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Working Group on Protection of the  
Human Rights of Older Persons

REPORT ON THE SITUATION OF OLDER PERSONS  
IN THE HEMISPHERE AND THE EFFECTIVENESS OF BINDING UNIVERSAL  
AND REGIONAL HUMAN RIGHTS INSTRUMENTS WITH REGARD  
TO PROTECTION OF THE HUMAN RIGHTS OF OLDER PERSONS

(Agreed by the Working Group at the meeting hold on December 5, 2011)

## **1. Introduction**

### **1.1. Background**

In the Declaration of Commitment of Port of Spain,<sup>1/</sup> the Heads of State and Government of the Americas pledged to continue “working to incorporate issues of aging into public policy agendas” and to promote “in the regional framework and with support from PAHO and ECLAC, a review of the feasibility of preparing an inter-American convention on the rights of older persons.”

At the Organization of American States (OAS), the member states have underscored the importance of the issue in resolutions AG/RES. 2455 (XXXIX-O/09) and AG/RES. 2562 (XL-O/10), by which the General Assembly instructed the Permanent Council to organize a special meeting on human rights and older persons, bearing in mind that the American Declaration of the Rights and Duties of Man establishes that every human being has the right to life, liberty, and the security of his person. That special meeting took place on October 28, 2010, and was attended by experts from the OAS General Secretariat, the Inter-American Commission on Human Rights, the Pan American Health Organization (PAHO), the United Nations Population Fund (UNFPA), and civil society representatives, who undertook a complex analysis of aging in the region and emphasized the importance of strengthening regional cooperation ties to promote implementation of the policies needed throughout the Hemisphere.

More recently, in resolution AG/RES. 2654 (XLI-O/11), the member states reiterated the earlier commitments, lending impetus to efforts in the framework of the OAS to establish a working group to analyze the situation of older persons in the Hemisphere and the effectiveness of binding universal and regional human rights instruments with regard to protection of the rights of older persons, with a view, ultimately, to drafting an inter-American convention on the rights of older persons with the participation of agencies specialized in this issue.

### **1.2. Mandates contained in resolution AG/RES. 2654 (XLI-O/11) on the creation and mission of the Working Group on the Human Rights of Older Persons**

Resolution AG/RES. 2654 (XLI-O/11), “Protecting the Human Rights of Older Persons,”<sup>2/</sup> instructed the Permanent Council to establish a working group to prepare by the end of 2011 a report analyzing the situation of older persons in the Hemisphere and the effectiveness of binding universal and regional human rights instruments with regard to protection of the rights of older persons.

The Permanent Council assigned performance of this mandate to the Committee on Juridical and Political Affairs (CAJP), which, at its meeting of September 22, 2011, created the Working Group on Human Rights of Older Persons and appointed as chair Ana Pastorino, Alternate Representative of the Argentine Republic. In adopting its work plan, the Working Group decided, for the purpose of marshaling inputs to carry out its mandate, to systematize in a background paper the conclusions of the special meeting of the Permanent Council of October 28, 2010; to request inputs on the issue from all the member states in the Working Group and from international agencies that specialize in the issue; and to hold a diagnostic meeting on November 4, 2011.

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1. Reservation by Nicaragua.  
2. Reservations by Canada and the United States.

Having collected the inputs mentioned in the preceding paragraph, the Working Group proceeded to consolidate the main conclusions put forward by experts from member states and specialized international agencies, and has prepared this report on the situation of older persons in the Hemisphere and on the effectiveness of universal and regional human rights instruments with regard to protection of the rights of older persons.

## **2. Situation of older persons in the Hemisphere**

The process of population aging is a complex current reality that poses new challenges for states as regards addressing the specific needs of older persons, within which context their rights warrant particular attention as far as their international protection and advancement are concerned. One feature of the current demographic context is a sustained increase in the number of older persons. According to data supplied to the Working Group by various of the most authoritative and well-recognized international agencies on the issue:

