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### Annual report of the United Nations High Commissioner for Human Rights and reports of the Office of the High Commissioner and the Secretary-General

Promotion and protection of all human rights, civil,  
political, economic, social and cultural rights,  
including the right to development

## Normative standards and obligations under international law in relation to the promotion and protection of the human rights of older persons

### Report of the United Nations High Commissioner for Human Rights\*

#### *Summary*

The present report, submitted pursuant to Human Rights Council resolution 48/3, provides an analytical overview of normative standards and obligations under international law in relation to the promotion and protection of the human rights of older persons. The report concludes that the current international framework provides fragmented and inconsistent coverage of the human rights of older persons in law and practice and that there is a need to move expeditiously towards developing and adopting a coherent, comprehensive and integrated human rights framework on older persons, while further integrating older persons' concerns into the work of existing mechanisms. The report is intended to facilitate discussion at a multi-stakeholder meeting mandated in the same resolution, as well as to contribute to all relevant discussions at the national, regional and international levels, including the Open-ended Working Group on Ageing.

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\* Agreement was reached to publish the present report after the standard publication date owing to circumstances beyond the submitter's control.



## I. Introduction

1. The present report is submitted pursuant to Human Rights Council resolution 48/3. In that resolution, the Council requested the United Nations High Commissioner for Human Rights to prepare a report on normative standards and obligations under international law in relation to the promotion and protection of the human rights of older persons and to do so in consultation with States, regional mechanisms, treaty bodies, national human rights institutions, relevant United Nations agencies and civil society organizations, for submission to the Human Rights Council at its forty-ninth session. The Council further requested the Office of the United Nations High Commissioner for Human Rights (OHCHR) to convene a multi-stakeholder meeting to discuss the report, and to prepare a summary with conclusions of the meeting that includes recommendations on addressing possible gaps and the dispersiveness of international human rights law with regard to older persons, and to submit the report to the Human Rights Council by its fifty-first session.

2. Over its 11 working sessions held since 2011, the Open-ended Working Group on Ageing, established and mandated by General Assembly resolutions 65/182 and 67/139,<sup>1</sup> has been considering the adequacy of the existing international framework relating to the human rights of older persons and how best to address possible gaps and other limitations, including by considering, as appropriate, the feasibility of further instruments and measures. Since 2013, the Independent Expert on the enjoyment by all older persons of human rights (hereinafter referred to as the Independent Expert), whose mandate was established by the Human Rights Council in its resolution 24/20, has also examined this issue in detail; furthermore, other human rights bodies have addressed aspects of the human rights of older persons in their work. The present report builds upon the work of these bodies and mechanisms, as well as on the two analytical studies undertaken by OHCHR on normative standards in relation to older persons as contributions to the Open-ended Working Group on Ageing at its working sessions in 2012<sup>2</sup> and 2021.<sup>3</sup>

3. In preparing the report, OHCHR consulted with relevant stakeholders and received 28 written contributions in response to a request for inputs, which are available on the OHCHR website.<sup>4</sup>

## II. Background

### A. Demography and the human rights of older persons

4. Rapid population ageing is one of the defining trends of our time.<sup>5</sup> By the year 2050, it is estimated that there will be 1.5 billion people aged 65 and above, constituting one sixth of the world's population.<sup>6</sup> While ageing in itself does not necessarily make individuals more vulnerable, a number of physical, political, economic and social factors that accompany older age contribute to the challenges that older persons face in the enjoyment of their human rights, as has been evidenced during the coronavirus disease (COVID-19) pandemic.<sup>7</sup>

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<sup>1</sup> See <https://social.un.org/ageing-working-group/index.shtml>.

<sup>2</sup> 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/OHCHRAnalyticalOutcomePaperonOldePersonsAugust2012.doc>.

<sup>3</sup> 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>.

<sup>4</sup> See [https://www.ohchr.org/EN/Issues/OlderPersons/Pages/submissions-res-48\\_3.aspx](https://www.ohchr.org/EN/Issues/OlderPersons/Pages/submissions-res-48_3.aspx).

<sup>5</sup> See *Shaping the Trends of Our Time*, report of the United Nations Economist Network for the seventy-fifth anniversary of the United Nations.

<sup>6</sup> United Nations, *World Population Ageing 2019: Highlights*, p. 5.

<sup>7</sup> See [A/75/205](#); and the Secretary-General's policy brief on the impact of COVID-19 on older persons.

