**Submission to the Office of the United Nations High Commissioner for Human Rights**

**on normative standards and obligations under international law in relation to the promotion and protection of the human rights of older persons**

**December 6, 2021**

**1. Introduction**

This submission is based on Human Rights Watch’s research on human rights issues impacting older people, with a focus on rights in situations of risk and humanitarian emergencies, the right to live independently and within the community, the right to freedom from torture, cruel, inhuman and degrading treatment, and the right to a family and private life. For each we present the findings of our research and the relevant normative standards.

**2. Rights in situations of risk and humanitarian emergencies**

Human Rights Watch’s has documented human rights abuses in conflicts and other situations of violence between 2015 and 2021 between Armenia and Azerbaijan over the ethnic-Armenian majority enclave Nagorno-Karabakh,[[1]](#footnote-1) and in Burkina Faso,[[2]](#footnote-2) Cameroon,[[3]](#footnote-3) Central African Republic,[[4]](#footnote-4) Ethiopia,[[5]](#footnote-5) Israel/Palestine,[[6]](#footnote-6) Mali,[[7]](#footnote-7) Mozambique,[[8]](#footnote-8) Niger,[[9]](#footnote-9) South Sudan,[[10]](#footnote-10) Syria,[[11]](#footnote-11) and Ukraine[[12]](#footnote-12). Our research found that government forces and non-governmental armed groups have killed and subjected older civilians to summary executions, arbitrary detention, torture, inhuman and degrading treatment, rape, abduction and kidnapping, and the destruction of their homes and other property.

For example, on July 29, 2017, in Ouham province in the Central African Republic, where a proliferation of armed groups has been fighting since 2013, armed Seleka forces executed Dieudonne, a 60-year-old blind man who had been hiding in a family compound nearby a displacement camp they were attacking. One witness said:

“As he was pulled outside, Dieudonne said, ‘My sons, look at me. I am old and blind. I was just on the way to the camp to look for food. Why kill me?’ The Seleka did not respond, they just shot him in the chest.”[[13]](#footnote-13)

Some older people have chosen not to flee their homes when they have come under attack because they thought they would not be attacked, they wanted to protect their property, or had become ill when fleeing an earlier attack. Older people who have been forced to leave their homes have said they would find it hard or impossible to rebuild their lives after all they have worked for and achieved had been destroyed. Others have been unable to flee because of disability, not being able to run fast enough, or because families could not support them to flee.

**Normative Standards**

All parties to armed conflict are bound by Common Article 3 to the 1949 Geneva Conventions which prohibits attacks on civilians including older civilians, summary executions, torture and other humiliating or degrading treatment, and rape of civilians, attacks on civilian property and the mistreatment of anyone in custody. People who commit serious violations of the laws of war, including summary executions and torture, may be prosecuted for war crimes.[[14]](#footnote-14) The fourth Geneva Convention affords protection to civilians, including older civilians, in international armed conflict, including in occupied territory. Article 17 of the Convention provides for the safe removal of older civilians, among others, from besieged or encircled areas.[[15]](#footnote-15)

International human rights law applies in the context of armed conflict and other situations of violence. The International Covenant on Civil and Political Rights (ICCPR) and the Convention against Torture protect older people’s right to life and freedom against torture, ill treatment, and abduction.[[16]](#footnote-16) Under Article 11 of the Convention on the Rights of Persons with Disabilities (CRPD) on situations of risk and humanitarian emergencies states are obliged to take “all necessary measures to ensure the protection and safety of persons with disabilities”.[[17]](#footnote-17) This applies to older people with disabilities in armed conflict and other situations of violence, and requires ratifying states to pay extra attention to, and positively accommodate, the difference of disability in established norms on protection in armed conflict.[[18]](#footnote-18) Article 11 does not apply to older people who do not live with disability, nor does it require ratifying states to pay attention to the difference of older age in established norms on protection in armed conflict or other situations of violence.