- The estimate reached by the United Nations Department of Economic and Social Affairs indicates that 1 in 10 persons in the world is aged 60 or over;
- Worldwide, the number of people over the age of 60 is expected to increase from 600 million who were living in 2000 to more than 2000 million in 2050, according to a UNFPA estimate;
- In the Americas, 106 million people are over the age of 60 and it is calculated that by 2050 this figure will have reached approximately 310 million, 190 million of whom will reside in Latin America and the Caribbean, according to PAHO;
- According to data submitted by the IACHR, based on a study of current demographic trends, by 2050, one in five people will be over 60 years old;
- Also at the regional level, ECLAC's estimates for Latin America and the Caribbean suggest that at present more than 57 million inhabitants are aged 60 or over and that by 2050 the overall number of older persons will have reached 180 million, thus comprising more than a quarter of the population;
- Another figure provided by ECLAC is that by around 2040 the population of Latin America and the Caribbean will experience a shift unprecedented in the region's history: there will be more older people than children. This situation will come to pass earlier for some countries than others.
- Average life expectancy, which increased from 51 to 75 years between 1950 and 2010, is projected as rising to 80 years by mid-century.<sup>3/</sup>

It is important to note that this rapid growth in the older adult population will have a serious impact on the capacity of social welfare systems of both less-developed and developed countries, and therefore, requires the preparation of protection measures to accompany the demographic changes, so that population aging does not become a problem as a result of lack of forward planning.

In Latin America and the Caribbean, 50% of older people do not have sufficient resources to meet their daily needs, while a minimal portion of the region's countries has in place health

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3. "From commitment to action: Guide to the review and evaluation of the Brasilia Declaration in Latin America and the Caribbean," ECLAC, 2011.

promotion goals for the over-60 population.<sup>4/</sup> The PAHO review notes the existence of thousands of older persons living in a situation of discrimination, impotence, and neglect.

The incidence of poverty among older people is just as high. The report of the United Nations Secretary-General published in July 2011 points to poverty as a pressing problem that affects the well-being of older persons differently to that of the rest of the population, as it tends to be associated with infirmity, lack of support networks, limited schooling, and a productive life marked by informality or intermittent employment.<sup>5/</sup>

The Organization of American Mutual Entities (ODEMA), representing civil society, has added to the diagnostic review by highlighting the existence of architectural barriers in older persons homes that cause daily difficulties, such as inability to feed themselves properly, see to their personal hygiene needs, move around the house, take their medication, and other simple yet necessary activities. To deal with these shortcomings, ODEMA has suggested the need to implement various integrated special services under a mutualist approach, in order to increase the independence of these persons in their day-to-day tasks, improve access and mobility in the home, adapt environments, and compensate for dysfunctions.

Mistreatment of older people in both public and private spheres is another aspect that raises concern. This was identified as a growing problem in the region and one that requires countries to adapt to the new context of the demographic and epidemiological situation through specific protection measures.<sup>6/</sup>

The challenge of protecting the rights of older persons also has a gender dimension. At present, older women make up 56% of the older adult population and 11% of the female population overall. In turn, the older female population has undergone a unique internal aging process, as evinced by the fact that one in every three older women in Latin America was 75 or older as of 2010. Although in most countries life expectancy is higher for women than for men, the same is not always true of quality of life since they tend to spend more years with functional limitations as a result of inequities experienced in the course of their lives.<sup>7/</sup>

These older women are very often exposed to situations of multiple risks. Despite the fact that 17 countries in the region have adopted laws on domestic violence, in six of them there is no protection for older persons, and even when the abuse is recorded at an advanced age, according to ECLAC, the guarantees of protection are insufficient. As regards laws and policies on gender equality, they are also non-specific with respect to age and, therefore, not sufficient to ensure effective protection for this vulnerable group.

Another point to which attention has been drawn is the impact of natural disasters on older persons. Their frequent occurrence in recent years has revealed the particular lack of protection for older persons affected by these events. Recent large-scale natural disasters, such as the earthquakes that struck Haiti and Chile, have highlighted the fact that older people comprise the segment most at risk. A survey conducted by the United Nations Office for the Coordination of Humanitarian Affairs

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4. PAHO:

5. Ibid.

6. Ibid 3.

7. "From commitment to action: Guide to the review and evaluation of the Brasilia Declaration in Latin America and the Caribbean," ECLAC, 2011.

(OCHA) and the Government of Haiti, has shown that older people are more at risk during emergencies because it is harder for them to leave and seek help. Similarly, in Chile, of the total number of fatalities reported by the Ministry of the Interior, almost 60% corresponded to older persons and minors.<sup>8/</sup>

Access to justice is another area in which older persons may also be at a disadvantage, given that very often proceedings lasting several years can mean that these individuals never have their claims processed, particularly in cases of economic and inheritance abuse. ECLAC has also analyzed the situation of aging in prisons. Without distinguishing between the level of development of countries, it has affirmed that older persons in prisons do not receive the care they need, on top of which they spend longer periods in prison without being convicted.