5. “Older age” or “older persons” are socially constructed concepts, as is the significance of a person being perceived as “old”.<sup>8</sup> There are no fixed, objective biological or chronological determinants of when a person enters “older age”: it depends on the cultural values and practices of the communities to which they belong.<sup>9</sup> “Older age” is defined differently for different purposes; even when chronological age is a threshold criterion, different ages are used, for example for eligibility for a State pension, for discounts or other privileges, or for reviewing a person’s capacity to drive.<sup>10</sup> The concepts of “old age” and “elder”<sup>11</sup> status have varied over time, within and among cultures. Individuals’ psychological age (how old they feel) may differ from their chronological age or from where others view them on the ageing spectrum, and different groups in society may answer the question of “who is old” in diverse ways and in comparison with their own age.<sup>12</sup>

6. Being classified as an “older person” or as having reached “older age” often leads to systematic disadvantage because of that status. Discriminatory treatment is often based on ageist stereotypes and paternalistic or adverse assumptions about loss of capacity, and inability to adapt and to learn new skills, or even interest in doing so. These ageist attitudes support exclusion of individuals and groups from social and economic activities such as remunerated work once they reach “older age”.

## **B. Impact of the COVID-19 pandemic on the human rights of older persons**

7. The COVID-19 pandemic highlighted the deficiencies in international and national frameworks for older persons in dramatic and tragic ways. While the pandemic seriously affected many groups, its consequences have been amplified by existing structures of inequality and disadvantage.<sup>13</sup> The impact on the human rights of older persons has been particularly devastating.<sup>14</sup> 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 loss of life and serious illness, and has highlighted the existence of ageist structures, attitudes and practices, and their grave consequences for the enjoyment of human rights by older persons.

8. In May 2020, the Secretary-General described the particular risks that COVID-19 pandemic presented to older persons.<sup>15</sup> These included: significantly higher risk of severe disease and mortality following infection; potential age discrimination in access to medical care, triage and life-saving therapies; the deaths of thousands of residents of care homes for the elderly or long-term care facilities as a result of contracting COVID-19; additional exposure to neglect, mistreatment or abuse – in family situations and in care homes and institutions – as a result of lockdowns; reduction in access to non-COVID-related health services, such as home-based visits and community care; threats to social networks, an increased risk of social isolation, and risks to mental health, especially for older women living alone during lockdowns and as a result of social distancing measures; an escalation of entrenched ageism, including discrimination against and stigmatization of older persons and the emergence in public discourse and on social media of remarks and hate speech targeted at older persons, as expressions of intergenerational resentment; differential access to

<sup>8</sup> A/HRC/48/53, paras. 31–37.

<sup>9</sup> 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.

<sup>10</sup> *Ibid.*, p. 16.

<sup>11</sup> 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.

<sup>12</sup> 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.

<sup>13</sup> See E/CN.5/2021/4.

<sup>14</sup> United Nations, “COVID-19 and human rights: we are all in this together”, April 2020.

<sup>15</sup> United Nations, “Policy brief: the impact of COVID-19 on older persons”, May 2020.

pandemic-related and other information and access to government and other services; and the invisibility of older persons in public data analysis.

9. Many impacts of the pandemic reflect existing deficiencies in the framework for the protection of older persons' human rights. The health emergency and the responses to it laid bare, and often amplified, many challenges that older people have been facing for years, such as discrimination based on older age, lack of social protection and of access to health services, lack of autonomy and participation in decision-making, and risk of violence, neglect, abuse and exploitation.

10. The gravity and urgency of the situation were highlighted in a joint statement by 146 Member States and permanent observers supporting the Secretary-General's policy brief on older persons. They expressed deep concern regarding the devastating impact that the COVID-19 pandemic had had on the lives of older persons, and in relation to the escalation of ageism, including age discrimination and the stigmatization of older persons. They also stated their commitment to fully promoting and respecting the dignity and rights of older people, 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".<sup>16</sup>

11. The pandemic continues to present new challenges to the international community and national governments to ensure protection of the human rights of all members of their societies, including older persons, as highlighted by the United Nations system<sup>17</sup> and human rights mechanisms,<sup>18</sup> including the Independent Expert.<sup>19</sup> Strategies to "build back better" have also raised questions about whether planning consistently includes older persons, or whether they are at times being sidelined.<sup>20</sup>

12. The pandemic has shown that existing normative frameworks have shortcomings and that there is still much to be done to achieve effective protection of the human rights of older persons. The Secretary-General's policy brief called for the building of stronger international and national legal frameworks to protect the human rights of older persons, and accelerating the efforts of the Open-ended Working Group on Ageing to develop proposals for an international legal instrument.<sup>21</sup> The Independent Expert concluded that the pandemic "has made visible protection gaps that will need to be addressed beyond the COVID-19 response and recovery stages"<sup>22</sup> 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".<sup>23</sup>

### III. Ageism, age discrimination and the human rights of older persons

13. To assess whether the current international framework adequately responds to the widespread and systematic violations of the human rights of older persons, it is necessary to identify the nature and causes of those violations. This requires understanding how social

<sup>16</sup> Available at [http://www.un.org/development/desa/ageing/wp-content/uploads/sites/24/2020/05/ENG\\_final\\_-with-countries.pdf](http://www.un.org/development/desa/ageing/wp-content/uploads/sites/24/2020/05/ENG_final_-with-countries.pdf).

