**International Disability Alliance Submission to OHCHR on Normative Standards and Obligations Under International Law in Relation to the Promotion and Protection of the Human Rights of Older Persons**

The International Disability Alliance (IDA) welcomes the opportunity to provide input to the Office of the United Nations High Commissioner for Human Rights (OHCHR) for its [study](https://drive.google.com/drive/folders/1pUClQQ3MtPHUeHNc4TELVzEeJxCkqF_F) on normative standards and

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

IDA brings together over 1,100 organizations of persons with disabilities and their families from across eight global and six regional networks. Together we [promote the rights of persons with disabilities](http://www.internationaldisabilityalliance.org/node/80) across the United Nations' efforts to advance human rights and sustainable development. We [support organizations of persons with disabilities](http://www.internationaldisabilityalliance.org/node/52) to hold their governments to account and advocate for change locally, nationally and internationally. The cornerstone of our work is the [United Nations Convention on the Rights of Persons with Disabilities](http://www.internationaldisabilityalliance.org/node/165) (the CRPD). Currently, 183 States and 1 regional integration organization have ratified or acceded, and 163 States and 1 regional integration organization have signed.

The CRPD represents a paradigm shift for persons with disabilities. It uses a social definition of disability, recognizing that disability “is an evolving concept and that disability results from the interaction between persons with impairments and attitudinal and environmental barriers that hinders their full and effective participation in society on an equal basis with others.”[[1]](#footnote-1) This “evolving concept” includes older persons with disabilities; both those living into older age with disabilities, and those who are acquiring disabilities in older age. The socially-constructed barrier of old-age discrimination, or ageism, prevents older persons with disabilities from accessing their rights, and it is “inadequately covered by existing international norms.”[[2]](#footnote-2)

This submission highlights intersectionality between older persons and persons with disabilities for the following legal norms for persons with disabilities: equality and non-discrimination (Article 5); equal recognition before the law (Article 12); living independently and being included in the community (Article 19); the general obligation of consultation (Article 4.3) and political participation (Article 29). There are many other rights that interact with these rights. IDA is focusing on these rights because the CRPD offers elaborations that are of specific relevance for older persons with disabilities’ enjoyment of their rights.

**Equality and Non-Discrimination -** The Committee on the Rights of Persons with Disabilities (the Committee) notes that older age is a potential ground for multiple and intersecting forms of discrimination in its General Comment No. 6 (2018) on equality and non-discrimination.[[3]](#footnote-3) It calls on States parties to adopt specific measures with a view to achieving inclusive equality for older persons with disabilities, among others. The normative standards and obligations under the international law of the CRPD promise “to restore voice, choice and control to persons with disabilities who have been treated as objects of care for too long,”[[4]](#footnote-4) and this includes older persons with disabilities.

Persons with disabilities face multiple and intersecting forms of discrimination, and older age discrimination, whether direct, indirect, or systemic, affects huge portions of our population. It occurs directly, with age cutoffs for state support for devices such as hearing aids and personal assistance; it occurs indirectly, with inflexible employer requirements for physical fitness tests; and it occurs systemically, such as with segregated systems of institutionalization.

Older persons with disabilities may be viewed by society as having deficits inherent to old age, rather than situating their disabilities within the context of society’s barriers to their full and effective participation. This is the topic of a 2019 report of the Special Rapporteur on the rights of persons with disabilities.[[5]](#footnote-5) Interactions between disability and environment may impact self-identification of disability and the social construction of older age, obscuring an older person’s disability, and leading to “a less extensive application of the CRPD in practice to older persons.”[[6]](#footnote-6) The reverse may also be found. In many countries, more than half of all persons with disabilities are older.[[7]](#footnote-7) The perception of being older can therefore be associated with the perception of disability. This may result in disability discrimination based on the perception of disability.[[8]](#footnote-8)

Ageism is “corrosive” to older persons, according to a 2021 OHCHR study, and “the international human rights system has failed to provide an explicit binding prohibition of this form of conduct or to provide an effective remedy for it.”[[9]](#footnote-9) This lack of recognition represents a threat to the rights enshrined in the CRPD for a large proportion of persons with disabilities worldwide.

IDA recommends reaffirming these norms on equality and non-discrimination set out in the CRPD, and that they are highlighted in OHCHR’s forthcoming report.