### **3. Effectiveness of binding universal and regional human rights instruments with regard to the rights of older persons**

#### **3.1. Fragmented legal framework**

The main challenge in advancing protection of the rights of older persons concerned the analysis of the fragmented and insufficient legal framework.<sup>9/</sup> This study also relied on the participation of experts and inputs from member states at the meetings of the Working Group as well as from national authorities to elucidate the situation as regards the legal framework on protection of older persons. Under international human rights doctrine, treatment of the issue of aging falls under the broad category of “any other social condition.” The reasoning for this broad treatment stems from the universal nature of international instruments, which, by definition, include the elderly.<sup>10/</sup>

The Universal Declaration of Human Rights (1948) makes no explicit reference to older persons; however, all its provisions apply to all persons without discrimination, including, of course, this social group. The International Covenant on Economic, Social and Cultural Rights (1966) also contains no explicit reference to the rights of older persons, except in Article 9, which deals with social security. That is why, in 1995, the Committee on Economic, Social and Cultural Rights noted in General Comment No. 6 that, “*States parties to the Covenant are obligated to pay particular attention to promoting and protecting the economic, social and cultural rights of older persons.*”<sup>11/</sup> In this regard, in 1995 the above Committee said that “neither the Covenant nor the Universal Declaration of Human Rights refers explicitly to age as one of the prohibited grounds.”<sup>12/</sup>

Today the region faces a new demographic and epidemiological situation, one that requires that countries adapt to new contexts and adopt specific programs and measures to protect the rights of older persons, as well as recognizing the existence of areas that require regional standards and measures more specific than those currently in place.<sup>13/</sup> Referring to the need to address the fragmentary nature of laws governing the rights of older persons, ECLAC has noted that “the creation

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8. Ibid. 4.

9. Ibid.

10. Vision statement of the State of Argentina on the rights of older persons and the attendant duties of states.

11. Ibid.

12. Ibid.

13. PAHO, Meeting of the Working Group of November 4, 2011.

of a treaty to protect the rights of older persons brings with it a series of benefits,” which include, in particular:

- To eliminate the enormous fragmentation of laws that currently exists in order to codify and interpret them in the context of aging; and
- To facilitate promotion and protection efforts on the part of states, international actors, and civil society.

In its extensive analysis on the regulatory insufficiency that limits effective protection of the rights of older persons, ECLAC stated that the international standards currently in place do not provide a sufficient set of coherent regulatory principles to guide the lawmaking efforts and public policies of states. The United Nations Principles for Older Persons provide a universal frame of reference; nonetheless, by their nature they are generic and are not sufficiently specific in many spheres of the reality that concerns us.

Equally, the general standards on human rights and other international standards leave aside a series of specific rights and protection measures that require a more elaborate regulatory framework in light of new understandings, consensus reached, the recommendations of international agencies, and the decisions of human rights treaty bodies.

At the time the international covenants on human rights and a number of other specific conventions were adopted, demographic aging was not a sufficiently important issue to be taken into account by international and regional agencies. At present, the changes in this area are proceeding like a silent revolution and, given their unprecedented pace and the context of inequality in which they occur, will have serious consequences for development, public policies, and the effective exercise of human rights.<sup>14/</sup>

Referring to the Action Plan on the Health of Older Persons, including Active and Healthy Aging, PAHO acknowledges that it is a technical document which constitutes an important contribution to the inter-American system for finding solutions to ongoing obstacles in policies, plans, and legislation with respect to the well-being of older persons throughout the Hemisphere, but is not a binding instrument. Nor, given its legal status, does it contemplate a regional organ or committee to supervise and constantly evaluate the protection of the human rights of older persons either in civil society or in public or private long-term care institutions.

Both the Vienna International Plan of Action on Ageing (1982) and the Madrid Political Declaration and International Plan of Action on Ageing (2002) also represent major diagnostic assessments on the situation of older persons but they, too, are not binding instruments. Referring to its report entitled “The need for a human rights perspective and an effective United Nations mechanism for protecting the rights of older persons,” the United Nations Human Rights Council Advisory Committee pointed out that said report underscored the importance and need for an international convention devoted specifically to the rights of older persons and for inclusion of the issue in the international human rights agenda.<sup>15/</sup>

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14. “From commitment to action: Guide to the review and evaluation of the Brasilia Declaration in Latin America and the Caribbean,” ECLAC, 2011.

15. Remarks by the representative of the Federative Republic of Brazil at the meeting of the Working Group on November 4, 2011.

