that 86 per cent of older people in 15 communities in Gaza province had to pay a consultation fee and 85 per cent had to pay for their medication when they visited a health centre. Volunteers and nurses at these health centres knew that older people were entitled to free healthcare but said they could do nothing about this without procedural guidelines from the Ministry of Health.¹³
- Equitable access to health services is a right, in times of both peace and conflict, and in humanitarian responses. However, research in 2009 by HelpAge in Buhimba, a camp for internally displaced people in the Democratic Republic of Congo, revealed that older people, considered to be no longer productive or active, were not being treated for their age-related illnesses or were being given the wrong drugs for their conditions.¹⁴

How does population ageing affect older people's rights?

The world's population is ageing at an unprecedented rate. By 2050 there will be two billion older people globally. The majority of older people, 65 per cent, already live in less developed countries. This will rise to 80 per cent by 2050.¹⁵ As the number of older people grows, the number of older women and men who experience discrimination is likely to increase if no action is taken to challenge the status quo.

By 2045 there will be more people over the age of 60 than under the age of 15.¹⁶ Policies and services need to be adapted to reflect this change in population structure. Insurance and credit facilities, employment policies, health and care services, social security systems and HIV and AIDS interventions all need to be changed so that they respect the rights of everyone, old and young. Responses to climate change and the impact of migration must take ageing and families with more older people and fewer children into account.

There is no denying that population ageing presents huge challenges for the public and private sectors as well as communities and families. How do you protect the rights of an ageing population? How do you build stronger, more inclusive societies? How do we design and deliver programmes to ensure that older people can claim their entitlements?

Many health and financial services are provided by businesses and NGOs. Although human rights conventions are only legally binding on the states that ratify them, the private and voluntary sectors also need standards to help them provide services that respect older people's rights and respond to population ageing.

A human rights approach can help. The human rights system, with its underlying principles of equality, freedom and dignity, offers a set of values to govern choices; its legal provisions often spell out specific obligations for governments, the private sector and individuals; and its monitoring and accountability mechanisms provide a robust framework to track and assess progress.

Why protect the rights of older people?

Firstly, discrimination against any group in society is 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.

Secondly, human rights change people's lives. They are transformative. Protecting older people's rights, treating older people with respect and on an equal basis with younger people will enable them to lead dignified, secure lives, free from discrimination and fear.

Respecting people's rights results in better development, since respect, dignity and having a say, as well as material security, are important to people's wellbeing. Protecting the rights of older men and women creates conditions that enable them to contribute to their own development and that of those around them. This results in more inclusive, equitable and sustainable development. For example, when grandmothers caring for grandchildren affected by HIV and AIDS can obtain social security payments, they can provide better care for themselves and for their grandchildren.

And thirdly, it is unlawful to deny people their legal entitlements, whatever their age.

Why aren't existing human rights mechanisms enough?

Existing international and regional human rights law does not sufficiently protect older people's rights. International human rights conventions that are legally binding all emphasise that human rights are for everyone. However, with the exception of one convention (on migrant workers), age is not listed explicitly as a reason why someone should not be discriminated against. As a result, age discrimination is often overlooked by the human rights world. This lack of specific provision in human rights law is known as a "normative gap".

There are a number of other normative gaps where aspects of the lives of older people are not adequately addressed by existing human rights law. For example, human rights law is largely silent on important topics such as rights within community-based and long-term care settings, both for the carer and for 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 and articulation. Harmful practices targeted specifically at older women and men, including violence as a result of witchcraft accusations and the many forms of elder abuse, have also not been adequately addressed. Existing human rights law only offers limited protection against the negative impact of the actions of the private sector and individuals within families. And it can be argued that insufficient attention has been paid to the specific vulnerability of older women.

In addition, human rights standards that protect older people's rights are presently scattered throughout the various international and regional conventions. This dispersal means that older people's rights remain invisible and it is unclear exactly what older people's rights are.

A convention would help reduce age discrimination.



Nile Sprague/HelpAge International

Key human rights mechanisms

The international bill of human rights

Universal Declaration of Human Rights (1948)

International Covenant on Civil and Political Rights (1966)

International Covenant on Economic, Social and Cultural Rights (1966)

Core international human rights instruments

International Convention on the Elimination of All Forms of Racial Discrimination (1965)

Convention on the Elimination of All Forms of Discrimination Against Women (1979)

Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (1984)

Convention on the Rights of the Child (1989)

International Convention on the Protection of All Migrant Workers and Members of Their Families (1990)

International Convention for the Protection of All Persons from Enforced Disappearance (2006)

Convention on the Rights of Persons with Disabilities (2008)

Regional human rights instruments

African Charter on Human and Peoples' Rights (1981)

American Convention on Human Rights (1969)

Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights "Protocol San Salvador" (1988)

Charter of Fundamental Rights of the European Union (2000)

In practice, too, the rights of older men and women are not being adequately protected or monitored. This lack of practical action is known as an "implementation gap". A study by HelpAge in 2008¹⁷ showed that the treaty bodies tasked with monitoring how human rights conventions are implemented rarely ask countries to include older people in their reporting. Likewise, governments rarely include older people's rights in their reports to these treaty bodies. The special rapporteurs and independent experts whose role it is to examine specific rights or geographic areas have also failed to consider the rights of older men and women in their work.