**Equal Recognition Before the Law -** The right to equality before the law is guaranteed in the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights, as well as the CRPD. At its core, the right to legal capacity is about equality and non-discrimination. The Committee explains in its General Comment No. 1 that “Article 12 does not set out additional rights for people with disabilities; it simply describes the specific elements that States parties are required to take into account to ensure the right to equality before the law for people with disabilities, on an equal basis with others.”[[10]](#footnote-10)

A lack of equal recognition before the law has been recognized as a barrier to the enjoyment of other rights by persons with disabilities.[[11]](#footnote-11) More people have dementia in older age. Older persons with or without disabilities can be perceived as suspect of having a disability, including dementia, based on their older age. This association between older age and dementia in particular contributes to violations of many older persons with disabilities’ rights, including equal recognition before the law, work and employment, and the right to live independently and be included in the community, among others.

In particular, older persons with disabilities face barriers to their right to legal capacity. The Committee writes that “perceived or actual deficits in mental capacity must not be used as justification for denying legal capacity.”[[12]](#footnote-12) The CRPD sets out the obligation to states parties to ensure that persons with disabilities receive the support necessary to make individual choices and to arrange one’s life.

For older persons with disabilities, in particular those with dementia, the threats to exercising legal capacity may come from laws regarding guardianship, conservatorship, and laws permitting forced treatment. Rather than supporting the rights, will and preferences of older persons with disabilities, these legal regimes permit substitute decision-making. Such substitutions are not only violative of the inherent dignity and personhood of older persons with disabilities, they also open individuals to risks of institutionalization, destitution, and loss of intimate relationships.

The Committee writes that “[o]ne of the aims of support in the exercise of legal capacity is to build the confidence and skills of persons with disabilities so that they can exercise their legal capacity with less support in the future, if they so wish.”[[13]](#footnote-13) For anyone with progressive conditions, including older persons with dementia, the aim of exercising legal capacity with less support may not be realizable. However, the practice of supported decision-making offers intrinsic benefits for the person using support: they practice expressing their will and preferences with support, possibly maintaining and building these skills; and the shared experiences and documentation of the individual’s will and preferences can benefit future support.

And lastly, equal recognition before the law includes honoring advance directives as an expression of older persons with disabilities’ will and preferences. The Committee writes that “All persons with disabilities have the right to engage in advance planning and should be given the opportunity to do so on an equal basis with others. …Support should be provided to a person, where desired, to complete an advance planning process. The point at which an advance directive enters into force (and ceases to have effect) should be decided by the person and included in the text of the directive; it should not be based on an assessment that the person lacks mental capacity.”[[14]](#footnote-14)

IDA recommends reaffirming these norms on equal recognition before the law set out in the CRPD, and that they are highlighted in OHCHR’s forthcoming report.

**Support to Live in the Community -** The right to live independently and be included in the community is a right that frequently goes unrecognized for older persons with disabilities. In many places, older persons with disabilities face barriers to accessing services and supports to live independently and be included in the community. This can result in disproportionate risk of institutionalization, seclusion, forced treatment, and other violations of their rights.

The CRPD requires that States recognize “right of ***all*** persons with disabilities to live in the community, with choices equal to others, and … take effective and appropriate measures to facilitate full enjoyment by persons with disabilities of this right and their full inclusion and participation in the community,” (emphasis added).[[15]](#footnote-15) This right remains, regardless of the level of support a person needs.[[16]](#footnote-16)

Older persons requiring services and supports are those with disabilities, however, their requirements have long been treated as health or medical issues, if addressed at all. The purpose of services and supports are not just to maintain health, but to give support to realize all other rights. This requires tailored support that recognizes individual personhood.

Ageism in attitudes and policies results in unmet needs for services and supports being viewed as acceptable because of older age. Many older persons with disabilities live without these services, relying on informal networks that can leave them vulnerable to abuse and undue influence. And even those who have the services they require recognize the threat to their rights from ageism in their surroundings: Adolf Ratzka, Ph.D., aged 77, is a long-time user of personal assistance, and a founder of the European Network for Independent Living.[[17]](#footnote-17) He reports that since moving out of institutions in 1966, he has had a “a rich and rewarding life, thanks to personal assistance,” with a family and career. However, he says, “I worry about having to move back to an institution, because a [national] government commission recently suggested stopping [personal assistance] payments for those over 65.”

Older persons with disabilities have the same right 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 from the community.”[[18]](#footnote-18) As Ratzka puts it, “I’m still the same person! My needs, interests and aspirations have not changed!”

IDA recommends reaffirming these norms on support to live independently and be included in the community set out in the CRPD, and that they are highlighted in OHCHR’s forthcoming report.