<sup>17</sup> 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>.

<sup>18</sup> 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](http://www.ohchr.org/Documents/HRBodies/TB/COVID19/External_TB_statements_COVID19.pdf).

<sup>19</sup> See A/75/205.

<sup>20</sup> A/HRC/48/53, para. 18.

<sup>21</sup> A/75/218, para. 58.

<sup>22</sup> A/75/205, para. 29.

<sup>23</sup> A/75/205, para. 78.

constructions of ageing and ageism contribute to those patterns of violation. This analysis is essential to determine whether the protection offered by the existing international framework, which is dispersed across multiple general and thematic treaties, reflects a full understanding of the underlying structures and causes of discrimination based on older age and whether it provides a coherent, systematic and sustained engagement with those issues.

14. An extensive body of academic literature has documented the nature and extent of ageism,<sup>24</sup> including its invisibility, its wide acceptance in society, and the significant physical and mental harm it causes to individuals and other adverse impacts on society as a whole.<sup>25</sup> Ageism can be implicit or explicit, negative or positive, and takes many different forms.<sup>26</sup> Ageist attitudes may exist in one's own mind, in the attitudes and behaviour of one person in relation to another, or on an institutional and policy level.<sup>27</sup> Ageist attitudes are widely held, including among older persons themselves, and this internalization leads to a range of harmful effects.<sup>28</sup>

15. Ageism is a global phenomenon with deleterious effects on older persons, which affects their enjoyment of many human rights, including the rights to life, to health, to an adequate standard of living, to work, to autonomy and independence, to liberty and security of person and to participation in community life. The *Global Report on Ageism*, jointly launched by the World Health Organization, OHCHR, the Department of Economic and Social Affairs and the United Nations Population Fund in 2021 provides evidence about the nature and extent of ageism, and its impacts in younger age and older age. This report identified the adoption of stronger legislative protection against age discrimination and ageism as a priority.<sup>29</sup>

16. The Independent Expert<sup>30</sup> drew attention to the harmful impacts of ageism in older persons' lives: in areas such as health and long-term care, subjection to violence and abuse, employment and retirement, social exclusion, and financial activities, in media representations and hate speech, and in emergency contexts.<sup>31</sup> She noted that, by homogenizing older persons, ageist attitudes and practices failed to 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".<sup>32</sup>

17. A striking feature of the international human rights framework is that there is no explicit guarantee against being subjected to discriminatory treatment based on ageism, and no explicit obligation on States to take active measures to eliminate ageism and its discriminatory consequences. Notwithstanding this gap, States arguably have an obligation to address ageism because ageism amounts to discrimination on the basis of age, and some treaties oblige States to eliminate discrimination on the basis of "other status", which includes age. Yet these general provisions on age discrimination have not generally been used to address ageism more broadly in the practice of existing human rights treaty mechanisms, and the term "ageism" rarely features, other than in reports of the Independent Expert and of the Special Rapporteur on the rights of persons with disabilities.

<sup>24</sup> 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).

<sup>25</sup> Kerry Sargent-Cox, "Ageism: we are our own worst enemy", *International Psychogeriatrics*, vol. 29, issue 1 (2017), pp. 1–2.

<sup>26</sup> 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.

<sup>27</sup> Israel Doron and Nena Georgantzi (eds.), *Ageing, Ageism and the Law: European Perspectives on the Rights of Older Persons* (2018).

<sup>28</sup> 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.

<sup>29</sup> World Health Organization (WHO), *Global Report on Ageism* (2021), p. 104.

<sup>30</sup> See [A/HRC/48/53](#), paras. 21–31 and 58.

<sup>31</sup> [A/HRC/48/53](#), paras. 51–72.

<sup>32</sup> [A/HRC/48/53](#), para. 51.