One of the representatives of civil society contributing to this report—*HelpAge International*—pointed out that existing international human rights instruments do not adequately address or protect the rights of older persons; the committees monitoring human rights treaties and commitments rarely inquire about the rights of older persons. The right to nondiscrimination; the right to identity, to freedom from violence, to decent work with social security, their right to health, inheritance, and many other rights continue to be systematically violated in the countries of the region.

The Human Rights Public Policy Institute (IPPDH) of the Southern Common Market (MERCOSUR) informed the Working Group of the approach to this issue adopted by the State Parties of MERCOSUR in the joint communiqué issued by the Presidents of MERCOSUR and its Associated States at the XXXVII Regular Meeting of the Common Market Council in July 2009. In that document, they reiterate their commitment to promoting the issue of the rights of older persons, with a view to achieving adoption of an international convention.<sup>16/</sup> The communiqué reflects a commitment to consolidate inter-American dialogue on this subject.

In short, given that the regulatory framework in place is fragmented and inadequate, the challenge is to find effective and specific mechanisms to guarantee the quality of life, wellbeing, health, and other rights of older persons, particularly in areas in which it is necessary to establish standards, technical guidelines, and more specific measures than those currently available.<sup>17/</sup>

### **3.2. Special measures for protecting the human rights of older persons**

Although rights upheld in universal instruments extend to older persons as well, this segment of society is exposed to vulnerabilities that render it necessary to adopt affirmative actions to ensure that effective protection of their rights covers the particular circumstances they face.

In connection with the participation of national representatives and experts from international organizations and civil society in the Working Group, PAHO has indicated, for example, that, although there are general human rights instruments that encompass the rights of all persons universally, there are specific situations in which older persons are more exposed to violation of their rights. By way of example, PAHO has singled out a number of rights, including:

- The right to life, which is upheld in instruments such as the 1969 American Convention on Human Rights (Article 4), but without any specific provisions guaranteeing the right to life of older persons, through to the end of life, as terminally ill patients, nor provisions for quality care, aimed above all at avoiding isolation, physical or mental mistreatment, or neglect.
- The right to humane treatment is also addressed in general in Article 5, but for effective protection of that right in the case of older persons, it is suggested that specific measures be adopted, above all for persons in long-term care institutions, such as assisted living residences or homes, to regulate the functions of care and health personnel and ensure that they are trained in human rights standards and aging and refrain from hitting or pushing the older persons in their care, forcing them to eat, or subjecting them to burns or sexual abuse.

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16. Human Rights Public Policy Institute (IPPDH) of the Southern Common Market (MERCOSUR)

17. *Ibid.* 3.

- Although the right to health, for its part, is provided for in instruments such as the Protocol of San Salvador (Article 10), it is not specific on the minimum measures required to protect that right for older persons, such as:<sup>18/</sup>
  - specific policies and plans for protecting the human rights of persons in long-term care;
  - training for the human resources managing national programs for older persons;
  - the formulation and review of legal frameworks and mechanisms for protecting the human rights of older persons;
  - the establishment of comprehensive health care services that genuinely meet the needs of older persons and the revamping of existing services;
  - the establishment of physical, social, and cultural environments conducive to the development of older persons and capable of protecting their decision-making capacity. Such environments should also facilitate the exercise in old age of such human rights as decent work, lifelong education, the improvement of both contributive and non-contributive pension coverage and older persons' right to enjoy the highest possible standards of health;
  - long-term community care options, including specially adapted housing and assisted living residences that pay special attention to nutritional health, unintentional injuries, and the prevention of falls and assaults that may create or exacerbate physical or mental disability in older persons and therefore constitute violations of their right to ongoing humane, psychological and moral integrity.

That is why reference is made not just to the need to guarantee measures that protect the quality of life and well-being, but also to measures that cater to the environment surrounding older persons, such as family care-givers lacking community support, health workers lacking the right tools, and health professionals lacking training in these areas.

Guidance for the effective protection of older persons' human rights must observe the principle of nondiscrimination, which has to do with the stigma, exclusion, and violence to which older persons are subjected, and that of participation, through which older persons make substantial contributions to their families, communities, and society in general; older persons must be participants in any decision that affects them and the environment in which they live.<sup>19/</sup>

Mention was also made of the importance of fully satisfying the material and spiritual needs of older persons as part of the very notion of a caring and just society. Although there have been a number of initiatives worldwide on behalf of older persons, such as those we have mentioned (the Vienna Plan of Action [1982], the Madrid Plan of Action [2002], and the Principles for Older Persons adopted by the United Nations), there is awareness in the Americas that efforts need to be redoubled in order to incorporate modern trends that are calling for a binding international convention to protect the rights of older persons. In the Americas region, this commitment was taken up in the Declaration of Brasilia, which also calls for an international convention for the protection of the rights of older persons and continues the fight on behalf of this vulnerable population.