**Participation -** Older persons with disabilities’ participation is crucial to the development and implementation of legislation, policies other decision-making processes concerning issues relating to persons with disabilities, including issues relating to independent living and community inclusion. The CRPD requires that States “shall closely consult with and actively involve persons with disabilities…through their representative organizations.”[[19]](#footnote-19) Older persons with disabilities should be consulted along with older persons organizations on policies that affect them, in line with the Committee’s General Comment No. 7: “The right of persons with disabilities to participate in political and public life (art. 29) is of extreme importance in ensuring the equality of opportunity for persons with disabilities to fully and effectively participate and be included in society.”[[20]](#footnote-20)

The Committee expressly included older persons as a group that should be closely consulted and actively involved in the development and implementation of legislation and policies to implement the CRPD.[[21]](#footnote-21) This is a critical and often-overlooked component of consultations on policies relating to older persons with disabilities. Such consultations can be dominated by aged care, pharmaceutical, and medical industries, which can have motives in opposition to older persons with disabilities’ rights.

Consultation and participation in political and public life is are the rights of persons with disabilities at any age, and as the Committee explains, a component of being included in society. IDA recommends reaffirming these norms, and that they are highlighted in OHCHR’s forthcoming report.

**Conclusion -** Our rights to be free from discrimination, to live where we choose and to be a part of a community on an equal basis with others, and to have the support we require to make decisions and participate in society are all key components of our personhood elaborated by the CRPD. Older persons with disabilities look to a future where all will enjoy their rights without an age limit.

1. UNCRPD, Preambular paragraph (e). <https://tinyurl.com/2ajeazfy> [↑](#footnote-ref-1)
2. OHCHR,Update to the 2012 Analytical Outcome Study on the normative standards in international human rights law in relation to older persons, <https://tinyurl.com/msce7jxa> [↑](#footnote-ref-2)
3. Committee’s General comment No. 6 (2018) on equality and non-discrimination, para 73 (o), <https://tinyurl.com/2p83snkd> [↑](#footnote-ref-3)
4. **Vision report of the Special Rapporteur on the rights of persons with disabilities, Gerard Quinn, 2021,** <https://undocs.org/en/A/HRC/46/27> [↑](#footnote-ref-4)
5. Report of the Special Rapporteur on the Rights of Persons with Disabilities, Older Persons with Disabilities, Catalina Devandas-Aguilar, 2019, <https://undocs.org/en/A/74/186> [↑](#footnote-ref-5)
6. OHCHR,Update to the 2012 Analytical Outcome Study on the normative standards in international human rights law in relation to older persons, para 99 (2021). <https://tinyurl.com/msce7jxa> [↑](#footnote-ref-6)
7. *Promoting Inclusion through Social Protection: Report on the World Social Situation 2018* p. 63 <https://tinyurl.com/2p8zpedb> [↑](#footnote-ref-7)
8. Committee’s Concluding Observations for Peru, CRPD/C/PER/CO/1 (2012), paras 28 and 29. [↑](#footnote-ref-8)
9. OHCHR,Update to the 2012 Analytical Outcome Study on the normative standards in international human rights law in relation to older persons, para 47 (2021). <https://tinyurl.com/msce7jxa> [↑](#footnote-ref-9)
10. Committee on the Rights of Persons with Disabilities, General comment No. 1 (2014), para 1, <https://tinyurl.com/5bxkx3cd> [↑](#footnote-ref-10)
11. Committee on the Rights of Persons with Disabilities, General Comment No. 7 (2018), para 79, <https://tinyurl.com/2p8njcu7> [↑](#footnote-ref-11)
12. Committee on the Rights of Persons with Disabilities, General comment No. 1 (2014), para 13, <https://tinyurl.com/5bxkx3cd> [↑](#footnote-ref-12)
13. Committee on the Rights of Persons with Disabilities, General comment No. 1 (2014), para 24, <https://tinyurl.com/5bxkx3cd> [↑](#footnote-ref-13)
14. Committee on the Rights of Persons with Disabilities, General comment No. 1 (2014), para 17, <https://tinyurl.com/5bxkx3cd> [↑](#footnote-ref-14)
15. CRPD Article 19, <https://tinyurl.com/h8d4675d> [↑](#footnote-ref-15)
16. CRPD Preamble (j) <https://tinyurl.com/2ajeazfy> [↑](#footnote-ref-16)
17. <http://enil.eu/news/hall-of-fame-adolf-ratza/> [↑](#footnote-ref-17)
18. CRPD Article 19 (b) <https://tinyurl.com/h8d4675d> [↑](#footnote-ref-18)
19. CRPD Article 4.3 <https://tinyurl.com/2p87xvwz> [↑](#footnote-ref-19)
20. Committee on the Rights of Persons with Disabilities, General Comment No. 7 (2018), para 88, <https://tinyurl.com/2p8njcu7> [↑](#footnote-ref-20)
21. Committee on the Rights of Persons with Disabilities, General Comment No. 7 (2018), para 50, <https://tinyurl.com/2p8njcu7> [↑](#footnote-ref-21)