18. Beyond the human rights protection gap relating to discrimination on the basis of older age, other significant gaps and limitations exist that have a particular impact on the effective coverage of the human rights of older persons. These include areas such as: 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, in particular with regard to 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 relation to 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.<sup>33</sup>

19. While an understanding of the types of gaps that affect the enjoyment of human rights by older persons is important, the update to the 2012 analytical outcome study on the normative standards in international human rights law in relation to older persons (the “2021 updated study”) proposed to focus on whether the elaboration of a dedicated new binding instrument would have a unique and significant effect on improving the protection of the human rights of older persons at the international and national levels.<sup>34</sup>

## **IV. Adequacy of coverage under existing international human rights instruments**

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

20. Older persons are entitled to enjoy all human rights and thus can invoke the general guarantees in human rights treaties.<sup>35</sup> Furthermore, some treaties explicitly guarantee rights of particular relevance to older persons, for example the right to social security in older age. At the regional level, the adoption in 2015 of the Inter-American Convention on Protecting the Human Rights of Older Persons, and in 2017 of the Protocol to the African Charter on Human and Peoples’ Rights on the Rights of Older Persons in Africa, represents a significant development, even though their coverage is limited to the States within those two regions that have adhered to the relevant treaty.

21. Nonetheless, older persons are otherwise rarely mentioned in United Nations human rights treaties, and there is generally no explicit reference to older age as an impermissible basis of discrimination.<sup>36</sup> The standard list of prohibited grounds of discrimination in United Nations human rights instruments does not explicitly include age: 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 thematic treaties.

22. Discrimination on the basis of age is now accepted as falling within discrimination on the basis of “other status”. Nonetheless, there has been relatively little case law or other practice under the United Nations human rights framework on the ageing process or the social and legal construction of “older age” and on the implications of these for the concept of equality and non-discrimination on the ground of (older) age. Nor has there been substantial consideration of the special features of age discrimination that require a tailored definition of discrimination (such as the provision in the Convention on the Rights of Persons with

<sup>33</sup> A/75/205, para. 78.

<sup>34</sup> 2021 updated study, para. 57.

<sup>35</sup> The present report focuses on United Nations human rights treaties. The coverage of the human rights of older persons under regional human rights treaties and other instruments is considered in the 2021 updated study, paras. 59–65.

<sup>36</sup> 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).

Disabilities that a denial of reasonable accommodation in itself constitutes a form of discrimination on the basis of disability).

23. 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.”<sup>37</sup>

24. Yet, ageism is not a new phenomenon: the term was coined around the time the International Covenants on Human Rights were adopted and the phenomenon existed long before it was explicitly named. That the drafters of the International Covenant on Economic, Social and Cultural Rights and other treaties did not have age or ageism in mind may have shaped the conceptual framework underpinning the treaty, as well as the rights selected for inclusion in the Covenant and their formulation.

25. The omission of age discrimination from the International Covenant on Economic, Social and Cultural Rights can be seen as sending an implicit message that it is of lesser importance than the forms of discrimination explicitly listed, and this may lead age discrimination to receive less rigorous scrutiny than other forms.<sup>38</sup> Indeed, international and national human rights systems have largely failed to respond adequately to ageism and age discrimination compared with their response to racism, sexism, ableism, and the rights of the child, where specific treaty provisions exist.

26. In particular, the lack of a rigorous international framework often flows through to the national level, where age discrimination and ageist attitudes are a widespread and ingrained part of most societies, and existing practices are often assumed to be “objective and reasonable” and thus not impermissible differential treatment, even though they embody ageist assumptions.<sup>39</sup> 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.

27. The issue of intersectional or multiple discrimination on the basis of 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, there has not been much articulation in the human rights treaty body case law of a coherent and experience-based conceptual framework on the rights of older persons from the perspective of intersectionality. In the absence of norms and standards particular to the situation of older persons, the existing human rights mechanisms currently have a limited ability to reflect a nuanced recognition of intersectional and multiple discrimination issues as they relate to older age and other grounds.<sup>40</sup>

28. The Independent Expert’s 2021 report highlighted the international framework’s failure to recognize and provide 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.<sup>41</sup>

<sup>37</sup> See the Committee’s general comment No. 6 (1995), para. 11.

<sup>38</sup> A/HRC/48/53, para. 38.

<sup>39</sup> A/HRC/48/53, para. 41.

<sup>40</sup> 2012 analytical study, p. 12.

<sup>41</sup> A/HRC/48/53, para. 95.

## B. Evolving practice in addressing the human rights of older persons by international human rights mechanisms

### *United Nations human rights treaty bodies*

29. The human rights treaty bodies have engaged with certain aspects of the human rights of older persons or of discrimination on the basis of older age, with the extent 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 falls short of providing a comprehensive, coherent and sustained engagement with the human rights of older persons.<sup>42</sup> 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”<sup>43</sup> and “procedures for monitoring human rights treaties generally ignore older persons”.<sup>44</sup> Furthermore, 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.