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18. Ibid.

19. United Nations Population Fund (UNFPA).



#### **4. Conclusion**

Older persons are visibly vulnerable where the normal exercise of their rights is concerned, and this has made societies aware of the need for states to intervene to ensure the principle of nondiscrimination by delivering equality to those who suffer inequality.

Governments must ensure that this vulnerable group, just like all other citizens, has an equal right to enjoy all civil, political, economic, social, and cultural rights. States must take affirmative steps in this regard to guarantee older persons the right to equal opportunity and to nondiscrimination.

All the parties involved in the discussions on the issue agree that aging must be approached as a human rights issue, and from that conceptual standpoint, must have an impact on the design and implementation of public policies, as well as on the adoption of laws in states.

The experts drew attention to the fragmentary nature of the legal framework. They also noted that, at the domestic level, countries have adopted different approaches: Some countries have specific domestic laws on older persons; however, others have different forms of institutional frameworks, evincing a lack of uniformity and standardization on the issue in the region.

Besides a variety of domestic rules, at the international and regional levels there are several non-binding instruments to protect the elderly, including the United Nations Vienna International Plan, the Madrid International Plan, and the Principles for Older Persons, as well as the recommendations of the Committee on the Elimination of Discrimination against Women and the Committee on Economic, Social and Cultural Rights, among others. For the inter-American system, the Protocol of San Salvador and the PAHO Action Plan were highlighted and, as noted above, these do not adequately cover the specific measures needed to protect the rights of older persons.

A legally binding instrument to safeguard the human rights of older persons is warranted, not only by the fragmented state of the legal framework but also because of the specific nature of the type of protection that older persons need, particularly given the urgency imposed by the progressive nature of demographic change.

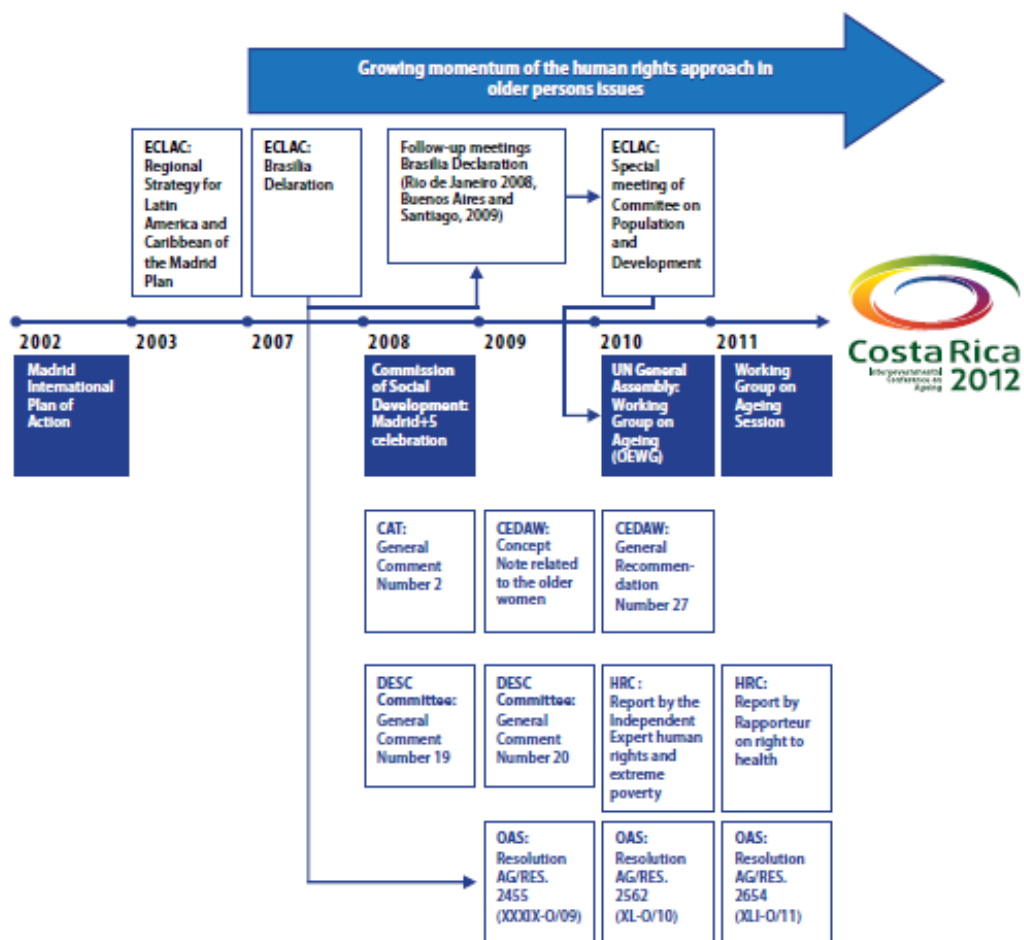
The region faces major challenges in terms of care for older persons, against the backdrop of an aging population. In the current regulatory framework, the Working Group's discussions have highlighted the inadequacy of international and regional instruments for protecting the rights of older persons in the Americas. As well as underscoring how important this issue is for the OAS member states, the intense participation by member states at the meeting of November 4, 2011, shows the level of commitment of these countries to the issue. The reaffirmation of this commitment to addressing the issue with urgency and the need to strengthen regional cooperation for effective protection of this vulnerable group led the Working Group to recognize the pressing need to draw up a legally binding inter-American instrument.