In 2019 Rosa Kornfeld-Matte, the then Independent Expert on the enjoyment of all human rights of older persons, addressed the rights of older people in emergency situations in her report to the Human Rights Council, concluding that ‘current instruments do not make the issues of ageing specific or sufficiently visible, and therefore preclude older persons from the full enjoyment of their human rights, particularly in emergency situations.’[[19]](#footnote-19) The Independent Expert also concluded that ‘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, including for older persons in emergency situations.’[[20]](#footnote-20)

**3. Right to live independently and within the community**

Human Rights Watch’s research on older people’s access to support services in Russia has found that the Russian government is not providing adequate resources for home-based services for older people, denying some of them the ability to live independent and dignified lives.[[21]](#footnote-21) Despite legislative reform to enhance these services, their funding and delivery appear to be inadequate to meet the needs of older people in Russia.

Enabling people to live with dignity and as full members of society goes beyond meeting basic survival needs. A 93-year-old woman in Sverdlovsk region, who broke her leg two years ago has pain that makes walking or bending it difficult, said that a social service worker visits her twice a week, primarily to deliver groceries and tidy her apartment. But the woman said that she cannot get into the bathtub without help, rarely eats cooked meals, and receives few visits other than from the social worker. “I don’t leave my apartment,” she said, crying. “I would love to… Two winters I have not been able to go anywhere. I sit here like I am in prison.”[[22]](#footnote-22)

Human Rights Watch’s research found that insufficient services may leave older people with little choice but to live in a nursing home or other institutional setting, rather than guaranteeing their right to live where and with whom they choose within their community. A social worker in Pskov region described one client who had had a stroke:

“She had difficulty moving around and she could talk, but [with difficulty]. She lived in a free-standing house and would have had to be visited every day so they could heat the stove, bring firewood, and bring water. She couldn’t even walk… If she at least was walking it would have been possible [to live independently at home]. But if a person is bedridden, there is no other option [than a nursing home].… They don’t want to go [to a nursing home] but need forces them to.”[[23]](#footnote-23)

**Normative Standards**

Older people with disabilities have the right to live independently in the community and to home and community-based support under Article 19 of the CRPD.[[24]](#footnote-24) Support includes “access to a range of in-home, residential, and other community support services, including personal assistance necessary to support living and inclusion in the community, and to prevent isolation or segregation.” These supports should be available to anyone with a disability on an equal basis, meaning it should not depend on the level of support a person requires.

The right to live independently and within the community is only guaranteed to older persons with disabilities. Older people who do not live with disability must rely on elements of the right to social security; the right to an adequate standard of living, including adequate food, clothing, and housing; and the right to the highest attainable standard of physical and mental health, all guaranteed in the International Covenant on Economic, Social and Cultural Rights (ICESCR).[[25]](#footnote-25)

The Office of the High Commissioner for Human Rights stated that ‘Article 19 [of the CRPD]…was developed from the perspectives of persons with disabilities and provides a clear and comprehensive statement of the right. That may be contrasted with how older persons would have to piece together bits of protection from disparate rights to create an approximation to what would be embodied in a self-contained articulation of this right. Similarly, a new normative statement could better construct the elements of the right from the ground up.’[[26]](#footnote-26)

**4. Right to freedom from torture, cruel, inhuman and degrading treatment**

Human Rights Watch has documented how nursing homes in the United States and Australia routinely give older people antipsychotic drugs as chemical restraints.[[27]](#footnote-27) Antipsychotic medications are often given without free and informed consent. Studies have found that on average, antipsychotic drugs almost double the risk of death in older people with dementia.[[28]](#footnote-28)

In 2018 Human Rights Watch’s documented that nursing homes across the United States routinely give antipsychotic drugs to residents with dementia to control their behavior, despite rules against the misuse of drugs as “chemical restraints”. This abusive practice remains widespread, even though the use of antipsychotic drugs on older people with dementia is associated with a nearly doubled risk of death. Using antipsychotic medications as a “chemical restraint” – for the convenience of staff or to discipline residents – violates federal regulations and can amount to cruel, inhuman, or degrading treatment under international human rights law. Yet even when nursing homes are found to have broken these rules, they are rarely punished. [[29]](#footnote-29)