30. The establishment of the Open-ended Working Group on Ageing in 2011 elevated the prominence of the human rights of older persons 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 provided a review of the extent to which older persons’ rights had been explicitly included in the work of the different treaty bodies, including the rights considered by the Open-ended Working Group on Ageing during its eighth to tenth sessions. However, there does not appear to have been a significant increase in the engagement by the human rights mechanisms over that period, either before the pandemic or subsequently. Searches of the OHCHR Universal Human Rights Index database of all treaty body concluding observations from 2010 to 2019 found 270 relevant hits for 2010–2014, and 249 for 2015–2019.<sup>45</sup>

31. 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 the human rights of older persons. 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 persons<sup>46</sup> and has 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.

32. The full impact of Committee on Economic, Social and Cultural Rights general comment No. 6 (1995) outside the treaty reporting process is difficult to gauge, though it provides an important frame of reference for those working to give effect to the International Covenant on Economic, Social and Cultural Rights. Its content also reflects the thinking of its time and contains a number of references that are now dated in terms of addressing human rights in older age.<sup>47</sup> Furthermore, the consideration of these issues by the Committee on

<sup>42</sup> 2021 updated study, para. 66.

<sup>43</sup> [A/74/186](#), para. 10.

<sup>44</sup> [A/HRC/27/46](#), para. 31 (d); and [A/HRC/39/50](#), para. 88.

<sup>45</sup> 2021 updated study, para. 72.

<sup>46</sup> 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.

<sup>47</sup> 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.



Economic, Social and Cultural Rights in the reporting procedure is mixed.<sup>48</sup> In respect of 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 such as the rights to health, to social security, and to an adequate standard of living and to live independently.<sup>49</sup> The Committee referred briefly to palliative care in three general comments, in each case it was a general reference in the context of ensuring the availability of “preventive, curative and palliative care services” to all.<sup>50</sup> There have been some references in concluding observations but no detailed discussion of the nature and extent of the right.

33. 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 touched on the position of older women in several other general recommendations, as well as adopting a general recommendation on the economic consequences of marriage, which has particular impacts on many older women.<sup>51</sup> Nonetheless, in some areas older women are included in general references without specificity or as one of an often lengthy list of possible forms of intersectional discrimination.

34. Apart from the Committee on Economic, Social and Cultural Rights and the Committee on the Elimination of Discrimination against Women, there is little engagement by other treaty bodies 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.<sup>52</sup>

35. The Committee against Torture has made limited references to older persons in its concluding observations,<sup>53</sup> 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.<sup>54</sup> Similarly, the Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment has given little priority to older persons: while accepting that its mandate covers care homes, and urging that national preventive mechanisms have a supervisory jurisdiction over them, little attention has been paid to them in its country visits.<sup>55</sup>

36. Other treaty bodies have also had limited explicit engagement with older persons. The Human Rights Committee has made few explicit references to older persons in its general comments and concluding observations. Although the intersections of age and race, ethnicity and indigeneity are important vectors of discrimination, the Committee on the Elimination of Racial Discrimination has given little attention to the issue of older persons, who have been rarely mentioned in its work.<sup>56</sup> Similarly, although the International Convention on the Protection of the Rights of All Migrant Workers and Their Families is the only core human rights treaty to include age in its list of grounds of prohibited discrimination, the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families has devoted little explicit attention to older migrant workers in its concluding observations or

<sup>48</sup> 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).

<sup>49</sup> 2021 updated study, paras. 133–136.

<sup>50</sup> *Ibid.*, para. 144.

<sup>51</sup> General recommendation No. 29 (2013).

<sup>52</sup> 2021 updated study, paras. 85–86.

<sup>53</sup> *Ibid.*, paras. 78–83.

<sup>54</sup> *Ibid.*, para. 82.

<sup>55</sup> *Ibid.*, para. 83.

<sup>56</sup> *Ibid.*, para. 84.

general comments.<sup>57</sup> The Committee on Enforced Disappearances and the Committee on the Rights of the Child have made few references to the situation of older persons.

#### *Special procedures of the Human Rights Council*

37. Since 2014, the mandate of the Independent Expert has brought focus to the issue of older persons' rights. There has been some explicit substantive consideration of the rights of older persons within other mandates, particularly the mandates on the rights of persons with disabilities, extreme poverty, the right to health,<sup>58</sup> violence against women, and discrimination against women and girls. However, most of the engagements by thematic 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 the human rights of older persons.<sup>59</sup> There is significant scope for further discussion of the rights of older persons, including with regard to the rights to education,<sup>60</sup> housing<sup>61</sup> or food, which have been little addressed in the work of the relevant thematic mandates. Special procedures could consult more systematically with older persons and their organizations during their country visits.