It must be pointed out that specialized agencies such as PAHO, ECLAC, and UNFPA, which contributed to the discussions on the topic within this Working Group, representatives of civil society organizations, and regional organizations assisted by their member states, such as MERCOSUR, support the idea of drafting a binding inter-American instrument that establishes specific measures for protecting the rights of older persons.

For all these reasons, this report underscores the need to implement in 2012 this Working Group's mandate, contained in operative paragraph 2 of resolution AG/RES. 2654 (XLI-O/11), to prepare "a draft inter-American convention for the advancement and protection of the rights of older persons ... before the end of the first half of 2012."



**APPENDIX I:** Timeline of regional and universal meetings on the issue ahead of the ECLAC 2012 conference in Costa Rica.<sup>20/</sup>



20. "From commitment to action: Guide to the review and evaluation of the Brasilia Declaration in Latin America and the Caribbean," ECLAC, 2011.



**APPENDIX II: Table of Special Measures Identified by PAHO.<sup>21/</sup>**

Rights	Provision	Special measures identified:
Right to life	American Convention, Article 4, 6 ICCPR	Special measures to protect the right to life of older persons through to the end of their lives, above all in relation to terminally ill patients under the protection of the State, including: * providing them with any necessary pain relief and nutritional support; * maintaining quality care through to the end of life, above all avoiding isolation, physical or mental abuse, inappropriate care, neglect, and financial exploitation; * specific measures for appropriate treatment of problems such as the fear of death, so that older persons can die with dignity.
Right to humane treatment	American Convention, Article 5, ICCPR 7	* formulating specific measures, particularly in connection with older persons living in long-term care institutions or assisted living residences or homes, to regulate the functions of caregivers and health personnel and training for them in human rights and ageing standards; * Specific measures relating to this right that need to be formulated and included in national legislation and policies, including those related to the aforementioned institutions.
Right to liberty	American Convention, Article 7, ICCPR9, y Article 22, ICCPR 17	National policies and laws that establish specific measures in community institutions and homes to guarantee: * visits or contacts by older persons with the community; * community participation in the activities of the home; and adaptation of the physical layout in homes to facilitate access and older persons' right to mobility.

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21. Source: PAHO:

<p>Right to personal security</p>	<p>American Convention, Article 7, ICCPR 9</p>	<p>* Specific measures relating to the right to personal security, such as those guaranteeing freedom to make decisions and to voluntarily accept or refuse, without coercion, treatments, interventions or medical or scientific experiments, be they physical or mental, as well as clear protocols in that regard; *Measures based on international standards and instruments to enable health personnel and others to determine whether a person is able to receive the necessary information, make up his or her own mind, and make a decision without being coerced.</p>
<p>Political rights</p>	<p>Protocol of San Salvador, Article 10</p>	<p>* Specific measures to enable older persons living in asylums, long-term care establishments, community homes, and psychiatric or other institutions to exercise their right to vote in elections.</p>
<p>Right to health</p>	<p>Protocol of San Salvador, Article 10</p>	<p>Measures, legislation, programs, and public programs and policies that allow everyone without discrimination: * primary health care, vaccinations against infectious diseases, prevention and treatment of endemic, occupational, and other diseases, education on disease prevention, and on meeting the health needs of more vulnerable groups(such as older persons).</p>