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.

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

Human rights conventions are complemented by a body of standards that aim to guide the treatment of older women and men. Most notable are the UN Principles for Older Persons (1991) and the Madrid International Plan of Action on Ageing (MIPAA, 2002). Older people's rights are a central theme running through these. However, they are not legally binding on governments and so have limited effect. A review in 2007 showed states' commitment to implementing the recommendations in MIPAA to be patchy and inconsistent.¹⁸

What would a convention on the rights of older people do?

A convention would help older people live lives of dignity. It would help change attitudes towards older people; increase the visibility of older people, ageism and age discrimination; clarify responsibilities towards older people; improve accountability; and provide a framework for policy and decision making.

• Change attitudes

A convention would help to reduce age discrimination and ageism. It would change the view of older people from recipients of charity to individuals with rights, knowledge, power and experience. Increased respect for older people will improve relationships between different generations and make societies more cohesive.

• Increase visibility

A convention would draw attention to the many different forms of discrimination that older people experience, including the different ways that men and women are discriminated against. It would provide the basis for advocacy, public awareness and education on the rights of older people. It would complement and raise the profile of MIPAA and the UN Principles.

• Clarify responsibilities

A convention would provide the necessary, legally binding protection of older people's rights under international law. Bringing older people's rights together in one text, as was successfully done for the rights of women, children and disabled people in their respective conventions, would clarify the responsibilities on states and others towards older people. It would spell out what older people's rights are and the minimum standards and action necessary to protect them. States that ratify a convention would be legally obliged to adopt non-discriminatory laws and revise existing legislation if it discriminates against older women or men.

• Improve accountability

A convention would provide a reporting and accountability mechanism that would make governments more accountable for their actions towards older people. It would provide a system of redress for the violation of rights of older people. It would, through the monitoring of its implementation, encourage ongoing dialogue among member states, civil society, NGOs, the private sector and older people.

• Provide a guiding framework

A convention would provide a framework to help policy makers respond effectively to population ageing. It would help governments, NGOs and the private sector design age-sensitive development programmes and allocate resources more fairly. It would encourage them to collect more age-disaggregated data to inform policy decisions. It would encourage donors to allocate more development aid to older people's programmes. Finally, it would lead to the training of employers, the judiciary, health workers and other service providers on older people's issues.

There will, of course, be those who do not support the idea of a new convention. They argue that international conventions make no difference to people's everyday lives, that the human rights system is already overloaded, that older people's rights are already protected under existing laws and that reporting on and implementing a new convention would be too expensive.

Similar arguments could have been made about children, women and disabled people's rights. However, there is now near universal acceptance of the need for international law to protect these groups. The conventions protecting children and women have changed attitudes and resulted in reform of domestic legislation, and financial resources have been allocated for their implementation. Lessons can be learnt from the experience of existing reporting mechanisms to make the reporting process simpler. Arguments against a convention should not be dismissed, but they are not strong enough reasons for continuing to discriminate against older people in international law as well as in practice.



Maxim Ahmer/HelpAge International

Why do we need a special rapporteur on the rights of older people?

A special rapporteur is an individual expert with a mandate to examine and report 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 member states on the better implementation of MIPAA and eventually a new convention. He or she could promote and 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 older people's rights. He or she would also be able to encourage existing rapporteurs to address older people's rights within their own specific areas of concern.

What existing support is there for older people's rights?

Political support is increasing 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. A new protocol to the African Charter on Human and People's Rights on the rights of older people is being drafted by the African Commission. 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 also growing debate about older women and men's rights within the UN system. The committee that monitors the implementation of the Convention on the Elimination of All Forms of Discrimination Against Women has set up a working group to draft a new general recommendation on older women's rights. This will provide guidance to reporting states on how they can better protect older women's rights and encourage more systematic reporting on this. The newly established Advisory Committee to the Human Rights Council has taken up the rights of older people as a priority issue and will present practical recommendations on how to improve protection to the Human Rights Council in 2010. And finally, the Secretary General's report on implementation of MIPAA to the 2009 General Assembly suggests that member states consider new international instruments to better protect older people's rights.

What HelpAge recommends

HelpAge believes the time has come for a convention and special rapporteur on the rights of older people.

A number of steps need to be taken to achieve this:

1. UN member states should discuss creating a new convention to better protect the rights of older women and men. Discussions can take place in different parts of the UN: at the UN General Assembly, at the Commission for Social Development and within the Human Rights Council.
2. UN member states should appoint a special rapporteur on the rights of older women and men to examine and report on the nature and extent of violations of older people's rights.
3. NGOs and others need to make sure that older women and men shape and are part of any discussion about their rights.
4. The Office of the High Commissioner for Human Rights in collaboration with the UN Programme on Ageing should commission research and produce a report on the rights of older people and their protection under international human rights law.

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Read more:

www.helpage.org/researchandpolicy/rights-1

Human rights change people's lives.

Tom Weller/HelpAge International



Older people's rights

are human rights

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HelpAge International helps older people claim their rights, challenge discrimination and overcome poverty, so that they can lead dignified, secure, active and healthy lives.

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