In Australia, Human Rights Watch’s research found that many aged care facilities routinely give older people with dementia dangerous medicines to control their behavior. Instead of providing support to older people with dementia, facilities use drugs to control their behavior. Many of the drugs used to control people in aged care facilities are antipsychotics that are not approved in Australia for older people with dementia. In addition to the physical, social, and emotional harm for older people restrained with these drugs, the use of these drugs in older people with dementia is also associated with an increased risk of death.[[30]](#footnote-30)

One woman Human Rights watch spoke to in Australia said that her grandmother had wandered away from an aged care facility where she was living in 2017. After the incident, the facility staff said they placed her on antipsychotic drugs. “Everything about her, her health, her spirit, declined after that drug,” the granddaughter said. “We went to see her after the meds, and she couldn’t hold a conversation, she was dropping off to sleep, [just] like that.… Her eyes would roll back in her head.”[[31]](#footnote-31)

**Normative standards**

In 2013, Juan Mendez, then the UN special rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, warned of the danger of human rights violations in the healthcare setting where the perception persists that “certain practices in health-care may be defended by the authorities on grounds of administrative efficiency, behavior modification or medical necessity.”[[32]](#footnote-32) Mendez also noted that “medical treatments of an intrusive and irreversible nature, when lacking a therapeutic purpose, may constitute torture or ill-treatment when enforced or administered without the free and informed consent of the person concerned.”[[33]](#footnote-33) He also emphasized that an act may constitute ill-treatment, even if it is “intended to benefit the ‘patient’” and may “exist alongside ostensibly therapeutic aims.”[[34]](#footnote-34) Mendez also stated that the use of a “prolonged restraint” may constitute torture and ill-treatment when used against people with mental (psychosocial or intellectual) disabilities.[[35]](#footnote-35)

Mendez concluded that “it is essential that an absolute ban on all coercive and nonconsensual measures, including restraint and solitary confinement of people with psychosocial or intellectual disabilities, should apply in all places of deprivation of liberty, including in psychiatric and social care institutions.”[[36]](#footnote-36)

The CRPD committee has determined that treating people with disabilities, who include older people with dementia, with medications without consent is a violation of the right to equal recognition before the law, the right to personal integrity, and the right to freedom from violent exploitation and abuse, as well as the right to freedom from torture and inhuman and degrading treatment.[[37]](#footnote-37)

**5. Right to a family and private life**

In 2017 unnecessary delays and arbitrary barriers kept older refugees and asylum seekers stranded in Greece, unable to reunite with family members who have legal status in the European Union. Human Rights Watch found that EU asylum processes were failing to properly respect or protect the right to family life of older refugees in Greece. Many older refugees and asylum seekers found their lives are on hold as they waited to learn if they would be reunified with family, with little information and great uncertainty.[[38]](#footnote-38)

The EU law that determines asylum processing, known as the Dublin regulation, says that in accordance with EU human rights law, “respect for family life should be a primary consideration for Member States when applying this Regulation.” It also states that “in order to ensure full respect for the principle of family unity and for the best interests of the child, the existence of a relationship of dependency between an applicant and his or her child, sibling or parent on account of the applicant’s pregnancy or maternity, state of health or old age, should become a binding responsibility criterion.”[[39]](#footnote-39)

**Normative standards**

The right to family in international law is enshrined in the Universal Declaration of Human Rights (Article 16 (3)), and key human rights treaties including the ICESCR (Article 10 (1)), the ICCPR (Article 23 (1)), the Charter of Fundamental Rights of the European Union, (Article 33 (1)), and the European Convention on Human Rights (article 8). Under international law the definition of “family” is not restricted only to spouses and minor children.

However, the definition of “family member” in the Dublin regulation is limited to spouses, or partners and minor children, while the definition of “relative” refers explicitly only to aunts, uncles, and grandparents of adults. Parents of adults are not listed in this definition. This omission leaves an important gap in the protection of older people’s rights.[[40]](#footnote-40)

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