## **V. Limitations, deficiencies and gaps of selected human rights norms and obligations**

38. A series of rights and issues have been examined by the Open-ended Working Group on Ageing: 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 to 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.<sup>62</sup> Some of these rights are explicitly guaranteed in existing human rights treaties, for example social security and education, while others such as long-term care and support and palliative care, are not. In some cases, the normative scope of the existing rights may be interpreted to cover matters of particular concern to older persons, but the interpretation and application of those rights has often fallen short of providing adequate protection.

39. 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. Underlying discussions about designing sustainable systems to ensure social protection are influenced, however, by ageist assumptions and stereotypes, for example the assumption that the "working population cohort" is all engaged in work and that the older population is not, in calculating dependency ratios.<sup>63</sup> There is a case for bringing some of these existing protections up to date in view of the transformations taking place in the world of work and old age-related policies and legal frameworks.

40. Another deficient conceptual framework appears to have led to the relative invisibility of older persons in relation to the *right to education*.<sup>64</sup> Older persons have the right to access lifelong learning, vocational training and capacity-building, for instrumental reasons (for example, updating or acquiring new skills for employment) and for reasons of personal development. Older persons are often denied the opportunities to do this as a result of systematic exclusion or ageist attitudes. The framework underpinning the guarantee of the right to education in article 13 of the International Covenant on Economic, Social and

<sup>57</sup> Ibid., para. 87.

<sup>58</sup> See, for example, [A/74/186](#), [A/HRC/14/31](#) and [A/HRC/18/37](#).

<sup>59</sup> 2021 updated study, paras. 90–99 and 177.

<sup>60</sup> Ibid., para. 177.

<sup>61</sup> Ibid., para. 90.

<sup>62</sup> Ibid., paras. 100–182.

<sup>63</sup> United Nations, *World Population Ageing 2019: Highlights*, p. 13.

<sup>64</sup> 2021 updated study, paras. 162–182.

Cultural Rights and other treaties is one developed in a world where people were assumed to 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.

41. The right-to-education focus on the early stages of life, seeking to ensure universal primary and secondary education as a priority, has influenced how States have approached the implementation of this right, notwithstanding recent developments to develop educational opportunities for older persons.<sup>65</sup> Yet many things have changed since the development of the “three-stage life” framework that article 13 reflects.<sup>66</sup> Above all, the significant increases in human longevity and the fact that many more people continue in remunerative work beyond “standard retirement age” and engage in many other activities of social and economic value pose challenges to a right-to-education paradigm skewed so heavily to earlier stages of life.

42. Both the Committee on Economic, Social and Cultural Rights<sup>67</sup> and the Committee on the Elimination of Discrimination against Women<sup>68</sup> have referred to the importance of the right to education for older persons, although despite these pronouncements, there appear to have been almost no references to lifelong learning, (re)training, education or capacity-building relating explicitly to older persons in Committee on Economic, Social and Cultural Rights concluding observations from 2012 to 2020. The practice of the Committee on the Elimination of Discrimination against Women has been somewhat better, with just over a dozen out of 211 sets of concluding observations referring to older women in the context of education from 2012 to 2020. However, most of these references simply mentioned older women as one of a number of categories of women to whom attention needed to be given, and frequently these references were combined with references to a number of 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.

43. The responsibilities of businesses relating to the rights of older persons have been identified as another area requiring greater attention and action by States and others.<sup>69</sup> The Independent Expert has, on a number of occasions, called upon business to adhere to the Guiding Principles on Business and Human Rights and to avoid discrimination against older persons and has reminded States of their obligations to regulate private businesses to ensure that they do not discriminate against older persons.<sup>70</sup> At the same time, the lack of explicit reference to age discrimination or older persons in the Guiding Principles may contribute to the little attention paid so far to the issue in the work of the human rights mechanisms and other United Nations entities in the field of business and human rights.

44. In addition, 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 a number of such issues,<sup>71</sup> which include: (a) data gaps and deficiencies;<sup>72</sup> (b) robotics and artificial intelligence and implications for older persons;<sup>73</sup> (c) refugees, asylum seekers and internally displaced persons; (d) disaster and emergency

<sup>65</sup> 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](https://social.un.org/ageing-working-group/documents/tenth/A_AC.278_2019_CRP.2.pdf) (A/AC.278/2019/CRP.2), para. 38.

<sup>66</sup> Lynda Gratton and Andrew Scott, *The 100-Year Life: Living and Working in an Age of Longevity* (Bloomsbury, 2016).

<sup>67</sup> General comment No. 6 (1995), paras. 35–42; and general comment No. 13 (1999), para. 24.

<sup>68</sup> General recommendation No. 27 (2010), para. 19.

