



Submission to the call for contributions on older persons deprived of liberty – 2022 HRC report

Association for the Prevention of Torture

1 April 2022

I. Introduction

1. The Association for the Prevention of Torture (APT) welcomes the initiative of the Independent Expert on the enjoyment of all human rights by older persons to focus her next thematic report to the Human Rights Council on older persons deprived of their liberty.

2. International and regional human rights law provide the overarching framework for the protection of the human rights of older persons. Specific regional standards have also been developed to assist States to fulfil the human rights of older people, including specific provisions on deprivation of liberty¹.

3. In the area of deprivation of liberty, specific international and regional instruments emphasize the principle of non-discrimination of persons deprived of liberty on different grounds, including age². However, no specific international or regional standards on deprivation of liberty address in detail the specific needs of older persons. Therefore, we believe that the report by the Independent Expert would represent a significant advancement in the development of specific standards to protect the rights of older persons deprived of liberty.

II. Scope of the submission

4. Without pretending to be exhaustive, this document outlines particular risks of torture and ill-treatment faced by older persons deprived of liberty within and outside the criminal justice system, based on the broad definition of deprivation of liberty as per Article 4 of the Optional Protocol to the UN Convention against Torture (OPCAT), encompassing all places where: i) persons are not free to leave; ii) staff and authorities exercise total control over a person's movement; iii) persons require assistance by staff or authorities for all activities of daily living.

¹ See the Inter-American Convention on the Protection of Human Rights of Older Persons (2015) and the African Union Protocol to the African Charter on Human and Peoples' Rights on the Rights of Older Persons in Africa (2016).

² See the revised UN Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules) and UN Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (the Bangkok Rules).

5. The following contribution stems from recent APT's work on the issue, including: i) a regional meeting³ jointly with the OSCE Office for Democratic Institutions and Human Rights (ODIHR) gathering National Preventive Mechanisms (NPMs) and civil society organisations; ii) the joint publication with Penal Reform International (PRI) "Older persons in detention: a framework for preventive monitoring"⁴; and iii) focus group discussions with NPMs from Latin America related to monitoring the situation of older persons deprived of liberty⁵.

III. Risk factors exposing older persons deprived of liberty to torture and other ill-treatment

a) Structural discrimination of older persons exacerbated in detention

6. Life expectancy has increased globally, resulting in a growing number and proportion of older persons in the population⁶. This growth is also reflected in the context of deprivation of liberty⁷. However, the specific risks and needs of older persons deprived of liberty have been overlooked.

7. As people age, they may face systematic stereotyping and discrimination in accessing systems and infrastructures that are not adapted or responsive to their needs. Ageing is also often linked with poverty, lower education, as well as mental and physical health conditions. This situation is exacerbated in the context of deprivation of liberty, for the harmful effect of detention on health and wellbeing⁸, the lack of meaningful contact with the outside world, poor material conditions and high risk of abuse and violence. In some contexts, the lack of public policies catering for older persons, and the abandonment by families, can lead older persons to be deprived of liberty within the criminal justice system or in social care homes.

8. Older persons are not a homogenous group and don't experience deprivation of liberty in the same way. Different factors, such as disability, ethnicity, gender, gender identity and sexual orientation, as well as the intersection between these factors, shape their experience of detention and place them at heightened risk of discrimination, ill-treatment and torture.

b) Deprivation of liberty within the criminal justice system

- **Moments of high risk**

9. Older persons deprived of liberty are at heightened risk of abuse and ill-treatment during certain moments of their detention within the criminal justice system, such as the initial period

³ https://www.apr.ch/en/news_on_prevention/monitoring-elderly-people-detention

⁴ <https://www.apr.ch/en/resources/publications/older-persons-detention-framework-preventive-monitoring>

⁵ January 2022.

⁶ World Health Organisation (WHO), Ageing and Health Factsheet, October 2021: <https://www.who.int/news-room/fact-sheets/detail/ageing-and-health>

⁷ See PRI/APR, *Older persons in detention: a framework for preventive monitoring*, 2021, p. 2.

⁸ *Ibid.* p.3.

of arrest, apprehension, stop and search, police questioning and custody, during transfer from one place of detention to another, and during admission to a place of detention. The increase in the number of older persons worldwide also results in more contacts with law enforcement.