<sup>69</sup> 2021 updated study, paras. 195–196.

<sup>70</sup> 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.

<sup>71</sup> 2021 updated study, sect. VII.

<sup>72</sup> A/75/205, paras. 60–66.

<sup>73</sup> See A/HRC/36/48.

situations; (e) digitalization and human rights;<sup>74</sup> (f) social inclusion;<sup>75</sup> and (g) developing age-friendly societies.

45. Overall, older persons and their concerns remain relatively invisible in the core human rights treaties and practice, and new issues are not being explicitly addressed by existing human rights instruments. There is a lack of a coherent, systematic and sustained engagement with the human rights of older persons and with discrimination on the basis of older age. According to the former Independent Expert<sup>76</sup> and as echoed by the current mandate holder,<sup>77</sup> “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; (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”.<sup>78</sup>

## **VI. Towards strengthening the protection of human rights of older persons**

### **A. Contribution of specialized conventions to the enjoyment of human rights**

46. The critical question in the search for ways to strengthen and address the gaps in the current international human rights framework in relation to the human rights of older persons is whether a new dedicated normative instrument would make a unique and significant contribution to ensuring the full enjoyment by older persons of all their human rights, including by addressing several of the challenges identified above. Asking this question does not exclude or diminish the importance of efforts to encourage existing mechanisms to engage more consistently with the human rights of older persons. Rather, it reflects the experience that specialized human rights conventions at both the international and the regional levels have made striking and tangible contributions to the realization of the human rights of the group protected by the thematic convention.

47. Thematic 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 the effectiveness of a specialized approach. 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 in those areas.

48. Firstly, specialized treaties perform a symbolic function: they are an affirmation that the particular group or the specific rights and violations are sufficiently important to necessitate a dedicated instrument. The creation of the specialized treaty indicates that the international community “takes their suffering seriously”.<sup>79</sup> Secondly, these treaties promote the visibility of those who are the beneficiaries of the treaty – an important matter, given the invisibility of older persons and age discrimination. Thirdly, thematic treaties have a catalysing effect, providing a focus for advocacy and solidarity, and affording a focused framework for legislative and policy development for governments that is tailored to the specific human rights involved. Fourthly, these specialized frameworks engender cross-fertilization with existing frameworks and help other mechanisms to become more aware of

<sup>74</sup> A/75/205, paras. 54–56.

<sup>75</sup> See A/HRC/39/50.

<sup>76</sup> A/HRC/39/50, para. 88; and A/HRC/48/53, para. 95.

<sup>77</sup> A/75/205, para. 78.

<sup>78</sup> A/HRC/39/50, para. 88.

<sup>79</sup> Upendra Baxi, *The Future of Human Rights* (Oxford, 2008), p. 49.

and sensitive to intersectional issues, increasing their ability to apply the latest thinking on these issues within their own treaty framework.

49. One of the most striking recent examples of the potential impact of a specialized treaty is the Convention on the Rights of Persons with Disabilities. The process leading to the adoption of this Convention 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 scrutinized, and subsequently amended or repealed, to ensure respect for the rights of persons with disabilities. These include laws relating to guardianship, mobility and accessibility, independent living arrangements, employment, voting and other political participation rights, communication rights and education, among others.

50. A treaty's impact lies not only in its direct implementation and application at the domestic level, but also in its shaping of policy frameworks and indicators to measure progress. For example, disability, gender and children's issues appear prominently in the goals, targets and indicators of the Sustainable Development Goals, while age, especially older age, has few references. The former Independent Expert noted that the Sustainable Development Goals generally, and in relation to 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 such as children and persons with disabilities, this lack of focus "is certainly a reflection of the lack of a dedicated legal instrument for older persons".<sup>80</sup>

## **B. Maximizing the potential of existing human rights mechanisms**

51. The varied practices by existing human rights mechanisms highlighted in the previous section imply that there is significant scope for further strengthening their engagement on the human rights of older persons. Existing mechanisms could do more to advance the implementation of existing binding norms, non-binding norms and policy documents. Existing mechanisms could increase their engagement with human rights in older age by, for example, the inclusion by treaty bodies of more specific questions in the lists of issues provided to States parties prior to reporting or in response to reports, as well as ensuring that concluding observations regularly address these matters. States parties could include more information on older persons in their reports. Civil society organizations could ensure that they bring the issues to the attention of treaty bodies.<sup>81</sup> Treaty bodies could update existing general comments or develop new ones. Special procedures could pay greater attention to impact of ageism and age discrimination and consult with older persons and organizations representing them in their country and thematic work.