10. Many older persons who come into contact with the criminal justice system may suffer from mental health conditions and substance abuse; may have sensory impairments, such as vision or hearing loss; and may have psycho-social or intellectual disabilities. As prison populations tend to have poorer health status compared to general populations, ageing in prison is accelerated compared to the community, so the average physiological age of a person in prison is higher than their chronological age⁹. Ageing is also often linked with poverty and lower education. All these factors expose them to the risk of abuse when in contact with law enforcement. For example, during police interviews, older persons may be at risk of being asked leading and misleading questions or being subjected to interrogative pressure, leading to false or unreliable information¹⁰. Older persons may also face more difficulties to navigate the system, including limited knowledge about their rights and the reason for their arrest, and lack of access to legal advice.

11. The newly launched **Principles on Effective Interviewing for Investigations and Information Gathering (the Méndez Principles¹¹)** include specific provisions related to persons in situations of vulnerability, including older persons, while providing guidance on how to strengthen human rights protection in the administration of justice and obtain accurate and reliable information during investigations.

- **Violence by other detainees**

12. Due to their deteriorating health and mobility, high prevalence of psycho-social disabilities and cognitive impairment including dementia-related conditions, older people are at high risk to be subject to abuses from other detainees. This is magnified in contexts where detainees exercise *de facto* control over prisons.

- **Lack of appropriate services and material conditions**

13. Prisons often lack age-appropriate services, activities and rehabilitation programmes. In most cases, they are designed to respond to situations involving young offenders. Furthermore, prisons are often ill-equipped, with architectural barriers and other challenging environmental features (eg. poor lighting, excessive heat or cold, extreme exposure to noise, steep staircases, lack of elevators, upper bunk beds and low toilets)¹², thus failing to meet the specific needs of

⁹ *Ibid.*, p. 3.

¹⁰ Principles on Effective Interviewing for Investigations and Information Gathering, May 2021, para. 140.

¹¹ <https://www.apt.ch/en/resources/publications/new-principles-effective-interviewing-investigations-and-information>

¹² Information based on APT-OSCE/ODIHR, *Monitoring the situation of older persons deprived of liberty in the context of the COVID-19 pandemic - Report on the regional meeting of NPMs and CSOs of the OSCE region* (16-17 June 2021), to be published in the course of 2022.

older persons with disabilities and mobility problems. In this regard, the Committee on the Rights of Persons with Disabilities has recommended that “States parties establish legal frameworks for the provision of reasonable accommodation that preserve the dignity of persons with disabilities, and guarantee this right for those detained in prisons”¹³.

- **Loneliness**

14. Older persons in prison may lack meaningful human contact for a number of reasons. In some cases, they experience abandonment by their families, resulting in lack of contact with the outside world and also impacting on the implementation of non-custodial measures, early release schemes and de-institutionalisation programmes, as older persons often do not have a place to live once they are released in the community¹⁴. Older persons who have aged in prison serving a long sentence may have new needs and face additional challenges when released from prison for the disconnection with the reality outside prison as compared to the moment they were initially admitted. The lack of appropriate services and material conditions of detention may also limit the possibility for older persons to participate in activities with other detainees.

- **Lack of access to healthcare**

15. Access to healthcare is often poor for the entire prison population, and even more so in the case of access to geriatric and other specialised health care for older persons (e.g., physiotherapy, treatments for arthritis, osteoporosis, hypertension, diabetes, Parkinson's disease, among others). Geriatric syndromes in prison settings include serious injuries and sometimes even death due to falls, cognitive and sensory impairment. In addition, older prisoners frequently suffer from mental health conditions, including anxiety related to impending release, fear of death in detention settings, depression, suicidal thoughts and isolation¹⁵.

c) Deprivation of liberty outside the criminal justice system

16. Older persons in places such as mental health institutions and social care homes can be considered as *de facto* deprived of their liberty¹⁶. This is particularly true for persons who are either not free to leave the institution, totally dependent on staff for daily activities, or are subjected to involuntary treatment and/or means of restraint without being protected by the

¹³ Committee on the Rights of Persons with Disabilities, Guidelines on article 14, The right to liberty and security of persons with disabilities, Adopted during the Committee's 14th session, September 2015, para. 17.

¹⁴ Information based on focus group discussion held with NPMs from Latin America, January 2022.

¹⁵ Information based on APT-OSCE/ODIHR, *Monitoring the situation of older persons deprived of liberty in the context of the COVID-19 pandemic - Report on the regional meeting of NPMs and CSOs of the OSCE region* (16-17 June 2021), to be published in the course of 2022.

¹⁶ See e.g., European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), Factsheet: Persons deprived of their liberty in social care establishments, 21 December 2020, available at: <https://rm.coe.int/1680a0cc19>

legal safeguards applicable to residents who are formally kept in the institution or subjected to treatment involuntarily.

- **Neglect and other forms of abuse**

17. Older persons deprived of liberty are particularly at risk of neglect and other forms of abuse by staff and other residents. Neglect may take different forms, including not changing residents' clothes and bedding regularly, requiring residents to wear piyama all day long, leaving residents with mobility issues in their room for hours, not providing them with adequate healthcare or meaningful activities and physical exercise.

18. Living conditions and the restrictions imposed on older persons in these settings can also affect the protection and respect for their right to privacy, for instance the prohibition for residents to lock their door or to keep their clothes. Furthermore, stringent conditions are often imposed to older persons, not allowing overnight visits of partners and/or not couples to live together¹⁷.

19. In some contexts, there are challenges in relation to laws and standards regulating the use of coercion and other forms of limitation of rights with respect to older persons in these types of facilities. The lack of standards and adequate training, and the shortage of staff expose older persons to the risk of abuse by both staff and other residents.

IV. The role of independent monitoring bodies

20. Independent monitoring of places of deprivation of liberty is recognised as one of the most effective preventive measures to protect the rights of persons deprived of liberty¹⁸.

21. Through their visits to all places of detention, their private interviews with persons deprived of liberty, and their unrestricted access to all relevant documentation, NPMs established under the OPCAT can observe first-hand the conditions and treatment of older persons, identify the risks to which they are exposed, and the deficiencies in standards and procedures. These bodies make recommendations, publish reports and engage in constructive dialogue with the authorities, shedding light on the situation of older persons deprived of liberty and driving changes to detention policies, regulatory frameworks and practices.

22. NPMs worldwide are increasingly including social care homes and psychiatric institutions as part of their monitoring mandates, as these places are being understood as places where people may be *de facto* deprived of their liberty. While some NPMs had not visited social care homes before, the COVID-19 pandemic created conditions that made it necessary for them to prioritise visits of these places, because of the heightened vulnerability of older persons. NPMs

¹⁷ Information based on APT-OSCE/ODIHR, *Monitoring the situation of older persons deprived of liberty in the context of the COVID-19 pandemic - Report on the regional meeting of NPMs and CSOs of the OSCE region* (16-17 June 2021), to be published in the course of 2022.

¹⁸ Richard Carver, Lisa Handley, *Does torture prevention work?*, Liverpool University Press, 2016.

have also begun to encourage the use of alternative measures to detention and address the need for deinstitutionalisation of older persons.

V. Suggested recommendations targeted at States

23. Disaggregated data. Collect accurate data related to persons deprived of liberty within and beyond the criminal justice system, disaggregated by age and other factors such as gender, ethnicity, disability, health conditions and needs.

24. Classification and needs assessment. Ensure the most comprehensive assessment possible of each person being admitted to a place of detention to determine age, profile, type of crime or misdemeanour committed, risks and special needs.

25. Appropriate conditions, services and activities. Ensure that older persons have access to appropriate activities and services, as well as material conditions that meet their specific needs.

26. Healthcare. Provide specialised health care services that meet the specific needs of older persons, at least equivalent to those available in the community, according to the principle of equality in health care.

27. Training. Ensure that law enforcement officials, prison guards, health professionals and staff of prisons, psychiatric institutions, social care homes and other places of deprivation of liberty are adequately trained on human rights standards related to the protection of older persons and associated legal and procedural safeguards, to ensure they fully respect the dignity of older persons.

28. Alternatives to detention. Adopt legal reforms for incorporating alternatives to the detention of older persons or to reduce the term of imprisonment based on a comprehensive set of eligibility criteria that give due consideration to the physical and psychological conditions.

29. Deinstitutionalisation measures. Take effective measures to facilitate persons to live independently and be included in the community.

30. Independent oversight

30.1. Ratify the OPCAT and establish an independent national preventive mechanism granted with the necessary resources and powers to monitor the treatment and conditions of deprivation of liberty including in psychiatric institutions and social care homes.

30.2. Engage in dialogue with NPMs on the implementation of their recommendations, including those aimed at protecting the rights of older persons deprived of their liberty.