52. While many steps could be taken by existing mechanisms to close the human rights protection gap of older persons, it is important to recognize their limitations. Current mechanisms face practical limitations in their ability to advance the human rights of older persons, including their mandates, workloads, expectations and expertise. Treaty bodies in particular are faced by 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 the length of documents 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 limited expertise of Committee members in the field of ageing and human rights.

53. It must be acknowledged that, despite the attention given to ageing and human rights issues over the last decade, there has not been a substantial increase in engagement. A sole reliance on the potential of existing mechanisms to make up the current shortfall in relation to older persons' human rights is likely at best to result in incremental changes rather than the needed paradigm shift to fully address older persons' human rights in a sustained and comprehensive way.

<sup>80</sup> A/HRC/39/50, para. 35.

<sup>81</sup> A/HRC/48/53, paras. 93–94.

## VII. Conclusions and recommendations

54. The testimony of older persons, views of their representative organizations and assessments by international and national experts have all concluded that fragmentation of existing norms and procedures and their conceptual and operational limitations have resulted in an overall failure to provide adequate recognition and protection of the human rights of older persons at the international level. The deficiencies in the international framework mean that the important catalysing and supportive role that international standards can play in generating action at the national level has also largely been absent. The result is more limited legal protection of the human rights of older persons compared to other groups.

55. Despite significant normative developments at the regional level over the last decade, the current international framework provides fragmented and inconsistent coverage of the human rights of older persons in law and practice. The protection afforded under the current framework and standards is either significantly deficient or too general to provide adequate and specific guidance to governments, policymakers and advocacy groups about what actions are necessary to ensure the realization of specific human rights for older persons. The absence of a dedicated international human rights framework on older persons hampers the consideration of cross-sectional issues by existing human rights mechanisms. Moreover, a number of issues that are particularly significant for older persons are not sufficiently covered by the existing international human rights framework.

56. While international human rights mechanisms have made an effort to consider issues affecting older persons as part of their ongoing work, there is widespread recognition that more needs to be done to close human rights protection gaps affecting older persons. The existing human rights treaty bodies and mechanisms could: further integrate older persons within their existing mandates and activities; consider developing specific norms and standards and updating guidance on older persons; and strengthen collaboration and explore joint approaches in addressing intersectional aspects impacting on older persons.

57. Against the backdrop of the COVID-19 pandemic, which has exposed and exacerbated the vulnerabilities of older persons, urgent action is needed to strengthen of the work of existing mechanisms on older persons. However, it is now increasingly recognized that this will not be sufficient to deliver the necessary change to close existing protection gaps and bring about a paradigm shift. A two-track approach is therefore required: better implementation of existing norms and standards and accelerated development of a new normative instrument.

58. Experience with other specialized treaties at the United Nations and the regional level shows that these treaties add substantially and in unique ways to the realization of the rights that they guarantee. A new normative framework on the human rights of older persons would put the spotlight on the specificity of older persons for the enjoyment of their rights and in addressing violations. A treaty's impact lies not only in its direct implementation and application at the domestic level, but also in its shaping of policy frameworks, and of indicators to measure progress. They also provide a rallying point for stakeholders and advocacy and facilitate cross-fertilization with existing frameworks and help other mechanisms to become more aware of and sensitive to the intersectionality of rights and violations.

59. To deliver on the promise to ensure that all persons, including all older persons, fully enjoy their human rights and fundamental freedoms, it is necessary to move expeditiously towards developing and adopting a coherent, comprehensive and integrated human rights framework that reflects an up-to-date and nuanced understanding of the social construction of ageing, the nature and extent of ageism and age discrimination, and the experiences of diverse groups of older persons.

60. In view of the foregoing, the following recommendations are proposed to States and other stakeholders in order to further strengthen and protect the enjoyment of all human rights by older persons:

(a) Invite States, with the support of OHCHR, to promote broad multi-stakeholder consultations at the national level to identify gaps, challenges and promising practices in the protection of the human rights of older persons, with a view to contributing to the work of the Open-ended Working Group and the United Nations human rights mechanisms, including regular reporting under the treaty bodies and the universal periodic review;

(b) Ensure the active and meaningful participation and contribution of all stakeholders, including civil society, national human rights institutions and older persons themselves, in the work on older persons of the Human Rights Council and the Open-ended Working Group;

(c) Actively engage in the multi-stakeholder meeting mandated by Human Rights Council resolution 48/3 and other consultations with a view to developing proposals and recommendations for strengthening legal frameworks at both the national and the international levels to protect the human rights of older persons for further consideration by the Council and other relevant bodies;

(d) Invite existing international human rights mechanisms to review their current practices with a view to better integrating the human rights of older persons in their work; and to address gaps and explore new issues particularly affecting older persons not currently addressed by the international human rights framework.

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